No. 18-1093

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

BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, NATIONAL LEAGUE OF CITIES, AND U.S. CONFERENCE OF MAYORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

LISA SORONEN
State and Local Legal Center
444 N. Capitol St., NW
Washington, D.C. 20001
(202) 434-4845
lsoronen@sso.org

GEOFFREY P. EATON
Counsel of Record
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006
(202) 282-5000
geaton@winston.com

Counsel for Amici Curiae

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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

OTHER AUTHORITIES

INTERESTS OF *AMICI CURIAE*[*]

Amici are nonprofit organizations whose mission is to advance the interests of local governments and the public that is dependent on their services. *Amici* monitor and analyze legal developments that impact local governments and advocate for greater protection of government officials as they serve the public.

The National League of Cities ("NLC") is the oldest and largest organization representing municipal governments throughout the United States. Working in partnership with 49 State municipal leagues, the NLC serves as a national advocate for the more than 19,000 cities, villages, and towns it represents.

The U.S. Conference of Mayors ("USCM"), founded in 1932, is the official nonpartisan organization of all U.S. cities with a population of more than 30,000 people, which includes over 1,200 cities at present. Each city is represented in the USCM by its chief elected official, the mayor.

The International Municipal Lawyers Association ("IMLA") has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters.

---

[*] Counsel for all parties received timely notice of and consented to the filing of this brief. Their letters of consent are on file with the Clerk. In accordance with Rule 37.6, *amici* state that no counsel for any party has authored this brief in whole or in part, and no person or entity, other than the *amici*, has made a monetary contribution to the preparation or submission of this brief.

Amici's member governments, law enforcement agencies, and public attorneys serve on the front lines of the daily battles over government searches and seizures and the § 1983 Fourth Amendment claims brought to challenge them. As such, *amici* have a strong institutional interest in the rules for determining accrual of those claims and urge that the Court grant the City of Joliet's petition to clarify those rules.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below further confused the Courts of Appeals' fragmented jurisprudence addressing the accrual date for § 1983 claims arising under the Fourth Amendment. Under the "standard rule," accrual occurs "when the plaintiff has a complete and present cause of action." A § 1983 claim arising under the Fourth Amendment would, under the standard rule, accrue when the constitutional injury occurs—in this case, when Manuel was detained pursuant to legal process. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). But the standard rule has been abandoned by the Courts of Appeals—first in favor of a "favorable termination" rule imported from state common-law malicious prosecution claims, and now in favor of a novel "continuing tort" theory, under which the Fourth Amendment claim is said to accrue only upon the claimant's release from detention.

The split in the Court of Appeals warrants this Court's review to resolve an issue of daily importance to the nation's local governments and the public officers and attorneys who serve them. The Courts of Appeals' departures from the standard accrual rule are inconsistent with this Court's precedent and with the

purposes and values embodied by the Fourth Amendment. Moreover, local governments and their personnel bear most of the burden of Fourth Amendment § 1983 claims. The adoption of delayed-accrual rules unduly increases that burden, to the detriment of the public good.

The Court should grant the petition for certiorari to provide needed guidance to the courts and restore uniformity to the accrual rules governing Fourth Amendment claims.

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant the Petition to Resolve Legal Uncertainty in an Area of Great Importance to Local Governments.

A. The accrual date of Fourth Amendment § 1983 claims is an issue of daily importance to local law enforcement.

For the nation's nearly 40,000 municipal, county, and township governments, Fourth Amendment-based § 1983 claims are a recurring fact of life. According to federal statistics, in 2017 American law enforcement agencies made an estimated 10.6 million arrests.[1] The overwhelming majority of those arrests were made by state and local law enforcement personnel.[2] Because every arrest constitutes a Fourth

---

[1] *See Table 29: Estimated Number of Arrests, United States 2017*, Fed. Bureau Investigation, https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-29 (last visited Mar. 22, 2019).

[2] In the same period, the FBI made fewer than 21,000 arrests. *See Federal Crime Data*, Fed. Bureau Investigation, https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-

Amendment "seizure," each of those 10.6 million arrests involved (in theory) a potential claim under § 1983 that the seizure was "unreasonable" and so violated the detainee's constitutional rights.

