No. 23-191

IN THE
Supreme Court of the United States

NANCY WILLIAMS, ET AL.,
Petitioners,
v.

FITZGERALD WASHINGTON,
ALABAMA SECRETARY OF LABOR,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Over four decades ago, this Court established that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to [42 U.S.C.] § 1983." *Patsy* v. *Bd. of Regents*, 457 U.S. 496, 516 (1982). In the decision below, the Alabama Supreme Court defied *Patsy* and dismissed petitioners' § 1983 claims on the ground that they failed to exhaust state administrative remedies. The court reached the astonishing and unprecedented conclusion that the "national government has no 'power to press a State's own courts into federal service' by compelling them to exercise jurisdiction in contravention of their own State's laws,'" and that "any '[s]uch plenary federal control of state governmental processes' would unconstitutionally 'denigrate[] the separate sovereignty of the States.'" Pet. App. 11a-12a. The sole case cited for this holding was *Alden* v. *Maine*, 527 U.S. 706, 749 (1999), a case addressing the entirely unrelated topic of Congress's power to abrogate state sovereign immunity. The decision below squarely conflicts with decisions of multiple state supreme courts—a point the dissent below recognized, and the majority did not contest.

Respondent abandons both the holding and the reasoning of the Alabama Supreme Court. Respondent does not defend the Alabama Supreme Court's conclusion that a federal rule requiring Alabama courts to exercise jurisdiction would denigrate the separate sovereignty of the States. Nor does respondent contend that *Alden* has any relevance to this case.

Instead, relying on *Johnson* v. *Fankell*, 520 U.S. 911 (1997), respondent characterizes Alabama's exhaustion requirement as a "neutral rule of judicial administration that coexists alongside § 1983." BIO 15. A rule that mandates dismissal if plaintiffs do not exhaust administrative remedies is not a "neutral rule of judicial administration." *Id.* In *Johnson*, this Court upheld a state-law rule because that rule did *not* "result[] in a judgment dismissing a complaint that would not have been dismissed—at least not without a judicial determination of the merits of the claim—if the case had been filed in a federal court." 520 U.S. at 920. Here, Alabama's rule *did* result in a judgment dismissing a case that would not have been dismissed in federal court. Therefore, *Patsy* governs.

The purported vehicle problems proffered by respondent are pure makeweights. Respondent claims there is some kind of distinction between the federal claim presented below and the federal claim presented to this Court. No such distinction exists: petitioners' argument has not changed a single iota. Respondent also suggests that a subset of petitioners' claims might be moot and speculates that if the Alabama Supreme Court reaches the merits, a subset of petitioners' § 1983 claims might lose. But respondent's arguments merely underscore that it is *undisputed* that several petitioners have live claims (in fact, they all do), and *undisputed* that the Alabama Supreme Court dismissed petitioners' claims based on administrative exhaustion without reaching the merits. This is a clean vehicle. The Court should grant certiorari and reverse.

ARGUMENT

Respondent does not defend the Alabama Supreme Court's reasoning and does not dispute that the decision below conflicts with decisions of numerous other state supreme courts. The Court should not be distracted by respondent's scattershot of vehicle objections.

I. PETITIONERS' ARGUMENT WAS PRESENTED TO, AND RESOLVED BY, THE ALABAMA SUPREME COURT.

Respondent's lead argument is that petitioners are presenting a new argument. BIO 8-10. Respondent is wrong.

Respondent expressly concedes that in the Alabama Supreme Court, petitioners preserved the claim that this Court has "'categorically rejected' the notion that state-law administrative exhaustion requirements could limit a state court's jurisdiction over § 1983 claims." BIO 8-9. The question presented in the petition for certiorari is: "Whether exhaustion of state administrative remedies is required to bring claims under 42 U.S.C. § 1983 in state court." Pet. i. That is the exact claim that respondent concedes is properly preserved.

According to respondent, however, pages 14 to 18 of the petition for certiorari present a purportedly "new question": whether "§ 1983 preempts any requirement that a plaintiff first submit her claim for agency review before obtaining judicial review in state court." BIO 11. Respondent's argument is baffling. Saying that "administrative exhaustion requirements" cannot "limit

a state court's jurisdiction over § 1983 claims"—the claim that respondent concedes is preserved—means the exact same thing as saying that § 1983 preempts administrative exhaustion requirements in state court. *Id.*

The Alabama Supreme Court had no difficulty understanding petitioners' argument. The court held: "*Even if it were true, as the plaintiffs seem to believe, that § 1983 preempts any and all independent exhaustion requirements found in State law*, that preemption would at most allow the plaintiffs to bring their unexhausted claims in federal court." Pet. App. 11a (emphasis added). Thus, although respondent claims that petitioners' preemption argument is somehow new, the Alabama Supreme Court correctly understood petitioners to be making that exact argument. Moreover, the Alabama Supreme Court plainly *decided* that preemption argument, ruling that "preemption would at most allow the plaintiffs to bring their unexhausted claims in federal court." Pet. App. 11a. This is a sufficient basis for exercising certiorari review regardless of how respondent now seeks to characterize petitioners' argument below. *See Cohen* v. *Cowles Media Co.*, 501 U.S. 663, 667 (1991) ("It is irrelevant to this Court's jurisdiction whether a party raised below and argued a federal-law issue that the state supreme court actually considered and decided."). As such,

petitioners' argument is properly teed up for Supreme Court review.[1]

