

In The  
**Supreme Court of the United States**

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TAYLOR CARLISLE, INDIVIDUALLY AND AS  
REPRESENTATIVE MEMBER OF A CLASS, ET AL.,

*Petitioners,*

v.

JOSEPH P. LOPINTO, III, SHERIFF, ET AL.,

*Respondents.*

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

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**RESPONDENT JOSEPH P. LOPINTO, III'S,  
OPPOSITION TO PLAINTIFFS' PETITION**

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## QUESTIONS PRESENTED FOR REVIEW

Petitioners dispute the lower courts' findings of fact and interpretations of law, particularly state law. These are not issues worthy of this Court's consideration under S. Ct. Rule 10.

Petitioners vaguely reference, without proper briefing, what has been described as a Circuit split on the issue of whether the favorable-termination requirement enunciated in *Heck v. Humphrey* and its progeny should apply to a Section 1983 suit brought by a Plaintiff that is no longer in custody.

However, this argument was not pressed or preserved in the lower courts and is not properly before this Court.

Further, even if the Court is inclined to grant cert to address the issue at this or some other time, Respondent submits that this is not the proper case to do so. Indeed, the issue was not properly preserved in the lower courts. Further, in this case, the issue would be purely academic, as it would not affect the parties or the outcome. As set forth below, the Respondents in this case did not cause Petitioners' alleged unconstitutional confinement.

This Court should deny Petition for certiorari.

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## **STATEMENT OF JURISDICTION**

This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1254(1), which confers jurisdiction on the Court over cases in the courts of appeals by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.



## **STATEMENT OF THE CASE**

This case arises out of the Petitioners' participation in a voluntary "drug court" program whereby they were afforded the opportunity to reduce their criminal liability if they were able to satisfactorily complete the program.

Petitioner Carlisle filed his Original Complaint on April 27, 2016. USCA5.73. Petitioners filed their First Supplementing Complaint on August 25, 2016, adding Petitioner Heron as a party Plaintiff. USCA5.249.

After numerous dispositive motions and other pleadings were filed by and between the rest of the parties, then-Jefferson Parish Sheriff Normand answered Petitioners' Complaints on November 17, 2016. USCA5.446.

A plethora of dispositive motions and other filings by and among the parties again ensued.

In its ruling on the Motions to dismiss filed by the co-defendants Joe McNair, Richard Thompson and

Joseph Marino, and by Defendants Kristen Becnel, Tracey Mussal, and Kevin Theriot, the Court summarized the claims being asserted by the Petitioners, in pertinent part, thusly:

In this suit, Plaintiffs challenge the manner in which the Jefferson Parish Drug Court is conducted. In addition to their individual claims, they seek to represent a class of individuals who were similarly sentenced by the Drug Court. The Court will begin by outlining their individual claims.

#### **I. Taylor Carlisle**

Plaintiff Taylor Carlisle was arrested on November 9, 2012 and charged in the 24th Judicial District Court for the Parish of Jefferson with possession of oxycodone in case no. 12-6158 and with possession of marijuana and drug paraphernalia in case no. 12-6159. On January 30, 2015 he entered a guilty plea as to all charges. In case number 12-6159 he was sentenced to time served, while his plea in case number 12-6158 was entered pursuant to Louisiana Revised Statutes § 13:5304, also known as the “Louisiana Drug Court Statute.” He was sentenced to 0-5 years, with the sentence deferred contingent upon his completion of the Jefferson Parish Intensive Drug Court Program while on probation. As part of this program, Carlisle was required to maintain regular contact with the program probation officer and the drug court, attend regular AA meetings, consent to regular drug testing, and present required documentation to the

probation officer and the drug court. He also agreed to waive due process rights in Drug Court proceedings. His primary claim involves allegations that he received excessive sentences from the Drug Court for failure to comply with the terms of the program. On April 28, 2015, he was sanctioned to 90 days flat time. Later, on August 25, 2015, he was sanctioned with six months of flat time for contempt of court when he failed to appear for a hearing. Carlisle brings six claims relative to his experience at Drug Court, essentially averring that the closed courtroom, lack of court reporter, and lack of adversarial proceedings violate his due process rights. He also alleges that these sentences were in excess of those permitted under the state law authorizing the Drug Court and that they are impermissible “flat time” sentences. He argues that this is violation of the Eighth Amendment’s protections against cruel and unusual punishment and the Equal Protection Clause of the Fourteenth Amendment. First, he seeks declaratory and injunctive relief prohibiting the Drug Court from acting in this unconstitutional manner. Second, he brings a § 1983 claim against Sheriff Normand for deliberate indifference in keeping Carlisle in jail for the 90 and 180 day flat time sentences, in violation of Louisiana law and his Equal Protection and Due Process rights. . . .



