No. _____

In the Supreme Court of the United States

NEVADA DEPARTMENT OF CORRECTIONS, *et al.*,

Petitioners,

v.

PHILIP ROY GALANTI,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under *Heck v. Humphrey*, 512 U.S. 477 (1994), a plaintiff asserting a claim under 42 U.S.C. § 1983 that questions the validity of his conviction or the duration of his sentence must show 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 favorable-termination rule. *Id.* at 486-87.

The question presented is: Is there an exception to the favorable-termination rule for plaintiffs who are no longer in custody, as six courts of appeals have held, or must an ex-prisoner plaintiff still satisfy the favorable-termination rule, as five courts of appeals have held?

PARTIES TO THE PROCEEDING

Petitioners in this proceeding are the Nevada Department of Corrections and six of its officers and employees: James Dzurenda, Brian Williams, Jennifer Nash, Kimberly Petersen, Alessia Moore and Anthony Ritz. Respondent is Philip Roy Galanti.

RELATED PROCEEDINGS

Galanti v. Nev. Dep't of Corr., 65 F.4th 1152 (9th Cir. 2023).

Galanti v. Nev. Dep't of Corr., No. 2:19-cv-01044-GMN-EJY

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PETITION FOR WRIT OF CERTIORARI

In *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court held that a plaintiff asserting a claim under 42 U.S.C. § 1983 that questions the validity of his conviction or the duration of his sentence must satisfy the favorable-termination rule. *Muhammad v. Close*, 540 U.S. 749, 751 (2004) (per curiam). That means that he must show "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." *Heck*, 512 U.S. at 486-87.

Although that language admits of no exception, six courts of appeals, relying on various concurrences and dissents in *Heck* and *Spencer v. Kemna*, 523 U.S. 1 (1998), have held that an ex-prisoner who is unable to petition for habeas relief can generally bring a § 1983 claim without satisfying the favorable-termination rule. Five courts of appeals take the opposite view: *Heck* means what it says and a § 1983 plaintiff must show a prior favorable termination, no matter what current forms of relief are or are not available to him.

This Court's intervention is needed to resolve this 6-5 split. However one views the issue's merits, it should not be the case that an ex-prisoner in one state can proceed to trial while an ex-prisoner in another has his claims dismissed solely because of the circuit he filed his complaint in. And few would doubt the importance of the interests on both sides – ex-prisoners' interest in seeking compensation for their allegedly unconstitutional convictions or sentences

and states' interest in protecting the finality of their courts' criminal judgments from collateral attacks in tort actions.

This case presents the right opportunity for this Court to answer the question presented. The sole claim remaining is a § 1983 claim that challenges the duration of Galanti's confinement. That claim would have been dismissed by five courts of appeals. But the Ninth Circuit recognizes an exception to the favorable-termination rule, so it allowed Galanti's claim to proceed. This Court should grant certiorari, reverse the Ninth Circuit and reaffirm that the favorable-termination rule governs all § 1983 claims that challenge the validity of a conviction or the duration of a sentence.

OPINIONS BELOW

The original opinion in this matter is reported at *Galanti v. Nevada Department of Corrections*, 65 F.4th 1152 (2023). *See also* Pet. App. 2-15. The district-court opinion is unreported. *See* Pet. App. 16-24.

JURISDICTION

The Ninth Circuit entered judgment on April 25, 2023. On July 27, 2023, this Court extended the time to file a petition for writ of certiorari to August 23, 2023. *See* No. 23A74. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

42 U.S.C. § 1983 states in relevant 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 . . . .

STATEMENT OF THE CASE

I. Legal background

1. *Heck v. Humphrey*, 512 U.S. 477 (1994), addressed "whether a state prisoner may challenge the constitutionality of his conviction in an action for damages under 42 U.S.C. § 1983." *Id.* at 478. The petitioner had been convicted of voluntary manslaughter. *Id.* While his direct appeal was pending in state court, he brought a § 1983 action in federal court, alleging that his conviction resulted from constitutional violations and seeking damages. *Id.* at 478-79.

