NO. 21-499

In the
Supreme Court of the United States

CARLOS VEGA,

Petitioner,

v.

TERENCE B. TEKOH,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR *AMICI CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

The International Municipal Lawyers Association ("IMLA") is a non-profit organization dedicated to advancing the interests and education of local government lawyers. It is the only national organization devoted exclusively to local government law. For over 85 years, it has been an educator and advocate for its members, which include cities, towns, villages, townships, counties, water and sewer authorities, transit authorities, attorneys focused on local government law, and others. It serves as an international clearinghouse of legal information and cooperates on municipal legal matters by collecting and disseminating accurate and up-to-date information to its members across the United States and Canada. It also helps local governmental officials prepare for litigation, provides advice in response to numerous requests from its members, and helps develop new local laws to address needs identified by its members.

The California State Association of Counties ("CSAC") is a non-profit corporation. Its membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties have received timely notice of the intent to file this brief and have consented in writing to this filing.

California and is overseen by its Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

Given their extensive experience with local governments and local government law, *amici* have a uniquely valuable perspective on the relevant issues in this case. In particular, *amici* and their members have direct experience of the significant problems that the decision below will pose for local governments in the Ninth Circuit. Those local governments will now face potential liability under 42 U.S.C. §1983 not only when plaintiffs allege violations of their actual Fifth Amendment rights against compelled self-incrimination, but whenever plaintiffs allege any violation of the broader prophylactic rule that this Court created in *Miranda v. Arizona*, 384 U.S. 436 (1966). *Amici* respectfully submit this brief to emphasize the substantial negative impact that the divided decision below will have on local governments, and the critical need for this Court to grant certiorari and end the acknowledged circuit conflict on this issue by reversing the Ninth Circuit's unsustainable holding.

SUMMARY OF THE ARGUMENT

Congress enacted §1983 to provide a federal cause of action for any person deprived of federal rights under color of state law. That federal cause of action plays an important and undisputed role in ensuring compensation for those whose federal rights are infringed by state officers. But at the same time,

§1983 litigation imposes significant burdens on local governments and their employees—burdens that should weigh heavily against any judicial expansion of §1983 beyond its statutorily defined scope. The Ninth Circuit's divided decision below ignores those concerns, rewriting §1983 to create a judicially enlarged cause of action that allows suit not only for the violation of federal *rights*, but also for the violation of judge-made prophylactic rules. By extending §1983 beyond its proper scope, the decision below aggravates the already-substantial costs that municipalities must face from §1983 litigation.

The resulting need for this Court's review is especially acute. In holding that a plaintiff may bring suit under §1983 based solely on a violation of the prophylactic *Miranda* rule, the decision below not only deepens an entrenched and acknowledged circuit split, but takes what is plainly the wrong side. The correct remedy for any improper failure to provide *Miranda* warnings is the exclusion of the resulting statements in any subsequent criminal trial—not a civil damages action against local law enforcement. The Ninth Circuit's decision to engraft §1983 liability onto *Miranda*'s exclusionary rule cannot be squared with the statutory text or with this Court's precedent, which make clear that §1983 authorizes suit only when a plaintiff alleges the violation of a federal right, and that *Miranda* announced a prophylactic rule and not a new federal right to be free from unwarned questioning. The Ninth Circuit also independently erred by treating a police officer's failure to provide *Miranda* warnings as the proximate cause of any later use of the unwarned statements at trial, when that outcome is instead controlled by the subsequent

intervening decisions of the prosecutor who chooses whether to introduce those statements and the judge who chooses whether to admit them. In short, the decision below is legally unsustainable, and the substantial financial and public safety costs it will impose on local governments are wholly unjustifiable.

This Court should grant certiorari and resolve these pressing issues now. As petitioners explain, practically every federal court of appeals has taken sides on the question presented, leading to an entrenched and acknowledged circuit conflict. That nationwide disuniformity has severe consequences for *amici* and their members, and warrants this Court's immediate attention—especially now that the largest circuit in the country has come down on the wrong side of the split. The petition for certiorari should be granted and the decision below should be reversed.

ARGUMENT

I. Local Governments Face Significant Costs When Courts Expand Section 1983 Liability Beyond Its Proper Boundaries.

Section 1983 unquestionably plays a critically important role in protecting federal rights, serving to "deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). At the same time, as this Court has recognized, lawsuits brought under §1983 can impose significant burdens on municipalities and on the public at large, saddling local governments with tremendous "expenses of litigation" and the "diversion of official energy from pressing public issues."

