NO. 21-1362

IN THE

Supreme Court of the United States

TIMOTHY GRAY,

Petitioner,

v.

CRAIG WHITE, *Major*; JOHN WELLS, *Captain*; MICHELLE SULLIVAN, *Lieutenant*; LINDELL SLATER, *Lieutenant*,

Respondents.

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

BRIEF OF OHIO JUSTICE & POLICY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

Amicus Curiae Ohio Justice & Policy Center ("OJPC") is a 501(c)(3) nonprofit law firm with offices in Cincinnati and Columbus, Ohio. OJPC provides a spectrum of free legal services, programs, and resources for incarcerated individuals and their families, including representation of plaintiffs suing pursuant to 42 U.S.C. 1983.

This Court has stated that the bar to Section 1983 recovery announced in *Heck* v. *Humphrey*, 512 U.S. 477 (1994), does not apply to lawsuits that challenge the conditions of a plaintiff's confinement (as opposed to the validity of a conviction or sentence). The Fifth Circuit's ruling below deviated from this Court's decision in *Heck*, instead setting forth a bewildering standard that creates needless confusion about the ability of plaintiffs to bring Section 1983 actions challenging the conditions of their confinement. OJPC has long represented prisoners alleging unconstitutional conditions of confinement, including excessive force, and has faced *Heck*-bar arguments. Confused and confusing expansions of the *Heck* bar like the Fifth Circuit's further imperil the ability of prisoners—who already face numerous legal hurdles—to vindicate their rights under Section 1983.

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[1] The parties have consented in writing to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no person or entity made a monetary contribution intended to fund the preparation or submission of this brief, which was prepared and submitted by counsel for the Ohio Justice & Policy Center on a *pro bono* basis.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 1983 creates a cause of action commonly used by plaintiffs, including prisoners, who sue for violations of their civil rights under color of state law. In this area, the Fifth Circuit has gravely misconstrued this Court's guidance in its line of cases addressing the distinctions between habeas and civil-rights claims, particularly with respect to the *Heck* bar. This Court should step in. See Sup. Ct. Rule 10(c).

As this Court has made clear, the *Heck* bar exists to prevent prisoners from using Section 1983 civil-rights suits as collateral attacks on their convictions or sentences. This bar applies to prison disciplinary proceedings that affect the length of prisoner sentences because, there too, the proper vehicle for such actions is habeas corpus.

Consistent with that recognized distinction, Section 1983 claims that require judicial review of the validity of a conviction or sentence are barred by *Heck* because such claims are cognizable under habeas. By contrast, Section 1983 claims concerning the conditions of confinement, such as allegations of excessive force, retaliation, or deliberate indifference by prison officials, are not barred by *Heck*.

The Fifth Circuit below remanded Petitioner's excessive-force claims to the District Court for a "fact-specific analysis" of which claims (if any) were *Heck*-barred—even though Petitioner did not challenge any finding or outcome of his disciplinary proceeding, including the prison board's decision to revoke his good-time credits. Pet. App. 6a–8a. This decision creates needless confusion, particularly in the context

of excessive-force claims—a subset of Section 1983 "conditions of confinement" claims—that intersect with prison disciplinary proceedings.

Some confusion is natural: Article III courts often lack familiarity with the realities of violence in the prison system and with the procedural informality of prison disciplinary proceedings as compared with criminal prosecutions. Judicial analysis runs astray, however, by assuming that excessive force by prison guards and disciplinary violations by prisoners are mutually exclusive. Not so. In many cases, the two coexist—as when a prisoner's violation elicits an unconstitutional overreaction from a prison guard. Just as these two wrongs do not make a right, the first wrong should not *Heck*-bar a claim for the second.

In addition, prison disciplinary proceedings are nothing like standard court proceedings. Rather, they lack many hallmarks of due process. This makes them particularly vulnerable to the rare (but sadly extant) prison guard who would both beat a prisoner and falsify a disciplinary report. Allowing the lower courts' current confusion as to the *Heck* bar to remain in place will continue to give unscrupulous over-reaching guards a surefire means of self-immunizing.

