No. 25-378

In the Supreme Court of the United States

DONALD OLSEN,
Petitioner,

v.

AARON SALTER,
Respondent.

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

BRIEF OF AMICUS CURIAE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

DANIEL G. SOLOMON
HUSCH BLACKWELL LLP
1801 Penn. Ave., NW
Suite 1000
Washington, DC 20006

ALYSSA M. LEROY
HUSCH BLACKWELL LLP
33 East Main St., Suite 300
Madison, WI 53703

SEBASTIAN WAISMAN
Counsel of Record
SPENCER TOLSON
HUSCH BLACKWELL LLP
600 Travis Street
Suite 2350
Houston, TX 77002
713.525-6291
sebastian.waisman@
huschblackwell.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases:

Page

Cases—continued:

Statutes and Rule:

Other Authorities:

STATEMENT OF INTEREST[1]

The International Municipal Lawyers Association is the nation's largest organization devoted solely to local government law. A nonprofit, non-partisan professional association with more than 2,500 members nationwide, IMLA has been an advocate and resource for local government attorneys since 1935. 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 and state and federal appellate courts.

Given its extensive experience with local governments and local government law, IMLA has a uniquely valuable perspective on the relevant issues here. In particular, IMLA and its members have direct experience with the significant problems that the decision below poses for local governments in the Sixth Circuit. These local governments will continue to face potential liability under 42 U.S.C. § 1983 for unintentional *Brady* violations—even though this Court has never suggested that the *Brady* disclosure duty applies to anyone but the prosecutor—and for unduly suggestive identification procedures—even though this Court held in *Vega v. Tekoh*, 597 U.S. 134

---

[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 was notified of Amicus Curiae's intent to file this brief.

(2022) that prophylactic rules do not create a right to sue under § 1983. IMLA submits this brief to emphasize the substantial negative impact that the divided decision below will have on local governments, and the critical need for this Court to grant certiorari and end the circuit conflict on these issues by reversing the Sixth Circuit's unsustainable holding.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Petitioner Donald Olsen faces liability under 42 U.S.C. § 1983 for his inadvertent failure to turn over potentially exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963) to the prosecution. He faces such liability not because of any holding by this Court, but simply because the alleged violation happened in Detroit, Michigan. Had the underlying events happened outside the Sixth Circuit—even though the courts of appeals' standards vary widely—Respondent Aaron Salter's claim would fail.

The entrenched circuit split on the level of intent required to subject police officers to liability under § 1983 for *Brady* violations begs for this Court's clarification. This circuit conflict not only undermines the uniformity of federal law but poses serious problems for organizations like IMLA that seek to provide consistent guidance and support for local governments nationwide. Advising local governments on their responsibilities (and potential liabilities) under federal law is exceptionally difficult when the law varies from one circuit to another.

Such inconsistency exacerbates an already-urgent problem facing local governments around the country. Section 1983 lawsuits based on *Brady* violations are among the most burdensome and expensive forms of

litigation that local governments face. These high-stakes cases—usually arising after wrongful convictions are overturned—can cripple local budgets with massive defense costs and damages awards. Police departments and their officers suffer too. The mere threat of protracted litigation and personal liability hinders departments' ability to recruit and retain quality officers. And in the field, the fear of violating *Brady* makes officers less effective investigators, encouraging them to either over-investigate or decline to act at all.

Worse still, the Sixth Circuit's outlier inadvertent disclosure standard for police officer liability makes little doctrinal sense. Police officers are tasked with gathering evidence; prosecutors with evaluating it. To this end, this Court has always described *Brady* disclosure as a duty that lies solely with the prosecutor even when the information is known only to the police. That makes sense. Prosecutors receive formal and experiential training on how to identify *Brady* material—a difficult inquiry focused on answering legal questions about evidentiary value. Police officers, however, do not. If police officers are to face liability for nondisclosure, the bar must be higher.

In sum, allowing the erroneous decision below to stand would have outsized consequences for local governments throughout the United States. And now that practically every federal court of appeals in the Nation has weighed in on the acknowledged split, there is no sound basis for this Court to await further percolation before addressing it. The petition for certiorari should be granted.

ARGUMENT

I. The expansion of *Brady*'s disclosure obligations to police officers imposes extraordinary financial and operational burdens on local governments.

