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 FOR RESPONDENT

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QUESTION PRESENTED

Whether remedies under 42 U.S.C. § 1983 are available for violations of the Fifth Amendment when a police officer takes un-*Mirandized* statements from a suspect during custodial interrogation and then "causes" those statements to be used against the suspect in a criminal trial.

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INTRODUCTION

This case is about a police officer who circumvented the protections this Court found essential to protect Fifth Amendment rights in *Miranda v. Arizona*, 384 U.S. 436 (1966), and then took steps that ineluctably led to the introduction of the un-*Mirandized* statement at trial in violation of those fundamental rights. Congress has provided that remedies are available under 42 U.S.C. § 1983 for the violation of all constitutional rights. Nothing in the statute excludes the Fifth Amendment.

This case is not about police officers who merely question suspects without giving them *Miranda* warnings. Nor is it about police officers who, with transparency, provide un-*Mirandized* statements to prosecutors for possible use in criminal proceedings.

Respondent Terrence Tekoh's Fifth Amendment rights were violated when his unwarned custodial statement was introduced to incriminate him in his criminal trial. The issue presented is whether Petitioner Carlos Vega "caused" Tekoh to be subjected to that violation within the meaning of § 1983.

Section 1983 creates a cause of action for damages for the violation of all constitutional rights when the infringement occurs under color of state law. This Court has never excluded an individual constitutional right from an action under § 1983. It is up to Congress, not the judiciary, to create exceptions to the statute.

This case raises a claim under § 1983 for violation of the Fifth Amendment right against self-incrimination. There is no basis for treating it differently from any other individual right protected by the Constitution.

Tekoh, a certified nursing assistant, contends that during an hour-long custodial interrogation, Vega, a Los Angeles County deputy sheriff, coerced a false confession that he touched a patient inappropriately. The parties agree that Vega gave no *Miranda* admonitions. Vega reported that the statement was obtained without any interrogation and that Tekoh was not in "custody." Vega's false version was the basis for the admission of the statement at every stage of the ensuing criminal case, from the probable cause declaration to the prosecution's case-in-chief.

In Tekoh's criminal trial, after hearing testimony from Tekoh and his co-workers that contradicted Vega's account, along with expert testimony on coercive interrogation practices, the criminal jury acquitted him. Tekoh's life and career plans were nevertheless shattered by Vega's misconduct.

The issue presented is whether Tekoh has a remedy under § 1983, which provides that any person may bring an action against a person who, under color of state law, "subjects, or causes to be subjected" another person to a deprivation of "rights . . . secured by the Constitution." Tekoh contends that Vega "caused" the deprivation of his Fifth Amendment

rights by extracting an incriminating statement during custodial interrogation without *Miranda* warnings and then using the statement to initiate a criminal prosecution against him, where the statement was foreseeably introduced at trial based on Vega's false description of the interrogation as not custodial.

Based on Tekoh's account of his interrogation as custodial his Fifth Amendment rights were violated when his statement was used to incriminate him at his criminal trial.[1] *Miranda* recognized that custodial interrogation is inherently coercive and that a "totality of circumstances" test does not adequately safeguard Fifth Amendment self-incrimination rights, and that an irrebuttable presumption of coercion arises when statements are taken from suspects during custodial interrogations without the constitutionally required warnings. Where *Miranda* applies, the introduction of such a statement in the prosecution's case-in-chief at a criminal trial violates the Fifth Amendment without other proof of coercion. Tekoh's rejected jury instruction was based on this established law.

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[1] Regardless of how the Fifth Amendment issue before this Court is resolved, whether Tekoh's statement was coerced remains to be addressed on remand. Tekoh appealed from the defense verdicts in his civil action on the ground that the district court erroneously excluded his designated expert on coercive interrogation and unreliable confessions, Iris Blandón-Gitlin, Ph.D. The court of appeals did not reach this issue. Pet. App. 25a-26a. Whether Tekoh was in "custody" when the statement was taken is also an open issue on remand because neither jury made that determination one way or the other.

Miranda's constitutional legitimacy is bolstered by historical practice. During the Framing era, official interrogators initiated the practice of warning suspects that they were permitted to remain silent and that any statements provided could be used against them. Doing so demonstrated that statements later given were not the product of inducements made before or during the questioning. The practice was so widespread and accepted that it became compulsory in many states of the young republic. *Miranda* appropriately resurrected this Framing Era practice to safeguard Fifth Amendment rights so essential to the founding generation. *See generally* Wesley M. Oliver, *Magistrates' Examinations, Police Interrogations, and Miranda-Like Rules in the Nineteenth Century*, 81 Tul. L. Rev. 777 (2007).

Despite these historical antecedents, and the reference to exclusion of compelled statements in the text of the Fifth Amendment, some questioned *Miranda*. This Court eliminated any uncertainty about its constitutional basis, however, in *Dickerson v. United States*, 530 U.S. 428 (2000). Chief Justice Rehnquist's opinion for seven members of this Court confirmed *Miranda*'s constitutional status by declaring Congressional legislation enacted to overturn *Miranda* unconstitutional. The legislation would have required courts to return to the pre-*Miranda* "totality of circumstances" test to determine whether confessions were voluntary and thus admissible. *Dickerson* could only reach this result if *Miranda* rules are required by the Fifth Amendment.

Dickerson relies squarely on the Fifth Amendment's Self-Incrimination Clause, emphasizing that this Court cannot create non-constitutional "prophylactic" rules binding on the States. 530 U.S. at 437-38 ("With respect to proceedings in state courts, our 'authority is limited to enforcing the commands of the United States Constitution.'") (quoting *Mu'Min v. Virginia*, 500 U.S. 415, 422 (1991)).

Unless Fifth Amendment rights are violated when an un-*Mirandized* statement is introduced in a criminal proceeding, federal courts would lack authority to overturn state criminal convictions on that basis. *Dickerson* confirms that introducing an unwarned statement obtained in custodial interrogation in the prosecution's case-in-chief violates the Fifth Amendment without the further inquiry the district court required in this case into whether the statement was voluntary based on the "totality of circumstances." *Dickerson* confirms that which the United States recognizes here: under the Fifth Amendment, there is a constitutional right prohibiting the introduction of an unwarned custodial statement at trial. U.S. Br. 4, 14.

The text of § 1983 does not exclude constitutional "trial" rights from its ambit, and, indeed, this Court has recognized that police officers may cause the violation of such rights. In fact, this Court has never excluded the deprivation of any individual constitutional right from the ambit of § 1983. Nor has this Court held that constitutionally mandated exclusionary rules displace the civil remedies Congress

provided in § 1983.

No principle of proximate cause insulates a law enforcement officer from § 1983 liability when he obtains an unwarned statement during custodial interrogation and misrepresents in reports the circumstances under which the statement was obtained, making it likely to be introduced at trial. Based on Tekoh's account of his custodial interrogation, a jury would be entitled to decide that the introduction of the unwarned statement was the natural and foreseeable consequence of Vega's actions, making him the proximate cause of the Fifth Amendment violation. Such deception by a police officer precludes prosecutors or judges from being deemed independent or superseding causes of Fifth Amendment violations.

Granting Vega's request for blanket immunity from § 1983 liability in these circumstances would undermine Fifth Amendment rights, this Court's *Miranda* framework and Congress's remedial purpose in enacting § 1983.

STATEMENT OF THE CASE

A. Statement of Facts[2]

Terence Tekoh as a young man immigrated with family members from Cameroon, where they were persecuted as members of the English-speaking minority. JA 324. The family found refuge in the United States, several with jobs in health care. JA 325. At age twenty-five, Tekoh was a Certified Nursing Assistant employed in the MRI Section of the Department of Radiology at the LAC+USC Medical Center, enrolled in a program to become a radiology technician. JA 326-27, 328.

On March 19, 2014, doctors inserted a large needle into an artery in the groin of a 53-year-old patient with a suspected brain bleed to inject contrast for a CT scan. JA 133. When she suddenly exhibited stroke-like symptoms, the doctors ordered an emergency brain MRI. Pet. Br. 6; JA 133, 335-36. Tekoh, who had just commenced his shift, assisted

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[2] Given the procedural posture of this case, the Court should not accept petitioner's statement of facts as established or undisputed. Tekoh contends that the district court abused its discretion in refusing to allow his coercive interrogation expert, Iris Blandón-Gitlin, Ph.D., to testify in either civil trial regarding the science of coerced confessions, *see supra* note 1, and the district court did not submit Tekoh's proposed instruction on whether the interrogation was "custodial." Pet. App. 63a-64a, Pet. App. 117a-26a. For these reasons, Tekoh presents the facts from his perspective.

with the emergency procedure. JA 332-33. With the help of others, Tekoh transferred the patient from a gurney onto the MRI table. JA 340-42. Tekoh wheeled her into the MRI room as multiple doctors and the technician watched through the control room's large glass window. JA 341-42. The patient became agitated as Tekoh attached oxygen and a pulse oximeter, and Tekoh reassured her "[i]t is very important that you get this exam done. Your doctor is anxious." JA 336-37. Tekoh put her in the MRI machine, waited a few moments to see whether she became claustrophobic, and left the exam room. JA 337.

