

No. _____

In the
Supreme Court of the United States

DARYL L. DAVIS,
Petitioner,

v.

DEBORAH PULLUM, JIMMY TOLER, JAMES GOODMAN,
TIMOTHY HUTSON, GARRETT MARTIN, BLAKE KELLY,
KRIS DAVIS, LARRY SMITH, JACOB PUTMAN,
E.B. JOHNSON, AND J. RACKLIFF,
Respondents.

**On Petition for A Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

To prevail on a Section 1983 claim of malicious prosecution, the accused must show that the criminal charge terminated in his favor and was brought without probable cause. Under *Thompson v. Clark*, 596 U.S. 36 (2022), the favorable-termination element is satisfied if the prosecution “ended without a conviction,” *id.* at 49, and under *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024), malicious-prosecution suits must be evaluated “charge by charge,” *id.* at 562.

The questions presented are:

1. Whether a criminal charge that was dismissed with prejudice in connection with a plea deal terminated in favor of the accused.
2. Whether the existence of probable cause for one criminal charge categorically bars a claim of malicious prosecution based on a different charge.

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

1. Petitioner Daryl L. Davis was the plaintiff in the district court and the appellant in the court of appeals.

Respondents Deborah Pullum, Jimmy Toler, James Goodman, Timothy Hutson, Garrett Martin, Blake Kelly, Kris Davis, Larry Smith, Jacob Putman, E.B. Johnson, and J. Rackliff were defendants in the district court and appellees in the court of appeals.

In the district court and at the court of appeals, Davis additionally alleged claims for malicious prosecution against Don Warren, Shirley McKellar, Neal Franklin, Ralph Caraway, Sr., and JoAnn Hampton. Davis doesn't challenge the dismissal of his malicious-prosecution claims against these defendants before this Court.

2. Petitioner is an individual.

STATEMENT OF RELATED PROCEEDINGS

Davis v. Warren, et al., No. 24-40599 (5th Cir.)
(judgment entered Apr. 21, 2026);

Davis v. Warren, et al., No. 6:24-cv-207 (E.D. Tex.)
(judgment entered Aug. 21, 2024).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Daryl L. Davis respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 173 F.4th 566 and reproduced at App. 1a–19a. The district court's order is reported at 2024 WL 3890185 and reproduced at App. 20a–26a. The magistrate judge's report is reported at 2024 WL 4179171 and reproduced at App. 27a–39a.

JURISDICTION

The Fifth Circuit entered judgment on April 21, 2026. On July 13, 2026, Justice Alito extended the deadline to file a petition for certiorari through August 19, 2026. No. 26A49. On August 7, 2026, Justice Alito further extended the deadline to file a petition for certiorari through September 18, 2026. No. 26A49. This Court has jurisdiction under 28 U.S.C. § 1254(1). The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1983, and Texas Penal Code §§ 37.09 and 38.15 are reproduced at App. 40a–49a.

STATEMENT

In *Thompson v. Clark*, 596 U.S. 36 (2022), this Court held that a plaintiff alleging malicious prosecution under the Fourth Amendment may satisfy the claim’s “favorable termination” element by showing that “the criminal prosecution ended without a conviction.” *Id.* at 49. Two years later, in *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024), this Court held that malicious-prosecution suits must be assessed “charge by charge”—so the presence of a valid charge in a proceeding doesn’t “categorically preclude” a claim for malicious prosecution of a baseless charge. *Id.* at 562–63.

The Fifth Circuit nevertheless held that a plea agreement always defeats a malicious-prosecution claim—even one challenging only dismissed charges—because a plea to any charge means no favorable termination as to any charge. App. 10a–11a. That rule cannot be reconciled with *Thompson* and *Chiaverini*, and this case presents the conflict cleanly: Petitioner’s nearly five-year-old felony charge for allegedly destroying evidence by swallowing a controlled substance was dismissed with prejudice in exchange for a plea to a newly filed misdemeanor for taking two steps away from an officer. Because the Fifth Circuit’s favorable-termination holding squarely conflicts with this Court’s precedents, summary reversal—or plenary review—is warranted.

