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

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Respondents have made this an easy case. Even though they advocated for the any-crime rule below, and even though the any-crime rule was the sole basis for the Sixth Circuit's decision, respondents now walk away from that rule. Indeed, they acknowledge that a plaintiff can make out a Fourth Amendment malicious-prosecution claim if he can prove that one charge among several lacks probable cause. At this point, then, no party appears to object to this Court adopting the charge-specific rule for the lack-of-probable-cause element. That's all this Court needs to resolve in order to answer the question presented and reverse the decision below.

Respondents go on to argue that *just* proving one charge lacks probable cause is not enough to establish a Fourth Amendment malicious-prosecution claim. So far, so good. Mr. Chiaverini agrees that in addition to proving a lack of probable cause, a plaintiff must prove the other elements of a Fourth Amendment malicious-prosecution claim—that defendants acted with the requisite mens rea, that the bogus charge was favorably terminated, and that the bogus charge resulted in a seizure or other Fourth Amendment harm.

But respondents then urge this Court to adopt and apply a novel rule about how to prove that resulted-in-a-Fourth-Amendment-harm element. This Court should decline the invitation. Not only are respondents' arguments outside the scope of the question presented, but respondents provide no reason

for this Court to reach them. Instead, this Court should simply reverse the Sixth Circuit, hold that the charge-specific rule governs the lack-of-probable-cause element of a Fourth Amendment malicious-prosecution claim, and remand for further proceedings.

I. The lack-of-probable-cause element of a Fourth Amendment malicious-prosecution claim is governed by the charge-specific rule.

At this stage, everyone agrees that the any-crime rule applied by the court below is wrong and that a plaintiff can succeed on a Fourth Amendment malicious-prosecution claim even if he proves that only one charge among many lacks probable cause (provided, of course, he proves the other elements of his claim). Rightly so.

1. In his opening brief, Mr. Chiaverini argued that, under the test articulated in *Thompson v. Clark*, 142 S. Ct. 1332 (2022), the charge-specific rule governs the lack-of-probable-cause element of a Fourth Amendment malicious-prosecution claim. Under the *Thompson* test, this Court first looks to "the most analogous tort as of 1871." *Id.* at 1337. In this case, that's the tort of malicious prosecution, as the "gravamen" of that tort is "the wrongful initiation of charges without probable cause." *Id.* at 1337-38. As of 1871, the common law applied the charge-specific rule to the lack-of-probable-cause element of a malicious-prosecution claim. Petr. Br. 18-23. Next, this Court looks to the "values and purposes" of the Fourth Amendment. *Thompson*, 142 S. Ct. at 1337. Those "values and purposes" also counsel in favor of the charge-specific rule. Petr. Br. 24-35.

Respondents do not materially dispute that analysis. They acknowledge—as they must—that it is "appropriate to look to the 1871 common-law consensus to determine the elements of a constitutional tort." Resp. Br. 28. They agree—again, as they must—that malicious-prosecution claims in 1871 proceeded through "a charge-by-charge analysis." *Id.* 31.

And though respondents quibble with the details of the "values and purposes" of the Fourth Amendment articulated by Mr. Chiaverini, they don't ultimately contend that those "values and purposes" counsel in favor of the any-crime rule. *See* Resp. Br. 32-39. Instead, they concede that a plaintiff can satisfy the lack-of-probable-cause element simply by proving that one charge lacked probable cause. *Id.* 24-27. The United States, too, agrees that both the common law and the "values and purposes" of the Fourth Amendment require the charge-specific rule. U.S. Br. 14-23.

2. Respondents instead spend much of their brief attacking a straw-man version of the charge-specific rule that eliminates the requirement that a plaintiff prove his malicious prosecution resulted in a Fourth Amendment harm. But Mr. Chiaverini has always acknowledged that he must show that the false charge resulted in a seizure or other Fourth Amendment injury. Petr. Br. 10-11. On remand, respondents will have the opportunity to argue that the bogus charge in this case caused no Fourth Amendment harm (or, for that matter, that the charge was not favorably terminated or was not brought with the requisite mens rea). This Court needn't say more regarding those

other elements than it already said in *Thompson*. *See* 142 S. Ct. at 1337-38 & n.2.

