
Alice Huang

Follow this and additional works at: http://lawdigitalcommons.bc.edu/bclr

Part of the Constitutional Law Commons, Criminal Law Commons, Criminal Procedure Commons, and the Law Enforcement and Corrections Commons

Recommended Citation


This Comments is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydlowski@bc.edu.
WHEN FREEDOM PREVENTS VINDICATION: WHY THE HECK RULE SHOULD NOT BAR A PRISONER’S § 1983 ACTION IN DEEMER v. BEARD

Abstract: In 2014, in Deemer v. Beard, the U.S. Court of Appeals for the Third Circuit held that the Heck v. Humphrey rule required all plaintiffs seeking damages for unconstitutional conviction under § 1983 to demonstrate that the criminal proceeding in question terminated in their favor. This decision defies a majority of circuit courts, which have held that there exists an exception to Heck if the plaintiff does not have other federal means of redress. In its decision, the Third Circuit aligned itself with three other appellate courts that did not take a plaintiff’s lack of access to other means of federal relief into consideration. Although these circuit courts have correctly adhered to binding U.S. Supreme Court precedent, doing so places an unfair burden upon a plaintiff’s ability to challenge an unconstitutional conviction. This Comment contends that the U.S. Supreme Court should settle the Heck circuit split and allow such an exception to the Heck rule to meet the underlying principles of § 1983.

INTRODUCTION

Under 42 U.S.C. § 1983, a plaintiff can bring a claim against the state for the unconstitutional deprivation of rights.1 Plaintiffs can challenge a conviction or sentence by using § 1983 to hold state actors accountable in a federal forum for violating federally protected rights.2 Although the U.S. Supreme Court has often interpreted the language of § 1983 broadly, it has also set limitations on this cause of action in specific situations.3 In 1994, in Heck v. Humphrey, the U.S. Supreme Court created a favorable termination requirement to restrict the ability of convicted plaintiffs to challenge their incarceration using § 1983, known as “the Heck rule.”4 This decision prevented

---

2 Heck v. Humphrey, 512 U.S. 477, 480, 502 (1994) (Souter, J., concurring). Section 1983 protects inmates against unconstitutional treatment. Id. at 480. By providing a federal forum, § 1983 removes possible state court bias when a plaintiff is challenging the actions of the state. See id. at 501 (Souter, J., concurring).
3 Id. at 486–87 (majority opinion) (placing a favorable termination restriction on § 1983 alleging unconstitutional conviction or imprisonment); id. at 491 (Thomas, J., concurring) (citing Preiser v. Rodriguez, 411 U.S. 475, 489 (1973)) (referring to § 1983 as a “general” and expansive statute).
4 Id. at 489 (majority opinion); see id. at 492 (Souter, J., concurring). To achieve a favorable termination, the plaintiff’s challenged conviction must have been “reversed on direct appeal, ex-
certain plaintiffs from the possibility of a federal remedy against state actors for an infringement of constitutional rights. Thus, § 1983 became unavailable to the individuals it was intended to protect.

In 2014, in Deemer v. Beard, the U.S. Court of Appeals for the Third Circuit applied the Heck rule to a plaintiff who had exhausted his options for state and federal remedy because his release rendered those avenues moot. Although the Third Circuit and three other circuit courts have maintained this approach, the other seven circuit courts have held that Heck does not apply when a plaintiff has exhausted his options and has no other forum for recourse.

This Comment argues that, although the Supreme Court has denied reviewing Deemer, it must resolve the circuit split soon and allow an exception to the Heck rule because it is a denial of constitutional rights to impose the Heck rule on prisoners who do not have another forum to seek redress through no fault of their own. Part I of this Comment details the Supreme
Courts’s decision in *Heck* and reviews the facts and procedural history of *Deemer*. Part II discusses the circuit split and the rationale used by different circuit courts to justify their decision to apply or not apply the *Heck* rule to released inmates. Lastly, Part III argues that the even though the Court declined to review the Third Circuit’s ruling in *Deemer*, it should address the issues *Deemer* raises soon because, in the interim, circuit courts are bound by binding precedent that goes against the goals of § 1983. This will prevent further infringement upon the very rights § 1983 protects and stop circuit courts from undermining *Heck* on its behalf.

**I. THE HECK RULE AND ITS APPLICABILITY TO INMATES SEEKING SECTION 1983 DAMAGES**

Lower courts have struggled on whether or not the *Heck* rule applies if a plaintiff has no other recourse for relief. Section A of Part I addresses the U.S. Supreme Court’s ruling in *Heck* and the impact of restricting plaintiffs from using §1983 to recover damages for unconstitutional convictions. Section B of Part I addresses how the U.S. Court of Appeals for the Third Circuit applied the *Heck* rule in *Deemer*.

