

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**

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

By enacting § 1983, Congress determined—and this Court has affirmed—that “when a genuine threat of prosecution exists, a litigant is entitled to resort to a federal forum to seek redress for an alleged deprivation of federal rights.” *Wooley v. Maynard*, 430 U.S. 705, 710 (1977). The entitlement to seek “wholly prospective” relief isn’t diminished because the litigant was previously “found guilty” of violating the law, even if he “failed to seek review of his criminal convictions” in state court. *Id.* at 708, 710-11. If anything, Olivier’s past conviction renders him “not just a permissible but a perfect plaintiff” to seek prospective relief against future prosecution. Pet. App. 48a (Ho, J., dissenting from denial of rehearing en banc).

Nothing in the text of § 1983 or the federal habeas statutes forecloses Olivier’s claims. Nor does anything in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), *Heck v. Humphrey*, 512 U.S. 477 (1994), or their progeny permit the city to close the federal courthouse doors. Olivier’s request for forward-looking declaratory and injunctive relief isn’t “‘designed to annul the results of a state trial’” and doesn’t require him to prove anything about the propriety or impropriety of his past conviction. *Wooley*, 430 U.S. at 711. He wants only “to be free from prosecutions for future violations of the same [law].” *Ibid.*

The city asks this Court to expand *Heck* to bar any § 1983 action that may produce “inconsistent resolution of similar issues.” Resp. Br. 2. But unconstitutional laws don’t become unreviewable under § 1983 just because they’ve been enforced in the past. Nor is

Heck a prophylactic rule against federal-court opinions whose reasoning might cast doubt on a plaintiff's (or others') past convictions. *Heck* applies only when the relief sought redresses harms from past criminal process. Because Olivier's claims don't attack his sentence and bear no resemblance to the malicious-prosecution analogue that supported *Heck*, his claims don't require favorable termination and aren't barred.

Heck's inapplicability to purely prospective relief suffices to reverse the judgment. The Court can also reverse on the alternative ground that Olivier was never in custody. As a result, there's no conflict between § 1983 and the federal habeas statutes in his case. Armed only with inapposite dicta and an all-encompassing conception of malicious prosecution, the city would extend *Heck* to plaintiffs who weren't in custody and never had access to *any* federal forum to vindicate free speech and free exercise rights. The Court should decline that invitation to engraft an implicit exception onto § 1983's plain, broad terms.

ARGUMENT

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

Section 1983 permits a plaintiff—including one with a prior conviction—to seek relief from prospective enforcement of an assertedly unconstitutional law. That simple rule is entirely consistent with *Heck v. Humphrey*, 512 U.S. 477 (1994), and its progeny. Pet. Br. 16-40.

The Court should reject the city's attempted re-writing of *Heck*, which is irreconcilable with multiple

decisions of this Court, conflicts with the rationale underlying *Heck* itself, and concludes with a sweeping attack on the entire regime of pre-enforcement challenges. Alternatively, the city seeks to avoid any resolution of the question presented by relitigating the Court’s decision to grant review and raising meritless arguments never presented below. That attempt, too, should be rejected.

A. Previously convicted plaintiffs may bring § 1983 claims for prospective relief.

1. Olivier brought heartland § 1983 claims. Pet. Br. 16-20. He alleges that a city ordinance violates his First and Fourteenth Amendment rights. J.A. 20-21. Because of the threat of future prosecution, he “fear[s] returning to the area” around the city’s amphitheater to evangelize. J.A. 38. He seeks prospective relief so that he can “return[]” to the amphitheater to “share his religious message on public sidewalks.” J.A. 19; see J.A. 21-22, 38.

Olivier’s open-air evangelism belongs to a long tradition of religious expression shared by people of many faiths throughout American history. Nylén Br. 6-15; Christian Legal Society Br. 4-7. And the city’s attempt (at 2-3) to stifle Olivier because it disagrees with his preaching simply reinforces the importance of the First Amendment’s guarantee that “no official, high or petty, can prescribe what shall be orthodox in * * * religion.” *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).¹

¹ The city disparages Olivier’s evangelism with inaccurate, unsupported accusations, even equating his peaceful expression

There's no dispute that a plaintiff may bring § 1983 claims seeking injunctive and declaratory relief to prevent the future enforcement of an unconstitutional law. Prospective relief under § 1983 is “designed to be available to test state criminal statutes.” *Steffel v. Thompson*, 415 U.S. 452, 467 (1974).

