No. 23-50

IN THE

Supreme Court of the United States

JASCHA CHIAVERINI, et al.,

Petitioners,

v.

NICHOLAS EVANOFF, et al.,

Respondents.

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

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

To make out a Fourth Amendment malicious-prosecution claim under 42 U.S.C. § 1983, a plaintiff must show that legal process was instituted without probable cause. *Thompson v. Clark*, 142 S. Ct. 1332, 1338 (2022). Under the charge-specific rule, a malicious-prosecution claim can proceed as to a baseless charge in a proceeding, even if other charges in the proceeding are supported by probable cause. Under the any-crime rule, probable cause for even one charge defeats a plaintiff's malicious-prosecution claims as to every other charge, including those unsupported by probable cause.

The question presented in this case is: Whether Fourth Amendment malicious-prosecution claims are governed by the charge-specific rule.

PARTIES TO THE PROCEEDING

Petitioners Jascha Chiaverini and Chiaverini, Inc., are plaintiffs in this case and were appellants in the court of appeals.

Respondents Nicholas Evanoff, David Steward, Jamie Mendez, Robert Weitzel, and the City of Napoleon are defendants in this case and were appellees in the court of appeals. David and Christina Hill were defendants in the district court but did not file an answer or otherwise participate in the litigation.

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BRIEF FOR PETITIONERS

Petitioners Jascha Chiaverini and Chiaverini, Inc., respectfully request that this Court reverse the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (Pet. App. 1a-17a) is unpublished. The district court's order (Pet. App. 18a-48a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on January 11, 2023. Pet. App. 1a. A timely petition for rehearing was denied on February 15, 2023. Pet. App. 49a. On April 26, 2023, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including July 14, 2023. The petition was filed on July 14, 2023, and certiorari was granted on December 13, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution 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.

The Civil Rights Act of 1871, 42 U.S.C. § 1983, provides, in relevant part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

INTRODUCTION

Police officers fabricated evidence of a felony money-laundering charge against Jascha Chiaverini. Mr. Chiaverini brought a Fourth Amendment malicious-prosecution claim against the officers. And he would have been able to do so under the charge-specific rule—the American tort-law rule as of the time of Section 1983's passage.

But the court below instead applied the any-crime rule, under which probable cause for one charge insulates every other charge from a malicious-prosecution claim. Because it found probable cause for two other charges—a misdemeanor charge of retaining stolen property and a licensing violation—the court below dismissed Mr. Chiaverini's malicious-prosecution claim as to the felony money-laundering charge. It did not bother to assess whether there was probable cause for that charge.

The Sixth Circuit's any-crime rule defies both common law and common sense. As Chief Judge William Pryor put the point for the Eleventh Circuit, "Centuries of common-law doctrine urge a charge-

specific approach, and bedrock Fourth Amendment principles support applying that approach." *Williams v. Aguirre*, 965 F.3d 1147, 1162 (11th Cir. 2020). And the any-crime rule would, for instance, foreclose liability for a police officer who fabricated a felony so long as there was probable cause to believe the plaintiff was jaywalking. That cannot be right.

This Court should reverse the Sixth Circuit.

STATEMENT OF THE CASE

A. Factual background[1]

1. *The Transaction.* Jascha Chiaverini was a respected, award-winning master jeweler. R. 98, Page ID # 2516.[2] He ran Diamond and Gold Outlet, a longstanding family business in the town of Napoleon, Ohio. *Id.* at 2524, 2528.

On November 16, 2016, Brent Burns came to Mr. Chiaverini's store to sell jewelry, including, as relevant here, a ring and an earring. R. 98, Page ID # 2553-54. On several past occasions, Burns had sold various kinds of jewelry to the store without incident. *Id.* at 2552. As was customary for every store transaction, J.A. 68, Mr. Chiaverini asked Burns to fill out a "buy card" with a signature affirming "I am the sole and lawful owner of [this] property" alongside Burns's name, driver's license information, and the date and time of the purchase, *id.* 5, 68-71. Per store

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[1] Because summary judgment was granted to respondents, the facts are recited in the light most favorable to petitioners.

[2] "R. X, Page ID # XX" refers to documents filed in the district court, in accordance with Sixth Circuit citation conventions.

policy, Mr. Chiaverini also asked Burns to orally affirm good title and his right to sell. *Id.* 69. Burns made both the written and oral affirmations. *See id.* 69-71.

Mr. Chiaverini paid Burns $45 for the jewelry—expecting to make an $11 profit on the scrap metal—and Burns left the store. Pet. App. 2a.

2. *The Hills Contact Mr. Chiaverini.* An hour after Burns left, Mr. Chiaverini received several phone calls from Christina and David Hill. The two called separately, each asking about a ring that they said had been recently stolen and offering divergent descriptions. R. 98, Page ID # 2556-57. Mr. Chiaverini repeatedly advised the Hills to make a police report if they suspected their property had been stolen. *Id.*; Pet. App. 2a. Mr. Chiaverini then called 911 himself to request police assistance. R. 98, Page ID # 2557.

3. *Officers Arrive at the Jewelry Store*. That afternoon, David Hill arrived at the jewelry store. Two officers—David Steward and his supervisor, Nicholas Evanoff—arrived shortly thereafter. R. 98, Page ID # 2557.[3] Steward remained outside with David Hill. *Id.* at 2557-58; J.A. 7-8. Based on their conversation, Steward decided that the jewelry in question belonged to the Hills, despite inconsistencies between the way the Hills had described the jewelry on the phone to Mr. Chiaverini and the way they had described it to the officers. J.A. 7-9. Evanoff spoke with Mr. Chiaverini

[3] Evanoff happened to be a co-owner of Star Pawn, in nearby Findlay, Ohio, which sometimes competed with Mr. Chiaverini's jewelry store for business. R. 98, Page ID # 2572. Evanoff has since been convicted on federal felony charges and was deposed for this case while in federal prison.

alone inside the store. *Id.* 8; R. 98, Page ID # 2557; Pet. App. 3a.

That same day, November 16, Steward submitted a police report describing Mr. Chiaverini's cooperation with the police. Pet. App. 21a-22a. Per police department policy, a more senior officer approved the report three days later. *See* R. 93-2, Page ID # 2203; J.A. 9.

4. *The Hold Letter and Subsequent Police Conduct.* The day after the Burns purchase, the police provided Mr. Chiaverini with a letter that told him two contradictory things: (i) to "hold" the ring and the earring "as evidence," and (ii) to "release these items to David or Christina Hill." J.A. 10. That same day, Steward and Evanoff returned to the jewelry store with Christina Hill, demanding that Mr. Chiaverini turn over the jewelry. Pet. App. 23a. He refused, citing the hold letter. *Id.*

In the subsequent days, Mr. Chiaverini again sought clarification on this internally contradictory hold letter, this time from Police Chief Robert Weitzel. R. 98, Page ID # 2562-63. Chief Weitzel promised to consult the city law director and get back to Mr. Chiaverini. *Id.* at 2563. He never did.

One week after the Burns transaction, Steward and Evanoff came back to the jewelry store. Pet. App. 24a-25a. They suggested that Mr. Chiaverini would be treated as a "co-victim" in the matter and that they could "make him whole" if he would just return the jewelry. *Id.*; R. 98, Page ID # 2563. Confused by what the officers were implying and under instruction from the store's attorney to comply with the hold letter's instruction to retain the jewelry as evidence, Mr. Chiaverini asked that the officers wait ten minutes for

the store's attorney to arrive. R. 98, Page ID # 2563. Instead of waiting, the officers left. *Id.*

5. *Altering the Police Report*. On December 2, Evanoff and Steward met with a prosecutor to discuss next steps. J.A. 12. That same day, Steward edited the November 16 police report that police had submitted following the Burns transaction. Steward altered the description of Mr. Chiaverini's conversation with Evanoff that had taken place sixteen days prior. He inserted the following sentence: "Jascha [Chiaverini] advised Ptl. Evanoff that the reason he bought the ring and kept records regarding the purchase, was because he suspected that it was in fact stolen." *Id.* 14; *compare id.* 8 (unaltered police report).

