No. 21-499

# In the Supreme Court of the United States

CARLOS VEGA,
*Petitioner,*

v.

TERENCE B. TEKOH,
*Respondent.*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

## REPLY BRIEF FOR PETITIONER


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**STATUTES AND RULES**

## INTRODUCTION

Tekoh no longer defends his argument—reflected in his proposed jury instruction, and embraced by the Ninth Circuit—that "the introduction of a defendant's un-*Mirandized* statement at his criminal trial during the prosecution's case in chief is alone sufficient to establish a Fifth Amendment violation and give rise to a § 1983 claim for damages" against the police officer who took the statement. Pet. App. 26a. Instead, he backpedals to a brand-new theory that Section 1983 liability lies against an officer who "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" in evidence. Tekoh Br. 39 (emphasis added). That new theory is just as flawed as the original.

*First*, Tekoh's revised approach still wrongly treats an alleged violation of *Miranda* as a violation of the Fifth Amendment. Tekoh has no explanation of how his theory squares with the decades of precedent treating *Miranda* as a *prophylactic* rule that "sweeps more broadly than the Fifth Amendment itself." *Oregon v. Elstad*, 470 U.S. 298, 306 (1985). His theory fails to recognize that—even after *Dickerson v. United States*, 530 U.S. 428 (2000)—violations of *Miranda*'s prophylactic rule "do not violate the constitutional rights of any person." *Chavez v. Martinez*, 538 U.S. 760, 772 (2003).[1] And he offers no good reason for expanding *Miranda*'s

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[1] Unless otherwise noted, all citations to *Chavez* and *United States v. Patane*, 542 U.S. 630 (2004) are to the plurality opinions.

presumption of coercion into the novel context of a civil claim for money damages.

*Second*, Tekoh's new theory concedes that the Ninth Circuit's proximate causation ruling was wrong, and abandons the proposed jury instruction underlying his appeal. That instruction would allow a jury to treat a police officer as the proximate cause of a *Miranda* violation so long as (1) the officer obtained an unwarned custodial statement, and (2) the statement was later introduced at the defendant's criminal trial. But Tekoh's new theory requires proof of an additional element—that the officer lied to prosecutors and the court—to establish causation. His proposed jury instruction lacked that element, and therefore fails even under his new legal theory. In any event, the proximate cause of a *Miranda* violation is a trial court's decision to admit an un-*Mirandized* statement into evidence—not the pre-trial conduct of the officer. And here the civil jury has already *rejected* Tekoh's argument that Vega misrepresented the circumstances of Tekoh's confession.

Tekoh's new theory cannot rescue his claim. The judgment below should be reversed.

## ARGUMENT

### I. TEKOH CANNOT ESTABLISH A VIOLATION OF HIS FIFTH AMENDMENT RIGHTS

The introduction of Tekoh's un-*Mirandized* statement at his criminal trial does not establish a violation of his Fifth Amendment rights under Section 1983. As the *Chavez v. Martinez* plurality recognized, *Miranda* establishes a prophylactic evidentiary rule to prevent "violations of the right

protected by the text of the Self-Incrimination Clause," and violations of that prophylactic rule "*do not violate the constitutional rights of any person*." 538 U.S. 760, 772 (2003) (emphasis added). Tekoh's arguments to the contrary fail.[2]

### A. Violations Of *Miranda*'s Evidentiary Rule Do Not Necessarily Violate The Fifth Amendment

1. Tekoh argues (at 19-35) that the introduction of his unwarned statement at the criminal trial violated his Fifth Amendment rights because it contradicted *Miranda*'s constitutional evidentiary rule barring such evidence. But "[t]he Fifth Amendment prohibits use by the prosecution in its case in chief only of *compelled* testimony." *Oregon v. Elstad*, 470 U.S. 298, 306-07 (1985). And although *Miranda* protects against violations of the Fifth Amendment, it does so prophylactically—by requiring the exclusion of *any* unwarned custodial statement, even if the statement was voluntary and therefore *not* compelled.

It follows that a violation of *Miranda*'s exclusionary rule does not automatically equate to a violation of the Fifth Amendment. Indeed, the jury below conclusively determined that Tekoh's statement was voluntary. Pet. App. 68a.

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[2] Most of Tekoh's brief correctly acknowledges that *Miranda* is an evidentiary *trial* rule that does not directly govern the primary conduct of police. *See, e.g.*, Tekoh Br. 21, 25. To the extent he briefly asserts otherwise in Section I-A-3 ("Law Enforcement Officers Are Bound to Apply *Miranda* Rules"), that argument is unsupported and contrary to settled law. *See* Vega Br. 17-19; U.S. Br. 9-10.