The lower courts are confused for three main reasons. First, by requiring "fact-specific analysis" to resolve a *Heck*-bar defense, they are muddling the clear distinction between habeas claims and civil-rights (Section 1983) claims. Second, they mistakenly assume that a condition-of-confinement claim (*e.g.*, an excessive-force claim) could impugn the validity of a conviction or sentence, when in fact a prison board's decision to discipline an inmate will not necessarily preclude an officer from being liable under Section 1983. Third, they overlook the scant process afforded

in prison disciplinary proceedings, as well as the reality (recognized by this Court) that prison officials have strong incentives to disfavor an inmate. Finally, by advancing an erroneous expansion of the *Heck* bar, courts make it dangerously hard for prisoner-plaintiffs to vindicate their federal rights against prison employees. Such consequences undermine the text and purpose of Section 1983.

A clear ruling by this Court that Section 1983 claims regarding unconstitutional mistreatment of prisoners are not barred by *Heck* would expressly distinguish the scope of prisoners' Section 1983 claims from that of habeas and honor Congress's intent in enacting Section 1983.

ARGUMENT

I. In Accordance with This Court's Precedents, Courts Should Not Apply the *Heck* Bar to Section 1983 Suits That Challenge the Conditions of Confinement.

When a prisoner brings a Section 1983 suit challenging the conditions of confinement (including, but not limited to, deliberate indifference or excessive force by prison officials), the *Heck* bar should play no role in a court's analysis. This Court has never applied the *Heck* bar to an action alleging that the conditions of confinement violated a prisoner's civil rights.

Heck holds that Section 1983 does not provide a cause of action challenging the validity or duration of a plaintiff's confinement, unless the conviction or sentence has been "reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." 512 U.S. at 489. In essence, this rule serves to

distinguish a prisoner's challenge to the validity of a conviction or sentence—which is brought properly via habeas—from the vindication of other constitutional rights. This Court wrote in *Heck* that, if a successful plaintiff's action "will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Id.* at 487.

Two years after the *Heck* decision, Congress enacted the Prison Litigation Reform Act ("PLRA"), Pub. L. 104-134, 110 Stat. 1321 (1996) , which clarified that prisoners must exhaust their administrative remedies prior to bringing a Section 1983 suit "with respect to prison conditions." 42 U.S.C. 1997e(a). The statute also defines "civil action with respect to prison conditions" as "any civil proceeding arising under Federal law with respect to the *conditions of confinement* or the effects of actions by government officials in the lives of persons confined in prison, but *does not include habeas corpus* proceedings challenging the fact or duration of confinement in prison." 18 U.S.C. 3626(g)(2) (emphasis added). Almost simultaneously with the PLRA, Congress enacted the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. 104-132, 110 Stat. 1214 (1996) , to regulate prisoners' federal habeas suits.

These twin statutes reflect a clear division of adjudicative labor: habeas for suits challenging the confinement itself, Section 1983 for suits challenging what happens to a prisoner during that confinement. *Heck* likewise distinguishes habeas proceedings from Section 1983 actions that do not challenge the validity or duration of confinement. And the definition of "civil action with respect to prison conditions" adopted by

Congress in the PLRA confirms this distinction, as does Congress's contemporaneous enactment of the AEDPA to govern federal habeas actions. The "great writ" of habeas corpus arose at common law and has always concerned the legality of detention or confinement. See *Preiser* v. *Rodriguez*, 411 U.S. 475, 485-86 (1973). Federal habeas, as codified in the AEDPA, is limited to "the ground that [the plaintiff] is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a).

This principle should apply as well when a Section 1983 plaintiff, such as Petitioner, claims that excessive force was used in connection with an alleged disciplinary violation but does not challenge the procedures used in the disciplinary hearing or the resulting revocation of good-time credits. Because neither the fact nor duration of confinement is in question, *Heck* should not bar the action.

