NOTE

THE RIGHT TO REMAIN PROTECTED: UPHOLDING YOUTHS' FIFTH AMENDMENT RIGHTS AFTER *VEGA V. TEKOH*

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In June 2022, the Supreme Court held in Vega v. Tekoh *that a failure to read a suspect their* Miranda *rights before questioning them does not provide a basis for a claim under 42 U.S.C. § 1983. Experts predict that this decision will disproportionately affect youth, who are more psychologically vulnerable to coercive interrogation tactics. However, no scholars have yet proposed any ways to mitigate this impact. This Note explores potential changes to Fifth Amendment doctrine that would safeguard youths' ability to obtain a remedy following a Fifth Amendment violation. It explains that while the voluntariness test gives many youths hope of securing a remedy for a* Miranda *violation, the current voluntariness doctrine will not protect all youth whose un-Mirandized statements are admitted in court. Furthermore, while protecting youths'* Miranda *rights is necessary,* Miranda *alone is not sufficient to uphold youths' rights because youth struggle to understand* Miranda *warnings and waive* Miranda *at very high rates. In light of these issues, this Note proposes three changes to Fifth Amendment doctrine. First, courts should adopt a rule that statements made by youth in custody without a parent, guardian, or lawyer present are per se involuntary. Additionally, courts should hold that un-Mirandized statements by youths in custody are per se involuntary. Finally, courts should allow youths to bring a lawsuit under § 1983 for the admission of an un-Mirandized statement.*

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> *[S]ometimes, as a result [of an un-Mirandized statement being admitted], a [youth] will be wrongly convicted and spend years in prison. He may succeed, on appeal or in habeas, in getting the conviction reversed. But then, what remedy does he have for all the harm he has suffered? . . . [The Supreme Court's interpretation of the Fifth Amendment in* Vega v. Tekoh*] injures the right by denying the remedy.*[1]

INTRODUCTION

In June 2022, the Supreme Court held in *Vega v. Tekoh* that a failure to read a suspect their *Miranda* rights before questioning them does not provide a basis for a claim under 42 U.S.C. § 1983.[2] Several experts have indicated that this decision could have grave consequences for the future of the right against self-incrimination. For example, Gary Stuart, author of a 2004 book about *Miranda* rights,[3] explained that the decision "will encourage that tiny minority of police officers . . . who abuse these rules routinely, who solve crimes by lying to suspects, by not telling suspects what their constitutional rights are."[4] While defendants who go to trial can seek the suppression of statements made following a violation of their *Miranda* rights, "sometimes, such a statement will not be suppressed."[5]

[1] Vega v. Tekoh, 142 S. Ct. 2095, 2111 (2022) (Kagan, J., dissenting) (citations omitted).
[2] Id. at 2099.
[3] Gary L. Stuart, *Miranda:* The Story of America's Right to Remain Silent (2004).
[4] Joe Dana, Arizona Miranda Rights Experts Weigh Significance of Supreme Court Decision, 12News (June 23, 2022, 6:42 PM), https://www.12news.com/article/news/local/arizona/Miranda-rights-experts-weigh-significance-of-us-supreme-court-decision/75-976b5c32-19f4-48b2-a97f-4a7035373f3a [https://perma.cc/C7CB-6QN9].
[5] *Vega*, 142 S. Ct. at 2111 (Kagan, J., dissenting); see, e.g., B.A. v. State, 100 N.E.3d 225, 233–34 (Ind. 2018) (overturning a conviction due to a juvenile court failing to suppress a statement a thirteen-year-old student made after a school resource officer escorted him to the vice principal's office, another officer encouraged the student to "just tell the truth" without giving him a *Miranda* warning, officers stayed between the student and the door at all times, no one told the student he was free to leave the room, and no one called the student's parents until after the interview).

Experts predict that *Vega*'s harm will have an "outsized impact[]" on youth.[6] When asked who is most at risk if police fail to give *Miranda* warnings, public defender Ilona Coleman responded, "It's the young—so teenagers who we see . . . in many of our cases that come through the criminal justice system."[7] Given these potential consequences, it is essential for lawyers and judges to take action to protect youths' rights against self-incrimination. This Note argues that courts should hold that a statement made by a youth in custody without a parent, guardian, or lawyer present or without *Miranda* warnings is per se involuntary and that youth have a cause of action under § 1983 for the admission of an un-Mirandized statement.[8]

Although experts acknowledge that *Vega* is likely to impact youth disproportionately, no scholarly works have proposed any ways to mitigate this impact. This Note makes two primary contributions to the literature. First, this Note argues that statements made by youth in custody without a parent, guardian, or lawyer present or without *Miranda* warnings should be deemed per se involuntary. Professor Eve Brensike Primus has discussed the importance of the voluntariness test in upholding interrogation rights as the Supreme Court narrows *Miranda*'s protections,[9] and Professor Hillary Farber has argued that states should adopt statutes requiring consultation with an attorney prior to an interrogation of a youth.[10] However, this Note is the first to argue that courts should expand the voluntariness doctrine to require both the presence of a parent, guardian, or lawyer and *Miranda* warnings in order for youths' statements to be deemed voluntary. Additionally, this Note contends that youth should have a § 1983 cause of action for the admission of an un-Mirandized statement even if adults do not. This argument is partially based on the notion that youths' un-Mirandized

[6] Tami Abdollah, 'You Have to Say the Magic Words.' What the Supreme Court Ruling on Miranda Rights Means for You, USA Today (June 24, 2022, 7:31 AM), https://www.usatoday.com/story/news/nation/2022/06/24/supreme-court-ruling-Miranda-weakens-civil-rights-activists-say/7716824001/ [https://perma.cc/R7LY-WY27].

[7] Shannon Bond, Supreme Court Says Police Can't Be Sued for Not Reading Out Miranda Rights, NPR (July 3, 2022, 8:01 AM), https://www.npr.org/2022/07/03/1109607667/supreme-court-says-police-cant-be-sued-for-not-reading-out-Miranda-rights [https://perma.cc/G6DM-TDL9].

[8] For purposes of this Note, "youth" consists of people under eighteen years old.

[9] Eve Brensike Primus, The Future of Confession Law: Toward Rules for the Voluntariness Test, 114 Mich. L. Rev. 1, 10–11 (2015).

[10] Hillary B. Farber, The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?, 41 Am. Crim. L. Rev. 1277, 1308–11 (2004).

statements should be deemed per se involuntary, which would necessitate the availability of a § 1983 cause of action. However, this Note explains that even if courts do not adopt the proposed expansion of the voluntariness doctrine, the balance-of-interests test used in *Vega* favors extending *Miranda* to allow youth to bring § 1983 claims for the admission of un-Mirandized statements.

This Note proceeds in five Parts. Part I discusses how it is especially important to protect youths' rights during interrogations due to their psychological vulnerabilities and the profound harms they face when incarcerated. Part II explains youths' rights during interrogations under the U.S. Constitution and how the holding in *Vega v. Tekoh* has limited the ability to vindicate those rights. Part III discusses how the current voluntariness doctrine can help to uphold youths' interrogation rights after *Vega*. Part IV argues that courts should adopt rules that statements by youth in custody without a parent, guardian, or lawyer present or without *Miranda* warnings are per se involuntary. Finally, Part V explains why youth should be able to sue under § 1983 for the admission of an un-Mirandized statement even if adults cannot.

I. WHY PROTECTING YOUTHS' INTERROGATION RIGHTS IS ESPECIALLY IMPORTANT

This Part explains why it is especially important for lawyers and judges to protect youths' interrogation rights given youths' susceptibility to coercive interrogation techniques and the severe harms youth can face if they are incarcerated following a Fifth Amendment violation.

