

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS VEGA,)
)
 Petitioner,)
)
 v.) No. 21-499
TERENCE B. TEKOH,)
)
 Respondent.)

Pages: 1 through 82
Place: Washington, D.C.
Date: April 20, 2022

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6 TERENCE B. TEKOH,)

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9

10 Washington, D.C.

11 Wednesday, April 20, 2022

12

13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 10:00 a.m.

16

17 APPEARANCES:

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19 of the Petitioner.

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23 Petitioner.

24 PAUL L. HOFFMAN, ESQUIRE, Hermosa Beach, California;
25 on behalf of the Respondent.

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P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 21-499, Vega versus Tekoh.

Mr. Martinez.

ORAL ARGUMENT OF ROMAN MARTINEZ

ON BEHALF OF THE PETITIONER

MR. MARTINEZ: Mr. Chief Justice, and may it please the court.

The Ninth Circuit's extension of Miranda into 1983 litigation is inconsistent with settled precedent and sound policy. For two reasons, you should reverse.

First, Miranda is a judicially crafted prophylactic rule, and the violation of such a rule doesn't violate the constitutional rights of any person. That's what the Chavez plurality said, reiterating pre-Dickerson holdings that Miranda violations result in no constitutional deprivation, that's Payne, and no identifiable constitutional harm, that's Elstad.

Tekoh and the Ninth Circuit say that Dickerson abandoned these cases. But, in fact, Dickerson reaffirmed their limits on Miranda's

1 scope. The cases show that Miranda's
2 presumption of coercion applies only when courts
3 assess whether a statement is admissible in the
4 prosecution's case-in-chief at trial. In that
5 context, when a defendant's liberty is at stake,
6 Miranda creates a protective fence around the
7 Fifth Amendment. It gives -- gives defendants a
8 windfall benefit by excluding statements that
9 are completely voluntary. A trial court's
10 Miranda violation taking away that windfall is
11 reversible error, but it doesn't violate the
12 defendant's actual Fifth Amendment rights, and
13 it doesn't trigger a right to money damages.

14 Second, as Tekoh now concedes, the
15 Ninth Circuit's proximate causation holding is
16 wrong. That concession provides a complete
17 basis for reversal here. Officers can't be held
18 liable when the mistakes are made by prosecutors
19 and judges.

20 Tekoh tries to rescue his case with a
21 brand-new causation theory based on alleged
22 lies. But that theory can't work for him here.
23 It's inconsistent with his jury instruction. It
24 was forfeited below. Its factual premise was
25 rejected by the jury. And it's legally baseless

1 in any event.

2 Sergeant Vega's conduct has been
3 exonerated from every angle by four different
4 fact finders. Two judges said Miranda warnings
5 weren't required. A jury said there was no
6 fabrication of evidence. Both juries said there
7 was no coercion. This case should end.

8 Unless the Court has questions, I'll
9 start with our view of what --

10 JUSTICE THOMAS: Mr. Martinez, the --
11 in -- in Dickerson, we held -- the Court held
12 that Miranda could not be displaced by a federal
13 statute by Congress.

14 If that's the case, then why is it not
15 a constitutional -- a -- a right secured by the
16 Constitution and, hence, actionable under 1983?

17 MR. MARTINEZ: Your Honor, we -- we
18 read Dickerson as saying that -- that -- that
19 Miranda has constitutional status,
20 constitutional underpinnings, and we agree with
21 the other side --

22 JUSTICE THOMAS: What does that mean?

23 MR. MARTINEZ: I think what that means
24 is that it can't be -- it can't be overturned by
25 statute. But I think Dickerson was very clear

1 that it was not -- you know, there was a dispute
2 in Dickerson between the majority opinion and
3 Justice Scalia, where Justice Scalia was saying
4 the majority's theory here is basically that
5 Miranda violates -- that a Miranda violation is
6 a violation of Fifth Amendment rights. And the
7 Court very clearly didn't -- was not willing to
8 say that.

9 I think the dispute between us here on
10 what Dickerson does is whether Dickerson
11 essentially changes the status quo and overturns
12 the line of pre-Dickerson cases, the cases that
13 came between Miranda and Dickerson, which
14 repeatedly said that a violation of Miranda
15 doesn't violate anyone's constitutional rights.

16 And the Chavez plurality, I think,
17 addresses this issue head on, and it says that
18 because Miranda's a traditionally created
19 prophylactic rule, the violation of that rule
20 doesn't violate anyone's constitutional rights.
21 And that's consistent, as I was saying earlier,
22 with what the Court had previously said in cases
23 like Payne and Elstad.

24 JUSTICE THOMAS: Yeah, but I couldn't
25 get a majority in Chavez, so the -- that -- I

1 don't know how much that does for you.

2 Would you tell me, what is the -- how
3 could something be both -- a rule be both
4 prophylactic and constitutional?

5 MR. MARTINEZ: I think it can be
6 prophylactic and constitutional because the
7 whole purpose of the rule is to protect the
8 underlying constitutional right against
9 compelled self-incrimination.

10 So what this Court has said repeatedly
11 in the cases between Miranda and Dickerson but
12 also in -- in the Chavez plurality is that,
13 essentially, the -- the rule is prophylactic in
14 the sense that it sweeps more broadly than the
15 Fifth Amendment itself. It excludes statements
16 that are voluntary and therefore themselves
17 would not violate the Fifth Amendment.

18 And the Court has said in Dickerson
19 that this extra measure of protection is needed
20 for a reason, because it's hard to know what
21 goes on inside the interrogation room, and when
22 a defendant's liberty is at stake in a criminal
23 trial and when the prosecution is trying to use
24 a statement as part of its case-in-chief at
25 trial, we're essentially going to presume

1 coercion. We're going to presume a Fifth
2 Amendment violation in that context.

3 So what the cases do essentially is
4 create a presumption of coercion in that one
5 context. But the presumption of coercion is
6 very different from actual coercion, and we know
7 that from all of the pre-Dickerson cases, which
8 essentially say that statements that would be
9 excludable under Miranda because they are
10 presumed to have been coerced can nonetheless be
11 used in other ways that would be impermissible
12 if they were actually coerced.

13 CHIEF JUSTICE ROBERTS: Mr. Martinez,
14 if I could focus just for a minute on the
15 language of the cause of action here, 1983. It
16 gives individuals a right against the
17 deprivation of any rights, privileges, or
18 immunities secured by the Constitution and laws.

19 Now, under Miranda, you have a right
20 not to have unwarned confessions admitted into
21 evidence. You wouldn't have that right if it
22 weren't for the Constitution. So why isn't that
23 right one secured by the Constitution?

24 MR. MARTINEZ: Well, I think for a
25 couple reasons, Your Honor.

1 I think, first of all, you have a
2 precedential reason, which is that both before
3 and after Dickerson, the Court has made clear or
4 at least a majority before Dickerson and then
5 the plurality in Chavez, I think, interpreting
6 the whole line of cases, including Dickerson --

7 CHIEF JUSTICE ROBERTS: Well, let's
8 focus on the -- on the text.

9 MR. MARTINEZ: Okay.

10 CHIEF JUSTICE ROBERTS: It seems to me
11 that you -- you wouldn't have a Miranda right if
12 it weren't for the Constitution.

13 MR. MARTINEZ: Well, we don't --

14 CHIEF JUSTICE ROBERTS: The right is
15 secured by the Constitution.

16 MR. MARTINEZ: -- we don't think that
17 the Miranda creates a Fifth Amendment right in
18 the sense that's relevant here in the 1983
19 context.

20 And I think one way to think about
21 this is there are all sorts of evidentiary rules
22 that are out there that a defendant can invoke
23 at a criminal trial or a party can invoke in
24 litigation. There are all sorts of evidentiary
25 rules that can be invoked, but no one thinks

1 that the -- that those evidentiary rules create
2 rights that are enforceable in 1983.

3 I think the two examples that I'll
4 give you, the exclusionary rule under the Fourth
5 Amendment is a -- is a rule of law that can be
6 invoked by the defendant, but in Calandra, this
7 Court recognized that it doesn't create a
8 personal constitutional right in the relevant
9 sense.

10 Federal Rules of Evidence is another
11 example. If I sue a state government under
12 Title VII on an employment discrimination claim
13 and the opposing counsel for the state
14 introduces a statement that was in violation of
15 the hearsay rule or in violation of the rule
16 against character evidence, that violates a rule
17 of evidence that is a law of the United States.

18 CHIEF JUSTICE ROBERTS: Yeah. A right
19 -- a right --

20 MR. MARTINEZ: But it's not a right
21 under 1983. You can't get damages for that.

22 CHIEF JUSTICE ROBERTS: It's a right
23 secured by the Federal Rules of Evidence. What
24 is the comparable provision that secures the
25 Miranda right? Under your example, it's a

1 Federal Rule of Evidence that secures the right.

2 What's comparable in your --

3 MR. MARTINEZ: We just don't think
4 it's -- it -- we think -- we think the
5 Constitution secures the ability to block the
6 statement. We don't dispute that. What we're
7 saying is that the Constitution doesn't -- here,
8 the claim that's being brought is that it's the
9 Fifth Amendment and that's the only argument
10 that the other side has made.

11 We just don't think that the Fifth
12 Amendment creates that -- that -- creates a
13 right that is, you know, enforceable or that --
14 that is violated when Miranda -- an unwarned
15 statement is admitted.

16 And, again, that's consistent with how
17 the Chavez plurality, I think, correctly read
18 Dickerson and the pre-Dickerson cases to -- to
19 kind of come up with a -- a coherent
20 harmonization of this Court's cases starting
21 with Miranda, taking the intervening cases
22 between Miranda and Dickerson, and then
23 Dickerson itself.

24 All those cases, I think, are best
25 read the way that the Chavez plurality read them

1 to essentially say, yeah, Miranda is important
2 and it's constitutionalized, you can't overturn
3 it, but, at the same time, a deprivation of a
4 judicially prophylac -- created prophylactic
5 rule like the one in Miranda doesn't violate the
6 constitutional rights of any person.

