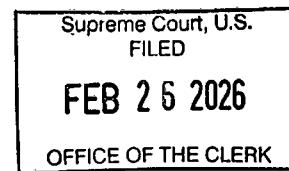


No. 25-1401



**IN THE
SUPREME COURT
OF THE UNITED STATES**

LEON BARCLEY STUSALITUS,

Petitioner,

v.

**ANGELIQUE ORTIZ, a/k/a A. M. Ortiz;
KELVIN WRIGHT, In his supervisory capacity as
Chief of Police,**

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case concerns the “Proxy Affiant” loophole: a practice where law enforcement officers avoid Fourth Amendment liability for obtaining warrants on unverified information by having a private citizen sign the formal affidavit, even when state law requires law-enforcement agency authorization to issue the warrant. The Fourth Circuit affirmed summary judgment by holding that the officer's failure to investigate and abuse of authority were irrelevant because she was not the “affiant.”

1. Whether the “objective unreasonableness” standard established in *Malley v. Briggs*, 475 U.S. 335 (1986), applies to an officer who “procures” or “authorizes” a warrant through a mandatory sign-off procedure, or whether an officer is shielded from Fourth Amendment liability whenever the formal affidavit is signed by a private citizen rather than the officer herself.
2. Whether, at the summary judgment stage, a court may find an officer's conduct “objectively reasonable” as a matter of law by recharacterizing the non-moving party's explicit denial of the underlying allegations as “non-categorical” or “conclusory,” thereby resolving genuine disputes of material fact and making credibility determinations in violation of *Tolan v. Cotton*, 572 U.S. 650 (2014).

LIST OF PROCEEDINGS

United States Court of Appeals for the Fourth
Circuit

No. 25-1186

LEON BARCLEY STUSALITUS, *Appellant*, v.
ANGELIQUE ORTIZ, a/k/a A. M. Ortiz; KELVIN
WRIGHT, In his supervisory capacity as Chief of
Police, *Appellees*.

Appeal to Review Summary Judgment Affirmed:
December 2, 2025.

United States District Court for the Eastern District
of Virginia

No. 2:24-cv-202

LEON BARCLEY STUSALITUS, *Plaintiff*, v.
OFFICER ANGELIQUE ORTIZ, et al., *Defendants*.

Defendant's Motion for Summary Judgment

Granted:

January 1, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Leon Barclay Stusalitus respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unpublished and is available at *Stusalitus v. Ortiz*, No. 25-1186 (4th Cir. Dec. 2, 2025). It is reprinted in the Appendix at App. 1a.

The opinion and order of the United States District Court for the Eastern District of Virginia granting summary judgment is available at *Stusalitus v. Ortiz*, No. 2:24-cv-202, ECF No. 35 (E.D. Va. Jan. 31, 2025). It is reprinted in the Appendix at App. 8a.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 2, 2025. This Court has jurisdiction through a petition for writ of certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution 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.

The Fourteenth Amendment to the United States Constitution, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Virginia Code § 19.2-71 provides, in pertinent part:

No magistrate may issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer... without

prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense.

STATEMENT OF THE CASE

This case arises from a 42 U.S.C. § 1983 action for malicious prosecution and Fourth Amendment violations. It addresses a reckless disregard of the "legal process" required for a felony arrest. Specifically, upon receiving a citizen complaint of alleged assault, Respondent Ortiz (f/k/a Angelique Herrera, then a patrol officer) personally sought three felony abduction warrants against Petitioner without undertaking any investigation into such offenses.

To bypass the mandatory oversight of her department, Respondent Ortiz declined to "pass up" the complaint to the investigations team as required. Instead, she escorted the complainant back to the same magistrate's office – which had just turned away the complainant and referred them to the police department. There, in **direct violation** of Virginia Code § 19.2-71 and internal department policy, Respondent Ortiz sought the felony abduction warrants from the magistrate and provided the required "agency" authorization herself. By acting as both the investigating officer and the authorizing "agency," she utilized a private citizen as a "Proxy Affiant" to insulate her unauthorized actions from oversight and to secure a seizure that her law-enforcement agency had never approved.

The reckless nature of this circumvention is underscored by the magistrate's initial refusal to act.

Prior to Respondent Ortiz's involvement, the complainant had appeared before the magistrate and submitted the same written complaint Ortiz reviewed. Likely recognizing that the accusations required investigation, the magistrate declined to issue any warrants and instead directed the complainant to the police department. It was only after Respondent Ortiz's intervention – wherein she used the same written complaint previously rejected by the magistrate and provided her own unauthorized "agency" approval to its claims – that the warrants were issued. But for Respondent Ortiz's misrepresentation of her authority and her status as the authorizing "agency," the magistrate would not have issued the felony warrants.

