No. 23-7809

IN THE

Supreme Court of the United States

RUBEN GUTIERREZ,

Petitioner,

v.

LUIS V. SAENZ, CAMERON COUNTY DISTRICT ATTORNEY; FELIX SAUCEDA, CHIEF, BROWNSVILLE POLICE DEPARTMENT,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring meaningful access to the courts, in accordance with constitutional text and history, and therefore has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is not about access to DNA evidence for death-row prisoners. It is about the power of the federal courts to adjudicate disputes that Congress authorized those courts to hear—disputes of constitutional proportion.

That power comes from Section 1983, a landmark Reconstruction statute enacted "in response to the widespread deprivations of constitutional rights in the Southern States and the inability or unwillingness of authorities in those States to protect those rights or punish wrongdoers." *Felder v. Casey*, 487 U.S. 131, 147 (1988). Yet the decision of the court below effectively hands over to state officials—the very officials accused of violating constitutional rights—the power to determine whether a Section 1983 claim can be brought at all. That result is fundamentally at odds

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

with the text and history of this critically important federal statute.

Section 1983 and the Fourteenth Amendment it was enacted to enforce "were crucial ingredients in the basic alteration of our federal system accomplished during the Reconstruction Era." *Patsy v. Bd. of Regents*, 457 U.S. 496, 503 (1982). In the wake of the Civil War, as Southern state officials continued to trample upon the rights of Black Americans and their allies, the Forty-Second Congress enacted the Civil Rights Act of 1871, the first section of which is codified at 42 U.S.C. § 1983, and provides a right to sue "[e]very person" who under color of state law deprives another person of "any rights, privileges, or immunities secured by the Constitution."

Among the abuses this statute was enacted to combat were those effectuated by corrupt officials in state criminal justice systems, including prosecutors and judges who were notoriously "unable or unwilling to check the evil" of violence and discrimination across the South. Cong. Globe, 42d Cong., 1st Sess. 321 (1871) (Rep. Stoughton). As this Court has put it, during a time when "state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights," Congress enacted Section 1983 to create "a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Mitchum v. Foster*, 407 U.S. 225, 239-40 (1972).

The decision of the court below turns this concept on its head. In the context of a suit alleging that Texas's post-conviction DNA-testing scheme violates procedural due process, the court fashioned a rule that a federal court presiding over a Section 1983 case must, as part of its threshold standing analysis,

scrutinize the state court record to make a particularized determination as to whether a state prosecutor would *in fact* order the ultimate relief sought by the prisoner in state proceedings if the prisoner prevailed in his federal action. Pet. App. A12-13. That novel requirement empowers state actors—those who "might, in fact, be antipathetic to the vindication of [federal] rights," *Mitchum*, 407 U.S. at 242—to manipulate the jurisdiction of federal courts to hear suits alleging constitutional violations by those very state actors.

In reaching this result, the Fifth Circuit made two fundamental errors. *First*, that court asked the wrong question. Rather than considering whether Gutierrez should get into federal court to assert that Texas's statutory procedures for seeking DNA testing transgress fundamental fairness, the court asked whether Gutierrez would, in fact, ultimately secure DNA testing if given a constitutionally adequate process in state court. In so doing, the court failed to "closely attend to the values and purposes of the constitutional right at issue," *Manuel v. City of Joliet*, 580 U.S. 357, 370 (2017), a critical aspect of the inquiry into any Section 1983 claim. *See, e.g.*, *Albright v. Oliver*, 510 U.S. 266, 271 (1994); *Wallace v. Kato*, 549 U.S. 384, 388-89 (2007); *Nieves v. Bartlett*, 587 U.S. 391, 398-401 (2019); *McDonough v. Smith*, 588 U.S. 109, 115-17 (2019); *Thompson v. Clark*, 596 U.S. 36, 43 (2022).

Had the court below properly treated Gutierrez's case as vindicating the federal procedural due process right rather than a conditional state right to DNA evidence, it would have recognized that "the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions." *Carey v. Piphus*, 435 U.S. 247, 266 (1978). Indeed, for that very reason, this Court

has determined that plaintiffs may vindicate their right to procedural due process even where a defendant demonstrates that affording the plaintiff a constitutionally adequate process would *not* have prevented the deprivation of the plaintiff's protected interest. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 544 (1985). Section 1983 plaintiffs are also entitled to recover nominal damages—the precursor to declaratory judgments, *see Uzuegbunam v. Preczewski*, 592 U.S. 279, 285-86 (2021)—for the deprivation of a fundamentally fair process even if they ultimately fail to prove any actual injury. *Carey*, 435 U.S. at 266-67.

