FEDERAL STATUTES

42 U.S.C. § 1983 — Miranda *Rights* — Vega v. Tekoh

Miranda v. Arizona[1] is perhaps the best-known criminal justice decision in American history,[2] bringing the privilege against self-incrimination "to the informal proceedings in the interrogation room"[3] and establishing the set of eponymous warnings deemed necessary to "dispel the compelling pressure of custodial interrogation."[4] *Miranda* spawned vigorous academic debate over both its effectiveness[5] and legitimacy,[6] with vocal critics calling for the decision to be overturned.[7] Nonetheless, when the Supreme Court last explicitly considered overruling *Miranda* two decades ago in *Dickerson v. United States*,[8] it rightly concluded that "the principles of *stare decisis* weigh heavily against overruling it."[9] Last Term, in *Vega v. Tekoh*,[10] the Supreme Court held that the admission of a criminal defendant's un-Mirandized statement at trial does not constitute "the deprivation of [a] right[] . . . secured by the Constitution" and thus does not allow the defendant to state a claim under 42 U.S.C. § 1983.[11] While the Court claimed to accept *Dickerson* on its own terms that *Miranda* provided a constitutionally based right,[12] it nonetheless held that *Miranda* did not establish a right "secured" by the Constitution within the meaning of § 1983.[13] This subversion of *Dickerson* could be the first step to overcoming principles of stare decisis and augurs a future in which the Court may overrule *Miranda*.

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[1] 384 U.S. 436 (1966).

[2] *See* Dickerson v. United States, 530 U.S. 428, 443 (2000) ("*Miranda* has become . . . part of our national culture."); Richard A. Leo, *Questioning the Relevance of* Miranda *in the Twenty-First Century*, 99 MICH. L. REV. 1000, 1000 (2001) (calling *Miranda* "arguably the most well-known legal decision . . . in American history").

[3] Yale Kamisar, *Foreword: From* Miranda *to § 3501 to* Dickerson *to* . . . , 99 MICH. L. REV. 879, 880 n.3 (2001).

[4] Stephen J. Schulhofer, *Reconsidering* Miranda, 54 U. CHI. L. REV. 435, 436 (1987).

[5] *Compare, e.g.*, Stephen J. Schulhofer, Miranda*'s Practical Effect: Substantial Benefits and Vanishingly Small Social Costs*, 90 NW. U. L. REV. 500 (1996), *with* Paul G. Cassell & Richard Fowles, *Handcuffing the Cops? A Thirty-Year Perspective on* Miranda*'s Harmful Effects on Law Enforcement*, 50 STAN. L. REV. 1055 (1998).

[6] *Compare, e.g.*, Schulhofer, *supra* note 4, *and* Charles D. Weisselberg, *Saving* Miranda, 84 CORNELL L. REV. 109 (1998), *with* Joseph D. Grano, Miranda*'s Constitutional Difficulties: A Reply to Professor Schulhofer*, 55 U. CHI. L. REV. 174 (1988), *and* David A. Strauss, *The Ubiquity of Prophylactic Rules*, 55 U. CHI. L. REV. 190 (1988).

[7] *E.g.*, *Dickerson*, 530 U.S. at 461–65 (Scalia, J., dissenting) ("[W]e cannot allow to remain on the books even a celebrated decision . . . stand[ing] for the proposition that the Supreme Court has power to impose extraconstitutional constraints upon Congress and the States." *Id.* at 465.).

[8] 530 U.S. 428 (2000).

[9] *Id.* at 443.

[10] 142 S. Ct. 2095 (2022).

[11] *Id.* at 2106, 2108 (alteration and omission in original) (quoting 42 U.S.C. § 1983).

[12] *Id.* at 2106 & n.5.

[13] *See id.* at 2106.

On March 19, 2014, Terence Tekoh was accused by a patient of sexual assault while working as a certified nurse assistant at a medical center in Los Angeles.[14] Hospital staff reported the allegation to the Los Angeles Sheriff's Department,[15] and Deputy Carlos Vega responded.[16] In a private room, Vega questioned Tekoh about the incident without advising Tekoh of his rights under *Miranda*.[17] By the end of the questioning, Tekoh had produced a statement admitting to and apologizing for inappropriately touching the patient's genitals.[18] However, the parties offered diverging accounts of how the statement came to be: Vega claimed that Tekoh immediately admitted to making "a mistake" and that Tekoh wrote the statement upon simply being asked to write what happened, all prior to any questioning.[19] Meanwhile, Tekoh alleged that Vega questioned Tekoh for more than half an hour while Tekoh repeatedly refused to confess, denied Tekoh's request for a lawyer, and ultimately dictated the written confession to Tekoh.[20]