**A. The Heck Rule Requires Plaintiffs to Show a Favorable Termination on Their Conviction to Have a Cause of Action Under 42 U.S.C. § 1983**

In *Heck*, the Supreme Court held that, in order for a plaintiff to bring a damages claim for an unconstitutional conviction under § 1983, the sentence needs to be “reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called invalid by a state tribunal authorized to make such determination, or called

principles that animated the Supreme Court’s opinion in *Heck* should lead to a different result, were the court to consider the issue anew in the fact pattern before us.”). The *Heck* rule should not apply when plaintiffs have appropriately sought state or federal relief but are denied those opportunities as a result of their release. *See Deemer II*, 557 F. App’x at 168 (Rendell, J., concurring). Liberty is a fundamental concept in the U.S. Constitution. *See generally U.S. CONST. pmbl.* (outlining the fundamental ideas protected by the United States Constitution). Prisoners often challenge their imprisonment by claiming that they were deprived of due process rights as well as other constitutional protections. *See, e.g.*, *Deemer II*, 557 F. App’x at 164 (concerning Deemer’s contentions that the state violated his Eighth and Fourteenth Amendment rights); *Gilles*, 427 F.3d at 203 (concerning Gilles’s contentions that the state violated his First Amendment rights).

10 *See infra* notes 14–43 and accompanying text.
11 *See infra* notes 45–67 and accompanying text.
12 *See infra* notes 68–85 and accompanying text.
13 *See infra* notes 68–85 and accompanying text.
14 *See infra* notes 25–43 and accompanying text (describing how the Third Circuit dealt with the issue in *Deemer*); *see also infra* notes 47–67 and accompanying text (discussing the circuit split in interpretation of the *Heck* rule).
15 *See infra* notes 17–24 and accompanying text.
16 *See infra* notes 25–43 and accompanying text.
into question by a federal court’s issuance of a writ of habeas corpus.”\textsuperscript{17} Accordingly, a plaintiff cannot bring a § 1983 claim if the sentence has not been nullified favorably in one of the aforementioned circumstances.\textsuperscript{18}

To reach this conclusion, the Court examined the required elements in malicious prosecution actions, which it considered the closest equivalent to an unconstitutional conviction claim.\textsuperscript{19} To avoid parallel litigation, plaintiffs in malicious prosecution suits must show that the criminal proceeding under review ended in their favor.\textsuperscript{20} This favorable termination requirement prevents plaintiffs from using a civil suit to make a “collateral attack” against his sentence.\textsuperscript{21} Thus, applying this reasoning, the Supreme Court established the \textit{Heck} rule: courts were required to dismiss a § 1983 cause of action for damages unless the plaintiff’s sentence was previously invalidated.\textsuperscript{22} This applied even to a plaintiff that had used every possible avenue of state and federal

\begin{itemize}
\item \textsuperscript{18} \textit{See Heck}, 512 U.S. at 486–87.
\item \textsuperscript{19} \textit{Id.} at 483, 484 (citing Memphis Comty. Sch. Dist. v. Stachura, 477 U.S. 299, 305 (1986)) (“[U]nlike the related cause of action for false arrest or imprisonment, [malicious prosecution] permits damages for confinement imposed pursuant to legal process.”).
\item \textsuperscript{20} \textit{Id.} at 484 (citing Carpenter v. Nutter, 59 P. 301 (Cal. 1899)); W. PAGE KEETON ET AL., PROSSER AND KEETON ON LAW OF TORTS 874 (5th ed. 1984)); 8 STUART M. SPEISER ET AL., \textit{THE AMERICAN LAW OF TORTS} § 28:5, at 24 (1991). If an individual brought a civil suit against the state while defending a criminal case, this would constitute parallel litigation. \textit{Heck}, 512 U.S. at 484. The civil and criminal court would both be determining probable cause and guilt. \textit{Id.} This created the possibility of contradictory results where an individual won the civil case and received damages despite being convicted in the criminal case. \textit{See id.}
\item \textsuperscript{21} \textit{Heck}, 512 U.S. at 484 (citing SPEISER ET AL., \textit{supra} note 20, § 28:5, at 24) (regarding a criminal defendant’s ability to use a civil suit to attack his criminal prosecution). A collateral attack is an attack on a judgment in a proceeding other than a direct appeal. \textit{BLACK’S LAW DICTIONARY}, \textit{supra} note 17, at 318.
\item \textsuperscript{22} \textit{See Heck}, 512 U.S. at 487 (“[T]he 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 . . . .”).
\end{itemize}
resolution. The Supreme Court’s 1998 decision in Spencer v. Kemna questioned this expansive reach in several concurring and dissenting opinions.

B. The Third Circuit’s Application of the Heck Rule in Deemer v. Beard

James Deemer brought suit pursuant to § 1983 against the former secretary of the Pennsylvania Department of Corrections and other individuals involved in prolonging his incarceration. He alleged his imprisonment was extended for a year and a day beyond the expiration of his sentence.

