No. 25-73

IN THE

Supreme Court of the United States

ALI AL-MAQABLH,

Petitioner,

v.

CRYSTAL HEINZ, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS COUNTY ATTORNEY OF TRIMBLE COUNTY, KENTUCKY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI OF RESPONDENT TROOPER JAMES PHELPS

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Whether the Petition should be denied, when it identifies no unsettled question of federal law warranting this Court's review, and the courts below applied settled precedent to conclude that Petitioner cannot establish the essential elements of a § 1983 malicious prosecution claim, including a lack of evidence of: (1) a constitutionally cognizable deprivation of liberty, or (2) the absence of probable cause.

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Page

Statues

Rules

INTRODUCTION

As it relates to Respondent Trooper James Phelps, this matter arises from Petitioner Ali Al-Maqablh's second attempt on appeal to salvage a meritless § 1983 malicious prosecution claim. After this Court reversed Petitioner's original appeal for further consideration in light of *Thompson v. Clark*, 596 U.S. 36 (2022), the United States District Court for the Western District of Kentucky entered summary judgment in Trooper Phelps's favor on remand, and the Sixth Circuit affirmed, because Petitioner cannot establish the essential elements of the claim. *See* App. 9, 35.

Petitioner's suggestion that *Thompson* somehow dictates a different outcome misstates both the holding of *Thompson* and the record here. *Thompson* addressed only the "favorable termination" element of malicious prosecution and abrogated the Sixth Circuit's prior rule requiring an affirmative indication of innocence. Consistent with *Thompson*, the District Court accepted that Petitioner could satisfy that element. *See* App. 11. But the District Court then correctly turned to the other essential elements of Petitioner's claim (which had never been addressed in prior proceedings) and held that Petitioner's claim failed for two independent and dispositive reasons: (1) Petitioner did not suffer a constitutionally cognizable deprivation of liberty, and (2) probable cause supported the charges. *Id.* The Sixth Circuit affirmed, explaining that this Court's remand was general, not limited, and that the District Court acted properly in resolving those defenses. *See* App. 9.

Contrary to Petitioner's portrayal, this case presents no unsettled question of federal law. The issues have been fully litigated, and both courts below correctly applied settled precedent to conclude that Petitioner's claim cannot survive. Petitioner's disagreement with those conclusions does not transform his case into one of exceptional importance. Rule 10 makes clear that this Court is not a forum for error correction, and there is no conflict, no novel constitutional issue, and no recurring question warranting *certiorari*.

This Court should deny the Petition.

COUNTERSTATMENT OF THE CASE

Petitioner Ali Al-Maqablh filed this action in the United States District Court for the Western District of Kentucky (No. 3:16-CV-289) under 42 U.S.C. § 1983, alleging that Respondent James Phelps, a trooper with the Kentucky State Police, subjected him to malicious prosecution in violation of the Fourth Amendment. *See* App. 61.[1] After discovery, the district court granted summary judgment for Respondent, holding that Petitioner failed to establish a *prima facie* case of malicious prosecution. *Id*. Specifically, the court ruled that Petitioner could not show favorable termination under then-controlling Sixth Circuit precedent, which required an affirmative indication of innocence. *Id*. at 66-67.

The United States Court of Appeals for the Sixth Circuit affirmed. *See* App. 38. Petitioner then sought

1. Unless otherwise noted, citations are to Petitioner's Appendix (hereafter, "App. __").

review in this Court. *See* App. 37. On October 3, 2022, this Court granted *certiorari*, vacated the Sixth Circuit's judgment, and remanded the case for further proceedings in light of *Thompson v. Clark*, 596 U.S. 36 (2022), which clarified that a plaintiff satisfies the "favorable termination" element by showing that the criminal case ended without a conviction. *Id*. *Thompson* expressly abrogated the precedent on which the lower courts had relied. *See* App. 38.

Following this Court's remand, the Sixth Circuit returned the case to the District Court, where it was reassigned. *Al-Maqablh v. Heinz*, No. 19-5548, 2022 U.S. App. LEXIS 28036 (6th Cir. Oct. 6, 2022). On remand, the District Court again entertained dispositive motions, and entered summary judgment in Respondent's favor once more. *See* App. 35. Although the court concluded that Petitioner could establish favorable termination under Thompson, it held that the malicious prosecution claim failed for two independent and dispositive reasons: (1) Petitioner did not suffer a constitutionally cognizable deprivation of liberty, and (2) probable cause supported Petitioner's charges. *See* App. 11.

