No. 25-73

In the
Supreme Court of the United States

ALI AL-MAQABLH,

Petitioner,

v.

CRYSTAL L. HEINZ, INDIVIDUALLY, AND IN HER OFFICIAL CAPACITY AS THE COUNTY ATTORNEY OF TRIMBLE COUNTY, KENTUCKY, ET AL.,

Respondents.

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

REPLY BRIEF FOR PETITIONER

/s/ Ali Magableh
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Nothing in Respondent James Phelps's brief in opposition seriously undermines Petitioner's core contention: that judgment should now be entered in Petitioner's favor because all elements of his § 1983 malicious prosecution claim—except for favorable termination—were conclusively resolved in his favor during the prior appeal, and the remaining element was definitively resolved in his favor on remand, despite lower courts' disregard of this Court's limited directive. Rather than engage with this straightforward procedural and legal reality, Respondent's submission is riddled with material misstatements of fact and law. It begins with the demonstrably false assertion that this Court "reversed" the Sixth Circuit in the prior proceedings (BIO at 1), recycles arguments already rejected by this Court (BIO at 6–12), and mischaracterizes the Sixth Circuit's opinion by attributing to it rulings the court expressly declined to make (BIO at 15). In substance and tone, Respondent's brief reflects not a serious effort to grapple with the legal questions presented, but a calculated attempt to obscure the lower courts' failure to comply with this Court's mandate—through distortions of the record and misstatements of governing precedent. Such tactics cannot shield the judgment below from review.

I. Respondent's Heavy Reliance on Supreme Court Rule 10 Is Misplaced; the Rule Offers No Shield Against Review Where a Party Seeks Enforcement of a Mandate

Respondent Phelps's principal argument against certiorari speaks volumes. It relies entirely on the assertion that the Petition presents no question warranting this Court's review under Rule 10 of this Court's Rules. See BIO at 4–6. According to Respondent, this case involves nothing more than a fact-bound application of settled law and represents an improper attempt to relitigate case-specific determinations regarding a § 1983 malicious prosecution claim.

That framing, however, misrepresents both the posture of this case and the fundamental issue presented. Far from seeking mere error correction, Petitioner challenges the lower courts' defiance of this Court's limited remand—an issue that goes to the core of the mandate rule and the hierarchical structure of judicial review. Respondent's attempt to recast a serious institutional violation as a routine factual dispute speaks volumes about the weakness of his position. At stake is not simply the outcome of one case, but the authority of this Court to have its mandates faithfully executed by lower courts. That question demands this Court's attention.

This Court's precedent recognizes that petitions may be used to enforce the Court's mandate. *See*, e.g., *United States v. Johnston*, 268 U.S. 220, 227 (1925). The question of whether lower courts may reopen

settled determinations after a mandate is issued to circumvent this Court's mandate is a genuine federal question of exceptional importance, precisely the type of issue warranting certiorari. This conduct implicates far more than a legal misstep. It raises serious concerns about finality, waiver, and adherence to the appellate structure that governs our judiciary. This Court's mandates are not open to reinterpretation or circumvention by lower courts. They are binding commands. Review is necessary to preserve the integrity of the remand process and to vindicate the rule of law.

If allowed to stand, this sequence of procedural manipulation would reduce this Court's authority to a mere formality. The Constitution does not tolerate any effort to evade the binding effect of this Court's decisions. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958). To preserve the rule of law and reaffirm the supremacy of this Court's judgments, this Court should grant certiorari, vacate the Sixth Circuit's judgment, and remand with instructions to enter judgment in Petitioner's favor.

