No. _____

In the Supreme Court of the United States

STATE OF MICHIGAN, PETITIONER

v.

JESSIE HARRISON

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the favorable-termination rule under *Heck* v. *Humphrey* applies to a § 1983 claim—thereby indefinitely postponing the statute of limitations—when a plaintiff alleges false imprisonment based on a sentence that has been fully served.

PARTIES TO THE PROCEEDING

The petitioner is the State of Michigan. Petitioner and the other defendants did not participate in the lower court proceedings because the complaint was dismissed under the screening provisions of the Prison Litigation Reform Act: 28 U.S.C. §§ 1915(e)(2) and 1915A, and 42 U.S.C. § 1997e(c). The respondent is Jessie Harrison, an inmate.

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The opinion of the Sixth Circuit Court of Appeals is reported at 722 F.3d 768. The opinion of the United States District Court for the Western District of Michigan is unreported, but available at 2010 WL 2925992.

JURISDICTION

The district court had jurisdiction over respondent's claims under 28 U.S.C. § 1331. The court of appeals had jurisdiction to review the district court's final judgment under 28 U.S.C. § 1291. The court of appeals filed its opinion on July 10, 2013. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

42 U.S.C. § 1983 states, 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 . . . .

INTRODUCTION

Respondent Jessie Harrison was erroneously held in prison 18 months longer than his conviction required. Although aware of this error when he was released from custody in 1990, he did not file his § 1983 claim until 2010. Despite this 20-year delay, a Sixth Circuit panel majority held that Michigan's three-year statute of limitations for § 1983 actions did not bar his suit.

The panel majority reached this outcome by applying the favorable-termination rule from *Heck* v. *Humphrey*, 512 U.S. 477 (1994), in a context where that rule does not fit. The rule prevents a person from bringing a § 1983 claim for an allegedly unconstitutional imprisonment unless the person can demonstrate that his conviction or sentence has already been invalidated. The rule arose to prevent prisoners from circumventing federal habeas restrictions by attacking their conviction through a § 1983 action.

But "the essence of habeas corpus is an attack *by a person in custody* upon the legality of that custody." *Preiser* v. *Rodriguez*, 411 U.S. 475, 480–81 (1973) (emphasis added). Because a person no longer in custody has no habeas remedy, the favorable-termination rule no longer fulfills its intended function of preventing collisions at the cross roads of federal habeas and § 1983 actions. For this reason, three circuits—the Second, Ninth, and Eleventh—have recognized that the favorable-termination rule does not apply to persons no longer in custody.

Taking a different path, the Sixth Circuit concluded that although Harrison had been free from custody for that conviction for 20 years, his false-imprisonment claim did not begin to accrue until 2008, when a state court issued a judgment correcting the length of his sentence. This conclusion, though disregarding contrary circuit precedent, accorded with decisions from the First, Third, Fifth, and Eighth Circuits, thereby deepening an existing circuit split.

The deeper issue underlying this split is disagreement about the effect of Justice Souter's concurrence in *Spencer* v. *Kemna*, 523 U.S. 1 (1998). Justice Souter proposed an exception to the favorable-termination rule in cases where federal habeas relief is unavailable, and four other justices agreed with his exception. Some circuits have interpreted Justice Souter's exception as binding law, while others have not. Only this Court can resolve the circuit split. Resolution of this broad issue will also resolve the narrower issue in this case regarding the effect of the favorable-termination rule on the statute of limitations. The petition for certiorari should be granted, and the decision of the Sixth Circuit should be reversed.

STATEMENT OF THE CASE

This is a § 1983 action brought *pro se* by Jessie Harrison, a prisoner in the Michigan Department of Corrections. Harrison is currently incarcerated, but for a conviction that is unrelated to this § 1983 action. Pet. App. 2a.

