No. 23-50

In the Supreme Court of the United States

JASCHA CHIAVERINI, ET AL.,
PETITIONERS

v.

CITY OF NAPOLEON, OHIO, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

JEFFREY T. GREEN
CO-CHAIR, NACDL AMICUS COMMITTEE
1660 L Street NW, 12th Floor
Washington, DC 20036

ZACHARY D. TRIPP
Counsel of Record
JOSHUA M. WESNESKI
SEBASTIAN LAGUNA
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
zack.tripp@weil.com

TABLE OF CONTENTS

Interest of *amicus curiae* 1
Summary of argument 2
Argument 4
I. The "any-crime" rule fails to allow recovery for prolonged seizures 4
II. The Warrant Clause undermines the "any-crime" rule 10
III. The "any-crime" rule incentivizes Fourth Amendment violations 14
Conclusion 17

TABLE OF AUTHORITIES

Page(s)

Cases

Albright v. *Oliver*,
510 U.S. 266 (1994) 8, 9

Ali v. *Bureau of Prisons*,
552 U.S. 214 (2008) 5

Barker v. *Wingo*,
407 U.S. 514 (1972) 7

Boyd v. *United States*,
116 U.S. 616 (1886) 12, 13

California v. *Hodari D.*,
499 U.S. 621 (1991) 8

Davis v. *United States*,
564 U.S. 229 (2011) 14

Entick v. *Carrington*
(1765) 95 Eng. Rep. 807 (K.B.) 13

Florida v. *Royer*,
460 U.S. 491 (1983) 5

Frank v. *Maryland*,
359 U.S. 360 (1959) 13

Franks v. *Delaware*,
438 U.S. 154 (1978) 3, 11, 12

Gallo v. *City of Philadelphia*,
161 F.3d 217 (3d Cir. 1998) 16

Gerstein v. *Pugh*,
420 U.S. 103 (1975)... 3, 7

Howse v. *Hodous*,
953 F.3d 402 (6th Cir. 2020).................................. 9

Huckle v. *Money*
(1763) 95 Eng. Rep. 768 (K.B.) 12, 13

Lafler v. *Cooper*,
566 U.S. 156 (2012).. 9

Marron v. *United States*,
275 U.S. 192 (1927).. 13

Martinez v. *California*,
444 U.S. 277 (1980).. 16

Molina-Martinez v. *United States*,
578 U.S. 189 (2016).. 10

Nieves v. *Bartlett*,
139 S. Ct. 1715 (2019) 15

Ohio v. *Robinette*,
519 U.S. 33 (1996).. 5

Rodriguez v. *United States*,
575 U.S. 348 (2015)............................... 3, 5, 10, 16

Scott v. *Harris*,
550 U.S. 372 (2007).. 8

Stanford v. *Texas*,
379 U.S. 476 (1965) 12

Thompson v. *Clark*,
596 U.S. 36 (2022) 2, 3, 15, 16

United States v. *Leon*,
468 U.S. 897 (1984) 14

United States v. *Salerno*,
481 U.S. 739 (1987) 6

Uzuegbunam v. *Preczewski*,
141 S. Ct. 792 (2021) 16

Wilkes v. *Wood*
(1763) 98 Eng. Rep. 489 (K.B.) 13

Williams v. *Aguirre*,
965 F.3d 1147 (11th Cir. 2020) 7

Constitutional Provisions

U.S. Const. amend. IV 4, 10

Ala. Const. art. I, § 16 6

Alaska Const. art. 1, § 11 6

Cal. Const. art. 1, § 12 6

Conn. Const. art. 1, § 8 6

Fla. Const. art. 1, § 14 6

Haw. Const. art. 1, § 12 6
Idaho Const. art. 1, § 6 6
Ill. Const. art. 1, § 9 6
Ind. Const. art. 1, § 17 6
Iowa Const. art. 1, § 12 6
Kan. Const. Bill of Rights § 9 6
Ky. Const. § 16 6
La. Const. art. 1, § 18 6
Me. Const. art. 1, § 10 6
Mo. Const. art. 1, §§ 20, 21 6
Mont. Const. art. II, § 21 6
Neb. Const. art. 1, § 9 6
N.D. Const. art. 1, § 11 6
Ohio Const. art. I, § 9 6
Okla. Const. art. II, §§ 8, 9 6
Utah Const. art. 1, § 8 6
Vt. Const. ch. II, § 40 6

