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

BRIEF IN OPPOSITION FOR NON-STATE RESPONDENTS

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QUESTION PRESENTED

In *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court held that a criminal defendant may not recover money damages under 42 U.S.C. § 1983 based on a claim that would impugn an outstanding criminal conviction or sentence, unless he proves "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 question presented is as follows:

Whether the rule established in *Heck* is categorically inapplicable to a Section 1983 claim seeking damages based on an allegedly unreasonable search and seizure in violation of the Fourth Amendment, even if a judgment in favor of the Section 1983 claimant would impugn an outstanding criminal conviction obtained with the fruits of the search and seizure.

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STATEMENT OF THE CASE

I. Legal Background

Section 1 of the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983, creates "a species of federal tort liability for individuals to sue state and local officers for deprivations of constitutional rights." *Thompson v. Clark*, 142 S. Ct. 1332, 1336-37 (2022). In "defining the elements of damages and the prerequisites for their recovery" under Section 1983, this Court has found it appropriate to look to the rules that the common law of torts has developed over the centuries for obtaining similar relief. *Carey v. Piphus*, 435 U.S. 247, 257-58 (1978).

Following that approach, in *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court held that a plaintiff subject to a still-valid conviction may not bring Section 1983 claims seeking damages for an "unconstitutional conviction or imprisonment" or for "actions whose unlawfulness would render [his] conviction or sentence invalid." *Id.* at 486. Analogizing such claims to a common-law claim for malicious prosecution, the Court held that to obtain relief under Section 1983, such a plaintiff must prove that the criminal proceeding his claim would impugn "terminat[ed] … in favor of the accused." *Id.* at 484. Specifically, the plaintiff must prove that his conviction has been reversed, expunged, or declared invalid before they can recover damages under Section 1983. *Id.*

The Court has elaborated on *Heck*'s rule over time. In *Edwards v. Balisok*, 520 U.S. 641 (1997), for example, the Court held that the *Heck* rule applied to a Section 1983 plaintiff's claim "challenging the validity of

the procedures used to deprive him of good-time credits" because the plaintiff's "allegations of deceit and bias on the part of the decisionmaker" would "necessarily imply" the invalidity of the denial of credits. *Id.* at 643, 648. And in *Wallace v. Kato*, 549 U.S. 384 (2007), the Court discussed the rule at length, declining to extend it to a Section 1983 claim that could impugn an *anticipated* conviction. *Id.* at 392-97.

The Court has revisited *Heck* on several more occasions in recent years. In *McDonough v. Smith*, 139 S. Ct. 2149 (2019), the Court held that the *Heck* rule applied to a Section 1983 Fifth Amendment claim that criminal proceedings had been initiated on the basis of fabricated evidence, even though the Section 1983 claimant had been acquitted—and therefore no conviction had ever been obtained. *See id.* at 2158 (explaining that the plaintiff's claims "challenge[d] the validity of the criminal proceedings against him in essentially the same manner as the plaintiff in *Heck* challenged the validity of his conviction"). And just last month, in *Thompson v. Clark*, 142 S. Ct. 1332 (2022), the Court held that the *Heck* rule extended to a Section 1983 claim that the initiation of criminal proceedings had resulted in an unreasonable seizure in violation of the Fourth Amendment. *Id.* at 1337-38.

II. Factual Background[1]

1. In early October 2014, Respondent Jeffrey Datzman—a detective in the Vacaville Police Depart-

[1] We draw the facts from the allegations in the operative complaint. Because the petition for a writ of certiorari seeks review of the court of appeals' decision affirming in part a motion to dismiss, those allegations are presumed true here.

ment—surveilled Yogurt Beach Shack, a frozen yogurt shop that "targets families with children." Second Amended Complaint (SAC), D. Ct. Dkt. No. 43, ¶¶ 33, 66, 67, 131, 133. Datzman was monitoring the shop because a computer that he had identified as downloading child pornography frequently connected to the shop's internet. *Id.* ¶ 187. At approximately 1:00 AM on the third night of the surveillance, Datzman noticed that a device was connected to the shop's wireless internet router. *Id.* ¶ 196. Datzman looked outside the shop and saw Petitioner Eric Lund—a California Highway Patrol officer—sitting in his patrol car. *Id.* ¶¶ 197, 203. Datzman would later state that petitioner was looking "down and to his right at a laptop computer." *Id.* ¶ 203. Datzman continued to monitor petitioner. *Id.* ¶ 211. When petitioner then left the parking lot, Datzman observed that the device's connection to the router terminated. *Id.*

This information led to further investigation. Suspecting that petitioner had accessed child pornography while on duty at other times, Datzman compared the times that the identified computer had accessed pornography with petitioner's "graveyard" shifts. SAC ¶¶ 166, 226-31, 390. This comparison confirmed that the computer's access matched petitioner's duty schedule. *Id.* Datzman sought and obtained a warrant to track petitioner's patrol car via GPS. *Id.* ¶ 67. The resulting GPS data placed petitioner near another IP address that had been used to access possible child pornography. *Id.* ¶¶ 238-41. This investigation in turn led Datzman to seek and receive a warrant to search petitioner and his vehicle. Pet. App. 11a-12a.

When police searched petitioner and his car pursuant to the warrant, they discovered an external hard drive containing child pornography in his car. Pet. App. 12a. Petitioner was arrested and charged with the possession and distribution of the child pornography that was found during the search. *Id.*

2. In the ensuing criminal proceedings, petitioner moved to suppress the evidence recovered during the search of his car. *See* App. to Pet. for Writ of Mandate, *Lund v. Superior Court of Solano Cnty.*, No. A149460, Dkt. No. 4 at Exhibit H (Cal. Ct. App., 1st Dist.) (Prelim. Hr'g Tr.); App. to Pet. for Writ of Mandate, *Lund v. Superior Court of Solano Cnty.*, No. A149460, Dkt. No. 4 at Exhibit M (Cal. Ct. App., 1st Dist.) (Hr'g Tr.). He argued that both the warrants authorizing the GPS tracking and authorizing the eventual search of petitioner and his car were not supported by probable cause and that both the GPS tracking and the search of his person and car violated the Fourth Amendment. *See* Pet. for Writ of Mandate, *Lund v. Superior Court of Solano Cnty.*, No. A149460, Dkt. No. 1 at 1-3 (Cal. Ct. App., 1st Dist.).