Judicial expansion of the disclosure obligations articulated in *Brady* from prosecutors to police officers has created a costly and destabilizing liability regime for local governments. Unlike prosecutors, police officers are protected only by qualified, rather than absolute, immunity. Moreover, local governments train and employ police officers, whereas prosecutors are typically state government officials. For these reasons, the expansion of *Brady*—particularly under the Sixth Circuit's unprecedently relaxed standard—means that local governments must face the costs of indemnifying police officers faced with massive jury awards as well as grapple with *Monell* liability arising from officers' disclosure practices.

This disparity in constitutional protection exposes local governments to extraordinary litigation burdens that could never have been anticipated when this Court first articulated *Brady*'s rule of mandatory disclosure of exculpatory evidence. The unwarranted enlargement of *Brady* to police officers has created an expansive area of legal exposure for local governments, with profound implications both for their budgets and core operational capacities, especially in the realm of public safety.

A. *Brady*-based § 1983 claims against police officers are uniquely costly and difficult for local governments to defend.

Wrongful conviction lawsuits premised on *Brady* violations are among the most burdensome and expensive forms of litigation faced by local governments. These claims often arise decades after the original conviction,

typically following exoneration through post-conviction relief or newly discovered evidence. The passage of time severely compromises the ability of localities to defend these suits. Critical documents may be lost, witnesses may be deceased or unreachable, and memories may have faded beyond reliable reconstruction. The result is a sprawling and inefficient discovery process that strains local government legal departments and increases litigation costs.

Compounding these difficulties is the high-stakes nature of such claims. Recent jury verdicts in *Brady*-based wrongful conviction cases have resulted in multi-million-dollar awards, reflecting both the emotional gravity of prolonged incarceration and the perceived severity of the constitutional violations at issue. Pet. 32–33. Faced with the risk of catastrophic financial judgments, local governments are often forced to settle even tenuous claims to avoid unpredictable outcomes. This dynamic drains local government budgets and diverts public funds from essential services such as education, infrastructure, and public safety. *See, e.g.*, *Town of Newton v. Rumery*, 480 U.S. 386, 387–88 (1987) (even for "marginal" or "frivolous" § 1983 lawsuits, the "burden of defending such suits is substantial, requiring officials' time and attention, to the detriment of their public duties"). This litigation, whether settled or litigated to verdict, imposes costs on local governments that continue far into the future, as insurers increase premiums or cut back on the scope of coverage. *See* Michelle Mbekeani, *Wrongful Convictions – A Billion Dollar Liability For States*, Forbes (Apr. 3, 2025), https://bit.ly/3JrxreF (discussing fiscal consequences of such litigation for local governments).

B. The operational burdens and personnel challenges resulting from *Brady*-based § 1983 claims against police officers are just as severe as the financial impacts.

The threat of litigation under § 1983 for *Brady* violations also imposes enduring operational burdens on local law enforcement agencies and municipal governments. To mitigate exposure, communities must implement extensive compliance infrastructures, including mandatory training programs on evidence disclosure, systems for tracking officer credibility and disciplinary histories, and mechanisms for resolving employment disputes arising from these oversight efforts.

Such measures are costly for local governments to undertake and represent permanent and resource-intensive commitments. For local governments that are required to balance budgets and that are already operating under fiscal constraints, the costs of these programs are substantial, and often unsustainable. Moreover, the administrative complexity of managing such systems can detract from core law enforcement functions, reducing overall departmental efficiency and effectiveness.

Finally, the personal liability risk for officers also has a corrosive effect on morale and recruitment. The uncertainty created by potential liability contributes to a climate of professional insecurity, discouraging qualified candidates from entering law enforcement and prompting experienced officers to leave the profession. Indeed, according to one estimate, more than a quarter of police officers have been sued at least once; this constant threat of personal liability threatens the quality of police work. *See* Larry K. Gaines, Victor E. Kappeler, & Zachary A. Powell, Policing in America 341 (9th ed. 2021); *see also Harlow v.*

Fitzgerald, 457 U.S. 800, 814 (1982) (explaining that extensive liability imposes social costs, including "the deterrence of able citizens from acceptance of public office."). As Judge Learned Hand put it: "[T]o submit all officials … to the burden of a trial and to the inevitable danger of its outcome would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." *Barr v. Mateo*, 360 U.S. 564, 571 (1959) (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949)). In an era when local governments are already struggling to recruit and retain law enforcement personnel, the application of *Brady* liability to police officers exacerbates an existing crisis.