As this Court has held, a plaintiff who has "raised no claim on which habeas relief could have been granted on any recognized theory" need not satisfy *Heck*'s requirement of establishing that the conviction has been impugned to proceed with a conditions claim. See *Muhammad* v. *Close*, 540 U.S. 749, 754-55 (2004). This requirement is "inapplicable," because the conviction and any further penalties imposed by a disciplinary board are irrelevant to the plaintiff's claims. *Id.* at 755.

Muhammad presented a closer question than this case. In *Muhammad*, a prisoner sued under Section 1983 regarding officers' allegedly retaliatory treatment *in the course of* prison disciplinary proceedings but did not seek the restoration of revoked good-time credits. Although the alleged misconduct by prison officials closely related to the

proceeding itself, this Court held that the Section 1983 suit could not "be construed as seeking a judgment at odds with his conviction or with the State's calculation of time to be served in accordance with the underlying sentence," and therefore was not barred by *Heck*. *Muhammad*, 540 U.S. at 754-55. Here, by contrast, there was no need for the courts to evaluate Petitioner's subsequent disciplinary hearing to determine whether, at the time he was seized, prison guards used excessive force in violation of Petitioner's civil rights. As a matter of law, the two inquiries do not overlap. And though they may intersect factually, the prison board's unchallenged disciplinary findings should not bar the court's adjudication of the excessive force claims.

Petitioner has identified circuit precedents holding "that *Heck* may bar § 1983 claims where the same facts underlie a prison disciplinary proceeding, even if the § 1983 claim isn't attacking the disciplinary proceeding itself." Pet. Br. 8 & n.2. The approach followed by those courts conflicts with this Court's guidance in *Muhammad* that a plaintiff's claims are not *Heck*-barred, despite relating in some way to disciplinary proceedings, so long as the plaintiff is not "seeking a judgment at odds with" the validity or length of his confinement. See 540 U.S. at 754-55.

Unlike in *Muhammad*, this Court's decisions in *Preiser* and *Edwards* v. *Balisok*, 520 U.S. 641 (1997), considered Section 1983 challenges to the validity or length of sentences, not allegations of excessive force, deliberate indifference, or other conditions of confinement. This Court thus has drawn simple lines: when a prisoner argues that his sentence should be shorter, *Heck* is implicated, and when a prisoner

argues that he was treated wrongfully while serving that sentence, *Heck* is not implicated.

Nonetheless, the Fifth Circuit held below that remand to the District Court was necessary for a "fact-specific analysis" of whether all of Petitioner's claims were barred by *Heck*. Pet. App. 8a, 11a–12a. This instruction muddles existing doctrine. The Fifth Circuit has effectively asked the District Court to conduct an unnecessary mini-trial, when the answer is clear on the face of the complaint: Petitioner's allegations concern his alleged mistreatment while serving his sentence, not the validity of that sentence.

That approach would require courts adjudicating Section 1983 conditions-of-confinement claims that intersect with prison disciplinary proceedings to engage in a needlessly fact-intensive claim-parsing analysis. It becomes clear that such an analysis is unnecessary when one considers why the *Heck* bar exists and the division of labor between habeas claims and Section 1983 claims, as articulated both by this Court and Congress. A clear rule reaffirming *Heck*'s and the PLRA's distinction between habeas actions and conditions-of-confinement challenges would both (i) better vindicate the constitutional and statutory rights of plaintiffs, as Congress intended when it enacted Section 1983, and (ii) better serve the needs of judicial economy and efficient administration of justice, eliminating the risk of inconsistent judgments among the federal courts.

OJPC urges this Court to resolve this judicial confusion by clarifying that *Heck* is irrelevant where prisoner-plaintiffs challenge how they were treated while serving their sentences, regardless of whether their claims intersect with prison disciplinary proceedings.

