VEGA V. TEKOH: A MISSED OPPORTUNITY TO PROTECT *MIRANDA*

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I. INTRODUCTION

Rights without remedies are illusory. Principles without remedies are vacuous.[1] Remedies are "a vital component of any scheme for vindicating cherished constitutional guarantees."[2] Meaningful deterrence of substantive violations serve essential remedial functions.[3] It follows that inadequate deterrence compromises adequate protection. In *Vega v. Tekoh*, the Supreme Court directly confronted the question of deterring law enforcement conduct violative of *Miranda v. Arizona*.[4] Since the

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1. Gomez v. Toledo, 446 U.S 635, 639 (1980) (involving an agent in Puerto Rico who sued the police superintendent claiming that his suspension and eventual discharge was a violation of his civil rights). The Supreme Court held, in a § 1983 action, when a public official pleads the affirmative defense of qualified immunity the burden is on that defendant to prove good faith, as opposed to the plaintiff bearing the burden to prove the official acted in bad faith. *Id.* at 639–40.

2. *Id.* at 639 (citing Owen v. City of Independence, 445 U.S. 622, 636 (1980)) (explaining that § 1983 should be interpreted broadly due to its remedial underpinnings).

3. *Id.* at 638–39.

4. Vega v. Tekoh, 142 S. Ct. 2095, 2101 (2022). *But see id.* at 2111 (Kagan, J., dissenting) ("The majority here, as elsewhere, injures the right by denying the remedy."). *See generally* Miranda v. Arizona, 384 U.S. 436, 445 (1966) (setting a new standard for law enforcement and laypeople interactions by proclaiming statements obtained during custodial interrogation cannot be used by prosecutors unless the interrogated individual

1966 *Miranda* decision, the Court has not provided any meaningful deterrence of *Miranda* violations.[5] Mere exclusion at trial of a suspect's self-incriminating statement garnered in violation of *Miranda* is, and has always been, inadequate to deter violations.[6] *Miranda* itself imposes no sanctions on law enforcement officers who fail to properly advise suspects in custody prior to interrogations.[7] Exclusion at trial of statements taken in violation of *Miranda* offer, at best, an indirect sanction, one borne by society in lost prosecutions. An offending officer may or may not be sanctioned via administrative reprisal, but otherwise will suffer no direct adverse consequences of his illegal conduct.[8] Moreover, *Vega* presented an opportunity to provide that protection.

In *Vega*, the Court addressed whether 42 U.S.C. § 1983 enables a plaintiff to state a claim for relief against a law enforcement officer when that officer failed to *Mirandize* the plaintiff and the jury heard the plaintiff's self-incriminating remarks.[9] The *Vega* Court, when presented with this opportunity to provide meaningful deterrence for *Miranda* violations, somewhat unsurprisingly, failed to do so.

The Court's decision was based on answering two questions. First, whether statements taken in violation of *Miranda* and admitted against the accused invoke a Fifth Amendment constitutional right, or whether *Miranda* warnings are a mere prophylaxis unworthy of constitutional protection.[10] Second,

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was informed of their right to remain silent; that their statements may be used against them; and their right to an attorney).

5. *See, e.g.*, Berghuis v. Thompkins, 560 U.S. 370, 381–82 (2010) (stating if you are invoking your Fifth Amendment right it must be expressly and unambiguously such that a reasonable officer would know the right was invoked); Illinois v. Perkins, 496 U.S. 292, 300 (1990) (holding undercover agents do not need to provide *Miranda* warnings to inmates because the statements are not coerced); Duckworth v. Eagan, 492 U.S. 195, 203 (1989) (opining a warning is sufficient as long as it reasonably touches all the bases required under *Miranda*); Michigan v. Mosley, 423 U.S. 96, 104 (1975) (concluding the admissibility of statements under *Miranda* depends on whether the suspect's right to cut off questions was scrupulously honored; further, the Court determined two hours was a meaningful passage of time and an interrogation could continue when the suspect was given new *Miranda* warnings and the questioning was about a different crime than the original interrogation).

6. Michigan v. Tucker, 417 U.S. 433, 451–52 (1974) (citing Harris v. New York, 401 U.S. 222, 224 (1971)).

7. *Miranda*, 384 U.S. at 444 (holding that statements obtained during coercive police-dominated interrogations are inadmissible in court, but not taking a step further and enforcing sanctions against officers who violate a person's Fifth Amendment rights).

8. *Vega*, 142 S. Ct. at 2099.

9. *Id.*

10. *Id.* at 2101.

whether the benefits of permitting § 1983 claims against offending law enforcement officers outweigh the costs of permitting such claims.[11]

Regarding the first question, the conservative wing of the Court effectively decoupled *Miranda* from its historically reaffirmed Fifth Amendment constitutional foundation. The Court opted to make the unpersuasive rationales that were raised, considered, and overruled in the *Miranda* dissent the new law of the land.[12] Further, the Court sounded the death knell for the foundational constitutional principle established in *Miranda* and reaffirmed more than two decades before in *Dickerson v. United States*.[13] This conservative-minded Court also departed from the only intellectually honest outcome that it could rationally reach based on its holding and reasoning in *Chavez v. Martinez*.[14] The Court's new ad hoc, seemingly random decision-making has sealed the fate of *Miranda* and returned our evaluations of coercive police interrogation practices to the totality-of-circumstances standard—the precise standard *Miranda* sought to evolve us from.[15]

Regarding the second question, the Court piggybacked off its untethered analysis to the first question and ruled that because *Miranda* is nothing more than a prophylaxis, rather than a constitutional right, the benefits of extending § 1983 protections to *Miranda* violations are not outweighed by the administrative costs.[16]

The *Vega* Court's two-prong decision that (1) statements taken in violation of *Miranda* and admitted against the accused do not

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11. *Id.* at 2103 (citing Maryland v. Shatzer, 555 U.S. 98, 106 (2010)).

12. *Id.* at 2106 (stating that *Miranda* is nothing more than a prophylactic rule); *Miranda*, 384 U.S. at 536–37 (White, J., dissenting) (advocating for the totality-of-circumstances test).

13. *See generally* Dickerson v. United States, 530 U.S. 428, 431–35 (2000) (holding a congressional statute to be unconstitutional because it attempted to reinstall the totality-of-circumstances test that was previously overruled in *Miranda*).

14. *See generally* Chavez v. Martinez, 538 U.S. 760, 763, 767 (2003) (concluding because the Fifth Amendment protects a person from being compelled to testify against himself in a "criminal case" and an interrogation does not constitute a criminal case, the Fifth Amendment is not violated by a coercive interrogation if the suspect's confession is never used against the suspect in court during a criminal trial).

15. *Compare Miranda*, 384 U.S. at 444–45 (moving beyond the totality-of-circumstances and requiring *Miranda* protections), *and Dickerson*, 530 U.S. at 434–39 (reaffirming *Miranda* protections are valued over the totality-of-circumstances approach), *with Vega*, 142 S. Ct. at 2105–06 (narrowing the potential scope of *Miranda* and *Dickerson* by holding that *Dickerson* did not proclaim *Miranda* to be synonymous with a violation of the Fifth Amendment and clarifying that the *Miranda* rules are prophylactic rules).

16. *Vega*, 142 S. Ct. at 2107.

justify § 1983 relief and (2) that the cost of permitting such claims outstrips the benefit has tremendous ramifications. Therefore, this Article will critically examine the Court's *Vega* holding that failed to provide meaningful protection against illegally obtained incriminating statements.

