IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1505

ROBERT SPRUILL #BW-7239,
Plaintiff/Appellant,

v.

FREDERIC A. ROSEMEYER, Warden, SCI Laurel Highlands, in his individual capacity, DAVID PITKINS, Deputy Warden for Centralized Services, in his individual capacity, JAMES HENDERSON, Deputy Warden, in his individual capacity, D. W. MYERS, Correctional Officer, SCI Laurel Highlands, in his individual capacity, DUANE ANDERSON, Corrections Officer, SCI Laurel Highlands, in his individual capacity, JOHN PAUL, Pennsylvania Department of Corrections, in his individual capacity, KERRI CROSS, Pennsylvania Department of Corrections, in her individual capacity, ROBERT BITNER, Pennsylvania Department of Corrections, Chief Hearing Examiner, in his individual capacity,
Defendants/Appellees.

On Appeal from the United States District Court
for the Western District of Pennsylvania
Civil Action No. 99-CV-00037J (W.D. Pa.)
(Honorable D. Brooks Smith, District Judge)

BRIEF FOR APPELLANT AND APPENDIX

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I. INTRODUCTORY STATEMENT

This Court's order granting plaintiff/appellant Robert Spruill's motion for appointment of counsel notes that this appeal presents a question over which other federal appellate courts have divided. Appendix (App.) 43a. Spruill, who is serving a sentence of incarceration in the Pennsylvania state prison system, brought suit under 42 U.S.C. §§ 1983 and 1985 alleging that the defendants placed him in a segregated housing unit and effectuated his transfer to a higher security correctional institution in unlawful retaliation for Spruill's having exercised his First Amendment right to seek redress for his grievances from the government.

Spruill's pro se complaint alleged that defendants' unlawful retaliatory conduct included the initiation of false disciplinary charges against him. App. 14a. Seizing on the fact that the disciplinary charges were sustained at a hearing, and that Spruill failed to get the charges overturned even though he scrupulously exhausted all administrative avenues of appeal, the magistrate judge issued a report and recommendation that Spruill's § 1983 claims should be dismissed for failure to state a claim on which relief can be granted pursuant to *Edwards* v. *Balisok*, 520 U.S. 641 (1997). App. 3a. Spruill objected to the magistrate judge's report and recommendation, App. 30a, but the district court adopted the proposed ruling and dismissed Spruill's complaint before the pleading had been served on the defendants, App. 5a. *See* 28 U.S.C. § 1915(e)(2)(B).

As this brief shall demonstrate, the district court erred as a matter of law in holding that *Edwards* v. *Balisok* barred Spruill's § 1983 claims. Four federal appellate courts that have addressed the question presented here have concluded that claims indistinguishable from Spruill's are not subject to dismissal under *Edwards*. Although two federal appellate courts have reached a different result, those rulings are based on an erroneous understanding of *Edwards*.

In *Edwards*, the Supreme Court ruled that a prisoner cannot bring a § 1983 claim challenging the result of a prison disciplinary proceeding that deprived the prisoner of good-time credits, thus postponing the prisoner's release from prison, unless the prisoner had first succeeded in overturning the result of the disciplinary proceeding in a habeas corpus action. As a majority of federal appellate courts with decisions on point has recognized, the holding of *Edwards* applies only to discipline that is subject to challenge in a habeas corpus proceeding — namely, discipline that causes the inmate to serve a longer sentence. Section 1983 actions that challenge only prison conditions, rather than the fact or duration of imprisonment, are not subject to *Edwards*'s holding.

Here, had Spruill succeeded in his § 1983 claims, he would not have been released from prison immediately or sooner than otherwise scheduled. Rather, Spruill's § 1983 claims only challenged his placement in segregated custody and his transfer to a higher security prison. A habeas corpus suit was not available to

Spruill to challenge his placement in solitary confinement or his transfer to a more restrictive facility. Moreover, such punishment, if imposed unlawfully in retaliation for a prisoner's exercise of his First Amendment right to petition for redress of grievances, gives rise to claims that are actionable under 42 U.S.C. § 1983.

For all of these reasons, this Court should reverse the dismissal of Spruill's complaint and should order the district court to serve the complaint on the defendants.

II. STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The district court possessed subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and 1367. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291. The district court entered its final order dismissing Spruill's action on April 19, 2000. App. 12a. Spruill filed a timely notice of appeal on May 3, 2000. App. 6a, 12a.

III. ISSUE ON APPEAL

Does *Edwards* v. *Balisok*, which held that a prisoner cannot bring a 42 U.S.C. § 1983 action to challenge the result of a disciplinary proceeding subject to challenge on writ of habeas corpus unless the prisoner first prevails in a habeas action, preclude an inmate from suing under 42 U.S.C. § 1983 to challenge unconstitutional retaliation (including the result of a disciplinary proceeding) that cannot be challenged in the first instance by means of a habeas action?

Where preserved: Because Spruill's complaint has never been served on the defendants, Spruill first learned that his action might be dismissed pursuant to *Edwards* v. *Balisok* when the magistrate judge issued his report and recommendation concluding that such a dismissal was appropriate. App. 3a. In response to the report and recommendation, Spruill filed objections asserting that his claims were indeed cognizable under 42 U.S.C. § 1983. App. 30a-33a.

