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The Right to Remain Silent. . . Sometimes: Why § 1983 Claims for Miranda Violations Are Necessary to Fifth Amendment Protection

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NOTE

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I. INTRODUCTION

The police arrive at your workplace and ask to speak with you. Feeling embarrassed and confused, you agree to accompany them to an isolated room to answer questions. As you pass by the concerned looks and accusatory whispers of your co-workers, you wonder to yourself, "what did I do?" Once in the room, the feeling of helplessness becomes insurmountable. The officers have blocked the exit and begin to vehemently accuse you of a crime. Although you adamantly deny any involvement in or knowledge of the crime, the officers seem prepared to keep you in the room until you make a statement. Without ever being informed that you have the right to remain silent or the right to an attorney, you begin to talk. As you walk back through the office, this time in handcuffs, it dawns on you: you just confessed to a crime you did not commit.

Miranda warnings have become "an institution in American society, thoroughly established within our culture and our consciousness."[1] Yet, a vast majority of Americans cannot freely recall or do not understand the *Miranda* rights afforded to them as a criminal suspect.[2] In *Miranda v.*

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[1] Richard A. Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L & CRIMINOLOGY 621, 679 (1996).

[2] *See* Richard Rogers, *General Knowledge and Misknowledge of Miranda Rights: Are Effective Miranda Advisements Still Necessary?*, 19 PSYCH. PUB. POL'Y & L 432, 440–41 (2013) ("The current research, consistently supported by previous studies, established that many individuals in all walks of life continue to possess and

Arizona, the Supreme Court of the United States acknowledged that individuals "must be adequately and effectively apprised of [their] rights" in order to combat the compelling pressures of in-custody interrogation and "permit a full opportunity to exercise the privilege against self-incrimination."[3] Under the *Miranda* doctrine, the un-*Mirandized* statements you made in the room alone with the police must be excluded from subsequent criminal proceedings.[4] But, what if they are still used against you in a criminal investigation or introduced at your trial? Do you have any recourse against the officer, prosecutor, judge, or county for the admission of statements made in violation of your *Miranda* rights? Does it matter whether you are *acquitted* at trial?

The Supreme Court of the United States recently faced these questions in *Vega v. Tekoh*.[5] Terence Tekoh alleged that a Los Angeles police officer coerced him into giving a false confession without being read his *Miranda* rights.[6] According to Tekoh, the officer blocked Tekoh's ability to exit the room, ignored his request for a lawyer, and pressured him into giving a confession despite his adamant denial.[7] Tekoh recalled the officer placing his hand on his gun and stating that "he was not joking."[8] While the officer alleged that the entire encounter and statement were voluntary, there is no dispute that Tekoh was not read his *Miranda* rights.[9] Tekoh's un-*Mirandized* confession was subsequently introduced against him at trial.[10] He filed a suit against the officer under 42 U.S.C. § 1983 alleging that the officer violated his Fifth Amendment right against self-incrimination.[11] The Court held that a *Miranda* violation alone cannot serve as the basis for a § 1983 claim.[12] Its holding sweeps under the rug many of the problems with modern-day *Miranda* enforcement and drastically reduces *Miranda*'s constitutional force.

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convey significant *misknowledge* of their *Miranda* rights, both in everyday, relatively stress-free settings and in the crucible of custodial interrogation.").

[3] Miranda v. Arizona, 384 U.S. 436, 467 (1966).

[4] *See id.* at 479 ("[U]nless and until [*Miranda*] warnings and waiver [of *Miranda* rights] are demonstrated by the prosecution at trial, no evidence obtained as a result of the interrogation can be used against [the individual subject to the in-custody interrogation].").

[5] *See* Vega v. Tekoh, 142 S. Ct. 2095 (2022).

[6] Tekoh v. Cnty. of Los Angeles, 985 F.3d 713, 715–17 (9th Cir. 2021), *rev'd and remanded sub nom.* Vega v. Tekoh, 142 S. Ct. 2095 (2022).

[7] *Id.* at 715–16.

[8] *Id.* at 716.

[9] *Id.* at 716, 724.

[10] *Id.* at 716.

[11] *Id.* The case began with several claims against multiple defendants, but Tekoh's claim against the officer was the only one at issue on appeal. *Id.*

[12] Vega v. Tekoh, 142 S. Ct. 2095, 2106 (2022).

Part II of this Note discusses the relevant legal background of the *Miranda* doctrine and how it intersects with § 1983 claims. Part III examines recent developments in federal court jurisprudence regarding civil claims for *Miranda* violations, from a circuit split to the Court's holding in *Vega v. Tekoh*. Finally, Part IV analyzes the negative implications of the Court's holding—that *Miranda* violations do not give rise to § 1983 civil suits—and argues that it is both legally and practically necessary to permit such claims.

II. LEGAL BACKGROUND

The protection of criminal suspects from involuntary statements in interrogations dates back to well before *Miranda v. Arizona*.[13] In several cases prior to *Miranda*, the Court carved out certain interrogation rules to safeguard an individual's Fifth and Sixth Amendment rights.[14] The *Miranda* Court subsequently recognized that more specific requirements were needed to truly ensure that an individual's privilege against self-incrimination was not jeopardized.[15] While *Miranda* is viewed as a landmark case in criminal law,[16] debates about whether it established a constitutional rule itself have affected its practical application in criminal litigation.[17] In fact, even the Court has provided conflicting guidance

[13] *See* Miranda v. Arizona, 384 U.S. 436, 458–66 (1966) (discussing the lengthy historical development of the privilege against self-incrimination and the importance of the voluntariness requirement).

[14] *See, e.g.*, Escobedo v. Illinois, 378 U.S. 478 (1964) (reinforcing an individual's Sixth Amendment right to counsel during police interrogations); Ziang Sung Wan v. United States, 266 U.S. 1 (1924) (expanding the definition of the voluntariness requirement for confessions); Bram v. United States, 168 U.S. 532 (1897) (applying the Fifth Amendment to custodial interrogation settings for the first time).

[15] *Miranda*, 384 U.S. at 467 ("[W]ithout proper safeguards[,] the process of in-custody interrogation. . . contains inherently compelling pressures. . . [and] the accused must be adequately and effectively apprised of his rights" in order to combat these pressures.).

[16] Bruce Peabody, *Fifty years later, the Miranda decision hasn't accomplished what the Supreme Court intended*, WASH. POST (June 13, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/06/13/your-miranda-rights-are-50-years-old-today-heres-how-that-decision-has-aged/ [https://perma.cc/QP7G-VL25] (describing *Miranda* as "perhaps the most well-known case in criminal law").

[17] *See, e.g.*, New York v. Quarles, 467 U.S. 649, 654 (1984) (carving out a "public safety exception" to the *Miranda* rule because the *Miranda* warnings are prophylactic rules rather than constitutional requirements); Michigan v. Tucker, 417 U.S. 433, 450–52 (1974) (holding that the exclusionary rule does not apply to evidence that was found because of an un-*Mirandized* statement).

about the *Miranda* decision's constitutional roots.[18] Not only is clarity on this debate important for evidentiary purposes at a criminal trial,[19] but it also helps to answer the question of whether a *Miranda* violation may serve as the basis for a § 1983 claim.[20]

A. Pre-Miranda *Fifth and Sixth Amendment Cases*

In *Bram v. United States*, the Court, for the first time, applied the Fifth Amendment's privilege against self-incrimination to interrogation settings.[21] According to the Court, a confession may be rendered involuntary if the government exerts influence over the confessor.[22] And because the Court concluded that interrogation necessarily involves the exertion of some degree of influence, it held that a voluntariness analysis must be performed not only when a defendant confesses at a hearing or in court, but also during any interrogations with the police.[23]

The Court expanded its protections against involuntary confessions by broadening its voluntariness standard in *Ziang Sung Wan v. United States*.[24] After the appellate court seemingly deemed the defendant's confession voluntary merely because it was *not* induced by a threat or a promise, the Court made clear that "[a] confession is voluntary in law if, *and only if*, it was, in fact, voluntarily made."[25] Therefore, the requisite for voluntariness is satisfied not by showing the absence of a promise or

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[18] *Compare, e.g.*, Oregon v. Elstad, 470 U.S. 298, 306–09 (1985) (stating that a *Miranda* violation by itself does not constitute a constitutional violation), *and Tucker*, 417 U.S. at 444 ("The [*Miranda*] safeguards were not intended to create a constitutional straightjacket, but rather to provide practical reinforcement for the right against compulsory self-incrimination."), *with* Dickerson v. United States, 530 U.S. 428, 444 (2000) ("[W]e conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively.").

