No.

In the Supreme Court of the United States

CITY OF JOLIET, ILLINOIS, ET AL.,

Petitioners,

v.

ELIJAH MANUEL,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Manuel v. City of Joliet, 137 S. Ct. 911 (2017) (*Manuel I*), held that a 42 U.S.C. §1983 claim for unlawful post-process, pretrial detention is actionable as a Fourth Amendment tort. But the then-eight-member Court declined to resolve the parties' dispute over the accrual date for such a claim, although two Justices noted in dissent that they would have reached the accrual question and resolved it in the City's favor.

On remand, the Seventh Circuit announced a new Fourth Amendment accrual rule—based on the idea that a Fourth Amendment detention constitutes a continuing tort—in square conflict with the law in other circuits and, separately, in conflict with the rule embraced by the two Justices to reach the issue in *Manuel I*.

The question presented is whether the Seventh Circuit erred in holding that a Fourth Amendment claim for unlawful post-process, pretrial detention brought pursuant to §1983 is subject to a special rule of delayed accrual, rather than the traditional rule under which a claim accrues when an injury first occurs—here, respondent's first appearance in court, when a judge found probable cause for his pretrial detention based on an allegedly false criminal complaint.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners, defendants-appellees below, are the City of Joliet, Illinois, Officer Terrence J. Gruber, Officer Thomas Conroy, Sergeant Scott P. Cammack, Officer Aaron Bandy, Officer Jeffrey German, Sergeant John Stefanski, Sergeant Joseph Rosado, and Officer Jeffrey Kneller.

Respondent Elijah Manuel was the plaintiff-appellant below.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

PETITION FOR A WRIT OF CERTIORARI

Petitioners the City of Joliet, Illinois, Officer Terrence J. Gruber, Officer Thomas Conroy, Sergeant Scott P. Cammack, Officer Aaron Bandy, Officer Jeffrey German, Sergeant John Stefanski, Sergeant Joseph Rosado, and Officer Jeffrey Kneller (collectively, the "City") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 903 F.3d 667 and reproduced at Pet. App. 1a-6a. This Court's previous opinion in this case is reported at 137 S. Ct. 911 and reproduced at Pet. App. 13a-45a. The Seventh Circuit's previous decision in this case is not published but is reprinted at 590 F. App'x 641 and reproduced at Pet. App. 46a-50a.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on September 10, 2018. Pet. App. 7a-8a. On September 19, 2018, the Seventh Circuit extended the time to file a petition for rehearing en banc to and including October 9, 2018. Pet. App. 9a-10a. A timely petition for rehearing en banc was filed on October 9, 2018 and denied on October 24, 2018. Pet. App. 11a-12a. Justice Kavanaugh extended the time to file a petition for a writ of certiorari to February 21, 2019. No. 18A730. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. §1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law * * * .

INTRODUCTION

When this case was last before the Court in *Manuel I*, the eight Justices unanimously agreed that a claim for unlawful post-process, pretrial detention is actionable as a Fourth Amendment tort under §1983—an issue on which the parties were also in agreement. A six-Justice majority then left unresolved the question of when such a claim accrues. Two Justices, however, argued that the Court should

have resolved the accrual question and that it should have done so in favor of the City. Applying traditional accrual principles, those Justices would have held that respondent Elijah Manuel's ("Manuel") claim accrued no later than his first appearance in court, when a judge found probable cause for Manuel's pretrial detention based on allegedly false evidence in the criminal complaint, and that his §1983 complaint was therefore untimely.

On remand (in *Manuel II*), the Seventh Circuit adopted a new, continuing-tort rule that breaks sharply with both the rule embraced by the two Justices to decide the accrual issue in *Manuel I* and with yet another rule—which delays accrual until the underlying criminal case terminates in favor of the §1983 plaintiff—followed by other circuits. In short, *Manuel II* has exacerbated the confusion and created a clear split over this issue. There are now three competing accrual rules for the same Fourth Amendment tort: (1) the first-appearance rule adopted by the only two members of this Court to answer the accrual question in *Manuel I*; (2) the favorable-termination rule, expressly rejected by those two Justices in *Manuel I* but reaffirmed by multiple circuits since then; and (3) the Seventh Circuit's new continuing-tort rule, which rejects both (1) and (2). Only this Court can resolve the split over this important and frequently recurring question.

In announcing its novel rule of accrual, the Seventh Circuit concluded that elements of this Court's decision in *Wallace v. Kato*, 549 U.S. 384 (2007), "did not survive *Manuel [I]*." Pet. App. 3a. The panel reached this conclusion in spite of the fact that

this Court cited *Wallace* with *favor* in *Manuel I*, without purporting to overturn any part of that decision. In fact, *Manuel II* conflicts with *Wallace* on multiple grounds, as it does with this Court's longstanding precedent on the limits of the continuing-tort doctrine.

