

“MY MIRANDAS DON’T STAND A CHANCE, WITH COPS”: THE UNITED STATES SUPREME COURT’S IMPENDING DESTRUCTION OF MIRANDA RIGHTS UNDER THE PRETENSE OF PROPHYLAXIS IN *VEGA* v. *TEKOH*

Abstract: In 2022, in *Vega v. Tekoh*, the U.S. Supreme Court held that individuals interrogated without knowledge of their *Miranda* rights cannot seek remedy under 42 U.S.C. § 1983. The Supreme Court’s rationale for this decision was that the right provided in the 1966 *Miranda v. Arizona* decision, which ensures that those facing the criminal legal system are provided information on their privileges, was not a constitutional right, and it would therefore be impermissible to seek remedy for a right that does not exist. Instead, the Court labeled *Miranda* rights as a prophylactic rule: a practice that exists to help protect constitutional rights but is itself not constitutionally required. With this decision, the Court is positioned to soon overturn *Miranda*. The job of the American judiciary is to create rulings that adhere to and uphold rights afforded under the U.S. Constitution. Prophylactic rules are no different. This Note argues that the decision in *Vega v. Tekoh* will hinder people—especially those from marginalized communities—from attaining the justice to which they are entitled. This disenfranchisement should be addressed through congressional action or initiatives taken by state legislatures to protect marginalized people from the injustices of the criminal legal system.

INTRODUCTION

“You have the right to remain silent when questioned. Anything you say or do may be used against you in a court of law.”¹ Commonly known as *Miranda* rights, these words are deeply ingrained in American popular culture and, consequently, the American public.² Widespread familiarity with these statements is representative of the critical role they play in informing members

¹ *Miranda Warning (Miranda Rights)*, GENIUS, <https://genius.com/The-supreme-court-of-the-united-states-miranda-warning-miranda-rights-annotated> [<https://perma.cc/KU3K-C3LC>]; see also *Miranda v. Arizona*, 384 U.S. 436, 469 (1966) (providing the requirements for an adequate *Miranda* warning).

² See Ronald Steiner, Rebecca Bauer & Rohit Talwar, *The Rise and Fall of the Miranda Warnings in Popular Culture*, 59 CLEV. ST. L. REV. 219, 220 (2011) (noting that the widespread use of *Miranda* rights in television shows and movies is responsible for the American public’s familiarity with the language). The hit television show *Cops* has featured *Miranda* rights in 813 episodes. GENIUS, *supra* note 1. *Miranda* rights have also been mentioned in many songs, including Jay-Z’s “Picasso Baby,” in which he raps, “My Mirandas don’t stand a chance, with cops.” JAY-Z, *Picasso Baby*, on MAGNA CARTA HOLY GRAIL (Roc Nation 2013).

of the public about the very basic rights they have when they interact with the criminal legal system.³ The U.S. Supreme Court, however, is poised to overturn the rights that have been guaranteed since 1966 in *Miranda v. Arizona*.⁴ In 2022, in *Vega v. Tekoh*, the Court decided that *Miranda* rights are a prophylactic rule—a procedural safeguard for constitutional rights—rather than a constitutional provision itself, which implies that individuals can no longer sue for the deprivation of these rights.⁵ This begs the question: if relief is not available for the deprivation of a so-called right, can it even be considered a right?⁶

Beyond the realm of popular culture, there are ample examples of the importance of *Miranda* rights in the truth-seeking process inherent to the adjudication of serious criminal cases.⁷ In 2016, A.A. was arrested in connection with an attempted murder.⁸ Because he was a minor when he was arrested, his mother

³ See 42 U.S.C. § 1983—*Miranda Rights*—*Vega v. Tekoh*, 136 HARV. L. REV. 430, 430 (2022) (stating that *Miranda v. Arizona* may be the most notable criminal justice case in American legal history). The warnings resulting from *Miranda v. Arizona* stem from the constitutional right provided by the Fifth Amendment: the right against self-incrimination. *Miranda Warning*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/miranda_warning#:~:text=Fifth%20and%20Sixth%20Amendments,Sixth%20Amendment%20right%20to%20counsel [https://perma.cc/WV4E-6BES] (July 2023).

⁴ See 42 U.S.C. § 1983—*Miranda Rights*—*Vega v. Tekoh*, *supra* note 3, at 437 (discussing how the Court's subversion of the *Dickerson v. United States* decision may suggest a future in which *Miranda* is overturned in its entirety); *infra* notes 149–177 and accompanying text (describing the circumstances surrounding an eventual overturning of *Miranda v. Arizona*).

⁵ See *Vega v. Tekoh*, 597 U.S. 134, 151–52 (2022) (holding that individuals who allege deprivation of their *Miranda* rights cannot seek relief under 42 U.S.C. § 1983); Chase T. Rogers, *Putting Meat on Constitutional Bones: The Authority of State Courts to Craft Constitutional Prophylactic Rules Under the Federal Constitution*, 98 B.U. L. REV. 541, 546–47 (2018) (defining prophylactic rules).

⁶ See Tracy A. Thomas, *Understanding Prophylactic Remedies Through the Looking Glass of Bush v. Gore*, 11 WM. & MARY BILL RTS. J. 343, 371 (2002) (stating that both a guarantee and a remedy are necessary facets for the creation of a right under the law).

⁷ See Karl Etters, *Miranda Warning: Impact Still Strong 50 Years Later*, TALLAHASSEE DEMOCRAT, <https://www.tallahassee.com/story/news/2016/04/29/miranda-warning-impact-still-strong-50-years-later/83710752/> [https://perma.cc/G6M9-GCWQ] (May 1, 2016) (stating that the implementation of *Miranda* rights has upheld the concept of innocent until proven guilty and has helped to maintain the dignity of those detained for custodial interrogations).

⁸ See *In re A.A.*, 222 A.3d 681, 684–85 (N.J. 2020) (illustrating the utility of *Miranda* in protecting juveniles, people of color, and generally vulnerable individuals from involuntary self-incrimination). The opinion in this case describes how the officer who arrested A.A. paid special attention to A.A.'s race and the way he and his companions were dressed prior to the incident leading to A.A.'s arrest. *Id.* The police officer's behavior in this case is indicative of the racial disparities present in policing practices nationwide. See generally REPORT OF THE SENTENCING PROJECT TO UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM, SENT'G PROJECT (2018), <https://www.sentencingproject.org/app/uploads/2022/08/UN-Report-on-Racial-Disparities.pdf> [https://perma.cc/5C34-KNC2] (explaining the disproportionately high levels of police contact in Black communities compared to other communities). Black children are much more likely to encounter the criminal legal system—they comprised 35% of juvenile arrests in 2016 but only made up 15% of the American youth population. *Id.* at 2. A study in California found that Black individuals in the state accounted for 16% of police stops in

was called to the prison as required by state law.⁹ Upon her arrival, A.A.'s mother learned of the crime her son had allegedly committed and asked to speak with him.¹⁰ She was then taken to the cell in which A.A. was being held, with a police officer standing nearby as a safety precaution.¹¹ The police provided A.A. with no knowledge of his *Miranda* rights—without being Mirandized, A.A. made self-incriminating statements while speaking to his mother and was subsequently charged with two counts of attempted murder.¹² The Supreme Court of New Jersey deemed the State's reliance on these un-Mirandized statements unjust and remanded the case to determine whether A.A. could be found guilty without the admission of his un-Mirandized statements.¹³

2019, despite only accounting for 7% of the state's population. MAGNUS LOFSTROM, JOSEPH HAYES, BRANDON MARTIN & DEEPAK PREMKUMAR, PUB. POL'Y INSTIT. OF CAL., RACIAL DISPARITIES IN LAW ENFORCEMENT STOPS 6 (2021), [https://www.ppic.org/?show-pdf=true&docraptor=true&url=https%3A%2F%2Fwww.ppic.org%2Fpublication%2Fracial-disparities-in-law-enforcement-stops%2F\[https://perma.cc/K9XN-Z3HU\]](https://www.ppic.org/?show-pdf=true&docraptor=true&url=https%3A%2F%2Fwww.ppic.org%2Fpublication%2Fracial-disparities-in-law-enforcement-stops%2F[https://perma.cc/K9XN-Z3HU]). Disparities exist across communities of color, as exhibited by Middle Eastern and South Asian individuals comprising 5% of law enforcement stops but only comprising 2% of the population. *Id.* Meanwhile, East and Southeast Asian individuals, who comprise 12% of the population, comprised 6% of police stops, and white residents experienced the most proportionate representation, comprising 33% of stops and accounting for 34% of the population. *Id.*

⁹ See *In re A.A.*, 222 A.3d at 684, 690 (explaining that, under New Jersey law, juvenile detainees are entitled to have their parent act as a buffer between them and law enforcement); see also *State v. Presha*, 748 A.2d 1108, 1118 (N.J. 2000) (holding that police officers must perform their due diligence in locating a juvenile's legal guardian before conducting an interrogation and that the absence of a guardian at an interrogation heavily impacts whether a statement made by a minor in the course of the interrogation is admissible).

¹⁰ *In re A.A.*, 222 A.3d at 685.

¹¹ *Id.* A.A.'s racial identity was potentially a factor leading to him being held in jail. See REPORT OF THE SENTENCING PROJECT, *supra* note 8, at 6 (reporting that, in 2016, Black people were incarcerated at local jails during the pretrial period at a 3.5 times greater rate than non-Hispanic white people). Individuals who remain in the state's custody prior to their trial date face a greater likelihood of conviction. *Id.* These individuals are also more likely to receive a prison sentence, receive lengthier sentences, and accept plea deals that are less favorable. *Id.* People of color, especially Black and Latino people, face a greater likelihood of being denied bail than their white peers. *Id.* Additionally, these same demographics are more likely to have a money bond set at a higher amount and face detainment due to an inability to pay that bond. *Id.* Black and Latino people also typically fare worse than white people in bail determinations due to implicit bias and the misguided perception that they pose a greater risk of flight or risk to the safety of themselves or others. *Id.*

¹² See *In re A.A.*, 222 A.3d at 686 (stating that the police officers' actions created an environment similar to that of a typical custodial interrogation). A.A.'s mother asked if he was present at the scene of the alleged crime, which A.A. confirmed. *Id.* at 685. When his mother asked why he was at that location, he told his mother that the other party involved in the incident had "jumped" him and his friends the week prior. *Id.* The detective overheard these statements and used them in charging A.A. *Id.* The appellate court in this case found that, although the police officers did not directly engage in questioning A.A., their actions resulted in the operational equivalent of a custodial interrogation. *Id.* at 686.

¹³ See *id.* at 689, 692 (describing the cognitive inability of children to make decisions like adults). The Supreme Court of New Jersey discussed how juveniles often lack the judgement and maturity of adults and are typically face greater vulnerability to outside pressures in comparison to adults. *Id.* at 689. The court stated that law enforcement must exercise great care to ensure that any self-incriminating statements made by juvenile suspects are done so voluntarily and in the absence of co-

When the U.S. Supreme Court decided *Miranda*, it emphasized the importance of transparency within the legal system.¹⁴ Because of the inherently coercive and often intimidating nature of police interrogations, the Court sought to protect those who did not know their constitutional rights against self-incrimination.¹⁵ Although *Miranda* rights are often considered an imperfect solution to these issues, it would be unreasonable for the Court to overturn them without adequate solutions provided by Congress, just as it is irrational for them to label them a prophylactic rule.¹⁶ The decision in *Vega* that police officers are no longer liable under 42 U.S.C. § 1983 if they fail to read individuals their *Miranda* rights inherently contradicts the motivation behind the original 1966 decision.¹⁷

There are few prophylactic rules in the law generally, but the majority that exist are in the realm of criminal procedure.¹⁸ The conceptual purpose of prophylactic rules is to distinguish constitutional rights from Supreme Court provisions that exist merely to safeguard constitutional rights.¹⁹ Many scholars

ercion, ignorance of their rights, or “adolescent fantasy, fright, or despair.” *Id.* In A.A.’s case, neither he nor his mother were informed that anything that A.A. may say to his mother could be utilized in his prosecution. *Id.* at 691. A.A.’s mother inadvertently assisted the police by gathering incriminating evidence against her son during a conversation with him at the jail, which was then overheard by the nearby police officer and subsequently used to prosecute A.A. *Id.*

¹⁴ See *Miranda v. Arizona*, 384 U.S. 436, 448 (1965) (discussing the inherent secrecy involved in law enforcement custodial interrogations). The Court in *Miranda* also noted that policing guidelines, at the time, did not in any way ensure that statements made during interrogations were voluntary. *Id.* at 457–58.

¹⁵ See *id.* (describing the interrogation environment as meant for the subjugation of a detainee to create the result most favored by the interrogator).

¹⁶ See Saul M. Kassir & Rebecca J. Norwick, *Why People Waive Their Miranda Rights: The Power of Innocence*, 28 LAW & HUM. BEHAV. 211, 212 (2004) (stating that a study observing live and taped custodial interrogations by law enforcement officials concluded that approximately 80% of suspects waived their *Miranda* rights).

¹⁷ See *Miranda*, 384 U.S. at 467 (discussing that these protections are critical in ensuring that criminal defendants are protected against self-incrimination, unless Congress or state legislatures can craft solutions that provide protections at least equivalent to those of *Miranda*).

¹⁸ See Susan R. Klein, *Identifying and (Re)Formulating Prophylactic Rules, Safe Harbors, and Incidental Rights in Constitutional Criminal Procedure*, 99 MICH. L. REV. 1030, 1037 (2001) (describing evidentiary presumptions and bright-line rules for police officials as some of the most common forms of prophylactic rules); see also Arthur Leavens, *Prophylactic Rules and State Constitutionalism*, 44 SUFFOLK U. L. REV. 415, 416 (2011) (noting the existence of prophylactic rules in criminal procedure); *infra* notes 55–62 and accompanying text (describing an additional example of prophylactic rules related to the Double Jeopardy Clause).

¹⁹ See Klein, *supra* note 18, at 1032–33 (describing prophylactic rules). Klein argues that a prophylactic rule is a “judicially-created doctrinal rule” used to decide if a constitutional rule is relevant and applicable. *Id.* A prophylactic rule is proper when two considerations are met: (1) only providing relief to the injured in response to the violation of a rule is ineffective; and (2) the use of a prophylactic rule would provide greater efficacy and involve only reasonable costs in its implementation. *Id.* A prophylactic rule has an instrumental function, in that it only strives to achieve a value that is implicit in a certain constitutional provision. *Id.* A prophylactic rule provides no function outside of that specific purpose. *Id.*

argue that prophylactic rules should not be assigned the same legitimacy as explicit constitutional protections because such rules are not expressly authorized under Article III.²⁰ Others believe that a distinction between constitutional rules and prophylactic rules should not exist because the two groups of rules are often analytically indistinguishable and that so-called prophylactic rules should be afforded the same protections as other judicial rulings.²¹

This Note explores the concept of prophylactic rules, particularly in the context of *Miranda* rights and the Supreme Court decision in *Vega*.²² Part I outlines the history of prophylactic rules and the circumstances under which the Supreme Court promulgates a prophylactic rule rather than a traditional constitutional provision.²³ Part I also surveys the history of *Miranda* rights and the impact of *Miranda v. Arizona*.²⁴ Part II discusses the implications of the *Vega* decision and the potential repeal of *Miranda*.²⁵ The sociopolitical context in which the *Vega* decision was published and the current Court's hostility towards civil liberties are also considered in Part II.²⁶ Finally, Part III looks to the future and contemplates solutions to address the gaps the *Vega* decision leaves in criminal procedure jurisprudence nationwide.²⁷

I. PROPHYLAXIS, *MIRANDA* THEN, AND *MIRANDA* NOW

In 1966, in *Miranda v. Arizona*, the Supreme Court held that individuals in the custody of law enforcement are entitled to know the mechanisms in place to protect them from self-incrimination, a right guaranteed by the Fifth Amendment.²⁸ Roughly fifty years later, the Court substantially limited the protections provided by *Miranda* by retroactively labeling those provisions a prophylactic rule.²⁹

²⁰ See *id.* at 1033–34 (asserting that prophylactic rules are not entitled to the same level of protection as those rights that are explicitly written in the Constitution).

