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Vega v. Tekoh and the Erosion of Miranda: A Reframing of Miranda as a Procedural Due Process Requirement

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VEGA V. TEKOH AND THE EROSION OF *MIRANDA*: A REFRAMING OF *MIRANDA* AS A PROCEDURAL DUE PROCESS REQUIREMENT

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Did you know that you have rights? The Constitution says you do. And so do I.

–Better Call Saul,
Breaking Bad (2009)†

I. INTRODUCTION

Miranda v. Arizona is one of the Supreme Court's most divisive cases, holding that no statement obtained from a suspect during custodial interrogation can be used against them at trial absent "procedural safeguards effective to secure the [Fifth Amendment] privilege against self-incrimination."[1] As controversial as it may be, the *Miranda* warning informing suspects of their rights to silence and to an attorney has endured for nearly sixty years and remains a staple in law enforcement and the American media. The warning stands for the proposition that the Constitution requires individual rights be upheld and respected when they are most vulnerable. The warning aims to put the accused and the state on an equal playing field, to prevent coercion, and to ensure the trustworthiness of evidence obtained through custodial interrogations.

Although the *Miranda* Court's holding was rooted in the Fifth Amendment's privilege against self-incrimination, the Court has since described the *Miranda* rule as "prophylactic"—necessary to safeguard individuals' Fifth Amendment rights, but not itself required by the Constitution.[2] As a result, the Court has carved out numerous exceptions to the *Miranda* rule in a series of cases eroding the landmark decision.[3] Most recently, in its 2022 decision in *Vega v. Tekoh*, the Court held that a *Miranda* violation does not provide the basis for a civil cause of action for a violation of constitutional rights under 42 U.S.C. § 1983.[4]

This Note examines the evolution of the Supreme Court's *Miranda* case law and reconceptualizes *Miranda* as a procedural due process requirement to provide the decision with an alternative justification

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† Episode #15 (season 2, episode 8).

1. Miranda v. Arizona, 384 U.S. 436, 444 (1966).
2. *See* discussion *infra* Part II.A.3.
3. *See* discussion *infra* Part II.A.3.
4. Vega v. Tekoh, 142 S. Ct. 2095, 2106 (2022).

grounded directly in the text of the Constitution. Section II traces the Court's reasoning in *Miranda* and in subsequent cases that defined the contours of *Miranda*'s application. Section II also summarizes *Miranda*'s impact on law enforcement in the United States. Further, Section II details the Court's decisions in *Dickerson v. United States*,[5] which solidified *Miranda*'s constitutional status, and *Vega v. Tekoh*,[6] which casts doubt on *Dickerson*'s vitality. Section II then briefly discusses the academic debate surrounding the legitimacy of prophylactic rules in constitutional law. Section II concludes with an introduction to procedural due process in the civil and criminal contexts.

Section III of this Note argues that *Vega* was wrongly decided and posits that a *Miranda* violation should give rise to a civil cause of action for a violation of constitutional rights. Section III reframes *Miranda* as a procedural due process requirement protecting individuals' liberty interest in intelligently exercising their rights in the face of overwhelming government power rather than stemming solely from the Fifth Amendment privilege against self-incrimination. Specifically, this Note analyzes *Miranda* as having a two-part holding: (1) the verbatim *Miranda* warning itself is not directly compelled by the Constitution, but (2) some equivalent procedural safeguard is constitutionally required to protect individuals' liberty interest in their ability to intelligently exercise their rights during custodial interrogations. Therefore, declining to provide a *Miranda* warning *or another constitutionally equivalent procedural safeguard* at the outset of custodial interrogation should give rise to a § 1983 claim to recover damages for a violation of constitutional rights. In consideration of *Miranda*'s case law development and the Court's recent decision in *Vega*, Section III also proposes suggestions for model legislation or police practices that, ideally, will be enacted or adopted into practice to enshrine these important rights into law and policy.

II. BACKGROUND

Miranda was once a bright-line constitutional rule that has since become vulnerable to numerous exceptions. Part A of this Section explores the development of the Supreme Court's ruling in *Miranda v. Arizona*. Part B describes the Court's decision in *Dickerson v. United States*, the principal case addressing *Miranda*'s constitutional status. Part C explains the Court's 2022 decision, *Vega v. Tekoh*, which vitiated civil enforceability of *Miranda* violations. Part D summarizes the salient points concerning the constitutional validity of prophylactic rules and judge-

5. 530 U.S. 428 (2000).

6. *Vega*, 142 S. Ct. 2095.

made law. Finally, Part E briefly examines the Court's approach to procedural due process in civil and criminal cases.

A. Miranda *and its Progeny*

The Fifth Amendment demands that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."[7] Prior to *Miranda*, courts evaluated the admissibility of incriminating statements solely through the voluntariness test under the Due Process Clauses of the Fifth and Fourteenth Amendments.[8] The voluntariness test requires courts to examine the totality of the circumstances surrounding a confession, including the characteristics of the individual defendant, to determine whether the statement was the product of their own free will, and therefore admissible against them in court.[9] Involuntary statements are barred from use at trial for *any* purpose, regardless of any independent indicia of reliability.[10] *Miranda v. Arizona* shifted the focus of confession law but preserved the traditional due process voluntariness test.

Subpart 1 of Part A details the Court's decision in *Miranda*. Subpart 2 covers later cases clarifying *Miranda*'s custodial interrogation requirement. Subpart 3 provides an overview of the limitations the Court has placed on *Miranda* in subsequent cases. Then, Subpart 4 briefly discusses *Miranda*'s impact on law enforcement.

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7. U.S. CONST. amend. V.

8. *Dickerson*, 530 U.S. at 432-33.

9. *Id*. at 434 ("The due process test takes into consideration 'the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.'"); *see also* Culombe v. Connecticut, 367 U.S. 568, 602-03 (1961) ("The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. . . . The inquiry whether, in a particular case, a confession was voluntarily or involuntarily made involves, at the least, a three-phased process. First, there is the business of finding the crude historical facts, the external, 'phenomenological' occurrences and events surrounding the confession. Second, because the concept of 'voluntariness' is one which concerns a mental state, there is the imaginative recreation, largely inferential, of internal, 'psychological' fact. Third, there is the application to this psychological fact of standards for judgment informed by the larger legal conceptions ordinarily characterized as rules of law but which, also, comprehend both induction from, and anticipation of, factual circumstances." (citation omitted)).

10. Mincey v. Arizona, 437 U.S. 385, 397-98 (1978) ("Statements made by a defendant in circumstances violating the strictures of *Miranda v. Arizona* are admissible for impeachment if their 'trustworthiness . . . satisfies legal standards.' But *any* criminal trial use against a defendant of his *involuntary* statement is a denial of due process of law 'even though there is ample evidence aside from the confession to support the conviction.'" (emphasis in original) (citations omitted)).

1. The *Miranda* Decision

Miranda v. Arizona presented the Supreme Court with four cases[11] involving custodial interrogations in which none of the defendants—all who were "questioned by police officers, detectives, or a prosecuting attorney in a room in which [they were] cut off from the outside world"—had been apprised of their constitutional rights.[12] The cases, the Court observed, involved "questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the [f]ederal Constitution in prosecuting individuals for crime."[13] Ultimately, the *Miranda* Court held that the prosecution in a criminal case may not use any statement at trial "stemming from custodial interrogation of [a] defendant unless [the prosecution] demonstrates the use of procedural safeguards effective to secure the [Fifth Amendment] privilege against self-incrimination."[14] The Court further held that, "unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it," an individual must be informed at the outset of custodial interrogation that they have the right to remain silent, anything they say can and will be used against them, that they have the right to an attorney, and if they cannot afford one, one will be provided.[15] If a defendant "indicates in any manner" or at any time their desire to remain silent, the interrogation must cease.[16] Likewise, if a defendant states that they want an attorney, "the interrogation must cease until an attorney is present."[17] In short, the *Miranda* warning coupled with a clear and intelligent waiver are,[18] "in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant" during custodial interrogation.[19]

The *Miranda* Court began its analysis by examining the "nature and setting" of custodial interrogations.[20] Citing "extensive factual studies"[21] from the 1930s such as the famous Wickersham Report,[22] the Court noted

11. Miranda v. Arizona, 401 P.2d 721 (1965); People v. Vignera, 207 N.E.2d 527 (N.Y. 1965); Westover v. United States, 342 F.2d 684 (9th Cir. 1965); People v. Stewart, 400 P.2d 97 (Cal. 1965).

12. Miranda v. Arizona, 384 U.S. 436, 445 (1966).

13. *Id.* at 439.

14. *Id.* at 444.

15. *Id.*

16. *Id.* at 473-74.

17. *Id.* at 474.

18. *Id.* at 475 ("This Court has always set high standards of proof for the waiver of constitutional rights, and we re-assert these standards as applied to in-custody interrogation." (citing Johnson v. Zerbst, 304 U.S. 458 (1938)).

19. *Id.* at 476.

20. *Id.* at 445.

21. *Id.* at 445 n.5.

22. IV NAT'L COMM'N ON L. OBSERVANCE & ENF'T, REPORT ON LAWLESSNESS IN LAW

the pervasive use of unlawful police brutality and the "third degree."[23] The Court then discussed at length the psychological nature of modern police practices, pointing to a number of police manuals promoting isolation, domination, and deception designed to break the will of suspects being questioned.[24] "Even without employing brutality, the 'third degree' or [other] specific stratagems," the Court discerned, "the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals."[25] Furthermore, the isolated nature of interrogations makes it difficult to reconstruct what takes place in the interrogation room.[26] Although suspects' statements made under such conditions may not be considered "involuntary in traditional terms," the Court determined that the "intimate connection between the privilege against self-incrimination and police custodial questioning" compels the conclusion that "no statement obtained from [a] defendant [in custody] can truly be the product of his free choice" absent adequate procedural safeguards.[27]

Next, the Court turned to the history behind the privilege against self-incrimination, one which has "consistently been accorded a liberal construction."[28] Underlying the privilege was the need to properly define

ENFORCEMENT (1931), https://www.ojp.gov/pdffiles1/Digitization/44549NCJRS.pdf [https://perma.cc/3VG9-CYVF].

23. *Miranda*, 384 U.S. at 445-47. The "third degree" refers to police officers' "use of physical brutality, or other forms of cruelty, to obtain involuntary confessions or admissions." Edwin R. Keedy, *The Third Degree and Legal Interrogation of Suspects*, 85 U. PA. L. REV. 761, 763 (1937).

24. *Miranda*, 384 U.S. at 448-55 (quoting police manuals instructing that: "The subject should be deprived of every psychological advantage. . . . The guilt of the subject is to be posited as a fact. . . . [The investigator] must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for a spell of several hours pausing only for the subject's necessities in acknowledgment of the need to avoid a charge of duress that can be technically substantiated. In a serious case, the interrogation may continue for days, with the required intervals for food and sleep, but with no respite from the atmosphere of domination," and detailing suggested practices including "the 'friendly-unfriendly' or the 'Mutt and Jeff' act," inducing confessions out of trickery, such as orchestrating a false lineup, and "point[ing] out the incriminating significance" of a suspect's invocation of his rights or the unnecessary expense "of any such professional service." (citing CHARLES E. O'HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION (1956); FRED E. INBAU & JOHN E. REID, CRIMINAL INTERROGATION AND CONFESSIONS (1962))).

25. *Id.* at 455; *see also id.* at 457 ("It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity.").

26. *Id.* at 448 ("Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms.").

27. *Id.* at 458.

