The *Heck* Bar Gone Too Far: *Heck*'s Application to Prisoners' Excessive Force Suits

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Introduction

The *Heck* doctrine bars a plaintiff from bringing a suit under the federal civil rights statute, 42 U.S.C. § 1983, where success on the claim would undermine a state-imposed conviction or sentence, unless that conviction or sentence has already been invalidated. This Article highlights one way in which the *Heck* bar—which arose from the Supreme Court's desire to respect state-court convictions and avoid inconsistent judgments—has crept beyond its natural borders, undermining the constitutional rights of incarcerated people to be free from excessive force.

In *Heck v. Humphrey*,[1] the Supreme Court held that a state prisoner may not challenge the constitutionality of his conviction in a suit for damages under § 1983—rather, that claim must go through federal habeas corpus.[2] And federal habeas, in turn, "requires that state prisoners first seek redress in a state forum" before coming to federal court with their habeas claims—sometimes referred to as exhaustion.[3]

In practice, then, litigants seeking to bring a civil rights suit based on their state criminal judgments or sentences (1) must first proceed in state court through direct appeals and state postconviction processes; (2) can bring a federal habeas claim if the state-court route isn't fruitful; and (3) only once their conviction is wiped out—on direct appeal, or through habeas relief, exoneration, etc.—may they bring a § 1983 claim that would otherwise conflict with a state criminal judgment.[4]

The Supreme Court in *Heck* invoked the "hoary principle" that civil actions aren't the appropriate vehicles for challenging outstanding criminal judgments and highlighted several benefits of a rule that funneled such suits to the states and federal habeas courts, it: (1) "avoids parallel litigation;" (2) prevents "a collateral attack on the conviction through the vehicle of a civil suit;" and, (3) supports "finality and consistency" in the criminal process.[5] So, *Heck*'s rule: "[W]hen a state prisoner seeks damages in a § 1983 suit, the

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[1] 512 U.S. 477 (1994).

[2] *Id.* at 486–87.

[3] *Id.* at 480–81.

[4] *See* Muhammad v. Close, 540 U.S. 749, 751 (2004) (per curiam) (noting "*Heck*'s requirement to resort to state litigation and federal habeas before § 1983").

[5] 512 U.S. at 484–86.

district court must consider whether a judgment in favor of the plaintiff 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"[6]—sometimes referred to as *Heck*'s favorable-termination requirement.[7] Under *Heck*, suits that call into question the lawfulness of a conviction or confinement that is still on the books are simply not cognizable under § 1983.[8]

Although *Heck* is mostly known as a doctrine that involves the interaction of state court judgments and § 1983, its reach is broader. Here's why: *Heck* applies to a suit that would implicate the validity of a conviction *or sentence*.[9] The length of a prisoner's sentence can, in most states, be decreased through "good time credits," which are effectively rewards of time toward a prison sentence for good behavior.[10] And these good-time credits can, in most states, be revoked through a prison disciplinary proceeding, which has the result of lengthening a once-shortened sentence.[11] So in *Preiser v. Rodriguez*,[12] years before *Heck*, the Supreme Court held that a § 1983 suit was barred where the plaintiffs sought the restoration of good-time credits as a remedy, because the prisoners should have proceeded through federal habeas, rather than § 1983.[13] And in *Edwards v. Balisok*,[14] the Court extended *Preiser* and *Heck* to cases that directly attack the validity of prison disciplinary proceedings that ultimately lengthen a prisoner's sentence, whether or not the remedy sought is actually the reinstatement of good-time credits, because such claims "necessarily . . . imply the invalidity

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[6] *Id.* at 487.

[7] *Muhammad*, 540 U.S. at 751. The favorable-termination requirement baked into *Heck* is related to, but distinct from, the favorable-termination requirement for a plaintiff to bring a Fourth Amendment claim under § 1983 for malicious prosecution. *See Heck*, 512 U.S. at 484 & n.4 ("The common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered here."); Thompson v. Clark, 142 S. Ct. 1332, 1335 (2022) (interpreting malicious prosecution's favorable termination requirement and providing a "*cf.*" cite to *Heck*).

[8] *Heck*, 512 U.S. at 483, 487.

[9] *Id.* at 487.

[10] "Good-time credits," broadly speaking, are awarded to incarcerated individuals for compliance with prison rules and required participation in activities. They count as "credit" toward the service of a sentence, and so advance the date of the person's release from prison. The specifics of good-time schemes—including how credits are calculated, what they are awarded for, and who is eligible—are dependent on state law. *See* National Conference of State Legislatures, *State Good Time and Earned Time Laws*, https://www.ncsl.org/research/civil-and-criminal-justice/state-good-time-and-earned-time-laws.aspx [https://perma.cc/FC2F-FQB7] (last updated June 11, 2021). Federal prisoners have access to good-time credits as well under 18 U.S.C. § 3624(b). *See An Overview of the First Step Act,* FED. BUREAU OF PRISONS, https://www.bop.gov/inmates/fsa/overview.jsp [https://perma.cc/566Y-EL7Z] (last visited Jan 31, 2023) (discussing federal good-time scheme under "Incentives for Success" heading).

[11] Revocation of good-time credits through these disciplinary processes is often paired with other consequences, including "segregation"—a euphemism for solitary confinement. *See* Benjamin Steiner & Calli M. Cain, *Punishment Within Prison: An Examination of the Influences of Prison Officials' Decisions to Remove Sentencing Credits*, 51 L. & SOC'Y REV. 70, 72, 84 (2017).

[12] 411 U.S. 475 (1973).

[13] *Id.* at 476–77, 491.

[14] 520 U.S. 641 (1997).

of the judgment" of the disciplinary proceeding through which the credits were revoked, and thus the ultimate duration of his confinement.[15]

But what of garden-variety § 1983 excessive-force suits seeking damages against a prison official, where a prisoner does not directly challenge the disciplinary proceeding that resulted from the incident? The courts of appeals to have addressed the question unanimously—and erroneously—allow such claims to be barred from federal court under *Heck* where a prison disciplinary board has adopted the correction officer's version of the story and revoked a prisoner's good-time credits. In other words, a prison official may forever insulate himself from an excessive-force suit under § 1983 by writing a false disciplinary report and convincing his colleagues on the disciplinary board to adopt his story.[16]

This Article will explain how this application of *Heck*, though widely adopted without comment, is wrong as a matter of doctrine and policy. Indeed, properly understood, *Heck* has no place where a prisoner brings a § 1983 excessive-force claim for damages against a prison official. That is true even if a prison disciplinary board has revoked a prisoner's good-time credits relating to the incident. The circuit courts' misapplication of *Heck* to the contrary inadequately protects the right to be free from excessive force in prison by putting too much power in the hands of prison officials to insulate themselves from suit in federal court by simply writing a false disciplinary report. And it gives too much deference to prison disciplinary proceedings that bear little resemblance to the state-court criminal proceedings in *Heck*'s heartland. Ultimately, it makes no sense to require a prisoner to go through state and federal habeas to try and get his disciplinary record expunged as a predicate to bringing a damages suit under § 1983 for excessive force he suffered at the hands of prison officials. When a prisoner asks for damages (not available in habeas) and seeks to address the excessive force applied (not the purview of habeas), there's no reason to send these claims through the post-conviction labyrinth before a federal court can touch the § 1983 claim.

This problem has received little, if any, attention. *Heck* itself appears fairly under-examined in the scholarship, with the bulk of articles written on the longstanding and entrenched circuit split regarding whether the doctrine applies at all when habeas is unavailable—for instance, after someone has been released from prison.[17] A few articles have addressed specific applica-

[15] *Id.* at 645.

[16] See *infra* notes 100–103 and accompanying text, regarding the pervasiveness of this problem.

[17] *See generally, e.g.*, Tyler Eubank, *A Prisoner's Dilemma: The Eighth Circuit's Application of* Heck v. Humphrey *to Released Prisoners*, 42 MITCHELL HAMLINE L. Rev. 603 (2016); Alice Huang, *When Freedom Prevents Vindication: Why the* Heck *Rule Should Not Bar A Prisoner's § 1983 Action in* Deemer v. Beard, 56 B.C. L. REV. 65 (2015); Aaron M. Gallardo, Cohen v. Longshore: *Determining Whether the* Heck *Favorable-Determination Requirement Applies to Plaintiffs Lacking Habeas Relief Under 42 U.S.C. § 1983*, 34 AM. J. TRIAL ADVOC. 725 (2011); Thomas Stephen Schneidau, Note, *Favorable Termination After Freedom: Why* Heck*'s Rule Should Reign, Within Reason*, 70 LA. L. REV. 647 (2010); 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 (2008); Bruce Ellis Fein, Heck v. Humphrey *After*

tions of *Heck*,[18] but none appears to have scrutinized its application to the situation here: where an Eighth Amendment excessive-force § 1983 claim is barred by *Heck* because the incident in question went through the prison's disciplinary process, and the plaintiff's good-time credits were revoked.[19] This Article seeks to expose the unfairness of this extension of *Heck* and to propose doctrinal solutions.

