

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS VEGA,)
)
 Petitioner,)
)
 v.) No. 21-499
TERENCE B. TEKOH,)
)
 Respondent.)

Pages: 1 through 82
Place: Washington, D.C.
Date: April 20, 2022

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4 Petitioner,)

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6 TERENCE B. TEKOH,)

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9

10 Washington, D.C.

11 Wednesday, April 20, 2022

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13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 10:00 a.m.

16

17 APPEARANCES:

18 ROMAN MARTINEZ, ESQUIRE, Washington, D.C.; on behalf
19 of the Petitioner.

20 VIVEK SURI, Assistant to the Solicitor General,
21 Department of Justice, Washington, D.C.; for the
22 United States, as amicus curiae, supporting the
23 Petitioner.

24 PAUL L. HOFFMAN, ESQUIRE, Hermosa Beach, California;
25 on behalf of the Respondent.

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P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 21-499, Vega versus Tekoh.

Mr. Martinez.

ORAL ARGUMENT OF ROMAN MARTINEZ

ON BEHALF OF THE PETITIONER

MR. MARTINEZ: Mr. Chief Justice, and may it please the Court:

The Ninth Circuit's extension of Miranda into 1983 litigation is inconsistent with settled precedent and sound policy. For two reasons, you should reverse.

First, Miranda is a judicially crafted prophylactic rule, and the violation of such a rule doesn't violate the constitutional rights of any person. That's what the Chavez plurality said, reiterating pre-Dickerson holdings that Miranda violations result in no constitutional deprivation, that's Payne, and no identifiable constitutional harm, that's Elstad.

Tekoh and the Ninth Circuit say that Dickerson abandoned these cases. But, in fact, Dickerson reaffirmed their limits on Miranda's

1 scope. The cases show that Miranda's
2 presumption of coercion applies only when courts
3 assess whether a statement is admissible in the
4 prosecution's case-in-chief at trial. In that
5 context, when a defendant's liberty is at stake,
6 Miranda creates a protective fence around the
7 Fifth Amendment. It gives -- gives defendants a
8 windfall benefit by excluding statements that
9 are completely voluntary. A trial court's
10 Miranda violation taking away that windfall is
11 reversible error, but it doesn't violate the
12 defendant's actual Fifth Amendment rights, and
13 it doesn't trigger a right to money damages.

14 Second, as Tekoh now concedes, the
15 Ninth Circuit's proximate causation holding is
16 wrong. That concession provides a complete
17 basis for reversal here. Officers can't be held
18 liable when the mistakes are made by prosecutors
19 and judges.

20 Tekoh tries to rescue his case with a
21 brand-new causation theory based on alleged
22 lies. But that theory can't work for him here.
23 It's inconsistent with his jury instruction. It
24 was forfeited below. Its factual premise was
25 rejected by the jury. And it's legally baseless

1 in any event.

2 Sergeant Vega's conduct has been
3 exonerated from every angle by four different
4 fact finders. Two judges said Miranda warnings
5 weren't required. A jury said there was no
6 fabrication of evidence. Both juries said there
7 was no coercion. This case should end.

8 Unless the Court has questions, I'll
9 start with our view of what --

10 JUSTICE THOMAS: Mr. Martinez, the --
11 in -- in Dickerson, we held -- the Court held
12 that Miranda could not be displaced by a federal
13 statute by Congress.

14 If that's the case, then why is it not
15 a constitutional -- a -- a right secured by the
16 Constitution and, hence, actionable under 1983?

17 MR. MARTINEZ: Your Honor, we -- we
18 read Dickerson as saying that -- that -- that
19 Miranda has constitutional status,
20 constitutional underpinnings, and we agree with
21 the other side --

22 JUSTICE THOMAS: What does that mean?

23 MR. MARTINEZ: I think what that means
24 is that it can't be -- it can't be overturned by
25 statute. But I think Dickerson was very clear

1 that it was not -- you know, there was a dispute
2 in Dickerson between the majority opinion and
3 Justice Scalia, where Justice Scalia was saying
4 the majority's theory here is basically that
5 Miranda violates -- that a Miranda violation is
6 a violation of Fifth Amendment rights. And the
7 Court very clearly didn't -- was not willing to
8 say that.

9 I think the dispute between us here on
10 what Dickerson does is whether Dickerson
11 essentially changes the status quo and overturns
12 the line of pre-Dickerson cases, the cases that
13 came between Miranda and Dickerson, which
14 repeatedly said that a violation of Miranda
15 doesn't violate anyone's constitutional rights.

16 And the Chavez plurality, I think,
17 addresses this issue head on, and it says that
18 because Miranda's a judicially created
19 prophylactic rule, the violation of that rule
20 doesn't violate anyone's constitutional rights.
21 And that's consistent, as I was saying earlier,
22 with what the Court had previously said in cases
23 like Payne and Elstad.

24 JUSTICE THOMAS: Yeah, but I couldn't
25 get a majority in Chavez, so the -- that -- I

1 don't know how much that does for you.

2 Would you tell me, what is the -- how
3 could something be both -- a rule be both
4 prophylactic and constitutional?

5 MR. MARTINEZ: I think it can be
6 prophylactic and constitutional because the
7 whole purpose of the rule is to protect the
8 underlying constitutional right against
9 compelled self-incrimination.

10 So what this Court has said repeatedly
11 in the cases between Miranda and Dickerson but
12 also in -- in the Chavez plurality is that,
13 essentially, the -- the rule is prophylactic in
14 the sense that it sweeps more broadly than the
15 Fifth Amendment itself. It excludes statements
16 that are voluntary and therefore themselves
17 would not violate the Fifth Amendment.

18 And the Court has said in Dickerson
19 that this extra measure of protection is needed
20 for a reason, because it's hard to know what
21 goes on inside the interrogation room, and when
22 a defendant's liberty is at stake in a criminal
23 trial and when the prosecution's trying to use a
24 statement as part of its case-in-chief at trial,
25 we're essentially going to presume coercion.

1 We're going to presume a Fifth Amendment
2 violation in that context.

3 So what the cases do essentially is
4 create a presumption of coercion in that one
5 context. But the presumption of coercion is
6 very different from actual coercion, and we know
7 that from all of the pre-Dickerson cases, which
8 essentially say that statements that would be
9 excludable under Miranda because they are
10 presumed to have been coerced can nonetheless be
11 used in other ways that would be impermissible
12 if they were actually coerced.

13 CHIEF JUSTICE ROBERTS: Mr. Martinez,
14 if I could focus just for a minute on the
15 language of the cause of action here, 1983. It
16 gives individuals a right against the
17 deprivation of any rights, privileges, or
18 immunities secured by the Constitution and laws.

19 Now, under Miranda, you have a right
20 not to have unwarned confessions admitted into
21 evidence. You wouldn't have that right if it
22 weren't for the Constitution. So why isn't that
23 right one secured by the Constitution?

24 MR. MARTINEZ: Well, I think for a
25 couple reasons, Your Honor.

1 I think, first of all, you have a
2 precedential reason, which is that both before
3 and after Dickerson, the Court has made clear or
4 at least a majority before Dickerson and then
5 the plurality in Chavez, I think, interpreting
6 the whole line of cases, including Dickerson --

7 CHIEF JUSTICE ROBERTS: Well, let's
8 focus on the -- on the text.

9 MR. MARTINEZ: Okay.

10 CHIEF JUSTICE ROBERTS: It seems to me
11 that you -- you wouldn't have a Miranda right if
12 it weren't for the Constitution.

13 MR. MARTINEZ: Well, we don't --

14 CHIEF JUSTICE ROBERTS: The right is
15 secured by the Constitution.

16 MR. MARTINEZ: -- we don't think that
17 Miranda creates a Fifth Amendment right in the
18 sense that's relevant here in the 1983 context.

19 And I think one way to think about
20 this is we -- there are all sorts of evidentiary
21 rules that are out there that a defendant can
22 invoke at a criminal trial or a party can invoke
23 in litigation. There are all sorts of
24 evidentiary rules that can be invoked, but no
25 one thinks that the -- that those evidentiary

1 rules create rights that are enforceable in
2 1983.

3 I think the two examples that I'll
4 give you, the exclusionary rule under the Fourth
5 Amendment is a -- is a rule of law that can be
6 invoked by the defendant, but in Calandra, this
7 Court recognized that it doesn't create a
8 personal constitutional right in the relevant
9 sense.

10 Federal Rules of Evidence is another
11 example. If I sue a state government under
12 Title VII on an employment discrimination claim
13 and the opposing counsel for the state
14 introduces a statement that was in violation of
15 the hearsay rule or in violation of the rule
16 against character evidence, that violates a rule
17 of evidence that is a law of the United States.

18 CHIEF JUSTICE ROBERTS: Right. A
19 right -- a right --

20 MR. MARTINEZ: But it's not a right
21 under 1983. You can't get damages for that.

22 CHIEF JUSTICE ROBERTS: It's a right
23 secured by the Federal Rules of Evidence. What
24 is the comparable provision that secures the
25 Miranda right? Under your example, it's a

1 Federal Rule of Evidence that secures the right.

2 What's comparable in your --

3 MR. MARTINEZ: We just don't think
4 it's -- it -- we think -- we think the
5 Constitution secures the ability to block the
6 statement. We don't dispute that. What we're
7 saying is that the Constitution doesn't -- here,
8 the claim that's being brought is that it's the
9 Fifth Amendment and that's the only argument
10 that the other side has made.

11 We just don't think that the Fifth
12 Amendment creates that -- that -- creates a
13 right that is, you know, enforceable or that --
14 that is violated when Miranda -- a state -- an
15 unwarned statement is admitted.

16 And, again, that's consistent with how
17 the Chavez plurality, I think, correctly read
18 Dickerson and the pre-Dickerson cases to -- to
19 kind of come up with a -- a coherent
20 harmonization of this Court's cases starting
21 with Miranda, taking the intervening cases
22 between Miranda and Dickerson, and then
23 Dickerson itself.

24 JUSTICE KAGAN: Counsel?

25 MR. MARTINEZ: All those cases, I

1 think, are best read the way that the Chavez
2 plurality read them to essentially say, yeah,
3 Miranda is important and it's
4 constitutionalized, you can't overturn it, but,
5 at the same time, a deprivatation of a judicially
6 craft -- prophylac -- created prophylactic rule
7 like the one in Miranda doesn't violate the
8 constitutional rights of any person.

