No. 24-5999

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Daine Anton Crawley,

Plaintiff-Appellee,

v.

Charles Daniels et al.,

Defendants-Appellants.

Appeal from the
United States District Court for the District of Nevada
Civil Action No. 3:22-cv-00530-CSD, Judge Craig S. Denney

SUPPLEMENTAL BRIEF FOR PLAINTIFF-APPELLEE DAINE ANTON CRAWLEY IN RESPONSE TO THIS COURT'S ORDER OF OCTOBER 22, 2025

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Introduction and Summary of Argument

"*Heck* is an affirmative defense that may be waived or forfeited." *Hebrard v. Nofziger*, 90 F.4th 1000, 1006 (9th Cir. 2024). This case was filed nearly three years ago. Defendants never raised *Heck* in their district-court briefing—not in a motion to dismiss, not in the briefing leading up to the district court's partial grant of summary judgment to Crawley more than a year ago, and not in their motion for reconsideration that followed. What's more, they did not raise this defense in their Opening Brief to this Court. Instead, their first mention of *Heck* came in their Reply filed two weeks ago, just six weeks before argument. The forfeiture doctrine exists to deter exactly this type of tactical maneuver and to prevent exactly this kind of leapfrogging over district-court adjudication.

That's not all. Defendants' invocation of *Heck* is disingenuous. They argue that Crawley may not bring this federal Section 1983 suit because he has yet to invalidate the results of the disciplinary hearing in a habeas or state-court proceeding. But Defendants fail to mention that there *was* a state-court proceeding—initiated by Crawley against four of the five Defendants here. After an evidentiary hearing in state court, Crawley initially obtained a default judgment against Defendants. Defendants moved to set aside that judgment, arguing it was barred by this very Section 1983 suit. The state court agreed, holding that the district court's

decision here precluded Crawley's state-court suit. Defendants should not be permitted to have it both ways: setting aside the state-court judgment because of the summary-judgment decision in this case and then setting aside the summary-judgment decision in this case because of the lack of a state-court or habeas judgment. Defendants' cynical, thirteenth-hour invocation of *Heck* should be rejected.

Argument

A. Defendants forfeited their *Heck* defense, and this Court should not excuse that forfeiture.

1. In their Reply on appeal, Defendants argue for the first time that Crawley's claims are *Heck*-barred and should therefore be dismissed. Defendants had ample opportunity to raise this *Heck* defense and failed to do so.

Defendants' first error is treating *Heck* as a forfeiture-proof jurisdictional requirement rather than as an affirmative defense. Defendants argue that this Court "must" apply a *Heck* bar, regardless of any forfeiture. Reply 4. That's wrong. "*Heck* is an affirmative defense that may be waived or forfeited." *Hebrard v. Nofziger*, 90 F.4th 1000, 1006 (9th Cir. 2024); *see Washington v. L.A. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016).

Because *Heck* is an affirmative defense, the Prison Litigation Reform Act does not change the forfeiture analysis. Where it applies, the PLRA requires a district court to dismiss a case that "fails to state a claim on

which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). But whether a plaintiff has stated a claim is an entirely separate inquiry from whether a defendant may assert an affirmative defense. *See Washington*, 833 F.3d at 1056. "The fact that a conviction has been set aside is *not* an element" of a Section 1983 claim. *Id.*

Defendants forfeited their *Heck* argument, which they "had every opportunity" to make. *Muhammad v. Close*, 540 U.S. 749, 755 (2004). This litigation commenced in 2022. 5-ER-695. Defendants could have moved to dismiss based on *Heck*. They did not. Defendants could have raised *Heck* in any of the three briefs they filed at the summary-judgment stage. *See* 3-ER-255-71; 2-ER-93-110; 2-ER-79-83. They did not. After the district court granted partial summary judgment in favor of Crawley, Defendants *still* did not raise the argument in their motion for reconsideration under Rule 59(e) or in their reply brief on that motion. *See* 2-ER-68-77; 2-ER-56-60. Defendants also declined to raise this argument in their Opening Brief on appeal. "Having failed to raise the claim when its legal and factual premises could have been litigated" from the onset, *Muhammad*, 540 U.S. at 755, Defendants should not be permitted to raise it now.