1. The Complaint and the Failure to Investigate

On September 25, 2021, Alaina Stewart Cmelik (n/k/a Alaina Stewart Tunis) appeared at the Chesapeake Police Department to file a complaint against Petitioner. She had just come from the magistrate's office which referred her to the police department to file a report. In meeting with Respondent Ortiz at 10:04 AM, she alleged that Petitioner had assaulted her on multiple occasions. Crucially, these alleged incidents were not recent; Cmelik claimed they had occurred months prior.

Despite this significant delay, which indicated the absence of any exigency or immediate threat, Respondent Ortiz conducted no independent investigation into the allegations. As captured on body-worn camera, she spent approximately 20 minutes with Cmelik before deciding to bypass the

department's investigation team and escort Cmelik to the magistrate, with intent on approving felony abduction warrants for Petitioner's arrest. At the magistrate's office, Respondent Ortiz spoke with Cmelik until at least 10:45 AM. The timeline confirms a rush to judgment and lack of investigation: Respondent Ortiz (f/k/a Herrera) authorized the written complaint, thereby falsely providing "agency approval" in violation of state law and department policy, at 10:58 AM, only 54 minutes after having met the complainant. (As seen on the complaint: "A. *HERRERA*"). (App. 19a). The first felony warrant was issued 46 minutes later at 11:44 AM, with the third at 11:57 AM. (App. 21a, 29a). It is **temporally impossible** for any investigation of three felony abductions to have occurred in the small window between receiving the complaint and Respondent Ortiz approving the warrants.

Timeline of Felony Warrant Procurement

10:04 AM	First contact between complainant and Respondent Ortiz.
10:24 AM	Respondent Ortiz verbally decides not to "kick up" felony charges to be looked into. Interview concludes.
10:25 AM	Respondent Ortiz escorts complainant across the street to the magistrate's office. Body camera is turned off.
10:38 AM	Respondent Ortiz activates body camera; sits with and consoles complainant at magistrate's office.
10:45 AM	Respondent Ortiz turns off body camera.

10:58 AM	Respondent Ortiz (Herrera) issues unauthorized agency approval for the procurement of three felony abduction warrants. (App. 19a.)
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Total time from meeting a stranger to authorizing three life-altering felony seizures: 54 minutes.

During this brief interaction, Respondent Ortiz accepted Cmelik's narrative at face value, ignoring glaring "red flags" presented during the recorded interview, including the knowledge that the parties were former romantic partners who had recently ended their cohabitation along with the staleness of the allegations. A reasonable officer would have recognized that this context requires further verification. Cmelik portrayed Petitioner as a "menacing intruder," a characterization a reasonable officer would reconcile with the reality of the parties' intimate relationship and cohabitation.

In truth, Petitioner and Cmelik had been in a committed relationship with discussions of future marriage; Cmelik was recently pregnant with Petitioner's child, and had Petitioner move in with her from out of state in July of 2021. After noticing the pregnancy around the same time Petitioner moved in, Cmelik withdrew from the relationship. To further complicate things, Cmelik was still legally married at the time, with her separated-from husband living in another country – awaiting the one-year separation time in Virginia before filing for divorce – whom she already had a son with. After ending the relationship with Petitioner mid-August of 2021, Cmelik began attempting to reconcile with her husband. This complex web of a domestic partnership, a pregnancy, and a concurrent attempt to salvage a marriage provided Cmelik with a powerful motive to

fabricate allegations to explain her behavior or Petitioner's presence in her life. Respondent Ortiz's failure to spend the necessary time investigating these facts, opting instead to bypass her department's trained detectives, demonstrated a reckless disregard for the truth.

Despite the forty-day gap between the most recent alleged incident and the filing of the complaint, Respondent Ortiz obtained zero independent corroboration of these stale claims. She failed to conduct a scene walkthrough, verify the parties' historical locations, or even attempt to contact Petitioner despite having his phone number. Notably, Respondent Ortiz failed to interview immediate neighbors of the alleged crime scene, one of whom was the elected Sheriff of the county, Sheriff O'Sullivan, living right next door in townhomes with shared walls, whom Petitioner was on good terms with and who could have provided immediate insight into the parties' cohabitation. Respondent Ortiz did not even verify if the parties were known to each other before seeking ruinous felony warrants. Instead, she moved to deprive a citizen of liberty based entirely on a name and uncorroborated statements, bypassing every investigative safeguard intended to prevent such an overreach.

