No. 21-499

In the Supreme Court of the United States

CARLOS VEGA,

Petitioner,

v.

TERENCE B. TEKOH,

Respondent.

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

BRIEF OF ARIZONA, ALABAMA, ARKANSAS, FLORIDA, GEORGIA, IDAHO, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, AND WEST VIRGINIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

MARK BRNOVICH
Attorney General of Arizona

JOSEPH A. KANEFIELD
Chief Deputy and Chief of Staff

BRUNN W. ROYSDEN III
Solicitor General

DREW C. ENSIGN
Deputy Solicitor General
Counsel of Record
LINLEY WILSON
Deputy Solicitor General
BRIAN R. COFFMAN
Assistant Attorney General
OFFICE OF THE ARIZONA ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-3333
drew.ensign@azag.gov

Counsel for the State of Arizona
(Additional Counsel listed on Inside Cover)

STEVE MARSHALL
Alabama Attorney General

LESLIE RUTLEDGE
Arkansas Attorney General

ASHLEY MOODY
Florida Attorney General

CHRISTOPHER M. CARR
Georgia Attorney General

LAWRENCE G. WASDEN
Idaho Attorney General

THEODORE E. ROKITA
Indiana Attorney General

DEREK SCHMIDT
Kansas Attorney General

DANIEL CAMERON
Kentucky Attorney General

JEFF LANDRY
Louisiana Attorney General

LYNN FITCH
Mississippi Attorney General

ERIC S. SCHMITT
Missouri Attorney General

AUSTIN KNUDSEN
Montana Attorney General

DOUGLAS J. PETERSON
Nebraska Attorney General

DAVE YOST
Ohio Attorney General

JOHN M. O'CONNOR
Oklahoma Attorney General

ALAN WILSON
South Carolina Attorney General

JASON R. RAVNSBORG
South Dakota Attorney General

HERBERT H. SLATERY III
Tennessee Attorney General

KEN PAXTON
Texas Attorney General

SEAN D. REYES
Utah Attorney General

PATRICK MORRISEY
West Virginia Attorney General

TABLE OF CONTENTS

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. *Miranda* Announced A Judicially-Created Prophylactic Rule, Not A Freestanding Constitutional Right. 3

A. *Miranda* Created A Prophylactic Rule. 4

B. This Court Has Repeatedly Recognized Limits To *Miranda*'s Reach 7

II. An Officer's Failure To Read *Miranda* Warnings Is Not Actionable Under Section 1983. 10

A. *Miranda* Did Not Create A Substantive Right That Can Be Vindicated Through Section 1983. 11

B. Police Officers Do Not Proximately Cause Unwarned Confessions To Be Admitted Into Evidence In A Criminal Trial. 13

1. Admitting an unwarned confession at a criminal trial is not reasonably foreseeable. 14

2. Independent actors break the chain of causation from a police officer. 15

CONCLUSION 17

TABLE OF AUTHORITIES

CASES

Barts v. Joyner,
865 F.2d 1187 (11th Cir. 1989) 16, 17

Chavez v. Martinez,
538 U.S. 760 (2003) 4, 6, 9, 10, 12

Dickerson v. United States,
530 U.S. 428 (2000) 1, 5, 8, 9

Dunaway v. New York,
442 U.S. 200 (1979) 15

Egervary v. Young,
366 F.3d 238 (3rd Cir. 2004) 16

Exxon Co., U.S.A. v. Sofec, Inc.,
517 U.S. 830 (1996) 16

Golden State Transit Corp. v. City of Los Angeles,
493 U.S. 103 (1989) 11

Graham v. Connor,
490 U.S. 386 (1989) 11

Hensley v. Carey,
818 F.2d 646 (7th Cir. 1987) 12

Higazy v. Templeton,
505 F.3d 161 (2nd Cir. 2007)................................ 16