II. THE DECISION BELOW DEFIES THIS COURT'S PRECEDENT.

Patsy held that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." 457 U.S. at 516. As the dissent below correctly stated (Pet. App. 21a), this Court recently reaffirmed the "'settled rule' that 'exhaustion of state remedies is *not* a prerequisite to an action under . . . § 1983.'" *Pakdel* v. *City & Cnty. of San Francisco*, 141 S. Ct. 2226, 2230 (2021) (quoting *Knick* v. *Twp. of Scott*, 139 S. Ct. 2162, 2167 (2019) (ellipsis in original)). The Alabama Supreme Court's decision flouted that settled rule.

The Alabama Supreme Court held that *Patsy* did not apply because "the national government has no 'power to press a State's own courts into federal service' by compelling them to exercise jurisdiction in contravention of their own State's law." Pet. App. 11a (quoting *Alden*, 527 U.S. at 749). Respondent pointedly does not defend that rationale.

Instead, respondent insists that *Patsy*'s interpretation of § 1983 applies only in federal court. BIO 8-10. But *Patsy* points out that a "feature of the

[1] Respondent chides petitioners for relying on *Patsy* below, as opposed to subsequent cases. BIO 11. Petitioners appropriately relied on *Patsy* because *Patsy* is the case that authoritatively construes § 1983 to bar any exhaustion requirement.

debates relevant to the exhaustion question is the fact that many legislators interpreted the bill to provide dual or concurrent forums in the state and federal system, enabling the plaintiff to choose the forum in which to seek relief." 457 U.S. at 506; *see Haywood* v. *Drown*, 556 U.S. 729, 735 (2009) (citing *Patsy* for the proposition that "state courts as well as federal courts are entrusted with providing a forum for the vindication of federal rights violated by state or local officials acting under color of state law"). More fundamentally, this Court in *Patsy* decided what § 1983 *means*—and the meaning of a statute does not depend on the court in which a case is filed. *See James* v. *City of Boise*, 577 U.S. 306, 307 (2016) (per curiam).

Respondent also characterizes Alabama's exhaustion requirement as a "neutral rule of judicial administration that coexists alongside § 1983." BIO 15. Respondent relies on *Johnson* v. *Fankell*, 520 U.S. 911 (1997), but respondent's position is irreconcilable with *Johnson*'s rationale. In *Johnson*, this Court held that a § 1983 state-court defendant lacks a federal right to file an interlocutory appeal. The dispositive point was that "the postponement of the appeal until after final judgment will not affect the ultimate outcome of the case." *Id.* at 921. The Court distinguished case law in which the application of a state-law rule was preempted because it "resulted in a judgment dismissing a complaint that would not have been dismissed—at least not without a judicial determination of the merits of the claim—if the case had been filed in a federal court." *Id.* at 920. In this case, by contrast, the application of Alabama's rule "resulted in a judgment dismissing a complaint that

would not have been dismissed—at least not without a judicial determination of the merits of the claim—if the case had been filed in a federal court." *Id.* Hence, Alabama's rule cannot "coexist[] alongside § 1983." BIO 15.

Respondent insists that "Alabama's process for unemployment claimants is designed to promote more efficient review for claimants by potentially obviating the need for judicial review of simple claims and ensuring that judicial review does not occur in a piecemeal fashion." BIO 15-16. But as explained in *Patsy*, the Congress that enacted § 1983 did not share respondent's faith in the virtues of state administrative review. "Of primary importance to the exhaustion question was the mistrust that the 1871 Congress held for the factfinding processes of state institutions … This perceived defect in the States' factfinding processes is particularly relevant to the question of exhaustion of administrative remedies: exhaustion rules are often applied in deference to the superior factfinding ability of the relevant administrative agency." *Patsy*, 457 U.S. at 506. Moreover, as applied to this case, respondent's reasoning is Kafkaesque. Petitioners allege that Alabama is subjecting them to extreme delays in processing their claims and scheduling hearings. Pet. App. 23a (dissenting opinion). Respondent cannot claim that Alabama is somehow promoting "efficient review," BIO 15-16, by *inefficiently* reviewing their claims and then relying on the *lack* of administrative decisions as a basis to foreclose federal litigation designed to speed up the process.

III. THE DECISION BELOW CONFLICTS WITH NUMEROUS STATE SUPREME COURT DECISIONS.

The dissent recognized, and the majority did not dispute, that the exhaustion rule adopted by the Supreme Court of Alabama conflicts with the rule that several other state courts have adopted. *See* Pet. App. 22a-23a. Indeed, the petition for certiorari catalogued decisions from the highest courts of 11 states and the District of Columbia expressly holding that states may not enforce exhaustion requirements in § 1983 cases, with only the high courts of Alabama and South Dakota taking the contrary view. Pet. 20-24.