A magistrate, the Solano Superior Court, and—after an interlocutory appeal—the California Court of Appeal rejected those arguments. The magistrate ruled that petitioner did not have a reasonable expectation of privacy in the location of the police cruiser or in the duty schedule that were used to support the warrants—dooming both challenges. *See* Prelim. Hr'g Tr. at 283-86. The Superior Court agreed that petitioner did not have a privacy interest in much of this information and in any event refused to suppress the evidence based on the good-faith exception to the warrant requirement. Hr'g Tr. at 25-26. The California

Court of Appeal denied petitioner's petition for a mandate in a summary order. Order, *Lund v. Superior Court of Solano Cnty.*, No. A149460, Dkt. No. 12 (Cal. Ct. App., 1st Dist.).

After proceedings on his motion to suppress concluded, petitioner proceeded to trial. Pet. App. 12a. Although the first trial resulted in a hung jury, petitioner was convicted on retrial of possessing child pornography, and was sentenced to five years in prison. *Id.* On appeal to the California Court of Appeal, petitioner alleged prosecutorial misconduct and asserted various evidentiary errors. *People v. Lund*, 64 Cal. App. 5th 1119, 1124 (2021). The court rejected each argument and affirmed his conviction. *Id.* at 1124. The California Supreme Court denied a petition for review. Order, *People v. Lund*, No. S269625, Dkt. No. 4 (Cal. Sup. Ct. Aug. 18, 2021).

Petitioner next filed a petition for writ of habeas corpus with the California Court of Appeal. Pet. for Writ of Habeas Corpus, *In re Lund*, No. A161768, Dkt. No. 1 (Cal. Ct. App., 1st. Dist.). Petitioner argued that the prosecution had withheld exculpatory evidence in violation of the Fourteenth Amendment and that newly discovered evidence would have resulted in a different outcome at trial. *Id.* at 38, 40, 50. These arguments include allegations about the surveillance of Lund at the Yogurt Beach Shack. *Id.* at 36-37. The Court of Appeal and California Supreme Court denied the petition. Pet. 8.

Finally, petitioner filed a federal habeas petition under 28 U.S.C. § 2254, alleging violations of *Brady v. Maryland*, 373 U.S. 83 (1963), ineffective assistance

of counsel, prosecutorial misconduct, and the discovery of new evidence. *Lund v. Locatelli*, No. 21-cv-1831, Dkt. No. 7 at 1-3 (E.D. Cal.). That petition is still pending.

III. The Present Controversy

1. Meanwhile, Susannah Lund—an attorney and petitioner's wife—initiated this Section 1983 case by filing a complaint on behalf of herself and petitioner.[2] Pet. App. 12a; SAC at 157. Ms. Lund and petitioner's "unnecessarily voluminous" complaint is 157 pages long (excluding exhibits), containing 73 claims and naming 31 defendants. Pet. App. 11a; *see* SAC.

The complaint "mixes allegations and arguments in a confusing manner." Pet. App. 11a. For example, the complaint contains meditations on why "[p]arallel construction" violates the Constitution. SAC ¶¶ 69-70. Elsewhere, the complaint opines on how "[t]echnology is a powerful tool in crime prevention," and why this means "it is necessary to our system, built on checks and balances, that law enforcement provide full disclosure to the judiciary of all law enforcement tools utilized." *Id.* ¶¶ 143-44. The complaint is also a fount of interrelated Section 1983 claims, that are primarily distinguishable by their incorporation of slightly different but overlapping sections of factual allegations. *Compare id.* ¶ 367 (alleging by "incorporat[ing] by reference all paragraphs under the headings 'PARTIES', 'GENERAL ALLEGATIONS' and 'FACT SET #2'" that Datzman and others violated the

[2] Despite her status as a plaintiff in the district court and appellant in the court of appeals, Ms. Lund is not a petitioner in this Court. *See* March 8, 2022 Letter to Clerk.

Fourth Amendment) *with id.* ¶ 502 (alleging by "incorporat[ing] by reference all paragraphs under the headings 'PARTIES', 'GENERAL ALLEGATIONS' and 'FACT SET #5'" that Datzman and others violated the Fourth Amendment).

As most relevant here, Claim 1 of the complaint asserts Section 1983 claims against Respondent Datzman and certain other respondents who worked with or supervised him. Petitioner alleges that they violated his Fourth Amendment right against unreasonable searches and seizures by recklessly disregarding the truth in submitting the affidavit that supported the final search warrant—which revealed the child pornography on the hard drive in petitioner's car. SAC ¶¶ 293-305 (Claim 1). Petitioner also asserts a related claim under a *Monell v. Dep't of Social Services of New York*, 436 U.S. 658 (1978), theory of liability against Respondent Vacaville Police Department. SAC ¶¶ 306-09 (Claim 2).

The district court held that these two claims (along with all but one of Petitioner's myriad other Section 1983 claims) were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Pet. App. 15a. The court observed that "Plaintiffs' Section 1983 claims 'are based on the prerequisite that [petitioner] was wrongfully investigated, arrested, and convicted.'" *Id.* The court recounted several categories of allegations and concluded that "these allegations are inextricably linked to [petitioner's] conviction and necessarily imply the invalidity of that conviction." *Id.* at 15a-16a. The court similarly concluded that petitioner's state-law claims were barred by *Yount v. City of Sacramento*, 43 Cal. 4th 885, 183 P.3d 471 (Cal. 2008), which adopts a parallel doctrine to *Heck* for certain California-law

claims. Pet. App. 16a. Several other claims were disposed of on other grounds, leaving, in the end, only one of 73 claims against two of the 31 defendants. *Id.* at 12a.

