No. 24-993

In the Supreme Court of the United States

GABRIEL OLIVIER,
PETITIONER

v.

CITY OF BRANDON, MISSISSIPPI, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE IN SUPPORT OF VACATUR

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QUESTIONS PRESENTED

1. Whether this Court's decision in *Heck* v. *Humphrey*, 512 U.S. 477 (1994), bars claims under 42 U.S.C. 1983 seeking to preclude prospective enforcement of a law where the plaintiff has previously been convicted under the law challenged as unconstitutional.

2. Whether *Heck* v. *Humphrey* bars Section 1983 claims where the plaintiff never had access to federal habeas.

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INTEREST OF THE UNITED STATES

The questions presented concern the availability of relief under 42 U.S.C. 1983 for a plaintiff who brings a First Amendment challenge to a law under which he has previously been convicted. The United States has substantial interests in the resolution of those questions.

First, the United States has a substantial interest in ensuring that the constitutional rights at issue here are carefully safeguarded. The United States is committed to the preservation of federal constitutional rights, including the right to free expression. The government also prosecutes state and local officials who willfully violate individuals' constitutional rights. 18 U.S.C. 241, 242.

Second, although this case involves a civil suit against local officials under Section 1983, this Court's resolution

of the questions presented could affect suits against federal officials or agencies. The United States has a substantial interest in the circumstances in which federal officials and agencies can be sued for violating constitutional rights.

Third, the United States often brings federal criminal charges or seeks criminal sentences that are predicated on prior convictions under state law. The United States has a substantial interest in promoting the finality of state convictions and consistency as to state-court judgments.

INTRODUCTION

Petitioner Gabriel Olivier brings suit under 42 U.S.C. 1983 to challenge the constitutionality of an ordinance enacted by respondent, the City of Brandon, Mississippi (the City). Petitioner contends that the ordinance, which restricts demonstrations near a public amphitheater, impermissibly interferes with his religious expression in violation of the First Amendment. Petitioner has previously been convicted under the ordinance, and he seeks declaratory and injunctive relief to preclude future prosecutions under the same law.

That claim is cognizable under Section 1983. There is no question that another plaintiff may properly bring (and has in fact brought) suit under Section 1983 to challenge the law's constitutionality. See Br. in Opp. at 17-18. Nor is there any dispute that, if a challenge brought by someone else were to succeed, a federal court might properly enjoin enforcement of the ordinance, or issue a judgment declaring it unconstitutional, as to that other plaintiff. The first question in this case is whether that same relief is available to a plaintiff, like petitioner, who was previously convicted under the ordinance.

The answer is straightforward under this Court's precedents, which have long recognized that a plaintiff may bring suit under Section 1983 to enjoin future enforcement of an allegedly unconstitutional law, notwithstanding a prior conviction under that law. *Wooley* v. *Maynard*, 430 U.S. 705, 711 (1977). While a plaintiff may not use Section 1983 as a vehicle to "annul the results of a state trial," a plaintiff may bring suit "to preclude further prosecution under" an allegedly unconstitutional law. *Ibid.* The alternative, this Court has recognized, would put individuals to an untenable choice: abide by a law that they believe is unconstitutional or risk "becoming enmeshed in (another) criminal proceeding." *Ibid.* (citation omitted).

The court of appeals erred in holding that this Court's subsequent decisions, including in *Heck* v. *Humphrey*, 512 U.S. 477 (1994), dictate a different result. In *Heck*, this Court set forth the elements of a Section 1983 action seeking "damages attributable to an unconstitutional conviction or sentence," and held that one element is the termination of the criminal proceedings in the plaintiff's favor. *Id.* at 489-490. That rule, however, does not apply to a suit (like petitioner's) that seeks only prospective relief and does not challenge the propriety of prior criminal proceedings. Nor does petitioner's suit seek a remedy traditionally limited to habeas—*i.e.*, to upset "the fact or duration of confinement" in state custody—such that it would pose a conflict with the federal habeas statute. *Preiser* v. *Rodriguez*, 411 U.S. 475, 489 (1973). Under these circumstances, nothing in this Court's case law prohibits the prospective relief that petitioner seeks. Accordingly, this Court should vacate and remand for further proceedings.

Petitioner also contends (Br. 5) that this Court should vacate for an "independent" reason: that *Heck* has "no role to play for a § 1983 plaintiff * * * who was never in custody." This case presents no need to resolve that question, but if the Court does so, it should reject petitioner's categorical rule. The applicability of *Heck*'s favorable-termination requirement depends on the nature of the plaintiff's claim, not whether the plaintiff was (or is) in custody. The requirement applies to a claim under Section 1983 that is analogous to the common-law tort of malicious prosecution, because one element of such a claim is that the prior criminal proceedings terminated in the tort plaintiff's favor. See *Heck*, 512 U.S. at 484. When a plaintiff cannot satisfy that element, he lacks a "present cause of action" under Section 1983, regardless of whether he previously had access to federal habeas. *McDonough* v. *Smith*, 588 U.S. 109, 119 (2019). Thus, if the Court concludes (contrary to the government's position with respect to the first question presented) that petitioner's claim for prospective-only relief is analogous to malicious prosecution, it should reject petitioner's contention that *Heck*'s bar is nonetheless inapplicable simply because he was never in custody.

STATEMENT

A. Factual Background

Petitioner Gabriel Olivier is an evangelical Christian who believes that "sharing his religious views is an important part of exercising his faith." Pet. App. 19a. To that end, petitioner frequents high-traffic areas with pedestrians, where he uses signs, handouts, and loudspeakers to promote his views. *Id.* at 2a; J.A. 3-4. Between 2018 and 2019, petitioner periodically "shared an evangelistic message * * * through preaching, litera-

ture, and conversation" on the sidewalks near an amphitheater, owned by the City, that hosts live events for up to 8500 people. Pet. App. 2a-3a.

In 2019, the City adopted an ordinance (Brandon, Miss., Code of Ordinances § 50-45) that restricts demonstrations near the amphitheater to a designated "protest area" during the three hours before, and the hour after, an event. Pet. App. 3a; see *id.* at 24a-26a. Violations of the ordinance are punishable by a fine up to $1000 and up to 90 days in county jail. See Brandon, Miss., Code of Ordinance § 1-12. In addition, an individual who is convicted of a second violation of the ordinance within the same calendar year will not be permitted to return to the protest area for the remainder of that calendar year. See Pet. App. 26a.