This Court's cases bear this out. They repeatedly explain that *Miranda*'s prophylactic rule "sweeps more broadly than the Fifth Amendment itself," *Elstad*, 470 U.S. at 306, and demands the exclusion of evidence even though such exclusion is "not . . . required by the Fifth Amendment's prohibition on coerced confessions," *Connecticut v. Barrett*, 479 U.S. 523, 528 (1987). The Court has emphasized that a violation of *Miranda* results in "no constitutional deprivation," *Michigan v. Payne*, 412 U.S. 47, 53 (1973), and "no identifiable constitutional harm," *Elstad*, 470 U.S. at 307 (citing *New York v. Quarles*, 467 U.S. 649, 654 (1984); *Michigan v. Tucker*, 417 U.S. 433, 444 (1974)). Violations of the *Miranda* rule "do not violate the constitutional rights of any person." *Chavez*, 538 U.S. at 772.

2. Tekoh has no persuasive response to any of this case law. He does not deny this Court's repeated characterizations of *Miranda* as establishing a prophylactic rule that provides an exclusionary remedy—even when the Fifth Amendment itself is not actually violated.

Instead, Tekoh emphasizes (at 20-21) that *Miranda* established an "irrebuttable presumption of coercion." But Tekoh ignores that the presumption of coercion has limited application. *Miranda* requires criminal trial judges generally to presume that the use of an unwarned statement would violate a defendant's Fifth Amendment rights if introduced in the prosecution's case-in-chief. It requires them to exclude such statements in that single context, and authorizes courts to overturn convictions obtained in violation of that exclusionary rule. Vega Br. 18, 33.

Crucially, though, *Miranda* does *not* require courts to presume coercion or a Fifth Amendment

violation in any context other than admissibility in the prosecution's case-in-chief. Rather, the Court has repeatedly emphasized that *Miranda*'s presumption does *not* apply in other situations, such as when an unwarned statement is used to impeach a criminal defendant's testimony or to gather other incriminating evidence against the defendant. *See* Vega Br. 22-24. In those cases, the Court recognized that a "simple failure to administer [*Miranda*] warnings" does not constitute "actual coercion." *Elstad*, 470 U.S. at 309; *see Quarles*, 467 U.S. at 655 n.5; *United States v. Patane*, 542 U.S. 630, 639-40 (2004); Vega Br. 22-24.

In short, *Miranda*'s presumption of coercion governs only the admissibility of unwarned custodial statements in the prosecution's case-in-chief at criminal trials. It does not equate to a determination of actual coercion in that (or any other) context. Tekoh's argument (at 29-30) that courts must now treat his allegedly custodial, unwarned statement as having been coerced in violation of the Fifth Amendment is wrong.[3]

3. Tekoh also relies heavily (at 24-29) on *Dickerson v. United States*, 530 U.S. 428 (2000). But *Dickerson* simply reaffirmed the Court's earlier

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[3] Tekoh cites (at 21, 29) *Orozco v. Texas*, a direct criminal appeal which characterized the use of a criminal defendant's unwarned statement in the prosecution's case-in-chief as a "flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*." 394 U.S. 324, 329 (1969). *Orozco*—which predated this Court's subsequent decisions clarifying *Miranda*'s limited application—reflects that when a criminal court assesses the admissibility of such a statement in that context, the statement is *presumed* to have been coerced in violation of the Fifth Amendment.

decisions holding that *Miranda* established a "prophylactic constitutional rule[]." *Payne*, 412 U.S. at 53. Accordingly, *Dickerson* held that *Miranda* could not be overturned by federal statute. 530 U.S. at 444.

Tekoh accuses Vega of ignoring *Dickerson*'s constitutional holding and characterizing *Miranda* as a "prophylactic *non*-constitutional rule[ ] of evidence." Tekoh Br. 25-26 (emphasis added). That is false. Vega's opening brief repeatedly emphasized that "*Miranda* is *both* constitutional *and* prophylactic." Vega Br. 29; *see also id.* at 12, 27, 30. The bulk of Tekoh's *Dickerson*-based argument (at 24-29) seeks to establish that (1) *Dickerson* affirmed *Miranda*'s constitutional status, and (2) the Court's pre-*Dickerson* cases are consistent with that holding. Neither point is contested here.

