No. 24-19

# In the Supreme Court of the United States

JAMES LEBLANC, PETITIONER

*v.*

BRIAN MCNEAL, RESPONDENT

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

## BRIEF FOR TEXAS, ALABAMA, ALASKA, GEORGIA, INDIANA, IOWA, KANSAS, MISSISSIPPI, MISSOURI, MONTANA, NORTH DAKOTA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, AND VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONER


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## TABLE OF CONTENTS

**Page(s)**

## TABLE OF AUTHORITIES

**Page(s)**

**Cases:**

***(Cases Ctd.)***

***(Cases Ctd.)***



**Statutory Provisions:**



**Other Authorities:**

## INTEREST OF AMICI CURIAE

Amici curiae are the States of Texas, Alabama, Alaska, Georgia, Indiana, Iowa, Kansas, Mississippi, Missouri, Montana, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, and Virginia. Officials within these States are regularly defendants in cases brought under 42 U.S.C. §1983 and the federal habeas statutory scheme. Furthermore, all States have a fundamental interest in the administration of prisons. Because this petition concerns an important and unsettled question about the proper interpretation of these federal statutes, it implicates Amici's interests.*

## SUMMARY OF ARGUMENT

The Court has drawn a sharp line between three situations. In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Court held that §1983 does not apply to "actions that lie 'within the core of habeas corpus.'" *Nance v. Ward*, 597 U.S. 159, 167 (2022) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005)). Thus, under the *Preiser* line of cases, a prisoner cannot use §1983 to get out of prison early. By enacting a more specific scheme for challenges to "the fact or duration of [a prisoner's] confinement," *Preiser*, 411 U.S. at 489, Congress displaced the more general §1983 cause of action. Not only is that conclusion compelled by the familiar rule that the specific governs the general, but giving primacy to the federal habeas scheme also better respects federalism. *See id.* at 491.

By contrast, in *Heck v. Humphrey*, 512 U.S. 477 (1994), the Court held that if "a judgment in favor of the

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* No counsel for any party authored this brief, in whole or in part. No person or entity other than amici contributed monetarily to its preparation or submission. On July 29, 2024, counsel of record for all parties received notice of amici's intention to file this brief.

plaintiff would necessarily imply the invalidity of his conviction or sentence," there is no §1983 cause of action, *even if* the plaintiff is only seeking damages—which are not available under federal habeas. *Id.* at 487. *Heck* thus imposes a "favorable[-]termination requirement." *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) (per curiam). Importantly, as *Heck* explains, this line of cases is about how to interpret §1983 itself given the statute's common law backdrop and so has nothing to do with reconciliation between §1983 and federal habeas. That is why the Court could explain that "the principle barring collateral attacks—a longstanding and deeply rooted feature of both the common law and our own jurisprudence—is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." *Heck*, 512 U.S. at 490 n.10. It is also why *Heck*'s favorable-termination requirement applies even where a §1983 plaintiff was acquitted and so never incarcerated in the first place. *See, e.g.*, *McDonough v. Smith*, 588 U.S. 109, 117 n.4 (2019).

The Court also has a third line of cases holding that suits that *both* do not seek early release (which are barred by *Preiser*) *and* do not imply the invalidity of a conviction or sentence (which are barred by *Heck*) can proceed under §1983, so long as the other requirements for such a suit are met. Thus, for example, a plaintiff can challenge his conditions of confinement under §1983 because such a suit neither seeks release from prison nor implies that the plaintiff was not properly convicted. *See, e.g.*, *Hudson v. McMillian*, 503 U.S. 1, 4 (1992).

The petition presents an important question that this Court has never addressed and that has divided the lower courts: What framework applies when a plaintiff alleges he was detained too long but waited to bring a

§1983 suit rather than availing himself of federal habeas during the period of allegedly overlong incarceration?