Crawford-El v. Britton, 523 U.S. 574, 590 & n.12 (1998). Those heavy burdens are warranted when they are necessary to redress alleged violations of the "rights, privileges, or immunities secured by the Constitution and laws" of the United States, which are the federal rights that §1983 explicitly enumerates. 42 U.S.C. §1983. At the same time, the burdens that §1983 suits impose on local governments—along with basic jurisprudential principles—caution strongly against judicially expanding the statutory cause of action that Congress enacted in §1983 beyond its proper bounds. *Cf. Comcast Corp. v. Nat'l Ass'n of African American-Owned Media*, 140 S.Ct. 1009, 1015 (2020) ("[R]aising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals." (quoting *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001)).

The Ninth Circuit's divided decision below ignores those concerns. It subjects local governments and their officers to substantial litigation costs, and potentially enormous damages liability and attorneys' fees, *see* 42 U.S.C. §1988, based not on the alleged violation of any federal right (as §1983 requires) but on the alleged violation of a judge-made prophylactic rule. Those costs may be justified when they are imposed to remedy violations of the Constitution or federal law, but neither law nor sound policy supports imposing them when the only asserted injury is the violation of a prophylactic rule and not the deprivation of any underlying constitutional right.

The Ninth Circuit's decision to expand the cause of action provided by §1983 beyond its properly

circumscribed limits will only aggravate the enormous flood of §1983 litigation that local governments face every year. In the district court where Tekoh initiated this suit, for instance, "[c]ivil rights case filings constituted the highest percentage of all civil case filing categories," representing 33.2% of all civil case filings in fiscal year 2019. Office of the Clerk of Court, *Central District of California Annual Report of Caseload Statistics Fiscal Year 2019*, at 6 (2019), https://bit.ly/3jNsKvQ. Continuing a long upward trend, the total number of civil rights filings in that district also increased every year from fiscal year 2015 through fiscal year 2019, for a remarkable 103% increase just over that four-year period. *Id.* at 7. Nationwide, some 18,000 civil rights actions are filed each year, accounting for about 13% of all civil cases filed in federal district courts and averaging out to about six new civil rights actions each year for every county in the United States. Philip Matthew Stinson Sr. & Steven L. Brewer Jr., *Federal Civil Litigation Pursuant to 42 U.S.C. §1983 as a Correlate of Police Crime*, 30 Crim. Just. Pol'y Rev. 223, 227 (2019); *see* World Population Review, *States With the Most Counties 2021*, https://bit.ly/3vSDP3j (last visited Nov. 3, 2021) (tallying 3,243 county equivalents nationwide).[2]

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[2] These numbers include all actions categorized by the federal district courts as "civil rights cases," as the federal courts do not report §1983 suits separately from other civil rights actions in their statistical reports. *See* Stinson & Brewer, *supra*, at 226-27. But the bulk of these civil rights cases are §1983 suits—and indeed, the total number of §1983 suits may be even higher, as the numbers above do not include employment discrimination suits or prisoner petitions. *Id.*

That flood of litigation is aggravated by structural factors. Plaintiffs with perceived grievances against their local governments often feel strong personal incentives to bring these suits, and are often encouraged by plaintiffs' lawyers hoping to recover attorneys' fees under §1988 if the suit is successful. *See* Stinson & Brewer, *supra*, at 227 (attributing the "explo[sion]" of §1983 litigation in cases alleging police misconduct in part to the availability of attorneys' fees under §1988); Thomas A. Eaton & Michael Wells, *Attorney's Fees*, *Nominal Damages, and Section 1983 Litigation*, 24 Wm. & Mary Bill Rts. J. 829, 837 (2016) (recognizing the "systemic value [of fees under §1988] in encouraging litigation"). Given those reinforcing incentives, any judicial expansion of the boundaries of §1983 liability almost automatically leads to a corresponding increase in the already-substantial volume of §1983 suits that local governments must bear.