Accordingly, access to the courts to pursue a Fourteenth Amendment procedural due process claim does not require plaintiffs to demonstrate "certain success" with respect to retaining their underlying protected interests. *Loudermill*, 470 U.S. at 544. As this Court put it last year in *Reed v. Goertz*, 598 U.S. 230 (2023), the threshold redressability question in a suit seeking a declaratory judgment that a state DNA-testing statute violates procedural due process is not whether a favorable declaratory judgment would *guarantee* access to the DNA testing, but instead whether it would eliminate a state actor's "justification for denying DNA testing," thus leading to "'a significant increase in the likelihood' that the state prosecutor would grant access to the requested evidence." *Id.* at 234 (quoting *Utah v. Evans*, 536 U.S. 452, 464 (2002)). Answering this question does not require federal courts to scour the state court record and speculate about a complex chain of events governed by state law and the subjective intent of state actors at the outset of a federal lawsuit. Perhaps that is why this Court's standing analysis in *Reed* occupied all of a single paragraph. *See id.*

Second, the court below ceded the question of Article III standing—a purely federal question—to state

actors. Wrong under any circumstances, that approach is especially troubling when considered against the history of Section 1983. As this Court has explained, "[w]hile one main scourge of the evil [during Reconstruction]—perhaps the leading one—was the Ku Klux Klan, the remedy created was not a remedy against it or its members but against those who *representing a State in some capacity* were unable or unwilling to enforce a state law." *Monroe v. Pape*, 365 U.S. 167, 175-76 (1961) (emphasis added). The Congress that enacted Section 1983 was acutely aware that state officials in the South had made a habit of avowing to defy federal law—and were "kept in office year after year" by the state electorate as a reward for doing so. Cong. Globe, 42d Cong., 1st Sess. 334 (Rep. Hoar).

Under the rule of the court below, such avowals of disregard for the supremacy of federal law effectively insulate state actors from suits for deprivations of federal rights. Hinging the standing analysis on the subjective intent of Section 1983 defendants reduces Section 1983 to a paper tiger. No Section 1983 plaintiff could get in the courthouse doors under the rule adopted by the court below if the official named as a defendant declared an intent to ignore any judgment in the plaintiff's favor. With a simple public statement or the stroke of a pen, state defendants could absolve federal courts of their "virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

The alleged reason for a state defendant's defiance of federal law, whether in good or bad faith, is irrelevant. Here, the court below speculated that the state prosecutor would likely deny DNA testing even after a federal declaratory judgment in Gutierrez's favor not out of malice or to seek political gain, but because of

statements in the state court record that Gutierrez faced additional state law barriers to such testing. That hardly matters. At best, treating those statements as preclusive of federal jurisdiction gives state courts—against whose corruption Section 1983 was also directed—control over the scope of federal judicial power. Indeed, it anoints state actors the gatekeepers to a federal cause of action, reinviting the problem to which Section 1983 responded: that state courts at the time "could not, or would not, fully protect federal rights." *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 177 (2023).

In sum, not only is the decision below at odds with *Reed* and standing precedent, as Petitioner describes, but it also erects an unjustified roadblock to plaintiffs who seek to vindicate constitutional rights in federal courts, as Section 1983 permits them to do. This Court should reverse.

ARGUMENT

I. Passed to Rein in Corruption in State Criminal Justice Systems, Section 1983 Established Federal Courts as the Chief Guardians of the People's Constitutional Rights.

During the Reconstruction years, Congress was especially concerned with "the maladministration of justice in the South," particularly ineffective or corrupt local prosecutors and state courts that failed to "administer[] justice fairly and impartially." Donald H. Zeigler, *A Reassessment of the* Younger *Doctrine in Light of the Legislative History of Reconstruction*, 1983 Duke L.J. 987, 989, 998 (1983). Because state criminal justice systems could not be trusted to protect and enforce federal constitutional rights or, worse, were actively engaged in the deprivation of those rights

themselves, Congress enacted Section 1983 to "clearly establish[]" "the Federal Government . . . as a guarantor of the basic federal rights of individuals against incursions by state power." *Patsy*, 457 U.S. at 503.

