No. 24-672

In the Supreme Court of the United States

ERMA WILSON,

Petitioner,

v.

MIDLAND COUNTY, TEXAS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

The questions presented are:

1. If a person never had access to § 2254 to impugn the constitutionality of her state criminal proceeding, is § 1983 presumptively available (as in six circuits); or must she always use state law instead (as in five)?

2. Is a § 1983 damages claim that impugns the constitutionality of a state criminal proceeding always analogous to a claim of malicious prosecution?

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses in particular on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

Cato's interest in this case lies in ensuring the protection of the fundamental right to due process enshrined in the Fourteenth Amendment and a correct and uniform application of 42 U.S.C. § 1983.

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[1] Rule 37 statement: All parties were timely notified before the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

> "[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy . . . whenever that right is invalidated." The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (quoting 3 WILLIAM BLACKSTONE, Commentaries *23).

The notion that the law affords a remedy to those whose rights have been violated is as old as our legal system. But to plaintiffs with serious constitutional injuries who find the courthouse door slammed in their face based on a court's (mis)reading of *Heck v. Humphrey*, 512 U.S. 477 (1994), Chief Justice Marshall's timeless admonition rings hollow. The sad irony is that, far from disabling the federal judiciary from remedying the manifest wrongs suffered by Petitioner Erma Wilson, Congress has provided a remedy for *exactly* that type of injury, in the form of 42 U.S.C. § 1983. But the Fifth Circuit along with four others have misread *Heck*, transforming dicta from one of its footnotes into a sweeping rule of law that renders § 1983 a dead letter for many victims of outrageous government misconduct, like Ms. Wilson.

The text and history of § 1983 indicate that Congress meant for it to be a broadly remedial statute applicable to all manner of constitutional violations including precisely the sort of wrongdoing alleged in this case. A proper reading of *Heck* supports the view of

those circuits which hold that its procedural bar in § 1983 cases does not extend to plaintiffs who are no longer in custody and thus ineligible for habeas relief. Scholarly authority is overwhelmingly critical of *Heck* and further demonstrates how an overly broad reading of its dicta leads to unjust and absurd results.

ARGUMENT

I. SECTION 1983 IS A FAR-REACHING REMEDIAL STATUTE THAT, BY ITS PLAIN LANGUAGE AND RELEVANT HISTORY, APPLIES TO CASES LIKE THIS ONE.

A. Section 1983's history demonstrates that it was meant to be a sweeping remedy for state violations of federally guaranteed rights.

Prior to the enactment of section one of the Civil Rights Act of 1871 (now codified at 42 U.S.C. § 1983), infringements of constitutional rights were treated like any other tort. An illegal search of one's home was a trespass, an unlawful seizure was remedied by replevin, and an unlawful arrest constituted false imprisonment. *See generally*, Alfred Hill, *Constitutional Remedies*, 69 COLUM. L. REV. 1109, 1124 n.61–62 (1969) (collecting cases). The Constitution contains no mention of causes of action to enforce its provisions; however, "the Framers assumed the existence of a going regime of common law and equitable remedies through which government officials could be held accountable for unlawful conduct, including constitutional violations." Richard H. Fallon, Jr., *Bidding*

Farewell to Constitutional Torts, 107 CALIF. L. REV. 933, 942 (2019).

The limitations of this patchwork system of state tort law and the shortcomings of reliance on state courts to enforce federal constitutional rights became apparent after the Civil War. The Reconstruction Amendments had guaranteed Black people the rights to suffrage, due process, and equal protection, but there were rampant efforts in the South to frustrate the actual enjoyment of those rights. Southern legislatures resisted federal policies by enacting laws, known as "Black Codes," that denied Black people political rights and equality before the law. *See* DAVID M. OSHINSKY, WORSE THAN SLAVERY 20–21 (1997). At the same time, violence against Black people became widespread, fueled by the emergence of the Ku Klux Klan. *See* Robert J. Kaczorowski, *Federal Enforcement of Civil Rights During the First Reconstruction*, 23 FORDHAM URB. L.J. 155, 156–57 (1995). As the 1868 presidential election approached, the Klan expanded its reign of terror across the South, intimidating, attacking, and even murdering Black voters. *Id.* Over the following years, the Klan systematically perpetrated what became known as the "outrages"—beatings, whippings, lynchings, shootings, rapes, and tortures. *See id.* at 157. Victims of Klan violence could rarely turn for justice to local officials who were often unwilling or unable to enforce the law against the Klan—indeed, sometimes they even conspired directly with Klan members. *Id.*

