No. _____

In The
Supreme Court of the United States

TERRY LYNN OLSON,

Petitioner,

v.

JANIS AMATUZIO, FORMER WRIGHT COUNTY MEDICAL EXAMINER, TOM ROY, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS, JOAN FABIAN, FORMER COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

ERICA A. HOLZER
Counsel of Record
DAVID F. HERR
MASLON LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140
(612) 672-8200
erica.holzer@maslon.com

Attorneys for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

In *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court held that an incarcerated individual may not challenge the validity or duration of his or her incarceration by bringing suit under 42 U.S.C. § 1983. Instead, before a plaintiff who is still in custody may pursue a Section 1983 claim, he or she "must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486–87. *Heck* did not, however, expressly address whether this rule applies in circumstances where, as here, habeas relief is unavailable to the Section 1983 plaintiff.

In the nearly three decades since *Heck* was decided, the circuits have split 6–5 on the question whether the *Heck* "favorable-termination" requirement applies to Section 1983 claims for damages when the petitioner's release from custody has made habeas relief unavailable. The majority of circuits hold *Heck* does not bar such claims. Four circuits, including the Eighth Circuit, disagree.

The question presented is:

Whether a petitioner who has no available remedy in habeas, through no lack of diligence on his part, is barred by *Heck* from pursuing a Section 1983 claim challenging the validity or duration of his incarceration.

PARTIES TO THE PROCEEDING

Petitioner Terry Olson was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondents Janis Amatuzio, former Wright County Medical Examiner; Tom Roy, Commissioner, former Minnesota Department of Corrections; and Joan Fabian, Former Commissioner, Minnesota Department of Corrections, were the defendants in the district court proceedings and appellees in the court of appeals proceedings. On January 7, 2019, Tom Roy was replaced by the current Commissioner of the Minnesota Department of Corrections, Paul Schnell.

RELATED CASES

Olson v. Amatuzio, No. 18-3084, U.S. Court of Appeals for the Eighth Circuit. Judgement entered Jan. 3, 2020.

Olson v. Amatuzio, No. 18-124, U.S. District Court for the District of Minnesota. Judgement entered Aug. 30, 2019

Olson v. Roy, No. 15-4380, U.S. District Court for the District of Minnesota. Order entered Sept. 20, 2016.

Olson v. State, No. A11-696, Minnesota Court of Appeals. Orders entered Jan. 30, 2012 and Aug. 17, 2015.

State v. Olson, No. A08-0084, Minnesota Court of Appeals. Order entered July 21, 2009.

RELATED CASES—Continued

State v. Olson, No. 86-K4-05-3795, Minnesota District Court, Wright County. Orders entered Oct. 18, 2007; Feb. 15, 2011; Oct. 8, 2012; and July 21, 2014.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Terry Lynn Olson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinions of the court of appeals (App. 1a) and the district court (*id.* at 12a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 3, 2020. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 provides, in pertinent part,

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. . . .

STATEMENT

Petitioner Terry Lynn Olson respectfully requests that this Court grant his petition for a writ of certiorari to review the unresolved and inconsistently applied "favorable-termination" requirement first articulated by this Court nearly 30 years ago in *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, this Court held that an incarcerated individual may not challenge the validity or duration of his or her incarceration by bringing suit under 42 U.S.C. § 1983. Instead, before a plaintiff who is still in custody may pursue a Section 1983 claim, he or she "must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486–87. The policy underlying *Heck* is to prevent incarcerated individuals from using Section 1983 to collaterally attack their conviction or sentence when state and federal remedies, such as direct appeals and federal habeas corpus relief under 28 U.S.C. § 2254, remain available. *Heck* did not, however, expressly address whether this rule applies in circumstances where, as here, habeas relief is no longer available to the Section 1983 plaintiff.

Four years later, in *Spencer v. Kemna*, 523 U.S. 1 (1998), five Justices, in three separate opinions, expressed the view that *Heck*'s favorable-termination rule does not apply to individuals who are not presently incarcerated and therefore do not have access to federal habeas.

