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 NATIONAL POLICE ACCOUNTABILITY PROJECT AS *AMICUS CURIAE* SUPPORTING PETITIONERS


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## INTEREST OF THE *AMICUS CURIAE*[1]

The National Police Accountability Project (NPAP) was founded in 1999 to address misconduct by law-enforcement and detention-facility officers. NPAP has approximately 600 attorney-members throughout the United States. It provides training and support for attorneys and other legal workers, public education and information, and resources for nonprofit organizations and community groups involved with victims of law-enforcement and detention-facility misconduct. NPAP also supports legislative efforts aimed at increasing accountability and appears as *amicus curiae* in cases of particular importance for its members' clients.

This case involves the standard that governs actions brought under 42 U.S.C. § 1983 to challenge constitutional violations amounting to malicious prosecution. Because such suits invariably involve allegations of serious police misconduct, and because the standard applied by the Sixth Circuit often will leave no effective remedy for misconduct of that sort, this litigation holds considerable importance for *amicus* and its members. *Amicus* therefore submits this brief to assist the Court in the resolution of this case.

[1] Pursuant to this Court's Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Jascha Chiaverini was charged with felony money-laundering, substantiated only by false police assertions and a doctored police report. As a result, he was jailed for nearly four days, lost business, and has suffered immense reputational harm.

Under the Sixth Circuit's "any-crime rule," because Mr. Chiaverini also arguably was legitimately charged with retaining stolen property and dealing precious metals without a license, he has no grounds for a malicious-prosecution claim.

Petitioners' brief demonstrates that rejecting the "any-crime rule" (and instead adopting the so-called "charge-specific rule") is consistent with the values and purposes of the Fourth Amendment, and that the tort-law consensus as of 1871 supports use of the charge-specific rule in Section 1983 malicious-prosecution actions. Rather than repeat these arguments, we focus here on related considerations: that rejecting the any-crime rule will not trigger a flood of malicious-prosecution claims, and that the common-law standard effectively and appropriately facilitates the preservation of constitutional rights.

Experience teaches that actions such as the one in this case often present credible claims of serious and destructive official misconduct that should be resolved on the merits by a court. At the same time, a variety of well-settled and frequently applied doctrines are available to screen out insubstantial Fourth Amendment claims at the pleading and summary judgment stages and, indeed, serve effectively to discourage such claims from being initiated at all. Against this background, the any-crime rule serves only to

frustrate Section 1983's central purpose: deterring, and providing compensation for, the deprivation of constitutional rights.

***First,*** the charge-specific rule has not led to a substantial increase in the number of malicious prosecution claims in jurisdictions that have adopted it. In the three years before the Eleventh Circuit formally adopted that rule, it decided nine cases in which the charge-specific rule was relevant; in the three years following adoption, it decided 11 such cases—only eight of which survived summary judgment. But in those eight cases, the charge-specific rule provided meaningful recourse for plaintiffs whose meritorious claims would otherwise have been barred by the any-crime rule—that is, cases where the charge for which probable cause was lacking significantly lengthened the plaintiff's detention. By contrast, over the same six-year period in the Sixth Circuit, we identified only six relevant federal-law malicious prosecution cases, suggesting that there, the any-crime rule may keep otherwise meritorious claims out of court altogether—that is, given the existence of the any-crime rule, plaintiffs are not bringing their claims in the first place. All six of these cases were dismissed upon application of the any-crime rule, including some where the trumped-up charge resulted in materially worse conditions for the litigant.

***Second***, a restrictive any-crime rule is not necessary to screen out insubstantial suits. The substantive elements of Fourth Amendment claims, as well as the more generally applicable limits on recovery in suits alleging constitutional violations under Section 1983, typically lead to the dismissal of non-meritorious suits on motions to dismiss and at the pleading and

summary-judgment stages—and, for that reason, tend to discourage such suits from being brought in the first place. These restrictive substantive rules include the requirement that the plaintiff show that the defendant caused the challenged seizure; restrictions on recovery include immunity rules and limits on damages. The specific-charge standard therefore will not open the floodgates to frivolous litigation.