Tekoh appears to believe that because *Dickerson* says *Miranda*'s evidentiary rule has constitutional status, a violation of that rule automatically entails a violation of the Self-Incrimination Clause. That doesn't follow. As explained, *Miranda* sweeps more broadly than the Fifth Amendment, and a *Miranda* violation therefore does not necessarily equate to a Fifth Amendment violation. Moreover, not every constitutional rule gives rise to a constitutional right enforceable under Section 1983. Vega Br. 29-31. *Dickerson*'s treatment of *Miranda* as a constitutional holding reflects its important role in protecting Fifth Amendment rights. But "[r]ules designed to safeguard a constitutional right . . . do not extend the scope of the constitutional right itself." *Chavez*, 538 U.S. at 772.

Like the Ninth Circuit, petitioner treats *Dickerson* as having overturned the "status quo" and

"affirmatively backed away from" its prior decisions describing *Miranda* warnings as "merely prophylactic and 'not themselves rights protected by the Constitution.'" Pet. App. 20a (citation omitted). But as Justice Kennedy later explained, *Dickerson* "did not undermine these precedents and, in fact, cited them in support." *Patane*, 542 U.S. at 645 (Kennedy, J., concurring in the judgment); *see id.* at 640-41 (plurality op.). And even after *Dickerson*, the Court has *continued* characterizing *Miranda* as "prophylactic" and invoking pre-*Dickerson* case law making clear that *Miranda* sweeps more broadly than the Fifth Amendment. *See, e.g.*, *Montejo v. Louisiana*, 556 U.S. 778, 794 (2009); *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011); *Patane*, 542 U.S. at 640-41; *Chavez*, 538 U.S. at 772-73.

Any doubt about what the Court meant in *Dickerson* is resolved by how its author—Chief Justice Rehnquist—subsequently treated *Miranda* in *Chavez*. There, he joined the plurality opinion concluding that "violations of judicially crafted prophylactic rules [such as *Miranda*] do not violate the constitutional rights of any person." 538 U.S. at 772. There is no reason to credit Tekoh's interpretation of *Dickerson* over Chief Justice Rehnquist's.

4. Tekoh also notes (at 28) that *Miranda* is binding on state courts, arguing that "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." But *Miranda*'s application to state-court proceedings is not a reason to conclude that a violation of its exclusionary rule necessarily violates the Fifth Amendment.

This Court has also established a constitutionally mandated exclusionary rule—applicable in federal *and* state courts—for evidence obtained in violation of the Fourth Amendment. But although the exclusionary rule "safeguard[s] Fourth Amendment rights generally," it does not create any "personal constitutional right of the party aggrieved." *United States v. Calandra*, 414 U.S. 338, 348 (1974). For that reason, courts have recognized that a violation of the Fourth Amendment exclusionary rule does not give rise to a claim under Section 1983. The same logic applies here. Vega Br. 31.[4]

5. Tekoh argues (at 28) that Vega's position is inconsistent with habeas relief for *Miranda* violations, since Congress authorized such relief "for constitutional violations, not for violation of non-constitutional 'prophylactic rules.'" That again mischaracterizes Vega's argument. Vega *agrees* that a criminal trial court's failure to apply *Miranda* and presume a Fifth Amendment violation in the appropriate circumstances results in "custody in violation of the Constitution." 28 U.S.C. § 2254(a); *see* Pet. Reply 8. But that does not mean that a defendant against whom an un-*Mirandized* statement is introduced has suffered an actual violation of his rights under the Fifth Amendment. He has suffered

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[4] Tekoh notes (at 34) that the Fourth Amendment exclusionary rule—unlike *Miranda*'s exclusionary rule—kicks in only after a constitutional violation has been consummated. That makes no difference. In both contexts, the exclusionary rule (1) has its own independent constitutional status, and (2) can be violated only if evidence is improperly introduced at trial. In neither context does violation of the exclusionary rule infringe any "personal constitutional right" of the defendant. *Calandra*, 414 U.S. at 348.

only the violation of a prophylactic constitutional rule meant to protect those rights.

6. Finally, Tekoh is wrong to imply (at 24 & n.6) that the government agrees with his position that a *Miranda* violation necessarily equates to a Fifth Amendment violation. Although the government states (at 14) that *Miranda* establishes a "federal right . . . to the exclusion of unwarned statements from the prosecution's case-in-chief," its brief makes clear (at 25) that violations of *Miranda* "differ[ ] in significant ways from direct violations of the Self-Incrimination Clause." Tekoh's *Miranda* claim has always turned—exclusively—on an argument that his Fifth Amendment rights under the Self-Incrimination Clause were violated.[5] The non-Fifth-Amendment *Miranda* "right" identified by the government is not the basis of his claim.

