No. 24-993

IN THE
Supreme Court of the United States

GABRIEL OLIVIER,

Petitioner,

v.

CITY OF BRANDON, ET AL.,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF FOR 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.

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.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

1. Petitioner Gabriel Olivier was the plaintiff in the district court and the appellant in the court of appeals.

Respondents City of Brandon and William A. Thompson, individually and in his official capacity, were the defendants in the district court and the appellees in the court of appeals. Olivier abandoned his claims against William Thompson in the court of appeals. Pet. App. 4a.

2. Petitioner is an individual.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *Olivier* v. *City of Brandon, et al.*, No. 22-60566 (5th Cir.) (judgment entered Aug. 25, 2023);
- *Olivier* v. *City of Brandon, et al.*, No. 21-cv-636 (S.D. Miss.) (judgment entered Sept. 23, 2022).

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The opinion of the court of appeals is available at 2023 WL 5500223. Pet. App. 1a-14a. The order of the court of appeals denying rehearing en banc is reported at 121 F.4th 511. Pet. App. 42a-52a. The order of the district court denying Olivier's motion for a preliminary injunction and granting judgment to the defendants is available at 2022 WL 15047414. Pet. App. 15a-41a.

JURISDICTION

The court of appeals entered judgment on August 25, 2023. A timely petition for rehearing en banc was denied on November 14, 2024. Pet. App. 42a. On January 21, 2025, Justice Alito granted Olivier's application to extend the time to file a petition for a writ of certiorari to and including March 14, 2025, and the petition was filed on that date. The petition was granted on July 3, 2025. This court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action

> at law, suit in equity, or other proper proceeding for redress * * * .

The federal habeas statute, 28 U.S.C. § 2254(a), provides in pertinent part:

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

All other relevant constitutional and statutory provisions are reproduced in the appendix at Pet. App. 53a-58a.

STATEMENT

Gabriel Olivier is a Christian called to share his faith with his fellow citizens. A local ordinance forbids him from doing so on a public sidewalk outside the city's amphitheater, and Olivier was arrested and fined in the past for violating that ordinance. Because Olivier wants to exercise his free speech and free exercise rights without fear of a new prosecution, he brought a § 1983 suit under the First and Fourteenth Amendments to protect him from future enforcement of the ordinance.

Olivier's free speech and free exercise claims have a rich textual and historical pedigree. As this Court recognized long ago, the religious speech he desires to engage in "occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits" with "the same claim to

protection as the more orthodox and conventional exercises of religion" and "the same claim as the others to the guarantees of freedom of speech and freedom of the press." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 108-09 (1943).

Congress allowed redress for invasions of these rights in § 1983 by authorizing requests in "equity" for prospective relief to prevent the "deprivation" of First Amendment rights "secured by the Constitution." 42 U.S.C. § 1983. Nearly 50 years ago, this Court confirmed in the *Younger* abstention context that a federal court may, consistent with principles of equity and federalism, issue purely prospective relief to prevent the future enforcement of an unconstitutional law against a plaintiff who was already convicted and fined in state court for violating that law. *Wooley* v. *Maynard*, 430 U.S. 705, 711-12 & n.9 (1977).

Contrary to the Fifth Circuit's decision below, nothing in *Heck* v. *Humphrey*, 512 U.S. 477 (1994), requires a different result here. In *Heck*, the Court reconciled two statutes: 42 U.S.C. § 1983 and 28 U.S.C. § 2254, the federal habeas statute authorizing persons to challenge the constitutionality of custody backed by a state-court conviction. To prevent prisoners from using § 1983 to collaterally attack "outstanding criminal judgments," the Court foreclosed § 1983 claims that either seek traditional habeas relief (such as immediate or speedier release from prison) or would "necessarily demonstrate[] the invalidity of the conviction." 512 U.S. at 481-82, 487. As to § 1983 claims seeking damages, the Court recognized that Congress enacted § 1983 against a common-law backdrop that prohibited plaintiffs from seeking damages for torts

like malicious prosecution without first obtaining favorable termination of the state-court proceeding. *Id.* at 483-84. *Heck* applied that same rule to damages claims brought under § 1983, holding that where a prisoner seeks "damages for confinement imposed pursuant to legal process," a federal-court judgment would be incompatible with an undisturbed state-court conviction. *Id.* at 484. There, habeas—not § 1983—is the proper vehicle for challenging the deprivation of constitutional rights.

In contrast, the claims here are heartland § 1983 claims seeking purely prospective relief "distant from" *Heck*'s domain. *Wilkinson* v. *Dotson*, 544 U.S. 74, 82 (2005). For one thing, Olivier doesn't seek to overturn, undermine, or attack the consequences of his prior conviction. He seeks only to prevent a *future* conviction that would rest on *future* conduct. If a federal court issued prospective relief, it wouldn't change anything about his prior conviction or punishment. For another thing, Olivier's forward-looking First and Fourteenth Amendment claims for prospective relief don't resemble the backward-looking claims for damages in *Heck*. In particular, no element of Olivier's claims turns on whether he's set aside his prior conviction because he's seeking prospective equitable relief against an unconstitutional ordinance. This Court has adjudicated those claims in statutory or common-law form for centuries. *E.g.*, *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U.S. 520, 529 (1993); *Ex parte Young*, 209 U.S. 123, 153-56 (1908).

Indeed, this Court has permitted exactly this type of § 1983 claim brought by a plaintiff, like Olivier, who has already been convicted under the challenged law. *Wooley*, 430 U.S. at 708. A plaintiff facing "a genuine

threat of prosecution"—even one with a prior conviction—"is entitled to resort to a federal forum to seek redress for an alleged deprivation of federal rights." *Id.* at 710. That's because prospective relief against another prosecution under an unconstitutional law wouldn't "annul" a prior conviction under that law. *Id.* at 711. The Fifth Circuit's extension of *Heck* rests on reasoning that this Court rejected in *Wooley*. Olivier's claims for prospective relief don't collaterally attack his conviction, and nothing in the federal habeas regime or *Heck*'s reasoning strips him of the claims Congress authorized in § 1983. The Court need go no further to reverse the judgment below and remand for the lower courts to assess the merits of Olivier's § 1983 claims in the first instance.

The Court can, however, reverse on the independent, alternative ground that Olivier was never in custody and as a result lacked access to federal habeas relief. *Heck*'s denial of a § 1983 claim is justified as an "implicit habeas exception" that channels claims out of § 1983's general regime into the more specific alternative designated by Congress. *Dotson*, 544 U.S. at 82. Because the federal habeas statutes offer a remedy only for those in "custody," *Heck*'s implicit exception has no role to play for § 1983 plaintiffs like Olivier who undisputedly weren't ever in custody. The Fifth Circuit was wrong to detach *Heck* from its habeas moorings. Reversal is required for that reason, too.

1. This case involves the interplay between two statutes: the federal civil-rights statute, 42 U.S.C. § 1983, and the federal habeas corpus statute, 28 U.S.C. § 2254. Both § 1983 and § 2254 "provide access

to a federal forum for claims of unconstitutional treatment," but "they differ in their scope and operation." *Heck*, 512 U.S. at 480.

Section 1983 empowers "*any* citizen of the United States or other person within the jurisdiction thereof" to bring "an action at law, suit in equity, or other proper proceeding for redress" against "[e]very person" who causes "the deprivation of *any* rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983 (emphases added). Enacted as part of the Civil Rights Act of 1871, § 1983 was fueled by Congress's "concern[] that state instrumentalities could not protect," wouldn't "vindicat[e]," and may even be "antipathetic" to constitutional rights. *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972). So Congress passed § 1983 to protect all people "from unconstitutional action under color of state law." *Ibid.* This promise is especially important where "doubly protect[ed]" free speech and free exercise rights are concerned, because "'government suppression of speech [is] so commonly * * * directed *precisely* at religious speech.'" *Kennedy* v. *Bremerton School District*, 597 U.S. 507, 523-24 (2022) (citation omitted).

Section 1983 doesn't require persons to await a state prosecution before asserting their federal rights. Instead, § 1983 empowers persons to bring pre-enforcement suits seeking protection from potential prosecutions. *E.g.*, *303 Creative LLC* v. *Elenis*, 600 U.S. 570, 580 (2023); *Wooley*, 430 U.S. at 710. Such suits are particularly important in the First Amendment context, where "the alleged danger of [a] statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution." *Virginia* v. *American Booksellers Ass'n*,

484 U.S. 383, 393 (1988). To avoid this harm, § 1983 allows persons to seek the protection of both an injunction against prosecution under an unconstitutional law and a declaratory judgment, a form of relief "designed to be available to test state criminal statutes." *Steffel* v. *Thompson*, 415 U.S. 452, 467 (1974) (citation omitted).

In sum, § 1983 "provides 'a uniquely federal remedy against incursions upon rights secured by the Constitution' * * * and is to be accorded 'a sweep as broad as its language.'" *Felder* v. *Casey*, 487 U.S. 131, 139 (1988) (citations and ellipsis omitted).

2. Olivier is a Christian who believes that "sharing his religious views is an important part of exercising his faith." Pet. App. 19a. On several occasions between 2018 and 2019, Olivier shared his faith on sidewalks in the public park near a city amphitheater in Brandon, Mississippi, that hosts live events. Pet. App. 2a-3a.

