No. 21-1179

In the Supreme Court of the United States

ERIC LUND,

Petitioner,

v.

JEFFREY DATZMAN, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under *Heck v. Humphrey*, 512 U.S. 477 (1994), a person who has been convicted of a crime may not bring a civil claim under 42 U.S.C. § 1983 if that claim would necessarily "imply" the incorrectness of the conviction, unless that conviction has been invalidated through a means such as appellate reversal, habeas corpus, or executive clemency. *Id.* at 486-487. In this case, petitioner Eric Lund was convicted of possession of child pornography. His conviction was affirmed on direct appeal. Without waiting for his habeas corpus challenges to conclude, petitioner sought immediate adjudication of a 73-claim lawsuit, including a claim under Section 1983 alleging the unconstitutionality of the warrant and the resulting search that recovered the evidence forming the basis of his conviction. Petitioner seeks damages based on that alleged Fourth Amendment violation, but disclaims damages for the consequent prosecution and punishment. The question presented is:

Whether that type of claim is categorically exempt from the *Heck* bar.

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STATEMENT

Petitioner Eric Lund was convicted in state court of possessing child pornography. *See generally People v. Lund*, 64 Cal. App. 5th 1119 (2021). His habeas corpus challenges to that conviction have not yet concluded. *See infra* pp. 5-6. He brought this civil case under 42 U.S.C. § 1983 to challenge the constitutionality of the investigation that led to his conviction, as well as conduct by police and prosecutors during those proceedings and consequences that the investigation and conviction had on his employment and benefits. Although lower court proceedings remain pending with respect to most of the claims in his lengthy complaint, he seeks this Court's review of one aspect of the decision below.

1. Petitioner was a patrol officer with the California Highway Patrol (CHP). Pet. App. 11a. In 2014, another law enforcement agency detected a pattern of suspected child pornography files being offered to internet users late at night, via the internet platform eDonkey and a program called eMule. *See* Second Am. Compl., D.C. Dkt. 43, at 66, 525 (SAC); *Lund*, 64 Cal. App. 5th at 1124-1126. Although internet data showed that the files were being offered from one particular computer, the computer was using several Wi-Fi connections around the Northern California city of Vacaville. *See Lund*, 64 Cal. App. 5th at 1126-1127.

Authorities obtained a succession of warrants, culminating in "Warrant E." Pet. 7. That warrant and the underlying affidavit, which are discussed throughout petitioner's complaint, are in the record of the trial- and appellate-court proceedings in which petitioner challenged the warrant's constitutionality and sought before trial to exclude evidence and have his criminal case dismissed. *See* Appendix to Petition for

Writ of Mandate and Prohibition, *Lund v. Superior Court*, No. A149460 (Cal. Ct. App., 1st Dist.) (Lund Mand. Pet. App.), at 244-294.

The affidavit was signed by respondent Detective Jeffrey Datzman, of the Vacaville Police Department. SAC ¶ 53; Lund Mand. Pet. App. 249. It included information on the correspondence between the timing of the distribution of suspected child pornography from the offering computer and petitioner's Wednesday-through-Sunday overnight shifts. Lund Mand. Pet. App. 261, 264-265. One Wi-Fi connection that was frequently used by the offering computer was a Vacaville yogurt shop, where Datzman set up after-hours surveillance and monitored the shop's Wi-Fi from inside. *Id.* at 262-264. When Datzman saw that a computer was connected to the Wi-Fi source, he arranged for a Vacaville police officer to drive by the shop. *Id.* That officer saw petitioner sitting in his CHP cruiser in the shop's parking lot. *Id.*

Datzman's affidavit also included information about GPS trackers that, pursuant to a separate warrant, were placed on two CHP cars that petitioner used for his patrols. Lund Mand. Pet. App. 265-267. After the computer that Datzman was investigating offered child-pornography one night via a particular public Wi-Fi source, Datzman confirmed from the GPS data that one of those patrol cars was near the Wi-Fi source at the time in question. *Id.* Petitioner's superior confirmed to Datzman that petitioner had been patrolling in that car the same night. *Id.*; SAC ¶¶ 238-243.

After obtaining Warrant E, law enforcement officials searched petitioner's car. SAC ¶¶ 53-55. They found two external hard drives containing child pornography in the trunk. *Id.* ¶ 56; *see Lund*, 64 Cal. App.

5th at 1128. They also found an external hard drive containing the same version of the eMule program that had previously been detected offering child pornography through the public Wi-Fi sources; a USB Wi-Fi adapter with an identifier matching what Datzman had detected from the yogurt shop; and computer records indicating that the eMule program had been connecting to the Wi-Fi router in the yogurt shop on the night of that surveillance. *Lund*, 64 Cal. App. 5th 1128-1129.[1]

2. Prosecutors charged petitioner with possession of more than 600 images of child pornography. Lund Mand. Pet. App. 1-2. "Pretrial litigation relating to the constitutionality of the searches stretched over the course of several years," including proceedings at the trial and appellate level. *Lund*, 64 Cal. App. 5th at 1129. Petitioner challenged Warrant E's constitutionality, and also sought an evidentiary hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), asserting that Datzman's affidavit contained misstatements and omissions that violated the Fourth Amendment. *See* Lund Mand. Pet. App. 4-294, 440-467 (suppression motion and reply); *id.* at 295-355, 415-439 (*Franks* motion and reply).