First, this Article will examine *Vega's* key holding and the factual context that gave rise to this case. Next, this Article will turn to a targeted discussion of 42 U.S.C. § 1983 and *Miranda*'s historical context. Last, this Article will address the *Vega* Court's lackluster cost-benefit analysis.

II. THE VEGA *COURT'S HOLDING*

Miranda sets forth a prophylactic rule designed to safeguard the Fifth Amendment; therefore, a violation of *Miranda* rules is not necessarily a violation of the Fifth Amendment. As such, a violation of *Miranda* standing alone does not give rise to a § 1983 cause of action based on the "deprivation of [a] right . . . secured by the Constitution."[17] Nor will a violation of *Miranda*'s prophylactic rule give rise to a § 1983 cause of action "based on the deprivation of any rights, privileges, or immunities secured by the . . . *laws*," because *Vega* held that: (1) "'a judicially crafted' prophylactic rule should apply 'only where its benefits outweigh its costs'"; (2) the exclusion of statements obtained in violation of *Miranda* at trial is sufficient to deter Fifth Amendment violations; and (3) allowing victims of *Miranda* violations "to sue a police officer for damages under § 1983 would have little additional deterrent value" while causing "many problems."[18]

III. FACTS GIVING RISE TO THE § 1983 CLAIM

While working as a nursing assistant at a medical center, Tekoh was accused of sexually assaulting a patient.[19] What transpired after the arrival of Los Angeles Sheriff's Department Deputy Carlos Vega is "hotly disputed."[20]

17. *Id.* at 2106 (quoting 42 U.S.C. § 1983).

18. *Id.* at 2106–08 (emphasis in original) (citing Maryland v. Shatzer, 559 U.S. 98, 106 (2010)).

19. Tekoh v. County of Los Angeles, 985 F.3d 713, 715 (9th Cir. 2021), *cert. granted sub nom.*, Vega v. Tekoh, 142 S. Ct. 858 (2022), *rev'd*, 142 S. Ct. 2095 (2022).

20. *Tekoh*, 985 F.3d at 715.

Under Tekoh's account of the questioning, Vega ordered Tekoh into a small, windowless, soundproof room and refused entry to Tekoh's co-workers because it was a private interview.[21] Further, "Deputy Vega shut the door and stood in front of it, blocking Tekoh's path to the exit."[22] After Vega accused Tekoh of sexually assaulting a patient, which Tekoh "adamantly denied," the *un-Mirandized* interrogation continued for approximately thirty to forty minutes with Tekoh continually refusing to confess.[23] When Tekoh asked to speak with a lawyer, Vega ignored the request.[24] This sparked Tekoh's frustration, and he tried to leave the room."[25] Vega rushed toward Tekoh with his hand on his gun, stepped on Tekoh's toes, and went on an alarming and racist diatribe:

> Deputy Vega . . . said, "Mr. Jungle Nigger trying to be smart with me. You make any funny move, you're going to regret it. I'm about to put your black ass where it belongs, about to hand you over to deportation services, and you and your entire family will be rounded up and sent back to the jungle. . . . [sic] Trust me, I have the power to do it."[26]

With Tekoh trembling in fear, Vega shoved a pen and paper toward Tekoh and demanded Tekoh write the patient's version of the facts as Tekoh's own.[27] Then, Vega told Tekoh what to write to constitute a confession, "and Tekoh, who was scared and 'ready to write whatever Vega wanted,' acquiesced and wrote the statement down."[28] Vega never informed Tekoh of his *Miranda* rights.[29]

Tekoh was then arrested and charged. At his first trial, the judge found that Tekoh was not in custody at the time of the interrogation, and accordingly his self-incriminating statement was admitted against him.[30] This trial resulted in a mistrial. At Tekoh's second trial, the judge also ruled that Tekoh was not in

21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.* at 716.
26. *Id.*
27. *Id.*
28. *Id.*
29. Vega v. Tekoh, 142 S. Ct. 2095, 2096 (2022).
30. *Id.* at 2100.

custody and admitted his statement—nonetheless, Tekoh was acquitted.[31]

Tekoh brought a 42 U.S.C. § 1983 action against the officer, seeking damages for alleged violations of Tekoh's Fifth Amendment right against self-incrimination. In federal court during the § 1983 trial, the jury returned a verdict against Tekoh. The judge, however, granted a new trial after concluding he had improperly instructed the jury.[32]

Before the second trial, Tekoh sought an instruction that the jury must find a Fifth Amendment violation if it determined that Tekoh's statement was obtained in violation of *Miranda*, and that the statement was used against him at trial.[33] The court declined, stating that *Miranda* was a prophylaxis and, as such, could provide no basis for § 1983 liability.[34] Based on this conclusion, the court instructed the jury to determine if Tekoh's Fifth Amendment right had been violated. The jury found no Fifth Amendment violation, and Tekoh appealed.[35]

A Ninth Circuit panel reversed, holding that the "use of an un-*Mirandized* statement against a defendant in a criminal proceeding violates the Fifth Amendment and may support a § 1983 claim" against the offending officer.[36] The case was remanded for a new trial.[37]

The officer's subsequent petition for rehearing en banc was denied, although with a dissent, and the Supreme Court then granted certiorari.[38]

IV. THE UNFINISHED BUSINESS OF MIRANDA

Vega v. Tekoh follows a decades-long, historical pattern of the Supreme Court eroding *Miranda*'s protections and could be one of the most profound broadsides yet sustained by the 1966 *Miranda* decision.[39] Any argument that *Vega*'s holding is limited to

31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.* (citing Tekoh v. County of Los Angeles, 985 F.3d 713, 722 (2021)).
37. *Id.*
38. *Id.*
39. *See id.* at 2111 (Kagan, J., dissenting); *see, e.g.*, Oregon v. Hass, 420 U.S. 714, 721–23 (1975) (permitting use of statements taken in violation of *Miranda* for impeachment

precluding § 1983 claims arising from *Miranda* concerns is myopic.[40] Even when viewed as yet another "exception" further eroding *Miranda*, the implications that *Miranda* should only be viewed as a prophylaxis—not imbued in the Fifth Amendment, and not as a bulwark against illegal custodial interrogations—can, and most likely will, license further "exceptions" denigrating the landmark decision.[41]

V. SECTION 1983 OVERVIEW

To understand the true meaning behind the *Vega* respondent's position, and the true cost and benefit of failing to provide *Miranda* warnings, a short overview of 42 U.S.C. § 1983 is appropriate. Section 1983 is derived from the Civil War, "the only war in our nation's history dedicated to the proposition that Black lives matter," followed by the Reconstruction, which was "dedicated to the proposition that Black futures matter, too."[42] The Thirteenth Amendment illuminated the Union's effort to stymie the damages of the enslaved and was a "call to abandon injustices that had made blacks outsiders in the country they helped build and whose

purposes (citing Harris v. New York, 401 U.S. 222, 224–26 (1971))); Fletcher v. Weir, 455 U.S. 603, 605–07 (1982) (allowing defendant's silence, absent *Miranda* warnings, to be used for impeachment); Jenkins v. Anderson, 447 U.S. 231, 239–40 (1980) (holding that pre-custodial silence was admissible); Michigan v. Tucker, 417 U.S. 433, 439, 450, 452 (1974) (holding that the fruits of *un-Mirandized* statements were admissible); Oregon v. Elstad, 470 U.S. 298, 309 (1985) (concluding that where a voluntary statement suggesting guilt is given before *Miranda* warnings are conferred, and a voluntary confession is given shortly after, the post-*Miranda* confession is admissible).

40. *But see Vega*, 142 S. Ct. at 2107–08.