***Third***, the any-crime rule frustrates the central goals of Section 1983. That statute is intended to deter, and to provide compensation for, constitutional violations. But as this case demonstrates, the any-crime rule requires dismissal of Section 1983 suits even where defendants materially harmed plaintiffs by tacking on charges for which they knew there was no probable cause. Victims of official misconduct should not be denied relief because they were properly charged with one minor offense, when they seek to recover for harms stemming separately and directly from an improperly and maliciously charged crime.

## ARGUMENT

### I. Rejecting the any-crime rule will not open the floodgates to insubstantial malicious-prosecution claims.

Rejecting the any-crime rule will not open the floodgates to numerous insubstantial malicious-prosecution claims. To test this proposition, we undertook an empirical analysis of malicious-prosecution claims in two Circuits: the Eleventh (which, in *Williams* v. *Aguirre*, 965 F.3d 1147 (11th Cir. 2020), explicitly *rejected* the any-crime rule); and the Sixth (which continues to abide by the any-crime rule). Our analysis confirms that the rejection of the any-crime rule in the Eleventh Circuit *did not* lead to a flood of malicious-

prosecution cases. In the almost four years since the Eleventh Circuit decided *Williams*, that court heard only 11 cases in which the rejection of the any-crime rule was relevant. Only eight of those cases survived the motion-to-dismiss and summary-judgment stages. The any-crime rule therefore is not an essential finger in the dike, barring a flood of insubstantial claims.

But although the number of cases in which rejection of the any-crime rule was small, the stakes in those cases were extremely high—such litigants faced severe deprivations of liberty (including months or years in jail) on the basis of charges for which probable cause did not exist. Consequently, rejecting the any-crime rule (1) will not burden the capacity of federal courts and (2) will vindicate the rights of litigants who have suffered serious deprivations of liberty at the hands of government actors operating in bad faith.

### A. Rejection of the any-crime rule did not result in a flood of cases in the Eleventh Circuit.

In the Eleventh Circuit, rejection of the any-crime rule did not cause a flood of malicious-prosecution claims. Our analysis of such claims in that circuit looked at two distinct periods: (1) the nearly four-year period after *Williams* was decided (that is, July 13, 2020, to Jan. 18, 2024)[2]; and (2) a three-year period before *Williams* was decided (that is, July 13, 2017, to

[2] Our search targeted cases in either the district courts or the court of appeals in the Eleventh Circuit from the date *Williams* was decided to the present. We used the following Boolean logic in Westlaw: "1983" AND "malicious prosecution" AND "probable cause" AND ("965 F.3d 1147" OR (charge /5 specific)). The search generated 188 unique cases.

July 12, 2020).[3] Our goal was to determine whether *Williams*'s rejection of the any-crime rule had a significant impact on how many claims made it past dismissal and summary-judgment motions.

In the three years preceding *Williams*, district courts addressing malicious-prosecution claims generally followed the Eleventh Circuit's articulation of the any-crime rule in false-arrest contexts. In *Hendricks* v. *Sheriff*, *Collier County*, the court of appeals had held that "[a]n officer's 'subjective reliance on an offense for which no probable cause exists' does not make an arrest faulty where there is actually probable cause to support some other offense." 492 F. App'x 90, 94 (2012) (quoting *Lee* v. *Ferraro*, 284 F.3d 1188, 1196 (11th Cir. 2002)). Although the Eleventh Circuit cited in passing a Seventh Circuit precedent suggesting that the any-crime rule did not apply to malicious-prosecution claims, see *Elmore* v. *Fulton Cnty. Sch. Dist.*, 605 F. App'x 906, 915 (11th Cir. 2015), district courts in the Eleventh Circuit largely disregarded this differentiation in the time-period we examined. See *Hochstein* v. *Demings*, 2017 WL 4317354 (M.D. Fla. July 17, 2017), aff'd, 723 F. App'x 938 (11th Cir. 2018).