About twenty minutes later, Tekoh removed the patient from the MRI scanner, unhooked the oxygen and oximeter, and wheeled her out. JA 338. Again with teamwork, the patient was moved from the table back to the gurney where doctors assessed her. *Id.* With a doctor accompanying them, Tekoh rolled the patient back to her hospital room as she nodded in and out of consciousness. JA 340-41. While the doctor spoke with a nurse, Tekoh moved the patient onto the bed. JA 341-42. Tekoh left the room. JA 342. He was never alone with the patient. *Id.*

A few hours later the patient woke up and told nurses that a hospital worker touched her inappropriately. JA 363. The Los Angeles Sheriff's Department was notified and Vega was dispatched to investigate. JA 398.

Vega found the patient upset because the nurses did not believe she has been assaulted. JA 263-65. The patient said she was touched inappropriately by somebody who transported her around the time of her MRI. JA 400-01. Hospital staff told Vega that Tekoh transported the patient. JA 402-03.

Tekoh was in the MRI section with co-workers Jessenia Herrera and Yolanda Quevada when Vega approached him. JA 344. Vega claims that he asked Tekoh, "Tell me the truth." Tekoh responded, "I made a mistake," suggested they talk in private, and led Vega into a small room, the door to which remained open. JA 408, 410-11, 417. Tekoh denies saying anything about making a mistake, and testified that Vega asked the co-workers "if there is anywhere we can speak in private." JA 345. The co-workers pointed to the small, soundproof, windowless "reading room" radiologists use to view images and prepare reports. JA 345. According to Tekoh and both co-workers, Vega excluded the co-workers and shut the door. JA 319-22,[3] 345-46. Ms. Hererra estimates they were behind the closed door for over an hour. JA 321.

The parties agree Vega never gave Tekoh *Miranda* admonitions. JA 421. The parties' accounts conflict about everything else that happened in the reading room. Vega claims that after he provided pen and paper, Tekoh wrote out that he touched the patient

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[3] The excerpts from the trial testimony of Herrera (JA 319-21) and Quevada (JA 321-22) are misidentified as Vega's testimony in the Joint Appendix.

outside her vagina and felt badly about it. JA 413-14, 456. In direct contrast, Tekoh claims that, once in the reading room, Vega asked, "What did you do to the patient?" JA 349. Vega accused Tekoh of touching her vagina during the MRI, and, falsely represented that he "might as well admit to it because [Vega] had [the perpetrator] on video." JA 351. Tekoh adamantly denied any inappropriate contact; indeed, he was relieved to hear there was video evidence because he believed it would clear him. JA 349-53.[4]

Tekoh testified that Vega refused to accept his denials. JA 351-52. Tekoh asked to speak to a lawyer or one of his supervisors, but Vega ignored him. JA 353-54. Vega would not allow Tekoh to leave. JA 354. With a hand resting on his firearm, Vega threatened to report Tekoh and his family to immigration. *Id.* Tekoh has a green card, and deportation could lead to persecution in Cameroon. JA 324. Tekoh testified that he wrote out words that Vega dictated to him after almost an hour spent in the reading room with the door closed. JA 355-58.

Vega filed a declaration of probable cause pursuant to *Cty. of Riverside v. McLaughlin*, 500 U.S. 44 (1991), in which he stated that Tekoh was under arrest on a charge of rape by instrumentality, Cal. Penal Code § 289(d), based on a supposed admission

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[4] Dr. Blandón-Gitlin would have explained to the jury that falsely representing the existence of incriminating information, an "evidence ploy," is a common interrogation tactic that can cause false confessions. JA 231-44.

that he put his fingers inside the patient's vagina. JA 453-55. Vega admits Tekoh made no such statement. JA 434-35. The probable-cause declaration makes no mention of the patient identifying Tekoh because she never did. JA 453-55. There was no physical evidence and no other eye witness. The statement extracted by Vega was always the principal evidence incriminating Tekoh.

Vega testified to his version of the interactions with Tekoh at the preliminary hearing. There were two criminal trials, with a suppression hearing before each, during which Vega testified to his version of events. Early in the first trial, a prosecution witness revealed potentially exculpatory DNA evidence that had not been turned over. JA 146. This led to a mistrial. The DNA evidence ultimately excluded Tekoh. *Id.*

After Vega testified about Tekoh's statements at the second criminal trial, and the prosecution rested, Tekoh presented the testimony of Herrera, Quevada and a third co-worker, who confirmed that he spent an hour behind a closed door with Vega, Tekoh took the witness stand and for the first time gave his version of the interrogation. Importantly, the criminal court judge permitted opinion testimony from Iris Blandón-Gitlin, Ph.D., as an expert on coerced interrogation and unreliable confessions. JA 228-51. The jury thereafter acquitted Tekoh.

B. Procedural History

After his acquittal Tekoh filed this § 1983 action. JA 131. The district court denied motions for judgment on the pleadings, JA 124-25, and summary judgment. JA 220-21 (reported at *Tekoh v. Cty. of Los Angeles*, 270 F. Supp. 3d 1163, 1178 (C.D. Cal. 2017)).

Before the first trial, the district court rejected Tekoh's proposed Fifth Amendment instruction, which provided for § 1983 liability based on proof that Vega "interrogat[ed] him while in custody without advising him of his rights to remain silent and to consult an attorney," and that the unwarned statements were subsequently used against him in criminal proceedings. JA 252-53, 294-96.

After the first civil jury returned a defense verdict on Tekoh's Fourteenth Amendment claims, Tekoh moved for a new trial based on the district court's exclusion of the coerced confessions expert, Dr. Blandón-Gitlin, and the failure to submit Tekoh's Fifth Amendment claim to the jury. The district court granted Tekoh a new trial, but only for its own failure to submit the Fifth-Amendment claim against Vega. Pet. App. 38a-54a.

Tekoh proposed the same Fifth Amendment instruction for the retrial. Pet. App. 111a-12a. The district court again rejected the instruction. JA 310-11. Instead, the district court gave a totality-of-the-circumstances Fifth Amendment instruction over Tekoh's objection. Pet. App. 117a-26a. As instructed,

the jury was allowed to find that use of Tekoh's statement during the criminal prosecution did not deprive him of Fifth-Amendment protection even if Vega interrogated him while in custody without *Miranda* admonitions. *Id.*

Faced with proving coercion beyond a *Miranda* violation, Tekoh renewed his efforts to persuade the district court to admit the testimony of coerced-confessions expert Dr. Blandón-Gitlin for the retrial, but the district court again ruled the expert testimony inadmissible. The jury again returned a verdict for Vega.

Tekoh appealed from the judgment entered after each trial on two grounds. First, he contended that the district court abused its discretion by precluding the testimony of his expert witness. Second, he appealed from the district court's refusal to give his proposed *Miranda* instruction, instead at the second trial giving an instruction based on the "totality of circumstances" test requiring Tekoh to prove that his statement was not voluntary regardless of whether he was in custody or provided *Miranda* admonitions.

The court of appeals held that the district court erred in refusing to give Tekoh's proposed Fifth Amendment *Miranda* instruction. Pet. App. 23a. The court based its decision on *Dickerson's* holding that the right of a criminal suspect not to have an unwarned statement taken during custodial interrogation introduced in his criminal trial in the prosecution's case-in-chief was a "right[] . . . secured by the

Constitution," Pet. App. 13a, actionable under § 1983. Pet. App. 9a-10a.

The court of appeals rejected the argument that the plurality decisions in *United States v. Patane*, 542 U.S. 630 (2004) and *Chavez v. Martinez*, 538 U.S. 760 (2003), negate a § 1983 remedy in these circumstances, Pet. App. 13-16a, noting that almost all circuits to have considered this issue after *Dickerson* came to the same conclusion. *See, e.g.*, *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1023-27 (7th Cir. 2006); *Burrell v. Virginia*, 395 F.3d 508, 513-14 (4th Cir. 2005); *Murray v. Earle*, 405 F.3d 278, 285 & n.11 (5th Cir 2005); and *Renda v. King*, 347 F.3d 550, 552, 557-59 (3d Cir. 2003). Pet. App. 19a. It rejected the Eighth Circuit's outlier decision in *Hannon v. Sanner*, 441 F.3d 635, 636-38 (8th Cir. 2006), as inconsistent with *Dickerson*. Pet. App. 19a-20a.

The court of appeals explicitly limited its holding to cases in which the unwarned statement was introduced at trial, emphasizing that the taking of unwarned custodial statements by officers does not, without more, constitute a Fifth Amendment violation, citing *Chavez*. Pet. App. 18a.