Finally, *McDonough v. Smith*, No. 18-485 (cert. granted Jan. 11, 2019), does not present the Fourth Amendment accrual question at issue in this case. But if the Court disagrees and determines to resolve that question in *McDonough*, then this petition should be held pending a final decision on the merits in that case.

STATEMENT OF THE CASE

1. On March 18, 2011, Manuel was in the passenger seat of a car driven by his brother when two Joliet police officers pulled them over for failing to signal a turn. Pet. App. 17a.[1] The officers performed a pat-down as part of the stop, which revealed that Manuel possessed a bottle of pills. *Ibid.*

According to Manuel, the bottle contained a legal substance, a fact he claims the officers knew based on a field test performed at the scene. *Ibid.* He further alleges that in spite of that negative test, the officers arrested him and took him to the police station. *Ibid.* Manuel contends that an evidence technician at the station performed a second test on the pills, which again confirmed that they were not a controlled

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[1] Because the district court granted the City's motion to dismiss, the factual allegations in Manuel's complaint (which the City disputes) must be taken as true. See, *e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

substance. *Ibid.* Manuel asserts that the evidence technician nevertheless stated falsely in his report that one of the pills was "found to be * * * positive for the probable presence of ecstasy." *Ibid.* (internal quotation marks omitted).

2. Another officer then swore out a criminal complaint charging Manuel with possession of a controlled substance. Pet. App. 17a-18a. Later that day, Manuel appeared before an Illinois trial court judge for a statutorily mandated custody hearing. Pet. App. 18a; see 725 Ill. Comp. Stat. 5/109-1(a). At that first appearance, the court explained the charges against Manuel, appointed counsel, and set bail. See 725 Ill. Comp. Stat. 5/109-1(b)(1)-(2), (4).[2] At this point, Manuel contends, the court also found probable cause for his arrest based on the false complaint. Pet. App. 2a, 18a; see *Gerstein v. Pugh*, 420 U.S. 103, 113-14 (1975) (requiring judicial determination of probable cause following warrantless arrest). Manuel was transferred from city custody to the county jail that same day. Pet. App. 18a.

On March 31, 2011, one of the officers allegedly testified falsely—consistent with the initial police report—before a grand jury, which indicted Manuel later that day. Pet. App. 18a n.2; D. Ct. Dkt. No. 1 (N.D. Ill. No. 1:13-cv-03022), at 34-35. Manuel was arraigned on April 8. Pet. App. 47a.

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[2] These details of the custody hearing appear on the state-court docket, available by clicking on the "Events" tab for case number 11CF00546 at the Will County Circuit Court website, https://ipublic.il12th.org/SearchPrompt.php.

Meanwhile, Manuel's pills had been sent to the Illinois police laboratory for additional testing. Pet. App. 18a. On April 1, 2011, the lab issued a report stating that the pills were negative for a controlled substance. *Ibid.* The prosecution voluntarily dismissed the charges against Manuel on May 4, 2011, Pet. App. 18a-19a, and he was released the following day, Pet. App. 2a, 19a.

3. On April 22, 2013, Manuel filed a *pro se* complaint in the United States District Court for the Northern District of Illinois pursuant to 42 U.S.C. §1983, naming, *inter alia*, petitioners here as defendants. Pet. App. 19a. Thereafter, the district court appointed counsel, who filed an amended complaint on Manuel's behalf. Pet. App. 53a. In relevant part, the amended pleading alleged that the City violated Manuel's constitutional rights by seizing him without "legal cause," "submitting false charges as contained in the criminal complaint and indictment," and "falsely imprisoning [him] beyond a preliminary hearing." D. Ct. Dkt. No. 15 (N.D. Ill. No. 1:13-cv-03022), at 14-15.

The statute of limitations applicable to Manuel's claim is two years. Pet. App. 2a. The City moved to dismiss the complaint—filed more than two years after Manuel's arrest, first appearance, indictment, and arraignment—as untimely. Pet. App. 52a-53a. Manuel responded that he was advancing a Fourth Amendment "malicious prosecution" claim for unlawful pretrial detention and that the claim was timely because a "malicious prosecution claim does not accrue until the underlying proceedings terminate in favor of the plaintiff," which did not occur until

prosecutors dropped the charges against Manuel on May 4, 2011. D. Ct. Dkt. No. 41 (N.D. Ill. No. 1:13-cv-03022), at 4, 9. The district court rejected Manuel's Fourth Amendment malicious-prosecution theory, and the Seventh Circuit affirmed the dismissal of his complaint. Pet. App. 50a, 54a.

4. This Court granted certiorari review. The Court explained that the Seventh Circuit, in conflict with other courts of appeals, did not recognize a Fourth Amendment claim for unlawful "pretrial detention following the start of legal process" (here, legal process began at Manuel's first appearance, when the judge found probable cause for his pretrial detention). Pet. App. 19a-21a. Rather, in the Seventh Circuit, "a §1983 plaintiff challenging such detention" had to "allege a breach of the Due Process Clause—and * * * to recover on that theory, [show] that state law fail[ed] to provide an adequate remedy." Pet. App. 20a. (The latter requirement follows from *Parratt v. Taylor*, which holds "that postdeprivation remedies made available by the State can satisfy the Due Process Clause." 451 U.S. 527, 538 (1981), overruled on other grounds by *Daniels v. Williams*, 474 U.S. 327 (1986).) In a 6-2 decision, the Court reversed and remanded, holding that "Manuel may challenge his pretrial detention on the ground that it violated the Fourth Amendment." Pet. App. 16a.