Furthermore, readily available evidence directly contradicted the core of the allegations. In a statement on the initial complaint, which statement was later crossed out due to jurisdiction, Cmelik alleged that Petitioner had attempted to choke her in late June. (App. 17a). During her interview with Respondent Ortiz, Cmelik claimed this occurred while on a trip to move Petitioner's belongings from Florida to Virginia. Had Respondent Ortiz conducted even a

cursory investigation, she would have discovered that this trip was taken with Petitioner's parents, all staying together at their residence, providing immediate access to witnesses and casting doubt upon other elements in the complaint.

Moreover, Cmelik's own contemporaneous records and diary entries from that period described the "choking" conduct not as an assault, but as a requested, ongoing consensual component of the parties' intimate relationship. By bypassing the police department's detectives who are trained to verify such claims and interview third-party witnesses, Respondent Ortiz ensured that these exculpatory facts remained hidden, allowing an unfounded "abduction" narrative to proceed to the magistrate.

Despite taking notes of Petitioner's contact information provided by Cmelik during the interview, Respondent Ortiz never attempted to contact Petitioner. She performed no background check on Cmelik, failed to visit the alleged crime scenes, processed no police report, and made no effort to verify the basic elements of an "abduction" charge. Furthermore, the complaint form was significantly altered following the interview; two disparate sets of dates and inconsistent details were appended to the back of the form prior to its second presentation to the magistrate, as if Cmelik was coached on the addition of specific dates and times -- details missing from the original complaint as provided initially to Respondent Ortiz and the magistrate -- necessary to secure charges. Respondent Ortiz chose a path of willful ignorance, intentionally avoiding any evidence that would have contradicted Cmelik's narrative. By doing so, she ensured that the "agency" gatekeeping

function codified into law to protect citizens was rendered a nullity.

The culmination of this constitutional bypass occurred at the magistrate's office. Having already been turned away once for lack of agency involvement, Cmelik returned under the personal escort of Respondent Ortiz. Despite the mandate of Virginia Code § 19.2-71 and her department's explicit requirement to "pass up" felony allegations to detectives, Respondent Ortiz personally provided the "agency" authorization herself. (App. 19a). By standing before the magistrate and validating the complaint as a representative of the police department with agency authority, she intentionally bypassed the investigative oversight designed to prevent the very overreach that occurred here. Respondent Ortiz's use of Cmelik as a "Proxy Affiant" while simultaneously acting as her own authorizing supervisor transformed the judicial process into a rubber stamp for an uninvestigated, unauthorized, and ultimately meritless seizure.

2. The Structural Abdication of the Fourth Amendment

The Fourth Amendment's warrant requirement is not a mere formality; it is a structural safeguard designed to interpose a "neutral and detached magistrate" between the citizen and the police. *Johnson v. United States*, 333 U.S. 10, 14 (1948). Here, that structure was deliberately dismantled. By utilizing Cmelik as a "Proxy Affiant" and simultaneously providing her own unauthorized "agency" approval, Respondent Ortiz created a closed

loop that excluded every meaningful check on her authority.

This was a structural abdication of the Fourth Amendment for two reasons. First, it allowed a patrol officer to exercise "detective-level" authority that her own department had explicitly withheld from her. Second, it deceived the magistrate into believing the warrants carried the imprimatur of the law-enforcement agency, as required by Virginia Code § 19.2-71. When an officer intentionally subverts the very "legal process" she is sworn to uphold to secure a seizure, that seizure is *prima facie* unreasonable. To hold otherwise, as the Fourth Circuit did, is to allow officers to "cure" a lack of probable cause through procedural fraud.

Having conducted no investigation, the body camera record shows that Respondent Ortiz decided that she would swear to the felony abduction charges herself. Under Virginia Code § 19.2-71, a magistrate may not issue a felony warrant based on a civilian complaint without authorization from the Commonwealth's Attorney or a law enforcement agency. By offering fraudulent agency approval to the magistrate, Respondent Ortiz bypassed this mandatory check.

Additionally, the magistrate abdicated their constitutional role as a "neutral and detached" arbiter. The magistrate did not independently determine probable cause in a vacuum alone with the complainant as the lower courts implied. As Respondent Ortiz stated in her sworn interrogatory responses, "When [Cmelik] sought domestic assault and abduction charges, the magistrate asked if I would be inclined to sign off on felony charges."