Although not raised by Vega on appeal, the court of appeals addressed proximate cause, examining the facts relating to Vega's actions leading to the admission of the unwarned statements in Tekoh's criminal trial. The court of appeals held that "a jury could infer that the subsequent introduction of the statements in Tekoh's criminal trial was the

reasonably foreseeable consequence of Deputy Vega's conduct." Pet. App. 22a. The court of appeals did not rule that an officer who obtains an unwarned statement from a suspect in custody would necessarily be responsible, and identified at least two "unusual circumstances" in which officers would not be liable: (1) "attempt[ing] to prevent the use of the allegedly incriminating statements" and (2) "never turn[ing] the statements over to the prosecutor in the first place. Pet. App. 21a. The court of appeals held that a jury could decide whether the introduction of an unwarned statement taken in violation of *Miranda* was the "natural and foreseeable consequence" of an officer's conduct. Pet. App. 22a. Thus, its proximate cause holding was tied to the particular facts and not stated as a broad principle.

Given its remand on Tekoh's Fifth Amendment claims the court of appeals did not rule on his claim that the exclusion of Dr Blandón-Gitlin's expert testimony deprived him of a fair trial on the Fifth and Fourteenth Amendment coercion claims the district court submitted to the juries in the two civil trials. Pet. App. 25a-26a. This issue was remanded to the district court for consideration in light of the remaining issue to be decided, whether Vega obtained Tekoh's statements during custodial interrogation.

SUMMARY OF ARGUMENT

Section 1983 creates a cause of action to remedy the violation of any individual constitutional right. There is no basis for excluding Fifth Amendment violations from § 1983's remedial scheme. Tekoh's claim against Vega for causing the violation of his Fifth Amendment rights is situated squarely within the plain text and remedial purposes of § 1983.

A *Miranda* violation establishes the deprivation of Fifth Amendment rights when unwarned statements are introduced, as here, in the prosecution's case-in-chief in a criminal proceeding. Based on Tekoh's account, Vega violated *Miranda* by obtaining a statement during an hour-long custodial interrogation, without providing the constitutionally mandated admonitions. Vega's false account of the interrogation in his report ensured that the unwarned statement would be used to incriminate Tekoh throughout the criminal proceedings. The Fifth Amendment violation was complete when the unwarned statements were introduced against Tekoh at trial. Section 1983 provides a damages remedy for the deprivation of this individual right secured by the Constitution.

The issue presented is not whether Vega may be held liable for "merely" questioning Tekoh in custody without providing *Miranda* warnings. This Court's *Chavez* decision answers that question in the negative, and Tekoh has never contended otherwise. *Chavez* is fundamentally different because here the unwarned statements taken during a custodial interrogation were

introduced in the prosecution's case-in-chief in Tekoh's criminal trials. *Chavez*, 538 U.S. at 766.

Moreover, Vega had a substantial connection to the introduction of the unwarned statement at trial. Not only did he take the statement without warnings, he misrepresented the custodial circumstances in his report so that prosecutors and the courts would admit the statement in the criminal trial to incriminate Tekoh. Based on his actions, Vega "caused" Tekoh's unwarned statement to be introduced during Tekoh's criminal proceedings and for a deprivation of Fifth Amendment rights redressable under § 1983.

Vega was the central actor in the chain of events leading directly to the statement being introduced at trial, and therefore proximately caused the violation. Established principles of proximate cause analysis under § 1983 place the decision on whether a particular defendant is the proximate cause of a constitutional violation in the hands of the jury unless no reasonable jury could so find. As the court of appeals concluded, a reasonable jury could find Vega to be a proximate cause of this Fifth Amendment violation based on this record. Pet. App. 22a-23a.

Tekoh does not contend that police officers are *always* the proximate cause of Fifth Amendment violations when they obtain unwarned statements that are later inappropriately introduced in a criminal trial. If police officers provide truthful accounts of their interrogations clearly the prosecutors or judges could be found to be independent, superseding causes of such

violations. Of course, had Vega been truthful no reasonable prosecutor would have sought to introduce Tekoh's statement. In this case, the prosecutors and judges in the state criminal proceedings relied in good faith on Vega's false account of the circumstances under which the statement was taken.

Vega makes a variety of policy arguments in support of his plea to restrict § 1983 remedies despite Congress' providing an explicit remedy for violations of "rights . . . secured by the Constitution." Tekoh's Fifth Amendment claim fits squarely within the language and purpose of § 1983. This Court has never carved out any individual constitutional right from the ambit of § 1983. Vega's policy arguments to restrict the remedy that Congress has provided are more appropriately addressed to Congress.

Section 1983 was intended to ensure a remedy for deprivations of any individual constitutional right, with damages being a "vital component" of vindicating constitutional guarantees. *Owen v. Independence*, 445 U.S. 622, 651 (1980). Damages under § 1983 also deter constitutional violations and misconduct, which is particularly important for cases such as this one. As this Court has recognized, and empirical evidence indicates, unwarned custodial interrogations lead to false confessions and wrongful convictions, and Tekoh himself was nearly wrongly convicted. Section 1983 is vitally important for the protection of constitutional rights, including the Fifth Amendment rights at stake in this case.

ARGUMENT

I. TEKOH WAS DEPRIVED OF A "RIGHT SECURED . . . BY THE CONSTITUTION" WHEN VEGA "CAUSED" HIS UNWARNED CUSTODIAL STATEMENT TO BE INTRODUCED IN HIS CRIMINAL TRIAL.

A. The Introduction of an Unwarned Custodial Statement Obtained in Violation of *Miranda* in Tekoh's Criminal Trial Established a Fifth Amendment Violation and a § 1983 Claim.

1. Tekoh's Claim Fits Squarely Within the Text of § 1983.

The text of § 1983 provides remedies against any state actor who "subjects, or causes to be subjected" any person to a deprivation of "rights . . . secured by the Constitution." *See, e.g.*, *Felder v. Casey*, 487 U.S. 131, 139 (1988) (noting § 1983 "is to be accorded 'a sweep as broad as its language.'") (quoting *United States v. Price*, 383 U.S. 787, 800 (1966)). Tekoh's claim is based on the violation of his Fifth Amendment rights when his unwarned custodial statement was introduced in his criminal trial. The issue before this Court is whether this Fifth Amendment violation should be treated differently from every other constitutional deprivation when considering whether Congress has provided a remedy under § 1983.

Based on Tekoh's account his interrogation was custodial and therefore the introduction of his unwarned statement at trial violated the Fifth Amendment. As *Dickerson* explains, such a violation must be of individual "rights secured . . . by the Constitution" otherwise there would be no constitutional basis for overturning state criminal convictions based on *Miranda* violations. 530 U.S. at, 438-39 & n. 3. Thus, Tekoh's § 1983 claim is a remedy specifically granted by Congress based on the plain text of the statute. Congress can withdraw damages remedies for *Miranda* violations if it agrees with the policy arguments made by Vega and his *amici,* but it has not done so, in addition to which, good policy cuts against withdrawing damage remedies.

2. The Violation of *Miranda* Rules Establishes a Deprivation of Fifth Amendment Rights.

Miranda held that its mandated warnings are required to protect Fifth Amendment rights, as incorporated through the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 11 (1964). *Miranda* is based on this Court's finding that custodial interrogations are inherently coercive and that the pre-*Miranda* "totality of circumstances" test was an inadequate safeguard for the protection of Fifth Amendment rights. This Court replaced that test with bright line rules governing when a suspect's statement could be introduced in a criminal proceeding, based on this presumption of coercion. Violation of *Miranda* rules create an irrebuttable presumption of coercion

and thus a violation of the Fifth Amendment Self-Incrimination Clause if the unwarned custodial statement is introduced in the prosecution's case-in-chief. *See, e.g.*, *Miranda*, 384 U.S. at 468 ("[S]uch a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere."); *United States v. Washington*, 431 U.S. 181, 188 & n. 5 (1977); *Orozco v. Texas*, 394 U.S. 324, 326 (1969) (holding that introduction of an un-*Mirandized* statement in a criminal trial is "a flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*.").

Miranda mandates the exclusion of unwarned custodial statements in criminal proceedings. *Miranda* did not address the application of § 1983 when the Fifth Amendment is violated by the admission of such statements. This Court has never held that the existence of an exclusionary remedy in criminal cases displaces damages remedies specifically authorized by Congress in § 1983.

Miranda was at first controversial, in large part because of the exclusion of statements obtained from criminal defendants, but over the last sixty-six years its familiar admonitions have become an integral and accepted feature of the criminal justice system. Every police officer is familiar with *Miranda*, especially the core requirements at issue here. *Miranda* rules benefit all participants in the criminal justice system by making the rules governing custodial interrogation more certain and predictable.

