No. 19-____

IN THE
Supreme Court of the United States

LOUIS TAYLOR,
Petitioner,

v.

COUNTY OF PIMA; CITY OF TUCSON,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Heck* v. *Humphrey*, 512 U.S. 477 (1994), this Court held that federal habeas corpus is the sole avenue by which a "state prisoner" may bring a claim that would "necessarily imply the invalidity of his conviction or sentence." *Id.* at 487. In *Spencer* v. *Kemna*, 523 U.S. 1 (1998), five Justices concluded that *Heck* has no application to a prisoner who has been "release[d] from custody" and who lacked an opportunity to raise his claims through federal habeas while incarcerated. *Id.* at 19 (Souter, J., concurring); *id.* at 25 n.8 (Stevens, J., dissenting).

Louis Taylor was wrongfully imprisoned for 42 years. After compelling evidence of Taylor's innocence—and of egregious prosecutorial misconduct at Taylor's trial—came to light, the prosecution consented to the vacatur of Taylor's conviction. But it insisted, as a condition of Taylor's release, that he plead "no contest" to time served. The Ninth Circuit held that, under *Heck*, that no-contest plea barred Taylor from recovering any damages for his 42 years of wrongful incarceration.

The questions presented are:

1. Whether *Heck* applies to a former prisoner who lacked an opportunity to challenge his conviction through federal habeas while incarcerated.

2. Whether *Heck* bars a plaintiff from recovering damages for his period of incarceration if the plaintiff's conviction has been vacated and he has been released from prison pursuant to a plea of "no contest" to time served.

PARTIES TO THE PROCEEDING

Louis Taylor, petitioner on review, was the plaintiff-appellee below.

The County of Pima and City of Tucson, respondents on review, were the defendants-appellants below.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- *Taylor* v. *County of Pima*, No. CV-15-00152-TUC-RM (D. Ariz. Mar. 16, 2017) (available at 2017 WL 6550590), *aff'd in part*, No. 17-16980 (9th Cir. Jan. 17, 2019) (reported at 913 F.3d 930), *reh'g denied* (Aug. 14, 2019) (reported at 933 F.3d 1191).

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PETITION FOR A WRIT OF CERTIORARI

Louis Taylor respectfully petitions for a writ of certiorari to review the judgment of the Ninth Circuit in this case.

INTRODUCTION

This case concerns a profound injustice and a deeply important question of civil rights law: Whether a local government can bar a wrongfully incarcerated person from recovering *any* damages for his term of imprisonment by insisting, as a condition of release, that the prisoner plead "no contest" to time served. In recent years, local governments have increasingly turned to this coercive tactic as a means of foreclosing recovery even by the demonstrably innocent. And the Circuits are now sharply and intractably split as to whether such pleas do in fact immunize jurisdictions from liability—with the decision below

only the latest and most dramatic extension yet of that division.

Louis Taylor is an African-American man who was sentenced to life imprisonment in 1972 for allegedly setting a fire that killed 28 people. Throughout his term of imprisonment, Taylor resolutely maintained his innocence. And in 2006, compelling evidence of Taylor's innocence began to come to light. An independent arson review commission and the Tucson Fire Department both determined that the fire for which Taylor had been convicted could not be classified as arson at all. Further, Taylor discovered that the prosecution had withheld critical exculpatory evidence from the defense at his trial; that law enforcement officers had suborned perjury from a critical witness; and that the state's arson "expert" believed Taylor to be guilty because " 'black boys' like to set fires." Pet. App. 18a (Schroeder, J., dissenting in part).

In light of this compelling new evidence of Taylor's innocence—and of egregious prosecutorial misconduct at his trial—the prosecution acknowledged that it could no longer sustain Taylor's conviction. Yet rather than agree to Taylor's unconditional release, the prosecution insisted that Taylor plead "no contest" to the original, discredited charges against him and enter a stipulated sentence of time served. Faced with the Hobson's Choice of immediate release pursuant to a no-contest plea, or indefinite further imprisonment while the prosecution fought his postconviction petition in court, Taylor accepted the plea. In 2013, his original conviction was vacated and he was immediately released.

Taylor then brought a § 1983 suit against Pima County, seeking recovery for the constitutional violations that had robbed him of 42 years of his freedom. Pima County, however, argued that the no-contest plea prevented Taylor from recovering *any* damages for his period of incarceration. A sharply divided panel of the Ninth Circuit agreed: Aligning itself with "factually indistinguishable" decisions from the First and Second Circuits, the majority held that *Heck* v. *Humphrey*, 512 U.S. 477 (1994), barred Taylor from recovering damages for a single day of his imprisonment. Pet. App. 10a-11a. It reasoned that such damages would imply the invalidity of Taylor's no-contest plea, which the panel understood to be the "sole legal cause" of his preceding 42 years of imprisonment. *Id.* at 8a-11a.

This Court's review is urgently warranted. The Ninth Circuit's decision deepens two severe splits regarding the scope of *Heck*: It extends an intractable 5-4 split as to whether *Heck* applies to a prisoner, like Taylor, who has been released from imprisonment and could not challenge his conviction (here, the no-contest plea) through federal habeas while incarcerated; and it deepens a separate 4-2 split over whether, even if *Heck* applies, it forecloses recovery by a former prisoner who has been released pursuant to a no-contest plea to time served. These divisions are widely acknowledged, frequently recurring, and—as multiple Circuits have indicated—incapable of resolution absent this Court's intervention.

Moreover, the Ninth Circuit's decision is gravely incorrect. In *Spencer* v. *Kemna*, 523 U.S. 1 (1998), five Justices expressly stated that *Heck* does not limit § 1983 relief for a plaintiff, like Taylor, who

never had an opportunity to challenge the pertinent conviction through federal habeas while incarcerated. *See id.* at 19 (Souter, J., concurring); *id.* at 25 n.8 (Stevens, J., dissenting). Moreover, basic principles of causation, the common-law understanding of favorable termination, and this Court's decision in *Town of Newton* v. *Rumery*, 480 U.S. 386 (1987), all make clear that a plea to time served does not retroactively immunize an unlawful term of imprisonment from § 1983 liability.

This issue is of utmost importance to the lives and liberties of Americans. The Ninth Circuit and three of its sister Circuits have handed local governments a foolproof means of immunizing themselves from liability for prosecutorial misconduct after a prisoner is exonerated: just insist on a plea to time served as a condition of release. That coercive tactic has become regrettably common throughout the country. And unless this Court steps in, persons most deserving of § 1983's protection—including individuals, like Louis Taylor, who have suffered incomprehensible abuses at the hands of their governments—will be left without redress for the most severe constitutional wrongs.

The petition should be granted.