The Court acknowledged, however, that the parties disputed *when* that Fourth Amendment claim accrued, for "[t]he timeliness of Manuel's suit hinges" on that question. Pet. App. 27a-28a. The Court described three potential, competing accrual rules: (1) Manuel's proposal—adopted by several other

circuits—which would import the elements of common-law malicious prosecution such "that [a] Fourth Amendment claim accrues only upon the dismissal of criminal charges," *i.e.*, upon favorable termination of the underlying criminal proceedings; (2) the City's view that "any such Fourth Amendment claim accrues * * * on the date of the initiation of legal process," here the date Manuel first appeared in court and the judge found probable cause for his pretrial detention; and (3) the theory that "pretrial detention 'constitute[d] a continuing Fourth Amendment violation,' each day of which triggered the statute of limitations anew," an accrual rule "similar" to one propounded years earlier by Justice Ginsburg, concurring in *Albright v. Oliver*, 510 U.S. 266 (1994). Pet. App. 28a-30a.

The majority left "consideration of this dispute to the Court of Appeals" on remand. Pet. App. 30a. The Court instructed, however, that in selecting the proper accrual rule, one "must closely attend to the values and purposes of the constitutional right at issue." Pet. App. 28a.

5. Justice Alito, in a dissent joined by Justice Thomas, agreed that a claim for unlawful post-process, pretrial detention is actionable as a Fourth Amendment tort under §1983, but wrote that the majority also should have settled the parties' dispute over the accrual date for Manuel's Fourth Amendment claim rather than remanding that issue to the Seventh Circuit. Pet. App. 33a-35a. The circuit "conflict on the malicious prosecution question was the centerpiece of Manuel's argument in favor of certiorari," the dissent explained, and the Court's

opinion would leave the circuit split intact if the Seventh Circuit chose an accrual principle other than the favorable-termination rule embraced by other circuits. Pet. App. 34 n.1.

On the merits of the accrual question, these Justices would have adopted the City's rule. Although several circuits delay accrual by importing the elements of common-law malicious prosecution into Fourth Amendment pretrial-detention claims, these Justices recognized "a severe mismatch between" the elements of common-law malicious prosecution "and the Fourth Amendment." Pet. App. 37a. Not only is "the core element of a malicious prosecution claim," malice, inconsistent with the Fourth Amendment, but "malicious prosecution's favorable-termination element makes no sense when the claim is that a seizure violated the Fourth Amendment." Pet. App. 38a. "The Fourth Amendment, after all, prohibits all unreasonable seizures," the dissent continued, "regardless of whether a prosecution is ever brought or how a prosecution ends." *Ibid.*

The dissent likewise rejected the continuing-tort theory mentioned in the majority opinion, reasoning that a rule whereby "new Fourth Amendment claims continue to accrue as long as pretrial detention lasts * * * stretches the concept of a seizure much too far." Pet. App. 33a. "The term 'seizure,'" the dissent recognized, "applies most directly to the act of taking a person into custody or otherwise depriving the person of liberty. It is not generally used to refer to a prolonged detention." Pet. App. 40a. Thus, while "damages resulting from an unlawful seizure may continue to mount during the period of confinement

caused by the seizure," "no new Fourth Amendment seizure claims accrue after that date." Pet. App. 42a.

Accordingly, Justices Alito and Thomas concluded, Manuel's Fourth Amendment, pretrial-detention claim accrued no later than his first appearance in court, when the judge found probable cause for that detention based on the purportedly false complaint. Pet. App. 32a-33a, 42a-43a. Manuel's claim was therefore untimely. Pet. App. 40a.

6. On remand, the Seventh Circuit did "not accept either [party's] approach" to accrual. Pet. App. 2a. The court rejected the City's position—adopted by the two Justices to reach the question in *Manuel I*—that Manuel's claim accrued no later than "March 18, when the judge ordered him held pending trial." *Ibid.* But the court also rejected Manuel's view—embraced by other circuits—that his claim accrued "on May 4, when his position was vindicated by dismissal of the prosecution." Pet. App. 2a, 4a. Rather, the Seventh Circuit adopted the third possibility, expressly rejected by Justices Alito and Thomas—whereby a Fourth Amendment claim for post-process, pretrial detention constitutes a continuing tort, meaning the claim does not accrue until "the detention ends." Pet. App. 3a, 5a. Under this rule, Manuel had no need to prove that his prosecution terminated favorably, *and* his claim accrued on the latest possible date, "May 5, when he was released from custody." Pet. App. 2a. For the Seventh Circuit, this result followed necessarily from *Manuel I*, which the panel read to "deprecate[] the analogy to malicious prosecution" and to hold "that the wrong of detention without probable cause

continues for the length of the unjustified detention." Pet. App. 3a-4a.