Moreover, *Miranda* is firmly situated within our historical traditions. Beginning in the 1740s, English judges began to express concerns about the process of interrogations, then conducted by magistrates. *See generally* Wesley M. Oliver, *Magistrates' Examinations, Police Interrogations, and Miranda-Like Rules in the Nineteenth Century*, 81 Tul. L. Rev. 777 (2007). A two-pronged response developed. Trial court judges began to exclude statements that were the products of threats or promises.[5]

At the same time, magistrates, who were conducting the interrogations, began to inform suspects of their right to remain silent and the fact that any statement would be used against them. Oliver, *supra,* at 784-95. Warnings allowed statements that otherwise might be portrayed as problematic to be admitted. These warnings were far from controversial in the history of the early republic. Treatise writers frequently observed the duty of magistrates to provide these cautions before questioning suspects and a number of state legislatures in the early 1800s codified such requirements. *See* Oliver, *supra,* at 790-95.

Miranda may have seemed like a new rule in 1966, not because it lacked a historical pedigree, but because the warnings disappeared as police officers in

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[5] *King v. Shorer and Shaw* (Oct. 12, 1748), The Proceedings of the Old Bailey, https://www.oldbaileyonline.org/browse.jsp?div=t17481012-30 (Accessed March 29, 2022).

the mid-nineteenth century took over the task of interrogating suspects. *Id*. at 795-828. *Miranda*, far from being an act of judicial fiat, restored a method of alerting suspects to their rights and protecting those rights that was very much a part of the legal customs of the Framers' era.

3. Law Enforcement Officers Are Bound to Apply *Miranda* Rules.

Miranda appropriately focused on the contemporary role law enforcement officials, not just judges, play in safeguarding Fifth Amendment rights. *Dickerson* emphasizes that *Miranda* "laid down 'concrete constitutional guidelines for law enforcement agencies and courts to follow.'" 530 U.S. at 435 (quoting *Miranda*, 384 U.S. at 442); *id*. at 443 ("*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture.") As the United States stated in its *Dickerson* brief, "the requirements of *Miranda* have shaped years of police conduct." Brief for Amicus Curiae the United States of America at 38*, Dickerson v. United States*, 530 U.S. 420 (2000) (No. 99-5525), 2000 WL 141075 (U.S.) at *38.

Law enforcement officers are not clueless, untrained investigators who leave the enforcement of constitutional rights to prosecutors and judges, nor should this Court adopt a rule that makes them so. The *Miranda* framework and the Fifth Amendment rights of criminal suspects depend on law enforcement officers adhering to constitutional requirements. When police officers deceive prosecutors and judges about

circumstances material to the constitutional admissibility of custodial statements they should be subject to liability under § 1983.

4. *Dickerson* Holds That *Miranda* Rules Are Constitutionally Required to Implement the Fifth Amendment.

Vega argues that a person does not have a constitutional right not to have un-*Mirandized* custodial statements introduced in a criminal trial. Pet. Br. 19-26.[6] This Court's *Dickerson* decision resolved any doubts about the constitutional status of *Miranda* rules and their relationship to the enforcement of Fifth Amendment rights.

Two years after *Miranda,* Congress passed 18 U.S.C. § 3501 to repeal its holding legislatively, mandating a return to the pre-*Miranda* "totality of circumstances" test to determine whether statements taken from subjects in custody were "voluntary," and therefore admissible, as the only basis for excluding statements taken during custodial interrogation. *Dickerson* explains that Congressional authority to overturn *Miranda* depended on whether the holding was constitutionally based or was a non-constitutional "prophylactic rule" subject to Congressional regulation. *Dickerson*, 530 U.S. at 437-38. In holding that *Miranda* established constitutional requirements this Court rejected the same arguments Vega and his *amici* now advance. This Court should do so again.

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[6] The United States disagrees. U.S. Br. 14.

First, *Dickerson* rejects the argument that because this Court has limited and expanded the reach of the *Miranda* exclusionary rule in some respects the admonitions are not constitutionally required. 530 U.S. at 437. As *Dickerson* explains, such exceptions reflect the application of a constitutional rule to a variety of new circumstances raised by parties in cases. *Id.* These exceptions do not, as Vega contends, prove that *Miranda* rules are merely prophylactic non-constitutional rules of evidence. Pet. Br. 22-25. Significantly, the United States parts company with Vega on this crucial point. U.S. Br. 4, 14.

Vega places great weight on Justice Rehnquist's opinion in *New York v. Quarles*, 467 U.S. 649 (1984), Pet. Br. 22-23, although Chief Justice Rehnquist in *Dickerson* explicitly rejected an interpretation of *Quarles* that suggests *Miranda* rules are not constitutionally based because this Court does not require admonitions when law enforcement officers ask important public safety questions at the outset of a detention. 530 U.S. at 437.[7] As the Court explained:

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[7] The other exception cited by *Dickerson* as limiting *Miranda*'s scope is the use of unwarned custodial statements to impeach a criminal defendant who testifies at trial. *Harris v. New York*, 401 U.S. 222 (1971) ("Every criminal defendant is privileged to testify in his own defense, or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury . . . . Having voluntarily taken the stand, petitioner was under an oath to speak truthfully and accurately, and the prosecution here did no more than utilize the traditional truth-testing devices of the adversary process.") *Dickerson* also cites with

> [T]hese decisions illustrate the principle—not that *Miranda* is not a constitutional rule—but that no constitutional rule is immutable. No court laying down a general rule can possibly foresee the various circumstances in which counsel will seek to apply it, and the sort of modifications represented by these cases are as much a normal part of constitutional law as the original decision.

Id. at 441.

As Chief Justice Rehnquist insisted, later decisions refined when admonitions are required and therefore when the Fifth Amendment is violated by the introduction of an unwarned statement during the prosecution's case-in-chief at a criminal trial. *Id*. at 441. By refining the scope of Fifth Amendment rights, these decisions equally refined the scope of § 1983 liability for their violations. They do not, as *Dickerson* holds, undermine the constitutional basis of *Miranda* rules.

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approval two cases that *expand Miranda*'s scope, *Doyle v. Ohio*, 426 U.S. 610 (1976) (prohibiting prosecutor's commenting on invocation of *Miranda* after a criminal defendant testifies at trial), and *Arizona v. Roberson,* 486 U.S. 675 (1988) (holding that suspect requesting counsel during first interrogation cannot be questioned about that offense during later interrogation on another offense).

Second, *Dickerson* rejected the argument that language in some cases referring to *Miranda* as creating "prophylactic rules" meant that *Miranda* rules are not based on the Constitution. *Id.* at 437-38. Indeed, the Court referred to many of the cases Vega cites for this proposition in rejecting this argument. *Id.* (citing *Quarles*, 467 U.S. at 653 and *Michigan v Tucker*, 417 U.S. 433, 444 (1974).[8] Again, *Dickerson* rejects the contention that such language undermines the constitutional status of *Miranda* rules.

Dickerson's holding is compelled by the logic that because *Miranda* rules are consistently applied to overturn state criminal convictions, they necessarily arise from the Fifth Amendment. Federal courts hold no supervisory authority over state judicial procedures and may intervene only to correct wrongs of constitutional dimension. *Dickerson,* 530 U.S. at 438 (quoting *Smith v. Phillips*, 455 U.S. 209, 221 (1982)). For more than sixty years, *Miranda* rules have been enforced as constitutional mandates in state court criminal proceedings. No authority other than the Fifth and Fourteenth Amendments has been advanced as empowering this federal court intervention. *Miranda*

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[8] *Dickerson* cited to many of Vega's other cases while rejecting the argument that they diminished the constitutional basis of *Miranda.* 530 U.S. at 438 n.2 (citing *Davis v. United States*, 512 U.S. 452 (1994); *Withrow v. Williams*, 507 U.S. 680 (1993); *Duckworth v. Eagan*, 492 U.S. 195 (1989); *Connecticut v. Barrett*, 479 U.S. 523 (1987); *Oregon v. Elstad*, 470 U.S. 298 (1985); and *Edwards v. Arizona*, 451 U.S. 477 (1981) (Powell, J., concurring).

rules protect individual "rights . . . secured by the Constitution," because this Court has no inherent constitutional authority in this context to create binding "prophylactic" rules on state court criminal proceedings apart from the Fifth and Fourteenth Amendments.

Dickerson buttressed its constitutional holding by underscoring the application of the federal habeas statute to *Miranda* violations. 530 U.S. at 439 n.3. Under 28 U.S.C. § 2254(a) federal habeas relief is available only if the prisoner is "in custody in violation of the Constitution or the laws or treaties of the United States." The Court's decisions affirm the application of the federal habeas statute to *Miranda* violations, and thus that they are violations of the Constitution. *See, e.g.*, *Thompson v. Keohane*, 516 U.S. 99 (1995); *Withrow v. Williams*, 507 U.S. 680 (1993).

Vega's attempt to explain away the application of the federal habeas statute to *Miranda* violations, Pet. Br. 33 n.2, should be rejected. Congress provided for relief for constitutional violations, not for violation of non-constitutional "prophylactic rules," and Congress provided, in similar language, for § 1983 remedies to flow from the same constitutional violations.

