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# "Black Lives Matter" and "The Blue Line" Clashed Across the United States in 2020, Raising a Necessary Question for the U.S. Supreme Court: Whether the *Heck* Doctrine Bars a Convict's Challenge for Equal Protection Claims of Racial-Profiling

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# "Black Lives Matter" and "The Blue Line" Clashed Across the United States in 2020, Raising a Necessary Question for the U.S. Supreme Court: Whether the *Heck* Doctrine Bars a Convict's Challenge for Equal Protection Claims of Racial-Profiling

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ABSTRACT

*Discussions of race and criminal convictions became a matter of necessity in 2020 after thousands gathered across the country in anger and protest following the death of George Floyd, many peaceful, others inflamed and dangerous. The Heck doctrine, taken from Heck v. Humphrey, serves to generally bar a collateral attack on a plaintiff's criminal case unless a conviction has been set aside in some fashion. Although the doctrine is seemingly straightforward, the lower federal courts have grappled with the application of this doctrine, especially when a convict files a civil suit alleging that the conviction is a result of an arrest from racial profiling.*

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*The Roberts Court, with its reputation for deftly handling respective matters of race and objective reasonableness of criminal procedure, is uniquely situated to bring closure to this issue during a year in which America's law enforcement faced targeted assassinations and a frightening record number of line-of-duty deaths for officers.*



## INTRODUCTION

On May 25, 2020, George Floyd, a forty-six-year-old African American, died as a result of a Minneapolis police officer kneeling on his neck.1 George Floyd's death sparked a mix of intense discourse and uprising across the United States over all matters involving race and law enforcement.2 His

1. Meredith Deliso, *Timeline: The Impact of George Floyd's Death in Minneapolis and Beyond*, ABC NEWS (Apr. 21, 2021, 3:35 PM), https://abcnews.go.com/US/timeline-impact-george-floyds-death-minneapolis/story?id=70999322 [https://perma.cc/Q33B-ZDZQ] (noting that Floyd was arrested after attempting to use a counterfeit $20.00 bill and referring to footage showing "an officer pinning Floyd to the ground with his knee on the back of Floyd's neck while a handcuffed Floyd repeats 'I can't breathe.'").

2. *See* Eliott C. McLaughlin, *How George Floyd's Death Ignited a Racial Reckoning that Shows No Signs of Slowing Down*, CNN (Aug. 9, 2020, 11:31 AM), https://www.cnn.com/2020/08/09/us/george-floyd-protests-different-why/index.html [https://perma.cc/A5ZK-2VAZ] ("The George Floyd police brutality protests are different—bigger, fiercer, more sustained—than demonstrations prior.").

death also came after the tragic deaths of Breonna Taylor and Ahmaud Arbery, causing a nation to grieve and face challenging discourse on applications of race and law enforcement.3

Earlier that year, on March 13, twenty-six-year-old Breonna Taylor died after complications arose when police executed an unannounced-entry search warrant for narcotics.4 In response to the unannounced entry, Taylor's boyfriend, a concealed-carry holder, fired upon the unidentified officers, who returned fire with approximately twenty-five shots, eight of which struck Taylor, sadly resulting in her death.5

On February 23, twenty-five-year-old Ahmaud Arbery was chased by three white men while jogging in Georgia.6 The men, who included a former police detective, suspected Arbery of local burglaries, horrifyingly chased him down, and shot him.7

Amid a year that already included the tragedy known as "COVID-19," the deaths of Arbery, Floyd, and Taylor ignited discourse, protests, and riotous looting across the country; as some cities burned literally, it shed a figurative light upon the American interplay of race and police.8 Even when looting was avoided in other parts of the country, tensions of race relations and law enforcement flared nonetheless.9 Meanwhile, danger

3. Eddy Rodriguez, *Petitions Demanding Justice for George Floyd, Ahmaud Arbery and Breonna Taylor Have Amassed Over 18 Million Signatures*, NEWSWEEK (June 3, 2020, 2:07 PM), https://www.newsweek.com/petitions-demanding-justice-george-floyd-ahmaud-arbery-breonna-taylor-have-amassed-over-18-1508493 [https://perma.cc/2V63-34MA].

4. Dylan Lovan & Piper Hudspeth Blackburn, *Grand Jury Audio Details Raid that Killed Breonna Taylor*, ASSOCIATED PRESS NEWS (Oct. 2, 2020), www.apnews.com/article/breonna-taylor-louisville-shootings-archive-kentucky-9cfd05228bb36f5541196020f0926f42 [https://perma.cc/X9ST-BCUW] (reporting that 26-year-old Breonna Taylor died during the execution of an unannounced entry search warrant when police entered with a battering ram, and Taylor's boyfriend fired at the unidentified police).

5. Bethanni Williams, *Who is Kenneth Walker?*, WHAS 11 (Sept. 24, 2020, 5:29 PM), https://www.whas11.com/article/news/investigations/breonna-taylor-case/who-is-kenneth-walker-breonna-taylor-boyfriend-grand-jury-decision/417-f20e20aa-e97e-4843-95f4-be5aba95201e [https://perma.cc/C85K-NRKC]; *see also* Rodriguez, *supra* note 3.

6. Bert Roughton & Hannah Knowles, *Newly Released Video Shows Police Didn't Immediately Help Ahmaud Arbery as He Lay Dying*, THE WASHINGTON POST (Dec. 18, 2020), https://www.washingtonpost.com/investigations/2020/12/17/ahmaud-arbery-body-camera-video [http://perma.cc/8AKE-6VX7].

7. *Id.*

8. Please see APPENDIX A for a non-exhaustive list of the crises cities across the United States faced in the wake of the George Floyd's death.

9. George Hunter, *In a City Known for Violence, Detroit Protests Have Not Been Marred by Arson, Looting, Destruction*, THE DETROIT NEWS (July 9, 2020, 11:05 PM), https://www.detroitnews.com/story/news/local/detroit-city/2020/07/09/despite-reputation-

increased exponentially in 2020 as officers faced a myriad of risks beyond the baseline of their profession, including the terror of targeted assassinations in the line of duty during a year that had the highest number of law enforcement line-of-duty deaths.10 In Oakland, California, on May 29, 2020, fifty-three-year-old federal officer David Patrick Underwood, was murdered in the line of duty by a drive by shooter who, along with an accomplice, was targeting law enforcement and intended to kill police officers.11 Earlier that year, in New York City, a gunman carried out a rampage

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detroit-protests-not-marred-arson-looting/3248916001/ [https://perma.cc/3AZC-LSS4] (reporting that Detroit 300 activist Martin Jones stated, "[i]t wasn't many years ago when we were known as the city that burned because of Devil's Night . . . That stopped because of the engagement of the community, the city and the police"; reporting also that "[w]hile the protests that followed over the next month were largely peaceful, tensions flared again June 28, when a police car struck protesters during an anti-police-brutality march. Detroit police chief James Craig said the next day the officers had to take 'evasive action' and called some of the protesters 'agitators' who initiated the incident by damaging the SUV. He said an investigation was opened on the officer driving the vehicle as well as those who appeared to attack the SUV.").

10. *See* Harmeet Kaur, *2020 Was One of the Deadliest Years for Law Enforcement Officers on Record*, CNN (Jan. 12, 2021, 7:30 AM), https://www.cnn.com/2021/01/12/us/2020-law-enforcement-line-of-duty-deaths-trnd/index.html [https://perma.cc/997V-6L4G] ("Law enforcement officers died last year of numerous causes, among them vehicle crashes, heart attacks and gun shots."); *see also* ABC7, *Honoring the Fallen: 264 Cops Killed in Line of Duty in 2020 with COVID Deaths Top Cause*, ABC13/WSET (Jan. 11, 2021), https://wset.com/news/coronavirus/honoring-the-fallen-police-officers-killed-in-the-line-of-duty [https://perma.cc/YYK5-66JE] ("As of Dec. 31, 2020, the 264 officers killed consisted of federal, state, local, tribal, and territorial officers in the line of duty compared to 135 officers who died in the line of duty in 2019. The Memorial Fund's report also records the deaths of officers in the category of '"other"' causes, which includes COVID-19 deaths, which is up 300% compared to other causes last year. Approximately 246 of the fallen officers were men and 18 were women with the average age of the fallen officer 47 years old with at least 17 years of service on the job and on average. Each fallen officer left behind two children."); Alex Wigglesworth, *Federal Officer Killed by Gunfire Outside U.S. Courthouse in Oakland*, LOS ANGELES TIMES (May 30, 2020, 2:50 PM), https://www.latimes.com/california/story/2020-05-30/federal-officer-killed-by-gunfire-outside-u-s-courthouse-in-oakland. [https://perma.cc/XB29-W2EC] ("A Federal Protective Service officer was fatally shot and another officer was critically injured outside a U.S. courthouse in Oakland during a protest Friday night over the killing of George Floyd, a shooting that officials described as an 'act of domestic terrorism.'"); Tim Stelloh & Jonathan Dienst, *2 New York officers Shot and Wounded Within hours in 'Assassination' Attempts*, NBC NEWS (Feb. 9, 2020, 3:13 AM), https://www.nbcnews.com/news/us-news/new-york-police-officer-shot-wounded-assassination-attempt-n1133136 [https://perma.cc/R43H-B3P2] ("Two New York City police officers were shot within hours of each other Saturday night and Sunday morning in what officials believe were targeted attacks by the same gunman.").