After hearing testimony, the trial court denied petitioner's challenges. *See generally* Lund Mand. Pet. App. 468-807. The court concluded that "there wasn't a misrepresentation," and that there was not "a material omission or something that was irresponsibly

[1] Other evidence in petitioner's desk connected him to the devices found in his car. *Lund*, 64 Cal. App. 5th at 1129.

done by Detective Datzman." *Id.* at 753-754.[2] Petitioner raised his Fourth Amendment challenges to Warrant E again in a motion to set aside the prosecution. *See id.* at 810-848, 869-892 (petitioner's motion and reply). The trial court again denied the motion. *See id.* at 917 (court's conclusion that petitioner had not shown "deliberate or reckless statements or omissions" in the affidavit). Petitioner sought to have the trial court decisions overturned by petitioning for writs of mandate and prohibition from the court of appeal, which denied his petition. *See Lund v. Superior Court*, No. A149460 (Dec. 8, 2016). Petitioner's criminal trial then proceeded. Although the jury in the initial trial hung 11-1 in favor of conviction, the jury in the retrial convicted petitioner.[3] The trial court sentenced him to five years in prison. Pet. App. 12a.

On direct appeal, the state court of appeal affirmed, *Lund*, 64 Cal. App. 5th at 1124, and the California Supreme Court denied a petition for review, *People v. Lund*, No. S269625 (Cal. Sup. Ct. Aug. 18, 2021). The criminal judgment became final under California law in November 2021, when the time for filing a petition for a writ of certiorari in this Court expired. *See In re Ruedas*, 23 Cal. App. 5th 777, 785 (2018).

3. Petitioner is challenging his conviction in state and federal habeas corpus proceedings that have yet to conclude. The Fifth, Sixth, and Fourteenth Amend-

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[2] *See also* Lund Mand. Pet. App. 755-756 (stating, with respect to the "multitude" of arguments by petitioner in his "very thorough briefing," that the court had "read and considered each of those and I am denying the motion to quash").

[3] *See* SAC ¶ 61-62; *People v. Lund*, No. A157205 (Cal. Ct. App., 1st Dist.), 10 Rep.'s Tr. 390.

ment grounds that petitioner is raising in those proceedings overlap with the Fourth Amendment allegations at issue in this petition.

Petitioner's initial state habeas petition alleged that his criminal conviction should be overturned under *Brady v. Maryland*, 373 U.S. 83 (1963), because the prosecution failed to disclose that Officer Johnson, who saw petitioner at the yogurt shop during Datzman's surveillance, did not recall noticing a laptop in petitioner's car. *See* Pet. for Writ of Habeas Corpus, *In re Lund*, No. A161768, at pp. 36-37, 40-56 (Cal. Ct. App., 1st. Dist.). Petitioner's Fourth Amendment contention in this Court is that the same information should have been disclosed in Detective Datzman's affidavit seeking Warrant E. *See* Pet. 10; SAC ¶¶ 219-224. The state court of appeal rejected petitioner's habeas petition, and the California Supreme Court denied review. Pet. 8; *see In re Lund*, No. A161768 (Cal. Ct. App., 1st Dist. June 1, 2021); *In re Lund*, No. S269624 (Cal. Sup. Ct. Aug. 11, 2021).

In October 2021, petitioner filed a federal habeas petition. *Lund v. Locatelli*, No. 21-cv-1831 (E.D. Cal.). That petition raises the same *Brady* claim about Officer Johnson's observations at the yogurt shop that was rejected in the state habeas proceeding. *See id.* Dkt. 1 at 7-9 (Fed. Habeas Pet.). It also raises additional claims that are not based in the Fourth Amendment, but that rest on essentially the same allegations as those advanced in this petition for a writ of certiorari.[4] Petitioner has moved to stay the federal habeas

[4] For instance, petitioner's assertions about Datzman possibly seeing a CHP device in his car at the yogurt shop, and about camera footage showing other cars in the vicinity, Pet. 10, are the basis of his Fourth Amendment claims here, and his claims of

case in order to exhaust those additional claims in state court. *Id.* Dkt. 3. That motion remains pending, so it is unclear if and when petitioner's state habeas proceedings will resume.

4. This petition for a writ of certiorari arises from a civil complaint that petitioner filed in the Eastern District of California after the jury verdict in his criminal case but before that verdict became final on direct appeal.

a. The operative complaint spans 157 pages (not counting exhibits) and 1,087 paragraphs. *See* SAC. It alleges 73 federal and state claims against 31 named and 40 unnamed defendants. *Id.*

Petitioners' arguments in this Court focus on allegations that law enforcement officers violated the Fourth Amendment in obtaining Warrant E. Pet. 7-8; *see* SAC ¶¶ 66-309. Petitioner alleges that Detective Datzman's affidavit, which was used to obtain that warrant, omitted information that "undermined the probable cause and deprived [petitioner] of the opportunity to challenge the lawfulness of the investigation" in his criminal case. SAC ¶ 145. For instance, petitioner alleges that the affidavit should have disclosed that internet protocol records for some transactions were reported to be from places beyond petitioner's patrol area, *id.* ¶¶ 166-179, and that the surveillance tool

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ineffective assistance and prosecutorial misconduct in his federal habeas petition. *Compare* SAC ¶¶ 196-205, *with* Fed. Habeas Pet. 33-34. Petitioner's allegations here about IP addresses matching "locations where [petitioner] could not have been," and about Datzman's allegedly improper conclusion that petitioner had used a car tracked by GPS, Pet. 10-11, similarly underlie ineffective assistance and prosecutorial misconduct claims in his habeas petition. *Compare* SAC ¶¶ 166-179, 238-252, *with* Fed. Habeas Pet. 16-17, 34-35, 51 & Ex. 3 at 17.

the police used to detect the transactions does not detect all activity from a given computer, *id.* ¶¶ 180-186; *see also id.* ¶¶ 126-139 (alleging that Datzman's affidavit covered up that the "true source" of initial information about the child pornography transactions at issue was "secret intelligence").