Tekoh was charged in California state court with unlawful sexual penetration.[21] Although the prosecution introduced Tekoh's un-Mirandized confession at trial, Tekoh was acquitted.[22] Tekoh subsequently filed an action in the Central District of California under § 1983 against Vega and several other defendants,[23] seeking damages for violations of his constitutional rights, including his Fifth Amendment right against compelled self-incrimination by way of a "coercive and illegal interrogation[] in violation of *Miranda*."[24] At trial, Tekoh proposed a jury instruction that would allow the jury to find that having the fruit of an illegal interrogation in violation of *Miranda* used against him in a

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[14] Tekoh v. County of Los Angeles, No. CV 16-7297, 2017 WL 5957727, at *1–3 (C.D. Cal. May 25, 2017); Tekoh v. County of Los Angeles, 270 F. Supp. 3d 1163, 1170–71 (C.D. Cal. 2017).

[15] *Tekoh*, 2017 WL 5957727, at *3.

[16] *Tekoh*, 270 F. Supp. 3d at 1171.

[17] *Id.* at 1172–73; *Tekoh*, 2017 WL 5957727, at *3.

[18] *Tekoh*, 270 F. Supp. 3d at 1173.

[19] *Id.* at 1172.

[20] Tekoh v. County of Los Angeles, 985 F.3d 713, 715–16 (9th Cir. 2021). Tekoh asserted that during the encounter Vega "shut the door and stood in front of it" and later threatened Tekoh by placing his hand on his gun and claiming that he would deport Tekoh "back to the jungle." *Id.*

[21] *Id.* at 716; *see* CAL. PENAL CODE § 289(d) (2013).

[22] *Tekoh*, 985 F.3d at 716.

[23] Complaint for Damages for Violations of Civil Rights Under Color of State Law ¶¶ 1, 4–7, *Tekoh*, 270 F. Supp. 3d 1163 (No. CV 16-7297) [hereinafter Complaint]; First Amended Complaint for Damages for Violations of Civil Rights Under Color of State Law ¶¶ 1, 4–6, *Tekoh*, 270 F. Supp. 3d 1163 (No. CV 16-7297) [hereinafter First Amended Complaint]. Tekoh initially named the County of Los Angeles, the Los Angeles Sheriff's Department, Vega's supervising officer, and Vega as defendants in the case, although Tekoh shortly thereafter withdrew his claim against the County, and only his claim against Vega is relevant to the case at bar. *Compare* First Amended Complaint, *supra*, ¶¶ 4–6, *with* Complaint, *supra*, ¶¶ 4–5.

[24] First Amended Complaint, *supra* note 23, ¶¶ 46–51; *see also* Complaint, *supra* note 23, ¶¶ 36–39. Tekoh also alleged violations of the Fourth Amendment by way of an arrest without probable cause and the Fourteenth Amendment by way of a false report depriving him of his substantive and procedural due process rights. First Amended Complaint, *supra* note 23, ¶¶ 46–51.

criminal case was "a violation of the Fifth Amendment actionable under § 1983."[25] However, his proposed jury instruction was denied and the jury returned a verdict in favor of the defendants.[26] As such, Tekoh moved for a new trial, arguing, inter alia, that the court erroneously failed to give his proposed instruction.[27]

The district court rejected Tekoh's claim regarding his proposed instruction, observing that Supreme Court precedent "strongly suggest[ed] that § 1983 liability will not attach to a technical violation of *Miranda*" alone and would require a further showing of "improper force or duress."[28] The court first noted the plurality opinion in *Chavez v. Martinez*,[29] which held that an officer's failure to read *Miranda* warnings alone did not violate the defendant's constitutional rights.[30] The court then noted another plurality opinion in *United States v. Patane*,[31] which held that the failure to give *Miranda* warnings alone could not "violate a suspect's constitutional rights or even the *Miranda* rule."[32] Therefore, the court found that it did not err when it refused to give Tekoh's proposed instruction.[33] And, although the court granted Tekoh's motion for a new trial on other grounds,[34] the jury at the new trial again returned for Vega.[35] Tekoh appealed.[36]

The Ninth Circuit vacated, reversed, and remanded.[37] The panel based its judgment on *Dickerson*, where the Court held that *Miranda* was "a constitutional decision" that Congress could not overrule.[38] Noting that *Dickerson* "made clear" that the right of a criminal defendant against having an un-Mirandized statement introduced against him "is indeed a right secured by the Constitution," the panel concluded that Tekoh had a valid claim under § 1983 that his Fifth Amendment right against self-incrimination was violated.[39] The panel also noted that the

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[25] *See* Tekoh v. County of Los Angeles, No. CV 16-7297, 2018 WL 9782523, at *4 (C.D. Cal. Mar. 8, 2018).

