No. 23-1250

IN THE

Supreme Court of the United States

CARLOS VEGA,

Petitioner,

v.

TERENCE B. TEKOH,

Respondent.

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

BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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June 28, 2024

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INTEREST OF THE *AMICUS CURIAE*[1]

The **International Municipal Lawyers Association** is a nonprofit, non-partisan professional organization with over 2,500 members. Membership consists of local government entities, including cities, counties, and their subdivisions, as represented by chief legal officers, state municipal leagues, and individual attorneys. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before this Court, as well as state and federal appellate courts.

IMLA represents cities and counties throughout the Ninth Circuit that will be significantly affected by the changes in existing law wrought by the Ninth Circuit's decision in this case. If allowed to stand, this decision will impact the way law enforcement officers are expected to investigate, the way officers must be trained, and the potential liability local governments may face for actions by officers.

IMLA has a strong interest in ensuring that police officers have clear guidance regarding the scope of their authority to carry out essential duties and in enabling officers to make reasonable and lawful decisions for the protection of the public without fear of civil lawsuits. The Ninth's Circuit's decision in this case is inconsistent with

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[1] *Amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Counsel of record for all parties were notified of *amicus curiae*'s intent to file this brief.

these interests and at odds with the legitimate needs of local government leaders. Accordingly, IMLA urges this Court to grant the petition and reverse this erroneous decision by the Ninth Circuit.

BACKGROUND AND SUMMARY OF THE ARGUMENT

Just two years ago, Deputy Sheriff Carlos Vega of the Los Angeles County Sheriff's Department sought this Court's relief from the Ninth Circuit's errant decision holding that he could be sued under § 1983 for a purported Fifth Amendment violation based entirely on a violation of a suspect's *Miranda* rights. This Court agreed with Deputy Vega: a violation of *Miranda* is not itself a violation of the Fifth Amendment. *Vega v. Tekoh (Tekoh I)*, 597 U.S. 134, 134 (2022).

Now, Deputy Vega is compelled to again seek relief from this Court, after the Ninth Circuit on remand wrongfully extended his legal jeopardy. Notwithstanding this Court's thorough rejection of the Ninth Circuit's extension of *Miranda*, that court revived the lawsuit against Deputy Vega by ratifying an alternate theory of liability advanced by the Respondent Terence B. Tekoh: namely, that Deputy Vega coerced him into making a false confession. *Id.*

To support this claim, Respondent sought to introduce expert testimony by Dr. Iris Blandón-Gitlin, a Professor of Psychology at California State University, Fullerton. Dr. Blandón-Gitlin's testimony focused on the purportedly coercive effects of commonly used police interrogation techniques and their propensity to elicit false confessions. App. 2a-3a. Dr. Blandón-Gitlin was prepared to analyze Respondent's written confession and to somehow illustrate how its contents supposedly exhibited classic

symptoms of coercion. App. 2a-3a. Specifically, she intended to highlight how the apologies and excuses within Respondent's confession reflected the "minimization tactics" allegedly employed by Deputy Vega during the interrogation. App. 2a-3a. She also proposed to address the use and implications of "false-evidence ploys," which she similarly deemed to be inherently coercive. App. 3a.

Properly exercising it discretion, the district excluded Dr. Blandón-Gitlin's testimony. But the Ninth Circuit reversed, reaching the unprecedented conclusion that such expert testimony depicting commonly used police tactics as coercive *must* be admitted in a § 1983 civil suit against a law enforcement officer.

The district court cited three principal reasons for its exclusion of the testimony. App. 28a-29a. First, if the jury accepted Respondent's version of events, the coercion of the confession would be evident, rendering expert opinion superfluous. App. 28a-29a. Second, given the "he-said-she-said" nature of the case, Respondent appeared to be using Dr. Blandón-Gitlin's testimony to bolster his narrative and credibility—a clear buttressing of a fact witness in violation of the Federal Rules of Evidence. App. 29a. Finally, Dr. Blandón-Gitlin's expert report included irrelevant information, which only would have further entangled the issues. App. 29a.

