

No. 26-393

In the Supreme Court of the United States

DARYL L. DAVIS, PETITIONER

v.

DEBORAH PULLUM, CITY ATTORNEY, TYLER, TEXAS, ET
AL.

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

BRIEF FOR LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW, NEW YORK UNIVERSITY
CENTER ON RACE, INEQUALITY, AND THE LAW, ET
AL., AS AMICI CURIAE IN SUPPORT OF PETITIONER

DAMON T. HEWITT*
LEN H. KAMDANG
FREYA R. JAMISON
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, DC 20005

ERICA L. ROSS
Counsel of Record
SOUMYALATHA DAYANANDA
WILLKIE FARR & GALLAGHER LLP
1875 K Street NW
Washington, DC 20006
eross@willkie.com
(202) 303-1000

VINCENT R. BIAGIOTTI
EMILY M. WILSON
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019

(Additional counsel listed on inside cover)

* Admitted in Pennsylvania only. Practice limited to matters before federal courts.

VINCENT M. SOUTHERLAND
PATRICE SULTON
CENTER ON RACE, INEQUALITY,
AND THE LAW
NEW YORK UNIVERSITY SCHOOL
OF LAW
139 MacDougal Street
New York, NY 10012

TABLE OF CONTENTS

	Page
Interest of amici curiae	1
Introduction and summary of argument.....	3
Argument	6
I. The Fifth Circuit’s categorical plea bar departs from this Court’s charge-specific framework for assessing malicious-prosecution claims	6
A. The categorical rule arbitrarily conditions malicious-prosecution remedies on the procedural mechanism by which charges are resolved.....	6
B. This Court’s charge-by-charge approach to malicious prosecution will not undermine legitimate plea bargaining.....	9
II. The Fifth Circuit’s categorical plea bar ignores the real-world pressures that lead people with valid malicious-prosecution claims to accept plea bargains.....	11
A. People often plead guilty for reasons unrelated to the merits of every charge	13
B. The coercive pressures that drive plea bargaining decisions disproportionately impact people of color	16
C. Mr. Davis’s case illustrates how, under the Fifth Circuit’s rule, plea pressures can foreclose valid malicious-prosecution claims	19
Conclusion	21

TABLE OF AUTHORITIES

Cases:

<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	15
<i>Barnes v. City of New York</i> , 68 F.4th 123 (2d Cir. 2023)	8

II

Cases—Continued:	Page
<i>Bordenkircher v. Hayes</i> , 434 U.S. 357 (1978).....	10
<i>Brown v. Louisville-Jefferson Cnty. Metro Gov’t</i> , 135 F.4th 1022 (6th Cir. 2025).....	7
<i>Carruthers v. Colton</i> , 153 F.4th 169 (2d Cir. 2025)	8, 9, 10
<i>Chiaverini v. City of Napoleon</i> , 602 U.S. 556 (2024).....	4, 6, 7, 9, 11
<i>District of Columbia v. Carter</i> , 409 U.S. 418 (1973).....	18
<i>Haring v. Prosise</i> , 462 U.S. 306 (1983)	14
<i>Heck v. Humphrey</i> , 512 U.S. 477 (1994)	7
<i>Hunter v. United States</i> , 608 U.S. 713 (2026).....	5, 13, 14, 16
<i>Janetka v. Dabe</i> , 892 F.2d 187 (2d Cir. 1989)	7, 8
<i>Jones v. Grill</i> , No. 21-2091, 2024 WL 3423707 (3d Cir. July 16, 2024).....	8
<i>Lafler v. Cooper</i> , 566 U.S. 156 (2012)	13, 16
<i>Lee v. United States</i> , 582 U.S. 357 (2017)	13
<i>Missouri v. Frye</i> , 566 U.S. 134 (2012).....	13
<i>Mitchum v. Foster</i> , 407 U.S. 225 (1972).....	18
<i>O’Donnell v. Harris Cnty.</i> , 251 F. Supp. 3d 1052 (S.D. Tex. 2017).....	15
<i>Posr v. Doherty</i> , 944 F.2d 91 (2d Cir. 1991).....	10
<i>Premo v. Moore</i> , 562 U.S. 115 (2011)	13, 14, 15
<i>Thompson v. Clark</i> , 596 U.S. 36 (2022)	4, 6, 7, 9, 11
<i>United States v. Marion</i> , 404 U.S. 307 (1971).....	15
Statutes and rules:	
Sup. Ct. R. 37.2	1
Sup. Ct. R. 37.6	1

III

Miscellaneous:

ABA Crim. Just. Section, <i>Plea Bargain Task Force Report</i> (2023)	14, 15
Andrew Chongseh Kim, <i>Underestimating the Trial Penalty: An Empirical Analysis of the Federal Trial Penalty and Critique of the Abrams Study</i> , 84 Miss. L.J. 1195 (2015).....	14
Cyndy Caravelis et al., <i>Static and Dynamic Indicators of Minority Threat in Sentencing Outcomes: A Multi-Level Analysis</i> , 27 J. Quantitative Criminology 405 (2011)	17
Innocence Project, <i>DNA Exonerations in the United States (1989–2020)</i> , https://innocenceproject.org/dna-exonerations-in-the-united-states/ (last visited Oct. 19, 2026).....	16
Elayne E. Greenberg, <i>Unshackling Plea Bargaining from Racial Bias</i> , 111 J. Crim. L. & Criminology 93 (2021).....	18
Emily Widra, <i>Despite Fewer People Experiencing Police Contact, Racial Disparities in Arrests, Police Misconduct, and Police Use of Force Continue</i> , Prison Policy Initiative (Dec. 19, 2024), https://www.prisonpolicy.org/blog/2024/12/19/policing_survey_2022	17
Nat'l Police Accountability Project, Amicus Br., <i>Chiaverini v. City of Napoleon</i> , No. 23-50.....	11
Ram Subramanian et al., <i>In the Shadows: A Review of the Research on Plea Bargaining</i> (Vera Inst. of Just. 2020).....	18
Transcript of Oral Argument, <i>Class v. United States</i> , 583 U.S. 174 (2018) (No. 16-424)	13
U.S. Sent'g Comm'n, <i>Demographic Differences in Sentencing: An Update to the 2012 Booker Report</i> (2017)	17

IV

Will Dobbie et al., <i>The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges</i> , 108 Am. Econ. Rev. 201 (2018)	15
---	----

In the Supreme Court of the United States

No. 26-393

DARYL L. DAVIS, PETITIONER

v.

DEBORAH PULLUM, CITY ATTORNEY, TYLER, TEXAS, ET
AL.

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

**BRIEF FOR LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW, NEW YORK UNIVERSITY
CENTER ON RACE, INEQUALITY, AND THE LAW, ET
AL., AS AMICI CURIAE IN SUPPORT OF PETITIONER**

INTEREST OF AMICI CURIAE¹

Amici are nonprofit organizations that represent the accused in criminal cases and/or advocate for their rights in civil and criminal cases.

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's

¹ Pursuant to Supreme Court Rule 37.6, *amici* certify that no counsel for any party authored this brief in whole or in part, and no entity or person aside from *amici* or their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, *amici* certify that they provided notice of their intent to file this brief to counsel of record for all parties at least ten days prior to the filing deadline.

leadership and resources in combating racial discrimination. As part of this work, the Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our democracy real. To that end, the Lawyers' Committee has participated as counsel or *amicus curiae* in cases addressing race, ethnicity, and national-origin discrimination in a wide range of subjects, including criminal justice.

The Center on Race, Inequality, and the Law at New York University School of Law (the "Center") works to confront and upend the laws, policies, and practices that fuel racial inequality and undermine the fair administration of justice. The Center fulfills its mission through public education, research, advocacy, and litigation. Those efforts include ensuring that the avenues to address allegations of misconduct by police and prosecutors are equally available to all. Neither this brief nor the Center purports to represent the views of New York University School of Law or New York University.

Civil Rights Corps ("CRC") is a nonprofit organization dedicated to challenging systemic injustice in the United States' legal system. CRC works with survivors of violence, families, communities, individuals accused of crimes, and government officials to promote a legal system that promotes safety, equality, and freedom.

JULIAN is a nonprofit organization committed to dismantling the caste system in America. JULIAN's mission is to end race, gender, national-origin, disability, and sexual-orientation caste structures. JULIAN will accomplish this through legal advocacy, organizing, policy, and innovation in order to exact justice, foster equality, and advance the doctrines of civil and human rights law.

NAACP Legal Defense and Educational Fund (“LDF”) is the nation’s first and foremost civil rights legal organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all Americans, and to break down barriers that prevent African Americans from realizing their basic civil and human rights. LDF has long been concerned with the arbitrary and pernicious influence of racial discrimination in the criminal justice system, including its effect on the plea-bargaining process and the exercise of prosecutorial discretion.

The Wren Collective is a nonprofit, nonpartisan organization that works to transform America’s approach to public safety, expose the weaponization of the legal system, and ensure that every person has the chance to participate in civic society. Wren believes that the current system of mass incarceration undermines safety and justice, and that the legitimacy of the justice system depends on protecting the due process and liberty interests of the accused. Wren’s perspective in this case is informed by its members’ experience as criminal defense lawyers in state and federal courts, including Texas state courts, where they routinely observed and litigated against the misuse and abuse of prosecutorial power through overcharging and the threat of the trial penalty.