Municipal governments not only face significant numbers of §1983 suits every year, but the risk of potentially massive damages awards (and attorneys' fees) in those suits. The average jury award of liability against a municipality in such cases is estimated at around $2 million, and "a six- or seven-figure award against a city" is "not uncommon." Larry K. Gaines & Victor E. Kappeler, *Policing in America* 346 (9th ed. 2021). One study of 151 local law enforcement agencies found an average annual legal liability for alleged misconduct of about $13.8 million. Gaines & Kappeler, *supra*, at 346. Moreover, given the ever-present risk of potentially crushing verdicts, municipalities are often forced to secure "extremely expensive" liability insurance, only to find that

"premium rates can skyrocket, or companies may refuse to insure the [municipality] at all" if the municipality finds itself litigating multiple suits in defense of its local officials. *Id.*[3]

For cash-strapped local governments, these costs can often cause severe financial difficulties, destroying municipal budgets and siphoning funds away from other much-needed local priorities. In the end, the "resulting financial loss" from the costs of litigation, any adverse judgment, and any award of attorneys' fees will be "borne by all the taxpayers" of the municipality, who are themselves entirely innocent of any wrongdoing. *Owen v. City of Independence*, 445 U.S. 622, 655 (1980). That outcome may be appropriate when necessary to compensate "those whose rights … have been violated," *id.*, but should weigh strongly against extending the statutory cause of action under §1983 to permit suits based on the violation of a prophylactic rule.

Unsurprisingly, when faced with the exorbitant costs of actually defending against a §1983 suit—including extensive litigation expenses, steep increases in insurance premiums, potential multi-million-dollar judgments, and the risk of substantial fee awards—municipalities often find themselves

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[3] To be clear, the costs of extending §1983 liability beyond its proper bounds are not limited to cases brought against local governments themselves. Even when the only named defendants are individual local officials or police officers, "most municipalities … indemnify officials sued for conduct within the scope of their authority, a policy that furthers the important interest of attracting and retaining competent officers." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 713 n.9 (1978) (Powell, J., concurring).

forced to settle even meritless §1983 actions. *Cf.* Gaines & Kappeler, *supra*, at 346-347 (noting that "more than half" of all cases alleging police misconduct "are settled out of court"); Stinson & Brewer, *supra*, at 226. Those settlements, however, impose their own costs, requiring municipalities "to pay [plaintiffs and their counsel] large sums of money, even in cases in which the police might not be found liable in a civil proceeding." Gaines & Kappeler, *supra*, at 347. Still worse, a municipality's willingness to settle in order to avoid the costs of litigation "can lead to the filing of frivolous civil suits" intended simply to extract further settlements from the beleaguered town, creating a vicious cycle in which each new settlement only encourages further suits. *Id.* As a result, whether through "enormous awards [or] settlements," actions under §1983 "have nearly bankrupted some municipalities and townships." *Id.* at 346.

In short, the statutory cause of action that Congress created in §1983 imposes significant costs on municipalities. Those costs may be justifiable when they are necessary to compensate plaintiffs who have been deprived of their federal rights, but they should weigh strongly against expanding §1983 beyond its terms to authorize suits against local governments and their officers based solely on the alleged violation of a prophylactic rule. The decision below should not be permitted to impose the drastic burdens of additional §1983 litigation on local governments without this Court's review.

II. The Ninth Circuit's Unwarranted Extension Of Section 1983 Liability To The Prophylactic *Miranda* Rule Is Plainly Wrong And Poses Serious Problems For Local Governments.

For the reasons explained above, any judicial expansion of §1983 liability beyond its proper bounds is problematic. The decision below, however, is especially wrong. The Ninth Circuit's decision to authorize suits under §1983 based solely on alleged *Miranda* violations not only deepens an existing circuit conflict, *see* Pet.12-19, but is clearly misguided both as a legal and as a practical matter. It disregards the statutory text and this Court's precedent, and will cause serious problems for local governments and local law enforcement officers. This Court should not allow that decision to stand.

1. As the petition correctly explains, the Ninth Circuit plainly erred by holding that a plaintiff can bring suit under §1983 premised solely on an officer's failure to provide a *Miranda* warning before eliciting statements that are subsequently introduced at a criminal trial. Pet.20-32. The remedy for any violation of *Miranda*'s prophylactic rule is exclusion at a subsequent criminal trial, not a civil damages action under §1983.

