NO. 23-50

In the Supreme Court of the United States

JASCHA CHIAVERINI, ET AL.,

Petitioners,

v.

CITY OF NAPOLEON, OHIO, ET AL.,

Respondents.

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

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether a plaintiff may bring a Fourth Amendment malicious prosecution claim if the plaintiff's seizure was justified by at least one charge supported by probable cause, even if another charge lacked probable cause?

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INTRODUCTION

A Fourth Amendment malicious prosecution claim requires a plaintiff "to prove that the malicious prosecution resulted in a seizure of the plaintiff." *Thompson v. Clark*, 596 U.S. 36, 43, n.2 (2022). Where the plaintiff was seized pursuant to several charges and only one allegedly lacked probable cause, the plaintiff must show that charge lacking probable cause resulted in his seizure. If his seizure was reasonable based on other legitimate charges, the plaintiff cannot meet that standard. That is what occurred here.

In this case, Petitioner was seized when he was arrested and held for three days before being released on his own recognizance. The entirety of that seizure was supported by probable cause for not one but two charges (as the Sixth Circuit has held and Petitioner has not challenged), and the nature and duration of his seizure was reasonable. Petitioner alleges that he was also charged with an additional crime that he says lacked probable cause, and he urges the Court to allow his Fourth Amendment malicious prosecution claim to proceed based merely on the presence of that charge. That is wrong. Because Petitioner cannot demonstrate that the charge allegedly lacking probable cause *resulted in his seizure*, his claim is not cognizable under the Fourth Amendment, and the decision below should be affirmed.

STATEMENT OF THE CASE

A. Chiaverini Purchases Stolen Property and Repeatedly Refuses to Return It.

Petitioner Jascha Chiaverini managed a jewelry store in Napoleon, Ohio called the Diamond and Gold Outlet (the "Outlet").[1] Petitioner Chiaverini, Inc. owned the Outlet.

On behalf of the Outlet, Jascha Chiaverini purchased stolen jewelry from a thief named Brent Burns. R.97-1, Page ID #2504–05; R.93-4, Page ID #2311. As it turned out, the jewelry actually belonged to David and Christina Hill, who called Chiaverini multiple times to seek its return. *Id.* Chiaverini refused and told the Hills to file a police report. *Id.*; *see also* R.98, Page ID #2557. On the last call, David Hill told Chiaverini: "I know you bought it … [Y]ou bought it from Brent Burns." *Id.* Chiaverini replied, "[T]his conversation is ending." *Id.*

Later the same day, the Hills went to the Outlet to retrieve their stolen property, and in a confrontation with David Hill, Chiaverini again refused to return the Hills' stolen jewelry. R.97-1, Page ID #2504–

[1] Although both Jascha Chiaverini and Chiaverini, Inc. are captioned as "Petitioners" in this action, the only claim at issue pertains to malicious prosecution, and Chiaverini has already "concede[d] that Chiaverini, Inc. cannot maintain actions for malicious prosecution or false arrest and imprisonment." R.135, Page ID #3882 n.11. Accordingly, Respondents will refer throughout to "Petitioner," as only Jascha Chiaverini.

05; R.98, Page ID #2557. David Hill called the police for help.

Chiaverini also called the police. For his part, Chiaverini told the police dispatcher: "There's going to be a man calling you making a police report on some jewelry. Okay? … I believe—and I'm not going to talk to him and I'm not going to get into a pissing battle with the victim or something here. But I believe I may have his property." R.93, Page ID #2022. As Chief Weitzel later testified, calls of this kind are not necessarily indicative of innocence: "I've seen many, many cases where somebody rushes to the phone to make excuses." R.93, Page ID #2024.

The dispatcher told Chiaverini, "I'm going to put you on hold real quick. I think the other dispatcher might be on the line with that." R.93, Page ID #2022. Indeed, another dispatcher was on the phone with David Hill at that moment. The dispatcher then told Chiaverini that officers were on their way. *Id*.

Respondents Steward and Evanoff were dispatched to the Outlet to respond to the Hills' complaint that Burns had stolen their jewelry. R.93-4, Page ID #2311. Officer Steward spoke with David Hill outside, while Officer Evanoff went inside to talk to Chiaverini. *Id*. In his deposition, Chiaverini said he told Officer Evanoff that in the past, Burns had brought in fake jewelry. R.98, Page ID #2552. Even though Burns brought in real jewelry on this day, Chiaverini did not ask Burns where he acquired it. R.98, Page ID #2555. He had Burns fill out a "buy card," documenting the sale, including a copy of his driver's license. R.98, Page ID #2553.

The parties dispute what else Chiaverini said to Officer Evanoff. Officer Evanoff later testified that Chiaverini told him that,

> Brent Burns had been a normal customer, in and out, but normally he brought costume jewelry, gold plated items, nothing of real value. [Chiaverini] state[d] that he did purchase the items believing that they may be stolen, he did provide receipt to get them all screened so we knew where they were in [an] attempt to help our investigation later.

R.42-8, Page ID #573–74. Chiaverini denies saying that he believed the items were stolen when he purchased them.

Officer Steward, who wrote the narrative summary related to this case, did not initially include in his summary Chiaverini's statement that he suspected the jewelry was stolen when he purchased it. Officer Steward explained that, "[a]t the time, Jascha [Chiaverini] wasn't under investigation for receiving stolen property on the 16th. It was Brent Burns being investigated for the theft." J.A. 111. And "I don't necessarily know that it's important to call out a local business owner for receiving stolen property in a theft report at the time of the theft. Brent Burns was the suspect, not Jascha [Chiaverini]." J.A. 112. Later, however, after Chiaverini repeatedly refused to return the Hills' jewelry and *was* under investigation for receiving stolen property, "it was now important

information," and Officer Steward added it to his narrative summary. J.A. 111.[2]

After collecting information separately and comparing notes with Officer Evanoff (including pictures of the jewelry in question), Officer Steward concluded that Chiaverini was indeed in possession of jewelry that belonged to the Hills and had been stolen by Burns. R.88, Page ID #1026. Officer Evanoff told Chiaverini to hold the items in question and not sell them because they were confirmed to belong to the Hills. *Id*.

The next day, police delivered a hold letter to Chiaverini, R.98, Page ID # 2558, which stated:

> I have confirmed that a men's ring, white gold with six stones in three recessed settings and a princess cut diamond stud earring was sold to your store on November 16, 2016 for a price of $45.00. These items were stolen regarding case #16-009538 in the City of Napoleon, Henry County Ohio. I am formerly [sic] requesting that you hold this item as in ORC 4727.12 states, as evidence of the crime of Theft. Please accept this letter as the official

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[2] Police Chief Weitzel testified that narrative summaries "are live documents" and that "on a fairly regular basis" "[y]ou remember something you should have put in" and "go back and put it in," just as Officer Steward did. R.93, Page ID #2027. The police department's record-keeping software logged when documents were accessed or altered, and Respondents provided this log to Chiaverini. R. 107-2, Page ID #2924. Petitioner's statement that "respondents … were never able to produce such an audit log," Pet.Br. at 6, is incorrect.

> request for retaining the items that are confirmed to be stolen and the rightful owner being David Hill …. Please release these items to David or Christina Hill.

JA 10. Soon after, Christina Hill went to the Outlet to pick up her stolen jewelry, but again, Chiaverini refused to return it. R.98, Page ID #2559–60. Instead, he called the police. Officer Steward prepared the call report:

> [Jascha Chiaverini] stated that he did not want to return the stolen items because they were "his property." Jascha exclaimed that he was choosing to not return the stolen items because of a previous interaction with David Hill the day before. Jascha was still upset with how David approached him regarding the stolen property. He continued to explain to us and Christina that he didn't even have to hold the property, despite being issued a letter of hold earlier in the shift. Ptl. Evanoff escorted a distraught Christina to the parking lot where I remained in a dialogue with Jascha. At this point Jascha told me that he would be within his rights if he "put that ring in his crucible and took a torch to it."

