No. 24-993

IN THE

Supreme Court of the United States

GABRIEL OLIVIER,

Petitioner,

v.

CITY OF BRANDON, et al.,

Respondents.

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

BRIEF OF *AMICUS CURIAE* HUMAN RIGHTS DEFENSE CENTER IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICUS CURIAE*[1]

The Human Rights Defense Center is a 501(c)(3) non-profit organization that advocates on behalf of the human rights of people held in U.S. detention facilities. This includes people in state and federal prisons, local jails, immigration detention centers, civil commitment facilities, Bureau of Indian Affairs jails, juvenile facilities and military prisons. HRDC is one of the few national opponents to the private prison industry and is the foremost advocate on behalf of the free speech rights of publishers to communicate with prisoners and the right of prisoners to receive publications and communications from outside sources. HRDC also does significant work around government transparency and accountability issues. HRDC publishes and distributes self-help reference books for prisoners, and engages in litigation, media campaigns and outreach, public speaking and education, and testimony before legislative and regulatory bodies.

This case directly implicates HRDC's work because the Fifth Circuit's rule restricts the ability of currently and formerly imprisoned people to seek redress for violations of their rights and secure prospective relief against future rights violations.

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person other than amicus or its counsel made any monetary contribution toward the preparation and submission of this brief. The parties received timely notice of amicus's intention to file this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court should grant the petition to review and correct the Fifth Circuit's erroneous expansion of *Heck* v. *Humphrey*, 512 U.S. 477 (1994). The *Heck* bar serves an important—but narrow—function. It preserves the separate roles of 42 U.S.C. § 1983 and the federal habeas statute, 28 U.S.C. § 2254, by channeling claims that "call into question the lawfulness of" a state prisoner's "conviction or confinement" through habeas, including the exhaustion of state remedies. See *Heck*, 512 U.S. at 481–83. "Because allowing a state prisoner to proceed directly with a federal-court § 1983 attack on his conviction or sentence 'would wholly frustrate explicit congressional intent' as declared in the habeas exhaustion requirement, the statutory scheme must be read as precluding such attacks." *Id.* at 498 (Souter, J., concurring, joined by Blackmun, Stevens, and O'Connor, JJ.); *Spencer* v. *Kemna*, 523 U.S. 1, 21 (1998) (Souter, J., concurring, joined by O'Connor, Ginsburg, and Breyer, JJ.).

But those concerns do not apply where a plaintiff either (i) seeks wholly prospective relief against the future enforcement of the statute of conviction or (ii) lacks access to habeas because he is not (or never was) in custody. While a successful § 1983 claim in those situations could *possibly* imply the invalidity of a conviction or sentence, there is no collision between § 1983 and the habeas statute because habeas is not available. Nevertheless barring a § 1983 claim in that situation conflicts with the statute's plain text, which allows "any citizen" to seek redress for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983.

Even so, the Fifth Circuit bars § 1983 claims in both situations, preventing people like Mr. Olivier from vindicating or protecting their rights. That approach is wrong and creates harmful consequences, as the petition explains. And while Mr. Olivier was not imprisoned as a result of his earlier conviction (and thus never had access to habeas), the Fifth Circuit's rule has dire effects for people who are or were incarcerated. If someone is imprisoned for exercising his civil rights in a way that he intends to repeat upon release, the Fifth Circuit's rule requires him to proceed all the way through state and (potentially) federal habeas before he can secure a prospective injunction against future prosecution. And if his sentence is shorter than the many years that process can take, he loses his rights altogether.

What's more, because *Heck* blocks a prisoner from challenging not just his *conviction* but also his *confinement*, it bars § 1983 claims attacking prison disciplinary actions that result in longer sentences, including through the loss of good-time credits. See *Wolff* v. *McDonnell*, 418 U.S. 539, 554 (1974); *Preiser* v. *Rodriguez*, 411 U.S. 475, 500 (1973). Against this backdrop, the Fifth Circuit's rule improperly prevents state prisoners from seeking prospective relief against ongoing rights violations. E.g., *Clarke* v. *Stalder*, 154 F.3d 186 (5th Cir. 1998) (en banc) (holding that a prisoner could not seek prospective relief under the First Amendment against a prison rule he was disciplined for violating, since success would necessarily imply the invalidity of his loss of good-time credits).

