No. _____

IN THE

Supreme Court of the United States

SEANTREY MORRIS,

Petitioner,

v.

JOSEPH MEKDESSIE, BRANDON LEBLANC; DANIEL SWEARS; ARTHUR S. LAWSON, IN HIS OFFICIAL CAPACITY AS CHIEF OF POLICE, CITY OF GRETNA POLICE DEPARTMENT; GRETNA CITY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court held in *Heck v. Humphrey* that a plaintiff cannot bring a § 1983 claim based on "actions whose unlawfulness would render a [prior] conviction or sentence invalid" unless he can "prove that the conviction or sentence has been reversed" or otherwise invalidated. 512 U.S. 477, 486-87 (1994). A contrary rule, the Court explained, "'would permit a collateral attack on the conviction through the vehicle of a civil suit.'" *Id.* at 484 (citations omitted).

The question presented, on which six courts of appeals are expressly and evenly divided, is whether *Heck* may properly be extended to bar the claims of a plaintiff who was never convicted or sentenced at all because his criminal charges were dismissed through a pretrial diversion program.

RELATED PROCEEDINGS

Morris v. Mekdessie, et al., No. 14-cv-1741 (E.D. La. Feb. 25, 2016) (summary judgment).

Morris v. Leblanc, et al., No. 16-30199 (5th Cir. Dec. 30, 2016) (interlocutory appeal).

Morris v. LeBlanc, et al., No. 14-cv-1741 (E.D. La. Apr. 16, 2018) (final judgment).

Morris v. Mekdessie, et al., No. 18-30705 (5th Cir. Apr. 26, 2019) (appeal from final judgment).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The rule of *Heck v. Humphrey* is clear: A convicted criminal cannot later bring a civil claim under 42 U.S.C. § 1983 when prevailing on that claim would collaterally "render [his criminal] conviction or sentence invalid." 512 U.S. 477, 487 (1994). The rationale for that rule is clear too: It is predicated on "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." *Id.* at 486. It therefore should be equally clear that *Heck* does not apply when there has been no conviction at all—as in this case, where the charges against Seantrey Morris were dismissed through a pretrial diversion program, and no conviction or sentence was entered.

On this question, however, the courts of appeals are expressly and persistently divided. The Sixth, Tenth, and Eleventh Circuits have correctly concluded that, when criminal charges have been dismissed pursuant to a pretrial diversion program involving no conviction or sentence, *Heck* does not apply—there is no criminal judgment at risk of collateral attack. Those courts each expressly rejected the contrary rule embraced by the Second, Third, and Fifth Circuits (including in the decision below): that *Heck* bars a plaintiff's § 1983 claim unless he was affirmatively exonerated of the underlying criminal charges.

Review is warranted now and in this case. Only this Court can resolve the square and acknowledged conflict of authority among the circuits. This issue

arises repeatedly, given the numerous pretrial diversion programs throughout the country. And this case is a particularly appropriate vehicle for resolving the question presented. The *Heck* bar was the only reason that Mr. Morris was forbidden from proceeding with his § 1983 claims. His claims are compelling, involving a traffic stop gone horribly wrong. Mr. Morris was stopped by police for minor moving violations and ended up in the hospital with a broken jaw. Video indicates that he was tased while handcuffed. He then was charged with traffic violations and resisting arrest and battery of an officer. But he was not convicted. He did not plead guilty to those charges, he did not admit any underlying facts, and no judgment was entered against him. Instead, he and prosecutors agreed that, pursuant to a pretrial diversion program, the charges against him would be dismissed. That diversion program lasted just minutes and merely required Mr. Morris to write a check for $350. Nothing in *Heck* bars Mr. Morris's claims under § 1983 for false arrest, unlawful seizure, false imprisonment, and malicious prosecution. In concluding otherwise, the Fifth Circuit misread *Heck* and furthered none of *Heck*'s purposes.

For all of these reasons, the petition should be granted.

OPINIONS AND ORDERS BELOW

The opinion of the Fifth Circuit is unreported. It can be found at 768 F. App'x 299 (5th Cir. 2019) and is reproduced at Pet. App. 1a-8a. The district court's unpublished decision granting summary judgment is reproduced at Pet. App. 9a-22a.