## **II. Emile Heron**

Plaintiff Emile Heron has been a participant in the Drug Court Program since April 17, 2012. He pleaded guilty to one count of possession of oxycodone. He alleges that he has suffered periods of detention for technical violations of his probation without procedural due process. On July 30, 2013, he was sentenced to 24 hours flat time for failing to complete required community service. He next alleges that, on November 12, 2013, he was sentenced to 30 days flat time for “associating with a felon” despite having never committed that offense. On January 14, 2014, he was sanctioned with 60 days flat time for failing to appear at Drug Court on January 3, 2014. He further avers that he was held for an additional four and a half months at the end of this sentence while waiting for a Long Term Care bed to become available. Eventually, he was sent to Assisi Bridge House in Shreveport for seven and half months of inpatient treatment. Upon release, he was again sanctioned for noncompliance and sentenced to 16 hours of community service due November 18, 2014. It seems that he failed to complete this community services and was therefore sentenced to 48 hours in the Jefferson Parish Correctional Center on December 2, 2014. On February 5, 2015 he was held in contempt for failure to pay \$1,624.50 in fines from the original plea agreement. He was later jailed on December 15, 2015 for failure to complete community service. He alleges that he was held until

January 26, 2016, at which time he was sanctioned with 6 months' time.

USCA5.898-901.

The district court granted in part the above motions and allowed Petitioners to amend their Complaint again. USCA5.915.

The Petitioners filed their Second Amending and Supplementing Complaint on June 13, 2017. USCA5.958-1020.

The additional claims against the Sheriff are found at USCA5.1012-1014. The Petitioners alleged that “[t]he Sheriff detained Carlisle first for 90 days, and then for six months without a showing of good time served/credit” in alleged violation of his rights under the Constitution and state law. USCA5.1013, ¶ 222.

Again, a barrage of dispositive motions and other filings ensued by and between the other litigants. Defendants Joe McNair and McNair & McNair, LLC, Richard Thompson and Joseph Marino, and Kristen Becnel, Tracey Mussal, and Kevin Theriot filed dispositive Motions. The district court once again distilled the claims made by the Petitioners. USCA5.1578-1585. The court observed that “[t]he Second Amending Complaint re-asserts the entirety of the original Complaint and First Supplementing Complaint. It also adds the following parties: Officer Patricia Klees of the Gretna Police Department, alleged to be a team member of Drug Court; McNair & McNair, LLC (“McNair’s Business”); Defendant Joseph McNair in his official capacity

as a member of the Drug Court team; Jefferson Parish; and two unidentified insurance companies. Plaintiffs' Second Amending Complaint alleges additional factual details as to how the Drug Court team . . . allegedly conspired to have the Drug Court judge sanction Plaintiffs in violation of due process." USCA5.1584.

The district court, in ruling on the above motions, dismissed the Petitioners' claims for injunctive and declaratory relief as barred by *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). USCA5.1594. The court reasoned that "[a]n injunction forcing the state to apply good time or time served credits to Plaintiffs' current sentences would result in earlier release, and the only avenue for such a remedy is a writ of habeas corpus." USCA5.1594-1595.

The district court also dismissed Petitioners' Section 1983 "claims for damages [as] barred by *Heck*." The court reasoned as follows:

In *Heck v. Humphrey*<sup>1</sup> the Supreme Court held that before a plaintiff may maintain a § 1983 action for damages resulting from an unconstitutional conviction or confinement, the conviction or confinement must be invalidated in some other proceeding. "Even a prisoner who has fully exhausted available state remedies has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." The rule applies not only to claims that seek

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<sup>1</sup> *Heck v. Humphrey*, 512 U.S. 477 (1994).

damages for the confinement itself, but also those for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid.