The Seventh Circuit also concluded that elements of this Court's decision in *Wallace* "did not survive *Manuel [I]*." Pet. App. 3a. But the panel found further "support[]" for its "conclusion that the end of detention starts the period of limitations" in this Court's earlier decisions in the same line—*Preiser v. Rodriguez*, 411 U.S. 475 (1973), *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Edwards v. Balisok*, 520 U.S. 641 (1997)—which the court cited for the notion that "§1983 cannot be used to contest ongoing custody," even if the detained plaintiff, like Manuel, was never criminally convicted or sentenced. Pet. App. 5a.

REASONS FOR GRANTING THE PETITION

Only this Court can resolve the entrenched split over the proper accrual rule for Fourth Amendment torts arising from post-process, pretrial detention. This case offers an ideal vehicle to settle the law on this important and oft-recurring issue.

I. The Circuits Are Divided Over The Accrual Date For A Post-Process, Pretrial Fourth Amendment Claim, And Both Camps Break From The Rule Embraced By Two Justices in *Manuel I*.

In *Wallace*, this Court held that a Fourth Amendment challenge to a warrantless arrest—detention *without* legal process—accrues when the detainee "becomes held *pursuant to such process*." 549 U.S. at 389. But lower courts have divided over how to treat Fourth Amendment claims for pretrial

detention—like the detention Manuel challenges here—*following* the initiation of legal process.

And as Justices Alito and Thomas predicted in *Manuel I*, the division in authority persists following the Seventh Circuit's decision on remand. The panel below rejected the malicious-prosecution-based, favorable-termination rule adopted by other courts of appeals and announced a new rule—one that other courts have rejected outright. At the same time, *Manuel II* also refused to adopt the accrual rule embraced by the two Justices to reach the issue in *Manuel I*. That leaves *three* competing rules in play: one followed by other circuits and reaffirmed by those courts after *Manuel I*, one adopted by the Seventh Circuit in this case, and one favored by the only two Justices to address the question.

1. As this Court noted in *Manuel I*, in addressing Fourth Amendment claims like Manuel's, several courts of appeals "have incorporated a 'favorable termination' element and so pegged the statute of limitations to the dismissal of the criminal case." Pet. App. 21a & n.4, 29a & n.9 (citing authority from the Second, Third, Fourth, Fifth, Sixth, Tenth, and Eleventh Circuits); see also *Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 100-01 & n.10 (1st Cir. 2013).[3]

[3] Beyond the bare existence of a favorable-termination rule, the consensus breaks down even among these courts. For example, some derive their favorable-termination rule from the common-law tort of malicious prosecution. See, *e.g.*, *Wilkins v. DeReyes*, 528 F.3d 790, 799, 801 n.6 (10th Cir. 2008); *Kingsland v. City of Miami*, 382 F.3d 1220, 1234 (11th Cir. 2004). Others, however, derive this rule from this Court's decision in *Heck*. See, *e.g.*, *King v. Harwood*,

Moreover, several of the circuits in this camp have reaffirmed their favorable-termination rule since this Court decided *Manuel I*. See, *e.g.*, *Lanning v. City of Glens Falls*, 908 F.3d 19, 25-26 (2d Cir. 2018); *Geness v. Cox*, 902 F.3d 344, 355-56 (3d Cir. 2018); *Humbert v. Mayor & City Council of Balt. City*, 866 F.3d 546, 555 (5th Cir. 2017); *Winfrey v. Rogers*, 901 F.3d 483, 492-93 (5th Cir. 2018), cert. pet. filed sub nom. *Johnson v. Winfrey* (No. 18-1024); *Miller v. Maddox*, 866 F.3d 386, 389 (6th Cir. 2017); *Margheim v. Buljko*, 855 F.3d 1077, 1085 (10th Cir. 2017).

2. In *Manuel II*, meanwhile, the Seventh Circuit rejected not only the favorable-termination accrual rule adopted by other circuits, but also the first-appearance rule embraced by the two Justices to reach the question in *Manuel I*. *Manuel II* adopted a

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852 F.3d 568, 578-79 (6th Cir. 2017). And until recently, the Second Circuit borrowed its favorable-termination requirement directly from underlying *state law*. Compare *Murphy v. Lynn*, 118 F.3d 938, 947 (2d Cir. 1997) (applying "New York State law" to Fourth Amendment malicious-prosecution claim), with *Lanning v. City of Glens Falls*, 908 F.3d 19, 25 (2d Cir. 2018) ("We now clarify that federal law defines the elements of a §1983 malicious prosecution claim."). At the same time, courts incorporating favorable termination from the common law are divided over whether malice—another element of the common-law tort—is also an element of a plaintiff's Fourth Amendment claim. Compare, *e.g.*, *Hernandez-Cuevas*, 723 F.3d at 100-01 (malice not required), with *Grider v. City of Auburn*, 618 F.3d 1240, 1256 (11th Cir. 2010) (malice required); see also *King*, 852 F.3d at 580 n.4 (acknowledging split).

third accrual rule—that Manuel's continued wrongful detention amounted to a continuing tort, meaning his claim did not accrue until May 5, 2011, the day authorities released him from custody. Pet. App. 2a, 5a; see also *Lewis v. City of Chi.*, 914 F.3d 472, 474-75, 478 (7th Cir. 2019) (applying *Manuel II*'s continuing-tort rule).