JURISDICTION

The Fifth Circuit issued its decision on April 26, 2019. On June 27, 2019, Justice Alito extended the time for filing a petition for a writ of certiorari to and including August 26, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

42 U.S.C. § 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State … subjects, or causes to be subjected, any citizen of the United States … 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 OF THE CASE[1]

Seantrey Morris Is Pulled Over, Beaten And Tased, And Given A Ticket For Traffic Violations

Seantrey Morris was driving to a friend's house in Gretna, Louisiana, on July 31, 2013, when he saw po-

[1] Because this case was decided at summary judgment, the facts and inferences are "viewed in the light most favorable to" Mr. Morris as the nonmoving party. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 158-59 (1970).

lice lights in the distance behind him. Record on Appeal (ROA) 252. Mr. Morris and the cars behind him moved to the side of the road. ROA.283. Officer Joseph Mekdessie approached Morris's car, and Morris handed over his driver's license, car registration, and proof of insurance. Pet. App. 3a; ROA.284-85. Officer Mekdessie walked away with those documents. ROA.285.

When Officer Mekdessie returned, he informed Mr. Morris that his insurance was expired. Pet. App. 3a; ROA.285. Morris immediately texted his fiancée and asked her to email him the updated insurance information, which she did. ROA.285. Morris showed the email with a picture of his current insurance information to Officer Mekdessie, who responded that Morris could have "made that up right then and there" and told Morris that his proof of insurance was not valid. ROA.286. Officer Mekdessie then returned to his vehicle.

Officer Daniel Swears soon joined Officer Mekdessie at the scene. ROA.288. Mr. Morris showed Officer Swears the email from his fiancée, and Swears assured Morris that electronic proof of insurance was acceptable and offered to relay that message to Officer Mekdessie. ROA.288-89. Swears then walked away. ROA.290.

Officer Mekdessie then returned to Mr. Morris's vehicle and told Mr. Morris that he had provided the wrong registration, after which Mekdessie returned to his own car. ROA.291-93. Mr. Morris found the correct, valid registration and walked to Officer Mekdessie's vehicle to deliver it. Pet. App. 3a. At Mekdessie's

instruction, Morris then waited behind his own car. Pet. App. 3a-4a.

Officer Mekdessie eventually approached Mr. Morris with a traffic ticket. Pet. App. 4a. Unable to read the violation from several feet away and in the dark, ROA.294; ROA.297, Mr. Morris asked why he was being ticketed, Pet. App. 4a. Mekdessie responded that Mr. Morris must "sign the ticket or you're going to jail." ROA.294; Pet. App. 4a. Mr. Morris asked again, "[W]hat's the ticket for?" ROA.294-95; Pet. App. 4a. Officer Mekdessie responded by instructing Mr. Morris to put his hands behind his back and informed him that he was "being arrested." Pet. App. 11a.

Mr. Morris again asked why he was being ticketed. ROA.295. The "next thing [Mr. Morris] kn[e]w," the two were "on the ground" and Mekdessie "had [him] in a headlock." ROA.296; Pet. App. 4a. Mr. Morris took out his cell phone and attempted to record the encounter. ROA.296; ROA.298. While Mr. Morris was on the ground, Officer Brandon LeBlanc, who had arrived on the scene, tased him in the back. Pet. App. 4a; ROA.320. A video of the incident "appears to indicate that Mr. Morris was already in handcuffs when the tasing occurred." Pet. App. 4a.

The next thing Mr. Morris remembers, he was handcuffed in the back of a police car with the taste of blood in his mouth and a missing tooth. Pet. App. 4a; ROA.300-01. He was taken to the Jefferson Parish Correctional Center, where medical personnel refused to accept him because of a "visible injury." Pet. App. 4a; ROA.302; ROA.334. He was then transported to a

hospital, where he had surgery to repair a broken jaw. Pet. App. 4a; ROA.303.