[26] *Id.* at *1.

[27] *Id.* Tekoh also argued that the court erred in excluding his proposed expert on false confessions, failing to give another one of his proposed jury instructions regarding his coerced confession claim, and allowing defense counsel's misconduct to deprive Tekoh of a fair trial. *Id.* at *1, *4.

[28] *Id.* at *5.

[29] 538 U.S. 760 (2003); *Tekoh*, 2018 WL 9782523, at *5.

[30] *Chavez*, 538 U.S. at 772 (plurality opinion) (citing Connecticut v. Barrett, 479 U.S. 523, 528 (1987); Michigan v. Tucker, 417 U.S. 433, 444 (1974)).

[31] 542 U.S. 630 (2004); *Tekoh*, 2018 WL 9782523, at *6.

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

[33] *Tekoh*, 2018 WL 9782523, at *6.

[34] *Id.* at *13. The district court found that the court had previously erred in failing to give a separate jury instruction on Tekoh's coerced confession claim. *Id.* at *6–11.

[35] Tekoh v. County of Los Angeles, 985 F.3d 713, 718 (9th Cir. 2021). The district court only granted the new trial as to Vega out of the defendants, *Tekoh*, 2018 WL 9782523, at *13, so Vega was the only remaining defendant.

[36] *Tekoh*, 985 F.3d at 718.

[37] *Id.* at 726. Judge Wardlaw wrote for the court, joined by Judges Murguia and Miller.

[38] *Id.* at 720 (quoting Dickerson v. United States, 530 U.S. 428, 438–39 (2000)).

[39] *Id.*

district court "went astray" in its reading of the fractured pluralities in *Chavez* and *Patane*: because the narrowest grounds for the specific results in both cases were inapplicable to the facts at hand, neither case supplied binding precedent.[40] Vega petitioned for rehearing en banc, but the petition was denied.[41]

The Supreme Court reversed and remanded.[42] Writing for the Court, Justice Alito[43] held that because a violation of *Miranda* at trial is not itself a violation of the Fifth Amendment and a cost-benefit analysis does not provide justification to expand *Miranda*, a violation of *Miranda* alone could not provide the basis for a claim under § 1983.[44] First, the Court noted that *Miranda* "was clear" in that it never "state[d] that a violation of its new rules constituted a violation of the Fifth Amendment," which would require some further showing of "*compelled* self-incrimination."[45] Further, Justice Alito explained that since *Miranda*, the Court had "repeatedly described" the *Miranda* rules as "prophylactic," citing to twenty of its decisions handed down since *Miranda*.[46] Justice Alito then characterized several of those decisions as "charting the dimensions" of the rules using cost-benefit analysis and, in some cases, "justif[ying] restrictions" on the rules that could not be possible if *Miranda* was part of the core Fifth Amendment right.[47]

The Court then explained that "*Dickerson* did not upend the Court's understanding of the *Miranda* rules as prophylactic."[48] The Court acknowledged that *Dickerson* claimed authority to "create constitutionally based prophylactic rules that bind both federal and state courts,"

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[40] *Id.* at 720–22. As "no single rationale command[ed] a majority of the Court" in either case, the panel recognized that "only the specific result" of each case was "binding on lower federal courts." *Id.* at 721 (quoting United States v. Davis, 825 F.3d 1014, 1021–22 (9th Cir. 2016)).

[41] Tekoh v. County of Los Angeles, 997 F.3d 1260, 1261 (9th Cir. 2021). Judge Miller, joined by Judges Wardlaw and Murguia, concurred in the denial, reiterating that *Dickerson* was inconsistent with the view that *Miranda* merely established a prophylactic rule that was not required by the Constitution. *Id.* at 1261–63 (Miller, J., concurring in the denial of rehearing en banc). Judge Bumatay, joined by Judges Callahan, Ikuta, Bennett, R. Nelson, Bress, and VanDyke, dissented from the denial, arguing that the text and history of the Fifth Amendment as well as the weight of Supreme Court precedent made clear that *Miranda* was merely a prophylactic rule, rather than a constitutional right. *Id.* at 1264–72 (Bumatay, J., dissenting from the denial of rehearing en banc).