Standard of review: This Court exercises plenary review over whether a district court has properly granted dismissal for failure to state a claim on which relief can be granted. *See Allah* v. *Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000). In reviewing the legal sufficiency of Spruill's complaint, this Court will accept as true the complaint's factual averments and all reasonable inferences in Spruill's favor that can be drawn from those averments. *See id.* "We cannot affirm the dismissal unless we can 'say with assurance that under the allegations of the *pro se*

complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."'" *McDowell* v. *Delaware State Police*, 88 F.3d 188, 189 (3d Cir. 1996) (quoting *Haines* v. *Kerner*, 404 U.S. 519, 520-21 (1972), and *Conley* v. *Gibson*, 355 U.S. 41, 45-46 (1957)).

IV. STATEMENT OF THE CASE

Plaintiff Robert Spruill, an inmate serving a sentence of incarceration in the Pennsylvania prison system, filed his complaint and motion to proceed in forma pauperis in the United States District Court for the Western District of Pennsylvania on February 23, 1999. App. 12a. The complaint was assigned to the Johnstown vicinage of the district court.

Spruill's complaint asserted claims arising under 42 U.S.C. §§ 1983 and 1985 and Pennsylvania law against eight defendants, all of whom were employees of the Pennsylvania Department of Corrections. App. 14a-16a. These defendants were all sued in their individual capacities. App. 16a. The claims at issue in Spruill's complaint arose after February 12, 1998, when Spruill arrived as an inmate at Pennsylvania's State Correctional Institution at Laurel Highlands. *Id.* Spruill's complaint avers that he has, in accordance with 42 U.S.C. § 1997e(a),

exhausted the administrative remedies available to address the claims asserted in his complaint. App. 16a-17a, 22a-23a.

On May 18, 1999, Magistrate Judge Keith A. Pesto granted Spruill's motion to proceed in forma pauperis. App. 12a. In accordance with 28 U.S.C. § 1915(b)(1), Spruill has since paid the applicable filing fees.

On March 21, 2000, Magistrate Judge Pesto served his report and recommendation concluding that Spruill's complaint should be dismissed for failure to state a claim on which relief can be granted. App. 1a-3a. The report and recommendation asserted that the Supreme Court's ruling in *Edwards* v. *Balisok*, 520 U.S. 641 (1997), required that Spruill's § 1983 claims be dismissed. App. 3a. The report and recommendation also suggested that Spruill's state law claims be dismissed without prejudice, allowing Spruill to pursue them in state court. App. 1a.

Spruill filed timely written objections to the magistrate judge's report and recommendation. App. 30a-33a. In those written objections, Spruill maintained that his § 1983 claims were actionable. App. 30a-33a.

On April 19, 2000, District Judge D. Brooks Smith entered a memorandum order adopting the magistrate judge's report and recommendation as the opinion of the court and dismissing Spruill's § 1983 claims for failure to state a claim on which relief can be granted. App. 4a-5a, 12a. Spruill filed a timely notice of

appeal on May 3, 2000 to this Court from the order dismissing his complaint. App. 6a.

On May 25, 2000, Spruill filed a motion in this Court to proceed in forma pauperis. One week later, he filed a motion for appointment of counsel. This Court granted Spruill's motion to proceed in forma pauperis on June 7, 2000, and Spruill has since paid the appellate filing fee in full.

On July 11, 2001, this Court granted Spruill's motion for appointment of counsel. App. 43a. This Court's order explained that the question presented in this appeal — whether *Edwards* v. *Balisok* bars the sort of § 1983 claims that Spruill has asserted — is the subject of a circuit split. App. 43a.

V. STATEMENT OF FACTS

On February 12, 1998, inmate-plaintiff Robert Spruill was transferred from the State Correctional Institution in Coal Township, Pennsylvania to the State Correctional Institution at Laurel Highlands, which is located in Somerset, Pennsylvania. App. 16a. SCI Laurel Highlands is a minimum security institution for male prisoners.

One day after arriving at SCI Laurel Highlands, Spruill was asked to inventory, in the presence of a corrections officer, the personal property that Spruill shipped from SCI Coal Township. *Id.* Among Spruill's personal property

was an electric razor that Spruill possessed while incarcerated at SCI Coal Township. *Id.* The correctional officer at SCI Laurel Highlands confiscated the razor and said he was doing so pursuant to the instructions of the institution's warden, defendant Frederic Rosemeyer. *Id.*

Spruill filed a grievance asserting that confiscation of his electric razor violated a Pennsylvania Department of Corrections policy that allowed prisoners to keep personal property noted on an inventory sheet prepared at the transferring institution. App. 16a-17a. Because the inventory sheet that Spruill brought from SCI Coal Township noted the electric razor among his personal possessions, Spruill's grievance asserted that confiscation of the electric razor at SCI Laurel Highlands violated applicable prison policy. *Id.*

SCI Laurel Highlands' grievance coordinator denied Spruill's grievance relating to the electric razor. App. 16a. Spruill then appealed to Warden Rosemeyer, who denied the appeal. *Id.*

Disgruntled by the denial of his grievance, Spruill wrote and mailed a letter on March 8, 1998 to Deputy Secretary William Love of the Pennsylvania Department of Corrections in Harrisburg. App. 17a. Spruill's letter asked Deputy Secretary Love to visit SCI Laurel Highlands to address problems adversely affecting him and other prisoners at the institution. *Id.* These problems included the confiscation of electric razors when prisoners are transferred into SCI Laurel

Highlands and the preferential assignment of white inmates to job assignments in the prison's maintenance department. *Id.* Spruill's envelope also enclosed ten inmate request slips from other prison inmates at SCI Laurel Highlands who also were requesting to meet with Deputy Secretary Love. *Id.*

In response to Spruill's letter, on March 18, 1998 Pennsylvania's Secretary of Corrections, Martin Horn, visited SCI Laurel Highlands and spoke with Spruill and other prisoners whose request slips were enclosed in Spruill's mailing. App. 17a-18a. Horn directed that Spruill and other inmates be permitted to use electric razors that accompanied them from prior correctional institutions and also instructed SCI Laurel Highlands to cease favoring white inmates over inmates of other races in making assignments to jobs in the prison's maintenance department.

