No. 21-___

IN THE
Supreme Court of the United States

DARVIN CASTRO SANTOS,

Petitioner,

v.

CRAIG WHITE, *Major*; JOHN WELLS, *Captain*; ALLEN VERRET, *Colonel*; ASHLEY MARTELL, *Lieutenant*,

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

DEVI M. RAO
Counsel of Record
DAVID F. OYER*
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3490
devi.rao@macarthurjustice.org

**Admitted only in California; not admitted in D.C. Practicing under the supervision of the Roderick & Solange MacArthur Justice Center*

Counsel for Petitioner

QUESTION PRESENTED

Whether *Heck v. Humphrey*, 512 U.S. 477 (1994), may bar a prisoner's excessive-force claim against correctional officers for damages under § 1983 where that claim does not directly attack the outcome of a prison disciplinary proceeding.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

IN THE
Supreme Court of the United States

DARVIN CASTRO SANTOS,

Petitioner,

v.

CRAIG WHITE, *Major*; JOHN WELLS, *Captain*; ALLEN VERRET, *Colonel*; ASHLEY MARTELL, *Lieutenant*,

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

Darvin Castro Santos petitions for a writ of certiorari to review the Fifth Circuit's judgment in this case.

INTRODUCTION

This is a case about the creep of the *Heck* bar. In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), this Court held that a § 1983 suit seeking restoration of good-time credits was barred because the prisoners should have proceeded through the federal habeas statute, rather than § 1983. *Id.* at 476-77, 491. In *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court famously extended *Preiser*'s rule to damages actions, holding that where success on a § 1983 claim would "necessarily demonstrate[] the invalidity of the [plaintiff's] conviction" or sentence, a § 1983 suit is barred. *Id.* at 481-82. And in *Edwards v. Balisok*, 520 U.S. 641 (1997), this Court extended *Preiser* and *Heck* still further, to cases that directly attack the validity of prison

disciplinary proceedings that ultimately lengthen a prisoner's sentence, because such claims "necessarily . . . imply the invalidity of the judgment" of the disciplinary board, and thus the duration of his confinement. *Id.* at 645.

But what of garden-variety § 1983 excessive-force suits seeking damages against a prison official, where a prisoner does not directly challenge the disciplinary proceeding? The courts of appeals to have addressed the question unanimously—and erroneously—allow such claims to be barred from federal court under *Heck* where a prison disciplinary board has adopted the official's version of the story and revoked a prisoner's good-time credits. In other words, a prison official may forever insulate himself from an excessive-force suit under § 1983 by writing a false disciplinary report and having his story adopted by a disciplinary board. The courts of appeals have gotten it wrong, and this Court should step in to correct them.

OPINIONS BELOW

The district court's dismissal of Darvin Castro Santos's § 1983 suit (Pet. App. 15a-23a) is not reported. The Fifth Circuit's opinion affirming in part, vacating in part, and remanding (Pet. App. 1a-13a) is published at 18 F.4th 472 (2021).

JURISDICTION

The judgment of the court of appeals was entered on November 17, 2021. A timely petition for rehearing was denied on January 3, 2022. Justice Alito granted an extension of time to file this petition to May 3, 2022. This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 1983 of Title 42, United States Code, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

The Eighth Amendment to the U.S. Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE

1. Darvin Castro Santos suffered a severe beating at the hands of correctional officers while incarcerated at Elayn Hunt Correctional Center. Pet. App. 2a.

Mr. Santos witnessed six guards beating another prisoner and intervened, "imploring" them to stop. *Id.* The officers then turned their sights onto Mr. Santos and "knocked [Mr. Santos] to the ground, hit, kicked, choked, handcuffed and dragged [him] in a manner that caused his head to hit poles in the walkway." *Id.* The officers then took Mr. Santos to a shower cell, where Respondent Wells sprayed him in the face with a chemical agent, ordered him naked, and sprayed him in the genitals and anus with the same agent. *Id.* The officers subsequently refused to let Mr. Santos shower the agent off. *Id.* Finally, Respondent Wells cut Mr. Santos with a knife and threatened to kill him. *Id.* Mr. Santos was ultimately transferred to a medical center. *Id.*

