NO. 21-1399

In the
Supreme Court of the United States

ALI AL-MAQABLH,

Petitioner,

v.

CRYSTAL L. HEINZ, Individually,
and in her official capacity as the County Attorney
of Trimble County, Kentucky, *et al.*

Respondents.

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

REPLY BRIEF FOR PETITIONER

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ARGUMENT

Nothing in Respondents' brief in opposition undermines Petitioner's key contention: the decisions below were based on Sixth Circuit precedent that this Court abrogated in *Thompson v. Clark*, 142 S. Ct. 1332 (2022) and a vacatur and remand could meaningfully change the outcome. Prior to *Thompson*, the Sixth Circuit held that, to satisfy the favorable-termination requirement for a malicious-prosecution claim, the prosecution must have terminated in a manner that affirmatively "'indicates that [the plaintiff] may be innocent of the charges'" or "that a conviction has become 'improbable.'" App. 6 (quoting *Jones v. Clark Cnty.*, 959 F.3d 748, 765 (6th Cir. 2020)). This Court squarely rejected that rule and held instead that a plaintiff "need only show that his prosecution ended without a conviction." *Thompson*, 142 S. Ct. at 1335. Respondents do not dispute that Petitioner's prosecution ended without a conviction—nor could they. App. 6–7. Thus, the proper disposition of this case could hardly be clearer: the Court should grant the petition, vacate the decision below, and remand for reconsideration in light of *Thompson*.

Rather than accept that straightforward logic, Respondents egregiously misrepresent the facts, the law, and the decisions below to raise a host of irrelevant arguments that have no bearing on this Court's certiorari determination. These alternative arguments and defenses can, if properly preserved, be addressed on remand by the lower courts. But they have nothing to do with the subject of this petition—*Thompson*'s effect on the favorable-termination element of a malicious-prosecution claim.

Respondents assert, "[f]irst and foremost," that the "courts below" found that Petitioner's settlement agreement terminating his prosecution was "dispositive of the issue of probable cause," a different element of a malicious-prosecution claim. BIO 6. But the courts below made *no such finding*, and Respondents tellingly fail to provide any supporting citation to any so-called "diversion agreement." On the contrary, the district court stated that there was "no factual dispute" about the circumstances of the termination and, citing Petitioner's deposition testimony, noted that Petitioner entered "an informal agreement" under which, if he did "not assault Lindsey Alley for three months … the charges [would] be dismissed." App. 27 (quotation marks omitted). The Sixth Circuit described the agreement in the same fashion. App. 6. Neither court suggested in any way that the agreement established probable cause. Indeed, in rejecting Respondents' request for an award of attorneys' fees, the district court observed that "Defendants' success came down to an issue with *a single element* of Plaintiff's malicious prosecution claims"—*i.e.*, the favorable-termination element. App. 19 (emphasis added).

Compounding their blatant distortion of the record, Respondents offer a similarly egregious misrepresentation of the law. According to Respondents, "the law is clear that diversion agreements are dispositive of probable cause," and "[t]he mere existence of a diversion agreement … is enough to defeat [a] malicious prosecution claim." BIO 6. But the authority they cite for those dubious propositions says *just the opposite*. In *Laskar v. Hurd*, the Eleventh Circuit held that "the favorable-

termination element of malicious prosecution is not limited to terminations that affirmatively support the plaintiff's innocence." 972 F.3d 1278, 1295 (11th Cir. 2020), *cert. denied*, 142 S. Ct. 1667 (2022). Reviewing the common-law history of the malicious-prosecution tort, the court explained that only settlements in which "the plaintiff compromised with his accuser to end the prosecution *in a way that conceded his guilt*" would bar a plaintiff's malicious-prosecution claim. *Id.* at 1289 (emphasis added). Far from holding that any and all settlements preclude a malicious-prosecution claim, the court concluded that a favorable termination is any termination "not inconsistent with a plaintiff's innocence." *Id.*

Respondents' coy "collecting cases" parenthetical, BIO 6, invites the reader to infer a vast weight of authority for their fanciful restatement of the law. But *Laskar* "collect[ed]" only *two* cases on the probable-cause question, and *neither* holds that "diversion agreements are dispositive of probable cause" or that the "mere existence" of such an agreement is "enough to defeat [a] malicious prosecution claim." BIO 6; *see Laskar*, 972 F.3d at 1289 (citing *Griffis v. Sellars*, 20 N.C. 315, 315 (1838) & *Morton v. Young*, 55 Me. 24, 27 (1867)). No surprise there: the point for which the court cited those cases was that "*convictions* or settlements in which *the defendant admitted guilt* … were fatal to a plaintiff's ability to establish the absence of probable cause." 972 F.3d at 1288–89 (emphasis added).

As for the other case Respondents cite, *Ohnemus v. Thompson*, 594 F. App'x 864, 866 (6th Cir. 2014), that is the principal decision the Sixth Circuit relied

on in *Jones v. Clark County*, which this Court expressly referenced and abrogated in *Thompson v. Clark*, 142 S. Ct. at 1340. Thus, neither the facts nor the law is on Respondents' side.

In any event, to the extent Respondents wish to argue that Petitioner cannot demonstrate a lack of probable cause for his prosecution—a point Petitioner vigorously disputes—the appropriate time to press that argument is on remand, after this Court vacates the decision below. Indeed, as Respondents seem to acknowledge in passing, that is precisely how the Court handled the probable-cause question in *Thompson*. *See* BIO 7. The Court concluded that Thompson had "satisfied [the] requirement" of showing that his criminal prosecution ended without a conviction. *Thompson*, 142 S. Ct. at 1341. But as to the other elements of his malicious-prosecution claim, the Court explained, "[w]e express no view … on additional questions that may be relevant on remand, including … whether [Thompson] was charged without probable cause." *Id.* Likewise, here, the Court need not determine whether Petitioner has satisfied any other elements of his malicious-prosecution claim. Because the decision below was based on Petitioner's purported failure to satisfy the favorable-termination element, the appropriate disposition is to vacate that decision and permit the lower courts to address any other issues on remand.

The same goes for the remainder of Respondent Phelps' and Alley's grab-bag of arguments opposing certiorari. First, Respondents assert that Respondent Phelps' involvement in Petitioner's prosecution was limited to "truthful testimony contained in a single

affidavit." BIO 8–10. But the truthfulness of Phelps' affidavit and the scope of his involvement are disputed factual issues, *see* CA6 Dkt. 54-1 at 38–39, which the lower courts can address on remand. Respondents also argue that (1) Respondent Alley is impervious to Petitioner's Section 1983 claim because she is not a state actor; (2) Respondent Alley's participation in the prosecution was too limited to support a malicious-prosecution claim; and (3) Respondent Phelps is entitled to qualified immunity. BIO 9–14. All of these contentions can be addressed on remand, to the extent they have been properly preserved, and none of them have any bearing on the proper disposition here: granting the petition, vacating the Sixth Circuit's decision, and remanding for reconsideration in light of *Thompson*.

Finally, the Question Presented is limited to the Section 1983 claim and so arguments about state law claims, BIO 14–15, are irrelevant.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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