The magistrate turned to Respondent Ortiz and asked her if she would "sign off" for the requested warrants as the approving authority. Respondent Ortiz agreed. By "signing off" without proper authority, Respondent Ortiz effectively acted as both the investigator and the magistrate; and with having performed no investigation into the claims, treated the Fourth Amendment's probable cause requirement as a mere formality to be circumvented.

By asking Respondent Ortiz to provide the "sign off," the magistrate did not merely seek a procedural signature; he delegated his judicial duty to the very officer who had already demonstrated a "reckless disregard" for the truth. This circumvention ensured that the "agency" approval required by Virginia Code § 19.2-71 was not an independent vetting of the charges.

The "agency" authorization requirement in Virginia is a specific gatekeeping mechanism designed to prevent precisely what occurred here: the elevation of unverified civilian grievances to the status of life-altering felony warrants. By acting as both the investigating officer and the authorizing "agency," Respondent Ortiz effectively nullified the statute. She utilized the complainant as a "Proxy Affiant" to provide the narrative, while she provided the authority, creating a closed-loop system that infringed upon Petitioner's liberty based upon an officer's subjective intent rather than objective law.

While the Fourth Amendment inquiry is often objective, the Supreme Court has long held that an officer's "reckless disregard for the truth" is a subjective path to a constitutional violation. See *Franks v. Delaware*, 438 U.S. 154 (1978). Respondent

Ortiz, in performing no investigation or corroboration of any of the elements of the offense she gave authorization for, doing so without said authority in violation of state law and her own department's policy, is the definition of "reckless."

3. The Arrest and Termination of Proceedings

Petitioner, a distinguished veteran who served honorably in the U.S. Army Infantry, including two year-long deployments overseas during wartime and becoming a non-commissioned officer in the process, was hunted down and arrested on the three counts of felony abduction on the same day the warrants were issued, September 25th, 2021, facing decades of potential incarceration.

Immediately following his arrest, Petitioner was denied bond by the jail magistrate based upon the severity of the charges and nothing more. Days later during a mandatory bond hearing, the local court paid little attention to argument, denying bond again. These denials were based solely on the severity of the three felony abduction charges, resulting in an indeterminate length of pre-trial incarceration. After over three weeks of incarceration and after obtaining reliable counsel, Petitioner was afforded a third bond hearing on appeal. Petitioner, with his parents and friends present for support, was narrowly afforded bond on the conditions that he live with his parents in a distant rural town, be monitored with a GPS ankle bracelet, and adhere to a strict curfew each day until trial.

Prior to his arrest, Petitioner was attending college online full-time using his earned benefits through military service. As a direct result of his extended incarceration, Petitioner was unable to report to classes, and was administratively dropped from his college courses for non-attendance the very day he obtained bond. Although Petitioner eventually completed his degree – after a lengthy delay in re-entry imposed by his college due to the criminal proceedings – he has endured numerous other life-altering events which took place as consequence of the arrest.

At the preliminary hearing for the criminal case on March 8th, 2022, in the Chesapeake Juvenile and Domestic Relations District Court, the complainant was questioned by Petitioner's counsel regarding the allegations made. Early in questioning, the complainant completely backtracked when asked about being dragged across the room as alleged in one of the charges. The complainant admitted the truth that on that occasion, Petitioner had gently and carefully escorted her – his pregnant wife-to-be – from her sleeping son's bedroom into another bedroom to go to sleep. Rather than dismiss this charge or alter proceedings, the judge halted the hearing and certified all felony charges to the circuit court. As a positive result of that hearing, however, the judge removed all the conditions of Petitioner's bond, restoring some due freedom to him.

Approximately one week before criminal trial, the prosecutor in the case approached petitioner with a request to *nolle prosequi* all charges. To *nolle prosequi* the charges, both parties must agree – Petitioner would have to agree to this disposition of the matter versus seeking the verdict of a jury.

Petitioner's counsel, Jason A. Barlow, advised that if moving forward with *nolle prosequi*, the State could bring these felony charges up against Petitioner at any time in the future, as it is not a "not guilty" verdict and there is no statute of limitations for felony charges. Whether dismissed, or terminated through *nolle prosequi*, the charges would still linger over Petitioner's head for the rest of his life.

Counsel did not want lingering charges over Petitioner's head for the rest of his life, and so worked out a pseudo statute of limitations into a contract between Petitioner and the State where the State would agree to not bring these charges up against Petitioner at any time in the future if he accepts the *nolle prosequi* disposition. The State, recognizing Petitioner's willingness to enter into a civil protective order with Cmelik, wanted to attach its limitations to the successful conclusion of the civil protective order, to which Petitioner agreed. Essentially, Petitioner agreed to *nolle prosequi* as the disposition of the charges if the State agreed to never bring them back up against him, and the State, in an exceptional move, accepted this limiting of their own rights to bring back these felony charges against Petitioner, indicating how weak their case was. The civil agreement between Cmelik and Petitioner has since expired without incident.