Here, Plaintiffs allege that Drug Court violated their constitutional rights by imprisoning them without due process, in the form of probation sanctions, contempt convictions, and time spent waiting. An award of damages to compensate for either the confinement itself or the alleged violations of due process that led to the confinements would necessarily imply that the confinements were invalid. . . .

Plaintiffs plainly seek damages on the grounds that their incarcerations during Drug Court were invalid. That is exactly the type of claim barred by *Heck*.

USCA5.1596-1597.

Petitioners again amended their Original Complaint by filing their Third Amending and Supplementing Complaint in which they substituted and named additional parties. USCA5.1994.

Sheriff Lopinto filed a Motion to Dismiss or, alternatively, for Summary Judgment and sought dismissal of Petitioners' claims against him in their entirety on the basis that they were *Heck* barred as per the district court's previous ruling. USCA5.2803.

The district court granted the motion in part. USCA5.3575. The Court reasoned and held:

This Court previously held that *Heck* applies to Plaintiff's claims for damages based on Plaintiff's incarceration imposed as a sanction in Drug Court. Because Plaintiff's incarceration has not been invalidated in some other proceeding, Plaintiff may not maintain a § 1983 claim based on the invalidity of that incarceration. The *Heck* rule also applies to claims for prospective injunctive or declaratory relief "if a favorable judgment would 'necessarily imply' the invalidity of the prisoner's 'conviction' . . . or the length of the prisoner's confinement." Therefore, for the same reasons set forth in this Court's previous ruling that *Heck* applies to Plaintiff's claims for damages, *Heck* also bars Plaintiff's claims for prospective relief declaring unconstitutional the Drug Court procedures under which Plaintiff was sanctioned to terms of imprisonment.

USCA5.3569-3570.

The district court further held, however, that "*Heck* does not bar a claim for incarceration that was not imposed pursuant to a judicial order. Similarly, *Heck* does not bar claims against the Sheriff for denying Plaintiff good time if the order imposing his incarceration did not specify that punishment. Therefore Plaintiff's claims for wrongful imprisonment against the sheriff remain but only to the extent that the imprisonment or refusal to consider good time was not pursuant to an order from Drug Court." USCA5.3571-3572.

Sheriff Lopinto filed for reconsideration of the district court Order. USCA5.3670. Petitioners also so moved. USCA5.3770. The district court denied both motions. USCA5.4243.

In its denial of Petitioners' motion to reconsider, the district court found that "Plaintiffs essentially argue that judicial orders contained in minute entries are not judicial orders. This argument has no merit. A judicial order is a judicial order whether it is stated in written reasons or whether it is given orally and recorded for the Record in a minute entry." USCA5.4243.

On December 13, 2018, the Sheriff filed a second Motion for Summary Judgment. USCA5.4262 (R. Doc. No. 443).

On February 12, 2019, after Petitioners were able to continue the submission date on the Sheriff's second Motion for Summary Judgment on two separate motions until February 27, 2019, the Petitioners filed for leave of court to file their Fourth Amending and Supplementing Complaint. USCA5.5638. The Sheriff opposed the motion. USCA5.5934.

On March 20, 2019, Magistrate Judge van Meerveld denied Petitioners' Motion to amend for a fourth time. USCA5.6008.

On April 3, 2019, Petitioners appealed the Magistrate Judge's Order. USCA5.6443. The district court denied Petitioners' motion on August 7, 2019. USCA5.6544.

On August 7, 2019, the district court granted in part the Sheriff's second Motion for Summary Judgment. USCA5.6544-6545. The court held that "Plaintiff Carlisle's claim that the Sheriff held him in jail without the authority to do so from August 25, 2015 to September 1, 2015 remains." USCA5.6544-6545. The court held that "Plaintiff Heron's claim that the Sheriff held him in jail from an unspecified day in June 2016 until July 20, 2016 without the authority to do so also remains." USCA5.6544-6545. The court held that the "Sheriff is entitled to summary judgment on the remainder of Plaintiffs' claims against him." USCA5.6544-6545.