The Fifth Circuit’s probable-cause holding also conflicts with this Court’s precedent. The Fifth Circuit held that petitioner’s malicious-prosecution claim—which concerned the *dismissed* charge—was meritless “because probable cause supported the

charge *to which he pleaded.*” App. 11a (emphasis added). But *Chiaverini* requires probable cause to be assessed charge by charge. 602 U.S. at 562. The Second Circuit understood that directive—holding probable cause for a dismissed charge “must be assessed independently” from probable cause for the pleaded-to charge. *Carruthers v. Colton*, 153 F.4th 169, 182 (2d Cir. 2025). The Second Circuit has the better of that split, and this Court should either summarily reverse or grant plenary review on this ground, too.

1. Under 42 U.S.C. § 1983, individuals may bring Fourth Amendment claims against state and local officials for malicious prosecution. *Thompson v. Clark*, 596 U.S. 36, 42 (2022) (citing *Manuel v. Joliet*, 580 U.S. 357, 363–64, 367–68 (2017)). The gravamen of a malicious-prosecution claim is “the wrongful initiation of charges without probable cause.” *Id.* at 42–43. To prevail on a malicious-prosecution claim, a plaintiff “must demonstrate, among other things, that he obtained a *favorable termination* of the underlying criminal prosecution.” *Id.* at 39.

Before *Thompson*, the circuits were “split over how to apply the favorable termination requirement.” 596 U.S. at 41. The Second and Fifth Circuits held that a termination was favorable only if it provided “some affirmative indication of innocence.” *Ibid.*; see *Lanning v. City of Glens Falls*, 908 F.3d 19, 22 (2d Cir. 2018); *Evans v. Ball*, 168 F.3d 856, 859 (5th Cir. 1999). The Eleventh Circuit, by contrast, held that a termination was favorable “so long as the criminal prosecution end[ed] without a conviction.” *Thompson*, 596 U.S. at 41 (citing *Laskar v. Hurd*, 972 F.3d 1278, 1282 (11th Cir. 2020)).

In *Thompson*, this Court endorsed the Eleventh Circuit’s approach. “As Chief Judge Pryor explained in his comprehensive opinion for the Eleventh Circuit,” 596 U.S. at 47, “the favorable-termination element requires only that the criminal proceedings against the plaintiff formally end in a manner not inconsistent with his innocence on at least one charge that authorized his confinement,” *Laskar*, 972 F.3d at 1295. So a “plaintiff need only show that the criminal prosecution ended without a conviction.” *Thompson*, 596 U.S. at 49.

2. Two years after deciding *Thompson*, this Court held in *Chiaverini v. City of Napoleon* that the presence of “a single valid charge in a proceeding” doesn’t “insulate officers from a Fourth Amendment malicious-prosecution claim” based on other baseless charges. 602 U.S. 556, 561 (2024). Instead, courts must evaluate malicious-prosecution suits “charge by charge.” *Id.* at 562. So the successful prosecution of “one valid charge in a criminal proceeding” doesn’t “categorically preclude” a claim for malicious prosecution of a baseless charge. *Id.* at 563.

3. On the evening of February 7, 2019, petitioner was driving in Tyler, Texas when officers pulled him over. Ct. App. ROA.9–10. Petitioner complied with the officers’ directions, provided them his license, and allowed them to search his car. See Ct. App. ROA.9, 42. During the stop, the officers accused him of “eating crack cocaine,” choked him, and slammed him onto a patrol car. Ct. App. ROA.9. The officers didn’t initially take petitioner to the hospital or test him for drugs; they took him to jail. See Ct. App. ROA.9–14, 58.

When the officers took petitioner to a hospital later that night, they didn't test him for drugs then, either. Ct. App. ROA.13. Instead, after holding petitioner for several hours at the hospital, the officers took him back to jail. Ct. App. ROA.13. Petitioner posted bond the next day. Ct. App. ROA.13. Later that day, as a condition of release, the probation department administered a drug test, which came back negative. Ct. App. ROA.13, 59. Three days later, petitioner again tested negative for drugs. See Ct. App. ROA.13, 59.¹

4. Seven months after petitioner's arrest, the district attorney's office initiated a prosecution. See Ct. App. ROA.42. Even though petitioner tested negative for drugs and the contemporaneous body- and dash-cam footage confirmed he swallowed nothing, the prosecutor used the officers' reports to procure an indictment against petitioner on a single count of tampering with physical evidence by allegedly swallowing a "white," "suspected controlled substance"—a third-degree felony in violation of Texas Penal Code § 37.09. Ct. App. ROA.11–12, 33, 42, 59.

