No. 21-499

IN THE
Supreme Court of the United States

CARLOS VEGA,

Petitioner,

v.

TERRENCE B. TEKOH,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Police Organizations (NAPO) is a coalition of police units and associations from across the United States. It was organized for the purpose of advancing the interests of America's law enforcement officers. Founded in 1978, NAPO is the strongest unified voice supporting law enforcement in the country. NAPO represents over 1,000 police units and associations, over 241,000 sworn law enforcement officers, and more than 100,000 citizens who share common dedication to fair and effective law enforcement. NAPO often appears as *amicus curiae* in cases of special importance.

Amicus has a strong interest in this case because the Ninth Circuit's opinion exposes *amicus*' members to additional and unwarranted 42 U.S.C. § 1983 suits. Law enforcement officers depend on the courts to protect them from the burdens of personal-liability lawsuits. If the Ninth Circuit's decision is allowed to stand—under which officers may be held liable for a court's subsequent admittance of unwarned statements—law enforcement will think twice before vigorously investigating crimes and questioning potential suspects. This is a dangerous result for

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[1] Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certify that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus* curiae or its counsel has made a monetary contribution to the preparation or submission of this brief. The parties have consented to its filing.

officers and the public. *Amicus* thus urges the Court to reverse the decision below.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case presents the question whether a *Miranda* violation alone can give rise to Section 1983 liability. *See Miranda v. Arizona*, 384 U.S. 436 (1966). The Ninth Circuit erroneously determined that it could. That decision is untenable. If left uncorrected, the Ninth Circuit's opinion—authorizing broad Section 1983 liability for *Miranda* violations—will harm law enforcement officers and the public they are sworn to protect.

Extending Section 1983 to *Miranda* violations would result in a host of negative consequences for police departments and their officers. First, this new liability would over-deter and distract officers from conducting efficient and effective investigations. Second, extending liability to *Miranda* violations would increase costs to police departments and the municipalities that indemnify them. Those costs will, in turn, reduce vital department resources and discourage talented candidates from joining and staying on the force.

These costs are especially unnecessary given the serious, effective, and less-burdensome remedy already available—the exclusion of un-*Mirandized* statements at trial. At its core, "*Miranda* is a procedural safeguard and the remedy for its violation is exclusion, not a § 1983 action." Pet. App. 95(a) (Bumatay, J., dissenting from denial of rehearing en

banc). This Court "established the *Miranda* exclusionary rule as a prophylactic measure to prevent violations of the right protected by the text of the Self–Incrimination Clause—the admission into evidence in a criminal case of confessions obtained through coercive custodial questioning." *Chavez v. Martinez*, 538 U.S. 760, 772 (2003) (plurality op.). Although *Miranda*'s exclusionary rule is an important prophylactic "[r]ule[] designed to safeguard a constitutional right," it is not a "constitutional right itself." *Id.* It thus "cannot be grounds for a § 1983 action." *Id.* Only a freestanding "right[] … secured by the Constitution," 42 U.S.C. § 1983, can supply the basis for such an action.

Indeed, *Miranda* is a rule of exclusion and "police do not violate a suspect's constitutional rights (or the *Miranda* rule) by negligent or even deliberate failures to provide the suspect with the full panoply of warnings prescribed by *Miranda*." *United States v. Patane*, 542 U.S. 630, 641 (2004) (plurality op.). Instead, "[p]otential violations occur, if at all, only upon the admission of unwarned statements into evidence at trial." *Id.* "[A]t that point, '[t]he exclusion of unwarned statements ... is a complete and sufficient remedy' for any perceived *Miranda* violation." *Id.* at 641-42. In light of that remedy, and given the added social costs to police officers and the public, the expansion of Section 1983 liability cannot be justified.

The Court should reverse the decision below.

ARGUMENT

I. If left uncorrected, the Ninth Circuit's opinion allowing broad Section 1983 liability for *Miranda* violations will harm law enforcement officers and the public they are sworn to protect.

A. Extending Section 1983 liability to *Miranda* violations will over-deter law enforcement and hinder investigations.

Extending Section 1983 liability to *Miranda* violations would have significant consequences for police departments. Chief among them, the threat of additional liability would over-deter and distract officers from efficiently questioning suspects, making investigations less effective. That is a dangerous result for the public.

