No. 20-

In the Supreme Court of the United States

LAYNE AUCOIN, *Petitioner*

v.

ANDREW CUPIL, Lieutenant; REGINALD ROBINSON, Sergeant, *Respondents*

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

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

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Question Presented

Petitioner presents the following question:

Do the Sixth Amendment and this Court's decision in *Muhammad v. Close*, 540 U.S. 749 (2004), foreclose a federal court from dismissing an inmate 8th Amendment excessive force suit where 1) the suit does not challenge the prison disciplinary proceeding, 2) where a criminal conviction did/does not result from a prison disciplinary proceeding and 3) where a favorable judgment entered on the 8th Amendment claim will not affect an underlying conviction for which an inmate is serving time?

CERTIFICATE OF PARTIES, PROCEEDINGS AND RELATED CASES

The parties on the caption are the parties to this proceeding.

PROCEEDINGS

Aucoin v. Cupil, U.S. District Court for the Middle District of Louisiana, Civ. Action No. 3:16-CV-373. Judgment entered on rehearing April 22, 2019.

Aucoin v. Cupil, U.S. District Court for the Middle District of Louisiana, Civ. Action No. 3:16-CV-373. Judgment entered on rehearing August 26, 2019.

Aucoin v. Cupil, U.S. Court of Appeals for the Fifth Circuit, No. 19-30779. Judgment entered May 6, 2020.

Aucoin v. Cupil, U.S. Court of Appeals for the Fifth Circuit, No. 19-30779. Motion for Rehearing out of time, denied June 15, 2020.

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PETITION FOR A WRIT OF CERTIORARI

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 958 F.3d 379 and reproduced at Pet.App.1a-9a. The opinion of the district court on rehearing (Pet.App.10a-18a) is not reported. 2019 WL 178141. The opinion of the district court (Pet.App.30a-35a) is not reported. 2019 WL 4023747.

JURISDICTION

On May 6,2020, the court of appeals issued its decision. Ths jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Sixth Amendment to the Constitution of the United States provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

The jurisdiction of the district and appellate courts arose under 28 U.S.C. § 1331,

federal question.

The pertinent facts are that there is no evidence in the record that either the Complaint/Amended Complaint, the evidence presented, or a possible jury verdict rendered in this case would in any manner affect LAYNE AUCOIN's underlying conviction or his release date.

The background facts underlying the claim and allegations of LAYNE AUCOIN are that by August 24, 2015, LAYNE AUCOIN had been on suicide watch for almost two weeks when he placed a paper cup over the video camera lens to see if anyone was actually watching him after which LT. CUPIL appeared and began berating AUCOIN. SERGEANT ROBINSON then snuck up on LAYNE AUCOIN and maced him. Afterwards, the two correctional officers restrained LAYNE AUCOIN, removed him from his cell to the lobby where he was beaten and later taken to a shower where he was again maced.

Because the prison, Dixon Correctional Center, found LAYNE AUCOIN violated a prison rule, for conduct while he was in his cell, which conduct merited a loss of good time credits, both the district and appellate courts found that LAYNE AUCOIN may not proceed on the excessive force claim for allegations of excessive force used on him while he was in his cell. The error before this Court was the failure of the lower courts

to follow *Muhammad* and to instead pluck a sentence from *Edwards v. Balisok*,[1] a wholy factually and legally distinguishable case, and apply that sentence to this case. The sentence is "A 'conviction,' for purposes of *Heck*, includes a ruling in a prison disciplinary proceeding that results in a change to the prisoner's sentence, including the loss of good-time credits." The district and appellate courts have expanded this sentence to allow all prison disciplinary proceedings Sixth Amendment protection as though 8th Amendment cases are 4th Amendment cases pursuant to *Heck*.

REASONS FOR GRANTING THE PETITION

The Court's intervention is needed now for two reasons: First, the Fifth Circuit's rule could not be more wrong. The decision below plainly conflicts with the directly controlling precedent of this Court in *Muhammad v. Close*, 540 U.S. 749 (2004), a decision rendered in a prison 8thAmendment case on the same issue raised in this case that was both legally and factually directly on point and should have been followed. And, second, the decision below is likewise irreconcilable with related decisions of the Fifth Circuit and, most importantly, with the Sixth Amendment, by elevating prison disciplinary proceedings to "criminal convictions" without the Sixth Amendment protections afforded for "criminal convictions."

