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

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INTEREST OF *AMICUS CURIAE*[1]

Young America's Foundation ("YAF") is a national nonprofit organization. A significant part of YAF's mission is to promote and support free speech by college students, including by training journalists through its National Journalism Center Over the last 45 years, the Center has trained over 2,250 budding journalists to ethically and boldly exercise their First Amendment rights and combat bias in the mainstream media. YAF has a significant interest in protecting those journalists' First Amendment rights.

YAF is alarmed at the far-reaching effect and lack of protection for claimants under the Fifth Circuit's expansion of the *Heck* bar. YAF files this brief out of concern for its members' ability to seek needed prospective injunctive relief when faced with violations of their constitutional rights, including the right to free speech.

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Federal courts have jurisdiction to consider Petitioner Gabriel Olivier's claim. In refusing to exercise their jurisdiction, the courts below created a de facto broad new abstention doctrine. But principles of comity and federalism do not counsel abstention here because Olivier raises a First Amendment constitutional claim and because no state court is considering or has already decided his claim. Thus, this *Heck* expansion violates federal courts' responsibility to adjudicate cases and controversies within their jurisdiction.

The *Heck* bar's original purpose was to harmonize two conflicting statutes: the Civil Rights Act and the federal habeas statute. *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973)*; Heck v. Humphrey*, 512 U.S. 477 (1994). To achieve this harmonization, the *Heck* court tied the test of "necessarily impl[ying] the invalidity" of a conviction to the elements of the § 1983 claim. The *Heck* bar has now escaped these confines, causing confusion and harming claimants.

This Court should hold that the *Heck* bar does not prevent a federal court from deciding the constitutional question in a § 1983 claim when the claimant cannot access federal habeas relief or when the claimant seeks prospective relief on a claim that does not require proof of the invalidity of his conviction.

ARGUMENT

I. Doctrines governing interplay between federal and state courts support Olivier's access to federal courts.

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

The Fifth Circuit expanded the rule of *Heck* v. *Humphrey*, 512 U.S. 477 (1994) to create in essence a new abstention doctrine allowing it to refuse to decide a question within its jurisdiction. This extension of the *Heck* bar violates the principles of *City of Houston* v. *Hill*, 482 U.S. 451 (1987), which disapproves of abstention in First Amendment facial challenges such as the one at issue here. The extension also violates constitutional, legislative, and judicial doctrines that control federal courts' ability to hear constitutional challenges. Thus, this Court should reverse.

A. The federal district court had a duty to exercise its grant of jurisdiction by deciding Olivier's constitutional issue.

"Federal courts . . . have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" *Sprint Commnc'ns*, 571 U.S. 69, 590–91 (2013) (quoting *Cohens*, 19 U.S. 264). The *Rooker–Feldman* doctrine addresses jurisdictional boundaries related to the interplay between federal and state courts. *Lance* v. *Dennis*, 546 U.S. 459, 463–64 (2006) (citing 28 U.S.C. § 1257). Congress has reserved federal review of state court judgments to this Court. 28 U.S.C. § 1257. Thus, *Rooker–Feldman* prevents district courts from adjudicating an attack on a state court judgment brought by the state court party. *Lance*, 546 U.S. at 463–64. However, no jurisdictional bar exists for an independent federal claim that involves similar questions as in the state court. *Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005).

No jurisdictional bar applies here. Olivier does not challenge his conviction or seek to overturn it; instead, he brings an independent claim in federal court. Even if Olivier's § 1983 claim "denies a legal conclusion that a state court has reached in a case to which he was a party," this fact does not deprive the federal district court of jurisdiction. *Id.* (quoting *GASH Assocs.* v. *Rosemont*, 995 F. 2d 726, 728 (7th Cir. 1993)) (citing

Noel v. Hall, 341 F.3d 1148, 1163–64 (9th Cir. 2003)). The district court should have exercised jurisdiction.

B. *City of Houston* proscribes abstention in First Amendment facial challenges.

Olivier initiated this federal case asserting that the City's ordinance, which creates a "designated protest area" that negates his ability to communicate, violates the First Amendment. Joint Appx. 1–2, 6–7. Olivier petitioned the district court for "prospective injunctive relief . . . on grounds of facial unconstitutionality." Petition Appx. 9a. This is exactly the type of adjudication from which federal courts should not abstain. *City of Houston*, 482 U.S. at 453, 467–68 (first quoting *Dombrowski* v. *Pfister*, 380 U.S. 479, 489–90 (1965); and then quoting *Zwickler* v. *Koota*, 389 U.S. 241 (1967)).