On March 24, 1998, less than one week after Horn's visit to the prison, SCI Laurel Highlands deputy warden James Henderson, a defendant herein, confronted Spruill about the letter sent to Deputy Secretary Love. App. 18a. Henderson criticized Spruill for presenting his grievances to Deputy Secretary Love, and Henderson told Spruill that Spruill could be subjected to a misconduct charge for having circulated a petition. App. 18a-19a. Henderson did not explain to Spruill how the letter could be construed as a petition. Simultaneously, correctional officers Paul and Myers, also defendants herein, were interviewing the other inmates whose request slips were included in Spruill's envelope to manufacture

"evidence" in support of a false disciplinary charge against Spruill for having circulated a petition among other inmates. App. 19a.

On the evening of March 24, 1998, the staff of SCI Laurel Highlands removed Spruill from the general inmate population and placed him in segregated confinement pursuant to defendant Henderson's orders. *Id.* Thereafter, Spruill received a prison misconduct report charging him with having engaged in unauthorized group activity in circulating a petition. App. 19a-20a.

On March 27, 1998, corrections officer Duane Anderson, also a defendant herein, interviewed Spruill as part of an investigation into the pending disciplinary charge. App. 21a. Anderson asked Spruill whether Spruill thought his letter was a petition, and Spruill responded in the negative. *Id.* Anderson told Spruill that Anderson likewise did not believe that the letter constituted a petition, and Anderson advised Spruill that Spruill would be released from the restricted housing unit within the next few days. *Id.*

At some point over the next several days, Spruill witnessed a conversation between defendants Anderson and Myers. *Id.* In that conversation, Anderson told Myers that Anderson did not believe that Spruill's letter constituted a petition. *Id.* Myers agreed with Anderson but nonetheless instructed Anderson to alter his report to conclude falsely that the letter was a petition. *Id.* Anderson agreed and

altered his report to conclude falsely that Spruill had in fact circulated an unauthorized petition. App. 21a-22a.

On April 3, 1998, Deputy Warden Henderson visited Spruill in restrictive custody and acknowledged that Spruill had been placed in restrictive custody because the prison's employees resented that Spruill brought his complaints to the attention of the Department of Corrections' central office. App. 22a. On April 6, 1998, Warden Rosemeyer visited Spruill in solitary confinement and stated, "You should not have gone over my head and got central office involved, I don't appreciate that at all. You know how it goes, you step on my toes, I step on yours." *Id.*

On April 8, 1998, defendant Kerry Cross, a hearing examiner with the Pennsylvania Department of Corrections, held a hearing on the disciplinary charge against Spruill. *Id.* At the hearing, Spruill called three inmate witnesses in his defense. App. 23a. All three inmates testified that they did not believe that Spruill's letter was a petition or that Spruill had intended his letter to be a petition. *Id.*

After the hearing, Spruill received a written disposition from defendant Cross finding him guilty of the disciplinary charge based on the report of defendants Anderson and Henderson. *Id.* Cross directed Spruill to spend thirty days in segregated confinement in the restricted housing unit. *Id.* Pursuant to

established prison procedures, Spruill filed an appeal to defendant David Pitkins, a deputy warden at SCI Laurel Highlands. *Id.* Pitkins denied the appeal. *Id.* Spruill next appealed to Warden Rosemeyer, who likewise denied the appeal. *Id.* Finally, Spruill appealed to defendant Robert Bitner, the Pennsylvania Department of Corrections' chief hearing officer, and Bitner denied the appeal. *Id.*

Confinement in segregated custody in the restrictive housing unit of SCI Laurel Highlands differs from confinement in the prison's general population in several noteworthy respects. Prisoners in segregated custody are kept in a small cell for nearly twenty-three hours a day, are fed in their cells, and are allowed to exit for only one hour of exercise per day and for a shower only three times a week. Prisoners in the general prison population are not confined in their cells for anywhere near that many hours per day, are allowed to shower at least once per day, and eat their meals in the dining hall. Prisoners in segregated custody lose their usual telephone privileges and lose personal access to the prison's law library.

In addition, the disciplinary hearing's outcome caused Spruill's custody level classification to be raised from Level 2 to Level 3. As a result of this custody level increase, Spruill lost his ability to work outside the prison's grounds.

Spruill, who walks with a cane, suffers from a chronic lower back disorder. App. 20a. During his month in solitary confinement, Spruill's back pain was severely aggravated by the prison doctor's refusal to treat or examine Spruill's

back condition. *Id.* As a result, Spruill suffered physical pain and mental anguish, in that he feared suffering a permanent injury, due to his month-long incarceration in segregated custody. *Id.*

Spruill's complaint also asserted that the discipline unlawfully imposed in retaliation for exercising his First Amendment right to petition for governmental redress of his grievances caused him to be transferred from SCI Laurel Highlands, a minimum security institution, to SCI Rockview in Bellefonte, Pennsylvania, a medium security institution. App. 26a. Once at the medium security institution, Spruill faced more restrictive conditions of confinement than he had experienced in the general prison population at Laurel Highlands.