This Court has long recognized that threats of personal liability against government officials performing job-related duties threaten the public good. From the start, the common law "recognized the necessity of permitting officials to perform their official functions free from the threat of suits for personal liability." *Scheuer v. Rhodes*, 416 U.S. 232, 239 (1974). That immunity rested on two principles: "(1) the injustice, particularly in the absence of bad faith, of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discretion; [and] (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good." *Id.* at 239-40. Of course, "[i]mplicit in the idea that officials have

some immunity" for their acts, "is a recognition that they may err." *Id.* at 242. But the entire "concept of immunity" assumes that "it is better to risk some error and possible injury from such error than not to decide or act at all." *Id.*

Yet that is what extending Section 1983 liability to *Miranda* violations would do: discourage police officers from acting effectively or from "act[ing] at all." *Id.* As Judge Learned Hand put it: "[T]o submit all officials ... to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." *Barr v. Mateo*, 360 U.S. 564, 571 (1959) (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949)). But it is wrong to "subject those who try to do their duty to the constant dread of retaliation." *Id.*

Ultimately, the idea of extending Section 1983 liability to *Miranda* violations stems from a misunderstanding of *Miranda*. "*Miranda* violations do not occur when the police disregard *Miranda* during interrogation, but when the tainted evidence is used against the suspect." Martin R. Gardner, *Section 1983 Actions Under* Miranda*: A Critical View of the Right to Avoid Interrogation*, 30 Am. Crim. L. Rev. 1277, 1325-26 (1993); *see infra* Section II. That means police officers are left to guess whether a prosecutor might seek to enter an unwarned statement into evidence and whether a judge might allow it in. If they guess wrong, they face liability. *See infra* Section II.

But "[p]olice officers are ill-equipped to pinch-hit for counsel, construing the murky and difficult questions of when 'custody' begins or whether a given unwarned statement will ultimately be held admissible." *Oregon v. Elstad*, 470 U.S. 298, 316 (1985). Determining where the lines are drawn is a difficult task—especially since caselaw has already carved out various *Miranda* exceptions. For example, traffic stops typically do not require *Miranda* warnings, even though a motorist is not free to leave until instructed by the officer and very frequently faces questioning during the stop. *See, e.g., Berkemer v. McCarty*, 468 U.S. 420, 436-38 (1984). Similarly, other non-traffic-related stops do not necessarily require *Miranda* despite involving a detention and questioning. *Id.* at 439 (in a "Terry stop," an officer "may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions"). And, generally, "temporary" and "nonthreatening" stops do not require *Miranda* warnings. *Maryland v. Shatzer*, 559 U.S. 98, 113 (2010). Subjecting an officer to liability because he misjudges an already "murky and difficult" situation, *Elstad*, 470 U.S. at 316, is unwarranted.

On top of that, police interact with civilians tens of millions of times in any given year. *See* Erika Harrell & Elizabeth Davis, *Contact Between Police and the Public-Statistical Tables*, Dep't of Justice (Dec. 2020), bit.ly/3j8vOCp. In 2018 alone, 61.5 million U.S. residents had at least one interaction with police. *Id.* Each interaction presents its own unique circumstances, and police officers should not be held

liable for incorrectly predicting whether an unwarned statement will be admitted into evidence months or years down the road. *See Elstad*, 470 U.S. at 316 ("In many cases, a breach of *Miranda* procedures may not be identified as such until long after full *Miranda* warnings are administered and a valid confession obtained."). Doing so would serve only to deter officers from carrying out effective investigations.

Thorough, effective, and efficient investigations are the heart of good police work. Yet the constant threat of personal liability threatens that work. As the number of Section 1983 suits has grown over time, *see infra* Section I.B., police officers and departments are constantly forced to seek out legal advice and exercise an over-abundance of caution. *See* Michael P. Stone & Marc Berger, *Civil Rights Liability for Intentional Violations of* Miranda *Part One: Liability Considerations*, 7 AELE Mo. L. J. 501, 508-10 (2009); Jacquelyn Kuhens, *The Newest Constitutional Right-The Right to* Miranda *Warnings,* Fed. Law Enf't. Training Ctr., bit.ly/2ZrF7WL. For example, some advisors explain that officers "will need to be even more careful" than in the past and instantly evaluate whether a suspect would reasonably perceive the interview as custodial. Kuhens, *supra*, at 2. Others even recommend that officers stop an investigation and "seek the advice from the agency's legal advisors and from prosecutors on how to proceed." Stone & Berger, *supra,* at 509.