In the two decades since *Spencer* was decided, the lower courts have grappled with whether that understanding of *Heck* is correct, resulting in a 6–5 circuit split. The majority of circuits hold that *Heck*'s favorable-termination rule does not apply to suits by individuals, like Petitioner, who are no longer in custody and without access to federal habeas relief. *See*, *e.g.*, *Cohen v. Longshore*, 621 F.3d 1311, 1316 (10th Cir. 2010). These circuits have concluded that "[i]f a petitioner is unable to obtain habeas relief—at least where this inability is not due to the petitioner's own lack of diligence—it would be unjust to place his claim for relief beyond the scope of § 1983 where 'exactly the same claim could be redressed if brought by a former prisoner who had succeeded in cutting his custody short through habeas.'" *Id.* (citation omitted).

Five circuits, including the Eighth Circuit, disagree. These circuits have concluded that *Heck* must be applied according to the broad language of its holding unless and until this Court explicitly holds otherwise. *See*, *e.g.*, *Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007) ("Absent a decision of the [Supreme] Court that explicitly overrules what we understand to be the holding of *Heck*, however, we decline to depart from that rule.").

In 2004, this Court recognized this issue to be an unsettled one. *Muhammad v. Close*, 540 U.S. 749, 752 n.2 (2004) ("Members of the Court have expressed the view that unavailability of habeas for other reasons may also dispense with the *Heck* requirement. . . . This case is no occasion to settle the issue." (citations omitted)).

The minority rule applied by the court below, which makes it impossible for certain individuals to vindicate their federal constitutional rights in any forum, is incorrect, and should be reversed. Further review by this Court is warranted because uniformity on this important question of federal law is essential.

A. Factual Background

In 2007, Petitioner Terry Lynn Olson was convicted of second-degree murder in the 1979 death of Jeffrey Hammill, a crime he consistently has maintained he did not commit.

It is undisputed that if Petitioner had been charged and prosecuted in 1979, his presumptive target release date for parole would have been set at 86 months. Yet the Minnesota Department of Corrections set his target release date at 204 months—between 140% and 240% longer than any other offender convicted of the same offense in 1978, which ranged from 85 months to 145 months. The Department illegally set Petitioner's target release date at 204 months either by relying on conduct that occurred after the alleged crime or by applying a severity level analysis that was

in effect in 2007 rather than under the 1979 matrix, as required, or both.

After a direct appeal and appeals of two petitions for postconviction relief, on December 15, 2015, Petitioner filed a Petition for a Writ of Habeas Corpus with the United States District Court for the District of Minnesota, pursuant to 28 U.S.C. § 2254.

The petition was dismissed without prejudice on July 15, 2016, on the grounds it was a mixed petition, presenting both exhausted and unexhausted claims. *Olson v. Roy*, No. 15-4380 (July 15, 2016), ECF No. 31. The district court granted Petitioner a period of thirty days to file an amended petition and indicated that if Petitioner filed an amended petition with the unexhausted claims deleted, it would consider Petitioner's "gateway innocence" claim and his Equal Protection claim.

Before Petitioner had a chance to file his amended petition, the Wright County prosecuting authority sent an unsolicited letter to Petitioner's counsel. The letter expressly acknowledged that Petitioner had served three years and seven months longer than he should have, and offered to release Petitioner immediately from prison without any post-release supervision, as long as he agreed to forgo any future lawsuits against the county.

Because it was his only option for immediate release from state custody, which he had already endured as a professed innocent man for over eleven years, Petitioner agreed.

On September 6, 2016, Petitioner and Wright County filed an Amended Stipulation for Issuance of Conditional Writ of Habeas Corpus ("Stipulated Writ") with the federal district court, which stated: "In the interest of fairness, justice, and equity the prosecuting authority for Wright County, Minnesota agrees to the issuance of a Conditional Writ of Habeas Corpus that the sentence imposed in this matter be amended pursuant to the guidelines in effect in 1980 with a criminal history score of zero." App. 31a–32a. The express intention of the Stipulated Writ was Petitioner's immediate release from custody "in the interest of justice and equity." *Id.* at 32a.