In 2007, Deemer was granted parole by the Pennsylvania Board of Probation and Parole (“Parole Board”). A few months later, he was arrested and charged in New Jersey for a separate drug violation that was eventually dismissed. Following his return to Pennsylvania, the Parole Board gave Deemer the maximum sentence on his conviction by adding on the days he did not serve before his parole release. Deemer appealed the decision, arguing that his incarceration in New Jersey should be credited towards his remaining sentence. The Commonwealth Court of Pennsylvania dismissed Deemer’s appeal because it was still pending after his release in June 2010. Deemer had also petitioned for a writ of habeas corpus in the Schuylkill County Court of Common Pleas, which similarly became moot once his sentence ended.

23 Id. at 489. Justice Scalia emphasized the expansiveness of the Heck rule by refuting Justice Souter’s concurrence that the Heck rule should not be applicable to released convicts that had no habeas corpus rights. See id. at 490 n.10.

24 See, e.g., 523 U.S. at 20–21 (Souter, J., concurring) (stating the need to limit the Heck rule’s application for prisoners without habeas corpus access); id. at 21 (Ginsburg, J., concurring) (same); id. at 25 n.8 (Stevens, J., dissenting) (same).

25 See Deemer II, 557 F. App’x at 164.

26 See id.

27 Id. at 163. Deemer had a two-to-six year sentence. Id. At the time of his release on parole, he had 489 days left on his conviction of two counts of retail theft. Id. A condition of Deemer’s parole, which he violated subsequently, required his enrollment in a drug treatment program. Id. After Deemer violated his parole, the Parole Board issued a warrant for his arrest. Id.

28 Id.; Complaint at 3–4, Deemer v. Beard (Deemer I), No. 1:CV-12-1143, 2013 WL 1149307 (M.D. Pa. Mar. 19, 2013), aff’d, 557 F. App’x 162 (3d Cir.), cert. denied, 135 S. Ct. 50 (2014). Deemer was incarcerated in the Warren County prison in New Jersey for 366 days before he was transferred back to Pennsylvania. Deemer II, 557 F. App’x at 163. The Parole Board did not take Deemer’s detainment in Warren County of 366 days into consideration when determining his new release date of June 17, 2010. Id.

29 Deemer II, 557 F. App’x at 163.


31 Deemer II, 557 F. App’x at 164. Previously, the Parole Board had rejected Deemer’s petition for an administrative review on December 18, 2009. Id. Deemer had completed his sentence before his appeal on his conviction reached the Commonwealth Court of Pennsylvania. See id.

32 Id.; Plaintiff’s Memorandum of Law in Opposition to Defendant’s Motion to Dismiss at 2, Deemer I, 2013 WL 1149307 (No. 1:12-CV-1143) [hereinafter Plaintiff’s Opposition to Defendant’s Motion to Dismiss].
Following his discharge, Deemer sought monetary damages by filing a § 1983 complaint against several defendants with the Middle District of Pennsylvania. He contended that the Parole Board infringed upon his constitutional rights under the Eighth and Fourteenth Amendment by extending his sentence beyond the maximum time the court of conviction had issued. The defendants moved to dismiss the case, arguing that the Heck rule prevented Deemer’s claim from moving forward. Deemer reasoned that Heck did not apply to his challenge because of his diligence in pursuing all other possible avenues of relief before finally resorting to filing suit against defendants. The district court did not find Deemer’s response persuasive. It cited the U.S. Court of Appeals for the Third Circuit’s decision in Williams v. Consovoy in 2006 as precedent to apply the Heck rule even if Deemer had no other forum for remedy due to the mootness of his case.

In Deemer’s appeal to the Third Circuit, the court upheld the existing precedent it set in Williams and affirmed the district court’s decision. The court reiterated its stance that the Heck rule applied equally in all § 1983 claims, even to plaintiffs who do not have a habeas corpus remedy.

Although the concurrences and dissent in Spencer challenged the use of the Heck rule in this situation, they did not sway the Third Circuit’s interpr-
Even if the five justices in Spencer meant to establish precedent for reinterpreting the Heck rule, the Third Circuit rejected the idea of using a non-majority opinion to overrule the Court’s decision in Heck. Deemer subsequently filed a petition for a writ of certiorari to the Supreme Court that was denied.

II. THE CIRCUIT COURT SPLIT REGARDING THE INTERPRETATION OF THE HECK RULE

Circuits are conflicted on the interpretation of the U.S. Supreme Court’s ruling in 1994 in Heck v. Humphrey and whether there exists an exception to the Heck rule for plaintiffs with no other means of relief. Section A discusses Justice Souter’s concurrence in Heck and the Supreme Court’s application of the Heck rule in 1998 in Spencer v. Kemna. Section B discusses the circuit split regarding the interpretation of the Heck rule after Spencer.

A. Justice Souter’s Concurrence in Heck v. Humphrey and its Reemergence in Spencer v. Kemna

In Spencer, the Supreme Court discussed the application of the precedent it set in Heck. In concurring and dissenting opinions, five justices adopted the reasoning from Justice Souter’s Heck concurrence.