2. The court of appeals affirmed in part and vacated in part in a unanimous, unpublished decision. Pet. App. 1a-8a. The court affirmed the district court's dismissal of Claims 1 and 2. *Id.* at 4a. The court explained that, "[u]nder *Heck,* a 42 U.S.C. § 1983 claim must be dismissed if 'a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence,' unless the conviction or sentence has already been invalidated." *Id.* at 3a (quoting *Heck*, 512 U.S. at 487). It reasoned that, "because Claims 1 and 2 attack the probable cause basis for the search warrant that uncovered the child pornography for which [petitioner] was convicted, the district court properly dismissed those claims as *Heck*-barred." *Id.* In so ruling, the court rejected petitioner's argument that Section 1983 claims predicated on Fourth Amendment violations are "categorically exempt" from *Heck*'s rule. *Id.* The court instructed the district court on remand, however, to amend its judgment to dismiss Claims 1 and 2 without prejudice, so that petitioner could refile if he is successful in invalidating his conviction through his pending habeas petition or other appropriate means.

With the exception of three claims that petitioner did not dispute were properly dismissed, the court of appeals vacated the dismissal of the rest of petitioner's Section 1983 claims. Pet. App. 2a-5a. The court reasoned that the district court had not given each claim sufficient individual consideration to de-

termine whether it would necessarily imply the invalidity of petitioner's conviction. *Id.* at 2a. The court of appeals thus remanded those claims for further consideration. *Id.* at 5a.

Petitioner filed this petition for a writ of certiorari challenging only the court of appeals' partial affirmance of the district court's dismissal of a subset of his Section 1983 claims. *See* Pet. 9 n.2.

REASONS FOR DENYING THE WRIT

Petitioner contends (Pet. 13) that the court of appeals' decision presents a "deep and acknowledged conflict among the courts of appeals" over the application of *Heck v. Humphrey*, 512 U.S. 477 (1994), to Fourth Amendment search-or-seizure claims that warrants this Court's resolution. On that basis, he asks the Court to review the court of appeals' determination that a small subset of those 73 claims are not cognizable under 42 U.S.C. § 1983 because a judgment in his favor on those claims would "necessarily imply the invalidity of his [still-outstanding criminal] conviction." Pet. App. 3a.

The court of appeals' unpublished, interlocutory decision does not warrant this Court's review. At the threshold, petitioner significantly overstates the extent of any conflict in the lower courts. The court of appeals' nonprecedential decision does not clearly implicate any existing disagreement among of the courts of appeals. Even if it did, this case would be a poor vehicle for addressing the question presented. And, in any event, the court below correctly held that the claims at issue in the petition are barred by *Heck v.*

Humphrey, 512 U.S. 477 (1994). This Court has repeatedly denied petitions for a writ of certiorari presenting similar questions.[3] The same result should follow here.

I. The Decision Below Does Not Clearly Implicate Any Conflict Among the Courts of Appeals.

Petitioner contends (Pet. 13-23) that the courts of appeals are split on whether Fourth Amendment search-or-seizure claims under Section 1983 are exempt from the rule this Court recognized in *Heck*. Relying largely on decades-old decisions, he argues that the Seventh, Eighth, Tenth, and Eleventh Circuits have recognized such an exemption—in contrast with the court below—and that his Fourth Amendment claims would not have been dismissed in those circuits. Pet. 13. But petitioner significantly overstates any disagreement that continues to exist among the courts of appeals after this Court's more recent decisions in this area. And it is far from clear that petitioner's Fourth Amendment claims would survive under any other circuit's current approach.

1. Petitioner principally relies (Pet. 13-16) on an alleged conflict between the Ninth and Seventh Circuits' approaches to applying *Heck* to Fourth Amendment claims. Citing almost exclusively pre-*Wallace* decisions, petitioner contends that the Seventh Circuit categorically exempts *all* Fourth Amendment search-or-seizure claims regardless of whether they

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[3] *See Winstead v. Johnson*, 139 S. Ct. 2776 (2019); *Szajer v. City of Los Angeles*, 565 U.S. 817 (2011); *Verniero v. Gibson*, 547 U.S. 1035 (2006); *Washington v. Summerville*, 523 U.S. 1073 (1998).

would impugn an outstanding conviction. Pet. 16 (citing *Copus v. City of Edgerton*, 151 F.3d 646 (7th Cir. 1998)). But the current rule in the Seventh Circuit is not nearly as clear-cut as petitioner contends.

As the Seventh Circuit itself has recognized, that circuit's cases "since *Wallace* have sent mixed signals" on the circuit's approach to applying *Heck*. *Johnson v. Winstead*, 900 F.3d 428, 437 (2018). To be sure, in some cases, the court does appear to recognize a categorical exclusion for Fourth Amendment claims that challenge "out-of-court events, such as gathering of evidence"—at least for purposes of determining when such claims accrue. *Moore v. Burge*, 771 F.3d 444, 446 (7th Cir. 2014). In other cases, however, the court applies a more nuanced approach. In *Evans v. Poskon*, 603 F.3d 362 (7th Cir. 2010), for example, the court recognized that a Section 1983 claim that a "search or seizure violated the [F]ourth [A]mendment" may, in fact, "imply the invalidity of the [resulting] conviction" within the meaning of *Heck*. *Id.* at 363. And the court held that, when a plaintiff's Section 1983 contention is "incompatible with his conviction[,] any proceedings based on th[at] contention must be stayed or dismissed." *Id.* at 364; *see also Johnson v. Rogers*, 944 F.3d 966, 968 (7th Cir. 2019). Any intracircuit conflict provides no basis for this Court's review. *See Wisniewski v. United States*, 353 U.S. 901, 902 (1957) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

