No. 21-499

In The
Supreme Court of the United States

CARLOS VEGA,

Petitioner,

v.

TERRENCE B. TEKOH,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE NATIONAL POLICE ACCOUNTABILITY PROJECT AS *AMICUS CURIAE* SUPPORTING RESPONDENT

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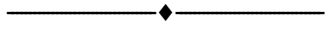
INTERESTS OF THE *AMICUS CURIAE*

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately six hundred attorney members practicing in every region of the United States. Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. This includes Section 1983 actions following wrongful convictions induced by coerced confessions and other civil rights violations.

NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as *amicus curiae* in cases, such as this one, presenting issues of particular importance for its members and their clients. NPAP has recently filed *amicus* briefs at this Court in *Egbert v. Boule*, No. 21-147, *Thompson v. Clark*, No. 20-659, and *Brownback v. King*, 19-546.[1]



[1] *Amicus* files this brief with the consent of the Parties, who announced blanket consent to *amicus* briefs. This brief has been authored entirely by *Amicus*'s counsel, and no person or entity funded the preparation or submission of this brief besides *Amicus* or its counsel. *See* Sup. Ct. R. 37.6.

SUMMARY OF THE ARGUMENT

Section 1983 is an essential vehicle to compensate and deter constitutional violations in all contexts, but it is particularly important when police infringe on an individual's Fifth Amendment rights. People suffer substantial and enduring harms because of coercive interrogations. However, there are no adequate safeguards in criminal procedure to prevent these harms from occurring. The exclusionary rule in particular is a wholly inadequate deterrent for police officers because it is riddled with exceptions and does not limit the use of coerced statements to develop evidence, set bail, or gain leverage in plea negotiations. In fact, empirical studies show that the exclusionary rule may incentivize police officers to violate a suspect's Fifth Amendment rights. Unsurprisingly, this Court has itself acknowledged the relative limitations of the exclusionary rule as a deterrent to violations of constitutional rights vis-à-vis Section 1983 actions. *See Hudson v. Michigan*, 547 U.S. 586 (2006).

This Court should not eliminate the cause of action out of fear that it sweeps too much law enforcement conduct within the ambit of liability. The availability of a Section 1983 action for Fifth Amendment violations is already circumscribed by serious limitations in the substantive law that inhibit recovery. Plaintiffs must show an officer undertook the most egregious conduct that shocks the conscience during an interrogation to state a Fourteenth Amendment due process claim for a coerced confession. Additionally, while the Respondent can prove causation in his case, many

plaintiffs cannot pursue a Section 1983 action because intervening actions of the prosecutor or a judge break the chain of causation. The standards for civil rights claims challenging coerced confessions already substantially limit their availability in all but the most egregious circumstances. Respectfully, this Court has no need to limit them further. The judgment of the Ninth Circuit should be affirmed.

ARGUMENT

I. Fifth Amendment rights depend upon the availability of Section 1983 actions to redress past violations and deter future ones.

Section 1983 was designed to provide individuals harmed by transgressions of the Constitution easy access to a federal forum and ensure the availability of federal remedies. A police officer's violation of a plaintiff's Fifth Amendment right against self-incrimination is precisely the type of constitutional harm for which Congress intended Section 1983 to provide a federal claim and remedy. Congress also did not intend to create merely *any* remedy. As this Court has repeatedly recognized, Section 1983 provides for monetary damages for people whose rights have been violated to deter future misconduct by government actors and protect constitutional rights. That protection matters especially in the Fifth Amendment self-incrimination context because other mechanisms, like exclusion of evidence obtained after violations, have shortcomings

that limit their effectiveness at ensuring law enforcement respects constitutional rights. Exclusionary rules include numerous exceptions that limit their usefulness, including some that actually incentivize affirmative violations. Further, the shift toward resolving the vast majority of criminal cases via plea—which defendants often must bargain for prior to knowing whether wrongfully-coerced confessions will be suppressed—makes exclusion an ineffective tool to deter misconduct. Under the circumstances, Section 1983 actions that redress violations of Fifth Amendment rights play a vital role in deterring future violations and protecting those rights for all.

A. Unwarned custodial interrogations fit squarely within the class of constitutional violations that Congress intended Section 1983 to remedy.