The Seventh Circuit's decision to recast Manuel's entire detention—rather than the alleged conduct by the City that caused the detention—as the "wrong" for accrual purposes has created an entirely new split in the circuits. Indeed, not only have other courts adopted a contrary accrual rule, as noted above, but many have considered and squarely rejected the continuing-tort rule adopted in *Manuel II*. Consistent with this Court's decision in *Wallace*, see *infra* pp. 17-19, these courts have treated the initial alleged misconduct (here, detaining Wallace based on the purportedly false criminal complaint) as a discrete wrong, with the ensuing period of detention merely adding to damages. See *Riley v. Dorton*, 115 F.3d 1159, 1162 (4th Cir. 1997) (rejecting "conten[tion] that the seizure of a person" based on an arrest warrant, "as contemplated by the Fourth Amendment, does not end after arrest, but continues as long as the person is 'seized'"), abrogated on other grounds, *Wilkins v. Gaddy*, 559 U.S. 34 (2010); *MacNamara v. Hess*, 67 F. App'x 139, 143-44 (3d Cir. 2003) (following seizure based on warrant, "the retention of the seized property is only a consequence of the original alleged illegal seizure and does not affect the date on which the claim accrues"); see also *Batiste v. City of Bos.*, No. 93-2233, 1994 WL 164568, at *2 (1st Cir. May 2, 1994)

(per curiam, joined by Breyer, C.J.) ("[W]here an individual alleges to have been wrongfully incarcerated because of false arrest or some other tortious activity, such incarceration constitutes a continuing ill effect from the earlier misconduct rather than a continuing tort.").

This trend has continued in the wake of *Manuel I*, which courts (unlike the Seventh Circuit) have specifically refused to read to embrace a continuing-tort theory. See, *e.g.*, *Johnson v. Duncan*, 719 F. App'x 144, 148-49 (3d Cir. 2017) (per curiam) (rejecting theory that, under *Manuel I*, claims for "false imprisonment and malicious prosecution" accrue "when [plaintiff] [i]s released from detention" and dismissing as time-barred claim against officer whose "contribution to the harm ended no later than * * * when the warrant, which allegedly was based on her intentionally providing false information to the court, issued"); *Everette-Oates v. Chapman*, No. 5:16-cv-623, 2017 WL 4933048, at *4 (E.D.N.C. Oct. 31, 2017) (rejecting argument that plaintiff's "Fourth Amendment rights continued to be violated [for accrual purposes] during the pendency of her prosecution," observing that "*Manuel* * * * expressly reserved the question of the time period for accrual of a Fourth Amendment claim based upon a prosecution commenced through unlawful act of fabrication or concealment of evidence to obtain warrant or indictment").

3. Finally, the two members of this Court to reach the question in *Manuel I* rejected both of the foregoing rules. Applying traditional accrual principles, Justices Alito and Thomas would have held that

Manuel's Fourth Amendment claim accrued no later than his first appearance in court, when the judge ordered his pretrial detention based on the allegedly false complaint. Pet. App. 32a-33a, 42a-43a. These Justices recognized that "[t]he favorable-termination element is * * * irrelevant to claims like Manuel's," because "[t]he Fourth Amendment * * * prohibits all unreasonable seizures—regardless of whether a prosecution is ever brought or how a prosecution ends." Pet. App. 38a-39a; see also *Cordova v. City of Albuquerque*, 816 F.3d 645, 663 (10th Cir. 2016) (Gorsuch, J., concurring in the judgment) ("[I]t's just pretty hard to see how you might squeeze anything that looks quite like the common law tort of malicious prosecution into the Fourth Amendment.").

Likewise, Justices Alito and Thomas rejected the very continuing-tort theory—"that every moment in pretrial detention constitutes a 'seizure'"—that the Seventh Circuit has now embraced. Pet. App. 40a. "The term 'seizure,'" these Justices recognized, "applies most directly to the act of taking a person into custody or otherwise depriving the person of liberty. It is not generally used to refer to a prolonged detention." *Ibid.* "The Members of Congress who proposed the Fourth Amendment and the State legislatures that ratified the Amendment," the dissent continued, "would have expected to see a more expansive term, such as 'detention' or 'confinement,' if a Fourth Amendment seizure could be a long event that continued throughout the entirety of the pretrial period." Pet. App. 41a. Mirroring the view of the many courts to reject this continuing-tort theory, see *supra* pp. 14-15, these Justices thus concluded that, while

"damages resulting from an unlawful seizure may continue to mount during the period of confinement caused by the seizure," "no new Fourth Amendment seizure claims accrue after that date." Pet. App. 42a.