28. *Id.* at 461 (citing Albertson v. Subversive Activities Control Bd., 382 U.S. 70, 81 (1965) (holding that the privilege against self-incrimination applies to members of the Communist Party's registration under the Subversive Activities Control Act); Hoffman v. United States, 341 U.S. 479, 486 (1951) (holding that the privilege against self-incrimination "not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime."); Arndstein

the scope of government power in order to preserve individual dignity and integrity.[29] Given the heavily antagonistic, state-dominated atmosphere of custodial interrogations, the Court concluded that the Fifth Amendment privilege has clear application in that setting,[30] for "[i]t is at this point that our adversary system of criminal proceedings commences."[31]

Having established the need for procedural safeguards to uphold the Fifth Amendment's protections and its application in custodial settings, the Court then laid out the specific warnings required as well as the rationales behind them.[32] Importantly, the Court made clear that its "decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform."[33] Rather, Congress and the states can devise alternative solutions to protect suspects' Fifth Amendment rights so long as they are "at least as effective" as the proposed *Miranda* warning.[34] A suspect's *awareness* of their rights, the Court observed, is "the threshold requirement for an intelligent decision as to [their] exercise."[35] After all, the constitutional privilege "applies to all individuals," and a decision requiring defendants to request a lawyer or otherwise invoke their rights prior to interrogation would "discriminate against the defendant who does not know his rights."[36]

Finally, before turning to the specific facts of the cases before it, the Court addressed the countervailing concern that the *Miranda* warning

v. McCarthy, 254 U.S. 71, 72-73 (1920) (applying the privilege against self-incrimination to a bankrupt refusing to answer questions concerning his assets and liabilities); Counselman v. Hitchcock, 142 U.S. 547, 562 (1892) (holding that the privilege against self-incrimination applies to grand jury proceedings)).

29. *Id.* at 460.

30. *Id.* at 462-63 ("In addition to the expansive historical development of the privilege and the sound policies which have nurtured its evolution, judicial precedent thus clearly establishes its application to incommunicado interrogation. In fact, the Government concedes this point as well established in No. 761, *Westover v. United States*, stating: 'We have no doubt . . . that it is possible for a suspect's Fifth Amendment right to be violated during in-custody questioning by a law-enforcement officer.'").

31. *Id.* at 477.

32. *Id.* at 467-79. The Court's discussion on the justifications underlying each individual warning is too extensive for this Note to fully explore.

33. *Id.* at 467.

34. *Id.* ("It is impossible for us to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States in the exercise of their creative rule-making capacities. Therefore we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted. . . . We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws.").

35. *Id.* at 468; *see also id.* at 468-69 (noting the impracticality of a case-by-case inquiry into whether a defendant was aware of their rights such that they could intelligently waive them: "Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clearcut fact. More important, whatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time.").

36. *Id.* at 470-72.

would impair the effectiveness of police investigations. First, the Court stated, "[g]eneral on-the-scene questioning . . . or other general questioning of citizens in the fact-finding process is not affected by our holding."[37] Moreover, statements given voluntarily are admissible as evidence regardless of whether a *Miranda* warning was given.[38] The Court went on to acknowledge the Federal Bureau of Investigation's "exemplary record of effective law enforcement" while routinely informing suspects of their rights at the outset of custodial interrogations.[39] Additionally, the Court noted similar evidentiary rules in place in other countries and in American military tribunals, which "also suggest[] that the danger to law enforcement in curbs on interrogation is overplayed."[40] In response to the argument that legislative bodies are better suited to promulgate rules regulating interrogations, the Court reiterated its holding that "the Constitution does not require any *specific* code of procedures,"[41] and regardless, deemed the issues facing the Court to be "of constitutional dimensions," which therefore "must be determined by the courts."[42]

Justices Clark,[43] Harlan,[44] and White[45] separately dissented. Justice Clark criticized the majority's reliance on police manuals to ascertain what transpires during custodial interrogations[46] and viewed the majority's holding as going "too far on too little."[47] He believed that custodial interrogation is an "essential tool in effective law enforcement" and cautioned against the promulgation of doctrinal rules in this area.[48] Instead, Justice Clark would adhere to the Court's voluntariness rule under the Due Process Clauses as the sole inquiry to determine the

37. *Id.* at 477.

38. *Id.* at 478.

39. *Id.* at 483-86.

40. *Id.* at 486-89; *see also id.* at 489-90 ("We deal in our country with rights grounded in a specific requirement of the Fifth Amendment of the Constitution, whereas other jurisdictions arrived at their conclusions on the basis of principles of justice not so specifically defined.").

41. *Id.* at 490 (emphasis added).

42. *Id.*

43. Justice Clark dissented in case Nos. 759, 760, and 761, and concurred in the judgment in case No. 584. *Id.* at 499 (Clark, J., concurring in part and dissenting in part).

44. Justice Harlan's dissent was joined by Justices Stewart and White. *Id.* at 503 (Harlan, J., dissenting).

45. Justice White's dissent was joined by Justices Harlan and Stewart. *Id.* at 526 (White, J., dissenting).

46. *Id.* at 499 (Clark, J., concurring in part and dissenting in part) ("The materials [the majority] refers to as 'police manuals' are, as I read them, merely writings in this field by professors and some police officers. Not one is shown by the record here to be the official manual of any police department, much less in universal use in crime detection.").

47. *Id.*

48. *Id.* at 501 (quoting Haynes v. Washington, 373 U.S. 503, 515 (1963)).

admissibility of statements made during custodial interrogations.[49] He would view the failure to give the *Miranda* warning as just one factor to consider when examining the circumstances surrounding a confession.[50]

Justices Harlan and White also opined that the due process voluntariness test served as an adequate safeguard against the admission of statements obtained in violation of the Self-Incrimination Clause.[51] In their dissents, Justices Harlan and White focused on the history and text of the Fifth Amendment and concluded that it left the majority's rule unsupported.[52] Although Justice Harlan recognized that "the privilege [against self-incrimination] embodies basic principles always capable of expansion," he concluded that the due process standard governing confessions has "openly . . . absorbed" the concerns for the accused which the majority sought to address.[53] And Justice White conceded that the majority had made "new law and new public policy in much the same way that it has in the course of interpreting other great clauses of the Constitution," something "the Court historically has done. Indeed . . . what it must do and will continue to do until and unless there is some fundamental change in the constitutional distribution of governmental powers."[54] Both Justices, however, perceived the public policy behind the majority's rule as too weak to justify its potential implications on criminal confessions.[55] Instead, they emphasized their perspective that the *Miranda* warning would unduly frustrate law enforcement efforts.[56]

The *Miranda* Court's ruling, however, did not see the defendants before the Court simply go free. On remand, Ernesto Miranda was re-convicted of kidnapping and rape despite the fact that his own confession

49. *Id.* at 503.

50. *Id.*

51. *See id.* at 508 (Harlan, J., dissenting) (citation omitted) ("[W]ith over 25 years of precedent the Court has developed an elaborate, sophisticated, and sensitive approach to admissibility of confessions. It is 'judicial' in its treatment of one case at a time, flexible in its ability to respond to the endless mutations of fact presented, and ever more familiar to the lower courts."); *id.* at 538-39 (White, J., dissenting).

52. *See id.* at 505-14 (Harlan, J., dissenting) ("To incorporate this notion into the Constitution requires a strained reading of history and precedent . . . . Even those who would readily enlarge the privilege must concede some linguistic difficulties since the Fifth Amendment in terms proscribes only compelling any person 'in any criminal case to be a witness against himself.'"); *id.* at 526-37 (White, J., dissenting).

53. *Id.* at 511 (Harlan, J., dissenting).

54. *Id.* at 531 (White, J., dissenting).

55. *See id.* at 514-24 (Harlan, J., dissenting); *id.* at 537-45 (White, J., dissenting).

56. *See id.* at 516-17 (Harlan, J., dissenting) ("What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it."); *id.* at 539-41 (White, J., dissenting).

and the victim's identification testimony were suppressed.[57] Carl Calvin Westover, accused of bank robbery, was again found guilty at his second trial, and received the same thirty-year sentence as had been originally imposed.[58]

2. Interpreting the Custodial Interrogation Requirement

As the *Miranda* Court made clear, its holding does not affect the ordinary investigatory capacity of the police. Rather, the *Miranda* warning is required only when a suspect is subjected to custodial interrogation, which the Court has defined as "express questioning or its functional equivalent"[59] "while [the suspect is] in custody or otherwise deprived of [] freedom of action in any significant way."[60] Later cases clarified the circumstances in which a defendant is considered to be in custody. Although the following cases are not exhaustive, they illustrate the relatively limited type of situation in which a *Miranda* warning is required prior to a police interaction.

In *Oregon v. Mathiason*, the Supreme Court held that questioning in a "coercive environment," does not automatically render a suspect in custody.[61] The Court reasoned that all police interactions have inherently coercive aspects, and the *Miranda* warning is not required merely because questioning takes place at a police station, "or because the questioned person is one whom the police suspect."[62]

In *Berkemer v. McCarty*, the Court further clarified that, when a suspect is subjected to a brief traffic stop, they will not be found to have been in custody and thus do not need to be given the *Miranda* warning.[63] The Court opined that the temporary and public nature of such a stop make the "atmosphere . . . substantially less 'police dominated' than that surrounding the kinds of interrogations at issue in *Miranda*."[64]

57. *The Law: Catching Up with Miranda*, TIME (Mar. 3, 1967), https://content.time.com/time/subscriber/article/0,33009,843458,00.html [https://perma.cc/FTQ9-HPTC].

58. *Id.*

59. Rhode Island v. Innis, 446 U.S. 291, 300-301 (1980) ("[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.").

60. *Miranda*, 384 U.S. at 445.

61. 429 U.S. 492, 495-96 (1977).

62. *Id.* at 495.

63. 468 U.S. 420, 440 (1984).

64. *Id.* at 437-39.

Illinois v. Perkins is also illuminating.[65] There, the Court held that undercover officers questioning incarcerated suspects need not administer *Miranda* warnings.[66] In so holding, the Court reasoned that "*Miranda* forbids coercion, not mere strategic deception," and "[t]he essential ingredients of a 'police-dominated atmosphere' and compulsion are not present when an incarcerated person speaks freely to someone whom he believes to be a fellow inmate."[67]

Together, these cases and their companions establish that "a court must examine all of the circumstances surrounding the interrogation" to determine whether a suspect is in custody and a *Miranda* warning is required.[68] "[T]he ultimate inquiry is simply whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest."[69]

3. Subsequent *Miranda* Cases

While some cases following *Miranda* chipped away at the protections it gave individuals in custodial interrogation, several others seemed to confirm its status as a constitutional rule.

For example, one of the first exceptions to the *Miranda* rule was fixed in the 1971 decision, *Harris v. New York*.[70] In *Harris*, the Court held that, although the prosecution is barred from using a defendant's un-*Mirandized* statement in their case in chief, the un-*Mirandized* statement *can* be used to impeach the defendant's credibility on cross examination, provided that the statement was voluntarily made.[71]

Three years later, in *Michigan v. Tucker*, the Court held that a police officer's failure to give a defendant the full *Miranda* warning prior to questioning does not bar the introduction of testimony obtained from a

65. 496 U.S. 292 (1990).

66. *Id.* at 299-300.

67. *Id.* at 296-97.

68. Stansbury v. California, 511 U.S. 318, 322 (1994); *see also* J.D.B. v. North Carolina, 564 U.S. 261, 270-77 (2011) (holding that, although the question "whether a suspect is 'in custody' is an objective inquiry," a child's age is relevant to the analysis to the extent that it is known or reasonably apparent to the interrogating officer).

69. *Stansbury*, 511 U.S. at 322 (quoting California v. Beheler, 463 U.S. 1121, 1125 (1983) (per curiam)).

70. 401 U.S. 222 (1971).