A. Youths' Psychological Vulnerability to the Pressures of Interrogation

1. Youth Are More Vulnerable to Techniques That Are Used on Suspects of All Ages

Several characteristics of youth make them more vulnerable to coercive interrogation tactics. Researchers have found that "[y]ouths' short- and long-term time perspective, risk perception, and appreciation of future consequences differ from [those of] adults" and that "[d]ifferences in knowledge, experience, and impulse control contribute to poorer

decisions."[11] It can be difficult for youth to understand that police officers are not necessarily trying to help them when questioning them.[12] One study found that twenty-nine percent of youths thought that police had friendly or apologetic feelings toward the people they interact with on duty, compared to twelve percent of adults.[13] Additionally, court-involved youth have higher rates of mental illness than other youth, making them even more psychologically vulnerable.[14]

Because of these characteristics, interrogation techniques that officers use on both youth and adults have an especially strong impact on youth. One category of techniques officers frequently use in interrogations is called maximization strategies.[15] These strategies include confronting the suspect with evidence of their guilt, accusing the suspect of lying, emphasizing inconsistencies in the suspect's story, and stressing that the subject could potentially face serious charges.[16] Lies about the existence of evidence can be very convincing to youth, who are more vulnerable than adults to influence by authority figures and may struggle to correct those authority figures when they present misinformation.[17]

Officers also frequently use minimization strategies, which include creating a narrative that reduces the suspect's moral culpability, emphasizing the importance of honesty, or implying that the officer can help the suspect.[18] Youth are more likely to be persuaded by these techniques than adults because they are more susceptible to authority figures, thus making them more receptive to the rationales given in the minimization process.[19] Furthermore, they are less capable than adults of considering future consequences and perceiving and understanding risk.[20]

[11] Barry C. Feld, Behind Closed Doors: What Really Happens When Cops Question Kids, 23 Cornell J.L. & Pub. Pol'y 395, 405–06 (2013).

[12] See Miranda v. Arizona, 384 U.S. 436, 469 (1966) ("[*Miranda* warnings] may serve to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest.").

[13] Naomi E. S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, Waving Good-Bye to Waiver: A Developmental Argument Against Youths' Waiver of Miranda Rights, 21 N.Y.U. J. Legis. & Pub. Pol'y 1, 38 (2018).

[14] Id.

[15] Id. at 40.

[16] Id.

[17] Jessica Owen-Kostelnik, N. Dickon Reppucci & Jessica R. Meyer, Testimony and Interrogation of Minors: Assumptions About Maturity and Morality, 61 Am. Psych. 286, 295 (2006).

[18] Goldstein et al., supra note 13, at 41.

[19] Owen-Kostelnik et al., supra note 17, at 295.

[20] Id.

As a result, youth may be more concerned about escaping a currently stressful interrogation experience than about the future consequences of making a false confession. This makes the minimization narrative, which offers them hope of getting out of the interrogation situation, extremely tempting.[21]

2. Officers Use Additional Interrogation Techniques That Seize on Youths' Vulnerability

In addition to youth being more vulnerable than adults to typical interrogation techniques, law enforcement officers use special techniques on youth suspects which are designed to take advantage of their vulnerability. The most commonly used police interrogation training manual[22] encourages officers to use the fact that many youth suspects live in "conditions and circumstances [that] place youths in a much more vulnerable position for wrongdoing" to get them to confess to crimes.[23] It suggests, for example, that "where one or both parents . . . neglected the suspect as a child, the investigator may say: I can pretty well understand what would have happened to me if that condition existed in my home . . . . No wonder you finally got into something like this."[24]

The manual further explains that officers should use "themes," meaning issues a suspect experiences that are common among youth, to form an explanation of why the youth may have committed a crime.[25] It gives the following example of language an officer used in an interrogation:

> Sometimes, in an all-out effort to provide for the material needs of their children, a parent, by concentrating almost exclusively on a career, might unwittingly neglect the emotional needs of a son or daughter. Under those circumstances, it is easy to understand how a child may feel neglected by a parent and do something drastic to try and gain that parent's attention. After a period of time in which an adolescent is

[21] Id.

[22] Miriam S. Gohara, A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques, 33 Fordham Urb. L.J. 791, 808 (2006) ("The interrogation method most widely publicized and probably most widely used is known as the Reid Technique . . . .").

[23] Fred E. Inbau, John E. Reid, Joseph P. Buckley & Brian C. Jayne, Criminal Interrogation and Confessions 250 (5th ed. 2013).

[24] Id. at 251.

[25] Id. at 252.

> subjected to this type of pressure, he might react in a manner such as this, like you did, Jimmy.[26]

3. Youths' Vulnerability Makes Them More Likely to Confess Falsely

Because youth are more vulnerable than adults to the pressures of interrogation settings, and because officers seize on these vulnerabilities to extract confessions, youth are more likely to make false confessions.[27] In one survey, approximately twenty-five percent of youths indicated that they would offer a false confession when faced with at least one common interrogation technique.[28] Additionally, in laboratory studies where participants were falsely accused of wrongdoing, youths under the age of seventeen confessed falsely at higher rates than adults.[29] When presented with false evidence of guilt in addition to being accused of wrongdoing, those youths confessed falsely at *significantly* higher rates than adults.[30] In some real-life interrogations, the pressures on youth are so strong that they even come to wrongfully believe that they committed the acts of which they are accused.[31] Professor Kevin Lapp explained that youth confess falsely more often than adults because they want to end the stressful interrogation process and because they want to please the officer

[26] Id. at 253.

[27] Steven A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-DNA World, 82 N.C. L. Rev. 891, 944 (2004) (explaining that youths are overrepresented among people who make false confessions because they are "less equipped to cope with stressful police interrogation and less likely to possess the psychological resources to resist the pressures of accusatorial police questioning" than adults).

[28] Naomi E. Sevin Goldstein, Lois Oberlander Condie, Rachel Kalbeitzer, Douglas Osman & Jessica L. Geier, Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions, 10 Assessment 359, 365 (2003).

[29] Goldstein et al., supra note 13, at 43.

[30] Id.

[31] See Saul M. Kassin et al., Police-Induced Confessions: Risk Factors and Recommendations, 34 Law Hum. Behav. 3, 17 (2010); Kevin Lapp, Taking Back Juvenile Confessions, 64 UCLA L. Rev. 902, 922 (2017) ("Fourteen-year-old Michael Crowe, for example, was interrogated about the death of his sister 'for more than ten hours over three days' without his parents' knowledge and without an attorney. In the face of repeated declarations by his interrogators that he had killed his sister, Michael went from denying he had done it, to doubting whether he had done it, to eventually breaking down weeping and saying 'I'm not sure how I did it. All I know is I did it.' DNA tests eventually linked a transient man who had been 'seen in the Crowes' neighborhood the night of the murder and reported by several neighbors for strange and harassing behavior' to the murder scene, and the charges against Michael were dismissed.").

who is questioning them.[32] Additionally, Professor Naomi Goldstein et al. explained that "[j]uveniles' immaturity in decision-making capacities likely contributes to their greater likelihood of falsely confessing; youth are generally less able to accurately balance the seriousness of the charges or the sufficiency of the evidence against them with the desire to escape a pressure-filled interrogation."[33]

B. Harms Youth Experience in Prison

Youths' vulnerability in interrogations inevitably results in some of them being sent to prison, and youths who spend time in prison are likely to experience severe harms. Incarcerated youth typically experience issues such as overcrowding in facilities, lack of access to mental health treatment and services, and separation from their support systems at home.[34] Additionally, many incarcerated youth experience physical or sexual abuse by peers or facility staff, and most of them repeatedly witness their peers being abused.[35] Incarcerated youth may also be placed in solitary confinement for twenty-two to twenty-four hours per day, strip-searched, shackled, and sprayed with chemicals.[36] Youth incarcerated in adult prisons experience even worse harms. These youth are more likely to experience sexual abuse or physical assault and are denied access to basic and special education.[37] The environment in detention facilities takes an alarming toll on youths' mental health, and that toll persists over their lifetimes. One study found that people who were incarcerated for a year or more as youths were over four times more likely to experience depression and twice as likely to have suicidal thoughts in adulthood than

[32] See, e.g., Lapp, supra note 31, at 920–21 ("One twelve-year-old who falsely confessed later said: 'I just felt like I was in a maze. I couldn't find my way out . . . . If I said I did it, I'll go home. That's what I thought.' A thirteen-year-old who falsely confessed explained that he did so because he was 'desperate to go home' and 'believed he could take back his false confession later.'").