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[1] 520 U.S. 641, 645 (1997)

Where the Fifth Circuit Panel Decision Conflicts with the Sixth Amendment and Directly Controlling Supreme Court Precedent, the ruling must be reversed.

Under *Heck v. Humphrey*, 512 U.S. 477 (1994), a convicted criminal may not bring a claim under 42 USC § 1983, if success on that claim would necessarily imply the invalidity of a prior criminal conviction. In *Edwards v. Balisok*, 520 U.S. 641, 117 S. Ct. 1584, 137 L. Ed. 2d 906 (1997), the inmate's core allegation was of due process violations during a prison disciplinary proceeding resulting in a loss of good-time credits. A favorable ruling would have restored lost good time credits; thereby, directly affecting the length of time served.

In *Wilkinson v. Dotson*, 544 U.S. 74, at 84 (2005), this Court explained the limited application of Heck to prisoner § 1983 cases.[2]

> Indeed, this Court has repeatedly permitted prisoners to bring § 1983 actions challenging the conditions of their confinement—conditions that, were Ohio right, might be considered part of the "sentence." [Citations omitted] **And this interpretation of Heck is consistent with Balisok, where the Court held the prisoner's suit Heck-barred not because it sought nullification of the disciplinary procedures but rather because nullification of the disciplinary procedures would lead necessarily to restoration of good-time credits and hence the shortening of the prisoner's sentence.** 520 U.S., at 646, 117 S.Ct. 1584. [Emphasis added]

In *Muhammad v. Close*, 540 U.S. at 750–52, Inmate Muhammad claimed that a correctional officer threatened him and subjected him to a mandatory prehearing

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[2] Wilkinson, 544 U.S. at 84.

lockup in retaliation for a prior lawsuits and grievances he filed against the officer. This Court held that the *Heck* line of cases did not apply to the § 1983 action which did not seek a judgment at odds with the prisoner's conviction or with the sentence to be served. Thus, where the remedy did not set aside a disciplinary hearing with restoration of good-time credits, the Edwards line of cases is not/was not implicated.

The issue in *Muhammad*, 540 U.S. at 754, was:

> **The Circuit thus maintained a split on the applicability of *Heck* to prison disciplinary proceedings in the absence of any implication going to the fact or duration of underlying sentence, four Circuits having taken the contrary view.** [Citations omitted] We granted certiorari to resolve the conflict, . . ., and now reverse. [Emphasis]

Adjudicating the exact same issue in this case, 540 U.S. at 754–55, in Muhammad, this Court found:

> **The factual error was compounded by following the mistaken view expressed in Circuit precedent that *Heck* applies categorically to all suits challenging prison disciplinary proceedings. But these administrative determinations do not as such raise any implication about the validity of the underlying conviction**, and although they may affect the duration of time to be served (by bearing on the award or revocation of good-time credits) that is not necessarily so. The effect of disciplinary proceedings on good-time credits is a matter of state law or regulation, and in this case, the Magistrate Judge expressly found or assumed that no good-time credits were eliminated by the prehearing action Muhammad called in question. **His § 1983 suit challenging this action could not therefore be construed as seeking a judgment at odds with his conviction or with the State's calculation of time to be served in accordance with the underlying sentence.** That is, he raised no claim on which habeas relief could have been granted on any recognized theory, with the consequence that *Heck*'s favorable termination requirement was inapplicable. [Emphasis added]

The Aucoin case at bar neither challenges disciplinary proceedings nor implicates any change to the loss of good time credits.

Here, as in *Muhammad*, a favorable ruling by a jury in this case will not affect the validity of the underlying conviction or any loss of good time credits. The anel decision is contrary to Muhammad, which is binding precedent. This Court should reverse.

The *Muhammad* Court referred to prison disciplinary proceeds as "administrative determinations." The panel decision in this case elevates those "administrative determinations" to "criminal convictions, " which is both inconsistent with *Mohammad* and the 6th Amendment, which provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

In this case, there was no evidence that the disciplinary finding and loss of good time credit was as a result of a public trial, impartial jury, that the inmate was allowed to call witness or have assistance of counsel. The panel ignored the blatant differences between a 6th Amendment "criminal conviction" and a prison "administrative determination" and announced a conflicting rule that places both in the same standing with the law and respect for prior adjudications.

