NO. 21-499

In the
Supreme Court of the United States

CARLOS VEGA,
Petitioner,
v.
TERENCE B. TEKOH,
Respondent.

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

BRIEF OF LOCAL GOVERNMENT ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

C. HARKER RHODES IV
Counsel of Record
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., NW
Washington, DC 20004
(202) 389-5000
harker.rhodes@kirkland.com

Counsel for Amici Curiae National Association of Counties, National League of Cities, International Municipal Lawyers Association, National Sheriffs' Association, Major County Sheriffs of America, and California State Association of Counties

(*Additional counsel listed on inside cover*)

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LISA SORONEN
STATE & LOCAL
LEGAL CENTER
444 N. Capitol St., NW
Suite 515
Washington, DC 20001
(202) 434-4845
lsoronen@sso.org

Counsel for Amici Curiae National Association of Counties, National League of Cities, United States Conference of Mayors, International Municipal Lawyers Association, National Sheriffs' Association, Major County Sheriffs of America, and California State Association of Counties

CELIA MEZA
Corporation Counsel of the City of Chicago
MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
SUZANNE LOOSE
Chief Assistant Corporation Counsel
CHRISTOPHER WALLACE
Chief Assistant Corporation Counsel
2 N. LaSalle St., Suite 580
Chicago, IL 60602
(312) 744-8519
suzanne.loose@cityofchicago.org

Counsel for Amicus Curiae City of Chicago

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STATEMENTS OF INTEREST[1]

The National Association of Counties ("NACo") is the only national association that represents county governments in the United States. Founded in 1935, NACo serves as an advocate for county governments and works to ensure that counties have the resources, skills, and support they need to serve and lead their communities.

The National League of Cities ("NLC") is the oldest and largest organization representing municipal governments throughout the United States. Working in partnership with forty-nine state municipal leagues, NLC is the voice of more than 19,000 American cities, towns, and villages, representing collectively more than 200 million people. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions.

The U.S. Conference of Mayors ("USCM") is the official nonpartisan organization of the more than 1,400 United States cities with a population of more than 30,000 people. Each city is represented in the USCM by its chief elected official, the mayor.

The International Municipal Lawyers Association ("IMLA") is a non-profit organization of more than 2,500 members dedicated to advancing the interests

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, counsel of record for all parties have consented in writing to this filing.

and education of local government lawyers. It is the only national organization devoted exclusively to local government law. For over 85 years, it has been an educator and advocate for its members, which include cities, towns, villages, townships, counties, water and sewer authorities, transit authorities, attorneys focused on local government law, and others. Its mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues.

The National Sheriffs' Association ("NSA") is a non-profit association formed in 1940 to promote the fair and efficient administration of criminal justice throughout the United States, and in particular to advance and protect the Office of Sheriff throughout the United States. The NSA has over 13,000 members and advocates for 3,080 sheriffs nationwide. The NSA also works to promote the public interest goals and policies of law enforcement nationwide, and participates in the judicial process where the vital interests of law enforcement and its members are affected.

The Major County Sheriffs of America is a professional law enforcement association of the 113 largest sheriff's offices representing counties or parishes with 500,000 population or more. It is dedicated to preserving the highest integrity in law enforcement and the elected office of the sheriff, and its membership represents over 130 million citizens.

The California State Association of Counties ("CSAC") is a non-profit corporation. Its membership consists of the 58 California counties. CSAC sponsors

a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by its Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The City of Chicago is the third largest city in the country. It is responsible for defending litigation against Chicago police officers and indemnifying officers for judgments against them arising from actions taken within the scope of their employment. Chicago and its police officers are regularly defendants in cases presenting the same or similar issues as this case, including *Carter v. Wrobel*, No. 21-1018 (7th Cir. argued Sept. 29, 2021), which is currently pending in the Seventh Circuit.

Given their extensive experience with local governments and local government law, *amici* have a uniquely valuable perspective on the relevant issues in this case. In particular, *amici* and their members have direct experience with the significant problems that local governments have faced under the rule adopted below. Under the Ninth Circuit's approach, local governments face liability under 42 U.S.C. §1983 not only when plaintiffs allege violations of their actual Fifth Amendment rights against compelled self-incrimination, but whenever plaintiffs allege any violation of the broader prophylactic rule that this Court created in *Miranda v. Arizona*, 384 U.S. 436 (1966). *Amici* respectfully submit this brief to emphasize the substantial negative impact that such

potential liability can have on local governments, and the critical need for this Court to reverse the decision below and hold that §1983 does not authorize a plaintiff to seek damages based solely on an alleged *Miranda* violation.

