No. 19-47

IN THE

Supreme Court of the United States

JERYME MORGAN,

Petitioner,

v.

MIHN SCHOTT, TIM VEATH, AND HUDSON MAYNARD,

Respondents.

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

BRIEF OF *AMICUS CURIAE* THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crimes or misconduct. Founded in 1958, NACDL has a membership of many thousands of direct members and approximately 40,000 affiliated members. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. The American Bar Association recognizes NACDL as an affiliated organization and awards it full representation in its House of Delegates.

NACDL has participated as *amicus* in many of the Court's most significant criminal cases. It has a keen interest in having this Court confirm the appropriate path for any necessary legal challenges for inmates facing sanctions both affecting their duration in confinement and their basic living conditions and privileges.

SUMMARY OF ARGUMENT

A. The circuit split identified by Petitioner has serious practical consequences, reinforcing the need for this Court's review. Nationwide, there are a sizable number of litigated cases annually where a prisoner seeks to challenge non-durational aspects

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[1] Pursuant to Rule 37.2, both parties received notice of the filing of this brief more than ten days prior to the due date. A letter of consent from each party accompanies this filing. Pursuant to Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amicus* and its counsel, made a monetary contribution to the preparation or submission of the brief.

of mixed disciplinary sanctions, and prisoners in different jurisdictions are – as a result of the circuit division – currently subject to disparate remedies. Additionally, the uneven results extend not just to state prisoners suing under 42 U.S.C. § 1983, but also to federal prisoners pursuing various federal causes of action. And in the circuits not yet to have spoken on the mixed-sanctions issue, prisoners (usually suing *pro se*) are left to navigate, with unpredictable results, a threshold, controverted procedural issue, an issue whose presence in this genre of litigation also burdens district courts attempting efficiently to process prisoner cases.

B. The Seventh Circuit's approach to mixed-sanctions cases conflicts with this Court's precedents. First of all, the Seventh Circuit perceived a collateral-estoppel underpinning for *Heck v. Humphrey*, 512 U.S. 477 (1994), that is nowhere present in *Heck*. Indeed, insisting that issue preclusion applies to a non-durational sanction, so that the sanction cannot be challenged under § 1983 until completion of habeas proceedings, envisions prisoners pursuing relief (such as the alteration of prison conditions) in habeas that traditionally habeas does not afford. The Seventh Circuit also deviated from this Court's jurisprudence cautioning against judge-made rules that negate statutory text. Here, the Seventh Circuit extended the judge-made *Heck* bar to negate § 1983, which at its core authorizes a prisoner suit (like Petitioner's) to challenge the circumstances of confinement.

ARGUMENT

The Court should grant the Petition to answer the important question of whether *Heck v.*

Humphrey, 512 U.S. 477 (1994), bars an inmate's 42 U.S.C. § 1983 claim arising from prison disciplinary sanctions consisting of both a loss of good-time credits and additional penalties. In particular, the Court should resolve the circuits' dispute over whether an inmate may proceed under § 1983 where he expressly waives any challenge to the loss of good-time credits in order solely to advance claims arising from the other sanctions. It should do so, and then decide the case in a manner contrary to the Seventh Circuit's substantive holding, because: (A) the current circuit split has significant, intolerable practical ramifications for prisoners and the lower courts; and (B) the Seventh Circuit's decision conflicts with this Court's *Heck* jurisprudence and with the Court's precedents obligating respect for statutory text.

A. The Circuit Split Has Significant, Negative Practical Consequences

The Petition identifies the circuit split on the Question Presented. *Amicus* writes separately to emphasize the practical necessity of granting the Petition. The circuit split has real-life consequences. That is, the split among the circuits on the proper avenue for challenging mixed sanctions results in unequal application of statutory and constitutional rights across state and federal prison systems, thereby engendering confusion for prisoners and taxing judicial resources.