C. The long-standing circuit split deepens the burden on local government advisors and policymakers.

The absence of a uniform standard governing police officer liability under § 1983 for *Brady* violations further complicates the challenges faced by local governments. The circuit split, *see infra* p. 11–12, has left local governments and the organizations that advise them navigating a fragmented legal landscape. The dizzying variety of standards applied by the circuit courts with respect to police officer liability for *Brady* violations under § 1983 frustrates local government efforts to develop coherent policies, train personnel effectively, and allocate resources prudently.

The lack of clarity further impedes national organizations like IMLA—and other municipal leagues, risk management pools, and law enforcement associations—from providing consistent guidance to constituents. As courts continue to diverge in their treatment of this issue, local governments are left in a state of legal limbo, forced to anticipate and prepare for litigation under standards that

may shift with each new decision. This uncertainty is itself a cost, one that is borne by taxpayers and felt across the spectrum of local government functions.

D. The Sixth Circuit's expansive reading of *Brady*-based § 1983 liability for police officers creates particularly daunting challenges for effective policing.

Imposing § 1983 liability on police officers for inadvertent nondisclosure of *Brady* evidence—as the Sixth Circuit did here—frustrates police officers' investigative discretion in two opposite but equally damaging ways. On the one hand, fear of liability risks inefficiency. Police officers make countless judgment calls in real time: whether to pursue a lead, how to document interviews, what evidence to keep or discard. If every omission risked § 1983 liability, officers may adopt defensive practices. They will over-investigate, engaging in prolonged investigative inquiries to avoid omissions, and over-preserve, obscuring key evidence with irrelevant information. *See* Theodore Eisenberg & Stewart Schwab, *The Reality of Constitutional Tort Litigation*, 72 Cornell L. Rev. 641, 652 (1987) (recognizing that to avoid liability, officials "may become formalistic by seeking to 'build a record' with which subsequently to defend their actions"); *Moldowan v. City of Warren*, 578 F.3d 351, 403 (6th Cir. 2009) (Kethledge, J., concurring in the judgment in part and dissenting in part) ("Police officers, particularly ones … who investigate violent crime in the field, obtain a great deal of information in the course of an investigation."). Police officers will then flood prosecutors with unfiltered information to avoid becoming "scapegoats … for every item of evidence discovered post-trial." *Jean v. Collins*, 221 F.3d 656, 661 (4th Cir. 2000) (Wilkinson, C.J., concurring in the

judgment); *but see Moldowan*, 578 F.3d at 403 (Kethledge, J., concurring in the judgment in part and dissenting in part) ("As a practical matter, an officer cannot preserve, and thus pass on to the prosecutor, *everything* he sees, hears, or learns in the course of investigating a crime.") (emphasis in original). In turn, prosecutors—the only group that this Court has ever required to comply with *Brady*, *see infra* pp. 12–16—will have a harder time filtering out the truly material exculpatory evidence for defense counsel in the haystack of evidence. *See Connick*, 563 U.S. at 71 ("The role of a prosecutor is to see that justice is done.").

In the other direction, defensive policing risks injustice. Police officers worried about civil liability may decline leads or witness interviews to avoid later accusations of nondisclosure. *Cf. Davis v. Scherer*, 468 U.S. 183, 196 (1984) (recognizing that officers "routinely make close decisions in the exercise of the broad authority that necessarily is delegated to them" and "should not err always on the side of caution"). This hesitation could mean lost opportunities to solve crimes, protect victims, and prevent future harm. *See Nieves v. Bartlett*, 587 U.S. 391, 404 (2019) (rejecting rule that would lead officers to "simply minimize their communication during arrests to avoid having their words scrutinized for hints of improper motive—a result that would leave everyone worse off").

In short, the law should encourage officers to act decisively in the field, not burden them with doubt. *See generally* Elizabeth E. Joh, *Breaking the Law to Enforce It: Undercover Police Participation in Crime*, 62 Stan. L. Rev. 155, 184 (2009) (noting that "th[is] Court has been reluctant to restrict police in their ability to make a variety of decisions in the investigative process"). After all, the

entire "concept of immunity" assumes that "it is better to risk some error and possible injury from such error than not to decide or act at all." *Scheuer v. Rhodes*, 416 U.S. 232, 239 (1974).

