

No. 17-1123

**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**

REPLY BRIEF FOR THE PETITIONER

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ARGUMENT

I. THIS CASE IS AN IDEAL VEHICLE FOR THE COURT TO RESOLVE THE QUESTIONS THAT THE VARIOUS CIRCUITS STILL STRUGGLE TO CONSISTENTLY ANSWER AFTER THIS COURT'S DECISION IN *MANUEL V. CITY OF JOLIET*.

Miller takes issue with what she calls Maddox's "scattershot" approach (Br. in Opp. 1) in asking this Court to review myriad issues, rather than simply presenting one discrete matter for review. However, a multi-pronged challenge to the Sixth Circuit's decision below is necessary, given the numerous important issues of federal "malicious prosecution" jurisprudence decided erroneously by the Sixth Circuit in this case and, indeed, the abundant unanswered questions regarding such jurisprudence throughout the various Circuits even after this Court's decision in *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017).

Despite Miller's assertion that *Manuel* resolved matters raised in the Petition in this case, *Manuel* did not in fact decide that "malicious prosecution," the only cause of action pleaded by Miller, is a constitutional tort at all. *Manuel*, decided on March 21, 2017, posed the following question presented: "Whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based on the Fourth Amendment." 137 S. Ct. at 923.

This Court declined to answer that precise question, however, and candidly recognized its decision not to do so. “Accordingly, we hold today that Manuel may challenge his pretrial detention on the ground that it violated the Fourth Amendment (while we leave all other issues, including one about that claim’s timeliness, to the court below).” *Id.* at 914-15. “Our holding . . . does not exhaust the disputed legal issues in this case. It addresses only the threshold inquiry in a § 1983 suit, which requires courts to ‘identify the specific constitutional right’ at issue.” *Id.* at 920 (citations omitted).

As a result of the questions left open in *Manuel*, Circuits continue to struggle with defining the elements of a federal “malicious prosecution” claim. The lower courts also grapple with unresolved issues such as what constitutes a “seizure” for purposes of such a claim, what is the impact of a grand jury indictment on such a claim, and when and how to apply the absolute testimonial immunity doctrine to such a claim. This case presents the opportunity to answer those questions once and for all.

Maddox first asks this Court to determine whether an individual who is not confined after her initial arrest has been “seized” so as to state a Fourth Amendment “malicious prosecution” claim, separate and apart from a false arrest claim. The unresolved nature of this inquiry is demonstrated not only by the Circuit split

outlined in the Petition,¹ but also by the fact that even the Sixth Circuit’s intra-Circuit decisions are so inconsistent that two cases decided within months of one another, with different outcomes, have engendered petitions for review with this Court in recent months.

In *Noonan v. Cty. of Oakland*, decided March 24, 2017, just a little over four months before the present case, the Sixth Circuit found no deprivation of liberty to support a “malicious prosecution” claim. *Noonan* involved a plaintiff who voluntarily surrendered on a felony warrant that he claimed was based on false evidence, and then faced the following “restrictions” on his liberty, among others: being called in for questioning twice, undergoing a polygraph, having his car held in impound for over five months, and being forced to hire a criminal lawyer. *Noonan v. Cty. of Oakland*, 683 F. App’x 455, 462 (6th Cir. 2017), *cert. denied sub nom. Noonan v. Cty. of Oakland*, 138 S. Ct. 1279 (2018). Conversely, on August 3, 2017, the Sixth Circuit *did* find a deprivation of Miller’s liberty based upon the required

¹ Miller insists that there is no Circuit split as to the viability of the “continuing seizure” doctrine and that courts have “consistently held that pre-trial restrictions that significantly limit an individual’s liberty . . . can amount to a seizure under the Fourth Amendment.” (Br. in Opp. 11). The key phrase that Miller uses in that proclamation is “significantly limits.” Here, Miller paid \$35 and was required to call in to (but not personally meet with) a case manager while her criminal charges were pending. (App. 12-13). And there is indeed a Circuit split as to whether the mere obligation to attend court, which is in reality the only “infringement” on Miller’s liberty after the initial arrest here, can be a seizure for Fourth Amendment “malicious prosecution purposes.” (Pet. 11-16).

payment of a \$35 fee, a weekly call to a case manager, and an obligation to appear for all court dates. (App. 12-13).

