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## Civil Rights - State Prisoners May Challenge Constitutionality of Parole Procedures under 42 U.S.C. Sec. 1983 - *Wilkinson v. Dotson*, 125 S. CT. 1242 (2005)

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**CIVIL RIGHTS – STATE PRISONERS MAY CHALLENGE  
CONSTITUTIONALITY OF PAROLE PROCEDURES  
UNDER 42 U.S.C. § 1983 – *WILKINSON v. DOTSON*, 125 S.  
CT. 1242 (2005)**

Federal prisoner litigation most often arises under either 42 U.S.C. § 1983 or the federal habeas corpus statute, 28 U.S.C. § 2254.<sup>1</sup> In 1973, the United States Supreme Court announced an exception to the broad language of § 1983 when it held that a prisoner must bring a suit for equitable relief that challenges “the fact or duration of confinement” as a habeas corpus petition.<sup>2</sup> The Court later expanded the habeas exception to § 1983 federal prisoner litigation to all claims in which the prisoner’s success would “necessarily demonstrate[] the invalidity of the conviction.”<sup>3</sup> In *Wilkinson v. Dotson*,<sup>4</sup> the Court limited the exception when it held that a

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<sup>1</sup> See 42 U.S.C. § 1983 (2000) (providing remedy for all persons in the United States who suffered constitutional deprivations at the hands of a person acting “under color” of state law). The federal habeas statute provides in part that:

(a) [A] district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –

(A) the applicant has exhausted the remedies available in the court of the State;

(B)(i) or that there is either an absence of available State corrective process;  
(ii) or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner . . .

(c) An applicant shall not be deemed to have exhausted the remedies available in the court of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

28 U.S.C. § 2254 (2000).

<sup>2</sup> See *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (holding that habeas relief is avenue for prisoner relief when conviction or sentence at issue).

<sup>3</sup> See *Heck v. Humphrey*, 512 U.S. 477, 481-82 (1994) (denying prisoner’s § 1983 claim because success would imply conviction was wrong).

<sup>4</sup> 125 S. Ct. 1242 (2005).

prisoner may pursue a § 1983 claim challenging the constitutionality of parole eligibility and parole determination procedures.<sup>5</sup>

Two Ohio state prisoners, William Dwight Dotson and Rogerico Johnson, filed separate § 1983 suits against the state parole authority alleging that state parole procedures violated their constitutional rights.<sup>6</sup> An Ohio court sentenced Dotson to life in prison in 1981, when Ohio law provided that Dotson must serve fifteen years before he was eligible for parole.<sup>7</sup> The Ohio Parole Board did not release Dotson at his first parole hearing in 1995, postponed his second hearing for ten years, and scheduled a halfway review for the year 2000.<sup>8</sup>

The Ohio legislature enacted new parole guidelines in 1998 that differed from the guidelines in force when a court convicted Dotson.<sup>9</sup> At his halfway review in March 2000, the Parole Board applied the new guidelines and ruled that Dotson must serve 32.5 years to be eligible for parole.<sup>10</sup> Dotson filed suit under § 1983 challenging the Parole Board's application of the 1998 guidelines to determine his parole eligibility.<sup>11</sup>

Rogerico Johnson entered an Ohio prison in 1992 to serve a ten to thirty year sentence.<sup>12</sup> Only one board member presided at Johnson's parole hearing, Johnson was not permitted to address the Board member orally, and the Board member's decision to deny Johnson parole relied on

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<sup>5</sup> See *Wilkinson v. Dotson*, 125 S. Ct. 1242, 1248 (2005) (upholding prisoner's § 1983 claim because success on merits will only lead to another parole eligibility hearing).

<sup>6</sup> See *Dotson v. Wilkinson*, 329 F.3d 463, 465-66 (6th Cir. 2003) (rehearing *en banc*) (explaining procedural history of both claims); *Dotson v. Wilkinson*, No. 3:00 CV 7303 (N.D. Ohio, Aug. 7, 2000); *Johnson v. Ghee*, No. 4:00 CV 1075 (N.D. Ohio, July 16, 2000). See *Wilkinson*, 125 S. Ct. at 1245 (articulating Dotson and Johnson's prayers for relief under § 1983). William Dwight Dotson and Rogerico Johnson sought declaratory and injunctive relief in pursuit of a new parole eligibility hearing and a parole determination hearing, respectively. *Id.*

<sup>7</sup> See *Dotson v. Wilkinson*, 300 F.3d 661, 662 (6th Cir. 2002) (describing events leading to Dotson's cause of action); see also OHIO REV. CODE ANN. § 2967.13(B) (West 1972) (stating that prisoner serving life sentence must serve fifteen years before first parole eligibility hearing); § 2967.13(B) (mandating that prisoner not released at initial parole proceeding entitled to parole hearing within five years).

