No. 23-186

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

REPLY BRIEF FOR PETITIONERS

AARON D. FORD
Attorney General of Nevada
HEIDI PARRY STERN*
Solicitor General
JEFFREY M. CONNER
Deputy Solicitor General
KIEL B. IRELAND
Deputy Solicitor General
100 North Carson Street
Carson City, NV 89701
(775) 684-1100
HStern@ag.nv.gov
* *Counsel of Record*

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

REPLY BRIEF FOR PETITIONERS

Galanti's brief in opposition concedes that "the circuits are split as to whether *Heck*'s favorable termination requirement has exceptions." BIO 1. In other words, the parties agree that the question presented by the petition is the subject of a 6-5 circuit split and that the circuits' varying approaches lead to different results for identical claims.

Faced with an undisputed, and undisputable, circuit split, Galanti contends that he is not challenging the duration of his confinement, so the favorable-termination rule isn't implicated at all. That purported vehicle problem is a nonstarter. There is no other way to read his allegation that the State failed to timely award "deductions to his sentence" than as an argument for a shorter sentence – that is, as an attack on the duration of his confinement. Galanti's claim is worlds away from the lower-court decisions that he relies on, which concluded that the favorable-termination rule doesn't apply when authorities hold a prisoner beyond the expiration of his court-imposed sentence.

This Court should grant the petition. It has previously granted certiorari to resolve conflicting applications of the favorable-termination rule. *Thompson v. Clark*, 596 U.S. 36, 41 (2022); *Muhammad v. Close*, 540 U.S. 749, 754 (2004) (per curiam). That is no surprise: these cases "lie[ ] at the intersection of the two most fertile sources of federal-court prisoner litigation," *Heck v. Humphrey*, 512 U.S. 477, 480 (1994), and involve weighty interests for prisoners, ex-prisoners and states alike. Galanti's

arguments against certiorari are misplaced; this case remains an excellent vehicle to restore consistency and certainty to this important area of federal law.

I. Galanti's purported vehicle issue ignores the nature of his claim.

1. Galanti contends that the favorable-termination rule doesn't apply here because his claim does "not imply the invalidity of [his] conviction or sentence." BIO 9. Wrong. A 42 U.S.C. § 1983 claim attacks the validity of a sentence when it implies the invalidity of "a particular ground for denying release short of serving the maximum term of confinement." *Muhammad*, 540 U.S. at 750-51. That includes disputes over credit deductions – in *Edwards v. Balisok*, 520 U.S. 641 (1997), this Court applied the favorable-termination rule to a plaintiff's claim targeting "a procedural defect in a prison's administrative process" that could have "affect[ed] credits toward release." *Muhammad*, 540 U.S. at 751.

Galanti's claim would necessarily imply the invalidity of the duration of his confinement, triggering the favorable-termination rule. *See Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005). He alleged that the State "failed to timely and properly provide lawful deductions to his sentence." D. Ct. Dkt. 21, at 5. [1] He further alleged that he earned "sentence reductions," so his sentence "should have expired on or about June 1st, 2018," instead of in August. *Id.* at 6;

[1] "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 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).

Pet. App. 5. As his counseled replacement opening brief put it, "his interest was in having educational credits that he already earned deducted from his maximum sentence," which would have "terminated his sentence earlier and required his release from either prison or parole earlier." Ct. App. Dkt. 41, at 15 (emphasis omitted).

While the decision below was flawed in other ways, it correctly recognized that Galanti's claim triggered the favorable-termination rule (and any exceptions to the rule that exist). *See* Pet. App. 10-11. It explained that the favorable-termination rule applies to a challenge to the "deprivation" of credits, "if a favorable judgment would imply the invalidity of such deprivation." *Id.* at 8. Galanti's claim fit the bill by "challeng[ing] the deprivation of credit-deductions." *Id.* at 10.