This was an overwhelming success for both parties; the prosecutor was spared embarrassment at trial – a triple abduction case with no crime scene, no evidence, no investigation, and nothing except the impeached words of a disgruntled ex-lover – and Petitioner did not have to endure the risk of a trial, while still achieving a result that left him free from future burden. The case was disposed of via *nolle*

prosequi on August 29th, 2022, eleven months after Respondent Ortiz had given false authorization for Petitioner's arrest. No criminal conviction was entered, and Petitioner did not plead guilty to any crime.

4. Proceedings Below

Following a formal internal investigation by the Chesapeake Police Department, which **substantiated Petitioner's formal complaint** regarding Respondent Ortiz's unauthorized conduct, Petitioner filed suit under 42 U.S.C. § 1983 for malicious prosecution in the United States District Court for the Eastern District of Virginia on March 26th, 2024.

Two business days before the scheduled oral argument for summary judgment, the District Court abruptly canceled the hearing and issued a decision in favor of the Respondents. By dispensing with long-scheduled oral argument, the court precluded any judicial inquiry into the glaring "temporal impossibility" of Respondent Ortiz's investigation or the "Proxy Affiant" maneuver used to secure the warrants.

In its opinion, the District Court held that Petitioner failed to present evidence contradicting the factual allegations in the affidavit. Most significantly, the court ruled that Respondent Ortiz's total failure to investigate was legally irrelevant, explicitly stating that **"nothing Defendant Ortiz did in this case matters"** because the affidavit was signed by the complainant, completely ignoring the section of the complaint where Respondent Ortiz is specifically

listed as the name of the person authorizing the issuance of the warrants. (App. 19a). This holding effectively grants law enforcement a “blank check” to bypass mandatory investigative safeguards, provided they can find a private citizen to sign the charging document, even if they themselves are responsible for the warrant’s issuance.

The United States Court of Appeals for the Fourth Circuit affirmed the judgment in an unpublished, *per curiam* opinion without oral argument. (App. 1a). The decision rests upon three fundamental legal errors that depart from this Court’s established jurisprudence:

First, in a **highly unusual** move, the Court of Appeals erroneously claimed that the underlying criminal proceedings did not terminate favorably for Petitioner. The court characterized the *nolle prosequi* of charges as a “plea deal.” This finding squarely contradicts this Court’s holding in *Thompson v. Clark*, 596 U.S. 36 (2022), which clarified that a favorable termination occurs whenever a prosecution ends without a conviction.

Second, the Court of Appeals conflated two distinct lanes of Fourth Amendment liability. It applied the restrictive standard of *Franks v. Delaware*, 438 U.S. 154 (1978), holding that it must defer to the magistrate’s finding unless the affidavit itself was “knowingly or recklessly false.” In doing so, the court ignored the standard established in *Malley v. Briggs*, 475 U.S. 335 (1986), which imposes liability where a “reasonably well-trained officer” would have known that the “affidavit failed to establish probable cause and that he should not have applied for the warrant.” *Id.* at 345. “If such was the case, the officer’s

application for a warrant was not objectively reasonable, because it created the unnecessary danger of an unlawful arrest.” *Id.* at 345. Here, the accusations alone failed to establish probable cause for abduction, and yet without any vetting of the claims, Respondent Ortiz authorized arrest warrants to that effect.

Third, the court dismissed the violation of Virginia Code § 19.2-71 as “irrelevant” to the constitutional inquiry. It failed to recognize that an officer’s intentional subversion of a statutory gatekeeping mechanism is, in itself, evidence of objective unreasonableness.

By affirming the District Court, the Fourth Circuit has effectively immunized officers who utilize “Proxy Affiants” to shield themselves from investigative duties. The ruling creates a blueprint for law enforcement to manufacture probable cause while remaining willfully ignorant of exculpatory evidence.

The Court of Appeals rendered its decision on December 2, 2025. This timely petition follows.