<sup>8</sup> See *Dotson*, 300 F.3d at 662 (stating Ohio Parole Board's decision with respect to Dotson).

<sup>9</sup> See *id.* (outlining history of Ohio parole eligibility statute); OHIO REV. CODE ANN. § 2967.13 (West 1998) (allowing Ohio Parole Board to consider seriousness of crime and inmate's violent nature to determine parole eligibility); *id.* (providing that prisoner denied parole at fifteen year mark not entitled to second hearing for ten years and never entitled to halfway hearing). With respect to Dotson's parole eligibility, the Parole Board considered the seriousness of the offense. See *Dotson*, 300 F.3d at 662 (articulating how Parole Board applied new procedures to Dotson).

<sup>10</sup> See *Dotson*, 300 F.3d at 662-63 (stating Parole Board's halfway parole determination to retroactively apply new parole guidelines).

<sup>11</sup> See *id.* (stating Dotson's constitutional challenges to parole procedures).

<sup>12</sup> See *Wilkinson v. Dotson*, 125 S. Ct. 1242, 1245 (2005) (describing facts giving rise to Johnson's § 1983 claims).

two alleged convictions that the State did not pursue against Johnson.<sup>13</sup> Additionally, the Parole Board applied the 1998 guidelines that were not in force when an Ohio court convicted Johnson.<sup>14</sup>

In accordance with 28 U.S.C. § 1915(e)(2), the United States District Court for the Northern District of Ohio dismissed Dotson's suit, *sua sponte*.<sup>15</sup> The district court found that Dotson's claim could not proceed because "'a judgment on the merits would affect the validity of [his] conviction or sentence, [and his] conviction or sentence has [not] been previously set aside.'"<sup>16</sup> The United States Court of Appeals for the Sixth Circuit reversed and held that Dotson's § 1983 claim was valid because a new parole eligibility hearing did not "'challenge . . . the fact or duration of his confinement" and "even if successful, will *not* demonstrate the invalidity of an outstanding criminal judgment against" him.<sup>17</sup>

On rehearing *en banc*, the Sixth Circuit held that both suits could proceed under § 1983 because success on the inmates' complaints would not "necessarily imply the invalidity of [their] convictions."<sup>18</sup> The Sixth Circuit reasoned that the prisoners, if successful, would not automatically receive a shortened prison sentence because the Board considers multiple factors to grant parole.<sup>19</sup> The Ohio Parole Board appealed, and the United States Supreme Court granted certiorari to decide whether a prisoner may challenge the constitutionality of state parole procedures under § 1983.<sup>20</sup>

The federal habeas corpus statute and § 1983 are the two primary mechanisms that prisoners use to challenge violations of their constitu-

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<sup>13</sup> See *id.* (stating events that Johnson alleges transpired at his parole determination hearing).

<sup>14</sup> See *id.* (stating facts giving rise to Johnson's § 1983 claims). The Ohio Code required that (1) the Parole Board or one member of the board and one Parole Hearing Officer conduct the hearing; (2) the Board must review the inmate's oral and written statements and (3) the Board may not consider allegations of the inmate's wrongdoing if the inmate was not charged with such wrongdoing. See *Dotson v. Wilkinson*, 329 F.3d 463, 465 (6th Cir. 2003) (rehearing *en banc*) (explaining Ohio parole hearing requirements).

<sup>15</sup> See *Dotson*, 300 F.3d at 663 (dismissing Dotson's suit before defendants served with process and without notice to defendants); *id.* (listing names of defendants to Dotson's § 1983 suit). See also 28 U.S.C. § 1915(e)(2)(B)(i)-(ii) (2000) (providing grounds for dismissal of *in forma pauperis* action).

<sup>16</sup> See *Dotson*, 300 F.3d at 663 (stating reasons that district court dismissed Dotson's claim).

<sup>17</sup> See *id.* at 666 (quoting *Heck v. Humphrey*, 512 U.S. 477, 487 (1994); *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973)).

<sup>18</sup> See *Dotson v. Wilkinson*, 329 F.3d 463, 471-72 (6th Cir. 2003) (consolidating Dotson's and Johnson's lawsuits); *id.* (holding that both prisoners have cognizable claims under § 1983 because neither plaintiff asserts actual entitlement to parole or shorter sentence).

<sup>19</sup> See *id.* (reasoning that plaintiffs' sentences would not be shorter nor would their convictions be tainted).

