No. 24-993

In the Supreme Court of the United States

GABRIEL OLIVIER,

Petitioner,

v.

CITY OF BRANDON, ET AL.,

Respondents.

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

BRIEF OF YOUNG AMERICA'S FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Young America's Foundation ("YAF") is a national nonprofit organization committed to ensuring that increasing numbers of young Americans understand and are inspired by the ideas of individual freedom, a strong national defense, free enterprise, and traditional values. YAF leads the Conservative Movement on campuses throughout the country by sponsoring campus lectures and other activities, which often results in conflict with university leaders who disagree with YAF's messages and ideas.

YAF's National Journalism Center trains budding journalists to be truth-seekers who are ethical and bold in exercising their First Amendment rights. Over the last 45 years, the Center has trained over 2,250 journalists to combat bias in the mainstream media. YAF also has a significant

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amici and their counsel made any monetary contribution intended to fun the preparation or submission of this brief. Counsel were timely notified of this brief as required by Supreme Court Rule 37.2.

interest in protecting those journalists' First Amendment rights.

YAF is alarmed at the far-reaching effect and lack of protection for claimants under the Fifth Circuit's expansion of the *Heck* bar. YAF's membership base consists of college students who regularly seek to exercise their free speech rights, and who because of limited finances, experience, and time are more likely to feel they have no choice but to plead guilty to a violation and pay a small fine than to fight a conviction. Under the holding below, this course of action would render the students unable to seek prospective injunctive relief against further encroachments on their First Amendment rights.

YAF files this brief out of concern for its members' ability to seek needed relief for First Amendment violations.

SUMMARY OF THE ARGUMENT

The Fifth Circuit's holding below presents a de facto broad new abstention doctrine that is inconsistent with other judicial doctrines that control the doors of the federal courthouse. Neither the *Rooker–Feldman* doctrine, nor claim preclusion, nor abstention doctrines block claimants' access to federal courts to raise issues distinct from those that a state court considered in a completed prior proceeding—especially when the federal claim contains a First Amendment constitutional challenge. In contrast, the Fifth Circuit's holding in *Olivier* closes the courthouse doors in exactly this situation. The Fifth Circuit's erroneous application of the bar that this Court stated in *Heck v. Humphrey*, 512 U.S. 477 (1994), abdicates federal courts' "virtually unflagging obligation" to adjudicate "cases and controversies" over which they hold jurisdiction.

Additionally, the original bar in *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973) and in *Heck* v. *Humphrey* recognized principles of statutory construction and thus attempted to harmonize Congress's expressed intent in two apparently conflicting statutes: the Civil Rights Act and the federal habeas statute. And the context of the original *Heck* bar counsels a restrained interpretation of what "necessarily impl[ies] the invalidity" of a conviction. The Fifth Circuit's interpretation of *Heck* fails to

respect principles of statutory interpretation and runs far beyond *Heck*'s context.

Because the basis for the Fifth Circuit's decision, and the decision itself, violate important constitutional principles and contradict case law, with far-reaching implications, the Supreme Court's intervention is necessary.

ARGUMENT

I. This Court should grant certiorari to address inconsistencies between the Fifth Circuit's holding and other judicial doctrines that control claimants' access to federal courts.

Federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them," including when state courts hold concurrent jurisdiction over the same matter. *Colo. River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817, (1976) (citing *England* v. *La. State Bd. of Med. Exam'rs*, 375 U.S. 411, 415 (1964); *McClellan* v. *Carland*, 217 U.S. 268, 281–82 (1910); *Cohens* v. *Virginia*, 19 U.S. 264 (1821)). Thus, generally, "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Id.* (quoting *McClellan*, 217 U.S. at 282) (citing *Donovan* v. *City of Dallas*, 377 U.S. 408 (1964)). Although several

doctrines require or permit federal courts to avoid adjudicating a claim related to a state action, the application of these doctrines is exceptionally narrow. *Id.*

In the decision below, the Fifth Circuit significantly expanded the rule of *Heck* v. *Humphrey*, 512 U.S. 477 (1994) to create in essence a new abstention doctrine. This extension of the *Heck* bar violates the principles of *City of Houston* v. *Hill*, 482 U.S. 451 (1987), which disapproves of abstention in First Amendment facial challenges to city ordinances such as the ordinance that Petitioner Gabriel Olivier seeks to address. The holding also ignores safeguards and limitations present in other doctrines that control claimants' ability to bring constitutional challenges in federal courts. Thus, this case presents important issues for this Court's review.

