No. 18–485

In the Supreme Court of the United States

EDWARD G. MCDONOUGH,

Petitioner,

v.

YOUEL SMITH, INDIVIDUALLY AND AS SPECIAL DISTRICT ATTORNEY FOR THE COUNTY OF RENSSELAER, NEW YORK, AKA TREY SMITH,

Respondent.

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

BRIEF OF FEDERAL COURTS SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

JON LOEVY
Counsel of Record
STEVEN ART
DAVID B. OWENS
TONY BALKISSOON
JULIA RICKERT
MEGAN PIERCE
LOEVY & LOEVY
311 North Aberdeen St.
Chicago, IL 60607
(312) 243-5900
jon@loevy.com

March 4, 2019

QUESTION PRESENTED

Whether the statute of limitations for a Section 1983 claim based on fabrication of evidence in criminal proceedings begins to run when those proceedings terminate in the defendant's favor (as the majority of circuits has held) or whether it begins to run when the defendant becomes aware of the tainted evidence and its improper use (as the Second Circuit held below).

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

STATUTES

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*[1]

This brief is filed on behalf of professors Leah Litman, James Pfander, Suzanna Sherry, Amanda Tyler, and Stephen Vladeck. Their principal fields of study are federal jurisdiction, federal procedure, and constitutional law, subjects they have researched and written about extensively. Their interest in this case is simply that of friends of the Court.

Leah Litman is an Assistant Professor of Law at the University of California, Irvine School of Law. Her scholarship focuses on how federalism and the separation of powers influence constitutional interpretation and procedural justice, particularly in the area of criminal law. Professor Litman's work is published in the California Law Review, the Michigan Law Review, the Virginia Law Review, the Duke Law Journal, and the Northwestern Law Review. In the past, she taught at Stanford Law School and Harvard Law School, and served as a law clerk to Justice Anthony Kennedy and Judge Jeffrey Sutton.

James Pfander is the Owen L. Coon Professor of Law at Northwestern University Pritzker School of Law. Professor Pfander is the author of dozens of

---

[1] Pursuant to Rule 37.6, *amici* certify that no counsel for a party has authored this brief in whole or in part and that no one other than *amici* and their counsel has made any monetary contribution to the preparation and submission of this brief. All parties have consented to the filing of this brief.

books and articles on the Article III judiciary and federal civil procedure. A member of the American Law Institute, Professor Pfander is a past chair of the federal courts and civil procedure sections of the Association of American Law Schools.

Suzanna Sherry is the Herman O. Loewenstein Chair in Law at Vanderbilt Law School. Her research and writing on constitutional law has earned her national recognition as one of the most well-known scholars in the field. Professor Sherry is the author of more than 75 books and articles. In addition to constitutional law, she has written extensively on federal courts and federal-court procedures.

Amanda Tyler is a Professor of Law at the University of California, Berkeley School of Law. Her scholarship focuses on the Supreme Court and lower federal courts, constitutional law, and civil procedure. Professor Tyler is a co-editor of Hart and Wechsler's The Federal Courts and the Federal System, and she has recently published Habeas Corpus in Wartime: From the Tower of London to Guantanamo Bay, a comprehensive history of habeas corpus.

Stephen Vladeck is the A. Dalton Cross Professor in Law at the University of Texas School of Law. His scholarship focuses on federal jurisdiction and constitutional law, and he is a nationally recognized expert on the role of the federal courts in the war on terrorism. Professor Vladeck is an elected member of the American Law Institute, a senior editor of the Journal of National Security Law and Policy, a Distinguished Scholar

at the Robert S. Strauss Center for International Security and Law, the Supreme Court Fellow at the Constitution Project, a member of the Advisory Committee to the ABA Standing Committee on Law and National Security, and a fellow at the Center on National Security at Fordham University School of Law.

SUMMARY OF ARGUMENT

The Court should adopt a rule that § 1983 claims challenging state criminal proceedings do not accrue until those proceedings terminate in the criminal defendant's favor. That rule is the only one consistent with the existing framework coordinating claims between the state and federal courts.

This Court's decisions establish a federal-state-federal sequence for the management of constitutional challenges to state criminal proceedings. *Heck v. Humphrey*, 512 U.S. 477 (1994); *Rose v. Lundy*, 455 U.S. 509 (1982); *Younger v. Harris*, 401 U.S. 37 (1971). Before state criminal proceedings begin, a federal court can adjudicate questions bearing on those potential proceedings. Once the state criminal proceedings are instituted, state courts enjoy decisional primacy, and federal courts are displaced until the completion of state proceedings. And when the state criminal proceedings are complete, the appropriate federal remedy depends on the nature of the claim: if the successful claim would impugn an outstanding state criminal judgment or require speedier release from custody, then habeas corpus provides the exclusive remedy; where the claim seeks some other relief, it can be brought pursuant to § 1983.

This existing framework serves a number of salutary purposes. It provides an orderly procedure in which only one court at a time decides the issues. It avoids conflicting resolutions from different courts and stops litigants from racing to judgment in state or federal court, thereby limiting the need

to consider questions of preclusion between federal and state proceedings. It keeps federal dockets clear of unmeritorious cases and claims that would routinely require dismissal or an indefinite stay. And it advances longstanding parity and comity principles fundamental to our federal-state system. Federal courts are stopped from interfering with state court jurisdiction, "'allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights.'" *Rose*, 455 U.S. at 518 (quoting *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981)). State courts are presumed to be as competent as the federal courts when it comes to protecting constitutional rights. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 n.12 (1987) (abstention rests on "proper respect for the ability of state courts to resolve federal questions"); *Stone v. Powell*, 428 U.S. 465, 493 n.35 (1976). And federal courts must respect the finality of state criminal judgments and custody, except in narrow circumstances. 28 U.S.C. § 2254; *Preiser v. Rodriguez*, 411 U.S. 475, 491 (1973); *Heck*, 512 U.S. at 484-85.

