No. _____

In The Supreme Court Of The United States

REGINALD WILKINSON, Director, et al.,
Petitioners,

v.

WILLIAM DWIGHT DOTSON, et al.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition arises from one of the many cases considering which prisoner claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). *Heck* holds that a prisoner cannot advance a claim under 42 U.S.C. § 1983 where success on that claim would "necessarily imply the invalidity of his conviction or sentence . . . unless . . . the conviction or sentence has already been invalidated." *Id*. at 487. This is *Heck*'s so-called "favorable termination requirement."

The Sixth Circuit concluded below that *Heck*'s favorable termination requirement does not cover claims challenging parole procedures because success on those claims would not necessarily guarantee speedier release, but instead would provide only a new parole hearing. This raises the following questions:

1. When a prisoner invokes § 1983 to challenge parole proceedings, does *Heck v. Humphrey*'s favorable termination requirement apply where success by the prisoner on the claim would result only in a new parole hearing and not necessarily guarantee earlier release from prison?

2. Does a federal court judgment ordering a new parole hearing "necessarily imply the invalidity of" the decision at the previous parole hearing for purposes of *Heck v. Humphrey*?

LIST OF PARTIES

The Petitioners are Ohio prison officials:

> Reginald Wilkinson, the Director of the Ohio Department of Rehabilitation and Correction ("ODRC").
>
> Margarette Ghee, the former chair of the Ohio Parole Board.

The Respondents are two prisoners in the custody of ODRC:

> William D. Dotson
> Rogerico J. Johnson

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PETITION FOR WRIT OF CERTIORARI

The Attorney General of Ohio, on behalf of Reginald Wilkinson, the Director of the Ohio Department of Rehabilitations and Corrections, and Margarette Ghee, the former Chair of the Ohio Parole Board, respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

This petition arises from two separate cases below that were consolidated for *en banc* review, *Dotson v. Wilkinson* and *Johnson v. Ghee*.

The district court decision in *Dotson* was captioned as *Dotson v. Wilkinson*, Case No. 3:00 CV-7303 (N.D. Ohio, Aug. 7, 2000). It is reproduced at App. 47a-51a. The panel decision from the court of appeals was reported as *Dotson v. Wilkinson*, 300 F.3d 661 (6th Cir. 2002). It is reproduced at App. 36a-46a. The Sixth Circuit's *en banc* decision is reported as *Dotson v. Wilkinson*, 329 F.3d 463 (6th Cir. 2003). That decision is reproduced at App. 4a-35a.

The district court decision in *Johnson* is captioned as *Johnson v. Ghee*, Case No. 4:00 CV 1075 (N.D. Ohio, July 16, 2000). It is reproduced at App. 52a-56a. The Sixth Circuit did not issue a panel opinion. Instead, it consolidated *Johnson* with *Dotson* for *en banc* disposition. Accordingly, the Sixth Circuit decision in *Johnson* is also reported as *Dotson v. Wilkinson*, 329 F.3d 463 (6th Cir. 2003). As noted above, that decision is reproduced at App. 4a-35a.

JURISDICTIONAL STATEMENT

The judgments and opinion below were entered May 19, 2003. No rehearing petition was filed below. Petitioners invoke the Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case turns on two sets of statutes. No constitutional provisions are at issue. The first statute is 42 U.S.C. § 1983, which states in relevant part that:

> 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 other relevant statutes govern federal habeas corpus proceedings, 28 U.S.C. §§ 2241 through 2254. They are reproduced at App. 57a-69a because of their length.

INTRODUCTION

Heck v. Humphrey's core holding is easily articulated—a state prisoner may not advance a claim under 42 U.S.C. § 1983 where success on that claim "would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." 512 U.S. 477, 487 (1994). This seemingly straightforward language, however, has been the source of ongoing and ever-increasing confusion among the lower courts. Perhaps nowhere is this confusion more apparent than with regard to *Heck*'s application to claims, such as those at issue here, that involve challenges under § 1983 to parole procedures. In the words of the court below, "the cases from the lower courts are anything but clear, and the rulings from the various circuits are not entirely consistent." *Dotson v. Wilkinson*, 329 F.3d 463, 468 (6th Cir. 2003). This case presents an ideal vehicle for providing clarity on that issue.

Certiorari is warranted for three reasons. First, as alluded to above, the circuits are in direct conflict on this important and frequently recurring issue. Some courts, including the court below, hold that *Heck* does not bar § 1983 claims challenging parole procedures where success will have only a probabilistic impact on the duration of confinement (*e.g.*, by resulting in a new parole hearing where parole may, or may not, be granted). According to these courts, *Heck* is instead limited to those claims that, if successful, "will inevitably or automatically result in earlier release." *Id*. at 471. Other courts reject this limitation, holding that because such claims—even if they seek only a new hearing—necessarily question the validity of the parole board's action, *Heck* bars *any* § 1983 claim predicated on "a challenge to the procedures used in the denial of parole." *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997).

Eight of the twelve circuits have weighed in on the issue in some form, and only this Court can provide a uniform reading of the appropriate reach of *Heck*'s bar on § 1983 claims challenging parole proceedings.

Nor can anyone doubt that this is a frequently-recurring issue. Indeed, it lies at the very heart of "the intersection of the two most fertile sources of federal-court prisoner litigation— . . . 42 U.S.C. § 1983, and the federal habeas corpus statute, 28 U.S.C. § 2254." *Heck*, 512 U.S. at 480. The high volume of potential traffic at this crossroads—there are over 1.2 million inmates in State correctional facilities nationwide and many, if not most, will become eligible for parole at some point during their sentence[1]—increases the need for clear signals as to which claims fall under § 1983, and which must go to habeas.

