No. 22-_____

In The

Supreme Court of the United States

SAMUEL CALHOUN ARRINGTON,

Petitioner,

v.

CITY OF LOS ANGELES, et al.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether *Heck* applies to a former prisoner who was ineligible to challenge his subsequent conviction through federal habeas while he was incarcerated pending trial or after he was released.

2. Whether *Heck* bars a plaintiff from recovering damages for false arrest, false imprisonment, and excessive force after entering a plea of "no contest" under a plea agreement that he would be sentenced to time served and released.

PARTIES TO THE PROCEEDING

Samuel Calhoun Arrington, petitioner on review, was the plaintiff-appellee below.

The City of Los Angeles, et al., respondents on review, were the defendants-appellants below.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- *Arrington v. City of Los Angeles, et al.*, D.C. No. CV-12-04698-GW
- *Arrington v. City of Los Angeles, et al.*, No. 16-56755 (9th Cir.)

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Samuel Calhoun Arrington respectfully petitions for a writ of certiorari to review the judgment of the Ninth Circuit in this case.

INTRODUCTION

Plea bargaining is prevalent in criminal prosecutions because, like any bargain, each side gets something it wants. The defendant gives up the constitutional right to a trial in exchange for a lower sentence, in this case, time served. But increasingly

the local government seeks something more: immunity from a future civil rights action, especially by a defendant injured by police at the time of arrest.

A plea of "no contest" is generally understood not to be an admission of guilt but an agreement not to present a defense but to retain the right to deny the charges in any other judicial proceeding. But in this case, because it arose in the Ninth Circuit, Petitioner lost precisely that right and his civil rights action was treated exactly as if he had been tried and convicted. And he is not alone. Today, the Circuits are split as to whether no contest pleas immunize jurisdictions from civil liability under § 1983. Unless this Court steps in to resolve the split, the benefits Congress intended to flow from § 1983 will be illusory for citizens of states in the largest Circuit and at least four other circuits that apply the *Heck* bar without exceptions for plaintiffs like Arrington for whom seeking habeas while awaiting trial was simply not an option.

Samuel Calhoun Arrington is an African-American man who was confronted by police because he fit the description, and was in the general location, of a suspect reported in several 911 calls. During his arrest for resisting arrest, police beat him with a baton so severely that he required 18 staples to his head to close the wound caused by the baton strikes. While in jail, Arrington brought a § 1983 suit against Los Angeles and the arresting officers, seeking recovery for the constitutional violations that left him with a serious head injury.

After 19 months in jail, during which time Arrington maintained his innocence, he was persuaded to plead no contest to the resisting arrest charge in return for a sentence of time served. Specifically, Arrington was told by the judge and standby counsel that the no contest plea would preserve his right to maintain his civil rights action against the city and the officers who arrested him. This advice was consistent with the California penal code, but that would make no difference to the federal district court that tried his § 1983 claims, which concluded that under *Heck*, Arrington's conviction under California Penal Code section 148(a)(1) for resisting, delaying, or obstructing an officer, precluded his claim under 42 U.S.C. § 1983 for false arrest and false imprisonment. The panel affirmed.

The prevalence of plea-bargaining means that defendants are forced every day to choose between remaining in custody or pleading to charges of which they are innocent.

This Court's review could resolve several circuit splits regarding the scope of *Heck*. Further, the Ninth Circuit's decision is flawed and incorrect.

The petition should be granted.

OPINIONS BELOW

The Ninth Circuit's opinion (Pet. App. 002-007) is unpublished but provided in the Appendix.

JURISDICTION

The Ninth Circuit entered judgment on September 14, 2021. Arrington filed a timely petition for panel rehearing, which the Ninth Circuit denied on December 17, 2021. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 1983 of Title 42, United States Code, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress * * * .

STATEMENT

A. Factual Background

At around 8:40 p.m. on June 27, 2011, Samuel Calhoun Arrington, a disabled, homeless man of African-American descent, was confronted by police officers responding to a radio call. Unbeknownst to the officers, Arrington was the victim: earlier that day, a thief had stolen his bicycle and then called 911, but Arrington had recovered the bicycle and pursued the thief. Officers who arrived on the scene initiated contact with Arrington, nearly hitting him with their police vehicle. Not understanding that he was a suspect, Arrington started to ride his bike away, but the officers pursued him, and more officers arrived on the scene. According to Arrington, to avoid crashing into the police car, he got off his bike and laid it on the ground. An officer yelled "Get your black ass on the ground!" Arrington responded, "Sir, my name is Samuel Arrington. I am handicapped. I have my handicap placard, Bible, my headphones, and my iPod, and that's all I have on. I have a beer in the backpack."