OPINIONS BELOW

The Ninth Circuit's opinion (Pet. App. 1a-21a) is reported at 913 F.3d 930. The District Court's order granting in part and denying in part Pima County's motion to dismiss (Pet. App. 39a-67a) is available at 2017 WL 6550590. The Ninth Circuit's order denying panel rehearing and rehearing en banc (Pet. App. 98a-99a) is reported at 933 F.3d 1191.

JURISDICTION

The Ninth Circuit entered judgment on January 17, 2019. Taylor filed a timely petition for panel rehearing and rehearing en banc, which the Ninth Circuit denied on August 14, 2019. On October 29, 2019, Justice Kagan extended the time within which to file a petition for a writ of certiorari until December 12, 2019. *See* No. 19A464. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 1983 of Title 42, United States Code, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress * * * .

STATEMENT

A. Factual Background

1. Shortly after midnight on December 20, 1970, a fire broke out at the Pioneer Hotel in Tucson, Arizona. ER 059, 118.[1] Louis Taylor, a 16-year old African-American, was attending a Christmas party in

[1] All record citations are to Appellant's Excerpts of Record in the Ninth Circuit. *See* Dkt. 12.

the hotel when the fire started. *Id.* at 059. Taylor remained inside the hotel for several hours, assisting emergency workers and helping guests to safety. *Id.* at 059-060.

At approximately 2 a.m., a hotel employee told a police officer that he had heard that "two Negro boys with bushy hair were fighting" when the fire began. *Id.* at 060. The officer spent 30 to 45 minutes searching for a "Negro boy," and eventually located Taylor, who was still assisting the evacuation. *Id.* The officer escorted Taylor to a police station, where police interrogated him for the rest of the night. *Id.* Taylor denied any involvement in the fire, crying and screaming, "I didn't kill those people!" *Id.* at 061. Taylor requested a polygraph test, which was administered at 7:15 a.m.; the test gave no indication that he was lying. *Id.* at 061-062.

Nonetheless, at approximately 9:00 a.m., police arrested Taylor and charged him with arson. *Id.* at 062. Police had not yet conducted any investigation to ascertain whether the fire was actually caused by arson. *Id.* Nor had police questioned a man named Donald Anthony, who was the suspect in three prior fires at the Pioneer Hotel. *Id.* at 221. Their principal evidence against Taylor was simply that he was a "Negro boy" and that Taylor—a smoker, who was permitted to smoke during his interrogation—had matches in his pocket. *Id.* at 062.

2. Taylor's trial took place in early 1972. *Id.* at 068. The lead prosecutor was Horton Weiss, who at the time was subject to five separate misconduct charges (for which he was later jailed), and who had previously referred to a white lawyer representing a black defendant as a "nigger lover." *Id.* at 223-225. The

prosecution charged Taylor with 28 counts of murder, and tried him as an adult before an all-white jury. *Id.* at 067-068.

At trial, the prosecution's theory was that Taylor had set the fire using matches and a liquid accelerant. To substantiate its claim of arson, the prosecution relied on the testimony of a "fire prevention officer" named Cyrillis Holmes, who testified that he could infer that the fire had at least two points of origin. *Id.* at 063-065, 087-090. The prosecution also introduced the testimony of a jailhouse witness, Robert Jackson, who testified that while detained pending trial, Taylor confessed that he set the fire using lighter fluid and matches. *Id.* at 070.

In March 1972, the jury convicted Taylor of 28 counts of murder, and a judge sentenced him to 28 concurrent life sentences. *Id.* at 068. Taylor filed a direct appeal, a motion for state postconviction relief, and a federal habeas petition. Each was denied. *Id.* at 073-075.

3. For the following 42 years, Taylor was incarcerated in Arizona state prison. Throughout that period, Taylor unwaveringly maintained his innocence.

In 2006, powerful new evidence of Taylor's innocence began to come to light. That year, an arson review committee comprised of national experts in the field of fire science reviewed the available evidence concerning the Pioneer Hotel fire. *Id.* at 085. The committee determined, using modern fire science techniques, that there was no factual or scientific basis to classify the fire as arson. *Id.* at 076-077, 085-086. The Tucson Fire Department reviewed the same evidence and came to the same conclusion. *Id.* at 123.

Taylor and his attorneys also uncovered disturbing new evidence of prosecutorial misconduct at Taylor's trial. They learned that the prosecution had withheld from the defense an expert report indicating, contrary to its central theory of the case, that no accelerants were used in the fire. *Id.* at 077-078. Albert Jackson, the brother of Robert Jackson (who died in 1983), provided an affidavit stating that police had instructed his brother to falsely inculpate Taylor as part of a deal not to prosecute Jackson for a separate offense. *Id.* at 073-074. Taylor's attorneys also conducted a deposition of Holmes, the prosecution's fire "expert," who testified that he believed Taylor was guilty of arson because "black boys" like to start fires. *Id.* at 227.[2]

In 2012, Taylor filed a petition for state postconviction relief. *Id.* at 053-055. Pima County acknowledged that the newly discovered evidence entitled Taylor to a new trial. *Id.* at 124, 155-156. It also conceded that "the state of the evidence is such that the State would be unable to proceed with a retrial, and the convictions would not stand." *Id.* at 124; *see also id.* at 172. But the County refused to consent to Taylor's unconditional release. Instead, it stated that it would agree to release Taylor only if he pled "no contest" to the original charges against him and entered a stipulated sentence of time served. *Id.* at 131.

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[2] An excerpt of Holmes's deposition testimony may be viewed at *60 Minutes: Arizona's Pioneer Hotel Fire Re-Examined* at 9:03-9:32 (CBS News television broadcast Mar. 31, 2013), *available at* https://www.youtube.com/watch?v=UKecVbSwKKw.

Taylor thus faced an impossible choice: He could plead no contest and obtain immediate release, or he could remain incarcerated indefinitely while Pima County fought his postconviction petition in court. Having already lost 42 years of his life to a term of wrongful imprisonment, Taylor acceded to the County's demand, while maintaining his innocence. *Id.* at 127-131, 172-173. In April 2013, an Arizona court vacated Taylor's 1972 conviction, sentenced Taylor to time served, and ordered him immediately released. *Id.* at 145, 149, 173, 175-176.

B. Procedural History

1. In 2015, Taylor filed a 42 U.S.C. § 1983 suit against Pima County and the City of Tucson. ER 002. Taylor alleged that respondents and their agents had committed severe constitutional violations during his trial, including soliciting false testimony, withholding exculpatory evidence, and engaging in racial discrimination. ER 012-024. Taylor sought compensatory damages for his 42 years of wrongful imprisonment. *Id.*

Pima County moved to dismiss the complaint, arguing that Taylor's claims for relief and his request for incarceration damages were barred by *Heck*. The District Court denied the motion in pertinent part. It held that *Heck* did not bar Taylor's claims of prosecutorial misconduct, because his 1972 convictions were "no longer outstanding," and because his later no-contest plea was "untainted" by the earlier violations. Pet. App. 87a-88a, 90a-91a. The court further held that *Heck* did not prohibit Taylor from "seek[ing] compensatory damages for the 42 years that he spent in prison." *Id.* at 93a. The court explained that, in *Spencer* v. *Kemna*, five Justices

recognized that "*Heck* [does] not bar a released prisoner unable to pursue habeas relief from bringing a § 1983 claim." *Id.* at 91a-92a. That "exception to *Heck*" applied here, the court concluded, because Taylor "was sentenced to time served and immediately released from custody" pursuant to his 2013 no-contest plea, and so "*never* had the opportunity to seek habeas relief with respect to his 2013 convictions." *Id.* at 92a-93a.