The officers prepared disciplinary reports denying that they attacked Mr. Santos merely for urging them not to beat another inmate. *See* Pet. App. 2a-3a. Instead, they alleged that Mr. Santos attacked them first and that their actions were necessary to restore order. *Id.*

Mr. Santos's case was sent to the prison disciplinary board. Pet. App. 3a. The board deemed "the officer's version . . . more credible than [Mr. Santos's]," ROA.380, ROA.382, ROA.384, ROA.386, and therefore found Mr. Santos guilty of three "Defiance" violations, four "Aggravated Disobedience" violations, one "Property Destruction" violation, and one "Unauthor-

ized Area" violation, Pet. App. 3a. These violations resulted in, among other things, the forfeiture of 180 days' good-time credits. Pet. App. 3a.

2. After exhausting his administrative remedies within the prison system, Mr. Santos filed suit under § 1983 against the correctional officers involved in his attack, seeking money damages. *Id.* He alleged that the officers had subjected him to excessive force while seizing and detaining him, in violation of the Eighth Amendment. *Id.* Respondents—correctional officers Craig White, John Wells, Allen Verret, and Ashley Martell—moved for summary judgment, alleging, as relevant here, that the suit was *Heck*-barred because Mr. Santos's claims contradicted the officers' stories, on which the disciplinary board had relied in reducing his good-time credits. *Id.*

The district court granted summary judgment, holding that Mr. Santos's claims were *Heck*-barred. *Id.* The court reasoned that, because the disciplinary board relied on the officers' stories in finding Mr. Santos guilty of certain disciplinary infractions, and because the outcome of that proceeding led to the revocation of his good-time credits, a verdict for him in his § 1983 suit would necessarily imply the invalidity of his sentence. *See* Pet. App. 3a-4a.

3. Mr. Santos appealed to the Fifth Circuit. That court explained that "[b]ecause *Heck* applies to the duration of" a plaintiff's confinement, the doctrine "bars claims that would, if accepted, negate a prison disciplinary finding that had resulted in the loss of good-

time credits."[1] Pet. App. 5a (internal quotation marks and citation omitted). By contrast, the court observed, "*Heck* is not 'implicated by a prisoner's challenge that threatens no consequence for . . . the duration of his sentence.' " *Id.* (quoting *Muhammad v. Close*, 540 U.S. 749, 751 (2004) (per curiam)). From these principles, the Fifth Circuit determined that courts must engage in a "fact-intensive" review that is "dependent on the precise nature of the disciplinary offense," to determine which of a prisoner's § 1983 claims "require[] negation of an element of the [disciplinary] offense or proof of a fact that is inherently inconsistent with one underlying the [disciplinary] conviction." Pet. App. 5a-6a. (citation omitted). Ultimately—although Mr. Santos never challenged the procedures used to convict him of his disciplinary violations—the Fifth Circuit held that his excessive-force claims could be barred if any fact necessary to those claims might contradict a fact underlying the merits of his disciplinary violations. *See* Pet. App. 7a. The Fifth Circuit thus remanded for the district court to determine whether Mr. Santos's claims are *Heck*-barred through "a fact-specific analysis informed by the elements necessary to establish those violations" that resulted in the revocation of good-time credits. *Id.*[2]

---

[1] After the Fifth Circuit heard argument in the case, Mr. Santos submitted a letter to that court explaining that he had recently been exonerated and released from prison. Letter of Aug. 20, 2021, at 1. The Fifth Circuit applied a *Heck* analysis nonetheless. *See* Pet. App. 4a-7a.

[2] The Fifth Circuit also affirmed the denial of an evidentiary motion by Mr. Santos, a ruling Mr. Santos does not challenge here. *See* Pet. App. 7a-8a.