On September 8, 2016, the district court, "being fully apprised of the circumstances of the matter and the stipulation, and concluding that the interest of justice, fairness, and equity will be served by the issuance of an order, consistent with the stipulation," issued a Writ ordering Petitioner's immediate release from custody. App. 27a–28a. On September 13, 2016, pursuant to the court's Writ and Order, Petitioner was released from custody. The day after Petitioner was released, on September 14, 2016, Petitioner and Wright County filed a stipulation for dismissal of Petitioner's original habeas petition, which the district court entered on September 20, 2016. *Id*. at 26a, 29a–30a.

B. The *Heck* Rule

In *Heck*, this Court considered a Section 1983 suit seeking damages brought by an incarcerated plaintiff

who had already been denied federal habeas relief. 512 U.S. at 479. The *Heck* Court adopted a favorable-termination requirement, ruling that a "plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486–87. In addition, "if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed[.]" *Id*. at 487.

Justice Souter (joined by Justices Blackmun, Stevens, and O'Connor) concurred in the judgment, stating that the "sensible way to read" the majority opinion is to limit its application to "prison inmates" who are "seeking [Section] 1983 damages in federal court for unconstitutional conviction or confinement." 512 U.S. at 500 (Souter, J., concurring in the judgment). According to these Justices, it would be an "untoward result" to require individuals who are no longer in custody, and therefore without access to habeas relief, to show favorable termination, as it would effectively "shut off federal courts altogether to claims that fall within the plain language of § 1983." *Id.* at 501. These Justices further noted that, absent congressional enactment, the Court cannot "narrow the broad language of § 1983, which speaks of deprivations of any constitutional rights, privileges, or immunities, by every person acting under color of state law, and to which [this Court

has] given full effect by recognizing that § 1983 provides a remedy, to be broadly construed, against all forms of official violation of federally protected rights." *Id*. at 502 (internal quotation marks and citations omitted).

More recently, in *Muhammad v. Close*, 540 U.S. 749 (2004), this Court granted certiorari on two questions: whether *Heck* applies to prison disciplinary proceedings that do not affect the validity or length of the underlying sentence; and if so, whether *Heck* applies even when circumstances render favorable termination impossible. *See* 539 U.S. 925 (2003). After concluding that *Heck* does not apply to such proceedings (540 U.S. at 754–55), this Court found it had "no occasion to settle" whether the "unavailability of habeas . . . may . . . dispense with the *Heck* requirement" (*id.* at 752 n.2).

In *Newmy v. Johnson*, 758 F.3d 1008 (8th Cir. 2014), the Eighth Circuit recognized the 6–5 "conflict in the circuits about the scope of *Heck*'s favorable-termination rule." *Id.* at 1010. The court of appeals explained that, although "[s]everal courts . . . have concluded that the *Heck* bar does not apply to a [Section] 1983 plaintiff who cannot bring a habeas action," "[f]our other circuits," including the Eighth Circuit, hold "that the favorable-termination rule still applies when a 1983 plaintiff is not incarcerated." *Id.* Applying circuit precedent, the *Newmy* court concluded that the plaintiff's claim was barred by *Heck*, even though the court recognized that "this rule could preclude a damages remedy for an inmate who is detained for only a

short time with limited access to legal resources." *Id.* at 1012.

Judge Kelly concurred. She agreed that the court's holding was compelled by circuit precedent, but "wr[o]te separately to express [her] concern that [the Eighth Circuit's] approach 'needlessly places at risk the rights of those outside the intersection of [Section] 1983 and the habeas statute, individuals not 'in custody' for habeas purposes.'" *Id.* (Kelly, J., concurring) (quoting *Heck*, 512 U.S. at 500 (Souter, J., concurring)). Judge Kelly noted the Tenth Circuit's reasoning that, "'if a Petitioner is unable to obtain habeas relief—at least where this inability is not due to the Petitioner's own lack of diligence—it would be unjust to place his claim for relief beyond the scope of 1983.'" *Id.* (quoting *Cohen*, 621 F.3d at 1316–17). And pointing to the concurring and dissenting opinions of five Justices in *Spencer*, Judge Kelly added that "the Supreme Court itself cast doubt on our broad reading of *Heck*." *Id.* (citing *Spencer*, 523 U.S. at 21 (Souter, J., concurring); *id*. at 25 n.8 (Stevens, J., concurring)).