After being transferred to SCI Rockview, Spruill filed the complaint at issue in this appeal. App. 28a.

VI. STATEMENT OF RELATED CASES AND PROCEEDINGS

Spruill is aware of no cases or proceedings related to this appeal.

VII. SUMMARY OF THE ARGUMENT

The district court held that the Supreme Court's ruling in *Edwards* v. *Balisok*, 520 U.S. 641 (1997), required the dismissal of plaintiff/appellant Robert Spruill's 42 U.S.C. § 1983 claims, which challenged among other things the unfavorable result of a prison disciplinary hearing. The district court incorrectly understood the scope of the Supreme Court's decision in *Edwards* and erred in dismissing Spruill's § 1983 claims. Spruill's § 1983 claims challenge the validity of disciplinary sanctions that did not affect the overall length of his confinement. As a result, *Edwards* does not bar those claims.

Most federal appellate courts that have considered whether *Edwards* bars the sort of § 1983 claims at issue in this appeal have concluded that *Edwards* does not mandate dismissal of the claims. The two federal appellate courts that have disagreed have based their rulings on the very same erroneous understanding of *Edwards* that the district court evidenced in Spruill's case.

Below, Spruill first examines the Supreme Court's ruling in *Edwards* and other relevant Supreme Court decisions to establish that *Edwards* does not bar his § 1983 claims. Next, Spruill reviews the many federal appellate court rulings that support a ruling in his favor and explains why these decisions are correct and why the contrary rulings reached by two other federal appellate courts and the district court below are erroneous. Finally, Spruill establishes that his § 1983 claims are

not subject to dismissal for failure to state a claim on any other ground. The district court's dismissal of those claims should therefore be reversed.

VIII. ARGUMENT

A. Understood Properly, The Supreme Court's Decision In *Edwards* v. *Balisok* Does Not Foreclose Spruill's 42 U.S.C. § 1983 Claims

In order to understand the Supreme Court's ruling in *Edwards* v. *Balisok*, 520 U.S. 641 (1997), it is necessary first to examine two earlier Supreme Court rulings on which *Edwards* relied.

In *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), state prisoners had filed suit under 42 U.S.C. § 1983 seeking the entry of an injunction restoring good-time credits. That relief, if granted, would have caused the prisoners to be released from prison sooner than they otherwise would have been. The Court recognized that while the prisoners had alleged the requisite elements of a § 1983 claim, "Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of § 1983." *Preiser*, 411 U.S. at 490.

The Court in *Preiser* explained that § 1983 actions would remain available to prisoners who sued to challenge conditions of confinement:

> The [prisoners] place a great deal of reliance on our recent decisions upholding the right of state prisoners to bring federal civil rights actions to challenge the conditions of their confinement. But none of the state prisoners in those cases was challenging the fact or duration of his physical confinement itself, and none was seeking immediate release or a speedier release from that confinement — the heart of habeas corpus.

411 U.S. at 498 (citations omitted); *see also Tedford* v. *Hepting*, 990 F.2d 745, 748 (3d Cir.) (prisoners may bring challenges to conditions of confinement pursuant to § 1983 but sole remedy for challenge to fact or length of confinement is habeas corpus), *cert. denied*, 510 U.S. 920 (1993).

In concluding its decision in *Preiser*, the Court explained:

> What is involved here is the extent to which § 1983 is a permissible alternative to the traditional remedy of habeas corpus. Upon that question, we hold today that when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.

411 U.S. at 500.

Some twenty-one years later, the Court returned to the teachings of *Preiser* in *Heck* v. *Humphrey*, 512 U.S. 477 (1994). *Heck* involved a prisoner's § 1983 claim against county prosecutors and police investigators. The claim alleged that the prisoner's conviction had been unconstitutionally obtained. The Court's holding in *Heck*, while lengthy, deserves to be set forth in full:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused

> by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

512 U.S. at 486-87 (footnotes omitted).

The majority opinion in *Heck* was written by Justice Scalia. Justice Souter wrote an opinion concurring in the judgment in which Justices Blackmun, Stevens and O'Connor joined. In that opinion, Justice Souter argued that other plaintiffs (unlike the petitioner in *Heck*) who have no habeas corpus remedy available in which to challenge the validity of a conviction or sentence should be able to assert § 1983 claims without first having to overturn the conviction or sentence whose invalidity success on the § 1983 claim would necessarily imply. *See* 512 U.S. at 500-03 (Souter, J., concurring in the judgment).

With this understanding of the Supreme Court's decisions in *Preiser* and *Heck*, it is appropriate to turn to the Court's ruling in *Edwards* v. *Balisok*, 520 U.S.

641 (1997). Balisok, a state prison inmate, brought suit under 42 U.S.C. § 1983 alleging that the procedures used at a disciplinary hearing that deprived him of thirty days of good-time credit were unconstitutional.