7 JUSTICE KAGAN: I mean, it does strike
8 me, Mr. Martinez, that you -- you keep on
9 saying, like, both before and after Dickerson.
10 Now, after Dickerson, you're relying mostly on a
11 plurality, which, as Justice Thomas said, is a
12 plurality. And before Dickerson, you know, you
13 definitely have some good cases on your side.

14 But then there's Dickerson, and
15 Dickerson says something that's quite different
16 from the before Dickerson cases where, you know,
17 even though Chief Justice Rehnquist didn't do
18 exactly -- you know, state in exactly so many
19 words as -- as you suggested that there was, you
20 know, a right to -- that Miranda gave rise to,
21 he -- he said all but that in exactly the way
22 Justice Thomas suggested.

23 MR. MARTINEZ: Justice Kagan, I
24 respectfully would disagree with that, but I
25 think you put your finger on the kind of issue,

1 which is what exactly does Dickerson do. And
2 just to frame this issue, if you look at what
3 the Ninth Circuit said, this is at page 20a of
4 the petition appendix.

5 The Ninth Circuit says that the
6 Supreme Court in no way maintained the status
7 quo and it affirmatively backed away from the
8 prior cases. So it reads Dickerson as a -- as a
9 decision that -- that creates this evulsive
10 change, rejects the earlier cases, comes up with
11 something new.

12 If you look at the language of
13 Dickerson itself, it's exactly the opposite, and
14 I would refer the Court to page 443 of Dickerson
15 when Dickerson is talking about this alleged
16 discrepancy between the Miranda rule and the
17 post-Miranda cases, Justice Scalia had -- and
18 others had argued that Miranda should be
19 overturned because there's -- the case law is
20 incoherent. And the -- the -- the Court in
21 Dickerson says no. The theoretical
22 underpinnings of Miranda are perfectly
23 consistent with the post-Miranda cases that
24 we're relying on, and it says that -- that these
25 are all consistent, it's one harmonious --

1 JUSTICE KAGAN: But, in fact, what --

2 MR. MARTINEZ: -- you don't see a --

3 JUSTICE KAGAN: -- Dickerson does is
4 Dickerson says there's a constitutional baseline
5 here, and, you know, it might be that Congress
6 could come up with something that's just as
7 effective as Miranda or more so, but that's what
8 Congress would have to do if Congress wants to
9 intervene in this area. There is a
10 constitutional baseline of procedures that are
11 constitutionally necessary to secure the
12 constitutional Fifth Amendment right.

13 MR. MARTINEZ: That's exactly right,
14 Your Honor, but -- but the justification
15 Dickerson gave was not that this is -- we're
16 doing something new. In fact, it was the
17 opposite. It said that we've always done this.
18 It looked back and it said Miranda was always
19 a --

20 JUSTICE KAGAN: To the extent it does
21 that, it essentially recasts the precedent in
22 its own light. But it's the relevant precedent
23 here.

24 MR. MARTINEZ: I -- I agree with that,
25 but I just think that you need to read -- or

1 focus on the part of the precedent where it says
2 that the post-Miranda cases that clarify the
3 rule and -- and what it means, the post-Miranda
4 cases that we're relying on, that those are
5 perfectly consistent with the theoretical
6 underpinnings of Miranda itself.

7 And so I think Dickerson very
8 consciously is saying -- you know, it's not
9 saying, hey, we zigzagged a couple times and
10 we've got to zigzag back. It's saying, no, this
11 is actually a consistent, common-sense, coherent
12 line of cases.

13 I think it's really driven by Justice
14 Rehnquist's -- Chief Justice Rehnquist's votes
15 and opinions throughout this entire line of
16 doctrine, including Dickerson and Chavez and in
17 the earlier cases as well, and it
18 basically said, yeah, Miranda is
19 constitutionalized, it's very important.
20 It's -- you know, you can't overturn it by
21 statute, but that doesn't mean that it creates a
22 kind of presumption of coercion that applies in
23 every single context.

24 JUSTICE SOTOMAYOR: Counsel, if that's
25 the case, then what do we do with Dickerson's

1 observation that if we don't view it as
2 having -- as being constitutionally required,
3 that -- I'm using the language of Dickerson, all
4 right -- what do we do with calling it a
5 prophylactic rule, which Dickerson rejected
6 expressly?

7 It said that language is loosely used
8 and doesn't suggest that it's not
9 constitutionally required. If it's
10 constitutionally required, why does it bind
11 state courts? Why do we have habeas review?

12 If we do what you're suggesting and go
13 back to the prophylactic language, we are
14 suggesting that you want us to overturn --

15 MR. MARTINEZ: Your Honor --

16 JUSTICE SOTOMAYOR: -- the essence of
17 Dickerson and Miranda.

18 MR. MARTINEZ: No. We -- we have no
19 quarrel with those cases. We have no objection
20 to any of those cases at all. We think -- we
21 don't think that Dickerson rejected the
22 prophylactic ruling, and we know that because
23 Dickerson said it was consistent with the -- the
24 pre-Dickerson cases.

25 JUSTICE SOTOMAYOR: No, it said --

1 MR. MARTINEZ: We know that as well --

2 JUSTICE SOTOMAYOR: I'll quote

3 Dickerson. Conceded that there is language in

4 some of our opinions that supports the view

5 taken by the court of appeals suggesting that

6 the Court's earlier statement suggesting that

7 Miranda was merely prophylactic and its

8 conclusion that Miranda protections were not

9 constitutionally required, and it rejected the
10 prophylactic description.

11 MR. MARTINEZ: No, Your Honor, I think

12 it rejected the conclusion that the Constitution

13 doesn't require it.

14 JUSTICE SOTOMAYOR: All right.

15 MR. MARTINEZ: And -- and --

16 JUSTICE SOTOMAYOR: Well, then we go

17 back to the Chief's question.

18 MR. MARTINEZ: Sure.

19 JUSTICE SOTOMAYOR: But I -- if we say

20 the Constitution doesn't require it --

21 MR. MARTINEZ: We're -- we're not

22 arguing that.

23 JUSTICE SOTOMAYOR: -- how do we have

24 habeas review and how do we get to tell state

25 courts that they have to follow a rule that's

1 not constitutionally required?

2 MR. MARTINEZ: Your -- Your Honor,
3 just to be very clear, we are not asking you to
4 overturn Dickerson. We think that -- that
5 Dickerson is -- is what it is. We think it's
6 perfectly good law. In fact, I think we said
7 some nice things about it --

8 JUSTICE SOTOMAYOR: Just answer --

9 MR. MARTINEZ: -- in our brief.

10 JUSTICE SOTOMAYOR: -- my question.

11 MR. MARTINEZ: But I'm -- I --

12 JUSTICE SOTOMAYOR: If it's a
13 prophylactic rule --

14 MR. MARTINEZ: Sure.

15 JUSTICE SOTOMAYOR: -- not required by
16 the Constitution, is it required by the
17 Constitution or not?

18 MR. MARTINEZ: I think Dickerson says
19 that it -- that it has to --

20 JUSTICE SOTOMAYOR: If it's required,
21 then we go back to the Chief's reading of the
22 language of 1983, but I still don't understand
23 how using the word "prophylactic" gets you out
24 of 1983.

25 MR. MARTINEZ: So I think what

1 "prophylactic" means is that -- what the Court
2 has said is that we need this prophylactic rule.
3 We need to go broader than the Constitution
4 itself. We need to presume coercion in this
5 context in order to protect the underlying right
6 against compelled self-incrimination.

7 And so it's kind of an adjunct.
8 It's -- but -- but that's different from saying
9 that it violates the actual constitutional
10 rights of someone if a statement is admitted.

11 And that's why the Court said that
12 repeatedly in Payne and Elstad, and that's why I
13 think the Chavez plurality correctly harmonized
14 the case law and recognized that that was true
15 even after Dickerson.

16 JUSTICE SOTOMAYOR: Can you tell me
17 why we're here? You have two -- I don't want
18 you to stop before you get to the second, the
19 proximate cause, okay?

20 You are right that the other side
21 never gave the trial court below an instruction
22 consistent with its position today that the only
23 statements that it could rely upon as giving it
24 a cause of action are statements that were
25 falsely made by the police. So there's some

1 sort of estoppel going on here. So I'm not sure
2 how they can win no matter what we find.

3 MR. MARTINEZ: We agree with that,
4 Your Honor.

5 JUSTICE SOTOMAYOR: All right. And so
6 assuming that we don't touch Miranda or
7 Dickerson and take it at its face and we go to
8 your second point, proximate causation, you win
9 because there's some sort of estoppel here?

10 MR. MARTINEZ: So I -- I think just to
11 be very clear because I want to make sure that
12 analytically we're -- we're all set, on the
13 first issue, we agree, we don't have to touch
14 Miranda or Dickerson. You don't have to
15 overturn those decisions, but we can still win
16 based on the understanding of Miranda and
17 Dickerson that was put forth in the Chavez
18 plurality and that we think is right.

19 If you agree with us on that, you can
20 stop there, we win the case. If you want to
21 then turn to proximate causation, I think the
22 most straightforward way to resolve the case is
23 to say that the Ninth Circuit decided this case
24 based on the instruction that was proposed and
25 the theory that was put forward that the Ninth

1 Circuit's analysis of that is wrong for the --
2 for the reasons that we argued in our brief and
3 that they essentially concede. And I think you
4 could just end it right there if you wanted to
5 reach a holding on proximate causation.

6 But just to be clear, we do think we
7 have an independent basis to win on our first
8 argument. If you want to go beyond that on
9 proximate causation, I'm happy to talk about why
10 we think that theory both was not preserved
11 below, not preserved at the cert stage here,
12 inconsistent with their jury instructions --

13 JUSTICE SOTOMAYOR: If --

14 MR. MARTINEZ: -- factually --

15 JUSTICE SOTOMAYOR: If --

16 MR. MARTINEZ: -- unsupported. We can
17 talk about all that too.

18 JUSTICE SOTOMAYOR: Two prosecutors
19 below and a judge at trial permitted the
20 statement to come in. But, in my experience,
21 the prosecutor offers a statement based on what
22 the police officer says, and it's not until a
23 hearing or the trial that the defense puts on
24 his or her side of the story. And then it's the
25 jury who decides whether or not that confession

1 was, in fact, coerced. If there's a conviction,
2 clearly, the defense's story has not been
3 believed. If there's an acquittal, like there
4 was here, it's an open question as to whether or
5 not the police officer was believed or not.