That single charge lingered for nearly five years. Ct. App. ROA.11, 34. Throughout that time, petitioner spent 75 days in jail on the charge, and a judicial order subjected him to regular drug testing at his own expense (\$100 per month). See Ct. App. ROA.15, 44. The order also prohibited him from consuming alcohol, possessing firearms, and leaving the county. Ct. App. Dkt. 57 at 16.

¹ In the five years these proceedings were pending, petitioner consistently tested negative for drugs. See Ct. App. ROA.59.

Three and a half years into petitioner's case, the prosecutor raised the stakes. Someone convicted of a third-degree felony like evidence tampering would ordinarily be penalized with no more than 10 years' imprisonment. See Tex. Penal Code §§ 12.34(a), 37.09(c). But the prosecutor sought to have petitioner sentenced as a habitual offender based on two prior convictions (one in 1987 for drug possession, the other in 1997 for aggravated assault)—subjecting him to a possible life sentence. See Ct. App. Dkt. 57 at 23–24.

5. Eventually, the prosecutor offered petitioner a deal. He would dismiss the felony evidence-tampering charge—the charge that had been pending for nearly five years and now carried the potential for a life sentence—if petitioner would plead no contest to a newly initiated misdemeanor charge for interfering with public duties under Texas Penal Code § 38.15(a)(1). See Ct. App. Dkt. 57 at 28–36. Facing the prospect of a life sentence, petitioner agreed. *Ibid.*

More than five years after the traffic stop, the prosecutor dropped the felony charge, and petitioner pleaded no contest to a new misdemeanor: “Interference with Public Duties” by “walking two steps from the officer, while the officer was * * * conducting a consensual search of a vehicle.” Ct. App. ROA.42; see also Ct. App. Dkt. 57 at 33.

In a written stipulation pleading no contest to that new charge, petitioner admitted only that he took those two steps. See Ct. App. Dkt. 57 at 33–34. He didn't admit to any drug possession or evidence destruction. See *ibid.* The prosecutor agreed not to bring any “additional charges stemming from the [traffic] stop on Feb. 7, 2019.” *Id.* at 28.

6. Four weeks after his charge for allegedly tampering with evidence was dismissed, petitioner brought a pro se civil-rights action in the Eastern District of Texas. Ct. App. ROA.5. Petitioner sued various officials under 42 U.S.C. § 1983 for malicious prosecution, fabrication of evidence, and the refusal of public officials to intervene despite being informed of these constitutional violations. Ct. App. ROA.13–16, 58–59.

The district court dismissed petitioner’s claims “related to his February 2019 arrest and subsequent prosecution” as “barred by the statute of limitations.” App. 26a. In reaching that decision, the district court concluded that petitioner’s prosecution didn’t “terminate in his favor” because he pleaded no contest to a misdemeanor. App. 24a.

7. Petitioner timely appealed. Ct. App. ROA.72. The Fifth Circuit granted petitioner’s motion to proceed *in forma pauperis* and appointed counsel. Ct. App. Dkt. 30-1 at 2.

After oral argument, the Fifth Circuit issued a published opinion affirming the district court’s judgment in part and vacating it in part. App. 18a. The court held that on remand, petitioner could replead his claims regarding fabrication of evidence, post-indictment seizure, and officials’ failure to act. App. 12a–18a.

But the court affirmed dismissal of the malicious-prosecution claim for two reasons. App. 9a–11a. *First*, in the Fifth Circuit’s view, petitioner couldn’t establish favorable termination—even though the prosecutor dropped the evidence-tampering charge—because the dismissal came “as part of an agreement

under which [petitioner] entered a *nolo contendere* plea for interfering with public duties.” App. 10a–11a. *Second*, the court held that the claim failed for “an independent reason”—“probable cause supported the charge to which [petitioner] *pleaded*.” App. 11a (emphasis added).