In any event, calling *Miranda*'s evidentiary rule the personal "right" of a criminal defendant does not track an appropriate conception of "rights," either generally or for purposes of Section 1983. Doing so is at odds with *Chavez*'s statement that violating *Miranda* "do[es] not violate the constitutional rights of any person." 538 U.S. at 772. It is in tension with *Calandra*'s recognition that the Fourth Amendment exclusionary rule is not "a personal constitutional right of the party aggrieved." 414 U.S. at 348. And it implies that the misapplication of *any* federal evidentiary rule—including the entire Federal Rules

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[5] *See, e.g.*, JA-148 (complaint); Pet. App. 115a-16a (proposed jury instruction); *id.* at 2a, 6a (Ninth Circuit decision adjudicating Tekoh's arguments on appeal); Cert. Opp. i, 13; Tekoh Br. 2, 20-21, 35.

of Evidence—would likewise violate a party's "rights" and give rise to a Section 1983 claim.

Perhaps for these reasons, the government does not assert that *Miranda*'s creation of a federal evidentiary "right" triggers potential Section 1983 liability. If anything, its brief suggests the opposite (at 25).

### B. Tekoh Cannot Satisfy The Court's "Close-Fit Requirement" For Extending *Miranda* To A New Context

As explained above and in Vega's opening brief, this Court's precedents reject the key premises underlying Tekoh's proposed extension of *Miranda* to Section 1983. Such an extension is also improper under the pragmatic approach this Court has endorsed for defining *Miranda*'s scope.

Under that approach, *Miranda*'s presumption of coercion applies only when necessary to protect the core Fifth Amendment right against compelled self-incrimination. Vega Br. 32-33. This "close-fit requirement" ensures that *Miranda*'s judge-made prophylactic rule is confined to the narrow set of circumstances justifying its creation. *Patane*, 542 U.S. at 639-40; *see id.* at 643. This Court's cases establish that—to date—the test has justified applying *Miranda* only in a single context: "the prosecution's case in chief" at a criminal trial. *Id.* at 639-40 (citation omitted); Vega Br. 33.

Tekoh nonetheless asserts (at 29-30) that the district court in this *civil* case erred by failing to apply *Miranda*'s presumption of coercion, and he rejects altogether (at 49) this Court's "close-fit" analysis, reasoning that Section 1983 claims are generally not subject to a "balancing [of] policy interests." That

argument is starkly at odds with *Patane*'s explanation of the "close-fit" test. 542 U.S. at 639-40. It also directly contradicts this Court's statement in *Tucker* that *Miranda*'s scope *is* subject to a "balancing [of] interests." *Tucker*, 417 U.S. at 450.

Beyond that, Tekoh makes no effort to show that such balancing favors his novel claim for application of *Miranda* in this civil-damages context. Nor does Tekoh explain why application of *Miranda*'s presumption only in the prosecution's case-in-chief at a criminal trial is not a "complete and sufficient" means of protecting the Fifth Amendment. *Chavez*, 538 U.S. at 790 (Kennedy, J., concurring in relevant part); *see id.* at 778 (Souter, J., concurring in the judgment). For the reasons explained in Vega's opening brief, *Miranda*'s presumption in this context is unnecessary and affirmatively harmful. Vega Br. 35-36, 47-51.

This Court should adhere to its longstanding rule that *Miranda*'s presumption of coercion applies only for certain purposes at criminal trials. Because the presumption does not apply in civil damages cases, Tekoh cannot invoke *Miranda* to establish a Fifth Amendment violation here. His Section 1983 claim fails.

## II. VEGA DID NOT PROXIMATELY CAUSE A *MIRANDA* VIOLATION

The decision below also violates basic tenets of proximate causation. The Ninth Circuit held that an officer's failure to give *Miranda* warnings during a custodial interrogation is "alone" sufficient to support Section 1983 liability against the officer if the statement is later used in the prosecution's case-in-chief. Pet. App. 26a. But taking an unwarned

custodial statement is lawful and does not have the natural and probable consequence of causing a *Miranda* violation at trial. Vega Br. 39-46.

Tekoh does not dispute this. Instead, he abandons the Ninth Circuit and stakes out an entirely new position: He argues that an officer proximately causes a *Miranda* violation at trial if the officer *both* fails to give *Miranda* warnings *and* commits a separate constitutional violation under the Due Process Clause—namely, fabricating evidence by lying to prosecutors about the interrogation. This new argument completely reformulates Tekoh's theory of *Miranda*-based Fifth Amendment claims, which has never depended on officers lying to prosecutors.