[33] Goldstein et al., supra note 13, at 43.

[34] Off. of Juv. Just. & Delinquency Prevention, U.S. Dep't of Just., Intersection Between Mental Health and the Juvenile Justice System 5 (July 2017), https://ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf [https://perma.cc/EBL9-BHTH].

[35] Richard Mendel, Why Youth Incarceration Fails: An Updated Review of the Evidence, The Sentencing Project (Mar. 1, 2023), https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/ [https://perma.cc/PHH8-PVS6].

[36] Children in Prison, Juv. L. Ctr., https://jlc.org/children-prison [https://perma.cc/H84A-W6H9] (last visited Mar. 8, 2024).

[37] Youth Tried as Adults, Juv. L. Ctr., https://jlc.org/issues/youth-tried-adults [https://perma.cc/W4US-8RZR] (last visited Mar. 8, 2024).

comparable people who had never been incarcerated.[38] Furthermore, between 2000 and 2014, suicide rates for incarcerated youths were two to three times higher than those for youths in the general population.[39] It may seem unthinkable that a youth who experienced these types of harms due to the admission of an un-Mirandized confession (possibly a confession to a crime they did not commit)[40] would not be able to obtain a remedy, but under the *Vega* holding, this is not only possible but likely.[41]

After *Jones v. Mississippi*, a 2021 case in which the Supreme Court held that a trial court does not have to make a finding that a youth is "permanently incorrigible" in order to sentence the youth to life in prison,[42] it is more important than ever to ensure that youth whose un-Mirandized statements are admitted in court have a remedy for the harm they suffer as a result. This is because under *Jones*, that harm could include years in prison with the expectation that they will never be released.

II. DOCTRINAL BACKGROUND

This Part first discusses youths' constitutional rights in interrogations and how they can file a lawsuit and obtain a remedy if those rights are violated. Then, it explains how the holding in *Vega v. Tekoh* has affected criminal defendants' ability to obtain a remedy following the admission of an un-Mirandized statement.

A. Youths' Legal Rights in Interrogations

According to Supreme Court precedent, under the Fifth Amendment, prior to being interrogated while "in custody" (meaning that a reasonable person would not have felt that they were allowed to end the interrogation and leave[43]), a person "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or

[38] Mendel, supra note 35.

[39] Carolyn Crist, Suicide-Risk Screening Might Cut Deaths Among Incarcerated Youth, Reuters (Jan. 31, 2019, 1:20 PM), https://www.reuters.com/article/us-health-youth-prison-suicide/suicide-risk-screening-might-cut-deaths-among-incarcerated-youth-idUSKCN1PP2LH [https://perma.cc/HW2Q-F3GJ].

[40] See supra Subsection I.A.3.

[41] See infra Subsection IV.B.3.

[42] 141 S. Ct. 1307, 1311 (2021).

[43] Thompson v. Keohane, 516 U.S. 99, 112 (1995).

appointed."[44] If these warnings are not given, the person's statement is inadmissible in court.[45] In *In re Gault*, the Court held that the right against self-incrimination also applies to youth.[46] Later, in *Fare v. Michael C.*, the Court explained that when determining whether a youth had validly waived their *Miranda* rights, courts must use a totality-of-the-circumstances approach that involves the consideration of "the juvenile's age, experience, education, background, and intelligence, and [] whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights."[47] Finally, in *J.D.B. v. North Carolina*, the Court determined that age is a factor in determining whether a suspect is in custody for *Miranda* purposes.[48]

If youths' *Miranda* rights are violated, they may be able to obtain a remedy by bringing a lawsuit under 42 U.S.C. § 1983. Section 1983 creates a federal cause of action against public officials who violate someone's civil rights.[49] In order to succeed in bringing a § 1983 claim, plaintiffs must establish (1) that a public official violated one of their rights and (2) that the right that was violated was "clearly established."[50] The latter part of the test is commonly called "qualified immunity."[51]

B. Holding and Reasoning in Vega v. Tekoh

In *Vega v. Tekoh*, the U.S. Supreme Court confronted the question of whether a plaintiff can sue a police officer under 42 U.S.C. § 1983 because of the allegedly improper admission of an un-Mirandized statement.[52] Following a mistrial and subsequent acquittal, Terence

[44] Miranda v. Arizona, 384 U.S. 436, 444 (1966).

[45] Id. at 492.

[46] 387 U.S. 1, 55 (1967) ("[T]he greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.").

[47] 442 U.S. 707, 725 (1979).

[48] 564 U.S. 261, 264–65 (2011) ("It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave."). The *J.D.B*. Court could see "no reason for police officers or courts to blind themselves to that commonsense reality" that youth are psychologically different from adults. Id. at 265.

[49] 42 U.S.C. § 1983 (1996).

[50] Saucier v. Katz, 533 U.S. 194, 200 (2001).

[51] Kerrin C. Wolf, Assessing Students' Civil Rights Claims Against School Resource Officers, 38 Pace L. Rev. 215, 239 (2018).

[52] Vega v. Tekoh, 142 S. Ct. 2095, 2099 (2022).

Tekoh sued Carlos Vega, the officer who had interrogated him, under § 1983 seeking damages for violations of his constitutional rights.[53] The parties disputed whether Vega used coercive interrogation techniques, but it was undisputed that he never informed Tekoh of his *Miranda* rights.[54] The U.S. Court of Appeals for the Ninth Circuit had held that the admission of an un-Mirandized statement in a criminal proceeding violates the Fifth Amendment and therefore supports a § 1983 claim.[55] It reasoned that under *Dickerson v. United States*, the right against the admission of an un-Mirandized statement is secured by the Constitution.[56] The Supreme Court reversed, holding that there is no § 1983 claim available for the admission of an un-Mirandized statement.[57]

The Court explained that the *Miranda* rules are "prophylactic," meaning that while the rules are designed to protect Fifth Amendment rights, a violation of the rules is not itself a violation of the Fifth Amendment.[58] It noted that "*Miranda* did not hold that a violation of the rules it established necessarily constitute[s] a Fifth Amendment violation."[59] It then explained that while the Court in *Dickerson v. United States* had determined that "the *Miranda* rules . . . are necessary to protect [the right against self-incrimination]," it had also affirmed that "legislative solutions that differed from the prescribed *Miranda* warnings but which were 'at least as effective in apprising accused persons'" of their rights were permitted.[60] It noted that the *Dickerson* Court described the *Miranda* rules as being "constitutionally based" and having "constitutional underpinnings,"[61] but did not say that "a *Miranda* violation is the same as a violation of the Fifth Amendment right."[62] The Court concluded that because the *Miranda* rules are prophylactic, litigants are not automatically entitled to bring a § 1983 claim for a *Miranda*

[53] Id.
[54] Id.
[55] Tekoh v. County of Los Angeles, 985 F.3d 713, 722 (9th Cir. 2021).
[56] Id. at 720.
[57] *Vega*, 142 S. Ct. at 2101.
[58] Id. at 2102.
[59] Id. at 2101.
[60] Id. at 2105 (citations omitted) (internal quotation marks omitted) (quoting Dickerson v. United States, 530 U.S. 428, 440 (2000)).
[61] Id. (quoting *Dickerson*, 530 U.S. at 440, 440 n.5).
[62] Id.

violation. Rather, the Court is tasked with "charting the dimensions of these . . . prophylactic rules."[63]

The Court's inquiry did not end with its determination that the admission of an un-Mirandized statement is not a Fifth Amendment violation. It explained that because a § 1983 claim may be based on "the deprivation of any rights, privileges, or immunities secured by the . . . laws," a § 1983 claim could be available for a *Miranda* violation if the *Miranda* rules are federal law.[64] However, it noted that it could not allow a § 1983 claim on this basis unless it was persuaded to extend that "law" to include the right to sue under § 1983.[65] In order to decide whether to extend the "law," it would have to evaluate "whether the benefits of allowing such a claim outweigh the costs."[66]

The Court concluded that this balancing test did not favor allowing people whose un-Mirandized statements were admitted to sue under § 1983, reasoning that allowing such claims "would have little additional deterrent value" and "would cause many problems."[67] It first noted that permitting these claims would negatively affect "judicial economy" by requiring a federal court to adjudicate the factual question of whether the suspect had been in custody when questioned, which would have already been litigated in state court.[68] The Court explained that this could produce "unnecessary friction" between federal and state courts.[69] Next, the Court reasoned that permitting these claims would present various procedural issues, such as whether a federal court considering a § 1983 claim would owe deference to a trial court's factual findings and whether civil damages would be available in cases where the unwarned statement did not affect the outcome of the criminal proceedings.[70]

[63] Id. at 2103 (quoting Maryland v. Shatzer, 559 U.S. 98, 106 (2010) ("A judicially crafted rule is 'justified only by reference to its prophylactic purpose,' . . . and applies only where its benefits outweigh its costs.")).

