No. 24-5444

IN THE

SUPREME COURT OF THE UNITED STATES

DELANO MEDINA,— PETITIONER
(Your Name)

vs.

JENNIFER MURPHY; REBEKAH RYAN; JR HALL,— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Tenth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Delano Medina, #129304
Colorado Territorial Correctional Facility (CTCF)
P.O. Box 1010
Canon City, CO 81215-1010

QUESTION(S) PRESENTED

In 1973, this Court announced an exception to the broad language of § 1983 when it held that a prisoner must bring a suit for equitable relief that challenges "the fact or duration of confinement" as a habeas corpus petition. See *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). And, in *Wilkinson v. Dotson*, 125 S. Ct. 1242 (2005) this Court limited the exception when it held that a prisoner may pursue a § 1983 claim challenging the constitutionality of parole eligibility procedures.

Here, Mr. Medina first challenged the parole eligibility procedures of the Colorado Department of Corrections Time Computation Office in a § 1983 only to be told he must instead file a habeas corpus. Then, when he filed § 2241 habeas corpus he was told the opposite, that he must file a § 1983. So who's right? They both cannot be right. This is a classic Catch-22 situation.

The question here is what remedy is the proper one for challenging over-detention and a sentence miscalculation? Habeas Corpus or 42 U.S.C. § 1983? Or both? Courts have granted relief under both habeas and 1983. Medina has sought both remedies only to be told he has to file the other. This is a typical Catch-22 situation were the lower courts are simply telling a litigant to pursue an alternate remedy so they can avoid dealing with it. Shame on them for taking the easy way out. This Court should answer this question not just for Mr. Medina, but for the thousands of other litigants who are wrongfully imprisoned past their release date and have no clear path to freedom. It will save the time and resources of many who are just trying to return to their loved ones. It raises a controversial issue of extreme important public interest and should be settled once and for all.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix_to the petition and is

[X] reported at *Medina v. Murphy*, 2024 U.S. App. LEXIS 16265, 2024 WL 3289638 (10th Cir. July 3, 2024); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is reported at *Medina v. Murphy*, 2023 U.S. Dist. LEXIS 234114 (D. Colo. December 11, 2023); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix_____to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the_____court appears at Appendix_____to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 3, 2024.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on_____(date) in Application No.____A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from state courts:

The date on which the highest state court decided my case was_____. A copy of that decision appears at Appendix_____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on_____(date) in Application No.____A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment Due Process Clause states:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Mr. Medina is a state prisoner in the custody of the Colorado Department of Corrections ("CDOC"). He is incarcerated at the Colorado Territorial Correctional Facility in Cañon City, Colorado. He brought an action under 42 U.S.C. § 1983 against several Colorado state officials, suing each in an individual and official capacity.

The complaint presented a single procedural due process claim under the Fourteenth Amendment as follows: "The CDOC's failure to execute and accurately compute sentences is wrongfully denying Medina the correct parole eligibility date. This denies parole consideration in violation of procedural due process; there also is a deprivation of an adequate state judicial process to correct the problem." See attched Amended Complaint.

Specifically, Mr. Medina argues that his parole eligibility date (PED) should be calculated by using a sentence effective date ("SED") of November 21, 2005, which matches to a 2005 prison sentence. On the 2005 sentence, Mr. Medina was mistakenly released to a 1-year term of parole on September 28, 2011, with the sentence being mistakenly considered discharged as of August 24, 2012. But legally the sentence was not complete.

The CDOC, however, has not used the 2005 sentence in calculating Mr. Medina's current PED because the CDOC considers incorrectly the 2005 sentence to have been fully served and discharged as of August 2012. But Medina can definitively prove the sentence was discharged prematurely because (1) the CDOC paroled him too early by failing to apply a consecutive

18-month sentence from an intervening 2010 case that has now been amended to clarify it was actually consecutive, and (2) the CDOC released him to serve a 1-year parole term instead of a 3-year parole term mandated by the sentence statute Colo. Rev. Stat. § 18-1.3-401 (1)(a)(V)(E).

Had the CDOC applied the consecutive 18-month sentence and the 3-year parole term, Mr. Medina would not have discharged those previous sentences before being sentenced in his most recent cases. Because he should still have been serving the 2005 and 2010 sentences at the time of his most recent sentencing, and because state law requires the CDOC to compute multiple sentences under the "one continuous sentence" method, his PED should be calculated by using the earliest SED, which is November 21, 2005.