It should be uncontroversial that a prisoner in Illinois should not have different avenues to federal statutory and constitutional redress than a prisoner in New York facing the same mixed sanctions. But that is the practical outcome of the current split between the Seventh Circuit's position below and

the leading decision on the other side, *Peralta v. Vasquez*, 467 F.3d 98 (2d Cir. 2006). And with the split, overall, being among several circuits (*i.e.*, not just the Seventh and Second), disparate remedies for prisoners based on their location becomes all the more prevalent. In just the last few weeks, still another circuit has noted the conflict in the lower courts regarding challenges to mixed sanctions. *See Morrison v. Rochlin*, ___ F. App'x ___, 2019 U.S. App. LEXIS 18774, at *5 n.4 (3d Cir. June 24, 2019) ("We do not appear to have addressed how to apply *Heck* in a 'mixed sanctions' case such as this, and other courts have come to different conclusions.").

This disparate treatment impacts a large number of litigated cases. Prisons regularly impose disciplinary sanctions consisting of both the forfeiture of good-time credits and the alteration of confinement conditions. In one state, Nebraska, a recent audit found that nearly *one in four* guilty dispositions from disciplinary hearings resulted in the loss of good-time credits, along with the altering of living conditions, like solitary confinement; plus, the total number of mixed-sanctions cases was substantial. *See* Neb. Legis. Performance Audit Comm., *Nebraska Department of Correctional Services: Disciplinary Process, Programs, and Commitment Processes* 22-23 (Nov. 17, 2014), https://nebraskalegislature.gov/pdf/reports/audit/corrections_2014.pdf (finding that 732 out of 3,212 guilty dispositions resulted in mixed sanctions). Statistical results from other states are similar. *See* Pet. 20 (noting that mixed sanctions occurred in 7,000 of a total of 17,000 disciplinary proceedings in New York in a particular year).

These empirical findings are unsurprising; after all, prison regulations expressly contemplate the award of mixed sanctions. *See* 28 C.F.R. § 541.3, Table 2. With, then, thousands of mixed-sanctions cases nationwide, and with *amicus*'s experience indicating that a fair share of those are challenged in federal court, a wide swath of prisoner cases are being remedied differently, even potentially under identical facts.

Additionally, the circuit split – and its concomitant disparate results – manifests itself not just for state prisoners seeking to sue under § 1983, but also in cases where federal prisoners challenge mixed sanctions. Courts have applied the *Heck* line of cases to federal inmates suing under other causes of action for damages that arguably would affect the inmate's length of confinement if successful. In *Skinner v. Dep't of Justice*, 584 F.3d 1093, 1100 (D.C. Cir. 2009), the D.C. Circuit dismissed a claim under the Privacy Act for damages associated with non-durational sanctions, because, if successfully won by the federal inmate, "he would necessarily have demonstrated the invalidity" of the durational sanctions he likewise received. Similarly, in its recent *Morrison* decision, the Third Circuit applied the *Heck* bar to a federal prisoner challenging a disciplinary proceeding under *Bivens*, since the prisoner had not properly preserved the argument that the case involved mixed sanctions. *See* 2019 U.S. App. LEXIS 18774, at *5 & n.4. With the circuit conflict leading to disparate results not just for state prisoners pursuing § 1983, but also potentially for federal inmates pursuing damages under other federal causes of action, the Court's intervention is necessary to resolve a division now increasing both

in the number of circuits implicated and in the categories of prisoners affected.

Finally, the split at the circuit level is accompanied too by a wide divergence among the district courts in circuits where the courts of appeals have not yet spoken to the issue.[2] As Petitioner noted, there are currently three circuits holding that *Heck* applies to § 1983 claims in mixed-sanctions cases, and at least three that hold oppositely. *See* Pet. 9. The remaining circuits have yet to decide their approaches, leaving their respective district courts to determine the appropriate path forward, as both state and federal litigants cite conflicting decisions from other circuits to make their cases.