[42] *Vega*, 142 S. Ct. at 2108.

[43] Justice Alito was joined by Chief Justice Roberts and Justices Thomas, Gorsuch, Kavanaugh, and Barrett.

[44] *Vega*, 142 S. Ct. at 2107–08.

[45] *Id.* at 2101–02 (emphasis added). The Court pointed out that an un-Mirandized suspect in custody might make a self-incriminating statement without any "hint of compulsion." *Id.* at 2101.

[46] *Id.* at 2102.

[47] *Id.* at 2103–04 (citing Harris v. New York, 401 U.S. 222, 224–26 (1971); Michigan v. Tucker, 417 U.S. 433, 445–46, 447–52, 452 n.26 (1974); New York v. Quarles, 467 U.S. 649, 654–57 (1984); Oregon v. Elstad, 470 U.S. 298, 301–02, 306–09 (1985)). Justice Alito also identified a set of cases that found that the prophylactic rules should be expanded. *Id.* at 2104–05 (citing Doyle v. Ohio, 426 U.S. 610, 617–19 (1976); Arizona v. Roberson, 486 U.S. 675, 681–82 (1988); Withrow v. Williams, 507 U.S. 680, 688–93 (1993)).

[48] *Id.* at 2106.

and purported to "follow its rationale" to decide *Vega*.[49] However, Justice Alito noted, even accepting *Dickerson*'s "bold" claim that *Miranda*'s "constitutional rule" could not be superseded by legislation, it "clear[ly]" did not equate a *Miranda* violation with an "outright Fifth Amendment violation."[50] As such, the Court found no precedent suggesting that a *Miranda* violation "necessarily constitute[s]" a constitutional violation, and the Court held that a *Miranda* violation alone could not constitute the "deprivation of [a] right . . . secured by the Constitution" under § 1983.[51] Finally, the Court declined to "expand[]" the "law" of *Miranda* to include a claim under § 1983 based on a cost-benefit analysis.[52]

Justice Kagan dissented.[53] She first noted the Court's previous expansive constructions of the "broad language" of § 1983.[54] Explaining that *Dickerson* "ma[de] plain" that *Miranda* has "all the substance of a constitutional rule," Justice Kagan concluded that *Miranda* clearly was "secured by the Constitution" within the meaning of § 1983.[55] She then noted that *Miranda*'s constitutional rule clearly gives a "correlative 'right[]'" within the meaning of § 1983 to be tried without the prosecution using an un-Mirandized statement.[56] Combining those two premises, she concluded that, even if *Miranda* extended beyond the Fifth Amendment's "core guarantee," it should still be "enforceable through § 1983."[57]

The *Vega* Court purported to sidestep the debate over its authority to create constitutionally based prophylactic rules. After all, the Court chose to acknowledge that while *Miranda* swept more broadly than the

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[49] *Id.* at 2106 n.5.

[50] *Id.* at 2105–06 (citing Dickerson v. United States, 530 U.S. at 428, 438–40 (2000)).

[51] *Id.* at 2106 (first alteration in original) (quoting 42 U.S.C. § 1983).

[52] *Id.* at 2106–08. The Court reasoned that allowing claims like Tekoh's would "disserve 'judicial economy'" by readjudicating factual questions, produce "unnecessary friction" between the federal and state court systems, and present a variety of procedural issues. *Id.* at 2107 (quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979); Preiser v. Rodriguez, 411 U.S. 475, 490–91 (1973)).

[53] *Id.* at 2108 (Kagan, J., dissenting). Justice Kagan was joined by Justices Breyer and Sotomayor.

[54] *Id.* (citing Dennis v. Higgins, 498 U.S. 439, 443 (1991)). Justice Kagan noted that under § 1983, a "'right[]' is anything that creates specific 'obligations binding on [a] governmental unit' that an individual may ask the judiciary to enforce," *id.* (alterations in original) (quoting *Dennis*, 498 U.S. at 449), and that a right "secured by the Constitution" is any right "protect[ed] or ma[de] certain" by the Constitution, *id.* (alterations in original) (citing Hague v. Comm. for Indus. Org., 307 U.S. 496, 527 (1939) (opinion of Stone, J.)).

[55] *Id.* at 2109. Justice Kagan pointed out that *Dickerson* made clear that *Miranda* could not be abrogated by ordinary legislation and was applicable in state court proceedings, both characteristics of a constitutional rule. *Id.*

[56] *Id.* at 2109–10 (alteration in original) (quoting 42 U.S.C. § 1983).