INTRODUCTION AND SUMMARY OF ARGUMENT

The evidence did not support the allegation that Daryl Davis swallowed a bag of cocaine on February 7, 2019. Yet seven months later, prosecutors charged him with felony evidence tampering based on that very allegation. The government pursued the unfounded charge for nearly five years. More than three years into the prosecution, it sought a sentencing enhancement that

exposed Mr. Davis to a possible life sentence. Facing the possibility of life behind bars for a crime he did not commit, Mr. Davis pleaded no contest to a new, factually distinct misdemeanor interference charge based on his stepping away from an officer who was searching his vehicle. The felony charge was dismissed. Instead of life, he got time served.

Under the Fifth Circuit’s categorical plea bar, Mr. Davis’s plea to one charge precludes him from seeking civil redress for any of his charges, including the baseless, now-dismissed felony. That categorical rule departs from the charge-by-charge framework this Court has established for separating meritorious malicious-prosecution claims from meritless ones. *Thompson v. Clark* rejected a rule that required an affirmative indication of innocence to establish favorable termination. 596 U.S. 36, 49 (2022) (*Thompson*). And *Chiaverini v. City of Napoleon* held that probable cause must be assessed charge-by-charge. 602 U.S. 556, 562-563 (2024) (*Chiaverini*). Under that framework, Mr. Davis’s claim should be tested on its own merits: his misdemeanor plea does not categorically defeat favorable termination of the dismissed felony, and probable cause for the misdemeanor does not establish probable cause for the felony.

Amici write to highlight the analytical weakness and practical consequences of the Fifth Circuit’s absolute rule for malicious-prosecution claims in a criminal justice system dominated by plea bargaining.

First, the charge-by-charge framework established by *Thompson* and *Chiaverini* should apply equally when criminal charges are resolved through a plea agreement. There is no principled reason to depart from that framework simply because a charge was dismissed as part of a negotiated plea. Under the Fifth Circuit’s rule, a

person who pleads guilty (or no contest, as in this case) to one charge cannot pursue a malicious-prosecution claim based on a distinct charge dismissed as part of the same plea—even though such a claim may be available if the same mixed outcome resulted from trial or a pretrial dismissal. That distinction improperly conditions the availability of a civil remedy on the procedural mechanism by which the charge is resolved rather than on the merits of the underlying claim. Moreover, applying this Court’s charge-by-charge approach in the plea context would not expose officials to undue civil liability. It would simply prevent them from using unsupported charges as risk-free bargaining leverage.

Second, a categorical plea bar has sweeping consequences in a criminal justice system that operates as a “conveyor belt of plea bargains,” *Hunter v. United States*, 608 U.S. 713, 730 (2026) (*Hunter*) (Gorsuch, J., joined by Sotomayor and Jackson, JJ., concurring), particularly for people of color accused of crimes. People accused of crimes accept pleas for many reasons unrelated to whether every charge against them is well founded. For instance, they may plead to avoid substantially greater punishment after trial, secure a favorable offer before it expires, end pretrial detention, or escape the financial and personal burdens of an unresolved criminal case. Those pressures are compounded for Black and brown people, who face racial disparities in charging decisions, sentencing enhancements, and plea outcomes. A plea to one offense therefore says little about the merits of a factually distinct charge dismissed as part of the plea bargain, and a categorical plea bar forecloses valid civil claims.

The Court should summarily reverse or grant plenary review to restore a charge-by-charge approach to malicious-prosecution claims and ensure that a plea to one

offense does not categorically extinguish a valid claim arising from another.

ARGUMENT

I. The Fifth Circuit’s Categorical Plea Bar Departs from This Court’s Charge-Specific Framework for Assessing Malicious-Prosecution Claims

The Fifth Circuit’s categorical rule for the favorable termination and probable cause elements of malicious prosecution—under which a plea to one charge categorically bars civil remedies on all charges—is inconsistent with *Thompson v. Clark*, 596 U.S. 36, 49 (2022), and *Chiaverini v. City of Napoleon*, 602 U.S. 556, 562-563 (2024). It creates the odd result of treating charges dismissed as part of a plea differently from charges dismissed before or following trial. And it undermines the malicious-prosecution remedy by insulating unsupported charges from review, even where a charge-specific inquiry would not call the underlying criminal judgment into question.

A. The Categorical Rule Arbitrarily Conditions Malicious-Prosecution Remedies on the Procedural Mechanism by Which Charges Are Resolved

“Consistent with both the Fourth Amendment and traditional common-law practice, courts should evaluate [malicious-prosecution] suits * * * charge by charge.” *Chiaverini*, 602 U.S. at 562. The Fifth Circuit erred by diverging from this rule in its assessment of both the probable cause and favorable termination elements of Mr. Davis’s malicious-prosecution claim. Rather than assess probable cause independently for each of Mr. Davis’s criminal charges, it barred Mr. Davis’s claim “because probable cause supported the [misdemeanor] charge *to which he pleaded*.” Pet. App. 11a-12a (emphasis added). The court of appeals did not consider whether officers had

probable cause for the dismissed felony charge underlying his malicious-prosecution claim. See *ibid.* And rather than assess favorable termination charge-by-charge, the court held categorically that a charge resolved by a plea can never be favorably terminated. *Id.* at 10a.

