No. 24-993

In the Supreme Court of the United States

GABRIEL OLIVIER,

Petitioner,

v.

CITY OF BRANDON, MISSISSIPPI, et al.,

Respondents.

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

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether, as the Fifth Circuit holds in conflict with the Ninth and Tenth Circuits, this Court's decision in *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*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the Constitution and its principles, which are the foundation of American liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files amicus briefs.

Cato's interest in this case lies in ensuring the correct and uniform application of 42 U.S.C. § 1983 and preserving a federal forum for constitutional litigants.

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[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), this Court held that "in order to recover damages for allegedly unconstitutional conviction . . . or for other harm caused by actions whose unlawfulness would render a conviction . . . invalid," a plaintiff seeking relief under 42 U.S.C. § 1983 "must prove that the conviction . . . has been reversed on direct appeal." The *Heck* bar should not apply where—as here—the plaintiff never had access to federal habeas relief or seeks purely prospective relief.

Petitioner Gabriel Olivier sought relief under § 1983 after his First Amendment rights were violated. Olivier is an Evangelical Christian who routinely attended events at his local amphitheater to share his faith with the public. Pet. App'x 19a. Although it was his constitutional right to speak freely about his religion, Respondent City of Brandon made it a crime for him to speak outside of a designated "protest area." *Id.* at 23a–26a. Olivier alleges that "the protest area was too isolated for attendees to hear his messages," as it was down the sidewalk away from the amphitheater and the City also banned the use of loudspeakers that are "clearly audible more than 100 feet" from the protest area. *Id.* at 3a, 29a. He further alleges that the City passed this ordinance specifically in response to his past public speech. *Id.* at 26a. After the ordinance was enacted, Olivier was arrested for speaking outside of the protest area. *Id.* at 28a–30a. He pleaded *nolo contendere*, and the trial court imposed a $304 fine and a suspended sentence of ten days in jail. *Id.* at 30a–31a.

Though Olivier did not appeal his conviction, he did file a § 1983 claim seeking damages and prospective relief to prevent the ordinance from being enforced against him again. *Id.* at 2a, 31a. The district court dismissed his suit, holding it barred under *Heck*. *Id.* at 40a. The Fifth Circuit affirmed, and this Court granted certiorari. *Id.* at 14a.

This Court should reverse the decisions below. *Heck* applies properly only to custodial plaintiffs who have access to federal habeas relief, and it does not apply when a plaintiff seeks only prospective relief. By improperly expanding *Heck*'s scope, the Fifth Circuit has wrongly blocked federal vindication of constitutional rights.

ARGUMENT

I. SECTION 1983 WAS DESIGNED TO OPEN BROAD ACCESS TO RELIEF.

Congress enacted the Civil Rights Act of 1871 (now codified as § 1983) to implement the Reconstruction Amendments guaranteeing Black people the rights to suffrage, due process, and equal protection. Southern legislatures resisted these provisions by enacting restrictive laws known as "Black Codes." *See* Maureen A. Dowd, Note, *A Comparison of Section 1983 and Federal Habeas Corpus in State Prisoners' Litigation*, 59 NOTRE DAME L. REV. 1315, 1316–17 (1984). At the same time, violence against Black people became widespread, fueled by the emergence of the Ku Klux Klan. *See* Robert J. Kaczorowski, *Federal Enforcement of Civil Rights During the First Reconstruction*, 23 FORDHAM URB. L.J. 155, 156–57 (1995). Victims of Klan violence rarely found relief from their state governments, as local officials were unwilling or unable to

enforce the law against the Klan—indeed, they sometimes were themselves Klan members. *Id.* at 157. President Grant notified Congress that he wanted it to enact legislation to "effectually secure life, liberty, and property, and the enforcement of law in all parts of the United States." Gene R. Nichol Jr., *Federalism, State Courts, and Section 1983*, 73 VA. L. REV. 959, 973 (1987).

Five days later, the Civil Rights Act of 1871 was reported to the House of Representatives. *Id.* Introducing the Act, Representative Shellabarger described it as a measure "which does affect the foundations of the Government itself, which goes to every part of it, and touches the liberties and the rights of all the people," continuing that it was "remedial, and in aid of the preservation of human liberty and human rights." CONG. GLOBE, 42d Cong., 1st Sess., app. 67, 68 (1871). Accordingly, the Act would be "liberally and beneficently construed," read with "the largest latitude consistent with the words employed." *Id.* at 68. Section 1983 was meant to provide relief for all manner of constitutional violations by state officials.