[19] *See, e.g.*, Michigan v. Tucker, 417 U.S. 433, 439–46 (1974) (considering first whether an officer's failure to give *Miranda* warnings directly infringed upon the defendant's Fifth Amendment rights, and then determining whether "fruits" of the *Miranda* violation must be excluded even if *Miranda* is not a constitutional requirement).

[20] *See* Tekoh v. Cnty. of Los Angeles, 985 F.3d 713, 718 (9th Cir. 2021), *cert. granted sub nom.* Vega v. Tekoh, 142 S. Ct. 858 (2022) (whether a defendant may bring a § 1983 claim for a *Miranda* violation "turns on whether the introduction of [the defendant's] un-*Mirandized* statement at his criminal trial" constitutes a Fifth Amendment violation).

[21] Bram v. United States, 168 U.S. 532 (1897).

[22] *Id.* at 559–62.

[23] *Id.* at 561. In *Bram*, the Court found that the defendant's confession was involuntary because he believed if he remained silent it would be an admission of guilt. *Id.* at 562–64. In other words, the defendant's confession was *influenced* by the force of hope and fear. *Id*. at 563.

[24] Ziang Sung Wan v. United States, 266 U.S. 1, 14–17 (1924).

[25] *Id.* at 14 (emphasis added).

threat, but rather by proving that the confession was not obtained through any degree of compulsion—regardless of the character of the compulsion or when it was applied.[26] Historian Scott D. Seligman has referred to *Ziang Sung Wan* as the case that "laid the groundwork for Americans' right to remain silent."[27]

A few decades later, the Court set the foundation for *Miranda*'s Fifth Amendment analysis when it extended an individual's Sixth Amendment right to counsel to police interrogations.[28] In *Escobedo v. Illinois*, the Court analyzed the voluntariness of a defendant's confession made without the presence of an attorney.[29] Where the focus of an investigation shifts to a specific suspect and the investigation's purpose becomes to "elicit a confession," the Court noted, the suspect must have an opportunity to consult with his lawyer.[30] Thus, in broadening the scope of an individual's protection against compulsory interrogation, the *Escobedo* Court held that an individual's statements will be inadmissible at trial if he is denied his right to counsel and is not "effectively warned of his absolute constitutional right to remain silent" during interrogation.[31] The Court decided *Miranda* just two years after *Escobedo*, and it relied heavily on the *Escobedo* Court's belief that the presence of an attorney and advisement of constitutional rights were necessary to "eliminate[] the evils [of] the interrogation process."[32]

B. Miranda v. Arizona

Miranda v. Arizona was one of four cases consolidated to address the admissibility of statements made during custodial interrogations.[33] In all four cases, law enforcement questioned the defendant in a room secluded from the public, and each defendant made self-incriminating statements.[34] None of the four defendants were given effective warnings of their rights

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[26] *Id.* at 14–15.

[27] Scott D. Seligman, *The Triple Homicide in D.C. That Laid the Groundwork for Americans' Right to Remain Silent*, SMITHSONIAN MAG. (Apr. 30, 2018), https://www.smithsonianmag.com/history/1919-murder-case-gave-americans-right-remain-silent-180968916/ [https://perma.cc/PJW6-4GYG].

[28] *See* Escobedo v. Illinois, 378 U.S. 478, 492 (1964).

[29] *Id.* at 481–82.

[30] *Id.* at 490–92.

[31] *Id.* at 490–91. The Court brought up several times the fact that the defendant was not advised of his right to remain silent. *Id*. at 483, 485, 491. It also noted that evidence showing that many confessions were made before indictment pointed to the "critical nature" of legal advice at that stage. *Id.* at 488.

[32] *See* Miranda v. Arizona, 384 U.S. 436, 466 (1966).

[33] *See id.* at 445, 491–99. The other cases were *Vignera v. New York*, *Westover v. United States*, and *California v. Stewart*. *Id.* at 493–99.

[34] *Id.* at 445.

at the beginning of their respective interrogations.[35] The signed confessions were admitted at three of the criminal trials.[36] The *Miranda* Court was concerned with the voluntariness of such statements and the practical application of the Fifth Amendment right to remain silent in present-day conversations with police.[37]

The majority began its analysis by discussing the then-modern practice of in-custody interrogation.[38] To do so, it examined various police manuals and texts which described the investigation procedures used by officers around the country.[39] The majority summarized the manuals' suggested interrogation techniques as follows:

> To be alone with the suspect is essential to. . . deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience, and persistence, at times relentless questioning, are employed . . . . When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems. . . . The police then persuade, trick, or cajole [the suspect] out of exercising his constitutional rights.[40]

The Court noted that many of these subtle interrogation techniques may not render a suspect's statements involuntary by "traditional terms."[41] According to the majority, however, such an interrogation environment serves no other purpose than to "subjugate the individual to the will of his examiner."[42] And thus, no statement obtained from a suspect can truly be voluntary "unless adequate protective devices are employed to dispel the compulsion."[43]

Given this backdrop, the majority in *Miranda* provided a list of now frequently-quoted safeguards to ensure that individuals are effectively apprised of their rights in an interrogation setting.[44] When an individual is in custody and subject to interrogation, he must be informed in clear and unequivocal terms of the following: his right to remain silent, that anything he says can and will be used against him in court, his right to counsel

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[35] *Id.*

[36] *Id.*

[37] *See id.* (noting that "[t]he difficulty in depicting what transpires [in] interrogations stems from the fact that in this country they have largely taken place incommunicado," and acknowledging that an examination of the nature of custodial interrogations was essential to the four cases before the Court).

[38] *Id.* at 445–56.

[39] *Id.* at 448–55.

[40] *Id.* at 455.

[41] *Id.* at 457.

[42] *Id.*

[43] *Id.* at 457–58.

[44] *Id.* at 467.

during the interrogation, and that an attorney will be appointed for him if he cannot afford one.[45] With regard to the right to remain silent, the Court reasoned that it is a "threshold requirement for an intelligent decision" that one be made aware of his Fifth Amendment privilege.[46] Additionally, a warning about this right "will show [an] individual that his interrogators are prepared to recognize his privilege should he choose to exercise it."[47] As for the right to counsel, the Court noted several subsidiary functions served by the presence of an attorney during interrogation: (1) mitigation of the dangers of untrustworthiness; (2) reduction of the likelihood of coercion; and (3) assurance that an individual's statement is accurately reported.[48] Thus, a warning that an individual has the right to consult with a lawyer is "an absolute prerequisite to interrogation," as it is the only way to have "ascertainable assurance that the [individual] was aware of his right."[49] To highlight the necessity of *Miranda* warnings, the Court extended the exclusionary rule to un-*Mirandized* statements.[50] It ultimately held that evidence obtained as a result of interrogation may not be used against the defendant unless the prosecution demonstrates that *Miranda* rights were provided to *and* waived by that defendant.[51]

The majority acknowledged the argument that society's need for police interrogation outweighs an individual's *Miranda* rights.[52] While it noted the burdens on law enforcement and the obligation of citizens to aid in the enforcement of criminal laws, it argued that the requirement of *Miranda* warnings "should not constitute an undue interference with a proper system of law enforcement."[53] The majority focused on the serious consequences that inherently compulsory interrogations have for *innocent* individuals.[54] According to the majority, custodial interrogation "does not necessarily afford the innocent an opportunity to clear themselves."[55] Thus, *Miranda* made clear that the importance of interrogation does not outweigh the protection of constitutional rights,[56] but it left open the

[45] *Id.* at 479.
[46] *Id.* at 468.
[47] *Id*.
[48] *Id.* at 470.
[49] *Id.* at 471–72.
[50] *See id.* at 479.
[51] *Id*.
[52] *Id*.
[53] *Id.* at 481.
[54] *See id.* at 482–86.
[55] *Id.* at 482.
[56] *Id*. at 479 ("The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged.").

question of whether its decision created a constitutional requirement itself.[57]

C. Is Miranda *a Constitutional Rule?*

At the time, *Miranda* was an extremely controversial decision.[58] The Court itself was split 5-4,[59] and the case remains a key part of the discussion about the nature and limitations of judicial power.[60] Central to the *Miranda* debate is whether it established a constitutional requirement or was merely a judicially crafted "prophylactic rule" to *help protect* constitutional rights.[61] Since the decision, the Court has made conflicting statements about the constitutional force of *Miranda* and its safeguards.[62]

In *Miranda* itself, the Court implied that *Miranda* safeguards are constitutionally required when it plainly declared that "no statement obtained from [a suspect] can truly be the product of his free choice" unless adequate safeguards are incorporated "to dispel the compulsion inherent in custodial surroundings."[63] In the same opinion, however, the *Miranda* Court stated that its decision "in no way create[d] a constitutional straitjacket which [would] handicap sound efforts at reform."[64] While the Court explicitly left the door open for Congress to devise other effective

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[57] *See id*. at 482 (noting that "Congress and the states are free to develop their own safeguards for the [Fifth Amendment and Sixth Amendment] privilege[s]" but *requiring* that any safeguards effectively inform individuals of their rights and the continuous opportunity to exercise them).