* * *

The three-way split over the accrual date for post-process, pretrial Fourth Amendment claims is now entrenched. The several courts adopting the favorable-termination element are reaffirming that rule in the wake of *Manuel I*, and the Seventh Circuit has openly broken from these courts of appeals by announcing a continuing-tort rule. Meanwhile, two Justices of this Court addressed the accrual question in *Manuel I* and embraced the City's proposed rule—one that adheres to traditional accrual principles and under which Manuel's claim is untimely. Only this Court can resolve the split over this important and frequently arising issue.

II. The Seventh Circuit's Decision Defies This Court's Clearly Established Precedent, Which Supports The Rule Embraced By Justices Alito And Thomas In *Manuel I*.

1. The Seventh Circuit's continuing-tort rule also violates two core holdings in *Wallace*: (1) that ongoing detention merely "forms part of the *damages*" for Fourth Amendment, pretrial-detention claims and (2) that such claims do not accrue on "the date of [plaintiff's] release from custody," but, rather, when the wrongful act or omission resulting in detention occurs. 549 U.S. at 388, 390 (emphasis added).

After Wallace served eight years in prison, the courts overturned his conviction on the ground that

his confession was the product of an unlawful, warrantless arrest. *Id.* at 387. Wallace then sought damages under §1983 for the years of detention that followed from the false arrest. In deciding when the limitations period began to run on that Fourth Amendment claim, the Court applied "'the standard rule that [accrual occurs] when the plaintiff has 'a complete and present cause of action,' * * * that is, when 'the plaintiff can file suit and obtain relief.'" *Id.* at 388. And the Court recognized that Wallace "could have filed suit as soon as the allegedly wrongful [warrantless] arrest occurred, subjecting him to the harm of involuntary detention." *Ibid.*[4]

Applying this "standard rule" to claims like Manuel's—for detention caused not by a warrantless arrest but by the alleged misuse of legal process to authorize pretrial confinement—Manuel's claim accrued when the City allegedly used false evidence to induce the judge to find probable cause and order

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[4] The Court then tolled the start of Wallace's limitations period until he first appeared before a judge, tracking a common-law rule deferring the start of the limitations clock for detainees held "*without legal process*" until "the alleged false imprisonment ends." *Wallace*, 549 U.S. at 389. "Reflective of the fact that false imprisonment consists of detention *without legal process*, a false imprisonment ends once the victim becomes held *pursuant to such process*—when, for example, he is bound over by a magistrate or arraigned on charges" shortly after his arrest. *Ibid.* (emphasis added). This exceptional, common-law tolling rule does not apply once a detainee is held pursuant to legal process.

Manuel to be detained. This part of *Wallace* alone forecloses the Seventh Circuit's delayed-accrual rule.

Moreover, like the several courts to reject the continuing-tort theory the Seventh Circuit adopted in *Manuel II*, see *supra* pp. 14-15, this Court also rejected Wallace's argument that his years of ensuing confinement constituted a single, continuing tort that delayed accrual. Like Manuel, Wallace sought a rule that his Fourth Amendment claim accrued on "the date of his release from custody." *Wallace*, 549 U.S. at 391. And although the Court recognized that Wallace's years of detention increased the "damages attributable to the unlawful arrest," this period of incarceration did not affect the accrual date, for "'[u]nder the traditional rule of accrual * * * the tort cause of action accrues, and the statute of limitations commences to run, when the wrongful act or omission results in damages. The cause of action accrues even though the full extent of the injury is not then known or predictable,'" for the detention merely "forms part of the *damages*." *Id.* at 390 (emphasis added).

2. Moreover, although the Seventh Circuit relied on this Court's decision in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), to hold that Manuel suffered an "ongoing rather than discrete" wrong each day of his unlawful incarceration, Pet. App. 3a, *Morgan* actually forecloses that result. Morgan sued his former employer under Title VII, alleging that he "had been subjected to discrete discriminatory and retaliatory acts and had experienced a racially hostile work environment throughout his employment." 536 U.S. at 104. For the discrimination and retaliation claims,

this Court recognized the *traditional* accrual rule—that "[a] discrete [wrongful] act 'occur[s]' on the day that it 'happen[s]'" and that each discrete act triggers the running of the statute of limitations for that act. *Id.* at 110. The Court acknowledged, however, that "[h]ostile environment claims are different in kind from discrete acts," for "[t]heir very nature involves repeated conduct." *Id.* at 115. More importantly, such claims are "based on the cumulative effect of individual acts" and "therefore cannot be said to occur on any particular day." *Ibid.* Indeed, in the hostile environment context, the Court explained, "*a single act of harassment may not be actionable on its own*." *Ibid.* (emphasis added).