Heck first established that the "common-law cause of action for malicious prosecution provide[d] the closest analogy" for the petitioner's claim. 512 U.S. at 484. As a general matter, the common law of torts "provide[s] the appropriate starting point" for determining "elements of damages and the prerequisites for their recovery" under § 1983. *Id.* at 483. Malicious prosecution was the proper analogy because it, unlike other torts, "permits damages for confinement imposed pursuant to legal process." *Id.* at 484.

The favorable-termination rule followed from the malicious-prosecution analogy. "One element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Heck*, 512 U.S. at 484. That rule "avoids parallel litigation over the issues of probable cause and guilt," which could lead to contradictory judgments on the plaintiff's guilt. *Id.*

But the favorable-termination rule was not the result of a mechanical porting of malicious-prosecution elements to similar § 1983 claims. It was also grounded in this Court's longstanding "concerns for finality and consistency" and aversion to permitting collateral attacks. *Heck*, 512 U.S. at 484-85. "[T]he hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments" applies to § 1983 claims and common-law malicious-prosecution claims alike. *Id.* at 486.

For those reasons, *Heck* held that a § 1983 plaintiff challenging, expressly or implicitly, the validity of his conviction or the duration of his sentence had to satisfy the favorable-termination rule, just like a plaintiff asserting a malicious-prosecution claim. 512 U.S. 486-87; *see Muhammad v. Close*, 540 U.S. 749, 751 (2004) (per curiam). It identified four favorable terminations of a conviction or sentence: reversal on direct appeal, expungement by executive order, invalidation by a "state tribunal authorized to make such determination[s]" and issuance of a writ of habeas corpus by a federal court under 28 U.S.C. § 2254. *Heck*, 512 U.S. at 487.

Heck's holding did not create an exhaustion requirement; it "den[ied] the existence of a [§ 1983] cause of action" without a prior favorable termination, no matter what steps the plaintiff had previously taken in state or federal court. 512 U.S. at 489. And though the *Heck* petitioner was in prison, the Court clarified that "the principle barring collateral attacks – a longstanding and deeply rooted feature of both the common law and [the Court's] jurisprudence – is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." *Id.* at 490 n.10.

Justice Thomas concurred. On his view, the Court had previously "expanded the prerogative writ of habeas corpus and § 1983 far beyond the limited scope either was originally intended to have." *Heck*, 512 U.S. at 491 (Thomas, J., concurring). He joined the Court's opinion because it properly "limit[ed] the scope of § 1983 in a manner consistent both with the federalism concerns undergirding the explicit exhaustion requirement of the habeas statute, and with the state of the common law at the time § 1983 was enacted." *Id.*

Justice Souter (joined by three justices) also concurred, but only in the judgment.[1] *Heck*, 512 U.S. at 491 (Souter, J., concurring in the judgment). He opined that "the general § 1983 statute" gave way to "the specific federal habeas corpus statute" when they conflicted. *Id.* at 497 (quotations omitted). That led him to the same conclusion as the majority on *Heck*'s

[1] The Court's judgment did not depend on Justice Souter and his co-signers; the majority opinion obtained five votes without them. *Heck*, 512 U.S. at 478 (majority opinion).

set of facts – a plaintiff could not skip habeas and go directly to § 1983. *Id.* at 499, 503. But he disagreed with any suggestion that "place[d] at risk the rights of those outside the intersection of § 1983 and the habeas statute," namely, "individuals not 'in custody' for habeas purposes." *Id.* at 500. He "would not cast doubt on the ability of an individual unaffected by the habeas statute to take advantage of the broad reach of § 1983." *Id.* at 503.

2. Justice Souter's concerns indirectly returned in *Spencer v. Kemna*, 523 U.S. 1 (1998). That case involved only a habeas petition; § 1983 was not at issue. *See id.* at 3. This Court held that courts cannot "presume that collateral consequences adequate to meet Article III's injury-in-fact requirement" result from parole revocation. *Id.* at 14.

The *Spencer* petitioner argued that, even without the benefit of presumed collateral consequences, he suffered ongoing injuries that saved his habeas case from mootness. 523 U.S. at 14, 17. Among other things, he contended that he had a continuing stake in habeas proceedings because without them he couldn't obtain the favorable termination necessary to later assert a § 1983 claim. *Id.* at 17. The Court rejected that contention as relying on the mistaken premise "that a § 1983 action for damages must always and everywhere be available." *Id.*

Justice Souter, again joined by three justices, concurred in the opinion and the judgment. *Spencer*, 523 U.S. at 18 (Souter, J., concurring). But he wrote separately to explain that he thought that the petitioner was wrong about *Heck*'s effects. *Id.* at 18-19.

