SUPREME COURT OF THE UNITED STATES

No. 09–9000

HENRY W. SKINNER, PETITIONER *v.* LYNN SWITZER, DISTRICT ATTORNEY FOR THE 31ST JUDICIAL DISTRICT OF TEXAS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[March 7, 2011]

JUSTICE THOMAS, with whom JUSTICE KENNEDY and JUSTICE ALITO join, dissenting.

The Court holds that Skinner may bring under 42 U. S. C. §1983 his "procedural due process" claim challenging "Texas' postconviction DNA statute." *Ante*, at 8. I disagree.[1] I accept the majority's characterization of the issue here as the question left open in *District Attorney's Office for Third Judicial Dist.* v. *Osborne,* 557 U. S. ___ (2009), *ante*, at 1, where a prisoner challenged the constitutional adequacy of the access to DNA evidence provided by Alaska's "general postconviction relief statute," 557 U. S., at ___ (slip op., at 10). Like Osborne, Skinner seeks to challenge state collateral review procedures.[2] I would

[1] I adopt the majority's view that Skinner has alleged a violation of procedural due process despite the fact that his complaint is more naturally read as alleging a violation of *substantive* due process. I also ignore the questionable premise that the requested relief—DNA testing—would be available in a procedural due process challenge. Compare *Wilkinson* v. *Dotson*, 544 U. S. 74, 77 (2005) (seeking "a new parole hearing conducted under constitutionally proper procedures"), with *Osborne*, 557 U. S., at ___, n. 1 (ALITO, J., concurring) (slip op., at 4, n. 1) (distinguishing *Dotson* because Osborne sought "'exculpatory' evidence").

[2] Skinner challenges Texas' Article 64, Tex. Code Crim. Proc. Ann., Art. 64.01 *et seq.* (Vernon 2006 and Supp. 2010), which provides for

now hold that these claims are not cognizable under §1983.

I

The Court has recognized that §1983 does not reach to the full extent of its "broad language." *Preiser* v. *Rodriguez*, 411 U. S. 475, 489 (1973); see, *e.g., Heck* v. *Humphrey*, 512 U. S. 477, 485 (1994) (§1983 should not "expand opportunities for collateral attack"). But this Court has never purported to fully circumscribe the boundaries of §1983. Cf. *id.*, at 482. Rather, we have evaluated each claim as it has come before us, reasoning from first principles and our prior decisions.

In *Preiser* v. *Rodriguez*, the Court began with the undisputed proposition that a state prisoner may not use §1983 to "challeng[e] his underlying conviction and sentence on federal constitutional grounds." 411 U. S., at 489. This included attacks on the trial procedures. See *id.*, at 486 ("den[ial] [of] constitutional rights at trial"). From there, the Court reasoned that "immediate release from [physi-

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postconviction discovery of DNA evidence that can then be used in a state habeas proceeding to challenge the validity of a conviction. See *Ard* v. *State*, 191 S. W. 3d 342, 344 (Tex. App. 2006). Article 64 does not itself "provide a vehicle for obtaining relief," *Ex parte Tuley*, 109 S. W. 3d 388, 391 (Tex. Crim. App. 2002), but rather is by design and by nature part of Texas' collateral review procedures. See Reply Brief for Petitioner 8 ("Because [Article 64] does not give the convicting court authority to overturn a conviction, the prisoner still must bring a habeas proceeding to challenge the conviction").

Although Article 64 is, for the purposes of Skinner's due process challenge, part of the state collateral review process, I do not suggest that a motion under Article 64 is an "application for . . . collateral review" under 28 U. S. C. §2244(d)(2). See *Wall* v. *Kholi*, *post*, at 10, n. 4 (noting that an application for review must "provide a state court with authority to order relief from a judgment"). Texas has divided postconviction discovery of DNA evidence and the application for state habeas into separate proceedings, but both remain parts of the State's collateral review process.

cal] confinement or the shortening of its duration" also cannot be sought under §1983. *Id.*, at 489; see also *Wolff* v. *McDonnell*, 418 U. S. 539 (1974) (refusing to allow a §1983 suit for restoration of good-time credits); *Edwards* v. *Balisok*, 520 U. S. 641 (1997) (refusing to allow a §1983 procedural challenge to the process used to revoke good-time credits). Then, in *Heck* v. *Humphrey*, we addressed §1983 actions seeking damages. 512 U. S., at 483. Determining that such actions were not covered by *Preiser*, we returned to "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments," 512 U. S., at 486, and concluded that a complaint must be dismissed where "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," *id.*, at 487. Most recently, in *Wilkinson* v. *Dotson*, 544 U. S. 74, 82 (2005), we applied the principles from these prior decisions and found cognizable under §1983 a claim that sought to "render invalid the state procedures used to deny parole eligibility . . . and parole suitability."