Dickerson acknowledges that *Miranda* does not dispense with the voluntariness test altogether. A criminal defendant given *Miranda* warnings can still attempt to prove that incriminating statements were otherwise involuntarily coerced in violation of the Due Process Clause. Law enforcement can be confident, however, that the circumstances in which a statement

would be found to be obtained in violation of the Constitution despite *Miranda* warnings will be "rare." 530 U.S. at 444. This is exactly why the practice of giving warnings arose in the Founding Era. *See generally* Oliver, *supra*.

The obverse is not true. A statement taken in violation of *Miranda* cannot be admitted in the prosecution's case-in-chief, as occurred in this case, even were the proponent to establish that under the "totality of circumstances" test, the statement was given voluntarily. *See, e.g.*, *Orozco v. Texas*, 394 U.S. at 326 (holding that introduction of an un-*Mirandized* statement in a criminal trial is "a flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*."); *id.* at 330 (White, J., dissenting) (acknowledging the holding applies regardless of whether the interrogation "would not constitute coercion in the traditional sense or lead any court to view the admissions as involuntary.") Vega's argument that admitting un-*Mirandized* custodial statements does not violate the Constitution is contrary to *Miranda* and *Dickerson*.

5. The District Court's Error

The district court refused to apply the irrebuttable constitutional presumption of coercion arising from Vega's failure to give *Miranda* warnings when required during Tekoh's custodial interrogation. Instead, the district court allowed the jury to treat the absence of *Miranda* warnings as one of many factors to consider when applying a "totality of circumstances" test to determine whether his statement was voluntary.

Pet. App. 117a-26a. Thus, the district court placed the burden on Tekoh to prove that his unwarned, custodial statement was involuntary.

Miranda's presumption of coercion creates a simple rule that eliminates the need for this uncertain analysis by recognizing a Fifth Amendment violation when an unwarned statement is obtained during custodial interrogation and introduced in a criminal proceeding.

B. The Plurality Opinions in *Patane* and *Chavez* Do Not Alter the Constitutional Status of *Miranda* and its Foundation in the Fifth Amendment.

Vega relies on the plurality opinions in *United States v. Patane*, 542 U.S. 630 (2004), and *Chavez v. Martinez*, 538 U.S. 760 (2003), Pet. Br. 29, neither of which involve the issue presented here: the introduction at trial of unwarned custodial statements as substantive evidence of guilt. These plurality opinions do not undermine or override the constitutional holding in *Dickerson*.

In *Patane,* Justice Thomas, for three members of the Court, wrote that "[t]he Self-Incrimination Clause . . . is not implicated by the admission into evidence of the physical fruit of a voluntary statement." 542 U.S. at 636.[9] Justices Kennedy and O'Connor concurred

[9] As explained in note 1, *supra*, the issue of whether Tekoh's statements were voluntary is still to be decided on remand.

separately limiting their assent to the judgment that the introduction at trial of a murder weapon located after an unwarned interrogation of the suspect was not barred by *Miranda*. Justice Kennedy's concurrence declined to decide whether there was a *Miranda* violation or whether there was "'anything to deter' so long as the unwarned statements are not later introduced at trial." *Id.* at 645 (Kennedy, J., concurring) (citation omitted).

Four members of the Court dissented and emphasized that "*Miranda* rested on insight into the inherently coercive character of custodial interrogation and the inherently difficult exercise of assessing the voluntariness of any confession resulting from it." 542 U.S. at 645-46 (Souter, J., dissenting). Thus, six Justices did not agree with the plurality's reasoning. Regardless, Vega's reading of the plurality opinion in *Patane* is inconsistent with the holding and reasoning in *Dickerson*. *Patane* was limited to the use of non-testimonial fruits of an un-*Mirandized* custodial interrogation, not the statement itself.

In *Chavez*, the unwarned statements were never used in any manner in any criminal proceeding. Both parties here accept the principle that questioning a suspect without giving *Miranda* warnings does not violate the Fifth Amendment until the statement is used in a criminal case. Justice Kennedy's concurrence in *Chavez*, joined by Justices Stevens and Ginsburg, emphasized that "[t]he *Miranda* warning, as is now well

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Whether he was in custody is also an open issue.

settled, is a constitutional requirement adopted to reduce the risk of a coerced confession and *to implement the Self-Incrimination Clause*." 538 U.S. 760, 790 (2003) (Kennedy, J., concurring in part and dissenting in part) (citing *Dickerson*, 530 U.S. at 444 and *Miranda*, 384 U.S. at 467) (emphasis added).

Justice Souter, here writing for the Court, affirms the viability of a substantive due process § 1983 claim regardless of whether the statement was introduced in a criminal case. Moreover, Justice Souter noted that the issue of whether the failure to give *Miranda* warnings in any other circumstances allowed for a § 1983 claim was not before the Court. *Id.* at 779 n.* (Souter, J., concurring in the judgment).

Over the last twenty years, this Court has not retreated from *Dickerson's* holding that *Miranda* warnings are constitutionally required because they implement the Fifth Amendment's Self-Incrimination Clause. Moreover, for every reference to *Miranda* warnings as "prophylactic" prior to *Dickerson*, there are also reaffirmations of the constitutional status of *Miranda* warnings. *See, e.g., Illinois v. Perkins*, 496 U.S. 292, 296 (1990) (describing *Miranda* rules as resting on "the Fifth Amendment privilege against incrimination."); *Moran v. Burbine*, 475 U.S. 412, 427 (1986) (describing *Miranda* as "our interpretation of the Federal Constitution."); *Edwards v. Arizona*, 451 U.S. 477, 481-82 (1981) (describing *Miranda* as having "determined that the Fifth and Fourteenth Amendments" required custodial interrogation to be preceded by advice regarding the suspect's rights); *Orozco*, 394 U.S. at 326 (holding that introduction of an

un-*Mirandized* statement in a criminal trial is "a flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*.")

As with other constitutional rights, this Court has adjusted the scope and application of *Miranda's* Fifth Amendment rule, but it has always prohibited the introduction of an unwarned custodial statements in the circumstances presented by Tekoh's § 1983 claim.

Vega maintains that the rule barring introduction of an unwarned custodial statement in the prosecution's case-in-chief is an evidentiary rule, akin to the Fourth Amendment exclusionary rule. Pet. Br. 26-27. The exclusion of evidence illegally obtained is an evidentiary rule to address a constitutional violation, one that occurred when the police conduct an unlawful search. Such exclusionary rules depend on the existence of an underlying Fourth Amendment violation. Section 1983 remedies are available for those violations regardless of the application of exclusionary rules for the same violations.

The *Patane* plurality grounds its analysis on the text of the Fifth Amendment, which:

> contains its own exclusionary rule. It provides that '[n]o person . . . shall be compelled in any criminal case to be a witness against himself.' Amdt. 5. Unlike the Fourth Amendment's bar on unreasonable searches, the Self-Incrimination Clause is self-executing. We have repeatedly explained 'that those

> subjected to coercive police interrogation have an automatic protection from the use of their involuntary statements (or evidence derived from their statements) in any subsequent criminal trial.'

Patane, 542 U.S. at 769 (quoting *Chavez*, 538 U.S. at 769) (plurality opinion)) (brackets and ellipsis in original).

This distinction between the Fourth Amendment exclusionary rule and the text of the Fifth Amendment confirms that, unlike the admission of illegally seized evidence, the introduction of an unwarned custodial statement consummates the violation of a constitutional right. In the Fourth Amendment context, the Court's exclusionary rule is intended to deter violations of constitutional rights that occur at the time of searches and seizures by eliminating their benefit to the criminal prosecution. The constitutional violation exists regardless of whether seized evidence is used in a criminal trial, and the same § 1983 remedies exist. The exclusionary rule is a deterrent mechanism designed to reduce future Fourth Amendment violations, but absent an individual Fourth Amendment violation, the Court would have no authority to impose an exclusionary rule on the states.

In the *Miranda* context as well, the Court's authority to impose a rule on the states requires the violation of a constitutional right. But in this setting, as this Court has made clear, it is not the unwarned interrogation of a suspect in custody that violates the Fifth Amendment's Self-Incrimination Clause, but the

use of an unwarned custodial statement in a criminal proceeding. The admission of the statement in the prosecution's case-in-chief at the criminal trial constitutes the incrimination, and consummates the constitutional violation that triggers § 1983 liability. Because these requirements are necessarily founded upon a constitutional violation, and because it is precisely the introduction of the unwarned statement to incriminate that completes the violation, Vega's characterization of *Miranda* as an evidentiary rule unrelated to Fifth Amendment deprivations is wrong.

Unlike exclusionary rules fashioned by this Court as deterrents, § 1983 remedies are explicitly provided by Congress for all violations of "rights . . . secured by the Constitution." Congress has not limited § 1983 remedies because an exclusionary rule might apply for the same violations. Tekoh's compelled custodial statements were introduced in his criminal trials in violation of *Miranda* and the Fifth Amendment's Self-Incrimination Clause. That constitutes a violation of his Fifth Amendment "right" and a basis for a § 1983 claim so long as Vega is also the proximate cause of the violation.

