No. 24-993

IN THE

Supreme Court of the United States

GABRIEL OLIVIER,

Petitioner,

v.

CITY OF BRANDON, MISSISSIPPI, *et al.*,

Respondents.

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

BRIEF OF *AMICUS CURIAE* CHIKE UZUEGBUNAM IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

This Court granted certiorari to determine whether *Heck* v. *Humphrey*, 512 U.S. 477 (1994), bars plaintiffs from bringing Section 1983 claims for prospective relief against an allegedly unconstitutional law they were previously punished under, even when plaintiffs never had access to federal habeas relief. Amicus Curiae Chike Uzuegbunam has a substantial interest in persuading the Court to answer "no." Chike is a Christian who feels called to publicly share his faith, and he, too, has previously been threatened with unlawful government sanctions for doing so.

As a student, Chike shared his faith in an outdoor plaza at Georgia Gwinnett College and handed out religious literature to interested persons. A campus police officer ordered him to stop because he was not in one of two designated "free speech areas" that comprised 0.0015 percent of campus. *Uzuegbunam* v. *Preczewski*, 592 U.S. 279, 283 (2021). So Chike applied for, and received, a permit to share his faith in a "free speech area." A different officer then ordered him to stop, labeling Chike's sharing of his faith "disturbing the peace" because people complained. *Id.* at 283–284. When Chike sued for injunctive relief and nominal damages, the college initially defended its policies by saying that Chike's religious speech "arguably rose to the level of fighting words." *Id.* at 284 (citation modified). Later, the college rescinded its unconstitutional policies and attempted to dismiss the case as moot. But this Court

1. No party or party's counsel authored this brief in whole or part, nor did anyone other than Amicus and its counsel contribute any money to fund the preparation of this brief. Sup. Ct. R. 37.6.

upheld Chike's standing to seek nominal damages. *Id.* at 284, 292–93.

Now as a husband, father, and church leader, Chike continues to share his faith outdoors in Tennessee. There, Chike is protected by the Sixth Circuit's holding "that *Heck*'s favorable-termination requirement cannot be imposed against § 1983 plaintiffs who lack a habeas option for the vindication of their federal rights." *Powers* v. *Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 603 (6th Cir. 2007). Chike has a substantial interest in the resolution of the questions presented because a contrary ruling would impair his ability to prospectively challenge laws that stifle his faith-based message, which "the First Amendment doubly protects." *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022).

INTRODUCTION

Amicus Curiae Chike Uzuegbunam submits this brief to underscore both the constitutional and practical stakes implicated by an overreading of *Heck* v. *Humphrey*, 512 U.S. 477 (1994), illustrated by the Fifth Circuit's decision below. As a street preacher who has experienced firsthand the chilling effects of government action on protected speech, Chike's journey to vindicate his rights—culminating in a landmark victory before this Court—exemplifies the extraordinary burdens and fortuities that too often determine whether justice is served. See *Uzuegbunam* v. *Preczewski*, 592 U.S. 279 (2021). For Chike, the stars aligned: he benefitted from pro bono representation in his years-long fight to vindicate his rights. For countless others—especially ordinary

citizens subjected to fines or other non-carceral sanctions for exercising fundamental rights—such resources and outcomes may be unattainable.

This case arises from another street preacher's ordeal and presents the Court with an opportunity to address lower courts' misapplications of its precedents. The so-called "*Heck* bar" was originally articulated to prevent incarcerated individuals from using 42 U.S.C. 1983 as a backdoor to habeas relief. Ever since, rulings like the Fifth Circuit's below have threatened to foreclose Section 1983 suits even where habeas was never available, and even where plaintiffs seek only prospective relief to protect against future constitutional violations. This overextension is entirely untethered from this Court's precedents and defies common sense. Moreover, the practical outcomes implicated by the Fifth Circuit's approach to *Heck* are untenable, and the consequences are dire—threatening to chill the exercise of constitutional rights and undermine Congress's purpose in enacting Section 1983.

This Court should set the record straight on questions that have persisted in the decades since *Heck* was issued by reaffirming the limited scope of the *Heck* bar. The Fifth Circuit's ruling, if left uncorrected, will close courthouse doors to countless citizens—street preachers, advocates, and ordinary speakers—whose only "offense" is exercising their constitutional rights.