Mr. Morris Is Charged With Various Violations, All Of Which Are Resolved Through Pretrial Diversion

Based on the events of July 31, Mr. Morris was charged with driving with an expired motor vehicle inspection sticker, speeding at less than 10 miles per hour over the speed limit, resisting an officer, and battery of an officer. Pet. App. 11a. When he came to court, by mutual agreement the charges were resolved through a pretrial diversion program. Pet. App. 4a; ROA.242. He entered no plea (nor was he asked to enter one), and the court entered no judgment or sentence. ROA.242; *see Carver v. La. Dep't of Pub. Safety*, 239 So. 3d 226, 228 (La. 2018) (plaintiff's "arrest did not result in a conviction" because he had "participated in a pre-trial diversion program"). Rather, he was simply required to pay $350 (plus another $200 in fees), which he did on the spot. Pet. App. 16a; ROA.242. The pretrial diversion program was thereby completed, and the charges against him were immediately dismissed. Pet. App. 16a; ROA.242. The diversion required no supervision, probation, counseling, or other conditions, and Mr. Morris admitted no culpability.

Mr. Morris Brings A Civil Rights Action, The District Court Holds His Claims To Be Barred By Heck*, And The Fifth Circuit Affirms*

Mr. Morris subsequently sued the arresting officers for arresting him without probable cause, false imprisonment, and using excessive force in violation of the Fourth and Fourteenth Amendments. Pet. App. 5a; ROA.28-29. He further alleged that the officers fabricated a false story to justify the unlawful arrest. ROA.29. He sought damages under 42 U.S.C. § 1983. ROA.29.[2]

The defendants moved for summary judgment, arguing in relevant part that Morris's claims were barred under *Heck v. Humphrey*. *Heck* involved a prisoner who brought § 1983 claims that "directly implicate[d] the legality of [his] confinement." 512 U.S. at 479. The Court held that, "in order to recover damages for … harm caused by actions whose unlawfulness would render a *conviction or sentence* invalid, a § 1983 plaintiff must prove that the *conviction or sentence*"

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[2] Mr. Morris also asserted Louisiana state-law battery claims. Pet. App. 12a. The courts below treated those claims as rising and falling with his § 1983 claims for excessive force. *See* Pet. App. 8a, 20a. He further asserted a failure-to-supervise claim against Gretna, its police department, and police chief, which was dismissed because of the dismissal of other claims under *Heck*; and a claim for municipal liability, which was dismissed for reasons not relevant here. Pet. App. 8a, 21a.

has previously been invalidated. *Id.* at 486-87 (emphases added).[3] "A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983." *Id.* at 487. "But if the district court determines that the plaintiff's action, even if successful, *will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff*, the action should be allowed to proceed, in the absence of some other bar to the suit." *Id.* (emphasis added).

The district court granted the defendants' motion for summary judgment, concluding that *Heck* barred Mr. Morris's claims because he had participated in a pretrial diversion program. It did not deny that Morris was never formally convicted or sentenced; nonetheless, it held that *Heck* applied because "[t]he Fifth Circuit considers voluntary participation in a pretrial diversion program to be a 'conviction' for purposes of *Heck*." Pet. App. 14a. Thus, the court held the § 1983 claims were barred because Mr. Morris's supposed "conviction ha[d] not been reversed on direct appeal, expunged, declared invalid or otherwise called into question in a habeas proceeding." Pet. App. 16a.[4]

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[3] *See also id.* at 487 ("[T]he district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.").

[4] The only claims that survived summary judgment were Mr. Morris's claims for excessive force and battery against Officer LeBlanc, the officer who tased him. Pet. App. 18a. The court

Mr. Morris appealed the dismissal of his claims to the Fifth Circuit. Relevant here, he argued that *Heck* did not apply because he was not convicted or sentenced, and was at no point subject to any criminal judgment on any charge. The Fifth Circuit affirmed, holding that *Heck* applies unless the underlying criminal action was resolved in the criminal defendant's favor. Pet. App. 6a. Then, relying on its own prior precedent, the court explained that "[e]ntering a pretrial diversion agreement does not terminate the criminal action in favor of the criminal defendant," and so Mr. Morris did not meet that additional requirement. Pet. App. 7a (quoting *Taylor v. Gregg*, 36 F.3d 453, 456 (5th Cir. 1994), *overruled on other grounds by Castellano v. Fragozo*, 352 F.3d 939 (5th Cir. 2003) (en banc)). Nowhere did the decision below address that this pretrial diversion program creates no conviction or sentence that a § 1983 suit could collaterally attack. Instead, the court of appeals concluded that "*Heck* thus applies and dismissal" of Mr. Morris's § 1983 claims "was appropriate under our decades-old rule." Pet. App. 7a (citing *Taylor*, 36 F.3d at 456).[5]

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allowed those claims to proceed because Mr. Morris alleged that the tasing occurred *after* he had been handcuffed, and thus did not challenge the lawfulness of his arrest. Pet. App. 18a. The taser-related claims proceeded to trial, and the jury returned a verdict for Officer LeBlanc. Pet. App. 5a.