Moreover, it is not clear that petitioner's claims could survive under either strain of Seventh Circuit decisions. Even Seventh Circuit decisions that appear to recognize a categorical "exception to the *Heck* bar" for Fourth Amendment search-or-seizure claims also

recognize "an exception to that exception ... if a plaintiff's allegations necessarily imply the invalidity of a conviction." *Mordi v. Zeigler*, 870 F.3d 703, 708 (7th Cir. 2017) (emphasis altered) (citing *Okoro v. Callaghan*, 324 F.3d 488 (7th Cir. 2003))[4]; *see Tolliver v. City of Chicago*, 820 F.3d 237, 243 (7th Cir. 2016) (applying *Okoro*). Petitioner's lengthy complaint is littered with allegations that do just that. *See, e.g.*, SAC ¶ 475 ("DATZMAN intentionally defamed LUND by fabricating facts that falsely accused LUND of the horrific crime of child pornography[.]"); SAC ¶ 978 (alleging that petitioner reported "that he had been falsely accused and framed for a crime," and stating that "[f]raming someone for a crime is a crime in itself"). Accordingly, whatever differences may exist between the Ninth and Seventh Circuits' approaches to *Heck*, petitioner cannot show that his claims would have been resolved any differently had he brought them there.

2. Petitioner's allegations of conflict with the Eighth, Tenth, and Eleventh Circuits are even less persuasive. In the Eighth Circuit, petitioner relies only on two 22-year-old per curiam decisions—*Moore v. Sims*, 200 F.3d 1170 (2000), and *Whitmore v. Harrington*, 204 F.3d 784 (2000). Between the two cases combined, the court of appeals' decisions barely cover

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[4] After holding that the exception to the exception did not apply, *Mordi* suggested in dicta that, even where it does, the "judge must carve off any *Heck*-barred contentions and proceed," rather than dismiss the complaint. 870 F.3d at 708. Other Seventh Circuit decisions, including ones on which *Mordi* relied, say otherwise. *See Evans*, 603 F.3d at 364 ("[A] plaintiff is master of his claim and can, if he insists, stick to a position that forecloses relief."); *Okoro*, 324 F.3d at 490 (the plaintiff "is the master of his ground").

two pages of the Federal Reporter. The courts' analysis of the *Heck* issue is significantly shorter and equally consistent with the Ninth Circuit's approach as any categorical exemption. *See Moore*, 200 F.3d at 1171-72 ("If Moore successfully demonstrates that his initial seizure and detention by officers was without probable cause, such a result does not necessarily imply the invalidity of his drug-possession conviction."); *Whitmore*, 204 F.3d at 784-85 ("If Whitmore were to succeed on [his Fourth Amendment] claim, it would not necessarily imply the invalidity of his later drug convictions.").

By contrast, the Eighth Circuit's more recent and more carefully reasoned decision in *Gerling v. City of Hermann*, 2 F.4th 737 (2021), unambiguously relied on a case-by-case approach to determine whether *Heck* applied to a Section 1983 claim alleging an unlawful arrest under the Fourth Amendment. Citing footnote 7 of *Heck*, the court explained that a Section 1983 claim, even one based on the Fourth Amendment, that "would necessarily imply the invalidity of [the plaintiff's] conviction … may not proceed unless the conviction has been invalidated." *Id.* at 743 (citing *Heck*, 512 U.S. at 487 n.7). And the court reasoned, that "insofar as [the plaintiff's] claim alleging unlawful arrest [wa]s based on the lack of probable cause, it [wa]s barred by the rule of *Heck*" where the evidence providing "the basis for the arrest and for the conviction are one and in the same," citing, *inter alia*, cases from the Fifth and Ninth Circuits applying a case-by-case approach. *Id.* That analysis is entirely consistent with the court of appeals' decision here.

3. Petitioner relies on a single decision from 1999 to argue that the Tenth Circuit has adopted a categorical exemption from *Heck* for Fourth Amendment search-or-seizure claims. Pet. 18 (citing *Beck v. City of Muskogee Police Dep't*, 195 F.3d 553 (10th Cir. 1999)). The court in *Beck*, however, noted only that "[c]laims arising out of police actions toward a criminal suspect, such as arrest, interrogation, or search and seizure, are *presumed* to have accrued when the actions actually occur." *Id.* at 558 (emphasis added). The court declined to depart from that "general rule" of accrual on the basis of *Heck* because "ultimate success on [the plaintiff's claims] would not necessarily question the validity of a conviction." *Id.*

To be sure, in a footnote, the *Beck* court also "generally disagree[d]" with courts of appeals that had "held that whether a plaintiff's illegal arrest claim is affected by *Heck* depends on whether evidence obtained as a product of the arrest is used at trial." 195 F.3d at 559 n.4. But as petitioner recognizes (Pet. 18 n.4), the court was quick to qualify (in the next sentence) even that "general" disagreement, noting that it was "not faced with the rare situation … where all evidence was obtained as a result of an illegal arrest." *Id.* Thus, even if *Beck* were still good law, it would not indicate that this case would have come out differently in that court. *See* Pet. App. 3a ("[B]ecause Claims 1 and 2 attack the probable cause basis for the search warrant that uncovered the child pornography for which [petitioner] was convicted, the district court properly dismissed those claims as *Heck*-barred.").