When this Court's three lines of cases are disentangled, the answer to that question is straightforward: For the same reason the *Preiser* line of cases holds that a plaintiff cannot use §1983 to seek earlier release from prison, a plaintiff also cannot use §1983 to challenge the duration of confinement merely by waiting until incarceration ends. Just as *Preiser* recognizes that it is unreasonable to presume that Congress intended to nullify its specific federal habeas scheme by allowing prisoners to evade that scheme's requirements by suing under the more general §1983 cause of action, it is also unreasonable to presume that Congress intended to nullify that same habeas scheme by allowing prisoners to sleep on their rights and then bring suit under that same more general cause of action. And just as *Preiser* gives primacy to federalism, courts should do the same here—especially because exhausting state remedies furthers important benefits for the entire criminal justice system.

Furthermore, the Fifth Circuit's rule invites gamesmanship. As Judge Oldham explained, under the Fifth Circuit's approach, "a clever prisoner can challenge all manner of things related to his conviction and sentence through § 1983 instead of habeas" simply by "sleep[ing] on his rights until his (ostensible) release date passes. And voila—the prisoner is no longer forced to choose the specific habeas remedy over the general § 1983 remedy." App.101 (Oldham, J., dissenting from denial of rehearing en banc). Congress and this Court have both soundly rejected analogous gamesmanship.

Finally, as explained in the petition, the question here is important and recurring, and courts are divided about how to address alleged overdetention. Such confusion

harms the States and State officials—the defendants in such cases—but there is nothing the States can do to escape the confusion because it is the product of federal courts construing federal statutes. Federalism thus again counsels in favor of this Court's review.

## ARGUMENT

### I. The Fifth Circuit Misunderstood This Court's Precedent.

Amici agree with Louisiana that this case merits certiorari. Not only is the issue identified by the petition significant, but it implicates broader misunderstanding in the lower courts about the conceptual bases for and relationships between several of this Court's bodies of law. The Court should grant review and clean up this confusion.

Specifically, the Court has three lines of precedent addressing the interplay, if any, between the federal habeas scheme and §1983. The logic of one of those lines of cases—the *Preiser* line—compels the conclusion that a prisoner alleging overly prolonged detention cannot sleep on his rights under federal habeas. The Fifth Circuit disagreed because it misunderstood the relationship between the Court's lines of precedent. The Court therefore should grant review to correct the Fifth Circuit's misunderstanding—one shared by other courts.

#### A. The Court's three lines of cases.

To understand the Fifth Circuit's error, it is important to distinguish between three analytically distinct lines of cases. Although lower courts sometimes conflate these lines and misunderstand their conceptual distinctions, each has its own logic and scope.

### 1. The *Preiser* line of cases.

Congress has enacted many statutes that may be relevant to prisoners, but two are particularly important. In 1871, Congress enacted §1983, which sometimes allows a prisoner to sue government officials for damages or injunctive relief. 42 U.S.C. §1983. Congress also has enacted and revised from time to time a comprehensive federal habeas scheme that, so long as its requirements are met, sometimes allows prisoners to be released from state incarceration. *See, e.g.*, 28 U.S.C. §2254.

In *Preiser*, the Court addressed how to reconcile these statutes and concluded that federal habeas is the only available path where a prisoner seeks earlier release. There, certain "state prisoners" alleged they "were deprived of good-conduct-time credits … as a result of" allegedly unlawful proceedings and "sought injunctive relief to compel restoration of the credits, which in each case would result in their immediate release from confinement in prison." 411 U.S. at 476-77. The Court framed the issue thusly: "The question before us is whether state prisoners seeking such redress may obtain equitable relief under the Civil Rights Act, even though the federal habeas corpus statute … clearly provides a specific federal remedy." *Id.* at 477.

To answer that question, the Court reasoned that where Congress enacts a specific scheme with distinct requirements, it makes no sense to allow a prisoner to avoid that scheme and those requirements by falling back on the more general §1983. Drawing on precedent, the Court explained that where the alleged "grievance is that [the plaintiff] is being unlawfully subjected to physical restraint," "habeas corpus has been accepted as the specific instrument to obtain release from such confinement." *Id.* at 486. The Court thus concluded that

the suits in *Preiser* "fell squarely within this traditional scope of habeas corpus" because "[t]hey alleged that the deprivation of their good-conduct-time credits was causing or would cause them to be in illegal physical confinement, i.e., that once their conditional-release date had passed, any further detention of them in prison was unlawful," and "restoration of those good-time credits … meant their immediate release from physical custody." *Id.* at 487.