REASONS FOR GRANTING THE PETITION

The decision of the Fourth Circuit does not merely affirm an erroneous summary judgment; it validates a dangerous erosion of Fourth Amendment protections by sanctioning a “Proxy Affiant” loophole. By focusing exclusively on whether the officer “lied” under *Franks v. Delaware*, 438 U.S. 154 (1978), the court effectively immunized Respondent Ortiz’s objectively unreasonable conduct in procuring warrants based on stale, uncorroborated allegations,

a standard that directly conflicts with *Malley v. Briggs*, 475 U.S. 335 (1986). Furthermore, by mischaracterizing a *nolle prosequi* as a “plea deal,” the court departs heavily from this Court’s recent holding in *Thompson v. Clark*, 596 U.S. 36 (2022). And by deferring to a magistrate who abdicated his neutral role, the court sanctioned a structural violation of the Constitution. This Court should grant certiorari to restore the proper balance between law enforcement power and individual liberty.

**I. The Decision Below Conflicts
with *Malley v. Briggs* by Immunizing
Objectively Unreasonable Police
Conduct Under the Guise of *Franks*.**

The Fourth Circuit affirmed summary judgment by applying a piecemeal legal standard that effectively immunizes incompetent or malicious policing. The court held that because a magistrate issued the warrants, Petitioner could only prevail by overcoming the “presumption of validity” attached to the affidavit, essentially requiring proof that the officer made “knowingly or recklessly false” statements under *Franks v. Delaware*, 438 U.S. 154 (1978), when the affidavit itself was written by a civilian complainant.

This reasoning disregards distinct paths to Fourth Amendment liability. In *Malley*, this Court held that an officer is not entitled to qualified immunity simply because a magistrate issued a warrant. The officer remains liable if their conduct in procuring the warrant was “objectively unreasonable.” By applying *Franks* to a third-party affidavit, the lower court created a “conduit loophole,”

allowing an officer to “launder” a lack of probable cause through a civilian.

The lower court transformed *Franks*, a case intended to expand a defendant’s rights to challenge a warrant, into a shield that contracts the Fourth Amendment. By requiring a showing of subjective “reckless falsity” in the affidavit, the court effectively immunized the officer’s objectively unreasonable procurement of that warrant.

This creates a **sharp split with the Second and First Circuits**, which maintain that an officer cannot rely blindly on a complainant where “circumstances raise doubts as to the victim’s veracity.” *Singer v. Fulton Cty. Sheriff*, 63 F.3d 110, 119 (2d Cir. 1995). See also *United States v. Tanguay*, 787 F.3d 44 (1st Cir. 2015). Here, the stale allegations, relationship status and cohabitation elements demanded further inquiry.

The District Court’s opinion, affirmed by the Fourth Circuit, exposes the precise legal error at the heart of this case. In granting summary judgment, the District Court explicitly held that the officer’s reckless failure to investigate was legally irrelevant. The court wrote:

Both sides’ briefs focus almost entirely on the extent to which Defendant Ortiz should have investigated the alleged victim’s allegations before taking her to the magistrate to present them. But nothing Defendant Ortiz did in this case matters, because it is undisputed that the affidavit presented to the magistrate came from the alleged victim, not from Officer Ortiz.

(App. 13a).

This statement, that **"nothing Defendant Ortiz did in this case matters,"** is a stunning repudiation of *Malley*. In addition, the court completely ignored that it was Respondent Ortiz's name on the affidavit presented to the magistrate as the person authorizing the issuance of the warrant. The lower courts have effectively ruled that an officer can be "reckless," "willfully ignorant," or "malicious" with impunity, provided they use a civilian as a "conduit" for the warrant.

Furthermore, by forgoing any investigation into allegations as severe as felony abduction, Respondent Ortiz deprived Petitioner of his Fourteenth Amendment right to the Equal Protection of the laws. Central to the guarantee of Equal Protection is the right to be free from arbitrary disparate treatment by the State. In any typical instance of a criminal complaint – such as a citizen reporting a stolen vehicle – standard police protocol dictates a reasonable investigation to verify the claim before the State strips the accused of their liberty. Here, Petitioner was denied that fundamental protection.

While other citizens are afforded the safety net of an independent police verification process, Petitioner was singled out for an immediate, unverified arrest. This arbitrary "Class of One" treatment is illustrated by the 54-minute window between the officer's first contact with the complainant and the issuance of three felony warrants. Such a total disregard of the duty to investigate shocks the conscience and violates the

core of the Fourteenth Amendment's promise of uniform justice.

