

No. _____

**In The
Supreme Court of the United States**

ANTHONY JOHNSON,

Cross- Petitioner,

v.

EDWARD WINSTEAD, et al.

Cross-Respondents,

Conditional Cross-Petition For A Writ
Of Certiorari To The United States Court
Of Appeals For The Seventh Circuit

**CONDITIONAL CROSS-PETITION FOR WRIT OF
CERTIORARI**

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QUESTION PRESENTED FOR REVIEW:

Does the statute of limitations for Section 1983 claim based on the use of an unconstitutional inculpatory statement begin to run when criminal proceedings terminate in the defendant's favor?

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**PETITION FOR A WRIT OF CERTIORARI
OPINION BELOW**

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 900 F.3d 428 (2018) and is reproduced in the Appendix to 18-1013 at 1a-23a. The opinion of the district court is unreported and is reproduced in the Appendix to 18-1013 at 24a-37a.

JURISDICTION

The Seventh Circuit entered its opinion on August 14, 2018. Cross-petitioner Anthony Johnson filed a timely petition for rehearing which was denied on October 3, 2018. After a Justice of this Court granted a motion to extend the time to February 1, 2019, cross-respondents filed a petition for writ of certiorari on that date. That petition was docketed on February 5, 2019. Under Supreme Court Rule 12.5, this conditional cross-petition is timely filed.

This Court has jurisdiction under 28 U.S.C. Sec. 1254.

**STATUTES AND CONSTITUTIONAL PROVISIONS
INVOLVED**

United States Constitution, amend. XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, with-out due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

42 U.S.C.A. § 1983

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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

STATEMENT OF THE CASE

Because the facts of this case are set forth in cross-respondent's original petition for certiorari, and will be further detailed in cross-petitioner's response to the original petition, this statement is limited to those facts most pertinent to the claim on the conditional cross-petition.

Cross-petitioner Anthony Johnson was originally stopped by cross-respondents, Chicago police detectives, on December 4, 2003. interrogated and released.

Johnson eventually complained that he was functionally placed under arrest and was questioned without being given *Miranda* warnings. According to the detectives, Johnson gave them a statement in which he admitted driving his eventual codefendant, Clayton Sims, to and from the scene where Sims murdered a man named Brandon Baity.

In 2007, Johnson was tried for first degree murder. His statements were introduced at his trial and he was convicted. His conviction was reversed on appeal because the trial judge had failed to answer a question from the jury.

In 2012, Johnson was tried again, and his statements were again introduced into evidence. On March 21, 2012, his statements were admitted through the testimony of the detectives.

Johnson was again convicted, but this time his conviction was reversed outright by the appellate court on the ground that he had not been proved accountable for first degree murder beyond a

reasonable doubt. The appellate court rendered its decision on December 31, 2014.

On August 15, 2015, Johnson filed this suit, claiming deprivation of his civil rights under 42 U.S.C. Section 1983.

The detectives moved to dismiss for failure to state a claim under Federal Rule of Civil Procedure, Rule 12(b)(6), alleging that Johnson's claims were barred by statute of limitations. The district court agreed, and dismissed Johnson's suit.

On appeal, the Seventh Circuit held that Johnson's Fifth Amendment claim, stemming from the introduction of his statements at his second trial, was timely, because the accrual of those claims was deferred, under *Heck v. Humphrey*, 512 U.S. 477 (1994). The court held, however, that any claim stemming from the introduction of his statements at the first trial was time-barred:

“Our holding that *Heck* applies does not mean that *all* of Johnson's Fifth Amendment claims may proceed. To the extent that Johnson seeks damages associated with alleged Fifth Amendment violations at his first trial in 2007, the claims are indeed time-barred. That conviction was reversed in 2010, and the two-year time clock began to run then. The limitations period expired long before he filed this suit in 2015. The claims arising from the second trial in 2012 are timely, however. That conviction was reversed in 2014, and Johnson filed suit less than a year later.”

Johnson v. Winstead, 900 F.3d 428, 439 (7th Cir. 2018).

REASON FOR GRANTING THE CONDITIONAL PETITION

I.

THIS COURT SHOULD GRANT THE CONDITIONAL CROSS-PETITION TO DETERMINE WHETHER THE ACCRUAL OF A FIFTH AMENDMENT CLAIM SHOULD BE DEFERRED UNTIL THE FINAL, FAVORABLE TERMINATION OF CRIMINAL PROCEEDINGS IN A DEFENDANT'S FAVOR

Anthony Johnson respectfully submits this conditional petition for writ of certiorari for the purpose of preserving the issue of whether the accrual of a Fifth Amendment claim should be deferred until a defendant has finally been exonerated, notwithstanding the interim reversal of an earlier conviction. This issue is submitted for the court's review in the unlikely event that cross-respondents' petition for certiorari is granted. This question is related to that before the court in *McDonough v. Smith*, 18-485.

In the course of its opinion partially affirming and partially reversing the district court's dismissal of Anthony Johnson's claims, the Seventh Circuit ruled as follows:

"Our holding that *Heck* applies does not mean that *all* of Johnson's Fifth Amendment claims may proceed. To the extent that Johnson seeks damages associated with alleged Fifth Amendment violations at his first trial in 2007, the claims are indeed

time-barred. That conviction was reversed in 2010, and the two-year time clock began to run then. The limitations period expired long before he filed this suit in 2015. The claims arising from the second trial in 2012 are timely, however. That conviction was reversed in 2014, and Johnson filed suit less than a year later.”

Johnson v. Winstead, 900 F.3d 428, 439 (7th Cir. 2018).

This portion of the Seventh Circuit’s decision was not supported by citation to authority and dealt with an issue which had not been addressed by either of the parties. But, in addition, the Seventh Circuit’s decision conflicts with this Court’s decisions in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Edwards v. Balisok*, 520 U.S. 641 (1997).

It is well settled that a claim cannot accrue until the would-be plaintiff is entitled to sue, yet the existence of detention forbids a suit for damages contesting that detention’s validity.

In *Preiser v. Rodriguez*, 411 U.S. 475, (1973), this Court held that the right way to contest ongoing state custody is by a petition for a writ of habeas corpus under 28 U.S.C. § 2241 or § 2254, not by an action under § 1983 seeking an injunction requiring release. In *Heck v. Humphrey*, 512 U.S. 477 (1994), this court extended *Preiser* to hold that § 1983 cannot be used to obtain damages for custody based on a criminal conviction—not until the conviction has been set aside by the judiciary or an executive pardon. And although *Heck* dealt exclusively with § 1983 proceedings that imply the invalidity of a

conviction, *Edwards v. Balisok*, 520 U.S. 641 (1997), extended its approach to custody that rests on the decision of a prison's administrative panel revoking some of a prisoner's good-time credits.

Under these decisions, the Seventh Circuit's cursory rejection of Anthony Johnson's claim for damages based upon his compelled self-incrimination at his 2007 trial was wrong. Under *Heck*, any claim was barred until his 2007 conviction was set aside by judicial decision – the reversal of his conviction in 2010. However, while Johnson was in custody awaiting his second trial, any suit for wrongful detention would have been barred by *Preiser* and *Edwards*. Therefore, his claim did not accrue until his conviction was finally set aside by the appellate court on December 31, 2014.

For these reasons, in the unlikely event of a grant of cross-respondent's petition, this Court should also grant this conditional cross-petition.

CONCLUSION

For the foregoing reasons, upon any grant of cross-respondent's petition, the conditional cross petition for writ of certiorari should also be granted.

Respectfully submitted,

DATED: March 4, 2019

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