Howes v. Fields,
565 U.S. 499 (2012) 6

Hutsell v. Sayre,
5 F.3d 996 (6th Cir. 1993) 13

Imbler v. Pachtman,
424 U.S. 409 (1976) 17

J.D.B. v. North Carolina,
564 U.S. 261 (2011) 6

Knick v. Township of Scott, Pennsylvania,
139 S. Ct. 2162 (2019) 11

Malley v. Briggs,
475 U.S. 335 (1986) 13, 15

Maryland v. Shatzer,
559 U.S. 98 (2010) 6

Michigan v. Harvey,
494 U.S. 344 (1990) 3

Michigan v. Tucker,
417 U.S. 433 (1974) 3, 6, 7

Miranda v. Arizona,
384 U.S. 436 (1966) 1, 2, 5, 6, 9, 14

Monroe v. Paper,
365 U.S. 167 (1961) 15

Montejo v. Louisiana,
556 U.S. 778 (2009) 6

Murray v. Earle,
405 F.3d 278 (5th Cir. 2005) 16, 17

New Jersey v. Portash,
440 U.S. 450 (1979) 7

New York v. Quarles,
467 U.S. 649 (1984) 8, 15

Oregon v. Elstad,
470 U.S. 298 (1985) 8, 14

Oregon v. Hass,
420 U.S. 714 (1975) 7

Oregon v. Ice,
555 U.S. 160 (2009) 1

Pace v. City of Des Moines,
201 F.3d 1050 (8th Cir. 2000) 13

Stump v. Sparkman,
435 U.S. 349 (1978) 17

Townes v. City of New York,
176 F.3d 138 (2d Cir.1999)....................................16

United States v. Davila,
569 U.S. 597 (2013) 4

United States v. Patane,
542 U.S. 630 (2004) 9, 10

Wilkins v. Gaddy,
559 U.S. 34 (2010) 12

Withrow v. Williams,
507 U.S. 680 (1993) 14

STATUTES

42 U.S.C. § 1983 ....11, 13

OTHER AUTHORITIES

Brian K. Landsberg, *Safeguarding Constitutional Rights: The Uses and Limits of Prophylactic Rules*, 66 Tenn. L. Rev. 925 (1999) 3

Erwin Chemerinsky, *The Court Should Have Remained Silent: Why the Court Erred in Deciding Dickerson v. United States*, 149 U. Pa. L. Rev. 287 (2000) 9

Joseph D. Grano, *Miranda's Constitutional Difficulties: A Reply to Professor Schulhofer*, 55 U. Chi. L. Rev. 174 (1988) 6

Michael A. Cantrell, *Constitutional Penumbras and Prophylactic Rights: The Right to Counsel and the "Fruit of the Poisonous Tree"*, 40 Am. J. Crim. L. 111 (2013) 9

Robert Frost, *Mending Wall*, in North of Boston 11 (1914) 3

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V 2, 5

INTEREST OF AMICI CURIAE

Amici Curiae are the States of Arizona, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia (collectively, "Amici States"). Amici States' sworn law enforcement officers investigate tens of thousands of crimes every year and are routinely named defendants in suits brought under 42 U.S.C. § 1983. In ferreting out crime, officers make on-the-spot judgment calls every day, including whether to read a suspect the prophylactic warnings required by *Miranda v. Arizona*, 384 U.S. 436, 443 (1966).

The Ninth Circuit erroneously held below that an officer's taking of an unwarned statement can give rise to liability under Section 1983. That conclusion frustrates Amici States' interests. Indeed, "administration of a discrete criminal justice system is among the basic sovereign prerogatives States retain." *Oregon v. Ice*, 555 U.S. 160, 168 (2009). Application of state-created evidentiary rules—which may very well result in suppression of a suspect's unwarned statement—is a sufficient mechanism to ensure compliance with *Miranda*. This is particularly true today, given that "there are more remedies available for abusive police conduct than there were at the time *Miranda* was decided[.]" *Dickerson v. United States*, 530 U.S. 428, 442 (2000).

The Ninth Circuit's decision below is erroneous and, if accepted by this Court, would cause all states to expend valuable resources litigating claims that other circuit courts properly preclude as a matter of

law. This Court should reject the Ninth Circuit's unwarranted expansion of the scope of liability under Section 1983.