In December 2019, the city passed an ordinance restricting "protests" and "demonstrations" in the park to a designated area isolated from pedestrian traffic during the hours surrounding events at the amphitheater. Pet. App. 3a; see Pet. App. 24a-27a (describing ordinance and its enactment); J.A. 10 (map of designated area). The city closed the amphitheater shortly thereafter as part of a COVID-19 lockdown. J.A. 11.

Once the amphitheater reopened in 2021, Olivier again visited the park to share his faith. Pet. App. 3a. The chief of police ordered him to go to the "protest" area. *Ibid.* Olivier went to that area to inspect it. *Ibid.* But finding it too isolated for attendees to hear

or see his message, he returned to the sidewalk he had used before. Pet. App. 3a, 28a. That action prompted the city to charge Olivier with violating the ordinance. Pet. App. 3a. He pleaded no contest, and the municipal court rendered a suspended sentence of 10 days' imprisonment along with a fine of $304. *Ibid.*; see Pet. App. 31a. Olivier paid the fine. Pet. App. 3a.

3. A few months later, Olivier sued the city and the police chief in federal court. Pet. App. 3a. He brought § 1983 claims alleging that the ordinance violates the First and Fourteenth Amendments both facially and as applied. *Ibid.*; see J.A. 2, 20-22. Olivier alleges that the ordinance prevents him from fulfilling his religious conviction to share the gospel because it is overbroad, vague, content based, viewpoint based, and not narrowly tailored. J.A. 20-21. He sought prospective injunctive and declaratory relief to prevent the city from enforcing the ordinance against him and halting his religious exercise in the future. Pet. App. 8a; see J.A. 22.[1]

The district court invoked the *Heck* bar in granting summary judgment to the city. Pet. App. 35a-41a. Olivier had emphasized that he didn't "seek to overturn his conviction, either directly or indirectly," and challenged only "'the constitutionality of the [ordinance] and its application to his'" future religious speech. Pet. App. 36a-37a. But the district court concluded that his claims—including his request for prospective injunctive relief—"functionally challenge[d]

[1] Olivier initially sought nominal and compensatory damages from the city for halting his religious expression, but he abandoned that relief on appeal in the Fifth Circuit and seeks only declaratory and injunctive relief. Pet. 7 n.1; Pet. App. 4a.

the legality of his conviction" because success in the civil suit would "prove" that his prior state-court conviction "violated his constitutional rights." Pet. App. 37a.

Olivier argued in the alternative that *Heck* didn't apply because he was never in custody and as a result never had access to habeas relief. C.A. ROA 557. The city didn't contest the premise, but argued that *Heck* applied regardless of Olivier's custodial status. C.A. ROA 594. The district court concluded that because Fifth Circuit precedent applies "*Heck*'s bar" "to both custodial and noncustodial § 1983 plaintiffs," it didn't matter that Olivier was never in custody. Pet. App. 37a (citation omitted).

4. The Fifth Circuit affirmed. Pet. App. 1a-14a. The panel applied circuit precedent holding that *Heck* forbids "'prospective injunctive relief'" against a "state law under which [plaintiff] was convicted" on "'grounds of facial unconstitutionality.'" Pet. App. 9a (quoting *Clarke* v. *Stalder*, 154 F.3d 186, 188 (5th Cir. 1998) (en banc)). *Clarke*, the panel held, "squarely applies to Olivier's case." *Ibid.*

The panel recognized the "friction" between *Clarke* and this Court's subsequent decisions in *Dotson* and *Skinner* v. *Switzer*, 562 U.S. 521 (2011). Pet. App. 11a. In *Dotson*, this Court held that § 1983 suits seeking injunctive relief requiring state officials to conduct constitutional parole hearings didn't "lie[] at 'the core of habeas corpus,'" wouldn't necessarily result in "speedier release" from prison, and were permissible. 544 U.S. at 76-77, 82. In *Skinner*, this Court held that § 1983 suits seeking injunctive relief to require a state official to conduct DNA testing were

permissible because the test results wouldn't make earlier release "inevitable." 562 U.S. at 534. Acknowledging the import of these decisions, the panel accepted that enjoining a law as unconstitutional "may not 'inevitably' lead to the invalidity of the underlying conviction." Pet. App. 11a (citation omitted). But because *Clarke* couldn't be distinguished, the panel didn't attempt to "bridge the gap" between the precedents of this Court and the Fifth Circuit. Pet. App. 13a.

Separately, the panel reaffirmed that "in this circuit," *Heck* applies "even if a § 1983 plaintiff is 'no longer in custody'" and as a result has no access to habeas relief. Pet. App. 10a (citation omitted).

5. The Fifth Circuit denied rehearing en banc by a one-vote margin over three dissenting opinions joined by eight judges—Chief Judge Elrod and Judges Jones, Smith, Richman, Willett, Ho, Duncan, and Oldham. Pet. App. 42a-43a. These judges agreed that applying *Heck* to bar Olivier's claims for injunctive relief was "indefensible." Pet. App. 49a (Oldham, J., dissenting from denial of rehearing en banc).

The judges voting for rehearing explained that *Heck* bars "the *retrospective* use of 42 U.S.C. § 1983 to collaterally attack criminal convictions." Pet. App. 50a (opinion of Oldham, J.). But "*Heck* plainly does nothing to bar Olivier's prospective-relief claim" because a grant of a "forward-looking injunction * * * does not invalidate Olivier's previous conviction." Pet. App. 50a-51a. Moreover, *Heck* "serves to ensure the finality and validity of previous convictions, not to insulate future prosecutions from challenge." Pet.

App. 47a n.2 (Ho, J., dissenting from denial of rehearing en banc) (citation omitted). So "[n]othing in the Constitution, federal law, or Supreme Court precedent dictates th[e] curious result" reached by the Fifth Circuit. Pet. App. 47a.

SUMMARY OF ARGUMENT

I. *Heck* doesn't bar plaintiffs who have previously been convicted under an unconstitutional law from seeking purely prospective relief against future enforcement of that law under § 1983.

A. Olivier alleges that the ordinance violates the First Amendment's guarantees of free speech and free exercise, as well as the Fourteenth Amendment's prohibition on vague laws. His request for prospective relief to prevent the enforcement of the ordinance against his religious speech on a forward-going basis is a classic § 1983 claim. This Court routinely adjudicates such claims, including when they're brought by plaintiffs like Olivier who have previously been punished under the laws they now challenge. *E.g.*, *Wooley* v. *Maynard*, 430 U.S. 705, 707-08, 711-12 (1977).

This Court's decision in *Heck* doesn't foreclose Olivier's claims. There, the Court required a § 1983 plaintiff seeking damages for an unconstitutional conviction to show that his prior conviction had favorably terminated because the plaintiff's claim would "necessarily imply the invalidity of [the plaintiff's] conviction or sentence" and was analogous to the common-law tort of malicious prosecution. *Heck* v. *Humphrey*, 512 U.S. 477, 484-87 (1994). Absent favorable termination, the claim belonged in habeas review. But *Heck* doesn't apply here.

For one thing, Olivier's § 1983 suit doesn't end-run the habeas statutes or "necessarily" imply the invalidity of his prior conviction. *Heck*, 512 U.S. at 487. His request for prospective relief *couldn't* be awarded in habeas because he doesn't seek release from custody. As this Court put it in the context of abstention, a § 1983 claim seeking purely prospective relief "against future criminal prosecutions" under an unconstitutional law wouldn't "annul" a prior conviction under that same law. *Wooley*, 430 U.S. at 710-11 & n.5. Nor would Olivier's claims for prospective relief "prove the unlawfulness" or "negate an element" of the *prior* conviction. *Heck*, 512 U.S. at 486 & n.6.

For another thing, Olivier's forward-looking claims for purely prospective relief don't resemble the backward-looking claims for damages in *Heck*. The *Heck* claimant sought "damages for confinement imposed pursuant to legal process"—a claim that closely resembled the common-law tort of malicious prosecution. 512 U.S. at 484-85. Because favorable termination was an element of that common-law tort, the Court reasoned that Congress borrowed that same element for the parallel § 1983 damages claim. *Id.* at 484-85. But the same analogy doesn't apply here. As an initial matter, the Court has never turned to tort-law analogues for First Amendment challenges to speech restrictions. *E.g.*, *McCullen* v. *Coakley*, 573 U.S. 464, 469-72, 486 (2014). Nor has the Court read tort-law limitations into the Fourteenth Amendment's vagueness standard. *E.g.*, *Kolender* v. *Lawson*, 461 U.S. 352, 357-58 (1983). If a historical analogue were required, though, Olivier's claims most closely resemble the equitable anti-suit injunction, which doesn't

require favorable termination. See *Ex parte Young*, 209 U.S. 123, 152 (1908).