On May 1, 2021, when the amphitheater hosted its first concert after being closed for the pandemic, petitioner brought a group of friends and family to the amphitheater's parking lot to evangelize. Pet. App. 3a; J.A. 11. The City's chief of police (a respondent here) directed petitioner to the protest area. Pet. App. 3a. Petitioner initially complied, but he found the protest area too isolated for concertgoers to hear his message, and he returned to the sidewalk outside the amphitheater. *Ibid.*

After a colloquy, the chief of police ordered the arrest of petitioner and another member of his group. J.A. 17-18. Petitioner was taken to the police station for processing and then released on his own recognizance, with instructions to appear in municipal court on a charge of violating the ordinance. Pet. App. 3a; J.A. 18. On June 23, 2021, petitioner entered a plea of *nolo contendere*. Pet. App. 3a. The court imposed a $304 fine and a sentence of ten days of imprisonment, which was

suspended on the condition that petitioner did not violate the ordinance for one year. *Id.* at 31a. Petitioner chose not to appeal, and he paid the fine on August 2, 2021. *Ibid.*

B. Procedural Background

1. On October 6, 2021, petitioner sued respondents in the United States District Court for the Southern District of Mississippi. Pet. App. 3a, 31a; J.A. 1. He brought claims under 42 U.S.C. 1983, one of which alleges that, by restricting his religious expression, the City's ordinance violates the Free Speech Clause of the First Amendment, as incorporated by the Fourteenth Amendment. Pet. App. 3a; J.A. 2, 20-21. Petitioner sought injunctive relief to prevent the City from applying the ordinance in the future to his religious expression on public sidewalks in the restricted zone near the amphitheater, as well as a declaratory judgment that the ordinance is unconstitutional on its face and as applied to his religious activities. See Pet. App. 8a; J.A. 21-22. Petitioner also initially sought nominal and compensatory damages, but he abandoned those requests on appeal. Pet. App. 3a-4a; J.A. 22.

The district court granted summary judgment in favor of respondents. Pet. App. 19a-41a. The court held that this Court's decision in *Heck* v. *Humphrey*, 512 U.S. 477 (1994), precludes petitioner's claims for relief. The district court believed that, under *Heck*, petitioner's prior conviction prevents him from challenging the constitutionality of the ordinance, including by seeking prospective relief. Pet. App. 37a-40a. The court further rejected petitioner's argument that *Heck* is inapplicable because he was never in custody. See *id.* at 37a.

2. The court of appeals affirmed. Pet. App. 1a-14a. The court understood *Heck* as precluding any suit un-

der Section 1983 that would "'necessarily impl[y]' the invalidity of [a state] conviction." *Id.* at 9a. It held that petitioner's constitutional challenge "to enjoin a state law under which he was convicted" is subject to that bar because a determination that a conviction is "based on an unconstitutional rule is the sort of 'obvious defect' that, when established, results in nullification of the conviction." *Id.* at 9a-10a (citation omitted). In so holding, the court of appeals acknowledged that the "classic example of a *Heck*-barred claim is one for money damages." *Id.* at 7a. The court nevertheless believed that this Court had "expanded *Heck* to also bar declaratory and injunctive relief." *Id.* at 7a, 11a (citing *Wilkinson* v. *Dotson*, 544 U.S. 74, 81-82 (2005)). It accordingly held that petitioner's Section 1983 suit cannot proceed until he can show favorable termination of the prior state proceedings, *i.e.,* that his conviction has been "reversed," "expunged," or "declared invalid." *Id.* at 7a (quoting *Heck*, 512 U.S. at 487).

Separately, the court of appeals applied circuit precedent holding that *Heck* applies "even if a § 1983 plaintiff is 'no longer in custody'" and has no access to habeas relief. Pet. App. 10a (citation omitted). The en banc Fifth Circuit had recently held that the favorable-termination requirement set forth in *Heck* "is unconcerned with custody" and applies instead to "*all* § 1983 claims by *all* civil plaintiffs who seek civil remedies against defective criminal process." *Wilson* v. *Midland County*, 116 F.4th 384, 389 (2024), petition for cert. pending, No. 24-672 (filed Dec. 12, 2024).

3. The court of appeals denied rehearing en banc by a vote of 9-8. Pet. App. 42a-43a. The eight dissenting judges concluded that "*Heck* does nothing to bar [petitioner's] prospective-relief claim" because "[t]he grant

of a forward-looking injunction * * * does not invalidate [his] previous conviction." *Id.* at 50a, 51a (Oldham, J.); see *id.* at 44a-45a (Richman, J.); *id.* at 46a-48a (Ho, J.).

SUMMARY OF ARGUMENT

I. A plaintiff may bring suit under Section 1983 to preclude enforcement of an allegedly unconstitutional law, regardless of whether he has previously been convicted under that law.

A. This Court has long held that a plaintiff may bring under Section 1983 a pre-enforcement challenge to a state or local law alleged to be unconstitutional, and it has regularly intervened when state laws—including criminal laws—run afoul of the Constitution's guarantees. Likewise, the Court has made clear that a past conviction under a law does not bar a plaintiff from seeking "wholly prospective" relief with respect to future enforcement of that law. *Wooley* v. *Maynard*, 430 U.S. 705, 711 (1977). While a plaintiff may not use Section 1983 to "annul the results of a state trial," a plaintiff may bring suit "to preclude *further* prosecution under a statute alleged to violate his [constitutional] rights." *Ibid.* (emphasis added).

This case involves a straightforward application of those principles. Petitioner brings suit under Section 1983, seeking declaratory and injunctive relief to preclude future enforcement of the City's ordinance. J.A. 2, 21-22. Although petitioner has previously been convicted under that law, he no longer seeks damages, nor does he seek to "annul any collateral effects [that his] conviction[] may have." *Wooley*, 430 U.S. at 711. In short, he "seek[s] only to be free from prosecution for future violations of the same [law]." *Ibid.* That claim is

cognizable under Section 1983, notwithstanding petitioner's prior conviction.

B. Nothing in the Court's subsequent decisions, including *Heck* v. *Humphrey*, 512 U.S. 477 (1994), dictates a different result.

In *Heck*, the Court considered "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence," and it held that such a claim "does not accrue until the conviction or sentence has been invalidated." 512 U.S. at 489-490. That decision, however, turned on the nature of the damages claim before the Court. In particular, the Court analogized the claim to the common-law tort of malicious prosecution, one element of which is that the prior criminal proceeding terminated in the plaintiff's favor. *Id.* at 484. The Court held that the same favorable-termination requirement applied to analogous Section 1983 claims for damages, such that the element is necessary for a complete cause of action under Section 1983. See *id.* at 488-489. But the Court's reasoning does not extend to a suit, like petitioner's, that seeks only prospective relief precluding the future enforcement of a state or local law. Favorable termination is not an element of such a claim, and a prior conviction therefore does not bar the possibility of prospective relief against further prosecution.