Custodial interrogations include many inherently coercive elements. This Court has long recognized the asymmetrical nature of interrogations and the techniques that law enforcement may bring to bear on suspects. *Miranda v. Arizona*, 384 U.S. 436, 457-58 (1966) (noting the innately coercive nature of a custodial interrogation); *Haynes v. Washington*, 373 U.S. 503 (1963). This includes the threat of detention itself, but "even apart from the express threat, the basic techniques" such as "secret and incommunicado detention and interrogation" are "devices adapted and used to extort confessions from suspects." *Haynes*, 373 U.S. at 514. Interrogations—even in the absence of physical

violence—subject suspects to intense inquisitorial methods, fear of inhumane treatment, degradation of individual personality, invasion of privacy, humiliation, and mental and emotional stress. *Miranda*, 384 U.S. at 457 ("to be sure, this is not physical intimidation, but it is equally destructive of human dignity"); Deborah Young, *Unnecessary Evil: Policing in Interrogations*, 28 CONN. L. REV. 425, 449 (1996) (describing the range of harms a custodial interrogation tactic has on an individual and its harm to human dignity); Richard J. Ofshe and Richard A. Leo, *Coerced Confessions, the Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 1082 (1997) (noting the cumulative harm that independently innocuous tactics can have on individuals over the course of an interrogation). This Court held that law enforcement officers need to issue warnings to suspects before beginning custodial interrogations precisely because of the inherently coercive aspects of the "interrogation atmosphere and the evils it can bring." *Miranda*, 384 U.S. at 456.

While a coercive interrogation itself may not violate individual constitution rights, the use of any ill-gotten self-incriminating statements in a prosecution can give rise to a cause of action. Many of the most harmful interrogation tactics are themselves legal. *See* Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 18 (2011) ("In a coerced-compliant confession, the pressure police apply during the interrogation may not be illegal, and it may come from tactics that judges have approved.").

However, this Court has long held and recently affirmed that a defendant has legal recourse available under the Fifth Amendment when law enforcement coerces a confession or statement and prosecutes them on that basis. *Chavez v. Martinez*, 538 U.S. 760, 767 (2003) (citing *Brown v. Mississippi*, 297 U.S. 278, 286 (1936)). That is because the "privilege against self-incrimination guaranteed by the Fifth Amendment is *a fundamental trial right*." *Chavez*, 538 U.S. at 767 (emphasis in original). The harms imposed by a fundamentally unfair prosecution or wrongful conviction are exactly the type of injuries Congress created Section 1983 to remedy.

B. Section 1983 actions redress past violations.

Coercive custodial interrogations produce a range of tangible injuries compensable by monetary damages. First, an unwarned custodial interrogation often results in unjust deprivation of liberty. The most egregious loss of liberty follows a wrongful conviction. *Corley v. United States*, 556 U.S. 303, 321 (2009) ("there is mounting empirical evidence that [interrogation tactics] can induce a frighteningly high percentage of people to confess to crimes they never committed."); Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 VA. L. REV. 395, 396 (2015) (noting the likely substantial undercounting of false of confessions); *see* False Confessions, Understand the Causes, Innocence Project, available at http://www.innocenceproject.org/understand/False-Confessions.php [http://perma.cc/

T7KE-9XD9] ("More than 1 out of 4 people wrongfully convicted but later exonerated . . . made a false confession or incriminating statement."). Wrongful convictions diminish a person's quality of life while incarcerated, including missed educational and employment opportunities, as well as time lost with family and loved ones. Deborah Mostaghel, *Wrongfully Incarcerated, Randomly Compensated—How to Fund Wrongful Conviction Compensation Statutes*, 44 IND. L. REV. 503, 509-10 (2011) (enumerating injuries typically suffered by the wrongfully convicted). But loss of liberty often occurs even without a conviction, because many coerced statements or confessions that do not result in wrongful conviction often still cause lengthy pretrial detention. *See*, *e.g.*, *Koh v. Vill. of Northbrook*, No. 11-C-02605, 2020 U.S. Dist. LEXIS 211442 at *17 (N.D. Ill. Nov. 12, 2020) (plaintiff was detained for nearly four years before trial because of a coerced confession); Paulo C. Alves, *"Taking the Fifth" Beyond Trial: § 1983 Claims for Pre-Trial Use of Coerced Statements Affirms One's Right Against Self-Incrimination*, 26 J. CIV. RTS. & ECON. DEV. 253, 258-59 (2012).