SUMMARY OF THE ARGUMENT

Congress enacted §1983 to provide a federal cause of action for any person deprived of federal rights under color of state law. That federal cause of action plays an important and undisputed role in ensuring compensation for those whose federal rights are infringed by state officers. But at the same time, §1983 litigation imposes significant burdens on local governments and their employees—burdens that should weigh heavily against any judicial expansion of §1983 beyond its statutorily defined scope. The Ninth Circuit's divided decision below ignores those concerns, rewriting §1983 to create a judicially enlarged cause of action that allows suit not only for the violation of federal *rights*, but also for the violation of judge-made prophylactic rules. By extending §1983 beyond its proper scope, the decision below aggravates the already-substantial costs that municipalities must face from §1983 litigation.

In holding that a plaintiff may bring suit under §1983 based solely on a violation of the prophylactic *Miranda* rule, the decision below is clearly incorrect. The proper remedy for any failure to provide *Miranda* warnings is the exclusion of the resulting statements in any subsequent criminal trial—not a civil damages action against local law enforcement. The Ninth Circuit's decision to engraft §1983 liability onto *Miranda*'s exclusionary rule cannot be squared with

the statutory text or with this Court's precedent, which make clear that §1983 authorizes suit only when a plaintiff alleges the violation of a federal right, and that *Miranda* announced a prophylactic rule and not a new federal right to be free from unwarned questioning. The Ninth Circuit also independently erred by treating a police officer's failure to provide *Miranda* warnings as the proximate cause of any later use of the unwarned statements at trial, as police officers do not control (and cannot be expected to second-guess) the subsequent intervening decisions of the prosecutor who chooses whether to introduce the unwarned statements at trial and the judge who chooses whether to admit them. In short, the decision below is legally unsustainable, and the substantial financial and public safety costs it will impose on local governments are wholly unjustifiable. This Court should reverse.

ARGUMENT

I. Local Governments Face Significant Costs When Courts Expand Section 1983 Liability Beyond Its Proper Boundaries.

Section 1983 plays an important role in protecting federal rights, serving to "deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). At the same time, lawsuits brought under §1983 can impose significant burdens on municipalities and on the public at large, saddling local governments with tremendous "expenses of litigation" and the "diversion of official energy from pressing public issues." *Crawford-El v. Britton*, 523

U.S. 574, 590 & n.12 (1998). Those heavy burdens are warranted when they are necessary to redress alleged violations of the "rights, privileges, or immunities secured by the Constitution and laws" of the United States, which are the federal rights that §1983 explicitly enumerates. 42 U.S.C. §1983. At the same time, the burdens that §1983 suits impose on local governments—along with basic jurisprudential principles—caution strongly against judicially expanding the statutory cause of action that Congress enacted in §1983 beyond its proper bounds. *Cf. Comcast Corp. v. Nat'l Ass'n of African American-Owned Media*, 140 S.Ct. 1009, 1015 (2020) ("[R]aising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals." (quoting *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001)).

The Ninth Circuit's divided decision below ignores those concerns. It subjects local governments and their officers to substantial litigation costs, and potentially enormous damages liability and attorneys' fees, *see* 42 U.S.C. §1988, based not on the alleged violation of any federal right (as §1983 requires) but on the alleged violation of a judge-made prophylactic rule. The costs of §1983 litigation may be justified when those costs are necessary to remedy violations of the Constitution or federal law, but neither the statutory text nor sound policy supports imposing them when the only asserted injury is the violation of a prophylactic rule and not the deprivation of any underlying constitutional right.

Expanding the cause of action provided by §1983 beyond its textually circumscribed limits would not