The statutory cause of action that Congress enacted in §1983 authorizes suits where a plaintiff alleges "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. §1983. But as this Court has repeatedly made clear, *Miranda* established a prophylactic rule that *protects* the existing Fifth

Amendment right against self-incrimination, not a new constitutional right to be free from unwarned questioning. *See, e.g.*, *Howes v. Fields*, 565 U.S. 499, 507 (2012) (recognizing "prophylactic" nature of the *Miranda* rule); *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (same); *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010) (same); *Montejo v. Louisiana*, 556 U.S. 778, 794 (2009) (same); *Davis v. United States*, 512 U.S. 452, 458 (1994) (same); *Brecht v. Abrahamson*, 507 U.S. 619, 629 (1993) (same); *see also* Pet.22-23 & n.4; Pet.App.79a-80a (listing more than twenty cases in which this Court has described *Miranda* as prophylactic). That is, the *Miranda* warnings are "not themselves rights protected by the Constitution but are instead measures to insure that the right against compulsory self-incrimination is protected." *New York v. Quarles*, 467 U.S. 649, 654 (1984) (brackets omitted) (quoting *Michigan v. Tucker*, 417 U.S. 433, 444 (1974)); *see also Oregon v. Elstad*, 470 U.S. 298, 306 (1985) (recognizing that *Miranda* "sweeps more broadly than the Fifth Amendment itself" and "may be triggered even in the absence of a Fifth Amendment violation"). As such, they cannot provide the basis for a suit under §1983. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002) (section 1983 authorizes suits for the deprivation of federal "*rights*, not the broader or vaguer 'benefits' or 'interests'").

Put simply, §1983 by its terms provides a civil damages action only for the violation of federal "rights, privileges, or immunities," and the prophylactic rule that this Court announced in *Miranda* is none of those things. A plaintiff can surely bring suit under §1983 if he is *actually* deprived of his constitutional rights by a coercive interrogation—for instance, if he is actually

forced into an involuntary confession that is later used against him in a criminal trial. But a plaintiff just as surely *cannot* bring suit under §1983 if he is *not* deprived of his constitutional rights, and instead is deprived only of a prophylactic protection that this Court has announced to preserve those rights. Congress has never created any statutory cause of action authorizing a plaintiff to sue for the violation of a judge-made prophylactic rule, and the Ninth Circuit seriously erred by expanding §1983 to serve that role.

The Ninth Circuit's reasoning threatens to expand §1983 far beyond its bounds not only with respect to *Miranda* (a problem that is already more than serious enough to warrant further review), but other prophylactic rules as well. Most notably, this Court has held that evidence obtained by the police in violation of the Fourth Amendment may warrant exclusion of that evidence in a subsequent criminal trial, as "a prophylactic device intended generally to deter Fourth Amendment violations by law enforcement officers." *Stone v. Powell*, 428 U.S. 465, 479 (1976). Under the Ninth Circuit's reasoning, could a person bring suit under §1983 against a police officer not only for any Fourth Amendment violation involved in obtaining the evidence at issue, but also for a separate violation of the exclusionary rule if that evidence was later used against the person in a criminal trial? Along similar lines, this Court has held that an identification of a criminal suspect must be excluded if it was obtained pursuant to an unnecessarily suggestive line-up or a post-indictment lineup without counsel. *See Manson v. Brathwaite*, 432 U.S. 98 (1977); *United States v. Wade*, 388 U.S. 218 (1967). If a prophylactic rule were to prohibit

police from conducting such line-ups at all, would that prophylactic rule automatically entitle any suspect placed in those line-ups to sue for damages under §1983? Surely not—and yet that is the result that the Ninth Circuit's reasoning would require. *Cf. Hensley v. Carey*, 818 F.2d 646, 649 (7th Cir. 1987) ("The rule against admission of evidence from unnecessarily suggestive lineups is a prophylactic rule designed to protect a core right … and it is only the violation of the core right and not the prophylactic rule that should be actionable under §1983.").

2. The Ninth Circuit also erred by holding that a police officer who fails to provide a *Miranda* warning is a proximate cause of the introduction of any resulting statement at a criminal trial. As the petition correctly explains, normal principles of proximate causation make clear that an officer who takes an unwarned statement cannot reasonably be considered the proximate cause of any injury if a prosecutor erroneously moves that statement into evidence at trial and the judge erroneously admits it. *See* Pet.20-28. On the contrary, a local police officer should be entitled to rely on both prosecutors and judges to carry out their responsibilities to ensure that any inadmissible evidence is not presented at trial—and should not face liability for their failure to do so, particularly when the officer himself has no control over those later decisions. *See United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926) (recognizing the "presumption of regularity [that] supports the official acts of public officers," under which "courts presume that they have properly discharged their official duties"); *see also Murray v. Earle*, 405 F.3d 278, 292-93 (5th Cir. 2005) (explaining that "an intervening

decision of an informed, neutral decision-maker 'breaks' the chain of causation," and so "an official who provides accurate information to a neutral intermediary … cannot 'cause' a subsequent Fifth Amendment violation arising out of the neutral intermediary's decision").