Second, beyond loss of liberty, coerced confessions can lead to significant quantifiable economic harm. The costs of bail and attorney's fees incurred defending charges that were obtained through a coerced confession or statement can exceed tens of thousands of dollars. *See* Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 AM. ECON. REV. 201, 201 (2018) (average bail for felony

defendants was approximately $55,000); *see also Train v. City of Albuquerque*, 629 F. Supp. 2d 1243, 1254 n.3 (D. N.M. 2009) (alleging $10,000 worth of damages for defending criminal charges that resulted from coerced confession). Charges and detentions related to a coerced confession can also result in reduced income and earning potential for years into the future. *See* Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 950-51 (2004). Victims of coercive interrogations may miss work during pre-trial incarceration and for their court proceedings even if they are not convicted, and may miss years of work and earning if they are convicted. Gabriel Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1791 (2012). But even people who are never detained at all may lose jobs and struggle to find employment because of harm to their professional reputations. Alves, *supra*, at 258 (explaining stigma and professional reputational harm that can result from false confessions even absent a conviction); *see also Paul v. Davis*, 424 U.S. 693, 733 n.17 (1976) (Brennan, J., dissenting); *cf. Nelson v. Colorado*, 137 S. Ct. 1249, 1261 (2017) (Alito, J, concurring) (observing "losses that result from conviction and imprisonment" include "reputational harm").

Third, many people suffer noneconomic damages from coerced confessions and statements, as well. The stress and stigma related to criminal charges that result from a coerced statement or confession can result in ostracization from a person's family and community.

Eugene Scalia, *Police Witness Immunity Under Section 1983*, 56 U. CHI. L. REV. 1433, 1441 (1989) (describing damage to reputation and associated harms long having a remedy in common law wrongful prosecution actions); Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. Chi. L. Sch. Roundtable 73, 107 (1999) (noting exonerees are "often without family, [] live alone and [are] lonely"); Alves, *supra*, at 258. Moreover, the emotional distress of defending charges that result from an unwarned statement can be significant and long-lasting. Drizin, *supra*, at 950.

Section 1983 provides redress for these harms through money damages. Indeed, monetary damages provide retrospective compensation for harms, like wrongful conviction, with no possible prospective remedy. This reflects the remedial purpose of Section 1983, and recognizes the seriousness of the harms in question.

C. Section 1983 actions deter future violations.

In addition to compensating people for gross abuses and violations of their civil rights, damages under Section 1983 also "serve as a deterrent against future constitutional deprivations." *Owen v. City of Independence*, 445 U.S. 622, 651 (1980). These dual purposes of Section 1983 work together—the deterrent effect comes from monetary payouts encouraging governments to train officers on constitutional rights to

avoid future liability, and officers "err[ing] on the side of protecting citizens' constitutional rights" as a result. *Id*. at 652. Indeed, there is no future "deterrent more formidable than that inherent in the award of compensatory damages." *Carey v. Piphus*, 435 U.S. 247, 256 (1978).

Damages liability works to deter misconduct even in some of the most intractable situations, in no small part because it brings public attention and political will to bear from outside law enforcement. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 254 (1981) (noting payments of damage awards "focus taxpayer and voter attention upon the entity's malicious conduct," which can "promote accountability at the next election"). Indeed, the political consequences of civil liability impose a deterrent effect on future violations even where the people causing the violations remain insulated from direct monetary sanction—insurance companies often "demand changes in personnel and policies as a condition of continued coverage" even where a government entity need not touch its budget and officers have indemnification agreements. Alex Rienert, et al., *New Federalism & Civil Rights Enforcement*, 116 NW. U. L. REV. 737, 765 (2021). The cumulative effect of multiple judgments makes Section 1983 suits "particularly beneficial in preventing those 'systemic' injuries that result not so much from the conduct of any single individual, but from the interactive behavior of several." *Owen*, 445 U.S. at 652. Such systemic injuries can include strings of wrongful convictions based upon pervasive Fifth Amendment violations by teams of law

enforcement officers. *See* Samantha Melamed, *As Philly tops two dozen exonerations, city may face tens of millions in civil liability*, The Philadelphia Inquirer (June 13, 2021), https://www.inquirer.com/news/wrongful-convictions-philadelphia-civil-settlements-lawsuits-20210613.html [https://perma.cc/A47Z-FA6F] (describing exonerations in cases involving coerced confessions, and political accountability in the form of a new district attorney).