The Fifth Circuit Panel held, "That is because we do not allow the use of § 1983 to collaterally attack a **prior criminal proceeding**, out of concern for finality and consistency. So an inmate cannot bring a § 1983 claim for excessive use of force by a prison guard, if the inmate has already been found guilty for misconduct [in a **prison disciplinary proceeding**] that justified that use of force." 958 F.3d at 38. The panel used the phrase "Guilty of misconduct." A finding of "Guilty of misconduct" in a prison disciplinary proceeding is not a criminal conviction under the 6th Amendment as is required for the *Heck* analysis. To bridge this legal gap, the panel reached to *Clarke*, a case under the *Edwards v. Balisok* line of cases, which are factually and legally distinguishable from this case. Again, the *Edwards* and *Clarke* cases both involved a direct challenges to prison disciplinary proceedings, where a favorable judgment would affect a return of good time credits and the length of a sentence served under the prior criminal conviction.

Finding that prison disciplinary proceedings are the same as "criminal convictions," allowed the Fifth Circuit Panel to then leap to a 4th Amendment analysis that apply to criminal convictions, writing, "But *Heck* does not bar a § 1983 claim for a prison guard's excessive use of force after the inmate has submitted and ceased engaging in the alleged misconduct." 958 F.3d at 381, citing, see, e.g., *Bourne v. Gunnels*, 921 F.3d 484 (5th Cir. 2019); *Bush v. Strain*, 513 F.3d 492 (5th Cir. 2008).

The Fifth Circuit Panel cited and quoted one line from *Clarke v. Stalder*, 154 F.3d 186, 189 (5th Cir. 1998), as authority for its finding that prison disciplinary proceedings equate to a "criminal conviction" under the Sixth Amendment. 958 F.3d at 382 ("This (a suit that implies invalidity of a conviction) includes not just criminal convictions but also disciplinary proceedings like the one at issue here.") First, *Clarke* did not hold that a finding from a prison disciplinary proceeding is a "criminal conviction." Second, *Clarke* involved a Louisiana State Penitentiary inmate who had been convicted of violating Louisiana Corrections Rule 3 that prohibited inmates from threatening prison employee with legal redress during a "confrontation situation" for which he lost good time credits. Clark sought to have Rule 3 declared unconstitutional and his loss of good time restored. Those are not the facts of this case. In this case, there was no attack on the disciplinary proceeding or claim for a restoration of good time credits.

Further, in support of its holding, the Fifth Circuit Panel relied repeatedly upon 4th Amendment cases that involved arrests and criminal proceeding rather than prison disciplinary hearings and, again, built on a dicta sentence pulled from *Clarke*, an older case, and *Bourne*, a recent Fifth Circuit case. *Bourne* was the only case cited by the panel that involved a prison excessive force case and disciplinary proceedings. The legal foundation for the panel ruling is illusory.

In *Bourne v. Gunnels*, 921 F.3d 484, 490–91 (5th Cir. 2019), the inmate, who was

proceeding *pro se* took an appeal to this Court from the dismissal of his § 1983 excessive force case on the basis of *Heck*. There, this Court found that *Heck* did not bar the excessive force claim even though the inmate lost 30 days good-time credit as a result of disciplinary action arising out of the same transaction and occurrence that formed the basis of the § 1983 claim. The *Bourne* panel wrote:

> *Heck*, however, "is not ... implicated by a prisoner's challenge that threatens no consequence for his [underlying] conviction or the duration of his sentence."[3]
>
> Bourne contends that *Heck* has "no bearing on this case" because he has "no interest in good time credits because of his incarceration for an aggravated charge." Liberally construing Bourne's appellate contentions, and reviewing this question of law *de novo*, *United States v. Martinez*, 151 F.3d 384, 390 (5th Cir. 1998), we determine that *Heck* and its progeny do not bar Bourne's excessive force claims.
>
> Bourne was convicted of tampering with his cell door and creating a disturbance in connection with the use of force, resulting in a forfeiture of thirty days' good-time credit. The district court determined that *Heck* bars the excessive-force claims because, "if true, [they would] implicate the validity of his disciplinary conviction for creating the disturbance that resulted in the use of force." To the contrary, Bourne's § 1983 excessive-force claims implicate neither the validity of his underlying conviction nor the duration of his sentence.
>
> Bourne's underlying conviction is for aggravated assault with a deadly weapon. **A finding of excessive force here would have no bearing on that**