71. *Id.* at 226. In so holding, the Court invoked the reasoning of *Walder v. United States*, 347 U.S. 62, 65 (1954), which permitted physical evidence obtained in violation of the Fourth Amendment to be used for impeachment purposes: "It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths." *Id.* at 224. The Court later extended its ruling in *Harris* in holding that statements made *after* a defendant invokes their *Miranda* rights can also be used for impeachment purposes. *See* Oregon v. Hass, 420 U.S. 714, 722-23 (1975).

witness whose identity was discovered as a result of the defendant's otherwise voluntary statements.[72] The Court reasoned that the officer's conduct "did not abridge [the defendant's] constitutional privilege against compulsory self-incrimination, but departed only from the prophylactic standards later laid down by this Court in *Miranda* to safeguard that privilege."[73] Because the evidence the prosecution "sought to introduce was not a confession of guilt . . . or indeed even an exculpatory statement . . . but rather the testimony of a third party who was subjected to no custodial pressures,"[74] the Court weighed the state's interest in introducing "relevant and trustworthy evidence" against "the need to provide an effective sanction to a constitutional right," and determined that exclusion of the defendant's own statements was sufficient to safeguard his Fifth Amendment rights.[75]

Engaging in a similar balancing of interests—and relying on the Court's determination that a violation of *Miranda*'s prophylaxis is not tantamount to a violation of the Fifth Amendment—the Court in later cases has held that: a public safety concern can override the requirement that the *Miranda* warning be given prior to questioning;[76] the initial failure to *Mirandize* a suspect does not "taint" statements made after a subsequent *Miranda* warning and waiver;[77] a suspect's "ambiguous" or "equivocal" request for an attorney does not require that the interrogation cease until an attorney is present (and officers are not required to ask clarifying questions);[78] and *Miranda* does not bar the admission of the physical fruit of an un-*Mirandized* but voluntary statement into evidence.[79] Further, the Court has held that an "express written or oral statement" from a suspect waiving their *Miranda* rights is not required; rather, waiver can be inferred from the circumstances.[80]

72. Michigan v. Tucker, 417 U.S. 433, 451-52 (1974).

73. *Id.* at 446.

74. *Id.* at 449.

75. *Id.* at 450-51.

76. New York v. Quarles, 467 U.S. 649, 657-59 (1984).

77. Oregon v. Elstad, 470 U.S. 298, 300 (1985).

78. Davis v. United States, 512 U.S. 452, 458-62 (1994) (finding that the suspect's statement, "[m]aybe I should talk to a lawyer," was insufficient to invoke his right to counsel).

79. United States v. Patane, 542 U.S. 630, 636 (2004).

80. North Carolina v. Butler, 441 U.S. 369, 373 (1979); *see, e.g.*, Berghuis v. Thompkins, 560 U.S. 370, 376, 385-88 (2010) (finding that a defendant had waived his *Miranda* rights after he declined to sign a waiver form and remained completely silent other than giving a few limited verbal responses for nearly three hours until answering yes to the detective's questions: "Do you pray to God?" and "Do you pray to God to forgive you for shooting that boy down?" and rejecting the defendant's argument that a *Miranda* waiver must be obtained prior to questioning as inconsistent with *Butler*'s holding that waiver can be inferred from the circumstances). In *Edwards v. Arizona*, 451 U.S. 477, 484 (1981), however, the Court held that, once a suspect has invoked their right to counsel, "a valid waiver . . . cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has [again] been advised of his rights." Instead, the accused is not subject to further questioning until counsel is made

The Court has, however, invalidated police protocol instructing officers to interrogate and elicit confessions, follow those confessions with *Miranda* warnings, and then have the suspects repeat their prior, unwarned confessions.[81] In *Missouri v. Seibert*, the Court determined that such a practice impermissibly "threatens to thwart *Miranda*'s purpose of reducing the risk that a coerced confession would be admitted."[82] And in *Withrow v. Williams*, the Court declined to extend *Stone v. Powell*—which held that federal habeas corpus review "is not available to a state prisoner alleging that his conviction rests on evidence obtained through an unconstitutional search or seizure" when the state had given a "full and fair chance to litigate" the Fourth Amendment claim—to restrict a defendant from raising an alleged *Miranda* violation in federal habeas corpus proceedings.[83]

In *Stone*, the Court had weighed the costs and benefits of allowing collateral review of an alleged Fourth Amendment exclusionary rule violation and determined that the limited deterrent value of such a claim was outweighed by the costs of excluding reliable evidence. The Court determined that it was also outweighed by the intrusion upon the public interest in "(i) the most effective utilization of limited judicial resources, (ii) the necessity of finality in criminal trials, (iii) the minimization of friction between our federal and state systems of justice, and (iv) the maintenance of the constitutional balance upon which the doctrine of federalism is founded."[84] By contrast, the *Withrow* Court held that, "'[p]rophylactic' though it may be . . . *Miranda* safeguards 'a fundamental *trial* right'" by "protecting a defendant's Fifth Amendment privilege against self-incrimination."[85] Furthermore, "[b]y bracing against 'the possibility of unreliable statements in every instance of in[-]custody interrogation,' *Miranda* serves to guard against 'the use of unreliable statements at trial.'"[86] Finally, the Court observed that a contrary ruling would simply encourage prisoners to convert their *Miranda* claims into

available "unless the accused himself initiates further communication . . . with the police." *Id.* at 484-85. In a later case, the Court held that a fourteen-day break in custody ends the *Edwards* presumption that a subsequent *Miranda* waiver is involuntary until counsel is present. Maryland v. Shatzer, 559 U.S. 98, 110 (2010). The Court reasoned that a fourteen-day period "provides plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody." *Id.*

81. Missouri v. Seibert, 542 U.S. 600 (2004).

82. *Id.* at 617.

83. Withrow v. Williams, 507 U.S. 680, 682-83 (1993) (citing Stone v. Powell, 428 U.S. 465 (1976)).

84. *Id.* at 686-87 (citing *Stone*, 428 U.S. at 491 n.31).

85. *Id.* at 691 (emphasis in original).

86. *Id.* at 692 (citations omitted).

due process voluntariness claims.[87] As such, disallowing habeas corpus review of *Miranda* violations would do little to serve judicial economy.[88]

Scholars have noted that the so-called "'prophylactic rules' cases are flatly inconsistent with the cases reversing state decisions" based on *Miranda* violations.[89] Whatever can be said for *Miranda*'s case law, however, the *Miranda* rule continues to govern the admissibility of statements obtained during custodial interrogations.

4. *Miranda*'s Impact on Law Enforcement

For many years after it was decided, politicians, the police, and the public widely criticized the *Miranda* decision's holding.[90] Common objections arose from the fact that *Miranda*'s holding is not supported by the text of the Fifth Amendment,[91] and the notion that the Court had engaged in impermissible judicial policymaking.[92] While some scholars

87. *Id.* at 693.

88. *Id.* at 693-94.

89. *See* Donald Dripps, *Is the* Miranda *Caselaw Really Inconsistent? A Proposed Fifth Amendment Synthesis*, 17 CONST. COMMENT. 19, 20 & n.9 (2000).

90. *See, e.g.*, Richard A. Leo, *The Impact of* Miranda *Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 622 (1996) ("Along with only a few other Supreme Court decisions, *Miranda* has generated enormous popular, political, and academic controversy. In its immediate aftermath, the *Miranda* opinion was assailed by police, prosecutors, politicians, and media."); Patrick A. Malone, *"You Have the Right to Remain Silent":* Miranda *After Twenty Years*, 55 AM. SCHOLAR 367, 367 (1986) ("When issued twenty years ago, [*Miranda*] quickly became—and remains to this day—the most reviled decision ever issued by the Supreme Court in a criminal case. Congressmen called for Chief Justice Earl Warren's impeachment. Constitutional amendments were introduced. Police chiefs predicted chaos. Richard Nixon won the presidency in part by holding up *Miranda* as Exhibit One in the indictment against the excesses of the Warren Court for 'coddling criminals' and 'hand-cuffing the police.'").

91. *See, e.g.*, Albert W. Alschuler, Miranda*'s Fourfold Failure*, 97 B.U. L. REV. 849, 850-51 (2017) (arguing that "*Miranda* seriously misconstrued the Fifth Amendment's privilege against self-incrimination"); John F. Stinneford, *The Illusory Eighth Amendment*, 63 AM. U. L. REV. 437, 464, 468 (2013) (writing that "[t]he interpretive emptiness at the heart of *Miranda* goes a long way toward explaining the dysfunction that has been associated with that case almost from the moment it was decided," and noting that the decision "was not built on an interpretation of the term 'compelled.'"); Miranda v. Arizona, 384 U.S. 436, 511 (1966) (Harlan, J., dissenting) ("Even those who would readily enlarge the privilege must concede some linguistic difficulties since the Fifth Amendment in terms proscribes only compelling any person 'in any criminal case to be a witness against himself.'").

92. *See, e.g.*, Alschuler, *supra* note 91, at 876-80 (arguing that *Miranda* was a "jurisprudential failure" because the Court departed from the appropriate role of the judiciary); Stinneford, *supra* note 91, at 445 (writing that critics "accused the *Miranda* Court of engaging in judicial legislation that violated the Constitution's structural limitations on the judicial role.").

faulted the *Miranda* decision as one "handcuffing" the police,[93] others noted that *Miranda* was never "as radical as critics have painted it."[94]

Although there is scholarly debate surrounding *Miranda*'s concrete effects on law enforcement efforts, Professors George C. Thomas III and Richard A. Leo report a general consensus from first-generation *Miranda* impact studies[95] that "the *Miranda* rules had only a marginal effect on the ability of the police to elicit confessions and on the ability of prosecutors to win convictions[.]"[96] Professors Thomas and Leo further observed that, although second-generation *Miranda* impact studies[97] generated "considerable interpretive disagreement,"[98] there has been "relatively little dispute" that police have since implemented and adapted to the *Miranda* requirements and commonly obtain waivers from suspects.[99]

Moreover, the *Miranda* decision did not stop police from using psychologically manipulative tactics in the interrogation room. It is legal for law enforcement officers to employ deceptive interrogation tactics against adults in all fifty states and against juveniles in forty-seven states.[100] Further, scholars have noted *Miranda*'s failure "to adequately

93. *See, e.g.*, Paul G. Cassell & Bret S. Hayman, *Police Interrogation in the 1990s: An Empirical Study of the Effects of* Miranda, 43 UCLA L. REV. 839 (1996); 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); *but see* Stephen J. Schulhofer, Miranda *and Clearance Rates*, 91 NW. U. L. REV. 278 (1996) (replying to Paul G. Cassell, *All Benefits, No Costs: The Grand Illusion of* Miranda*'s Defenders*, 90 NW. U. L. REV. 1084 (1996)); John J. Donohue III, *Did* Miranda *Diminish Police Effectiveness?*, 50 STAN. L. REV. 1147 (1998).

94. Malone, *supra* note 90, at 367-68 ("All this controversy was over a decision that required police departments to do what many law enforcement agencies already practiced . . . . *Miranda* has met neither side's expectations. The creation of a suspect's right to be told his rights has not appreciably affected the confession rate. Nor has *Miranda* curbed the use by police interrogators of such tactics as showing the suspect fake evidence, putting the suspect to a phony lie detector test that he is guaranteed to flunk, and making fraudulent offers of sympathy and help."); *see also* Richard A. Leo, *Questioning the Relevance of* Miranda *in the Twenty-First Century*, 99 MICH. L. REV. 1000, 1001 (2001) (examining two generations of studies assessing *Miranda*'s impact and concluding "that *Miranda* has had a very limited impact (positive or negative) on the criminal justice system in the last two decades"); Alschuler, *supra* note 91, at 880-90 (discussing the competing research on *Miranda*'s impact and concluding that "[t]here is no reason to believe that *Miranda* has significantly changed the lives of [] suspects or made the police less effective in securing incriminating statements from them.").

95. First-generation *Miranda* impact studies were those conducted in the wake of the *Miranda* decision, between 1966 and 1973.

96. George C. Thomas III & Richard A. Leo, *The Effects of* Miranda v. Arizona: *"Embedded" in Our National Culture?*, 29 CRIME & JUST. 203, 232-38 (2002).

97. Second-generation *Miranda* impact studies were those conducted between 1996 and 2002.

98. *Id.* at 238-45 (discussing the competing conclusions of second-generation *Miranda* impact studies).

99. *Id.* at 244; *see also* Donald A. Dripps, *On the Costs of Uniformity and the Prospects of Dualism in Constitutional Criminal Procedure*, 45 ST. LOUIS U. L.J. 433, 435 n.11 (discussing research indicating that "*Miranda* has imposed only minor costs on law enforcement").

