No. 24-

IN THE

Supreme Court of the United States

JONATHAN BRUNSON,

Petitioner,

v.

JOSHUA H. STEIN, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Prison Litigation Reform Act's (PLRA) "three-strikes" rule, a prisoner receives one "strike" for any prior lawsuit that was "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). A prisoner who accrues three or more "strikes" cannot proceed *in forma pauperis* and thus must pay the full filing fee up front to initiate a case or to appeal.

The courts of appeals are divided over whether a dismissal under *Heck v. Humphrey*, 512 U.S. 477 (1994), constitutes a strike under this rule. *Heck* holds that where claims in a suit under 42 U.S.C. § 1983 "would necessarily imply the invalidity" of a conviction, a litigant cannot proceed unless and until he has obtained a favorable termination of that conviction. *Id.* at 487. A *Heck* dismissal thus concerns a lawsuit's timing, not its merits.

The question presented is:

Whether the Fourth Circuit erred in holding that dismissals under *Heck* categorically constitute strikes under the PLRA.

PARTIES TO THE PROCEEDING BELOW

Petitioner is Plaintiff-Appellant Jonathan Eugene Brunson below.

Respondents include the Defendants-Appellees below. They are Josh Stein; Barry H. Bloch; Jessica B. Helms; Elizabeth B. Jenkins; Benjamin S. Gurlitz; Charlton L. Allen; Philip A. Baddour, III; Yolanda K. Stith; Myra L. Griffin; Kenneth L. Goodman; James C. Gillen; Tammy R. Nance; Christopher C. Loutit; Brian R. Liebman; Amanda M. Phillips; Kimberlee Farr; Brittany A. Puckett; and Emily M. Baucom.

STATEMENT OF RELATED CASES

Brunson v. Stein, No. 5:21-ct-03063-FL (E.D.N.C.) (judgment issued Jan. 28, 2022)

Brunson v. Stein, No. 22-7228 (4th Cir.) (opinion denying motion for leave to proceed *in forma pauperis* published Sept. 16, 2024)

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INTRODUCTION

The question presented "is the subject of an entrenched circuit split"—with five circuits on one side and at least three on the other—over the proper interpretation of the PLRA's three-strikes provision, 28 U.S.C. § 1915(g). Pet. App. 6a. Under the three-strikes rule, a prisoner receives one strike for any action that was "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." Pet. App. 5a (quoting § 1915(g)). A prisoner who accrues three or more strikes cannot proceed *in forma pauperis* and thus must pay the full filing fee up front to initiate a case or to appeal. Because most prisoners lack the resources to pay the full filing fee all at once, prisoners with three strikes are often functionally barred from court.

Petitioner Jonathan Brunson wrongly faces that three-strikes bar. When he filed a complaint against North Carolina officials under 42 U.S.C. § 1983, Mr. Brunson acknowledged that he had previously filed several § 1983 complaints, each of which was dismissed without prejudice under *Heck v. Humphrey,* 512 U.S. 477 (1994). CA App. 18-19. *Heck* holds that where claims in a § 1983 suit "would necessarily imply the invalidity" of a conviction, a litigant cannot proceed unless and until he has obtained a favorable termination of that conviction. 512 U.S. at 487.

A dismissal under *Heck* is not one of the enumerated types of dismissals identified in the PLRA's three-strikes rule. Rather, as three courts of appeals have recognized, where a prisoner's action is dis-

missed under *Heck*, the core defect is prematurity, not failure to state a claim. As those courts have explained, an action barred under *Heck* must be dismissed because it is "dormant" or "unripe" for adjudication, not because it is meritless. *See McDonough v. Smith*, 588 U.S. 109, 121 (2019).

