

No. 24-993

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**In the Supreme Court of the United States**

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GABRIEL OLIVIER,

*Petitioner,*

*v.*

CITY OF BRANDON, MISSISSIPPI, ET AL.,

*Respondents.*

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*On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit*

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**BRIEF OF THE MANHATTAN INSTITUTE  
AS AMICUS CURIAE  
SUPPORTING PETITIONER**

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## QUESTIONS PRESENTED

Gabriel Olivier is a Christian who feels called to share the gospel with his fellow citizens. After being arrested and fined for violating an ordinance targeting “protests” outside a public amphitheater, Olivier brought a § 1983 suit under the First and Fourteenth Amendments to declare the ordinance unconstitutional and enjoin its enforcement against him in the future. The Fifth Circuit, applying its precedent construing this Court’s decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), held that Olivier’s prior conviction barred his § 1983 suit because even the prospective relief it seeks would necessarily undermine his prior conviction. The Fifth Circuit acknowledged the “friction” between its decision and those of this Court and other circuits. Over vigorous dissents, the Fifth Circuit denied rehearing en banc by one vote.

The questions presented are:

1. Whether, as the Fifth Circuit holds in conflict with the Ninth and Tenth Circuits, *Heck v. Humphrey* bars § 1983 claims seeking purely prospective relief where the plaintiff has been punished before under the law challenged as unconstitutional.
2. Whether, as the Fifth Circuit and at least four others hold in conflict with five other circuits, *Heck v. Humphrey* bars § 1983 claims by plaintiffs even where they never had access to federal habeas relief.

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Manhattan Institute is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. It has historically sponsored scholarship and filed briefs opposing regulations that either chill or compel speech, as well as those that insulate government actors from legal accountability. This case interests MI because it involves a seemingly arbitrary denial of the ability to challenge an unconstitutional speech restriction.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner Gabriel Olivier, an evangelical Christian, was convicted of violating a city ordinance for engaging in religious speech in front of a public amphitheater. Knowing that he would continue to speak and would, thus, be subject to future enforcement, Olivier sued under 42 U.S.C. § 1983. Olivier claimed that future enforcement of the city ordinance would violate his First and Fourteenth Amendment Rights. Accordingly, Olivier sought damages and a preliminary injunction against future enforcement. The district court dismissed his claim as noncognizable under the standard this Court established in *Heck v. Humphrey*, 512 U.S. 477 (1994). The Fifth Circuit affirmed, finding that Olivier had failed to meet *Heck*'s favorable-termination bar and that his claim "necessarily implied" the invalidity of his prior conviction.

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<sup>1</sup> Rule 37 statement: Counsel for both parties were timely notified of *amicus*'s intent to file this brief. No counsel for any party authored this brief in any part; nobody other than *amicus* made a monetary contribution to fund its preparation or submission.

*Heck* established that a § 1983 suit is not cognizable if the plaintiff fails to show that his prior conviction was favorably terminated or if the relief sought “necessarily implies” the conviction’s invalidity. This Court has since clarified that *Heck*’s bar applies to claims for damages and declaratory judgments that directly challenge the underlying basis of a conviction. It has not definitively ruled, however, on whether *Heck* also bars claims for prospective relief. Dicta in cases such as *Edwards v. Balisok*, 520 U.S. 641 (1997), alludes to an exception to the *Heck* bar for prospective relief as it “ordinarily” would not necessarily imply the invalidity of the underlying conviction. But this exception has never been definitively established.

The resulting ambiguity has led to a circuit split. *Heck* underscores the importance of common law principles, specifically the finality and validity of criminal convictions. But the extent to which these principles—and *Heck* itself—should be broadly or narrowly applied remains unsettled. Some circuits, such as the Fifth Circuit here, adopt a broad approach, holding that prospective § 1983 claims “necessarily imply” the invalidity of a prior conviction. That court extends *Heck*’s basic principles beyond what was originally stated in *Heck*. In contrast, the Ninth and Eleventh Circuits take a narrower view, interpreting *Heck* as primarily protecting backward-looking common-law principles rather than barring challenges to future enforcement. In these circuits, allowing claims for prospective relief does not undermine this Court’s position in *Heck*.

