No.

IN THE

Supreme Court of the United States

GABRIEL OLIVIER,

Petitioner,

v.

CITY OF BRANDON, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Gabriel Olivier is a Christian who feels called to share the gospel with his fellow citizens. After being arrested and fined for violating an ordinance targeting "protests" outside a public amphitheater, Olivier brought a § 1983 suit under the First and Fourteenth Amendments to declare the ordinance unconstitutional and enjoin its enforcement against him in the future.

The Fifth Circuit, applying its precedent construing this Court's decision in *Heck* v. *Humphrey*, 512 U.S. 477 (1994), held that Olivier's prior conviction barred his § 1983 suit because even the prospective relief it seeks would necessarily undermine his prior conviction. The Fifth Circuit acknowledged the "friction" between its decision and those of this Court and other circuits. Over vigorous dissents, the Fifth Circuit denied rehearing en banc by one vote.

The questions presented are:

1. Whether, as the Fifth Circuit holds in conflict with the Ninth and Tenth Circuits, this Court's decision in *Heck* v. *Humphrey* bars § 1983 claims seeking purely prospective relief where the plaintiff has been punished before under the law challenged as unconstitutional.

2. Whether, as the Fifth Circuit and at least four others hold in conflict with five other circuits, *Heck* v. *Humphrey* bars § 1983 claims by plaintiffs even where they never had access to federal habeas relief.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

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

Respondents City of Brandon and William A. Thompson, individually and in his official capacity, were the defendants in the district court and the appellees in the court of appeals.

2. Petitioner is an individual.

STATEMENT OF RELATED PROCEEDINGS

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

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

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gabriel Olivier respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

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

JURISDICTION

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

STATUTORY PROVISIONS INVOLVED

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

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

> shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress * * *.

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

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

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

STATEMENT

Gabriel Olivier's religious faith compels him to share that faith with his fellow citizens. But a local ordinance forbids him from doing so outside the city's public amphitheater. Olivier has been arrested and fined for doing so in the past. So he brought a § 1983 suit under the First and Fourteenth Amendments to enjoin the city from enforcing the ordinance against him in the future.

But in conflict with two other circuits, the Fifth Circuit held that Olivier couldn't challenge the ordinance—even if its future enforcement would violate his constitutional rights. The mere fact that he previously paid a fine for violating the ordinance rendered him permanently and peculiarly unable to vindicate his constitutional rights through a § 1983 suit seeking prospective relief.

The Fifth Circuit reached this counterintuitive decision based on a misreading of this Court's decision in *Heck* v. *Humphrey*, 512 U.S. 477 (1994). In *Heck*, the Court held that a plaintiff serving a sentence under a state conviction couldn't bring a § 1983 suit seeking damages because that backward-looking remedy "necessarily demonstrates the invalidity of the conviction." *Id*. at 481-82. Nothing in *Heck* addressed forward-looking claims seeking prospective, *equitable* relief. But Fifth Circuit precedent extends *Heck*'s bar to § 1983 suits for equitable relief even where that relief is purely prospective. App. 12a (citing *Clarke* v. *Stalder*, 154 F.3d 186 (5th Cir. 1998) (en banc)).

Applying that precedent, the Fifth Circuit held below that Olivier couldn't seek protection against future prosecution precisely because he "seeks to enjoin a state law under which he was convicted." App. 9a. The panel acknowledged the "friction" between this Court's precedents and the Fifth Circuit's own. App. 11a. But the panel felt duty-bound to apply Fifth Circuit precedent to close the courthouse doors to Olivier.

The Fifth Circuit denied rehearing by a single vote, with eight judges voting in favor of rehearing. App. 43a. As those judges agreed, *Heck* "plainly does nothing to bar Olivier's prospective-relief claim" because the "grant of a forward-looking injunction * * * does not invalidate Olivier's previous conviction." App. 50a-51a (Oldham, J., dissenting from denial of rehearing en banc). The panel's contrary ruling is "indefensible," App. 49a, because "[n]othing in the Constitution, federal law, or Supreme Court precedent dictates this curious result," App. 47a (Ho, J., dissenting from denial of rehearing en banc).

As one of the dissents observed, the panel decision conflicts not only with this Court's precedent but also with at "least two of our sister circuits," which "construe *Heck* not to apply in cases such as this." App. 47a n.2 (Ho, J., dissenting from denial of rehearing en banc) (citing *Martin* v. *City of Boise*, 920 F.3d 584, 603 (9th Cir. 2019); *Lawrence* v. *McCall*, 238 F. App'x 393, 395-96 (10th Cir. 2007)). The split is entrenched and won't go away on its own, as both the Fifth Circuit and the Ninth Circuit have denied rehearing en banc over dissents that fully aired the issue. Compare App. 47a (Ho, J., dissenting from denial of rehearing en banc), and App. 52a (Oldham, J., dissenting from denial of rehearing en banc), with *Martin*, 920 F.3d at 597 (Smith, J., dissenting from denial of rehearing en banc).

This entrenched split has significant implications for vindicating constitutional rights. Section 1983 secures Olivier's right to share his faith—a right doubly protected by the First Amendment's free-exercise and free-speech clauses. "There is no greater federal interest" than enforcing this "explicit constitutional guarantee[]." *New Orleans Public Service, Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 365 (1989). But § 1983 also protects many other bedrock constitutional guarantees. Confirming § 1983's proper scope would ensure consistent outcomes for citizens across the country most in need of § 1983's protections. Indeed, this Court regularly intervenes to maintain uniformity where *Heck* and § 1983 are concerned—including to resolve conflicting holdings of just two circuits. *Nance* v. *Ward*, 597 U.S. 159 (2022).

The Court should do so again here by granting the petition, reversing the Fifth Circuit, and ensuring a

"uniform application" of § 1983. *Felder* v. *Casey*, 487 U.S. 131, 152-53 (1988).

This petition also raises a second question worthy of the Court's review—whether § 1983 relief is available for plaintiffs, like Olivier, who didn't have access to habeas relief (in Olivier's situation, because he wasn't "in custody" for habeas purposes). On that question, the circuits are deeply divided. Five hold that § 1983 relief is available, and at least five others (including the Fifth Circuit below) hold that it isn't. The Court should grant this petition to resolve the entrenched split on this question, too.