A. The Fifth Circuit's holding violates *City of Houston*'s proscription against abstention in First Amendment facial challenges.

Olivier initiated this federal case asserting that the City of Brandon's ordinance violates the First Amendment. Appx. 16a. Olivier petitioned the district court for "prospective injunctive relief . . . on grounds of facial unconstitutionality." Appx. 9a. This is exactly the type of adjudication from which this Court has

said federal courts should not abstain. *City of Houston*, 482 U.S. at 453, 467–68 (first quoting *Dombrowski* v. *Pfister*, 380 U.S. 479, 489–90 (1965); and then quoting *Zwickler* v. *Koota*, 389 U.S. 421 (1967)).

In *City of Houston*, 482 U.S. at 453, 455, the plaintiff brought a facial First Amendment challenge to a municipal ordinance. The City of Houston, as defendant, urged abstention on the grounds that the matter was better suited for state courts. *Id.* at 467. This Court rejected the abstention argument, noting that the municipal court that "regularly applied" the ordinance had a fair opportunity to limit the scope of the ordinance and failed to do so. *Id.* at 469–70. This Court held that "there is certainly no need for a federal court to abstain until state appellate courts have an opportunity to construe" a regularly-applied or unambiguous statute. *Id.* at 467, 469–70; *see also Stenberg* v. *Carhart*, 530 U.S. 914, 945 (2000) (confirming the *City of Houston* rule).

This Court further held that "forc[ing] the plaintiff who has commenced a federal action to suffer the delay of state-court proceedings might itself effect the impermissible chilling of the very constitutional right he seeks to protect." *City of Houston*, 482 U.S. at 467–68 (quoting *Zwickler*, 389 U.S. at 252). In so holding, this Court reconfirmed that "[a]bstention is . . . the exception and not the rule" and that

"abstention . . . is inappropriate" for "facial challenges based on the First Amendment." *Id.* In a more recent concurring opinion, Justice Sotomayor acknowledged the continuing validity of this rule, stating that "this Court has described abstention as particularly problematic where, as here, a challenge to a state statute rests on the First Amendment." *Expressions Hair Design* v. *Schneiderman*, 581 U.S. 37, 58 (2017) (Sotomayer, J., concurring) (citing *Virginia* v. *Am. Booksellers Assn., Inc.*, 484 U.S. 383, 396 (1988); *City of Houston*, 482 U.S. at 467–68).

The Fifth Circuit's decision to expand *Heck* is inconsistent with its obligation to decide cases and controversies over which it holds jurisdiction. *See Colo. River*, 424 U.S. at 817. It is also inconsistent with this Court's admonitions that abstention is an "exceptional" step. *See Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 73 (2013) (quoting *Colo. River*, 424 U.S. at 817). Allowing the Fifth Circuit to turn the *Heck* bar into a de facto broad new abstention doctrine—as it has in this case—will chill the First Amendment rights of many throughout that Circuit, including *amicus*'s members. This important matter thus warrants this Court's review.

B. The Fifth Circuit's application of *Heck* ignores guardrails present in *Rooker–Feldman*, claim preclusion, and abstention doctrines.

