NO. 23-1302

In the Supreme Court of the United States

KEVIN HARDAWAY,

Petitioner,

v.

DWIGHT HAMILTON, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court reverse the Eleventh Circuit's decision that affirmed the dismissal of Petitioner Hardaway's official capacity claims against two Georgia sheriff employees based on Eleventh Amendment immunity, where Petitioner's argument for granting certiorari is based on his contention that *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003) (*en banc*), *cert denied*, 504 U.S. 1107 (2004), the decision the Eleventh Circuit panel relied on when affirming such dismissal, was wrongly decided by the Eleventh Circuit due to alleged misapplication of the Eleventh Amendment immunity framework to state law regarding Georgia sheriffs?

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INTRODUCTION

In his Petition for Writ of Certiorari, Petitioner Kevin Hardaway asks this Court to do two things that it typically does not do: delve deep into issues of state law and consider legal issues that were not decided by the Court of Appeals. A grant of certiorari is not warranted in this case under the legal standards this Court applies to manage its caseload.

Twenty years ago, this Court denied a petition for writ of certiorari that sought review of the Eleventh Circuit's *en banc* decision in *Manders v. Lee*, 338 F.3d 1304 (2003), *cert denied*, 540 U.S. 1107 (2004). In the *Manders en banc* decision, the Eleventh Circuit relied on Georgia law when holding that a sheriff was entitled to Eleventh Amendment immunity in his official capacity on an excessive force claim filed in federal court because the sheriff was "an arm of the state . . . in establishing use-of-force policy at the jail and in training and disciplining his deputies in that regard." *Id.* at 1328. Around the same time, similar petitions came from other circuits, asking this Court to address the Eleventh Amendment immunity framework as applied to sheriffs under various states' laws. Following this Court's denial of certiorari on multiple petitions on this issue, the Eleventh Amendment immunity framework became settled.

Last year, Hardaway's appeal of the dismissal of his official capacity claims against sheriff employees Dwight Hamilton and Leonard Dreyer reached the Eleventh Circuit. Recognizing it was bound by *Manders*, the Court of Appeals panel affirmed the district court's Eleventh Amendment immunity-based dismissal of

Hardaway's excessive force-related claims against the two sheriff employees in their official capacities. Hardaway requested *en banc* review of the panel decision, but his motion for rehearing *en banc* was denied on March 13, 2024. Pet.App.28.

Now, 20 years after the original denial of certiorari in *Manders*, Hardaway asks this Court to revisit the application of the Eleventh Amendment immunity framework to Georgia sheriff law. Petitioner offers this Court no new reasons for doing so, simply pointing to arguments the dissenting judges made in *Manders*, an alleged circuit split based on cases that had already been decided when this Court denied the *Manders* certiorari petition in 2004, a prediction from the early 2000s about the ill-effects *Manders* might have in the future, and Hardaway's own case as ostensible proof that this prediction had come to pass.

This Court has already denied certiorari requests to hear such arguments, none of which meet the criteria this Court uses for deciding whether to grant certiorari. Moreover, Hardaway is asking this Court to decide a narrow issue, inextricably tied to Georgia sheriff law, which could only generate a narrow holding, necessarily limited to how Eleventh Circuit courts apply the Eleventh Amendment immunity framework to Georgia law in use-of-force-at-a-county-jail cases. This Court should not grant this Petition.

STATEMENT OF THE CASE

In 2012, Sergeant Dwight Hamilton, an officer at the DeKalb County Jail, tased Petitioner Kevin Hardaway, an inmate. (*See* Doc. 87).[1] Hamilton's supervisor was Lieutenant Leonard Dreyer. *Id.*

In February 2014, Hardaway filed in federal district court a *pro se* 42 U.S.C. § 1983 complaint based on the incident, naming Sheriff Thomas Brown, Sergeant Hamilton, two other sergeants, and the jail itself as defendants. (Doc. 1 at 4). In November of that year, the district court issued an order allowing Hardaway's excessive force claim against Hamilton to proceed but dismissing all other claims and defendants, including the sheriff, as frivolous pursuant to 28 U.S.C. § 1915A. (Docs. 6, 12).

While Hardaway's excessive force claim was pending, federal prosecutors brought criminal charges against Hamilton for his role in the incident. Pet. App.12. In August 2015, the district court ordered the excessive force proceeding stayed pending the outcome of Hamilton's criminal case, and the case was stayed for several years. (Docs. 26-27, 54-55).