100. *See* Nigel Quiroz, *Five Facts About Police Deception and Youth You Should Know*, INNOCENCE PROJECT (May 13, 2022), https://innocenceproject.org/news/police-deception-lying-interrogations-youth-teenagers/ [https://perma.cc/V7GQ-SC36] ("Illinois, Oregon, and Utah have passed

prevent the police from using . . . exploitative tactics to help induce a waiver even *before* providing the warnings,"[101] such as police officers' use of "pre-*Miranda* conversation to build rapport" to obtain a waiver—and later a confession—and "downplay[ing] the significance of the warning or portray[ing] it as a bureaucratic step to be satisfied before a conversation may occur."[102]

In short, the *Miranda* decision has not stripped police of their ability to put suspects behind bars. In the midst of *Miranda*'s criticisms and praises, the United States has seen a 500% increase in jail and prison populations over the last forty years and remains a world leader in mass incarceration.[103]

B. Dickerson v. United States

In 2000, the *Miranda* warning's constitutional status was put to the ultimate test: could Congress legislatively supersede *Miranda* by entirely removing the procedural safeguard requirement from the interrogation room before a statement is admissible into evidence? The Supreme Court answered no.

Two years after *Miranda* was decided, Congress enacted 18 U.S.C. § 3501, which provides that, "[i]n any criminal prosecution . . . a confession . . . shall be admissible in evidence if it is voluntarily given."[104] The statute further instructs judges to consider all of the circumstances surrounding a confession when determining its voluntariness.[105] In effect, the statute supplanted the *Miranda* warning with the traditional voluntariness inquiry under the Due Process Clauses, rendering the *Miranda* warning superfluous.

In *Dickerson v. United States*, the Court was presented with the question, "whether the *Miranda* Court announced a constitutional rule or merely exercised its supervisory authority to regulate evidence in the

legislation to protect juveniles from the use of police deception during interrogations."); *see also* Stinneford, *supra* note 91, at 471 ("As long as the police give the requisite warnings and obtain the requisite waiver, they can still keep the defendant alone in a room and question him for hours, using psychological pressure and trickery to induce a confession."). Some common examples of police deception are falsely informing the suspect of the existence of incriminating evidence, such as physical or eyewitness testimony linking the suspect to the crime, and making false or otherwise unenforceable promises of leniency in exchange for a confession. *See also supra* note 24.

101. Scott W. Howe, *Moving Beyond* Miranda: *Concessions for Confessions*, 110 NW. U. L. REV. 905, 932-33 (2016) (emphasis added).

102. Yale Kamisar, *The Rise, Decline and Fall(?) of* Miranda, 87 WASH. L. REV. 965, 1024-25 (2012) (quoting Charles D. Weisselberg, *Mourning* Miranda, 96 CALIF. L. REV. 1519, 1562-63 (2008)).

103. *Growth in Mass Incarceration*, THE SENTENCING PROJECT, https://www.sentencingproject.org/research/ [https://perma.cc/6C2C-K8M2] (last visited Dec. 10, 2023).

104. 18 U.S.C. § 3501(a).

105. § 3501(b).

absence of congressional direction."[106] If *Miranda* was held to be a constitutional rule, § 3501 must be void, for "Congress may not legislatively supersede [the Supreme Court's] decisions interpreting and applying the Constitution."[107]

First, the Supreme Court, led by Chief Justice Rehnquist writing for the seven-member majority,[108] observed that the Court has "consistently applied *Miranda*'s rule to prosecutions arising in state courts," yet, "[w]ith respect to proceedings in state courts, [the Supreme Court's] 'authority is limited to enforcing the commands of the United States Constitution.'"[109] Second, the Court pointed to the repeated language in the *Miranda* opinion indicating it had pronounced a constitutional rule,[110] as well as the *Miranda* Court's invitation for legislative action so long as it is "*at least as effective*" in protecting individuals' constitutional rights.[111] Third, the Court addressed the ensuing exceptions to the *Miranda* rule, which demonstrate only "that no constitutional rule is immutable."[112]

Next, the Court turned to the principle of stare decisis, which directs courts to adhere to judicial precedent absent some "special justification."[113] Here, there was no such justification. In fact, the Court observed, "*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture."[114] The Court acknowledged that it has overruled "precedents when subsequent cases have undermined their doctrinal underpinnings," however, it did "not believe that this ha[d] happened to the *Miranda* decision."[115] Moreover, in practice, the traditional voluntariness test had proven difficult both for courts to apply, and for the police to conform

106. Dickerson v. United States, 530 U.S. 428, 437 (2000).

107. *Id.*

108. Chief Justice Rehnquist was joined by Justices Stevens, O'Connor, Kennedy, Souter, Ginsburg, and Breyer. Justice Scalia, joined by Justice Thomas, dissented. *Id*. at 431, 444.

109. *Id*. at 438 (citations omitted).

110. *Id.* at 439 n.4.

111. *Id.* at 440 (emphasis added) (quoting Miranda v. Arizona, 384 U.S. 436, 467 (1966)); *see also id.* at 440 n.6 ("[A] review of our opinion in *Miranda* clarifies that this disclaimer [that *Miranda* in no way creates a "constitutional straitjacket"] was intended to indicate that the Constitution does not require police to administer the particular *Miranda* warnings, not that the Constitution does not require a procedure that is effective in securing Fifth Amendment rights.").

112. *Id.* at 441 ("No court laying down a general rule can possibly foresee the various circumstances in which counsel will seek to apply it, and the sort of modifications represented by these cases are as much a normal part of constitutional law as the original decision.").

113. *Id.* at 443 (citation omitted).

114. *Id.* (citation omitted).

115. *Id.* "If anything," the Court stated, "our subsequent cases have reduced the impact of the *Miranda* rule on legitimate law enforcement while reaffirming the decision's core ruling that unwarned statements may not be used as evidence in the prosecution's case in chief." *Id.* at 443-44.

to.[116] Although the *Miranda* warning does not dispense with the traditional voluntariness test, *Miranda* provides a clear standard to ensure that suspects are aware of their rights so they are not compelled to speak when they would otherwise choose to remain silent or exercise their right to an attorney.[117]

For all these reasons, the Court held that *Miranda* is a constitutional rule, and as such, *Miranda* and its progeny control the admissibility of statements made during custodial interrogations notwithstanding Congress's efforts to impose a contrary rule.[118]

C. Vega v. Tekoh

42 U.S.C. § 1983 "provides a cause of action against any person acting under color of state law who 'subjects' a person or 'causes [a person] to be subjected . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.'"[119] Under § 1983, an individual whose rights were violated can recoup compensatory damages for their injuries.[120] Additionally, that individual can recover punitive damages from the actor responsible for the constitutional deprivation if the official conduct was "motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others."[121]

This civil liability under § 1983, however, is not absolute. The judicially created doctrine of qualified immunity renders government officials performing discretionary functions immune from suit when "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[122] In practice, qualified immunity protects "all but the plainly incompetent

116. *Id.* at 444; *id.* at 442 ("In *Miranda*, the Court noted that reliance on the traditional totality-of-the-circumstances test raised a risk of overlooking an involuntary custodial confession, a risk that the Court found unacceptably great when the confession is offered in the case in chief to prove guilt."); *see also* Paul Marcus, *It's Not Just About* Miranda*: Determining the Voluntariness of Confessions in Criminal Prosecutions*, 40 VAL. U. L. REV. 601, 638-41 (2006) (discussing the "extremely limited precedential value of any judicial opinion" applying the voluntariness test).

117. Dickerson v. United States, 530 U.S. 428, 444 (2000) ("The requirement that *Miranda* warnings be given does not, of course, dispense with the voluntariness inquiry. But as we said in *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984), 'cases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare.'").

118. *Id.* at 432.

119. Vega v. Tekoh, 142 S. Ct. 2095, 2101 (2022) (quoting 42 U.S.C. § 1983).

120. *See* Carey v. Piphus, 435 U.S. 247, 254-57 (1978) (holding that compensatory damages are appropriate under § 1983 where actual injury can be proven).

121. Smith v. Wade, 461 U.S. 30, 56 (1983).

122. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). See John C. Williams, *Qualifying Qualified Immunity*, 65 VAND. L. REV. 1295 (2012), for a more comprehensive discussion on the doctrine.

or those who knowingly violate the law."[123] Accordingly, the doctrine has been the source of considerable controversy.[124] Nonetheless, the Supreme Court reasons that, "where an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken 'with independence and without fear of consequences.'"[125] In the 2022 case, *Vega v. Tekoh*, the Supreme Court held that a *Miranda* violation does not provide a basis for a claim under § 1983.[126]

Terence Tekoh, an employee at a Los Angeles medical center, was accused of sexually assaulting a patient.[127] Deputy Carlos Vega responded to the incident.[128] According to Tekoh's version of events, Vega requested to speak to Tekoh in private and was referred to a windowless, soundproof MRI "reading room."[129] There, Vega allegedly refused to allow Tekoh's co-worker to accompany him, blocked the exit, and questioned Tekoh for around forty minutes while Tekoh "adamantly denied" the allegation—even after Vega falsely informed Tekoh that the incident had been captured on video.[130] Then, Tekoh alleged, after requesting to speak to his lawyer and attempting to leave the room when the request was denied, Vega rushed at him with his hand on his gun, called Tekoh a racial slur, threatened to have his family deported, and demanded Tekoh "write what the patient said [he] did."[131] When Tekoh hesitated, Vega allegedly placed his hand on his gun, again, and forced Tekoh to write a confession, which Vega dictated.[132]

Vega's version of events was much more cordial. Vega alleged that Tekoh had admitted to making a "mistake," asked to speak with the deputy in private, and "wrote out the confession himself without further prompting."[133] Regardless, it was undisputed that Vega had not advised Tekoh of his rights during the encounter.[134] Over Tekoh's objection, his written confession was introduced at his trial in a California state court, and the jury returned a verdict of not guilty.[135]

123. Malley v. Briggs, 475 U.S. 335, 341 (1986).

124. *See, e.g.*, William Baude, *Is Qualified Immunity Unlawful?*, 106 CALIF. L. REV. 45 (2018); Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797 (2018).

125. *Harlow*, 457 U.S. at 819 (quoting Pierson v. Ray, 386 U.S. 547, 554 (1967)).

126. Vega v. Tekoh, 142 S. Ct. 2095, 2106 (2022).

127. Tekoh v. Cty. of Los Angeles, 985 F.3d 713, 715 (9th Cir. 2021).

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 715-16.

132. *Id.* at 716.

133. *Id.*

134. Vega v. Tekoh, 142 S. Ct. 2095, 2099 (2022).

135. *Id.* at 2100.

Subsequently, Tekoh brought suit under § 1983 "against Vega and several other defendants seeking damages for alleged violations of his constitutional rights."[136] His case centered around whether a *Miranda* violation was itself a violation of the Fifth Amendment.

The district court found "that the use of [Tekoh's written confession] alone was insufficient to demonstrate a violation of the right against self-incrimination."[137] Instead, the district court "instructed the jury that [Tekoh] had to show that the interrogation . . . was unconstitutionally coercive under the totality of the circumstances, with the *Miranda* violation only one factor to be considered."[138] The jury found in favor of Vega.[139] On appeal, the Ninth Circuit reversed, finding the Supreme Court's decision in *Dickerson* controlling.[140] The Ninth Circuit reasoned that "*Dickerson* made clear that the right of a criminal defendant against having an un-*Mirandized* statement introduced in the prosecution's case in chief is indeed a right secured by the Constitution," and therefore, "Tekoh ha[d] a [§ 1983] claim that his Fifth Amendment right against self-incrimination was violated."[141]

By a sharp political divide, the Supreme Court reversed.[142] First, the six-member conservative majority found that "*Miranda* itself was clear" that a violation of its rules do not "necessarily constitute a Fifth Amendment violation[.]"[143] The majority pointed to the *Miranda* Court's description of the warning as a "safeguard" to protect the right against compelled self-incrimination, the *Miranda* Court's suggestion that alternative procedures might adequately protect individuals' rights during custodial interrogations, and the Court's repeated characterization of *Miranda* as "prophylactic," citing a string of twenty post-*Miranda* cases to that effect.[144] The majority then turned to these cases, which it said had "engaged in the process of charting the dimensions of these new prophylactic rules" through a "weighing of the benefits and costs."[145] Some cases, the majority observed, "found that the balance of interests justified restrictions that would not have been possible if *Miranda* represented an explanation of the meaning of the Fifth Amendment right

136. *Id.*

137. Tekoh v. Cty. of Los Angeles, 985 F.3d at 714-15.

138. *Id.* at 715.