SUMMARY OF ARGUMENT

This case presents an opportunity for the Court to clarify *Miranda*'s doctrinal underpinnings and circumscribe *Miranda*'s rule to its appropriate place in this Court's jurisprudence. As an initial matter, *Miranda* is conspicuously unmoored from both the text and history of the Fifth Amendment. The Fifth Amendment's text guarantees only that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. It simply does not address pre-interrogation warnings by its terms at all. Similarly, nothing in the Self-Incrimination Clause's history contemplates pre-interrogation warnings. *See Miranda*, 384 U.S. at 458–63 (reviewing history of the right against self-incrimination but never claiming that certain warnings before custodial interrogation were historically required or even considered): App.84a (Bumatay, J., dissenting) ("[A]s as a matter of history, the right against self-incrimination did not include the right to be given particular warnings before custodial interrogation may begin."). The pre-interrogation warnings were a novel creation of this Court in *Miranda*, and are only defensible (if at all) as a judge-made prophylactic rule.

Amici States agree with Petitioner and the dissenting judges below that the Ninth Circuit's decision allowing officers to be sued for *Miranda* violations alone is fundamentally flawed. That conclusion finds no support in this Court's

precedents or the text of Section 1983, and is an unwarranted expansion of *Miranda*.

ARGUMENT

I. *Miranda* Announced A Judicially-Created Prophylactic Rule, Not A Freestanding Constitutional Right

As the venerable adage goes, "Good fences make good neighbors." Robert Frost, *Mending Wall*, in North of Boston 11, 12–13 (1914). But that is not to say the "fences" *are* the "neighbors."

So too with prophylactic rules: as proverbial "fences" they are meant to safeguard constitutional rights (the "neighbors") but are not themselves the rights/neighbors. *See Michigan v. Harvey*, 494 U.S. 344, 350–51 (1990) (referring to prophylactic rules or "procedural safeguards" as "measures designed to ensure that constitutional rights are protected," and stating such rules "are 'not themselves rights protected by the Constitution'" (quoting *Michigan v. Tucker*, 417 U.S. 433, 444 (1974))).

This Court has constructed prophylactic rules for much the same reason that fences may be erected between neighbors: the risks of encroachment are judged too great to allow the landscape to remain unaltered. *See* Brian K. Landsberg, *Safeguarding Constitutional Rights: The Uses and Limits of Prophylactic Rules*, 66 Tenn. L. Rev. 925, 950 (1999) ("[Prophylactic rules] are based on the Constitution because they are predicated on a judicial judgment that the risk of a constitutional violation is sufficiently great that simple case-by-case enforcement of the core right is insufficient to secure that right."). The prophylactic rules, in other words,

create a barrier between the perceived risks of harms and the constitutional right.

But that's all prophylactic rules are: an intentionally created obstacle that make trespassings harder. They are not the constitutional rights they are meant to protect or even an extension of those rights. *Chavez v. Martinez*, 538 U.S. 760, 772 (2003) (plurality opinion) ("Rules designed to safeguard a constitutional right [] do not extend the scope of the constitutional right itself…."). Rather, prophylactic rules resemble evidentiary or procedural rules because both inject large doses of preventative medicine into the criminal justice system—medicine that is meant to insulate constitutional rights from any close violations. *See, e.g.*, *United States v. Davila*, 569 U.S. 597, 610 (2013) (recognizing criminal procedural rule prohibiting judicial involvement in plea negotiations as prophylactic, and stating "particular facts and circumstances matter" to determine whether defendant was deprived of constitutional right to elect a trial).

A violation of the prophylactic rule is thus *not* equivalent to a violation of the underlying right itself. Indeed, the *raison d'être* for prophylactic rules is to sweep more broadly, reaching actions that invite only a *risk*—sometimes unrealized—of a violation of the right. As a mere prophylactic rule, a violation of *Miranda* cannot be equated with a violation of the Self-Incrimination Clause itself, and hence is not actionable under Section 1983.