A prior conviction doesn't alter a plaintiff's entitlement to prospective relief. This Court has established that a plaintiff may bring those same § 1983 claims after being convicted under the laws he challenges: A claim for “wholly prospective” relief isn't “designed to annul the results of a state trial” and doesn't “seek to have his record expunged, or to annul any collateral effects those convictions may have.” *Wooley v. Maynard*, 430 U.S. 705, 711 (1977).

Because the federal-court judgment isn't incompatible with the undisturbed state-court conviction, the city's invocation of federalism and comity is misplaced. *Wooley*, 430 U.S. at 705; see U.S. Br. 3. One of § 1983's “main aims,” after all, is to provide a federal forum to “vindicate federal constitutional rights” when States won't. *Nance v. Ward*, 597 U.S. 159, 171 (2022); Liberty Justice Center Br. 4-6.

Under these settled principles, Olivier may seek to stop the city from enforcing the ordinance against him when he next evangelizes in the public park.

with “domestic terrorism.” Resp. Br. 3 n.1 (citing C.A. ROA 414). Olivier vigorously disputes this characterization. The prosecution cited by the city involved the conduct of other people in a different location. That prosecution doesn't allege that Olivier participated in the purportedly “aggressive conduct,” and there's no support for the city's baseless implication that Olivier “spit[] on people.” *Ibid.*; see J.A. 26-27.

B. Nothing in *Heck* bars the prospective relief § 1983 permits and *Wooley* recognizes.

The city wrongly contends (at 27-36) that Olivier’s § 1983 claims necessarily imply the invalidity of his conviction. In the city’s view, a § 1983 judgment would have an “indirect impact” on Olivier’s conviction and is therefore barred. The city’s argument fails to grapple with this Court’s precedents and rests on the mistaken premise that success for Olivier would nullify his conviction.

1. *Heck* applies when a “*judgment* in favor of the plaintiff would *necessarily* imply the invalidity of his conviction or sentence.” 512 U.S. at 487 (emphases added). It isn’t enough to say—as the city does (at 8, 27, 40)—that the reasoning underlying the judgment “would imply a legal infirmity in [a] prior conviction.” U.S. Br. 21. What matters is whether the “*relief* sought” is inescapably incompatible with the conviction or sentence. *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005) (emphasis added). Although the city would elide the distinction, it’s “a federal court’s judgment, not its opinion,” that matters. *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023).

The city disregards this Court’s focus on the conflict between the prior conviction and the relief sought. *Heck*’s damages claim “necessarily require[d] the plaintiff to prove the unlawfulness of his conviction or confinement.” 512 U.S. at 486. Likewise, a claim that a hearing officer’s bias infected a prison disciplinary hearing was incompatible with the sentence because a “criminal defendant tried by a partial judge is entitled to have his conviction set aside.” *Edwards v.*

Balisok, 520 U.S. 641, 647 (1997). And a § 1983 claim that the prosecution withheld material evidence during a prior proceeding likely would be barred because it falls “within the traditional core of habeas corpus.” *Skinner v. Switzer*, 562 U.S. 521, 536 (2011). Such claims all look backward to the conviction and its consequences.

But when the requested relief is prospective, § 1983 claims can go forward. Pet. Br. 23-24. That’s why this Court refused to apply *Heck* to a prisoner’s request for “prospective injunctive relief” concerning future disciplinary proceedings even while rejecting the same prisoner’s requests for “money damages” and a declaration that “deceit and bias on the part of the decisionmaker” had tainted already-concluded proceedings. *Edwards*, 520 U.S. at 648.

So too, the Court separately analyzed requests first for new parole hearings and then for an injunction requiring “the State to comply with constitutional due process * * * requirements in the future.” *Dotson*, 544 U.S. at 77, 80-81. The city has no explanation for these holdings or the Court’s claim-by-claim method of analysis.

The city correctly observes (at 39-41) that *Heck* can apply “no matter the relief sought.” *Dotson*, 544 U.S. at 82. But that principle means only that no general category of relief is immune from *Heck*. A plaintiff can’t seek an “injunction compelling speedier release” to invalidate his confinement, *id.* at 81, or seek to enjoin “collateral effects [prior] convictions may have,” *Wooley*, 430 U.S. at 711. *Heck* bars these claims because they seek relief from the effects of the prior convictions. *Nance*, 597 U.S. at 167-68. By contrast,

Olivier’s claims seek relief that wouldn’t “work backwards to invalidate official actions taken in the past.” Pet. App. 50a (Oldham, J., dissenting from denial of rehearing en banc).