²¹ See David A. Strauss, *The Ubiquity of Prophylactic Rules*, 55 U. CHI. L. REV. 190, 195 (1988) (discussing how prophylactic rules are the norm in constitutional law rather than the exception). Thus, a distinction between the legitimacy of prophylactic rules versus constitutional provisions is illegitimate. *Id.*

²² See *Vega v. Tekoh*, 597 U.S. 134, 152 (2022) (holding that no relief is available for violations of *Miranda*—i.e., the failure to properly inform a detainee of their *Miranda* rights).

²³ See *infra* notes 28–62 and accompanying text.

²⁴ See *infra* notes 63–128 and accompanying text.

²⁵ See *infra* notes 129–202 and accompanying text.

²⁶ See *infra* notes 151–177 and accompanying text.

²⁷ See *infra* notes 203–236 and accompanying text.

²⁸ See *Miranda v. Arizona*, 384 U.S. 436, 467 (1966) (stating that transparency was necessary to combat the inherently coercive pressures of custodial interrogations).

²⁹ See *Vega v. Tekoh*, 597 U.S. 134, 151–52 (2022) (holding that there is no remedy available for a *Miranda* violation under 42 § 1983, the statutory section providing a civil right of action for deprivation of rights by government employees acting under the color of law).

The Supreme Court has inconsistently determined that the rules it promulgates in certain decisions are prophylactic rather than purely constitutional.³⁰ Any distinction between the two concepts is blurry at best, as prophylactic rules are named explicitly in very few decisions.³¹ Part A of this section explores prophylaxis in the law and the conditions under which the Supreme Court has promulgated prophylactic rules.³² Part B explains the history behind the landmark decision in *Miranda* and discusses the legal standard that courts used to protect against self-incrimination prior to *Miranda*.³³ Finally, Part C examines the state of *Miranda* rights today.³⁴ The section surveys the impact *Miranda* has had on policing practices, the doctrine's impact on protections against self-incrimination for vulnerable communities, and issues surrounding the waiver of *Miranda* rights.³⁵

A. The Puzzling Nature of Prophylactic Rules

A prophylactic rule is a judicially-created procedural safeguard designed to protect a specific constitutional right.³⁶ These rules are typically employed to direct lower courts in their attempts to apply some of the more vague and open-ended standards provided by the Constitution.³⁷ This allows the Supreme Court to direct the resolution of lower court decisions with greater ease.³⁸ Essentially, they are measures taken to decrease the risk of potential violations of constitutional provisions, even if they are not explicitly sanctioned by the Constitution.³⁹ Such a rule is deemed necessary when individual enforcement of the constitutional right at issue may be insufficient to secure that particular right.⁴⁰ Ultimately, a rule that has a constitutional basis is characterized as

³⁰ See Klein, *supra* note 19, at 1032–33 (describing the concept and utility of prophylactic rules).

³¹ See Rogers, *supra* note 5, at 546–47 (explaining that there is little agreement between scholars on the definition of prophylactic rules and the impact of their application in courts).

³² See *infra* notes 36–62 and accompanying text.

³³ See *infra* notes 63–91 and accompanying text.

³⁴ See *infra* notes 92–128 and accompanying text.

³⁵ See *infra* notes 92–128 and accompanying text.

³⁶ See Rogers, *supra* note 5, at 546 (noting that the Supreme Court has described prophylactic rules not as constitutionally protected rights, but rather as rules used to ensure that certain constitutional rights are not violated). Prophylactic rules are also often referred to as “bright-line rules.” See Russell L. Weaver, *Bright-Line & Prophylactic Rules: Reflections from Miranda*, 50 TEX. TECH L. REV. 33, 33 (2017) (illustrating that the terms “bright-line rules” and “prophylactic rules” are often interchangeable).

³⁷ See Leavens, *supra* note 18, at 416 (characterizing prophylactic rules as “relatively concrete constitutional rules” in comparison to vague, value-based constitutional rights).

³⁸ See Weaver, *supra* note 36, at 34 (describing how lower courts no longer engage in a tedious process of reviewing entire records to make judicial determinations due to the growth in the use of prophylactic rules).

³⁹ See Rogers, *supra* note 5, at 547 (explaining the utility of prophylactic rules).

⁴⁰ See *id.* at 546–47 (describing the various understandings of prophylactic rules). There are many competing definitions of prophylactic rules. *Id.* The Supreme Court describes constitutional prophylactic

prophylactic if it permits state-sanctioned procedures that are neither explicitly mandated nor prohibited by the Constitution, but would prevent a violation of some constitutional right.⁴¹

Miranda rights are an archetypal example of prophylactic rules in legal scholarship.⁴² In 1991, in *Dennis v. Higgins*, the Supreme Court provided another, less well-known example of a prophylactic rule.⁴³ *Dennis* challenged the constitutionality of a Nebraska state tax scheme imposed on commercial transportation companies operating in Nebraska but utilizing vehicles registered outside of the state.⁴⁴ The petitioner brought forth a claim under the Commerce Clause that these taxes created an illegitimate, undue burden on interstate commerce and, consequently, that the State of Nebraska should be liable for this burden under 42 U.S.C. § 1983.⁴⁵

Section 1983 empowers individuals to sue local and state government officials acting under the “color of law” for violations of their constitutional rights.⁴⁶ Section 1983 was created during the Reconstruction Era to protect

lactic rules as “procedural safeguards” that are not subject to constitutional protections. *Id.* These safeguards provide reinforcement and protection of specific constitutional rights and create rules that “sweep more broadly” than the constitutional right that is being enforced through the prophylactic rule. *Id.* (quoting *Michigan v. Tucker*, 417 U.S. 433, 444 (1974)). Prophylactic rules have also been defined as tools used to ensure adherence to the Constitution, even if the tools themselves are not expressly authorized by the Constitution. *Id.* They have also been described as “hybrid rules” that depend on the belief that risks of constitutional violations are so significant that case-by-case enforcement of the relevant fundamental constitutional right is inadequate to guarantee the protection of that right. *Id.*

⁴¹ See *id.* at 547 (highlighting the similarity between the various understandings of prophylactic rules).

⁴² Rogers, *supra* note 5, at 548; see Weaver, *supra* note 36, at 35 (describing the prominence of *Miranda v. Arizona* in the discourse surrounding prophylactic rules).

⁴³ See 498 U.S. 439, 450–51 (1991) (holding that the Dormant Commerce Clause provided an avenue for the petitioner); see also Vega v. Tekoh, 597 U.S. 134, 156–57 (2022) (Kagan J., dissenting) (arguing that the Court’s previous leniency in protecting an implicit constitutional right should also be reflected in the Court’s determination regarding the protections surrounding *Miranda*).

⁴⁴ See 498 U.S. at 441 (discussing the petitioner’s claim of suffering an unlawful burden due to the taxes and fees imposed upon him).

⁴⁵ *Id.*

⁴⁶ 42 U.S.C. § 1983. The statute provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

Id. Essentially, if an individual is deprived of their constitutional rights by an officer of the government, the individual may seek redress under 42 U.S.C. § 1983. *Id.*

Black Americans from violence at the hands of white supremacists.⁴⁷ Today, the statute is often invoked in civil rights suits against police officers and other government actors who impede the constitutional rights of individuals while acting in their official capacity.⁴⁸

Accordingly, in *Dennis v. Higgins*, the respondent asserted that the Commerce Clause does not provide rights for individuals—it simply assigns power between state and federal governments, and, therefore, relief under § 1983 would be improper.⁴⁹ The Supreme Court agreed that the main function of the Commerce Clause is to allocate power between levels of government and authorize Congress’ regulation of interstate commerce.⁵⁰ The Court, however, asserted that the clause also restricts what regulations of interstate commerce are permissible.⁵¹ The Court thus held that the Commerce Clause conferred the “right” upon individual civilians and business entities to participate in interstate commerce without the burden of restrictive state regulations.⁵² This protection conferred by the Commerce Clause is commonly referred to as the Dormant Commerce Clause.⁵³ Although the text of the Commerce Clause does not specifically state that this right exists, the Court found it necessary to safeguard interstate commerce—thereby creating a prophylactic rule.⁵⁴

⁴⁷ Scott Michelman, *Happy 150th Anniversary, Section 1983!*, ACLU OF D.C. (Apr. 20, 2021), <https://www.acludc.org/en/news/happy-150th-anniversary-section-1983> [<https://perma.cc/XK5U-5JKV>]. Originally, the statute was known as the “Ku Klux Klan Act.” *Id.*

⁴⁸ *See id.* (describing the modern civil rights cases in which § 1983 is invoked).

⁴⁹ 498 U.S. at 447.

⁵⁰ *Id.*

⁵¹ *Id.* The Court noted that the Commerce Clause does allocate power to Congress to regulate interstate commerce, but it also creates restrictions on state regulation of such commerce. *Id.* The Commerce Clause is recognized as a “self-executing limitation” on states’ power to create laws and regulations that impose significant burdens on interstate commerce. *Id.*

⁵² *Id.* at 448. Justice Kennedy’s dissenting opinion asserted that the Court’s decision was inappropriate because § 1983 was an avenue for relief passed during the Reconstruction Era to protect the civil rights of individuals from oppressive state action, particularly action directed toward marginalized people. *Id.* at 465 (Kennedy, J., dissenting). Justice Kennedy considered the extension of § 1983 to include the Dormant Commerce Clause inappropriate based on Congress’s intentions in creating the statute. *Id.* Some scholars argue that the creation of the Dormant Commerce Clause was an illegitimate use of constitutional power. *See* Martin H. Redish & Shane V. Nugent, *The Dormant Commerce Clause and the Constitutional Balance of Federalism*, 1987 DUKE L.J. 569, 617 (stating that the Dormant Commerce Clause lacks justification in the Constitution’s texts and history and alters the balance of federalism that was outlined in the Constitution by shifting oversight power of the Commerce Clause to the judiciary rather than Congress).

⁵³ *See Commerce Clause*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/commerce_clause [<https://perma.cc/EYF9-MJEV>] (July 2022) (describing the function of the Dormant Commerce Clause). The Dormant Commerce Clause describes the proscription against state legislatures creating and implementing legislation that excessively burdens individuals in their participation in interstate commerce. *Id.* This prohibition is argued to be tacit in the Commerce Clause. *Id.*

⁵⁴ *See* *Vega v. Tekoh*, 597 U.S. 134, 156–57 (2022) (Kagan, J., dissenting) (arguing that, under the majority’s analysis in *Vega*, the protection of the Dormant Commerce Clause in *Dennis* was inappropriate due to the Dormant Commerce Clause’s prophylactic nature); *supra* note 40 and accompanying text (describing the characteristics of prophylactic rules).

In 1983, in *Missouri v. Hunter*, the Supreme Court established another prophylactic rule, as characterized by legal scholars, related to the Fifth Amendment.⁵⁵ The Court held that, when two separate criminal statutes prohibit the same conduct, cumulative punishments cannot be authorized for those offenses.⁵⁶ The only exception to this directive exists when there is explicit legislative intent advocating otherwise.⁵⁷ The Supreme Court created this rule to ensure the protections of the Constitution's Double Jeopardy Clause.⁵⁸ Whereas the Double Jeopardy Clause's text does not provide this specific right to individuals, the Court deemed that it was necessary to safeguard defendants from greater punishment than intended by the state legislature—crafting a prophylactic rule.⁵⁹

Ultimately, prophylactic rules help protect the rights created by the Constitution.⁶⁰ Some scholars believe that such rules are the norm in constitutional law, rather than the exception.⁶¹ Prophylactic rules are, in fact, common in criminal procedure, protecting the sometimes vague, value-based rights afforded to individuals who are accused of criminal activity.⁶²

⁵⁵ See 459 U.S. 359, 368–69 (1983) (holding that cumulative punishments for the same offense are a violation of the Double Jeopardy Clause). The *Missouri* rule is prophylactic because it prevents sentencing courts from assigning greater sentences than intended by the legislature without specifically tracking “the underlying purpose of the Double Jeopardy Clause in a single trial situation.” Klein, *supra* note 18, at 1040. Instead, the rule is instrumental—it is a technique with which the Court can ensure that the Double Jeopardy Clause is not violated, thus upholding the legislative intent behind the Clause. *Id.*

⁵⁶ *Missouri*, 459 U.S. at 368–69.

⁵⁷ *Id.* An example of such legislative intent was provided in 2019, in *Gamble v. United States*, where the Supreme Court declined to overturn the separate sovereigns doctrine, holding that an individual can be subject to prosecution under state law even if the federal government has already prosecuted them for the same offense, or vice versa. 587 U.S. 678, 681–83 (2019). The majority opinion emphasized that the doctrine of stare decisis outweighed the evidence challenging the long-standing view that the Double Jeopardy Clause allows successive prosecutions by separate sovereigns. *Id.* at 690–91.

⁵⁸ *Missouri*, 459 U.S. at 369. The Double Jeopardy Clause of the Fifth Amendment stipulates that an individual shall not “be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. CONST. amend. V.

⁵⁹ *Missouri*, 459 U.S. at 369.

⁶⁰ See Leavens, *supra* note 18, at 418 (describing that prophylactic rules are still subject to adjudgment by the states based on the states’ experiences and interests).

⁶¹ See Strauss, *supra* note 21, at 195 (asserting that prophylactic rules are in line with other constitutional rules established in the adjudication process). Many rules within the realm of constitutional law are assigned justifications that are ultimately “analytically indistinguishable” from the justifications given for *Miranda* rights. *Id.*

⁶² See Leavens, *supra* note 18, at 416 (discussing how the Court has used prophylactic rules to address gaps in the preservation of the Fourth and Fifth Amendments).

B. Ernesto Miranda and “His” Rights

Before the Supreme Court’s decision in *Miranda*, the “voluntariness” doctrine established in *Brown v. Mississippi* dictated the admissibility and legitimacy of self-incriminating statements.⁶³ Courts employed a “totality of the circumstances” standard in order to determine whether an interrogation violated a defendant’s due process rights, considering factors such as the personal background and previous criminal history of the defendant, as well as the conduct of police officers during the interrogation.⁶⁴ This test aimed to ensure that only statements made out of free will would be admissible.⁶⁵ The Supreme Court’s holding in *Escobedo v. Illinois* in 1964 paved the way for the Court’s decision in *Miranda* by critiquing police interrogations without counsel present and the use of resulting self-incriminating statements.⁶⁶ In *Escobedo*, the Court recognized the inherently unjust nature of a criminal legal system that allows for defendants to be uneducated and unaware of their rights.⁶⁷

On March 13, 1963, Ernesto Miranda was arrested at his home in Phoenix, Arizona on charges of rape and kidnapping.⁶⁸ He was placed in police custody and transported to a police station, where he was interrogated by two law enforcement officers without advisement of his right to an attorney during the

⁶³ Richard A. Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 624 (1996). The “voluntariness” standard was also known as the “due process test.” *Id.*

⁶⁴ *Id.* at 625. These factors included age, educational attainment, previous contact with law enforcement officials, and intelligence levels. *Id.*; see also *Brown v. Mississippi*, 297 U.S. 278, 281–82, 287 (1936) (holding that the brutality endured by three individuals due to the conduct of police officers during custodial interrogations was a violation of the “voluntariness” test and the Fourteenth Amendment’s Due Process Clause).

⁶⁵ See Leo, *The Impact of Miranda Revisited*, *supra* note 63, at 625 (describing the importance of voluntariness and free-will in custodial interrogations).