As the Petition explains, the Fifth Circuit’s categorical rule for malicious prosecution cannot be squared with *Chiaverini*, *supra*, or *Thompson*, *supra*. Pet. 8-15. *Thompson* holds that favorable termination does not require an affirmative indication of innocence, 596 U.S. at 49, while *Chiaverini* requires probable cause to be assessed charge-by-charge, 602 U.S. at 562-563. Together, *Chiaverini* and *Thompson* demonstrate that dismissed charges can form the basis of a malicious-prosecution claim, even if a person is convicted on another charge.

The only material difference between those cases and Mr. Davis’s is that the dismissal of his felony charge came through a plea bargain. But there is no principled reason to diverge from the charge-by-charge approach in the plea context. When a mixed verdict results from a trial, an acquittal on one charge may constitute a favorable termination even where another charge results in conviction, particularly where the charges involve distinct allegations and elements. See *Janetka v. Dabe*, 892 F.2d 187, 190 (2d Cir. 1989) (*Janetka*); cf. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). To determine whether a civil suit might conflict with a criminal judgment, courts assess whether the offenses of conviction and acquittal share common elements or stand in a lesser-included relationship and whether they arise from the same underlying conduct such that they “cannot be divorced.” *Brown v. Louisville-Jefferson Cnty. Metro Gov’t*, 135 F.4th 1022, 1032-1033 (6th Cir. 2025) (citation omitted);

Janetka, 892 F.2d at 190.² When, as here, the charges are factually and legally distinct, a malicious-prosecution claim may proceed on the dismissed charges. See, e.g., *Jones v. Grill*, No. 21-2091, 2024 WL 3423707, at *2 (3d Cir. July 16, 2024) (dismissal of malicious-prosecution claim was improper where “[t]he count of acquittal contained statutory requirements that are different from those applicable to the counts of conviction”); cf. *Barnes v. City of New York*, 68 F.4th 123, 128 (2d Cir. 2023) (affirming dismissal of malicious-prosecution claim where plaintiff was acquitted of a drug-sale charge but convicted of a drug-possession charge in the same proceeding). The same analysis can—and should—apply when charges are resolved through a negotiated plea.

Mr. Davis’s case illustrates the anomalous results of the lower court’s categorical rule. Suppose, as the record suggests, his felony evidence tampering charge lacked probable cause, while the factually distinct misdemeanor interference charge was supported. If the felony charge had been dismissed before trial while the prosecution went forward on the misdemeanor, then, under the decisions just discussed, Mr. Davis could pursue a malicious-prosecution claim based on the dismissed felony, because it ended without a conviction and turns on distinct elements and facts. If he had proceeded to trial, been acquitted of the felony, and been convicted of the misdemeanor, he likewise could pursue such a claim. But, because the same result was reached through a plea bargain, the Fifth Circuit held that he has no civil remedy for the unsupported felony charge—without even

² *Janetka* addressed a mixed verdict following trial. The Second Circuit has since held, however, that a different rule applies when charges are dismissed pursuant to a negotiated plea. See *Carruthers v. Colton*, 153 F.4th 169, 185-188 (2d Cir. 2025); Pet. 10-11; see also *infra* Part I.B.

examining whether the legal elements or facts overlapped. The availability of a constitutional remedy should not turn on whether Mr. Davis secured dismissal of an unsupported charge through a plea bargain rather than through pretrial dismissal or acquittal at trial.

The Fifth Circuit was wrong to diverge from *Thompson* and *Chiaverini*. *First*, a plea to one charge does not categorically prevent a separate, legally and factually distinct charge that was dismissed from satisfying the favorable termination requirement. *Second*, probable cause for the pleaded-to charge cannot defeat a malicious-prosecution claim based on the dismissed charge; under *Chiaverini*, probable cause must be assessed charge-by-charge.

B. This Court's Charge-by-Charge Approach to Malicious Prosecution Will Not Undermine Legitimate Plea Bargaining

Assessing malicious-prosecution claims charge-by-charge will not undermine legitimate plea bargaining. To the contrary: it disincentivizes coercive charge stacking, while promoting meaningful plea bargaining regarding *legitimate* charges. And the robust proof requirements for malicious-prosecution claims ensure that the charge-by-charge approach will not encourage a flood of baseless claims.