This Article proceeds in three parts. Part I sets out the evolution and purposes of the *Heck* doctrine. Part II introduces the issue at hand—when *Heck* bars excessive-force suits on incidents that have gone through the prison disciplinary process and happened to have resulted in the denial of good-time credits—and exposes the problems with the use of the doctrine in this context. Finally, Part III proposes some doctrinal approaches that advocates and courts could use to argue or conclude that *Heck* should not apply in this context.

I. The *Heck* Doctrine

A. The Scope of the Rule

The Supreme Court has articulated and applied the *Heck* doctrine in a series of cases spanning decades. Although commonly known as the *Heck* bar—from *Heck v. Humphrey*—the doctrine's origin story begins years earlier, in *Preiser v. Rodriguez*.[20] The plaintiffs in *Preiser* were New York state prisoners, who were deprived of good-time credits as a result of prison disci-

Spencer v. Kenma, 28 New. Eng. J. on Crim. & Civ. Confinement 1 (2002). As one might expect of a question on which a persistent circuit split exists, there have also been many petitions for certiorari filed on this question, with the Supreme Court repeatedly denying such petitions. *See, e.g.*, Arrington v. Los Angeles, 143 S. Ct. 210 (2022) (mem.); Taylor v. County of Pima, 140 S. Ct. 2508 (2020) (mem.); Morris v. Mekdessie, 140 S. Ct. 870 (2020) (mem.).

[18] *See generally, e.g.*, Bonnie Gill, *Collateral Consequences of Pretrial Diversion Programs Under the* Heck *Doctrine*, 76 Wash. & Lee L. Rev. 1763 (2019) (whether participation in pretrial diversion programs counts as a "conviction" for *Heck* purposes); Lyndon Bradshaw, *The* Heck *Conundrum: Why Federal Courts Should Not Overextend the* Heck v. Humphrey *Preclusion Doctrine*, 2014 B.Y.U. L. Rev. 185 (2014) (addressing the impact of *Heck* when a § 1983 suit conflicts with another person's conviction or sentence); Joseph D. Mueller, *Pardon Me, but Can You Open That Door?: The Potential Effects of Pardons on Subsequent Civil Suits by Pardonees Under Malicious Prosecution and Section 1983—A Disciplined Approach to State Pardon Law*, 29 Cardozo L. Rev. 443 (2007) (whether pardons count as "favorable terminations").

[19] There has also been little scholarly attention paid to prison disciplinary boards. Ann Marie Rocheleau, *An Exploratory Examination of a Prison Disciplinary Process: Assessing Staff and Prisoners' Perceptions of Fairness*, 2 J. of Qualitative Crim. Just. & Criminology 1, 4 (2014) ("Apart from the focus on due process rights and the plight of the mentally ill in disciplinary proceedings, little research has been conducted on the disciplinary process itself."). One notable exception is Professor Andrea Armstrong, who has called for more transparency in prisons generally, and has specifically called on prisons to collect data on the "number of disciplinary hearings held; availability of inmate or outside counsel at disciplinary hearings; types of disciplinary measures actually imposed." Andrea C. Armstrong, *No Prisoner Left Behind? Enhancing Public Transparency of Penal Institutions*, 25 Stan. L. & Pol'y Rev. 435, 472 (2014).

[20] 411 U.S. 475 (1973).

plinary proceedings.[21] They brought suit in federal court under 42 U.S.C. § 1983, alleging that the state had deprived them of credits without due process.[22] As a remedy, the plaintiffs sought injunctive relief requiring the restoration of their credits, which would result in each of them being immediately released from prison.[23]

The *Preiser* Court focused on "the interrelationship" between § 1983 and habeas.[24] What to do when a suit plausibly sounds in both § 1983—which broadly applies "to the deprivation of any rights, privileges or immunities secured by the Constitution and laws"[25]—and habeas, which provides a federal-court avenue for "a person in custody pursuant to the judgment of a State" who has "exhausted the remedies available in the courts of the State"?[26] The Court concluded that both the text of the habeas statutes and the common-law history of the writ made clear that "habeas corpus is an attack by a person in custody upon the legality of that custody," and that its "traditional function" was "to secure release from illegal custody."[27] The Supreme Court held in *Preiser* that a § 1983 suit seeking restoration of good-time credits—although within § 1983's reach—was barred because the prisoners should have proceeded through federal habeas instead.[28] Since "they sought restoration of th[eir] good-time credits," which would shorten the length of their confinement, their suits challenging the unconstitutionality of the state administrative action "fell squarely within this traditional scope of habeas corpus."[29] It makes sense, the Court opined, to "giv[e] the States the first opportunity to correct the errors made in the internal administration of their prisons," as a matter of "federal-state comity."[30]

One year after *Preiser*, the Supreme Court drew a similar line in *Wolff v. McDonell*.[31] There, the Court was confronted with a class action alleging that a Nebraska prison's disciplinary procedures under which good-time credits might be revoked violated due process.[32] Applying *Preiser*, the Court determined that the plaintiffs' request for restoration of good-time credits was foreclosed, but "declaratory judgment as a predicate to a damages award" or an injunction enjoining the prospective enforcement of the prison regula-

[21] *Id.* at 476.
[22] *Id.*
[23] *Id.* at 476–77.
[24] *Id.* at 482 (citing 28 U.S.C. §§ 2241, 2254 and 41 U.S.C. § 1983).
[25] 42 U.S.C. § 1983.
[26] 28 U.S.C. § 2254(a), (b)(1)(a).
[27] 411 U.S. 475 at 484, 489. Habeas, of course, "was designed to provide 'swift judicial review of alleged unlawful restraints of liberty.'" Eric J. Savoy, Comment, Heck v. Humphrey*: What Should State Prisoners Use When Seeking Damages From State Officials . . . Section 1983 or Federal Habeas Corpus?*, 22 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 109, 115 (1996) (quoting Peyton v. Rowe, 391 U.S. 54, 63 (1968)).
[28] *Preiser*, 411 U.S. at 476–77, 491.
[29] *Id.* at 487.
[30] *Id.* at 492.
[31] 418 U.S. 539 (1974); *see also* Wilkinson v. Dotson, 544 U.S. 74, 79 (2005) (characterizing *Wolff* as "the Court elaborat[ing] the contours of th[e] habeas corpus 'core'").
[32] 418 U.S. at 542–43, 554.

tions were permissible relief, and the suit could proceed.[33] The lower courts could both assess the validity of the procedures used for revoking good-time credits and "fashion appropriate remedies for any constitutional violations ascertained, short of ordering the actual restoration of good time already canceled."[34] This was the rule for two decades.

Enter *Heck v. Humphrey*.[35] Petitioner Roy Heck was convicted in Indiana state court of voluntary manslaughter, and while the appeal from his conviction was pending he filed suit in federal district court under § 1983.[36] Heck's suit alleged that the county prosecutors and an investigator with the state police—among other things—knowingly destroyed exculpatory evidence, and he sought compensatory and punitive damages, not injunctive relief.[37] As in *Preiser*, the Court in *Heck* observed that the "case lies at the intersection" of § 1983 and the federal habeas statute.[38] The *Heck* Court concluded that "when establishing the basis for the damages claim necessarily demonstrates the invalidity of the conviction," then "the claimant *can* be said to be 'attacking . . . the fact or length of confinement,'" and so must go through habeas rather than § 1983.[39] Requiring litigants to use habeas instead of § 1983 had three benefits, from the Court's perspective: (1) it "avoids parallel litigation"; (2) prevents "a collateral attack on the conviction through the vehicle of a civil suit," and (3) supports "finality and consistency" in the criminal process.[40]

Next, in *Edwards v. Balisok*,[41] the Supreme Court extended *Preiser* and *Heck* still further, to cases that directly attack the validity of prison disciplinary proceedings that ultimately lengthen a prisoner's sentence, because such claims "necessarily . . . imply the invalidity of the judgment" of the disciplinary board, and thus the duration of his confinement.[42] *Edwards* involved an incarcerated man in a Washington State prison, who was charged with four infractions at a disciplinary hearing, and was, as a result, deprived of thirty days of good-time credits he had previously earned.[43] He filed a § 1983 action, alleging that the procedures used in his disciplinary proceeding violated his due process rights, and sought damages and declaratory relief.[44] The Court held that "[t]he principal procedural defect complained of"—"a biased hearing officer who dishonestly suppresse[d] evidence of innocence"—

[33] *Id.* at 554–55.
[34] *Id.* at 555.
[35] 512 U.S. 477 (1994).
[36] *Id.* at 478–79.
[37] *Id.* at 479.
[38] *Id.* at 480.
[39] *Id.* at 481–82. The petitioner in *Heck* argued that *Wolff* already decided the question. *Id.* at 482. The Court rejected that notion, characterizing the § 1983 damages claim in *Wolff* as one "for using the wrong procedures, not for reaching the wrong result (*i.e.*, denying good-time credits)" and there was no reason to believe "that using the wrong procedures necessarily vitiated the denial of good-time credits." *Id.* at 482–83.
[40] *Id.* at 484–85.
[41] 520 U.S. 641 (1997).
[42] *Id.* at 645.
[43] *Id.* at 643.
[44] *Id.*

"would, if established, necessarily imply the invalidity of the deprivation of his good-time credits," and so *Heck* barred his § 1983 suit.[45]

In sum, the doctrine began as one that applied when a plaintiff sought relief specifically aimed at ending a person's incarceration (*Preiser*, *Wolff*), was extended to damages actions that would "necessarily imply" the invalidity of a person's conviction or sentence (*Heck*), and has been applied to claims that directly attack the validity of a prison disciplinary process (*Edwards*). With each case, the doctrine incrementally grew larger and larger, with the end result being a wide variety of types of suits falling into *Heck*-land.

