No. 21-499

IN THE

Supreme Court of the United States

CARLOS VEGA,

Petitioner,

—v.—

TERENCE B. TEKOH,

Respondent.

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

BRIEF FOR *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION AND CATO INSTITUTE IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

INTERESTS OF *AMICI CURIAE*

The American Civil Liberties Union ("ACLU") is a nationwide, nonpartisan, non-profit organization with approximately two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. Founded in 1920, the ACLU regularly appears before this Court, both as direct counsel and as *amicus curiae*. The ACLU was counsel in *Miranda v. Arizona*, 384 U.S. 436 (1966), and has participated in many of the Court's subsequent cases further explicating and enforcing *Miranda*.[1]

The Cato Institute ("Cato") is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999, and focuses in particular on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

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[1] No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Both Vega's and Tekoh's letters consenting to the filing of *amicus* briefs are on file with the Clerk.

SUMMARY OF THE ARGUMENT

An accused's Fifth Amendment right against self-incrimination is violated when his custodial, un-*Mirandized*, and therefore presumptively coerced, statement is introduced at his criminal trial as evidence of guilt. Under 42 U.S.C. § 1983, any "person" acting under "color of" law who proximately causes the violation of a constitutional right, including the right against compelled self-incrimination, may be found liable for damages. A violation of the Fifth Amendment right occurs, as this Court explained in *Chavez v. Martinez*, 538 U.S. 760 (2003), not when a statement is obtained without *Miranda* warnings, but when it is used in a criminal case to incriminate the defendant.

Petitioner's contention, contrary to *Chavez* and *Dickerson v. United States*, 530 U.S. 428, 444 (2000), is that the introduction of an unwarned statement at trial does not violate the Fifth Amendment at all, but merely implicates a judge-made evidentiary rule. That contention is without merit. The introduction of an un-*Mirandized* statement violates the Fifth Amendment, as demonstrated by this Court's rulings imposing *Miranda*'s constitutional rule on the states and providing habeas corpus review for *Miranda* violations.

The fact that there is no Section 1983 remedy for violating the Fourth Amendment's exclusionary rule does not control here, as that rule is of a different kind and serves a different purpose. Fourth Amendment violations are effectuated when the unreasonable search or seizure occurs, so transgressing the exclusionary rule does not itself violate the Constitution. By contrast, the violation of

the Fifth Amendment's Self-Incrimination Clause that gives rise to *Miranda* occurs during the "criminal case," U.S. Const. amend. V, namely, when an un-*Mirandized* statement is introduced at trial.

A police officer can be held liable for a Self-Incrimination Clause violation only where the officer's conduct is a proximate cause of the violation. In some cases, the prosecutor's decision to introduce a statement will be a superseding cause that precludes holding the officer liable. But contrary to the arguments of Petitioner, that will not *always* be true.

In this case, the Court need only decide that at least where the plaintiff introduces evidence that the officer not only obtained an unwarned statement, but also *lied to the prosecutor and the court about the circumstances of the interrogation* in a manner that would foreseeably affect the decisions to introduce and admit the statement, the jury should be permitted to determine whether the police officer's conduct was a proximate cause of the Fifth Amendment violation.

Respondent Tekoh proffered such evidence below. A reasonable jury could find that Petitioner Vega falsely claimed that no custodial interrogation took place and that Tekoh simply confessed voluntarily, with the foreseeable results that the prosecutor would rely on those representations and introduce the statement and that the court would admit it. If the jury made that finding, then Vega was the proximate cause of the violation of Tekoh's Fifth Amendment right. The fact that a criminal jury acquitted Tekoh notwithstanding the admission of his alleged confession is strong support for the proposition that a reasonable jury could credit Tekoh's account and conclude that Vega lied. The district court erred

in refusing to allow the jury to consider whether the police officer's full course of conduct, including his interrogation of Tekoh and his subsequent lies about that interrogation, constituted a proximate cause of the Fifth Amendment violation. This Court should affirm the court of appeals' judgment remanding the matter for presentation to the jury with appropriate instructions.

ARGUMENT

I. The introduction of an accused's custodial, un-*Mirandized* statement at trial is a violation of the Fifth Amendment's Self-Incrimination Clause.