BACKGROUND

Before *Heck* was penned in 1994, there arose concerns that incarcerated individuals could side-step the habeas corpus statute, 42 U.S.C. 2241, by collaterally attacking a conviction via Section 1983. To avoid such circumvention, the Court held in *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), that incarcerated individuals cannot use Section 1983 to veer into traditional habeas territory to seek a speedier release from their sentences. This Court later emphasized in *Wolff* v. *McDonnell*, 418 U.S. 539 (1974), that for Section 1983 suits that do not encroach upon said territory, the court will entertain the action provided the validity or length of the plaintiff's confinement is not in question. See *id.* at 554-555.

The question remained: could an incarcerated person seek damages under Section 1983 for a past unconstitutional confinement? In *Heck*, the Court said "no"—if such a claim would necessarily imply the invalidity of the plaintiff's conviction. 512 U.S. at 487. As with *Preiser*, *Heck*'s ruling sought to resolve the tension inherent in the overlap between habeas and Section 1983.

What *Heck* did not answer, however, was whether its limitation on Section 1983 suits extended to claims for which the plaintiff never had access to habeas relief. Although dicta and concurring opinions in both *Heck* and *Spencer* v. *Kemna*, 523 U.S. 1 (1998), addressed this question, this Court has never expressly answered it.

As recounted at length in Petitioner's certiorari briefing, multiple splits have arisen on questions along these lines—including whether *Heck* applies to suits

seeking prospective injunctive relief, and whether *Heck* encompasses plaintiffs who are not in custody (either because their confinement was completed, or they never had been confined).

As this case and others show, the Fifth Circuit has come out on the wrong side of these splits, and its *Heck* jurisprudence has gone far afield from the actual holdings in *Heck* and its progeny. This departure flips Section 1983 on its head. See *Wilson* v. *Garcia*, 471 U.S. 261, 272 (1985) (overruled on other grounds) ("If a prisoner could not . . . seek habeas relief, and after release, was prevented from filing a § 1983 claim, § 1983's purpose of providing litigants with 'a uniquely federal remedy against incursions . . . upon rights secured by the Constitution and laws of the Nations,' would be severely imperiled.").

SUMMARY OF THE ARGUMENT

The Fifth Circuit's decision fundamentally misinterprets *Heck* by extending its bar to Section 1983 claims brought by individuals who are not in custody and seek only prospective relief. *Heck* was a limited decision, focused on barring damages actions by incarcerated plaintiffs where a judgment in their favor would necessarily imply the invalidity of an outstanding conviction or sentence—precisely the context in which habeas corpus relief is available.

Heck explicitly emphasizes the decision's narrow scope: it addresses Section 1983 damages actions by prisoners still subject to "outstanding criminal convictions." The language of the opinion, including its references to "outstanding" convictions and confinement, underscores

this limitation. Footnote 10's dicta has not been adopted in any holding by this Court. Indeed, subsequent Supreme Court decisions have extended *Heck* to suits seeking certain declaratory or injunctive relief, but only where the plaintiff remains "in custody" and the claim implicates the core concerns of habeas corpus—namely, the validity or duration of confinement.

The Fifth Circuit's ruling disregards these boundaries and applies *Heck* to suits by plaintiffs who have already satisfied their judgments—such as by paying a fine—and who never had access to habeas relief. Such an approach erroneously immunizes government officials who elect to avoid incarceration as a penalty, and chills the exercise of fundamental rights by making it impracticable or impossible for citizens to challenge unconstitutional fines or similar penalties.

The practical consequences are illustrated by the experiences of Mr. Olivier and others, who find themselves denied a federal remedy for prospective constitutional violations simply because their past punishment did not involve incarceration. By imposing an extra-statutory bar on prospective claims by non-custodial plaintiffs, the Fifth Circuit's rule effectively closes the courthouse doors to a large class of citizens—often those most in need of constitutional protection.

Practical considerations underscore the need to reject the Fifth Circuit's approach. Section 1983 is supposed to be construed liberally, to ensure that citizens can vindicate their constitutional rights. The Fifth Circuit's expansion of the *Heck* bar chills the exercise of First Amendment and other core rights by denying meaningful relief, making

it even harder for ordinary people to obtain counsel and challenge unconstitutional government actions.