When, as here, a plaintiff brings a First Amendment challenge to an unambiguous municipal ordinance, "there is certainly no need for a federal court to abstain." *Id.* at 455, 469–70; *see also Stenberg* v. *Carhart*, 530 U.S. 914, 945 (2000) (confirming the *City of Houston* rule). Even if a statute may contain ambiguity, the fact that a municipality has previously applied the statute satisfies any federalism or comity concerns by showing that the state court had a fair opportunity to limit the scope of the ordinance and failed to do so. *City of Houston*, 482 U.S. at 468–70.

The Fifth Circuit's refusal to provide a federal forum has "itself effect[ed] the impermissible chilling of the very constitutional right [Olivier] seeks to protect." *See City of Houston*, 482 U.S. at 467–68 (quoting *Zwickler*, 389 U.S. at 252). This result stands contrary to *City of Houston*'s express instructions.

To avoid such chilling, federal courts should not abstain from deciding a First Amendment facial challenge. *Id; see also Expressions Hair Design* v. *Schneiderman*, 581 U.S. 37, 58 (2017) (Sotomayer, J., concurring) ("this Court has described abstention as particularly problematic where, as here, a challenge to a state statute rests on the First Amendment") (citing *Virginia* v. *Am. Booksellers Assn., Inc.*, 484 U.S. 383, 396 (1988); *City of Houston*, 482 U.S. at 467–68)). Thus, reversal is warranted to avoid chilling the First Amendment rights—including the rights of amicus's members.

C. Principles of comity and federalism do not allow a federal court to abstain from a constitutional question related to but not decided in a prior state court proceeding.

Federal courts and state courts often exercise concurrent jurisdiction over the same subject matter. *Growe* v. *Emison*, 507 U.S. 25, 32 (1993). Such parallel proceedings do not ordinarily require a federal court

to dismiss or stay the federal action. *Id.* "In rare circumstances, however, principles of federalism and comity dictate otherwise." *Id.*

The claim preclusion doctrine and various abstention doctrines address whether a federal court should dismiss, stay, or alter a federal proceeding in deference to a related state court proceeding. *Allen* v. *McCurry*, 449 U.S. 90, 95–96 (1980) (preclusion); *Growe*, 507 U.S. at 32 (1993) (abstention). However, as discussed below, federal courts need not dismiss a claim in deference to the state judicial system when the state proceeding is complete or if a claimant requires a federal forum to litigate a constitutional issue. This Court warns against overuse of abstention out of concern that claimants maintain access to federal courts for redress for constitutional violations.

First, the *Younger* abstention doctrine can prohibit federal courts from enjoining ongoing state prosecutions or similar proceedings. *Sprint Commc'ns*, 571 U.S at 72–73 (citing *New Orleans Pub. Serv., Inc.* v. *Council of New Orleans*, 491 U.S. 350, 358 (1989); *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975)) (applying doctrine of *Younger* v. *Harris*, 401 U.S. 37 (1971)). But outside of these "exceptional" circumstances, the "general rule governs" and no bar exists. *Id.* at 73 (quoting *Colo. River*, 424 U.S. at 817). And regardless of the pendency of a state court proceeding, courts should not apply *Younger* when the

claimant lacks adequate opportunity to raise a constitutional challenge in the state court proceeding. *Middlesex Cnty. Ethics Comm.* v. *Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) (affirmed as factor in the *Younger* analysis by *Sprint Commnc'ns*, 571 U.S. at 81).

When Olivier filed his § 1983 claim, no state court proceeding was pending. Petition Appx. 3a. Moreover, Olivier's claim consists of a constitutional challenge. Thus, this Court should open the federal courthouse doors to Olivier and decide his constitutional question. Depriving Olivier of access to federal courts "make[s] a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *New Orleans Pub. Serv., Inc.*, 491 U.S. at 368 (citing *Colo. River*, 424 U.S. at 817; *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U.S. 1, 25 (1983); *Moore* v. *Sims*, 442 U.S. 415, 423 n.8 (1979)).

Additionally, under claim preclusion, when a state court has already decided a question and the same party attempts to relitigate the same claim at a federal court, the federal court must give "full faith and credit" to the prior state court decision—to the same extent that the state court would do so. *Allen*, 449 U.S. at 96 (quoting 28 U.S.C. § 1738). However, claim preclusion does not prohibit a federal court from independently deciding a subsequent claim based on

the same subject matter when the federal claim is not the "very same claim" as brought in state court, even if the distinction is minute or nuanced. *Whole Woman's Health* v. *Hellerstedt*, 579 U.S. 582, 599, 601, (2016), as revised (June 27, 2016), abrogated on other grounds by *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215 (2022).