---

41 See id. (quoting Gilles, 427 F.3d at 209–10); see also Spencer, 523 U.S. at 20–21 (Souter, J., concurring) (explaining that it’s important to interpret and restrict the majority opinion in Heck to prisoners without habeas corpus access); Spencer, 523 U.S. at 21 (Ginsburg, J., concurring) (same); Spencer, 523 U.S. at 25 n.8 (Stevens, J., dissenting) (agreeing with Justice Souter’s view that the plaintiff was not barred by the Heck rule against bringing suit under § 1983).
42 Deemer II, 557 F. App’x at 166.
44 See infra notes 47–67 and accompanying text.
45 See infra notes 47–56 and accompanying text.
46 See infra notes 57–67 and accompanying text.
48 See Spencer, 523 U.S. at 17; id. at 21 (Souter, J., concurring); id. at 21 (Ginsburg, J., concurring); id. at 25 n.8 (Stevens, J., dissenting); see also Heck, 512 U.S. at 500, 501 (Souter, J., concurring) (asserting that there should be an exception to the Heck rule if the plaintiff has no access to habeas corpus relief due to his release because the very purpose of § 1983 is to “interpose the federal courts between the States and the people”); Deemer v. Beard (Deemer II), 557 F. App’x 162, 165 (3d Cir. 2014) (acknowledging the potential interpretation of the Heck rule based upon the Spencer plurality), cert. denied, 135 S. Ct. 50 (2014). The plaintiff in Spencer argued that the Heck rule would prevent him from seeking damages under § 1983 because he did not incur a favorable termination of his sentence. Spencer, 523 U.S. at 19. He asserted that his habeas corpus claim was not moot because Heck would prevent any other avenue for federal redress against the state’s unconstitutional revocation of his parole. See id.
In Justice Souter’s concurrence in *Heck*, he worried how *Heck*’s favorable termination rule would apply when there is no intersection between § 1983 and the habeas corpus statute.⁴⁹ Those in state custody have an available remedy through habeas corpus for due process, but those who are not in custody do not have the option of invoking federal habeas jurisdiction.⁵⁰ Without a writ of habeas corpus, the only way a plaintiff can challenge the constitutionality of their conviction in a federal forum is by bringing a cause of action under § 1983.⁵¹ Justice Souter suggested that the Court could not prevent plaintiffs that are not in state custody from bringing a claim using § 1983 because it goes against the congressional intent behind the statute.⁵² He concluded that the applicability of the habeas corpus statute should be an important consideration when determining whether *Heck*’s limitations on § 1983 apply to the facts of a case.⁵³

In his concurrence in *Spencer*, Justice Souter once more emphasized the importance of limiting the application of the *Heck* rule to only inmates that are pursuing damages for unconstitutional convictions through a §1983 action.⁵⁴ Following a prisoner’s release, a moot habeas corpus claim should not prevent relief under § 1983.⁵⁵ Overall five justices supported Justice Souter’s

---

⁴⁹ See *Heck*, 512 U.S. at 500 (Souter, J., concurring) (referring to “individuals not ‘in custody’ for habeas purposes” and released prisoners who are unable to bring habeas corpus claims).

⁵⁰ See id.

⁵¹ See id.

⁵² See id. at 501 (citing Wyatt v. Cole, 504 U.S. 158, 158 (1992)); *Civil Suits for Violations of Civil Rights: Hearing and Markups Before the Subcomm. on Judiciary, Manpower, & Educ. and the Comm. on the D.C. H.R.*, 96th Cong. 2 (1979) (statement of Rep. Romano L. Mazzoli, Chairman, Subcomm. on Judiciary, Manpower, & Educ.) (“[T]he citizens of all the States of the Union . . . should not have to rely upon local courts for adjudication of their Constitutional grievances against local authorities.”). Justice Souter provided an example of a “former slave framed by Ku Klux Klan-controlled law-enforcement . . . and convicted by a Klan-controlled state court . . . [who didn’t have] proof of unconstitutionality until after his release from state custody.” *Heck*, 512 U.S. at 501–02. The Heck rule would prevent him from seeking remedy via a § 1983 action unless he convinced a biased state court that his conviction was unlawful. See id. at 502. The unfair result and inability of the plaintiff to reach a federal forum is the opposite of what § 1983 sought to achieve. See id. Justice Souter went on to posit that Congress did not intend to deny individuals who were fined unconstitutionally or those who discovered evidence of unconstitutional state action following release from prison from accessing § 1983 protections. See id.

⁵³ See *Heck*, 512 U.S. at 503 (Souter, J., concurring) (“I would not cast doubt on the ability of an individual unaffected by the habeas [corpus] statute to take advantage of the broad reach of § 1983.”).