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant The Petition To Resolve A Conflict With This Court’s Cases Over Plea Agreements’ Effect On Malicious-Prosecution Claims.

A criminal charge that the government abandons without a conviction has terminated in favor of the accused. That was the rule at common law, and it’s the rule this Court adopted in *Thompson*. This Court’s decision in *Chiaverini*, in turn, made clear that malicious-prosecution claims must be assessed “charge by charge.” 602 U.S. at 562. In other words, *Thompson* supplies the rule; *Chiaverini* supplies the method of analysis. Together, those decisions foreclose treating a conviction on one charge as defeating favorable termination of another. Those dictates don’t change simply because a charge was dismissed under a plea agreement.

Yet the Fifth Circuit—joined by the Second—has carved plea-resolved charges out of malicious-prosecution claims entirely. That carve-out is wrong on the law and the history. And because plea bargaining resolves the overwhelming majority of criminal prosecutions, its consequences are substantial. The Court should grant the petition, summarily reverse, or set the case for merits briefing and argument.

A. The Fifth Circuit’s Categorical Rule That Plea Agreements Bar Malicious-Prosecution Claims Conflicts With This Court’s Precedent.

In *Thompson*, this Court undertook a survey of “American malicious prosecution tort law as of 1871.” 596 U.S. at 45. And it categorically rejected the requirement that a termination carry “some affirmative indication of innocence,” holding instead that a “plaintiff need only show that the criminal prosecution ended without a conviction.” *Id.* at 49. Demanding more, the Court explained, was “not necessary to protect officers from unwarranted civil suits” because they’re already protected by qualified immunity and by the requirement that a plaintiff show, among other things, that he was “charged without probable cause” and “seized as a result.” *Id.* at 48–49.

Two years later, in *Chiaverini*, this Court held that malicious-prosecution suits should be assessed “charge by charge,” so the validity of one charge doesn’t “categorically preclude” a claim based on another. 602 U.S. at 562–63; see also *Laskar*, 972 F.3d at 1295 (holding that proceedings need only “formally end in a manner not inconsistent with” the plaintiff’s “innocence *on at least one charge* that authorized his confinement”) (emphasis added). Together, *Thompson* and *Chiaverini* set out a simple test for the favorable-termination requirement of a malicious-prosecution claim—whether the prosecution on the challenged charge ended without a conviction. If it did, the favorable-termination requirement is satisfied. The Fifth Circuit’s decision that the favorable-termination requirement can *never* be satisfied when the

challenged charge is dismissed as part of a plea agreement directly conflicts with that rule and cannot be squared with this Court’s precedents articulating and applying it.

The Fifth Circuit isn’t alone in its error. The Second Circuit held in *Carruthers v. Colton* that charges dismissed under a plea agreement aren’t favorably terminated. 153 F.4th 169, 185–88 (2d Cir. 2025). After being arrested by a state trooper, the Section 1983 plaintiff was charged with several DWI-related offenses along with an infraction for changing lanes unsafely. *Id.* at 174–76. Eventually, the plaintiff agreed to plead guilty to the changing-lanes charge on the condition that the prosecutor dismiss the remaining DWI-related charges. *Id.* at 177 & n.3. The plaintiff then sued the state trooper for malicious prosecution in connection with all the DWI-related charges. *Id.* at 177, 181.

The Second Circuit affirmed dismissal of the plaintiff’s malicious-prosecution claim “insofar as it relate[d] to the DWI-related charges dismissed as part of the plea agreement.” 153 F.4th at 192. It acknowledged that “courts must engage in a charge-by-charge approach in determining whether the favorable termination element is satisfied.” *Id.* at 185. Nevertheless, the court held that “any charges that are dismissed as part of a plea disposition in a criminal case cannot satisfy the favorable termination element.” *Id.* at 187–88.

The Second and Fifth Circuits’ decisions can’t be squared with this Court’s precedent. A charge dismissed in connection with a plea agreement ends, by

definition, without a conviction. Yet two courts of appeals now deem such dismissals unfavorable because the prosecution obtained a conviction on a different charge. By letting the outcome of one charge determine the fate of a claim concerning another, those courts have violated this Court's command to assess malicious-prosecution suits charge by charge. *Chiaverini*, 602 U.S. at 562.