The *Rooker–Feldman* doctrine, claim preclusion, and various abstention doctrines govern interplay between federal and state courts. *Lance* v. *Dennis*, 546 U.S. 459, 463 (2006) (*Rooker–Feldman*); *Allen* v. *McCurry*, 449 U.S. 90, 101 (1980) (preclusion); *Growe* v. *Emison*, 507 U.S. 25, 32 (1993) (abstention). As *amicus* discusses below, this Court has provided guidance as to when one or more of these doctrines might bar a plaintiff's federal court claim on the basis of a related state court proceeding. However, each of these limiting doctrines addresses concerns relating to jurisdiction, Congressional direction, or federalism. And each imposes at least a modicum of protection that supports claimants' access to relief in federal courts. These concerns and guardrails are not present in the Fifth Circuit's reading of *Heck*.

The *Rooker–Feldman* doctrine delineates one aspect of the boundaries of federal courts' subject matter jurisdiction: it prevents lower federal courts from adjudicating collateral attacks on state court judgments because Congress has reserved such federal review to this Court. *Lance*, 546 U.S. at 463 (citing 28 U.S.C. § 1257). *Rooker–Feldman* applies only after a state court has rendered a final judgment,

and only bars review of the state court judgment itself. *Id*. at 464. The doctrine does not prevent a federal district court from exercising jurisdiction over "a matter [that the same party] previously litigated in state court" or "some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party." *Exxon Mobil Corp*. v. *Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005) (quoting *GASH Assocs.* v. *Rosemont*, 995 F. 2d 726, 728 (7th Cir. 1993) (citing *Noel v. Hall*, 341 F.3d 1148, 1163–64 (9th Cir. 2003). Accordingly, this Court has been sparse in its application of the *Rooker–Feldman* doctrine and has warned of its narrowness—confining its reach strictly to constitutional and legislative mandates. *Lance*, 546 U.S. at 464; *Exxon Mobil* 544 U.S. at 293.

Olivier's claim is well within federal courts' jurisdictional bounds as stated in *Exxon Mobil*, because he does not appeal his prior conviction. However, the Fifth Circuit does not base its new *Heck* bar on an interpretation of either jurisdictional or Congressional grounds; instead, it focuses on reinterpreting—and expanding—a judge-made rule. Appx. 7a–9a, 11a, 14a.

Claim preclusion is another doctrine that addresses federalism and comity concerns. *Allen*, 449 U.S. at 95–96 (first citing *Montana* v. *United States*, 440 U.S. 147 (1979); then citing *Angel* v. *Bullington*,

330 U.S. 183 (1947); and then citing *Younger* v. *Harris*, 401 U.S. 37, 43–45 (1971)). Pursuant to the constitution's Full Faith and Credit Clause, Congress legislated that state acts and judicial proceedings "shall have the same full faith and credit in [federal courts] as they have by law or usage" in their respective state courts. *Migra* v. *Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 83–84 (1984) (quoting 28 U.S.C. § 1738) (citing U.S. CONST., Art. IV, § 1). Claim preclusion arises from this legislative mandate and prohibits federal courts from relitigating the "very same claim" that a state court already considered and adjudged between the same parties. *Id.*; *Whole Woman's Health* v. *Hellerstedt*, 579 U.S. 582, 599, (2016), as revised (June 27, 2016), abrogated on other grounds by *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215 (2022).

Claim preclusion rules apply to suits brought under 42 U.S.C. § 1983. *Allen*, 449 U.S. at 95–96. Claim preclusion prevents a federal plaintiff from litigating the "same federal issues" that a state court previously considered and resolved. *San Remo Hotel, L.P.* v. *City & Cnty. of San Francisco*, 545 U.S. 323, 327 (2005) (applying preclusion to a Takings Claim when the state court analyzed and ruled on a state law claim using on this Court's Takings Claim rules). However, claim preclusion does not prevent a plaintiff who received a state court judgment from bringing a

slightly new claim in federal court. *Whole Woman's Health*, 579 U.S. at 604–05. *Whole Woman's Health* emphasized the extreme narrowness of the preclusion doctrine as prohibiting only "successive litigation of the very same claim" and held that tiny changes in a claimant's posture can result in a subsequent claim on the same subject matter being a different claim for preclusion purposes. *Id.* at 599–600 (emphasis added). For example, two constitutional attacks on the very same statutory provision were not the "very same claim" when the first was a pre-enforcement facial challenge and the second a post-enforcement as-applied challenge. *Id.* at 600. New factual development showing additional harm can make a second identical claim not the "very same claim." *Id.* at 600–01. A state court ruling on a constitutional challenge to one statutory provision did not preclude a constitutional challenge on another provision within the same statute. *Id.* at 604–05.