II

We have not previously addressed whether due process challenges to state collateral review procedures may be brought under §1983, and I would hold that they may not. Challenges to all state procedures for reviewing the validity of a conviction should be treated the same as challenges to state trial procedures, which we have already recognized may not be brought under §1983. Moreover, allowing such challenges under §1983 would undermine Congress' strict limitations on federal review of state habeas decisions. If cognizable at all, Skinner's claim sounds in habeas corpus.

First, for the purposes of the Due Process Clause, the process of law for the deprivation of liberty comprises all procedures—including collateral review procedures—that

establish and review the validity of a conviction. This has long been recognized for direct appellate review:

> "And while the Fourteenth Amendment does not require that a State shall provide for an appellate review in criminal cases, it is perfectly obvious that where such an appeal is provided for, and the prisoner has had the benefit of it, the proceedings in the appellate tribunal are to be regarded as part of the process of law under which he is held in custody by the State, and to be considered in determining any question of alleged deprivation of his life or liberty contrary to the Fourteenth Amendment." *Frank* v. *Mangum*, 237 U. S. 309, 327 (1915) (citations omitted).

Similarly, although a State is not required to provide procedures for postconviction review, it seems clear that when state collateral review procedures are provided for, they too are part of the "process of law under which [a prisoner] is held in custody by the State." *Ibid.* As this Court has explained, when considering whether the State has provided all the process that is due in depriving an individual of life, liberty, or property, we must look at both pre- and post-deprivation process. See *Cleveland Bd. of Ed.* v. *Loudermill*, 470 U. S. 532, 547, n. 12 (1985) ("[T]he existence of post-termination procedures is relevant to the necessary scope of pretermination procedures"); see also *National Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U. S. 582, 587 (1995); *Mathews* v. *Eldridge*, 424 U. S. 319, 349 (1976). There is no principled reason this Court should refuse to allow §1983 suits to challenge part of this process—the trial proceedings—but bless the use of §1983 to challenge other parts.

Collateral review procedures are, of course, "not part of the criminal proceeding itself." *Pennsylvania* v. *Finley*, 481 U. S. 551, 557 (1987). But like trial and direct appellate procedures, they concern the validity of the conviction.

Trial procedures are used to initially convict a prisoner; appellate procedures review the validity of that conviction before it becomes final; and collateral review procedures permit challenge to the conviction after it is final. For purposes of deciding which claims fall within the bounds of §1983, I think it makes sense to treat similarly all constitutional challenges to procedures concerning the validity of a conviction. See *Heck*, *supra*, at 491 (THOMAS, J., concurring) ("[I]t is proper for the Court to devise limitations aimed at ameliorating the conflict [between habeas and §1983], provided that it does so in a principled fashion").

Second, "principles of federalism and comity [are] at stake" when federal courts review state collateral review procedures, just as when they review state trial procedures. *Osborne*, 557 U. S., at ___ (ALITO, J., concurring) (slip op., at 2). An attack in federal court on any "state judicial action" concerning a state conviction must proceed with "proper respect for state functions," because the federal courts are being asked to "tr[y] the regularity of proceedings had in courts of coordinate jurisdiction." *Preiser*, 411 U. S., at 491 (internal quotation marks and emphasis omitted).

Because of these concerns for federal-state comity, Congress has strictly limited the procedures for federal habeas challenges to state convictions and state habeas decisions. Congress requires that before a state prisoner may seek relief in federal court, he must "exhaus[t] the remedies available in the courts of the State." 28 U. S. C. §2254(b)(1)(A). And state habeas determinations receive significant deference in subsequent federal habeas proceedings. §2254(d). These requirements ensure that the state courts have the first opportunity to correct any error with a state conviction and that their rulings receive due respect in subsequent federal challenges.