Those incentives can be counterproductive for investigations. Forcing officers to constantly seek legal advice and exercise an over-abundance of caution

will slow the investigative process and increase its cost, while lowering its effectiveness. Indeed, they may encourage officers to be overly timid with their investigative techniques. Fearing even the potential for liability, officers may "refrain from acting, may delay their actions, may become formalistic by seeking to 'build a record' with which subsequently to defend their actions, or may substitute 'safe' actions for riskier, but socially more desirable, actions." Theodore Eisenberg & Stewart Schwab, *The Reality of Constitutional Tort Litigation*, 72 Cornell L. Rev. 641, 652 (1987) (citation omitted).

That makes sense, given that it can often be unclear whether a suspect is "in custody" for purposes of *Miranda*. Instead of focusing on effective questioning and fact-finding, fear of liability may distract officers, causing them to over-analyze whether or not the suspect believes he is in custody. Indeed, the mere possibility of a different perspective could spark an expensive lawsuit. Thus, instead of taking immediate action when necessary, officers fearing "the prolonged agony of being sued" might delay critical interrogations to wait for further instruction from legal advisors. Stone & Berger, *supra*, at 510. This is especially dangerous when officers must make split second decisions. *See*, *e.g.*, U.S. Amicus Br., *Chavez*, 538 U.S. 760, 2002 WL 31100916, at *25 (quoting *New York v. Quarles*, 467 U.S. 649, 657-58 (1984)) ("This Court should 'decline to place officers … in the untenable position of having to consider, often in a matter of seconds' whether to risk not just hampering a prosecution but incurring personal liability in order to neutralize the volatile

situation confronting them."). Similarly, officers might avoid an interrogation in the first place, "foregoing the possibility of immediately exonerating the suspect or gathering legally admissible evidence indirectly useful in convicting the suspect." Gardner, *supra*, at 1326. Increased liability would therefore incapacitate police officers, their departments, and the victims of crime who depend on them.

Miranda has also been shown to handcuff the police, leading to substantial declines in the confession rate, and it "has allowed numerous criminals to escape justice." Paul G. Cassell & Richard Fowles, *Still Handcuffing Cops? A review of Fifty Years of Empirical Evidence of* Miranda's *Harmful Effects on Law Enforcement*, 97 Bos. Univ. L. Rev. 685, 848 (2017). Extending Section 1983 liability to *Miranda* violations only serves to increase the likelihood of victims of crime not receiving justice, as police officers are deterred from confidently investigating and questioning suspects for fear of potential liability. The costs of Section 1983 liability in impeding the efficient administration of justice are too great.

Ultimately, extending new liability does more harm than good. It threatens effective, efficient, and proper investigations. Police officers "should be free to exercise their duties unembarrassed by the fear of damage suits" for *Miranda* violations—suits "which would consume time and energies which would otherwise be devoted to governmental service and the threat of which might appreciably inhibit the fearless, vigorous, and effective administration of policies of government." *Mateo*, 360 U.S. at 571.

B. Extending Section 1983 liability to *Miranda* violations will strain police budgets and hinder departments' ability to recruit and retain quality officers.

Extending liability to *Miranda* violations would also increase costs to police departments and the municipalities that indemnify them. Those costs would, in turn, reduce vital department resources and discourage talented candidates from joining and staying on the force.

Section 1983 suits can "absorb undue shares of public budgets." Eisenberg & Schwab, *supra*, at 650. Municipalities usually indemnify their officers for job-related actions. Such policies are often "needed to allay employees' 'fear of personal liability' for actions they may take in the line of duty [which may] 'tend to intimidate all employees, impede creativity and stifle initiative and decisive action.'" *Id.* at 652 n.59 (quoting Attorney General Ed Meese III). Those suits drain local government resources in three primary ways: (1) "cities spend inordinate amounts of money to satisfy judgments," (2) "cities must pay the prevailing plaintiff's legal fees," and (3) liability insurance premiums skyrocket. *Id.* at 650-51. Opening yet another avenue of liability—as the Ninth Circuit's decision does—will increase the already overwhelming costs that municipalities bear for Section 1983 suits.

