

No. _____

**In The
Supreme Court of the United States**

—◆—
WOODSTON MADDOX,

Petitioner,

v.

ANDREA MILLER,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

—◆—
PETITION FOR WRIT OF CERTIORARI

—◆—
KELI J. OLIVER*
MELISSA S. ROBERGE
DEPARTMENT OF LAW FOR THE
METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY, TENNESSEE
P.O. Box 196300
Nashville, TN 37219
Telephone: (615) 862-6341
Facsimile: (615) 862-6352
keli.oliver@nashville.gov
melissa.roberge@nashville.gov

Counsel for Petitioner

**Counsel of Record*

QUESTIONS PRESENTED

1. Whether a person who was arrested and booked, but never actually confined in jail or subjected to substantial pretrial restrictions, suffers a deprivation of liberty sufficient to state a Fourth Amendment “malicious prosecution” claim against the arresting police officer.
2. Whether a person who is indicted on multiple charges, including a charge not brought by the arresting officer, can prevail on a Fourth Amendment “malicious prosecution” claim against that officer when there is no record of what was presented to the grand jury, and the officer’s role in the “prosecution” consisted only of the arrest itself and associated testimonial actions.
3. Whether an officer is entitled to qualified immunity for a Fourth Amendment “malicious prosecution” claim when this Court has never expressly recognized the existence of such a claim or defined its potential parameters, the circuits are split as to what can constitute a “seizure” that would support such a claim if indeed it does exist, and the Sixth Circuit has never previously held that a “malicious prosecution” claim was viable in a case with similar facts to those presented here.

PARTIES TO THE PROCEEDINGS

Petitioner Woodston Maddox, in his individual capacity, was the Defendant-Appellee in the Sixth Circuit Court of Appeals.

Respondent Andrea Miller was the Plaintiff-Appellant in the Sixth Circuit Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner Woodston Maddox is a natural person, not a corporation.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
A. Factual Background	3
B. Relevant Case Proceedings	6
C. Basis for Federal Jurisdiction	9
REASONS FOR GRANTING THE PETITION ...	9
I. A SUSPECT WHO IS NOT CONFINED DURING THE PENDENCY OF HER CRIMINAL CHARGES AND IS ONLY REQUIRED TO CALL IN WEEKLY TO A CASE MANAGER AND APPEAR FOR COURT CANNOT SUSTAIN A “MALICIOUS PROSECUTION” CLAIM AGAINST HER ARRESTING OFFICER BECAUSE SHE HAS NOT SUFFERED THE REQUISITE DEPRIVATION OF LIBERTY	11

TABLE OF CONTENTS – Continued

	Page
II. A PERSON WHO IS INDICTED ON MULTIPLE CHARGES, INCLUDING A CHARGE NOT BROUGHT BY THE ARRESTING OFFICER, SHOULD NOT BE PERMITTED TO PREVAIL ON A FOURTH AMENDMENT “MALICIOUS PROSECUTION” CLAIM AGAINST THAT OFFICER WHEN THERE IS NO RECORD OF WHAT WAS PRESENTED TO THE GRAND JURY, AND THE OFFICER’S ROLE IN THE PROSECUTION CONSISTED ONLY OF THE ARREST ITSELF AND ASSOCIATED TESTIMONIAL ACTIONS.....	16
III. THIS COURT SHOULD REVERSE AND GRANT QUALIFIED IMMUNITY TO MADDOX BECAUSE THE STATE OF FOURTH AMENDMENT “MALICIOUS PROSECUTION” LAW IS PATENTLY UNSETTLED IN PRACTICALLY EVERY RESPECT; THUS, THERE WAS NO PRECEDENT THAT COULD HAVE PUT MADDOX ON NOTICE THAT HIS CONDUCT DURING THE RELEVANT TIME FRAME WAS UNLAWFUL	23
CONCLUSION.....	28

TABLE OF CONTENTS – Continued

	Page
APPENDIX	
United States Court of Appeals for the Sixth Circuit Opinion, dated August 3, 2017.....	App. 1
United States Court of Appeals for the Sixth Circuit Judgment, dated August 3, 2017	App. 21
United States District Court for the Middle Dis- trict of Tennessee Memorandum and Order, dated January 4, 2017	App. 22
United States District Court for the Middle Dis- trict of Tennessee Entry of Judgment, dated January 4, 2017	App. 29
United States Court of Appeals for the Sixth Circuit Order denying <i>en banc</i> review, dated November 8, 2017.....	App. 30

TABLE OF AUTHORITIES

	Page
CASES	
<i>Albright v. Oliver</i> , 510 U.S. 266 (1994).....	12, 13
<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987).....	24
<i>Ashcroft v. al-Kidd</i> , 563 U.S. 731 (2011)	23, 24
<i>Becker v. Kroll</i> , 494 F.3d 904 (10th Cir. 2007).....	14
<i>Briscoe v. LaHue</i> , 460 U.S. 325 (1983).....	22
<i>Britton v. Maloney</i> , 196 F.3d 24 (1st Cir. 1999).....	13
<i>District of Columbia v. Wesby</i> , No. 15-1485, 2018 WL 491521 (U.S. Jan. 22, 2018).....	24
<i>Evans v. Ball</i> , 168 F.3d 856 (5th Cir. 1999).....	14
<i>Ex parte United States</i> , 287 U.S. 241 (1932).....	16
<i>Gallo v. City of Philadelphia</i> , 161 F.3d 217 (3d Cir. 1998)	14
<i>Gerstein v. Pugh</i> , 420 U.S. 103 (1975)	11, 16
<i>Giordenello v. United States</i> , 357 U.S. 480 (1958)	16
<i>Harrington v. City of Nashua</i> , 610 F.3d 24 (1st Cir. 2010)	13
<i>Hunter v. Bryant</i> , 502 U.S. 224 (1991).....	23
<i>Johnson v. City of Cincinnati</i> , 310 F.3d 484 (6th Cir. 2002)	12
<i>Kaley v. United States</i> , 134 S. Ct. 1090 (2014).....	17
<i>Kalina v. Fletcher</i> , 522 U.S. 118 (1997)	20, 21
<i>Karam v. City of Burbank</i> , 352 F.3d 1188 (9th Cir. 2003)	14