Indeed, the availability of a damages remedy for violations gives strength and life to the Fifth Amendment. "[W]here there is a legal right there is also a legal remedy." 3 William Blackstone, *Commentaries* *23. Such remedies are vital because "a large part of a right's effectiveness rides on the remedies available for its violation." Alves, *supra*, at 276.

Violations of the Fifth Amendment, even among other sorts of constitutional violations, lack other effective remedies. The exclusionary rule does not meaningfully deter Fifth Amendment violations. *See* Section I.D., *infra*. No remedies protect people from, for example, compelled production of blood for testing, or compelled DNA swabs—or indeed, anything non-testimonial. *See Schmerber v. California*, 347 U.S. 757 (1966); *see also Maryland v. King*, 569 U.S. 435 (2013). Nor do any remedies protect people from coercion in non-custodial interviews. *See Beckwith v. United States*, 425 U.S. 341 (1976). The extensive limitations on available remedies for Fifth Amendment violations have already truncated the scope of the right;

eliminating Section 1983 actions as even a possibility would whittle the right down even further.

D. The exclusionary rule is not an effective alternative deterrent of Fifth Amendment violations in this context.

Alternatives to damages remedies under Section 1983 are insufficient to protect people's civil rights in the context of coercive interrogations. The most oft-cited alternative, the exclusionary rule that allows for suppression of evidence obtained amidst civil rights violations, is particularly insufficient to deter future Fifth Amendment violations. For one thing, the exclusionary rule has numerous exceptions that limit its applicability—hindering its ability to deter even officers who know the law. *Cf. Illinois v. Krull*, 480 U.S. 340, 352 (1987) (observing how there is "nothing to indicate that applying the exclusionary rule . . . will act as significant, additional deterrent" compared to alternative remedy). In fact, as empirical research shows, some exceptions to the exclusionary rule in the interrogation context actually incentivize officers to obtain information by any means they can. Additionally, the nature of the modern criminal process—and its reliance on plea bargaining to resolve the vast majority of criminal cases—means that the exclusionary rule often never even comes into play at all, no matter how the underlying interrogation unfolded. Under the circumstances, the exclusionary rule does not deter violations of the Fifth Amendment, and must not bear the weight

that would fall upon it in the absence of Section 1983 actions.

The exclusionary rule has numerous exceptions that make it particularly unsuitable to deter Fifth Amendment violations. Exceptions to the exclusionary rule in the interrogation context apply at virtually every stage of the criminal process, and in fact, some of the exceptions actually incentivize officers to obtain information through coercion rather than avoid Fifth Amendment violations. For instance, one key exception allows officers to use information gathered during coerced interrogations that violate the Fifth Amendment to develop separate leads, seek out other witnesses, and collect additional evidence—without any of that additional information subject to exclusion. *See Michigan v. Tucker*, 417 U.S. 433, 443 (1974). Both litigation and empirical research document this incentive through violations of *Miranda* protections. *See* Michael Avery*, You Have a Right to Remain Silent*, 30 FORDHAM URB. L. J. 571, 613 (2003). Later in the criminal process, another exception allows prosecutors to use coerced statements against defendants at pretrial proceedings. *See Harris v. New York*, 401 U.S. 222, 226 (1971); *Oregon v. Hass*, 420 U.S. 714, 727 (1975). And as late as trial, even information a judge has adjudicated as coerced and accordingly excluded as direct evidence may still be used for impeachment purposes, limited only by Fourteenth Amendment due process protections. Avery, *supra*, at 614 (quoting Charles D. Weisselberg, *Saving* Miranda, 84 CORNELL L. REV. 109, 133-34 (1998)).

Moreover, whatever protection suppression does provide only even adheres at (or shortly before) trial. And in nearly all criminal cases, a trial never happens at all. In the modern American criminal justice system, the vast majority of cases resolve through plea deals rather than criminal trials. More than 97% of federal convictions and 94% of all state convictions come by plea bargain. *See* Clark Neily, *Prisons Are Packed because Prosecutors Are Coercing Plea Deals. And, Yes, It's Totally Legal*, The Cato Institute (Aug. 8, 2019). As this Court observed a decade ago, plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system." *Missouri v. Frye*, 566 U.S. 134, 143 (2012) (emphasis in original). While prosecutors and defendants may strike plea bargains at any point in the criminal process, prosecutors regularly offer deals that "expire on a certain date," and depend on "off-the-record" facts that the government may not even share at all. Stephanos Bibas, *Incompetent Plea Bargaining and Extrajudicial Reforms*, 126 HARV. L. REV. 150, 153, 156 (2012). Prosecutors often make their best offers before the defendant even files a motion to suppress, and most states allow prosecutors to condition pleas entered after denials of suppression motions on the defendant waiving any appeal of the denial. *See* Alexandra W. Reimelt, *An Unjust Bargain: Plea Bargains and Waiver of the Right to Appeal*, 51 B.C. L. REV. 871 (2010).