41. *Harris*, 401 U.S. at 226 (finding the prosecution's use of the *un-Mirandized* statement for impeachment purposes was proper and establishing the "impeachment exception" to *Miranda*); New York v. Quarles, 467 U.S. 649, 655–56 (1984) (noting, in a "kaleidoscopic situation," where abiding by the handbook rather than modifying tactics may result in harm to another—a "public safety exception" to the *Miranda* rule is needed); Maryland v. Shatzer, 559 U.S. 98, 110–11 (2010) (refusing to apply the *Edwards* rule—where a defendant who has invoked their right to counsel is no longer subject to further interrogation—because of a fourteen-day break in custody, creating the "break-in-custody exception" to *Miranda*); *see* Edwards v. Arizona, 451 U.S. 477, 484–85 (1981).

42. Jamison v. McClendon, 476 F. Supp. 3d 386, 397 (S.D. Miss. 2020) (citing RON CHERNOW, GRANT 706 (2017)); *see also* Stephen Cresswell, *Enforcing the Enforcement Acts: The Department of Justice in Northern Mississippi, 1870-1890*, 53 J.S. HIST. 421, 421 (1987) (describing the era as "Mississippi's first civil rights struggle" and noting that the federal government sought to "secure black civil and political equality in the years after the Civil War").

economy they helped sustain."[43] With a historical deep-dive, the connection between the Civil War and Reconstruction with the origins of § 1983 comes alive:

> What is now 42 U.S.C. § 1983 came into existence as § 1 of the Ku Klux Klan Act of April 20, 1871, 17 Stat. 13. The Chairman of the House Select Committee which drafted this legislation described § 1 as modeled after § 2 of the Civil Rights Act of 1866—a criminal provision that also contained language that forbade certain acts by any person "under color of any law, statute, ordinance, regulation, or custom," 14 Stat. 27. In the Civil Rights Cases, 109 U.S. 3, 16, 3 S.Ct. 18, 25, 27 L.Ed. 835 (1883), the Court said of this 1866 statute: "This law is clearly corrective in its character, intended to counteract and furnish redress against state laws and proceedings, and *customs having the force of law*, which sanction the wrongful acts specified." (Emphasis added.) Moreover, after an exhaustive examination of the legislative history of the 1866 Act, both the majority and dissenting opinions in Jones v. Alfred H. Mayer Co., 392 U.S. 409, 88 S. Ct. 2186, 20 L.Ed.2d 1189 (1968), concluded that § 2 of the 1866 Civil Rights Act was intended to be limited to "deprivations perpetrated 'under color of *law*.'" (Emphasis added.)[44]

In a modern context, "even where the laws are just and equal on their face . . . a systemic maladministration . . . neglect or refusal to enforce their provisions" led to groups of people losing equal protection under these laws; therefore, Congress was forced to include "customs and usages within its definition of law in § 1983."[45] Further, considering "[m]any of the perpetrators of racial terror were members of law enforcement" the intertwinement of racism and § 1983 is unequivocal.[46]

Who are the populations most susceptible to *Miranda* violations and most likely to suffer harm requiring a § 1983 suit? In its report of prisoners in 2016, the U.S. Department of Justice found that "[b]lack males ages 18 to 19 were 11.8 times more likely

43. *Jamison*, 476 F. Supp. 3d at 397 (quoting Alexander Tsesis, *The Problem of Confederate Symbols: A Thirteenth Amendment Approach*, 75 TEMP. L. REV. 539, 542 (2002)).

44. Adickes v. S. H. Kress & Co., 398 U.S. 144, 162–63 (1970).

45. *Id.* at 167.

46. *Jamison*, 476 F. Supp. 3d at 399.

to be imprisoned than white males of the same age."[47] In the same year, the Federal Bureau of Investigation found that black Americans comprised 26.9% of all individuals arrested in the United States,[48] which is double their share of the total population.[49] Thus, black Americans "are more likely . . . to be arrested; once arrested, they are more likely to be convicted; and once convicted, . . . they are more likely to experience lengthy prison sentences."[50]

Plaintiffs bringing § 1983 claims bear the burden of proving both statutory elements by a preponderance of the evidence.[51] To prevail, the plaintiff must first prove the defendant was acting under the color of the law when committing the specific conduct that allegedly violated the plaintiff's rights.[52] Specifically, the plaintiff must show "that [defendant] was using power that [he/she] possessed by virtue of state law" at the time of the alleged unconstitutional conduct.[53] Furthermore: "[S]tate employment is generally sufficient to render the defendant a state actor."[54] Due to the lack of complexity of this first element for § 1983 cases, the majority of the Court's analysis focuses on the second element, whether the defendant's conduct deprived the plaintiff of a constitutional or statutory right.

The most common rights that have given rise to § 1983 claims are rights explicitly set forth in the Constitution: the First Amendment (right to freedom of speech, press, assembly, petition, and religion); the Fourth Amendment (protection against

47. BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., NCJ 251149, PRISONERS IN 2016 (2018).

48. Unif. Crime Reporting Program, *Crime in the United States, 2016: Arrests*, FED. BUREAU OF INVESTIGATION, 2 (Fall 2017), http://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/persons-arrested.pdf.

49. *See* 2016 American Community Survey 1-Year Estimates on Race in Table B02001 Race, U.S. CENSUS BUREAU, https://data.census.gov/table?tid=ACSDT1Y2016.B02001&q=B02001 (last visited August 1, 2023).

50. THE SENT'G PROJECT, REPORT TO THE UNITED NATIONS ON RACIAL DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM 2 (2018).

51. 3D CIR. MODEL CIVIL JURY INSTR. 4.2–4.3 (Oct. 2014); *see also* Campbell v. Pa. Sch. Bds. Ass'n, 972 F.3d 213, 224 (3d Cir. 2020) ("[W]e have repeatedly held preponderance of the evidence to be the proper standard for § 1983 claims.").

52. *See* sources cited *supra* note 51.

53. 3D CIR. MODEL CIVIL JURY INSTR. 4.4 (clarifying "state law" qualifies as "any statute, ordinance, regulation, custom or usage of any state," and the term "state" includes "any political subdivisions of the state, such as a county or municipality, and also any state, county or municipal agencies").

54. Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 935 n.18 (1982).

unreasonable searches and seizures and excessive force); the Fifth Amendment (protection against self-incrimination and double jeopardy); the Eighth Amendment (protection against excessive bail and cruel and unusual punishment); and the Fourteenth Amendment (right to substantive and procedural due process and equal protection).[55] In addition to such explicit claims, § 1983 has historically been applied broadly to provide relief for a person deprived of *any* rights, privileges, or immunities secured by the Constitution and laws.[56] The Supreme Court in *Monell v. Department of Social Services* gave full effect to this broad interpretation of § 1983 by stating that such claims permit remedies "against all forms of official violation of federally protected rights."[57] The Court in *Golden State Transit Corp. v. City of Los Angeles* further emphasized that § 1983 must be interpreted broadly to include any rights, privileges, and immunities beyond those explicitly stated in the Constitution.[58]

Looking to the second element, the Court considers three factors when determining if a federal right has been violated in § 1983 claims: (1) whether the provision at issue forces the governmental body into binding obligations or merely voices a congressional preference; (2) whether the interest of the plaintiff is "too vague and amorphous" to be judicially enforced; and (3) whether the provision was meant to benefit the plaintiff.[59]

However, the shield of qualified immunity is an essential caveat limiting the applicability of § 1983 claims. A government official acting under the color of the law and within their authority while undertaking their duties is immune from § 1983 claims "insofar as their conduct does not violate clearly established

55. *What Are the Elements of a Section 1983 Claim?*, THOMSON REUTERS, (June 13, 2022), https://legal.thomsonreuters.com/blog/what-are-the-elements-of-a-section-1983-claim/; *see, e.g.*, Nance v. Ward, 142 S. Ct. 2214, 2219 (2022) (cruel and unusual punishment); Thompson v. Clark, 142 S. Ct. 1322, 1335 (2022) (malicious prosecution); Torres v. Madrid, 141 S. Ct. 989, 994 (2021) (excessive force); Rankin v. McPherson, 483 U.S. 378, 382–83 (1987) (freedom of speech); Carey v. Piphus, 435 U.S. 247, 248 (1978) (due process); Weaver v. Brenner, 40 F.3d 527, 536 (2d Cir. 1994) (self-incrimination).