R.92-6, Page ID #1839. When deposed, Chiaverini did not deny having made these statements. R.98, Page ID #2559.

A few days later, Chiaverini went to the police station and confronted Police Chief Weitzel about the Hills' stolen jewelry. R.98, Page ID #2562. Chiaverini

told Chief Weitzel that he would not release the jewelry, and he also implied that he did not have a license to operate the Outlet (Chiaverini appears to have believed this fact would absolve him from obeying the hold letter). R.98, Page ID # 2562–63; R.93, Page ID #2037. Officers Steward and Evanoff also returned to the Outlet and offered to make Chiaverini a "co-victim," so he would be entitled to restitution for the cost of purchasing the Hills' stolen jewelry. R.88, Page ID #1023–24. Chiaverini refused this offer and refused to return the stolen jewelry. *Id.*; R.98, Page ID #2563.

B. Chiaverini Is Charged With Three Criminal Offenses.

By this time, Chief Weitzel feared the Hills' stolen jewelry would be lost because Chiaverini was refusing to honor the hold letter. R.93, Page ID #2041. Chief Weitzel then reviewed the Ohio Department of Commerce's website and determined that a license formerly issued to the Outlet had been cancelled. R.93, Page ID #2037–38. Chief Weitzel reasonably believed Chiaverini had committed the crime of receiving stolen property: "At the point where [Chiaverini] continually refused to turn [the jewelry] over, he was retaining possession, knew it was stolen. He didn't have a license, so he had no protection under the license. He was now receiving stolen property." R.93, Page ID #2045.

After consulting with the Napoleon Law Director, Billy Harmon, who also consulted with the Henry County Prosecuting Attorney, Officer Evanoff applied for a search warrant and arrest warrant. R.92-3, Page ID #1790; R.92-1, Page ID #1585. The probable cause

affidavit in support of the arrest warrant described that Chiaverini had been "informed by the Napoleon Police Department that [a ring in his possession] was confirmed stolen," and that Chiaverini "furthered the commission of corrupt activity by refusing the return of this stolen property." R.91-4, Page ID #1374. Also, Chiaverini "was … learned to be operating this business without the proper licenses required by the state of Ohio since 06-30-2013." *Id*. The affidavit also stated that Chiaverini bought the ring "while suspecting that it was stolen." *Id*. A warrant was requested not merely because of the presence of a felony charge, but also "to ensure the defendants [sic] appearance in court." *Id*. A municipal judge reviewed and signed the arrest warrant.

Respondent Evanoff also charged Chiaverini with three criminal offenses: (1) receiving stolen property in violation of Ohio Rev. Code 2913.51(A); (2) license requirements in violation of Ohio Rev. Code 4728.02; and (3) money laundering in violation of Ohio Rev. Code 1315.55(A)(1). The money laundering charge applies where a person conducts "a transaction knowing that the property involved is the proceeds of some form of unlawful activity," and it depends on an underlying "corrupt activity," which is defined to include "[r]eceiving stolen property" in violation of Ohio Rev. Code § 2913.51(B). Ohio Rev. Code §§ 1315.55, 1315.51, 2923.31(I). The offense of "[r]eceiving stolen property" says "[n]o person shall receive, *retain*, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense." Ohio Rev. Code § 2913.51(A) (emphasis added).

On December 2, 2016, officers executed the search warrant at the Outlet and seized the Hills' stolen jewelry, along with items related to the licenses, sales, and purchases of precious metals, which would be relevant to Chiaverini's licensure charge. R.42-8, Page ID #569, 578. They arrested Chiaverini, who was released on his own recognizance three days later. R.98, Page ID #2566–67.

C. At a Preliminary Hearing, a Judge Determines Probable Cause Supports the Charges Against Chiaverini.

On December 12, 2016, a judge conducted a preliminary hearing on Chiaverini's felony money-laundering charge. The judge heard conflicting testimony from Officer Evanoff and Chiaverini about whether Chiaverini told Officer Evanoff he suspected the jewelry was stolen when he bought it from Burns. *Compare* R.42-8, Page ID #573–74, 626. The judge was presented with a copy of the police letter issued to Chiaverini and heard Chiaverini testify about why he did not return the jewelry to the Hills. R.42-8, Page ID #623. The judge determined that probable cause existed to suspect that Chiaverini had committed the crime of money laundering under Ohio law, premised on the underlying corrupt activity of receiving stolen property. The judge explained:

> I do not see the ambiguity of the [hold] letter sent to the defendant in Defendant's Exhibit #1. The last sentence of that letter states, please release these items to David or Christina Hill. It was further testified that Ms. Hill went to the store with two uniformed police,

and that letter was signed by the Chief of Police, the testimony was that Ms. Hill and two officers in uniform went to the store and were not released that property. And the property was only then obtained after the conduct of the search warrant in conjunction with the arrest of the defendant on these charges.

Certainly with the sending of this letter [sic] the defendant, I find that … the defendant had probable cause to believe these items were stolen and he retained them contrary to the clear statement of the Chief of Police and the patrolman whose case this was.

Did the defendant conduct or attempt to conduct the transaction knowing that the property involved in this transaction was proceeds? … I[n] this case, there were [sic] conflicting evidence that there was testimony that the defendant said he knew that the property or he knew that the property was likely to be stolen at the time he bought it from Mr. Burns. And in fact Mr. Burns has been charged with a theft offense. The defendant did testify that was not the case. But given the other circumstances surrounding the retention of this property, in the face of what I determine to be clear evidence and clear direction to give this property back. To me that speak [sic] with his purpose in the matter as well.

> Therefore I am going to find that there is probable cause to believe … the defendant committed that crime in these cases.…

R.42-8, PageID #640–42.

D. The Charges Against Chiaverini Are Dismissed Without Prejudice.

Ohio's procedural rules required a grand jury to take final action within 60 days of the judge's order at the preliminary hearing. Prosecutors did not bring the case before a grand jury, so when that window elapsed, the criminal charges against Chiaverini were dismissed without prejudice.

E. Procedural History.

Chiaverini and Chiaverini, Inc. filed a complaint against Officers Evanoff and Steward, other individual defendants, and the City of Napoleon. The complaint sought over $3 million in damages and alleged ten counts, including common law and constitutional violations for unlawful search and seizure, false arrest, and malicious prosecution, as well as multiple conspiracy counts, a public records request, and claims for punitive damages and attorneys' fees. R.1-1, PageID #24, 30–31.

The officers moved for summary judgment on several grounds, including that Chiaverini could not establish a false arrest, false imprisonment, or malicious prosecution claim because probable cause supported his arrest and prosecution. The district court agreed and granted summary judgment because Chiaverini "failed to produce sufficient evidence that the

warrants were issued without probable cause or on the basis of knowingly or recklessly false statements." R.135, Page ID #3881. Specifically, the district court concluded that the statement in Chiaverini's arrest affidavit that Chiaverini "bought [a] ring while suspecting it was stolen," was not a knowing or reckless falsity because "Evanoff's suspicion regarding Jascha [Chiaverini's] knowledge" was not "unreasonable considering the facts Evanoff knew at the time." *Id.* at Page ID #3878. Even if that statement had been false, the district court further concluded that "[i]t does not doom the issuance of the warrants," because "probable cause existed for the warrants to issue on the receiving stolen property charge," given that "the Napoleon Police had confirmed the items had been stolen from the Hills and Jascha [Chiaverini] refused to return the items." *Id.* at Page ID 3879.