[58] *See* Peabody, *supra* note 16 ("*Miranda*. . . was so widely unpopular when first handed down. In addition to opposition by politicians, a Harris poll conducted a few months after the opinion found that [fifty-seven] percent of respondents thought it 'wrong,' with only [thirty] percent calling it 'right.'").

[59] *See* Miranda v. Arizona, 384 U.S. 436 (1966).

[60] Peabody, *supra* note 16.

[61] *See* Tekoh v. Cnty. of Los Angeles, 985 F.3d 713, 719–20 (9th Cir. 2021), *rev'd and remanded sub nom.* Vega v. Tekoh, 142 S. Ct. 2095 (2022) (acknowledging that there has been "significant debate about the extent to which *Miranda* warnings [are] constitutionally required" and citing several cases that support an argument on either side of the debate).

[62] *Compare, e.g.*, Oregon v. Elstad, 470 U.S. 298, 306–09 (1985) (stating that a *Miranda* violation by itself does not constitute a constitutional violation), *and* Michigan v. Tucker, 417 U.S. 433, 444 (1974) ("The [*Miranda*] safeguards were not intended to create a constitutional straightjacket, but rather to provide practical reinforcement for the right against compulsory self-incrimination."), *with* Dickerson v. United States, 530 U.S. 428, 444 (2000) ("[W]e conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively.").

[63] *See Miranda*, 384 U.S. at 458. The Court added that there is an "intimate connection" between the Fifth Amendment's protection against self-incrimination and police custodial questioning. *Id.*

[64] *Id.* at 467.

ways to protect the rights of individuals in interrogations,[65] it added that any legislatively created procedures must be "at least as effective [as the *Miranda* safeguards] in apprising accused persons of their right to silence and in assuring a continuous opportunity to exercise [that right]."[66]

Confronted with *Miranda*'s mixed guidance, the Court partially clarified the exclusionary scope of the *Miranda* holding eight years later.[67] In *Michigan v. Tucker*, the Court faced the question of whether a *witness's* statements were also inadmissible at trial where the police only learned of the witness's identification through an un-*Mirandized* interrogation of the defendant.[68] The Court addressed the issue in two parts: first, it analyzed whether the police's failure to *Mirandize* directly infringed upon the defendant's constitutional rights or whether it instead violated only "prophylactic rules" created to *protect* those constitutional rights;[69] and second, it considered whether the evidence obtained from the un-*Mirandized* statements must be excluded at trial.[70]

In response to the first question, the Court held that the police's failure to fully advise the defendant of his *Miranda* rights was not enough to violate the defendant's privilege against self-incrimination.[71] It reasoned that the *Miranda* safeguards were created "to provide practical reinforcement" of the Fifth Amendment rather than to create constitutional requirements themselves.[72] And because the Court's precedent established that the exclusionary rule could be extended *only* to the "fruits of police conduct" which actually violated an individual's constitutional rights,[73] the *Tucker* Court addressed the second consideration in its

[65] *Id*. ("We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws.").

[66] *Id*.

[67] *See Tucker*, 417 U.S. at 435 ("This case presents the question whether the testimony of a witness in respondent's state court trial for rape must be excluded simply because police had learned the identity of the witness by questioning respondent" while he was in custody and had not been fully advised of his rights).

[68] *See id*. at 435, 439. In *Tucker*, the police questioned the defendant without fully advising him that an attorney would be provided for him if he could not afford one. *Id*. at 436. The interrogation led to statements from the defendant that identified a possible witness, and the police contacted the witness to confirm the defendant's story. *Id.* The witness's statements contradicted the defendant's story and were admitted at trial despite the defendant's motion to have them excluded. *Id*. at 436–37.

[69] *Id*. at 439.

[70] *Id*.

[71] *Id*. at 444–45. Looking at the record, the Court noted that the defendant was warned that he had a right to remain silent, informed that his statements could be used against him, and asked if he wanted an attorney. *Id.* Thus, the Court determined that the defendant's statements "could hardly be termed involuntary." *Id.* at 445.

[72] *Id*. at 444.

[73] *See id*. at 445 (citing Wong Sun v. United States, 371 U.S. 471 (1963)).

analysis "as a question of principle."[74] The Court ultimately held that the witness's statements were admissible at trial.[75] It reasoned that the justice system's strong interest in making available all trustworthy and relevant evidence, combined with society's interest in the effective prosecution of criminals, outweighed the defendant's interest in excluding a third party's statements where the defendant's own statements were already excluded.[76] While the *Tucker* Court narrowly limited its holding to the circumstances of the case, its decision laid the groundwork for a subsequent case to answer the broader question of whether *any* evidence obtained from a *Miranda* violation must be excluded.[77]

One decade later, the Court carved out a "public safety" exception to the *Miranda* requirement.[78] In *New York v. Quarles*, an officer interrogated the defendant about the location of a gun without advising the defendant of his *Miranda* rights.[79] The Court held that "overriding considerations of public safety justif[ied] the officer's failure to provide *Miranda* warnings,"[80] and it concluded that both the defendant's statement and the gun were admissible at trial.[81] In doing so, it endorsed the notion that *Miranda* created merely a "prophylactic rule,"[82] and the Court thus implied that exceptions to the rule do not infringe upon an individual's constitutional rights.[83]

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[74] *Id*. at 446–52.

[75] *Id*. at 452.

[76] *Id.* at 450–51.

[77] *See id.* at 447 ("Although we have been urged to resolve the broad question of whether evidence derived from statements taken in violation of the Miranda rules must be excluded regardless of when the interrogation took place, we instead place our holding on a narrower ground."). The Court chose to place its holding on narrower ground because the police interrogation at issue in this case took place *before Miranda* was decided. *Id.*

[78] *See* New York v. Quarles, 467 U.S. 649, 655–56 (1984).

[79] *Id.* at 652. In *Quarles*, the police were informed that the suspect of an alleged rape was inside a supermarket carrying a gun. *Id*. at 651–52. The officers arrived at the supermarket and spotted the defendant—who matched the description of the suspect. *Id*. at 652. An officer stopped, frisked, and handcuffed the defendant before asking him about the location of the gun. *Id*. The Court quickly acknowledged that the defendant was "in police custody" and subject to interrogation for the purposes of *Miranda*. *Id.* at 655.

[80] *Id.* at 651. The public safety exception applies in circumstances where "spontaneity rather than adherence to a police manual is necessarily the order of the day." *Id.* at 656. The Court reasoned that "the need for answers to questions in a situation posing a threat to public safety" outweighs the judicially created *Miranda* rule. *Id*. at 657.

[81] *Id*. at 655–56, 659–60.

[82] *Id*. at 657.

[83] *See id.* at 657–60.

Just one year later, the Court explicitly recognized that *Miranda* violations are fundamentally different from police infringements of constitutional rights.[84] In *Oregon v. Elstad*, the Court plainly stated that the *Miranda* exclusionary rule "sweeps more broadly than the Fifth Amendment itself" and "may be triggered *even in the absence of a Fifth Amendment violation*."[85] Importantly, however, the *Elstad* Court acknowledged that a "[f]ailure to administer *Miranda* warnings creates a *presumption* of compulsion."[86] Nonetheless, the Court noted that this presumption "does not require that the statements and their fruits be discarded as inherently tainted."[87] The Court ultimately concluded that the admissibility of any "fruits" of a *Miranda* violation should turn on whether they were themselves obtained in violation of an individual's constitutional rights.[88]

While this language appears to resolve the confusion about whether *Miranda* was a constitutional decision or not, the Court has since made a strong statement that contradicts *Tucker*, *Quarles*, and *Elstad*.[89] Two years after *Miranda*, Congress enacted a statute that effectively overruled the *Miranda* Court's decision.[90] According to the Court, Congress has the authority to "modify or set aside any judicially created rules . . . not required by the Constitution," but it does *not* have the power to "legislatively supersede [the Court's] decisions interpreting and applying the Constitution."[91] Thus, in *Dickerson v. United States*, the Court directly faced the question of whether the *Miranda* Court "announced a

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[84] *See* Oregon v. Elstad, 470 U.S. 298, 303 (1985) (declaring that an assumption that *Miranda* violations and constitutional violations "necessarily breed[] the same consequences" misunderstands the "nature of protections afforded by *Miranda*").