The Fourth Circuit nonetheless treated Mr. Brunson's prior *Heck* dismissals as PLRA strikes, joining four other courts of appeals and deepening a split among the circuits. Mr. Brunson would be in a materially different situation had he been incarcerated in a state within the Second, Seventh, or Ninth Circuits. As the Fourth Circuit recognized, the question presented is a "conceptual morass" that has puzzled the lower courts and resulted in conflicting decisions among them. Pet. App. 7a. The proper interpretation of the PLRA's three-strikes provision is of significant importance to prisoners seeking to vindicate their civil and constitutional rights through access to the courts. The decision below bars that access for prisoners like Mr. Brunson based on a distortion of the PLRA's statutory text and a misreading of *Heck*.

The petition should be granted.

OPINIONS AND ORDERS BELOW

The Fourth Circuit's decision denying Mr. Brunson's motion for leave to proceed *in forma pauperis* is reported at 116 F.4th 301 and reproduced at Pet. App. 1a-15a. The relevant proceedings of the district court are unreported.

JURISDICTION

This Court has jurisdiction to review the Fourth Circuit's decision under 28 U.S.C. § 1254(1). The Fourth Circuit's decision denying Mr. Brunson's motion to proceed *in forma pauperis* was filed on September 16, 2024. Pet. App. 1a-15a.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1915 provides in relevant part:

> (a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.
>
> (2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period

> immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.
>
> (3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.
>
> * * *
>
> (g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

STATEMENT OF THE CASE

1. Petitioner Jonathan Brunson has been incarcerated in North Carolina state prisons since 2011. *See State v. Brunson*, 727 S.E.2d 916 (N.C. Ct. App. 2012). While incarcerated, Mr. Brunson "filed this § 1983 action naming the North Carolina Attorney General and seventeen other state officials as defendants." Pet. App. 3a; *see* CA App. 5-21. Mr. Brunson acknowledged in his complaint that he had filed four previous lawsuits under § 1983, each of

which had been dismissed without prejudice under *Heck*. CA App. 18-19.

Given his poverty, Mr. Brunson moved to proceed *in forma pauperis*. D.CT. Doc. No. 4. He declared that he had no assets and no income other than approximately $80 per month that a relative sent to his prison trust fund. D.CT. Doc. No. 4 at 1-2.

Although the district court initially granted Mr. Brunson's request, Pet. App. 19a-21a, it subsequently vacated that order, citing the PLRA's three-strikes provision, CA App. 22-24. The district court did not address whether or how a *Heck* dismissal qualifies as a PLRA strike; the court simply declared that "[a]t least three previous civil rights actions filed by plaintiff have been dismissed as frivolous or for failure to state a claim on which relief may be granted." CA App. 23. The district court accordingly ordered Mr. Brunson "to pay the $402.00 filing fee within *30 days* of entry of this order." *Id.*

Mr. Brunson paid the filing fee in full so he could proceed with his case. A month later, the district court dismissed the case on the merits, holding that Mr. Brunson's "claims are barred by the *Rooker-Feldman* doctrine" and that "the [North Carolina Industrial Commission] defendants adjudicating the underlying tort claims in administrative proceedings

are entitled to quasi-judicial immunity." CA App. 29-30.[1]

2. Mr. Brunson appealed to the Fourth Circuit. CA4 ECF 1. He immediately received a notice that he either had to establish *in forma pauperis* status under the PLRA or pay the full appellate filing fee to initiate his appeal. CA4 ECF 2. Mr. Brunson applied to proceed *in forma pauperis*. CA4 ECF 3. The court of appeals appointed counsel to brief the question presented here: "Whether a dismissal pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994), counts as a strike for purposes of the PLRA, 28 U.S.C. § 1915(g)." CA4 ECF 6.