2. Defendants' untimely effort to raise a *Heck* defense is also inconsistent with their position in Crawley's parallel state-court litigation. Crawley filed a state-court civil complaint on August 18, 2022, before this case was filed, challenging Defendants' revocation of his good-

time credits. *See* Compl., *Crawley v. Nev. Dep't of Corrs.*, 22 OC 00095, (Nev. D. Ct. Aug. 18, 2022).[1]

In October 2023, the state court granted a default judgment in Crawley's favor. Judgment, *Crawley v. Nev. Dep't of Corrs.*, 22 OC 00095, (Nev. D. Ct. Oct. 30, 2023). The state court initially set aside that default judgment due to improper service, Order Granting Mot. to Set Aside J., *Crawley v. Nev. Dep't of Corrs.*, 22 OC 00095, (Nev. D. Ct. Jan. 8, 2024), but the Nevada Court of Appeals reversed as to Crawley's Section 1983 claims, finding that the state district court had improperly set aside the default judgment on those claims, *Crawley v. Nev. Dep't of Corrs.*, 554 P.3d 240 (Nev. Ct. App. 2024) (table).

Defendants then again requested that the state court set aside its default judgment, arguing that Crawley's state-court Section 1983 claims were claim-precluded by the district court's summary-judgment order in this case. Resp. to Order, *Crawley v. Nev. Dep't of Corrs.*, 22 OC 00095, (Nev. D. Ct. Nov. 15, 2024). The state court agreed and set aside the default judgment on that basis. Order Setting Aside Default J., *Crawley v. Nev. Dep't of Corrs.*, 22 OC 00095, (Nev. D. Ct. Jan. 15, 2025).[2]

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[1] We have attached copies of the relevant state-court case materials in an addendum to a motion that asks this Court to take judicial notice of these materials.

[2] The state court's preclusion holding may be incorrect if for no other reason than that the state-court default judgment in Crawley's favor preceded the district court's grant of summary judgment. That issue may

Significantly, Defendants invoked claim preclusion in the state-court case on November 15, 2024, over a month after they filed this appeal and nearly two months after the federal district court granted partial summary judgment in favor of Crawley and against Defendants. Defendants chose to argue claim preclusion in the state-court case rather than mount a *Heck* defense in this federal case, which they only did a year later (and without informing the district court or this Court of the state-court proceedings).

3. This Court should not excuse Defendants' forfeiture. Forfeiture is excused only when the failure to address the forfeited issue would "seriously affect[] the fairness, integrity or public reputation of judicial proceedings." *United States v. Olano*, 507 U.S. 725, 732 (1993) (quoting *United States v. Young*, 470 U.S. 1, 15 (1985)). Here, the opposite is true. Allowing Defendants to belatedly raise a *Heck* defense would undermine the fairness of these proceedings and the integrity of the judicial process.

Defendants' failure to raise *Heck* in a timely manner prejudices Crawley by compromising his ability to efficiently and effectively vindicate his rights. Defendants contend that Crawley was required to bring his claim as a habeas action, and not under Section 1983. Had Defendants raised their *Heck* argument in a timely manner three years ago, and had the Court embraced their argument, Crawley could have

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be separately litigated in a state appellate court, but the outcome there would not bear on Defendants' forfeiture of the *Heck* issue here.

filed a habeas petition to pursue his due-process claim. Due to Defendants' delay, however, Crawley now faces procedural barriers to pursuing habeas relief.

That prejudice is heightened given the timeline here. Crawley is eligible for parole in mere months—on July 9, 2026—and the latest he will be released is in 2029.[3] Formerly incarcerated people who have been released are unable to bring habeas cases, so *Heck* cannot bar their claims. *Nonnette v. Small*, 316 F.3d 872, 875-76 (9th Cir. 2002). If, as Defendants now argue, Crawley's only available remedy comes from habeas, their nearly three-year delay in asserting a *Heck* defense puts Crawley in an untenable position: Any habeas claim could be mooted by his release before it could be finally adjudicated. *See Nonnette*, 316 F.3d at 875-76. This Court should not bless Defendants' gamesmanship.