11. *See* Leslie Brinkley & Anser Hassan, *Family, Friends Hold Memorial for Federal Protective Service Officer Killed Outside Federal Building in Oakland: 'Outstanding*

on officers because, as he explained, "he was tired of police officers."12 Robert Williams opened fire on officers from whom he had asked directions and later stormed a Bronx police station, firing upon multiple officers, striking Lieutenant Jose Gautreaux, and reminding many of the tragic 2014 assassination of Wenjian Liu and Rafael Ramos, two unsuspecting NYPD officers sitting in their vehicle.13

Meanwhile, questions involving race and law enforcement continually loom over the U.S. Supreme Court and its reputation.14 Duke University Law Professor and constitutional scholar, Neil S. Siegel, wrote in The Atlantic that "[o]ccasionally a justice will mention concerns about racism in a dissent, but that's pretty much it."15

In 2016, Justice Sonia Sotomayor, a former criminal prosecutor, dissented from Justice Clarence Thomas's majority opinion in Utah v. Strieff, writing "it is no secret that people of color are disproportionate victims of

*Person*,*'* ABC7 (June 19, 2020), https://abc7news.com/patrick-underwood-funeral-public-memorial-service-oakland-federal-officer-killed-in/6255697/ [https://perma.cc/ZJ5N-CW45] ("Officials say a white van drove by and a shooter fired at Underwood and another officer, killing Underwood. An active duty Air Force police officer named Steven Carrillo was eventually arrested with the federal complaint alleging he went to Oakland with an accomplice intending to kill cops.").

12. Ali Watkins, *Man Who Shot Up a Bronx Precinct Was 'Tired of Police Officers'*, N.Y. TIMES (Feb. 10, 2020), https://www.nytimes.com/2020/02/10/nyregion/bronx-cop-shooting-robert-williams.html [https://perma.cc/9X72-DYJF]; *see also* Ali Watkins et al., *Gunman Storms N.Y.P.D. Precinct After Firing at Police Van, Wounding 2*, N.Y. TIMES (Feb. 08, 2020), http://www.nytimes.com/2020/02/08/nyregion/police-shooting-Bronx.html [https://perma.cc/9DPL-QRFK] ("He first shot at two police officers in a van after having asked them for directions. Then, less than 12 hours later, the police said, the man entered a precinct in the Bronx and began shooting, hitting one officer and injuring another, while sending others scrambling for cover.").

13. *See id.*; *see also* Benjamin Mueller & Al Baker, *2 N.Y.P.D. Officers Killed in Brooklyn Ambush; Suspect Commits Suicide*, N.Y. TIMES (Dec. 20, 2014), https://www.nytimes.com/2014/12/21/nyregion/two-police-officers-shot-in-their-patrol-car-in-brooklyn.html?action=click&module=RelatedLinks&pgtype=Article [https://perma.cc/PB2F-EY4G] ("The officers, Wenjian Liu and Rafael Ramos, were in the car near Myrtle and Tompkins Avenues in Bedford-Stuyvesant in the shadow of a tall housing project when the gunman, Ismaaiyl Brinsley, walked up to the passenger-side window and assumed a firing stance, Police Commissioner William J. Bratton said. Mr. Brinsley shot several rounds into the heads and upper bodies of the officers, who never drew their weapons, the authorities said.").

14. Neil S. Siegel, *The Supreme Court Is Avoiding Talking About Race*, THE ATLANTIC (Aug. 7, 2020), http://www.theatlantic.com/ideas/archive/2020/08/supreme-court-doesnt-like-talk-about-race/614944/ [https://perma.cc/92MF-45BT].

15. *Id.*

this type of scrutiny."16 In Strieff, the Court "granted certiorari to resolve disagreement about" what happens when "an unconstitutional detention leads to the discovery of a valid arrest warrant."17 In answer to that question, it held that objective ends will ultimately justify a stop.18 Professor Siegel argued that the constitutionality of racial profiling was left unsettled because "[t]he Court had nothing to say about whether it was enabling police to engage in racial profiling."19 Similarly, the question looms as to whether Heck v. Humphrey guards a government entity against civil rights litigation when a plaintiff attempts to pursue a 42 U.S.C. § 1983 suit for racial profiling without overturning or achieving a judicial set-aside of the underlying conviction.20 Part (a) of this article's analysis will provide an overview of the Heck doctrine and its functions. Part (b) explains how lower courts have interpreted Heck. Part (c) examines the function of equal protection claims and how Heck applies to those claims. Finally, Part (d) explores the need for the Court to address that function.

16. Utah v. Strieff, 136 S. Ct. 2056, 2070 (2016) ("This case involves a *suspicionless* stop, one in which the officer initiated this chain of events without justification. As the Justice Department notes, [] many innocent people are subjected to the humiliations of these unconstitutional searches. The white defendant in this case shows that anyone's dignity can be violated in this manner. But it is no secret that people of color are disproportionate victims of this type of scrutiny." (Sotomayor, J., dissenting) (citation omitted)); *see generally* Benjamin Weiser & William K. Rashbaum, *Sotomayor Is Recalled as a Driven Rookie Prosecutor*, N.Y. TIMES (June 7, 2009), http://www.nytimes.com/2009/06/08/us/politics/08prosecutor.html [https://perma.cc/2NGJ-G5N4].

17. *Strieff*, 136 S. Ct. at 2060.

18. *See id.* at 2064 ("We hold that the evidence Officer Fackrell seized as part of his search incident to arrest is admissible because his discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to arrest.").

19. Siegel, *supra* note 14.

20. *See generally* 42 U.S.C.A. § 1983 (providing "[e]very 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.").

## I. ANALYSIS

### *A. The Heck Doctrine*

In *Heck v. Humphrey*, the state of Indiana had convicted Roy Heck of voluntary manslaughter for killing his wife and sentenced him to fifteen years in prison.[21] While Heck's appeal was pending before the U.S. Court of Appeals for the Seventh Circuit, he pursued a 42 U.S.C. § 1983 suit *pro se*, alleging that Indiana State Police investigators engaged, to his detriment, in an illegal investigation in which he alleged they "knowingly destroyed" exculpatory evidence.[22] Moreover, he alleged illegal procedures for use of voice identification at his trial and sought both compensatory and punitive damages.[23] Heck did not, however, seek injunctive relief for a custodial release.[24] Heck's action was dismissed by the Indiana District Court "without prejudice, because the issues it raised 'directly implicate[d] the legality of [his] confinement.'"[25] Meanwhile, as Heck's appeal to the Seventh Circuit awaited its consideration, the Supreme Court of Indiana rendered its decision to uphold Heck's conviction and sentence.[26] Ultimately, Heck's petitions for habeas corpus were dismissed due to non-exhaustion, and the Seventh Circuit affirmed his second denial.[27]

Contrary to the Seventh Circuit's holding, the U.S. Supreme Court was careful to note that it did not characterize *Heck* as a question of exhaustion, acknowledging that "the question posed by § 1983 damages claims that do call into question the lawfulness of conviction or confinement remains open."[28] Furthermore, the Court stated that "[t]o answer that question correctly, we see no need to abandon, as the Seventh Circuit and those courts in agreement with it have done, our teaching that § 1983 contains no

21. Heck v. Humphrey, 512 U.S. 477, 478 (1994).

22. *Id.* at 478–79.

23. *Id.* at 479.

24. *Id.*

25. *Id.*

26. *Id.*; *see also* Heck v. State, 552 N.E.2d 446, 453 (Ind. 1990).

27. *Heck*, 512 U.S. at 479; *see also id.* at 479–80 (quoting Heck v. Humphrey, 997 F.2d 355 (7th Cir. 1993), *aff'd*, 512 U.S. 477 (1994)) (providing the Seventh Circuit's reasoning and why the Court granted certiorari, that the Circuit "affirmed the judgment and approved the reasoning of the District Court: 'If, regardless of the relief sought, the plaintiff [in a federal civil rights action] is challenging the legality of his conviction, so that if he won his case the state would be obliged to release him even if he hadn't sought that relief, the suit is classified as an application for habeas corpus and the plaintiff must exhaust his state remedies, on pain of dismissal if he fails to do so.'").

28. *Id.* at 483.

exhaustion requirement beyond what Congress has provided."[29] Rather, it likened the analysis to a manner of collateral estoppel, insofar as "permit[ting] a convicted criminal defendant to proceed with a malicious prosecution claim would permit a collateral attack on the conviction through the vehicle of a civil suit."[30]

The *Heck* Court established a bright-line rule that "a prisoner who has fully exhausted available state remedies has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus," and "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."[31] The Court reasoned that the "hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement, just as it has always applied to actions for malicious prosecution."[32] Ultimately, while the Court did not explain ad nauseam *Heck*'s application to issues not *sub judice*, it gave a straightforward instruction:

> [W]hen a state prisoner seeks damages in a § 1983 suit, the 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.[33]

Justice Souter concurred separately in the unanimous *Heck* decision to call attention to the majority's Pilatus handwashing in its clinging to

29. *Id.* at 483 (citing Patsy v. Bd. of Regents of Fla., 457 U.S. 496, 501, 509 (1982)).