II. The Court should resolve the circuit split on the correct standard for police officer liability under § 1983 for *Brady* violations.

A. The circuit split undermines the uniformity of federal law.

The Sixth Circuit's decision aggravates the acknowledged circuit split on the correct standard for imposing liability on police officers under § 1983 for *Brady* violations. *See, e.g.*, *Clark v. Louisville-Jefferson Cnty. Metro Gov't*, 130 F.4th 571, 590 (6th Cir. 2025) (Murphy, J., concurring) ("[O]ur holding solidifies a circuit split on this intent element."); *Owens v. Baltimore City State's Att'ys Off.*, 767 F.3d 379, 396 n.6 (4th Cir. 2014) (similar). This circuit split results in a scattered landscape that undermines the uniformity of federal law.

The Sixth Circuit is the only circuit to hold that police officers can be sued for *Brady* violations based on inadvertent nondisclosure. *See* Pet. App. 12a. The Eighth Circuit and Fourth Circuit require evidence of bad faith. *See, e.g.*, *Helmig v. Fowler*, 828 F.3d 755, 762 (8th Cir. 2016); *Owens*, 767 F.3d at 396. The Fifth Circuit and Third Circuit require deliberate or affirmative concealment. *See, e.g., Brown v. Miller*, 519 F.3d 231, 237–38 (5th Cir. 2008); *Gibson v. Superintendent of NJ Dep't of L. & Pub. Safety-Div. of State Police*, 411 F.3d 427, 443 (3d Cir. 2005), *overruled on other grounds by Dique v. N.J. State Police*, 603 F.3d 181 (3d Cir. 2010). The Seventh, Ninth, and Tenth Circuits have adopted a baseline of recklessness. *See, e.g.*, *Moran v. Calumet City*, 54 F.4th 483, 493

(7th Cir. 2022); *Tennison v. City & Cnty. of S. F.*, 570 F.3d 1078, 1088 (9th Cir. 2009); *Johnson v. City of Cheyenne*, 99 F.4th 1206, 1232 (10th Cir. 2024). And the First Circuit, Second Circuit, and Eleventh Circuit have generally adhered to a standard tied to intentionality. *See, e.g.*, *Drumgold v. Callahan*, 707 F.3d 28, 44–45 (1st Cir. 2013); *Bellamy v. City of New York*, 914 F.3d 727, 751 n.23 (2d Cir. 2019); *Porter v. White*, 483 F.3d 1294, 1302 (11th Cir. 2007).

The cause of action that Congress created in § 1983—and the scope of liability that local governments and their officers face under this statute—should not vary with the happenstance of geography. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 812 (1995) ("[R]ights which depend on federal law 'should be the same everywhere' and 'their construction should be uniform.'" (quoting *Murdock v. Memphis*, 20 Wall. 590 (1875))). Whether a police officer (or his employer) can be sued under § 1983 for *Brady* violations should not depend on whether that officer serves in Detroit or Chicago. But that is how matters now stand—and will remain—until this Court intervenes. Granting review to address the proper standard for liability would thus advance the "federal interests in uniformity, certainty, and the minimization of unnecessary litigation." *Wilson v. Garcia*, 471 U.S. 261, 266–67 (1985).

At bottom, this issue has percolated long enough. The courts of appeals would benefit from this Court's clarifying the correct standard for police officer liability under § 1983 for *Brady* violation.

B. Imposing § 1983 liability on police officers for "no fault" *Brady* violations does not square with the Court's *Brady* jurisprudence.

In resolving the circuit split, the Court should find that the Sixth Circuit wrongly imposes liability on police officers for inadvertent *Brady* violations.