According to him, "*Heck* did not hold that a released prisoner in [the *Spencer* petitioner's] circumstances is out of court on a § 1983 claim." *Id.* at 19. In other words, the petitioner's habeas action was *not* necessary to assert a § 1983 claim – once a plaintiff is released, he can bring a § 1983 claim without a prior favorable termination in habeas. *See id.*

Justice Ginsburg joined Justice Souter's concurrence (and the majority opinion) and also wrote her own concurrence. *Spencer*, 523 U.S. at 21-22 (Ginsburg, J., concurring). She explained that she "ha[d] come to agree with Justice Souter" since *Heck* that individuals who lack recourse to the habeas statute can bring § 1983 claims without satisfying the favorable-termination rule. *Id.*

Justice Stevens was the sole dissenter. *See Spencer*, 523 U.S. at 22 (Stevens, J., dissenting). His opinion focused on what collateral consequences attended the petitioner's parole revocation, but in a footnote it mentioned that he agreed with Justice Souter that "[g]iven the Court's holding that petitioner does not have a remedy under the habeas statute," the petitioner could "bring an action under [§ 1983]." *Id.* at 23-25, 25 n.8.

II. Procedural background

Galanti, proceeding pro se, filed his complaint in the U.S. District Court for the District of Nevada. D. Ct. Dkt. 1. [2] The operative complaint named the

[2] "D. Ct. Dkt." citations refer to the docket in *Galanti v. Nev. Dep't of Corr.*, No. 2:19-cv-01044-GMN-EJY (D. Nev. filed June

Nevada Department of Corrections and six officers and employees as defendants (collectively, the "State"). Pet. App. at 17. The officers and employees are named in both their individual and official capacities. D. Ct. Dkt. 21, at 2-4.[3]

Galanti alleged that he completed education courses that entitled him to sentence deductions under Nevada law. Pet. App. 5. He also alleged that Nevada officials failed to timely apply those deductions, causing his sentence to expire later than it should have. *Id.* Relevant here, he asserted a due-process claim and an equal-protection claim and sought damages. *Id.* at 20-24; D. Ct. Dkt. 21, at 16. Galanti didn't bring his lawsuit until after his sentence expired, Pet. App. 5, and nothing in the record indicates that he filed a habeas petition challenging the alleged failure to apply his credits while he was in custody, *see* D. Ct. Dkt. 21, at 14.

The State moved to dismiss the operative complaint on the grounds that *Heck*'s favorable-termination rule barred Galanti's claims and his claims failed on the merits, among other reasons. Pet. App. 19-20. The district court granted the motion without reaching the *Heck* issue and entered judgment for the State. *See id.* at 6-7, 25-26.

18, 2019). "Ct. App. Dkt." citations refer to the docket in *Galanti v. Nev. Dep't of Corr.*, No. 20-17332 (9th Cir. filed Nov. 30, 2020).

[3] The operative complaint also named Clark County School District as a defendant. The school district was dismissed by the district court, was not part of the Ninth Circuit appeal and is not a Petitioner here. *See* Pet. App. 4-5, 17.

Galanti appealed the judgment to the U.S. Court of Appeals for the Ninth Circuit, D. Ct. Dkt. 48, which appointed the UC Law SF Appellate Project (previously known as the Hastings Appellate Project) to represent Galanti on appeal, Ct. App. Dkt. 31-1, at 1. The State's answering brief argued that the district court's order was correct on the merits and also that the favorable-termination rule provided an alternative basis for affirmance. *See* Pet. App. 7.

The Ninth Circuit affirmed in part, reversed in part and remanded. Pet. App. 15. Relying on circuit precedent, it held that Galanti didn't have to satisfy the favorable-termination rule. *Id.* at 9-11. That was because Galanti "challenge[d] the deprivation of credit-deductions" and had alleged that he "earned the credits at issue on April 1, 2018" and "was released on June 1, 2018," leaving him little time to pursue habeas relief. *Id.* at 10-11.