30. *Id.* at 484 (quoting 8 STUART M. SPEISER, CHARLES F. KRAUSE & ALFRED W. GANS, AMERICAN LAW OF TORTS § 28:5, at 24 (1991)). "This Court has long expressed similar concerns for finality and consistency and has generally declined to expand opportunities for collateral attack." *Id.* at 484–85 (citing Parke v. Raley, 506 U.S. 20, 29–30 (1992); Teague v. Lane, 489 U.S. 288, 308 (1989); Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923); and Voorhees v. Jackson, 35 U.S. (10 Pet.) 449, 472–473 (1836)).

31. *Id.* at 489–90; *see also id.* at 486–87 ("We hold that, in order 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 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." (footnote omitted)).

32. *Id.* at 486.

33. *Id.* at 487.

common law principles. Souter explained that an ironic, albeit absurd, stricter reality was afoot if the common law bore the conclusive value that the majority suggested. He wrote:

> As § 1983 requirements, however, these elements would mean that even a § 1983 plaintiff whose conviction was invalidated as unconstitutional (premised, for example, on a confession coerced by an interrogation-room beating) could not obtain damages for the unconstitutional conviction and ensuing confinement if the defendant police officials (or perhaps the prosecutor) had probable cause to believe the plaintiff was guilty and intended to bring him to justice.[34]

Rather, unless Congress guaranteed "an independent statutory basis for doing so" by amending § 1983, "the malicious-prosecution tort's favorable-termination requirement but not its probable-cause requirement would be particularly odd since it is from the latter that the former derives."[35]

Justice Souter nevertheless concurred and explained what *Heck* was *not*, writing that it would be "untenable as a matter of statutory interpretation (and, to be clear, disclaimed by the Court), that conviction of a crime wipes out a person's § 1983 claim for damages for unconstitutional conviction or postconviction confinement."[36] Souter's concurrence resonated with the other Justices, as his reasoning was adopted by many in subsequent decisions.[37]

### *B. Post-Heck: The General Doctrinal Functions, Apprehension Among the Lower Courts, and U.S. Supreme Court Criticism for Previous Handling of Racial Profiling*

*Heck* quickly secured its place in the law, earning the title of the "'favorable termination' rule," as a condition of § 1983 suits.[38] Nevertheless,

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34. *Id.* at 494 (Souter, J., concurring).

35. *Id.*

36. *Id.* at 496.

37. Emery G. Lee III, *Federal Rights, Federal Forum: Section 1983 Challenges to State Convictions in Federal Court*, 51 CASE W. RSRV. L. REV. 353, 374 (2000) (Since *Heck*, "[i]n a more recent case, *Spencer v. Kemna*, a majority of the current Court adopted Justice Souter's position on allowing § 1983 challenges to state convictions."); *see also* Spencer v. Kemna, 523 U.S. 1, 21 (1998).

38. Nancy J. King & Suzanna Sherry, *Habeas Corpus and State Sentencing Reform: A Story of Unintended Consequences*, 58 DUKE L.J. 1, 16 (2008) (explaining that *Heck* "conditions a § 1983 suit on a prior favorable termination of a challenge to the underlying conviction or sentence").

*Heck* is not without criticism among scholarship for its presumptive straightforwardness of application, something that Souter indeed touched upon.[39] Nor was it without its subsequent distancing by those among its majority.[40] Thirteen years after *Heck*, in *Wallace v. Kato*, the Court affirmed a rule under *Heck*: "A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983."[41] It based its "conclusion upon 'the hoary principle'" set forth in *Heck* that, once again, "civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments."[42] Since then, the Court has elaborated upon the *Heck* doctrine, noting the requisites that "a plaintiff in a § 1983 action first" must "prove that his conviction had been invalidated in some way."[43] The Roberts Court explained that *Heck*'s "favorable-termination requirement . . . applies whenever 'a judgment in favor of the plaintiff would necessarily imply' that his prior conviction or sentence was invalid."[44] Accordingly, on behalf of the majority, Justice Sonia Sotomayor wrote affirmatively that when "a plaintiff's claim 'necessarily' questions the validity of a state proceeding . . . there is no reason to put the onus to safeguard comity on district courts exercising case-by-case discretion—particularly at the foreseeable expense of potentially prejudicing litigants and cluttering dockets with dormant, unripe cases."[45]

However, in spite of the apparent straightforwardness of *Heck*'s affirmed rules, and the fact that it has been the law for over a quarter-century, when interpreting § 1983 claims, the lower courts are said to still struggle

39. Lyndon Bradshaw, *The* Heck *Conundrum: Why Federal Courts Should Not Overextend the* Heck v. Humphrey *Preclusion Doctrine*, BYU L. REV. 185, 198 (2014) (noting Justice Souter's concurrence recognized the problems that may lay ahead) ("The Heck court established what it thought was a bright-line rule—a plaintiff seeking § 1983 relief must first show favorable termination of her conviction if success in the civil action would necessarily imply the invalidity of the conviction. If this rule applied only to current prisoners who are within the habeas relief and § 1983 intersection, then it would be an appropriate means for avoiding jurisdictional collisions.").

40. *See Spencer*, 523 U.S. at 21 (Ginsburg, J. concurring) ("I joined the Court's opinion in *Heck.* Mindful of 'real-life example[s],' among them this case . . . I have come to agree with Justice Souter's reasoning: Individuals without recourse to the habeas statute because they are not 'in custody . . . ."); *see also* STEVEN H. STEINGLASS, SECTION 1893 LITIGATION IN STATE COURTS § 18:18, 18:75 (1988) ("Although *Heck* has not been overruled, one member of the five-Justice *Heck* majority has questioned whether *Heck* was correctly decided.").

41. *See* Wallace v. Kato, 549 U.S. 384, 393 (2007) (refusing plaintiff's proposition that the Court should adopt a rule "that an action which would impugn *an anticipated future conviction* cannot be brought until that conviction occurs and is set aside.").

42. *Id.* at 392 (quoting *Heck*, 512 U.S. at 486).

43. McDonough v. Smith, 139 S. Ct. 2149, 2157 (2019).

44. *Id.* (quoting *Heck*, 512 U.S. at 487).

45. *Id.* at 2158 (quoting *Heck*, 512 U.S. at 487).

with its application to the dark corners of the law.[46] Equal protection is no less complicated and is something that has been acknowledged but largely punted in the Court's landmark criminal procedure analysis.[47] For that reason, the CATO Institute accused the Court of "effectively legaliz[ing] racial profiling of drivers by police in *Whren v. United States*" and that "[l]ike so much of the Court's criminal justice jurisprudence, the Court didn't mean to do it."[48]

Thus, given the criticisms of the Court in its well-meaning pursuit of objective reasonableness for law enforcement and all matters constitutional, as *Heck*'s straightforward application relates to racial profiling, it could fairly be something else that the CATO Institute could state "the Court didn't mean to do."[49] The Court can, therefore, help clarify the

46. *See* MARTIN A. SCHWARTZ, SECTION 1983 LITIGATION 164 (Kris Markarian, 3d ed. 2014) ("Lower courts sometimes have a difficult time determining whether a § 1983 claim 'necessarily implicates' the validity of a conviction. For example, it is not always clear whether, under the *Heck* doctrine, a § 1983 excessive force claim necessarily implicates a conviction for such crimes as resisting arrest, assault or battery of an officer, or obstructing an officer. Resolution of the issue requires a careful analysis of the specific facts alleged in the § 1983 excessive force complaint in relation to the specific crime for which the plaintiff was convicted.").

47. *See* Whren v. United States, 517 U.S. 806, 813–14 (1996) (basing its objective rationalization on the pretextual permissiveness of United States v. Robinson, 414 U.S. 218, 236 (1973), *superseded by statute*, MASS. GEN. LAWS ANN. ch. 276, § 1 (West 2021), and Scott v. United States, 436 U.S. 128, 138 (1978)) ("[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." (quoting *Scott*, 436 U.S. at 136, 138). In *Whren*, the Court reasoned that such objective analysis "foreclose[s] any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved. We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren*, 517 U.S. at 813.

48. *See* Jonathan Blanks, *Twenty Years Ago the Supreme Court Effectively Legalized Racial Profiling*, CATO INSTITUTE (June 10, 2016), http://www.cato.org/commentary/twenty-years-ago-supreme-court-effectively-legalized-racial-profiling [https://perma.cc/Z6HZ-MDWM] ("What does [*Whren v. United States*] look like in the real world? A police officer sees young black male driving in an upper middle class and predominantly white neighborhood. He decides [to] follow the car for a period of time until the driver violates one of the myriad [of] minor traffic rules that most drivers violate routinely. The police officer now has sufficient cause to stop the car for further investigation.").