The Court held that Balisok's "claim for declaratory relief and money damages, based on allegations of deceit and bias on the part of the decisionmaker that necessarily imply the invalidity of the punishment imposed, is not cognizable under § 1983." 520 U.S. at 648. Instead, as *Preiser* teaches, Balisok could have and should have challenged the loss of good-time credits directly by means of a habeas corpus action, and only then, as *Heck* teaches, after having prevailed in the habeas action, could Balisok assert claims pursuant to § 1983.

The final Supreme Court ruling that is relevant to understanding the scope of the Court's ruling in *Edwards* is *Spencer* v. *Kemna*, 523 U.S. 1 (1998). Spencer, while an inmate in the Missouri state correctional system, brought a habeas corpus action challenging the constitutionality of a parole revocation proceeding that caused him to be returned to prison. Before the federal district court ruled on Spencer's suit, his term of imprisonment had fully expired. The Supreme Court, in an opinion by Justice Scalia, held that Spencer's habeas action was moot as a result of his release from prison.

Once again, Justice Souter issued a concurring opinion, joined this time by Justices O'Connor, Ginsburg and Breyer. In his concurring opinion, Justice Souter explained:

> One of Spencer's arguments for finding his present interest adequate to support continuing standing despite his release from custody is, as he says, that he may not now press his claims of constitutional injury by action against state officers under 42 U.S.C. § 1983. He assumes that *Heck* v. *Humphrey*, 512 U.S. 477 (1994), held or entails that conclusion, with the result that holding his habeas claim moot would leave him without any present access to a federal forum to show the unconstitutionality of his parole revocation. If Spencer were right on this point, his argument would provide a reason, whether or not dispositive, to recognize continuing standing to litigate his habeas claim. But he is wrong; *Heck* did not hold that a released prisoner in Spencer's circumstances is out of court on a § 1983 claim, and for reasons explained in my *Heck* concurrence, it would be unsound to read either *Heck* or the habeas statute as requiring any such result. For all that appears here, then, Spencer is free to bring a § 1983 action, and his corresponding argument for continuing habeas standing falls accordingly.

Id. at 18-19 (Souter, J., concurring).

In concluding his concurring opinion, Justice Souter explained that one who has no recourse to a habeas action "may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." *Id.* at 21.

Justice Stevens dissented from the judgment in *Spencer*, but in his dissenting opinion Justice Stevens expressed his agreement with Justice Souter's concurring

opinion: "Given the Court's holding that petitioner does not have a remedy under the habeas statute, it is perfectly clear, as Justice Souter explains, that he may bring an action under 42 U.S.C. § 1983." *Id.* at 25 n.8 (Stevens, J., dissenting).

Thus, in *Spencer*, five currently sitting Justices — Justices Stevens, O'Connor, Souter, Ginsburg and Breyer — concluded that a plaintiff who cannot challenge a conviction, the result of a disciplinary proceeding, or a parole revocation by means of a habeas corpus action can bring suit under 42 U.S.C. § 1983 even if prevailing in the § 1983 suit would necessarily imply the invalidity of the conviction, or the disciplinary proceeding's result, or the parole revocation.

As Spruill now turns to explain, the discipline that resulted from the disciplinary hearing at which Spruill was punished in unconstitutional retaliation for having exercised his First Amendment rights could not have been, and cannot be, challenged by means of a habeas corpus action. Accordingly, the Supreme Court's ruling in *Edwards* v. *Balisok* does not foreclose Spruill's § 1983 claims.

B. Most Federal Appellate Courts With Decisions On Point Have Correctly Held That *Edwards* v. *Balisok* Does Not Mandate Dismissal Of § 1983 Claims Indistinguishable From Those That Spruill Has Asserted

The district court ruled that Spruill's § 1983 claims, which in part challenged as unconstitutionally retaliatory the result of a disciplinary hearing that led to the imposition of thirty-days in solitary confinement, had to be dismissed under

Edwards v. *Balisok* because Spruill had not overturned the disciplinary hearing's result. App. 3a. The district court's understanding of *Edwards* was in error, however, and its dismissal of Spruill's § 1983 claims should therefore be reversed.

Unlike in *Edwards*, *Heck* and *Preiser*, where the inmate plaintiffs could have pursued a habeas corpus action to overturn the result of the prison disciplinary hearings or criminal cases that were the subject of their § 1983 claims, Spruill could not and cannot bring a habeas corpus action to challenge either the segregated custody that resulted from his disciplinary proceeding or his transfer from SCI Laurel Highlands to SCI Rockview.

As the Seventh Circuit has recently explained, "[d]isciplinary segregation affects the severity rather than the duration of custody. More-restrictive custody must be challenged under § 1983, in the uncommon circumstances when it can be challenged at all." *Montgomery* v. *Anderson*, No. 00-2869, 2001 WL 903121, at *1 (7th Cir. Aug. 13, 2001) (citing *Sandin* v. *Conner*, 515 U.S. 472 (1995)). Indeed, this Court recognized in *Allah* v. *Seiverling*, 229 F.3d 220, 224-25 (3d Cir. 2000), that placing an inmate in segregated confinement in retaliation for the prisoner's exercise of his First Amendment rights violates the prisoner's civil rights and gives rise to an actionable § 1983 claim.