B. What Does "Necessarily Imply" Mean?

Pulling in the opposite direction, another important line of cases added clarity to what level of connection is required for a § 1983 suit to be *Heck*-barred—that is, when does the outcome of a § 1983 suit "necessarily imply" the invalidity of a person's conviction or sentence. "Necessarily" means "of necessity" or "unavoidably"[46] and that's the line the Supreme Court has largely stuck to in adjudicating the borders of *Heck*.

Start with *Wilkinson v. Dotson*.[47] There, two state prisoners brought a § 1983 action, arguing that Ohio's parole procedures violated the federal Constitution.[48] Ohio argued that *Heck* applied because the plaintiffs were attacking the parole procedures "only because they believe that victory on their claims will lead to speedier release from prison."[49] Thus, Ohio claimed, they were collaterally attacking the duration of their confinement and had to do so through habeas, not through § 1983.[50] The Supreme Court disagreed, holding that the connection between the plaintiffs' claims "and release from confinement is too tenuous" to close the door on their § 1983 claims.[51] Success for the plaintiffs meant, "at most" a new parole hearing "at which Ohio parole authorities may, in their discretion, decline to shorten his prison term."[52] Since that claim would not "necessarily spell speedier release," it did not "lie[ ] at 'the core of habeas'" and so it was cognizable under § 1983.[53]

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[45] *Id.* at 646–48. In contrast, the Court in *Muhammad v. Close*, 540 U.S. 749, 753 (2004), held that *Heck* did not bar a prisoner's suit where he sought only damages relating to the six days of prehearing detention, which was required by the allegedly retaliatory charge he received.

[46] *Necessarily*, MERRIAM-WEBSTER ONLINE, https://www.merriam-webster./dictionary/necessarily [https://perma.cc/NWG5-6CZK] (last visited Jan 31, 2023).

[47] 544 U.S. 74 (2005).

[48] *Id.* at 76.

[49] *Id.* at 78.

[50] *Id.*

[51] *Id.* In this vein, the *Wilkinson* Court explained that the suit in *Wolff* could go forward since it "attacked only the wrong procedures, not the wrong result (*i.e.*, the denial of good-time credits)." 544 U.S. at 80 (cleaned up).

[52] 544 U.S. at 82.

[53] *Id.* (quoting Preiser v. Rodriguez, 411 U.S. 475 489 (1973)).

The Court reached a similar conclusion in *Skinner v. Switzer*,[54] where a state prisoner filed a § 1983 suit seeking DNA testing of crime-scene evidence.[55] The Court allowed the claim to proceed, holding that, while the petitioner's aim was to establish his innocence and achieve release from custody, the result of success in his § 1983 suit will not *necessarily* be release from custody; he sought "only access to the DNA evidence, which may prove exculpatory, inculpatory, or inconclusive."[56] Moreover, the Court noted, it had never "recognized habeas as the sole remedy . . . where the relief sought would 'neither terminat[e] custody, accelerat[e] the future date of release from custody, nor reduc[e] the level of custody.'"[57] In other words, because the "ask" in the § 1983 suit was attenuated from the conviction, application of the *Heck* bar was inappropriate.[58]

Likewise, the Supreme Court has allowed claims challenging a prisoner's method of execution to be brought under § 1983, where a plaintiff alleges that alternatives to the challenged procedures are available.[59] That is, where the plaintiff pleads an alternative method of execution, his § 1983 suit will not *necessarily* prevent the state from carrying out the execution.[60] The Court has maintained that this is true even if the state would have to change its law to provide for that alternative form of execution.[61] Throughout this line of cases, the Court has repeatedly reiterated that for a suit to be *Heck*-barred, it must "necessarily" imply the invalidity of a prior conviction or sentence.[62] In short, although the Supreme Court has held that the *Heck* doctrine potentially applies in an increasing variety of cases, it has also recently tightened the level of connection required for a § 1983 suit to "necessarily" conflict with a criminal judgment or sentence.

C. Conditions of Confinement Suits = Classic § 1983 Actions

It is important to be clear about what types of cases *are not* barred by *Heck*. The Supreme Court has recognized time and again that condition of confinement suits—suits brought by prisoners complaining about their treatment in prison, are the prototypical § 1983 cases that are not implicated by

[54] 562 U.S. 521 (2011).
[55] *Id.* at 524.
[56] *Id.* at 525.
[57] *Id.* at 534 (quoting *Wilkinson*, 544 U.S. at 86 (Scalia, J., concurring)).
[58] *Id.* at 525.
[59] This requirement that a plaintiff suggest an alternative method of execution when bringing a challenge to the state's designated method comes from recent Supreme Court doctrine. *See, e.g.*, *Glossip v. Gross*, 576 U.S. 863, 879 (2015) (interpreting *Baze v. Rees*, 553 U.S. 35 (2008)).
[60] *See Nance v. Ward*, 142 S. Ct. 2214, 2222 (2022).
[61] *Id.* at 2223.
[62] *Id.* at 2222 (discussing Nelson v. Campbell, 541 U.S. 637 (2004) and Hill v. McDonough, 547 U.S. 573 (2006)).

Heck.[63] Such suits, the Court has explained, are "[o]n the opposite end of the spectrum," from suits that fall within the "core" of habeas, because they attack only the condition, and not the term, of a person's confinement.[64] These suits are the bread-and-butter of federal prisoner litigation.[65] It makes sense to have these claims heard in federal court via § 1983 actions, since "[t]he very purpose of § 1983 was to interpose the federal courts . . . as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law."[66]

II. Applying *Heck* to Events Laundered Through Prison Disciplinary Proceedings

A. The Issue

With the Supreme Court law set out, we turn now to the problem at hand: *Heck* being used to bar a prisoner's excessive-force claim against correctional officers for damages under § 1983 where that claim does not directly attack the outcome of a prison disciplinary proceeding. Notably, this Article focuses on excessive force claims because those are the only ones that are "closest," from a *Heck* perspective, since the events in question are most likely to have gone through a prison disciplinary process. Other types of prisoner suits, such as religious exercise claims, medical care claims, or "traditional" conditions of confinement suits, are generally unlikely to have anything to do with an episode that's gone through a prison disciplinary proceeding.

Under the prevailing rule in the federal circuits, officers who assault a prisoner are exempt from federal damages actions so long as there has been a prison disciplinary proceeding covering the same ground as the incident that would serve as the basis for the § 1983 excessive-force claim.[67] In other words, the circuits hold that *Heck* may bar § 1983 claims where the same facts underlie a prison disciplinary proceeding that resulted in a loss of good-

[63] *Id.* at 2221–22 (citing Preiser v. Rodriguez, 411 U.S. 475, 488–89 (1973)); *see also id.* at 2224 ("[T]he classic prisoner § 1983 suit"—"one challenging prison conditions"—poses no *Heck* problem).

[64] *Id.* at 2222; *see also id.* at 2224 (noting such suits concern not the length of a person's confinement, but "how the prescribed incarceration is being carried out").

[65] For example, in 2021, prisoner civil rights and conditions claims made up 91% of pro se litigation in the district courts. *Data Update*, tbl. B, Incarceration and the Law, https://incarcerationlaw.com/resources/data-update/ [https://perma.cc/DV9P-SSPR] (last visited Jan. 31, 2023). In 2021, there were 42% more civil rights/conditions claims, as compared to federal habeas claims. *Id.* at tbl. D.

[66] Mitchum v. Foster, 407 U.S. 225, 242 (1972).