1. Section 1983 empowers "any citizen" to bring "an action at law, suit in equity, or other proper proceeding for redress" to vindicate "any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. A separate statute permits "a person in custody" to petition a federal court for "a writ of habeas corpus * * * on the ground that he is in custody in violation of the Constitution." 28 U.S.C. § 2254(a). Both statutes "provide access to a federal forum for claims of unconstitutional treatment," but "they differ in their scope and operation." *Heck*, 512 U.S. at 480.

This Court has reconciled the two provisions by carving out an "implicit exception" from § 1983 for actions "within the core of habeas corpus." *Wilkinson* v. *Dotson*, 544 U.S. 74, 79 (2005). The Court has held, for instance, that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release." *Heck*, 512 U.S. at 481 (discussing *Preiser* v. *Rodriguez*, 411 U.S. 475, 488 (1973)). The

Court later extended that rule in *Heck* to include actions for "monetary damages" when "establishing the basis for the damages claim necessarily demonstrates the invalidity of the conviction." *Id.* at 481-82.

This Court has made clear, however, that actions outside the narrow bounds set by *Heck* "should be allowed to proceed." 512 U.S. at 487. A claim for injunctive relief, in particular, "[o]rdinarily" doesn't imply the invalidity of a prior conviction or sentence. *Edwards* v. *Balisok*, 520 U.S. 641, 648-49 (1997). So in *Wilkinson*, the Court held that § 1983 suits seeking injunctive relief that would require the state to conduct constitutional parole hearings didn't "lie[] at 'the core of habeas corpus,'" wouldn't necessarily result in "speedier release" from prison, and were permissible. 544 U.S. at 76-77, 82.

2. Olivier is a Christian who often shares his faith on public streets in the city of Brandon, Mississippi. App. 2a. He believes that "sharing his religious views is an important part of exercising his faith." App. 19a. When he shares his faith, he passes out religious literature "expounding on the gospel message" and "attempts to engage individuals in conversation or debate on various religious topics." App. 19a-20a. On a handful of occasions between 2018 and 2019, Olivier shared his faith near a city amphitheater that hosts live events. App. 2a-3a.

In 2019, the city passed an ordinance restricting "protests" and "demonstrations" near the amphitheater to a designated area in the hours surrounding an event. App. 3a; see also App. 24a-26a (district court order reproducing ordinance); Ct. App. ROA.13 (reproducing map of designated area).

Two years later, Olivier visited the amphitheater to share his faith. App. 3a. The chief of police ordered him to go the protest area. *Ibid.* Olivier initially did so. *Ibid.* But the protest area was too isolated for attendees to hear his message, so he returned to the sidewalk. *Ibid.* The city charged Olivier with violating the ordinance. *Ibid.* Olivier entered a no-contest plea in municipal court. *Ibid.* The court rendered a sentence of 10 days' suspended imprisonment and a $304 fine. *Ibid.*; see also App. 31a. Olivier paid the fine and didn't appeal. App. 3a.

3. A few months after Olivier paid the fine, he sued the city and the police chief in federal court. App. 3a; see Ct. App. ROA.7. He brought § 1983 claims alleging that the ordinance violates the First and Fourteenth Amendments. App. 3a; see Ct. App. ROA.7, 22-23. Olivier sought prospective injunctive relief to prevent the city from enforcing the ordinance against him in the future. App. 8a; see Ct. App. ROA.24 (Prayer for Relief ¶¶ B-E).[1]

The district court granted summary judgment to the city, holding that *Heck* and Fifth Circuit precedent construing it barred Olivier's claims. App. 36a-41a. Although Olivier emphasized that he didn't "seek to overturn his conviction, either directly or indirectly," and instead challenged only "the constitutionality of the [ordinance] and its application to his" future religious speech, App. 36a-37a, the district court concluded that his claims—including his request for prospective injunctive relief—"functionally challenge[d]

[1] Initially, Olivier also sought nominal and compensatory damages for the city halting his religious expression. See App. 3a. But he abandoned those requests on appeal. App. 4a.

the legality of his conviction" because success in the civil suit would "prove" that his prior state-court conviction "violated his constitutional rights." App. 37a. The district court also concluded that Fifth Circuit precedent applies "*Heck*'s bar" "to both custodial and noncustodial § 1983 plaintiffs" so it didn't matter whether Olivier was in custody. *Ibid.*

4. A Fifth Circuit panel affirmed. App. 14a. The panel explained that *Heck*, as construed by circuit precedent, forbids "'prospective injunctive relief'" against a "state law under which [plaintiff] was convicted" on "'grounds of facial unconstitutionality.'" App. 9a (quoting *Clarke*, 154 F.3d at 188). This circuit precedent, the panel held, "squarely applies to Olivier's case." *Ibid.*

The panel recognized the "friction" between Fifth Circuit precedent and this Court's subsequent decisions interpreting and applying *Heck*. App. 11a (citing *Wilkinson*, 544 U.S. 74; *Skinner* v. *Switzer*, 562 U.S. 521 (2011)). And the panel acknowledged that Fifth Circuit precedent conflicts with the Ninth Circuit's, which permits "prospective challenges like" Olivier's. App. 13a (citing *Martin*, 920 F.3d at 603-04, 611). After all, enjoining a law as unconstitutional "may not 'inevitably' lead to the invalidity of the underlying conviction." App. 11a (quoting *University of Texas* v. *Camenisch*, 451 U.S. 390, 395 (1981)). But because Fifth Circuit precedent couldn't be distinguished, the panel didn't attempt to "bridge the gap" between this Court's precedent and the Fifth Circuit's decisions. App. 13a.

Separately, the panel reaffirmed that "in this circuit," *Heck* applies "even if a § 1983 plaintiff is 'no

longer in custody'" and has no access to habeas relief. App. 10a.

5. The Fifth Circuit denied rehearing en banc by a one-vote margin, over three dissenting opinions joined by eight judges—Chief Judge Elrod and Judges Jones, Smith, Richman, Willett, Ho, Duncan, and Oldham. App. 42a-43a.

The dissenting judges explained that applying *Heck* to bar Olivier's claim for injunctive relief was "indefensible." App. 49a (Oldham, J., dissenting from denial of rehearing en banc). *Heck* bars claims that, if successful, would necessarily imply the invalidity of a prior conviction or sentence. But "*Heck* plainly does nothing to bar Olivier's prospective-relief claim" because a grant of a "forward-looking injunction * * * does not invalidate Olivier's previous conviction." App. 50a-51a. So "[n]othing in the Constitution, federal law, or Supreme Court precedent dictates th[e] curious result" reached by the panel and the Fifth Circuit precedent on which it relied. App. 47a (Ho, J., dissenting from denial of rehearing en banc).