Moreover, the probable cause determination underlying the warrants on all three charges was "backstopped by" the judge's "findings at the preliminary hearing," where both Officer Evanoff and Chiaverini testified. *Id.* at Page ID #3879–81. At the preliminary hearing, the judge "had the ability to … make a credibility determination regarding Jascha's knowledge of the items' provenance, and at what point it formed," and the judge concluded that probable cause supported all the charges. *Id.* at Page ID #3880.

Accordingly, Chiaverini's "claims for malicious prosecution under § 1983 fail as a matter of law because probable cause existed for both the arrest and continuation of legal proceedings." *Id.* at Page ID #3882. In fact, the judge at Chiaverini's preliminary hearing had concluded as much *without* relying upon

Officer Evanoff's testimony about Chiaverini's knowledge, which Chiaverini disputed. *Id.*

Chiaverini appealed.

The Sixth Circuit denied Chiaverini's claims on appeal because "[p]robable cause justified [his] search, arrest, and prosecution." Pet. App. 9a. Specifically, the court held that "there was probable cause to arrest and prosecute [Chiaverini] for both his receipt of stolen property and the licensure violation," and for that reason "all of [Chiaverini]'s … malicious prosecution claims fail." *Id.* at 10a. The court did not decide whether probable cause supported Chiaverini's money-laundering charge. *Id.* at 10a, n.10. Because probable cause supported two of Chiaverini's three charges, the Sixth Circuit concluded that Chiaverini was "no more seized when he was detained to await prosecution for several charges than if he were seized for just one valid charge." *Id.* at 10a (cleaned up).

SUMMARY OF THE ARGUMENT

Because Petitioner's malicious prosecution claim is "housed in the Fourth Amendment, the plaintiff … has to prove that the malicious prosecution resulted in a seizure." *Thompson*, 596 U.S. at 43, n.2. Petitioner cannot do so here. Petitioner's seizure is not in dispute: he was arrested and held for three days before being released on his own recognizance. Nor is there any dispute that Petitioner was charged with two crimes supported by probable cause. Nonetheless, Petitioner asks the Court to allow his Fourth Amendment malicious prosecution claim on the ground that a third charge allegedly lacked probable cause. But

that third charge cannot have caused Petitioner's seizure and therefore cannot support his Fourth Amendment malicious prosecution claim because both the nature and duration of his seizure were reasonable and justified by two indisputably legitimate charges.

Petitioner's counterarguments are unavailing. He relies on the nineteenth century common law as the starting point for his analysis, but that is improper—the Fourth Amendment provides the substantive law underlying his malicious prosecution claim, and Petitioner's every-crime rule is inconsistent with the requirement that the alleged malicious prosecution *resulted in* a seizure. Petitioner also ignores that the nineteenth-century common law remedied other injuries that the Fourth Amendment does not recognize, including purely reputational or defamatory harms. It would be inconsistent with the values and purposes of the Fourth Amendment, apparent from its text, to import nineteenth century common law designed to remedy other types of injuries not guaranteed by the Fourth Amendment.

Petitioner advocates for an every-crime rule, which would allow a plaintiff to bring a Fourth Amendment malicious prosecution claim for every crime charged that allegedly lacks probable cause. Such a rule is inconsistent with the Fourth Amendment's values and purposes. Most fundamentally, it is severed from the requirement of a seizure, but the rule is inconsistent in other ways, too. To the extent the rule would apply any time a plaintiff merely alleges that a charge is fabricated, it would create a *per se* Fourth Amendment claim based on the subjective state of mind of an officer, which would be foreign to

and in conflict with longstanding Fourth Amendment jurisprudence. Alleged ulterior motives do not invalidate police conduct that is justifiable on the basis of probable cause. Here, the police officers did not fabricate evidence, but even taking Petitioner's allegations as true, their alleged ulterior motives do not negate the probable cause for Petitioner's reasonable seizure on two other charges.

Petitioner's claim does not invoke the Fourth Amendment's guarantee against unreasonable seizures or the Warrant Clause. Even if the Warrant Clause were implicated here, it would not support the rule Petitioner proposes. Where a warrant includes deliberate or reckless falsehoods, it is nonetheless valid if the falsehoods do not negate probable cause. Here, the presence of an allegedly fabricated charge does not negate the probable cause underlying Petitioner's reasonable seizure on two other charges.

Lastly, no remand is appropriate here. The United States as *amicus curiae* urges the Court to articulate the proper test but remand to apply it in the first instance, but that is not necessary or prudent here. Petitioner was aware that binding Sixth Circuit precedent would have considered his malicious prosecution claim arising out of one of several charges if the problematic charge changed the nature or duration of his seizure. Despite this, Petitioner did not make such an argument. His attempt to do so now is foreclosed by waiver and wrong in any event. Petitioner asks the Court to probe Respondents' subjective enforcement decisions based on the way another, dissimilar criminal defendant was charged. That approach finds no support in caselaw, nor should it.

The judgment of the Sixth Circuit Court of Appeals should be affirmed.

ARGUMENT

I. A Fourth Amendment Malicious Prosecution Claim Requires That An Allegedly Baseless Criminal Charge Cause An Unreasonable Seizure.

To prove a Fourth Amendment malicious prosecution claim, Petitioner must show that the charge he alleges to have lacked probable cause resulted in his unreasonable seizure. Petitioner cannot make this showing, so his claim should be rejected.

A. A Fourth Amendment Malicious Prosecution Claim Requires a Seizure.

Because § 1983 provides a civil cause of action for any person who has suffered "the deprivation of any rights … *secured by the Constitution and laws,*" 42 U.S.C. § 1983 (emphasis added), it "is not itself a source of substantive rights," but merely provides "a method for vindicating federal rights elsewhere conferred," *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979). "The first inquiry in any § 1983 suit, therefore, is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws," *id*, and a court must begin its analysis by "identify[ing] the specific constitutional right at issue." *Manuel v. City of Joliet*, 580 U.S. 357, 370 (2017).

Here, the specific constitutional right at issue is the Fourth Amendment's "right of the people to be

secure in their persons … against unreasonable … seizures." U.S. CONST., amend. iv. This Court has held that this kind of malicious prosecution claim, "sometimes referred to as a claim for unreasonable seizure pursuant to legal process," may be brought under the Fourth Amendment, and that is how Petitioner has styled his claim here. *Thompson*, 596 U.S. at 42. Petitioner's malicious prosecution claim invoked the Fourth Amendment in his complaint, JA 60–61, in the proceedings below, R.102, Page ID #2768, and in his cert petition, Pet. at i.

"Because this [malicious prosecution] claim is housed in the Fourth Amendment, the plaintiff … has to prove that the malicious prosecution resulted in a seizure of the plaintiff." *Thompson*, 596 U.S. at 43, n.2. Here, Petitioner's malicious prosecution claim pertains to only *one* of three charges brought against him, so in order to proceed on that claim, Petitioner must demonstrate that the charge still at issue resulted in his seizure. To be sure, his malicious prosecution claim will require him to satisfy other elements as well: in general, that (1) a prosecution "was instituted without any probable cause," (2) the motive "was malicious,"[3] and (3) the prosecution ended in a disposition favorable to the plaintiff. 596 U.S. at 44. Even if these elements are satisfied, however, no Fourth Amendment violation can exist—and no Fourth Amendment claim under section 1983 can be

[3] This Court has not determined what *mens rea* is required for a Fourth Amendment malicious prosecution claim. *Thompson*, 596 U.S. at 44, n.3.

maintained—unless the threshold of a Fourth Amendment seizure is satisfied.