⁶⁶ *Id.* at 627; see also *Escobedo v. Illinois*, 378 U.S. 478, 490–91 (1963) (holding that denying an individual access to counsel infringes on the Sixth Amendment and that no statements made by an individual under these circumstances could be used to incriminate the individual in court).

⁶⁷ *Escobedo*, 378 U.S. at 490. The Court asserted that the criminal legal system cannot survive if its efficacy is dependent on citizens being uneducated and unaware of their rights and privileges. *Id.* A criminal legal system worth upholding should not be deterred by an individual’s exercise of their right against self-incrimination. See *id.* (“If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.”)

⁶⁸ See *Miranda v. Arizona*, 384 U.S. 436, 491–92 (1965) (describing the circumstances of Miranda’s arrest). Ernesto Miranda was an indigent Mexican-American who was born in Mesa, Arizona. Ron Dungan, *Miranda and the Right to Remain Silent: The Phoenix Story*, ARIZ. CENT. (June 11, 2016), <https://www.azcentral.com/story/news/local/phoenix/2016/06/11/miranda-and-right-remain-silent-phoenix-story/85206416/> [https://perma.cc/4N93-49YB]. He was known to have committed burglary, armed robbery, vagrancy, and rape, among other crimes. *Id.* In 1958, Miranda joined the U.S. Army, but lasted in the military for only a little over a year. *Id.* After some time spent in prison for a charge separate from the one in *Miranda v. Arizona*, Miranda settled down with a domestic partner and found a job. *Id.* He also had a daughter with his partner and seemed to have changed his ways until the charges of kidnapping and rape brought against him in 1963. *Id.*

interrogation.⁶⁹ The police officers eventually left the interrogation room with a written confession that Miranda had signed, along with a typed statement alleging that Miranda's confession was made voluntarily.⁷⁰ The written testimony and the signed statement regarding the testimony's voluntariness were both submitted into evidence at trial.⁷¹ Miranda was subsequently found guilty of the alleged crimes.⁷² Miranda appealed his conviction, but the Arizona Supreme Court affirmed the trial court's decision.⁷³ Miranda appealed again, and the Supreme Court granted certiorari.⁷⁴

The Supreme Court reversed the Arizona Supreme Court's decision on the ground that Mr. Miranda was not notified of his right to counsel.⁷⁵ The Court noted the inherent potential for intimidation and coercion during custodial interrogations due to the private nature of these interactions between law enforcement and arrestees.⁷⁶ Accordingly, the Court analyzed policing manuals to

⁶⁹ See *Miranda*, 384 U.S. at 491–92 (describing how officers did not tell Miranda of his right and entitlement to consult with an attorney or that anything said by him over the course of his detainment could be used against him in court).

⁷⁰ *Id.* at 492. Miranda had only an eighth-grade level of education, so, although he could write, he was likely incapable of substantively comprehending the typed statement that accompanied his confession. Dungan, *supra* note 68.

⁷¹ *Miranda*, 384 U.S. at 492.

⁷² *Id.* Upon finding Miranda guilty of kidnapping and rape, the court sentenced Miranda to twenty to thirty years in prison. *Id.*

⁷³ *State v. Miranda*, 401 P.2d 721, 733 (Ariz. 1965), *rev'd*, 384 U.S. 436 (1966). The lower court put emphasis on the fact that Miranda did not request counsel during his interrogation in its affirmation of the trial court's reliance on the written testimony and signed statement. *Id.* at 731.

⁷⁴ *Miranda*, 384 U.S. at 441. The Supreme Court specifically granted certiorari to analyze the issue of applying the right against self-incrimination to instances of custodial interrogations and to provide "concrete constitutional guidelines" for lower courts and law enforcement officials. *Id.* at 441–42.

⁷⁵ *Id.* at 492. The Court held that the police officers' testimony heavily suggested that Miranda was not informed of his right to seek counsel from an attorney or of his right to request an attorney's presence over the course of the interrogation. *Id.* The testimony also suggested that his right to protection from self-incrimination was not properly upheld. *Id.* The Court discussed that the absence of warnings rendered the statements inadmissible. *Id.* The simple fact that Miranda signed a statement that included a clause asserting that he had "full knowledge" of his rights and privileges did not fulfill the standard of intelligent and knowing waiver typically required to surrender one's constitutional rights. *Id.*

⁷⁶ *Id.* at 448. The Court emphasized that the private nature of custodial interrogations lends itself to secrecy—there is an inherent gap in knowledge regarding what occurs in an interrogation room. *Id.* American law enforcement officers are uniquely taught the false notion that they are capable of accurately detecting dishonesty from those they interrogate, which often results in the use of coercion to collect false confessions. Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY L. 332, 334 (2009).

[W]hen today's police interrogators employ psychologically coercive techniques, they usually consist of (implicit or express) promises of leniency and threats of harsher treatment. . . . The custodial environment and physical confinement are intended to isolate and disempower the suspect. Interrogation is designed to be stressful and unpleasant, and it is more stressful and unpleasant the more intense it becomes and the longer it lasts. Interrogation techniques are meant to cause the suspect to perceive that his guilt

understand the procedures that officially dictate interrogation room practices.⁷⁷ The Court concluded that police officers generally fail to take the steps necessary to ensure self-incriminating statements are the result of free agency.⁷⁸ This resulted in the formation of *Miranda* rights as a means of maintaining the right against self-incrimination provided to individuals through the Fifth Amendment.⁷⁹ In practice, in order for a self-incriminating statement to be admissible at trial, this decision requires that the statement was “Mirandized.”⁸⁰ This means that individuals in custody must be read their rights and indicate their understanding of these rights.⁸¹ Alternatively, a statement made without

has been established beyond any conceivable doubt, that no one will believe his claims of innocence, and that by continuing to deny the detectives’ accusations he will only make his situation (and the ultimate outcome of the case against him) much worse. The suspect may perceive that he has no choice but to comply with the detectives’ wishes, because he is fatigued, worn down, or simply sees no other way to escape an intolerably stressful experience.

Id. at 335.

⁷⁷ See *Miranda*, 384 U.S. at 450 (describing the contents of the police manuals as encouraging interrogators to display confidence in the detainee’s guilt, diminish the gravity of the alleged offense, and to put the subject in a state of psychological vulnerability).

⁷⁸ *Id.* at 457–58. In none of the cases that the Court analyzed had law enforcement officials provided the “appropriate safeguards” or created the requisite environment to ensure that the statements made were of free choice. *Id.* An atmosphere of intimidation is foundational to the interrogation environment in order to subjugate the individual to the will of the interrogating official. *Id.* Physical intimidation may not exist within these custodial interrogations, but the mental pressures involved are just as damaging. *Id.* The prevailing practice of incommunicado interrogation conflicts with the legal system’s principle against involuntary self-incrimination. *Id.* Incommunicado interrogation occurs when an individual who is under interrogation only has the right to communicate with a small number of designated individuals or no individuals at all. See *Incommunicado*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “incommunicado”). “Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.” *Miranda*, 384 U.S. at 458.

⁷⁹ See *Miranda*, 384 U.S. at 458 (describing the need for a uniform rule to determine whether self-incriminating statements are valid and admissible). The Supreme Court held that the lack of safeguards during the process of custodial interrogations contributes to inherently coercive pressures. *Id.* In order to combat this coercion and to preserve defendants’ right to avoid self-incrimination, individuals subjected to custodial interrogations must be informed of their rights, and their exercise of said rights should be honored. *Id.* Once the Supreme Court overturned the decision made by the Arizona Supreme Court in *Miranda*’s case, the state court retried his case without admitting his confession. 1966: *Miranda v. Arizona*, LIBR. CONG. <https://guides.loc.gov/latinx-civil-rights/miranda-v-arizona> [<https://perma.cc/QXB7-RCWP>]. *Miranda* was convicted of the same charges as his original conviction, resulting in a prison sentence of thirty years. *Id.* After *Miranda*’s release on parole, he was stabbed to death by a convicted criminal who, ironically, had received his *Miranda* rights. *Id.*

⁸⁰ See *Mirandize*, BLACK’S, *supra* note 78 (describing the act of reading *Miranda* warnings as “Mirandizing” an individual). If a defendant is not informed of their *Miranda* rights or fails to adequately waive them, any incriminating evidence collected during the interrogation cannot be used against the defendant. *Miranda Rule*, BLACK’S, *supra* note 78.

⁸¹ See *Mirandize*, *supra* note 80 (implying that, if an individual has not been read their *Miranda* rights, they have not been Mirandized).

knowledge of their *Miranda* rights is considered un-Mirandized and is inadmissible in court.⁸²

The *Miranda* Court's goal was to create a more uniform rule than the subjective "voluntariness" test from *Brown*, focusing on an objective standard that could be applied to all instances of custodial law enforcement interrogations.⁸³ Chief Justice Warren, in writing for the majority, acknowledged that Congress and state legislatures could devise alternatives to the *Miranda* rule, but, because no effective alternatives existed at present, *Miranda* rights were necessary to protect the Fifth Amendment rights of individuals brought in for police interrogations.⁸⁴ Still, the Court explained that the decision was in no way intended to restrain other government institutions from realizing their own solutions to the inherently coercive nature of custodial interrogations and it encouraged state and federal lawmakers to formulate alternatives to *Miranda* rights.⁸⁵

The Supreme Court's holding was not received well by many politicians, prosecutors, the media, and law enforcement alike.⁸⁶ Still, in 2000, in *Dickerson v. United States*, the Court upheld *Miranda*'s constitutionality by characterizing it as a constitutional right.⁸⁷ And, although law enforcement officers

⁸² See *Miranda Rule*, *supra* note 80 (explaining that failure to Mirandize results in the exclusion of evidence obtained during the interrogation at trial). The exclusionary rule prohibits the government from utilizing and admitting evidence gathered in a manner that infringes the Constitution. See *Exclusionary Rule*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/exclusionary_rule [<https://perma.cc/U39J-VD4T>] (Nov. 2022) (stating that the exclusionary rule is enforceable against self-incriminating statements gathered in violation of the Fifth Amendment).

⁸³ See Leo, *supra* note 63, at 628 (describing the motivation behind the creation of the *Miranda* rule). The Due Process "voluntariness" test, along with *Miranda* rights or in lieu of them, helps ascertain the admissibility of self-incriminating statements given during an interrogation. *Id.* The "voluntariness" test is still valid and is applied in all circumstances of the evaluation of a self-incriminating statement when a suspect waives their *Miranda* rights. *Id.* The Court must find that a custodial interrogation occurred in order to apply the *Miranda* test. See *Miranda*, 384 U.S. at 447 (specifying that protections need to be imposed within the context of custodial interrogations).

⁸⁴ See *Miranda*, 384 U.S. at 467 (stating that the Supreme Court's decision does not require the *Miranda* doctrine to be followed exactly if the states or Congress create varying standards or tests). The Court acknowledged that it could not predict the alternatives that Congress or state legislatures may craft to address this same issue. *Id.*

⁸⁵ *Id.* The Court clarified that this decision did not create "a constitutional straitjacket" that would inhibit the efforts of Congress or state legislatures to craft their own solution. *Id.* In fact, the Court encouraged legislators at every level of government to create their own reforms to protect individual rights while promoting an efficient law enforcement system. *Id.* The Court expressed, however, that, in the absence of alternative procedures that are at least as effective as *Miranda* in apprising suspects of their right to silence, the safeguards provided by the *Miranda* decision must be observed. *Id.*

⁸⁶ See Leo, *supra* note 63, at 622 (explaining that many called for the impeachment of Chief Justice Warren, who authored the *Miranda* decision). Law enforcement officials claimed that the Court's decision would make it unreasonably difficult to investigate criminal activity. *Id.* Congress attempted to invalidate the ruling by passing the Omnibus Crime Control and Safe Streets Act of 1968. 34 U.S.C. § 10101. This legislation allowed self-incriminating statements to be brought in as admissible evidence in criminal trials if the trial judge decided that the statements in question were voluntary. 18 U.S.C. § 3501.

⁸⁷ *Dickerson v. United States*, 530 U.S. 428, 440 (2000).

tended to comply with the letter of the law, they often refused to consider the motivation behind the law and failed to alter their interrogation tactics accordingly.⁸⁸ A series of studies found that *Miranda* has not had a substantive impact on the criminal outcomes, as most individuals waive their rights.⁸⁹ Some critics of *Miranda* assert that the doctrine should be abolished because it threatens the separate nature of state and federal courts—that the prophylactic rules of *Miranda* are an inappropriate extension of federal power, imposing rules upon state courts.⁹⁰ The current Court seems to agree with this proposition, as exhibited by its decision in *Vega v. Tekoh*.⁹¹

C. *Miranda* Rights in the 21st Century

Application of the *Miranda* rule presents many flaws.⁹² Despite the prevalence of the language of *Miranda* warnings in popular culture, substantial gaps exist in the public's comprehension of these warnings.⁹³ These gaps are

⁸⁸ Leo, *supra* note 63 **Error! Bookmark not defined.**, at 632.

⁸⁹ *Id.* Most individuals suspected of a crime and subjected to custodial interrogations waive the constitutional rights they are informed of through *Miranda* warnings. See Kassir & Norwick, *supra* note 16, at 4 (asserting that four out of five custodial interviewees waive *Miranda* rights). The enforcement of *Miranda* has had a negligible impact on law enforcement officials' ability to obtain admissions from those they interrogate. Leo, *supra* note 63 **Error! Bookmark not defined.**, at 632.

⁹⁰ See Leo, *supra* note 63 at 675 (expressing concerns about the potential overreach of the Supreme Court). The supervisory authority that federal courts have over state courts is limited to issues involving constitutional matters. *Id.* Some scholars argue that *Miranda* warnings do not qualify as a constitutional matter, but "rather are merely prophylactic measures designed to protect underlying constitutional rights; therefore, the Supreme Court's attempt to impose *Miranda* on state courts represents an illegitimate extension of federal power." *Id.*

⁹¹ See *Vega v. Tekoh*, 597 U.S. 134, 151–52 (2022) (holding that *Miranda* is simply a prophylactic rule with no remedy under 42 U.S.C. § 1983).

⁹² See Richard Rogers & Eric Y. Drogin, *Miranda Rights and Wrongs: Matters of Justice*, 51 CT. REV. 150, 151 (2015) (explaining that, although the American public is generally familiar with the gist of *Miranda* rights, significant gaps in the comprehension of those rights exist, partially due to a misconception that the delivery of *Miranda* rights is a formality with little consequence on the outcome of interactions with law enforcement). Studies have shown that juvenile detainees face difficulty in comprehending their *Miranda* rights due to cognitive limitations. Antonis Katsiyannis, David E. Barrett & Mickey L. Losinski, *Miranda Rights: Implications for Juveniles with Disabilities*, 47 INTERVENTION SCH. & CLINIC 113, 115 (2011). Similar issues exist with individuals with mental illness, those who have not been able to benefit from a formal education, those who may not speak English fluently, and those who are from marginalized communities. See Virginia G. Cooper & Patricia A. Zapf, *Psychiatric Patients' Comprehension of Miranda Rights*, 32 LAW HUM. BEHAV. 390, 391 (2008) (describing defendant characteristics such as mental illness, age, intelligence, prior experience with police, and education as factors used by the courts to determine defendants' competency to understand and subsequently waive *Miranda* rights); Floralyann Einesman, *Confessions and Culture: The Interaction of Miranda and Diversity*, 90 J. CRIM. L. & CRIMINOLOGY 1, 24 (1999) (stating that there are no requirements regarding how *Miranda* warnings must be given, placing those who struggle to comprehend legal jargon particularly at risk of misunderstanding).