Petitioner's proposed rule, under which § 1983 claims challenging state criminal proceedings do not accrue until those proceedings have terminated in the criminal defendant's favor, fits this sensible regime and promotes the same goals. The Second Circuit's early accrual rule does the opposite. It would undermine the existing framework and create doctrinal and claim-coordination problems.

ARGUMENT

I. A SETTLED FRAMEWORK COORDINATES LITIGATION OF CONSTITUTIONAL CLAIMS BETWEEN STATE CRIMINAL COURTS AND FEDERAL COURTS

This case asks the Court to devise an accrual rule for § 1983 claims that challenge the validity of ongoing state criminal proceedings. That rule should be fashioned in accordance with three existing bodies of law that already work together to coordinate the adjudication of federal constitutional claims between the state criminal courts and the federal courts: *Younger* abstention, federal habeas corpus, and the *Preiser-Heck* line of cases. This part discusses those doctrines and the framework they collectively establish.

A. *Younger* Abstention

The *Younger* doctrine developed to cabin the use of § 1983 to enjoin ongoing state criminal cases. The Anti-Injunction Act, 28 U.S.C. § 2283, generally bars federal courts from enjoining ongoing state court proceedings. In *Mitchum v. Foster*, 407 U.S. 225, 242-43 (1972), the Court held that § 1983 is an "expressly authorized" exception to the Anti-Injunction Act. But injunctions against state criminal proceedings are limited by the doctrine of equitable restraint from *Younger v. Harris*, 401 U.S. 37 (1971).

1. *Younger* considered a request to enjoin a state prosecution that allegedly violated federal constitutional rights. 401 U.S. at 38-39. The Court

concluded that federal courts cannot, except in extraordinary circumstances, enjoin state criminal prosecutions. *Id.* at 53-54; see also *Samuels v. Mackell*, 401 U.S. 66, 73 (1971) (applying the same holding to claims for declaratory relief).

"Since the beginning of this country's history," *Younger* explained, "Congress has, subject to a few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." 401 U.S. at 43. This longstanding policy against federal interference in state proceedings is justified in part by the view that a court's equity jurisdiction should be restrained "in order to prevent erosion of the role of the jury and avoid a duplication of legal proceedings[.]" *Id.* at 44. But there is "an even more vital consideration," the Court observed, that justifies abstention:

> the notion of 'comity,' that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as 'Our Federalism[.]'

Id.

Younger recognized that allowing state criminal defendants to challenge their ongoing prosecutions in federal court could flood the federal courts with anti-suit litigation, considering that the injury

alleged in such cases is "solely 'that incidental to every criminal proceeding brought lawfully and in good faith[.]'" *Id.* at 49 (quoting *Douglas v. City of Jeannette*, 319 U.S. 157, 164 (1943)). The Court explained that state criminal defendants in nearly all cases can effectively vindicate their constitutional rights by adjudicating their federal defenses in the state criminal proceeding, since state and federal courts are presumed equally competent. *Id.* at 45.

Younger therefore established a presumption that federal courts should abstain from considering challenges to pending state criminal proceedings. A suit subject to *Younger* must be dismissed. *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973) ("*Younger v. Harris* contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts.").[2]

---

[2] *Younger*'s prohibition on federal suits challenging state criminal proceedings has exceptions, including: when the prosecution is brought in bad faith or to harass; when the state criminal law is patently unconstitutional; when the state forum is inadequate; and other extraordinary circumstances. A body of literature explores these exceptions. *E.g.*, Fred O. Smith, Jr., Abstention in the Time of Ferguson, 131 Harv. L. Rev. 2283 (2018); Owen M. Fiss, *Dombrowski*, 86 Yale L.J. 1103 (1977). There can be no dispute, however, that normal claims of constitutional violations affecting the fairness of state criminal proceedings—claims like Petitioner's—cannot fit these exceptions, lest the exceptions swallow the rule. *Cf. Hicks v. Miranda*, 422 U.S. 332, 352 (1975).

2. The *Younger* presumption applies from the start of state criminal proceedings until their end. The Court's later decisions in *Steffel v. Thompson*, 415 U.S. 452, 475 (1974), and *Doran v. Salem Inn*, 422 U.S. 922, 930 (1975), establish that *Younger* does not affect federal injunctive and declaratory suits adjudicated before state proceedings begin.

But *Younger* applies to all federal cases filed after state criminal proceedings, and to some in which the federal suit gets underway first but a state criminal case is later filed. *Hicks v. Miranda* held that "where state criminal proceedings are begun against the federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court, the principles of *Younger v. Harris* should apply in full force." 422 U.S. at 349. As a result, although a federal court might enjoin a potential state criminal proceeding by reaching the merits of a constitutional challenge before the state criminal case is filed, the filing of a state criminal case otherwise brings *Younger* abstention into play.

Once invoked, *Younger* requires the federal court to exercise restraint until the state criminal case ends, whether it ends with a dismissal, an acquittal, or the conclusion of state criminal appeals. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 609-11 (1975). The *Younger* doctrine thus prevents duplicative litigation, permits the state courts to pass first on constitutional defenses raised in criminal proceedings, and promotes Our Federalism.

B. Federal Habeas Corpus

The same principles have animated the development of federal habeas corpus. The writ of habeas corpus is much older than the United States. It was presumptively available at common law to test the legality of detention, an idea enshrined in the Suspension Clause. *INS v. St. Cyr*, 533 U.S. 289, 300-02 & n.14 (2001); see generally Amanda L. Tyler, Habeas Corpus in Wartime: From the Tower of London to Guantanamo Bay 13-33, 123-40 (2017).

Lower federal courts did not originally have the authority to issue writs examining state detention. Judiciary Act of 1789 § 14, 1 Stat. 73, 81-82. In 1867, Congress first authorized the lower courts to grant writs of habeas corpus to state prisoners held in violation of the Constitution, laws, and treaties of the United States. Habeas Corpus Act of 1867, 14 Stat. 385, 385-86. Two aspects of federal habeas review of state criminal cases are important here: exhaustion and exclusivity.