9 JUSTICE KAGAN: I mean, it does strike
10 me, Mr. Martinez, that you -- you keep on
11 saying, like, both before and after Dickerson.
12 Now, after Dickerson, you're relying mostly on a
13 plurality, which, as Justice Thomas said, is a
14 plurality. And before Dickerson, you know, you
15 definitely have some good cases on your side.

16 But then there's Dickerson, and
17 Dickerson says something that's quite different
18 from the before Dickerson cases, where, you
19 know, even though Chief Justice Rehnquist didn't
20 do exactly -- you know, state in exactly so many
21 words, as -- as you suggested, that there was,
22 you know, a right to -- that Miranda gave rise
23 to, he -- he said all but that in exactly the
24 way Justice Thomas suggested.

25 MR. MARTINEZ: Justice Kagan, I

1 respectfully would disagree with that, but I
2 think you put your finger on the kind of issue,
3 which is what exactly does Dickerson do. And
4 just to frame this issue, if you look at what
5 the Ninth Circuit said, this is at page 20a of
6 the petition appendix.

7 The Ninth Circuit says that the
8 Supreme Court in no way maintained the status
9 quo and it affirmatively backed away from the
10 prior cases. So it reads Dickerson as a -- as a
11 decision that -- that creates this evulsive
12 change, rejects the earlier cases, comes up with
13 something new.

14 If you look at the language of
15 Dickerson itself, it's exactly the opposite, and
16 I would refer the Court to page 443 of
17 Dickerson. When Dickerson is talking about this
18 alleged discrepancy between the Miranda rule and
19 the post-Miranda cases, Justice Scalia had --
20 and others had argued that Miranda should be
21 overturned because there's the -- the case law
22 is incoherent. And the -- the -- the Court in
23 Dickerson says no. The theoretical
24 underpinnings of Miranda are perfectly
25 consistent with the post-Miranda cases that

1 we're relying on, and it says that -- that these
2 are all consistent, it's one harmonious --

3 JUSTICE KAGAN: But, in fact, what --

4 MR. MARTINEZ: -- you don't see a --

5 JUSTICE KAGAN: -- Dickerson does is
6 Dickerson says there's a constitutional baseline
7 here, and, you know, it might be that Congress
8 could come up with something that's just as
9 effective as Miranda or more so, but that's what
10 Congress would have to do. If Congress wants to
11 intervene in this area, there is a
12 constitutional baseline of procedures that are
13 constitutionally necessary to secure the
14 constitutional Fifth Amendment right.

15 MR. MARTINEZ: That's exactly right,
16 Your Honor, but -- but the justification
17 Dickerson gave was not that this is do -- we're
18 now -- we're doing something new. In fact, it
19 was the opposite. It said that we've always
20 done this. It looked back and it said Miranda
21 was always a --

22 JUSTICE KAGAN: To the extent it does
23 that, it essentially recasts the precedent in
24 its own light. But it's the relevant precedent
25 here.

1 MR. MARTINEZ: I -- I agree with that,
2 but I just think that you need to read the -- or
3 focus on the part of the precedent where it says
4 that the post-Miranda cases that clarify the
5 rule and -- and what it means, the post-Miranda
6 cases that we're relying on, that those are
7 perfectly consistent with the theoretical
8 underpinnings of Miranda itself.

9 And so I think Dickerson very
10 consciously is saying -- you know, it's not
11 saying, hey, we zigzagged a couple times and
12 we've got to zigzag back. It's saying, no, this
13 is actually a consistent, common-sense, coherent
14 line of cases.

15 I think it's really driven by Justice
16 Rehnquist's -- Chief Justice Rehnquist's votes
17 and opinions throughout this entire line of
18 doctrine, including Dickerson and Chavez and in
19 the earlier cases as well, and it
20 basically said, yeah, Miranda is
21 constitutionalized, it's very important.
22 It's -- you know, you can't overturn it by
23 statute, but that doesn't mean that it creates a
24 kind of presumption of coercion that applies in
25 every single context.

1 JUSTICE SOTOMAYOR: Counsel, if that's
2 the case, then what do we do with Dickerson's
3 observation that if we don't view it as
4 having -- as being constitutionally required,
5 that -- I'm using the language of Dickerson, all
6 right -- what do we do with calling it a
7 prophylactic rule, which Dickerson rejected
8 expressly?

9 It said that language is loosely used
10 and doesn't suggest that it's not
11 constitutionally required. If it's
12 constitutionally required, why does it bind
13 state courts? Why do we have habeas review?

14 MR. MARTINEZ: We --

15 JUSTICE SOTOMAYOR: If we do what
16 you're suggesting and go back to the
17 prophylactic language, we are suggesting that
18 you want us to overturn --

19 MR. MARTINEZ: Your Honor --

20 JUSTICE SOTOMAYOR: -- the essence of
21 Dickerson and Miranda.

22 MR. MARTINEZ: No. We -- we have no
23 quarrel with those cases. We have no objection
24 to any of those cases at all. We think -- we
25 don't think that Dickerson rejected the

1 prophylactic ruling, and we know that because
2 Dickerson said it was consistent with the -- the
3 pre-Dickerson cases.

4 JUSTICE SOTOMAYOR: No, it said --

5 MR. MARTINEZ: We know that as well --

6 JUSTICE SOTOMAYOR: I'll quote
7 Dickerson. Conceded that there is language in
8 some of our opinions that supports the view
9 taken by the court of appeals suggesting that
10 the court's earlier statement suggesting that
11 Miranda was merely prophylactic and its
12 conclusion that Miranda protections were not
13 constitutionally required, and it rejected the
14 prophylactic description.

15 MR. MARTINEZ: No, Your Honor, I think
16 it rejected the conclusion that the Constitution
17 doesn't require it.

18 JUSTICE SOTOMAYOR: All right.

19 MR. MARTINEZ: And -- and just --

20 JUSTICE SOTOMAYOR: Well, then we go
21 back to the Chief's question.

22 MR. MARTINEZ: Sure.

23 JUSTICE SOTOMAYOR: But I -- if we say
24 the Constitution doesn't require it --

25 MR. MARTINEZ: We're -- we're not

1 arguing that.

2 JUSTICE SOTOMAYOR: -- how do we have
3 habeas review and how do we get to tell state
4 courts that they have to follow a rule that's
5 not constitutionally required?

6 MR. MARTINEZ: Your -- Your Honor,
7 just to be very clear, we are not asking you to
8 overturn Dickerson. We think that -- that
9 Dickerson is -- is what it is. We think it's
10 perfectly good law. In fact, I think we said
11 some nice things about it --

12 JUSTICE SOTOMAYOR: Just answer --

13 MR. MARTINEZ: -- in our brief.

14 JUSTICE SOTOMAYOR: -- my question.

15 MR. MARTINEZ: But I'm -- I --

16 JUSTICE SOTOMAYOR: If it's a
17 prophylactic rule --

18 MR. MARTINEZ: Sure.

19 JUSTICE SOTOMAYOR: -- not required by
20 the Constitution, is it required by the
21 Constitution or not?

22 MR. MARTINEZ: I think Dickerson says
23 that it -- that it has to --

24 JUSTICE SOTOMAYOR: If it's required,
25 then we go back to the Chief's reading of the

1 language of 1983, but I still don't understand
2 how using the word "prophylactic" gets you out
3 of 1983.

4 MR. MARTINEZ: So I think what
5 "prophylactic" means is that -- what the Court
6 has said is that we need this prophylactic rule.
7 We need to go broader than the Constitution
8 itself. We need to presume coercion in this
9 context in order to protect the underlying right
10 against compelled self-incrimination.

11 And so it's kind of an adjunct.
12 It's -- but that's different from saying that it
13 violates the actual constitutional rights of
14 someone if a statement is admitted.

15 And that's why the Court said that
16 repeatedly in Payne and Elstad, and that's why I
17 think the Chavez plurality correctly harmonized
18 the case law and recognized that that was true
19 even after Dickerson.

20 JUSTICE SOTOMAYOR: Can you tell me
21 why we're here? You have two -- I don't want
22 you to stop before you get to the second, the
23 proximate cause, okay?

24 You are right that the other side
25 never gave the trial court below an instruction

1 consistent with its position today that the only
2 statements that it could rely upon are -- as
3 giving it a cause of action are statements that
4 were falsely made by the police. So there's
5 some sort of estoppel going on here. So I'm not
6 sure how they can win no matter what we find.

7 MR. MARTINEZ: We agree with that,
8 Your Honor.

9 JUSTICE SOTOMAYOR: All right. And so
10 assuming that we don't touch Miranda or
11 Dickerson and take it at its face and we go to
12 your second point, proximate causation, you win
13 because there's some sort of estoppel here?

14 MR. MARTINEZ: So I -- I think just to
15 be very clear because I want to make sure that
16 analytically we're -- we're all set, on the
17 first issue, we agree, we don't have to touch
18 Miranda or Dickerson. You don't have to
19 overturn those decisions, but we can still win
20 based on the understanding of Miranda and
21 Dickerson that was put forth in the Chavez
22 plurality and that we think is right.

23 If you agree with us on that, you can
24 stop there, we win the case. If you want to
25 then turn to proximate causation, I think the

1 most straightforward way to resolve the case is
2 to say that the Ninth Circuit decided this case
3 based on the instruction that was proposed and
4 the theory that was put forward that the Ninth
5 Circuit's analysis of that is wrong for the --
6 for the reasons that we argued in our brief and
7 that they essentially concede. And I think you
8 could just end it right there if you wanted to
9 reach a holding on proximate causation.