A divided panel of the Ninth Circuit disagreed. App. 4a. In a 2-1 disposition, the panel majority determined that the trial court erred by excluding Dr. Blandón-Gitlin's testimony because the "jury could benefit" from her expertise regarding the science of coercive interrogation tactics, which would supposedly enhance their understanding of coerced confessions. App. 3a. Further, the panel majority found that her testimony would not

constitute improper buttressing but would instead merely serve to corroborate the Plaintiff's account—even if it "implicitly [lent] support to [the Plaintiff's] testimony." App. 3a. Judge Miller dissented, echoing the proper conclusions of the district court. App. 5a-7a. The Ninth Circuit en banc denied Deputy Vega's petition for rehearing over the dissent of ten judges. App. 58a-59a.

In addition to the many legal flaws in the panel majority's opinion, each of which Deputy Vega ably identifies in his petition, Deputy Vega also raises the broad practical consequences of the Ninth Circuit's misguided decision. As Deputy Vega explains, the decision will disrupt routine, on-the-ground police work in the nation's largest judicial circuit, with deleterious effects on law enforcement efficacy and morale, and ultimately, on public safety.

On behalf of cities and counties throughout the Ninth Circuit that collectively employ thousands of law enforcement officers, IMLA agrees. The Court should grant the petition to ward off the pervasive interference with legitimate law enforcement methods about which Deputy Vega sounds the alarm in Section III of his petition. The Court should also grant the petition to stem an unwarranted expansion of § 1983 liability that will further impinge upon the resources, personnel, and operational flexibility that local government leaders need to govern effectively.

ARGUMENT

I. The Ninth Circuit's Opinion Will Interfere With Local Law Enforcement Investigations Throughout A Large Swath of the United States.

Both the specific language and broader holding from the court of appeals have negative consequences for law enforcement throughout the nation's largest judicial

circuit. First, the panel majority's choice of words suggests that long-permissible police investigation tactics are coercive and unlawful, leaving law enforcement officers guessing as to how to carry out essential duties. Were this the only flaw in the majority's opinion—and it is not—it alone would warrant certiorari to rectify the false impression that basic methods officers use to interview and interrogate suspects are proscribed.

Second, the Ninth Circuit's holding deprives district courts of discretion to exclude expert testimony regarding the allegedly coercive effect of routine interview and interrogation tactics. This testimony will now be admitted in all cases, regardless of its undue prejudicial effect on law enforcement defendants. This constant, after-the-fact scrutiny of common policing by a "coerced-confessions expert" in civil lawsuits will deter police officers from conducting effective investigations, ultimately compromising public safety.

A. The sweeping language of the Ninth Circuit's opinion wrongfully stigmatizes legitimate police investigation techniques and will demoralize and confuse local law enforcement officers.

"Stealth and strategy" in interrogation are "necessary weapons in the arsenal of the police officer." *Sherman v. United States*, 356 U.S. 369, 372 (1958). Indeed, police questioning remains "a tool for the effective enforcement of criminal laws." *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973). But in its misguided disposition, the panel majority opted to disparage many heretofore lawful interrogation techniques as "coercive"—and thus potentially unlawful.

The Ninth Circuit's opinion states, without qualification, that legitimate and widely used law enforcement interview and interrogation methods such as "minimization tactics," "false-evidence ploys," and even "just asking questions" are coercive. App. 3a-4a. The gratuitous breadth of this assertion is a serious problem.