The Fifth Circuit's approach, by contrast, has the potential to insulate police and prosecutorial misconduct by creating perverse incentives for the government in plea bargaining. If a plea to one charge automatically forecloses malicious-prosecution claims arising from other charges dismissed as part of the same bargain, prosecutors and law-enforcement officers could use a supported charge to protect unsupported charges from later review. As the Second Circuit recognized in *Carruthers v. Colton*, such a rule could allow the

government to “tack on more serious, unfounded charges” and use a lesser charge supported by probable cause to insulate them from malicious-prosecution liability. 153 F.4th 169, 184-188 (2d Cir. 2025) (*Carruthers*) (quoting *Posr v. Doherty*, 944 F.2d 91, 100 (2d Cir. 1991)). Although *Carruthers* ultimately (and erroneously) adopted a categorical exception for charges dismissed through negotiated pleas, *id.* at 185-188, its recognition of that risk underscores the dangers of treating a plea to one charge as dispositive of separate charges dismissed in the same proceeding.

The charge-by-charge approach addresses this concern while also preserving the government’s incentives to engage in meaningful plea bargaining. In adopting a categorical plea bar, the Second Circuit noted that a charge-by-charge approach might make prosecutors less willing to engage in plea bargaining out of fear of increased exposure to civil liability on charges dismissed during negotiation. *Carruthers*, 153 F.4th at 186-187. This fear is unfounded for two reasons.

First, it assumes that every charge provides fair bargaining leverage in the first place. That is incorrect. As this Court has recognized, only charges “on which [the defendant] was plainly subject to prosecution” are proper leverage in plea negotiations. *Bordenkircher v. Hayes*, 434 U.S. 357, 358-359, 365 (1978). Under a charge-by-charge approach, prosecutors remain free to use *supported* charges to negotiate pleas; recognizing favorable termination for a dismissed, factually distinct charge does not change that. The rule simply prevents prosecutors from using unsupported charges as bargaining leverage. It is unlikely that a prosecutor would forgo bargaining and proceed to trial solely to avoid potential civil liability for a charge that should not have been brought in the first place, particularly because

dismissal before trial or an acquittal would likewise leave open the possibility of a malicious-prosecution claim based on the unfounded charge.

Second, the charge-by-charge rule would not expose officials to liability whenever a charge is dismissed in plea bargaining. Plaintiffs must still prove all the elements of a malicious-prosecution claim, including that the challenged charge lacked probable cause and itself caused an unreasonable seizure. See *Thompson*, 596 U.S. at 43-44 & n.2. Those requirements will continue to screen out meritless suits at early stages of litigation. See Nat'l Police Accountability Project Amicus Br. at 12-19, *Chiaverini*, *supra* (No. 23-50) (cataloging the constitutional and prudential doctrines that weed out meritless malicious-prosecution claims).

Recognizing that the elements of malicious prosecution are properly assessed charge-by-charge in the plea-bargaining context, as in the pretrial and trial contexts, thus preserves both the legitimate benefits of plea bargaining and the ordinary operation of the malicious-prosecution doctrine.

II. The Fifth Circuit's Categorical Plea Bar Ignores the Real-World Pressures That Lead People with Valid Malicious-Prosecution Claims to Accept Plea Bargains

The Fifth Circuit's rule rests on a flawed premise: that a person's plea to one charge provides relevant information regarding the others. That premise is inconsistent with how criminal cases are resolved in practice. Plea agreements routinely dispose of several charges at once—the accused pleads to one, and the government dismisses the rest. The bargain does not resolve the merits of the dismissed charges in either direction. The government's agreement to dismiss a charge does not establish that the charge lacked probable cause; by the same token, the accused's plea to a different

charge does not establish that the dismissed charge was supported by probable cause.

In a system where pleas predominate, the gap between the Fifth Circuit's theoretical premise and reality is not academic. People plead guilty for reasons that have little to do with the merits of every charge, including the threat of far greater punishment after trial, offers that expire before discovery is complete, the hardship of pretrial detention, and the personal and financial toll of a prosecution that drags on for years. Each of those pressures can make a plea rational even for someone who continues to contest—and may well be innocent of—the charge the government agrees to dismiss.

Those pressures do not operate evenly. Research documents racial disparities in charging decisions, sentencing enhancements, and plea outcomes. Those disparities can increase both the punishment some people face if they choose to exercise their right to trial and the pressure to accept a plea. The Fifth Circuit's rule compounds the disparities in the criminal justice system by attaching an additional consequence to a plea: forfeiture of a potential civil remedy for a separate charge. That result undermines Section 1983's role in providing a federal remedy when state actors violate constitutional rights.