Second, certiorari is warranted because the decision below directly conflicts with this Court's precedent, and, in doing so, undermines important State sovereignty interests. Neither *Heck* nor *Edwards v. Balisok*, 520 U.S. 641 (1997), imposes the "earlier release requirement" created by the court below; in fact, both opinions are flatly inconsistent with it. Imposing this unwarranted limitation here is particularly troubling because decisions regarding whom to incarcerate, and for how long, go to the core of the State's interest in protecting its citizens from criminal activity. The decision below, by reading *Heck* and *Edwards* to bar only those suits that "'necessarily imply' that the prisoner should be released immediately or sooner than he would have been" incorrectly increases the prospect that federal oversight of state parole procedures will occur through § 1983, rather than through the more deferential vehicle of habeas. *See Dotson*, 329 F.3d at

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[1] *See* Paige M. Harrison and Allen J. Beck, "Prisoners in 2002," U.S. Department of Justice, Bureau of Justice Statistics Bulletin (July 2003) (available at http://www.ojp.usdoj.gov/bjs/pub/pdf/p02.pdf).

471. By accepting review, this Court could correct the lower courts' improper reading of *Heck* and *Edwards*, thereby vindicating the State's important sovereignty interest in its parole decisions.

Finally, this case would permit the Court to provide additional, and much needed, guidance on what *Heck* meant by "necessarily imply the invalidity" of a conviction or sentencing decision. This language has spawned circuit splits on a variety of issues. Review here would necessarily include consideration of that language, and accordingly, the Court's resolution would materially assist the circuits in resolving these other issues.

STATEMENT OF THE CASE

This petition stems from an *en banc* decision of the Sixth Circuit allowing two inmates in state prisons to proceed with § 1983 challenges to parole proceedings.

A. Dotson's claim

Dotson was convicted in Ohio in 1981 of aggravated murder, and sentenced to life in prison. He is currently incarcerated on that sentence.

Under the parole regulations in effect when he was sentenced, Dotson was first eligible for parole after about fifteen years, *i.e.,* in 1995. He was denied parole, and under the then-relevant rules, he was scheduled for a new hearing in ten years (in 2005), with a halfway point evaluation in five years (in 2000). However, in 1998, the Ohio Adult Parole Authority revised its guidelines, and under the new rules, prisoners convicted of aggravated murder, with the risk factors found in Dotson's history, would generally be denied parole until serving at least thirty-two years. At Dotson's halfway review, he was informed that the new rules would

apply to him, so that he would likely not be paroled until at least 2007. He remained scheduled for a hearing in 2005, however.

After his halfway review, Dotson sued in federal district court under § 1983, claiming that the Parole Board violated his rights when it decided that the new guidelines applied to him. Dotson sought as relief a declaration that he should have been evaluated under the old rules, contrary to the Board's decision to apply the new rules to him. He also sought a "prompt and immediate parole hearing," so that he could be re-evaluated under the old rules.

B. Johnson's claim

Johnson was convicted of aggravated robbery, and sentenced to ten to thirty years. He is currently serving that sentence.

Johnson had an initial parole hearing in April 1999. Johnson alleges that the hearing violated his rights in several ways. He claims that just one Parole Board member held the hearing, while Ohio law requires that both a Board member and a Parole Board hearing officer conduct a hearing. He also claims that he was not allowed to speak on his own behalf. And Johnson claims that the Board member denied him parole based upon prior convictions, although, he says, he was never even charged with those crimes.

Johnson filed a § 1983 claim in federal district court as well, seeking unspecified declaratory and injunctive relief. His later briefing, however, said that he sought to set aside the parole denial, and to have an immediate, new hearing, with the new hearing to be conducted differently.

C. District Court dismissals

Dotson and Johnson each asked the district court to declare their parole proceedings unconstitutional and to order new hearings. *See, e.g.*, App. 47a-56a. The district court in each case screened the prisoners' claims pursuant to 28 U.S.C. § 1915(e) and dismissed them before service. Each court concluded that the claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). *Id*. at 49a-50a, 54a-55a.

D. The Sixth Circuit's Decision Below

Both Respondents filed timely *pro se* appeals under 28 U.S.C. § 1291. The Appellee waived briefing in *Dotson* and the matter was submitted for decision. Meanwhile, the court of appeals appointed counsel for *Johnson*, and his appeal was fully briefed and argued before a separate panel.

While *Johnson* was pending before a panel, the *Dotson* panel issued a published decision reversing the district court's decision in that case. *See Dotson v. Wilkinson*, 300 F.3d 661 (6th Cir. 2002), reproduced at App. 36a-46a. The panel held that *Heck* does not apply unless a prisoner's § 1983 claim would, if successful, inevitably affect the fact or duration of his confinement. *See id.* at 45a.

The full circuit then *sua sponte* ordered that *Dotson* be reheard *en banc*. It also ordered that *Johnson* and another case be consolidated with *Dotson* for *en banc* consideration. *See Goodwin v. Ghee*, 330 F.3d 446 (6th Cir. 2003). The *en banc* court then reversed both dismissals and reinstated Dotson's and Johnson's claims. In a separate opinion, an equally divided court affirmed the dismissal of a prisoner's claim in the third case, *Goodwin v. Ghee*. *See id.*

Chief Judge Martin wrote the majority opinion, joined by five other judges, while four judges dissented in

part and concurred in part**.** The majority first noted that "our sister circuits have struggled with application of" the *Heck* line of cases. *Dotson*, 329 F. 3d at 466. After reviewing this Court's precedents, the majority observed that "[t]he Supreme Court seems thus to have dictated how these claims can proceed, but the cases from the lower courts are anything but clear, and the rulings from the various circuits are not entirely consistent." *Id.* at 468.

