

No. -

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In the Supreme Court of the United States

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JAMES MILLS,

*Petitioner,*

v.

CITY OF COVINA, KIM RANEY AND TERRANCE HANOU,

*Respondents.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Does section 356 of the California Civil Procedure Code, which tolls a statute of limitations during any period that a plaintiff is legally prevented from taking action to protect his or her rights, apply during the period that a plaintiff's claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994)?

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

## **OPINIONS AND ORDERS BELOW**

The Ninth Circuit panel opinion affirming the district court's order is reported at 921 F.3d 1161. The district court's order and the Ninth Circuit order denying panel rehearing and denying rehearing *en banc* are unreported. Each is reproduced in the Appendix to this Petition (Pet. App.).

## **JURISDICTION**

The Ninth Circuit opinion was filed on April 24, 2019. Pet. App. A-1. The Ninth Circuit order denying panel rehearing and denying rehearing *en banc* was entered on June 4, 2019. Pet. App. D-1. This Court's jurisdiction is timely invoked under section 1254(1) of title 28 of the United States Code

## **STATUTORY PROVISIONS INVOLVED**

Section 356 of the California Civil Procedure Code reads, in its entirety, as follows: “[w]hen the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.”

## STATEMENT OF THE CASE<sup>1</sup>

### **A. The Unconstitutional Detention and Search, Erroneous State Court Conviction, and Its Reversal.**

On April 14, 2013, Respondent Terrance Hanou (Hanou), a City of Covina police officer, pulled Petitioner over for a traffic stop. During the traffic stop, Hanou asked for consent to search Petitioner's vehicle. Petitioner refused. Hanou then asked Petitioner if he had any weapons in his vehicle. Petitioner informed Hanou that there was an unloaded shotgun in the cargo compartment. Hanou made a call on his mobile phone and then asked Petitioner to exit his vehicle. Petitioner complied. Hanou then immediately handcuffed Petitioner, conducted a pat down search, and conducted a search of Petitioner's entire vehicle, starting with the cargo area.

After Hanou finished searching the vehicle, he placed Petitioner under arrest for possession of methamphetamine and a methamphetamine smoking device that Hanou said he found in Petitioner's vehicle. On June 6, 2014, Petitioner was convicted of one count of possession of methamphetamine and one count of possession of a

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<sup>1</sup> The facts material to this Petition are not in dispute. Petitioner adopts the Ninth Circuit's statement of facts (Pet. App. A-1) and generally summarizes the same here.

methamphetamine smoking device, in violation of Sections 11377 and 11364.1 of the California Health and Safety Code.

On March 3, 2016, in an unreported opinion, the California Court of Appeal found that Hanou's detention of Petitioner was unconstitutionally excessive in duration, Hanou's search of Petitioner's vehicle was unconstitutional, and the trial court should have excluded evidence allegedly derived from Hanou's unconstitutional conduct. The court reversed Petitioner's conviction and remanded the matter with instructions to dismiss the case, explaining that "[r]emanding the matter for further proceedings other than dismissal would be an idle gesture" because the prosecution had no admissible, lawfully obtained evidence.

**B. The District Court's Dismissal of Petitioner's 1983 Claim.**

On September 22, 2016, Petitioner filed a complaint against the City of Covina, Covina Police Chief Kim Raney, and Hanou, alleging claims under section 1983 of title 42 of the United States Code, for: (1) unlawful stop and detention, (2) false arrest, (3) false imprisonment, (4) malicious prosecution, (5) failure to screen and hire properly, (6) failure to train properly, (7) failure to supervise and discipline, and (8) *Monell* municipal liability against the City of Covina. The district court had original subject matter jurisdiction under section 1331 of title 28 of the United States Code. The district court dismissed all of Petitioner's claims as time barred, except for



the malicious prosecution claim. The district court held that *Heck* “did not bar [Petitioner] from filing his claims while he was subject to a criminal prosecution,” and thus, section 356 of the California Civil Procedure Code did not toll his claims during the pendency of his criminal appeal.

Petitioner filed two amended complaints against only the City of Covina and Hanou alleging only claims for: (1) malicious prosecution; and (2) *Monell* municipal liability. On August 4, 2017, Covina and Hanou moved for judgment on the pleadings, arguing that Petitioner’s amended claims were barred by collateral estoppel or, in the alternative, that Petitioner failed to establish a favorable termination of his criminal proceedings. The district court held that collateral estoppel barred Petitioner from relitigating the issue of whether he possessed drugs, and thus, probable cause was conclusively established. The district court did not reach the favorable termination issue.