Because of the timing of suppression motions, then, most of the harms visited upon people by coercive interrogations are redressable only by Section 1983.

Coerced confessions may result in the deprivation of liberty at many stages of the criminal process that occur before the defendant has an opportunity to file a motion to suppress. *See* Section I.B., *supra*. Although the exclusionary rule does not apply pre-trial, several courts have found Section 1983 liability where statements taken in violation of *Miranda* were used in pre-trial proceedings. *See*, *e.g.*, *Aleman v. Vill. of Hanover Park*, 662 F.3d 897, 905-06 (7th Cir. 2011) (holding violation of *Miranda* actionable under Section 1983 where statement made to police officers was used against defendant to obtain a murder indictment); *Crowe v. Cty. of San Diego*, 608 F.3d 406, 427 (9th Cir. 2010) (holding former juveniles might have Section 1983 claims after law enforcement coerced confessions to use at a juvenile detention hearing, before a grand jury, and at a proceeding to determine if they should be tried as adults); *Best v. City of Portland*, 554 F.3d 698, 702-03 (7th Cir. 2009) (holding that use of statements at the suppression hearing itself constitutes "use" in a criminal case in violation of the Fifth Amendment). For *Miranda* warnings to offer meaningful protection at various pre-trial stages of the criminal process, people must have a remedy under Section 1983 when law enforcement violates their Fifth Amendment rights.

Suppression, therefore, generally occurs too inconsistently and too late to matter as a deterrent—especially as compared to Section 1983 damages. If officers may still pursue leads based upon coerced statements, and any resulting information may later come into evidence, suppression of the coerced statements offers

little deterrence to law enforcement. If prosecutors may introduce coerced information at pretrial proceedings to seek higher bail or detention without bond, and the person is detained, the prospect of suppression later offers little deterrence to law enforcement. If defendants must consider and accept plea deals before they've even filed their suppression motions, suppression offers little deterrence to law enforcement. And if a defendant nevertheless holds out, wins a suppression motion, and goes to trial, but prosecutors may admit as direct evidence information gathered in reliance on his coerced statements and may use those statements to impeach him, even *successful suppression* offers little deterrence to law enforcement.

Indeed, this Court has not only noted the superiority of Section 1983 actions for deterrence but has specifically justified limiting the scope and application of the exclusionary rule because of the availability of Section 1983 actions. "As far as we know, civil liability is an effective deterrent here, as we have assumed it is in other contexts." *Hudson v. Michigan*, 547 U.S. 586, 598 (2006) (Scalia, J.) (limiting the exclusionary rule in the Fourth Amendment context in part because of the availability of Section 1983 actions). The *Hudson* Court contrasted Section 1983 with the exclusionary rule not only because of the stronger deterrence imposed by damages awards, but because of the comparatively lesser social costs imposed by those awards. "[T]he social costs of applying the exclusionary rule . . . are considerable," *id.* at 599, including the "grave adverse consequence that exclusion of relevant incriminating

evidence always entails," *id*. at 595. The Court dismissed the deterrence capabilities of the exclusionary rule, noting it was a product of "the sins and inadequacies of a legal regime that existed almost half a century ago" before finding that the availability of Section 1983 claims provided a better deterrent than exclusion. The inadequacies of the exclusionary rule have become only more pronounced in the last two decades.

Under the circumstances, this Court must not eliminate Section 1983 actions on the basis that suppression provides a sufficient alternative deterrent to Fifth Amendment violations. Suppression is not an adequate alternative deterrent to money damages under Section 1983.

II. Existing limitations already prevent most litigants from bringing successful Section 1983 actions for coercive interrogations.