Finally, spurred in part by violent attacks on Black mail agents, President Grant was driven to act. *See* David Achtenberg, *A Milder Measure of Villainy: The Unknown History of 42 U.S.C. § 1983 and the*

Meaning of "Under the Color of Law," 1999 UTAH L. REV. 1, 45 n. 343 (1999). On March 23, 1871, Grant notified Congress he wanted legislation to "effectually secure life, liberty, and property, and the enforcement of law in all parts of the United States." Gene R. Nichol, Jr., *Federalism, State Courts, and Section 1983*, 73 VA. L. REV. 959, 973 (1987). Five days later, the Civil Rights Act of 1871, containing the progenitor of § 1983, was reported from committee to the House of Representatives. *Id.* The legislative history reveals that two perceived needs were paramount: (1) a broad remedy to protect constitutional rights; and (2) a federal judicial forum, as opposed to what many congressmen saw as untrustworthy state court systems.

When Representative Shellabarger introduced the Civil Rights Act, he described it as a measure "which does affect the foundations of the Government itself," "and touches the liberties and the rights of all people," and added that it was "remedial, and in aid of the preservation of human liberty and human rights." CONG. GLOBE, 42d Cong., 1st Sess., app. 67, 68 (1871). Accordingly, the Act would be "liberally and beneficently construed" and read with "the largest latitude consistent with the words employed." *Id.* at 68. Shellabarger "described [section one (§ 1983's precursor)] as a straightforward, almost noncontroversial provision." Nichol, *supra*, at 973. Indeed, section one "was perhaps the least controversial . . . provision of the statute." *Id.* at 974 n.96.

Moreover, it was precisely the sweeping scope of the Act's remedial provisions that actuated its

detractors. One opponent, Representative Kerr, decried its potentially broad reach:

> This section gives to any person who may have been injured in any of his rights, privileges, or immunities of person or property, a civil action for damages against the wrongdoer in Federal courts . . . . It is a covert attempt to transfer another large portion of its jurisdiction from the State tribunals, to which it of right belongs, to those of the United States.

CONG. GLOBE, 42d Cong., 1st Sess., app. 50 (1871). In a similar vein, Senator Thurman declared that the law:

> [A]uthorizes any person who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrongdoer in the Federal courts, and that without any limit whatsoever as to the amount in controversy. The deprivation may be of the slightest conceivable character, the damages in the estimation of any sensible man may not be five dollars or even five cents; they may be what lawyers call merely nominal damages; and yet by this section jurisdiction of that civil action is being given to the Federal

> courts instead of its being prosecuted as now in the courts of the States.

Id. at 216.

Thus it is plain that Congress both knew and intended that § 1983 would be construed broadly to cover all manner of constitutional violations by state officials.

B. In enacting Section 1983, Congress was particularly worried about the limitations of state courts.

Of particular concern to Congress was affording a federal remedy for constitutional violations. Section 1983's drafters had understandably little faith in state courts. As Representative Perry put it:

> Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices . . . . [A]ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice.

Id. at 78.

Congressmen asseverated variously that state courts were "'under the control'" of conspirators, "'unable or unwilling to check the evil,'" "'notoriously powerless to protect life, person and liberty,'" and that biased state court judges denied "'the rights and privileges due an American citizen.'" Nichol, *supra*, at 975

(quoting CONG. GLOBE, 42d Cong., 1st Sess., app 394, 321–22, 429 (1871)). Senator Morton contended that "the States do not protect the rights of the people; the State courts are powerless to redress these wrongs. The great fact remains that large classes of people . . . are without legal remedy in the courts of the States." CONG. GLOBE, 42d Cong., 1st Sess., app. 252 (1871). In short, "[t]he framers of section 1983" "believed that local judges had abdicated their responsibility to ensure evenhanded enforcement of the law." Nichol, *supra*, at 975. Thus Congress's message was and remains clear: state courts are not to be trusted with citizens' constitutional rights.