In making this switch, Tekoh expressly concedes that the Ninth Circuit's causation analysis—and his own proposed jury instruction—were mistaken. His new theory is also inconsistent with the jury's rejection of his fabrication-of-evidence claim, and is legally baseless in any event. As the government agrees, proximate causation offers an independent ground for reversal.[6]

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[6] Tekoh halfheartedly asserts (at 36) that Vega improperly raised proximate causation for the first time in this Court. Tekoh is mistaken. Vega generally addressed causation below, *see, e.g.*, Pet. App. 109a-10a & n.4, and the Ninth Circuit fully analyzed the issue on the merits, *id.* at 20a-23a. *See Verizon Commc'ns Inc. v. FCC*, 535 U.S. 467, 530 (2002). In any event, Vega was not required to press his current causation argument because it was squarely foreclosed by Ninth Circuit precedent. *See US Airways, Inc. v. McCutchen*, 569 U.S. 88, 101 n.7 (2013); Vega Br. 43. And he clearly presented that argument in his certiorari petition (at 28-32).

### A. Tekoh Has Abandoned His Proposed Jury Instruction And The Ninth Circuit's Proximate Causation Rule

1. Until now, Tekoh has consistently maintained that his *Miranda*-based Fifth Amendment claim turns entirely on two propositions: (1) that Vega obtained Tekoh's self-incriminatory statement without giving a *Miranda* warning, and (2) that the statement was subsequently introduced at his criminal trial. Most importantly for present purposes, this two-prong theory is reflected in the rejected jury instruction—proposed by Tekoh—that gives rise to this appeal. That instruction would have told the jury that

> In order to establish his Fifth-Amendment claim, Plaintiff must prove by a preponderance of the evidence that [1] Defendant Carlos Vega obtained one or more statements from him in violation of [*Miranda*] that [2] were subsequently used in the criminal case against Plaintiff.

Pet. App. 115a-16a; *see* JA-252-53.

Tekoh's proposed two-prong instruction was consistent with how he repeatedly described his *Miranda* claim to both courts below. In defending his jury instruction to the district court, Tekoh's counsel argued that "once a statement is taken from a suspect in violation of *Miranda* and is used against that person in a criminal case, then that constitutes a Fifth Amendment violation . . . attributable to the officer who took the statement." JA-296; *see* JA-299. In his first new-trial motion, Tekoh likewise explained that his instruction was legally and factually supported because a jury could conclude that (1) Tekoh was "in

custody" and thus "entitled to *Miranda* admonitions," and (2) his statement was "used against [him] in a criminal case." Dkt. No. 201 at 9, No. 16-cv-7297 (C.D. Cal. Dec. 5, 2017). According to Tekoh, "These facts establish Plaintiff's Fifth Amendment claim." *Id.*; *see* Pet. App. 42a.

After two civil juries rejected Vega's fabrication-of-evidence and coercion claims, Tekoh appealed the district court's denial of his jury instruction to the Ninth Circuit. That court accurately summarized Tekoh's legal argument in the first sentence of its opinion: "We must decide whether the use of an un-*Mirandized* statement against a defendant in a criminal case is *alone* sufficient to support a 42 U.S.C. § 1983 action based on the Fifth Amendment violation." Pet. App. 1a (emphasis added).

The Ninth Circuit upheld Tekoh's instructional challenge and remanded for a new trial, stating that "the jury must be properly instructed that the introduction of a defendant's un-*Mirandized* statement at his criminal trial during the prosecution's case in chief is *alone* sufficient to establish a Fifth Amendment violation and give rise to a § 1983 claim for damages." *Id.* at 26a (emphasis added). As to causation, the court emphasized that there was "no question" Vega caused the alleged *Miranda* violation because he obtained the unwarned statement and passed it to prosecutors without urging them not to use it at trial. *Id.* at 21a-22a.

2. Tekoh's response brief no longer defends the validity of his proposed jury instruction or the Ninth Circuit's proximate causation ruling in his favor. He nowhere argues that an officer causes a Fifth Amendment violation simply because (1) the officer obtains a custodial statement without providing a

*Miranda* warning, and (2) the statement is introduced against the defendant at trial.

Instead, Tekoh now adds a third requirement: The officer must *also* "misrepresent[] in reports the circumstances under which the statement was obtained." Tekoh Br. 6; *see id.* at 2-3. As Tekoh acknowledges, this new misrepresentation requirement is the "linchpin" of his causation theory, as it provides the crucial link establishing that the officer's conduct is wrongful and that the improper use of the un-*Mirandized* statement is foreseeable. *Id.* at 39, 51.

Tekoh's misrepresentation-based theory abandons—and indeed, contradicts—the proposed jury instruction that forms the basis of this appeal. That instruction did not require the new element—a lie about "the circumstances under which the statement was obtained"—that Tekoh now introduces for the first time in this Court. But if an officer's deception is the "linchpin" of Tekoh's Fifth Amendment theory, then his proposed instruction misstated the law and was properly rejected.