Statutes

42 U.S.C. 1983 .... 5, 17

Bail Reform Act of 1984, 18 U.S.C. 3142 5

Ohio Rev. Code Ann. § 2937.222 6

Other Authorities

Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 Harv. L. Rev. 2463 (2004) 9

Thomas K. Clancy, *The Role of Individualized Suspicion*, 25 U. Mem. L. Rev. 483 (1995) 13, 14

Lauryn P. Gouldin, *Disentangling Flight Risk from Dangerousness*, 2016 B.Y.U. L. Rev. 837 6

Silas J. Wasserstrom, *The Incredible Shrinking Fourth Amendment*, 21 Am. Crim. L. Rev. 257 (1984) 12

Samuel R. Wiseman, *Fixing Bail*, 84 Geo. Wash. L. Rev. 417 (2016) 6

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae the National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit, voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct.

Founded in 1958, NACDL has a rich history of promoting education and reform through support of America's criminal defense bar, *amicus curiae* advocacy, and projects designed to advance the proper, efficient, and

[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus* and its counsel made a monetary contribution to its preparation or submission. S. Ct. Rule 37.6.

fair administration of justice. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges.

NACDL is dedicated to advancing the just, efficient, and proper administration of justice, including the administration of federal criminal law. NACDL files numerous *amicus curiae* briefs each year in this Court and other courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

NACDL has an interest in this case because it concerns the Fourth Amendment right to be free from unreasonable seizures. NACDL has a strong interest in ensuring that criminal defendants are not wrongfully seized without probable cause, and Section 1983 is an important deterrent measure against such seizures. Full and rigorous enforcement of Fourth Amendment rights under Section 1983 is therefore crucial to NACDL's interests.

SUMMARY OF ARGUMENT

When determining the elements for a Fourth Amendment claim under Section 1983, there are two steps. First, a court must "look to the elements of the most analogous tort as of 1871 when § 1983 was enacted." *Thompson* v. *Clark*, 596 U.S. 36, 43 (2022). Second, courts apply that common-law rule so long as doing so is consistent with the "values and purposes" of the Fourth Amendment. *Ibid.* This brief addresses the second step.

The "any-crime" rule endorsed by the Sixth Circuit is an artificial, categorical rule of immunity that conflicts with several aspects of the Fourth Amendment. The

common-law "charge-specific" rule is the more accurate embodiment of Fourth Amendment principles and should control under Section 1983.

This Court has explained that the gravamen of a Fourth Amendment malicious prosecution claim is the "wrongful initiation of charges without probable cause." *Thompson*, 596 U.S. at 43. The "any-crime" rule asserts that the government may wrongfully initiate multiple baseless charges against a defendant so long as a single charge is supported by probable cause. The any-crime rule is a judicially-crafted rule of immunity that conflicts with the Fourth Amendment by imposing a categorical bar to recovery for certain Fourth Amendment violations. This Court has made clear that probable cause is required "as a condition for any significant pretrial restraint of liberty." *Gerstein* v. *Pugh*, 420 U.S. 103, 125 (1975). But the any-crime rule artificially restricts its analysis to a defendant's physical detention and rejects the possibility that additional baseless charges could ever affect a defendant's seizure. See *Rodriguez* v. *United States*, 575 U.S. 348, 350–51 (2015). As a result, the rule violates the Fourth Amendment's requirements.

The Fourth Amendment's Warrant Clause further cautions against adoption of the any-crime rule. The Warrant Clause is the bulwark of the Fourth Amendment and prevents officials from relying on falsehoods to obtain warrants. *Franks* v. *Delaware*, 438 U.S. 154, 164 (1978). The any-crime rule, however, allows such misconduct. Moreover, the history of the Warrant Clause establishes the broad opposition to general warrants, which allowed officials to search and seize with broad discretion. This opposition led the Founders to

adopt the Fourth Amendment, and specifically the Warrant Clause's particularity requirement, which limits official discretion and prevents officials from relying on falsehoods. The Warrant Clause thus demonstrates how far the any-crime rule diverges from the Fourth Amendment and provides an independent basis to reject the any-crime rule's categorical approach.