In 1986, Harrison was charged with second-degree murder and carrying a firearm during the commission of a felony. A jury convicted him of reckless use of a firearm resulting in death—a lesser-included misdemeanor—and felony-firearm. Harrison received consecutive sentences. Pet. App. 3a. According to Harrison, the Department of Corrections had a policy of reviewing all inmate sentences, convictions, and judgment orders for mistakes. Harrison asserts that he notified his counselor, the director, and the parole board that his sentence was unconstitutionally long. Pet App. 3a, 25a–26a. But Harrison's complaints went unresolved. As a result, he was not released around September 1988, as he should have been, but in March 1990, some 18 months later. In 1991, Harrison committed another, unrelated firearm offense. He was found guilty and returned to prison. Pet. App. 3a.

In 2003, while serving his sentence on the newer and unrelated conviction, Harrison filed a motion in state court for relief from the 1986 judgment under Michigan Court Rule 6.502. Harrison asserted that his 1986 sentence was improper because the felony-firearm sentence could not run consecutively to a sentence for a misdemeanor. This error, Harrison argued, resulted in 18 months of illegal imprisonment. The state trial court denied relief, but in 2008 the Michigan Court of Appeals reversed, ruling that the sentence Harrison received was "invalid" and constituted "actual prejudice." Pet. App. 4a. Excusing Harrison's delay in seeking relief as caused by ineffective assistance of counsel, the appeals court ordered the trial court to issue a new judgment.

Harrison then filed an administrative grievance, informing the prison records office about the decision and requesting that the extra 18 months be taken off of the minimum and maximum sentence for the 1991 offenses for which he was then imprisoned. A prison employee denied the grievance, advising Harrison that time served on a previous case could not be applied to his current sentence. Pet. App. 4a, 26a. Harrison then applied for a commutation of the last two years of his 1991 sentence with the Michigan Parole Board and, later, with the Governor. Neither application was successful. Pet. App. 4a.

Harrison filed this § 1983 action in 2010—20 years after being discharged from the incorrect sentence. In his complaint, he alleged that the State of Michigan, the Michigan Parole Board, the Department of Corrections, Governor Jennifer Granholm, Wayne County, and a number of Department of Corrections officials violated his constitutional rights by failing to commute his 1991 sentence. Harrison sought money damages for the 18 months he served beyond the statutory maximum provided for in his 1986 convictions. Pet. App. 5a.

The district court dismissed the claims against the State, the Department of Corrections, and the Parole Board on the basis of sovereign immunity. Pet. App. 27a–28a. And the district court held that Harrison's claims against the individual defendants for false imprisonment were time-barred under the three-year statute of limitations, which was triggered by Harrison's release from prison in 1990. Pet. App. 30a–31a.

The complaint was never served on the state defendants, because the district court dismissed the complaint *sua sponte* under 28 U.S.C. §§ 1915(e)(2) and 1915A, and 42 U.S.C. § 1997e(c)(1). Pet. App. 34a.

Harrison appealed to the Sixth Circuit. He argued, among other things, that the statute of limitations did not begin running in 1990 when he was released from custody on the sentence in question but, instead, in 2010 when he received a favorable decision from the state court that corrected his 1986 sentence. Pet. App. 5a. In a 2-1 decision, the court of appeals reversed as to the statute-of-limitations issue. Relying on *Heck*, the majority concluded that Harrison's § 1983 action was timely filed in 2010 because the statute of limitations did not begin to run until Harrison received a favorable termination of his sentence when the state court issued its ruling in 2008. Pet. App. 11a–12a.

Judge Rogers dissented. Citing Justice Souter's concurrence in *Spencer*, as well as other case law, he reasoned that the favorable-termination rule did not apply after a prisoner is released from custody, which meant that the statute of limitations began to run when Harrison was released from prison in 1990. Pet. App. 20a–21a. A contrary rule would allow prisoners to "avoid the procedural hurdles of federal habeas review by simply not filing a petition." Pet App. 23a. The dissent also observed that "[t]here is a circuit split regarding the interplay between *Spencer* and *Heck*." Pet. App. 21a.