The majority decided that while the exact details of Dotson's and Johnson's claims varied, they were the same in one key respect—each prisoner would gain only a new *hearing* if successful; neither would gain immediate release. *See id.* at 470. According to the court, a § 1983 claim "necessarily implies the invalidity of a prisoner's conviction or sentence" under *Heck* **only if** it "will inevitably or automatically result in an earlier release." *Id.* at 471. Thus, the majority concluded, neither claim was *Heck*-barred.

E. The Dissent

Four judges rejected that aproach, arguing that the majority's "earlier release test" contradicted both case law from the other circuits and this Court's precedent.[2] The dissent contended that *Heck* bars all claims that would "imply the invalidity of any state criminal judgments relating to the length of a prisoner's incarceration" (*i.e.,* including parole decisions), not merely those that would result in earlier release. *Id*. at 473. In particular, the dissent noted that the majority's test was inconsistent with this Court's decision in *Balisok* because the prisoner there, like Dotson and Johnson here, may have received only a new hearing if

[2] These four judges would have affirmed the dismissal of Johnson's claim. *Id*. at 472. For other reasons, however, they concurred in the reinstatement of Dotson's claim. *Id*. at 476.

he had been successful on his claims, but nonetheless, this Court had concluded his claims were *Heck*-barred. *Id*. at 474.

The dissent also noted that if the majority were correct, then almost no parole decisions would be *Heck*-barred. *Id*. at 479. Because parole is almost always a discretionary matter, in Ohio and most States, it could always be said that a new hearing would not necessarily lead to earlier release.

REASONS FOR GRANTING REVIEW

I. This case would allow the Court to resolve the longstanding confusion among lower courts as to whether *Heck*'s favorable termination requirement applies to prisoner claims challenging parole decisions and procedures.

In *Heck* and *Balisok*, this Court established a framework designed to ensure that prisoners could not use § 1983 as a vehicle for collaterally attacking State criminal convictions or sentencing decisions. *See, e.g., Heck v. Humphrey*, 512 U.S. 477, 488-489 (1994). According to these cases, when a federal court is faced with a prisoner's § 1983 claim, it must first determine how success on the claim would affect the prisoner-plaintiff's conviction and sentence. If success would "necessarily imply" the invalidity of the prisoner's conviction or sentence, the § 1983 claims are barred. *Id*. at 487. *See also Edwards v. Balisok*, 520 U.S. 641, 648 (1997) (applying *Heck* test to state prison administrative decisions).

In the nearly ten years since *Heck* (and six since *Balisok*), however, the lower courts have struggled with the application of the "necessarily implies" test. This is especially true with regard to § 1983 claims that are framed

as challenges to parole procedures. In particular, as detailed below, the circuits are plainly split on whether *Heck* applies to claims whose success would result only in a new parole hearing (and thus the possibility of parole), but would not necessarily alter the parole decision or shorten the duration of confinement.

A. Three circuits have concluded that *Heck* is limited to § 1983 claims that, if successful, would guarantee earlier release.

Of the eight circuits that have addressed the issue presented here, three of them—the *en banc* Sixth Circuit below, along with the D.C. Circuit and the Seventh Circuit in an unpublished opinion—have concluded that *Heck* applies to claims challenging parole hearings *only if* the claims, if successful, would automatically and necessarily result in speedier release. *See Dotson v. Wilkinson*, 329 F.3d 463 (6th Cir. 2003) (*en banc*); *Anyanwutaku v. Moore*, 151 F.3d 1053 (D.C. Cir. 1998); *Ferguson v. Nagel*, 34 Fed. Appx. 499 (7th Cir. 2001).

According to these courts, where the prisoner seeks only "a ticket to get back in the door of the parole board" (*i.e.*, a new discretionary parole hearing), *Heck* does not bar the § 1983 claim. *Dotson*, 329 F.3d at 471. *See also Ferguson*, 34 Fed. Appx. at 499 (because prisoner sought only new parole and disciplinary hearings, and not immediate release on parole, his claim was not barred by *Heck*). This is true, these courts assert "even though the prisoners filed their suits for the very purpose of increasing their chances of parole." *Anyanwutaku*, 151 F.3d at 1056. *But see Razzoli v. Federal Bureau of Prisons*, 230 F.3d 371 (D.C. Cir. 2000) (with regard to federal, rather than state, prisoner, *Heck* bars those claims that, if successful, would have a "probabilistic impact" on the duration of custody, including challenges to denial of parole eligibility). Accordingly, in States like Ohio,

where parole is discretionary, this effectively means that *Heck* does not bar *any* claims challenging parole proceedings. *Dotson*, 329 F.3d at 473 (Gillman, J., dissenting) (noting this effect).