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[3] Bourne, 921 F.3d at 490, note 2, citing, "Muhammad v. Close, 540 U.S. 749, 751, 124 S.Ct. 1303, 158 L.Ed.2d 32 (2004) (per curiam). "[T]he incarceration that matters under Heck is the incarceration ordered by the original judgment of conviction, not special disciplinary confinement for infraction of prison rules." Id. at 751 n.1, 124 S.Ct. 1303."

conviction. Nor would it negate his disciplinary conviction, potentially affecting the duration of his sentence by restoring his good time credits. [Emphasis added]

* * * *[4]

A ruling in Bourne's favor on his excessive-force claims would not affect his underlying conviction, his disciplinary conviction, or the duration of his sentence. Accordingly, *Heck* and its progeny do not bar Bourne's excessive-force claims.[5]

The same is true in this Case. *Heck* does not apply to this case.

Rejecting this portion of *Bourne*, the Fifth Circuit Panel in this case, wrote, "Our court nevertheless permitted the plaintiff to proceed with his excessive force claim, because he alleged that he was beaten *after* he submitted and was already restrained." 958 F.3d at 383, citing, 921 F.3d at 49. Thus, while *Bourne* reached the correct result, part of the rationale, was at odds with firmly established Supreme Court precedent.

The *Bourne* panel used the phrase "disciplinary conviction" to describe a finding of a prison rule violations. The use of the phrase "disciplinary conviction" by the *Bourne* panel, in a *pro se* inmate case, was a stepping stone that led to the holding in this case

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[4] This dicta section is discussed below.

[5] Bourne, 921 F.3d at 491, note 3, citing, "See, e.g., Mosley v. White, 464 F. App'x 206, 210–11 (5th Cir. 2010) (per curiam)(unpublished). 'The district court erred in determining that [plaintiff's] excessive force claim was barred by Heck and Edwards' because '[s]uccess in the instant action would not affect the validity of [his] underlying conviction or the duration of his sentence.' Id. at 211."

and new and novel Fifth Circuit precedent that prison disciplinary hearings on prison rule violations are "criminal proceedings" that result in "criminal convictions" all of which is at odds with the Sixth Amendment, Supreme Court and Fifth Circuit precedents. This Court should reverse per curium.

Seizing upon dicta inapplicable cases and failure to follow *Muhammad*, led the Fifth Circuit Panel in this case to 1) reject the 6th Amendment; 2) reject Supreme Court authority; 3) reject the rationale and holding of *Muhammad*; 4) analogize this case to *Edwards*, which involved an inmate's constitutional challenge to a disciplinary hearing; and 5) apply the 4th Amendment cases involving arrests and criminal proceedings rather than make a distinction between criminal convictions and prison administrative proceedings.

In *Woods v. Smith*, 60 F.3d 1161 (5th Cir. 1995), Woods, an LSP inmate, filed a § 1983 action against a correctional officer, who threatened Inmate Woods that if he did not become an informant, bad things would happen to him including a transfer to a less desirable part of the prison. Inmate Woods then provided a copy of the letter to the federal judge and various supervisors including the Warden. Three days later, Woods was cited with defiance for attempting to coerce the correctional officer from doing his job through the letter. Later the same day, an additional charge of defiance was placed on Woods. Woods pled not guilty, but was found guilty in a prison

disciplinary hearing and sanctioned. Woods filed a § 1983 action over the retaliation for his exercising his 14th and 1st Amendment rights.

After his case was dismissed, on appeal the Defendants argued that Woods had no claim "unless he first establishes that the underlying disciplinary proceedings were ultimately terminated in his favor."[6] Rejecting this claim, the Fifth Circuit, in that case,[7] wrote:

> We are not persuaded. Under this circuit's controlling precedents, favorable termination is not a requisite of a retaliatory interference claim. Defendants rely heavily on an analogy with a section 1983 malicious prosecution claim where we have held favorable termination to be an element of the offense. The two causes of action, however, have an essential difference. As we explained in *Brummett*,[8] "[t]he essence of a malicious prosecution claim is a groundless prosecution." Indeed, the focus of that action is the ultimate merit of the underlying proceeding. The retaliation claim, on the other hand, focuses on the interference, asking only whether there has been an obstruction of the exercise of a constitutional right. [Footnotes omitted]
>
> Further, in a malicious prosecution claim, resolution of the underlying proceedings typically is within the province of a judge, jury, or senior prosecutor. **This differs sharply from the procedures at bar where the disciplinary proceedings are conducted solely by corrections officials. Mindful of that critical difference, we are not prepared to require a favorable termination before examining an otherwise legitimate constitutional complaint. Such a requirement would unfairly tempt corrections officers to enrobe themselves and their colleagues in what would be an absolute shield against retaliation claims.** This we will not do, for as we

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[6] Woods, 60 F.3d at 1164-1165.