The any-crime rule also undermines bedrock Fourth Amendment principles. Rather than deterring unconstitutional conduct, the rule provides incentives for rogue officials to initiate baseless charges for arbitrary reasons. Other elements of a Section 1983 claim—such as causation and damages—are sufficient to protect against meritless claims.

Taken together, there is no sound basis for this Court to adopt the categorical bar imposed by the any-crime rule given its theoretical defects and serious inconsistencies with the Fourth Amendment.

ARGUMENT

The initiation of baseless charges may impose significant pretrial restraints that amount to seizures under the Fourth Amendment—including physical detention, travel restrictions, required appearances, and other significant deprivations of liberty. When these seizures are unsupported by probable cause, they violate the Fourth Amendment.

I. The "Any-Crime" Rule Fails to Allow Recovery for Prolonged Seizures

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. It is well-settled that a

warrantless seizure of *any* length without adequate suspicion is unreasonable and violates the Fourth Amendment. *Rodriguez*, 575 U.S. at 350–51 (concluding that a minor extension of a traffic stop beyond the time reasonably required to complete the stop was unlawful). As the Court explained in *Rodriguez*, a warrantless seizure "may last no longer than is necessary to effectuate [its] purpose," and even a modest extension of an otherwise lawful seizure violates the Fourth Amendment. *Id.* at 354 (simplified). And Section 1983's plain language provides a cause of action for "the deprivation of *any* rights, privileges, or immunities secured by the Constitution." 42 U.S.C. 1983 (emphasis added). "[R]ead naturally," the word "any" has "an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali* v. *Bureau of Prisons*, 552 U.S. 214, 219 (2008) (citation omitted).

To properly evaluate whether a seizure is reasonable, this Court has "consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry." *Ohio* v. *Robinette*, 519 U.S. 33, 39 (1996); see also *Florida* v. *Royer*, 460 U.S. 491, 506 (1983) (recognizing the "endless variations in the facts and circumstances" implicating the Fourth Amendment). The any-crime rule's fatal defect is that it requires courts to blind themselves to what actually happens to a defendant—crudely relying on probable cause for any one valid charge to authorize any seizure, even a seizure supported only by another baseless charge.

That categorical rule ignores the many ways in which the assertion of baseless charges in addition to ones supported by probable cause can affect a defendant's pretrial seizure. For example, whether a defend-

ant is detained or released on bail often turns on the nature and severity of the charges brought against him. Under federal law, the Bail Reform Act of 1984, 18 U.S.C. 3142(g)(1), requires courts to analyze the "nature and circumstances of the offense charged" and "whether the offense is a crime of violence" when determining whether to order pretrial detention. See *United States* v. *Salerno*, 481 U.S. 739, 742–43 (1987). Many states have adopted similar requirements.[2] See Lauryn P. Gouldin, *Disentangling Flight Risk from Dangerousness*, 2016 B.Y.U. L. Rev. 837, 866 (describing state bail schedules that are "based exclusively on the charged offense"); Samuel R. Wiseman, *Fixing Bail*, 84 Geo. Wash. L. Rev. 417, 447 (2016) (concluding that 64 percent of judges in large counties rely on bail schedules). Ohio law, for instance, expressly requires courts to analyze the nature and circumstances of the charged offenses when assessing whether to authorize bail, including whether the offenses involved violence or the use of illicit drugs or alcohol. See Ohio Const. art. I, § 9; see also Ohio Rev. Code Ann. § 2937.222(C)(1). As a result, the addition of a baseless charge—particularly for a violent or otherwise serious crime—can significantly extend an individual's physical seizure in violation of the Fourth Amendment.