B. Three other circuits have concluded that *Heck* bars § 1983 claims that merely seek a new parole hearing.

Three other circuits—the First, Eighth and Tenth—have concluded that claims challenging parole procedures are *Heck*-barred even if success on the claim would *not* necessarily result in earlier release. *McClain v. Fuseymore*, No. 97-2095, 1998 U.S. App. Lexis 8332, at *2 (1st Cir. Apr. 25, 1998); *Bass v. Mitchell*, No. 93-1414, 1995 U.S. App. Lexis 9663, at *1-*2 (8th Cir. Apr. 28, 1995); *Vann v. Oklahoma State Bureau of Investigation*, 28 Fed. Appx. 861, 864 (10th Cir. 2001); *Waekerele v. State of Oklahoma*, 37 Fed. Appx. 395 (10th Cir. 2002). Although these decisions are unreported, the Ninth Circuit has issued a reported decision reaching the same conclusion. *Butterfield v. Bail*, 120 F.3d 1023 (9th Cir. 1997). As discussed below, however, another Ninth Circuit panel has issued a reported decision reaching the opposite conclusion, further compounding the manifest confusion in the courts of appeals.

In *McClain*, the First Circuit determined that *Heck* barred a § 1983 claim predicated on, *inter alia*, state parole authorities having allegedly "miscalculat[ed] plaintiff's parole eligibility date." 1998 U.S. App. Lexis 8332 at *1. Similarly, in *Bass*, the Eighth Circuit held that *Heck* barred a prisoner's challenge to retroactive application of a law changing his parole eligibility date. In each of these cases, a decision in the prisoner's favor on the § 1983 claim would not have guaranteed earlier release, merely earlier *eligibility*, yet the courts had no difficulty concluding that the challenges fell within *Heck*'s scope.

Similarly, in *Vann*, the prisoner brought a § 1983 claim alleging that the parole file used at his hearing contained false information. 28 Fed. Appx. at 862. He did not allege that he was entitled to parole, but only that he was entitled to have the false information removed from his file for parole consideration purposes. The Tenth Circuit, however, concluded that such a claim would "necessarily cast doubt on" the earlier parole decision, thereby bringing the claim within *Balisok* (and, accordingly, *Heck*). *Id*. at 864. *See also Crow v. Penry*, 102 F.3d 1086, 1087 (10th Cir. 1996) (*Heck* "applies to [all] proceedings that call into question the fact or duration of parole or probation"); *Waeckerle*, 37 Fed. Appx. at 397 (prisoner's claim that parole investigator unjustly recommended denying parole is barred under *Heck*, even though success on the claim would presumably not entitle prisoner to parole, but only to a new hearing without the unjust recommendation). These decisions clearly conflict with the Sixth Circuit decision below.

C. Two other circuits have internal conflicts on the issue.

Finally two circuits, the Fourth and the Ninth, have issued opinions going both directions on this issue. In *Butterfield v. Bail*, for instance, the Ninth Circuit considered a prisoner's § 1983 challenge to the procedures used in making a parole eligibility decision. 120 F.3d at 1024. A determination of parole eligibility, of course, merely provides the prisoner with a parole hearing; it does not guarantee a successful outcome. Thus, the § 1983 challenge, even if successful, would not necessarily guarantee an earlier release. Nonetheless, the court had "no difficulty concluding that a challenge to the procedures used in the denial of parole

necessarily implicates the validity of the denial of parole and, therefore, the prisoner's continuing confinement." *Id*. at 1024. Indeed, according to the court:

> Few things implicate the validity of continued confinement more directly than the allegedly improper denial of parole. This is true whether that denial is alleged to be improper based upon procedural defects in the parole hearing or upon allegations that parole was improperly denied on the merits.

Id. In short, the court faced precisely the same issue presented here, but arrived at exactly the opposite conclusion.

But, in *Neal v. Shimoda*, 131 F.3d 818 (9th Cir. 1997), a different panel of the Ninth Circuit reached a different result. There, the prisoners sought to advance § 1983 claims challenging new laws that required the prisoners to take certain steps (completion of sex offender treatment) as a precondition to parole eligibility. The court concluded that these claims were not barred by *Heck* because victory would provide the prisoners only "a ticket to get in the door of the parole board, thus only making them *eligible* for parole consideration according to the terms of their sentences. . . . [I]t will in no way *guarantee* parole or necessarily shorten their prison sentences by a single day." *Id*. at 824 (emphasis in original). Thus, the *Neal* court drew the same line articulated by the court below here, a line that, as discussed in Section II below, is not warranted by this Court's cases.

The Fourth Circuit is similarly conflicted. In *Husketh v. Sills*, 34 Fed. Appx. 104 n.2 (4th Cir. 2002), the court concluded that a prisoner's claim was *Heck*-barred "because his challenge of his parole eligibility implies the invalidity of his continued confinement." But in *Miller v. Jackson*, No.

94-6395, 1994 U.S. App. Lexis 26817, at *1 (4th Cir. Sept. 23, 1994), the court took a narrower view of *Heck* and *Balisok*—"because [the prisoner's] claims challenged not the right to parole, but the right to procedural due process in the consideration of parole, his complaint was properly brought in a § 1983 action." *Id*. at *2.

* * *

In sum, there is a direct conflict among published and unpublished circuit court decisions alike on the issue presented by this petition: Does *Heck* bars claims that, if successful, will result in new parole hearings, but not necessarily different parole decisions? Or does *Heck* bar only claims that, if successful, would guarantee earlier release? The published opinions alone have amply developed and sharpened the arguments on both sides of this issue so as to warrant certiorari. The various unpublished opinions only magnify the confusion among the circuit courts and provide additional justification for certiorari.

Certiorari is especially warranted by the importance of this issue to the States and the frequency with which it arises. As discussed below (*see* Section II.C), the decision whether these claims should proceed in habeas rather than § 1983 has important implications for State sovereignty. And undoubtedly, this issue will frequently recur. There are over 1.2 million prisoners being held in State correctional facilities across the country. Many of them will, at some point during their sentence, become eligible for parole. In every case challenging either a parole eligibility decision, or the procedures used in a parole hearing, the issue presented here will arise. Granting certiorari will allow the Court to prescribe a clear answer to this question, thus both ensuring that prisoners receive uniform treatment in the various

circuits on their federal constitutional claims, and allowing the lower courts to more expeditiously handle prisoner claims.