It is a credit to the nation's law enforcement officers that as a percentage of total law enforcement seizures, the number that actually give rise to a § 1983 claim—never mind a meritorious one—is vanishingly small. But in absolute terms, the amount of litigation spawned by those claims is massive. Although exact numbers are not known, it is generally estimated that complainants file approximately 18,000 § 1983 claims annually. Philip M. Stinson & Steven L. Brewer Jr., *Federal Civil Rights Litigation Pursuant to 42 U.S.C. § 1983 as a Correlate of Police Crime* 68 (Bowling Green State Univ. Criminal Justice Faculty Publ'ns 2016). By definition, all of those claims are lodged against state and local governments and officials.

The percentage of those 18,000 claims that allege Fourth Amendment violations is not precisely known, but it is significant. The City of Chicago reports 94 active claims similar to Manuel's. It is indicative of the prevalence of such claims that the federal courts have repeatedly addressed the questions raised by them. Ten of the twelve regional Courts of Appeals have addressed the accrual date question presented by the petition.[3]

2017/additional-data-collections/federal-crime-data (last visited Mar. 22, 2019) (table 3).

[3] *See, e.g.*, *Harrington v. City of Nashua*, 610 F.3d 24, 28 (1st Cir. 2010); *Calero-Colon v. Betancourt-Lebron*, 68 F.3d 1, 2 (1st Cir. 1995); *Street v. Vose*, 936 F.2d 38, 40 (1st Cir. 1991) (per curiam); *Marrapese v. Rhode Island*, 749 F.2d 934, 936 (1st Cir.

As this litany of authority demonstrates, the accrual date for Fourth Amendment-based § 1983 claims is an issue that local governments and their personnel must constantly address. And because the choice of accrual date may be dispositive of an asserted claim, it is an issue of enormous consequence. The question presented is important and warrants resolution by the Court.

1984); *Spak v. Phillips*, 857 F.3d 458, 460 (2d Cir. 2017); *Smith v. Campbell*, 782 F.3d 93, 101 (2d Cir. 2015); *Pearl v. City of Long Beach*, 296 F.3d 76, 80 (2d Cir. 2002); *Nguyen v. Pennsylvania*, 906 F.3d 271, 273 (3d Cir. 2018); *Woodson v. Payton*, 503 F. App'x 110, 111 (3d Cir. 2012) (per curiam); *Deary v. Three Un-Named Police Officers*, 746 F.2d 185, 199 (3d Cir. 1984); *Brooks v. City of Winston-Salem*, 85 F.3d 178, 182 (4th Cir. 1996); *Wright v. Oliver*, No. 95-6546, 1996 WL 531299, at *1-2 (4th Cir. Aug. 15, 1996) (per curiam); *Winfrey v. Rogers*, 901 F.3d 483, 493 (5th Cir. 2018), *petition for cert. filed*, No. 18-1024 (U.S. Jan. 31, 2019); *Reed v. Edwards*, 487 F. App'x 904, 905 (5th Cir. 2012) (per curiam); *Casares v. City of Donna*, No. 94-60203, 1994 WL 559025, at *1 (5th Cir. Sept. 22, 1994) (per curiam); *Adepegba v. Louisiana*, No. 94-40749, 1994 WL 684734, at *1 (5th Cir. Nov. 17, 1994) (per curiam); *Hill v. Snyder*, 878 F.3d 193, 208 (6th Cir. 2017); *Panzica v. Corr. Corp. of Am.*, 559 F. App'x 461, 463 (6th Cir. 2014); *Hornback v. Lexington-Fayette Urban Cty. Gov't*, 543 F. App'x 499, 501 (6th Cir. 2013); *Scott v. City of Pontiac*, No. 92-1482, 1992 WL 289572, at *1 (6th Cir. Oct. 14, 1992) (per curiam); *Lewis v. City of Chicago*, 914 F.3d 472, 474-75 (7th Cir. 2019); *Mitchell v. City of Elgin*, 912 F.3d 1012, 1013 (7th Cir. 2019); *Klein v. City of Beverly Hills*, 865 F.3d 1276, 1279 (9th Cir. 2017) (per curiam); *Yasin v. Coulter*, 449 F. App'x 687, 689 (9th Cir. 2011) (per curiam); *Harvey v. Waldron*, 210 F.3d 1008, 1015 (9th Cir. 2000); *Varnell v. Dora Consol. Sch. Dist.*, 756 F.3d 1208, 1215 (10th Cir. 2014); *Garza v. Burnett*, 672 F.3d 1217, 1219-20 (10th Cir. 2012); *Young v. Davis*, 554 F.3d 1254, 1256 (10th Cir. 2009); *Mondragon v. Thompson*, 519 F.3d 1078, 1080 (10th Cir. 2008); *Kelly v. Serna*, 87 F.3d 1235, 1239 (11th Cir. 1996).