The Fifth Amendment guarantees that "[n]o person shall be . . . compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The right against compelled self-incrimination is rooted in our nation's "unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt," "our respect for the inviolability of the human personality and of the right of each individual 'to a private enclave where he may lead a private life,'" and "our realization that the privilege, while sometimes 'a shelter to the guilty,' is often 'a protection to the innocent.'" *Doe v. United States*, 487 U.S. 201, 212–13 (1988) (quoting *Murphy v. Waterfront Comm'n*, 378 U.S. 52, 55 (1964)). The Founders were specifically concerned about the right against self-incrimination because of "historical abuses" like "the operation of the Star Chamber, wherein suspects were forced to choose between revealing incriminating private thoughts and forsaking their oath by committing perjury." *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990). Thus

the right both "enhance[s] the soundness of the criminal process by improving the reliability of evidence introduced at trial," *Withrow v. Williams*, 507 U.S. 680, 691 (1993), and provides protection for a core of individual autonomy into which the state may not encroach, *see, e.g.*, *United States v. Nobles*, 422 U.S. 225, 233 (1975) ("The Fifth Amendment privilege against compulsory self-incrimination is an 'intimate and personal one,' which protects 'a private inner sanctum of individual feeling and thought and proscribes state intrusion to extract self-condemnation.'" (quoting *Couch v. United States*, 409 U.S. 322, 327 (1973))).

In light of those founding principles, and in recognition of the failure of the then-reigning "totality of the circumstances" test to afford adequate protection to the privilege against self-incrimination, this Court in *Miranda* established a right to affirmative warnings from law enforcement designed to offset the inherent coercion of a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436 (1966); *Moran v. Burbine*, 475 U.S. 412, 420 (1986). The *Miranda* Court concluded that "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized." 384 U.S. at 478. In order to safeguard that right, the Court held that police officers must issue the now-famous warnings concerning an individual's right to an attorney and right to remain silent, and absent such warnings, "no evidence obtained as a result of interrogation can be used against [the defendant]." *Id.* at 479. The warnings mandated in *Miranda* have been

part of the fabric of law enforcement's interactions with the public for more than sixty years.

In *Chavez v. Martinez*, 538 U.S. 760 (2003), the Court addressed the question of *when* the Constitution is violated in the context of statements obtained in custodial interrogations. There, an unwarned statement was elicited in custody, but was never used in a criminal case. A plurality of the Court concluded that merely obtaining a statement without warnings in a custodial setting does not violate the Self-Incrimination Clause if the statement is *not* subsequently used in a criminal trial, because the Clause prohibits "incrimination" and not mere interrogation. 538 U.S. at 766–67 (Thomas, J., concurring for a four-Justice plurality). Pointing to the Clause's specific reference to "a criminal case," the plurality reasoned that the constitutional violation occurs only when an un-*Mirandized* statement is used to incriminate an individual after the "initiation of legal proceedings." *Id.* An individual whose un-*Mirandized* "statement[is] never admitted as testimony against him in a criminal case" is "never made to be a 'witness' against himself." *Id.* at 767.

The corollary to *Chavez* is that when an individual's unwarned custodial statements *are* introduced in a "criminal case," the Fifth Amendment is violated. And that conclusion is mandated by the Fifth Amendment. As this Court held in *Dickerson v. United States*, 530 U.S. 428 (2000), "*Miranda* announced a constitutional rule," *id.* at 444, and therefore could not be overridden by Congress. The Court observed that even though it lacks supervisory authority over the state courts, it had consistently applied *Miranda* in both state and federal cases, and

thus the rule was necessarily predicated on a *constitutional* violation. *Id.* at 438.

In addition, the *Dickerson* Court noted that the enforcement of *Miranda* violations in habeas corpus illustrates that it is a constitutional rule:

> Habeas corpus proceedings are available only for claims that a person "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Since the *Miranda* rule is clearly not based on federal laws or treaties, our decision allowing habeas review for *Miranda* claims obviously assumes that *Miranda* is of constitutional origin.

Dickerson, 530 U.S. at 439 n.3.