Shortly after the parties completed briefing on the motion to dismiss, the Ninth Circuit issued its decision in *Lyall* v. *City of Los Angeles*, 807 F.3d 1178 (9th Cir. 2015). There, the court largely repudiated the exception to *Heck* recognized by five Justices in *Spencer*. *Id.* at 1191-92. Pima County moved for reconsideration in light of *Lyall*, and the District Court granted the motion in part. Pet. App. 68a-72a. It held that, "[p]ursuant to *Lyall*, it is now clear that [Taylor] is *Heck*-barred from challenging his 2013 convictions in this action." *Id.* at 70a. It deferred a decision on how this conclusion affected Taylor's "claim for compensatory damages." *Id.* at 70a-71a.

Taylor filed an amended complaint, which Pima County again moved to dismiss. The District Court granted the motion in part. Pet. App. 66a-67a. The court reaffirmed its prior holding that Taylor could pursue most of his claims without calling into question the validity of his 2013 plea. *Id.* at 56a-60a. But, in light of *Lyall*, it held that Taylor was barred from recovering any incarceration damages, because those damages would ostensibly call into question the validity of his "outstanding 2013 convictions and time-served sentence." *Id.* at 54a, 65a.

On a motion for reconsideration, however, the District Court expressed "concern" with this decision. *Id.* at 35a. It observed that "*Heck* and its progeny may have unintentionally created a financial incentive for prosecutors to require convicted defendants asserting actual innocence claims to enter no-contest pleas in exchange for immediate release," a practice that "undermines the fairness and integrity of the justice system." *Id.* The court thus certified for immediate appeal the question of whether Taylor could recover incarceration damages. *Id.* at 37a.

2. In a sharply divided decision, the Ninth Circuit affirmed. *Id.* at 7a-11a.[3] The majority observed that "Taylor's 1972 jury conviction has been vacated by the state court, so *Heck* poses no bar to a challenge to that conviction or the resulting sentence." *Id.* at 8a-9a. "But Taylor's 2013 conviction, following his plea of no contest, remains valid." *Id.* at 9a. Thus, the panel reasoned, "Taylor may not state a § 1983 claim if a judgment in his favor 'would necessarily imply the invalidity of his [2013] conviction or sentence.'" *Id.* (alteration in original) (quoting *Heck*, 512 U.S. at 487).

The panel then concluded that an award of incarceration damages would imply the invalidity of Taylor's 2013 plea. In the panel's view, "all of the time that Taylor served in prison is supported by the valid 2013 state-court judgment," because "[t]he state court * * * sentenced Taylor to time served." *Id.*

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[3] The Ninth Circuit dismissed a separate appeal by Pima County seeking review of a decision denying it Eleventh Amendment immunity. Pet. App. 7a.

Indeed, the panel stated that, "[a]s a matter of law, the 2013 conviction *caused* the entire period of his incarceration." *Id.* (emphasis added). Thus, it held, "Taylor cannot seek to collect damages for the time that he served pursuant to his plea agreement." *Id.* at 11a. The panel noted that this decision accorded with "factually indistinguishable" decisions from the First and Second Circuits. *Id.* at 10a-11a. The majority added that it "t[ook] no pleasure in reaching this unfortunate result, given Taylor's serious allegations of unconstitutional actions by the County," but stated that it believed its decision compelled by this Court's precedents. *Id.* at 11a.

Judge Schroeder dissented, writing that "our law is not that unjust." *Id.* at 19a. She explained that Taylor "served decades of imprisonment as a result of his first, vacated conviction." *Id.* "That Taylor later, in order to gain prompt release, pleaded no contest to the charges and to a sentence of time served, does not undo the causal sentencing chain set in motion after the original, invalid conviction." *Id.* "To say such a plea justifies the loss of 42 years," Judge Schroeder concluded, "is to deny the reality of this situation and perpetuate an abuse of power that § 1983 should redress." *Id.* at 21a.

Taylor petitioned for panel rehearing and rehearing en banc. Over Judge Schroeder's dissent, the Ninth Circuit denied the petition. *Id.* at 99a.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision extends a disturbing trend in the lower courts that threatens to vitiate § 1983 for those most deserving of its protection. In four Circuits, including the Ninth, local governments may now immunize themselves from § 1983 liability

for the most egregious constitutional violations simply by insisting, as a condition of release, that a person plead "no contest" to time served. That perceived loophole in the law has become a widespread and increasingly successful means by which local governments seek to foreclose recovery for exonerated defendants. And this case presents an all-too-vivid representation of the real-world costs: After 42 years of wrongful imprisonment, Louis Taylor will—if the Ninth Circuit's decision is permitted to stand—recover *nothing* for a lifetime stolen by his government.

This Court's review is urgently needed. The Ninth Circuit's holding extends two deep and intractable sharp splits of authority in the Circuits. On each question, the Ninth Circuit gravely erred. And these issues are of unparalleled importance to the integrity of our criminal justice system and to the lives of Americans, like Louis Taylor, whom the government has grievously and irreversibly wronged.

I. THE NINTH CIRCUIT'S DECISION DEEPENS MULTIPLE SPLITS OF AUTHORITY ON THE SCOPE OF *HECK*.

The decision below implicates two highly consequential and recurring circuit splits. *First*, it extends a widely acknowledged circuit split as to whether *Heck* applies to a former prisoner, like Taylor, who could not challenge his conviction—in this case, the no-contest plea—while incarcerated. *Second*, the decision also implicates a profoundly important split as to whether, even if *Heck* applies, it prevents a prisoner from recovering damages for his period of incarceration if he was released pursuant to a plea of no contest to time served. These questions

arise frequently in the lower courts, are have proven incapable of resolution without this Court's intervention, and were outcome-determinative in this case.

A. The Ninth Circuit's Decision Deepens A Split Regarding Whether *Heck* Applies To A Former Prisoner Who Lacked An Opportunity To Seek Habeas Relief While Incarcerated.

