No. 23-50

In The
Supreme Court of the United States

JASCHA CHIAVERINI, ET AL.,

Petitioners,

v.

CITY OF NAPOLEON, ET AL.,

Respondents.

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

BRIEF OF THE INSTITUTE FOR JUSTICE AS AMICUS CURIAE SUPPORTING PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The Institute for Justice (IJ) is a nonprofit public-interest law firm dedicated to supporting judicial protection of individual rights and defending the foundations of a free society. One such foundation is the American people's ability to hold the government and its officials accountable. For this reason, IJ seeks to remove procedural barriers to individuals' enforcement of their constitutional rights.

IJ represents clients in cases seeking government accountability for rights violations,[2] and it regularly files amicus briefs on the topic.[3] For example, IJ represents clients who, like the petitioners here, aim to hold government officials accountable for causing seizures of their person and property through lies. See, *e.g.*, *Yassin* v. *Weyker*, 39 F.4th 1086 (CA8 2022), cert. denied, 143 S. Ct. 779 (2023); *Ahmed* v. *Weyker*, 984 F.3d 564 (CA8 2020).

The Sixth Circuit's decision below denies the petitioners a remedy for the violation of their rights to be free from unreasonable seizures. The decision is based on a rule that the Sixth Circuit alone has

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[1] No counsel for a party authored this amicus brief in whole or in part. No person other than Amicus has made any monetary contributions intended to fund the preparation or submission of this brief. See Sup. Ct. R. 37.6.

[2] See, *e.g.*, *Brownback* v. *King*, 141 S. Ct. 740 (2021); *Gonzalez* v. *Trevino*, No. 22-1025 (cert. granted Oct. 13, 2023); *Rosales* v. *Bradshaw*, 72 F.4th 1145 (CA8 2023).

[3] See, *e.g.*, *Sosa* v. *Martin County*, 144 S. Ct. 88 (2023) (denying certiorari); *Health & Hosp. Corp. of Marion Cnty.* v. *Talevski*, 143 S. Ct. 1444 (2023); *Egbert* v. *Boule*, 142 S. Ct. 1793 (2022); *Thompson* v. *Clark*, 142 S. Ct. 1332 (2022).

adopted. That rule finds no basis in the Fourth Amendment, Section 1983, the common law, or even wise policy. Because the rule adds a procedural barrier to the enforcement of constitutional rights, IJ has an interest in this Court's review of the Court of Appeals' decision.

SUMMARY OF ARGUMENT

Jascha Chiaverini spent several days in jail and had his property seized because officers accused him of money laundering when they had no reasonable ground for believing he was guilty of that crime. Pet. App. 25a. The seizures were thus unreasonable and violated the petitioners' Fourth Amendment rights.

Congress has provided a remedy: "Every person" who, under color of state law, "subjects, or causes to be subjected" another person "to the deprivation of any rights * * * secured by the Constitution and laws, shall be liable to the party injured." 42 U.S.C. 1983.

But the Sixth Circuit denied this remedy to the petitioners based on the circuit's so-called any-crime rule: A plaintiff who was seized in violation of the Fourth Amendment cannot recover under Section 1983 if there was probable cause to believe the plaintiff committed any alleged crime. See *Howse* v. *Hodous*, 953 F.3d 402, 409–410 (CA6 2020). This rule, which split the Sixth Circuit from its sister courts, runs counter not only to the Fourth Amendment and Section 1983, but also to the common law as of 1871 (when Section 1983 was enacted) and prudent policy.

It runs counter to the Fourth Amendment and Section 1983 because the text and purpose of both require courts to hold officers to account if their false

accusations caused or aggravated a seizure. But the any-crime rule gives false accusers an out: tack on some other offense that could be charged legitimately, no matter how petty.

The any-crime rule runs contrary to the common law because under a well-established common-law principle, a plaintiff could proceed with his claim by proving the absence of probable cause for at least one charge brought against him.

This common-law principle makes sense. An officer who seized a person based on a groundless charge may not skirt liability by attaching a legitimate accusation that the person broke some other law. But the Sixth Circuit's any-crime rule allows such nonsense. As a result, plaintiffs in Kentucky, Michigan, Ohio, and Tennessee face an additional, unjustified barrier when seeking redress for the kind of Fourth Amendment violation at issue here.