The Act empowered federal courts in part because of the unwillingness of state courts to protect federally guaranteed rights. Congressmen observed that state tribunals were "under the control of conspirators, and unable or unwilling to check the evil," "notoriously powerless to protect life, person and liberty," and themselves guilty of denying "the rights and privileges due an American citizen." Nichol, *supra*, at 975 (citations and quotation marks omitted). Section 1983's framers "believed that local judges had abdicated their responsibility to ensure evenhanded enforcement of the law." *Id.*

The force Congress meant for § 1983 to have is now being undermined by a pervasive misreading of this Court's decision in *Heck*. *Heck* was concerned with resolving tension between § 1983 and the federal habeas statute, but some of the circuit courts apply *Heck* to preclude relief even where federal habeas relief is categorically unavailable. This reading of *Heck* is inconsistent with the opinion itself, and if the *Heck* doctrine is not properly cabined, a litigant who has been convicted under an unconstitutional state law will almost never be able to bring a § 1983 suit to prevent its enforcement in the future. This Court should clarify *Heck* in favor of preserving access to the federal courts for Americans whose constitutional rights have been violated by government officials.

II. *HECK* MUST BE INTERPRETED NARROWLY.

Heck concerned "whether a state *prisoner* may challenge the constitutionality of his conviction in a suit for *damages* under 42 U.S.C. § 1983." 512 U.S. at 478 (emphasis added). It held that "civil tort actions" like those brought under § 1983 "are not appropriate vehicles for challenging the validity of outstanding criminal judgments," as that is the work of the federal habeas statute. *Id.* at 480–81, 486. But *Heck* simply does not apply when a plaintiff is not in custody or otherwise lacks access to federal habeas relief. What is more, prospective relief like that sought by Olivier does not necessarily undermine a prior state conviction at all.

A. The *Heck* bar applies only to custodial plaintiffs who have access to federal habeas relief.

Heck's reach is limited by its dependence on federal habeas relief as an alternative to § 1983 for prisoners challenging their confinement. *See id.* at 480–81. Allowing such people to immediately bring § 1983 claims would thwart federal habeas exhaustion requirements and so frustrate the role Congress wanted state courts to hold. Lyndon Bradshaw, Comment, *The* Heck *Conundrum: Why Federal Courts Should Not Overextend the* Heck v. Humphrey *Doctrine*, 2014 BYU L. REV. 185, 191 (2014). Further, federal habeas affords one key form of relief—release from custody—whereas § 1983 authorizes monetary, injunctive, and declaratory remedies. *Id.* at 190. Both procedurally and substantively, *Heck* keeps prisoners from doing "what habeas expressly prohibits by merely changing the label on the complaint." *Id.* at 191.

Indeed, the exclusivity of federal habeas as a means of relief for state prisoners was established even before *Heck*. In *Preiser v. Rodriguez*, 411 U.S. 475, 490 (1973), this Court denied the availability of § 1983 suits to state prisoners challenging "the validity of the fact or length of their confinement," because Congress's "specific determination" in designing federal habeas relief "must override the general terms of § 1983." In cases like the one presented here, however, there is no need to show comity to state appellate procedures. There was no direct appeal at all, and Olivier is not in confinement, so he need not exhaust state remedies and cannot pursue federal habeas relief. *See Heck*, 512 U.S. at 480–81, 483, 489 (repeatedly reiterating that § 1983 has no exhaustion requirement).

Section 1983 is the appropriate—and exclusive—remedy for plaintiffs like him.

Justice Souter's concurring opinion in *Heck*, joined by three other Justices, is instructive. He read *Heck* "as saying nothing more than that now, after enactment of the habeas statute and because of it, prison inmates seeking § 1983 damages in federal court for unconstitutional conviction or confinement" must show favorable termination of their convictions. *Id.* at 500 (Souter, J., concurring in the judgment). Any broader reading–such as that adopted by the Fifth Circuit here—"would needlessly place at risk the rights of those outside the intersection of § 1983 and the habeas statute, individuals not 'in custody' for habeas purposes." *Id.* If people like Olivier "who were merely fined" had to show favorable termination, they would often lack access to any federal forum. *Id. Heck* was not meant to "shut off federal courts altogether to claims that fall within the plain language of § 1983." *Id.* at 501.