TABLE OF AUTHORITIES – Continued

	Page
<i>King v. Harwood</i> , 852 F.3d 568 (6th Cir. 2017).....	8, 26
<i>Kingsland v. City of Miami</i> , 382 F.3d 1220 (11th Cir. 2004)	14
<i>Malley v. Briggs</i> , 475 U.S. 335 (1986).....	20, 21
<i>Manuel v. City of Joliet, Ill.</i> , 137 S. Ct. 911 (2017)	18
<i>Miller v. Maddox</i> , 866 F.3d 386 (6th Cir. 2017).....	1
<i>Miller v. Maddox</i> , 2017 WL 35721 (M.D. Tenn., Jan. 4, 2017)	1
<i>Mullenix v. Luna</i> , 136 S. Ct. 305 (2015).....	24, 25
<i>Murphy v. Lynn</i> , 118 F.3d 938 (2d Cir. 1997)	14
<i>Nieves v. McSweeney</i> , 241 F.3d 46 (1st Cir. 2001)	13
<i>Noonan v. Cty. of Oakland</i> , 683 F. Appx. 455 (6th Cir. 2017)	12
<i>Rapp v. Putman</i> , 644 F. Appx. 621 (6th Cir. 2016).....	12
<i>Rehberg v. Paulk</i> , 566 U.S. 356 (2012)	16, 19, 20, 21, 22
<i>Reichle v. Howards</i> , 566 U.S. 658 (2012)	23, 24
<i>Riley v. Dorton</i> , 115 F.3d 1159 (4th Cir. 1997)	14
<i>Roberson v. Tennessee</i> , 399 F.3d 792 (6th Cir. 2005)	6, 21
<i>Robertson v. Lucas</i> , 753 F.3d 606 (6th Cir. 2014).....	18
<i>Saucier v. Katz</i> , 533 U.S. 194 (2001)	26
<i>Spurlock v. Satterfield</i> , 167 F.3d 995 (6th Cir. 1999)	25, 26
<i>Wallace v. Kato</i> , 549 U.S. 384 (2007)	21

TABLE OF AUTHORITIES – Continued

	Page
<i>White v. Pauly</i> , 137 S. Ct. 548 (2017).....	24, 27, 28
<i>Wiley v. City of Chicago</i> , 361 F.3d 994 (7th Cir. 2004)	14
<i>Wilson v. Layne</i> , 526 U.S. 603 (1999).....	23
CONSTITUTIONAL PROVISION	
U.S. CONST. amend. IV	<i>passim</i>
STATUTES	
28 U.S.C. § 1254	1
28 U.S.C. § 1291	9
28 U.S.C. § 1331	9
42 U.S.C. § 1983	2, 6, 9, 19, 20
Tenn. Code Ann. § 28-3-104.....	6, 21
Tenn. Code Ann. § 39-16-602.....	4
Tenn. Code Ann. § 55-10-205.....	4

PETITION FOR A WRIT OF CERTIORARI

Petitioner Woodston Maddox respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Sixth Circuit in this case.

**OPINIONS BELOW**

The opinion of the Court of Appeals is reported at 866 F.3d 386; it is reproduced in the appendix hereto (“App.”) at App. 1. The opinion of the District Court for the Middle District of Tennessee overruling the Magistrate Judge’s report and recommendation and granting summary judgment to Petitioner Woodston Maddox is reported electronically at 2017 WL 35721 (M.D. Tenn., Jan. 4, 2017) and reproduced at App. 22.

**JURISDICTION**

The judgment of the Court of Appeals was entered on August 3, 2017. By Order entered November 8, 2017 (App. 30), the Court of Appeals denied Petitioner Woodston Maddox’s petition for a rehearing *en banc*. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment, U.S. CONST. amend. IV, provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 1983, Title 42, provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .



STATEMENT OF THE CASE

The questions presented arise from a summary judgment granted by the District Court and reversed by the Sixth Circuit as to Petitioner Maddox. The factual background of this case is discussed in limited

detail in the District Court and Sixth Circuit Opinions (*see* App. 1-20 and 22-28, respectively). However, to provide a full factual background, the references below are directly to documents submitted as exhibits and supporting materials to Petitioner Maddox's summary judgment motion (RE #60, PAGE ID # 243-47). The documents are identified by name, record entry number ("RE ____"), and record page number ("PAGE ID # ____").

A. Factual Background

This case arises out of Andrea Miller's arrest on August 31, 2011. Miller was driving home from work at around midnight. (Deposition of Andrea Miller ("Miller Depo."), RE 60-1 at 23, PAGE ID # 249). Metro Nashville Police Department Officer Woodston Maddox was stationed in the vicinity because he was providing a police presence to deter retaliation against a family who had been a witness to a shooting in the days prior. (Deposition of Woodston Maddox ("Maddox Depo."), RE 60-2 at 15, PAGE ID # 272). According to Maddox, instead of pulling over when blue lights were activated, Miller progressed down Baldwin Court at a high rate of speed, endangering pedestrians who were in the area. Maddox also claimed that Miller physically resisted his efforts to take her into custody. (Arrest Affidavits, Ex. A to Maddox Dec., RE 63-1, PAGE ID # 354-55). Miller contends that she did neither of those things.