56. *See* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 700–01 (1978) ("Therefore, absent a clear statement in the legislative history . . . there is no justification for excluding municipalities from the 'persons' covered by § [1983].").

57. *Id.*

58. Golden State Transit Corp. v. City of Los Angeles, 493 U.S. 103, 105–06 (1986) (citing *Monell*, 436 U.S. at 700–01) (explaining the language of § 1983 clearly asserts that the remedy includes violations of federal statutory and constitutional rights).

59. *Id.* at 106 (quoting Wright v. Roanoke Redevelopment & Hous. Auth., 479 U.S. 418, 430–32 (1987)).

statutory or constitutional rights of which a reasonable person would have known."[60] This shield of qualified immunity provokes two questions: (1) whether the officer's conduct violated a constitutional right and (2) whether such principle was "clearly established," which is based on an inquiry into whether a reasonable officer would have understood his actions were unlawful in those circumstances.[61] Whether an official was put on notice is decided by comparing established law to the current factual situation:

> To determine whether a new scenario is sufficiently analogous to previously established law to warn an official that his/her conduct is unconstitutional, we "inquir[e] into the general legal principles governing analogous factual situations . . . and . . . determin[e] whether the official should have related this established law to the instant situation."[62]

The Court acknowledges the legal boundaries on specific police conduct are variant enough to open the door to reasonable mistakes.[63] Further, it can be difficult to determine whether the officer made a reasonable mistake in ascertaining what the law in that situation requires.[64] In *Hope v. Pelzer*, the Court made it clear that "the salient question . . . is whether the state of the law [at the time of the conduct] . . . gave respondents fair warning that their

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60. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) (citing Procunier v. Navarette, 434 U.S. 555, 565 (1978)); Anderson v. Creighton, 483 U.S. 635, 640 (1987) ("The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.").

61. Saucier v. Katz, 533 U.S. 194, 201–02 (2001) (citing *Anderson*, 483 U.S. at 640).

62. Burns v. Pa. Dep't of Corr., 642 F.3d 163, 177 (3d Cir. 2011) (quoting Hicks v. Feeney, 770 F.2d 375, 380 (3d Cir. 1985)). "[Plaintiff] filed . . . [a] § 1983 action in the district court claiming that the Pennsylvania Department of Corrections and certain officials violated his due process rights during the prison's disciplinary proceedings. . . ." *Id.* at 169.

63. *Saucier*, 533 U.S. at 205. Further, the Court considers the unique situations encountered by police officers:

> Because "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation," . . . the reasonableness of the officer's belief as to the appropriate level of force should be judged from that on-scene perspective.

Id. (quoting Graham v. Connor, 490 U.S. 386, 397 (1989)).

64. *Id.*; *see also Anderson*, 483 U.S. at 644 ("Law enforcement officers whose judgments in making these difficult determinations [whether particular searches or seizures comport with the Fourth Amendment] are objectively legally reasonable should no more be held personally liable in damages than should officials making *analogous determinations* in other areas of law.") (emphasis added).

[conduct] . . . was unconstitutional."[65] The Court emphasized the need to understand the context in evaluating whether some guiding principle was clear under the circumstances.[66]

The Court in *Vega v. Tekoh* never reached the question of qualified immunity.[67] Such questions were rendered moot by the Court when they held a violation of *Miranda* is not a Fifth Amendment violation.[68] Accordingly, any analysis of whether Tekoh was in custody or under interrogation was not at issue.

VI. CONSTITUTIONAL RIGHT V. PROPHYLACTIC RULE

When *Miranda* was decided by the Supreme Court in 1966, the holding centered around a profound concern for the "interrogation atmosphere" of a criminal investigation and the "evils it can bring."[69] Specifically, the Court believed there was a substantial risk that during questioning individuals could be "thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures" where the "potentiality for compulsion [of an incriminating statement] is forcefully apparent."[70] Rather than focusing on law enforcement's affirmative use of standard psychological tactics or physical coercion, the Court sought to protect defendants from interrogative techniques that inherently undermine the notion that a defendant's confession is the result of free choice.[71]

In its analysis, the *Miranda* Court found that an interrogation atmosphere is cultivated for the sole purpose of subjugating a person to the desires of his examiner and that the "practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself."[72] The Court concluded that only

65. Hope v. Pelzer, 536 U.S. 730, 741–42 (2002) (holding the inmate's Eighth Amendment rights were violated when he was subjected to cruel and unusual punishment). In *Hope*, the inmate brought a § 1983 claim against the guards who participated in "handcuff[ing the inmate] to a hitching post on two occasions," the second lasting "approximately seven hours" while the inmate was shirtless in the sun, with limited water, and "no bathroom breaks." *Id.* at 733–35.

66. *Id.* at 741.

67. *See generally* Vega v. Tekoh, 142 S. Ct. 2095 (2022) (failing to discuss qualified immunity because the Court narrowed the applicable scope of *Miranda* violations).

68. *Id.* at 2108.

69. Miranda v. Arizona, 384 U.S. 436, 456 (1966).

70. *Id.* at 457.

71. *Id.*

72. *Id.* at 457–58.

with a proper "protective device[]"—that is, the *Miranda* warnings reminding suspects of their constitutional right to remain silent (among others)—could the coercive nature of the interrogation atmosphere be effectively dispelled.[73] Statements elicited from criminal suspects, after such advisements were heard and acknowledged, could truly be considered the product of the suspect's own "free choice" and thus would satisfy the Fifth Amendment protections of the United States Constitution.[74]

While the *Miranda* warnings were delineated as the preferred methodology to guard against the inherent coercion in criminal interrogations, the warnings themselves were not intended to be a "constitutional straitjacket."[75] Instead, *Miranda*'s ruling represented a constitutional floor, such that alternative measures would need to be equally as effective in alerting the accused of their right of silence and safeguarding their continual ability to remain silent.[76] Through this declaration, the *Miranda* Court called for "Congress and the States to continue their laudable search" for equally effective ways of protecting the Fifth Amendment "rights of the individual while promoting efficient enforcement of our criminal laws."[77] Sadly, the Court's call for State and Congressional action to protect against the "inherently compelling pressures" of custodial interrogation was not taken in earnest.[78]

Instead, Congress enacted 18 U.S.C. § 3501, which made the admissibility of a criminal defendant's statement turn solely on the question of whether it was voluntary.[79] As a part of the proposed voluntariness determination, the receipt of a *Miranda* warning would become a mere factor among several to be weighed under the totality-of-circumstances.[80] In *Dickerson v. United States*, the Court took up the question of whether 18 U.S.C. § 3501 would provide a sufficient safeguard of a criminal defendant's Fifth Amendment rights in determining the voluntariness of their confession.[81]

73. *Id.* at 458.
74. *Id.* at 457–58, 474.
75. *Id.* at 467.
76. *Id.*
77. *Id.*
78. *Id.*
79. 18 U.S.C. § 3501(a).
80. *Id.* § 3501(b).
81. Dickerson v. United States, 530 U.S. 428, 437 (2000).