In any event, *Garza v. Burnett*, 672 F.3d 1217 (10th Cir. 2012), makes clear that *Beck* does not represent the settled law of the Tenth Circuit. In *Garza*,

the Tenth Circuit recognized that "dicta … in *Beck v. City of Muskogee Police Dep't* could be read as supporting" a categorical exemption from *Heck* for Fourth Amendment claims. *Id.* at 1219. But the court stated unequivocally that the better reading was that the circuit had "eschewed such a categorical rule in favor of a more nuanced analysis." *Id.* In the Tenth Circuit, the court explained, "the question of whether *Heck* bars a plaintiff's claims 'depend[s] on their substance.'" *Id.* at 1220 (quoting *Beck*, 195 F.3d at 557) (brackets in original). More specifically, the court explained, its precedent requires that "[r]egardless of the manner in which a claim is labeled, it is barred if it 'would necessarily imply the invalidity of any conviction.'" *Id.* (citation omitted). Because it was "abundantly clear that [the plaintiff] could not have been convicted" without the allegedly "unlawfully seized evidence" and no exception to the exclusionary rule applied, the court concluded that, for purposes of determining its accrual, the plaintiff's Fourth Amendment search claim would have been barred by *Heck* had he brought the claim prior to his conviction being reversed. *Id.*

Petitioner attempts to discount *Garza*'s discussion as dicta because the court's disposition was to certify a tolling question to the Utah Supreme Court. *See* Pet. 18 n.4. But the *Garza* court's analysis of *Heck* for accrual purposes was a critical step in the court's determination that certification of the tolling question was appropriate. *See* 672 F.3d at 1220-21. And, indeed, the certified question itself was expressly premised on (and included) the court's conclusion that "[u]nder Tenth Circuit decisions [interpreting *Heck*]

at the time Gerardo Thomas Garza filed his complaint," his complaint would have been treated as timely. *Id.* at 1222.

The *Garza* court's analysis, moreover, is consistent with Tenth Circuit decisions concerning *Heck*'s application to other Fourth Amendment claims from before and after the dicta in *Beck*. *See, e.g.*, *Hooks v. Atoki*, 983 F.3d 1193, 1200-01 (2020) ("To determine the effect of *Heck* on an excessive-force claim, the court must compare the plaintiff's allegations to the offense he committed."); *Martinez v. City of Albuquerque*, 184 F.3d 1123, 1125 (1999) (determining that *Heck* did not bar an excessive-force claim only after engaging in a "careful comparison between *Heck* and the facts of th[e] case" to decide whether the plaintiff's suit "challenge[d] the lawfulness of his arrest and conviction") (emphasis omitted).

4. Finally, petitioner relies on a one-sentence footnote in the Eleventh Circuit's per curiam decision in *Datz v. Kilgore*, 51 F.3d 252 (1995), and on *Harrigan v. Metro Dade Police Dep't Station #4*, 977 F.3d 1185 (2020), to assert that that circuit would have resolved his claims differently than the court below. Neither decision supports petitioner's assertion.

As for *Datz*, the court of appeals declined to apply *Heck* only in the cursory footnote on its way to affirming dismissal of the relevant Section 1983 claims on other grounds. *See Datz*, 51 F.3d at 254 (concluding that the plaintiff's Section 1983 Fourth Amendment search claim was barred by the state court's previous rejection of that claim in his criminal trial); *cf.* pp. 18-19, *infra* (explaining that petitioner's Fourth Amendment search claims are barred on similar alternative

grounds). The decision tells us virtually nothing about the Eleventh Circuit's approach to *Heck*.

Contrary to petitioner's assertion, the court's subsequent analysis in *Harrigan* of a Section 1983 excessive-force claim also does not indicate that the Eleventh Circuit has or would adopt a categorical exemption from *Heck* for search-or-seizure claims. Pet. 19. Petitioner focuses on the Eleventh Circuit's requirement of "logical necessity" for the *Heck* bar to apply. *Id.* (quoting *Harrigan*, 977 F.3d at 1193). But the addition of the word "logical" adds little to *Heck*'s insistence of a necessary contradiction. The more salient part of the *Harrigan* decision is the circuit's intensively case-specific, detailed consideration of the plaintiff's particular claims, the record from his criminal trial, and the jury's criminal verdict. *See Harrigan*, 977 F.3d at 1192-97. Such a record-based analysis bears little resemblance to petitioner's proferred categorical exemption of search-and-seizure claims. It certainly does not establish that the Eleventh Circuit would have reversed the dismissal of petitioner's Fourth Amendment claims as petitioner suggests.

II. This Case Would Be an Unsuitable Vehicle for Addressing the Question Presented.

Even if the Court were inclined to provide further guidance on the application of *Heck* to Fourth Amendment claims, this case would be an unsuitable vehicle for several reasons.

1. Although petitioner attempts to narrow this case for the Court's review, he cannot bring order to his chaotic complaint. And the "unnecessarily voluminous" complaint, which the reviewing courts were

not sure they "correctly understood," Pet. App. 11a (citation omitted), presents a poor candidate for further review by this Court. The complaint's overlapping factual allegations and "confusing" claims, *id.*, pose a significant risk of frustrating this Court's attempt to provide clarity to the law. To take but one example, the complaint is interlaced with allegations—incorporated into all of petitioner's claims—that respondents "fabricat[ed]" evidence. SAC ¶¶ 176, 475, 558-59, 1034, 1063-64. Whatever might be true about Fourth Amendment search-or-seizure claims generally, such allegations undoubtedly impugn petitioner's conviction. *See, e.g.*, *Mordi*, 870 F.3d at 708; *cf. McDonough*, 139 S. Ct. at 2155 (concluding that *Heck* applied to a "fabricated evidence" claim). If the Court were inclined to provide further guidance on Fourth Amendment search-or-seizure claims, it would be well-served to await a case in which such claims are presented in a more straightforward manner.

2. In addition, the question presented is unlikely to be determinative of petitioner's Section 1983 claims in any event. In particular, even if *Heck* did not preclude petitioner's Fourth Amendment claims, issue preclusion would. "Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so," including in suits under Section 1983. *Allen v. McCurry*, 449 U.S. 90, 96 (1980). California courts have held that issue preclusion "may apply to subsequent civil actions based upon rulings pursuant to ... motions to suppress evidence." *McGowan v. City of San Diego*, 208 Cal. App. 3d 890, 895 (Ct. App. 1989); *see also Ayers v. City of Richmond*, 895 F.2d 1267, 1272 (9th

Cir. 1990). Here, the state courts' denial of petitioner's motion to suppress would preclude the relevant Section 1983 claims.