Maddox arrested Miller and charged her with Reckless Driving in violation of Tenn. Code Ann. § 55-10-205 and Resisting a Stop in violation of Tenn. Code Ann. § 39-16-602. (Declaration of Woodston Maddox (“Maddox Dec.”), RE 63 at ¶ 3, PAGE ID # 350). Maddox also issued Miller a traffic citation for running a stop sign. (*Id.* at ¶ 10, PAGE ID # 351). Upon arresting Miller, Maddox drove her to the Criminal Justice Center (“CJC”) in downtown Nashville. After arriving at the CJC, Miller went before a night court judicial commissioner via video conferencing. (Miller Depo., RE 60-1, at 52, PAGE ID # 264). Maddox testified before the commissioner, and the commissioner then signed the arrest affidavits prepared by Maddox after determining that there was probable cause for Miller’s arrest. (Maddox Dec., RE 63, at ¶¶ 5-6, PAGE ID # 350; Maddox Depo., RE 60-2, at 41, PAGE ID # 273).

After Miller participated in the video conference with the night court commissioner who found probable cause, she remained at the CJC for approximately forty-five minutes during which she was enrolled in a pretrial release program. Participation in this program required payment of a \$35 fee, a weekly call to a case manager, and appearing for all court dates. Participation in this program was an alternative to Miller posting a \$3,000 bond. (App. 12-13). No travel or other restrictions were placed on Miller during the pendency of the criminal proceedings.

Subsequently, a preliminary hearing was held, where the judge found probable cause for Miller’s arrest and bound her over to the grand jury. Maddox

testified at the preliminary hearing. (Maddox Dec., RE 63, at ¶¶ 7-8, PAGE ID # 350-51). The grand jury indicted Miller for Resisting Arrest (later amended to Resisting a Stop), Reckless Driving, and Evading Arrest by Motor Vehicle. (Criminal Court file, RE 64-1, at 2-7, PAGE ID # 359-64). District Attorney Kyle Anderson had added the charge of Evading Arrest, which was an offense for which Maddox did not charge Miller. (Deposition of Kyle Anderson (“Anderson Depo.”), RE 60-3 at 7-8, PAGE ID # 276-77). Maddox did not testify before the grand jury. (Maddox Dec., RE 63, at ¶ 9, PAGE ID # 351). Sergeant David Liles, who was working as a liaison for the District Attorney’s Office at the relevant time period, presented the testimony that led to Miller’s indictments. (Deposition of David Liles (“Liles Depo.”), RE 60-4 at 5, 7-8, PAGE ID # 286-88). Sergeant Liles does not recall the substance of his testimony. He does not recall speaking with Maddox about the case. Sergeant Liles likewise does not know whether he reviewed arrest reports, or arrest affidavits, or any other documents, in preparing to give his testimony or in giving his testimony. Sergeant. Liles does not recall whether the grand jury asked him any questions. (*Id.* at 29-30, PAGE ID # 289-90). There is no audio recording or transcript of the grand jury proceedings, as Davidson County grand jury proceedings are not recorded.

No trial was held. On June 7, 2013, the criminal case was dismissed with prejudice upon Miller’s motion. (Anderson Depo., RE 60-3, at 17, PAGE ID # 283); (Crim. Court File, RE 64-1 at 1, PAGE ID # 358). As for

the ticket for running the stop sign, Miller appeared in traffic court and the judge ordered her to pay the ticket. (Miller Depo., RE 60-1, at 74, PAGE ID # 270); (Maddox Dec., RE 63, at ¶ 11, PAGE ID # 351).

After the conclusion of criminal and traffic court proceedings, Miller filed a 42 U.S.C. § 1983 (“Section 1983”) action against Maddox alleging “malicious prosecution” in violation of the Fourth Amendment. Miller did not allege a false arrest claim against Maddox. Any false arrest claim would have clearly been barred by the applicable one year statute of limitations, as Miller’s arrest occurred in 2011, and she filed her lawsuit in 2013. *See* Tenn. Code Ann. § 28-3-104(a)(3); *Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005). Thus, Miller proceeded solely under a “malicious prosecution” theory.

B. Relevant Case Proceedings

Miller filed suit against Maddox on November 15, 2013. Maddox moved for summary judgment on May 27, 2016. (RE 60, PAGE ID # 243-47). Maddox argued that he was entitled to summary judgment on several grounds. First, Maddox submitted that the grand jury indictment of Miller on three separate charges conclusively established probable cause for her arrest. Second, Maddox argued that he was entitled to summary judgment because his role in the prosecution consisted merely of arresting Miller and then giving testimony for which he was absolutely immune. Third, Maddox reasoned that Miller’s brief time at the CJC on the

night of her arrest was not a deprivation of liberty sufficient to support a “malicious prosecution” claim. Finally, Maddox argued that he was entitled to qualified immunity because it was not clearly established that his actions could constitute “malicious prosecution,” particularly given the rather inconsistent Courts of Appeals decisions regarding that purported cause of action in general, as well the Sixth Circuit’s prior decisions refusing to recognize a “secondary deprivation of liberty” under facts similar to those in this case.