[67] *See, e.g.*, Aucoin v. Cupil, 958 F.3d 379, 382 (5th Cir. 2020); Lockett v. Suardini, 526 F.3d 866, 873 (6th Cir. 2008); Moore v. Mahone, 652 F.3d 722, 723 (7th Cir. 2011); Simpson v. Thomas, 528 F.3d 685, 691-96 (9th Cir. 2008); Hall v. Merola, 67 F.4th 1282, 1291-92 (11th Cir. 2023). There does not appear to be substantial dissent from this view, either from other circuits or in the form of dissenting or concurring opinions.

time credits, even if the § 1983 claim isn't attacking the disciplinary proceeding itself. It's worth taking a look at how this plays out in practice.

We'll use as a case study the Fifth Circuit's decision in *Santos v. White*.[68] According to the facts alleged in Mr. Santos's complaint, he suffered a severe beating at the hands of correctional officers while incarcerated at Elayn Hunt Correctional Center in Louisiana.[69] Mr. Santos alleged he witnessed six guards beating another prisoner and intervened, "imploring" them to stop.[70] The officers then turned their sights onto Mr. Santos. They "knocked [Mr. Santos] to the ground, hit, kicked, choked, handcuffed and dragged [him] in a manner that caused his head to hit poles in the walkway."[71] The officers then took Mr. Santos to a shower cell, where one officer sprayed him in the face with a chemical agent, ordered him naked, and sprayed him in the genitals and anus with the same agent.[72] The officers subsequently refused to let Mr. Santos shower the agent off.[73] Finally, Mr. Santos alleged that one of the officers, Captain Wells, cut him with a knife and threatened to kill him.[74] Mr. Santos was ultimately transferred to a medical center.[75]

Shortly after Mr. Santos was taken to the medical center, the officers prepared disciplinary reports denying that they attacked Mr. Santos merely for urging them not to beat another inmate.[76] Instead, they alleged that Mr. Santos attacked them first and that their actions were necessary to restore order.[77]

Mr. Santos's case was sent to the prison disciplinary board.[78] The board deemed "the officer's version . . . more credible than [Mr. Santos's]"[79] and

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[68] 18 F.4th 472 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 2817 (2022). I represented Mr. Santos in a petition for certiorari related to this case. *See* Petition for a Writ of Certiorari, Santos v. White, 2022 WL 1441378 (May 3, 2022) (No. 21-1425). *Gray v. White*, 18 F.4th 463 (5th Cir. 2021), involves very similar facts and application of the *Heck* bar, and I likewise represented Mr. Gray in a petition for certiorari. *See* Petition for a Writ of Certiorari, Gray v. White, 2022 WL 1214904 (Apr. 20, 2022) (No. 21-1362).

[69] *Santos*, 18 F.4th at 474.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id. See also* Ruling and Order on Defendants' Motion for Summary Judgment, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. Jan. 7, 2020), ECF 97 (noting incident took place at 4:30 PM on Jan. 28, 2016); Martell Incident Report, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019), ECF 71-6 (dated 5:59 PM on Jan. 28, 2016); White Incident Report, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019), ECF 71-7 (dated 5:44 PM on Jan. 18. 2016); Collins Incident Report, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019), ECF 71-9 (dated 7:18 PM on Jan. 28, 2016); Wells Incident Report, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019) ECF 71-5 (dated 7:26 PM on Jan. 28, 2016); Verret Incident Report, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019) ECF 71-8 (dated 7:51 PM on Jan. 28, 2016).

[77] *Santos*, 18 F.4th at 474.

[78] *Id.* at 475.

[79] Wells Disciplinary Report, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019), ECF 71-1; Wells Disciplinary Report, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019), ECF 71-2; Martell Disciplinary Report, Santos v. White,

therefore found Mr. Santos guilty of three "Defiance" violations, four "Aggravated Disobedience" violations, one "Property Destruction" violation, and one "Unauthorized Area" violation.[80] These violations resulted in, among other things, the forfeiture of 180 days' good-time credits.[81]

After exhausting his administrative remedies within the prison system,[82] Mr. Santos filed suit under § 1983 against the correctional officers involved in his attack, seeking money damages.[83] He alleged that the officers had subjected him to excessive force, in violation of the Eighth Amendment.[84] The district court granted summary judgment to the defendants, holding that Mr. Santos's claims were *Heck*-barred.[85] The district court reasoned that, because the disciplinary board relied on the officers' stories in finding Mr. Santos guilty of certain disciplinary infractions, and because the outcome of that proceeding led to the revocation of his good-time credits, a verdict for him in his § 1983 suit would necessarily imply the invalidity of his sentence.[86]

The Fifth Circuit affirmed in part and reversed in part.[87] That court explained that "[b]ecause *Heck* applies to the duration of a plaintiff's confinement, the doctrine bars claims that would, if accepted, negate a prison disciplinary finding that had resulted in the loss of good-time credits."[88] By contrast, the court observed, "*Heck* is not 'implicated by a prisoner's challenge that threatens no consequence for . . . the duration of his sentence.'"[89] From these principles, the Fifth Circuit determined that courts must engage in a "fact-intensive" review that is "dependent on the precise nature of the disciplinary offense"[90] to determine which of a prisoner's § 1983 claims "require[ ] negation of an element of the [disciplinary] offense or proof of a fact that is inherently inconsistent with one underlying the [disciplinary] convic-

3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019), ECF 71-3; White Disciplinary Report, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. July 22, 2019), ECF 71-4.

[80] *Santos*, 18 F.4th at 475.

[81] *Id.*

[82] The Prison Litigation Reform Act requires that "a prisoner confined in any jail, prison, or other correctional facility" cannot bring a prison conditions claim under § 1983 "until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a); *see also* Ross v. Blake, 578 U.S. 632 (2016).

[83] *Santos*, 18 F.4th at 475.

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *Id.* at 476 (internal quotation marks and citation omitted). After the Fifth Circuit heard argument in the case, Mr. Santos submitted a letter to that court explaining that he had recently been exonerated and released from prison, and so *Heck* no longer applied. Letter of Aug. 20, 2021, Santos v. White, No. 20-30048 (5th Cir. 2021), Dkt 00515987024 at 1. Because he had been released, he no longer had access to habeas corpus and so couldn't—even if he wanted to—have challenged the revocation of his good-time credits through that route. *See* 28 U.S.C. § 2254(a) (applying to people "in custody"). The Fifth Circuit applied a *Heck* analysis nonetheless. *See Santos*, 18 F.4th at 475–77.

[89] *Santos*, 18 F.4th at 476 (quoting Muhammad v. Close, 540 U.S. 749, 751 (2004) (per curiam)).

[90] *Id.* (quoting Aucoin v. Cupil, 958 F.3d 379, 382 (5th Cir. 2020) (quoting Bush v. Strain, 513 F.3d 442, 947 (5th Cir. 2008), *cert. denied* 141 S. Ct. 567 (2020))).

tion."[91] Ultimately—although Mr. Santos never challenged the procedures used to convict him of his disciplinary violations—the Fifth Circuit held that his excessive-force claims could be barred if any fact necessary to those claims might contradict a fact underlying the merits of his disciplinary violations.[92] It thus remanded for the district court to determine whether Mr. Santos's claims were *Heck*-barred through "a fact-specific analysis informed by the elements necessary to establish those violations" that resulted in the revocation of good-time credits.[93]

Judge Willett concurred in the judgment. He criticized the Fifth Circuit majority's "needlessly complicate[d]" rule, observing that "*Heck* does not categorically compel an element-by-element inquiry."[94] He also added a troubling observation: one of the aggressor officers in Mr. Santos's case—Captain Wells—had an "apparent familiarity with the impact of *Heck* on civil rights claims," having benefited from several such dismissals in cases where he allegedly engaged in unprovoked assaults on prisoners.[95] Judge Willett suggested that Wells's behavior "merits indignance," but, under the Fifth Circuit's reading of *Heck*, his conduct is "beyond the reach of § 1983" because that court interprets *Heck* as barring excessive-force suits that would conflict with the factual determinations of a prison disciplinary proceeding.[96] This case is an exemplar, not an outlier, in terms of the circuits' application of *Heck* to cases where the disciplinary board has looked at the episode in question and revoked a prisoner's good-time credits.

B. The Problem With the Status Quo

There are a number of problems with this application of *Heck*. First, allowing *Heck* to bar prisoner excessive force suits that have been laundered through a prison disciplinary proceeding yields a troubling under-protection of prisoners' constitutional rights. Second, applying *Heck* to the interaction of prison disciplinary proceedings and prison excessive force claims is extremely difficult. Third, the application of *Heck* here leads to inconsistent and conflicting results, based on the vagaries of state law and a person's sentence.