California courts apply four criteria when applying issue preclusion to issues raised in a prior criminal proceeding, each of which is satisfied here. *First*, "the prior conviction must have been for a serious offense." *Ayers*, 895 F.2d at 1271 (citation omitted). Possession of child pornography is a serious offense. *Second*, "there must have been a full and fair trial." *Id.* Petitioner had full trial and appellate procedures in California, and his claims that those proceedings were unfair have been rejected on direct appeal and in his state habeas proceedings, with federal habeas proceedings underway. *Third*, "the issue on which the prior conviction is offered must of necessity have been decided at the criminal trial." *Id.* The magistrate, trial court, and appellate court all ruled against petitioner on these issues. *Fourth*, "the party against whom collateral estoppel is asserted [must have been] a party ... to the prior trial." *Id.* Petitioner—the party against whom issue preclusion is asserted—was the defendant in the prior trial. Thus, even if the Court were to adopt petitioner's preferred reading of *Heck*, he would not be entitled to relief on his Fourth Amendment claims.

3. Finally, at a minimum, the interlocutory posture of this case counsels against further review now. As noted, petitioner's operative 157-page, 1,087-paragraph complaint in this matter asserted 73 claims. *See* SAC. The district court held that *Heck* or California's state-law equivalent, *Yount v. City of Sacramento*, 43 Cal. 4th 885, 183 P.3d 471 (Cal. 2008), bars

69 of those claims. *See* Pet. App. 2a. The Ninth Circuit affirmed dismissal of eight *Heck*- and *Yount*-barred claims, *id.* at 3a-4a, but vacated the district court's *Heck*- and *Yount*-based dismissal of 61 more claims and remanded for further proceedings consistent with its opinion, including by amending the judgment even as to the claims at issue here. *Id.* at 3a, 5a. The Ninth Circuit suggested that at least some of these claims would *not* be *Heck*-barred. *See id.* at 4a (suggesting that Claim 45 may not impugn petitioner's outstanding conviction). But it ultimately left it to 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.

This Court's "general[]" practice is to "await final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Virginia Mil. Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., statement respecting denial of certiorari); *see also Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944, 945 (2012) (Alito, J., statement respecting denial of certiorari) (concurring in denial of petitions because "[t]he current petitions come to us in an interlocutory posture"). That approach makes particular sense here. In *Heck*, the Court declined to weigh in on the "fact-bound issue" whether the particular claims before it necessarily impugned the Section 1983 plaintiff's conviction. 512 U.S. at 480 n.2. But if the Court is inclined to provide clarification of the sort of Fourth Amendment claims that satisfy that standard, it would benefit from permitting the lower courts to analyze petitioner's multiple Fourth Amendment claims in the first instance before granting review.

III. The Court of Appeals' Decision Is Correct.

Lastly, further review is unwarranted here because the decision below is correct. The court of appeals correctly rejected petitioner's assertion that Section 1983 claims alleging unreasonable searches and seizures under the Fourth Amendment are categorically exempt from the *Heck* rule. Petitioner's arguments to the contrary are unavailing.

A. Fourth Amendment Search-or-Seizure Claims Are Not Categorically Exempt from the *Heck* Rule.

1. In *Heck*, the Court considered the question whether a claim for damages that "call[s] into question the lawfulness of conviction or confinement" is "cognizable under § 1983." 512 U.S. at 483. The Court explained that, because Section 1983 "creates a species of tort liability," it was appropriate to look to the common law of torts as the "starting point" for that analysis. *Id.* In particular, the Court looked to the requirements of the common-law cause of action for malicious prosecution, which it found provided "the closest analogy to claims of the type considered [t]here." *Id.* at 484.

The Court observed that one element of a malicious prosecution claim was the "termination of the [challenged] criminal proceeding in favor of the accused." *Id.* Imposing that requirement, the Court explained, (1) "avoid[ed] parallel litigation over the issues of probable cause and guilt;" (2) prevented "conflicting resolutions," where a party is convicted in a criminal matter but then prevails on the same issues as a civil plaintiff; and (3) refused "convicted criminal

defendant[s]" the opportunity for "a collateral attack on the conviction through the vehicle of a civil suit." *Id.* It noted that it had "long expressed similar concerns for finality and consistency," and concluded that "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement, just as it has always applied to actions for malicious prosecution." *Id.* at 485-86.

The Court thus held that, "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 Section 1983 plaintiff "must prove that [his] conviction or sentence has been reversed on direct appeal, expunged by executive order, [or] declared invalid" through state or federal habeas. *Heck*, 512 U.S. at 486-87. When "a state prisoner seeks damages in a § 1983 suit, 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. If it would, the Court explained, "the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* If not, "the action should be allowed to proceed, in the absence of some other bar to the suit." *Id.*

2. Nothing in *Heck* (or any of this Court's subsequent decisions) suggests that Fourth Amendment claims for unreasonable searches or seizures are "categorically" exempt from that analysis or the *Heck* rule.

Pet. 23. To the contrary, *Heck* itself expressly contemplated that its rule would apply to Fourth Amendment claims that "would necessarily imply the invalidity of his conviction or sentence." 512 U.S. at 487. Because the Court took the case on the premise that the plaintiff's claims "challeng[ed] the legality of his conviction," *id.* at 480 n.2, it had no occasion there to articulate the limits of its standard. But the Court offered a Fourth Amendment claim for an unreasonable seizure as its only example of a Section 1983 claim "whose successful prosecution would necessarily imply that the plaintiff's criminal conviction was wrongful." *Id.* at 486 n.6.