II. None of Respondent's Defenses Is Properly Before This Court

Even setting aside the troubling procedural conduct of Respondent, his merits briefing exemplifies the familiar adage that repeating the same arguments while expecting a different result rarely alters the outcome. At best, Respondent's brief is a repackaging

of arguments that have already been fully presented, considered, and rejected at every stage of this case.[1]

Specifically, Respondent now reasserts defenses relating to Procurement Element (BIO at 12), probable cause (BIO at 15), and qualified immunity (BIO at 18) —arguments he previously advanced in his opposition to the prior petition for certiorari. *See Maqablh v. Heinz*, No. 21-1399, Brief in Opposition at 6 (probable cause), 8 (Procurement Element), 11 (qualified immunity). This Court nonetheless granted certiorari, necessarily rejecting Respondent's contention that those issues precluded review. *The same arguments* were also previously rejected by the original trial judge and by the Sixth Circuit during the first appeal. Yet Respondent now attempts to reframe them as "settled precedent," as though this Court's prior grant of certiorari and remand somehow revived issues already conclusively resolved. *See* Reply Brief for Petitioner, *Maqablh v. Heinz*, No. 21-1399, 1-2.

By advancing these arguments anew, Respondent invites this Court to sanction precisely what both the law-of-the-case doctrine and the mandate rule forbid: the relitigation of issues that have already been

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[1] In the prior petition for certiorari, the principal dispute centered on whether the remaining elements of Petitioner's § 1983 malicious prosecution claim—apart from favorable termination—had already been resolved in his favor. See *Maqablh v. Heinz*, No. 21-1399, Reply Brief for Petitioner at 1–2. This Court implicitly accepted Petitioner's position that they had been.

resolved.[2] This Court has long made clear that "[w]hatever was before [it], and is disposed of, is considered as finally settled. The inferior court is bound by the decree as the law of the case, and must carry it into execution." *Sibbald v. United States*, 37 U.S. (12 Pet.) 488, 492 (1838). Likewise, "[a]n inferior court has no power or authority to deviate from the mandate issued by an appellate court." *Briggs v. Pennsylvania R. Co.*, 334 U.S. 304, 306 (1948).

Respondent misrepresents the status of the procurement element by claiming it was resolved in his favor (BIO at 12), when in fact both the district court and the Sixth Circuit held otherwise. On remand, the newly assigned district judge squarely found that whether Phelps "influenced or participated" in the decision to prosecute was a genuine dispute of material fact, precluding summary judgment. App. 27–30. The Sixth Circuit affirmed that ruling. App. 8. At no point did Phelps appeal the procurement determination, and he concedes elsewhere in his brief that he did not file a cross-appeal, asserting—incorrectly—that none was required. BIO at 6; see *Am. Ry. Express Co. v. United*

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[2] Neither the district court on remand nor the Sixth Circuit addressed the issue of qualified immunity. The district court expressly declined to reach it. App. 34. The Sixth Circuit likewise made no determination on the issue, referencing qualified immunity only once—to erroneously hold that *Thompson* permits unfettered reconsideration of such matters on remand. App. 7. Yet despite this, Respondent Phelps now presents the defense as if it were conclusively resolved in his favor.

States, 265 U.S. 425, 435 (1924); *Jennings v. Stephens*, 574 U.S. 271, 276–77 (2015).

Here, this Court's remand—explicitly in light of *Thompson*—was limited. It confined the lower courts to consideration of the favorable-termination element of a § 1983 malicious prosecution claim. Neither *Thompson* nor this Court's mandate reopened other issues. Each of those issues had already been fully litigated and resolved in Petitioner's favor prior to remand. For these reasons, none of Respondent Phelps's arguments is properly before the Court, and they should be disregarded in their entirety.

III. Respondent's Mischaracterization of The Sixth Circuit's Construction of This Court's Mandate Reflects a Broader Effort to Obscure its Defiance of This Court's Mandate.