Petitioner appealed, challenging both the District Court's authority to revisit these defenses on remand. *See* App. 8. On December 23, 2024, the Sixth Circuit affirmed. *See* App. 9. The Court of Appeals held that this Court's remand was general, not limited. *Id*. at 7-8. Moreover, the Court of Appeals held that Petitioner had forfeited any appeal of the substance of the district court's ruling on the merits, because Petitioner did "not challenge the district court's rejection of his § 1983 malicious prosecution claim against Phelps for failure to establish two elements of the

cause of action: that the Commonwealth lacked probable cause to bring the criminal charges and that the criminal proceeding deprived him of a liberty interest." *See* App. 8. Thus, the Court of Appeals held that Petitioner had waived appellate review of these merits issues. *Id.* Petitioner's petition for rehearing *en banc* was denied on February 13, 2025. *See* App. 1. Petitioner now seeks review in this Court for a second time.

REASONS FOR DENYING CERTIORARI

I. THE PETITION SHOULD BE DENIED BECAUSE IT RAISES NO QUESTION WARRANTING THIS COURT'S REVIEW

This Court's *certiorari* jurisdiction is limited to cases presenting "compelling reasons," such as conflicts among the courts of appeals or unsettled questions of federal law. Sup. Ct. R. 10. The Petition identifies no such question. Rather, it seeks to relitigate case-specific determinations concerning the elements of a § 1983 malicious prosecution claim, for a second time. The District Court and the United States Court of Appeals for the Sixth Circuit carefully considered and rejected Petitioner's arguments, and his dissatisfaction with those outcomes does not supply a basis for this Court's review.

This Court has long recognized that it is not a tribunal of error correction for dissatisfied litigants who simply seek a different outcome. *United States v. Johnston*, 268 U.S. 220, 227 (1925). For that reason, the Court has consistently denied review where petitions fail to raise genuine federal questions. *See*, e.g., *Texas v. Mead*, 465 U.S. 1041 (1984) (denying *certiorari* where the State

attempted to inject an issue not properly presented in its petition, reaffirming that this Court will not reach beyond the questions squarely before it); *Lackey v. Texas*, 514 U.S. 1045 (1995) (Stevens, J., respecting denial of *certiorari*) (explaining that even novel constitutional arguments must first be developed in the lower courts before they may warrant this Court's attention); *Johnson v. Bredesen*, 558 U.S. 1067 (2009) (adhering to precedents denying review of claims that lacked a constitutional foundation, regardless of procedural posture); *Morrow v. United States*, 514 U.S. 1015 (1995) (denying *certiorari* in a fact-specific case without comment).

Those principles apply squarely here. After this Court remanded for further proceedings in light of *Thompson v. Clark*, 596 U.S. 36 (2022), the United States District Court for the Western District of Kentucky carefully reconsidered Petitioner's claim and again entered summary judgment for Respondent Phelps. *See* App. 35. The court held that Petitioner's malicious prosecution claim failed on two independent grounds: Petitioner was not deprived of a constitutionally cognizable liberty interest, and the charges were supported by probable cause. *See* App. 11. On appeal, the United States Court of Appeals for the Sixth Circuit affirmed in an unpublished opinion, explaining that the remand from this Court was general rather than limited and that the District Court acted properly in addressing these unresolved defenses. *See* App. 3-8.

The Petition currently before the Court identifies no conflict among the courts of appeals, no unsettled question of federal law, and no issue of recurring or exceptional importance. It merely challenges the application of settled

doctrines—the mandate rule, the law-of-the-case doctrine, and the established elements of malicious prosecution—to the particular facts of this record. This Court has consistently declined review in such circumstances, and it should do so again here.

Because the Petition raises no question that satisfies this Court's demanding standard for *certiorari*, it should be denied.