Judge Willett concurred in the judgment. Pet. App. 8a. He criticized the Fifth Circuit majority's "needlessly complicate[d]" rule, observing that "*Heck* does not categorically compel an element-by-element inquiry." Pet. App. 9a. He also added a troubling observation: One of the aggressor officers in Mr. Santos's case—Respondent Wells—had an "apparent familiarity with the impact of *Heck* on civil rights claims," having benefited from several such dismissals in cases where he allegedly engaged in unprovoked assaults on prisoners. Pet. App. 13a n.15. Judge Willett suggested that Respondent Wells's behavior "merits indignance," but, under the Fifth Circuit's reading of *Heck*, his conduct is "beyond the reach of § 1983" because that court interprets *Heck* as barring excessive-force suits that would conflict with the factual determinations of a prison disciplinary proceeding. Pet App. 12a-13a.

Even under the Fifth Circuit's test, however, Judge Willett would have held outright that some portion of Mr. Santos's claims—those based on Captain Wells "ordering him to 'spread his butt cheeks' and spraying him 'in the anus with pe[p]per spray'" and on "Captain Wells threaten[ing] and cut[ting] him with a knife"—posed no *Heck* problem because no disciplinary records "provide[d] an iota of justification for this alleged force." Pet. App. 10a.

REASONS FOR GRANTING THE PETITION

Heck has no place where a prisoner brings a § 1983 excessive-force claim for damages against a prison official. That is true even if a prison disciplinary board has revoked a prisoner's good-time credits relating to the incident.

The circuit courts' misapplication of *Heck* to the contrary puts too much power in the hands of prison officials to protect themselves from suit in federal court by simply writing a false disciplinary report. It gives too much deference to prison disciplinary proceedings that bear little resemblance to the state-court criminal proceedings in *Heck*'s heartland. And it does nothing to further the twin goals of *Heck*. The rule is wrong, the issue is important, and this case is a suitable vehicle.

The Court should grant certiorari.

I. Suits Alleging Excessive Force By Prison Officials Pose No *Heck* Problem.

Under the prevailing rule in the federal circuits, officers who assault a prisoner are exempt from damages actions so long as there has been a prison disciplinary proceeding covering the same ground as the incident that would serve as the basis for the § 1983 excessive-force claim. That's because the circuits hold that *Heck* may bar § 1983 claims where the same facts underlie a prison disciplinary proceeding, even if the § 1983 claim isn't attacking the disciplinary proceeding itself.[3]

---

[3] *See, e.g.*, *Aucoin v. Cupil*, 958 F.3d 379, 382 (5th Cir. 2020); *Lockett v. Suardini*, 526 F.3d 866, 873 (6th Cir. 2008); *Moore v.*

That's wrong under *Heck*. *Heck* is not implicated by an excessive-force claim against prison officials, even if those officials launder their misbehavior through the prison disciplinary system. *First*, elevating a disciplinary board's factual findings to bar an ordinary excessive-force suit under § 1983 gives such proceedings the same preclusive effect in federal court ordinarily reserved for state-court criminal proceedings, where far more procedural protections apply. *Second*, the purposes behind the *Heck* bar are not served by shunting § 1983 excessive-force suits by prisoners out of federal court. The courts of appeals have gotten it wrong, and this Court should intervene.

A. Prison Disciplinary Proceedings Do Not Have The Due Process And Reliability Protections Of State Court Proceedings And So Should Not Be Given Preclusive Effect Under *Heck*.

This Court has only ever applied *Heck* in the prison-disciplinary context where a plaintiff's § 1983 claim *directly* challenges the procedural adequacy of the disciplinary proceedings themselves. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Edwards v. Balisok*, 520 U.S. 641 (1997). Extending this rule to bar § 1983 claims that might be factually inconsistent with a prison disciplinary determination, however, undermines judicial supremacy. After all, prison disciplinary proceedings are starkly different from the state court criminal proceedings to which *Heck* usually applies—yet application of the *Heck* bar in this context

---

Mahone, 652 F.3d 722, 723 (7th Cir. 2011); *Simpson v. Thomas*, 528 F.3d 685, 691-96 (9th Cir. 2008); *Dixon v. Hodges*, 887 F.3d 1235, 1240 (11th Cir. 2018).

imbues their factfinding with the preclusive effect of a criminal conviction.

"Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). In disciplinary proceedings, this Court has explained, prisoners generally have no right to confrontation or cross-examination. *Id.* at 567-68. And although "ordinarily the right to present evidence is basic to a fair hearing," prison officials may refuse to allow incarcerated individuals to call witnesses in the disciplinary-hearing setting due to "the penological need to provide swift discipline in individual cases." *Ponte v. Real*, 471 U.S. 491, 495 (1985). A prison disciplinary board may "limit access to other inmates to collect statements or to compile other documentary evidence." *Wolff*, 418 U.S. at 566. A prisoner's silence may be used against him. *Baxter v. Palmigiano*, 425 U.S. 308, 315 (1976). In making its determination, a board may even consider facts not presented at the hearing. *Id.* at 322 n.5. And, crucially, prisoners "do not have a right to either retained or appointed counsel in disciplinary hearings," *id.* at 315 (citation omitted), because counsel "would inevitably give the proceedings a more adversary cast and tend to reduce their utility as a means to further correctional goals," *Wolff* 418 U.S. at 570.[4]

[4] Consistent with these limitations, Mr. Santos's "right to present evidence and witnesses" and "to request cross-examination of the accuser" were conditional, left to the disciplinary board's discretionary determination of whether any such presentation would be "relevant, not repetitious, not unduly burdensome to the institution and/or not unduly hazardous to staff or offender safety." La. Admin. Code Tit. 22, Pt. 1 § 341(J)(5). The record does not

What is more, these decisions do not receive meaningful federal-court review; due process requires only that "the record is not so devoid of evidence that the findings of the disciplinary board [a]re without support." *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 457 (1985).

The procedures used in disciplinary proceedings are not the only distinguishing factor from the state-court criminal convictions to which *Heck* gives deference; disciplinary-board members themselves are quite unlike state-court judges. A prison disciplinary body's function is not "a 'classic' adjudicatory one." *Cleavinger v. Saxner*, 474 U.S. 193, 203 (1985). Prison disciplinary adjudicators, "unlike a federal or state judge, are not 'independent'; to say that they are is to ignore reality." *Id.* Indeed, those decisionmakers—entrusted with the fact-finding that is given preclusive effect if *Heck* applies—are not even "professional hearing officers, as are administrative law judges." *Id.* at 203-04. "They are, instead, prison officials," employed by the very agency responsible for the prisoner's incarceration, and "direct subordinates of the warden[,] who reviews their decision." *Id.* at 204. As a result, "[t]he credibility determination they make often is one between a co-worker and an inmate" and "[t]hey thus are under obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee." *Id.* As this Court has put it: "It is the old situational problem of the relationship between the keeper and the kept, a relationship that

---

suggest that Mr. Santos was able to present evidence, witnesses, or cross-examination, and in each case the board deemed "the officer's version . . . more credible" than Mr. Santos's. ROA.380, ROA.382, ROA.384, ROA.386.

hardly is conducive to a truly adjudicatory performance." *Id.*

Thus, consider the probable effect of applying the *Heck* bar to § 1983 excessive-force claims that implicate facts underlying a prison disciplinary violation. A prison guard, secure in his knowledge that his colleagues will accept his version of events in a prison disciplinary proceeding, has free rein to violate the rights of those with whose care he is entrusted. So long as the disciplinary board—which need not hear at all from the prisoner and is comprised of the officer's coworkers—signs off on his version of what happened, rather than siding with the prisoner, those violations will forever be beyond the ambit of a § 1983 suit. This is not nightmare speculation; as Judge Willett observed, it appears to have happened *in this very case*. *See* Pet. App. 13a n.15 (Willett, J., concurring) (noting that Respondent Wells has now had four distinct excessive-force claims against him deemed *Heck*-barred).

B. *Heck*'s Dual Goals Are Not Served By Precluding Excessive-Force Suits Under § 1983 In Favor Of Prison Disciplinary Proceedings.

Neither of *Heck*'s primary goals is served by applying the doctrine to § 1983 suits for excessive-force suits that may implicate prison disciplinary proceedings.