Newmy demonstrates that the circuits will remain sharply divided on the question presented here until this Court resolves the issue, that the minority approach will continue to deny many litigants, such as Petitioner, any federal forum in which to vindicate their constitutional rights, and that the issue arises with considerable frequency.

For each of these reasons, this Court should grant the petition for certiorari to settle whether *Heck* applies in circumstances where "favorable termination"

is, as a practical matter, impossible for the litigant to obtain.

C. Proceedings Below

In January 2018, Petitioner brought the instant suit in the United States District Court for the District of Minnesota under the available federal remedy of 42 U.S.C. § 1983, seeking damages for respondents' violations of his rights under the Eighth and Fourteenth Amendments to the United States Constitution, and Minnesota state law. App. 34a–67a. Because a Section 1983 plaintiff cannot engage in forum shopping and is obligated to bring the lawsuit in the district court embracing the location of his conviction, Petitioner had the misfortune of bringing his claims before a court that was bound by precedent to apply the minority rule. Therefore:

1. The district court dismissed the suit, reasoning that Petitioner had not satisfied the "favorable termination" requirement of *Heck v. Humphrey*. App. 10a–25a.

2. The Eighth Circuit affirmed. App. 1a–9a.

REASONS FOR GRANTING THE PETITION

Under the minority rule applied by the Eighth Circuit, Petitioner is barred from challenging his unconstitutional incarceration under Section 1983 because he has not demonstrated favorable termination of that incarceration through a habeas proceeding. However,

Petitioner is now a free man precisely *because* the strength of his habeas petition led the prosecuting authority to immediately release him, to avoid a ruling on the merits of his habeas petition. This is precisely the sort of "untoward result" Justice Souter warned against. *Heck*, 512 U.S. at 500 (Souter, J., concurring). An individual "seeking redress for denial of his most precious right—freedom—should" not "be left without access to a federal court." *Wilson v. Johnson*, 535 F.3d 262, 268 (4th Cir. 2008).

While four other courts of appeals embrace the Eighth Circuit's minority rule that *Heck* precludes Section 1983 claims in such cases, six others have rejected such a broad reading of *Heck* as manifestly unjust and ungrounded in the language or policy of either Section 1983 or the federal habeas statute.

Until this Court resolves the 6–5 circuit split, the minority approach will continue to deny formerly incarcerated individuals like Petitioner the ability to vindicate their constitutional rights in any federal forum.

The question whether *Heck*'s favorable-termination rule applies in these circumstances is critically important. Quite often, Section 1983 plaintiffs challenging the constitutionality of their conviction or sentence have no access to habeas relief because they "were merely fined, . . . [or] have completed short terms of imprisonment, probation, or parole, or . . . discover[ed] (through no fault of their own) a constitutional violation after full expiration of their sentences,"

Heck, 512 U.S. at 500 (Souter, J., concurring), or, as here, were released before a final determination on the merits of their habeas petition. In these cases, if the plaintiff has the misfortune of being convicted or sentenced in one of the five minority jurisdictions, he or she will have no available federal forum in which to assert a claim of unconstitutional confinement.

The question also arises with great frequency. Based on our research, more than 200 cases implicating this issue have been decided by federal courts in the last ten years, and the question presented by this petition has been presented to this Court for resolution at least 67 times.

Furthermore, the minority approach is wrong. The purpose of *Heck*'s favorable-termination rule is to reconcile two potentially conflicting statutes: Section 1983 and the federal habeas statute. But in a case like this one, where habeas is unavailable through no lack of diligence, there is no possibility of conflict. Favorable termination is not required in such circumstances.

Finally, this issue is ripe for definitive resolution by this Court. In 2004, this Court granted certiorari to consider the question, but resolved that case on a different ground. *See Muhammad*, 540 U.S. at 752 n.2. In this case, the question is squarely presented, providing the right vehicle for the Court to decide this important and critical question, and to resolve the deep split among the circuits.