REASONS FOR GRANTING THE PETITION

I. The circuits are split as to whether Justice Souter's concurrence in *Spencer* is binding law.

If this case had arisen in the Second, Ninth, or Eleventh Circuits, or even had been heard by a Sixth Circuit panel that followed its own precedent, it would have come out differently.

In *Nonnette* v. *Small*, 316 F.3d 872 (9th Cir. 2002), for example, the Ninth Circuit did not apply the favorable-termination rule. After being released from custody, Nonnette brought a § 1983 claim asserting that his "release date initially had been improperly calculated, and that he wrongfully had been denied work credits that would have led to an earlier release." *Id.* at 874. The district court, citing *Heck*, held that "he could not bring a § 1983 action for damages until he had succeeded in invalidating his confinement through habeas." *Id.* The Ninth Circuit reversed, because Nonnette's case differed from *Heck* "in one respect" that was "critical": "*Heck* dealt with a prisoner who was still incarcerated, and thus where a remedy in habeas corpus was available," but Nonnette had been released. *Id.* at 876, 875. Thus, if Nonnette "filed a petition for habeas corpus attacking" the length of his sentence, "his petition would have to be dismissed for lack of a case or controversy because he has fully served the period of incarceration that he is attacking." *Id.* at 876. The Ninth Circuit concluded that Justice Souter's reasoning applied, meaning Nonnette would be free to bring his claim immediately, without first achieving a favorable termination. *Id.* at 876–77.

The outcome would also be different in the Second Circuit. In *Huang* v. *Johnson*, 251 F.3d 65 (2d Cir. 2001), a mother brought a § 1983 false-imprisonment claim on behalf of her minor son, who had just been released from a juvenile correctional facility. *Id.* at 68. After quoting *Heck*'s favorable-termination rule, *id.* at 73, the Second Circuit observed that "five Justices agreed in *Spencer* that the petitioner" whose habeas petition was rendered moot by "the expiration of his sentence" "could still bring a Section 1983 action to redress the alleged wrongs," *id.* at 74. The Second Circuit "conclude[d] that *Heck* [did] not bar [the mother's] Section 1983 action" because the son had "no habeas remedy because he has long since been released from [ ] custody." *Id.* at 75. Thus the Second Circuit also did not impose the favorable-termination rule on a § 1983 plaintiff no longer in custody.

The favorable-termination rule also would not have barred Harrison's § 1983 claim if his case had arisen in the Eleventh Circuit. In *Harden* v. *Pataki*, 320 F.3d 1289 (11th Cir. 2003), a case involving extradition, the Eleventh Circuit concluded that *Heck* did not bar a § 1983 claim against the state that returned the fugitive to the demanding state. *Id.* at 1299. Discussing Justice Souter's concurrence in *Spencer*, the court stated that "'five justices hold the view that, where federal habeas corpus is not available to address constitutional wrongs, § 1983 must be,'" *id.* at 1298. Reasoning that an attempted habeas claim by a returned fugitive would be moot—since "the fugitive is no longer being detained by the asylum state," that detention "is no longer an issue," *id.* at 1299—the court allowed the § 1983 claim.

In each of these circuits, then, a § 1983 claim brought by someone no longer in custody would not have to wait for a favorable termination of the conviction or sentence before bringing a claim. So the indefinite delay for the claim's accrual that Harrison benefitted from here would not have occurred in those circuits.

Worse, that result should not have occurred in the Sixth Circuit. In *Shamaeizadeh* v. *Cunigan*, 182 F.3d 391 (6th Cir. 1999), a prior Sixth Circuit panel had already concluded that "[t]he majority of the Court in *Spencer* . . . clearly excludes from *Heck*'s favorable termination requirement former prisoners no longer in custody." *Id.* at 396 n.3.