[64] Id. at 2106 (quoting 42 U.S.C. § 1983 (1996)).

[65] Id. at 2106–07.

[66] Id. at 2106–07 n.6.

[67] Id. at 2107.

[68] Id. (quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979)).

[69] Id. (quoting Preiser v. Rodriguez, 411 U.S. 475, 490 (1973)).

[70] Id.

III. HOW THE VOLUNTARINESS TEST CAN PROTECT YOUTHS' RIGHTS AFTER *VEGA V. TEKOH*

This Part discusses how the voluntariness test can help youth vindicate their Fifth Amendment rights after *Vega*. It first describes how the voluntariness test works and then explains how the current voluntariness doctrine can protect youths' rights against self-incrimination.

A. Explanation of the Voluntariness Test

Voluntariness doctrine is rooted in the Due Process Clauses of the Fifth and Fourteenth Amendments and prohibits the police from breaking a suspect's will to get them to confess, regardless of whether the suspect is in custody or charged with crimes.[71] The voluntariness test involves an inquiry into whether a defendant's confession was coerced given the totality of the circumstances surrounding the confession.[72] It was used to determine the admissibility of confessions prior to *Miranda* and continues to be relevant today.[73] In *Miranda*, the Supreme Court determined that "the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements, and thus heightens the risk that an individual will not be 'accorded his privilege under the Fifth Amendment . . . not to be compelled to incriminate himself.'"[74] Under *Miranda*, an officer's failure to give the *Miranda* warnings creates a rebuttable presumption of involuntariness for any confessions given.[75] Despite *Vega*'s holding that no § 1983 cause of action is available for the admission of an un-Mirandized confession,[76] a § 1983 cause of action is still available if admitted confessions were "obtained by compulsion,"[77] meaning that they would not pass the voluntariness test.

In recent years, two strands of voluntariness doctrine have emerged. The first concerns the nature of police questioning, deeming confessions involuntary when police partake in actions that are "inherently bad, regardless of the effects that those actions have on suspects."[78] Under this strand, the Supreme Court has found confessions involuntary when

[71] Primus, supra note 9, at 10.
[72] Dickerson v. United States, 530 U.S. 428, 434 (2000).
[73] Primus, supra note 9, at 14.
[74] *Dickerson*, 530 U.S. at 435 (quoting Miranda v. Arizona, 384 U.S. 436, 439 (1966)).
[75] Oregon v. Elstad, 470 U.S. 298, 307 (1985).
[76] Vega v. Tekoh, 142 S. Ct. 2095, 2101 (2022).
[77] Id.
[78] Primus, supra note 9, at 23.

officers' tactics "shock the conscience,"[79] are "offensive to a civilized system,"[80] or are "revolting to the sense of justice."[81] Tactics that meet this standard include, for example, continuously questioning a suspect for thirty-six hours[82] and threatening a suspect with violence.[83]

The second strand of voluntariness doctrine is concerned with the effect of questioning on the suspect, finding confessions to be involuntary when police actions "tend to cause suspects to give unreliable confessions."[84] For example, courts sometimes determine that confessions are involuntary when officers detain suspects for long periods of time because those suspects may believe that they will not be allowed to leave unless they confess—and thus confess falsely.[85] Additionally, courts have sometimes found confessions involuntary when police promise to drop the charges or reduce their severity if the suspect confesses, or threaten to increase the charges' severity if the suspect does not confess.[86] Courts deem confessions given following threats or promises by police untrustworthy because those tactics give suspects a strong incentive to confess falsely.[87] For example, the court in *E.C. v. State* explained that "[a] confession or inculpatory statement is not freely and voluntarily given if it has been elicited by direct or implied promises, however slight."[88] However, courts have indicated that in order for confessions resulting from threats or promises by police to be deemed

[79] Chavez v. Martinez, 538 U.S. 760, 774 (2003) (plurality opinion).
[80] Miller v. Fenton, 474 U.S. 104, 109 (1985).
[81] Brown v. Mississippi, 297 U.S. 278, 286 (1936).
[82] See Ashcraft v. Tennessee, 322 U.S. 143, 153–54 (1944).
[83] See Beecher v. Alabama, 389 U.S. 35, 38 (1967) (per curiam) (holding that a confession was involuntary when the suspect confessed while held at gunpoint). For an additional example of a tactic that rendered a confession involuntary under the nature-of-the-questioning strand, see Culombe v. Connecticut, 367 U.S. 568, 631–35 (1961) (holding that a confession was involuntary when police held the suspect for more than four days, did not inform him of his right to remain silent or provide him with legal assistance, and brought his wife and daughter to the police station to try to convince him to confess).
[84] Primus, supra note 9, at 23.
[85] Id. at 28–29 (citing *Culombe*, 367 U.S. at 575).
[86] Id. at 28.
[87] Id.
[88] 841 So. 2d 604, 606 (Fla. Dist. Ct. App. 2003); see also Fillinger v. State, 349 So. 2d 714, 716 (Fla. Dist. Ct. App. 1977) ("If the interrogator induces the accused to confess by using language which amounts to a threat or promise of benefit, then the confession may be untrustworthy and should be excluded.").

involuntary, there "must be a causal nexus between the improper police conduct and the confession."[89]

There are two forms of tactics that can render a confession involuntary under the effect-on-the-suspect test. The first includes tactics that significantly increase the odds that any given suspect will confess falsely.[90] The second, which is more pertinent for purposes of this Note, includes tactics that may not increase the risk of false confessions in general, but are likely to increase the odds of a false confession in a certain case, "given the known characteristics and susceptibilities of the suspect."[91] This portion of the effect-on-the-suspect test is likely to benefit youth who experienced interrogation tactics that have a stronger impact on youth than on adults.

B. How the Current Voluntariness Doctrine Can Protect Youths' Rights Against Self-Incrimination

The voluntariness doctrine currently offers many youths hope of obtaining a remedy following the admission of an un-Mirandized confession. The component of the effect-on-the-suspect test pertaining to tactics that are highly influential for a particular suspect[92] can be especially helpful to lawyers trying to vindicate youths' rights. This is because, as previously explained, youths' unique psychological characteristics make them especially susceptible to coercive interrogation tactics and especially likely to give false confessions.[93] Because of these

[89] Nelson v. State, 688 So. 2d 971, 972–74 (Fla. Dist. Ct. App. 1997) (holding the trial court did not abuse its discretion when it found a confession voluntary, even though the officers had implicitly threatened the suspect with the death penalty, because the suspect confessed two hours after the threatening comments were made, which indicated that the threats did not cause the confession); Green v. State, 878 So. 2d 382, 385 (Fla. Dist. Ct. App. 2004) (refusing to find that the trial court abused its discretion in holding that statements made following assurances that cooperation would prevent a long sentence were voluntary).

[90] Primus, supra note 9, at 29.

[91] Id. at 29–30 (giving an example of police questioning a "young, impressionable, and very religious" person and telling them repeatedly that God wants them to confess).

[92] See id.