II. A CROSS-APPEAL WAS NOT REQUIRED BECAUSE RESPONDENT PHELPS DID NOT SEEK TO MODIFY THE JUDGMENT, BUT ONLY TO DEFEND IT ON ALTERNATIVE GROUNDS

The Petitioner's suggestion that Respondents were obligated to file a cross-appeal in order to preserve certain defenses reflects a fundamental misunderstanding of this Court's precedent. The cross-appeal requirement applies only when a party seeks to enlarge its own rights under the judgment or diminish the rights of the opposing party. *El Paso Nat. Gas Co. v. Neztsosie*, 526 U.S. 473, 479–80 (1999); *Greenlaw v. United States*, 554 U.S. 237, 244–45 (2008). Where, as here, the appellee merely defends the judgment that was entered in the appellee's favor, no cross-appeal is required.

This Court has consistently reaffirmed that principle. A prevailing party that does not seek to alter the judgment below may nonetheless rely on any matter appearing in the record to support affirmance without filing a cross-appeal. As the Court explained, "So long as a respondent does not seek to modify the judgment below," true here, "[i]t is well accepted" that the respondent may, "without filing

a cross-appeal or cross-petition . . . rely upon any matter appearing in the record in support of the judgment." *Union Pac. R.R. v. Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment*, 558 U.S. 67, 71 (2009).

That is exactly what occurred here. After this Court remanded for further proceedings in light of *Thompson*, the United States District Court for the Western District of Kentucky entered summary judgment for Respondent Trooper Phelps on two independent grounds: (1) Petitioner was not deprived of a constitutionally cognizable liberty interest; and (2) the criminal charges were supported by probable cause. *See* App. 11. On appeal, Respondents argued each of these grounds as alternative bases for affirmance. None of these arguments enlarged Respondents' rights or reduced Petitioner's rights under the judgment—they simply defended the judgment that had already been entered.

This Court's more recent decisions reaffirm that such a defense is proper. In *Dupree v. Younger*, 598 U.S. 729, 734–35 (2023), the Court held that purely legal issues resolved at summary judgment are preserved for appellate review without additional procedural steps. And in *Ortiz v. Jordan*, 562 U.S. 180, 188–89 (2011), the Court distinguished between sufficiency-of-the-evidence claims, which must be renewed after trial, and purely legal issues, which may be raised on appeal even without further preservation. The defenses asserted here—lack of initiation, no constitutional deprivation, and the presence of probable cause—are quintessentially legal issues.

Petitioner's contrary suggestion would upend long-settled practice and mischaracterize the record.

Respondents prevailed in the District Court, and they properly invoked preserved legal defenses as alternative grounds for affirmance in the Sixth Circuit. This Court's precedents foreclose Petitioner's cross-appeal argument, providing no basis for *certiorari*. Because this dispute turns only on the straightforward application of settled procedural principles to the particular facts of this record, it presents no question warranting this Court's review under Rule 10.

III. THE SIXTH CIRCUIT'S DECISION FAITHFULLY APPLIED *THOMPSON V. CLARK* AND SETTLED PRINCIPLES GOVERNING THE MANDATE RULE AND LAW OF THE CASE

Petitioner's suggestion that the District Court and Sixth Circuit improperly considered elements of malicious prosecution other than favorable termination on remand is incorrect and meritless. This Court's remand was precisely to ensure that the lower courts applied *Thompson v. Clark's* favorable termination concept, and then resolve this case in light of whatever effect (if any) that concept would have; that is exactly what the courts below did.

This Court vacated and remanded "for further consideration in light of *Thompson v. Clark*." See App. 37. The Sixth Circuit in turn remanded the case to the district court "for further consideration in light of *Thompson*." *Al-Maqablh v. Heinz*, No. 19-5548, 2022 U.S. App. LEXIS 28036 (6th Cir. Oct. 6, 2022). Neither order contained an express, procedural limitation confining the district court to a single micro-issue. Under controlling Sixth Circuit precedent, the mandate rule binds the district court to the

scope of the remand, but remands that do not explicitly limit procedure are presumed to be general, permitting the district court to address all matters consistent with the appellate directive. *United States v. Campbell*, 168 F.3d 263, 265, 267–68 (6th Cir. 1999) (quoting *United States v. Moore*, 131 F.3d 595, 597–98 (6th Cir. 1997)). The courts below accordingly applied the mandate exactly as written.

