No. 17-652

IN THE

Supreme Court of the United States

MARIE HENRY, as guardian, parent, next of kin, and for and on behalf of M.E. Henry-Robinson, a minor

Petitioner,

v.

CITY OF MT. DORA, et al.

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF OF PETITIONER

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REPLY IN SUPPORT OF PETITION

Dueling dicta have led to a nearly even circuit split on the question presented, and almost every circuit already has weighed in. In their Brief in Opposition, Respondents concede that the Eleventh Circuit took the minority side in an otherwise six-to-four split among federal appellate courts on the applicability of *Heck* v. *Humphrey*, 512 U.S. 477 (1994), to bar Section 1983 actions when federal *habeas* relief is unavailable. BIO 8. Six courts of appeals have held that *Heck* does not apply to Section 1983 actions when the underlying conviction could not be challenged via a petition for *habeas corpus* in federal court. The Eleventh Circuit joined the four circuits that have held otherwise here.

Respondents have conspicuously little to say on the division in the circuits and nothing to say in response to the importance of the issues presented, as stated by Petitioner and three *amici*. Instead, they devote most of their Brief in Opposition to arguing the merits of the issues and improperly relying on disputed facts to create a narrative of innocence. These arguments for denying certiorari are baseless, particularly in the face of the acknowledged and ripe split in authority, and the importance of the issue presented. The Court should grant the petition.

I. THE SPLIT OF AUTHORITY ON THE FIRST QUESTION PRESENTED IS FULLY DEVELOPED AND NEEDS RESOLUTION.

Respondents only acknowledge in passing the deep divide on whether *Heck* v. *Humphrey* bars Section 1983 claims when the underlying criminal conviction could not be challenged in a federal petition for *habeas*

corpus, noting only that "other Circuits—not the Eleventh Circuit—have been following dicta from two Supreme Court opinions in applying the *Heck* bar." BIO 8. But Respondents do not disagree that six courts have ruled one way while five have gone the other way. Nor do respondents disagree that those "other Circuits" it derides are the majority.

Respondents also do not challenge the importance of this issue, which cannot be minimized. The minority circuits' misapplication of *Heck* has extended to myriad contexts, including immigration, convicts who were not incarcerated for a long enough period to assert a federal petition for a writ of *habeas corpus*, prisoners who die awaiting resolution of *habeas* petitions, parolees, participants in diversionary programs, and juveniles.[1] But Congress enacted Section 1983 to provide a federal venue to protect the federal constitutional rights of all people who might otherwise be subject to state actors' indifference or hostility to those rights, including state judges. *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972). And the need for Section 1983's protections remains extant—this case is proof, as are many others. Pet. 24; Br. of Amicus Curiae Nat'l Bar Ass'n at 16-20.

Thus, it is unsurprising that, at the petition stage, groups with varied interests have asserted the

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[1] *Cohen* v. *Longshore*, 621 F.3d 1311 (10th Cir. 2010) (immigration); *Powers* v. *Hamilton Cty. Pub. Def. Comm'n*, 501 F.3d 592 (6th Cir. 2007) (sentence too short to complete *habeas* process); *Figueroa* v. *Rivera*, 147 F.3d 77 (1st Cir. 1998) (death awaiting *habeas* relief); *Nonnette* v. *Small*, 316 F.3d 872 (9th Cir. 2002) (parolees); *Gilles* v. *Davis*, 427 F.3d 197 (3d Cir. 2005) (alternative rehabilitation programs; App 2a; *Huang* v. *Johnson*, 251 F.3d 65, 75 (2d Cir. 2001) (juveniles).

importance of resolving this issue, and doing so in favor of limiting *Heck*'s application to the context in which it was decided—a Section 1983 plaintiff who had federal *habeas* as an avenue of federal collateral attack on the conviction. *See* Br. of Amicus Curiae Nat'l Bar Ass'n at 13 ("[T]he only resolution consistent with Section 1983's fundamental purpose is one that preserves access to the federal courts by dispensing with *Heck*'s favorable termination requirement for *habeas*-ineligible plaintiffs."); Br. of Amicus Curiae Nat'l Ass'n for Pub. Def. at 2 ("Access to the federal courts by way of a § 1983 action to redress violations of fundamental constitutional rights is particularly important for juveniles and others placed in diversionary programs, such as 'drug courts.'"); Br. of Amicus Curiae Nat'l Juvenile Defender Ctr. at 2 ("[T]his particular case places significant limitations on a juvenile's ability to redress constitutional violations through a § 1983 action.").

II. THIS CASE IS A PROPER VEHICLE FOR RESOLVING THE SPLIT, AS WELL AS THE SECOND QUESTION PRESENTED.

This case cleanly presents the questions presented, and it is unencumbered by ancillary issues. The district court relied solely on the *Heck* doctrine to resolve that the claims at issue here should be dismissed. Pet. App. 7a-24a. Then, the Eleventh Circuit adopted that position after both parties argued only the *Heck* issue in their appellate briefs. Pet. App. 2a.

To suggest there is an issue of whether the Officers' initial stop was constitutionally allowable, Respondents rely on disputed facts, and improper citation to documents outside the complaint, when the

case was decided on a motion to dismiss. For instance, citing a police report that was not attached to the Complaint, Respondents assert that the officers received a call describing "'a large group of black juvenile subjects.'" BIO 15. But the Complaint alleges that the call came for "'10-12 black male' juveniles." AA 11. M.E. is female who was with a group of girls, and this should have dispelled suspicion. The Respondents further claim that M.E. was stopped less than a block from the alleged rock-throwing. BIO 15. That, too, is a disputed fact, as they were stopped significantly farther away than one block. AA 11 ("The children were nowhere near the building [where] the rocks were being thrown when they were stopped.").