139. *Id.* at 717.

140. *Id.* at 715.

141. *Id.* at 720.

142. The majority opinion was authored by Justice Alito. Chief Justice Roberts, along with Justices Thomas, Gorsuch, Kavanaugh, and Barrett, joined. Justice Kagan penned the dissent, joined by Justices Breyer and Sotomayor. Vega v. Tekoh, 142 S. Ct. 2095, 2098, 2107 (2022).

143. *Id.* at 2101.

144. *Id.* at 2101-02.

145. *Id.* at 2103.

as opposed to a set of rules designed to protect that right,"[146] while other cases called for the rule's expansion.[147]

Next, the majority attempted to reconcile *Dickerson* with its holding, explaining that *Dickerson* "did not upend the Court's understanding of the *Miranda* rules as prophylactic."[148] Although *Dickerson* described *Miranda* as a "constitutional decision" that adopted a "constitutional rule," the *Vega* majority reasoned that *Miranda* was only constitutional in the sense that it claimed authority to adopt prophylactic rules necessary to *safeguard* constitutional rights; "[a]nd when the Court adopts a constitutional prophylactic rule of this nature, *Dickerson* concluded the rule has the status of a 'La[w] of the United States' that is binding on the States under the Supremacy Clause."[149] The *Vega* majority called this a "bold and controversial claim of authority," but found that the cases could not be understood any other way without disturbing the Court's *Miranda* jurisprudence or "taking the insupportable position that a *Miranda* violation is tantamount to a violation of the Fifth Amendment[.]"[150]

Reaffirming *Miranda*'s status as prophylactic, the majority reasoned that *Miranda* "should apply 'only where its benefits outweigh its costs'" and concluded that allowing a cause of action under § 1983 for *Miranda* violations was not justified.[151] The majority stated that providing such a cause of action would add little deterrent value against police misconduct; "disserve 'judicial economy' by requiring a federal judge or jury to adjudicate a factual question . . . that had already been decided by a state court[;]" "produce 'unnecessary friction' between the federal and state court systems[;]" and "present many procedural issues," such as whether

146. *Id.* at 2103-04 (citing Harris v. New York, 401 U.S. 222, 224-26 (1971) (holding that an un-*Mirandized* statement can be used for impeachment purposes); Michigan v. Tucker, 417 U.S. 433, 450-52 (1974) (holding that a witness's testimony was admissible in evidence even though knowledge of the witness's identity was obtained from the defendant's un-*Mirandized* statement); New York v. Quarles, 467 U.S. 649, 654-57 (1984) (holding that a concern for public safety can override the requirement that the *Miranda* warning be given prior to questioning); Oregon v. Elstad, 470 U.S. 298, 300 (1985) (holding that the initial failure to *Mirandize* a suspect does not "taint" statements made after a subsequent valid warning and waiver)).

147. *Id.* at 2104-05 (citing Doyle v. Ohio, 426 U.S. 610, 617-19 (1976) (holding that a defendant's silence following a *Miranda* warning cannot be used for impeachment purposes); Arizona v. Roberson, 486 U.S. 675, 682 (1988) (holding that "a suspect's post-warning request for counsel with respect to one offense barred later interrogation without counsel regarding a different offense"); Withrow v. Williams, 507 U.S. 680, 682-83 (1993) (holding that *Miranda* claims can be raised in federal habeas corpus proceedings)).

148. *Id.* at 2106.

149. *Id.*

150. *Id.* The majority appeared to sidestep the debate as to whether it has the authority to adopt constitutionally based prophylactic rules that are binding on the states. "But that is what the Court did in *Miranda*," and the *Vega* majority purported to accept *Miranda* "on its own terms" and to "follow its rationale" for the purpose of deciding Tekoh's case. *Id.* at 2106 n.5.

151. *Id.* at 2107 (citation omitted).

a federal court would owe deference to the trial court's factual findings, and whether the harmless error rule would apply.[152]

Conversely, the dissent from the more liberal Justice Kagan found that *Dickerson* provided a clear answer to the case at hand:

> *Dickerson v. United States* tells us in no uncertain terms that *Miranda* is a "constitutional rule." And that rule grants a corresponding right: If police fail to provide the *Miranda* warnings to a suspect before interrogating him, then he is generally entitled to have any resulting confession excluded from his trial. From those facts, only one conclusion can follow—that *Miranda*'s protections are a "right[]" "secured by the Constitution" under the federal civil rights statute.[153]

The dissent began by acknowledging that the Court has "given a broad construction to § 1983's broad language."[154] It then pointed to *Dickerson*, which said "again and again . . . [o]ver and over" that *Miranda* was a constitutional decision.[155] Further, the dissent noted *Miranda*'s substance as a constitutional rule: it cannot be abrogated by legislation, and it applies in state court proceedings as well as federal habeas corpus proceedings.[156] Thus, the dissent concluded, "*Dickerson* is unequivocal: *Miranda* is set in constitutional stone."[157]

Although the majority "basically agree[d]" with these premises (and "[h]ow could it not?"),[158] the dissent opined that the majority had arrived at the wrong conclusion. The dissent observed that, although *Miranda* may exclude some non-compelled statements, it still plainly "grants the defendant a legally enforceable entitlement—in a word, a right—to have his confession excluded."[159] Yet, the majority left harmed individuals with no redress.[160] Tekoh, an acquitted defendant who endured a criminal trial in which his un-*Mirandized* statement was used against him, was left with no avenue through which he could recover for the psychological and financial harm he suffered. "[A] remedy 'is a vital component of any

152. *Id.*

153. *Id.* at 2108 (Kagan, J., dissenting) (citations omitted).

154. *Id.* at 2108 (Kagan, J., dissenting) (citing Dennis v. Higgins, 498 U.S. 439 (1991) (holding that suits for violations of the Commerce Clause may be brought under 42 U.S.C. § 1983 and rejecting respondents' argument that "protection from interference with trade conferred by the Commerce Clause cannot be a 'right' because it is subject to qualification or elimination by Congress[,]" reasoning that, "[u]ntil Congress does so, such rights operate as 'a guarantee of freedom for private conduct that the State may not abridge.'")).

155. *Id.* at 2109.

156. *Id.*

157. *Id.*

158. *Id.* at 2110.

159. *Id.*

160. *Id.* at 2111.

scheme for vindicating cherished constitutional guarantees,'" the dissent wrote.[161] "The majority . . . injures the right by denying the remedy."[162]

D. Prophylactic Rules and Judge-Made Law

As noted by the majority in *Vega v. Tekoh*, the Court has repeatedly described the *Miranda* warning as "prophylactic."[163] Scholars have long debated the legitimacy of judicially created prophylactic rules,[164] which are generally defined as "risk-avoidan[t],"[165] preventive safeguards used to ensure "that constitutional violations will not occur,"[166] but are not themselves directly enumerated in the Constitution.

Some scholars argue that the Court's creation of such prophylactic rules is an unauthorized exercise of judicial power, infringing upon principles of federalism and the separation of powers.[167] They reason that "[s]uch rules are improper because the Constitution does not empower judges to create extra-constitutional rules and enforce them against other governmental actors; it only empowers judges to enforce the Constitution itself."[168] Other scholars, however, assert that "generating constitutional prophylactic rules and incidental rights to protect constitutional values is a beneficial and necessary function of the judiciary."[169] They note that

161. *Id.*

162. *Id.*

163. *See supra* note 144; *see also* Brian K. Landsberg, *Safeguarding Constitutional Rights: The Uses and Limits of Prophylactic Rules*, 66 TENN. L. REV. 925, 929 (1999) ("When *Miranda v. Arizona* was first decided, it was unclear which kind of rule it was. Only later did the Court identify the *Miranda* holding as a prophylactic rule." (citing Michigan v. Payne, 412 U.S. 47, 53 (1973))).

164. Landsberg, *supra* note 163, at 925; Vega v. Tekoh, 142 S. Ct. 2095, 2106 n.5 (2022) ("Whether this Court has the authority to create constitutionally based prophylactic rules that bind both federal and state courts has been the subject of debate among jurists and commentators.") (citations omitted)).

165. Landsberg, *supra* note 163, at 926 (defining prophylactic rules in full as "those risk-avoidance rules that are not directly sanctioned or required by the Constitution, but that are adopted to ensure that the government follows constitutionally sanctioned or required rules.").

166. Joseph D. Grano, *Prophylactic Rules in Criminal Procedure: A Question of Article III Legitimacy*, 80 NW. U. L. REV. 100, 105 n.22 (1985); *see also* Arthur Leavens, *Prophylactic Rules and State Constitutionalism*, 44 SUFFOLK U. L. REV. 415, 415 (2011) (defining prophylactic rules as "those specific constitutional rules meant to guide the implementation of broader federal constitutional principles.").

167. *See* Susan R. Klein, *Identifying and (Re)Formulating Prophylactic Rules, Safe Harbors, and Incidental Rights in Constitutional Criminal Procedure*, 99 MICH. L. REV. 1030, 1052 (2001); Grano, *supra* note 166, at 124 (arguing that, "[f]irst, the Court may violate the separation of powers doctrine by invading an area left to Congress or to the Executive under the Constitution. Second, the Court may violate the principle of federalism, embodied in the tenth amendment and in the structure of the Constitution, by intruding into an area reserved to the states. Third, the Court may do both of the above by invading an area in which the states have final authority until Congress chooses to enter the field pursuant to article I or some other delegation of authority.").

168. Stinneford, *supra* note 91, at 446; *see also* Klein, *supra* note 167, at 1034.

169. Klein, *supra* note 167, at 1035; Landsberg, *supra* note 163, at 955 ("One argument asserts that

"even the most concrete constitutional provision cannot be enforced without the use of judicially created rules that help [courts] determine whether the provision has been violated."[170]

Furthermore, some scholars view prophylactic rules as a necessary incident to the Court's own institutional limitations.[171] Professor Evan H. Caminker observed that "in many contexts there is no doctrinal test that can *perfectly* detect each instance in which the government has transgressed a particular constitutional norm."[172] Therefore, "a seemingly straightforward, case-by-case inquiry into whether a constitutional norm has been transgressed will result in what might be called 'adjudication errors,' meaning the production of false-negatives and false-positives."[173] Regarding the *Miranda* rule, Professor Caminker suggests that the Supreme Court could have reasonably determined that the case-specific due process voluntariness test created too great a risk that compelled confessions would be erroneously admitted into evidence; thus, a more manageable doctrinal rule was warranted.[174]

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because Article III confers the judicial power on the federal courts to decide cases, to do so they must fashion rules to govern the result of each case."); David A. Strauss, *The Ubiquity of Prophylactic Rules*, 55 U. CHI. L. REV. 190, 190 (1988) ("'[P]rophylactic' rules are not exceptional measures of questionable legitimacy but are a central and necessary feature of constitutional law."); Grano, *supra* note 166, at 141 ("As long as federal courts have jurisdiction to decide whether a state conviction was obtained in violation of the Constitution, they arguably also must have implied authority to make procedural rulings that aid them in performing this task."); Richard H. Fallon, Jr., *The Supreme Court 1996 Term—Foreword: Implementing the Constitution*, 111 HARV. L. REV. 54, 57 (1997) ("Identifying the 'meaning' of the Constitution is not the Court's only function. A crucial mission of the Court is to *implement* the Constitution successfully. In service of this mission, the Court often must craft doctrine that is driven by the Constitution, but does not reflect the Constitution's meaning precisely."); Jack G. Day, *Why Judges Must Make Law*, 26 CASE W. RSRV. L. REV. 563, 575 (1976) ("Judicial 'lawmaking' gives specific life to [the Constitution's] generalized principles and is essential to the operation of the constitutional system.").