The bottom line is that Olivier’s claims look “to the future’ rather than any official actions in the past.” U.S. Br. 18. *Heck* doesn’t bar these claims.

2. The city makes little effort to reconcile its position with *Wooley* and instead posits (at 51) that “*Heck* changed the focus.” “This Court does not normally overturn, or so dramatically limit, earlier authority *sub silentio*.” *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000). The Court didn’t do so here. *Wooley* followed on the heels of *Preiser v. Rodriguez*, which first articulated the rule that plaintiffs can’t seek injunctive relief under § 1983 from the effects of a conviction. 411 U.S. 475, 489 (1973). If a conviction precluded § 1983 claims for prospective relief altogether, *Wooley* surely would have mentioned *Preiser*—and *Heck* would have mentioned *Wooley*. U.S. Br. 20.

The city’s attempt to distinguish *Wooley* on its facts is equally unpersuasive. The city notes (at 48) that while Olivier endured one prosecution, one *Wooley* plaintiff was “subjected to multiple prosecutions in five weeks.” That distinction only confirms *Heck*’s irrelevance here. On the city’s theory, prospective relief in *Wooley* would have implied the invalidity of multiple convictions—more, not less, reason to bar the civil action.

The city isn’t helped by its observation (at 48) that the *Wooley* plaintiff raised a First Amendment chal-

lenge “in each prosecution.” This Court has consistently held that “§ 1983 contains no exhaustion requirement,” and *Heck* didn’t impose one. 512 U.S. at 483. Forcing plaintiffs seeking prospective relief to run to state court first would undercut the core function of § 1983, which Congress enacted to provide a federal forum to vindicate federal rights.

3. The city doesn’t defend the Fifth Circuit’s flawed theory that forward-looking claims necessarily imply a conviction’s invalidity because a § 1983 plaintiff could assert preclusion in a later collateral attack. Pet. App. 12a; Pet. Br. 34-36; U.S. Br. 21-22. Instead, the city advances (at 32) an even broader rule that *Heck* bars plaintiffs from seeking prospective relief whenever they make “a substantive attack on the law” under which they were previously prosecuted.

a. This Court has never adopted a substantive-attack rule, as the city tacitly concedes (at 33-34) by citing lower-court decisions. For good reason. The city’s attempt to rewrite *Heck* again founders on the distinction between relief and reasoning. Remedies under § 1983 or otherwise “‘operate with respect to specific parties,’” not “‘on legal rules in the abstract.’” *California v. Texas*, 593 U.S. 659, 672 (2021).

A prevailing § 1983 plaintiff benefits through the personal, specific effect of the judgment preventing the defendant from acting against him. Section 1983 doesn’t empower courts to erase laws through the “awe-inspiring effect of the opinion.” *Brackeen*, 599 U.S. at 294; Pet. Br. 32-33. So *Heck* bars injunctive relief only where a “claim seeks—not where it simply ‘relates to’—‘core’ habeas corpus relief.” *Dotson*, 544 U.S. at 81.

The city’s reliance (at 31) on habeas cases underscores why this Court has consistently focused on the remedy’s relationship to the conviction. If a plaintiff seeks relief from his conviction—like release from incarceration—on the theory that a state law is substantively unconstitutional, that claim sounds in habeas. Cf. *Montgomery v. Louisiana*, 577 U.S. 190, 200 (2016).

But when a plaintiff seeks prospective relief from “prosecutions for future violations” of an unconstitutional law, this Court has made clear that success in that action won’t “annul the results of a state trial.” *Wooley*, 430 U.S. at 711; *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). Any effect on the conviction is too attenuated because a judgment awarding prospective relief could aid a collateral attack only if preclusion applies—an outcome that is “hardly inevitable,” *Skinner*, 562 U.S. at 534, that *Heck* itself said wouldn’t “necessarily be an automatic, or even a permissible, effect” of a § 1983 judgment, 512 U.S. at 488, and that the city doesn’t even urge.

b. The city tries to shore up its prohibition on “substantive attacks” by singling out facial challenges for disfavored treatment under *Heck*. The city argues that a “rigorous standard” governs facial challenges. Resp. Br. 28. True, but irrelevant, because that rigorous standard isn’t *Heck*. Whether Olivier can justify facial relief goes to the underlying merits of his claims, which are for the courts below to resolve after remand.² The only thing that matters for present purposes is that any injunction (whether awarding facial

² Moreover, the “substantive rule of law necessary to establish a constitutional violation”—here, the First and Fourteenth

or as-applied relief) would redress only Olivier’s risk of future prosecution—not the harms from the past one. See pp. 6-7, *supra*.