On the other side of the circuit-split ledger, the First, Third, Fifth, and Eighth Circuits have all taken the same approach the Sixth Circuit panel majority did here. In each of those circuits, the courts of appeals have concluded that the favorable-termination rule always applies, even if the § 1983 plaintiff is no longer in custody. See *Figueroa* v. *Rivera*, 147 F.3d 77, 81 (1st Cir. 1998) (dismissing a claim brought by deceased prisoner's family); *Gilles* v. *Davis*, 427 F.3d 197, 210 (3d Cir. 2005) (dismissing a claim brought by an individual not in custody who could not show favorable termination); *Randell* v. *Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) ("Because Randell is seeking damages pursuant to § 1983 for unconstitutional imprisonment and has not satisfied the favorable termination requirement of *Heck*, he is barred from any recovery and fails to state a claim upon which relief may be granted."); *Entzi* v. *Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007).

In each decision in this latter group, the courts of appeals have concluded that they are bound to follow *Heck*'s rule, despite the views expressed in *Spencer*, because this Court "has admonished the lower federal courts to follow its directly applicable precedent, even if that precedent appears weakened by pronouncements in its subsequent decisions, and to leave to the Court 'the prerogative of overruling its own decisions.'" *Figueroa*, 147 F.3d at 81 (quoting *Agostini* v. *Felton*, 521 U.S. 203, 207 (1997)).

As a result, released prisoners in the First, Third, Fifth, Sixth, and Eighth Circuits have no need to comply with the statute of limitations for § 1983 claims—although free of custody and therefore not within the purview of habeas, they can delay the limitations period for as long as they want. In contrast, if a plaintiff no longer in custody happens to be in the Second, Ninth, and Eleventh Circuit, then that plaintiff need not show favorable termination as an element of his § 1983 claim, so his claim is cognizable—and therefore subject to the limitations period—under ordinary rules of accrual.

II. The purposes of the favorable-termination rule do not apply when the § 1983 plaintiff is not in custody.

When a plaintiff bringing a § 1983 claim is in custody, the risk arises that the plaintiff could use the tort claim as a collateral attack on his underlying conviction. This Court developed the favorable-termination rule to prevent these collateral attacks. But when a § 1983 plaintiff is not in custody, this concern disappears, and thus so does the rationale for requiring favorable termination.

The Court laid the groundwork on which favorable-termination rule eventually rested in *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), where this Court addressed "the interrelationship of two important federals laws," namely the habeas statutes and § 1983. *Id.* at 482. In *Preiser*, state prisoners sued under § 1983 for the deprivation of good-time credits. The respondent-prisoners "sought injunctive relief to compel restoration of the credits, which in each case would result in their immediate release from confinement in prison." *Id.* at 476–77. The question in *Preiser* was "whether state prisoners seeking such redress may obtain equitable relief under the Civil Rights Act, even though the federal habeas corpus statute, 28 U.S.C. § 2254, clearly provides a specific federal remedy." *Id.* at 477. This Court held that for such a claim, a prisoner's "sole federal remedy is a writ of habeas corpus." *Id.* at 500.

In reaching this conclusion, the Court emphasized that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Id.* at 484. In fact, the Court described "seeking immediate release or a speedier release from [physical] confinement" as "the heart of habeas corpus." *Id.* at 498; see also *id.* at 487 (suits "attacking the very duration of [ ] physical confinement itself" are "the core of habeas corpus"). And the Court recognized that it "would wholly frustrate congressional intent" to allow prisoners to "evade" habeas requirements, such as exhaustion of adequate state remedies, "by the simple expedient of putting a different label on their pleadings." *Id.* at 489–90.

Having concluded that prisoners cannot evade habeas procedures by seeking injunctive relief under § 1983 in *Preiser*, the Court confronted the question of damages in *Heck*, again addressing "the intersection of the two most fertile sources of federal-court prisoner litigation"—"§ 1983, and the federal habeas corpus statute." *Heck*, 512 U.S. at 480. In *Heck*, even though the prisoner sought only damages, and not release, success on his § 1983 action for malicious prosecution would have called into question the validity of his sentence.