ARGUMENT

Petitioner Jascha Chiaverini spent nearly four days in jail, had his property seized, and had his reputation shot because officers lied to obtain warrants founded at least in large part on an allegation of felony money laundering. Chiaverini and his business sued the responsible state actors for violating their Fourth Amendment rights. But the Sixth Circuit held that Chiaverini's claims could not proceed because the officers had reason to believe he was guilty of *other* crimes. The Court of Appeals' decision was misguided from start to finish.

Because Fourth Amendment rights are the basis for the petitioners' claims, the Fourth Amendment is

the starting point to determine whether the claims can proceed. The next place to look is the text and purpose of Section 1983, which provides a remedy for violations of constitutional rights at the hands of state actors. If those two provisions weren't enough, common-law principles point in the same direction, and sensible policies affirm the results.

I. The text and purpose of the Fourth Amendment and Section 1983 compel rejection of the Sixth Circuit's any-crime rule.

The petitioners' claims, like all claims under 42 U.S.C. 1983, arise from violations of rights guaranteed by the Constitution or other federal laws. That is why the Constitution is the first place courts should look when figuring out whether Section 1983 claims can proceed. See *Manuel* v. *City of Joliet*, 580 U.S. 357, 370 (2017) (observing that "the threshold inquiry in a § 1983 suit * * * requires courts to 'identify the specific constitutional right' at issue"). But instead of focusing on Fourth Amendment reasonableness and the enforcement aim of Section 1983, the Sixth Circuit's any-crime rule obscures the issue, asking whether state actors who made false accusations also made legitimate ones.

A. The Fourth Amendment protects against seizures caused by an officer's unreasonable accusation that a person committed a crime.

The petitioners' claims rest specifically on violations of the Fourth Amendment. The Fourth Amendment promises that "[t]he right of the people to be

secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. It also insists 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." *Ibid.*

The "ultimate touchstone of the Fourth Amendment is 'reasonableness,'" *Riley* v. *California*, 573 U.S. 373, 381–382 (2014) (citation omitted), and "[t]he basic purpose of this Amendment * * * is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials," *Carpenter* v. *United States*, 138 S. Ct. 2206, 2213 (2018) (citation and quotation marks omitted).

With this text and purpose, it is no surprise that seizures following a warrant or other criminal process can violate the Fourth Amendment. *Manuel*, 580 U.S. at 368–369. After all, a warrant, by itself, does not make a seizure reasonable. Reasonableness comes only from "a reasonable ground for belief of guilt." *Maryland* v. *Pringle*, 540 U.S. 366, 371 (2003). And warrants may be issued improperly, without a valid finding of probable cause. See *Franks* v. *Delaware*, 438 U.S. 154 (1978).[4] In other words, "'seizures are "reasonable" only if based on probable cause' to

[4] See also *Manuel*, 580 U.S. at 367 ("The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause. That can happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it also can occur when legal process itself goes wrong—when, for example, a judge's probable-cause determination is predicated solely on a police officer's false statements.").

believe that the individual has committed a crime." *Bailey* v. *United States*, 568 U.S. 186, 192 (2013).

Probable cause also "must be particularized" to the alleged crimes. *Pringle*, 540 U.S. at 371. Otherwise, the seizure (like the warrant for it) was not in fact "based" on a reasonable belief of guilt. This is perhaps easiest to see when the absence of probable cause for a crime clearly affected the length of a person's confinement.[5] A couple of examples are illustrative.

Imagine officers framed a man for battery and burglary though they had no reason to believe he was guilty of either crime, and he was held on a warrant as a result. The detention obviously lacked a basis in probable cause and was unreasonable.

An unreasonable seizure likewise exists when a person was accused of two crimes, only one charge stood on probable cause, and the person would have been released sooner without the baseless charge. For instance, imagine a man was jailed for six days on a warrant, facing charges of battery and burglary, but only the battery charge stood on probable cause, and the man would have been released three days earlier without the baseless burglary charge. The first three days in jail were based on a reasonable belief of guilt, but the next three days were not. So only the first three days were reasonable. Days four, five, and six were unreasonable, offending the Fourth

[5] This is not to say Fourth Amendment injuries lie only in time spent detained by government actors, see, *e.g.*, *Marrero* v. *City of Hialeah*, 625 F.2d 499, 513–514 & n.19 (CA5 1980), or that subjecting a person or property to an unreasonable search or seizure is the only way to offend the Fourth Amendment. After all, the Warrants Clause makes its own specific demands.