Based on the foregoing ruling, on December 20, 2019, the Sheriff filed a third Motion for Summary Judgment and provided evidence that (1) Plaintiff Carlisle was held in the JPCC pursuant to a valid court order from August 25, 2015 to September 1, 2015, and (2) Plaintiff Heron was held in the JPCC pursuant to a valid court order from January 19, 2016 until July 20, 2016. USCA5.7411-7430.

On November 10, 2020, the Petitioners filed to certify their classes with respect to the claims against the Sheriff. USCA5.7629.

On March 23, 2021, the district court denied the Sheriff's latest Motion for Summary Judgment, finding that there were issues of fact that remained based on what the court found to be the confusing nature of some of the documents in evidence. USCA5.8193-8204.

The district court also reiterated for no less than the third time that “the only claims that remain against the Sheriff are Plaintiff Carlisle’s claim that he was wrongfully held in JPCC from August 25, 2015 to September 1, 2015 and Plaintiff Heron’s claim that he was wrongfully held from mid-to-late June 2016 to July 20, 2016. To the extent that Plaintiffs contend that they have additional claims against the Sheriff, the Court emphasizes that these are not before the Court.” USCA5.8202-8203. The district court again explained: “Plaintiffs’ inaccurate reporting claim was brought before this Court for the first time in Plaintiffs’ proposed Fourth Amended and Supplementing Complaint. On March 20, 2019, the Magistrate Judge denied Plaintiffs’ leave to file said complaint, finding that Plaintiffs’ amendment was both untimely and an attempt to shift the claims in response to the Court’s rulings. On August 7, 2019, this Court affirmed the Magistrate Judge’s decision on appeal. On September 27, 2019, this Court denied Plaintiffs’ Motion for Reconsideration of its August 7, 2019 decision. Now, a year and a half later and for the third time, Plaintiff asks this Court to reverse the Magistrate Judge’s decision and address the claims in their proposed Fourth Amended and Supplemental Complaint. The Court declines to do so.” USCA5.8201-8202.

The district court likewise denied Petitioners’ Motion to Certify Class. USCA5.8193-8204. The court first explained that “Plaintiffs’ defined class is a restatement of Plaintiffs’ proposed inaccurate reporting claim. As explained above in response to Plaintiffs’



Motion for Partial Summary Judgment, this claim is not before the Court. Accordingly, Plaintiffs' Motion to Certify such a class is denied." USCA5.8203. The court then explained that [t]o the extent that Plaintiffs ask this Court to certify a class relating to Plaintiffs' wrongful imprisonment claims, Plaintiffs' request is also denied. Plaintiffs each only have one, highly fact-specific claim remaining against the Sheriff. Plaintiffs therefore have not demonstrated that they can "fairly and adequately protect the interests of the class" or that the certified questions "predominate." USCA5.8203-8204.

On August 2, 2021, the Sheriff filed a fourth Motion for Summary Judgment, again attempting to clarify the admittedly confusing record and to try and allay the district court's concerns regarding the evidence. USCA5.8302-8328.

On November 4, 2021, the Court ruled on the Defendants most recent Motion for Summary Judgment. USCA5.9782. The Court held thusly: "Considering this Motion and the related opposition; **IT IS ORDERED** that the Sheriff's Motion is **GRANTED IN PART AND DENIED IN PART**. The Court grants Summary Judgment to the Sheriff as to Plaintiff Taylor Carlisle's claim that he was wrongfully held in JPCC from August 25, 2015 to September 1, 2015. The Court denies Summary Judgment to the Sheriff as to Plaintiff Emile Heron's claim that he was wrongfully held in JPCC from mid-to-late June 2016 to July 20, 2016. Reasons for this Order will follow." USCA5.9782.

An Order and Reasons did not issue. Rather, on November 4, 2021, the parties attended a pretrial conference. USCA5.9794. At the conference, the parties and the district court Judge discussed the court's Order. The court expressed that it had concerns regarding the sufficiency and authenticity of the record evidence on Summary Judgment vis-à-vis Plaintiff Heron, but that it was inclined to revisit the Court's ruling if the evidentiary concerns were remedied.

Following the pretrial conference, the Court ordered that "Defendants are instructed to file a motion to reconsider the Court's Order (Doc. 680) granting in part and denying in part their Motion for Summary Judgment. Defendants are also instructed to supplement the motion to reconsider with exhibits as discussed in the pretrial conference." R. Doc. 686.