Respondent's procedural arguments do not merely distort the nature of this case—they attempt to obscure the lower courts' failure to comply with this Court's express directive. Indeed, in lockstep with his effort to sideline the merits under Rule 10, Respondent Phelps now offers a plainly inaccurate account of the scope of this Court's remand. Specifically, he asserts that the Sixth Circuit "properly construed" the remand as "general" in

nature and insists that any error in doing so is unworthy of this Court's review. BIO at 1, 3, 4.[3]

That claim is demonstrably false. The Sixth Circuit itself expressly acknowledged the remand was limited, stating unequivocally that Petitioner "does not dispute that [it] issued a limited remand." App. 7. Respondent's assertion is not a harmless misstatement. It reflects a broader pattern of distortion aimed at justifying defiance of this Court's mandate. Respondent's mischaracterization serves no legitimate purpose except to obscure the lower courts' failure to carry out the mandate faithfully.

IV. Respondent Simultaneously Denies and Concedes a Circuit Split on Liberty Deprivation

The issue of liberty deprivation was fully litigated and resolved in Petitioner's favor during the prior appeal. For full accord, *see Reply Brief for Petitioner, Maqablh v. Heinz*, No. 21-1399, at 1–2. Even assuming arguendo that was properly before this Court—which it is not—Respondent's position is internally incoherent and doctrinally untenable.

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[3] Respondent cites Petitioner's Appendix at page 9 in support of this proposition. BIO at 1. A review of that Appendix page, however, reveals only the Sixth Circuit's judgment, which contains no discussion regarding the scope of the remand, whether limited or general.

On the one hand, Respondent Phelps asserts that no circuit split exists warranting this Court's review. BIO at 2. On the other hand, he simultaneously insists that the Sixth Circuit stands alone in requiring a deprivation of liberty as an element of a Fourth Amendment malicious-prosecution claim—relying not on binding circuit precedent, but on stray dicta from district court cases. BIO at 14.

Which is it? If the Sixth Circuit's approach is indeed "unique," as Phelps suggests, then a circuit split necessarily exists. And if no such split exists, then Phelps's premise—that the Sixth Circuit imposes a more stringent liberty-deprivation requirement than other circuits—falls apart. Either way, his own argument concedes that the issue is unsettled and ripe for this Court's resolution.

This confusion is not hypothetical. On remand, the newly assigned district judge relied almost entirely on district court dicta and mischaracterized appellate precedent to hold—wrongly—that Petitioner failed to establish a deprivation of liberty under the Fourth Amendment. *See* App. 32. In doing so, the court discounted binding Sixth Circuit authority, including *Sykes*, 625 F.3d 294, and instead cited out-of-circuit and unpublished cases to conclude that, because Petitioner was never arrested or jailed, his injuries did not rise to a constitutional violation. But the Sixth Circuit has never held that arrest or incarceration is a prerequisite to liberty deprivation under § 1983 malicious prosecution. By denying the existence of a circuit split while simultaneously invoking a heightened and unsupported liberty standard,

Respondent underscores precisely why this Court's guidance is needed.

Indeed, this Court in *Thompson*, 596 U.S. 36, expressly acknowledged but declined to resolve the question whether a Fourth Amendment malicious-prosecution claim requires a post-arraignment deprivation of liberty. *Id.* at 43 n.2. Respondent's arguments, albeit unintentionally, place that unresolved question squarely before this Court, underscoring the need for clarity on an issue that affects § 1983 plaintiffs nationwide.

Worse still, Respondent misrepresents the law in a way that would expand *Thompson's* narrow holding far beyond its scope. Citing *Gutierrez v. Saenz*, 145 S. Ct. 2258 (2025), Phelps erroneously claims that a constitutionally cognizable deprivation of liberty requires "an arrest, detention, or comparable legal restraint." BIO at 14–15. But *Gutierrez* concerned a discrete post-conviction procedural right under state DNA-testing statutes, not the scope of Fourth Amendment liberty interests in pretrial prosecutions. To stretch it as Phelps does here is to recast *Gutierrez* far beyond its holding and to ignore decades of this Court's Fourth Amendment jurisprudence recognizing non-custodial restraints as constitutionally cognizable. [4]