[91] *Id.* (quoting *Bush*, 513 F.3d at 497).
[92] *Id.*
[93] *Id.* at 477. This case settled when remanded to the district court. *See* Joint Motion to Dismiss With Prejudice, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. Sept. 27, 2022), Dkt 130; Judgment, Santos v. White, 3:16-CV-00598-BAJ-EWD (M.D. La. Sept. 30, 2022), Dkt 131. There does not appear to be criticism of this opinion, either in the literature or the caselaw.
[94] *Id.* (Willett, J., concurring).
[95] *Id.* at 479 n.15.
[96] *Id.* at 479.

i. Inadequate Protection of Federal Rights

Allowing prison disciplinary proceedings to block excessive force suits subverts the federal courts' role as arbiters of federal rights. What is more, permitting prison disciplinary proceedings to erect a *Heck* bar on subsequent excessive-force claims creates a unique opportunity for prison officials to forever insulate themselves from liability—and federal-court review—by simply falsifying a disciplinary report. This is troubling because it allows prison officials to shield what would otherwise be a cognizable conditions-of-confinement-type case from view of the federal courts.[97] Indeed, complaints about physical assaults are the most common form of prisoner condition suits.[98]

Excessive-force cases are usually about two conflicting stories, and that is perhaps particularly true in the prison context.[99] And it is sadly an all-too-common practice for jail and prison officers to abuse inmates and then lie about it. A 2021 study found that "more than half" of New York City jail officers accused of violence lied about their behavior to investigators.[100] Although justice in such situations is extremely rare, the U.S. Attorney's Office in the Southern District of New York recently charged a former correction officer at a New York prison with assault of an incarcerated man, in which he punched the man for no reason, and then wrote up a false "use of force" report to cover his tracks.[101] Likewise, the Boston Globe's famed "Spotlight" investigatory reporting team examined one particular use of force at Massachusetts's maximum security prison, and found that "'use of force' reports filed by at least four officers who witnessed the events contained obviously false information."[102] In short, violence and dishonesty by guards—combined

[97] This is known as a "cover charge"—a charge that can be used to arrest (or, in the prison context, write up) a person who officers have assaulted, to cover up the assault. Richard Webster, *He was Filming on His Phone. Then a Deputy Attacked Him and Charged Him With Resisting Arrest*, Pro Publica (Dec. 22, 2021, 7:00 AM), https://www.propublica.org/article/he-was-filming-on-his-phone-then-a-deputy-attacked-him-and-charged-him-with-resisting-arrest.

[98] Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1570–71 (2003) ("The several published detailed inquiries into district court inmate case dockets relate quite consistent accounts, together establishing that four leading topics of correctional-conditions litigation in federal court are physical assaults (by correctional staff or by other inmates), inadequate medical care, alleged due process violations relating to disciplinary sanctions, and more general living-conditions claims (relating, for example, to nutrition or sanitation.")).

[99] *See, e.g.*, Dixon v. Hodges, 887 F.3d 1235, 1237 (11th Cir. 2018) ("[The officer's] version of events differs significantly from [the plaintiff's]."); *Gilbert*, 512 F.3d at 900 ("[T]he guards have a different version."); Simpson v. Thomas, 528 F.3d 685, 687 (9th Cir. 2008) ("The parties dispute what happened next.").

[100] Jan Ransom, *New York City Jail Records Show Guards' Brutality and Cover-Ups*, N.Y. Times (Apr. 24, 2021, at A1).

[101] Brendan Rascius, *Correction Officer Punches NY Inmate, Then Lies That He Was the Victim, Feds Say*, Miami Herald, (Oct. 21, 2022), https://www.miamiherald.com/news/nation-world/national/article267687012.html [https://perma.cc/6GCS-MMSQ]; *see also* https://www.justice.gov/usao-sdny/press-release/file/1545706/download [https://perma.cc/SSG3-4ZDH] (indictment in the case).

[102] Mark Arsenault, *The Taking of Cell 15: A Look at Secrecy, Assaults, and Accountability Inside Massachusetts' Maximum Security Prison*, Boston Globe (Aug. 14, 2021), https://apps.bostonglobe.com/metro/investigations/spotlight/2021/08/department-of-corrections-in-

with a lack of accountability—is prevalent in our country's prisons.[103] Yet under the current overly broad application of *Heck*, a prison official may use excessive force against a prisoner, lie in the disciplinary report, and thereby insulate themselves from suit and prevent federal courts from fulfilling their role as arbiters of federal rights.

Indeed, in the *Santos v. White* case outlined above, Mr. Santos appears to have had his access to the federal courts blocked by a prison official with a habit of beating up prisoners and lying about it. Indeed, Judge Willett in his concurrence "pause[d] to note Captain Wells's apparent familiarity with the impact of *Heck* on civil rights claims."[104] Judge Willett cited two district-court *Heck* dismissals in which Captain Wells was a defendant—involving claims alleging the "unlawful use of chemical agents and force resulting in a broken ankle and leg" and "an unprovoked 'vicious beating'"—in addition to the *Santos* case and another recent Fifth Circuit case "involving Captain Wells, again."[105] By Judge Willett's count, then, Captain Wells had apparently used *Heck* at least four times to immunize himself from excessive-force claims—and there's nothing to stop him from continuing to do so. The current status of the law allows bad actors like Captain Wells to use *Heck* as a sword, rather than a shield. This is no small matter. Access to courts is critically important to safeguarding prisoners' rights. The Supreme Court "has 'constantly emphasized'" that "civil rights actions are of 'fundamental importance . . . in our constitutional scheme' because they directly protect our most valued rights."[106] Our constitutional scheme, then, is frustrated when prison officials block prisoners' access to federal courts by telling an embellished version of the story in disciplinary reports, which *Heck* then converts to gospel.

ii. Inadministrable

The tests the courts of appeals have developed to try and make sense of *Heck* in the prison disciplinary context are byzantine and inadministrable—

vestigation/ [https://perma.cc/7UE4-Z2ZC]. A § 1983 suit arising from these events is pending. *See* Complaint, Silva v. Turco, No. 1:21-cv-11580 (D. Mass. Sept. 27, 2021).

[103] *See, e.g.*, Armstrong v. Newsom, No. 94-cv-02307 CW, 2021 WL 933106, at *10–13, 20 (N.D. Cal. Mar. 11, 2021) (concluding that the California prison system had failed to comply with an earlier order requiring accountability for abusive officers and therefore ordered that officers be equipped with mandatory body cameras); Melissa Brown & Brian Lyman, *'Cruel Treatment': Alabama prisons ignore guards' excessive force, beatings, report finds*, MONTGOMERY ADVERTISER (July 24, 2020, 1:46 PM), https://tinyurl.com/ycyfnkrx [https://perma.cc/ZJ3P-ZWKX] (noting Department of Justice report on the Alabama prison system found that "violence against prisoners is so commonplace that some officers 'consider it normal'").

[104] Santos v. White, 18 F.4th 472, 479 n.15 (5th Cir. 2021) (Willett, J., concurring).

[105] *Id.*

[106] Bounds v. Smith, 430 U.S. 817, 827 (1977), *abrogated on other grounds by* Lewis v. Casey, 518 U.S. 343 (1996) (quoting Johnson v. Avery, 393 U.S. 483, 485 (1969); Wolff v. McDonnell, 418 U.S. 539, 579 (1974)).

just the opposite of the easy-to-apply rules that our justice system prefers.[107] To illustrate, the Fifth Circuit's self-described "analytical and fact-intensive" approach to *Heck* and prison disciplinary proceedings asks district courts to suss out which claims "require[ ] negation of an element of the criminal offense or proof of a fact that is inherently inconsistent with one underlying the criminal conviction."[108] This exercise requires more than just figuring out which § 1983 excessive-force claims are "'intertwined' with [a prisoner's] loss of good time credits;" it asks courts to overlay the elements required for a disciplinary violation on top of the allegations in the complaint and determine whether those claims are "necessarily at odds with the disciplinary rulings."[109] This is extremely difficult in many circumstances, such as Mr. Santos's, where the disciplinary report "list[ed] factual findings," but where "the elements required to find a prisoner guilty of those violations do not appear anywhere in the record."[110] To determine *Heck*'s applicability, then, district courts in the Fifth Circuit apparently need to conduct redux disciplinary hearings in which they would have to call disciplinary board witnesses to address the elements of the violations in question, what facts were necessary to those violations, and whether a determination that the officers engaged in excessive force would change the outcome of the disciplinary proceeding. In other words, a trial before the trial, just to get past the *Heck* bar. This represents a tremendous waste of judicial resources, and gives prison officials a (second) opportunity to paper over their shoddy disciplinary processes. It also requires courts to undertake an extensive and difficult parsing of a factual record that may or may not exist.