⁵⁴ See *Spencer*, 523 U.S. at 20 (Souter, J., concurring). Justice Souter further implied that this should be the interpretation of the majority opinion in *Heck*. See id.

⁵⁵ See id. at 21 (Souter, J., concurring). Furthermore, Justice Ruth Bader Ginsburg’s concurrence reiterated that the state of the law should be in line with Justice Souter’s reasoning. *Id.* at 21 (Ginsburg, J., concurring). Likewise, Justice John Paul Stevens supported Justice Souter’s reasoning that those without access to federal habeas jurisdiction should be allowed to file for damages using § 1983. *Id.* at 25 n.8 (Stevens, J., dissenting).
B. How Circuit Courts Interpreted the Heck Rule After the Plurality Opinion in Spencer v. Kemna

As the U.S. Court of Appeals for the Third Circuit indicated in Deemer v. Beard, circuit courts are split on their interpretations of the Heck decision. The lack of a majority following Spencer left the question regarding the parameters of the Heck rule’s scope unresolved. As a result, circuit courts diverged in their application of Heck’s favorable termination requirement. The Second, Fourth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits interpret Heck in accordance with Justice Souter’s concurrence, considering the Spencer plurality to be informative of the Court’s ruling in Heck. These interpretations of the Heck rule in Spencer, which resulted in the circuit split that followed.56

56 See id. at 19–21 (Souter, J., concurring); id. at 21 (Ginsburg, J., concurring); id. at 25 n.8 (Stevens, J., dissenting); see also Deemer II, 557 F. App’x at 165, 166 (discussing how seven Courts of Appeals have cited Spencer in their decision and apply Justice Souter’s interpretation but the four other Courts of Appeals have decided to create an exception to Heck’s favorable termination requirement).  
57 See Deemer II, 557 F. App’x at 165, 166; infra notes 59–67 (discussing the divergence in circuit interpretation of the Heck rule after the Court’s decision in Spencer).  
58 See Deemer II, 557 F. App’x at 165, 166. See generally Spencer, 523 U.S. at 1 (resolving the application of the Heck rule through a plurality opinion as opposed to a consensus between a majority of justices).  
59 See Deemer II, 557 F. App’x. The concurrences and dissent of Justices Stevens, O’Connor, Souter, Ginsburg, and Breyer could be synthesized together and viewed as a plurality opinion indicative of the Court’s intended interpretation of its Heck holding. See id. On the other hand, following Spencer, there has not been a majority opinion that definitively upholds the viewpoints in Justice Souter’s concurrence in Heck leaving circuit courts uncertain on the applicability of the Spencer plurality. See id. at 166–67.  
60 See Heck, 512 U.S. at 489; Deemer II, at 165; see also Burd v. Sessler, 702 F.3d 429, 435 n.3 (7th Cir. 2012) (“The Supreme Court has not specified, in a majority holding, whether Heck applies where habeas corpus relief is unavailable, although five Justices in one opinion expressed their views that it should not . . . [thus, the Seventh Circuit] follow[s its] previous opinions in this regard.” (citation omitted)); Cohen v. Longshore, 621 F.3d 1311, 1316–17 (10th Cir. 2010) (opting to follow “the reasoning of the Second, Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits that [the court is] free to follow the five-Justice plurality’s approach in Spencer on this unsettled question of law”); Wilson v. Johnson, 535 F.3d 262, 267–68 (4th Cir. 2008) ( “[W]ith no directly applicable precedent upon which to rely . . . [the Fourth Circuit believes] that the reasoning employed by the plurality in Spencer must prevail . . . where an individual would be left without any access to federal court if his § 1983 claim was barred.”); Powers v. Hamilton Cnty. Pub. Defender Comm'n, 501 F.3d 592, 602–03 (6th Cir. 2007) (“Casting Spencer aside is something we decline to do.”); Harden v. Pataki, 320 F.3d 1289, 1301–02 (11th Cir. 2003) (“[A] claim filed pursuant to . . . § 1983 seeking damages and declaratory relief for the violation of a state prisoner’s federally protected extradition rights . . . is not barred by Heck, where the specific allegations . . . [involve failure] to provide . . . [a] habeas corpus hearing . . . ”); Nonnette v. Small, 316 F.3d 872, 876–77 (9th Cir. 2002) (“Informed as we are by the opinions in Spencer, we conclude that Heck does not preclude [the plaintiff’s] § 1983 action.”); Huang v. Johnson, 251 F.3d 65, 75 (2d Cir. 2001) (“Spencer concurrences and dissent ‘revealed that five justices hold the view that, where federal
courts consider their implementation of Justice Souter’s interpretation in \textit{Spencer} as “rule refinement.”

\cite{SupremeCourt} \textit{Spencer} did not definitively limit the \textit{Heck} rule, but \textit{Heck} also did not set a binding precedent on plaintiffs without access to habeas corpus because it did not involve an analogous fact pattern.