In May 2020, Hardaway, through counsel, filed an amended complaint—the operative complaint in this petition—adding Dreyer as a defendant and alleging that Dreyer had directed Hamilton to tase him. (Doc. 87). Attorneys for the DeKalb County Sheriff filed a

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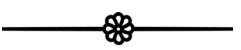
[1] Record cites herein are to document numbers in the district court's record, Civil Action No. 1:14cv00542, U.S. District Court, N.D. Ga., except where the Petitioner's Appendix is cited.

motion to dismiss on behalf of Hamilton and Dreyer in their official capacities, arguing, in part, that Eleventh Amendment immunity barred Hardaway's official capacity claims against Hamilton and Dreyer. (Doc. 92).

The district court granted the motion to dismiss the official capacity claims against Hamilton and Dreyer, citing *Manders*. Pet.App.7-8. The district court explained it was bound by *Manders*, and thus, Hamilton and Dreyer, as sheriff's employees supervising and administering the jail, were entitled to Eleventh Amendment immunity on claims against them in their official capacities. *Id.*[2]

Hardaway appealed this decision and the Eleventh Circuit affirmed, concluding it too was bound by *Manders*. Pet.App.1-2. Hardaway filed a motion for rehearing *en banc*, which was denied. *Id.* at 28-29. The instant petition followed.



REASONS FOR DENYING THE PETITION

I. Background law

The Eleventh Amendment provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State." U.S. Const. Amend. XI.

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[2] Hardaway's individual capacity excessive force claims against Hamilton and Dreyer proceeded to trial, where the jury returned a verdict in Hardaway's favor and awarded him $255.020.00 in damages. (Docs. 250-51).

By its terms the Eleventh Amendment applies only to suits against a state by citizens of another state, but this Court has construed it to bar suits against a state by that state's own citizens as well. *Bd. of Trs. of Univ. of Ala. v. Garrett,* 531 U.S. 356, 363 (2001). Although the bar of the Eleventh Amendment to suit in federal courts extends to states and "arm[s] of the State" in appropriate circumstances, it "does not extend to counties and similar municipal corporations." *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977). Whether an entity is to be treated as an "arm of the State," partaking of the State's Eleventh Amendment immunity, or is instead to be treated as a municipal corporation or other political subdivision, depends at least in part on the nature of the entity as defined under state law. *Id.* This is a question of federal law, which "can be answered only after considering the provisions of state law that define the agency's character." *Regents of the Univ. of Cal. v. Doe,* 519 U.S. 425, 429 n.5 (1997).

Claims can be brought against a sheriff or sheriff employee in his/her individual/personal capacity and/or official capacity. Individual or personal capacity suits seek to impose personal liability on a government official for actions he takes under color of state law. However, official capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent. As long as the government entity receives notice and an opportunity to respond, an official capacity suit is, in all respects other than name, to be treated as a suit against the entity. *See Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985). Only official capacity claims are at issue in Hardaway's Petition. Petition ("Pet.") at 2.

When undertaking Eleventh Amendment immunity analysis, courts must define the particular function the entity was performing in the challenged activity. *See McMillian v. Monroe County, Alabama*, 520 U.S. 781, 785-86 (1997). In *McMillian*, this Court considered whether the Sheriff of Monroe County was a policymaker for the state or the county in the area of law enforcement. *Id*. Though *McMillian* is not an Eleventh Amendment immunity decision, circuit courts have relied on it to decide whether the Eleventh Amendment applies to county sheriffs in cases like the instant one. *E.g.*, *Franklin v. Zaruba*, 150 F.3d 682, 684-85 (7th Cir. 1998); *DeGenova v. Sheriff of DuPage Cty.*, 209 F.3d 973, 975-77 (7th Cir. 2000); *Cortez v. Cty. of Los Angeles*, 294 F.3d 1186, 1189-92 (9th Cir. 2002).

This Court began its *McMillian* decision by holding that whether government officials are final policymakers for a local government in a particular area or on a particular issue is dependent on analysis of state law—and stating that this Court would defer considerably to the circuit court of appeals' view on this issue. *Id.* at 785-87 (citing *Jett v. Dallas Indep. Sch. Dist.,* 491 U.S. 701, 738 (1989) ("We think the Court of Appeals [for the Fifth Circuit], whose expertise in interpreting Texas law is greater than our own, is in a better position to determine whether [the school district superintendent] possessed final policymaking authority in the area of employee transfers"); and *Pembaur v. City of Cincinnati,* 475 U.S. 469, 484 n.13 (1986) ("We generally accord great deference to the interpretation and application of state law by the courts of appeals")). After reviewing the Alabama Constitution and Code and how the Eleventh Circuit and the Alabama Supreme Court construed those sources, this Court held that when

an Alabama Sheriff acts in a law enforcement capacity, he acts as a state official. *McMillian,* 520 U.S. at 787-93. This Court also recognized that since "both the role of sheriffs and the importance of counties vary from State to State, there is no inconsistency created by court decisions that declare sheriffs to be county officers in one State, and not in another." *Id.* at 795.