The *Heck* inquiry in the prison-disciplinary context is similarly difficult to navigate in other circuits. In the Seventh Circuit, for instance, a litigant may present his § 1983 excessive force claim at trial, but must do so "without . . . contesting" the findings of the prison disciplinary board.[111] The plaintiff in *Gilbert v. Cook* denied hitting prison guards, but the prison disciplinary board determined that (somehow) he was able to punch one of the guards through the "chuckhole," a small opening that can be used to cuff and uncuff prisoners, and revoked a year's worth of Mr. Gilbert's good-time credits.[112] Mr. Gilbert had to try and present his claim of violence by prison officials without contesting the board's finding—he "had to argue that the guards wrenched his arm out of his socket in retaliation for an act that Gilbert neither concedes nor denies."[113] The Seventh Circuit described the task as

[107] *See, e.g.*, Perdue v. Kenny, 559 U.S. 542, 551–52 (2010) (recognizing the virtue of having a rule that is "readily administrable" and "objective" so that it "permits meaningful judicial review, and produces reasonably predictable results").

[108] Gray v. White, 18 F.4th 463, 468 (5th Cir. 2021) (quoting Bush v. Strain, 513 F.3d 492, 497 (5th Cir. 2008)); *see also id.* at 469 (explaining that *Heck* issue "must be determined by a fact-specific analysis informed by the elements necessary to establish those violations"); Santos v. White, 18 F.4th 472, 476 (5th Cir. 2021) (same).

[109] *Santos*, 18 F.4th at 476; *Gray*, 18 F.4th at 468.

[110] *Santos*, 18 F.4th at 476.

[111] Gilbert v. Cook, 512 F.3d 899, 901 (7th Cir. 2008).

[112] *Id.* at 900.

[113] *Id.*

one that would be "difficult . . . for a lawyer and was even more difficult for a poorly educated layman"—the prisoner-plaintiff representing himself *pro se*.[114] And, no surprise, implementing that rule in practice proved aggravating for all involved: "Gilbert's struggle to proceed without confessing that he had punched a guard frustrated the magistrate judge; the judge's effort to enforce the rule of *Heck* and *Edwards* frustrated and confused Gilbert."[115] Other courts have noted similar difficulty in applying *Heck* in this context.[116] In short, the application of *Heck* to excessive-force claims that have gone through the prison disciplinary system is no simple task.

iii. Inconsistent Results

Permitting prison disciplinary hearings to erect a *Heck* bar on excessive-force claims leaves *Heck*'s applicability to turn on trivial differences. The arbitrariness of *Heck*'s application in this context undermines the rule of law because it results in similarly situated plaintiffs being treated differently—to great effect.

Imagine two cellmates who are written up for identical conduct (say, "Defiance") and allege that officers used excessive force against each of them; the first cellmate is penalized with a loss of good-time credits and the second is penalized with a loss of exercise privileges. The first cellmate would face *Heck* problems relating to his § 1983 excessive-force claim, whereas the second cellmate would be unaffected by *Heck*.[117] So the availability of a § 1983 action in the two cellmates' respective cases would turn arbitrarily on the nature of the punishment meted out in their disciplinary reviews, with some types erecting a *Heck* bar and others not.

Heck's application in this context is even more arbitrary considering that it varies not only from proceeding to proceeding, but from state to state. As the Supreme Court has recognized, "[t]he effect of disciplinary proceedings on good-time credits is a matter of state law or regulation."[118] So even when a prisoner loses good-time credits, as opposed to disciplinary segregation or another administrative penalty, further analysis of state law is required to determine whether that loss actually affects the ultimate duration of the pris-

[114] *Id.* at 901.

[115] *Id.*

[116] *See, e.g.*, Wilkerson v. Wheeler, 772 F.3d 834, 841 (9th Cir. 2014) ("[T]he district court's instruction, though it did not directly exclude any testimony, was in tension with [the plaintiff's] trial testimony in a way that likely confused the jury.").

[117] The *Heck* bar is, of course, inapplicable where a § 1983 claim conflicts with a disciplinary violation which was *not* punished with the loss of good-time credits. *See* Muhammad v. Close, 540 U.S. 749, 745–55 (2004) (per curiam). But this Article argues that even disciplinary violations that lead to the loss of good-time privileges should not pose a *Heck* problem for a § 1983 excessive-force damages suit that does not directly challenge the disciplinary proceeding. The Supreme Court did not address that question in *Muhammad*.

[118] *Muhammad*, 540 U.S. at 754.

oner's sentence, rather than just, say, advancing their parole eligibility date.[119] But as the Supreme Court recently noted in *Nance v. Ward*,[120] it is "strange to read such state-by-state discrepancies into our understanding of how § 1983 and the habeas statute apply to federal constitutional claims."[121] "[T]hat is especially so because" a prisoner's use of § 1983 versus habeas "can lead to different outcomes" due to, for example, the procedural bars that exist in habeas and not in § 1983, such as the bar on second-or-successive petitions.[122] This means, in effect, that the federal Constitution becomes "enforceable in federal court in one State, but not in another."[123] That is, to say the least, a problem.

The arbitrariness of *Heck*'s application here is further reflected in the perverse fact that those given the *longest* sentences are actually treated *better*—for *Heck* purposes—than those serving shorter terms. If the applicability of *Heck* turns on whether, through the revocation of good-time credits, a prisoner's sentence is lengthened, then a prisoner serving a life sentence without the possibility of parole would never face a *Heck* bar to § 1983 excessive-force claims implicating a disciplinary proceeding, since "[a]ny loss of good-time credits could not extend his potential term."[124] So too with individuals who have committed particularly serious crimes[125] or who are serving under mandatory minimum sentences, who are deemed ineligible to earn good-time credits.[126]

This arbitrariness is troubling. As the Supreme Court has noted, "justice must satisfy the appearance of justice."[127] These fairness concerns are particularly acute, given that *Heck*'s application to prison disciplinary proceedings almost uniformly applies to civil rights suits brought by our most vulnerable of citizens[128] and arise in cases where litigants are proceeding *pro*

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[119] *See, e.g.*, Thomas v. Eby, 481 F.3d 434, 440 (6th Cir. 2007) (no *Heck* bar on retaliation claim because under Michigan law the deprived disciplinary credits are tied to a prisoner's parole date, but don't affect when a sentence expires).

[120] 142 S. Ct. 2214, 2222 (2022).

[121] *Id.* at 2225.

[122] *Id.*; *see also Defining the Reach of* Heck, *supra* note 17 at 877 (listing one-year filing deadline, requirement to exhaust in state court before pursuing federal habeas, the limitations on evidentiary hearings, and the stringent standard of § 2254(d) for a claim that was adjudicated on the merits in state court as additional barriers under federal habeas).

[123] *Nance*, 142 S. Ct. at 2225.

[124] Wilkerson v. Wheeler, 772 F.3d 834, 840 (9th Cir. 2014).

[125] *See, e.g.*, *An Overview of the First Step Act*, *supra* note 10 (noting offenses that make people ineligible to earn good-time credits "are generally categorized as violent, or involve terrorism, espionage, human trafficking, sex and sexual exploitation," as well as repeat felon-in-possession or "high-level drug offenses").

[126] *See, e.g.*, Steiner & Cain, *supra* note 11, at 72 & n.1 (noting in Midwestern state studied individuals sentenced to a mandatory minimum prison term were not eligible to receive good-time credits until the mandatory portion of their sentence had expired).

[127] Offutt v. United States, 348 U.S. 11, 14 (1954).

[128] The Supreme Court has described prisoner suits as "rais[ing] heretofore unlitigated issues" and serving as "the first line of defense against constitutional violations." Bounds v. Smith, 430 U.S. 817, 828 (1977).

se.[129] In short, allowing prison disciplinary proceedings to bar § 1983 excessive-force claims turns the application of *Heck* into little more than a game of chance, resulting in similarly situated plaintiffs finding their suits to be *Heck*-barred (or not) based on factual quirks unrelated to the merits of their claims or the severity of the complained-of conduct. That can't be right.

III. A Path Out

But here's the good news: it doesn't have to be this way. *Heck*—properly construed—should not be implicated by an excessive-force claim against prison officials, even if those officials launder their misbehavior through the prison disciplinary system. That is, *Heck* is currently misapplied and stretched beyond the bounds that its rationale can support. This Part provides various options for litigants and courts to, respectively, argue and conclude that these suits pose no *Heck* problem. First, these are properly understood as a species of conditions-of-confinement suits, to which *Heck* does not apply, and its motivating policies do not support. Second, excessive-force suits within prison do not "necessarily imply" the invalidity of anything. Third, the *Heck* bar should not apply to the factual determinations of disciplinary proceedings because they are quite a different beast from the state-court criminal proceedings to which *Heck* normally gives deference, where far more procedural protections apply.