The *Heck* Court adopted the favorable-termination rule, turning—in part—to the law of malicious prosecution. "One element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Id*. at 484. Regarding § 1983 claims in general, this Court applied the termination element more broadly, holding that, "to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove" favorable termination—"that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." *Id*. at 486–87.

In *Heck*, the statute-of-limitations issue lurked in the background, but the Court did not directly address it. Instead, because this Court concluded

that the favorable-termination rule "den[ies] the existence of a cause of action" in the first place, it was "unnecessary for [this Court] to address the statute-of-limitations issue wrestled with by the Court of Appeals . . . ." *Id.* at 489. Again using the law of malicious prosecution as guidance, this Court stated that "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Id.* at 489–90. But this Court in *Heck* dealt with the situation where the prisoner was still in custody, *id.* at 479 ("petitioner has not sought release from custody in this action"), and did not decide when the statute of limitations accrues for false-imprisonment claims.

The favorable-termination rule was revisited again in *Spencer* v. *Kemna*, 523 U.S. 1 (1998). *Spencer* was not a § 1983 case, but a habeas action. The issue was whether the petitioner's completion of his entire term of imprisonment rendered his habeas petition moot. *Id.* at 3. Framing the issue as one of Article III standing, this Court found that the habeas petition was moot and affirmed the court of appeals. *Id.* at 18.

In a concurring opinion, joined by three other justices, Justice Souter opined that the favorable-termination rule under *Heck* would not bar a suit under § 1983, even though the underlying conviction had not been set aside, because the habeas action was dismissed as moot. *Spencer*, 523 U.S. at 19. Justice Souter explained "that a former prisoner, no longer 'in custody,' may bring a § 1983 action establishing the unconstitutionality of a conviction or

confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." *Id.* at 21. In his dissent, Justice Stevens also endorsed this approach. *Id.* at 25 n.8. Five justices thus agreed that the favorable-termination rule would not bar a released prisoner—having no recourse under the federal habeas statute—from bringing a § 1983 action that challenged the now-served conviction and sentence.

As detailed above, Justice Souter's concurrence in *Spencer* resulted in a split among the circuits as to whether the approach he espoused was law or dicta. See also *Powers* v. *Hamilton Co. Public Defender Comm'n*, 501 F.3d 592, 602–03 (6th Cir. 2008) (discussing the circuit split). The circuits thus were split between a no-exception application of the favorable-termination rule and a no-longer-in-custody exception.

In reaching its decision, the majority panel lost sight of the primary purpose of the favorable-termination rule. *Preiser*, *Heck*, and *Spencer* were all focused on defining the scope and applicability of § 1983 and the federal habeas corpus statute in situations where the two statutes had the potential to overlap. The root concern was that an inmate could use § 1983 to collaterally attack a sentence *while still incarcerated*. Other courts have recognized that this is the rule's main purpose, observing that "the purpose of the *Heck* favorable-termination requirement is to prevent prisoners from using § 1983 to vitiate collaterally a judicial or administrative decision that affected the overall

length of their confinement," and to ensure "that punishments related to their term of imprisonment, or the procedures that led to them . . . must be attacked through a habeas petition." *Peralta* v. *Vasquez*, 467 F.3d 98, 104 (2d Cir. 2006). See also *Abella* v. *Rubino*, 63 F.3d 1063, 1065 (11th Cir. 1995) (the purpose of the rule "was to limit the opportunities for collateral attack on state court convictions because such collateral attacks undermine the finality of criminal proceedings and may create conflicting resolutions of issues").