3. The decision below not only rests on indefensible legal grounds, but is untenable as a practical matter as well. By expanding §1983 to authorize suits against local law enforcement whenever an unwarned statement is later impermissibly introduced at trial, the decision below opens the door to a measurable increase in the already-significant litigation burdens that local governments face under §1983—aggravating those burdens not in order to compensate plaintiffs whose constitutional rights have been violated, but solely to protect a judge-made prophylactic rule. *See supra* Part I.

Taking advantage of the acknowledged circuit split on the issue, other plaintiffs have already filed numerous §1983 cases seeking to impose liability on local officers and local governments for alleged violations of the prophylactic *Miranda* rule, often requesting millions of dollars in damages. *See, e.g.*, *Steward v. Dunlap*, No. 3:21-cv-00416-BJD-JRK (M.D. Fla. filed Apr. 16, 2021) (seeking over $2,200,000); *Smith v. Aims*, No. 2:20-cv-12013-MAG-DRG (E.D. Mich. filed July 14, 2020) (seeking over $2,400,000); *Green v. Irvington Police Dep't*, No. 2:19-cv-20239-SDW-ESK (D.N.J. filed Nov. 14, 2019) (seeking $10,000,000); *Nunez v. Vill. of Rockville Centre*, No. 2:18-cv-04249-DRH-SIL (E.D.N.Y. filed July 26, 2018)

(seeking over $3,000,000); *Besedin v. Cnty. of Nassau*, No. 2:18-cv-00819-KAM-ST (E.D.N.Y. filed Feb. 7, 2018) (seeking $15,000,000); *see also* Pet.33 n.6 (listing additional cases). The Ninth Circuit's decision below has now started adding to that flood, directly encouraging plaintiffs to file new *Miranda*-based §1983 claims. *See, e.g.*, *Smith v. City of Dalles*, No. 6:16-cv-1771-SI, 2021 WL 1040380, at *11-12 (D. Or. Mar. 17, 2021) (granting leave to plead a new *Miranda*-based §1983 claim in light of the decision below). Allowing that decision to stand will only encourage plaintiffs (and plaintiffs' lawyers) to bring more and more *Miranda*-based §1983 suits in the Ninth Circuit, weighing down local governments and their officers with expensive and burdensome litigation.

That result will not only produce new financial difficulties for municipalities, but also undermine public safety. Officers who face the threat of a lawsuit for taking unwarned statements that are later used at trial will be naturally reluctant to take such statements, especially when they know they will have little to no control over whether a prosecutor later chooses to introduce that statement or a judge chooses to admit it. That reluctance will persist even for officers who are indemnified by their employers; after all, no one enjoys being named as a defendant in a lawsuit, even when they may not face financial ruin as a result. And police officers are fully aware of the distractions and other nonfinancial burdens that a named defendant is likely to face in litigation, given that (according to one conservative estimate) up to 27% of all officers have been sued at least once in their careers. Gaines & Kappeler, *supra*, at 341; *see id.* at

340 ("[N]o other group of governmental employees are more exposed to civil suits and liability than are police officers. Indeed, civil liability is an occupational hazard for many officers and their departments.").

That risk of overdeterrence is particularly problematic in the *Miranda* context, where unwarned statements may be obtained and used for a wide variety of legitimate purposes. Among other things, *Miranda* does not require officers to warn suspects before asking questions in noncustodial settings, *see Miranda*, 384 U.S. at 477-78, or before asking questions where exigent circumstances require immediate action to preserve public safety, *see Quarles*, 467 U.S. at 655-56. As this Court has often recognized, however, the line between situations in which *Miranda* warnings are required and those in which they are not is anything but clear-cut. *See, e.g.*, *Berkemer v. McCarty*, 468 U.S. 420, 441 (1984) (recognizing that "police and lower courts will continue occasionally to have difficulty deciding exactly when a suspect has been taken into custody"); *see also J.D.B.*, 564 U.S. at 279-280 (acknowledging that the custody analysis is not designed "to make the fault line between custodial and noncustodial brighter"). Subjecting officers (and the municipalities that employ them) to severe financial consequences for landing on the wrong side of that fuzzy line will deter officers from *any* unwarned questioning, reducing the investigative tools available to law enforcement officers and threatening public safety. *Cf. Davis v. Scherer*, 468 U.S. 183, 196 (1984) (recognizing that officers "routinely make close decisions" and "should not err always on the side of caution").