[2] See, *e.g.*, Ala. Const. art. I, § 16; Alaska Const. art. 1, § 11; Cal. Const. art. 1, § 12; Conn. Const. art. 1, § 8; Fla. Const. art. 1, § 14; Haw. Const. art. 1, § 12; Idaho Const. art. 1, § 6; Ill. Const. art. 1, § 9; Ind. Const. art. 1, § 17; Iowa Const. art. 1, § 12; Kan. Const. Bill of Rights § 9; Ky. Const. § 16; La. Const. art. 1, § 18; Me. Const. art. 1, § 10; Mo. Const. art. 1, §§ 20, 21; Mont. Const. art. II, § 21; Neb. Const. art. 1, § 9; N.D. Const. art. 1, § 11; Okla. Const. art. II, §§ 8, 9; Utah Const. art. 1, § 8; Vt. Const. ch. II, § 40.

The any-crime rule's categorical approach jettisons any inquiry into the nature of the baseless offenses, instead rejecting the possibility that a baseless charge could ever lead to a prolonged seizure. As a result, the any-crime rule allows unscrupulous officials to initiate baseless felony charges which ensure that a defendant remains detained pending trial. In such situations, the nature of the defendant's seizure has clearly changed.

The recent case of *Williams* v. *Aguirre*, 965 F.3d 1147 (11th Cir. 2020), highlights the problem. In *Williams*, officials initiated a baseless attempted murder charge against the defendant when probable cause only supported a firearm concealment charge. *Id.* at 1152. As a result of the baseless attempted murder charge, the defendant "spent longer in pretrial detention—more than 16 months—than the maximum one-year sentence of imprisonment he could have received if a jury convicted him of the 'other' crime—carrying a concealed firearm without a permit." *Id.* at 1161. Such a lengthy pretrial seizure imposes severe consequences. The deprivation of physical liberty is immediate. And as this Court has long recognized, extended pretrial detention "has a destructive effect on human character and makes the rehabilitation of the individual offender much more difficult." *Barker* v. *Wingo*, 407 U.S. 514, 520 (1972) (simplified).

While such examples are striking, this Court need not focus on seizures caused by physical detention alone. Since this Court's seminal decision in *Gerstein* v. *Pugh*, 420 U.S. 103 (1975), the Fourth Amendment has been understood to require probable cause "as a condition for any significant pretrial restraint of liberty." *Id.* at 125. In *Gerstein*, the Court emphasized that there are "many

kinds of pretrial release and many degrees of conditional liberty." *Id.* at 125 n.26. And a baseless charge offends the Fourth Amendment when it imposes "significant pretrial restraint[s]" on a defendant's liberty. *Id.* at 125. Seizures thus need not involve physical detention. *California* v. *Hodari D.*, 499 U.S. 621, 625–27 (1991); see also *Scott* v. *Harris*, 550 U.S. 372, 381 (2007) ("[A] Fourth Amendment seizure [occurs] … when there is a governmental termination of freedom of movement through means intentionally applied."). In cases where the initiation of baseless charges against a defendant imposes significant pretrial restraints other than physical seizure, the addition of baseless charges further violates the Fourth Amendment.

History and tradition strongly supports that rule. "At common law, an arrested person's seizure was deemed to continue even after release from official custody." *Albright* v. *Oliver*, 510 U.S. 266, 277–78 (1994) (Ginsburg, J., concurring) (quoting 2 M. Hale, Pleas of the Crown *124 ("he that is bailed, is in supposition of law still in custody, and the parties that take him to bail are in law his keepers"); 4 W. Blackstone, Commentaries *297 (bail in both civil and criminal cases is "a delivery or bailment, of a person to his sureties, … he being supposed to continue in their friendly custody, instead of going to gaol")). Relying on these authorities, Justice Ginsburg has explained:

> A person facing serious criminal charges is hardly freed from the state's control upon his release from a police officer's physical grip. He is required to appear in court at the state's command. He is often subject … to the condition that he seek formal permission from the court (at significant expense) before exercising what would otherwise be his unquestioned right

> to travel outside the jurisdiction. Pending prosecution, his employment prospects may be diminished severely, he may suffer reputational harm, and he will experience the financial and emotional strain of preparing a defense.