⁹³ See Lisa Bowen, *Many Suspects Don't Understand Their Right to Remain Silent*, MONITOR ON PSYCH. (Oct. 2011), <https://www.apa.org/monitor/2011/10/suspects> [<https://perma.cc/6LW4-NMWS>] (asserting that approximately one million criminal cases in the United States are compromised annual-

particularly prominent among juveniles and those with psychiatric illnesses, particularly illnesses inhibiting intellectual development.⁹⁴ There are several factors that impact an individual's understanding of *Miranda*'s protections, including the perception that *Miranda* warnings are inconsequential formalities—any meaningful understanding is precluded by the often robotic and quick delivery of the warning.⁹⁵ Only a simple affirmative response is required of defendants to establish that they understand their *Miranda* rights.⁹⁶ This is especially problematic for defendants with cognitive disabilities, who often agree reflexively when asked if they understand their *Miranda* rights, even if they do not or cannot comprehend the rights that they have.⁹⁷

Juvenile defendants, such as A.A., are also highly vulnerable to shortcomings in the delivery of *Miranda* rights.⁹⁸ Studies show that the majority of juveniles do not fully comprehend or appreciate their rights when presented with *Miranda* warnings.⁹⁹ This issue is further exacerbated by inconsistent legal standards related to adjudicative competence for adolescent defendants.¹⁰⁰ Ad-

ly due to a lack of understanding of the rights afforded to them under the Constitution). A study of 9.2 million arrests, all of which occurred in 2009, brought forth that ten percent of these cases arose due to issues related to *Miranda* warnings. *Id.* The approximate number of arrests affected was 976,000, which included “360,000 arrests of adults with mental health disorders; 305,000 arrests of adults without mental health disorders; and 311,000 juvenile arrests.” *Id.*

⁹⁴ See Cooper & Zapf, *supra* note 92, at 401 (noting that psychiatric patients have an impaired comprehension of *Miranda* rights compared to those without psychiatric issues).

⁹⁵ Rogers & Drogin, *supra* note 92, at 151. Warnings are often delivered quickly to those in detention, and the quickness with which these warnings are communicated make them prone to inaccuracy and misunderstanding. *Id.* A survey of civilians revealed that approximately one third of the sample size had little to no knowledge of *Miranda* rights. *Id.* Most respondents were aware of their right to silence, but few knew of the risks of speaking to law enforcement, the right to obtain counsel, and rights to other legal services. *Id.* Almost all of the respondents did not know they could assert their right to remain silent or their right to counsel at any time over the course of custody. *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* When vulnerable individuals are confronted by authority figures, particularly law enforcement officials, reflexive agreement to their wishes, also known as the response style of “acquiescence,” is prominent. *Id.* Yes-no questions, which are commonly used in *Miranda* warnings, leave individuals with intellectual disabilities particularly vulnerable to acquiescence, even when acquiescence is not in their best interest. *Id.*

⁹⁸ See Jodi L. Viljoen, Patricia A. Zapf & Ronald Roesch, *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of Legal Standards*, 25 BEHAV. SCIS. L. 1, 1 (2007) (stating that there is currently considerable ambiguity in the legal standards determining the competency of juveniles to comprehend their *Miranda* rights).

⁹⁹ *Id.* at 14. Seventy-eight percent of juveniles between the ages of eleven and thirteen and 63% of juveniles between the ages of fourteen and fifteen indicated impaired understanding on at least one of the rights communicated during *Miranda* warnings. *Id.* Further, stress levels during legitimate police interrogations are likely much higher for the age groups studied, suggesting that actual comprehension of *Miranda* is likely much lower for many of the children that were studied. *Id.*

¹⁰⁰ See *id.* (describing the two most prominent standards for determining juvenile comprehension of *Miranda* rights). Some courts apply the lower “Understanding Only Standard,” which requires merely that juvenile defendants “understand” the *Miranda* warnings they were given. *Id.* Other courts required the higher “Understanding and Appreciation Standard,” which requires that defendants actu-

olescents tried in adult courts must fulfill the competence standards required of other adults.¹⁰¹ Alternatively, proceedings in juvenile courts vary in terms of their requirements for competency—some require adult levels of competency, and some require no competency at all.¹⁰² Courts have attempted to protect disenfranchised juveniles from potential gaps in comprehension by allowing adolescent defendants to consult an “interested adult,” such as a parent or legal guardian.¹⁰³ Still, this solution is imperfect due to the potentially limited legal knowledge many “interested adults” have and may backfire, as it did for A.A. and his mother.¹⁰⁴

Gaps in comprehension are also disproportionately high within communities of color and among those of immigrant backgrounds.¹⁰⁵ Criminal defendants who are not fluent in English are particularly at risk of being unable to comprehend their *Miranda* rights.¹⁰⁶ Law enforcement officials are required to translate *Miranda* warnings into the defendant’s primary language, but perfect translation is not required.¹⁰⁷ To be considered constitutionally adequate, a translation need only capture the general “gist” of *Miranda* rights—translated warnings with grammatical errors or dialectal differences would be legally sufficient.¹⁰⁸

ally comprehend the substance of the *Miranda* warnings. *Id.* The difficulty of proving comprehension inherently increases the number of juvenile defendants who are considered to have weakened appreciation of their *Miranda* rights. *Id.* The application of these standards highlights the concern that juvenile defendants are not being informed of their rights adequately or consistently. *See id.* (underscoring the discrepancies between the standards of application).

¹⁰¹ *Id.* at 3. Under the “adult” standard, individuals must be able to comprehend and appreciate the legal proceedings that they are involved in and have the capacity to substantively communicate with their legal counsel. *Id.*

¹⁰² *Id.* at 14–15. Studies show that the adoption of the adult standard of adjudicative competency for juvenile defendants places an unreasonable burden on the legal system. *Id.*

¹⁰³ *See id.* at 14 (stating that some courts have placed a requirement or option for children to consult with parents or other parental figures while in the custody of law enforcement). Parents cannot always serve as suitable protection for their children because they may themselves have limited understanding of the law and may urge their children to make a confession. *Id.* at 14–15. Accordingly, many legal scholars assert that the presence of an attorney is necessary during custodial interrogation of minors. *Id.*

¹⁰⁴ *See supra* notes 9–13 and accompanying text (illustrating how A.A.’s mother inadvertently assisted the police in gathering a self-incriminating statement from her son while interacting with him at the jailhouse).

¹⁰⁵ *See Einesman, supra* note 92, at 39 (analyzing how non-English speakers struggle to understand their *Miranda* rights and can inadvertently waive them as a result).

¹⁰⁶ *See id.* at 25, 39 (describing the lack of accommodations, beyond a translator, afforded to suspects who do not fluently speak English).

¹⁰⁷ *Id.* at 25–26.

¹⁰⁸ *Id.* at 25. If a suspect is not proficient in English, a law enforcement official can communicate *Miranda* warnings in the appropriate foreign language. *Id.* An officer’s translation of *Miranda* rights does not need to be perfect. *Id.* The suspect need only be told that “(1) he need not talk to the authorities; (2) if he does, his statements will be used against him; and (3) he has a right to an attorney.” *Id.* If these requirements are fulfilled, a court will most likely conclude that the communication of *Miranda* rights is adequate. *Id.* A translation will not be considered defective even if the translator uses a different dialect than that used by the suspect, the translation contains grammatical errors, or the translator’s accent is poor. *Id.* The translation will only be found defective if it does not adequately com-

Even among the general population, significant gaps exist in knowledge of *Miranda* rights.¹⁰⁹ Ultimately, the act of stating to individuals that they possess certain rights does not guarantee that the individuals will understand what those rights actually afford them, or how best to shield themselves from self-incrimination.¹¹⁰ Consequently, many defendants end up waiving their rights.¹¹¹ Waivers require a knowing, intelligent, and voluntary decision to relinquish the rights that *Miranda* provides.¹¹² In order for a waiver to be valid, it must be free from coercion, intimidation, and other external pressures.¹¹³ While validity is a case-by-case determination for the court, a waiver need not be explicit to be valid.¹¹⁴ An individual's actions and words while under interrogation can imply a waiver.¹¹⁵

Waivers often result from an individual's belief that their innocence will help set them free.¹¹⁶ Others believe that compliance with law enforcement

municate *Miranda* rights to the individual, in which case any self-incriminating statements made will be suppressed. *Id.* Otherwise, if a translation captures the "gist" of *Miranda*, it is adequate. *Id.*

¹⁰⁹ See Rogers et al., *General Knowledge and Misknowledge of Miranda Rights: Are Effective Miranda Advisements Still Necessary?*, 19 PSYCH. PUB. POL'Y & L. 432, 434 (2013) (describing gaps in comprehension of *Miranda* rights among the general public). Approximately one third of study respondents did not recognize that their silence during a custodial interrogation is constitutionally protected and is inadmissible at trial as incriminating evidence. *Id.* Other misconceptions impacted waivers of silence, including "erroneous beliefs regarding the admissibility of 'off-the-record' comments, retracted statements, and admissions without a signed *Miranda* waiver." *Id.* Most jail detainees surveyed correctly believed that custodial interrogators must stop their interrogations once a suspect asks for an attorney. *Id.* One third of the detainees, however, held the misconception that questioning was allowed to resume only after an attorney was appointed and physically present at the interrogation. *Id.*

¹¹⁰ See Rogers & Drogin, *supra* note 92, at 152 (stating that a simple notice of *Miranda* rights does not guarantee knowledge or education of those rights). Simply because *Miranda* rights are stated or written does not guarantee that they were properly heard or read or, even if they were heard or read, that they were properly comprehended. *Id.*

¹¹¹ See Kassin & Norwick, *supra* note 16, at 212 (describing that four out of five custodial interviewees waive their rights, thus submitting to questioning). "Waiver" is defined as the explicit or implicit voluntary relinquishment of a legal right. *Waiver*, BLACK'S, *supra* note 78.

¹¹² See Rogers & Drogin, *supra* note 92, at 153 (stating that the "knowing" requirement helps to ensure that a waiver is made "intelligently"); see also *Colorado v. Spring*, 479 U.S. 564, 572 (1987) (holding that a waiver must be made "knowingly" and "intelligently").

¹¹³ See Einesman, *supra* note 92, at 38 (describing that a court will determine whether a waiver resulted from coercion when analyzing its validity).

¹¹⁴ See *id.* (describing the characteristics of a valid waiver). The government holds the burden to prove the validity of a waiver "by a preponderance of the evidence." *Id.* On the one hand, an individual's silence is not enough to presume a waiver, but, on the other hand, an explicit waiver is also not required. *Id.* A waiver may be implied either from an individual's language or actions. *Id.* Ultimately, the legitimacy of a waiver depends on the circumstances and facts of each case, which includes the conduct, experience, and personal background of the individual under interrogation. *Id.* Further, a suspect does not need advance notice of all the potential topics of their interrogation for their waiver to be considered valid. *Id.*

¹¹⁵ See *id.* (describing that both words and actions can be used to assert a waiver).

¹¹⁶ Kassin & Norwick, *supra* note 16, at 218. Kassin and Norwick argue that many individuals tend to have great faith in their own innocence ensuring their freedom. *Id.* This faith reflects a "belief

will result in greater leniency in the punishment they receive for potential illegal conduct.¹¹⁷ These perceptions are misguided—the waiver of *Miranda* rights by individuals with such perceptions may backfire and result in self-incrimination and subsequent conviction.¹¹⁸

While the *Miranda* doctrine has many shortcomings, other factors must be considered in determining its efficacy.¹¹⁹ *Miranda* rights facilitate a fundamental step towards educating those who interact with the criminal legal system of their constitutional rights.¹²⁰ *Miranda* guarantees that law enforcement officials convey those rights to individuals in their custody.¹²¹ *Miranda* rights also hold significant symbolic value, showcasing a commitment to a more just criminal legal system and respect towards those accused of criminal activity.¹²²

The issues that the current state of *Miranda* presents are closely tied to the issue of racial justice in policing.¹²³ The murder of Michael Brown in 2014 by Darren Wilson, a Ferguson police officer, ignited a nationwide reform movement to address the often unchecked misconduct of law enforcement officials.¹²⁴ The murder of George Floyd in 2020 by former Minneapolis police officers Derek Chauvin, Tou Thao, J. Alexander Keung, and Thomas Lane brought greater attention to the issue of police brutality.¹²⁵

in a just world in which human beings ‘get what they deserve’ and ‘deserve what they get.’” *Id.* (internal citations omitted).

¹¹⁷ See *id.* at 217–18 (describing the motivations of individuals who choose to not exercise their *Miranda* rights).

¹¹⁸ *Id.* Peter Reilly, an eighteen-year-old boy, confessed to murdering his mother and was prosecuted, convicted, and imprisoned for the crime solely based on his confession. *Id.* Later, independent evidence proved that he did not commit the murder. *Id.* When he was asked why he failed to invoke his *Miranda* rights, Reilly answered that he did not feel like he needed an attorney because he believed that only those guilty of crimes needed legal assistance. *Id.* He believed that he would walk free without the help of an attorney because of his innocence. *Id.*

¹¹⁹ See, e.g., Welsh S. White, *Defending Miranda: A Reply to Professor Caplan*, 39 VAND. L. REV. 1, 21 (1986) (illustrating the cultural and social benefits that *Miranda* has provided, particularly in policing).

¹²⁰ See Paul Marcus, *Defending Miranda*, 24 LAND & WATER L. REV. 241, 249 (1989) (describing that *Miranda* has achieved its goals simply as an educational tool for defendants).

¹²¹ See *id.* (asserting that *Miranda* rights both help police officers learn the rights that the individuals in their custody possess and create an incentive to enforce those rights because officers are required to communicate them to arrestees).

¹²² See White, *supra* note 119, at 21 (characterizing *Miranda* as an effort to create a more just system of criminal procedure and to curb abusive policing practices).

¹²³ See *Criminal Justice Fact Sheet*, NAACP, <https://naacp.org/resources/criminal-justice-fact-sheet> [<https://perma.cc/TYE3-5WJL>] (stating that Black people are five times more likely to be stopped by law enforcement without legitimate cause than white people and that 65% of Black adults express feeling targeted by law enforcement because of their race).

¹²⁴ See German Lopez, *What Were the 2014 Ferguson Protests About?*, VOX, <https://www.vox.com/2015/5/31/17937764/ferguson-missouri-protests-2014-michael-brown-police-shooting> [<https://perma.cc/H82G-WVQM>] (Jan. 27, 2016) (describing the public outcry after Michael Brown’s murder regarding racial disparities in policing).

¹²⁵ See Emma Bowman, *Minneapolis Reacts to Chauvin Sentence with Fury and Hope*, NPR (June 25, 2021), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/06/25/1010384150/>

Although the deaths of these Black men, and countless others, have largely brought attention to issues related to excessive force by police, many Black Lives Matter activists and organizers have urged politicians and community leaders to rethink policing at every step, including the initial interactions that detainees and arrestees have with law enforcement.¹²⁶ Issues of coercion, intimidation, and physical violence are rampant among interactions between police and civilians, particularly those who identify as Black, Indigenous, and people of color (BIPOC).¹²⁷ Although cities across the country are considering reform to their policing systems in order to afford greater protections to their communities, the Supreme Court has engaged in a seemingly contradictory approach in *Vega*, limiting the relief available for individuals subjected to custodial interrogations.¹²⁸

minneapolis-reacts-to-chauvin-sentence-with-fury-and-hope [https://perma.cc/VY4W-QEA8] (reporting that Derek Chauvin, the police officer who placed his knee on George Floyd's neck and caused Floyd to suffocate to death, was sentenced to a little over 22 years in prison). The death of George Floyd sparked protests across the country and led to demands for changes in law enforcement practices. *Id.*; see also Trone Dowd, *All the Cops Involved in George Floyd's Murder Are Now Going to Prison*, VICE (July 27, 2022), <https://www.vice.com/en/article/v7vv4j/george-floyd-murder-police-prison> [https://perma.cc/W3WW-JXUF] (naming the police officers responsible for George Floyd's murder).