Moreover, when a federal court is presented with an unclear, undecided, complex question of state law, the federal court may either apply the *Burford* abstention (for "difficult questions of state law bearing on policy problems of substantial public import") or certify the question to the state court to gain clarification on the state law issue. *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 726–27 (1996) (quoting *New Orleans Pub. Serv.*, 491 U.S. at 361) (*Burford* abstention); *Arizonans for Off. Eng.* v. *Arizona*, 520 U.S. 43, 75–76 (1997) (discussing certification as successor to historical *Pullman* abstention);.

Olivier's position is inapposite to a claim in which a federal court would need to defer to (or wait for) a state court's holding. Olivier does not ask the federal courts to reexamine his conviction; thus, he does not seek to relitigate the "very same issue." The state court never decided—nor was it asked to decide—the issue that Olivier brings to federal court: the constitutionality of the ordinance. And the state court never made a ruling related to the prospective

equitable relief that Olivier seeks. Moreover, the state courts have already interpreted and applied the ordinance to Olivier and others, so the federal court is well apprised of the state court's position on the ordinance. As a result, the principles which counsel deference through preclusion, certification, or *Burford* abstention simply don't apply. Instead, because Olivier's § 1983 claim has a federal basis for jurisdiction, it was inappropriate for the federal district court to abdicate its duty to exercise its jurisdiction. *Colo. River*, 424 U.S. at 815 n.21 (citing *Burford* v. *Sun Oil Co.*, 319 U.S. 315, 318 n.5 (1943); *Hawks* v. *Hamill*, 288 U.S. 52, 61 (1933)).

In sum, each of the above doctrines counsels a federal court to refrain from making a decision because a state court has decided, is deciding, or will decide that question. The Fifth Circuit created a "*Heck* abstention" to avoid a question that a state court has not decided, is not deciding, and will not decide. Thus, far from applying principles of comity, equity, and federalism to shepherd the question to the most appropriate forum, this new "*Heck* abstention" deprives a litigant of *any* resolution to his constitutional claim.

When a federal court would decline to exercise its jurisdiction, "[o]nly the clearest of justifications will warrant dismissal." *Colo. River*, 424 U.S. at 819. No such justification appears here.

Olivier's question is squarely within the federal courts' jurisdiction. Principles of comity and federalism do not reveal any need for deference to the state courts. Thus, this Court should hold that the federal courts must follow their "virtually unflagging obligation" to decide the federal question Olivier brings. *See Sprint Commnc'ns*, 571 U.S. at 591 (quoting *Colo. River*, 424 U.S. at 817).

II. Principles of statutory interpretation dictate availability of § 1983 whenever habeas relief is unavailable.

Heck and its predecessor attempted to address the "collision course" between § 1983 and federal habeas statutes and to harmonize them. *Heck* v. *Humphrey*, 512 U.S. 477, 491 (1994) (Thomas, J., concurring). The Fifth Circuit's approach does not attempt such harmonization. This Court should require lower courts to apply principles of statutory construction to properly construe and harmonize these statutes.

Congress established the Civil Rights Act of 1871, now codified in 42 U.S.C. § 1983, to give plaintiffs broad access to federal courts to obtain relief from constitutional injuries. *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972). The statute's plain language "reflect[s] the regrettable reality that 'state instrumentalities' could not, or would not, fully protect federal rights." *Health & Hosp. Corp.* v.

Talevski, 599 U.S. 166, 177 (2023) (quoting *Mitchum*, 407 U.S. at 240 (1972)). Consistent with its purpose, Section 1983 does not require plaintiffs to first exhaust state administrative remedies. *Patsy* v. *Bd. of Regents*, 457 U.S. 496, 502, 506 (1982).

The federal habeas statute provides another avenue for a narrow group of petitioners to obtain a narrow type of relief from constitutional injuries through federal courts. 28 U.S.C. § 2254. Habeas relief is available only to custodial prisoners who seek to attack the conviction or sentence that they are then serving, *Maleng* v. *Cook*, 490 U.S. 488, 490 (1989) (citing *Carafas* v. *LaVellee*, 391 U.S. 234, 238 (1968)), and only after a petitioner exhausts all avenues of relief in state courts, *Rose* v. *Lundy*, 455 U.S. 509, 515, 518–19 (1982) (holding exhaustion rule is based on principles of federalism and comity).

Prisoners have attempted to use § 1983 as a type of loophole to avoid the habeas prerequisites while still obtaining habeas-like relief from their sentence. *See, e.g., Preiser* v. *Rodriguez*, 411 U.S. 475, 479 (1973) (discussing prisoner's civil rights suit that was "really a petition for habeas corpus"). This pathway would have the practical effect of nullifying Congress's expressed intent for prisoners to exhaust administrative remedies before obtaining relief from the fact or duration of their sentence.