170. Stinneford, *supra* note 91, at 448; *see also* Grano, *supra* note 166, at 162 ("That the Constitution itself may generate a body of 'constitutionally required' implementing detail should come as no surprise. The generation of such detail, after all, is what the process of interpretation frequently is all about."). Some scholars further argue that labelling certain rules as prophylactic "inappropriately raises concerns of legitimacy where none should exist." *See* Evan H. Caminker, Miranda *and Some Puzzles of "Prophylactic" Rules*, 70 U. CIN. L. REV. 1, 2, 25 (2001) ("[T]he adjective 'prophylactic' in this context is both unhelpful and unfortunate; there is no difference in kind, or meaningful difference in degree, between *Miranda*'s so-called prophylactic rule and the run-of-the-mill judicial doctrines routinely constructed by the Court that we unquestioningly accept as perfectly legitimate exercises of judicial power.").

171. *See* Klein, *supra* note 167, at 1053; Caminker, *supra* note 170, at 25-26 ("Almost all constitutional doctrine, from Article I and the First Amendment on down, represents a judicial judgment both about the content of the constitutional norm worthy of protection *and also* about a court's institutional capacity to enforce that norm in various ways, taking into account both its own propensities and limitations and those of other relevant actors such as lower federal and state courts."); Strauss, *supra* note 169, at 207 ("[I]n deciding constitutional cases, the courts constantly consider institutional capacities and propensities.").

172. Caminker, *supra* note 170, at 8.

173. *Id.* at 9.

174. *Id.* at 10-11 (detailing the difficulty trial courts face in attempting to "determine the historical set of events surrounding a custodial interrogation with 100% accuracy" and in delineating a precise

Notably, prophylactic rules are not confined to the realm of criminal procedure.[175] "[C]onstitutional law consists, to a significant degree, [of] the elaboration of doctrines that are universally accepted as legitimate, but that have the same 'prophylactic' character as the *Miranda* rule."[176] "[P]rophylactic reasoning in fashioning constitutional rules had its modern beginning in 1938, with footnote four of *United States v. Carolene Products*,"[177] which laid the groundwork for heightened judicial scrutiny of legislation that appears "within a specific prohibition of the Constitution."[178] A First Amendment example lies in *New York Times v. Sullivan*, in which the Court held that "the constitutional guarantees [of the First and Fourteenth Amendments] require . . . a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice[.]'"[179] Although neither of these decisions were explicitly described by the Court as "prophylactic," they exhibit the same principle characteristics of such rules: protecting core constitutional rights by employing a framework that reflects a considered balance of the interests at stake in a manner not specifically required by the Constitution.[180] Often, whether a rule is perceived as prophylactic

"metric by which to determine whether a particular defendant's will was actually 'overborne' by those events."). Caminker further observed that, "[c]ompared to the case-specific-voluntariness-test, *Miranda* likely screens out both more actually coerced confessions and more actually freely-given confessions; it is a more rigorous screen all around. But the Constitution certainly does not indicate a preference for the more porous screen." *Id.* at 26-27 (also noting that the voluntariness test "is 'no more 'directly compelled' by the Constitution, and no more a product of the 'explicit' text of the Constitution than *Miranda* itself.'").

175. *But see* Klein, *supra* note 167, at 1037 ("Constitutional criminal procedure is rife with prophylactic rules, which most often take the form of rebuttable or conclusive evidentiary presumptions or bright-line rules for law enforcement officials to follow. The Court finds the former necessary in cases where factfinding would be particularly difficult, the latter necessary to guide officials making snap judgment without legal training, and both justified by the reality that the Court has limited time to hear individual cases.").

176. Strauss, *supra* note 169; *see also* Stinneford, *supra* note 91, at 447 ("It is undoubtedly true that judges—including 'originalists' like Justice Scalia—use rules to implement the Constitution that could be characterized as prophylactic.").

177. Landsberg, *supra* note 163, at 931.

178. United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938); *see also* Tara Leigh Grove, *Tiers of Scrutiny in a Hierarchical Judiciary*, 14 GEO. J.L. & PUB. POL'Y 475, 477 (2016) (describing the tiers of scrutiny under the Equal Protection Clause as "prophylactic rules"); Strauss, *supra* note 169, at 204-07 (same).

179. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964); *see also* Landsberg, *supra* note 163, at 932 (describing the rule in *Sullivan* as "prophylactic"); David A. Strauss, Miranda, *the Constitution, and Congress*, 99 MICH. L. REV. 958, 965-66 (2001) (same).

180. *See* Landsberg, *supra* note 163, at 958 ("The rule of *Carolene Products*'s note four relies in part on structural analysis and partly on factual and historical evidence of risk. Those risks are closely linked to the emerging prophylactic rule, which is designed to assure practical and not just theoretical protection of rights."); Strauss, *supra* note 169, at 204-05 ("One of the principal justifications for this strict scrutiny is that racial (and certain other) classifications are likely to reflect prejudiced or excessively stereotyped judgments by the legislature, and it will be difficult for courts to identify prejudiced judgments on a case-by-case basis. That warrants the use of a strict rule of presumptive (in race cases, nearly

simply depends on "how the Court describes the rule and its underlying rationale."[181]

In sum, the *Miranda* decision and the Court's reasoning therein is not as unique—or as revolutionary—as it has been portrayed.

E. Procedural Due Process

The Due Process Clauses of the Fifth and Fourteenth Amendments prohibit the federal and state governments respectively from depriving any person of "life, liberty, or property, without due process of law." [182] Due process is understood to consist of both a substantive and a procedural component. Substantive due process "prevents the government from engaging in conduct that 'shocks the conscience,' or interferes with rights 'implicit in the concept of ordered liberty,'"[183] while procedural due process "asks whether the government has followed the proper procedures when it takes away life, liberty or property."[184] Although this Part does not undertake an exhaustive review of the Court's interpretation and application of procedural due process, a brief explanation is appropriate to provide context for the following discussion.

The traditional formulation of procedural due process is the requirement of notice and an opportunity to be heard when one is deprived of life, liberty, or property by adjudication.[185] However, procedural due process is an evolving concept without fixed contours; it "is flexible and calls for such procedural protections as the particular situation demands."[186] As Justice Frankfurter observed, "'[d]ue process' is,

conclusive) invalidity. . . . Strict scrutiny therefore goes beyond the 'real' equal protection clause."); *see also* Strauss, *supra* note 179, at 965 (describing the justification for the rule in *Sullivan*: "false speech must be protected to some degree in order to avoid discouraging valuable speech."); Landsberg, *supra* note 163, at 934-35 ("[I]t is necessary to protect [false publications] in order to avoid 'the pall of fear and timidity imposed upon those who would give voice to public criticism' that would be the result of punishment for mistaken but nonmalicious publications about public figures.").

181. Grano, *supra* note 166, at 111.

182. U.S. CONST. amend. V; U.S. CONST. amend. XIV.

183. United States v. Salerno, 481 U.S. 739, 746 (1987) (citing Rochin v. California, 342 U.S. 165, 172 (1952); Palko v. Connecticut, 302 U.S. 319, 325-326 (1937)).

184. Erwin Chemerinsky, *Substantive Due Process*, 15 TOURO L. REV. 1501, 1501 (1999).

185. *See* Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) ("Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."); *see also* Fuentes v. Shevin, 407 U.S. 67, 80 (1972) ("It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'") (citing Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

186. Morrissey v. Brewer, 408 U.S. 471, 481 (1972); *see also* Bell v. Burson, 402 U.S. 535, 540 (1971) ("A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case.").

perhaps, the least frozen concept of our law—the least confined to history and the most absorptive of powerful social standards of a progressive society."[187] *Mathews v. Eldridge*[188] is the seminal procedural due process case in which the Court set forth three factors to measure the adequacy of procedural safeguards in a given situation:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[189]

The *Mathews* balancing test thus requires a cost-benefit analysis of the parties' interests in the procedural safeguard at issue; no single factor holds a determinative weight.[190]

Although the *Mathews* factors were borne in an administrative context (concerning the process for Social Security benefit termination), they have been invoked to evaluate procedural issues in criminal and related contexts, including whether magistrates can be constitutionally authorized to make findings and recommendations on motions to suppress evidence,[191] whether the Constitution requires the state to provide an indigent defendant whose sanity is in question access to psychiatric examination and assistance for their defense,[192] and the standards of proof required for both involuntary civil commitment to a mental hospital for an indefinite period[193] and for the termination of parental rights over objection.[194]

In its 1992 decision *Medina v. California*, the Court changed course

187. Griffin v. Illinois, 351 U.S. 12, 20-21 (1956) (Frankfurter, J., concurring); *see also* Cafeteria & Rest. Workers Union, Loc. 473 v. McElroy, 367 U.S. 886, 895 (1961) (Stewart, J.) (citation omitted) (internal quotation marks omitted) ("'Due' process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. It is compounded of history, reason, the past course of decisions.").

188. 424 U.S. 319 (1976).

189. *Id.* at 335.

190. *See* Bruce J. Winick, *Presumptions and Burdens of Proof in Determining Competency to Stand Trial: An Analysis of* Medina v. California *and the Supreme Court's New Due Process Methodology in Criminal Cases*, 47 U. MIAMI L. REV. 817, 839-45 (1993).

191. United States v. Raddatz, 447 U.S. 667, 677-81 (1980).

192. Ake v. Oklahoma, 470 U.S. 68, 77-83 (1985).

193. Addington v. Texas, 441 U.S. 418, 425-27 (1979).

194. Santosky v. Kramer, 455 U.S. 745, 758-68 (1982). *See also* United States v. Salerno, 481 U.S. 739, 746 (1987) (citing *Mathews* for the proposition that, "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner," and engaging in a similar balancing of government and individual interests to determine the constitutionality of the Bail Reform Act of 1984 provision allowing federal courts to detain an arrestee pending trial if the government demonstrates by clear and convincing evidence that the arrestee poses a danger to the community).

and held that the *Mathews* balancing test was not the appropriate framework for assessing the validity of state rules of criminal procedure.[195] The Court reasoned that, because the Bill of Rights provides various protections to criminal defendants, "the expansion of those constitutional guarantees under the open-ended rubric of the Due Process Clause invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order."[196] Therefore, the Court held that a state procedural rule is "not subject to proscription under the Due Process Clause unless 'it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'"[197]

Four Justices, however, rejected the *Medina* majority's holding that a balancing of equities is inappropriate in a criminal due process case.[198] Justice Blackmun, dissenting, observed that, in applying the Court's new standard, the majority had clearly engaged "in a balancing inquiry not meaningfully distinguishable from that of the *Mathews v. Eldridge* test it earlier appears to forswear."[199] Justice O'Connor, concurring in the judgment, similarly read the majority opinion as allowing "some weight to be given countervailing considerations of fairness . . . much like those [] evaluated in *Mathews*," because to read the decision otherwise would cast doubt on a number of criminal due process decisions in which the Court required states to implement procedures "neither required at

195. 505 U.S. 437, 443-45 (1992).

196. *Id.* at 443.

197. *Id.* at 445 (citing Patterson v. New York, 432 U.S. 197 (1977)). In evaluating the "fundamental fairness" of the evidentiary rule in *Medina*, the Court distinguished that rule—which required the defendant to bear the burden of proving their incompetence to stand trial—from other decisions placing the burden of proof on the government, such as a waiver of *Miranda* rights and the voluntariness of consent to a search. *Id.* at 451-52 (citing Colorado v. Connelly, 479 U.S. 157, 168-69 (1986); United States v. Matlock, 415 U.S. 164, 177-78 & n.14 (1974)). The Court reasoned that the latter decisions "involved situations where the government sought to introduce inculpatory evidence obtained by virtue of a waiver of, or in violation of, a defendant's constitutional rights," where the allocation of the burden of proof to the government furthered "the objective of 'deterring lawless conduct by police and prosecution,'" while the evidentiary rule at issue in *Medina* served "[n]o such purpose," and was not required by due process. *Id.* at 452.