Police subdued Arrington, then hit him in the head with a police baton multiple times, causing serious injury. He was arrested, and then taken to a hospital, where he received 18 staples to his head to close the wound caused by the baton strikes. Arrington was charged with assaulting a police officer and resisting arrest. Following his arrest, Arrington was held in jail for 19 months.

Before his preliminary hearing, the prosecution offered Arrington a plea bargain: he would receive the low term on his charges and serve three years at half time if he pleaded guilty. Arrington maintained his innocence and, unable to pay bail set at $105,000.00, remained in jail pending trial. During this time, his medical condition caused by his head injury during the arrest rapidly deteriorated, and he had dismissed his public defender. He tried to defend himself against the charges, and continued to maintain his innocence, declining subsequent plea offers. Several eyewitnesses gave statements supporting his position that he was not fleeing or resisting arrest when the officers restrained and beat him. On June 6, 2012, Arrington filed the civil rights complaint in this case, including a § 1983 claim for false arrest and imprisonment.

On January 30, 2013, nineteen months after his head injury and arrest, Arrington, was brought before the trial judge, in handcuffs, with standby counsel. The trial court stated that he wanted to try to settle his case before trial. Arrington told the court that he had already filed a civil suit against the City of Los Angeles and the officers involved in his arrest. The court told him "I think that there may be a way for you to resolve this case before trial while still protecting your interests in terms of filing a civil lawsuit." The solution the court proposed was a nolo contendere plea to a misdemeanor. The court went on to explain that the nolo contendere plea "cannot be used against you in a civil lawsuit" because the plea entered would be in Arrington's best interest. The court and prosecutor also

agreed that the plea could be vacated almost immediately. The court then encouraged Arrington to speak with his standby counsel. The court additionally noted that the plea he would enter with the court's help would protect him in a civil lawsuit. After Arrington conferred with standby counsel, the court recognized on the record that Arrington would be entering a no-contest plea to a misdemeanor resisting arrest charge, with credit for time served. Arrington entered the plea and was released from custody.

B. Procedural History

Arrington's § 1983 suit, filed while he was still in jail, was stayed for a period of time and then reinstituted with an amended complaint. At the start of the trial, the court addressed the effect of *Heck*, 512 U.S. 477, to limit Arrington's claims. Several days into trial, however, the court returned to the issue and asked the parties to submit briefs on the issue of whether *Heck* applied in the context of a no contest plea under California Penal Code section 1016. Although the District Court noted that under the California section, nolo contendere pleas are "not supposed to be admissible, or to be treated as admissions by the defendant, who later becomes a plaintiff," the District Court concluded that Arrington's nolo contendere plea could be treated as an admission to establish the validity of his conviction and to invoke the *Heck* bar. The District Court then stated that it would limit Arrington's presentation of his excessive force theories through jury instructions based on his having entered the nolo contendere plea.

The court discussed a split of non-binding federal authority on the issue but ultimately relied on an opinion of the California Supreme Court to conclude that the *Heck* bar applied to Arrington's civil rights action.

The District Court's application of the *Heck* bar affected the scope and direction of the entire trial. The court dismissed Arrington's false arrest and false imprisonment claims, thus preventing him from presenting evidence on these claims to the jury. The court's application of *Heck* resulted in two prejudicial jury instructions. First, the court instructed the jury "[u]nder applicable law, Plaintiff's § 148(a)(1) conviction establishes that at some point during the June 27, 2011 incident, Plaintiff resisted, delayed and/or obstructed the arresting the officers at a time when the officers were acting lawfully—that is, the officers had a proper basis for investigating, detaining and/or arresting the Plaintiff and were using reasonable force at the time."