Although *Heck* involved a claim for damages, the court of appeals maintained that the decision governed suits for declaratory and injunctive relief as well. That is incorrect. In a separate line of cases, this Court has limited the availability of prospective relief under Section 1983 when the plaintiff's suit poses a conflict with the federal habeas statute. See *Preiser* v. *Rodriguez*, 411 U.S. 475, 489 (1973); accord *Wilkinson* v. *Dotson*,

544 U.S. 74, 81-82 (2005). Under those precedents, a plaintiff cannot bring suit under Section 1983 if he seeks, directly or indirectly, relief that would result in his "immediate or speedier release" from confinement. *Wilkinson*, 544 U.S. at 81. But that rule applies only where (unlike here) the plaintiff remains in custody. Because petitioner's suit does not conflict with the habeas statute, *Preiser* and its progeny do not bar relief.

II. The court of appeals improperly held that it was bound by *Heck* to dismiss petitioner's suit, and this Court should accordingly vacate the judgment below and remand for further proceedings, without addressing petitioner's alternative argument as to why *Heck* does not bar his claim. But if the Court reaches the second question presented, it should reaffirm that the application of *Heck*'s favorable-termination requirement does not depend on whether the plaintiff had access to federal habeas.

A. *Heck* establishes when a plaintiff has a "complete and present cause of action" for certain damages claims under Section 1983, without respect to that plaintiff's custodial status. *McDonough* v. *Smith*, 588 U.S. 109, 119 (2019) (citation omitted). Because favorable termination is one element of a malicious-prosecution claim, a plaintiff who brings an analogous claim under Section 1983 must meet that requirement, regardless of whether he could have pursued relief under federal habeas. Thus, if the Court concludes (contrary to the government's position) that petitioner has brought a claim analogous to malicious prosecution, but see pp. 16-18, *infra*, it should reject petitioner's argument that *Heck* is nonetheless inapplicable because he was never in custody.

B. Petitioner attempts to distinguish *Heck* because that case involved a plaintiff who was in custody and therefore might have pursued relief through federal habeas. But the "reasoning underlying" *Heck*'s holding applies equally to a plaintiff outside custody who brings a claim analogous to malicious prosecution, and that reasoning is therefore "just as binding as the holding" itself. *Bucklew* v. *Precythe*, 587 U.S. 119, 136 (2019). In addition, this Court's later decisions have reinforced that *Heck* extends to individuals who had no practical access to habeas. See *McDonough*, 588 U.S. at 119; *Thompson* v. *Clark*, 596 U.S. 36, 44 (2022).

Finally, petitioner's policy concerns do not warrant the rule he proposes. Petitioner maintains that extending *Heck* to a plaintiff without access to habeas would deny a federal forum to plaintiffs who cannot first obtain a favorable state ruling. Section 1983, however, does not remedy every constitutional wrong, and in any event, petitioner overstates the degree to which *Heck*'s favorable-termination requirement limits access to a federal forum. Petitioner's rule, meanwhile, would create its own anomalies and undermine the State's important interests in finality and consistency.

ARGUMENT

I. A PRIOR CONVICTION UNDER A STATE OR LOCAL LAW DOES NOT BAR A SUIT UNDER 42 U.S.C. 1983 CHALLENGING THE FUTURE ENFORCEMENT OF THAT LAW

This Court has long held that a plaintiff may bring suit under Section 1983 to preclude future enforcement of an allegedly unconstitutional law, notwithstanding a prior conviction under that law. *Wooley* v. *Maynard*, 430 U.S. 705, 711 (1977). This Court's subsequent deci-

sions, including *Heck* v. *Humphrey*, 512 U.S. 477 (1994), do not displace that rule.

A. Section 1983 Authorizes Pre-Enforcement Challenges To State Or Local Criminal Laws, Notwithstanding A Plaintiff's Prior Conviction Under The Challenged Law

1. For more than two centuries, federal courts have been willing to "restrain a state officer from executing an unconstitutional statute of the State, when to execute it would violate rights and privileges of the complainant which had been guaranteed by the Constitution." *Ex parte Young*, 209 U.S. 123, 152 (1908) (citation omitted); see *Osborn* v. *Bank of United States*, 22 U.S. (9 Wheat.) 738, 838-839 (1824). This Court has held that Section 1983, by its terms, contains an express cause of action for prospective relief, including injunctive relief, see *Mitchum* v. *Foster*, 407 U.S. 225, 242-243 (1972), and declaratory relief, see *Zwickler* v. *Koota*, 389 U.S. 241, 245-252 (1967). In appropriate circumstances, a plaintiff may therefore seek to restrain the enforcement of a state or local law—including a criminal law—alleged to be unconstitutional, and this Court has regularly entertained challenges rooted in the First Amendment.[1]

This Court has also addressed when "principles of equity, comity, and federalism" permit federal courts to entertain pre-enforcement suits. *Mitchum*, 407 U.S. at 243. To avoid "federal court interference with state court proceedings," a federal court must ordinarily abstain from resolving a challenge to a state law when a

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[1] See, *e.g.*, *McCullen* v. *Coakley*, 573 U.S. 464, 496-497 (2014) (First Amendment challenge to state criminal law establishing buffer zones around abortion clinics); *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 528 (1993) (First Amendment challenge to municipal ordinance criminalizing animal sacrifice).

prosecution of the plaintiff under that law is pending. *Younger* v. *Harris*, 401 U.S. 37, 43-45 (1971). But the Court has also held that a federal court may intervene when a genuine threat of prosecution exists and no such prosecution is pending. See *Steffel* v. *Thompson*, 415 U.S. 452, 472-473 (1974) (declaratory relief); *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 934 (1975) (preliminary injunction); cf. *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158-159 (2014). The alternative, this Court has recognized, would leave the "plaintiff between the Scylla of intentionally flouting state law and the Charybdis of forgoing what he believes to be constitutionally protected activity." *Steffel*, 415 U.S. at 462.