The court of appeals also held that the district court had incorrectly determined the merits of Galanti's due-process claim. Pet. App. 11-14. But it affirmed the dismissal of his equal-protection claim. *Id.* at 14.

REASONS FOR GRANTING THE PETITION

I. There is a deep, acknowledged and entrenched circuit split on the question presented.

1. In the First, Third, Fifth, Seventh and Eighth Circuits, the favorable-termination rule established by *Heck v. Humphrey*, 512 U.S. 477 (1994), would bar Galanti's 42 U.S.C. § 1983 claim. *Forte v. Reilly*, 43 F. App'x 395, 396 (1st Cir.) (per curiam) (unpublished) (citing *Figueroa v. Rivera*, 147 F.3d 77, 80-81 (1st Cir. 1998)), *cert. denied*, 537 U.S. 1093 (2002); *Williams v. Consovoy*, 453 F.3d 173, 177-78 (3d Cir. 2006); *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) (per curiam), *cert. denied*, 532 U.S. 971 (2001); *Savory v. Cannon*, 947 F.3d 409, 423-24 (7th Cir.) (en banc), *cert. denied*, 141 S. Ct. 251 (2020); *Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007), *cert. denied*, 552 U.S. 1285 (2008).

Meanwhile, the Second, Fourth, Sixth, Ninth, Tenth and Eleventh Circuits have created an exception to the favorable-termination rule that would (and in the Ninth Circuit's case, did) allow Galanti's claim to proceed. *Huang v. Johnson*, 251 F.3d 65, 75 (2d Cir. 2001); *Wilson v. Johnson*, 535 F.3d 262, 267-68 (4th Cir. 2008), *cert. denied*, 562 U.S. 828 (2010); *Powers v. Hamilton Cty. Pub. Def. Comm'n*, 501 F.3d 592, 603 (6th Cir. 2007), *cert. denied*, 555 U.S. 813 (2008); Pet. App. 5; *Cohen v. Longshore*, 621 F.3d 1311,

1317 (10th Cir. 2010); *Harden v. Pataki*, 320 F.3d 1289, 1298-99 (11th Cir. 2003).[4]

2. The split arises from the concurrences and dissents in *Heck* and *Spencer v. Kemna*, 523 U.S. 1 (1998), discussed above. The courts that apply the favorable-termination rule point out that the plain meaning of *Heck*'s holding bars ex-prisoners' claims without a prior favorable termination, even if *Heck* didn't involve an ex-prisoner plaintiff. *Savory*, 947 F.3d at 419-22. Indeed, *Heck* "ma[de] clear how broadly it intended its holding to apply" by explaining that it extended to plaintiffs who are no longer in custody. *Id.* at 422. These courts view themselves bound by *Heck*'s holding and rationale. *Id.* at 421-22.

The courts that have created an exception, by contrast, believe that they are "free to follow" the *Spencer* concurrences and dissent because, on their view, *Heck*'s application of the favorable-termination rule to ex-prisoners was dicta. *See, e.g.*, *Cohen*, 621 F.3d at 1316. For support, they cite *Muhammad v. Close*, 540 U.S. 749 (2004) (per curiam), in which this Court said that the case was "'no occasion to settle the issue' of whether *Heck*'s favorable-termination

[4] The Eleventh Circuit's *Harden* decision arose in a different context but arrived at the same result for the same reasons as the other courts of appeals on its side of the split. The *Harden* plaintiff asserted a § 1983 claim based on alleged defects in his extradition from Georgia to New York. 320 F.3d at 1292. Relying on Justice Souter's concurrences, the Eleventh Circuit held that "because federal habeas corpus is not available to a person extradited in violation of his or her federally protected rights, even where the extradition itself was illegal, § 1983 must be." *Id.* at 1298-99.

requirement applies to § 1983 plaintiffs who are habeas ineligible." *Powers*, 501 F.3d at 602 (quoting *Muhammad*, 540 U.S. at 752 n.2); *accord Cohen*, 621 F.3d at 1316. And they opine that the approach advocated in the *Spencer* concurrences and dissent is "more just and more in accordance with the purpose of § 1983 than the approach of those circuits that strictly apply *Heck*" to ex-prisoners. *Cohen*, 621 F.3d at 1316; *accord Wilson*, 535 F.3d at 268.