I. The Circuits Are Deeply Divided on the Question Presented Here.

In the nearly three decades since *Heck* was decided, an entrenched 6–5 circuit split has emerged. In this case, the district court expressly recognized this conflict (App. 22a n.5), and the Eighth Circuit affirmed without additional scrutiny or analysis (*id.* at 4a–5a). The Eighth Circuit has, however, previously recognized the conflict among the circuits. *See Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007).

Nearly every other circuit has also recognized the deep divide on this issue. *See*, *e.g.*, *Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 198 n.10 (4th Cir. 2015) ("Although circuits are split on this issue, our Court follows the majority view—based on Judge Souter's analysis—that *Heck* does not apply to claimants no longer in custody and thus without access to habeas relief, *at least* when the claimant is not responsible for failing to seek or limiting his own access to habeas relief."); *Poventud v. City of New York*, 750 F.3d 121, 163 (2d Cir. 2014) (en banc) (Jacobs, J., dissenting) ("[A] Circuit split has opened as to whether some exceptions to *Heck* may be permitted."); *Harrison v. Mich.*, 722 F.3d 768, 773–74 (6th Cir. 2013) (noting the "circuit split"); *Cohen v. Longshore*, 621 F.3d 1311, 1315 (10th Cir. 2010) (noting that the "circuits have split"); *Wilson v. Johnson*, 535 F.3d 262, 267 (4th Cir. 2008) (noting "the circuit split").

Legal scholars have also grappled with the circuit split, authoring dozens of law review articles on the topic. Notably, nearly all of these scholars agree with the courts' majority view, that *Heck* should not apply to plaintiffs lacking habeas relief. *See*, *e.g.*, Tyler Eubank, *A Prisoner's Dilemma: The Eighth Circuit's Application of* Heck v. Humphrey *to Released Prisoners*, 42 MITCHELL HAMLINE L. REV. 603 (2016); Alice Huang, *When Freedom Prevents Vindication: Why the* Heck *Rule Should Not Bar a Prisoner's § 1983 Action in* Deemer v. Beard, 56 B.C.L. REV. E-SUPPLEMENT 65 (2015); Claire Mueller, *The* Poventud *Population: Why § 1983 Plaintiffs Who Plead or Are Reconvicted After a Constitutionally Deficient Conviction Is Vacated Should Not Be Barred by* Heck, 34 REV. LITIG. 563 (2015); Lyndon Bradshaw, *The* Heck *Conundrum: Why Federal Courts Should Not Overextend the* Heck v. Humphrey *Preclusion Doctrine*, 2014 B.Y.U.L. REV. 185 (2014); John P. Collins, *Has All* Heck *Broken Loose? Examining* Heck*'s Favorable-Termination Requirement in the Second Circuit After* Poventud v. City of New York, 42 FORDHAM URB. L.J. 451 (2014); Aaron M. Gallardo, Cohen v. Longshore*: Determining Whether the* Heck *Favorable-Determination Requirement Applies to Plaintiffs Lacking Habeas Relief Under 42 U.S.C. § 1983*, 34 AM. J. TRIAL ADVOC. 725 (2011); Thomas Stephen Schneidau, *Favorable Termination After Freedom: Why* Heck*'s Rule Should Reign, Within Reason*, 70 LA. L. REV. 647 (2010); *Defining the Reach of* Heck v. Humphrey*: Should the Favorable Termination Rule Apply to Individuals Who Lack Access to Habeas Corpus?*, 121 HARV. L. REV. 868 (2008); Heck v. Humphrey

After Spencer v. Kemna, 28 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 1 (2002).

A. Six Circuits Do Not Apply *Heck*'s Favorable-Termination Requirement When Habeas Is Unavailable.

The majority of federal appellate courts—six out of eleven courts of appeals—have concluded that a favorable-termination rule should be required only in cases where a habeas-eligible plaintiff seeks recovery under Section 1983. *See Huang v. Johnson*, 251 F.3d 65, 75 (2d Cir. 2001); *Wilson v. Johnson*, 535 F.3d 262, 266–68 (4th Cir. 2008); *Powers v. Hamilton Cnty. Pub. Defender Comm'n*, 501 F.3d 592, 603 (6th Cir. 2007); *Nonnette v. Small*, 316 F.3d 872, 876–77 (9th Cir. 2002); *Cohen v. Longshore*, 621 F.3d 1311, 1316 (10th Cir. 2010); *Harden v. Pataki*, 320 F.3d 1289, 1298–99 (11th Cir. 2003).