This additional sentence was false. Mr. Chiaverini had never told Evanoff that he suspected the jewelry was stolen when he bought it from Burns. Pet. App. 34a. Steward was not present for the conversation with Mr. Chiaverini. And neither Evanoff nor Steward had even asked Mr. Chiaverini whether he suspected the ring was stolen when he bought it, despite speaking with him several times over the preceding two weeks.

Although Steward edited the police report, he did not change its date or otherwise indicate it had been edited after November 19. Nor did he resubmit the police report for approval by a more senior officer, instead retaining the previous supervisor signoff from November 19. Though respondents maintained that the police department's record management system could produce an audit trail of alterations to police reports, they were never able to produce such an audit log. J.A. 81-82; R. 102, Page ID # 2748.

6. *The Police Secure Warrants*. That same day, December 2, Evanoff signed a probable-cause affidavit repeating the false allegation Steward had added to the police report: "[T]he defendant bought a ring while suspecting that it was stolen." J.A. 16. Evanoff also filed three criminal complaints against Mr. Chiaverini for retaining stolen property (Ohio Rev. Code Ann. § 2913.51 (West 2016)), violating precious metals dealers licensing requirements (Ohio Rev. Code Ann. § 4728.02 (West 2016)), and money laundering (Ohio Rev. Code Ann. § 1315.55 (West 2016)). Pet. App. 25a.

Of the three, money laundering was the only felony. The money-laundering charge required proof that a criminal defendant "conduct[ed] a transaction knowing" the property was "the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity." Ohio Rev. Code Ann. § 1315.55(A)(1) (West 2016). In other words, the statute required proof that Mr. Chiaverini had knowledge at the time of the Burns transaction that the ring and earring were stolen.[4] But the only suggestion of Mr. Chiaverini's alleged knowledge at the time of the purchase was Steward's alteration of the November 16 police report, made sixteen days after the conversation between Mr. Chiaverini and Evanoff and repeated by Evanoff in his probable-cause affidavit.

Furthermore, under Ohio law, the sort of money-laundering charge at issue in Mr. Chiaverini's case could have been based only on transactions that

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[4] *See, e.g.*, *State v. Searfoss*, 135 N.E.3d 853, 875-76 (Ohio Ct. App. 2019); *State v. Rich*, 2018 WL 1568537, at *16 (Ohio Ct. App. Mar. 30, 2018); *State v. Pugh*, 2010 WL 2393603, at *4 (Ohio Ct. App. June 16, 2010).

exceed $1,000. *See* Ohio Rev. Code Ann. § 2923.31(I)(2)(c) (West 2016). Evanoff knew Mr. Chiaverini had paid $45 for the jewelry. J.A. 5, 8. Evanoff himself listed the value of the jewelry as $350 in the criminal complaint. *Id.* 24. Yet Evanoff signed the criminal complaint for money laundering anyway.

Relying on the probable-cause affidavit, a judge authorized arrest and search warrants against Mr. Chiaverini. J.A. 18; Pet. App. 25a-26a.

7. *Respondents Seize Mr. Chiaverini and His Property*. Police returned to Mr. Chiaverini's jewelry store later on December 2. Pet. App. 25a. There, they seized various property, including other jewelry and the store's three computers. *Id.* Police officers also had Mr. Chiaverini's property appraised for forfeiture. R. 88-4, Page ID # 1129.

Police then arrested Mr. Chiaverini and transported him to the Corrections Center of Northwest Ohio. J.A. 46. He was strip searched at booking. *Id.* He fell and injured his shoulder. R. 98, Page ID # 2569. All told, he spent nearly four days in jail. Pet. App. 25a.

Mr. Chiaverini was eventually released, subject to pretrial conditions, and ordered to appear in court. *See* Petr. C.A. Br. 20.

8. *Officers Enable the Prosecution*. Following Mr. Chiaverini's arrest, the county prosecutor emailed to express "concern with the money laundering charge." J.A. 30. Given the mens rea requirement for this crime, he asked the police department, "Do we have evidence that he knew the property was stolen when he purchased it?" *Id.*

Police Chief Weitzel responded with two falsehoods. First, he sent the doctored police report, specifically pointing out the sentence that Steward had added after the fact. J.A. 29-30. In reality, Mr. Chiaverini did not suspect the Burns jewelry was stolen when he purchased it (nor did he tell anyone otherwise). Second, Weitzel asserted that Mr. Chiaverini never called the police about the jewelry. *Id.* 30. In reality, Mr. Chiaverini had called 911 immediately after hearing from the Hills the day of the sale. Weitzel signed off with, "I hope this settles your mind on this issue." *Id.* Reassured by these falsehoods, the prosecutor moved forward with all three charges, including the money-laundering felony.

At a preliminary hearing, a municipal court judge considered the documents provided by the police, including the doctored police report and probable-cause affidavit. The judge also considered the testimony of one witness, Evanoff, who repeated the lie that Mr. Chiaverini had confessed to suspecting the property was stolen at the time he purchased it. R. 42-8, Page ID # 573-74. The judge found probable cause as to all three charges. J.A. 39-42.

All of the charges were eventually dismissed when the prosecution declined to present the case to a grand jury. Pet. App. 26a.

9. *The Effects of the Charges*. As explained above, police officers jailed Mr. Chiaverini for nearly four days, seized store inventory and computers, and subjected Mr. Chiaverini to pretrial conditions while the prosecution continued. Mr. Chiaverini fell and injured his shoulder while detained. He expended significant attorneys' fees. And he lost revenue because the Diamond and Gold Outlet was without its

manager and key equipment through the heart of the Christmas and New Year season.

When word got out that Mr. Chiaverini had been charged and jailed for money laundering—the only felony of the three—his reputation and business were devastated. Shortly after being jailed, Mr. Chiaverini tried to broker a diamond for a customer. When he contacted long-time business associates in New York, they refused to do business with him because he had been jailed for money laundering. R. 98, Page ID # 2574. Other associates would not even accept his phone calls. *Id.* One of the Diamond and Gold Outlet's banks would no longer lend to the jewelry store if Mr. Chiaverini was part of the transaction. *Id.* at 2568. Even today, over six years after the charges were dropped, the first two Google images results for "Jascha Chiaverini" are Mr. Chiaverini's mugshot and a news website's composite image of his mugshot, booking date, and the list of charges with money laundering at the top.

B. Procedural background

1. In 2017, petitioners filed this case against respondents in state court under 42 U.S.C. § 1983. Petitioners alleged several constitutional violations, including a Fourth Amendment claim for malicious prosecution. Respondents removed the action to the Northern District of Ohio.

A Fourth Amendment malicious-prosecution claim has four elements: (i) legal process instituted "without any probable cause"; (ii) a "malicious"

motive[5]; (iii) a favorable termination; and (iv) a harm "housed in the Fourth Amendment" (for instance, a seizure). *Thompson v. Clark*, 142 S. Ct. 1332, 1337 n.2, 1338 (2022) (internal quotation marks omitted).

Here, Mr. Chiaverini alleged that proceedings were instituted when officers secured an arrest warrant and, later, a probable-cause determination at the preliminary hearing; that both proceedings were without probable cause as to any of the three charges against him (the felony money-laundering charge, the misdemeanor receiving-stolen-property charge, and the licensing violation); that police officers acted maliciously when they fabricated evidence against him; that the prosecution terminated in his favor when charges were dropped; and that the Fourth Amendment's Warrant Clause and its prohibition on unreasonable seizures were violated when officers lied to secure an arrest warrant and seized Mr. Chiaverini and his property (jewelry and computers).