[57] *Id.* at 2110–11. Justice Kagan noted that it should make no difference under § 1983 whether the right in question "safeguards a yet deeper constitutional commitment." *Id.* at 2110 (citing *Dennis*, 498 U.S. at 445 (declining to "limit the types of constitutional rights" included within § 1983 and holding that an implied dormant commerce clause right was enforceable under § 1983)).

constitutional minimum, it still created a constitutional rule, and likewise that in *Dickerson*, the Court previously used the constitutional basis of the prophylactic rule to hold that *Miranda* could not be superseded by statute. However, instead of leaning into the constitutional nature of the rule, as the Court did in *Dickerson*, to find a corresponding right under § 1983, the *Vega* Court reiterated the rule's prophylactic nature as the reason why it did not establish a right "secured" by the Constitution for the purposes of § 1983. This subtle subversion of the driving rationale behind *Dickerson* in the context of § 1983 signals the Court's potential willingness to overturn *Miranda* and could be a stepping stone to overcoming the principles of stare decisis.

Although *Miranda* could in isolation be read to hold that any admission of an un-Mirandized statement squarely violates the Constitution, the Court has since backed away from that reading and couched the rule in the flavor of constitutional prophylaxis. In *Miranda*, noting compulsion as the touchstone of classic Fifth Amendment analysis,[58] the Court fashioned a set of warnings to protect against the "compulsion inherent in custodial surroundings."[59] *Miranda* noted that any unwarned custodial interrogation creates pressure sufficient to constitute compulsion and could thus be read to hold that the admission of any un-Mirandized statement elicited in such a manner flatly violates the Fifth Amendment.[60] However, in the decades following *Miranda*, the Court backed away from that strong reading, instead reaching holdings that could only be consistent with the view that the "*Miranda* exclusionary rule . . . sweeps more broadly than the Fifth Amendment itself."[61]

Nonetheless, when the Court in *Dickerson* considered the validity of a federal statute intended to overrule *Miranda*, it reinforced the constitutional nature of *Miranda* and emphatically declined to overrule it. In response to 18 U.S.C. § 3501, which intended to change the touchstone of confession admissibility from whether a statement was Mirandized to whether it was voluntary,[62] the Court in *Dickerson* reiterated that

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[58] Miranda v. Arizona, 384 U.S. 436, 461–62 (1966) (citing Bram v. United States, 168 U.S. 532, 542, 549 (1897)).

[59] *Id.* at 458, 467–79 ("Unless adequate protective devices are employed to dispel the *compulsion inherent* in custodial surroundings, *no statement* obtained from the defendant can truly be the product of his free choice." *Id.* at 458 (emphases added).).

[60] *See* Schulhofer, *supra* note 4, at 440; *Miranda*, 384 U.S. at 458; Orozco v. Texas, 394 U.S. 324, 326 (1969) ("[U]se of these admissions obtained in the absence of the required warnings was a flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*.").

[61] Oregon v. Elstad, 470 U.S. 298, 306 (1985); *see, e.g.*, New York v. Quarles, 467 U.S. 649, 654–57 (1984) (allowing the use of un-Mirandized statements to be admitted through a "public safety" exception); Michigan v. Tucker, 417 U.S. 433, 450–52 & n.26 (1974) (allowing the "fruits" of an un-Mirandized statement to be admitted); Harris v. New York, 401 U.S. 222, 224–26 (1971) (allowing the use of an un-Mirandized statement to impeach the defendant).

[62] *See* 18 U.S.C. § 3501.

Miranda was "a constitutional decision" that "announced a constitutional rule."[63] Thus, even though the Court did not go as far as to hold that *Miranda* warnings were "required by the Constitution, in the sense that nothing else [would] suffice to satisfy constitutional requirements," it still leaned into *Miranda*'s constitutional basis and held that *Miranda* was a constitutional rule that could not be "supersede[d] legislatively."[64]

Since *Dickerson*, there has been great debate among both jurists and commentators over "[w]hether [the] Court has the authority to create constitutionally based prophylactic rules that bind both federal and state courts."[65] Prophylactic constitutional rules, as defined by the Court, are those that sweep more broadly than the underlying constitutional right.[66] Some, like the late Justice Scalia and Professor Joseph Grano, have argued that such rules are illegitimate judicial legislation and overstep the Court's Article III power.[67] Others, such as Professors David Strauss and Susan Klein, have argued that such rules are the result of the interpretation that the Constitution itself requires prophylaxis, and thus are legitimate, necessary, and even broadly used.[68]