[85] *Id*. at 306 (emphasis added). *Elstad* involved the custodial interrogation of an eighteen-year-old (the defendant in this case) that led to un-*Mirandized* incriminating statements. *See id*. at 300–01. The defendant was transported back to the police station after making the statements and was there advised of his *Miranda* rights before giving more incriminating statements. *Id*. at 302. The defendant argued that both his un-*Mirandized* statements and the subsequent *Mirandized* statements should be inadmissible at trial because the original *Miranda* violation "tainted the subsequent confession." *Id*.

[86] *Id*. at 307.

[87] *Id*.

[88] *See id.* at 309 ("Though Miranda requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made.").

[89] *See* Dickerson v. United States, 530 U.S. 428, 432 (2000) (holding that *Miranda* is a "constitutional decision of [the] Court").

[90] *Id.* at 435–36. The statute expressly designated voluntariness as the "touchstone of admissibility" and did not contain any warning requirement. *Id.* at 436. The Court noted that Congress intended to overrule *Miranda* with the enactment of this statute. *Id.*

[91] *Id.* at 437.

constitutional rule or merely exercised its supervisory authority to regulate evidence in the absence of congressional direction."[92]

The majority conceded that the language in cases like *Tucker*, *Quarles*, and *Elstad* indicates that *Miranda* was not a constitutional decision.[93] But, it argued that the factors on the other side—that *Miranda* protections *are* constitutionally required—outweigh the implications of those cases.[94] First, the Court has consistently applied *Miranda* to state court proceedings, and its authority to do so "is limited to enforcing the commands of the [Constitution]."[95] Second, the *Miranda* decision itself is "replete with statements indicating that the majority thought it was announcing a constitutional rule."[96] Third, the Court has broadened *Miranda*'s application just as often as it has created exceptions to it.[97] According to the Court, this array of post-*Miranda* decisions represents the principle that "no constitutional rule is immutable"—unforeseen circumstances often arise that require the sort of modifications made throughout the *Miranda* doctrine.[98] Finally, the majority clarified that the decision in *Elstad*—refusing to apply the traditional "fruits" doctrine to *Miranda* violations—does *not* show that *Miranda* is non-constitutional.[99] Rather, it "simply recognizes the fact that unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth Amendment."[100] Therefore, the *Dickerson* Court ultimately held that Congress could not overrule *Miranda* because the decision created a constitutional rule.[101] Under this holding, it would seem that *Miranda* violations could serve as the basis for a § 1983 lawsuit.[102]

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[92] *Id.*

[93] *Id.* at 438.

[94] *Id.* at 438–41.

[95] *Id.* at 438 (quotations omitted).

[96] *Id.* at 439–40 (citing language throughout *Miranda*).

[97] *Id.* at 441 (citing Arizona v. Roberson, 486 U.S. 675 (1988); Doyle v. Ohio, 426 U.S. 610 (1976)). The Fourth Circuit relied in part on the fact that the Court had made exceptions to *Miranda*—such as the public safety exception in *Quarles*—to conclude that *Miranda* did not create a constitutional rule. *Dickerson*, 530 U.S. at 441.

[98] *Dickerson*, 530 U.S. at 441. According to the majority in *Dickerson*, these modifications—both the exceptions and the expansions—are "as much a normal part of constitutional law as the original decision." *Id.* at 441.

[99] *Id.*

[100] *Id.* Thus, according to the majority, the Fourth Circuit's reliance on language from *Elstad* to suggest that *Miranda* was non-constitutional was insufficient. *See id.*

[101] *Id.* at 444.

[102] *See* 42 U.S.C. § 1983 (1996) (giving individuals a statutory right to sue any person who deprives them of their constitutional rights). If *Miranda* created a constitutional right to receive warnings before being interrogated in custody—as *Dickerson* seems to suggest—an individual would be able to file suit under § 1983 against an officer who violated his *Miranda* rights. *See id.*

D. Section 1983 Claims

Under 42 U.S.C. § 1983, a person who, acting under the color of state law, deprives an individual of his constitutional "rights, privileges, or immunities" shall be liable to that individual.[103] Section 1983 does not itself create substantive rights, but rather it is a means of *vindicating* those substantive constitutional rights an individual already possesses.[104] It has served as a "vehicle for the articulation of much constitutional law."[105] To establish a prima facie case under a § 1983 claim, a plaintiff must show (1) a violation of a constitutional or federal right and (2) that the violation was committed by a person acting under the color of state law.[106]

One of the most important considerations in § 1983 litigation is qualified immunity.[107] Qualified immunity protects an executive official from suit so long as the official did not violate clearly established federal rights.[108] While the issue of qualified immunity plays a meaningful role in § 1983 lawsuits, its specific details are outside the scope of this Note. In general, if the *Miranda* rule is a clearly established federal or constitutional right, an officer does not receive qualified immunity from liability for a *Miranda* violation.[109] Therefore, post-*Dickerson* and pre-

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[103] *Id.* Section 1983 expressly provides that "[e]very person who, under color of any [state law], subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . ." *Id.*

[104] *Procedural Means of Enforcement Under 42 U.S.C. § 1983*, 43 GEO. L.J. ANN. REV. CRIM. PROC. 1112, 1117 (2014).

[105] Sheldon Nahmod, *Section 1983 is Born: The Interlocking Supreme Court Stories of Tenney and Monroe*, 17 LEWIS & CLARK L. REV. 1019, 1021 (2013).

[106] West v. Atkins, 487 U.S. 42, 48 (1988); MARTIN A. SCHWARTS, SECTION 1983 LITIGATION 12 (Kris Markarian ed., Fed. Jud. Ctr. 3d ed. 2014). While Congress has not enacted a counterpart to § 1983 to apply to *federal* officials, the Court has "fill[ed] [the] remedial gap" in several cases to recognize an implied claim for damages against federal officials for certain violations. *Id.* at 7. The Court has provided that any person whose conduct is "fairly attributable to the State" may be sued under § 1983. Filarsky v. Delia, 566 U.S. 377, 383 (2012) (internal quotations omitted).

[107] SCHWARTZ, *supra* note 106, at 143 ("Qualified immunity may well be the most important issue in § 1983 litigation.").

[108] *Id.* Courts currently have discretion about how to approach the determination of qualified immunity. *Id.* at 158. They may either follow a two-step approach that involves first deciding whether the allegedly violated right is a constitutional one, or they may proceed directly to the question of whether the right was clearly established. *Id.*

[109] *See id.* at 143–44 ("Qualified immunity protects officials who acted in an objectively reasonable manner. An official who violated clearly established federal law did not act in an objectively reasonable manner, while an official who violated

Vega, the Court and federal circuits were left to grapple with the question of whether a *Miranda* violation amounts to such a level.[110]

III. RECENT DEVELOPMENTS

Prior to *Vega*, the Court never expressly answered the question of whether an individual has the basis for a § 1983 claim when his un-*Mirandized* statements are used against him at trial.[111] However, in 2003, the Court addressed whether a plaintiff could bring a § 1983 claim against an officer who violated the plaintiff's *Miranda* rights when the plaintiff was *never charged with a crime* and his answers were never used against him in a criminal prosecution.[112] In *Chavez v. Martinez*, as part of a plurality opinion, the Court analyzed whether the officer's failure to provide *Miranda* warnings violated a constitutional right.[113] It concluded that the plaintiff was "never made to be a witness against himself in violation of the Fifth Amendment's Self-Incrimination Clause" because he was never charged and his statements were never used against him at trial.[114] Thus, the Court implicitly held that the plaintiff did not have a

federal law, but not *clearly established* federal law, did act in an objectively reasonable manner.").