only depart from basic jurisprudential principles, but also aggravate the enormous flood of §1983 litigation that local governments face every year. In the district court where Tekoh initiated this suit, for instance, "[c]ivil rights case filings constituted the highest percentage of all civil case filing categories," representing 33.2% of all civil case filings in fiscal year 2019. Office of the Clerk of Court, *Central District of California Annual Report of Caseload Statistics Fiscal Year 2019*, at 6 (2019), https://bit.ly/3jNsKvQ. Continuing a long upward trend, the total number of civil rights filings in that district also increased every year from fiscal year 2015 through fiscal year 2019, for a remarkable 103% increase just over that four-year period. *Id.* at 7. Nationwide, some 18,000 civil rights actions are filed each year, accounting for about 13% of all civil cases filed in federal district courts and averaging out to about six new civil rights actions each year for every county in the United States. Philip Matthew Stinson Sr. & Steven L. Brewer Jr., *Federal Civil Litigation Pursuant to 42 U.S.C. §1983 as a Correlate of Police Crime*, 30 Crim. Just. Pol'y Rev. 223, 227 (2019); *see* World Population Review, *States With the Most Counties 2021*, https://bit.ly/3vSDP3j (last visited Mar. 1, 2022) (tallying 3,243 county equivalents nationwide).[2]

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[2] These numbers include all actions categorized by the federal district courts as "civil rights cases," as the federal courts do not report §1983 suits separately from other civil rights actions in their statistical reports. *See* Stinson & Brewer, *supra*, at 226-27. But the bulk of these civil rights cases are §1983 suits—and indeed, the total number of §1983 suits may be even higher, as the numbers above do not include employment discrimination suits or prisoner petitions. *Id.*

That flood of litigation is exacerbated by structural factors. Plaintiffs with perceived grievances against their local governments often feel strong personal incentives to bring these suits, and are often encouraged by plaintiffs' lawyers hoping to recover attorneys' fees under §1988 if the suit is successful. *See* Stinson & Brewer, *supra*, at 227 (attributing the "explo[sion]" of §1983 litigation in cases alleging police misconduct in part to the availability of attorneys' fees under §1988); Thomas A. Eaton & Michael Wells, *Attorney's Fees*, *Nominal Damages, and Section 1983 Litigation*, 24 Wm. & Mary Bill Rts. J. 829, 837 (2016) (recognizing the "systemic value [of fees under §1988] in encouraging litigation"). Given those reinforcing incentives, any judicial expansion of the boundaries of §1983 liability almost automatically leads to a corresponding increase in the already-substantial volume of §1983 suits that local governments must bear.

Municipal governments not only face significant numbers of §1983 suits every year, but the risk of potentially massive damages awards (and attorneys' fees) in those suits. The average jury award of liability against a municipality in such cases is estimated at around $2 million, and "a six- or seven-figure award against a city" is "not uncommon." Larry K. Gaines & Victor E. Kappeler, *Policing in America* 346 (9th ed. 2021). One study of 151 local law enforcement agencies found an average annual legal liability for alleged misconduct of about $13.8 million. *Id.* Moreover, given the ever-present risk of potentially crushing verdicts, municipalities are often forced to secure "extremely expensive" liability insurance, only to find that "premium rates can skyrocket, or

companies may refuse to insure the [municipality] at all" if the municipality finds itself litigating multiple suits in defense of its local officials. *Id.*[3]

For cash-strapped local governments, these costs can often cause severe financial difficulties, destroying municipal budgets and siphoning funds away from other much-needed local priorities. In the end, the "resulting financial loss" from the costs of litigation, any adverse judgment, and any award of attorneys' fees will be "borne by all the taxpayers" of the municipality, who are themselves entirely innocent of any wrongdoing. *Owen v. City of Independence*, 445 U.S. 622, 655 (1980). That outcome may be appropriate when necessary to compensate "those whose rights … have been violated," *id.*, but should weigh strongly against extending the statutory cause of action under §1983 to permit suits based on the violation of a prophylactic rule.

Unsurprisingly, when faced with the exorbitant costs of actually defending against a §1983 suit—including extensive litigation expenses, steep increases in insurance premiums, potential multi-million-dollar judgments, and the risk of substantial fee awards—municipalities often find themselves forced to settle even meritless §1983 actions. *Cf.*

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[3] To be clear, the costs of extending §1983 liability beyond its proper bounds are not limited to cases brought against local governments themselves. Even when the only named defendants are individual local officials or police officers, "most municipalities … indemnify officials sued for conduct within the scope of their authority, a policy that furthers the important interest of attracting and retaining competent officers." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 713 n.9 (1978) (Powell, J., concurring).