10 But just to be clear, we do think we
11 have an independent basis to win on our first
12 argument. If you want to go beyond that on
13 proximate causation, I'm happy to talk about why
14 we think that theory both was not preserved
15 below, not preserved at the cert stage here,
16 inconsistent with their jury instructions --

17 JUSTICE SOTOMAYOR: If --

18 MR. MARTINEZ: -- factually --

19 JUSTICE SOTOMAYOR: If --

20 MR. MARTINEZ: -- unsupported. We can
21 talk about all that too.

22 JUSTICE SOTOMAYOR: Two prosecutors
23 below and a judge at trial permitted the
24 statement to come in. But, in my experience,
25 the prosecutor offers a statement based on what

1 the police officer says, and it's not until a
2 hearing or the trial that the defense puts on
3 his or her side of the story. And then it's the
4 jury who decides whether or not that confession
5 was, in fact, coerced. If there's a conviction,
6 clearly, the defense's story has not been
7 believed. If there's an acquittal, like there
8 was here, it's an open question as to whether or
9 not the police officer was believed or not.

10 But I don't understand how you can say
11 that there's an intervening cause by a judge or
12 a prosecutor in introducing a statement if
13 they're not the ultimate arbiter of who's
14 telling the truth.

15 MR. MARTINEZ: Well, I -- I think two
16 points on that if I can answer, Mr. Chief
17 Justice.

18 CHIEF JUSTICE ROBERTS: Certainly.

19 MR. MARTINEZ: I think two points on
20 that.

21 First of all, here, there was a
22 suppression hearing. There was a full-blown
23 adversarial suppression hearing. Both sides --
24 that was the -- that's the point in time in the
25 case in which both sides have to come forward

1 with their best evidence to argue about the
2 admissibility of the statement. And twice in
3 front of both criminal trial judges, because
4 this was done twice, twice the trial judge
5 agreed with us that there was no Miranda warning
6 that was required here.

7 And so I think that in and of itself
8 is significant, and I think, you know, this
9 Section 1983 litigation really is an attempt to
10 relitigate that sort of fundamental point.

11 And so I -- I guess I'll -- I'll leave
12 it there, but I'm happy to come back to it in
13 the seriatim questioning.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Justice Thomas, anything?

17 Justice Breyer?

18 Justice Sotomayor?

19 JUSTICE KAGAN: Mr. Martinez, you
20 mentioned before Chief Justice Rehnquist's
21 journey in these cases. I just want to talk a
22 little bit about that. I appreciate that you
23 think that your position does not undermine or
24 isn't consistent with Dickerson, but I kind of
25 want to assume that that's not true or at least

1 have you assume that people could think that it
2 was not true. And -- and --

3 MR. MARTINEZ: Sorry. To -- to assume
4 that -- that it -- that --

5 JUSTICE KAGAN: That it does --

6 MR. MARTINEZ: -- there was
7 zigzagging?

8 JUSTICE KAGAN: That -- that if we
9 come out your way, it will undermine Dickerson,
10 it will be understood as inconsistent with
11 Dickerson. I mean, that's what I think, and I
12 know you don't think it, but I want to put that
13 aside and -- and -- and to have you at least
14 acknowledge that there are many people who will
15 think of this as utterly inconsistent with
16 Dickerson.

17 And I just want your reaction to what
18 Dickerson was all about and what it said about
19 the Court as an institution, in part through the
20 lens of Chief Justice Rehnquist's progress
21 through these cases, because, you know, I think
22 what people think about Dickerson is that,
23 essentially, the Chief Justice understood that
24 Miranda had come to mean something extremely
25 important in the way people understood the law

1 and the way people understood the Constitution
2 and that whatever he might have thought about
3 the original bases of Miranda, that it, you
4 know, was sort of central to people's
5 understanding of the law and that if you
6 overturned it or undermined it or denigrated it,
7 it would be -- you know, it had -- would have a
8 kind of unsettling effect not only on people's
9 understanding of the criminal justice system but
10 on people's understanding of the Court itself
11 and the legitimacy of the Court and the way the
12 Court operates and the way the Court sticks to
13 what it says, you know, not just in a kind of
14 technical stare decisis sense but in a more
15 profound -- in a -- in a more profound sense
16 about the Court as an institution and the role
17 it plays in society.

18 So I -- I guess I just -- that might
19 be above your pay grade, and I'm sorry if it is,
20 but if you would just react to that.

21 MR. MARTINEZ: Your Honor, I think
22 those are important points, and I think that the
23 best way to write an opinion that's consistent
24 with those points and -- and takes proper
25 account of them is to say very clearly that --

1 that Dickerson remains good law. It stays on
2 the books. Miranda and Dickerson are important
3 constitutional decisions of this Court but that
4 those decisions do not go so far as to require a
5 -- the recognition of -- that -- of some -- a
6 Fifth Amendment right has been violated in such
7 a way as to trigger 1983 liability.

8 So I think it's perfectly consistent
9 and is perfectly consistent with what Chief
10 Justice Rehnquist himself voted to do a couple
11 years later in Chavez, perfectly consistent with
12 Dickerson to say both of those things
13 simultaneously.

14 And to the people out there who might
15 be confused about this line of case law,
16 obviously, it's been a very controversial line
17 of case law. All these cases have dissents
18 going back. The dissents are always saying that
19 the majority's opinion is inconsistent with the
20 prior cases. But the through line that runs
21 through them is a consistent common-sense
22 approach by Chief Justice Rehnquist to recognize
23 the importance of Miranda but also to recognize
24 its important limits.

25 And I think you can write an opinion

1 that says both of those things, that doesn't do
2 any harm to Dickerson, but does say that -- that
3 the presumption of coercion that was recognized
4 in those cases doesn't mean that you have to
5 presume a Fifth Amendment violation when it
6 comes to 1983.

7 JUSTICE KAGAN: Thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Gorsuch?

10 JUSTICE GORSUCH: Yeah, counsel, I --
11 I'd just like to get your reaction to some of
12 the scholarship that we received in the amicus
13 briefs from a variety of historians suggesting
14 that whether or not Miranda intended to or aimed
15 at the original meaning of the Constitution,
16 there is a fair amount of evidence that by the
17 time of the founding, warnings were considered
18 an important prophylactic rule to protect the
19 right against self-incrimination.

20 MR. MARTINEZ: Right. Your Honor, I
21 think those are important points to consider. I
22 think that this is not the case in which to
23 consider them, mainly --

24 JUSTICE GORSUCH: All right.

25 MR. MARTINEZ: But -- but --

1 JUSTICE GORSUCH: If you'd just spot
2 me that, all right?

3 MR. MARTINEZ: Sure.

4 JUSTICE GORSUCH: Address it on the
5 merits.

6 MR. MARTINEZ: On the merits, I think
7 the historians' brief helps us. I think what
8 the historians' brief says is that it -- it has
9 exhaustively looked at a whole bunch of evidence
10 that hadn't been considered before. And if you
11 read closely at what it says that evidence
12 shows, I think what it says is that in a lot of
13 cases people were encouraged to give warnings
14 because it would help protect the admissibility
15 of statements under a totality-of-circumstances
16 analysis.

17 What the cases don't show -- or what
18 the examples don't show, what the historical
19 evidence does not show is that there is a
20 mandatory rule of exclusion, which is what
21 Miranda recognized. And it certainly doesn't
22 show that there's a mandatory rule of exclusion
23 that somehow gives right to a private cause of
24 action for money damages.

25 So I think that the evidence is

1 actually telling in what it doesn't show, and
2 what it doesn't show is the key point of Miranda
3 and Dickerson, which is that there has to be as
4 an original matter at least this underlying, you
5 know, exclusionary rule. It doesn't say that
6 there's a -- the evidence doesn't support an
7 exclusionary rule.

8 I think the final thing I'd say on
9 this, though, Your Honor, is that if the Court
10 were inclined to take a serious originalist look
11 at this -- at this language, I think, again, you
12 should do it in a case where it's more properly
13 presented, but I also think you would have to
14 grapple with, of course, the actual text of the
15 Fifth Amendment, which does require compulsion
16 and only bars compelled statements.

17 CHIEF JUSTICE ROBERTS: Justice
18 Kavanaugh?

19 JUSTICE KAVANAUGH: What would you say
20 about Withrow, where a lot of the arguments that
21 you're advancing today were similarly --

22 MR. MARTINEZ: Yeah.

23 JUSTICE KAVANAUGH: -- advanced as a
24 basis for saying that Miranda claims should not
25 be cognizable in habeas?

1 MR. MARTINEZ: I think the best way to
2 understand Withrow is that it's essentially
3 treating -- Withrow is a habeas case, of course,
4 and it's essentially analyzing -- the issue in
5 that case is whether the statement was properly
6 admitted at trial, whether the trial judge made
7 a mistake by -- by not excluding the statement.
8 And I think it's very similar to the direct
9 appeal context, and I think it's consistent with
10 the underlying purposes of Miranda and
11 Dickerson, which basically limit the presumption
12 of coercion to the admissibility decision by the
13 trial judge at the criminal trial.

14 And I think Withrow says, essentially,
15 recognizing that -- that that's where liberty
16 matters most, we're going to apply the
17 presumption of coercion in that circumstance and
18 we're -- we're going to allow habeas relief.

19 The text of the -- of the habeas
20 statute is different from the text of 1983. We
21 don't think that simply because something is
22 cognizable in habeas it's necessarily cognizable
23 in 1983.

24 If you agree with us and our position
25 based on the Chavez plurality and Justice

1 Rehnquist, you can conclude that there's no
2 Fifth Amendment right that's been violated by a
3 Miranda violation, and, therefore, there's no
4 1983 liability even if there is a habeas
5 violation -- a violation that's cognizable in
6 habeas.

7 JUSTICE KAVANAUGH: Thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Barrett?

10 JUSTICE BARRETT: Mr. Martinez, I want
11 to present something to you and see if it's
12 consistent with your understanding. I think
13 Justice Kagan makes some good points, and, you
14 know, there are points made by your friend on
15 the other side about your position being
16 inconsistent with Dickerson. But I wonder
17 whether this is a way that you would agree with
18 characterizing it.

19 So Dickerson didn't ever use the word
20 "constitutional" right. It seemed very
21 carefully worded to say constitutional rule or
22 constitutionally required. And I've always
23 taken one of the reasons why Dickerson was
24 controversial was that it asserted a right
25 vis-a-vis state courts and vis-a-vis Congress

1 for the court to announce constitutional
2 prophylactic rules that it could impose on state
3 courts and that it could assert as against
4 Congress so Congress couldn't overrule it by
5 statute but that it didn't think were
6 constitutionally required.