49. *Id.* ("In a time when police departments across the country are struggling with establishing their legitimacy with local black communities, policies that needlessly antagonize the people who live there ought to be reexamined.").

well-established foundation upon which equal protection analysis found stable footing under *Heck*.[50]

*C. Equal Protection, Criminal Convictions, and Heck Application*

As an initial premise, which is well-settled in criminal procedure, "selective enforcement of the law based on considerations such as race," is prohibited by the Equal Protection Clause of the Fourteenth Amendment.[51] The Court's landmark holdings regarding equal protection have reflected as much.[52] Still, however, without the U.S. Supreme Court settling concerns of racial profiling, the question persists as to how courts should apply the *Heck* doctrine upon equal protection analysis.[53] Nevertheless, as of 2019, the U.S. District Court for the Central District of California noted assuredly that indeed, "[c]ourts across the country have routinely held that claims alleging discriminatory enforcement of the law, such as an arrest motivated by bias against a defendant's race and gender, implicate the validity of the defendant's conviction and sentence, and are therefore barred by *Heck*."[54]

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50. *See Wilkinson v. Dotson*, 544 U.S. 74, 81–82 (2005) ("[A] state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate the invalidity of confinement or its duration.").

51. *Whren,* 517 U.S. at 813.

52. *See generally* Yick Wo v. Hopkins, 118 U.S. 356, 539 (1886) (ruling unanimously that the enforcement of San Francisco's ordinance against launderers in wooden buildings violated the Fourteenth Amendment's Equal Protection Clause because the Chinese launderers "had been occupying and using for laundries for more than twenty years, and such petitions were denied, and all the petitions of those who were not Chinese, with one exception . . . were granted") ("If this means prohibition of the occupation, and destruction of the business and property of the Chinese laundrymen in San Francisco—as it seems to us this must be the effect of executing the ordinance—and not merely the proper regulation of the business, then there is discrimination, and a violation of other highly important rights secured by the fourteenth amendment and the treaty." *Id.* at 363.); McLaughlin v. Florida, 379 U.S. 184, 187 (1964) (setting aside convictions under a statute violating equal protection, writing, "[w]e deal with the single issue of equal protection and on this basis set aside these convictions."); Loving v. Virginia, 388 U.S. 1, 12 (1967) (ordering the overturning of convictions for miscegenation on the basis that it violated the right to marry and equal protection under the Fourteenth Amendment).

53. *See generally* Siegel, *supra* note 14 ("[o]ccasionally a justice will mention concerns about racism in a dissent, but that's pretty much it.").

54. Sams v. Cnty. of Riverside, No. EDCV 17-1848 SVW (SS), 2019 WL 3069180, at *10 (C.D. Cal. June 14, 2019), *report adopted*, No. EDCV 17-1848 SVW (SS), 2019 WL 3067590 (C.D. Cal. July 10, 2019) ("Plaintiff allege[d] that criminal proceedings" for domestic violence and protective custody proceedings of his daughter "were brought against

However, long before the routine holdings noted by the Central District Court of California, the Eighth Circuit reasoned in 2002 that "the equal protection claim, like the due process damage claim, is a direct attack on the validity of a disciplinary decision" and thus, "[t]his claim, too, is *Heck*-barred."[55] In *Portley-El v. Brill*, the Circuit reviewed a case in which a Colorado inmate was disciplined in prison for striking a white inmate with a metal softball bat during what the court described as "a racial disturbance at the Minnesota correctional facility where [he] was incarcerated."[56] The Plaintiff chose an interesting tactic, bringing a § 1983 action against the defendant prison officials, in which he alleged "that his rights to due process and equal protection were violated by the disciplinary proceedings."[57] The Circuit interpreted that the Plaintiff's equal protection claim against the warden for charging and convicting him "on account of his race" would render the disciplinary result invalid and found that "[t]he rule in *Heck* covers any § 1983 claim that would 'necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement.'"[58]

This premise had appeared at the federal district court level too, relatively soon after *Heck*. For instance, the Northern District of Illinois reasoned accordingly, "[w]e cannot see why this principle would not apply to selective prosecution claims under § 1983, and indeed there is some authority to suggest that *Heck* does apply to such claims."[59] In 2004, the Seventh Circuit passingly suggested in *obiter dictum* that a plea agreement setting

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him for discriminatory motives, even though no charges were brought against his 'similarly situated' wife. [(citation omitted)] Success on this claim of discriminatory application of the criminal law would undermine the validity of Plaintiff's conviction, and as such, the claim is barred by *Heck*." *Id.*). Acknowledging the plaintiff's "numerous opportunities to amend this claim, and [that] further attempts at amendment would be futile," U.S. Magistrate Judge Suzanne H. Segal "recommended that Claim V be dismissed without prejudice, but without leave to amend, as to all Defendants pursuant to the *Heck* doctrine." *Id.*

55. Portley-El v. Brill, 288 F.3d 1063, 1067 (8th Cir. 2002).

56. *Id.* at 1064.

57. *Id.*

58. *Id.* at 1067.

59. Rogers v. Ill. Dep't of Corr. Special Evaluation Unit, 160 F. Supp. 2d 972, 977 (N.D. Ill. 2001) (first citing Norris v. Contra Costa Cnty. Jud. Sys., No. C-94-3137, 1995 WL 125467 (N.D. Cal. Mar. 15, 1995); then citing Cobb v. Moore, No. 2:93-cv-131, 1995 WL 358674 (N.D. Ind. Mar. 23, 1995)); *see also* Hubbs v. Alamao, 360 F. Supp. 2d 1073, 1081 (C.D. Cal. 2005) ("[P]laintiff claims defendant . . . denied him equal protection of the law by . . . initiating SVP proceedings against him because . . . plaintiff was subjected to a 'fraudulent "screening" process' leading to his civil commitment . . . Yet, these allegations, if true, also imply the invalidity of plaintiff's civil commitment, *see Rogers,* 160 F.Supp.2d at 977–78 (dismissing, under *Heck*, inmates' claims they were denied equal protection of the law due to selective enforcement of Illinois Sexually Violent Persons Commitment Act against them to civilly commit them), and are barred by Heck.").

aside one crime but manifesting from the same conduct would still be *Heck* barred in *Kramer v. Village of North Fond du Lac*.[60] There, the Circuit noted that the "plaintiff's conviction ha[d] not been overturned or set aside," and although his original conviction "was reversed, he later entered into a plea agreement with the State that resulted in misdemeanor convictions for the same conduct. Thus, under *Heck,* it would seem that plaintiff's action should be barred as to those claims that would have rendered his underlying conviction invalid."[61] Nevertheless, on behalf of the Circuit, Judge William J. Bauer noted the potential effect of *Heck* to bar an equal protection claim, writing, "there are reasons that are not apparent from the record before me that *Heck* is not applicable to those claims. In any event, it appears defendants have waived *Heck* as a defense to those claims and thus it would be improper for me to apply it."[62]

Similarly, in 2006, Judges on the Second Circuit reduced the potential application of the *Heck* doctrine on equal protection claims to a footnote (at a time in which Justice Sotomayor sat upon that Circuit).[63] The Tenth Circuit also acknowledged *Heck*, without ruling as such, in *Jackson v. Loftis*, in which the plaintiff pled *nolo contendere* to charges stemming from an arrest by a patrolman for obstructing an officer and traffic offenses but later filed a § 1983 suit "broadly claiming that the charges against him were false

60. *See* Kramer v. Vill. of N. Fond du Lac, 384 F.3d 856, 863 (7th Cir. 2004) ("The plaintiff claim[ed] that he and other North Fond du Lac bar owners were singled out for prosecution, in violation of the Equal Protection Clause. . . . [Plaintiff relied] on the decision of the Wisconsin Supreme Court, which found that he had established a *prima facie* case for selective prosecution in the trial court. [(citation omitted)] . . . Kramer's argument in his criminal appeal was that North Fond du Lac tavern owners were selectively prosecuted solely on the basis of geography." (citation omitted)).

61. *Id.* at 862.

62. *Id.* at 862–63.

63. *See* Hayden v. Pataki, 449 F.3d 305, 314 n.8 (2d Cir. 2006) ("We note that, despite plaintiffs' claim that racial discrimination infects the whole of the criminal justice system such that non-racially motivated felon disenfranchisement laws violate the VRA, counsel for plaintiffs insisted at oral argument that they do not allege any discrimination in plaintiffs' particular convictions. They did well not to make this claim, for such an assertion might have raised questions under the doctrine of *Heck v. Humphrey*."); *see also id.* at 340–41 (Raggi, J., concurring) ("In reaching this conclusion, I am mindful that state felons are not without a federal means to challenge race discrimination in state criminal proceedings. . . . Nevertheless, *Heck* is instructive."). *See generally id.* at 367–68 (J. Sotomayor, J., dissenting) ("I fear that the many pages of the majority opinion and concurrences—and the many pages of the dissent that are necessary to explain why they are wrong—may give the impression that this case is in some way complex. It is not. . . . The duty of a judge is to follow the law, not to question its plain terms. . . I trust that Congress would prefer to make any needed changes itself, rather than have courts do so for it.").

and served as a pretext for racial profiling."[64] The court noted "a patent legal deficiency evident from the pleadings . . . obviat[ed] our consideration of *Heck" because it could affirm* the underlying dismissal order on a basis that did not require reliance upon *Heck*.[65] That same year, the Tenth Circuit applied the *Heck* bar to an equal protection claim for malicious prosecution in *Roberts v. O'Bannon*.[66]

However, the cases most responsible for generating a jurisprudential comfort in applying the *Heck* doctrine to equal protection claims, specifically centered on racial profiling, both came from the Third Circuit in 2008: the cases of *Gibson v. Superintendent of New Jersey Dep't of Law & Pub. Safety-Div. of State Police* and *Cook v. Layton*.[67] In *Gibson*, the plaintiff alleged that in 1992, New Jersey State Troopers illegally stopped, searched, and arrested him based on racial profiling.[68] Accordingly, he levied an equal protection claim under § 1983 against the state troopers "after newly obtained evidence suggested that his initial stop was tainted by racial animus."[69] Examining the allegations of racial profiling, the Third Circuit in *Gibson* acknowledged that the U.S. Supreme Court decision in *Whren* had only guided the lower courts away from Fourth Amendment analysis towards equal protection.[70] Rather, the Third Circuit noted, "[t]his requires a wholly different analysis."[71] Nevertheless, it considered the well-settled principles of criminal procedure and racial animus under *Whren* as supporting "the proposition that, even though the Fourth Amendment reasonableness standard is not influenced by the subjective intentions of the person

64. Jackson v. Loftis, 189 F. App'x 775, 777 (10th Cir. 2006).

65. *Id.* at 779.