The six circuits in the majority generally adhere to the reasoning endorsed by Justice Souter in his concurrence in *Spencer v. Kemna*, 523 U.S. 1 (1998), issued four years after this Court's decision in *Heck*:

> We are forced to recognize that any application of the favorable-termination requirement to § 1983 suits brought by plaintiffs not in custody would produce a patent anomaly: a given claim for relief from unconstitutional injury would be placed beyond the scope of § 1983 if brought by a convict free of custody (as, in this case, following service of a full term

> of imprisonment), when exactly the same claim could be redressed if brought by a former prisoner who had succeeded in cutting his custody short through habeas.

Id. at 20–21 (Souter, J., concurring). Following this reasoning, the majority of circuits acknowledge that *Heck* should not preclude claims like Petitioner's. Indeed, in this case, Petitioner no longer has access to habeas precisely *because* the arguments in his habeas petition were so persuasive that it led the prosecuting authority to make the unsolicited offer to set him free to *avoid* a ruling on the merits of his habeas petition. It is illogical and manifestly unjust to deprive Petitioner of a federal remedy on the basis of *Heck*'s favorable-termination requirement in such circumstances.

Recently, the Fourth Circuit stated this proposition plainly:

> From its inception, *Heck* has clearly applied to prisoners currently in custody. The Supreme Court ***has not, however, definitively decided whether*** **Heck** ***ever applies if a claimant has served his or her sentence and is no longer in custody***, as is the case here. . . . Although circuits are split on this issue, our Court follows the majority view—based on Judge Souter's analysis—that *Heck* does not apply to claimants no longer in custody and thus without access to habeas relief, at least when the claimant is not responsible for failing to seek or limiting his own access to habeas relief.

Covey v. Assessor of Ohio Cty., 777 F.3d 186, 198 (4th Cir. 2015) (emphasis added) (internal citations omitted).

In every conceivable respect, Petitioner acted diligently to challenge his unlawful incarceration: first through direct appeal, then through post-conviction challenges in state court, and finally through a habeas petition which led to his ultimate release. Because Petitioner is now a free man, further habeas proceedings are unavailable to him. In such circumstances, *Heck* should not bar "a Petitioner who has no available remedy in habeas, through no lack of diligence on his part . . . from pursuing a [Section] 1983 claim." *Cohen*, 621 F.3d at 1317.

B. Five Circuits Apply *Heck*'s Favorable-Termination Requirement Even When Habeas Is Unavailable.

Contrary to the majority rule, the First, Third, Fifth, Seventh, and Eighth Circuits hold that *Heck*'s favorable-termination rule applies to a Section 1983 plaintiff who is out of custody and no longer has—or who never had—access to habeas relief.

In this case, the district court expressly recognized the circuit split, but concluded it was bound by Eighth Circuit precedent in determining that Petitioner's claims were *Heck*-barred:

> [Petitioner] asserts that because he abandoned his habeas petition only because he was released, the favorable-termination rule should not be required. However, under the law of this Circuit, *Heck* still applies to the facts of this case. *See*, *e.g.*, *Newmy v. Johnson*, 758 F.3d 1008, 1011 (8th Cir. 2014) (noting a circuit split on whether *Heck* bars section 1983 claims when the plaintiff cannot bring a habeas action; explaining that the Eighth Circuit adheres to the conclusion that *Heck*'s favorable termination rule still applies when a plaintiff is not incarcerated (and therefore cannot bring a habeas claim)); *Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007) (holding that *Heck* applies even when habeas relief is unavailable).

App. 22a n.5.