Amendment. Cf. *Rodriguez* v. *United States*, 575 U.S. 348, 354–355 (2015) (Fourth Amendment prohibits a police officer, after stopping a motorist on reasonable suspicion of a crime, from prolonging the stop to investigate a different crime for which the officer lacks reasonable suspicion was committed); *Maryland* v. *Garrison*, 480 U.S. 79, 86–87 (1987) (Fourth Amendment prohibits officers from continuing to search wrong apartment unit "as soon as" they "were put on notice of the risk that they might be in a unit erroneously included within the terms of the warrant"); *United States* v. *Place*, 462 U.S. 696, 698, 709–710 (1983) (initial seizure of luggage was reasonable, but prolonged 90-minute period of detention that followed was not).

How do we know which restraints on a person's freedom were based on probable cause and which were not? That is a question of causation and damages. As in any civil case, the plaintiff must show that the defendants caused the alleged injuries. See *Thompson* v. *Clark*, 142 S. Ct. 1332, 1337 n.2 (2022). But one way a plaintiff suffers a Fourth Amendment injury is by being seized—at all—based on an unreasonable belief of guilt. That much is established by proving that at least one charge brought against him lacked support in probable cause.[6]

B. Section 1983 provides a remedy for unreasonable seizures.

When, like here, a person has suffered a violation of the Fourth Amendment right to be free from

[6] Even if the plaintiff shows no more than this, he is entitled to nominal damages. See *Carey* v. *Piphus*, 435 U.S. 247, 266–267 (1978).

unreasonable seizures, Section 1983 provides a remedy, common-law defenses "notwithstanding." Civil Rights Act of 1871, ch. 22 § 1, 17 Stat. 13 (1871).

Section 1983 was passed as part of "the new structure of law that emerged in the post-Civil War era." *Mitchum* v. *Foster*, 407 U.S. 225, 238–239 (1972). That new structure had the Fourteenth Amendment as its centerpiece and "the Federal Government as a guarantor of basic federal rights against state power." *Ibid.* State courts at the time were notorious for being either "powerless to stop deprivations" or "in league with those who were bent upon abrogation of federally protected rights." *Id.* at 240.

In response, the Reconstruction Congress passed the Civil Rights Act of 1871 (now referred to as Section 1983), which was designed "to enforce the Provisions of the Fourteenth Amendment to the Constitution." *Monroe* v. *Pape*, 365 U.S. 167, 171 (1961) (citation omitted), overruled in part by *Monell* v. *Dep't of Soc. Servs.*, 436 U.S. 658 (1978). It did so by "open[ing] the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution." *Mitchum*, 407 U.S. at 239. The text enacted in 1871 read:

> [A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, *any such*

> *law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding*, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress * * * .

Civil Rights Act of 1871, ch. 22 § 1, 17 Stat. 13 (1871) (emphasis added). The italicized clause makes explicit and clear that the statute is categorical: state actors who violate federal constitutional rights are liable, regardless of whether state law otherwise provides them some excuse, defense, or justification.

There is thus no need for "unwritten, gap-filling implications, importations, or incorporations." *Rogers* v. *Jarrett*, 63 F.4th 971, 980 (CA5 2023) (Willett, J., concurring); see also *Price* v. *Montgomery County*, 72 F.4th 711, 727 n.1 (CA6 2023) (Nalbandian, J., concurring in part and in judgment). Extra-textual rules narrowing the availability of recovery have emerged from a long-unnoticed and unauthorized alteration to Congress's language. The Reviser of the Federal Statutes omitted—without Congressional imprimatur—the "notwithstanding" clause when compiling the federal laws in 1874. See 2 Cong. Rec. 4220 (1874) (Sen. Conkling) (explaining that in condensing many volumes of law into one, the intention was "to preserve absolute identity of meaning" in the consolidated law). That error has carried into the published United States Code. But the deletion was not by congressional pen. See 2 Cong. Rec. 129 (1873) (Rep. Butler) ("We have not attempted to change the law, in a single word or letter, so as to make a different meaning or different sense."). So the original "notwithstanding"

clause remains textual evidence that Congress abrogated common-law defenses.