In short, a warning is constitutionally required because a custodial interrogation is inherently coercive, and therefore the use of an unwarned and presumptively coerced statement in a criminal case violates the Self-Incrimination Clause. *See id.* at 438–40 (citing *Miranda*, 384 U.S. at 467). And, as the Court in *Dickerson* clarified, this Court's references to *Miranda* as a "prophylactic rule" do not undermine its constitutional foundation in the Self-Incrimination Clause. *Id.* at 438 & n.2 (discussing *New York v. Quarles*, 467 U.S. 649, 653 (1984); *Michigan v. Tucker*, 417 U.S. 433, 444 (1974)). Together, *Chavez* and *Dickerson* make clear that when an un-*Mirandized* statement is introduced at trial, an individual's Fifth Amendment rights have been violated.

Vega argues that *Miranda* should be deemed a mere evidentiary rule with a constitutional foundation, much like the Fourth Amendment

exclusionary rule. Just as the violation of the exclusionary rule does not itself violate a defendant's Fourth Amendment rights, Vega (but not the United States) argues, the introduction of an unwarned statement does not violate the Fifth Amendment right against self-incrimination. Pet. Br. 30–31. But this Court rejected that argument in *Dickerson*, 530 U.S. at 441, explaining that past cases "recognize[] the fact that unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth." Vega's analogy to the exclusionary rule fails because it conflates the distinct natures of the Fourth and Fifth Amendment rights at issue.

While the Fourth Amendment exclusionary rule is based on the antecedent violation of a constitutional right, the actual Fourth Amendment violation is complete when the illegal search or seizure happens. The exclusionary rule is designed to deter violations of Fourth Amendment rights, but exclusion itself is not the right. A criminal defendant has no "personal constitutional right" to suppression as a Fourth Amendment remedy, *Stone v. Powell*, 428 U.S. 465, 486 (1976), nor does he have a cognizable claim for federal habeas relief, *id.* at 494–95. The Fourth Amendment violation is complete at the time of the unlawful search, not when evidence is used in a criminal case.

Miranda, by contrast, is predicated on the Fifth Amendment Self-Incrimination Clause, which provides "a fundamental *trial* right of criminal defendants." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) (emphasis added); *see Withrow*, 507 U.S. at 691; *Chavez*, 538 U.S. at 767. That right is violated not when the statement is obtained, but when

it is used to incriminate a criminal defendant during a criminal case. *See Withrow*, 507 U.S. at 705 (O'Connor, J., concurring in part and dissenting in part) (describing "true Fifth Amendment claims" as "the extraction and use of compelled testimony"); *see* U.S. Br. 11 ("The Court's habeas corpus jurisprudence reinforces that trial-focused understanding of *Miranda*'s constitutional rule."). Thus, *Miranda*'s rule against the admission of an unwarned custodial statement is no mere evidentiary rule, but a constitutional command. When that command is violated, the defendant's Fifth Amendment right has been violated.

II. When a police officer's course of conduct proximately causes a violation of the Fifth Amendment's Self-Incrimination clause, Section 1983 provides a remedy—and a reasonable jury could conclude that Vega proximately caused such a violation in this case.

In this case, Tekoh adduced evidence that Vega not only obtained a statement without providing *Miranda* warnings, but further lied about the circumstances of the interrogation in ways that would reasonably lead the prosecutor to introduce the statement (and the judge to admit it). Given those facts, had the jury been properly instructed, it could have reasonably concluded that it was foreseeable that Vega's conduct and misrepresentations induced the prosecutor and court to introduce and admit Tekoh's unwarned and presumptively coerced statement at the criminal trial. If the jury in the civil case credited that evidence, it could have found that Vega was the proximate cause of the violation of Tekoh's Fifth Amendment right at trial. The court of

appeals correctly held that that question should go to the jury.

A. Police officers who proximately cause a Self-Incrimination Clause violation can be liable under Section 1983.

When a "person" acting under "color of" law proximately causes a violation of the Fifth Amendment privilege against self-incrimination, a "right[] secured by the Constitution," Congress has provided for a damages remedy. 42 U.S.C. § 1983; *see, e.g.*, *West v. Atkins*, 487 U.S. 42, 48 (1988); *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Both parties and the United States agree that liability under Section 1983 is read against the background of common law tort principles, including proximate cause. Pet. Br. 37; U.S. Br. 15; Resp. Br. 36–37; *see also County of Los Angeles v. Mendez*, 137 S. Ct. 1539, 1548 (2017).

