No. 18-576

IN THE

Supreme Court of the United States

ROBERT H. WRIGHT, JR.,

Petitioner,

v.

JERALD WATSON,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should grant certiorari and review for error the District Court's finding of probable cause, which formed the basis for the District Court's rejection of Petitioner's malicious prosecution claim, and which in turn was upheld by a unanimous Eleventh Circuit panel in an unpublished per curiam decision.

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COUNTERSTATEMENT OF THE CASE

A. Factual Background.

Petitioner Robert Wright's submission is entirely based on a false narrative: that law enforcement lacked probable cause to arrest and prosecute him for the felony manufacturing of marijuana. Pet. i, 5, 8, 9, 11, 12, 14, 15, 16, 17, 18, 20, 21. A magistrate judge, a District Court judge, and a unanimous Eleventh Circuit panel found otherwise. Pet. App. 6, 23, 53. Petitioner also presented the same contention to a jury, and that jury rejected Wright's claim.

Wright nonetheless continues to promote the same false narrative to suggest that he should be able to maintain a malicious prosecution claim for what he continues to maintain was a "felony overcharge." He is incorrect.

Wright and his wife, Lisa Wright, lived at 525 R.D. Brown Road in Hamilton, Georgia ("Wright Property"). Pet. App. 11. R.D. Brown Road is a dirt road located in a rural area of Harris County, Georgia. *See* Pet. App. 11. Mrs. Wright owned the Wright Property, which is approximately nine and a half acres. Pet. App. 11.

On June 27, 2013, the Governor's Task Force for Drug Suppression performed aerial surveillance in Harris County, Georgia as part of its marijuana eradication operation. Pet. App. 14. As part of the Task Force, two Georgia state troopers randomly canvassed the county by helicopter looking for marijuana. Pet. App. 14. A suspected marijuana grow site at a property on R.D. Brown Road was spotted. Pet. App. 14. The grow site was south of a black chain-link fence surrounding the south side of the Wright Property. Pet. App. 14. The troopers reported the observation to a ground team and requested the location be investigated. Pet. App. 14.

Neither trooper in the helicopter nor the ground team members knew whether the large grow site was actually on the Wright Property or just south of it. Pet. App. 14. One of the troopers in the helicopter reported to the ground team that the large grow site was near the black chain-link fence. Pet. App. 14. The trooper further reported to the ground team that the house at 525 R.D. Brown Road was the closest house to the large grow site, which was otherwise in a rural, undeveloped area. *See* Pet. App. 14–15.[1]

[1] *See also* Doc. No. 71-2 ¶¶ 4–5 (trooper declaring that the house on the Wright Property was the closest house to the large marijuana grow site, which was otherwise in a rural, undeveloped area).

Additionally, the trooper reported to the ground team that he observed a path leading from the house on the Wright Property to the large marijuana grow site. Pet. App. 15.

The trooper further reported to the ground team that he saw a utility shed on the north side of the house on the Wright Property. Pet. App. 15. The trooper observed and reported small plants in cups and trays near the shed that appeared to him "to possibly be marijuana." Pet. App. 15. The trooper also reported to the ground team that the materials observed near the shed "resembled what was observed at the large marijuana grow site." Pet App. 15.

Members of the ground team responded to the location reported by the troopers. Four members of the ground team, including Georgia Department of Natural Resources Conservation Ranger Jeremy Bolen, located the small plants near the shed. At least two of the ground team members thought the small plants were marijuana. *See* Pet. App. 18. But because one of the members was not sure due to the fact he had never seen juvenile marijuana that small before, the ground team members moved on without confiscating the small plants. Pet. App. 18.

Bolen and two of the ground team members went to the large marijuana grow site where other ground team members were already documenting and confiscating evidence. Items were observed suggesting a connection between the large marijuana grow site and the area previously observed near the utility shed, including bags of the same brand of potting soil, Solo cups, and black potting containers. *See* Pet. App. 19. It was also observed, inter alia, that (1) the large marijuana grow site was near a gate in the

black chain link fence, (2) there was fresh long-needle pine straw at the large grow site and bales of the same near the house, (3) there were similar bamboo stakes found at the large grow site and near the house, and (4) a wire dog crate was found at the large grow site and the packaging box for the crate found on an open trailer near the utility shed.[2]