B. The Fifth Circuit erred in extending *Heck* to the purely prospective relief sought by Olivier.

The court of appeals concluded that *Heck* applies because a federal-court opinion declaring the ordinance unconstitutional might suggest an error underlying the state-court conviction. Pet. App. 11a-12a. But that rationale conflates *relief* with *reasoning*. The relevant question is whether the "relief" awarded in a judgment would necessarily invalidate a conviction or sentence. *Wilkinson* v. *Dotson*, 544 U.S. 74, 81-82 (2005). A federal-court judgment awarding prospective relief would prevent the city from enforcing the ordinance against Olivier's future religious speech, but it wouldn't disturb Olivier's previous conviction. While the Fifth Circuit speculated that such a judgment might aid a future collateral attack, this Court has already explained that "preclusion will not necessarily be an automatic, or even a permissible, effect" of a § 1983 judgment. *Heck*, 512 U.S. at 488. Because preclusion wouldn't be "inevitable," that contingent possibility doesn't trigger the *Heck* bar. *Skinner* v. *Switzer*, 562 U.S. 521, 534 (2011).

The Fifth Circuit's contrary holding not only misreads this Court's precedents, but also undermines § 1983's purposes without offsetting gains in furthering *Heck*'s interests in finality and consistency.

II. *Heck* doesn't bar Olivier's § 1983 claims for the alternative, independent reason that Olivier was never in "custody," so he never had access to federal habeas relief.

A. Under the canon that the specific governs the general, the federal habeas statutes are the exclusive means of challenging unconstitutional "custody" in federal court. 28 U.S.C. §§ 2241(c)(3), 2254(a); see *Preiser* v. *Rodriguez*, 411 U.S. 475, 489 (1973). *Heck* extended that rule from § 1983 claims that seek habeas relief (immediate or quicker release from custody) to other relief (such as damages) that would remedy unconstitutional "confinement." 512 U.S. at 484.

When federal habeas isn't "even an available" remedy for unconstitutional action, there's no justification for barring the remedy Congress provided in the plain text of § 1983. *Skinner*, 562 U.S. at 534. This Court has expressed "reluctance to infer implicit displacement of the § 1983 remedy" by other statutory remedies. *Health & Hospital Corp. of Marion County* v. *Talevski*, 599 U.S. 166, 191 n.14 (2023). Even more so, that displacement can't be justified when Congress hasn't enacted any alternative remedy that could supplant the general cause of action in § 1983.

Because Olivier lacked any opportunity to assert his First and Fourteenth Amendment rights in federal habeas, *Heck* doesn't bar his claims. Olivier was never "in custody"—an indispensable prerequisite to file a habeas petition. Pet. 30; C.A. ROA 594; Pet. App. 10a, 37a. Because he never came within the habeas regime, there's no conflict with that regime that could justify an atextual deprivation of his § 1983 claims.

B. The court of appeals' holding that *Heck* bars § 1983 claims even when the plaintiff was never in custody lacks a sound basis.

The Fifth Circuit held that circuit precedent interpreting *Heck* foreclosed Olivier's claims even though he could not "file a habeas petition." Pet. App. 10a (quoting *Randell* v. *Johnson*, 227 F.3d 300, 301 (5th Cir. 2000)). The city's defense of that rule relies heavily on reading a footnote in *Heck* to require applying its bar even after a prisoner's incarceration ends. Br. in Opp. 10 (citing 512 U.S. at 490 n.10). But that footnote is dicta and cannot bear the weight the city places on it besides. Indeed, this Court has subsequently confirmed that it remains an open question whether the "unavailability of habeas * * * may * * * dispense with the *Heck* requirement" of favorable termination. *Muhammad* v. *Close*, 540 U.S. 749, 752 n.2 (2004). So the footnote doesn't settle the question even for those no longer in custody. And the footnote doesn't even contemplate barring claims by those, like Olivier, who were never in custody in the first place.

Neither *Heck*'s reasoning nor its progeny support the Fifth Circuit's holding either. To be sure, "Congress could create by legislation a rule foreclosing [a claim] until a plaintiff, although no longer in prison, has been vindicated by a pardon or certificate of innocence, but such a rule cannot be found in any enacted statute." *Savory* v. *Cannon*, 947 F.3d 409, 434 (7th Cir. 2020) (Easterbrook, J., dissenting). Where Congress hasn't provided a more specific remedy in habeas—and where the state itself wouldn't treat the prior conviction as foreclosing a constitutional claim—a judge-made limitation on § 1983's plain text shouldn't stand in the way of a constitutional claim.

ARGUMENT

I. *Heck* doesn't bar § 1983 claims seeking prospective relief against the enforcement of laws challenged as unconstitutional.

In § 1983, Congress opened the federal courthouse doors to persons seeking to prevent the future enforcement of unconstitutional laws—including where, as here, the person had been previously punished under the challenged law. *E.g.*, *Wooley* v. *Maynard*, 430 U.S. 705, 711-12 & n.9 (1977). The Fifth Circuit's extension of *Heck* v. *Humphrey*, 512 U.S. 477 (1994), to bar these claims is "indefensible," Pet. App. 49a (opinion of Oldham, J.), because "[n]othing in the Constitution, federal law, or Supreme Court precedent dictates" denying § 1983's protections to those who need them the most, Pet. App. 47a (opinion of Ho, J.).

A. Olivier alleges heartland § 1983 claims for purely prospective relief.

As a matter of text, history, and precedent, Olivier's § 1983 claims seeking protection against future enforcement of an unconstitutional law aren't barred simply because he was sanctioned for violating the law in the past. Section 1983 squarely authorizes claims in "equity" to prevent the "deprivation" of First Amendment and Fourteenth Amendment rights "secured by the Constitution." 42 U.S.C. § 1983. Because *Heck* doesn't bar those claims, this Court should reverse and allow Olivier's claims to proceed.

Heck seeks to reconcile "the two most fertile sources of federal-court prisoner litigation—the Civil Rights Act of 1871 * * * as amended, 42 U.S.C. § 1983, and the federal habeas corpus statute, 28 U.S.C. § 2254." 512 U.S. at 480. *Heck* navigated the conflict

between these regimes by foreclosing a § 1983 claim brought by an incarcerated plaintiff because that claim would "necessarily demonstrate[] the invalidity of the [prior] conviction." *Id.* at 481-82. But with a few limited exceptions (none of which applies here), claims for "*future* relief" are "distant from" *Heck*'s scope. *Wilkinson* v. *Dotson*, 544 U.S. 74, 82 (2005). So too here. Olivier's claims don't operate to overturn or undermine his prior conviction. He seeks only to prevent a *future* conviction. Such "wholly prospective" relief against an unconstitutional law is a heartland § 1983 claim—even for plaintiffs who have "already sustained convictions" under that law. *Wooley*, 430 U.S. at 711.

Olivier alleges that the city's ordinance preventing him from speaking in a public park outside a designated zone deprives him of his constitutional right to engage in religious expression and share his faith. J.A. 20-21. His evangelism in public places follows a tradition as "old as the history of printing presses." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 108 (1943). This right is "doubly protect[ed]" by the First Amendment's free exercise and free speech clauses because "'government suppression of speech [is] so commonly * * * directed *precisely* at religious speech.'" *Kennedy* v. *Bremerton School District*, 597 U.S. 507, 523-24 (2022) (citation omitted). "There is no greater federal interest" than enforcing this "explicit constitutional guarantee[]." *New Orleans Public Service, Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 365 (1989).

Section 1983 is the primary way persons like Olivier can enforce this guarantee against state and local

officials. To help ensure that the newly ratified Fourteenth Amendment wasn't just a parchment promise, Congress empowered "any citizen of the United States or other person within the jurisdiction thereof" subject to a deprivation of constitutional rights under color of state law to bring "an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983; see Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13.

Olivier's claims fall in the heartland of § 1983's text and history. He's a person who alleges that the city's ordinance violates his First and Fourteenth Amendment rights. As this Court has "explicitly and repeatedly reaffirmed" "without a dissenting voice," § 1983 "plainly authorize[s]" claims alleging the deprivation of "freedom of speech." *Hague* v. *Committee for Industrial Organization*, 307 U.S. 496, 519, 527 (1939) (opinion of Stone, J.). Indeed, because "streets and parks" "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions," § 1983 has long been used specifically to enjoin infringement of these rights "under color of [local] ordinances" by municipal officials. *Id.* at 514-15 (opinion of Roberts, J.); see *Medina* v. *Planned Parenthood South Atlantic*, 145 S. Ct. 2219, 2241 (2025) (Thomas, J., concurring) (describing the history of § 1983 suits to protect "rights * * * 'of personal liberty,' such as free speech and assembly" (citation omitted)).

That's why this Court routinely adjudicates First Amendment claims of all stripes under § 1983. *E.g.*,

Mahmoud v. *Taylor*, 145 S. Ct. 2332, 2353 (2025); *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U.S. 14, 16-17 (2020) (per curiam); *Janus* v. *American Federation of State, County & Municipal Employees*, 585 U.S. 878, 891-92 (2018); *Ayotte* v. *Planned Parenthood of Northern New England*, 546 U.S. 320, 324-25 (2006); *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U.S. 520, 528 (1993). Indeed, litigants rely on § 1983 to vindicate the full spectrum of constitutional rights. *E.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 16 (2022); *Torres* v. *Madrid*, 592 U.S. 306, 310 (2021).