On one point, however, the en banc dissenters agreed with the panel—Fifth Circuit precedent conflicts with "[a]t least two of our sister circuits." App. 47a n.2 (Ho, J., dissenting from denial of rehearing en banc); see also App. 52a (Oldham, J., dissenting from denial of rehearing en banc).

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant The Petition To Resolve A Recognized Split On An Important, Recurring § 1983 Issue.

This Court's intervention is needed to resolve an issue that has sharply divided the circuits—whether a person previously convicted under a law can bring a § 1983 suit to declare that law unconstitutional and prevent its future enforcement without running afoul of this Court's decision in *Heck* v. *Humphrey*, 512 U.S. 477 (1994).

To start, the Fifth Circuit's decision is in open conflict with two other circuits. Olivier could have brought his § 1983 suit to vindicate his constitutional rights in either the Ninth or the Tenth Circuit. See *Martin* v. *City of Boise*, 920 F.3d 584, 615 (9th Cir. 2019); *Lawrence* v. *McCall*, 238 F. App'x 393, 395-96 (10th Cir. 2007). But in the Fifth Circuit, he can't. This conflict is firmly entrenched. Both the Fifth and Ninth Circuits recently denied rehearing en banc over vigorous dissent. That stark conflict is untenable, and this Court's review is needed to resolve it.

The decision below is wrong because it "misreads *Heck*" and "defies common sense." App. 48a (Ho, J., dissenting from denial of rehearing en banc); see also App. 49a (Oldham, J., dissenting from denial of rehearing en banc). *Heck* bars only § 1983 suits that, if successful, would "necessarily demonstrate[] the invalidity of the [prior] conviction." 512 U.S. at 481-82. But Olivier's suit doesn't seek to overturn or undermine his prior conviction; he seeks only to prevent a *future* conviction. Claims for injunctive relief, like Olivier's claims here, are "distant from" the core of

Heck's coverage, *Wilkinson* v. *Dotson*, 544 U.S. 74, 82 (2005), and "[o]rdinarily" will not necessarily demonstrate the invalidity of a prior conviction, *Edwards* v. *Balisok*, 520 U.S. 641, 648 (1997). Barring Olivier's § 1983 suit transforms *Heck* into "an escape hatch to avoid ruling on constitutional issues," something that "Justice Scalia never envisioned" when he authored *Heck*. *Clarke* v. *Stalder*, 154 F.3d 186, 194 (5th Cir. 1998) (Garza, J., dissenting).

This petition is an ideal vehicle to decide this important, recurring question. The decision below decided a "single, narrow issue"—whether *Heck* bars Olivier's "request for injunctive relief." App. 4a. That issue is unquestionably important. The conflict between circuits undermines Congress's interest in the "uniform application" of § 1983. *Felder* v. *Casey*, 487 U.S. 131, 152-53 (1988). And § 1983 secures foundational constitutional rights for citizens across the country. So it's unsurprising that this Court has repeatedly intervened to maintain uniformity in the interplay between *Heck* and § 1983 claims, even when only two circuits disagree. See, e.g., *Nance* v. *Ward*, 597 U.S. 159 (2022). The Court should intervene here, too, and restore uniformity by reversing the Fifth Circuit.

A. The Fifth Circuit's Decision Conflicts With Decisions Of At Least Two Other Circuits.

The Fifth Circuit's decision openly conflicts with "two of [its] sister circuits." App. 47a n.2 (Ho, J., dissenting from denial of rehearing en banc); see also App. 52a (Oldham, J., dissenting from denial of re-

hearing en banc) (acknowledging split with Ninth Circuit); App. 13a (panel opinion) (same). The Ninth and Tenth Circuits have held that "*Heck* has no application to" a § 1983 plaintiff's "request[] for prospective injunctive relief," even where a plaintiff has previously been fined for violating the ordinance. *Martin*, 920 F.3d at 615; *Lawrence*, 238 F. App'x at 395-96. The Fifth Circuit takes the opposite view.

This Court should grant certiorari to resolve the conflict among the circuits on the important question presented here. Both the Fifth and Ninth Circuits have denied rehearing en banc over dissents on this issue, so the split won't resolve itself. Those circuits alone account for about one-third of all federal appeals, so this split has a wide-ranging impact. See Federal Judicial Center, U.S. Courts of Appeals Statistical Tables for the Federal Judiciary (June 30, 2024).[2] Until this Court provides clarity, lower courts will continue to "struggle applying *Heck* to 'real life examples'" such as this one. *Martin*, 920 F.3d at 620 (Owens, J., concurring in part and dissenting in part).

1. The Ninth Circuit has held that "*Heck* has no application to" a plaintiff's "requests for prospective injunctive relief" to prevent the "future" enforcement of an unconstitutional law under which he was previously convicted. *Martin*, 920 F.3d at 615. In the Ninth Circuit's view, this Court's precedents "compel" that conclusion. *Id.* at 614. In *Edwards*, for example, this Court indicated that a plaintiff "*could* seek an injunction barring" unconstitutional acts "in the future," and in *Wilkinson*, this Court explained that

[2] Available at https://www.uscourts.gov/data-news/data-tables/2024/06/30/statistical-tables-federal-judiciary/b.

"'claims for *future* relief'" are generally "not precluded by the *Heck* doctrine." *Id.* at 614-15 (citing *Edwards*, 520 U.S. at 648, and *Wilkinson*, 544 U.S. at 82).

Conversely, the Ninth Circuit found nothing in this Court's precedents suggesting that *Heck* was designed to "insulate future prosecutions from challenge" simply because an individual was previously convicted "under an unconstitutional statute." *Martin*, 920 F.3d at 614-15. The *Heck* bar ensures that state prisoners use only habeas corpus remedies when they "'seek to invalidate the duration of their confinement.'" *Id.* at 614 (quoting *Wilkinson*, 544 U.S. at 81). But *Heck*'s "allu[sion] to an existing confinement" has no import when a plaintiff seeks to prevent a confinement that is "yet to come." *Id.* at 614-15. Similarly, *Heck* ensures "the finality and validity of previous convictions." *Id.* at 615. But suits "seeking to preclude an unconstitutional confinement in the future, arising from incidents occurring after any prior conviction and stemming from a possible later prosecution and conviction," wouldn't cast doubt on a *prior* conviction that the § 1983 suit doesn't challenge. *Ibid.*