B. Petitioner's Allegedly Falsified Charge Did Not Cause His Seizure and Cannot Support a Fourth Amendment Malicious Prosecution Claim.

Petitioner cannot demonstrate that the only charge that now underlies his malicious prosecution caused him any Fourth Amendment injury, and so he cannot state a Fourth Amendment malicious prosecution claim.

Petitioner was arrested and detained for three days pursuant to an arrest warrant on three charges. The entirety of this seizure was constitutionally justified by two of those charges (receiving stolen property and a licensure violation), both of which were supported by probable cause. Even if the Petitioner's third charge lacked probable cause, then, it did not cause him to be seized and cannot be the basis of a Fourth Amendment malicious prosecution claim. That conclusion follows from this Court's existing Fourth Amendment jurisprudence.

"[T]he ultimate touchstone of the Fourth Amendment is reasonableness," *Lange v. California*, 594 U.S. __ , 141 S. Ct. 2011, 2017 (2021) (internal citations omitted), and "[t]he general rule [is] that Fourth Amendment seizures are 'reasonable' only if based on probable cause to believe that the individual has committed a crime." *Bailey v. United States*, 568 U.S. 186, 192 (2013).

Petitioner's arrest was indisputably justified by probable case, and therefore was a reasonable seizure under the Fourth Amendment. Petitioner was arrested pursuant to a warrant on three Ohio law charges: (1) receiving stolen property, which includes *retaining* stolen property, Ohio Rev. Code § 2913.51(A); (2) a precious metals dealer licensure violation, Ohio Rev. Code §§ 4728.02(A) and 4728.99; and (3) money laundering, Ohio Rev. Code § 1315.55(A)(1). Respondents obtained that warrant from a magistrate, who concluded that probable cause existed to arrest Petitioner. R.27-8, Page ID #181 (arrest warrant); JA 16 (probable cause affidavit). The district court below agreed, and the Sixth Circuit affirmed as to two of the three charges, holding that "there was probable cause to arrest and prosecute [Petitioner] for both his receipt of stolen property and the licensure violation." Pet. App. 9a. Petitioner has not appealed that decision, which is obviously correct in any event. The objective facts known at Petitioner's arrest included his retention of the Hills' stolen property despite repeated instructions to return it, and his operation of a precious metals dealership without a license.

Thus, even if Petitioner's money laundering charge lacked probable cause, his arrest was reasonable under the Fourth Amendment because it was supported by probable cause on two other charges. A defendant is "lawfully arrested" if "the facts known to the arresting officers give probable cause to arrest." *Devenpeck v. Alford*, 543 U.S. 146, 155 (2004). "[U]lterior motives," like the malicious intent to bring a false charge that Petitioner alleges here, cannot "invalidate police conduct that is justifiable on the basis of

probable cause to believe that a violation of law has occurred." *Whren v. United States*, 517 U.S. 806, 811 (1996).

Petitioner's seizure then continued through three days of pretrial detention, which was also indisputably reasonable under the Fourth Amendment. "The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause," *Manuel*, 580 U.S. at 367, and further "requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest," *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Petitioner received this judicial determination when a neutral and detached magistrate issued his arrest warrant, which was indisputably supported by probable cause to suspect Petitioner had committed two crimes. No Fourth Amendment violation occurs where a plaintiff, as here, "was … deprived of his liberty for a period of days … pursuant to a warrant conforming … to the requirements of the Fourth Amendment." *Baker*, 443 U.S. at 144–45. *See also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) (holding that pretrial detention beyond 48 hours ordinarily complies with the Fourth Amendment only when supported by a magistrate's finding of probable cause). That is especially true where the warrant was also the subject of a preliminary hearing in which Petitioner aired his version of events and the judge determined probable cause after setting aside the disputed testimony on that issue.

Therefore, even if Petitioner's money laundering charge lacked probable cause, it did not cause him to be seized, and he cannot make out a Fourth

Amendment malicious prosecution claim based on it. The situation would be different if the magistrate "judge's probable-cause determination [wa]s predicated solely on a police officer's false statements," *Manuel*, 580 U.S. at 367, but that did not occur here. Petitioner contends that only one statement in the affidavit supporting his arrest warrant was allegedly fabricated: that he bought the Hills' ring "while suspecting that it was stolen." JA 16. But even if that statement were excised from Petitioner's arrest warrant, the warrant would still supply probable cause for two crimes. It is simply not possible for Petitioner to link a Fourth Amendment seizure to the allegedly falsified money laundering charge.

Nor does the existence of an allegedly falsified statement somehow taint Petitioner's warrant and invalidate his arrest or ensuing three-day detention. In *Franks v. Delaware*, this Court held that the validity of a warrant could be reexamined in a subsequent hearing if the defendant "makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause." 438 U.S. 154, 154–56 (1978). The alleged falsity, however, could not invalidate the warrant unless it had been necessary to establish probable cause. In reaching its decision, this Court considered the "specter of intentional falsification" and the possibility that a "police officer was able to use deliberately falsified allegations" to obtain a warrant, but concluded that the Fourth Amendment was violated only where intentional falsehoods were used "*to demonstrate probable cause*." 438 U.S. at 168.

Here, the only allegedly falsified allegation in Petitioner's arrest warrant was not necessary to demonstrate probable cause for Petitioner's arrest and detention. Petitioner's warrant and ensuing detention were valid despite the presence of one charge allegedly lacking probable cause.

It is also irrelevant that Petitioner thinks his arrest warrant would not have been sought or issued without the presence of the felony money laundering charge. Pet.Br. at 40. The Fourth Amendment clearly allowed Petitioner to be arrested on his two misdemeanor charges, whether the money-laundering felony was also charged or not. *Virginia v. Moore*, 553 U.S. 164, 171 (2008) ("In a long line of cases, we have said that when an officer has probable cause to believe a person committed even a minor crime in his presence, … [t]he arrest is constitutionally reasonable."); *Atwater v. City of Lago Vista*, 532 U.S. 318, 323 (2001) (holding the Fourth Amendment permits even a "warrantless arrest for a minor criminal offense, … punishable only by a fine."). And on its face (although omitted in Petitioner's telling), the warrant supplied two reasons for its issuance: "this charge being a [f]elony of [t]hird (3rd) degree, *and to ensure the defendant[']s appearance in court*." *Compare* JA 16, *with* Pet.Br.40 (emphasis added).

Petitioner's contrary position (that no arrest warrant would have been issued without the money laundering charge) depends on subjectivity: what a particular officer or prosecutor would have been motivated to do based on other arrest and charging decisions made at a similar time. Even if the position is "framed in empirical terms, the approach is plainly and

indisputably driven by subjective considerations:" what a particular police officer would have subjectively thought was appropriate under the circumstances—issuing a summons or obtaining an arrest warrant. *Whren*, 517 U.S. at 814; *see also Devenpeck*, 543 U.S. at 155 ("Subjective intent of the arresting officer, *however* it is determined (and of course subjective intent is *always* determined by objective means), is simply no basis for invalidating an arrest." (emphasis in original). Fourth Amendment jurisprudence rejects subjective standards of this kind. *Whren*, 517 U.S. at 815–16 (rejecting subjective test even when framed in objective terms); *Horton v. California*, 496 U.S. 128, 138 (1990) ("[E]venhanded law enforcement is best achieved by the application of objective standards of conduct."); *Devenpeck v. Alford*, 543 U.S. 146, 152–53 (2004) (an officer's subjective purpose for arresting does not determine probable cause); *Horton*, 496 U.S. at 130 ("inadvertence … is not a necessary condition" of a warrantless seizure of evidence in plain view); *Hill v. California*, 401 U.S. 797, 804 (1971) (an officer's "subjective good-faith belief would not in itself justify" an arrest or search). In fact, the Fourth Amendment would have permitted Petitioner's arrest on the two charges supported by probable cause *even if state law had not allowed it*. *Moore*, 553 U.S. at 166 (holding that a police officer does not violate "the Fourth Amendment by making an arrest based on probable cause but prohibited by state law").