Tekoh's brief never tries to square his new causation theory with the jury instruction. Quite the opposite: Tekoh acknowledges (at 17) that officers do not "*always*" proximately cause *Miranda* violations by taking unwarned statements that are later used at trial. Elsewhere, he appears to recognize (at 44) that absent fabrication of evidence, officers may "reasonably assume prosecutors will not introduce statements when doing so would violate *Miranda*," thereby negating causation. He likewise concedes (at 48) that a jury should not impose Section 1983 liability on an officer simply because an un-

*Mirandized* statement obtained by that officer was later used at trial.

These concessions make sense under Tekoh's new misrepresentation-based causation theory. But they are all incompatible with his proposed jury instruction. And they are likewise inconsistent with the Ninth Circuit's ruling that use of a defendant's un-*Mirandized* statement at his criminal trial is "*alone* sufficient to establish a Fifth Amendment violation and give rise to a § 1983 claim for damages." Pet. App. 26a (emphasis added).

3. The Court can also reject Tekoh's new theory on forfeiture grounds. Below, Tekoh never (1) treated Vega's alleged deception as an essential element of his Fifth Amendment claim, (2) sought a jury instruction including that element, or (3) presented it to the Ninth Circuit. This Court typically refuses to review questions "not raised or litigated in the lower courts," and that rule has "special force" in the context of jury instructions. *City of Springfield v. Kibbe*, 480 U.S. 257, 259 (1987) (per curiam). Moreover, Tekoh's new argument is outside the scope of the question presented and was not advanced in his opposition to certiorari. *See* Sup. Ct. R. 14.1(a), 15.2.

### B. Tekoh's New Causation Theory Is Factually Unsupported

Tekoh had good reason not to press his misrepresentation-based proximate causation argument below: The jury in his first civil trial already rejected his fabrication-of-evidence claim based on the same alleged misrepresentations. Vega Br. 8, 40 & n.3. Moreover, none of those alleged misrepresentations is even capable of satisfying Tekoh's new theory, even if that theory were correct.

1. At the first Section 1983 trial, Tekoh presented essentially the same theory he is now trying to recycle as part of his Fifth Amendment claim. He argued that Vega fabricated evidence in violation of the Due Process Clause by "compromis[ing] evidence" and filing "deliberately false" reports about Tekoh's confession. JA-148-49. The jury was instructed that it should rule for Tekoh if it concluded that Vega "deliberately fabricated evidence that was used to criminally charge and prosecute him" or used "coercive" techniques that would yield false information. JA-261. As Tekoh's own counsel conceded, the case "fundamentally hinged on whether the jury believed [Tekoh's] account of what happened . . . , or whether they believed [Vega's account]." Pet. App. 38a n.3 (omission in original) (citation omitted).

The jury believed Vega, concluding that he did *not* fabricate evidence. *Id.* at 27a-29a. And although the district court later determined that it should have separately instructed the jury on a Fifth Amendment self-incrimination violation, it did not disturb the verdict on Tekoh's fabrication-of-evidence claim. *Id.* at 7a, 38a-54a. On the contrary, it instructed the second jury that "it has already been established" that Vega did not "deliberately fabricat[e] evidence" used to charge or prosecute Tekoh. *Id.* at 126a.

Tekoh has not identified any alleged misrepresentations—other than those adjudicated in the first trial—that could possibly support his new lie-based theory of causation. Because the first jury

rejected Tekoh's claims, he cannot prevail even under his new theory.[7]

2. Even without the verdict, Tekoh's misrepresentation theory fails. None of the evidence he cites establishes that Vega caused prosecutors to introduce Tekoh's unwarned statement by "misrepresent[ing] . . . the circumstances under which the statement was obtained." Tekoh Br. 6.

First, Tekoh argues (at 39) that Vega's "Statement of Probable Cause" relayed a "false version" of Tekoh's confession, insofar as it claimed that Tekoh confessed to "penetrating the victim's vagina with his fingers," when instead the confession itself referred to "spreading her vagina lip." JA-454-56 (capitalization normalized). That inconsistency has nothing to do with the circumstances of Tekoh's confession or its admissibility.