Mr. Brunson submitted a brief explaining why a dismissal under *Heck* "should not automatically result in a 'strike' for purposes of the PLRA." CA Brunson Br. 5. As Mr. Brunson outlined, "[a] dismissal pursuant to *Heck* … should not constitute a strike because *Heck* only temporarily prevents courts from addressing the underlying merits of claims alleged in an action until they accrue by virtue of a favorable termination of the underlying conviction or sentence, operates as an affirmative defense, and is not an element of [a] § 1983 claim[]." CA Brunson Br. 7-8. Because three of Mr. Brunson's prior cases were dismissed solely under *Heck*, Mr. Brunson argued that those dismissals "should not

[1] The district court's ruling on the merits of Mr. Brunson's claims is still pending on appeal to the Fourth Circuit and is not at issue in this petition.

count toward [his] strike tally under § 1915(g)." CA Brunson Br. 15-16.

The Fourth Circuit disagreed. In a published opinion denying Mr. Brunson's motion for *in forma pauperis* status, the court held that *Heck* dismissals are necessarily dismissals for failure to state a claim. The court began by explaining that if a § 1983 plaintiff whose claims impugn the validity of their conviction or sentence has not proven that their conviction or sentence has been invalidated, then their claim "is not cognizable under § 1983" and the court must "deny the existence of a cause of action." Pet. App. 8a (quoting *Heck*, 512 U.S. at 487, 489). It then reasoned that the rationale for denying the existence of a cause of action is because the *Heck*-barred plaintiff has "failed to 'allege[] and prove[]' an element of that cause of action." Pet. App. 8a (quoting *Heck*, 512 U.S. at 484). As the Fourth Circuit saw it, "a cause of action does *not* exist *only* if one or more elements is missing." Pet. App. 8a (second emphasis added). Thus, "for a *Heck*-barred plaintiff to lack a cause of action, an element must be missing. And *Heck* tells us what is missing: favorable termination." Pet. App. 8a. The Fourth Circuit also looked to *Heck*'s explanation that the most analogous common-law tort to § 1983 claims challenging a conviction's validity is malicious prosecution, for which favorable termination is an element of the claim. Pet. App. 9a.

Because, in the Fourth Circuit's eyes, a *Heck*-barred plaintiff necessarily lacks an element (favorable termination) of their cause of action, they categorically fail to state a claim. Pet. App. 9a-10a. "All told, the upshot of *Heck*'s holding—that certain

plaintiffs have a cause of action only if they show favorable termination—is that when such a plaintiff *does not* show favorable termination, that plaintiff has no cause of action and thus fails to state a claim." Pet. App. 10a.

REASONS FOR GRANTING THE WRIT

I. The Question Presented Is The Subject Of An Entrenched 5-3 Circuit Split.

As the Fourth Circuit recognized, the question presented "is the subject of an entrenched circuit split" that has divided the courts of appeals, with five circuits taking one side and at least three circuits taking the other. Pet. App. 6a-7a. This Court acknowledged the split several terms ago, but did not address it then because the petitioner "did not raise th[e] issue." *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 n.2 (2020). In the four years since *Lomax*, courts have continued to weigh in, further deepening the split. The "conceptual morass" that has led to this conflict, Pet. App. 7a, desperately needs this Court's intervention. Under the current state of the law, whether a prisoner automatically incurs a PLRA strike when a lawsuit is dismissed under *Heck* depends entirely on the prisoner's geographic location.

1. In five circuits—now including the Fourth Circuit—*Heck* dismissals automatically count as PLRA strikes. Pet. App. 6a-7a. Those courts have held, as the Fourth Circuit did here, that *Heck* dismissals are necessarily dismissals for failure to state a claim because *Heck*'s favorable-termination re-

quirement "is an element of the type of § 1983 claims *Heck* identified." Pet. App. 7a. The Fourth Circuit reached this conclusion after explicitly acknowledging the four other circuits on its side of the split and the three that went the other way, including a painstaking rejection of the Ninth Circuit's contrary reasoning. Pet. App. 6a-7a, 11a-14a.

The Third Circuit joined the split several years ago, and its reasoning is all but identical to the Fourth Circuit's. *Garrett v. Murphy*, 17 F.4th 419, 425-30 (3d Cir. 2021). As with the Fourth Circuit, the Third Circuit expressly acknowledged the split and considered the decisions on each side. *Id*. at 427.