66. *See* Roberts v. O'Bannon, 199 F. App'x 711, 713–14 (10th Cir. 2006) ("His Fourteenth Amendment equal protection claim challenges the validity of his prosecution when another person, whom he claims to be more culpable, was not prosecuted. . . . [H]is malicious-prosecution claim, as explained in *Heck* [(citation omitted), is barred, and he] cannot proceed unless the revocation that resulted from the alleged malicious prosecution has been expunged or declared invalid.").

67. In *Cook v. Layton*, a federal inmate pursued a *pro se* complaint against a New Jersey State Trooper, alleging that on account of race, he had been stopped and searched in 1992. The search ultimately led to the trooper's discovery of cocaine on Cook's person. *See* Cook v. Layton, 299 F. App'x 173, 173–74 (3d Cir. 2008).

68. Gibson v. Superintendent of N.J. Dep't of L. & Pub. Safety-Div. of State Police, 411 F.3d 427, 431 (3d Cir. 2005).

69. *Id.*

70. *See id*. at 440 ("[T]he Court in *Whren* expressly limited its analysis to the Fourth Amendment, and acknowledged that 'the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment.'" (quoting Whren v. United States, 517 U.S. 806, 813 (1996)).

71. *Gibson*, 411 F.3d at 440.

making the search or seizure, if a person can demonstrate that he was subjected to selective enforcement in violation of his *Equal Protection* rights, his conviction will be invalid."[72] While *Gibson* has been overturned since then, it was done so on other grounds.[73]

Three years later, in *Cook*, the district court had interpreted a *pro se* inmate's claim as alleging false arrest, or an arrest absent probable cause, insofar as he was racially profiled, which further "led to his unlawful conviction and imprisonment."[74] However, the Third Circuit noted, that rather than merely alleging "that the arrest lacked probable cause or legal justification, Cook alleges that Officer Layton acted with an illegal motive—racial discrimination—that tainted his entire prosecution. Under these circumstances, we believe that Cook has asserted an equal protection claim, and not merely a claim of false arrest."[75] With that in mind, the Third Circuit ruled that *Heck* "applies to allegations of a violation of equal protection, because a successful claim of racially discriminatory enforcement of the law would invalidate the resulting conviction and sentence."[76] A Tenth and Ninth Circuit affirmance of these principles similarly followed.[77]

Nevertheless, in the time when the Third Circuit's *Cook* decision was still relatively new, some District Courts noted a reluctance in applying

72. *Id.* at 440–41.

73. *See* Dique v. N.J. State Police, 603 F.3d 181, 183 (3d Cir. 2010) ("In *Gibson*, we held, relying on the rule of *Heck v. Humphrey*, that the statute of limitations for a selective-enforcement claim 'did not begin to run until [the] sentence was vacated.' *Gibson*, 411 F.3d at 441. We believe, however, that the Supreme Court's decision in *Wallace v. Kato*, which clarified the *Heck* rule, extends to Fourteenth Amendment selective-enforcement claims and thus overrides our decision in *Gibson*." (addition in original) (citations omitted)).

74. *Cook*, 299 F. App'x at 174.

75. *Id.*

76. *Id.*; *see also id.* n.2 ("In contrast, the deferred accrual rule does not apply to claims of false arrest because a successful claim for false arrest does not necessarily invalidate a conviction and sentence resulting from that arrest." (citation omitted)).

77. *See, e.g.*, Sherratt v. Utah Dep't of Corr., 545 F. App'x 744, 749 (10th Cir. 2013) (barring plaintiff's claim that "his conviction itself violated the Equal Protection Clause of the Fourteenth Amendment because Mormon citizens are not charged for statutory rape" because the claim "necessarily implies the invalidity of [his] conviction and sentence"); *see also* Goldsby v. Kaschmitter, 2016 U.S. Dist. LEXIS 47424, at *5 (D. Idaho Apr. 6, 2016), *aff'd sub nom.* Lamont-Goldsby v. Kaschmitter, U.S. App. LEXIS 4160, at *2 (9th Cir. Feb. 21, 2018) (listing cases) ("[T]he courts determined that equal protection claims arising from instances of alleged racial profiling (whether true or not) impermissibly implicated a state court's criminal conviction and sentence. In such a setting, unless the conviction has been somehow invalidated, a habeas corpus action is the only avenue to pursue claims for alleged constitutional violations. Goldsby does not assert that his sentence has been expunged, overturned, or otherwise invalidated. Accordingly[,] his Fourteenth Amendment Equal Protection claim is subject to dismissal.").

*Heck* to equal protection claims, while nevertheless recognizing its effect. For instance, the Eastern District of Kentucky noted that the general consensus among federal courts was that *Heck* barred claims of police racial profiling.[78] Still, it noted the reluctance among other districts.[79] In spite of that, however, the Eastern District of Kentucky concluded, "[b]ased on the foregoing authority, [the] plaintiff's allegations of racial profiling are inextricably intertwined with her prosecution and conviction, and hence are barred by *Heck.*"[80] Similarly, in 2008, the District Court of New Jersey noted pushback from other district courts and argued there was questionable terrain in the Third Circuit's holding insofar as *Cook* was "labeled 'Not Precedential,'" and did "not mention *Wallace* or contain any discussion of that decision's impact on *Heck* or *Gibson*. Without further direction from the Third Circuit, this Court must be guided by the Supreme Court's holding in *Wallace.*"[81] In the time since 2008, however, and among district courts all across the United States, application of the *Heck* bar to claims of racial profiling has become straightforward and

78. *See* Hutson v. Felder, Civil Action No. 5: 07-183-JMH, 2008 U.S. Dist. LEXIS 69642, at *15–16 (E.D. Ky. Sept. 10, 2008) ("It appears that the greater weight of authority holds that *Heck* bars a claim that police selectively targeted an arrestee for prosecution based upon their race. Some courts suggest that such a claim does not imply the invalidity of the underlying charge and conviction, only the reason for pursuing it." (first citing Wells v. King, 232 F. App'x 148 (3d Cir. 2007); then citing Sanford v. Motts, 258 F.3d 1117, 1119 (9th Cir. 2001)).

79. *Id.* at *16 ("[A] number of courts have held that such a claim directly challenges the underlying conviction, and thus runs afoul of *Heck. Gibson v. Superintendent*, 411 F.3d 427, 451–52 (3d Cir. 2005) (*Heck* bars claim factually related to sole evidence supporting conviction); *Hayden v. Pataki*, 449 F.3d 305, 314 n.8 (2d Cir. 2006) (claim that criminal conviction was product of racial discrimination would be barred by *Heck*); *Jackson v. Loftis*, 2006 WL 2053822, **2–3 (10th Cir. 2006) (*Heck* bars claim that arrest was product of racial profiling where arrestee was subsequently prosecuted and convicted).").

80. *Id.* at *16.

81. Kirkland v. Morgievich, No. 04-1651, 2008 U.S. Dist. LEXIS 101472 at *26 (D.N.J. Dec. 16, 2008); *see also Id.* at *27 (holding that Heck does not apply to Fourteenth Amendment claims of selective enforcement based on racial profiling) ("To hold otherwise would be to create exactly the situation the Supreme Court sought to avoid: a rule where 'an action which would impugn an *anticipated future conviction* cannot be brought until that conviction occurs and is set aside.'" (quoting Wallace v. Kato, 549 U.S. 384, 393 (2007))); Eidson v. Tennessee, 510 F.3d 631, 640 (6th Cir. 2007) ("[I]rrespective of the difference between types of § 1983 claims asserted, the rule of *Heck* cannot be divorced from its post-conviction setting. This is the teaching of *Wallace*."); Fox v. DeSoto, 489 F.3d 227, 234 (6th Cir. 2007) ("[T]he *Heck* bar has no application in the pre-conviction context."); Hilton v. Whitman, No. CIVA 04-6420 (SDW), 2008 WL 5272190, at *20 (D.N.J. Dec. 16, 2008) (containing a similar reluctant disclaimer).

well-settled.[82] Ultimately, in spite of the aforementioned societal complications of racial profiling and equal protection, *Heck* application among the Circuits seems to be more consistent and less unnerving between sister Circuits than other aspects of the *Heck* doctrine.[83]