[110] *See, e.g.*, Chavez v. Martinez, 538 U.S. 760 (2003) (determining whether an officer's failure to read the defendant his *Miranda* warnings could serve as the basis for a § 1983 action when the defendant was never officially charged with a crime); Tekoh v. Cnty of Los Angeles, 985 F.3d 713, 716 (9th Cir. 2021), *cert. granted sub nom.* Vega v. Tekoh, 142 S. Ct. 2095 (2022) (determining whether introduction of the defendant's un-*Mirandized* statement at trial was a violation of his Fifth Amendment rights such that it could serve as the basis for a § 1983 claim); Sornberger v. City of Knoxville, 434 F.3d 1006 (7th Cir. 2006) (determining whether a defendant could successfully file a § 1983 claim for a *Miranda* violation when the charges against her were dropped before trial).

[111] *See* Tekoh v. Cnty of Los Angeles, 985 F.3d 713, 721–23 (9th Cir. 2021), *cert. granted sub nom.* Vega v. Tekoh, 142 S. Ct. 858 (2022) (noting that the Court's prior *Miranda* doctrine "does not govern Tekoh's case because. . . Tekoh's un-*Mirandized* statements were used against him," and thus, the Ninth Circuit looked to other circuit courts for guidance on the issue).

[112] Chavez v. Martinez, 538 U.S. 760, 776 (2003) (plurality opinion). In *Chavez*, the defendant was accompanied by an officer to the hospital to receive medical treatment for a gunshot wound. *Id.* at 764. The officer interviewed the defendant for a total of about ten minutes over a forty-five-minute period, but the officer failed to advise the defendant of his *Miranda* rights. *Id.* The defendant was never charged with a crime, and therefore his answers were never used against him in a criminal prosecution. *Id.* Nevertheless, the defendant filed a § 1983 action against the officer, alleging that the officer violated the defendant's Fifth Amendment rights. *Id.*

[113] *Id.* at 766. The Court analyzed the question specifically when addressing whether the officer was entitled to qualified immunity. *Id.*

[114] *Id.*

viable § 1983 claim.[115] The plurality declined to determine the "precise moment when a criminal case commences,"[116] and the *Chavez* holding is thus viewed as limited and "specific" to the facts in the case.[117] The *Chavez* plurality did suggest, however, that the use of un-*Mirandized* statements in a criminal case could cause a violation of the Self-Incrimination Clause.[118]

And as if the debate about *Miranda*'s constitutional authority was not already muddied enough, the *Chavez* Court was similarly divided on the issue.[119] While Justices Thomas and Scalia suggested that *Miranda* is not constitutionally required,[120] Justice Kennedy plainly stated that it is "now well settled" that *Miranda* warnings are "constitutional requirement[s]."[121] The narrowness of the *Chavez* holding and the uncertainty about the constitutional force of *Miranda* created a circuit split about whether plaintiffs may sue for *Miranda* violations.[122] The Court finally addressed this ambiguity in *Vega v. Tekoh*.[123]

A. Circuit Split

In the two decades leading up to *Vega*, several circuits addressed whether and when the use of statements against a defendant obtained in violation of the Fifth Amendment may give rise to a § 1983 claim.[124]

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[115] *Id.* at 776.

[116] *Id.* at 766–67 (The plurality provided that "it is enough to say that police questioning does not constitute a 'case.'").

[117] *See, e.g.*, Tekoh v. Cnty of Los Angeles, 985 F.3d 713, 721 (9th Cir. 2021), *cert. granted sub nom.* Vega v. Tekoh, 142 S. Ct. 858 (2022) ("The *specific* holding in *Chavez* does not govern Tekoh's case. . . .").

[118] *Chavez*, 538 U.S. at 767 (plurality opinion).

[119] *Compare id.* at 772 ("We have [] established the *Miranda* exclusionary rule as a prophylactic measure to prevent violations of the [Fifth Amendment]."), *with id*. at 790 (Kennedy, J., concurring in part) ("The *Miranda* warning, as is now well settled, is a constitutional requirement. . . .").

[120] *See id.* at 772–73 (plurality opinion); *Id*. at 780 (Scalia, J., concurring in part) ("Section 1983 does not provide remedies for violations of judicially created prophylactic rules, such as the rule of *Miranda v. Arizona*.").

[121] *Id.* at 790 (Kennedy, J., concurring in part).

[122] *Compare, e.g.*, Tekoh v. Cnty of Los Angeles, 985 F.3d 713, 725 (9th Cir. 2021), *cert. granted sub nom.* Vega v. Tekoh, 142 S. Ct. 858 (2022) (holding that "where government officials introduce an un-*Mirandized* statement to prove a criminal charge at a criminal trial against a defendant, a § 1983 claim may lie. . . "), *with* Hannon v. Sanner, 441 F.3d 635, 638 (8th Cir. 2006) (holding that a *Miranda* violation may not serve as the basis of a § 1983 claim because the "admission of [such] statements in a criminal case [does] not cause a deprivation of any [constitutional] right").

[123] Vega v. Tekoh, 142 S. Ct. 2095, 2108 (2022).

[124] *See, e.g.*, Stoot v. City of Everett, 582 F.3d 910, 922–25 (9th Cir. 2009) (addressing whether a defendant has a claim under the Fifth Amendment when his

While not all circuits dealt specifically with *Miranda* violations in this context, many distinguished *Chavez* from cases where involuntary statements were used *in criminal proceedings*—i.e., where a criminal prosecution was initiated against the defendant.[125] The Eighth Circuit, on the other hand, extended *Chavez* to hold that *Miranda* violations cannot form the basis of a § 1983 claim.[126]

The Ninth Circuit has consistently held post-*Chavez* that a defendant may sue an officer under § 1983 for a Fifth Amendment violation when the defendant's un-*Mirandized* statements are introduced against him at trial.[127] The Third, Fourth, and Fifth Circuits also suggested that the use of involuntary statements—whether they involve a *Miranda* violation or not—*at trial* would trigger a Fifth Amendment claim.[128] And the Second, Seventh, and Ninth Circuits indicated that the use of a coerced statement

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statements were used against him in an affidavit, pre-evidentiary hearing); Sornberger v. City of Knoxville, 434 F.3d 1006, 1025–27 (7th Cir. 2006) (addressing whether a defendant's Fifth Amendment rights were triggered for § 1983 purposes when a criminal prosecution was initiated against her but the charges were ultimately dropped before trial); Burrell v. Virginia, 395 F.3d 508, 513–14 (4th Cir. 2005) (addressing the merits of a § 1983 claim where the claimant did not allege any *trial action* against him as a criminal defendant).

[125] *See, e.g.*, *Stoot*, 582 F.3d at 923 ("*Chavez*. . . does not decide the issue [in this case]," as the defendants' Fifth Amendment claim "falls squarely within the gray area created by *Chavez*."); *Sornberger*, 434 F.3d at 1025 ("[The defendant's] 'criminal case' advanced significantly farther than did that of the *Chavez* plaintiff, who never had criminal charges filed against him at all."); Renda v. King, 347 F.3d 550, 559 (3d Cir. 2003) ("[U]nlike in *Chavez*, [the defendant's] statement was used in a criminal case in one sense. . . [and] *Chavez* leaves open the issue of when a statement is used at a criminal proceeding.").

[126] *See* Hannon v. Sanner, 441 F.3d 635, 638 (8th Cir. 2006).

[127] *See, e.g.*, Tekoh v. Cnty of Los Angeles, 985 F.3d 713, 725 (9th Cir. 2021), *cert. granted sub nom.* Vega v. Tekoh, 142 S. Ct. 858 (2022) (holding that "where government officials introduce an un-*Mirandized* statement to prove a criminal charge at a criminal trial against a defendant, a § 1983 claim may lie. . ."); Jackson v. Barnes, 749 F.3d 755, 762 (9th Cir. 2014) (holding that a criminal defendant may file a § 1983 claim against an officer for a *Miranda* violation when his un-*Mirandized* statements are introduced at trial).