A. These Are Conditions-of-Confinement Suits, to Which Heck *Doesn't Apply*

The *Heck* rule arose "at the intersection" of § 1983 and habeas corpus and sought to maintain the primacy of habeas as the federal-court forum for attacking the validity of a state conviction or sentence.[130] *Heck*'s central rationales—avoiding parallel litigation and collateral attacks on the conviction, and supporting finality and consistency in the criminal process—simply are not at play here, where a person doesn't care to (and has little incentive to) challenge what happened in the disciplinary proceeding, given the relatively small difference the results of a particular disciplinary hearing has on his sentence. All the person seeks is a venue to bring a claim related to what they experienced in prison. In fact, excessive-force suits by their nature are about the conditions of a person's confinement, not the validity or length of confinement and do not challenge the adequacy of any conviction or disciplinary

[129] *See, e.g.*, Garrett v. Winn, 778 F. App'x 458, 459 (9th Cir. 2019) (dismissing *pro se* prisoner's excessive-force claim as *Heck*-barred by prison disciplinary violation); Richards v. Dickens, 411 F. App'x 276, 278–79 (11th Cir. 2011) (per curiam) (same); Arceneaux v. Leger, 251 F. App'x 876, 877–78 (5th Cir. 2007) (per curiam) (same); Jennings v. Mitchell, 93 F. App'x 723, 725 (6th Cir. 2004) (same); Wooten v. Law, 118 F. App'x 66, 67–68 (7th Cir. 2004) (same).

[130] 512 U.S. 477, 480–82 (1994).

violation. They also seek only damages, not the reinstatement of their good-time credits; and damages are not available in habeas.[131]

Indeed, the Supreme Court routinely draws this very line. In *Nelson v. Campbell*, for instance, the Court distinguished suits in which a prisoner seeks injunctive relief challenging the fact of his conviction or the duration of his sentence from "constitutional claims that merely challenge the conditions of a prisoner's confinement."[132] The latter "fall outside of [habeas's] core and may be brought pursuant to § 1983 in the first instance."[133] Excessive-force actions arising in prison are properly characterized as part of the latter category: conditions-of-confinement suits to which *Heck* does not apply.[134]

It is one thing to say—as the Supreme Court has in *Preiser*, *Wolff*, and *Edwards*—that a prisoner cannot bring a § 1983 suit seeking restoration of their good-time credits, or raising constitutional issues (say, due process claims) that call into question the results of a disciplinary proceeding; these must be channeled to the state, first, and then to federal habeas, because they involve a headlong challenge to the procedures a state has chosen to implement at one of their prisons.[135] But where the disciplinary proceeding has—at most—a glancing connection to the underlying claim a plaintiff would bring, *Heck*'s interests in avoiding parallel litigation and collateral attacks on the conviction, and in supporting finality and consistency in the criminal process, are not furthered by applying *Heck*. Nor are the comity concerns that underlie the doctrine at play, because there's no reason to think that state post-conviction courts are more competent (or more appropriate) to decide these type of § 1983 excessive-force claims.[136] In short, excessive-force suits brought by incarcerated people are properly construed as conditions-of-confinement claims, and there is no policy-based reason to apply the *Heck* bar to them.

[131] This factor is not dispositive because, of course, *Heck* applies to damages actions as well as those seeking injunctive relief, so long as the § 1983 suit would "necessarily imply" the invalidity of the prior conviction or sentence. 512 U.S. at 487.

[132] 541 U.S. 637, 643 (2004).

[133] *Id.* at 643 (citing Muhammad v. Close, 540 U.S. 749, 750 (2004) and Preiser v. Rodriguez, 411 U.S. 475, 498–99 (1973)); *see also* Wilkinson v. Dotson, 544 U.S. 74, 84 (2005). ("[T]his Court has repeatedly permitted prisoners to bring § 1983 actions challenging the conditions of their confinement." (citing Cooper v. Pate, 578 U.S. 546 (1964) (per curiam) and Wilwording v. Swenson, 404 U.S. 249 (1971) (per curiam)); *Muhammad*, 540 U.S. at 750 ("[R]equests for relief turning on circumstances of confinement may be presented in a § 1983 action.").

[134] *See* Porter v. Nussle, 534 U.S. 516, 527 (2002) (holding that excessive-force claims "challeng[e] the conditions of confinement").

[135] *See Preiser*, 411 U.S. at 489; Wolff v. McDonell, 418 U.S. 539, 554 (1974); Edwards v. Balisok, 520 U.S. 641, 646–47 (1997).

[136] *Preiser*, 411 U.S. at 491.

B. Excessive Force Suits Do Not "Necessarily Imply" Anything

Even assuming we're in *Heck*-land for excessive-force claims in prison, there's yet another reason that *Heck* shouldn't bar these type of suits: they don't "necessarily imply" the invalidity of the disciplinary hearing. *Heck*, recall, represents the "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction."[137] That is why the bar is limited to § 1983 suits that "*necessarily* imply the invalidity of [the plaintiff's] conviction or sentence."[138] The word "necessarily" is critical.[139] "Necessarily" means "of necessity" or "unavoidably."[140]

Consistent with this line, the Supreme Court holds that a § 1983 suit is barred only where there is a direct connection between the § 1983 suit and the other adjudication in question—in other words, if a plaintiff prevailing in their § 1983 suit would *necessarily* undermine the validity of the conviction or sentence. This explains why the Supreme Court has consistently barred § 1983 suits where a plaintiff challenges the procedural adequacy of his conviction or sentence itself. In *Preiser*, for example, the petitioners alleged due-process violations and requested as a remedy the restoration of their good-time credits, which "in each case would result in their immediate release from confinement in prison."[141] And in *Heck*, although the petitioner requested monetary damages, rather than immediate release, his claim still directly attacked the procedural soundness of his conviction.[142] Similarly, in *Edwards*, the Court held that a plaintiff's § 1983 challenge to the validity of a state's disciplinary procedures used to deprive him of good-time credits was *Heck*-barred because "[t]he principal procedural defect complained of by [the plaintiff] would, if established, necessarily imply the invalidity of the deprivation of his good-time credits."[143]

But where success in a § 1983 suit would not *necessarily* imply the invalidity of a conviction or sentence, the Court has been equally rigorous in its refusal to apply *Heck*. In *Wilkinson v. Dotson*, for instance, the Court held that a § 1983 challenge to Ohio's parole proceedings was not *Heck*-barred where petitioners' claims would not "necessarily spell speedier release."[144] In so holding, the Court cautioned against applying the *Heck* bar to claims whose connection to any "release from confinement" was "too tenuous."[145]

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[137] 512 U.S. 477, 484 (1994).

[138] *Id.* at 487 (emphasis added).

[139] *See* Nelson v. Campbell, 541 U.S. 637, 647 (2004) ("[W]e were careful in *Heck* to stress the importance of the term 'necessarily.'"); Nance v. Ward, 142 S. Ct. 2214, 2222 (2022) ("[W]e have underscored that the implication must be '*necessar[y].*'") (quoting Wilkinson v. Dotson, 544 U.S. 74, 81 (2005)).

[140] *Necessarily*, *supra* note 46.

[141] 411 U.S. at 476–77; *see also* Wolff v. McDonell, 418 U.S. 539, 554 (1974) ("The complaint in this case sought restoration of good-time credits, and the Court of Appeals correctly held this relief foreclosed under *Preiser*.").

[142] 512 U.S. at 479, 481–82.

[143] 520 U.S. 641, 646 (1997).

[144] 544 U.S. 74, 82 (2005).

[145] *Id.* at 78.

Likewise, in *Skinner v. Switzer*,[146] the Court reached the same result in a § 1983 suit seeking post-conviction DNA testing of crime-scene evidence.[147] The Court allowed the claim to proceed, holding that, while the petitioner's aim was to establish his innocence and achieve release from custody, the result of success in his § 1983 suit would not *necessarily* be release from custody—who knows what the DNA test would reveal.[148] So too in *Wolff*, where the Supreme Court authorized a claim for damages connected to the plaintiff's allegation that his disciplinary proceedings did not comply with the Due Process Clause.[149] Subsequently, in *Heck*, the Court read that passage as "recogniz[ing] a § 1983 claim for using the wrong procedures, not for reaching the wrong result (*i.e.*, denying good-time credits)."[150] That was permissible because it wasn't clear that "using the wrong procedures necessarily vitiated the denial of good-time credits."[151]

In short, the Supreme Court has only barred § 1983 claims whose success would have *necessarily* undermined the validity of a conviction or disciplinary violation.[152] But where the challenge does not "seek to invalidate the duration of [a prisoner's] confinement," the Court has made clear that "§ 1983 remains available."[153]

Excessive-force cases arising in prison, where the episode has gone through the prison's disciplinary process and the plaintiff has had good-time credits revoked, are much closer to *Wilkinson*, *Skinner*, and *Wolff* (rejecting *Heck*'s application) than to *Preiser* and *Edwards* (applying *Heck*). The connection between success on an excessive-force claim and the restoration of good-time credits is, like the connection between the § 1983 claims and the underlying convictions in *Wilkinson* (new parole proceedings), *Skinner* (DNA testing), and *Wolff* (new disciplinary procedures), too "tenuous" for *Heck* to apply.[154] Just as we don't know for sure that a new parole hearing would let the person out of prison faster (*Wilkinson*), that DNA testing would exonerate someone (*Skinner*), or "that using the wrong procedures necessarily vitiated the denial of good-time credits" (*Wolff*),[155] it's similarly not clear that a finding that defendants used excessive force would "necessarily" undermine the disciplinary board's revocation of good-time credits.[156]