The D.C. Circuit, too, squarely holds that a *Heck* dismissal is necessarily a dismissal for failure to state a claim, and therefore qualifies as a strike. *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011). As in the Fourth and Third Circuits, the D.C. Circuit's rationale rests on the idea that favorable termination is an "essential element" of a *Heck*-barred § 1983 claim, such that "failure to allege this essential element" equates to "failure to state a claim." *Id.* Though no circuits had yet taken the other view of the question, the D.C. Circuit explicitly acknowledged that it was joining the Tenth and Fifth Circuits in answering the question, and it adopted the Tenth Circuit's reasoning nearly wholesale. *Id.* (citing *Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (10th Cir. 2011), and *Hamilton v. Lyons*, 74 F.3d 99, 103 (5th Cir. 1996)).

The Tenth Circuit was the first court of appeals to expressly answer the question presented. Like its

sister circuits on this side of the split, the Tenth Circuit holds that *Heck* dismissals are categorically dismissals for failure to state a claim and therefore necessarily constitute strikes under the PLRA. *Smith*, 636 F.3d at 1312. As with the Fourth, Third, and D.C. Circuits, the Tenth Circuit reasoned that favorable termination is "an *essential* element" of any § 1983 claim for damages that necessarily implies the invalidity of the prisoner's conviction or sentence. *Id.* So, the Tenth Circuit explained, the "failure to allege this essential element of [such a] § 1983 claim … [i]s a failure to state a claim"—and thus, a strike. *Id.*

Finally, although the Fifth Circuit has not addressed the question presented quite as clearly as the other circuits on this side of the split, it has held that *Heck* dismissals are either necessarily dismissals for failure to state a claim, *Colvin v. LeBlanc*, 2 F.4th 494, 499 (5th Cir. 2021), or are categorically frivolous, *Hamilton*, 74 F.3d at 103. Under either framing, the Fifth Circuit would necessarily count a *Heck* dismissal as a strike—putting it firmly on the majority side of the split. And indeed, the Fourth, Third, and Tenth Circuits have counted the Fifth Circuit as taking their view of the question presented. *See* Pet. App. 6a-7a; *Garrett*, 17 F.4th at 427; *In re Jones*, 652 F.3d at 38.

2. In at least three other circuits, however, Mr. Brunson's *Heck* dismissals would not have automatically rendered him ineligible for *in forma pauperis* status.

In the Second Circuit, for instance, *Heck* dismissals "do not categorically count as a strike"; their treatment "depends on the circumstances." *Cotton v. Noeth*, 96 F.4th 249, 257 (2d Cir. 2024). As the Second Circuit explained, *Heck* dismissals "reflect a matter of 'judicial traffic control' and prevent civil actions from collaterally attacking existing criminal judgments." *Id.* (quoting *Washington v. L.A. Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016)). For that reason, they "do not reflect a final judgment on the merits"—and so cannot categorically count as strikes within the plain terms of § 1915(g). *Id.* Instead, *Heck* dismissals are analogous to other dismissals for "prematurity," like failure to exhaust administrative remedies, which do not qualify as failures to state a claim unless they are irremediable. *Id.* at 258. Thus, in the Second Circuit, whether Mr. Brunson's prior *Heck* dismissals counted as strikes would depend on whether those prior dismissals "turned on the merits or … [were] simply a matter of sequencing or timing." *Id.* at 257. For prisoners in the Second Circuit, only the first type of dismissal (one on the merits) is sufficiently similar to the dismissals enumerated in § 1915(g) to count as a strike under the PLRA. In arriving at its conclusion, the Second Circuit explicitly acknowledged the split. *Id.* (recognizing that, at the time, the Third, Fifth, Tenth, and D.C. Circuits all held that *Heck* dismissals categorically qualify as strikes, whereas the Seventh and Ninth Circuits took positions on the other side of the split).