Accordingly, the Sheriff filed a supplemental memorandum in support of his Motion for Summary Judgment. USCA5.9800-9814.

Again, the only issues before the district court were "the claims for wrongful imprisonment against the sheriff remain but only to the extent that the imprisonment or refusal to consider good time was not pursuant to an order from Drug Court." USCA5.3571-3572.

On his final Motion, the district court found that the Sheriff had cured the evidentiary defects that the court had previously perceived. USCA5.9978. The district court held that the "evidence proves that pursuant to a valid court order, Heron was incarcerated from

mid-to-late June until July 20, 2016, the date of his revocation hearing. The evidence also indicates that Heron received credit for time served. Heron was in detention from December 15, 2015 until January 19, 2016 – at which point he was ordered to serve six months for contempt and be held for revocation until July 20, 2016. On January 26, 2016, the court entered another order amending its January 19 order to give Heron credit for time served between December 15 and January 26. This means Heron’s contempt sentence ended around early June, which is when he would have been released had he not been held for revocation until July 20, per the January 19 court order.” USCA5.9979. The district court therefore dismissed the case against the Sheriff with prejudice. USCA5.9980.

On January 19, 2022, the district court entered judgment in favor of the Defendants and dismissed the case in its entirety, with prejudice. USCA5.9995.

Petitioners appealed to the United States Fifth Circuit Court of Appeal on January 21, 2022. USCA5.9996.

On May 10, 2023, the Fifth Circuit affirmed the district court. *Carlisle v. McNair*, 22-30031 (5th Cir. May 10, 2023). The Fifth Circuit found that Petitioners only properly raised five issues on appeal, just two related to these Respondents. *Id.* The Fifth Circuit explained that “Appellants’ briefing does not clearly convey their arguments. Appellants listed eighteen issues but failed to adequately brief most of those positions with legal arguments and citations to the record. Failure to adequately brief an issue on appeal

constitutes waiver. *See Roy v. City of Monroe*, 950 F.3d 245, 251 (5th Cir. 2020). And an Appellant’s contentions must provide citations to the authorities and parts of the record on which the Petitioner relies, as well as ‘a short conclusion stating the precise relief sought.’” *Id.*

Regarding the first issue raised vis-à-vis these Respondents, the Fifth Circuit summarily rejected Petitioners’ arguments, reasoning and holding thusly: “Appellants argue that the district court erred in rejecting their overdetention claim against Sheriff Joseph Lopinto. But the district court found, and Appellants do not contest, that authorities detained them at all times pursuant to court orders. Appellants’ claim therefore attacks the drug court’s sentence and is barred by *Heck v. Humphry*, which requires a § 1983 plaintiff whose claims would necessarily ‘render a conviction or sentence invalid’ to prove that the conviction or sentence has been reversed on appeal or collateral attack. Appellants can make no such showing here, so their overdetention claim may not proceed under § 1983.” (internal footnotes and citations omitted). *Id.*

Regarding the second issue raised vis-à-vis these Respondents, the Fifth Circuit likewise summarily rejected Petitioners’ arguments, reasoning and holding: “Appellants challenge the district court’s denial of their motion to file a Fourth Amended Complaint. A ‘district court properly exercises its discretion under Rule 15(a)(2) when it denies leave to amend for a substantial reason, such as undue delay, repeated failures to cure deficiencies, undue prejudice, or futility.’ The

district court reasoned that Appellants were ‘simply shifting their claims in response to the Court’s rulings, and that the Sheriff would be unduly prejudiced at this stage of litigation if Plaintiffs were allowed to significantly amend the claims against him, particularly given the status of his pending Motion for Summary Judgment.’ Appellants argue that they had good cause to amend and that the district court lacked a substantial reason to deny the motion but provide no reasons specific to their case. We are satisfied that the district court did not abuse its discretion in denying leave to file a sixty-page amended complaint in these circumstances.” *Id.*

The Fifth Circuit Court of Appeals concluded: “Appellants fail to show district court error in any orders rejecting claims brought against individuals conducting work related to the Drug Court. We AFFIRM.” *Id.*



## SUMMARY OF THE ARGUMENT

The Petition disputes the lower courts’ findings of fact and interpretations of law, particularly state law.<sup>2</sup>

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<sup>2</sup> Indeed, by way of an example, and as held by another panel of the Fifth Circuit affirming Plaintiffs’ denial of habeas relief “Carlisle’s contention that the contempt judgment exceeded the drug court’s statutory authority pleads a violation only of state law and fails to state a cognizable basis for Section 2254 relief.” See *Beazley v. Johnson*, 242 F.3d 248, 261 (5th Cir. 2001). *Carlisle v. Lopinto*, 20-30720 (5th Cir. Jun 01, 2022).