2. The rest of Galanti's analysis suffers from the same basic failure to grapple with his claim as pleaded. He repeats like a mantra *Dotson*'s explanation that *Heck* uses the word "sentence" to refer to "substantive determinations as to the length of confinement." BIO 1, 6, 8, 10 (quoting *Dotson*, 544 U.S. at 83). But *Dotson* supports the State's position. The "substantive determination" was the "incarceration ordered by the original judgment of conviction." *Dotson*, 544 U.S. at 83. Galanti's claim, if successful, would imply the substantive invalidity of that determination because it would mean that he should have been released earlier. *Dotson* confirms that such a claim is governed by *Heck*. *Id.* at 81-82, 84.

The Fifth Circuit cases that Galanti relies on (BIO 9) are irrelevant to his claim. Both cases involved conduct that caused a prisoner to remain incarcerated beyond his court-ordered sentence. *Hicks v. LeBlanc*, 81 F.4th 497, 500-01 (5th Cir. 2023); *Crittindon v. LeBlanc*, 37 F.4th 177, 183-84 (5th Cir. 2022), *cert. denied*, __ U.S. __, 2023 WL 6377920 (2023). Whether or not the Fifth Circuit's conclusion was correct, that fact pattern is materially different from Galanti's claim that he was entitled to a shorter duration of confinement than the one ordered by his judgment of conviction. *See Dotson*, 544 U.S. at 83-84.[2]

Galanti's analogizing to false-imprisonment claims (BIO 8-9) fails for the same reason. False imprisonment is the proper claim when the confinement occurs "without legal process." *Wallace v. Kato*, 549 U.S. 384, 389 (2007). Galanti's claim is that the legal process led to a too-long duration of confinement, not that there was no legal process at all.

3. Contrary to Galanti's argument (BIO 7-8), applying the favorable-termination rule to his claim advances *Heck*'s policy rationales. His claim, just like the claim in *Heck*, requires addressing the "collision course" between § 1983 and the habeas statute.[3] 512

---

[2] Galanti also cites *Douthit v. Jones*, 619 F.2d 527 (5th Cir. 1980). BIO 8. A case that predates *Heck* by more than a decade has no bearing here.

[3] If Galanti were still in custody, there is little doubt that his claim would have to be brought in habeas. *Preiser v. Rodriguez*, 411 U.S. 475, 487, 500 (1973); *see, e.g.*, *Waddell v. Dep't of Corr.*, 680 F.3d 384, 386 (4th Cir. 2012); *Vega v. United States*, 493 F.3d 310, 313 (3d Cir. 2007).

U.S. at 491 (Thomas, J., concurring). *Heck* resolved the collision course by requiring a favorable termination before a plaintiff could bring a § 1983 claim that would ordinarily be within habeas's exclusive purview. *See Muhammad*, 540 U.S. at 751. That vindicated habeas's exhaustion requirement – otherwise, plaintiffs could circumvent it by simply filing a § 1983 claim instead. *See id.*; *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973). Applying the favorable-termination rule to Galanti's claim serves the same purpose.

Galanti's claim is also the kind of collateral attack that *Heck* is intended to prevent. *See* BIO 7 (citing *Thompson*, 596 U.S. at 44). By pressing a § 1983 claim based on the allegation that the duration of his confinement should have been shorter, he is trying to use a civil action to decide issues that should be resolved in criminal or habeas proceedings. *See Heck*, 512 U.S. at 486, 490 n.10 (majority opinion).[4]

II. The question presented is important and recurs often across the country.

1. Galanti does not dispute the importance of this issue to prisoners, ex-prisoners and states. *See* BIO 11-12. Prisoners are receiving mixed signals on whether they must seek habeas relief before their sentence expires, ex-prisoners in some circuits are

[4] Galanti mentions in passing "a separate and distinct § 1983 claim" involving his requests for reports. BIO 10. But even assuming he properly preserved that claim below, which is debatable, he does not explain why such a claim is a barrier to granting the petition. It is, at most, a reason to remand after this Court's determination of the question presented.

being denied a civil-rights cause of action and states in other circuits are facing collateral attacks on expired criminal judgments. Pet. 13.

