No. 18-1013

IN THE

Supreme Court of the United States

EDWARD WINSTEAD, ET AL.,
Petitioners,

v.

ANTHONY JOHNSON,
Respondent.

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

SUPPLEMENTAL BRIEF IN SUPPORT OF CERTIORARI

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Petitioners respectfully submit this supplemental brief to address *McDonough v. Smith*, No. 18-484 (June 20, 2019).

I. THE DECISION BELOW CONFLICTS WITH *WALLACE*.

The court of appeals held in this case that the rule of *Heck v. Humphrey*, 512 U.S. 477 (1994), which delays accrual of certain section 1983 claims until a conviction has been overturned, applies to all claims concerning constitutional violations that occur during the criminal trial, including *Miranda* violations like

the one respondent alleged. App. 20a-21a. In Part I of our petition, we explain that this ruling of the court of appeals conflicts with *Wallace v. Kato*, 549 U.S. 384 (2007), which holds that "the *Heck* rule for deferred accrual is called into play only when there exists 'a conviction or sentence that has *not* been . . . invalidated,' that is to say, an 'outstanding criminal judgment.'" 549 U.S. at 393 (quoting *Heck*, 512 U.S. at 486-87). The rule thus "delays what would otherwise be the accrual date of a tort action until the setting aside of an *extant conviction* that success in the section 1983 action would impugn." *Id.* *Wallace* explained that the *Heck* rule did not apply to the claim in that case because when that claim accrued, "there was in existence no criminal conviction that the cause of action would impugn." *Id.* The decision of the court of appeals in this case conflicts with that holding in *Wallace* because there is never an "extant conviction" when a *Miranda* violation occurs at a criminal trial that precedes the conviction.

This Court held in *McDonough* that "[t]he statute of limitations for a fabricated-evidence claim like McDonough's does not begin to run until the criminal proceedings against the defendant (*i.e.*, the §1983 plaintiff) have terminated in his favor." Slip op. 3-4. The Court gave two reasons for this, neither of which addresses the question presented here.

First, the Court concluded that malicious

prosecution is the common-law tort most analogous to McDonough's fabricated-evidence claim," slip op. 6, and explained that favorable termination is the accrual rule for malicious prosecution, *id.* at 5-6. But malicious prosecution is *not* analogous to a *Miranda* claim. "Common-law malicious prosecution," the Court explained, "requires showing, in part, that a defendant instigated a criminal proceeding with improper purpose and without probable cause." Slip op. 6. Respondent's *Miranda* claim plainly does not fit that description.

Second, the Court explained that McDonough's "claims challenge the validity of the criminal proceedings against him in essentially the same manner as the plaintiff in *Heck* challenged the validity of his conviction[,]" slip op. 9, and that "the pragmatic considerations discussed in *Heck* apply generally to civil suits within the domain of habeas corpus, not only to those that challenge convictions," *id.* (citing *Preiser v. Rodriguez*, 411 U.S. 475, 490-91 (1973)). That discussion likewise does not address the question presented here. Unlike in *McDonough*, respondent was convicted, and he challenged only his conviction based on the alleged *Miranda* violation at his trial – that claim did not otherwise challenge the criminal proceedings against him. This Court's review is therefore still necessary to make clear that Wallace's extant-conviction holding continues to apply to claims like respondent's.

II. THIS COURT SHOULD RESOLVE THE ENTRENCHED, DEEPENING CIRCUIT CONFLICT REGARDING THE PROPER INTERPRETATION OF *HECK* FOOTNOTE SEVEN.

As we explain in our petition, this Court's review is necessary to resolve a longstanding and deepening conflict among the circuits regarding the proper interpretation of this Court's decision in *Heck*. Pet. 21-35. Specifically, ambiguities in *Heck* footnote seven have led to "confusion, and considerable litigation," in the lower courts, which have now adopted three different legal standards for determining whether a particular claim is barred under *Heck*: the majority's fact-based approach, a minority categorical approach based on the availability of harmless-error review, and the Seventh Circuit's newest categorical approach based on whether the alleged error occurred during trial. *Id.* at 24-26. Because *Heck*'s effect on the accrual of section 1983 claims is litigated regularly in the courts of appeals, and, in light of the conflict, confusion, and uncertainty on that subject, this Court's guidance on this subject is vital. *Id.* at 27-28.

McDonough does not provide that guidance, nor does it purport to do so. Rather, this Court stated only that McDonough's "claim 'necessarily' questions the validity of a state proceeding," Slip Op. 10 (quoting *Heck*, 512 U.S. at 487), without addressing

which, if any, of the above approaches to *Heck* the courts should apply in resolving such questions. Nor does this Court address the conflict that *Heck* footnote seven has precipitated.

Absent guidance from this Court on how to properly interpret and apply *Heck*, and the footnote from *Heck* that has long confounded courts and litigants, the longstanding circuit split our petition identifies will persist. This Court should grant certiorari to offer a clear, definitive legal standard for the lower courts and litigants to apply when determining whether a section 1983 claim is barred by *Heck*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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