Although the Court in *Vega* claimed to accept *Dickerson*'s legitimacy, its reasoning and holding in fact deeply undermined the foundations of *Dickerson*. While acknowledging the scholarly divide over the Court's actions in *Dickerson*, the Court purported to remain faithful to *Dickerson*'s rationale "for the purpose of deciding [*Vega*]," "accept[ing] it on its own terms" and not "disturb[ing]" the caselaw.[69] But *Vega* largely departed from the reasoning that undergirded *Dickerson*. *Dickerson* read *Miranda* to establish a "*constitutional* prophylactic rule" based on "what is *required* to safeguard that constitutional right."[70] In other words, *Dickerson* relied on the constitutional power of *Miranda*

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63 Dickerson v. United States, 530 U.S. 428, 432, 444 (2000). Prior to *Miranda*, voluntariness had been the key indicator of admissibility. *See Bram*, 168 U.S. at 542.

64 *Dickerson*, 530 U.S. at 442, 444.

65 *Vega*, 142 S. Ct. at 2106 n.5.

66 *See* Michigan v. Payne, 412 U.S. 47, 53 (1973) (noting that "prophylactic constitutional rules" inherently benefit "some defendants who have suffered no constitutional deprivation").

67 *Dickerson*, 530 U.S. at 461 (Scalia, J., dissenting) ("*Miranda* represents an illegitimate exercise of [the Court's] authority to review state-court judgments."); Grano, *supra* note 6, at 174–81 ("*Miranda* . . . represents an exercise of judicial authority not conveyed by the Constitution." *Id.* at 174.); *see also* Joseph D. Grano, *Prophylactic Rules in Criminal Procedure: A Question of Article III Legitimacy*, 80 NW. U. L. REV. 100, 101–02 (1985).

68 David A. Strauss, Miranda*, The Constitution, and Congress*, 99 MICH. L. REV. 958, 960 (2001) ("[C]onstitutional rules — routinely, unavoidably, and quite properly — treat 'the Constitution itself' as requiring 'prophylaxis.'"); Susan R. Klein, Miranda *Deconstitutionalized: When the Self-Incrimination Clause and the Civil Rights Act Collide*, 143 U. PA. L. REV. 417, 482–83 (1994) ("[C]onstitutional common law is in fact required by the Federal Constitution in some instances . . . . This 'constitutional common law' has the same status as 'true' constitutional interpretation . . . and would thus be a proper basis for a § 1983 suit."); *see also* Strauss, *supra* note 6, at 190.

69 *Vega*, 142 S. Ct. at 2106 n.5.

70 *Id.* at 2106 (emphases added); *see also Dickerson*, 530 U.S. at 442–44.

to hold that it could not be superseded legislatively in spite of its prophylactic nature.

The *Vega* Court did the opposite, holding that in the § 1983 context, *Miranda*'s prophylactic nature was dispositive. As Justice Kagan argued in dissent, a faithful application of *Dickerson*'s rationale to § 1983 would conclude that though *Miranda*'s rule is prophylactic, it is still a "constitutional rule" that secures a corollary "right," the loss of which should be enforceable under § 1983.[71] After all, as she and other scholars have observed, the Court has generally construed § 1983 broadly and found that a variety of other implied or prophylactic constitutional rules, like the one recognized in *Dickerson*, all confer a constitutional right "'encompassed within' § 1983."[72] Thus, a straightforward application of the rationale that *Miranda* was constitutional enough to be impervious to legislative overruling would have found the corresponding § 1983 right to be constitutionally secured.[73] Instead, the *Vega* Court concluded that *Miranda* did not grant such a right on account of its prophylactic nature,[74] in spite of its constitutional basis and in contravention of the plain text of § 1983. By denying that *Miranda* established a "right[] . . . secured by the Constitution,"[75] the *Vega* Court necessarily diminished the force of the constitutional status that *Miranda*'s prophylactic rule was afforded in *Dickerson*.

The Court's subversion of *Dickerson* opens the door to and signals a distressing potential future in which *Miranda* may be overturned entirely. When the Court last explicitly declined to overrule *Miranda* in *Dickerson*, it noted that while it had "overruled . . . precedents when subsequent cases have undermined their doctrinal underpinnings," it did not "believe that this has happened to the *Miranda* decision."[76] Following that logic, in order for a future Court to overturn *Miranda*, a previous Court would first need to undermine its "doctrinal underpinnings," and *Vega* was a perfect vehicle for the Court to begin undermin-

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[71] *See Vega*, 142 S. Ct. at 2110–11 (Kagan, J., dissenting).