This case provides a modern-day example of why state courts are an inadequate forum for vindicating federal constitutional rights. According to Petitioner, Mr. Petty played both sides, acting in prosecutorial and judicial capacities on the same case without notifying the defendants. Pet. App. at 2. As the Texas Court of Criminal Appeals wrote in another Petty-prosecuted case: "Judicial and prosecutorial misconduct . . . tainted Applicant's entire proceeding from the outset. As a result, little confidence can be placed in the fairness of the proceedings or the outcome of [the] trial . . . . Applicant was deprived of his due process rights to a fair trial and an impartial judge." *Ex Parte Young*, No. WR-65,137-05, 2021 Tex. Crim App. Unpub. LEXIS 508, at *13 (Tex. Crim. App., Sept. 22, 2021). This collusion between prosecutor and judge against criminal defendants mirrors the sort of concerns that § 1983's drafters had about state courts. Respondents' actions here—whether viewed as a concerted effort to violate Petitioner's due-process rights or simply inexcusable and gross indifference to those rights—are alarmingly similar to the structural

denials of justice that motivated the passage of § 1983 itself.

C. The Supreme Court has repeatedly interpreted Section 1983 in broad terms to effectuate its remedial purpose.

Nothing could indicate § 1983's broad reach more plainly than its sweeping text:

> 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 property proceeding for redress . . . .

"*Every* person"; "*any* statute, ordinance, regulation, custom, or usage"; "deprivation of *any* rights, privileges, or immunities": the statute's breadth is repeatedly emphasized with the all-encompassing "every" and "any." By design, the plain text of § 1983 was broad and sweeping. Indisputably, Congress meant to create a cause of action for all violations of federal rights under color of state law.

In light of that manifest purpose, it is unsurprising that this Court has often stated that § 1983 should be liberally construed. Section 1983 was part of "a vast transformation" whose "very purpose" was to "interpose the federal courts between the States and the people, as guardians of the people's federal rights—to

protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.'" *Mitchum v. Foster*, 407 U.S. 225, 242 (1972) (quoting *Ex Parte Viriginia*, 100 U.S. 339, 346 (1879)). Congress "intended to give a broad remedy for violations of federally protected civil rights," *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 685 (1978), because it "belie[ved] that the state authorities had been unable or unwilling to protect the constitutional rights of individuals or to punish those who violated these rights." *Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 505 (1982).

The Court has found "[i]t abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because . . . rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." *Monroe v. Pape*, 365 U.S. 167, 180 (1961), *overruled on other grounds by Monell*, 436 U.S. at 663. Thus, Congress intended that individuals "threatened [with a] deprivation of constitutional rights" would have "immediate access to the federal courts notwithstanding any provision of state law to the contrary." *Patsy*, 457 U.S. at 504.

Accordingly, the Court has stressed that, "[a]s remedial litigation," § 1983 "is to be construed generously to further its primary purpose." *Gomez v. Toledo*, 446 U.S. 635, 639 (1980). "[T]here can be no doubt that [§ 1983] was intended to provide a remedy, to be broadly construed, against all forms of official

violation of federally protected rights." *Monell*, 436 U.S. at 700–01.

Indeed, so unique is § 1983's purpose and scope that the Court has found it reaches even state-court action ordinarily off-limits to federal courts. In *Mitchum*, for example, the Court held that § 1983 was an exception to the Anti-Injunction Act and permitted a federal court to stay a state-court proceeding. Similarly, the Court has recognized a limited exception to judicial immunity under § 1983: "Congress enacted § 1983 . . . to provide an independent avenue for the protection of federal constitutional rights . . . because state courts were being used to harass and injure individuals." *Pulliam v. Allen*, 466 U.S. 522, 540 (1984).

In short, as its text and history illustrate, and as this Court has repeatedly affirmed, § 1983 "assign[s] to the federal courts a paramount role in protecting constitutional rights," *Patsy*, 457 U.S. at 503, by creating "a uniquely federal remedy against incursions upon rights secured by the Constitution and laws of the Nation." *Felder v. Casey*, 487 U.S. 131, 139 (1988).

II. *HECK V. HUMPHREY* MUST BE READ NARROWLY TO AVOID SUBSTITUTING THE JUDICIARY'S POLICY CHOICES FOR THE LEGISLATURE'S.

In *Heck v. Humphrey*, the Court unanimously held that an inmate's § 1983 damages action was "not cognizable" because he could not show a "favorable termination" to his conviction, such as via habeas relief. 512 U.S. 477, 487 (1994). But the case produced dueling opinions—the majority opinion by Justice Scalia, and a concurrence by Justice Souter and three other justices—and how best to interpret and apply those

opinions has caused prolonged and widespread confusion in the lower courts.