A. *Miranda* Created A Prophylactic Rule

This stark contrast between a prophylactic rule and a constitutional right is readily apparent in

Miranda itself. There, the Court recounted the tactics police used in custodial interrogations, *Miranda*, 384 U.S. at 448–55, and it was alarmed about the "interrogation atmosphere and the evils it can bring," *id.* at 456. The Court found that the interrogation tactics "work[ed] to undermine the individual's will to resist and to compel him to speak." *Id.* at 467. Consequently, the Court believed that in-custody interrogation "jeopardized" the Fifth Amendment right that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." *Id.* at 442, 478; U.S. Const. amend. V. The Court concluded that "protective devices" or "procedural safeguards" needed to be "erected about the privilege" against self-incrimination to "combat" the pressures inherent in custodial interrogation. *Miranda*, 384 U.S. at 458, 467, 477–79.

The protective devices or procedural safeguards this Court chose to implement are what are now widely known as *Miranda* warnings: those accused of crimes and in custody must be informed, before questioning, that they have the right to remain silent, anything they say can be used against them in a court of law, they have the right to an attorney, and an attorney will be appointed if they cannot afford one. *Id.* at 478–79. This Court explained in painstaking, legislative-like detail the *specific* warning that must be given and the threat to the right against self-incrimination it was attempting to prevent. *Id.* at 467–77.

Because *Miranda* reads more like a statute than a judicial decision, it has been subject to extensive criticism—including by members of this Court. *See Dickerson v. United States*, 530 U.S. 428, 465 n.2 (2000) (Scalia, J., dissenting) ("*Miranda* has been

continually criticized by lawyers, law enforcement officials, and scholars since its pronouncement....”); *Michigan v. Tucker*, 417 U.S. 433, 460 (1974) (White, J., concurring) (“I continue to think that *Miranda v. Arizona*, 384 U.S. 436 (1966), was illconceived and without warrant in the Constitution.”); *see also* Joseph D. Grano, *Miranda’s Constitutional Difficulties: A Reply to Professor Schulhofer*, 55 U. Chi. L. Rev. 174 (1988) (presenting argument that *Miranda* exercised “judicial authority not conveyed by the Constitution”).

This Court has addressed some of that criticism by making clear that all *Miranda* did was to create a prophylactic rule designed to protect the right against self-incrimination. *See*, *e.g.*, *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (*Miranda* established a “prophylactic” rule designed to “safeguard the constitutional guarantee against self-incrimination.”); *Howes v. Fields*, 565 U.S. 499, 507 (2012) (*Miranda* adopted a “set of prophylactic measures” (quoting *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010))); *Montejo v. Louisiana*, 556 U.S. 778, 794 (2009) (discussing “*Miranda*’s prophylactic protection”); *Chavez*, 538 U.S. at 772 (“[T]he *Miranda* exclusionary rule [is] a prophylactic measure.”).

Importantly, *Miranda* did not hold that the right against self-incrimination was violated merely because police questioned a suspect in custody. *Miranda* instead believed the right against self-incrimination was “jeopardized” during custodial interrogation. 384 U.S. at 478. *Miranda* created a barrier to protect the Fifth Amendment right by requiring police to give certain warnings and by excluding any unwarned statements from trial.

B. This Court Has Repeatedly Recognized Limits To *Miranda*'s Reach

Nothing over the past five decades suggests that *Miranda* warnings have blossomed from a mere prophylactic rule into a full-blown, freestanding constitutional right. As Judge Bumatay correctly recognized in his dissent, this Court has reiterated many times that *Miranda* warnings are "prophylactic" but not once has this Court declared them a "constitutional right." App.89a (collecting cases showing the Court has "described *Miranda* warnings as 'prophylactic' at least 21 times and called them a 'constitutional right' zero times").

Notably, this Court has repeatedly relied on the fact that *Miranda*'s rule is only prophylactic in nature to limit *Miranda*'s reach. For example, in *Michigan v. Tucker*, the Court refused to exclude the "fruits" of a mere *Miranda* violation because *Miranda* warnings are a procedural safeguard, not a constitutional right, and there was no other reason to exclude the fruits. 417 U.S. at 439, 444–50. One year later, in *Oregon v. Hass*, the Court allowed unwarned statements to be admitted for impeachment purposes despite a *Miranda* violation because the statements were voluntary and "the shield provided by *Miranda* is not to be perverted." 420 U.S. 714, 722 (1975); *see also New Jersey v. Portash*, 440 U.S. 450, 458–59 (1979) (stating that the voluntariness of the unwarned statements in *Hass* was central to *Hass*'s holding).