This Court has also made clear that a prior conviction does not bar the pursuit of "wholly prospective" relief that will preclude future prosecution for the same offense. *Wooley*, 430 U.S. at 711. The petitioners in *Wooley* (a husband and wife) had covered the motto "Live Free or Die" on their New Hampshire license plate because the motto was "repugnant to their moral and religious beliefs." *Id.* at 706-707 (citation omitted). On three occasions, Mr. Maynard was convicted of violating a state statute making it a misdemeanor to obscure portions of his license plate. *Id.* at 708. After his third conviction became final, the couple brought suit under Section 1983 seeking declaratory and injunctive relief precluding future enforcement of the provision. See *id.* at 709.

Their challenge was cognizable, this Court held, notwithstanding that Mr. Maynard had "failed to seek review of his criminal convictions." *Wooley*, 430 U.S. at 710. The Court distinguished the Maynards' suit from one in which a plaintiff sought to challenge, "by means of federal intervention," a state-court judgment against

him. *Id.* at 710-711 (citing *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975)). "Federal post-trial intervention[] in a fashion designed to annul the results of a state trial . . . deprives the States of a function which quite legitimately is left to them." *Id.* at 711 (quoting *Huffman*, 420 U.S. at 609)). By contrast, when a plaintiff seeks "only to be free from prosecutions for future violations of the same statutes," the same federalism and comity concerns do not counsel against review. *Ibid.* A plaintiff may properly seek that sort of "wholly prospective" relief, including injunctive and declaratory relief, "to preclude further prosecution under" an allegedly unconstitutional statute. *Ibid.*

2. This case involves a straightforward application of those principles. Petitioner contends that the City's ordinance is unconstitutional on its face and as applied to him, as an impermissible restriction on his freedom of speech. J.A. 20. He brings suit under Section 1983, seeking declaratory and injunctive relief to preclude prosecutions for future violations of that ordinance. J.A. 2, 21-22. The court of appeals accepted that he has a credible fear of prosecution, such that he must forgo what he believes to be protected religious and expressive activity or risk further prosecution. Pet. App. 7a.

Under the logic of this Court's decisions, that suffices to establish a cognizable Section 1983 claim. Although petitioner has previously been convicted under the law that he challenges, he no longer seeks damages, p. 6, *supra*, and he does not seek "to annul any collateral effects those convictions may have," *Wooley*, 430 U.S. at 711; see Pet. App. 36a. In short, he "seek[s] only to be free from prosecution for *future* violations of the same [law]." *Wooley*, 430 U.S. at 711 (emphasis added).

B. The Court Of Appeals Erred In Holding That This Court's Precedents Preclude Relief

The court of appeals erred in holding that petitioner's Section 1983 claim is not cognizable under *Heck*. The court accepted that petitioner could have proceeded under Section 1983 but for his prior conviction under the law he challenges. See Pet. App. 6a-7a. In the court's view, however, petitioner may not bring suit under Section 1983 unless and until his prior conviction is "reversed," "expunged," or "declared invalid." *Id.* at 7a (quoting *Heck*, 512 U.S. at 487). That holding misunderstands this Court's precedents. Petitioner does not seek "damages attributable to an unlawful conviction or sentence." *Heck*, 512 U.S. at 489-490. Nor does he seek a remedy traditionally limited to habeas—*i.e.*, to challenge "the fact or duration of his confinement" in state custody. *Preiser* v. *Rodriguez*, 411 U.S. 475, 489 (1973). Nothing in this Court's case law prohibits the prospective relief he seeks.

1. This Court's decision in *Heck* does not bar a claim for prospective relief, such as petitioner's, that seeks only to restrain the future enforcement of a state or local law.

a. In *Heck*, the Court set forth the elements of a claim "to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid." 512 U.S. at 486. "One element" of such a claim, the Court held, "is termination of the prior criminal proceeding in favor of the accused," *id.* at 484, which means that "a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such de-

termination, or called into question by a federal court's issuance of a writ of habeas corpus," *id.* at 486-487. Unless and until the plaintiff establishes that essential element for such a claim, he has no "cause of action under § 1983." *Id.* at 489.

The Court in *Heck* adopted the favorable-termination requirement by reference to the "common law of torts." 512 U.S. at 483. The plaintiff alleged that the State had unlawfully secured his conviction, including by intentionally suppressing exculpatory evidence. *Id.* at 479. The "closest analogy" to such a claim, the Court held, was "[t]he common-law cause of action for malicious prosecution," *id.* at 484, which traditionally allowed recovery for the institution of criminal proceedings "against another from wrongful or improper motives, and without probable cause," Martin L. Newell, *A Treatise on the Law of Malicious Prosecution* § 5 (1892); see *Thompson* v. *Clark*, 596 U.S. 36, 44 (2022). Such a claim depends in part on whether the proceedings were actually improper, and a favorable termination is necessary to establish that element of the claim. *Heck*, 512 U.S. at 484.

There is no favorable-termination requirement, however, when a plaintiff seeks to enjoin a law's *future* enforcement. Such a claim is not analogous to one for malicious prosecution. In a pre-enforcement suit, the plaintiff necessarily does not challenge the *initiation* of any prosecution against him. Nor does he predicate his request for relief on the impropriety of any past legal proceeding. Instead, the plaintiff seeks to establish in federal court the unconstitutionality of the law, which would preclude prosecution under it. Plainly, a favorable-termination requirement cannot extend to a plaintiff

who has not been prosecuted, as there is no criminal proceeding that might terminate in his favor.[2]

b. Nor are there compelling reasons to impose a favorable-termination requirement on a plaintiff who brings a pre-enforcement challenge but was previously convicted under the same law. The cause of action there, which also targets future enforcement, similarly requires no proof that a past proceeding was improper. Indeed, when a plaintiff brings a pre-enforcement challenge, he may well accept that the State fairly and faithfully prosecuted his past conduct. The plaintiff simply argues that the law prohibiting certain conduct is constitutionally invalid and cannot be enforced prospectively. In those circumstances, the analogy to common-law malicious prosecution is inapt, and whether the prior proceedings terminated favorably is beside the point.

