

No. 24-993

IN THE
Supreme Court of the United States

GABRIEL OLIVIER,

Petitioner,

v.

CITY OF BRANDON, ET AL.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

REPLY BRIEF FOR PETITIONER

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RULE 29.6 STATEMENT

The disclosure statement included in the petition remains accurate.

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REPLY BRIEF FOR PETITIONER

The courts of appeals are deeply and intractably divided over the propriety of courts imposing their own judicially crafted limitations on Congress's provision to "any citizen of the United States" the right to vindicate "rights, privileges, or immunities secured by the Constitution" through a suit for equitable relief. 42 U.S.C. § 1983. A large, diverse coalition of *amici* has come together to stand firmly behind the need for this Court to grant review, resolve the divide, and restore uniformity on these important, recurring issues.

The city doesn't meaningfully dispute that there's a well-developed, entrenched split on both questions. Instead, the city quibbles about its contours. That's because there's simply no denying that the Fifth and Ninth Circuits (joined by the Tenth) disagree over whether a prior conviction permanently bars a plaintiff from seeking prospective injunctive protection from future enforcement of an unconstitutional law. Both the Fifth and Ninth Circuits have declined to rehear this issue en banc, and more than thirty judges on both courts have joined or authored nine opinions on the issue. Pet. 26-27. This division won't resolve itself and no further percolation is necessary. As for the second question presented, the city agrees that each court of appeals has staked out a position on the question and that the circuits are in conflict. Only this Court can resolve the split and restore uniformity.

The city's other efforts to evade review are equally unpersuasive. For one, the city argues that Olivier didn't raise the questions presented below—but that's demonstrably incorrect. He has argued at every stage

of this litigation that *Heck v. Humphrey*, 512 U.S. 477 (1994), poses no impediment to his § 1983 claim for injunctive relief, and the questions presented were the sole basis for the Fifth Circuit’s decision. The issues were both pressed and passed upon below. For another, the city puts the cart before the horse when it argues that Olivier is wrong on the merits of his underlying constitutional claims. The only thing before this Court is whether Olivier is entitled to his day in court on those claims. The merits of those claims are for the courts below to address in the first instance.

The decision below is “indefensible,” “misreads *Heck*,” “defies common sense,” and exacerbates two conflicts with other circuits. App. 49a (Oldham, J., dissenting), App. 48a (Ho, J., dissenting). This Court should grant the petition and reverse.

I. THE DECISION BELOW EXACERBATES AN EXISTING SPLIT OVER WHETHER *HECK* BARS § 1983 CLAIMS FOR PURELY PROSPECTIVE RELIEF.

The city agrees (at 2) that the decision below takes one side of an entrenched split. As a dissent ignored by the city but endorsed by six judges below explained, “at least two [other] circuits * * * construe *Heck* not to apply in cases such as this.” App. 47a n.2 (Ho, J., dissenting). Two circuits implicated in the split—the Fifth and the Ninth—have refused to reconsider their holdings en banc. Only this Court can resolve the division and restore uniformity on this important, recurring issue.

A. The Circuits Are Intractably Divided.

While the Fifth Circuit barred Olivier from pursuing his § 1983 claim, the Ninth and Tenth Circuits

would allow it. Pet. 10. In the Ninth Circuit, “*Heck* has no application to” a plaintiff’s “requests for prospective injunctive relief” against “future prosecution.” *Martin v. City of Boise*, 920 F.3d 584, 604, 615 (9th Cir. 2019). So too in the Tenth Circuit, where *Heck* doesn’t bar prospective injunctive relief because granting that relief wouldn’t “imply the invalidity of the prior sentences.” *Lawrence v. McCall*, 238 F. App’x 393, 395 (10th Cir. 2007).

The city insists (at 15) that the Tenth Circuit is on the other side because it “uses *Heck* to bar prospective relief.” Even if true, that wouldn’t alter the fundamental divide—it would just move the Tenth Circuit to the other side. But it’s not true. In *Davis v. Kansas Department of Corrections*, 507 F.3d 1246, 1247-48 (10th Cir. 2007), and *Coleman v. United States District Court of New Mexico*, 678 F. App’x 751, 754 (10th Cir. 2017), the Tenth Circuit applied *Heck* to prisoner-plaintiffs challenging the sentences they were serving—heartland *Heck* lawsuits. Neither addressed a request for prospective injunctive relief to prevent the future enforcement of an unconstitutional law.