II. The Sixth Circuit decision below conflicts with *Heck* and *Edwards v. Balisok*, and it also dramatically undermines State sovereignty.

Review is also warranted because the Sixth Circuit decision below directly conflicts with this Court's decisions in both *Heck* and *Balisok*. First, as the dissent below points out, it adopts a reading of *Heck*'s "invalidation" language that rejects this Court's understanding of that term in *Balisok*. *Dotson*, 329 F.3d at 474 (Gillman, J., dissenting). Second, while there may be two plausible readings of the scope of *Heck*'s favorable termination requirement, the claims below were *Heck*-barred under either view. The court below focused solely on whether the prisoners' § 1983 claims would inevitably result in their "earlier release," a requirement found nowhere in *Heck* or its progeny. In doing so, it missed the key issue common to both readings of *Heck*—that state sentencing decisions are entitled to more deference than § 1983 provides especially when, as here, they can also be reviewed through habeas proceedings. Finally, in opening the floodgates to prisoner claims under § 1983 challenging parole procedures, the court below undermined this Court's longstanding respect for State sovereignty, namely the State's ability to monitor its own incarceration decisions.

A. The decision below adopts an interpretation of "invalidation" under *Heck* that is inconsistent with this Court's treatment of that term in *Balisok*.

Heck holds that a prisoner cannot use § 1983 to advance a claim that, if successful, would "necessarily imply

the invalidity of [a criminal] conviction or sentence." *Heck*, 512 U.S. at 487. *Balisok* establishes that "invalidating" a state decision for *Heck*'s purposes includes a federal court order resulting in a new State hearing, as the order to re-hear necessarily vacates, and thereby invalidates, the result of the prior hearing. The Sixth Circuit, however, interpreted "invalidate" to cover only those federal court orders that would require a different *result*, not those that merely would require a new *hearing*. In doing so, the Sixth Circuit, and those courts in its camp, directly conflict with this Court's precedent.

In *Balisok*, the prisoner, Edwards, sought to use § 1983 to challenge the procedures used to deprive him of good-time credits. He shaped his claim as a challenge to the *procedures*, rather than the deprivation itself, in an attempt to avoid *Heck*. This Court, however, rebuffed his claim. It noted that a "challenge to the procedures could be such as necessarily to imply the invalidity of the judgment." *Balisok*, 520 U.S. at 646. And the Court concluded that the procedural challenge there would indeed "imply the invalidity of the judgment" because:

> This is an obvious procedural defect, and state and federal courts have reinstated good-time credits (*absent a new hearing*) when established.

Id. at 647 (emphasis added). That is, the Court expressly recognized that the prisoner's success on his § 1983 claim may result only in a new hearing, and even acknowledged that the outcome of that new hearing may be the same. *Id*. Nonetheless, it concluded that the claim "necessarily impl[ied] the invalidity" of the decision at the prior State hearing. *Id.* at 649.

The court below, however, rejected this definition in favor of a much narrower understanding of "invalidity." According to the Sixth Circuit majority, those claims that, if successful, would result only in a new "ticket to the door" (*i.e.*, a new hearing) do not "imply the invalidity" of the previous ruling. *Dotson*, 329 F.3d at 471. Rather, it is only when federal court would, in effect, reverse the State decision on the merits (*e.g.*, order parole when the State had not) that the "necessarily implies" test is met. This, as the dissent pointed out, directly contradicts *Balisok*:

> Because the impact the new hearings would have on Dotson and Johnson's parole or release is indeterminate, the majority contends that the validity of the administrative judgment has not been questioned. A similar argument, however, was advanced by the petitioner in *[Balisok]* to the effect that a ruling in Edwards's favor on his § 1983 procedural attack would not necessarily imply the invalidity of the loss of his good time credits because the Washington courts could still uphold the administrative determination once the procedural error were corrected. *But the Court clearly rejected this argument in [Balisok]. Simply because the administrative body might reach the same result the second time around, therefore, does not save a § 1983 procedural attack.*

Dotson, 329 F.3d at 474 (emphasis added).

In reaching its decision, the majority below thus mirrored the D.C. Circuit's flawed reasoning in *Anyanwutaku.* Like the Sixth Circuit, that court rejected the idea that a federal court order vacating a state decision and

ordering a new hearing is enough. Rather, it reads *Balisok* "to require that a state prisoner's section 1983 claim must first be brought in habeas only when, if successful, it would 'necessarily imply' or automatically result in, *a speedier release from prison*." *Anyanwutaku*, 151 F.3d at 1056 (emphasis added). According to these courts, then, only a federal court order that would *reverse* on the merits, not merely one that orders a new hearing, trips *Heck*'s bar—a result directly at odds with this Court's opinion in *Balisok*.[3]

The failure of the Sixth Circuit, and the courts that agree with it, to follow binding Supreme Court precedent on this important and frequently-recurring issue is an independent reason justifying certiorari here.

B. Under either of the two prevailing readings of *Heck*, the claims here should have been subject to the favorable termination requirement.

In the years since *Heck* was decided, two views have emerged regarding its scope. Those readings differ on whether *Heck* applies where the prisoner has no alternate federal remedy through the habeas statute. Under either of them, however, the claims advanced here are *Heck*-barred.