7 So there was inherent tension in
8 Dickerson, and Chief Justice Rehnquist said
9 we're not overruling Miranda and we're living
10 with that tension but never characterized it as
11 a right. And that's an important power, it
12 seems to me, that Dickerson recognized and
13 asserted and that you're not asking us to -- to
14 overturn, right?

15 MR. MARTINEZ: Correct.

16 JUSTICE BARRETT: And so would that
17 description of Dickerson be consistent with your
18 view that Dickerson acknowledged a power on the
19 Court that you want us to leave undisturbed,
20 that it could implement the Fifth Amendment
21 right or that it could prophylactically protect
22 it in a powerful way against the states and
23 Congress but that isn't a definition of the
24 right itself?

25 MR. MARTINEZ: Yes, I think that's

1 exactly right, Justice Barrett. And I think the
2 only additional point I would make is that
3 although this power has been recognized not just
4 in the Miranda line of cases but in a couple
5 others as well, the -- the power to create a
6 kind of prophylactic rule to protect a
7 constitutional guarantee, I think the Court has
8 always recognized that it's doing something very
9 unusual when it creates these rules and it needs
10 to be very careful and limited and focused on
11 what are -- what is the core underlying
12 real-life constitutional right that you're
13 protecting.

14 And so whether it's Patane saying --
15 the Patane plurality saying that there needs to
16 be a close as possible fit between the -- the --
17 the application of the Miranda rule and the
18 underlying right against compelled discrim- --
19 incrimination -- self-incrimination at trial or
20 Tucker saying the same thing, you really need to
21 do a very rigorous cost/benefit analysis and
22 show that expand -- expanding or creating a
23 prophylactic rule is really necessary.

24 Here, we think it's necessary or the
25 Court has said it's necessary when you're

1 introducing evidence in the prosecution's
2 case-in-chief at trial, but the Court has
3 repeatedly refused to go beyond that, and we
4 respectfully would submit that you shouldn't go
5 beyond it in this case.

6 JUSTICE BARRETT: Thank you.

7 JUSTICE BREYER: I'd like to ask you
8 if there is any analogy you've come across that
9 would have these characteristics: One -- or A,
10 there is a constitutional rule; B, there is a
11 prophylactic rule to enforce the constitutional
12 rule; C, Congress does not have the power under
13 the Constitution to change the prophylactic
14 rule; and, D, you can enforce the prophylactic
15 rule in habeas but not in 1983.

16 MR. MARTINEZ: I -- Your Honor, that's
17 a great question. I don't have a specific
18 example that -- that I know for certain sort of
19 checks all four of those boxes.

20 I do think, though, I will point you
21 to the context, I think the Stovall case and the
22 Manson case recognized a prophylactic
23 evidentiary rule of exclusion that allows
24 people -- allows defendants to -- to exclude
25 overly suggestive police lineups, and that

1 was -- has been understood by the lower courts
2 correctly as a prophylactic constitutional rule
3 and the lower -- although I don't think that
4 that could be overturned by Congress -- I don't
5 think that Congress could overturn the
6 Supreme Court's -- this Court's decision, I
7 think the lower courts have correctly recognized
8 that's a prophylactic rule that doesn't give
9 right to a -- rise to a right that can be
10 enforced in 1983.

11 JUSTICE BREYER: Maybe you could add
12 one other thing because, if it's so skimpy, the
13 analogies, I don't know where I'm going if I
14 adopt your position.

15 That is to say, I don't know what
16 other rules there are which may or may not fall
17 within -- I don't know what the distinctions
18 would be, I don't know where we're going, I
19 don't know how many prophylactic rules there
20 are, I don't know how many have fallen within
21 1983, I don't know what the courts have said
22 about prophylactic.

23 I mean, we could stay here a long
24 time, which we won't, listing things I don't
25 know.

1 MR. MARTINEZ: Right.

2 JUSTICE BREYER: All right. So what
3 do you think?

4 MR. MARTINEZ: Well, I think, on that,
5 I think -- like I was suggesting earlier, I
6 think you can write an opinion that makes very
7 clear that you're talking about this particular
8 prophylactic rule and that you're not talking
9 about other -- other circumstances.

10 I think, in this partic- -- with
11 respect to this particular rule --

12 JUSTICE BREYER: All right. If we
13 take that approach, we have to have --
14 unfortunately, we cannot write -- we can say the
15 words, this statute -- this -- rather, this
16 opinion applies only to, now fill in the blank.

17 MR. MARTINEZ: But -- but --

18 JUSTICE BREYER: Today's case, not
19 tomorrow's. It just doesn't work --

20 MR. MARTINEZ: It doesn't work --

21 JUSTICE BREYER: -- because the law
22 doesn't work that way.

23 MR. MARTINEZ: -- it doesn't work if
24 you stop there, but I think you would say, and
25 here's the two reasons why. Number one, in this

1 unique context, we have a lot of precedent that
2 has repeatedly made clear that constitutional
3 rights are violated when Miranda's violated, and
4 number two, even if you didn't have that
5 precedent, we have to do -- we would have to do
6 a kind of cost/benefit analysis that is specific
7 to this particular right.

8 And, here, the cost/benefit analysis
9 supports excluding it from the prosecution's
10 case-in-chief at trial, but it doesn't support
11 treating the -- the completely voluntary
12 statement as coerced in -- in other contexts.
13 And I think that would distinguish other cases
14 that you could then decide when they come up.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Mr. Suri.

18 ORAL ARGUMENT OF VIVEK SURI
19 FOR THE UNITED STATES, AS AMICUS CURIAE,
20 SUPPORTING THE PETITIONER

21 MR. SURI: Mr. Chief Justice, and may
22 it please the Court:

23 Miranda recognized a constitutional
24 right, but it's a trial right concerning the
25 exclusion of evidence at a criminal trial. It

1 isn't a substantive right to receive the Miranda
2 warnings themselves.

3 A police officer who fails to provide
4 the Miranda warnings accordingly doesn't himself
5 violate the constitutional right, and he also
6 isn't legally responsible for any violation that
7 might occur later at the trial. The Ninth
8 Circuit's contrary decision should be reversed.

9 JUSTICE THOMAS: What if the police
10 officer purposely lies in order to convince the
11 prosecutor to use the statement?

12 MR. SURI: We would still say that
13 there is no Miranda claim, but I have to be
14 clear that that issue is not properly presented
15 in this case.

16 Taking that as a hypothetical,
17 however, we would say that there is no Miranda
18 liability because we don't see how the causation
19 problem can be solved without creating a witness
20 immunity problem in its place.

21 There are two actors that lie between
22 the police officer and any Miranda violation:
23 the prosecutor who offers the statement into
24 evidence and the judge who admits it at the
25 suppression hearing.

1 And in order to show that the judge
2 has been misled into admitting the evidence, you
3 have to presumably argue that the police officer
4 lied on the witness stand and thereby convinced
5 the judge to introduce the evidence. But, under
6 absolute witness immunity, that can't be a
7 predicate for liability.

8 JUSTICE KAGAN: I mean, take an
9 outlandish example, and it is outlandish, but,
10 you know, suppose the police officer, you know,
11 bribed the prosecutor and the judge. What then?

12 I mean, at that point, I tell you what
13 it seems to me, is your causation problem
14 disappears but that there must be some way of
15 saying that that's such an unusual case that
16 we're not going to bend or -- or change the rule
17 for it. But I don't exactly quite know how that
18 argument works legally, so I guess I'm asking
19 you to provide the missing pieces.

20 MR. SURI: Okay. This Court has said
21 that in applying causation principles or other
22 common law principles, it isn't tied exactly to
23 the old common law rules. It can adjust those
24 approaches as necessary in light of the nature
25 of the right at issue.

1 In addition, the Court sometimes
2 adopts categorical rules that may fit
3 imperfectly in some extreme cases, but it
4 acknowledges that those cases are so unlikely to
5 arise that it's not worth trying to deal with
6 them.

7 And the two best examples I can think
8 of are the retaliatory inducement to prosecute
9 case, Hartman against Moore, and Nieves against
10 Bartlett, which is retaliatory arrest.

11 In both of those cases, the Court said
12 that because of causation problems, we're going
13 to adopt a categorical rule requiring the
14 plaintiff to show the absence of proximate -- of
15 probable cause in order to allow that case to
16 come forward.

17 Now it's true, theoretically, you can
18 think of some outlandish hypotheticals where
19 there is probable cause, yet there should be a
20 retaliatory arrest or prosecution claim, and the
21 Court still said, we -- we're going to adopt a
22 categorical rule.

23 And we suggest that the Court could
24 adopt a similar categorical rule here because,
25 as you say, the only circumstances that we can

1 think of where there's no causation problem are
2 so outlandish, it's not worth trying to preserve
3 those.

4 JUSTICE SOTOMAYOR: Counsel, I -- I'm
5 not sure what witness immunity has to do with
6 this issue. Yes, you're immune from prosecution
7 for any testimony you give at a trial. But, if
8 you're testifying falsely and that's what
9 induces a judge or a prosecutor to use your
10 statement, I -- I don't understand why that
11 should be immune from 1983.

12 MR. SURI: Your Honor, that view is
13 contrary to this Court's previous decision in
14 *Briscoe against LaHue*. In that case, the Court
15 held that witnesses enjoy absolute immunity from
16 1983 claims for their testimony and it
17 specifically held that that extends even to
18 perjured testimony.

19 The reasoning of the decision is that
20 the appropriate remedy for perjury is a criminal
21 prosecution for perjury, but we don't want to
22 discourage witnesses by exposing them to the
23 specter of civil liability.

24 JUSTICE GORSUCH: Counsel, you -- your
25 -- your argument for a firm proximate cause rule

1 has some appeal, obviously, the clarity of it,
2 but I wonder have you thought about -- and I'm
3 sure you have and you can help us think about --
4 how it would apply outside the Miranda context
5 and how it might bleed into other constitutional
6 rights and make them more difficult to assert
7 under 1983. An involuntary confession under --
8 forget about Miranda. You know, a tortured
9 confession being admitted.

10 Are you concerned, is the government
11 concerned, that its rule would -- would place
12 the onus on the prosecutor to deal with that and
13 not allow recovery against a police officer who
14 conducted the -- the -- the tortured confession?