In *Heck*, this Court reconciled "the two most fertile sources of federal-court prisoner litigation"—§ 1983 and the federal habeas corpus statute—by holding that a "state prisoner" may not "seek[ ] damages in a § 1983 suit" that "would necessarily imply the invalidity of his conviction or sentence" unless criminal proceedings have been "terminat[ed] * * * in favor of the accused." 512 U.S. at 480, 484, 487. Every Member of the Court agreed that this holding applies to persons "in custody" for purposes of the habeas statute. *See id.* at 487. But Justice Souter, joined by three other Justices, argued that this limitation does not extend to "individuals *not* 'in custody' for habeas purposes" who were unable to "invoke federal habeas jurisdiction" before their release. *Id.* at 500 (Souter, J., concurring in the judgment) (emphasis added). Four years later, in *Spencer* v. *Kemna*, five Justices joined opinions expressly agreeing with that view. *See Spencer*, 523 U.S. at 19 (Souter, J., joined by O'Connor, Ginsburg, and Breyer, JJ., concurring); *id.* at 21 (Ginsburg, J., concurring); *id.* at 25 n.8 (Stevens, J., dissenting).

In the wake of *Heck* and *Spencer*, the Circuits have deeply split as to whether the limitation on *Heck* recognized by Justice Souter is correct. Four Circuits have expressly adopted Justice Souter's view;

five Circuits—including the Ninth—have largely or entirely rejected that view; and two Circuits have expressed deep and unresolvable internal division on the question.

1. Four Circuits—the Fourth, Sixth, Tenth, and Eleventh—expressly follow Justice Souter's *Spencer* concurrence. In *Wilson* v. *Johnson*, 535 F.3d 262 (4th Cir. 2008), the Fourth Circuit explained that while "the circuits are split" on the validity of Justice Souter's view, it found persuasive "the reasoning employed by the plurality in *Spencer*." *Id.* at 267-268. It therefore held that *Heck* does not apply to an individual who "seeks damages for past confinement" and who "could not, as a practical matter, seek habeas relief" prior to his release. *Id.*; *see Griffin* v. *Baltimore Police Dep't*, 804 F.3d 692, 697 (4th Cir. 2015) (reaffirming this position).

In *Powers* v. *Hamilton County Public Defender Commission*, 501 F.3d 592 (6th Cir. 2007), the Sixth Circuit likewise stated that it was "persuaded by the logic of those circuits that have held that *Heck*'s favorable-termination requirement cannot be imposed against § 1983 plaintiffs who lack a habeas option for the vindication of their federal rights." *Id.* at 603. It thus permitted a § 1983 suit by a former prisoner whose "term of incarceration—one day—was too short to enable him to seek habeas relief." *Id.* at 601; *see Harrison* v. *Michigan*, 722 F.3d 768, 774 (6th Cir. 2013) (reaffirming this position).

The Tenth and Eleventh Circuits have adopted the same position. In *Cohen* v. *Longshore*, 621 F.3d 1311 (10th Cir. 2010), the Tenth Circuit "adopt[ed] the reasoning of th[o]se circuits" that "hold that a petitioner who has no available remedy in habeas,

through no lack of diligence on his part, is not barred by *Heck* from pursuing a § 1983 claim." *Id.* at 1315-17. So too in *Harden* v. *Pataki*, 320 F.3d 1289 (11th Cir. 2003), the Eleventh Circuit aligned itself with those Circuits that "hold the view that, where federal habeas corpus is not available to address constitutional wrongs, § 1983 must be." *Id.* at 1298-99 (internal quotation marks omitted); *see Morrow* v. *Fed. Bureau of Prisons*, 610 F.3d 1271, 1272 (11th Cir. 2010).

2. In acknowledged conflict with these Circuits, five Circuits—the First, Third, Fifth, Eighth, and Ninth—have largely or entirely rejected Justice Souter's *Spencer* concurrence.

In *Deemer* v. *Beard*, 557 F. App'x 162 (3d Cir. 2014), the Third Circuit explained that it disagreed with those "courts of appeals [that] have found that the *Heck* favorable termination rule does not apply to plaintiffs for whom federal habeas relief is unavailable." *Id.* at 165-166. Rather, it "interpreted *Heck* to impose a universal favorable termination requirement on all § 1983 plaintiffs attacking the validity of their conviction or sentence." *Id.* at 166. The Third Circuit acknowledged that a "majority of the justices in *Spencer* endorsed a different course," but concluded that it was bound to "leav[e] it to the Supreme Court to scale back or overrule *Heck*'s holding." *Id.* at 166-167.

The Fifth Circuit reached the same conclusion in *Randell* v. *Johnson*, 227 F.3d 300 (5th Cir. 2000) (per curiam). It read *Heck* as "unequivocally" imposing a "universal favorable termination requirement," and refused to join its sister Circuits in following the "concurring and dissenting opinions in *Spencer*." *Id.*

at 301. Although the Fifth Circuit acknowledged that it was possible that "the Supreme Court—if presented with the question—would relax *Heck*'s favorable termination requirement for plaintiffs who have no procedural vehicle to challenge their conviction," it "decline[d] to announce for the Supreme Court that it has overruled one of its decisions." *Id.*; *see Black* v. *Hathaway*, 616 F. App'x 650, 653-654 (5th Cir. 2015) (per curiam) (reaffirming this position).

The Eighth and First Circuits agree. In *Entzi* v. *Redmann*, 485 F.3d 998 (8th Cir. 2007), the Eighth Circuit concluded that *Heck* "rejected the proposition" that favorable termination is not required when "the writ of habeas corpus is no longer available." *Id.* at 1003. "Absent a decision of the Court that explicitly overrules what we understand to be the holding of *Heck*," the Eighth Circuit added, "we decline to depart from that rule." *Id.* So too in *Figueroa* v. *Rivera*, 147 F.3d 77 (1st Cir. 1998), the First Circuit reasoned that while "dicta from concurring and dissenting opinions in [*Spencer*] may cast doubt upon the universality of *Heck*'s 'favorable termination' requirement,'" lower courts must "leave to th[is] Court 'the prerogative of overruling its own decisions.'" *Id.* at 81 & n.3 (quoting *Agostini* v. *Felton*, 521 U.S. 203, 236 (1997)).

The Ninth Circuit recently aligned itself with these Circuits. For several years, it took the view that "the unavailability of a remedy in habeas corpus * * * permit[s]" a plaintiff "to maintain a § 1983 action for damages." *Nonnette* v. *Small*, 316 F.3d 872, 876 (9th Cir. 2002). But in 2014, the Ninth Circuit dramatically limited that precedent, holding that "*Nonnette's*

relief from *Heck* 'affects only former prisoners challenging loss of good-time credits, revocation of parole or similar matters, not challenges to an underlying conviction.'" *Lyall*, 807 F.3d at 1192 (quoting *Guerrero* v. *Gates*, 442 F.3d 697, 705 (9th Cir. 2006)). Further, it held that even as to that narrow class of claimants, *Heck* still applies if the plaintiff could have sought relief "through direct appeal *or* post-conviction relief." *Id.* at 705 n.12 (emphasis added); *see Martin* v. *City of Boise*, 920 F.3d 584, 613 (9th Cir. 2019) (same), *petition for cert. filed*, No. 19-247 (Aug. 22, 2019). The Ninth Circuit has thus reduced the exception to *Heck* to miniscule scope—applying only to persons who challenge the loss of good-time credits or the revocation of parole, and who never had *any* state or federal avenue for seeking relief.