According to Justice Souter, "a sensible way to read" *Heck* is that it says "nothing more than that . . . prison inmates seeking § 1983 damages in federal court for unconstitutional conviction or confinement must satisfy a requirement analogous to the malicious-prosecution tort's favorable-termination requirement." *Id.* at 500 (Souter, J., concurring). A broader reading, Justice Souter writes, "would needlessly place at risk those outside the intersection of § 1983 and the habeas statute," thus "deny[ing] any federal forum" to those who, like Petitioner, "discover (through no fault of their own) a constitutional violation after full expiration of their sentences." *Id.* Meanwhile, in footnote 10, Justice Scalia seems to articulate a more sweeping rule that "is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." *Id.* at 490 n.10.

It is worth a closer look at *Heck* to see what exactly it said. Start with the first sentence: "This case presents the question whether a *state prisoner* may challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983." *Id.* at 489 (emphasis added). Language about "prisoners" pervades the opinion: "This case lies at the intersection of the two most fertile sources of *prisoner* litigation," "[t]he federal habeas corpus statute . . . requires that *state prisoners* first seek redress in a state forum," "habeas corpus is the exclusive remedy for a *state prisoner* who challenges the fact or duration of his confinement," "certain claims by *state prisoners* are not cognizable under [§ 1983]." *Id.* at 480–81 (emphases added). Later the Court says, "when a *state prisoner* seeks damages

in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id.* at 487 (emphasis added). And again two pages later: "Even a *prisoner* who has fully exhausted available state remedies has no cause of action under § 1983 unless and until" he can show favorable termination. *Id.* at 489 (emphasis added). The dissent below sensibly viewed *Heck*'s repeated use of the word "prisoner" as a "tell-tale point" concerning the limits of its application. *Wilson v. Midland Cty.*, 116 F.4th 384, 411–12 (5th Cir. 2024) (en banc) (Willett, J., dissenting) ("Given that *Heck* presented a question about prisoners, it is no surprise that the effect of the holding—as the Court itself describes it—is limited to prisoners."). It seems logical, then, to read *Heck* as Justice Souter and Judge Willett did—that is, as having to do with incarcerated prisoners specifically, as opposed to plaintiffs not in custody.

The only support for the decision below comes from dicta in footnote 10, in which Justice Scalia suggests that *Heck*'s holding should apply to all manner of other cases, "of which no real-life example comes to mind." *Heck*, 512 U.S. at 490 n.10. As one circuit judge has noted, "[s]tatements in *Heck* (other than note 10) about the need to wait for a prisoner's vindication discuss the claim at hand: by a prisoner then in custody. Opinions are not statutes and should not be read as if they were." *Savory v. Cannon*, 947 F.3d 409, 432 (7th Cir. 2020) (Easterbrook, J., dissenting). And as Judge Willett explains, note 10 is "the very quintessence of dicta." *Wilson*, 116 F.4th at 396 (Willett, J., dissenting). "'[A] clearer example of dicta is hard to imagine,' because the 'footnote concerns a subject that had not been briefed by the parties, that did not matter to the

disposition of Heck's claim, and that the majority thought would not matter to anyone, ever.'" *Id.* at 412 (quoting *Savory*, 947 F.3d at 432 (Easterbrook, J., dissenting)).

Parsing the *Heck* opinion, it appears the Court's decision was motivated by two paramount concerns: (1) prisoners using § 1983 to make an end-run around the requirements of habeas, including exhaustion of state remedies; and (2) the possibility that a favorable judgment in a § 1983 case could somehow force a state to release a prisoner from custody while a valid judgment of conviction was still outstanding. For these very reasons the Court was unanimous that *prisoners* must pursue habeas relief before seeking damages under § 1983. *See Heck*, 512 U.S. at 477, 498 (Souter, J., concurring).

Moreover, reading *Heck* as broadly as does the Fifth Circuit majority would contravene this Court's precedent. In *Health and Hospital Corp. v. Talevski*, 599 U.S. 166 (2023), the Court declined to carve out an exception to § 1983 for laws enacted pursuant to Congress's spending power. It held that to do so would be to "impose a categorical font-of-power condition that the Reconstruction Congress did not." *Id.* at 192. Instead, it held that § 1983 is presumptively "available to enforce every right that Congress validly and unambiguously creates," *id.*, and that an alternative federal remedial scheme can only displace it if the two are "incompatible." *Id.* at 187. Thus, the Court's recent statutory interpretation precedent regarding the interplay between § 1983 and other federal statutes supports

the conclusion that *Heck* does not bar the availability of § 1983 for noncustodial plaintiffs.