6 But I don't understand how you can say
7 that there's an intervening cause by a judge or
8 a prosecutor in introducing a statement if
9 they're not the ultimate arbiter of who's
10 telling the truth.

11 MR. MARTINEZ: Well, I -- I think two
12 points on that if I can answer, Mr. Chief
13 Justice.

14 CHIEF JUSTICE ROBERTS: Certainly.

15 MR. MARTINEZ: I think two points on
16 that.

17 First of all, here, there was a
18 suppression hearing. There was a full-blown
19 adversarial suppression hearing. Both sides --
20 that was the -- that's the point in time in the
21 case in which both sides have to come forward
22 with their best evidence to argue about the
23 admissibility of the statement. And twice in
24 front of both criminal trial judges, because
25 this was done twice, twice the trial judge

1 agreed with us that there was no Miranda warning
2 that was required here.

3 And so I think that in and of itself
4 is significant, and I think, you know, this
5 Section 1983 litigation really is an attempt to
6 relitigate that sort of fundamental point.

7 And so I -- I guess I'll -- I'll leave
8 it there, but I'm happy to come back to it in
9 the seriatim questioning.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Justice Thomas, anything?

13 Justice Breyer?

14 Justice Sotomayor?

15 JUSTICE KAGAN: Mr. Martinez, you
16 mentioned before Chief Justice Rehnquist's
17 journey in these cases. I just want to talk a
18 little bit about that. I appreciate that you
19 think that your position does not undermine or
20 isn't consistent with Dickerson, but I kind of
21 want to assume that that's not true or at least
22 have you assume that people could think that it
23 was not true. And -- and --

24 MR. MARTINEZ: Sorry. To -- to assume
25 that -- that it -- that --

1 JUSTICE KAGAN: That it does --

2 MR. MARTINEZ: -- there was zigzagging

3 --

4 JUSTICE KAGAN: That -- that if we
5 come out your way, it will undermine Dickerson,
6 it will be understood as inconsistent with
7 Dickerson. I mean, that's what I think, and I
8 know you don't think it, but I want to put that
9 aside and -- and -- and to have you at least
10 acknowledge that there are many people who will
11 think of this as utterly inconsistent with
12 Dickerson.

13 And I just want your reaction to what
14 Dickerson was all about and what it said about
15 the Court as an institution, in part through the
16 lens of Chief Justice Rehnquist's progress
17 through these cases, because, you know, I think
18 what people think about Dickerson is that,
19 essentially, the Chief Justice understood that
20 Miranda had come to mean something extremely
21 important in the way people understood the law
22 and the way people understood the Constitution
23 and that whatever he might have thought about
24 the original bases of Miranda, that it, you
25 know, was sort of central to people's

1 understanding of the law and that if you
2 overturned it or undermined it or denigrated it,
3 it would be -- you know, it had -- would have a
4 kind of unsettling effect not only on people's
5 understanding of the criminal justice system but
6 on people's understanding of the Court itself
7 and the legitimacy of the Court and the way the
8 Court operates and the way the Court sticks to
9 what it says, you know, not just in a kind of
10 technical stare decisis sense but in a more
11 profound -- in a -- in a more profound sense
12 about the Court as an institution and the role
13 it plays in society.

14 So I -- I guess I just -- that might
15 be above your pay grade, and I'm sorry if it is,
16 but if you would just react to that.

17 MR. MARTINEZ: Your Honor, I think
18 those are important points, and I think that the
19 best way to write an opinion that's consistent
20 with those points and -- and takes proper
21 account of them is to say very clearly that --
22 that Dickerson remains good law. It stays on
23 the books. Miranda and Dickerson are important
24 constitutional decisions of this Court but that
25 those decisions do not go so far as to require a

1 -- the recognition of -- that -- of some -- a
2 Fifth Amendment right has been violated in such
3 a way as to trigger 1983 liability.

4 So I think it's perfectly consistent
5 and is perfectly consistent with what Chief
6 Justice Rehnquist himself voted to do a couple
7 years later in Chavez, perfectly consistent with
8 Dickerson to say both of those things
9 simultaneously.

10 And to the people out there who might
11 be confused about this line of case law,
12 obviously, it's been a very controversial line
13 of case law. All these cases have dissents
14 going back. The dissents are always saying that
15 the majority's opinion is inconsistent with the
16 prior cases. But the through line that runs
17 through them is a consistent common-sense
18 approach by Chief Justice Rehnquist to recognize
19 the importance of Miranda but also to recognize
20 its important limits.

21 And I think you can write an opinion
22 that says both of those things, that doesn't do
23 any harm to Dickerson, but does say that -- that
24 the presumption of coercion that was recognized
25 in those cases doesn't mean that you have to

1 presume a Fifth Amendment violation when it
2 comes to 1983.

3 JUSTICE KAGAN: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Gorsuch?

6 JUSTICE GORSUCH: Yeah, counsel, I --
7 I'd just like to get your reaction to some of
8 the scholarship that we received in the amicus
9 briefs from a variety of historians suggesting
10 that whether or not Miranda intended to or aimed
11 at the original meaning of the Constitution,
12 there is a fair amount of evidence that by the
13 time of the founding, warnings were considered
14 an important prophylactic rule to protect the
15 right against self-incrimination.

16 MR. MARTINEZ: Right. Your Honor, I
17 think those are important points to consider. I
18 think that this is not the case in which to
19 consider them mainly --

20 JUSTICE GORSUCH: All right.

21 MR. MARTINEZ: But -- but --

22 JUSTICE GORSUCH: If you'd just spot
23 me that, all right?

24 MR. MARTINEZ: Sure.

25 JUSTICE GORSUCH: Address it on the

1 merits.

2 MR. MARTINEZ: On the merits, I think
3 the historians' brief helps us. I think what
4 the historians' brief says is that it -- it has
5 exhaustively looked at a whole bunch of evidence
6 that hadn't been considered before. And if you
7 read closely at what it says that evidence
8 shows, I think what it says is that in a lot of
9 cases people were encouraged to give warnings
10 because it would help protect the admissibility
11 of statements under a totality-of-circumstances
12 analysis.

13 What the cases don't show -- or what
14 the examples don't show, what the historical
15 evidence does not show is that there is a
16 mandatory rule of exclusion, which is what
17 Miranda recognized. And it certainly doesn't
18 show that there's a mandatory rule of exclusion
19 that somehow gives right to a private cause of
20 action for money damages.

21 So I think that the evidence is
22 actually telling in what it doesn't show, and
23 what it doesn't show is the key point of Miranda
24 and Dickerson, which is that there has to be as
25 an original matter at least this underlying, you

1 know, exclusionary rule. It doesn't say that
2 there's a -- the evidence doesn't support an
3 exclusionary rule.

4 I think the final thing I'd say on
5 this, though, Your Honor, is that if the Court
6 were inclined to take a serious originalist look
7 at this -- at this language, I think, again, you
8 should do it in a case where it's more properly
9 presented, but I also think you would have to
10 grapple with, of course, the actual text of the
11 Fifth Amendment, which does require compulsion
12 and only bars compelled statements.

13 CHIEF JUSTICE ROBERTS: Justice
14 Kavanaugh?

15 JUSTICE KAVANAUGH: What would you say
16 about Withrow, where a lot of the arguments that
17 you're advancing today were similarly --

18 MR. MARTINEZ: Yeah.

19 JUSTICE KAVANAUGH: -- advanced as a
20 basis for saying that Miranda claims should not
21 be cognizable in habeas?

22 MR. MARTINEZ: I think the best way to
23 understand Withrow is that it's essentially
24 treating -- Withrow is a habeas case, of course,
25 and it's essentially analyzing -- the issue in

1 that case is whether the statement was properly
2 admitted at trial, whether the trial judge made
3 a mistake by -- by not excluding the statement.
4 And I think it's very similar to the direct
5 appeal context, and I think it's consistent with
6 the underlying purposes of Miranda and
7 Dickerson, which basically limit the presumption
8 of coercion to the admissibility decision by the
9 trial judge at the criminal trial.

10 And I think Withrow says, essentially,
11 recognizing that -- that that's where liberty
12 matters most, we're going to apply the
13 presumption of coercion in that circumstance and
14 we're -- we're going to allow habeas relief.

15 The text of the -- of the habeas
16 statute is different from the text of 1983. We
17 don't think that simply because something is
18 cognizable in habeas it's necessarily cognizable
19 in 1983.

20 If you agree with us and our position
21 based on the Chavez plurality and Justice
22 Rehnquist, you can conclude that there's no
23 Fifth Amendment right that's been violated by a
24 Miranda violation, and, therefore, there's no
25 1983 liability even if there is a habeas

1 violation -- a violation that's cognizable in
2 habeas.

3 JUSTICE KAVANAUGH: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Barrett?

6 JUSTICE BARRETT: Mr. Martinez, I want
7 to present something to you and see if it's
8 consistent with your understanding. I think
9 Justice Kagan makes some good points, and, you
10 know, there are points made by your friend on
11 the other side about your position being
12 inconsistent with Dickerson. But I wonder
13 whether this is a way that you would agree with
14 characterizing it.

15 So Dickerson didn't ever use the word
16 "constitutional" right. It seemed very
17 carefully worded to say constitutional rule or
18 constitutionally required. And I've always
19 taken one of the reasons why Dickerson was
20 controversial was that it asserted a right
21 vis-a-vis state courts and vis-a-vis Congress
22 for the court to announce constitutional
23 prophylactic rules that it could impose on state
24 courts and that it could assert as against
25 Congress so Congress couldn't overrule it by

1 statute but that it didn't think were
2 constitutionally required.

3 So there was inherent tension in
4 Dickerson, and Chief Justice Rehnquist said
5 we're not overruling Miranda and we're living
6 with that tension but never characterized it as
7 a right. And that's an important power, it
8 seems to me, that Dickerson recognized and
9 asserted and that you're not asking us to -- to
10 overturn, right?