### *D. Just for the Heck of it, a U.S. Supreme Court Consideration Would Bolster Clarity in Society and Law at a Necessary Time*

Aside from the physical manifestations in 2020, scholars have highlighted how issues of racial tension and white supremacy factor into the difficult discussions of any hopeful efforts to improve relations between law enforcement and persons of color.[84] Williams College Assistant Professor

82. Please see APPENDIX B for a non-exhaustive list of momentum among the district courts in applying the Heck doctrine to claims of equal protection, centered in racial profiling

83. *See generally* Paul D. Vink, *The Emergence of Divergence: The Federal Court's Struggle to Apply* Heck v. Humphrey *to § 1983 Claims for Illegal Searches*, 35 IND. L. REV. 1085, 1089 (2002) ("The Seventh, Eighth, Tenth, and Eleventh Circuits have taken the position that 'footnote seven creates a general exception' for § 1983 illegal search and seizure claims to the general rule articulated in *Heck* that § 1983 claims are barred if the trial court determines it is a collateral attack on the criminal conviction.") ("[F]ootnote seven, according to the Second, Fifth, Sixth, and Ninth Circuit Courts, is merely illustrative of a § 1983 claim that could go forward despite the fact that the criminal conviction has not been reversed or invalidated in any way."); *see also Heck*, 512 U.S. at 487 n.7 ("For example, a suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction. Because of doctrines like independent source and inevitable discovery, *see Murray v. United States,* 487 U.S. 533, 539(1988), and especially harmless error, *see Arizona v. Fulminante,* 499 U.S. 279, 307–308 (1991), such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful. In order to recover compensatory damages, however, the § 1983 plaintiff must prove not only that the search was unlawful, but that it caused him actual, compensable injury, *see Memphis Cmty. Sch. Dist. v. Stachura,* 477 U.S. 299, 308 (1986), which, we hold today, does *not* encompass the "injury" of being convicted and imprisoned (until his conviction has been overturned).")

84. *See* Samuel Vincent Jones, *Law Enforcement and White Power: An F.B.I. Report Unraveled*, 41 T. MARSHALL L. REV. 103, 107–08 (2015) (noting that an FBI investigation uncovered unsettling issues of white supremacy in law enforcement) ("The unfortunate consequence . . . is that a law enforcement officer may be good or bad, a villain or hero; one exceptionally prone to exhibit malicious forms of racial hatred, or distinctively suited to protect the racially oppressed. . . . The White supremacist threat brings to light a dark feature of the American experience that some believed extinct. It rouses ingrained notions of distrust between police and communities of color, while bringing to bear the vital interest citizens of good will share in the complete abolishment of race as a judgmental factor." (first citing Reiland Rabaka, *The Souls of White Fold: W.E.B. Du Bois's Critique of White Supremacy*

of History, Tyran Steward, argued that America "perpetuat[es] an archaic system of race management that favors the symbolic and performative," and "[p]olicies must have teeth."[85] On behalf of *The Washington Post*, Jamila Michener wrote that to fully understand the state of America in the wake of George Floyd's death "requires a larger recognition of systemic racism . . . . Black people are disproportionately likely to come in contact with the criminal legal system, whether that's being stopped by police, arrested, detained or incarcerated."[86] She further argues that "research finds widespread bias in law enforcement decisions, among other issues."[87] After the FBI uncovered disturbing infiltration of white supremacy in law enforcement for those who rally in protest, Assistant Dean Samuel Vincent Jones of the UIC John Marshall Law School in Chicago, Illinois, noted this "civil discord is not borne out of a robust animosity towards law enforcement, most of whom are professional."[88] It is not that simple; rather, according to Jones, "it is more representative of a century-old ideological clash, which has ignited in citizens of good will a desire to affirm notions of racial equality, so that the moral ethos of American culture is a reality for all."[89] Moreover, the moral ethos ultimately necessitates acknowledging the functional realities of the duties for law enforcement within that framework.[90] However, it is a complicated matter that cannot be solved with a simple

*and Contributions to Critical White Studies*, 29(2) ETHNIC STUD. REV. 1 (2006); then citing EVELYN A. SCHLATTER, ARYAN COWBOYS: WHITE SUPREMACISTS AND THE SEARCH FOR A NEW FRONTIER 1970–2000, 161 (2006); and then citing Charles M. Blow, Police Abuse Is a Form of Terror, N.Y. Times (Aug. 12, 2015), https://www.nytimes.com/2015/08/13/opinion/police-abuse-is-a-form-of-terror.html [https://perma.cc/J3XR-YCBJ])); *see also* Floyd D. Weatherspoon, *Racial Profiling of African-American Males: Stopped, Searched, and Stripped of Constitutional Protection*, 38 J. MARSHALL L. REV. 439, 439–40 (2004) ("Unfortunately, the American justice system has condoned, supported, and in some instances encouraged such actions by law enforcement officials to stop, arrest, prosecute, and incarcerate African-American males. On the basis of race and gender, governmental officials have devised a profile of the typical criminal: black and male.").

85. McLaughlin, *supra* note 2.

86. Jamila Michener*, George Floyd's Killing Was Just the Spark. Here's What Really Made the Protests Explode*, THE WASHINGTON POST (June 11, 2020), https://www.washingtonpost.com/politics/2020/06/11/george-floyds-killing-was-just-spark-heres-what-really-made-protests-explode/ [https://perma.cc/SA8C-U3H8].

87. *Id.*

88. Jones*, supra* note 84, at 108.

89. *Id.*

90. *See* Steve Herbert, *Morality in Law Enforcement: Chasing Bad Guys with the Los Angeles Police Department*, 30 LAW & SOC'Y REV. 799, 810–12 (1996) ("[B]ecause police officers serve as a key mechanism of the state's coercive apparatus, they attract potentially lethal attention themselves from those who resist police authority. Officers are never unaware of the potential danger they face at a moment's notice.").

pendulum swing, which Professor Steve Herbert acknowledged, writing, "[i]t is misguided to lay the blame for police-minority tension in . . . [America's] cities solely at the feet of police moralizing."[91] Furthermore, Herbert argues that the natural tendencies of binary thinking for "crude frames of good and evil, no matter how comforting," aptly erode "an officers' ability to discriminate with more sensitivity between residents in minority neighborhoods. Not all who dress, walk, and talk in an apparently threatening way are in fact a danger, but many moralistic officers are unable to appreciate that fact."[92]

The Roberts Court's contemporaneous review of the *Heck* doctrine has centered on Fourth Amendment analysis, not equal protection analysis.[93] If the opportunity comes along, the Court should weigh in and help to reinforce the momentum that has (almost consistently) been generated among its Circuits. The Court's capacity to authoritatively bring closure to matters of race and precedent will bring certainty and order to the logical proposition that *Heck* bars equal protection claims.[94] The layers of subconsciousness and morality that pervade accusations of racial profiling have been well-documented and analyzed in vast arrays of scholarship. The Roberts Court, which has never shied away from complicated questions of race[95] or

91. *Id.*

92. *See id.* ("[Moralistic officers may nevertheless] approach those they label as bad in a harsh and imperturbable fashion and needlessly antagonize many who merit a lighter hand.").

93. *See, e.g.*, Nieves v. Bartlett, 139 S. Ct. 1715, 1726 (2019) ("The presence of probable cause should generally defeat a First Amendment retaliatory arrest claim").

94. *See generally* Erica Frankenberg, *The Authority of Race in Legal Decisions: The District Court Opinions of* Brown v. Board of Education, 15 U. PA. J.L. & SOC. CHANGE 67, 67 (2011) ("Legal scholarship, indeed the legal system itself, has often argued that the United States Supreme Court merely settles Constitutional principles in a contemporary context. It is a system that argues objectivity and places heavy emphasis on its past decisions in deciding new cases. Yet occasionally, the courts have reversed what had been settled law for many decades. One such instance was *Brown v. Board of Education*, the 1954 landmark school desegregation case, when the Court unanimously invalidated the application of *Plessy v. Ferguson*."); *see also* Christian Ketter, *Chief Justice John Marshall's Judicial Statesmanship Amid In Re Burr: A Pragmatic Political Balancing Against President Jefferson Over Treason*, 53 UIC J. MARSHALL L. REV. 789, 795 (2020) ("After [Chief Justice John] Marshall's death, the Court had demonstrated the apt capability to address any constitutional issue with political implications. Because of Marshall, if the Court faced an issue involving the Constitution, it declared its interpretation of the Constitution with supreme authority over that provision.").

95. Please see APPENDIX C for a non-exhaustive list of Roberts Court landmark cases involving race.

objective police practices and officer safety[96] is, therefore, uniquely capable of settling the question of whether the U.S. Supreme Court intended for the *Heck* doctrine to extend to accusations of racial profiling.