II. There Is No Risk of a Conditions Claim Necessarily Impugning the Validity of a Conviction or Sentence.

There is no risk that a prisoner's Section 1983 claim alleging excessive force (or another civil-rights violation) by a prison employee will by its own force impugn the validity of a disciplinary proceeding conviction or sentence. Valid disciplinary penalties can, and sadly do, coexist with excessive force in the prison system. See, *e.g.*, *Hope* v. *Pelzer*, 536 U.S. 730, 734-35, 738 (2002) (holding that prisoner's Eighth Amendment rights were violated in connection with discipline for altercation with another inmate); *Thompson* v. *Virginia*, 878 F.3d 89, 95, 106 (4th Cir. 2017) (reversing summary judgment for defense on excessive-force claims, even though plaintiff prisoner had been disciplined for allegedly lying about assault allegations). If there is (for some reason) an apparent risk of unavoidable inconsistency in a given case, claim-processing and estoppel rules can resolve such conflicts.

Courts have already recognized that allowing Section 1983 conditions claims to go forward without subjecting them to an intricate *Heck* analysis poses no risk of invading habeas territory. As the First Circuit has explained, "*Heck* does not require a section 1983 plaintiff who challenges the conditions of his confinement . . . to demonstrate that his conviction has been impugned," and "[s]uch claims may go forward under section 1983, even if the plaintiff's complaint includes a separate, *Heck*-barred cause of action." *Figueroa* v. *Rivera*, 147 F.3d 77, 82 (1st Cir. 1998); see also *Huey* v. *Stine*, 230 F.3d 226, 230 (6th Cir. 2000) (question of excessive force is "analytically distinct" from question of plaintiff's violation).

Unconstitutional mistreatment claims like Petitioner's—whether they sound in excessive force, deliberate indifference, or retaliation—simply do not create a risk of inconsistent judgments, a significant public-policy reason underlying *Heck*, 512 U.S. at 487, 489, as well as preclusion doctrines like *Rooker–Feldman*; see *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Ct. App.* v. *Feldman*, 460 U.S. 462 (1983).

As OJPC's founder has previously noted, a "typical excessive force case involves an incident provoked by the prisoner," where an officer "decides to retaliate with force rather than to simply write a disciplinary ticket." Alphonse A. Gerhardstein, *Anatomy of the Modern Prisoners' Rights Suit: A Practitioner's Guide to Successful Jury Trials on Behalf of Prisoner-Plaintiffs*, 24 Pace L. Rev. 691, 705 (2004). "Officers may feel that the disciplinary process is too slow or too lenient and they may occasionally 'supplement' formal discipline with an 'attitude adjustment' for a prisoner who acts out against the officer." *Ibid*.

There is thus no inherent inconsistency between a Section 1983 excessive-force claim and a prison disciplinary proceeding, and if a risk of unavoidable inconsistency appears (for some reason) in a given case, claim-processing and estoppel rules can provide a backstop. A simple hypothetical illustrates this situation and the absence of any resulting *Heck* problem. Imagine that Guard writes a disciplinary ticket stating that Prisoner attacked him or another inmate or officer. The disciplinary board upholds the ticket and revokes Prisoner's good-time credits. Prisoner disputes Guard's version of events and brings a Section 1983 suit alleging that Guard engaged in excessive force and seeks damages.

Prisoner does not seek restoration of his good-time credits. Even if Prisoner wins this lawsuit, his credits will not be restored, and hence there is no risk of inconsistent adjudications or that Prisoner's conviction or sentence will be impugned. That is because it is possible for the finder of fact to conclude that Prisoner attacked Guard *and that* Guard then engaged in excessive force against Prisoner. And even if an Article III court treated the conclusion that Prisoner committed an infraction as *res judicata* (which there are good reasons not to do; see Part III, *infra*), that does not speak to whether Guard is liable for excessive force, much as any tortfeasor can commit a battery against one who has also battered them.