1. The federal habeas statute has been amended and interpreted many times. One constant, however, is the rule that federal habeas review of state criminal convictions or custody must await completion of state proceedings. *Ex parte Royall* announced this rule, concluding that it is justified by considerations of federal-state comity. 117 U.S. 241, 251-53 (1886). Congress then codified the

exhaustion requirement in 1948. Act of June 25, 1948, § 2254, 62 Stat. 869, 967.[3]

Congress and the Court have reaffirmed habeas exhaustion requirements many times. For instance, when *Brown v. Allen* endorsed re-litigation of federal constitutional defenses that had been considered and rejected in state criminal courts, the Court held that such review could take place only after the exhaustion of state remedies. 344 U.S. 443, 487 (1953). The Court in *Wainwright v. Sykes* established a presumption against habeas review of claims that were not first presented to state courts. 433 U.S. 72, 89-91 (1977). Shortly after, *Rose v. Lundy* held that petitions presenting both exhausted and unexhausted claims should be dismissed. 455 U.S. at 522. Recognizing the parity and comity concerns that gave rise to the exhaustion requirement, the Court "provid[ed] a simple and clear instruction to potential litigants: before you bring any claims to federal court, be sure that you first have taken each one to state court." *Id.* at 520. Finally, in passing the 1996 Anti-Terrorism and Effective Death Penalty Act,

---

[3] Even before the lower federal courts were empowered to grant writs of habeas corpus to state prisoners, the notion that federal review should wait until the conclusion of state criminal proceedings was embodied in Section 25 of the Judiciary Act of 1789, 1 Stat. 73, 85-87, which provided as-of-right review in this Court of federal defenses rejected in state criminal courts, but only after completion of the state proceedings and entry of a final judgment.

Congress imposed a strict version of the exhaustion requirement. 28 U.S.C. § 2254(b)&(c).

2. Despite restrictions on its availability, federal habeas corpus remains the exclusive mechanism by which lower federal courts can review extant state criminal proceedings, convictions, and custody. *Fay v. Noia*, 372 U.S. 391, 399-406 (1963); see also *Allen v. McCurry*, 449 U.S. 90, 104 & n.24 (1980) ("It is difficult to believe that the drafters of [§ 1983] considered it a substitute for a federal writ of habeas corpus[.]"). And habeas corpus occupies this role in the circumstances that Petitioner faced. While exhaustion requirements mean that habeas relief is not immediately available to a state criminal defendant who is facing trial in state court and wishes to raise federal constitutional defenses to the proceedings, habeas nevertheless is that defendant's exclusive federal avenue of review. *Ex parte Royall*, 117 U.S. at 251-53; see also *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 488-93 (1973) ("We emphasize that nothing we have said would permit the derailment of a pending state proceeding by an attempt to litigate constitutional defenses prematurely in federal court."); *Justices of Boston Mun. Court v. Lydon*, 466 U.S. 294, 300-02 (1984) (holding that a defendant released before trial is in custody for purposes of the federal habeas statute but must wait until exhaustion of state criminal proceedings

to seek relief).[4] Never has this Court suggested that there is any federal mechanism for securing relief from state custody or a state conviction other than habeas corpus.

* * *

The history of habeas corpus in the United States and its current statutory and doctrinal form thus complement the principle of *Younger*: Once state criminal proceedings are initiated, habeas exhaustion requirements, like *Younger*, ensure that state courts are given the first chance to pass on constitutional questions, and that federal courts do not interfere in state criminal cases. After state proceedings are complete, federal habeas provides the exclusive mechanism for federal courts to re-litigate the validity of the state criminal proceedings, a state conviction, or state custody, limiting federal interference to exceptional circumstances.

---

[4] Petitioner's conditions of pre-trial release satisfy the definition of custody established in *Lydon*, 466 U.S. at 301 and *Hensley v. Municipal Court*, 411 U.S. 345, 351-53 (1973). See Brief for Petitioner at 12-13. In those cases the Court considered whether defining custody to include litigants in Petitioner's situation would cause a flood of habeas petitions from state prisoners facing trial. The Court rejected that argument, emphasizing that habeas exhaustion requirements still require resort first to state court proceedings. *Hensley*, 411 U.S. at 351-53.

C. The *Preiser-Heck* Cases

Concerns about preserving state court primacy through habeas exclusivity animate the *Preiser-Heck* cases, which provide that § 1983 claims are not cognizable if they imply the invalidity of an existing state criminal judgment or state confinement. Instead, such § 1983 claims accrue, if at all, only upon favorable termination of the state criminal case. By establishing this deferred accrual rule, the *Preiser-Heck* cases protect habeas corpus as an exclusive federal remedy, ensuring that carefully designed limitations on habeas corpus (such as exhaustion) cannot be circumvented using § 1983. This principle has been well established for decades.

1. *Preiser v. Rodriguez* considered a § 1983 claim for injunctive relief brought by state prisoners who sought to restore good-time credits and secure release from custody. The Court barred the claims, concluding:

> Congress clearly required exhaustion of adequate state remedies as a condition precedent to the invocation of federal relief under [federal habeas] laws. It would wholly frustrate explicit congressional intent to hold that the respondents . . . could evade this requirement by the simple expedient of putting a different label on their pleadings. In short, Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that

> specific determination must override the general terms of § 1983.

411 U.S. at 489-90.

The Court's emphasis on habeas exclusivity was based not only on the habeas statute but also on the history of the writ. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody," the Court wrote, and "the traditional function of the writ is to secure release from illegal custody." *Id.* at 484; see also *id.* at 485 (discussing the writ's role in securing release from custody at common law and at the Founding) (quoting *Ex parte Bollman*, 8 U.S. 75 (1807), and *Bushell's Case*, 124 Eng. Rep. 1006, 1007 (1670)). The Court reiterated that the writ plays this role where the challenge is to state custody prior to a conviction. *Preiser*, 411 U.S. at 486 (noting that when a litigant claims "he has been imprisoned prior to trial on account of a defective indictment against him, as in *Ex parte Royall*, . . . his grievance is that he is being unlawfully subjected to physical restraint, and . . . habeas corpus has been accepted as the specific instrument to obtain release from such confinement.").