This Court then created a public safety exception to *Miranda* because "the need for answers to questions in a situation posing a threat to the public safety outweigh[ed] the need for the prophylactic

rule protecting the Fifth Amendment's privilege against self-incrimination." *New York v. Quarles*, 467 U.S. 649, 657 (1984). And in *Oregon v. Elstad*, this Court declined to extend the fruit-of-the-poisonous-tree doctrine to a *Miranda* violation because there was no constitutional violation or any other reason to exclude the statement. 470 U.S. 298, 304–09, 317–18 (1985). In *Elstad*, the Court observed that *Miranda* "serves the Fifth Amendment and sweeps more broadly than the Fifth Amendment itself" because *Miranda* "may be triggered even in the absence of a Fifth Amendment violation." *Id.* at 306. Thus, "*Miranda*'s preventive medicine provides a remedy even to the defendant who has suffered no identifiable constitutional harm." *Id.* at 307. This Court emphasized that an officer's error "in administering the prophylactic *Miranda* procedures … should not breed the same irremediable consequences as police infringement of the Fifth Amendment itself." *Id.* at 309.

The majority opinion in *Dickerson v. United States*, 530 U.S. 428 (2000), did not elevate *Miranda* warnings from a prophylactic rule to a constitutional right. Although it said *Miranda* announced a "constitutional rule," 530 U.S. at 444, *Dickerson* never said *Miranda* expanded the Fifth Amendment's right against self-incrimination or created a new constitutional right. Instead, *Dickerson* said that it "need not go further than *Miranda* to decide this case." *Id.* at 442. And as already discussed, *Miranda* never laid down anything but a prophylactic rule. *See supra* at 4-6.

Consequently, the "constitutional rule" in *Miranda* remained a prophylactic rule after *Dickerson*. The rule is only "constitutional" in the

sense that it *protects* a constitutional right and cannot be legislatively abrogated unless other procedural safeguards are at least as protective. *See Dickerson*, 530 U.S. at 444 (holding that Congress cannot supersede *Miranda* legislatively); *Miranda*, 384 U.S. at 477 (describing the "principles announced today" as "deal[ing] with the protection which must be given to the privilege against self-incrimination," and explaining that the delineated warnings or another effective system are "safeguards to be erected about the privilege" during custodial interrogation); *see also* Erwin Chemerinsky, *The Court Should Have Remained Silent: Why the Court Erred in Deciding Dickerson v. United States*, 149 U. Pa. L. Rev. 287, 288 (2000) (recognizing, even after *Dickerson*, that *Miranda* warnings are part of those "judicially created devices for protecting constitutional rights"). Put another way, *Miranda*'s status as a "constitutional rule" is still a "far cry from elevating it to a 'constitutional right.'" App.91a (Bumatay, J., dissenting).

The Court's subsequent treatment of *Miranda* in *Chavez v. Martinez*, 538 U.S. 760 (2003), and *United States v. Patane*, 542 U.S. 630 (2004), confirms that *Miranda* warnings were never elevated to a constitutional right in *Dickerson* or any other case. *See* Michael A. Cantrell, *Constitutional Penumbras and Prophylactic Rights: The Right to Counsel and the "Fruit of the Poisonous Tree,"* 40 Am. J. Crim. L. 111, 143 (2013) (stating that after *Patane*, it is clearer that *Dickerson* did not "elevat[e] the Miranda safeguards to the level of fully-recognized constitutional rights"). The four-justice plurality in *Chavez* concluded that a failure to read *Miranda* warnings "cannot be grounds for a § 1983 action"

because *Miranda* was a "prophylactic measure" designed to prevent violations of the right against self-incrimination and not a constitutional right. *Chavez*, 538 U.S. at 772 (plurality opinion). A two-justice concurrence agreed that *Miranda* was "outside the Fifth Amendment's core" and a "complementary protection," and rejected the § 1983 claim. *Id.* at 778 (Souter, J., concurring). Hence, a majority of justices in *Chavez* agreed that *Miranda* warnings are not a constitutional right.