The city’s argument is beside the point for the additional reason that Olivier’s complaint challenges the ordinance as “unconstitutional” both “on its face *and as applied* to Olivier’s religious speech.” J.A. 21 (emphasis added).

4. The city contends (at 49) that federalism supports extending *Heck* to prospective relief. This Court has “already placed the States’ important comity considerations in the balance” by allowing claims that wouldn’t “necessarily invalidate state-imposed confinement,” *Dotson*, 544 U.S. at 84, and in crafting limits on injunctive and declaratory relief, U.S. Br. 12-14, 21-22.

When, as here, no state prosecution is pending, “principles of federalism not only do not preclude federal intervention, they compel it.” *Steffel*, 415 U.S. at 472. That result properly recognizes the “paramount role Congress has assigned to the federal courts to protect constitutional rights” through § 1983. *Id.* at 473; Human Rights Defense Center Br. 4-7.

C. Malicious prosecution isn’t an appropriate analogue to Olivier’s claims for prospective relief.

The city makes much (at 13-14, 41-42) of *Heck*’s references to the common-law elements of malicious

Amendments—doesn’t vary between facial and as-applied claims. *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019). The distinction “goes to the breadth of the remedy.” *Citizens United v. Federal Election Commission*, 558 U.S. 310, 331 (2010).

prosecution. But the city vastly overreads *Heck*. Tort remedies for past prosecutions are a historical and logical mismatch where—as here, but unlike in *Heck*—a plaintiff seeks equitable relief against future prosecution.

1. *Heck* analogized to the “common-law cause of action for malicious prosecution” in requiring a plaintiff—who was seeking the backward-looking relief of damages—to prove “termination of the prior criminal proceeding in favor of the accused.” 512 U.S. at 484. As the United States explains (at 16), that analogy has no force here because pre-enforcement claims don’t “challenge the *initiation* of any prosecution” or “predicate [the] request for relief on the impropriety of any past legal proceeding.”

The city never argues (nor could it) that malicious prosecution is the historical analogue for an action seeking protection against future prosecution. Pet. Br. 28-29. Instead, the city asserts (at 41) that malicious prosecution is the proper analogue for *any* § 1983 claim that “alleges harm from a criminal proceeding.” Olivier’s suit does so, the city says (at 42), because he “stakes his prospective standing on his past arrest and prosecution.” Here, the city confuses the merits of Olivier’s claims—which don’t rely on his conviction—with the distinct issue of his standing. *Heck* governs “whether the claim is cognizable under § 1983,” 512 U.S. at 483—not what evidence a plaintiff may use to establish Article III standing.

The city “gets things entirely backwards.” Pet. App. 48a (opinion of Ho, J.). Olivier’s past conviction makes him the “perfect plaintiff” to seek prospective

relief against future prosecution. *Ibid.*; *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014).

The city also is wrong to argue (at 41) that Olivier seeks an unprincipled “First Amendment exception” to *Heck*. Determining the contours of any § 1983 claim “begins with identifying ‘the specific constitutional right’ alleged to have been infringed.” *McDonough v. Smith*, 588 U.S. 109, 115 (2019). Here: Free speech, free exercise, and fair notice. J.A. 20-22. No common-law tort—certainly not malicious prosecution—captures “the values and purposes of the constitutional right[s] at issue.” *Thompson v. Clark*, 596 U.S. 36, 43 (2022). Nor has this Court ever required a tort-law analogy when § 1983 plaintiffs seek prospective relief against laws regulating speech, Pet. Br. 29, as the United States agrees (at 17 n.2), and as the city doesn’t dispute. Far from seeking an “exception,” Olivier is following this Court’s instructions and determining his § 1983 claims by reference to the specific right and context.

2. The city’s illogical demand (at 43) to “retain the tort comparison” despite the mismatch between malicious prosecution and prospective relief disregards the plain text of § 1983. Congress authorized both “action[s] at law” and “suit[s] in equity.” 42 U.S.C. § 1983. If Olivier were required to identify a historical analogue (and he isn’t), it would be an antisuit injunction, not malicious prosecution. Pet. Br. 29-30; U.S. Br. 17 n.2.