In *Entzi*, a Section 1983 plaintiff challenged his loss of sentence-reduction credits. Habeas relief was functionally unavailable because of his brief period of incarceration, but the court nonetheless applied *Heck* to bar the action. 485 F.3d at 103. In foreclosing any federal remedy to the plaintiff in that case, the Eighth Circuit followed the First Circuit's approach in *Figueroa v. Rivera*, 147 F.3d 77 (1st Cir. 1998), wherein the First Circuit declined to "[c]reat[e] an equitable exception" to *Heck* in a case involving a prisoner who died while his habeas action was pending. *Id*. at 79–81. Doing so, the First Circuit reasoned, "would fly in the teeth of *Heck*." *Id* at 81. The Third and Fifth Circuits also follow the First Circuit's reasoning in *Figueroa*.

See Deemer v. Beard, 557 F. App'x 162, 166 (3d Cir. 2014) ("We, along with three other courts of appeals, have declined to follow the concurring and dissenting opinions in *Spencer*, and have interpreted *Heck* to impose a universal favorable termination requirement on all § 1983 plaintiffs attacking the validity of their conviction or sentence"); *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) (also following *Figueroa* and declining to "relax *Heck*'s universal favorable termination requirement" for Petitioner no longer in custody). Despite several previous Seventh Circuit decisions siding with the majority view, in January 2020, the Seventh Circuit abrogated those decisions and staked its place in the minority, reasoning: "The Supreme Court may eventually adopt Justice Souter's view, but it has not yet done so and we are bound by *Heck*." *Savory v. Cannon*, 947 F.3d 409, 421 (7th Cir. 2020) (en banc).

The court of appeals in this case did not address the district court's conclusion that it was bound by *Entzi*. Indeed, the opinion is completely silent as to the circuit split and Petitioner's alternative argument that *Heck* should not apply in these circumstances. *See Olson v. Amatuzio*, No. 18-3084, 2018 WL 6173303, at *42–45 (8th Cir. 2019) (appellant's opening brief); *id.*, 2019 WL 486675, at *10–11 (appellant's reply brief). Instead, the court of appeals simply affirmed the district court's conclusion that the Stipulated Writ, pursuant to which Petitioner was released, did not constitute a favorable termination under *Heck*. App. 4a–5a.

II. The Question Presented Is Important and Frequently Recurring.

The question whether certain individuals can be denied all federal avenues to challenge unconstitutional incarceration is of the utmost importance and warrants this Court's attention. "As this Court has constantly emphasized, habeas corpus and civil rights actions are of fundamental importance in our constitutional scheme because they directly protect our most valued rights." *Bounds v. Smith*, 430 U.S. 817, 827 (1977) (alteration and quotations omitted).

Moreover, litigation involving this question is frequent and—because of the circuit split—produces varied and inequitable results. This petition presents this Court with the opportunity to resolve this issue.

This Court most recently granted certiorari to resolve the *Heck* favorable-termination question in *Muhammad v. Close*, 540 U.S. 749 (2004). But while this Court recognized that "[m]embers of this Court have expressed the view that unavailability of habeas for other reasons may also dispense with the *Heck* requirement[,]" because this Court decided the case on other grounds, it concluded the case was "no occasion to settle the issue." *Id*. at 752 n.2. The Court has not addressed the issue since, and the intervening years have seen an increase in disparate outcomes as the conflict among the circuits has expanded.

Here, Petitioner has a strong claim that he was illegally incarcerated for three years and seven months longer than he should have been. Indeed, his claim is

so strong the prosecuting authority agreed to release him on those grounds. Yet because he was incarcerated in the Eighth Circuit (as opposed to any of the several other circuits applying the majority rule) he has been denied *any* avenue to challenge his incarceration, despite his demonstrated exhaustion of each and every prerequisite remedy.

Our research indicates there have been at least 200 federal cases dealing with this issue in one way or another over the past decade, and the question has been presented to this Court for review at least 67 times. State courts also generally apply *Heck* to Section 1983 claims. *See*, *e.g.*, *Heilman v. Courtney for Minnesota Dep't of Corr.*, No. A17-0863, 2019 WL 4008097, at *5 (Minn. Ct. App. Aug. 26, 2019).

This issue will continue to arise, and will continue to produce disparate and inequitable results, until it is definitively resolved by this Court.

III. The Majority Approach Is Correct.

While a 6–5 split among the circuits on an issue of such significant and life-altering importance is a sufficient and compelling reason to grant certiorari, the need for this Court's review is especially urgent because the minority approach is plainly wrong.