As they did before *Thompson*, the Second and Fifth Circuits have continued to misapprehend the favorable-termination requirement. Before *Thompson*, both circuits required an affirmative indication of innocence. *Thompson* ended that regime, but the Second and Fifth Circuits have perpetuated it by holding that the favorable-termination element cannot be satisfied as to *one* charge dismissed through a plea agreement in which the accused admitted guilt to a *different* charge. That's just the reinstatement in a different form of the affirmative-indication-of-innocence requirement this Court has already rejected.

B. The Fifth Circuit's Rule Is Wrong.

The charge petitioner's malicious-prosecution suit challenges—felony evidence tampering—ended without a conviction. The prosecutor dismissed it with prejudice. So under *Thompson*, it terminated in petitioner's favor. End of story. The Fifth Circuit held otherwise only by asking the wrong question. In its view, there was no favorable termination because the evidence-tampering charge was dismissed as a result of a plea deal, meaning the *proceeding* produced a misdemeanor conviction. See App. 10a–11a. But *Chiaverini* requires courts to assess charges individually, not proceedings generally—and the felony charge

ended without a conviction. That’s favorable termination under *Thompson*.

The Fifth Circuit reached the opposite conclusion by falling back on its pre-*Thompson* and *Chiaverini* case law and “seiz[ing] on a comment in the American Law Institute’s 1977 Second Restatement of Torts.” *Thompson*, 596 U.S. at 47. The Restatement started from the proposition that a charge terminates favorably only when the termination “indicate[s] the innocence of the accused.” § 660 cmt. a. It then reasoned that a termination pursuant to a compromise agreement isn’t favorable because “the fact of compromise indicates that the question of [the accused’s] guilt or innocence is left open.” *Id.* cmt. c.

The premise of the Restatement and the Fifth Circuit’s case law didn’t survive *Thompson*, which expressly rejected the Second Restatement’s favorable-termination analysis as “flawed” because it “did not purport to describe the consensus of American law as of 1871.” 596 U.S. at 48. The Court instead conducted its own survey of nineteenth-century law and held that favorable termination requires only that the particular prosecution “ended without a conviction.” *Id.* at 48–49.

Once *Thompson* rejected the Restatement’s foundational premise that favorable termination requires an affirmative indication of innocence, the Restatement’s conclusion that a plea agreement defeats the favorable-termination element collapsed with it. Indeed, the Restatement’s own conclusion that a plea agreement leaves “open” the question of “guilt or innocence” is just another way of saying that the charge

“ended without a conviction.” So the Restatement offers little support to the Fifth or Second Circuits after *Thompson*.²

The “influential New York decision” of *Clark v. Cleveland*, 6 Hill 344 (N.Y. Sup. Ct. 1844), on which *Thompson* relied, confirms the point. *Thompson*, 596 U.S. at 45. In *Clark*, the court addressed whether a prosecution must result in a “terminat[ion] by a technical acquittal” to be considered a favorable termination. 6 Hill at 346. It explained that although “[t]he manner in which the prosecution is disposed of, *as if it be by compromise*, * * * *may* interpose great if not insurmountable obstacles to showing *a want of probable cause*,” for purposes of favorable termination, the “technical prerequisite is only that the particular prosecution be disposed of in such a manner that this cannot be revived.” *Id.* at 347 (emphases added).

The bottom line is that while the dismissal of a charge “by compromise” “may” have relevance to whether a plaintiff can satisfy other elements of a malicious-prosecution claim, it doesn’t control whether a charge favorably terminated.