2. The District Court bifurcated the liability and damages phases of the suit. *See* R. 57, Page ID # 857. The District Court granted summary judgment to respondents on Mr. Chiaverini's malicious-prosecution claim, finding that he could not establish element (i), a lack of probable cause, as to any of the three charges. *See* Pet. App. 18a-48a.

3. Mr. Chiaverini appealed to the Sixth Circuit and made two arguments related to the money-laundering charge. Petr. C.A. Br. 17-18, 41. First, he argued there was no probable cause because he did not

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[5] This Court has not decided whether a "malicious motive" requires proof of something more than a lack of probable cause. *Thompson v. Clark*, 142 S. Ct. 1332, 1338 n.3 (2022).

know the jewelry was stolen at the time of the transaction and any suggestion that he did came from Steward's, Evanoff's, and Weitzel's falsehoods. *Id.* at 13-15, 41. Second, he argued that there was no probable cause because there was no basis for finding that the jewelry he had purchased for $45 met the statute's requirement that the transaction be worth $1,000 or more. *Id.* at 17-18.[6]

Respondents replied that they need prove only that there was probable cause for one of the listed charges: "[S]o long as probable cause exists to one of multiple criminal charges, that is enough . . . to negate" a malicious-prosecution claim as to any charge. Oral Argument at 16:45, *Chiaverini v. City of Napoleon*, 2023 WL 152477 (6th Cir. 2023) (No. 21-3996), https://perma.cc/P6FY-RHME; *see also* Resp. C.A. Br. 40-41. Thus, in their view, it would not matter whether there was probable cause for the felony money-laundering charge so long as there was probable cause for either the misdemeanor or the licensing violation.

The Sixth Circuit sided with respondents. Pet. App. 1a-2a. It found probable cause for the licensing violation and the misdemeanor charge of retaining stolen property. *Id.* 11a-16a. It then applied the Sixth Circuit's rule that finding probable cause for any one charge defeats a malicious-prosecution claim as to any other charges. *Id.* 16a. Under that rule—shorthanded the any-crime rule—the Sixth Circuit's finding of probable cause for those other two charges

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[6] Mr. Chiaverini also continued to contest that probable cause existed for either the retaining-stolen-property or licensing-violation charges. Pet. App. 11a-16a.

extinguished Mr. Chiaverini's malicious-prosecution claim even if there was no probable cause for the money-laundering charge. *Id.* The Sixth Circuit thus refused to assess probable cause for the money-laundering charge. *Id.* 10a n.8.

4. Mr. Chiaverini petitioned for rehearing en banc, arguing that the Sixth Circuit was on the wrong side of a circuit split "regarding whether a 4th Amendment 'malicious prosecution' claim may proceed where there is probable cause for one, but not all, charges prosecuted." Pet. for Reh'g En Banc 5. The petition was denied. Pet. App. 49a.

5. This Court granted certiorari. 144 S. Ct. ___ (2023).

SUMMARY OF THE ARGUMENT

In *Thompson v. Clark*, 142 S. Ct. 1332 (2022), this Court explained how to answer questions about the elements of a constitutional tort. First, this Court looks to the common-law consensus regarding the relevant tort—here, the tort of malicious prosecution—"as of 1871 when § 1983 was enacted." *Id.* at 1337. This Court then adopts those common-law elements "so long as doing so is consistent with the values and purposes of the constitutional right at issue"—here, the Fourth Amendment. *Id.* at 1340 (internal quotation marks omitted). That framework requires reversal here.

I. Treatises, American cases, and English cases from around the time of Section 1983's passage demonstrate that the charge-specific rule is the correct one for a Fourth Amendment malicious-prosecution claim brought under Section 1983.

1. Nineteenth-century treatises uniformly instructed that courts should assess probable cause on a charge-by-charge basis in a malicious-prosecution case. Greenleaf's treatise is representative: "It is not necessary that the whole proceedings be utterly groundless; for if groundless charges are maliciously and without probable cause coupled with others, which are well founded, they are not on that account the less injurious, and therefore constitute a valid cause of action." 2 Simon Greenleaf, *Treatise on the Law of Evidence* § 449 (10th ed. 1868).

2. State supreme courts around the country similarly applied the charge-specific rule in malicious-prosecution cases during the nineteenth century. For example, in *Boogher v. Bryant*, 86 Mo. 42 (1885), the Missouri Supreme Court affirmed the common-law consensus that "in order to maintain an action like this, it is not necessary that the whole proceeding be utterly groundless." *Id.* at 49 (internal quotation marks omitted).

3. At the time of Section 1983's passage, courts on the other side of the Atlantic also applied the charge-specific rule in malicious-prosecution cases involving multiple charges. To take just one example: In *Reed v. Taylor* (1812) 128 Eng. Rep. 472 (CP), a plaintiff alleged that twelve counts of perjury against him were fabricated. *Id.* at 472. Despite probable cause supporting three of the counts, the plaintiff was still allowed to proceed. *Id.* at 472-73.

II. Because "the American tort-law consensus as of 1871" used the charge-specific rule, *Thompson* dictates that this Court should "similarly construe the Fourth Amendment claim under § 1983 for malicious prosecution" so long as doing so is "consistent . . . with

the values and purposes of the Fourth Amendment." 142 S. Ct. at 1340 (internal quotation marks omitted)). The charge-specific rule is consistent with those "values and purposes"; the any-crime rule is not.

1. In *Thompson*, this Court identified two "values and purposes of the Fourth Amendment." The charge-specific rule is consistent with both. First, a common-law tort rule applied to a Fourth Amendment malicious-prosecution claim cannot lead to arbitrary results. But the any-crime rule would do just that by insulating an officer from liability where there is probable cause for even the smallest offense and by allowing an individual's right to seek redress to turn on the fortuity of whether a prosecutor decides to bring charges all at once or in separate proceedings. Second, a common-law tort rule applied to a Fourth Amendment malicious-prosecution claim cannot lead to unwarranted civil suits. The charge-specific rule won't: Police officers will still be protected by other doctrines, including qualified immunity.

2. The Fourth Amendment's Warrant Clause points to the same conclusion. The any-crime rule would undermine three key features of that clause. First, the Warrant Clause's requirement that a warrant be "supported by Oath or Affirmation" would be "reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause." *Franks v. Delaware*, 438 U.S. 154, 168 (1978). But the any-crime rule allows just that. Second, the Clause's requirements that a warrant issue only "upon probable cause" and "particularly describe" the places to be searched and people or things to be seized requires officers to detail "what specific crime has been or is being committed." *Berger*

v. New York, 388 U.S. 41, 55-56 (1967). The any-crime rule allows an officer to secure a warrant based on as many trumped-up charges as he'd like so long as probable cause exists for even one. Finally, the any-crime rule undermines the Warrant Clause's requirement that a "neutral and detached magistrate" be the one to issue the warrant because it makes it impossible for that independent party to properly weigh the evidence. *See United States v. U.S. Dist. Ct. for the E. Dist. of Mich.*, 407 U.S. 297, 316 (1972) (internal quotation marks omitted).

3. The charge-specific rule is also more consistent than the any-crime rule with the Fourth Amendment's prohibition on "unreasonable" seizures. At the time of the Founding, an arrest was reasonable only if there was legal process confirming probable cause for the arrest as soon as possible. *County of Riverside v. McLaughlin*, 500 U.S. 44, 61 (1991) (Scalia, J., dissenting). The only legal process in Mr. Chiaverini's case was the issuance of a warrant based on outright misrepresentations by police officers. That one of the charges included in the warrant might have been supported by probable cause did not suffice to render his seizure reasonable. Black-letter Founding-era tort law confirms as much.