Using this framework by analogy, the two claims at play in this matter are clearly dissimilar to the point that this Court's statedconcerns of federalism and comity would not apply. In the state court proceeding, Olivier pleaded guilty to violating a municipal ordinance. Appx. 2a. In the subsequent federal court proceeding, Olivier did not attack his state conviction or challenge the facts of whether his actions fell within the ordinance's scope; instead, he

brought a wholly different claim under § 1983, requesting prospective relief based on the unconstitutionality of the ordinance. Appx. 1a–2a. If two constitutional challenges to the same statute do not constitute the "very same claim" such that comity and federalism preclude a federal court from considering the challenge, *see Whole Woman's Health*, 579 U.S. at 600, 604–05, comity and federalism concerns certainly would not preclude Olivier's § 1983 claim. Even when preclusion applies, it does not bar a federal answer, but merely requires a federal court to give the state court judgment preclusive effect only to the extent the courts of that state would do so—a far less severe result than the Fifth Circuit's refusal to provide any answer. *Allen*, 449 U.S at 96; Appx. 13a. Thus, preclusion is far more restrained than the Fifth Circuit's *Heck* bar, which oversteps the principles this Court has laid out on appropriate interplay between state and federal courts.

Additionally, federal courts in "extraordinary" circumstances may may apply various abstention doctrines to refrain from deciding cases and controversies in which they have subject matter jurisdiction. *See*, *e.g.*, *Colo. River*, 424 U.S. at 813–14 (collecting cases). In comparison to the Fifth Circuit's *Heck* bar, these doctrines are narrower and more specifically targeted to the underlying concerns of comity and federalism. *Growe*, 507 U.S. at 32.

First, the *Younger* abstention doctrine prevents federal courts from enjoining state prosecutions or particular state civil proceedings that are akin to criminal prosecutions. *Sprint Commc'ns*, 571 U.S at 72–73 (citing *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975)) (applying doctrine of *Younger* v. *Harris*, 401 U.S. 37 (1971)). Similar to *Heck*, early case law on the *Younger* doctrine addressed the juxtaposition of § 1983 suits and state criminal prosecutions. *See*, *e.g.*, *Mitchum* v. *Foster*, 407 U.S. 225, 231 (1972). However, *Younger* merely "precluded federal intrusion into ongoing state criminal prosecutions," *Sprint Commc'ns*, 571 U.S. at 73 (citing *New Orleans Pub. Serv., Inc.* v. *Council of New Orleans*, 491 U.S. 350, 358 (1989)) (emphasis added). And *Younger* does not apply if the state court proceeding does not provide "an adequate opportunity . . . to raise constitutional challenges." *Middlesex Cnty. Ethics Comm.* v. *Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) (affirmed as factor in the *Younger* analysis by *Sprint Commnc'ns*, 571 U.S. at 81).

Since establishing the *Younger* doctrine, this Court has curtailed broad applications. For example, it warned that expanding *Younger*'s scope into a "broad abstention requirement would make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *New Orleans Pub. Serv., Inc.*, 491 U.S.

at 368 (citing *Colo. River*, 424 U.S. at 817; *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U.S. 1, 25 (1983); *Moore* v. *Sims*, 442 U.S. 415 423, n.8 (1979)). In *Haw. Hous. Auth.* v. *Midkiff*, 467 U.S. 229, 237–38 (1984), this Court held "considerations of economy, equity, and federalism" counseled against *Younger* abstention even in certain cases in which a parallel state court proceeding existed. And most recently, this Court reversed the Eighth Circuit's extension of *Younger*, stating that its "result is irreconcilable with our dominant instruction that, even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the 'exception, not the rule.'" *Sprint Commnc'ns*, 571 U.S. at 81–82 (quoting *Haw. Hous. Auth.*, 467 U.S. at 236).