Imposing a favorable-termination requirement would not serve the purposes that the Court identified in *Heck*. In a pre-enforcement challenge, there is no "parallel litigation over the issues of probable cause and guilt." *Heck*, 512 U.S. at 484. When the pre-enforcement plaintiff's past proceedings have terminated, he might ac-

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[2] This Court has never held that a Section 1983 plaintiff seeking declaratory or injunctive relief against future enforcement of a state or local law must identify a common-law analogue under tort law. If one is needed, the Court has suggested that an "antisuit injunction" might serve as the appropriate analogue. *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2554 n.9 (2025) (recognizing the "long line of cases" that allowed "a court of equity [to] issue an antisuit injunction to prevent an officer from engaging in tortious conduct"); John Harrison, *Ex Parte* Young, 60 Stan. L. Rev. 989, 990 (2008) ("Through an anti-suit injunction a party who would be the defendant in a corresponding lawsuit can enforce in equity a legal position that would be a defense at law.").

cept that a prior conviction was supported by probable cause. There is no risk of "two conflicting resolutions arising out of the same or identical transactions." *Ibid.* (citation omitted). In *Heck*, the plaintiff sought relief (damages) arising out of the same transaction (his prior prosecution) that gave rise to his conviction under state law. That suit therefore created a risk that federal and state courts would reach different judgments as to the propriety of the same prosecution. See *ibid.* Here, by contrast, petitioner seeks relief (an injunction) relating to a separate transaction (a future prosecution under the same law). The relief he seeks "looks to the future" rather than to any official actions in the past. *Douglas* v. *City of Jeannette*, 319 U.S. 157, 165 (1943). His unchallenged prior conviction does not bar the possibility of prospective relief against a future prosecution.

2. In reaching a contrary result, the court of appeals acknowledged that the "classic example of a *Heck*-barred claim is one for money damages." Pet. App. 7a. The court, however, believed that this Court has "expanded *Heck* to bar declaratory and injunctive relief" when a petitioner has previously been convicted under the challenged law (unless that conviction has already been invalidated). *Id.* at 7a, 11a (citing *Wilkinson* v. *Dotson*, 544 U.S. 74, 81-82 (2005)). That is incorrect. Although this Court has limited the availability of prospective relief under Section 1983 when a suit poses a conflict with the federal habeas statute, that line of cases applies only where (unlike here) the plaintiff remains in custody.

a. This Court recognized in *Preiser* that the federal habeas statute provides "the exclusive remedy" in federal court for a prisoner who "attack[s] the validity of his confinement." 411 U.S. at 489. The Court consid-

ered a challenge from state inmates seeking injunctive relief that would compel the restoration of good-time credits, which would in turn result in their immediate release from prison. *Id.* at 482. The Court acknowledged the plaintiffs' constitutional claims might fit within Section 1983's "literal terms." *Id.* at 488. But it held that "the specific federal habeas corpus statute" was instead the "appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement." *Id.* at 489, 490.

The Court has since extended *Preiser* to any suit that "*indirectly*" attacks a prisoner's "confinement" through a "judicial determination that necessarily implies the unlawfulness of the State's custody." *Wilkinson*, 544 U.S. at 81. Accordingly, a state inmate cannot use Section 1983 to challenge the procedures used to deny him good-time credits if success in such a suit would "necessarily imply the invalidity of the deprivation of his good-time credits," and thus, of the "punishment imposed." *Edwards* v. *Balisok*, 520 U.S. 641, 646, 648 (1997). Likewise, an individual in state custody cannot raise a claim through Section 1983 that would "necessarily imply the invalidity of his conviction." *Skinner* v. *Switzer*, 562 U.S. 521, 533 (2011) (citation and internal quotation marks omitted). That includes when the "challenge to his custody is that the statute under which he stands convicted is unconstitutional." *Preiser*, 411 U.S. at 485-486. In that circumstance, a "claim that necessarily demonstrates the invalidity of the conviction * * * *can* be said to be attacking the fact or length of confinement." *Heck*, 512 U.S. at 481-482 (alterations and quotation marks omitted). Relief in such a suit would lead to "immediate or speedier release" from confinement; it therefore falls within the proper sphere of

habeas rather than Section 1983. *Wilkinson*, 544 U.S. at 81.

But petitioner's claim poses no conflict between Section 1983 and the habeas statute.[3] He is not in custody, and he therefore does not directly seek relief that would bring about his "immediate or speedier" release from custody. *Wilkinson*, 544 U.S. at 81. Nor would success in his suit *indirectly* bring about that relief, even if it suggested a legal infirmity in his conviction. Because petitioner is not confined, the suit can have no bearing on the "validity of the fact or length of [any term of] confinement" pursuant to that conviction. *Preiser*, 411 U.S. at 490. Petitioner's claim therefore falls outside the "core of habeas," *id.* at 489, and *Preiser* and its progeny pose no bar to relief. That is presumably why the Court in *Wooley*—which was decided several years after *Preiser*—treated the plaintiff's prior convictions as no barrier to his prospective challenge to the statute. See pp. 13-14, *supra*.

b. The decision below therefore erred in holding that petitioner's prospective suit is barred because its success would "imply the invalidity" of a prior conviction, even though petitioner is not (and was not) in custody. Pet. App. 1a. The court of appeals grounded its holding in federalism concerns about "the potential for conflict-

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[3] When petitioner brought suit, he was still subject to a ten-day jail sentence, which remained suspended so long as he did not violate the ordinance for a period of one year. Pet. App. 31a. By the time the district court dismissed the complaint, however, petitioner's sentence was complete. The court of appeals accordingly decided this case on the premise that petitioner was "not serving his sentence," *id.* at 10a, and the case reaches the Court on the same assumption. The case accordingly provides no occasion to consider whether Section 1983 affords prospective relief to a plaintiff who, though not in custody, continues to serve a state sentence.

ing judgments" between federal and state courts. *Id.* at 7a (citation omitted). But when a plaintiff outside custody seeks prospective relief, this Court has accommodated principles of federalism through abstention. See pp. 12-13, *supra.* A federal court may enjoin an ongoing state prosecution only in "extraordinary circumstances." *Younger*, 401 U.S. at 43-45 (citation omitted). But *Wooley* held that, if no state proceedings are pending, a plaintiff outside custody may pursue "wholly prospective" relief to enjoin *future* enforcement of the law, even if he has previously been convicted under it. 430 U.S. at 711.