Six years later, in *Manders*, the Eleventh Circuit held that a Georgia sheriff in his official capacity was an "arm of the State," not the county, in establishing use-of-force policy at the county jail and in training and disciplining his deputies in that regard. *Manders*, 338 F.3d at 1328. Manders was allegedly beaten by a deputy at the county jail and brought a § 1983 excessive force claim against the sheriff, claiming, *inter alia*, that the sheriff had permitted the deputy's use of excessive force and failed to provide deputies with proper training and supervision regarding use of force at the jail. *Id.* at 1306-07. The district court denied the sheriff's motion for summary judgment and the sheriff appealed, arguing he was entitled to Eleventh Amendment immunity in his official capacity. *Id.* at 1307-08.

On appeal, after relaying the Eleventh Amendment legal framework, the Eleventh Circuit identified the particular function in which the sheriff was engaged when taking the actions out of which liability was asserted to arise, defining it as the sheriff's "force policy at the jail and the training and disciplining of his deputies in that regard." *Id.* at 1308-09. The court then delineated four "Eleventh Amendment factors" for determining whether an entity is an "arm of the State" in carrying out a particular function: "(1) how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the

entity derives its funds; and (4) who is responsible for judgments against the entity." *Id.* at 1309. Finally, the court "journey[ed] through Georgia's legal terrain at some length," applying the four factors to the function the sheriff was performing and concluding that, on balance, the sheriff was acting as an arm of the state in his official capacity and, therefore, was immune from suit. *Id.* at 1309-29.

II. This Court already has Denied Certiorari in *Manders* and similar Cases.

In the late 1990s and early 2000s, this Court denied certiorari in a series of cases concerning applicability of Eleventh Amendment immunity to sheriffs. *E.g.*, *Zaruba v. Franklin*, 525 U.S. 1141 (1999); *Cnty. of Los Angeles v. Streit*, 534 U.S. 823 (2001); *Manders v. Lee*, 540 U.S. 1107 (2004). Then in 2018, this Court denied certiorari as to *Lake v. Skelton*, 840 F.3d 1334, 1338 (11th Cir. 2016), a case applying the four-part test from *Manders* to bar a complaint for damages against a deputy sheriff who had failed to accommodate a dietary request from an inmate in a county jail in Georgia, effectively extending the holding in *Manders*. *Lake v. Skelton*, 584 U.S. 931 (2018).

By consistently denying certiorari in these cases, this Court has made clear its conclusion that the Eleventh Amendment immunity framework is settled; decisions like *Mt. Healthy, Regents*, and *McMillian* provide sufficient guidance for circuit courts to determine when Eleventh Amendment immunity applies to sheriffs and when it does not. Given that decisions applying Eleventh Amendment immunity to sheriffs focus on state law and *Manders* has not proved unworkable in the Eleventh Circuit, there is no reason

for this Court to walk back its previous denial of certiorari in *Manders*.

III. None of This Court's Traditional Criteria for Granting Certiorari Are Met.

This Court will grant certiorari only for "compelling reasons." U.S. Sup. Ct. R. 10. Hardaway's contention that this standard is met because *Manders* is inconsistent with Supreme Court precedent or creates a circuit split does not hold up to scrutiny.

A. In *Manders*, the Eleventh Circuit Did Not Decide an Important Federal Question in a Way That Conflicts with This Court's Precedents.

Hardaway argues that *Manders* is inconsistent with this Court's precedent because it "cannot be squared with the purposes and intent" of the Eighth Amendment, 42 U.S.C. § 1983, and *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). Hardaway further argues that *Manders* reached its conclusion "via judicial fiat," since, in his opinion, it was wrongly decided. Pet.13-17.

To the extent Hardaway means *Manders* conflicts with federal law by preventing plaintiffs from using *Monell* to vindicate violations of § 1983 and the Eighth Amendment, *see* Pet.17-19, it is the Eleventh Amendment that bars these claims—not *Manders*. *Manders* simply applied Eleventh Amendment immunity to Georgia sheriffs in circumstances when, under Georgia law, a sheriff is acting as an arm of the state. Petitioner's argument that *Manders* violates the Eighth Amendment, § 1983, and *Monell* is unpersuasive as it would apply with equal force to an argument that this

Court's entire body of Eleventh Immunity law—and indeed the Eleventh Amendment itself—violates these laws.