A. Section 1983's Statutory Predecessors

Section 1983's statutory predecessors helped build the momentum that resulted in a "transformation [in] the concepts of federalism" that took place during the Reconstruction era. *Mitchum*, 407 U.S. at 242. Indeed, even before the Civil Rights Act of 1871, Congress enacted a series of laws to remedy abuses by state actors and ensure the paramount role of federal courts as protectors of federal rights.

These laws were in large part a response to the "Black Codes" passed by Southern states after the Civil War "to subjugate newly freed slaves and maintain the prewar racial hierarchy." *Timbs v. Indiana*, 586 U.S. 146, 153 (2019). While many of the Black Codes "embodied express racial classifications," "others, such as those penalizing vagrancy, were facially neutral" and relied upon selective enforcement by state prosecutors and biased state judiciaries to "resurrect[] the incidents of slavery." *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 387 (1982). Accordingly, the federal civil rights statutes did not merely target state laws that were discriminatory on their face, but also state officials who could not be trusted to enforce state laws fairly and impartially, consistent with the Constitution's guarantees of due process and equal protection.

Among the laws that Congress passed in response to this conduct was the Freedmen's Bureau Act, which Congress first considered in 1866. *See Timbs*, 586 U.S. at 168 (Thomas, J., concurring in the judgment). The bill contained a sweeping prohibition on disparate

treatment in state criminal justice systems, imposed criminal penalties for violating that prohibition, and established a Freedmen's Bureau with jurisdiction to "hear and determine all offenses" committed against "persons who are discriminated against in any of the particulars" covered by the bill. Cong. Globe, 39th Cong., 1st Sess. 209-10 (1866). As one Senator explained, the bill was designed to "set [the Black Codes] aside" and to "give the freedman a practical remedy by taking his case at once before the authorities of the United States." *Id.* at 340 (Sen. Wilson).

Around the same time, Congress also passed the Civil Rights Act of 1866. The 1866 Act guaranteed "such citizens, of every race and color . . . full and equal benefit of all laws and proceedings for the security of person and property," while permitting them to be subject to "like punishment, pains, and penalties, and to none other." An Act to Protect All Persons in the United States in Their Civil Rights and Liberties, and Furnish the Means of Their Vindication, ch. 31, § 1, 14 Stat. 27 (1866). Unlike Section 1983, which creates a civil remedy, the 1866 Act provided for criminal penalties if its provisions were violated. *See id.* § 2. It also designated federal courts as the exclusive forum for "all crimes and offences committed against the provisions of this act," establishing the primacy of the federal judiciary for guarding against constitutional violations. *Id.* § 3.

Opponents of the 1866 Act repeatedly objected that it would allow federal courts to interfere in state criminal justice systems. One opponent remarked, for instance, that the bill "not only proposes to enter the States to regulate their police and municipal affairs, but it attempts to destroy the independence of the State judiciary." Cong. Globe, 39th Cong., 1st Sess. 1154 (Rep. Eldridge); *see also, e.g.*, *id.* at 478 (Sen.

Saulsbury) (expressing concern that the bill would "regulat[e] the internal affairs of the States" by "invad[ing] and defraud[ing] [them] of the right of determining . . . who shall sue and be sued, and who shall give evidence in [their] courts").

Yet the majority in Congress was unmoved—they were more concerned with the prospect of state courts and prosecutors interfering with federal enforcement of constitutional rights than with federal intrusion on state judicial processes. They recognized that, as one proponent of the bill put it, "a ministerial officer or a judge, if he acts corruptly or viciously in the execution or under color of an illegal act, may be and *ought to be* punished." *Id.* at 1758 (Sen. Trumbull) (emphasis added); *see id.* (the "assumption" that state prosecutors and judges "are not to be held responsible for violations of United States laws, when done under color of State statutes or customs, is akin to the maxim of the English law that the King can do no wrong"). In the end, the Civil Rights Act of 1866 passed overwhelmingly in Congress over President Johnson's veto. Zeigler, *supra*, at 1001.