To the extent this Court fears Section 1983 claims based on coercive interrogations sweep too much law enforcement conduct within the ambit of liability, this concern is without unwarranted. Other aspects of Section 1983 claims in this context substantially circumscribe the scope of the available civil damages remedy. For one thing, this Court has already limited such claims by requiring plaintiffs alleging Fourteenth Amendment violations to show that the officer's conduct was not merely coercive, but that the tactics used shock the conscience. And for another thing, plaintiffs in this context often have difficulty proving that the

coercive interrogation was the proximate cause of their constitutional violation. As courts have observed, the intervening actions of another individual—including, for example, a judge protected by absolute immunity—may break the chain of causation and limit a claim. In this context, the Court need not worry that allowing Section 1983 claims for the use of unwarned statements will greatly increase liability for police officers, or apply to anything but the most egregious misconduct.

A. Fourteenth Amendment due process claims only protect against coercive interrogations in limited circumstances.

Fourteenth Amendment due process claims are already too narrow to protect most suspects from coercive interrogations or address harms stemming from Fifth Amendment violations. To bring a claim for harm resulting from a coercive interrogation under the due process clause, plaintiffs must show that the individual police officer undertook "the most egregious conduct" that "shocks the conscience." *Chavez*, 538 U.S. at 775. The standard set out in a portion of Justice Thomas's opinion of the Court not joined by a majority of justices imposes an even higher bar on plaintiffs, where lower courts choose to follow it. *See* Thomas B. Bennett et al., *Divide & Concur: Separate Opinions & Legal Change*, 103 CORNELL L. REV. 817, 842-45 (2017) (noting that, in practice, lower courts often treat the announcement or framing of rules in this context as controlling). Under the higher standard, interrogation

tactics would only shock the conscience if they were "intended to injure" and "unjustifiable by any government interest"—a nearly impossible standard in light of the obvious government interests at play during most if not all interrogations of suspects or defendants. *Chavez*, 538 U.S. at 775 (Thomas, J., joined by Rehnquist, C.J., & Scalia, J.); *see also* Alves, *supra*, at 274.

Chavez illustrates how high this standard can be in practice, and how broadly "government interest" may be defined. There, after police shot a suspect, they brought him to the hospital, where an officer subjected him to persistent questioning over the course of 45 minutes—without first giving him a *Miranda* warning—while medical personnel attempted to treat his injuries. *Chavez*, 538 U.S. at 764. The suspect was clearly "suffering severe pain and mental anguish" throughout the questioning. *Id.* at 786 (Stevens, J., dissenting). Yet, the plaintiff could not make out a due process violation. The portion of the Court's opinion not joined by a majority of justices noted that even if the questioning deprived the suspect of his liberty interest, there still would not be a due process claim because the officer did not "intentionally interfer[e] with [the suspect's] medical treatment" and "the need to investigate whether there had been police misconduct constituted a justifiable government interest." *Id.* at 775 (Thomas, J., joined by Rehnquist, C.J., & Scalia, J.). If anything, that part of the opinion observed that the seriousness of the individual's medical situation only heightened the government interest because of the danger that

"key evidence would have been lost if [the suspect] had died without the authorities ever hearing his side of the story." *Id*.

With such a high bar for conduct that shocks the conscience—and such a low bar for what constitutes a government interest—Fourteenth Amendment due process claims are often unavailable to suspects subjected to coercive interrogations. Indeed, Respondent here could not meet the threshold to pursue this cause of action to challenge his coercive interrogation. *Tekoh v. Cty. of L.A.*, 985 F.3d 713, 717 (9th Cir. 2021). Only plaintiffs who have experienced the most shocking and egregious conduct can bring coerced interrogation claims under the Fourteenth Amendment's Due Process clause, substantially limiting those claims. As things already stand, many people who have experienced harms from coerced statements or confessions have no remedy under the Due Process clause. There is no need to limit these claims further.

B. Plaintiffs can only meet proximate cause requirements for Section 1983 coercive confession claims in limited circumstances.

Proximate cause requirements also substantially limit the availability of claims under the existing regime. Under Section 1983, a public official can be held liable if they "cause[ ] the plaintiff to be subjected to a deprivation of [their] constitutional rights." *Baker v. McCollan*, 443 U.S. 137, 142 (1979); *see also Cty. of L.A.*

v. Mendez, 137 S. Ct. 1539, 1548-49 (2017) (acknowledging that Section 1983 claims incorporate common law proximate cause principles); *McKinley v. City of Mansfield*, 404 F.3d 418, 438 (6th Cir. 2005), *cert. denied*, 126 S.Ct. 1026 (2006) ("Causation in the constitutional sense is no different from causation in the common law sense."). Section 1983 seeks to hold public officials accountable for "the natural consequences of [their] actions." *Monroe v. Pape*, 365 U.S. 167, 187 (1961). But in the context of self-incrimination claims, the natural consequences may be complicated to discern because of intervening actions of other individuals in the criminal justice system.