The absence of a clearly defined standard allows for misinterpretation. Case law grounded in additional and equally important common-law principles suggests that *Heck*’s restriction on claims functioning as

collateral attacks on past convictions applies solely to requests for backward-looking relief. Conversely, claims seeking injunctions against future enforcement do not serve as collateral attacks on past convictions. Courts, like the one below, that interpret *Heck*'s implications broadly, fail to recognize that distinction.

This Court should grant cert. and establish once and for all that § 1983 claims seeking prospective relief do not inherently imply the invalidity of past convictions and are, therefore, permissible.

## ARGUMENT

### I. ALTHOUGH *HECK* ESTABLISHED A “CLEARLY ENVISIONED” STANDARD FOR PROTECTING RETROSPECTIVE COMMON-LAW PRINCIPLES, ITS AMBIGUOUS APPLICATION TO PROSPECTIVE RELIEF HAS LED TO A CIRCUIT SPLIT

In *Heck v Humphrey*, this Court held that a plaintiff's claim for damages under 42 U.S.C. § 1983 is not cognizable if it would necessarily imply the invalidity of their conviction or sentence. 512 U.S. 477 (1994). To recover damages for an allegedly unconstitutional conviction, the plaintiff must show that the conviction or sentence has been reversed, expunged, or invalidated by a writ of *habeas corpus*. *Id.* at 487. A federal court must assess two factors before barring a § 1983 suit: (1) whether the plaintiff's conviction or sentence remains intact and (2) whether a judgment in the plaintiff's favor would necessarily imply the conviction or sentence's invalidity. *Id.* If the plaintiff can establish either that the conviction has been overturned or that

a favorable outcome would not effectively invalidate it, the claim may proceed. *Id.*

*Heck*'s two-step inquiry is rooted in common-law principles. To uphold the doctrines of validity and finality, the Court closed a loophole in § 1983 that could have undermined criminal procedure. *See Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). Allowing defendants to bypass the rigorous habeas corpus process by attacking a conviction through a § 1983 claim risked doctrinal conflict. *Id.*; *Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005). Thus, § 1983 itself must exclude claims that fall within "the core of habeas corpus." *Wilkinson*, 544 U.S. at 79. Reserving habeas review as the exclusive means for challenging convictions preserves basic common-law principles. *See Preiser*, 411 U.S. at 500; *McDonough v. Smith*, 588 U.S. 109, 118 (2019).

Yet these principles were incomplete. In *Heck*, the Court acknowledged that, even if a prisoner were not directly challenging his conviction, a § 1983 damages claim founded on a theory of tort liability could still serve as a means for collateral attack. *See Heck*, 512 U.S. at 485. To succeed under § 1983, a plaintiff must show that his conviction resulted in a violation of constitutional rights. *See id.*; *see also* 42 U.S.C. § 1983. Proving the conviction's invalidity is often inherent to the claim, effectively mirroring the collateral attack the Court previously rejected. *See Preiser*, 411 U.S. at 489; *Heck*, 512 U.S. at 485 (This Court . . . has generally declined to expand opportunities for collateral attack."). This loophole not only threatened validity and finality but also the common-law principle barring tort claims from undermining criminal judgments. *Heck*, 512 U.S. at 486. By imposing a strict favorable-termination requirement for all § 1983 claims—not just



those directly contesting a conviction—the Court established a clear standard grounded in both habeas and tort law. *Id.* at 487.

Or so the Court thought. Like many standards, clarity becomes obscured through the lens of specific application. Whether a suit necessarily implies an abrogation of those long-held common-law principles has been a point of friction since *Heck* for lower courts. In *Edwards v. Balisok*, confusion over Heck’s “clearly envisioned” standard led the Court to clarify that a § 1983 damages claim based on procedural defects in a disciplinary hearing, if proven, would necessarily imply the invalidity of the punishment. 520 U.S. 641, 646 (1997). The Court later refined *Edwards*’s holding in *Wilkinson*, shifting focus to the nature of the claim. *Wilkinson*, 544 U.S. at 75. Unlike in *Edwards*, the plaintiffs in *Wilkinson* did not seek immediate invalidation or release. Instead, their claims, if successful, would only grant a new parole-eligibility review—potentially accelerating parole consideration but not necessarily invalidating their original convictions. *Id.* Notably, the Court stated that the plaintiffs’ claims for injunctions against future proceedings containing similar procedural defects are “yet more distant from that core” of common-law principles protected in *Heck*. *Id.*