1. *Heck* represents the "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction." 512 U.S. at 484. That is why the bar is limited to § 1983 suits

that "*necessarily* imply the invalidity of [the plaintiff's] conviction or sentence." *Id.* at 487 (emphasis added). The word "necessarily" is critical. *See Nelson v. Campbell*, 541 U.S. 637, 647 (2004) ("[W]e were careful in *Heck* to stress the importance of the term 'necessarily.' "). "Necessarily" means "of necessity" or "unavoidably." Necessarily, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/necessarily.

This Court holds that a § 1983 suit is barred only where there is a direct connection between the § 1983 suit and the other adjudication in question. Indeed, the Court has consistently barred § 1983 suits where a plaintiff challenges the procedural adequacy of his conviction or sentence itself. In *Preiser*, for example, the petitioners alleged due-process violations and requested as a remedy the restoration of their good-time credits, which "in each case would result in their immediate release from confinement in prison." 411 U.S. at 476-77. And in *Heck*, although the petitioner requested monetary damages, rather than immediate release, his claim still directly attacked the procedural soundness of his conviction. 512 U.S. at 479, 481-82. Similarly, in *Edwards*, this Court held that a plaintiff's § 1983 challenge to the validity of a state's disciplinary procedures used to deprive him of good-time credits was *Heck*-barred because "[t]he principal procedural defect complained of by [the plaintiff] would, if established, necessarily imply the invalidity of the deprivation of his good-time credits." 520 U.S. at 646.

But where success in a § 1983 suit would not *necessarily* imply the invalidity of a conviction or sentence, this Court has been rigorous in its refusal to apply *Heck*. In *Wilkinson v. Dotson*, 544 U.S. 74

(2005), for instance, the Court held that a § 1983 challenge to Ohio's parole proceedings was not *Heck*-barred where petitioners' claims would not "necessarily spell speedier release." *Id.* at 82. In so holding, the Court cautioned against applying the *Heck* bar to claims whose connection to any "release from confinement" was "too tenuous." *Id.* at 78.

Likewise, in *Skinner v. Switzer*, 562 U.S. 521 (2011), the Court reached the same result in a § 1983 suit seeking post-conviction DNA testing of crime-scene evidence. *See id.* at 529. The Court allowed the claim to proceed, holding that, while the petitioner's aim was to establish his innocence and achieve release from custody, the result of success in his § 1983 suit would not necessarily be release from custody. *Id.* at 534. Instead, intermediating steps would need to occur—the testing would have to be conducted, the government would have to evaluate the results, etc.—that attenuated the § 1983 claim from the conviction and made application of the *Heck* bar inappropriate. *See id.*

In short, this Court has only barred § 1983 claims whose success would have *directly* undermined the validity of a conviction or disciplinary violation. *See Preiser*, 411 U.S. at 477; *Edwards*, 520 U.S. at 646. But where the challenge does not "seek to invalidate the duration of [a prisoner's] confinement," the Court has made clear that "§ 1983 remains available." *See Wilkinson*, 544 U.S. at 81; *see also Skinner*, 562 U.S. at 534.

Cases presenting a purported conflict between a § 1983 excessive-force claim and a prison disciplinary conviction, like this one, are much closer to *Wilkinson*

and *Skinner* (rejecting *Heck*) than to *Preiser* and *Edwards* (applying *Heck*). The connection between success on an excessive-force claim and the restoration of good-time credits is, like the connection between the § 1983 claims and the underlying convictions in *Wilkinson* and *Edwards*, too "tenuous" for *Heck* to apply, *see Wilkinson*, 544 U.S. at 78—in particular because in the prison disciplinary context it's not necessarily even clear what facts a decision rests on or that those facts are reliable.

2. The *Heck* rule arose "at the intersection" of § 1983 and sought to maintain the primacy of habeas as the federal-court forum for attacking the validity of a state conviction or sentence. 512 U.S. at 480-82. But this central rationale—preventing prisoners from using § 1983 as an end-run around the habeas statute—is not at play here; excessive-force suits by their nature do not challenge the adequacy of any conviction or disciplinary violation, and they seek only damages, not any relief relevant to the disciplinary proceeding.