Mr. Davis's case is illustrative. The government pursued a baseless charge against him for nearly five years. The prosecution upended his life: he spent 75 days in jail, was required to undergo drug testing at his own expense, and faced other burdensome pretrial restrictions, such as limitations on travel. Pet. 5. Faced with prolonged prosecution and the threat of a sentencing enhancement that exposed him to a possible life sentence, he accepted a plea to a factually distinct misdemeanor

while his felony charge was dismissed. That was a rational way to end the already protracted prosecution and limit his exposure to criminal punishment; it was not an admission that the felony was supported by probable cause. Yet the Fifth Circuit’s rule turns his pragmatic choice into a forfeiture of a potential federal civil rights remedy. No one should have to endure trial and risk a harsher criminal outcome to preserve the right to seek redress for separate alleged government misconduct.

A. People Often Plead Guilty for Reasons Unrelated to the Merits of Every Charge

Plea bargaining dominates modern criminal adjudication. “[C]riminal justice today is for the most part a system of pleas, not a system of trials.” *Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (*Lafler*). An estimated 97% of federal convictions and 94% of state convictions result from guilty pleas. *Missouri v. Frye*, 566 U.S. 134, 143 (2012); see *Hunter*, 608 U.S. at 736 (Gorsuch, J., concurring) (“[P]erhaps 95% of convictions now come by way of plea bargains.”). Of those guilty pleas, about 75% are the result of plea bargaining (the other 25% are open pleas). See Tr. of Oral Arg. at 61-62, *Class v. United States*, 583 U.S. 174 (2018) (No. 16-424).

A bargained-for plea does not necessarily reflect a person’s assessment of every charge levied against them. Rather, the accused weighs the risks of continuing the prosecution against the benefits of ending it.

This Court has recognized that calculus. Anyone considering a plea must weigh “opportunities and risks,” *Premo v. Moore*, 562 U.S. 115, 124 (2011) (*Premo*), and those decisions may turn on considerations other than the merits of the charge. As this Court explained in *Lee v. United States*, the decision whether to plead guilty involves “more to consider than simply the likelihood of success at trial.” 582 U.S. 357, 367 (2017). Indeed, an

accused person may plead guilty for “any number of * * * motivations,” including the prospect of a lesser sentence. *Haring v. Prosise*, 462 U.S. 306, 318-319 (1983). Those risks extend beyond sentencing to time-limited offers, pretrial detention, and the personal and financial costs of an unresolved prosecution. Any one of them can make a plea rational, even when the accused continues to contest whether the government had probable cause for a separate charge it agrees to dismiss.

The trial penalty strongly incentivizes pleas, even among innocent people. People may plead guilty to avoid the prospect of a substantially greater punishment after trial. See, e.g., *Hunter*, 608 U.S. at 734-736 (Gorsuch, J., concurring) (discussing a case in which prosecutors coerced a plea by threatening the accused “that he would be sentenced to twice as great a [prison] term if he did not [plead]”). Empirical evidence confirms the magnitude of the differential. One study of federal cases estimated that people who went to trial received sentences 64% longer than their similarly situated counterparts who pleaded guilty. See Andrew Chongseh Kim, *Underestimating the Trial Penalty: An Empirical Analysis of the Federal Trial Penalty and Critique of the Abrams Study*, 84 Miss. L.J. 1195, 1199-1200 (2015). The ABA’s Plea Bargain Task Force likewise reported an average seven-year difference between post-trial and post-plea sentences in federal felony cases. ABA Crim. Just. Section, *Plea Bargain Task Force Report* 17 (2023) (*ABA Plea Bargain Report*). A person facing that disparity may rationally accept a plea even while continuing to deny another charge the government agrees to dismiss.

Time-limited offers create a different pressure. Plea negotiations are “suffused with uncertainty,” and an early plea offer may “come before” developments that make the prosecutor’s case “weaker, not stronger.” *Premo*, 562

U.S. at 124-125. The ABA Plea Bargain Task Force has identified early “exploding offers”—one-time offers made early in a case—as a particular source of pressure; it therefore recommends that people facing criminal charges receive available discovery and sufficient time to review an offer before deciding whether to plead. See *ABA Plea Bargain Report* 20, 24. But as things stand, a person may accept a plea, not because they have concluded that every charge is well founded, but because further investigation risks losing the offer altogether.

Pretrial detention can make the pressure to plead still more immediate. Detention before trial can mean “loss of a job,” disruption of family life, and greater difficulty preparing a defense. *Barker v. Wingo*, 407 U.S. 514, 532-533 (1972). In Harris County, Texas, for example, a federal court found that people charged with misdemeanor drug offenses sometimes pleaded guilty to obtain release rather than await laboratory results that could establish their innocence. *O'Donnell v. Harris Cnty.*, 251 F. Supp. 3d 1052, 1105 (S.D. Tex. 2017). Empirical research likewise finds that pretrial detention increases guilty pleas and carries lasting employment costs. Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 Am. Econ. Rev. 201, 201 (2018). Those consequences can make immediate resolution rational even when the accused continues to contest a separate charge.