Petitioner is not in custody, so there is no danger of her using a § 1983 action to skirt habeas requirements. And an award of damages would have no effect on her conviction and sentence, which have already been carried out. *See* John P. Collins, *Has All Heck Broken Loose? Examining* Heck*'s Favorable-Termination Requirement in the Second Circuit After* Poventud v. City of New York, 42 FORDHAM URB. L.J. 451, 459 (2015) ("Permitting suits by plaintiffs who were never or are no longer incarcerated does nothing to thwart 'the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments.'") (quoting *Heck*, 512 U.S. at 486).

Congress intended § 1983 to be read broadly to provide a remedy for violations of constitutional rights. "Absent a statutory edict to the contrary or a restriction within the common law, the reach of § 1983 should not be compromised." *Wilson v. Johnson*, 535 F.3d 262, 266 (4th Cir. 2008). Thus, the Court should use this case to disavow incorrect readings of *Heck* and thereby avoid grafting a court-made limitation onto the broad remedial scheme of § 1983 chosen instead by the branch whose constitutionally appointed job it is to make such choices.

III. SCHOLARSHIP ON *HECK* PROVIDES FURTHER IMPORTANT RATIONALES FOR READING IT NARROWLY.

Scholarship and commentary on *Heck* has been almost universally critical of the decision, both on legal

and practical grounds.[2] As one commentator recently argued, "[t]he *Heck* doctrine has been plagued with issues since its inception; it has fueled confusion in the lower courts and significantly limited prisoners' access to justice. The overarching issue, however, is that *Heck* is wholly inconsistent with the history and purpose of § 1983 and should be abandoned to preserve the true meaning of the statute." Gregory Getrajdman, *What the Heck Were They Thinking? It's Time to Abandon the* Heck *Doctrine*, 74 RUTGERS L. REV. 181, 196 (2022).

Besides those considerations, scholarship on *Heck* provides at least two further arguments for reading the decision narrowly: (1) it encourages misconduct by prosecutors who offer plea deals to the wrongfully convicted; and (2) rigid application of its rule leads to absurd and unjustifiable results. The legal and practical shortcomings of the decision further reinforce the point that lower courts should not needlessly expand the doctrine beyond what the decision itself commands.

A. An expansive reading of *Heck* incentivizes prosecutorial misconduct in wrongful-conviction cases.

Between 94 and 97 percent of criminal defendants accept plea deals, regardless of their actual guilt. Caroline Reinwald, *A Deal With the Devil: Reevaluating*

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[2] Even the lone champion of *Heck*'s favorable-termination rule acknowledges it should not extend to cases where "state actors withheld exculpatory evidence from the plaintiff material to his underlying conviction, and such is not discovered until after the exhaustion of available remedies in the state criminal appeals process." Thomas Stephen Schneidau, *Favorable Termination After Freedom: Why* Heck*'s Rule Should Reign, Within Reason*, 70 LA. L. REV. 647, 647–82 (2010).

Plea Bargains Offered to the Wrongfully Convicted, 99 N.C. L. REV. FORUM 139, 152 (2021). Prosecutors have "overwhelming leverage" to obtain guilty pleas, and one study shows that over half of defendants are willing to forgo the chance to argue their innocence in court in exchange for a perceived benefit. *See id.* at 152 n.119–20. As a 2018 study showed, "defendants plead guilty for a variety of reasons, many of which have nothing to do with guilt or innocence." *Id.* at 153.

Take for instance, *Taylor v. County of Pima*, 913 F.3d 930 (9th Cir. 2019). In 1972, an all-white jury convicted Taylor, a sixteen-year-old Black youth, for a fire that killed twenty-eight people based on nonsensical "evidence," such as that "black boys like to set fires." *Id.* at 939 (Schroeder, J., dissenting). Forty-two years later evidence emerged to support his innocence, and he filed a post-conviction petition for release. *Id.* at 932 (majority op.). The prosecutor agreed to vacate Taylor's original conviction and release him immediately—if he pleaded no contest to new, identical charges for the same crime. *Id.* Taylor agreed to the terms and was released on his no contest plea after being resentenced to time served. *Id.*

After his release, Taylor sued under § 1983, raising claims of racially motivated prosecution, withholding of exculpatory evidence, and suborning perjury from key witnesses. *Id.* at 149. But the Ninth Circuit found his claims barred by *Heck*: Taylor's suit, if successful, would "necessarily impl[y] the invalidity of a state court judgment" and "his time in prison was now legally supported by his new conviction to which he pled no contest." *Id.*