III. None of the reasons the Sixth Circuit and respondents have identified for adopting the any-crime rule survives scrutiny. First, the Sixth Circuit assumed that because an any-crime rule applies to warrantless-arrest claims under the Fourth Amendment, the same rule should also apply to malicious-prosecution claims under the Fourth Amendment. But this Court's doctrine treats warrantless arrests differently from arrests pursuant

to legal process. Second, the Sixth Circuit assumed that it wouldn't matter to a plaintiff whether he was charged with one count or several. But the number and severity of the counts matter a great deal—they can affect the duration of the pretrial seizure and the amount and availability of bail, for instance. Finally, respondents' brief in opposition raised the possibility of a "length-of-detention" rule. But that wasn't the rule respondents pressed below, and the rule strays far from the question presented in this case.

ARGUMENT

Thompson v. Clark, 142 S. Ct. 1332 (2022), laid out four elements for a Fourth Amendment malicious-prosecution claim: (i) legal process instituted "without any probable cause"; (ii) a "malicious" motive; (iii) a favorable termination; and (iv) a harm "housed in the Fourth Amendment." *Id.* at 1337 n.2, 1338.

This case is about the first of the four elements laid out in *Thompson*. Petitioners argued for the charge-specific rule, under which a plaintiff can proceed on a malicious-prosecution claim as to a baseless charge of criminal conduct even if other charges in the same criminal proceeding are supported by probable cause. The court below rejected that position and instead applied the any-crime rule—that probable cause for even one charge defeats a plaintiff's malicious-prosecution claims as to every other charge, even those lacking probable cause. Pet. App. 10a.

The *Thompson* framework—which adopts the "American tort-law consensus as of 1871" so long as doing so is "consistent with the values and purposes of the constitutional right at issue," 142 S. Ct. at 1337, 1340—unequivocally supports the charge-specific

rule. As Chief Judge William Pryor has explained, "Centuries of common-law doctrine urge a charge-specific approach, and bedrock Fourth Amendment principles support applying that approach." *Williams v. Aguirre*, 965 F.3d 1147, 1162 (11th Cir. 2020). The Sixth Circuit's arguments to the contrary are wrong.

I. The American tort-law consensus as of 1871 requires the charge-specific rule.

The tort of malicious prosecution—an "aggravated form of defamation"—traces its roots to pre-Norman Conquest England, where courts punished anyone who brought "a false and scandalous accusation" through "wrongful prosecution." 2 Frederick Pollock & Frederic William Maitland, *The History of English Law: Before the Time of Edward I*, ch. VIII, § 3 (2d ed. 1895). The sanctions against such abuses of legal process were harsh—at times, the cost could be one's tongue. *See* Note, *Groundless Litigation and the Malicious Prosecution Debate: A Historical Analysis*, 88 Yale L.J. 1218, 1221 (1979). The tort eventually evolved into a common law "action on the case," part of "a comprehensive system for dealing with wrongful litigation" whose "essential outline" had not changed "in over a millennium." *Id.* at 1227, 1229. By the end of the seventeenth century, individuals who had suffered from the wrongful initiation of legal process could recover through a claim for malicious prosecution for injuries to their "fame or reputation," "liberty," or "property." *Roberts v. Savill* (1698) 87 Eng. Rep. 733, 734 (KB). American common-law courts inherited this long tradition.

The key element of a malicious-prosecution tort has long been a lack of probable cause. *See, e.g.*, *Farmer v. Darling* (1766) 98 Eng. Rep. 27, 29 (KB NP).

Treatises, American cases, and English cases from around the time of Section 1983's passage demonstrate that the charge-specific rule governs that lack-of-probable-cause element.

1. Start with nineteenth-century treatises. They uniformly instructed that courts in malicious-prosecution cases should assess probable cause on a charge-by-charge basis. Greenleaf's treatise is representative: "It is not necessary that the whole proceedings be utterly groundless; for if groundless charges are maliciously and without probable cause coupled with others, which are well founded, they are not on that account the less injurious, and therefore constitute a valid cause of action." 2 Simon Greenleaf, *Treatise on the Law of Evidence* § 449 (10th ed. 1868). Hilliard's treatise, cited by this Court in its two most recent constitutional tort cases, was similarly unambiguous: "An averment, that the defendant maliciously and without probable cause preferred an indictment, setting it forth, is proved, if only a part of the charges were malicious and without probable cause." 1 Francis Hilliard, *The Law of Torts or Private Wrongs* 435 n.(b) (4th ed. 1874); *see Thompson v. Clark*, 142 S. Ct. 1332, 1339 (2022) (citing Hilliard); *Nieves v. Bartlett*, 139 S. Ct. 1715, 1726 (2019) (same).

Other treatises of the day similarly recited the charge-specific rule as black-letter law. *See, e.g.*, Charles Collett, *A Manual of the Law of Torts, and of the Measure of Damages* § 81 (1895) ("It is sufficient to maintain an action for a malicious prosecution, if some only [sic] of the charges in the indictment, were malicious and without probable cause."); 2 C. G. Addison, *Wrongs and Their Remedies: A Treatise on the Law of Torts* § 860 (4th ed. 1876) ("If an indictment

preferred by the defendant contains several charges against the plaintiff, and he is convicted on some and acquitted on others, this does not prevent the plaintiff from maintaining an action for a malicious prosecution in respect of the charges of which he was acquitted."); Herbert Stephen, *The Law Relating to Actions for Malicious Prosecution* 12 (1888) ("[A] prosecution for one offence is not, it would seem, justified by the fact that there might have been reasonable cause for a prosecution for some other offence."); Martin L. Newell, *A Treatise on the Law of Malicious Prosecution, False Imprisonment, and the Abuse of Legal Process* 283 (1892) (where a defendant is accused of a felony and a misdemeanor and convicted only of the misdemeanor, "the conviction is not such evidence of probable cause as will defeat an action for malicious prosecution based on the charge of felony").

Indeed, at common law, a malicious-prosecution claim could proceed in a case where some but not all charges were supported by probable cause even where a plaintiff could not identify which damages were attributable to which charge. *See, e.g.*, 14 John Houston Merrill, *American and English Encyclopedia of Law* 52 n.3 (1890) (it was "no defence" that "the plaintiff is unable to adjust the damages between" charges based on probable cause and "groundless charges"); *see also id.* at 75 n.1 ("The defendant cannot by uniting in the information groundless accusations with those for which probable cause might exist, escape liability . . . .").

The any-crime rule would make little sense given that a malicious-prosecution action as of 1871 allowed recovery for harms to "reputation by [] scandal." 2

William Selwyn, *Abridgment of the Law of Nisi Prius* 1064 (7th Am. ed. 1857); *see also* Newell, *supra*, at 494-95. Because the damage to reputation wrought by a false accusation was no less potent when paired with a truthful allegation, probable cause for one charge didn't defeat a malicious-prosecution claim as to another.

2. State supreme courts around the country similarly applied the charge-specific rule in malicious-prosecution cases during the nineteenth century.

Consider *Boogher v. Bryant*, 86 Mo. 42 (1885). The plaintiff there brought a malicious-prosecution suit over two criminal libel charges. *Id.* at 43. The defendant argued that the entire suit was barred because the plaintiff had been found guilty on other libel charges in the same indictment. *Id.* at 44. The Missouri Supreme Court rejected that contention. *Id.* at 49. It followed the common-law consensus that "in order to maintain an action like this, it is not necessary that the whole proceeding be utterly groundless." *Id.* (internal quotation marks omitted).

Other state high courts similarly rejected the any-crime rule and adopted the charge-specific rule. Here's the Massachusetts Supreme Judicial Court, for instance: The any-crime rule "cannot be a correct principle, for then a man may at any time protect himself from the consequences of prosecuting a malicious action, by commencing at the same time an action founded on a valid demand." *Pierce v. Thompson*, 23 Mass. (6 Pick.) 193, 197 (1828). The Vermont Supreme Court: "It is true, the want of probable cause need not be shown to extend to all the particulars charged. Nor is it any defence that there was probable cause for part of the prosecution."