Because the plaintiffs in *Preiser* sought relief within the "traditional scope of habeas," the Court held that the more general §1983 cause of action was not available. After all, §1983 "is a general [statute], and, despite the literal applicability of its terms," it cannot nullify "the specific federal habeas corpus statute, explicitly and historically designed to provide the means for a state prisoner to attack the validity of his confinement." *Id.* at 489. "It would wholly frustrate explicit congressional intent to hold that the respondents in the present case could evade [the habeas scheme's exhaustion] requirement by the simple expedient of putting a different label on their pleadings." *Id.* at 489-90. Instead, "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." *Id.* at 490.

If there were any doubt, moreover, the Court explained that principles of federalism support applying the more specific habeas scheme. The Court observed that "[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Id.* at

491-92. Thus, combining the familiar principle that the specific governs the general with the rule that Congress does not lightly intrude on state prison administration—a principle protected by the federal habeas scheme's exhaustion requirements—the Court held that the "sole federal remedy" for the prisoners in *Preiser* was a "writ of habeas corpus." *Id.* at 500; *see also id.* at 492 n.10 ("Congress has made the specific determination in § 2254(b) that requiring the exhaustion of adequate state remedies in such cases will best serve the policies of federalism.").

Following *Preiser*'s reconciliation of the more general §1983 with the more specific habeas scheme, the Court has repeatedly held that challenges to the duration of a plaintiff's incarceration can only be pursued in habeas. In *Wolff v. McDonnell*, 418 U.S. 539 (1974), for example, the Court again confronted whether prisoners can challenge the revocation of good-time credits under §1983. The Court held that they cannot because suits challenging "the fact or length of custody" cannot be brought under §1983. *Id.* at 554. But, applying *Preiser*'s logic, the Court also reasoned that a claim seeking damages for invalid disciplinary procedures *could* be brought under §1983. Such suits attack a State's procedures, not criminal judgments, and "victory for the prisoners" does not necessarily mean "immediate release or a shorter period of incarceration." *Wilkinson*, 544 U.S. at 80 (discussing *Wolff*, 418 U.S. at 554).

The Court explained these points again in *Wilkinson*, where state prisoners sued under §1983 for injunctive and declaratory relief regarding parole procedures. *See id.* at 76. The Court explained that *Preiser* holds that because "the language of the habeas statute is more specific" than §1983, and because "habeas corpus actions

require a petitioner fully to exhaust state remedies, which § 1983 does not," there is "an implicit exception from § 1983's otherwise broad scope for actions that lie 'within the core of habeas corpus.'" *Id.* at 79 (quoting *Preiser*, 411 U.S. at 487).

The Court further explained that §1983 can be used to challenge parole procedures because "habeas remedies do not displace § 1983 actions where success in the civil rights suit would not necessarily vitiate the legality of (not previously invalidated) state confinement." *Id.* at 82; *see also id.* ("Neither respondent seeks an injunction ordering his immediate or speedier release into the community."). Although Justice Kennedy disagreed that a challenge to parole procedures is not an attack on confinement, he fully agreed with the Court that while "[t]he language of § 1983 … is capacious enough to include a challenge to the fact or duration of confinement," "*Preiser*, nonetheless, established that because habeas is the most specific applicable remedy it should be the exclusive means for raising the challenge." *Id.* at 90 (Kennedy, J., dissenting).

**2. The *Heck* line of cases.**

*Heck*'s favorable-termination requirement, by contrast, is not the product of a reconciliation between §1983 and federal habeas. Instead, *Heck* is a product of this Court's interpretation of §1983 alone.