Such hypotheticals are not academic. An investigation in New York City found that of 270 corrections officers who were disciplined, 56 percent had lied or filed misleading reports, including 17 officers who made false statements to investigators; one officer was disciplined for excessive force eight times in less than two years and lied in four of those cases. Mihir Zaveri, *When Guards in New York City's Jails Lie About the Use of Force*, N.Y. Times (Apr. 26, 2021), available at https://www.nytimes.com/2021/04/26/nyregion/guards-rikers-use-of-force.html. In 2021 and 2022, at least five corrections officers in Louisiana (where Petitioner is incarcerated) have been arrested for excessive force and subsequent attempts to cover it up. *Angola Corrections Officer Accused of Excessive Force*, WAFB News (Apr. 18, 2022), available at https://www.wafb.com/2022/04/18/angola-corrections-officer-accused-excessive-force/; *Louisiana Prison Guards Accused of Excessive Force Cover-Up*, Associated Press (Apr. 19, 2021), available at https://www.usnews.com/news/best-

states/louisiana/articles/2021-04-19/louisiana-prison-guards-accused-of-excessive-force-cover-up.

III. Prison Disciplinary Proceedings Should Not Be Used to Insulate Prison Officials from Section 1983 Liability.

This Court has recognized that a prison disciplinary body's function is not "a 'classic' adjudicatory one," because prison disciplinary officials "are not 'independent'" like judges," and "to say that they are is to ignore reality." *Cleavinger* v. *Saxner*, 474 U.S. 193, 203 (1985). "The credibility determination they make often is one between a co-worker and an inmate," creating "obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee." *Id.* at 204. It is within this climate of "obvious pressure" that inmate discipline arises and can intersect with non-*Heck*-barred claims relating to the unconstitutional mistreatment of prisoners.

Prison disciplinary hearings feature noticeably "more limited procedural due process rights" than a courtroom. See Emily Parker, *Due Process in Prison Disciplinary Hearings: How the "Some Evidence" Standard of Proof Violates the Constitution*, 96 Wash. L. Rev. 1613, 1623 (2021). "The guilt of charged prisoners is usually a foregone conclusion," and "disciplinary tribunals face obvious pressure to resolve a dispute in favor of the institution." Erin Kae Cardinal, Bray v. Russell*: The Constitutionality of the "Bad Time" Statute*, 35 Akron L. Rev. 283, 299 (2002).

Few officers would either beat a prisoner maliciously, in violation of that prisoner's civil rights, or falsify accusations against that prisoner, but we know that some do both. See Part II, *supra*, at 11; see

also James E. Robertson, *"One of the Dirty Secrets of American Corrections": Retaliation, Surplus Power, and Whistleblowing Inmates*, 42 U. Mich. J. L. Reform 611, 616–17 (2009) ("Because inmates acquire 'spoiled identities,' their claims of retaliation often carry little credibility in disciplinary hearings—the effect of which is to ensure that even the wholesale fabrication of disciplinary incidents will result in official sanctions for inmates."). These are the officers whose malfeasance can be exposed if this Court adopts a clear rule that *Heck* does not bar claims alleging unconstitutional behavior or conditions. Officers who would commit neither wrong are well protected from needless litigation by the requirements of the PLRA, pleading standards, the qualified-immunity doctrine, and their own good behavior.

Under the Fifth Circuit's bewildering new standard, by contrast, a corrections officer could beat an already-subdued prisoner maliciously and then virtually assure immunity by falsifying accusations against the prisoner. That is because any charges the corrections officer writes up will be resolved in an informal and lightly documented disciplinary hearing adjudicated by prison staff with no legal training, during which the officer's culpability for excessive force is usually not at issue. Though data is scarce, an analysis in one state found that in 1996, "prisoners were found guilty of 91.3 percent of the misconduct charges that were lodged." Marjorie M. Van Ochten, *Prison Disciplinary Hearings: Enforcing the Rules Behind Bars*, 77 Mich. Bar J. 178, 180 (1998). It is a dangerous analytical mistake for courts to treat such results as precluding a separate determination of whether the *officer* engaged in excessive force, which is not an issue that prison disciplinary hearings exist to determine.