The strength of that argument is underscored by the extreme position the city takes against it—urging (at 43-44) that § 1983 shouldn’t be read to permit injunctions that “issue against the sovereign” or that

“enjoin criminal prosecutions.” This sweeping assertion depends, as the city admits (at 44), on the supposed “incorrectness” of *Ex parte Young*, 209 U.S. 123 (1908). The city stops short of requesting what’s implicit in its argument—that this Court overrule *Ex parte Young* and upend an entire body of federal pre-enforcement challenges. That the city must urge the Court to entertain that radical, sweeping, and mistaken notion only confirms the weakness of its position.

The city’s skepticism about antisuit injunctions is unwarranted. The remedy endorsed in *Ex parte Young* reflects “traditional equity practice.” *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 39 (2021); *id.* at 53 (Thomas, J., concurring in part and dissenting in part). Just last Term, the Court reiterated that federal courts can issue antisuit injunctions under the Judiciary Act of 1789, *Trump v. CASA, Inc.*, 606 U.S. 831, 846 n.9 (2025), which necessarily establishes the requisite historical pedigree under the Civil Rights Act of 1871, see *Whole Woman’s Health*, 595 U.S. at 44. The city concedes (at 44 n.9) its position is contrary to *CASA* but never asks this Court to reconsider its precedent—and for good reason.

The city doesn’t advance its cause by arguing (at 44-45) that Olivier’s claims for prospective relief are more analogous to certain common-law “prerogative writs” (prohibition, mandamus, and certiorari) that compelled officials to follow the law. As the city concedes (at 45 n.13), its argument conflicts with *Armstrong v. Exceptional Child Center, Inc.*, where this Court explained that the “ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity” and “reflects a long

history of judicial review of illegal executive action.” 575 U.S. 320, 327 (2015).

Nor would a comparison to prerogative writs aid the city. This Court has already approved “prospective relief” under § 1983—including against judges who (unlike executive officers) couldn’t be enjoined at common law—by analogy to prerogative writs. *Pulliam v. Allen*, 466 U.S. 522, 530, 536 (1984). Tellingly, the city never cites any historical support for the notion that plaintiffs with convictions couldn’t seek prospective relief via prerogative writs. The Court need not map out the historical differences between antisuit injunctions and prerogative writs because they are the same in the only way that matters in this case: no favorable-termination requirement.

The city falls back (at 46-48) on the argument that injunctive relief would be inappropriate because Olivier had an “adequate remedy at law”—namely, the right to appeal from the earlier conviction. That argument isn’t just wrong; it’s irrelevant. It goes to the district court’s remedial authority after finding a constitutional violation, not to whether *Heck* bars Olivier from bringing his claims in the first instance.

Equity—not *Heck*—demands inadequacy of remedies for a court ultimately to enter a permanent injunction. Pet. Br. 30-31. This Court has repeatedly held that plaintiffs lack an adequate remedy for the “threat of repeated prosecutions in the future” when their only other way to secure review is to violate the unconstitutional law again. *Wooley*, 430 U.S. at 712; U.S. Br. 13 (collecting cases). Plus, the “existence of another adequate remedy” wouldn’t “preclude a declaratory judgment.” Fed. R. Civ. P. 57; *Steffel*, 415

U.S. at 471 (declaratory relief doesn't require "all of the traditional equitable prerequisites to the issuance of an injunction").

3. The city ultimately confesses (at 49-55) the true thrust of its malicious-prosecution framing: Anyone who doesn't obtain a favorable termination of a prior prosecution forever loses the constitutional right infringed by a law, regardless of the right infringed or the relief sought. The city doesn't deny that its rule grants state officials *de facto* immunity from judicial review for laws that chill speech, lays an exhaustion trap for litigants, and forces individuals to choose between violating the law and surrendering their constitutional rights. Pet. Br. 40; U.S. Br. 13; cf. *Uzuegbunam* Br. 16-19.