In *Heck*, a prisoner brought a *damages* action under §1983 that sought to "challenge the constitutionality of his conviction" rather than immediate release. *Heck*, 512 U.S. at 478. The Court did not allow that suit, but not because of overlap between the more general §1983 and more specific federal habeas scheme.

Instead, the Court explained in *Heck* that §1983 must be read against the common-law backdrop of its

enactment, which requires identifying the correct common-law analog of the claim being pursued. *See id.* at 484. The Court reasoned that in determining whether a case is cognizable under §1983, courts focus on "the common law of torts." *Id.* at 483 (quoting *Carey v. Piphus*, 435 U.S. 247, 257-58 (1978)); *see also Manuel v. City of Joliet*, 580 U.S. 357, 370 (2017) ("In defining the contours and prerequisites of a § 1983 claim, including its rule of accrual, courts are to look first to the common law of torts. Sometimes, that review of common law will lead a court to adopt wholesale the rules that would apply in a suit involving the most analogous tort.") (citing, *inter alia*, *Heck*, 512 U.S. at 483-87).

Focusing on the common law of torts demonstrated that for centuries, malicious prosecution has stood alone in allowing damages from a defective criminal process. *See Heck*, 512 U.S. at 484.[1] Yet "[o]ne element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Id.* (citations omitted).

Thus, a suit under §1983 that would necessarily challenge the validity of a criminal judgment must fail not because federal habeas exists, but because a §1983 cause of action does not exist until the favorable-termination rule is satisfied. *Id.* at 486-87, 489. As the Court explained, "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or

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[1] This fact explains why the Court consistently invokes malicious prosecution not as *an* analog, but rather *the* analog, in §1983 cases that would impugn prior criminal proceedings. *See, e.g.*, *McDonough*, 588 U.S. at 116; *Heck*, 512 U.S. at 484.

confinement, just as it has always applied to actions for malicious prosecution." *Id.* at 486.

Because *Heck*'s rule is not a product of reconciliation between §1983 and federal habeas, the Court further held that the favorable-termination requirement applies even when habeas is not available. "We think the principle barring collateral attacks—a longstanding and deeply rooted feature of both the common law and our own jurisprudence—is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." *Id.* at 490 n.10; *see also Savory v. Cannon*, 947 F.3d 409, 421-22 (7th Cir. 2020) (en banc) (explaining why footnote 10 is not dicta but rather illustrates the scope of the Court's reasoning).

Furthermore, *Heck* goes out of its way to emphasize that its analysis is about how to understand §1983—*not* the interaction between §1983 and federal habeas. *Heck* thus states that the plaintiff claimed damages that "could not 'have [been] sought … through federal habeas corpus proceedings.'" 512 U.S. at 481 (citation omitted). That reality "clearly" distinguished cases like *Preiser*, in which §1983 and habeas facially provided overlapping relief. 411 U.S. at 500. And *Heck*'s concurring Justices *disagreed* with the Court's "position that the statutes"—i.e., federal habeas and §1983—"were never on a collision course in the first place" with respect to the favorable-termination requirement. 512 U.S. at 492 (Souter, J., concurring).

The rule from *Heck* is thus clear. Under *Heck*'s interpretation of §1983, courts do not reconcile §1983 with federal habeas in order to recognize a favorable-termination requirement because §1983 would not allow such a suit even if federal habeas didn't exist. The

favorable-termination requirement thus "is clearly not covered by the holding of *Preiser*." *Id.* at 481.

The Court's cases reconfirm this understanding of *Heck*. In *Edwards v. Balisok*, 520 U.S. 641 (1997), for example, the Court held that a state prisoner's claim for damages with respect to the validity of procedures used to deprive him of good-time credits was not cognizable under §1983. While the plaintiff challenged only the procedure (not the outcome of the procedure), "[t]he principal procedural defect complained of by respondent would, if established, necessarily imply the invalidity of the deprivation of his good-time credits." *Id.* at 646. Furthermore, in *McDonough*, the Court applied *Heck* to ascertain when a claim about criminal proceedings accrues, even though the §1983 plaintiff was not convicted at all—and so never had access to habeas. 588 U.S. at 117 & n.4. That holding makes perfect sense because, again, *Heck*'s favorable-termination requirement is not a product of reconciliation.