Additionally, *Manders* does not conflict with this Court's Eleventh Amendment caselaw. Hardaway, like the dissenting judges in *Manders*, takes issue not with the four-factor test from *Manders*, but with its function inquiry and application of Georgia law. Pet.13-16; *Manders*, 338 F.3d at 1329-32 (Anderson, J. dissenting) (submitting the majority had "misapplie[d] the appropriate Eleventh Amendment analysis."). *Manders*, however, closely tracks the framework this Court used in *McMillian*, *compare Manders*, 338 F.3d at 1309-29, *with McMillian*, 520 U.S. 787-793, which concluded that "Alabama sheriffs, when executing their law enforcement duties, represent the State of Alabama, not their counties," *McMillian*, 520 U.S. at 793.

Hardaway's chief concern seems to be that *Manders* was wrongly decided or unfair. To this end, Hardaway merely summarizes Judge Barkett's lengthy dissent from *Manders*. *Compare Manders*, 338 F.3d at 1332-1348 (Barkett, J. dissenting), *with* Pet.13-16. But this Court has no reason to double-check the Eleventh Circuit's work in applying the appropriate framework to Georgia law. As this Court stated in *McMillian*:

> The Court of Appeals for the Eleventh Circuit determined that under Alabama law, a Sheriff acting in his law enforcement capacity is not a policy maker for the county. Since the jurisdiction of the Court of Appeals includes Alabama, *we defer considerably to that court's expertise in interpreting Alabama law.*

McMillian, 520 U.S. at 786 (emphasis added). *McMillian* also pointed out that two of the three judges on the Eleventh Circuit's panel were based in Alabama. *Id.* at 786, n.3. Similarly, in *Manders*, the author of the majority's *en banc* opinion, the Honorable Frank M. Hull, is based in Georgia, and previously served as a State Court judge, Superior Court judge, and U.S. District Court judge in the state of Georgia.

In arguing that Georgia sheriffs should not be considered arms of the state for purposes of this case, Hardaway sidesteps sources of legal authority that indicate otherwise such as O.C.G.A. § 15-16-26, which gives Georgia's governor the authority to investigate and suspend sheriffs, along with other Georgia statutes discussed in *Manders* and in *Grech v. Clayton County*, 335 F.3d 1326, 1332-1337 (11th Cir. 2003) (*en banc*). In *Grech*, the Eleventh Circuit held that Georgia sheriffs are state actors as to their law enforcement and peacekeeping functions; a county could not be liable under 42 U.S.C. § 1983 for a sheriff's exercise of such functions due to the county's lack of control. *Id.* at 1333-1334, 1347.

Finally, overturning *Manders* would have little practical value. It would serve only to instruct the Eleventh Circuit on what Georgia law says and, in the process, establish an extremely narrow rule, applicable to only a few cases a year where a Georgia sheriff or sheriff employee was sued in his or her official capacity in federal court based on the excessive use of force by a jailer against an inmate. This is not an important federal question worthy of certiorari.

B. *Manders* Has Not Created a Circuit Split.

Petitioner next argues *Manders* creates a circuit split, as "other circuits have reached a different conclusion when applying the correct 'function' of operating a county jail." Pet.16 (citing *DeGenova*, 209 F.3d at 977; *Cortez*, 294 F.3d at 1187). However, *Manders* does not create a circuit split as to the function inquiry, as shown by the cases Petitioner cites. In *DeGenova*, deputies failed to provide an inmate at the county jail with emergency medical treatment, and the Seventh Circuit—relying principally on *McMillian*—defined the function at issue as "managing the jail" and held that the sheriff was a county officer under Illinois law when performing this function. *DeGenova*, 209 F.3d at 974-77. In *Cortez*, an inmate was beaten to death by five cellmates after county jail officials placed him in a unit with gang members who threatened and ultimately took his life. The Ninth Circuit—also "follow[ing] the analytical framework set forth in *McMillian*"—defined the relevant function as establishing and implementing a policy as the jail administrator and decided that, under California law, the sheriff was acting as a county officer in performing this function. *Cortez*, 294 F.3d at 1187-92. Neither case involved a function like the one in *Manders* (establishing a use of force policy at the jail and training and disciplining deputies in that regard), but each applied the same state law-based function inquiry as *Manders*, illustrating the adherence to *McMillian* among the circuits.

It is unclear how Petitioner would have this Court address his argument that *Manders* defined the function at issue in the case too narrowly. Pet.13-14. This Court has cautioned against employing a "categorical, all or

nothing" approach to determine whether a sheriff acts for the state or for the county. *McMillian*, 520 U.S. at 785.