3. The two remaining Circuits—the Second and Seventh—have expressed sharp and unresolvable internal conflict on this question. For a time, the Second Circuit appeared to follow the position taken by Justice Souter's concurrence in *Spencer*. *See, e.g.*, *Huang* v. *Johnson*, 251 F.3d 65, 75 (2d Cir. 2001). But in *Poventud* v. *City of New York*, 715 F.3d 57 (2d Cir. 2013), the panel split as to whether the court should continue to follow that approach. *Compare id.* at 58 (majority opinion), *with id.* at 66 (Jacobs, C.J., dissenting). The Second Circuit granted rehearing en banc to resolve the "relationship of access to *habeas* relief and the use of § 1983," but, in the face of deep and intractable disagreement on that question, ultimately resolved the case on the assumption that *Heck* did apply. *Poventud* v. *City of New York*, 750 F.3d 121, 125 n.1, 127 & n.6 (2d Cir. 2014) (en banc); *see infra* at p. 22. Second Circuit judges continue to disagree as to the court's prevail-

ing approach. *Compare Teichmann* v. *New York*, 769 F.3d 821, 829-830 (2d Cir. 2014) (Calabresi, J., concurring); *with id.* at 827 (Livingston, J., concurring in part and concurring in the judgment in part).

For several years, the Seventh Circuit likewise appeared to follow the approach taken by Justice Souter's *Spencer* concurrence. *See, e.g.*, *Burd* v. *Sessler*, 702 F.3d 429, 435 (7th Cir. 2012). Earlier this year, however, a panel of the Seventh Circuit repudiated that position, dismissing the court's earlier statements as "confus[ing]" dicta irreconcilable with "the core holding of *Heck*." *Savory* v. *Cannon*, 912 F.3d 1030, 1034-38 (7th Cir. 2019). In March, the Seventh Circuit granted rehearing en banc to resolve this conflict in its precedents. Order Granting Rehearing En Banc, *Savory*, No. 17-3543 (7th Cir. Mar. 6, 2019).

4. In short, the Circuits are sharply and intractably divided as to whether *Heck* applies to former prisoners who could not challenge their convictions through habeas while incarcerated. Every regional Circuit has taken a position on this question. Nearly every Circuit has acknowledged disagreement with some of its sister courts on the issue. And several Circuits have made clear that they will not revisit their precedents unless this Court intervenes, with a number of judges urging this Court to take up the issue. *See, e.g.*, *Deemer*, 557 F. App'x at 166-167; *Entzi*, 485 F.3d at 1003; *Randell*, 227 F.3d at 301; *Figueroa*, 147 F.3d at 81 n.3; *see also Deemer*, 557 F. App'x at 167-168 (Rendell, J., concurring) (urging the Court to "decide[] this issue"); *Brown* v. *Williams*, 644 F. App'x 117, 120 n.2 (3d Cir. 2016) (Ambro and Greenberg, JJ., concurring in the judgment) (same);

Newmy v. *Johnson*, 758 F.3d 1008, 1012 (8th Cir. 2014) (Kelly, J., concurring) (similar). This important and recurring split is simply incapable of resolution without this Court's intervention.

The split was also outcome-determinative in this case. It is beyond dispute that Louis Taylor lacked an opportunity to challenge his 2013 plea and sentence through habeas: He was released from incarceration the very same day that his 2013 plea was entered. ER 149, 175-176. Accordingly, applying the *Spencer* concurrence, the District Court initially concluded that *Heck* imposed no bar to his § 1983 damages claim. Pet. App. 91a-93a. But after the Ninth Circuit largely repudiated the *Spencer* concurrence in *Lyall*, the District Court reversed course. *Id.* at 70a-71a. The Ninth Circuit then affirmed on the ground that *Heck* shielded Taylor's 2013 plea and sentence from attack. *Id.* at 8a-11a.

Had Taylor's claim arisen in the Fourth, Sixth, Tenth, or Eleventh Circuits, *Heck* would thus have interposed no bar to his claim—as numerous cases involving similarly situated plaintiffs in those courts demonstrate. *See, e.g.*, *Powers*, 501 F.3d at 601 (holding that *Heck* does not preclude recovery by plaintiff whose "term of incarceration—one day—was too short to enable him to seek habeas relief"). Only because the Ninth Circuit largely abandoned the *Spencer* concurrence was Taylor foreclosed from obtaining relief for his decades of wrongful imprisonment.

B. The Ninth Circuit's Decision Deepens A Split Regarding Whether *Heck* Applies To A Plaintiff Whose Conviction Was Vacated And Who Pled No Contest To Time Served.

The Ninth Circuit's decision also implicates a second, highly consequential split. Even where Circuits deem *Heck* applicable to claims by former prisoners, they disagree as to whether *Heck* bars the specific type of claim at issue here: a § 1983 suit seeking incarceration damages after the plaintiff has succeeded in obtaining vacatur of his sentence and been released on a plea of time served. Four Circuits—the First, Second, Fifth, and now the Ninth—hold that *Heck* categorically bars such suits. In contrast, two Circuits—the Third and the Seventh—have adopted rules that permit plaintiffs like Taylor to overcome the *Heck* bar and recover damages for their term of imprisonment.

1. Four Circuits have expressly held that a plaintiff may not recover damages for his term of imprisonment where his initial conviction was vacated and he entered a no-contest plea to time served.

In *Pete* v. *Metcalfe*, 8 F.3d 214 (5th Cir. 1993), the plaintiff was convicted of sexual assault, succeeded in overturning his conviction on appeal, and then agreed to "plead *nolo contendere* to the charges and receive a sentence of the two years he had already served in prison." *Id.* at 215-216. Upon release, Pete brought a malicious prosecution claim under § 1983. *Id.* at 216. The Fifth Circuit dismissed the suit. It reasoned simply that the "prosecution ended with a plea of *nolo contendere* and resulting conviction and thus the action did not terminate in [Pete's] favor."

Id. at 219. Pete therefore could not bring a claim of malicious prosecution under § 1983. *Id.*

The First Circuit followed similar reasoning in *Olsen* v. *Correiro*, 189 F.3d 52 (1st Cir. 1999). There, too, the plaintiff was convicted of murder, successfully challenged his conviction on appeal, and pleaded "nolo contendere to a charge of manslaughter" and "was sentenced to the time he had already served for the original conviction." *Id.* at 55. The First Circuit held that the plaintiff could not recover incarceration damages for his initial murder conviction, because the plaintiff's plea to time served was "the sole legal cause of the incarceration imposed in the sentence," and allowing recovery would "call into question * * * the legal validity of [that] unimpeached criminal sentence." *Id.* at 68-69.