Second, the court instructed the jury: "Plaintiff's § 148(a)(1) conviction does not bar his § 1983 excessive force claim. However, it does limit that claim and imposes additional burdens on him. To establish a § 1983 excessive force claim in this case, Plaintiff must prove by a preponderance of the evidence either that: (1) the individual Defendant Office used excessive force either at a time before or after Plaintiff's unlawful resistance, delay or obstruction (for example, a post-arrest use of unreasonable deadly force) or (2) though having the right to use reasonable force on Plaintiff because of his conduct in violation of § 148(a)(1), the

individual Defendant Officer responded with excessive force."

After the District Court instructed the jury, the jury returned a verdict in favor of the Defendants (Respondents), concluding that they did not use excessive force.

Arrington timely appealed to the Ninth Circuit. The Court of Appeals heard oral argument on September 13, 2019. On September 14, 2021, the Court of Appeals filed a memorandum opinion affirming the appeal in all respects. The panel concluded that under *Heck*, Arrington's conviction under California Penal Code section 148(a)(1) for resisting, delaying, or obstructing an officer precluded his claim under 42 U.S.C. § 1983 for false arrest and false imprisonment. "Success on Arrington's false arrest and false imprisonment claim 'would necessarily imply the invalidity of his conviction.'" (quoting *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). The panel explained "[that Arrington's conviction is based on a nolo contendere plea rather than a guilty plea or jury verdict does not change the *Heck* analysis with regard to the false arrest and false imprisonment claim." *Id.*, *citing Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (per curiam). Arrington petitioned for panel rehearing. Pet. App. 008-269 (charting the factual background and procedural history above). The Ninth Circuit denied the petition for rehearing. Pet. App. 270.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision follows precedent in the lower courts that limits recovery under § 1983 for individuals like Arrington who most deserve its protection. Local governments are able to immunize themselves from § 1983 liability for constitutional violations simply by insisting that a person plead "no contest" to time served in order for the prosecution to agree to his release. This case is only one of many.

This Court's review is urgently needed. The Ninth Circuit's holding extends sharp splits of authority in the Circuits that will not be resolved unless this Court intervenes. Plea bargaining is the most common way criminal charges, especially misdemeanors, are resolved. The effect of pleading no contest on the right to maintain a §1983 action should not depend on which regional circuit encompasses the state where the plea is entered.

I. THE NINTH CIRCUIT'S DECISION PERPETUATES SPLITS OF AUTHORITY REGARDING THE SCOPE OF *HECK*.

The decision below implicates consequential and recurring circuit splits. First, it continues a circuit split as to whether *Heck* applies to a former prisoner, like Arrington, for whom habeas was not available while he was incarcerated. Second, the decision also implicates a split as to whether *Heck* prevents a former prisoner from recovering damages for constitutional violations surrounding his arrest if he was released upon

entering a plea of no contest to time served. These questions arise frequently in the lower courts. The appellate courts' conflicting decisions and their opinions show that the split and the disparate treatment of 1983 plaintiffs in different states will persist until this Court intervenes by granting certiorari and issuing an opinion clarifying the scope of the *Heck* bar.

In *Heck*, this Court held that a "state prisoner" may not "seek[ ] damages in a § 1983 suit" that "would necessarily imply the invalidity of his conviction or sentence" unless criminal proceedings have been "terminat[ed] * * * in favor of the accused." 512 U.S. at 480, 484, 487. The decision was unanimous as to its application to persons "in custody" for purposes of the habeas statute. *See id.* at 487. Justice Souter, joined by three other Justices, however, concluded that the bar against 1983 claims does not extend to individuals who were unable to "invoke federal habeas jurisdiction" before their release. *Id.* at 500 (Souter, J., concurring in the judgment) (emphasis added).

That issue soon arose again. In *Spencer* v. *Kemna*, five Justices joined opinions expressly agreeing with Justice Souter's view. *See Spencer*, 523 U.S. at 19 (Souter, J., joined by O'Connor, Ginsburg, and Breyer, JJ., concurring); *id.* at 21 (Ginsburg, J., concurring); *id.* at 25 n.8 (Stevens, J., dissenting).

Four Circuits have expressly adopted Justice Souter's view. Six Circuits—including the Ninth—have largely or entirely rejected that view. The Second Circuits is internally divided on the question.