During this three-year period prior to *Williams*, we found only eight district-court and two appellate decisions that invoked the any-crime doctrine when

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[3] We used the following Boolean logic in Westlaw: ("any crime" OR (charge /3 specific) OR "at least one") AND "malicious prosecution" and "1983". The search generated 98 unique cases, 81 of which were district-court cases. We also cross-referenced this case list with citing references to *Elmore* which contained both "any crime" AND "malicious prosecution".

discussing malicious prosecution claims.[4] Of these cases, four were dismissed and/or granted summary judgment in favor of the defendants because of the any-crime doctrine—and one of those decisions was the lower court's decision in *Williams*.[5] One court did not dismiss a malicious-prosecution claim on any-crime grounds, but did invoke the doctrine in dismissing an unlawful-arrest claim. *Foster*, 2020 WL 247082, at *8. The remaining six cases made it past dismissal or summary judgement on a variety of grounds, including that the defendants did not establish probable cause for any crime or had fabricated support for their warrant One court favored *Elmore*'s distinction between false arrest and malicious prosecution and found the secondary crimes for which probable cause did exist were too distinct from those

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[4] *Hochstein*, 2017 WL 4317354; *Sebastian* v. *Ortiz*, 2017 WL 4382010 (S.D. Fla. Sept. 29, 2017), aff'd, 918 F.3d 1301 (11th Cir. 2019); *Manners* v. *Cannella*, 891 F.3d 959 (11th Cir. 2018); *Phillips* v. *City of W. Palm Beach*, 2018 WL 3586179 (S.D. Fla. July 26, 2018); *Wynn* v. *City of Griffin*, 2019 WL 9088168 (N.D. Ga. Jan. 7, 2019), aff'd, 2021 WL 4848075 (11th Cir. Oct. 18, 2021); *Rhodes* v. *Robbins*, 2019 WL 1160828 (M.D. Fla. Mar. 13, 2019), aff'd, 2022 WL 1311558 (11th Cir. May 2, 2022); *Williams* v. *City of Birmingham*, 2019 WL 11679764 (N.D. Ala. Apr. 23, 2019), aff'd *sub nom. Williams* v. *Aguirre*, 965 F.3d 1147 (11th Cir. 2020); *Harris* v. *Rambosk*, 2019 WL 5722080 (M.D. Fla. Nov. 5, 2019), aff'd *sub nom. Harris* v. *Wingo*, 845 F. App'x 892 (11th Cir. 2021), and aff'd *sub nom. Harris* v. *Wingo*, 2023 WL 3221640 (11th Cir. May 3, 2023); *Brown* v. *Gill*, 792 F. App'x 716, 720 (11th Cir. 2019); *Foster* v. *Lofton*, 2020 WL 247082 (N.D. Ga. Jan. 16, 2020).

[5] *Manners*, 891 F.3d at 969. *Wynn*, 2019 WL 9088168, at *10; *Sebastian*, 2017 WL 4382010, at *4; *Williams*, 2019 WL 11679764, at *13.

relevant to the malicious-prosecution claim. *Rhoades* v. *Robbins*, 2019 WL 1160828, at * 16 (M.D. Fla. 2019).

In comparison, only 11 cases in the three-and-a-half years since *Williams* relied on the rejection of the any-crime rule—that is, these were cases for which the courts' disposition rested on the fact that probable cause was lacking for at least one, but not necessarily for all, charges.[6] Three of these cases were then dismissed—either because the court *did* find probable cause existed for all charges or because the charges had been brought prior to *Williams* (and therefore the defendants were not on notice that the any-crime rule had been rejected).[7]

But notably, the remaining eight cases that did make it past dismissal or summary judgment all involved a charge where the lack of probable cause had a material effect on the nature of the litigant's detention. In one case, for example, a plaintiff was charged with both jaywalking and cocaine possession. *Goldring* v. *Henry*, 2021 WL 5274721 (11th Cir. 2021).

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[6] See *Laskar* v. *Hurd*, 972 F.3d 1278 (11th Cir. 2020); *Landau* v. *City of Daytona Beach*, 2021 WL 3878220 (M.D. Fla. Jan. 11, 2021); *Jones* v. *Yaffey*, 2021 WL 687727 (S.D. Fla. Feb. 23, 2021); *Luckett* v. *Chambers*, 2021 WL 3084998 (S.D. Ga. July 21, 2021); *Sorrells* v. *Dodd*, 2021 WL 4928416 (N.D. Ga. Sept. 29, 2021); *Goldring* v. *Henry*, 2021 WL 5274721 (11th Cir. 2021); *O'Boyle* v. *Town of Gulf Stream*, 2022 WL 866756 (S.D. Fla. Jan. 25, 2022); *Roberson* v. *Gwinnett County, Georgia*, 2022 WL 1415938 (N.D. Ga. Mar. 30, 2022); *Adkins* v. *Edenfield*, 2022 WL 20508217 (N.D. Fla. Sept. 22, 2022); *Alcius* v. *Grontenhuis*, 2023 WL 3340931 (S.D. Fla. May 10, 2023); *Glenn* v. *Schill*, 2023 WL 3855590 (M.D. Ga. June 6, 2023).