Preiser therefore instructs courts to ask whether a § 1983 claim would intrude upon the exclusive domain of habeas corpus. If the § 1983 claim seeks the type of relief traditionally obtained in a federal habeas proceeding, then it cannot be entertained. The Court explained that this conclusion is also justified by the parity and comity principles underlying federal habeas and *Younger* abstention. *Id.* at 490-92.

2. *Heck v. Humphrey* applied *Preiser*'s logic to § 1983 damages actions. 512 U.S. 477. Heck sought damages (and separately filed for habeas relief), contending that due process violations had infected his state criminal proceedings and had caused his wrongful conviction. *Id.* at 478-79. Drawing an analogy to common-law malicious prosecution, *Heck* held that a § 1983 damages action implying that a state conviction or confinement is invalid must await the final invalidation of that conviction or confinement. *Id.* at 483-87. Before such favorable termination, the § 1983 claim is not cognizable, and it must be dismissed without prejudice. *Id.* at 479, 483, 490. In turn, the § 1983 claim accrues, if ever, when a favorable termination is obtained. *Id.* at 489-90.

Like *Preiser*, *Heck* was grounded in comity concerns. 512 U.S. at 484-85 ("This Court has long expressed similar concerns for finality and consistency and has generally declined to expand opportunities for collateral attack[.]"). And the Court again emphasized the exclusive role of habeas corpus, barring § 1983 damages suits that imply an entitlement to the type of relief traditionally secured by the writ. *Id.* at 489 ("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."); see also *id.* at 490 n.10. Favorable termination was imposed as a prerequisite to such claims.

The Court's decision to defer the accrual of § 1983 damages claims until favorable termination

was also prompted by preclusion principles. The Court noted that deferring such claims prevents parallel litigation and conflicting determinations on the same issues, and it promotes "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." *Id.* at 486. Before *Heck* was decided, the Court had concluded in *Allen v. McCurry*, 449 U.S. at 105, that state criminal judgments have preclusive effect in later § 1983 litigation. By deferring a § 1983 suit until the state court judgment is invalidated, *Heck* avoided preclusion that otherwise would have been mandated by *Allen*.[5]

3. This Court has repeatedly reaffirmed *Heck* and its favorable-termination rule. *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005) ("Throughout the legal journey from *Preiser* to *Balisok*, the Court has focused on the need to 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

---

[5] While § 1983 claims are subject to both issue- and claim-preclusion rules, *Allen*, 449 U.S. at 105; *Migra v. Warren City School District*, 465 U.S. 75, 85 (1984), federal habeas proceedings are not, *Noia*, 372 U.S. at 422-23. This distinction reinforces the exclusive and exceptional nature of the habeas remedy.

judicial determination that necessarily implies the unlawfulness of the State's custody.").[6]

The lower courts have developed this body of law further. *Heck*'s deferred accrual rule has now been applied thousands of times, either to delay the accrual of § 1983 damages suits (typically in cases where *Heck* bars a state prisoner's suit) or to authorize the immediate filing of suits despite their relationship to state criminal proceedings (typically in cases that merely challenge the conditions of prison confinement).

---

[6] *Wolff v. McDonnell*, 418 U.S. 539 (1974), allowed a § 1983 challenge to procedures used to revoke good-time credits because success would not compel speedier release from state custody; *Edwards v. Balisok*, 520 U.S. 641 (1997), barred a damages claim challenging the deprivation of good-time credits because success would necessitate earlier release; *Muhammad v. Close*, 540 U.S. 749 (2004), permitted a challenge to prison disciplinary procedures because success would not affect the length of confinement; *Nelson v. Campbell*, 541 U.S. 637 (2004), allowed an action to enjoin an execution procedure, holding that it did not compel relief from the underlying criminal sentence; *Wilkinson v. Dotson*, 544 U.S. 74 (2005), permitted a challenge to parole procedures because success would not necessarily mean speedier release from prison; *Wallace v. Kato*, 549 U.S. 384 (2007), authorized the immediate filing of a claim challenging an false arrest that occurred prior to state criminal proceedings; and *Skinner v. Switzer*, 562 U.S. 521 (2011), permitted a suit for DNA testing because the results of the testing would not necessarily compel relief from a state conviction or confinement.

* * *

By deferring accrual of § 1983 suits challenging the validity of state criminal proceedings, state custody, or a state criminal judgment, the *Preiser-Heck* cases protect the exclusive domain of habeas and acknowledge the preclusive effect of judgments that may issue during the state criminal proceeding. As *Preiser* recognized, these justifications for deferred accrual apply in full force to claims challenging the validity of state custody prior to a criminal conviction. The favorable-termination requirement reinforces the same parity and comity considerations that underlie the federal habeas regime and the *Younger* doctrine.

D. The Existing Framework Summarized

Understood together, the *Younger* doctrine, federal habeas corpus, and the *Preiser-Heck* case line form a unified framework. *Younger* establishes a barrier to the federal courts at the start of state criminal proceedings. Federal courts have the power to enjoin potential state criminal proceedings, but they must adjudicate such constitutional challenges before state criminal proceedings begin. Once legal process issues from a state criminal court, the balance tips. The *Younger* doctrine then displaces the federal court, requiring abstention absent some special circumstance.

Federal courts remain divested throughout state criminal and post-conviction proceedings. *Younger* applies until the end of direct appeals in the state courts. Habeas exhaustion requirements then ensure that all state procedures—not just direct appeals, but also state post-conviction remedies—

are completed before the state criminal defendant can seek relief in federal court. And the *Preiser-Heck* case line holds that claims seeking the type of relief allocated to federal habeas corpus (or implying that such relief is warranted) cannot be filed pursuant to § 1983.