This Court also recognized this theme in *Wilkinson* v. *Dotson*, 544 U.S. 74 (2005), where two state prisoners brought an action under § 1983 claiming that Ohio's state parole procedures violate the U.S. Constitution. *Id.* at 76. The question was whether the prisoners may bring such an action under § 1983, or whether they must instead seek relief exclusively under the federal habeas corpus statutes. *Id.* This Court concluded that such an action could be brought under § 1983 because a successful challenge to parole procedures would not necessarily result in a speedier release. *Id.* Other cases involved the application of the favorable-termination rule to the misconduct system. See *Edwards* v. *Balisok*, 520 U.S. 641 (1997); *Muhammad* v. *Close*, 540 U.S. 749 (2004). Although habeas corpus was not a core issue, both *Edwards* and *Muhammad* also concerned a prisoner's use of § 1983 to collaterally attack the length of his sentence *while incarcerated*. But none of these cases applied the favorable-termination rule to a prisoner who had been released after fully serving his sentence.

In this case, the Sixth Circuit complicated the circuit split further by creating an exception to the exception. The panel majority recognized that its prior decision in *Powers* was binding—*i.e.*, Justice Souter's concurrence was the law—but nevertheless chose to apply the favorable-termination rule. It did this because the respondent had, in fact, achieved a favorable termination by pursuing a remedy under state law *after* he was released from the sentence that formed the basis of his false-imprisonment claim. "*Powers* has no bearing on this case because, as Justice Souter made clear in his concurrence in *Spencer*, the exception applies only to those § 1983 litigants who are unable as a matter of law to satisfy *Heck*'s favorable-termination requirement or, at least, those unable as a matter of law to satisfy it by means of a federal habeas action." Pet. App. 13a–14a. Thus, under the majority's reasoning, if *any* method is available (i.e., via habeas or state law), then the favorable-termination rule applies.

The *Harrison* majority's reasoning is flawed on this point too. The fact that the respondent achieved a post-release favorable termination does not mean that he was *required* to do so. If this Court were to resolve the circuit split by adopting Justice Souter's concurrence as law, then the favorable-termination rule no longer applied after Harrison served his sentence and was released. The majority focused on the "impossible as a matter of law" language in Justice Souter's concurrence. This language, however, must be read in context. *Spencer* was a habeas case. Justice Souter focused on the fact that the habeas action was found to be moot and that the petitioner would have been without a remedy if the

favorable-termination rule foreclosed a potential § 1983 action.

The *Harrison* majority's broad interpretation of the "impossible as a matter of law" language would eviscerate the rule proposed by Justice Souter. Getting a conviction or sentence set aside after release may be difficult, but it is rarely—if ever—*impossible*. The petitioner in *Spencer*, who was convicted and sentenced in Missouri, most likely had remedies available under state law—just as Harrison had remedies under Michigan state law. For example, post-conviction relief is available under Missouri Supreme Court Rule 29.15. And under Article 4, § 7 of the Missouri State Constitution, "[t]he governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment . . . ." So, when Justice Souter wrote of "a favorable-termination requirement that it would be *impossible as a matter of law* for him to satisfy," it was directed at the impossibility of attaining relief under the federal habeas corpus statute. It is unlikely that obtaining relief under state law was *impossible*. But that was not the issue in *Spencer*.

The Sixth Circuit's decision in *Harrison* strongly supports the need for this Court to reach a decision regarding the effect and scope of Justice Souter's concurrence in *Spencer*. There is currently confusion among the circuits as to whether the favorable-termination rule applies in cases where a plaintiff's sentence has already been served. And the fact that this case is at an interlocutory stage should not delay this Court's review. See, e.g., *Owens* v. *Okure*, 488

U.S. 235, 238 (1989) (reviewing an interlocutory appeal concerning the statute of limitations for § 1983 claims); *Wilson*, 471 U.S. at 1941–42 ("the conflict, confusion, and uncertainty concerning the appropriate statute of limitations to apply to this most important, and ubiquitous, civil rights statute provided compelling reasons for granting certiorari").