[7] *Landau*, 2021 WL 3878220; *Jones*, 2021 WL 687727; *Alcius*, 2023 WL 3340931.

The officers who arrested the plaintiff reportedly found a stress ball on her person, which they cut open to reveal a "white, 'powdery, sandy kind of substance.'" *Id.* at *1 (quotations omitted). After repeatedly testing the substance (which the litigant claimed was sand, commonly found in such stress balls) both at the site of the arrest and at the police station, no positive result came back for cocaine. *Id.* at *2. Though the Georgia Bureau of Investigation determined by Nov. 17, 2015, that the powder was conclusively *not* cocaine, the state did not dismiss charges until Mar. 21, 2016. *Ibid.* Thus, Goldring spent *five months* in prison for a charge that lacked probable cause. *Ibid.* On that ground, the Eleventh Circuit affirmed the district court's denial of the officers' motion for summary judgment.

The Court should not fear that rejecting the any-crime rule will expose officers to penalties that are untethered to the nature of their violation; courts are well-equipped to forestall this possibility. In *Luckett* v. *Chambers*, for example, the court held that the plaintiff was entitled only to nominal damages where the charge made without probable cause did not materially affect the circumstances of the detention—that is, the time the plaintiff spent in jail would have been the same even if the additional charge had not been brought. 2021 WL 3084998, at *6 (S.D. Ga. July 21, 2021) ("Plaintiff must 'show that, but for th[ose] illegitimate charge[s], he would have been released earlier or would not have faced detention.'" (quoting *Williams*, 965 F.3d at 1161).

### B. The any-crime rule excludes meritorious claims from court.

We conducted a similar analysis of district court cases in the Sixth Circuit to determine how frequently multiple-charge malicious prosecution cases are brought in a jurisdiction that uses the any-crime rule, and how frequently the any-crime rule led to the dismissal of such cases in their entirety. We identified 114 potentially relevant opinions concerning 107 unique cases.[8] Only eight cases (six federal and two state) presented the pattern in which a plaintiff was legitimately prosecuted on one charge, but brought malicious prosecution claims regarding other, allegedly illegitimate charges.

In all six cases presenting federal malicious prosecution claims, the any-crime rule resulted in dismissal.[9] Several of these cases show why the any-crime

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[8] To identify these cases, we identified opinions that mentioned the terms "1983," "malicious prosecution," "probable cause," and at least one of the three following phrases: "*Howse*," "at least one," and "any-crime." "At least one" was the operative phrase used to describe the central conflict in *Chiaverini*; "any-crime" is the descriptor generally applied to this situation; and *Howse* v. *Hodous*, 953 F.3d 402 (6th Cir. 2020), is the decision that formalized the any-crime rule in the Sixth Circuit and that we would expect courts to cite when deciding a case on those grounds.

[9] *Peterson* v. *Smith*, 2021 WL 1556863, at *11 (E.D. Mich. Feb. 1, 2021), report and recommendation adopted, 2021 WL 822496 (E.D. Mich. Mar. 4, 2021) ("because Smith and Brewer had probable cause to arrest Peterson for disturbing the peace, his malicious prosecution claim related to the resisting and obstructing charge fails."); *Bickerstaff* v. *Cuyahoga County*, 2022 WL 4102742, at *19 (N.D. Ohio Sept. 8, 2022) ("because there was probable cause for her arrest and continued prosecution on the weapons under disability charge, Bickerstaff cannot move forward with her malicious prosecution claims as to any of the

rule is so problematic. Take *Peterson* v. *Smith*, in which the court considered a malicious prosecution claim where police had probable cause to arrest a man for disturbing the peace, but not for resisting arrest and assaulting a police officer, a felony charge on which he was held in jail. *Peterson*, 2021 WL 1556863 at *8-9. "Unfortunately for Peterson, although the Court finds that questions of fact exist as to whether probable cause supported the resisting and obstructing felony charge that was brought against him, under *Howse* [recognizing the any-crime limit], the Court is compelled to find that [defendants] are entitled to summary judgment." *Ibid.* The court recognized the illogic of this result: "[W]here a police officer lies in order to tack false charges on to a legitimate one, it seems quite unreasonable to absolve him from Section 1983 liability simply because the one charge was supported by probable cause." *Id.* at *13.