11 MR. MARTINEZ: Correct.

12 JUSTICE BARRETT: And so would that
13 description of Dickerson be consistent with your
14 view that Dickerson acknowledged a power on the
15 Court that you want us to leave undisturbed,
16 that it could implement the Fifth Amendment
17 right or that it could prophylactically protect
18 it in a powerful way against the states and
19 Congress but that isn't a definition of the
20 right itself?

21 MR. MARTINEZ: Yes, I think that's
22 exactly right, Justice Barrett. And I think the
23 only additional point I would make is that
24 although this power has been recognized not just
25 in the Miranda line of cases but in a couple

1 others as well, the -- the power to create a
2 kind of prophylactic rule to protect a
3 constitutional guarantee, I think the Court has
4 always recognized that it's doing something very
5 unusual when it creates these rules and it needs
6 to be very careful and limited and focused on
7 what are -- what is the core underlying
8 real-life constitutional right that you're
9 protecting.

10 And so whether it's Patane saying --
11 the Patane plurality saying that there needs to
12 be a close as possible fit between the -- the --
13 the application of the Miranda rule and the
14 underlying right against compelled discrim- --
15 incrimination -- self-incrimination at trial or
16 Tucker saying the same thing, you really need to
17 do a very rigorous cost/benefit analysis and
18 show that expand -- expanding or creating a
19 prophylactic rule is really necessary.

20 Here, we think it's necessary or the
21 Court has said it's necessary when you're
22 introducing evidence in the prosecution's
23 case-in-chief at trial, but the Court has
24 repeatedly refused to go beyond that, and we
25 respectfully would submit that you shouldn't go

1 beyond it in this case.

2 JUSTICE BARRETT: Thank you.

3 JUSTICE BREYER: I'd like to ask you
4 if there is any analogy you've come across that
5 would have these characteristics: One -- or A,
6 there is a constitutional rule; B, there is a
7 prophylactic rule to enforce the constitutional
8 rule; C, Congress does not have the power under
9 the Constitution to change the prophylactic
10 rule; and, D, you can enforce the prophylactic
11 rule in habeas but not in 1983.

12 MR. MARTINEZ: I -- Your Honor, that's
13 a great question. I don't have a specific
14 example that -- that I know for certain sort of
15 checks all four of those boxes.

16 I do think, though, I would point you
17 to the context, I think the Stovall case and the
18 Manson case recognized a prophylactic
19 evidentiary rule of exclusion that allows
20 people -- allows defendants to -- to exclude
21 overly suggestive police lineups, and that
22 was -- has been understood by the lower courts
23 correctly as a prophylactic constitutional rule
24 and the lower -- although I don't think that
25 that could be overturned by Congress -- I don't

1 think that Congress could overturn the
2 Supreme Court's -- this Court's decision, I
3 think the lower courts have correctly recognized
4 that's a prophylactic rule that doesn't give
5 right to a -- rise to a right that can be
6 enforced in 1983.

7 JUSTICE BREYER: Maybe you could add
8 one other thing because, if it's so skimpy, the
9 analogies, I don't know where I'm going if I
10 adopt your position.

11 That is to say, I don't know what
12 other rules there are which may or may not fall
13 within -- I don't know what the distinctions
14 would be, I don't know where we're going, I
15 don't know how many prophylactic rules there
16 are, I don't know how many have fallen within
17 1983, I don't know what the courts have said
18 about prophylactic.

19 I mean, we could stay here a long
20 time, which we won't, listing things I don't
21 know.

22 MR. MARTINEZ: Right.

23 JUSTICE BREYER: All right. So what
24 do you think?

25 MR. MARTINEZ: Well, I think, on that,

1 I think -- like I was suggesting earlier, I
2 think you can write an opinion that makes very
3 clear that you're talking about this particular
4 prophylactic rule and that you're not talking
5 about other -- other circumstances.

6 I think, in this partic- -- with
7 respect to this particular rule --

8 JUSTICE BREYER: All right. If we
9 take that approach, we have to have --
10 unfortunately, we cannot write -- we can say the
11 words, this statute, this -- rather, this
12 opinion applies only to, now fill in the blank.

13 MR. MARTINEZ: But -- but --

14 JUSTICE BREYER: Today's case, not
15 tomorrow's. It just doesn't work --

16 MR. MARTINEZ: It doesn't work --

17 JUSTICE BREYER: -- because the law
18 doesn't work that way.

19 MR. MARTINEZ: -- it doesn't work if
20 you stop there, but I think you would say, and
21 here's the two reasons why. Number one, in this
22 unique context, we have a lot of precedent that
23 has repeatedly made clear that constitutional
24 rights are violated when Miranda's violated, and
25 number two, even if you didn't have that

1 precedent, we have to do -- we would have to do
2 a kind of cost/benefit analysis that is specific
3 to this particular right.

4 And, here, the cost/benefit analysis
5 supports excluding it from the prosecution's
6 case-in-chief at trial, but it doesn't support
7 treating the -- the completely voluntary
8 statement as coerced in -- in other contexts.
9 And I think that would distinguish other cases
10 that you could then decide when they come up.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel.

13 Mr. Suri.

14 ORAL ARGUMENT OF VIVEK SURI
15 FOR THE UNITED STATES, AS AMICUS CURIAE,
16 SUPPORTING THE PETITIONER

17 MR. SURI: Mr. Chief Justice, and may
18 it please the Court:

19 Miranda recognized a constitutional
20 right, but it's a trial right concerning the
21 exclusion of evidence at a criminal trial. It
22 isn't a substantive right to receive the Miranda
23 warnings themselves.

24 A police officer who fails to provide
25 the Miranda warnings accordingly doesn't himself

1 violate the constitutional right, and he also
2 isn't legally responsible for any violation that
3 might occur later at the trial. The Ninth
4 Circuit's contrary decision should be reversed.

5 JUSTICE THOMAS: What if the police
6 officer purposely lies in order to convince the
7 prosecutor to use the statement?

8 MR. SURI: We would still say that
9 there is no Miranda claim, but I have to be
10 clear that that issue is not properly presented
11 in this case.

12 Taking that as a hypothetical,
13 however, we would say that there is no Miranda
14 liability because we don't see how the causation
15 problem can be solved without creating a witness
16 immunity problem in its place.

17 There are two actors that lie between
18 the police officer and any Miranda violation:
19 the prosecutor who offers the statement into
20 evidence and the judge who admits it at the
21 suppression hearing.

22 And in order to show that the judge
23 has been misled into admitting the evidence, you
24 have to presumably argue that the police officer
25 lied on the witness stand and thereby convinced

1 the judge to introduce the evidence. But, under
2 absolute witness immunity, that can't be a
3 predicate for liability.

4 JUSTICE KAGAN: I mean, take an
5 outlandish example, and it is outlandish, but,
6 you know, suppose the police officer, you know,
7 bribed the prosecutor and the judge. What then?

8 I mean, at that point, I tell you what
9 it seems to me, is your causation problem
10 disappears but that there must be some way of
11 saying that that's such an unusual case that
12 we're not going to bend or -- or change the rule
13 for it, but I don't exactly quite know how that
14 argument works legally, so I guess I'm asking
15 you to provide the missing pieces.

16 MR. SURI: Okay. This Court has said
17 that in applying causation principles or other
18 common law principles, it isn't tied exactly to
19 the old common law rules. It can adjust those
20 approaches as necessary in light of the nature
21 of the right at issue.

22 In addition, the Court sometimes
23 adopts categorical rules that may fit
24 imperfectly in some extreme cases, but it
25 acknowledges that those cases are so unlikely to

1 arise that it's not worth trying to deal with
2 them.

3 And the two best examples I can think
4 of are the retaliatory inducement to prosecute
5 case, Hartman against Moore, and Nieves against
6 Bartlett, which is retaliatory arrest.

7 In both of those cases, the Court said
8 that because of causation problems, we're going
9 to adopt a categorical rule requiring the
10 plaintiff to show the absence of proximate -- of
11 probable cause in order to allow that case to
12 come forward.

13 Now it's true, theoretically, you can
14 think of some outlandish hypotheticals where
15 there is probable cause, yet there should be a
16 retaliatory arrest or prosecution claim, and the
17 Court still said, we -- we're going to adopt a
18 categorical rule.

19 And we suggest that the Court could
20 adopt a similar categorical rule here because,
21 as you say, the only circumstances that we can
22 think of where there's no causation problem are
23 so outlandish, it's not worth trying to preserve
24 those.

25 JUSTICE SOTOMAYOR: Counsel, I -- I'm

1 not sure what witness immunity has to do with
2 this issue. Yes, you're immune from prosecution
3 for any testimony you give at a trial. But, if
4 you're testifying falsely and that's what
5 induces a judge or a prosecutor to use your
6 statement, I -- I don't understand why that
7 should be immune from 1983.

8 MR. SURI: Your Honor, that view is
9 contrary to this Court's previous decision in
10 *Briscoe against LaHue*. In that case, the Court
11 held that witnesses enjoy absolute immunity from
12 1983 claims for their testimony and it
13 specifically held that that extends even to
14 perjured testimony.

15 The reasoning of the decision is that
16 the appropriate remedy for perjury is a criminal
17 prosecution for perjury, but we don't want to
18 discourage witnesses by exposing them to the
19 specter of civil liability.

20 JUSTICE GORSUCH: Counsel, you -- your
21 -- your argument for a firm proximate cause rule
22 has some appeal, obviously, the clarity of it,
23 but I wonder have you thought about -- and I'm
24 sure you have and you can help us think about --
25 how it would apply outside the *Miranda* context

1 and how it might bleed into other constitutional
2 rights and make them more difficult to assert
3 under 1983. An involuntary confession under --
4 forget about Miranda. You know, a tortured
5 confession being admitted. Are you concerned,
6 is the government concerned, that its rule would
7 -- would place the onus on the prosecutor to
8 deal with that and not allow recovery against a
9 police officer who conducted the -- the -- the
10 tortured confession?

11 MR. SURI: Justice Gorsuch, let me
12 first explain why the logic of our position
13 would indeed affect some other constitutional
14 rights and then turn to, if you're uncomfortable
15 with that, how you can cabin the logic so that
16 it applies only to this particular right.