Minimization tactics, for instance, refer to situations in which the interrogator "suggests 'moral justifications or face-saving excuses' that would 'explain why the person may have committed the act,' thereby 'imply[ing] to the suspect that providing a confession or admission . . . is the best way to get out of the situation.'" App. 85a (Collins, J., dissenting from denial of rehearing en banc). Most investigative officers use minimization tactics. *See* Richard A. Leo, *Police Interrogation, False Confessions, and Alleged Child Abuse Cases*, 50 U. MICH. J.L. REFORM 693, 713 (2017) (describing minimization tactics as a "common interrogation strategy"). Far from resembling an inquisition, these tactics do not entail physical force, the threat of punishment (or the promise of leniency), or even strategic misinformation or exaggeration. They exemplify a psychological approach to interrogating suspects. *See Miranda v. Arizona*, 384 U.S. 436, 450 (1966) ("[Minimization] tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know . . . .").

Similarly, "false evidence ploys"—bluffing by the interrogator about what evidence of guilt the police have—although admittedly deceptive, do not entail the use or threat of force. For this reason, these techniques are widely understood to be acceptable, and they are commonly employed by police. Krista D. Forrest & William Douglas Woody, *Police Deception During Interrogation*

and Its Surprise Influence on Jurors' Perceptions of Confession Evidence, 22 THE JURY EXPERT 9, 9–10 (2010) ("92% of over 630 police detectives from the United States and Canada report[ed] that they use false-evidence ploys during an interrogation.").

As for the just-asking-questions "approach"—well, "just asking questions" is about as straightforward and obviously permissible as it sounds. If such ordinary and non-forcible police behavior is deemed coercive, it is unclear how police are supposed to conduct investigations at all.

Indeed, policing experts typically distinguish between interviewing witnesses, which occurs at an early stage of the investigation, and interrogating suspects, which typically begins only after investigators develop a theory of guilt. Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 STUD. IN L., POL., & SOC'Y 189, 190 (1997); *see also* Christian A. Meissner & Melissa B. Russano, *The Psychology of Interrogations and False Confessions*: *Research and Recommendations*, 1 CANADIAN J. POLICE & SEC. SERVS. 53, 56 (2003) ("[A]n interrogation is conducted only when the investigator is reasonably certain of the suspect's guilt."). If "just asking questions" is deemed coercive, not only are interrogation techniques implicated, so too is basic interviewing and information-gathering by law enforcement officers, unduly curtailing these necessary tools.

Reputable commentators agree the "tactics" at issue are common, lawful, and instrumental to effective police interrogation and investigation. Fred E. Inbau, *Police Interrogation–A Practical Necessity*, 89 J. CRIM. L. & CRIMINOLOGY 1403, 1404 (1999) ("I do approve of such

psychological tactics and techniques as trickery and deceit that are not only helpful but frequently necessary in order to secure incriminating information from the guilty."); Albert W. Alschuler, *Constraint and Confession*, 74 DEN. U. L. REV. 957, 973 (1997) ("In some circumstances, [the police] should be allowed to express false sympathy for the suspect, blame the victim, play on the suspect's religious feelings, . . ."). Moreover, these methods are effective in uncovering the truth about responsibility for criminal activity. *See* Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 293 (1996) (finding that minimization and false-evidence tactics had over an 80% success rate).

Nevertheless, the panel majority haphazardly classifies these methods as "classic coercion." App. 2a-3a. This overly broad characterization disregards that, for decades, this Court has deemed such methods part of lawful, routine police work. *Compare Frazier v. Cupp*, 394 U.S. 731, 737–38 (1969) (upholding admission of confession obtained under false-evidence ploy), *Oregon v. Mathiason*, 429 U.S. 492, 495–96 (1977) (tacitly upholding admission of confession elicited from a false-evidence ploy), and *Illinois v. Perkins*, 496 U.S. 292, 296–98 (1990) (placing undercover agent posed as an inmate near a suspect to elicit a confession was not coercive); *with Missouri v. Seibert*, 542 U.S. 600, 617 (2004) (condemning two-step interrogation technique), *Brown v. Mississippi*, 297 U.S. 278, 287 (1936) (finding physical torture coercive), *Reck v. Pate*, 367 U.S. 433, 443 (1961) (finding food deprivation coercive), and *Ashcraft v. Tennessee*, 322 U.S. 143, 157 (1944) (holding that 36 hours of continuous interrogation is "inherently coercive"). Curtailing officer discretion to use these methods during interrogation and investigation is simply "inconsistent with current Supreme Court

doctrine." Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 HARV. C.R.-C.L. L. Rev. 105, 136 (1997).