At bottom, a proximate cause is "one with a sufficient connection to the result." *Paroline v. United States*, 572 U.S. 434, 444 (2014). Generally, where a result is "foreseeabl[e]," or where a result falls within "the scope of the risk created by the predicate conduct," the proximate cause requirement is satisfied. *Id.* at 445 (citing 1 Wayne R. LaFave, Substantive Criminal Law § 6.4(c), at 471 (2d ed. 2003); Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 29 (Am. L. Inst. 2005)). Where "the source of the risk is an intervening act" of another, "the foreseeability of the intervening act will determine whether an actor's liability extends to any harm that occurs." Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 34 (Am. L. Inst. 2010).

Because the constitutional violation of the Self-Incrimination Clause under *Miranda* occurs not during an interrogation but when the statement is introduced in a criminal case, a prosecutor's decision to introduce the statement at trial may often preclude a finding of proximate cause for a police officer who merely takes an unwarned statement. Police officers do not generally decide whether to introduce a statement at trial; the prosecutor does. And where the actions of the prosecutor (and the judge who admits the statement) are genuinely independent, the officer's taking of the statement will often be superseded by the prosecutor's decision.[2]

But Vega goes further and maintains that, as a matter of law, a police officer can *never* proximately cause a Self-Incrimination Clause violation. If that were true, even where a police officer lies about the circumstances in which he obtained a statement with

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[2] *See*, *e.g.*, *Murray v. Earle*, 405 F.3d 278, 293 (5th Cir. 2005) (holding that "an official who provides *accurate information* to a neutral intermediary, such as a trial judge, cannot 'cause' a subsequent Fifth Amendment violation arising out of the neutral intermediary's decision" (emphasis added)); *cf.*, *e.g.*, *Evans v. Chalmers*, 703 F.3d 636, 649 (4th Cir. 2012) (malicious prosecution claim) ("[A] prosecutor's independent decision to seek an indictment breaks the causal chain *unless the officer has misled or unduly pressured the prosecut*or" (emphasis added)). But where the police officer provides false information, the prosecutor's decision is not independent and the officer can be deemed a proximate cause. *See Egervary v. Young*, 366 F.3d 238, 250 (3d Cir. 2004) (Fifth Amendment Due Process claim) ("adher[ing] to the well-settled principle that, in situations in which a judicial officer or other independent intermediary . . . reaches an erroneous conclusion because he or she is misled in some manner as to the relevant facts, the causal chain is not broken and liability may be imposed upon those involved in making the misrepresentations or omissions").

the foreseeable result that the suspect's right against self-incrimination would be violated, and the prosecutor relied on that lie in deciding to introduce the statement, the police officer would bear no responsibility. The argument that police officers can never be the proximate cause, and thus are absolutely immune from Section 1983 claims for *Miranda* violations, no matter their conduct, fails for three reasons.[3]

First, Vega too narrowly conceives the conduct relevant to the proximate cause inquiry. He treats the relevant police officer conduct as solely the *taking of an unwarned statement* by itself. *See* Pet. Br. 39 ("It follows from this that when a *Miranda* violation does occur, it is proximately caused by the flawed decisions of the prosecutor and judge, not by the officers *who took the unwarned statement*." (emphasis added)). Where that is all the police officer has done, the officer's conduct will ordinarily not constitute proximate cause. But where the police officer's conduct is not limited to eliciting the statement—and, in particular, where the officer provides false information about the circumstances under which he took the statement in a way that the prosecutor and

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[3] The United States appears to take a less extreme position, maintaining that a police officer is not liable where he simply takes an unwarned statement and "otherwise acts in accordance with the law." *See* U.S. Br. 16 ("A police officer who simply questions a suspect without warnings, and who *otherwise acts in accordance with the law*, has not 'caused' the later admission of un-warned statements in court for purposes of damages under Section 1983." (emphasis added)). This is not inconsistent with the view *amici* advance here, namely that an officer who misleads the prosecutor and court about the circumstances of the interrogation could be a proximate cause of the Fifth Amendment violation.

judge would foreseeably rely upon in introducing and admitting the statement—the police officer's conduct must be viewed as a whole and can be a proximate cause.