17 So, to take the first part first, yes,
18 it's true our logic does apply, for example, to
19 self-incrimination claims, but that shouldn't
20 trouble you because this Court has recognized an
21 independent substantive due process limit on
22 what the police can do in the interrogation
23 itself. If the police torture an individual or
24 even beat him, that's a substantive due process
25 violation that is actionable under Section 1983.

1 JUSTICE GORSUCH: I get that argument.
2 But there's an additional quantum of harm surely
3 associated with its introduction at trial and a
4 potential conviction wrongfully. And your rule,
5 I think, would take that out of play, and maybe
6 it won't, but I'd like to hear your thoughts.

7 MR. SURI: No, it would take that out
8 of play, Justice Gorsuch. And the reason the
9 Court shouldn't be troubled by that is that the
10 appropriate forum for redressing harms that
11 occur in the trial itself is the appeal process
12 in habeas corpus, not a collateral civil suit
13 attacking the trial ruling. But let's say --

14 JUSTICE GORSUCH: You might say that
15 about almost anything that happens at trial, but
16 we have 1983 actions all the time about things
17 that happen at trial.

18 MR. SURI: I -- I don't think that's
19 right, Justice Gorsuch. You have 1983 things --
20 actions about things that happen outside trial,
21 like unreasonable searches and seizures. But
22 you don't have 1983 claims about things that
23 happen in the trial itself, like ineffective
24 assistance of counsel or denial of a jury trial
25 right. Those are traditionally enforced through

1 the appellate process.

2 And if I can offer an analogy --

3 JUSTICE GORSUCH: Sure.

4 MR. SURI: -- to show why this makes
5 sense. Think of this Court's Confrontation
6 Clause jurisprudence. The Court has held that
7 the introduction of a forensic analyst's report
8 at trial can be a confrontation violation if the
9 analyst isn't put on the stand.

10 Now we would say that you can't sue
11 the analyst under Section 1983 on the theory
12 that he proximately caused the prosecutor's
13 violation of the Confrontation Clause. Your
14 remedy would be an appeal, not a 1983 claim.

15 So, yes, that is one consequence of
16 our theory, but that's a perfectly reasonable
17 consequence. We don't think it makes sense to
18 allow collateral Confrontation Clause
19 challenges.

20 JUSTICE GORSUCH: Let's say I'm a
21 little worried about that. You said you had a
22 narrower approach.

23 MR. SURI: Yeah.

24 JUSTICE GORSUCH: What -- what's that?

25 MR. SURI: This Court has said most

1 recently in the Thompson opinion that Justice
2 Kavanaugh wrote earlier this term that common
3 law principles must be applied in light of the
4 values and purposes of the right at issue.

5 And the right at issue here, the
6 Miranda right, has always been based on an
7 analysis of what is necessary in practice to
8 enforce the self-incrimination right. And the
9 Court has enforced it as far as it is necessary,
10 but it hasn't taken it any further. It said
11 that Miranda applies, for example, only in the
12 case-in-chief in a criminal prosecution. It
13 doesn't apply to impeachment. It doesn't apply
14 to the fruits of the evidence. It doesn't apply
15 in public safety cases. And the Court could say
16 similarly that it's not necessary to apply in --
17 in a civil trial.

18 JUSTICE GORSUCH: Thank you.

19 JUSTICE BARRETT: You just said -- you
20 just talked about enforcing the right. But the
21 government, as I understand it, has taken the
22 position that this is a Fifth Amendment right,
23 although, in your brief, you kind of -- which
24 strikes me as probably careful language --
25 characterize it as a federal right. You don't

1 actually say Fifth Amendment right that I saw.

2 Could you elaborate on the
3 government's position there?

4 MR. SURI: Yes. We think Miranda is a
5 constitutional right. To use the language of
6 Section 1983, it is any right, privilege, or
7 immunity secured by the Constitution. And if I
8 could divide that into two parts, secured by the
9 Constitution because Dickerson says it is a
10 constitutional rule. And right, privilege, or
11 immunity is drawing a distinction between rights
12 and structural provisions, like separation of
13 powers or federalism provisions. But Miranda is
14 pretty clearly a right rather than a structural
15 provision.

16 In addition, if you look at this
17 Court's past 1983 cases, the Court has defined
18 the term "right" in the constitutional context
19 extremely broadly. For example, in Dennis
20 against Higgins, the Court held that the
21 negative Commerce Clause gives rise to rights
22 enforceable under Section 1983 even though one
23 might think of the Commerce Clause as a
24 structural provision rather than a rights
25 provision.

1 So, if -- if that's a right, then
2 surely we think Miranda is a right. And, of
3 course, it's constitutional because Dickerson
4 says so.

5 JUSTICE KAVANAUGH: Can you address
6 Justice Kagan's question to Mr. Martinez about
7 the precedent and how we should think about the
8 precedent?

9 MR. SURI: Yes. I -- I think one of
10 the reasons we have not relied on the theory
11 that Miranda is not a constitutional right is
12 precisely the concern that Justice Kagan has
13 raised that would seem to undermine the -- what
14 the Court has said all these years, especially
15 in Dickerson. But even apart from that, we just
16 don't think that that theory is correct as an
17 original matter, and we don't think it's
18 necessary in order for the Court to foreclose
19 Miranda claims from Section 1983.

20 JUSTICE GORSUCH: Would you care to
21 comment on the historians' briefs and the
22 suggestion that Miranda might have a better
23 original provenance than had previously been
24 thought?

25 MR. SURI: I -- I wish, Justice

1 Gorsuch, I could say that Miranda in its
2 totality is supported by the original meaning of
3 the Constitution. I -- I -- I -- I'm afraid I
4 cannot in all candor go quite that far.

5 The historians' brief supports one
6 aspect of Miranda, which is the warning
7 requirement. Miranda, of course, goes beyond
8 warnings. It also talks about having counsel
9 present at the interrogation. And in all
10 candor, I have to concede that the historians'
11 brief doesn't provide support for that aspect of
12 the Miranda decision, that, instead, we think
13 it's still correct because it's -- it's been
14 found necessary to implement the
15 self-incrimination right as a practical matter.

16 But, with respect to the warnings, it
17 -- it's certainly the case that warnings were
18 much more commonplace than one might have
19 imagined. If you look at Chief Justice White's
20 opinion in *Bram* against United States, he talks
21 about these warning requirements. So it isn't
22 just the original meaning at the time of the
23 finding. It's also the 19th Century case law
24 that recognizes that warnings are an important
25 part of implementing the Fifth Amendment.

1 Nevertheless, that doesn't affect our
2 argument in this case because the issue in this
3 case, of course, is whether Miranda is civilly
4 enforceable. And if you look back to
5 founding-era sources, I've seen no evidence that
6 you would bring collateral civil actions saying
7 that an involuntary confession or other type of
8 improper evidence was introduced at a criminal
9 trial. The appropriate remedy would have been
10 the exclusion of that evidence at the trial
11 itself, not some collateral civil proceeding.

12 In contrast, we have lots of history
13 of civil suits about the equivalent of the
14 Fourth Amendment. Unreasonable searches were at
15 issue in Entick against Carrington, Wilkes
16 against Wood, cases like that. The absence of
17 any comparable history here should give you some
18 comfort that this is indeed not the kind of
19 thing that is meant to be civilly enforceable.

20 JUSTICE ALITO: If you have the
21 situation where a police officer does something
22 that violates a constitutional right but that
23 later a prosecutor makes an independent decision
24 about whether the prosecution will attempt to
25 obtain any advantage at trial as a result of the

1 conduct of the police officer, that, I take it,
2 is what you think is the situation here.

3 Could you state in general terms the
4 rule that you think applies as to the creation
5 of a categorical rule regarding the absence of
6 proximate cause?

7 MR. SURI: I'm sorry, Justice Alito, I
8 think I have to take issue with the premise of
9 the question, which is we don't accept that the
10 police officer has done anything unlawful. Our
11 theory is that the unlawful act is committed
12 entirely at the trial itself.

13 But our rule is that when a police
14 officer --

15 JUSTICE ALITO: All right. Well, so
16 we're getting back to the issue of -- of the
17 nature of the Miranda violation. When something
18 is done by the police officer, but the
19 prosecution seeks to obtain some advantage at
20 trial as a result of something that was done or
21 was not done and should have been done by the
22 police officer, what is your general -- how
23 would you state in general terms the rule about
24 cutting off proximate cause?

25 MR. SURI: The rule is that when a

1 police officer does not himself engage in any
2 legal violation, then, in the absence of some
3 special circumstance I can't think of right now,
4 the prosecutors' and the judges' independent
5 decision about the action constitute superseding
6 causes that cut off liability.

7 CHIEF JUSTICE ROBERTS: Justice
8 Thomas?

9 JUSTICE THOMAS: No.

10 CHIEF JUSTICE ROBERTS: All right.
11 Justice Kavanaugh?

12 JUSTICE KAVANAUGH: Just the same
13 question that I asked Mr. Martinez about Withrow
14 and how you would deal with that.

15 MR. SURI: Withrow supports our
16 position. Withrow described the Fifth Amendment
17 right and Miranda as trial-focused rights. That
18 suggests that Miranda is about what happens at
19 the trial, whether the evidence is admitted or
20 not admitted. It's not about what the police
21 officer himself does.

22 And, indeed, Withrow contrasted the
23 Miranda right with the Fourth Amendment right on
24 precisely that reasoning. It said the Fourth
25 Amendment is about what happens outside the

1 trial and that's why it isn't enforceable in
2 habeas corpus.

3 JUSTICE KAVANAUGH: Thank you.

4 CHIEF JUSTICE ROBERTS: Thank you,
5 counsel.

6 Mr. Hoffman.

7 ORAL ARGUMENT OF PAUL L. HOFFMAN

8 ON BEHALF OF THE RESPONDENT

9 MR. HOFFMAN: Mr. Chief Justice, and
10 may it please the Court:

11 Petitioner asked this Court to find
12 that a police officer can never be found liable
13 under Section 1983 for a Miranda violation.
14 This is so even where an officer elicits an
15 unwarned custodial statement, lies about the
16 circumstances, and the statement is introduced
17 in the prosecution's case-in-chief. That
18 categorical approach is counter to precedent,
19 the text of Section 1983, and common sense.