II. The Decision Below Conflicts with *Thompson v. Clark* Regarding Favorable Termination.

In *Thompson v. Clark*, 596 U.S. 36 (2022), this Court held that a malicious prosecution claim requires only that the prosecution ended without a conviction. The Fourth Circuit's determination that Petitioner's *nolle prosequi* was a "plea deal" is a back-door attempt to re-import the "indication of innocence" requirement this Court expressly rejected. In its analysis of the proceedings, the Fourth Circuit incorrectly determined that the criminal proceedings against Petitioner did not terminate in his favor. The court reasoned that because Petitioner agreed to a *nolle prosequi* of the criminal charges, the outcome was a "plea deal." (App. 3a).

Here, the prosecution ended without a conviction via an abandonment of the prosecution. Petitioner did not plead guilty, nor did he admit to any facts sufficient to sustain a conviction. The court's claim appears twice in the court's recitation of facts and illustrates that the panel did not meaningfully examine the record or the legal framework governing the termination of the criminal proceedings nor the nuance of the probable cause issue at hand.

III. The Fourth Circuit Sanctioned a Structural Violation of the Fourth Amendment by Deferring to a Magistrate Who Abdicated His Neutral Role.

The lower court affirmed summary judgment based on "great deference" to the magistrate's probable cause determination. See *United States v. Leon*, 468 U.S. 897 (1984). However, such deference relies on a foundational premise: that the magistrate acted as a "neutral and detached" judicial officer. *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1979).

The record demonstrates that the magistrate wholly abdicated this role. The magistrate did not independently evaluate probable cause; instead, he requested that Respondent Ortiz "sign off" on the warrants as the approving agency. This "sign off" was a mandatory legal prerequisite under Virginia Code § 19.2-71. By approving the issuance of the warrants, Respondent Ortiz did not merely "walk" a victim to the office; she provided the "but-for" authorization that adopted the stale allegations as official state action.

Under the procedures applied here, the State's criminal process was triggered by a private accusation backed up by the authorization of an officer who performed no investigation and had no authority to provide such authorization, bypassing the essential "gatekeeping" function of law enforcement. If the complainant had alleged armed robbery rather than abduction, the result of same-day incarceration without an independent inquiry would have been identical.

While § 1983 does not provide a remedy for mere state-law violations, an officer's intentional

bypass of a statutory gatekeeping mechanism is objective evidence of "reckless disregard" concerning the Fourth Amendment. Without the officer's affirmative act of authorization, the magistrate would have been legally barred from issuing the warrants. When an officer circumvents a safeguard intended to prevent meritless felony charges, she cannot claim her conduct was objectively reasonable. By framing the officer's role as passive, the lower court avoided addressing whether a "reckless authorization" (authorizing multiple warrants without the requisite authority) constitutes "initiating" a prosecution. The officer was a "but-for" cause of the constitutional violation, not a passive observer. Further, by asking the officer to "sign off," the magistrate effectively delegated judicial power back to the executive branch, collapsing the separation of powers inherent in the Warrant Clause, and making the officer liable for the procurement of warrants with absent probable cause.

IV. The Decision Encourages "Willful Ignorance" and Violates the Summary Judgment Standard.

The decision below establishes a path where an officer may ignore obvious "red flags" in stale, non-exigent cases. Respondent Ortiz was aware of the failed romantic relationship, cohabitation, and the 40-day delay in reporting, factors that *Singer* and *Tanguay* recognize as triggering a duty to investigate. A reasonable officer would have viewed the stale, uncorroborated allegations of a biased complainant with heightened skepticism before authorizing life-altering felony charges against a citizen with no record of a propensity for such behavior.

The Fourth Circuit disregarded the fundamental principle that, on summary judgment, all inferences must be drawn in favor of the non-moving party. *Tolan v. Cotton*, 572 U.S. 650 (2014). The court ignored the “temporal impossibility” of investigating three 40-plus-day-old abduction allegations within the timeline. No competent officer could reasonably conclude that probable cause existed for multiple serious felonies within such a compressed timeframe, absent any corroborating evidence. This failure to adhere to the *Tolan* standard improperly usurped the role of the jury.

The lower court’s grant of summary judgment was further predicated on a manifest mischaracterization of the evidentiary record. The court suggested that Petitioner “never categorically denied” the allegations in the affidavit, but merely claimed the complainant “lied.” (App. 13a). This improperly resolves a credibility dispute against the non-moving party.

In his deposition and throughout the administrative investigation, Petitioner explicitly and consistently maintained his innocence, asserting that the allegations were a fabrication of twisted facts intended to gain leverage in a custody dispute. By framing Petitioner’s denial as “non-categorical,” the court engaged in the very “weighing of evidence” that *Tolan* expressly prohibits. Whether a denial is “sufficiently categorical” is a determination for a jury, not a judge on summary judgment. This judicial discounting of Petitioner’s testimony, while simultaneously granting “great deference” to a stale, uncorroborated affidavit, illustrates a departure from the neutral application of summary judgment

standards, thereby transforming the “presumption of validity” into a shield for law enforcement.