It is true that if a plaintiff with a prior conviction prevails in a facial challenge (or an as-applied challenge that covers his past conduct), the federal-court decision would imply a legal infirmity in his prior conviction. See Pet. App. 10a. This Court, however, has distinguished between federal intervention that is "'designed to annul the results of a state trial'" and relief meant to preclude "prosecutions for future violations of the same statutes." *Wooley*, 430 U.S. at 711 (citation omitted). The former would impermissibly "deprive[] the States of a function which quite legitimately is left to them." *Ibid.* (citation omitted). But when a federal court issues only prospective relief to an individual outside custody, the availability of any additional relief as to a past conviction depends on the *State*'s chosen remedies, including whether the State chooses to allow habeas, expungement, clemency, or other post-conviction relief based on the actions of federal courts. See, *e.g.*, D.C. Code § 16-802(a) (LexisNexis Supp. June 2025); Miss. Code Ann. § 99-39-5(1)(c) (West 2019). Such relief does not threaten the comity and federalism interests that arise

when a federal court directly intervenes in a state-court proceeding.[4]

And even under the court of appeals' own rule, there would be a risk that federal-court decisions will "imply the invalidity" of state convictions. Pet. App. 1a. There is no dispute that *other* plaintiffs, who have never been convicted, may bring a pre-enforcement challenge to the same law. If any of those plaintiffs were to succeed on a facial challenge under Section 1983, the decision would necessarily impugn the validity of all convictions previously obtained under the provision. But to eliminate that inconsistency would mean that "*no one* could *ever* [bring a facial] challenge [to] a law after any other person had been convicted of violating it." *Id.* at 51a (Oldham, J., dissenting from the denial of rehearing en banc). That plainly is not the law. This Court has long permitted federal courts to enjoin state officials from enforcing unconstitutional laws, see p. 12, *supra*, notwithstanding that the State may have previously obtained some convictions under the law.

Given that *some* plaintiffs may challenge the municipal ordinance at issue here, there is no basis to single petitioner for special disadvantage solely because he was previously convicted under the allegedly unconstitutional law. Each time an individual is subject to a "credible threat of prosecution" under the law, he suf-

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[4] The chance of further relief is also remote in this case. Petitioner has disclaimed any interest in "hav[ing] his record expunged" or "annul[ling] any collateral effects [his] conviction[] may have." *Wooley*, 430 U.S. at 711; see Pet. App. 36a. He will presumably be bound by that representation even if he ultimately prevails on his Section 1983 claim. Moreover, the limitations period for challenging his conviction under Mississippi law appears to have expired. See Miss. Code Ann. § 99-39-5(2) (West 2019).

fers a new constitutional injury and, accordingly, has new grounds for a challenge. *Susan B. Anthony List*, 573 U.S. at 158-159 (citation omitted); see *Stanton* v. *District of Columbia Ct. of Appeals*, 127 F.3d 72, 78 (D.C. Cir. 1997) ("[E]ach successive enforcement of a statute * * * creates a new cause of action."). With each threatened enforcement, a plaintiff faces the same Hobson's choice: "expose himself to actual arrest or prosecution" or comply with "a statute that he claims deters the exercise of his constitutional rights." *Steffel*, 415 U.S. at 459.

A plaintiff at risk of future prosecution should not be limited to challenging the constitutionality of the law in connection with his past criminal proceeding. He may have various reasons for forgoing such a challenge—perhaps subsequent legal developments have made the challenge stronger or perhaps the law imposes escalating penalties for repeat violations, as was true of the ordinance at issue here. See p. 5, *supra*. Although such a plaintiff has forfeited the opportunity to challenge his past conviction, the *Heck* bar does not deny him the "opportunity to challenge the statute prospectively so as to avoid arrest and conviction for violating the same statute in the future." *Martin* v. *City of Boise*, 920 F.3d 584, 614 (9th Cir.), cert. denied, 140 S. Ct. 674 (2019), abrogated on other grounds by *City of Grants Pass* v. *Johnson*, 603 U.S. 520 (2024). In that instance, the plaintiff seeks nothing more than the relief available to any other person with a credible fear of prosecution under the statute—an injunction against *future* enforcement. See p. 12, *supra*. Under this Court's precedents, such a claim is cognizable under Section 1983.[5]

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[5] In her dissent from the denial of rehearing en banc, Judge Richman reserved the possibility that petitioner's failure to raise a con-

II. IF THE COURT REACHES THE SECOND QUESTION PRESENTED, IT SHOULD REJECT PETITIONER'S PROPOSED RULE

Because the court of appeals improperly held that it was bound by *Heck* to dismiss petitioner's suit, this Court should vacate the judgment below and remand for further proceedings. Consistent with this Court's usual practice, it should decline to reach petitioner's alternative argument (Br. 40-49) that, simply because he never had access to federal habeas, *Heck* does not bar his Section 1983 claim. See, *e.g.*, *FCC* v. *Prometheus Radio Project*, 592 U.S. 414, 427 n.3 (2021); *Decker* v. *Northwest Envtl. Def. Ctr.*, 568 U.S. 597, 615 (2013).

This case would also be a poor vehicle to address that question. In seeking certiorari, petitioner correctly identified (Pet. 11-17) a disagreement among the courts of appeals as to whether a Section 1983 plaintiff who lacked access to federal habeas may properly pursue monetary damages for an alleged abuse of process in a prior criminal proceeding. But petitioner has disclaimed any damages claim here, see p. 6, *supra*, and this case therefore does not implicate the question whether *Heck* might preclude relief in that circumstance. And while petitioner characterizes (Br. 5) the second question presented as an "independent, alternative ground" for relief in his case, he nevertheless acknowledges (Br. 47) that some claims—*i.e.*, "when a plaintiff seeks damages for con-

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stitutional defense during his prior criminal proceedings "may have a preclusive effect in subsequent § 1983 litigation." Pet. App. 44a (footnote omitted). The court of appeals and district court, however, dismissed petitioner's claims "solely on the basis of the *Heck* bar." *Id.* at 44a-45a. This Court therefore may leave for remand whether issue preclusion might "provide an independent basis" for dismissal. *Id.* at 44a.

finement imposed pursuant to legal process"—might be subject to *Heck* regardless of whether the plaintiff "now (or always) lacked access to habeas." Petitioner is correct that his claim is meaningfully "different," as he "seeks prospective relief against future prosecutions," *ibid.*, but that argument explains why he should prevail on the first question presented. See pp. 11-23, *supra*. It is not an "independent" ground for relief. Pet. Br. 5.

If the Court nevertheless reaches the second question presented, it should reject a categorical rule that *Heck* is inapplicable to any plaintiff who did not previously have access to federal habeas. The *Heck* rule governs claims under Section 1983 that are analogous to the common-law tort of malicious prosecution, whether or not the plaintiff had the opportunity to pursue federal habeas relief. Thus, if the Court concludes that petitioner has brought such a claim, but see pp. 16-18, *supra*, it should reject petitioner's argument that *Heck* is nonetheless inapplicable because he was never in custody.