The first view, referred to here as the "Literal Reading," understands *Heck's* favorable termination requirement as barring any § 1983 claim where success on

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[3] The Sixth Circuit opinion directly contradicts this Court's precedent in another respect as well. According to the majority, administrative determinations do not count as "judgments" under *Heck* and *Balisok*. *See Dotson*, 329 F.3d at 470 n.2. As the dissent notes, however, this must be wrong "because [*Balisok*] itself was dealing with the judgment of an administrative body." *Id*. at 474 (Gilman, J., dissenting).

the claim would imply the invalidity of a previous conviction or sentencing decision, regardless of whether habeas corpus is available as an alternative remedy. This approach finds support in the *Heck* majority's refusal to limit its holding to cases where plaintiffs have an alternate vehicle, habeas, to challenge the criminal decision at issue. *See Heck*, 512 U.S. at 490 n.10 ("the principle barring collateral attacks . . . is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated," *i.e.,* making habeas unavailable); *see also Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (rejecting claim that released prisoner must necessarily have live habeas claim or a potential § 1983 claim, and rejecting claim that "a § 1983 claim must always and everywhere be available"). In sum, this view is not premised on whether habeas is available, but instead focuses on preventing "a collateral attack on [a] conviction through the vehicle of a civil suit." *Heck*, 512 U.S. at 484. *See, e.g., Schilling v. White*, 58 F.3d 1081, 1086 (6th Cir. 1995) ("*Heck v. Humphrey* is not based solely on the need to preserve habeas corpus as the exclusive federal remedy. In fact, *Heck* applies as much to prisoners in custody (a habeas prerequisite) as to persons no longer incarcerated.").

The second view, which we refer to as the "Appropriate Federal Remedy Reading," limits *Heck* to cases that fit textually within *both* § 1983 *and* the habeas statutes. Under this reading, a claim is *Heck*-barred under § 1983 *only if* the prisoner has habeas available as a vehicle to pursue his claim. This view is based on Justice Souter's concurrences in *Heck* and *Spencer v. Kemna*. *See Heck,* 512 U.S. at 501-02 (Souter, J. concurring); *Spencer,* 523 U.S. at 20 (Souter, J., concurring). It understands *Heck's* favorable termination requirement as merely a tool for separating those claims that should be routed through the more general provisions of § 1983 from those that should proceed under the more specific habeas statutes. *Heck*, 512 U.S. at 498-500 (Souter, J., concurring); *Spencer*, 523 U.S. at 20 (Souter, J.,

concurring). It seeks to assure the existence of some federal vehicle to advance federal claims implying the invalidity of State convictions or sentencing decisions, *Heck*, 512 U.S. at 501-502 (Souter, J., concurring); and hence would limit *Heck's* bar to cases where such a remedy exists. *See Spencer*, 523 U.S. 20-21 (Souter, J., concurring) ("the better view, then, is that a former prisoner, no longer 'in custody,' may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy."). *See also DeWalt v. Carter*, 224 F.3d 607, 617 (7th Cir. 2000) ("In this case, where habeas is not applicable, the requirements of the habeas statute do not supersede the explicit right to proceed under § 1983. Consequently, [plaintiff] may proceed with his § 1983 action without first seeking to invalidate the state court action through habeas.").

The claims presented here are *Heck*-barred under either of these readings. The claims below challenged parole denials, and such decisions are undoubtedly sentencing decisions. *See Mistretta v. United States*, 488 U.S. 361, 364-365, 366 (1988) (parole officials exercise sentencing power). *See also* A. Campbell, *The Law of Sentencing* § 4.1, p. 70, § 17.6, 450 (2d Ed. 1991). *See also* V. Palcios, *Go and Sin No More: Rationality in Release Decisions by Parole Boards*, 45 S.C.L. Rev. 567, 573, 574 (1994) ("Indeterminate sentencing systems allocate sentencing discretion to the judge and the paroling authority."). Indeed, consistent with that reality, courts routinely recognize that the denial of parole implicates a prisoner's sentence for habeas purposes. *See*, *e.g.*, *Coady v. Vaughn*, 251 F.3d 480, 484-486 (3d Cir. 2001); *Sammons v. Rodgers*, 785 F.2d 1343, 1345 (5th Cir. 1986); *Kills Crow v. United States*, 555 F.2d 183, 189 n. 9 (8th Cir. 1977).

Further, the nature of the claims here is such that, if successful, they would "invalidate" the decisions at issue. Both Respondents seek new parole hearings, and, as described above, granting them that relief would "necessarily imply" the invalidity of their former hearings.

Thus, because the claims, if successful, would invalidate State sentencing decisions, they fall within the ambit of the Literal Reading. And, because the claims are cognizable in habeas, *see Coady* and *Sammons, supra,* the Appropriate Federal Remedy Reading bars them as well. In short, this decision below conflicts with the Court's decision in *Heck* under either reading, and thus certiorari is warranted.

C. Contrary to the decision below, nothing in *Heck* or *Balisok* limits the favorable termination requirement to claims that will inevitably affect the fact or duration of a prisoner's confinement.

The mere fact that Respondents' claim would not guarantee earlier release does not preclude application of *Heck*'s bar. Nothing in either *Heck* or *Balisok* limits those holdings to claims that will "inevitably or automatically result in earlier release" of the prisoner-plaintiff. *See Dotson*, 329 F.3d at 471. To the contrary, those opinions in fact mandate that *Heck's* favorable termination requirement applies regardless of whether the claim will necessarily impact the term of confinement.