Medina concludes that these erroneous calculations under Colorado's parole statutes, coupled with the defendants' failure to correct the erroneous calculations, amount to a violation of his Fourteenth Amendment due process rights. The CDOC has developed an unwritten policy of intentionally and maliciously miscalculating inmate's sentence to keep them over-detained longer than the sentence allows. This should have been remedied in state courts, but the state court also refuse to correct the problem. Then when Medina petitioned the Federal courts they gave him the run-around. When a person is wrongfully being denied his accurate release date and is put in an impossible Catch-22 situation there must be an adequate remedy for relief. Medina has been denied any meaningful remedy thus far and should not had to even come this far. But here he is! Hopefully this Court helps.

REASONS FOR GRANTING THE PETITION

This case provides a rare opportunity for this Court to clarify the never-ending confusion of federal courts between the lines drawn between habeas corpus and § 1983. In *Wilkinson v. Dotson*, 125 S. Ct. 1242 (2005), two Ohio state prisoners challenged the denial of their parole under the *ex post facto* and Due Process Clauses by filing § 1983 actions in federal district court. Just like this case, the federal district court concluded that the prisoner's case had to be brought, if in anything, as a habeas petition.

The Sixth Circuit reversed the lower courts, concluding that the prisoners' claims could be heard under § 1983. Ohio appealed to this Court, where it erroneously asserted that the prisoners had challenged their parole proceedings because they hoped for speedier release; thus, the state argued, their claims challenged the duration of their confinement and could be brought only in habeas. This Court rejected this claim, explaining that, because paroling authorities still possessed discretion to deny the prisoners release even if they succeeded in challenging the parole procedures, "neither prisoner's claim would necessarily spell speedier release," and neither "lies at the core of habeas corpus." Id. at 1248.

Wilkinson outlined a series of the Supreme Court's cases that have described the line Congress has implicitly drawn between § 1983 and habeas: *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Wolff v. McDonnell*, 418 U.S. 539 (1974); *Heck v. Humphrey*, 512 U.S. 477 (1994); and *Edwards v. Balisok*, 520 U.S. 641 (1997). By contrast, in *Wolff v. McDonnell*, the prisoners sought—not only the actual restoration of the good time credits themselves—but also a declaration

that the prison disciplinary procedures were invalid. In that case, this Court concluded that while, per Preiser, the prisoners' good time credits could not be restored in a civil rights action, claims for injunctive and declaratory relief could be brought via § 1983, because these types of prospective relief would not mean speedier release. Those are the exact two types of relief Medina sought.

Now, after Wilkinson, it should be crystal clear that Congress intended habeas to be the exclusive remedy *only* for those claims that fall in the "core habeas" area where success would necessarily shorten the length of confinement.

Differentiating Between 42 U.S.C. § 1983 and Habeas Corpus Petitions

A. The Intersection between Habeas Corpus and 42 U.S.C. § 1983

Prior to Wilkinson, this Court considered the intersection between the habeas corpus statute, 28 U.S.C. § 2254, and 42 U.S.C. § 1983 in the four key decisions, beginning with *Preiser v. Rodriguez* in 1973. In Preiser, three New York prisoners brought § 1983 actions, combined with petitions for habeas corpus relief, against the New York State Department of Correctional Services.

The prisoners sought injunctive relief to restore their good-time credits, which were revoked through allegedly unconstitutional disciplinary proceedings. For each prisoner, a judgment restoring the good-time credits would result in immediate release from prison. This Court opined that their action "fell squarely within [the]traditional scope of habeas corpus" regardless of whether restoration of the good-time credits resulted in immediate release or simply shortened their confinement. Id. at 487.

The Court reasoned that exhaustion of state remedies, required by habeas corpus, but not by a § 1983 claim, is "rooted in considerations of federal-state comity," in which the state's interest is especially strong. Thus, the Court held that when a state prisoner challenges "the very fact or duration of his physical imprisonment . . . his sole federal remedy is a writ of habeas corpus." The Preiser decision specifically did not eliminate § 1983 claims, but instead reaffirmed that "a § 1983 action is a proper remedy for ... a constitutional challenge to the conditions of . . . prison life." Id. at 499.

Cases concerning parole decisions may be divided into two groups, those involving parole release or eligibility proceedings and those involving parole revocation or termination proceedings. The two types of proceedings differ in regard to the nature of the prisoner's interest and the objectives of the parole board. This is a case regarding the former issue, parole eligibility procedures.

The Circuit Court of Appeals are Split on this Issue.