That makes sense. Fourth Amendment unreasonable search and seizure claims that would impugn an outstanding conviction, no less than any other Section 1983 claims, implicate all of the "concerns for finality and consistency" that the *Heck* rule is designed to address. "[A]void[ing] parallel litigation over the issue[] of *probable cause*" is distinctively applicable to litigation concerning Fourth Amendment searches and seizures, where "probable cause" is a ubiquitous standard. *Heck*, 512 U.S. at 484 (emphasis added) (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 887-88 (5th ed. 1984)). Likewise, "the strong judicial policy against the creation of two conflicting resolutions" in a criminal conviction and a civil damages suit "arising out of the same or identical transaction" applies with equal to force whether the inconsistency is based on a Fourth, Fifth, or Sixth Amendment claim. *Id.* Finally, the Court should not "permit ... collateral attack[s]" on convictions through civil damages suits based on alleged violations of the Fourth Amendment any more

than it permits collateral attacks based on violations of other rights. *Id.*

The Court's more recent cases in this line confirm that Fourth Amendment claims are not subject to any special rule. The Court's decision in *Wallace v. Kato*, 549 U.S. 384 (2007), is instructive. There, in an opinion by Justice Scalia—the author of *Heck*—the Court declined to apply the *Heck* rule to a Fourth Amendment claim challenging a warrantless arrest for purposes of determining when the Section 1983 claim had accrued. *Id.* at 392-97. The Court explained that the *Heck* rule "is called into play only when there exists 'a conviction or sentence that has *not* been … invalidated." *Id.* at 393. In *Wallace*, when the plaintiff first could have brought his claim for unlawful arrest, "there was in existence no criminal conviction that [his Fourth Amendment] cause of action would impugn." *Id.* And the Court refused to extend the *Heck* rule to "an action which would impugn *an anticipated future conviction*." *Id.*

Although the *Wallace* Court determined that the *Heck* bar did not defer accrual of the Fourth Amendment claim in that case, the Court's reasoning makes clear that Fourth Amendment claims are not categorically exempt from *Heck*. To the contrary, the Court reasoned that applying the *Heck* bar to a Fourth Amendment claim based on an anticipated future conviction would be impractical, because the plaintiff would be required "to speculate about whether a prosecution will be brought, whether it will result in conviction, and whether the pending civil action will impugn that verdict—*all this at a time when it can hardly be known what evidence the prosecution has in its possession*"—indicating that *Heck* requires a case-

specific analysis. *Wallace*, 549 U.S. at 393 (citing *Heck*, 512 U.S. at 487 n.7) (emphasis added). And just as importantly, the Court further explained that, if a plaintiff raising a Section 1983 Fourth Amendment claim "is ultimately convicted, and if [his] civil suit would impugn that conviction," that *then* "*Heck would* require dismissal." *Id.* at 394 (emphasis added); *see id.* at 395 n.4 (declining to decide "how much time" such a plaintiff would have to refile his Fourth Amendment claims if and when "the *Heck* bar" is removed by the invalidation of the conviction).

Subsequent cases are similarly inconsistent with a categorical exemption from *Heck* for Fourth Amendment search-or-seizure claims. In *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017), the Court recognized the possibility of a Section 1983 claim alleging that pretrial detention unsupported by probable cause violated the Fourth Amendment's prohibition on unreasonable seizures. *Id.* at 918. The Court then remanded the case to the court of appeals to determine whether *Heck* would require a plaintiff asserting such a claim to prove that the criminal proceedings terminated in his favor, *id.* at 921-22—a holding that would have been unnecessary if Fourth Amendment claims for unreasonable seizures are categorically exempt from that requirement. In *McDonough*, the Court read *Heck* to suggest only that "at least some Fourth Amendment unlawful-search claims" might be able "to proceed without a favorable termination." 139 S. Ct. at 2159, n.8. And in *Thompson v. Clark*, 142 S. Ct. 1332 (2022), the Court affirmatively held that the type of Fourth Amendment unreasonable seizure claim recognized in *Manuel* requires the plaintiff "to show a favorable termination of the underlying criminal case against him"—*i.e.*, to satisfy the *Heck* bar. *Id.* at 1338.

B. Petitioner's Arguments to the Contrary Are Unpersuasive.

Petitioner's arguments for a categorical exemption from the *Heck* bar are unpersuasive.

1. Petitioner principally relies on a footnote in *Heck* observing that "a suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction," because under "doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful." 512 U.S. at 487 n.7 (citations omitted). But petitioner misreads that footnote.

Far from suggesting a categorical exclusion for Fourth Amendment claims, footnote 7 of *Heck* is best read as indicating that the *Heck* bar will apply to Fourth Amendment unreasonable search and seizure claims just like any other constitutional claim. The footnote is expressly styled as an "example" of how the Court's rule should be applied—not as a categorical exemption from it. And it states that a Section 1983 claim alleging an unreasonable search "*may* lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in [a] still-outstanding conviction," not that it *shall* or *will* lie. *Heck*, 512 U.S. at 487 n.7 (emphasis added). This corresponds with the Court's comment in *McDonough*, which indicated that "some" but not all Fourth Amendment claims would avoid the *Heck* bar. 139 S. Ct. at 2159 n.8.

Petitioner ignores those aspects of the footnote, focusing instead on the Court's explanation for why some Fourth Amendment claims "may" not be barred by the *Heck* rule—namely, that "doctrines like independent source and inevitable discovery, and especially harmless error" mean that not every Fourth Amendment unreasonable search and seizure claim will "*necessarily* imply that the plaintiff's conviction was unlawful." *Heck*, 512 U.S. at 487 n.7. That recognition is a powerful reason to reject the categorical *application* of *Heck*'s requirement to Fourth Amendment claims. But it cannot be enough to support their categorical *exclusion*. After all, most constitutional claims are subject to harmless-error review. *See Arizona v. Fulminante*, 499 U.S. 279, 306 (1991) (collecting cases "appl[ying] harmless-error analysis to a wide range of errors"). If the mere prospect of finding a constitutional violation to be harmless were sufficient to categorically exclude a constitutional claim from *Heck*, the categorical exemptions would extend far beyond Fourth Amendment claims. It would create a massive hole in the *Heck* regime.

