No. _____

In The Supreme Court of the United States

PHILLIP W. HURD and PATRICK A. JENKINS,

Petitioners,

v.

JOY LASKAR, PH.D.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A plaintiff alleging malicious prosecution under 42 U.S.C. § 1983 must show that the broader prosecution against him was terminated in his favor. *Heck v. Humphrey*, 512 U.S. 477, 483, 484, 487 (1994). The question presented is whether a plaintiff satisfies the favorable-termination requirement by showing that his prosecution has "ended in a manner that affirmatively indicates his innocence," as seven circuits require, or merely that the termination was "not inconsistent with innocence," as the Eleventh Circuit held below.

PARTIES TO THE PROCEEDING

Petitioners Phillip Hurd and Patrick Jenkins were defendants in the district court proceedings and appellees in the court of appeals proceedings. Respondent Joy Laskar was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Jilda Garton and Mark Allen were also defendants and appellees below, but are not parties to the petition because the claims against them were dismissed on qualified-immunity grounds.

RELATED CASES

- *Laskar v. Hurd,* No. 1:18-cv-04570, U.S. District Court for the Northern District of Georgia. Judgment entered April 3, 2019.
- *Laskar v. Hurd,* No. 19-11719, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered August 28, 2020.
- *Laskar v. Hurd,* No. 19-11719, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered October 23, 2020.

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The Attorney General of Georgia, on behalf of Petitioners Phillip W. Hurd and Patrick A. Jenkins, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The court of appeals' order denying en banc review is available at Pet. App. 76–77. The opinion of the court of appeals (Pet. App. 1–60) is published and

reported at 972 F.3d 1278 (11th Cir. 2020). The district court's order dismissing the complaint (Pet. App. 61–75) is unreported.

JURISDICTION

The court of appeals entered judgment on August 28, 2020, and denied rehearing en banc on October 23, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment 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.

U.S. Const. amend. IV.

STATEMENT

After charges against him for racketeering and theft were dismissed as untimely, Joy Laskar, a

professor at the Georgia Institute of Technology, sued university officials under 42 U.S.C. § 1983 for malicious prosecution in violation of the Fourth Amendment. Pet. App. 5. The district court dismissed the complaint, concluding that Laskar had not established a favorable termination of his prosecution. *Id.* at 75. A divided Eleventh Circuit panel reversed and remanded as to two of the officials, Phillip Hurd and Patrick Jenkins, after holding that the termination of Laskar's prosecution as untimely was favorable because it was "not inconsistent with" his innocence. *Id.* at 33, 39.

1. Laskar was an engineering professor at Georgia Tech who focused on the design and development of signal integration circuits and chips for digital communications systems. He served as director of a university-affiliated research center and also founded and directed a private technology company that partnered with that center. *Id.* at 2–3, 62.

In winter 2009-10, university officials Jilda Garton and Mark Allen requested an internal audit of roughly $650,000 in cost overruns at the research center. *Id*. at 3. They were concerned that Laskar was mixing his work for the university and his private company and that the center's money was being "double spent." *Id.* Phillip Hurd and Patrick Jenkins, members of Georgia Tech's auditing department, performed the audit and produced a report that accused Laskar of fraud and theft. *Id.*

Georgia Tech officials shared the report with law enforcement, and a state criminal investigation ensued. *Id*. Hurd then worked with an agent from the Georgia Bureau of Investigation to seek and obtain search and arrest warrants for Laskar's home and automobiles. *Id*. at 3–4. The GBI agent's affidavit was based primarily on the audit report and stated that Laskar stole $700,000 or more from Georgia Tech to pay off his own company's debt through the purchase of certain microchips. *Id.* A grand jury indicted Laskar in December 2014 for "racketeering and theft" in connection with the purchase by Georgia Tech of CMP computer prototype chips. *Id.* at 5. About two years later, the charges were dismissed because any alleged criminal acts would have fallen outside the applicable limitations period. *Id*.