Nor does the law-of-the-case doctrine bar the District Court's consideration of other essential elements of malicious prosecution that were not resolved on the prior appeal. Under the law of the case doctrine, "the trial court is free to consider any issues not decided expressly or impliedly by the appellate court." *Kavorkian v. CSX Transp.*, 117 F.3d 953, 958-59 (6th Cir. 1997) (quoting *Jones v. Lewis*, 957 F. 2d 260, 262 (6th Cir. 1992)); *see also Quern v. Jordan*, 440 U.S. 332, 347 n.18 (1979) (applying the rule to mandates from the Supreme Court). The prior rulings here rested solely on favorable termination; they did not decide the other essential elements—such as probable cause and deprivation of liberty—or the defenses available to Respondent. *Kavorkian* therefore squarely supports the District Court's duty and discretion to resolve those issues on remand.

Finally, the courts below did not act in isolation or error, particularly when viewed in comparison to the outcome of the *Thompson* case itself, after it was remanded. The district court's approach here mirrors how the *Thompson* court proceeded on remand. After this Court's decision in *Thompson*, the Eastern District of New York granted summary judgment for the defendant on the probable cause element, explaining that the Supreme Court "did not hold that Plaintiff had prevailed on his

malicious prosecution claim or that the claim required a new trial," while recognizing that "several additional issues of fact and law . . . potentially remained relevant to Plaintiff's malicious prosecution claim on remand." *Thompson v. Clark*, 673 F. Supp. 3d 261, 266–67 (E.D.N.Y. 2023). Although the Second Circuit later reversed the second judgment in favor of the defendants in *Thompson*, it did not do so based on the district court's having exceeded the mandate. *Thompson v. Police Officer Pagiel Clark*, No. 23-900-cv, 2024 U.S. App. LEXIS 12682, at *1 (2d Cir. May 28, 2024). This outcome confirms that both the district court and Sixth Circuit followed appropriate remand practice here.

The Sixth Circuit's disposition reflects a faithful application of *Thompson* and settled rules governing the mandate rule and law of the case. The lower courts were correct to consider the outstanding elements of malicious prosecution and defenses on remand, and Petitioner points to no controlling conflict or legal error that would warrant this Court's review. The petition should be denied.

IV. THE SIXTH CIRCUIT'S JUDGEMENT WAS CORRECT AS PETITIONER CANNOT ESTABLISH THE ESSENTIAL ELEMENTS OF MALICIOUS PROSECUTION

A plaintiff attempting to assert a malicious prosecution claim under 42 U.S.C.S. § 1983 must show: (1) that the defendant made, influenced, or participated in the decision to initiate a criminal prosecution against the plaintiff; (2) showing of evidence that the prosecution lacked probable cause; (3) that the plaintiff suffered a deprivation of liberty—apart from the initial seizure—

as a consequence of the legal proceeding; and (4) that the criminal proceeding was resolved in the plaintiff's favor. *Sykes*, 625 F.3d 294 at 309. This Court held in *Thompson* that "favorable termination" requires only a showing that the criminal charges concluded without a conviction. While the diversion agreement Petitioner Al-Maqablh entered with Prosecutor Heinz necessarily means that his charges terminated without a criminal conviction, Petitioner remains unable to prevail on any of the other essential elements required to prove malicious prosecution. The District Court correctly recognized these fatal deficiencies, and the Sixth Circuit properly affirmed.

a. Petitioner forfeited appellate review of both the probable cause and liberty deprivation elements.

The Sixth Circuit held that Petitioner failed to preserve two essential elements of his malicious prosecution claim on appeal: (1) that the Commonwealth lacked probable cause, and (2) that the criminal proceedings deprived him of a liberty interest. *See* App. 8. Because the Petitioner failed to brief these issues, the Sixth Circuit deemed them forfeited and declined to consider them on appeal.

This merits determination of the Sixth Circuit is dispositive of this Petition. A plaintiff cannot prevail on a malicious prosecution claim without establishing each of its required elements, including the lack of probable cause and a resulting deprivation of liberty. By failing to contest the District Court's rejection of those elements, Petitioner necessarily waived any argument that could sustain his claim. With two essential elements abandoned,

there is no live controversy for this Court to resolve, and the judgment of the District Court and Sixth Circuit must be affirmed.

b. Trooper Phelps did not make, influence, or participate in the decision to criminally charge Petitioner Al-Maqablh.