[128] *See, e.g.*, Murray v. Earle, 405 F.3d 278, 289, 296 (5th Cir. 2005) (holding that the criminal defendant's statement was involuntary and that its admission at trial violated the defendant's Fifth Amendment rights, but ultimately concluding that there was not sufficient proximate cause to sustain a § 1983 claim); Burrell v. Virginia, 395 F.3d 508, 513–14 (4th Cir. 2005) (holding that the § 1983 action must fail because the claimant did not "allege any *trial action* that violated his Fifth Amendment rights"); Renda v. King, 347 F.3d 550, 559 (3d Cir. 2003) (holding that the defendant's Fifth Amendment right was not violated when the charges against him were dropped before trial but acknowledging that its prior decisions "compel[] the conclusion that it is the use of coerced statements *during a criminal trial*. . . that violates the Constitution").

before trial may still constitute a Fifth Amendment violation for purposes of a § 1983 claim.[129]

The Eighth Circuit takes a different approach as it holds that the use of un-*Mirandized* statements against a defendant—even *at the defendant's trial*—does not constitute a constitutional violation necessary under § 1983.[130] It reasons that the remedy for *Miranda* violations is the "suppression of evidence."[131] Thus, where a defendant obtains such a remedy on appeal, he has no basis for a § 1983 claim.[132]

It was this inconsistency and lack of clarity that the Court faced in *Vega v. Tekoh*.[133] Specifically, the question before the Court was whether a plaintiff may state a claim for relief against a law enforcement officer under § 1983 based on the use of an un-*Mirandized* statement in the plaintiff's criminal prosecution.[134]

B. Vega v. Tekoh

In a 6-3 decision, the *Vega* Court held that a *Miranda* violation may not itself serve as the basis for a § 1983 claim.[135] The majority reasoned that a failure to give *Miranda* warnings is not "tantamount" to a Fifth Amendment violation.[136] First, the Court pointed to several cases where it referred to *Miranda* as a "prophylactic" rule, including *Tucker*, *Quarles*, and *Elstad*.[137] Second, the majority argued that *Dickerson* did not upset these decisions because its holding merely reiterates that *Miranda* rules are necessary safeguards to protect Fifth Amendment rights.[138] According to the *Vega* majority, the *Dickerson* Court's description of *Miranda* as "constitutionally based" or as having "constitutional underpinnings" was "to avoid saying that a *Miranda* violation is the same as a violation of the

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[129] *See, e.g.*, *Stoot*, 582 F.3d at 925 ("A coerced statement has been 'used' in a criminal case when it has been relied upon to file formal charges. . . to determine judicially that the prosecution may proceed, and to determine pre-trial custody status." Thus, "[the] use of the coerced statements *at trial* is not necessary for [a defendant] to assert a claim for [a Fifth Amendment violation]."); Higazy v. Templeton, 505 F.3d 161, 172–73 (2d Cir. 2007) (holding that the defendant's initial appearance was "part of the criminal case against [him]" for Fifth Amendment purposes); *Sornberger*, 434 F.3d at 1025 (holding that the use of an unwarned confession at "a probable cause hearing, a bail hearing, and an arraignment proceeding" is grounds for a suit for damages under § 1983).

[130] *See, e.g.*, Hannon v. Sanner, 441 F.3d 635, 638 (8th Cir. 2006).

[131] *Id.*

[132] *Id.*

[133] *See generally* Vega v. Tekoh, 142 S. Ct. 2095, 2103–04 (2022).

[134] *Id.* at 2099.

[135] *Id.* at 2108.

[136] *Id*. at 2101.

[137] *Id.* at 2103–04; *see supra* Section II.C.

[138] *Id*. at 2105–06.

Fifth Amendment right."[139] And third, the majority contended that the costs of permitting *Miranda* claims under § 1983 would be "substantial" while its benefits would be "slight."[140] The majority specifically noted that such claims would hinder judicial economy, create friction between the federal and state court systems, and produce procedural issues—such as whether deference must be given to a trial court's findings, whether damages are available when the un-*Mirandized* statement had no impact on a criminal case, and whether the harmless-error rule applies.[141] Therefore, the majority declined to "extend" *Miranda* to confer a right to sue under § 1983.[142]

The dissent's argument in *Vega* is rather simple: *Dickerson* controls and *Dickerson* unequivocally held that *Miranda* is "set in constitutional stone."[143] According to the dissent, *Miranda* grants a defendant a legally enforceable right, secured by the Constitution, to have his confession excluded.[144] Thus, *Miranda* violations fall squarely within the scope of § 1983.[145]

IV. DISCUSSION

A decision to allow § 1983 claims for the introduction of un-*Mirandized* statements against an individual in criminal proceedings is both supported by the Court's *Miranda* doctrine and absolutely necessary to ensure that *Miranda* still effectively operates. Because *Miranda* established a constitutional rule, and thus triggers the Fifth Amendment when violated, an individual has the basis for a § 1983 claim when his involuntary statements are used against him.[146] Without this recourse, police have a lessened incentive to apply *Miranda* as it was intended, and the heightened level of compulsion in interrogation settings will lead to extremely problematic results.

A. Miranda *Violations Are Constitutional Violations*

The *Miranda* Court plainly stated that "[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, *no statement obtained from the defendant can truly be the*

[139] *Id.* at 2105.

[140] *Id.* at 2107.

[141] *Id.* Under the harmless error rule, no error in admitting or excluding evidence is ground for a new trial "[u]nless justice otherwise requires. FED. R. CIV. PRO. 61.

[142] *Vega*, 142 S. Ct. at 2107.

[143] *Id.* at 2109–10 (Kagan, J., dissenting).

[144] *Id.* at 2110 (Kagan, J., dissenting).

[145] *Id*. at 2111 (Kagan, J., dissenting).

[146] *See, e.g.*, Dickerson v. United States, 530 U.S. 428, 444 (2000) ("[W]e conclude that *Miranda* announced a constitutional rule.").

product of his free choice."[147] To ensure that such "adequate protective devices" are given, the *Miranda* Court established "concrete *constitutional* guidelines for law enforcement agencies and courts to follow."[148] Roughly forty years later in *Dickerson*, the Court reaffirmed the constitutional weight of the *Miranda* rule.[149] The cases in between and the ones that came after do not provide sufficient legal bases to hold otherwise now.[150] As the *Dickerson* Court stated, the cases between *Miranda* and *Dickerson* simply represent the "sort of modifications" that are a "normal part of constitutional law."[151] And as the Ninth Circuit pointed out in its analysis of the post-*Dickerson* cases, none of the recent Supreme Court *Miranda*-related decisions established a binding principle that would undermine *Dickerson*.[152]

Some have argued that *Miranda*'s invitation for legislative action indicates that the *Miranda* Court did not intend to create a constitutional rule, but the *Dickerson* Court used this language to support the contention that *Miranda was* a constitutional decision.[153] It emphasized the *Miranda* Court's requirement that any legislative solutions be "at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it."[154] In fact, according to the *Dickerson* Court, "the majority opinion [in *Miranda*] is replete with statements indicating that the majority thought it was announcing a constitutional rule."[155] Even the dissent in *Dickerson* acknowledged that the "fairest reading" of *Miranda* establishes that "the admission at trial of un-*Mirandized* confessions violates the Constitution."[156] It went on to note that the dissenters in *Miranda* themselves "understood [the] holding to be based on [that constitutional] premise."[157] As for the cases that came after *Miranda,* which carved out exceptions to its application or limitations

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[147] Miranda v. Arizona, 384 U.S. 436, 458 (1966) (emphasis added).

[148] *See id.* at 441–42 (emphasis added).

[149] *See id.* at 444.

[150] *See Dickerson*, 530 U.S. at 444; Tekoh v. Cnty. of Los Angeles, 985 F.3d 713, 721–22 (9th Cir. 2021).

[151] *Dickerson*, 530 U.S. at 444.

[152] Tekoh v. Cnty. of Los Angeles, 985 F.3d 713, 721–22 (9th Cir. 2021) (noting that Justice Kennedy's narrow opinion in *Patane* controls and "did not echo the plurality's broader discussion of *Miranda*" and that none of the six opinions in *Chavez* provides a binding rationale).

[153] *See Dickerson*, 530 U.S. at 440.

[154] *Id.* (quoting Miranda v. Arizona, 384 U.S. 436, 467 (1966)).

[155] *Id.* at 439; *see supra* Section II.B.

[156] *Dickerson*, 530 U.S. at 447 (Scalia, J., dissenting).