Id. at 278 (Ginsburg, J., concurring). In short, when a defendant is faced with a baseless charge, he becomes subject to a variety of liberty restrictions that may amount to a seizure under the Fourth Amendment.

The any-crime rule, however, improperly presupposes that complete physical pretrial detention is the only relevant seizure at issue. In *Howse* v. *Hodous*, 953 F.3d 402 (6th Cir. 2020), the Sixth Circuit reasoned that "a person is no more seized when he's detained to await prosecution for several charges than if he were seized for just one valid charge." 953 F.3d at 409. Relying on *Howse*, the decision below held that, "even tacked-on meritless charges … do not change the nature of the seizure." Pet. App. 10a (simplified). In reality, the variety of significant pretrial restrictions that a defendant faces is made more burdensome when he is subject to baseless charges.

For example, baseless charges may lead to more severe travel restrictions depending on the nature of the baseless charges. The initiation of baseless charges can also significantly restrain a defendant's ability to negotiate a fair plea or effectively prepare for trial. "[C]riminal justice today is for the most part a system of pleas, not a system of trials." *Lafler* v. *Cooper*, 566 U.S. 156, 170 (2012). Under the any-crime rule, officials have wide discretion to base their initial plea offers on baseless felony charges in order to establish a strong "anchoring" position that will shape the course of the plea negotiation. See Stephanos Bibas, *Plea Bargaining*

Outside the Shadow of Trial, 117 Harv. L. Rev. 2463, 2515–17 (2004) (describing the anchoring effect and its consequences). When distorted by baseless charges, the anchoring effect severely hampers a defendant's ability to secure a just plea. Cf. *Molina-Martinez* v. *United States*, 578 U.S. 189, 198–99 (2016) (finding prejudice where a Sentencing Guidelines error improperly anchored the defendant's sentence).

Relatedly, baseless charges improperly restrict the ability of prosecutors to accurately assess whether the interests of justice require that a case even be brought to trial. And when a case does proceed to trial, the defendant must expend substantial resources defending himself against all charges—even those that law enforcement knows are baseless.

Taken together, each of these consequences illustrates how the any-crime rule conflicts with the Fourth Amendment: The any-crime rule looks solely to a single factor to assess the validity of the seizure (a single valid charge), when the addition of baseless charges could, in fact, lengthen the duration of the seizure or otherwise render the seizure more extreme or severe in a variety of ways. Because any seizure unsupported by probable cause is unlawful, see *Rodriguez*, 575 U.S. at 350–51, the any-crime rule artificially bars viable Fourth Amendment claims from proceeding under Section 1983.

II. The Warrant Clause Undermines the "Any-Crime" Rule

The text and history of the Warrant Clause provide an independent basis for this Court to reject the any-crime rule. The Warrant Clause states: "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. This Court has described the Warrant Clause as "[t]he bulwark of Fourth Amendment protection," as it generally requires that "police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search." *Franks* v. *Delaware*, 438 U.S. 154, 164 (1978). Under *Franks*, individuals may challenge the validity of a warrant where they can raise plausible allegations of a deliberate falsehood or a reckless disregard for the truth. *Id.* at 171.

In *Franks*, this Court analyzed the text of the Warrant Clause and observed that the "language of the Warrant Clause … surely takes the affiant's good faith as its premise." *Id.* at 164. The Court focused on the "Oath or affirmation" requirement and explained that "[t]he requirement that a warrant not issue 'but upon probable cause, 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, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile." *Id.* at 168. The any-crime rule authorizes the precise type of "ploy" *Franks* rejected.

In this case, law enforcement officials committed two Fourth Amendment violations. First, officials used false allegations to secure an arrest warrant. Second, they used those false allegations to initiate a baseless money laundering charge that led directly to the defendant's seizure. Pet. App. 6a–7a. In other words, the officials engaged in two deceptive "ploys"—securing an arrest warrant with falsehoods and initiating a baseless charge without probable cause, both in violation of the Warrant Clause.