II. This Court should not reach respondents' other arguments.

Instead of meaningfully engaging on the question presented, respondents urge this Court to affirm the decision below by holding that Mr. Chiaverini cannot prove that the fabricated charge resulted in a Fourth Amendment harm. This Court should turn aside that request. Siding with respondents would require this Court to stray far beyond the question presented. It would also require this Court to depart from its usual practice of leaving questions like waiver for remand, not to mention to accept the very same arguments it ignored at the certiorari stage. *See* BIO 11-14, 24. And it would require this Court to answer at least three legal questions contrary to the weight of authority in the courts of appeal with no argument from the text or history of the Fourth Amendment.

1. As in *Thompson*, "[t]he narrow dispute in this case concerns *one element* of [a] Fourth Amendment claim under § 1983 for malicious prosecution." *Thompson v. Clark*, 142 S. Ct. 1332, 1337 (2022) (emphasis added). Recall that a Fourth Amendment malicious-prosecution claim has four elements: (1) lack of probable cause; (2) the requisite mens rea; (3) favorable termination; and (4) a resulting harm grounded in the Fourth Amendment (for instance, that "the malicious prosecution resulted in a seizure"). *Id.* at 1337-38 & n.2. The question presented on which this Court granted certiorari is about the first of those elements—namely, how a plaintiff shows "that legal process was instituted without probable cause." Pet. i; *see also* U.S. Br. 9 (lack-of-probable-cause element is

separate from resulted-in-a-Fourth-Amendment-harm element).

Respondents' brief, however, is almost entirely about whether the malicious prosecution resulted in a Fourth Amendment harm, the fourth of those elements. *See* Resp. Br. 1, 13, 17-18. Respondents' proposed disposition would thus require this Court to go beyond the question presented.

Respondents attempt to justify this shift in focus by suggesting that the Sixth Circuit actually bars Fourth Amendment malicious-prosecution claims where baseless charges do not "cause [the plaintiff's] seizure." Resp. Br. 24-25. But this contention "conflicts with the language of the decision below, with respondents' own arguments below, and with district courts' understanding of Sixth Circuit precedent," as the United States put the point. U.S. Br. 23.

In the proceedings below, respondents repeatedly argued for the any-crime rule: "[S]o long as probable cause exists to one of multiple criminal charges, that is enough to negate" a Fourth Amendment malicious-prosecution claim as to any charge. Oral Argument at 16:45, *Chiaverini v. City of Napoleon*, 2023 WL 152477 (6th Cir. 2023) (No. 21-3996) (cleaned up), https://perma.cc/P6FY-RHME; *see also* Resp. C.A. Br. 40-41 ("If probable cause existed for just one charge, both the false arrest and malicious prosecution claims fail." (citing *Howse v. Hodous*, 953 F.3d 402, 409 (6th Cir. 2020))); Defs. Reply in Supp. of Mot. for Summ. J., R. 107, Page ID # 2875 ("In *Howse* . . . the Sixth Circuit held that when probable cause exists for one charge, a plaintiff 'cannot move forward with *any* of his malicious-prosecution claims.'" (quoting *Howse*, 953 F.3d at 408)). Respondents made no argument that

Mr. Chiaverini failed to satisfy the Fourth Amendment harm element or about how that element worked.

The court below also ruled against Mr. Chiaverini solely based on the any-crime rule: "[W]e need not decide whether the officers had probable cause for the money-laundering charge because probable cause existed for the other valid charges." Pet. App. 10a n.8 (citing *Howse*, 953 F.3d at 408-09); *see also id.* 10a ("So long as probable cause supports at least one charge against Chiaverini . . . , his false-arrest and malicious-prosecution claims based on other charges . . . also fail."); *id.* 16a ("Because probable cause existed to arrest and prosecute Chiaverini on at least one charge, his malicious-prosecution and false-arrest claims fail." (citing *Howse*, 953 F.3d at 409-10)). Again, no mention of the Fourth Amendment harm element.