[7] Woods, 60 F.3d at 1165.

[8] Referencing, Brummett v. Camble, 946 F.2d 1178 (5th Cir.1991), cert. denied, 504 U.S. 965, 112 S.Ct. 2323, 119 L.Ed.2d 241 (1992).

previously have stated, **"the court with which [the inmate] sought contact, and not his jailer, will determine the merits of his claim."** [Footnotes omitted]

The same rationale applies to this case.

Stripped of his 6th Amendment protections, the Fifth Circuit Panel decision allows the correctional officer, rather than a jury, to determine whether their use of force against LAYNE AUCOIN was reasonable under the Constitution. This Court should reverse. The Fifth Circuit Panel decision, in this case, conflicts sharply with the 6th Amendment, multiple Supreme Court decisions and with the precedents of the Fifth Circuit.

Failing to distinguish between "criminal convictions" and "prison administrative proceedings," the Fifth Circuit panel in this case held, "That is because we do not allow the use of § 1983 to collaterally attack a prior criminal proceeding, out of concern for finality and consistency. . . So an inmate cannot bring a § 1983 claim for excessive use of force by a prison guard, if the inmate has already been found guilty for misconduct that justified that use of force." 958 F.3d at 381. Here, there were no criminal charges filed or instituted by a district attorney or a grand jury. Here, no court of law made a finding that Mr. Aucoin was guilty of misconduct that justified a use of force. Here, there was a disciplinary proceeding from which the Panel had, but vague documentation. Here, the Fifth Circuit should not be prepared to declare a prison

disciplinary proceeding finding to be a "criminal conviction."

The Panel cited *Okoro v. Callaghan*, 324 F.3d 488, 490 (7th Cir. 2003), where Okoro filed a *Bivens* claim for stolen gems after he had been arrested in his home by several of the federal officer defendants on suspicion of being a heroin dealer. Okoro alleged that during the search incident to the arrest, the federal agents stole his gems and cash. That case is factually and legally distinguishable from the present.

Here, the panel wrote, "Determining whether the § 1983 claim challenges the conviction is 'fact-intensive, requiring us to focus on whether success on the . . . claim requires negation of an element of the criminal offense or proof of a fact that is inherently inconsistent with one underlying the criminal conviction.'" 958 F.3d at 382 The panel, 958 F.3d at382, cited *Bush v. Strain*, 513 F.3d 492 (5th Cir. 2008), a 4th Amendment case involving arrests and criminal proceedings rather than rule violations at a prison. The *Bush* case did not involve prison disciplinary proceedings and was both factually and legally distinguishable and is not controlling precedent.

Here, the panel cited the recent case of *Bourne v. Gunnels*, which at 921 F.3d 484, nt. 2, found, "*Muhammad v. Close*, 540 U.S. 749, 751, 124 S.Ct. 1303, 158 L.Ed.2d 32 (2004) (per curiam). "[T]he incarceration that matters under Heck is the incarceration ordered by the original judgment of conviction, not special disciplinary confinement for infraction of prison rules." *Id.* at 751 n.1, 124 S.Ct. 1303." Here, the panel rejected

Muhammad. This Court should reverse.

Proper resolution of the application of *Heck* to inmate excessive force claims is important in this case for the same reason it was in *Muhammad* and *Woods*. Prison disciplinary proceedings may not be used to create exhaustion requirements where none exist or to deny an inmate beaten by guards his day in court.

In Woods, the Fifth Circuit found that an extension of the Heck to prison rule violation proceedings was not only unwarranted by existing precedent, the extension would elevate prison hearings on a prison rule violation to the status of a conviction for a crime, even though criminal proceedings and prison hearings lack the procedural safeguards and other rights guaranteed by the 6th Amendment.

