No. 20–659

In the Supreme Court of the United States

LARRY THOMPSON,

Petitioner,

v.

POLICE OFFICER PAGIEL CLARK, SHIELD #28472

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF NATIONAL, STATE, AND LOCAL CRIMINAL DEFENSE, CIVIL RIGHTS, AND RACIAL JUSTICE ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether 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," *Laskar v. Hurd*, 972 F.3d 1278, 1293 (11th Cir. 2020), or that the proceeding "ended in a manner that affirmatively indicates his innocence," *Lanning v. City of Glens Falls*, 908 F.3d 19, 22 (2d Cir. 2018).

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are leading criminal defense, civil rights, and public policy organizations whose interest in this case arises from their dedication to defending the constitutional rights of individuals engaged in the American criminal legal system. They are the Bronx Defenders, Brooklyn Defender Services, the Center for Appellate Litigation, the Chief Defenders Association of New York, the Center on Race, Inequality, and the Law at New York University School of Law, the Legal Aid Society, the National Association of Criminal Defense Lawyers, the New York State Association of Criminal Defense Lawyers, and the Office of the Appellate Defender.

[1] Pursuant to Rule 37.6, *amici* certify that no counsel for a party has authored this brief in whole or in part and that no one other than *amici* and their counsel has made any monetary contribution to the preparation and submission of this brief. All parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

The Court should adopt a rule that individuals seized during criminal proceedings in violation of their Fourth Amendment rights need only show that the criminal case terminated in their favor in order to proceed with a Section 1983 action to redress the constitutional violation. The Second Circuit's alternative rule that such a plaintiff must show that criminal proceedings ended in a manner affirmatively indicating their innocence cannot coexist with the legal standards and procedures that govern our criminal legal system.

First, a rule that former criminal defendants may not vindicate their constitutional rights under Section 1983 without showing that their criminal case ended in a manner affirmatively establishing their innocence contradicts deeply rooted principles of American criminal law. By design, our criminal legal system does not ask whether a person is innocent. Instead, innocence is presumed, and this presumption is overcome only if the state can obtain a conviction based on proof of guilt beyond a reasonable doubt. If a defendant is convicted but the conviction is later set aside for any reason, the presumption of innocence is immediately restored. Requiring an affirmative showing of innocence as a prerequisite to a Section 1983 action following the termination of criminal proceedings in the plaintiff's favor disregards the presumption of innocence. Such a rule is inconsistent with the foundation of our criminal legal system.

Additionally, because innocence is presumed in criminal cases, our criminal legal system does not,

as a practical matter, even offer defendants the chance to prove their innocence. When the state dismisses criminal charges, innocence is never adjudicated. An acquittal at trial—unquestionably a favorable termination—is not a finding of innocence but instead reflects the conclusion that the state has failed to prove guilt beyond a reasonable doubt. When the state does obtain a conviction by verdict or plea and the defendant contests it, the challenges available on direct appeal or via collateral attack are nearly always confined to procedural or constitutional issues that are unconcerned with innocence. While some states have in recent decades adopted "actual innocence" as a theoretical basis for obtaining post-conviction relief, procedural hurdles implemented by those statutory regimes mean that criminal defendants rarely can pursue such a claim as a practical matter. Even the rare defendant who overcomes those hurdles and advances an innocence claim is often granted relief on another ground, if at all, leaving the innocence question unresolved. The lack of any opportunity to adjudicate innocence in our criminal legal system is by design, and that reality leaves no room for a rule that a civil rights plaintiff must prove that a prior criminal case ended in a manner affirmatively demonstrating innocence.

Finally, it would wreak havoc on our criminal legal system if criminal defendants wishing to later vindicate their federal constitutional rights were required to obtain a termination of their criminal proceedings that affirmatively indicated their innocence. Such a requirement would impose a new and unsustainable burden on state criminal courts, prosecutors, and defendants, and it would create

perverse incentives for prosecutors and defense attorneys at odds with their traditional roles in the criminal legal system.