The same is true in *Patane*. The three-justice plurality noted that *Miranda* was a judge-made prophylactic rule designed to protect the right against self-incrimination, not a constitutional right itself, and declined to exclude from trial the "fruits" of a mere *Miranda* violation. *Patane*, 542 U.S. at 633–34, 639–43 (plurality opinion). A two-justice concurrence agreed with the plurality opinion that *Dickerson* did not undermine *Elstad* or *Quarles*, *id.* at 644–45 (Kennedy, J., concurring), both of which differentiated between Fifth Amendment violations and a violation of *Miranda*'s prophylactic rule, *supra* at 7-8.

For all of these reasons, Amici States agree with Petitioner that *Miranda* only sets forth a prophylactic rule, not a freestanding constitutional right. This Court should therefore reverse the judgment below.

II. An Officer's Failure To Read *Miranda* Warnings Is Not Actionable Under Section 1983

Exposing officers to liability for mere *Miranda* violations is also untenable under Section 1983, not only because *Miranda* is a prophylactic rule, but also

because officers do not proximately cause *Miranda*-violative statements to be admitted into evidence.

A. *Miranda* Did Not Create A Substantive Right That Can Be Vindicated Through Section 1983

Section 1983 provides a cause of action only when a person has suffered the "deprivation of any rights, privileges, or immunities, *secured by the Constitution and laws*." 42 U.S.C. § 1983 (emphasis added). As discussed above, *Miranda* warnings are not a constitutional right but a judge-made, prophylactic rule designed to protect the right against self-incrimination. *See supra* Section I. This Court should therefore not find a cognizable claim for damages when the allegation is that an officer violated *Miranda*'s prophylactic rule instead of the constitutional right against self-incrimination itself.

The purpose of a Section 1983 cause of action is to give individuals the opportunity to seek redress for a violation of a constitutional right.[1] *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 105 (1989). For example, individuals may seek damages for violations of the Fourth Amendment right against unreasonable seizures, *Graham v. Connor*, 490 U.S. 386, 394 (1989) (opining that excessive force claim arising during arrest or investigatory stop and brought under § 1983 invokes Fourth Amendment right to be secure in their person and free from unreasonable seizures); the Fifth Amendment right against government takings without pay, *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162, 2168 (2019) (holding

[1] No federal statutory right is at issue in this case.

that a property owner may bring a § 1983 claim for violations of the Fifth Amendment "when the government takes his property without just compensation"); and the Eighth Amendment right against cruel and unusual punishment, *Wilkins v. Gaddy*, 559 U.S. 34, 36–40 (2010) (examining requirements for proving § 1983 claim alleging violation of Eight Amendment right against cruel and unusual punishment).

But violations of prophylactic rules are treated differently. They are not redressable under Section 1983 because "violations of judicially crafted prophylactic rules do not violate the constitutional rights of any person." *Chavez*, 538 U.S. at 772 (plurality opinion). In *Chavez*, for example, a plurality of the Court decided that "Chavez's failure to read *Miranda* warnings to Martinez did not violate Martinez's constitutional rights and cannot be grounds for a § 1983 action." *Id.*; *see also id.* at 780 (Scalia, J., concurring) ("Section 1983 does not provide remedies for violations of judicially created prophylactic rules, such as the rule of *Miranda*....").

Similarly, the Seventh Circuit has refused to allow liability under Section 1983 for a violation of a prophylactic rule that prohibits the admission of unreliable eyewitness identifications at a criminal trial. *Hensley v. Carey*, 818 F.2d 646, 649–51 (7th Cir. 1987). The Seventh Circuit reasoned, "The rule against admission of evidence from unnecessarily suggestive lineups is a prophylactic rule designed to protect a core right, that is the right to a fair trial, and it is only the violation of the core right and not the prophylactic rule that should be actionable under [Section] 1983." *Id.* at 649. The Sixth and Eighth Circuits have likewise concluded that an unduly

suggestive lineup merely implicates a prophylactic rule, not a constitutional right, and precluded the Section 1983 claims. *Pace v. City of Des Moines*, 201 F.3d 1050, 1055 (8th Cir. 2000) (reasoning that Section 1983 claim for malicious prosecution did not allege violation to right to fair trial but only violation of the prophylactic rule against unduly suggestive lineups); *Hutsell v. Sayre*, 5 F.3d 996, 1005–06 (6th Cir. 1993) (holding that Section 1983 claim did not lie where plaintiff was "not challenging a violation of the core right to a fair trial, but merely the purported violation of a prophylactic rule").