Contrary to petitioner's assertion (Pet. 25), the fact that the *Heck* rule applies only to Section 1983 claims that "*necessarily* imply the invalidity of [the plaintiff's] conviction or sentence" does not support a different conclusion. 512 U.S. at 487 (emphasis added). The prosecution of some Fourth Amendment unreasonable search and seizure claims *will* necessarily impugn an outstanding conviction. *See, e.g.*, *Szajer v. City of Los Angeles*, 632 F.3d 607, 612 (9th Cir. 2011) (barring Fourth Amendment claim because the fruit "was the only basis for finding probable cause to search both the gun shop and residence"); *Ballenger v. Owens*, 352 F.3d 842, 847 (4th Cir. 2003) (barring

Fourth Amendment claim because "[t]he cocaine seized was uniquely available from the alleged illegal search, and if it were suppressed as evidence, there would be no evidence to convict [the criminal defendant] for drug trafficking"). It is perfectly sensible to describe such a case as one in which, to prevail, the plaintiff must "prove the unlawfulness of his conviction or confinement." *Heck*, 512 U.S. at 486; *cf.* Pet 26.

2. Subjecting Fourth Amendment search-or-seizure claims to the *Heck* rule is also not inconsistent with *Heck*'s rationales. *See* pp. 22-24, *supra*; *cf.* Pet. 26-28.

Petitioner argues that "[a] successful § 1983 Fourth Amendment claim challenging an unlawful search or seizure does not permit convicted prisoners to '... challenge the fact or duration of their confinement.'" Pet. 27 (quoting *Nelson v. Campbell*, 541 U.S. 637, 647 (2004)). But where a Fourth Amendment search-or-seizure claim would, as a matter of fact, imply the invalidity of a Section 1983 claimant's outstanding conviction—because, *e.g.*, the evidence would need to be excluded or the factual premises of the Fourth Amendment claim are fundamentally inconsistent with the conviction—that is exactly what petitioner's rule would allow. The Court recognized as much in *Wallace* when it explained that Fourth Amendment false-arrest claims challenging warrantless arrests may need to be dismissed under *Heck* if "the plaintiff is ultimately convicted" and the Section 1983 suit "would impugn that conviction." 549 U.S. at 394; *see id.* at 395 n.4 (recognizing the plaintiff's false-

arrest claim in that case may have been such a claim).[5]

Petitioner also insists that the most "directly analogous" tort to Fourth Amendment search-or-seizure claims is either "trespass or false arrest." Pet. 28. Although that may sometimes be true when there is not (yet) a conviction that the Fourth Amendment claim impugns, *see, e.g., Wallace*, 549 U.S. at 388-90 (analogizing a Section 1983 Fourth Amendment challenge to a warrantless arrest to a common-law claim of false arrest), the teaching of this Court's decision in *Heck*, *Wallace*, *Thompson*, and others is that if (and when) a Section 1983 claim of any sort *would* impugn a criminal proceeding, it is appropriate to look to the tort of malicious prosecution, and its favorable termination element, to inform the prerequisites to damages for that Section 1983 claim—and to protect the interests of finality and consistency that would be undermined by permitting such a claim to proceed.

3. Finally, applying the *Heck* rule to Fourth Amendment search-or-seizure claims does not lead to perverse consequences.

Petitioner argues (Pet. 29) that a "fact-based approach" forces courts to decide issues in Section 1983 cases that are appropriately the domain of habeas litigation. But petitioner has it exactly backwards. By

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[5] *Haring v. Prosise*, 462 U.S. 306 (1983), is not to the contrary. *Cf.* Pet. 27. *Haring* reasoned only that the "the legality of the search under the Fourth Amendment" was irrelevant to the plaintiff's conviction *when* the plaintiff had pleaded guilty, "declined to contest his guilt in any way," and not actually litigated "the legality of the search." *Id.* at 316. Petitioner did not plead guilty, and the contested search was fully litigated.

permitting Section 1983 plaintiffs to seek damages for alleged Fourth Amendment violations, even where a judgment in the plaintiff's favor would necessarily call into question the validity of an outstanding criminal conviction, petitioner would permit precisely the intrusion of Section 1983 litigation into habeas that *Heck* intended to prevent. Moreover, while the Ninth Circuit (and others) frequently are able to dispose of such claims at the motion-to-dismiss stage, petitioner's categorical exemption from *Heck* would allow full civil discovery and trial concerning the searches and seizures that provided the critical support for outstanding criminal convictions.

Contrary to petitioner's assertion (Pet. 29-30), there is nothing "corrupt" in requiring a Section 1983 plaintiff to explain why his Fourth Amendment claim would not undermine an outstanding, and presumptively valid, conviction before permitting him to pursue his claim outside of habeas—or in permitting the government to argue that the plaintiff is attempting to commit such an end-run around the habeas regime. The same purported "inversion of the adversarial process" applies to Section 1983 claims based on other constitutional rights. *See, e.g.*, Pet'r Br. at 27, *Nance v. Ward*, No. 21-439 (a Section 1983 plaintiff arguing that his Eighth Amendment claim was cognizable under Section 1983 because even "[i]f [he] were to gain all the relief he seeks, the State can still execute him."). Petitioner provides no basis to conclude that it is any more problematic here.

Applying *Heck* to Fourth Amendment claims, moreover, does not permit the exclusionary rule to "shield" Fourth Amendment violations from Section

1983 liability. Pet. 30. To the contrary, if in a criminal proceeding a search is found to be unconstitutional and the fruit is excluded, the exclusionary rule serves only to enable a Section 1983 claim. In such a case, any conviction will not be the fruit of the constitutional violation and a civil judgment would thus not impugn it. And, if in the criminal proceeding the fruit of an unconstitutional search is admitted under an exception to the exclusionary rule, the exclusionary rule is again no barrier to the Section 1983 claim. The Section 1983 plaintiff can point to those same exceptions in seeking civil relief.

The problem for petitioner is not the exclusionary rule. His difficulty stems from the fact that in his criminal proceedings the California courts declined to find a Fourth Amendment violation at all. Contrary to his suggestion, there is no perversion in preventing him from now pursuing monetary relief on the basis of the same Fourth Amendment claims. Because petitioner's outstanding conviction rests on the California courts' rejection of those claims, that is precisely how the *Heck* rule is designed.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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