Indeed, this Court routinely distinguishes between cases that directly challenge a conviction or sentence and therefore "fall within the 'core' of habeas corpus," and those that "merely challenge the conditions of a prisoner's confinement" and thus do not implicate the concerns in which the *Heck* bar is rooted. *Nelson*, 541 U.S. at 643 (citing *Muhammad*, 540 U.S. at 750 and *Preiser*, 411 U.S. at 498-99); *see also Wilkinson*, 544 U.S. at 84 ("[T]his Court has repeatedly permitted prisoners to bring § 1983 actions challenging the conditions of their confinement." (citing *Cooper v. Pate*, 578 U.S. 546 (1964) (per curiam) and *Wilwording v. Swenson*, 404 U.S. 249 (1971) (per curiam)); *Muhammad*, 540 U.S. at 750 ("[R]equests for relief turning on

circumstances of confinement may be presented in a § 1983 action."). Excessive-force actions arising in prison are properly characterized as part of the latter category: conditions-of-confinement suits to which *Heck* does not apply. *See Porter v. Nussle*, 534 U.S. 516, 527 (2002) (holding that excessive-force claims "challeng[e] the conditions of confinement").

II. The Issue Is Important.

The question presented concerns a recurring federal issue of national importance, which bears directly on whether corrections officers who use excessive force against prisoners may insulate themselves from facing suit in federal court by laundering their side of the story through a prison disciplinary proceeding.

1. The courts of appeals need this Court's assistance. The tests they have developed to try to make sense of *Heck* in the prison disciplinary context are byzantine and inadministrable. To illustrate, the Fifth Circuit's "analytical and fact-intensive" approach to *Heck* and prison disciplinary proceedings asks district courts to suss out which claims "require[] negation of an element of the criminal offense or proof of a fact that is inherently inconsistent with the one underlying the criminal conviction." Pet. App. 5a; *see also* Pet. App. 7a (explaining that *Heck* issue "must be determined by a fact-specific analysis informed by the elements necessary to establish those violations").

Indeed, determining what is in and what it out for *Heck* purposes is nearly impossible in the prison-disciplinary context. As even the Fifth Circuit observed, this exercise requires more than just figuring out which § 1983 excessive-force claims are " 'intertwined' with [a prisoner's] loss of good time credits." Pet. App.

7a. And although disciplinary reports sometimes "list factual findings," it is more likely than not that "the elements required to find a prisoner guilty of those violations do not appear anywhere in the record." Pet. App. 6a. To determine *Heck*'s applicability, then, district courts in the Fifth Circuit apparently need to conduct redux disciplinary hearings in which they would have to call disciplinary board witnesses to address whether a determination that the officers engaged in excessive force would change the outcome of the disciplinary proceeding. In other words, a trial before the trial.

The *Heck* inquiry in the prison-disciplinary context is not substantially easier in other circuits. In the Seventh Circuit, for instance, a litigant may "present his [§ 1983 excessive force] claim" at trial, but must do so "without . . . contesting" the findings of the prison disciplinary board. *Gilbert v. Cook*, 512 F.3d 899, 901 (7th Cir. 2008). That court has described the task of drawing such fine-grained distinctions as one that would be "difficult . . . for a lawyer and was even more difficult for a poorly educated layman"—the prisoner-plaintiff representing himself *pro se*. *Id.* at 901. Implementing this rule in practice proves frustrating for all involved: "[The plaintiff's] struggle to proceed without confessing that he had punched a guard frustrated the magistrate judge; the judge's effort to enforce the rule of *Heck* and *Edwards* frustrated and confused [the plaintiff]." *Id.* Other courts have noted similar uncertainty in applying *Heck* in this context. *See, e.g.*, *Wilkerson v. Wheeler*, 772 F.3d 834, 841 (9th Cir. 2014) ("[T]he district court's instruction, though it did not directly exclude any testimony, was in tension with [the plaintiff's] trial testimony in a way that

likely confused the jury."). This Court should step in and assist the courts of appeals by letting them know that they need not apply these elaborate tests—*Heck* simply does not apply here.