The Ninth Circuit's position is entrenched. One judge on the panel dissented on this issue, and six more dissented from the denial of rehearing en banc. As those judges saw it, an "injunction against the[] future enforcement" of an unconstitutional law would "necessarily demonstrate the invalidity of the plaintiffs' prior conviction." *Martin*, 920 F.3d at 598 (Smith, J., dissenting from denial of rehearing en banc). Under that logic, a plaintiff must defend against their state-court conviction or else lose forever the right to contest "the constitutionality of the statute." *Id.* at 619 (Owens, J., concurring in part and dissenting in part). But

the panel opinion "sufficiently rebut[ted] those erroneous arguments." *Id.* at 588 (Berzon, J., concurring in the denial of rehearing en banc).[3]

The Tenth Circuit agrees with the Ninth Circuit. In the Tenth Circuit, *Heck* doesn't bar prospective injunctive relief, "since a grant of prospective [injunctive] relief would not imply the invalidity of the prior sentences." *Lawrence*, 238 F. App'x at 395. In the Tenth Circuit's view, a plaintiff who "risk[s] facing the allegedly unconstitutional sentencing procedures in the future" remains a proper § 1983 plaintiff, even if he's been punished for a prior violation because "*Heck* does not bar" him "from seeking prospective relief." *Id.* at 396.

2. The Fifth Circuit has taken the opposite position—consistently reaffirming that *Heck* bars a § 1983 claim that seeks prospective relief against a "facially unconstitutional" law under which the plaintiff was previously convicted. *Clarke*, 154 F.3d at 190.

Under the Fifth Circuit's reading of *Heck* and its progeny, a § 1983 plaintiff may seek prospective relief

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[3] In *City of Grants Pass* v. *Johnson*, 603 U.S. 520 (2024), this Court abrogated *Martin*'s Eighth Amendment holding. But this Court didn't discuss the *Heck* bar, so "*Grants Pass* does not undermine *Martin*'s analysis of *Heck*." App. 48a n.2 (Ho, J., dissenting from denial of rehearing en banc); see generally *Northwest Environmental Defense Center* v. *Decker*, 728 F.3d 1085, 1086 (9th Cir. 2013) (when "'[t]he Supreme Court reverse[s] this court, but on other grounds,' it leaves unchanged the law of this circuit on issues not reached by the Court"). The Ninth Circuit has continued to rely on *Martin* after *Grants Pass* to hold that *Heck* doesn't bar a prisoner's claims for prospective relief. See *Anderson* v. *IDOC Policy Administration Board Members*, 2024 WL 5153596, at *1 (9th Cir. Dec. 18, 2024).

that has "only an 'indirect impact' on the validity of a prisoner's conviction." *Clarke*, 154 F.3d at 189 (citing *Edwards*, 520 U.S. at 648). But unlike the Ninth and Tenth Circuits, the Fifth Circuit has distinguished that kind of § 1983 claim from one seeking a "facial declaration of the unconstitutionality of" a law. *Ibid.* The latter claim is barred by *Heck* because a "favorable ruling" on that claim "would 'necessarily imply' the invalidity of" the conviction or sentence. *Ibid.* That's so, the Fifth Circuit reasons, because in a hypothetical "subsequent action," a state court "could only conclude" that a plaintiff "had been convicted of violating an unconstitutional rule," which "is the sort of obvious defect that, when established, results in nullification of the conviction." *Id.* at 190 (internal quotation marks omitted).

In the decision below, the Fifth Circuit held that Olivier's claims couldn't be "distinguish[ed]" from the claims in *Clarke*, and "*Clarke* makes clear that *Heck* forbids injunctive relief declaring a state law of conviction as 'facially unconstitutional.'" App. 9a-10a.

A majority of the Fifth Circuit—all three judges on the panel and the eight judges voting in favor of rehearing—agreed that the Fifth Circuit's view conflicts with the holdings of other circuits. The panel acknowledged that the "Ninth Circuit" permits "prospective challenges like" Olivier's. App. 13a. The judges who voted to grant rehearing en banc likewise recognized that the Fifth Circuit's approach conflicts with "two of [its] sister circuits," App. 47a n.2 (Ho, J., dissenting from denial of rehearing en banc), and that the Ninth Circuit "has expressly rejected [the Fifth Circuit's] interpretation of *Heck*," App. 52a (Oldham, J., dissenting from denial of rehearing en banc). But

by a one-vote margin, the en banc court declined to "fix" its outlier position. App. 47a (Ho, J., dissenting from denial of rehearing en banc).

3. Underscoring the need for clarity on this divisive issue, another court of appeals confronted but was unable to decide this "serious and substantial question." *Abusaid* v. *Hillsborough County Board of County Commissioners*, 405 F.3d 1298, 1316 n.9 (11th Cir. 2005). In that case, the plaintiff "challenge[d] the constitutionality of the ordinance under which [he] was convicted" and sought prospective relief, damages, and declaratory relief. *Ibid.* The court "*sua sponte*" called for briefing on *Heck*'s application to those claims but couldn't resolve the issue and remanded. *Ibid.* In parting, the court indicated that "some of [plaintiff's] claims for injunctive relief might survive even if the corresponding claims for damages do not." *Ibid.*

* * *

The Fifth Circuit alone applies *Heck* to bar § 1983 claims that seek to prevent the future enforcement of laws under which a plaintiff was previously convicted. Even though judges in multiple dissenting opinions have criticized this understanding of *Heck* since the Fifth Circuit first adopted it, the Fifth Circuit refuses to change course. See *Clarke*, 154 F.3d at 191 (Garza, J., dissenting); App. 48a (Ho, J., dissenting from denial of rehearing en banc); App. 49a (Oldham, J., dissenting from denial of rehearing en banc). Especially now that the Fifth Circuit denied rehearing en banc in the decision below and the Ninth Circuit denied rehearing en banc in *Martin*, it's become crystal clear

that this conflict between circuits won't resolve without this Court's intervention. This Court's review is needed now to resolve this conflict and dispel the confusion about whether plaintiffs who have previously been convicted can safeguard their constitutional rights in the future—as § 1983 authorizes and this Court's precedents support.