In sum, the Court should reaffirm that *Heck*'s bar is limited to Section 1983 damages actions by prisoners with outstanding convictions or sentences, where habeas relief is implicated. Suits seeking prospective relief by non-custodial plaintiffs who cannot access habeas and do not seek to invalidate their prior convictions clearly fall outside *Heck*'s scope. By reversing the Fifth Circuit's overbroad application, the Court will preserve access to federal remedies for constitutional violations and uphold the purposes for which Congress enacted Section 1983.

ARGUMENT

I. *Heck* doesn't support The Fifth Circuit's Ruling.

The rift between the majority and dissenting opinions below—each presenting quite different conceptions of *Heck*—is emblematic of the increasingly fractured state into which the lower courts have fallen in the three decades since this Court issued that decision. The opinion was couched and confined in certain key respects, and momentous questions persist in its wake. Questions remain concerning the scope of the "favorable termination requirement" when prospective relief is sought, and when habeas is not implicated; questions that—though posed in the sidelines of *Heck*'s progeny—have remained unanswered. Thus, lower courts have labored to parse and prognosticate as to which individual justices' passing footnotes and concurring sidebars should be heeded. And as with the Fifth Circuit here, some courts have enshrined dicta as canon and have invoked *Heck* where it

does not belong. A proper reading of the opinion points in a different direction.

A. The Explicit Parameters of *Heck*.

At the outset of *Heck*, the opinion sets forth the scope of its assignment: to answer the question of "whether a *state prisoner* may challenge the constitutionality of his *conviction* in a *suit for damages under 42 U.S.C. § 1983*." 512 U.S. at 478 (emphasis added). And each element offered in this encapsulation is significant, regarding the breadth of this Court's holding: it specifically concerns (1) damages suits under Section 1983 that (2) are brought by state prisoners who (3) are challenging the constitutionality of their convictions or their resulting confinement.

These same elements are reinforced throughout the opinion. *E.g.*, *id.* at 483 ("The issue with respect to *monetary damages* challenging *conviction* is . . . whether the claim is cognizable under § 1983 at all.") (emphasis added); *id.* at 486 ("We think the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of *outstanding criminal judgments* applies to *§ 1983 damages actions* that necessarily require the plaintiff to prove the unlawfulness of his *conviction or confinement*, just as it has always applied to actions for malicious prosecution.") (emphasis added). And to put an even finer point on the rule, *Heck* states that

> 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. at 487 (emphasis added).

Thus, *Heck* originally precluded suits brought by (1) incarcerated persons that are (2) pursuing damages under Section 1983 for (3) an allegedly unconstitutional conviction or sentence—unless the conviction or sentence has already been invalidated. Those narrowly circumscribed parameters are as far as *Heck*'s holding went, though, as discussed below, this Court has extended *Heck* in certain ways, while reserving other questions for future resolution.

B. *Heck*'s footnote 10.

Before proceeding to *Heck*'s progeny, it is worth considering the opinion's footnote 10:

> [in his concurrence] Justice SOUTER also adopts the common-law principle that one cannot use the device of a civil tort action to challenge the validity of an outstanding criminal conviction, but thinks it necessary to abandon that principle in those cases (of which no real-life example comes to mind) involving former state prisoners who, because they are no longer in custody, cannot bring postconviction challenges. . . . We think the principle barring collateral attacks—a longstanding and deeply rooted feature of both the common law and

> our own jurisprudence—is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated.

Id. at 490 n.10 (citation omitted).

This reference to the "principle barring collateral attacks" is not part of *Heck*'s holding because Heck himself was still in custody. *Heck*, 512 U.S. at 479 ("The complaint sought, among other things, compensatory and punitive monetary damages. It did not ask for injunctive relief, and *petitioner has not sought release from custody in this action*.") (emphasis added); accord *Savory* v. *Cannon*, 947 F.3d 409, 432 (7th Cir. 2020) (Easterbrook, J., dissenting) ("Footnote 10 is the only part of the Court's opinion in *Heck* to address the appropriate treatment of plaintiffs *whose custody has ended*, and a clearer example of dicta is hard to imagine.") (emphasis added). Footnote 10 is out of place because it addresses former state prisoners who are no longer incarcerated. *Heck*'s holding is inextricably tied to *custodial* plaintiffs. And even footnote 10 does not address the situation here, where a plaintiff seeks only prospective relief.