This Court has previously emphasized the threat of depleting law enforcement resources when considering whether to extend Section 1983 liability to new categories. For example, in *Briscoe v. Lahue*, 460

U.S. 325, 343 (1983), the Court declined to extend liability to police officers who act as witnesses in part because it would "impose significant burdens on ... law enforcement resources." Not only must officers and their departments each retain counsel, but "[p]reparation for trial, and the trial itself, [] require[s] the time and attention of the defendant officials, to the detriment of their public duties." *Newton v. Rumery*, 480 U.S. 386, 395-96 (1987).

On top of that, "[m]any [1983 suits] are marginal and some are frivolous." *Id.* at 395. "Yet even when the risk of ultimate liability is negligible, the burden of defending such lawsuits is substantial." *Id.* Litigation can last for years, even when it is ultimately meritless. "This diversion of officials from their normal duties and the inevitable expense of defending even unjust claims is distinctly not in the public interest." *Id.* at 396. Indeed, "protect[ing] public officials from the burdens of defending such unjust claims," "further[s] th[e] ... public interest." *Id.*

Current data on police-related lawsuits across the country confirms these likely adverse impacts. Section 1983 lawsuits have "exploded over the past 40 years." Philip M. Stinson Sr. & Steven L. Brewer Jr., *Federal Civil Rights Litigation Pursuant to 42 U.S.C. §1983 as a Correlate of Police Crime*, 30 Crim. Just. Pol'y Rev. 223, 227 (2019); *see also* United States Courts, *Over Two Decades, Civil Rights Cases Rise 27 Percent* (June 9, 2014), bit.ly/3CigWc9. Indeed, they inundate the federal courts every year. *Id.* Although it is difficult to "accurately determine the extent of litigation against the police" due to lack of official statistics, "[r]ecent

estimates suggest that approximately 30,000 police misconduct lawsuits are filed each year in state and federal courts against police officers, their employing agencies, and municipalities." Stinson & Brewer, *supra*, at 226. In fact, in the Central District of California, where this case was originally filed, civil rights cases made up 33% of all civil case filings in 2019, with a 103% increase in filings from four years prior. Office of the Clerk of Court, *Central District of California Annual Report of Caseload Statistics Fiscal Year 2019*, at 6-7 (2019), bit.ly/3tsIGHT.

And the cost to litigate or settle those suits is astonishing. Over the past ten years, Los Angeles alone has spent close to $330 million on police settlements. Amelia Thomson-DeVeaux, Laura Bronner & Damini Sharma, *Cities Spend Millions on Police Misconduct Every Year. Here's Why It's So Difficult to Hold Departments Accountable*, FiveThirtyEight (Feb. 22, 2021), 53eig.ht/3BcHni5. The average jury award is also highly costly—coming in at roughly $2 million per award. Larry K. Gaines, Victor E. Kappeler, & Zachary A. Powell, Policing in America 346 (9th ed. 2021). Legal fees alone can pose massive costs even when the officer prevails. Between 2004 and 2019, private police misconduct lawyers cost Chicago $213 million. Dan Hinkel, *A Hidden Cost of Chicago Police Misconduct: $213 Million to Private Lawyers Since 2004*, Chicago Tribune (Sep. 12, 2019), bit.ly/35nbnhe. Liability insurance, too, costs municipalities dearly. And they have faced skyrocketing premiums and decreased availability as Section 1983 has expanded over time. Kenneth S. Abraham, *Police Liability Insurance After Repeal of*

Qualified Immunity, and Before, Tort Trial & Ins. Prac. L.J. 31, 52 (2021). Thus, as new roads of civil liability open, police departments have access to fewer and fewer resources from the overburdened municipalities that fund them.

Moreover, extending liability to *Miranda* violations would hinder a department's ability to attract and retain quality officers. *See Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982) (explaining that extensive liability imposes social costs, including "the deterrence of able citizens from acceptance of public office."). According to one estimate, more than a quarter of police officers have been sued at least once. Gaines et. al, *supra*, at 341. And due to the sheer number of police interactions, Section 1983 lawsuits for *Miranda* violations "'could be expected with some frequency.'" *Briscoe*, 460 U.S. at 343. The threat of additional lawsuits thus adds additional risks to an already-risky job. Those risks may, in turn, discourage talented individuals from joining the force in the first place and deter good officers from staying on.