2. Laskar sued Hurd, Jenkins, Garton, and Allen in federal court under 42 U.S.C. § 1983 for malicious prosecution in violation of the Fourth Amendment. *Id.* He alleged that these officials knowingly provided false and misleading information to law enforcement, thus instigating a criminal prosecution against him maliciously and without probable cause. *Id.*

The district court dismissed Laskar's complaint. The court noted that although it lacked specific guidance from the Eleventh Circuit on whether a statute-of-limitations dismissal amounted to a favorable termination, that court's decisions were consistent with the "widely-accepted requirement that the termination of criminal charges at least reveal an indication of the accused's innocence." *Id.* at 68. After noting that a

dismissal for untimeliness "does not reflect the merits of the case" and thus did not indicate innocence, the district court ruled that Laskar could not satisfy the favorable termination requirement for malicious prosecution claims. *Id.* at 73.

3. On appeal, a divided panel of the Eleventh Circuit reversed in part. *Id.* at 39. The majority explained that because the details of the favorable-termination requirement remained unsettled in the circuit, it was required to look to the common law principles that were "well-settled" when Congress enacted § 1983, and, after identifying the relevant rule, consider whether it is compatible with the constitutional provision at issue—here, the Fourth Amendment. *Id.* at 10 (citing *Nieves v. Bartlett*, 139 S. Ct. 1715, 1726 (2019)). After canvassing the common law of the period, the majority identified what it called a "consensus between nearly every state" that "the only final terminations that would bar a plaintiff's suit were those that were inconsistent with a plaintiff's innocence—that is, if a jury convicted the plaintiff or if the plaintiff compromised with his accuser to end the prosecution in a way that conceded his guilt." *Id.* at 18, 24. The majority next determined that this historical "not-inconsistent-with-innocence" principle was compatible with the Fourth Amendment, which protects against "searches" and "seizures," because "the favorable-termination requirement functions as a rule of accrual, not as a criterion for determining whether a constitutional violation occurred." *Id.* at 26. This is so, the majority explained, because "'malicious prosecution' is only a shorthand

way of describing certain claims for unlawful seizure, not an independent Fourth Amendment right to be free from a malicious prosecution." *Id.* at 30–31.

Based on these determinations, the majority announced a new favorable termination standard:

> [W]e hold that the favorable-termination element of malicious prosecution is not limited to terminations that affirmatively support the plaintiff's innocence. Instead, the favorable-termination element requires only that the criminal proceedings against the plaintiff formally end in a manner not inconsistent with his innocence on at least one charge that authorized his confinement.

Id. at 32. The majority acknowledged that this standard "depart[ed] from the consensus" of seven other circuits that use an indication-of-innocence test, but noted that these circuits seemed to have adopted this approach based on a comment in the *Restatement (Second) of Torts* or modern state decisions adopting the comment, rather than examining the well-settled law at the time of § 1983's enactment, as required by *Nieves*. *Id.* at 28–30.

Applying its new standard to Laskar, the majority concluded that a dismissal based on the statute of limitations met its new standard. *Id.* at 32–33. The panel went on to affirm the dismissal of Laskar's claims against Garton and Allen on qualified immunity grounds, but it denied qualified immunity for the

claims against Hurd and Jenkins and remanded those claims for further proceedings. *Id.* at 36, 38–39.

Chief Judge K. Michael Moore of the United States District Court for the Southern District of Florida, sitting by designation, dissented. *Id.* at 39. He explained that the enactment-era common law was not at all "well-settled" on the favorable-termination issue: some courts identified the indication-of-innocence standard as the prevailing rule, and others acknowledged "significant disagreement between jurisdictions" on the question. *Id.* at 48. In the absence of any clear-cut governing principle from the era, Judge Moore contended that the court should adopt the consensus indication-of-innocence approach used by every other circuit to address the issue. *Id.* at 52–55. He observed that this approach "strike[s] the best balance between filtering out meritless claims and permitting claims that demonstrate some likelihood of success." *Id.* at 55. The majority's new test, by contrast, would ensure that virtually every malicious prosecution claim survived to summary judgment because "pleading a want of probable cause is easy," and under the majority's new rule, "there is no need for a plaintiff to plead anything more than 'the charges against me were dismissed.' " *Id.* at 58–59. That, Judge Moore reasoned, would deprive trial courts of an important opportunity to "stop false claims short." *Id.* at 59.