Defendants argue that this Court should excuse their forfeiture, relying on this Court's decision in *Hebrard v. Nofziger*, 90 F.4th 1000 (9th Cir. 2024). But this case is different from *Hebrard* and demands different treatment. In *Hebrard*, the district court raised the *Heck* bar *sua sponte* before making any merits determinations. *Id.* at 1005. And excusing the forfeiture caused "no prejudice" to the plaintiff because "[h]is underlying due process claim [wa]s almost certainly meritless." *Id.* at 1007 n.5. Here, by the time Defendants first raised a *Heck* defense two weeks ago, the

[3] *See* Nevada Department of Corrections Inmate Search: Daine Crawley, https://ofdsearch.doc.nv.gov/ (last accessed Oct. 28, 2025).

district court had already granted Crawley summary judgment on his due-process claim, 1-ER-33, and Defendants had filed five separate briefs post-dating the district court's summary-judgment opinion, each of which were silent on *Heck*. *See* 2-ER-93-110; 2-ER-68-77; 2-ER-79-83; 2-ER-56-60; Defendants' Opening Br. And, as both our Response Brief (at 16-38) and the district court, 1-ER-24-29, have explained, Crawley's claims are *not* "meritless." *Contra Hebrard*, 90 F.4th at 1007 n.5.

Defendants seem to suggest that their forfeiture should be excused because Crawley had not previously invoked his claim of entitlement to good-time credits as the source of his liberty interest. Reply 2. That's irrelevant. The *Heck* inquiry turns on "whether a judgment in favor of the plaintiff would necessarily imply the invalidity of [a] conviction or sentence." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). In other words, it concerns the *result* of the court's "judgment" resolving a claim, *not* the relied-upon liberty interest in the claim. *Id.* at 482-83. Defendants have known since the beginning that a loss of good-time credits was one of the sanctions imposed on Crawley, *see, e.g.*, 3-ER-257. Put differently, Defendants could have moved to dismiss this case based on *Heck* right after Crawley filed this suit in 2022.

Even assuming (counterfactually) that Crawley's invocation of good-time credits to support a liberty interest impacts this analysis, it is *Defendants*, not Crawley, who belatedly raised the issue. As our Response Brief explains (at 16-18), Defendants were well aware that (1) Crawley

had sought summary judgment based on a violation of procedural due process and (2) Crawley's procedural-due-process claim must be premised on the existence of a liberty interest. Yet they did nothing to challenge Crawley's liberty interest in the district court. So, even if we credit Defendants' efforts to tether *Heck* to Crawley's liberty interest, that simply exposes Defendants' double forfeiture, with the *Heck* forfeiture stemming from their earlier failure to attack Crawley's liberty interest in good-time credits.

B. Defendants' *Heck* defense also fails on the merits.

Finding a *Heck* bar would be inconsistent with Supreme Court precedent. A trio of Supreme Court cases establish the rule that squarely applies here: A prisoner may bring a Section 1983 suit to challenge the procedure by which a prison has revoked his good-time credits, without first showing that his conviction was invalid, if the prisoner's claim would not necessarily imply that the revocation was substantively invalid. That's exactly the type of challenge that Crawley has brought.

Start with *Wolff v. McDonnell*, 418 U.S. 539 (1974). *Wolff* held in favor of a class of incarcerated people that brought a Section 1983 due-process challenge to Nebraska's "rules, practices, and procedures" concerning the award of good-time credits as violating the Due Process Clause, *id.* at 553, which is fundamentally the same type of legal claim Crawley brings in this suit.

Heck itself recognized that the type of suit brought in *Wolff* is not subject to a *Heck* bar because *Wolff* "recognized a § 1983 claim for using the wrong *procedures*, not for reaching the wrong *result*" with respect to loss of good-time credits. *Heck v. Humphrey*, 512 U.S. 477, 482-83 (1994). (emphases added). That distinction squarely applies to this case in which Crawley is alleging that the *procedures* by which his good-time credits were revoked violated his due-process rights; he is not challenging the revocation itself. He is thus seeking relief for "the deprivation of civil rights" not for the "deprivation of good-time credits." *Id.* at 482.

Nor does *Edwards v. Balisok*, 520 U.S. 641 (1997), bar Crawley's claims. *Balisok* held that *Heck* can properly be raised as an affirmative defense when a finding in favor of the plaintiff would "necessarily imply the invalidity of the deprivation of his good-time credits." *Balisok*, 520 U.S. at 646. Balisok alleged that the hearing officer concealed certain evidence. *Id.* at 644. In ruling that Balisok's claim fell within this category, the Court noted that the alleged "cause of the exclusion of the exculpatory evidence was the deceit and bias of the hearing officer himself." *Id.* at 646-47.