While at the large marijuana grow site, Bolen observed juvenile plants that looked identical to the small plants observed near the utility shed.[3] Bolen asked another ground team member at the large grow marijuana site, who was a Georgia state trooper, whether the observed juvenile plants were marijuana, and the trooper confirmed that they were.[4] Bolen then concluded that if those juvenile plants were marijuana, the small plants found near the shed were also marijuana.[5] Bolen immediately took the trooper and others back to the shed site—but by the time they arrived, the small pants had been removed.[6] Bolen observed disturbed soil remaining in the plastic trays and determined that the small plants had been (very) recently pulled.[7]

Bolen and another officer then knocked on the front door of the house, and Mrs. Wright answered.[8] Bolen

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[2] Doc. 71-2, ¶¶ 4–5; Doc. 71–3, ¶¶ 9–11; Doc. 81, pp. 41, 46; Doc. 83, pp. 69–70, 73, 96.

[3] Doc. 71-3, ¶ 10; Doc. 80, p. 65.

[4] Doc. 71-3, ¶ 10; Doc. 80, pp. 70, 73.

[5] Doc. 71-3, ¶ 10.

[6] Doc. 71-3, ¶ 11.

[7] Doc. 71-3, ¶ 11.

[8] Doc. 80, pp. 74–75.

observed that she was sweating, and that it appeared to Bolen that she recently had been outside.[9]

Respondent Jerald Watson did not arrive to the Wright Property until some time later. Members of the ground team discussed with Watson what was observed near the utility shed and the large marijuana grow site, including the small plants that had been reported both from the air and the ground, which Bolen determined to be marijuana, and which had been quickly and surreptitiously pulled. *See* Pet. App. 19-20.[10] Watson, who at the time was a sheriff's deputy in the subject jurisdiction, Harris County, where the Wright Property was located, was tasked with obtaining a search warrant based on these collective findings. *See* Pet. App. 20.

While waiting for Watson to return with a search warrant, Bolen offered his K-9 service dog to backtrack from the area where the small plants went missing.[11] The dog tracked to a back door of the Wright house, where Bolen observed more bamboo stakes and similar-style netting observed at the large marijuana grow site.[12] The dog then tracked a trail to a green tent on the northeast part of the Wright Property.[13] Before confirming that the search warrant was obtained, Bolen simply checked the tent for persons; in doing so, he detected a strong odor of

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[9] Doc. 80, pp. 75–76.

[10] Doc. 71-2, ¶¶ 4-5; Doc. 71-3, ¶¶ 9–11; Doc. 81, pp. 41, 46; Doc. 83, pp. 69–70, 73, 96.

[11] Doc. 80, pp. 83-84.

[12] Doc. 80, p. 91.

[13] Doc. 80, pp. 91–92; *see* Doc. 93, p. 127.

what he suspected to be marijuana coming from the tent.[14] Bolen observed a partially smoked marijuana cigarette inside the tent in plain view.[15] There was also an extension cord running from the tent to the house.[16]

The search warrant eventually was secured and executed. During execution of the warrant, officers found evidence that marijuana plants had been moved prior to the search and flushed down a toilet in the house. Pet. App. 6. Marijuana plant remnants and soil were found in the toilet in the basement, near the back door to which Bolen's dog had previously tracked.[17] Approximately 8.9 grams of marijuana were found in and around the house, in addition to the fifty-four plants found at the large grow site. Pet. App. 23. Marijuana paraphernalia, including a horticultural grow light, were found in and around the house. Pet. App. 6.

As a result of the pre-search warrant investigation and search warrant execution, Wright and Mrs. Wright were arrested for felony manufacture of marijuana, misdemeanor possession of marijuana, and misdemeanor possession of drug related objects. Pet. App. 23. Although taken to jail, Wright and Mrs. Wright both were released later that night. Wright did not undergo further detention as a result of any of the charges.

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[14] Doc. 80, p. 92.

[15] Doc. 80, p. 92.

[16] Doc. 77, pp. 65-66.

[17] *See also* Doc. 75, pp. 31–32; Doc. 83, pp. 103–04.