198. *Id.* at 453 (O'Connor, J., concurring, joined by Souter, J.); *id.* at 460 (Blackmun, J., dissenting, joined by Stevens, J.) ("I do not interpret the Court's reliance on *Patterson* to undermine the basic balancing of the government's interests against the individual's interest that is germane to any due process inquiry."); *see also id.* at 462 n.2 ("Recently, several Members of this Court have expressly declined to limit *Mathews v. Eldridge* balancing to the civil administrative context and determined that *Mathews* provides the appropriate framework for assessing the validity of criminal rules of procedure. (citing Burns v. United States, 501 U.S. 129, 148-56 (1991) (applying *Mathews* to federal criminal sentencing procedures, stating that *Mathews* does not apply only to civil 'administrative' determinations but '[t]he *Mathews* analysis has thus been used as a general approach for determining the procedures required by due process whenever erroneous governmental action would infringe an individual's protected interest[.]'))"); *accord* Parham v. J. R., 442 U.S. 584, 599 (1979) (stating that prior holdings applying *Mathews* "set out a general approach for testing challenged state procedures under a due process claim.").

199. *Medina*, 505 U.S. at 462 (Blackmun, J., dissenting).

common law nor explicitly commanded by the text of the Constitution."[200]

Some scholars have argued against a fixed, historical due process approach as incompatible with the principles underlying the Due Process Clauses and the function of judicial review.[201] They argue such an approach inappropriately prevents courts from considering "newly emerging forms of injustice that have no historical analogue" and from reconsidering "practices previously upheld that now appear to be manifestly unjust."[202] Professor Niki Kuckes further contends that the divergent approaches taken toward procedural due process in civil and criminal cases, specifically at the pre-trial stage, is particularly unjustified because criminal defendants often lack key notice-and-hearing rights despite the fact that they have comparable and often greater interests at stake than their civil counterparts.[203]

III. DISCUSSION

Miranda's classification as a "prophylactic" rule and the Court's corresponding determination that a *Miranda* violation does not amount to a violation of the Fifth Amendment has led to the steady erosion of *Miranda*'s protections for suspects in custodial interrogation. Both

200. *Id.* at 454 (O'Connor, J., concurring) (citing Griffin v. Illinois, 351 U.S. 12 (1956) (due process right to trial transcript on appeal); Brady v. Maryland, 373 U.S. 83 (1963) (due process right to discovery of exculpatory evidence); Sheppard v. Maxwell, 384 U.S. 333 (1966) (due process right to protection from prejudicial publicity and courtroom disruptions); Chambers v. Mississippi, 410 U.S. 284 (1973) (due process right to introduce certain evidence); Gagnon v. Scarpelli, 411 U.S. 778 (1973) (due process right to hearing and counsel before probation revoked); Ake v. Oklahoma, 470 U.S. 68 (1985) (due process right to psychiatric examination when sanity is significantly in question)).

201. *See* Sandford H. Kadish, *Methodology and Criteria in Due Process Adjudication—A Survey and Criticism*, 66 YALE L.J. 319, 340-41 (1957) ("The need for a flexible due process, whose contours are not permanently shaped by any fixed mold, but which can adapt to drastically changed and changing social contexts, is suggested by a proper regard for the function of such a clause in the written constitution of a democratic community committed to the doctrine of judicial review. . . . Freezing the meaning of due process . . . destroys the chief virtue of its generality: its elasticity."); Winick, *supra* note 190, at 832-36 ("The restricted due process approach of *Medina* [] impinges on the Court's historic role in constitutional adjudication in criminal cases. . . . The Due Process Clause, 'the least specific and most comprehensive protection of liberties,' is one of a number of broad and general phrases in the Constitution that exist as 'organic living institutions,' for which an exclusively traditional approach seems particularly inappropriate.") (quoting Rochin v. California, 342 U.S. 165, 170 (1952); Gompers v. United States, 233 U.S. 604, 610 (1914)).

202. Winick, *supra* note 190, at 864; Kadish, *supra* note 201, at 341 (stating that, under a fixed conception of due process, "[f]uture generations would become bound to the perceptions of an earlier one; the experience that develops with changing modes of governmental power, unpredicted and unpredictable at an earlier time, as well as the deeper insights into the nature of man in organized society that are gained in continually changing social contexts, would become irrelevant.").

203. *See* Niki Kuckes, *Civil Due Process, Criminal Due Process*, 25 YALE L. & POL'Y REV. 1, 14-17, 39-42 (2006) (arguing that the Court's approach to criminal procedural due process has "neither the clarity nor the consistency of the civil due process test").

Dickerson and *Vega* presented the Supreme Court with the opportunity to unequivocally clarify *Miranda*'s constitutional basis, but both decisions left wanting, keeping *Miranda* intact while failing to reinforce the decision with a straightforward interpretive foundation.

Part A of this Section offers an alternative justification for the *Miranda* rule, grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments. Accordingly, Part A reframes the *Miranda* decision as encompassing a two-part holding: (1) the verbatim *Miranda* warning itself is not directly compelled by the Constitution, but (2) some equivalent procedural safeguard is constitutionally required to protect individuals' liberty interest in intelligently exercising their rights during custodial interrogations. Part A further argues that *Vega* was wrongly decided; failure to provide the *Miranda* warning or some equivalent procedural safeguard at the outset of custodial interrogation violated Tekoh's "rights . . . secured by the Constitution" under 42 U.S.C. § 1983.[204]

Recognizing that this reinterpretation was not undertaken by the Supreme Court, Part B of this Section suggests Congress and state legislatures should adopt legislation to ensure individuals' constitutional rights are protected, and appropriate civil redress is available for *Miranda* violations. Additionally, Part B proposes that police departments should endorse policies aimed at protecting constitutional rights and maintaining public trust and integrity in law enforcement.

A. Miranda *as a Procedural Due Process Requirement*

The Supreme Court is charged with interpreting and applying the Constitution, contingent on its authority to hear a case.[205] Therefore, a defensible interpretation of *Miranda* as a constitutional rule must start explicitly with the Constitution's text.

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."[206] Faced with the reality that modern police practices involve psychologically manipulative tactics that threaten to overbear the will of interrogated individuals, the *Miranda* Court found that procedural safeguards were necessary to ensure that statements made in custody are truly voluntary before they are introduced against a defendant in court.[207] The Court rooted its holding in the Fifth Amendment's Self-Incrimination Clause.

204. Quoting 42 U.S.C. § 1983.

205. *See* U.S. CONST. art. III, § 2, cl. 1.

206. U.S. CONST. amend. V.

207. *See* discussion *supra* Part II.A.1.

On its face, this makes sense. The purpose of the *Miranda* rule is to uphold the privilege against self-incrimination; therefore, it is required by the Self-Incrimination Clause. But, as the *Miranda* dissenters recognized, the Self-Incrimination Clause does not *itself* require procedural safeguards to ensure that the privilege is protected.[208] Further, critics point out that statements made in custody, even absent the *Miranda* warning, are not *necessarily* compelled within the meaning of the Fifth Amendment,[209] and the Court has likewise noted in a number of cases that a *Miranda* violation is not always equivalent to a violation of the Fifth Amendment.[210] Indeed, a suspect may already be fully aware of their rights, or may be unswayed by police coercion and decide of their own free will that speaking to the police is in their best interest. Consequently, the Court in later cases described *Miranda* as a prophylactic rule designed to protect the Fifth Amendment privilege, rather than itself a right secured by the Constitution, and engaged in a cost-benefit analysis when charting the outer bounds of its authority.[211]

But the fact that a *Miranda* violation does not always result in a violation of the right against compelled self-incrimination does not make *Miranda* any less constitutionally indispensable. A right that is not protected—one that can be disregarded by those entrusted with the power of the state in an environment in which it is most at risk—is, in effect, not a right at all but a mere formality.

The procedural due process component of the Due Process Clauses, however, specifically require precisely what the *Miranda* Court prescribed. Procedural due process demands that the government follow constitutionally sufficient procedures when it deprives an individual of life, liberty, or property[212] to guard against the abuse of government power[213] and to minimize the risk of error inherent to the truth-finding process.[214] When determining whether a suspect is in custody (and a *Miranda* warning is required), the Court asks whether there was "a

208. *See* discussion *supra* Part II.A.1.

209. *See supra* note 91.

210. *See* discussion *supra* Part II.A.3.

211. *See* discussion *supra* Part II.A.3.

212. Chemerinsky, *supra* note 184.

213. Kadish, *supra* note 201, at 340 ("The substantive and procedural limitations of the Constitution, therefore, are directed toward imposing those limitations upon governmental power that are required in the interests of preserving a free society."); *see also* Snyder v. Massachusetts, 291 U.S. 97, 127 (1934) ("In whatsoever proceeding, whether it affect property or liberty or life, the Fourteenth Amendment commands the observance of that standard of common fairness, the failure to observe which would offend men's sense of the decencies and proprieties of civilized life.").

214. Mathews v. Eldridge, 424 U.S. 319, 344 (1976); *see also* Kadish, *supra* note 201, at 350 ("[T]he various traditional procedural requirements of due process indicate the influence of two significant values: (1) maximization of the reliability of the guilt determination process, and (2) preservation of the intrinsic dignity of the individual.").

'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest."[215] Thus, by definition, when a suspect is in custody, they are deprived of their liberty to move freely. This deprivation of liberty—coupled with coercive interrogation tactics executed in an isolated environment designed to compel suspects to forgo their rights—creates too great a risk that individuals' constitutional rights will be erroneously disregarded. For this reason, procedural safeguards are necessary to ensure that suspects in custodial interrogations are accorded the liberty to exercise their rights. The fact that the *Miranda* Court itself described the warning as a "procedural safeguard" further suggests its logical home within the Due Process Clauses as opposed to within the amendment it is necessary to uphold.

Miranda v. Arizona was decided a decade before the Court set forth the modern procedural due process standard in *Mathews v. Eldridge*,[216] and a quarter-century before the Court shifted toward the more history-based inquiry of *Medina v. California*.[217] Although *Medina* marked the Court's abandonment of the *Mathews* factors in criminal due process cases, it should not be read to give historical practices a determinative weight. If the guarantee of due process is to have meaning in a modern society, the question of what amounts to due process of law must be able to develop alongside evolving modes of government power.[218] To construe procedural due process such that it encompasses only those protections expressly mentioned in the Bill of Rights and accompanying historical practices is to effectively read the Due Process Clauses right out of the Constitution (and, as Justice O'Connor noted, is at odds with many of the Court's criminal due process decisions).[219] The flexibility of the *Mathews* balancing approach, on the other hand, better effectuates the Due Process Clauses' guarantee and allows for a more holistic determination of what amounts to fair procedure. Therefore, this Note suggests that a *Mathews v. Eldridge*-type balancing test is an appropriate vehicle through which to analyze the efficacy of the *Miranda* warning. An analysis of the *Mathews* factors demonstrates that, if anything, the Constitution demands *more* than what *Miranda* requires.

The first factor, the private interest affected by the official action, is exceedingly important. Individuals have a compelling interest in being informed of their rights during custodial interrogations so that they can make an intelligent decision as to their exercise at a meaningful time in the adversary process. Although not itself a formal adjudicatory

215. Stansbury v. California, 511 U.S. 318, 322 (1994).

216. 424 U.S. 319 (1976).

217. 505 U.S. 437 (1992).

218. *See generally* Kadish, *supra* note 201; Winick, *supra* note 190.