The Second Circuit joined this view in its *en banc* decision in *Poventud*. In that case, the plaintiff was convicted of attempted murder, obtained vacatur of his conviction after several years, and then pleaded guilty to attempted robbery with a sentence of one year of time served. 750 F.3d at 126. The *en banc* court held that Poventud was not categorically barred from challenging his initial conviction under § 1983. *Id.* at 135-136. But, citing *Olsen*, the Second Circuit held that "Poventud cannot seek to collect damages for the time that he served pursuant to his plea agreement (that is, for the year-long term of imprisonment)," because such recovery would impermissibly "impugn[ ] the validity" of his plea. *Id.*

The Ninth Circuit expressly followed the holdings of these Circuits in the decision below. Pet. App. 10a-11a. It held that "[a] plaintiff in a §1983 action may not recover incarceration-related damages for

any period of incarceration supported by a valid, unchallenged conviction and sentence." *Id.* at 11a. And just as in *Olsen* and *Poventud*—which the Ninth Circuit said it "agree[d] with" and described as "factually indistinguishable"—it held that Taylor could not recover any damages for his time of imprisonment because, in its view, "Taylor's valid 2013 conviction and sentence are the sole legal causes of his incarceration." *Id.* at 10a-11a.

2. The Third and Seventh Circuits, in contrast, have adopted rules that permit plaintiffs like Taylor to obtain recovery after entry of no-contest pleas.

The Third Circuit has permitted such claims by adopting a broad understanding of *Heck*'s favorable-termination requirement. It holds that "favorable termination is established by showing that the proceeding ended in any manner 'that indicates the innocence of the accused.' " *Geness* v. *Cox*, 902 F.3d 344, 356 (3d Cir. 2018). And it "eschew[s] an overly mechanical approach" in applying that standard, in favor of an inquiry into "the particular circumstances" of the plaintiff's case and the "judgment as a whole." *Bronowicz* v. *Allegheny County*, 804 F.3d 338, 346 (3d Cir. 2015) (internal quotation marks omitted). Thus, for example, it has concluded that a proceeding is favorably terminated where the prosecution "abandon[ed] * * * charges" against the plaintiff because it "anticipated it would be 'unable to prove the case.' " *Geness*, 902 F.3d at 356.

Applying that flexible standard, multiple district courts in the Third Circuit have held that plaintiffs like Taylor establish favorable termination where prosecutors consented to their immediate release or agreed to a time-served sentence. In *Thomas* v. *City*

of Philadelphia, 2019 WL 4039575 (E.D. Pa. Aug. 27, 2019), for instance, the plaintiff obtained vacatur of his sentence after 24 years of wrongful incarceration, and the government filed a *nolle prosequi* declining to bring new charges. *Id.* at *1, *5. The court held that this outcome "[wa]s indicative of the plaintiff's innocence," because it rested on the prosecution's determination that "it did not 'believe sufficient evidence exists to prove [the plaintiff] guilty beyond a reasonable doubt.'" *Id.* at *8 (citing *Geness*, 902 F.3d at 356). Similarly, in *Kitchen* v. *PA Board of Probation & Parole*, 2017 WL 4151170 (M.D. Pa. Sept. 19, 2017), the plaintiff secured vacatur of his sentence after sixteen months' imprisonment, and was issued a new sentence with credit for time served. *Id.* at *1-2. The court held that this outcome amounted to favorable termination because the plaintiff's initial sentence was "vacated by an appropriate state tribunal," and "upon remand he received a more favorable sentence." *Id.* at *4; *see also Dennis* v. *City of Philadelphia*, 379 F. Supp. 3d 420, 423 (E.D. Pa. 2019) (similar).

The Seventh Circuit has likewise permitted plaintiffs to recover damages for periods of incarceration covered by a time-served sentence, although on a different theory. In *Lopez* v. *City of Chicago*, 464 F.3d 711 (7th Cir. 2006), the Seventh Circuit held that a plaintiff could "recover compensatory damages for the unlawful duration of his [pre-trial] confinement," even though the plaintiff later "stipulated there was probable cause to arrest him." *Id.* at 722. Rejecting the contention that the plaintiff's incarceration was solely the result of the after-the-fact finding of probable cause, the court held that a jury "could rationally conclude" that the defendant would

not have suffered the same injuries "if [he] had received the *** hearing to which he was constitutionally entitled" at the outset. *Id.*

Applying that principle, district courts in the Seventh Circuit have repeatedly permitted full recovery by claimants like Taylor. In *McFarlane* v. *Carothers*, 2018 WL 4625660 (S.D. Ind. Sept. 27, 2018), the court held that a class of plaintiffs could recover damages for their periods of incarceration even though the plaintiffs were later issued sentences for time served. *Id.*, *adopting report and recommendation*, 2018 WL 5914848 (S.D. Ind. July 10, 2018). The court found no basis in the law of causation for the principle that "credit at sentencing for time served always erases an otherwise proven constitutional injury." *Id.* at *1. Likewise, in *Myatt* v. *Fries*, 2013 WL 3776480 (N.D. Ind. July 17, 2013), the court held that "evidence of later sentences" for time served "should not operate to lessen the Defendant's liability for violating the [plaintiffs'] constitutional rights," given that "the first portion of the time they served" was still "unconstitutional." *Id.* at *5.

Had Taylor's case arisen in either the Third or Seventh Circuits, he would thus have been eligible for recovery. The prosecution expressly stated that it abandoned its case against Taylor because it determined that it "would be unable to proceed with a retrial, and the convictions would not stand"—the very standard the Third Circuit applies for favorable termination. ER 124; *see id.* at 172; *Geness*, 902 F.3d at 356 (favorable termination occurs where the state abandoned prosecution because it "anticipated it would be 'unable to prove [its] case' "). And Taylor had his conviction vacated and received a sentence of

time served, enabling a jury to "rationally conclude" that he would not have been incarcerated but for his original, tainted conviction. *Lopez*, 464 F.3d at 722. Yet because of the Ninth Circuit's adoption of the position taken by the First, Second, and Fifth Circuits, the Ninth Circuit deemed *Heck* an absolute bar to Taylor's claims.

* * *

All told, then, the Circuits are split 6-4 on the availability of recovery in a case like Taylor's. Four Circuits (the Fourth, Sixth, Tenth, and Eleventh) deem *Heck* categorically inapplicable to former prisoners who lacked a habeas remedy while incarcerated, and two more Circuits (the Third and Seventh) deem *Heck* inapplicable to persons, like Taylor, who have been effectively exonerated and released pursuant to pleas of time served. In contrast, four Circuits (the First, Second, Fifth, and Ninth), have held that *Heck* applies both to former prisoners generally and to persons like Taylor in particular. These splits are deep, widely acknowledged, and manifestly incapable of resolution without this Court's intervention. The rights of the wrongfully incarcerated should not vary based on geography and which local jurisdiction wronged them. Certiorari should be granted, and the divisions in the Circuits should be resolved.