4. The university officials petitioned for rehearing en banc. They argued that the full court should consider whether malicious prosecution is cognizable under the Fourth Amendment in the first instance, *see*

Pet. for Reh'g En Banc at 4, but that if it is, the court should adopt the consensus "indication of innocence" standard. *Id.* at 11. The officials argued that that standard better reflects that malicious prosecution claims were "heavily disfavored" at common law, functions as a filtering mechanism for meritless claims, and, in cases with varying resolutions of multiple charges, helps to avoid conflicting federal and state rulings arising out of the same transaction. *Id.* at 11–20. The court denied the petition on October 23, 2020. Pet. App. 77.

REASONS FOR GRANTING THE PETITION

On March 8, 2021, this Court granted certiorari in *Thompson v. Clark*, No. 20-659, to resolve the circuit split on the applicable favorable-termination test for malicious prosecution claims. This case presents the same question as *Thompson*. In fact, the question presented in *Thompson* specifically notes that review is necessary because of the Eleventh Circuit's decision in this very case: it asks the Court to determine

> [w]hether the rule that a plaintiff must await favorable termination before bringing a Section 1983 action alleging unreasonable seizure pursuant to legal process requires the plaintiff to show that the criminal proceeding against him has "formally ended in a manner not inconsistent with his innocence," as the U.S. Court of Appeals for the 11th Circuit decided in *Laskar v. Hurd*, or that the proceeding

> "ended in a manner that affirmatively indicates his innocence," as the U.S. Court of Appeals for the 2nd Circuit decided in *Lanning v. City of Glens Falls*.

Thompson v. Clark, No. 20-659, Pet. for Cert. at i (U.S. Nov. 6, 2020). Here, as in *Thompson*, the choice of the applicable test is dispositive. Laskar has pleaded only that the criminal charges against him were dismissed based on the statute of limitations. That is not sufficient to show a favorable termination under the consensus indication-of-innocence test because it does not reflect the merits of the case or provide any insight into Laskar's guilt or innocence. Pet. App. 73; *see also Cordova v. City of Albuquerque*, 816 F.3d 645, 653–54 & n.4 (10th Cir. 2016) (citing statute of limitations as an example of a procedural termination that fails to suggest innocence); *Craig v. City of Yazoo City*, 984 F. Supp. 2d 616, 629–30 (S.D. Miss. 2013) (holding that statute of limitations says nothing of a malicious prosecution plaintiff's "innocence" in the underlying criminal action); *Parrish v. Marquis*, 172 S.W.3d 526, 532 (Tenn. 2005), overruled on other grounds, *Himmelfarb v. Allain*, 380 S.W.3d 35 (Tenn. 2012) ("[C]ourts have universally concluded that a favorable termination is not present where the underlying proceeding was resolved based upon the expiration of a statute of limitations"). Under the Eleventh Circuit's test, however, a dismissal on timeliness grounds amounts to a favorable termination because it is not a "conviction on or admission of guilt to each charge that justified his seizure," Pet. App. 32–33. Put simply, Laskar's malicious-prosecution claim would fail under the consensus

test, but it would proceed to discovery under the Eleventh Circuit's test. Because the resolution of *Thompson* will control the disposition of this case, the Court should hold this petition pending its decision in *Thompson*.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's decision in *Thompson* and disposed of as appropriate in light of that decision.

Respectfully submitted.

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