How distant from the core principles “clearly envisioned” by *Heck* a plaintiff’s § 1983 claim for future relief may be is also an unresolved point of tension. Whether *Heck*’s favorable-termination rule, as interpreted in *Edwards* and *Wilkinson*, also bars claims for future relief continues to divide the circuits. The Fifth Circuit has taken a broader approach, holding that when a § 1983 claim for prospective relief is “so intertwined with a request for damages,” it necessarily

implies the validity of the underlying conviction. *Clarke v. Stalder*, 154 F.3d 186, 189 (5th Cir. 1998). While later recognizing that *Heck* may not categorically preclude claims for future relief, the Fifth Circuit, in attempt to square the circle, concluded that prospective injunctions may only be available if the future relief has a mere “indirect impact” and does not challenge the constitutionality of the underlying conviction. *See Wilson v. Midland County*, 116 F.4th 384, 398 n.5 (5th Cir. 2024) (noting that “a suit seeking prospective relief does not implicate *Heck*’s favorable termination requirement”); *Clarke* 154 F.3d at 189 (distinguishing prospective relief that may only have an “indirect impact” on the conviction); *Olivier v. City of Brandon*, 2023 WL 5500223 at \*5 (5th Cir. Aug. 25, 2023) (restating that an indirect challenge is different from one that seeks to question the constitutionality of the law that led to conviction). Favoring an expansive view of *Heck*’s protection of common-law principles, the Fifth Circuit has yet to define when a plaintiff’s claim for prospective § 1983 relief has a merely “indirect impact” and is thus cognizable.

In contrast, the Ninth Circuit however has made this determination. Keen to view *Heck*’s bar more narrowly, that court declined to apply it to requests for prospective injunctive relief. *Martin v. City of Boise*, 902 F.3d 1031, 1046 (9th Cir. 2018), *abrogated on the substance of the underlying claim*, *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024); *see also Huftile v. Miccio-Fonseca*, 410 F.3d 1136, 1141 (9th Cir. 2005). While recognizing *Heck*’s role in preserving finality and validity, the Ninth Circuit emphasized that these principles should not shield future prosecutions from challenge. *Martin*, 902 F.3d at 1046. Accordingly, it allowed § 1983 claims aimed at preventing enforcement

of city ordinances, even when plaintiffs had prior convictions under the same law.

The Eleventh Circuit has similarly interpreted *Heck* to permit § 1983 claims for prospective relief. *See Roberts v. Wilson*, 259 F. App'x 226, 228 (11th Cir. 2007) (finding that claims “seeking prospective relief, are properly brought under § 1983”). That court joined the Ninth Circuit in neither requiring an “indirect impact” analysis nor presuming that claims for prospective relief necessarily imply the invalidity of a prior conviction. Instead, it viewed *Heck* as a solely backward-looking doctrine that safeguards finality and validity but does not extend farther. *Id.*

The apparent uncertainty regarding the proper application of *Heck* to claims for prospective relief calls for the Court’s clarification. Must a court inquire into whether a claim has an “indirect impact” on the underlying conviction? Should the focus be on whether the prospective relief is “so intertwined” with a claim for damages that it essentially challenges the constitutionality of the law leading to the original conviction? Or do the Ninth and Eleventh Circuits offer the right approach, excluding most claims for prospective relief from *Heck*’s retrospective bar? This circuit split is more than a difference in interpretation. It reflects a fundamental disagreement over the reach of common-law principles.

The time is ripe for the Court to clarify how far the doctrines of finality and validity extend with respect to prospective § 1983 claims.

## II. *HECK*'S AMBIGUITY AND THE RESULTING CIRCUIT SPLIT HAVE LED TO MISAPPLICATIONS OF THIS COURT'S PRECEDENT

The Fifth Circuit's opinion below highlights *Heck*'s ambiguity and the resulting circuit split. Two unanswered questions appear evident. First is the issue of whether Olivier's suspended sentence even implicates *Heck* at all. He isn't in custody, so habeas relief is unavailable. Still, the court broadly extends *Heck*'s bar beyond the "core of habeas corpus" to noncustodial sentences, exemplifying its expansive interpretation of *Heck*'s "clearly envisioned" standard. *Olivier*, 2023 WL 5500223 at \*4; *see also Wilkinson*, 544 U.S. at 79; *Edwards*, 520 U.S. at 646. Second, the court applies *Heck*'s favorable termination bar to Olivier's claim for prospective relief. By ruling that his § 1983 claim for prospective relief "necessarily implies" the invalidity of his conviction, the court stretches *Heck*'s limited scope, transforming it from a backward-looking safeguard of common law principles into a shield against future prosecutions. *See McDonough*, 588 U.S. at 118 (stating that concerns for finality motivated the *Heck* court to prevent multiple lines of collateral attack on past criminal convictions) *but see Martin*, 902 F.3d at 1046 (finding that finality and validity are not implicated when the request is for future relief).