A plaintiff may only prevail on his malicious prosecution claim if he can prove that the defendant made, influenced, or participated int eh decision to criminally prosecute the plaintiff. *Id.* This element is satisfied where an officer aids the decision to prosecute "as opposed to passively or neutrally participating." *Sykes*, 625 F.3d, at 309, n.5. This requires a showing that a defendant "(1) stated a deliberate falsehood or showed reckless disregard for the truth . . . and (2) that the allegedly false or omitted information was material to the [court's] finding of probable cause." *Id.* At 312 (citation omitted).

In *Sykes*, officers made "plainly misleading, if not entirely false" assertions about surveillance footage and offered false testimony material to probable cause. *Id.* at 306, 312–13. The court reasoned that these misrepresentations of the fact could have been "one cause of the commencement of the criminal proceedings against the Plaintiffs." *Id.* at 309. By stark contrast to the defendants in *Sykes*, Petitioner in this case has never been able to identify evidence that Trooper Phelps provided false or misleading information that would have invalidated the probable cause underlying Petitioner Al- Maqablh's criminal charges. *See* App. 29. Unlike the defendant officer in *Sykes*, Phelps did not offer any testimony; rather, he provided truthful documentation and

information to Prosecutor Heinz. *Id.* His statements in the police reports were mere recitations of what occurred, not opinions. Petitioner Maqablh also does not dispute Phelps' assertion that he did not make the decision to prosecute. *See*, App. 30.

By Petitioner Al-Maqablh's own admission, he made the calls in each of the police reports, and he had no evidence whatsoever to dispute the truth of the officers' reports. *Id* at 30. Therefore, the information provided was neither false nor showed reckless disregard for the truth.

In addition, Prosecutor Heinz was the sole decisionmaker regarding Petitioner Al-Maqablh's criminal charges, which she based in part on the neutral, factual report presented to her by Trooper Phelps. *See* App. 30. Therefore, Petitioner Al-Maqablh cannot satisfy this element of his federal malicious prosecution claim.

Accordingly, the record independently demonstrates that Trooper Phelps neither initiated nor influenced the prosecution, but instead performed the limited, ministerial task of documenting facts for the prosecutor's independent review. That falls far short of the causal involvement required under *Sykes*, and it confirms that Petitioner cannot establish this essential element of a malicious prosecution claim.

c. The Sixth Circuit correctly concluded that Petitioner Al-Maqablh was not deprived of any liberty as a result of his criminal charges.

To succeed on a federal malicious prosecution claim, a plaintiff must prove that, beyond the initial seizure, he was

deprived of some liberty because of the legal proceedings. *Sykes*, 625 F.3d, at 308-09. In the Sixth Circuit, plaintiffs who are not arrested or whose charges were dropped do not satisfy the standard of "a deprivation of constitutional dimension" as applied to this element. *Phat's Bar & Grill v. Louisville Jefferson Cnty. Metro Gov't*, 918 F. Supp.2d 654, 662-63 (W.D. Ky. 2013) (quoting *Dean v. Earle*, 866 F.Supp. 336, 340 (W.D. Ky 1994)). Where the purported deprivation is "even less a deprivation than an arrest," the Sixth Circuit has found that the plaintiff cannot satisfy the deprivation of liberty element. *Noonan v. Cnty of Oakland*, 683 Fed. Appx. 455, 463 (6th Cir. 2017).

The undisputed facts show that the criminal charges against Petitioner Al-Maqablh were dropped because of a diversion agreement between Petitioner and the prosecutor, and (perhaps most importantly) that he was never arrested. *See* App. 33. Because any deprivation of rights Petitioner allegedly suffered would constitute even less of a deprivation than an initial arrest, he cannot prove that he suffered any deprivation of liberty of a constitutional dimension. Because he was not deprived of any liberty, Petitioner's malicious prosecution claim independently fails on this claim as well, providing an independently sufficient reason to deny the Petition.