The city waves away (at 16-18) these consequences because persons like Olivier can take a direct appeal, seek post-conviction relief, or request expungement. Those backward-looking remedies operate only on his prior conviction (which Olivier doesn't challenge) and don't prevent future interference with his constitutional rights (which Olivier seeks to protect). Just as an injunction wouldn't invalidate his conviction, post-conviction relief is worthless for a plaintiff who seeks protection against a future prosecution. That's why the plaintiff in *Wooley* could bring a § 1983 suit "to be free from prosecutions for future violations of the same statutes" even though he "failed to seek review of his criminal convictions." 430 U.S. at 710-11. The availability of backward-looking relief under state law doesn't speak to the availability of forward-looking relief under federal law.

The city’s federal-law alternative is no better. It contends (at 52-53) that Olivier should have ignored the legislatively conferred cause of action in § 1983 in favor of the judicially implied cause of action recognized in *Ex parte Young*. That inverts the separation of powers. This Court expects plaintiffs to rely on congressionally authorized enforcement mechanisms where they exist. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 74 (1996). If, as the city contends (at 52), Olivier “could have brought his challenge” under *Ex parte Young* without showing favorable termination, why would § 1983 require it? If anything, there’s even less justification to impose unwritten restrictions on a § 1983 claim—expressly authorized by Congress—than a judicially crafted *Ex parte Young* remedy.

The city frets (at 51-53) that constitutional violations may result in attorneys’ fees. That’s an argument for Congress—which has determined that the importance of suits “in vindication of civil rights” justifies a discretionary fee-shifting regime, 42 U.S.C. § 1988(b)—not this Court. Even so, the city can’t point to any flood of suits brought by previously convicted plaintiffs, including in the vast majority of circuits that haven’t accepted the Fifth Circuit’s outlier position. See Cato Br. 11-12. If the city wishes to avoid the risk of attorneys’ fees, it need only respect constitutional rights.

D. The city’s attempts to evade the question presented are forfeited and meritless.

Because *Heck* doesn’t bar the purely prospective relief that Olivier seeks, the city asks this Court

(at 19-23) to avoid the question altogether. The Court should decline that invitation.

1. The city starts by relitigating this Court’s decision to grant review. It argues there’s no “split” because the Fifth Circuit left “for another day” the question whether *Heck* bars purely prospective relief. Resp. Br. 20-21.

That’s wrong. The “question presented” to the Fifth Circuit was whether *Heck* “precludes injunctive relief against future enforcement of an allegedly unconstitutional ordinance.” Pet. App. 1a-2a. The court decided that “single, narrow issue.” Pet. App. 4a. It held that circuit precedent barred “prospective challenges,” and it “rejected Olivier’s invitation to distinguish” that precedent. Pet. App. 13a (citing *Clarke v. Stalder*, 154 F.3d 186, 189 (5th Cir. 1998) (en banc)). The court expressly set damages to the side: “Damages notwithstanding, *Clarke* makes clear that *Heck* forbids injunctive relief declaring a state law of conviction as ‘facially unconstitutional.’” Pet. App. 10a.

2. The city argues (at 20-21) that *Heck* applies differently to “intertwined” requests for damages and injunctive relief. But this case doesn’t present that question, because Olivier properly abandoned his damages claim on appeal. See U.S. Br. 8, 14; Pet. App. 4a. The city didn’t contest that premise at the petition stage and so waived any argument to the contrary. Pet. 7 n.1; see Sup. Ct. R. 15.2.

Regardless, this Court’s cases are clear that a party can abandon a claim just as Olivier did here by making a “representation” in his appellate brief “below” that he isn’t pursuing that claim. *Stanley v. City of Sanford*, 606 U.S. 46, 64 (2025) (plurality opinion);

accord *Pacific Bell Telephone Co. v. linkLine Communications, Inc.*, 555 U.S. 438, 446 (2009). Contrary to the city (at 19, 23), nothing more is required.

What’s more, this Court has always applied *Heck* on a claim-by-claim basis, asking whether each form of requested relief would necessarily imply the conviction’s invalidity. *Edwards* concluded that *Heck* barred a plaintiff’s “claim for declaratory relief and money damages” but remanded for consideration of the claim seeking “prospective injunctive relief.” 520 U.S. at 648-49. *Dotson* allowed claims seeking to invalidate the “procedures used to deny parole eligibility” or “parole suitability” before explaining that separate “claims for *future* relief* * * are yet more distant from [*Heck*’s] core.” 544 U.S. at 82. The city’s view that an entire complaint rises or falls together cannot be reconciled with this Court’s cases.³

3. Unable to make headway against the straightforward proposition that *Heck* doesn’t bar prospective relief against future prosecution, the city changes tack (at 24-27) with a new theory that equitable relief would somehow comprise a “direct attack” on Olivier’s long-expired term of probation. This argument is forfeited, wrong, and moot.