**C. The Ninth Circuit’s Opinion  
Affirming the District Court.**

Petitioner appealed to the Ninth Circuit and raised the following issues: (1) whether the district court erred in holding that section 356 of the California Civil Procedure Code did not toll the statute of limitation for Petitioner’s claims during the period Petitioner was barred from asserting such claims pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994); and (2) whether the district court erred in holding that Petitioner was collaterally estopped by

a reversed state-court conviction from prosecuting a malicious prosecution claim.<sup>2</sup>

The Ninth Circuit affirmed, concluding that the *Heck* bar does not “legally prevent[ a plaintiff] from taking action to protect his rights” unless and until a claim is filed and the district court determines that it will impugn an extant conviction. The Ninth Circuit reasoned that “[u]ntil that determination is made, a plaintiff is not ‘legally prevented from taking action to protect his rights.’”

The Ninth Circuit denied Petitioner’s request for panel rehearing and a rehearing *en banc*.

## **REASONS FOR GRANTING THE PETITION**

### **I. THE NINTH CIRCUIT’S NOVEL INTERPRETATION OF *HECK* IS A RADICAL DEPARTURE FROM THIS COURT’S DECISIONS**

#### **A. The Ninth Circuit’s *de facto* exhaustion requirement compels plaintiffs to file cases that are barred under *Heck*.**

Despite universal acknowledgement that *Heck* barred Petitioner’s claims from the date of his

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<sup>2</sup> Petitioner does not seek review of the collateral estoppel issue and therefore does not include further discussion of that issue.

erroneous conviction to the date the conviction was reversed on appeal (*see, e.g.*, Pet. App. A-1 (district court acknowledging that Petitioner's claims necessarily imply the invalidity of conviction), the Ninth Circuit held otherwise. The Ninth Circuit reasoned that the *Heck* bar does not actually take effect or prevent a plaintiff from taking action until a plaintiff files a barred claim, the district court determines the claim will imply the invalidity of a criminal conviction and the district court dismisses the barred claim. Pet. App. B-1. This novel interpretation conflicts with *Heck*, in which this Court makes it clear that the bar is self-executing. *See Heck*, 512 U.S. at 486-487 (holding that a claim for damages that would necessarily imply the invalidity of a conviction "[...] is not cognizable under § 1983[]" unless and until the conviction has been invalidated).

There is no dispute in this case that Petitioner's claims necessarily imply the invalidity of his conviction. The District Court expressly acknowledged it, and it is not disputed by either the Respondents or the Ninth Circuit. Consequently, *Heck* is very clear: Petitioner's claims were "not cognizable" until Petitioner's conviction was reversed on appeal.

Nonetheless, the Ninth Circuit rejected tolling under section 356 of the California Civil Procedure Code based on the reasoning in *Wallace v. Kato*, 594 U.S. 384 (2007), in which this Court decided that *Heck* did not defer accrual of a civil claim or result in pre-conviction tolling under federal common law because, at the pre-conviction stage, it is unknown

whether a conviction will be obtained and the *Heck* bar triggered. Pet. App. A-1. This conflicts with *Wallace* because, when considering the issue of “[...] whether, assuming that the *Heck* bar takes effect when the later conviction is obtained, the statute of limitations on the once valid cause of action is tolled as long as the *Heck* bar subsists” (*i.e.*, the precise issue presented in this case), this Court expressly recognized that state law tolling rules apply and that no such tolling existed in that case because it was not provided by Illinois state law. *Wallace*, 594 U.S. at 394. Stated differently, it conflicts with *Wallace* because instead of simply applying section 356 of the California Civil Procedure Code—which provides exactly what was missing in *Wallace*: state law statutory tolling during any period of time a person is legally prevented from taking action—the Ninth Circuit imposes conditions it created based on *Wallace*’s discussion of pre-conviction tolling under federal common law. What the Ninth Circuit ultimately applies is not California’s statute, but rather a hybrid of *Wallace*’s discussion of pre-conviction tolling under federal common law and section 356 of the California Civil Procedure Code.

To the extent the Ninth Circuit has not established a *per se* rule against the *Heck* bar triggering tolling under section 356 of the California Civil Procedure Code, it erroneously limits it to cases actually filed and then dismissed. This ignores that the *Heck* bar is self-executing, triggered by a conviction and terminates only if and when the conviction is invalidated. Additionally, this novel interpretation requires plaintiffs to file the very

cases *Heck* seeks to eliminate. Central to the Ninth Circuit's analysis here is the fact that Petitioner did not file his case during the *Heck* bar period. There is no dispute that had Petitioner done so, his case would have been dismissed because it was barred by *Heck*. This exercise in futility, according to the Ninth Circuit, is required before a plaintiff is afforded the tolling provided by section 356 of the California Civil Procedure Code. Conditioning access to state law tolling in this manner conflicts with both *Heck* and *Wallace*.

### CONCLUSION

The Ninth Circuit radically departs from this Court's decisions by imposing a *de facto* exhaustion requirement that compels a plaintiff to file a case, even when there is no dispute that the case is barred under *Heck* and must be dismissed. Not only does this defeat the *Heck* bar's purpose, it improperly obstructs a plaintiff's access to state law tolling rules.

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

DATED: AUGUST 30, 2019

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