Sadly *Taylor* is not an outlier. "[M]ore and more prosecutors across the country are using plea deals as

a workaround for dealing with claims of actual innocence." Reinwald, *supra*, at 139. "Wrongful convictions place prosecutors at an ethical crossroads: help vacate a conviction and potentially invite civil liability for the original prosecution or offer a plea deal that preserves the prosecutor's track record and avoids liability." *Id.* at 141. In short, *Heck* incentivizes prosecutorial misconduct: if a prosecutor cooperates in freeing an innocent defendant, a § 1983 suit for an unconstitutional conviction may follow, but if a defendant is coerced into accepting a plea, *Heck* provides a shield to liability.

A similar case is that of the "Fairbanks Four," four Native Alaskan teenagers convicted of murder in a "racially motivated prosecution that proceeded on dubious evidentiary grounds." *Id.* at 150. After twenty years in prison, the men had gathered strong evidence of their innocence, but "like *Taylor*, the prosecutor offered a shadowy deal:" "if the men gave up any compensation claims, the prosecutor would outright dismiss their convictions." *Id.* The men accepted the deal but later sued anyway. Fortunately for them, the Ninth Circuit found no *Heck* bar; however, as one commentator notes, "[i]f the Fairbanks Four case were to be heard in any other circuit court . . . the wrongfully incarcerated men would have been entirely barred from recovery by *Heck*." Josh Cayetano, *What the Heck: Favorable Termination and the Narrowing of § 1983 Liability*, BERKELEY J. OF CRIM. L. BLOG (Jan. 7, 2023).[3]

[3] Available at https://www.bjcl.org/blog/what-the-heck-favorable-termination-and-the-narrowing-of-1983-liability.

B. Aggressive application of *Heck* leads to absurd and inconsistent results.

When it comes to state officials committing constitutional violations, *Heck* seems to say "the bigger, the better." *Heck* bars § 1983 claims by implying the invalidity of a conviction but doesn't necessarily preclude other constitutional claims, leading to "a curious remedial oddity: less serious constitutional claims remain cognizable in § 1983, while more serious [ones] . . . go unremedied entirely." Note, *Defining the Reach of* Heck v. Humphrey*: Should the Favorable Termination Rule Apply to Individuals Who Lack Access to Habeas Corpus?*, 121 HARV. L. REV. 868, 889 (2008). In other words, "individuals who have suffered more serious constitutional deprivations can receive no relief whatsoever, [while] those with [less serious] claims . . . are able to receive a damages remedy." *Id.*

Furthermore, as one scholar explains, *Heck* can end up barring a remedy for an individual who was never even convicted of a crime. *See* Lydon Bradshaw, *The* Heck *Conundrum: Why Federal Courts Should Not Overextend the* Heck v. Humphrey *Preclusion Doctrine*, 2014 BYU L. REV. 185 (2014). In May 2008, Glen Rose and Sarah Morales fled police in a stolen vehicle; Morales wound up convicted, but Rose was shot and killed. *Id.* at 204. Rose's parents sued, arguing that police used excessive deadly force in violation of his constitutional rights. *Id.* In *Beets v. County of Los Angeles*, 669 F.3d 1038, 1040 (9th Cir. 2012), the court found the suit barred by *Heck*, even though neither the plaintiffs nor their son was subject to a criminal judgment. Instead, the court said a verdict in favor of Rose's parents would *imply* the invalidity of Morales's conviction. *Id.*

Even pretrial diversion programs, which allow the accused to avoid jail time and a guilty conviction upon completion of classes, community service, or probation can trigger *Heck*'s bar, leading one commentator to lament, "it is a poor system where tools designed to reduce punitiveness carry collateral consequences that bar access to remedies for civil rights violations." Cayetano, *supra*.

These are just a handful of real-life examples of how a broad reading of *Heck* works to subvert § 1983's remedial purpose. Elevating the dicta from a footnote in *Heck* to a sweeping, bright-line preclusionary rule denies plaintiffs with serious constitutional claims a chance to vindicate their rights in federal court. The outcome of such cases—let alone the ability to even bring them before a court at all—should not turn on the happenstance of which circuit the injured plaintiff happens to have access to; nor is there any sound reason to continue letting a subset of lower courts artificially narrow the broad remedial scheme chosen by Congress when it enacted § 1983.

CONCLUSION

For these reasons, and those described by the Petitioner, this Court should grant the petition.

Respectfully submitted,

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