To apply *Heck* to excessive-force claims—and conditions-of-confinement claims more generally—thus risks immunizing bad-apple prison employees against the accountability demanded by Section 1983. This problem has been acknowledged by the concurring judge below. As Judge Willett noted in another case, one of the Respondents here, Captain John Wells, has been a defendant in at least *four* federal Section 1983 lawsuits alleging that he used excessive force, including (as here) through the unlawful use of chemical agents and vicious beatings. See *Santos* v. *White*, 18 F.4th 472, 479 n.15 (5th Cir. 2021).

IV. The Fifth Circuit's Standard Could Effectively Abolish Many Meritorious Section 1983 Claims.

Section 1983 excessive-force claims will be significantly imperiled if, as the Fifth Circuit held, a Section 1983 claim that in no way challenges the disciplinary proceeding itself or attempts to alter the length of a plaintiff's sentence could be barred by *Heck* on the basis of some *hypothetical future* inconsistency between (a) a prison board's conclusion that a prisoner was subject to discipline under the prison rules and (b) a federal court's unrelated finding that an officer used unconstitutional excessive force against the prisoner. This result has no basis in the text or legislative history of the statute, which has long supported excessive-force claims by prisoners otherwise subject to discipline.

These issues are of particular concern to OJPC, which has represented numerous incarcerated plaintiffs in Section 1983 actions, including several who alleged excessive force in situations where they faced discipline. For example, in *Mitchell* v. *Craft*, No.

1:12-cv-943, 2015 U.S. Dist. LEXIS 104560 (S.D. Ohio Aug. 10, 2015)
, OJPC represented a detainee, disciplined for assault, who alleged excessive force by corrections officers. The court held that these claims were not *Heck*-barred, and noted that "even if Plaintiff were the aggressor in the incident, *Heck* does not bar a § 1983 claim alleging that excessive force was used **after** the apparent need for force had subsided." *Id.* at *11–12 (citing decisions by Fourth, Sixth, and Seventh Circuits). Similar facts were at issue in OJPC's representation in *Givens* v. *McClintic*, No. 1:11-cv-558, 2013 U.S. Dist. LEXIS 158364, at *20-21 (S.D. Ohio Nov. 5, 2013), in which the disciplined plaintiff's excessive-force claims survived a defense motion for summary judgment.

Notably, nothing in the Fifth Circuit's reasoning cabins this danger to the excessive-force context. If a prisoner violates prison policies (for example, by engaging in a physical altercation) and comes to need medical attention as a result, the Fifth Circuit's ruling would presumably allow courts to use *Heck* as a bar against any subsequent deliberate-indifference claim by that prisoner because there could *potentially* be some attenuated factual overlap between (a) whether the prisoner violated prison policies and (b) whether corrections officers should have provided medical care once that prisoner claimed to need it. In another OJPC case, *Stamper* v. *Shank*, No. 13-cv-516 (S.D. Ohio)
, the plaintiff's estate sued regarding his suicide due to debilitating pain for which the prison doctor had (as a disciplinary measure, following a related disciplinary violation) refused him medication. Such allegations clearly are not properly *Heck*-barred, and yet could be excluded after a misbegotten "fact-specific

analysis" as suggested by the Fifth Circuit. This ambiguity could result in an almost complete negation of prisoners' constitutional and statutory rights to challenge the conditions of their confinement.

If a prisoner's complaint challenges how he was treated while serving his sentence, without challenging the validity or length of that sentence, the rule should be simple: these claims are not *Heck*-barred. Such a bright-line rule would be simpler, more administrable, truer to congressional intent, and less likely to result in inconsistent adjudications among federal courts that could permit continued violations of prisoners' most basic rights.

CONCLUSION

For the reasons set forth above, the Court should grant the petition.

Respectfully submitted,

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