**3. Permissible §1983 claims.**

Finally, precedent also recognizes that some cases properly fall within the scope of §1983. These are cases that satisfy all the ordinary requirements of §1983, and *both* seek relief outside the scope of the federal habeas scheme (and thus are not barred by *Preiser*) *and* do not challenge the legal process culminating in the conviction until the plaintiff has first obtained favorable termination (and thus are not barred by *Heck*).

The most obvious examples from this line of cases are those addressing prison conditions. In such cases, the plaintiff does not claim he should be released or claim that he was wrongly convicted; the plaintiff instead claims the conditions of confinement are constitutionally deficient and should be improved.

In *McCarthy v. Bronson*, 500 U.S. 136 (1991), the Court—drawing from *Preiser*—collected cases in which prisoners challenged the conditions of confinement but not the validity of their sentences. *See id.* at 141-42. *Cooper v. Pate*, 378 U.S. 546 (1964) (per curiam), for example, involved a prisoner who alleged that he was denied certain privileges solely because of his religion. *Houghton v. Shafer*, 392 U.S. 639 (1968) (per curiam), concerned allegations that a prisoner's legal materials had been unconstitutionally confiscated. And *Haines v. Kerner*, 404 U.S. 519 (1972) (per curiam), addressed a prisoner's challenge to solitary confinement. *McCarthy* describes these suits as "challenges to specific instances of unconstitutional conduct" or "challenges to 'conditions of confinement'" that are cognizable under §1983 because they do not involve a plaintiff "seeking immediate release or a speedier release from that confinement," which is "the heart of habeas corpus." 500 U.S. at 141-42 (quoting *Preiser*, 411 U.S. at 498).

*Wilkinson* also holds that "Section 1983 remains available for procedural challenges where success would not necessarily spell immediate or speedier release for the prisoner." 544 U.S. at 74. The plaintiffs there challenged not the duration of their confinement but rather sought relief that would "render invalid the state procedures used to deny parole eligibility." *Id.* at 75. The Court explained that if the plaintiffs succeeded on their claims, they would not automatically be entitled to earlier release or parole; rather, they would receive new hearings or reviews of their release or parole. *Id.* Over Justice Kennedy's dissent, the Court thus concluded that §1983 was available for them as well. Relevant here, no one disagreed about the correct framework itself.

More recently, the Court in *Nance* differentiated between a challenge to an execution itself, which would be a habeas claim, and a challenge to the method of execution. There, the Court concluded that the plaintiff's challenge did not implicate habeas because he accepted the validity of his sentence. 597 U.S. at 169. In other words, he agreed that "the State really [could] put him to death, though in a different way than it plan[ned]." *Id.* He also did not contest the validity of his conviction. *Id.* The Court thus concluded he could bring a §1983 claim. Although that conclusion is also debatable, no one disputed the key point for purposes here: "An inmate must bring a method-of-execution challenge in a federal habeas application, rather than under 42 U.S.C. § 1983, if 'a grant of relief to the inmate would necessarily bar the execution.'" *Id.* at 175 (Barrett, J., dissenting) (quoting *Hill v. McDonough*, 547 U.S. 573, 583 (2006)).

**B. The *Preiser* line of cases controls here.**

As the Court's cases illustrate, prisoners often prefer to bring suit under §1983 rather than seeking relief under federal habeas or satisfying *Heck*'s favorable-termination requirement. This is because §1983—which is a broad provision not specifically targeted at prisons—carries with it special benefits, including potential punitive damages and attorneys' fees. Furthermore, Congress has placed specific restrictions and limitations on the federal habeas scheme that can be challenging for prisoners to satisfy. Yet to give effect to Congress's creation of federal habeas, the Court must be vigilant to ensure that §1983 stays within its proper scope.

Here, the petition raises a scenario this Court has not yet addressed—allegations that a State has detained someone beyond the terms of the person's sentence. Although the Court has not addressed this precise scenario,

it has indicated how courts should approach the question. Logically, the correct line of cases is *Preiser*.