Even without the "notwithstanding" clause, though, there is no doubt that Section 1983 exists "to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt* v. *Cole*, 504 U.S. 158, 161 (1992). And as a remedial statute, it is "well settled that § 1983 must be given a liberal construction." *Lake Country Estates, Inc.* v. *Tahoe Reg'l Planning Agency*, 440 U.S. 391, 399–400 (1979).

The result is that when a person has suffered a violation of a Fourth Amendment right, Section 1983 provides a remedy.

C. The Sixth Circuit's any-crime rule runs counter to the Fourth Amendment and Section 1983.

The any-crime rule undermines the Fourth Amendment by foreclosing a remedy for certain violations of the right to be free from unreasonable seizures. It specifically allows seizures animated by groundless charges—that is, unreasonable seizures—to go unredressed, so long as a defendant has identified some other crime for which there is probable cause to believe the accused person committed.

To borrow this Court's reasoning in *Thompson*, "[t]he question of whether a criminal defendant was wrongly charged does not logically depend on whether" those charges were accompanied by legitimate ones. 142 S. Ct. at 1340. "And the individual's ability to seek redress for a wrongful prosecution

cannot reasonably turn on the fortuity of whether the prosecutor" or officer chose to forgo minor charges supported by probable cause, *ibid.*—like driving 1 mile per hour over the speed limit,[7] improperly using turn signals,[8] failing to completely stop at a stop sign,[9] jaywalking,[10] or riding a bicycle on the sidewalk.[11] Indeed, a months- or years-long seizure based on groundless charges for murder cannot, under past or current common understandings, be anything but unreasonable. And it is not made reasonable by the existence of probable cause to believe the detainee committed a petty traffic offense.

Likewise, nothing in Section 1983's text (with or without the Reviser's unauthorized edit in 1874) suggests that plaintiffs must disprove probable cause for every criminal allegation a defendant raises. The statute says that a plaintiff may sue for "the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. 1983. A deprivation of rights secured by the Fourth Amendment occurs when a person is unreasonably seized through legal process. See *Manuel*, 580 U.S. at 367–368. And a person is unreasonably seized through legal process when a charge on which the seizure is based lacks support in "a

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[7] *E.g.*, *United States* v. *Fuehrer*, 844 F.3d 767 (CA8 2016) (probable cause supported detention based on radar reading that motorist was traveling 1 mile per hour over the speed limit).

[8] *E.g.*, La. Stat. § 32:104.

[9] *E.g.*, *United States* v. *Macklin*, 819 Fed. Appx. 372 (CA6 2020).

[10] *E.g.*, Cal. Veh. Code § 21955.

[11] *E.g.*, Ala. Stat. §§ 32-1-1.1; 32-5A-52.

reasonable ground for belief of guilt"—that is, probable cause. *Pringle*, 540 U.S. at 371; see *supra* Part I.A.

Section 1983's "principal purpose * * * was to provide a federal forum for civil rights claims." *Will* v. *Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). The statute was not created to reduce the federal courts' caseload or to allow rights-violating actors to insulate themselves from liability when they lie to lock someone up on baseless charges. But that's exactly what the any-crime rule does and allows.

As a result, the any-crime rule offends the text and purpose of the Fourth Amendment and Section 1983. That is reason enough to eliminate the rule.

II. Neither the common law nor sound policy justify the Sixth Circuit's any-crime rule.

The common law and sensible policy provide two more reasons to reject the Sixth Circuit's approach.

This Court has developed a habit of trying to read Section 1983 "in harmony" with general common-law principles that existed in 1871. *Imbler* v. *Pachtman*, 424 U.S. 409, 418 (1976). The congressionally enacted text of Section 1983—with its "notwithstanding" clause—confirms that some of this Court's reliance on the common law has been misguided. In particular, Congress explicitly abrogated common-law defenses when enacting Section 1983. See *supra* Part I.B.; Civil Rights Act of 1871 (making rights-violating actors liable "any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding"); *W. Union Tel. Co.* v. *Call Pub. Co.*, 181 U.S. 92, 102 (1901) (observing that "usages and customs" "form the common law").