Moreover, *Manders* cannot have created a circuit split, as its analysis was specific to Georgia law. Indeed, circuits have reached different outcomes in Eleventh Amendment cases because they have applied the same basic Eleventh Amendment immunity framework to the law of different states. *See McMillian*, 520 U.S. at 795. ("[T]here is no inconsistency created by court decisions that declare sheriffs to be county officers in one State, and not in another."). *McMillian* rejected a "uniform, national characterization for all sheriffs" because "such a blunderbuss approach would ignore a crucial axiom of our government: the States have wide authority to set up their state and local governments as they wish." *Id.*

Finally, even if a circuit split did exist, that same split would have existed at the time this Court denied certiorari in *Manders*. The two cases Hardaway cites as proof of the alleged split were both decided before 2004. Hardaway presents no new circuit split issue for this Court to hear.

IV. None of Hardaway's Remaining Arguments Warrant Granting Certiorari.

Hardaway's remaining arguments fail to show this Court should grant certiorari. Hardaway claims *Manders* has left Eleventh Circuit courts to play a guessing game as to the function inquiry, pointing to two Eleventh Circuit cases extending Eleventh Amendment immunity to Georgia sheriffs in other functions. Pet.17-18 (citing *Lake*, 840 F.3d at 1339; *Andrews*, 996 F.3d at 1235). Petitioner does not explain

how these decisions constitute a guessing game. To the contrary, they illustrate consistency in the Eleventh Circuit's now-settled body of Eleventh Amendment immunity caselaw.

Hardaway next argues that the "public policy implications of *Manders* are dire," pointing to a prediction from a scholar published around the time *Manders* was decided. Pet.18. This should carry little weight given that this Court denied certiorari from *Lake* in 2018, long after the prediction Petitioner cites was made. *See Lake*, 584 U.S. 931. Petitioner also points to his own case as evidence that the prediction of dire results had come true. But Petitioner secured a six-figure jury verdict against Hamilton (in his individual capacity) in federal court, Hamilton was sentenced to prison for his crime, and *Manders* would not have prevented Hardaway from bringing official capacity claims in state court.

Finally, Hardaway argues that overturning *Manders* would not create detrimental reliance concerns. Pet.19-20. But federal courts across the country rely on the state-law-focused inquiry established in *McMillian* to decide whether county sheriffs are operating on behalf of the state when performing particular functions. Overturning *Manders* potentially would upset this settled area of the law and cause confusion among the federal circuits.

V. Hardaway's Petition Improperly Raises Issues That Were Not Decided by the Eleventh Circuit.

This Court has asserted on many occasions that it is a court of review, not of first view. *E.g. Cutter v. Wilkinson*, 544 U.S. 709, 718, n. 7 (2005). Hardaway, however, asks this Court to be the first to consider whether (or assume that) evidence from the trial of Hardaway's individual capacity claims is sufficient to establish official capacity liability under *Monell* and its progeny. Hardaway thus asks this Court to consider issues under *Monell* that the Eleventh Circuit Court of Appeals neither decided nor even mentioned in its three-paragraph decision in this case. *See* Pet.App.1-2 ("[A]s a panel we are bound by *Manders* and therefore affirm the district court's order.").

In bringing up *Monell*, Hardaway asks this Court to consider evidence that is not only outside the allegations of the amended complaint, but that came out of a trial of individual capacity claims at which no defendant was a party (or represented by counsel) in his official capacity because the trial happened years after the official capacity claims were dismissed. *See* Pet.App.3, 9. The proposed use of such post-hoc trial evidence to determine whether official capacity claims in Hardaway's amended complaint should have survived a Rule 12(b) motion is contrary to the admonition of *Ashcroft v. Iqbal* that "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Hardaway does not contend that such trial evidence is relevant to a determination whether Respondents are entitled to Eleventh Amendment immunity in their official capacities. Nor does Hardaway contend that such trial evidence is relevant to his contention that *Manders* was wrongly decided. Such trial evidence therefore has no proper place in Hardaway's certiorari petition. Pursuant to Sup. Ct. R. 15.2, Respondents object to use of trial evidence in this proceeding and dispute that such evidence is applicable to or binding on them in this context.

This Court should not consider issues of *Monell* liability that the Eleventh Circuit did not address and should disregard the trial evidence that Hardaway attempts to use to support his improper *Monell* argument.

CONCLUSION

This Court should deny the Petition for Certiorari.

Respectfully submitted,

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