Congress has created a specific scheme for those who allege they should not be in prison: Habeas. It would nullify Congress's choice to allow a plaintiff to evade that scheme simply by waiting until incarceration ends and then suing for damages under §1983. This is so because "if a prisoner could simply choose which statute to use for his constitutional claims, every prisoner in his right mind would choose § 1983; he could use it to get out of jail, get money damages, and get attorney's fees—all without having to confront … the numerous common-law restrictions on habeas." *Crittindon v. LeBlanc*, 37 F.4th 177, 193 (5th Cir. 2022) (Oldham, J., dissenting), *cert. denied*, 144 S. Ct. 90 (2023).

On one hand, §1983 is a general statute that does not expressly address incarceration at all. On the other hand, federal habeas is a specific scheme that is all about incarceration. Where, as here, Congress creates a specific scheme, the plaintiff must use that scheme rather than any general cause of action. "[I]t is a commonplace of statutory construction that the specific governs the general. That is particularly true where … 'Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.'" *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). Thus, as in *Preiser*, where a court must reconcile §1983 and federal habeas, the more specific scheme controls.

Indeed, the Court has "warn[ed] against applying a general provision when doing so would undermine limitations created by a more specific provision." *Varity Corp. v. Howe*, 516 U.S. 489, 511 (1996). Thus, "[t]he provision of an express, private means of redress in" a

separate statute "is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under § 1983." *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121 (2005). In *City of Rancho Palos Verdes*, the plaintiff alleged damages under both the Telecommunications Act (TCA) and §1983. *Id.* at 118. The Court reasoned that because the TCA provided "a judicial remedy different from § 1983," the TCA "precluded resort to § 1983." *Id.* at 127. After all, the Court reasoned, "[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Id.* at 121 (quoting *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001)). Furthermore, in *United States v. Bormes*, 568 U.S. 6, 14 (2012), the Court held that because the Fair Credit Reporting Act created a "detailed remedial scheme," it precluded recourse to the Little Tucker Act. *Id.* at 15. To allow plaintiffs to choose their own adventure would "transform" the landscape. *Id.*

Given that familiar principle of statutory interpretation, Judge Jones is correct that "court[s] should not enable overdetained prisoners to neglect their obligation to seek habeas relief and instead bypass that remedy in order to pursue Section 1983 damages by filing for the wrong type of relief in the wrong court at the wrong time." App.16 (Jones, J., concurring). Congress would not have created a detailed, specific scheme if plaintiffs could evade its restrictions by waiting until incarceration ends.

Furthermore, in reconciling §1983 with federal habeas, the Court in *Preiser* emphasized "[t]he strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct its own errors." 411 U.S. at 492.

Allowing the States an opportunity to address a plaintiff's concerns through state habeas proceedings or some state procedure avoids "unseemliness" and "friction" between federal and state courts, *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999), and "minimizes federal interference and disruption of state judicial proceedings. *Rose v. Lundy*, 455 U.S. 509, 514 (1982). Yet permitting a plaintiff to ignore federal habeas and sue in the first instance under §1983 is the antithesis of comity.

Indeed, one of the central features of federal habeas is that prisoners must exhaust state remedies before turning to federal ones. *See, e.g.*, *Woodford v. Ngo*, 548 U.S. 81, 92 (2006). This requirement serves important values that benefit everyone involved in the criminal justice system—litigants and courts alike. For example, "federal claims that have been fully exhausted in state courts will more often be accompanied by a complete factual record to aid the federal courts in their review." *Rose*, 455 U.S. at 519. And "state appellate courts[] … can [d]evelop and correct errors of state and federal law and most effectively supervise and impose uniformity on trial courts." *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 490-91 (1973). Accordingly, to prevent a prisoner from "evad[ing] the exhaustion requirement" and "the values that it serves," a prisoner must "properly exhaust[] [his state] remedies" by "present[ing] his claims to the state courts." *O'Sullivan*, 526 U.S. at 848.