The same goes for Vega's incident report. *See* Tekoh Br. 16-17, 38-39. The report provides a "narrative" of the incident in which Vega, after describing what the victim had told him, reports on his conversation with Tekoh, leading up to and including the confession. *See* JA-451-52. The only way the report contradicts Tekoh's account of the interrogation is that it says Vega asked Tekoh to "write down what happened in his own words," JA-452, while Tekoh later testified that he "wrote out words that Vega dictated to him," Tekoh Br. 10 (citing JA-355-58). But that dispute does not speak to

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[7] Tekoh denies the significance of the jury verdict by noting his unresolved challenge to one of the district court's evidentiary rulings. Tekoh Br. 3 n.1. But that challenge—which is subject to deferential abuse-of-discretion review—does not change the facts as they come to this Court.

whether the interrogation was *custodial*—thus implicating *Miranda*. Rather, it speaks to whether Tekoh's statement was *coerced*, in which case it would be inadmissible regardless of *Miranda*. And two civil juries rejected Tekoh's coercion claim. Vega Br. 8-9.

Because the statement and incident report are silent on the key factors for admissibility under *Miranda*, Tekoh cannot rely on them to show that Vega proximately caused his *Miranda* violation by making false statements in those documents. Neither of those documents could have foreseeably "induce[d]" the prosecutor and the trial judges to make a *Miranda* determination one way or the other. Tekoh Br. 39.

Tekoh also argues (at 11, 39 & n.13) that Vega caused the improper admission of the unwarned confession by falsely testifying at the suppression hearings before his criminal trials. But Vega is absolutely immune from civil liability for that testimony, which means it cannot be the predicate for Tekoh's Fifth Amendment claim. *See Briscoe v. LaHue*, 460 U.S. 325, 326 (1983); U.S. Br. 26 (making same point). Tekoh's fact-free causation argument lacks merit.

### C. Tekoh's New Causation Theory Is Legally Baseless

If the Court addresses Tekoh's new misrepresentation-based causation theory, it should reject his argument and hold that police officers do not proximately cause *Miranda* violations at trial, as a matter of law. In cases involving alleged officer misconduct, the criminal defendant is free to sue under the Due Process Clause or other constitutional provisions, but he cannot shoehorn those claims into a Fifth Amendment theory.

1. Treating an officer who misrepresents the circumstances of a custodial interrogation as the proximate cause of a *Miranda* violation disregards the key roles of the prosecutor, the criminal trial judge, and the suppression hearing—all of which break the causal chain linking the officer to the ultimate *Miranda* violation at trial.

The suppression hearing offers an adversarial proceeding where both sides are entitled to present their best evidence and arguments, and where the judge can adjudicate whether the defendant's un-*Mirandized* statement is admissible. Proximate cause turns on objective principles of foreseeability, *see Paroline v. United States*, 572 U.S. 434, 453-56 (2014), and it is objectively reasonable to presume that the prosecutor and judge will discharge their duties properly during that proceeding and reach the proper determination as to admissibility, *see United States v. Armstrong*, 517 U.S. 456, 464 (1996). Any ruling denying suppression—and admitting the statement at issue—is an independent act that breaks the causal chain leading back to the officer.

More broadly, in applying common-law principles to particular Section 1983 claims, this Court has flexibility to "adjust[] common-law approaches" in ways that "closely attend to the values and purposes of the constitutional right at issue." *Manuel v. City of Joliet*, 137 S. Ct. 911, 921 (2017). Here, that means the Court should take special account of *Miranda*'s "values and purposes" when explaining how proximate causation should work in this context. *Id.* at 921; *see* U.S. Br. 19-20. Three features of *Miranda* weigh against treating police officers as the proximate cause of a *Miranda* violation at trial.

*First*, *Miranda*'s core purpose is to protect the Fifth Amendment right against self-incrimination *at trial*—not to "operate[] as a direct constraint on police" or establish a "code of police conduct." *Patane*, 542 U.S. at 637, 642 n.3; Vega Br. 15-19. Whereas *Miranda* governs the admissibility of trial evidence, other constitutional provisions—such as the First Amendment, Fourth Amendment, and Due Process Clause—directly regulate police conduct. *E.g.*, *Graham v. Connor*, 490 U.S. 386, 395 (1989). Those provisions are the natural homes for claims that turn, at their core, on whether an officer has mistreated a criminal suspect or impaired the integrity of the judicial process.

Under Tekoh's new misrepresentation-based *Miranda* theory, the core misconduct underlying the plaintiff's claim—indeed, the *only* alleged conduct that is independently wrongful—is the officer's false statements to prosecutors and courts about the circumstances of a custodial interrogation. Given that focus on officer misconduct, it makes sense to adjudicate such claims under the Due Process Clause. *See, e.g.*, *Devereaux v. Abbey*, 263 F.3d 1070, 1074-75 (9th Cir. 2001) (en banc). *Miranda* is a poor fit.