Barron v. Mason, 31 Vt. 189, 198 (1858). And the Supreme Court of Kansas: "[T]he plaintiff would not be wholly defeated by a showing on the part of the defendant that a part of the imprisonment was legal, if the other part was illegal." *Bauer v. Clay*, 8 Kan. 580, 583 (1871).

3. At the time of Section 1983's passage, English courts also applied the charge-specific rule in malicious-prosecution cases involving multiple claims. "English courts refused to allow accusers to raise the existence of probable cause on other charges as a defense to liability." *Williams v. Aguirre*, 965 F.3d 1147, 1160 (11th Cir. 2020) (collecting cases).

Reed v. Taylor (1812) 128 Eng. Rep. 472 (CP), is illustrative. In that case, a defendant's false accusations resulted in the plaintiff being indicted for twelve counts of perjury. *Id.* at 472. At trial, the defendant "produced evidence" of probable cause "as to three of the transactions upon which the perjury had been assigned." *Id.* But for all others, "there was no probable cause." *Id.* Accordingly, the jury entered a verdict in favor of the plaintiff regarding those other charges. On appeal, the defendant moved for a new trial, arguing that the twelve perjury charges "all arise out of one affidavit and one oath." *Id.* at 472-73. The defendant argued that if there was probable cause for one of the charges, that should be sufficient to immunize him from a malicious-prosecution suit. *Id.* at 473. Chief Justice James Mansfield rejected these arguments and affirmed the verdict below, emphasizing that the defendant-appellant had pointed to "no precedent" in his favor. *Id.* Another justice agreed: "There is no probable cause for some of

the charges in the indictment, therefore this indictment is preferred without probable cause." *Id.*

Other nineteenth-century English cases also applied the charge-specific rule. In *Ellis v. Abrahams* (1846) 115 Eng. Rep. 1039, 1041 (QB), for instance, the court affirmed a jury verdict in favor of a malicious-prosecution plaintiff who proved lack of probable cause for only one of the two perjury charges in the underlying indictment. And in *Boaler v. Holder* (1887) 51 JPR 277 (QB), the plaintiff had been acquitted of criminal libel but convicted of a lesser offense. *Id.* at 277. The trial court dismissed his malicious-prosecution action for the greater offense based on the conviction of the lesser offense. *Id.* But the appeals court overturned the dismissal and granted a new malicious-prosecution trial: "To put a man on his trial for a much graver offence than you have any chance of convicting him of, is a legal wrong." *Id.*[7]

In 1871, then, the common law overwhelmingly pointed in one direction: Probable cause for some charge did not extinguish malicious-prosecution claims for another, baseless charge.

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[7] *Johnstone v. Sutton* (1786) 99 Eng. Rep. 1225 (KB), is not to the contrary. To be sure, *Johnstone* suggested that a plaintiff could not prevail if false charges "created no additional trouble, vexation, or expense." *Id.* at 1245. But that suggestion was dicta. *See Williams*, 965 F.3d at 1160 (discussing *Johnstone*). *Johnstone* actually rested on the ground that in that case, while the "charges against the plaintiff . . . were formally two," they were, "in reality and effect, one." *Johnstone*, 99 Eng. Rep. at 1244. Because the two were inseparable, proof of probable cause for one functioned as proof of probable cause for the other. *Johnstone* thus stands for the unremarkable proposition that *some* charge must lack probable cause for a plaintiff to recover, not for the any-crime rule.

II. The charge-specific rule is consistent with the values and purposes of the Fourth Amendment.

Because "the American tort-law consensus as of 1871" used the charge-specific rule, *Thompson v. Clark* dictates that this Court must "similarly construe the Fourth Amendment claim under § 1983 for malicious prosecution" so long as doing so is "consistent . . . with the values and purposes of the Fourth Amendment." 142 S. Ct. 1332, 1340 (2022) (internal quotation marks omitted). There is a strong presumption in favor of the 1871 tort-law consensus, because this Court looks to that same tort-law consensus in determining the scope of the Fourth Amendment. *See, e.g.*, *California v. Hodari D.*, 499 U.S. 621, 624-25 (1991) (relying on nineteenth-century tort law cases to answer question about scope of Fourth Amendment).

The presumption in favor of the 1871 tort-law consensus governs here. Far from being inconsistent with the Fourth Amendment's values and purposes, "[b]edrock Fourth Amendment principles support" adopting the charge-specific rule. *Williams v. Aguirre*, 965 F.3d 1147, 1162 (11th Cir. 2020). The "values and purposes of the Fourth Amendment" that this Court identified in *Thompson* point squarely toward the charge-specific rule. The Fourth Amendment's Warrant Clause and its prohibition on "unreasonable" seizures buttress that conclusion.

1. *Values Identified in* Thompson. In *Thompson*, this Court identified two "values and purposes of the Fourth Amendment": the avoidance of arbitrary results and the protection of law-enforcement interests. 142 S. Ct. at 1340-41. The charge-specific rule is consistent with both.

a. First, courts can decline to apply a common-law tort rule to a Fourth Amendment malicious-prosecution claim if its application would lead to arbitrary results. *See Thompson*, 142 S. Ct. at 1340. The charge-specific rule avoids such randomness; the any-crime rule does not.

In *Thompson*, for instance, the Court rejected a rule that would let an "individual's ability to seek redress" turn on the "fortuity" of a prosecutor's decision. 142 S. Ct. at 1340. But the any-crime rule does just that. Imagine a criminal defendant who is charged with a pair of crimes, one valid and the other based on evidence fabricated by the police. A prosecutor has almost total discretion over how to split a given set of charges. *See United States v. Dixon*, 509 U.S. 688, 705 (1993) (prosecutor may bring separate prosecutions based on same conduct). If the prosecutor decides to bring the charges in the same prosecution, then under the any-crime rule, the defendant cannot sue the police after his acquittal because there was probable cause for at least one offense. But if the prosecutor had brought two separate prosecutions and the defendant had been acquitted in the second one, the proceeding based on that fabricated charge would be actionable. An "individual's ability to seek redress" for a fabricated charge would thus turn entirely on the "fortuity" of the prosecutor's decision if this Court were to adopt the any-crime rule. *See Thompson*, 140 S. Ct. at 1340.

The any-crime rule leads to arbitrary results for yet another reason. Under the any-crime rule, probable cause for the smallest offense would insulate officers from accountability for fabricating evidence for the most serious. In a world where "criminal laws have

grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something," virtually any officer can take advantage of this shield by dredging up some sort of minor, seldom-prosecuted criminal offense supported by probable cause. *See Nieves v. Bartlett*, 139 S. Ct. 1715, 1730 (2019) (Gorsuch, J., concurring in part and dissenting in part).

For example, in the Sixth Circuit, where the any-crime rule governs, a police officer can seek an arrest warrant based on a traffic violation ("rear license not illuminated") and get away with tacking on a concededly bogus obstruction charge so long as he can prove the traffic violation. *See Mix v. West*, 2023 WL 2654175, at *3-4 (W.D. Ky. Mar. 27, 2023). He can press charges for resisting and obstructing arrest (a felony), even though he had probable cause only for disturbing the peace (a misdemeanor). *See Peterson v. Smith*, 2021 WL 1556863, at *1-4, 9-13 (E.D. Mich. Feb. 1, 2021). Indeed, if the any-crime rule were the law, a police officer need only catch someone jaywalking and he could entirely fabricate a drug-trafficking charge without subjecting himself to Section 1983 liability. *Cf. Goldring v. Henry*, 2021 WL 5274721, at *1-3 (11th Cir. Nov. 12, 2021).

b. Second, courts can decline to apply a common-law tort rule to a Fourth Amendment malicious-prosecution claim if its application would hamper the interests of law enforcement. The charge-specific rule wouldn't.