[157] *Id.*

on its exclusionary scope,[158] the *Dickerson* Court stated that those decisions "[do] not prove that *Miranda* is a non-constitutional decision."[159]

The *Dickerson* Court could not have settled the question any clearer, ending its opinion by declaring that "*Miranda* announced a constitutional rule."[160] The narrow holdings and plurality opinions post-*Dickerson* are not enough to reverse that unambiguous language.[161] While *Chavez* refers to the *Miranda* rule as "prophylactic,"[162] it is a plurality decision with six different opinions—none of which "provide[] a binding rationale."[163] In fact, a separate opinion in *Chavez* explicitly deemed *Miranda* warnings a "constitutional requirement."[164] And although a plurality opinion in *United States v. Patane*—which the *Vega* Court mentioned only in a footnote—stated that a failure to give *Miranda* warnings "[does] not violate a suspect's constitutional rights,"[165] Justice Kennedy's concurrence is the controlling opinion because it is limited to holding that non-testimonial physical fruits of *Miranda* violations are admissible at trial.[166] His concurrence specifically noted that "it [was] unnecessary to decide [in *Patane*] whether the detective's failure to give [the defendant] the full *Miranda* warnings should be characterized as a violation of the *Miranda* rule itself."[167]

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[158] *See* Oregon v. Elstad, 470 U.S. 298, 309 (1985); New York v. Quarles, 467 U.S. 649, 654 (1984); Michigan v. Tucker, 417 U.S. 433, 450–52 (1974).

[159] *Dickerson*, 530 U.S. at 441.

[160] *Id.* at 444.

[161] *See generally* Marks v. United States, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." (internal citations omitted)); *see also* United States v. Patane, 542 U.S. 630 (2004) (plurality opinion); Chavez v. Martinez, 538 U.S. 760 (2003) (plurality opinion).

[162] *See Chavez*, 538 U.S. at 772 (plurality opinion).

[163] Tekoh v. Cnty. of Los Angeles, 985 F.3d 713, 722 (9th Cir. 2021), *cert. granted sub nom.* Vega v. Tekoh, 142 S. Ct. 858 (2022).

[164] *See Chavez*, 538 U.S. at 790 (Kennedy, J., concurring in part).

[165] *Patane*, 542 U.S. at 641 (plurality opinion).

[166] *See id.* at 644–45 (Kennedy, J., concurring) ("Admission of nontestimonial physical fruits. . . does not run the risk of admitting into trial an accused's coerced incriminating statements against himself. . . [and thus] it is doubtful that exclusion can be justified by a deterrence rationale. . . ."); Tekoh v. Cnty. of Los Angeles, 985 F.3d 713, 721–22 (9th Cir. 2021), *cert. granted sub nom.* Vega v. Tekoh, 142 S. Ct. 858 (2022) ("Justice Kennedy's opinion did not echo the plurality's broader discussion of *Miranda*, and it thus controls."); *see generally* Marks v. United States, 430 U.S. 188, 193 (1977).

[167] *Patane*, 542 U.S. at 645 (Kennedy, J., concurring).

Thus, the *Vega* Court was confronted with (1) one of the Court's most notable precedents—*Miranda*,[168] (2) a 7-2 decision reiterating that, even though the Court carved out exceptions to *Miranda*, it nonetheless created a constitutional rule,[169] and (3) subsequent cases that sought to undermine *Dickerson* but failed to garner a majority.[170] This alone supports a conclusion that *Miranda* still operates as a constitutional requirement. The principle of stare decisis helps reinforce this conclusion even further.[171]

B. No Justification to De-constitutionalize Miranda

The *Dickerson* Court pointed out that "the principles of stare decisis weigh heavily against overruling [*Miranda*]" regardless of whether the Court "would agree with [its] reasoning and its resulting rule."[172] The Court has consistently required a "special justification" to depart from constitutional precedent.[173] It has previously laid out several factors the Court should consider when reexamining a prior holding, including: (1) the practical workability of the rule; (2) whether the rule is subject to substantial reliance such that overruling would create a special hardship; (3) whether the rule has been effectively abandoned by other developments of the law; and (4) whether evolving facts and circumstances have changed the application or justification of the rule.[174] While the *Vega* Court's conclusion that *Miranda* violations are not sufficient for § 1983 claims does not *technically* "overrule" *Miranda*, it effectively reversed the substance of *Dickerson*'s holding that *Miranda* did in fact create a constitutional rule. Even though the majority argued that its holding is consistent with *Dickerson*,[175] the dissent correctly pointed out that *Dickerson* discussed *Miranda*'s constitutional force "over and over" and yet the majority "says otherwise."[176] However, the

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[168] Tekoh v. Cnty. of Los Angeles, 985 F.3d 713 (9th Cir. 2021), *cert. granted sub nom.*, *rev'd* Vega v. Tekoh, 142 S. Ct. 2095 (2022); *see* Miranda v. Arizona, 384 U.S. 436 (1966); Leo, *supra* note 1, at 621 (*Miranda* is "one of the most well-known and influential legal decisions of the twentieth century.").

[169] *See* Dickerson v. United States, 530 U.S. 428, 441, 444 (2000).

[170] *See, e.g.*, United States v. Patane, 542 U.S. 630 (2004) (plurality opinion); Chavez v. Martinez, 538 U.S. 760 (2003) (plurality opinion).

[171] *See Dickerson*, 530 U.S. at 443–44 ("[T]he principles of stare decisis weigh heavily against overruling [*Miranda*].").

[172] *Id.* at 443.

[173] *See, e.g.*, Citizens United v. FEC, 558 U.S. 310, 377 (2010) (Roberts, J., concurring); *Dickerson*, 530 U.S. at 443; United States v. Int'l Bus. Machs. Corp., 517 U.S. 843, 856 (1996); Arizona v. Rumsey, 467 U.S. 203, 212 (1984).

[174] *See, e.g.*, Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. 833, 854–55 (1992) (plurality opinion) (overruled by Dobbs v. Whole Women's Health Org., 142 S. Ct. 2228 (plurality opinion)).

[175] Vega v. Tekoh, 142 S. Ct. 2095, 2105–06 (2022).

[176] *Id.* at 2108–09 (Kagan, J., dissenting).

considerations to determine if there is a "special justification" weigh heavily in favor of upholding *Dickerson*, and thus *Miranda* violations must trigger the Fifth Amendment for § 1983 purposes.

First, the requirement for *Miranda* warnings has not become unworkable. One way to evaluate the workability of a precedent is to focus on any incoherence in the rule and any disconnect between a rule and its purported goals.[177] If a precedent is incoherent or illogical, "it may draw distinctions that do not withstand careful analysis."[178] While courts—including the Supreme Court—have had a somewhat uncertain stance on *Miranda*,[179] the *Dickerson* Court explained that the cases within the Court's *Miranda* doctrine are *not* inconsistent with one another but rather illustrate "the sort of modifications. . . [that are] a normal part of constitutional law."[180]

A precedent may also be unworkable "if the results generated by a rule plainly contradict its stated rationale."[181] It is not necessary to look any further than the *Miranda* Court's own language to find the purpose for its rule. The Court began its opinion by explaining that it granted certiorari "to give concrete constitutional guidelines for law enforcement agencies and courts to follow."[182] And after concluding that modern interrogation environments are created "for no purpose other than to subjugate the individual to the will of his examiner,"[183] the Court declared that an accused "must be adequately and effectively apprised of his rights" in order to "combat [the inherent interrogation] pressures and to permit a full opportunity to exercise the privilege against self-incrimination."[184] A requirement that the police inform an individual of his rights before an interrogation is not in contradiction with a goal to reduce coercion in such interrogations. While outside the scope of this Note, there are certainly other shortcomings that hinder the practical application of *Miranda*—such as the standards governing its waiver, a misunderstanding among the public about the rights it provides, and the evolution of interrogation

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[177] *See* Mary Ziegler, *Taming Unworkability Doctrine: Rethinking Stare Decisis*, 50 ARIZ. ST. L. J. 1215, 1255 (2019).

[178] *Id.*

[179] *Compare, e.g.*, Oregon v. Elstad, 470 U.S. 298, 306–09 (1985) (stating that a *Miranda* violation by itself does not constitute a constitutional violation), *and* Michigan v. Tucker, 417 U.S. 433, 444 ("The [*Miranda*] safeguards were not intended to create a constitutional straightjacket, but rather to provide practical reinforcement for the right against compulsory self-incrimination."), *with* Dickerson v. United States, 530 U.S. 428, 444 (2000) ("[W]e conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively.").

[180] *Dickerson*, 530 U.S. at 441.

[181] Ziegler, *supra* note 177, at 1256.

[182] Miranda v. Arizona, 384 U.S. 436, 441–42 (1966).

[183] *Id.* at 457.

[184] *Id.* at 467.

tactics.[185] If anything, however, these problems are evidence that *Miranda* needs to be *expanded*, not repealed. If the *Miranda* warnings are not currently providing *enough* safeguards against involuntary confessions, it makes little sense to reduce its constitutional force even further by holding that a violation of the rule does not provide the basis for a § 1983 claim.