Moreover, these courts justify following the five-justice plurality in \textit{Spencer} by finding that Justice Souter’s interpretation was more in line with the principles that promulgated 42 U.S.C. § 1983.

The four remaining circuit courts, including the Third Circuit in \textit{Deemer}, interpret \textit{Heck}'s favorable termination requirement as universal. They con-
clude that _Heck_ was a restriction on even those without access to habeas corpus from filing a § 1983 damages claim and that reinterpreting _Heck_ based upon the _Spencer_ plurality violated clearly set precedent. These appellate courts maintain that the _Spencer_ plurality did not supersede the Court’s decision in _Heck_.

III. THE SUPREME COURT SHOULD CUT BACK ON THE _HECK_ RULE SO IT ONLY APPLIES TO THOSE WITH HABEAS CORPUS ACCESS

Freedom is a fundamental right of the U.S. Constitution and revoking a prisoner’s ability to challenge his conviction in a federal forum goes against the objectives of § 1983. If the U.S. Supreme Court continues to deny review of the circuit split over the interpretation of its 1994 ruling in _Heck v. Humphrey_, numerous plaintiffs will remain unable to seek relief for unconstitutional imprisonment. Furthermore, for purposes of judicial consistency, the Court must address this disagreement among the circuits. The Court’s

77, 81 & n.3 (1st Cir. 1998) (“The Court, however, has admonished the lower federal courts to follow its directly applicable precedent, even if that precedent appears weakened by pronouncement in its subsequent decisions, and to leave the Court ‘the prerogative of overruling its own decisions.’” (citation omitted)); see also Cohen, 621 F.3d at 1315 (discussing the Third Circuit’s alignment with the First, Fifth, and Eighth Circuits on this question); Powers, 501 F.3d at 602 (reiterating Cohen’s acknowledgment of the agreement between First, Third, Fifth, and Eighth Circuits on interpreting _Heck_).

66 See Deemer II, 557 F. App’x at 166; Figueroa, 147 F.3d at 81 n.3; see also Powers, 501 F.3d at 602 (citing Figueroa, 147 F.3d at 81) (disagreeing with the viewpoints of the First Circuit that it was bound by U.S. Supreme Court precedent to apply _Heck_ to plaintiffs without any other federal recourse).

67 See Deemer II, 557 F. App’x at 167; Randell, 227 F.3d at 301; see also Gilles, 427 F.3d at 210 (finding that _Heck_ has not been undermined by _Spencer_).


69 See Deemer v. Beard (Deemer II), 557 F. App’x 162, 168 (3d Cir. 2014) (Rendell, J., concurring) (postulating that released plaintiffs like Deemer will be left without federal recourse absent § 1983), cert. denied, 135 S. Ct. 50 (2014); Brief for the National Ass’n of Criminal Defense Lawyers as Amicus Curiae in Support of Petitioner at 4, Deemer II, 557 F. App’x 162 (No. 13-1153) [hereinafter Brief of NACDL] (stating that the Third Circuit’s interpretation of _Heck_ will “leave a considerable number of individuals without any recourse for a violation of their constitutional rights”); Aaron M. Gallardo, Cohen v. Longshore: Determining Whether the Heck Favorable-Termination Requirement Applies to Plaintiffs Lacking Habeas Corpus Relief Under 42 U.S.C. § 1983, 34 AM. J. TRIAL ADVOC. 725, 729 (2011) (“Strict application of the Heck favorable-termination requirement would prevent relief to those whose Constitutional rights have been violated, but without the means for habeas relief.” (citing Spencer v. Kemna, 523 U.S. 1, 21 (1998) (Souter, J., concurring))).

70 See 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, 875 (2008) (stating that the divide between the circuits requires the Court to clarify the boundaries of the Heck rule); see also Deemer II, 557 F. App’x at 168 (Rendell, J., concurring) (arguing that the Court’s reconsideration of Heck’s application upon Deemer’s facts will likely lead to a different
denial of Deemer’s petition for certiorari implies the Court approves of the circuits undermining and ignoring existing precedent.\textsuperscript{71} The Court must move expeditiously to grant certiorari on the issue because in the interim, lower courts are—or ought to be—bound by clear precedent that counteracts the intended uses of § 1983.\textsuperscript{72}

Plaintiffs seeking to challenge the constitutionality of a conviction using § 1983 should not be required to show favorable termination, if, through no fault of their own, there is no legal recourse via other state or federal forums.\textsuperscript{73} In 1994, in \textit{Heck v. Humphrey}, the Supreme Court adopted the \textit{Heck} rule to prevent prisoners from challenging their conviction through civil means after exhausting their ability to appeal in criminal court.\textsuperscript{74} There, the Court was concerned about potential discrepancies when a plaintiff’s previous conviction had not been favorably terminated; however, these concerns become irrelevant once an inmate was released.\textsuperscript{75} Despite this, the \textit{Heck} rule still applied to those who were not in state custody and did not have any other