[5] The Fifth Circuit also affirmed the jury verdict in favor of Officer LeBlanc, Pet. App. 6a, and determined that Officer Mekdessie had qualified immunity for any excessive force that he employed during the arrest. Pet. App. 8a.

REASONS FOR GRANTING THE PETITION

This case presents an important and recurring question on which the courts of appeals are sharply divided: whether *Heck* applies to § 1983 claims of plaintiffs who were never subjected to any criminal judgment, but whose charges were instead dismissed pursuant to pretrial diversion. Three circuits properly recognize that pretrial diversion programs—in which the state and the defendant agree to a disposition under which charges are dismissed, no sentence is imposed, and no judgment of conviction is entered—do not trigger *Heck* because there is no "conviction or sentence," 512 U.S. at 487, that a § 1983 suit could collaterally attack. In direct contrast, three other circuits (including the decision below) hold that a plaintiff may not pursue a § 1983 claim if he previously resolved criminal charges through pretrial diversion. On this question, the decision below is wrong. By its plain terms, *Heck* requires a "conviction or sentence" before it prohibits § 1983 claims. When charges dismissed through pretrial diversion result in no criminal judgment, no conviction, and no sentence, the premise for the *Heck* bar is absent. This Court's intervention is sorely needed: The question presented arises frequently, in courts of all levels across the country. And this case presents an ideal vehicle for resolving this important question.

I. The Petition Should Be Granted To Resolve The Persistent, Square, And Acknowledged Circuit Split Over The Question Presented.

A. Three circuits hold that *Heck* does not bar civil damages suits where criminal charges were dismissed pursuant to pretrial diversion.

Three courts of appeals properly recognize that, when there has been no conviction or sentence because the criminal charges were resolved through pretrial diversion, the *Heck* bar is not triggered at all.

In *McClish v. Nugent*, the Eleventh Circuit permitted a § 1983 claim alleging false arrest to proceed after charges for resisting arrest had been "dismissed without prejudice pursuant to Florida's pretrial intervention program." 483 F.3d 1231, 1251 (11th Cir. 2007). Under those circumstances, the court explained, *Heck* is "inapposite." *Id.* That is because "[t]he issue is not" whether the plaintiff had secured "a favorable termination on the merits" but rather the "antecedent one—whether *Heck* applies at all since [the plaintiff] was never convicted of *any* crime." *Id.* Because the plaintiff's completion of a pretrial diversion program was "neither … a conviction [n]or [a] sentence," his "§ 1983 suit [did] not represent the sort of collateral attack foreclosed by *Heck* for the straightforward reason that it is not collateral to anything." *Id.* A contrary rule "would stretch *Heck* beyond the limits of its reasoning." *Id.* at 1251-52. Accordingly, the Eleventh Circuit "disagree[d]" with contrary decisions of the "Second, Third, and Fifth Circuit[s]." *Id.* at 1251.

The Sixth Circuit likewise rejected the rule adopted by the Second, Third, and Fifth Circuits. *S.E. v. Grant County Board of Education* involved a middle-school student who completed a "diversion contract" that led to charges being "dismissed." 544 F.3d 633, 636 (6th Cir. 2008). She later sued under § 1983 for violations of the Fourth and Fifth Amendments. *Id.* The district court dismissed the claim, but the Sixth Circuit reversed, concluding that "*Heck* is inapplicable, and poses no bar to plaintiffs' claims," because "the plaintiff was neither convicted nor sentenced." *Id.* at 639.

