

No. 23-186

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In the Supreme Court of the United States

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NEVADA DEPARTMENT OF CORRECTIONS, ET AL.,

*Petitioners,*

v.

PHILIP ROY GALANTI,

*Respondent.*

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

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**BRIEF IN OPPOSITION**

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**QUESTION PRESENTED**

Under *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), prisoners may not bring a claim for damages pursuant to 42 U.S.C. § 1983 if it would necessarily imply the invalidity of their original conviction or sentence, unless the underlying judgment has been expunged, reversed, or otherwise invalidated, which is known as the favorable termination requirement. The circuits are split as to whether an exception to this requirement exists for former prisoners who can no longer bring a habeas action to obtain favorable termination and, if so, under what circumstances. However, neither *Heck* nor any exception to *Heck* is at issue when a § 1983 claim “threatens no consequence for the conviction or the duration of [the] sentence.” *Muhammad v. Close*, 540 U.S. 749, 751 (2004) (per curiam).

The question presented is: Does *Heck* apply to Respondent’s § 1983 claim for damages based on his overdetention in prison beyond the lawful expiration of his sentence, when the claim does not imply the invalidity of his conviction or duration of his sentence?

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## INTRODUCTION

While the circuits are split as to whether *Heck*'s favorable termination requirement has exceptions (Pet. at 1), this case is an unsuitable candidate for resolving that split because *Heck* does not apply to respondent Philip Galanti's claim in the first instance. *Heck* applies to a prisoner's § 1983 claim only when success on the claim would "necessarily imply" the invalidity of the prisoner's conviction or sentence. *Nelson v. Campbell*, 541 U.S. 637, 646–47 (2004) (quoting *Heck*, 512 U.S. at 487). A "sentence" in the *Heck* context refers to "substantive determinations as to the length of confinement" that are made by the state court or by prison officials. *Wilkinson v. Dotson*, 544 U.S. 74, 83–84 (2005).

Here, Mr. Galanti's § 1983 claim for overdetention in custody past the proper expiration of his sentence does not challenge any substantive determinations about the length of his sentence made by a Nevada state court or by Nevada prison officials. Mr. Galanti does not claim that his sentence should have been shorter, but that prison officials kept him in custody beyond his sentence. His overdetention claim centers on prison officials' intentional delay in administering the credits, which led to his continued custody, without legal authority, after he served his full sentence. Because his claim does not imply the invalidity of the duration of his sentence, or of his underlying conviction, *Heck* has no application.

Even if this Court were to decide that *Heck* applies, the Ninth Circuit's narrow exception to the favorable termination requirement does not implicate the broad concerns raised by Petitioners. The exception is limited to prisoners who have been released from

custody and have no avenue for otherwise challenging “loss of good-time credits, revocation of parole or similar matters.” *Nonnette v. Small*, 316 F.3d 872, 876 n.7 (9th Cir. 2002). Thus, Petitioners’ concern over former prisoners using a § 1983 claim to collaterally attack a state court conviction (Pet. at 2, 16), which might occur in other circuits, has no relevance in Nevada because the Ninth Circuit applies *Heck*’s favorable termination requirement to any claim challenging the conviction, when habeas remains available for such claims.

The Ninth Circuit’s limited exception to *Heck* is consistent with the view shared by a majority of this Court in *Spencer v. Kemna*, 523 U.S. 1 (1998), that *Heck*’s favorable termination rule does not apply when it would be impossible for the former prisoner to obtain favorable termination through habeas. Five justices, in the concurring and dissenting opinions in *Spencer*, recognized the *Heck* exception that the Ninth Circuit has followed.

Thus, the petition should be denied.

### STATEMENT OF THE CASE

1. While an inmate at High Desert State Prison in Nevada, Mr. Galanti earned a high school diploma and vocational certificates entitling him to 150 days’ worth of time credits off the end of his maximum sentence. C.A. Supplemental Excerpts of Record (SER) at 36, 40–41, 98–101. Mr. Galanti earned these credits near the end of his full prison term and, thus, became eligible for imminent, if not immediate, release based on the credits. *Id.* at 41.