Subsequently, Noonan petitioned this Court for review, asking specifically:

Whether one who voluntarily surrenders pursuant to a felony warrant obtained via fabricated evidence, and is subjected to continuing court jurisdiction for months, must also be arrested, incarcerated, or subjected to interstate travel restrictions to establish a deprivation of liberty and defeat qualified immunity on his 4th Am. malicious prosecution claim.

Noonan v. Cty. of Oakland, No. 17-473, 2017 U.S. S. Ct. Briefs LEXIS 3764 at *1 (Sept. 27, 2017). And in the reply brief in support of the Petition, Noonan expressly set out the inconsistencies between that case and this one: “[T]he two §1983 malicious-prosecution plaintiffs suffered restrictions that were indistinguishable—if anything, Noonan’s were more onerous. Yet the Sixth Circuit recognizes only one as undergoing a deprivation of liberty.” *Noonan v. Cty. of Oakland*, No. 17-473, 2018 U.S. S. Ct. Briefs LEXIS 719 at *9-10 (Feb. 22, 2018).

The Sixth Circuit’s intra-Circuit inconsistency is stark and clearly capable of frequent repetition, given that these two cases were decided so close in time to one another and yet their holdings cannot be reconciled. This case thus provides this Court the perfect vehicle to determine the law on an issue not decided in

Manuel—exactly what constitutes a “seizure” for purposes of a Fourth Amendment claim related to an allegedly unlawful prosecution.

Maddox next asks this Court to clarify the scope of the presumption of probable cause that attaches to a grand jury indictment and the circumstances under which that presumption can be overcome, if any. As Miller points out, *Manuel* did state that a judicial determination of probable cause, or even a grand jury indictment, does not necessarily expunge a Fourth Amendment claim when it is based entirely on fabricated testimony or evidence. *Manuel*, 137 S. Ct. at 920, n. 8. But this broad statement is not the end of the inquiry when addressing the impact of a grand jury indictment in “malicious prosecution” cases, nor did *Manuel* indicate as much.

Manuel did not answer the question of how an indictment’s presumption of probable cause, which has long been recognized and embraced by this Court, *see, e.g., Gerstein v. Pugh*, 420 U.S. 103, 117-18, n. 18 (1975), can be overcome, if at all, in the absence of facts as those alleged in *Manuel*. *Manuel* merely noted that an indictment did not wholly eradicate a Fourth Amendment claim where there was proof that fabricated evidence had been presented to a grand jury to secure that indictment. 137 S. Ct. at 920, n. 8. No other means of potentially overcoming that probable cause presumption was even mentioned. Nor was the doctrine of absolute immunity for testimonial actions discussed. As a result, lower courts continue to struggle with this

issue as evidenced by post-*Manuel* petitions for review filed with this Court.

For example, in a petition arising from the Seventh Circuit case of *Colbert v. City of Chicago*, 851 F.3d 649 (7th Cir. 2017), the petitioner presented the following inquiry, specifically questioning the scope of *Manuel* as it related to overcoming the presumption of probable cause created by grand jury indictments: “Did this Court in *Manuel v. Joliet* reject the Seventh Circuit’s rule that a grand jury indictment ends any constitutional violation caused by a police officer’s fabrication of evidence?” *Crutcher v. City of Chicago*, No. 17-595, 2017 U.S. S. Ct. Briefs LEXIS 4018 at *2 (Oct. 18, 2017).