Younger's narrow bounds contrast with the Fifth Circuit's *Heck* bar. Here, no state court proceeding is pending. Appx. 3a. The holding below applies a broad rule without examining whether comity, equity, and federalism warrant the rule's application in that specific context, and without considering whether the specific question implicates an exceptional state interest. "[T]he relevant principles of equity, comity, and federalism 'have little force in the absence of a pending state proceeding.'" *Steffel* v. *Thompson*, 415 U.S. 452, 462 (1974) (quoting *Lake Carriers' Assn.* v. *MacMullan*, 406 U.S. 498, 509

(1972)). Thus, the Fifth Circuit's holding is at odds with this Court's abstention analysis under *Younger*.

Second, the historical *Pullman* "abstention" is more appropriately called a "deferral," as it allowed federal courts to stay the federal proceeding pending resolution of a concurrent state court proceeding. *Growe*, 507 U.S. 32 n.1. Under this doctrine, federal courts on occasion would give state courts the opportunity to resolve complex issues of state law, if such resolution would render the remaining federal issues moot. *Id.*; *Colo. River*, 424 U.S. at 814 (quoting *County of Allegheny* v. *Frank Masuda Co.*, 360 U.S. 185, 189 (1166)). This doctrine necessarily required (a) a concurrent state court proceeding and (b) an ambiguous state statute that the state courts had not yet interpreted. *Haw. Hous. Auth.*, 467 U.S. at 237. Neither element existed in the proceeding below—yet the Fifth Circuit still abstained.

"Certification today covers territory once dominated by . . . *Pullman* abstention." *Arizonans for Off. Eng.* v. *Arizona*, 520 U.S. 43, 76 (1997) (citing *Railroad Comm'n of Tex.* v. *Pullman Co.,* 312 U.S. 496 (1941). This Court has approved use of certification in cases involving constitutional challenges to a state statute—but only for the purpose of requesting the state court's interpretation of an ambiguous statute, after which the federal court must then consider whether the statute, as construed by the state court,

violates the federal constitution. *See*, *e.g.*, *id.* at 76 (approving of certification for a "novel state-law question"); *Expressions Hair Design* v. *Schneiderman*, 581 U.S. 37, 58 (2017) (Sotomayor, J., concurring) (approving of certification to "resolve antecedent state-law question" prior to federal court "resolution of the constitutional question"). Thus, claimants ultimately receive a federal court analysis and answer on their constitutional challenges. Moreover, although certification is less "problematic" than abstention, *see Arizonans for Off. Eng.*, 520 U.S. at 58 (Sotomayor, J., concurring), it is still "manifestly inappropriate to certify a question" when "there is no uncertain question of state law whose resolution might affect the pending federal claim." *City of Houston*, 482 U.S. at 471. As a result, federal courts' use of the *Pullman* abstention and certification contrasts with the Fifth Circuit's outright refusal to consider Olivier's federal constitutional challenge of an unambiguous local ordinance.

Third, the *Burford* abstention requires a complex analysis related to whether the matter contains "difficult questions of state law bearing on policy problems of substantial public import." *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 726–27 (1996) (quoting *New Orleans Pub. Serv.*, 491 U.S. at 361). *Burford* does not apply at all when the case does not "involve a state-law claim, nor even an

assertion that the federal claims [were] 'in any way entangled in a skein of state law . . . .'" *Id.* at 727 (quoting *New Orleans Pub. Serv.*, 491 U.S. at 361). Thus, it is far narrower than the holding below, in which the Fifth Circuit, without undergoing any complex *Burford*-like analysis or citing ambiguity, abstained from deciding a claim that Olivier brought under § 1983 (federal law) in which he requested a First Amendment analysis of an unambiguous, commonly-applied municipal ordinance.