B. The Civil Rights Act of 1871

In 1871, following reports of continued violence against Black Americans and the refusal of Southern states to take this breakdown of justice seriously, the Forty-Second Congress considered an additional Civil Rights Act. As it debated this legislation, Congress heard about problems infecting almost every aspect of state criminal justice systems. *See Monroe*, 365 U.S. at 174 ("The debates are replete with references to the lawless conditions existing in the South in 1871."); *Pierson v. Ray*, 386 U.S. 547, 559 (1967) (Douglas, J., dissenting) (Congressional "members were not unaware that certain members of the judiciary were implicated in the state of affairs which [Section 1983] was

intended to rectify."). As one representative put it, "[s]heriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices." Cong. Globe, 42d Cong., 1st Sess. app. 78 (Rep. Perry). "[A]ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection." *Id.*

For instance, Congress received reports that baseless prosecutions had been initiated across the South against Unionists and their allies. *Id.* at 321. Confederate sympathizers in Kentucky, Virginia, Texas, and other states were able to take over the machinery of state and local government in the wake of the Civil War, initiating thousands of civil suits and criminal prosecutions against Black Americans and Union loyalists for "offenses" such as violating the "slave code," capturing Confederate soldiers during the war, and acting "disloyal[ly]" by challenging in court a Virginia law prohibiting Black Americans from testifying. David Achtenberg, *With Malice Toward Some:* United States v. Kirby*, Malicious Prosecution, and the Fourteenth Amendment*, 26 Rutgers L.J. 273, 299, 340-41 & n.496 (1995).

Congress also received reports that, "as the result of Klan intimidation, and perhaps empathy," Gene R. Nichol, Jr., *Federalism, State Courts, and Section 1983*, 73 Va. L. Rev. 959, 974 (1987), state justice systems were "under the control of those who are wholly inimical to the impartial administration of law and equity," Cong. Globe, 42d Cong., 1st Sess. 394 (Rep. Rainey), and "unable or unwilling to check the evil," *id.* at 321 (Rep. Stoughton). Senator Pratt complained that "the arm of justice is paralyzed" and "punishment has not been inflicted in a single case of the hundreds

of outrages which have occurred." *Id.* at 505. Senator Morton concluded that "the States do not protect the rights of the people; . . . State courts are powerless to redress these wrongs, [leaving] large classes of people . . . without legal remedy in the courts of the States." *Id.* at app. 252. And Senator Osborn noted that "[i]f the state courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate upon this subject at all." *Id.* at 653.

Other supporters of the Act went even further, noting that not only were local judiciaries "impotent," Nichol, *supra*, at 975 (quoting Cong. Globe, 42d Cong., 1st Sess. 459 (Rep. Coburn)), but many were also "in league with the Klan," *id.* Representative Beatty described Southern judges who openly accepted bribes from Klansmen, Cong. Globe, 42d Cong., 1st Sess. 429, and Representative Rainey bemoaned that local judges were "secretly in sympathy with the very evil against which we are striving," *id.* at app. 394; *see also, e.g.*, *id.* at 186 (Rep. Platt) (decrying local judges who "are made little kings, with almost despotic powers to carry out the partisan demands of the Legislature which elected them—powers which, almost without exception, have been exercised against Republicans without regard to law or justice").

In sum, abuse of states' prosecutorial power, alongside corrupt Southern judiciaries, presented a protracted "crisis that provoked vigorous debate and decisive legislative action." Achtenberg, *supra*, at 342. Whether through passive refusal to enforce federal law or active complicity with those intent on undermining Reconstruction, state prosecutors and judges had wholly abdicated their responsibility to enforce the Constitution, making it imperative that Congress "enact the laws necessary for the protection of citizens of

the United States." Cong. Globe, 42d Cong., 1st Sess. 653 (Sen. Osborn); *see id.* at 460 (Rep. Coburn) (a federal forum was necessary to "act with more independence" and "rise above prejudices or bad passions or terror"); *Monroe*, 365 U.S. at 174 (explaining that the 1871 legislation was prompted not by "the unavailability of state remedies," but by "the failure of certain States to enforce the laws with an equal hand"). President Grant agreed that "the power to correct these evils is beyond the control of State authorities," and he recommended that Congress pass "such legislation as in the judgment of Congress shall effectually secure life, liberty, and property, and the enforcement of law in all parts of the United States." *Id.* at 173.