With respect to the yogurt shop, petitioner alleges Datzman should have informed the magistrate that the other law enforcement witness at the scene did not specifically notice a laptop in petitioner's car, SAC ¶¶ 219-224, that a glowing screen that Datzman saw in petitioner's car could have been a CHP device rather than a separate laptop, *id.* ¶¶ 203-205, that Datzman was friendly with the yogurt shop owners, *id.* ¶¶ 187-190, and that other cars were present near the yogurt shop that night, *id.* ¶¶ 196-202, 214-218.

b. The district court dismissed each of petitioner's 73 claims. Pet. App. 9a-22a; C.A. E.R. 3-8. It determined that the 17 federal claims under Section 1983 were "inextricably linked to Mr. Lund's conviction" and "necessarily imply the invalidity of his conviction." Pet. App. 15a. Because the conviction had not been set aside by appeal, collateral review, or executive action, the district court dismissed those claims under *Heck v. Humphrey*, 512 U.S. 477 (1994). Pet. App. 14a-15a. It dismissed 56 state-law claims under a similar state doctrine. *See id.* at 16a-18a (citing *Yount v. City of Sacramento*, 43 Cal. 4th 885 (2008)). The court ruled, as an alternative basis, that three claims were barred by various immunities. *Id.* at 18a-21a. Petitioner's claim for tortious interference was dismissed against two defendants but not two others, *id.* at 21a-22a; but the court declined to exercise supplemental jurisdiction over the surviving portion of that claim once no federal claims remained, C.A. E.R. 7-8.

c. The court of appeals affirmed in part and vacated in part, in an unpublished memorandum opinion. Pet. App. 1a-8a. The court affirmed with respect to eight claims (Claims 1-5, 37, 38, and 43), reasoning that dismissal under *Heck* and *Yount* was proper. *Id.* at 3a-4a. Claims 1 through 5 "attack the probable cause basis for the search warrant that uncovered the child pornography for which Mr. Lund was convicted." *Id.* at 3a. Those claims, the court concluded, could not be brought unless petitioner's criminal conviction is in some way invalidated. *Id.* The court rejected petitioner's argument that Section 1983 claims predicated on Fourth Amendment violations are categorically excluded from the *Heck* bar, citing precedent requiring a case-specific analysis of potential inconsistency between a Fourth Amendment claim and a particular criminal conviction. *Id.* at 3a (citing *Szajer v. City of Los Angeles*, 632 F.3d 607, 611 (9th Cir. 2011), and *Whitaker v. Garcetti*, 486 F.3d 572, 583-584 (9th Cir. 2007)). But the court ordered that the judgment be amended to reflect that those claims were dismissed without prejudice to refiling should petitioner's conviction be invalidated in the future. *Id.* at 4a.

With respect to 58 claims, the court of appeals vacated the district court's dismissals. Pet. App. 5a (vacating dismissal of Claims 6-35, 39-42, 44-59, 65-67, and 69-73). The court of appeals reasoned that "*Heck* does not automatically bar a claim simply because the claim relates to events that predate [a] conviction." *Id.* at 4a. Rather, "to trigger the *Heck*/*Yount* bar, the claim must be fundamentally inconsistent with [the] conviction." *Id.* The court remanded those claims for "the district court to determine in the first instance whether each individual claim necessarily implies the

invalidity of [petitioner's] conviction or warrants dismissal on other grounds." *Id.* at 4a-5a.[5]

Petitioner sought rehearing en banc, but the court of appeals denied that petition without dissent and without any judge requesting a vote. Pet. App. 24a. The remanded claims remain pending at the district court, where proceedings are currently stayed pending this Court's disposition of this petition.

ARGUMENT

Petitioner contends that this Court's review is warranted to consider a "deep" five-to-four circuit conflict (Pet. 13) over whether the bar to Section 1983 claims adopted by this Court in *Heck v. Humphrey*, 512 U.S. 477 (1994), is categorically inapplicable to claims alleging an unconstitutional search or seizure. In fact, at most one circuit has endorsed a categorical rule—and that circuit's rule contains an exception that would likely cause a complaint with allegations like petitioner's to be dismissed nonetheless. The decision below, which calls for a case-specific analysis of individual claims, aligns with the precedent of every other circuit that has addressed the question. The case-specific approach is also consistent with *Heck* and subsequent decisions from this Court. Moreover, this Court has repeatedly denied petitions raising the identical question. There is no reason for a different outcome here; indeed, this case would make a particularly poor vehicle for considering this question.