B. Because the Circuits have adopted conflicting accrual rules, it is impossible to formulate best practices for local governments.

There are now at least three distinct accrual rules that may apply to Fourth Amendment § 1983 claims: (1) the "standard rule" adopted in *Wallace v. Kato*, 549 U.S. 384 (2007), and by two Justices of this Court in *Manuel I*, under which such a claim accrues upon initial seizure, subject to tolling until seizure pursuant to process; (2) the "favorable termination" rule that several Circuits have grafted onto § 1983 claims from state common-law malicious prosecution torts, under which the claim does not accrue until the plaintiff has been prosecuted and that prosecution has been terminated in his favor; and (3) the "continuing tort" rule adopted only by the Seventh Circuit in the decision below, under which the claim is recast as a continuing tort that begins with the initial seizure but does not end until the claimant is released from detention, whenever that might be.

These inconsistent rules result in conflicting accrual dates in different Circuits. This outcome is untenable: there is only one Fourth Amendment, and the accrual of claims brought to enforce it must be determined in a uniform way no matter where in the federal system they are brought.

The fragmented state of the law of Fourth Amendment claim accrual is, of itself, sufficient to warrant the Court's intervention. *Amici* have a particular interest in restoring uniformity to the accrual rules: as advocates for local governments and their agencies, officials, and attorneys, a significant part of their function is (as IMLA's mission statement puts

it) to serve as a center for "legal information and cooperation on municipal legal matters" and to "help[] governmental officials prepare for litigation."[4] *Amici* cannot perform this function effectively when the application of federal law varies by court or region or is otherwise saddled with uncertainty. For a legal issue as significant to local governments as constitutional litigation under § 1983, the confused state of the law is particularly intolerable. The Court should grant the petition to resolve that confusion.

C. The Court's upcoming decision in *McDonough* will not resolve the question presented.

The circuit split, which was exacerbated by the Seventh Circuit's decision below, is specific to Fourth Amendment-based § 1983 claims. Thus, the question presented here will not be resolved by the Court's decision in *McDonough v. Smith*, No. 18-485 (U.S., cert. granted Jan. 11, 2019). Notwithstanding the *McDonough* petitioner's refusal to identify the constitutional right there at issue, McDonough presents (at most) a Due Process Clause claim, which requires a different accrual analysis.

As this Court explained in *Manuel I*, the "threshold inquiry" in any § 1983 suit is to "'identify the specific constitutional right' at issue," 137 S. Ct. at 920 (quoting *Albright v. Oliver*, 510 U.S. 266, 271 (1994)), and identification of that right has consequences for claim accrual. For example, a plaintiff who has been subjected to a warrantless seizure without legal pro-

---

[4] *See About / Mission / History*, Int'l Mun. Law. Ass'n, https://www.imla.org/about-imla/about-mission-history (last visited Mar. 22, 2019).

cess may have a viable Fourth Amendment claim even if he is never prosecuted. *Id*. at 926 (Alito, J., dissenting); *see also Whalen v. McMullen*, 907 F.3d 1139, 1152 (9th Cir. 2018). A rule in which the claim accrued upon favorable termination of a prosecution that might never occur would make no sense. *Manuel I*, 137 S. Ct. at 926 (Alito, J., dissenting) ("Accordingly, there is no good reason why the accrual of a claim like Manuel's should have to await a favorable termination of the prosecution."). A due process claim requires a different analysis. For example, a plaintiff who alleges a deprivation of liberty resulting from the use of fabricated evidence at trial cannot bring a due process claim at all unless the trial results in a conviction. *See, e.g.*, *Morgan v. Gertz*, 166 F.3d 1307, 1310 (10th Cir. 1999) ("[A] defendant who is acquitted cannot be said to have been deprived of the [due process] right to a fair trial."); *Flores v. Satz*, 137 F.3d 1275, 1278-79 (11th Cir. 1998) (per curiam) ("Plaintiff . . . was never convicted and, therefore, did not suffer the effects of an unfair trial."). In that context, an accrual rule that required the plaintiff to bring his claim prior to conviction would make no sense, either. It is the nature of the asserted constitutional right and the "purposes and values" embodied by that right that determine the appropriate accrual date.