The next day, Watson applied for arrest warrants on the charges, and the magistrate issued the arrest warrants. Pet. App. 23. Watson had no involvement in the criminal proceedings or civil forfeiture action, including the plea/settlement negotiations, after securing the arrest warrants and turning over the evidence and investigation reports to the district attorney's office.[18]

As to the civil forfeiture action, in his verified answer to the action, Wright asserted that all of the seized property at issue belonged to Mrs. Wright. Pet. App. 24. "He also asserted the innocent owner defense, averring that he was not legally accountable for the conduct giving rise to the forfeiture, that he did not know or have reason to know about the conduct giving rise to the forfeiture, and that he did not hold the property jointly 'with a person whose conduct gave rise to its forfeiture.'" Pet. App. 24. Wright did not challenge the legality of the search in his answer to the civil forfeiture proceeding. Pet. App. 24.

A consent judgment subsequently was entered in the civil forfeiture action, whereby $20,000 was paid in exchange for the release of Mrs. Wright's property. Pet. App. 24. Mrs. Wright also voluntarily pled guilty to felony possession of more than an ounce of marijuana.[19] As a result of Mrs. Wright's guilty plea, the

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[18] Doc. 83, pp. 114, 117.

[19] Doc. 71-10, pp. 2–4, 16. Importantly, because only 8.9 grams of marijuana were found in and around the house, the guilty plea and admission of possessing more than an ounce consequently included admission of possessing the fifty-four marijuana plants found at the large grow site.

district attorney agreed to *nolle prosequi* the charges against Wright. *See* Pet. App. 25.[20]

B. Proceedings Below.

Wright filed this action in the Middle District of Georgia in March 2015, alleging violations of his Fourth Amendment rights and various state law claims against fourteen state and local law enforcement officers. Wright's malicious prosecution claim was dismissed as to all named defendants, except Watson. Wright later voluntarily dismissed eleven of the fourteen named defendants.

Following discovery, Watson and the other remaining defendants moved for summary judgment on the ground that they were entitled to qualified immunity as to all federal law claims and official immunity as to all state law claims. After hearing oral arguments, the District Court entered a fifty-four page order granting in part and denying in part the summary judgment motion.

As relevant to this petition, the District Court found that Wright's malicious prosecution claim against Watson failed as a matter of law, because Wright had not established that Watson "violated clearly established law in seeking the arrest warrant." Pet. App. 53. The District Court noted that the felony charge was based on the statement in the arrest warrant that Wright possessed the fifty-four plants found growing at the large grow site adjacent to the Wright Property. While Wright continues to contend that those plants were not his, the District Court found that Wright "does not dispute that

[20] Doc. 65, ¶ 65; Doc. 71-10, pp. 10–11.

officers found fifty-four plants growing at the large grow site, along with marijuana scattered in and around the Wrights' home and common items at both sites, such as the similar Solo cups and matching potting soil." Pet. App. 53. The District Court therefore found that Wright "did not point the Court to any authority clearly establishing that a reasonable officer in [Watson's] position should not believe he had probable cause to arrest [Wright] for marijuana manufacture based on all of these facts." *Id.* That finding entitled Watson to summary judgment on Wright's Section 1983 claim, and to official immunity on Wright's state-law malicious prosecution claim. *Id.*

A trial was conducted in September 2017 on Wright's remaining Fourth Amendment unlawful search claim. The jury returned a verdict in favor of Watson and the one other remaining defendant, concluding that neither defendant had violated Wright's Fourth Amendment rights.

Wright did not appeal the jury's verdict. He appealed only the order granting summary judgment to Watson on the Section 1983 and state-law malicious prosecution claims. The Eleventh Circuit affirmed the District Court's ruling in a short, unanimous, unpublished, per curiam opinion.

As the court of appeals explained, to establish a malicious prosecution claim under Section 1983, " 'a plaintiff must prove (1) the elements of the common law tort of malicious prosecution, and (2) a violation of her Fourth Amendment right to be free from unreasonable seizures.'" Pet. App. 3 (quoting *Kingsland* v. *City of Miami*, 382 F.3d 1220, 1234 (11th Cir. 2004)). Georgia's parallel state-law malicious prosecution claim requires, among other things, a criminal

prosecution instituted or continued " 'without probable cause.'" *Id.* (quoting *Wood* v. *Kesler*, 323 F.3d 872, 882 (11th Cir. 2003)). Under federal law, law enforcement officers are entitled to qualified immunity in making an arrest "so long as there was arguable probable cause" for the arrest. Pet. App. 4. Under Georgia law, " 'an officer performing a discretionary act is entitled to official immunity unless he or she acted with actual malice or with actual intent to cause injury.' " Pet. App. 5 (quoting *Bateast v. Dekalb Cty.*, 572 SE2d 756, 757 (Ga. Ct. App. 2002)).