Only at the conclusion of state criminal proceedings may the federal courts step back in, and at that point these doctrines also define what relief they may provide. In a rare circumstance, the state criminal case might end in an acquittal, at which point the federal court may adjudicate a claim without the need for judicial restraint. But usually the defendant is convicted and resort to state direct appeals and state post-conviction procedures is required first. If relief is obtained there, the defendant will either have secured a judgment of acquittal, again obviating the need for federal judicial restraint, or a retrial in the state criminal courts, during which the federal courts would remain displaced.

But if state appellate or post-conviction procedures do not yield relief, then federal habeas corpus stands as the exclusive federal mechanism for setting aside the extant state criminal judgment or challenging the duration of state confinement. That type of relief cannot be obtained, or a right to it implied, in a suit brought under § 1983. Instead, to obtain damages for an allegedly unconstitutional state criminal proceeding, state custody, or a state criminal judgment, a suit under § 1983 must wait until the criminal case terminates finally in the criminal defendant's favor.

In nearly all cases, federal consideration of constitutional challenges to state criminal proceedings occurs, if at all, either before the state proceedings begin or after they have concluded. This federal-state-federal sequence is based on and reinforces fundamental interests. It allows for the orderly processing of claims by one court system at a time, which in turn prevents a race to judgment or conflicting resolutions in different forums. It acknowledges parity between the state and federal courts, presuming that state courts are as competent to resolve federal constitutional questions and providing them with the first opportunity to do so. And it promotes comity by avoiding undue interference with state proceedings and by respecting state criminal judgments, while at the same time maintaining the power of federal courts to vindicate important constitutional rights.

II. SIMILAR RULES COORDINATE CONSTITUTIONAL CLAIMS IN STATE-FEDERAL CIVIL PROCEEDINGS

If there were any doubt that this framework reflects an intentional design, the same principles are implemented in this Court's decisions coordinating civil cases between state and federal courts. These cases also promote state court primacy and delay federal review of state proceedings.

In *Pennzoil v. Texaco*, the Court applied *Younger* abstention to state civil proceedings, holding that the losing litigant in a state trial court cannot bring a § 1983 suit challenging state court

procedures as unconstitutional. 481 U.S. 1, 10 (1987). The appropriate avenue is to present such constitutional claims first to the state courts and to appeal any judgment in the state system. *Id.* at 17.

A federal court adjudicating § 1983 claims that were the subject of earlier state court litigation is required by the Full Faith and Credit Act, 28 U.S.C. § 1738, to give preclusive effect to a state court judgment to the same extent the rendering state court would. *Allen*, 449 U.S. at 105. Similarly, under *Parsons Steel v. First Alabama Bank*, a lower federal court can determine the preclusive effect of a prior federal-court decision—and thus enjoin a state proceeding under the re-litigation exception to the Anti-Injunction Act—but only if the state court has not already ruled on the preclusion question. 474 U.S. 518, 524 (1986).

Lastly, the *Rooker-Feldman* doctrine provides that the lower federal courts lack jurisdiction to consider a challenge brought by a party who has already lost in state court at the time the federal suit is filed and seeks relief from the state court judgment. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 291-94 (2005). Appellate authority to review judgments of the state courts rests exclusively in this Court. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923).

Like the existing framework coordinating constitutional claims between state criminal and federal courts, these doctrines permit a federal court to decide an issue before the state court acts. But once the state courts have ruled on a question, that ruling has preclusive effect and can be

overturned only after completion of all state appeals, and then only by this Court. The state case must complete its journey through the state courts before the federal court can act. These rules in civil cases serve the same basic principles of parity and comity that animate the framework governing claims in criminal cases.

III. PETITIONER'S PROPOSED ACCRUAL RULE FITS THE EXISTING FRAMEWORK AND SERVES ITS ANIMATING COMITY AND FEDERALISM VALUES

Petitioner proposes a deferred accrual rule for his § 1983 claim challenging the legality of his state criminal prosecution. He advocates for this rule by analogy to common-law torts, based on the standard federal limitations rule, and under the continuing violation doctrine. Brief for Petitioner at 14-18. *Amici* agree with Petitioner that a deferred accrual rule is essential. In their view, that rule is mandated by the existing federal-jurisdiction framework.

Only a deferred accrual rule fits the framework laid out above. If a defendant challenging ongoing state criminal proceedings files a habeas petition, the petition will be dismissed for failure to exhaust. If that defendant instead asks for declaratory or injunctive relief to stop the proceedings, *Younger* will require dismissal of the action. Completing this picture, the logic of the *Preiser-Heck* case line dictates that a § 1983 suit for damages should be dismissed if it necessarily implies the invalidity of those same proceedings, as in McDonough's case.

Because claims like McDonough's imply the invalidity of state proceedings, they seek relief traditionally secured by a writ of habeas corpus. Deferring accrual of those claims prevents an end run around the federal habeas regime and preserves habeas as the sole federal mechanism for reviewing state criminal proceedings. In so doing, it promotes principles of parity and comity, and it ensures orderly processing of constitutional claims affecting state criminal proceedings.

In sum, the existing framework coordinating constitutional claims between state criminal courts and the federal courts dictates that *Heck*'s deferred accrual rule should be applied starting at the beginning of state criminal proceedings. Section 1983 claims implying that ongoing state criminal proceedings are invalid, seeking speedier release from state custody, or attacking a state criminal judgment are not cognizable. As in *Heck*, this recognition compels the corollary conclusion that § 1983 claims challenging state criminal proceedings do not accrue until the state criminal case terminates finally in the criminal defendant's favor.