Even without detention, the burdens of being accused of a crime are substantial. Pending charges can “disrupt [a person’s] employment, drain his financial resources, [and] curtail his associations.” *United States v. Marion*, 404 U.S. 307, 320 (1971). A plea that ends those burdens can be rational regardless of the merits of any dismissed charge.

These pressures can lead even innocent people to plead guilty. As Justice Scalia observed, plea bargaining “presents grave risks of prosecutorial overcharging that effectively compels an innocent defendant to avoid massive risk by pleading guilty to a lesser offense.” *Lafler*, 566 U.S. at 185 (Scalia, J., dissenting). Justice Gorsuch, joined by Justices Sotomayor and Jackson, recently made a similar point, describing the “coercive prosecutorial tactics” that can induce people to accept plea deals and explaining that modern charging and sentencing practices have “made it easier than ever for prosecutors to cajole defendants into pleading guilty.” *Hunter*, 608 U.S. at 730, 736 (Gorsuch, J., concurring). Data confirms the point: among 375 people exonerated through DNA evidence between 1989 and 2020, 44 had pleaded guilty to crimes they did not commit. See Innocence Project, *DNA Exonerations in the United States (1989–2020)*, <https://innocenceproject.org/dna-exonerations-in-the-united-states/> (last visited Oct. 19, 2026).

Given these diverse and compounding pressures, people may—and do—rationally plead guilty even when they are factually innocent victims of official misconduct. The charge-by-charge approach recognizes that two things can be true: a person can accept a plea to some of the charges against them and still have a valid malicious-prosecution claim as to another charge.

B. The Coercive Pressures That Drive Plea Bargaining Decisions Disproportionately Impact People of Color

The plea pressures described above do not operate uniformly. Racial disparities arise at multiple stages of the criminal justice process, from initial encounters with law enforcement through sentencing and plea negotiations. These disparities can shape both the

charges people face and the risks they weigh in deciding whether to accept a plea.

Black and brown people experience disproportionate rates of certain police encounters and enforcement actions. For example, a review of federal data found that Black people were more likely than white people to experience police-initiated contact and more than twice as likely to be searched or arrested during a traffic stop. See Emily Widra, *Despite Fewer People Experiencing Police Contact, Racial Disparities in Arrests, Police Misconduct, and Police Use of Force Continue*, Prison Policy Initiative (Dec. 19, 2024), https://www.prisonpolicy.org/blog/2024/12/19/policing_survey_2022 (discussing results of 2022 Bureau of Justice Statistics police contact survey).

Disparities also persist in sentencing. A study of people sentenced to prison in Florida who were eligible for habitual-offender treatment found that Black and Latino people had significantly greater odds than their white counterparts of receiving a habitual-offender designation. See Cyndy Caravelis et al., *Static and Dynamic Indicators of Minority Threat in Sentencing Outcomes: A Multi-Level Analysis*, 27 J. Quantitative Criminology 405, 416 (2011). The U.S. Sentencing Commission likewise found that, after controlling for a wide range of sentencing factors, Black male offenders received sentences 19.1% longer than similarly situated white male offenders. See U.S. Sent'g Comm'n, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report 2* (2017). Such disparities can heighten the perceived risks of rejecting a plea and proceeding to trial for people of color.

Racial disparities also shape plea offers. A study of misdemeanor and felony cases in Wisconsin found that, among those without any prior criminal history, white

people were 25% more likely than Black people to receive a reduction in their initial charges. Ram Subramanian et al., *In the Shadows: A Review of the Research on Plea Bargaining* 26-27 (Vera Inst. of Just. 2020). Other research found that, in New York City misdemeanor cases, the odds of receiving a custodial plea offer were nearly 70% greater for Black people than for white people and that Black and Latino people were less likely than white people to receive charge reductions in weapons cases. *Id.* at 27-28; see also Elayne E. Greenberg, *Unshackling Plea Bargaining from Racial Bias*, 111 J. Crim. L. & Criminology 93, 124 (2021).

The Fifth Circuit's rule disregards the pressures that shape plea decisions. It treats a plea to one charge as dispositive of a malicious-prosecution claim involving a separate, dismissed charge, even though the decision to plead may reflect considerations entirely unrelated to the merits of that dismissed charge. That result is especially troubling given Section 1983's purpose. Congress enacted Section 1983 to provide a federal remedy when state institutions failed to protect federal rights. *Mitchum v. Foster*, 407 U.S. 225, 238-242 (1972) (*Mitchum*). The statute was enacted against the backdrop of state officials' failure—and, at times, outright refusal—to protect the federal rights of Black Americans during Reconstruction. *Ibid.*; see *District of Columbia v. Carter*, 409 U.S. 418, 425-429 (1973). Section 1983's "very purpose" was to interpose the federal courts between the States and the people as "guardians of the people's federal rights." *Mitchum*, 407 U.S. at 242. A categorical rule that bars otherwise viable malicious-prosecution claims based solely on a plea to a different charge undermines that remedial purpose.