Initially, neither *Heck* nor *Balisok* involved claims that would have necessarily guaranteed the plaintiffs there earlier release. Neither plaintiff requested such relief, *see, e.g.*, *Heck*, 512 U.S. at 479, *Balisok*, 520 U.S. at 644, and nothing indicates that success on their claims would have resulted in anything more than a new trial or a rehearing, the usual result when a conviction is overturned.

More importantly, *Heck* contains several strong indicators that the favorable termination requirement applies regardless of whether the § 1983 claim would necessarily alter the term of plaintiff's confinement. *Heck* expressly stated, for instance, that the requirement applies to claims that could not possibly affect a plaintiff's confinement—those brought by a released prisoner, *Heck*, 512 U.S. at 490 n.10—a point the Sixth Circuit failed to even address.

Similarly, both the express language and internal logic of the Appropriate Federal Remedy Reading indicate that a claim's impact on a prisoner's current confinement is irrelevant to *Heck's* applicability. Justice Souter expressly rejected the proposition that "the relief sought in a § 1983 action dictates whether a state prisoner can proceed immediately to federal court," *Heck*, 512 U.S. at 497, thus making the fact that a prisoner seeks a new hearing, rather than outright release, irrelevant.

Nor can Respondents argue that the fact they are seeking a new hearing rather than release means that habeas is not an appropriate vehicle (thus making § 1983 more necessary under the Appropriate Federal Remedy Reading). After all, the remedy in habeas usually results only in a retrial or rehearing with no guaranteed result. 2 R. Hertz & J. Liebman, *Federal Habeas Corpus Practice and Procedure*, § 33.3 (4th Ed. 2001) ("By far the most common habeas remedies today are so-called 'conditional release' orders . . . which require the state to . . . retry (or resentence) the petitioner in a constitutional manner within a 'reasonable' period of time."). That the result here would be a new hearing, then, certainly cannot rule out habeas as the appropriate choice.

Balisok further contradicts this "earlier release" requirement. As noted above, the Court in *Balisok* expressly

acknowledged that the State might provide a new hearing that would reach the same result. Yet, it held that the § 1983 claims were still *Heck*-barred. *See* Section II.A. Moreover, in that case, in addition to suing over the revocation of good time credits, the prisoner-plaintiff also challenged a 30-day placement in disciplinary segregation, a separate sanction having no impact on the length of his sentence. The trial court applied *Heck* to dismiss the entire claim, including the portion related to the segregation. *Id.* at 644. This Court sustained that action, making no distinction between the sentence-affecting portion of the prisoner's claim (good time credits) and that portion that had no impact on sentence duration (segregation). That result directly contradicts any notion that *Heck* is limited to those claims that would guarantee an earlier release. But the *Balisok* result makes perfect sense if the key point is whether success on the prisoner's § 1983 claim would invalidate the results of a State hearing.

In sum, nothing in *Heck* or *Balisok* limits *Heck's* favorable termination requirement to claims inevitably affecting the fact or duration of a prisoner's confinement. The Sixth Circuit's decision below engrafting that requirement thus conflicts with this Court's precedent.

D. The decision below undermines the longstanding policy against excessive federal interference in State processes related to the enforcement of criminal law.

Not only did the Sixth Circuit run afoul of both *Heck* and *Balisok*, but its decision also frustrates the long-standing policy underlying those decisions—the principle that State courts must be allowed the first opportunity to review constitutional claims bearing upon State prisoners' release from custody.

Heck and *Balisok* are not isolated holdings. They are merely recent examples of the "fundamental policy against federal interference with state criminal" matters. *Younger v. Harris*, 401 U.S. 37, 46 (1971). As *Younger* recounts, "the national government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the states." *Id.* at 44. That policy of respect for State sovereignty also underlies the habeas requirement that State courts be afforded "a meaningful opportunity to consider allegations of legal error without interference from the federal judiciary." *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986). *See also Rose v. Lundy*, 455 U.S. 509, 515 (1982).

The favorable termination requirement common to *Heck* and *Balisok* reflects that policy. It fosters federal respect for State sovereignty by barring prisoners' use of § 1983 to launch federal attacks on State incarceration decisions. *Heck* does so with regard to State court decisions, and *Balisok* extends the same principle to administrative decisions, an area where respect for State determinations "has as much relevance . . . as it does where state judicial actions are being attacked." *Prieser v. Rodriguez*, 411 U.S. 475, 491 (1973). *Heck* and *Balisok* therefore squarely reflect the policy of respect for State criminal decisions that underlies *Younger*, *Vasquez*, *Rose*, *Prieser* and their progeny.

This longstanding policy of federal deference to State sovereignty in the criminal arena extends not only to convictions, but also to State sentencing policies and decisions. *See Ewing v. California*, __ U.S. __, 123 S.Ct. 1179, 155 L.Ed.2d 108, 119 (2003) (noting the Court's "tradition of deference to state legislatures making and implementing" sentencing policy decisions). And, of course, parole decisions are an integral part of the criminal sentencing process. These decisions reflect the State's

difficult policy choices concerning "whether in the light of the nature of the crime, the inmate's release will minimize the gravity of the offense, weaken the deterrent impact on others, and undermine respect for the administration of justice." *Greenholz v. Inmates of the Nebraska Penal and Correction Complex*, 442 U.S. 1, 8 (1979). In making these decisions, the State must navigate the difficult straits between "encourag[ing] for its prisoners constructive future citizenship while avoiding the danger of releasing them prematurely upon society." *McGinnis v. Royster*, 410 U.S. 263, 270 (1973).