C. This Court's Corresponding Focus on the "Core" of Habeas Relief.

Fundamental to *Heck* was its effort to resolve the inherent tension between habeas relief and Section 1983 relief, which it did in line with *Preiser*'s recognition that Section 1983 contains an "implicit exception" for actions that lie "within the core of habeas corpus." *Wilkinson* v. *Dotson*, 544 U.S. 74, 79 (2005) (quoting *Preiser*, 411 U.S. at 487)). Accordingly, *Heck*'s "'favorable termination'

requirement is necessary to prevent *inmates* from doing indirectly through damages actions what they could not do directly by seeking injunctive relief—challenge the fact or duration of their *confinement* without complying with the procedural limitations of the federal habeas statute." *Nelson* v. *Campbell*, 541 U.S. 637, 646-647 (2004) (citing *Muhammad* v. *Close*, 540 U.S. 749, 751 (2004)) (emphasis added).

The Court's focus on preventing Section 1983 from becoming a backdoor to habeas-style relief also explains the cases in which the Court has not applied the *Heck* bar. In *Close*, for example, the Court noted that the plaintiff "raised no claim on which habeas relief could have been granted on any recognized theory, [so] *Heck*'s favorable termination requirement was inapplicable." 540 U.S. at 755. Likewise, if a prisoner's Section 1983 claim does *not* implicate habeas relief—say, in the case of "an injunction barring future unconstitutional procedures [that does] not fall within habeas' exclusive domain"—*Heck* offers no bar, because "such prospective relief will not 'necessarily imply' the invalidity of a[n] [outstanding conviction]." *Wilkinson*, 544 U.S. at 81 (quoting *Edwards* v. *Balisok*, 520 U.S. 641, 648 (1997)).

D. Application of the Elements of *Heck*'s Legacy Here.

These twin concepts—(1) custodial plaintiffs and (2) claims that implicate the core of habeas relief—work together to weed out the narrow categories of suits that may not proceed under Section 1983.

Along with the many reasons outlined in Petitioner's Opening Brief (in particular, the fact that Mr. Olivier's

bid for prospective relief would not invalidate his prior conviction), this Court should reverse the Fifth Circuit's ruling in this case because Mr. Olivier's situation clearly does not satisfy the twin elements mentioned above. He was never imprisoned because he satisfied the judgment by pleading *nolo contendere* and paying a fine. Additionally, Mr. Olivier's Section 1983 suit for prospective injunctive relief in no way implicates the core of habeas relief because he was never confined and never had the option to file a habeas petition. *Olivier* v. *City of Brandon, Mississippi*, 2023 WL 5500223, at *5 (5th Cir. Aug. 25, 2023).

The broad terms of Section 1983 afford "any citizen of the United States" the ability to vindicate "rights, privileges, or immunities secured by the Constitution." "Congress could create by legislation a rule foreclosing damages 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*, 947 F.3d at 434 (Easterbrook, J., dissenting). Nor may state officials escape from Section 1983 by limiting themselves to penalties short of incarceration. The Fifth Circuit's ruling would allow local officials to violate constitutional rights and avoid responsibility provided they limit themselves to fines, which cannot possibly be what Congress intended when it enacted Section 1983.

II. Other Fact Patterns Reveal Problems with the Fifth Circuit's Ruling.

The Fifth Circuit's reasoning also leads to absurd and untenable outcomes that "def[y] common sense."

Olivier v. *City of Brandon, Mississippi*, 121 F.4th 511, 513 (5th Cir. 2024) (Ho, J., dissenting). It beggars logic to foreclose litigants the opportunity to vindicate their constitutional rights under Section 1983 when they are "without recourse to the habeas statute . . . because they are not 'in custody.'" *Spencer*, 523 U.S. at 21 (Ginsburg, J., concurring). It makes even less sense here, where Mr. Olivier is the best person to challenge the constitutionality of the ordinance because he has experienced its harms firsthand. *Olivier*, 121 F.4th at 513 (Ho, J., dissenting) ("The fact that Olivier was previously convicted under the ordinance should make him not just a permissible but a perfect plaintiff.").