ARGUMENT

I. OUR CRIMINAL LEGAL SYSTEM PRESUMES INNOCENCE AND REQUIRES PROOF OF GUILT BEYOND A REASONABLE DOUBT

Two principles underpin the American criminal legal system: the presumption of innocence and its correlate requirement that guilt be proved beyond a reasonable doubt. The Second Circuit's rule requiring proof that prior criminal proceedings terminated in a manner affirmatively indicating a defendant's innocence gets these bedrock standards backwards. By presuming guilt and requiring proof of innocence, the Second Circuit's rule is fundamentally incompatible with American criminal law.

This Court has long recognized that no precept is more crucial to our criminal legal system than the presumption of innocence. "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U.S. 432, 453 (1895). The "venerable history" of the presumption stretches "from Deuteronomy through Roman law, English common law, and the common law of the United States." *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978) (citing *Coffin*, 156 U.S. at 458-61).

The presumption is durable and endures in a free society because "every individual going about his

ordinary affairs" must "have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt." *In re Winship*, 397 U.S. 358, 364 (1970). Put differently, "[i]f it suffices to accuse, what will become of the innocent?" *Coffin*, 156 U.S. at 455 (quoting Ammianus Marcellinus, Rerum Gestarum, lib. 18, c. 1). Accordingly, the presumption persists until a conviction is obtained, *Herrera v. Collins*, 506 U.S. 390, 398-99 (1993), and if a conviction is obtained but is later set aside for any reason, the presumption of innocence springs back to life again in full force, *Nelson v. Colorado*, 137 S. Ct. 1249, 1255 (2017) ("[O]nce those convictions were erased, the presumption of their innocence was restored."); see also *id.* at 1259 n.1 (Alito, J., concurring in the judgment).

Similarly essential to individual liberty and public confidence in the criminal legal system is the high burden that the state must overcome to defeat the presumption of innocence. "It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned." *Winship*, 397 U.S. at 364. By design, then, the huge number of criminal proceedings occurring each day in the United States assess just one question with respect to liability: whether the government has shown with admissible evidence that the defendant is guilty beyond a reasonable doubt. A criminal proceeding that fails to adequately address that question cannot stand. *Jackson v. Virginia*, 443 U.S. 307, 321-24 (1979). This high burden of proof "plays a vital role in the American scheme of criminal procedure" by "provid[ing] concrete substance for the

presumption of innocence." *Winship*, 397 U.S. at 363.

The reasonable-doubt standard, like the presumption it protects, has deep roots. Roman law called for "unmistakable proof" in support of a criminal conviction. 3 Simon Greenleaf, A TREATISE ON THE LAW OF EVIDENCE § 29, at 35-36 n.4 (16th ed. 1899) (quoting Cod. lib. 4, tit. 19, 1. 25). With the advent of Christianity, punishing the innocent came to be viewed as so abhorrent that doing so could result in damnation, making a high standard of proof a protection for the souls of judges and jurors as well the accused. James Q. Whitman, THE ORIGINS OF REASONABLE DOUBT: THE THEOLOGICAL ROOTS OF THE CRIMINAL TRIAL 2-4 (Yale Univ. Press 2008). The common law provided an explicit connection between the presumption of innocence and the requirement of proof beyond a reasonable doubt, as this Court explained in *Coffin*: "While Rome and the Mediaevalists taught that, wherever doubt existed in a criminal case, acquittal must follow, the expounders of the common law, in their devotion to human liberty and individual rights, traced this doctrine of doubt to its true origin,—the presumption of innocence,—and rested it upon this enduring basis." 156 U.S. at 460.

The upshot of this history is that the American criminal legal system is built on an ancient and abiding recognition of the grave seriousness of criminal accusations and their unique threat to liberty. As a result, an accused person's innocence is always presumed in the absence of a criminal conviction obtained by proof of guilt beyond a reasonable doubt. And given that our criminal system is fundamentally uninterested in whether defendants can prove their innocence, this Court has

held unequivocally that defendants cannot be required to introduce evidence of innocence, *Sandstrom v. Montana*, 442 U.S. 510, 524 (1979), even after a conviction has been reversed, *Nelson*, 137 S. Ct. at 1256.

The Second Circuit's rule that an individual must establish that their prior criminal proceedings ended in a manner affirmatively establishing their innocence to proceed with a federal constitutional claim is antithetical to our criminal legal system's foundational principles. This Court should instead establish a rule that the formal conclusion of criminal proceedings in favor of the accused is all that is required to later proceed with a Section 1983 action in federal court. That rule is the only one that properly implements the presumption of innocence.