B. The Fifth Circuit's Decision Is Wrong.

The decision below is wrong in far-reaching ways—denying § 1983 protection to those who need it most. As the dissenting judges explained—and as other courts of appeals have held—"[n]othing in the Constitution, federal law, or Supreme Court precedent dictates" applying *Heck* to bar a plaintiff from seeking prospective relief against the future enforcement of an unconstitutional law. App. 47a (Ho, J., dissenting from denial of rehearing en banc). The Fifth Circuit's rule is "indefensible"—it "misreads *Heck*" and "defies common sense." App. 49a (Oldham, J., dissenting from denial of rehearing en banc), 48a (Ho, J., dissenting from denial of rehearing en banc); see also *Clarke*, 154 F.3d at 194 (Garza, J., dissenting).

1. Section 1983 expressly authorizes suit by "any citizen" who has suffered the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. The habeas statute, however, is more limited. Persons "in custody pursuant to the judgment of a State court" may petition a federal court "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). To reconcile these statutes, this Court has held that § 1983 contains an "implicit exception" for actions that lie

"within the core of habeas corpus." *Wilkinson*, 544 U.S. at 79. That unwritten exception bars § 1983 claims that "would necessarily imply the invalidity of [the plaintiff's] conviction or sentence." *Heck*, 512 U.S. at 487. But when claims don't fall within that exception, "the action should be allowed to proceed." *Ibid.*

Typically, *Heck* bars a civil suit that seeks retroactive relief from the burdens of a prior conviction. In *Heck* itself, for example, the plaintiff brought a § 1983 suit based on an allegedly unlawful arrest and sought damages, not prospective relief. 512 U.S. at 479-80 & n.2. That challenge was, in effect, an impermissible "collateral attack" on a conviction. *Id.* at 484.

By contrast, "claims for *future* [injunctive] relief" are "distant from" *Heck*'s "core." *Wilkinson*, 544 U.S. at 82. So "[o]rdinarily, a prayer for * * * prospective relief will not 'necessarily imply' the invalidity of" a conviction or sentence, "and so may properly be brought under § 1983." *Edwards*, 520 U.S. at 648; see *Wolff* v. *McDonnell*, 418 U.S. 539, 555 (1974) (habeas statute doesn't "preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid prison regulations"). To be sure, some requests for "equitable relief" will "necessarily demonstrate the invalidity of confinement or its duration," such as a request for an "injunction compelling speedier release" from prison. *Wilkinson*, 544 U.S. at 81-82. But this Court has held that prisoners may seek injunctive relief to ensure that officials apply constitutional parole-hearing procedures, *id.* at 76-77, to re-

quire officials to date-stamp witness statements, *Edwards*, 520 U.S. at 648, and to compel DNA testing, *Skinner* v. *Switzer*, 562 U.S. 521, 525 (2011).

As one of the dissents below distilled these precedents, "*Heck* bars the *retrospective* use of 42 U.S.C. § 1983 to collaterally attack criminal convictions." App. 50a (Oldham, J., dissenting from denial of rehearing en banc). "Contrariwise, *Heck* permits *prospective-relief* claims that (1) do not implicate the habeas remedy of release from custody, and that (2) do not resemble 'tort suits that would undermine criminal proceedings and judgments.'" *Ibid.* (quoting *Wilson* v. *Midland County*, 116 F.4th 384, 392 (5th Cir. 2024) (en banc)).

Far from barring Olivier's § 1983 claim, then, this Court's decisions "compel the opposite conclusion." *Martin*, 920 F.3d at 614. By their very nature, "[i]njunctions do not work backwards to invalidate official actions taken in the past. Rather, they operate to prevent future official enforcement actions upon threat of contempt." App. 50a (Oldham, J., dissenting from denial of rehearing en banc). So if Olivier obtained an injunction preventing the *future* enforcement of the ordinance at issue here, it wouldn't "necessarily" imply the invalidity of the *prior* conviction that he doesn't challenge. *Nelson* v. *Campbell*, 541 U.S. 637, 647 (2004) ("[W]e were careful in *Heck* to stress the importance of the term 'necessarily.'"). Because "*Heck* plainly does nothing to bar Olivier's prospective-relief claim," the Fifth Circuit's decision is "indefensible." App. 49a-50a (Oldham, J., dissenting from denial of rehearing en banc).

In fact, a plaintiff like Olivier is "not just a permissible but a perfect plaintiff." App. 48a (Ho, J., dissenting from denial of rehearing en banc). To seek injunctive relief, a plaintiff must show that the risk of future harm is concrete and imminent. See *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 410 (2013). A plaintiff who hasn't previously had an unconstitutional law enforced against him might not clear the Article III bar. *Id.* at 411. By contrast, "past enforcement against the same conduct is good evidence that the threat of enforcement is not 'chimerical.'" *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 164 (2014). Foreclosing § 1983 claims in this context sends an "odd message to citizens"—"you can't sue if you're not injured" but you also "can't sue if you *are* injured." App. 48a (Ho, J., dissenting from denial of rehearing en banc). That message cannot be reconciled with—and, if anything, flouts—this Court's precedents.

2. The Fifth Circuit's application of the *Heck* bar lacks grounding in the statutory text, implicates none of the purposes animating *Heck* itself, defies common sense, and conflicts with this Court's precedent in adjacent § 1983 contexts.

a. *Heck* embodies a judicial accommodation of two competing statutes—the federal habeas statute and § 1983. But here, there's no overlap. Olivier's prospective-relief claim doesn't allege that he was or is "in custody in violation of" the First Amendment. 28 U.S.C. § 2254(a). Instead, he seeks prospective relief preventing state officials from *later* putting him in custody for *future* preaching—a claim that § 1983 unambiguously authorizes. If there were any doubt (and there isn't), ordinary canons of construction resolve it.

This Court doesn't "engraft [its] own exceptions onto the statutory text," *Henry Schein, Inc.* v. *Archer & White Sales, Inc.*, 586 U.S. 63, 70 (2019), so *Heck*'s judge-made "implicit habeas exception" to § 1983 must be applied narrowly to avoid expanding this atextual carve-out from Congress's enactment, *Wilkinson*, 544 U.S. at 82.

b. Barring Olivier's claim serves none of the purposes animating the *Heck* bar. By preventing § 1983 challenges to the "fact or duration of [a] confinement," *Wilkinson*, 544 U.S. at 78, the *Heck* bar promotes "finality and consistency" in the criminal process, *Heck*, 512 U.S. at 485. But "each successive enforcement of a statute * * * creates a new cause of action." *Stanton* v. *District of Columbia Court of Appeals*, 127 F.3d 72, 78 (D.C. Cir. 1997) (citing *Commissioner* v. *Sunnen*, 333 U.S. 591, 597-99 (1948)). So where, as here, a plaintiff seeks "to preclude an unconstitutional confinement *in the future*, arising from incidents occurring *after* any prior conviction and stemming from a possible later prosecution and conviction," *Heck*'s purposes aren't jeopardized. *Martin*, 920 F.3d at 615 (emphases added). The Fifth Circuit's contrary reasoning improperly "insulate[s] future prosecutions from challenge." *Ibid.*; see also *Clarke*, 154 F.3d at 194 (Garza, J., dissenting) ("Justice Scalia never envisioned *Heck* or *Edwards* to be an escape hatch to avoid ruling on constitutional issues" in pre-enforcement contexts).