Finally, the *Colorado River* abstention involves another complex, factor-based analysis and applies only in cases involving "the contemporaneous exercise of concurrent jurisdictions"; it does not apply to the exercise of federal jurisdiction after completion of state court proceedings. *Colo. River*, 424 U.S. at 818–19. Indeed, this Court expressed particular wariness in abstaining in parallel proceedings between a federal court and a state court, because abstention in such cases abdicates a court's duty to exercise the jurisdiction given it. *Id.* at 817 (citing *England* v. *La. State Bd.*, 375 U.S. 411; *McClellan*, 217 U.S. at 281; *Cohens*, 19 U.S. at 404). And this Court noted that "the presence of a federal basis for jurisdiction"—such as a § 1983 claim—"may raise the level of justification needed for abstention" generally. *Id.* at 815 n.21 (citing *Burford* v. *Sun Oil Co.*, 319 U.S. 315, 319 n.5 (1943); *Hawks* v. *Hamill*, 288 U.S. 52, 61 (1933)).

Yet the Fifth Circuit would now abstain from deciding a wide subset of cases that present a federal question merely because a state court previously (non-contemporaneously) adjudged that a person's actions failed to comply with an ordinance—providing clarity as to state court construal of the ordinance. This subset of cases is inapposite to those cases in which *Colorado River* would counsel an abstention. The fifth Circuit thus leaps over the guardrails that this Court established in *Colorado River*, effectively lowering the level of justification it provides for its abstention.

In sum, each of these abstention doctrines stems from comity and federalism concerns. However, in none of these doctrines has this Court found that such concerns require a federal court to abstain from considering federal constitutional questions that a claimant did not raise in a final state court proceeding. Yet that is exactly what the Fifth Circuit purports to do: without analyzing comity or federalism, it bars Olivier from having a federal court adjudicate the constitutionality of a statute—an issue that his state court proceeding did not touch.

Regardless of various scholars' views of abstention doctrines generally, or the proper extent of their application, the Fifth Circuit's *Heck* bar embraces substantially greater abstention—for substantially broader reasons—than any of the abstention doctrines. The Fifth Circuit invokes

neither subject matter jurisdiction (as in *Rooker–Feldman*), nor Congressional mandate (as in preclusion), nor principles of comity and federalism (as in abstention doctriens) when wielding *Heck* as a tool to refuse to adjudicate a cases and controversy otherwise properly before it. Thus, the Fifth Circuit uses *Heck* to close the courthouse doors where no other limiting doctrine would do so. In this manner, it fails its "virtually unflagging" "obligation" to hear and decide a case over which it has subject matter jurisdiction. *See Sprint Commnc'ns*, 571 U.S. at 591 (quoting *Colo. River*, 424 U.S. at 817).

All these limiting doctrines impose guardrails and require justifications that provide claimants with a level of access to relief in federal court. The Fifth Circuit's reading of *Heck* lacks similar protection and analysis. This case thus presents important federal questions—ones that the Fifth Circuit has decided in a manner that conflicts with relevant decisions of this Court. This Court should grant certiorari to resolve these conflicts.

II. This Court should grant certiorari to ensure the *Heck* bar respects statutory text.

Congress established the Civil Rights Act of 1871, now codified in 42 U.S.C. § 1983, to give plaintiffs broad access to federal courts to obtain relief

from constitutional injuries. *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972). Congressional members believed state courts did not provide an adequate means for such relief. CONG GLOBE, 42d Cong., 1st Sess., app. 78, 252, 394 (1871) (remarks of Rep. Perry, Sen. Morton, and Rep. Rainey) ("the apparatus and machinery of [state] government . . . skulk away"; "large classes of people . . . are without legal remedy in the courts of the States"; "[state] courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity"). Thus, § 1983 suits are Congress's answer to that issue, and the statute's plain language "reflect[s] the regrettable reality that state instrumentalities could not, or would not, fully protect federal rights." *Health & Hosp. Corp.* v. *Talevski*, 599 U.S. 166, 177 (2023) (quoting *Maine* v. *Thiboutot*, 448 U.S. 1, 4 (1980)) (citing *Mitchum*, 407 U.S. at 240 (1972)) (cleaned up) (holding that this Court "ha[s] adhered to this understanding of § 1983's operation"). Consistent with the purpose of providing "dual or concurrent forums in the state and federal system," § 1983 suits do not require plaintiffs to first exhaust state administrative remedies. *Patsy* v. *Bd. of Regents*, 457 U.S. 496, 502, 506 (1982).