Mr. Brunson would not face the categorical *in forma pauperis* bar in the Ninth Circuit, either. Like the Second Circuit, the Ninth Circuit analogizes

Heck dismissals to dismissals for lack of administrative exhaustion, which do not categorically qualify as strikes. Neither type of dismissal "reflect[s] a final determination on the underlying merits of the case." *Washington*, 833 F.3d at 1056. Instead, *Heck* dismissals are "a matter of 'judicial traffic control,'" preventing "civil actions from collaterally attacking existing criminal judgments." *Id.* The Ninth Circuit also reasoned that a favorable termination (within the meaning of *Heck*) is not "a necessary element of a civil damages claim under § 1983." *Id.* Thus, a plaintiff's failure to first set aside his conviction before filing a *Heck*-barred § 1983 claim does not go to the merits of the case.

Under the Ninth Circuit's rule, two conditions must apply for a *Heck* dismissal to qualify as a strike: (1) "there exists an obvious bar to securing relief on the face of the complaint" such that the complaint can be dismissed for failure to state a claim under Rule 12(b)(6); and (2) the entire complaint "is dismissed for a qualifying reason under the PLRA." *Id.* at 1055-56 (citation omitted). As with the Second Circuit, the Ninth Circuit explicitly acknowledged the circuits on the other side of the split before rejecting their position. *Id.* at 1056 n.4.

The Seventh Circuit likewise reasons that *Heck* "deal[s] with timing rather than the merits of litigation." *Mejia v. Harrington*, 541 F. App'x 709, 710 (7th Cir. 2013). If a plaintiff's claim is *Heck*-barred, then his "claim is unripe, and the statute of limitations has not begun to run" until his conviction is set aside. *Id.* Thus, a dismissal on *Heck* grounds "do[es] not concern the adequacy of the underlying claim for

relief"—it is instead a question of timing or sequencing. *Id.* It therefore cannot constitute a strike, because it is not a failure to state a claim on the merits.

Finally, while the First Circuit has not explicitly addressed the question presented, its treatment of *Heck* dismissals strongly signals that it would follow the same approach as the Second, Seventh, and Ninth Circuits. According to the First Circuit, "[w]hether *Heck* bars § 1983 claims is a jurisdictional question." *O'Brien v. Town of Bellingham*, 943 F.3d 514, 529 (1st Cir. 2019). Dismissals for lack of subject-matter jurisdiction, in turn, are generally not treated as strikes. *See, e.g.*, *Moore v. Maricopa Cnty. Sheriff's Off.*, 657 F.3d 890, 893-94 (9th Cir. 2011); *Haury v. Lemmon*, 656 F.3d 521, 522-23 (7th Cir. 2011); *Thompson v. DEA*, 492 F.3d 428, 437 (D.C. Cir. 2007). So, it follows from the First Circuit's jurisdictional treatment of *Heck* that it would not view *Heck* dismissals as strikes.

The circuit split here creates uncertainty and a troubling lack of uniformity among the federal courts. A prisoner's access to court should not depend on where they are involuntarily incarcerated. Without the Court's review, this disparity will persist.

II. The Question Presented Is Important And Recurring.

As the sheer number of decisions on this question illustrates, the question presented both is important and will continue to recur without this

Court's review. A prisoner-plaintiff's ability to proceed *in forma pauperis* has enormous practical importance. To preclude *in forma pauperis* status is to shut the courthouse doors entirely to the vast majority of prisoners and pretrial detainees, no matter how meritorious their suits.

About 80% of incarcerated people in America are indigent. Lauren-Brooke Eisen, *Charging Inmates Perpetuates Mass Incarceration*, Brennan Ctr. For Justice, at 4 (2015), https://tinyurl.com/4kwfrnty. Most people entering prison have little to no income in the years before their incarceration. Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, Brookings Inst., at 8 (Mar. 14, 2018), https://tinyurl.com/y7uj4bnm. And although most prisoners work jobs while incarcerated, those jobs pay next to nothing—and in seven states, nothing at all (with rare exceptions). ACLU & Univ. of Chi. Law School Glob. Human Rights Clinic, *Captive Labor: Exploitation of Incarcerated Workers*, at 10 (2022), https://tinyurl.com/bdeafpyb.