The Court should grant review of both questions presented to restore the proper functioning of Congress's remedial scheme for all plaintiffs—including people who were imprisoned under invalid statutes or who face ongoing constitutional violations in prison.

ARGUMENT

I. Barring prospective relief unnecessarily insulates ongoing constitutional violations in prison settings.

"Since 1871, when it was passed by Congress, § 1983 has stood as an independent safeguard against deprivations of federal constitutional and statutory rights." *Smith* v. *Robinson*, 468 U.S. 992, 1012 (1984). Thus, the Court "do[es] not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy" for federal rights violations. *Id.* In nevertheless blocking purely prospective claims, the Fifth Circuit's approach extends *Heck*'s rule beyond its reasoning, denying remedies to people facing ongoing or future violations of their constitutional rights, including current and former prisoners.

A. The Fifth Circuit's rule prevents current and former prisoners from seeking relief from ongoing constitutional violations.

In at least two ways, the Fifth Circuit's rule wrongly prevents people—including those who are or have been imprisoned—from securing relief against ongoing or future violations of their rights.

First, as the petition explains, the Fifth Circuit's rule improperly prevents "any citizen," 42 U.S.C. § 1983, who has previously been convicted of violating a law from seeking prospective relief against that law's future enforcement. Pet. 17–23. That is true for people who were never imprisoned, like Mr. Olivier. And it is equally true for people who have been imprisoned for violating unconstitutional laws. Just as a person who receives a suspended sentence for violating an invalid law should be able to seek relief against further punishment under that law—provided he can show he intends to violate the law again, see *City of L.A.* v. *Lyons*,

461 U.S. 95, 105–06 (1983)—a person who has actually been incarcerated under an unconstitutional law should be able to obtain the same protection. Indeed, such a plaintiff is "the ideal person to challenge future enforcement," given the obvious "risk of future injury" from repeat enforcement. App. 46a (Ho, J., dissenting).

Second, the Fifth Circuit's rule equally blocks prospective relief against unconstitutional policies in prisons. The court's ruling in *Clarke*, on which the decision below relied, App. 8a–10a, is a prime example. The *Clarke* plaintiff was disciplined for violating a prison rule that prohibited "threatening a prison employee with legal redress during a confrontation situation." 154 F.3d at 188 (cleaned up). He was punished with "the loss of ten days good-time credit" and a transfer "to a higher-security prison." *Id.* He then brought a § 1983 suit seeking damages, the restoration of his good-time credits, and "prospective injunctive relief" under the First Amendment against the rule's future enforcement against him. See *id.* The Fifth Circuit panel rejected the retrospective-relief claims as *Heck*-barred, but reached the merits of the prospective-relief claim, holding the prison rule facially unconstitutional. *Id.* at 187.

The *en banc* Fifth Circuit, however, held that *Heck* barred all these claims—including the injunctive-relief claim. In the court's view, "a facial declaration of the unconstitutionality of" the prison's rule "would 'necessarily imply' the invalidity of his loss of good-time credits"—meaning it "would 'necessarily imply' the invalidity of his punishment." *Id.* at 189–90. In the Fifth Circuit, even such prospective, "broad-based attacks" on prison policies "must be pursued initially through habeas corpus." *Id.* at 190 (cleaned up) (quoting *Serio* v. *Members of La. State Bd. of Pardons*, 821 F.2d 1112, 1119 (5th Cir. 1987)).

As the *Clarke* dissenters explained, by requiring resort to habeas even for purely prospective challenges to prison policies, the Fifth Circuit's rule requires "a waste of judicial time and resources." *Id.* at 194 (Garza, J., dissenting). "It is not necessary for [a plaintiff] to have a lower court conduct *Habeas Corpus* proceedings" to adjudicate such prospective claims. *Id.* "At best," a successful prospective claim "could 'possibly imply' the invalidity of" the underlying disciplinary action, which is not enough to trigger *Heck*. *Id.* at 191. That follows both from the distinction between retrospective and prospective relief and from the fact that (as *Heck* itself noted) various doctrines could prevent even a successful prospective-relief claim from implying that the plaintiff was unlawfully punished. See *id.* at 195–96 (Dennis, J., dissenting); App. 50a (Oldham, J., dissenting).