1. Petitioner principally contends that certiorari is needed to settle a "deep and acknowledged conflict among the courts of appeals." Pet. 13. Closer scrutiny

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[5] The court also vacated or affirmed the dismissal of various other claims for reasons not relevant here. Pet. App. 5a-6a.

reveals that the conflict is not nearly as deep as petitioner contends. The clear trend among the circuits is to follow a fact-based approach consistent with what the Ninth Circuit did here. Only the Seventh Circuit appears to have endorsed a categorical rule; and other precedents of that court would likely cause it to apply the *Heck* bar in this case in any event given the specific allegations in petitioner's complaint. Moreover, this Court has repeatedly denied certiorari when faced with petitions raising the same asserted conflict. *See, e.g., Winstead v. Johnson*, 139 S. Ct. 2776 (2019) (No. 18-1013); *Szajer v. City of Los Angeles*, 565 U.S. 817 (2011) (No. 10-1343); *Verniero v. Gibson*, 547 U.S. 1035 (2006) (No. 05-779); *Washington v. Summerville*, 523 U.S. 1073 (1998) (No. 97-1324).

a. The decision below applied Ninth Circuit precedent construing *Heck*. Based on concerns for "finality and consistency," and the principle that "civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments," *Heck* imposed limitations on Section 1983 damages claims that relate to a criminal case. 512 U.S. at 485-486. In particular, "in order to recover damages for allegedly unconstitutional conviction or imprisonment, *or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid*, a § 1983 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 486-487 (emphasis added) (footnote omitted).

Under *Heck*, a claim "bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983." 512 U.S. at 487. In contrast, "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, in the absence of some other bar to the suit." *Id.* (footnotes omitted). The Court noted, as one example, that "a suit for damages attributable to an allegedly unreasonable search *may* lie"—because of "doctrines like independent source and inevitable discovery, and especially harmless error," under which "a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful." *Id.* at 487 n.7 (first emphasis added) (citations omitted); *see id.* (noting, however, that such a suit still cannot be premised on the "'injury' of being convicted and imprisoned").

In the wake of *Heck*, the Ninth Circuit held that Fourth Amendment claims are not categorically exempt from the *Heck* bar merely because the plaintiff seeks damages only for the allegedly improper search or seizure itself rather than for the consequent conviction and imprisonment. *See generally Szajer v. City of Los Angeles*, 632 F.3d 607, 611 (9th Cir. 2011), *cert. denied*, 565 U.S. 817 (2011). Instead, the Ninth Circuit construed *Heck* to require a favorable termination of the criminal case before the Section 1983 claim may proceed if, under the particular circumstances of the case, the defendant invoking *Heck* demonstrates that success on the Fourth Amendment claim would imply the invalidity of the conviction. *Id.*; *see Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 n.5 (9th Cir. 2016).

In adopting that rule, the Ninth Circuit reasoned that its interpretation of *Heck* "will avoid the potential for inconsistent determinations on the legality of a search and seizure in the civil and criminal cases and will therefore fulfill the *Heck* Court's objectives of preserving consistency and finality, and preventing 'a collateral attack on [a] conviction through the vehicle of a civil suit.'" *Harvey v. Waldron*, 210 F.3d 1008, 1015 (9th Cir. 2000) (quoting *Heck*, 512 U.S. at 484-485), *overruled in part on other grounds by Wallace v. Kato*, 549 U.S. 384, 393-394 (2007).

As petitioner acknowledges (Pet. 20-22), the Second, Fourth, Fifth, and Sixth Circuits have similarly concluded that the application of *Heck* in this context requires consideration of the factual circumstances of a particular case. *See, e.g.*, *Covington v. City of New York*, 171 F.3d 117, 122-124 (2d Cir. 1999); *Ballenger v. Owens*, 352 F.3d 842, 845-847 (4th Cir. 2003); *Hudson v. Hughes*, 98 F.3d 868, 872 (5th Cir. 1996); *Schilling v. White*, 58 F.3d 1081, 1085-1087 (6th Cir. 1995).

b. Petitioner asserts that "four circuits hold that the *Heck* bar is categorically inapplicable in this context without regard to the factual record," Pet. 13 (capitalization omitted), and that those circuits "would not have dismissed [his] claim," *id.* at 2. That assertion substantially overstates the degree of any conflict and misunderstands the state of the law in those circuits.

i. It is true that some Seventh Circuit decisions endorse a categorical approach. Although earlier circuit precedents were contradictory, the court attempted to clarify its position in *Wallace v. City of Chicago*, 440 F.3d 421 (7th Cir. 2006).[6] In that case, years after

[6] Before that, one line of Seventh Circuit cases opined that

Wallace was convicted of murder, an appellate court reversed his conviction on the ground that his arrest was without probable cause and the consequent confession therefore should not have been admitted at trial. *Id.* at 423-424. Wallace then filed a Section 1983 complaint asserting a Fourth Amendment claim. *Id.* at 424. Given the statute of limitations, the claim's timeliness depended on whether, because of *Heck*, it had not accrued until the state appellate court's reversal of his conviction and the prosecutor's decision not to retry him. *Id.* at 425. The Seventh Circuit held that "'a § 1983 unlawful arrest claim . . . accrue[s] on the day of [] arrest,'" *id.* at 427, regardless of whether a case-by-case examination indicates that the fruits of a particular arrest were a necessary part of a plaintiff's conviction, *see id.* at 426. In so holding, the Seventh Circuit overruled a prior case's holding that the *Heck* bar applied to a Fourth Amendment claim challenging an arrest that led to statements that were key to the plaintiff's conviction. *See id.* at 423 & n.* (overruling *Gauger*, 349 F.3d 354, and noting that the majority of Seventh Circuit judges declined to hear the case en banc). But it is not clear whether the Seventh Circuit court would adhere to that approach if asked to consider the implications of this Court's more recent consideration of a categorical Fourth Amendment rule in a subsequent stage of the same case. *See infra* pp. 23-24 (discussing *Wallace v. Kato*, 549 U.S. 384 (2007)).