Petitioner is on his weakest footing when comparing his treatment (arrest and brief detention on two misdemeanors and a felony) with that of the thief Brent Burns (issued a summons). Petitioner believes he would have "presumably" been treated like Burns

but for his felony charge, but that is pure speculation. After all, Petitioner and Burns were different in many ways, not just the presence of a felony charge. Only Petitioner had been confronted by police repeatedly, yet had openly persisted in retaining stolen property—and thus committing a crime in their presence. Only Petitioner had asserted the (illegitimate) right to melt the Hills' property in his crucible, rendering it unrecoverable. Only Petitioner was running a substantial unlicensed business operation in apparent violation of Ohio law. Regardless of these obvious incomparables, Fourth Amendment reasonableness does not turn on speculation about discretionary law enforcement decisions. Whether to issue a summons or obtain an arrest warrant is a discretionary enforcement practice and not only subjective but highly variable, both within and among police departments. This Court has held that police enforcement practices are irrelevant to a Fourth Amendment reasonableness analysis. "[P]olice enforcement practices, even if they could be practicably assessed by a judge, vary from place to place and from time to time. We cannot accept that the search and seizure protections of the Fourth Amendment are so variable and can be made to turn upon such trivialities." *Whren*, 517 U.S. at 815 (internal citations omitted).

C. In Other Circumstances Not Present Here, A Charge Unsupported By Probable Cause Can Cause A Seizure.

In this case, the allegedly falsified money laundering charge did not cause Petitioner's seizure, but that would not necessarily be the result in every case in

which probable cause supports at least one but not all charges against a defendant. *See* Br. of the United States as *amicus curiae* at 14–18. Existing Sixth Circuit caselaw acknowledges this fact. *Howse v. Hodous*, 953 F.3d 402, 409 n.3 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 1515 (2021). In *Howse v. Hodous*, the Sixth Circuit concluded that a Fourth Amendment malicious prosecution claim will "rise and fall on whether there was probable cause supporting the [plaintiff's] detention." 953 F.3d at 409. Where a plaintiff suffers one detention, "just like in the context of false arrests, 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." *Id*. Nonetheless, the Sixth Circuit recognized that "[i]f hypothetically" "additional (meritless charges … were to change the length of detention, that would be a different issue." *Id*. at 409, n.3. That is true, even though the facts here do not create such a circumstance.

Consider a criminal defendant charged with a drug offense that is supported by probable cause and a theft offense that is not. That defendant could be arrested and detained on the basis of the valid probable cause determination for the drug charge, despite the presence of the theft charge that lacks probable cause. If, however, the defendant later secures the dismissal of the drug charge (by, for example, agreeing to cooperate in the prosecution of another defendant), but remains detained only on the baseless theft charge, then that baseless charge will have caused a Fourth Amendment seizure and the defendant may later bring a malicious prosecution claim related to it.

Although it concerns uncharged offenses, the fact pattern of *Williams v. Aguirre*, 965 F.3d 1147 (11th Cir. 2020) provides a relevant example. There, the plaintiff brought a Fourth Amendment malicious prosecution claim after he was arrested and detained for sixteen months on attempted murder charges that he alleged were falsified (those charges were ultimately dropped). 965 F.3d at 1155. Police officers justified the plaintiff's arrest because they had probable cause to believe the plaintiff had committed a different, uncharged crime: carrying a concealed weapon without a permit. *Id*. at 1158. Probable cause for that crime, however, could not justify plaintiff's sixteen months of pretrial detention. No magistrate had ever determined that probable cause supported the plaintiff's uncharged concealed weapon's offense, so the plaintiff could not have been detained based on that uncharged offense beyond the first 48 hours. *See Cnty. of Riverside*, 500 U.S. at 56. The Eleventh Circuit allowed the *Williams* plaintiff to pursue a malicious prosecution claim for the allegedly falsified attempted murder charges. That outcome was correct, even though other aspects of that opinion were wrong. *See infra* at 39–40. The baseless charges leveled against the *Williams* plaintiff caused his sixteen months of pretrial detention, a Fourth Amendment seizure that forms the foundation of his Fourth Amendment malicious prosecution claim.

Other circumstances may also exist. The Fourth Amendment concerns not only the fact of a defendant's detention but also its duration. *Rodriguez v. United States*, 575 U.S. 348, 349–50 (2015) ("A seizure justified only by a police-observed traffic violation … becomes unlawful if it is prolonged beyond the time

reasonably required to issu[e] a ticket for the violation.") (cleaned up). This may include the duration of pretrial detention in certain circumstances. *Baker v. McCollan*, 443 U.S. 137, 144–45 (1979) ("Obviously, one in respondent's position could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment."). Accordingly, where the amount of a defendant's bail or the duration of a defendant's pretrial detention can be satisfied under the Fourth Amendment *only* when premised on a baseless charge, the defendant may be able to show that the baseless charge caused a Fourth Amendment seizure. The Court need not endorse such a theory to decide this case, though, because nothing along those lines happened here. Petitioner's arrest and three-day detention were reasonably justified by two misdemeanor charges indisputably supported by probable cause.

II. Petitioner's Approach Is Oversimplified And Wrong.

Petitioner presents the Court with a binary choice between an "any crime" rule, which holds that "probable cause for even one charge defeats a plaintiff's malicious prosecution claim[] as to every other charge," and a "charge-specific" rule that allows a plaintiff to "proceed on a malicious prosecution claim as to a baseless charge of criminal conduct even if other charges in the same criminal proceeding are supported by probable cause." Pet.Br. 17. This dichotomy is oversimplified and wrong. The correct rule is that a plaintiff who has faced a baseless criminal charge may bring a Fourth Amendment malicious prosecution

claim under § 1983 even if he also faced a valid charge, but that plaintiff must show that the baseless charge *caused a Fourth Amendment seizure*. *Cf.* Br. of the United States as *amicus curiae*, at 6, 10 ("The correct answer lies between the extremes of an 'any crime' rule and an 'every crime' rule."). In other words, the analysis is charge specific, but it is charge specific in the sense that the allegedly baseless charge must have caused the plaintiff to be seized unreasonably.

A. The Constitutional Requirement of a Seizure Takes Precedence Over Nineteenth Century Common Law.

Petitioner arrives at the unhelpful "any crime" versus "charge-specific" binary by starting in the wrong place: Petitioner starts by analyzing the common law of 1871 rather than the Constitution. Pet.Br. at 13 ("First, this Court looks to the common-law consensus … as of 1871 …"). That approach is wrong because the "first inquiry in any § 1983 suit" is not the content of nineteenth century tort law but "whether the plaintiff has been deprived of a right 'secured by the Constitution[.]' " *Baker*, 443 U.S. at 140. "Common-law principles are meant to guide rather than to control the definition of § 1983 claims," and "courts must closely attend to the values and purposes of the constitutional right at issue." *Manuel*, 580 U.S. at 370. Here, the right at issue is the Fourth Amendment's protection against unreasonable seizure. While it is appropriate to look to the 1871 common-law consensus to determine the elements of a constitutional tort, doing so happens *within* the applicable constitutional framework, not outside of it. The elements of a

common law tort are irrelevant to § 1983 analysis if they are divorced from the Constitution.