15 MR. SURI: Justice Gorsuch, let me
16 first explain why the logic of our position
17 would indeed affect some other constitutional
18 rights and then turn to, if you're uncomfortable
19 with that, how you can cabin the logic so that
20 it applies only to this particular right.

21 So, to take the first part first, yes,
22 it's true our logic does apply, for example, to
23 self-incrimination claims, but that shouldn't
24 trouble you because this Court has recognized an
25 independent substantive due process limit on

1 what the police can do in the interrogation
2 itself. If the police torture an individual or
3 even beat him, that's a substantive due process
4 violation that is actionable under Section 1983.

5 JUSTICE GORSUCH: I get that argument.
6 But there's an additional quantum of harm surely
7 associated with its introduction at trial and a
8 potential conviction wrongfully. And your rule,
9 I think, would take that out of play, and maybe
10 it won't, but I'd like to hear your thoughts.

11 MR. SURI: No, it would take that out
12 of play, Justice Gorsuch. And the reason the
13 Court shouldn't be troubled by that is that the
14 appropriate forum for redressing harms that
15 occur in the trial itself is the appeal process
16 in habeas corpus, not a collateral civil suit
17 attacking the trial ruling. But let's say --

18 JUSTICE GORSUCH: You might say that
19 about almost anything that happens at trial, but
20 we have 1983 actions all the time about things
21 that happen at trial.

22 MR. SURI: I -- I don't think that's
23 right, Justice Gorsuch. You have 1983 thing --
24 actions about things that happen outside trial,
25 like unreasonable searches and seizures. But

1 you don't have 1983 claims about things that
2 happen in the trial itself, like ineffective
3 assistance of counsel or denial of a jury trial
4 right. Those are traditionally enforced through
5 the appellate process.

6 And if I can offer an analogy --

7 JUSTICE GORSUCH: Sure.

8 MR. SURI: -- to show why this makes
9 sense. Think of this Court's Confrontation
10 Clause jurisprudence. The Court has held that
11 the introduction of a forensic analyst's report
12 at trial can be a confrontation violation if the
13 analyst isn't put on the stand.

14 Now we would say that you can't sue
15 the analyst under Section 1983 on the theory
16 that he proximately caused the prosecutor's
17 violation of the Confrontation Clause. Your
18 remedy would be an appeal, not a 1983 claim.

19 So, yes, that is one consequence of
20 our theory, but that's a perfectly reasonable
21 consequence. We don't think it makes sense to
22 allow collateral Confrontation Clause
23 challenges.

24 JUSTICE GORSUCH: Let's say I'm a
25 little worried about that. You said you had a

1 narrower approach.

2 MR. SURI: Yeah.

3 JUSTICE GORSUCH: What -- what's that?

4 MR. SURI: This Court has said most
5 recently in the Thompson opinion that Justice
6 Kavanaugh wrote earlier this term that common
7 law principles must be applied in light of the
8 values and purposes of the right at issue.

9 And the right at issue here, the
10 Miranda right, has always been based on an
11 analysis of what is necessary in practice to
12 enforce the self-incrimination right. And the
13 Court has enforced it as far as it is necessary,
14 but it hasn't taken it any further.

15 It said that Miranda applies, for
16 example, only in the case-in-chief in a criminal
17 prosecution. It doesn't apply to impeachment.
18 It doesn't apply to the fruits of the evidence.
19 It doesn't apply in public safety cases. And
20 the Court could say similarly that it's not
21 necessary to apply in -- in a civil trial.

22 JUSTICE GORSUCH: Thank you.

23 JUSTICE BARRETT: You just said -- you
24 just talked about enforcing the right. But the
25 government, as I understand it, has taken the

1 position that this is a Fifth Amendment right,
2 although, in your brief, you kind of -- which
3 strikes me as probably careful language --
4 characterize it as a federal right. You don't
5 actually say Fifth Amendment right that I saw.

6 Could you elaborate on the
7 government's position there?

8 MR. SURI: Yes. We think Miranda is a
9 constitutional right. To use the language of
10 Section 1983, it is any right, privilege, or
11 immunity secured by the Constitution. And if I
12 could divide that into two parts, secured by the
13 Constitution because Dickerson says it is a
14 constitutional rule, and right, privilege, or
15 immunity is drawing a distinction between rights
16 and structural provisions, like separation of
17 powers or federalism provisions. But Miranda is
18 pretty clearly a right rather than a structural
19 provision.

20 In addition, if you look at this
21 Court's past 1983 cases, the Court has defined
22 the term "right" in the constitutional context
23 extremely broadly. For example, in Dennis
24 against Higgins, the Court held that the
25 negative Commerce Clause gives rise to rights

1 enforceable under Section 1983 even though one
2 might think of the Commerce Clause as a
3 structural provision rather than a rights
4 provision.

5 So, if -- if that's a right, then,
6 surely, we think Miranda is a right. And, of
7 course, it's constitutional because Dickerson
8 says so.

9 JUSTICE KAVANAUGH: Can you address
10 Justice Kagan's question to Mr. Martinez about
11 the precedent and how we should think about the
12 precedent?

13 MR. SURI: Yes. I -- I think one of
14 the reasons we have not relied on the theory
15 that Miranda is not a constitutional right is
16 precisely the concern that Justice Kagan has
17 raised that would seem to undermine the -- what
18 the Court has said all these years, especially
19 in Dickerson. But even apart from that, we just
20 don't think that that theory is correct as an
21 original matter, and we don't think it's
22 necessary in order for the Court to foreclose
23 Miranda claims from Section 1983.

24 JUSTICE GORSUCH: Would you care to
25 comment on the historians' briefs and the

1 suggestion that Miranda might have a better
2 original provenance than had previously been
3 thought?

4 MR. SURI: I -- I wish, Justice
5 Gorsuch, I could say that Miranda in its
6 totality is supported by the original meaning of
7 the Constitution. I -- I -- I -- I'm afraid I
8 cannot in all candor go quite that far.

9 The historians' brief supports one
10 aspect of Miranda, which is the warning
11 requirement. Miranda, of course, goes beyond
12 warnings. It also talks about having counsel
13 present at the interrogation. And in all
14 candor, I have to concede that the historians'
15 brief doesn't provide support for that aspect of
16 the Miranda decision, that, instead, we think
17 it's still correct because it's -- it's been
18 found necessary to implement the
19 self-incrimination right as a practical matter.

20 But, with respect to the warnings, it
21 -- it's certainly the case that warnings were
22 much more commonplace than one might have
23 imagined. If you look at Chief Justice White's
24 opinion in *Bram* against United States, he talks
25 about these warning requirements. So it isn't

1 just the original meaning at the time of the
2 founding. It's also the 19th Century case law
3 that recognizes that warnings are an important
4 part of implementing the Fifth Amendment.

5 Nevertheless, that doesn't affect our
6 argument in this case because the issue in this
7 case, of course, is whether Miranda is civilly
8 enforceable. And if you look back to
9 founding-era sources, I've seen no evidence that
10 you would bring collateral civil actions saying
11 that an involuntary confession or other type of
12 improper evidence was introduced at a criminal
13 trial. The appropriate remedy would have been
14 the exclusion of that evidence at the trial
15 itself, not some collateral civil proceeding.

16 In contrast, we have lots of history
17 of civil suits about the equivalent of the
18 Fourth Amendment. Unreasonable searches were at
19 issue in Entick against Carrington, Wilkes
20 against Wood, cases like that. The absence of
21 any comparable history here should give you some
22 comfort that this is indeed not the kind of
23 thing that is meant to be civilly enforceable.

24 JUSTICE ALITO: If you have the
25 situation where a police officer does something

1 that violates a constitutional right but that
2 later a prosecutor makes an independent decision
3 about whether the prosecution will attempt to
4 obtain any advantage at trial as a result of the
5 conduct of the police officer, that, I take it,
6 is what you think is the situation here.

7 Could you state in general terms the
8 rule that you think applies as to the creation
9 of a categorical rule regarding the absence of
10 proximate cause?

11 MR. SURI: I'm sorry, Justice Alito, I
12 think I have to take issue with the premise of
13 the question, which is we don't accept that the
14 police officer has done anything unlawful. Our
15 theory is that the unlawful act is committed
16 entirely at the trial itself.

17 But our rule is that when a police
18 officer --

19 JUSTICE ALITO: All right. Well, so
20 we're getting back to the issue of -- of the
21 nature of the Miranda violation. When something
22 is done by the police officer, but the
23 prosecution seeks to obtain some advantage at
24 trial as a result of something that was done or
25 was not done and should have been done by the

1 police officer, what is your general -- how
2 would you state in general terms the rule about
3 cutting off proximate cause?

4 MR. SURI: The rule is that when a
5 police officer does not himself engage in any
6 legal violation, then, in the absence of some
7 special circumstance I can't think of right now,
8 the prosecutors' and the judges' independent
9 decision about the action constitute superseding
10 causes that cut off liability.

11 CHIEF JUSTICE ROBERTS: Justice
12 Thomas?

13 JUSTICE THOMAS: No.

14 CHIEF JUSTICE ROBERTS: All right.
15 Justice Kavanaugh?

16 JUSTICE KAVANAUGH: Just the same
17 question that I asked Mr. Martinez about Withrow
18 and how you would deal with that.

19 MR. SURI: Withrow supports our
20 position. Withrow described the Fifth Amendment
21 right and Miranda as trial-focused rights. That
22 suggests that Miranda is about what happens at
23 the trial, whether the evidence is admitted or
24 not admitted. It's not about what the police
25 officer himself does.

1 And, indeed, Withrow contrasted the
2 Miranda right with the Fourth Amendment right on
3 precisely that reasoning. It said the Fourth
4 Amendment is about what happens outside the
5 trial and that's why it isn't enforceable in
6 habeas corpus.

7 JUSTICE KAVANAUGH: Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 Mr. Hoffman.

11 ORAL ARGUMENT OF PAUL L. HOFFMAN

12 ON BEHALF OF THE RESPONDENT

13 MR. HOFFMAN: Mr. Chief Justice, and
14 may it please the Court:

15 Petitioner asked this Court to find
16 that a police officer can never be found liable
17 under Section 1983 for a Miranda violation.
18 This is so even where an officer elicits an
19 unwarned custodial statement, lies about the
20 circumstances, and the statement is introduced
21 in the prosecution's case-in-chief. That
22 categorical approach is counter to precedent,
23 the text of Section 1983, and common sense.