It is similarly clear that transfer from one correctional institution to another does not give rise to a habeas corpus claim, because it does not affect the duration

of custody. *See Moran* v. *Sondalle*, 218 F.3d 647, 650-51 (7th Cir. 2000) (per curiam) (while prisoners who "contest the fact or duration of custody" "must seek habeas corpus," "[s]tate prisoners who want to raise a constitutional challenge to any other decision, such as transfer to a new prison, administrative segregation, exclusion from prison programs, or suspension of privileges, must instead employ § 1983 or another statute authorizing damages"); *see also Boyce* v. *Ashcroft*, 251 F.3d 911, 918 (10th Cir. 2001) (habeas corpus "may not be used to challenge a prisoner's placement within a given jurisdictional entity, such as the federal prison system"; rather, "[s]uch an action must instead be brought under *Bivens* or Section 1983"); *Pischke* v. *Litscher*, 178 F.3d 497, 499 (7th Cir.) ("habeas corpus cannot be used to challenge a transfer between prisons"), *cert. denied*, 528 U.S. 954 (1999).

For these very reasons, the U.S. Courts of Appeals for the District of Columbia, First, Second and Seventh Circuits have correctly concluded that *Edwards* v. *Balisok* does not bar § 1983 claims of the sort that Spruill has asserted.

In *DeWalt* v. *Carter*, 224 F.3d 607, 616 (7th Cir. 2000), the Seventh Circuit recognized that "the Supreme Court never has addressed whether *Heck*'s favorable termination requirement bars a prisoner's challenge under § 1983 to an administrative sanction that does not affect the length of confinement." *See also Jenkins* v. *Haubert*, 179 F.3d 19, 27 (2d Cir. 1999) ("the Court has never

announced that the *Heck* rule bars a prisoner's challenge to an administrative or disciplinary sanction that does not affect the overall length of his confinement").

In *Jenkins*, the Second Circuit stated: "we hold that a § 1983 suit by a prisoner, such as Jenkins, challenging the validity of a disciplinary or administrative sanction that does not affect the overall length of the prisoner's confinement is not barred by *Heck* and *Edwards*." *Jenkins*, 179 F.3d at 27.

As the Seventh Circuit explained in *DeWalt*:

> we, like the Second Circuit in *Jenkins*, are hesitant to apply the *Heck* rule in such a way as would contravene the pronouncement of five sitting Justices. The concurring and dissenting opinions in *Spencer* reveal that five justices now hold the view that a § 1983 action must be available to challenge constitutional wrongs where federal habeas is not available.

224 F.3d at 616-17 (citation omitted).

In *Jenkins*, as in Spruill's case, the prisoner brought a § 1983 claim to challenge the unconstitutionality of a disciplinary proceeding that caused the prisoner to be placed in segregated confinement. 179 F.3d at 20-21. In *DeWalt*, the prisoner brought a § 1983 claim to challenge the result of a disciplinary proceeding that led to the prisoner's loss of his job in prison. 224 F.3d at 611. The prisoner in *DeWalt* asserted that the loss of his prison job was in unlawful retaliation for filing a grievance. *See id.* The Seventh Circuit explained in *DeWalt* that "a prison official may not retaliate against a prisoner because that prisoner

filed a grievance. This is so even if the adverse action does not independently violate the Constitution." *Id.* at 618 (citations omitted).

In *Brown* v. *Plaut*, 131 F.3d 163, 165 (D.C. Cir. 1997), *cert. denied*, 524 U.S. 939 (1998), the court considered an inmate's § 1983 claim alleging that he had been placed in administrative segregation without due process. As in Spruill's case, the discipline imposed in *Brown* did not affect the duration of the inmate's time in prison. The District of Columbia Circuit's holding in *Brown* is worth quoting at length:

> We conclude, however, that Brown's suit, which challenges only his placement in administrative segregation, is not of the type to which it is appropriate to apply *Preiser* and its progeny. The Court has never deviated from *Preiser*'s clear line between challenges to the fact or length of custody and challenges to the conditions of confinement. In *Edwards*, the Court was careful to respect the distinction drawn by *Preiser*, repeatedly characterizing the plaintiff's claim as one that would "necessarily imply the invalidity of the deprivation of his good-time credits" and therefore hasten his release. *Heck*, too, observed that the damages action in that case was in effect an attack on "the fact or length of confinement." The Court also did not question the plaintiff's invocation of section 1983 in *Sandin*, a case in which the underlying prison disciplinary proceeding affected only the plaintiff's conditions of confinement, not the duration of his sentence.

131 F.3d at 167-68 (citations and footnote omitted).

More recently, the Second Circuit, in *Sims* v. *Artuz*, 230 F.3d 14 (2d Cir. 2000), reaffirmed its ruling in *Jenkins*. As the Second Circuit explained in *Sims*, referring to its earlier decision in *Jenkins*, "[w]e concluded that where a prisoner

claims a deprivation of due process in disciplinary hearings that resulted in punishment not affecting the fact or duration of his overall confinement, his § 1983 action is not barred by the fact that the disciplinary rulings have not been invalidated through administrative or judicial review." 230 F.3d at 24; *see also* *Figueroa* v. *Rivera*, 147 F.3d 77, 82 (1st Cir. 1998) ("*Heck* does not require a section 1983 plaintiff who challenges the conditions of his confinement, as opposed to the fact or length of his confinement, to demonstrate that his conviction has been impugned.").

In Spruill's case, as in the decisions cited above from the District of Columbia, First, Second and Seventh Circuits, the disciplinary hearing at issue did not increase the duration of his imprisonment. Instead, Spruill's § 1983 claims challenged only the conditions of his confinement, and Spruill could not have challenged the retaliatory imposition of segregated custody or his transfer to a more secure institution by means of a habeas corpus action. As a result, this Court should hold that the district court erred in dismissing Spruill's § 1983 claims based on an improper understanding of the Supreme Court's ruling in *Edwards* v. *Balisok*.