Here, the Panel's decision with a "before or after inquiry" invites prison guards to carefully write disciplinary reports to deny inmates their day in court. These very same disciplinary reports that the Panel invites the district to review and upon which to rely to dismiss, otherwise valid § 1983 cases, have long been held to be inadmissible at trial due to their status as hearsay and inherent unreliability. Johnson v. Cain, 2011 WL 2437608, at *2 (M.D. La. June 17, 2011), ("This Court has often concluded that disciplinary reports prepared by prison security officers who are named as defendants in litigation do not fit within the exception of Rule 803(8)(c) **because they are often self-serving and are inherently untrustworthy**.") [Emphasis added]

Thus, the same reports that the district court have long held to be "self-serving" and inherently unreliable now form the basis of dismissing excessive force claims under the guise that they are "criminal convictions." A disciplinary proceeding over a rule violation at a prison does not yield a conviction as the panel, in this case, found. Rehearing is necessary.

In Causey v. Poret, No. CIV.A. 07-238-FJPSCR, 2007 WL 2701969 (M.D. La. Aug. 23, 2007), Causey was an LSP inmate who filed a § 1983 claim alleging that on September 28, 2006, he was sprayed with mace and was beaten without provocation in violation of his constitutional rights and in violation of state law. The plaintiff-inmate sought compensatory and punitive damages.

In that case, the defendant correctional officers argued that the plaintiff's 8th Amendment excessive force claim was barred by the Supreme Court's decisions in Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994), and Edwards v. Balisok, 520 U.S. 641, 117 S.Ct. 1584 (1997). Specifically, correctional officer defendants argued that the plaintiff was found guilty of several disciplinary infractions as a result of the September 28 incident. Defendants argued that because the plaintiff's § 1983 excessive force claim, if successful, would invalidate the decision of the disciplinary board regarding the aggravated disobedience and defiance disciplinary charges the claim was barred under Heck.

Although Causey, the LSP inmate plaintiff, averred that he was issued disciplinary charges, there was no reference to the outcome of the charges and no challenge to the charges or a loss of good-time. Denying the Rule 12(b) motion in that case, the Middle District found that Heck did not apply under the facts, Causey, 2007 WL 2701969, at *4 (M.D. La. Aug. 23, 2007), writing:

> Heck provides that in order to recover damages for an 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. **The Supreme Court has applied the Heck analysis to claims made by prisoners challenging prison disciplinary proceedings that result in a change to the prisoner's sentence, such as the loss of good time credits.** Edwards v. Balisok, 520 U.S. at 643-649, 117 S.Ct. at 1586-89. However, Heck is not categorically applicable to all suits challenging prison disciplinary actions. [Emphasis added]
>
> In *Muhammad v. Close*[9] a prisoner filed a § 1983 action against a prison official, alleging that the official had charged him with threatening behavior and subjected him to mandatory pre-hearing lockup in retaliation for prior lawsuits and grievance proceedings the prisoner had filed against the prison official. *Muhammad v. Close*, 540 U.S. 749, 753-54, 124 S.Ct. 1303, 1305-06 (2004)(per curiam). The district court entered summary judgment in favor of the prison official, holding that the prisoner failed to come forward with sufficient evidence of retaliation. Id. The Sixth Circuit Court of Appeals upheld the dismissal of the suit on different grounds. The appellate court concluded that the action was barred by Heck. Id. at 753, 124 S.Ct. at 1306. The Supreme Court reversed, holding that because the magistrate judge expressly found **no good-time credits were affected by the actions challenged in the law suit, the**

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[9] Referencing, Muhammad v. Close, 540 U.S. 749, 753-54, 124 S.Ct. 1303, 1305-06 (2004)(*per curiam*).

prisoner's § 1983 claims could not be "construed as seeking a judgment at odds with his conviction or with the State's calculation of time to be served in accordance with the underlying sentence." Id. at 754-55, 124 S.Ct. at 1306. [Emphasis added]

The same is true in this case. Plaintiff did not allege, nor did the defendants argue, that a favorablel jury verdict would affect the disciplinary charges against LAYNE AUCOIN or the forfeiture of any good time credits or otherwise affect the length of the AUCOIN's prison sentence. Moreover, nothing in the record suggests that the plaintiff's excessive force claim, if successful, would result in any direct or indirect change in the length of his term of imprisonment. Consequently, *Heck* does not apply in this case. [Emphasis added]

This Court must reverse.

Conclusion

This Court should grant this petition and reverse.

Respectfully submitted:

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CERTIFICATE UNDER RULE 33.1

I declare under penalty of perjury that this brief filed on behalf of LAYNE AUCOIN complies with the word limitations and contains 4663 words.

Respectfully submitted:

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