c. The Fifth Circuit's reasoning "defies common sense." App. 48a (Ho, J., dissenting from denial of rehearing en banc). As the Fifth Circuit saw it, injunctive relief barring future enforcement of an unconstitutional law "necessarily implies" the invalidity of a prior conviction under that law. App. 9a-10a (panel

opinion). Under that reasoning, Olivier couldn't even defend against a future prosecution for a separate incident on the ground that the statute is unconstitutional because, if successful, that defense would imply his prior conviction was invalid. Likewise, the Fifth Circuit's logic would bar § 1983 claims brought by *another* plaintiff—for example, someone who engaged in political speech near the city's amphitheater leading up to an election—because that plaintiff's successful facial challenge would imply the invalidity of Olivier's conviction. The correct "answer is that neither suit is barred by *Heck*." App. 51a (Oldham, J., dissenting from denial of rehearing en banc).

d. Reversing the Fifth Circuit's erroneous application of *Heck* would also ensure conformity with this Court's precedents in related § 1983 contexts. For example, the *Younger* abstention doctrine doesn't bar a plaintiff's § 1983 suit for declaratory and injunctive relief "against future criminal prosecutions for violation[s] of" allegedly unconstitutional statutes—even where, as here, a state court previously "found guilty" and "sentenced" the plaintiff under the statutes he now challenges as unconstitutional. *Wooley* v. *Maynard*, 430 U.S. 705, 708-09 & n.5 (1977). The reason is straightforward—that "suit is in no way 'designed to annul the results of a state trial' since the relief sought is wholly prospective, to preclude further prosecution under a statute alleged to violate appellees' constitutional rights." *Id.* at 711. For the same reasons, *Wooley* refutes the Fifth Circuit's belief that Olivier's suit would "result[] in nullification of [a prior] conviction." App. 10a.

* * *

The whole point of § 1983 is providing citizens a means to vindicate federal rights in federal courts, and in this way to guard against the threat of unconstitutional state laws. There is no justification for denying that protection simply because a law was previously applied against the citizen—just like Olivier here. If anything, plaintiffs like Olivier are the ones *most* in need of § 1983's protection on a forward-going basis.

C. The Question Is Important, And This Case Is A Good Vehicle For Resolving It.

The question that has divided the circuits has significant implications for vindicating constitutional rights—including free-speech and free-exercise rights—across the country. This is the ideal case for this Court to address the issue.

For one thing, the entrenched circuit split undermines the substantial federal interest in the uniform application of § 1983, and results in similarly situated citizens being treated differently when they seek to vindicate foundational constitutional rights. For another, the Fifth Circuit's courthouse doors are closed to the very people § 1983 was designed to protect. Because the interplay between *Heck* and a § 1983 claim like Olivier's was the sole basis for the Fifth Circuit's decision below, this petition is an excellent vehicle to resolve this important issue.

1. The circuit split significantly undercuts substantial federal interests. Section 1983 reflects Congress's "desire that the federal civil rights laws be given a uniform application within each State."

Felder, 487 U.S. at 152-53. If the Fifth Circuit's decision is allowed to stand, a plaintiff previously convicted under an unconstitutional statute may seek to prevent future enforcement of that statute in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming—but not in Texas, Mississippi, or Louisiana, where the "courthouse doors" are "close[d]." App. 46a (Ho, J., dissenting from denial of rehearing en banc).

Restoring uniformity is critical to ensuring that all citizens have equal access to federal courts to protect their constitutional rights. This Court has "repeatedly held that" § 1983 is to be "broadly construed" to protect "all * * * federally protected rights." *Golden State Transit Corp.* v. *City of Los Angeles*, 493 U.S. 103, 105-06 (1989). Indeed, the "very purpose" of § 1983 is to allow federal courts, "as guardians of the people's federal rights," to "protect the people from unconstitutional action under color of state law." *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972). Absent this Court's intervention, however, some citizens will have access to federal court "to prevent great, immediate, and irreparable loss of [their] constitutional rights," and others won't—solely as a function of geography. *Ibid*. The circuits' divergent application of *Heck* "undermines the rule of law" where it "results in similarly situated plaintiffs being treated differently." Devi M. Rao, *The* Heck *Bar Gone Too Far*, 17 Harv. L. & Pol'y Rev. 365, 380 (2022).

This Court regularly intervenes to maintain uniformity where, as here, *Heck* and § 1983 are concerned. E.g., *Nance*, 597 U.S. 159 (*Heck* and method-of-execution claim); *Thompson* v. *Clark*, 596 U.S. 36

(2022) (*Heck* and favorable-termination conditions); *Skinner*, 562 U.S. 521 (*Heck* and claim for injunctive relief to DNA access); *Wallace* v. *Kato*, 549 U.S. 384 (2007) (*Heck* and statute of limitations); *Wilkinson*, 544 U.S. 74 (*Heck* and prospective challenge to parole procedures); *Nelson* v. *Campbell*, 541 U.S. 637 (2004) (*Heck* and method-of-execution claim); *Muhammad* v. *Close*, 540 U.S. 749 (2004) (*Heck* and claim seeking expungement of misconduct charge); *Edwards*, 520 U.S. 641 (*Heck* and disciplinary hearing procedures). This Court has done so to resolve a split between just two circuits. Pet. 15-17, *Nance*, 597 U.S. 159 (Sept. 17, 2021).

The need for uniformity is particularly compelling here given the rights at stake. Olivier seeks an injunction allowing him to exercise his religious liberty and share his faith. That right is "doubly protect[ed]" by the First Amendment's free exercise and free speech clauses. *Kennedy* v. *Bremerton School District*, 597 U.S. 507, 523 (2022); see also *School District of Abington Township* v. *Schempp*, 374 U.S. 203, 216 (1963) (explaining that the First Amendment was "first in the forefathers' minds").