II. THE NINTH CIRCUIT'S DECISION IS WRONG.

Certiorari is also warranted because the Ninth Circuit's decision is gravely incorrect.

1. Five Members of this Court correctly concluded in *Spencer* that *Heck* does not apply to a prisoner, like Taylor, who has been released from prison and

who lacked an opportunity to raise his claims through habeas. *Heck* resolved a narrow problem of statutory interpretation: how to address "the intersection of the two most fertile sources of federal-court prisoner litigation," § 1983 and "the federal habeas corpus statute." 512 U.S. at 480. In *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), the Court held that "the specific federal habeas corpus statute" takes precedence over the "general" terms of § 1983 when a prisoner directly challenges his conviction or sentence by requesting an injunction shortening his sentence. *Id.* at 489. In *Heck*, the Court concluded that the same principle bars "inmates from doing indirectly through damages actions what they could not do directly by seeking injunctive relief—challenge the fact or duration of their confinement without complying with the procedural limitations of the federal habeas statute." *Nelson* v. *Campbell*, 541 U.S. 637, 646-647 (2004). To "prevent" that statutory conflict, *Heck* thus adopted the "favorable termination" requirement, which bars a prisoner from bringing under the guise of a § 1983 damages action a claim that Congress sought to channel through federal habeas. *Id.*; *see Heck*, 512 U.S. at 486-487.

Since *Heck*, this Court has repeatedly made clear that *Heck*'s favorable termination rule serves simply to avoid a conflict between § 1983 and the habeas statute. In *Muhammad* v. *Close*, 540 U.S. 749 (2004) (per curiam), the Court explained that "conditioning the right to bring a § 1983 action on a favorable result in state litigation or federal habeas serve[s] the practical objective of preserving limitations on the availability of habeas remedies." *Id.* at 751. Likewise, in *Wallace* v. *Kato*, 549 U.S. 384 (2007), Justice Scalia—*Heck*'s author—wrote that *Heck*

rested on the rationale that "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." *Id.* at 392 (quoting *Heck*, 512 U.S. at 482).

It follows that *Heck*'s favorable termination requirement has no application where, as here, the plaintiff *never* had an opportunity to bring his claims through federal habeas. *See Spencer*, 523 U.S. at 20 (Souter, J., concurring). In that circumstance, there is no statutory conflict to avoid; the plaintiff is not "evad[ing] th[e] requirement[s]" of the habeas statute that he was not subject to in the first place. *Preiser*, 411 U.S. at 489-490. And there is no basis for courts to read limits into the broad and unqualified language of § 1983 not compelled by a statutory conflict or some other weighty consideration. *See Spencer*, 523 U.S. at 19 (Souter, J., concurring).

Those Circuits to hold otherwise have not offered any coherent theory to the contrary. Instead, they have stated simply that they believe their positions compelled by unqualified language in *Heck*. *See, e.g.*, *Figueroa*, 147 F.3d at 81 n.3; *Randell*, 227 F.3d at 301; *Deemer*, 557 F. App'x at 166; *Entzi*, 485 F.3d at 1003. But *Heck* did not involve a former prisoner, and so did not address the circumstances of this case. *See Heck*, 512 U.S. at 487 (describing the rule for "a state prisoner seek[ing] damages in a § 1983 suit"). And, since *Heck*, this Court has made clear that it has not yet "settle[d] the issue." *Muhammad*, 540 U.S. at 752 n.2. It is critical that this Court clarify what the logic of *Heck* should make plain: where

habeas corpus is unavailable, *Heck* interposes no barrier to § 1983 relief.

2. Furthermore, even if *Heck* applied to persons who never had an opportunity to challenge their convictions through federal habeas, it still would not follow that plaintiffs are barred from recovering damages for their terms of imprisonment in the circumstances of this case—that is, where the plaintiff's conviction has been vacated, and the plaintiff has been released from imprisonment on a plea to time served. That is true for several reasons.

First, awarding a plaintiff damages for his term of imprisonment does not "necessarily imply the invalidity" of his subsequent sentence to time served. *Heck*, 512 U.S. at 487. Under the Double Jeopardy Clause, a court is constitutionally compelled to credit a sentence served for a given offense against a later sentence imposed for that same offense, even if the prior conviction has been deemed invalid. *See North Carolina* v. *Pearce*, 395 U.S. 711, 717-719 (1969). Accordingly, holding that this first period of imprisonment was unlawful—and that the defendant must be compensated for it—does not imply that it was improper for a court to credit the time served. To the contrary, the constitutional obligation to credit the time served exists *regardless* of whether the first period of imprisonment was lawful.

The Ninth Circuit, echoing the reasoning of the First Circuit in *Olsen*, asserted that a sentence to time served is the "sole legal cause[ ]" of the preceding term of imprisonment. Pet. App. 10a. But that understanding of causation has no discernible legal basis. Section 1983 borrows ordinary tort-law principles of causation, *see Memphis Cmty. Sch. Dist.* v.

Stachura, 477 U.S. 299, 305-306 (1986), and under no known conception of causation can an after-the-fact event be deemed the legal cause—let alone the *sole* legal cause—of a preceding injury. A legal cause is an "act or omission" that is "a substantial factor in bringing about the [plaintiff's] harm." Restatement (Second) of Torts § 9 cmt. b (1965). In law, as in reality, an act can only "bring[ ] about [a] harm" if it happens at an earlier point in time—not 42 years after that harm was first suffered. *Accord Lopez*, 464 F.3d at 722.

Second, a plaintiff like Taylor has established "favorable termination" under *Heck*. At common law, "[t]he abandonment of the proceedings because the accuser believes that the accused is innocent or that a conviction has, in the natural course of events, become impossible or improbable, is a sufficient termination in favor of the accused." Restatement (Second) of Torts § 660 cmt. d (1977); *see Heck*, 512 U.S. at 484-485 (invoking common-law standard). Here, the government acquiesced to Taylor's release because it determined it "would be unable to proceed with a retrial, and the convictions would not stand." ER 124. That is precisely the type of termination "indicat[iv]e [of] innocence" that the common law deemed favorable to the accused. Restatement (Second) of Torts § 660 cmt. a; *see Geness*, 902 F.3d at 356.

It is true that, as a condition of release, prosecutors demanded that Taylor plead "no contest," and the trial court consequently imposed a time-served sentence. But this Court noted last Term that "prosecutors' broad discretion over such matters as the terms on which pleas will be offered or whether

charged will be dropped * * * might call for a context-specific and more capacious understanding of what constitutes 'favorable' termination," particularly in light of "valid" concerns about creating "perverse incentives for prosecutors." *McDonough* v. *Smith*, 139 S. Ct. 2149, 2160 n.10 (2019). That admonition rings particularly true here, where Taylor's plea imposed no further penalty, reflected no credible assessment of Taylor's guilt, and arose from plainly "coercive tactics," Pet. App. 21a (Schroeder, J., dissenting in part) that were designed, by all indications, to shield Pima County from § 1983 liability.