This conclusion is further supported by the design of § 1983. *Heck* discussed how § 1983 reflects common law torts. *Id.* at 483 (majority op.). Damages for legally imposed confinement were available at common law through the tort of malicious prosecution. *Id.* at 484. However, such an action required "termination of the prior criminal proceeding in favor of the accused." *Id.* A "prisoner" thus "has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Id.* at 489. This reasoning does not extend to cases like Olivier's. First, unlike the claimants in *Preiser* and *Heck*, Olivier does not challenge "the fact or length of [his] confinement." *Preiser*,

411 U.S. at 490. He was never incarcerated. Second, and relatedly, because Olivier is not in custody, he lacks access to federal habeas relief—so the statutory tension that drove *Heck* is absent. *See Spencer v. Kemna*, 523 U.S. 1, 21 (1998) (Ginsburg, J., concurring) (". . . Individuals without recourse to the habeas statute because they are not 'in custody' (people merely fined or whose sentences have been fully served, for example) fit within § 1983's 'broad reach.'").

The Second, Fourth, Sixth, Tenth, and Eleventh Circuits recognize this.[2] But other circuits preclude litigants from suing under § 1983 even when federal habeas relief is unavailable.[3] *Heck* did note "in infamous footnote 10—the very quintessence of dicta"—that there may be times when a non-custodial plaintiff could be barred from filing a § 1983 claim. *See Wilson v. Midland County*, 116 F.4th 384, 407 (5th Cir. 2024) (en banc) (Willett, J., dissenting), *cert. pet. filed* Dec. 12, 2024 (discussing *Heck*, 512 U.S. at 490 n.10). A "clearer example of dicta is hard to imagine," because footnote 10 "concerns a subject that had not been briefed by the parties, that did not matter to the disposition of Heck's claim, and that the majority thought would not matter to anyone, ever." *Savory v. Cannon*,

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[2] *See Huang v. Johnson*, 251 F.3d 65, 75 (2d Cir. 2001); *Covey v. Assessor of Ohio Cnty.*, 777 F.3d 186, 197–98 n.10 (4th Cir. 2015); *Powers v. Hamilton Cnty. Pub. Def. Comm'n.*, 501 F.3d 592, 603 (6th Cir. 2007); *Cohen v. Longshore*, 621 F.3d 1311, 1316–17 (10th Cir. 2010); *Harden v. Pataki*, 320 F.3d 1289, 1298 (11th Cir. 2003).

[3] *See Figueroa v. Rivera*, 147 F.3d 77, 81 (1st Cir. 1998); *Deemer v. Beard*, 557 Fed. App'x 162, 166 (3d. Cir. 2014); *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) (per curiam); *Knowlin v. Thompson*, 207 F.3d 907, 909 (7th Cir. 2000); *Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007).

947 F.3d 409, 432 (7th Cir. 2020) (en banc) (Easterbrook, J., dissenting).

Moreover, *Heck* never intended to leave certain litigants with no road to relief. Rather, the Court was merely confirming that litigants should not be able to use § 1983 as a loophole to avoid federal habeas exhaustion requirements. *Heck*, 512 U.S. at 490 n.10 (stating that while "no real-life example comes to mind," "[w]e think the principle barring collateral attacks . . . is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated."). Plaintiffs like Olivier, however, should be permitted to proceed with a § 1983 claim. "A tell-tale point about *Heck*: The word 'prisoner' pervades the Court's opinion." *Wilson*, 116 F.4th at 411 (Willett, J., dissenting).[4] The *Heck* Court did nothing more than create "a simple way to avoid collisions at the intersection of habeas and § 1983." *Heck*, 512 U.S. at 498 (Souter, J., concurring in the judgment).

Reading *Heck* as broadly as the Fifth Circuit does would contravene this Court's precedent. In *Health &*

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[4] *See Heck*, 512 U.S. at 480–81 ("This case lies at the intersection of the two most fertile sources of federal-court *prisoner* litigation . . . . The federal habeas corpus statute . . . requires that *state prisoners* first seek redress in a state forum. . . . habeas corpus is the exclusive remedy for a *state prisoner who challenges the fact or duration of his confinement* . . . . certain claims by *state prisoners* are not cognizable under [§ 1983 . . . .]") (emphases added); *id.* at 487 ("[W]hen 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 . . . .") (emphasis added); *id.* at 489 ("Even a *prisoner* who has fully exhausted available state remedies has no cause of action under § 1983 unless and until [he can show favorable termination].") (emphasis added).