That makes sense. The nineteenth-century compromise cases often arose from prosecutions brought to collect debts or recover property. See W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 119, at 875 (5th ed. 1984) (the compromise in these

² The Second Circuit’s reliance on *Halberstadt v. New York Life Insurance Co.*, 86 N.E. 801 (N.Y. 1909), is similarly misplaced. That court required a plaintiff to demonstrate a “lack of a reasonable ground for [the] prosecution” to satisfy the favorable-termination element. *Id.* at 804. So its dicta about compromises rests on the same premise this Court rejected in *Thompson*.

cases was “often no more than an agreement by the accused to pay a bad check or other obligation on which the prosecution was based”). If the accused then “settled the demand understandingly, and voluntarily,” he was “estopped from denying that the [creditor] had *probable cause* for bringing the suit.” *Morton v. Young*, 55 Me. 24, 27 (1867) (emphasis added).³

So a compromise—or in modern terminology, a plea agreement—doesn’t defeat favorable termination merely because charges were dismissed as part of the bargain. Accord *Laskar*, 972 F.3d at 1295 (explaining a compromise “bar[s] a plaintiff’s” malicious-prosecution claim only “if the plaintiff compromised with his accuser to end the prosecution in a way that conceded his guilt” to the charge upon which he sues).

Two decisions the Second Circuit drew on for its no-favorable-termination rule in the plea-bargain context fit that bill. Each suggested that a claim for malicious prosecution following a compromised criminal charge would be barred where the compromise effectively conceded the validity of the dismissed charge.⁴

³ See also, e.g., *Sartwell v. Parker*, 5 N.E. 807, 808 (Mass. 1886) (“A party who terminates a suit by paying what is demanded in it * * * cannot be admitted to say that the action was commenced without probable cause.”).

⁴ See *Craig v. Ginn*, 48 A. 192, 193–95 (Del. 1901) (malicious-prosecution claim barred where the accused returned the sale proceeds he allegedly obtained under false pretenses); *Mayer v. Walter*, 64 Pa. 283, 287 (1870) (citing in dicta *Clark v. Everett*, 2 Grant 416, 417 (Pa. 1854), which dismissed a malicious-prosecution suit because the defendant admitted the debt upon which he was initially sued was valid).

Unlike the defendants in those cases, petitioner never conceded the substance of the charge for which he was arrested and jailed.

Allowing a plaintiff to sue for a charge dismissed in connection with a plea agreement is consistent with the design of the favorable-termination requirement. That “requirement is rooted in pragmatic concerns,” like “collateral attacks on criminal judgments.” *McDonough v. Smith*, 588 U.S. 109, 117–18 (2019).

Together, *Thompson* and *Chiaverini* supply the answer to that concern without a categorical plea-bargain exception. A plaintiff can’t bring a claim of malicious prosecution for a charge to which he pleaded, but he may be able to sue for a charge that’s dismissed in connection with a plea agreement.

Even then, a malicious-prosecution plaintiff still must run a gauntlet of other requirements to obtain relief. For one thing, the causation element may have real bite when it comes to multiple charges. See *Chiaverini*, 602 U.S. at 559 (leaving open “the follow-on question” of “whether the baseless charge caused the requisite seizure”). For another thing, prosecutors may bargain for the release of Section 1983 claims as part of a plea agreement with a criminal defendant. *Town of Newton v. Rumery*, 480 U.S. 386, 392–94 (1987). So a categorical rule that the termination element can never be satisfied in the face of a plea agreement “is not necessary to protect officers from unwarranted civil suits.” *Thompson*, 596 U.S. at 49 (“officers are still protected by the requirement that the plaintiff show the absence of probable cause and by qualified immunity”).

**C. The Question Presented Is Important
And This Case Is The Ideal Vehicle For
Resolving It.**

The consequences of the Fifth Circuit’s categorical bar matter enormously in a criminal-justice system where “the jury trial has given way to a conveyor belt of plea bargains” and “perhaps 95 percent of convictions * * * come by way of plea bargains.” *Hunter v. United States*, 608 U.S. 713, 146 S. Ct. 1702, 1715, 1718 (2026) (Gorsuch, J., concurring). As this Court put it, plea bargaining “*is* the criminal justice system.” *Missouri v. Frye*, 566 U.S. 134, 144 (2012) (citation omitted). So if a charge dismissed under a plea agreement can *never* constitute favorable termination, *Thompson* and *Chiaverini* will have little force in the mine-run of cases.

This case is the ideal vehicle for resolving the conflict between the Second and Fifth Circuits and this Court’s decisions in *Thompson* and *Chiaverini*. The pertinent facts are undisputed—all agree that years after petitioner was charged under a single-count felony indictment for destroying or concealing “a white substance,” petitioner pleaded no contest to a misdemeanor of walking two steps from an officer. And the Fifth Circuit’s malicious-prosecution holding rests solely on legal error.