Respondent does not seriously dispute the existence of this widespread and entrenched split. Indeed, respondent does not cite—much less discuss—*any* of the 12 decisions that squarely conflict with the decision below.

Respondent's three arguments attempting to minimize the split are makeweights. First, respondent asserts that "the preemption inquiry requires taking each case as it comes" and notes that the conflicting decisions are from "a different State's court" and address "a different State's law." BIO 16-17. But the Alabama Supreme Court's reasoning did not turn on the particulars of Alabama's law. Instead, the court categorically held that federal preemption cannot be applied "to compel *State* courts to adjudicate federal claims that lie outside the State courts' jurisdiction." Pet. App. 11a. Moreover, respondent says literally nothing about *how* the Alabama Supreme Court's

decision can be reconciled with decisions from other states. Respondent cannot deny a conflict with high courts from other states merely by observing that other cases come from other states.

Second, respondent contends that the question presented is "purely academic" because, on the merits, there was no due process violation. BIO 18. Respondent insists that "the availability of additional state process that a § 1983 plaintiff has bypassed can doom his due process claim." BIO 18. But as respondent's own cited case states, "'[i]f *adequate* state remedies were available but the plaintiff failed to take advantage of them, the plaintiff cannot rely on that failure to claim that the state deprived him of procedural due process.'" BIO 18 (emphasis added) (quoting *Cotton* v. *Jackson*, 216 F.3d 1328, 1331 (11th Cir. 2000)). Here, petitioners claim that the state remedies were *inadequate* precisely because the state refuses to act on applications, and when it does act, notice is either nonexistent or "woefully inadequate and confusing." Pet. App. 23a (dissenting opinion). Moreover, respondent overlooks that petitioners' § 1983 claim not only asserts a violation of the Due Process Clause, but also a violation of petitioners' federal statutory rights under the Social Security Act. Pet. 7. Respondent does not even attempt to argue that petitioners' argument is "academic" with respect to their statutory claim.

Third, respondent characterizes the split as "stale." BIO 18. While there is indeed longstanding case law that squarely conflicts with the decision below, there is also recent case law that squarely conflicts with the decision below. Pet. 22-23 (citing, among other cases, *Clark* v.

McDermott, 518 P.3d 76 (Mont. 2022) and *Eggleston* v. *Stuart*, 495 P.3d 482 (Nev. 2021)). This frequently recurring question has continuing relevance.

IV. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE AN IMPORTANT QUESTION.

As the petition explained, this is an ideal vehicle to resolve a question of national importance. Pet. 24-26. Respondent cannot show otherwise.

Respondent states that "the claims of at least 17 of the original 26 plaintiffs in this lawsuit were moot," because the plaintiffs have been "paid in full," "had not appealed adverse determinations," or "had hearings scheduled." BIO 20. Respondent also speculates that "more are likely to become moot." *Id.* This statement acknowledges that several plaintiffs' claims are *not* currently moot. Indeed, the Alabama Supreme Court emphasized that exhaustion "is the only jurisdictional question that applies to all the claims brought by all the plaintiffs." Pet. App. 6a. As such, justiciability is not a vehicle problem. *Biden* v. *Nebraska*, 600 U.S. 477, 489 (2023) ("If at least one plaintiff has standing, the suit may proceed").

In any event, *none* of petitioners' claims is moot. Although a plaintiff's claim would be moot if the plaintiff is paid in full, any plaintiffs who have been paid in full have dropped out of this case. Contrary to respondent's contention, a claim does not become moot if the plaintiff "had not appealed adverse determinations." BIO 20. If the plaintiff did not appeal *because of insufficient notice*, the plaintiff's due process claim would still be live—the

court could confer relief by directing Alabama to grant a new hearing. Likewise, a claim does not become moot based on the fact that a hearing was "scheduled" (BIO 20), if there are delays in reaching a determination *following* the hearing.

Respondent also states that the question presented has "little practical significance" because § 1983 plaintiffs can sue in federal court and suggests that petitioners refile their claims in federal court. BIO 20-21. The Alabama Supreme Court held that § 1983, as authoritatively construed by this Court, "denigrate[d] the separate sovereignty of the States." Pet. App. 12a (quotation marks omitted). Respondent cannot seriously claim this holding is too unimportant for this Court. Moreover, this Court has repeatedly decided cases on whether state courts must hear § 1983 claims. *See, e.g.*, *Haywood*, 556 U.S. at 736-37; *Howlett ex rel. Howlett* v. *Rose*, 496 U.S. 356, 359 (1990); *Felder* v. *Casey*, 487 U.S. 131, 147 (1988). In all of those cases, the plaintiff could have sued in federal court, yet that did not deter this Court from granting certiorari. The Court should do the same here.

Finally, respondent argues that failure to exhaust "often will lead to a loss on the merits of the federal claims." BIO 21. Respondent postulates that this might happen if (1) the plaintiff was challenging the adequacy of a state remedy, (2) the state remedy was adequate, and (3) the plaintiff failed to exhaust that remedy. BIO 17-18. That is not the typical § 1983 case, and is certainly not this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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