24 This case presents two distinct
25 issues. On the first issue, the introduction of

1 an unwarned custodial statement is a violation
2 of a defendant's Fifth Amendment rights and,
3 therefore, the basis for Section 1983 liability.

4 If Miranda violations lead to habeas
5 relief based on a violation of the Constitution
6 or to the reversal of state criminal convictions
7 on the same basis, the same violations fall
8 within the broad remedial sweep of Section 1983.

9 On the second issue, police officers,
10 like any other state actor, can be sued under
11 Section 1983 if their acts proximately cause a
12 violation of constitutional rights. At a
13 minimum, when an officer takes an unwarned
14 custodial statement and deceives the prosecutor
15 about the circumstances of the interrogation, a
16 jury can find that proximate cause exists.

17 Mr. Tekoh has always argued that
18 Deputy Vega gave a false account of the
19 circumstances of the interrogation in this case.
20 The court of appeals correctly found that
21 Mr. Tekoh has a Section 1983 claim based on the
22 Miranda violation and that a reasonable jury, if
23 they believe Mr. Tekoh's testimony, could find
24 that Deputy Vega was the proximate cause of this
25 violation.

1 I welcome the Court's questions.

2 JUSTICE THOMAS: In the trials that
3 we've had in this so far, have there been any
4 findings by the jury that the officer lied?

5 MR. HOFFMAN: The -- there -- no,
6 there's no -- there hasn't been a finding that
7 the officer lied. That issue hasn't really been
8 presented to the jury. And there were no
9 find -- there were no -- there was never a
10 finding in this case about whether Mr. Tekoh was
11 in custody or not. None of the -- none of the
12 juries were required to find that.

13 And, in fact, from the beginning of
14 this case, it was argued that the claim was that
15 a violation of -- a core Miranda violation, the
16 introduction of the statement at trial, gave
17 rise to a 1983 violation.

18 And the judge -- the district judge
19 refused to give that instruction on that theory
20 of liability because he thought that the Chavez
21 case overturned -- made -- made that claim
22 unviable.

23 And so the -- the appeal to the Ninth
24 Circuit that we made was to allow us to go
25 forward with that claim. That's the -- that's

1 the -- the issue that we raised in addition to
2 an issue about an expert.

3 But there's never been a finding one
4 way or the other about whether the officer lied
5 about the circumstances of the -- of the
6 interrogation, which is at the heart of the
7 case. That's always been the dispute --

8 JUSTICE SOTOMAYOR: So can you --

9 MR. HOFFMAN: -- in this case.

10 JUSTICE SOTOMAYOR: -- so you -- can
11 you point me to somewhere in the record on
12 either trial before the district courts where
13 you presented that theory of your case? I've
14 looked in vein, number one.

15 And, number two, in the first trial,
16 it was a fabrication of evidence case.

17 MR. HOFFMAN: That's right.

18 JUSTICE SOTOMAYOR: So tell me if they
19 found against you on the fabrication of the
20 evidence. Isn't that a finding that Mr. Vega
21 didn't fabricate?

22 MR. HOFFMAN: No. I mean, what --
23 what it was -- what -- what the -- what the jury
24 was asked to find under standards that are much
25 higher than the standards that would apply to a

1 Fifth Amendment claim, it was a Fourteenth
2 Amendment substantive due process claim.

3 But, at most, and what the district
4 court found, was that there was a finding that
5 the -- that the officer did not fabricate the
6 report and that a different officer didn't
7 fabricate certain statements attributable to Mr.
8 Tekoh in one of his supplemental reports.
9 That's all they found.

10 They didn't find -- they weren't asked
11 to find anything about custody. They weren't
12 asked to determine the difference between
13 Mister --

14 JUSTICE SOTOMAYOR: It doesn't -- it
15 doesn't matter, does it? If they found that he
16 didn't fabricate the statements by your client,
17 that was the whole basis of the decision about
18 there, A, not being coercion or, B, that he
19 wasn't in custody.

20 MR. HOFFMAN: Well, no. I mean, the
21 -- the custody part of it wasn't a part of, and
22 -- and the district court properly found that we
23 were able to go forward with a Fifth Amendment
24 trial after the fabrication case and said --
25 that argument was made to the judge, and they

1 said -- said no, the -- the -- the jury hasn't
2 made that finding.

3 And -- and -- and whether the report
4 was fabricated or not doesn't affect the Miranda
5 violation. It could be a true statement.

6 JUSTICE BARRETT: But doesn't it
7 affect -- I'm -- I'm just confused because I had
8 the same understanding as Justice Sotomayor.

9 I understood your causation argument
10 that you're pressing here, which is, as I
11 understand it, narrower than the jury
12 instruction that your client asked for below, to
13 depend on this falsification of evidence claim
14 --

15 MR. HOFFMAN: Well --

16 JUSTICE BARRETT: -- and that that was
17 important to your proximate cause argument, but,
18 as Justice Sotomayor said, it was my
19 understanding that you lost on the fabrication
20 of evidence claim.

21 MR. HOFFMAN: No. No, our -- our --
22 and -- and -- and it may be useful, it seems to
23 me, to clear up how the proximate cause issue
24 happened here. There -- there's a separate
25 causation instruction that was a joint

1 instruction from the Defendant and the
2 Plaintiff. That's found on page 118a of the
3 Petitioner's appendix, and it's a moving force
4 causation instruction and it requires the
5 Plaintiff to show that the Defendants were so
6 closely related to the deprivation of the
7 Plaintiff's rights as to be the moving force
8 that caused the ultimate jury. That was the
9 agreed-upon instruction.

10 And -- and we never got to that point
11 on the Miranda claim because the Miranda claim
12 was never presented to the jury. So there
13 wasn't any issue about proximate cause because
14 it wasn't -- it didn't ever get to the jury.

15 That was the agreed-upon instruction
16 for the Fifth Amendment claim that the judge
17 actually allowed to go forward. There's
18 never -- the -- the Defendant never asked for a
19 superseding cause instruction. The Defendant
20 never raised any of the issues that have been
21 raised in this Court in the district court.

22 There was an agreed-upon instruction.
23 The Defendant never made any claim in the Ninth
24 Circuit about proximate cause. You can read all
25 of the briefs. There's not a word about

1 causation in --

2 JUSTICE BREYER: Well, but still, what
3 is your -- I mean, suppose I think
4 hypothetically that when a improperly obtained
5 confession is introduced into the trial, the
6 person who does it is the prosecutor and he has
7 immunity and he is the superseding cause of
8 however this bad thing happened to occur, unless
9 the policeman's there, and then he has immunity
10 because there's a witness.

11 MR. HOFFMAN: Well, yeah.

12 JUSTICE BREYER: But there might be a
13 case where that policeman outside of court said
14 to the prosecutor, this is what happened, I gave
15 him 92 Miranda warnings, and he is deliberately
16 lying, that policeman, in which case maybe --
17 maybe you can bring a case against him.

18 Now suppose I start from that and say
19 what did you say here to say this falls into the
20 latter category in the lower courts.

21 MR. HOFFMAN: Well, what -- well, in
22 the lower court, what our -- what our -- and --
23 and let me back up. The -- our --

24 JUSTICE BREYER: No, no. Or here. I
25 mean, I haven't seen anything even here that

1 says that.

2 MR. HOFFMAN: Well, our -- our
3 argument is in response to the Petitioner's
4 argument that there can never be proximate
5 cause, which is a completely different argument.

6 JUSTICE BREYER: No, no, but if that
7 were -- that's his -- they say never, okay?

8 MR. HOFFMAN: They say never.

9 JUSTICE BREYER: I'd say -- suppose I
10 said hypothetically hardly ever.

11 MR. HOFFMAN: Well --

12 JUSTICE BREYER: But there could be a
13 situation where the policeman is lying through
14 his teeth to the prosecutor, dot, dot, dot, fill
15 in the blanks. But there is no indication that
16 that is what happened in this case.

17 MR. HOFFMAN: That's exact --

18 JUSTICE BREYER: Now that last part is
19 what you think is wrong.

20 MR. HOFFMAN: That's --

21 JUSTICE BREYER: So I'm asking you
22 what to look at to show that you are right and
23 that last part's wrong.

24 MR. HOFFMAN: We've -- both sides have
25 pointed to the testimony at trial. The

1 testimony at trial was Mr. -- Deputy Vega said
2 this was a casual -- this was a statement that
3 was utterly voluntary, the -- that he came --
4 you know, that Mr. Tekoh came and said, I made a
5 mistake. I wrote down the confession. Mr.
6 Tekoh's testimony --

7 JUSTICE BREYER: All right. At trial,
8 you have a witness immunity problem.

9 MR. HOFFMAN: Well, no, the --

10 JUSTICE BREYER: So was there anything
11 other than that out -- outside of trial?

12 MR. HOFFMAN: Well, the -- first of
13 all --

14 JUSTICE BREYER: I'm not saying you
15 lose on the witness immunity thing. I'm just
16 boxing it in my mind.

17 MR. HOFFMAN: Well, right. What I'm
18 saying -- there -- the question about the -- the
19 steps at -- the first thing, you asked me where
20 this was in the trial. In the trial, there has
21 always been this complete dispute between what
22 happened in that room. Mr. Tekoh says he's put
23 in a -- in a closed room for an hour. He is
24 berated and basically threatened with
25 deportation with -- with an officer with a --

1 with -- with his hand on a gun.

2 JUSTICE BARRETT: But didn't you lose
3 that claim? Didn't --

4 MR. HOFFMAN: No.

5 JUSTICE BARRETT: -- wasn't that part
6 of -- because you lost -- didn't you bring a
7 claim, another Fifth Amendment claim, for
8 coercion that you lost and another fabrication
9 of evidence --

10 MR. HOFFMAN: Well --

11 JUSTICE BARRETT: -- claim that you
12 lost, which would preclude --

13 MR. HOFFMAN: Well, we lost the
14 fabrication of evidence claim, but that's a
15 claim that -- that the evidence was false --
16 deliberately falsified by the officer with --
17 meaning the report -- the argument that -- that
18 the -- that the officer actually did the report
19 or falsified it, which is different from this
20 claim.