No one disputes that *Miranda* provides vital prophylactic protections that serve important public interests. But those interests are properly satisfied by the tailored remedy that *Miranda* itself announced: the exclusion in subsequent criminal proceedings of any statements obtained in violation of the protections that *Miranda* provides. 384 U.S. at 444. That is why this Court has repeatedly declined to extend that exclusionary remedy further than necessary, recognizing the need to balance the interests served by *Miranda* with the equally pressing public interest in effective law enforcement. *See, e.g.*, *Elstad*, 470 U.S. 298 (allowing use of post-warning confession obtained as fruit of pre-warning statement); *Quarles*, 467 U.S. at 655-59 (recognizing public safety exception); *Oregon v. Hass*, 420 U.S. 714 (1975) (allowing use of unwarned statement for impeachment); *Michigan v. Tucker*, 417 U.S. 433 (1974) (allowing admission of evidence discovered as a result of statements given after inadequate warnings). The decision below, by contrast, radically upsets that balance, taking *Miranda* and its exclusionary remedy and adding on a civil damages action that neither this Court nor Congress has ever authorized in the *Miranda* context. That approach expands the burdens on local governments and local officers, deters legitimate law enforcement, and cannot be sustained.

III. This Court Should Grant Certiorari Now And Resolve The Acknowledged Circuit Conflict On This Issue.

The decision below not only reaches the wrong result, but aggravates the acknowledged circuit conflict on this issue. *See* Pet.12-19. That

disuniformity should not be allowed to continue. The cause of action that Congress created in §1983—and the scope of liability that local governments and their officers face under that statute—should not vary with the happenstance of geography. Whether a police officer (or his employer) can be sued under §1983 for taking an unwarned statement that is subsequently used in a criminal trial should not depend on whether that officer lives in Minneapolis or San Francisco. But that is how matters now stand—and given the entrenched nature of the circuit split here, that is how matters will remain unless and until this Court intervenes. *See* Pet.19; *see also* Pet.App.19a-20a (explicitly considering and rejecting the majority approach).

That circuit conflict not only undermines the uniformity of federal law, but poses serious problems for organizations like *amicus curiae* IMLA that seek to provide consistent guidance and support for municipalities nationwide. Advising local governments on their responsibilities (and potential liabilities) under federal law becomes exceptionally difficult when that law varies from one regional circuit to another. The nationwide disuniformity on this issue also has repercussions for individual municipalities, skewing the burdens of §1983 litigation toward local governments in circuits that have adopted the more expansive (and unjustified) reading of the statute. Those unwarranted discrepancies should not be permitted to continue.

The need for this Court's immediate intervention is all the more pressing now that the Ninth Circuit has taken sides on this issue—and taken the wrong side to

boot. Absent this Court's review, the decision below will become binding law for some 11,000 local governments and over 60 million Americans in the Ninth Circuit, subjecting them to an expanded version of §1983 that neither this Court nor Congress has ever approved. *See* Michael Maciag, *Number of Local Governments by State*, Governing: The Future of State and Localities (Sept. 14, 2012), https://tinyurl.com/zw2jbr4b; Kole Lyons, *The 9/12 Split: The Newest Proposal to Reduce the Burden on Ninth Circuit Court of Appeals*, Ariz. State L.J. Blog (May 21, 2021), https://tinyurl.com/yab7kcfr. Allowing the erroneous decision below to stand would thus have outsized consequences—and now that practically every federal court of appeals in the Nation has weighed in on the acknowledged split on this clean legal issue, there is no sound basis for this Court to await further percolation before addressing it. On the contrary, there is every reason for the Court to grant review now, as this case presents an exceptionally good vehicle for resolving this discrete and outcome-determinative legal question. *See* Pet.34-35. This Court should grant the petition for certiorari and reverse the Ninth Circuit's misguided decision below.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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