Finally, even if the federal habeas scheme does not displace §1983 in situations like this one, the common-law analogizing required by *Heck* also cuts against the Fifth Circuit's decision. As Judge Jones explained, "[i]t is well established in civil cases that litigants have a duty to mitigate their damages after an injury occurs." App.16 (Jones, J., concurring). This is not a new principle. *See,*

*e.g.*, RESTATEMENT (FIRST) OF TORTS §918 (1939); CHARLES T. MCCORMICK, LAW OF DAMAGES 127 (1935). Congress surely did not overlook "[t]his duty, rooted in an ancient principle of law," *Ford Motor Co. v. EEOC*, 458 U.S. 219, 231 (1982), when it enacted §1983.

### C. The Fifth Circuit misapplied *Preiser*.

Despite *Preiser*'s reasoning, the Fifth Circuit has now effectively held "that the federal habeas statute and §1983 offer prisoners like McNeal an election of remedies." App.93 (Oldham, J., dissenting from the denial of rehearing en banc). Yet under the comprehensive habeas scheme enacted by Congress, a prisoner cannot "sleep on his rights until his (ostensible) release date passes" and then ignore "the specific habeas remedy" in favor of "the general § 1983 remedy." App.101 (Oldham, J., dissenting from the denial of rehearing en banc).

The Fifth Circuit declined to apply *Preiser* because "McNeal does not challenge his conviction or attendant sentence, but rather the 41 days he was imprisoned beyond his release date." App.7. And in *Hicks v. LeBlanc*, 81 F.4th 497 (5th Cir. 2023), it stated—correctly—that this Court's cases hold that "constitutional claims that merely challenge the conditions of prisoner's confinement … fall outside of that core and may be brought pursuant to § 1983 in the first instance," *id.* at 509 (quotation omitted), but then concluded—incorrectly—that overdetention claims are also beyond the "core" of habeas because they do "not implicate the fact or duration of … confinement." *Id.*

Under *Preiser*, however, a challenge to the "duration of [] physical confinement … lies at 'the core of habeas corpus.'" *Wilkinson*, 544 U.S. at 79 (quoting *Preiser*, 411 U.S. at 487). Alleged overdetention implicates the fact of confinement or detention. By definition, plaintiffs

alleging such a theory contend they are confined but shouldn't be, or, as here, that they were confined but shouldn't have been. Under *Preiser*, it matters that plaintiffs who believe that their sentence of lawful detention has ended have a means to challenge that detention through habeas proceedings. There is no reason to think that Congress intended to allow plaintiffs to forgo habeas—which is specifically designed to provide relief to those who are wrongfully detained—but then sue later under the general auspices of §1983.

At the same time, the Fifth Circuit's rule also contravenes *Preiser*'s federalism concerns. Allowing plaintiffs to sleep on their rights undermines a State's interests in "timely notice of alleged misconduct," *Wallace v. Kato*, 549 U.S. 384, 396-97 (2007), and nullifies rules that advance "uniformity, certainty, and the minimization of unnecessary litigation," *Owens v. Okure*, 488 U.S. 235, 239-40 (1989). None of this is consistent with *Preiser*, especially because enforcing federal habeas's exhaustion requirement in this context would allow state courts that are more familiar with how to calculate sentence length under state law to more quickly remedy errors.

## II. The Fifth Circuit's Rule Invites Gamesmanship.

Not only does the Fifth Circuit's rule misunderstand precedent, but it also invites gamesmanship.

The Court has warned against allowing §1983 plaintiffs to evade habeas by artful pleading. As *Preiser* explains, for example, "[i]t would wholly frustrate explicit congressional intent to hold that the respondents … could evade [federal habeas's exhaustion] requirement by the simple expedient of putting a different label on their pleadings." *Preiser*, 411 U.S. at 489-90. Or as Justice Alito has explained, "[t]he rules set forth in [the Court's] cases … would mean very little if

state prisoners could simply evade them through artful pleading." *Dist. Att'y's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 77 (2009) (Alito, J., concurring). In short, "[c]ourts should police carefully against" abuses of §1983. *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019).