In *Preiser*, the precursor to *Heck*, this Court closed this prisoner loophole by applying the principle of statutory interpretation that the specific controls over the general. *Id.* at 489–90. Although the plain language of § 1983 would ostensibly allow custodial prisoners to attack the fact or duration of their confinement, *Preiser* carved this type of claim—the realm of the more specific habeas statute—out of the claims available under the more generalized § 1983 statute. *Id.* This Court's analysis focused on harmonizing both statutes and giving meaning to each. *Id.* ("It would wholly frustrate explicit congressional intent to hold that the respondents in the present case could evade this [administrative exhaustion] requirement by the simple expedient of putting a different label on their pleadings.").

Heck to some degree continued to apply the rule of statutory interpretation that the specific (habeas) controls the general (§ 1983) by requiring prisoners who were "attacking . . . the fact or length of . . . confinement" to adhere to the same threshold showing as the habeas statute: favorable termination. *Id.* at 481–82, 487. However, subsequent applications of the *Heck* bar have drifted from the original underpinnings of harmonization and statutory construction. This is particularly apparent in the Fifth Circuit's holding, which bars a claim to which habeas *never* would have applied. Thus, courts have

moved far afield of merely closing the prisoner loophole and enforcing the administrative exhaustion requirement of habeas statutes for custodial prisoners attacking their confinement.

This Court should construe § 1983 and habeas statutes in harmony and limit the *Heck* bar only to claims in which habeas relief is available. A litigant who cannot access habeas relief should have access to federal courts through § 1983.

III. A § 1983 claim's essential elements should determine whether success necessarily implies the invalidity of the conviction.

The opinion below—and much of the *Heck* progeny—focus on determining whether the plaintiff's claim, if successful, "necessarily impl[ies] the invalidity" of a conviction. Petition Appx. 7a–91, 11a, 14a (quoting *Heck*, 512 U.S at 487). However, *Heck* required this analysis only "when a state prisoner seeks damages in a § 1983 suit." *Heck*, 512 U.S. at 487. Because Olivier is not (and never was) a state prisoner and does not seek damages, this analysis does not apply to him. However, if this Court decides to engage in the analysis of whether Olivier's claim, if successful, would necessarily imply the invalidity of his conviction, this Court should tie the analysis to the essential elements of the claim.

In *Heck*, this Court identified the § 1983 claim as a malicious prosecution suit. 512 U.S. at 484. As an essential element of, the plaintiff needed to prove that he had received a criminal conviction, but that his conviction terminated in his favor through reversal, expungement, or other declaration of invalidity. *Id.* at 484, 486–87. Thus, if the plaintiff "establish[ed] the basis for the damages claim" he would have "necessarily demonstrate[d] the invalidity of the conviction." *Id.* at 481–82. This Court barred "[a] claim for damages bearing that relationship to a conviction or sentence." *Id.* at 487 (emphasis added).

In this immediate context, the Court stated:

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

Id. (emphasis added).

The *Heck* court thus tied the test of "necessarily imply[ing] the invalidity of [a] sentence" to the elements of a claim, holding that the claim and sentence must bear the same type of relationship as in *Heck*. A successful § 1983 claim does not imply the

invalidity of a conviction unless an essential element of the § 1983 cause of action requires the plaintiff to prove the facts of his prior conviction and its invalidity. *Id.* at 486 n. 6, 487 n. 7. For this reason, the *Heck* bar analysis "depends on what facts a § 1983 plaintiff would need to prove to prevail on his claim." *McDonough* v. *Smith*, 588 U.S. 109, 126 (2019) (Thomas, J., dissenting). A court cannot determine whether the *Heck* bar applies to a § 1983 claim until it determines and examines the elements of the claim.

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

If the Court reaches this analysis, it should hold that a claim necessarily implies the invalidity of a conviction only when an essential element of the § 1983 claim requires proof of the existence and invalidity of a conviction. Because Olivier's claim does not require this proof, it does not necessarily imply his conviction's invalidity, so *Heck* does not bar the claim.

CONCLUSION

Federal courts have an obligation to decide cases and controversies over which they hold jurisdiction—including cases such as Olivier's. This Court should reverse the Fifth Circuit's holding because principles of comity and federalism do not warrant abstention. Instead, this Court should harmonize § 1983 and habeas statutes, limit *Heck* to its original context, and hold that *Heck does* not bar Olivier's claim.

Respectfully submitted,

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