<sup>20</sup> *Wilkinson v. Dotson*, 541 U.S. 935 (2004).

tional rights.<sup>21</sup> Most prisoners prefer to sue under § 1983 because, unlike a § 1983 action, habeas relief requires prisoners to exhaust all state remedies and damage awards are not available in habeas relief.<sup>22</sup> Despite the apparent applicability of § 1983 to a prisoner's lawsuit, the United States Supreme Court held that the sole federal remedy for a prisoner challenging "the fact or duration of his confinement" is habeas corpus because allegations of wrongful confinement go to the "core of habeas corpus."<sup>23</sup>

In *Preiser v. Rodriguez*, the United States Supreme Court held that § 1983 challenges to prison disciplinary procedures that deny good time

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<sup>21</sup> See *Preiser v. Rodriguez*, 411 U.S. 475, 476, 486 (1973) (stating that language of § 1983 encompasses § 1983 prisoner litigation along with federal habeas statute); Jason A. Jones, Note, *Prisoner Litigation and the Mistake of Jenkins' v. Haubert*, 86 CORNELL L. REV. 140, 141 (2000) (noting that § 1983 and federal habeas statute are "the two most common sources of federal court prisoner litigation").

<sup>22</sup> See *Preiser*, 411 U.S. at 489 (stating Congress intended that prisoners exhaust state remedies prior to seeking federal habeas relief); *Ex Parte Royall*, 117 U.S. 241, 251 (1886) (holding federal habeas relief not available until state remedies exhausted); see also *Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 501 (1982) (holding that civil litigants not required to exhaust state remedies before filing § 1983 suit because Congress did not intend an exhaustion requirement). The exhaustion requirement stems from the federal government's respect for state criminal proceedings, an issue not of concern when an individual claims constitutional injuries from state actions. See *Preiser*, 411 U.S. at 490 (recognizing purpose of habeas exhaustion requirement is "to avoid the unnecessary friction between the federal and state court systems" and to afford "the state court system an opportunity to correct its own constitutional errors"); *Patsy*, 457 U.S. at 507 (stating that exhaustion requirement is contrary to legislative intent behind § 1983); *Rose v. Lundy*, 455 U.S. 509, 518 (1982) (noting that habeas exhaustion requirement protects state enforcement of federal law and state adjudications); *Royall*, 117 U.S. at 251 (reasoning that exhaustion requirement preserved ability of state and federal courts to protect constitutional rights). See also *Younger v. Harris*, 401 U.S. 37, 44 (1971) (holding that federal courts will not review challenges to ongoing state criminal proceedings as "a proper respect for state functions"); see generally *Barry v. Barchi*, 443 U.S. 55, 63, n.10 (1979); *Gibson v. Berryhill*, 411 U.S. 564, 574 (1973); *Carter v. Stanton*, 405 U.S. 669, 671 (1972); *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971); *Houghton v. Shafer*, 392 U.S. 639, 640 (1968); *King v. Smith*, 392 U.S. 309, 312, n.4 (1968); *Damico v. California*, 389 U.S. 416 (1967). But see Prison Litigation Reform Act of 1995, 41 U.S.C. § 1997e(a) (1994 ed., Supp. V) (stating, "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted"); *Porter v. Nussle*, 534 U.S. 516, 520 (2002) (holding that prisoners must exhaust prison administrative grievance process before bringing § 1983 suit).

<sup>23</sup> *Preiser*, 411 U.S. at 489; see *In re Bonner*, 151 U.S. 242, 261 (1894) (granting habeas relief to prisoner challenging validity of conviction); *Graham v. Broglin*, 922 F.2d 379, 380-82 (7th Cir. 1991) (declaring that prisoner seeking release, more lenient parole, probation, or prison procedures is limited to federal habeas relief while prisoner seeking new prison location or program is challenging conditions of confinement). Cf. *Osborne v. District Attorney's Office for the Third Judicial District*, 423 F.3d 1050, 1055 (9th Cir. 2005) (interpreting *Preiser* and *Wilkinson* to mean that § 1983 prisoner lawsuits not precluded if habeas relief is also proper); *Franceski v. Bureau of Prisons*, No. 04 Civ. 8667 (LBS), 2005 WL 821703, at \*3 (S.D.N.Y. April 8, 2005) (reasoning that "some claims might be cognizable both under § 1983 and in a habeas action").