3. Circuit judges across the country have acknowledged the "deep circuit split" on this question. *Teichmann v. New York*, 769 F.3d 821, 829 & n.1 (2d Cir. 2014) (Calabresi, J., concurring).[5] And the split is entrenched. In the decision below, the court relied on circuit precedent from over two decades ago to determine that Galanti's claim could proceed. Pet. App. 5 (citing *Nonnette v. Small*, 316 F.3d 872, 875-76 (9th Cir. 2002)). In 2010 the Tenth Circuit listed the published court of appeals decisions on both sides of the split. *Cohen*, 621 F.3d at 1315-16. The only thing that has changed since then is that the Seventh Circuit overruled its prior precedent and switched sides. *Savory*, 947 F.3d at 426. There is no reasonable likelihood that the courts of appeals will find a consensus on their own; only this Court can "conclusively decide" this question and resolve the split. *Wilson*, 535 F.3d at 267.

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[5] *Accord, e.g.*, *Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 197 n.10 (4th Cir. 2015) ("[C]ircuits are split on this issue"); *Cohen*, 621 F.3d at 1315 ("The circuits have split on the question of whether the *Heck* favorable-termination requirement applies when the plaintiff lacks an available habeas remedy.").

II. The question presented is important to prisoners, ex-prisoners and states.

Prisoners have an obvious interest in timely release from custody. It is essential, then, that prisoners, ex-prisoners and states have clarity as to what vehicles are available to challenge convictions and sentences. If the favorable-termination rule applies, prisoners should know that they must petition for habeas relief (maybe on an expedited basis) before their sentence expires – else they'll lose any chance to adjudicate the issue. If, on the other hand, the favorable-termination rule doesn't apply, then in five circuits ex-prisoners are being wrongly denied the ability to challenge the validity of their conviction or duration of their sentence in a § 1983 action. Either way, it is unfair that an ex-prisoner's § 1983 claim will be dismissed in New Jersey while the exact same claim could proceed in New York solely because of the happenstance of circuit boundaries. *See Williams*, 453 F.3d at 177-78 (declining to follow the Second Circuit's approach).

The applicability of the favorable-termination rule is a recurring question in the district courts. *Savory*, 947 F.3d at 432 n.2 (Easterbrook, J., dissenting) (noting that the Seventh Circuit alone has "seen dozens of such cases"). The fact that the circuit split implicates nearly every regional court of appeals shows how widespread and common the question is. That is unsurprising given that the issue "lies at the intersection of the two most fertile sources of federal-court prisoner litigation – [§ 1983] and the federal habeas corpus statute." *Heck*, 512 U.S. at 480.

And the specific set of facts at issue here – credit deductions to a sentence's length – is itself likely a recurring scenario: the National Conference of State Legislatures found in 2021 that 39 states offer good-time credits, earned-time credits, or both. *State Good Time and Earned Time Laws*, Nat'l Conf. State Legislatures, https://tinyurl.com/yktf6nap (updated June 11, 2021). That number doesn't include other types of credits, like the education credits that Galanti obtained here to shorten his sentence. *See id.*

III. This case is an excellent vehicle for resolving the circuit split.

Galanti's case cleanly presents the discrete, dispositive issue of whether the favorable-termination rule bars an ex-prisoner's § 1983 claim. The State preserved the issue below by moving to dismiss based on the favorable-termination rule and asserting it as an alternative ground for affirmance in the Ninth Circuit. Pet. App. 6-7. The Ninth Circuit fully examined and determined the issue. *Id.* at 7-11. Only a single claim remains in the case; if this Court reverses the Ninth Circuit, that will require dismissal of the remaining claim and end the case. *See id.* at 5.