20 This case presents two distinct
21 issues. On the first issue, the introduction of
22 an unwarned custodial statement is a violation
23 of the Defendant's Fifth Amendment rights and,
24 therefore, the basis for Section 1983 liability.

25 If Miranda violations lead to habeas

1 relief based on a violation of the Constitution
2 or to the reversal of state criminal convictions
3 on the same basis, the same violations fall
4 within the broad remedial sweep of Section 1983.

5 On the second issue, police officers,
6 like any other state actor, can be sued under
7 Section 1983 if their acts proximately cause a
8 violation of constitutional rights. At a
9 minimum, when an officer takes an unwarned
10 custodial statement and deceives the prosecutor
11 about the circumstances of the interrogation, a
12 jury can find that proximate cause exists.

13 Mr. Tekoh has always argued that
14 Deputy Vega gave a false account of the
15 circumstances of the interrogation in this case.
16 The court of appeals correctly found that
17 Mr. Tekoh has a Section 1983 claim based on the
18 Miranda violation and that a reasonable jury, if
19 they believe Mr. Tekoh's testimony, could find
20 that Deputy Vega was the proximate cause of this
21 violation.

22 I welcome the Court's questions.

23 JUSTICE THOMAS: In the trials that
24 we've had in this so far, have there been any
25 findings by the jury that the officer lied?

1 MR. HOFFMAN: The -- there -- no,
2 there's not -- there hasn't been a finding that
3 the officer lied. That issue hasn't really been
4 presented to the jury. And there were no
5 find -- there were no -- there was never a
6 finding in this case about whether Mr. Tekoh was
7 in custody or not. None of the -- none of the
8 juries were required to find that.

9 And, in fact, from the beginning of
10 this case, it was argued that the claim was that
11 a violation of -- a core Miranda violation, the
12 introduction of the statement at trial, gave
13 rise to a 1983 violation.

14 And the judge -- the district judge
15 refused to give that instruction on that theory
16 of liability because he thought that the Chavez
17 case overturned -- made -- made that claim
18 unviable.

19 And so the -- the appeal to the Ninth
20 Circuit that we made was to allow us to go
21 forward with that claim. That's the -- that's
22 the -- the issue that we raised in addition to
23 an issue about an expert.

24 But there's never been a finding one
25 way or the other about whether the officer lied

1 about the circumstances of the -- of the
2 interrogation, which is at the heart of the
3 case. That's always been the dispute --

4 JUSTICE SOTOMAYOR: So can you --

5 MR. HOFFMAN: -- in this case.

6 JUSTICE SOTOMAYOR: -- so you -- can
7 you point me to somewhere in the record on
8 either trial before the district courts where
9 you presented that theory of your case? I've
10 looked in vein, number one.

11 And, number two, in the first trial,
12 it was a fabrication of evidence case.

13 MR. HOFFMAN: That's right.

14 JUSTICE SOTOMAYOR: So tell me if they
15 found against you on the fabrication of the
16 evidence. Isn't that a finding that Mr. Vega
17 didn't fabricate?

18 MR. HOFFMAN: No. I mean, what --
19 what it was -- what -- what the -- what the jury
20 was asked to find under standards that are much
21 higher than the standards that would apply to a
22 Fifth Amendment claim, it was a Fourteenth
23 Amendment substantive due process claim.

24 But, at most, and what the district
25 court found, was that there was a finding that

1 the -- that the officer did not fabricate the
2 report and that a different officer didn't
3 fabricate certain statements attributable to Mr.
4 Tekoh in one of his supplemental reports.
5 That's all they found.

6 They didn't find -- they weren't asked
7 to find anything about custody. They weren't
8 asked to determine the difference between
9 Mister --

10 JUSTICE SOTOMAYOR: It doesn't -- it
11 doesn't matter, does it? If they found that he
12 didn't fabricate the statements by your client,
13 that was the whole basis of the decision about
14 there, A, not being coercion or, B, that he
15 wasn't in custody.

16 MR. HOFFMAN: Well, no. I mean, the
17 -- the custody part of it wasn't a part of, and
18 -- and the district court properly found that we
19 were able to go forward with a Fifth Amendment
20 trial after the fabrication case and said --
21 that argument was made to the judge, and they
22 said -- said no, the -- the -- the jury hasn't
23 made that finding.

24 And -- and -- and whether the report
25 was fabricated or not doesn't affect the Miranda

1 violation. It could be a true statement.

2 JUSTICE BARRETT: But doesn't it
3 affect -- I'm -- I'm just confused because I had
4 the same understanding as Justice Sotomayor.

5 I understood your causation argument
6 that you're pressing here, which is, as I
7 understand it, narrower than the jury
8 instruction that your client asked for below, to
9 depend on this falsification of evidence claim
10 --

11 MR. HOFFMAN: Well --

12 JUSTICE BARRETT: -- and that that was
13 important to your proximate cause argument, but,
14 as Justice Sotomayor said, it was my
15 understanding that you lost on the fabrication
16 of evidence claim.

17 MR. HOFFMAN: No. No, our -- our --
18 and -- and -- and it may be useful it seems to
19 me to clear up how the proximate cause issue
20 happened here. There -- there's a separate
21 causation instruction that was a joint
22 instruction from the Defendant and the
23 Plaintiff. That's found on page 118a of the
24 Petitioner's appendix, and it's a moving force
25 causation instruction and it requires the

1 Plaintiff to show that the Defendants were so
2 closely related to the deprivation of the
3 Plaintiff's rights as to be the moving force
4 that caused the ultimate jury. That was the
5 agreed-upon instruction.

6 And -- and we never got to that point
7 on the Miranda claim because the Miranda claim
8 was never presented to the jury. So there
9 wasn't any issue about proximate cause because
10 it wasn't -- it didn't ever get to the jury.

11 That was the agreed-upon instruction
12 for the Fifth Amendment claim that the Judge
13 actually allowed to go forward. There's
14 never -- the -- the Defendant never asked for a
15 superseding cause instruction. The Defendant
16 never raised any of the issues that have been
17 raised in this Court in the district court.

18 There was an agreed-upon instruction.
19 The Defendant never made any claim in the Ninth
20 Circuit about proximate cause. You can read all
21 of the briefs. There's not a word about
22 causation in --

23 JUSTICE BREYER: Well, but still, what
24 is your -- I mean, suppose I think
25 hypothetically that when a improperly obtained

1 confession is introduced into the trial, the
2 person who does it is the prosecutor and he has
3 immunity and he is the superseding cause of
4 however this bad thing happened to occur, unless
5 the policeman's there, and then he has immunity
6 because there's a witness.

7 MR. HOFFMAN: Well, yeah.

8 JUSTICE BREYER: But there might be a
9 case where that policeman outside of court said
10 to the prosecutor, this is what happened, I gave
11 him 92 Miranda warnings, and he is deliberately
12 lying, that policeman, in which case maybe --
13 maybe you can bring a case against him.

14 Now suppose I start from that and say
15 what did you say here to say this falls into the
16 latter category in the lower courts.

17 MR. HOFFMAN: Well, what -- well, in
18 the lower court, what our -- what our -- and --
19 and let me back up. The -- our --

20 JUSTICE BREYER: No, no. Or here. I
21 mean, I haven't seen anything even here that
22 says that.

23 MR. HOFFMAN: Well, our -- our
24 argument is in response to the Petitioner's
25 argument that there can never be proximate

1 cause, which is a completely different argument.

2 JUSTICE BREYER: No, no, but if that
3 were -- that's his -- they say never, okay?

4 MR. HOFFMAN: They say never.

5 JUSTICE BREYER: I'd say -- suppose I
6 said hypothetically hardly ever.

7 MR. HOFFMAN: Well --

8 JUSTICE BREYER: But there could be a
9 situation where the policeman is lying through
10 his teeth to the prosecutor, dot, dot, dot, fill
11 in the blanks. But there is no indication that
12 that is what happened in this case.

13 MR. HOFFMAN: That's exact --

14 JUSTICE BREYER: Now that last part is
15 what you think is wrong.

16 MR. HOFFMAN: That's --

17 JUSTICE BREYER: So I'm asking you
18 what to look at to show that you are right and
19 that last part's wrong.

20 MR. HOFFMAN: We've -- both sides have
21 pointed to the testimony at trial. The
22 testimony at trial was Mr. -- Deputy Vega said
23 this was a casual -- this was a statement that
24 was utterly voluntary, the -- that he -- you
25 know, Mr. Tekoh came and said, I made a mistake.

1 I wrote down the confession. Mr. Tekoh's
2 testimony --

3 JUSTICE BREYER: All right. At trial,
4 you have the witness immunity problem.

5 MR. HOFFMAN: Well, no, the --

6 JUSTICE BREYER: So was there anything
7 other than that out -- outside of trial?

8 MR. HOFFMAN: Well, the -- first of
9 all --

10 JUSTICE BREYER: I'm not saying you
11 lose on the witness immunity thing. I'm just
12 boxing it in my mind.

13 MR. HOFFMAN: Well, right. What I'm
14 saying -- there -- the question about the -- the
15 steps at -- the first thing, you asked me where
16 this was in the trial. In the trial, there has
17 always been this complete dispute between what
18 happened in that room. Mr. Tekoh says he's put
19 in a -- in a closed room for an hour. He is
20 berated and basically threatened with
21 deportation with -- with an officer with -- with
22 -- with his hand on a gun.

23 JUSTICE BARRETT: But didn't you lose
24 that claim? Didn't --

25 MR. HOFFMAN: No.

1 JUSTICE BARRETT: -- wasn't that part
2 of -- because you lost -- didn't you bring a
3 claim, another Fifth Amendment claim, for
4 coercion that you lost and another fabrication
5 of evidence --

6 MR. HOFFMAN: Well --

7 JUSTICE BARRETT: -- claim that you
8 lost, which would preclude --

9 MR. HOFFMAN: Well, we lost the
10 fabrication of evidence claim, but that's a
11 claim that -- that the evidence was false --
12 deliberately falsified by the officer with --
13 meaning the report -- the argument that -- that
14 the -- that the officer actually did the report
15 or falsified it, which is different from this
16 claim.