This conclusion is not a departure from settled precedent, but its faithful application. Both this Court and the Sixth Circuit have long required a showing of a concrete liberty deprivation to sustain a § 1983 malicious prosecution claim. *See*, *Sykes*, 625 F.3d, at 308–09. And just this term, *Gutierrez v. Saenz* reaffirmed that "liberty" interests for § 1983 purposes must be grounded in a cognizable legal right, which in that case constituted

the state-created procedures governing postconviction DNA testing. 145 S. Ct. 2258, 2262 (2025). That decision underscores the settled principle applied here: absent an arrest, detention, or comparable legal restraint, there is no deprivation of liberty of constitutional dimension. Petitioner identifies no conflict among the circuits and no break from prior decisions. Instead, the Sixth Circuit's analysis is squarely in line with its own precedent and with this Court's teaching that § 1983 malicious prosecution claims require more than the mere initiation of charges.

d. The Sixth Circuit correctly found that Petitioner Al-Maqablh's criminal charges were supported by probable cause.

A federal malicious prosecution claim under 42 U.S.C. § 1983 requires that a plaintiff show that the defendant lacked a basis in probable cause with regard to criminal charges against the plaintiff. *Sykes*, 625 F.3d, at 308. When Prosecutor Heinz made the decision to file criminal charges against Petitioner Al-Maqablh in 2015, she had probable cause to do so. This Court has often reminded litigants that the standard for probable cause is "not a 'high bar.'" *Lester v. Roberts*, 986 F.3d 599, 607 (6th Cir. 2021) (citing *Kaley v. United States*, 571 U.S. 320, 338 (2014)). The probable cause standard used to detain and charge criminal defendants is lower than the "proof beyond a reasonable doubt" standard required for conviction and imprisonment. *Lester*, 986 F.3d, at 602. Hearsay is an acceptable basis for probable cause provided that, if tried, a criminal defendant may confront the otherwise hearsay statements of witnesses. *Id.* A finding that probable cause exists is appropriate "when the facts and circumstances are sufficient to lead a reasonable person to believe that

the accused committed the particular offense with which he is to be charged." *Mott v. Mayer*, 524 F. App'x 179, 187 (6th Cir. 2013) (citing *McKinley v. City of Mansfield*, 404 F.3d 418, 445 (6th Cir. 2005)). Where probable cause is present, a plaintiff cannot show a defendant's liability for a malicious prosecution claim under the United States Constitution. *Stemler v. City of Florence*, 126 F.3d 856, 871 (6th Cir. 1997).

The charges filed against Petitioner Al-Maqablh were undisputedly based on probable cause. In his own deposition, Petitioner testified that he made the welfare check calls to KSP on June 21, 2014 and August 11, 2014. *See* App. 31. He also admitted that he had no evidence disputing the assertion of KSP that the child was okay. *See* App. 32. Additionally, Petitioner Al-Maqablh could not provide any evidence which would contradict the Respondent's assertion that the criminal charges were based on probable cause. *Id.*

Police reports taken at the time indicated that Trooper Phelps and others within the Kentucky State Police believed that Petitioner Al-Maqablh and Respondent Alley were involved in an ongoing custody dispute and that he had a no-contact order with her. *See* App. 31-32. Therefore, to the best of Trooper Phelps' knowledge at the time criminal charges were filed by Prosecutor Heinz, Petitioner Al-Maqablh had called in requesting continued, repetitive, and unsubstantiated welfare checks that required police to visit Respondent Alley's home, and in each of those instances her child was perfectly unharmed. Additionally, Trooper Phelps had reason to believe that Petitioner Al-Maqablh was barred by a no-contact order and that the two were involved in a custody dispute, which

allows for reasonable inferences into the true nature of Petitioner's motivation to call in requesting the welfare checks.

Even if Petitioner Al-Maqablh had an innocent explanation for the welfare checks—and to be clear, he has never been formally declared innocent of his criminal charges—the presence of an innocent explanation for a criminal defendant's conduct does not negate a finding of probable cause; rather, probable cause for a criminal charge can exist even if a suspect provides an "innocent explanation for suspicious facts" and officers are under no obligation to investigate such explanations. *District of Columbia v. Wesby*, 583 U.S. 48, 61 (2018) (finding that officers had probable cause to make arrests for illegal activities despite the potential "innocent explanation" that plaintiffs drinking and receiving lap dances in a filthy, nearly-empty house was indicative of a bachelor party rather than a "makeshift strip club"). The fact that Petitioner Al-Maqablh's criminal charges ended without a conviction because of the diversion agreement does not mean that the criminal charges were made without probable cause. Even if the criminal charges had ended with an affirmation of Petitioner Al-Maqablh's innocence—and they did not—that fact alone would not be sufficient to constitute a lack of probable cause *per se*.