2. Permitting prison disciplinary hearings to erect a *Heck* bar on excessive-force claims when those proceedings happen to involve an award or revocation of good-time credits leaves *Heck*'s applicability to turn on trivial differences. The arbitrariness of *Heck*'s application in this context undermines the rule of law because it results in similarly situated plaintiffs being treated differently—to great effect.

Imagine two cellmates who are written up for identical conduct and allege that officers used excessive force against each of them; the first cellmate is penalized with a loss of good-time credits and the second is penalized with a loss of exercise privileges. In that case, the first cellmate would not be able to surmount the *Heck* bar to his § 1983 excessive-force claim, whereas the second cellmate would be unaffected by *Heck*. So the availability of a § 1983 action in the two cellmates' respective cases would turn arbitrarily on the nature of the punishment meted out in their respective disciplinary reviews.[5]

---

[5] The *Heck* bar is, of course, inapplicable where a § 1983 claim conflicts with a disciplinary violation which was not punished with the loss of good-time credits. *See Muhammad*, 540 U.S. at 745-55. Mr. Santos's position is that even disciplinary violations that lead to the loss of good-time privileges should not pose a *Heck* problem for a § 1983 excessive-force damages suit that does not directly challenge the disciplinary proceeding. This Court did not address that question in *Muhammad*.

Heck's application in this context is even more arbitrary considering that it varies not only from proceeding to proceeding, but from state to state. As this Court has recognized, "[t]he effect of disciplinary proceedings on good-time credits is a matter of state law or regulation." *Muhammad*, 540 U.S. at 754. Indeed, even when a prisoner loses good-time credits, further analysis of state law is required to determine whether that loss actually affects the ultimate duration of the prisoner's sentence. *See, e.g.*, *Thomas v. Eby*, 481 F.3d 434, 440 (6th Cir. 2007) (no *Heck* bar on retaliation claim because under Michigan law the deprived disciplinary credits are tied to a prisoner's parole date, but don't affect when a sentence expires).

The arbitrariness of *Heck*'s application here is further reflected in the perverse fact that those given the *longest* sentences are actually treated *better*—for *Heck* purposes—than those serving shorter terms. If the applicability of *Heck* turns on whether, through the revocation of good-time credits, a prisoner's sentence is lengthened, then a prisoner serving a life sentence without the possibility of parole would never face a *Heck* bar to § 1983 excessive-force claims implicating a disciplinary proceeding, since "[a]ny loss of good-time credits could not extend his potential term." *Wilkerson*, 772 F.3d at 840.

This arbitrariness is troubling in and of itself, but raises particularly acute concerns about the fairness of the legal system, given that *Heck*'s application to prison disciplinary proceedings almost uniformly arises in cases where prisoners are proceeding *pro se*. *See, e.g.*, *Garrett v. Winn*, 778 F. App'x 458, 459 (9th Cir. 2019) (dismissing *pro se* prisoner's excessive-force claim as *Heck*-barred by prison disciplinary violation);

Richards v. Dickens, 411 F. App'x 276, 278-79 (11th Cir. 2011) (per curiam) (same); *Arceneaux v. Leger*, 251 F. App'x 876, 877-78 (5th Cir. 2007) (per curiam) (same); *Jennings v. Mitchell*, 93 F. App'x 723, 725 (6th Cir. 2004) (same); *Wooten v. Law*, 118 F. App'x 66, 67-68 (7th Cir. 2004) (same).

In short, allowing prison disciplinary proceedings to bar § 1983 excessive-force claims turns the application of *Heck* into little more than a game of chance, resulting in similarly situated plaintiffs finding their suits to be *Heck*-barred (or not) based on factual quirks unrelated to the merits of their claims or the severity of the complained-of conduct.