Petitioner elides that fact by framing a seizure as merely one additional element of a malicious prosecution claim. Pet.Br. 17 (listing "a harm housed in the Fourth Amendment" as the fourth element of a malicious prosecution claim) (quotation marks omitted). But a seizure is not an element of a malicious prosecution, it is the *foundation for bringing* a malicious prosecution claim under the Fourth Amendment. That is why *Thompson v. Clark* is clear in requiring a plaintiff to "prove that the malicious prosecution *resulted in* a seizure of the plaintiff." 596 U.S. at 43, n.2 (emphasis added). It is not enough for a plaintiff to prove that a seizure occurred, the plaintiff must prove that the alleged malicious prosecution caused the seizure. Where the basis of the malicious prosecution claim is fewer than all of the charges brought against a plaintiff, that means the plaintiff must prove that the specific charge or charges that form the basis of the claim caused the plaintiff to be seized. If a plaintiff is not able to prove that a malicious prosecution resulted in a seizure, the plaintiff does not have a Fourth Amendment malicious prosecution claim. While it has been suggested that a plaintiff perhaps would have *other* constitutional claims in this circumstance, the existence and nature of any other such claims is beyond the scope of this proceeding. *See* 596 U.S. at 43, n.2 (noting that a malicious prosecution claim may also have "an appropriate analytical home" under the Due Process Clause where "the plaintiff presumably would not have to prove that he was seized as a result of the malicious prosecution"); *McDonough v. Smith*, 139 S. Ct. 2149, 2155 (2019)

(assuming without deciding that the Due Process Clause protects "a right not to be deprived of liberty as a result of the fabrication of evidence by a government officer").

This understanding proves the limits of Petitioner's nineteenth-century common law analysis. Petitioner invites this Court to simply import into the Fourth Amendment context the common law understanding of malicious prosecution, that the "key element of a malicious prosecution tort" is "lack of probable cause, Pet.Br. at 18, without accounting for the ways that common law malicious prosecution claims—unlike Fourth Amendment malicious prosecution claims—were concerned with more than unlawful seizures. At common law, a malicious prosecution claim did not exist only for the purpose of remedying an unlawful seizure, as Petitioner's § 1983 claim must—the common law tort claim was far broader. One 1874 treatise describes it well: malicious prosecution is "analogous to the action for libel and slander," and "though involving an injury to the person, as connected with false imprisonment, and also to property, on account of the necessary cost and expense of defending against unfounded demands or accusations," it "is primarily, more especially in a case of criminal prosecution, a wrong to *character* or *reputation*." Hilliard, The Law of Torts or Private Wrongs 433 (4th ed. 1874). Seminal English tort cases on which the common law relied are of accord. In *Roberts v. Savill*, 87 Eng. Rp. 733 (1698), for example, the Court noted "that there are three sorts of damages which will support" an action for malicious prosecution, the first being "where a man is injured in his fame or reputation, so that his good name is lost," while "[t]he second

relates to a man's person, where he is assaulted or beaten, or put under any confinement whereby he is deprived of his liberty," and third, where "the plaintiff was put to unnecessary charges [or expenses] to answer this indictment." *Id.* at 734.

Unlike a malicious prosecution claim at common law, a malicious prosecution claim arises under the Fourth Amendment for only one of the three *Roberts* categories, a man "assaulted or beaten, or put under any confinement whereby he is deprived of his liberty." *Id.* Petitioner, however, would have this Court broaden the Fourth Amendment's scope to remedy purely reputational harms simply because nineteenth-century common law provided a tort remedy for the same. Purely reputational harms will not support a due process claim, and it is even less plausible that they would support a Fourth Amendment claim. *Paul v. Davis*, 424 U.S. 693, 711–12 (1976) (holding "that the interest in reputation … is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law"). Petitioner acknowledges that "a malicious prosecution action as of 1871 allowed recovery for harms to 'reputation by [] scandal,'" and that this "damage to reputation wrought by a false accusation [is] no less potent when paired with a truthful allegation." Pet.Br. 20–21. But a false accusation paired with a truthful allegation *can be* less potent for Fourth Amendment purposes than a false accusation unaccompanied by a truthful one. While a charge-by-charge analysis may always yield a claim at common law where a malicious prosecution claim could remedy solely reputational harms, a charge-by-charge analysis does not always yield a Fourth Amendment malicious prosecution claim because not

every baseless charge will result in a plaintiff's seizure.

B. Petitioner's Every-Crime Rule Conflicts with the Fourth Amendment's Values and Purposes.

Given the misplaced priorities exhibited in Petitioner's exclusive reliance on nineteenth-century common law, it is no surprise that Petitioner's every-crime rule conflicts with the Fourth Amendment's values and purposes. *See Manuel*, 580 U.S. at 370 ("In applying, selecting among, or adjusting common-law approaches, courts must closely attend to the values and purposes of the constitutional right at issue.").

The Fourth Amendment's values and purposes are best derived from its text: "The 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. On its face, the Fourth Amendment provides a guarantee against unreasonable seizures, not against other harms.

Yet Petitioner advocates for an every-crime rule under which a plaintiff can state a malicious prosecution claim for every crime charged that lacks probable cause. This kind of claim can find no home in the Fourth Amendment. The Fourth Amendment is not a guarantee against charges lacking probable cause but a guarantee against unreasonable seizures. Charges lacking probable cause may be unreasonable in some abstract sense, but unless they cause an unreasonable *seizure*, they will find no remedy in the Fourth

Amendment. Petitioner's *per se* rule premised merely on a lack of probable cause is inconsistent with the values and principles of the Fourth Amendment.

To the extent Petitioner's every-crime rule would apply any time a charge is fabricated, it is also inconsistent with the values and purposes of the Fourth Amendment, which eschews *per se* claims premised on an officer's improper motive. "[T]he ultimate touchstone of the Fourth Amendment is reasonableness." *Riley v. California*, 573 U.S. 373, 381 (2014). Reasonableness is an objective inquiry that does not "depend upon the subjective state of mind of the officer." *Horton*, 496 U.S. at 138. That is why "ulterior motives" do not "invalidate police conduct that is justifiable on the basis of probable cause." *Whren*, 517 U.S. at 811. Even "deliberately falsified allegations" do not cause a *per se* Fourth Amendment injury but violate the Fourth Amendment only if they are "necessary to the finding of probable cause." *Franks*, 438 U.S. at 156, 168.

Petitioner claims that the every-crime rule is consistent with the Fourth Amendment's values and purposes, but that assertion fails on its merits. Under the rule Respondents advocate, the existence of a malicious prosecution claim does not depend on the fortuity of a prosecutor's charging decisions, despite Petitioner's contrary assertion. *See* Pet.Br. at 25–26. What matters under Respondents' rule is whether an allegedly baseless charge caused a plaintiff to be seized unreasonably. The result of that analysis is not affected by a prosecutor's decision to charge multiple crimes together or bring them in separate proceedings.