It’s forfeited twice over. The city didn’t make it below or at the petition stage—and where, as here, an “argument first ma[kes] its appearance in this Court in [the respondent’s] brief on the merits,” it’s “‘deemed waived’” under this Court’s Rule 15. *Baldwin v. Reese*,

³ The city’s statute-of-limitations discussion (at 22-23) is misguided for much the same reason: A separate claim accrues each time a defendant enforces an unconstitutional law. Pet. Br. 38; U.S. Br. 22-23.

541 U.S. 27, 34 (2004). In fact, the city has been so delinquent in raising the issue that neither the district court nor the court of appeals even mentioned probation as part of Olivier’s sentence. Pet. App. 3a, 31a; *OBb Personenverkehr AG v. Sachs*, 577 U.S. 27, 37 (2015). The case comes to this Court “on the premise” that Olivier wasn’t serving his sentence. U.S. Br. 20 n.3.

Even if not forfeited, the city’s late-breaking argument is wrong. Olivier never sought relief from the terms of his probation and didn’t mention probation in his complaint. J.A. 1-22. He sought “only to be free from prosecutions for future violations of the same [ordinance],” which § 1983 permits. *Wooley*, 430 U.S. at 711 & n.8. Prevailing on that claim wouldn’t disturb his temporary suspended sentence, so *Heck* doesn’t bar it.

In all events, the city’s argument is moot and provides no basis to affirm. U.S. Br. 20 n.3. *Heck* hinges on whether the claims in the present, not at the time of filing, would interfere with an undisturbed conviction. *Wallace v. Kato*, 549 U.S. 384, 393-94 (2007). The city concedes (at 24-25) that Olivier’s probation ended in June 2022—three months before the district court granted summary judgment to the city (Pet. App. 15a), more than a year before the Fifth Circuit affirmed (Pet. App. 1a), and three years before this Court took up the case. At any of those points, Olivier not only didn’t but couldn’t seek relief against an “expired” sentence lacking any “continuing collateral consequences.” *Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998).

* * *

Olivier turned to the federal courts for prospective relief from an ordinance infringing his First Amendment freedoms. This Court’s cases—from *Wooley* to *Heck* to *Edwards* to *Dotson*—confirm that Olivier’s conviction doesn’t bar federal courts from stopping future unconstitutional conduct. The Court should reject the city’s invitation to undermine § 1983 by closing the courthouse doors to those most in need of protection—those whose constitutional rights have already been infringed.

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

If § 1983 authorizes the prospective relief that Olivier seeks, then this Court needn’t address the second question presented. See U.S. Br. 24. If the Court reaches the question, it should hold that *Heck* bars claims only where the federal habeas statutes actually displace § 1983. Pet. Br. 41-45. Olivier never was in custody, so *Heck* doesn’t bar his claims.

A. Through the habeas statutes, Congress has established a reticulated scheme for claims that a State holds a person “in custody in violation of the Constitution.” 28 U.S.C. §§ 2241(c)(3), 2254(a). Plaintiffs can’t circumvent that scheme’s limitations through § 1983. Wilson Br. 7-9. And plaintiffs can’t repackage challenges to unconstitutional custody under § 1983 by seeking remedies Congress didn’t authorize in habeas without first securing favorable termination of their criminal proceedings. *Heck*, 512 U.S. at 486-87.

The city, however, asks this Court to extend *Heck* to § 1983 claims by convicted plaintiffs who were never in custody and don’t challenge custody in any

respect. Plain statutory text and long-settled precedent foreclose extending *Heck* to bar Olivier’s claims.

1. The city (at 12) and the United States (at 27) invoke a footnote in *Heck* opining that the “principle barring collateral attacks * * * is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated.” 512 U.S. at 490 n.10. But that footnote can’t justify applying *Heck* to plaintiffs who weren’t incarcerated to begin with. Pet. Br. 45-46.

Footnote 10 was the “very quintessence of dicta” because the plaintiff was still in prison when this Court barred his claims. *Wilson v. Midland County*, 116 F.4th 384, 407 (5th Cir. 2024) (en banc) (Willett, J., dissenting). That’s why this Court has treated as “[un]settled” the question whether “unavailability of habeas for other reasons may also dispense with the *Heck* requirement.” *Muhammad v. Close*, 540 U.S. 749, 752 n.2 (2004) (per curiam).