3. This case further warrants this Court's review because the courts of appeals' practice subverts the federal courts' role as arbiters of federal rights. Permitting prison disciplinary proceedings to erect a *Heck* bar on subsequent excessive-force claims creates a unique opportunity for bad actors to forever shield themselves from liability—or federal-court review—by simply falsifying a disciplinary report. Excessive-force cases are usually about two conflicting stories, and that is perhaps particularly true in the prison context. *See, e.g., Dixon v. Hodges*, 887 F.3d 1235, 1237 (11th Cir. 2018) ("[The officer's] version of events differs significantly from [the plaintiff's]."); *Gilbert*, 512 F.3d at 900 ("[T]he guards have a different version."); *Simpson v. Thomas*, 528 F.3d 685, 687 (9th Cir. 2008) ("The parties dispute what happened next."). Under the circuits' overly broad application of *Heck*, a prison official may use excessive force against a prisoner, lie in the disciplinary report, and thereby insulate themselves from suit and prevent federal

courts from fulfilling their role as arbiters of federal rights.

Indeed, in this case, Mr. Santos appears to have had his access to the federal courts blocked by a prison official with a habit of beating up prisoners and lying about it. Judge Willett "pause[d] to note Captain Wells's apparent familiarity with the impact of *Heck* on civil rights claims." Pet. App. 13a n.15 (Willett, J., concurring). Judge Willett cited two district-court *Heck* dismissals in which Respondent Wells was a defendant—involving claims alleging the "unlawful use of chemical agents and force resulting in a broken ankle and leg" and "an unprovoked 'vicious beating' "—in addition to this case and another recent Fifth Circuit case "involving Captain Wells, again." *Id.* By Judge Willett's count, then, Respondent Wells has apparently used *Heck* at least four times to immunize himself from excessive-force claims. Only this Court can stop him—and other bad apples like him—from continuing to use *Heck* as a sword, rather than a shield.[6]

Access to courts is critically important to safeguarding prisoners' rights. This Court "has 'constantly emphasized" that "civil rights actions are of 'fundamental importance . . . in our constitutional scheme' because they directly protect our most valued rights." *Bounds v. Smith*, 430 U.S. 817, 827 (1977), *abrogated on other grounds by Lewis v. Casey*, 518 U.S.

[6] Correctional officers lying in disciplinary reports may be prevalent. For instance, a study last year found that "more than half" of New York City jail officers disciplined for violence against inmates lied about their behavior to investigators. Jan Ransom, *New York City Jail Records Show Guards' Brutality and Cover-Ups*, N.Y. Times, Apr. 24, 2021, at A1.

343 (1996). Our constitutional scheme, then, is frustrated when prison officials block prisoners' access to federal courts by telling an embellished version of the story in disciplinary reports, which *Heck* then converts to gospel.

Finally, this question is frequently recurring, and thus worthy of this Court's scarce resources. A search in the Westlaw database for cases involving *Heck* and discussing "excessive force" and "prison disciplinary," "disciplinary violation," or "disciplinary conviction" in the same paragraph yielded over 1,000 results in the federal courts.

For all these reasons, this case raises an important question that warrants this Court's review.

III. This Is A Suitable Vehicle.

This case is a suitable vehicle to answer this question, as the issue was preserved and passed on below. Mr. Santos argued at every stage that *Heck* does not apply to his claim. *See* Appellant's Br. 10-11; Pet. for En Banc Reh'g 6-7.

The Fifth Circuit considered this argument but rejected it, adhering to its precedent and holding that success in Mr. Santos's § 1983 excessive-force suit could necessarily imply the invalidity of his conviction or sentence, and remanding for the district court to determine which of his claims were barred for that reason. Pet. App. 4a-7a. While the Fifth Circuit did not decide one way or another whether his claims were *Heck*-barred, it called for a "fact-intensive" assessment of whether the facts alleged in the § 1983 suit contradict those facts underlying the disciplinary proceeding. Pet. App. 6a. This fact-intensive assessment—or any inquiry that pits a § 1983 excessive

force case against a prison disciplinary proceeding—strays well beyond the appropriate scope of *Heck* and its progeny. This Court should intervene.

CONCLUSION

The petition should be granted.

Respectfully submitted,

DEVI M. RAO
Counsel of Record
DAVID F. OYER*
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3490
devi.rao@macarthurjustice.org
**Admitted only in California; not admitted in D.C. Practicing under the supervision of the Roderick & Solange MacArthur Justice Center*

Counsel for Petitioner

MAY 2022