In contrast, no one would say that Manuel had an actionable Fourth Amendment claim only after a certain, undefined number of days had passed, or that the discrete act he alleges—submitting a false criminal complaint to the court that found probable cause for his pretrial detention—would "not be actionable on its own."[5] Quite simply, unlike a hostile environment claim that *requires* a collection of acts over "a series of days or perhaps years, in direct contrast to discrete acts," *ibid.*, Manuel's claim required only this one alleged act to violate the Fourth Amendment. Thus, as *Morgan* recognized—like

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[5] The only other act by the City that Manuel could challenge was the alleged false testimony, which mirrored the purportedly false complaint, before the grand jury on March 31, 2011. See *supra* p. 5. Like submission of the allegedly false complaint, however, the allegedly false grand jury testimony occurred outside the two-year limitations period.

Justices Alito and Thomas in *Manuel I*—the traditional rule of accrual applies to Manuel's claim, meaning that claim accrued on March 18, 2011, when the judge found probable cause for Manuel's pretrial detention based on an allegedly false complaint.

3. Finally, in adopting its continuing-tort accrual rule, *Manuel II* violated the strict limits this Court has long imposed on the application of the "*Heck* bar" to §1983 claims.

Heck requires §1983 plaintiffs whose damages claims necessarily challenge their criminal "conviction or sentence" to prove first "that the conviction or sentence has been reversed," "expunged," "declared invalid," "or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. at 486-87. Underlying this rule is the principle that federal habeas corpus petitions, not §1983 suits, are the proper vehicle for challenging criminal convictions and sentences. See *id.* at 480-81, 489; see also *Preiser*, 411 U.S. at 500. And from this, the Seventh Circuit in *Manuel II* derived a broader rule—that "§1983 cannot be used to contest ongoing custody" *of any kind*, even if the §1983 suit does *not* challenge a criminal conviction or sentence. Pet. App. 5a. The panel then used that rule to support its holding that pretrial Fourth Amendment claims do not accrue until the detainee is released. Pet. App. 6a.

But this expands the *Heck* bar well beyond the limits this Court has consistently imposed on its use—that it applies only when a civil plaintiff's §1983 claim would effectively challenge his or her "conviction or sentence." 512 U.S. at 486-88. *Wallace* reaffirmed that

limitation, holding that *Heck* applies only where there is "an *extant conviction* which success in [the §1983] action would impugn." 549 U.S. at 393; see also *ibid.* ("[T]he *Heck* rule for deferred accrual is called into play only when there exists 'a conviction or sentence that has *not* been * * * invalidated,' that is to say, 'an outstanding criminal judgment.'"). Indeed, *Wallace* specifically refused to embrace precisely the "bizarre extension of *Heck*" to *pre-conviction* proceedings that *Manuel II* adopted. *Ibid.*

Nor did *Edwards* expand *Heck* to apply beyond convictions and sentences, as the Seventh Circuit suggested. Pet. App. 5a. The decision below cites the fact that *Edwards* applied *Heck* to bar an inmate's §1983 challenge to "the decision of a prison's administrative panel revoking some of a prisoner's good-time credits." *Ibid.* But *Edwards* applied *Heck* to bar the inmate's challenge in that case only because, if successful, that challenge would have affected the length of his criminal sentence. See 520 U.S. at 643-44. Conversely, this Court has refused to apply *Heck*/*Edwards* to inmate good-conduct challenges that "threaten[] no consequence for [the inmate's] conviction or the duration of his sentence." *Muhammad v. Close*, 540 U.S. 749, 751 (2004) (per curiam). Indeed, were there any doubt, *Wallace* eliminated it by unequivocally reaffirming, ten years after *Edwards*, that *Heck* bars only §1983 suits that challenge a criminal conviction or sentence.

In short, the Seventh Circuit found support for its new accrual rule only by announcing a radical extension of *Heck* that defies this Court's long-established law.

III. This Case Presents An Important Issue And Provides An Excellent Vehicle To Answer The Question Left Open In *Manuel I*.

The question presented is of great importance to states and municipalities. To defend against Fourth Amendment claims like Manuel's, government defendants must preserve evidence in connection with every arrest warrant and probable cause finding following a warrantless arrest. The Seventh Circuit's rule adds to that burden by extending the period before §1983 plaintiffs must file suit.

Worse, confusion and an inter-circuit split over the accrual date for such frequently recurring claims plague §1983 plaintiffs and defendants alike.

Moreover, this case presents an excellent vehicle to resolve the question presented. Two members of the Court already have used this case to address that question, and as the majority recognized in *Manuel I*, "[t]he timeliness of Manuel's suit hinges on the choice between the[] proposed [accrual] dates." Pet. App. 27a-28a. Indeed, that was the very reason Manuel claimed this case presented an "ideal vehicle" when he successfully sought certiorari review three years ago: "In the present case, the availability of a malicious prosecution claim and its statute of limitations will determine Manuel's fate." See Pet. at 21, 25, *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017). The accrual question remains unresolved, and there is no better vehicle to end the confusion and impose nationwide uniformity on this important and recurring issue.