\textsuperscript{71} See Michelle M. Berry et al., \textit{Much Ado About Pluralities: Pride and Precedent Amidst the Cacophony of Concurrences, and Re-Percolation After Rapanos}, 15 VA. J. SOC. POL’Y & L. 299, 320 (2008) (“A plurality opinion generally cannot overrule prior precedent.”) (citing Stanley K. Laughlin, Jr., \textit{Cultural Preservation in Pacific Islands: Still a Good Idea—and Constitutional}, 27 U. HAW. L. REV. 331, 347 (2005)); see also Deemer II, 557 F. App’x at 165, 167 (citations omitted) (referring to seven Courts of Appeals that have used Spencer’s “cobbled-together majority of justices” to justify not applying the \textit{Heck} rule to plaintiffs who do not have any other federal remedy). See \textit{generally} Deemer v. Beard (Deemer III), 135 S. Ct. 50, 50 (2014) (indicating the U.S. Supreme Court’s denial of Deemer’s petition for certiorari). But see Justin F. Marceau, \textit{Lifting the Haze of Baze: Lethal Injection, the Eighth Amendment, and Plurality Opinions}, 41 ARIZ. ST. L.J. 159, 169 (2009) (referring to the U.S. Supreme Court’s decision in \textit{Marks v. United States} that “a fragmented Court . . . . with no single rationale” still sets a binding precedent that “may be viewed as that position taken by those Members who concurred in the judgment on the narrowest grounds” (quoting 430 U.S. 188, 193 (1977)).

\textsuperscript{72} See H.R. REP. No. 96-548, at 2 (1979) (referring to the legislature’s intent to provide plaintiffs with a federal forum to challenge unconstitutional convictions).

\textsuperscript{73} See Gallardo, \textit{ supra} note 69, at 729 (noting that, although allowing a plaintiff who has no other federal forum access to § 1983 might “contravene the core holding of \textit{Heck},” it does not conflict with the Court’s rationale in \textit{Heck}); see also Deemer II, 557 F. App’x at 168 (Rendell, J., \textit{concurring}) (stating that fairness requires a limitation on the \textit{Heck} rule’s applicability to those without habeas corpus remedy and reiterating the importance of this consideration because fairness is an important principle behind § 1983).

\textsuperscript{74} See 512 U.S. 477, 484, 486 (1994).

\textsuperscript{75} See Gallardo, \textit{ supra} note 69, at 729 (arguing that the Court’s concerns in \textit{Heck} regarding a plaintiff receiving contradictory judgments based on two laws does not exist if the prisoner does not have access to habeas corpus); see also \textit{Heck}, 512 U.S. at 486 (stating that § 1983 is not an appropriate vehicle to challenge criminal convictions); Deemer II, 557 F. App’x at 167 (Rendell, J., \textit{concurring}) (citing \textit{Heck}, 512 U.S. at 484–85) (alluding to plaintiffs determined to be lawfully imprisoned but also allowed to receive damages via civil litigation for wrongful incarceration).
means of receiving federal relief. 76 By not explicitly reinterpreting Heck to exclude this group of potential plaintiffs, the Court has unfairly denied many individuals an opportunity for vindication over violations of their constitutional rights. 77 A continuation of this interpretation lets Heck limit §1983 in a way that counteracts its purpose to remedy the state’s unconstitutional infringements. 78

For the reasons detailed above, the Supreme Court must address this circuit split and should reinterpret Heck to exclude those plaintiffs who are not in state custody. 79 Nonetheless, until the Court has explicitly done so, rules of precedent requires circuit courts to apply the majority interpretation in Heck. 80 Allowing circuits to reinterpret Supreme Court decisions by piecing together concurrences and dissents authorizes the circumvention of set precedent. 81 The U.S. Court of Appeals for the Third Circuit correctly concluded in

---

76 See Note, supra note 70, at 875 (citing Dible v. Scholl, 410 F. Supp. 2d 807, 820–22 (N.D. Iowa 2006)) (stating that circuits have determined because Heck was not overruled by Spencer, it applies to all cases where a plaintiff is challenging the validity of a conviction); see also Deemer II, 557 F. App’x at 167. State remedies often become moot due to the long-winded review procedures. Brief of NACDL, supra note 69, at 4. Due to timing, most prisoners do not have the opportunity to file a habeas corpus petition. Id. at 5. Even prisoners who manage to bring habeas corpus claims often end up with their cases mooted upon release. Id. at 4–5.

77 See Note, supra note 70, at 885–86 (citing Figueroa v. Rivera, 147 F.3d 77, 80–81 (1st Cir. 1998) (mentioning that even circuits ruling to uphold Heck strictly acknowledge an application of the favorable termination requirement in all cases constituted a “fundamental unfairness”); see also Deemer II, 557 F. App’x at 166, 168 (Rendell, J., concurring) (stating that fairness required a released prisoner who without habeas corpus relief to be permitted to file for §1983 damages). The plaintiff would have no way of collaterally attacking the state’s criminal conviction via §1983 post-release. Brief of NACDL, supra note 69, at 5, 14 (citing Peralta v. Vasquez, 476 F.3d 98, 104 (2d Cir. 2006) (referring to the implementation of Heck’s favorable termination as preventative against prisoners using §1983 instead of a habeas corpus claim to challenge a conviction).