The U.S. Courts of Appeals for the Fifth and Sixth Circuits have issued rulings in conflict with the decisions of the District of Columbia, First, Second and Seventh Circuits discussed above. The Fifth and Sixth Circuits' rulings provide no

basis on which to affirm the district court's dismissal of Spruill's § 1983 claims, because those rulings are based on an incorrect understanding of the Supreme Court's decisions in *Heck* and *Edwards*.

The Fifth Circuit ruled in *Randell* v. *Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) (per curiam), *cert. denied*, 121 S. Ct. 1601 (2001), that a plaintiff who had been imprisoned beyond his lawful sentence could not, following his release from prison, bring a § 1983 claim challenging that additional, unlawful confinement. The Fifth Circuit asserted that in *Heck*, "the Court unequivocally held that unless an authorized tribunal or executive body has overturned or otherwise invalidated the plaintiff's conviction, his claim is not cognizable under section 1983." 227 F.3d at 301 (internal quotations and brackets omitted). The Fifth Circuit in *Randell* overlooked, however, that the prisoner whose § 1983 claims were at issue in *Heck* had the ability to file a habeas corpus action to obtain the invalidity of the convictions whose unlawfulness the § 1983 claims would necessarily imply. By contrast, the former prisoner whose claims were at issue in *Randell* did *not* have the ability to pursue a habeas corpus action to obtain the invalidity of the prior confinement that he was challenging in his § 1983 action.

The Sixth Circuit's ruling in *Huey* v. *Stine*, 230 F.3d 226 (6th Cir. 2000), evidences the same error that the Fifth Circuit made in *Randell*. In *Huey*, a prison inmate sued under § 1983 asserting that his placement in solitary confinement

following a disciplinary hearing violated the Eighth Amendment. 230 F.3d at 228. The Sixth Circuit ruled that even though the prisoner could not challenge his solitary confinement by means of a habeas proceeding, the Supreme Court's rulings in *Heck* and *Edwards* nevertheless required dismissal of the prisoner's § 1983 claim. As the Sixth Circuit explained, "[i]n order to grant the plaintiff in this case the relief that he seeks, we would have to unwind the judgment of the state agency. This is precisely the result that we have repeatedly held to be impermissible based on our interpretation of *Edwards*." 230 F.3d at 230 (internal quotations omitted).

The Fifth and Sixth Circuits reached erroneous results when they applied the broadly-phrased holdings of *Heck* and *Edwards* without due regard for the facts at issue in those two Supreme Court decisions. As this Court has recognized, in "the common law tradition of deciding only specific cases or controversies," a federal court's holding "is simply a precept attaching a definite detailed legal consequence to a definite, detailed state of facts." *Floyd* v. *Lykes Bros. S.S. Co.*, 844 F.2d 1044, 1050 (3d Cir. 1988) (internal quotations omitted). The facts presented in a case control the scope of a federal court's holding, and to apply a case's holding without due regard for the facts that produced the holding would impermissibly result in federal judges' exercising power that is legislative, rather than judicial, in nature.

The Second and Seventh Circuits correctly observed that neither *Heck* nor *Edwards* required that a prisoner challenging only prison conditions, rather than the duration of his sentence, first overturn the result of the prison disciplinary proceeding giving rise to the conditions at issue before being able to assert a § 1983 claim. Moreover, neither *Heck* nor *Edwards* held that a prisoner who is unable to pursue a habeas corpus action to challenge the prison disciplinary proceeding at issue is prohibited from bringing a § 1983 claim to challenge either the proceeding itself or prison conditions that resulted therefrom. Instead, as both the Second and Seventh Circuits have acknowledged, five sitting Justices have unambiguously expressed their view that where — as in Spruill's case — a habeas action is unavailable, the plaintiff may bring suit under § 1983.

For these reasons, this Court should follow the well-reasoned rulings of the District of Columbia, First, Second and Seventh Circuits and should refuse to follow the contrary, erroneous rulings of the Fifth and Sixth Circuits. In so doing, this Court should reverse the district court's dismissal of Spruill's § 1983 claims and should instruct the district court to serve the complaint on the defendants.

C. Spruill's § 1983 Claims Are Not Otherwise Subject To Dismissal For Failure To State A Claim

This Court has held that placing a prisoner in solitary confinement in unlawful retaliation for the prisoner's exercise of his First Amendment rights gives rise to an actionable § 1983 claim notwithstanding the Supreme Court's ruling in *Sandin*. *See Allah* v. *Seiverling*, 229 F.3d 220, 224-25 (3d Cir. 2000). This Court's recent decision in *Allah* also recognized that, although a prisoner may not have a liberty interest in being confined in a particular correctional institution, a transfer from one institution to another in unlawful retaliation for the prisoner's exercise of his First Amendment rights is actionable under § 1983. *Id.* at 225 (citing *Pratt* v. *Rowland*, 65 F.3d 802, 806 (9th Cir. 1995)); *see also Milhouse* v. *Carlson*, 652 F.2d 371, 373-74 (3d Cir. 1981) (noting that a prisoner may sue to challenge discipline imposed in retaliation for the prisoner's exercise of his right to petition the government for redress of grievances).