And as the United States notes, the any-crime rule is the rule that district courts within the Sixth Circuit believe is the governing rule. U.S. Br. 23; *see also* Cert. Reply 3.

In short, respondents' rule would require this Court to wade into an issue that wasn't aired at all below. As in *Thompson*—where defendants also argued that the plaintiff could not prove the malicious prosecution resulted in a Fourth Amendment harm, even though the case concerned a different element—this Court should decline respondents' invitation to reach that issue. *See* Resp. Br. at 24, *Thompson*, *supra* (No. 20-659); *Thompson*, 142 S. Ct. at 1341 ("We express no view . . . on additional questions that may be relevant on remand, including whether Thompson was ever seized as a result of the alleged malicious prosecution . . . .").

2. In an effort to avoid defending the any-crime rule, respondents urge this Court to affirm the decision below by finding that Mr. Chiaverini waived any argument about the resulted-in-a-Fourth-Amendment-harm element of his claim. *See* Resp. Br. 41-42. To start, respondents haven't given this Court any reason to depart from its near-universal practice of leaving questions like waiver for remand. *See Thompson*, 142 S. Ct. at 1341. (The United States agrees with Mr. Chiaverini that this Court should not resolve arguments regarding waiver in the first instance. U.S. Br. 22-23.)

Moreover, respondents made precisely this argument at the cert stage, but this Court nonetheless granted certiorari. *See* BIO 11-14, 24 (urging this Court to deny certiorari because Mr. Chiaverini could not satisfy the resulted-in-a-Fourth-Amendment-harm element of his claim).

Besides, respondents are wrong regarding waiver. As respondents acknowledge, in the district court, Mr. Chiaverini urged that "'[b]ut for the felony money laundering charge, Mr. Chiaverini would have been issued a summons as had been done for Brent Burns'—exactly the argument Petitioner now renews in this Court." Resp. Br. 42 (alteration in original) (quoting R. 102, Page ID # 2755). The district court didn't question that assertion. Pet. App. 39a-41a. Nor did respondents dispute it—not before the district court, and not on appeal. *See supra* at 5-6. Before the Sixth Circuit, then, there was no reason for Mr. Chiaverini to discuss the Fourth Amendment harm element of his claim at any length.

Respondents contend that Mr. Chiaverini should have reiterated his argument that the money-

laundering charge caused his seizure "because of the Sixth Circuit's prior decision in *Howse v. Hodous.*" Resp. Br. 41-42. But respondents themselves—not to mention the panel below and district courts within the Sixth Circuit—have read *Howse* as establishing the any-crime rule, not as saying anything about the Fourth Amendment harm element of a malicious-prosecution claim. *See, e.g.*, Resp. C.A. Br. 23 (citing *Howse* for the blanket rule that "[t]he absence of probable cause as to a single charge invalidates both the false arrest and malicious prosecution claims"); U.S. Br. 23; *supra* at 5-6.

3. Finally, respondents urge this Court to take at least three legal positions that no court of appeals has ever endorsed, including some that have been correctly rejected by the Eleventh Circuit. This Court should not do so.

a. First up is respondents' claim about how to prove the resulted-in-a-Fourth-Amendment-harm element of a malicious-prosecution claim. Their test: A malicious-prosecution plaintiff has no cause of action if "[t]he entirety of [his] seizure was constitutionally justified" by the valid charges. Resp. Br. 18; *see id.* 19-20, 25-27. Respondents' proposal isn't just novel; it also appears to differ in significant measure both from the United States' rule and from the rule in the Eleventh Circuit. And respondents' proposed rule is incorrect.

Although respondents imply their test is the same as the United States' (*see, e.g.*, Resp. Br. 40), that's not what the briefs suggest. According to respondents, Mr. Chiaverini would not be able to proceed under their rule. If a magistrate *could*, constitutionally, have signed an arrest warrant just based on the legitimate

charges, Mr. Chiaverini would have no claim. *See id.* 39-40. Per respondents, the fact that an arrest warrant "would not have been sought or issued without the presence of the felony money laundering charge" is "irrelevant." *Id.* 22.