C. Mr. Davis's Case Illustrates How, Under the Fifth Circuit's Rule, Plea Pressures Can Foreclose Valid Malicious-Prosecution Claims

Mr. Davis's case illustrates the impossible choice the categorical plea bar creates for those with valid malicious-prosecution claims: endure a prolonged prosecution with mounting personal and legal consequences, or accept a plea to one charge and forfeit the ability to challenge another—even when the plea neither admits the allegations underlying that charge nor resolves whether probable cause existed for that discrete charge. The result is to foreclose otherwise valid civil claims, based not on their merits, but on a person's rational decision about how to resolve the criminal prosecution.

The evidence supporting Mr. Davis's felony evidence tampering charge—the only charge on which he was initially indicted—was remarkably weak. That charge was based on an allegation that Mr. Davis swallowed drugs to evade detection by law enforcement. But no drugs were ever recovered, no video showed Mr. Davis swallowing or destroying drugs, police delayed taking Mr. Davis for a drug test, and drug tests the next day and three days later were negative. See Pet. 4-5. Despite this thin record, the felony remained pending for nearly five years.

During that time, Mr. Davis faced mounting pressures to resolve the case. Over the course of his prosecution, Mr. Davis spent 75 days in jail and was subject to years of pretrial restrictions. Pet. 5. He was required to undergo regular drug testing at his own expense—\$100 per month—and faced restrictions on travel, alcohol use, and possession of firearms. *Ibid.* Years into his prosecution, the government increased the pressure by seeking a sentencing enhancement that exposed Mr. Davis to a possible life sentence. See Pet. 6.

The plea finally put an end to those burdens. The government ultimately initiated a separate misdemeanor charge of interfering with public duties based on different conduct from the felony: specifically, Mr. Davis's walking two steps away from an officer during the search of his vehicle. Mr. Davis pleaded no contest to that charge, and in exchange, the government dismissed the felony. R. 42; Davis C.A. Mot. for Judicial Notice 28-36. His written stipulation admitted only the conduct underlying the misdemeanor; it did not admit possessing drugs or destroying evidence. See Davis C.A. Mot. for Judicial Notice 33-34.

Those facts matter because, under the charge-by-charge approach to malicious prosecution endorsed by this Court, Mr. Davis would have a viable civil claim. He alleges that the felony charge not only lacked evidentiary support, but was pursued for an improper purpose: namely, racial bias. His allegations of misconduct begin with his stop, which he contends resulted from racial profiling. After his arrest, he repeatedly complained to local officials that his treatment reflected a broader pattern of racial profiling by the Tyler Police Department. He further alleges that prosecutors continued pursuing the felony despite his complaints about racial profiling and the absence of evidence supporting the charge. See R. 8-11, 13-15; Davis Supp. C.A. Br. 8; Pet. App. 3a. If proven, these facts support a colorable malicious-prosecution claim. Adjudicating that claim would not undermine Mr. Davis's misdemeanor conviction because his plea admitted only facts regarding the misdemeanor, and no facts establishing the felony allegations. Yet the categorical plea bar forecloses any consideration of the merits of Mr. Davis's claim.

Mr. Davis's case thus illustrates the categorical rule's central flaw. The pressures of a prolonged prosecution

led him to accept a plea to a factually distinct misdemeanor without admitting the felony allegations. Yet the rule transforms that pragmatic decision into a bar against challenging the dismissed felony—even though the plea neither resolved the felony’s merits nor established that probable cause supported it. People who resolve their criminal cases through pleas should not automatically be denied a remedy for otherwise valid malicious-prosecution claims.

CONCLUSION

The Court should summarily reverse the judgment below or, in the alternative, grant the petition for a writ of certiorari and set the case for argument.

Respectfully submitted.

DAMON T. HEWITT*
LEN H. KAMDANG
FREYA R. JAMISON
LAWYERS’ COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
*1500 K Street NW, Suite 900
Washington, DC 20005*

VINCENT M. SOUTHERLAND
PATRICE SULTON
CENTER ON RACE, INEQUALITY,
AND THE LAW
NEW YORK UNIVERSITY SCHOOL OF
LAW
*139 MacDougal Street
New York, NY 10012*

ERICA L. ROSS
Counsel of Record
SOUMYALATHA DAYANANDA
WILLKIE FARR & GALLAGHER LLP
*1875 K Street NW
Washington, DC 20006
eross@willkie.com
(202) 303-1000*

VINCENT R. BIAGIOTTI
EMILY M. WILSON
WILLKIE FARR & GALLAGHER LLP
*787 Seventh Avenue
New York, NY 10019*

OCTOBER 2026

* Admitted in Pennsylvania only. Practice limited to matters before federal courts.