This includes litigants who have previously been convicted of violating the law they now challenge. *Carey* v. *Brown*, 447 U.S. 455, 458 (1980); *Wooley*, 430 U.S. at 707-08. These challenges, too, are consistent with § 1983's plain text. The statute protects "any citizen of the United States or other person within the jurisdiction thereof" who's been deprived of constitutional rights—full stop. 42 U.S.C. § 1983. It doesn't distinguish between persons who have been punished in the past and those who haven't. Allowing "injunctive relief" to safeguard constitutional rights follows from § 1983's express reference to equity, as well as its "central objective" to ensure a remedy for both past and future deprivations of constitutional rights. *Felder* v. *Casey*, 487 U.S. 131, 139 (1988) (citation omitted).

If anything, Olivier's prior conviction for preaching outside the city's official speech zone makes him the "perfect plaintiff" to bring a § 1983 claim. Pet. App. 48a (opinion of Ho, J.). Injunctive relief requires a plaintiff to show that the risk of future harm

is concrete and imminent. *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 410 (2013). A plaintiff who hasn't violated a challenged law or hasn't faced punishment might struggle to clear the Article III bar. *Id.* at 411; see, *e.g.*, *Murthy* v. *Missouri*, 603 U.S. 43, 70 (2024). By contrast, "past enforcement against the same conduct is good evidence that the threat of enforcement is not 'chimerical.'" *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 164 (2014) (citation omitted). Foreclosing § 1983 claims like Olivier's would send an "odd message to citizens"—"you can't sue if you're not injured" but you also "can't sue if you *are* injured." Pet. App. 48a (opinion of Ho, J.). Section 2254 doesn't compel that Catch-22.

B. *Heck* doesn't bar Olivier's claims for prospective relief.

Under precedent and first principles, *Heck* doesn't bar Olivier's claims. *Heck* forecloses § 1983 claims when a "judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence" in state court. 512 U.S. at 487. In *Heck*, the plaintiff's § 1983 claims sought "damages for confinement" imposed following a state-court conviction that was allegedly marred by an "unlawful, unreasonable and arbitrary investigation" as well as the destruction and manipulation of evidence. *Id.* at 479, 484. This Court held that those claims were irreconcilable with—and therefore would imply the invalidity of—his conviction. *Id.* at 486-87.

Because the plaintiff in *Heck* sought to be "compensated fairly for injuries caused by the violation of his legal rights," the Court drew on "the common law

of torts" and "the elements of damages and the prerequisites for their recovery" as "the starting point" for Heck's § 1983 claim. 512 U.S. at 483 (quoting *Carey* v. *Piphus*, 435 U.S. 247, 257-58 (1978)). The constitutional tort asserted in *Heck* most closely resembled the common-law tort of malicious prosecution, which historically required a plaintiff to show the "termination of the prior criminal proceeding in favor of the accused." *Id.* at 484. Drawing from that background, the Court similarly required favorable termination for constitutional torts brought under § 1983 seeking damages for the invasion of rights in a prosecution. *Id*. at 486-87.

Olivier's prospective § 1983 claims, unlike the retrospective damages claims in *Heck*, don't trigger that bar. A judgment in Olivier's favor wouldn't "necessarily" imply the invalidity of his prior conviction or sentence. *Heck*, 512 U.S. at 487. Prospective relief to prevent the future enforcement of an unconstitutional law doesn't change a past conviction or sentence. That is reason alone to reverse.

Further still, Olivier's § 1983 First Amendment and Fourteenth Amendment claims aren't analogous to the common-law tort of malicious prosecution, which the *Heck* Court invoked to impose a requirement that the state-court proceeding must have ended favorably for the § 1983 claimant to proceed. 512 U.S. at 484. This Court hasn't drawn analogies to common-law torts for First Amendment claims seeking injunctive relief. But to the extent a common-law analogue is needed, Olivier's claims more closely resemble equitable bills for antisuit injunctions that don't require plaintiffs to show favorable termination of a prior conviction. Either way, *Heck* doesn't bar Olivier's claims.

1. In *Heck*, this Court confronted the "intersection" between § 1983, and the federal habeas corpus statute, 28 U.S.C. § 2254. 512 U.S. at 480. The Court held that a plaintiff can't seek "damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," without proof that the conviction has been overturned. *Id.* at 486-87. This holding bars a § 1983 suit only "*if* success in *that action* would *necessarily* demonstrate the invalidity of confinement or its duration." *Dotson*, 544 U.S. at 81-82 (some emphases added). Claims like Olivier's seeking prospective relief against the future enforcement of a law challenged as unconstitutional fall outside that prohibition.

The "simplest cases" under *Heck* arise when an inmate's § 1983 suit seeks relief that "lie[s] 'within the core of habeas corpus.'" *Nance* v. *Ward*, 597 U.S. 159, 167 (2022) (citation omitted). "Habeas is at its core a remedy for unlawful * * * detention." *Munaf* v. *Geren*, 553 U.S. 674, 693 (2008). So § 1983 can't be used to pursue "immediate release or speedier release" from prison. *Preiser* v. *Rodriguez*, 411 U.S. 475, 500 (1973). Because that relief is available directly through habeas review, *Heck* sensibly prevents plaintiffs from end-running the habeas regime. See also pp. 42-43, *infra*.

No such conflict exists here. Olivier doesn't seek immediate or speedier release from prison. Prospective injunctive relief would "neither terminate custody, accelerate the future date of release from custody, nor reduce the level of custody"—and no case has "recognized habeas as the sole remedy, or even an available one," absent those consequences. *Skinner* v.

Switzer, 562 U.S. 521, 534 (2011) (cleaned up); accord *DHS* v. *Thuraissigiam*, 591 U.S. 103, 119 (2020). If Olivier were required to seek habeas review of potential *future* confinement in violation of the First Amendment, that would "broaden the scope of habeas relief beyond recognition"—a telltale sign that the *Heck* bar doesn't apply here. *Dotson*, 544 U.S. at 85 (Scalia, J., concurring).

Absent any conflict between the federal civil rights and habeas regimes, there's no basis to impose a prudential, judge-made restriction on § 1983's text. That's why this Court has been "careful" to "stress the importance of the term 'necessarily,'" *Nelson* v. *Campbell*, 541 U.S. 637, 647 (2004), before § 1983 claims can be barred based on an inference that "a favorable judgment would * * * necessarily imply the invalidity of [plaintiffs'] convictions or sentences," *Skinner*, 562 U.S. at 533-34 (cleaned up). It's not enough to say that a successful § 1983 suit might lead to earlier release. *Dotson*, 544 U.S. at 78. The "implication" of the conviction's invalidity really "must be '*necessar[y].*'" *Nance*, 597 U.S. at 168. Absent that narrow circumstance, "the action should be allowed to proceed." *Heck*, 512 U.S. at 487.

When applying *Heck*, this Court has distinguished between permissible *forward*-looking relief and impermissible *backward*-looking relief. See *Dotson*, 544 U.S. at 82; *Edwards* v. *Balisok*, 520 U.S. 641, 648-49 (1997); see also *Skinner*, 562 U.S. at 529, 534. And it has explained that "claims for *future* relief" are "distant from [*Heck*'s] core." *Dotson*, 544 U.S. at 82. So "ordinarily," a request for "prospective relief will not 'necessarily imply' the invalidity" of a conviction or custody. *Edwards*, 520 U.S. at 648; see also *Wolff* v.

McDonnell, 418 U.S. 539, 555 (1974) (*Heck* doesn't "preclude a litigant with standing" from seeking to "enjoin[] the prospective enforcement of invalid prison regulations").

In *Wooley*, this Court vindicated the availability of a federal claim in a federal forum to a plaintiff much like Olivier. *Wooley* involved a § 1983 claim raising free speech and free exercise objections to a state statute requiring the display of New Hampshire's "'Live Free or Die'" motto on license plates and seeking an injunction "against future criminal prosecutions." 430 U.S. at 709 & n.7. The plaintiff had been convicted three times of violating the law, been fined, and served a sentence of 15 days imprisonment. *Id*. at 708. The state argued that his "fail[ure] to seek review of his criminal convictions" and general considerations of "state-federal relations" and "judicial economy" required the federal court to abstain from hearing his claim. *Id*. at 710.

This Court disagreed. When "a genuine threat of prosecution exists, a litigant is entitled to resort to a federal forum to seek redress for an alleged deprivation of federal rights." *Wooley*, 430 U.S. at 710 (citing *Steffel* v. *Thompson*, 415 U.S. 452 (1974); *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 930-31 (1975)). And the plaintiff's § 1983 suit was "in no way designed to annul the results of a state trial since the relief sought is wholly prospective, to preclude further prosecution under a statute alleged to violate * * * constitutional rights" and didn't seek "to have [the plaintiff's] record expunged, or to annul any collateral effects those convictions may have." *Wooley*, 430 U.S. at 711. So *Younger* abstention didn't bar a federal-court proceeding. Neither does *Heck*.

In cases like *Wooley* and this one, "principles of federalism not only do not preclude federal intervention, they compel it. Requiring the federal courts to totally step aside when no state criminal prosecution is pending against the federal plaintiff would turn federalism on its head." *Steffel*, 415 U.S. at 472. That is why this Court has repeatedly rejected the suggestion that a § 1983 plaintiff must exhaust remedies available in state court before seeking a federal forum. See *id.* at 473; *Wooley*, 430 U.S. at 711; *Heck*, 512 U.S. at 489.