To be sure, the Fifth Amendment forbids law enforcement officers from coercing a suspect into confessing to a crime. All reasonable persons would agree that genuine coercion has no place in the interrogation room. *See Miranda v. Arizona*, 384 U.S. 436, 478 (1966); *Perkins*, 496 U.S. at 297. But the Fifth Amendment does not forbid "mere strategic deception" or "ploys to mislead a suspect," or even tactics that create "a false sense of security," so long as they "do not rise to the level of compulsion or coercion to speak." *Miranda*, 384 U.S. at 478; *Perkins*, 496 U.S. at 297. Put differently, the interrogation and investigation techniques at issue here have been—and continue to be—accepted by this Court. Accordingly, this Court should grant the petition and reverse the Ninth Circuit, thereby dispelling the false impression created by the panel majority that commonly used approaches in criminal investigations are unlawful.

B. Mandating the admission of expert testimony on the coercive effect of commonly used interrogation techniques will deter police officers from conducting effective investigations and will negatively impact public safety throughout the Ninth Circuit.

The Ninth Circuit's holding requires that a trial court admit coerced-confession expert testimony in every § 1983 case in which the plaintiff alleges he was coerced into confessing to a crime—regardless of how much (or little) probative value such testimony may have under the circumstances. Such an inflexible evidentiary rule will

hamper effective police investigations and risk community safety.

Instead of employing the established legal framework to evaluate whether expert testimony is admissible in a particular case, the panel majority summarily determined that coerced-confession expert testimony will "help the jury better understand coerced confessions, including why just asking questions can be coercive, issues that are beyond a layperson's understanding and not necessarily obvious, even in these circumstances." App. 4a. This blanket approach invites expert testimony opining that any method of investigation or interrogation may be unconstitutionally coercive—thus expanding § 1983 liability to cover most any level of investigative work. App. 6a (Miller, J., dissenting) (noting that the opinion will have broad applicability because "every situation is theoretically susceptible to some sort of expert analysis" about such "other, subtler pressures").

The perspective on policing tactics presented by Dr. Blandón-Gitlin and other "coerced-confession experts" is debatable, but its rote introduction in § 1983 cases means these experts will now benefit from added gravitas and credibility. For example, in criminal cases, policing scholars have found that jurors exposed to this type of expert testimony "convicted less often, considered their defendants less guilty, and rated their interrogations as more deceptive and coercive." Forrest & Woody, *supra* at 12. Accordingly, scholars have concluded that "experts may influence trial outcomes" when allowed to testify about the alleged coercive effect of some of the tactics at issue here. *Id.* This situation is unfair to police officers, who will be left to face juries primed to view most investigative policing as coercive.

As a result, police officers will second-guess which measures they should use to obtain information from witnesses and suspects. Police officers, and the local governments that employ them, will use scarce time and resources trying to figure out how to approach investigation and interrogation in a way that will appease so-called experts and avoid monetary liability, as opposed to doing what they should be doing: solving crimes.

The Ninth Circuit's decision offers no guidance on how to replace the essential procedures that it now allows experts to discredit. This Court has long recognized that the "detection and solution of crime is [] an arduous task." *Haynes v. Washington*, 373 U.S. 503, 514–15 (1963). Without police questioning, "many crimes would go unsolved" and the "security of all would be diminished." *Schneckloth*, 412 U.S. at 225. Consequently, if a purported expert can always provide testimony that characterizes the methods used as "coercive," it undermines public safety. The panel ruling strips law enforcement of essential interrogation and investigation tools, thereby emboldening criminals and leaving communities more vulnerable. Without the ability to employ proven, lawful techniques, police officers will be hamstrung in their efforts to extract crucial information, solve crimes, and protect the public. *See* Inbau, *supra*, at 1406.