Prison officials knew the importance of making prompt credit deductions to prevent detention past a

prisoner's correct release date. SER at 46; NDOC Admin. Regs. § 803.01(16) ("Credit awards which create a situation of immediate release will be processed as expeditiously as possible on a case by case basis."). Yet despite repeated complaints from Mr. Galanti about the inordinate delay, prison officials failed to apply the credits in a timely manner. SER at 46.

Further, prison officials denied Mr. Galanti and other inmates copies of their credit and sentence reports, effectively depriving them of the ability to verify whether prison staff timely applied the earned credits. SER at 43–44. Prison officials had a history of refusing to give sex offender inmates like Mr. Galanti the credits they were due, and Mr. Galanti attributes the delay in his own credits to the ongoing mistreatment of sex offender inmates. *Id.* at 45–46.

Because of inaction by prison officials, Mr. Galanti suffered detention past the lawful expiration of his sentence, when he should have been released from prison and free from parole. SER at 44–45, 64.

2. On June 18, 2019, Mr. Galanti brought an action against Petitioners under § 1983. SER at 13. As is relevant here, he alleged that prison officials deprived him of his due process rights by failing to timely apply his earned credits to his maximum sentence and by refusing to provide him with a copy of his credit and sentence reports. *Id.* at 41–42.

Based on a misreading of the claims, Petitioners moved to dismiss the complaint for failure to state a claim. SER at 52. Petitioners construed the complaint as alleging that Mr. Galanti should have been granted earlier parole and argued that inmates have no liberty

interest in eligibility for parole. SER at 56. Petitioners also argued two alternative grounds for dismissal: (1) this Court's decision in *Heck* barred Mr. Galanti's § 1983 claim; and (2) qualified immunity shielded them from liability. *Id.* at 55–59. The district court granted Petitioners' motion to dismiss based on failure to state a claim and did not reach the *Heck* and qualified immunity issues. *Id.* at 5–11.

3. On appeal, the Ninth Circuit appointed the UC Law Appellate Project (formerly the UC Hastings Appellate Project) as pro bono counsel to represent Mr. Galanti. C.A. Dkt. No. 31. Through counsel, Mr. Galanti argued that he sufficiently stated a claim based on prison officials' failure to timely deduct his earned credits from his maximum sentence and that he had a cognizable liberty interest in the deduction of those credits. Petitioners' Appendix (App.) at 7. Further, once Mr. Galanti's maximum sentence expired due to the credits, he could no longer be held in prison or on parole under Nevada state law. C.A. Dkt. No. 41, at 15–16; Nev. Rev. Stat. § 213.1099(3) (parole ends when the maximum sentence expires).

Mr. Galanti also argued that his claims were outside the purview of *Heck* and, in any event, they would fall within the exception to *Heck* articulated by the Ninth Circuit in *Nonnette*, 316 F.3d at 876–78 & nn.5–6. App. at 7; C.A. Dkt. No. 41, at 36–37. *Nonnette* allows a § 1983 claim challenging the “loss of good-time credits, revocation of parole or similar matters” when a plaintiff has been released from prison and can no longer bring a habeas petition to address those types of issues. *Nonnette*, 316 F.3d at 876, 878 n.7.

Petitioners' answering brief did not raise any argument regarding the application of *Heck* or the *Heck* exception in *Nonnette*. C.A. Dkt. No. 44. However, at oral argument, counsel for Petitioners revived the *Heck* argument from prior briefing. *See* C.A. Dkt. 17, at 12–14.

Without addressing Mr. Galanti's argument that *Heck* was inapplicable, the Ninth Circuit determined that the *Nonnette* exception to *Heck* applied to his claim. App. at 10–11. On the merits, the court determined that Mr. Galanti sufficiently stated a claim for relief based on the failure of prison officials to timely apply his earned credits, and the court reversed the dismissal of the complaint as to that claim. App. at 14. Petitioners did not seek panel rehearing or rehearing en banc.