As one example of law-enforcement interests that this Court must take into account, *Thompson* looked to whether the common-law tort rule would lead to "unwarranted civil suits." 142 S. Ct. at 1340.

Thompson adopted petitioner's rule for the favorable-termination element of a Fourth Amendment malicious-prosecution claim because "among other things, officers are still protected by . . . qualified immunity." *Id.* at 1340-41. The same would be true if this Court adopted the charge-specific rule. Indeed, this Court has already explained that qualified immunity furnishes sufficient protection for officers seeking warrants because such an officer has time to "reflect, before submitting a request for a warrant, upon whether he has a reasonable basis for believing his affidavit establishes probable cause." *Malley v. Briggs*, 475 U.S. 335, 343 (1986).

In addition, this case implicates only whether damages are available, and not whether evidence is suppressed. It thus poses none of the "substantial social costs" associated with the exclusionary rule. *See Hudson v. Michigan,* 547 U.S. 586, 591 (2006). As this Court put the point in considering another kind of officer misconduct in seeking a warrant, "a damages remedy for an arrest following an objectively unreasonable request for a warrant imposes a cost directly on the officer responsible for the unreasonable request without the side effect of hampering a criminal prosecution." *Malley*, 475 U.S. at 344.

In sum, because the charge-specific rule protects plaintiffs against arbitrary outcomes without unduly hampering law enforcement, it is "consistent . . . with the values and purposes of the Fourth Amendment." *See Thompson*, 142 S. Ct. at 1340 (internal quotation marks omitted). But if any doubt remains, the text and history of the Fourth Amendment confirm that the charge-specific rule is the right one.

2. *Warrant Clause*. The Fourth Amendment provides that "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.

At the time of the Founding, warrants were thought to confer a dangerous power on government officials—more dangerous, in some ways, than the power to search or arrest without a warrant. *See* Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 771-81 (1994); Telford Taylor, *Two Studies in Constitutional Interpretation* 41 (1969). The Framers thus embedded three checks in the text of the Fourth Amendment on police officers' ability to obtain a warrant. The any-crime rule would undermine all three.

a. First, the Warrant Clause provides that the probable cause required to secure a warrant must be "supported by Oath or affirmation." U.S. Const., amend. IV.

As this Court has explained, that language "surely takes the affiant's good faith as its premise." *Franks v. Delaware*, 438 U.S. 154, 164 (1978). That is, "[w]hen the Fourth Amendment demands a factual showing sufficient to comprise probable cause, the obvious assumption is that there will be a *truthful* showing." *Id.* at 164-65 (internal quotation marks omitted). The Warrant Clause's probable-cause requirement thus forbids "the issue of warrants on loose, vague, or doubtful bases of fact." *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931).

The oath or affirmation requirement serves two functions. First, it provides a procedural guardrail

against the arbitrary use of legal process by ensuring that those seeking a warrant tell the truth to a magistrate. Indeed, several states expressed concerns at ratification that, without an oath or affirmation, a warrant would be an instrument of oppression.[8] Second, in the centuries leading up to the Founding, courts worried about falsehoods in warrant applications because those lies in the warrant might slander the victim and the actual arrest might "deprive him of his good name and fame."[9]

The any-crime rule would "reduce" that oath or affirmation requirement "to a nullity" because a police officer would be "able to use deliberately falsified allegations to demonstrate probable cause." *Franks*, 438 U.S. at 168. That conclusion is confirmed by this Court's case law regarding falsehoods in warrant applications: When deciding whether the falsehood violates the Fourth Amendment, this Court looks to whether the falsehood undermines probable cause for the *listed* charge, not whether some other charge

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[8] *See, e.g.*, Ratification of the Federal Constitution by the State of New York, *reprinted in* 2 Dep't of State, *Documentary History of the Constitution of the United States* 193 (1894) (warrants issued "without information upon Oath or Affirmation of sufficient cause, are grievous and oppressive"); Ratification of the Federal Constitution by the Commonwealth of Virginia, *reprinted in* 2 Dep't of State, *supra*, at 379 (similar).

[9] *Windham v. Clere* (1589) 78 Eng. Rep. 387, 387 (QB), *abrogated on other grounds by Morgan v. Hughes* (1788) 100 Eng. Rep. 123, 123 (KB); *see also Goslin v. Wilcock* (1766) 95 Eng. Rep. 824, 827 (KB) (Camden, J.) (affirming jury verdict when defendant "abuse[d]" plaintiff "publicly, and arrest[ed] him in the fair at his stall, when the defendant must [have] know[n] that the Court there had no jurisdiction"); *Roberts v. Savill* (1698) 87 Eng. Rep. 733, 734-35 (KB).

might justify the warrant. *See id.* at 155-56. And that makes sense: A lie is no less a lie because it is coupled with truths.

b. Second, the Fourth Amendment requires that officers applying for warrants detail "what specific crime has been or is being committed." *Berger v. New York*, 388 U.S. 41, 56 (1967). That requirement stems from two provisions in the Fourth Amendment's text: its commands that "no Warrants shall issue, but upon probable cause" and that any warrant "particularly describ[e] the place to be searched, and the persons or things to be seized." Whether there is probable cause to effectuate a search or seizure of a particular person or thing necessarily depends on the charges at issue.

The requirement that officers detail a specific crime is confirmed by the historical backdrop of the Warrant Clause. The "manifest purpose" animating the particularity requirement was the English Crown's use of general warrants. *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). Those warrants gave royal officials "a discretionary power . . . to search wherever their suspicions may chance to fall." *Wilkes v. Wood* (1763) 98 Eng. Rep. 489, 498 (KB).

The antidote was to ensure that the judge issuing the warrant inspected the precise reasons for granting the warrant. Blackstone, for instance, believed the way to get rid of the despised general warrants was to ensure that a magistrate was given the "ground of suspicion." 4 William Blackstone, *Commentaries on the Laws of England* *288 (Wilfrid Prest ed., Oxford ed. 2016). By requiring probable cause for a particular offense in order to issue a warrant, the Founders intended to ensure each warrant was "carefully tailored to its justifications." *Garrison*, 480 U.S. at 84.

The any-crime rule would undermine the requirement that officers allege specific crimes. Under the any-crime rule, officers could, without fear of liability, allege as many trumped-up crimes as they'd like so long as probable cause existed for even one. Officers could effectively secure general warrants by tacking on crimes of a much wider scope than the probable cause supports.[10]

c. Finally, "[i]nherent in" the Warrant Clause is the requirement that a "neutral and detached magistrate" be the one to confirm that there is probable cause upon which the warrant should issue. *United States v. U.S. Dist. Ct. for the E. Dist. of Mich.*, 407 U.S. 297, 316 (1972) (internal quotation marks omitted). The Founders recognized that those whose "duty and responsibility are to enforce the laws, to investigate, and to prosecute" may "yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy." *Id.* at 317. The Founders' recognition reflected the common-law view that it was "the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of suspicion." 4 Blackstone, *supra*, at *288. The Fourth Amendment enshrines that practice by interposing a

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[10] To be sure, the concerns about general warrants animating the Founding generation were primarily about search, not arrest, warrants. *See Boyd v. United States*, 116 U.S. 616, 625 (1886). But the Framers chose to write a unitary Warrant Clause: The requirements to secure a warrant do not vary depending on whether the warrant is for a "place to be searched" or a "person[] or thing[] to be seized." U.S. Const. amend. IV. If the charge-specific rule applies to search warrants, it applies to arrest warrants, too.

magistrate between the executive branch and the suspect.