Similarly, in a case from the Sixth Circuit, *King v. Harwood*, 852 F.3d 568 (6th Cir. 2017), the need for resolution of issues left unsettled by *Manuel* was evidenced by the questions presented in asking this Court for review. The *King v. Harwood* petition asked: “Whether the Fourth Amendment right to be free from unreasonable seizure supports a Section 1983 malicious prosecution claim” and “Whether testimonial immunity and the presumption of probable cause from a grand jury indictment effectively bar a Section 1983 claim for a seizure following an indictment, regardless of whether the testifying law enforcement officer set the prosecution in motion.” *Harwood v. King*, No. 17-260, 2017 U.S. S. Ct. Briefs LEXIS 2904 at *1 (Aug. 15, 2017).

As shown by the repeated requests for this Court's guidance, lower courts are unsure as to: (1) exactly what evidence is sufficient to overcome the probable cause presumption created by a grand jury indictment; and (2) what is the interplay between testimonial immunity and "malicious prosecution" liability. These questions need to be answered to promote consistency in lower courts' Fourth Amendment "malicious prosecution" decisions going forward. And this case presents a vehicle for providing such answers, as there is no dispute for purposes of review that: (1) Maddox set the criminal process "in motion" through testimony before a judicial commissioner;² (2) Miller was subsequently indicted; (3) Maddox himself did not present false testimony to the grand jury; and (4) there is no evidence that any false testimony or other fabricated evidence was used to secure the indictments against Miller. Accordingly, Maddox asks this Court to take up his Petition.

² Miller misstates to the Court that Maddox waived arguments related to Maddox's action in taking Miller before a night court judicial commissioner immediately following her arrest. (Br. in Opp. 18, n. 4). As the record establishes, that proceeding, for which Maddox has always claimed absolute immunity, is a separate proceeding from the preliminary hearing testimony that the Sixth Circuit refused to rely on as establishing probable cause. (App. 12). The "fabricated evidence" in this case was presented in conjunction with Maddox's testimony before the night court commissioner. Maddox has consistently submitted that he is entitled to testimonial immunity for these actions, and indeed testimonial immunity was an alternative basis for the District Court's grant of summary judgment. (App. 27).

II. THE SIXTH CIRCUIT’S HOLDING ON CLEARLY ESTABLISHED LAW SHOULD BE REVERSED BECAUSE MADDOX HAD NO NOTICE THAT HIS CONDUCT COULD AMOUNT TO UNLAWFULLY “PROSECUTING” MILLER.

Miller asks this Court to altogether abandon the doctrine of qualified immunity, both implicitly in arguing that the doctrine does not apply in this case despite the unsettled law on “malicious prosecution” claims, and explicitly, by stating that “if anything, this Court should reverse the doctrine of qualified immunity in its entirety.” (Br. in Opp. 25). This bold request ignores decades of precedent from this Court reaffirming the significance of the qualified immunity doctrine and its impactful role in governing the conduct of law enforcement.

In *Harlow v. Fitzgerald*, this Court explained that the doctrine of qualified immunity was important “to society as a whole” given that “claims frequently run against the innocent [government officials] as well as the guilty.” *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). Qualified immunity recognizes the need to shield officials from “harassment, distraction, and liability when they perform their duties reasonably[,]” whether their error may be “a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citations omitted). To fulfill the purposes of the qualified immunity doctrine, “this Court has often undertaken its duty to correct lower courts when they

wrongly subject individual officers to liability.” *City & Cty. of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 1774, n. 3 (2015) (citing *Carroll v. Carman*, 135 S. Ct. 348 (2014) (per curiam); *Wood v. Moss*, 134 S. Ct. 2056 (2014); *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014); *Stanton v. Sims*, 134 S. Ct. 3 (2013) (per curiam); *Reichle v. Howards*, 132 S. Ct. 2088 (2012)).

Here, Miller misapprehends Maddox’s qualified immunity argument. Miller posits that Maddox claims to be entitled to qualified immunity because the unsettled nature of the law surrounding “malicious prosecution” claims, though having no bearing on his underlying conduct, did not put him on notice that he could be held civilly liable for violating Miller’s rights. Maddox’s actual argument, however, is that the law did not put him on notice that his underlying actions—arresting a suspect and taking her to booking, with no expectation that she would be physically confined thereafter—could be deemed to violate Miller’s constitutional right to be free from a subsequent unlawful prosecutorial process that Maddox never advocated for nor in any way encouraged.