On October 13, 2016, Magistrate Judge Jeffery S. Frensley issued a report and recommendation to the District Court recommending denial of Maddox’s motion for summary judgment. Maddox filed objections to the report and recommendation. Upon review, the District Judge rejected the report and recommendation, granted Maddox’s motion for summary judgment, and dismissed Miller’s lawsuit. (App. 22-28). The District Court noted that there was absolutely no record of what was presented to the grand jury that had indicted Miller on three separate charges, and that it was undisputed that Maddox himself had not testified before the grand jury. Accordingly, the District Court concluded, “[p]laintiff cannot sustain her burden of showing an exception to the general rule that an indictment conclusively determines the existence of probable cause because she cannot show that anyone deliberately or recklessly presented false testimony to the grand jury . . . so Plaintiff has not shown a lack of probable cause.” (*Id.* at 26-27). The District Court also held: “Alternatively, even if Defendant’s statements to the

night court commissioner (rather than testimony before the grand jury) are considered the initiation of allegedly false charges,” then “Defendant is entitled to immunity for those statements.” (*Id.* at 27).

Miller appealed to the Sixth Circuit Court of Appeals. On August 3, 2017, the Sixth Circuit reversed the grant of summary judgment to Maddox. The Sixth Circuit stated that the District Court had erred in granting summary judgment on the basis that Miller’s indictments conclusively established probable cause, given the Sixth Circuit’s subsequent decision in *King v. Harwood*, 852 F.3d 568 (6th Cir. 2017), which had created an exception to that general rule. (App. 7-8). The Sixth Circuit also held that Miller’s participation in the pretrial release program could constitute a deprivation of liberty separate from her initial arrest. (App. 13). The Sixth Circuit further rejected Maddox’s entitlement to absolute immunity for the statements in his affidavits that were the basis of his testimony to the judicial commissioner and likewise declined to grant him qualified immunity, stating that “Maddox’s alleged actions – arresting and detaining Miller based on false pretenses and then seeking an arrest warrant based on these false statements – violated Miller’s clearly established constitutional rights.” (App. 15-18).

Maddox filed a petition for rehearing *en banc* on August 15, 2017. That petition was denied by an Order entered November 8, 2017. (App. 30).

C. Basis for Federal Jurisdiction

The U.S. District Court for the Middle District of Tennessee has subject matter jurisdiction over this matter because it involves a federal question. 28 U.S.C. § 1331. The Sixth Circuit Court of Appeals had jurisdiction over the appeal because it was an appeal from a final decision by the District Court. 28 U.S.C. § 1291.



REASONS FOR GRANTING THE PETITION

A person who is criminally charged, but who remains free awaiting trial and then has her charges dismissed, should not be permitted to maintain a Section 1983 suit for “malicious prosecution” against a police officer merely because she missed the statute of limitations for a false arrest claim. Here, the Sixth Circuit held otherwise, despite having previously refused to adopt the “continuing seizure” doctrine that allows a plaintiff to essentially conflate false arrest and “malicious prosecution” claims and get a “second bite at the apple” if she allows the statute of limitations to lapse as to a false arrest claim. Other circuits have reached contrary conclusions, however. Accordingly, this Court should clarify that a Fourth Amendment “malicious prosecution” claim, to the extent that such a claim exists at all, cannot be brought against an arresting officer when a suspect who was arrested but never confined ultimately prevails in her criminal proceedings.

This Court should also grant Maddox's Petition to address the impact that a grand jury indictment has on the existence of probable cause and to provide guidance as to whether the absolute testimonial immunity afforded to officers for grand jury proceedings extends to earlier testimonial actions as well. The Sixth Circuit held that the indictments in this case, including an indictment for a charge not brought by Maddox, were essentially irrelevant and that Maddox was not entitled to absolute immunity for his testimonial actions undertaken in conjunction with arresting Miller. In doing so, the Sixth Circuit has created law that directly conflicts, or at a minimum is inconsistent with, the well-settled precedent of this Court.

Finally, this Court should grant Maddox's Petition because qualified immunity is a doctrine of utmost importance to law enforcement officers whose conduct must be governed by established law. The Sixth Circuit shrugged off the importance of that doctrine in this case and ignored the highly unsettled state of the law and the disagreements among the circuits when it comes to Fourth Amendment "malicious prosecution" claims. Notably, under the Sixth Circuit's ruling, an officer who makes an arrest for which probable cause is arguably lacking is necessarily then liable for "malicious prosecution," regardless of his lack of involvement with the actual prosecution, and regardless of whether the suspect is actually confined following an arrest. If this decision is left unreviewed, it will have a chilling effect on officers' willingness to arrest suspects and actually swear out arrest warrants before a

judicial commissioner, given that that act alone is deemed a “prosecution.”

I. A SUSPECT WHO IS NOT CONFINED DURING THE PENDENCY OF HER CRIMINAL CHARGES AND IS ONLY REQUIRED TO CALL IN WEEKLY TO A CASE MANAGER AND APPEAR FOR COURT CANNOT SUSTAIN A “MALICIOUS PROSECUTION” CLAIM AGAINST HER ARRESTING OFFICER BECAUSE SHE HAS NOT SUFFERED THE REQUISITE DEPRIVATION OF LIBERTY.

This case presents a Fourth Amendment question over which the circuits are divided: whether a person suffers a deprivation of liberty sufficient to support a “malicious prosecution” claim merely by being charged with a crime and required to answer those charges. This Court, while not having squarely addressed this issue to date, suggested otherwise in *Gerstein v. Pugh*, 420 U.S. 103, 125 n. 26 (1975), noting that a probable cause determination “is required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial.”