The any-crime rule prevents the magistrate from being "judge of the ground of suspicion." Officers could lie to a magistrate without consequence and may well have an incentive to do so. The magistrate, in turn, would be led to believe that the suspect had committed more crimes than there was probable cause to support. Had the magistrate known that only a subset of the charges alleged by an officer were supported by probable cause—and particularly if he'd known the officer fabricated evidence for some of the other charges—he might have declined to issue a warrant altogether or might have tailored the warrant according to the severity of the charges. *Cf. Jones v. Kirchner*, 835 F.3d 74, 84-87 (D.C. Cir. 2016) (even where statute authorized nighttime execution of warrants, magistrate may limit warrant's execution to daytime). Only the charge-specific rule enables the magistrate to perform his constitutional function.

2. *Prohibition on Unreasonable Seizures*. Separate and apart from the Warrant Clause, the Fourth Amendment provides that "[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures, shall not be violated." U.S. Const., amend. IV. When considering whether a seizure is reasonable, this Court has consulted rules about tort liability at the Founding. *See, e.g.*, *Lange v. California*, 141 S. Ct. 2011, 2022-24 (2021); *Wyoming v. Houghton*, 526 U.S. 295, 299 (1999); *California v. Hodari D.*, 499 U.S. 621, 624-25 (1991). At the time of the Founding, an arrest was reasonable only if there was legal process—a warrant or hearing—confirming probable cause for the arrest either before or as soon

as possible after the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 61 (1991) (Scalia, J., dissenting); *see also id.* at 57 (majority opinion) (adopting rule that police must either get signoff from magistrate before arrest or within forty-eight hours).

The only legal process in Mr. Chiaverini's case was the issuance of a warrant based on outright misrepresentations by police officers. That one of the charges included in the warrant might have been supported by probable cause did not suffice to render his seizure reasonable. Black-letter Founding-era tort law makes that clear: Where legal process was required to render a seizure "reasonable," the process could not be tainted by a misrepresentation; this was so whether or not the legal process could have gone forward without the misrepresentation; and the validity of legal process was a charge-specific inquiry.

First, false accusations initiating legal process were actionable. *See Samuel v. Payne* (1780) 99 Eng. Rep. 230, 231 (KB); 1 Thomas Walter Williams, *An Abridgment of Cases Argued and Determined in the Courts of Law, During the Reign of His Present Majesty, King George the Third* 668 (1798); *Muriel v. Tracy* (1704) 87 Eng. Rep. 925, 926 (QB NP); 1 Joseph Backus, *A Digest of Laws Relating to the Offices and Duties of Sheriff, Coroner and Constable* 119 (1812) ("[T]he person making the charge, if unfounded, is liable to the accused.").

Second, those false accusations during the legal process were actionable without regard to whether the legal process could have been effected without the misrepresentation. *See Dowse v. Swaine* (1680) 83 Eng. Rep. 404 (KB). For instance, "where one man arrests another for a great sum of money, when but a

small one is due . . . a good action lies." *Roberts v. Savill* (1698) 87 Eng. Rep. 733, 735 (KB); *see also* 1 William Nelson, *An Abridgment of the Common Law* 46 (1725) (plaintiff can recover for malicious prosecution where defendant "had a good Cause of Action" to sue for £200 but instead sued for £500). Courts holding as much didn't ask whether the arrest could have been made just as easily for the smaller sum of money—the fact that the legal process was tainted by the lie about the sum of money was sufficient to render the conduct actionable.

Third, what constituted valid process depended on the precise charges against the arrestee. For instance, arrest warrants "executed against any person whatsoever, on the Lord's day," were "void" except where the warrant was for "treason, felony, and breach of the peace." 1 Richard Burn, *The Justice of the Peace and Parish Officer* 101 (15th ed. 1785); *see also* James Parker, *Conductor Generalis* 26 (1764) (same). The Constitution itself contains a similar charge-specific rule: Legislators in session are "privileged from Arrest" except for "Treason, Felony, and Breach of the Peace." U.S. Const. art. I, § 6. The requirements for what went into a warrant also differed based on the underlying charge. If the warrant was to summon someone to swear the peace, it needed "to contain the *Special Cause* whereupon it [wa]s granted," whereas if the warrant was "for *Treason*, *Murder* or *Felony*, or other Capital Offence, or for great Conspiracies, Rebellious Assemblies, or the like, it need[ed] not contain any special Cause[.]"

Michael Dalton, *The Country Justice* 401 (1746); *see also* Parker, *supra*, at 459 (same).[11]

The any-crime rule is contrary to all of those tenets. The charge-specific rule thus better comports with the Fourth Amendment's prohibition on "unreasonable" seizures and the "values and purposes" underlying that provision. *See Thompson*, 142 S. Ct. at 1340.

III. The Sixth Circuit's reasons for adopting the any-crime rule do not hold up.

The Sixth Circuit and respondents identified various reasons for adopting the any-crime rule. None survives scrutiny.

1. First, the Sixth Circuit observed that this Court's decision in *Devenpeck v. Alford*, 543 U.S. 146 (2004), dictates that a Fourth Amendment false-arrest claim—that is, a claim that a warrantless arrest was made without probable cause—is governed by the any-crime rule. *See Howse v. Hodous*, 953 F.3d 402, 409 (6th Cir. 2020). It then assumed that "there's no principled reason for treating a Fourth Amendment malicious-prosecution claim"—here, a claim that an arrest pursuant to a warrant was made without

[11] To be sure, many of the more byzantine charge-specific rules have been abrogated in the intervening centuries. But modern Fourth Amendment doctrine in many instances still determines whether a seizure is "reasonable" based on the nature of the underlying charge. *See, e.g.*, *Lange*, 141 S. Ct at 2024 (as a categorical matter, officer may pursue fleeing felon, but not fleeing misdemeanant, into home); *Atwater v. City of Lago Vista*, 532 U.S. 318, 329-32, 341-42 (2001) (police may make warrantless arrest for felony committed outside officers' presence, but leaving open whether the same is true for a misdemeanor).

probable cause—"differently than a Fourth Amendment false-arrest claim," since "both arise under the Fourth Amendment." *Id.*

The Sixth Circuit's reasoning ignores the distinction between seizures pursuant to legal process and warrantless seizures. *Devenpeck* rests on two premises, neither applicable to the malicious-prosecution context. First, when it comes to warrantless arrests, "an arresting officer's state of mind . . . is irrelevant to the existence of probable cause." *Devenpeck*, 543 U.S. at 153. But "unlike the standards governing warrantless arrests, whether an arrest pursuant to a warrant is valid can turn on the mental state of the arresting officer." *Williams v. Aguirre*, 965 F.3d 1147, 1162 (11th Cir. 2020); *see also Franks v. Delaware*, 438 U.S. 154, 171 (1978).

Second, the Constitution doesn't require an officer to inform someone of the reasons he's being taken into custody. *Devenpeck*, 543 U.S. at 155. It would thus be impractical to adopt a charge-specific rule in the false-arrest context: Since an officer needn't announce any charges at all when making a warrantless arrest, it makes sense to allow probable cause for any one offense to insulate the officer from liability. By contrast, in the malicious-prosecution context, an officer necessarily has listed the potential charges against a suspect as part of a warrant application or in pursuit of other legal process. *See Berger v. New York*, 388 U.S. 41, 55-56, 58-59 (1967). And this Court has already held that a warrant may be unconstitutional if supported with "deliberately falsified allegations"—making no mention of whether there might be probable cause for some other charges

not included in the warrant application. *See Franks*, 438 U.S. at 168.[12]

The distinction between Fourth Amendment false-arrest and Fourth Amendment malicious-prosecution claims makes a good deal of sense. A warrantless arrest often occurs in the heat of the moment, with officers making split-second decisions; in those cases, this Court has made a "practical compromise" to defer to "a policeman's on-the-scene assessment." *See Gerstein v. Pugh*, 420 U.S. 103, 113-14 (1975). But a seizure pursuant to legal process by