IV. *WALLACE* FITS THE EXISTING FRAMEWORK AS WELL

Wallace v. Kato is not to the contrary. 549 U.S. 384 (2007). There the Court considered the accrual of a § 1983 claim that alleged a false arrest prior to any state criminal proceeding. *Id.* at 387 n.1 & 390 n.2 (noting that the grant of *certiorari* was limited to that question and that other claims had been abandoned). So limited, the claim in *Wallace*

questioned the legality of a seizure *in the absence of judicial proceedings*, not the legality of a state criminal proceeding. *Id.* at 389-90. Accordingly, the Court concluded that the claim accrued with the seizure, *id.* at 388 (or at latest when the arrestee was bound over on charges, *id.* at 391-92). Wallace had not timely filed his claim. *Id.*

Wallace's early accrual rule for Fourth Amendment claims challenging conduct *prior to* state criminal proceedings fits the existing framework. Unlike constitutional claims attacking ongoing state criminal proceedings or the legality of state custody secured by legal process, a claim that alleges an unconstitutional seizure by state actors without legal process is not typically the type of claim redressed by a writ of habeas corpus. *Stone v. Powell* held that Fourth Amendment claims alleging illegal searches or seizures prior to state criminal proceedings generally cannot be re-litigated in federal habeas proceedings. 428 U.S. at 494-95.[7]

In addition, *Wallace*'s conclusion that such Fourth Amendment claims accrue and can be considered by federal courts prior to state criminal proceedings is consistent with the rule that federal

---

[7] In light of *Stone*'s holding, both the majority and concurring opinions in *Wallace* acknowledged that Fourth Amendment false arrest claims generally would not interfere with federal habeas. 549 U.S. at 395 n.5; *id.* at 398-400 (Stevens, J., concurring in the judgment).

courts generally may adjudicate constitutional claims that might bear on a future state criminal proceeding before the state proceedings get underway. *Supra* Part I.A. A similar claim under the Fourth Amendment was presented in *Gerstein v. Pugh*, which permitted a § 1983 claim for injunctive relief that challenged an illegal seizure before state criminal proceedings had started. 420 U.S. 103, 106-08 & nn.5, 6 & 9 (1975).

As *Wallace* recognized, many Fourth Amendment claims—those alleging excessive force, an illegal seizure of evidence, or an arrest without probable cause—have little to do with the fairness of state criminal proceedings that follow, if such proceedings follow at all. 549 U.S. at 393. Federal adjudication of such Fourth Amendment claims will rarely cause tension with state criminal proceedings or their resulting judgments, and they therefore do not implicate the concerns about claims processing, interference with federal habeas, or state court parity and comity outlined already.

For the same reasons *Heck* decided that a § 1983 claim challenging a state criminal judgment was not cognizable and did not accrue until favorable termination, *Wallace* concluded that there was no need to defer accrual of a claim contesting the legality of conduct that takes place in the absence of state criminal proceedings and before they begin. *Wallace*'s holding is consistent

with *Younger*, with the federal habeas regime, and with the rest of the *Preiser-Heck* case line.[8]

V. THE SECOND CIRCUIT'S PROPOSED ACCRUAL RULE WOULD UNSETTLE THE EXISTING FRAMEWORK

The Second Circuit's decision that McDonough's § 1983 claims accrued in the midst of his state criminal prosecution is contrary to the large body of law discussed in this brief. That early accrual rule would create the usual problems of duplicative litigation, including those addressed by current doctrines of preclusion and abstention; it would allow litigants to evade habeas exclusivity and limitations on federal habeas; and it undercuts the values of parity and comity.

A. Parallel Litigation Problems

1. A rule requiring criminal defendants to immediately file § 1983 suits asserting the constitutional defenses they have raised in their state criminal proceedings would lead to concurrent

---

[8] When the Court decided in *Wallace* that the accrual of false arrest claims is not deferred, it said that *Heck*'s deferred accrual rule would not apply to "an action which would impugn *an anticipated future conviction*." 549 U.S. at 393. Understood in context, that statement rightly expressed a concern that, viewed ex ante, a court or party faced with a false arrest claim has no idea whether that arrest will result in a criminal proceeding. The Court had no occasion to address the issue presented in this case.

litigation of the same issues in two separate court systems. This double litigation would happen frequently, given that state criminal defendants would be required to file such § 1983 suits in order to preserve their claims in federal court. Litigation in two court systems would impose a burden not only on the federal plaintiff/state criminal defendant, but also on all of the state actors who would be involved in different roles in both proceedings. Entirely different procedural and discovery rules would apply to the separate cases, and the parties might use or block discovery in one case in order to gain an advantage in the other, particularly given that federal civil discovery is more fulsome than that typically allowed in state criminal cases.

2. Concurrent litigation would also present the potential for friction between the federal and state courts. The two court systems might issue inconsistent rulings on the same factual or legal issues. Pretrial or trial proceedings might lead to contradictory judgments. Once entered, a judgment in one court system could be used for its issue- or claim-preclusive effect in the other. In turn, the different court systems might reach contrary conclusions about the preclusive effect of their own or the other court's judgments. Depending on the state in which the criminal case was filed, the preclusive effect of the state court's judgment might change as the litigation proceeded in the two court systems. 18A Charles Alan Wright, et al., Federal Practice & Procedure § 4433 n.18 (3d ed. Nov. 2018 update). The preclusive effect of a federal decision

in state proceedings might be similarly variable. *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938).

There would be races to judgment between the state and federal cases. If a state court judgment were entered, and it was found under *Allen* to have preclusive effect in the federal litigation, then dismissal of the § 1983 claims challenging the state proceedings would be required. That dismissal would occur regardless of the merit of the federal claims, and there would likely be no opportunity to re-file if the state judgment was later set aside on grounds, for example, that the criminal proceedings violated the Constitution.

Conversely, if the federal case beat the state criminal case to judgment, the federal judgment might dictate the resolution of contested issues in the state case or even its result. *Stoll*, 305 U.S. at 170 ("[W]here the judgment or decree of the Federal court determines a right under a Federal statute, that decision is final until reversed in an appellate court, or modified or set aside in the court of its rendition.") (internal quotation omitted). This Court has not defined the preclusive effect of a federal judgment in this context. *Heck*, 512 U.S. at 488 & n.9. Regardless, interference between federal and state court systems could become the norm.