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[4] Phelps repeatedly misrepresents precedent, including his misuse of *Quern v. Jordan*, which he cites to argue that the law-of-the-case doctrine doesn't bar reconsideration of unresolved elements. BIO at 9. But *Quern* makes no such claim—it merely notes that certain issues weren't reached in that case. Citing it to

Moreover, Sixth Circuit precedent squarely contradicts Phelps's position. In *Sykes*, 625 F.3d at 308–09, the court held that mandatory court appearances and being bound over for trial constitute a Fourth Amendment liberty deprivation. In *Miller v. Sanilac County*, 606 F.3d 240, 247 (6th Cir. 2010), the court reaffirmed that malicious-prosecution claims require a deprivation beyond the initial seizure. And in *Miller v. Maddox*, 866 F.3d 386, 391–92 (6th Cir. 2017), pretrial conditions such as fees, supervision, and reporting were found sufficient to establish a liberty deprivation.

Other circuits agree. See *Swartz v. Insogna*, 704 F.3d 105, 112 (2d Cir. 2013); *Gallo v. City of Philadelphia*, 161 F.3d 217, 222–24 (3d Cir. 1998); *Evans v. Ball*, 168 F.3d 856, 861 (5th Cir. 1999). This Court's own decisions reinforce that liberty under the Fourth Amendment extends beyond custody. See *Albright v. Oliver*, 510 U.S. 266 (1994); *Manuel v. City of Joliet*, 580 U.S. 357, 365–66 (2017); *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

Here, Petitioner's diversion agreement imposed tangible restrictions—compliance with prosecutorial terms and monitoring—falling squarely within this established framework. Even if the liberty-deprivation issue were properly before this Court, Respondent's position is irreconcilable with binding precedent,

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justify defiance of this Court's mandate highlights how much Respondent's position relies on distorting precedent and procedural history.

reflects circuit disarray, and only underscores the need for this Court's review.

V. Respondent's Brief Misrepresents Both the Law and the Record—and Borders on Sanctionable Conduct.

In addition to the previously discussed distortions, Respondent Phelps's brief is replete with material misrepresentations of both law and fact—misstatements so significant that they border on sanctionable conduct. A particularly egregious example appears in Respondent's assertion that the Sixth Circuit resolved the issues of probable cause and liberty deprivation. *See* BIO at 12 (asserting that the court "correctly concluded that Petitioner was not deprived of any liberty"); *id.* at 15 (claiming the Sixth Circuit "correctly found that Petitioner's criminal charges were supported by probable cause").

That claim is demonstrably false. In the decision under review, the Sixth Circuit expressly declined to reach the merits of either element, holding instead that Petitioner had "forfeited appellate review of those issues." App. 8. This was despite the fact that the *same panel* had considered those very questions in the prior appeal and upheld the district court's determinations in Petitioner's favor. Respondent's contrary characterization is not a mere oversight—it is a deliberate misrepresentation of the record, designed to obscure the fact that the panel failed to enforce its own earlier conclusions after this Court's limited remand.

Indeed, Respondent's brief is not only misleading, but internally contradictory. Just pages before asserting that the Sixth Circuit resolved these elements, he concedes that the court found Petitioner had "failed to preserve" them and therefore declined to consider them. *See* BIO at 11. This admission makes clear that *no merits adjudication occurred* in the appeal now before this Court. Yet, despite this concession, Respondent elsewhere insists that the Sixth Circuit "correctly found" against Petitioner on both elements. BIO at 12, 15.

These irreconcilable representations reveal more than sloppy briefing—they point to a calculated effort to shield a strategically engineered outcome from this Court's review. The panel's about-face, its refusal to faithfully execute this Court's mandate or safeguard against the wrong decisions of the district court, and Respondent's mischaracterization of that refusal as an erroneous merits ruling together reflect a broader pattern: an attempt to bury this case under procedural pretext and ensure that the constitutional violations at issue never see meaningful appellate review.

Such tactics erode not only the adversarial process, but the structural integrity of appellate review. This Court should not permit misrepresentation to succeed where the rule of law has been so plainly subverted.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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