Footnote 10 also spoke only to “former state prisoners” who were once in state custody, 512 U.S. at 490 n.10, not litigants like Olivier who were never in state custody. So the city’s protestations (at 13) that “*Heck* itself would need to be overruled” for this Court to rule in Olivier’s favor on the second question presented fall flat.

2. The city and the United States argue that this Court’s decisions in *McDonough* and *Thompson* establish that “*Heck* extends to individuals who were never in state custody.” U.S. Br. 29; see Resp. Br. 14-15. Neither decision resolved the issue *Muhammad* left open.

In *McDonough*, this Court assumed that the plaintiff had suffered a deprivation of liberty based on

pretrial restrictions that could satisfy the habeas custody requirement. 588 U.S. at 115 & n.2; *id.* at 117 n.4. The Court concluded that *Heck* applies to claims seeking damages for “confinement pending trial before any conviction has occurred” (governed by § 2241) as it does to claims seeking damages for post-conviction confinement (governed by § 2254). *Id.* at 118 n.6. Because a “petition for writ of habeas corpus” is the “appropriate remedy” in both contexts, “the pragmatic considerations discussed in *Heck* apply generally to civil suits within the domain of habeas corpus, not only to those that challenge convictions.” *Id.* at 118 n.6, 119 (quoting *Preiser*, 411 U.S. at 490). *McDonough* doesn’t speak to claims *outside* the domain of habeas corpus like Olivier’s.

In *Thompson*, the plaintiff brought a Fourth Amendment claim premised on “custody” that lasted “two days” after the filing of criminal charges. 596 U.S. at 40. This Court held that the claim was analogous to malicious prosecution and required the plaintiff to prove favorable termination of the criminal proceeding. *Id.* at 43-44. At most, *Thompson* might suggest that *Heck* applies to plaintiffs who were (but no longer are) in custody. See U.S. Br. 30. That isn’t the situation here.

3. That conclusion isn’t altered by the city’s (at 13-15) and the United States’s (at 28) reliance on the malicious-prosecution analogy. The Court has analogized § 1983 claims to malicious prosecution only when a plaintiff seeks damages for “a deprivation of liberty” (*i.e.*, custody). *McDonough*, 588 U.S. at 115 n.2; see, *e.g.*, *Thompson*, 596 U.S. at 42 (“unreasonable seizure pursuant to legal process”); *Heck*, 512 U.S.

at 484 (“confinement imposed pursuant to legal process”).

The Court has reserved whether malicious prosecution is an appropriate analogy for “other types of harm independent of a liberty deprivation,” such as harm to “reputation” or the chilling of speech. *McDonough*, 588 U.S. at 115 n.2. Here, Olivier doesn’t seek damages, much less damages flowing from unlawful custody.

B. For the first time, the city argues (at 10) that Olivier was in custody during the probationary period of his sentence. That argument is forfeited and wrong.

It’s forfeited because the city’s brief in opposition didn’t dispute Olivier’s assertion that he was “never in custody.” Pet. 30; see, e.g., Br. in Opp. 9. Nor did the city’s lower-court briefing. Compare C.A. ROA 557 with C.A. ROA 594. So it’s too late for the city to dispute that premise now. See pp. 18-19, *supra*.

It’s wrong because probation didn’t place Olivier in custody, which requires “substantial restraints not shared by the public generally.” *Lehman v. Lycoming County Children’s Services Agency*, 458 U.S. 502, 510 (1982). Unlike a prisoner on parole with regular reporting requirements and other restrictions, *Maleng v. Cook*, 490 U.S. 488, 491 (1989) (per curiam), Olivier was concededly “unsupervised” and subject only to the restraint (shared by the public) that he wouldn’t violate the ordinance, Resp. Br. 4 (citing J.A. 95).

* * *

The city says this case isn’t about religious liberty. Resp. Br. 2. But the First Amendment’s guarantee of

religious liberty, and § 1983's provision of a federal forum to enforce that guarantee, are parchment promises if federal courts are closed to those who need them the most—persons like Olivier whose rights have already been infringed. Past enforcement is the hallmark of a justiciable controversy, not a roadblock to prospective relief. Without this relief, many may fall silent. Nothing in *Heck* requires that result, and nothing in the First Amendment permits it.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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