Here, it is undisputed that the only constitutional right at issue is the Fourth Amendment prohibition against unreasonable seizures. By contrast, if the petitioner in *McDonough* presents a valid constitutional claim at all, it is a due process claim. To the extent McDonough had any Fourth Amendment claim, the district court found that it was subsumed in his "malicious prosecution" claim, which both the district

court and the Second Circuit found to be timely but, as to respondent Smith, barred by prosecutorial immunity. *See McDonough v. Smith*, No. 1:15-cv-1505, 2016 WL 5717263, at *10 (N.D.N.Y. Sept. 30, 2016); *McDonough v. Smith*, 898 F.3d 259, 269-70 (2d Cir. 2018). The Second Circuit then considered and resolved McDonough's only surviving claim as a due process claim, without reference to the Fourth Amendment. *McDonough*, 898 F.3d at 270. Regardless of the outcome as to due process in *McDonough*, the Court should grant the petition in this case to resolve the distinct Fourth Amendment accrual issue presented here.

II. The Delayed-Accrual Rules Adopted by the Courts of Appeals Are Wrong as a Matter of Both Law and Policy.

A. Neither the "continuing tort" rule nor the "favorable termination" rule is consistent with this Court's jurisprudence.

While the Courts of Appeals differ on the exact accrual rule that applies to Fourth Amendment claims, they generally agree that accrual of such claims should be delayed—in some cases, delayed for years beyond what the standard accrual rule would permit. But neither the Seventh Circuit's novel "continuing tort" rule nor other Circuits' "favorable termination" rule is consistent with this Court's authority.

1. Under *Wallace*, Fourth Amendment injury occurs no later than the date of seizure pursuant to legal process.

The Seventh Circuit's continuing-tort accrual rule cannot be squared with this Court's ruling in *Wallace v. Kato*, 549 U.S. 384 (2007). There, the Court directly addressed the accrual of a Fourth Amendment

claim based upon a wrongful, pre-process, warrantless arrest. Applying the "standard rule," the Court held that Wallace's Fourth Amendment claim "normally" would have accrued "as soon as the allegedly wrongful arrest occurred" but applied common-law tolling doctrine to toll accrual until "the claimant becomes detained pursuant to legal process." *Id.* at 388, 397 (quoting *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997)). The Court expressly rejected Wallace's argument that the initial arrest, subsequent arraignment, and further detention constituted a continuing tort that delayed accrual until his release from custody. His post-process detention, the Court explained, constituted (at most) "consequential damages" from the original arrest—not a continuing constitutional violation subject to delayed accrual. *Id.* at 391.

The logic of the standard rule is plain. When, for example, a claimant brings an action for an unconstitutional seizure of property, his claim accrues when he learns that the property has been seized, not when it is returned to him. *See, e.g.*, *Voneida v. Stoehr*, 512 F. App'x 219, 221 (3d Cir. 2013) (per curiam) (§ 1983 Fourth Amendment claim accrued "at or by the time of the search and seizure" of the plaintiff's property); *Rollin v. Cook*, 466 F. App'x 665, 667 (9th Cir. 2012) (per curiam) (§ 1983 Fourth Amendment claim "accrued on the search date"). As Justice Alito explained in *Manuel I*, "[t]he term 'seizure' applies most directly to the act of taking a person into custody . . . . It is not generally used to refer to a prolonged detention." 137 S. Ct. at 927 (Alito, J., dissenting). The Seventh Circuit's continuing-tort approach to accrual is incon-

sistent with the nature of the Fourth Amendment right it purports to enforce.

2. The "favorable termination" rule improperly elevates a common-law tort principle over the purposes and values of the Fourth Amendment right.

Other Circuits have properly rejected the Seventh Circuit's continuing-tort rule, only to adopt a different delayed-accrual rule. Eight Courts of Appeals have held that a Fourth Amendment claim based on fabricated evidence accrues only upon a favorable termination of the prosecution, such as an acquittal. *Manuel I*, 137 S. Ct. at 921. That accrual rule, too, is inconsistent with this Court's jurisprudence.