Many cases from other circuits recognize that retaliation against a prisoner for exercising his right to seek redress of grievances is actionable under 42 U.S.C. § 1983 and violates such clearly established rights that the defendants are not entitled to qualified immunity. *See, e.g.*, *Meriwether* v. *Coughlin*, 879 F.2d 1037, 1045-46 (2d Cir. 1989) ("retaliatory [prison] transfers were clearly illegal in 1980"); *Gill* v. *Mooney*, 824 F.2d 192, 194 (2d Cir. 1987) (recognizing in prisoner's rights case that "a claim for relief may be stated under section 1983 if

otherwise routine administrative decisions are made in retaliation for the exercise of constitutionally protected rights"); *Gibbs* v. *King*, 779 F.2d 1040, 1046 (5th Cir.) (noting that the Fifth Circuit ruled in 1982 that "prison officials were prohibited from retaliation against inmates who complain of prison conditions or official misconduct" (internal quotations omitted)), *cert. denied*, 476 U.S. 1117 (1986); *Babcock* v. *White*, 102 F.3d 267, 276 (7th Cir. 1996) ("The federal courts have long recognized a prisoner's right to seek administrative or judicial remedy of conditions of confinement, as well as the right to be free from retaliation for exercising this right." (citations omitted)); *Goff* v. *Burton*, 91 F.3d 1188, 1191 (8th Cir. 1996) ("The prohibition against transferring an inmate in retaliation for his initiating legal action against the prison is equally applicable to prison officials' decision to discipline an inmate in retaliation for his legal activities."); *Penrod* v. *Zavaras*, 94 F.3d 1399, 1404 (10th Cir. 1996) (per curiam) (holding that defendants do not have qualified immunity from claims alleging harassment or retaliation against prisoners for exercising their right of access to the courts).

Spruill's complaint alleges that the discipline about which he complains — being placed in segregated custody for one month and being transferred to a higher security prison — was imposed in retaliation for his having written a letter to Pennsylvania Department of Corrections Deputy Secretary William Love. App. 17a-28a. Spruill's complaint also implies that his letter to Deputy Secretary Love

caused Secretary of Corrections Martin Horn to visit SCI Laurel Highlands. App. 17a-18a.

During that visit, Secretary Horn agreed that SCI Laurel Highlands should return to Spruill his electric razor, and that the prison should cease giving white inmates preference in certain job assignments. After Secretary Horn left the prison, however, officials at SCI Laurel Highlands retaliated against Spruill for having successfully gotten his grievances resolved by presenting them to officials at the Department of Corrections' central office in Harrisburg, Pennsylvania. App. 18a-28a. The Fifth Circuit's decision in *Jackson* v. *Cain*, 864 F.2d 1235, 1248 (5th Cir. 1989), recognizes that a prisoner's sending of a letter complaining of improper or unlawful prison conditions to a high-ranking prison official is behavior that the First Amendment protects.

Spruill's complaint also alleges that certain defendants acknowledged in his presence that his letter to Deputy Secretary Love was not a petition. App. 21a. Notwithstanding defendants' acknowledgement that Spruill had not circulated a petition, the complaint alleges that that these defendants were nevertheless asserting against Spruill, and finding Spruill liable on, the disciplinary charge of having circulated an improper petition. App. 21a-22a.

These averments, by a pro se litigant, adequately allege actionable § 1983 claims under this Court's ruling in *Allah*, 229 F.3d at 224-25, and the numerous

other decisions cited above. Accordingly, this Court should conclude that the § 1983 claims asserted in Spruill's complaint do state claims on which relief can be granted.

IX. CONCLUSION

For all of the foregoing reasons, this Court should hold that the district court erred when it ruled that *Edwards* v. *Balisok* mandated the dismissal of Spruill's § 1983 claims and should reverse the district court's dismissal of those claims.

Respectfully submitted,

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CERTIFICATION OF TYPE-VOLUME COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that this brief complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B) and contains 7,300 words.

Dated September 24, 2001

Howard J. Bashman

CERTIFICATION OF BAR MEMBERSHIP

I hereby certify that I am a member of the Bar of the United States Court of Appeals for the Third Circuit.

Dated September 24, 2001

Howard J. Bashman

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1505

ROBERT SPRUILL #BW-7239,
Plaintiff/Appellant,

v.

FREDERIC A. ROSEMEYER, Warden, SCI Laurel Highlands, in his individual capacity, DAVID PITKINS, Deputy Warden for Centralized Services, in his individual capacity, JAMES HENDERSON, Deputy Warden, in his individual capacity, D. W. MYERS, Correctional Officer, SCI Laurel Highlands, in his individual capacity, DUANE ANDERSON, Corrections Officer, SCI Laurel Highlands, in his individual capacity, JOHN PAUL, Pennsylvania Department of Corrections, in his individual capacity, KERRI CROSS, Pennsylvania Department of Corrections, in her individual capacity, ROBERT BITNER, Pennsylvania Department of Corrections, Chief Hearing Examiner, in his individual capacity,
Defendants/Appellees.

On Appeal from the United States District Court
for the Western District of Pennsylvania
Civil Action No. 99-CV-00037J (W.D. Pa.)
(Honorable D. Brooks Smith, District Judge)

APPENDIX

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I hereby certify that two true and correct copies of the foregoing document were served via first class United States mail upon the persons, at the addresses, and on the date that appear below.

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