[72] *Id.* at 2110 (citing Dennis v. Higgins, 498 U.S. 439, 445 (1991) (affirming § 1983 liability for a violation of the implied dormant commerce clause)); *see also* Recent Case, Tekoh v. County of Los Angeles, *997 F.3d 1260 (9th Cir. 2021),* cert. granted sub nom. *Vega v. Tekoh, 142 S. Ct. 858 (2022) (mem.)*, 135 HARV. L. REV. 1496, 1501–02, 1502 n.71 (2022) (noting that the Court has affirmed § 1983 liability from content-based restrictions in the First Amendment context and the per se warrant requirement in the Fourth Amendment context, two requirements that have been argued to be prophylactic rules by Strauss and Klein, respectively).

[73] The Solicitor General, whose reading of *Dickerson* most closely aligned with that of the Court's out of the litigants and amici curiae who briefed the Court, concluded that *Miranda* as understood by *Dickerson* did not confer a right to sue *police officers* under § 1983 because officers are not the "cause" of the actual *Miranda* violation at trial, rather than that *Miranda* was not a "right" secured by the Constitution. Brief for the United States as Amicus Curiae Supporting Petitioner at 14–19, *Vega* (No. 21–499).

[74] *See Vega*, 142 S. Ct. at 2106.

[75] *Id.* (quoting 42 U.S.C. § 1983).

[76] Dickerson v. United States, 530 U.S. 428, 443 (2000) (citing Patterson v. McLean Credit Union, 491 U.S. 164, 173 (1989)).

ing *Miranda*'s progeny. Civil cases presenting facts like that of *Vega* rarely arise: a criminal defendant must have an un-Mirandized statement improperly admitted against him at trial but nevertheless be acquitted and bring the § 1983 claim solely on the failure to give *Miranda* warnings.[77] Tekoh's plight thus provided a unique opportunity to revisit the reasoning underlying *Miranda* without needing to overrule its core holding.[78] While being of dubious practical value,[79] *Vega* allowed the Court to hold only that *Miranda* should not be expanded to the § 1983 context while its reasoning swept further to undermine *Dickerson* and *Miranda*.[80]

While an overruling of *Miranda* might have once been unthinkably radical, it seems increasingly possible in light of the Court's recent decision in *Dobbs v. Jackson Women's Health Organization*.[81] When the Court last refused to overrule *Miranda* in *Dickerson*, its decision rested on principles of stare decisis that "weigh[ed] heavily against overruling."[82] The Court noted that departures from precedent require "special justification," and the Court found no such justification, noting *Miranda*'s solid doctrinal underpinnings and cultural relevance.[83] So despite the continuing debate and controversy surrounding *Miranda*,[84] a supermajority of the Court concluded that it should not and would not reverse enough caselaw to return to the pre-*Miranda* days.[85]

Nonetheless, in the ensuing twenty years, the Court's composition has changed.[86] One need only turn a few pages in the U.S. Reports to find *Dobbs*, where the Court overturned the longstanding decision of

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[77] If the statement is not admitted at trial, the § 1983 suit would be barred by the narrowest holding in *Chavez v. Martinez*, 538 U.S. 760, 767 (2003) ("[Defendant] was never made to be a 'witness' against himself in violation of the Fifth Amendment . . . because his statements were never admitted as testimony against him in a criminal case."). Similarly, if the criminal defendant was not acquitted, the § 1983 suit would be barred by *Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (holding that a § 1983 claim is not cognizable if it implies the invalidity of the conviction).

[78] *See Vega*, 142 S. Ct. at 2107–08 (noting the maintenance of *Miranda*'s core remedy of the "exclusion of unwarned statements" at trial (quoting *Chavez*, 538 U.S. at 790 (Kennedy, J., concurring in part and dissenting in part))).

[79] Although there had been a circuit split prior to the Ninth Circuit's decision in *Tekoh*, the two cases that created the split were from fifteen years prior, and neither side had been revisited by the Courts of Appeals in the intervening years. *Compare* Sornberger v. City of Knoxville, 434 F.3d 1006 (7th Cir. 2006), *with* Hannon v. Sanner, 441 F.3d 635 (8th Cir. 2006).

[80] *See* Brief in Opposition at 8, *Vega* (No. 21–499) ("Because it is so unusual for the Fifth Amendment claim to arise . . . , Petitioner . . . [is] . . . interested in overturning the constitutional foundation of *Dickerson*[] and *Miranda* itself . . . .").