In a seven-two decision penned by Chief Justice Rehnquist, a noted conservative, the Court reaffirmed the central holding of *Miranda*: that *Miranda* advisements are constitutional in nature and cannot be overruled by an act of Congress.[82] The *Dickerson* Court explained that *Miranda* was specifically written "*to give concrete constitutional guidelines for law enforcement agencies and courts to follow*" when determining the voluntariness of a confession.[83] The *Dickerson* Court reasoned that 18 U.S.C. § 3501 was an attempt to resurrect the old totality-of-circumstances test for voluntariness that *Miranda* had already specifically overruled.[84] *Dickerson* closed by noting that *Miranda* is a "constitutional rule" and that Congress may not "legislatively supersede" the Constitution itself.[85]

However, before *Dickerson*'s affirmation of *Miranda*'s constitutional underpinnings, conservative members of the Supreme Court systematically attempted to carve out exceptions to *Miranda*—attempting to relabel, recategorize, and relegate *Miranda* to something less than the constitutional imperative that the *Dickerson* majority had unequivocally affirmed it to be.[86] The *Dickerson* dissent, penned by Justice Scalia and joined by Justice Thomas, stated that the *Dickerson* majority was categorically wrong. Furthermore, the dissent asserted that not only should *Miranda* be overturned, but that *Miranda* protections should not have been established in the first place.[87] In service of that thesis, the *Dickerson* dissenters offered a preview and roadmap for future justices to potentially weaken *Miranda* and detach it from its firmly established constitutional foundation.[88]

Justice Scalia and Justice Thomas argued that *Miranda* warnings sweep more broadly than the Fifth Amendment, and the warnings exist as nothing more than a prophylactic, constitutional rule rather than as an extension of the Fifth Amendment constitutional right itself.[89] If *Miranda* was indeed something other than a prophylactic rule, evidence of a coerced confession in violation of *Miranda* should never be properly introduced against

82. *Id.* at 436–38, 440.
83. *Id.* at 439 (emphasis in original) (quoting *Miranda*, 384 U.S. at 441–42).
84. *See id.* at 436–37, 442–43.
85. *Id.* at 437–38, 444.
86. *Id.* at 444. *But see* cases cited *supra* note 39.
87. *Dickerson*, 530 U.S. at 444–50 (Scalia, J., dissenting).
88. *Id.* at 444–64; *see, e.g.*, Vega v. Tekoh, 142 S. Ct. 2095, 2101–02 (2022).
89. *Dickerson*, 530 U.S. at 450 (Scalia, J., dissenting).

a defendant during criminal proceedings, because doing so would be in contravention of the Fifth Amendment's bar on involuntary statements.[90] Thus, because *Miranda*-violative statements can and have been admitted against defendants under certain conditions, *Miranda* guards something greater than the voluntariness of a statement and cannot be considered a codification of the underlying constitutional right.[91]

At first blush, there appears to be a superficial appeal to this argument. The foundational United States legal dogma taught to American civic students is to cherish and deem constitutional rights more important than any other rules or laws. These hallowed constitutional rights are to be held in such high esteem they ought to overrule any and all other competing interests. Pragmatically, however, a distinction between a constitutional prophylactic rule and a constitutional right is flawed, disingenuous, and inapposite to a common law system where "refinements" made by factually distinct cases "are merely a normal part of constitutional law," and the bedrock of a common law democracy.[92]

In truth, few, if any, constitutional laws, rules, or rights within our system receive the sort of unconditional and unlimited deference that the *Dickerson* dissenters, and their like-minded colleagues, seem to require from doctrines like *Miranda* in order to be classified as a constitutional right. Some of the most fundamental constitutional rights do not receive the sort of deference the Court demands from *Miranda*. The robust right to freedom of speech does not protect a man who falsely shouts fire in a crowded theater.[93] The comprehensive right to bear arms does not protect possession of firearms by felons, the mentally ill, nor within and around schools and government buildings.[94] Even our

90. *See* U.S. CONST. amend. V.

91. *See* cases cited *supra* note 39. *See generally* Miranda v. Arizona, 384 U.S. 436, 467 (1966) (explaining how the *Miranda* warnings enable individuals to tell their story without fear and reduces the negative consequences inherent in the interrogation process).

92. *Dickerson*, 530 U.S. at 429 (citing Oregon v. Elstad, 470 U.S. 298, 306 (1985)).

93. U.S. CONST. amend. I; *see also* Schenck v. United States, 249 U.S. 47, 52 (1919) (declaring the right to free speech "is a question of proximity and degree" and there are circumstances where other factors, such as public safety, outweigh an individual's First Amendment protections).

94. U.S. CONST. amend. II; *see also* District of Columbia v. Heller, 554 U.S. 570, 626 (2008) ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places . . . .").

fundamental right of interstate travel during the Coronavirus pandemic permitted moratoriums in the interest of public health.[95] To be clear, the above list is neither exhaustive nor comprehensive; it is merely illustrative of a fundamental truth—even the most hallowed constitutional rights are not immutable or absolute.

If we permit this flawed line of reasoning to be the continuing precedent for distinguishing a Fifth Amendment constitutional, prophylactic rule from a constitutional right, nothing could rightfully be considered a constitutional right, and every constitutional right would be nothing more than a prophylactic rule against government overreach. Our constitutional jurisprudence should not continue to justify a disingenuous distinction between prophylactic rules and constitutional rights on the basis of their mutability when all rules and rights are subject to limitation.

Assuming, *arguendo*, as the *Vega* majority held, that *Miranda* truly is nothing more than a prophylactic rule undeserving of the status reserved for constitutional rights,[96] even the flawed reasoning behind the prophylactic rule jurisprudence of this Court would demand the majority find the other way on these facts.

Consider the curious case of *Chavez v. Martinez*.[97] In *Chavez*, the defendant, Oliviero Martinez, allegedly drew an officer's gun from its holster, after which a different officer drew his gun and shot Martinez several times. Martinez suffered severe injuries that left him permanently blinded and paralyzed from the waist down.[98] After Martinez was placed under arrest, the patrol supervisor arrived on scene with paramedics and began to question the defendant en route to the hospital.[99] During questioning, Martinez was never given his *Miranda* warnings, and no corresponding criminal case was ever filed against him.[100] Martinez ultimately brought a § 1983 case against the police agency for violation of his "Fifth Amendment right not to be 'compelled in any criminal case to be a witness against himself,' as well as his Fourteenth

95. *See Travel Restrictions Issued by States in Response to the Coronavirus (COVID-19) Pandemic, 2020-2022*, BALLOTPEDIA, https://ballotpedia.org/Travel_restrictions_issued_by_states_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2022 (last visited August 6, 2023).

96. Vega v. Tekoh, 142 S. Ct. 2095, 2107–08 (2022).

97. Chavez v. Martinez, 538 U.S. 760 (2003).

98. *Id.* at 764.