"[O]ur society[]" maintains a "deep-rooted commitment" to the free exercise of religion. *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 554 (2021) (Alito, J., concurring in the judgment). "There is no greater federal interest" than enforcing this "explicit constitutional guarantee[]." *New Orleans Public Service, Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 365 (1989). Further, the constitutional right to share one's faith is no "accident." *Kennedy*, 597 U.S. at 523. "'[G]overnment suppression of speech [is] commonly * * * directed *precisely* at religious speech.'" *Id.* at 524

(quoting *Capitol Square Review & Advisory Board* v. *Pinette*, 515 U.S. 753, 760 (1995)).

The ramifications of the Fifth Circuit's decision, however, extend far beyond the First Amendment. Plaintiffs who have been convicted in state court often bring § 1983 claims in federal court to secure injunctions protecting other constitutional rights—from due process claims about access to government evidence, *District Attorney's Office* v. *Osborne*, 557 U.S. 52, 67 (2009), to equal protection claims against residential-picketing statutes, *Carey* v. *Brown*, 447 U.S. 455 (1980). Until this Court resolves the question presented and restores uniformity, however, citizens will have a shadow over their ability to sue in federal court to prevent future government interference with their constitutional rights.

2. This petition squarely and cleanly presents this important question. The "single, narrow issue" the Fifth Circuit decided—and the only question for this Court—is whether *Heck* categorically bars Olivier's "request for injunctive relief." App. 4a. That question is a purely legal one; no facts are in dispute. So this case is a particularly good vehicle for the Court to consider the question without any complicating factors.

Moreover, the issue has sufficiently percolated. The Fifth and Ninth Circuits are in recognized conflict, and each court recently declined to revisit the issue en banc. Those two courts alone have produced nine separate opinions on the issue joined by 35

judges.[4] Further developments in the courts of appeals are unlikely to assist this Court's review of the question presented, much less obviate the need for review altogether. This Court should intercede now. Accord *Wallace*, 549 U.S. at 388 (resolving *Heck* question without circuit split); *Nance*, 597 U.S. 159 (resolving 1-1 circuit split regarding *Heck* question); *Edwards*, 520 U.S. 641 (resolving 2-1 circuit split regarding *Heck* question); *Harris* v. *Viegelahn*, 575 U.S. 510, 515 (2015) (resolving 1-1 circuit split in bankruptcy case).

This case is a good vehicle for resolving the conflict, restoring uniformity, and answering the important question presented. The Court should grant certiorari and reverse.

II. The Court Should Grant The Petition To Resolve Another Entrenched Split On Whether *Heck* Bars § 1983 Suits Even When Habeas Relief Isn't Available.

The Fifth Circuit also rejected Olivier's argument that *Heck* doesn't bar his § 1983 suit on the alternative, independent basis that he was never in custody and, as a result, habeas was never available to him—so *Heck* has no role to play because there's no overlap between § 1983 and the habeas statute. See App. 10a ("[I]n this circuit, *Heck* applies even if a § 1983 plaintiff is no longer in custody and cannot file a habeas

[4] App. 1a (panel opinion); App. 46a (Ho, J., dissenting from denial of rehearing en banc); App. 49a (Oldham, J., dissenting from denial of rehearing en banc); *Clarke*, 154 F.3d at 187 (en banc); *id.* at 191 (Garza, J., dissenting); *id.* at 195 (Dennis, J., dissenting); *Martin*, 920 F.3d at 614 (panel opinion); *id.* at 619 (Owens, J., concurring in part and dissenting in part); *id.* at 597 (Smith, J., dissenting from denial of rehearing en banc).

petition." (internal quotation marks omitted)); App. 37a ("[T]he Fifth Circuit has explicitly rejected Olivier's argument that Heck does not apply because he is not in custody."). The Fifth Circuit's decision reinforces an already deep division in the circuits about whether *Heck* bars § 1983 claims even when, as here, habeas relief wasn't available.

Another petition raising this question is currently pending before this Court. See *Wilson* v. *Midland County*, No. 24-672. Olivier agrees that this question is worthy of this Court's review. But the Court should grant this petition, regardless of whether it grants Wilson's, for two reasons. First, this petition presents two important and related issues regarding the interplay of *Heck* and § 1983 that the Court could consider together. Second, the common question presented both here and in *Wilson* is presented more cleanly here. Unlike Wilson, who once was in custody but argues that *Heck* doesn't apply because habeas relief was *practically* unavailable during her stint in custody, Olivier was *never* in custody to begin with. And that difference is potentially dispositive. Federal courts may entertain habeas applications only from a "person in custody" who argues that "he is in custody" in violation of federal law. 28 U.S.C. § 2254(a).

A. The Circuits Are Split.

The circuits are split on *Heck*'s applicability to claims by plaintiffs who lacked access to habeas relief.

On one side of the split, the Second, Fourth, Sixth, Tenth, and Eleventh Circuits have determined that *Heck* doesn't apply to claims brought by plaintiffs who lacked access to federal habeas corpus, either categorically or through no fault of their own. *Leather* v.

Eyck, 180 F.3d 420, 424 (2d Cir. 1999); *Griffin* v. *Baltimore Police Department*, 804 F.3d 692, 697 (4th Cir. 2015); *Powers* v. *Hamilton County Public Defender Commission*, 501 F.3d 592, 603 (6th Cir. 2007); *Cohen* v. *Longshore*, 621 F.3d 1311, 1317 (10th Cir. 2010); *Harden* v. *Pataki*, 320 F.3d 1289, 1299 (11th Cir. 2003).

For example, the Second Circuit—in direct contrast to the Fifth Circuit—has held that a plaintiff like Olivier who paid a fine and "never was in the custody of the State" was "permitted to pursue his § 1983 claim in the district court." *Leather*, 180 F.3d at 424; see also *Moravitz* v. *Anderson*, 644 F. App'x 248, 249 (4th Cir. 2016) (*Heck* didn't apply when plaintiff paid a fine but wasn't incarcerated).