The court of appeals explained that Wright's malicious prosecution claim "faces an uphill battle" in light of these basic principles. Pet. App. 5. After all, "[a] jury already determined that Watson did not violate Wright's Fourth Amendment rights in procuring the search warrant," *id.*—a finding Wright did not even appeal. And more than that: Wright *admitted* that Watson had "probable cause to seek an arrest warrant for the *misdemeanor* marijuana drug charges." *Id.* (emphasis added). Those admissions and forfeitures meant that for Wright to prevail on appeal from the qualified immunity ruling as to the felony charge, he was required to show "that no reasonable officer in the same circumstances and possessing the same knowledge as Watson could have believed that probable cause existed to arrest Wright for *felony* manufacture of marijuana." Pet. App. 5-6 (emphasis added).

As the panel succinctly explained, Wright failed to make that showing. "Multiple officers and police divisions were involved in the search of Wright's property, and Watson was briefed on their observations and evidentiary discoveries prior to seeking both the search and arrest warrants." Pet. App. 6.

The officers' collective knowledge included (1) the discovery of fifty-four marijuana plants growing by a gate adjacent to Wright's property; (2) the observation of multiple common items on the grow site and Wright's property; (3) small quantities of marijuana and related paraphernalia in the house; and (4) evidence that marijuana plants had been hastily flushed down the toilet in Wright's house. *Id.* In light of all this, the panel concluded that "a reasonable officer could have believed there was probable cause to arrest [Wright] for felony manufacture of marijuana under Georgia law." *Id.* Wright relatedly had failed to demonstrate that Watson had sought his arrest without probable cause and with intent to injure, as Georgia law required. *Id.* The Eleventh Circuit therefore affirmed the District Court's grant of judgment for Watson.

Wright sought rehearing and rehearing en banc. The Eleventh Circuit denied the petitions without a dissenting vote.

REASONS FOR DENYING THE PETITION

Wright's Section 1983 claim for malicious prosecution failed for one fundamental reason: Watson repeatedly has been found to have *had* probable cause to arrest and charge Wright for felony manufacture of marijuana. A state magistrate, a federal district court judge, and a three-judge panel of the Eleventh Circuit all reached this same conclusion, as did a federal jury when presented with a related issue. Petitioner plainly thinks otherwise—and argues otherwise on nearly every page of his petition. But this Court's intervention is not merited merely to correct an asserted error, no matter how strenuously petitioner argues it. *See* S. Ct. R. 10.

Petitioner nevertheless offers several grounds for certiorari. None has any merit at all. First, the Court's decision in *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017) is inapposite, and any questions left open there are not presented here, in any event. Second, Wright's case does not implicate any circuit conflict. Third, this case is an especially poor vehicle for the Court to weigh in on the questions Wright presents.

I. The Court's Decision In *Manuel* Is Inapposite.

Wright commences his argument by claiming that this Court "recently made clear that the Fourth Amendment is the source of the right to be free from arbitrary and malicious prosecution." Pet. 10. That will come as a surprise to this Court. *Manuel* emphatically did not establish a "Fourth Amendment malicious prosecution claim." The majority opinion and Justice Alito's dissent both make this clear. *Manuel*, 137 S. Ct. at 922 n.10 (majority), *and id.* at 923 n.1 (dissent). By its own terms, *Manuel* was a narrow decision resolving a specific issue: whether the Fourth Amendment governs claims for unlawful pretrial detention *beyond the start of legal process*. *See* 137 S. Ct. at 919.

In fact, "[a]fter *Manuel*, 'Fourth Amendment malicious prosecution' is the wrong characterization" anyway. *Manuel* v. *City of Joliet*, 903 F.3d 667, 670 (7th Cir. 2018), *on remand from* 137 S. Ct. 911 (2017). "There is only a Fourth Amendment claim—the absence of probable cause that would justify the detention." *Id.* After all, "[t]he problem is the wrongful custody. '[T]here is no such thing as a constitutional right not to be prosecuted without probable cause.' *Serino* v. *Hensley*, 735 F.3d 588, 593 (7th Cir. 2013). But there is a constitutional right not

to be held in custody without probable cause." *Id.* The wrong that *Manuel* addresses thus "is the detention" itself—the unlawful seizure—which is what makes it "a plain-vanilla Fourth Amendment claim[.]" *Id.*

Wright concedes, however, that he was *not* subject to continued detention after the state magistrate issued the arrest warrant. *See* Pet. at 5. He was released on his own recognizance before the arrest warrant was issued, and the charges were eventually dropped as part of his wife's plea agreement. *See supra* at [7-8]. So the answer to Wright's first question presented is no. A "Fourth Amendment malicious prosecution claim" under *Manuel* is not proper here because Wright's detention did not continue after an allegedly deficient legal process.