The Tenth Circuit also has held that *Heck* does not bar § 1983 claims following pretrial diversion leading to no conviction or sentence. In *Vasquez Arroyo v. Starks*, the court considered a plaintiff's "§ 1983 claims aris[ing] from allegedly false arrests" that he pursued after having completed a Kansas "pre-trial diversion" program. 589 F.3d 1091, 1093-94 (10th Cir. 2009). The court recognized that "[c]ourts disagree as to whether the *Heck* bar applies to pretrial programs similar to diversion agreements," and followed the reasoning of the Sixth and Eleventh Circuits. *Id.* at 1095. It explained that this Court had "made clear that the *Heck* bar comes into play only when there is an actual conviction." *Id.* (citing *Wallace v. Kato*, 549 U.S. 384, 393 (2007)). Pretrial diversion, however, is "the opposite of a conviction in a criminal action." *Id.* Accordingly, the court concluded, because "the Kansas pre-trial diversion agreement[]" entered into by the plaintiff was "not [an] outstanding conviction[]," his claims could not be and were "not barred by *Heck*." *Id.* at 1096.

B. Three other circuits hold directly to the contrary.

The Fifth Circuit is one of three courts of appeals to embrace the opposite rule.

Specifically, it held that *Heck* barred Mr. Morris's § 1983 claims even though he was never convicted or sentenced on any underlying criminal charges. Pet. App. 6a-7a. The court recognized that Mr. Morris did not have a criminal conviction and that, instead, all of the charges against him were dismissed through pre-trial diversion. Pet. App. 6a. But, citing its own precedent—and similar cases from the Second and Third Circuits—the court held that the *Heck* bar nevertheless precluded Mr. Morris's civil damages claims. Pet. App. 7a. It reasoned that "*Heck* does not allow a civil rights lawsuit to be an alternative vehicle … to a criminal case for challenging law enforcement decisions that resulted in arrest or prosecution unless the criminal case was resolved 'in favor of the accused.'" Pet. App. 6a (quoting *Heck*, 512 U.S. at 484). Thus, it concluded, because "[e]ntering a pre-trial diversion agreement does not terminate the criminal action in favor of the criminal defendant," "dismissal was appropriate" under *Heck*. Pet. App. 7a (quoting *Taylor*, 36 F.3d at 455).

The Third Circuit has adopted the same rule. In *Gilles v. Davis*, a person who had been arrested after protesting on a college campus brought § 1983 claims alleging violations of his First Amendment rights. 427 F.3d 197, 202-03 (3d Cir. 2005). He had been charged with "resisting arrest, disorderly conduct, and failure of disorderly persons to disperse," *id.* at 202, but he

was never convicted and the charges were expunged after he completed Pennsylvania's Accelerated Rehabilitation Disposition, *id.* at 209, which requires no admission of guilt, *id*. Expressly following the Second and Fifth Circuits, the Third Circuit nonetheless held that *Heck* barred his civil claims. *Id.* at 210-11. Because the court thought that the plaintiff had not received a "favorable termination" of his criminal case, it concluded that "success in the § 1983 claim would result in parallel litigation over whether [his] activity constituted disorderly conduct and could result in a conflicting resolution arising from the same conduct." *Id.* at 209; *see also Fernandez v. City of Elizabeth*, 468 F. App'x 150, 154 (3d Cir. 2012) (adhering to *Gilles*; barring the § 1983 claims of a plaintiff who completed New Jersey's Pre-Trial Intervention program).

Similarly, the Second Circuit has held that "[a] person who thinks there is not even probable cause to believe he committed the crime with which he is charged must pursue the criminal case to an acquittal or an unqualified dismissal, or else waive his section 1983 claim." *Roesch v. Otarola*, 980 F.2d 850, 853 (2d Cir. 1992). That is so, the court reasoned, because a pretrial diversion program "leaves open the question of the accused's guilt" and is thus not "a termination in favor of the defendant." *Id.* at 852. The court therefore barred the plaintiff's suit for "malicious prosecution, false arrest, or unjust imprisonment" even though he had completed a Connecticut program through which "the charges [were] dismissed, and all records of the charges [were] erased." *Id.* at 852-53; *see also Miles v. City of Hartford*, 445 F. App'x 379,

382-83 (2d Cir. 2011) (adhering to *Roesch* and affirming dismissal of plaintiff's claims because of her participation in an "accelerated rehabilitation" program).