credits go to the “core of habeas corpus” because a prisoner’s success on the merits of his claim would result in a shorter prison sentence.<sup>24</sup> The Court also intimated that if habeas relief is available, § 1983 suits are not because principles of federalism mandate that the States have the first chance to remedy errors in prison administration.<sup>25</sup> A prisoner may, however, challenge “the wrong procedures, not . . . the wrong result” because the suit does not implicate the “core of habeas corpus.”<sup>26</sup>

The *Preiser* court noted that a prisoner’s prayer for equitable remedies is a clear attack on “the fact or duration of confinement,” but a prisoner’s suit for damages could be cognizable under § 1983.<sup>27</sup> Later, the Court closed the door on § 1983 prisoner suits for damages where “judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence.”<sup>28</sup> In *Heck v. Humphrey*, a prisoner brought a § 1983 suit for damages for, among other claims, malicious prosecution.<sup>29</sup> The Court held that because one element of a malicious prosecution claim is that the criminal proceeding end in the prisoner’s favor, success on the merits of his claims would negatively impact his conviction.<sup>30</sup> An excep-

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<sup>24</sup> See *Preiser*, 411 U.S. at 486-89 (denying state prisoner prayer for equitable relief for denial of good time credits because restoration of good time credits leads to shorter prison sentences which is a challenge to confinement). But see *Cooper v. Pate*, 378 U.S. 546 (1964) (per curiam) (permitting prisoner § 1983 claim alleging that prison denied him privileges and right to purchase religious materials). See also *Preiser*, 411 U.S. at 477 (explaining that good time credits reduce prisoner’s sentence in exchange for prisoner’s good behavior).

<sup>25</sup> See *Preiser*, 411 U.S. at 492 (reasoning that prisoners must exhaust state remedies in state administrative and judicial proceedings because strong state interest in prison administration which is “most efficiently and properly handled” by the state); *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (stating that federal courts have “broad discretion in conditioning a judgment granting habeas relief . . . [and] to provide the State an opportunity to correct the constitutional violation found by the court”).

<sup>26</sup> *Heck v. Humphrey*, 512 U.S. 477, 482-83 (1994) (citing *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974)); see also *Wolff*, 418 U.S. at 555 (holding that declaratory and injunctive relief under § 1983 are available to prisoner alleging that prison’s disciplinary procedures are unconstitutional).

<sup>27</sup> See *Preiser*, 411 U.S. at 494 (dictum) (implying there is no exhaustion requirement for prisoner seeking damages).

<sup>28</sup> *Heck*, 512 U.S. at 481-82; see also *Nelson v. Campbell*, 541 U.S. 637, 646 (2004) (denying § 1983 prisoner suit for damages unless he obtains “favorable termination” of conviction); *Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (dictum) (recognizing prisoner suit for damages under § 1983 provided that underlying conviction not implicated); *DeWalt v. Carter*, 224 F.3d 607, 617-18 (7th Cir. 2000) (reasoning that prisoner § 1983 action permissible when habeas not available remedy); *Jenkins v. Haubert*, 179 F.3d 19, 21 (2nd Cir. 1999) (holding that prisoner challenging conditions of confinement may bring § 1983 action where habeas not appropriate).

<sup>29</sup> See *Heck* 512 U.S. at 484 (detailing charges in prisoner’s complaint).

<sup>30</sup> See *id.* at 484-86 (reasoning that damages award in federal court would result in conflicting outcomes in state criminal court and federal court); *Abusaid v. Hillsborough County Board of County Commissioners*, No. 03-16243, 2005 WL 858296, at \*16 n.9 (11th

tion to this rule is if the prisoner can show that a court reversed his prior conviction on direct appeal, an executive order expunged his prior conviction, or a federal court's issuance of a writ of habeas corpus called his prior conviction into question.<sup>31</sup>

The Court subsequently declared invalid § 1983 prisoner lawsuits that challenged prison disciplinary procedures if the suit threatened the underlying conviction.<sup>32</sup> For example, in *Edwards v. Balisok*, the Court held that allegations of "deceit and bias on the part of the decision maker," if successful, would "necessarily imply the invalidity of the deprivation of good time credits."<sup>33</sup> Conversely, prisoner attacks on prison disciplinary procedures under § 1983 are cognizable if they concern the conditions of confinement.<sup>34</sup>

Although the Court did not expressly define the relationship of § 1983 to prisoner attacks on parole eligibility and parole determination before *Wilkinson*, federal courts often adjudicated parole challenges under the federal habeas statute.<sup>35</sup> The circuit courts, however, generally hold that an

Cir. April 15, 2005) (interpreting *Heck* as "an exception to the availability of § 1983 relief in cases in which habeas provides a remedy").