"Fourth Amendment claims for unlawful searches or arrests" could "in all cases" go forward. *Copus v. City of Edgerton*, 151 F.3d 646, 648 (7th Cir. 1998); *see Booker v. Ward*, 94 F.3d 1052 (7th Cir. 1996). Another line denied that "false-arrest and other Fourth Amendment claims" are "*always* premature while the plaintiff still faces criminal punishment." *Gauger v. Hendle*, 349 F.3d 354, 361 (7th Cir. 2003).

In any event, it is incorrect to say that courts following current Seventh Circuit precedent on *Heck* "would not have dismissed [petitioner's] claim." Pet. 2. The Seventh Circuit's decision in *Wallace v. Chicago* did not overrule previous holdings—which that circuit continues to invoke—that a Fourth Amendment Section 1983 complaint asserting the plaintiff's *innocence* is indeed barred by *Heck*. In *Okoro v. Callaghan*, 324 F.3d 488 (7th Cir. 2003), and *Okoro v. Bohman*, 164 F.3d 1059 (7th Cir. 1999), the plaintiff had been convicted of a drug offense based on heroin found in his home. His Section 1983 claim, which alleged that the police had violated the Fourth Amendment by illegally seizing and stealing jewels as part of that search, was supported by allegations that he had never had any heroin and that the entire search had been a setup to "frame[]" him and steal the jewels. 324 F.3d at 490; 164 F.3d at 1062. The *Okoro* decisions reasoned that *Heck* prohibited the Fourth Amendment claim from going forward unless the plaintiff first received a favorable termination of his criminal case, because his civil suit argued "that there were no drugs and that he was framed"—and "[i]f a jury believed those allegations, the basis of his conviction would have been wiped out." *Mordi v. Zeigler*, 870 F.3d 703, 708 (7th Cir. 2017) (discussing *Okoro v. Callaghan*, 324 F.3d at 489).

In this case, petitioner's complaint similarly contends that he never possessed child pornography and was in fact framed. *See, e.g.*, SAC ¶ 1034 (alleging that police "fabricate[d] the flash drive" that was found in the search and introduced at trial); *id.* ¶ 1064 (asserting that Datzman and prosecutor collaborated in "fabrication[s]" both "at trial" and when "seeking warrants"); *id.* ¶¶ 674, 687 (alleging that Datzman's

forensic tools implanted incriminating data on petitioner's devices); *id.* ¶¶ 54-55 (implying that evidence was planted in Lund's patrol car after its initial seizure by police). Because the basis for petitioner's conviction would have been wiped out if a jury believed those allegations, *see Mordi*, 870 F.3d at 708, petitioner's Fourth Amendment claims would appear to be barred under Seventh Circuit precedent, too.[7]

ii. Petitioner's argument that the Eighth, Tenth, and Eleventh Circuits also view *Heck* as "categorically exempt[ing] Fourth Amendment claims seeking damages for unlawful searches or seizures but not the ensuing convictions" (Pet. 17) is incorrect.

In describing the Eighth Circuit's position, petitioner points to *Moore v. Sims*, 200 F.3d 1170 (8th Cir. 2000) (per curiam), and *Whitmore v. Harrington*, 204 F.3d 784 (8th Cir. 2000) (per curiam). Pet. 17. Those short per curiam opinions did conclude that the Fourth Amendment claims at issue in those cases were not subject to the *Heck* bar. But they did not state (let alone hold) that *Heck* requires a categorical approach to Fourth Amendment claims—or that it forbids a case-specific approach. Neither opinion explains whether the court's ruling rested on the mere existence of a Fourth Amendment claim as opposed to the particular facts and circumstances surrounding that claim. Petitioner observes that *Moore* did not "identify[] any exclusionary rule exception or harmless-error theory" applicable to the case, and that *Whitmore* did not "mention[] any case-specific facts."

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[7] *See McCann v. Neilsen*, 466 F.3d 619, 622 (7th Cir. 2006) (stating that the question is "not whether McCann could have drafted a complaint that steers clear of *Heck* (he could have)," but whether "the complaint *contain[s] factual allegations* that 'necessarily imply' the invalidity of his convictions") (emphasis added).

Pet. 17. But the lack of a thorough discussion is not surprising in the context of a per curiam opinion, and those observations hardly establish that the Eighth Circuit was necessarily applying a categorical rule.