Although one who is subjected to “prolonged detention” while awaiting trial would presumably be “seized” pursuant to the Fourth Amendment, *see Gerstein*, 420 U.S. at 114, that is not the situation presented in this case. Miller was not physically detained in jail following her arrest and her enrollment in the pretrial release program. The Sixth Circuit

nonetheless concluded that Miller’s participation in the pretrial release program, where the only conditions of her release were to pay \$35, call in weekly to a case manager, and show up for court appearances, could be a secondary deprivation of liberty to maintain a “malicious prosecution” claim. (App. 13-14). The Sixth Circuit did not expressly invoke the “continuing seizure” doctrine by name in its decision, but it is from this doctrine that such a finding must flow. The “continuing seizure” doctrine was originally articulated by Justice Ginsburg in her concurrence in *Albright v. Oliver*, 510 U.S. 266 (1994). Prior to Maddox’s case, the Sixth Circuit had expressly declined to recognize the “continuing seizure” doctrine and had repeatedly granted qualified immunity to law enforcement officers on the basis that it was not clearly established that a person who was not confined during the pendency of criminal proceedings could maintain a “malicious prosecution” claim. See *Johnson v. City of Cincinnati*, 310 F.3d 484, 492 (6th Cir. 2002) (“[W]e have not yet explicitly addressed the ‘continuing seizure’ doctrine.”); *Noonan v. Cty. of Oakland*, 683 F. Appx. 455, 463 (6th Cir. 2017) (“Noonan was never arrested or incarcerated, required to post bail or bond, or subjected to any travel restrictions. In short . . . we must conclude as a matter of law that he did not suffer a deprivation of liberty as understood in our Fourth Amendment jurisprudence.”); *Rapp v. Putman*, 644 F. Appx. 621, 628 (6th Cir. 2016) (noting that far from being clearly established, the “point of law [regarding ‘continuing seizures’ and ‘malicious prosecution’ claims] was (and

remains) expressly unsettled in this Circuit.”) (citations omitted).

In addition to being only newly embraced by the Sixth Circuit in its Opinion here, the “continuing seizure” doctrine is a source of great dissension among the Circuits. The essence of the “continuing seizure” doctrine is that a “defendant released pretrial . . . remains apprehended, arrested in his movements . . . so long as he is bound to appear in court and answer the state’s charges.” *Albright*, 510 U.S. at 278-79 (Ginsburg, J., concurring). To date, this Court as a whole has not spoken with regard to Justice Ginsburg’s interpretation of the law.

Many Courts of Appeals, however, have declined to adopt the “continuing seizure” doctrine. For example, the First Circuit rejected the doctrine in *Nieves v. McSweeney*, 241 F.3d 46, 55-57 (1st Cir. 2001) (surveying cases and concluding “the view that an obligation to appear in court to face criminal charges constitutes a Fourth Amendment seizure is not the law”); *see also Harrington v. City of Nashua*, 610 F.3d 24, 32-33 (1st Cir. 2010); *Britton v. Maloney*, 196 F.3d 24, 29-30 (1st Cir. 1999). The *Nieves* court stated that “the very idea of defining commonplace conditions of pretrial release as a ‘seizure’ for Fourth Amendment purposes seems to stretch the accepted meaning of the term” because a “seizure” under the Fourth Amendment “is generally a discrete event, quintessentially an arrest, . . . , or at least a physical detention” and “not a continuous fact,” such as “run-of-the-mill conditions of pretrial release.” *Nieves*, 241 F.3d at 55 (citations omitted). Similarly, in

the alleged “malicious prosecution” context and otherwise, the Fourth, Seventh, Ninth, Tenth, and Eleventh Circuits have declined to adhere to the “continuing seizure” doctrine. *See, e.g., Riley v. Dorton*, 115 F.3d 1159, 1162-64 (4th Cir. 1997) (*en banc*); *Wiley v. City of Chicago*, 361 F.3d 994, 998 (7th Cir. 2004); *Karam v. City of Burbank*, 352 F.3d 1188, 1193-94 (9th Cir. 2003); *Becker v. Kroll*, 494 F.3d 904, 915 (10th Cir. 2007); *Kingsland v. City of Miami*, 382 F.3d 1220, 1236 (11th Cir. 2004).

A minority of Circuits, now joined by the Sixth Circuit in this case, have reached the opposite conclusion. The Second Circuit endorsed the “continuing seizure” doctrine in *Murphy v. Lynn*, 118 F.3d 938, 945-46 (2d Cir. 1997), where the plaintiff spent a night in jail following his arrest and was ordered not to leave the State of New York while his criminal charges were pending. The Fifth Circuit also followed the “continuing seizure” doctrine in *Evans v. Ball*, 168 F.3d 856, 861-62 (5th Cir. 1999), holding that the plaintiff’s “summons to appear in court, coupled with the requirements that he obtain permission before leaving the state, report regularly to pretrial services, sign a personal recognizance bond, and provide federal officers with financial and identifying information, diminished his liberty enough to render him seized under the Fourth Amendment.” Likewise, the Third Circuit recognized a “continuing seizure” in *Gallo v. City of Philadelphia*, 161 F.3d 217, 222 (3d Cir. 1998), although the court stated that the issue of whether a seizure had occurred was a “close call” where Gallo’s “liberty was

restricted in the following ways: he had to post a \$10,000 bond, he had to attend all court hearings including his trial and arraignment, he was required to contact Pretrial Services on a weekly basis, and he was prohibited from traveling outside New Jersey and Pennsylvania.”

The various Circuits obviously have divergent views regarding whether the “continuing seizure” doctrine can be used to establish a deprivation of liberty sufficient to maintain a Fourth Amendment “malicious prosecution” claim in the absence of any actual confinement of a suspect during the pendency of criminal proceedings. Further, no court other than the Sixth Circuit has held that a person suffers a deprivation of liberty when she is not actually incarcerated following her arrest and has no significant restrictions, such as travel restrictions or bond conditions, placed upon her during the pendency of her criminal charges. Finally, and most importantly, this Court in its entirety has not addressed the viability of the “continuing seizure” doctrine. This Court’s voice needs to be heard on this issue, especially in the context of the doctrine’s application to police officers making warrantless arrests and having no further investigatory or prosecutorial role in the criminal proceedings. The sheer number of disparate Courts of Appeals decisions touching on the nature and scope of potential Fourth Amendment “malicious prosecution” claims illustrates that the issues presented in this case are both recurrent, important, and a source of disagreement among the Circuits. For these reasons,

Maddox respectfully submits that this Court should grant his Petition.