Under the United States' rule, by contrast, it's true that "[i]f a magistrate or grand jury has made a valid finding of probable cause on at least one charge, the Fourth Amendment permits the suspect's continued detention pending trial on that charge." U.S. Br. 16. "But *even in that situation*"—that is, even where a magistrate *could*, constitutionally, have signed an arrest warrant—"the suspect can establish an unreasonable seizure by showing, for example, that a fabricated charge prolonged his pretrial detention—or, *a fortiori*, by showing that it caused pretrial detention that *would not otherwise have occurred*." *Id.* 16-17 (emphases added).

In Mr. Chiaverini's case, then, the fact that "a magistrate . . . has made a valid finding of probable cause on at least one charge" so as to "permit[] the suspect's continued detention pending trial on that charge" doesn't end the inquiry under the United States' rule. *See* U.S. Br. 16. The United States acknowledges that "even in that situation," Mr. Chiaverini can "establish an unreasonable seizure" by showing that his four days in jail "would not otherwise have occurred" but for the felony money-laundering charge. *See id.* 16-17. Under the United States' rule, Mr. Chiaverini's evidence that an arrest warrant "would not have been sought or issued without the presence of the felony money laundering charge," *see* Resp. Br. 22, is thus highly relevant.

In other words, while respondents ask plaintiffs to prove there *could not* have been a seizure under the Constitution, the United States asks plaintiffs to prove only that there *would not* have been a seizure as a matter of fact but for the charge lacking probable cause. *Compare* U.S. Br. 16-17, *with* Resp. Br. 18. The United States' rule appears to be the predominant rule within the Second Circuit. *See, e.g.*, *Evans v. City of New York*, 2015 WL 1345374, at *7 & n.9 (E.D.N.Y. Mar. 25, 2015); *cf. Coleman v. City of New York*, 2019 WL 1413999, at *3 (S.D.N.Y. Mar. 29, 2019). Respondents' brief does not identify—nor did petitioner's research uncover—any court that applies respondents' rule.

The Eleventh Circuit has yet a third rule: The plaintiff must show that his seizure "would not otherwise be justified without legal process." *Williams v. Aguirre*, 965 F.3d 1147, 1165 (11th Cir. 2020). In *Williams*, the Eleventh Circuit first required the plaintiff to show that "probable cause was absent for at least one of the two attempted murder charges against him." *Id.* at 1158. Once he had done so, he satisfied the resulted-in-a-Fourth-Amendment-harm element so long as his pretrial detention could not have been "justified as a warrantless arrest." *Id.* at 1167.

Recall that, in general, no detention longer than forty-eight hours can be justified as a warrantless arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). Practically speaking, then, the Eleventh Circuit's approach allows any plaintiff held for longer than forty-eight hours to bring a Fourth Amendment malicious-prosecution claim after showing that one of

the charges lacked probable cause. *Williams*, 965 F.3d at 1165; *see also Glenn v. Schill*, 2023 WL 3855590, at *6-7 (M.D. Ga. June 6, 2023). Mr. Chiaverini would thus be able to proceed under the Eleventh Circuit's rule: He was detained for nearly four days, well beyond the forty-eight hours that could have been "justified without legal process." *Williams*, 965 F.3d at 1165.

This Court shouldn't wade into the debate among the three rules. Respondents muddy the differences between their rule and the United States' rule and do not even acknowledge the Eleventh Circuit's rule, let alone explain why theirs (again, adopted by no court, to Mr. Chiaverini's knowledge) is preferable.[1]

At the very least, this Court should not adopt respondents' rule. That rule misunderstands the Fourth Amendment's legal process requirements. The entire point of arrests pursuant to legal process—which come with the power to detain the arrestee for a meaningful period of time—is to allow a neutral party to weigh the evidence for the listed charges. *See* Petr. Br. 31-32. It makes no sense to argue that because a magistrate *could* have signed off on an arrest consistent with the Constitution, detention without that signoff is constitutional. Respondents' arguments to the contrary stem from their near-