[93] See supra Section I.A; see also Primus, supra note 9, at 30 ("Presenting children . . . with false reports that others have identified them as criminals poses an even greater risk of creating a false confession than would the same information when posed to an adult with no mental handicaps. Thus, it is possible that the use of certain tactics could be offensive but only when used on specific subpopulations. The use of that tactic might not tend to provoke false confessions in general, but the police need no individualized information about a suspect beyond the fact that he is a child . . . to know that the tactic might provoke a false confession in the case at hand.").

psychological differences, courts often consider a suspect's age in determining whether a confession was coerced and are even more scrutinizing when the confession was extracted from a very young child.[94]

In re D.L.H, Jr., an Illinois case from 2015, provides a recent example of how considering a suspect's age can lead a court to determine that a confession was not voluntary.[95] This case examined the admissibility of a confession by a nine-year-old that he had hit a fourteen-month-old infant who later died of a head injury.[96] The court noted that the questioning officer "seized on [the child]'s fear that his [relatives] would go to jail, or that he, himself, would be taken away"; "promised [the child] that no matter what he said, no one was going to jail, no one would be in trouble, [and] he would not be taken from his father"; "continually reinforced the notion that no consequences would attach to an admission by [the child] that he hit [the infant]"; "rejected [the child]'s repeated denials of wrongdoing, making plain that anything less than an admission was unacceptable"; and "unceasingly [told the child] that whatever happened was an accident or a mistake."[97] The court found it especially notable that the officer was "explicit about the kind of admission that would suffice—an admission that [the child] hit [the infant] once" and that the child "eventually admitted to just that: hitting the infant *once*."[98] It explained that although "an adult might very well have been left 'cold and unimpressed'" with these tactics, the suspect "was just a boy of nine,

[94] See, e.g., infra notes 115–20 and accompanying text; State v. Moore, 864 N.W.2d 827, 838 (Wis. 2015) ("The age of the suspect may affect how we view police tactics; 'the younger the child the more carefully we will scrutinize police questioning tactics to determine if excessive coercion or intimidation or simple immaturity that would not affect an adult has tainted the juvenile's confession.' When a suspect is a juvenile, 'special caution' must be taken with the methods of interrogation used when 'a parent, lawyer, or other friendly adult' is not present." (first quoting In re Jerrell C.J., 699 N.W.2d 110, 117 (Wis. 2005); and then quoting id. at 116)); In re D.L.H., Jr., 32 N.E.3d 1075, 1090 (Ill. 2015) ("[We] recognize[] that 'the receiving of an incriminating statement by a juvenile is a sensitive concern.' Thus, the 'greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.' In light of these concerns, we view respondent's age as a key factor in the voluntariness analysis." (citations omitted) (quoting People v. Prude, 363 N.E.2d 371, 373 (Ill. 1977))).

[95] 32 N.E.3d 1075, 1095–96 (Ill. 2015).

[96] Id. at 1078–79.

[97] Id. at 1096.

[98] Id.

functioning at the level of a seven- or eight-year-old, and thus far more vulnerable and susceptible to police coercion of this type."[99]

IV. PROPOSAL FOR ADJUSTING THE VOLUNTARINESS DOCTRINE TO BETTER PROTECT YOUTHS' RIGHTS

This Part explains how the voluntariness doctrine must change to better protect youths' Fifth Amendment rights. It argues that courts should adopt categorical rules that statements made by a youth in custody without a parent, guardian, or lawyer present or without *Miranda* warnings are per se involuntary. These changes are important for upholding youths' rights after *Vega* because the voluntariness doctrine is now the most plausible avenue for obtaining a § 1983 cause of action for a Fifth Amendment violation.[100]

A. Statements Made by Youths Without a Parent, Guardian, or Lawyer Present Should Be Deemed Per Se Involuntary

Courts should adopt a categorical rule that a statement made by a youth in custody without a parent, guardian, or lawyer present is per se involuntary. This rule would fill in gaps in protection for youths left by the *Miranda* rules and is supported by Supreme Court case law on youth interrogations.

While *Miranda* warnings are a necessary component of efforts to protect youths' rights against self-incrimination, there is evidence that they are not sufficient to fully protect youths' rights. Researchers have found that youths, especially younger youths, often do not fully understand *Miranda* warnings. This is because some of the concepts included in *Miranda* warnings; such as rights, appointed counsel, and waiver; require a high school education in order to understand what they mean.[101] Demonstrating the disadvantage youths face in comprehending *Miranda* warnings, one study found that over half of youths, compared to less than one-fourth of adults, failed to understand at least one of the required *Miranda* warnings.[102] Officers sometimes use youth-specific *Miranda* warnings with simplified language.[103] However, even these

[99] Id. (quoting Haley v. Ohio, 332 U.S. 596, 599 (1948)).
[100] See supra notes 76–77 and accompanying text.
[101] Feld, supra note 11, at 408.
[102] Id. at 408–09.
[103] Id. at 408.

warnings can be difficult for youth to understand due to their length.[104] In part because of the difficulty youth face in understanding their *Miranda* rights, they waive *Miranda* at very high rates. Researchers have found that approximately 90% of youth suspects waive *Miranda*, while approximately 80% of adult suspects do.[105] While one could argue that older youths are better able to understand *Miranda* warnings[106] and therefore do not need a parent, guardian, or lawyer present in order for their statements to be voluntary, older youths need adult guidance to overcome their psychological disadvantages in the interrogation setting.[107]

Furthermore, Supreme Court case law supports creating this categorical rule. In *Haley v. Ohio*, the Court reasoned that "[the majority cannot] believe that [a fifteen-year-old boy] is a match for the police in [an hours-long interrogation]. He needs counsel and support if he is not to become the victim first of fear, then of panic."[108] Similarly, in *Gallegos v. Colorado*, the Court explained that "a 14-year-old boy, *no matter how sophisticated*, is unlikely to have any conception of what will confront him when he is made accessible only to the police. . . . Without some adult protection . . . , a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had."[109] These opinions strongly suggest that the youths involved in these cases could not possibly have made a voluntary statement without a lawyer, parent, or guardian present.

Professor Hillary Farber made a convincing argument that even the presence of a parent or guardian is not sufficient to fully protect youths' rights and that youths should therefore have a mandatory, non-waivable right to counsel prior to an interrogation.[110] However, adopting this rule is better left to state legislatures than to courts because, as Farber

[104] Id.

[105] Id. at 453. Other factors contributing to this discrepancy include parents instilling in their children that they must always tell the truth and the high pressure that youth experience during interrogations. Id. at 429–30.

[106] See infra note 148 and accompanying text.

[107] See supra Section I.A.

[108] 332 U.S. 596, 599–600 (1948).

[109] 370 U.S. 49, 54 (1962) (emphasis added).

[110] Farber, supra note 10, at 1278–79; see also id. at 1289 (explaining that the presence of a parent or guardian is insufficient because "courts employ a standardless approach in determining the appropriateness of a given lay advisor"; "parents, who most often act as the juvenile's lay advisor, lack an adequate understanding of *Miranda* rights"; and "conflicts of interest existing between the juvenile and parent/guardian undermine the efficacy of relying on the same relationship to insure the juvenile's Fifth Amendment rights").

acknowledges, "[t]he practicality of instituting this reform measure will vary from state to state. . . . For those states with public defender organizations, coordination and implementation may be slightly easier than for the states that provide appointment of counsel from a panel of private lawyers."[111]

B. Un-Mirandized Statements by Youth Should Be Deemed Per Se Involuntary

In addition to establishing a rule that statements by youths in custody without a parent, guardian, or lawyer present are per se involuntary, courts should hold that statements made by youths in custody who did not receive *Miranda* warnings are per se involuntary. Although the *Vega* Court suggested that "an un-Mirandized suspect in custody may make self-incriminating statements without any hint of compulsion,"[112] this is not possible in the context of a youth. Concerns about the inherently compulsory nature of custodial interrogation settings are relevant to adults as well as youths. However, a categorical rule that un-Mirandized statements are involuntary is necessary for youths, even though it may not be necessary for adults, because of youths' much stronger susceptibility to the pressures of interrogation. In *Dickerson*, the Court explained that "'custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.' [In *Miranda*,] [w]e concluded that the coercion inherent in custodial interrogation . . . heightens the risk that an individual will [have his Fifth Amendment rights violated]."[113] This is especially true of youth, who "are not full-fledged citizens"; are expected "to answer questions posed by parents, teachers, police, and other adults"; "acquiesce more readily to suggestion during questioning"; and "respond more readily to negative pressure."[114]

1. Support in Case Law

Several Supreme Court decisions have acknowledged the importance of the psychological differences between youths and adults in custodial

[111] Id. at 1309–10.