21 And -- and on the coercion claim, it
22 is true that the second jury found no coercion,
23 and we had an argument that the expert was
24 wrongfully excluded that the Ninth Circuit
25 didn't deal with. But the Ninth Circuit also

1 vacated that -- that -- that judgment. And so
2 it's not clear what that status is.

3 And -- and -- and our argument is that
4 if -- if the district judge had -- had -- had
5 instructed the jury on the Miranda theory, we
6 wouldn't have to have gone through any of these.
7 We'd be done by now. But either -- either --

8 JUSTICE SOTOMAYOR: I'm still --

9 MR. HOFFMAN: -- either it's a
10 custodial interrogation or not, and either
11 Deputy Vega lied or he didn't.

12 JUSTICE SOTOMAYOR: Counsel, I guess
13 my problem has been your brief says, if the
14 police officer told the truth and the government
15 and the prosecutor admitted the statement based
16 on truthful information, there's no liability
17 under 1983.

18 MR. HOFFMAN: Correct.

19 JUSTICE SOTOMAYOR: Correct?

20 MR. HOFFMAN: Yes, we agree.

21 JUSTICE SOTOMAYOR: If the police
22 officer, however, was the inducing cause by
23 lying for an admission of the evidence that
24 should otherwise not have been admitted, then I
25 win. I don't see anywhere in the record below

1 before either judge in the two trials you had
2 where you made that statement in that way.

3 MR. HOFFMAN: We didn't make that
4 statement in that way because both sides were
5 operating under Ninth Circuit precedent, which
6 didn't require you to make that statement. We
7 didn't elevate the standard for proximate cause
8 on our own.

9 What -- what -- what we've responded
10 to in this Court is their argument that it
11 should be a categorical exclusion. And what
12 we're saying is, when there's officer
13 misconduct, as we claim happened here, that that
14 should be the basis for proximate cause.

15 In the -- in the -- in the -- in the
16 court below, both sides argued on that causation
17 instruction, which doesn't include that. We
18 didn't ask to have an elevated causation
19 instruction that would make it harder for us to
20 prove our case. We accepted the Defendant's
21 instruction.

22 You know, and I -- I'm -- I'm sure
23 the -- you know, what's confusing about all this
24 is that the procedural history with respect to
25 proximate causation is that no one really

1 thought this was a serious issue in the district
2 court. I don't think the defense even made a
3 serious contention that --

4 JUSTICE BREYER: Well, what about now?
5 Can you say to us right now that you have some
6 evidence you would like to introduce that the
7 policeman did mislead the prosecutor about what
8 happened, other than the policeman speaking as a
9 witness?

10 MR. HOFFMAN: Well, the -- the -- the
11 evidence that -- that I would submit to the
12 Court would be, first of all, the reports. The
13 reports omit the true circumstances of the
14 interrogation, make it seem like a completely
15 voluntary statement and that he confessed
16 willingly, and don't say anything about the fact
17 that there's an hour-long interrogation in a
18 closed room with threats and -- and all the rest
19 that would make it clearly a custodial
20 interrogation.

21 There's some evidence -- and -- and
22 the record is spotty on this because none of the
23 parties focused on it -- that the prosecutor got
24 the information about the statements from Deputy
25 Vega, and Deputy Vega then testified about this

1 other story throughout the proceedings.

2 Whether or not that's covered by
3 witness immunity is nothing -- that's never been
4 argued before. At no point did the defense ever
5 say, well, you -- it can't be proximate cause
6 because your evidence is barred by witness
7 immunity. And that issue never got litigated as
8 to whether each of the steps in which Deputy
9 Vega gave the same false account throughout the
10 proceedings.

11 And so what would happen -- I mean,
12 under the -- the question I guess is, if the
13 Court is inclined to believe the Ninth Circuit's
14 view of proximate cause, which seems to be based
15 on Monroe natural, unforeseeable consequences
16 and -- and common law principles of proximate
17 cause, if that sweeps too broadly, what we're
18 saying is that in this case at least, it's
19 really a binary choice.

20 If -- if Deputy Vega is believed,
21 there's no violation. So we don't even get to
22 proximate cause. If our client's believed, then
23 we believe that should be the basis for
24 proximate cause because you can't allow officer
25 misconduct that deceives the circuit breakers in

1 the system. The prosecutor and the judge -- and
2 judge are the circuit breakers, right? They're
3 the ones supposed to exercise independent
4 judgment to make sure that constitutionally
5 impermissible evidence is not introduced in
6 violation of the Fifth Amendment. If the
7 officer actually causes -- causes the person to
8 be subjected to the violation, which is the
9 language of Section 1983, by deceiving the
10 prosecutor, then that should be at least one of
11 the circumstances in which this could happen.

12 Now what would happen, I think, if --
13 if the Court agrees with our first position,
14 that a Miranda violation isn't a violation of a
15 right secured by the Constitution for 1983
16 purposes, the case would go back for further
17 proceedings with respect to proximate cause, and
18 I assume that the defense would raise a lot of
19 the issues that they're now raising here that
20 they've never raised before.

21 CHIEF JUSTICE ROBERTS: Counsel, this
22 was a huge issue in the late '70s, early '80s.
23 This was a -- a staple of panel discussions in
24 criminal law, partly because Miranda was a
25 little more controversial back then than it may

1 be now. And Assistant Attorney General
2 Rehnquist, Justice Rehnquist, he would have been
3 very aware of the debate we're having today.

4 And when it came to Dickerson, he was
5 also somebody careful with his words, he didn't
6 say Miranda is in the Constitution. He talked
7 about constitutional underpinnings,
8 constitutional basis.

9 And I'm -- I don't know, of course,
10 but it would surprise me if that -- those
11 particular formulations were just happenstance.
12 And I doubt that he'd be surprised that we were
13 having this debate now, 20 years later, after
14 Dickerson. Don't you think that if, in fact,
15 Dickerson said what you say it said, you could
16 point to something in that opinion that said
17 expressly that and did not have a particular
18 nuance like basis underpinning all that?

19 MR. HOFFMAN: Well, I am not sure why
20 Chief Justice Rehnquist wrote in the nuanced way
21 that he did. Our position is that the -- the
22 consequence of his analysis is that Miranda is a
23 constitutional decision and that Miranda defines
24 the circumstances in which custodial statements
25 can be introduced in -- in a criminal trial and

1 that if Miranda's violated, the violation has to
2 be of the Fifth Amendment.

3 And I think this goes to Justice
4 Barrett's question, which is what is the -- what
5 is the power that the Court has, right? Is --
6 is this a power that the Court has that even
7 goes beyond specific constitutional rights, that
8 there's a -- an ability that the Court has to
9 create any rules that it wants independent of a
10 -- of a violation?

11 I think the -- the narrower and I
12 think better constitutionally based argument
13 would be that that's what Dickerson has to mean,
14 that -- that the violation of the Miranda --
15 core Miranda rule -- which is what we're talking
16 about here. We're not talking about any of the
17 periphery. We're talking about the core Miranda
18 rule, that that -- that that -- what -- what
19 Miranda meant was that they're defining the
20 circumstances where there's a Fifth Amendment
21 violation.

22 If you violate these Miranda and you
23 introduce that statement in a case-in-chief, a
24 Fifth Amendment violation has occurred. And if
25 --

1 JUSTICE KAVANAUGH: In thinking about

2 --

3 MR. HOFFMAN: Sorry.

4 JUSTICE KAVANAUGH: Keep going, sorry.

5 MR. HOFFMAN: No, sorry, Justice --

6 JUSTICE KAVANAUGH: In thinking about
7 the status of Miranda and Dickerson, it seems
8 that the other side's position is accept it, but
9 don't extend it, if I could boil it down.
10 Accept it, but don't extend it. And we've done
11 that with other precedents of that era even,
12 like Bivens, we accept it. We haven't declined
13 to extend it. We've declined to extend it.

14 And then that -- then they argue, I
15 think, that this seems like an extension of
16 Miranda and Dickerson to a new context, 1983
17 suits, that it has not previously extended to.

18 So why isn't that the right way to
19 think about that case? Where -- where would you
20 get off --

21 MR. HOFFMAN: Well --

22 JUSTICE KAVANAUGH: -- on -- on that
23 analysis?

24 MR. HOFFMAN: Well, what we would say
25 is that, to be sure, the Court has considered

1 the circumstances in which the Miranda rule
2 applies in a variety of ways.

3 And I think Chief Justice Rehnquist
4 dealt with that issue in Dickerson and said,
5 yeah, I mean, the fact that there are exceptions
6 and -- and changes to the Miranda rule is just
7 the natural evolution of a constitutional rule.

8 We're not talking about an extension
9 of the Miranda rule. We're talking about the
10 core principle of the Miranda rule, the
11 introduction of a custodial statement in the
12 prosecution's case-in-chief.

13 Now, with respect to Section 1983, our
14 position is that 1983 provides the authority for
15 a -- a -- a cause of action for the violation of
16 that right. In other words, once the -- the
17 core Miranda right is violated and the Fifth
18 Amendment right is violated, Section 1983
19 applies to give someone a remedy for the
20 deprivation of a right secured by the
21 Constitution which is that violation.

22 And so Congress has done that.
23 Congress could decide not to do that. Congress
24 could decide to limit it. And, to be sure, I
25 know my colleague talked about the -- the

1 Thompson case, for example.

2 Well, the Thompson case was about the
3 elements of that cause of action, right? I
4 mean, it was about whether you had to prove
5 innocence or not for that. And -- and the Court
6 has always gone back to common law principles
7 and, if necessary, adjusted them and dealt with
8 them.

9 JUSTICE KAVANAUGH: I think you may
10 have --

11 MR. HOFFMAN: But it hasn't excluded
12 an entire right like -- I mean, the Fifth
13 Amendment right is one of the fundamental rights
14 in the Constitution and Bill of Rights. Why
15 would you exclude this if a police officer
16 causes someone to be subjected to it?

17 JUSTICE KAVANAUGH: But I think their
18 response and the Solicitor General's office said
19 this as well, which is that the right is fully
20 remedied -- a violation of the right is fully
21 remedied by the exclusion of the evidence at
22 trial, and this would be some -- some extension
23 of that, something new that would go beyond the
24 way the right has ordinarily been characterized.