Another petition is pending before this Court that illustrates the consequences of the Fifth Circuit's reasoning. Twenty years after Erma Wilson's sentence for cocaine offenses in 2001—a sentence that apparently dashed her dreams of becoming a nurse—she learned her prosecutor had been on her judge's payroll. This "brazen prosecutorial misconduct laid waste to her fundamental fair-trial-right," but she did not discover it until "long after she had been convicted, lost her direct appeal, and served her suspended sentence." *Wilson* v. *Midland Cnty., Texas*, 116 F.4th 384, 422 (5th Cir. 2024) (Willett, J., dissenting). Misconstruing *Heck* and its progeny, and misreading two of this Court's cases that clearly *analogized* to *Heck* but did not invoke its bar,[2] the en banc Fifth Circuit applied a

2. See *McDonough* v. *Smith*, 588 U.S. 109, 116-120 (2019) (involving a non-custodial plaintiff, but only analogizing to *Heck* and concluding that acquittal caused accrual of the statute of limitations—with no resolution of whether *Heck* can be directly applied to non-custodial plaintiffs); *Thompson* v. *Clark*, 596 U.S. 36, 44 (2022) (involving a non-custodial plaintiff, but only analogizing

Heck bar based on Wilson's failure to receive a favorable determination. The majority closed with the indifferent acknowledgment that "favorable termination is sometimes difficult to satisfy. Undoubtedly, as Wilson worries, some plaintiffs will not be able to do so." *Id*. at 404.

Although the Fifth Circuit pointed to alternatives that Wilson theoretically could have pursued before seeking damages via Section 1983—such as petitioning for a pardon from the Governor or seeking some form of state post-conviction review to have her prior sentence expunged—this misses the point of Section 1983: it exists to provide a federal avenue for relief from constitutional violations. In *Wilson*, the undeniable constitutional infirmities came to light years after Wilson could pursue direct appeals on that basis, and federal habeas was never available to her, so it makes no sense to invoke *Heck* to prevent the appropriate use of Section 1983.

Wilson and Olivier are not unique in finding themselves on the wrong side of a misapplied *Heck* bar. Although *Heck*'s footnote 10 expressed skepticism about how often the issue of a noncustodial *Heck* bar might come up, the Seventh Circuit "alone has seen dozens of such cases." *Savory*, 947 F.3d at 433; see also *Martin* v. *City of Boise*, 920 F.3d 584, 620 (9th Cir. 2019) (Owen, J., concurring in part) ("We are not the first court to struggle applying *Heck* to 'real life examples,' nor will we be the last."), *abrogated on other grounds by City of Grants Pass, Oregon* v. *Johnson*, 603 U.S. 520 (2024). In addition to these recent examples, other revealing fact patterns also militate against the Fifth Circuit's approach

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to *Heck* with "Cf." references because it directly involved an actual malicious prosecution claim with a favorable termination element).

First is a scenario in which a former criminal defendant is barred from seeking federal relief against the very law enforcement officers who framed him or falsified evidence against him. It may well be that the same state officials responsible for violating a Section 1983 plaintiff's rights—or state officials that are comrades with those violators—are also responsible for the decision whether to incarcerate him. Giving those officials power to opt against incarceration and, as in Olivier's case, impose a monetary penalty that inoculates them against Section 1983 is a perverse incentive. And in the context of speech rights, even if the speaker is later able to recover the cost of the fine, the process for doing so is burdensome and will necessarily chill other speech for fear of triggering a lengthy litigation process for which no compensation is assured. Amicus knows this all too well, given the years it took to vindicate his rights (from his religious speech in 2016 through this Court's decision in 2021 and settlement in 2022), and in light of the immense legal fees absorbed by his pro bono representation (reflected in the more than $800,000 in attorneys' fees that were paid along with the settlement).