Had Arrington's case arisen in the Fourth, Sixth, Tenth, or Eleventh Circuits, he would have been allowed to present his claims to a jury without a prejudicial instruction that doomed his §1983 lawsuit. These circuits follow the reasoning of Justice Souter's concurrence in *Heck* and the plurality opinion in *Spencer*. In *Wilson* v. *Johnson*, 535 F.3d 262 (4th Cir. 2008), the Fourth Circuit held that *Heck* does not apply to an individual who "seeks damages for past confinement" and who "could not, as a practical matter, seek habeas relief" prior to his release. *Id.*; *see Griffin* v. *Baltimore Police Dep't*, 804 F.3d 692, 697 (4th Cir. 2015) (reaffirming this position). In *Powers* v. *Hamilton County Public Defender Commission*, 501 F.3d 592 (6th Cir. 2007), the Sixth Circuit permitted a former prisoner's § 1983 suit by a plaintiff who could not seek habeas relief because he was only in prison for one day. *Id.* at 601; *see Harrison* v. *Michigan*, 722 F.3d 768, 774 (6th Cir. 2013) (reaffirming this position). In *Cohen* v. *Longshore*, 621 F.3d 1311 (10th Cir. 2010), the Tenth Circuit agreed with the Fourth and Sixth Circuits and held that "a petitioner who has no available remedy in habeas, because of the circumstances is not barred by *Heck* from pursuing a § 1983 claim." *Id.* at 1315-17. And in *Harden* v. *Pataki*, 320 F.3d 1289 (11th Cir. 2003), the Eleventh Circuit agreed that "where federal habeas corpus is not available to address constitutional wrongs, § 1983 must be." *Id.* at 1298-99 (internal quotation marks omitted); *see Morrow* v. *Fed. Bureau of Prisons*, 610 F.3d 1271, 1272 (11th Cir. 2010).

But five Circuits—the First, Third, Fifth, Eighth, and Ninth—have effectively broadened *Heck*'s holding, recognizing but declining to follow the reasoning of the Circuits that only apply the *Heck* bar to 1983 plaintiffs who had no chance to pursue federal habeas relief while incarcerated.

In *Figueroa* v. *Rivera*, 147 F.3d 77 (1st Cir. 1998), the First Circuit acknowledged "dicta from concurring and dissenting opinions" might cast doubt that on *Heck*'s "'favorable termination' requirement," for 1983 plaintiffs previously convicted, but it concluded that it was bound by this Court's majority opinion. *Id.* at 81 & n.3 (quoting *Agostini* v. *Felton*, 521 U.S. 203, 236 (1997)). In *Deemer* v. *Beard*, 557 F. App'x 162 (3d Cir. 2014), the Third Circuit "interpreted *Heck* to impose a universal favorable termination requirement on all § 1983 plaintiffs attacking the validity of their conviction or sentence." *Id.* at 166. So did the Fifth Circuit in *Randell* v. *Johnson*, 227 F.3d 300 (5th Cir. 2000) (per curiam). It read *Heck* as "unequivocally" imposing a "universal favorable termination requirement," while acknowledging the circuit split in *Heck*'s progeny that had already begun. *Id.* at 301. *see Black* v. *Hathaway*, 616 F. App'x 650, 653-654 (5th Cir. 2015) (per curiam) (reaffirming *Randall*).

The Seventh Circuit is the most recent to join the Circuits that reject an exception to the *Heck* bar for plaintiffs, like Arrington, who are without recourse to the habeas statute. *Savory v. Cannon*, 947 F.3d 409, 421 (7th Cir. 2020) (en banc), cert. denied, 2020 U.S. LEXIS 4439 (2020) ("The Supreme Court may eventually

adopt Justice Souter's view, but it has not yet done so and we are bound by *Heck*.) Only Circuit Judge Easterbrook dissented, reasoning that *Heck* only discussed claims by a prisoner in custody and did not decide the rights of former prisoners who "contend their convictions are wrongful but are no longer in a position to seek collateral relief." 947 F.3d at 432.

In *Entzi* v. *Redmann*, 485 F.3d 998 (8th Cir. 2007), the Eighth Circuit also concluded that *Heck* would not permit a different result for plaintiffs for whom "the writ of habeas corpus is no longer available." *Id.* at 1003. The Ninth Circuit first took the view, expressed by Justice Souter's concurrence, that the *Heck* bar does not apply to plaintiffs for whom a habeas remedy had not been available. *Nonnette* v. *Small*, 316 F.3d 872, 876 (9th Cir. 2002). In 2014, however, the Ninth Circuit narrowed *Nonnette*'s precedential effect severely, holding that the *Heck* bar applies unless the former prisoner's 1983 suit would not challenge the underlying conviction. *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1192 (9th Cir. 2015).