This Court has granted certiorari three times over the last six years to correct decisions that undermined the rights of plaintiffs alleging malicious prosecution to bring Section 1983 claims. See *Chiaverini*, 602 U.S. 556 (2024) (clarifying when the probable-cause element is satisfied); *Thompson*, 596 U.S. 36 (2022) (clar-

ifying when the favorable-termination element is satisfied); *McDonough*, 588 U.S. 109 (2019) (clarifying when claims like these accrue). The Court should do so again here to prevent the lower courts from backsliding into a legal regime that this Court has already rejected.

The Court need not wait for a full-blown circuit split to act—and it need not hold argument before reversing. Because the decision below squarely conflicts with two of this Court’s decisions, summary reversal is appropriate. See, e.g., *Martinez v. Illinois*, 572 U.S. 833, 843 (2014) (per curiam) (summarily reversing where a holding, though “understandable,” ran “directly counter to [this Court’s] precedents and to the protection conferred” by the Bill of Rights).

Alternatively, plenary review is warranted because two circuits have now “decided an important federal question in a way that conflicts with” *Thompson* and *Chiaverini*. Sup. Ct. R. 10(c). Further percolation isn’t needed to illuminate a conflict that’s already stark and straightforward to resolve.

II. The Court Should Grant The Petition To Resolve A Circuit Split Over Whether Probable Cause Must Be Assessed Charge-By-Charge.

The Fifth Circuit’s probable-cause holding unmistakably rests on the “categorical rule” this Court *rejected* in *Chiaverini*. 602 U.S. at 564. And it creates a circuit split with the Second Circuit. It independently warrants this Court’s review.

A. The Fifth Circuit’s Decision Creates A Circuit Split And Conflicts With This Court’s Cases.

This Court already settled whether probable cause for one charge insulates another from civil liability. *Chiaverini* said no. Yet the Fifth Circuit declined to apply that rule in the plea-bargain context and, in doing so, created a circuit split.

In the Fifth Circuit’s view, the fact that “probable cause supported the charge *to which [petitioner] pleaded*” provided “an independent reason” his malicious-prosecution claim relating to *the dismissed charge* failed. App. 11a (emphasis added). In support, the Fifth Circuit relied on its pre-*Chiaverini* holding that if a “prosecution is supported by probable cause on at least one charge, then a malicious prosecution claim cannot move forward.” App. 9a (quoting *Armstrong v. Ashley*, 60 F.4th 262, 279 n.15 (5th Cir. 2023)). But that’s exactly the rationale this Court rejected in *Chiaverini*. See 602 U.S. at 564.

The Fifth Circuit’s decision doesn’t just conflict with this Court’s cases. It also created a circuit split. In *Carruthers*, the Second Circuit correctly recognized that courts need to assess dismissed charges “independently” from pleaded-to charges. 153 F.4th at 182. Applying that rule, the Second Circuit “rejec[ted]” the notion that a “guilty plea as to the traffic infraction provide[d] the requisite probable cause with respect to the [dismissed] DWI-related charges.” *Ibid.* So the only other court of appeals that shares the Fifth Circuit’s mistaken view of favorable termination diverges from it on probable cause.

After *Chiaverini*, “the question is not close.” 602 U.S. at 564. The Fifth Circuit’s decision warrants summary reversal, if not plenary review.

B. The Fifth Circuit’s Decision Is Wrong.

The Fifth Circuit’s probable-cause holding directly contravenes this Court’s decision in *Chiaverini*: A “single valid charge in a proceeding” doesn’t “insulate officers from a Fourth Amendment malicious-prosecution claim relating to * * * other charges.” 602 U.S. at 558–59, 561. Instead, “[c]onsistent with both the Fourth Amendment and traditional common-law practice, courts should evaluate [malicious-prosecution] suits * * * charge by charge.” *Id.* at 562.