Many circuit courts hold that an inmate may file § 1983 suit challenging the constitutionality of parole eligibility procedures. See *Moran v. Sondalle*, 218 F.3d 647, 650-51 (7th Cir. 2000) (holding § 1983 prisoner litigation permissible unless prisoners "want to challenge their convictions, their sentences, or administrative orders revoking good-time credits or equivalent sentence shortening devices . . . because they contest the fact or duration of custody"); *Anyanwutaku v. Moore*, 151 F. 3d 1053, 1057 (D.C. Cir. 1998) (declaring that inmate may file § 1983 suit attacking constitutionality of prison's calculation of parole eligibility date because new parole eligibility hearing does not necessarily

imply the invalidity of his sentence); *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997) (holding that inmate may file § 1983 suit to challenge unconstitutional conditions of confinement and procedures so long as it will not expedite his release); *Neal v. Shimoda*, 131 F.3d 818, 824 (9th Cir. 1997) (reasoning that inmate may file a § 1983 suit to challenge classification as sex offender because successful result would only determine eligibility for parole and would not expedite his release); *Williams v. Hopkins*, 130 F.3d 333, 335-36 (8th Cir. 1997) (finding that prisoners may challenge conditions of confinement "or the method by which a sentence is being carried out" under § 1983); but see *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997) (stating that challenges to parole denials "implicate the validity of continued confinement" even if parole board employed improper procedures to reach its conclusion).

The Tenth Circuit holds these claims to be only habeas corpus. See *Tillman v. Bigelow*, 484 Fed. Appx. 286 (10th Cir. August 7, 2012) (Tillman's claims essentially challenge the execution of his sentence and must be brought, if at all, in a petition for writ of habeas corpus under 28 U.S.C. § 2241. citing *Davis v. Roberts*, 425 F.3d 830, 833 (10th Cir. 2005)). And, as the Tenth Circuit told Medina: Thus, courts must "ensure that state prisoners use only habeas corpus (or similar state) remedies when they seek to invalidate the duration of their confinement—either directly through an injunction compelling speedier release or indirectly through a judicial determination that necessarily implies the unlawfulness of the State's custody." *Medina v. Murphy*, at 4, 2024 U.S. App. LEXIS 16265 (10th Cir. July 3, 2024), citing *Wilkinson v. Dotson*, at 81.

The court then held: "We need not decide whether Mr. Medina sufficiently pled a due process liberty interest because we construe his complaint as seeking immediate or speedier release from confinement. His claim is therefore cognizable only in a habeas corpus action, as the district court alternatively held."

This Court and the courts of appeals have adjudicated the merits of many parole challenges in federal habeas corpus proceedings. See, e.g., *California Dep't of Corrections v. Morales*, 514 U.S. 499, 131 L. Ed. 2d 588, 115 S. Ct. 1597 (1995); *Mickens-Thomas v. Vaughn*, 321 F.3d 374 (CA3 2003); *Nulph v. Faatz*, 27 F.3d 451 (CA9 1994) (per curiam); *Fender v. Thompson*, 883 F.2d 303 (CA4 1989); *Thomas v. McDonough*, 228 Fed. Appx. 931, 2007 U.S. App. LEXIS 14099 (11th Cir. 2007) (Inmate's claim that state Parole Commission had committed ex post facto violation by performing only biannual parole reviews, where annual parole reviews had been required at time of inmate's conviction in 1969 for second-degree murder, was properly cognizable under § 1983 and not under § 2254).

B. Procedural History of *Dotson v. Wilkinson*

In *Dotson v. Wilkinson*, William Dotson and Rogerico Johnson individually brought § 1983 actions in federal district court against the Ohio Department of Rehabilitation and Corrections. Each prisoner sought injunctive and declaratory relief against the procedures used by their respective parole boards, which used guidelines adopted after each prisoner's conviction. In each case, the district court concluded that the claims must be brought through a habeas corpus petition rather than through a § 1983 claim. After the district court's dismissal of the

cases as not cognizable under § 1983, the Sixth Circuit consolidated the cases and heard the appeals en banc. On appeal, the Sixth Circuit reversed, holding that "procedural challenges to parole eligibility and parole suitability determinations ... do not 'necessarily imply' the invalidity of the prisoner's conviction or sentence and, therefore, may appropriately be brought as civil rights actions, under 42 U.S.C. § 1983 ...." Medina's claim was nearly identical to Dotson.

For the purpose of a fair judgment on the merits of a case, the state's assumption that the prisoner hopes that his legal claims will result in a reduced sentence is both irrelevant and speculative. The holding in Wilkinson indicates that a deciding factor between a cognizable § 1983 claim and one which must be brought under habeas is the actual relief sought, rather than the remote and uncertain consequences of a favorable judgment. The possibility of earlier release from a parole hearing "is too tenuous here to achieve [the state's] legal door-closing objective."