¹²⁶ See generally MOVEMENT FOR BLACK LIVES, THE BREATHE ACT (2020), https://breatheact.org/wp-content/uploads/2020/07/The-BREATHE-Act-PDF_FINAL3-1.pdf [https://perma.cc/259M-FDUF] (providing policy changes to address police brutality). Activists have identified four main areas of interest in improving the state of policing: (1) "divesting federal resources from incarceration and policing [and] ending criminal-legal system harms"; (2) "investing in new approaches to community safety utilizing funding incentives"; (3) "allocating new money to build healthy, sustainable, [and] equitable communities for all people"; and (4) "holding officials accountable [and] enhancing self-determination of Black communities." *Id.* at 2. While efforts are underway to reform policing, there has also been an increase in the militarization of police departments across the country. Steven Arrigg Koh, *Policing & the Problem of Physical Restraint*, 64 B.C. L. REV. 309, 343–44 (2023). This militarization deters progress towards a more equitable and justice-oriented form of policing, but recent shifts in the public perception of police can incentivize police reform. *Id.*

¹²⁷ See *Criminal Justice Fact Sheet*, *supra* note 123 (stating that, although Black people make up only 13.4% of the American population, they comprise 22% of police officer fatal shooting victims).

¹²⁸ See Caleb Pennington, *The Vega v. Tekoh Decision is an Attempt by the Court to Fight Back Against Black Lives Matter and the George Floyd Protests*, BRILLIANT MINDS COLLECTIVE (June 30, 2022), <https://brilliantmindscollective.org/the-vega-v-tekoh-decision-is-an-attempt-by-the-court-to-fight-back-against-black-lives-matter-and-the-george-floyd-protests/> [https://perma.cc/8QTY-4QVB] (describing how the *Vega* decision wholly conflicts with the demands of the public as they seek to better the quality of living of communities of color). The term "criminal legal system" is used throughout this Note instead of the more mainstream term "criminal justice system" to acknowledge the overwhelming lack of justice the current system delivers. See Erica Bryant, *Why We Say "Criminal Legal System," Not "Criminal Justice System,"* VERA INST. OF JUST. (Dec. 1, 2021), <https://www.vera.org/news/why-we-say-criminal-legal-system-not-criminal-justice-system#:~:text=Lawmakers%20and%20media%20often%20speak,corrections%20in%20the%20United%20States> [https://perma.cc/6KEM-8PR2] (describing the inherently racist character of the criminal legal system).

II. THE SUPREME COURT'S REGRESSION

The entrenched cultural and political prominence of *Miranda* rights suggests a governmental interest in protecting those rights and in building trust and transparency between the American public, law enforcement, and the judiciary.¹²⁹ *Miranda* rights are undoubtedly imperfect, but the U.S. Supreme Court's decision in *Vega v. Tekoh* exacerbates the issue instead of providing a solution.¹³⁰ Part A of this Section analyzes the language of the *Vega* decision, including Justice Elena Kagan's dissenting opinion.¹³¹ Part B explores the implications of the *Vega* decision on *Miranda* rights.¹³² Part B also considers the trend towards judicial politicization among Supreme Court personnel and the context of other recent Supreme Court decisions.¹³³ Finally, Part C addresses the main contention of the *Vega* decision: that *Miranda* rights are a prophylactic rule.¹³⁴ Part C explores potential solutions to the problems created by the *Vega* Court's characterization of *Miranda*.¹³⁵

A. *Vega v. Tekoh* Muddies the Waters

In 2022, in *Vega v. Tekoh*, the Supreme Court ruled that a government official's failure to comply with *Miranda* does not violate the Fifth Amendment due to the prophylactic nature of the *Miranda* rule.¹³⁶ Therefore, an individual who was not provided with his *Miranda* rights cannot sue the responsible law enforcement official or officials under 42 U.S.C. § 1983.¹³⁷ Justice Samuel Alito, writing for the majority, emphasized that *Miranda* and its progeny imposed rules that have a constitutional basis but are themselves prophylactic.¹³⁸ Justice Alito pointed to the fact that nowhere in the *Miranda* decision is it stated that a failure to provide *Miranda* warnings would constitute a violation of the Fifth Amendment itself.¹³⁹ Instead, the opinion states only that the rule ex-

¹²⁹ See Naomi Mezey, *Law as Culture*, 13 YALE J.L. & HUMAN. 35, 57 (2001) (stating that culture was critical to the prominence of *Miranda* rights—the warnings were popularized to a point at which they were culturally understood as being required by the Constitution).

¹³⁰ See *supra* notes 92–117 and accompanying text (discussing the valuable steps that *Miranda* provides towards the creation of a more transparent criminal legal system while acknowledging the doctrine's shortcomings).

¹³¹ See *infra* notes 136–148 and accompanying text.

¹³² See *infra* notes 149–157 and accompanying text.

¹³³ See *infra* notes 158–177 and accompanying text.

¹³⁴ See *infra* notes 178–194 and accompanying text.

¹³⁵ See *infra* notes 195–202 and accompanying text.

¹³⁶ 597 U.S. 134, 149–50 (2022).

¹³⁷ See *supra* notes 46–48 and accompanying text (describing the function of § 1983).

¹³⁸ See *Vega*, 597 U.S. at 142–43 (asserting that, if a nonobservance of *Miranda* amounted to a violation of the Fifth Amendment, the *Miranda* Court should not have stated that adherence to *Miranda* warnings was unnecessary in case Congress or the states crafted their own solutions to issues of self-incrimination).

¹³⁹ *Id.* at 141–43.

isted to safeguard against self-incrimination during law enforcement custodial interrogations.¹⁴⁰ The *Vega* Court held that a prophylactic rule should only be treated as constitutionally required under § 1983 when its benefits outweigh its costs, and, in this case, allowing *Miranda* liability would result in unreasonably burdensome costs.¹⁴¹

Justice Elena Kagan delivered the dissenting opinion and was joined by Justices Sonia Sotomayor and Stephen Breyer.¹⁴² The dissent emphasized that the Court's decision in *Dickerson v. United States* made certain that *Miranda* is a constitutional right.¹⁴³ The *Dickerson* Court held that *Miranda* was a constitutional decision, even with its invitation for federal congressional or state legislative action.¹⁴⁴ Justice Kagan suggested that this determination grants a corresponding protection of *Miranda* rights under federal civil rights statutes.¹⁴⁵ The dissent also pointed to the Court's holding in *Dennis v. Higgins*, in which an individual could sue for infringement of the Dormant Commerce Clause under 42 U.S.C. § 1983.¹⁴⁶ The *Dennis* Court held that the Dormant Commerce

¹⁴⁰ *Id.*

¹⁴¹ *See id.* at 151–52 (asserting that *Miranda* relies on a determination about what is necessary to prevent violations of the Fifth Amendment through compelled self-incrimination). The Court asserted that enabling suits under § 1983 for victims of *Miranda* violations would have a negligible deterrent effect on law enforcement officials. *Id.* at 151. Further, the majority concluded that allowing such claims to come forward would create more problems than benefits, as it would be a disservice to judicial economy to require federal courts to adjudicate factual questions that have already been decided by state courts, such as if Tekoh's interrogation qualified as a custodial interrogation. *Id.* Judicial economy is typically understood as the principle of seeking the most efficient use of the judicial system and its limited resources. *Judicial Economy*, QUIMBEE, <https://www.quimbee.com/keyterms/judicial-economy> [<https://perma.cc/YFZ7-PNN8>]. The Court asserted that allowing § 1983 claims related to *Miranda* rights would not only be wasteful of judicial resources, but would also create friction “between the federal and state court systems by requiring the federal court entertaining the § 1983 claim to pass judgment on legal and factual issues already settled in state court.” *Vega*, 597 U.S. at 151. Procedural issues would also arise by allowing § 1983 claims related to *Miranda* to be brought forth. *Id.* These issues include if federal courts considering § 1983 claims owe deference to the factual findings of lower courts; if “forfeiture and plain error rules” transfer from the criminal proceeding to the federal proceeding; if “harmless-error rules” are applicable; and if civil damages are appropriate in circumstances in which any un-Mirandized statements did not play a role on the outcome of any criminal proceedings. *Id.* at 152.

¹⁴² *See Vega*, 597 U.S. at 152–55 (Kagan, J., dissenting) (asserting that the *Dickerson v. United States*, 530 U.S. 428 (2000), decision established that *Miranda* is a constitutional rule).

¹⁴³ *See id.* (explaining that *Miranda* has already been upheld by the Supreme Court through the *Dickerson* decision).

¹⁴⁴ *Dickerson*, 530 U.S. at 440. The *Vega* dissent explained that the *Dickerson* decision was charged with language that indicated that the majority considered *Miranda* a constitutional rule. *Vega*, 597 U.S. at 154–55 (Kagan, J., dissenting). Further, the *Vega* dissent cited the *Miranda* Court's invitation to Congress and state legislatures to craft protections for the right against self-incrimination as an indication that *Miranda* is constitutionally based. *Id.* at 154.

¹⁴⁵ *Vega*, 597 U.S. at 154–55 (Kagan, J., dissenting).

¹⁴⁶ *See id.* at 156–57 (arguing that, even though the Dormant Commerce Clause is only implicit in the Constitution, it is upheld as a constitutional right with an enforceable remedy—thus, the same

Clause provided a constitutional right to individuals, despite some viewing the clause simply as an allocation of power between the various levels of government.¹⁴⁷ This disagreement between Justices Kagan and Alito illustrates the crux of the prophylaxis controversy and the holding's limiting effect on the liability of government officials under § 1983.¹⁴⁸

B. The Implications of Vega and the (Probable) End of Miranda

The Supreme Court has not yet overturned *Miranda v. Arizona*, but it has laid the groundwork to do so in the foreseeable future.¹⁴⁹ Courts are still required to suppress un-Mirandized statements during litigation.¹⁵⁰ Still, the absence of liability under § 1983 creates substantial difficulty in holding law enforcement officials accountable for not informing detainees of their rights.¹⁵¹ Depriving individuals of this remedy undermines the rights that *Miranda* provides them in the first place.¹⁵²

logic should apply to *Miranda*); *Dennis v. Higgins*, 498 U.S. 439, 451 (1991) (holding that violations of an individual's right to participate in interstate commerce may be subject to relief under § 1983).

¹⁴⁷ *Vega*, 597 U.S. at 156–57 (Kagan, J., dissenting). The dissenting opinion compared the majority's holding in *Vega* to that of *Dennis*, which rejected an attempt to limit which constitutional rights were included under § 1983. *Id.* In *Dennis*, the Court held that individuals could bring suit under § 1983 for alleged violations of the Dormant Commerce Clause. *Id.* The Supreme Court did not consider the Clause's allocation of power as an impediment to viewing the Clause as also conferring a right on individuals to participate in interstate commerce without significant interference from states. *Id.* The "implied" nature of the Dormant Commerce Clause also did not deter the Court from viewing it as a constitutional right. *Id.* Ultimately, the Supreme Court held that the Dormant Commerce Clause conferred a right "in the 'ordinary' sense of being 'a legally enforceable claim of one person against another.'" *Id.* (quoting *Dennis*, 498 U.S. at 447 n.7). The dissent argued that this same logic applied to *Miranda*. *Id.* The dissent emphasized the Court's inconsistency—if a right to interstate commerce is enforceable under § 1983, it is illogical to not extend that same privilege to *Miranda* rights, which are necessary to uphold the protections provided by the Fifth Amendment. *Id.* at 157–58.

¹⁴⁸ *See id.* at 157–58 (discussing that, although individuals may seek to suppress a self-incriminating statement, there is still no remedy for the harm individuals may have suffered if their statement was not suppressed and they were subsequently wrongfully convicted).

¹⁴⁹ *See* Mark Joseph Stern, *Alito's Attack on Miranda Warnings Is Worse Than It Seems*, SLATE (June 23, 2022), <https://slate.com/news-and-politics/2022/06/miranda-warnings-supreme-court-alito-kagan.html> [<https://perma.cc/B6KT-HKWX>] (speculating that the conservative Supreme Court coalition has indicated that *Miranda* and *Dickerson* were decided incorrectly).

¹⁵⁰ *See Vega*, 597 U.S. at 151–52 (holding only that *Miranda* does not create a right to sue law enforcement officials under § 1983).

¹⁵¹ *See id.* at 157–58 (Kagan, J., dissenting) (discussing how the absence of relief under § 1983 removes a critical path for redress for individuals who are wrongfully convicted and consequently deprived of their liberty in the carceral system). Without the ability to sue police officers for *Miranda* violations under § 1983, there may no longer be any relief available for victims of these violations. *Id.*

¹⁵² *See id.* (stating that the inability to seek remedies for a violation of *Miranda* does not account for the fact that not all compelled self-incriminating statements are suppressed, and, for those who find themselves spending years in prison due to the injustice of a wrongful conviction, there is no longer a remedy available to them to account for the harm they suffered).

The *Vega* decision also indicates the increasing possibility that the Court will eventually overrule *Miranda* altogether.¹⁵³ In *Dickerson*, the Supreme Court declined to overrule *Miranda*, largely on the principles of stare decisis.¹⁵⁴ Specifically, the Court noted that “special justification[s]” were required in order to depart from precedent.¹⁵⁵ Despite the controversy and consistent debate surrounding *Miranda*, the Court found that no such justification to depart from precedent existed.¹⁵⁶ Further, the cultural prominence of *Miranda* and its solid basis in constitutional authority held great weight for the *Dickerson* Court and contributed to its determination to hold true to precedent.¹⁵⁷

But, in the time since *Dickerson*, the Supreme Court’s politics have shifted dramatically.¹⁵⁸ Scholars have long asserted that the Supreme Court is a political body, largely due to the partisan nature of the appointment process.¹⁵⁹ This concept, known as judicial politicization theory, asserts that judges who adjudicate within an exceptionally politicized judicial system are more prone to engaging in ideological decision-making, in comparison to those judges who

¹⁵³ See 42 U.S.C. § 1983—*Miranda Rights*—*Vega v. Tekoh*, *supra* note 3, at 438 (describing the impact of *Vega* on the future of *Miranda* rights). The Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), raised alarm bells regarding the Court’s deviation from precedent, especially due to its lackluster treatment of stare decisis principles. *Id.*

¹⁵⁴ See *Dickerson v. United States*, 530 U.S. 428, 443 (2000) (stating that, regardless of whether the Court agreed with the reasoning behind the decision in *Miranda* stare decisis deterred a determination to overrule *Miranda*). Stare decisis means “to stand by things decided” and is a legal doctrine that creates a presumption that courts will observe relevant precedent when making legal decisions. *Stare Decisis*, BLACK’S, *supra* note 78.

¹⁵⁵ *Dickerson*, 530 U.S. at 443 (quoting *United States v. Int’l Bus. Machs. Corp.*, 517 U.S. 843, 856 (1996)). Although stare decisis is not dispositive of a legal question, it carries significant persuasive value, such that a departure from precedent must typically be accompanied by a compelling justification. *Id.*

¹⁵⁶ See 42 U.S.C. § 1983—*Miranda Rights*—*Vega v. Tekoh*, *supra* note 3, at 438 (discussing the lack of reasoning available to justify a departure from the precedent set forth in *Miranda v. Arizona*).

¹⁵⁷ See *id.* (citing the cultural significance of *Miranda* as a reason for the *Dickerson* decision).