II. CRIMINAL DEFENDANTS HAVE NO OPPORTUNITY TO ADJUDICATE INNOCENCE

Because our criminal legal system judges guilt and not innocence, criminal defendants almost never have the chance to litigate their innocence during criminal proceedings. When a criminal case finally terminates in favor of the accused—*i.e.*, any disposition other than a conviction—it almost always ends without any opportunity to prove innocence. This is true whether the criminal case terminates favorably before a criminal trial, with an acquittal, or as the result of some grant of post-conviction relief.

1. When a case terminates in favor of a defendant after legal process issues but before the criminal trial, there is never an opportunity for a defendant to offer evidence of innocence, and such pretrial

resolutions will categorically fail to establish the defendant is innocent of the offenses charged.

A case may end before trial because a grand jury declines to indict, in which case the grand jury will have considered only evidence presented by the prosecutor, without cross-examination, and its rationale for refusing to indict will not appear in any opinion, order, or statement. See 38 AM. JUR. 2d Grand Jury § 3. A defendant might also successfully move to dismiss charges before trial, but the grounds for dismissal will almost never be that the defendant is actually innocent of the crime. *E.g.*, N.Y. Crim. Proc. Law § 210.20(1)(a)-(i) (outlining procedural and jurisdictional defects justifying dismissal); Ariz. R. Crim. P. 16.4(b) (providing that a defendant may move for dismissal only on the grounds that the charging instrument is "insufficient as a matter of law"); 725 Ill. Comp. Stat. 5/114-1(a) (permitting a defendant to move for dismissal on eleven different bases unrelated to innocence); Minn. Stat. § 630.18 (authorizing a defendant to move for dismissal based on procedural errors or legal deficiencies in the indictment).

Most commonly, as in Petitioner's case, a prosecution ends before trial because a prosecutor dismisses the charges. State prosecutors appropriately have wide discretion to dismiss for any number of reasons. The defendant might have successfully moved to suppress evidence necessary to the prosecution. An essential witness might be uncooperative or not credible. Evidence might be lost or destroyed. The case may have a legal defect. The prosecutor's caseload might call for the allocation of resources elsewhere. Further investigation or

review of evidence might reveal that the evidence is insufficient to take the case to trial or might identify a more likely perpetrator. The list goes on *ad infinitum*, but whatever the specific reasons, a prosecutor will rarely state them on the record. Instead, as in Petitioner's case, prosecutors almost always make a general statement that the dismissal is "in the interests of justice," for state laws require no more. JA158. The law permits a prosecutor to make that decision without any assessment or articulation of innocence, and, in some instances, for no enumerated reasons whatsoever. *E.g.*, N.Y. Crim. Proc. Law §§ 170.40 & 210.40 (allowing dismissal for reasons ranging from "the evidence of guilt," to "exceptionally serious misconduct of law enforcement personnel," to "confidence of the public in the criminal justice system"); Cal. Penal Code § 1385 (permitting dismissal for any reason "in furtherance of justice"); N.C. Gen. Stat. § 15A-931(a) (authorizing "an oral dismissal in open court"); Mich. Comp. Laws § 767.29 (requiring only a record of the reasons for discontinuance); Ga. Code. § 17-8-3 (permitting the prosecution to enter nolle prosequi with the consent of the court); Del. Super. Ct. Crim. R. 48(a) (authorizing the prosecution to dismiss an indictment before trial without leave of the court); La. Code Crim. P. Art. 691 (conferring discretion on the prosecution to dismiss an indictment without the court's consent); Va. Code § 19.2-265.3 (permitting dismissal for "good cause"); Pa. R. Crim. P. 585(a) (authorizing a nolle prosequi as long as it is ordered in open court); Md. R. Crim. P. 4-247(a) (same); Haw. Rev. Stat. § 806-56 (authorizing a nolle prosequi if the prosecution states the reasons in writing); Ohio

Rev. Code § 2941.33 (allowing dismissal for "good cause"); Mass. R. Crim. P. 16(a) (permitting a nolle prosequi whenever the prosecution files a written statement "setting forth the reasons for that disposition.").