But regardless of this Court's faulty textual premise for incorporating certain common-law principles into Section 1983 actions,[12] the any-crime rule finds no support in this Court's common-law approach. That approach entails first identifying the most analogous tort as of 1871 and then discerning "common-law principles that were well settled" then. *Kalina* v. *Fletcher*, 522 U.S. 118, 123 (1997). If the prevailing common-law rule is consistent with the "values and purposes" of the constitutional provision at issue, Section 1983 incorporates the common-law rule. *Thompson*, 142 S. Ct. at 1340 (quoting *Manuel*, 580 U.S. at 370). The Sixth Circuit's any-crime rule does not come from well-settled common-law principles for the analogous tort, and it is inconsistent with the values and purposes of the Fourth Amendment.

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[12] One such principle is qualified immunity. See generally Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 201, 234–241 (2023). The congressionally enacted text for Section 1983 refutes the idea that Congress meant to incorporate common-law immunity defenses. Still, this Court has departed from any common-law foundation for qualified immunity. In *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), the Court "completely reformulated qualified immunity along principles not at all embodied in the common law." *Anderson* v. *Creighton*, 483 U.S. 635, 645 (1987). Instead, the Court's modern qualified-immunity precedents represent "precisely the sort of 'freewheeling policy choice[s]'" that are not for the Courts to make. *Ziglar* v. *Abbasi*, 582 U.S. 120, 159–160 (2017) (Thomas, J., concurring in part and in judgment).

A. The common law points to the rule that a claim can proceed when the plaintiff shows at least one charged crime lacked a basis in a reasonable belief the plaintiff was guilty.

This Court has charted a two-step analysis to help figure out whether a Section 1983 claim can proceed. The first step involves identifying the most closely analogous common-law tort. Here the closest analogue is malicious prosecution. That is because the claims' gravamen is that the seizures lacked a basis in lawful authority—because they rested on charges lacking probable cause.[13] See *Wallace* v. *Kato*, 549 U.S. 384, 389–390 (2007) (recognizing that the common-law tort of false imprisonment "ends once the victim becomes held *pursuant to* [legal] *process*," at which time "unlawful detention forms part of the damages for the 'entirely distinct' tort of malicious prosecution, which remedies detention accompanied, not by absence of legal process, but by *wrongful institution* of legal process" (citations omitted)); Thomas Cooley, *Law of Torts* at 181 (1879) (setting out the elements for malicious prosecution: "1. A suit or proceeding has been instituted without any probable cause therefor. 2. The motive in instituting it was malicious. 3. The prosecution has terminated in the acquittal or discharge of the accused.").

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[13] This contrasts with the distinct tort for abuse of process. Whereas malicious prosecution was the malicious institution of proceedings "without probable cause therefore," Thomas Cooley, *The Law of Torts* 181 (1879), abuse of process lay in lawful process "willfully abused to accomplish some unlawful purpose," *id.* at 190.

As Chief Judge Pryor explained upon surveying the relevant history, "[a]t common law, probable cause was specific to each accusation." *Williams* v. *Aguirre*, 965 F.3d 1147, 1160 (CA11 2020).[14] That is, "accusers could not shield themselves from liability by establishing probable cause for other charges" or uncharged crimes. *Id.* at 1160–1161. English and American courts agreed on this rule. *Ibid.* (collecting cases).[15] One contemporary treatise explained it clearly:

> 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 malicious prosecution in respect of the charges of which he was acquitted []. The question whether there was or was not probable cause for some parts of the charge would affect the

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[14] See also Thomas Cooley, *The Law of Torts* 182 n.2, 183 (1879) (explaining that "[t]here should be such a state of facts and circumstances as would induce men of ordinary prudence and conscience to believe the charge to be true" and that the accuser "shall act as a reasonable and prudent man would be likely to act under like circumstances").

[15] See, *e.g.*, *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."); *Barron* v. *Mason*, 31 Vt. 189, 198 (1858) ("[T]he 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."); *Ellis* v. *Abrahams*, 115 Eng. Rep. 1039, 1041 (1846).

> amount of damages recoverable, but not the plaintiff's right to a verdict [].

2 C.G. Addison, *A Treatise on the Law of Torts* 541 (1864); see also *Delisser* v. *Towne*, 113 Eng. Rep. 1159, 1163 (1841) (explaining that when part of the action was wanting in probable cause, probable cause for other parts "would affect the damages, but could not affect the verdict, or shew that the defendant had properly preferred the indictment, that is, with probable cause for every part of it").