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[1] The closest respondents come is suggesting that the Eleventh Circuit's rule is inconsistent with *Thompson*. Resp. Br. 38-39. But the Fourth Amendment harm element was not at issue in *Thompson*, and this Court was careful to avoid weighing in on the debate. *See* 142 S. Ct. at 1341. *Thompson* said only that the petitioner in that case had to prove that "the malicious prosecution *resulted in* a seizure"—a formulation equally consistent with respondents', the United States', and the Eleventh Circuit's rules. *Id.* at 1337 n.2 (emphasis added).

exclusive reliance on cases dealing with warrantless arrests. *See, e.g.*, Resp. Br. 22-24. But this Court's cases treat warrantless arrests (where, for example, there's no need for an officer to specify the crime of arrest or even to have a crime in mind) differently from arrests pursuant to a warrant (where an officer must specify the crime and tell the truth about the evidence supporting probable cause). *Compare Devenpeck v. Alford*, 543 U.S. 146, 153 (2004), *with Berger v. New York*, 388 U.S. 41, 55-56, 58-59 (1967); *see also* Petr. Br. 36-38.

b. Respondents also ask this Court to hold that their proposed could-not-have-been-detained requirement is part of establishing liability, rather than being relevant only to the damages calculation. Resp. Br. 38-39. (Although the United States agrees with respondents that some kind of but-for seizure showing is part of the plaintiff's case on liability, its proposed disposition does not require this Court to answer that question. *See* U.S. Br. 22-23, 29.)

The only court of appeals to squarely reach the liability versus damages question, the Eleventh Circuit, has rejected respondents' position. In *Williams*, Chief Judge Pryor explained that "probable cause for other offenses may be relevant to damages" but "is not determinative of whether [the plaintiff] can state a claim for a constitutional violation." 965 F.3d at 1161; *see* U.S. Br. 29 (acknowledging Eleventh Circuit view); Resp. Br. 38-39 (same). Remember, a plaintiff in the Eleventh Circuit satisfies his burden on liability so long as he proves that "probable cause was absent for at least one" charge and that "his seizure would not otherwise be justified without legal process." *Williams*, 965 F.3d at 1157, 1168. So the

question whether "but for th[e] illegitimate charge, he would have been released earlier or would not have faced detention" is relevant only to the damages calculation. *Id.* at 1161 (internal quotation marks omitted).

The Eleventh Circuit's view accords with the common law of 1871: "The question whether there was or was not probable cause for some parts of the charge would affect the amount of the damages recoverable, but not the plaintiff's right to a verdict." 2 C. G. Addison, *Wrongs and Their Remedies: A Treatise on the Law of Torts* § 860 (4th ed. 1876); *see also Delisser v. Towne* (1841) 113 Eng. Rep. 1159, 1163 (QB) (same).

Once again, respondents provide this Court with no reason to reach beyond the question presented to take a legal position not aired below and contrary to the limited authority in the circuit courts and to the common law.

c. Finally—with no argument from text or history—respondents ask this Court to hold that there can be no malicious-prosecution claim premised on a violation of the Warrant Clause. Resp. Br. 34-36. Rather, respondents urge this Court to hold that only the Fourth Amendment's prohibition on unreasonable seizures can give rise to such a claim. *Id.* Again, that issue is outside the scope of the question presented and not properly before this Court, as the United States agrees. *See* U.S. Br. 23-25. And because Mr. Chiaverini was unquestionably seized, this case wouldn't be a particularly good vehicle to consider the question.

Respondents suggest this Court should address the Warrant Clause question because Mr. Chiaverini cited the Warrant Clause in identifying the "values

and purposes" of the Fourth Amendment. Resp. Br. 34-35. But this Court invoked the "values and purposes" test in *Thompson* not to make a doctrinal Fourth Amendment holding but to confirm that the "elements of the most analogous tort as of 1871" were "consistent with . . . the constitutional right at issue." 142 S. Ct. at 1337. And this Court could entirely ignore Mr. Chiaverini's Warrant Clause "values and purposes" argument and still rule in his favor on the question presented; after all, respondents aren't actually arguing that the "values and purposes" of the Fourth Amendment counsel in favor of the any-crime rule.