## **REASONS FOR DENYING THE PETITION**

### **I. *Heck* does not properly apply to this case.**

This case is a poor, if not improper, vehicle for resolving whether *Heck* applies to former prisoners who cannot seek relief through habeas because *Heck* does not apply to Mr. Galanti's claim at all. Where, as here, a plaintiff seeks compensation for being kept in custody *beyond* the lawful expiration of his sentence, his claim does not implicate the Court's central concern in *Heck*: it does not challenge the fact of his conviction or the duration of his sentence. The Ninth Circuit nonetheless applied *Heck*, and then a *Heck* exception, to Mr. Galanti's claims. If this Court were to grant review, it would have to resolve an issue that the Ninth Circuit avoided: whether *Heck* applies in the first place. This Court's prior decisions compel the conclusion that *Heck* is inapplicable.

1. *Heck* does not apply to all § 1983 claims that seek damages for prison officials' unconstitutional actions. *Dotson*, 544 U.S. at 83–84; *Nelson*, 541 U.S. at 646–47; *Muhammad*, 540 U.S. at 751–52. Rather, it applies only when the claims “necessarily imply” the invalidity of the plaintiff’s conviction or sentence, in which case the claims cannot proceed “unless and until the inmate obtains favorable termination of a state, or federal habeas, challenge to his conviction or sentence.” *Nelson*, 541 U.S. at 646 (quoting *Heck*, 512 U.S. at 487).

Further, a challenge to a person’s “sentence,” for purposes of *Heck*, refers to a challenge regarding a court’s or prison official’s “substantive determinations as to the length of confinement.” *Dotson*, 544 U.S. at 83–84. Thus, § 1983 claims that challenge substantive decisions made by prison officials to revoke or deny good-time credits, which affect the duration of the prisoner’s sentence, fall within the purview of *Heck*. *Edwards v. Balisok*, 520 U.S. 641, 643–44, 646–48 (1997). However, *Heck* has no application to § 1983 claims that challenge decisions or actions by prison officials if those decisions or actions had no substantive effect on the sentence. *Muhammad*, 540 U.S. at 754–55.

The favorable termination requirement in *Heck* is specific to the type of harm sought to be remedied when a § 1983 claim collaterally attacks a sentence or a conviction. The requirement comes from tort law, which is the touchstone for § 1983 claims. *Thompson v. Clark*, 596 U.S. 36, 42 (2022). In enacting § 1983, Congress “created a species of federal tort liability for individuals to sue state and local officers for

deprivations of constitutional rights.” *Thompson*, 596 U.S. at 43. Thus, “[t]o determine the elements of a constitutional claim under § 1983,” this Court “look[s] to the elements of the most analogous tort as of 1871 when § 1983 was enacted, so long as doing so is consistent with ‘the values and purposes of the constitutional right at issue.’” *Id.* (citations omitted).

The *Heck* majority concluded that when a § 1983 claim for damages implies the invalidity of a conviction or sentence, the closest analogy is a malicious prosecution claim, which permits an award of damages based on a wrongful conviction or sentence that is imposed “pursuant to legal process.” *Heck*, 512 U.S. at 484. To sustain a malicious prosecution claim, a plaintiff must allege and prove that the prior criminal proceeding was ultimately terminated in his favor. *Id.* at 484. Accordingly, *Heck* imposed the same favorable termination requirement on § 1983 claims that necessarily imply the invalidity of the plaintiff’s conviction or sentence. *Id.* at 486–87.