II. A PERSON WHO IS INDICTED ON MULTIPLE CHARGES, INCLUDING A CHARGE NOT BROUGHT BY THE ARRESTING OFFICER, SHOULD NOT BE PERMITTED TO PREVAIL ON A FOURTH AMENDMENT “MALICIOUS PROSECUTION” CLAIM AGAINST THAT OFFICER WHEN THERE IS NO RECORD OF WHAT WAS PRESENTED TO THE GRAND JURY, AND THE OFFICER’S ROLE IN THE PROSECUTION CONSISTED ONLY OF THE ARREST ITSELF AND ASSOCIATED TESTIMONIAL ACTIONS.

The Sixth Circuit’s decision to reverse the grant of summary judgment to Maddox required working around both the conclusive presumption of probable cause created by an indictment that this Court has repeatedly recognized and the absolute immunity afforded to testimonial conduct as discussed by this Court in *Rehberg v. Paulk*, 566 U.S. 356 (2012). The manner in which the Sixth Circuit sidestepped these well-established legal principles is inconsistent with this Court’s precedent and should be reviewed.

This Court has consistently held that an indictment conclusively determines the existence of probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 117, n. 19 (1975) (citing *Ex parte United States*, 287 U.S. 241, 250 (1932) and *Giordenello v. United States*, 357 U.S. 480,

487 (1958)). And as the Court stated in *Kaley v. United States*, 134 S. Ct. 1090, 1097-98 (2014), the term “conclusively” has been found to mean, “case in and case out, just that.” Indeed “‘the whole history of the grand jury institution’ demonstrates that ‘a challenge to the reliability or competence of the evidence’ supporting a grand jury’s finding of probable cause ‘will not be heard.’” *Id.* (citations omitted).

Despite this clear directive from this Court, the Sixth Circuit has now crafted a rule whereby only a “rebuttable presumption” of probable cause attaches to an indictment. The Sixth Circuit admits that it has done so in order to avoid “harsh” results for suspects who have been indicted. (App 8-10). Perhaps this “rebuttable presumption,” in theory, could be a workable standard in cases where there was a record of false testimony or fabricated evidence provided to the grand jury. But here, the Sixth Circuit applied this newly designed exception despite the fact that there is absolutely no record of what was presented to the grand jury, essentially holding that Miller’s speculation that the indictments must somehow have been wrongfully procured was sufficient to overcome the presumption of probable cause. (App. 10-11). As the District Court properly recognized, however, there can be no inference drawn that the indictments were based on false testimony or fabricated evidence because there is no record of what was presented to the grand jury. (App. 27). The sole witness before the grand jury, who was not Maddox, did not recall what he said or what he did to prepare for his testimony. (App. 26). And Miller was

indicted on a charge not even brought by Maddox. (Deposition of Kyle Anderson (“Anderson Depo.”), RE 60-3 at 7-8, PAGE ID # 276-77). Under these circumstances, where there is no record at all of what was presented to the grand jury, even the “false testimony” exception previously endorsed by the Sixth Circuit, which allowed a plaintiff to overcome the preclusive effect of an indictment when a defendant deliberately or recklessly presented false testimony to a grand jury, *see Robertson v. Lucas*, 753 F.3d 606, 616 (6th Cir. 2014), would be inapplicable. This Court should review the Sixth Circuit’s decision and clarify that, at a minimum, mere speculation cannot be relied upon to undercut an indictment’s conclusive establishment of probable cause.¹

In addition, the Sixth Circuit’s decision is inconsistent with the rationale of this Court’s decision in

¹ Although this Court recognized in *Manuel v. City of Joliet, Ill.*, that an indictment cannot “expunge” a Fourth Amendment claim where the record showed that the indictment was based “entirely on false testimony” and that the proceedings were tainted based on fabricated evidence, *see* 137 S. Ct. 911, 920, n. 8 (2017), *Manuel did not* hold that an indictment creates only a rebuttable presumption of probable cause that can somehow be overcome when there is no evidence that any false or fabricated evidence was presented to the grand jury. To allow the Sixth Circuit to create an avenue to collaterally attack the sanctity of a grand jury indictment when there is no record that false testimony or fabricated evidence was presented, and when the suspect is indicted on a charge not even brought by the police officer that she has sued for “malicious prosecution,” would contravene decades of precedent from this Court regarding the preclusive effect of indictments on probable cause and the importance of grand jury proceedings.

Rehberg, which held that testimonial immunity barred a Section 1983 claim against a law enforcement officer even if that officer conspired to present and did present false evidence to a grand jury. 566 U.S. at 367-69. *Rehberg* also made it clear that absolute immunity extended to preparatory actions associated with testimony and not just the words that were spoken by the witness:

[T]his rule [that a grand jury witness has absolute immunity from any § 1983 claim based on the witness' testimony] may not be circumvented by claiming that a grand jury witness conspired to present false testimony or by using evidence of the witness' testimony to support any other § 1983 claim concerning the initiation or maintenance of a prosecution. . . . In the vast majority of cases involving a claim against a grand jury witness, the witness and the prosecutor conducting the investigation engage in preparatory activity, such as a preliminary discussion in which the witness relates the substance of his intended testimony. We decline to endorse a rule of absolute immunity that is so easily frustrated. *Id.* at 1506-07 (some internal citations omitted).