As these decisions make clear, the courts of appeals are irreconcilably conflicted over whether *Heck* precludes a § 1983 action when the underlying charges were dismissed under pretrial diversion and no criminal conviction or sentence was imposed. This Court's intervention is necessary to resolve this square, deep, and acknowledged disagreement.

II. The Petition Should Be Granted Because The Decision Below Is Wrong.

A. For all of the reasons that the Sixth, Tenth, and Eleventh Circuits have explained, the decision below misreads *Heck*.

By its express terms, *Heck* applies to a civil plaintiff who seeks "to recover damages for … harm caused by actions whose unlawfulness *would render [his] conviction or sentence invalid*." 512 U.S. at 486 (emphasis added). Thus, for *Heck* to apply, there must be a conviction or sentence in the first place. Accordingly, a court evaluating *Heck*'s applicability must start by asking whether, in order "to prevail in [his] § 1983 action," the plaintiff "would have to negate an element of the offense of which he has been convicted." *Id.* at 486 n.6. When—as here—the defendant was not "convicted" of any offense, the answer is "No." As the Eleventh Circuit explained, "[t]he problem with using … *Heck* … to bar [such a plaintiff's] § 1983 suit is definitional—to prevail in his § 1983 suit, [the plaintiff] would not have to negate an element of the

offense of which he has been convicted, because he was never convicted of *any* offense." *McClish*, 483 F.3d at 1251 (internal quotation marks omitted); *see* Fed. R. Crim. P. 32(k) ("In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence."); *see generally* Conviction, *Black's Law Dictionary* (11th ed. 2019) ("conviction" is "[t]he act or process of judicially finding someone guilty of a crime; the state of having been proved guilty"). *Heck* simply does not apply to pretrial diversion involving no conviction or sentence.

The Fifth Circuit instead reasoned that a plaintiff's § 1983 claims cannot proceed unless the previous criminal proceedings had been "terminate[d]" in his "favor." Pet. App. 7a; *see also Gilles*, 427 F.3d at 209; *Roesch*, 980 F.2d at 852-53. That is wrong. Or, more precisely, it is true only when the "plaintiff's action … if successful" will "demonstrate the invalidity of any outstanding criminal judgment against the plaintiff." 512 U.S. at 487. If not, the plaintiff's civil action "should be allowed to proceed." *Id.* Only if the plaintiff's civil suit would require him "to negate an element of the offense of which he has been convicted," *id.* at 486 n.6, must the plaintiff "prove that the conviction or sentence has been reversed" or otherwise set aside. *Id.* at 486-87. Here, there is no outstanding criminal judgment against Mr. Morris, and there never was, because the charges against him were dismissed after he completed pretrial diversion.

B. Extending *Heck* to cover Mr. Morris's claims "would stretch *Heck* beyond the limits of its reasoning." *McClish*, 483 F.3d at 1252. The *Heck* rule aims

to "avoid[] parallel litigation over the issues of probable cause and guilt" and to "preclude[] the possibility of the claimant … succeeding in the tort action *after having been convicted* in the underlying criminal prosecution." *Heck*, 512 U.S. at 484 (internal quotation marks omitted; emphasis added). It thereby guards against a "collateral attack on [a] conviction." *Id.* at 484; *see also id.* at 486 ("[C]ivil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments.…").

None of those concerns are present here for the simple reason that there is no underlying conviction or sentence. Allowing Mr. Morris's claims to go forward would not result in any parallel litigation, it would not allow him to succeed in a tort action after having been convicted in a criminal case, and it would not allow him to collaterally attack or otherwise undermine the finality of any criminal conviction or sentence. Because the charges against him were dismissed, there was no conviction and no sentence.

Indeed, this Court has always assumed the existence of an underlying criminal conviction as a predicate for the *Heck* rule. In *Wallace v. Kato*, for instance, this Court considered *Heck*'s reach when deciding when the statute of limitations for a false arrest claim begins to run. 549 U.S. at 388-89. The petitioner there had argued that his claim "could not accrue until the State dropped its charges against him" because *Heck* otherwise would bar the claim. *Id.* at 392. This Court rejected that argument because "the *Heck* rule … is called into play only when there exists '*a conviction or sentence* that has not been ... invalidated,' that is to say, an 'outstanding criminal judgment.'" *Id.* at 393

(emphasis added) (quoting *Heck*, 512 U.S. at 486-87); *see also McDonough v. Smith*, 139 S. Ct. 2149, 2157 (2019) (to avoid *Heck*, a plaintiff "first ha[s] to prove that his *conviction* ha[s] been invalidated in some way"). The entire premise of *Heck* was that there is an "*an extant conviction*" that a civil claim might "impugn." *Wallace*, 549 U.S. at 393 (emphasis in original). Absent an underlying conviction or sentence, there is nothing to impugn.