In large jurisdictions, many misdemeanor and felony cases are dismissed. Surell Brady, *Arrests Without Prosecution and the Fourth Amendment*, 59 MD. L. REV. 1, 3 (2000); Brian A. Reaves, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Felony Defendants in Large Urban Counties, 2009—Statistical Tables* at 22, 24 (2013). In these cases, there will, at best, be exceedingly little procedural or factual record, and the prosecutor's reasons for dismissal will be unknown or ambiguous. Given the dismissal, there will be no further proceedings at which innocence might be adjudicated.

2. The same is true of cases that end with an acquittal. An acquittal is an unquestionably favorable termination. See *McDonough*, 139 S. Ct. at 2161. But it does not reflect an adjudication of innocence. Given the government's burden to prove guilt beyond a reasonable doubt, "an acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361 (1984); see also *Savory v. Cannon*, 947 F.3d 409, 429 (7th Cir. 2020) (en banc) (noting that the acquittal discussed in *McDonough v. Smith*, 139 S. Ct. 2149, 2161 (2019), is "another resolution that does not necessarily imply innocence"). This Court has acknowledged that a judge may acquit (and that double jeopardy bars re-prosecution) for reasons

unrelated to innocence. *Evans v. Michigan*, 568 U.S. 313, 318-21 (2013). Whatever the evidence introduced at trial, a criminal defendant cannot argue that an acquittal affirmatively demonstrates innocence.

3. Finally, where a criminal defendant is convicted and relief from that conviction is later granted, that relief does not adjudicate innocence, except in exceedingly rare circumstances. Whether the conviction is obtained by verdict or plea, a direct appeal does not offer a chance to adjudicate innocence. Instead, the appeal might address a seizure of evidence that led to the charges or plea, or an error during the trial that led to the conviction. A reversal on these grounds might entitle the criminal defendant to a new trial, but it does not adjudicate innocence, and innocence will not be adjudicated on remand. Even where a conviction is reversed because the evidence is insufficient to sustain a conviction, that decision does not reflect a subjective determination of innocence. *Jackson*, 443 U.S. at 310 n.13.

Similarly, states authorize collateral attacks on convictions on a number of grounds that do not require an assessment of innocence. *E.g.*, Fla. R. Crim. P. 3.850(a) (enumerating six bases for post-conviction relief that do not include innocence); 725 Ill. Comp. Stat. 5/122-1(a) (authorizing post-conviction relief only in the case of federal or state constitutional violations); La. Code Crim. P. Art. 930.3 (listing innocence based on DNA testing alone as one of seven grounds for post-conviction relief); Mo. S. Ct. R. 29.15(a) (enumerating various grounds for post-conviction relief that do not include

innocence); N.C. Gen. Stat. § 15A-1415(b) (listing nine grounds for post-conviction relief unrelated to innocence); Tenn. Code § 40-30-103 (permitting post-conviction relief only where "the conviction or sentence is void or voidable because of the abridgment of" federal or state constitutional rights); Wis. Stat. § 974.06(1) (enumerating various grounds for post-conviction relief that do not include actual innocence). Collateral attacks on state convictions in federal court are more limited, 28 U.S.C. § 2254; and relief is always granted on grounds unrelated to innocence, *e.g.*, *Strickland v. Washington*, 466 U.S. 668 (1984) (ineffective assistance of counsel); *Kyles v. Whitley*, 514 U.S. 419 (1995) (suppression of exculpatory evidence); *Brewer v. Williams*, 430 U.S. 387 (1977) (violation of the right to counsel).

This Court has not resolved whether a freestanding claim of innocence entitles a prisoner to habeas relief. *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013). While many states authorize post-conviction relief based on a claim of innocence, *e.g.*, N.Y. Crim. P. Law § 440.10(g); Md. Code Crim. P. § 8-301; D.C. Code § 22-4135; Utah Code § 78B-9-402, substantial procedural barriers limit such claims. *e.g.*, Md. Code Crim. P. § 8-301 (requiring newly discovered evidence that "creates a substantial or significant possibility that the result [of the criminal trial] may have been different"). When a petitioner includes a claim of actual innocence in a post-conviction petition, relief may be granted (if it is granted at all) on other grounds presented, without adjudicating innocence. Regardless, relief from a conviction in a state court

on grounds that the petitioner is actually innocent is extraordinarily rare, representing an infinitesimal proportion of all criminal cases.