And by requiring such wasteful and protracted habeas proceedings, the Fifth Circuit's rule insulates unconstitutional prison policies from judicial review—either temporarily or permanently. At best, a habeas challenge can take years to adjudicate, during which the plaintiff remains subject to the unconstitutional policy. And at worst, a merits resolution will never come. If, for example, a habeas court determines that the application of the challenged policy was irrelevant to the ultimate discipline imposed—possibly because there were other grounds for discipline—it need not resolve the issue at all. Cf. *Clarke*, 154 F.3d at 195–96 (Dennis, J., dissenting).

The Fifth Circuit's approach also exacerbates a related issue. Because prison disciplinary proceedings are treated as "convictions" under *Heck* to the extent they result in the loss of good-time credits, courts often apply *Heck* to reject § 1983 claims alleging excessive

force by prison guards if the prisoner's allegations contradict the version of events accepted in the disciplinary proceedings. See Devi M. Rao, *The* Heck *Bar Gone Too Far:* Heck*'s Application to Prisoners' Excessive Force Suits*, 17 Harv. L. & Pol'y Rev. 365, 373–76 (2023) (discussing *Santos* v. *White*, 18 F.4th 472 (5th Cir. 2021)). By itself, that approach creates perverse incentives by providing "a unique opportunity for prison officials to forever insulate themselves from liability—and federal-court review—by simply falsifying a disciplinary report." *Id.* at 377; see also Jan Ransom, *In N.Y.C. Jail System, Guards Often Lie About Excessive Force*, N.Y. Times (Apr. 24, 2021), https://shorturl.at/J4QAI (describing recurring instances of prison guards lying to investigators or filing incomplete or inaccurate reports). Extending *Heck* to bar purely prospective claims just worsens the problem: A prisoner who faces an ongoing pattern of excessive force and physical abuse cannot point to past incidents of abuse to secure injunctive relief under § 1983 if prison officials have punished him with lost good-time credits based on guards' falsified accounts of their actions. And to make matters worse, the Fifth Circuit's application of these rules in the prison-discipline context is "byzantine and inadministrable." Rao, *supra*, at 378–79.

For all these reasons, the Fifth Circuit's approach "subverts the federal courts' role as arbiters of federal rights." *Id.* at 377.

B. Purely prospective relief does not interfere with habeas or retroactively invalidate past convictions.

The perverse results just described are not required by *Heck's* reasoning. In particular, barring prospective relief is not necessary to avoid either (i) interfering with habeas or (ii) invalidating prior convictions.

To start with the obvious, habeas is about seeking relief from existing convictions—it allows "a person in custody" to seek earlier or immediate release from confinement. 28 U.S.C. § 2254(a). Purely prospective relief, by contrast, is about "the future enforcement of a law," and "does not result in immediate or speedier release into the community or necessarily imply the invalidity of a prior conviction or sentence." App. 47a (Ho, J., dissenting) (cleaned up); *id.* at 50a (Oldham, J., dissenting); see *Wilkinson* v. *Dotson*, 544 U.S. 74, 82 (2005) ("[T]he prisoners' claims for *future* relief (which, if successful, will not necessarily imply the invalidity of confinement or shorten its duration) are yet more distant from [the] core [of habeas corpus]."). That is, a suit seeking "wholly prospective [relief], to preclude further prosecution under a statute alleged to violate [the plaintiff's] constitutional rights," "is in no way 'designed to annul the results of a state trial'" that produced a prior conviction under the challenged law. *Wooley* v. *Maynard*, 430 U.S. 705, 711–12 & n.9 (1977).