Gaines & Kappeler, *supra*, at 346-347 (noting that "more than half" of all cases alleging police misconduct "are settled out of court"); Stinson & Brewer, *supra*, at 226. Those settlements, however, impose their own costs, requiring municipalities "to pay [plaintiffs and their counsel] large sums of money, even in cases in which the police might not be found liable in a civil proceeding." Gaines & Kappeler, *supra*, at 347. Still worse, a municipality's willingness to settle in order to avoid the costs of litigation "can lead to the filing of frivolous civil suits" intended simply to extract further settlements from the beleaguered town, creating a vicious cycle in which each new settlement only encourages further suits. *Id.* As a result, whether through "enormous awards [or] settlements," actions under §1983 "have nearly bankrupted some municipalities and townships." *Id.* at 346.

In sum, the statutory cause of action that Congress created in §1983 imposes significant costs on municipalities. Those costs may be justifiable when they are necessary to compensate plaintiffs who have been deprived of their federal rights, but they should weigh strongly against expanding §1983 beyond its terms to authorize suits against local governments and their officers based solely on the alleged violation of a prophylactic rule.

II. The Ninth Circuit's Unwarranted Extension Of Section 1983 Liability To The Prophylactic *Miranda* Rule Is Plainly Wrong And Poses Serious Problems For Local Governments.

For the reasons explained above, any judicial expansion of §1983 liability beyond its proper bounds

is problematic. The decision below, however, is especially wrong. It disregards the statutory text and this Court's precedent, and will cause serious problems for local governments and local law enforcement officers. This Court should reverse.

1. As both the statutory text and decades of precedent confirm, the Ninth Circuit plainly erred by holding that a plaintiff can bring suit under §1983 premised solely on an officer's failure to provide a *Miranda* warning before eliciting statements that are subsequently introduced at a criminal trial. *See* Petr.Br.15-36. The remedy for any violation of *Miranda*'s prophylactic rule is exclusion at a subsequent criminal trial, not a civil damages action under §1983.

The statutory cause of action that Congress enacted in §1983 authorizes suits where a plaintiff alleges "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. §1983. But as this Court has repeatedly made clear, *Miranda* established a prophylactic rule that *protects* the existing Fifth Amendment right against self-incrimination, not a new constitutional right to be free from unwarned questioning. *See, e.g.*, *Howes v. Fields*, 565 U.S. 499, 507 (2012) (recognizing "prophylactic" nature of the *Miranda* rule); *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (same); *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010) (same); *Montejo v. Louisiana*, 556 U.S. 778, 794 (2009) (same); *Davis v. United States*, 512 U.S. 452, 458 (1994) (same); *Brecht v. Abrahamson*, 507 U.S. 619, 629 (1993) (same); *see also* Pet.App.79a-80a

(listing more than twenty cases in which this Court has described *Miranda* as prophylactic).

Put differently, the *Miranda* warnings are "not themselves rights protected by the Constitution but are instead measures to insure that the right against compulsory self-incrimination is protected." *New York v. Quarles*, 467 U.S. 649, 654 (1984) (brackets omitted) (quoting *Michigan v. Tucker*, 417 U.S. 433, 444 (1974)); *see also Oregon v. Elstad*, 470 U.S. 298, 306 (1985) (recognizing that *Miranda* "sweeps more broadly than the Fifth Amendment itself" and "may be triggered even in the absence of a Fifth Amendment violation"); U.S.Br.18, *United States v. Patane*, 542 U.S. 630 (2004) (No. 02-1183), 2003 WL 21715020 (*Miranda* "sweeps more broadly than the core Fifth Amendment privilege" (capitalization altered)). As such, an officer's failure to provide the *Miranda* warnings does not in itself violate any federal right and so cannot provide the basis for a suit under §1983, whether or not any resulting statement is later introduced at trial. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002) (section 1983 authorizes suits for the deprivation of federal "*rights*, not the broader or vaguer 'benefits' or 'interests'"); *see also* U.S.Br.7, *Patane*, 542 U.S. 630 ("The Constitution does not forbid the police from taking unwarned statements. Rather, the Fifth Amendment confers a trial right, and *Miranda* protects against violation of that right by excluding unwarned statements.").

In short, §1983 by its terms provides a civil damages action only for the violation of federal "rights, privileges, or immunities," and the prophylactic rule that this Court announced in *Miranda* is none of those

things. A plaintiff can surely bring suit under §1983 if he is *actually* deprived of his constitutional rights by a coercive interrogation—for instance, if he is actually forced into an involuntary confession that is later used against him in a criminal trial. But a plaintiff just as surely *cannot* bring suit under §1983 if he is *not* deprived of his constitutional rights, and instead is deprived only of a prophylactic protection that this Court has announced to preserve those rights. As the United States has recognized, where a *Miranda* violation occurs, the "complete and sufficient response … is to exclude the ensuing statement from the government's case in chief," not to provide a separate cause of action for damages. U.S.Br.10-11, *Patane*, 542 U.S. 630. Congress has never created any statutory cause of action authorizing a plaintiff to sue for the violation of a judge-made prophylactic rule, and the Ninth Circuit seriously erred by expanding §1983 to serve that role.