Given how prophylactic rules are treated generally in Section 1983 lawsuits, and that only constitutional rights are redressable under Section 1983, this Court should hold that a *Miranda* violation alone does not give rise to a cognizable claim for damages under Section 1983.

B. Police Officers Do Not Proximately Cause Unwarned Confessions To Be Admitted Into Evidence In A Criminal Trial

As Vega correctly asserts, the Ninth Circuit's judgment rests on yet another error since it held causation could be established here. But a police officer does not proximately cause an unwarned statement to be admitted into evidence at trial.

It is well-established that Section 1983 requires causation. *See* 42 U.S.C. § 1983 (authorizing action against a person who "*subjects, or causes to be subjected*" any person who is deprived of a constitutional right (emphasis added)); *see also Malley v. Briggs*, 475 U.S. 335, 344 n.7 (1986) (Section 1983 requires "the same causal link" required by common tort law principles). Police

officers' actions might be a link in the chain leading to the introduction of unwarned statements at trial because they collected the statements months—or even years—before trial. But the admission of *Miranda*-violative statements at trial is neither reasonably foreseeable by officers nor proximately caused by them—particularly because the causal chain runs through multiple independent actors.

1. Admitting an unwarned confession at a criminal trial is not reasonably foreseeable

Courts should not expect police officers to reasonably foresee that any unwarned confession they collect will be admitted into evidence at a criminal trial. To the contrary, a police officer should reasonably expect *Miranda*-violative statements to be suppressed. *See Miranda*, 384 U.S. at 479 ("[U]nless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.").

Holding police officers liable under Section 1983 would mean the law expects them to understand all the nuances of *Miranda*-related case law. That is unreasonable. These nuances are ever-evolving and are often "ill defined." *Withrow v. Williams*, 507 U.S. 680, 711 (1993) (O'Connor, J., concurring in part).

A prime example is the "custody" requirement. What constitutes "custody" has proved to be 'a slippery one,'" *id.* (quoting *Elstad*, 470 U.S. at 309), and police officers "investigating serious crimes [cannot realistically be expected to] make no errors whatsoever," *Elstad*, 470 U.S. at 309 (quoting *Tucker*, 417 U.S. at 446). As this Court has

recognized in many other contexts, officers "'have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" *Quarles*, 467 U.S. at 658 (quoting *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979)).

A police officer should reasonably be able to expect that law-trained prosecutors would not offer unwarned statements for admission at trial and, even if they did, that judges would not violate *Miranda* by admitting them. A judge's admission of unwarned statements into evidence is not a "natural consequence" of a police officer's actions. *See Malley*, 475 U.S. at 344 n.7 (Section 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions") (quoting *Monroe v. Paper*, 365 U.S. 167, 187 (1961)).

Respondent's theory of liability thus bizarrely makes the non-legally-trained police officer—*i.e.*, the only actor *without* a law degree here—liable for the purported *legal* errors of prosecutors and judges—who, unlike the officer, possess both law degrees and immunity. That is neither coherent nor equitable.

2. Independent actors break the chain of causation from a police officer

An officer's taking of unwarned statements from a suspect is also not the proximate cause of a plaintiff's injury. Any statements that officers gather—unwarned or not—require a prosecutor to introduce evidence, a defense attorney to either object or not, and a judge to decide the admissibility of the evidence. These independent actors are superseding causes of unwarned confessions being used as

evidence at a criminal trial. *See Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 837 (1996) (superseding cause cuts off liability and is applied when an "injury was actually brought about by a later cause of independent origin that was not foreseeable").