In North Carolina, where Mr. Brunson is incarcerated, for instance, pay ranges from $0.05 to $0.13 per hour for most jobs (reaching up to $0.38 an hour for industry jobs, which make up around 6.5% of all prison jobs). *Id.* at 8, 102. Moreover, incarcerated workers typically keep less than half of their gross pay—prisons deduct as much as 80 percent for court-imposed fines, taxes, restitution, family support, room and board, and various other fees (with the largest chunk going to room and board in many states). *Id.* at 11. And what little money remains after deductions often goes largely or entirely to pay-

ing for basic needs like hygiene products (including soap, toothpaste, and menstrual supplies), healthcare copays, clothing, food, and increasing costs of communicating with loved ones.[2]

Little surprise, then, that most incarcerated people would find it impossible to pay court filing fees all at once, in a lump sum. (Prisoners proceeding *in forma pauperis* must still pay filing fees—but, crucially, can do so in installments, typically via deductions from their inmate trust accounts.) In federal district courts, the initial filing fee totals $405: a base fee of $350 set by statute, with another $55 assessed as an administrative fee. 28 U.S.C. § 1914(a); U.S. Courts, *District Court Miscellaneous Fee Schedule*, ¶ 14 (Dec. 1, 2023). To pay the initial filing fee for just one district-court case, a prisoner earning $0.13 an hour (the top of the North Carolina pay scale for all but the rarest prison jobs) would have to work more than 3,115 hours—and that is assuming they miraculously had zero deductions from their paychecks. That equates to more than *a year and a half* of work, assuming 40 hours of work every single week. And for the prisoners in seven states who earn no wages at all for their work, paying the filing fee remains even more out of reach.

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[2] *See, e.g.*, Stephen Raher, *The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails*, 17 Hastings Race & Poverty L.J. 3, 17-18, 81 (2020); Wendy Sawyer, *The Steep Cost of Medical Co-Pays in Prison Puts Health at Risk*, Prison Policy Initiative (Apr. 19, 2017), https://tinyurl.com/38ud44n7; Erica Bryant, *Working for Pennies Just to Buy Overpriced Soap in Prison*, Vera Institute (Apr. 30, 2021), https://tinyurl.com/y4yp8krt.

Paying for filing fees up front thus poses an insurmountable hurdle for nearly all prisoners. Indeed, this Court's answer to the question presented will be outcome-determinative for most prisoners in Mr. Brunson's situation. Without this Court's immediate review, the courthouse doors may be entirely closed to these prisoners.

III. This Case Is An Excellent Vehicle.

This case provides an excellent opportunity for the Court to resolve an acknowledged circuit split. The question presented is purely legal and entirely distinct from the merits of Mr. Brunson's claims in this case, so the Court need not wade into any factual issues. *See* Pet. App. 3a; *Cotton*, 96 F.4th at 255. Moreover, the parties fully briefed the issue below, and the Fourth Circuit recognized that its opinion chose a side in the entrenched conflict, meaning this case presents an excellent record for the Court to consider all aspects of the legal debate. *See* Pet. App. 6a-14a. Also, the question presented is outcome-determinative for Mr. Brunson's future access to the court system. He would not be categorically barred from proceeding *in forma pauperis* under the Second, Seventh, and Ninth Circuit's approaches, *supra* 10-13, and Respondents have never argued otherwise. But under the Fourth Circuit's approach, Mr. Brunson cannot vindicate his legal rights without first paying a hefty filing fee.

IV. The Fourth Circuit's Ruling Is Wrong.

The Fourth Circuit's conclusion that *Heck* dismissals qualify as strikes under the PLRA contra-

venes the statutory text of § 1915(g) and misreads *Heck*.