¹⁵⁸ See Anita Kumar, *Trump’s Legacy Is Now the Supreme Court*, POLITICO (Sept. 26, 2020) <https://www.politico.com/news/2020/09/26/trump-legacy-supreme-court-422058> [<https://perma.cc/99ZA-CBHV>] (stating that President Donald Trump transformed the judiciary by appointing a record number of conservative judges). The three Supreme Court justices appointed by former President Trump—Justices Amy Coney Barrett, Brett Kavanaugh, and Neil Gorsuch—have helped to push the Supreme Court’s collective ideology to the right, with the impact borne out for decades to come. *Id.*

¹⁵⁹ See David L. Weiden, *Judicial Politicization, Ideology, and Activism at the High Courts of the United States, Canada, and Australia*, 64 POL. RSCH. Q. 335, 336 (2011) (asserting that a country’s judicial system is typically relatively politicized if the seats on the bench are filled by an executive power that is elected on partisan grounds). The partisan nature of American presidential elections is reflected in the individuals that American presidents appoint to serve the judiciary. Neal Devins & Lawrence Baum, *Split Definitive: How Party Polarization Turned the Supreme Court into a Partisan Court*, 2016 SUP. CT. REV. 301, 303. Partisan sorting, or the migration of conservatives identifying with the Republican Party and liberals with the Democratic Party, at increasing rates contributes to the polarization that results in partisan electoral processes. *Id.* At the same time, the president, Congress, and those who sit on the bench are becoming increasingly ideologically conscious. *Id.*

are appointed in systems that tend to be nonpartisan.¹⁶⁰ Consequently, cases concerning civil liberties and civil rights are subject to the personal ideological values of partisan justices.¹⁶¹

The Reagan Administration is primarily responsible for the ever-increasing politicization of the judicial appointment process today.¹⁶² President Ronald Reagan aimed to fundamentally transform the Court's role in order to craft and uphold conservative ideals—unlike his predecessors, he assigned ideology the greatest weight in his screening of candidates.¹⁶³ This goal continued beyond the Reagan Administration, as illustrated by the judicial appointments made by Presidents George H.W. Bush, George W. Bush, and Donald Trump.¹⁶⁴ Appointments made by recent Democratic Presidents Barack Obama and Bill Clinton considered demographics and identity more than ideology.¹⁶⁵ Ultimate-

¹⁶⁰ Weiden, *supra* note 159, at 336. An increasingly politicized judicial selection process creates a greater likelihood that judicial nominees will be chosen on the basis of ideological and partisan grounds. *Id.* Upon their confirmation, these judges are more likely to adjudicate in accordance with their personal political and ideological preferences, which typically results in the overturning of oppositional legal standards and legislation. *Id.* The culture surrounding judicial selection is the most critical factor in determining the level of politicization of the judiciary and whether the members of the judiciary are driven by ideological and political concerns. *Id.* “The corollary to [judicial politicization theory] is that judges on a high court that is less politicized will be more likely to decide cases based on legal factors, and will be less likely to invalidate laws enacted by the political branch.” *Id.*

¹⁶¹ *See id.* at 344 (stating that attitudinal voting patterns were found in the high courts of the United States, Canada, and Australia, but the pattern is especially well documented within the U.S. Supreme Court).

¹⁶² *See* Devins & Baum, *supra* note 159, at 338 (describing the shift in metrics during the Reagan Administration that were used in the nomination of Supreme Court justices). Factors that most presidents consider when nominating Supreme Court justices include “objective” qualifications, such as ethical behavior, accomplishments, and legal capabilities, and subjective and political factors, such as ideology, political gains to be made through strategic selections, and the nominee’s likelihood of successfully completing the appointment process. *Id.* at 331.

¹⁶³ *Id.* at 338. President Reagan’s nomination of four conservative justices created a long-lasting impact on the collective ideology of the Supreme Court, most recently illustrated by Justice Antonin Scalia’s legacy. *How Antonin Scalia Changed America*, POLITICO (Feb. 14, 2016) <https://www.politico.com/magazine/story/2016/02/antonin-scalia-how-he-changed-america-213631/> [<https://perma.cc/WZZ4-L87G>]. Justice Scalia prominently brought originalism to the forefront of the Supreme Court and contributed to the growing polarization on the Supreme Court bench. *Id.* Most importantly, he set the conservative vision of the modern Court, as exhibited by his staunch opposition to affirmative action, LGBTQ+ equality, and reproductive rights. *Id.*

¹⁶⁴ *See* Devins & Baum, *supra* note 159, at 339 (describing how former President George H.W. Bush specifically sought to choose the most right-leaning Supreme Court justices possible for his appointments to the bench and nominated Justice Clarence Thomas partly due to his strong record of conservatism).

¹⁶⁵ *Id.* at 334–35. Political ideology was not a conclusive factor in the nominations made by Presidents Clinton and Obama. *Id.* at 334. Like presidents before President Reagan, Presidents Clinton and Obama placed more emphasis on ensuring that their nominees would survive the confirmation process by nominating candidates who did not hold strong liberal values and instead nominating candidates who were perceived as politically moderate and espoused judicial restraint. *Id.* This was done to avoid “confirmation battles” in the Senate. *Id.* Presidents Clinton and Obama also perpetuated the tendency of the Democratic Party to assign “interest group politics” greater weight than political ideology by

ly, the deep ideological divides in the Supreme Court are a result of nominations being made on the basis of personal ideology rather than qualification.¹⁶⁶

This was recently witnessed in the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade* and asserted that the U.S. Constitution does not provide a right to seek an abortion.¹⁶⁷

Legal scholars have argued that the underlying similarities between *Roe* and *Miranda* do not bode well for *Miranda*'s future.¹⁶⁸ The failure of stare decisis to protect *Roe* suggests that *Miranda* is soon to share a similar fate.¹⁶⁹

During the same term in which *Dobbs* was decided, the Supreme Court decided another criminal procedure case that provides further evidence of the

placing significant weight on diverse representation in their nominations for the judiciary. *Id.* at 334–35. In fact, unlike previous Democratic presidents, who tended to nominate more liberal justices, the nominees chosen by Presidents Clinton and Obama were much more moderate. *Id.* at 335–36. Nonetheless, President Obama's nomination of Merrick Garland was notably unsuccessful. *Id.* at 334–35. Despite Garland being a very moderate judicial figure, Republicans had promised to derail any nominee that President Obama brought forth. *Id.* at 335. This illustrates the political strategy involved in the nomination process. *Id.* President Biden's appointment of Justice Ketanji Brown Jackson further demonstrates Democratic presidents' commitment to nominating individuals of diverse racial and gender backgrounds while also suggesting a return to liberal nominees, rather than the moderate candidates brought forth by the Clinton and Obama Administrations. See Amy Davidson Sorkin, *What Justice Ketanji Brown Jackson Can Do on a Radical-Right Court*, NEW YORKER (July 1, 2022), <https://www.newyorker.com/news/daily-comment/what-justice-ketanji-brown-jackson-can-do-on-a-radical-right-court> [<https://perma.cc/5UL5-G5MS>] (describing how Justice Jackson will likely now join Justices Kagan and Sotomayor in attempting to counteract the regressive decisions of their peers on the Supreme Court).

¹⁶⁶ See Devins & Baum, *supra* note 159, at 331 (describing the rising significance of ideology in the nomination decisions of Republican and Democratic administrations but noting that the trend has been more prominent during Republican administrations due to the increasing ideological homogeneity within the Republican Party).

¹⁶⁷ See *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 221–22 (2022) (holding that the decision to regulate or prohibit abortion belongs to the states). This decision had a devastating impact on the state of reproductive rights across the country. *Dobbs v. Jackson Women's Health Organization*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/case/scotus-mississippi-abortion-ban/> (Mar. 19, 2018) [<https://perma.cc/YA6X-7QDS>]. Many states in the country immediately acted to ban or restrict abortion access, requiring women to travel long distances to access reproductive healthcare or forcing them to carry pregnancies without their consent. *Id.*

¹⁶⁸ See 42 U.S.C. § 1983—*Miranda Rights*—Vega v. Tekoh, *supra* note 3, at 439 (outlining the parallels between *Miranda* and *Roe*). *Miranda* and *Roe* are also similar in that they established unenumerated constitutional rights. *Id.* Some legal scholars believe that both the right to abortion and the right to *Miranda* warnings are the result of judicial overreach. *Id.* Similar to *Miranda*'s relationship with the *Dickerson* decision, *Roe* was upheld in *Planned Parenthood of Southeastern Pennsylvania v. Casey* on the principle of stare decisis. See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 833 (1992) (holding that institutional integrity, stare decisis, and consideration of the constitutional issue resolved by *Roe* required that *Roe*'s holding be upheld), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

¹⁶⁹ 42 U.S.C. § 1983—*Miranda Rights*—Vega v. Tekoh, *supra* note 3, at 439. The collapse of the federal right to abortion, despite having been explicitly held to be a constitutional right in prior precedent, highlights the constrained nature of the current Supreme Court's reading of the Constitution. *Id.*

grim future for *Miranda*.¹⁷⁰ In 2022, in *Egbert v. Boule*, the Supreme Court mirrored much of its reasoning in *Vega*.¹⁷¹ The case addressed whether a person has a right to sue federal Border Patrol officials for excessive force, in violation of the Fourth Amendment, or for retaliation under the First Amendment.¹⁷² Previously, in 1971, in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, the Supreme Court held that there is a cause of action for damages where federal agents violate rights afforded by the Fourth Amendment.¹⁷³ Now, according to the *Egbert* Court, this liability does not apply to federal Border Patrol agents.¹⁷⁴ Justice Clarence Thomas, writing for the majority, reasoned that the national security concerns associated with the duties of Border Patrol agents make judicial intrusion inappropriate.¹⁷⁵ The Court decided that Congress is better suited to craft and authorize legal remedies for the First and Fourth Amendment claims that the plaintiff brought forth.¹⁷⁶ As this reversal of decades-old precedent suggests, the combined impacts of judicial politicization and the current Court's opposition to liability for law enforcement officials strongly suggests an impending reversal of *Miranda v. Arizona*.¹⁷⁷

¹⁷⁰ See *Egbert v. Boule*, 596 U.S. 482, 496–97, 501–02 (2022) (holding that U.S. Border Patrol agents cannot be held liable under the Fourth Amendment).

¹⁷¹ See *id.* (removing liability from law enforcement officials).

¹⁷² *Id.* at 486–91. Boule, a resident of Blaine, Washington, lived on the United States–Canada border. *Id.* at 486. He operated a bed-and-breakfast by the name of “Smuggler’s Inn,” which was a pathway for immigrants to enter the country without documentation. *Id.* at 487. Boule worked with Border Patrol to arrest individuals who were entering the country without documentation, ultimately leveraging his relationship with law enforcement as a business opportunity. *Id.* at 487–88. In 2014, Boule informed Border Patrol Agent Erik Egbert of the arrival of a Turkish immigrant. *Id.* at 488. Egbert approached Boule’s property to check the status of Boule’s Turkish guest. *Id.* at 489. Boule denied Egbert entry, which resulted in a physical altercation between Egbert and Boule. *Id.*

¹⁷³ See 403 U.S. 388, 395, 397–98 (1971) (holding that state law cannot limit the exercise of federal authority, just as it may not sanction violations of the Fourth Amendment by federal agents).

¹⁷⁴ See *Egbert*, 596 U.S. at 496 (holding that a *Bivens* claim does not permit courts in the federal system to assess the pros and cons of creating a cause of action and that courts should instead determine whether judicial intrusion would be appropriate or if it would create more harm). Judicial intrusion may impair government interests and frustrate the policymaking role of Congress. *Id.*

¹⁷⁵ *Id.* at 493–96. *Bivens* actions have not been recognized by the Court when related to issues of national security and border control. *Id.* The Court held that “regulating the conduct of agents at the border unquestionably has national security implications” and that “the risk of undermining border security provides reason to hesitate before extending *Bivens* into this field.” *Id.* at 494 (quoting *Hernández v. Mesa*, 140 S. Ct. 735, 747 (2020)).

¹⁷⁶ *Id.* at 498–99.

¹⁷⁷ See *supra* notes 158–169 and accompanying text (highlighting an increasingly political Supreme Court and the regressive tendencies of the current makeup of the Court).

C. The Problem with Prophylaxis

Many legal scholars question the legitimacy and constitutionality of prophylactic rules.¹⁷⁸ In *Dickerson v. United States*, Justice Scalia, dissenting, stated that the prophylactic rule created in *Miranda* was an attempt to expand the Constitution, not just uphold it.¹⁷⁹ Justice Scalia argued that this use of power is undemocratic and unconstitutional because it infringes on the rights of Congress and state legislatures.¹⁸⁰

In response, other scholars have defended prophylactic rules as simply interpretive rules that appropriately fall within the Court's judicial power.¹⁸¹ According to this theory, these rules simply detect constitutional violations—a function that is a legitimate and appropriate exercise of judicial power.¹⁸² This argument is reinforced by congressional inaction in response to the creation of various prophylactic rules.¹⁸³ When the Constitution does not explicitly provide an avenue for redress, the Supreme Court has a duty to create such an avenue—otherwise, the Court becomes an accessory to constitutional violations.¹⁸⁴ In the case of *Miranda* warnings, the potential cost of the overprotec-

¹⁷⁸ See Joseph D. Grano, *Prophylactic Rules in Criminal Procedure: A Question of Article III Legitimacy*, 80 NW. U. L. REV. 100, 123 (1985) (stating that the creation of some prophylactic rules violates the principle of judicial review established in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)). The power assigned to the judiciary in Article III of the Constitution does not extend to the creation of prophylactic rules. *Id.* According to Professor Grano, three consequences result from the judicial exercise of authority that was not granted under Article III. *Id.* at 123–24. First, the Supreme Court could violate the separation of powers between the judiciary, executive, and the legislature by “invading” a power typically assigned to Congress or the president. *Id.* at 124. Second, such an exercise of power could violate the Tenth Amendment by infringing on the power of the states to legislate on certain issues. *Id.* This is the primary concern with the creation of prophylactic rules, as courts impose legal rules on federal and state courts. *Id.* Third, the Supreme Court could violate the doctrines of separation of powers and federalism by “invading an area” in which the states are typically assigned final authority. *Id.* States should have final authority to craft and authorize rules in fields where Article I or another delegation of power authorizes Congress to act but it has not yet done so. *Id.*

¹⁷⁹ See 530 U.S. 428, 460 (2000) (Scalia, J., dissenting) (stating that the Court had gone beyond its power in establishing a prophylactic rule in *Miranda*, and, although the Court has created more prophylactic rules, such repeated mistakes do not “transform error into truth”).

¹⁸⁰ *Id.* The *Dickerson* Court's decision to uphold *Miranda*, Scalia argued, “illustrate[d] the potential for future mischief” under the concept of prophylactic rules. *Id.* He believed that the Supreme Court's decision in *Dickerson* stood for “the power of the Supreme Court to write a prophylactic, extraconstitutional Constitution, binding on Congress and the States.” *Id.* at 461.

¹⁸¹ See Thomas, *supra* note 6, at 366 (describing prophylactic rules as sub-constitutional rules that draw inspiration from, but are not required by, the Constitution and arguing that the ubiquitous application of such rules demonstrates their legitimacy).

¹⁸² *Id.* at 367. Prophylactic rules function like the rules of strict scrutiny, which protect certain actions under the First Amendment. *Id.* Although these doctrines are interpretive, they are legitimate, as indicated by the Court's reference to prophylactic rules as “protective” and “bright-line.” *Id.* at 366–67.

¹⁸³ See Rogers, *supra* note 5, at 555 (stating that the creation of prophylactic rules is justified due to the practical need to direct the conduct of government agents and preserve the virtue of the judiciary).