II. VEGA WAS THE PROXIMATE CAUSE OF TEKOH'S FIFTH AMENDMENT DEPRIVATION.

Vega did not raise proximate cause as an issue prior to the court of appeals' ruling.[10] Vega now argues, for the first time in this Court, that police officers cannot be the proximate cause of Fifth Amendment violations because decisions to proffer and admit unwarned custodial statements will always be the result of the independent, superseding judgments of prosecutors and judges. Pet. Br. 36-46. There is no basis for such a blanket rule, and the facts of this case demonstrate why one should not be adopted.

The common law of torts and proximate cause generally govern § 1983 claims. Pet. Br. 37. This Court has long held that § 1983 creates a species of tort liability in which proximate cause applies. *Monroe v Pape*, 365 U.S. 167, 187 (1961); *Cty. of Los Angeles v. Mendez*, 137 S. Ct. 1539, 1548-49 (2017) (indicating that § 1983 claims are governed by common law proximate cause principles). Proximate causation generally should be as expansive in § 1983 claims as it is for torts. *See,*

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[10] Indeed, Vega's argued below that the suppression hearing findings in the criminal court collaterally estopped Tekoh's *Miranda* claims in the civil case, because Vega and the criminal prosecution were "one and the same," and that the *Miranda* determinations in the criminal case happened "through Sgt. Vega." Vega Pet. For Rehearing 12. The district court ruled that because Tekoh could not appeal from his acquittal "collateral estoppel and res judicata cannot be applied." JA 220 (citing *Lombardi v. City of El Cajon*, 117 F.3d 1117, 1122 (9th Cir. 1997)).

e.g., *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 709 (1999) ("[T]here can be no doubt that claims brought pursuant to § 1983 sound in tort. Just as common-law tort actions provide redress for interference with protected personal or property interests, § 1983 provides relief for invasions of rights protected under federal law."); *Smith v. Wade*, 461 U.S. 30, 48-49 (1983) ("[W]e discern no reason why a person whose federally guaranteed rights have been violated should be granted a more restrictive remedy than a person asserting an ordinary tort cause of action.").

Proximate cause is present where an injury—under § 1983, a constitutional deprivation—is either foreseeable, or within the scope of what the defendant's conduct risks. *Paroline v. United States*, 572 U.S. 434, 445 (2014); *Monroe*, 365 U.S. at 187; *Mendez*, 137 S. Ct. at 1548-49. The standard can be met here.

A. A Jury Should Determine Whether Vega's Conduct Proximately Caused Tekoh's Fifth Amendment Deprivation.

Initially, whether an injury is "natural or foreseeable" "is not a question of science or of legal knowledge. It is to be determined as a fact, in view of the circumstances of fact attending it." *Milwaukee & Saint Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 474 (1876); *see also, e.g., Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 566 (1931); *Exxon Co. U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 840-41 (1996) ("[P]roximate causation . . . involve[s] application of law to fact, which is left to the factfinder, subject to limited

review.").[11]

Vega's suggestion that police officers cannot cause Fifth Amendment violations that are consummated at trial is inconsistent with these principles and this Court's cases. *See, e.g.*, *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) ("[C]onduct by law enforcement officials prior to trial may ultimately impair" the Fifth Amendment where completed violation happens at trial).[12] The issue is whether the particular defendant "caused" the violation. Vega's characterization of events, that he merely took a statement without *Miranda* warnings and accurately described the circumstances in his report presents a proximate cause issue vastly different from that presented by Tekoh's § 1983 claim.

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[11] The Court ordinarily will not address proximate cause in § 1983 cases, or elsewhere, where the matter was not passed on below. *Cty. of Los Angeles v. Mendez*, 137 S. Ct. 1539, 1549 (2017) (citing *Bank of Am. Corp. v.. City of Miami*, 137 S. Ct. 1296 (2017)); *see also Sofec, Inc.*, 517 U.S. at 840-41 ("[P]roximate causation . . . involve[s] application of law to fact, which is left to the factfinder, subject to limited review.")

[12] The Sixth Amendment, for example, is violated when a person's incriminating words, obtained without counsel, are used against him in trial. *Massiah v. United States*, 377 U.S. 201, 206 (1964); This Court has indicated that § 1983 claims could be available against officers who took such statements. *See, e.g.*, *Weatherford v. Bursey*, 429 U.S. 545, 558 (1977).

Where, as here, a law enforcement officer does not merely take an unwarned statement, but provides a false account about its circumstances in a manner that would reasonably induce a prosecutor to offer it and a judge to admit it, a jury should be allowed to determine whether the prosecutor's and judge's having done so was a "natural and foreseeable" consequence of the officer' unlawful conduct.[13]

This is what Tekoh alleged happened here. Vega referenced only Tekoh's statement—actually a false version of it—in the Statement of Probable Cause, and then prepared a false police report, knowing that his version of the interrogation would be relied on by prosecutors to decide whether to prosecute Tekoh and to use his statements. The prosecutor did so and the statements were predictably admitted at trial.[14] Thus,

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[13] The United States notes that a motion to suppress enforces *Miranda*. U.S. Br. 6. But exclusionary rules do not preclude a § 1983 damages remedy. Moreover, a motion to suppress offers no remedy for *Miranda* violations where a judge, as here, erroneously admits a statement because an officer misled him.

[14] Vega contends that his "only conduct that might arguably be responsible for the alleged *Miranda* violations is his questioning of Tekoh without first providing a *Miranda* admonition" and intimates that this was conclusively established through the verdicts. Pet. Br. 40 n. 3; *see also* U.S. Br. 16. That is incorrect, and ignores the factual disputes never addressed by the juries. S*ee supra* note 1. Vega's conduct included deception and other actions that led to the introduction of the statements at trial.

the court of appeals' decision permitting a jury to address proximate cause on retrial should be affirmed.[15]

B. This Court Should Reject Vega's Arguments that He Did Not Proximately Cause the Deprivation of Tekoh's Fifth Amendment Rights.

Vega argues extensively that the prosecutor and judges were independent, superseding causes. Pet. Br. 36-46. Prosecutors and judges are not independent or superseding causes of a constitutional violation as a matter of law, including where, as here, a police officer's deception foreseeably caused the same actions the officer purports to be independent and superseding. *See Hartman v. Moore*, 547 U.S. 250, 262 (2006) (finding the prosecutor is not a superseding cause and police officer may be liable for bringing about a retaliatory prosecution where the officer "influenced the prosecutorial decision but did not himself make it," as by doing something to induce the decision).[16]

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[15] Vega concedes that proximate cause can be established where the "officer should expect that the statement will be improperly used" in a way which violates *Miranda*. Pet. Br. 42. By that standard proximate cause would be satisfied here, and a jury should at least be permitted to address the issue.

[16] The United States claims that *Hartman* is distinguishable because a *Miranda* violation "is not fully traceable" to an officer's out-of-court action, U.S. Br. 26, a questionable assertion. Whether an officer's out-of-court actions "caused" an in court *Miranda* violation should generally be

Prosecutors should not be considered independent or superseding causes for *Miranda* violations when they reasonably rely on false or misleading information from police officers bearing on whether to offer unwarned statements. Indeed, this Court has held, as have several circuit court of appeals, that police officers can be the proximate cause of a Fifth Amendment violation under § 1983, even where it is a prosecutor's "use" at criminal trial that completes the violation, at least where relevant information is withheld from the prosecutor and judge.[17]

Under common law principles the actions of prosecutors and state court judges could only be considered independent and superseding causes for police officers' misconduct if, at minimum, the

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considered a question of fact under the circumstances in each case, rather than as a categorical rule.

[17] *See Verdugo-Urquidez*, 494 U.S. at 264; *McKinley v. City of Mansfield*, 404 F.3d 418, 436-37 (6th Cir. 2005) (collecting cases from circuits); *id.* at 437-38 (holding it "hard to see how officials whose conduct ultimately impaired a citizen's Fifth Amendment rights could nonetheless escape civil liability merely because a different state official put the statements into trial"); *Sornberger v. City of Knoxville*, 434 F.3d. 1006, 1025-27 (7th Cir. 2006). The Fifth Circuit differs from other circuits by breaking the causal chain for Fifth Amendment violations where officers do *not* misstate or omit relevant information from a court. *Murray v. Earle*, 405 F.3d 278, 291 (5th Cir. 2005). Of course, Tekoh contends that Vega did exactly that.

prosecutors or judges had been provided with relatively complete and truthful information about the circumstances on which they based their decision, so that they could apply their own legal analysis. Circuits addressing the matter repeatedly hold the same.[18]

This Court has rejected attempts to relieve a police officer of liability in similar contexts. For example, in *Malley v. Briggs*, 475 U.S. 335 (1986), this Court found potential § 1983 liability for police officers who obtain warrants that lack "objective reasonableness," rejecting the argument that decisions of issuing judges is a superseding cause. *Id.* at 344-45. *Malley* incorporates *United States v. Leon*, 468 U.S. 897 (1984), for the principle that "deference accorded to a magistrate's finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which the determination is based." *Id.* at 914 (citing *Franks v. Delaware*, 438 U.S. 154, 155 (1978) (criminal defendant may challenge false statements used by police officers to obtain warrants)). When police officers deceive, as Vega did here, they create a basis for a proximate cause finding by their own actions.