Similar circumstances were presented in *Mix* v. *West*. In that case, Mix was pulled over for failure to

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felony charges arising from the * * * traffic stop."); *Hembrook* v. *Seiber,* 2022 WL 3702091, at *10 (M.D. Tenn. Aug. 26, 2022), report and recommendation approved, 2022 WL 4358771 (M.D. Tenn. Sept. 20, 2022) ("Because Seiber has shown that he had probable cause to arrest Hembrook for evading arrest and disorderly conduct, it is not necessary for the Court to determine whether there was probable cause to support the resisting arrest charge."); *Chiaverini* v. *City of Napoleon*, 2021 WL 4502730, at *9 (N.D. Ohio Sept. 30, 2021), aff'd *sub nom*. *Chiaverini* v. *City of Napoleon*, 2023 WL 152477 (6th Cir. Jan. 11, 2023); *Rife* v. *Houser*, 2022 WL 788063, at *3 (N.D. Ohio Mar. 15, 2022) ("the fact that [Rife] was a minor and intoxicated means probable cause existed to support his prosecution."); *Mix* v. *West*, 2023 WL 2654175, at *4 (W.D. Ky. Mar. 27, 2023) ("Because probable cause was present for the traffic violations, Plaintiff's false arrest and malicious prosecution claims fail as a matter of law.").

illuminate his license plate while making his way home in inclement and worsening weather conditions. *Mix*, 2023 WL 2654175, at *1. Mix expressed his frustration at being pulled over, to which the officer responded, "I wasn't going to write you a ticket, but, since you think it's so crappy, you're getting a ticket." *Ibid.* The officer then arrested Mix and booked him into jail for failure to have proof of insurance, having a non-illuminated license plate, and obstructing governmental operations. *Id.* at *2. "Because probable cause was present for the traffic violations, Plaintiff's false arrest and malicious prosecution claims fail as a matter of law." *Id.* at *4.

Accordingly, the harm caused by the any-crime rule is not theoretical: In the Sixth Circuit, the rule leads to the dismissal of otherwise meritorious claims concerning serious allegations of police misconduct—and thus likely discourages potential plaintiffs from bringing such cases in the first place. Adopting the charge-specific rule recognized by the Eleventh Circuit would provide much-needed recourse for victims of official misconduct.

## II. Existing constitutional and prudential doctrines will ensure that only substantial and credible Fourth Amendment claims proceed.

Moreover, it should not require extensive proof to show that the preservation of an effective mechanism for the assertion of Fourth Amendment claims involving malicious prosecution is essential. As described above, such claims may involve allegations of serious law-enforcement misconduct, including the fabrication of evidence; the suppression of exculpatory materials; retaliatory charging; and racially biased policing. When litigated, these claims are often shown to

be credible—and, ultimately, found to be meritorious.[10] But they may founder at an early stage under the any-crime standard, for reasons having nothing to do with the merits of the constitutional contentions. The common-law rule advocated by petitioner avoids that result.

At the same time, existing doctrines are sufficient to prevent non-meritorious actions from succeeding, and therefore provide a powerful incentive for plaintiffs to proceed only with credible and legitimate claims.

These limiting doctrines fall into two major categories. *First*, the elements of a Section 1983 Fourth Amendment malicious prosecution claim themselves pose significant hurdles to those seeking relief, such as the requirement that the defendant *caused* the seizure complained of. *Second*, an additional set of