That is exactly what Congress did, enacting a powerful new remedy that provided a cause of action in law or equity against "any person" who, "under color of any law, statute, ordinance, regulation, custom, or usage of any State," deprived another of "any rights, privileges, or immunities secured by the Constitution of the United States . . . any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding." An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes, ch. 22, § 1, 17 Stat. 13 (1871) (codified at 42 U.S.C. § 1983).

The statute's text contained no "modifiers" or procedural limitations, nor did it exempt any state actors from liability. *Talevski*, 599 U.S. at 177 (quotation marks omitted). As one member of the Forty-Second Congress put it, "whoever interferes with the rights and immunities granted to the citizen by the Constitution of the United States, though it may be done under State law or State regulation, *shall not be exempt from responsibility* to the party injured when he brings suit

for redress." Cong. Globe, 42d Cong., 1st Sess. app. 310 (Rep. Maynard) (emphasis added). And members of the Forty-Second Congress also made clear that the Act's text would be "liberally and beneficently construed," as a law "in aid of the preservation of human liberty and human rights," *id.* at app. 68 (Rep. Shellabarger).

II. The Redressability Test Adopted by the Court Below Is Fundamentally at Odds with Section 1983's Text, History, and Purpose.

The court below paid no mind to the text, history, and purpose of Section 1983. Rather than "throw[] open the doors of the United States courts to those whose rights under the Constitution are denied or impaired," *Mitchum*, 407 U.S. at 240 (quotation marks omitted), it slammed those doors shut on a paradigmatic Fourteenth Amendment claim. Remarkably, the court below held—in direct conflict with this Court's decision just last year in *Reed*—that Gutierrez, a death-row prisoner seeking DNA testing pursuant to a state statutory scheme that he alleges deprives him of procedural due process, Pet. App. A14, does not have a sufficiently "'personal stake in the dispute'" to "get in the federal courthouse door," *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021)). Why? Because, according to the court below, it is not certain that state officials will grant him the DNA testing that he seeks in state post-conviction proceedings. Pet. App. A15.

A. The Court Below Erroneously Treated this Section 1983 Case as Vindicating a State Right Rather than a Federal Constitutional Right.

The first error committed by the court below was its conversion of the question of whether Gutierrez gets into federal court to assert that Texas's statutory procedures for seeking DNA testing transgress fundamental fairness into the question of whether Gutierrez would, in fact, ultimately secure DNA testing if given a constitutionally adequate process in state court. In this manner, the court not only transformed the threshold redressability analysis into a merits analysis, but it also treated Gutierrez's Section 1983 suit vindicating a *federal* right—the Fourteenth's Amendment's guarantee of "procedural due process," *see Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 72 (2009) (rejecting creation of "freestanding right to DNA evidence" under "substantive due process" doctrine)—as if it were a suit designed to vindicate a conditional right created by state law—post-conviction DNA testing.

That approach cannot be squared with Section 1983's creation of "a uniquely federal remedy" for incursions on "rights secured by the Constitution." *Wilson v. Garcia*, 471 U.S. 261, 271-72 (1985) (quoting *Mitchum*, 407 U.S. at 239). The text and history of Section 1983 make clear, and this Court has repeatedly held, that "Section 1983 imposes liability for violations of rights protected by *the Constitution*," not rights created under state or common law. *Baker v. McCollan*, 443 U.S. 137, 146 (1979) (emphasis added); *see Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 686 n.45 (1978) (Representative Bingham, the Fourteenth Amendment's principal architect, "declared the bill's purpose to be 'the enforcement . . . of the Constitution

on behalf of every individual citizen of the Republic.'" (quoting Cong. Globe, 42d Cong., 1st Sess. app. 81)). Section 1983 "was designed to expose state and local officials to a new form of liability," *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 259 (1981), by providing a remedy for "federally secured rights," *Smith v. Wade*, 461 U.S. 30, 34 (1983), that would be "supplementary to any remedy any State might have," *McNeese v. Bd. of Educ.*, 373 U.S. 668, 672 (1963).

In light of Section 1983's "very purpose"—"to interpose the federal courts between the States and the people, as guardians of the people's federal rights," *Mitchum*, 407 U.S. at 242—this Court has repeatedly instructed that the contours of a Section 1983 claim "should be tailored to the interests protected by the particular right in question," *Carey*, 435 U.S. at 259. This means that federal courts, even when applying procedural rules adapted from the common law or discerning elements of claims, must always "closely attend to the values and purposes of the constitutional right at issue." *Manuel*, 580 U.S. at 370; *see, e.g.*, *Albright*, 510 U.S. at 271; *Wallace*, 549 U.S. at 388-89; *Nieves*, 587 U.S. at 398-401; *McDonough*, 588 U.S. at 115-17; *Thompson*, 596 U.S. at 43.