The favorable termination requirement serves several purposes that justify its use in the § 1983 context, *Thompson*, 596 U.S. at 44, although these purposes leave room for exceptions. First, applying the favorable termination requirement “avoids parallel litigation in civil and criminal proceedings over the issues of probable cause and guilt.” *Id.* Second, “it precludes inconsistent civil and criminal judgments where a claimant could succeed in the tort action after having been convicted in the criminal case.” *Id.* And third, “it prevents civil suits from being improperly used as collateral attacks on criminal proceedings.” *Id.*

2. An overdetention claim implicates none of the concerns addressed in *Heck*, and none of the reasons for the favorable termination requirement, because the claim accepts the validity of the conviction and the sentence imposed. It challenges the continued detention of the plaintiff *beyond* the proper expiration of the sentence. In this way, an overdetention claim is unlike a challenge to the revocation or denial of good-time credits, which does imply the invalidity of prison officials' substantive decisions about the length of confinement. *See Balisok*, 520 U.S. at 646–48.

Because the type of harm sought to be remedied in an overdetention claim differs from a *Heck* claim, a more analogous tort must be used: the tort of false imprisonment. *See Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980). A claim for false imprisonment is based on “detention *without legal process*,” whereas a claim for malicious prosecution, as in *Heck*, is based on detention by the “*wrongful institution* of legal process” or the “*wrongful use*” of legal process. *Wallace v. Kato*, 549 U.S. 384, 389–90 (2007). In an overdetention claim, the harm alleged is that prison officials held the plaintiff in custody, *without legal authority or process*, past the lawful expiration of the sentence. *Douthit*, 619 F.2d at 532. Thus, an overdetention claim functions like a false imprisonment claim, not a malicious prosecution claim.

A false imprisonment claim requires only three elements: “(1) intent to confine, (2) acts resulting in confinement, and (3) consciousness of the victim of confinement or resulting harm.” *Douthit*, 619 F.2d at 532 (citations omitted); Restatement Second of Torts § 35 (1965); 1 Francis Hilliard, *The Law of Torts or Private Wrongs* § 1a at 195 (1866). Thus, there is no

tort law basis to import the favorable termination requirement into an overdetention claim. Further, it would be illogical to do so because overdetention claims are based on custody *without* legal authority; there is no legal judgment allowing the overdetention that could be favorably overturned or that is being collaterally challenged.

Only the Fifth Circuit has directly addressed whether *Heck* applies to overdetention claims and has twice concluded that it does not. *Hicks v. LeBlanc*, 81 F.4th 497, 509 (5th Cir. 2023) (Plaintiff’s “claims challenge his overdetention, and by [their] terms do not implicate the fact or duration of his confinement.”); *Crittendon v. LeBlanc*, 37 F.4th 177, 190–91 (5th Cir. 2022) (“[T]he parties agree that Plaintiffs were held in excess of their sentences and Plaintiffs do not challenge their underlying conviction nor the length of their sentence.”). The Ninth Circuit has not addressed the issue and, in prior overdetention cases, *Heck*’s application to such claims was never even suggested. *See, e.g., Brass v. Cnty. of Los Angeles*, 328 F.3d 1192 (9th Cir. 2003); *Streit v. Cnty. of Los Angeles*, 236 F.3d 552 (9th Cir. 2001); *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en banc).

In sum, § 1983 overdetention claims fall outside the purview of *Heck* because they do not imply the invalidity of the conviction or sentence.

3. Accordingly, Mr. Galanti’s § 1983 overdetention claim falls outside the purview of *Heck*. Petitioners acknowledge that the nature of Mr. Galanti’s claim is based on the failure of prison officials “*to timely apply*” the earned credits—it is not based on a substantive decision by the prison to revoke or deny the credits. Pet. at 8 (emphasis added). Specifically, Mr. Galanti’s

complaint alleges that despite his repeated complaints that he was entitled to immediate release based on his earned credits, prison officials failed to timely report and apply 150 days' worth of credits. *See* Ct. App. Dkt. 41 at pp. 1, 7–8. Officials engaged in this delay knowing that it would keep Mr. Galanti in custody past the lawful expiration of his sentence. Ct. App. Dkt. 41 at pp. 7–8.