These problems will only worsen with the emerging trend of stripping officers across the country of qualified immunity. States across the country have been limiting how and when officers can raise qualified immunity. In 2020, Colorado became the first state to eliminate the qualified immunity defense in state court. Colo Rev. Stat. § 13-21-131(2)(b); *see also* Saja Hindi, *Here's What Colorado's Police Reform Bill Does*, The Denver Post (June 13, 2020), dpo.st/3MfXFgI. Other states and municipalities have also eliminated or limited the defense. *See, e.g.,* Jacob

Knutson, *New Mexico Eliminates Qualified Immunity*, Axios (Apr. 7, 2021), bit.ly/3syGNtS; Nick Sibilla, *New York City Bans Qualified Immunity For Cops Who Use Excessive Force*, Forbes (Apr. 29, 2021), bit.ly/3CbqqXd; Nick Sibilla, *New Connecticut Law Limits Policy Immunity in Civil Rights Lawsuits, But Loopholes Remain*, Forbes (Jul. 31, 2020), bit.ly/35nbARy. Indeed, 25 states have jumped on this troubling bandwagon against qualified immunity. Emma Tucker, *States Tackling 'Qualified Immunity' for Police as Congress Squabbles Over the Issue*, CNN (Apr. 23, 2021), cnn.it/3vxKamx. This movement has also prompted federal legislative efforts to end qualified immunity, most notably H.R. 1280 which passed the House in March 2021. *See* George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. (2021).

Not only is qualified immunity necessary "to shield officials from harassment, distraction, and liability when they perform their duties reasonably," *Pearson v. Callahan*, 555 U.S.223, 231 (2009), but it is also municipalities' strongest shield against excessive liability. Expanding the scope of potential liability under Section 1983 at the precise moment when qualified immunity protections are receding is a recipe for disaster in terms of both resources and officer recruitment and morale. Aaron L. Nielson & Christopher J. Walker, *A Qualified Defense of Qualified Immunity,* 93 Notre Dame L. Rev. 1853, 1877 (2018) (discussing how the already "heavy financial burden" on municipalities for defending Section 1983 suits will only increase if qualified immunity is eliminated); Abraham, *supra*, at 52

(describing how ending qualified immunity will aggravate an already tumultuous liability insurance market by lessening availability and increasing municipality premiums).

In short, allowing the decision below to stand would force substantial financial burdens on already overwhelmed police departments and municipalities. Those costs are especially unnecessary given the serious, effective, and less-burdensome remedy already available—the exclusion of un-*Mirandized* statements at trial. *See infra* Section II.

II. Exclusion is a "complete and sufficient" remedy for *Miranda* violations.

Traditionally, police officers are not subject to Section 1983 damages claims simply because they failed to give a *Miranda* warning. Rather, this Court has provided that the exclusion of unwarned statements from a criminal trial is a "complete and sufficient remedy" for any such violation. *Patane*, 542 U.S. at 641-42 (plurality op.) (citation omitted). Yet under the Ninth Circuit's approach, not only would an officer's failure to warn require the exclusion of valuable evidence at trial, but the officer could also be held liable for money damages. That conclusion is untenable.

This Court "established the *Miranda* exclusionary rule as a prophylactic measure to prevent violations of the right protected by the text of the Self–Incrimination Clause—the admission into evidence in a criminal case of confessions obtained through coercive custodial questioning." *Chavez*, 538 U.S. at

772 (plurality op.). Although *Miranda*'s exclusionary rule is an important prophylactic "[r]ule[] designed to safeguard a constitutional right," it is not a "constitutional right itself." *Id.* at 772. It thus "cannot be grounds for a § 1983 action." *Id.* Only a freestanding "right[] … secured by the Constitution," 42 U.S.C. § 1983, can supply the basis for such an action. *See also* U.S. Opening Br., *Patane*, 542 U.S. 630, 2003 WL 21715020, at *11 (2003). ("[A] failure to give *Miranda* warnings, by itself, cannot be regarded as a violation of the Self-Incrimination Clause[]. … Instead, *Miranda* establishes a constitutionally based judicial device to protect against the risk that a compelled statement would be mistakenly admitted in a criminal case.").