Focusing on the constitutional right at issue is no less critical in the context of the standing analysis, which derives not from state or common law but from Article III of the federal Constitution. *See Alliance*, 602 U.S. at 378. In recognition of that principle, this Court held in *Reed* that the threshold redressability question in a suit seeking a declaratory judgment that a state DNA-testing statute denies a plaintiff procedural due process is not whether a favorable declaratory judgment would guarantee access to the DNA testing, but instead whether it would eliminate a state actor's "justification for denying DNA testing," thus

leading to "'a significant increase in the likelihood' that the state prosecutor would grant access to the requested evidence." *Reed*, 598 U.S. at 234 (quoting *Evans*, 536 U.S. at 464); *see id.* at 236 (emphasizing the importance of "focus[ing] first on the specific constitutional right alleged to have been infringed").

Critically, this Court also made clear in *Reed* that no scouring of the state court record for evidence of subjective prosecutorial intent is necessary to answer this question—particularly for purposes of a procedural due process claim. *Id.* at 234. Rather, this Court held that a federal court ruling that a state statute standing between a prisoner and potential evidence in his favor is invalid under the United States Constitution necessarily increases the likelihood that the prisoner will get what he wants (DNA evidence) in the state proceeding. *Id.* At the same time, this Court recognized that the removal of a concrete barrier preventing a prisoner from obtaining favorable evidence may not *guarantee* him that evidence—there may be other substantial barriers lurking in the state proceedings—but it is still "substantially likely" that the federal court's "ordered . . . change in a legal status" will have a palpable effect on the state process. *Id.* (quoting *Evans*, 536 U.S. at 464); *cf. Massachusetts v. EPA*, 549 U.S. 497, 525-26 (2007) ("While it may be true that regulating motor-vehicle emissions will not by itself *reverse* global warming, it by no means follows that we lack jurisdiction to decide whether EPA has a duty to take steps to *slow* or *reduce* it.").

This focus on process rather than outcome is at the heart of this Court's procedural due process doctrine, which again, must serve as the lodestar for courts assessing standing to assert a Section 1983 claim vindicating that federal right. As this Court has explained, the Due Process Clause "raises no impenetrable

barrier to the taking of a person's possessions," or liberty, or life. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). Rather, procedural due process rules protect people from "the *mistaken* or *unjustified* deprivation of life, liberty, or property." *Carey*, 435 U.S. at 259 (emphasis added). In other words, "[i]n procedural due process claims, the deprivation by state action of a constitutionally protected interest in life, liberty, or property is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without* due process of law." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990) (quotation marks omitted).

The flip side of that coin is that "the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions." *Carey*, 435 U.S. at 266. Put another way, "[t]he right to be heard does not depend upon an advance showing that one will surely prevail at the hearing." *Fuentes*, 407 U.S. at 87; *see also, e.g.*, *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 424 (1915) ("To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits."); *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86 (1988) (same).

Thus, even where a defendant proves that affording the plaintiff a constitutionally adequate process would *not* have prevented the deprivation of the plaintiff's protected interest, the plaintiff is *still* entitled to a judgment in his favor. *See Carey*, 435 U.S. at 266-67 (holding that plaintiffs would be entitled to recover nominal damages for deprivation of procedural due process, even if they ultimately failed to prove actual injury). After all, whether or not other damages have been proven, this Court's jurisprudence "obligates" a

court to "award nominal damages when a plaintiff establishes the violation of his right to procedural due process." *Farrar v. Hobby*, 506 U.S. 103, 112 (1992); *see also Uzuegbunam*, 592 U.S. at 285-86 (describing "the declaratory function" of nominal damages, and characterizing nominal damages as a precursor to the Declaratory Judgment Act).