The Ninth Circuit's reasoning threatens to expand §1983 far beyond its bounds not only with respect to *Miranda* (a problem that is already more than serious enough to require reversal), but other prophylactic rules as well. To take one notable example, this Court has held that evidence obtained by the police in violation of the Fourth Amendment may warrant exclusion of that evidence in a subsequent criminal trial, as "a prophylactic device intended generally to deter Fourth Amendment violations by law enforcement officers." *Stone v. Powell*, 428 U.S. 465, 479 (1976). Under the Ninth Circuit's reasoning, a plaintiff would apparently be entitled to bring suit under §1983 against a police officer not only for any Fourth Amendment violation

involved in obtaining any illegally-acquired evidence, but also for a separate violation of the exclusionary rule if that evidence was later used against the person in a criminal trial. Along similar lines, this Court has held that an identification of a criminal suspect must be excluded if it was obtained pursuant to an unnecessarily suggestive line-up or a post-indictment lineup without counsel. *See Manson v. Brathwaite*, 432 U.S. 98 (1977); *United States v. Wade*, 388 U.S. 218 (1967). If a prophylactic rule were to prohibit police from conducting such line-ups at all, would a violation of that prophylactic rule therefore warrant damages under §1983? Surely not—and yet that is again the result that the Ninth Circuit's reasoning below would require. *Cf. Hensley v. Carey*, 818 F.2d 646, 649 (7th Cir. 1987) ("The rule against admission of evidence from unnecessarily suggestive lineups is a prophylactic rule designed to protect a core right … and it is only the violation of the core right and not the prophylactic rule that should be actionable under §1983.").

2. The Ninth Circuit also erred by holding that a police officer who takes an unwarned statement is a proximate cause of any *Miranda* violation that results if that statement is later introduced at a criminal trial. Normal principles of proximate causation make clear that an officer who records an unwarned statement in the field cannot be expected to reasonably foresee that a prosecutor may someday erroneously move that unwarned statement into evidence at trial and a judge may erroneously admit it. *See* Petr.Br.39-42. On the contrary, a local police officer should be entitled to rely on both prosecutors and judges to carry out their responsibilities to ensure that any inadmissible

evidence is not presented at trial—and should not face liability for their failure to do so. *See United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926) (recognizing the "presumption of regularity [that] supports the official acts of public officers," under which "courts presume that they have properly discharged their official duties"); *see also Murray v. Earle*, 405 F.3d 278, 292-93 (5th Cir. 2005) (explaining that "an intervening decision of an informed, neutral decision-maker 'breaks' the chain of causation," and so "an official who provides accurate information to a neutral intermediary … cannot 'cause' a subsequent Fifth Amendment violation arising out of the neutral intermediary's decision").

The Ninth Circuit's contrary rule—that police officers may be held liable unless they somehow attempt to *prevent* introduction of the unwarned statement at trial, *see* Pet.App.21-22—makes no sense whatsoever. That approach not only reverses the presumption of regularity, and erroneously treats *Miranda* as a "code of police conduct" rather than a prophylactic exclusionary rule, *United States v. Patane*, 542 U.S. 630, 637 (2004) (plurality op.), but would force police officers to either refuse to tell prosecutors about a suspect's unwarned statements or else second-guess prosecutors' legal judgments about whether to introduce those statements. Petr.Br.42-46. That result is entirely untenable—for police officers, for prosecutors, and for the local governments that rely them to protect the public.

Put simply, the ultimate decision to admit Tekoh's confession at his criminal trial was made not by Vega, but by the prosecutor who presented that evidence and

the state judge who ruled it admissible. *See* Petr.Br.39-42. Indeed, Tekoh himself recognizes that his theory of liability in his §1983 suit is simply a collateral challenge to the state court's decision to admit his confession. *See* BIO.1 (arguing that the state court's decision to admit his confession is "not preclusive" because it was not subject to appellate review). As two federal juries have since confirmed (by rejecting Tekoh's version of the circumstances surrounding his confession), the prosecutor who charged Tekoh and the state court that presided over his trial did not err in determining that Tekoh's confession was admissible. But even if the prosecutor and the court had erred, their intervening decisions preclude Tekoh's attempt to hold Vega liable for the admission of his confession at his criminal trial.