Finally, and equally rarely, an individual convicted of a crime might secure executive clemency. Again, however, in most instances this represents an act of forgiveness, rather than an acknowledgement of innocence. *Logan v. United States*, 552 U.S. 23, 26 (2007). Even where it is possible to obtain clemency based on a finding of innocence, no record of that finding is normally available. Sarah Cooper & Daniel Gough, *The Controversy of Clemency & Innocence in America*, 51 CAL. W. L. REV. 55, 74 (2014).

In the end, post-conviction relief from a conviction is rare. And of the myriad avenues by which post-conviction relief might be secured, the only two that even hint at an opportunity to adjudicate innocence are a post-conviction petition based on actual innocence filed in a jurisdiction authorizing such relief, and a pardon based on innocence from an executive in a jurisdiction authorizing such pardons. Otherwise, as with pretrial resolutions and acquittals, a defendant has no opportunity to prove innocence, and a decision granting relief will not reflect innocence.

In sum, a nearly invisible fraction of criminal cases in the United States even offer the chance to adjudicate innocence, and in even fewer does the termination of the criminal case come with such an adjudication. In light of the practical reality that innocence is almost never adjudicated in American criminal proceedings, it makes little sense to condition a constitutional claim on proof that prior

criminal proceedings ended in a manner indicating innocence. Such an innocence requirement contradicts both the legal design of our justice system and the way that it functions in practice.

III. REQUIRING CRIMINAL DEFENDANTS TO ADJUDICATE INNOCENCE WOULD HARM OUR CRIMINAL LEGAL SYSTEM

Requiring a criminal defendant to ensure that criminal proceedings conclude in a manner affirmatively indicating innocence in order to preserve a Section 1983 claim also undermines the efficient function of our criminal legal system.

First, federal courts should not saddle state criminal courts, prosecutors, and defendants with the job of adjudicating innocence. Those criminal legal systems do not normally adjudicate those issues and requiring them to do so would impose a substantial new burden. The investigation, litigation, and resolution of the question of a defendant's innocence would require a massive commitment of resources that, to date, has not been required by American criminal proceedings. For a trial court to decide whether the criminal case has come to an end in a manner indicating innocence would require a whole new set of legal standards not yet devised, with new burdens and factfinding functions. It may well require an additional record of evidence and testimony in some, if not all, criminal cases. Criminal proceedings that should have ended instead would continue to demand resources from an already taxed system of courts, prosecutors, and public defenders. And the ultimate resolution of criminal cases would be delayed.

Second, adjudicating innocence at the conclusion of criminal proceedings creates perverse incentives for prosecutors and defense attorneys at odds with their established roles. Although all parties should seek the prompt dismissal of charges when warranted, a prosecutor who believes it is in the interest of justice to dismiss a criminal case might be hampered in doing so by a defendant who seeks an adjudication of innocence in order to preserve a later civil claim. Or a prosecutor who is aware that dismissing a case might lead to future civil litigation in federal court might be inclined to conceal the reasons for dismissal in an attempt to defeat future liability for state actors, even though the prosecutor's sole focus should be the neutral administration of criminal justice. Criminal defendants and their attorneys should not feel pressure to prolong criminal proceedings. The prosecutor should not be concerned with what happens in federal court after prosecutorial discretion is exercised appropriately. A rule that requires proof of innocence in the criminal case creates these complications; a rule that simply looks for a favorable termination of criminal proceedings will avoid them.

CONCLUSION

The Second Circuit's rule requiring Section 1983 plaintiffs to show that their prior criminal cases ended in a manner affirmatively indicating their innocence cannot exist alongside the American criminal legal system. The rule is contrary to our system's organizing principles, its design, and its function. This Court should adopt a rule consistent with the presumption of innocence, the lack of an

opportunity to adjudicate innocence in criminal cases, and the efficient function of our criminal legal system: that a Section 1983 plaintiff need only show favorable termination of criminal proceedings to vindicate their federal constitutional rights.

For the foregoing reasons, the judgment of the Second Circuit should be reversed.

Respectfully submitted,

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