Although this issue recurs frequently, clean vehicles for this Court's review are rare. Defendants in circuits that have created an exception to the favorable-termination rule usually have no reason to raise it because the argument is foreclosed by binding circuit precedent. Even when they do, the case may turn on factbound issues – like whether the plaintiff timely pursued available relief – that are not appropriate for this Court's review. *See, e.g.*, *Guerrero*

v. Gates, 442 F.3d 697, 705 (9th Cir. 2006). Ex-prisoner § 1983 plaintiffs, for their part, often appear pro se and lack the knowledge and resources to pursue the case through the court of appeals to this Court. This case is the exception, as Galanti was ably represented by an appellate clinic in the Ninth Circuit.[6]

IV. The Ninth Circuit and the other courts that have created an exception to the favorable-termination rule are wrong.

1. *Heck*'s holding is based on the principle that allowing a § 1983 claim challenging the validity of a conviction or the duration of confinement without a prior favorable termination would impermissibly "permit a collateral attack" through "the vehicle of a civil suit." 512 U.S. at 484-86. That principle is not "rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." *Id.* at 490 n.10. Because the principle barring collateral attacks was necessary to the result in *Heck*, it is binding on lower courts and this Court. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 66-67 (1996).

The Ninth Circuit violated vertical stare decisis by "cobbling together" concurrences and dissents to justify contradicting *Heck*. *See Savory*, 947 F.3d at 421 (majority opinion). The language in the *Spencer* concurrences and dissent attempting to limit *Heck*'s holding did not appear in an opinion of the Court and

[6] It is true that the Ninth Circuit's disposition of the appeal means that this case could, absent this Court's intervention, proceed in district court. But that is irrelevant to this Court's jurisdiction over cases "in the courts of appeals" like this one. 28 U.S.C. § 1254; *see Forsyth v. Hammond*, 166 U.S. 506, 513 (1897).

addressed hypothetical claims that the petitioner had never asserted. "The dicta of five [j]ustices in *Spencer* did not overrule the holding and reasoning of *Heck*." *Savory*, 947 F.3d at 425; *see Agostini v. Felton*, 521 U.S. 203, 217 (1997).

It makes no difference that *Heck* didn't involve an ex-prisoner. *Heck* was about the nature of a § 1983 claim. 512 U.S. at 489. The reason for analogizing current-prisoner § 1983 claims to malicious-prosecution claims – the possibility of "damages for confinement imposed pursuant to legal process" – is equally applicable to ex-prisoner § 1983 claims. *See id.* at 484. Malicious prosecution's favorable-termination rule does not evaporate if habeas relief is no longer available to the plaintiff. *See* Restatement (Second) of Torts §§ 658-659. The same rule should apply to its § 1983 analog.

2. Strong policy reasons, beyond respect for stare decisis, support applying *Heck* here. *Heck*'s "concerns for finality and consistency" apply with equal force whether the plaintiff is currently incarcerated or not. 512 U.S. at 484-86. There is no reason to think that "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments" expires with a prisoner's sentence. *Id.* at 486.

The Ninth Circuit was understandably motivated by the potential unfairness of leaving an ex-prisoner "with no conceivable remedy even if his constitutional objections are meritorious." *Nonnette*, 316 F.3d at 877. But that is just a rephrasing of the argument rejected in *Spencer* that "a § 1983 action for damages must

always and everywhere be available." 523 U.S. at 17. Section 1983 is a broad statute, but it is not boundless, and plaintiffs with otherwise meritorious claims sometimes find themselves without a viable cause of action (for example, when the defendant is entitled to absolute immunity). *See Heck*, 512 U.S. at 490 n.10. The favorable-termination rule is just an example of the principle that all statutes have limits and "[n]o legislation pursues its purposes at all costs." *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 234 (2013).

And the Ninth Circuit failed to consider the unjust asymmetry that its holding represents. It pointed out that Galanti had "only a few months during which he could have filed a habeas petition." Pet. App. 10. True enough. But the court ignored the administrative difficulty presented by calculating and applying the credits on that same tight timeline – a time crunch that Galanti created by accruing his education credits only at the tail end of his incarceration. The court also ignored the fact that the Galanti apparently didn't even try to obtain habeas relief while in custody. Yet on the court's view, Galanti is rewarded for his inaction with a § 1983 claim for damages, while the State is punished by facing monetary liability in a collateral attack on the sentence it imposed.

CONCLUSION

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

Respectfully submitted,

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