17 And -- and on the coercion claim, it
18 is true that the second jury found no coercion,
19 and we had an argument that the expert was
20 wrongfully excluded that the Ninth Circuit
21 didn't deal with. But the Ninth Circuit also
22 vacated that -- that -- that judgment. And so
23 it's not clear what that status is.

24 And -- and -- and our argument is that
25 if -- if the district judge had -- had -- had

1 instructed the jury on the Miranda theory, we
2 wouldn't have to have gone through any of these.
3 We'd be done by now. But either -- either --

4 JUSTICE SOTOMAYOR: I'm still --

5 MR. HOFFMAN: -- either it's a
6 custodial interrogation or not, and either
7 Deputy Vega lied or he didn't.

8 JUSTICE SOTOMAYOR: Counsel, I guess
9 my problem has been your brief says, if the
10 police officer told the truth and the government
11 and the prosecutor admitted the statement based
12 on truthful information, there's no liability
13 under 1983.

14 MR. HOFFMAN: Correct.

15 JUSTICE SOTOMAYOR: Correct?

16 MR. HOFFMAN: Yes, we agree.

17 JUSTICE SOTOMAYOR: If the police
18 officer, however, was the inducing cause by
19 lying for an admission of the evidence that
20 should otherwise not have been admitted, then I
21 win. I don't see anywhere in the record below
22 before either judge in the two trials you had
23 where you made that statement in that way.

24 MR. HOFFMAN: We didn't make that
25 statement in that way because both sides were

1 operating under Ninth Circuit precedent, which
2 didn't require you to make that statement. We
3 didn't elevate the standard for proximate cause
4 on our own.

5 What -- what -- what we've responded
6 to in this Court is their argument that it
7 should be a categorical exclusion. And what
8 we're saying is, when there's officer
9 misconduct, as we claim happened here, that that
10 should be the basis for proximate cause.

11 In the -- in the -- in the -- in the
12 court below, both sides argued on that causation
13 instruction, which doesn't include that. We
14 didn't ask to have an elevated causation
15 instruction that would make it harder for us to
16 prove our case. We accepted the Defendant's
17 instruction.

18 You know, and I -- I'm -- I'm sure
19 the -- you know, what's confusing about all this
20 is that the procedural history with respect to
21 proximate causation is that no one really
22 thought this was a serious issue in the district
23 court. I don't think the defense even made a
24 serious contention that --

25 JUSTICE BREYER: Well, what about now?

1 Can you say to us right now that you have some
2 evidence you would like to introduce that the
3 policeman did mislead the prosecutor about what
4 happened, other than the policeman speaking as a
5 witness?

6 MR. HOFFMAN: Well, the -- the -- the
7 evidence that -- that I would submit to the
8 Court would be, first of all, the reports. The
9 reports omit the true circumstances of the
10 interrogation, make it seem like a completely
11 voluntary statement and that he confessed
12 willingly, and don't say anything about the fact
13 that there's an hour-long interrogation in a
14 closed room with threats and -- and all the rest
15 that would make it clearly a custodial
16 interrogation.

17 There's some evidence -- and -- and
18 the record is spotty on this because none of the
19 parties focused on it -- that the prosecutor got
20 the information about the statements from Deputy
21 Vega, and Deputy Vega then testified about this
22 other story throughout the proceedings.

23 Whether or not that's covered by
24 witness immunity is nothing -- that's never been
25 argued before. At no point did the defense ever

1 say, well, you -- it can't be proximate cause
2 because your evidence is barred by witness
3 immunity. And that issue never got litigated as
4 to whether each of the steps in which Deputy
5 Vega gave the same false account throughout the
6 proceedings.

7 And so what would happen -- I mean,
8 under the -- the question I guess is, if the
9 Court is inclined to believe the Ninth Circuit's
10 view of proximate cause, which seems to be based
11 on Monroe natural, unforeseeable consequences
12 and -- and common law principles of proximate
13 cause, if that sweeps too broadly, what we're
14 saying is that in this case at least, it's
15 really a binary choice.

16 If -- if Deputy Vega is believed,
17 there's no violation. So we don't even get to
18 proximate cause. If our client is believed,
19 then we believe that should be the basis for
20 proximate cause because you can't allow officer
21 misconduct that deceives the circuit breakers in
22 the system. The prosecutor and the judge -- and
23 judge are the circuit breakers, right? They're
24 the ones supposed to exercise independent
25 judgment to make sure that constitutionally

1 impermissible evidence is not introduced in
2 violation of the Fifth Amendment. If the
3 officer actually causes -- causes the person to
4 be subjected to the violation, which is the
5 language of Section 1983, by deceiving the
6 prosecutor, then that should be at least one of
7 the circumstances in which this could happen.

8 Now what would happen, I think, if --
9 if the Court agrees with our first position,
10 that a Miranda violation isn't a violation of a
11 right secured by the Constitution for 1983
12 purposes, the case would go back for further
13 proceedings with respect to proximate cause, and
14 I assume that the defense would raise a lot of
15 the issues that they're now raising here that
16 they've never raised before.

17 CHIEF JUSTICE ROBERTS: Counsel, this
18 was a huge issue in the late '70s, early '80s.
19 This was a -- a staple of panel discussions in
20 criminal law, partly because Miranda was a
21 little more controversial back then than it may
22 be now. And Assistant Attorney General
23 Rehnquist, Justice Rehnquist, he would have been
24 very aware of the debate we're having today.

25 And when it came to Dickerson, he was

1 also somebody careful with his words, he didn't
2 say Miranda is in the Constitution. He talked
3 about constitutional underpinnings,
4 constitutional basis.

5 And I'm -- I don't know, of course,
6 but it would surprise me if that -- those
7 particular formulations were just happenstance.
8 And I doubt that he'd be surprised that we were
9 having this debate now, 20 years later, after
10 Dickerson. Don't you think that if, in fact,
11 Dickerson said what you say it said, you could
12 point to something in that opinion that said
13 expressly that and did not have a particular
14 nuance like basis underpinning all that?

15 MR. HOFFMAN: Well, I am not sure why
16 Chief Justice Rehnquist wrote in the nuanced way
17 that he did. Our position is that the -- the
18 consequence of his analysis is that Miranda is a
19 constitutional decision and that Miranda defines
20 the circumstances in which custodial statements
21 can be introduced in -- in a criminal trial and
22 that if Miranda is violated, the violation has
23 to be of the Fifth Amendment.

24 And I think this goes to Justice
25 Barrett's question, which is what is the -- what

1 is the power that the Court has, right? Is --
2 is this a power that the Court has that even
3 goes beyond specific constitutional rights, that
4 there's an -- an ability that the Court has to
5 create any rules that it wants independent of a
6 -- of a violation?

7 I think the narrower and I think
8 better constitutionally-based argument would be
9 that that's what Dickerson has to mean, that --
10 that the violation of the Miranda -- core
11 Miranda rule, which is what we're talking about
12 here. We're not talking about any of the
13 periphery. We're talking about the core Miranda
14 rule, that that -- that that -- what -- what
15 Miranda meant was that they're defining the
16 circumstances where there's a Fifth Amendment
17 violation.

18 If you violate these Miranda, and you
19 introduce that statement in a case-in-chief, a
20 Fifth Amendment violation has occurred. And if
21 --

22 JUSTICE KAVANAUGH: In thinking about
23 --

24 MR. HOFFMAN: Sorry.

25 JUSTICE KAVANAUGH: Keep going, sorry.

1 MR. HOFFMAN: No, sorry, Justice --

2 JUSTICE KAVANAUGH: In thinking about
3 the status of Miranda and Dickerson, it seems
4 that the other side's position is, accept it but
5 don't extend it, if I could boil it down, accept
6 it but don't extend it.

7 And we've done that with other
8 precedents of that era even, like Bivens, we
9 accepted. We haven't declined to extend it.
10 We've declined to extend it. And then that --
11 then they argue, I think, that this seems like
12 an extension of Miranda and Dickerson to a new
13 context, 1983 suits, that it has not previously
14 extended to.

15 So why isn't that the right way to
16 think about that case, where -- where would you
17 get off on --

18 MR. HOFFMAN: Well --

19 JUSTICE KAVANAUGH: -- on that
20 analysis?

21 MR. HOFFMAN: -- what we would say is
22 that, to be sure, the Court has considered the
23 circumstances in which the Miranda rule applies
24 in a variety of ways.

25 And I think Chief Justice Rehnquist

1 dealt with that issue in Dickerson and said,
2 yeah, I mean, the fact that there are exceptions
3 and changes to the Miranda rule is just the
4 natural evolution of a constitutional rule.

5 We're not talking about an extension
6 of the Miranda rule. We're talking about the
7 core principle of the Miranda rule, the
8 introduction of a custodial statement in the
9 prosecution's case-in-chief.

10 Now, with respect to Section 1983, our
11 position is that 1983 provides the authority for
12 a -- a -- a cause of action for the violation of
13 that right. In other words, once the -- the
14 core Miranda right is violated and the Fifth
15 Amendment right is violated, Section 1983
16 applies to give someone a remedy for the
17 deprivation of a right secured by the
18 constitution which is that violation.

19 And so Congress has done that.
20 Congress could decide not to do that. Congress
21 could decide to limit it. And to be sure, I
22 know my colleague talked about the -- the
23 Thompson case, for example.

24 Well, the Thompson case was about the
25 elements of that cause of action, right? I

1 mean, it was about whether you had to prove
2 innocence or not for that. And -- and the Court
3 has always gone back to common law principles
4 and, if necessary, adjusted them and dealt with
5 them.

6 JUSTICE KAVANAUGH: I think you might
7 --

8 MR. HOFFMAN: But it hasn't excluded
9 an entire right like -- I mean, the Fifth
10 Amendment right is one of the fundamental rights
11 in the Constitution and Bill of Rights. Why
12 would you exclude this if a police officer
13 causes someone to be subjected to it?

14 JUSTICE KAVANAUGH: But I think their
15 response and the Solicitor General's office said
16 this as well, which is that the right is fully
17 remedied -- a violation of the right is fully
18 remedied by the exclusion of the evidence at
19 trial, and this would be some -- some extension
20 of that, something new that would go beyond the
21 way the right has ordinarily been characterized.