99. *Id.*

100. *Id.*

Amendment substantive due process right to be free from coercive questioning."[101]

Even though Martinez was not given his *Miranda* warnings—which creates an "irrebuttable" presumption of coercion—because Martinez's statements were not admitted against him in a criminal trial, the Court, led by Justice Thomas, determined his Fifth Amendment right against self-incrimination was not triggered.[102] The Court held that because there was an absence of a criminal case for Martinez to be a witness against himself in, his core Fifth Amendment claim was defeated, and his § 1983 claim could not be sustained on those grounds.[103]

In *Vega*, unlike in *Chavez*, the defendant never received his *Miranda* warning, and the incriminating statements he made during questioning *were* admitted against him in his criminal trial.[104] It is well settled law that the failure to administer *Miranda* warnings creates a presumption of compulsion, and the Fifth Amendment prohibits the use of compelled confessions in the prosecution's case in chief—In *Vega*, both occurred.[105]

Even if *Miranda*'s scope is broader than the Fifth Amendment right against self-incrimination, and a violation of *Miranda* is not inherently a violation of the Fifth Amendment—certainly a presumptively compelled statement that is admitted in the prosecution's case constitutes a fundamental, constitutional violation. The *Vega* majority does not even address this pivotal factual distinction. The Court instead couches the issue and re-frames the question to be exactly the same as the issue presented in *Chavez*: whether a violation of the *Miranda* rules provides a basis for a claim under § 1983.[106]

The offshoot of the Court's ruling then is that even if *Miranda* is violated, and even if that *Miranda* violative statement is admitted against the defendant, the Fifth Amendment still has not necessarily been violated. This ruling inevitably creates the question of what types of statements would violate the Fifth Amendment. Through the *Vega* ruling, the Court arguably stripped the Fifth Amendment constitutional threads from

101. *Id.* at 764–65 (quoting U.S. CONST. amend. V).
102. *Id.* at 766–67.
103. *Id.* at 767.
104. Vega v. Tekoh, 142 S. Ct. 2095, 2099 (2022).
105. *See id.* at 2101.
106. *Id.* at 2099; *see also Chavez*, 538 U.S. at 763, 766.

Miranda and de facto returned the question of coercive police interrogation to an evaluation of the totality-of-circumstances—the very standard *Miranda* explicitly sought to overrule.

VII. COST V. BENEFIT

Prior to examining the Court's cost-benefit analysis associated with § 1983 claims related to violations of *Miranda*, it is important to reiterate that Tekoh, the plaintiff in *Vega v. Tekoh*, was acquitted at his criminal trial despite the inclusion of his illegally obtained, self-incriminating statements.[107] The state criminal proceedings against Tekoh terminated in his favor. A finality of state proceedings had been reached. Tekoh had exhausted all avenues in his pursuit of a federal civil rights claim under § 1983. Further, outside of the § 1983 claim, Tekoh was barred from seeking compensation for the damages he suffered as a result of his illegally obtained, self-incriminating statement that was used against him at trial.

With this understanding in mind, it is time to turn to the cost-benefit analysis the Court employed to bolster its conclusion relegating *Miranda's* protections to mere prophylaxis. In what appears to be a response to the arguments raised by several amicus briefs in support of respondent Tekoh, the Court concluded that "while the benefits of permitting the assertion of *Miranda* claims under § 1983 would be slight, the cost would be substantial."[108] The Court stated that claims "would have little additional deterrent value, and permitting such claims would cause many problems."[109] These bold assertions, however, have little support. Indeed, the Court's claims belie any true analysis of either the costs or benefits of allowing § 1983 claims in the wake of *Miranda* violations. While viewing the *Vega* question in context is understandable, it appears the Court attempted to solidify its conclusion that *Miranda*'s rules

107. *Vega*, 142 S. Ct. at 2100. Tekoh underwent numerous trials for his case to reach finality:

> At Tekoh's first trial, the judge held that *Miranda* had not been violated because Tekoh was not in custody when he provided the statement, but the trial resulted in a mistrial. When Tekoh was retried, a second judge again denied his request to exclude the confession. This trial resulted in acquittal.

Id.

108. *Id.* at 2107.

109. *Id. But see* Vincenzo Iuppa, *When Efficiency Arguments Fail: The Counter-Intuitive Effects of Amended Rule 78.07(c)*, 76 MO. L. REV. 213, 221 (2011) (noting that attempts to increase judicial efficiency "can have unpredictable, and at times paradoxical, results").

are merely prophylactic by claiming that a cost-benefit analysis is supportive of its holding.[110] Instead of glossing over the costs and omitting recognition of any benefits, any true and thoughtful analysis should have undertaken a thorough examination of both sides of the ledger.

The Court initiated its discussion of the cost of permitting § 1983 claims arising from *Miranda* violations by asserting that such claims "would disserve 'judicial economy'"[111] and bring about "'unnecessary friction' between the federal and state court[s]."[112] Yet, this "friction" currently exists and has existed in virtually every § 1983 claim originating at the state level and is routinely dealt with in § 1983 claims generally.[113] Nevertheless, as the *Vega* Court pointed out, this is only a concern with a claim like Tekoh's where the criminal trial court determined that his confession was not given during custody.[114]

If the criminal trial court did not make a factual finding, as in Tekoh's case, perhaps putting the finding in the jury's hands with a special interrogatory, and allowing the admission of a confession, would eliminate the "cost" of judicial economy and friction between the courts. One conceivable situation may arise where an intentionally coerced confession—knowingly violating Supreme Court precedent as a custom and practice in the department—is used to keep a suspect in custody and develop other leads. Then, the coerced confession is excluded from trial and the criminal defendant is acquitted, having been denied his freedom for an appreciable amount of time. Perhaps the coerced confession led to the arrest and conviction of a third party—creating not only an

110. *Vega*, 142 S. Ct. at 2107.

111. *Id.* (quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979)). "Collateral estoppel, like the related doctrine of res judicata, has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *Parklane*, 439 U.S. at 326 (citing Blonder-Tongue Lab'ys, Inc. v. Univ. of Ill. Found., 402 U.S. 313, 328–29 (1971)).

112. *Vega*, 142 S. Ct. at 2107 (quoting Preiser v. Rodriguez, 411 U.S. 475, 490 (1973)). Further, friction between the state and federal systems can be produced when federal courts "upset a state court conviction." *Preiser*, 411 U.S. at 490 (citing Fay v. Noia, 372 U.S. 391, 419–20 (1963)).

113. *See, e.g.*, Am. Consumer Publ'g Ass'n, Inc. v. Margosian, 349 F.3d 1122, 1129 (9th Cir. 2003) (acknowledging the potential federal-state friction presented by § 1983 claims); Mann v. Jett, 781 F.2d 1448, 1449 (9th Cir. 1986) (holding that there was risk of friction resulting from potential federal intervention in the § 1983 claim); Guerro v. Mulhearn, 498 F.2d 1249, 1253 (1st Cir. 1974) (noting that in the § 1983 case presented "the potential for federal-state friction is obvious").

114. *Vega*, 142 S. Ct. at 2107.

incentive to ignore *Miranda*, but to treat the accused as guilty by ignoring the presumption of innocence. Under *Vega*, there is no recourse for this person whose resulting loss of employment and home is replaced with grief, anxiety, humiliation, and shame.

In attempting to justify its conclusion that the cost substantially outweighs the benefits because such claims disserve judicial economy, the Court maintains there are "many procedural issues" that would render § 1983 imprudent.[115] The first procedural issue cited is "whether a federal court . . . would owe any deference to a trial court's factual findings."[116] As previously stated, such decisions are routinely made in any number of contexts.[117] The Court resolved the issue with reference to *Heck v. Humphrey*.[118] Federal courts maintain authority to dismiss § 1983 actions where an issue or claim has already been decided at the state court level and a person seeks relief that "would necessarily imply the invalidity of his conviction or sentence."[119] Further, where there appears to be something unresolved in parallel criminal proceedings "a court may decide in its discretion to stay civil proceedings . . . 'when the interests of justice seem[ ] to require such action.'"[120] Thus, federal courts have discretion to give deference to state courts when the interest of justice so requires. Additionally, the *Heck* burden on state criminal versus federal civil decisions is moot in Tekoh's suit since he was acquitted. If a jury found Tekoh guilty, then *Heck* may bar a civil suit because it may create an inconsistent verdict; however, the acquittal in Tekoh's case supports the civil suit.