## CONCLUSION

Chief Justice Roberts, quoting Justice Oliver Wendell Holmes, stated that "'[c]ertitude is not the test of certainty.' It's not how strongly you feel about it, but how effective you can be in explaining the reasoning and getting others to understand the reasoning."[97] Those who disagree, according to Roberts, "don't just disagree and say, 'Well, I don't agree with that,' they try to explain why and it's a very important part of the process."[98] As far as the *Heck* doctrine and claims of racial profiling are concerned, the process has largely worked itself out among the Circuits to a consistent result. Nevertheless, as Martin A. Schwartz noted, on behalf of the Federal Judicial Center, that lower courts tend to have trouble "determining whether a § 1983 claim 'necessarily implicates' the validity of a conviction . . . . under the *Heck* doctrine, a § 1983 excessive force claim necessarily implicates a conviction for such crimes as resisting arrest, assault or battery of an officer, or obstructing an officer."[99] So long as this general difficulty pervades *Heck*, issues of race will not make the jurisprudence thereon any easier.[100] Constitutional scholar and University of Chicago Professor David A. Strauss cautioned, "[m]ost people's intuitive judgments about race are not fully trustworthy, and a requirement that reasons be articulated will hold those judgments up to a critical light."[101] However, this Supreme Court can

96. Please see APPENDIX D for a non-exhaustive list of the Roberts Court landmark cases involving police practices.

97. Jan Crawford Greenburg, *Interview with Chief Justice Roberts*, ABC NEWS (Nov. 28, 2006, 2:50 PM), http://abcnews.go.com/Nightline/story?id=2661589&page=1 [https://perma.cc/TB49-FJMQ] ("Anytime you get nine people together, whether it's at a party or it's in the conference room of the Supreme Court, you do have to maintain some order, or it does kind of degenerate into squabbling pretty quickly . . . People have strong views").

98. *Id.*

99. SCHWARTZ, *supra* note 46, at 164 ("Resolution of the issue requires a careful analysis of the specific facts alleged in the § 1983 excessive force complaint in relation to the specific crime for which the plaintiff was convicted.").

100. *See* David A. Strauss, *"Recognizing Race" and the Elusive Ideal of Racial Neutrality*, 113 COLUM. L. REV. SIDEBAR 1, 8 (2013) ("It is all too easy to slip into using race when it is not necessary, or without a full understanding of the costs of using it. That is true of profiling, just as it is true of recognizing race in an opinion.").

101. *Id.* at 3.

offer the critical light necessary to bring closure to the *Heck* doctrine on this issue.

While Chief Justice Roberts has aptly stated, "I don't think it would be a good idea to turn all the hard issues over to the courts," police practice and matters of race are precisely a subject upon which the Roberts Court may objectively call "balls and strikes."[102] Moreover, Chief Justice Roberts has positioned the Court to serve as umpire to an issue in need of such review.[103] The *Heck* doctrine is nearly a quarter century old, but the effect of its application is still young. While the Second, Third, Seventh, Eighth, Ninth, and Tenth Circuits, and America's district courts have addressed the issue of equal protection claims and their interplay with *Heck* over the past twenty years, the U.S. Supreme Court notably has not. As discussions of race and law enforcement rattle on, the need for the Court to settle the *Heck* doctrine's applicability becomes greater.

## APPENDIX A

The following is a non-exhaustive list of the crises that cities across the United States faced in the wake of the George Floyd killing:

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102. Greenburg, *supra* note 97 ("Anytime you get nine people together, whether it's at a party or it's in the conference room of the Supreme Court, you do have to maintain some order, or it does kind of degenerate into squabbling pretty quickly . . . . People have strong views, but remember we're lawyers and as Holmes once said, 'Certitude is not the test of certainty.' It's not how strongly you feel about it, but how effective you can be in explaining the reasoning and getting others to understand the reasoning and if they disagree, they don't just disagree and say, 'Well, I don't agree with that,' they try to explain why and it's a very important part of the process."). *See generally Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 48 (2005) [*hereinafter* Hearing] (statement of Tom Coburn, U.S. Senator, State of Okla.).

103. *See generally* Christian Ketter, *The NFL Player, the Schoolchild, and the Entertainer: When the Term "Free Speech" Is Too Freely Spoken, Exactly "Who's on First?"*, 68 CLEV. ST. L. REV. 421, 425 (2020) ("Roberts stated 'I have no agenda, but I do have a commitment . . . it's my job to call balls and strikes and not to pitch or bat.'" (quoting *Hearing*, supra note 102)); *id.* at 453–55 ("At his 2005 Senate Confirmation Hearing, Chief Justice John Roberts employed a sports analogy for law, in which he opined that 'Judges and Justices are servants of the law, not the other way around. Judges are like umpires. Umpires don't make the rules, they apply them . . . [in] a limited role. Nobody ever went to a ball game to see the umpire.' Nevertheless, in baseball, the umpire has a discretionary role to rule upon what constitutes a ball or a strike, and in so doing, effectively calls the runs and the outs." (first quoting *Hearing*, supra note 102; then citing WILLIAM M. SIMONS, THE COOPERSTOWN SYMPOSIUM ON BASEBALL AND AMERICAN CULTURE, 2013–2014 251 (2015)).

1. Aila Silsco, *Sen. Chuck Grassley Calls on Joe Biden to Condemn 'Violence/Looting/Arson' in Oregon*, NEWSWEEK (Jan. 21, 2021, 11:21 PM), https://www.newsweek.com/sen-chuck-grassley-calls-joe-biden-condemn-violence-looting-arson-oregon-1563570 [https://perma.cc/C2JW-NYWC] ("Massive protests against racial injustice and police brutality erupted throughout the country last summer following the May 25 police killing of George Floyd. Although most of the protests were peaceful, some violence did occur and property damage was not uncommon.").

2. Annie Sweeney & Jeremy Gorner, *Pandemic, Civil Unrest Likely Contributed to More Than 50% Increase in Chicago Homicides in 2020, Experts Say*, CHICAGO TRIBUNE (Dec. 31, 2020, 5:00 PM), https://www.chicagotribune.com/news/criminal-justice/ct-year-end-gun-violence-20201231-33wbrdh44jbr7h5u77sunwj2pu-story.html [https://perma.cc/3C3F-9ZCU] (writing that 2020 was "a year marred by a deadly pandemic and rocked by civil unrest over policing in America, [in which] Chicago endured a level of violence in 2020 that reversed recent progress, with homicides increasing by more than 50%, according to official statistics"; and stating "[t]he high-profile killings of Black people by police officers sparked a national reckoning on race issues, and in some cases generated instability across the city and increased distrust of police officers, eroding their ability to rely on community members for help").

3. Trevor Hughes, *Protests in Minneapolis Turned Violent: Officials First Blamed Outsiders, But That's Not What Arrests Show*, USA TODAY (May 30, 2020), https://www.usatoday.com/story/news/nation/2020/05/30/george-floyd-protests-riots-violent-outside-agitators-minnesota/5291658002/ [https://perma.cc/Z6YJ-WYNC] ("Many Minneapolis residents appear to be growing weary of the violence and destruction, while still supporting peaceful protests.").

4. Jason Whitely, *Cities Across North Texas Placed Under Curfews in Response to Civil Unrest*, KHOU (June 1, 2020, 11:54 AM), https://www.khou.com/article/news/crime/dallas-leaders-institute-curfew-sunday-after-second-night-of-vandalism-looting/285-ba4e4d66-e976-402e-b1ce-ffe0b561977e [https://perma.cc/CY9T-XYWE] (reciting Dallas Police Chief Renee Hall's statement, "[t]hese rioters, these looters, they have become extremely aggressive and our enforcement efforts have escalated . . . . We will not tolerate . . . any more damage to our city").

5. City News Service, *National Police Foundation to Review LAPD's Response Tactics to BLM Protests*, KNBC (Jan. 29, 2021, 10:50 PM), https://www.nbclosangeles.com/news/local/national-police-foundation-to-review-lapds-response-tactics-to-blm-protests/2514449/ [https://perma.cc/X2KP-ZHFQ] ("[A]lthough the mass demonstrations were largely peaceful, there were also criminal acts of arson and looting

which threatened public safety, and the LAPD 'must be able to respond to such situations.'").

6. Madeline Mitchell et al., *Protesters Break Windows at Justice Center, OTR Businesses During Rally Over George Floyd's Death*, CINCINNATI ENQUIRER (May 29, 2020, 6:08 PM), https://www.cincinnati.com/story/news/2020/05/29/friday-protest-cincinnati-george-floyd-police-killed-unarmed-black-minneapolis-man-5285853002/5285853002/ [https://perma.cc/EU74-GTB2] (providing that Lieutenant Steve Saunders, Cincinnati Police Department spokesman stated, "[o]ur primary effort right now is to stabilize this area and seek cooperation and calm from the groups engaging in violent and turbulent behavior.").

7. Brian Vitagliano & Veronica Stracqualursi, *Cuomo Calls New York City's Response to Looting and Damage "Inexcusable*,*"* CNN (June 2, 2020, 2:42 PM), https://www.cnn.com/2020/06/02/politics/andrew-cuomo-new-york-city-floyd-protests/index.html [https://perma.cc/BF66-WM7C] (writing "New York Gov. Andrew Cuomo on Tuesday called recent looting and unrest in New York City 'inexcusable,' publicly blaming Mayor Bill de Blasio and the New York City Police Department and suggesting that he could override de Blasio to send the National Guard into the city"; and quoting Governor Cuomo, "I believe the mayor underestimates the scope of the problem. I think he underestimates the duration of the problem. And I don't think they've used enough police to address the situation . . . What happened in New York City was inexcusable . . . .").