The Fourth Circuit and the other circuits in its camp invoke the statutory language defining a strike to include a case "dismissed on the grounds that it … fails to state a claim upon which relief may be granted." § 1915(g). "[F]ailure to state a claim" means "not having alleged facts in the complaint sufficient to maintain a claim." Black's Law Dictionary, *Failure* (12th ed. 2024). When a complaint fails to state a claim, the lawsuit is "simply meritless." *Lomax*, 140 S. Ct. at 1726.

Contrary to the views of the Fourth Circuit and its cohort, a dismissal under *Heck* does not qualify as a failure to state a claim. In *Heck*, this Court held that "in order to recover damages" for constitutional violations or other harms "that would render a conviction or sentence invalid, a … plaintiff must prove that the conviction or sentence has been reversed…, expunged …, declared invalid … or called into question." 512 U.S. at 486-87. *Heck* compared the § 1983 claim at issue there with the common-law tort of malicious prosecution, where a criminal proceeding against the plaintiff must be terminated in favor of the plaintiff before the malicious-prosecution claim can proceed. *Id.* at 484-86. Through this comparison, the Court recognized the balance between the procedures for invalidating a conviction or sentence and seeking relief under § 1983.

The Court held that "when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff

would necessarily imply the invalidity of his conviction or sentence." *Id.* at 487. If so, and the plaintiff is unable to "demonstrate that the conviction or sentence has already been invalidated," the court must dismiss the complaint. *Id.* At its core, however, *Heck* did not hold that such relief would never be available. Instead, the Court recognized that a "§ 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Id.* at 489-90.

A dismissal pursuant to *Heck* without more cannot constitute a strike because it does not implicate frivolity, maliciousness, or the merits of the § 1983 claims. At most, when a court considers applying a *Heck* bar, it looks to the underlying merits only to determine if a favorable ruling would undermine an existing conviction or sentence. *Id.* at 486-87. If so, the inquiry into the merits of the § 1983 action ceases and the court dismisses the action without prejudice until such time as the plaintiff obtains a favorable termination of the conviction or sentence. *Id.*

As the Second Circuit has explained, "the rule created by the Supreme Court in *Heck* is an 'accrual rule designed to avoid inconsistent results and new avenues of collateral attack.'" *Cotton*, 96 F.4th at 257 (citation omitted). It "deal[s] with [the] timing rather than the merits of litigation." *Mejia*, 541 F. App'x at 710. An action barred under *Heck* must be dismissed because it is "dormant" or "unripe" for adjudication, *not* because it is meritless. *McDonough*, 588 U.S. at 121. Indeed, even the most meritorious of claims

would be dismissed under *Heck* if the favorable-termination requirement had not yet been met. *See Washington*, 833 F.3d at 1055.

The decision below interpreted *Heck* to mean that claims brought too early lack merit in part because this Court said such claims are not "cognizable under § 1983." 512 U.S. at 487. But "not cognizable" is not the same thing as meritless. *Compare* Black's Law Dictionary, *Cognizable* (12th ed. 2024) ("cognizable" means "[c]apable of being judicially tried or examined before a designated tribunal," or "within the court's jurisdiction"), *with* Black's Law Dictionary, *Failure* (12th ed. 2024) ("failure to state a claim" means "not having alleged facts in the complaint sufficient to maintain a claim").

Whether a § 1983 claim is "cognizable" under *Heck* concerns the court's power (or lack thereof) to *reach* the merits, not the merits of the claim itself. Consider, for example, a plaintiff who brings a slam-dunk claim for patent infringement but sues the infringer in state court by mistake. That claim would not be cognizable in state court because federal courts have exclusive jurisdiction over claims arising under federal laws "relating to patents," 28 U.S.C. § 1338(a), but the plaintiff still would have stated a valid claim. Section 1915(g) says nothing about assigning strikes for an action that is not "cognizable."