This Court's decision in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), provides a helpful illustration of this concept. There, two public employees who were fired without a pre-termination hearing claimed deprivation of their right to procedural due process. *Id.* at 535-37. In analyzing their claims, this Court made clear that to get in the courthouse doors, the plaintiffs did not have to demonstrate that a constitutionally adequate process would result in "certain success"—*i.e.*, retaining their positions. *Id.* at 544. In fact, this Court noted that for one of the two plaintiffs, there was evidence strongly suggesting that he still would have been terminated even if he *had* been afforded a pre-deprivation hearing. *See id.* ("As for Loudermill, . . . we cannot say that the discharge was mistaken."). That fact, however, had no bearing on the plaintiffs' right to press their procedural due process claims in federal court. *Id.*; *cf. Dep't of Educ. v. Brown*, 600 U.S. 551, 561-62 (2023) ("[W]hen a statute affords a litigant a procedural right to protect his concrete interests, . . . the fact that the defendant might well come to the same decision after abiding by the contested procedural requirement does not deprive a plaintiff of standing." (quotation marks omitted)).

Of course, it is true that in any case in which a person claims denial of procedural due process, the plaintiff's ultimate goal is to win back whatever life, liberty, or property right is at stake. For instance, in the context of a post-conviction DNA testing claim, the

plaintiff's goal is to obtain an adequate state process for seeking DNA testing, that in turn yields an order of DNA testing, that in turn yields favorable DNA evidence, that in turn leads to the plaintiff's exoneration or a reduction in punishment. *Cf. Skinner v. Switzer*, 562 U.S. 521, 536 (2011) (emphasizing that DNA testing "may yield exculpatory, incriminating, or inconclusive results," and thus may not always result in the enhancement of liberty).

But federal courts assessing redressability do not need to scour the state court record to speculate on that entire chain of events to assure themselves of jurisdiction to hear a prisoner's claim of denial of procedural due process in the first instance. That is, they do not need to show that an order to the state actors to bring state procedures into compliance with the Fourteenth Amendment's Due Process Clause would result in "certain success," *Loudermill*, 470 U.S. at 544, on the prisoner's state law claim for DNA evidence any more than they have to show that the DNA evidence would ultimately prove exculpatory, *see Skinner*, 562 U.S. at 536. As long as the federal court finds a "significant increase in the likelihood" that the Section 1983 plaintiff "would obtain relief that directly redresses the injury suffered," that is sufficient. *Reed*, 598 U.S. at 234 (quotation marks omitted); *see also Larson v. Valente,* 456 U.S. 228, 244 n.15 (1982) (a plaintiff satisfies the redressability requirement by showing that a favorable decision will likely relieve a discrete injury, not that it will necessarily "relieve his *every* injury").

Thus, the court below erred by transforming a threshold standing inquiry—about whether Gutierrez gets into court to vindicate a procedural due process right in the first place—into a merits analysis of whether, if sufficient process were provided, Gutierrez

would prevail in his effort to seek DNA testing. And as it attempted to apply its burdensome new test, the court lost sight of the role of federal courts hearing Section 1983 claims as guardians of *federal*, not state, rights.

B. The Decision of the Court Below Cedes the Question of Federal Jurisdiction to the Subjective Intent of State Actors.

"Any determination of who has standing to assert constitutional rights is a federal question to be decided by the [federal court] itself." *Princeton Univ. v. Schmid*, 455 U.S. 100, 103 n.* (1982) (citing *Cramp v. Bd. of Pub. Instr.*, 368 U.S. 278, 282 (1961), and *United States v. Raines*, 362 U.S. 17, 23 n.3 (1960)). That question, at bottom, is whether a case is "of the sort traditionally amenable to, and resolved by, the judicial process." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998). Ceding that threshold inquiry to the subjective intent of state actors is not just a dereliction of a federal court's duty—it also undermines Section 1983's provision of "an effective remedy against those abuses of state power that violate federal law," *Collins v. City of Harker Heights*, 503 U.S. 115, 119 (1992).

Indeed, critical to Congress's decision to enact Section 1983 in the first place was Southern state prosecutors' refusal to enforce state laws against their political allies, and state judiciaries' refusal to administer justice with an even hand. *See supra* Section I. As this Court has explained, "[w]hile one main scourge of the evil [during Reconstruction]—perhaps the leading one—was the Ku Klux Klan, the remedy created was not a remedy against it or its members but against those who *representing a State in some capacity* were unable or unwilling to enforce a state law." *Monroe*, 365 U.S. at 175-76 (emphasis added).