1. *Brady*'s origin lies in due process cases targeting prosecutorial deception. *See Mooney v. Holohan*, 294 U.S. 103, 112 (1935) (holding that the "deliberate deception of court and jury by the presentation of testimony known to be perjured" violates due process); *Pyle v. State of Kansas*, 317 U.S. 213, 216 (1942). To alleviate this problem, *Brady* held that "the suppression *by the prosecution* of evidence favorable to an accused" violates due process. *Brady*, 373 U.S. at 87 (emphasis added). Since then, the Court has unflinchingly described *Brady* as a prosecutorial obligation. *See Giglio v. United States*, 405 U.S. 150, 154 (1972) (satisfying *Brady* "is the responsibility of the prosecutor"); *Moore v. Illinois*, 408 U.S. 786, 794 (1972) ("The heart of the holding in *Brady* is the prosecution's suppression of evidence …."); *United States v. Agurs*, 427 U.S. 97, 107–08 (1976) (discussing the duty "of the prosecutor"); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (defining the duty of "the individual prosecutor"). All together, these cases "illustrate the special role played by the American prosecutor in the search for truth in criminal trials." *Strickler v. Greene*, 527 U.S. 263, 281 (1999).

To comply with *Brady*, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles*, 514 U.S. at 437. An absolute *Brady* obligation thus need not be placed on police officers because the *Brady* rule *already* "encompasses evidence

'known only to police investigators and not to the prosecutor.'"[2] *Strickler*, 527 U.S. at 280–81 (citing *Kyles*, 514 U.S. at 438); *see also Youngblood v. West Virginia*, 547 U.S. 867, 869–70 (2006). Put simply, if police officers already had a *Brady* duty, the prosecutor's affirmative duty to learn of any *Brady* material would be superfluous.

2. That the Court has always defined *Brady* as a prosecutorial duty is unsurprising: *Brady* requires specialized legal training that only prosecutors receive. *See* U.S. Dep't of Justice, Justice Manual § 9-5001(E) (updated Jan. 2020), http://bit.ly/4mC3LZL (requiring new and established federal prosecutors to undergo *Brady* training); *see also* Jennifer Mason McAward, *Understanding Brady Violations*, 78 Vand. L. Rev. 875, 943 (2025) ("[I]t is unclear how uniformly well trained law enforcement officers are with respect to this constitutional obligation."). "[L]egal training is what differentiates attorneys from average public employees. Attorneys are trained in the law and equipped with the tools to interpret and apply legal principles, understand constitutional limits, and exercise legal judgment." *Connick v. Thompson*, 563 U.S. 51, 64 (2011) (cleaned up). To this end, the Court has recognized "the difference between" a prosecutor's role in "evaluating evidence" and "the detective's role in searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested." *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). And consistent with this role, prosecutors are only entitled to

[2] In fact, the *Brady* duty extends even to "unrelated-case material." Jonathan Abel, *Brady's Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, 67 Stan. L. Rev. 743, 753–54 (2015) (observing that in three *Brady* cases, the Court "never indicated that the evidence's lack of connection to the case meant that it did not count as *Brady* evidence").

prosecutorial immunity for acts involving "the professional evaluation of the evidence assembled by the police." *Ibid.*

Legal training is essential for following *Brady* as "[l]egal terms of art define its bounds and limits." *Jean*, 221 F.3d at 660 (Wilkinson, C.J., concurring in the judgment). Prosecutors must analyze legal questions about whether evidence is "exculpatory" or "impeaching" and whether the evidence is "material"—determined by asking if "the result of the proceeding would have been different." *Strickler*, 527 U.S. at 282; *see Kyles*, 514 U.S. at 421 (reaffirming that "the prosecutor remains responsible for gauging" "the cumulative effect of all [favorable] evidence suppressed by the government"). "It would be inappropriate to charge police with answering these same questions, for their job of gathering evidence is quite different from the prosecution's task of evaluating it." *Jean*, 221 F.3d at 660 (Wilkinson, C.J., concurring in the judgment); *see also Moldowan*, 578 F.3d at 401 (Kethledge, J., concurring in the judgment in part and dissenting in part) ("Whether a particular piece of evidence would have changed the result of a criminal trial, of course, is a judgment that prosecutors, not police officers, are trained to make."). Indeed, because prosecutors are trained to spot *Brady* evidence, "the moral culpability, or the willfulness, of the prosecutor" need not be proven in any individual case: "If evidence highly probative of innocence is in his file, he should be presumed to recognize its significance even if he has actually overlooked it." *Agurs*, 427 U.S. at 110.