Petitioner's every-crime rule is also inconsistent with the Fourth Amendment's values and purposes because it would lead to "unwarranted civil suits." *Thompson*, 596 U.S. at 49; Pet.Br. at 26–27. This case is an unwarranted civil suit. Petitioner presents this case in the light most favorable to his allegations, so he treats the alleged falsification of the money-laundering charge as proven. Pet.Br. at 3, n.1 ("Because summary judgment was granted to respondents, the facts are recited in the light most favorable to petitioners."). In reality, Petitioner's allegations of falsification are flimsy at best. Petitioner's *only* evidence of falsification besides his own self-serving testimony is the amendment of an investigative document—an action that the investigating officers testified represented a truthful depiction of their views during the investigation and that Chief Weitzel testified was not improper or unusual behavior when documenting an evolving investigation. Yet under Petitioner's rule, a case like this one could advance to trial solely to determine the underlying police motivations, *even though* the Petitioner could not have suffered an unconstitutional seizure as a result of the allegedly baseless charge. By contrast, under Respondents' rule, this case would not advance to trial based on Petitioner's bare allegation of improper police conduct because the Petitioner's only seizure was indisputably reasonable, having been supported by probable cause for two other crimes.

Petitioner's every-crime rule is not demanded by the Warrant Clause, which is not at issue in this case in any event. Petitioner's malicious prosecution claim requires him to "prove that the malicious prosecution resulted in a seizure *of the plaintiff*." *Thompson*, 596

U.S. at 43, n.2 (emphasis added). The Warrant Clause governs a different subject: the circumstances in which a warrant may be issued. U.S. CONST., amend. iv. Petitioner's only remaining claim is a malicious prosecution claim premised on an unreasonable seizure—not a claim under the Warrant Clause or, for that matter, a claim for an unreasonable search. *See* Br. of United States as *amicus curiae*, at 23–25. Amalgamating these distinct constitutional guarantees to create an omnibus Fourth Amendment claim is ill-advised and finds no support in the caselaw of this Court. *See id*.

Even if the Warrant Clause were implicated here as evidence of the Fourth Amendment's values and purposes, the analysis due under that provision would support Respondents' rule, not Petitioner's. The Warrant Clause is not premised on the expectation that "every fact recited in the warrant affidavit is necessarily correct," but rather that no "deliberately or recklessly false statement" in the affidavit is "necessary to the finding of probable cause." *Franks*, 438 U.S. at 156, 165. Thus, where a warrant is infected with "deliberate falsehood or … reckless disregard for the truth," that information should be "set to one side," and if "there remains sufficient content in the warrant affidavit to support a finding of probable cause," the warrant is valid. *Id*. at 171–72. Respondents' rule is consistent with that approach. Where falsified evidence is allegedly used to cause a plaintiff's unreasonable seizure, Respondents' rule would set aside that evidence and determine whether the seizure was nonetheless reasonable without it. Where, as here, a plaintiff was reasonably seized on other grounds not affected by the allegedly falsified

information, the plaintiff has no cognizable Fourth Amendment malicious prosecution claim.

Nor is Petitioner's every-crime rule necessary to protect the role of a neutral and detached magistrate. Pet.Br. at 31–32. The Fourth Amendment protects against unreasonable *seizures*, not unreasonable allegations. *See Gerstein*, 420 U.S. at 119, 125, n.26 ("We do not imply that the accused is entitled to judicial oversight or review of the decision to prosecute."). When a defendant is detained following a neutral and detached magistrate's probable cause determination, that detention comports with the Fourth Amendment, regardless of whether the magistrate was also exposed to erroneous allegations that could not support probable cause if they stood alone. Respondents' rule preserves the magistrate's role, consistent with *Franks*, 438 U.S. at 168, by refusing to negate a magistrate's probable cause determination unless the presence of falsified evidence actually eliminated probable cause to issue the warrant.

Throughout his brief, Petitioner justifies the every-crime rule as required to safeguard against the risk that police officers will be incentivized to (or will fail to be punished if they) layer falsified charges on top of legitimate ones. The point is both irrelevant and overstated. It is irrelevant because the possibility of an unremedied harm (deliberately false accusations in charging documents) does not justify expanding the *Fourth Amendment's* coverage beyond unreasonable seizures. *See Gerstein*, 420 U.S. at 125, n.26 (probable cause not required for charging decisions). The point is overstated because it ignores the existing ways that police officers are disincentivized to intentionally

stack false charges on top of legitimate ones. Police officers face perjury prosecution and departmental discipline (including job loss) as consequences for the deliberate falsification of criminal charges or evidence. Pursuant to the exclusionary rule, evidence will be excluded from criminal proceedings if police obtained it because of deliberately falsified information in a warrant or affidavit. *Utah v. Strieff*, 579 U.S. 232, 237 (2016) (exclusionary rule "requires trial courts to exclude unlawfully seized evidence in a criminal trial," including both "primary" and "derivative" evidence). And state tort law in all fifty states supplies a cause of action for malicious prosecution that, unlike a § 1983 claim, does not depend upon a Fourth Amendment seizure.[4]

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[4] *Dolgencorp, LLC v. Spence*, 224 So. 3d 173 (Ala. 2016); *Greywolf v. Carroll*, 151 P.3d 1234 (Alaska 2007); *Rahn v. City of Scottsdale*, No. 1 CA-CV 15-0767, 2016 WL 7508085, at *1 (Ariz. Ct. App. Dec. 30, 2016); *S. Ark. Petroleum Co. v. Schiesser*, 36 S.W.3d 317, 319 (Ark. 2001); *Parrish v. Latham & Watkins*, 400 P.3d 1, 775 (Cal. 2017); *Hewitt v. Rice*, 154 P.3d 408 (Colo. 2007); *Talley v. Town of Plainville*, No. CV166032658, 2017 WL 7048660, at *13 (Conn. Super. Ct. Dec. 14, 2017); *Quartarone v. Kohl's Dep't Stores, Inc.*, 983 A.2d 949 (Del. Super. Ct. 2009); *Debrincat v. Fischer*, 217 So. 3d 68 (Fla. 2017); *McKissick v. S.O.A., Inc.,* 684 S.E.2d 24 (Ga. 2009); *Isobe v. Sakatani*, 279 P.3d 33 (Hawaii Ct. App. 2012); *Berian v. Berberian*, 483 P.3d 937 (Idaho 2020); *St. Paul Fire & Marine Ins. Co. v. City of Zion*, 18 N.E.3d 193 (Ill. 2014); *Crosson v. Berry*, 829 N.E.2d 184 (Ind. Ct. App. 2005); *Venckus v. City of Iowa City*, 990 N.W.2d 800 (Iowa 2023); *Debbrecht v. City of Haysville*, 328 P.3d 585 (Kan. Ct. App. 2014); *Martin v. O'Daniel*, 507 S.W.3d 1 (Ky. 2016), *as corrected* (Sept. 22, 2016); *Lemoine v. Wolfe*, 168 So. 3d 362, 368 (La. 2015); *Trask v. Devlin*, 788 A.2d 179, 182 (Maine 2002); *Candelero v. Cole*, 831 A.2d 495 (Md. 2003); *Gutierrez v. Mass. Bay Transp. Auth.*, 772

Lastly, Petitioner suggests that whether a malicious prosecution claim caused a plaintiff to be seized is relevant only to determining compensatory damages, but that is wrong. Pet.Br. at 40, n.14. When Chief Judge Pryor adopted that view in *Williams v. Aguirre*, 965 F.3d 1157, 1161–62 (11th Cir. 2020), he did so without the benefit of *Thompson*, which made clear that a malicious prosecution must result in a seizure to state a violation of the Fourth Amendment.