<sup>31</sup> See *Heck*, 511 U.S. at 486-87 (holding that § 1983 damages available to prisoner only if conviction or sentence resolved in favor of prisoner).

<sup>32</sup> See *Edwards v. Balisok*, 520 U.S. 641, 646 (1997) (denying prisoner § 1983 claim challenging constitutionality of procedures that denied him good time credits because implicated length of confinement); see also Jason A. Jones, Note, *Prisoner Litigation and the Mistake of Jenkins v. Haubert*, 86 CORNELL L. REV. 140, 166 (2000) (supporting *Edward's* broad application of *Heck* to prison disciplinary proceedings because prisoners should not sidestep habeas requirements).

<sup>33</sup> *Edwards*, 520 U.S. at 646. The Court noted that the prisoner could, under § 1983, pursue an injunction precluding unconstitutional procedures because prospective relief does not necessarily imply the invalidity of a prior loss of good time credits. *Id.* at 648; see also *Wolff v. McDonnell*, 418 U.S. 539, 554-55 (1974) (holding that prisoner could seek a declaratory judgment "as a predicate to a damages award" under § 1983 and an injunction prohibiting enforcement of unlawful prison regulations concerning revocation of good-time credits because both forms of relief are prospective). But see *Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (stating that *Heck* inapplicable to § 1983 prisoner suits where prisoner challenges procedure, not result, prison issued); *Osborne v. District Attorney's Office for the Third Judicial District*, 423 F.3d 1050, 1055 (9th Cir. 2005) (rejecting state's argument that prisoner's § 1983 action barred if prisoner's claim will "set the stage" to later challenge his conviction).

<sup>34</sup> See *Muhammad v. Close*, 540 U.S. 749, 754 (2004) (per curiam) (upholding prisoner § 1983 suit against correction officer for misconduct during prison disciplinary proceedings because it challenged conditions of confinement); *Wilwording v. Swenson*, 404 U.S. 249, 251-52 (1971) (per curiam) (upholding prisoner § 1983 suit challenging living conditions and prison disciplinary measures concerning living conditions); *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991) (holding that inmate attacks on prison work release regulations challenge prison conditions).

<sup>35</sup> See *California Dept. of Corrs. v. Morales*, 514 U.S. 499, 503 (1995) (stating that prisoner filed petition for writ of habeas corpus to challenge constitutionality of parole suitability proceedings). *Morales* was entitled to annual parole determination hearings following the denial of his initial parole application under the California parole statute in

inmate may file § 1983 suits challenging the constitutionality of parole eligibility procedures.<sup>36</sup> In particular, the Sixth Circuit permitted several Ohio inmates to pursue a § 1983 action alleging due process violation in the parole process.<sup>37</sup>

In *Wilkinson v. Dotson*,<sup>38</sup> the United States Supreme Court considered whether state prisoners have cognizable claims under § 1983 to question the constitutionality of state parole procedures.<sup>39</sup> The *Wilkinson* court held that prisoners are not limited to habeas relief when challenging the constitutionality of state parole procedures because success on the merits

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force in 1980, the time of his conviction. *Id.* at 503. The California legislature amended the statute in 1981, allowing the parole board to delay parole determination hearings for up to three years if the conviction was for taking a life and it was unlikely the prisoner would be paroled within that three year period. *Id.* The parole board found Morales satisfied both factors and delayed his next parole determination hearing for three years. *Id.*; *see also* U.S. CONST. art. I, § 10, cl. 1 (prohibiting states from passing ex post facto laws); *Jones v. Cunningham*, 371 U.S. 236, 241 (1963) (holding that paroled person may still file petition for writ of habeas corpus to challenge parole conditions); *Mickens-Thomas v. Vaughn*, 321 F.3d 374, 376 (3rd Cir. 2003) (noting that prisoner filed petition for writ of habeas corpus to challenge retroactive application of state parole laws enacted after his conviction); *Nulph v. Faatz*, 27 F.3d 451, 452 (9th Cir. 1994) (stating that prisoner filed petition for writ of habeas corpus because state parole board used post-conviction parole laws to determine parole eligibility); *Fender v. Thompson*, 883 F.2d 303, 304 (4th Cir. 1989) (explaining that prisoner filed petition for writ of habeas corpus after exhausting state remedies to challenge application of new parole laws to his eligibility proceedings).