25 MR. HOFFMAN: But -- but -- but,

1 clearly, that isn't a complete remedy. I'm
2 standing here on behalf of -- of Mr. Tekoh, who
3 was acquitted and has absolutely no other remedy
4 than a Section 1983 violation.

5 His life was destroyed by these
6 actions. He gets acquitted. When the full
7 story comes out, he is contending that the
8 officer set him up for this and basically set up
9 the prosecutor and the -- and the court too.

10 What remedy does he have? That's what
11 Section 1983 is for. There may not be a lot of
12 these cases. There haven't been a lot of these
13 cases since Schnorenberg, which was one of the
14 first cases in the Seventh Circuit to agree to
15 this proposition. There are a handful of cases.

16 So the other side's contention that
17 all of a sudden there's going to be a ground
18 swell of people filing these cases, that's not
19 going to happen. But, in this -- in the cases
20 where there is officer misconduct, claims of
21 officer misconduct, it doesn't make any sense to
22 withdraw that -- that Section 1983 remedy
23 because policing that kind of conduct guarantees
24 the integrity of the entire system that
25 Miranda's based on.

1 I mean, officers are always going to
2 be involved in the interrogation process.
3 They're the ones that get the statements.
4 Nobody else gets them. And so, if they're not
5 completely honest, then the system breaks down.

6 But, when they are completely honest,
7 I mean, you can look at the Fifth Circuit's
8 decision in Murray versus Earle, where the court
9 in Murray versus Earle says, when an officer
10 gives a completely honest account to an
11 independent neutral intermediary, like a judge,
12 then proximate cause is cut off.

13 They could have asked for a -- a -- a
14 superseding cause instruction. They could have
15 made arguments about proximate causation. They
16 never did. So that's why we're making it here,
17 which doesn't make any sense, but, you know, the
18 Court granted cert, so we're here.

19 (Laughter.)

20 MR. HOFFMAN: We -- we -- we -- we
21 tried to say that you shouldn't do it, but what
22 can we say? I don't know if there are other
23 questions. Let me just have a second.

24 I -- I think that the -- the Solicitor
25 General's position is important in the sense

1 that I think, although the Solicitor General
2 tries to limit Section 1983 liability to trial
3 rights, I think the Solicitor General of the
4 United States understands what Dickerson means
5 and that it is a constitutional rule. If
6 there's a constitutional violation, Section 1983
7 provides remedies in that situation.

8 And I think, as Justice Scalia said in
9 Hudson versus Michigan, Section 1983 plays a
10 very important remedial -- a remedial role and a
11 deterrent role, and that we think that for --
12 for the violation of fundamental rights like
13 this, if our client is believed, there should be
14 a remedy.

15 And -- and I'm sorry for the confusion
16 about the fabrication and the way that the
17 procedure happened, but it's been a -- it was
18 a -- the procedural history is obviously very
19 complex in this. But it would have been a lot
20 simpler if Judge Wu had just agreed that
21 Dickerson gave us the right to make this claim,
22 which is what the Ninth Circuit said that we
23 had.

24 CHIEF JUSTICE ROBERTS: Does your
25 argument that the officer can be liable for the

1 decision of the prosecutor, or involved in that,
2 present difficult factual questions about who's
3 going to examine the people involved?

4 MR. HOFFMAN: I don't think it
5 presents any more difficult factual or discovery
6 issues than many other cases.

7 CHIEF JUSTICE ROBERTS: Well, I mean,
8 you say that, okay, you're -- you're -- the
9 officer, you're subject to liability because you
10 prevailed upon the prosecutor to put the
11 evidence in, to put the statement in. You
12 misrepresented the circumstances of the
13 statement, you know, and the officer or the
14 prosecutor, are you going to ask him, why did
15 you put this evidence in? You're going to
16 ask -- ask the officer what did you tell the
17 prosecutor?

18 MR. HOFFMAN: I mean, in fact, there
19 was -- there was evidence from the prosecutor in
20 the case, in the trial. The prosecutor
21 testified about --

22 CHIEF JUSTICE ROBERTS: Is that -- I
23 mean, I guess I'm asking whether that's a good
24 thing, to be able to go back and examine the
25 prosecutor about his conduct of the -- of the

1 litigation.

2 MR. HOFFMAN: Yeah, I think that when
3 you have a claim like this of -- of misconduct
4 that leads to this kind of fundamental violation
5 that -- that it is a good thing to -- to give
6 someone in Mr. Tekoh's position a chance to
7 vindicate his rights. I think that's what
8 Congress meant in Section 1983.

9 There are a lot of cases where there
10 are difficulties of discovery or immunity or --
11 or those issues, and we understand that. I
12 mean, it could be that we can't prove our case
13 because of those issues. I mean, that's
14 possible. We think we can, but it's possible
15 that we can't. And, you know, we accept the
16 fact that there are -- there are constitutional
17 rules or rules of immunity in Section 1983 that
18 could create difficulties.

19 But those are the kinds of
20 difficulties that civil rights lawyers deal with
21 every day and -- and defense lawyers deal with
22 every day, and I don't think they were any more
23 unusual in this case than many cases that I've
24 been a part of.

25 CHIEF JUSTICE ROBERTS: Well, if you

1 can ask the prosecutor, did you get discovery
2 into his notes, because they might say, you
3 know, this is what Joe says -- we ought -- we
4 ought to use this, or Joe says, look, I beat --
5 beat the confession out of the guy, but I'm not
6 going to testify to that effect or --

7 MR. HOFFMAN: Well, I -- I don't know
8 whether you could get the prosecutor's notes, I
9 mean, whether there would be a -- there
10 obviously would be a discovery dispute about
11 that, I assume, since that happens in most of
12 these cases.

13 I think that -- it seems to me that
14 there are tools in the discovery process that
15 are handled every day across the country in
16 district courts dealing with civil rights cases
17 that are adequate to handle any of those issues.

18 I think there's also issues relating
19 to -- I mean, the -- Heck versus Humphrey will
20 make these kind of cases, you know, less
21 numerous because, if you are convicted, then you
22 have to go through the whole appellate process.
23 Qualified immunity may apply in some
24 circumstances to limit the circumstances in
25 which officers can be found liable.

1 If officers come forward, as they
2 should do, to give an honest and complete
3 account of their -- the circumstances of an
4 interrogation and the prosecutor decides to go
5 forward and the error is in the court accepting
6 something that it shouldn't have accepted, I
7 don't think the officer is responsible there.
8 So we're not saying that.

9 You know, our -- our position is that,
10 at least in the context of this case, there's a
11 stark choice between a -- a deputy who, from our
12 standpoint, told a completely false story to get
13 this statement in versus our client, who tells a
14 completely different story supported by
15 co-workers, you know, to also contradict the --
16 the officer.

17 And in that kind of situation, what
18 we're suggesting is that the rules of proximate
19 cause should at least allow for that. And --
20 and we think that if the Court remands the case,
21 accepts our first principle so that we can
22 actually go forward with that claim, the Ninth
23 Circuit could obviously consider whatever rules
24 this Court deems necessary for proximate cause
25 or ask the Ninth Circuit to start all over and

1 -- and do another analysis.

2 But we think we can meet any principle
3 of proximate cause other than the categorical
4 "you can't show proximate cause" principle.

5 CHIEF JUSTICE ROBERTS: Okay, counsel.
6 Justice -- anything?

7 Okay. Thank you, counsel.

8 MR. HOFFMAN: Thank you.

9 CHIEF JUSTICE ROBERTS: Rebuttal,
10 Mr. Martinez?

11 REBUTTAL ARGUMENT OF ROMAN MARTINEZ
12 ON BEHALF OF THE PETITIONER

13 MR. MARTINEZ: My friend on the other
14 side is trying to preserve Dickerson by
15 interpreting it in a way that was rejected by
16 Dickerson's own author and is inconsistent with
17 decisions of this Court both predating Dickerson
18 and postdating Dickerson.

19 Dickerson gives Miranda constitutional
20 status, but it doesn't say that Miranda creates
21 a Fifth Amendment right. Our reading of
22 Dickerson and the case law as a whole harmonizes
23 the doctrine, and it's consistent with the
24 language of Dickerson itself; the prior cases,
25 Harris, Quarles, Tucker, Elstad, Payne; the

1 Chavez plurality; and five justices in their
2 votes in the Patane case, where five justices
3 agreed that Dickerson did not undermine the
4 pre-Dickerson post-Miranda cases.

5 We think you should adopt Chief
6 Justice Rehnquist's consistent, common-sense,
7 middle-ground approach to Miranda. You should
8 preserve Dickerson, but you should hold there's
9 no Fifth Amendment right here giving rise to
10 1983.

11 As to causation, they've raised a
12 totally new theory here. It wasn't raised
13 below. They described their own jury
14 instruction, the one at issue here, at the
15 charge conference as -- in causation terms.
16 That's at JA 296. Everyone has always
17 understood their causation theory not to require
18 a lie. That's how the Ninth Circuit understood
19 it. That's why the Ninth Circuit addressed this
20 issue this way.

21 Their new theory, even if it weren't
22 forfeited, it would be factually untenable
23 because there's no evidence of any lies that --
24 that is actionable here. Their brief points
25 repeatedly to lies that were allegedly told at

1 the suppression hearing, but the testimony at
2 the suppression hearing is immunized.

3 They also point to the statement of
4 possible -- proximate cause and to the incident
5 report. But the alleged lies there don't bear
6 on the custody issue that is at the core --
7 that's at the core of this Miranda case. And,
8 in any event, you have a jury that said that
9 there weren't lies there. A jury rejected the
10 fabrication of evidence claim based on those
11 exact same reports.

12 Ultimately, Your Honors, their --
13 their claim here is that they need a remedy,
14 they need a chance to get relief for this
15 alleged misconduct. They had two chances to do
16 that. They brought a Fourteenth Amendment due
17 process theory. They brought a coercion theory.
18 The jury agreed with us on both theories. This
19 case should end.

20 We respectfully ask you to reverse.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel. The case is submitted.

23 (Whereupon, at 11:21 a.m., the case
24 was submitted.)

25

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