3. The decision below not only rests on indefensible legal grounds, but is untenable as a practical matter as well. By expanding §1983 to authorize suits against local law enforcement whenever an unwarned statement is later impermissibly introduced at trial, the decision below opens the door to a measurable increase in the already-significant litigation burdens that local governments face under §1983, *see supra* Part I—not in order to compensate plaintiffs whose constitutional rights have been violated, but solely to protect a judge-made prophylactic rule.

The potential burden on local governments and local law enforcement is staggering. On any given day, police officers interact with tens of thousands of their fellow American citizens, often in ways that involve posing direct or indirect questions and in

circumstances that may or may not be custodial. Under the Ninth Circuit's rule, an officer would either have to provide prophylactic *Miranda* warnings at practically every one of those interactions, or else face potential personal liability for damages if the resulting statements are later admitted at a criminal trial over the defendant's objection that he was in custody when they were made.

Even in cases where it is relatively clear that *Miranda* warnings are appropriate, the Ninth Circuit's rule would radically change the consequences of any mistaken failure to provide those warnings, imposing not only the appropriate consequence of exclusion but also the unwarranted risk of significant financial damages. In 2019, law enforcement officers made over *10 million* arrests in the United States, or an average of one every three seconds. FBI, *Crime in the United States 2019: Persons Arrested*, https://bit.ly/3BCoYNu (last visited Mar. 7, 2022). It is literally inevitable that for some number of those arrests, the arresting officers will mistakenly fail to provide proper *Miranda* warnings before asking questions. This Court has determined that in those cases, statements made in response to unwarned questions should generally be excluded, in order to protect the underlying Fifth Amendment right against self-incrimination. *Miranda*, 384 U.S. at 444-45. But neither this Court nor Congress has ever concluded that police officers (and the municipalities that employ them) should *additionally* be subject to liability for *money damages* for any failure to provide the judicially required *Miranda* warnings—an approach that would require a unique and extraordinarily expansive theory of Fifth Amendment prophylaxis. As

the United States has previously recognized, expanding *Miranda* to afford such additional prophylactic "deterrence" is fundamentally misguided; in fact, "deterrence concerns are inapt in this context, because the Constitution does not forbid interrogation without prior administration of *Miranda* warnings." U.S.Br.26, *Patane*, 542 U.S. 630. In any event, "even assuming that deterrence of unwarned questioning were an appropriate purpose of *Miranda*, the rule provides sufficient deterrence by suppressing the unwarned statement itself from use in the government's case." *Id.*; *see id.* at 29-35.

The potential burden that the Ninth Circuit's approach would pose is anything but theoretical. Plaintiffs have already filed numerous §1983 cases seeking to impose liability on local officers and local governments for alleged violations of the prophylactic *Miranda* rule, often requesting millions of dollars in damages. *See, e.g.*, *Steward v. Dunlap*, No. 3:21-cv-00416-BJD-JRK (M.D. Fla. filed Apr. 16, 2021) (seeking over $2,200,000); *Smith v. Aims*, No. 2:20-cv-12013-MAG-DRG (E.D. Mich. filed July 14, 2020) (seeking over $2,400,000); *Green v. Irvington Police Dep't*, No. 2:19-cv-20239-SDW-ESK (D.N.J. filed Nov. 14, 2019) (seeking $10,000,000); *Nunez v. Vill. of Rockville Centre*, No. 2:18-cv-04249-DRH-SIL (E.D.N.Y. filed July 26, 2018) (seeking over $3,000,000); *Besedin v. Cnty. of Nassau*, No. 2:18-cv-00819-KAM-ST (E.D.N.Y. filed Feb. 7, 2018) (seeking $15,000,000); *see also* Pet.33 n.6 (listing additional cases). The Ninth Circuit's decision below has now started adding to that flood, directly encouraging plaintiffs to file new *Miranda*-based §1983 claims. *See, e.g.*, *Smith v. City of Dalles*, No. 6:16-cv-1771-SI,

2021 WL 1040380, at *11-12 (D. Or. Mar. 17, 2021) (granting leave to plead a new *Miranda*-based §1983 claim in light of the decision below). Allowing that decision to stand—or even worse, expanding the Ninth Circuit's rule to apply nationwide—will only encourage plaintiffs (and plaintiffs' lawyers) to bring more and more *Miranda*-based §1983 suits, weighing down local governments and their officers with expensive and burdensome litigation.