The Ninth Circuit has thus reduced the exception to *Heck* so much that it only applies to prisoners challenging the loss of good-time credits or the revocation of parole, and who never had *any* state or federal avenue for seeking relief. *See also Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), cert. denied (2019); *Taylor v. County of Pima*, 913 F.3d 930 (9th Cir. 2019), cert. denied (2020).

Finally, the Second Circuit has an internal conflict over how narrow or expansive the *Heck* bar is. In *Poventud* v. *City of New York*, 715 F.3d 57 (2d Cir. 2013), the panel split as to what approach was correct. The Second Circuit granted rehearing en banc to resolve the "relationship of access to *habeas* relief and the use of § 1983," but ultimately decided the case by assuming that *Heck* applied. *Poventud* v. *City of New York*, 750 F.3d 121, 125 n.1, 127 & n.6 (2d Cir. 2014) (en banc); *see infra* at p. 22. So the internal conflict persists.

Finally, the circuits are inconsistent in their treatment of no-contest pleas. The Third and Seventh Circuits permit plaintiffs like Arrington to obtain recovery after entry of no-contest pleas. *Geness* v. *Cox*, 902 F.3d 344, 356 (3d Cir. 2018); *Bronowicz* v. *Allegheny County*, 804 F.3d 338, 346 (3d Cir. 2015) (internal quotation marks omitted).

In short, the Circuits are regrettably split on this important issue, which recurs over and over in the district courts. In the almost thirty years since this Court decided *Heck*, every regional Circuit has taken a position. And those positions are well-settled: several Circuits have expressly stated they will continue to follow their precedents unless this Court intervenes. *See*, *e.g.*, *Deemer*, 557 F. App'x at 166-167; *Entzi*, 485 F.3d at 1003; *Randell*, 227 F.3d at 301; *Figueroa*, 147 F.3d at 81 n.3; *Savory*, 947 F.3d at 421. Some judges have urged this Court to weigh in. *See Deemer*, 557 F. App'x at 167-168 (Rendell, J., concurring) (urging the Court to "decide[] this issue"); *Brown* v. *Williams*, 644 F. App'x 117, 120 n.2 (3d Cir. 2016) (Ambro and Greenberg, JJ.,

concurring in the judgment) (same); *Newmy* v. *Johnson*, 758 F.3d 1008, 1012 (8th Cir. 2014) (Kelly, J., concurring) (similar). This important and recurring split is simply incapable of resolution without this Court's intervention.

The rights of the former prisoners wrongfully arrested, falsely imprisoned, or injured by police use of excessive force should not depend on where they were arrested and where they must bring their civil rights claims. Certiorari should be granted, and the divisions in the Circuits should be resolved.

II. THE QUESTIONS PRESENTED AFFECT THE RIGHTS OF NUMEROUS AMERICANS.

Judge Easterbrook noted in his dissent in *Savory* that the Seventh Circuit alone has seen dozens of cases in which former prisoners whose custody has ended, has made habeas unavailable, and these are but the tip of the iceberg when other circuits are considered. 947 F.3d at 432-433. The *Heck* bar, applied as it is in the majority of circuits, now including the Seventh, extinguishes many substantively valid constitutional claims. *Id.* at 434.

This case is an ideal vehicle to resolve this vitally important question because it arose in the circumstances left unaddressed in *Heck*. Arrington could not bring a habeas case while he was incarcerated because he had not been convicted. He could not bring one after he plead no contest because he was released and thus no longer in custody.

There is also another petition for certiorari already pending before the Court that concerns the *Heck* bar, *Lund v. Datzman*, et al., filed February 23, 2022. That case presents the question of how the *Heck* bar applies to § 1983 Fourth Amendment claims that seek damages for an unlawful search and seizure but not the ensuing conviction. It would be efficient and economical for the Court to consider these two cases as companions to address the multiple issues troubling the courts of appeals in the almost thirty years since *Heck* was decided.

Review should be granted, and the Ninth Circuit's decision should be reversed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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