<sup>36</sup> *See Moran v. Sondalle*, 218 F.3d 647, 650-51 (7th Cir. 2000) (holding § 1983 prisoner litigation permissible unless prisoners “want to challenge their convictions, their sentences, or administrative orders revoking good-time credits or equivalent sentence shortening devices . . . because they contest the fact or duration of custody”); *Anyanwutaku v. Moore*, 151 F. 3d 1053, 1057 (D.C. Cir. 1998) (declaring that inmate may file § 1983 suit attacking constitutionality of prison’s calculation of parole eligibility date because new parole eligibility hearing does not necessarily imply the invalidity of his sentence); *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997) (holding that inmate may file § 1983 suit to challenge unconstitutional conditions of confinement and procedures so long as it will not expedite his release); *Neal v. Shimoda*, 131 F.3d 818, 824 (9th Cir. 1997) (reasoning that inmate may file a § 1983 suit to challenge classification as sex offender because successful result would only determine eligibility for parole and would not expedite his release); *Williams v. Hopkins*, 130 F.3d 333, 335-36 (8th Cir. 1997) (finding that prisoners may challenge conditions of confinement “or the method by which a sentence is being carried out” under § 1983); *but see Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997) (stating that challenges to parole denials “implicate the validity of continued confinement” even if parole board employed improper procedures to reach its conclusion).

<sup>37</sup> *See Inmates of Orient Corr. Inst. v. Ohio State Adult Parole Auth.*, 929 F.2d 233, 236 (6th Cir. 1991) (denying inmate’s § 1983 claims on the merits). The Sixth Circuit rejected the prisoners’ claims that the parole authority denied them due process when the parole board did not immediately grant parole after a hearing. *Id.* at 234. Rather than holding the suit must be brought as a habeas proceeding, the Sixth Circuit evaluated the merits of the claim and held that the inmates did not have a liberty interest in being released on parole at a particular time. *Id.* at 237.

<sup>38</sup> 125 S. Ct. 1242 (2005).

<sup>39</sup> *See id.* at 1244-45 (setting forth legal question at issue).

of such actions “would [not] necessarily spell speedier release” and do not go to “the core of habeas corpus.”<sup>40</sup> The Court articulated a concise rule encompassing all prior case law concerning prisoner litigation under § 1983:

A state prisoner’s § 1983 action is barred (absent prior invalidation) – no matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct lead to conviction or internal prison proceedings) – if success in that action would necessarily demonstrate the invalidity of confinement or duration.<sup>41</sup>

The Court then rejected Ohio’s contention that the prisoners are challenging their confinement because the ultimate goal is to be released from prison sooner.<sup>42</sup> With respect to Dotson’s claim concerning Ohio’s parole eligibility procedures, the Court held that forcing the Ohio Parole Board to consider another parole application will not necessarily invalidate his conviction or sentence because the Board still has discretion not to grant parole.<sup>43</sup> Similarly, Johnson’s demand for a new parole determina-

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<sup>40</sup> See *id.* at 1248 (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973)) (explaining future implications if Dotson and Johnson prevail in their respective lawsuits).

<sup>41</sup> See *id.* at 1248 (summarizing prior case law concerning prisoner litigation). The Court stated prior case law indicates that prisoner litigation under § 1983 is permissible when an inmate asks for a declaratory judgment that prison procedures are unconstitutional and an injunction precluding future application of the unconstitutional procedures. See *id.* at 1246-47 (citing *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974); *Edwards v. Balisok*, 520 U.S. 641, 648 (1997)). Conversely, injunctions for wrongful denial of good time credits, unconstitutional procedures denying good time credits and damages for an unconstitutional conviction are not permitted under § 1983, and must be brought as a petition for a writ of habeas corpus, because they challenge the legality of the prisoner’s continued confinement. See *id.* at 1245-48 (citing *Preiser*, 411 U.S. at 487-88; *Wolff*, 418 U.S. at 553; *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)).

<sup>42</sup> See *Wilkinson* 125 S. Ct. at 1245-46 (articulating Ohio’s rationale to relegate prisoner challenges to parole procedures to habeas relief because the prisoner’s ultimate goal is earlier release). The Court also rejected two additional arguments Ohio advanced to preclude the § 1983 claims. *Id.* at 1249. Ohio posited that: (1) parole proceedings constitute part of a prisoner’s sentence and any challenge thereto violates Heck’s bar on actions that “necessarily imply the invalidity of [the prisoner’s] . . . sentence;” and (2) that allowing the prisoners’ claims to proceed is contrary to principles of federal/state comity. *Id.* (emphasis in original). The Court narrowly construed the word sentence as referring only to the original punishment issued upon conviction, not subsequent prison procedures. *Id.* Ohio’s second argument was invalid because the Court previously weighed comity issues when it set forth the rule that § 1983 actions may not imply the invalidity of a state prison sentence. *Id.*