On the other side of the split, the First, Third, Fifth, Seventh, and Eighth Circuits hold that the unavailability of habeas relief is irrelevant to the *Heck* bar, at least where the plaintiff could pursue other state avenues for relief (such as post-conviction direct appeals or state pardons). See *Figueroa* v. *Rivera*, 147 F.3d 77, 81 (1st Cir. 1998); *Gilles* v. *Davis*, 427 F.3d 197, 210 (3d Cir. 2005); *Wilson* v. *Midland County*, 116 F.4th 384, 397 (5th Cir. 2024) (en banc); *Savory* v. *Cannon*, 947 F.3d 409, 421 (7th Cir. 2020) (en banc); *Newmy* v. *Johnson*, 758 F.3d 1008, 1011-12 (8th Cir. 2014). The Ninth Circuit agrees that, at least where the plaintiff is challenging the underlying conviction rather than the loss of good-time credits or parole revocations, *Heck* bars § 1983 claims even if the plaintiff lacked access to habeas relief through "no fault of [their] own." *Lyall* v. *City of Los Angeles*, 807 F.3d

1178, 1192 & n.12 (9th Cir. 2015); see generally *Galanti* v. *Nevada Department of Corrections*, 65 F.4th 1152, 1155 (9th Cir. 2023) (summarizing case law).[5]

This Court should grant certiorari to resolve this deep, entrenched division among the circuits on an important § 1983 issue where uniformity is imperative. See *Felder*, 487 U.S. at 152-53.

B. The Decision Below Is Wrong.

As a matter of plain text, *Heck* doesn't bar Olivier's claim because he was never in custody. The federal habeas statute allows a "person in custody" to apply for relief "on the ground that he is in custody in violation of" federal law. 28 U.S.C. § 2254(a). But when Olivier was charged with violating the city's ordinance, he pleaded no contest, received a suspended sentence, and paid a fine. App. 4a. The suspended sentence simply ordered Olivier not to violate the ordinance, App. 31a n.12, and didn't place him "in custody" because that's an obligation "'shared by the public generally,'" *Hensley* v. *Municipal Court*, 411 U.S. 345, 351 (1973). "All the circuit courts" agree that a person isn't in custody when a court orders him to pay a fine. *Spring* v. *Caldwell*, 692 F.2d 994, 996 (5th Cir.

[5] This Court denied petitions for certiorari in *Savory* and *Newmy*. See 141 S. Ct. 251 (2020); 574 U.S. 1047 (2014). Those denials don't suggest the issue is unworthy of review. The plaintiff in *Savory* argued that habeas relief was categorically unavailable for *all* former prisoners. *Savory*, 947 F.3d at 418, 431. And the plaintiff in *Newmy* argued that habeas relief was unavailable because he had been imprisoned for only a few months. See Pet. for Cert., *Newmy*, 2014 WL 3735449, at *2 (U.S. July 28, 2014). By contrast, Olivier was never in custody in the first place. In any event, these previous petitions confirm that the question presented is recurring and further percolation isn't needed.

1982). So it's undisputed that Olivier was never "in custody" for purpose of the federal habeas statute, 28 U.S.C. § 2254(a), and he had no reason—indeed, no statutory right—to file an application for a writ of habeas corpus.

Applying *Heck* in this circumstance also contravenes this Court's stated rationale for that rule. This Court has described *Heck* as resting on the notion that "Congress * * * has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of § 1983." *Wallace*, 549 U.S. at 392. The *Heck* rule also "serve[s] the practical objective of preserving limitations on the availability of habeas remedies." *Muhammad*, 540 U.S. at 751.

It follows, then, that the *Heck* bar has no application where the plaintiff had no opportunity to raise his claims through federal habeas or take advantage of habeas remedies. See *Wilson*, 116 F.4th at 410 (Willett, J., dissenting) ("The only reason the Court got into the business of defining the respective scopes of § 2254 and § 1983 in the first place is because of their overlap * * * ."). Habeas was unavailable to Olivier not because of the limits that habeas statutes place on plaintiffs, like a "statute of limitations or the restrictions on successive petitions," *Nance*, 597 U.S. at 178 (Barrett, J., dissenting), but because he had no "confinement" to attack, *Wallace*, 549 U.S. at 392. Applying *Heck* in this circumstance wrongly deprives citizens of "remedies for serious wrongdoing," "no matter how egregious the constitutional violations." *Savory*, 947 F.3d at 433-34 (Easterbrook, J., dissenting).

C. The Question Is Important And The Court Should Resolve It In This Case.

This question is recurring and important, as the parallel petitions in this case and *Wilson* demonstrate. The courts of appeals continue to confront cases in which plaintiffs can't pursue habeas through no fault of their own. As Judge Easterbrook observed, the Seventh Circuit "alone has seen dozens of such cases." *Savory*, 947 F.3d at 432 n.2 (Easterbrook, J., dissenting). The Court should grant this petition, regardless of whether it grants Wilson's, for two reasons.

First, this petition presents two important but related questions: Whether and how *Heck* applies to (1) claims for prospective relief and (2) claims where the plaintiff didn't have access to habeas relief. This Court would benefit by considering both questions together to examine holistically the interaction between § 1983 and § 2254. Both issues matter where, for example, individuals accept a fine for violating low-penalty ordinances, but want to dispute the constitutionality of applying those laws to future conduct. See *Martin*, 920 F.3d at 613-14. Wilson's petition addresses only half of that scenario.

Second, this petition presents the second issue more cleanly than *Wilson*. The plaintiff in *Wilson* lacked access to habeas relief because she discovered the facts underlying the constitutional violations in her conviction after her sentence expired. See 116 F.4th at 386. By contrast, Olivier's position isn't fact-bound—he never had access to habeas because he was never in custody. App. 3a. *Heck* might apply differently in these distinct circumstances. While a litigant

in Wilson's position had access to habeas relief, even if lacking the complete factual basis for the claim, a plaintiff in Olivier's position never had the opportunity to bring a § 2254 petition. So if the Court grants this petition, it could decide the narrow question whether *Heck* bars § 1983 claims brought by plaintiffs who were previously convicted but never in custody (Olivier), while leaving for another day the question whether *Heck* bars § 1983 claims brought by plaintiffs who were in custody but lacked access to habeas relief for other reasons (*Wilson*).

Alternatively, this Court could grant both petitions and consider them in parallel. That would allow the Court to resolve the important questions about *Heck*'s application to claims for prospective relief as well as *Heck*'s application to plaintiffs who lacked access to habeas relief—while also considering the second question in two related, albeit distinct, scenarios.

At minimum, the Court should address the first question presented in this petition. Whether *Heck* bars a claim for prospective relief to prevent future enforcement of a law independently warrants this Court's review. All plaintiffs—regardless of whether they had access to habeas relief—need clarity on whether they can bring a § 1983 suit to prevent the future enforcement of laws that violate their constitutional rights. The Court should provide that clarity by granting the petition, resolving the split, and restoring uniformity on this important § 1983 question, too.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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