Given the information available to Trooper Phelps and Prosecutor Heinz at the time the charges were filed, no reasonable finder of fact could conclude that there was a genuine issue of material fact as to the probable cause basis for the criminal charges. In the absence of a genuine issue of material fact, summary judgment was properly entered in Trooper Phelps's favor. Both the District Court and Sixth Circuit agreed. *See* App. 9, 35.

The Sixth Circuit faithfully applied settled precedent in holding that probable cause supported the criminal charges against Petitioner. This conclusion did not depart from, but rather followed, this Court's clear instruction that probable cause is a "not high bar" and exists so long as the facts and circumstances would warrant a reasonable belief that an offense occurred. *Lester*, 986 F.3d at 607 (internal citation omitted). Because the existence of probable cause defeats a malicious prosecution claim, the Sixth Circuit correctly affirmed summary judgment in Trooper Phelps's favor. Petitioner identifies no conflict among the circuits and no deviation from controlling authority. On the contrary, the decision below is a straightforward application of settled law and thus provides no basis for this Court's intervention.

V. GRANTING CERTIOTATI WOULD NOT CHANGE THE OUTCOME OF THIS CASE AS QUALIFIED IMMUNITY PROVIDES A SEPARATE AND INDEPENDENTLY SUFFICIENT BASIS TO UPHOLD THE JUDGMENT OF THE SIXTH CIRCUIT AS TO RESPONDENT PHELPS

Even assuming, *arguendo*, that Petitioner could satisfy the favorable termination element under *Thompson*, his claim against Trooper Phelps still fails because Phelps is independently entitled to qualified immunity. Qualified immunity bars suit unless an official's conduct violated a constitutional right that was "clearly established at the time" of the alleged violation. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This standard is designed to shield government officials who act reasonably within the scope of their duties from the burdens of litigation. *Mullenix v. Luna*, 577 U.S. 7, 11 (2015).

Here, Petitioner has never identified any clearly established right that Phelps allegedly violated. The record reflects that Phelps' conduct was limited to preparing CAD reports, meeting with County Attorney Heinz at his sergeant's direction, and signing a sworn affidavit recounting facts were already documented in the record. The District Court and Sixth Circuit specifically found no evidence that Phelps made false statements, exaggerated facts, or otherwise influenced prosecutorial discretion beyond relaying the undisputed fact of Petitioner's repeated welfare-check calls. *See* App. 30. Such ministerial compliance with a prosecutor's request to prepare an affidavit is precisely the kind of reasonable law-enforcement conduct qualified immunity exists to protect. *See Sykes v. Anderson*, 625 F.3d at 314 (holding that an officer does not "participate" in prosecution by providing truthful materials to a prosecutor); *McKinley v. City of Mansfield*, 404 F.3d 418, 444–45 (6th Cir. 2005) (same).

Moreover, even if Heinz had erred in determining that probable cause supported the charges, Phelps' reasonable reliance on his legal judgment cannot abrogate his immunity. *See Novak v. City of Parma*, 33 F.4th 296, 305 (6th Cir. 2022) (qualified immunity shields officers who reasonably rely on a prosecutor's charging decision, even if mistaken). The Sixth Circuit affirmed that Petitioner failed to establish either a lack of probable cause or a deprivation of liberty sufficient to sustain his § 1983 claim—two dispositive elements wholly apart from favorable termination. *See* App. 3. Those failures alone defeat his claim and underscore why Phelps' conduct cannot be stripped of immunity.

Finally, because *Thompson* was decided years after the events at issue, no reasonable officer in Phelps' position could have anticipated that the absence of an affirmative indication of innocence would cease to be required to prove favorable termination. Qualified immunity is retrospective, not prospective; it shields officers unless unlawfulness was "apparent" under then-existing precedent. *Anderson*, 483 U.S. at 640. Thus, even if Petitioner could show error in the courts below, *certiorari* would not alter the outcome: Petitioner is entitled to immunity as a matter of law.

CONCLUSION

For all the aforementioned reasons, the Petition for a Writ of *Certiorari* should be denied.

Respectfully submitted,

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