II. The Inevitable Proliferation of Coerced Confession Litigation Directed Against Police Officers Because of the Ninth Circuit's Opinion Will Create Further Challenges for Local Government Leaders Already Facing Pressure on Limited Resources, Personnel, and Operational Flexibility.

In addition to changes in criminal procedure impacting public safety by creating obstacles to conviction and

punishment, expansion of civil liability for law enforcement officers directly disrupts local government operations. If the Ninth Circuit's decision stands, local government managers will have to cope with rising litigation costs likely to result from the expansion in § 1983 liability that this decision incentivizes, as well as pressure to introduce changes in police investigation and interrogation practices when there are few good alternatives available.

Expansion of § 1983 liability is possible under any one of the recognized theories of municipal liability. Any current municipal policy or procedure detailing how officers are to conduct an investigation or interrogation may be characterized as an unlawful policy within the expansive language of the Ninth Circuit's opinion. As a result, a § 1983 plaintiff may seek to impose responsibility on the municipality employing an allegedly offending officer. *See Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658 (1978); *see also Lindke v. Freed*, 601 U.S. 187, 195 n.1 (2024) ("Because local governments are subdivisions of the State, actions taken under color of a local government's law, custom, or usage count as 'state' action for purposes of § 1983.").

Aside from the direct litigation costs, there will be indirect impacts as well, as any careful municipality will be forced to consider changing its policies and procedures for training police officers on investigations. This is a formidable task, given that the Ninth Circuit's opinion does not provide any guidance on how to conduct effective investigations without use of the basic tactics it labels as coercive.

This unfairly places local leaders on a razor's edge, because they still need to establish policies to guide officer discretion. The police techniques now condemned by the

panel majority are widespread and commonly used by police officers across the country. Accordingly, absent a department-level policy discouraging such techniques, a locality may be accused of deliberate indifference to the known or obvious consequences of these practices and to the rights of those allegedly injured by them. *See, e.g.*, *Connick v. Thompson*, 563 U.S. 51, 61 (2011).

Moreover, localities will still need to contend with theories of liability premised on a municipality's alleged failure to train, supervise, or otherwise control individual officers who, by engaging in such previously permissible conduct as "just asking questions," are now deemed to be participating in "classic coercion." As a result, local governments will face heightened costs to monitor interrogations or develop alternative approaches to investigations that will escape the label of "coercion."

Even absent municipal liability, local governments will still face increased financial burdens because of the Ninth Circuit's opinion. The reality of today's police force is that police officers are usually indemnified by the city or county employing them. *See* Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 890 (2014) ("Police officers are virtually always indemnified"). Thus, even if a locality is not sued, expansion of § 1983 liability against police officers will also strain local government finances, because municipalities will be forced to indemnify honest police officers simply attempting to carry out essential duties.

Finally, the harm to officer morale from the ambiguous haze of liability introduced into basic policing practices will heighten recruitment and retention challenges for local law enforcement departments. This problem is already dire for localities across the country. INT'L ASS'N

OF CHIEFS OF POLICE, The State of Recruitment: A Crisis for Law Enforcement 3 (2021) (citing a September 2019 study that determined that 78% of membership police entities had difficulty in recruiting qualified candidates, and with 75% of agencies reporting that recruiting is more difficult today than it was 5 years ago).[2]

In sum, the Ninth Circuit's opinion will have a substantial negative impact even beyond the harm to public safety. By burdening local government leaders already facing limited financial resources and personnel challenges, it will harm "institutions of local government . . . and their responsible and responsive operation," which is "of increasing importance to the quality of life for more and more of our citizens." *Abate v. Mundt*, 403 U.S. 182, 189 (1971) (Brennan, J. dissenting) (quotation omitted).

CONCLUSION

This Court should grant the petition.

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[2] Available at https://www.theiacp.org/sites/default/files/239416_IACP_RecruitmentBR_HR_0.pdf.

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