78 See Brief of NACDL, supra note 69, at 6. As previously stated, the majority of circuits have used this reasoning to adopt the Spencer plurality. E.g., Cohen v. Longshore, 621 F.3d 1311, 1316 (10th Cir. 2010) (holding that the Spencer plurality’s interpretation of Heck is “more just and more in accordance with the purpose of §1983); Wilson, 535 F.3d at 268 (stating that §1983’s “high purposes” would be compromised without following the Spencer plurality’s interpretation of the Heck rule); Powers v. Hamilton Cnty. Pub. Defender Comm’n, 501 F.3d 592, 603 (6th Cir. 2007) (holding that the circuit courts that adopted Justice Souter’s Heck and Spencer concurrences “have the better-reasoned view” and Powers should not be impeded from his §1983 claim when he has no other avenue to federal review of asserted deprivations of federal rights [as a habeas-ineligible plaintiff]).

79 See infra notes 68–78 and accompanying text (outlining the goals of §1983 and arguing that Heck rule should exclude certain plaintiffs to meet those objectives).

80 See Deemer II, 557 F. App’x at 166, 168 (Rendell, J., concurring) (citing the seven circuit courts that have adopted the Spencer approach); see also Agostini v. Felton, 521 U.S. 203, 237 (1997) (“We reaffirm that ‘[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case that directly controls, leaving to this Court the prerogative of overruling its own decisions.’” (quoting Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989)).

81 See Berry, supra note 71, at 320 (noting that some plurality opinions are “a source of ongoing confusion and uncertainty that seriously undermines our system of precedent”); Linda Novak,
Deemer that appellate courts do not have the power to supersede precedent established by the Supreme Court. The plurality opinion in the Supreme Court’s decision in Spencer v. Kemna in 1998 is not enough to overturn the clearly established interpretation of the Heck rule. Until the Court reinterprets the perimeters of Heck, appellate courts do not have the authority to restrict the applicability of the Heck rule. It is important for the Court to prevent further disregard for the explicit precedent from Heck and address the circuit split by creating a limitation on Heck rule.

CONCLUSION

To promote the principles that gave rise to § 1983, plaintiffs should have the ability to bring a damages claim when they do not have access to habeas relief. Therefore, the U.S. Supreme Court should have reversed the Third Circuit’s decision in Deemer v. Beard in 2014. If the Court continues to ignore the circuit split over the interpretation of the Heck v. Humphrey rule, it will be allowing circuits violate set precedent. In the interim, lower courts should be complying with the binding precedent the Court set in Heck. It is necessary for the Court to create an exception to its holding in Heck when a plaintiff has no other state or federal remedy.

ALICE HUANG


Note, The Precedential Value of Supreme Court Plurality Decisions, 80 COLUM. L. REV. 756, 770–71 (1980) (explaining that when lower courts find it difficult to discern a coherent majority rationale, it can lead courts to uphold a combination of two or more minority rationales as authoritative); see also Figueroa, 147 F.3d at 81 n.3 (requiring lower federal courts to follow “[the Supreme Court’s] directly applicable precedent, even if that precedent appears weakened by pronouncements in its subsequent decisions”) (citing Agostini, 521 U.S. at 237)).

See Berry, supra note 71, at 320 (“A plurality opinion generally cannot overrule prior precedent.”). Contra Powers, 501 F.3d at 602 (referring to the reworking of precedent as “rule refining”).

See Deemer II, 557 F. App’x at 167 (reiterating that the Spencer plurality did not overturn Heck); see also Spencer, 523 U.S. at 21 (Souter, J., concurring) (arguing that the Heck rule should not apply if a plaintiff has no other access to a federal forum through no fault of his own); id. at 21 (Ginsburg, J., concurring) (expressing her agreement with Justice Souter’s viewpoint); id. at 25 n.8 (Stevens, J., dissenting) (echoing his agreement with Justice Souter’s Heck concurrence).

See Deemer II, 557 F. App’x at 168 (Rendell, J., concurring). The concurrences and dissents in Spencer do not negate Heck’s favorable termination requirement. See id. This is evident because Scalia addresses Justice Souter’s concerns by finding that favorable termination is still relevant even if a criminal is no longer incarcerated. See Heck, 512 U.S. at 490 n.10.

See Wilson, 535 F.3d at 267 (stating that courts of appeals do not have directly applicable precedent regarding the dilemma of whether to apply Heck when a plaintiff does not have access to habeas corpus relief and citing Spencer as potential support for both sides of the circuit split).