3. Unlike Fourth Amendment claims, which often do not impugn the validity of a state criminal case, *Wallace*, 549 U.S. at 393, claims like McDonough's always do so. Accordingly, the Second Circuit's early accrual rule would open the federal courts to, and require the immediate filing of, a whole new class of § 1983 suits attacking ongoing

state criminal proceedings. The reasoning of *Younger* suggests that judicial restraint would be required in every such case, creating a unique category of federal cases requiring automatic abstention.[9]

If the Second Circuit's accrual rule brought *Younger* abstention automatically into play, that would raise an additional question about whether that automatic abstention would come in the form of a dismissal or a stay. As discussed, claims

---

[9] This Court has left open whether *Younger* applies to damages suits. *Deakins v. Monaghan*, 484 U.S. 193, 202 (1988). Most courts have found that it does so apply. *Gilbertson v. Albright*, 381 F.3d 965, 979-80 (9th Cir. 2004) (en banc); *Nimer v. Litchfield Township*, 707 F.3d 699, 700 (6th Cir. 2013); *Rossi v. Gemma*, 489 F.3d 26, 37-38 (1st Cir. 2007); *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004); *Yamaha Motor Corp. v. Stroud*, 179 F.3d 598, 603-04 (8th Cir. 1999); *Majors v. Engelbrecht*, 149 F.3d 709, 714 (7th Cir. 1998); *Traverso v. Penn*, 874 F.2d 209, 213 (4th Cir. 1989); *Williams v. Hepting*, 844 F.2d 138, 144 (3d Cir. 1988). Three have suggested that it does not. *Kirschner v. Klemons*, 225 F.3d 227, 238-39 (2d Cir. 2000); *Bridges v. Kelly*, 84 F.3d 470, 477-78 (D.C. Cir. 1996); *Alexander v. Ieyoub*, 62 F.3d 709, 713 (5th Cir. 1995).

The question is neither presented by this case nor necessary to its resolution. Notably, however, by implementing a deferred accrual rule in this case, the Court can resolve two circuit splits at once. Adopting Petitioner's proposed rule and rejecting the Second Circuit's obviates the need to decide whether *Younger* applies to damages suits filed during state criminal proceedings because such suits will not be cognizable and will not accrue until after the criminal proceedings have terminated favorably.

subject to *Younger* require dismissal. *Supra* Part I.A. If all claims like Petitioner's accrued but were automatically dismissed, there would have been no point in requiring them to be filed in the first place. Worse yet, even if they were dismissed without prejudice, the claims would have accrued already and may be untimely once the *Younger* obstacle was removed.

The court below suggested that claims like Petitioner's might be stayed instead of dismissed. *McDonough v. Smith*, 898 F.3d 259, 268 n.13 (2d Cir. 2018). That, too, would be problematic. Federal courts are supposed to stay litigation only in exceptional circumstances, not as a routine matter in an entire category of cases. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983) (noting that only "exceptional circumstances" justify a stay pursuant to *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976)); *Kusper v. Pontikes*, 414 U.S. 51, 54 (1973) (observing that a stay under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), is appropriate only in "special circumstances"); *cf. Rhines v. Weber*, 544 U.S. 269, 276-77 (2005) (authorizing a stay-and-abey procedure for mixed habeas petitions, but limiting it to exceptional circumstances).

Requiring the filing and stay of all claims in this category would clog federal dockets with dormant constitutional suits. Many of those suits would lack merit, given that federal constitutional defenses are raised routinely in thousands of state criminal proceedings each year. Moreover, there would be no way to move the stayed claims off of federal

dockets. A small portion of state criminal proceedings might end relatively quickly in an acquittal, allowing the federal claims to proceed. But the vast majority of stayed claims would languish for years.

How long a stay would remain in place is also open to debate. A federal court's stay typically persists until the conclusion of state proceedings. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 730 (1996). But district courts would have to decide whether that means the stay lasts until the end of state direct appeals, the conclusion of state post-conviction proceedings, the exhaustion of federal habeas remedies, or indefinitely until relief from the state criminal judgment is secured.

Regardless of the stay's duration, once the state criminal proceedings concluded, the state judgment would likely have preclusive effect in the federal case, another issue that would have to be litigated once the stay was finally lifted. (If the litigant instead waited until after state criminal proceedings were completed and still managed to timely file the federal suit, *Rooker-Feldman* would deprive the district court of jurisdiction to consider it.) In total, the Second Circuit's rule would require the filing of a large number of automatically stayed claims, the vast majority of which would lie dormant for years until they became precluded by a state court judgment.

This Court should not adopt an accrual rule that yields such results. As the Court noted in *Wallace*, claims accrue as a matter of federal law "'when the plaintiff has a complete and present cause of

action,' . . . that is, when 'the plaintiff can file suit *and obtain relief*.'" 549 U.S. at 388 (quoting *Bay Area Laundry v. Ferbar Corp.*, 522 U.S. 192, 201 (1997)) (emphasis added). Applying the Second Circuit's accrual rule would mean that in most cases filed the plaintiff would never have any opportunity to pursue the claim or obtain relief in federal court.

B. Federal Claim Coordination Problems

1. The Second Circuit's immediate accrual rule would also be difficult to administer alongside *Heck*'s deferred accrual rule. One way courts might try to reconcile the two rules would be to require litigants to split their claims, with the Second Circuit's immediate accrual rule governing claims attacking criminal proceedings before a conviction and *Heck* governing claims attacking any resulting criminal judgment. But splitting claims arising from the same transaction is rightly discouraged. *Stone v. Dep't of Aviation*, 453 F.3d 1271, 1278 (10th Cir. 2006) ("A plaintiff's obligation to bring all related claims together in the same action arises under the common law rule of claim preclusion prohibiting the splitting of actions.") (citing Restatement (Second) of Judgments § 24 (1982)). Consider if Petitioner had been convicted rather than acquitted. The Second Circuit's rule would have required him to immediately file his claim that the use of fabricated evidence rendered his criminal proceedings invalid, but *Heck* would defer accrual of his claim that the same fabricated evidence resulted in a conviction. And splitting the two claims would not change the fact that a § 1983 suit challenging the validity of pre-conviction state

criminal proceedings would necessarily impugn the resulting conviction, even if that suit did not mention the conviction explicitly.