Nothing suggests that Congress intended to enable gamesmanship. Rather, Congress has gone out of its way to prevent it. For example, Congress enacted the Prison Litigation Reform Act (PLRA), which imposes an exhaustion requirement on prisoners attempting to use §1983 to sue for damages. *See* 42 U.S.C. §1997e(a). Reviewing that requirement, the Court has concluded that "Congress's imposition of an obviously broader exhaustion requirement makes it highly implausible that it meant to give prisoners a strong inducement to skip the administrative process simply by limiting prayers for relief to money damages not offered through administrative grievance mechanisms." *Booth v. Churner*, 532 U.S. 731, 740-41 (2001).

The Court has also explained that "if state-court remedies are no longer available because [a] prisoner failed to comply with the deadline for seeking state-court review or for taking an appeal, those remedies are technically exhausted … but exhaustion in this sense does not automatically entitle the habeas petitioner to litigate his or her claims in federal court." *Woodford*, 548 U.S. at 93. Rather, "if [a] petitioner procedurally defaulted those claims, the prisoner generally is barred from asserting those claims in a federal habeas proceeding." *Id.* Prisoners therefore cannot refrain from filing grievances. *See id.* at 95.

Here, the Court faces a similar question: Can Respondent refrain from filing for habeas relief and instead seek damages under the more general §1983? As

the Court's PLRA precedent confirms, the answer is no. *Preiser* does not apply to him, he claims, because he is not seeking release, and *Heck* does not apply to him because damages would not necessarily impugn the validity of his conviction. Yet Congress's enactment of a specific habeas scheme "makes it highly implausible that it meant to give prisoners a strong inducement," *Booth*, 532 U.S. at 741, to bypass that scheme.

## III. The Question is Important and Recurring.

Finally, Amici agree with Louisiana that the question presented here is important and recurring. As Judge Duncan observed below, the Fifth Circuit is deluged by a "rising tide of suits by overdetained prisoners against Louisiana officials." App.92 (Duncan, J., dissenting from denial of rehearing en banc). In fact, Louisiana is subject to two separate class actions. Yet the Fifth Circuit is divided and lacks a clear path forward.

Nor is the issue limited to the Fifth Circuit. As the petition explains (at 16-25), courts are divided. This confusion persists because not all courts understand the distinct reasoning of each line of the Court's cases. The Fifth Circuit in *Hicks*, for example, recognized that *Preiser* does not bar all prison-related litigation but then misidentified which types of claims are permitted under §1983. *See supra* pp. 17-18. Certiorari is warranted so the Court can reiterate the correct framework.

This Court's review is particularly important, moreover, because of federalism. As *Preiser* explains, "[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." 411 U.S. at 491-92. Indeed, "[t]he relationship of state prisoners and the state officers who supervise their confinement is far more intimate

than that of a State and a private citizen," and "[w]hat for a private citizen would be a dispute with his landlord, with his employer, with his tailor, with his neighbor, or with his banker becomes, for the prisoner, a dispute with the State." *Id.* at 492. Given that "the possibilities for litigation under the Fourteenth Amendment are boundless," the States "have an important interest in not being bypassed in the correction of those problems." *Id.* at 492.

*Amici* do not condone overdetention. States should promptly release prisoners, and when they do not, courts should promptly order their release. States have "a coordinate responsibility to enforce the Constitution" and federal courts "should not assume the States will refuse to honor the Constitution." *DeVillier v. Texas*, 601 U.S. 285, 292-93 (2024) (cleaned up). Yet how to calculate the correct detention period and ensure timely release are important questions of prison administration. As *Preiser* explains, the States have a strong interest in ensuring that federal courts properly apply federal statutes touching on these issues. Here, the confusion in the lower courts is not one of State law. Both the federal habeas scheme and §1983 are federal statutes, and it is federal courts that disagree about how and when to apply them. This Court's review is particularly warranted where the States bear the burden of such federal confusion.

## CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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AUGUST 2024

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