One notable example is pending even now in the Seventh Circuit. *See Carter v. Wrobel*, No. 21-1018 (7th Cir. argued Sept. 29, 2021). In *Carter*, police officers executed a search warrant at a Chicago residence looking for narcotics equipment and controlled substances. *People v. Carter*, 2018 IL App. (1st) 153357, ¶5. The officers found and detained Carter in a bedroom in the basement, and Officer Wrobel asked Carter whether "there was anything illegal in the home that should not be there." *Id.* ¶6. Carter responded that he had "some bullets." *Id.* ¶8. The officers then searched the basement, and recovered a holster, a black magazine for a .9mm handgun, and a shotgun shell in a ceiling panel, and two different calibers of ammunition on the floor and in a cabinet. *Id.* ¶¶9, 16-17. The officers also found cocaine, cannabis, and narcotics equipment. *Id.* ¶15.

Carter was arrested and charged with possession of firearm ammunition by a felon. *Id.* ¶2. He moved to suppress his "some bullets" statement, arguing that Officer Wrobel was required to provide him *Miranda* warnings before asking him any questions. The trial court denied the motion, holding that *Miranda* warnings were not required because Officer Wrobel's

question was intended to determine whether there were dangerous weapons that could imperil the officers' safety, and because Carter was not in custody in any event. *Id.* ¶12. Carter was subsequently convicted and sentenced to nine years in prison. *Id.* ¶24; Complaint ¶¶23-24, *Carter v. City of Chicago*, No. 20-cv-1684 (N.D. Ill. filed Mar. 9, 2020). Dkt.1 ("*Carter* Complaint").

On appeal, however, the Illinois Appellate Court vacated Carter's conviction. It rejected both the trial court's finding that Carter was not in custody during Officer Wrobel's questioning and the court's alternative finding that the public safety exception applied, and held (five years after the fact) that Carter's "some bullets" statement should have been suppressed because Officer Wrobel should have given Carter the *Miranda* warnings after all. *Carter*, 2018 IL App. (1st) 153357, ¶¶29-44.[4]

Armed with that appellate finding, Carter has now sued Officer Wrobel and the City of Chicago in federal court, claiming that he is entitled to damages under §1983 based on Officer Wrobel's purported violation of the *Miranda* rule. *Carter* Complaint ¶¶1-4. Notably, Carter does not claim that his "some bullets" statement was actually involuntary, or that Officer Wrobel engaged in any actual coercion toward

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[4] Notably, even the Illinois Appellate Court recognized the uncertain contours of the *Miranda* rule, suggesting that if "the form of Officer Wrobel's question" had been different—for instance, if Officer Wrobel had asked whether there was anything *dangerous* in the house rather than anything *illegal*—then *Miranda* warnings might not have been required. *Carter*, 2018 IL App. (1st) 153357, ¶44.

him to force him to make it. Still more striking, even though Officer Wrobel did not make the decision to admit Carter's statement into evidence at Carter's criminal trial, Carter now seeks damages from Officer Wrobel for the nearly five years that Carter spent in prison before his conviction was reversed on appeal—even though Carter does not dispute the other facts that led to his conviction. *See id.* ¶¶1-4, 32-35. The district court nevertheless denied the defendants' motion to dismiss, concluding that Seventh Circuit precedent permitted Carter to sue under §1983 based on Officer Wrobel's purported *Miranda* violation. *Carter v. City of Chicago*, 2020 WL 7183740 (N.D. Ill. Dec. 7, 2020). Officer Wrobel's appeal from that decision is currently pending before the Seventh Circuit, and potentially being held for this Court's decision in this case. *Carter v. Wrobel*, No. 21-1018 (7th Cir. argued Sept. 29, 2021).

As *Carter* illustrates, allowing plaintiffs to bring suit under §1983 based on purported *Miranda* violations (rather than actual Fifth Amendment violations) will impose real costs on local governments and local law enforcement. The *Carter* litigation has now continued for more than two years—with all the attendant burdens on the parties and the courts—despite resting on a fundamentally flawed theory of liability. Unless this Court reverses the decision below, similar suits will continue to proliferate and force local taxpayers to cover substantial legal expenses to fight off similar meritless claims. This Court should end that rising tide of unproductive litigation.