The federal habeas statute provides another avenue for a narrow group of petitioners to obtain a narrow type of relief from constitutional injuries

through federal courts. 28 U.S.C. § 2254 (providing review of application "in behalf of a person in custody . . . only on the ground that he is in custody in violation of the Constitution . . ."). The limitations are clear from the statutory text: habeas is available only to custodial prisoners who seek to attack the fact or duration of the sentence that they are then serving. *Maleng* v. *Cook*, 490 U.S. 488, 490 (1989) (citing *Carafasi* v. *LaVellee*, 391 U.S. 234, 238 (1968)). Additionally, federal habeas relief is available only after a petitioner exhausts all avenues of relief in state courts. *Rose* v. *Lundy*, 455 U.S. 509, 518 (1982) (holding exhaustion rule is based on principles of federalism and comity).

Section 1983's availability regardless of a plaintiff's attempts to gain relief through state courts makes it attractive to prisoners, who would logically prefer to use § 1983 as a workaround to obtain the same relief that federal habeas statutes would provide only after exhaustion of state remedies. *See, e.g.*, *Preiser* v. *Rodriguez*, 411 U.S. 475, 479 (1973) (addressing prisoner's § 1983 suit that was "in fact an application for habeas corpus"). In *Preiser*, the precursor to *Heck*, this Court addressed this conflict by applying the principle of statutory interpretation that the specific controls over the general. *Id.* at 489–90. Although the plain language of § 1983 would ostensibly allow custodial prisoners to attack the fact

or duration of their confinement, *Preiser* carved this type of claim—the realm of the more specific habeas statute—out of the claims available under the more generalized § 1983 statute. *Id.* This Court's analysis focused on harmonizing both statutory provisions and giving meaning to each. *Id.* ("It would wholly frustrate explicit congressional intent to hold that the respondents in the present case could evade this requirement by the simple expedient of putting a different label on their pleadings."

The "enterprise" of the *Heck* Court was to continue address the "collision course" between § 1983 and federal habeas statutes and to harmonize them. *Heck* v. *Humphrey*, 512 U.S. 477, 491 (1994) (Thomas, J., concurring). *Heck* to some degree continued to apply the rule of statutory interpretation that the specific (habeas) controls the general (§ 1983). *Id.* Under this principle, *Heck* held that a claim by a prisoner "attacking . . . the fact or length of . . . confinement"—even when not seeking release from that confinement—required as a prerequisite the same threshold showing as does the habeas statute: favorable termination. *Id.* at 481–82, 487.

The Fifth Circuit has run far afield of this interpretation and the original statutory basis for the *Heck* bar and its precursor, *Preiser*. Instead of merely carving out the piece of § 1983 to which the specific provisions of the federal habeas statutes apply, either

to establish the claim or its prerequisite, the Fifth Circuit now applies the *Heck* bar to restrict claimants' access to federal courts through § 1983 suits even when the claimants cannot—and never could—use federal habeas statutes to claim relief. App. 3a, 10a (barring Olivier's claim even though he never suffered confinement and thus never had access to habeas relief).

Accordingly, *amicus* is concerned not only about the Fifth Circuit's ultimate decision, but the analysis by which the Fifth Circuit reached its decision—an analysis that neither respects Congress's intent as expressed in § 1983 nor concerns itself with harmonizing the text of § 1983 and the habeas statutes. *Amicus* is also concerned of far-reaching negative impact on the constitutional roles of the judiciary and legislative branches if courts are permitted to apply judge-made doctrines so broadly that they controvert legislative direction. For this additional reason, this case presents important questions meriting this Court's resolution.

III. This Court should grant certiorari to correct an interpretation that is inconsistent with the context of *Heck*'s rule.