The second consideration, reliance, heavily favors the continued application of *Miranda* as a constitutional requirement. *Miranda* is perhaps the most well-known case in this country's criminal law jurisprudence,[186] and its safeguards have become "an institution in American society."[187] If *Miranda* does not establish sufficient reliance, it is hard to envision a precedent that would.

The third factor, abandonment, may also be addressed by reference to the Court's own language. In *Dickerson*, the Court expressly stated that "subsequent cases [to *Miranda*] have . . . reaffirm[ed] the [*Miranda*] decision's core ruling."[188] Because the Court reaffirmed *Miranda*'s constitutional weight in *Dickerson*, its rule has not been effectively abandoned.[189] And to reiterate, nothing since *Dickerson* has weakened its ultimate holding.

Lastly, the evolving application of *Miranda* and modern interactions with police also reinforce the need for *stronger* judicial enforcement of *Miranda*, not weaker. Implied waiver practices, misguided assumptions that officers will give warnings and obtain waivers *before* the application of interrogation tactics, and potential deficiencies in the application of the "custody" standard are all examples of present-day problems that may undermine *Miranda*'s effect.[190] However, it is not an adequate solution to slowly chip away at the *Miranda* doctrine. The *Vega* Court had the opportunity to reiterate the importance of reading *Miranda* rights before custodial interrogation. The Court had an enforcement mechanism right before it: permit § 1983 claims to provide individuals with a way to redress *Miranda* violations when officers circumvent the constitutional requirement. Instead, the majority chose to dismiss the explicit language of *Dickerson* and lessen *Miranda*'s constitutional force.

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[185] *See* Charles D. Weisselberg, *Mourning Miranda*, 96 CALIF. L. REV. 1519, 1590–92 (2008).

[186] Peabody, *supra* note 16 (describing *Miranda* as "perhaps the most well-known case in criminal law").

[187] Leo, *supra* note 1, at 679.

[188] Dickerson v. United States, 530 U.S. 428, 443–44 (2000).

[189] *See id.*

[190] *See* Weisselberg, *supra* note 185.

C. Practical Necessity of § 1983 Claims for Miranda *Violations*

The Court has previously acknowledged the valuable deterrent effects of § 1983 civil lawsuits against police officers.[191] In fact, according to the Court, the purpose of § 1983 in the first place is "*to deter* state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights."[192] Some legal scholars have noted that recognition of a § 1983 cause of action is *necessary* to effectively deter police tactics that ignore an individual's right to remain silent.[193] For example, an analysis of California policing practices in the late 1990s and early 2000s indicated that both the *Dickerson* decision and a prospect of civil liability deterred officers from violating *Miranda*.[194]

Permitting individuals to file suit under § 1983 when their un-*Mirandized* statements are used against them will help deter both deliberate and reckless violations of *Miranda*. On the other hand, an adoption of the theory that *Miranda* provides only an exclusionary remedy will likely hinder deterrence in an area where officers already have little incentive to comply.

The same arguments that are used to undermine the constitutional force of *Miranda* can just as easily serve as reasons why allowing § 1983 claims for *Miranda* violations is *absolutely necessary* to preserve its application. Under the Court's pre-*Vega Miranda* doctrine, an individual had no redress against a *Miranda* violation in the following circumstances: (1) where the officers successfully argue that "public safety" was at issue;[195] (2) where the prosecution seeks to introduce evidence—whether physical evidence or witness testimony—discovered only through the un-*Mirandized* statements;[196] or (3) where the prosecution seeks to admit the individual's own subsequent, *Mirandized* statements so long as an hour

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[191] *See, e.g.*, Hudson v. Michigan, 547 U.S. 586, 597–99 (2006) (explaining that "civil liability is an effective deterrent" in knock-and-announce rule violations, and thus the exclusionary rule is unnecessary in such contexts).

[192] *See* Wyatt v. Cole, 504 U.S. 158, 161 (1992) (emphasis added).

[193] *See* Michael Avery, *You Have a Right to Remain Silent*, 30 FORDHAM URB. L.J. 571, 615 (2002).

[194] *See* Brief for California Attorneys for Criminal Justice & Professor Charles D. Weisselberg as Amici Curiae in Support of Respondent, Vega v. Tekoh, 142 S. Ct. 2095 (2022) (No. 21-499) (citing studies of California police manuals both before and after the Ninth Circuit held that officers could be subject to civil liability for *Miranda* violations).

[195] *See* New York v. Quarles, 467 U.S. 649, 654 (1984).

[196] *See* United States v. Patane, 542 U.S. 630, 634 (2004) (plurality opinion) (holding that a *Miranda* violation does not require suppression of the physical fruits of an individual's un-*Mirandized* statements); Michigan v. Tucker, 417 U.S. 433, 435, 452 (1974) (holding that *Miranda* does not require the exclusion of witness testimony merely because the police learned of the witness's identity from the defendant's un-*Mirandized* statements).

has passed since the un-*Mirandized* interrogation.[197] These carve-outs of *Miranda* have only *increased* the incentive for officers to violate the rule. The Court's holding in *Vega* runs the risk that what is left of *Miranda*'s exclusionary rule will have very little deterrence effect on law enforcement. For many officers, the benefit of outside evidence—anything other than the un-*Mirandized* statements—in a successful prosecution may strongly outweigh the costs of a ravaged exclusionary rule. But the prospect of civil liability for *Miranda* violations may help strongly swing that cost-benefit analysis in the other direction.

While deterrence serves several valuable purposes in criminal law, it has special importance under the *Miranda* doctrine to prevent false confessions. In the absence of *Miranda* warnings, suspects are more likely to give a false confession.[198] This is likely attributable to the "inherent pressures of the interrogation atmosphere," about which the *Miranda* Court was specifically concerned.[199] A study found that ninety-five percent of false confessions contained accurate details about the crime that were unavailable to the public, indicating that the confessions were "contaminated during the process of interrogation."[200] Statistics about false confessions become even more alarming when analyzed together with data about wrongful convictions. For example, As of 2016, false confessions contributed to thirteen percent of all wrongful convictions.[201] Section 1983 claims are especially important for those whose false confessions are used to wrongly accuse them of a crime. Even where they are prosecuted and found not guilty or freed following a wrongful conviction, *Miranda*'s exclusionary rule is not a sufficient remedy for the harms they suffered. Section 1983 offers relief to individuals that is not available through other mechanisms, including *Miranda*'s exclusionary rule.

Because *Miranda* established a constitutional rule and a violation of its requirements therefore triggers the Fifth Amendment, the Court should have recognized that § 1983 claims are permitted for such violations. Its failure to do so undermined and effectively overruled parts of its own

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[197] *See* Missouri v. Seibert, 542 U.S. 600, 604 (2004) (plurality opinion) (holding that statements made after a mid-interrogation reading of *Miranda* warnings are similarly inadmissible as the un-*Mirandized* statements made before such warning); Oregon v. Elstad, 470 U.S. 298, 300–01, 317–18 (1985) (holding that a defendant's subsequent, *Mirandized* statements were admissible at trial where (1) an hour had passed between the un-*Mirandized* interrogation and the *Mirandized* interrogation, and (2) the defendant knowingly and voluntarily waived his rights the second time).

[198] *See* Saul Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 AM. PSYCH. 63, 72 (2018).

[199] *See* Miranda v. Arizona, 384 U.S. 436, 468 (1966).

[200] Kassin et al., *supra* note 198, at 65.

[201] *Id.*

Miranda doctrine and added another obstacle to the enforcement of individuals' *Miranda* rights in practice.

V. CONCLUSION

"You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you." While almost anyone who has ever watched a crime television show is likely familiar with that saying, most do not understand the actual rights it provides for them in real life. While not perfect, *Miranda* helps to remind and advise those individuals of their rights when they need it most—during inherently compulsory interrogations with the police. Without the ability to assert their constitutional rights under § 1983, individuals will have very little recourse when those rights are violated. As the dissent in *Vega* articulated, under the Court's holding, a defendant may be wrongfully convicted, spend years in prison, and, even if he later succeeds on appeal, have no redress for the harm he suffered.[202] But where the two competing interests are law enforcement's desire for a successful prosecution and an individual's privilege against self-incrimination, the constitutional interest has to win out. In the words of the Court, "[i]f the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system."[203]

[202] Vega v. Tekoh, 142 S. Ct. 2095, 2111 (2022) (Kagan, J., dissenting).

[203] Escobedo v. Illinois, 378 U.S. 478, 490 (1964).