Based on Mr. Galanti's pleadings, the factfinding for his claim will center on what actions the officials took to apply the credits; when they took those actions; and what reasons explain the delay. This inquiry focuses on the prison officials' administrative steps, not any "substantive determinations as to the length of confinement." *Dotson*, 544 U.S. at 83. As a result, success on Mr. Galanti's claim would not imply the invalidity of the duration of his sentence.

In addition, Mr. Galanti's complaint alleges a separate and distinct § 1983 claim to which *Heck* is inapplicable. Mr. Galanti alleges that prison officials violated his due process rights by denying him access to his credit and sentence reports. *See* Ct. App. Dkt. 41 at p. 8. Mr. Galanti requested these reports to substantiate that he was being held past the lawful expiration of his sentence, but officials refused to provide them. *Id.* This distinct claim also falls outside the purview of *Heck* because it does not implicate the validity of his conviction or sentence. *See* Ct. App. Dkt. 41 at p. 8.

Thus, this case is an unsuitable vehicle to address exceptions to *Heck* because *Heck* does not apply to Mr. Galanti's claims in the first instance.

**II. Even if *Heck* applies, the Ninth Circuit’s narrow exception affects few cases and avoids Petitioners’ broad concerns.**

Mr. Galanti’s case is also a poor vehicle for addressing the circuit split even if *Heck* applies because it involves the narrowest grounds on which courts have recognized an exception and does not implicate the broader and more fundamental concerns raised in the petition about collateral attacks on criminal judgments. *See* Pet. 1–2, 16–17.

The Ninth Circuit recognizes a very limited exception to *Heck*’s favorable termination requirement when a plaintiff who is no longer in custody brings a § 1983 claim challenging the “loss of good-time credits, revocation of parole or similar matters.” App. at 9 (quoting *Nonnette*, 316 F.3d at 878 n.7). The exception applies only when habeas relief is unavailable through no fault of the plaintiff. *Compare* App. at 9–10 (exception applies where plaintiff lacked sufficient time to pursue habeas relief while incarcerated), *with* *Guerrero v. Gates*, 442 F.3d 697, 705 (9th Cir. 2006) (exception does not apply where plaintiff failed to “timely pursue[] appropriate relief”).

Some plaintiffs have challenged the Ninth Circuit’s *Heck* exception as too narrow because it does not permit § 1983 claims that would imply the invalidity of the underlying conviction or original sentence; such claims are still subject to *Heck*’s favorable termination requirement. *See* *Arrington v. City of Los Angeles, et al.*, 2022 WL 2954785 (U.S.), at \*14; *see also* App. at 9; *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1190–92 (9th Cir. 2015) (explaining that the *Nonnette* exception to *Heck* does not apply to a former inmate’s § 1983 claim challenging a warrantless entry that would

necessarily imply the invalidity of his conviction, if successful). Mr. Galanti has no personal stake in expanding the narrow *Heck* exception recognized in *Nonnette* or in making it available to “challenge the validity of [a] conviction.” *See* Pet. at 13.

Likewise, the Ninth Circuit’s narrow exception saves Nevada from collateral challenges to the validity of its state court convictions and sentences by way of § 1983 claims. The concerns that Petitioners express about ensuring the finality of state court judgments (Pet. at 1–2, 16–17) are irrelevant in Nevada because Nevada prisoners must satisfy the favorable termination requirement to sustain any claim that affects a state court judgment.

And as for the cases that do come within the Ninth Circuit’s narrow exception to *Heck*, it is unclear that they arise with any frequency. Although Petitioners allude to the prevalence of good-time credits in several states, Petitioners do not assert that § 1983 claims concerning credits arise often, either in Nevada or in other states. *See* Pet. at 14.

The Ninth Circuit’s *Heck* exception is very limited and does not implicate the broader concerns raised in the petition.