The Fifth Circuit's decision does not accord with *Heck*, it is not consistent with how this Court has since described *Heck*, and it does not further any of the policy concerns upon which *Heck* was premised.

III. The Question Presented Is Important And Recurring.

Resolving the question presented is critical because pretrial diversion programs are used extensively, and indeed increasingly so. Federal district courts, 48 States, the District of Columbia, and countless cities and counties authorize pretrial diversion programs. *See* 18 U.S.C. § 3154 (authorizing pretrial diversion programs in federal court); *States Taking the Lead on Pretrial Diversion*, Nat'l Conference of State Legislatures (Oct. 16, 2017), https://tinyurl.com/y2a6q7br. Yet participants in these many programs who seek to vindicate their constitutional rights in the Second, Third, or Fifth Circuits—and in the federal district courts and state jurisdictions that hold likewise, *see infra* 12-15—lack the "federal forum for claims of unconstitutional treatment at the hands of state officials" that is vital to enforce fundamental limits on, and curb abuses of, government power.

Knick v. Twp. of Scott, Pa., 139 S. Ct. 2162, 2167 (2019) (quoting *Heck*, 512 U.S. at 480).

Given the frequency with which pretrial diversion programs are used, the question presented here frequently recurs. In addition to the six courts of appeals that have resolved the question, the issue has arisen within the jurisdiction of four other circuit courts—again, with conflicting results:

- Judges in the District of Massachusetts have held that *Heck* barred claims like these. *See Kennedy v. Town of Billerica*, No. 10-cv-11457, 2014 WL 4926348, at *2-*3 (D. Mass. Sept. 30, 2014) (recognizing that "[t]he circuits that have addressed the issue are divided" before concluding that the *Heck* bar applied); *Cardoso v. City of Brockton*, 62 F. Supp. 3d 185, 186-87 (D. Mass. 2015); *Cabot v. Lewis*, 241 F. Supp. 3d 239, 254 (D. Mass 2017).

- Conversely, a district court in West Virginia concluded that "a dismissal of charges" following completion of a pretrial diversion program is not "even remotely analogous to a conviction" for *Heck* purposes. *Tomashek v. Raleigh Cty. Emergency Operating Ctr.*, 344 F. Supp. 3d 869, 875 (S.D. W. Va. 2018).

- An Indiana district court has concluded that two plaintiffs whose "charges were dismissed upon completion of the terms specified in their plea agreements" were "outside the class of plaintiffs with which

the *Heck* doctrine is concerned," and therefore allowed them to proceed with their § 1983 claims. *Hudkins v. City of Indianapolis*, No. 1:13-cv-01179, 2015 WL 4664592, at *11 (S.D. Ind. Aug. 6, 2015).

- Multiple California district courts have agreed that *Heck* does not bar § 1983 claims where the plaintiff completed a pretrial diversion program and there was no conviction. *See Magana v. Cty. of San Diego*, 835 F. Supp. 2d 906, 913 (S.D. Cal. 2011); *Medeiros v. Clark*, 713 F. Supp. 2d 1043, 1056 (E.D. Cal. 2010).