Section 1983 and the federal habeas statute both provide mechanisms to challenge unlawful incarceration. But the habeas statute imposes considerably more restrictive procedural limitations on a claimant

than does Section 1983, including the "exhaustion of adequate state remedies as a condition precedent to the invocation of federal judicial relief." *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). If Section 1983 were available without limitation to challenge the constitutionality of an individual's conviction or incarceration, a litigant could use Section 1983 as an avenue to "evade this [exhaustion] requirement" of habeas. *Id*. at 489–90.

It is a legitimate concern that the lack of any meaningful exhaustion of non-Section 1983 federal and state remedies would flood the federal district courts with prisoner litigation. But *Heck* cannot be read so broadly, as the minority of circuits do, to leave a segment of former prisoners without *any* access to federal district courts to seek redress for actual constitutional deprivations. *See*, *e.g.*, *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 23 n.1 (1979) ("A criminal conviction cannot, however, terminate all liberty interests"); *see also*, *e.g., Procunier v. Navarette*, 434 U.S. 555 (1978); *Bounds*, 430 U.S. at 827; *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974).

In *Preiser*, Section 1983 plaintiffs sought injunctive relief that would shorten their period of incarceration. This Court was concerned that if these plaintiffs were permitted to use Section 1983 to circumvent the procedural requirements of habeas, it "would wholly frustrate explicit congressional intent." *Preiser*, 411 U.S. at 489. This Court reconciled the two federal statutes by determining that in situations where "a prisoner's state remedy [is] adequate and available," *id*. at

493, the specific habeas statute governs the general Section 1983 remedy. *Id*. at 489 ("[E]ven though the literal terms of [Section] 1983 might seem to cover" a prisoner's suit challenging his or her confinement, "Congress has passed a more specific act to cover that situation.").

Subsequently, in *Heck*, this Court considered a Section 1983 claim for damages by a plaintiff who was presently incarcerated and who had already lost his habeas claim. 512 U.S. at 478–79. In such cases, the Court reasoned, "the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id*. at 487. "[I]f it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id*. To hold otherwise would permit an improper collateral attack on the conviction or sentence. *Id.* at 484. Or, if there had been no prior habeas action, permitting a Section 1983 claim to proceed would allow the incarcerated plaintiff to circumvent the habeas exhaustion requirement altogether. The *Heck* Court did not, however, expressly address whether the favorable-termination rule applies in circumstances where, as here, habeas relief is no longer available to the Section 1983 plaintiff.

This Court has since confirmed that while *Heck*'s "'favorable termination' requirement is necessary to prevent inmates from . . . challeng[ing] the fact or duration of their confinement without complying with the

procedural limitations of the federal habeas statute," it should not "cut off potentially valid damages actions as to which a plaintiff might never obtain favorable termination." *Nelson v. Campbell*, 541 U.S. 637, 646–47 (2004).

In *Muhammad*, this Court similarly reasoned that "conditioning the right to bring a [Section] 1983 action on a favorable result in state litigation or federal habeas served the practical objective of preserving limitations on the availability of habeas remedies." 540 U.S. at 751–52. But where "[t]here is no need to preserve the habeas exhaustion rule," there is "no impediment under *Heck*." *Id.*

The rulings below are inconsistent with these principles. When, as here, federal habeas is unavailable, there can be no conflict between the habeas statute and Section 1983. The minority rule leaves broad categories of individuals without any access to a federal forum to challenge the constitutionality of their imprisonment, including individuals incarcerated for short periods of time; those sentenced only to probation, a fine, or community service; persons who uncover evidence of a constitutional violation after release from custody; and individuals, like Petitioner, who are released from custody before a final determination on the merits of their habeas proceedings. There is nothing in the language, background, or policy of the habeas statute that suggests Congress intended to displace the Section 1983 remedy in such circumstances.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ERICA A. HOLZER
Counsel of Record
DAVID F. HERR
MASLON LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140
(612) 672-8200
erica.holzer@maslon.com

Attorneys for Petitioner

Dated: June 1, 2020