Dotson's claim did not challenge the conditions of his confinement; it alleged that the Ohio Parole Board merely used the wrong procedures to conclude that he was not entitled to a parole decision at all. See *Dotson v. Wilkinson*, 300 F.3d 661, 662 (6th Cir. 2002) (articulating that Dotson challenged Ohio Parole Board's application of new parole guidelines to deny parole hearing); *Wilkinson,* 125 S. Ct. at 1248 (recognizing that if Dotson wins § 1983 suit "it means at most new eligibility review, which at most will speed consideration of a new parole application")

When a prisoner submits a claim under § 1983, the claim rests at the

intersection of § 1983 and the habeas corpus statute. *Heck v. Humphrey*, 512 U.S. 477, 479 (1994). In *Heck v. Humphrey*, this Court stated that if the section 1983 complaint attacks the validity of the conviction or sentence, then it should be dismissed.

Here, Medina's claim simply sought a correct parole eligibility date so he would have a timely parole hearing. This in no way attacks his conviction or sentence. In *Wilkinson v. Dotson*, it was held that § 1983 remained available for procedural challenges where success would not necessarily spell immediate or speedier release. And, that is exactly what Medina's claim is.

The Court noted that in Preiser it had held that a § 1983 action will not lie when a state prisoner challenges "the fact or duration of his confinement" and seeks either "immediate release from prison" or the "shortening" of his term of confinement." Id., at 79. And, Medina made no such claim.

The Wilkinson Court concluded that its precedent cases, "taken together, indicate that a state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration." Id., at 82.

Applying those principles to this case, this Court can easily concluded that Medina's claims were cognizable under section 1983, i.e., they did not fall within the implicit habeas exception. Medina sought relief that would render invalid the state procedures used to deny parole eligibility via an injunction.

Thus, a favorable judgment would not necessarily imply the invalidity of his convictions or sentences. Because neither claim would necessarily spell speedier release, neither lay at "the core of habeas corpus".

Justice Breyer delivered the opinion of the 8-1 Court in *Wilkinson v. Dotson*. Justice Kennedy, the lone dissenter, believes that "it is elementary that habeas is the appropriate remedy for challenging a sentence." In his view, challenging a parole proceeding, or essentially seeking a new parole hearing, is no different than challenging a sentencing proceeding, which the Court would require to be filed as a habeas petition. He states that it is clear that respondents' claims are cognizable in habeas corpus proceedings and, thus, habeas should be the "exclusive vehicle" for seeking relief.

So again, which one is it, various courts say § 1983 is the proper remedy, but the overwhelming majority of courts say habeas corpus is the sole remedy. While the lower courts are struggling with those issues, help may be on the way if this Court grants certiorari. Finally, the question of whether a prisoner who challenges the procedures used to determine parole release can be answered in a definitive yes. This case provides a rare opportunity to clarity the confusion between a claim under § 1983 that should be brought under habeas corpus.

When a prisoner submits a claim under § 1983, the claim rests at the intersection of § 1983 and the habeas corpus statute. True, Dotson and Johnson instituted their § 1983 actions attacking their parole eligibility and parole suitability proceedings precisely because they believed that success would result in speedier release from prison. But "the connection between the constitutionality

of the prisoners' parole proceedings and release from confinement is too tenuous" to relegate them to habeas corpus as their exclusive remedy.

The prisoners' claims are cognizable under § 1983, i.e., they do not fall within the implicit habeas exception. Dotson and Johnson sought relief that will render invalid the state procedures used to deny parole eligibility (Dotson) and parole suitability (Johnson) .... Neither ... sought an injunction ordering his immediate or speedier release into the community .... [A] favorable judgment will not "necessarily imply the invalidity of [their] conviction[s] or sentence[s] .... Success for Dotson does not mean immediate release from confinement or a shorter stay in prison; it means at most new eligibility review, which at most will speed consideration of a new parole application. Success for Johnson means at most a new parole hearing at which [the state] parole authorities may, in their discretion, decline to shorten his prison term .... Finally, the prisoners' claims for future relief (which, if successful, will not necessarily imply the invalidity of confinement or shorten its duration) are yet more distant from that core. Id. at 82.

The Court's decision in *Wilkinson v. Dotson* allows a prisoner to challenge state parole procedures under § 1983, but does not preclude the same challenge under the federal habeas statute. See id. at 1247-48 (articulating that state prisoner can pursue § 1983 claim if underlying confinement or sentence is not challenged). This Court should help settle a controversial issue and help provide all the lower courts guidance by clearing-up the confusion by considering this case for review and enlightening the distinction between habeas and § 1983.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

S/ Delano Medina

Date: August 20, 2024