For all that, even prosecutors get it wrong. *See, e.g.*, *Connick*, 563 U.S. at 79 (Ginsburg, J., dissenting) ("[M]embers of the District Attorney's Office, including

the District Attorney himself, misperceived *Brady*'s compass and therefore inadequately attended to their disclosure obligations."). That's because *Brady* has "gray areas" and many "decisions are difficult." *Id.* at 71; *see also United States v. Ruiz*, 536 U.S. 622, 630 (2002) (recognizing the difficulty in identifying impeachment evidence "given the random way in which such information may, or may not, help a particular defendant"); *United States v. Sipe*, 388 F.3d 471, 488 (5th Cir. 2004) ("[M]ateriality determinations under Brady are always difficult."). These hard questions should thus be left in the hands of those most prepared to answer them.

* * *

At bottom, "extending [a no-fault] *Brady* regime to police officers would be both unprecedented and unwise." *Moldowan*, 578 F.3d at 401 (Kethledge, J., concurring in the judgment in part and dissenting in part).

III. The Court should resolve the circuit split on whether police officers can be sued under § 1983 for conducting unduly suggestive identification procedures.

The Sixth Circuit held that Olsen can be sued under § 1983 for conducting an unduly suggestive identification procedure because it appeared in evidence at Salter's trial. Pet. App. 21a–22a. This holding conflicts with other circuits and with this Court's precedent holding that § 1983 liability cannot be based on violating prophylactic rules.

Section 1983 provides a cause of action against any person acting under the color of state law who deprives a person of a right "secured by the Constitution." In *Vega v. Tekoh*, the Court held that *Miranda* is a "judicially crafted" prophylactic rule and thus "does not constitute 'the deprivation of [a] right … secured by the

Constitution" to support a right to sue under § 1983. 597 U.S. 134, 150–51 (2022) (quoting § 1983). Like *Miranda*, this Court has held that "a suggestive preindictment identification procedure does not in itself intrude upon a constitutionally protected interest." *Manson v. Brathwaite*, 432 U.S. 98, 113 n.13 (1977). To this end, courts of appeals have refused to recognize § 1983 claims based on unduly suggestive identification procedures. *See Alexander v. City of South Bend*, 433 F.3d 550, 555 (7th Cir. 2006); *Pace v. City of Des Moines*, 201 F.3d 1050, 1055 (8th Cir. 2000).

Ignoring this precedent, the decision below held that Salter could bring a claim against Olsen for conducting an unduly suggestive identification procedure. Pet. App. 21a–22a. Judge Nalbandian, however, recognized the obvious: "[R]ecent Supreme Court precedent fatally undermines 42 U.S.C. § 1983 suits based on unduly suggestive identification procedures. These protections, like *Miranda*, are prophylactic rules that do not create a right to sue under § 1983." *See* Pet. App. at 28a–29a (Nalbandian, J., concurring).

As with *Miranda*-based claims, the benefits of allowing a plaintiff to sue based on violating the prophylactic rule against conducting unduly suggestive identification procedures "would be slight" while "the costs would be substantial." *Vega*, 597 U.S. at 151 (citing *Maryland v. Shatzer*, 559 U.S. 98, 106 (2010)). The "prophylactic purpose" of the rule against admitting evidence obtained from an unduly suggestive identification procedure "is served by the suppression at trial of" this evidence." *Id.* And police officers are entitled, within reason, to rely on prosecutors not to introduce, and judges to exclude, unduly suggestive identification procedures. On the other

hand, "[a]llowing the victim of [such a] violation to sue a police officer for damages under § 1983 would have little additional deterrent value, and permitting such claims would cause many problems." *Id.* at 151–52 (identifying various procedural challenges flowing from allowing a § 1983 claim against a police officer for a *Miranda* violation). The Court should thus grant the petition to correct this error of law and resolve the circuit split.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

DANIEL G. SOLOMON
HUSCH BLACKWELL LLP
1801 Penn. Ave., NW
Suite 1000
Washington, DC 20006

ALYSSA M. LEROY
HUSCH BLACKWELL LLP
33 East Main St., Suite 300
Madison, WI 53703

SEBASTIAN WAISMAN
Counsel of Record
SPENCER TOLSON
HUSCH BLACKWELL LLP
600 Travis Street
Suite 2350
Houston, TX 77002
713.525-6291
sebastian.waisman@
huschblackwell.com

Counsel for Amicus Curiae

October 30, 2025