Ultimately, the only things M.E.'s group had in common with the purported perpetrators was that there was a group of them, they were young, and they were Black. It is unsurprising to see many groups of young people on Halloween. So with the limited description, and the fact that the Officers did not even limit themselves to males, it is at least a fair inference that the girls here, AA 11, were stopped because they were African-American.

But this discussion is beside the point. The Court need not decide whether the initial stop was constitutionally allowable—and Respondents do not claim to have argued that it was allowable on appeal. They could not on a motion to dismiss, given their reliance on disputed facts to make the argument now. Thus, a jury must resolve those disputes, and the only thing for the Court to do here is to decide whether the *Heck* doctrine bars this action, taking the facts in the light most favorable to the plaintiff.

III. THE ELEVENTH CIRCUIT'S DECISION IS INCORRECT.

Rather than address the conflict among the circuits or the importance of the issues, Respondents primarily assert that the petition should be denied because the Eleventh Circuit purportedly was correct on the merits. BIO 8-13. Respondents state that "[t]his Court need not issue a second opinion to confirm that *Heck* v. *Humphrey* means what it says." BIO 13. Even if the Eleventh Circuit were correct on the merits, it would not render this case a less suitable vehicle to review the split in authority, given that the Eleventh Circuit's position is in the minority. Six circuits have correctly chosen to follow *Heck*'s ruling but not its dicta, while five have chosen to give its dicta precedential force. The need for the Court to clarify *Heck*'s application could not be more apparent.

All of the courts that have decided this issue acknowledge that Justice Souter stated in concurrence in *Heck* that a case in which *habeas* was unavailable would be distinguishable from *Heck*, and the *Heck* bar would not apply. Similarly, they all acknowledge that Justice Scalia, writing for the majority, disagreed in a footnote. Additionally, the Circuits acknowledge that a majority of Justices adopted Justice Souter's position in dicta in *Spencer* v. *Kemna*, 523 U.S. 1 (1998) (J., Souter, concurring), including Justices Ginsburg and Breyer.

The courts in the minority simply see Justice Scalia's dicta in the majority opinion as binding on the lower courts, even though the determination was not required to resolve the case. *See Figueroa* v. *Rivera*, 147 F.3d 77, 81 n.3 (1st Cir. 1998); *see also Gilles* v. *Davis*, 427 F.3d 197, 210 (3d Cir. 2005) (quoting

Figueroa, 147 F.3d at 81 n.3); *Randell* v. *Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) (per curiam) (quoting *Figueroa*, 147 F.3d at 81 n.3).

Moreover, the fact that this case involves a juvenile adjudication, rather than a criminal conviction, also removes it from *Heck*'s control. Respondents, without analysis, simply note that the Florida juvenile adjudication process has some similarities to the adult criminal process. They do not address any of the critical differences, such as the lack of a constitutional right to be tried before a jury, that inherently undermine any preclusive effect juvenile adjudications otherwise should have on subsequent assertions of constitutional rights violations in federal court. They also do not address strong public policy interests in not treating juvenile adjudications as criminal convictions. *See* Br. of Amicus Curiae National Juvenile Defender Center at 15 *et seq*.

The Eleventh Circuit misapplied *Heck*. That the Eleventh Circuit chose to only unofficially join the four circuits in the minority through an unpublished disposition is of no moment. As Respondent acknowledges, the Eleventh Circuit's decision may be cited in district courts in that circuit as persuasive authority. BIO 16. The district court's decision already has been cited as authority three times, and district courts in the Eleventh Circuit have not hesitated to rely on unpublished dispositions from the Circuit court on this issue. *Brewer* v. *City of Gulf Breeze*, No. 15-cv-573, 2016 U.S. Dist. LEXIS 99798 at *13-14 (N.D. Fla. June 24, 2016) ("In unpublished decisions, the Eleventh Circuit has applied *Heck* to plaintiffs who were not in custody."); *Gibson* v. *Holder*, No. 14-cv-641, 2015 U.S. Dist. LEXIS 128541 at *49 (M.D. Fla. Aug. 3, 2015); *Betts* v. *Hall*, No. 14-cv-33, U.S. Dist.

LEXIS 6907 at *29 n.11 (N.D. Fla. Jan. 26, 2015). Now that the district court decision has been affirmed by the Eleventh Circuit, it can only gain strength.

Given the persuasive effect of the decision below and the fact that ten other circuits already have issued published opinions on this issue in closely divided fashion, the issue is ripe for review by the Court in this case. That is particularly so, given the fact that some of the circuits in the minority do not necessarily agree with applying *Heck* when there is no right to pursue *habeas* relief, and only ruled such because they feel bound by the majority's dicta in *Heck*. *See*, *e.g.*, *Figueroa* v. *Rivera*, 147 F.3d 77, 81 (1st Cir. 1998)("[T]his plaint strikes a responsive chord."). There is no reason to await any further input from the Eleventh Circuit. The petition for a writ of certiorari should be granted.

CONCLUSION

For the foregoing reasons, the petition should be granted, the judgment below should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted,

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