V. This Case is an Ideal Vehicle to Address the “Temporal Impossibility” of Objective Reasonableness and the Improper Grant of Summary Judgment.

This case provides an ideal vehicle for review because it presents a clear record of a **genuine dispute of material fact** that was improperly resolved by the court rather than a jury. Whether probable cause exists is a “mixed question of law and fact,” and where the underlying facts concerning the officer’s conduct are in dispute, summary judgment is precluded. The Fourth Circuit disregarded the fundamental principle that all inferences must be drawn in favor of the non-moving party. *Tolan v. Cotton*, 572 U.S. 650 (2014).

The record confirms a 54-minute window (10:04 AM to 10:58 AM) between initial contact with the complainant, and Respondent Ortiz’s authorization of three felony abduction warrants, with most of that time spent taking the complainant’s statement and consoling the complainant. Petitioner contends that an investigation into stale, uncorroborated allegations of three 40-plus-day-old abductions within this time frame to establish probable cause is a physical and legal impossibility. Respondent contends it was sufficient or irrelevant. By granting summary judgment, the court improperly resolved this **disputed material fact** in favor of the moving party, effectively ruling that “reasonableness” can be determined in a vacuum, divorced from the physical reality of the timeline. In doing so, the

Fourth Circuit fundamentally subverted the "totality of the circumstances" test mandated by *Illinois v. Gates*, 462 U.S. 213 (1983). By excising the temporal impossibility from its analysis, the court did not evaluate the "totality" of the officer's conduct; it sanctioned a version of the facts that could not exist in the physical world.

Under the *Singer* standard, the "fact" of probable cause depends on whether a reasonable officer would have doubted the complainant's veracity. Petitioner presented specific evidence of "red flags" such as the 40-day delay, the failed romantic relationship, cohabitation, and a pregnancy with a pending custody dispute, that triggered a duty to investigate and challenged the veracity of the affidavit. The lower courts dismissed these facts as "speculation," thereby improperly weighing evidence and making credibility determinations that are the exclusive province of a jury.

The District Court's conclusion that "nothing Defendant Ortiz did... matters" rests on the factual assumption that she was a passive observer. However, Petitioner provided evidence that her authorization for the issuance of the felony warrants was a **mandatory legal prerequisite**. This creates a genuine dispute as to whether she "initiated" the prosecution. By resolving this dispute on summary judgment, the lower courts usurped the jury's role in determining the scope of the officer's participation in the constitutional violation.

The "temporal impossibility" in this case is not a "legal conclusion" for the court to draw; it is a material factual failure that renders the resulting seizure unreasonable as a matter of law. This Court

should grant certiorari to clarify that when the timeline of an "investigation" renders "objective reasonableness" a physical impossibility, the Fourth Amendment requires the issue to be put before a jury.

CONCLUSION

The Fourth Circuit's decision creates a blueprint for law enforcement to bypass the Fourth Amendment. By sanctioning a "Proxy Affiant" loophole, the court has signaled to officers that they may procure felony warrants based on stale, unverified, uninvestigated and biased allegations, provided they shield themselves behind a civilian signing the formal affidavit. This result effectively nullifies the "objective reasonableness" requirement of *Malley v. Briggs* and leaves citizens with no recourse for unreasonable seizures of this kind.

Furthermore, the lower courts' departure from *Thompson v. Clark* and the improper resolution of genuine disputes of material fact on summary judgment subvert the procedural integrity of the federal judiciary. By rebranding a defendant's explicit denial of guilt as "conclusory" and "non-categorical," and by excluding evidence that could be authenticated at trial, the courts below usurped the role of the jury and weighed evidence in a manner expressly forbidden by *Tolan v. Cotton*.

If an officer can abandon all investigative duties, bypass legislative checks and departmental policy in authorizing warrants – without even actually possessing the authority to do so – and still receive the "great deference" of a warrant determination based on a record the court has

sanitized of the Petitioner's own testimony, then the Warrant Clause is reduced to a mere formality.

This Court's intervention is necessary to clarify that an officer's mandatory authorization is an act of "procuring" a warrant, that "temporal impossibility" is a material fact for a jury, and that the Fourth Amendment does not permit the laundering of unconstitutional conduct through a civilian proxy.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, reading "Leon Stusalitus".

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