Nor does a forward-looking injunction to "prevent future official enforcement actions" *necessarily* invalidate a past conviction entered before the injunction took effect. App. 50a (Oldham, J., dissenting). "Injunctions do not work backwards to invalidate official actions taken in the past." *Id.* "Ordinarily," then, "a prayer for such prospective relief will not 'necessarily imply' the invalidity of a previous [conviction or] loss of good-time credits, and so may properly be brought under § 1983." *Edwards* v. *Balisok*, 520 U.S. 641, 648 (1997); see, e.g., *Wilkinson* v. *Dotson*, 544 U.S. 74, 78 (2005) (the *Heck* bar did not apply because success in the plaintiff's claim would at most expedite the consideration of a new parole application, without *guaranteeing* immediate release or a reduced sentence); *Skinner*

v. *Switzer*, 562 U.S. 521, 525 (2011) (while the petitioner's aim was to establish his innocence and achieve release from custody, success in his § 1983 suit would not *necessarily* result in release).

II. Applying *Heck* when habeas relief is not available unnecessarily undermines current and former prisoners' civil rights.

The Court should also grant review of the second question presented. By applying *Heck* even where habeas is not available, the Fifth Circuit further extends the doctrine beyond its reasoning and prevents people from vindicating their rights altogether.

"[T]he issue of whether *Heck* operates when habeas is unavailable has become increasingly important." See Note, *Defining the Reach of* Heck v. Humphrey*: Should the Favorable Termination Rule Apply to Individuals Who Lack Access to Habeas Corpus?*, 121 Harv. L. Rev. 868, 875 (2008). Since the passage of the Antiterrorism and Effective Death Penalty Act of 1996, "[t]he combination of AEDPA's habeas restrictions and *Heck*'s bar on certain § 1983 claims may leave many prisoners with valid but unremedied constitutional claims." *Id.* at 869. And this important issue has split the lower courts; some circuits have "permitted a prisoner without access to habeas to pursue relief within § 1983's broad scope," while others—like the Fifth Circuit—hold that Heck "applies whenever a claim attacks the validity of an underlying conviction." See *id.* at 875–76; Pet. 28–30 (cataloging the current split).

The Fifth Circuit's approach is wrong. Applying *Heck* where habeas relief is not available is unnecessary to harmonize § 1983 with the habeas statute and effectively denies any remedy for many constitutional violations. *Heck*'s rule reflects Congress's determination "that habeas corpus is the appropriate remedy for

state prisoners attacking the validity of the fact or length of their confinement." 512 U.S. at 482 (quoting *Preiser*, 411 U.S. at 490). That rationale has no force where a prisoner has been released, or where a person (like Mr. Olivier) was never imprisoned to begin with. Nor can a § 1983 suit have preclusive effect in habeas proceedings where habeas is unavailable. Cf. *id.* at 488 & n.9.

Thus, "the interests that the Court felt were at stake in *Heck* and *Preiser*"—"preventing an end-run around the [habeas] exhaustion requirement and ensuring that § 1983 does not serve as even an indirect basis for undoing state criminal convictions"—"are not compromised in cases in which habeas relief is unavailable." *Defining the Reach*, supra, at 882. And "the state interests in denying remedies under § 1983 are simply not so substantial as to deny access to the federal forum for inmates who are ineligible for habeas and who seek relief for constitutional deprivations." *Id.* at 888. Unlike habeas claims, § 1983 claims "do not reduce the certitude that the convicted criminal will serve the sentence that the state has imposed upon him." *Id.* at 886. Likewise, even a successful § 1983 claim "does not result in the *undoing* of a criminal conviction." *Id.* at 887 (emphasis added). On the other hand, "when *Heck* is invoked to bar claims by individuals who no longer have access to habeas corpus, a curious remedial oddity results: less serious constitutional claims remain cognizable in § 1983, while more serious constitutional claims—those that would necessarily imply the invalidity of petitioner's conviction—go unremedied entirely." *Id.* at 889.

"The better view" of *Heck*, then, "is 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 20–21 (Souter, J., concurring).

CONCLUSION

For the reasons above and in the petition, the Court should grant the petition.

Respectfully submitted,

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