When the Tenth Circuit spoke to the question presented, it explained that “§ 1983 claims for prospective injunctive relief would not be barred.” *Lawrence*, 238 F. App’x at 395; see also *id.* at 396 (“*Heck* does not bar [a prisoner] from seeking prospective relief.”). Whether a plaintiff with a prior conviction may seek *prospective* relief against *future* enforcement of an unconstitutional law is a question that three circuits have answered categorically, reaching conflicting results. Determining what relief a plaintiff seeks—and whether *Heck* bars that relief—isn’t a “fact-specific

question,” Opp. 16, but a purely legal one that requires a uniform answer.

Trying to avoid the split, the city argues (at 16) that the issue hasn’t “sufficiently percolated” in the Fifth Circuit. That argument rests on the slimmest of reeds: a footnote in a plurality opinion of an earlier Fifth Circuit decision suggesting that prospective relief may be available for plaintiffs like Olivier. *Ibid.* (citing *Wilson v. Midland County*, 116 F.4th 384, 398 n.5 (5th Cir. 2024) (en banc)). The Fifth Circuit’s refusal to rehear Olivier’s case despite that footnote demonstrates that the Fifth Circuit has doubled down on its prior precedent that “misreads *Heck*” and “uniquely prohibits citizens like Olivier from bringing suit.” App. 48a (Ho, J., dissenting); Pet. 14-15 (discussing *Clarke v. Stadler*, 154 F.3d 186 (5th Cir. 1998) (en banc)).

Little surprise, then, that eleven Fifth Circuit judges—all three judges on the panel and eight judges voting in favor of rehearing—agreed that the Fifth Circuit’s position conflicts with other circuits. See App. 13a, 47a n.2, 52a.

The city attempts (at 16) to diminish the conflict as unimportant. Hardly. That’s belied by the large, diverse coalition of *amici* urging this Court to grant review. The entrenched split severely undermines Congress’s “desire that the federal civil rights laws be given a uniform application within each State.” *Felder v. Casey*, 487 U.S. 131, 153 (1988). The decision below shuts out the potential plaintiffs most likely to be targeted by future unconstitutional en-

forcement—those previously punished under unconstitutional laws. App. 48a (Ho, J., dissenting); see Southeastern Legal Foundation Br. 7-8.

Neither *Heck* nor common sense supports a rule that denies civil-rights plaintiffs like Olivier a prospective claim while allowing otherwise identically situated individuals to seek the same injunctive relief from the same law. App. 51a (Oldham, J., dissenting); see Life Legal Defense Foundation Br. 15-21.

The city tries to color this case (at 16) as “a recent debate.” App. 16. Nonsense. The debate is nearly as old as *Heck*, with the Fifth Circuit pronouncing its view nearly thirty years ago. See *Clarke*, 154 F.3d at 189. Both the Fifth and Ninth Circuits—covering a large swath of the country—have thoroughly developed their conflicting views and made clear they won’t change course. See *id.* at 190 (adopting rule en banc); *Martin*, 920 F.3d at 588, 614 (declining rehearing en banc); App. 43a (same). Without this Court’s intervention, this division will persist. This Court has previously acted to ensure the clarity and consistency of *Heck*’s application when faced with no conflict at all, Pet. 27, and it should do so here.

B. The Decision Below Is Wrong.

Inadvertently proving the need for this Court’s review, the city argues (at 15) that this Court’s decisions in *Edwards v. Balisok*, 520 U.S. 641 (1997), and *Wilkinson v. Dotson*, 544 U.S. 74 (2005), dictated the decision below. Even if they did, that would only underscore the need for this Court to settle the question, as only this Court can speak definitively on the import of its prior precedents. But they don’t.

In *Wilkinson*, this Court allowed § 1983 injunctive relief because it did “not mean immediate release or a shorter stay in prison” but only “new eligibility review.” 544 U.S. at 82. The Court acknowledged that some injunctive relief could be barred by *Heck* if, for example, a plaintiff sought an injunction compelling “the shortening of the prisoner’s sentence.” *Id.* at 84.

In *Edwards*, the Court applied *Heck* to bar a prisoner from challenging past procedures governing good-time credits but simultaneously held that a request for “an injunction” seeking “prospective relief will not ‘necessarily imply’ the invalidity of a previous loss of good-time credits, and so may properly be brought under § 1983.” 520 U.S. at 648.

The prospective relief from future enforcement Olivier seeks is even further from habeas relief than that sought in *Wilkinson* and *Edwards*. It wouldn’t “undermine, collaterally attack, or otherwise impose tort liability on Olivier’s previous conviction.” App. 51a (Oldham, J., dissenting); *Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (similar). Far from compelling the decision below, *Wilkinson* and *Edwards* support the position taken by the *dissenters* below. App. 47a, 52a; see Manhattan Institute Br. 8-10; Human Rights Defense Center Br. 7-9.