219. *See supra* note 200 and accompanying text.

proceeding, custodial interrogation is where "our adversary system of criminal proceedings commences."[220]

The second factor, "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value . . . of additional or substitute procedural safeguards,"[221] was exactly why the Court saw the *Miranda* warning constitutionally necessary. Implicit in the *Miranda* Court's holding was the recognition that the isolated nature of interrogations renders the traditional post hoc evaluation of the circumstances surrounding a confession impermissibly susceptible to error as the sole inquiry into whether a custodial statement was voluntarily made. The gravity of this risk is especially great given the consequences of criminal litigation, where an incorrect ruling on a statement's voluntariness could result in wrongful imprisonment, or even wrongful execution. Additional safeguards—including a warning apprising individuals of the rights available to them at the outset of custodial interrogation and the corresponding dictate that statements there obtained are inadmissible if not preceded by such a warning—work both to dispel the coercion inherent to the custodial atmosphere and increase the likelihood that compelled statements are not erroneously admitted against a defendant at trial. Because the manner in which police present the warning tends to decrease its effectiveness,[222] additional admonitions may be necessary for *Miranda* to serve its constitutional purpose.[223]

In fact, the *Miranda* Court expressly reserved the option that Congress or state legislatures might devise a more effective means of protecting individual rights during custodial interrogations.[224] That the Court left open the possibility that an alternative solution be developed, however, does not compel the conclusion that *Miranda* is not constitutionally required. *Miranda*'s verbatim warning itself may be prophylaxis and open to revision by the legislature, an institution better suited to craft a particular solution. But, given the "intimate connection between the privilege against self-incrimination and police custodial questioning,"[225] *some* procedural due process at the outset of custodial interrogations providing individuals with notice of their rights and an opportunity to be heard in their exercise is constitutionally required to prevent the erroneous and unjustified deprivation of the individual's liberty to exercise those rights. After all, the *Miranda* Court was not dealing with a state's

220. Miranda v. Arizona, 384 U.S. 436, 477 (1966).

221. Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

222. *See* discussion *supra* Part II.A.4.

223. *See* discussion *infra* Part III.B.

224. *See* discussion *supra* Part II.A.1.

225. Miranda v. Arizona, 384 U.S. 436, 458 (1966).

"considered legislative judgment[]"[226] regarding the proper procedures for custodial interrogations, but with the reality that *no* procedure was no longer constitutionally acceptable in light of contemporary police practices.[227] In expounding the specific *Miranda* warning, the Court simply set the constitutional floor.

The final *Mathews* factor, "the Government's interest, including the function involved and the fiscal and administrative burdens that" additional safeguards would entail,[228] also aligns with *Miranda* as a procedural due process requirement. While the government has an interest in obtaining confessions, it has an equally compelling interest in ensuring that individual rights are respected, that evidence obtained during custodial interrogations is reliable, and that individuals are not wrongfully convicted due to the erroneous admission of a false confession. Moreover, as a fiscal and administrative matter, the *Miranda* warning is far from costly. The *Miranda* warning requires no financial expenditure, and it takes minimal time to inform suspects of their rights.

In addition to tying *Miranda* directly to the text of the Constitution, grounding *Miranda* in the Due Process Clauses of the Fifth and Fourteenth Amendments reconciles some of *Miranda*'s case law. As exemplified by the *Mathews* factors, procedural safeguards are amenable to flexibility as different circumstances may demand.[229] For example, in a situation where public safety is threatened, the government interest in protecting the public may outweigh the individual interest in being apprised of one's rights before the police ask limited questions aimed to secure the surrounding area.[230]

In the end, a reinterpretation of *Miranda* is only an academic exercise. The Court's subsequent narrowing of the procedural due process inquiry in criminal cases makes the proposed interpretation particularly unlikely today. Regardless of what Amendment or provision the decision is rooted in, however, *Dickerson* decided with finality that the *Miranda* warning (or some equally effective procedural safeguard) is required by the Constitution to uphold the Bill of Right's guarantees. That should have

226. Medina v. California, 505 U.S. 437, 443 (1992).

227. It is also worth noting that *Miranda* was not the first time the Court utilized social and economic data in reaching a decision. The Court has considered such data "most notably in cases calling for determinations of constitutional questions, in which 'constitutional facts' have been of crucial importance." Kadish, *supra* note 201, at 359. A famous example is Brown v. Bd. of Educ., 347 U.S. 483, 494 n.11 (1954). *See also* Kadish, *supra* note 201, at 358-63 (arguing that "[t]he objection that judges lack the expertise and background to make competent judgments of policy falls short of the mark when the policy concerns procedural matters. The main business of courts, after all, has historically been the process of adjudication—applying rules of law to the concrete setting of a case.").

228. Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

229. *See* discussion *supra* note 190 and accompanying text.

230. *See* New York v. Quarles, 467 U.S. 649 (1984) (holding that a concern for public safety can override the requirement that the *Miranda* warning be given prior to questioning).

been the beginning and end of the Court's discussion in *Vega*. But, because the *Miranda* warning's home in the Self-Incrimination Clause requires a somewhat strained reading of the Constitution's text, it is unsurprising that the conservative Court took the opportunity in *Vega* to further cut back on *Miranda*'s protections.

1. *Vega* was Wrongly Decided

Still, recasting *Miranda* as a procedural due process requirement would have foreclosed the Court's decision in *Vega*. When an individual is deprived of their liberty without due process of law, their rights under the Constitution are violated. As such, when the state fails to *Mirandize* an individual at the outset of custodial interrogation (or provide an equivalent procedural safeguard), the individual should have a viable civil claim under 42 U.S.C. § 1983 for a violation of their right to due process. Additionally, the majority in *Vega* was wrong about the costs for allowing § 1983 claims for *Miranda* violations.

Contrary to the Court's suggestion in *Vega*, allowing § 1983 claims for *Miranda* violations would provide considerable deterrent value. Given the plethora of exceptions the Court has carved out of the *Miranda* rule—such as allowing physical evidence and witness testimony obtained in violation of *Miranda* to be admitted at trial and allowing un-*Mirandized* statements to be used for impeachment purposes—police have little incentive to provide suspects with the *Miranda* warning, knowing that the majority of evidence obtained in violation of the warning will likely be admissible anyway.[231] Opening officers to liability for punitive damages under § 1983 for intentionally disregarding suspects' *Miranda* rights works as a strong financial deterrent for those inclined to forgo the *Miranda* warning and makes police answerable for their misconduct. Conversely, the lack of financial accountability likely affects the way police officers are trained with respect to *Miranda*.[232]

Second, in holding that *Miranda* violations can be raised in federal habeas corpus proceedings, the Supreme Court in *Withrow v. Williams* has already decided that *Miranda*'s role in protecting a "fundamental trial right" and "guard[ing] against 'the use of unreliable statements at trial'" outweighed any concerns of judicial economy, or tension between the

231. *See* discussion *supra* Part II.A.3.

232. *See* Charles D. Weisselberg, *Saving* Miranda, 84 CORNELL L. REV. 109, 132-40 (1998) (discussing a "new vision" of *Miranda* that has emerged as a result of the Supreme Court's decisions minimizing the consequences of *Miranda* violations that encourages police to question "outside *Miranda*").

state and federal courts.[233] The *Withrow* Court's reasoning applies with equal force in the context of § 1983 claims. Similarly, procedural questions that may arise on collateral review are not a novel issue that weighs against allowing *Miranda* claims under § 1983, as the majority in *Vega* suggested.[234] Such issues can be resolved in a similar manner as if they had arisen in federal habeas corpus proceedings.

In short, there was no compelling reason for the Court in *Vega* to depart from *Dickerson*'s holding that *Miranda* is a constitutional rule. Although *Vega* did not overturn *Miranda* per se, it greatly weakened *Miranda*'s ability to adequately protect core constitutional rights in custodial interrogations. Reframing *Miranda* as a procedural due process requirement would have grounded the decision explicitly within the text of the Constitution, protected *Miranda* from further erosion, and ensured that *Miranda* violations are vindicated and that police and the courts respect and uphold individuals' constitutional rights.

B. Suggested Reform

The Supreme Court's failure in *Vega* to provide redress for *Miranda* violations under § 1983 creates the need for other institutions to step in to prevent further erosion of *Miranda* and ensure that individual rights are adequately protected.

To make recovery available under § 1983, Congress should enact a statute requiring the *Miranda* warning as a matter of federal law, such that when police fail to *Mirandize* suspects at the outset of custodial interrogation, they have violated a federal statutory right. Alternatively, states could enact their own laws providing for a civil cause of action in state court when individuals' *Miranda* rights are violated.

Codifying the verbatim *Miranda* warning, however, may not be enough. The exceptions to the *Miranda* rule[235] and police practices aimed to minimize its effectiveness[236] necessitate a reinforcement of the warning so that it is more than a mere recitation, and actually gives suspects an understanding of their rights and how to invoke them. Additional warnings—for example, "if you wish to invoke your rights you must do so expressly," "you can choose to reinvoke your rights at any time after you have waived them," and "invoking your rights cannot be used against you in court"—would inform suspects of the impact and mechanics of their invocation. A model statute may further require that periodic

233. Withrow v. Williams, 507 U.S. 680, 691-92 (1993) (emphasis omitted); *see* discussion *supra* Part II.A.3.

234. *See* discussion *supra* Part II.C.

235. *See* discussion *supra* Part II.A.3.

236. *See* discussion *supra* Part II.A.4.

Miranda warnings are given during extended interrogations, and that custodial interrogations are recorded so courts can determine whether the interrogator complied with *Miranda*, and whether any statements were involuntary despite the warning. Also, legislators may require that counsel is made available during custodial interrogations of juveniles and the developmentally disabled so that attorneys can explain the rights available to their clients and make certain that those rights are fully understood and protected.

Significantly, the Court's ruling in *Vega* has likely already had, and will continue to have, a disproportionate impact on people with communication barriers and those who are not already aware of their constitutional rights. To better protect people in underprivileged communities with limited access to quality education, people who do not speak English as a first language, and people with intellectual or sensory impairments, the manner in which police are trained to handle the *Miranda* warning and waiver should be amended as a matter of departmental policy. For example, police should keep "*Miranda* cards" that spell out the *Miranda* warning in a variety of languages to be provided to suspects upon arrest. Additionally, police departments should retain certified interpreters prior to the custodial interrogation of a suspect whose first language is not English, or who communicates with sign language. Irrespective of any language barrier, when a suspect persists in their silence or makes an ambiguous request for an attorney, police should be encouraged to ask the suspect clarifying questions to discern whether the suspect intended, through their words, conduct, or lack thereof, to invoke their rights.

Furthermore, regardless of whether police are required by law to record custodial interrogations, it would benefit both the police, and the public, to do so. Recording interrogations would make the interrogation process more transparent, serve as proof that *Miranda* was (or was not) complied with, and allow the court to observe the demeanor of the suspect and the police to determine whether a statement was involuntarily made, and therefore inadmissible for any purpose. Keeping written records of custodial interrogations, including transcripts of the interrogation and waiver forms signed by both the police officer and the suspect, would also promote transparency in the interrogation process and serve as evidence in the event of a legal dispute concerning the admissibility of custodial statements.

In conclusion, police departments' implementation of proper procedures that consider the individual characteristics of suspects to ensure that *Miranda* is understood and complied with will boost the integrity of the investigative process and the criminal justice system, and better protect the constitutional rights of those most vulnerable.

IV. CONCLUSION

Although *Miranda v. Arizona* was criticized as judicial policymaking that invaded the legislature's prerogative, the Court was doing what it always has done: applying the Constitution's historic guarantees to a modern society.

Regardless of whether *Miranda*'s foundation lies in the Fifth Amendment's Self-Incrimination Clause or the Fifth and Fourteenth Amendments' Due Process Clauses, *Vega* was wrongly decided. There was no special justification to disregard *Dickerson*'s precedent that *Miranda* is a constitutional rule, required by the Constitution, to give effect to constitutional guarantees. A reframing of *Miranda* as a procedural due process requirement responds to the decision's interpretive criticisms and strengthens its constitutional weight.