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[2] *Compare Gardner v. Lanigan*, No. 13-7064, 2018 U.S. Dist. LEXIS 148058, at *6 (D.N.J. Aug. 30, 2018) (applying *Peralta* to permit an inmate's prison-conditions case to move forward on waiver of durational claims); *Paladin v. Rivas*, No. 05-cv-79, 2007 U.S. Dist. LEXIS 73416, at *25 (D.N.H. Sept. 28, 2007) (citing *Peralta* and stating that the *Heck* bar "did not apply to prisoner suits brought under § 1983 which did not seek a judgment at odds with a prisoner's conviction or with the state's calculation of time to be served"); *Petties v. Caruso*, No. 06-cv-72, 2007 U.S. Dist. LEXIS 23120, at *34 n.17 (W.D. Mich. Mar. 29, 2007) (citing *Peralta*'s understanding of the *Heck* requirement); *Hughes v. Parker*, No. 17-cv-0009, 2018 U.S. Dist. 34583, at *1-2 (M.D. Tenn. Mar. 1, 2018) (citing *Peralta* as consistent with *Heck*); *with Patrick v. Hirbst*, No. 19-cv-65, 2019 U.S. Dist. LEXIS 95244, at *18-20 (S.D. Tex. May 20, 2019) (applying *Heck* bar where prisoner lost good-time credits, along with receiving a reduction in line class and other thirty-day restrictions); *Harris v. Elam*, No. 17-cv-147, 2019 U.S. Dist. LEXIS 25716, at *2, *15-16 (W.D. Va. Feb. 19, 2019) (applying *Heck* bar where prisoner lost good-time credits, along with receiving segregation); *Harris v. Perry*, No. 15-cv-222, 2015 U.S. Dist. LEXIS 107249, at *4, *12-14 (D.R.I. July 15, 2015) (applying *Heck* bar where prisoner lost good-time credits, along with receiving segregation and lost visitation rights).

This is, in short, a conflict not only ensnaring the circuits that have weighed in, but also the district courts left to decide on their own. Ten years ago, in a similar case, the federal government conceded there is a circuit split on the mixed-sanctions issue, but persuaded the Court that further percolation in the lower courts should occur before certiorari should be granted. *See Skinner v. U.S. Dep't of Justice*, No. 09-1188, Br. of United States in Opp'n 12 (U.S. July 21, 2010) (arguing that circuit dispute was of "limited and recent vintage" and that certiorari should await "additional consideration of the question by lower courts"). Much percolating has now occurred, and the lower courts' division is far worse.

And the uneven situation in the "open" circuits has its own nefarious practical consequences. For prisoners, they do not know which legal avenue to pursue when they seek to focus a challenge on the non-durational aspects of their sanction; their cases – usually brought *pro se* – get bogged down at the outset on the complex procedural issue of what is the correct form and forum for challenging the non-durational sanction if mixed sanctions occurred, an issue entirely separate from the merits of the discipline itself. For the district courts – which must decide the procedural issue usually, and unfortunately, without adequate briefing from the *pro se* plaintiff – their dockets are burdened with an unnecessary threshold question in a large number of prisoner cases. For the benefit of all interested stakeholders, the Court should grant the Petition and resolve the festering question of which civil remedy applies to a challenge in a mixed-sanctions case.

B. The Seventh Circuit's Decision Below Departs from This Court's Precedents

The Court should grant certiorari not just because of the division in the lower courts but also because the Seventh Circuit's decision deviates from this Court's precedents. The Petition, again, well-describes the various ways in which the Seventh Circuit diverged from the Court's decisions. *See* Pet. 16-19. *Amicus* amplifies on one, and adds another: the Seventh Circuit's decision departs from this Court's cases by delineating an issue-preclusion basis for the *Heck* bar, *see id.* at 17, and, more generally, conflicts with the Court's jurisprudence on the respect to be accorded to statutory text Congress has enacted.