Other cases, however, make clear that the Eighth Circuit *does* look to case-specific facts regarding the evidence of conviction in determining whether *Heck* bars a Fourth Amendment claim. In *Shultz v. Buchanan*, 829 F.3d 943 (8th Cir. 2016), for instance, the Eighth Circuit concluded that *Heck* did not require a plaintiff to first invalidate his conviction for public intoxication before suing officers over their warrantless entry into his home. Rather than simply rely on the Fourth Amendment nature of the claim, however, the Eighth Circuit reasoned that *Heck* did not bar the claim because the alleged violation did not lead to the trial evidence supporting the conviction: "[s]uccess on Shultz's Fourth Amendment claim . . . would not demonstrate the invalidity of his conviction for public intoxication" because "[a]ll of the conduct relating to the public intoxication offense necessarily occurred in public and before Buchanan's entry into Shultz's home." *Id.* at 949.[8]

With respect to the Tenth Circuit, petitioner portrays *Beck v. City of Muskogee Police Department*, 195 F.3d 553 (10th Cir. 1999), as establishing that "the *Heck* bar is categorically inapplicable to Fourth Amendment claims for unreasonable searches or seizures." Pet. 18. But the Tenth Circuit more recently clarified that the portion of *Beck* on which petitioner relies is "dicta"—and that courts in that circuit should

[8] *See also, e.g., Anderson v. Franklin Cnty.*, 192 F.3d 1125, 1128, 1131 (8th Cir. 1999) (concluding that *Heck* barred the plaintiff from bringing a § 1983 claim for false arrest and imprisonment unless he first invalidated his misdemeanor theft conviction).

not apply a "categorical rule" in this context. *Garza v. Burnett*, 672 F.3d 1217, 1219 (10th Cir. 2012). As that more recent decision makes clear, the Tenth Circuit "eschew[s]" petitioner's "categorical rule in favor of a more nuanced" and "case-by-case approach," in which treatment of a plaintiff's Fourth Amendment claims "'depend[s] on their substance.'" *Id.* at 1219-1220. In that case, the Tenth Circuit held that *Heck* had barred a plaintiff's Fourth Amendment claim until the reversal of his conviction—because without the unlawfully seized evidence, he "could not have been convicted, and thus a declaration that the search was unconstitutional would undermine the convictions." *Id.* at 1220. While the court acknowledged that "the doctrines of 'independent source,' 'inevitable discovery,' and 'harmless error'" might inform whether a particular Fourth Amendment claim is barred by *Heck*, it understood *Heck* to require a case-specific evaluation of how those doctrines would apply "to [a] specific claim." *Id.* (quoting *Heck*, 512 U.S. at 487 n.7).[9]

Finally, petitioner contends that "the Eleventh Circuit also applies *Heck*'s footnote 7 categorically." Pet. 18. Once again, however, petitioner misunderstands the case he cites and ignores subsequent circuit precedent. Petitioner primarily relies on one sentence in a footnote of a per curiam decision, *Datz v. Kilgore*, 51 F.3d 252, 253 n.1 (11th Cir. 1995) (per curiam). But *Datz*'s cursory mention of *Heck*—in an opinion focused on an entirely different issue—did not address

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[9] Petitioner tries to explain away *Garza*'s rejection of the categorical approach as "not clearly essential" to the disposition of that case. Pet. 18 n.4. But *Garza*'s discussion of this aspect of the *Heck* rule was lengthy and considered, *see Garza*, 672 F.3d at 1219-1221, and the Tenth Circuit continues to rely on it, *see, e.g., Strepka v. Thompson*, 831 F. App'x 906, 909 (10th Cir. 2020).

whether courts should apply a categorical or fact-based analysis in applying *Heck* to Fourth Amendment claims. *Id.* Instead, the opinion simply acknowledged that the plaintiff's conviction "*might* still be valid considering such doctrines as inevitable discovery, independent source, and harmless error," *id.* (emphasis added), before affirming the district court's dismissal of the claim on other grounds, *id.* at 253-254.

Subsequent decisions make clear that the Eleventh Circuit applies a fact-based approach. Before holding that *Heck* bars a particular Fourth Amendment claim, the Eleventh Circuit requires a sufficient record to determine—on a case-by-case basis—whether success on that claim would in fact cast doubt on the propriety of the criminal conviction. *See Hughes v. Lott*, 350 F.3d 1157, 1161 (11th Cir. 2003). Where "the circumstances surrounding" the plaintiff's convictions "are unknown from the record," it is "impossible" to determine whether "a successful § 1983 action for unreasonable search and seizure *necessarily* implie[s] the invalidity of those convictions." *Id.* The Eleventh Circuit therefore disapproves of dismissing claims under *Heck* in cases where sufficient facts are not yet known at that "stage in the proceedings." *Id.*; *see generally Dyer v. Lee*, 488 F.3d 876, 883-884 (11th Cir. 2007) (discussing *Hughes*). Where it is clear, however, that the underlying conviction in fact depended on evidence from the challenged search, the Eleventh Circuit applies the *Heck* bar. *See, e.g., Baxter v. Crawford*, 233 F. App'x 912, 916 (11th Cir. 2007).[10]

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[10] The Eleventh Circuit's fact-intensive approach is also reflected in *Harrigan v. Metro Dade Police Dep't*, 977 F.3d 1185 (11th Cir. 2020). *See* Pet. 19. *Harrigan* determined that *Heck* did not apply to a plaintiff's claims based on a close analysis of the testimony,