[112] Vega v. Tekoh, 142 S. Ct. 2095, 2101 (2022).

[113] Dickerson v. United States, 530 U.S. 428, 435 (2000) (citation omitted) (quoting Miranda v. Arizona, 384 U.S. 436, 455 (1966)).

[114] Feld, supra note 11, at 411; see also supra Section I.A (explaining why certain characteristics of youth make them particularly vulnerable to interrogation techniques, therefore making them more likely to confess falsely).

interrogation settings. In *Haley v. Ohio*, the Supreme Court reversed a fifteen-year-old boy's conviction on the basis that the interrogation techniques police officers used to persuade the boy to confess were inappropriate for youth.[115] It focused on the suspect's age in explaining why his confession could not properly be deemed voluntary, explaining, "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. . . . A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition."[116] In *Gallegos v. Colorado*, the Court again acknowledged the need to consider a suspect's age in determining whether interrogation techniques are appropriate.[117] The Court focused on the fact that the suspect was only fourteen years old when assessing the tactics used to get him to confess.[118] It reasoned that a fourteen-year-old "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions."[119] As a result of these considerations, the Court overturned the boy's conviction on the basis that his confession violated due process.[120]

More recently, in *J.D.B. v. North Carolina*, heightened concerns about false confessions in the youth context were an important factor in the Court's determination that courts should consider a suspect's age in evaluating whether the suspect was in custody for *Miranda* purposes.[121] As the majority opinion explained:

> By its very nature, custodial police interrogation entails "inherently compelling pressures." Even for an adult, the physical and psychological isolation of custodial interrogation can "undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely." Indeed, the pressure of custodial interrogation is so immense that it "can induce a frighteningly high percentage of people to confess to crimes they never committed." That

[115] 332 U.S. 596, 599–601 (1948).

[116] Id. at 599; see also id. ("[W]hen . . . a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used.").

[117] 370 U.S. 49, 54 (1962).

[118] Id.

[119] Id.

[120] Id. at 55.

[121] 564 U.S. 261, 269–70, 272, 277 (2011).

> risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.[122]

These cases' discussions of youths' psychology in interrogations support the notion that it is impossible for a youth to give a truly voluntary confession in a custodial interrogation setting without receiving *Miranda* warnings.

2. Why Protecting Youths' Miranda *Rights Is Necessary*

Miranda warnings' inability to *fully* protect youths under arrest[123] does not mean that it is not important for officers to give youths *Miranda* warnings. Although most youths choose not to exercise their interrogation rights under the currently available protections,[124] youths must be aware of those rights in order to have any hope of exercising them. Therefore, advocates must work to protect youths' rights to receive *Miranda* warnings while also fighting for additional protections.

Although the decisions in *Haley v. Ohio* and *Gallegos v. Colorado* suggest that youths need the help of an attorney, parent, or guardian to understand their rights in interrogation settings,[125] these decisions are not at odds with the notion that youths must understand their rights and make their own decisions regarding whether to confess. The *Haley* Court explained that the teenage suspect in the case needed to fully understand his rights so that he could have "freedom of choice."[126] The Court indicated that counsel could have helped the youth understand what was at stake in confessing,[127] but it did not indicate that a lawyer, parent, or guardian could make a decision on the youth's behalf regarding whether to confess. Similarly, the *Gallegos* Court explained that the presence of a lawyer, relative, or friend was necessary for the youth suspect to "know[] what the consequences of his confession were"[128] and thus make an informed decision about whether to confess.

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[122] Id. at 269 (citations omitted) (first quoting Miranda v. Arizona, 384 U.S. 436, 467 (1966); then quoting Corley v. United States, 556 U.S. 303, 321 (2009)).

[123] See supra notes 101–07 and accompanying text.

[124] See supra note 105 and accompanying text.

[125] See supra notes 108–09 and accompanying text.

[126] Haley v. Ohio, 332 U.S. 596, 600–01 (1948).

[127] Id. at 601.

[128] Gallegos v. Colorado, 370 U.S. 49, 54 (1962). Interrogation manuals for police officers also acknowledge the importance of ensuring that youths understand their rights. See Inbau et al., supra note 23, at 255 ("When a juvenile younger than 15, who has not had any prior experience with the police, is advised of his *Miranda* rights, the investigator should carefully

Along with Supreme Court case law, both federal and state legislatures seem to acknowledge that *Miranda* warnings are necessary for protecting youths' rights against self-incrimination. The Supreme Court's opinion in *Dickerson v. United States* suggests that the specific warning requirements, as articulated in *Miranda*, can be supplanted by statute. It reasoned that in order for a court to hold that a failure to Mirandize a suspect is *not* a Fifth Amendment violation, the police must comply with statutory requirements that are "at least as effective" as *Miranda* warnings in informing people of their rights.[129] However, federal and state legislators have not attempted to supplant *Miranda* in the context of youths but rather have built on *Miranda*'s protections through statutes. This indicates that legislators believe that *Miranda* warnings are necessary for protecting youths' rights against self-incrimination even if they are not sufficient.

In response to *In re Gault*, Congress passed the Juvenile Justice and Delinquency Prevention Act of 1974 "to provide basic procedural rights for juveniles who come under Federal jurisdiction and to bring Federal procedures up to the standards set by various model acts, many state codes and court decisions."[130] As codified, Section 5033 provides that when a youth is taken into custody, "[t]he arresting officer shall . . . notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense."[131] The requirement to inform the youth's parents or guardians of the youth's rights supplements but does not replace a requirement to inform the youth themself—the statute also requires the arresting officer to "immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile."[132]

Along with the federal government, state governments have adopted several types of policies to provide additional protections to youths in interrogation settings. For example, per se exclusionary rules, which have been adopted in several states, involve "procedural safeguards" such as

discuss and talk about those rights with the subject (not just recite them) to make sure that he understands them. If attempts to explain the rights are unsuccessful, no interrogation should be conducted at that time.").

[129] Dickerson v. United States, 530 U.S. 428, 440 (2000) (quoting Miranda v. Arizona, 384 U.S. 436, 467 (1966)).

[130] S. Rep. No. 93-1011, at 19, 48 (1974), *as reprinted in* 1974 U.S.C.C.A.N. 5283, 5284, 5312; Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109.

[131] 18 U.S.C. § 5033 (2012).

[132] Id.

"mandating the presence of counsel during the interrogation of a juvenile under thirteen years of age" or "mandating the presence of a parent or guardian who has been apprised of the juvenile's *Miranda* rights."[133] Importantly, the statutes creating these rules still require a youth to be given *Miranda* warnings and to make their own decision about whether to waive their rights.[134] Therefore, these statutes support the notion that even with an attorney, parent, or guardian present, it is necessary for a youth to be informed of their rights and empowered to exercise them.[135]

3. Why This Rule Is Needed to Protect Youths' Miranda *Rights After* Vega

While the voluntariness test can be a powerful tool for vindicating youths' interrogation rights, it is not sufficient to enable all youths whose un-Mirandized statements are admitted in court to obtain a § 1983 cause of action. Because this Note argues that un-Mirandized statements by youths should be deemed per se involuntary, it argues by extension that when a court deems a youth's un-Mirandized statement voluntary, it denies that youth their Fifth Amendment rights.

Although a lack of *Miranda* warnings creates a presumption of involuntariness,[136] there is a risk of even un-Mirandized statements being deemed voluntary. Indeed, the *Vega* Court admitted this was a possibility when it noted that "it is easy to imagine many situations in which an un-Mirandized suspect in custody may make self-incriminating statements without any hint of compulsion."[137] Evidence from interviews with police officers and lawyers indicates that youths' un-Mirandized statements may

[133] Farber, supra note 10, at 1287 (internal quotation marks omitted).