As the Court explained in *Balisok*, this error is different in kind from the procedural errors at issue in *Wolff*. *See Balisok*, 520 U.S. at 645-47. Importantly, the "decision of a biased hearing officer who dishonestly suppresses evidence of innocence" is necessarily invalid. *Id.* That contrasts with *Wolff*, where correcting the procedural defect may or may

not have resulted in a changed outcome, so the claim would not have been *Heck*-barred. *Balisok*, 520 U.S. at 647. This difference matters because "[a] prisoner who seeks damages only for being subjected to unconstitutional procedures, without implying the invalidity of (or seeking damages for) the resulting loss of good-time credits, may proceed under § 1983 without first invalidating his disciplinary proceeding." *Nonnette v. Small*, 316 F.3d 872, 875 n.3 (9th Cir. 2002).

Justice Ginsburg's concurrence in *Balisok* sheds further light on this distinction, highlighting that the Court's holding reached only the "allegations of deceit and bias on the part of the decisionmaker" and did not apply to Balisok's due-process claims related to "the failure of prison official Edwards 'to specify what facts and evidence supported the finding of guilt.'" 520 U.S. at 649 (Ginsburg, J., concurring) (quoting the majority opinion). "A defect of this order, unlike the principal 'deceit and bias' procedural defect Balisok alleged … would not necessarily imply the invalidity of the deprivation of his good-time credits." *Id.* at 649-50 (Ginsburg, J., concurring) (quoting the majority opinion).

This case involves the exact types of claims that *Heck* and *Balisok* recognized a plaintiff may still bring, even in the absence of a favorable result in another proceeding. Crawley challenges the "procedures," not the "result," of the disciplinary action. *Heck*, 512 U.S. at 482-83. Those challenged procedures include the failure of prison officials to "specify what facts and evidence supported the finding of guilt." *Balisok*, 520 U.S.

at 649 (Ginsburg, J., concurring); *see also Melnik v. Dzurenda*, 14 F.4th 981, 985 (9th Cir. 2021); 1-ER-18. The challenge brought by Crawley does not "necessarily imply the invalidity of the deprivation of his good-time credits," *Balisok*, 520 U.S. at 646, so it is not barred by *Heck*.

Defendants rely heavily on *Hebrard v. Nofziger*, 90 F.4th 1000 (9th Cir. 2024). At first glance, *Hebrard* seems to conflict with the position Crawley advances here. But upon further analysis, it does not. Like *Balisok*, *Hebrard* applies a *Heck* bar only where "the alleged 'procedural defect,' if proven, would demonstrate the 'invalidity of the judgment' in [a prisoner's] disciplinary hearing." 90 F.4th at 1013 (quoting *Balisok*, 520 U.S. at 645-47).

Hebrard's reach is limited further because Hebrard did not advance the argument that Crawley is making: that finding for him on his procedural-due-process challenge would not necessarily imply the invalidity of the good-time-credit revocation. Instead Hebrard's briefing *presumed* that *Heck* barred the good-time-credits challenge and argued that he could nonetheless challenge a separate sanction—the loss of property—that resulted from the same hearing. *See* Brief for Appellant at 21-25, *Hebrard v. Nofziger*, 90 F.4th 1000 (No. 22-35327) (9th Cir. Aug. 31, 2022). Put differently, the *Hebrard* court needed to decide whether separate *relief* impacted the *Heck* analysis; the dispute in that case had nothing to do with the nature of the plaintiff's *claims*.

As just discussed, *Wolff*, *Heck*, and *Balisok* allow Crawley to proceed in this litigation. To the extent that tension exists between those cases and *Hebrard*, this Court should adopt a reasonable reading of *Hebrard* that does not conflict with Supreme Court precedent. *See FTC v. Consumer Def., LLC*, 926 F.3d 1208, 1213 (9th Cir. 2019) ("[I]f we can apply our precedent consistently with that of the higher authority, we must do so.").

* * *

We end where we began. Navigating the borderline between *Hebrard* on the one hand, and *Wolff*, *Heck*, and *Balisok* on the other, may ultimately present a range of challenges. This Court need not, however, enter that quagmire. Because *Heck* is an affirmative defense, Defendants had the choice of whether to raise it. For more than three years, they did not. Any potential *Heck* defense has been forfeited.

Conclusion

This Court should affirm.

Respectfully submitted,

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