By bringing a procedural challenge under §1983, Skin-

ner undermines these restrictions. For example, Skinner has never presented his current challenge to Texas' procedures for postconviction relief to the Texas courts. Allowing Skinner to artfully plead an attack on state habeas *procedures* instead of an attack on state habeas *results* undercuts the restrictions Congress and this Court have placed on federal review of state convictions. See *Osborne*, *supra*, at ___ (ALITO, J., concurring) (slip op., at 3). To allege that the Texas courts erred in denying him relief on collateral review, Skinner could only file a federal habeas petition, with its accompanying procedural restrictions and deferential review. But a successful challenge to Texas' collateral review procedures under §1983 would impeach the result of collateral review without complying with any of the restrictions for relief in federal habeas.

The majority contends that its decision will not "spill over to claims relying on *Brady* v. *Maryland*, 373 U. S. 83 (1963)." *Ante*, at 13; but cf. *Osborne*, *supra*, at ___–___ (ALITO, J., concurring) (slip op., at 3–5). In truth, the majority provides a roadmap for any unsuccessful state habeas petitioner to relitigate his claim under §1983: After state habeas is denied, file a §1983 suit challenging the state habeas process rather than the result. What prisoner would not avail himself of this additional bite at the apple?[3]

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[3] Nor is there any reason to believe that the Court's holding will be cabined to collateral review procedures. The Court does not discuss whether a State's direct review process may be subject to challenge under §1983, but it suggests no principled distinction between direct and collateral review. This risks transforming §1983 into a vehicle for direct criminal appeals. Cf. *Heck* v. *Humphrey*, 512 U. S. 477, 486 (1994). Just as any unsuccessful state habeas petitioner will now resort to §1983 and challenge state collateral review procedures, so, too, will unsuccessful appellants turn to §1983 to challenge the state appellate procedures.

III

The majority relies on *Dotson* to reach its conclusion. In that case, the plaintiffs alleged due process violations in state parole adjudications and sought injunctive relief and "a new parole hearing conducted under constitutionally proper procedures." 544 U. S., at 77. We found the claims cognizable under §1983.

Dotson does not control this case. Unlike state collateral review, parole does not evaluate the validity of the underlying state conviction or sentence. Collateral review permits prisoners to "attack their final convictions." *Osborne*, *supra*, at ___ (ALITO, J., concurring) (slip op., at 2). In contrast, parole may provide release, but whether or not a prisoner is paroled in no way relates to the validity of the underlying conviction or sentence. Whatever the correctness of *Dotson*, parole procedures do not review the validity of a conviction or sentence. For that reason, permitting review of parole procedures does not similarly risk transforming §1983 into a vehicle for "challenging the validity of outstanding criminal judgments." *Heck*, 512 U. S., at 486.

Contrary to the majority's contention, *Dotson* did not reduce the question whether a claim is cognizable under §1983 to a single inquiry into whether the prisoner's claim would "necessarily spell speedier release." See *ante*, at 11, 12, n. 12 (internal quotation marks omitted).[4] As we recognized in *Heck*, evaluating the boundaries of §1983 is not a narrow, mechanical inquiry. Even when the relief sought was not "speedier release," we inquired further and returned to first principles to determine that the chal-

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[4] Because parole procedures are unrelated to the validity of a conviction, a "necessarily spell speedier release" test may sufficiently summarize the analysis of §1983 challenges to parole procedures. But "necessarily spell speedier release" cannot be the only limit when a prisoner challenges procedures used to review the validity of the underlying conviction.

lenge in that case was not cognizable under §1983.[5] See 512 U. S., at 486. *Dotson* does not suggest that the *Heck* approach, which I would continue to follow here, was incorrect.

* * *

This Court has struggled to limit §1983 and prevent it from intruding into the boundaries of habeas corpus. In crafting these limits, we have recognized that suits seeking "immediate or speedier release" from confinement fall outside its scope. *Dotson*, *supra*, at 82. We found another limit when faced with a civil action in which "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Heck*, *supra*, at 487. This case calls for yet another: due process challenges to state procedures used to review the validity of a conviction or sentence. Under that rule, Skinner's claim is not cognizable under §1983, and the judgment of the Court of Appeals should be affirmed. I respectfully dissent.

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[5] As respondent argued, our existing formulations are not "the end of the test." Tr. of Oral Arg. 32–33.