[134] See, e.g., Colo. Rev. Stat. Ann. § 19-2.5-203 (2024) ("A statement or admission of a juvenile made as a result of the custodial interrogation of the juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile are not admissible in evidence against the juvenile unless . . . the juvenile *and* the juvenile's parent, guardian, or legal or physical custodian were advised of the juvenile's right[s]. . . ." (emphasis added)); N.C. Gen. Stat. § 7B-2101 (2023) ("Any juvenile . . . in custody must be advised [of their rights] prior to questioning . . . . If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights . . . ; however, a parent, guardian, or custodian *may not waive any right on behalf of the juvenile*." (emphasis added)).

[135] See supra notes 125–28 and accompanying text; see also Farber, supra note 10, at 1291–98 (explaining that the presence of a parent or guardian may not protect a youth's rights because the parent's or guardian's interests may conflict with the youth's interests).

[136] Oregon v. Elstad, 470 U.S. 298, 307 (1985).

[137] Vega v. Tekoh, 142 S. Ct. 2095, 2101 (2022).

be deemed voluntary because youths, not understanding the implications of confessing, are often eager to explain to police what transpired. One officer explained: "Some kids just can't wait to tell you exactly their side of the story. They're used to telling teachers and parents their side of the story, and they want their side heard."[138] Similarly, a public defender said: "[Youths are] much more likely to talk because they think, 'I can get out of my situation if I just explain and I'm truthful. I'm going to get some help. They're not going to prosecute me. This is what my parents want me to do.'"[139] Testimony from police about youths' eagerness to confess could lead courts to determine that their statements were voluntary, even in the absence of *Miranda* warnings. This is especially plausible given that the *Vega* Court indicated that there are "*many* situations" in which an un-Mirandized suspect could make a voluntary statement.[140]

The difficulty of establishing that a statement was involuntary is most likely to affect older youths. There is evidence that courts view older children, especially those with prior experience with the criminal legal system, differently from younger children. They are therefore more likely to find that older youths' un-Mirandized statements were given voluntarily. For example, the Supreme Court's decision in *Fare v. Michael C.* requires courts to consider a youth's age and experience with the criminal legal system in determining whether a youth validly waived *Miranda*.[141] Though this case is not specifically about voluntariness in the absence of *Miranda* warnings, its holding suggests that courts would be more inclined to view a youth's un-Mirandized statement as voluntary (which, this Note argues, would be erroneous)[142] if the youth were older and/or experienced in the criminal legal system.

Cases involving a determination of whether a youth was in custody for *Miranda* purposes when interrogated shed additional light on how the fact that a youth is older may influence courts. For instance, in *Gaono v. Long*, a finding of no custody was upheld for an interrogation that had taken place in a police station, lasted for a few hours, and involved the defendant being handcuffed. This was, in part, because the suspect was "17; nearly

[138] Feld, supra note 11, at 430 n.184 (quoting Barry C. Feld, Kids, Cops, and Confessions: Inside the Interrogation Room 96 (2013)).

[139] Id. at 430 n.186 (quoting Barry C. Feld, Kids, Cops, and Confessions: Inside the Interrogation Room 96 (2013)).

[140] *Vega*, 142 S Ct. at 2101 (emphasis added).

[141] 442 U.S. 707, 725 (1979).

[142] See supra notes 112–22 and accompanying text.

an adult."[143] Similarly, in *Loredo v. Miller*, a court confirmed a finding that an interrogation in which a police officer went to the suspect's house, asked the suspect to come out to the porch, and refused to allow the suspect to go back inside and close the door was not custodial, in part because the individual "was close to his 17th birthday."[144] While the custody determination is not synonymous with the voluntariness determination, these issues implicate similar considerations because both involve a totality-of-the-circumstances approach that includes psychological factors.[145] Therefore, older youths being treated differently from younger youths in custody determinations suggests that this is also likely to happen in voluntariness determinations. Again, this Note argues that if this differing treatment led to a determination that an older youth's un-Mirandized statement was voluntary, that determination would be incorrect—*no* youth can make a truly voluntary statement without *Miranda* warnings.[146]

The current voluntariness doctrine also fails to protect youths who did not receive *Miranda* warnings but would have refused to waive *Miranda* if they had received the warnings. This subset of youths, like those who are most at risk of wrongfully having their statements deemed voluntary,[147] largely consists of youths aged sixteen or seventeen. Professor Barry Feld examined the interrogation records for sixteen- and seventeen-year-olds who had been charged with felony-level offenses and found that these youths had an adult-like understanding of the *Miranda* warnings.[148] While 90% of all youth suspects waive their *Miranda* rights, only 80% of the youths in Feld's study waived theirs—around the same

[143] No. 13-cv-00103, 2014 WL 171548, at *17 (S.D. Cal. Jan. 10, 2014).

[144] No. 14-cv-04314, 2016 WL 4184065, at *11 (C.D. Cal. Mar. 30, 2016), *report and recommendation adopted*, No. 14-cv-04314, 2016 WL 4180949 (C.D. Cal. Aug. 5, 2016). Compare In re R.S., No. 11-13-10, 2014 WL 4071562, at *4 (Ohio Ct. App. Aug. 18, 2014) (holding that a sixteen-year-old was not in custody for purposes of *Miranda*, even though he was brought into the juvenile probation officer's office and questioned by a uniformed police officer), with In re K.C., 32 N.E.3d 988, 993 (Ohio Ct. App. 2015), *abrogated by* State v. Barker, 73 N.E.3d 365 (Ohio 2016) (determining that a 12-year-old was in custody because of several factors, two of which were her age and her lack of prior experience with the criminal legal system), and In re S.R., No. 116,245, 2017 WL 1300092, at *4 (Kan. Ct. App. Apr. 7, 2017) (finding a suspect to have been in custody in part because he was "an immature child of 13 who was unfamiliar with the criminal justice system").

[145] See supra note 44 and accompanying text; supra note 72 and accompanying text.

[146] See supra notes 112–22 and accompanying text.

[147] See supra notes 143–44 and accompanying text.

[148] Barry C. Feld, Juveniles' Competence to Exercise *Miranda* Rights: An Empirical Study of Policy and Practice, 91 Minn. L. Rev. 26, 62–63, 90 (2006).

percentage as that for adults.[149] This discrepancy supports the notion that older youths are less likely to waive their *Miranda* rights.

Because older youths are less likely to waive their *Miranda* rights, they have the most to lose as a result of *Vega*'s holding that there is no § 1983 cause of action for a failure to read *Miranda* rights. For the older youths who are ultimately convicted, their cases very well could have come out differently if they had been informed of their rights. Therefore, an officer's failure to Mirandize them could have caused them to experience the stigma and barriers to success associated with a conviction and/or the harm of time in prison. However, they still may not be able to obtain a remedy for these harms. One could argue that older youths who have prior experience with the criminal legal system are already aware of their *Miranda* rights. However, given the highly stressful interrogation environment,[150] these youths cannot reasonably be expected to remember to invoke their rights without being reminded of them.[151]

V. WHY YOUTHS SHOULD HAVE A § 1983 CLAIM FOR THE ADMISSION OF UN-MIRANDIZED STATEMENTS

Given the limits of the voluntariness test, additional legal protections are needed to ensure that all youths can vindicate their rights against self-incrimination. This Note argues that courts should strengthen youths' ability to vindicate their rights by holding that youths have a § 1983 cause of action for the admission of un-Mirandized statements. Regardless of whether adults can bring § 1983 claims for the admission of un-Mirandized statements, youths must be able to do so because of their heightened vulnerability in interrogation settings and propensity to make false confessions.

This Part first explains why courts should hold that a failure to read a youth suspect their *Miranda* rights is a violation of the Fifth Amendment. It then argues that if courts are unwilling to find that this is a violation of the Fifth Amendment, then they should extend the *Miranda* rules to allow a youth to bring a § 1983 claim following the admission of an un-Mirandized statement.

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[149] Id. at 82; supra note 11, at 453.