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[146] 562 U.S. 521 (2011).
[147] *Id.* at 529.
[148] *Id.* at 534.
[149] 418 U.S. 539, 554 (1974).
[150] 512 U.S. 477, 482–83 (1994).
[151] *Id.* at 483.
[152] *See* Preiser v. Rodriguez, 411 U.S. 475, 477 (1973); Edwards v. Balisok, 520 U.S. 641, 646 (1997).
[153] *See Wilkinson*, 544 U.S. at 81; *Skinner*, 562 U.S. at 534.
[154] *See Wilkinson*, 544 U.S. at 81; *Skinner*, 562 U.S. at 534.
[155] Heck v. Humphrey, 512 U.S. 477, 483 (1994) (discussing Wolff v. McDonell, 418 U.S. 539 (1974)).
[156] The board revoked Mr. Santos's good-time credits relating to his aggravated disobedience, defiance, and property destruction charged. Santos v. White, 18 F.4th 472, 476 (5th Cir. 2021). His other violations resulted in sanctions such as loss of canteen and phone privileges, and are unquestionably not barred by *Heck*. *Id.*

In other words, if we presume excessive-force was applied, who knows what that does to the disciplinary ruling that led to the revocation of good-time credits? This is akin to *Wolff* allowing a claim for damages for applying the wrong procedures (but not the wrong result) to go forward[157]—here, at most a successful § 1983 action would suggest the prison disciplinary proceeding considered *some* incorrect facts. But we don't know what happens after that. This is, in part, because in the prison disciplinary context it may not be obvious what facts a decision rests on, or what the elements of violations are, and that is true in Mr. Santos's case.[158] All we know in Mr. Santos's case, is that the disciplinary board found the officers more credible than Mr. Santos, imposed a number of violations, and revoked some of his good-time credits related to certain of these violations.[159] What we don't know is how a successful § 1983 excessive-force claim would impact that analysis. This "unknown" makes this case like the DNA testing in *Skinner* or the new parole proceedings in *Wilkinson*. Where we can't say the § 1983 claim *necessarily* undermines the disciplinary board decision—where, like here, the record of the disciplinary proceeding is deficient in this regard—the *Heck* doctrine just doesn't apply.

C. Prison Disciplinary Proceedings Are Different than State-Court Proceedings

A final reason to not apply *Heck* to excessive-force claims by prisoners where the episode has gone through a prison disciplinary process and the plaintiff's good-time credits were revoked is that doing so gives preclusive effect to shoddy procedures that look nothing like the state-court adjudications at issue in *Heck*'s heartland. The Supreme Court has only ever applied the *Heck* bar in the prison-disciplinary context where a plaintiff's § 1983 claim *directly* challenges the procedural adequacy of the disciplinary proceedings themselves.[160] Extending this rule to bar § 1983 claims that might theoretically be factually inconsistent with a prison disciplinary determination, however, undermines judicial supremacy in a uniquely concerning way. After all, prison disciplinary proceedings are starkly different from the state court criminal proceedings to which *Heck* usually applies—yet application of the *Heck* bar in this context imbues their decisions with the preclusive effect of a criminal conviction.

"Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply."[161] In disciplinary proceedings, the Supreme Court has explained, prisoners generally have no right to confrontation or cross-examination.[162]

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[157] *Heck*, 512 U.S. at 482–83.
[158] *See Santos*, 18 F.4th at 476.
[159] *See supra* note 79 and related text.
[160] Preiser v. Rodriguez, 411 U.S. 475 (1973); Edwards v. Balisok, 520 U.S. 641 (1997).
[161] Wolff v. McDonnell, 418 U.S. 539, 556 (1974).
[162] *Id.* at 567–68.

And although "ordinarily the right to present evidence is basic to a fair hearing," prison officials may refuse to allow incarcerated individuals to call witnesses in the disciplinary-hearing setting due to "the penological need to provide swift discipline in individual cases."[163] A prison disciplinary board may "limit access to other inmates to collect statements or to compile other documentary evidence."[164] A prisoner's silence may be used against him.[165] In making its determination, a board may even consider facts not presented at the hearing.[166] And, crucially, prisoners "do not have a right to either retained or appointed counsel in disciplinary hearings,"[167] because counsel "would inevitably give the proceedings a more adversary cast and tend to reduce their utility as a means to further correctional goals."[168] What is more, these decisions do not receive meaningful federal-court review; due process requires only that "the record is not so devoid of evidence that the findings of the disciplinary board [a]re without support."[169] Given these minimal procedural guardrails, it should not be a surprise that prisoners are rarely successful in challenging the charges against them.[170]

The procedures used in disciplinary proceedings are not the only distinguishing factor from the state-court criminal convictions to which *Heck* gives deference; disciplinary-board members themselves are quite unlike state-court judges. A prison disciplinary body's function is not "a 'classic' adjudicatory one."[171] Prison disciplinary adjudicators, "unlike a federal or state judge, are not 'independent'; to say that they are is to ignore reality."[172] Indeed, those decisionmakers—entrusted with the fact-finding that is given preclusive effect if *Heck* applies—are not even "professional hearing officers, as are administrative law judges."[173] "They are, instead, prison officials," employed by the very agency responsible for the prisoner's incarceration, and "direct subordinates of the warden[,] who reviews their decision."[174] As a result, "[t]he credibility determination they make often is one between a co-worker and an inmate" and "[t]hey thus are under obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee."[175] As the Supreme Court has put it: "It is the old situational problem of the relationship between the keeper and the kept, a relationship that hardly is conducive to a truly adjudicatory performance."[176]

[163] Ponte v. Real, 471 U.S. 491, 495 (1985).
[164] *Wolff*, 418 U.S. at 566.
[165] Baxter v. Palmigiano, 425 U.S. 308, 315 (1976).
[166] *Id.* at 322 n.5.
[167] *Id.* at 315 (citation omitted).
[168] *Wolff*, 418 U.S. at 570.
[169] Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 457 (1985).
[170] Steiner & Cain, *supra* note 11, at 73.
[171] Cleavinger v. Saxner, 474 U.S. 193, 203 (1985).
[172] *Id.*
[173] *Id.* at 203–04.
[174] *Id.* at 204.
[175] *Id.*
[176] *Id.*

Thus, consider the probable effect of applying the *Heck* bar to § 1983 excessive-force claims that implicate facts underlying a prison disciplinary violation. A prison guard, secure in his knowledge that his colleagues will accept his version of events in a prison disciplinary proceeding, has free rein to violate the rights of those with whose care he is entrusted. So long as the disciplinary board—which need not hear at all from the prisoner and is comprised of the officer's coworkers—signs off on his version of what happened, rather than siding with the prisoner, those violations will forever remain beyond the ambit of a § 1983 suit. This is not nightmare speculation; as Judge Willett has observed, it appears to actually be happening.[177]

It is precisely these differences between the prison disciplinary proceeding and a "classic" state-court adjudication that makes it plain why *Heck*, properly construed, should not apply to § 1983 suits that do not directly attack the results of a prison disciplinary board.

Conclusion

This Article set to shed light on an application of *Heck* that has largely gone unnoticed—to prisoner excessive-force suits, where the episodes in question were the subject of a disciplinary board proceeding in which the plaintiff lost good-time credit. After setting out the *Heck* doctrine, the Article turned to this application of *Heck*, and set out three problems with the doctrine—it yields an inadequate protection of crucial constitutional rights for incarcerated people, it is inadministrable, and it leads to inconsistent and arbitrary results. There are no doubt others. Finally, the Article suggested some doctrinal "paths out" of this bad outcome, under current caselaw. Advocates might try to push these arguments, and courts may want to adopt them. It's worth noting that none of these options out of the *Heck* thicket involve the Supreme Court changing its precedent; rather, the articulated options out are viable under the Court's current doctrine. In addition, hopefully this is just the start of scholarly attention to this problem, and no doubt there are further solutions that subsequent articles could propose. Ultimately, it is fundamentally unfair and a perversion of the *Heck* doctrine to allow prison officials to insulate themselves forever from a § 1983 suit for excessive-force by writing cover charges to paper over the incident, and then having their side of the story rubber-stamped by a prison disciplinary board—made up of prison officials, and lacking the procedural protections of state criminal courts.

[177] *See* Santos v. White, 18 F.4th 472, 479 n.15 (5th Cir. 2021) (Willett, J., concurring) (noting defendant's "apparent familiarity with the impact of *Heck* on civil rights claims," and collecting four distinct excessive-force claims against him deemed *Heck*-barred).