1. The circuits that apply the *Heck* bar in mixed-sanctions cases purport to be acting consistently with the purpose of the *Heck* line of decisions, in order to determine when a prisoner's challenge to disciplinary sanctions can be brought pursuant to § 1983 or, instead, exclusively through the federal habeas statute. Nonetheless, the Seventh Circuit's approach below threatens the delicate balance between the two federal statutes that *Heck* sought to accomplish. One glaring example is the Seventh Circuit's reliance on collateral estoppel. By interpreting *Heck* to be about issue preclusion – without citing any cases from this Court in support – the Seventh Circuit illogically forbids a § 1983 lawsuit in deference to a potential habeas adjudication in which the relevant issue could not even be raised and remedied. Habeas artificially is inflated; § 1983, diminished.

Quoting its earlier decision in *Haywood v. Hathaway*, 842 F.3d 1026, 1029 (7th Cir. 2016), the

Seventh Circuit reasserted its position that the *Heck* rule was a version of issue preclusion: a disciplinary sanction collaterally estops "'any inconsistent civil judgment.'" Pet. App. 8a-9a. But even in *Haywood*, the source of the Seventh Circuit's issue-preclusion approach to *Heck*, the court did not cite any of this Court's cases as precedent – only Seventh Circuit cases. *See Haywood*, 842 F.3d at 1029 (citing *Simpson v. Nickel*, 450 F.3d 303 (7th Cir. 2006); *DeWalt v. Carter*, 224 F.3d 607 (7th Cir. 2000); *Carr v. O'Leary*, 167 F.3d 1124 (7th Cir. 1999)). The reference to, and reliance on, issue preclusion is not just without support from this Court's *Heck* jurisprudence or any other cases from this Court, but in defiance of it.

Petitioner rightly notes that this Court expressly declined to discuss the preclusion doctrines in *Heck*. *See* Pet. 17; *see also Heck*, 512 U.S. at 480 n.2 ("We also decline to pursue . . . another issue . . . that if petitioner's conviction were proper, this suit would in all likelihood be barred by res judicata.") (internal quotation marks and citation omitted). Rather, all that *Heck* accomplished was to close a possible avenue of collateral attack to a prisoner's sentence, through the mere election of damages remedies. *See id.* at 487 (key to barring the § 1983 remedy is "whether a [§ 1983] judgment . . . *would necessarily* imply the invalidity of his conviction or sentence"). In that sense, the *Heck* bar is designed to protect the habeas remedy by disallowing alternative lawsuits that can fit within habeas. *See infra* p. 12. On the other hand, this Court has gone on to affirm that where there is "no consequence" for the basis of an inmate's conviction and sentence duration, he may bring a § 1983 claim without needing to start with

the habeas process. *Muhammed v. Close*, 540 U.S. 749, 751 (2004).

In fact, where, as here, a state prisoner challenges solely his "circumstances of confinement," there is "no claim on which habeas relief could have been granted on any recognized theory," with § 1983 being the exclusive remedy. *Id.* at 750, 755. The "purpose of federal habeas corpus is to ensure that state convictions comply with the federal law in existence at the time the conviction became final." *Sawyer v. Smith*, 497 U.S. 227, 234 (1990). The Court has maintained this limited understanding of habeas throughout the entire *Heck* line of cases, including the line's progenitor case. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody"). In turn, "requests for relief turning on circumstances of confinement" are within the province of "a § 1983 action." *Muhammed*, 540 U.S. at 750.

The upshot is that the Seventh Circuit found a preclusion element in *Heck* that does not exist, and it then applied *issue* preclusion to a non-durational sanction (*i.e.*, altered conditions of confinement) supposedly subject to habeas, when this Court's decisions regularly have held habeas traditionally does not reach the topic. Other courts might now rely on the Seventh Circuit's faulty collateral-estoppel reasoning to thwart cases similar to Petitioner's. The Court should grant certiorari, and reverse, in order to stop the Seventh Circuit's misreading of the basis and scope of *Heck* from proliferating.