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[10] See, *e.g.*, for a few recent, representative examples: *Noviho* v. *Lancaster Cnty. of Pennsylvania*, 683 F. App'x 160, 167 (3d Cir. 2017) (claim that plaintiff's arrest was generated by a state official whose sister had rear-ended the plaintiff's truck in a traffic accident dismissed on favorable termination grounds, even though the "allegations do not fail to give us pause"); *Smith* v. *Munday*, 848 F.3d 248, 251-52 (4th Cir. 2017) (police made no attempt to investigate defendant or connect her to the crime prior to seizure); *Sykes* v. *Anderson*, 625 F.3d 294, 309 (6th Cir. 2010) (affirming jury verdict for malicious prosecution where officers accused three people, including a pregnant woman, of staging a robbery, based on nothing but "speculation" and "impermissibly layered inferences"), aff'd, 419 F. App'x 615 (6th Cir. 2011); *Hoskins* v. *Knox Cnty.*, 2018 WL 1352163 (E.D. Ky. Mar. 15, 2018) (testimony showed that detectives generated false evidence and concealed exculpatory material); *Laskar*, 972 F.3d at 1278 (refusing to dismiss complaint alleging that police conducted baseless raids of a university professor's home in search of evidence to support subsequently dismissed fraud charges).

doctrines limits recovery under Section 1983 more generally. These rules include qualified immunity for police officers and limitations on available damages awards.

Of course, none of this is to say that plaintiffs asserting Section 1983 Fourth Amendment malicious prosecution claims cannot, or never should, succeed; such suits often do demonstrate well-supported cases of serious police misconduct where recovery is not only warranted, but essential to preserve constitutional rights. But the doctrines described below do impose substantial, practical obstacles to recovery for Section 1983 claims (sometimes even when constitutional rights were violated)—and make it unlikely that plaintiffs with weak or frivolous cases will initiate lawsuits at all.

### A. Plaintiffs asserting Fourth Amendment malicious prosecution claims must show that the defendant caused their prosecution.

Courts generally require plaintiffs bringing malicious prosecution claims under the Fourth Amendment to demonstrate that defendants caused the plaintiffs' prosecution, a requirement that insubstantial claims are seldom able to meet. Thus, if this Court were to adopt petitioner's approach to the any-crime rule, this requirement and the others outlined below would suffice to preclude plaintiffs from "flooding" the courts with such claims.

To meet the causation requirement, plaintiffs must make two showings. First, they must identify the officers responsible for prosecution. This entails describing "exactly who is alleged to have done what to whom" with "particular[ity,] * * * as distinguished

from collective allegations." *Pahls* v. *Thomas*, 718 F.3d 1210, 1225 (10th Cir. 2013) (citations and emphasis omitted).

And second, they must show that the officers identified were in fact the cause of their prosecution and, relatedly, of the alleged constitutional violation. The Court has made clear that "a public official is liable under § 1983 only if he *causes* the plaintiff to be subjected to deprivation of [the plaintiff's] constitutional rights." *Baker* v. *McCollan*, 443 U.S. 137, 142 (1979) (internal quotation marks omitted).

In making such claims, plaintiffs must identify "specific actions taken by particular defendants" and link these actions to "the alleged constitutional violation" to avoid having their claims dismissed at the motion to dismiss stage. *Pahls*, 718 F.3d at 1226, 1228. In one such formulation of the rule, plaintiffs must "'plausibly allege' that the [d]efendants 'made, influenced, or participated in the decision to prosecute.'" *Hoskins* v. *Knox Cnty.*, 2018 WL 1352163, *7 (E.D. Ky. Mar. 15, 2018) (quoting *Sykes* v. *Anderson*, 625 F.3d 294, 308 (6th Cir. 2010)). Mere allegation that one's rights "were violated" by certain government officers "will not suffice." *Pahls*, 718 F.3d at 1226.

These requirements apply with special force when multiple defendants are alleged to have caused a constitutional violation. In such cases, "[p]laintiffs must do more than show that * * * 'defendants,' as a collective and undifferentiated whole, were responsible for those violations. *Pahls*, 718 F.3d at 1228 (quoting *Dodds* v. *Richardson*, 614 F.3d 1185, 1194 (10th Cir. 2010)). Instead, they must be able to point to "particular defendants * * * that violated their clearly established constitutional rights." *Ibid.*

Courts have deployed this standard—in conjunction with those outlined below—to distinguish between frivolous and substantial claims. For example, the claims in the Tenth Circuit case, *Brown* v. *Montoya,* were dismissed because, although the "[c]omplaint refers to actions of '[d]efendants' * * * that is not sufficient to show how [the particular defendant] 'might be individually liable for deprivations of [plaintiff's] constitution rights.'" 662 F.3d 1152, 1165 (10th Cir. 2011); see also *Lewis* v. *Tripp*, 604 F.3d 1221, 1230 (10th Cir. 2010) ("The record before us lacks any evidence suggesting [the defendant's] involvement in any of these * * * unlawful activities."). In other cases, courts have sustained plaintiffs' claims only after they presented "a myriad of specific factual allegations against" specifically identified defendants. See, *e.g.*, *Hoskins*, 2018 WL 1352163, at *7.