Thus, "[e]very person" who deprived another of federal rights "under color of [state law]" would be liable. 42 U.S.C. § 1983. As one member of the Forty-Second Congress stated, even if "the statutes show no discrimination, yet in [state] judicial tribunals one class is unable to secure that enforcement of their rights . . . , or if secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights . . . , the State has not afforded to all its citizens the equal protection of the laws." Cong. Globe, 42d Cong., 1st Sess. app. 315 (Rep. Burchard); *see id.* at 334 (Rep. Hoar) (Southern prosecutors and courts "constantly and as a rule refuse to do justice between man and man where the rights of a particular class of its citizens are concerned," in defiance of "the equal protection of the laws").

As these statements illustrate, Congress was well aware when it enacted Section 1983 that state officials in the South frequently avowed an intent to defy federal law. Congress was also aware that state officials might even reap political gain from doing so. *See, e.g.*, *id.* at 334 (Rep. Hoar) ("If every sheriff in South Carolina refuses to serve a writ for a colored man and *those sheriffs are kept in office year after year by the people of South Carolina*, and no verdict against them for their failure of duty can be obtained before a South Carolina jury, the State of South Carolina, . . . has denied [equal] protection." (emphasis added)). Section 1983 was passed to provide a remedy for this problem.

Yet the rule of the court below allows those very actors to manipulate federal jurisdiction to review their constitutional violations. That is wrong: access to the courts to vindicate federal rights should not depend on the subjective whims of local officials any more than on "the vagaries of state law." *Nance v. Ward*, 597 U.S. 159, 172 (2022). After all, this Court

has repeatedly rejected the application of state law barriers to the Section 1983 cause of action in light of the text and history of Section 1983. *See, e.g.*, *Patsy*, 457 U.S. at 507 (holding "that exhaustion of state administrative remedies is not a prerequisite to an action under § 1983"); *Felder*, 487 U.S. at 153 (holding that a state notice-of-claim statute was preempted by Section 1983).

By forcing federal courts to probe the subjective intent of state actors—many of whom are the *defendants* in Section 1983 suits—as part of the determination whether Section 1983 plaintiffs get into federal court, the rule of the court below effectively authorizes "state executives or judicial officers" to "nullif[y]" constitutional rights, whether "openly" or "indirectly . . . through evasive schemes." *Cooper v. Aaron*, 358 U.S. 1, 17 (1958). That latitude simply cannot be squared with Section 1983's text, history, or purpose. As this Court has put it in a closely analogous context, "given the evil at which the federal civil rights legislation was aimed, there is simply no reason to suppose that Congress . . . contemplated that those who sought to vindicate their federal rights . . . could be required to seek redress in the first instance from the very state officials whose hostility to those rights precipitated their injuries." *Felder*, 487 U.S. at 147.

Of course, in this particular case, the court below did not hold that the state prosecutor would deny DNA testing out of malice or to seek political gain; rather, it speculated that he would be "quite likely to follow . . . his state's highest criminal court" even in the face of a federal declaratory judgment that Texas's DNA-testing scheme violates fundamental fairness. Pet. App. A12. But that hardly saves the rule—state courts should not be the arbiters of federal court jurisdiction any more than state prosecutors should be. Indeed, at

the time it was passed, Section 1983 was as much a remedy against state courts as against other state officials. *See, e.g.*, *Mitchum*, 407 U.S. at 241 (Section 1983 "extend[ed] federal power in an attempt to remedy the state courts' failure to secure federal rights"); *Patsy*, 457 U.S. at 506 (describing the "mistrust that the 1871 Congress held for . . . state courts").

Section 1983 does not authorize state judicial actors to, in the words of the court below, "effectively anticipate[] an unfavorable federal court ruling" and ward it off with dicta that becomes a mandatory part of the federal standing analysis. Pet. App. A15. By endorsing the effort (whether in good faith or not) of state actors to immunize themselves from the practical effects of an adverse federal judgment, the court below adopted the "repugnant" notion, Cong. Globe, 42d Cong., 1st Sess. app. 262 (Rep. Dunnell), rejected by Section 1983's framers, that state actors—whether "executive, legislative, or judicial," *Mitchum*, 407 U.S. at 242 (quoting *Ex parte Virginia*, 100 U.S. 339, 346 (1879))—may control access to constitutional protections while "the Federal Government has nothing to do [on] behalf of the citizen," Cong. Globe, 42d Cong., 1st Sess. app. 262 (Rep. Dunnell).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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