Of significance, the Court has very recently emphasized the importance of § 1983 in the federal constellation, and it has warned against unnecessarily hampering its use. Less than two months ago, the Court reaffirmed the "settled rule" that because the § 1983 statute "guarantees 'a federal forum for claims of unconstitutional treatment at the hands of state officials,'" the exhaustion of state remedies "'is *not* a prerequisite to an action under [42 U.S.C.] § 1983.'" *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2167 (2019) (citing *Heck*, 512 U.S. at 480 (quoting *Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 501 (1982)). In *Knick*, the Court overruled its prior takings-clause jurisprudence that required a property owner to seek just compensation in state court initially and that treated the state-court proceeding as preclusive in any subsequent federal suit. These rules were, the Court said, an "unjustifiable burden" on the right to seek relief under § 1983. *Id.* The burden here on § 1983 is even greater than in *Knick*: the Seventh Circuit finds a claim not even within the confines of another remedy (*i.e.*, habeas) must be pursued and won there, to the preclusion of § 1983 cases in the meantime.[3]

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[3] Perhaps the Seventh Circuit's point with collateral estoppel was that the disciplinary proceeding plus habeas review precludes a § 1983 case because, in a mixed-sanctions case, the prisoner *could* challenge the loss of good-time credits emanating from the disciplinary hearing in habeas. If he did, then the habeas ruling would have issue-preclusion effect in a subsequent § 1983 case. Were that the Seventh Circuit's reasoning, then the Seventh Circuit would be compelling Petitioner to challenge a durational sanction with which he may not disagree and in a format not of his choosing, in order to later challenge a non-durational sanction with which he does

2. The Seventh Circuit's extension of *Heck* to mixed-sanctions cases is at odds with this Court's decisions treating cautiously judge-made doctrines that are ungrounded in statutory text. Though *Heck* "lies at the intersection" of two federal statutes (namely, habeas and § 1983), the doctrine is not prescribed by the text of either. *Heck*, 512 U.S. at 480. At its heart, the *Heck* bar is a case-management tool that the Court created for the orderly division of disputes between two competing federal statutes. *See Preiser*, 411 U.S. at 488 (relying on the Court's canons for reconciling two federal statutes where a dispute falls within the "literal terms" of both); *id.* at 482 (noting that creation of the rule favoring habeas in durational cases resolves an "important problem in the administration of federal justice").

As recently as this past January, the Court reaffirmed its hesitation to extend judge-made doctrines that lack connection to statutory text. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019) (invalidating the judicially created "wholly groundless" exception to the Federal Arbitration Act because it lacked support from the text, even though the exception helped judges block frivolous actions). The "text of the statute controls [the] decision" concerning the scope of a statute even if "[the] entire area of law is replete with judge-made rules." *Morrison v. Nat'l Australia Bank Ltd.*, 561

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disagree in a format of his choosing. Such a scenario not only has no basis in this Court's rulings, but may also compel litigants essentially to fabricate threshold cases in order to pursue their real grievance. The compulsion raises due-process concerns, as well as alarm that the prisoner's § 1983 right has been "burden[ed]." *Knick*, 139 S. Ct. at 2167.

U.S. 247, 261 n.5 (2010) (internal quotation marks and citation omitted).

In this instance, the Seventh Circuit extended the judge-made *Heck* bar to a case that, under the plain wording of § 1983, is actionable under § 1983.[4] Whereas an extra-textual result might be appropriate when the dispute likewise falls within the core of habeas (*see Preiser*, 411 U.S. at 487), it should not be the outcome where the controversy is instead at the center of § 1983. In the latter situation, respect for the terms Congress adopted in § 1983 – broadly inclusive of "challenge[s] [to] . . . prison conditions," *id.* at 499 – warrants the rejection of *Heck*'s rule favoring habeas. That outcome is especially fitting here, given that Petitioner's dispute (as ultimately narrowed by his abandonment of any good-time credits challenge) comes *only* within the text of § 1983, with habeas historically not covering Petitioner's stated grievance.

[4] The familiar language of § 1983, in relevant part, is: "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 . . . ." 42 U.S.C. § 1983.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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