Nor is the issue confined to the federal courts; state courts at various levels have considered the effect under *Heck* of participating in pretrial diversion programs. A California Court of Appeal has adopted the approach of the decision below, in direct conflict with federal district courts within that state. *See Lujano v. Cty. of Santa Barbara*, 190 Cal. App. 4th 801, 807-08 (2d Dist. 2010). New Jersey and Delaware courts have held likewise. *E.g.*, *Bustamante v. Borough of Paramus*, 994 A.2d 573, 578-81 (N.J. Super. Ct. App. Div. 2010) (recognizing the "split among the circuit courts" but following *Gilles* and barring plaintiff's claims under *Heck*); *Tilghman v. Delaware State Univ.*, No. Civ. K10C-10-022WL, 2012 WL 3860825, at *7-*9 (Del. Super. Ct. Aug. 15, 2012) (same). And the issue has reached at least one state supreme court, where it was left undecided but provoked sharp disagreement. *See Waldron v. Roark*, 902 N.W.2d 204, 222 (Neb. 2017) (Cassel, J., concurring) (the plaintiff's "acceptance and completion of pretrial diversion—in

exchange for dismissal of criminal charges—bar [her § 1983] claim"); *id.* at 222 (Wright, J., dissenting) ("My reading of *Heck*, and that of many other courts, is to the contrary."; the plaintiff's "participati[on] in pretrial diversion does not bar her claim").[6]

This question arises repeatedly, and it is not going away. Criminal defendants need clear guidance about the collateral consequences of entering into pretrial diversion programs, and states and localities need to be able to make judgments about when and how to use these programs. Only this Court can settle the widespread and entrenched disagreement that now exists.

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[6] Indeed, the issue is so commonplace that it, or variants on it, continues to arise even in those circuits that seemingly have resolved the question. *See, e.g.*, *Adams v. Soyka*, No. 11-cv-00399, 2011 WL 4915492, at *6 (D. Colo. Oct. 14, 2011); *Wilkerson v. Seymour*, No. 1:11-cv-4426, 2012 WL 12892433, at *4 (N.D. Ga. Oct. 17, 2012), *rev'd in part on other grounds*, 736 F.3d 974 (11th Cir. 2013); *Bates v. McKenna*, No. 11-cv-1395, 2012 WL 3309381, at *4-*5 (W.D. La. Aug. 13, 2012); *Elphage v. Gautreaux*, 969 F. Supp. 2d 493, 507-08 (M.D. La. 2013); *D.D. v. Scheeler*, No. 1:13-cv-504, 2015 WL 892387, at *8 (S.D. Ohio Mar. 3, 2015); *Escort v. Miles*, No. 6:17-cv-00484, 2018 WL 3580656, at *2-*3 (W.D. La. July 25, 2018); *Perez v. Vega*, No. 5:18-cv-00997, 2019 WL 1045387, at *3-*4 (E.D. Pa. Mar. 5, 2019) (collecting cases in E.D. Pa); *DiTullio v. Borough of Berlin*, No. 16-cv-2775, 2019 WL 1238824, at *2-*3 (D.N.J. Mar. 18, 2019).

IV. This Case Is An Ideal Vehicle For Resolving The Question Presented.

This case presents an ideal opportunity to resolve the important question presented. The perfunctory diversion program completed by Mr. Morris required nothing more than writing a check. He never admitted guilt in any fashion, or any of the facts underlying the charges. The program involved no probation, supervision, or rehabilitation. Upon his prompt payment of the diversion fee, Mr. Morris was discharged from diversion and the charges against him were dismissed. Pet. App. 5a, 16a; ROA.242. The *Heck* bar was the only impediment to his § 1983 action.

The question presented was hotly disputed by the parties in both the district court and the court of appeals. Mr. Morris expressly challenged the district court's reliance on *Heck* given the disposition of the charges against him under a diversion program, whereas the officers expressly urged that participation in pretrial diversion triggers the *Heck* bar. Appellant's Brief at 26-36; Appellees' Brief at 16-20.

And ultimately, this question was fully considered and expressly addressed by both the district court and the Fifth Circuit. Indeed, the *Heck* bar was the sole basis for both decisions below. The district court held that *Heck* applies notwithstanding the lack of any underlying criminal judgment, conviction, or sentence, because it interpreted Fifth Circuit precedent as holding that participation in a pretrial diversion program "constitutes a conviction under *Heck*." Pet. App. 16a. And the Fifth Circuit affirmed both the district court's result and its rationale, applying its

"decades-old rule" that entering into a pretrial diversion agreement triggers the *Heck* bar because such agreements do not reflect a favorable termination of the criminal case for the defendant. Pet. App. 7a. The question is perfectly teed up for this Court's review.

CONCLUSION

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

Respectfully submitted,

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