22 MR. HOFFMAN: But -- but -- but,
23 clearly, that isn't a complete remedy. I'm
24 standing here on behalf of -- of Mr. Tekoh, who
25 was acquitted and has absolutely no other remedy

1 than a Section 1983 violation.

2 His life was destroyed by these
3 actions. He gets acquitted. When the full
4 story comes out, he is contending that the
5 officer set him up for this and basically set up
6 the prosecutor and the -- and the court too.

7 What remedy does he have? That's what
8 Section 1983 is for. There may not be a lot of
9 these cases. There haven't been a lot of these
10 cases since Schnorenberg, which was one of the
11 first cases in the Seventh Circuit to agree to
12 this proposition. There are a handful of cases.

13 So the other side's contention that
14 all of a sudden there's going to be a ground
15 swell of people filing these cases, that's not
16 going to happen. But, in this -- in the cases
17 where there is officer misconduct, claims of
18 officer misconduct, it doesn't make any sense to
19 withdraw that -- that Section 1983 remedy
20 because policing that kind of conduct guarantees
21 the integrity of the entire system that Miranda
22 is based on.

23 I mean, officers are always going to
24 be involved in the interrogation process.
25 They're the ones that get the statements.

1 Nobody else gets them. And so, if they're not
2 completely honest, then the system breaks down.

3 But, when they are completely honest,
4 I mean, you can look at the Fifth Circuit's
5 decision in Murray versus Earle where the court
6 in Murray versus Earle says, when an officer
7 gives a completely honest account to an
8 independent neutral intermediary, like a judge,
9 then proximate cause is cut off.

10 They could have asked for a -- a -- a
11 superseding cause instruction. They could have
12 made arguments about proximate causation. They
13 never did. So that's why we're making it here,
14 which doesn't make any sense, but, you know, the
15 Court granted cert, so we're here.

16 (Laughter.)

17 MR. HOFFMAN: We -- we -- we -- we
18 tried to say that you shouldn't do it, but what
19 can we say? I don't know if there are other
20 questions. Let me just have a second.

21 I -- I think that the -- the Solicitor
22 General's position is important in the sense
23 that I think, although the Solicitor General
24 tries to limit Section 1983 liability to trial
25 rights, I think the Solicitor General of the

1 United States understands what Dickerson means
2 and that it is a constitutional rule. If
3 there's a constitutional violation, Section 1983
4 provides remedies in that situation.

5 And I think, as Justice Scalia said in
6 Hudson versus Michigan, Section 1983 plays a
7 very important remedial -- a remedial role and a
8 deterrent role, and that we think that for --
9 for the violation of fundamental rights like
10 this, if our client is believed, there should be
11 a remedy.

12 And -- and I'm sorry for the confusion
13 about the fabrication and the way that the
14 procedure happened, but it's been a -- it was
15 a -- the procedural history is obviously very
16 complex in this. But it would have been a lot
17 simpler if Judge Wu had just agreed that
18 Dickerson gave us the right to make this claim,
19 which is what the Ninth Circuit said that we
20 had.

21 CHIEF JUSTICE ROBERTS: Does your
22 argument that the officer can be liable for the
23 decision of the prosecutor, or involved in that,
24 present difficult factual questions about who's
25 going to examine the people involved?

1 MR. HOFFMAN: I don't think it
2 presents any more difficult factual or discovery
3 issues than many other cases.

4 CHIEF JUSTICE ROBERTS: Well, I mean,
5 you say that, okay, you're -- you're -- the
6 officer, you're subject to liability because you
7 prevailed upon the prosecutor to put the
8 evidence in, to put the statement in. You
9 misrepresented the circumstances of the
10 statement, you know, and the officer or the
11 prosecutor, are you going to ask him, why did
12 you put this evidence in? You're going to
13 ask -- ask the officer what did you tell the
14 prosecutor?

15 MR. HOFFMAN: I mean, in fact, there
16 was -- there was evidence from the prosecutor in
17 the case, in the trial. The prosecutor
18 testified about --

19 CHIEF JUSTICE ROBERTS: Is that -- I
20 mean, I guess I'm asking whether that's a good
21 thing, to be able to go back and examine the
22 prosecutor about his conduct of the -- of the
23 litigation.

24 MR. HOFFMAN: Yeah, I think that when
25 you have a claim like this of -- of misconduct

1 that leads to this kind of fundamental violation
2 that -- that it is a good thing to -- to give
3 someone in Mr. Tekoh's position a chance to
4 vindicate his rights. I think that's what
5 Congress meant in Section 1983.

6 There are a lot of cases where there
7 are difficulties of discovery or immunity or --
8 or those issues, and we understand that. I
9 mean, it could be that we can't prove our case
10 because of those issues. I mean, that's
11 possible.

12 We think we can, but it's possible
13 that we can't. And, you know, we accept the
14 fact that there are -- there are constitutional
15 rules or rules of immunity in Section 1983 that
16 could create difficulties.

17 But those are the kinds of
18 difficulties that civil rights lawyers deal with
19 every day and -- and defense lawyers deal with
20 every day, and I don't think they were any more
21 unusual in this case than many cases that I've
22 been a part of.

23 CHIEF JUSTICE ROBERTS: Well, if you
24 can ask the prosecutor, did you get discovery
25 into his notes, because they might say, you

1 know, this is what Joe says -- we ought -- we
2 ought to use this, or Joe says, look, I beat --
3 beat the confession out of the guy, but I'm not
4 going to testify to that effect or --

5 MR. HOFFMAN: Well, I -- I don't know
6 whether you could get the prosecutor's notes, I
7 mean, whether there would be a -- there
8 obviously would be a discovery dispute about
9 that, I assume, since that happens in most of
10 these cases.

11 I think that -- it seems to me that
12 there are tools in the discovery process that
13 are handled every day across the country in
14 district courts dealing with civil rights cases
15 that are adequate to handle any of those issues.
16 And I think there's also issues relating to -- I
17 mean, the -- Heck versus Humphrey will make
18 these kind of cases, you know, less numerous,
19 because if you are convicted, then you have to
20 go through the whole appellate process.
21 Qualified immunity may apply in some
22 circumstances to limit the circumstances in
23 which officers can be found liable.

24 If officers come forward, as they
25 should do, to give an honest and complete

1 account of their -- the circumstances of an
2 interrogation and the prosecutor decides to go
3 forward and the error is in the court accepting
4 something that it shouldn't have accepted, I
5 don't think the officer is responsible there.
6 So we're not saying that.

7 You know, our -- our position is that,
8 at least in the context of this case, there's a
9 stark choice between a -- a deputy who, from our
10 standpoint, told a completely false story to get
11 this statement in, versus our client who tells a
12 completely different story supported by
13 co-workers, you know, to also contradict the --
14 the officer.

15 And in that kind of situation, what
16 we're suggesting is that the rules of proximate
17 cause should at least allow for that. And --
18 and we think that if the Court remands the case,
19 accepts our first principle so that we can
20 actually go forward with that claim, the Ninth
21 Circuit could obviously consider whatever rules
22 this Court deems necessary for proximate cause
23 or ask the Ninth Circuit to start all over and
24 -- and do another analysis.

25 But we think we can meet any principle

1 of proximate cause other than the categorical
2 "you can't show proximate cause" principle.

3 CHIEF JUSTICE ROBERTS: Okay, counsel.
4 Justice -- anything?

5 Okay. Thank you, counsel.

6 MR. HOFFMAN: Thank you.

7 CHIEF JUSTICE ROBERTS: Rebuttal,
8 Mr. Martinez?

9 REBUTTAL ARGUMENT OF ROMAN MARTINEZ
10 ON BEHALF OF THE PETITIONER

11 MR. MARTINEZ: My friend on the other
12 side is trying to preserve Dickerson by
13 interpreting it in a way that was rejected by
14 Dickerson's own author and is inconsistent with
15 decisions of this Court both predating Dickerson
16 and postdating Dickerson.

17 Dickerson gives Miranda constitutional
18 status, but it doesn't say that Miranda creates
19 a Fifth Amendment right. Our reading of
20 Dickerson and the case law as a whole harmonizes
21 the doctrine, and it's consistent with the
22 language of Dickerson itself; the prior cases,
23 Harris, Quarles, Tucker, Elstad, Payne; the
24 Chavez plurality; and five justices in their
25 votes in the Patane case, where five justices

1 agreed that Dickerson did not undermine the
2 pre-Dickerson post-Miranda cases.

3 We think you should adopt Chief
4 Justice Rehnquist's consistent, commonsense
5 middle ground approach to Miranda. You should
6 preserve Dickerson, but you should hold there's
7 no Fifth Amendment right here giving rise to
8 1983.

9 As to causation, they've raised a
10 totally new theory here. It wasn't raised
11 below. They described their own jury
12 instruction, the one at issue here, at the
13 charge conference as -- in causation terms.
14 That's at JA 296. Everyone has always
15 understood their causation theory not to require
16 a lie. That's how the Ninth Circuit understood
17 it. That's why the Ninth Circuit addressed this
18 issue this way.

19 Their new theory, even if it weren't
20 forfeited, it would be factually untenable
21 because there's no evidence of any lies that is
22 actionable here. Their brief points repeatedly
23 to lies that were allegedly told at the
24 suppression hearing, but the testimony at the
25 suppression hearing is immunized.

1 They also point to the statement of
2 possible -- proximate cause and to the incident
3 report. But the alleged lies there don't bear
4 on the custody issue that is at the core --
5 that's at the core of this Miranda case. And,
6 in any event, you have a jury that said that
7 there weren't lies there. A jury rejected the
8 fabrication of evidence claim based on those
9 exact same reports.

10 Ultimately, Your Honors, their --
11 their claim here is that they need a remedy,
12 they need a chance to get relief for this
13 alleged misconduct. They had two chances to do
14 that. They brought a Fourteenth Amendment due
15 process theory. They brought a coercion theory.
16 The jury agreed with us on both theories. This
17 case should end.

18 We respectfully ask you to reverse.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 The case is submitted.

22 (Whereupon, at 11:21 a.m., the case
23 was submitted.)

24

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