The Sixth Circuit imported the any-crime rule from the common-law tort for false arrest, which consisted of a detention without legal process. See *Wallace*, 549 U.S. at 388–389 (recognizing that false arrest and false imprisonment were virtually synonymous). Setting aside any wisdom of the any-crime rule in the false-arrest context, the common law drew a sharp division between the tort of false arrest and the "entirely distinct" tort of malicious prosecution. *Ibid.* (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* § 119, at 885–886 (5th ed. 1984)). If a court is going to look at a rule from common-law false arrest or common-law malicious prosecution, the court should also heed the settled principle that false-arrest claims were treated differently from malicious-prosecution claims—at least to the extent doing so is consistent with the values and purposes of Section 1983 and the rights it enforces.

Emphasizing the point, common-law courts rejected the any-crime rule as threatening to make "almost a mockery" of malicious prosecution, which sought to remedy the injurious consequences of false accusations. The tort would not effectively further

that goal if defendants could "escape liability" by uniting groundless accusations with those for which probable cause might exist. *Boogher* v. *Bryant*, 86 Mo. 42, 50 (1885).

The common-law rule for malicious prosecution is consistent with "the values and purposes" of the Fourth Amendment and Section 1983. *Manuel*, 580 U.S. at 370. It allows plaintiffs to hold state actors liable for seizing them or their property without a reasonable basis to believe the plaintiff was guilty of the alleged crime(s). See *supra* Parts I.A., I.B. The any-crime rule is inconsistent with the values and purposes of the Fourth Amendment and Section 1983 because it allows officers to easily escape liability for unreasonably seizing people and property. See *supra* Part I.C. Indeed, little creativity is needed to see how state officials in the Reconstruction-era South would abuse the any-crime rule to circumvent Section 1983. Thus, common-law principles as of 1871 do not endorse the Sixth Circuit's adoption of the any-crime rule.

B. The Sixth Circuit's any-crime rule allows dishonest officers to insulate themselves from liability when they cause unreasonable seizures based on fabricated evidence and lies.

Finally, the any-crime rule is an affront to sensibility and accountability. It hands defendants an easy way to avoid liability for subjecting another person to an unreasonable seizure. To avoid liability, officers procuring a warrant need only identify one crime on which the accused person could be validly detained; they could lie to establish probable cause for more

serious crimes and be insulated from liability because they truthfully accused the person of a minor crime.

There is sadly no doubt that rights-violating actors would take advantage. Officers who fabricated evidence to detain people on false charges have already asserted variations of the any-crime rule. For example, in *Williams*, the defendants who fabricated evidence and caused the plaintiff's detention on unfounded charges of attempted murder argued that probable cause on a different crime shielded them from liability. 965 F.3d at 1155. The Eleventh Circuit rightly disagreed. Defendants made similar arguments in *Johnson* v. *Knorr*, 477 F.3d 75 (CA3 2007), *Holmes* v. *Village of Hoffman Estates*, 511 F.3d 673 (CA7 2007), and *Posr* v. *Doherty*, 944 F.2d 91, 100 (CA2 1991). And the number of cases in which officers could bring any-crime arguments is large, as the petitioners' count confirms. Pet. at 26.

Finally, where the any-crime rule ends is anybody's guess. The Sixth Circuit may have limited its any-crime rule to charged offenses, see *Howse*, 953 F.3d at 410, but the *Williams* court understood the any-crime rule to be broader, and officers have argued that they can escape liability by identifying any crime the accused is reasonably believed to have committed, charged or not. See 965 F.3d at 1161. The logic that the Sixth Circuit used to adopt the any-crime rule certainly does not turn on whether or what charges were listed in an indictment, information, or warrant application. As a result, we have no assurance that the Sixth Circuit's approach will go no further in undermining Fourth Amendment rights and the purpose of Section 1983.

CONCLUSION

The Sixth Circuit's any-crime rule offends the text and aims of the Fourth Amendment and Section 1983, and it finds no justification in the common law or sound policy. The Court should reverse the Sixth Circuit's decision to ensure that victims of unreasonable seizures may obtain redress under Section 1983, as the Reconstruction Congress expressly intended.

February 7, 2024

Respectfully submitted,

/s/ Marie Miller

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