<sup>43</sup> See *supra* note 35.

tion proceeding will not guarantee a quicker prison release because that decision is at the Board's discretion.<sup>44</sup>

Justices Scalia and Thomas, concurring, posited that the right to release is not implicated in a prisoner's challenge to procedural deficiencies during a state's discretionary parole proceeding.<sup>45</sup> Thus, because habeas relief was not initially available Dotson and Johnson, § 1983 is a permissible legal avenue to pursue their claims.<sup>46</sup>

Justice Kennedy, dissenting, maintained that the constitutionality of parole procedures goes to the duration of the prisoner's confinement.<sup>47</sup> Habeas relief should be "the exclusive vehicle" for parole challenges.<sup>48</sup> Furthermore, as a matter of comity, the propriety of state parole procedures is a state matter and the Court's decision "deprives the federal courts of the invaluable assistance and frontline expertise found in the state courts."<sup>49</sup>

The Court's decision in *Wilkinson v. Dotson* allows a prisoner to challenge state parole procedures under § 1983, but does not preclude the same challenge under the federal habeas statute.<sup>50</sup> Heavily relying on *Heck's* requirement that a prisoner's § 1983 suit is barred if it would "necessarily demonstrate the invalidity of the conviction," the Court narrowed the scope of prison procedures that would lead to earlier prison releases to allow § 1983 challenges to parole procedures.<sup>51</sup> Based on this limited definition, the Court accurately concluded that Dotson properly brought his demand for a new parole eligibility proceeding under § 1983.<sup>52</sup>

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<sup>44</sup> See *Wilkinson*, 125 S. Ct. at 1250 (2005) (Scalia, J. and Thomas, J., concurring) (noting that habeas relief is limited to right to be released from custody, shorter prison sentence, or lower prison security level); *supra* note 35.

<sup>45</sup> See *id.* at 1251 (contrasting prisoner who demands right to release to prisoner who demands proper procedure).

<sup>46</sup> See *id.* (comparing case at bar to hypothetical prisoner who failed to exhaust all of his state remedies in a habeas proceeding contesting the length of his confinement).

<sup>47</sup> See *Wilkinson*, 125 S. Ct. at 1252 (Kennedy, J., dissenting) (explaining that erroneous parole determinations and procedures lead to continued confinement, which is what the prisoners are challenging); *id.* at 1252-53 (arguing that the Court's holding regarding state parole procedures is contrary to the distinction between challenged to confinement and challenges to condition of confinement).

<sup>48</sup> See *Wilkinson*, 125 S. Ct. at 1252 (2005) (rejecting narrow interpretation of habeas corpus because prior cases consistently held that federal courts may broadly construe a claim as a petition for a writ of habeas corpus); *supra* note 34.

<sup>49</sup> See *id.* at 1254 (positing that federal courts should defer to state courts concerning constitutionality of state parole procedures as a matter of comity and to better enable federal courts to decide cases about state parole procedures).

<sup>50</sup> See *id.* at 1247-48 (articulating that state prisoner can pursue § 1983 claim if underlying confinement or sentence is not challenged).

<sup>51</sup> See *id.* at 1248 (emphasis in original) (reasoning that parole procedures are not part of underlying conviction or sentence because neither Dotson or Johnson assured earlier release from prison if procedures later declared invalid).

<sup>52</sup> See *id.* (stating challenges to parole procedures do not fall within § 1983's "implicit habeas exception"). Cf. *supra* note 23.

As Justice Kennedy correctly articulated in his dissent, however, the Court's decision undermines prior cases that pointed to habeas corpus, if available, as the exclusive remedy for prisoners.<sup>53</sup> Rather, the Court ignored the distinction between challenges to prison conditions and confinement thereby permitting prisoners to bring § 1983 suits that are properly brought as a petition for a writ of habeas corpus.<sup>54</sup> Circuit splits as to the nature of a prisoner's § 1983 claim are inevitable because lower federal courts can no longer rely on a clearly defined habeas exception.<sup>55</sup>

Justices Thomas and Scalia's concurring opinion offers a resolution to this dilemma – that a prisoner must bring his challenge to parole procedures under § 1983 because habeas corpus is not an available remedy.<sup>56</sup> Dotson's claim did not challenge the conditions of his confinement; it alleged that the Ohio Parole Board merely used the wrong procedures to conclude that he was not entitled to a parole decision at all.<sup>57</sup> On the other hand, Johnson's claim that the Ohio Parole Board wrongly denied his application for parole release is appropriately litigated as a habeas petition because the core of the claim is that the Ohio Parole Board allegedly reached the wrong result.<sup>58</sup> Realistically, Johnson probably would not

<sup>53</sup> See *Wilkinson*, 125 S. Ct. at 1252-53 (Kennedy, J., dissenting) (pointing out that challenges to all parole procedures require a habeas proceeding and § 1983 suit is improper); *Preiser*, 411 U.S. at 489 (recognizing Congressional intent that habeas corpus is proper remedy for attacks on imprisonment or sentence "and that specific determination must override the general terms of § 1983"); see also *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (noting that federal courts should broadly construe scope of habeas corpus).