Wright also contends that *Manuel* requires further "clarification" lest Section 1983 malicious prosecution claims inevitably vary from state to state, and therefore circuit to circuit, because states take various approaches to common law malicious prosecution claims. *See* Pet. at 10–11, 14, 20–21. True, common law principles play some role in sculpting Section 1983 claims. *Manuel*, 137 S. Ct. at 920–21. But this Court has never held that Section 1983 claims necessarily adopt the common law elements of the most analogous tort of any particular state, and the Eleventh Circuit understands that full well. *See Wood* v. *Kesler*, 323 F.3d 872, 882 n.17 (11th Cir. 2003) ("When malicious prosecution is brought as a federal constitutional tort, the outcome of the case does not hinge on state law, but federal law, and does not differ depending on the tort law of a particular state."). And that is why the issue Wright poses is completely academic when it comes

to this case. Whether Watson had probable cause to charge Wright with a felony turns on the "federal law of probable cause—not state law." *Id.* at 882 n.17 (quoting *Green v. Montgomery*, 219 F.3d 52, 60 n.2 (2nd Cir. 2000)). The Court need not grant Wright's petition just to clarify that his expansive reading of *Manuel* is incorrect, or to address his hypothetical that "Fourth Amendment malicious prosecution claims" will inevitably vary across the circuits because the underlying common law elements vary across the states.

II. Wright's Case Does Not Implicate Any Actual Conflict Over Section 1983 Malicious Prosecution Claims.

Seizing on a statement by Justice Alito in his *Manuel* dissent, Wright questions why he should have to prove malice or other elements of the common law tort of malicious prosecution for his Fourth Amendment claim. *See, e.g.*, Pet. 14. Whatever the state of the circuits on this issue,[21] Wright's case (again) does not implicate that conflict. His claim failed not because of any deficiency on the malice element, but because he could not establish the necessary predicate for a Fourth Amendment violation—that Wat-

[21] *See Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 99 (1st Cir. 2013) (discussing "theoretical divide" among circuits); *compare Grider v. City of Auburn*, 618 F.3d 1240 (11th Cir. 2010) (requiring plaintiff to prove Fourth Amendment violation and elements of a common law malicious prosecution claim), *with Sykes v. Anderson*, 625 F.3d 294, 309 (6th Cir. 2010) ("The circuits that require malice have imported elements from the common law without reflecting on their consistency with the overriding *constitutional* nature of § 1983 claims.") (emphasis in original).

son lacked probable cause for the felony charge. That claim would have met the same demise in any of the other circuits Wright identifies.[22]

To avoid this inevitable conclusion, Wright trots out what is at most a minor and shallow circuit split.[23] He argues that for Section 1983 malicious prosecution claims, probable cause should be evalu-

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[22] *See Kossler v. Crisanti*, 564 F.3d 181, 192–95, 194 (3rd Cir. 2009) (explaining that "had the District Court instead focused its analysis on whether probable cause existed, it would have reached the same ultimate conclusion that [the] malicious prosecution claim could not proceed"); *Burell v. Virginia*, 395 F.3d 508, 514–15, 516 (4th Cir. 2005) ("Because the officers had probable cause to issue the summonses on each of the charges, the facts alleged do not establish a violation of the Fourth Amendment's prohibition on unreasonable seizure."); *Newman v. Township of Hamburg*, 773 F.3d 769, 771–73 (6th Cir. 2014) (affirming grant of summary judgment on malicious prosecution claim because no reasonable jury "could find that the authorities lacked probable cause"); *Yousefian v. City of Glendale*, 779 F.3d 1010, 1014 (9th Cir. 2015) ("The absence of probable cause is a necessary element of § 1983 false arrest and malicious prosecution claims."); *Taylor v. Meachem*, 82 F.3d 1556, 1561–64 (10th Cir. 1996) (inaccurate statements and omissions in arrest warrant would not have altered probable-cause determination); *compare Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 105 (1st Cir. 2013) (complaint stated malicious prosecution claim because probable cause in arrest warrant affidavit was "woefully insufficient") *and Winfrey v. Rogers*, 901 F.3d 483, 493–96 (5th Cir. 2018) (similar but on summary judgment).