Conversely—and tellingly—the city cites “no case * * * in which the Court has recognized habeas as the sole remedy, or even an available one,” to prevent an unconstitutional law from being enforced against the plaintiff in the future. *Skinner*, 562 U.S. at 534. The implication of the decision below—that Olivier must seek protection through § 2254—“would require

[the court] to broaden the scope of habeas relief beyond recognition.” *Wilkinson*, 544 U.S. at 85 (Scalia, J., concurring).

Olivier seeks prospective relief against future enforcement of an unconstitutional law. The federal habeas regime poses no barrier to that relief. The decision below is wrong and should be reversed.

**C. This Case Is An Appropriate Vehicle
For Resolving This Important
Question.**

This case asks whether federal courts “must close [the] courthouse doors” to “the ideal person to challenge future enforcement” of an unconstitutional law. App. 46a (Ho, J., dissenting). That “single, narrow issue,” App. 4a, was dispositive below and is cleanly presented here. The city’s vehicle objections are either misdirected or involve ancillary issues not before this Court.

The city begins (at 7-8) by disparaging Olivier’s evangelism and states that while he “presents himself as ‘a Christian’” the “evidence proves otherwise.” But “no official, high or petty, can prescribe what shall be orthodox in * * * religion.” *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943). Contrary to the city’s over-hyped rhetoric, Olivier “identifies sins he believes are relevant for the community at large” to share the good news that Jesus Christ saves people from their sins. App. 19a. In any event, this Court’s intervention is required precisely so that Olivier can be heard—on remand—on the merits of his constitutional challenge. See *Foundation for Moral Law* Br. 4-11. The merits of that challenge aren’t before this Court.

The city mostly complains about issue preservation (at 12-14), but that comes to nothing for two separate, independent reasons.

First, it's belied by the record. Olivier repeatedly argued that *Heck* doesn't apply because "he does not seek to overturn his conviction" and "his challenge focuses 'entirely on the constitutionality of [the ordinance] and its application to his protected religious speech.'" App. 36-37a; see also Ct. App. ROA.557 n.1 (*Heck* doesn't bar challenge to "continued enforcement against him"). Indeed, the courts below understood him to argue *Heck* is no bar because "the injunction he seeks is entirely prospective." App. 8a (Fifth Circuit); App. 37a (district court).

Second, both courts below ruled on the question presented. The Fifth Circuit resolved "whether *Heck* also precludes injunctive relief against future enforcement of an allegedly unconstitutional ordinance." App. 1a-2a. The district court too "dismissed Olivier's claims solely on the basis of the *Heck* bar." App. 44a-45a. That "the court below passed on the issue" is enough to preserve it for this Court's review. *United States v. Williams*, 504 U.S. 36, 41 (1992).

The city suggests that the question isn't raised because Olivier's complaint also sought damages. Opp. i, 6, 12. But each form of relief should be assessed separately. *Edwards*, 520 U.S. at 648. Regardless, Olivier abandoned any claim for damages on appeal and the Fifth Circuit decided "a single narrow issue: whether the district court erred in barring his request for injunctive relief under *Heck*." App. 4a. The question is squarely presented.

The city insinuates that the decision below is unworthy of review because it’s unpublished. That’s irrelevant. The Fifth Circuit applied thirty-year-old en banc precedent. App. 9a (applying *Clarke*). As the denial of rehearing en banc confirms, *Clarke* remains the law of that court. This Court doesn’t hesitate to review unpublished opinions in a conflict. E.g., *Lynce v. Mathis*, 519 U.S. 433, 436 (1997).

In a last-ditch attempt to evade review, the city argues (at 17-18) that Olivier’s underlying constitutional claims are foreclosed by the Fifth Circuit’s affirmation of a preliminary-injunction denial in a different case, *Siders v. City of Brandon*, 123 F.4th 293 (5th Cir. 2024), involving a different plaintiff and different claims in a different posture. To state the argument is to refute it. *Siders* involved only a preliminary merits assessment that is “not binding” at later stages of the same case, much less in a different case brought by another plaintiff. *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Indeed, *Siders* involved an as-applied challenge, and didn’t rule—or purport to rule—on the merits of any claims related to Olivier. 123 F.4th at 301-02. The only barrier to Olivier’s claims is the *Heck* bar—and this case is a well-suited vehicle for this Court to resolve the split, reverse the decision below, and restore uniformity on this important, recurring question.