A. The Application Of *Heck* Does Not Depend On Whether The Plaintiff Previously Had Access To Federal Habeas

The favorable-termination requirement set forth in *Heck* is rooted in the elements necessary to bring a particular type of claim under Section 1983. It does not depend on whether the petitioner is, or ever was, in state custody.

1. The Court's decision in *Heck* established the "accru[al]" date for claims under Section 1983 that are analogous to the common-law tort of malicious prosecution, including the claim in that case, which sought "damages attributable to an unconstitutional conviction or sentence." 512 U.S. at 489-490. Consistent with the rule at common law, "[o]ne element that must be alleged

and proved in [such an] action is termination of the prior criminal proceeding in favor of the accused." *Id.* at 484.

Although the plaintiff in *Heck* was in custody, the Court's reasoning did not depend on his potential access to habeas proceedings. Indeed, the Court acknowledged that the plaintiff "could *not* 'have sought and obtained'" his preferred relief (monetary damages) "'through federal habeas corpus proceedings.'" *Heck*, 512 U.S. at 481 (quoting *Preiser*, 411 U.S. at 488) (emphasis added). Instead, the *Heck* rule turns on the nature of the plaintiff's suit and whether the gravamen of his claim is the same as that of a malicious-prosecution claim—that "the plaintiff has improperly been made the subject of legal process to his damage." 2 Simon Greenleaf, *A Treatise on the Law of Evidence* 498 (9th ed. 1863). Thus, when a plaintiff's claim challenges the improper initiation of criminal proceedings, the favorable-termination requirement is a necessary element, regardless of whether petitioner had access to federal habeas relief.

2. Petitioner offers a different understanding of *Heck*. In his view (Pet. Br. 41-45), this Court adopted the *Heck* rule to avoid a conflict between a general statute (Section 1983) and specific ones (for federal habeas). Thus, petitioner contends (Br. 5) that *Heck*'s favorable-termination requirement has "no role to play for a § 1983 plaintiff * * * who was never in custody."

Petitioner's argument echoes that of Justice Souter, who concurred in the judgment in *Heck*. Like petitioner, Justice Souter would have resolved the case through "the interpretive methodology employed in *Preiser*," which precludes Section 1983 as a vehicle for relief available in habeas. *Heck*, 512 U.S. at 497 (Souter, J., concurring in the judgment). Under that rationale, a plaintiff's custodial status would itself be dispositive:

When an individual in state custody seeks damages for an unconstitutional conviction or confinement, the action, if successful, would "compel the State to release the prisoner" and therefore supplant the federal habeas remedy. *Id.* at 498. By contrast, individuals who "were merely fined" or "completed short terms of imprisonment, probation, or parole" could still proceed under Section 1983 because they are not "'in custody'" and "cannot invoke federal habeas jurisdiction." *Id.* at 500.

The majority of the Court, however, expressly rejected Justice Souter's approach. *Heck*, 512 U.S. at 490 n.10. As Justice Scalia's opinion for the Court explained, the reasoning underlying its opinion did not turn on the "fortuity" of whether "a convicted criminal [remains] incarcerated." *Ibid.* Instead, the Court adopted a "broad[]" rule that applied to claims that are analogous to malicious prosecution. *Id.* at 489-490. Because the Court's reasoning does not depend on the availability of habeas, "[e]ven a prisoner who has fully exhausted available state remedies has no cause of action under § 1983 unless and until the conviction or sentence is reversed." *Id.* at 490. By extension, an individual who could never access habeas also has no cause of action under Section 1983 until the underlying criminal case has terminated in his favor.

Of course, when a plaintiff is in custody, the federal habeas statute can pose an *additional* barrier to relief under Section 1983. See *Preiser*, 411 U.S. at 489; see also pp. 18-20, *supra*. Such a plaintiff cannot pursue relief, including prospective relief, that might directly or indirectly challenge the fact or duration of his confinement, even though a plaintiff (like petitioner) who is no longer in custody may proceed with claims under Section 1983 for injunctive or declaratory relief. See pp.

11-23, *supra*. But, whether in or out of custody, an individual who brings a claim under Section 1983 that is analogous to malicious prosecution must establish each element of the tort claim. *Heck*, 512 U.S. at 489-490. Because favorable termination is one such element, a plaintiff has no cognizable cause of action for damages under Section 1983 unless and until he satisfies that requirement. See *ibid.*

B. Petitioner's Contrary Arguments Are Unavailing

1. The courts of appeals that have adopted petitioner's proposed rule did not consider themselves bound by the Court's "guidance" in *Heck*. *Powers* v. *Hamilton County Pub. Def. Comm'n*, 501 F.3d 592, 601-603 (6th Cir. 2007), cert. denied, 555 U.S. 813 (2008). In the years following *Heck*, some "[m]embers of the Court * * * expressed the view that unavailability of habeas * * * may also dispense with the *Heck* requirement," consistent with Justice Souter's concurrence in the judgment. *Muhammad* v. *Close*, 540 U.S. 749, 752 n.2 (2004) (per curiam); see *Spencer* v. *Kemna*, 523 U.S. 1, 21-23 (1998) (Ginsburg, J., concurring). Because the Court in *Muhammad* cited that disagreement and observed that the case before it provided "no occasion to settle the issue," 540 U.S. at 752 n.2, some courts of appeals considered the question open even after *Heck*. See, *e.g.*, *Powers*, 501 F.3d at 601-603; *Cohen* v. *Longshore*, 621 F.3d 1311, 1316-1317 (10th Cir. 2010). Petitioner, too, maintains (Br. 46) that the Court can disregard *Heck*'s reasoning, including footnote 10, as dicta to the extent it addresses plaintiffs outside custody.

But this Court has never revisited or overruled its decision in *Heck*, and the "reasoning underlying" its holding remains "just as binding as the holding" itself. *Bucklew* v. *Precythe*, 587 U.S. 119, 136 (2019); *Seminole*

Tribe of Florida v. *Florida*, 517 U.S. 44, 67 (1996) ("When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound."). That reasoning, as explained, applies fully to a plaintiff outside custody who brings under Section 1983 a claim analogous to malicious prosecution. See pp. 26-27, *supra*.