566 U.S. at 369-70.

Rehberg involved a Section 1983 claim brought against Paulk, the chief investigator for a Georgia district attorney's office who had allegedly assisted the district attorneys in launching an investigation and securing indictments against Mr. Rehberg for crimes that he did not commit. Mr. Rehberg argued that Paulk

was not absolutely immune for his perjurious grand jury testimony because he was a “complaining witness” and this Court had previously held that complaining witnesses were shielded only by qualified immunity in *Kalina v. Fletcher*, 522 U.S. 118, 123 (1997) and *Malley v. Briggs*, 475 U.S. 335, 342 (1986). *See* 566 U.S. at 370. But the Court rejected that notion that testimonial immunity could be overcome by labeling someone a “complaining witness,” noting that the mid-19th century practice whereby a complaining witness “procured an arrest and initiated a criminal proceeding” had been superseded by public prosecutors and that testifying, whether before a grand jury or at trial, “was not the distinctive function performed by a complaining witness.” *Rehberg*, 566 U.S. at 371-72.

The Sixth Circuit tried to circumvent *Rehberg* by labeling Maddox a “complaining witness” who set the wheels of Miller’s prosecution in motion and thus could not claim absolute immunity, citing *Kalina*, *Malley*, and even *Rehberg* itself as support for its conclusion in that regard. (App. 16-17). In doing so, the Sixth Circuit distorted *Rehberg*, which in actuality rejected the notion of a testifying law enforcement officer being equated with a “complaining witness” for immunity purposes. The *Rehberg* court pointed out that the “mid-19th century practice” whereby a complaining witness could initiate a criminal proceeding had been superseded by public prosecutors and explained that the “complaining witness” category of Section 1983 claims was not necessarily relevant, or at least not entirely

applicable, in today's jurisprudence. 566 U.S. at 364-65, 370.

Moreover, the Sixth Circuit blatantly ignored the factual distinction between this case and the *Malley* and *Kalina* cases, where this Court had declined to extend absolute immunity – but had granted qualified immunity – to a prosecutor and a police officer, respectively, who had made false statements in applying for warrants that would allow them to seek a suspect's arrest. Here, Maddox had already arrested Miller but was required, under his jurisdiction's rather unique system, to take Miller before a judicial commissioner immediately following her arrest. (Maddox Depo., RE 60-2, at 41, PAGE ID # 273). He thus went before a judicial commissioner based on the information in his arrest affidavits as part of the prosecution of Miller, not as part of her arrest.² Under those circumstances, where the testimony is part of the prosecution rather than part of the pre-arrest process, Maddox was not a “complaining witness” attempting to file criminal charges, but instead a witness in a judicial proceeding whose testimony and attendant preparatory materials

² Indeed, because Miller's claims would be time-barred if Maddox's actions in testifying before the commissioner were part of the arrest process, they must necessarily be part of the prosecutorial process in order for this lawsuit to be viable at all. *See, e.g., Wallace v. Kato*, 549 U.S. 384, 391 (2007) (holding that a false arrest claim begins to accrue on the date of the arrest itself, rather than after disposition of the criminal charges); *Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005) (noting that the statute of limitations for a false arrest claim is one year pursuant to Tenn. Code Ann. § 28-3-104(a)(3)).

would be shielded by absolute immunity pursuant to *Rehberg* and the well-settled principle that “[w]itnesses are immune from causes of action based on testimony given during a legal proceeding.” *Briscoe v. LaHue*, 460 U.S. 325, 331-32 (1983). Simply put, the fact that the legal proceeding here was earlier in the prosecution than grand jury testimony does not change the fundamental testimonial nature of Maddox’s actions, and the District Court properly granted summary judgment on that basis. (App. 27).

In declining to extend absolute immunity to Maddox for actions in testifying before a judicial commissioner and presenting arrest affidavits that he prepared to the commissioner as part of that testimony, the Sixth Circuit distorted *Rehberg* and ignored *Briscoe*. Accordingly, in addition to clarifying the circumstances under which the preclusive effect of a grand jury indictment can be subject to challenge, this Court should grant Maddox’s Petition to settle the issue of what testimonial actions are entitled to absolute immunity.

III. THIS COURT SHOULD REVERSE AND GRANT QUALIFIED IMMUNITY TO MADDOX BECAUSE THE STATE OF FOURTH AMENDMENT “MALICIOUS PROSECUTION” LAW IS PATENTLY UNSETTLED IN PRACTICALLY EVERY RESPECT; THUS, THERE WAS NO PRECEDENT THAT COULD HAVE PUT MADDOX ON NOTICE THAT HIS CONDUCT DURING THE RELEVANT TIME FRAME WAS UNLAWFUL.

Qualified immunity attaches when an official’s conduct “‘does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” And as this Court recently reiterated:

To be clearly established, a legal principle must have sufficiently clear foundation in then-existing precedent. The rule must be “settled law,” *Hunter v. Bryant*, 502 U.S. 224, 228 (1991) (*per curiam*), which means it is dictated by “controlling authority” or “a robust ‘consensus of cases of persuasive authority,’” [*Ashcroft v. al-Kidd*, *supra*, [563 U.S. 731][,] 741-42 (quoting *Wilson v. Layne*, 526 U.S. 603, 617 (1999))]. It is not enough that the rule is suggested by then-existing precedent. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply. See *Reichle [v. Howards]*, 566 U.S. [658][,]666 [2012]. Otherwise, the rule is not one that “every reasonable official” would

know. *Id.* at 664 (internal quotation marks omitted).

District of Columbia v. Wesby, No. 15-1485, 2018 WL 491521, at *11 (U.S. Jan. 22, 2018).