The favorable-termination accrual rule is imported from state-law causes of action for the tort of "malicious prosecution." *See, e.g.*, *Eidson v. Olin Corp.*, 527 So. 2d 1283, 1287 (Ala. 1988); *Greenberg v. Wolfberg*, 890 P.2d 895, 902 (Okla. 1994); *Wiggs v. Farmer*, 135 S.E.2d 829, 831 (Va. 1964). But as the Seventh Circuit below recognized, after this Court's decision in *Manuel I*, there is no such thing as a "Fourth Amendment malicious prosecution" claim. *Manuel v. City of Joliet*, 903 F.3d 667, 669-70 (7th Cir. 2018). There is only a Fourth Amendment claim for an unlawful seizure. *Id.* Common-law tort principles may provide a "guide" in determining the "contours and prerequisites" of a § 1983 claim, but "[i]n applying, selecting among, or adjusting common-law approaches, courts must closely attend to the values and purposes of the constitutional right at issue"—here, the Fourth Amendment right to be free of unreasonable seizures. *Manuel I*, 137 S. Ct. at 920-21.

The Fourth Amendment's prohibition on unreasonable seizures is not consistent with a favorable-termination accrual rule. As Justice Alito explained in *Manuel I*, "when the claim is that a seizure violated the Fourth Amendment," a favorable-termination element "makes no sense" because that Amendment "prohibits *all* unreasonable seizures—regardless of whether a prosecution is ever brought or how a prosecution ends." 137 S. Ct. at 925-26 (Alito, J., dissenting). That is, under current doctrine, a person who is subjected to an unreasonable seizure and is never prosecuted has a viable Fourth Amendment claim. But in a favorable-termination accrual regime, that claim would never accrue. An accrual regime that produces an outcome so inconsistent with established doctrine does not serve the "purposes and values" of the Fourth Amendment.

Moreover, the favorable-termination rule brings additional uncertainties. It is not at all clear, for example, what outcomes other than outright acquittal constitute "favorable" terminations. Prosecutions have myriad potential conclusions: entry of *nolle prosequi*, plea of *nolo contendere*, dismissal without prejudice, mistrial, mixed verdicts, and many varieties of plea bargain. Whether those outcomes are "favorable" or not is to an extent in the eye of the beholder. Predictably, different courts have resolved this question in different ways. Some states hold that a termination is only "favorable" if the proceedings indicate actual innocence. *See, e.g.*, *Miles v. Paul Mook of Ridgeland, Inc.*, 113 So. 3d 580, 585-86 (Miss. Ct. App. 2012). Others require only that the prosecution be dismissed, for any reason. *See, e.g.*, *Glover v. City of Wilmington*, 966 F. Supp. 2d 417, 426 (D. Del. 2013) (discussing Delaware's malicious

prosecution cause of action). To further confuse matters, at least one state's malicious prosecution tort does not require favorable termination at all. *See Cordova v. City of Albuquerque*, 816 F.3d 645, 662 (10th Cir. 2016) (Gorsuch, J., concurring in the judgment) (describing the law of New Mexico). In short, adopting a favorable-termination accrual regime for Fourth Amendment claims would eliminate one source of legal uncertainty only to replace it with another.

B. A delayed-accrual rule for Fourth Amendment claims is bad public policy.

The various delayed-accrual rules adopted by the Courts of Appeals have significant negative public-policy ramifications, not only for the local governments and officials who must defend Fourth Amendment § 1983 suits but also for injured plaintiffs and the interests of justice.

For the governments and officials whose interests *amici* serve, delayed accrual of Fourth Amendment claims have the practical effect of vitiating the statute of limitations for the actual constitutional injury. This is not merely a technical detail. As the Court explained in *Wilson v. Garcia*, 471 U.S. 261 (1985), important "policies of repose" are furthered by statutes of limitations, and "[j]ust determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost." *Id.* at 271. Basic principles of fairness suggest that if a plaintiff has a Fourth Amendment claim that originates in a pre-process seizure, the officer who made that seizure should not be forced to wait indefinitely to learn that his conduct has been challenged.

The § 1983 plaintiff, too, may suffer from long delays in the accrual of her claim. Extended delay between the injury and the resulting claim may create insuperable problems of proof, as memories fade and evidence is lost or discarded. When meritorious claims are lost to the passage of time, the interests of justice—and the constitutional right here at issue—are not served.

In short, the only rule that provides the necessary legal certainty for both defendants and plaintiffs is the standard rule, under which the plaintiff's claim always accrues no later than the date the plaintiff is seized pursuant to legal process.

CONCLUSION

For the preceding reasons, the Court should grant the petition for certiorari.

Respectfully submitted.

LISA SORONEN
State and Local Legal Center
444 N. Capitol St., NW
Washington, D.C. 20001
(202) 434-4845
lsoronen@sso.org

GEOFFREY P. EATON
Counsel of Record
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006
(202) 282-5000
geaton@winston.com

Counsel for Amici Curiae

MARCH 2019