The Fifth Circuit's broad interpretation diverges from both its sister circuits and this Court's *dicta*. Although "ordinarily a prayer for prospective relief will not undermine *Heck*," the Fifth Circuit narrowed the scope of "ordinarily" and "prospective" to only those claims with an "indirect impact" on a past conviction. Compare *Edwards*, 520 U.S. at 648 ("Ordinarily, a prayer for such prospective relief will not 'necessarily

imply’ the invalidity of the previous loss of good-time credits.”), with *Olivier*, 2023 WL 5500223 at \*5 (distinguishing the prospective relief in *Edwards* as one that only had an “indirect impact” on the conviction). This ruling effectively prohibits § 1983 claims for prospective relief, regardless of how “ordinary” they are, as nearly all such claims would have more than an “indirect impact” on the original conviction.

Where this Court has held that claims merely opening the door to a new hearing do not necessarily undermine a prior sentence, the Fifth Circuit’s broad implication suggests that any suit seeking the opportunity for prospective future relief categorically implies the prior conviction’s invalidity. Compare *Wilkinson*, 544 U.S. at 82, with *Olivier* 2023 WL 5500223 at \*5 (citing the “friction” between Fifth Circuit and Supreme Court precedent here). And while sister circuits have recognized the clear distinction between prospective future relief and backward focused § 1983 claims for damages or declaratory judgments, the Fifth Circuit views all three types of claims as equally non-cognizable under *Heck*. See *Martin*, 902 F.3d at 1046; *Clarke* 154 F.3d at 189; *Olivier* 2023 WL 5500223 at \*5.

The Fifth Circuit’s consolidation of claims seeking declaratory judgments, damages, and prospective relief into one noncognizable category aims to uphold *Heck*’s core principles of finality and validity. But it need not reach so broadly to achieve this goal. *Heck*’s focus on finality and validity in criminal convictions was not a novel consideration; this Court had already weighed these factors when determining that new constitutional rules do not apply retroactively. *Teague v. Lane*, 489 U.S. 288, 310 (1989); see also *Edwards v. Vannoy*, 141 S.Ct. 1547, 1551–52 (2021).

This understanding raises a basic question: If landmark cases involving facial constitutional challenges effectively create prospective injunctions against enforcing unconstitutional ordinances—without invalidating prior convictions or undermining finality and validity—how can *Heck* justify barring similar prospective relief under the same logical circumstances?

It simply cannot. Constitutional case law distinguishes between forward-looking injunctions against future enforcement and backward-looking invalidation of convictions. See *Teague*, 489 U.S. at 310; *Edwards*, 141 S.Ct. at 1551. While claims for damages or declaratory relief by a convicted plaintiff inherently challenge a past conviction and are clearly barred by *Heck* unless favorably terminated, claims for prospective relief fall outside *Heck*'s scope. See *Martin*, 902 F.3d at 1046; *Clarke* 154 F.3d at 189; *Olivier* 2023 WL 5500223 at \*5. Because prospective injunctions do not apply retroactively and only prevent future enforcement, they do not affect a conviction's validity or finality. See *Edwards*, 520 U.S. at 648. By over-anticipating the potential impacts of allowing *Olivier*'s § 1983 claim for prospective relief to move forward, the Fifth Circuit misinterpreted *Heck* and applied its bar overly broadly. See *Olivier*, No. 22-60566 at \*10 (5th Cir. Nov. 14, 2024) (Oldham, J., dissental). A claim for prospective relief like *Olivier*'s, as recognized by other circuits, should be cognizable under § 1983.

## CONCLUSION

This case presents an important issue regarding whether prospective relief is barred by *Heck v Humphrey*. For the foregoing reasons, and those stated in the petition, the Court should grant certiorari.

Respectfully submitted,

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