Respondents ask the federal courts to impose themselves into that process. In essence they seek a federal court order vacating a State decision that is "based upon [state officials'] experience with the difficult and sensitive task of evaluating the advisability of parole release," *Greenholz*, 442 U.S. at 10, without first giving the State an opportunity to consider the prisoners' challenges in the State's own courts. Those circuits rejecting such requests as *Heck*-barred are thus merely giving due weight to "the strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct" errors relating to the consequences of that conviction. *Prieser*, 411 U.S. at 492.

In its decision below, the Sixth Circuit ignored the carefully constructed limitations on federal court intrusion into State criminal proceedings, and thereby erred on this important issue of federalism. We respectfully urge the Court to grant certiorari to correct the lower court's misinterpretation of this binding precedent, and to protect the States' interest in overseeing their own sentencing decisions.

III. This case is an ideal companion to *Muhammad v. Close* for establishing a bright-line test for determining which prisoner claims can be brought under § 1983, which would give much-needed guidance on other issues regarding the scope of *Heck*'s favorable termination requirement that have engendered circuit splits.

In addition to resolving the specific conflict on *Heck's* affect on parole release claims, accepting this case as a companion to the recent grant of certiorari in *Muhammad v. Close*, Case No. 02-9065, *cert. granted* June 16, 2003, would provide the Court a unique opportunity to establish a general rule for determining which prisoner claims should be brought under § 1983 and which should be reviewed by habeas corpus. Moreover, it would allow the Court to provide much needed-guidance on the appropriate interpretation of *Heck*'s "necessarily implies" language, language that has fostered circuit splits on at least three other issues.

The lack of a clear rule for separating § 1983 and habeas claims has plagued the lower courts for more than three decades. Even before *Heck*, confusion reigned. *See, e.g.,* M. Schwartz, *The* Preiser *Puzzle: Continued Frustrating Conflict between the Civil Rights and Habeas Corpus Remedies for State Prisons,* 37 DePaul L. Rev. 85 (1988). And that uncertainty has, if anything, increased since *Heck,* at least with regard to the two most common types of claims frequenting "the intersection of habeas and § 1983," *Heck*, 512 U.S. at 498 (Souter, J., concurring)—those involving parole and prison disciplinary proceedings.

As described above, the circuits have taken vastly divergent approaches to parole claims. There is similar confusion regarding claims arising from prison disciplinary sanctions, with conflicting decisions among district courts, *Jenkins v. Haubert*, 179 F.3d 19, 25 (2d Cir. 1999)

(collecting cases), and between circuits, *compare Brown v. Plaut*, 131 F.3d 163, 168 (D.C. Cir. 1997), *with Huey v. Stine*, 230 F.3d 226, 230 (6th Cir. 2000), and even between different panels of individual appellate courts, *compare Stone-Bey v. Barnes*, 120 F.3d 718, 721-722 (7th Cir. 1997), *with DeWalt v. Carter*, 224 F.3d 607 (7th Cir. 2000). That confusion vexes prisoners, government defendants, trial and appellate courts across the country, generating significant satellite litigation over the procedural question of how to process substantive claims before anyone reaches the substance of those claims. Reasonable people may disagree about how to solve that problem, but all must agree that a solution is necessary.

The Court recently granted certiorari in *Muhammad v. Close,* in which it will have the opportunity to address this question in the context of prison disciplinary hearings. A grant here would allow the Court to craft a comprehensive solution for all the claims in this murky area.

Moreover, the juxtaposition of an opinion here, with that in *Muhammad*, would allow the Court to both articulate a general rule and explicate its operation in a way that both resolves the specific parole and disciplinary claims generating the most cases and provides general guidance on a number of other circuit conflicts that have arisen post-*Heck*. *See* 1B Schwartz & J. Kirklin, *Section 1983 Litigation: Claims and Defenses*, §§ 10.7, 10.8 (3d Ed. 1997) (discussing other open questions about *Heck*). Indeed, *Heck* has generated at least three other circuit splits: (1) the appropriateness of § 1983 as a means for a prisoner to obtain DNA evidence, *compare Bradley v. Pryor*, 305 F.3d 1287, 1290-1291 (11th Cir. 2002) ("we disagree with the Fourth Circuit panel that *Heck* does not permit a § 1983 suit for production of evidence for the purpose of DNA testing"), *with Harvey v. Horan*, 278 F.3d 370, 375 (4th Cir. 2002) (reaching the opposite conclusion); (2) prisoners' use of

§ 1983 to pursue Fourth Amendment unreasonable search and seizure claims, *see Harvey v. Waldron*, 210 F.3d 1008, 1015 (9th Cir. 2000) (noting that "[t]here is a split in the circuits as to how *Heck*'s footnote seven [dealing with 'necessarily' implies] should be interpreted" and citing decisions from the 2d, 6th, 7th, 8th, 10th and 11th Circuits); and (3) the application of *Heck* to extradition, *see Harden v. Pataki*, 320 F.3d 1289, 1299 (11th Cir. 2003) (noting that "we disagree with the Seventh Circuit's [*Heck*] analysis" in *Knowlin v. Thompson*, 207 F.3d 907 (7th Cir. 2000)). At the root of each of these conflicts is a disagreement about the scope of *Heck*'s "necessarily implies" language. Granting certiorari here would thus assist the circuits in resolving these other conflicts as well.

CONCLUSION

For the foregoing reasons, the Petitioners respectfully urge this Court to grant certiorari and resolve the conflict regarding the appropriate scope of *Heck*'s favorable termination requirement.

Respectfully submitted,

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August 2003