¹⁸⁴ *Id.* The need to address the skepticism surrounding the criminal legal system's legitimacy provides another justification for the use of prophylactic rules. *Id.* at 556. Prophylactic rules can be less likely to face conscious or unconscious manipulation by governmental officials or judges than

tion of constitutional rights is outweighed by the need for clear rules that inform the public of their rights and restore their trust in public institutions.¹⁸⁵

Some scholars argue that the term “prophylactic rule” is itself problematic and should no longer be used to describe judicial provisions.¹⁸⁶ These scholars argue that a distinction between prophylactic rules and typical judicial rulings results in unwarranted legitimacy concerns.¹⁸⁷ Most constitutional jurisprudence is comprised of judicial decisions that evaluate the constitutional issues presented and the capacity of the courts to safeguard those constitutional rights; prophylactic rules are no different.¹⁸⁸ Accordingly, both doctrinal devices are deserving of equal respect when applied, and a distinction between so-called “prophylactic rules” and other judicial determinations is illegitimate.¹⁸⁹ In the *Dickerson* majority opinion, Justice William Rehnquist described *Miranda* warnings as constitutional rules with constitutional justifications.¹⁹⁰ He did not label *Miranda* rules as “prophylactic” and avoided having to determine

other rules due to pressure placed on those actors to reach a certain result. *Id.* Through the use of prophylactic rules, officials can enforce constitutional protections with “greater transparency, predictability, and evenhandedness.” *Id.*

¹⁸⁵ *Id.* at 556–57, 566–67. Legal rules that are more readily understood and accessible to judges and government officials are also more accessible to the people whose lives are impacted by those same rules. *Id.* at 556–57. Therefore, creating such clarity may work to restore confidence in the criminal legal system. *Id.* at 557. The judiciary has a duty to prevent false determinations of “constitutional compliance” by adopting appropriate rules and remedies. *Id.* at 566.

¹⁸⁶ See Evan H. Caminker, *Miranda and Some Puzzles of ‘Prophylactic’ Rules*, 70 U. CIN. L. REV. 1, 25 (2001) (explaining that the use of the adjective “prophylactic” creates more confusion than clarification and allows those who disagree with the contents of a certain rule to label it as “prophylactic” in order to create an illusion of illegitimacy).

¹⁸⁷ *Id.* The distinctive name of “prophylactic” rules misleadingly suggests that such rules drastically differ from “ordinary” constitutional provisions. *Id.* Such a perception is illegitimate because the underlying rationale that prophylactic rules rest on is just as prominent in the creation of most constitutional law. *Id.*

¹⁸⁸ *Id.* at 25–26. For example, the Court’s First Amendment jurisprudence involves “cases wielding doctrines such as the public forum doctrine and the content-neutrality doctrine” which further the goal of making First Amendment protection judicially manageable. *Id.* In protecting rights provided under the Equal Protection Clause, the Court navigates issues by applying “tiers of scrutiny” as proxies for various forms of discrimination. *Id.* In protecting the Commerce Clause, the Court regulates commercial activity as a proxy for interstate commerce and any regulations imposed upon it. *Id.* In these contexts, the Court applies “doctrinal rules and presumptions” that assist it in screening out constitutional violations in a manner that is manageable. *Id.* These doctrinal rules and presumptions are based, to some extent, on a “self-conscious assessment of the judicial capacity to enforce the underlying norms in various manners.” *Id.* *Miranda* shares the same characteristics as these other doctrines, with the only difference being the Supreme Court explicitly acknowledged its role in the application of *Miranda*. *Id.*

¹⁸⁹ *Id.* at 28. “Slippage” between constitutional rights and doctrinal rules that are applied to enforce those rights commonly exists. *Id.* Although the gray area between rights and rules surrounding *Miranda* seems to be more prominent, it is still in line with the function of other doctrinal tests. *Id.*

¹⁹⁰ See *Dickerson v. United States*, 530 U.S. 428, 439, 443 (2000) (holding that subsequent cases have not overruled the Supreme Court’s precedent in *Miranda*, thus upholding *Miranda*’s constitutionality).

whether prophylactic rules are constitutionally legitimate—a discussion that would have ultimately been unproductive considering the greater issues of self-incrimination at hand.¹⁹¹

But critics of *Miranda* and prophylactic rules argue that their function as external directives for law enforcement officials, instead of as internal standards for courts, differentiate them from typical court rulings.¹⁹² Doctrinal rules, both substantive and procedural, act as internal guidelines for lower courts, unlike prophylactic rules, which result in mandatory legal requirements that apply to entities outside of the judicial system.¹⁹³ Accordingly, critics consider prophylactic rules an illegitimate form of “judicial legislation.”¹⁹⁴

The “unified right theory” offers a solution, reconciling these issues by reframing prophylactic rules as remedies.¹⁹⁵ The unified right theory views remedies as an intrinsic and critical part of every substantive right afforded by the Constitution, rather than as secondary rights.¹⁹⁶ By recharacterizing *Miranda* rights as remedies, the proscription of external directives is more easily justified.¹⁹⁷ Through this lens, the enforcement of *Miranda* rights operates as an

¹⁹¹ See *id.* at 443–44 (describing how *Miranda* rights have become heavily embedded in police practices and, subsequently, in American culture). The practice of *Miranda* warnings creates a test for the admissibility of self-incriminating statements that is uniform throughout police practices across the country. *Id.*; see Thomas, *supra* note 6, at 365 (arguing that Justice Rehnquist specifically avoided labeling *Miranda* as prophylactic in order to avoid addressing the general issue of the constitutional legitimacy of prophylactic rules).

¹⁹² Thomas, *supra* note 6, at 368. The legitimacy of externally binding rules, such as prophylactic rules, is in question. *Id.* Other types of procedural and substantive doctrinal rules are not in question, as they are not external directives to state courts and non-judicial actors like the police. *Id.*

¹⁹³ *Id.* at 369. Most rules function as judicial directives meant to guide lower courts in resolving cases that come before them. *Id.* These rules address “technical details and policies” that are fundamental within the litigation of certain issues. *Id.* (internal quotations omitted). Interpretive rules are established by courts to direct other courts issuing remedies. *Id.* The internal nature of most judicial rulings is the crux of the issue of prophylactic legitimacy. *Id.*

¹⁹⁴ *Id.* Prophylactic rules applied outside of the judicial system are often labeled “judicial legislation” and are considered illegitimate uses of judicial power to direct the conduct of outside parties and institutions. *Id.* (internal quotations omitted).

¹⁹⁵ *Id.* at 370–71. The distinction between prophylactic rules and remedies is greater than just semantics. *Id.* at 371, 373. The recharacterization of prophylactic rules as remedies resolves the issue of legitimacy because remedies are legitimate forms of judicial action with precedential effects. *Id.* at 373.

¹⁹⁶ *Id.* at 371. Remedies should not be viewed as subsidiary rules that are inferior to the primary substantive right to which they apply. *Id.* A legal right requires both the guarantee of a particular protection and a particular remedy in order to have any real meaning for individuals entitled to that right. *Id.* Therefore, remedies cannot be held secondary or inferior to substantive rights. *Id.* A remedy effectively enforces a guaranteed right and defines the scope of said right. *Id.*

¹⁹⁷ *Id.* at 373. Characterizing *Miranda* rights as remedies addresses the questions of legitimacy that the *Dickerson* and *Vega* Courts highlighted. *Id.*; see *Vega v. Tekoh*, 597 U.S. 134, 149–50 (2022) (holding that *Miranda* rights are not subject to protection under 42 U.S.C. § 1983). Individual injunctive remedies inherently force the relevant actors to comply with the Court’s directives. Thomas, *supra* note 6, at 373. The “consequential rule-like effects” of prophylactic rules, including *Miranda*, are also easily justified through understanding them as remedies. *Id.*

injunction against unconstitutional conduct.¹⁹⁸ The *Miranda* decision provides two specific remedies: a prophylactic injunction that prescribes warnings to defendants to protect them from self-incrimination and a restorative injunction to exclude a self-incriminating confession made in the absence of *Miranda* warnings.¹⁹⁹ The creation of these remedies is a response to proven violations of the Constitution.²⁰⁰ The reactive nature of these prophylactic provisions indicate their remedial nature.²⁰¹ Consequently, as long as judicial remedies are considered legitimate, prophylactic remedies should also be considered as such.²⁰²

III. TURNING TO CONGRESS AND THE STATES TO CODIFY *MIRANDA* RIGHTS

The Supreme Court incorrectly decided *Vega v. Tekoh* in 2022, and the impacts of this decision may prove to be incredibly detrimental to the criminal legal system.²⁰³ By limiting the relief available, the Court essentially stripped away one of the two prophylactic remedies that the *Miranda v. Arizona* decision created.²⁰⁴ The proscribed injunction to provide detainees with their *Miranda* rights essentially no longer exists, as law enforcement officials are no longer held liable for their violations of *Miranda* under 42 U.S.C. § 1983.²⁰⁵ By eliminating this avenue for accountability, there is now little incentive for

¹⁹⁸ See Thomas, *supra* note 6, at 373 (illustrating the injunctive nature of prophylactic rules). A prophylactic remedy operates as an injunction against potential defendants by requiring certain conduct. *Id.* The directive is enforced by the threat of a fine or imprisonment if the defendant fails to obey court orders. *Id.* Through this mechanism, “the prophylactic measures convert the innocuous conduct into required law.” *Id.* Further, prophylactic measures are only imposed by courts in response to proven violations of the law. *Id.* This highlights the remedial nature of prophylactic rules. *Id.*

¹⁹⁹ *Id.* at 375; see *Miranda v. Arizona*, 384 U.S. 436, 468 (1966) (holding that criminal detainees must be warned of certain rights guaranteed to them under the Fifth Amendment in order to protect detainees from making involuntary statements of self-incrimination).

²⁰⁰ See Thomas, *supra* note 6, at 373–74 (stating that, in the absence of a constitutional violation, the Court has never created prophylactic rules to protect the constitutional right in question); see also *Rizzo v. Goode*, 423 U.S. 362, 376–77 (1976) (holding that a prophylactic rule was unnecessary for the creation of new police department manuals, procedures, and a community complaint system).

²⁰¹ See Thomas, *supra* note 6, at 373 (highlighting that prophylactic rules are developed in response to an infringement of a constitutional right and that such development parallels that of judicial remedies).

²⁰² *Id.* at 376. The legitimacy of prophylactic remedies is reliant on the legitimacy of judicial remedies. *Id.* By characterizing prophylactic rules as remedies, concerns related to judicial overreach and random judicial rulemaking are eliminated. *Id.* Remedies are fundamental to unified rights and are appropriate exercises of judicial power. *Id.*

²⁰³ See *supra* notes 150–157 and accompanying text (describing how the *Vega* decision sets a clear path to the eventual overturning of *Miranda v. Arizona*).

²⁰⁴ See *supra* notes 195–202 and accompanying text (establishing two prophylactic remedies under *Miranda*: an injunction that orders the delivery of warnings to individuals in law enforcement custody to protect them from involuntary self-incrimination and a restorative remedy that rejects the inclusion of an involuntary admission of self-incrimination).

²⁰⁵ See *Vega v. Tekoh*, 597 U.S. 134, 149–50 (2022) (holding that, although a cause of action for a § 1983 claim can be brought under any law, *Miranda* is a prophylactic rule instead of a law, and § 1983 therefore cannot be extended to include *Miranda*).

law enforcement officers to provide detainees with information related to how they can protect themselves from self-incrimination.²⁰⁶ Without consequence, there is no motivation to uphold *Miranda*.²⁰⁷

The Court's decision in *Vega* aligns with its broader regressive agenda, siphoning away individual rights.²⁰⁸ Notably, in *Dobbs v. Jackson Women's Health Organization*, the Court took a similar approach to *Vega*.²⁰⁹ The Court used a textualist and originalist approach, deciding that, because it is not explicitly mentioned in the Constitution nor rooted in the nation's history, access to abortion cannot be classified as a constitutional right.²¹⁰ The *Vega* decision

²⁰⁶ See Leo, *supra* note 76, at 334 (describing how police departments wrongly teach their officers that they can become human lie detectors). The techniques used by police departments are already inherently coercive. *Id.* at 335. Many custodial interrogators use psychologically coercive techniques, including making promises of leniency and threatening harsher punishment to those who are uncooperative. *Id.* Further, the custodial environment itself can result in coercion and intimidation. *Id.* The custodial environment isolates the suspect, creating a sense of disempowerment. *Id.* Interrogation is meant to cause stress, and that stress increases as the intensity and duration of the interrogation increase. *Id.* The goal of stressful and unpleasant interrogation environments is to make the suspect believe that their guilt has already been established beyond a conceivable doubt. *Id.* Further, suspects are made to feel that their claims of innocence will not be heard and that a lack of cooperation with law enforcement officials will lead to a harsher result. *Id.* Accordingly, suspects eventually feel worn down and believe that they have no other option but to comply with their interrogators. *Id.* These techniques are employed by police departments across the country despite *Miranda*'s existence, indicating that the eventual reversal of *Miranda* may result in a much harsher custodial environment. *Id.* Additionally, police officers are not concerned with the burden of proof that is assigned to prosecutors. See Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U. L. REV. 1133, 1160 (2013) (describing how perjury by police officers regarding their compliance with *Miranda* is well documented).

²⁰⁷ See Leo, *False Confessions*, *supra* note 76, at 335 (explaining that police officers are not always interested in seeking the truth and will employ coercive tactics to obtain favorable outcomes).

²⁰⁸ See Mark A. Lemley, *The Imperial Supreme Court*, 136 HARV. L. REV. F. 97, 110–11 (2022) (describing how the recent slate of Supreme Court cases have restricted individual rights, including those related to reproductive freedom, the right to be free from vote dilution and the subsequent weakened political power of marginalized communities, and the right to be informed of Fifth Amendment protections against self-incrimination during custodial interrogations).

²⁰⁹ See *supra* notes 167–169 and accompanying text (discussing the parallels between *Roe* and *Miranda*).

²¹⁰ See *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 270–71 (2022) (holding that the *Roe* Court found an implicit conferral of the right to abortion within the Constitution, but it failed to root its decision in the text, precedent, or the nation's history). The *Dobbs* Court found that the *Roe* Court

devoted great attention to and presumably relied on matters that have no bearing on the meaning of the Constitution; it disregarded the fundamental difference between the precedents on which it relied and the question before the Court; it concocted an elaborate set of rules, with different restrictions for each trimester of pregnancy, but it did not explain how this veritable code could be teased out of anything in the Constitution, the history of abortion laws, prior precedent, or any other cited source; and its most important rule (that States cannot protect fetal life prior to “viability”) was never raised by any party and has never been plausibly explained.

used similar reasoning.²¹¹ Because *Miranda* rights are not in the text of the Fifth Amendment's Self-Incrimination Clause, they cannot stand as constitutional rights.²¹²

Those who support the *Vega*, *Dobbs*, and *Egbert* decisions claim that these holdings are the appropriate result of the Court's return towards originalism and textualism.²¹³ The issue is deeper, however, and more consequential than statutory or constitutional interpretation.²¹⁴ The current Supreme Court is indicating that the Constitution simply does not provide certain essential rights to marginalized and vulnerable people.²¹⁵ These decisions are symptoms of a judiciary that does not value the rights of marginalized communities.²¹⁶ These regressive decisions disproportionately impact people of color, poor people, those from immigrant communities, and those with intellectual disabilities.²¹⁷ Essentially, the Supreme Court has shown that it holds little value for the lives of the most vulnerable in American society.²¹⁸

²¹¹ See *supra* notes 136–141 and accompanying text (describing the Supreme Court's reasoning in the *Vega* decision).

²¹² See *supra* notes 136–141 and accompanying text (same).

²¹³ See Katie Eyer, *Disentangling Textualism and Originalism*, 13 CONLAWNOW 115, 115 (2022) (clarifying the distinction between textualism and originalism). Textualism requires adherence to the written text of a statute, law, or constitutional provision, while originalism gives weight to the nation's history and legal history. *Id.* Despite textualism and originalism commonly being conflated, not all textualist methodologies are coupled with originalist commitments. *Id.* at 118. An interpreter of the law can focus heavily on the textual meaning of the law without giving the historical context of a law that same level of importance. *Id.* This kind of interpretive approach is sometimes considered "dynamic textualism," suggesting that the textual meaning of a legal provision evolves over time. *Id.* at 118 n.13.

²¹⁴ See *supra* notes 158–166 and accompanying text (analyzing the increasing judicial politicization plaguing the American judiciary and the impact such politicization has on Supreme Court decisions).