Recognizing the importance of the qualified immunity doctrine, this Court has repeatedly admonished lower courts that “clearly established law” should not be defined “at a high level of generality.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). The clearly established law must be “particularized” to the facts of the case. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Otherwise, “[p]laintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.” *Id.* at 639. When no case puts a defendant on notice that his conduct during the relevant time frame was unlawful, he should be granted qualified immunity. *See, e.g., White v. Pauly*, 137 S. Ct. 548, 552 (2017). That the rule of law be specifically delineated is “especially important in the Fourth Amendment context.” *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015).

Here, Maddox was found to be potentially liable for a purported secondary deprivation of Miller’s liberty even though she was not confined while awaiting trial. Maddox was also found to be potentially liable for “malicious prosecution” where he did not testify before the grand jury and there was absolutely no record of what was presented to the grand jury that indicted Miller on several charges, including one charge that

Maddox himself did not bring. Finally, Maddox was found to be potentially liable for “malicious prosecution” based on arrest affidavits that were presented in conjunction with his testimony before a judicial commissioner. The Sixth Circuit’s reliance on the general proposition that “arresting and detaining Miller based on false pretenses and then seeking an arrest warrant based on these false statements . . . violated Miller’s clearly established constitutional rights” (App. 18) ignores the factual particularities of this case, the generally unclear parameters of “malicious prosecution” law in general, and especially this Court’s oft-repeated directive that qualified immunity must be granted unless “‘existing precedent [has] placed the statutory or constitutional question beyond debate.’” *Mullenix*, 136 S. Ct. at 308 (citations omitted).

The Sixth Circuit cited multiple cases in denying Maddox qualified immunity, but those cases did not involve facts remotely similar to those presented here. (App. 18-19). First, *Spurlock v. Satterfield*, 167 F.3d 995, 1002 (6th Cir. 1999), involved a suspect actually held in custody and convicted of murder rather than someone who was never confined in jail. Additionally, the defendant in *Spurlock* was granted absolute immunity for trial testimony, but that immunity was not extended to non-testimonial acts such as attempting to bribe witnesses on multiple occasions and tampering with evidence. Those “non-testimonial” acts are a far cry from what the Sixth Circuit held to be non-testimonial here: the presentation of an

affidavit with allegedly false statements during testimony before a judicial commissioner.

Similarly, *King v. Harwood*, 852 F.3d 568 (6th Cir. 2017), dealt with very different factual circumstances than those presented here. In *King*, there was evidence of fabricated evidence presented to the grand jury and relied upon in securing an indictment, whereas here there is no record as to what information formed the grounds for the grand jury indictments. Second, the defendant officer in *King* revived a cold case that other officers had abandoned due to a lack of probable cause, then presented false and misleading evidence to obtain a warrant to search the plaintiff's home. That officer also made a report to the Commonwealth's Attorney identifying plaintiff King as her former boyfriend's killer and setting forth his theory of the murder. The officer himself then sought to obtain an indictment against King for murder and testified before the grand jury, giving false testimony. 852 F.3d at 573-75. Further, as in *Spurlock*, King was actually confined in jail based on this alleged unlawful behavior by Harwood. None of those facts are present in Maddox's case. Indeed, *King* is so factually dissimilar from this case that its holding, even if it had been issued *before* the incidents underlying this action instead of years *after*, could not possibly have made it "clear to [Maddox] that his conduct was unlawful in the situation he confronted." *Saucier v. Katz*, 533 U.S. 194, 202 (2001).

In denying Maddox qualified immunity, the Sixth Circuit did not cite a case where an officer was held liable for "malicious prosecution" when the suspect was

not confined during the pendency of criminal proceedings and not subject to any travel restrictions while on pretrial release. The Sixth Circuit did not cite a case where an officer was held liable for “malicious prosecution” in the absence of any record that he presented false testimony or fabricated evidence to a grand jury that indicted a suspect on multiple charges, including one indictment for a charge not brought by the officer. The Sixth Circuit did not cite a case where an officer testified before a judicial commissioner immediately following a warrantless arrest and was found to be liable for “malicious prosecution” based upon the content of the arrest affidavits presented as part of that testimony. Because “there is no case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment,” *see, e.g., White v. Pauly*, 137 S. Ct. 548, 552 (2017), Maddox is entitled to qualified immunity.

The Sixth Circuit also ignored the unsettled nature of the law surrounding “malicious prosecution” claims generally, failing to address the fact that this Court has never even held that a Fourth Amendment “malicious prosecution” claim exists. Given the lack of any Fourth Amendment “malicious prosecution” cases factually similar to this one, the dearth of well-settled standards for what the elements of a “malicious prosecution” claim may be, and the obvious divergence among the circuits as to whether merely being required to answer criminal charges is a “seizure” that can support a “malicious prosecution” claim, the Sixth Circuit erred in not granting Maddox qualified immunity. This

Court, recognizing the importance of qualified immunity to “society as a whole” and the apparently increasing numbers of Courts of Appeals that seem to misapprehend the purposes and application of this important doctrine, should reverse that decision. *See id.* at 551-52 (noting that this Court has had to reiterate to Courts of Appeals, particularly in recent years, that “clearly established law” is not to be defined “at a high level of generality”) (citations omitted).

◆

CONCLUSION

WHEREFORE, Petitioner Woodston Maddox respectfully requests that this Court grant his Petition for a Writ of Certiorari to the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

KELI J. OLIVER*

MELISSA S. ROBERGE

DEPARTMENT OF LAW FOR THE

METROPOLITAN GOVERNMENT

OF NASHVILLE AND DAVIDSON

COUNTY, TENNESSEE

P.O. Box 196300

Nashville, TN 37219

Telephone: (615) 862-6341

Facsimile: (615) 862-6352

keli.oliver@nashville.gov

melissa.roberge@nashville.gov

Counsel for Petitioner

**Counsel of Record*