### B. Qualified immunity and limitations on damages will discourage insubstantial lawsuits.

Moreover, a set of restrictive doctrines impose substantial barriers to imposing liability on individual officers under Section 1983. Combined with the limitations on damages that even successful plaintiffs are permitted to recover, these doctrines mean that plaintiffs will have little incentive to bring Fourth Amendment malicious prosecution suits absent a credible claim.

#### *1. Individual Officer Liability*

First, establishing individual officer liability is challenging because of police officers' qualified immunity. Even if a court finds that there was no probable cause for the plaintiff's prosecution, the officers' qualified immunity is overcome only if their belief

that probable cause existed was unreasonable. "A police officer who applies for an arrest warrant can be liable for malicious prosecution if he should have known that his application 'failed to establish probable cause.'" *Black* v. *Wigington*, 811 F.3d 1259, 1267 (11th Cir. 2016) (quoting *Malley* v. *Briggs*, 475 U.S. 335, 345 (1986)). But this means that the "shield of immunity [is] lost" only where "the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable." *Malley*, 475 U.S. at 344-45. Thus, a police officer, to be liable under Section 1983, must not only be wrong that probable cause existed, but must be so wrong that his or her belief was "unreasonable."

Alternatively, a police officer may be liable for malicious prosecution if "he made statements or omissions in his [warrant] application that were material and perjurious or recklessly false." *Black*, 811 F.3d at 1267 (citing *Franks* v. *Delaware*, 438 U.S. 154, 156, 165-71 (1978) (quotations removed)). Again, this is a significantly more demanding standard for establishing officer liability than proving merely that the officer made a mistake about whether probable cause existed: the plaintiff would have to demonstrate the officer's intentional perjury or reckless disregard for the truth to overcome qualified immunity.

*2. Damages*

In addition, even where Section 1983 plaintiffs overcome qualified immunity or restrictive municipal liability doctrines, they face limitations on the damages they may recover. Damages under Section 1983 are governed by tort compensation principles. *Carey* v. *Piphus*, 435 U.S. 247, 254-55 (1978). The plaintiff's injuries must be traceable to the defendant's conduct,

*ibid.*, and that conduct must be a but-for cause of the injury. *Olsen* v. *Correiro*, 189 F.3d 52, 66 (1st Cir. 1999).

Under this exacting standard, even when a plaintiff's loss of liberty followed from "deficient" procedures, no injury resulting from the deprivation would be compensable under Section 1983 if the deprivation was "justified." *Carey*, 435 U.S. at 263. Thus, in the context of a lawsuit for malicious prosecution or false imprisonment, a plaintiff "'cannot recover [actual] damages merely by showing that he was incarcerated on one illegitimate charge.' Instead, the plaintiff must also 'show that, but for that illegitimate charge, he would have been released' earlier or would not have faced detention." *Williams*, 965 F.3d at 1161 (quoting *Kelly* v. *Curtis*, 21 F.3d 1544, 1557 (11th Cir. 1994)); see also *Olsen*, 189 F.3d at 66 ("[Where] a defendant serves a period of imprisonment for two crimes or two counts of conviction that result in the imposition of concurrent sentences[, * * * i]f one conviction is vacated, the defendant has nevertheless been imprisoned pursuant to a valid sentence. He may not then bring a § 1983 action for damages for his imprisonment.")

To be sure, under the Eleventh Circuit's "any-crime" standard, a plaintiff may state a claim for malicious prosecution when one of the charges that justified their prosecution was not supported by probable cause and did not result in conviction or an admission of guilt. Even so, however, the plaintiff will be unable to obtain compensatory damages unless they were held without probable cause for *any* charge. The right to compensatory damages should not turn on such fortuities.

