

No. 21-973

In the
Supreme Court of the United States

JOHN COLANGELO, ET AL.,
Petitioners,

v.

NICOLE CHASE,
Respondent.

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

**RESPONDENT TOWN OF CANTON'S RESPONSE
IN SUPPORT OF THE PETITION
FOR WRIT OF CERTIORARI**

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INTRODUCTION

Pursuant to Supreme Court rule 12.6, Respondent Town of Canton (“the Town” or “Canton”) respectfully files this brief in support of Petitioners Officer Adam Gompper and Detective John Colangelo’s petition for a writ of certiorari. As fully set forth in the Petition, Officer Gompper and Detective Colangelo were employed by the Town as law enforcement officers at the time of their interactions with Respondent Nicole Chase (“Ms. Chase”). Petitioners seek review of the decision by the Second Circuit Court of Appeals dismissing Petitioners’ appeal from the decision of the United States District Court for the District of Connecticut (*Bryant, USDJ*) holding that Petitioners are not entitled to qualified immunity on Ms. Chase’s claims of false arrest and malicious prosecution in violation of the Fourth Amendment brought pursuant to 42 U.S.C. § 1983.

The Town supports this petition for certiorari being granted. The Town has a direct stake in the outcome of this appeal since Respondent Nicole Chase seeks to hold the Town liable for indemnification of Petitioners pursuant to Conn. Gen. Stat. § 7-765.

REASONS FOR GRANTING THE PETITION

First, the Town joins the Petitioners in their assertion that the Court of Appeals erred in dismissing the appeal of the District Court’s ruling on whether Petitioners violated clearly established law in arresting and prosecuting Ms. Chase pursuant to Conn. Gen. Stat. § 53a-157b. There is no genuine issue of material fact precluding appellate review of this claim. In fact,

both the District Court and Court of Appeals recognized that Conn. Gen. Stat. § 53a-157b is silent as to whether making a false statement under oath includes purposely omitting a salient fact when reporting a crime to the police, and that there is no case law on point. Thus, it is not clearly established that Petitioners did not have probable cause for Ms. Chase's arrest, especially where, as here, the warrant application was executed by both the States Attorney and a State of Connecticut Superior Court judge. For this reason, Petitioners' appeal to the Court of Appeals should not have been dismissed and the Court of Appeals should have ruled that Petitioners are entitled to qualified immunity.

Second, with respect to the claim of malicious prosecution, the Town also joins the Petitioners in the argument that whether the criminal matter against Ms. Chase terminated in her favor is not clearly established. Under the Court of Appeal's own precedent, see *Thompson v Clark*, 794 Fed. Appx. 140 (2d Cir. 2020), *cert. granted*, --- U.S. --- 141 S.Ct. 1513, *as amended*, --- U.S. ---, 141 S.Ct. 1682 (2021); *Lanning v. City of Glens Falls*, 908 F.3d 19, 22 (2d Cir. 2018), it was not clearly established that the criminal proceedings against Ms. Chase terminated in her favor. The States Attorney entered a *nolle prosequi* on the charges that Ms. Chase violated Conn. Gen. Stat. § 53a-157b only after she met the States Attorney's condition that she not be arrested again. As such, it is not clearly established that this result "affirmatively indicates" Ms. Chase's innocence as required to establish a prima facie case of malicious prosecution, if such a cause of action even exists under the Fourth

Amendment. Consequently, the Court of Appeal should have held that Petitioners are entitled to qualified immunity.

Granting this petition for certification is crucial to preserve the integrity of the qualified immunity defense, which is a defense to suit, not just to liability, and one that is lost if Ms. Chase's Fourth Amendment claims against Petitioners are permitted to proceed to trial. Effective policing requires officers to use discretion. A police department cannot operate otherwise. It is for this reason that qualified immunity exists. This Court, therefore, should grant Petitioners' petition for certiorari to decide these important issues and grant Petitioners qualified immunity on Ms. Chase's claims brought pursuant to 42 U.S.C. § 1983.

Canton hereby adopts the Petitioners' petition for certiorari as if fully set forth herein. For the reasons stated therein, the petition for certiorari should be granted.

CONCLUSION

For the foregoing reasons, the Respondent Town of Canton respectfully requests that the Court grant the Petitioners Adam Gompper and John Colangelo's petition for certiorari.

Respectfully Submitted,

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