Olivier's prospective claims fit comfortably within the ordinary rule that *Heck* doesn't apply to claims for "*future* relief." *Dotson*, 544 U.S. at 82. *Wooley* dispels any remaining suggestion that Olivier's past conviction changes this calculus. To secure an injunction or a declaration against the city's ordinance, Olivier need not revisit his past conviction. That's because "[i]njunctions do not work backwards to invalidate official actions taken in the past" but instead "operate to prevent future official enforcement actions upon threat of contempt." Pet. App. 50a (opinion of Oldham, J.). This forward-looking relief to prevent "possible *later* prosecution and conviction" is "independent of the *prior* conviction." *Martin* v. *Boise*, 920 F.3d 584, 614-15 (9th Cir. 2019) (emphasis added).[2] Because an injunction preventing the future enforcement of an ordinance doesn't invalidate official actions in the past, that relief wouldn't "prove the unlawfulness" or "negate an element" of the prior conviction. *Heck*, 512 U.S. at 486 & n.6. Neither Olivier's conviction nor his

[2] This Court abrogated *Martin*'s Eighth Amendment holding, but not its *Heck* holding, in *Grants Pass* v. *Johnson*, 603 U.S. 520 (2024). See Pet. 14 n.3.

sentence will change one whit if he wins below on the merits.

In short, *Heck* doesn't bar Olivier's § 1983 claims because a judgment awarding prospective relief wouldn't "necessarily imply the invalidity of his conviction or sentence." *Heck*, 512 U.S. at 487.

2. What's more, unlike the § 1983 claims for damages in *Heck*, Olivier's § 1983 claims for prospective relief don't sound in malicious prosecution or any similar common-law tort that could trigger a favorable-termination requirement of the prior state-court proceedings. This Court has never looked to the common law to identify the elements of § 1983 claims that challenge unconstitutional regulations of speech. But if a common-law analogue were necessary here, the most appropriate one would be an antisuit injunction. Olivier seeks prospective relief against enforcement of an unconstitutional law—a remedy that springs from equity, not tort law.

This Court has recognized that § 1983 creates, in some contexts, a species of tort liability. *Heck*, 512 U.S. at 483. So the "common law of torts" can be helpful in "defining the contours and prerequisites of a § 1983 claim." *Manuel* v. *Joliet*, 580 U.S. 357, 370 (2017). Because § 1983 wasn't enacted "in a historical vacuum," the Court presumes that Congress likely incorporated certain "familiar" common-law principles "absent specific provisions to the contrary." *Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247, 258 (1981).

Heck turned to that backdrop to elaborate why the plaintiff there could not use § 1983 to collaterally attack his state-court conviction. 512 U.S. at 483. This Court reasoned that the "common-law cause of action

for malicious prosecution provides the closest analogy to claims" seeking "damages for confinement imposed pursuant to legal process." *Id.* at 484. The common-law tort of malicious prosecution required plaintiffs to prove "termination of the prior criminal proceeding in favor of the accused." *Ibid.* The Court determined that it was appropriate to require the plaintiff to satisfy that same element for the § 1983 claims in that case.

The Court has cautioned, however, that "[c]ommon-law principles are meant to guide rather than to control the definition of § 1983 claims, serving 'more as a source of inspired examples than of prefabricated components.'" *Manuel*, 580 U.S. at 370 (quoting *Hartman* v. *Moore*, 547 U.S. 250, 258 (2006)). In § 1983, Congress created a new federal cause of action to provide a remedy where none may have existed, so § 1983 can't be "simply a federalized amalgamation of pre-existing common-law claims, an all-in-one federal claim encompassing the torts of assault, trespass, false arrest, defamation, malicious prosecution, and more." *Rehberg* v. *Paulk*, 566 U.S. 356, 366 (2012). This claim is "broader in that it reaches constitutional and statutory violations that do not correspond to any previously known tort" and "differ[s] in some respects from the common law." *Ibid.*

This Court has taken a measured approach to borrowing common-law rules for § 1983 claims. A rule must be both "firmly rooted," *Health & Hospital Corp. of Marion County* v. *Talevski*, 599 U.S. 166, 178 (2023) (citation omitted), and consistent with "the values and purposes of the constitutional right at issue," *Thompson* v. *Clark*, 596 U.S. 36, 43 (2022) (citation omitted). That makes good sense. The Constitution protects

certain rights that "may not also be protected by an analogous branch of the common law torts." *Carey*, 435 U.S. at 258. For those rights, the Constitution—not the common law—guides the analysis.

One critical example is the First Amendment's protection of the right to religious speech, which doesn't track "battery, false imprisonment, defamation, malicious prosecution, or the like." Michael Wells, *Constitutional Torts, Common Law Torts, and Due Process of Law*, 72 Chi.-Kent L. Rev. 617, 620 (1997). After all, the founders fought a Revolution in part "to get rid of the English common law on liberty of speech." *Bridges* v. *California*, 314 U.S. 252, 264 (1941) (citation omitted). So claims alleging the "abridgment of free speech" or the "infringement of free exercise" seek to remedy a "harm[] specified by the Constitution itself"—not a common-law harm that was "traditionally recognized as providing a basis for lawsuits in American courts." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 425 (2021).

As a result, Olivier's First Amendment and Fourteenth Amendment claims differ from common-law torts in meaningful ways. Olivier challenges a city ordinance that relegates him to a remote designated area when he tries to share his faith in a public park. He asserts that the ordinance is "overly broad," among other things. J.A. 20. If Olivier can prove that the ordinance "'burden[s] substantially more speech than is necessary,'" then the city's regulation of speech in this traditional "venue[] for the exchange of ideas" violates the First Amendment. *McCullen* v. *Coakley*, 573 U.S. 464, 476, 486 (2014) (citation omitted).

The constitutional framework for Olivier's claims doesn't resemble the tort of malicious prosecution in any way, shedding any justification for a favorable-termination requirement. This Court has consistently heard First Amendment claims under § 1983 without ever invoking malicious-prosecution tort principles to limit relief against laws that regulate speech. *Reed* v. *Town of Gilbert*, 576 U.S. 155, 159 (2015) (law "governing the manner in which people may display outdoor signs"); *McCullen*, 573 U.S. at 472 (buffer-zone law that threatened violators with imprisonment); *City of Ladue* v. *Gilleo*, 512 U.S. 43, 57 (1994) (sign ordinance that foreclosed access to "an audience that could not be reached nearly as well by other means"). Nor has the specter of malicious prosecution ever manifested in decisions addressing related Fourteenth Amendment challenges to vague laws that chill speech. *E.g.*, *Kolender* v. *Lawson*, 461 U.S. 352, 357-58 (1983); *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982).

To the extent § 1983 looks to a historical analogue, Olivier's claims more closely resemble equitable bills for antisuit injunctions, not tort actions for malicious prosecution. Congress empowered plaintiffs to vindicate their constitutional rights not only through an "action at law" but also through a "suit in equity." 42 U.S.C. § 1983. In a § 1983 action, a federal court can "exercis[e] its equitable authority" when "[c]onsistent with historical practice." *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 44 (2021). The injunctive and declaratory relief Olivier seeks against future prosecutions under an unconstitutional law is similar to an antisuit injunction, which allows "a party who would

be the defendant in a corresponding lawsuit [to] enforce in equity a legal position that would be a defense at law." John Harrison, *Ex parte Young*, 60 Stan. L. Rev. 989, 990 (2008). Historically and logically, nothing about that request for prospective protection requires Olivier to prove favorable termination of a past prosecution.

Antisuit injunctions boast a deep historical pedigree. In an early decision, Chief Justice Marshall explained for the Court that "an injunction can be issued to restrain a person, who is a State officer, from performing any official act" that violates the Constitution. *Osborn* v. *Bank of United States*, 22 U.S. (9 Wheat.) 738, 838 (1824). Unconstitutional prosecutions were no exception from that rule. Just last Term, the Court reaffirmed that "a court of equity could issue an antisuit injunction to prevent an officer from engaging in tortious conduct." *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2554 n.9 (2025); see *Whole Woman's Health*, 595 U.S. at 53 (Thomas, J., concurring in part and dissenting in part). Such injunctions could be appropriate because the "commencement of a suit" (including a prosecution) can qualify as "an actionable injury to another." *Ex parte Young*, 209 U.S. 123, 153 (1908); see *id.* at 160-62.

A claim for a forward-looking antisuit injunction doesn't turn on whether a plaintiff was or wasn't convicted under a challenged law in the past. Instead, a plaintiff must prove (1) that the threatened enforcement of state law would "violate the rights and privileges of the complainant which had been guaranteed by the Constitution," (2) that he will suffer "irreparable damage and injury" without judicial intervention, and (3) that remedies at law are inadequate. *Young*,

209 U.S. at 152, 165 (citation omitted); accord *Doran*, 422 U.S. at 931. Those elements track the standard test for a permanent injunction. *eBay Inc.* v. *MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). And they reinforce that "an injunction looks to the future"—not to past prosecutions under the challenged law. *Douglas* v. *City of Jeannette*, 319 U.S. 157, 165 (1943).