[23] *See Van De Weghe v. Chambers*, 569 Fed. App'x 617, 620 (10th Cir. 2014) (Gorsuch, J.,) (discussing the Third Circuit's en banc opinion in *Kossler v. Crisanti*, which held that probable cause to pursue one charge "preclude[s] the plaintiff from proceeding with [a] malicious prosecution claim with respect to any" other charge brought simultaneously against her and arising from the same set of facts).

ated with respect to each of the crimes charged at the relevant stage of the proceedings. *See* Pet. at 15–16, 20–22. Either way, however, that mode of analysis is (again) irrelevant to the outcome of Wright's case. There was no confusion as to whether probable cause supported Wright's felony charge. It did. *See* Pet. App. 53; *id.* at 6. Moreover, the dominant view among the circuits permits a claim for malicious prosecution on a distinct charge so long as the plaintiff can demonstrate that probable cause was lacking for that charge, even if it existed for a lesser charge.[24] Wright indeed had the *benefit* of that more favorable analysis below: both courts analyzed whether probable cause existed for the felony charge even after explicitly noting Wright's concession that probable cause existed for the misdemeanor charges. *See* Pet. App. 5–6; *id.* at 52–53. Wright's problem was that probable cause was *not* lacking for *any* of the charges.

III. This Case Is A Poor Vehicle For Resolving The Questions Presented.

Even if Wright's arguments had any substantive merit, his case would still be an inappropriate vehicle for this Court to resolve those issues. For one

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[24] *See Elmore v. Fulton Cty. School Dist.*, 605 Fed. App'x 906, 915 (11th Cir. 2015) ("Generally, in contrast to false-arrest claims, probable cause as to one charge will not bar a malicious prosecution claim based on a second distinct charge as to which probable cause was lacking.") (quoting *Holmes v. Vill. of Hoffman Estates*, 511 F.3d 673, 682 (7th Cir. 2007)); *Sykes v. Anderson*, 625 F.3d 294, 310–11 (6th Cir. 2010); *Burrell v. Virginia*, 395 F.3d 508, 514–15 (analyzing whether probable cause existed for each of the charges) (4th Cir. 2005); *Posr v. Doherty*, 944 F.2d 91, 100 (2nd Cir. 1991).

thing, Wright lacks standing to challenge the seizure of his wife's property. *See* Pet. App. 50–51 ("Mr. Wright's verified answer to the forfeiture action states that Mrs. Wright owned all of the property that was at issue in the civil forfeiture proceeding.").

For another, in the District Court and in the Eleventh Circuit, Wright *affirmatively argued* that his Section 1983 claim incorporated the common-law elements of malicious prosecution. Wright therefore has forfeited this issue. *See United States v. Jones*, 565 U.S. 400, 413 (2012) (issue of whether probable cause existed was forfeited because party did not raise it below and court of appeals did not address it).

In the end, and again, the questions Wright presents are academic. A state magistrate found probable cause for Wright's felony charge, the District Court agreed, the Eleventh Circuit affirmed, and Wright's petitions for rehearing and rehearing en banc were subsequently denied without a dissenting vote. Of course Wright can maintain that the crop of fifty-four marijuana plants was grown just across the (unapparent) property line.[25] But the final page of the Eleventh Circuit opinion speaks volumes:

> The officers' collective knowledge included the discovery of fifty-four marijuana plants growing by a gate adjacent to Wright's property; the observation of multiple common items on the marijuana grow site and Wright's property; the seizure of small quantities of marijuana

[25] Other than his own testimony, Wright can point to no record evidence establishing that the large marijuana grow site was in fact on the other side of the property line.

> and marijuana paraphernalia found throughout Wright's property, including a horticultural grow light; and evidence that marijuana plants had been moved prior to the search and flushed down a toilet in Wright's house.

Pet. App. at 6. Simply put, Wright's contention that there was probable cause merely for misdemeanor possession of marijuana based on all these facts is emphatically *not* "the only reasonable inference officers could draw[.]" *See* Pet. App. 49; Pet. 15–17. Probable cause existed for the felony charge—full stop.

CONCLUSION

The petition should be denied.

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