## APPENDIX B

The following is a non-exhaustive list of momentum among the district courts in applying the *Heck* doctrine to claims of equal protection, centered in racial profiling:

(1) Phillips v. Alsleben, No. 08-1388, 2009 WL 650285, at *4 (E.D. Pa. Mar. 13, 2009). The Eastern District of Pennsylvania reasoned that an "equal protection claim is barred. The Third Circuit has unequivocally stated that '[i]f a person can demonstrate that he was subjected to selective enforcement in violation of his *Equal Protection* rights, his conviction will be invalid.' Because a favorable verdict on this claim would necessarily invalidate . . . [a] conviction or sentence, it is barred." *Id.* (citation omitted) (quoting *Gibson*, 411 F.3d at 440–41). This is because "a successful claim of racially discriminatory enforcement of the law would invalidate the resulting conviction and sentence." *Id.* (quoting *Cook*, 299 F. App'x at 174).

(2) Owens v. Fox, No. 07-365-JJF, 2010 U.S. Dist. LEXIS 34031 at *14 (D. Del. Mar. 30, 2010) ("Plaintiff makes no showing that his conviction had been invalidated as a result of racial profiling. Inasmuch as there has been no favorable termination of Plaintiff's underlying state-court conviction, his claim of selective enforcement is barred by *Heck v. Humphrey*.").

(3) Cano-Diaz v. City of Leeds, 882 F. Supp. 2d 1280, 1290–91 (N.D. Ala. 2012). The Northern District of Alabama elaborated on the reasoning behind the *Heck* bar to equal protections claims, reasoning that if the plaintiff "prevailed on her § 1983 claim for Equal Protection violations under the Fourteenth Amendment, it would, [consistent with the *Heck* bar,] 'necessarily imply' the invalidity of any outstanding conviction against her at the state or municipal level for the offenses charged during her traffic stop." *Id.* at 1290. The Court stated bluntly, "[m]ore specifically, if [the plaintiff] proved that the City of Leeds officer who pulled her over did so for purely discriminatory motives based on her race or ethnicity, such proof of the illegality of the stop would invalidate any convictions resulting therefrom." *Id.* (first citing *Cook*, 299 Fed. App'x at 174; then citing Sanders v. Fayetteville City Police Dep't, 160 Fed. Appx. 542, 543 (8th Cir.); and then citing Gibson, 411 F.3d at 441). Thus, in *Cano-Diaz*, the Alabama district court dismissed the equal protection claim, reasoning that the plaintiff "has not shown that her 'conviction . . . [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.'" *Id.* at 1291 (citing Heck v. Humphrey, 512 U.S. 477, 487 (1994). The Court continued that plaintiff's "Fourteenth Amendment claim in Count II is not ripe under *Heck* and is due to be

dismissed under *Heck* to the extent that her pending underlying state charges have become convictions." *Id.*

(4) Robinson v. Donovan, No. 13-14752, 2015 U.S. Dist. LEXIS 98129, at *15 (E.D. Mich. Mar. 24, 2015), *report adopted*, No. 4:13-cv-14752, 2015 U.S. Dist. LEXIS 97357, at *2 (E.D Mich. July 27, 2015), *aff'd*, No. 15-2026 (6th Cir. Apr. 7, 2016) ("To the extent Robinson alleges that the officers treated him differently on the basis of his race because they arrested him for heroin possession, but declined to arrest Leist and Helmer on the same charge, this claim is also barred under *Heck*.").

(5) Fairbanks v. O'Hagan, 255 F. Supp. 3d 239, 245–46 (D. Mass. 2017). A Massachusetts District Court ruled that the "[p]laintiff's equal protection claim is barred by the *Heck* doctrine [because a] conviction derived from an officer's selective enforcement of laws in violation of a defendant's Equal Protection rights is invalid." *Id.* (citing Gibson, 411 F.3d at 440–41). In *Fairbanks*, the plaintiff "allege[d] that defendants arrested him in violation of his equal protection rights because he was a Marine." *Id.* at 246. However, the Court reasoned, "if plaintiff succeeds on that claim it will necessarily imply the invalidity of his state court [continuances without a finding]. Therefore, that claim is not cognizable under *Heck* and will be dismissed. Because the equal protection claim will be dismissed under the *Heck* doctrine, this Court declines to address whether plaintiff states a plausible claim for an equal protection violation." *Id.*

(6) Watson v. Shumate, No. 3:18-CV-P460-GNS, 2018 U.S. Dist. LEXIS 215868, at *7 (W.D. Ky. Dec. 21, 2018) ("In the present case, a finding that Detective Barry violated the Constitution by arresting/charging Plaintiff based on his race would necessarily imply the invalidity of his continued confinement.").

(7) Sams v. Cnty of Riverside, No. EDCV 17-1848 SVW (SS), 2019 WL 3069180, at *10 (C.D. Cal. June 14, 2019), *report adopted*, No. EDCV 17-1848 SVW (SS), 2019 WL 3067590 (C.D. Cal. July 10, 2019) ("Plaintiff alleges that criminal proceedings were brought against him for discriminatory motives, even though no charges were brought against his 'similarly situated' wife. Success on this claim of discriminatory application of the criminal law would undermine the validity of Plaintiff's conviction, and as such, the claim is barred by *Heck*." (citation omitted)).

## APPENDIX C

The following is a non-exhaustive list of Roberts Court landmark cases involving race.

(1) Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 748 (2007) (striking down racial determinations for school attendance) ("The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.").

(2) Snyder v. Louisiana, 552 U.S. 472, 478 (2008) (holding that a prosecutor's suspicious reasons for striking a prospective African-American juror constituted racial discrimination) ("[A]ll of the circumstances that bear upon the issue of racial animosity must be consulted." (citing Miller-El v. Dretke, 545 U.S. 231, 239 (2005))).

(3) CBOCS W., Inc. v. Humphries, 553 U.S. 442, 452 (2008) (addressing the dismissal of one employee who complained about the dismissal of another on account of race) ("We agree . . . that the statute's language does not expressly refer to the claim of an individual (black or white) who suffers retaliation because he has tried to help a different individual, suffering direct racial discrimination, secure his § 1981 rights. But that fact alone is not sufficient to carry the day.").

(4) Ricci v. DeStefano, 557 U.S. 557, 585 (2009) ("We hold only that, under Title VII, before an employer can engage in intentional discrimination for the asserted purpose of avoiding or remedying an unintentional disparate impact, the employer must have a strong basis in evidence to believe it will be subject to disparate-impact liability if it fails to take the race-conscious, discriminatory action.").

(5) Ashcroft v. Iqbal, 556 U.S. 662, 683 (2009) (noting that a post-9/11 detainee who alleged discrimination on the basis of race in part, "need[s] to allege more by way of factual content to nudge his claim of purposeful discrimination across the line from conceivable to plausible.").

(6) Fisher v. Univ. of Tex. at Austin, 570 U.S. 297, 309 (2013) ("Race may not be considered unless the admissions process can withstand strict scrutiny.").

## APPENDIX D

The following is a non-exhaustive list of the Roberts Court landmark cases involving police practices.

(1) Georgia v. Randolph, 547 U.S. 103, 114 (2006) ("Since the co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all.").

(2) Hudson v. Michigan, 547 U.S. 586, 599 (2006) ("Modern police forces are staffed with professionals; it is not credible to assert that internal discipline, which can limit successful careers, will not have a deterrent effect. There is also evidence that the increasing use of various forms of citizen review can enhance police accountability.").

(3) United States v. Grubbs, 547 U.S. 90, 99 (2006) ("The Constitution protects property owners not by giving them license to engage the police in a debate over the basis for the warrant, but by interposing, *ex ante*, the 'deliberate, impartial judgment of a judicial . . . officer between the citizen and the police.'" (alteration in original) (quoting Wong Sun v. United States, 371 U.S. 471, 481–82 (1963).).

(4) Brigham City v. Stuart, 547 U.S. 398, 400, 407 (2006) ("In this case we consider whether police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. We conclude that they may.") ("Under these circumstances, there was no violation of the Fourth Amendment's knock-and-announce rule. Furthermore, once the announcement was made, the officers were free to enter; it would serve no purpose to require them to stand dumbly at the door awaiting a response while those within brawled on, oblivious to their presence.").

(5) Arizona v. Gant, 556 U.S. 332, 345 (2009) ("A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to the privacy of countless individuals. Indeed, the character of that threat implicates the central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at will among a person's private effects.").

(6) Herring v. United States, 555 U.S. 135, 147–48 (2009) (declining to extend the exclusionary rule to good-faith error) ("[W]e conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements,

any marginal deterrence does not 'pay its way.' In such a case, the criminal should not 'go free because the constable has blundered.'" (first quoting United States v. Leon, 468 U.S. 897, 907–908, n.6; then quoting People v. Defore, 150 N.E. 585, 587 (N.Y. 1926)).

(7) Bailey v. United States, 568 U.S. 186, 193 (2013) (concluding that an officer's detaining of occupants present on the premises during a search warrant is constitutional) ("Within the framework of these fundamental rules there is some latitude for police to detain where 'the intrusion on the citizen's privacy "was so much less severe" than that involved in a traditional arrest that "the opposing interests in crime prevention and detection and in the police officer's safety" could support the seizure as reasonable.'" (quoting Summers, 452 U.S. 692, 697–698 (1981)).