There's one historical limit on antisuit injunctions—but it doesn't apply here. A federal court generally would abstain from "interfer[ing] in a case where proceedings were already pending in a state court." *Young*, 209 U.S. at 162; see *Younger* v. *Harris*, 401 U.S. 37, 45 (1971). But there was no rule against seeking relief against a not-yet-initiated prosecution just because the plaintiff was subject to an already-finished prosecution in the past. A state-court proceeding could disable a federal-court action only until "the jurisdiction involved [was] exhausted" in state court. *Harkrader* v. *Wadley*, 172 U.S. 148, 164 (1898). Once the state-court proceeding has ended, plaintiffs who were convicted for violating allegedly unconstitutional laws can seek an injunction against "prosecutions for future violations of the same statutes." *Wooley*, 430 U.S. at 711; see, *e.g.*, *Kolender*, 461 U.S. at 354; *Carey*, 447 U.S. at 458; *Cline* v. *Frink Dairy Co.*, 274 U.S. 445, 451-53 (1927). That rule leaves appropriate "room for federal intervention under § 1983" in cases like this one. *Wooley*, 430 U.S. at 712 n.9.

Congress also has moved beyond the common law by expanding the relief available for a § 1983 plaintiff like Olivier through the Declaratory Judgment Act, ch. 512, 48 Stat. 955 (1934), codified at 28 U.S.C. §§ 2201-2202. "Congress anticipated that the declaratory judgment procedure would be used by the federal

courts to test the constitutionality of state criminal statutes." *Steffel*, 415 U.S. at 467-68 (citation omitted). This Court has rejected invitations to engraft restrictions that "would defy Congress' intent to make declaratory relief available" even "in cases where an injunction would be inappropriate." *Id.* at 471.

In sum, the analogy in *Heck* to the tort of malicious prosecution has no bearing on Olivier's claims.

C. The Fifth Circuit wrongly transformed *Heck* into forward-looking immunity for ongoing constitutional violations.

The Fifth Circuit forthrightly acknowledged the "friction" between its decision and this Court's precedents. Pet. App. 11a. But relying on circuit precedent, the court concluded that *Heck* bars a previously convicted plaintiff's § 1983 suit that seeks "prospective injunctive relief" against a state law on "grounds of facial unconstitutionality." Pet. App. 9a (quoting *Clarke* v. *Stalder*, 154 F.3d 186, 188 (5th Cir. 1998) (en banc)); see Pet. App. 13a. That conclusion is wrong. It conflates *relief* with *reasoning* and rests on speculation about possible post-conviction actions. The Fifth Circuit's resulting atextual rule precluding prospective relief undermines § 1983 without advancing *Heck*'s purposes.

1. In the Fifth Circuit's view, a federal court's opinion reasoning that the law is unconstitutional isn't "entirely separate from the underlying conviction" because it could imply that the previous conviction was erroneous. Pet. App. 11a-12a. The court was wrong to redirect its focus from the prospective relief that Olivier seeks to the potential reasoning that might underlie such relief.

Heck doesn't turn on the reasoning in an opinion. Instead, the *Heck* bar applies only when a "*judgment* in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." 512 U.S. at 487 (emphasis added). The "*relief* sought"—whether damages, an injunction, or a declaration—must be predicated on the unlawfulness of the conviction or a remedy for harm stemming from the legal process that secured the conviction. *Dotson*, 544 U.S. at 81-82 (emphasis added). That focus on judgments makes sense. Only a "federal court's judgment, not its opinion," remedies the plaintiff's injury and binds the defendant. *CASA*, 145 S. Ct. at 2560 (citation omitted). A court affords relief "*through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Haaland* v. *Brackeen*, 599 U.S. 255, 294 (2023) (citation omitted).

Here, an injunction would prevent the city "from taking specified unlawful actions" against Olivier's future religious speech. *Whole Woman's Health*, 595 U.S. at 44. But the injunction wouldn't "annul" the ordinance. *Massachusetts* v. *Mellon*, 262 U.S. 447, 488 (1923). Nor would it change the parties' legal obligations with respect to Olivier's past conviction, such as by entitling Olivier to the amount he paid in fines or requiring the city to expunge his conviction. Because a federal-court judgment wouldn't do "anything to undermine, collaterally attack, or otherwise impose tort liability on Olivier's previous conviction," applying *Heck* here is "indefensible." Pet. App. 51a (opinion of Oldham, J.).

The Fifth Circuit's concern that a ruling on the ordinance's facial unconstitutionality would demonstrate the invalidity of Olivier's conviction ultimately proves too much. See Pet. App. 9a. That same logic would bar § 1983 claims brought by *another* plaintiff. Consider someone who engaged in similar religious speech in the public park near the city's amphitheater, sought prospective relief in federal court before he was arrested, and challenged the ordinance as facially unconstitutional. That plaintiff's successful facial challenge would "undermine the legal reasoning of Olivier's previous conviction" no differently than Olivier's facial challenge would. Pet. App. 51a (opinion of Oldham, J.). But *Heck* indisputably wouldn't bar that claim. Plaintiffs routinely bring pre-enforcement challenges to laws that have previously been enforced against someone else. *E.g.*, *303 Creative LLC* v. *Elenis*, 600 U.S. 570, 583 (2023); *Steffel*, 415 U.S. at 459. Because Olivier's challenge has the same (lack of) effect on his conviction as anyone else's identical challenge, the correct "answer is that neither suit is barred by *Heck*." Pet. App. 51a (opinion of Oldham, J.).

2. The Fifth Circuit also reasoned that the *Heck* bar applied to Olivier's § 1983 claims because a federal-court judgment in that action would "be binding on a state court in a subsequent action," leaving the state court with "no choice but to strike down" the person's conviction. *Clarke*, 154 F.3d at 190; see Pet. App. 12a. But the premise is wrong, and the conclusion doesn't follow. That hypothetical action wouldn't "necessarily" invalidate the conviction.

If Olivier were to prevail in his § 1983 suit and pursue relief from his conviction in state court, a state court wouldn't be required to vacate that conviction.

A state court isn't bound by a lower federal court's decision that a statutory provision is unconstitutional. See *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 58 n.11 (1997). At most, a state court is "likely to defer"—but won't necessarily defer—"to a federal court's interpretation of federal law." *Brackeen*, 599 U.S. at 293-94 (likelihood of state court's deference didn't establish redressability).

Nor would the defendant in any post-conviction action be precluded from defending Olivier's conviction. Issue preclusion would require the plaintiff to show that the subsequent state-court proceeding seeks to relitigate the "same issue" that was "actually decided" in a prior final judgment "between the same parties" or "nonparties that are subject to the binding effect" of the federal-court action. Wright & Miller, Federal Practice and Procedure § 4416 (3d ed. May 2025 update); see *Bravo-Fernandez* v. *United States*, 580 U.S. 5, 10 (2016). Even if those requirements were met, courts can still decline to preclude a party if there are "special considerations of fairness" counseling against preclusion. Wright & Miller, Federal Practice and Procedure § 4416.

Here, preclusion would be far from guaranteed. A federal-court judgment wouldn't necessarily check the "same parties" box. Olivier's § 1983 suit named as defendants the government body that enacted the law (the city) and the official who enforces it (the police chief). But the State of Mississippi would be the respondent to a post-conviction motion. See Miss. Code Ann. § 99-39-9(1). A state court might also decline to apply issue preclusion based on "special considerations" counseling against it. Wright & Miller, Federal Practice and Procedure § 4416.

So as this Court noted in *Heck* itself, "preclusion will not *necessarily* be an automatic, or even a permissible, effect" of a § 1983 judgment. 512 U.S. at 488 (emphasis added). And "necessarily" is the standard that the city must meet. *Id.* at 487; accord *Dotson*, 544 U.S. at 86 (Scalia, J., concurring) (explaining that *Heck* doesn't bar a § 1983 claim that "may or may not result in release").

Aside from the doubtful role for preclusion, other limitations on post-conviction relief would further shield any effort to use a favorable § 1983 judgment to vacate the conviction. In Mississippi, for example, a person's failure to raise constitutional arguments in a prior state-court trial or appeal generally "waive[s]" the right to raise those arguments in a post-conviction challenge. Miss. Code Ann. §§ 99-39-3, 99-39-5(1)(a).

All these contingencies show that success in a § 1983 action hardly makes vacatur of a conviction "inevitable." *Skinner*, 562 U.S. at 534 (rejecting *Heck* bar even though plaintiff sought DNA testing that might aid future challenge to conviction). Again, "Justice Scalia's words" in *Heck* were "'necessarily imply' not 'possibly imply' or 'probably imply.'" *Clarke*, 154 F.3d at 194 (Garza, J., dissenting). The Fifth Circuit erred in not taking *Heck* at its word.

3. As a practical matter, the Fifth Circuit's misreading of *Heck* results in the worst of both worlds by undermining § 1983's aims without any offsetting gains in *Heck*'s goals of "finality and consistency." 512 U.S. at 485.