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115. *Id.*

116. *Id.*

117. *See* 28 U.S.C. § 2254; *see also* Keating v. Off. of Thrift Supervision, 45 F.3d 322, 324 (9th Cir. 1995).

118. Heck v. Humphrey, 512 U.S. 477, 484 (1994).

119. *Id.* at 487.

120. *Keating*, 45 F.3d at 324 (quoting Sec. & Exch. Comm'n v. Dresser Indus., Inc., 628 F.2d 1368, 1375 (D.C. Cir. 1980)). In considering judicial efficiency, the court looks to the following five factors:

> (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation.

Id. at 324–25; *see also* United States v. Kordel, 397 U.S. 1, 12 n.27 (1970) (collecting cases) ("Federal courts have deferred civil proceedings pending the completion of parallel criminal prosecutions when the interests of justice seemed to require such action, sometimes at the request of the prosecution.").

Justice Alito, in his *Vega* opinion, maintains that another procedural concern is whether forfeiture, plain error, and harmless-error rules carry over to the state criminal trial.[121] Again, decisions involving the federal-state relationship arising from state prosecutions are a matter of common practice.[122] There are several procedural rules in place that address these issues; therefore, the so-called "costs" are unclear. In *Greer v. United States*, the Court asserts: "Under Rule 51(b) of the Federal Rules of Criminal Procedure, a defendant can preserve a claim of error 'by informing the court' of the claimed error when the relevant 'court ruling or order is made or sought.'"[123] Defining the scope of this rule, the Court continues: "If the defendant has 'an opportunity to object' and fails to do so, he forfeits the claim of error . . . If the defendant later raises the forfeited claim on appeal, Rule 52(b)'s plain-error standard applies."[124] Further, the Court contextualizes this rule as it applies to appeals, stating, "Rule 52(b) provides: 'A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.' 'Rule 52(b) is permissive, not mandatory.'"[125] Additionally, forfeiture of arguments has long been a rule in federal courts. For example, Federal Rule of Civil Procedure 50 provides that any argument not preserved by a Rule 50(a) motion cannot be brought under Rule 50(b).[126] Last, Federal Rule of Evidence 103 declares that a party must timely object and state specific grounds to preserve a claim of error, and also addresses the substantial right standard under the plain error rule.[127]

Once an argument is preserved by objection in accordance with the rules, one defense the prosecution would make in a criminal trial, and the defendant in a § 1983 action, is asserting the violation was harmless.[128] It again is unclear what actual "cost" the Court sees in this issue. The potential "harm" in a criminal

121. *Vega*, 142 S. Ct. at 2107.

122. *See* Preiser v. Rodriguez, 411 U.S. 475, 490 (1973) (recognizing that friction between the state and federal systems can be produced when federal courts "upset a state court conviction").

123. Greer v. United States, 141 S. Ct. 2090, 2096 (2021) (quoting FED. R. CRIM. P. 51(b)).

124. *Id.* (citations omitted) (citing Puckett v. United States, 556 U.S. 129, 135 (2009)).

125. *Id.* (first quoting FED. R. CRIM. P. 52(b); and then quoting United States v. Olano, 507 U.S. 725, 735 (1993)).

126. FED. R. CIV. P. 50.

127. FED. R. EVID. 103(e) ("A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.").

128. *See* Neder v. United States, 527 U.S. 1, 7–8 (1999).

case is the risk of conviction and incarceration. However, the "harm" in a civil case is much more expansive, including mental and emotional pain and suffering, the reasonable value of lost wages and employment opportunities, and punitive damages.[129] Further, whether procedural rules carry over from the state criminal trial has long been established by the *Erie* Court.[130] The "harmless-error" rule exemplifies the power of federal procedure, stating:

> Unless justice requires otherwise, no error in admitting or excluding evidence--or any other error by the court or a party--is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.[131]

Demonstrating its importance, every state now has a harmless-error rule or statute and Congress prohibited the reversal of judgments for "errors or defects which do not affect the substantial rights of the parties."[132]

Finally, courts consider "whether civil damages are available in instances where the unwarned statement had no impact on the outcome of the criminal case."[133] First, it is hard to imagine a situation where the unwarned statement had *no* impact on the outcome of the criminal case given the many exceptions to the exclusionary rule.[134] Regardless of whether the violative statement had an impact on the criminal trial's outcome, the accused has paid a cost such as potential prolonged custody, anxiety, and perhaps attorney fees. Again, civil damages are more extensive than the

129. 9TH CIR. MODEL CIVIL JURY INSTR. 5.1 (2017) ("Damages means the amount of money that will reasonably and fairly compensate the plaintiff for any injury you find was caused by the defendant."); *id.* at 80–81 (explaining measures of types of damages, including categories of general and special damages); *id.* at 84 ("The purposes of punitive damages are . . . to deter similar acts in the future.").

130. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 92 (1938) (Reed, J., concurring) ("[N]o one doubts federal power over procedure.").

131. FED. R. CIV. P. 61.

132. Chapman v. California, 386 U.S. 18, 22 (1967); *see id.* at 24 (explaining the harmless error rule by recognizing that constitutional errors can be harmless and will not require automatic reversal of conviction, but that the judge must be convinced beyond a reasonable doubt that the error was harmless).

133. Vega v. Tekoh, 142 S. Ct. 2095, 2107 (2022).

134. *See* Oregon v. Hass, 420 U.S. 714, 723 (1975); Michigan v. Tucker, 417 U.S. 433, 451–52 (1974); Harris v. New York, 401 U.S. 222, 225 (1971).

sole risk of incarceration. According to the Supreme Court: "[T]o satisfy Article III's standing requirements, a plaintiff must show 'injury in fact,' causation, and redressability."[135] If there is no injury in fact, the case will be dismissed as moot. However, if there is an injury, a civil rights suit for money damages under § 1983 is the victim's only recourse, regardless of the outcome of the criminal action. The costs incurred when a federal court defers to a state court's factual finding are insignificant compared to the consequences endured by an accused individual.

Against the backdrop of the costs of permitting § 1983 claims in the context of *Miranda*, the Court undertook no discussion of the benefits that could derive from authorizing such claims. One need only track the course of a criminal prosecution as it works its way through a state's criminal justice apparatus to understand the benefits. Use of a compelled statement (violative of *Miranda* warnings) can erroneously create probable cause for the prosecution to file criminal charges and hold the accused in custody for an extended time. The *Miranda* protections would ensure that any incriminating statement would be legally obtained to provide probable cause without fear of prosecutorial misconduct, false confessions, or case dismissal. If plaintiffs are allowed § 1983 actions under *Miranda*, it will allow for a *Monell* action against the supervising municipality for failure to train its officials in the requirements of *Miranda*; for ratifying their failure to follow *Miranda*; or for maintaining an unconstitutional policy, custom, or practice of failing to provide *Miranda* warnings in an effort to secure convictions.[136]

Another essential, unquantifiable benefit of authorizing § 1983 claims is enhancing public trust of law enforcement. *Miranda* has been in place since 1966, and there is an expectation that individuals will receive *Miranda* warnings during custodial interrogations. Municipalities ensuring *Miranda* compliance may have a positive impact on the community and the profession which cultivates public trust—a significant component of community

135. Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 168 (2000) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992)).

136. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978) ("[M]unicipalities and other local government units . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action . . . implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.").

policing.[137] The benefits of *Miranda* being recognized as part of a person's fundamental right under the Fifth Amendment include enforcing ethical values; enhancing cooperation and even collaboration in the community; minimizing claims of abuse of power, malicious prosecution, and violations of due process; ensuring officers are acting within their authority; and providing concrete procedures for officers and courts to follow.

The importance of community policing and public trust can be "found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics."[138] Peace officers are trained to assume responsibility for safeguarding arrested persons in their care because depriving a person of their freedom in any capacity is one of the most serious and sensitive responsibilities that peace officers face.[139] Thus, peace officers must protect an individual's rights guaranteed to all persons under *The Bill of Rights*.[140] Law enforcement can ensure this protection by acting as leaders within the communities they serve.

Basic peace officer training recognizes that leadership must be practiced at all levels, and an officer's ability to exercise leadership will have a significant impact on the community and the profession.[141] This reality is codified in training manuals, elucidating: "The exercise of leadership by an officer results in increased respect, confidence and influence. The result will be personal and professional success, increased public trust and personal growth."[142] Trust is the crucial focal point forging the community and policing partnership. If community members and peace officers have a common group of values, communicate often

137. United States v. Rehal, 940 F.2d 1, 5 (1st Cir. 1991) ("Needless to say, a police officer occupies a position of public trust, and the commission of a crime by a police officer constitutes an abuse of that trust." (citing United States v. Foreman, 926 F.2d 792, 796 (9th Cir. 1990))); *see* United States v. Sierra, 188 F.3d 798, 802 (7th Cir. 1999) ("The Sentencing Guidelines call for a two-level enhancement if the [police officer] defendant abused a position of public or private trust." (citing U.S. SENT'G GUIDELINES MANUAL § 3B1.3 (U.S. SENT'G COMM'N 2009))).

138. *See* Miranda v. Arizona, 384 U.S. 436, 448 (1966).

139. CAL. COMM'N ON PEACE OFFICER STANDARDS AND TRAINING, BASIC COURSE WORKBOOK SERIES, CUSTODY 1-4, 1-6 (Version 6.5 2020), https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_31_V-6.5.pdf.

140. *Id.* at 1-10 to 1-11.

141. CAL. COMM'N ON PEACE OFFICER STANDARDS AND TRAINING, BASIC COURSE WORKBOOK SERIES, LEADERSHIP, PROFESSIONALISM, AND ETHICS 1-3 (Version 5.6 2020), https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_01_V-5.6.pdf.

142. *Id.*

and openly, and have a mutual appreciation for each other, the necessary trust will form.[143] In the interest of leadership, professionalism, and ethics, peace officers are trained to follow legal practices during interrogation, detention, searches, seizures, use of informants, and collection and preservation of evidence.[144] Thus, there is a direct correlation between an officer's conduct during necessary interrogation and the statements made by their subjects. Do the statements arise voluntarily, possibly as a result of trust, or through the use of deception?

As opposed to an authoritarian derivation, the power to arrest stems from "the will and consent of the people" who expect law enforcement to safeguard this right with proper care.[145] Law enforcement officers must appreciate that the freedom from self-incrimination is a fundamental right. Also, it is crucial that "[p]eace officers . . . understand the relationship between a person's right against self-incrimination and their responsibility to advise individuals of their right to remain silent when applicable."[146] Peace officers are trained to understand "the relationship between a person's right against self-incrimination" and the *Miranda* decision.[147] Therefore, "[w]hen conducting a custodial interrogation, peace officers must follow Miranda procedures" knowing that custodial interrogation is inherently coercive.[148] This was also the department policy[149] respondent Vega failed to follow, with no indication that he was reprimanded or retrained as a result.

The benefit of ensuring that *Miranda* is subject to the threat of civil liability is that officers will follow Supreme Court authority; adhere to their training and department policy; build a community policing partnership by setting the example of leadership, professionalism, and ethics; and hold the municipality responsible

143. *Id.* at 1-18.

144. *Id.* at S-8.

145. CAL. COMM'N ON PEACE OFFICER STANDARDS AND TRAINING, BASIC COURSE WORKBOOK SERIES, CRIMINAL JUSTICE SYSTEM 1-4 to 1-5 (Version 6.4 2017), https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_02_V-6.4.pdf.

146. *Id.* at 1-8.

147. *Id.*

148. CAL. COMM'N ON PEACE OFFICER STANDARDS AND TRAINING, BASIC COURSE WORKBOOK SERIES, LAWS OF ARREST 5-1 (Version 4.16 2022), https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_01_V-5.6.pdf.

149. L.A. CNTY. SHERIFF'S DEP'T, MANUAL OF POLICY AND PROCEDURES, VOLUME 5 - LINE PROCEDURES, CHAPTER 7 - JUDICIAL PROCESS 5-07/010.05 to 5-07/010.15 (Version 2021.7.22.1, 2023), https://pars.lasd.org/Viewer/Manuals/10008.

for ratifying any failure of the above. The cost of *Vega* is equally clear—since peace officers are not obligated to follow *Miranda* (only the trial judge is) despite the training, peace officers will lose the trust of the community as officers are free to cause harm without repercussion and incentivized to treat arrested persons as if they are presumed guilty.

VIII. CONCLUSION

A cause of action arises under § 1983 when a state actor subjects another "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."[150] Except, apparently, when it is inconvenient or stresses the federal-state relationship.[151] Further, the Supreme Court has "repeatedly held that the coverage of [§ 1983] must be broadly construed."[152]

Is it sound policy to turn away a person asserting a wrongfully decided trial court *Miranda* error? Should the costs associated with reviewing a possible error take precedence over an aggrieved individual's right to raise a claim, especially when that individual is facing imprisonment or other significant deprivations? A plaintiff can claim violation of his or her Fourth Amendment right to be free from unreasonable seizure arising from the plaintiff being wrongfully detained based on an illegally obtained confession, or a Fourteenth Amendment Due Process violation after charges are filed; however, after *Vega*, the same plaintiff cannot assert a claim under the Fifth Amendment that more closely resembles the proximate cause of the violation. Enshrining this principle, the Supreme Court advised: "[W]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims."[153] As applied here, Tekoh had a specific Fifth Amendment right that no person shall "be compelled in any criminal case to be a witness

150. Vega v. Tekoh, 142 S. Ct. 2095, 2101 (2022) (citing 42 U.S.C. § 1983).

151. *See* Preiser v. Rodriguez, 411 U.S. 475, 490 (1973) (concluding that states should rectify their own judicial mistakes to prevent "unnecessary friction between the federal and state court systems" (citing Fay v. Noia, 372 U.S. 391, 419–20 (1963))).

152. Dennis v. Higgins, 498 U.S. 439, 443 (1991) (alteration in original) (citing Golden State Transit Corp. v. City of Los Angeles, 493 U.S. 103, 105 (1989)).

153. County of Sacramento v. Lewis, 523 U.S. 833, 842 (1998) (quoting Albright v. Oliver, 510 U.S. 266, 273 (1994)).

against himself."[154] That Fifth Amendment right was violated the moment the compelled confession was made; and that right was further violated when the fruit of the compelled confession was used against Tekoh; and then that right was seriously violated when the criminal court allowed the jury to hear testimony that clearly constituted a compelled, self-incriminating statement. Failing to allow a § 1983 action for these violations to redress the harm they caused is an assault on civil rights and a missed opportunity to encourage professionalism, leadership, and ethics in law enforcement.

154. U.S. CONST. amend. V.