The first ploy was clearly unlawful under *Franks* because law enforcement relied on false allegations to secure the arrest warrant. 438 U.S. at 171. But the any-crime rule insulates the second ploy whenever probable cause exists for any charge. This approach leads to jarring results: Officials breach the Fourth Amendment when lying to secure arrest warrants, but do not when they use the same lies to fabricate charges. Such an outcome contradicts the Warrant Clause's "Oath or affirmation" command, which fundamentally presumes law enforcement officers act in good faith. See *id.* at 164.

History further demonstrates how the any-crime rule resurrects the primary problem the Warrant Clause was adopted to resolve. The Warrant Clause—and indeed, the Fourth Amendment itself—was largely adopted as a response to the abuses of general warrants and writs of assistance that were prevalent during the Founding era. See, *e.g.*, *Boyd* v. *United States*, 116 U.S. 616, 624–26 (1886); *Stanford* v. *Texas*, 379 U.S. 476, 481–82 (1965). In England, the problem with general warrants rose to prominence in a series of famous cases decided during the 1760s. For example, *Huckle* v. *Money* (1763) 95 Eng. Rep. 768 (K.B.), concerned a general arrest warrant that was issued to apprehend and seize the printers and publishers of the North Briton, a supposedly libelous pamphlet. Over the course of three days, English officials used their broad authority under the general warrant to arrest forty-nine people. See Silas J. Wasserstrom, *The Incredible Shrinking Fourth Amendment*, 21 Am. Crim. L. Rev. 257, 283 n.145 (1984). When the English officials were later sued for false imprisonment, they relied on the general warrant as a defense. *Huckle*, 95 Eng. Rep. at 768. In rejecting their defense, the Lord Chief Justice explained that the

general warrant had allowed the officials to "exercis[e] arbitrary power … to destroy the liberty of the kingdom" and were illegal at common law. *Id.* at 769. Together, *Huckle* and a series of related cases including *Wilkes* v. *Wood* (1763) 98 Eng. Rep. 489 (K.B.), and *Entick* v. *Carrington* (1765) 95 Eng. Rep. 807 (K.B.), later known as the *General Warrant Cases*, were well regarded by the Founders for their rejection of general warrants. See *Boyd*, 116 U.S. at 624–26; see also *Frank* v. *Maryland*, 359 U.S. 360, 363–65 (1959).

The scourge of general warrants was likewise suffered in the colonies, where they were frequently granted to revenue officials. *Boyd*, 116 U.S. at 625. To address the persistent problems posed by general warrants, the Founders proposed the Fourth Amendment—and specifically the Warrant Clause's particularity requirement—to reduce such sweeping discretion. As this Court has underscored, "[t]he requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another." *Marron* v. *United States*, 275 U.S. 192, 196 (1927).

In key respects, the any-crime rule recreates the same problem created by general warrants. Rather than specifically asking whether an official had probable cause to initiate each charge against a defendant, the any-crime rule asks whether there is probable cause to support *any* charge. This categorical approach broadly expands the scope of official discretion and disregards the particularity requirement. General warrants, for example, did not require officials to describe their suspicion particularly, instead allowing a modest showing to authorize sweeping seizures—well beyond

what probable cause would have supported. See Thomas K. Clancy, *The Role of Individualized Suspicion*, 25 U. Mem. L. Rev. 483, 527–29 (1995). As a result, by the time the Fourth Amendment was ratified, particularized suspicion had become an irreducible minimum for reasonable searches or seizures. *See id.* at 529. The any-crime rule dispenses with particularity in favor of sweeping authority to initiate baseless charges whenever probable cause supports any charge. More specifically, the any-crime rule allows officials to sidestep the Warrant Clause's particularity requirement by using one valid charge as authority to tack on unlimited baseless charges that are unsupported by probable cause. Such an approach is inconsistent with the history and tradition of the Warrant Clause and should be rejected.