Second, Vega argues that because a Self-Incrimination Clause violation occurs only upon the introduction of un-*Mirandized* statements at trial, "it is proximately caused by the flawed decisions of the prosecutor and judge, not by the officers who took the unwarned statement." Pet. Br. 39. Similarly, the United States maintains that "a police officer should be allowed to trust that courts and prosecutors will avoid the introduction of a constitutionally inadmissible statement at trial." U.S. Br. 17. But at least where an officer has lied about the circumstances of the interrogation, and prosecutors and the judge foreseeably rely on the officer's false statements to decide on the admissibility of the defendant's statement, the police officer cannot point his finger at others and absolve himself of responsibility—and there is nothing unfair or fortuitous about imposing liability. *See Malley v. Briggs*, 475 U.S. 335, 344 n.7 (1986) (explaining that it was "clear" that, in connection with an officer's liability under Section 1983 for requesting a warrant lacking probable cause, a "judge's decision to issue [a] warrant" does not automatically "break[] the causal chain between the application for the warrant and [an] improvident arrest").

Vega and the United States both invoke the "presumption of regularity" attaching to prosecutorial decisions. *See* Pet. Br. 41; U.S. Br. 17. But that presumption is misplaced where the officer has misled in a way that foreseeably influences and taints the prosecutor's decision. Police officers may be entitled as

a general matter to rely on the independent judgment of prosecutors and judges, but not where the officer provides false information about the circumstances of an interrogation the officer conducted and thereby induces the admission of an unwarned statement at trial. Where a plaintiff can prove a set of facts in which the police officer was not a "supporting actor" but "the star player," that officer should be liable under Section 1983. U.S. Br. 18 (quoting *Albright v. Oliver*, 510 U.S. 266, 279 n.5 (1994) (Ginsburg, J., concurring)).

Third, concluding that police officers can never be liable for Self-Incrimination Clause violations would not only reward police lying, but would erode the very incentives that the *Miranda* rule was intended to provide with respect to police officers' interactions with suspects. In *Miranda*, this Court explained that warnings were necessary because it "is not for the authorities to decide" whether an individual "desires to exercise his privilege" against self-incrimination. 384 U.S. at 480. It made clear that one purpose of its ruling was to reduce the role of coerced confessions in determining criminal guilt." *Id.* at 481; *see Withrow*, 507 U.S. at 691–92 (explaining that *Miranda* warnings contribute to the reliability of evidence admitted at trial by filtering out self-incriminating statements that are coerced). And it emphasized that the warnings would "not in any way preclude police from carrying out traditional investigatory functions" or from the "legitimate exercise of their duties." *Miranda*, 384 U.S. at 481. A half-century of practice has confirmed that judgment, as police officers routinely obtain confessions *after* providing the required warnings. Cases in which a police officer is sued for causing a Self-Incrimination

Clause violation are rare. *See* Opp. 8. To hold that officers will never incur liability—even when they go beyond the mere taking of an un-*Mirandized* statement to deceive prosecutors and the court and effectively orchestrate the introduction of such a statement in a criminal trial—finds no justification in the doctrines of proximate cause, *Miranda*, or Section 1983.

B. The court of appeals correctly held that the jury should have been permitted to determine whether Deputy Vega proximately caused the violation of Tekoh's constitutional right.

The court of appeals correctly determined that a reasonable jury could conclude, based on the evidence that Tekoh adduced at the civil trial, that Vega proximately caused a Fifth Amendment violation. Because a jury could conclude that Vega lied about the circumstances in which he obtained his statement and thereby induced others to rely on it, the district court erred in refusing to instruct the jury on Tekoh's Self-Incrimination Clause claim.