**III. The Ninth Circuit’s narrow exception is consistent with this Court’s decisions that address *Heck* and its limits.**

Finally, the Ninth Circuit’s decision in this case does not conflict with *Heck* or any of this Court’s decisions addressing the scope of *Heck*. In *Heck*, a prisoner brought a § 1983 claim challenging the investigation that led to his conviction. 512 U.S. at 478–79. As discussed above, the Court analogized the

§ 1983 claim to a malicious prosecution claim and imposed the favorable termination requirement. *Id.* at 486–87.

*Heck* did not present, and thus this Court did not decide, the issue of whether a former prisoner who has no opportunity to bring a habeas corpus petition to obtain favorable termination can bring a § 1983 claim. 512 U.S. at 478. However, the concurrence of four justices anticipated that a § 1983 claim would be available in such instances. *Id.* at 498–501 (Souter, J., concurring).

The concurrence noted that while the favorable termination requirement imported from tort law serves as a useful “way to avoid collisions at the intersection of habeas and § 1983,” *id.* at 498, any analogy to tort law in the § 1983 context is imperfect, *id.* at 492–503, and the tort law analogy cannot be used in a manner contrary to the “history or purpose” of § 1983 actions, *id.* at 492 (citations omitted). Since *Heck*, this Court has continued to emphasize that tort law analogies used for defining the contours and elements of a § 1983 claim can be adopted only to the extent that “doing so is consistent with ‘the values and purpose of the constitutional right at issue.’” *Thompson*, 596 U.S. at 43 (citations omitted); *see also Nieves v. Bartlett*, 587 U.S. \_\_\_, 139 S. Ct. 1715, 1726–27 (2019) (creating an exception to the tort law rule imported into the § 1983 context).

The scope of the *Heck* favorable termination requirement and its limits arose again in *Spencer*. The prisoner in *Spencer* challenged his revocation of parole in a habeas petition, but the trial court dismissed the petition as moot when he was released from custody during the proceedings. 523 U.S. at 3–6. The now

former prisoner argued that his habeas petition should be allowed to proceed because *Heck* required that he obtain a favorable termination before bringing a § 1983 claim and dismissing his habeas petition as moot would thus foreclose a § 1983 claim. *Id.* at 17. The majority decision did not directly address whether an exception to the favorable termination requirement existed for plaintiffs who have no avenue for satisfying it, but the decision could be read as rejecting such an exception. *Id.*; see also *Nonnette*, 316 F.3d at 876.

However, two concurring opinions and a dissenting opinion—representing the collective view of five justices—made clear that there would be an exception. *Spencer*, 523 U.S. at 21 (Souter, J., concurring); *id.* at 21–22 (Ginsburg, J., concurring); *id.* at 25 n.8 (Stevens, J., dissenting). The first concurrence explained that “a former prisoner, no longer ‘in custody,’ may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy.” *Spencer*, 523 U.S. at 21. The other concurrence and the dissent agreed. *Id.* at 21–22 (Ginsburg, J., concurring) (“Individuals without recourse to the habeas statute \* \* \* fit within § 1983’s ‘broad reach’” (citations omitted)); *id.* at 25 n.8 (Stevens, J., dissenting) (“Given the Court’s holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear \* \* \* that he may bring an action under 42 U.S.C. § 1983.”).

Thus, the Ninth Circuit’s limited exception to *Heck*’s favorable termination requirement is consistent with the view shared by the majority of this Court in *Spencer*. It allows former prisoners who have

no avenue for habeas relief, through no fault of their own, to pursue a § 1983 claim. App. 10–11. However, it does not allow challenges to an underlying conviction when the former prisoners “continue to be able to challenge their underlying convictions in habeas after their release.” *Id.* at 9. This exception to the tort law favorable termination requirement is consistent with the history and purpose of § 1983 actions and the constitutional rights at issue. See *Thompson*, 596 U.S. at 42–43; *Nieves*, 139 S. Ct. at 1726–27.

### CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,  
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