In any event, the Court's later decisions have reinforced that the reasoning of *Heck* extends to individuals who were never in state custody. In *McDonough* v. *Smith*, 588 U.S. 109 (2019), the Court considered the necessary elements of a Section 1983 claim that prosecutors used fabricated evidence to pursue charges on which the plaintiff was ultimately acquitted. *Id.* at 112-115. In addressing the statute of limitations, the Court explained that the fabricated-evidence claim was analogous to "the common-law tort of malicious prosecution," which meant that it did not accrue, and could not be brought under Section 1983, until the "favorable termination of the prosecution." *Id.* at 116-117. The Court recognized that McDonough's case "differ[ed] from *Heck* because the plaintiff in *Heck* had been convicted, while McDonough was acquitted." *Id.* at 119. But McDonough's claims "challenge[d] the validity of the criminal proceedings against him in essentially the same manner as the plaintiff in *Heck* challenged the validity of his conviction." *Ibid.* And though the plaintiff was never incarcerated, the civil suit implicated the same "pragmatic concerns" at issue in *Heck*, *ibid.*, including the "possibility of conflicting civil and criminal judgments," *id.* at 117-118. "The principles and reasoning of *Heck* thus point[ed] toward a corollary result" in *McDonough*: A defendant who has not been convicted cannot bring an action under Section 1983 until "the

criminal proceeding has ended in the defendant's favor." *Id.* at 119-120 (citations omitted).

The Court reaffirmed that reasoning in *Thompson* v. *Clark*, which involved a Section 1983 suit brought by an individual who was detained for two days and whose criminal charges were later dismissed before trial. See 596 U.S. at 39, 40. There, too, the plaintiff could not have practically accessed federal habeas, as there was no state-court judgment against him, 28 U.S.C. 2254(a), and his time in "custody" lasted only two days, 28 U.S.C. 2241(c)(3). But the Court still recognized that malicious prosecution was the appropriate common-law analogy. See *Thompson*, 596 U.S. at 42. Thus, to maintain his Section 1983 claim, such a plaintiff "must demonstrate, among other things, that he obtained a *favorable termination* of the underlying criminal prosecution." *Id.* at 39 (citing *Heck*, 512 U.S. at 484 & n.4); see *id.* at 44.

Petitioner cannot square his proposed rule with those decisions. Because favorable termination is one of "the elements of the malicious prosecution" claim, *Thompson*, 596 U.S. at 44, a plaintiff who brings an analogous claim under Section 1983 must meet that requirement, regardless of whether he could have pursued relief under federal habeas. That rule, contrary to petitioner's contention (Br. 32), is not "atextual." The *Heck* rule simply establishes when a plaintiff with such a claim has a "complete and present cause of action" for damages under Section 1983, and it does so without respect to that plaintiff's custodial status. *McDonough*, 588 U.S. at 119 (citation omitted).

2. Finally, some courts of appeals have adopted petitioner's rule because they considered it "more just and more in accordance with the purpose of § 1983." *Cohen*, 621 F.3d at 1316. Those courts have expressed concern

that applying *Heck* when a plaintiff lacked access to federal habeas relief would "deny a[] federal forum for claiming a deprivation of federal rights to those who cannot first obtain a favorable state ruling." *Heck*, 512 U.S. at 500 (Souter, J., concurring in the judgment).

This Court, however, has rejected the "principle that every person asserting a federal right is entitled to one unencumbered opportunity to litigate that right in a federal district court." *Allen* v. *McCurry*, 449 U.S. 90, 102-103 (1980). The Court, for example, has held that issue preclusion applies when a Section 1983 plaintiff "attempt[s] to relitigate in federal court issues decided against them in state criminal proceedings," even if that plaintiff did not have the opportunity to fully litigate those issues in federal habeas proceedings. *Id.* at 103. Likewise, this Court has prohibited recovery under Section 1983 in suits brought against officials entitled to absolute immunity, *Pierson* v. *Ray*, 386 U.S. 547 (1967), or qualified immunity, *Mitchell* v. *Forsyth*, 472 U.S. 511 (1985). In short, if the Court were to insist that Section 1983 "provide[s] a remedy for all conceivable invasions of federal rights," "the entire landscape of [its] § 1983 jurisprudence would look very different." *Heck*, 512 U.S. at 490 n.10.

It is also inaccurate to equate "the favorable-termination element [with] 'the blanket denial of any federal forum.'" *Wilson* v. *Midland County*, 116 F.4th 384, 403 (5th Cir. 2024) (en banc) (citation omitted). When a plaintiff can prove that element, he may proceed in federal court. When a plaintiff cannot satisfy the requirement, he has no cause of action, but "[t]hat is not the denial of any forum; it's a specification of the federal claim." *Ibid.* In addition, even plaintiffs who cannot satisfy the *Heck* requirement may still have re-

sort to federal court. For the reasons explained at pp. 11-23, *supra*, a plaintiff, like petitioner, who seeks to challenge the constitutionality of a state or local law may seek through Section 1983 injunctive or declaratory relief in federal court. Likewise, a plaintiff who contends that his state conviction or sentence violates the federal Constitution may seek to vindicate those claims through direct review in this Court. See 28 U.S.C. 1257(a).

Petitioner's rule, meanwhile, raises the "pragmatic considerations discussed in *Heck*." *McDonough*, 588 U.S. at 119. It would allow state defendants who were never incarcerated to bring "a collateral attack on the conviction through the vehicle of a civil suit," at the risk of creating inconsistent judgments with state courts. *Heck*, 512 U.S. at 484 (citation omitted). It would also create its own anomalies. When an individual is in custody pursuant to a conviction, all agree that he must challenge his conviction through habeas, which requires federal courts to afford significant deference to state judgments. See 28 U.S.C. 2254(d)(1). By contrast, if an individual were never in custody, petitioner would allow federal courts to review *de novo* a defendant's constitutional claims, freed from the same deference to state courts. It is not clear why Congress would have made damages more readily available to one whose allegedly unconstitutional conviction did not result in any custodial sentence.

Precedent from this Court strikes a more sensible balance. Plaintiffs may use Section 1983 to preclude prospective enforcement of allegedly unconstitutional laws. See pp. 11-23, *supra*. If an individual suffers harm attributable to the alleged abuse of process in a state criminal proceeding, he may seek damages if that

proceeding terminated in his favor. See *Heck*, 512 U.S. at 489-490. And if a plaintiff remains subject to the most severe deprivation of liberty—incarceration—he enjoys an additional avenue of relief in federal court: He may challenge an allegedly unconstitutional conviction or sentence through habeas. 28 U.S.C. 2254. That framework adequately respects "concerns for finality and consistency" in state criminal proceedings, *Heck*, 512 U.S. at 485, while ensuring that Section 1983 remains an important "guarantor of basic federal rights against state power," *Mitchum*, 407 U.S. at 239.

CONCLUSION

The judgment of the court of appeals should be vacated and remanded.

Respectfully submitted.

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