III. The "Any-Crime" Rule Incentivizes Fourth Amendment Violations

The any-crime rule also undermines the Fourth Amendment's values and purposes by incentivizing Fourth Amendment violations and failing to deter official misconduct. This Court has explained on numerous occasions that a core purpose of the Fourth Amendment is to deter misconduct by law enforcement officials. For example, the exclusionary rule "is designed to deter police misconduct rather than to punish the errors of judges and magistrates." *United States* v. *Leon*, 468 U.S. 897, 916 (1984); see also *Davis* v. *United States*, 564 U.S. 229, 246 (2011) ("the sole purpose of the exclusionary rule is to deter misconduct by law enforcement").

Rather than deterring official misconduct, however, the any-crime rule creates perverse incentivizes for officials to violate the Fourth Amendment. For instance, when an official is uncertain whether there is probable

cause to initiate a given charge, the any-crime rule gives him cover to add additional charges in the hope that probable cause will sustain at least one charge. In other instances, where officials are confident that probable cause supports a misdemeanor with minor consequences (say, a speeding ticket), they could elect to add baseless felony charges (say, grand theft auto) for tactical reasons—confident they will face no consequences. There is no sound basis for this Court to create a rule that leads to such arbitrary and unjust results.

The any-crime rule also imposes no limit on the number of baseless charges that officials may initiate against a defendant. As a strategic matter, the any-crime rule thus provides an incentive for officials to scour statutes in search of any offense supported by probable cause to immunize all other charges—no matter how many and no matter how serious. But an individual's ability to recover for a Fourth Amendment violation should not "turn on the fortuity" of whether an official has probable cause for some unrelated charge. *Thompson*, 596 U.S. at 48. This is especially so in today's environment, where "criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something." *Nieves* v. *Bartlett*, 139 S. Ct. 1715, 1730 (2019) (Gorsuch, J., concurring in part, dissenting in part).

Finally, rejection of the any-crime rule will not spawn a wave of "unwarranted civil suits." See *Thompson*, 596 U.S. at 48–49. The any-crime rule wrongly relies on the existence of probable cause for one charge to extinguish viable Fourth Amendment claims. But the appropriate place to analyze the impact of charges supported by probable cause is through the elements of cau-

sation and injury. Each Section 1983 plaintiff must establish proximate causation to prevail. See *Martinez* v. *California*, 444 U.S. 277, 285 (1980). And each plaintiff must demonstrate a sufficient injury-in-fact in order to obtain actual (rather than merely nominal) damages under Section 1983. See *Uzuegbunam* v. *Preczewski*, 141 S. Ct. 792, 801–02 (2021).

Putting these requirements together, each plaintiff bringing a Fourth Amendment malicious prosecution claim under Section 1983 will have to overcome the presence of probable cause for any charges brought against him. In such cases, the plaintiff could face difficulty establishing that the baseless charge was the proximate cause of any Fourth Amendment seizure. For example, in some cases, it could be challenging for the plaintiff to demonstrate how the baseless charge created a prolonged Fourth Amendment seizure. See *Rodriguez*, 575 U.S. at 350–51; see also *Gallo* v. *City of Philadelphia*, 161 F.3d 217, 225 (3d Cir. 1998) (explaining that "the limited scope of the seizure … is germane to damages not liability"). Where a plaintiff fails at either step, lower courts are obliged to dismiss the claim.

Beyond general principles of causation and injury, plaintiffs must further establish all of the specific elements of a malicious prosecution claim, including the favorable termination requirement. See *Thompson*, 596 U.S. at 48–49. Additionally, current qualified immunity doctrine provides officials with an independent layer of insulation from unwarranted civil suits. *Id.* at 49.

In all events, there is no sound basis for this Court to create a novel and atextual categorical bar against valid Fourth Amendment claims, when Section 1983 provides a remedy for "any" deprivation of constitutional rights

by a person acting under color of state law. 42 U.S.C. 1983.

CONCLUSION

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

Respectfully submitted.

JEFFREY T. GREEN
CO-CHAIR, NACDL AMICUS COMMITTEE
1660 L Street NW, 12th Floor
Washington, DC 20036

ZACHARY D. TRIPP
Counsel of Record
JOSHUA M. WESNESKI
SEBASTIAN LAGUNA
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
zack.tripp@weil.com

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