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[18] *See, e.g.*, *Murray*, 405 F.3d at 291 (so indicating for officers causing un-*Mirandized* statement to be introduced)*; McKinley,* 404 F.3d at 436-37 (so indicating for officers causing coerced statements to be introduced); *Jones v. Chicago*, 856 F.2d 985, 993-94 (7th Cir. 1988) (so indicating for officers causing prosecutors' decision to charge and proceed with trial); *Caldwell v. City & Cty. of S.F.*, 889 F.3d 1105, 1115-17 (9th Cir. 2018) (so indicating for due process claims).

There are often multiple or alternative causes of an injury, but this does not inherently preclude liability. *Staub v. Proctor Hosp.*, 562 U.S. 411, 420 (2011). At the most basic level, a cause, even an ultimate decisionmaker's judgment, can be "'superseding' only if it is a 'cause of independent origin that was not foreseeable.'" *Id.* (citing *Sofec, Inc.*, 517 U.S. at 837). The prosecutor offering, and the state court admitting, these unwarned statements, given Vega's false account of the circumstances in which they were obtained, should not be considered independent or superseding as a matter of law. Any reasonable police officer would foresee that Tekoh's unwarned custodial statements would be introduced to incriminate him in violation of *Miranda* in the criminal proceeding Vega instigated.

Vega makes much of the prosecutor's statement that she used her "independent judgment" in seeking to introduce Tekoh's statement in the prosecution's case-in-chief. Pet. Br. 40. However, the prosecutor was misled by Vega's false and misleading narrative that Tekoh was not in custody. The prosecutor did not have Tekoh's version, nor the co-workers' corroboration, that the interrogation was custodial.

The presumption of regularity also does not assist Vega. Pet. Br. 40-42. This presumption generally attaches to prosecutors or judges but it is irrelevant and rebutted when officials caused a Fifth Amendment violation, as would be indisputable based on Tekoh's version of events. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941) (finding presumption overcome when a party establishes she was deprived of a constitutional right). Nor can the presumption be extended into

proximate cause, as Petitioner requests. Officers are categorically taken to reasonably assume prosecutors will not introduce statements when doing so would violate *Miranda*. The presumption of regularity makes no sense where an officer deceives decisionmakers about fundamental facts bearing on the decision, indeed deceiving them *in order* to ensure a constitutional right is violated. In such circumstances an officer cannot reasonably assume a prosecutor will act independently to ensure that the introduction of a suspect' statement is constitutionally permissible.

Vega acknowledges that proximate cause considers natural and probable risks that a reasonable person would take into account. Pet. Br. 38. That hornbook principle supports affirming the court of appeals. As addressed above, deceiving prosecutors and judges about the fundamental circumstances of a custodial interrogation to have a statement admitted clearly poses a natural and probable risk, indeed almost a certainty, that the statement will be admitted into evidence.

Vega argues that proximate cause limits liability to the harms that result from the risks that made the actor's conduct tortious, unlawful, or wrongful. Pet. Br. 38, citing Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 29 (2010). As comment d to that section describes, however, if the harms risked by unlawful conduct "include the general sort of harm suffered by the plaintiff, the defendant is

subject to liability for the plaintiff's harm."[19]

The unlawful conduct Tekoh alleges here is taking unwarned custodial statements *and* causing them to be admitted at trial against a person in violation of the Fifth Amendment. Causation is built into the elements of the constitutional violation, which creates liability under § 1983. *See also, e.g.*, *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 692 (1978) (noting that § 1983 specifies that "A's tort became B's liability if B 'caused' A to subject another to a tort . . . ."); *Malley*, 475 U.S. at 342 (police officers may be liable for warrant issued by a judge and secured by a prosecutor based on the officers' affidavit). The injury here is directly related to and within the scope of the risks created by this conduct.

The remaining cases cited by Vega do not assist him. The generic statement in *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692 (2011), that proximate cause differs from but-for cause has no apparent application to this case. Here, the admission of un-*Mirandized* statements were, under well-established principles of proximate cause, the natural and

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[19] The Restatement provides examples. A person who drives inattentively and hits another is liable the resulting injuries from the accident, given they are among the harms risked by the defendant's actions. *Id.,* illus. 1. A person who gives a gun to a child is not liable for the child dropping the gun and breaking her toe, because it is not among the harms risked by the defendant's actions. *Id.,* illus. 3. The same principles render Vega liable for the very harm he wrongfully risked and foreseeably caused.

foreseeable consequences of Vega's actions and *CSX* does not hold or suggest otherwise.[20]

Similarly, *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014), considered whether a defendant's actions affecting a third party were too remote (and held that they were not). Here Vega's actions had a foreseeable, and substantial impact on Tekoh's rights, and the injury was exactly the sort risked by this misconduct.

Lexmark held that proximate cause determinations are controlled by whether "the harm alleged has a sufficiently close connection to the conduct the statute prohibits." 572 U.S. at 133; *see also Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1305 (2017) (same). Under traditional principles of proximate cause, if the statutory duty is designed, at least in part, to protect against the hazard of being harmed by an intervening force (here, the actions of the prosecutor and the court), "then that hazard is within the duty, and the intervening force is not a superseding cause". See Restatement (Second) of Torts § 281 cmt. h.

There should be no question that if the jury resolves the factual disputes in Tekoh's favor, it may also find Vega a proximate cause of this Fifth Amendment violation. In this case, "the conduct the

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[20] Additionally *CSX* applied the standard for causation under the Federal Employers' Liability Act, which was not governed by the same common law proximate causation standard. *CSX*, 564 U.S. at 703.

statute prohibits" is that of "*subject*[ing] *or caus[ing] to be subjected*," a person to the deprivation of Constitutional rights, including by causing another to deprive that person of constitutional rights. *Monell*, 436 U.S. at 692. There is a direct relationship between the harm suffered and conduct the statute prohibits.

Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009) is not relevant. The case holds there is no supervisory liability solely from knowledge that a subordinate may have committed a tort. *Id.* But *Iqbal* assumes correctly that a supervisory defendant can be liable for *causing* a plaintiff to be subjected to a constitutional violation (in addition to subjecting the plaintiff to the violation individually); which is what § 1983 in fact explicitly permits. *Monell*, 436 U.S. at 692.[21]

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[21] The United States suggests that a law enforcement officer cannot be liable for causing a plaintiff to be subjected to unconstitutional conduct of another, as only the primary actor's conduct is unlawful or proscribed. U.S. Br. 16. Causing another person's commission of a constitutional violation is itself unlawful and wrongful conduct under § 1983. *See, e.g., Monell*, 436 U.S. at 692; *Bd. of the Cty. Comm'r of Bryan Cty. v. Brown*, 520 U.S. 397, 405 (1997), does not hold otherwise and has nothing to do with this case. *Brown* involved the showing of deliberate indifference necessary to hold municipalities liable for failures in hiring and supervision. *Brown* hold that lawful conduct causing another's violation *could* be the basis for a § 1983 claim provided there is a showing of deliberate indifference sufficient for municipal liability.

Lastly, Vega presents an unrelated hypothetical in support of his request that law enforcement officers receive blanket immunity from *Miranda*-based § 1983 claims. Pet. Br. 44-45. An officer responding to a domestic dispute believes in good faith *Miranda* does not apply, and accurately reports the circumstances of his interaction and the statements obtained to a prosecutor. Vega's hypothetical is contrary to the facts of this case, and should not result § 1983 liability.

When a police officer gives a truthful account of the circumstances in which a statement is taken, a jury has grounds to find the prosecutor or judge is an independent, superseding cause of any Fifth Amendment violation. Here, by contrast, the claim is that Vega affirmatively misled prosecutors and state judges by giving a false account of the circumstances of Tekoh's interrogation, on facts that are patently a violation of *Miranda* and would require exclusion of the statements. Comparing Vega's hypothetical to the facts on which Tekoh relies illustrates why proximate cause is ordinarily a question to be decided by a jury.[22]

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[22] The United States suggests that this Court's decision in *Briscoe v. LaHue*, 460 U.S. 325 (1983), might impact § 1983 liability under these circumstances. U.S. Br. 26. *Briscoe* does not apply to the preparation of police reports or other documents, or to conduct that would cause a prosecutor to charge a suspect or to introduce the statement at trial. As the Court noted in *Rehberg v. Paulk,* 566 U.S. 356 (2012), for example, the immunity is limited and the Court provides "only qualified immunity to law enforcement officials who falsify affidavits . . . and fabricate evidence concerning an unsolved crime." *Id.* at 370 n.1 (citing *Kalina v. Fletcher*,

III. VEGA'S POLICY ARGUMENTS ARE MISPLACED.

A. Section 1983 Does not Incorporate the Balancing Vega Requests.

The application of § 1983 to Tekoh's claim is not a question of balancing policy interests. Section 1983 provides remedies for a violation of constitutional rights against a person who "subjects" or "causes [any person] to be subjected" to those violations. Tekoh's claim is based on the plain language of § 1983. If Vega and his *amici* believe such liability and remedies have negative consequences on law enforcement, they should urge Congress to restrict § 1983 Fifth Amendment claims.