Subsequent prosecution, for example, complicates assessment of causation. While the use of a coerced statement to prosecute, and later convict, a suspect may seem like an "obvious consequence of supplying a coerced statement" to the interrogating officer, Alves, *supra*, at 266, many courts have found that the causal link between coercing a confession and its use in a later court proceeding may be broken by the actions of subsequent actor, such as a prosecutor or judge. *See*, *e.g.*, *Higazy v. Templeton*, 505 F.3d 161, 177 (2d Cir. 2007) ("Police officers have also been insulated from liability for any deprivation of liberty resulting from their misconduct by the intervening acts of other participants in the criminal justice system.") (quoting *Zahrey v. Coffey*, 221 F.3d 342, 351 (2d Cir. 2000)); *Stoot v. City of Everett*, 582 F.3d 910, 926 (9th Cir. 2009) ("liability may not attach if 'an intervening decision of an informed, neutral decision-maker "breaks" the

chain of causation,' meaning that the harm to the plaintiff can be traced more directly to an intervening actor") (quoting *Murray v. Earle*, 405 F.3d 278, 292 (5th Cir. 2005)). In other words, if a court finds that a subsequent actor, like a prosecutor, made an independent decision as to whether to rely upon and use coerced statements, the law enforcement officers who coerced the statements may not face liability.

In cases where police officers have been held liable for violating a suspect's Fifth Amendment rights despite a prosecutor or judge's subsequent decision regarding prosecution or sentencing, plaintiffs have a high burden. In such cases, plaintiffs must show that: a police officer coerced a confession and provided it to the prosecution; the prosecution then relied upon the confession based solely on the police officer's information (without other corroborating evidence); the prosecution did not know that the confession was coerced; *and* the confession was subsequently used against the plaintiff in a court proceeding. *See*, *e.g.*, *Stoot*, 582 F.3d 927 (holding police officer liable for wrongfully procuring statements relied upon and used by the prosecutor to initiate proceedings); *McKinley*, 404 F.3d at 438-39 (holding liable the police officer who compelled incriminating statements, turned them over to the prosecution, and testified about the statements at trial); *Jones v. City of Chicago*, 856 F.2d 985, 994 (7th Cir. 1988) (holding that a prosecutor's decision to charge did not relieve officers of liability for the plaintiff's confinement because the prosecutor's decision itself depended upon false statements provided by the police).

Sometimes, prosecution initiated solely based upon coerced confession can allow a plaintiff to recover damages. *See Sornberger v. City of Knoxville*, 434 F.3d 1006, 1026-27 (7th Cir. 2006) (finding criminal prosecution was only commenced because of a suspect's coerced confession); *Kunz v. City of Chicago*, No. 01-C-1753, 2006 U.S. Dist. LEXIS 41897, *11 (N.D. Ill. June 22, 2006) (stating plaintiff may have potential substantive due process claim where a coerced confession was "the sole cause of [their] subsequent detention"). Here, Petitioner's conduct met this standard, because he engaged in an unwarned interrogation of Respondent, used coerced statements to charge him, provided that information to prosecutors with the affirmatively misleading note that it had been voluntarily disclosed, and then testified at the preliminary hearing to that effect. But most plaintiffs' cases do not involve these unique circumstances. And as noted, because law enforcement may use coerced confessions as leads to obtain other information, *see* Section I.D., *supra*, even a modicum of legwork can ensure that the coerced statements are not the only evidence supporting probable cause—possibly interrupting proximate cause and making a claim impossible for plaintiffs.

As things stand, civil rights plaintiffs already face substantial obstacles to recovering damages under Section 1983 for the harms visited upon them by coerced confessions, including those that lead to wrongful conviction. This Court need not limit that availability even further.

CONCLUSION

Section 1983 actions for violations of Fifth Amendment rights serve a vital purpose in our criminal justice system. They redress violations of fundamental civil rights that cause enormous long-term harms, including wrongful convictions. They offer important deterrence to law enforcement misconduct in a context without viable alternative deterrents. Moreover, the standards for these claims already substantially limit their availability in all but the most egregious circumstances. This Court has no need to limit them further, and should not do so. The judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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