In *Murray v. Earle*, the Fifth Circuit held that "an official who provides accurate information to a neutral intermediary, such as a trial judge, cannot 'cause' a subsequent Fifth Amendment violation arising out of the neutral intermediary's decision, even if a defendant can later demonstrate that his or her statement was made involuntarily while in custody." 405 F.3d 278, 293 (5th Cir. 2005). Many circuit courts have likewise concluded that the chain of causation from a police officer's gathering of evidence breaks when independent actors later decide the admissibility of evidence at trial. *See, e.g.*, *Higazy v. Templeton*, 505 F.3d 161, 181 (2nd Cir. 2007) (Jacobs, C.J., concurring) ("It is well settled that the chain of causation between a police officer's unlawful arrest and a subsequent conviction and incarceration is broken by the intervening exercise of independent judgment.") (quoting *Townes v. City of New York*, 176 F.3d 138, 147 (2d Cir.1999)); *Egervary v. Young*, 366 F.3d 238, 250-51 (3rd Cir. 2004) ("We conclude that where, as here, the judicial officer is provided with the appropriate facts to adjudicate the proceeding but fails to properly apply the governing law and procedures, such error must be held to be a superseding cause, breaking the chain of causation for purposes of § 1983 and *Bivens* liability."); *Barts v. Joyner*, 865 F.2d 1187, 1196 (11th Cir. 1989) (reasoning that "later independent decisions of prosecutors, juries and judges to prosecute, indict, convict, and sentence" are "independent acts" that

break the causal connection between an unlawful seizure and damages).

Holding a police officer responsible for a person's harm caused by legal proceedings run by third parties is unwarranted. As the Eleventh Circuit aptly put it, "[p]rosecuting, indicting, finding ultimate guilt, and sentencing criminal defendants are not the business of the police.... The decisions to prosecute, to indict, to convict, and to sentence are independent from and involve considerations different from the original decision to arrest and result in different harm to a person than the harm caused by the original arrest." *Id*. Police officers certainly should not be held responsible for errors made by independent actors that receive immunity themselves. *See, e.g.*, *Imbler v. Pachtman*, 424 U.S. 409, 420 (1976) (prosecutorial immunity); *Stump v. Sparkman*, 435 U.S. 349, 359 (1978) (judicial immunity).

In sum, a trial judge's decision to admit an unwarned statement into evidence is the superseding cause of any Section 1983 injury and therefore eliminates any potential liability of the police officer. *See Murray*, 405 F.3d at 293.

CONCLUSION

The Court should reverse the Ninth Circuit's decision below.

March 7, 2022

Respectfully submitted,

MARK BRNOVICH
Attorney General

JOSEPH A. KANEFIELD
Chief Deputy and Chief of Staff

BRUNN W. ROYSDEN III
Solicitor General

DREW C. ENSIGN
Deputy Solicitor General
Counsel of Record
LINLEY WILSON
Deputy Solicitor General
BRIAN R. COFFMAN
Assistant Attorney General
OFFICE OF THE ARIZONA ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-3333
drew.ensign@azag.gov

Counsel for the State of Arizona

STEVE MARSHALL
Alabama Attorney General

LESLIE RUTLEDGE
Arkansas Attorney General

ASHLEY MOODY
Florida Attorney General

CHRISTOPHER M. CARR
Georgia Attorney General

LAWRENCE G. WASDEN
Idaho Attorney General

THEODORE E. ROKITA
Indiana Attorney General

DEREK SCHMIDT
Kansas Attorney General

DANIEL CAMERON
Kentucky Attorney General

JEFF LANDRY
Louisiana Attorney General

LYNN FITCH
Mississippi Attorney General

ERIC S. SCHMITT
Missouri Attorney General

AUSTIN KNUDSEN
Montana Attorney General

DOUGLAS J. PETERSON
Nebraska Attorney General

DAVE YOST
Ohio Attorney General

JOHN M. O'CONNOR
Oklahoma Attorney General

ALAN WILSON
South Carolina Attorney General

JASON R. RAVNSBORG
South Dakota Attorney General

HERBERT H. SLATERY III
Tennessee Attorney General

KEN PAXTON
Texas Attorney General

SEAN D. REYES
Utah Attorney General

PATRICK MORRISEY
West Virginia Attorney General