Nor does Galanti dispute that the question of whether the favorable-termination rule applies to ex-prisoners' § 1983 claims – and what exceptions exist – recurs often. *See* BIO 11-12. While it is not possible to quantify precisely how many § 1983 claims are dismissed due to the favorable-termination rule and how many survive due to some circuits' exceptions, the issue arises often enough to generate a 6-5 circuit split. Pet. 10-11. And Judge Easterbrook has observed that the decisions that make up the split are just "the tip of the iceberg." *Savory v. Cannon*, 947 F.3d 409, 432 n.2 (7th Cir. 2020) (en banc) (Easterbrook, J., dissenting).

2. Galanti tries to downplay the issue's frequency by focusing on only the cases that "come within the Ninth Circuit's narrow exception to *Heck*." BIO 12. The importance of the interests on both sides of the question presented would still support granting the petition even if the number of cases affected were so limited.

But in any event, Galanti's argument misses the value of certiorari review here. By granting the petition, this Court will address the applicability of the favorable-termination rule nationwide, not just in the Ninth Circuit. A reversal would abrogate six circuits' decisions and confirm the correctness of five circuits'. *See* Pet. 10-11. On the flipside, an affirmance would abrogate five circuits' decisions, and could also cause the circuits that recognize broader exceptions to

reconsider. Either way, it would change the litigation landscape across the country.

3. Galanti also argues that the Ninth Circuit's narrower exception makes this case "a poor vehicle for addressing the circuit split." BIO 11. But the fact that the petition comes out of the Ninth Circuit is a feature, not a bug. It allows this Court to issue a binding opinion on more "limited exception[s]" to the favorable-termination rule, if it wishes to. *See id.* at 11. By contrast, if this Court granted a petition from a circuit with a categorical rule, any discussion of a rule in between "all ex-prisoners must satisfy the favorable-termination rule" and "no ex-prisoners must satisfy the favorable-termination rule" would be mere dicta.

III. The Ninth Circuit's exception to the favorable-termination rule should be rejected.

Heck held that a plaintiff "has no cause of action under § 1983" if his claim would imply the invalidity of his conviction or sentence and he does not show a prior favorable termination. 512 U.S. at 486-87, 489. And it explained that that rule applied equally to "former state prisoners who, because they are no longer in custody, cannot bring postconviction challenges." *Id.* at 490 n.10. The "fortuity" that those plaintiffs are no longer incarcerated does not grant them an exception to the favorable-termination rule. *Id.*

As the petition explained, strong policy reasons support *Heck*'s statement that ex-prisoners are subject to the favorable-termination rule. Pet. 16-17. Those

include the "concerns for finality and consistency" that drove *Heck*, as well as the unfairness inherent in rewarding an ex-prisoner's failure to timely seek habeas relief with a claim for damages. *Id.*

Galanti fails to point to any textual, precedential or policy reason for departing from *Heck*. *See* BIO 12-15. The brief in opposition relies almost exclusively on a concurrence in *Heck* and "two concurring opinions and a dissenting opinion" in *Spencer v. Kemna*, 523 U.S. 1 (1998). BIO 13-14. It cites no authority for the proposition that those separate opinions could have overridden the *Heck* majority opinion's statement that the favorable-termination rule applies to ex-prisoners. *See id.* Even if separate opinions theoretically had that power, *Spencer* didn't involve a § 1983 claim, 523 U.S. at 3, 5-7, so the separate opinions there would be nothing more than dicta.

The other argument potentially raised by Galanti is his conclusory remark that the Ninth Circuit's favorable-termination exception "is consistent with the history and purpose of § 1983 actions and the constitutional rights at issue." BIO 15. But the brief in opposition fails to elaborate on that purported "history and purpose." *See id.* Even if *Heck* doesn't control the result here – and it should – Galanti cannot rebut the policy reasons for applying the favorable-termination rule to his claim and others like it.

CONCLUSION

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

Respectfully submitted,

AARON D. FORD
Attorney General of Nevada
HEIDI PARRY STERN*
Solicitor General
JEFFREY M. CONNER
Deputy Solicitor General
KIEL B. IRELAND
Deputy Solicitor General
100 North Carson Street
Carson City, NV 89701
(775) 684-1100
HStern@ag.nv.gov
* *Counsel of Record*

Counsel for Petitioners

November 3, 2023