Section 1983 authorizes federal courts, "as guardians of the people's federal rights," to "protect the people from unconstitutional action under color of state

law." *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972). But in the Fifth Circuit, "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." *Martin*, 920 F.3d at 614. Unconstitutional state action that isn't immediately challenged could, in turn, shield yet more unconstitutional state action from judicial review. That result turns § 1983 on its head. A past conviction shouldn't "insulate future prosecutions from challenge." *Id.* at 615. "Justice Scalia never envisioned *Heck* * * * to be an escape hatch to avoid ruling on constitutional issues." *Clarke*, 154 F.3d at 194 (Garza, J., dissenting).

In the First Amendment context, the Fifth Circuit's rule leaves people like Olivier suffering constitutional injuries with no federal claim at all. Where free speech and religious exercise are concerned, "the alleged danger of [a] statute is, in large measure, one of self-censorship." *Virginia* v. *American Booksellers Ass'n*, 484 U.S. 383, 393 (1988). The city's attempt to read § 2254 to impliedly foreclose these § 1983 claims ignores that danger and disregards the "'serious constitutional question' that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." *Webster* v. *Doe*, 486 U.S. 592, 603 (1988) (quoting *Bowen* v. *Michigan Academy of Family Physicians*, 476 U.S. 667, 681 n.12 (1986)). This Court has "emphasized" that "where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear." *Ibid.* (citing *Johnson* v. *Robison*, 415 U.S. 361, 373-74

(1974)). There's no text suggesting an intent to foreclose relief here, much less any text clearly demonstrating it.

At the same time, barring § 1983 claims like Olivier's wouldn't result in any offsetting gains in either finality or efficiency. See *Martin*, 920 F.3d at 615. Even if Olivier were to prevail in his § 1983 suit, his conviction would remain final. As for consistency, the two cases would simply result in two separate judgments about the lawfulness of separate instances of conduct at separate times. The upshot is that Olivier's suit wouldn't undermine finality and consistency any more than a separate suit brought by another individual would—and the *Heck* bar plainly wouldn't foreclose that suit. That's why it's perverse to apply the *Heck* bar to prevent only the individual who has already *been* victimized by an assertedly unconstitutional law from challenging that law.

Applying *Heck* here also imposes an exhaustion requirement that *Heck* itself disavowed when this Court rejected the notion that "[e]xhaustion of state remedies" would be required just because a § 1983 judgment would "'resolve a necessary element to a likely challenge to a conviction.'" 512 U.S. at 488 (citation omitted). That makes sense, because "each time a plaintiff is injured by" the enforcement of an unconstitutional law, a separate constitutional violation occurs that creates a new "cause of action." *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971) (discussing statutory violations); accord *Commissioner* v. *Sunnen*, 333 U.S. 591, 597-99 (1948). So *Heck* doesn't require a plaintiff like Olivier to challenge a law's constitutionality "at the time of his conviction through direct appeal or post-conviction

relief" before seeking prospective relief against future enforcement. Cf. *Martin*, 920 F.3d at 619 (Owens, J., concurring in part and dissenting in part).

After all, defendants in criminal proceedings may have good reason to do just what Olivier did here—plead no contest and then seek prospective relief against future enforcement. As a moral matter, a defendant may believe he has an obligation to suffer the consequences of disobeying even an unjust, unconstitutional law. As a practical matter, a criminal defendant can't obtain interim or prospective relief (from state or federal court) while his trial is ongoing. See *Younger*, 401 U.S. at 45. Every day the criminal proceeding stretches on is another day he won't be able to exercise his constitutional rights without fear of additional punishment.

That state of affairs is intolerable for people who, like Olivier, wish to speak and exercise their religious liberty. The loss of "First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). Understandably, persons in Olivier's situation might choose to seek meaningful relief that a state criminal court can't provide, even at the cost of paying a fine or suffering some other punishment because of the conviction. Douglas Laycock, *Federal Interference with State Prosecutions: The Need for Prospective Relief*, 1977 Sup. Ct. Rev. 193, 194.

Other criminal defendants might unintentionally forgo pressing a constitutional defense. Not everyone would understand that by accepting a state-court conviction and perhaps incurring modest penalties,

they're giving up their constitutional rights for all time. Stretched that far, *Heck* would create an unwarranted "preclusion trap" for the unwary. *Knick* v. *Township of Scott*, 588 U.S. 180, 185 (2019).

For anyone who has forgone a challenge to a conviction, applying *Heck* to bar prospective claims for injunctive relief against an unconstitutional law would paint them into a corner. They would be left with the untenable choice of violating the law again and enduring the consequences, or giving up their constitutional rights. As this Court has observed, however, individuals shouldn't have to "'bet the farm' by 'taking the violative action' before 'testing the validity of the law.'" *Free Enterprise Fund* v. *Public Co. Accounting Oversight Board*, 561 U.S. 477, 490-91 (2010) (citation omitted). Prospective relief under § 1983 exists to protect a plaintiff trapped "between the Scylla of intentionally flouting state law and the Charybdis of forgoing what he believes to be constitutionally protected activity in order to avoid becoming enmeshed in another criminal proceeding." *Wooley*, 430 U.S. at 710. Olivier is entitled to seek that protection.

II. *Heck* doesn't bar § 1983 claims where a plaintiff never had access to habeas relief.

Heck doesn't bar Olivier's § 1983 claims for the independent, alternative reason that Olivier couldn't have sought federal habeas relief against the ordinance under the First and Fourteenth Amendments because he was never in "custody." As a result, there is no role for *Heck* to play in protecting the habeas regime from a § 1983 end-run.

A. The *Heck* bar doesn't apply to plaintiffs who were never in custody.

Heck is an implied exception to § 1983 that safeguards the proper domain of the federal habeas statute. When, however, a plaintiff like Olivier couldn't press his constitutional claims in habeas because habeas was unavailable, his claims should go forward under § 1983—just as Congress provided.

This Court applies "ordinary interpretive tools" to § 1983. *Talevski*, 599 U.S. at 189. One of those tools is the canon that "the specific governs the general." *NLRB* v. *SW General, Inc.*, 580 U.S. 288, 305 (2017) (citation omitted). Under this canon, a "carefully tailored scheme" implicitly forecloses a constitutional claim under the more general § 1983 regime so as not to "circumvent" Congress's scheme of "administrative remedies." *Smith* v. *Robinson*, 468 U.S. 992, 1012-13 (1984). The more specific statute is the "exclusive avenue" for such claims, displacing the general cause of action in § 1983. *Id.* at 1013.[3]

Where, however, two federal statutes "allegedly touch[] on the same topic, this Court is not at liberty to pick and choose among congressional enactments and must instead strive to give effect to both." *Epic Systems Inc.* v. *Lewis*, 584 U.S. 497, 510 (2018) (cleaned up). This harmonization canon "grow[s] from an appreciation that it's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them." *Id.* at 511. As a result, a

[3] Some remedial statutes expressly provide relief only where "no other adequate remedy in a court" may be sought. 5 U.S.C. § 704. Section 1983 doesn't contain such a limitation, so any restriction on its scope is, at most, implicit.

statute implicitly precludes a § 1983 claim only if there's an "incompatibility between enforcement under § 1983 and the enforcement scheme that Congress has enacted." *Talevski*, 599 U.S. at 187.

Those interpretive principles are reflected in this Court's cases addressing the "interrelationship" of §§ 1983 and 2254. *Preiser*, 411 U.S. at 482-83. A few years before the Civil Rights Act of 1871, Congress authorized federal courts to provide habeas relief to state prisoners who were "restrained of his or her liberty in violation of the constitution." Habeas Corpus Act of 1867, ch. 28, § 1, 14 Stat. 386. That authority is now divided between two statutes, both of which apply only when a person is in "custody." 28 U.S.C. § 2241(c)(3); *id.* § 2254(a) (more specifically in "custody pursuant to the judgment of a State court"). Both statutes' "essence" is "an attack by a person in custody upon the legality of that custody." *Preiser*, 411 U.S. at 484.

Against the backdrop of the pre-existing federal habeas mechanism, Congress enacted § 1983 without any express limitation for prisoner claims. But in *Preiser*, this Court held that the "specific federal habeas corpus statute" is the "exclusive remedy" for a state prisoner who seeks "to attack the validity of his confinement," lest the "broad language of § 1983" allow plaintiffs to "evade" restrictions on habeas such as exhaustion of state remedies. *Id.* at 489.

Heck took the reasoning of *Preiser* a step further. 512 U.S. at 480. *Preiser* had foreclosed injunctive relief under § 1983 that would compel "immediate or speedier release." *Id.* at 481. Although damages are unavailable in federal habeas proceedings, the Court

held that a prisoner can't seek "damages for allegedly unconstitutional conviction or imprisonment" under § 1983 unless he first secures the favorable termination of his sentence. *Id.* at 486-87. *Heck* discussed both the habeas statute's role as "'the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement'" and malicious prosecution, the analogous tort for recovering "damages for confinement." *Id.* at 482, 484 (citation omitted). Either way, "confinement" (viz., custody) was the throughline linking the prisoner's purported § 1983 claim with the alternative mechanism of habeas relief.