²¹⁵ See Lemley, *supra* note 208, at 113 (asserting that the recent turn in the Supreme Court cannot be explained by the principles that typically govern its decisions, such as adherence to a specific philosophy of law and stare decisis).

²¹⁶ *Id.* The Supreme Court is developing an image as an unpredictable, and even dangerous, institution. *Id.* at 115. It has rejected stare decisis, refused to defer to policy decisions, and thrown out well-established judicial procedures to decide cases. *Id.* Presently, the biggest danger posed is the "withdrawal of individual rights" and the "dismantling of political institutions." *Id.* The Court's current conservative majority actively targets those two goals. *Id.* These actions have favored conservative ideals, but conservatives should themselves worry about such an imperial institution persisting: the ideological values of the Court could easily swing in the opposite direction. *Id.*

²¹⁷ See *supra* notes 109 and accompanying text (analyzing the specific groups of people especially vulnerable to self-incrimination); see also Risa Kaufman et al., *Global Impacts of Dobbs v. Jackson Women's Health Organization and Abortion Regression in the United States*, 30 SEX REPROD. HEALTH MATTERS 1, 2 (2022) (stating that approximately three-fourths of abortions sought in the United States are by sought by low income patients). *Dobbs* disproportionately impacts those who are already facing discrimination in obtaining healthcare. *Id.* These people are largely from Black and Indigenous communities, and are also from other communities of color, are disabled, undocumented, young, or living in rural areas. *Id.*

²¹⁸ See *supra* notes 92–108 and accompanying text (analyzing the impacts of *Miranda* on vulnerable communities). The Supreme Court's lack of concern for the wellbeing of marginalized communi-

If the Supreme Court continues down this path, *Miranda* will soon be overturned.²¹⁹ Considering the cultural prominence of *Miranda* rights, that decision would be more symbolic than functional.²²⁰ It would illustrate animosity towards those who *Miranda* aims to protect: our society's most vulnerable.²²¹ There is no denying that there are functional gaps in *Miranda* rights as they currently exist, but the solution is not to do away with the doctrine in its entirety, especially when no alternative solution exists.²²² Instead, law enforcement officers should be required to more actively engage detainees to ensure their understanding of their *Miranda* rights—along with adequate assistance for those who do not speak English or who do not have the capacity to comprehend and appreciate *Miranda* rights on their own.²²³

ties is alarming when considering how these communities have historically relied on the judicial system to expand and protect their rights. See Michele L. Jawando & Abby Bar-Lev Wiley, *The Supreme Court Matters for Communities of Color*, CTR. FOR AM. PROGRESS (Oct. 4, 2016), <https://www.americanprogress.org/article/the-supreme-court-matters-for-communities-of-color/> [<https://perma.cc/WA2L-W6E3>] (surveying Supreme Court decisions that have negatively impacted the quality of living of communities of color). Although the Supreme Court has written decisions that expand rights for marginalized communities, such as overturning racist Jim Crow laws, many of the Court's decisions have been detrimental. *Id.* Examples of this include the *Plessy v. Ferguson* decision that upheld segregationist laws and the *Korematsu* decision, which upheld Japanese internment during World War II. *Id.* In 2018, in *Trump v. Hawaii*, the Supreme Court briefly considered the constitutionality of *Korematsu* in a decision regarding former President Trump's Muslim travel ban. 138 S.Ct. 2392, 2423 (2018) (discussing the constitutionality of *Korematsu*). Although in the majority opinion, Justice Roberts expressed that *Korematsu* was wrongly decided, has no place under the Constitution, and "has been overruled in the court of history," the Court failed to explicitly overturn the decision. *Id.* And despite acknowledgment of the "morally repugnant" nature of *Korematsu*, the Court in *Trump v. Hawaii* upheld a similarly cruel government policy of denying entry of individuals from several Muslim-majority countries into the United States. See *id.* at 2403, 2423 (deciding that the Trump Administration's national security justification for the travel ban was sufficient to survive the Court's rational basis review).

²¹⁹ See *supra* notes 167–169, 208–212 and accompanying text (highlighting the similarities between *Vega* and *Dobbs* as a means of illustrating the idea that *Miranda* will have a similar fate as *Roe* did through *Dobbs*).

²²⁰ See *Dickerson v. United States*, 530 U.S. 428, 443 (2000) (stating that the widespread use and general knowledge of *Miranda* rights suggests that the doctrine has gained prominence in American culture).

²²¹ See *Miranda v. Arizona*, 384 U.S. 436, 468–69 (1966) (explaining how *Miranda* warnings help to promote equality for all who encounter law enforcement officials and to overcome systemic barriers that prevent marginalized people from adequately advocating for themselves in front of law enforcement).

²²² See Rogers et al., *supra* note 109, at 440 (describing that, although knowledge of *Miranda* is not sufficient to ensure working knowledge of the rights under the doctrine, the doctrine is still necessary to ensure that there is still at least some communication of *Miranda* protections until a more holistic solution is proposed by Congress or the states).

²²³ Einesman, *supra* note 92, at 24–27 (describing the severe gaps that exist when law enforcement officials deliver *Miranda* warnings to individuals who do not speak English).

Congress should leverage its power and codify *Miranda* rights.²²⁴ As indicated in *Miranda v. Arizona*, Congress has the capacity to create legislation to protect detainees from self-incrimination.²²⁵ Congress should craft legislation to not only maintain the essence of *Miranda*, but also to strengthen its protections by requiring greater transparency and educational efforts from law enforcement agencies when interacting with detainees.²²⁶ Congress should also embrace reframing *Miranda* rights as remedies.²²⁷

²²⁴ See Rachel M. Cohen & Marcia Brown, *Court Order: Congress Has the Power to Override Supreme Court Rulings. Here's How.*, THE INTERCEPT (Nov. 24, 2020), <https://theintercept.com/2020/11/24/congress-override-supreme-court/> [<https://perma.cc/6M9W-GS43>] (describing congressional override as a mechanism that can be used to counteract Supreme Court decisions that fail to serve public interest). Although courts set the boundaries of congressional intent, Congress has the power to shift said boundaries. *Id.* Accordingly, Congress can place a critical check on the actions of the judiciary, a branch of the government that holds an equal amount of power. *Id.* As the Court has not shied away from interfering in the legislative efforts of Congress, Congress can also push back on the decisions made by the Court. *Id.* The Constitution also grants Congress the power to lessen the Supreme Court's jurisdiction over specific matters. Joshua Zeitz, *How the Founders Intended to Check the Supreme Court's Power*, POLITICO, <https://www.politico.com/news/magazine/2022/07/03/don't-expand-the-supreme-court-shrink-it-00043863> [<https://perma.cc/7NVV-V7BF>] (July 3, 2022). Theoretically, Congress could pass legislation to deny the Supreme Court jurisdiction over *Miranda* rights and Fifth Amendment protections related to custodial interrogations. *Id.* Article III, Section 2 reads:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. CONST. art. III, § 2.

²²⁵ See Cohen & Brown, *supra* note 224 (explaining that the Justice in Policing Act, if passed by Congress, would end qualified immunity). Congress can similarly leverage its power to ensure that individuals have the right to sue law enforcement officials under § 1983 if they are not adequately provided their *Miranda* rights. *Id.*

²²⁶ *Id.* Strengthening *Miranda* rights could take the form of requiring a nonwaivable right to seek legal counsel prior to an interrogation with law enforcement. Charles J. Ogletree, *Are Confessions Really Good for the Soul?: A Proposal to Mirandize "Miranda,"* 100 HARV. L. REV. 1826, 1842 (1987). Accordingly, any statements made by a suspect prior to a legal consultation would be held inadmissible as evidence. *Id.* This solution would also ensure that any waivers that are made by defendants are made knowingly and voluntarily. See Rogers & Drogin, *supra* note 92, at 153 (describing the "knowing" and "voluntary" requirements of waivers). Additionally, some states have required that all police questioning be videotaped. Erwin Chemerinsky, *Why Have Miranda Rights Failed?*, DEMOCRACY (June 27, 2016), <https://democracyjournal.org/arguments/why-have-miranda-rights-failed/> [<https://perma.cc/9LP5-LLWV>]. This relatively "inexpensive and unobtrusive" practice is capable of being implemented in police departments across the country to ensure that interrogations are performed with adequate provision and comprehension of *Miranda* rights. *Id.*

²²⁷ See *supra* notes 195–202 and accompanying text (explaining how recharacterizing *Miranda* as a remedy could address concerns of potential judicial overreach). Some scholars assert that the implementation of *Miranda* rights on police practices has a detrimental impact on the efficacy of law enforcement institutions because the use of *Miranda* discourages suspects from making self-incriminating confessions. Paul G. Cassell & Richard Fowles, *Still Handcuffing the Cops: A Review of Fifty Years of Empirical Evidence of Miranda's Harmful Effects on Law Enforcement*, 97 B.U. L. REV. 685, 702–03 (2017). Law enforcement officials often heavily rely on "interrogation-induced confessions"

Despite Congress' power to codify *Miranda*, its failure to do so is palpable.²²⁸ State legislatures may therefore need to play a larger role in safeguarding constitutional rights and remedies within the criminal legal system.²²⁹ While all state and local law enforcement agencies incorporate *Miranda* warnings into their interactions with the public, these practices differ.²³⁰ Although some state supreme courts have mirrored the U.S. Supreme Court's decision in *Miranda v. Arizona*, none have codified *Miranda* rights or similar provisions through their state constitutions or legislatures.²³¹ Now is the time to do so.²³² Moreover, state legislatures should use this as an opportunity to reform policing practices in the form of guaranteeing local authority over police depart-

to clear crimes, and a decrease in confessions allegedly makes it more difficult to achieve clearance. *Id.* at 703. Between 1965 and 1968, the time period immediately following the *Miranda* decision, violent crime clearance rates dropped dramatically. *Id.* at 709. Prior to the *Miranda* decision, the violent crime clearance rate steadily hovered above a rate of 60%. *Id.* After *Miranda*, this rate has dropped down to 45%. *Id.* Scholars attribute this drop in clearance rates to a lack of confessions due to the protections of *Miranda*. *Id.* Interestingly, it is not discussed whether the drop could be attributed to police officers being deterred from using coercive interrogation techniques to solicit criminal confessions from those who may not actually be guilty upon implementation of *Miranda*. *See id.* at 728 (considering factors such as unemployment, urbanization, and births by unmarried women in the statistical analysis, but not factoring in potential empirical changes in police conduct). Additionally, recent increases in public support for law enforcement, emerging out of Blue Lives Matter, has put negative pressure on legislative spaces, halting efforts to create new protections for criminal defendants. *See* Christopher Smith, *Blue Lives Matter Versus Black Lives Matter: Beneficial Social Policies as the Path Away from Punitive Rhetoric and Harm*, 44 VT. L. REV. 463, 466–67 (2020) (explaining that the Blue Lives Matter movement was founded as a response to the Black Lives Matter movement, after the deaths of two New York Police Department officers).

²²⁸ *See* Juana Summers, *Congressional Negotiators Have Failed to Reach a Deal on Police Reform*, NPR, <https://www.npr.org/2021/09/22/1039718450/congressional-negotiators-have-failed-to-reach-a-deal-on-police-reform> [<https://perma.cc/M5QY-R5SQ>] (Sept. 22, 2021) (describing the inability of Congress to come to a consensus on police reform measures, despite pressure from constituency groups across the country following the murders of George Floyd and other Black Americans at the hands of police officers).

²²⁹ *See* Lauren-Brooke Eisen, *Criminal Justice Reform at the State Level*, BRENNAN CTR. FOR JUST. (Jan. 2, 2020), <https://www.brennancenter.org/our-work/research-reports/criminal-justice-reform-state-level> [<https://perma.cc/5HYX-K7GL>] (asserting that criminal legal reform is especially important at the state and local levels because most individuals who enter the criminal legal system do so at those levels).

²³⁰ *See* Michael Wechsler, *Miranda Rights, the Miranda Warning & Police Questioning*, THE LAW.COM, <https://www.thelaw.com/law/miranda-rights-the-miranda-warning-police-questioning>.269/ [<https://perma.cc/BSW2-KB7K>] (Aug. 14, 2015) (describing the adjustments some states have made based on their geographic location and subsequent law enforcement needs or concerns regarding comprehension of *Miranda* rights).

²³¹ *See* Jorge Xavier Camacho, *Expected Reversal of Miranda Requires States to Step Up on Policing*, THE HILL (June 9, 2022), <https://thehill.com/opinion/congress-blog/3517724-expected-reversal-of-miranda-requires-states-to-step-up-on-policing/> [<https://perma.cc/Y6ED-7GRU>] (stating that most state high courts have not yet made independent determinations regarding the status of *Miranda* rights in their jurisdictions).

²³² *See id.* (characterizing the codification of *Miranda* by states as an opportunity to recharacterize and reform one of the most central restrictions on policing).

ments, increasing accessibility to policing data, and establishing statewide standards for policing.²³³

The life and liberty of so many individuals is at risk.²³⁴ A misunderstanding of *Miranda* rights, an inadvertent waiver of them, or the failure to even be informed of the right against self-incrimination can be detrimental to entire communities.²³⁵ Especially in a moment when police departments across the country are under fire for their abuses of power, particularly in marginalized communities, federal and state governments should require greater responsibility in order to increase transparency and accountability and to penalize law enforcement misconduct.²³⁶

CONCLUSION

The U.S. Supreme Court's decision in *Vega v. Tekoh* is alarming—it shows a complete disregard for stare decisis and lacks sound reasoning. Further, it is representative of the lack of value the judiciary places on Black and Brown lives. *Miranda v. Arizona* was a milestone decision for a reason. It is well-known for a reason. The *Vega* decision explicitly contradicts ongoing efforts to battle the complex and convoluted nature of the American criminal legal system. *Miranda*, although imperfect, educates vulnerable individuals facing the criminal legal system about their rights and privileges. The United States is plagued by mass incarceration and a legal system that awards justice to few people. The Supreme Court's decision to hide behind prophylaxis in their gutting of *Miranda* rights proves to be weak, but it will work. And alt-

²³³ See *id.* (asserting that state and local governments need to quickly adapt to the impending reality of shaping critical aspects of criminal procedure and policing practices in their jurisdictions). With states across the country considering police reform, *Vega* provides an opportunity to act and create tangible changes in policing. *Id.* In creating statewide minimum standards, states can extend their influence on entire police departments, “regulating areas like recordkeeping and transparency, officer discipline, and use of emerging technologies.” *Id.* The standards could enact streamlined and efficient methods for the decertification of police officers for egregious conduct and cut funding to police departments that fail to abide by the state standards for trainings and practice. *Id.* Finally, “they can also revive any federal constitutional minimum standard that is disavowed by the Supreme Court, including those at risk in *Vega*.” *Id.*

²³⁴ See *supra* notes 92–108 and accompanying text (describing how an inadequate delivery of *Miranda* rights can impact the liberty of so many individuals, particularly those from marginalized backgrounds).

²³⁵ See *supra* notes 92–108 and accompanying text (highlighting issues of incomprehension and inadvertent waivers and the destructive impact they can have on innocent defendants and defendants who may not have the resources to advocate for themselves).

²³⁶ See Pennington, *supra* note 128 (stating that the *Vega* decision is an attempt to protect law enforcement officials during a time in which the public perception of the police has worsened). The Supreme Court's decision in *Vega* is less concerned with fixing a mistake made by a previous iteration of the Court and more “about protecting police and the violent tactics they use to confront and intimidate African Americans. The Supreme Court has succeeded in rolling back one of the few legal protections available to people of color to push back against misconduct from officers.” *Id.*

though it is illegitimate, the decision will likely stand for decades to come. The Supreme Court has failed the American people with this decision. Now, the question is whether Congress and state legislatures will step in and decide to protect vulnerable communities and individuals.

AYESHA I. AHSAN