The opinion below—and much of the *Heck* progeny—focus on determining whether the plaintiff's

claim, if successful, "necessarily impl[ies] the invalidity" of a conviction. App. 7a–91, 11a, 14a (quoting *Heck*, 512 U.S at 487). However, because the Fifth Circuit failed to consider the context of this phrase, its holding is inconsistent with *Heck*. Thus, if this Court continues to uphold the rule that *Heck* bars § 1983 suits whose success would "necessarily imply" the invalidity of a prior conviction or sentence, it should provide clarity as to the extent of the bar and the analysis lower courts must undertake.

In *Heck*, the plaintiff was a state prisoner still in confinement who claimed damages under § 1983 on the basis of what this Court identified as a malicious prosecution suit. 512 U.S. at 478–79, 484. As an element of the cause of action, the plaintiff needed to prove that the "prior criminal proceeding"—his conviction—ended in his favor through reversal, expungement, or other declaration of invalidity through an authorized state tribunal or federal writ of habeas corpus. *Id.* at 484, 486–87. On this basis, this Court held that "establishing the basis for the damages claim necessarily demonstrates the invalidity of the conviction." *Id.* at 481–82. This Court further established what we now call the *Heck* bar on "[a] claim for damages bearing that relationship to a conviction or sentence." *Id.* at 487 (emphasis added).

It was in this immediate context that the Court stated:

> "Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated."

Id. (emphasis added).

This context supports that "necessarily imply[ing] the invalidity of a[a]sentence" is tied to the elements of a claim, and that the claim and sentence must bear the same type of relationship as in *Heck*. In other words, if the cause of action requires, as an essential element, that the plaintiff prove the facts of his prior conviction and its invalidity, success on the claim necessarily implies the invalidity of the sentence. For this reason, the *Heck* bar analysis "depends on what facts a § 1983 plaintiff would need to prove to prevail on his claim." *McDonough* v. *Smith*, 588 U.S. 109 (2019) (Thomas, J., dissenting). Thus, courts cannot determine whether the *Heck* bar—or any other rules—apply to a § 1983 claim until it "determine[s] the elements of" the claim. *Id.*

In the opinion below, the Fifth Circuit applied *Heck* to bar Olivier's challenge to the constitutionality of the ordinance under which he was convicted. App. 14a. This type of claim does *not*, as an essential

element or as a threshold showing, require the claimant to prove any facts relating to any prior conviction—because it does not require that a plaintiff hold a prior conviction at all. *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158–59 (2014). Indeed, a plaintiff can succeed in bringing a facial constitutional challenge to a statute without mentioning that he committed acts prohibited by the statute, or whether he was charged, prosecuted, convicted, or sentenced under the statute. *Id.* at 158 (citing *Steffel* v. *Thompson*, 415 U.S. 452, 459 (1974) ("an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law."). Although a plaintiff could use the facts of his conviction to establish standing, for example to show imminent harm or the presence of an actual controversy, a prior conviction is still not necessary even for this threshold determination. *Id*.

Thus, the Fifth Circuit's reading does not limit itself to the context in which *Heck* laid out its "necessarily imply" rule. Instead, the Fifth Circuit would use *Heck* to bar any claim that, as an essential element, requires the plaintiff to prove that a statute is invalid when the plaintiff asserts any § 1983 claim challenging a statute under which he happens to have a prior conviction.

Because of this apparent discrepancy between *Heck* and its progeny, on the one hand, and the Fifth

Circuit's holding, on the other, this Court should clarify whether it intends for courts to analyze, as part of a *Heck* bar, whether a claim "necessarily imply[ing] the invalidity" of a conviction merely indicates a claim that, as an essential element, requires the plaintiff to prove the facts of the invalidity of *his* own conviction.

CONCLUSION

The holding below is inconsistent with abstention doctrines, principles of statutory construction, and the contextual basis of the rule it seeks to apply. For all the above reasons and those presented by Petitioner, the Court should grant the petition.

Respectfully submitted,

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