Simply put, *Miranda* is a "rule of exclusion." *Chavez*, 538 U.S. at 790 (Kennedy, J., concurring in part and dissenting in part). It thus follows that "police do not violate a suspect's constitutional rights (or the *Miranda* rule) by negligent or even deliberate failures to provide the suspect with the full panoply of warnings prescribed by *Miranda*." *Patane*, 542 U.S. at 641 (plurality op.). Instead, "[p]otential violations occur, if at all, only upon the admission of unwarned statements into evidence at trial." *Id.* "[A]t that point, '[t]he exclusion of unwarned statements ... is a complete and sufficient remedy' for any perceived *Miranda* violation." *Id.* at 641-42; *see also Chavez,* 538 U.S. at 790 (Kennedy, J., concurring in part and dissenting in part) ("The exclusion of unwarned statements ... is a complete and sufficient remedy."); U.S. Amicus Br., *Chavez*, 2002 WL at *23 (noting that "[t]he *Miranda* exclusionary rule … already provide[s]

a strong deterrent against the taking of compelled statements"). Police officers simply do not violate a suspect's right against self-incrimination by failing to give a *Miranda* warning.

Nor do police control when improperly obtained statements are admitted into evidence. As one scholar has explained, "if *Miranda* violations are considered violations of the privilege against self-incrimination, a § 1983 remedy appears conceptually impossible." Gardner, *supra*, 1327. "Potential [*Miranda*] violations occur … only upon the admission of unwarned statements into evidence at trial." *Patane*, 542 U.S. at 641-42 (plurality op.). Accordingly, police officers are not—as the Ninth Circuit concluded—the proximate cause of a statement's admission at trial. *See* Pet. 28; Pet. App. 21a. Instead, "prosecutors or judges are the primary offenders of a suspect's rights." Gardner, *supra*, 1327; *see also* U.S. Amicus Br., *Chavez*, 2002 WL at *16 n.7 (noting that "the relevant state actor … would be the prosecutor who attempted to introduce the statement"). Statements obtained by police pass through two separate filters before they are used against a defendant in trial: (1) the prosecutor with discretion to seek admission of evidence; and (2) the trial judge with the duty to exclude any improperly obtained statements. Both are intervening acts, rendering it impossible for police officers to proximately cause the improper admission of un-*Mirandized* statements.

Extending liability to police officers "as indirect participants in such violations" is "unsound" for that reason. Gardner, *supra*, 1327. Indeed, hinging

liability on the subsequent erroneous use of evidence is "untenable." *Id.* "To find that the police knew or should have known that their eliciting of a *Miranda*-tainted statement would eventually be erroneously used against the suspect is to suggest that the police should foresee the erroneous actions of prosecutors or judges." *Id.*; *see also, e.g.*, *Duncan v. Nelson*, 466 F.2d 939, 942 (7th Cir. 1972) (rejecting as "untenable" liability for officers who obtained confession in violation of *Miranda* because officers could not "foresee that the trial judge would erroneously admit th[e] unlawful confession"; "act of the trial judge in admitting the confession was a superseding, intervening cause for which the defendants cannot be held liable"). After all, *Miranda*'s purpose is to prevent courts from taking unwarned statements into evidence, "not to regulate out-of-court conduct by the police." U.S. Amicus Br., *Missouri v. Seibert*, 542 U.S. 600 (2004), 2003 WL 21840207, at *19. "Accordingly, the taking of unwarned statements need not be deterred" in this manner. *Id.*

At bottom, "*Miranda* is a procedural safeguard and the remedy for its violation is exclusion, not a § 1983 action." Pet. App. 95(a) (Bumatay, J., dissenting from denial of rehearing en banc). This is an important distinction. Such a distinction "provides the necessary breathing space for law enforcement to investigate imminent threats to the public safety while protecting the civil liberties of those who stand trial for criminal offenses." Pet. 33. Given the added social costs to the public, and in light of the "complete and sufficient remedy" that *Miranda*'s exclusionary rule already provides, *Patane*, 542 U.S. at 641-42

(plurality op.), the expansion of Section 1983 liability cannot be justified.

CONCLUSION

For these reasons, the Court should reverse the decision below.

Respectfully submitted,

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