These are not issues worthy of this Court's consideration under S. Ct. Rule 10.

Further, the Petitioners' vague reference, without proper briefing, to a Circuit split on the issue of whether the favorable-termination requirement enunciated in *Heck v. Humphrey* and its progeny should apply to a Section 1983 suit brought by a Plaintiff that is no longer in custody, was not pressed or preserved in the lower courts and is not properly before this Court.

Moreover, even if the Court is inclined to grant cert to address the issue at this or some other time, Respondent submits that this is not the proper case to do so. Indeed, the issue was not properly preserved in the lower courts and would otherwise not affect the parties or the outcome in this case.

Respondents submit that the Petition should be denied.

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## ARGUMENT

### **I. THE PETITIONERS DID NOT PRESS OR PRESERVE THE ISSUE REGARDING THE APPLICATION OF THE *HECK* FAVORABLE TERMINATION RULE TO PERSONS NOT IN CUSTODY.**

Questions posed for appellate review but inadequately briefed are considered abandoned. *See Friou v. Phillips Petroleum Co.*, 948 F.2d 972, 974 (5th Cir.

1991); *Harris v. Plastics Mfg. Co.*, 617 F.2d 438, 440 (5th Cir. 1980).

Here, the Petitioners did not press the issue in the Court of Appeal. Petitioners did not even cite *Spencer v. Kemna*, 523 U.S. 1 (1998) or *Muhammad v. Close*, 540 U.S. 749 (2004) in their brief.

Furthermore, Petitioners do not adequately press the issue in their Petition to this Court. In their nearly forty (40) pages of argument, Petitioners only glancingly mention the issue.

The issue is not properly before the Court.

The Petition should be denied.

## **II. RESOLUTION OF THE ISSUE OF THE CIRCUIT SPLIT WOULD NOT ALTER THE OUTCOME IN THIS CASE.**

Even if the Court is inclined to grant cert to address the issue at this or some other time, Respondent submits that this is not the proper case to do so. Indeed, the issue was not properly preserved in the lower courts and would otherwise not affect the parties or the outcome in this case.

At base, Petitioners challenge the administration of the Drug Court in Jefferson Parish.

The Drug Court Program, as Petitioners concede, is not a function of or administered by the Respondent.

The Respondent's only role in the program was to execute the orders of the Drug Court.

The Respondent did not cause the Petitioners' detention, arrest, conviction or sentence.

Regardless of what Petitioners think of the court orders sentencing them for contempt of the Drug Court, the Respondent was duty bound to execute them.

Pursuant to Article 5, Section 27 of the Louisiana Constitution of 1974, a Sheriff "shall execute court orders and process." Likewise, per La. R.S. 13:5539(B), "[e]ach sheriff or deputy . . . shall execute all writs, orders, and process of the court or judge thereof directed to him."

Respondent submits that the issue would thus be purely academic.

Therefore, this is simply not the case to address this important issue.

The Petition should be denied.



## CONCLUSION

The Petition disputes the lower courts' findings of fact and interpretations of law, particularly state law. These are not issues worthy of this Court's consideration under S. Ct. Rule 10.

Further, the Petitioners' vague reference, without proper briefing, to a Circuit split on the issue of



whether the favorable-termination requirement enunciated in *Heck v. Humphrey* and its progeny should apply to a Section 1983 suit brought by a Plaintiff that is no longer in custody, was not pressed or preserved in the lower courts and is not properly before this Court.

Moreover, even if the Court is inclined to grant cert to address the issue at this or some other time, Respondents submit that this is not the proper case to do so. Indeed, the issue was not properly preserved in the lower courts and would otherwise not affect the parties or the outcome in this case.

Respondents submit that the Petition should be denied.

Respectfully submitted,

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