Similarly, another illuminating fact pattern is the prospect that, after Olivier's conviction, another protester could bring suit under Section 1983 seeking prospective injunctive relief against the use of that same statute. That suit would certainly undercut the legal reasoning of Olivier's prior conviction, but under the Fifth Circuit's approach it could nevertheless proceed without implicating *Heck*. See *Olivier*, 121 F.4th at 514–515 (Oldham, J., dissenting). But this scenario reveals a fundamental difference between the pursuit of generally applicable prospective injunctive relief, on one hand, and a Section

1983 action brought by an inmate that necessarily and directly implies the invalidity of his outstanding conviction, on the other: the latter may in essence constitute an impermissible collateral attack on a conviction, but the former *does not*. In the former circumstance, if at any point in the lifecycle of a criminal defendant's case a separate decision holds that the statute under which the defendant was charged is unconstitutional, then the defendant can rely upon that precedential development to halt and/or unwind the proceedings against him. Such circumstances do not constitute an impermissible second bite at the proverbial apple. But if injunctive relief in a different party's Section 1983 suit could have effects in a pending criminal prosecution without upsetting *Heck*, then there is no reason that the criminal defendant himself could not seek injunctive relief after conviction. That possibility coexists comfortably with *Heck*'s guiding principles: avoiding encroachment on traditional habeas territory and protecting finality and consistency. And in such circumstances, there is no need to safeguard against "risking parallel litigation and conflicting judgments." *McDonough*, 588 U.S. at 123.

Returning to *Heck*'s original scope and focus avoids sliding down any number of slippery slopes that come with expanding the *Heck* bar.

III. Practical Reasons Weight Heavily Against the Fifth Circuit's Ruling.

In addition to the textual rationales and troubling outcomes referenced above, there are numerous practical reasons to reverse the Fifth Circuit's misguided ruling.

Section 1983 is the main mechanism Congress provided to vindicate federal rights against state and local officials. This Court has repeatedly recognized that Section 1983 "opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution." *Mitchum* v. *Foster*, 407 U.S. 225, 239 (1972). Denying access to that vehicle to the broad class of plaintiffs that seek only prospective relief and that have never had access to habeas would defy Section 1983's text and purpose.

Save narrow, statutory carve-outs, federal courts may not impose extra-statutory obstacles to Section 1983 actions. *E.g.*, *Patsy* v. *Bd. of Regents*, 457 U.S. 496, 500–516 (1982) (finding no exhaustion prerequisite for Section 1983 claims); *Crawford-El* v. *Britton*, 523 U.S. 574, 576 (1998) (federal courts may not create a heightened standard of proof that "undermines § 1983's very purpose—to provide a remedy for the violation of federal rights"). The Fifth Circuit's ruling creates precisely the sort of court-fashioned add-on barrier this Court has repeatedly rejected, jeopardizing ordinary citizens' rights to freedom of speech and the free exercise of religion—not to mention all of the other liberties imperiled by an unwarranted expansion of the *Heck* bar. Amicus's own circumstances make this clear.

Chike's facts are the paradigm of First Amendment chill, and they closely mirror Olivier's circumstances. See *Uzuegbunam*, 592 U.S. at 283-284. Chike quietly spoke with willing listeners and handed out religious literature on campus; a police officer ordered him to stop, and he complied. *Id.* After administrators confined speech to

two tiny "zones" and required a permit, he obtained the permit and confined himself to the narrow territory where free speech remained, only to be threatened with discipline after listeners complained. *Id.* He again stopped speaking—which is a constitutional tragedy in and of itself—and only later filed suit seeking declaratory relief, injunctive relief, and nominal damages under Section 1983. *Id.*

Applying the Fifth Circuit's rule to the facts of *Uzuegbunam* may have created an untenable situation for Chike. If officials had secured even a minor conviction (or plea) from the first encounter, the Fifth Circuit's version of *Heck* would have barred the purely prospective injunction needed to lift the ongoing chill. Chike would have been forced to continue violating the ordinance to the point of incarceration before he could seek prospective relief. But requiring incarceration to qualify a plaintiff (who already cleared the favorable termination hurdle) to seek an injunction creates an absurd obstacle course for would-be speakers. Moreover, prospective relief aimed at preventing future enforcement does not "annul" a past conviction—"the relief sought is wholly prospective, to preclude further prosecution under a statute alleged to violate . . . constitutional rights." *Wooley* v. *Maynard*, 430 U.S. 705, 711 (1977).