Nor was the court of appeals correct to infer that *Heck* deemed favorable termination an "element" of a § 1983 claim. As the Ninth Circuit has observed, "*Heck*'s favorable-termination requirement is distinct from the favorable-termination element of a

malicious-prosecution claim." *Roberts v. City of Fairbanks*, 947 F.3d 1191, 1201 (9th Cir. 2020); *see also Washington*, 833 F.3d at 1056 ("compliance with *Heck*" is "not a pleading requirement"). This distinction makes sense, because § 1983 is not "simply a federalized amalgamation of pre-existing common-law claims," and it "differs in important ways from those pre-existing torts." *Rehberg v. Paulk*, 566 U.S. 356, 366 (2012). Thus, the "common-law principles governing analogous torts" are "'meant to guide rather than to control the definition of § 1983 claims,' such that the common law serves 'more as a source of inspired examples than of prefabricated components.'" *McDonough*, 588 U.S. at 116 (quoting *Manuel v. Joliet*, 580 U.S. 357, 370 (2017)).

Heck likewise recognized that the common law of torts "provide[d] the appropriate starting point for the inquiry under § 1983" rather than a one-to-one match. 512 U.S. at 483 (quoting *Carey v. Piphus*, 435 U.S. 247, 257-58 (1978)). Accordingly, *Heck* did not hold that favorable termination is an "element" of a § 1983 claim; it held that "§ 1983 damages actions … necessarily *require* the plaintiff to prove the unlawfulness of his conviction or confinement." *Id.* at 486 (emphasis added). But ripeness is also "required" for any claim brought in federal court, *see Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014), and no one would call ripeness an element of a claim. Declaring a claim "unripe" "[u]ntil the conviction or disciplinary decision is set aside" has no bearing on "the adequacy of the underlying claim for relief." *Mejia*, 541 F. App'x at 710. That the *Heck* bar blocks a lawsuit now says nothing about whether the same claims will later prove meritorious after the plain-

tiff's conviction is reversed or expunged, for instance. *See, e.g.*, Notice of Settlement at 2, *Roberts v. Fairbanks*, No. 17-cv-00034, (D. Alaska Sept. 22, 2023), Dkt. 202 (on remand, defendant settled § 1983 claims that the district court had previously held were *Heck*-barred); *Jones v. Kirchner*, 12-cv-01334, Dkt. 45 at 5-6, Dkt. 73 (D.D.C.) (defendants settled previously *Heck*-barred § 1983 claims when the plaintiff refiled them after his conviction was overturned). As the Ninth Circuit has observed, "[l]ike dismissals for lack of administrative exhaustion, Heck dismissals do not reflect a final determination on the underlying merits of the case." *Washington*, 833 F.3d at 1056.

The Fourth Circuit stretched *Heck* too far in concluding that a *Heck* dismissal is equivalent to a dismissal for failure to state a claim. *Heck* dismissals are "simply a matter of sequencing or timing," not a "judgment on the merits." *Cotton*, 96 F.4th at 257; *accord Washington*, 833 F.3d at 1056 ("*Heck* dismissals reflect a matter of 'judicial traffic control' and prevent civil actions from collaterally attacking existing criminal judgments."). A dismissal under *Heck* is no different from a dismissal for ripeness or any other quasi-jurisdictional or exhaustion ground. The fact that Mr. Brunson's claims were not ripe does not mean that they "fail[ed] to state a claim" within the meaning of § 1915(g).

In short, the PLRA's three-strikes provision is clear: Only dismissals based on frivolousness, maliciousness, or failure to state a claim can constitute a strike. § 1915(g). Dismissals based on *Heck* are not

on that list, nor are they the functional equivalent of any of the dismissals on that list.

This Court has made clear time and again that "only the words on the page constitute the law." *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). Courts may not "remodel, update, or detract" from the statutory text, as the Fourth Circuit did here. *Id.* at 654-55. The decision below misinterprets *Heck* and contradicts the plain text of § 1915(g). This Court must intervene to correct this error.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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