II. THE CIRCUITS ARE DIVIDED ON WHETHER HECK BARS PLAINTIFFS WITHOUT ACCESS TO FEDERAL HABEAS RELIEF FROM BRINGING § 1983 CLAIMS.

The city doesn’t dispute that the courts of appeals are intractably divided on the second question presented or that ten circuits have taken a position on it.

Pet. 28-29. Instead, the city quibbles with the contours of the split and insists that the decision below falls on the right side. Neither tack obviates the need for this Court’s review.

Contrary to the city’s wishful thinking (at 10), there’s no “emerging trend of uniformity.” The city’s evidence of this “trend” is one Fifth Circuit decision—which adhered to its existing precedent, *Wilson*, 116 F.4th 384—and one Seventh Circuit decision where that court flip-flopped (for the second time), *Savory v. Cannon*, 947 F.3d 409, 423 (7th Cir. 2020) (disavowing *DeWalt v. Carter*, 224 F.3d 607 (7th Cir. 2000) (overruling prior precedent, *id.* at 618 n.6)). The circuits are now split five to (at least) four—hardly a “trend of uniformity.”

The city also argues (at 9) that the Fourth, Sixth, and Eleventh Circuits agree with the decision below. That’s wrong. The city recategorizes the circuits by redrafting the question presented, asking whether a plaintiff “released from custody” is barred by *Heck*. *Ibid.* That’s not the issue Olivier raises. Olivier was never in custody in the meaning of the federal habeas statute. Pet. 30. So he never had access to habeas.

The issue decided below, and raised here, is whether a plaintiff who “never had access to federal habeas relief” is barred by *Heck*. Pet. i. On that question, the Fourth, Sixth, and Eleventh circuits align just as the petition describes. Pet. 29. While *Heck* doesn’t bar a § 1983 claim where a plaintiff “was unable to pursue habeas relief,” *Covey v. Assessor of Ohio County*, 777 F.3d 186, 198 (4th Cir. 2015), it *does* bar a § 1983 claim where the plaintiff “could have sought habeas review” and “in fact pursued it,” *Hobbs v.*

Faulkner, 2020 WL 12933850, at *2 (6th Cir. June 9, 2020).¹ In all three circuits, as the petition correctly describes (at 29), § 1983 is available to raise a challenge “when habeas corpus is not available.” *Harden v. Pataki*, 320 F.3d 1289, 1299 (11th Cir. 2003).

On the question Olivier presents—whether a plaintiff who lacked access to federal habeas may sue under § 1983—there’s a sharp split cleanly implicated by the decision below.

The decision below also falls on the wrong side. *Heck* reconciles the interplay between habeas and § 1983 by disallowing plaintiffs who can seek habeas relief from bringing a § 1983 action. When there’s no overlap—because a plaintiff *can’t* seek habeas relief—there’s no risk that § 1983 will be abused to end-run the habeas regime. See *Young America’s Foundation Br.* 19-23. So applying *Heck* here only deprives Olivier of “remedies for serious * * * constitutional violations.” *Savory*, 947 F.3d at 433-34 (Easterbrook, J., dissenting).²

Finally, this case is an appropriate vehicle, and it presents the question more cleanly than *Wilson*. Pet. 28.³ Because Olivier was legally barred from seeking federal habeas relief, the inquiry is not plaintiff-specific. So this Court can review the second question presented without resolving the circumstances in

¹ *Topa v. Melendez* isn’t to the contrary (Opp. 9); it didn’t resolve the different issue of *Heck*’s application to “a plaintiff who is no longer incarcerated.” 739 F. App’x 516, 519 n.2 (11th Cir. 2018).

² *Muhammad v. Close*, 540 U.S. 749, 752 n.2 (2004), found “no occasion to settle the issue” raised here. Contra Opp. 11.

³ The city’s contention (at 9) that “relief cannot be ordered absent a valid claim” ignores that Olivier *has* a valid claim but for *Heck*.

which a prisoner who previously had access to habeas, but no longer does, may bring a claim based on changed facts or knowledge. Pet. 32-33.

* * *

The courts of appeals are deeply divided on two important, recurring issues on the interplay between the federal civil rights and habeas statutes. This Court should intervene to provide uniformity, reverse the “indefensible” holding below, App. 49a (Oldham, J., dissenting), and ensure a hearing for citizens like Olivier who “deserve their day in court,” App. 48a (Ho, J., dissenting).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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