[81] 142 S. Ct. 2228 (2022).

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

[83] *Id.* (quoting United States v. Int'l Bus. Machs. Corp., 517 U.S. 843, 856 (1996)).

[84] *See* sources cited *supra* notes 5–6.

[85] Susan R. Klein, *Identifying and (Re)formulating Prophylactic Rules, Safe Harbors, and Incidental Rights in Constitutional Criminal Procedure*, 99 MICH. L. REV. 1030, 1051 & n.96 (2001) ("Only Justices Scalia and Thomas might be willing to reverse the great quantity of case law needed to return to those days." *Id.* at 1051 n.96.).

[86] Chief Justice Rehnquist and Justices Stevens, O'Connor, Kennedy, Souter, Ginsburg, and Breyer, who composed the supermajority that decided *Dickerson*, have all since retired or passed.

Roe v. Wade[87] that established the constitutional right to abortion and repudiated the principles of stare decisis that had upheld *Roe* in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[88] *Roe* and *Miranda* share some similarities: Both were landmark decisions from a half century ago establishing rights not explicitly mentioned in the Constitution.[89] Both have since been heavily debated, argued by some to be constitutional rights[90] and by others to be overreaching judicial legislation.[91] And both were upheld against challenges decades later, largely on the force of stare decisis.[92] Now that stare decisis has failed to save even *Roe*,[93] which protected a bona fide constitutional right, *Miranda* — protecting only a prophylactic constitutional rule now shaken and subject to aspersion by the *Vega* Court[94] — may fall next.

In *Vega*, the Court claimed to accept *Dickerson*'s rationale that *Miranda* established a constitutionally based right that could not be legislatively overruled. But, in spite of that constitutional basis, it held that *Miranda* did not create a right for the purposes of § 1983 on account of its prophylactic nature, thus subverting *Dickerson*'s underlying reasoning. As Justice Kagan noted in dissent, this holding certainly hollowed out *Miranda* and "injures the right by denying the remedy."[95] But for a Court increasingly less beholden to stare decisis, *Vega* goes further and provides a recipe for striking down rights framed in constitutional prophylaxis: begin by limiting § 1983 liability to weaken the constitutional foundations of any such right. One need look no further than *Vega* to see the possibilities: the Court's crippling of the doctrinal underpinnings of *Dickerson* weakened the principles of stare decisis as applied to *Miranda* and opened the door for the Court to overturn *Miranda* itself.

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[87] 410 U.S. 113 (1973).

[88] 505 U.S. 833 (1992); Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2240–43 (2022).

[89] *Compare Roe*, 410 U.S. at 152 ("The Constitution does not explicitly mention any right of privacy."), *with* Miranda v. Arizona, 384 U.S. 436, 467 (1966) ("[W]e cannot say that the Constitution necessarily requires adherence to any particular solution.").

[90] *Compare, e.g.*, *Roe*, 410 U.S. at 152–54 (recognizing "a right of personal privacy . . . under the Constitution" that "includes the abortion decision"), *with, e.g.*, sources cited *supra* note 68.

[91] *Compare, e.g.*, *Roe*, 410 U.S. at 174 (Rehnquist, J., dissenting) (arguing that the majority "partakes . . . of judicial legislation"), *and* John Hart Ely, *The Wages of Crying Wolf: A Comment on* Roe v. Wade, 82 YALE L.J. 920, 947 (1973), *with, e.g.*, sources cited *supra* note 67.

[92] *Compare Casey*, 505 U.S. at 853 ("[T]he reservations [we] may have in reaffirming the central holding of *Roe* are outweighed by the explication of individual liberty we have given combined with the force of *stare decisis*."), *with* Dickerson v. United States, 530 U.S. 428, 443 (2000) ("Whether or not we would agree with *Miranda*'s reasoning and its resulting rule, were we addressing the issue in the first instance, the principles of *stare decisis* weigh heavily against overruling it now.").

[93] *See* Melissa Murray, *Race-ing* Roe*: Reproductive Justice, Racial Justice, and the Battle for* Roe v. Wade, 134 HARV. L. REV. 2025, 2029 (2021) ("The doctrine of stare decisis . . . has been the chief impediment to overruling *Roe*."); *see also* Michael J. Gerhardt, *Super Precedent*, 90 MINN. L. REV. 1204, 1204 (2006) (noting that even then-Judge Luttig once referred to *Roe* as having achieved "super-stare decisis" due to its repeated reaffirmation by the Court).

[94] *See, e.g.*, *Vega*, 142 S. Ct. at 2106 n.5.

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