*Second*, Section 1983 *Miranda* litigation is inherently duplicative. The whole point of such litigation is to second-guess the criminal trial judge's admissibility ruling at the suppression hearing. As the government explains, this scenario threatens unnecessary expense and relitigation, undermines judicial economy and federalism, and raises thorny procedural questions about the extent to which facts and arguments from the initial proceeding should constrain the Section 1983 case. *See* U.S. Br. 22-24. This Court's proximate causation analysis should

reflect these unique dangers posed by *Miranda*-based Section 1983 litigation.

*Finally*, Tekoh's misrepresentation-based causation theory would leave the door wide open to meritless *Miranda* claims. It will be easy for plaintiffs to allege that an officer misrepresented the circumstances surrounding an unwarned interrogation. Allowing plaintiffs to obtain a civil trial for damages on this basis would undermine the general rule (no longer disputed by Tekoh) that officers are not subject to *Miranda* claims simply because they obtained an unwarned statement that was later admitted at trial. Indeed, Tekoh's flimsy causation argument here reflects the kind of claims that would flood courts if his novel causation theory were adopted. *See generally* Pet. 33 & n.6 (citing pending cases); Pet. Reply 10-11 & n.1 (same).

2. To support his proximate causation theory, Tekoh relies on a hodgepodge assortment of inapposite case law from outside the Fifth Amendment/*Miranda* context. None of his cases is binding or persuasive here.

For example, Tekoh says (at 42) this case is analogous to *Malley v. Briggs*, 475 U.S. 335 (1986), in which this Court refused to grant absolute immunity to officers sued for violating the Fourth and Fourteenth Amendments in connection with search and arrest warrants obtained from a state trial judge. But *Malley* involved an officer's direct, ex parte application for the warrants. *Id.* That is a far cry from the kind of full-blown, adversarial suppression hearing that is available to every criminal defendant who objects to the admissibility of a confession. *See Jackson v. Denno*, 378 U.S. 368, 376-77 (1964).

Moreover, *Malley* involved a common-law tradition recognizing "the causal link between the submission of a complaint and an ensuing arrest." 475 U.S. at 344 n.7. Tekoh cites no comparable tradition here. *Malley* also involved claims brought under constitutional provisions designed in part to address officer misconduct—not the Fifth Amendment's trial-focused Self-Incrimination Clause. *See supra* at 21.

Tekoh likewise cites (at 41) *Hartman v. Moore*, 547 U.S. 250 (2006), where the Court required plaintiffs bringing a First Amendment retaliatory prosecution claim against an officer to prove the absence of probable cause. But the Court imposed that additional objective pleading requirement precisely because the prosecutor's intervening decision does substantially attenuate any causal connection with the officer. *See Nieves v. Bartlett*, 139 S. Ct. 1715, 1722-23 (2019) (explaining "problem of causation" in *Hartman*). Here, there is twice the attenuation (decisions by both the prosecutor to introduce the confession and the judge to admit it), and no objective pleading barrier like the absence of probable cause. Furthermore—and again unlike the *Miranda* claim here—the retaliation claim in *Hartman* does not involve second-guessing the result of a full-blown adversarial proceeding. If anything, *Hartman* supports Vega's position by confirming that common-law causation principles can be precisely tailored to particular types of claims using categorical rules. *See* 547 U.S. at 259-66.

Tekoh's other causation cases are even further afield. Neither *Massiah v. United States*, 377 U.S. 201 (1964), nor *Weatherford v. Bursey*, 429 U.S. 545 (1977), address proximate causation at all, let alone

how that doctrine applies to officer misconduct related to a subsequent evidentiary error at trial. And contrary to Tekoh (at 41 & n.17), *United States v. Verdugo-Urquidez* was a Fourth Amendment case; it mentioned the Fifth Amendment only as an example of when officers cannot commit the constitutional violation because it "occurs only at trial." 494 U.S. 259, 264 (1990). Tekoh's reliance on these decision is hard to understand.

* * *

For eight years, Vega has been enmeshed in a nearly continuous stream of litigation challenging his good-faith efforts to investigate the sexual assault of a defenseless hospital patient. Along the way, four different factfinders have exonerated Vega's conduct: Two state trial judges held that his questioning of Tekoh was not subject to *Miranda*; the first civil jury found he did not fabricate evidence; and the second civil jury found he did not coerce or compel Vega's confession.

The Court should now bring this duplicative collateral litigation to an end. It should hold that the Ninth Circuit erred in subjecting the Nation's law enforcement officers to Section 1983 damages claims for violations of *Miranda*'s prophylactic constitutional rule.

## CONCLUSION

The Ninth Circuit's judgment should be reversed.

Respectfully submitted,

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