That conclusion is consistent with the common law. A plaintiff bringing a malicious-prosecution claim “did not have to show * * * that *every* charge brought against him lacked an adequate basis.” *Chiaverini*, 602 U.S. at 563. “One bad charge, even if joined with good ones, was enough to satisfy the malicious-prosecution tort’s ‘without probable cause’ element.” *Id.* at 564. “All that doom[ed] the Sixth Circuit’s categorical rule barring a Fourth Amendment malicious-prosecution claim if any charge [was] valid.” *Ibid.*

The Fifth Circuit revived that rejected categorical rule. It lumped the dismissed and pleaded-to charges together, asking whether “probable cause supported the charge *to which [petitioner] pleaded.*” App. 11a (emphasis added). In doing so, it relied on its earlier decision in *Armstrong*, 60 F.4th at 279 n.15, for the proposition that “if the prosecution is supported by probable cause on at least one charge, then a malicious prosecution claim cannot move forward.” App.

11a & n.18 (cleaned up). But that’s the same categorical rule *Chiaverini* rejected. Indeed, the petition in *Chiaverini* identified *Armstrong* as an example of an opinion endorsing the rule warranting this Court’s review and rejection. Pet. for Writ of Cert. at 18, *Chiaverini*, No. 23-50 (U.S. filed July 14, 2023).

So same song, different verse. As with favorable termination, the Fifth Circuit reprises the very rule this Court rejected. Under *Chiaverini*, the relevant question is whether probable cause supported the *dropped* charge. And here, probable cause for the pleaded-to charge of walking a couple of steps from an officer says nothing about probable cause for the dropped charge of tampering with evidence by “destroy[ing] * * * a white substance.” Ct. App. ROA.42.

Bringing the Fifth Circuit back in line with this Court’s cases and the other circuits wouldn’t open any floodgates. When the Eleventh Circuit first adopted a charge-specific rule before *Chiaverini* in 2020, the floodgates held: Plaintiffs in that circuit brought nine cases in which the charge-specific rule was relevant in the three years before the circuit adopted the rule, and they brought just eleven more in the three and a half years after. Br. for Nat’l Police Accountability Project as *Amicus Curiae* Supporting Pet’rs at 3, 8, *Chiaverini*, No. 23-50 (U.S. filed Feb. 7, 2024).

**C. The Question Presented Is Important
And This Case Is The Ideal Vehicle For
Resolving It.**

Three terms ago, this Court granted review to decide whether “valid charges insulate the official from a Fourth Amendment malicious-prosecution claim relating to the invalid charge.” *Chiaverini*, 602 U.S. at

558. It did so when multiple courts—including the Fifth Circuit in dicta—had endorsed the view that a malicious-prosecution claim “cannot move forward” if “the prosecution is supported by probable cause on at least one charge.” *Chiaverini* Pet. 18 (quoting *Armstrong*, 60 F.4th at 279 n.15). The Court should reverse—either summarily or after plenary review—once again.

Otherwise, the Fifth Circuit will continue to depart from this Court’s precedent for civil-rights litigants across three states. And this case presents the question cleanly—the pertinent facts are undisputed and the Fifth Circuit’s holding is purely legal. There’s no need for further percolation because the Fifth Circuit’s departure from this Court’s precedent is as stark as it is straightforward to resolve.

Because the Fifth Circuit’s decision squarely conflicts with this Court’s precedent, summary reversal is the appropriate disposition here, too. See *Martinez*, 572 U.S. at 843. Alternatively, plenary review is warranted to resolve the conflict and restore uniformity on this important, recurring issue.

* * *

Under the Fifth Circuit’s categorical bar, the government can defeat a malicious-prosecution claim based on a baseless charge by dismissing that charge in exchange for a plea to an entirely distinct one. This Court’s decisions in *Thompson* and *Chiaverini* squarely foreclose that result. The Fifth Circuit’s departure from this Court’s precedent is so stark that summary reversal is appropriate to send a clear message that *Thompson* and *Chiaverini* mean what they say and apply with equal force in the plea-bargain

context. Alternatively, plenary review is needed to resolve the conflict and restore uniformity on a foundational civil-rights issue.

CONCLUSION

For the foregoing reasons, this Court should summarily reverse the Fifth Circuit's judgment affirming the dismissal of petitioner's malicious-prosecution claim. In the alternative, the Court should grant the petition for a writ of certiorari and set the case for argument.

Respectfully submitted.

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