A second possibility is that courts might apply the Second Circuit's immediate accrual rule to cases resulting in acquittals and *Heck*'s deferred accrual rule to cases resulting in convictions. But if that were the case, neither the federal court nor the putative plaintiff could know while state criminal proceedings were ongoing—*i.e.*, at the time the Second Circuit said the case should be filed—whether the state case would result in acquittal or conviction, and so it would be impossible to determine whether the claim should be allowed to proceed. The lower courts have worked hard to refine the complex doctrine established by the *Preiser-Heck* cases.[10] A new rule requiring the federal courts to analyze claim accrual based on a contingent future event—whether or not a § 1983 plaintiff who is also a criminal defendant is

---

[10] To determine whether *Heck* applies, lower courts must already consider whether the § 1983 plaintiff's claim of error is so fundamental that it entirely invalidates the state's authority to keep him imprisoned or whether it merely requires a new hearing to determine whether the state has the authority to keep him imprisoned. Compare *Wolff*, 418 U.S. at 554-55 (prisoner may use § 1983 to challenge procedures used to revoke good-time credits), with *Edwards*, 520 U.S. at 648 (prisoner may not use § 1983 to challenge procedures used to revoke good-time credits because the procedural defect alleged (deceit and bias of decision maker) would imply invalidity of deprivation of credits).

ultimately convicted—cannot be administered. *Cf. Wallace*, 549 U.S. at 393 ("And what if the plaintiff (or the court) guesses wrong, and the anticipated future conviction never occurs[?]").

By contrast, a rule that defers every § 1983 claim challenging state criminal proceedings or a resulting judgment until favorable termination of the criminal case is simple to administer. If the criminal case has not resolved in the plaintiff's favor (whether because proceedings are ongoing or an unfavorable judgment is intact), then the civil suit must wait. If the criminal case is terminated favorably, then the claim has accrued and the civil suit can move forward.

2. The Second Circuit's accrual rule also conflicts with the federal habeas regime, a conflict that the *Preiser-Heck* cases exist to guard against. To date, habeas proceedings have been the exclusive federal forum for re-litigating the legality of state criminal proceedings. That exclusive mechanism has always required exhaustion of state court remedies before the federal court can act, as well as deference to the state court's decisions if the federal court does act.

The Second Circuit's accrual rule contemplates an immediate federal challenge to ongoing state criminal proceedings, which would evade limitations on federal habeas. Habeas would cease to be an exclusive federal remedy, and longstanding exhaustion requirements would be nullified. A claim could simply be re-pleaded under § 1983 to secure plenary review at the outset. See *Preiser*, 411 U.S. at 489-90 ("It would wholly frustrate

explicit congressional intent to hold that the respondents in the present case could evade [the exhaustion] requirement by the simple expedient of putting a different label on their pleadings."); *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 77 (2009) (Alito, J., concurring) ("The rules set forth in our cases and codified in AEDPA would mean very little if state prisoners could simply evade them through artful pleading.").

That plenary review would necessarily entail far less deference to the state criminal proceedings than is required under AEDPA. Compare *Crawford-El v. Britton*, 523 U.S. 574, 594 (1998) (discussing the standard of proof applied in § 1983 cases), with *Williams v. Taylor*, 529 U.S. 362, 412 (2000) (discussing the standards imposed by 28 U.S.C. § 2254(d)). The entire federal habeas regime, carefully constructed by Congress and this Court, would be undermined, and the role of federal courts in the supervision of state criminal proceedings would be redefined.

C. Federalism Problems

Last but not least, the Second Circuit's accrual rule undermines the principles of parity and comity that have animated this Court's claim coordination doctrines. Instead of delaying federal litigation until after the state criminal courts have had the initial opportunity to pass upon federal constitutional defenses, the Second Circuit has required litigants to immediately file those defenses as § 1983 claims in federal court. Implicit in that requirement is distrust for the state courts,

and a presumption that they are not competent to perceive and effectively remedy constitutional problems in their own criminal proceedings. Moreover, calling for § 1983 claims challenging state criminal proceedings to be filed in the midst of those proceedings disrespects the separate state governments, allows for federal interference in the states' performance of their separate functions, and calls into question decisions and judgments that issue from state proceedings. In short, the Second Circuit's accrual rule creates substantial federalism problems without any corresponding benefit.

CONCLUSION

There is no good reason to adopt the Second Circuit's accrual rule, and there are many good reasons not to. Petitioner's deferred accrual rule, on the other hand, fits neatly within the existing framework coordinating cases between state and federal courts. That rule would require a federal court to ask a simple question: Has the state criminal case terminated in the plaintiff's favor? If the answer is no, then a § 1983 claim challenging the state criminal case is not cognizable, and the federal court must dismiss it without prejudice. If the answer is yes, then the § 1983 claim has accrued and can proceed. While a state criminal proceeding is ongoing or a state judgment is in place, this rule ensures that habeas corpus remains the exclusive federal mechanism for securing relief from state custody and state criminal judgments. In the process, claim coordination problems are eliminated and the state courts are respected.

For the foregoing reasons, the judgment of the Second Circuit should be reversed.

Respectfully submitted,

JON LOEVY
Counsel of Record
STEVEN ART
DAVID B. OWENS
TONY BALKISSOON
JULIA RICKERT
MEGAN PIERCE
LOEVY & LOEVY
311 North Aberdeen St.
Chicago, IL 60607
(312) 243-5900
jon@loevy.com

March 4, 2019