<sup>54</sup> See *Wilkinson*, 125 S. Ct. at 1252 (Kennedy, J., dissenting) (reasoning that possibility that new parole proceeding might not result in earlier prison release does not obviate that challenge to parole procedures contests continued confinement); *supra* note 35.

<sup>55</sup> Compare *supra* note 35, with *Franceski*, No. 04 Civ. 8667 (LBS), 2005 WL 821703, at \*3 (S.D.N.Y. April 8, 2005) (interpreting *Wilkinson* to allow "the possibility that some claims by a federal prisoner might be cognizable" under both § 1983 and in habeas corpus), and *Osborne v. District Atty's Office for the Third Judicial Dist.*, 423 F.3d 1050, 1055 (9th Cir. 2005) (stating, "§ 1983 and habeas are not always mutually exclusive").

<sup>56</sup> See *Wilkinson*, 125 S. Ct. at 1250-51 (Scalia, J., and Thomas, J., concurring) (noting that prisoner not entitled to release and therefore not entitled to writ of habeas corpus if he successfully sues state parole board for procedural error in parole hearing); *DeWalt v. Carter*, 224 F.3d 607, 617 (7th Cir. 2000) (holding that prisoner could bring § 1983 claim for loss of prison job as habeas not an available remedy because he challenged condition of confinement); *Jenkins v. Haubert*, 179 F.3d 19, 21 (2nd Cir. 1999), (holding that prisoner could bring § 1983 claim for constitutional violations during prison disciplinary proceedings because habeas not appropriate remedy).

<sup>57</sup> See *Dotson v. Wilkinson*, 300 F.3d 661, 662 (6th Cir. 2002) (articulating that Dotson challenged Ohio Parole Board's application of new parole guidelines to deny parole hearing); *Wilkinson*, 125 S. Ct. at 1248 (recognizing that if Dotson wins § 1983 suit "it means at most new eligibility review, which at most will speed consideration of a new parole application") (emphasis in original); *Wolff*, 418 U.S. at 555 (allowing prisoner lawsuit under § 1983 to proceed with respect to prison procedures used to deny good time credits); *supra* note 34.

<sup>58</sup> See *Wilkinson*, 125 S. Ct. at 1245 (explaining that Johnson's § 1983 claim arises from alleged procedural deficiencies at hearing to determine whether he would be released

have brought his § 1983 action if the Ohio Parole Board decided to release him on parole. Habeas corpus is the proper remedy in cases similar to Johnson's because the Court should allow state governments the first opportunity to correct invalid procedures used in a parole determination proceedings; immediate federal review of state parole determination procedures is contrary to the principles of comity the Court strives to preserve.<sup>59</sup>

In *Wilkinson v. Dotson*, the Court narrowed the habeas corpus exception to § 1983 federal prisoner litigation. The Court's holding that prisoners may bring § 1983 suits to challenge the constitutionality of parole eligibility and parole determination procedures opens the door to § 1983 litigation that is properly pursued under the federal habeas statute. Moreover, the Court's holding as it pertains to parole determination procedures is contrary to prior case law forbidding prisoners to bring § 1983 actions that would impugn the length of their sentence. As a matter of comity, the state should have the first opportunity to correct unlawful state procedures in parole determination hearings while the prisoner exhausts his state remedies under habeas corpus.

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at an earlier date); *id.* at 1251-53 (Kennedy, J., dissenting) (arguing that parole suitability proceedings challenge continued confinement and must be pursued under habeas statute); *Heck v. Humphrey*, 512 U.S. 477, 483 (1994) (distinguishing between prisoner suit for wrong procedures used in imposing prison sanctions and prisoner suit for constitutional violations as a result of those sanctions); *Wolff*, 418 U.S. at 555 (stating that federal restoration of good time credits to inmates impugns prisoner's continued confinement); *Morales*, 514 U.S. at 503 (explaining that prisoner filed petition for writ of habeas corpus to challenge the constitutionality of parole suitability proceedings); *supra* note 35.

<sup>59</sup> See *supra* note 22.