The threshold for punitive liability is even higher. In a Section 1983 action, juries may award punitive damages only "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith* v. *Wade*, 461 U.S. 30, 56 (1983). And even in those rare cases where plaintiffs might be able to recover punitive damages against individual officers, municipalities are immune from punitive damages under Section 1983. *City of Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

Plaintiffs may still seek nominal damages when they cannot recover punitive or full compensatory damages. *Carey*, 435 U.S. at 266. But plaintiffs that likely would recover only nominal damages have little economic incentive to bring Section 1983 claims. Indeed, plaintiffs who receive only nominal damages after being unable to prove compensable injury typically are not awarded even attorney's fees, despite being a prevailing party under federal fee-shifting statutes. See *Farrar* v. *Hobby*, 506 U.S. 103, 115 (1992) ("When a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, * * * the only reasonable fee is usually no fee at all" (citation omitted)). Consequently, the limited availability of attorneys' fees means that plaintiffs' attorneys have an economic incentive to decline these cases, helping ensure that only meritorious Fourth Amendment malicious prosecution claims for actually compensable injuries make it to court.

### III. Section 1983 was enacted to provide a federal cause of action to every person whose constitutional rights are violated by a state actor.

One additional point bears emphasis. Petitioner shows that the "any-crime" rule finds no support in the common-law history. Pet. Br. 18-23. That standard also suffers from an additional, fundamental defect: it frustrates the central policy of Section 1983.

Cases presenting malicious prosecution claims under Section 1983 necessarily assert violations of the Constitution. As we have shown, these cases often involve very serious official misconduct, including such wrongful behavior as the fabrication of evidence, the suppression of exculpatory material, retaliatory prosecution, and racially biased policing. Meanwhile, ancillary legal doctrines addressing immunity and damages, as well as the practical context in which these cases arise, require a showing of gross misconduct and serious injury if a plaintiff is to obtain any substantial recovery. There is no justification for layering on the additional requirement that plaintiffs must not have been legitimately charged with *any* offense as a prerequisite for proceeding under Section 1983.

In fact, the imposition of such a requirement would frustrate Section 1983's purpose. Section 1983 famously creates a "constitutional tort" (*City of Monterey* v. *Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 727-28 (1999) (Scalia, J., concurring in part) (citing cases)); yet as petitioner demonstrates (at Pet. Br. 22-32), nothing in tort principles requires plaintiffs in cases like this one to prove a lack of probable cause for all related charges, including ones on which they are not bringing malicious prosecution claims. Nor is

there any such requirement in the text of Section 1983, which by its plain terms provides a cause of action to every person suffering a violation of federal rights; it does not restrict its remedy only to those who can affirmatively demonstrate their innocence of criminal behavior.

And centrally, so as to fully vindicate the constitutional rights of all persons, Section 1983 was created both "to provide compensation to the victims of past abuses" and "to serve as a deterrent against future constitutional deprivations." *Owen* v. *City of Indep.*, 445 U.S. 622, 651 (1980); see, *e.g.*, *Memphis Cmty. Sch. Dist.* v. *Stachura*, 477 U.S. 299, 310 (1986); *City of Riverside* v. *Rivera*, 477 U.S. 561, 574-75 (1986); *Carey*, 435 U.S. at 256-57. The "any-crime" rule is directly contrary to that policy.

That rule precludes the award of compensation, notwithstanding the denial of constitutional rights and the infliction of serious injury, if the litigant was legitimately charged with any crime, no matter how minor or pretextual. This is consequential because "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 and dissenting in part). If a legitimate arrest for jaywalking or another common minor criminal offense provides cover for detention on an illegitimate charge, the protections of Section 1983 are diluted to meaninglessness.

Such a rule leaves bad actors unpunished simply because they identified one legitimate charge, a reason that has nothing to do with their culpability and, in the worst case, gives the state a mechanism for

cutting off liability even after constitutional rights have been denied and injury inflicted—as happened in this case under the Sixth Circuit's approach. Accordingly, if the common-law history leaves any doubt, these considerations militate strongly in favor of the Eleventh Circuit's "specific-charge" rule.

## CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted,

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[11] The representation of *amicus* by a Clinic affiliated with Yale Law School does not reflect any institutional views of Yale Law School or Yale University.