IV. *McDonough v. Smith* Will Not Answer The Question Presented, But If The Court Disagrees, Then This Petition Should Be Held For A Decision On The Merits In *McDonough*.

McDonough v. Smith, No. 18-485 (cert. granted Jan. 11, 2019), will not resolve the split presented in this case. As this Court has made clear, the specific, underlying constitutional provision dictates the choice of accrual rule, Pet. App. 28a, and *McDonough* does not present a Fourth Amendment claim in this Court. Rather, it is McDonough's *due process* (and Sixth Amendment) claim based on use of fabricated evidence (Count I in his complaint) that was dismissed as untimely, a ruling affirmed by the Second Circuit on interlocutory appeal and now before this Court on certiorari review. See *McDonough v. Smith*, No. 1:15-cv-1505, 2016 WL 5717263, at *10-11 (N.D.N.Y. Sept. 30, 2016) (noting that "fabrication of evidence" count was based on Fifth and Fourteenth Amendment Due Process Clauses and Sixth Amendment right to fair trial, and dismissing that claim as untimely because it accrued when McDonough "learn[ed], or should have learned, that the evidence was fabricated"); *McDonough v. Smith*, 898 F.3d 259, 260, 264-69 (2d Cir. 2018) (repeatedly clarifying that McDonough's falsification-of-evidence count was a "due process" claim, and holding that the claim was untimely). The Second Circuit thus described the circuit split in that case as *limited* to due process claims. *McDonough*, 898 F.3d at 267 ("acknowledg[ing] that [other courts] have held that

the due process fabrication cause of action accrues only after criminal proceedings have terminated").

In contrast, the district court held that McDonough's *Fourth Amendment* claim (Count II in his complaint, also based on the use of fabricated evidence), was *timely* filed, and that claim is still proceeding against certain defendants in the district court. *McDonough*, 2016 WL 5717263, at *10, *12 (holding that "Fourth Amendment claim for malicious prosecution" was timely because it did not accrue until "favorable disposition of [McDonough's] criminal case"); *McDonough v. Smith*, No. 1:15-cv-1505, 2016 WL 7496128, at *4 (N.D.N.Y. Dec. 30, 2016) (noting that McDonough's Fourth Amendment malicious-prosecution claim was timely); *McDonough*, 898 F.3d at 264 n.6, 267-68.[6]

The fact that *McDonough* involves accrual for a due process challenge to wrongful prosecution and trial, rather than accrual for a Fourth Amendment challenge to a period of pretrial detention, makes all the difference. See *McDonough*, 898 F.3d at 269 n.14 (distinguishing between accrual for due process claims like McDonough's and for Fourth Amendment claims, citing *Manuel I* as an example of the latter). The "threshold inquiry in a §1983 suit" always is to "identify the specific constitutional right at issue,"

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[6] Having found the claim timely, the district court dismissed McDonough's Fourth Amendment claim against respondent Smith on immunity grounds, a holding that the Second Circuit affirmed and McDonough does not challenge in his certiorari petition. *McDonough*, 2016 WL 7496128, at *5, *8-10; *McDonough*, 898 F.3d at 269-70.

and in assigning an accrual date courts must "closely attend to the values and purposes of the constitutional right at issue." Pet. App. 27a-28a; see also *Cordova*, 816 F.3d at 661 (Gorsuch, J., concurring in the judgment) (criticizing parties for seeking damages under §1983 malicious-prosecution theory without specifying constitutional basis for claim).

That is why both the majority and dissent in *Manuel I* emphasized that Manuel's pursuit of a Fourth Amendment claim would dictate his accrual date. See Pet. App. 27a n.8; Pet. App. 35a-40a (Alito, J., joined by Thomas, J., dissenting). Indeed, the dissenting Justices concluded that it was because a Fourth Amendment claim—in contrast to a due process claim—challenges pretrial *seizure* alone that neither favorable-termination nor continuing-tort principles could rescue Manuel's complaint. Pet. App. 38a ("[M]alicious prosecution's favorable-termination element makes no sense when the claim is that a seizure violated the Fourth Amendment," for "[t]he Fourth Amendment, after all, prohibits all unreasonable seizures—regardless of whether a prosecution is ever brought or how a prosecution ends."); Pet. App. 33a ("If a malicious prosecution claim," with its delayed accrual principle, "may be brought under the Constitution, it must find some other home, presumably the Due Process Clause."); Pet. App. 40a ("The term 'seizure' applies most directly to the act of taking a person into custody or otherwise depriving the person of liberty. It is not generally used to refer to a prolonged detention.").

In short, *McDonough* does not present the Fourth Amendment accrual question posed here. In the

alternative, however, should this Court conclude that *McDonough* offers a vehicle to resolve the split over the accrual date for a Fourth Amendment post-process, pretrial claim like Manuel's, the Court should hold this petition for a final disposition on the merits in *McDonough*.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the petition should be held for a decision in *McDonough*.

Respectfully submitted.

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