Hospital Corp. v. Talevski, 599 U.S. 166 (2023), the Court declined to carve out an exception to § 1983 for laws enacted pursuant to Congress's spending power. It held that to do so would be to "impose a categorical font-of-power condition that the Reconstruction Congress did not." *Id.* at 192. Instead, the Court held that § 1983 is presumptively "available to enforce every right that Congress validly and unambiguously creates," *id.*, and that an alternative federal remedial scheme can only displace it if the two are "incompatible." *Id.* at 187 (citation omitted). Thus, the Court's recent precedent regarding the interplay between § 1983 and other federal statutes reinforces the conclusion that *Heck* does not bar the availability of § 1983 for noncustodial plaintiffs. This Court should clarify that *Heck* does not bar § 1983 claims where the plaintiff is noncustodial or otherwise lacks access to federal habeas relief.

B. *Heck* does not apply when a plaintiff is seeking prospective relief.

The Fifth Circuit's decision is also wrong because *Heck* is inapplicable when a plaintiff is seeking prospective relief. The *Heck* Court explained that its bar applies "when a state prisoner seeks *damages* in a § 1983 suit." *Heck*, 512 U.S. at 487 (emphasis added). The Fifth Circuit and other courts have misconstrued *Heck* to preclude § 1983 claims when plaintiffs have a prior conviction and seek prospective relief. But *Heck* was concerned with collateral attacks on state convictions—an issue inapplicable where the plaintiff is seeking to prevent future enforcement of an unconstitutional law.

Prospective relief does not necessarily imply the invalidity of a prior conviction, so this kind of remedy

ordinarily can be sought under § 1983. *See Edwards v. Balisok*, 520 U.S. 641, 648 (1997). The Ninth Circuit in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019),[5] pointed out the absurdity of applying *Heck* to bar prospective relief claims. The result would be that "an individual who does not successfully invalidate a first conviction under an unconstitutional statute will have no opportunity to challenge that statute prospectively so as to avoid arrest and conviction for violating that same statute in the future." *Id.* at 614. While the *Heck* doctrine "serves to ensure the finality and validity of previous convictions," it should not be used "to insulate future prosecutions from challenge." *Id.* at 615. *Heck* does not bar prospective relief cases like Olivier's.

III. PROPERLY LIMITING THE *HECK* BAR WILL NOT OVERWHELM THE FEDERAL COURTS.

Without this Court's clarification, Americans who have been wrongly convicted will often be left unable to vindicate their constitutional rights. Section 1983 plaintiffs who acquire standing by dint of having been convicted will be barred from securing relief by *Heck*—"Heads I win, tails you lose." Pet. App'x at 48a (Ho, J., dissenting from den'l of reh'g en banc) (citation omitted). A tragic result, given that Congress drafted § 1983 to make federal courts liberty's champions.

On the other hand, permitting § 1983 claims to go forward as Congress intended will not unduly burden the federal courts, because the *Heck* bar is merely one obstacle that § 1983 plaintiffs must surmount. Few § 1983 cases are tried on the merits. Notably, "only 1

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[5] *Overruled on other grounds by City of Grants Pass v. Johnson*, 603 U.S. 520 (2024).

percent of people who believe they have been mistreated by the police ever sue." Joanna C. Schwartz, *Civil Rights Without Representation*, 64 WM. & MARY L. REV. 641, 675 (2023). Many of the § 1983 plaintiffs who do file a lawsuit go unrepresented by counsel. *Id.* at 675–77. According to a study of § 1983 claims in five federal districts, over 60% of unsuccessful pro se cases were dismissed at the outset or for failure to prosecute—"bases for dismissal that may say more about the pro se plaintiffs' limited resources and abilities to pursue their claims than about the underlying merits of those claims." *Id.* at 678–79.

The skill and expertise required to litigate a § 1983 claim is already disqualifying for many people. Administrative concerns are no reason to artificially impose another barrier by way of inflating the *Heck* bar. This Court should not let the *Heck* bar exceed its proper scope.

CONCLUSION

This Court should reverse the decision below and hold that *Heck* applies only to a custodial plaintiff who has access to habeas relief, and not at all to claims seeking a prospective remedy.

Respectfully submitted,

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