2. On the merits, petitioner argues that the Ninth Circuit (along with the Second, Fourth, Fifth, and Sixth Circuits) has "fundamentally erred" and "contradict[ed] *Heck*'s rule and its rationales" by following a case-specific approach. Pet. 23; *see id.* at 23-31. That argument is unpersuasive.

a. The decision below faithfully applied *Heck*'s rule that, if a Section 1983 claim "will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff" if it succeeds, the claim "should be allowed to proceed" so long as there is no "other bar." 512 U.S. at 487. The district court had dismissed all of petitioner's Section 1983 claims as "inextricably linked to" his criminal conviction. Pet. App. 15a. But the court of appeals recognized that a mere "link[age]" does not bar claims under *Heck*. *Id.* at 2a. Instead, *Heck* bars a Section 1983 claim if success on that claim "would negate an element of the offense or relies on facts inconsistent with the plaintiff's extant conviction." *Id.* at 3a. With respect to the bulk of petitioner's claims, where it was not obvious whether the claims were "fundamentally inconsistent with [his] conviction," *id.* at 4a, the court of appeals accordingly vacated the district court's dismissals and remanded for a careful assessment.

With respect to Claims 1 through 5, however, which "attack[ed] the probable cause basis" for Warrant E, the court of appeals determined that *Heck* applied. Pet. App. 3a. That warrant uncovered the child pornography "for which [petitioner] was convicted," *id.*, and petitioner has never identified how he could have been convicted of possessing that contraband without

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arguments, instructions, and verdicts in the plaintiff's criminal cases. 977 F.3d at 1187-1189, 1193-1195.

it actually being found. Moreover, petitioner's complaint essentially contended that he was framed: that the evidence of his crime was defective; that evidence proving his innocence was hidden; and that evidence introduced by the prosecution at trial was fabricated. *See, e.g.,* SAC ¶ 1034 (alleging police "fabricate[d] the flash drive" that was found in the search and introduced at trial); *id.* ¶ 1064 (police "fabrication[s]" "at trial" and when "seeking warrants"); *id.* ¶¶ 674, 687 (incriminating data implanted on petitioner's devices); *id.* ¶ 55 (appearing to deny that police actually found evidence in petitioner's car). Under those particular circumstances, it is irrelevant whether petitioner "disclaimed seeking any relief for the conviction," Pet. 2, because he plainly alleged facts that conflict with the jury's verdict of guilt.

b. Petitioner argues that *Heck* is "categorically inapplicable" to Section 1983 Fourth Amendment claims as long as a claim seeks damages only for the search or seizure itself and not for the resulting conviction or incarceration. Pet. 23. In his view, that follows from the Court's observation in footnote 7 that, in light of "doctrines like independent source," "inevitable discovery," and "harmless error," a successful Section 1983 claim challenging a search "would not *necessarily* imply that the plaintiff's conviction was unlawful." Pet. 24. (quoting *Heck*, 512 U.S. at 487 n.7). Seizing on the presence of the word "necessarily," petitioner contends that footnote 7 requires "a categorical" analysis of Fourth Amendment claims, *id.* at 25, regardless of whether "there is a particular exclusionary-rule exception or harmless-error theory that could potentially sustain the conviction despite the" alleged Fourth Amendment violation, *id.* at 24. *But see Brown v. Davenport*, 142 S. Ct. 1510, 1528 (2022) ("'the language of

an opinion is not always to be parsed as though we were dealing with [the] language of a statute.'").

But the Court's holding in *Heck* confirms that it is the relationship between a particular Section 1983 complaint and a particular criminal judgment that matters—not any categorical rule. *Heck* directs that a Section 1983 suit "should be allowed to proceed" only "if the district court determines that the plaintiff's action, even if successful, *will not* demonstrate the invalidity of any outstanding criminal judgment." 512 U.S. at 487 (first emphasis added). And footnote 7 contemplates that only some Fourth Amendment search claims (not all) will therefore go forward: it says that "a suit for damages attributable to an allegedly unreasonable search *may* lie"—not that such a suit will always lie. *Id.* at 487 n.7.[11]

This case also illustrates why petitioner's proposed categorical rule would not serve *Heck*'s rationales. *Heck* cited the need to "'avoid[] parallel litigation over the issues of probable cause and guilt,'" to avoid "'a collateral attack on the conviction through the vehicle of a civil suit,'" and to preserve the "hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." 512 U.S. at 484-486. Here, petitioner's civil complaint essentially asserts that he was framed from

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[11] Petitioner argues that *Heck* bars only claims that could not possibly coexist with a criminal judgment. Pet. 6. But *Heck* also aims to prevent claims that, if successful, would call into *question* an outstanding criminal conviction. *See Heck*, 512 U.S. at 487 (asking "whether a judgment in favor of the plaintiff would necessarily *imply* the invalidity of his conviction or sentence") (emphasis added); *Muhammad v. Close*, 540 U.S. 749, 751 (2004) (per curiam) (*Heck* applies "where success in a prisoner's § 1983 damages action would implicitly *question* the validity of conviction").

the warrant application on. *See supra* pp. 14-15. He commenced the suit while his criminal appeal was pending and continues to pursue it at the same time as he pursues habeas relief in state and federal court. *See supra* pp. 5-6. The complaint even admits that its factual allegations, if proven, could "lead[] to reversal of conviction on appeal or through habeas proceedings." SAC ¶ 64. It amounts to the kind of "parallel litigation" challenging the validity of a criminal conviction about which *Heck* was concerned.