The court of appeals correctly held that Tekoh should have the opportunity on remand to prove that Vega was the proximate cause of the Self-Incrimination Clause violation. *See* Resp. Br. 7 n.2 (explaining the factual questions left undecided by the unusual procedural posture of this case). Vega and the United States read the court of appeals' opinion as having broadly concluded that the mere elicitation of an unwarned statement could, without more, render a police officer liable under Section 1983, even if a prosecutor made an independent and fully informed

decision to introduce an unwarned statement at trial. But the decision below rests on all the facts related to Vega's conduct, not merely the elicitation of an unwarned statement, and in particular, on evidence that Vega lied about the circumstances of the interrogation in a manner that made his conduct a proximate cause of the violation.

A careful examination of Vega's actions—all of which are relevant to the proximate cause inquiry—reveals just how far this case is from the "ordinary" case in which an officer's elicitation of an unwarned statement is the full extent of the officer's involvement in a Self-Incrimination Clause violation. Tekoh testified that he was simply doing his job as a Certified Nursing Assistant when Vega ordered him into a small, windowless room and refused others' entry. Resp. Br. 9. Vega then proceeded to interrogate Tekoh, alleging that he had molested a patient while transporting her. *Id.* at 10. Vega threatened Tekoh with violence, flashing his gun. *Id.* He warned Tekoh, an immigrant, that he and his family members would face deportation back to the country he and his family had fled in fear of persecution. *Id.* And he called Tekoh a "Jungle Nigger." Pet. App. 4a ("Mr. Jungle Nigger trying to be smart with me. You make any funny move, you're going to regret it. I'm about to put your black ass where it belongs, about to hand you over to deportation services, and you and your entire family will be rounded up and sent back to the jungle . . . . Trust me, I have the power to do it."). Vega would not permit Tekoh to leave the room, and he ignored Tekoh's pleas to see a lawyer or talk to his co-workers and supervisors. Resp. Br. 9–10. Vega ultimately extracted a false letter of apology that Vega himself dictated, which Tekoh maintains will be shown to be

wholly unreliable in part through previously excluded testimony about false confessions. *Id.* at 10. Following his interrogation of Tekoh, Vega also "prepared the incident report, and personally signed the probable cause declaration." Pet. App. 22a.

And most importantly, if a jury were to credit Tekoh's account (as the criminal jury that acquitted him appeared to do), Vega not only created and attested to the truth of these documents, but repeatedly lied about the circumstances in which the statements were obtained, about his own conduct, and about the voluntariness of Tekoh's "confession." Resp. Br. 10–11; J.A. 116–18; First Amended Complaint at 15, *Tekoh v. County of Los Angeles*, No. 16-7297 (C.D. Cal. May 25, 2017). Vega then apparently maintained those lies to prosecutors, and then lied again on the stand while introducing Tekoh's statement at trial.

If Vega did these things, then the introduction of Tekoh's unwarned statement at trial was the foreseeable result of Vega's actions under ordinary tort principles. Vega caused the introduction of the statement at the centerpiece of the prosecution's case by falsely representing that the statement had *not* been obtained in a custodial interrogation at all, and the prosecutor and judge relied on those statements to conclude that it could be used against Tekoh. *All* of that conduct leading up to and during trial, not just the taking of the statement, are relevant to the proximate cause inquiry. Indeed, in this case, where there was evidence that Vega specifically intended to cause the introduction of an unwarned and coerced statement, and misled the prosecutor and judge in order to effectuate his intent, it would be a perversion of Section 1983's purpose not to instruct a jury on proximate cause. Plainly, Vega would have

understood that the introduction of this evidence fell within "the scope of the risk created by the predicate conduct." *Paroline*, 572 U.S. at 445. And because a reasonable jury could so find, the question should properly be presented to it, with appropriate proximate cause instructions. Moreover, because a jury could conclude that the prosecutor's and judge's actions at trial were taken in reliance on the false information Vega gave them, the jury could find that their actions were not superseding causes of the violation.

In sum, the court of appeals correctly held that Tekoh introduced sufficient evidence to warrant a jury instruction on his Fifth Amendment Self-Incrimination Clause claim, including whether Vega was a proximate cause of the violation of Tekoh's rights. Unless this Court were to conclude that police officers can lie about the circumstances of a custodial interrogation and escape liability even where those lies induce prosecutors and judges to introduce and admit an unwarned statement, the Court should affirm.

CONCLUSION

For all of the above reasons, the decision of the court of appeals should be affirmed.

Respectfully submitted,

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