N.E.2d 552 (Mass. 2002); *Peterson Novelties, Inc. v. City of Berkley*, 672 N.W.2d 351 (Mich. 2003); *Stead-Bowers v. Langley*, 636 N.W.2d 334 (Minn. Ct. App. 2001); *Univ. of Miss. Med. Ctr. v. Oliver*, 235 So. 3d 75 (Miss. 2017); *Brockman v. Regency Fin. Corp.*, 124 S.W.3d 43 (Mo. Ct. App. 2004); *Sherner v. Nat'l Loss Control Servs. Corp.*, 124 P.3d 150, 157 (Mont. 2005); *Holmes v. Crossroads Joint Venture*, 629 N.W.2d 511, 526 (Neb. 2001); *LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev. 2002); *Ojo v. Lorenzo*, 164 N.H. 717, 727, 64 A.3d 974, 983 (N.H. 2013); *LoBiondo v. Schwartz*, 970 A.2d 1007, 1022 (N.J. 2009); *Durham v. Guest*, 204 P.3d 19, 26 (N.M. 2009); *Pinchback v. State*, 68 N.Y.S.3d 845, 853 (N.Y. Ct. Cl. 2017); *Turner v. Thomas*, 794 S.E.2d 439, 444 (N.C. 2016); *Rodenburg L. Firm v. Sira*, 931 N.W.2d 687, 690 (N.D. 2019); *Armatas v. Aultman Hosp.*, 203 N.E.3d 130, 135 (Ohio 2022); *Parker v. City of Midwest City*, 850 P.2d 1065, 1067 (Okla. 1993); *Miller v. Columbia Cnty.*, 385 P.3d 1214, 1223 (Or. Ct. App. 2016); *York v. Kanan*, 298 A.3d 533, 542 (Pa. Commw. Ct. 2023); *Horton v. Portsmouth Police Dep't*, 22 A.3d 1115, 1124 (R.I. 2011); *Pallares v. Seinar*, 756 S.E.2d 128, 131 (S.C. 2014); *Harvey v. Reg'l Health Network, Inc.,* 906 N.W.2d 382, 395 (S.D. 2018); *Mynatt v. Nat'l Treasury Emps. Union, Chapter 39*, 669 S.W.3d 741, 746 (Tenn. 2023); *Garcia v. Semler*, 663 S.W.3d 270, 284 (Tex. Ct. App. 2022); *Neff v. Neff*, 247 P.3d 380, 394 (Utah 2011); *Siliski v. Allstate Ins. Co.*, 811 A.2d 148, 151 (Vt. 2002); *Dill v. Kroger Ltd. P'ship I*, 860 S.E.2d 372, 378 (Va. 2021); *Zink v. City of Mesa*, 487 P.3d 902, 909 (Wash. 2021); *Goodwin v. City of Shepherdstown*, 825 S.E.2d 363, 369 (W. Va. 2019); *Monroe v. Chase*, 961 N.W.2d 50, 53 (Wis. 2021); *Toltec Watershed Improvement Dist. v. Johnston*, 717 P.2d 808, 811 (Wyo. 1986).

596 U.S. at 43, n.2. And *Thompson* is undoubtedly correct. Nominal damages (which open the door to punitive damages and attorneys' fees) can be awarded only where a plaintiff proves a constitutional injury, and for a Fourth Amendment malicious prosecution claim like Petitioner's, the constitutional injury must be an unreasonable seizure. Petitioner says nominal damages would have been available under the common law of 1871, Pet.Br. at 40, n.14, but that is irrelevant because the common law of 1871 did not depend on the text of the Fourth Amendment for its substance, as Petitioner's § 1983 claim does. And in any event, Petitioner does not dispute that nominal damages could be available if a Fourth Amendment violation were shown, but an element of any such showing is an unlawful seizure.

Petitioner's every-crime rule is inconsistent with the Fourth Amendment's text and the principles and values that underlie it. Petitioner's every-crime rule should be rejected.

III. A Remand Is Not Appropriate.

The appropriate resolution in this case is to affirm because Petitioner cannot state a malicious prosecution claim related to his money-laundering charge, which did not cause him to be seized.

Petitioner's seizure is not the subject of any disputed material facts. "[O]n December 2, 2016, … Mr. Chiaverini was arrested and taken to jail …, where he remained until later in the day on December 5, 2016." R.102, Page ID#2749 (Pl's Opp. to Mot. for Summ. J.)

On these straightforward facts, the application of the correct rule is clear. Petitioner's money-laundering charge did not cause him to be seized. Rather, under this Court's existing Fourth Amendment precedents, Petitioner's seizure was reasonable and therefore constitutional because it was entirely justified by probable cause on two misdemeanor offenses. *Supra*, section I.B.

The United States joins Respondents in urging the Court to adopt the correct test—that a charge lacking probable cause can support a malicious prosecution claim only if it caused the plaintiff to be seized—but the United States calls for the Court to vacate and remand rather than affirm. Br. for the United States as *amicus curiae*, at 22–23. The Court should reject this suggestion. The Court regularly articulates a new rule *and applies it* in the first instance. *See*, *e.g.*, *Carpenter v. United States*, 585 U.S. 296, 320 (2018) (articulating new Fourth Amendment rule on searches and applying it before remanding for further proceedings); *Crawford v. Washington*, 541 U.S. 36, 68 (2004) (articulating and applying new Sixth Amendment confrontation standard); *Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 890 (1990) (articulating new constitutional rule and applying same in the first instance); *Terry v. Ohio*, 392 U.S. 1, 27–31 (1968) (articulating and applying Fourth Amendment rule regarding a stop and weapons frisk); *Katz v. United States*, 389 U.S. 347, 359 (1967) (articulating and applying Fourth Amendment rule for electronic surveillance).

The Court should do the same here. The scope and duration of Petitioner's seizure is not in dispute, and

the application of the correct test is clear from this Court's precedents. *Supra*, section I.B. To remand in this circumstance would lead to confusion among the lower courts, opening the door to Petitioner's creative but unsupportable claims that his seizure was caused by the money-laundering charge based on speculative predictions of the discretionary decisions of law enforcement officers. *See* Pet.Br. at 40.

The Court should not be concerned that "respondents never argued … below" that Petitioner's "unfounded charges changed the nature of his seizure or prolonged his detention." Pet.Br. at 39. Of course not. It was *Petitioner's* obligation to raise in the courts below how his allegedly baseless money-laundering charge caused him to be seized. Petitioner was on notice to do so because of the Sixth Circuit's prior decision in *Howse v. Hodous*. There, the Sixth Circuit rejected the Second Circuit's every-crime rule, including its motivation: to disincentivize an officer who "might tack on many additional (meritless) charges" with impunity. 953 F.3d at 409, n.3. In the panel's words:

> Tacking on meritless charges, however, does not change the nature of the seizure. If hypothetically it were to change the length of detention, that would be a different issue. But the plaintiff has not presented any evidence that the additional assault charges" he faced "caused [him] to suffer longer detention.

Id. When Petitioner briefed his appeal in the Sixth Circuit two years later, the *Howse* rule and its caveat were available to him. Indeed, Respondents cited *Howse* in their appellate briefing. Appellees' Br., No.

21-3996, Doc. 23 at 30 (6th Cir. May 5, 2022). Despite this, Petitioner chose not to assert that his money-laundering charge caused him to be seized. That was a knowing choice, too, because Petitioner *had* argued in the district court that, "[b]ut for the felony money laundering charge, Mr. Chiaverini would have been issued a summons as had been done for Brent Burns," R.102, Page ID #2755—exactly the argument Petitioner now renews in this Court. Pet.Br. at 40. By failing to renew the argument before the Sixth Circuit, Petitioner has waived it.

The Court should articulate the correct test and apply it here to affirm the decision below. If the Court chooses to remand instead, it should instruct that only a charge that caused a plaintiff to be seized can support a Fourth Amendment malicious prosecution claim.

CONCLUSION

Respondents respectfully request that the Court affirm the decision of the Sixth Circuit Court of Appeals.

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Respectfully submitted,

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