[150] See supra Section I.A.

[151] See Miranda v. Arizona, 384 U.S. 436, 469 (1966) ("[W]hatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time.").

A. A Failure to Mirandize a Youth Should Be Deemed a Violation of the Fifth Amendment

Because questioning a youth without Mirandizing them should always be deemed a Fifth Amendment violation, these warnings should not be considered prophylactic in the context of youth. However, it must be noted that *if* a court determines that the *Miranda* rules are still prophylactic in the context of youths, it will not be possible to establish the right to a § 1983 cause of action on the basis that a failure to Mirandize a youth is a violation of the Fifth Amendment.

The *Vega* Court indicated that one reason why *Miranda* warnings are prophylactic is that un-Mirandized suspects can make self-incriminating statements without being compelled to do so.[152] However, as explained previously, *Miranda* warnings should be deemed a necessary condition for a youth's statement to be voluntary.[153] Under this proposed rule, if an officer questions a youth in custody without Mirandizing them, and thereby obtains a confession, that confession is involuntary regardless of the other circumstances of the interrogation. Therefore, the officer would have violated the youth's Fifth Amendment rights, which necessitates the availability of a § 1983 claim.[154]

The *Vega* Court also reasoned that *Miranda* warnings are prophylactic because the components of the *Miranda* warnings "do not concern self-incrimination *per se* but are instead plainly designed to safeguard that right."[155] However, under the proposed rule that un-Mirandized statements by youths are per se involuntary, *Miranda* warnings do not merely "safeguard" the right against self-incrimination. Rather, in the absence of *Miranda* warnings, the right against self-incrimination has unequivocally been violated. Again, this would be the case regardless of any other circumstances of the interrogation.

B. If a Failure to Mirandize a Youth Is Not a Violation of the Fifth Amendment, Youth Should Still Be Allowed to Bring a § 1983 Claim for Admission of an Un-Mirandized Statement

Even if courts are unwilling to find that a failure to Mirandize a youth is a violation of the Fifth Amendment, under the balance-of-interests test

[152] Vega v. Tekoh, 142 S. Ct. 2095, 2101 (2022).
[153] See supra Section IV.B.
[154] See supra notes 74 and 77 and accompanying text.
[155] *Vega*, 142 S. Ct. at 2101.

the Supreme Court used in *Vega*,[156] courts should extend *Miranda* to allow youths to sue under § 1983 when an un-Mirandized statement is admitted.

There are several potential benefits to allowing § 1983 claims in the context of youths whose un-Mirandized statements were admitted in court. One of the most salient benefits is that many youths would be able to obtain remedies they could not otherwise access. In *Maryland v. Shatzer*, the Supreme Court explained that "the benefits of [an extension of *Miranda* that deems additional types of statements involuntary] are measured by the number of coerced confessions it suppresses that otherwise would have been admitted."[157] This explanation indicates that, in the context of extending *Miranda* for youths, the benefits would be measured by the number of successful suits that could be brought following the admission of an un-Mirandized statement. As explained previously, extending *Miranda* in this way would likely create many opportunities for such suits for older youths who are both more likely to wrongfully have their un-Mirandized statements deemed voluntary and more likely to have a lack of *Miranda* warnings affect the outcome of their criminal cases.[158]

Another potential benefit of the proposed extension of *Miranda* is that remedies would be available for constitutional violations that are especially egregious due to youths' vulnerability in interrogation settings.[159] In *Oregon v. Elstad*, the Court suggested that extending *Miranda* is more readily justifiable in the context of youth suspects, explaining that there were "serious Fifth Amendment and due process concerns" in cases involving "[a] two hours' unwarned custodial interrogation of [a] 16-year-old in violation of [a] state law requiring [a] parent's presence, culminating in [a] visit to [the] scene of [the] crime"; "[a] confrontation at [a] police station and at [the] scene of [the] crime between police and [a mentally challenged] youth with [a] mental age of eight or nine"; and "[an] unwarned 'close and intense' station house questioning of [a] 15-year-old, including threats and promises."[160]

[156] See supra notes 66–67 and accompanying text.
[157] 559 U.S. 98, 105–06 (2010).
[158] See supra Subsection IV.B.3.
[159] See supra Section I.A.
[160] 470 U.S. 298, 312 n.3 (1985) (first citing People v. Saiz, 620 P.2d 15, 15–19 (Colo. 1980); then citing People v. Bodner, 430 N.Y.S.2d 433, 442–43 (N.Y. App. Div. 1980); and then quoting State v. Badger, 450 A.2d 336, 339, 343 (Vt. 1982)).

Although there are many potential benefits from this extension of *Miranda*, which are supported by case law, this extension would also involve costs. However, those costs are not nearly large enough to outweigh the benefits.[161] The potential costs of allowing youths whose un-Mirandized statements are admitted in court to bring § 1983 claims include: (1) the time and expense of relitigating whether the suspect had been in custody when questioned, (2) federalism concerns due to the possibility of federal and state courts reaching different conclusions on this question, and (3) the need to resolve procedural issues that would stem from these claims.[162]

As in *Withrow v. Williams*, refusing to allow claims based on *Miranda* in this context would be unlikely to "advance the cause of federalism in any substantial way" or "reduce the amount of litigation" because a youth could "simply convert[] his barred *Miranda* claim into a due process claim that his conviction rested on an involuntary confession."[163] As explained previously, the voluntariness inquiry involves many of the same considerations as those involved in *Miranda* claims.[164] Because youths could still bring § 1983 claims on the basis that the admitted statements were involuntary, courts would still have to address the procedural issues that would result from allowing *Miranda* claims. Furthermore, the costs of allowing § 1983 claims for admissions of un-Mirandized statements do not weigh nearly as heavily in the context of youth interrogations as in the context of interrogations in general because the number of cases involved is much smaller. According to 2020 reports submitted by law enforcement agencies in U.S. cities, arrests of youths

[161] The cases in which the Court has determined that the costs of a proposed extension of *Miranda* outweigh the benefits generally involve unique circumstances that would not be relevant in the typical youth interrogation case. See, e.g., Maryland v. Shatzer, 559 U.S. 98, 104, 108–10 (2010) (holding that a rule—under which a suspect who has invoked his right to the counsel during an interrogation may not be interrogated without counsel present, unless the suspect, himself, initiates contact with the police—does not apply more than fourteen days after the suspect was first interrogated); New York v. Quarles, 467 U.S. 649, 656 (1984) (declining to extend the *Miranda* requirements to "a situation in which police officers ask questions reasonably prompted by a concern for the public safety"); Oregon v. Elstad, 470 U.S. 298, 301, 309, 316 (1985) (declining to hold that a suspect's waiver of his *Miranda* rights was per se invalid when he previously responded to noncoercive questions without receiving *Miranda* warnings).

[162] Vega v. Tekoh, 142 S. Ct. 2095, 2107; Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979); Preiser v. Rodriguez, 411 U.S. 475, 490 (1973).

[163] 507 U.S. 680, 693–94 (1993); see also id. at 694 ("We could lock the front door against *Miranda*, but not the back.").

[164] See supra note 145 and accompanying text.

made up just 6.2% of all arrests in the cities represented by those agencies.[165]

CONCLUSION

The holding in *Vega v. Tekoh* poses a grave danger to the interrogation rights of youth and especially older youths, and lawyers and judges must take action to ensure that those rights are protected. The voluntariness test can help many youths to vindicate their rights following the admission of an un-Mirandized statement. However, it remains likely that some claims by youths which should be viable will fall through the cracks under the current voluntariness doctrine. Therefore, courts should safeguard youths' ability to obtain a remedy for a Fifth Amendment violation by holding that statements by youths in custody made without a parent, guardian, or lawyer present or without *Miranda* warnings are per se involuntary. Courts should also allow youths to bring § 1983 claims for the admission of un-Mirandized statements. By taking these steps, courts can ensure that youths whose Fifth Amendment rights are violated can obtain a remedy for the resulting harm that they suffer.

[165] Crime in the United States 291 (Shana Hertz Hattis ed., Bernan Press, 16th ed. 2022).