In ensuing decisions, this Court has consistently described *Heck* as "an 'implicit exception' for actions that lie 'within the core of habeas corpus.'" *Nance*, 597 U.S. at 167 (quoting *Dotson*, 544 U.S. at 79). This exception achieves "the practical objective of preserving limitations on the availability of habeas remedies." *Muhammad* v. *Close*, 540 U.S. 749, 751 (2004) (per curiam); see also *Trump* v. *J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (per curiam) (applying the reasoning of *Heck* to claims brought under the Administrative Procedure Act).

But while these decisions clarify what happens when a litigant has a claim under the text of both § 1983 and § 2254, they go no further. This Court has so far declined to "settle" whether the "unavailability of habeas" may "dispense with the *Heck* requirement." *Muhammad*, 540 U.S. at 752 n.2.

The justifications for *Preiser* and *Heck* compel the conclusion that a person like Olivier who was never in custody can bring a § 1983 claim, full stop. *Spencer* v.

Kemna, 523 U.S. 1, 20-21 (1998) (Souter, J., concurring); *id.* at 21 (Ginsburg, J., concurring); *id.* at 25 n.8 (Stevens, J., dissenting). Just as the federal habeas statute provides the "exclusive remedy available in a situation * * * where it so clearly applies," *Preiser*, 411 U.S. at 489, § 1983 cannot be precluded when habeas does *not* apply. Federal habeas can't be the "sole remedy" when it's not "even an available one" for claims that don't challenge custody. *Skinner*, 562 U.S. at 534. Such an upside-down application of "*Heck* would produce immunity from § 1983 liability, a result surely not intended." *Wallace* v. *Kato*, 549 U.S. 384, 395 n.4 (2007).

To be sure, a prisoner might not be permitted to wait until habeas relief *becomes* unavailable—for example, when the statute of limitations on habeas claims expires—and then race to the federal courthouse under § 1983. *Nance*, 597 U.S. at 178 (Barrett, J., dissenting) (citing *Dotson*, 544 U.S. at 87-88 (Scalia, J., concurring)). That isn't this case. Here, the habeas statutes don't offer any remedy at all because habeas was never available to Olivier in the first place.

In that circumstance, there's "no conflict" between an applicable general statute (§ 1983) and an inapplicable specific one (§ 2254)—and, in turn, no basis to apply the canon of favoring the specific over the general. *National Cable & Telecommunications Ass'n, Inc.* v. *Gulf Power Co.*, 534 U.S. 327, 335-36 (2002); A. Scalia & B. Garner, Reading Law 183 (2012) (the "general/specific canon" applies when "conflicting provisions simply cannot be reconciled"). With no conflict to resolve, there's no need for courts to "engraft [their] own exceptions onto the statutory text." *Henry Schein,*

Inc. v. *Archer & White Sales, Inc.*, 586 U.S. 63, 70 (2019). That approach would also run afoul of this Court's "reluctance to infer implicit displacement of the § 1983 remedy" even when another federal statute provides some remedy, much less no remedy at all. *Talevski*, 599 U.S. at 191 n.14.

This Court can make short work of applying the proper legal rule to the facts here. Both courts below held that Olivier was never in custody. Pet. App. 10a, 37a. The city never disputed that premise. Pet. 30; see Br. in Opp. 9; C.A. ROA 594. So Olivier never had the ability to seek relief under the federal habeas statute, which allows challenges only to "custody." 28 U.S.C. § 2254(a). Because this case doesn't fall within any "implicit habeas exception," *Dotson*, 544 U.S. at 82, § 1983 applies by its plain terms.

B. The Fifth Circuit erred in imposing a favorable-termination requirement on plaintiffs who were never in custody.

The Fifth Circuit was wrong to extend *Heck* to plaintiffs like Olivier who never had access to federal habeas review. See Pet. App. 10a. *Heck* doesn't justify that leap. Nor do tort-law principles. And any judge-made exception to § 1983 would have severe consequences that cut against any prudential limitation.

1. The city has defended the Fifth Circuit's rule by placing too much weight on a footnote in *Heck*. Br. in Opp. 10; accord, *e.g.*, *Savory* v. *Cannon*, 947 F.3d 409, 420-22 (7th Cir. 2020) (en banc). In that footnote, this Court observed that "the principle barring collateral attacks * * * is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." 512 U.S. at 490 n.10. That footnote can't

sustain the Fifth Circuit's extension of *Heck* to plaintiffs who were never in custody.

To start, footnote 10 is dicta because the plaintiff in *Heck* was "serving a 15-year sentence in an Indiana prison" at the time of his lawsuit. 512 U.S. at 478. *Heck* didn't (and couldn't) resolve the question whether a plaintiff who is no longer confined must prove that his conviction has been undone before bringing a § 1983 claim. *Wilson* v. *Midland County*, 116 F.4th 384, 412 (5th Cir. 2024) (en banc) (Willett, J., dissenting); *Savory*, 947 F.3d at 432-33 (Easterbrook, J., dissenting). To the contrary, this Court has treated as an open question whether "unavailability of habeas for other reasons may also dispense with the *Heck* requirement" of favorable termination. *Muhammad*, 540 U.S. at 752 n.2. *Muhammad* refutes any argument that footnote 10 already resolved this issue.

Even on its own terms, footnote 10 doesn't apply here. The footnote refers to "a convicted criminal [who] is no longer incarcerated." *Heck*, 512 U.S. at 490 n.10. But Olivier was never incarcerated in the first place. Pet. App. 3a, 31a. He was never in custody, and this Court need go no further than hold that plaintiffs who never had a habeas claim don't lose their ability to bring a civil-rights claim.

2. The city is also wrong to describe *Heck* as a "collateral-attack rule" grounded in background principles of tort law instead of ordinary principles of statutory interpretation that reconcile § 1983 with the habeas statutes. Br. in Opp. 11. Its line of reasoning is doubly flawed as applied here. While *Heck* might bar § 1983 claims by plaintiffs who had access to habeas but asserted their § 1983 claims only after completing

their sentences, the question here is whether a plaintiff who was never in custody in the first place must prove favorable termination. Regardless, Olivier doesn't seek damages for the wrongful use of criminal process, which severs any analogy to torts such as malicious prosecution that require showing a conviction has been favorably terminated.

This Court has disavowed the suggestion that tort law "control[s]" the interpretation of § 1983. *Manuel*, 580 U.S. at 370; see *Wilson*, 116 F.4th at 414 (Willett, J., dissenting). *Heck* itself treated tort law as the "starting point," not the finish line. 512 U.S. at 483 (citation omitted). Since *Heck*, the Court has made clear that the favorable-termination requirement applies only when "consistent with 'the values and purposes of the constitutional right at issue.'" *Thompson*, 596 U.S. at 43 (citation omitted). It would be "unjust" to the values and purposes of *any* constitutional right "to place [a] claim for relief beyond the scope of § 1983" when a plaintiff never had an "available remedy in habeas." *Cohen* v. *Longshore*, 621 F.3d 1311, 1317 (10th Cir. 2010).

Even if the city were right that *some* § 1983 claims by a plaintiff who now (or always) lacked access to habeas might sound in malicious prosecution, the claims here aren't one of them. Such a requirement could be justified only when a plaintiff seeks "damages for confinement imposed pursuant to legal process." *Heck*, 512 U.S. at 484. But the claims here are entirely different. Olivier seeks prospective relief against future prosecutions—a forward-looking request that looks nothing like malicious prosecution. See pp. 28-30, *supra*. So not even the city's tort-only take on *Heck* should bar Olivier's claims.

3. Policy reasons can never justify ignoring statutory text because this Court "implement[s] Congress's choices rather than remake[s] them." *Talevski*, 599 U.S. at 178. But here, the Fifth Circuit's expansion of *Heck* to plaintiffs who were never in custody is unnecessary to vindicate its "concerns for finality and consistency." *Heck*, 512 U.S. at 485.

The Full Faith and Credit Act ensures that state convictions ordinarily have preclusive effect in subsequent § 1983 actions. *Allen* v. *McCurry*, 449 U.S. 90, 97-98 (1980). State preclusion law often will prevent a plaintiff from relitigating, for example, the probable cause to initiate charges that culminated in a conviction. See *Wilson*, 116 F.4th at 420 n.128 (Willett, J., dissenting); cf. *Heck*, 512 U.S. at 480 n.2 (taking no position on conviction's preclusive effect). But some States—like Mississippi here—have "removed claims based in constitutional principle from the bounds of common law *res judicata*." Pet. App. 46a n.1 (opinion of Ho, J.) (citation omitted). The Fifth Circuit's approach bars § 1983 actions even where state preclusion principles wouldn't. That decision—disregarding Congress's text about the scope of § 1983 and Mississippi's rules of res judicata—strikes a double blow against the separation of powers and federalism.

* * *

Gabriel Olivier wants to exercise the first freedom by sharing his faith with others in the public square. He seeks protection in federal court against the future enforcement of a law that abridges that freedom. Congress enacted § 1983 to protect persons like Olivier and to provide a federal forum for vindicating the rights he asserts. The federal courthouse doors shouldn't be

shut to Olivier simply because he's been prosecuted for exercising his rights in the past. If anything, his past prosecution confirms that the threat of future enforcement against him is real. The judgment should be reversed, and the case remanded for Olivier's claims to be heard on their merits.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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