Besides proximate cause arguments, police officers such as the hypothetical one Vega posits have another substantial layer of protection. If there is uncertainty due to the absence of clear case authority about what a reasonable officer should do under the circumstances of the interrogation the officer would be entitled to qualified immunity. Vega was denied qualified immunity in the district court. JA 225-27. Vega did not seek review of that decision in the court of appeals or in this Court.

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522 U.S. 118, 129-31 (1997); *Malley v. Briggs*, 475 U.S. 335, 340-45 (1986); and *Buckley v. Fitzsimmons*, 509 U.S. 259, 272-76 (1993)).

B. Other Limitations on § 1983 Do Not Apply Here.

The United States argues that the exclusion of unwarned statements should be the only remedy for a *Miranda* violation. U.S. Br. 21-24. The United States relies on two lines of cases in which § 1983 liability has been restricted in non-constitutional settings for reasons unrelated to issues in this case. The first line concerns attempts to enforce federal statutes under § 1983 where the statute itself provided its own remedial scheme. *See, e.g., Alexander v. Sandoval*, 532 U.S. 275, 290 (2001). This Court has developed a complex body of law harmonizing such statutory § 1983 claims with other legislation. These limitations have never been applied to constitutional claims asserted under § 1983.

The other line prevents § 1983 from being used to undermine pending criminal proceedings. *See, e.g., Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973). Unlike those cases, Tekoh's § 1983 claim here did not interfere with any pending criminal proceedings. Tekoh filed suit after the jury heard from him, his expert and his co-workers, and returned a verdict of acquittal. Had Tekoh tried to bring these claims before he was acquitted those cases would have precluded it. Had he been convicted he would have been barred by *Heck v. Humprey*, 512 U.S. 477 (1994), as well as state issue preclusion rules. These cases are based on comity concerns and the availability of other relief, such as habeas corpus. Once the jury acquitted him, however, a damages remedy was the only relief Tekoh could pursue for the violation of his Fifth Amendment rights.

C. There is no Basis for Vega's Floodgates Arguments.

Miranda has proven easy to administer; Vega's suggestions otherwise are overblown. *See, e.g.*, *Dickerson*, 530 U.S. at 431 (noting "*Miranda* is 'embedded in routine police practice to the point where the warnings have become part of our national culture.'"); *Withrow,* 507 U.S. at 695 ("[T]here is little reason to believe that the police today are unable, or even generally unwilling, to satisfy *Miranda*'s requirements.")

Vega's attempt to create a specter of limitless § 1983 liability based on taking unwarned statements is not grounded in fact. Tekoh's claim does not rest on the failure to provide warnings alone. The linchpin of § 1983 liability here is Vega's false account of the circumstances in which he obtained Tekoh's statement.

The rule applied by the court of appeals below is identical to that in *Sornberger v. City of Knoxville*, 434 F.3d 1006 (7th Cir. 2006). The last fifteen years have not seen a plethora of these cases because most police officers do their interrogations properly and do not mislead prosecutors and judges. *Heck* and issue preclusion bar claims arising from criminal cases that resulted in convictions, and qualified immunity protects officers who face close or novel questions.

The United States' argument that the "practical realities" faced by police officers should not lead to a blanket immunity when, as here, officers "cause" Fifth Amendment violations. U.S. Br. 12-14. Police officers

may engage in unwarned custodial interrogation for a wide variety of important reasons, such as searching for active terrorists, without violating the Fifth Amendment, as this Court held in *Chavez*. Only when the officer "causes" the introduction of a custodial statement taken without required *Miranda* warnings in a criminal proceeding that § 1983 liability is appropriate. Officers who provide accurate and material information about the circumstances in which they obtained the statements will likely be protected either because prosecutors or courts will be found to be independent superseding causes of any violation or in uncertain cases be protected by qualified immunity. There is no justification for creating a new categorical rule of proximate cause that shields all police officers, including those who mislead prosecutors and courts, who take unwarned custodial statements that are subsequently used to incriminate a suspect.

D. *Miranda* Protects Important Rights and Interests, Including the Prevention of Wrongful Convictions.

Miranda warnings are important and essential for the protection of Fifth Amendment rights. For reasons this Court has recognized over nearly seventy years, custodial interrogations are inherently coercive and always risk the denial of fundamental Fifth Amendment rights. *Miranda*, 384 U.S. at 457-58. Unwarned custodial interrogation can lead to false confessions. *See, e,g.*, *Miranda*, 384 U.S. at 455-56 & n.24; *Corley v. United States*, 556 U.S. 303, 321 (2009) (noting mounting empirical evidence that interrogations "induce a frighteningly high percentage of people to

confess to crimes they never committed."); Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 906-07 (2004); Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 Am. Psych. 63, 72 (2018).

Such confessions are more likely to cause wrongful convictions and are usually dispositive to a case at all stages. *See, e.g.*, *Miranda*, 384 U.S. at 466 (confessions are "the most compelling possible evidence of guilt"); Cleary, McCormick on Evidence 316 (2d ed. 1972) ("[T]he introduction of a confession makes the other aspects of a trial in court superfluous, and the real trial, for all practical purposes, occurs when the confession is obtained.") Indeed, relying on false confessions, investigating officers may disregard conflicting evidence and prematurely conclude investigations, allowing perpetrators to escape justice. *See* Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L.R. 1051, 1086-87 (2010). Every aspect of the criminal process can be tainted by reliance on an unreliable and false confession. *See generally* Saul M. Kassin, *Why Confessions Trump Innocence*, 67 Am. Psych. 431, 440 (2012).

Tekoh was nearly the victim of a wrongful conviction because of Vega's actions. Even though Tekoh escaped wrongful imprisonment, his hopes for a medical career were dashed. Tekoh endured two years of anxiety, wearing an ankle bracelet, awaiting the chance to clear his name at trial. This case reflects the continuing wisdom and empirical basis for *Miranda's* insight into the inherent coercion in custodial

interrogation.

Fortunately, the criminal jury acquitted Tekoh despite the unwarned custodial statements Vega obtained. Section 1983 is the only means Tekoh has to obtain redress for Vega's misconduct.

The United States' suggestion that holding police officers liable for obtaining un-*Mirandized* confessions, including when they mislead prosecutors and courts about the circumstances in which the statements were obtained, would upset the traditional division of labor in the criminal justice system, or undermine the trial right is unwarranted. U.S. Br. 18. Allowing accountability for such actions ensures that the appropriate division of functions—with police officers investigating, and prosecutors prosecuting—will continue and permits the trial rights *Miranda* safeguards to remain effective.

E. Section 1983 Implements Important Congressional Policies.

Apart from the plain text commanding it, there are important policy reasons to enforce the remedies Congress provides in § 1983 for constitutional violations. When enacting § 1983, Congress "intended to give a broad remedy for violations of federally protected civil rights," indeed "against all forms of official violation of federally protected rights." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 685, 700-02 (1978); *see also Dennis v. Higgins*, 498 U.S. 439, 444-45 (1991) ("[T]he Court has never restricted the section's scope to the effectuation of that goal" and has "rejected attempts to

limit the types of constitutional rights that are encompassed within the phrase 'rights, privileges, or immunities.'") As the legislative history indicates, its language is without limit and "as broad as can be used." Cong. App. 42d Cong., 1st Sess. 68, 217 (Mar. 28, 1871) (statement of Sen. Thurman); *id.* at 317 (statement of Rep. Shellabarger) (stating § 1983 should be "liberally and beneficently construed" given it is "remedial and in the aid of the preservation of human liberty and human rights").

As this Court has also recognized, § 1983 reflects the fact that "[a] damages remedy against the offending party is a vital component" in addressing constitutional violations. *Owen v. City of Independence*, 445 U.S. 622, 651 (1980). Moreover, § 1983 was also intended to deter constitutional violations, and the fact that persons such as Vega will face liability for causing constitutional violations is an important means of deterring such misconduct. *Id*. at 651-52; *see also Hudson v. Michigan*, 547 U.S. 586, 597-99 (2006) (recognizing the deterrent effect of § 1983 on criminal law). Recognizing a § 1983 claim here advances those important Congressional policies.

Thus, there are important policy reasons to enforce the remedies Congress has provided in § 1983 for constitutional violation, including that accepting Vega's conduct undermines the criminal justice system. Such conduct should be deterred and the damages caused by it compensated.

CONCLUSION

For all the foregoing reasons the Judgment of the court of appeals should be affirmed.

Respectfully submitted,

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