4. Allowing the decision below to stand would not only subject municipalities nationwide to ever-growing numbers of meritless lawsuits, but also undermine public safety. Again, police officers in America interact with tens of thousands of members of the public every day. Officers who face the threat of a lawsuit for taking unwarned statements that are later used at trial will be naturally reluctant to take such statements, especially when they know they will have little to no control over whether a prosecutor later chooses to introduce that statement or a judge chooses to admit it. That reluctance will persist even for officers who are indemnified by their employers; after all, no one enjoys being named as a defendant in a lawsuit, even when they may not face financial ruin as a result. And police officers are fully aware of the distractions and other nonfinancial burdens that a named defendant is likely to face in litigation, given that (according to one conservative estimate) up to 27% of all officers have been sued at least once in their careers. Gaines & Kappeler, *supra*, at 341; *see id.* at 340 ("[N]o other group of governmental employees are more exposed to civil suits and liability than are police officers. Indeed, civil liability is an occupational hazard for many officers and their departments.").

The risk of overdeterrence is particularly problematic in the *Miranda* context, which can potentially arise in practically every police interaction and where the rules of the road are anything but clear. Depending on the circumstances of the particular interaction, unwarned statements may be obtained and used for a wide variety of legitimate purposes; among other things, for instance, *Miranda* does not require officers to warn suspects before asking

questions in noncustodial settings, *see Miranda*, 384 U.S. at 477-78, or before asking questions where exigent circumstances require immediate action to preserve public safety, *see Quarles*, 467 U.S. at 655-56. As this Court has recognized, however, the line between situations in which *Miranda* warnings are required and those in which they are not can be "murky and difficult," and police officers are "ill-equipped to pinch-hit for counsel" in tracing its uncertain contours. *Elstad*, 470 U.S. at 316. Subjecting officers (and the municipalities that employ them) to severe financial consequences for landing on the wrong side of that fuzzy line will deter officers from *any* unwarned questioning, reducing the investigative tools available to law enforcement officers and threatening public safety. *Cf. Davis v. Scherer*, 468 U.S. 183, 196 (1984) (recognizing that officers "routinely make close decisions" and "should not err always on the side of caution").

No one disputes that *Miranda* provides vital prophylactic protections that serve important public interests. But those interests are properly satisfied by the tailored remedy that *Miranda* itself announced: the exclusion in subsequent criminal proceedings of any statements obtained in violation of the protections that *Miranda* provides. 384 U.S. at 444. That is why this Court has repeatedly declined to extend that exclusionary remedy further than necessary, recognizing the need to balance the interests served by *Miranda* with the equally pressing public interest in effective law enforcement. *See, e.g.*, *Elstad*, 470 U.S. 298 (allowing use of post-warning confession obtained as fruit of pre-warning statement); *Quarles*, 467 U.S. at 655-59 (recognizing public safety exception); *Oregon*

v. Hass, 420 U.S. 714 (1975) (allowing use of unwarned statement for impeachment); *Michigan v. Tucker*, 417 U.S. 433 (1974) (allowing admission of evidence discovered as a result of statements given after inadequate warnings). The decision below, by contrast, radically upsets that balance, taking *Miranda* and its exclusionary remedy and adding on a civil damages action that neither this Court nor Congress has ever authorized in the *Miranda* context. That approach expands the burdens on local governments and local officers, deters legitimate law enforcement, and cannot be sustained.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

LISA SORONEN
STATE & LOCAL
LEGAL CENTER
444 N. Capitol St., NW
Suite 515
Washington, DC 20001

Counsel for Amici Curiae National Association of Counties, National League of Cities, United States Conference of Mayors, International Municipal Lawyers Association, National Sheriffs' Association, Major County Sheriffs of America, and California State Association of Counties

C. HARKER RHODES IV
Counsel of Record
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., NW
Washington, DC 20004
(202) 389-5000
harker.rhodes@kirkland.com

Counsel for Amici Curiae National Association of Counties, National League of Cities, International Municipal Lawyers Association, National Sheriffs' Association, Major County Sheriffs of America, and California State Association of Counties

CELIA MEZA
Corporation Counsel
of the City of Chicago
MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
SUZANNE LOOSE
Chief Assistant
Corporation Counsel
CHRISTOPHER WALLACE
Chief Assistant
Corporation Counsel
2 N. LaSalle St., Suite 580
Chicago, IL 60602

Counsel for Amicus Curiae
City of Chicago

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