c. Petitioner also argues that post-*Heck* decisions of this Court support his position. He asserts that in *Nelson v. Campbell*, 541 U.S. 637 (2004), the Court "describ[ed] footnote 7 categorically." Pet. 25. That overreads *Nelson*. *Nelson* held that a prisoner could use Section 1983 to prevent the allegedly inhumane "cut-down" procedure that Alabama intended to use to carry out the plaintiff's death sentence. 541 U.S. at 639. The plaintiff sought only injunctive relief, so the Court applied the limitations on injunctive relief recognized in *Preiser v. Rodriguez*, 411 U.S. 475 (1973). *See Nelson*, 541 U.S. at 639, 643. The Court held that *Preiser* would not bar the plaintiff's claim if it were possible for Alabama to carry out the death sentence by other means. *Id.* at 645-646. It observed that this approach was "consistent" with its approach to damages claims under *Heck*, stating that "we were careful in *Heck* to stress the importance of the term 'necessarily'" with respect to *Heck*'s applicability to "a § 1983 suit . . . that would 'necessarily imply' the invalidity of the fact of an inmate's conviction." *Id.* at 646-647 (quoting *Heck*, 512 U.S. at 487 & n.7). *Nelson* remanded for the district court to determine whether an injunction barring the cut-down procedure would *in fact* make carrying out the death sentence impossible on the particular facts of his case. *Id.* at 645-646; *see*

id. (noting importance of State's agreement about possible alternatives). To the extent that *Nelson* elucidates the proper understanding of *Heck*, it supports the fact-specific approach applied by the decision below—not the categorical rule favored by petitioner.[12]

In any event, this Court's most pertinent post-*Heck* decision is *Wallace v. Kato*, 549 U.S. 384 (2007), which undermines petitioners' position. That case arose out of the Seventh Circuit litigation discussed above, *see supra* pp. 12-13, where a plaintiff filed a Section 1983 action for false arrest in violation of the Fourth Amendment after his murder conviction was set aside on appeal. *Wallace v. Kato*, 549 U.S. at 386-387 & n.1. The statute of limitations would have made the plaintiff's Section 1983 claim timely if *Heck* had barred the claim until his successful appeal, but presumptively late if not. *Id.* at 387-388. This Court ruled that because *Heck* only bars a Section 1983 suit once the plaintiff is *convicted*, the limitations period began to run well before the plaintiff's conviction was overturned, because he could have brought his claim in the time between his arraignment and conviction. *Id.* at 391-394. In contrast, the Court declined to adopt the alternative argument for affirmance, advanced by a concurring opinion in *Wallace* (and petitioner here), that "the *Heck* bar can never come into play in a § 1983

[12] A fact-specific inquiry about the relationship between the alleged violation and the *Heck*-protected penal determination is also confirmed by *Muhammad v. Close*. *See* 540 U.S. at 754-755 (*Heck* did not apply to allegation that improper parole hearing cost petitioner good-time credits, because "the Magistrate Judge expressly found or assumed" that in the underlying parole hearing no good-time credits were eliminated by the prehearing action "Muhammad called into question").

suit seeking damages for a Fourth Amendment violation." *Id.* at 395 n.5 (discussing *id.* at 398-399 (Stevens, J., concurring in the judgment)).

3. Finally, although petitioner asserts that "this case is an ideal vehicle to resolve the question presented," Pet. 31 (capitalization omitted), it would actually be an exceptionally poor vehicle in which to do so. The case arises from an unusually long and confusing complaint, which even petitioner has acknowledged is "burden[some]." SAC ¶ 65.[13] Petitioner attempts to extract some subset of claims for presentation to this Court.[14] But even those claims overlap significantly with claims in petitioner's other pending litigation, and dozens of additional claims remain subject to ongoing proceedings in this case. *See supra* pp. 5, 8-9 & n.4. The presentation of petitioner's issue is far from "clean[]." Pet. 31.

In any event, recent developments have made the petition's issue essentially irrelevant. After the court of appeal's decision here, the judgment in petitioner's criminal case became final. *See supra* p. 4. The determination in petitioner's criminal case that Warrant E was legally obtained therefore has preclusive effect in this case. *See Allen v. McCurry*, 449 U.S. 90, 95-105 (1980) (federal courts give preclusive effect to Fourth Amendment determinations in state criminal cases);

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[13] *Cf.* Pet. App. 11a (district court's statement that petitioner's "unnecessarily voluminous" complaint "mix[es] allegations and arguments in a confusing manner," such that "the Court 'cannot be sure [it] ha[s] correctly understood all the averments'"); C.A. Dkt. 6 at 6 (petitioner's brief, "acknowledg[ing] the difficulty the Complaint's verbosity created").

[14] *Compare* Pet. ii (multiple "claims directly at issue here"), *and id.* at 11 (multiple "counts at issue"), *with id.* at 31 (single "claim at issue here").

Schmidlin v. City of Palo Alto, 157 Cal. App. 4th 728, 767-771 (2008) (granting preclusive effect under California law to issues in denial of motion to suppress). Unless petitioner's criminal judgment is invalidated, petitioner therefore would be unable to succeed on his Fourth Amendment claim regardless of how this Court might resolve the *Heck* issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

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