In any event, respondents' position lacks merit. Respondents maintain that a Section 1983 malicious-prosecution claim can only be based on the Fourth Amendment's unreasonable seizures prohibition, citing *Thompson*'s footnote that a plaintiff "has to prove that the malicious prosecution resulted in a seizure of the plaintiff."[2] Resp. Br. 13, 17 (citing *Thompson*, 142 S. Ct. at 1137 n.2). But in *Thompson*, the only possible Fourth Amendment harm at issue was an unreasonable seizure of Mr. Thompson himself. No warrant had been issued in that case. *See*

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[2] At times, respondents appear to go even further and seek to limit Fourth Amendment malicious-prosecution claims to cases where a plaintiff has been detained. *See, e.g.*, Resp. Br. 18-19, 34-35. But the Constitution's prohibition on unreasonable seizures extends beyond detention to, for instance, seizures of property and pretrial bond conditions. *See Soldal v. Cook County*, 506 U.S. 56, 61 (1992) (interference with property interests is a "seizure" for Fourth Amendment purposes); *Albright v. Oliver*, 510 U.S. 266, 277-79 (1994) (Ginsburg, J., concurring) (observing, based on common law, that a "seizure" may continue even after pretrial release).

Thompson, 142 S. Ct. at 1335-36. So it would be passing strange to assume the Court considered and accepted the argument that no Fourth Amendment malicious-prosecution claim could be predicated on the Warrant Clause. At the very least, before doing so, the Court would have engaged with the text of the Fourth Amendment itself. That text prohibits a warrant from being "*issue[d]*" (not just executed) "but upon probable cause." U.S. Const., amend. IV (emphasis added). And that text makes clear the Warrant Clause's prohibition is independent of the prohibition on unreasonable seizures. *Id.*

More importantly, the question presented in *Thompson* was about the favorable-termination element of the claim, not the Fourth Amendment harm element. 142 S. Ct. at 1338. *Thompson* thus did not purport to be exhaustive about the kinds of harms that could satisfy that final element of a malicious-prosecution claim. *Id.* This Court should follow *Thompson*'s lead. In a case about the lack-of-probable-cause element, this Court needn't decide what sort of Fourth Amendment harm is necessary to prove a different element of the claim.

Respondents also argue that this Court's opinion in *Franks v. Delaware*, 438 U.S. 154 (1978), somehow held that false allegations in a warrant application don't violate the Warrant Clause. Resp. Br. 33. They claim that, under *Franks*, "[e]ven '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.'" Resp. Br. 33 (quoting *Franks*, 438 U.S. at 156, 168). Not so. *Franks* squarely held that false

allegations *do* violate the Warrant Clause: The "language of the Warrant Clause itself . . . surely takes the affiant's good faith as its premise." 438 U.S. at 164. The "necessary to the finding of probable cause" language was about whether the exclusionary rule should apply. *Id.* at 167, 171-72. That aspect of *Franks* was a function of this Court's "reluctance . . . to extend the rule of exclusion," not of the Fourth Amendment. *See id.* at 170.

To beat a dead horse: This Court needn't address respondents' contention about the Warrant Clause to resolve this case. *See supra* at 13. Because everyone agrees that the lack-of-probable-cause element of a Fourth Amendment malicious-prosecution claim is governed by the charge-specific rule, this Court should simply hold as much and reverse the decision below. It may reiterate that, in addition to proving that lack-of-probable-cause element, Mr. Chiaverini must prove the other elements of a Fourth Amendment malicious-prosecution claim. *Thompson*, 142 S. Ct. at 1337-38 & n.2. But any questions about the particulars of those other elements should be saved for remand or a future case.

CONCLUSION

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

Respectfully submitted,

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