In twisting Maddox’s position to argue that qualified immunity does not apply here, Miller ignores the particular facts of this case and instead makes the broad sweeping statement that “[c]ourts have long held that it violates the Constitution to fabricate evidence.” (Br. in Opp. 24). But as this Court has long recognized, “general statements of the law are not inherently incapable of giving fair and clear warning” to officers that their conduct may be unlawful. *United*

States v. Lanier, 520 U.S. 259, 271 (1997). Moreover, “clearly established law” should not be defined “at a high level of generality.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). 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).

The present case involves a police officer who arrested an individual and immediately thereafter completed arrest warrants that formed the basis of his testimony to a judicial commissioner. That judicial commissioner found probable cause for the arrest, and Miller was released within a number of minutes after this determination, with no bond or travel restrictions pending her trial. Thereafter, Maddox had no other voluntary involvement in Miller’s prosecution, including no involvement in the unrecorded grand jury proceedings that secured her indictments on three separate charges, one of which was not even brought by Maddox. Yet it is Miller’s prosecution, not her arrest, for which Miller seeks damages from Maddox, presumably because she missed the statute of limitations for a false arrest claim.³ Miller has pointed to no case with

³ Miller claims that Maddox has waived a statute of limitations defense by not raising it in his answer (Br. in Opp. 18, n. 4), but that argument misapprehends Maddox’s position. Miller did not plead a false arrest claim, only a malicious prosecution claim. Maddox did not assert an affirmative defense to a claim not contained in the Complaint. However, throughout this litigation,

similar facts sustaining a Fourth Amendment “malicious prosecution” claim against a police officer, which is her burden to do to overcome the qualified immunity defense.

The Sixth Circuit’s decision in this case melds together and makes indistinguishable the constitutional torts of false arrest and “malicious prosecution.” Under its rationale, an officer accused of providing false information in an arrest report is liable not only for the arrest, but also for any subsequent prosecution if the arrestee is not ultimately convicted. This is the case even if that officer has no involvement in the criminal case beyond taking the arrestee to booking or, given the Sixth Circuit’s new implicit adoption of the “continuing seizure” doctrine, even if that officer simply writes an individual a citation that is later dismissed after the individual attends a required court appearance.

If an officer is liable for a Fourth Amendment violation for any custodial arrest that does not result in conviction, it may very well alter that officer’s conduct in the field. Officers may hesitate to make an arrest

Maddox has consistently contended that the only reason that Plaintiff has re-cast what in reality is a false arrest claim as a “malicious prosecution” claim is to take advantage of the latter’s more generous statute of limitations under Sixth Circuit precedent. Moreover, however Miller wishes to characterize the timeliness issue, it is well-settled that this Court can grant review with respect to “[a]ny issue ‘pressed or passed upon below’ by a federal court.” *Verizon Communications Inc. v. F.C.C.*, 535 U.S. 467, 530-31 (2002) (quoting *United States v. Williams*, 504 U.S. 36, 41 (1992)).

based on the applicable arrest standard of “probable cause” and instead make only those arrests that they believe can satisfy the much higher “beyond a reasonable doubt” standard required for conviction. As the law currently stands in the Sixth Circuit, even an officer who tries to halt a prosecution upon finding evidence of a suspect’s innocence could still be liable for “malicious prosecution” for setting the criminal process in motion by an arrest.

If federal “malicious prosecution” claims are to be treated as synonymous with false arrest claims going forward, this certainly is a new development in the law, and it cannot be deemed to have been “clearly established” so as to guide Maddox’s conduct in this case. Maddox asks that this Court grant his Petition to address qualified immunity specifically in the “malicious prosecution” context, given that even post-*Manuel*, courts still disagree about when an officer has acted unlawfully in “prosecuting” a suspect.



CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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