And that leads to a *third* point. In *Town of Newton* v. *Rumery*, this Court imposed limits on the enforceability of "release-dismissal agreements," under which "a criminal defendant releases his right to file an action under 42 U.S.C. § 1983 in return for a prosecutor's dismissal of pending criminal charges." 480 U.S. at 389, 392. The Court explained that these agreements "may infringe important interests of the criminal defendant and of society as a whole," including by "intimidat[ing] [criminal] defendant[s]" into abandoning meritorious constitutional claims. *Id.* at 392-393. A majority of the Court thus held that such agreements may bar a prisoner from pursuing § 1983 claims only where they are "voluntary," where "there is no evidence of prosecutorial misconduct," and where "enforcement of th[e] agreement would not adversely affect the relevant public interests." *Id.* at 398; *see id.* at 401-402 (O'Connor, J., concurring in part and concurring the judgment).

Taylor's plea agreement is a release-dismissal agreement in all but name. No-contest pleas to time served do not accomplish any of the ordinary aims of

plea bargaining, such as forgoing the risks of trial in exchange for leniency. Rather, their only evident purpose is to leverage the state's custody over the prisoner to obtain acquiescence to an agreement that it perceives will prevent the prisoner from seeking § 1983 relief. If prosecutors could bar criminal defendants from pursuing § 1983 claims in this way, this Court's decision in *Town of Newton* would be a dead letter for a broad class of criminal defendants, as prosecutors could insist on the very agreements that *Town of Newton* prohibits through the guise of plea bargaining.

III. THE QUESTIONS PRESENTED ARE OF ENORMOUS PRACTICAL IMPORTANCE.

This case is of enormous importance to the lives and liberties of Americans. Section 1983 is a vital tool for vindicating constitutional rights, deterring official misconduct, and compensating Americans for the injuries suffered when their governments violate the Constitution. And the importance of § 1983 is nowhere greater than in cases of wrongful incarceration. Few abuses of the public trust are more egregious than unconstitutionally procuring the conviction of the innocent. And few persons are more deserving of compensation than those who have spent years—or decades—imprisoned because of government malfeasance.

The Ninth Circuit, like the First, Second, and Fifth Circuits, has now handed local governments a foolproof means of foreclosing § 1983 relief for the wrongfully incarcerated. The tactic is simple: just demand that a prisoner plead no contest to time served as a condition of release. Under the law of each Circuit, such a plea will bar recovery for every single day of

the person's incarceration. And in light of the pressure that even demonstrably innocent defendants face when presented with such pleas, many prisoners have no real choice but to accept. *See* Lucian E. Dervan & Vanessa A. Edkins, *The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem*, 103 J. Crim. L. & Criminology 1 (2013).

Local governments have responded accordingly. In recent years, no-contest pleas to time served have become "an emerging strategy in potentially costly wrongful conviction cases." Stephanie Clifford, *Wrongly Convicted, They Had to Choose: Freedom or Restitution*, N.Y. Times (Sept. 30, 2019), https://www.nytimes.com/2019/09/30/us/wrongful-convictions-civil-lawsuits.html. "[A]s the number of overturned convictions mounts," many jurisdictions have turned to time-served pleas as "a potential out" to avoid "payment for [an exoneree's] years in prison." *Id.*

The case law is now replete with examples of such pleas. In *Dennis*, the City of Philadelphia sought to deny § 1983 relief to an individual who was exonerated "after spending over a quarter-century on death row" because, as a condition of his release, the plaintiff "entered [a] no contest plea" and "was sentenced to time served." 379 F. Supp. 3d at 424. In *Blumberg* v. *Hewitt*, 2019 WL 2353012 (C.D. Cal. Apr. 19, 2019), the court barred recovery by a § 1983 claimant whose conviction was overturned after 12 years of wrongful imprisonment because of a plea and a time-served sentence. *Id.* at *3 (citing *Taylor* v. *County of Pima*, 913 F.3d 930, 935 (9th Cir. 2019)). Other decisions throughout the country—most arising in

just the last few years, and with growing frequency—involve similar fact patterns. *See, e.g.*, *Roberts* v. *City of Fairbanks*, 2018 WL 5259453 (Oct. 22, 2018); *Rosales-Martinez* v. *Palmer*, 2017 WL 3710068 (D. Nev. Aug. 28, 2017); *Thomas*, 2019 WL 4039575; *Kitchen*, 2017 WL 4151170; *Poventud*, 750 F.3d 121; *Stein* v. *County of Westchester*, 410 F. Supp. 2d 175 (S.D.N.Y. 2006); *Olsen*, 189 F.3d 52; Pet. App. 2a.

Unless this Court intervenes, this practice will continue to grow. The Circuits that deem such pleas effective in foreclosing § 1983 relief are deeply entrenched in their views—they have ratified such pleas by en banc decision, *see Poventud*, 750 F.3d at 136, refused to reconsider their holdings, Pet. App. 99a, and stated that they will not revisit their precedents absent a contrary decision of this Court, *see, e.g.*, *Randell*, 227 F.3d at 301; *Figueroa*, 147 F.3d at 81 n.3. It is improbable that local governments will cease to take advantage of a tool to which four Circuits have given express sanction and that promises governments near-total immunity from liability.

This case is an ideal vehicle to resolve this vitally important question. Taylor's plea is "factually indistinguishable" from the pleas that have been considered by other courts. Pet. App. 10a. The Ninth Circuit issued a published decision, on direct appeal, that drew a vigorous dissent. And as the Ninth Circuit recognized, further proceedings in the district court would not shed light on this question. *Id.* at 7a-8a. On the contrary, requiring Taylor—who is already in his mid-sixties—to spend years more litigating this case in the teeth of a ruling barring him from seeking any damages would only compound an already severe injustice. *Id.* at 8a.

This case also illustrates the enormous stakes of the question presented. Louis Taylor was charged, tried, and convicted of 28 counts of murder as a result of a grotesque campaign of racial discrimination and prosecutorial misconduct. After serving 42 years in prison—a lifetime of unwarranted suffering—Taylor obtained "virtual exoneration" of his non-existent crime, to the point that even Pima County admitted it could not sustain his conviction. *Id.* at 20a (Schroeder, J., dissenting in part). Yet rather than own up to its debt to Taylor, Pima County insisted that Taylor enter a no-contest plea of time served, then turned around to argue, successfully, that the plea required that Taylor recover nothing for his period of incarceration.

"[O]ur law is not that unjust." *Id.* at 19a. Review should be granted, and the Ninth Circuit's decision should be reversed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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DECEMBER 2019