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[12] Malicious-prosecution cases at common law also squarely rejected *Devenpeck*'s rule that evidence of an uncharged crime could be used to defend against an assertion that one of the listed charges lacked probable cause. *See, e.g.*, *Sutton v. McConnell*, 50 N.W. 414, 415 (Wis. 1879) ("We think no case has been cited which holds that, in an action for malicious prosecution, probable cause therefor is established by proof that, although the act complained of was not an offense, the accused had committed an offense not complained of."); *Hill v. Palm*, 38 Mo. 13, 20 (1866) ("The offence charged against the respondent was larceny, and it was not competent, in support of probable cause, to show that he was guilty of another and different offence."); *Gregory v. Thomas*, 5 Ky. (2 Bibb) 286, 286 (1811) ("The defendant hath set forth in his plea, what causes and grounds of suspicion he had to prosecute the plaintiff; these causes and grounds are properly confined to circumstances connected with the particular charge; the evidence, therefore, to support them must be special, and confined to the particular facts put in issue.") *Hill v. Palm*, 38 Mo. 13, 20 (1866) ("The offence charged against the respondent was larceny, and it was not competent, in support of probable cause, to show that he was guilty of another and different offence.") *Sutton v. McConnell*, 50 N.W. 414, 415 (Wis. 1879) ("We think no case has been cited which holds that, in an action for malicious prosecution, probable cause therefor is established by proof that, although the act complained of was not an offense, the accused had committed an offense not complained of.").

its very nature allows an officer the time to reflect, edit, and confirm before making a representation to a judge. *Malley v. Briggs*, 475 U.S. 335, 343-44 (1986). And the whole point of interposing a judicial officer is to allow a neutral party to weigh the evidence for the listed charges. *See supra* at 31-32. Immunizing an officer for lying about those charges means the neutral magistrate has no opportunity to offer an informed judgment.

2. The Sixth Circuit also assumed that an individual would be "no more seized when he's detained to await prosecution for several charges than if he were seized for just one valid charge." *Howse*, 953 F.3d at 409. But that's simply untrue. As Chief Judge Pryor put the point, "The charges that support a defendant's pretrial detention—that is, the seizure pursuant to legal process—meaningfully affect the existence and duration of that seizure." *Williams*, 965 F.3d at 1161. The specific charges determine the availability and amount of bail as well as the complexity of preparing for trial (a factor which itself might lengthen a defendant's pretrial detention). *Id.*; *see also* Brian J. Ostrom et al., Nat'l Ctr. for State Cts., *Timely Justice in Criminal Cases: What the Data Tells Us* 6 (2020) (average time to disposition for misdemeanor is 193 days; for felony, 256 days). And in virtually every state, the specific charges are a relevant consideration in deciding whether to detain a criminal defendant before trial at all.[13]

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[13] *See, e.g.*, Ohio Rev. Code Ann. § 2937.222 (West 2023); Ala. Code § 15-13-3 (2023); Alaska Stat. Ann. § 12.30.011 (West 2023); Ariz. Rev. Stat. Ann. § 13-3967 (2023); Cal. Penal Code § 1275 (West 2023); Colo. Rev. Stat. Ann. § 16-4-102 (West 2023);

3. In their brief in opposition at the certiorari stage, respondents' primary argument was that Mr. Chiaverini's claim failed because he did not prove that "the unfounded charges changed the nature of [his] seizure or prolonged [his] detention." *See* BIO 13. But respondents never argued that below. *See* Resp. C.A. Br. 40-41, 47. It's not the ground on which the court of appeals resolved the case. Pet. App. 10a & n.8. And it's far afield of the question presented. At issue here is how a plaintiff must prove the lack-of-probable-cause element of a Fourth Amendment malicious-prosecution claim. This Court should hold that the charge-specific rule applies to that element. And it should leave for another case whether prolonged

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Conn. Gen. Stat. Ann. § 54-64a (West 2023); Del. Code Ann. tit. 11, § 2103 (West 2023); D.C. Code Ann. § 23-1325 (West 2023); Fla. Stat. Ann. § 903.046 (West 2023); Ga. Code Ann. § 17-6-1 (West 2023); Haw. Rev. Stat. Ann. § 804-3 (West 2023); 725 Ill. Comp. Stat. Ann. 5/110-6.1 (West 2023); Ind. Code Ann. § 35-33-8-2 (West 2023); Iowa Code Ann. § 811.1 (West 2023); La. Code Crim. Proc. Ann. art. 321 (2023); Md. Code Ann., Crim. Proc. § 5-202 (West 2023); Mass. Gen. Laws Ann. ch. 276, § 57 (West 2023); Mich. Const. art. I, § 15; Miss. Const. art. III, § 29; Mont. Const. art. II, § 21; Neb. Rev. Stat. Ann. § 29-901.01 (West 2023); Nev. Const. art. I, § 7; N.J. Stat. Ann. § 2A:162-12 (West 2023); N.Y. Crim. Proc. Law § 510.10 (McKinney 2023); N.D. Cent. Code Ann. § 29-08-03.1 (West 2023); Or. Rev. Stat. Ann. § 135.240 (West 2023); Pa. Const. art. I, § 14; R.I. Const. art. I, § 9; S.C. Code Ann. § 17-15-10 (2023); S.D. Codified Laws § 23A-43-2 (2023); Tenn. Code Ann. § 40-11-102 (West 2023); Tex. Code Crim. Proc. Ann. art. 17.022 (West 2023); Utah Code Ann. § 77-20-201 (West 2023); Vt. Stat. Ann. tit. 13, § 7553 (West 2023); Va. Code Ann. § 19.2-123 (West 2023); Wash. Const. art. I, § 20; W. Va. Code Ann. § 62-1C-1(a) (West 2023); Wis. Stat. Ann. § 969.01(1)(b)(2) (West 2023); Wyo. R. Crim. Proc. 46.1 (West 2024).

detention is *also* relevant to a Fourth Amendment malicious-prosecution claim.[14]

This also wouldn't be the correct case to consider whether respondents are right about that additional element because Mr. Chiaverini has established that the "unfounded charge[]" *did* "prolong[]" his detention. *See* BIO 13. The arrest warrant for Mr. Chiaverini explicitly stated that it was being issued *because of* the money-laundering charge, the only felony of which police officers accused Mr. Chiaverini. J.A. 16 ("A warrant is being requested due to this charge being a Felony of Third (3rd) degree . . . ."). And consider police officers' treatment of Brent Burns. Burns actually stole the jewelry Mr. Chiaverini was accused of receiving. But because he was charged only with a misdemeanor, he was issued a summons rather than being arrested and detained. *See* R. 102, Page ID # 2755. Absent the unfounded felony charge, then, police officers presumably would have treated Mr. Chiaverini similarly, and he wouldn't have been detained at all.

Because this case doesn't tee up respondents' proposed "length-of-detention" requirement, this

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[14] For example, courts sometimes require a plaintiff to show that the unfounded charges changed the nature of his seizure to collect more than nominal damages. Chief Judge Pryor, for one, has asserted that the question whether "'but for th[e] illegitimate charge, [the plaintiff] would have been released earlier' or would not have faced detention" is at best a damages question, not a question about liability. *Williams*, 965 F.3d at 1161-62 (citation omitted). And the common law of 1871 dealt with the issue similarly. *See, e.g.*, 2 C.G. Addison, *Wrongs and Their Remedies: A Treatise on the Law of Torts* § 860 (4th ed. 1876); *Delisser v. Towne* (1841) 113 Eng. Rep. 1159, 1163 (QB); *Doherty v. Munson*, 127 Mass. 495, 495-96 (1879).

Court should not reach it. Instead, it should answer the question presented by holding that the charge-specific rule applies to the probable-cause element of a Fourth Amendment malicious-prosecution claim.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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