The evident solution is to hold that Section 1983 suits seeking only prospective relief are not barred by a prior conviction. This rule makes sense given the Court's concern for chilling speech: speakers "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief" from laws that

credibly threaten enforcement. *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 161 (2014) (quoting *Holder* v. *Humanitarian Law Project*, 561 U.S. 1 (2010)); accord *Boos* v. *Barry*, 485 U.S. 312, 322 (1988) (there needs to be "adequate 'breathing space' to the freedoms protected by the First Amendment"); *NRA* v. *Vullo*, 602 U.S. 175, 189 (2024) ("[T]he First Amendment prohibits government officials from relying on the 'threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression' of disfavored speech.") (quotation omitted).

Chike could have decided to continue to speak and may have been prosecuted and fined. In that situation, Chike—like other normal citizens—would not likely have retained counsel for a small fine, but probably would have just accepted the unjust and unconstitutional punishment and moved on. Under the Fifth Circuit's approach, that understandable response would have grave constitutional consequences: a past citation or conviction would shut the federal courthouse doors to any later suit seeking the forward-looking injunction that lifts the ongoing chill. The result is that similarly situated citizens lose the one remedy that prevents tomorrow's censorship, simply because they resolved yesterday's ticket.

Even if Chike had retained counsel, his experience underscores the cost of protecting core speech rights—and how those costs are typically borne. Pro bono representation for speech claims is scarce. Even among the best-known civil-liberties litigators, intake vastly outstrips capacity: for example, the ACLU of Texas reports that it "accept[s] less than 1%" of matters submitted through its intake form, despite receiving a large number

of requests.[3] Likewise, Foundation for Individual Rights and Expression's 2022-2023 annual report shows that its litigation team reviewed "more than 900 cases for potential litigation," but ultimately "litigated nine campus lawsuits"—underscoring how few matters any one public-interest practice can take on.[4] Even long-standing national firms with speech dockets operate at low capacity relative to demand: *since its founding in 1991*, the Institute for Justice reports a modest figure of "more than 60" First Amendment lawsuits, total.[5] These capacity constraints sit atop a broader access-to-justice shortfall, making it even harder for ordinary speakers to secure competent counsel to represent them in complex constitutional litigation against seasoned and sophisticated government attorneys.

Chike was fortunate to catch the attention of Alliance Defending Freedom, which served as pro bono counsel of record before this Court. After the Court held that nominal damages redress a completed violation, the case settled on remand: Georgia Gwinnett College agreed to pay nominal damages and more than $800,000 in attorneys' fees.[6] But as traced above, that financing model—public-interest counsel advancing the litigation and later recovering fees under Section 1988 if the plaintiff prevails—does not

3. ACLU of Tex., Request Legal Assistance, https://www.aclutx.org/en/request-legal-assistance.

4. Found. for Individual Rights & Expression (FIRE), FIRE 2022-23 Annual Report (Oct. 2023), https://www.thefire.org/sites/default/files/2023/10/FIRE%202022-23%20Annual%20Report.pdf.

5. Inst. for Just., First Amendment, https://ij.org/issues/first-amendment/.

6. Alliance Defending Freedom, *Uzuegbunam* v. *Preczewski*, https://adfmedia.org/case/uzuegbunam-v-preczewski/.

open the courts' doors wide open for speakers. It merely provides life support to precious few speech-protective suits for ordinary speakers who are fortunate enough to find counsel for multiyear federal litigation.

* * *

In sum, a simple fine plus *Heck* should not be a bar to citizens' exercise of their constitutional rights in the future. Otherwise, whole swaths of speakers will be shut out of the marketplace of ideas. Here, Respondents' briefing went so far as to disparage Olivier's evangelism, as though a message against abortion ipso facto "presented hardships" "without regard for the rights or interest of anyone else." Cert. Opp. Brief at 2-3, 8. This disparagement shows how the Fifth Circuit's ruling invites attacks on two foundational liberties: religious freedom and freedom of speech. These fundamental constitutional interests warrant the utmost protection—including protection from being chilled by an overbroad, unsupported extension of the *Heck* bar.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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