PREVIEW OF FIRST THREE PAGES
OF CHAPTER TWO

THE INTERPLAY BETWEEN HABEAS CORPUS AND CIVIL RIGHTS ACTIONS [2.00.0]:

Both the federal habeas corpus statute, 28 U.S.C. § 2254, and the civil rights statute, 42 U.S.C. § 1983, provide access to a federal forum for claims of unconstitutional treatment at the hands of state officials. But these statutes differ in both scope and operation.

Generally, a prisoner's challenge to the validity of his confinement or to matters affecting its duration falls within the province of habeas corpus and, therefore, must be brought pursuant to § 2254. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). On the other hand, challenges involving the circumstances of confinement may be presented in a § 1983 action. But some cases are hybrids, "with a prisoner seeking relief unavailable in habeas, notably damages, but on allegations that not only support a claim for recompense, but imply the invalidity either of an underlying conviction or of a particular ground for denying release short of serving the maximum term of confinement." *Muhammad v. Close*, 540 U.S. 749, 750-51 (2004). It is at the intersection of these two statutes that is the focus of this chapter.

A. GENERAL PRINCIPLES [2.10.0]:

1. The *Heck* Rule [2.11.0]: Section 1983 authorizes actions by persons deprived of constitutional rights against persons acting under color of state law. But a state prisoner is not entitled to use § 1983 as a vehicle to pursue redress if success in that action would necessarily demonstrate the invalidity of confinement or its duration. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); *see also Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005).

   A § 1983 plaintiff seeking monetary damages or declaratory relief based on an allegedly unconstitutional conviction or imprisonment, or for other harm caused by action whose

unlawfulness would render a conviction or sentence invalid, must initially establish that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal or called into question by a federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); *see Butler v. Compton*, 482 F.3d 1277, 1280-81 (10th Cir. 2007) (where the charges were dismissed as part of a plea agreement, there was no related underlying conviction that could be invalidated by the plaintiff's § 1983 action); *Wilson v. Lawrence County, Missouri*, 154 F.3d 757, 760-61 (8th Cir. 1998) (executive pardon satisfies "expunged by executive order" requirement of *Heck*). The *Heck* rule is intended to prevent a "collateral attack on [a] conviction through the vehicle of a civil suit." *Heck*, 512 U.S. at 484. Since § 1983 "creates a species of tort liability," *id.* at 483, the *Heck* rule underscores "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments . . . ." *Id.* at 486.

In applying the *Heck* rule, a district court must analyze the relationship between the plaintiff's § 1983 claim and the charge on which the plaintiff was convicted. If a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence, the § 1983 action is precluded. If, however, the plaintiff's action, even if successful, would not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action can proceed. *Id.* at 487.

The Court has emphasized the need for a clear nexus between the plaintiff's conviction and the alleged wrongful government action before the *Heck* bar applies. Writing for a unanimous court, Justice O'Connor stated: "[W]e were careful in *Heck* to stress the importance of the term 'necessarily.' For instance, we acknowledged that an inmate could bring a challenge to the lawfulness of a search pursuant to § 1983 in the first instance, even if the search revealed evidence used to convict the inmate at trial, because success on the merits would not '*necessarily* imply that the plaintiff's conviction was unlawful.' 512 U.S. at 487, n.7, 114 S. Ct. 2364 (noting doctrines such as

inevitable discovery, independent source, and harmless error). "To hold otherwise would have cut off potentially valid damages actions as to which a plaintiff might never obtain favorable termination." *Nelson v. Campbell*, 541 U.S. 637, 647 (2004).

2. Prospective Relief Excluded [2.12.0]: The *Heck* rule is limited to § 1983 actions seeking either monetary damages or declaratory relief. Claims seeking an injunction barring *future* unconstitutional conduct does not fall within habeas' exclusive domain. The reason is that ordinarily a prayer for prospective relief will not "necessarily imply" the invalidity of a conviction or sentence or the loss of good-time credits. *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005); *Edwards v. Balisok*, 520 U.S. 641, 648 (1997).

3. *Heck* Not Applicable To Pending Criminal Matters [2.13.0]: The Supreme Court has refused to extend *Heck's* application to *pending* criminal matters. In *Wallace v. Kato*, ___ U.S. ___, 127 S. Ct. 1091, 1098 (2007), the Court stated: "What petitioner seeks, in other words, is the adoption of a principle that goes well beyond *Heck*: that an action which would impugn *an anticipated future conviction* cannot be brought until that conviction occurs and is set aside. We are not disposed to embrace this bizarre extension of *Heck*. If a plaintiff files a false arrest claim before he has been convicted (or files any other claim related to rulings that will likely be made in a pending or anticipated criminal trial), it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended."

   Prior to *Wallace v. Kato*, courts had applied *Heck* to cases where the criminal charges were pending and dismissed charges subject to retrial if, at the time the § 1983 action was filed, a judgment in favor of the plaintiff would necessarily imply the invalidity of any conviction or sentence that might result from prosecution of the pending charges. *Wolfe v. Perry*, 412 F.3d 707, 714 (6th Cir. 2005); *Harvey v. Waldron*, 210 F.3d 1008, 1013-14 (9th Cir. 2000); *Beck v. City of Muskogee Police Dep't*,