The well-developed issue of whether Justice Souter's concurrence is the law has been brewing for quite some time now and is in need of resolution by this Court.

III. The Sixth Circuit's interpretation of the favorable-termination rule conflicts with established law regarding the statute of limitations for false imprisonment cases.

The general purpose of statutes of limitations is "to protect defendants against stale or unduly delayed claims." *Credit Suisse Securities (USA) LLC* v. *Simmonds*, 132 S. Ct. 1414, 1420 (2012). If the Sixth Circuit's decision is allowed to stand, Michigan prison officials will have to defend actions they took over 25 years ago (respondent's allegations reach as far back as 1986). And much longer delays in other cases are entirely possible, because the Sixth Circuit has held that "[a] cause of action under § 1983 that would imply the invalidity of a conviction does not accrue until the conviction is reversed or expunged, and therefore the statute of limitations does not begin to run until such an event occurs, if ever." *Wolfe* v. *Perry*, 412 F.3d 707, 714 (6th Cir. 2005). Such a result runs contrary to the core purpose of statutes of limitations.

For claims brought under 42 U.S.C. § 1983, the pertinent limitations period is that determined by state law. *Wilson* v. *Garcia*, 471 U.S. 261 (1985). This Court held that because "§ 1983 claims are best characterized as personal injury actions," the correct statute of limitations to apply is the one for personal injury. *Id.* at 280. Michigan law provides three years for personal injury actions. Mich. Comp. Laws § 600.5805(10) (providing "3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property"). The Sixth Circuit has held that in Michigan, the period for a § 1983 violation is three years. *McCune* v. *City of Grand Rapids*, 842 F.2d 903, 905 (6th Cir. 1988).

And while the length of the statute of limitations is determined by state law, "the accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law." *Wallace* v. *Kato*, 549 U.S. 384, 388 (2007). Although the claim in *Wallace* was for false arrest, this Court nevertheless reaffirmed the law regarding false-imprisonment claims. "The running of the statute of limitations on false imprisonment is subject to a distinctive rule—dictated, perhaps, by the reality that the victim may not be able to sue while he is still imprisoned: Limitations begin to run against an action for false imprisonment when the alleged false imprisonment ends." *Id*. at 389. Thus, following the rule under *Wallace*, the statute of limitations on respondent's claim began to accrue when he was released in 1990.

Of course, the simple rule in *Wallace* could be complicated by the *Heck* favorable-termination rule. If the favorable-termination rule applies, then "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Heck*, 512 U.S. at 489–90. Here, respondent obtained a new judgment of sentence in 2008. Consequently, if *Heck* were to apply, then Harrison's claim would have begun to accrue in 2008.

So, courts that apply the favorable-termination rule to § 1983 claims for false imprisonment face a conflict, placing the rules under *Heck* and *Wallace* at odds: *Heck*'s favorable-termination rule ties accrual to when the conviction or sentence has been invalidated, but the well-established rule for false-imprisonment claims, as explained in *Wallace*, is that the claim accrues when the false imprisonment ends. But there is no conflict between *Heck* and *Wallace* if Justice Souter's concurrence in *Spencer* is adopted; with the favorable-termination element removed, the limitations period begins when one would expect—when the incarceration ends.

The rule becomes even easier to apply if the "impossible as a matter of law" language is clarified to refer to the availability of federal habeas relief, not merely the availability of any conceivable relief under state law, which was the exception-to-the-exception interpretation made by the court of appeals in this case. As discussed above, it is the unavailability of *federal habeas relief*—not just any conceivable remedy under state law—that is at the core of the exception to the favorable-termination

rule proposed in Justice Souter's concurrence. Whether the proposed exception is considered law or dicta depends on the resolution of the long-standing split among the circuits. And because resolution of the statute-of-limitations question is directly related to the issue regarding Justice Souter's concurrence in *Spencer*, this case presents an opportunity for this Court to hit two birds with one stone.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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