26-5851 ORIGINAL

No. _____

Supreme Court, U.S.
FILED
AUG 20 2026
OFFICE OF THE CLERK

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

JOHN ALAN SAKON,
Petitioner,

v.

JOHN JOHNSON, F. PERRONE, BRUCE D. SKEHAN, PETER BRANDER, NEAL CAVANAUGH, MICHAEL ROBERTS, PETER J. CELIO, WILMARY LABONTE, DANIELLE STONE-MITCHELL, CHRISTOPHER FERREIRA, SETH CONANT, FREED MARCROFT LLC, TOWN OF GLASTONBURY, TOWN OF MANCHESTER, and STATE OF CONNECTICUT,
Respondents.

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

# PETITION FOR A WRIT OF CERTIORARI

8/20/2026

Refiled 9/5/2026 10/8/26

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## QUESTIONS PRESENTED

1. Whether the rule that a Fourth Amendment malicious-prosecution claim under 42 U.S.C. § 1983 accrues on the date a nolle prosequi is entered, as the 2nd Circuit Court's decision in Spak v. Phillips, 857 F.3d 458 (2d Cir. 2017), was applied by the panel below, survives Thompson v. Clark, 596 U.S. 36 (2022), which held that such a claim accrues only when the underlying criminal proceeding has been disposed of in a manner that "cannot be revived."
2. Whether, under Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938), a federal court may apply a claim-accrual rule for the state-law tort underlying a § 1983 malicious-prosecution claim that conflicts with the accrual rule the State itself has enacted, Conn. Gen. Stat. § 52-577f, and confirmed through its appellate courts, Lopes v. Farmer, 286 Conn. 384 (2008), and Washington v. Ivancic, 113 Conn. App. 131 (2009).
3. Whether the court of appeals committed reversible error by affirming dismissal of Petitioner's claims as time-barred without addressing the tolling provision of 11 U.S.C. § 108(a), where Petitioner's claims were property of a bankruptcy estate, subject to an automatic stay, and were not abandoned back to him until the bankruptcy court's order of August 1, 2021 — a dispositive, squarely presented question of federal statutory law that the panel's summary order does not address.

4. Whether an officer's arrest warrant application can establish probable cause for larceny as a matter of law where the application accounts only for the income a property manager received from the property, with no accounting for the correlative business expenses the officer knew the manager was responsible for paying, and where an accounting of those expenses was independently available in the municipal Assessment records but the officer failed to review it.

## PARTIES TO THE PROCEEDING

Petitioner John Alan Sakon was the plaintiff-appellant in the courts below.

Respondents, who were the defendants-appellees in the court of appeals, are: John Johnson, F. Perrone, Bruce D. Skehan, Peter Brander, and Neal Cavanaugh, each an officer of the Glastonbury Police Department; Michael Roberts, an officer of Glastonbury Emergency Management; the Town of Glastonbury; Peter J. Celio, Wilmary Labonte, and Danielle Stone-Mitchell, each an officer of the Manchester Police Department; the Town of Manchester; Christopher Ferreira, a trooper of the Connecticut State Police, and the State of Connecticut; and Seth Conant and Freed Marcroft LLC.

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## OPINIONS BELOW

The summary order of the United States Court of Appeals for the Second Circuit is unreported and is reprinted at Appendix A. It was entered February 17, 2026.

The order of the Court of Appeals denying Petitioner's timely petition for rehearing en banc is unreported and is reprinted at Appendix B. It was entered March 24, 2026.

The judgment and underlying rulings of the United States District Court for the District of Connecticut (Thompson, J.), dismissing Petitioner's claims and striking his proposed amended complaint, are unreported and are reprinted at Appendix C. Judgment entered August 19, 2024.

## JURISDICTION

The Court of Appeals entered judgment on February 17, 2026. Petitioner timely sought rehearing and rehearing en banc, which was denied on March 24, 2026. On July 18, 2026 Justice Sotomayer, the Circuit Justice for the Second Circuit granted Petitioner's application under Rule 13.5 and extended the time within which to file this petition to and including August 21, 2026. This petition is filed within that extended time.

This Court has jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ...." Section 1983 of Title 42 of the United States Code provides, in relevant part, that every person who, under color of state law, subjects any citizen to the deprivation of rights secured by the Constitution shall be liable to the injured party.

Section 108(a) of Title 11 of the United States Code provides: "If applicable nonbankruptcy law ... fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of— (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) two years after the order for relief."

Connecticut General Statutes § 52-577f provides: "Notwithstanding the provisions of section 52-577, no action to recover damages for malicious prosecution may be brought later than three years from the date of the termination of the criminal proceeding that is the subject of such action." Connecticut General Statutes § 54-142a(c)(1) provides, in relevant part: "Whenever any charge in a criminal case has been nolled in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased . . . ."

## STATEMENT OF THE CASE

### A. Factual Background

Petitioner, born August 3, 1954, is a whistleblower who reported alleged corruption by the Town of Glastonbury and its police department. Prior to his whistleblowing, the then 62-year old Petitioner had no criminal record. After his reports were made public, he was arrested and incarcerated nine times between 2016 and 2018 by officers of the Glastonbury Police Department, the Manchester Police Department, and the Connecticut State Police, resulting in eighteen felony charges and at least one misdemeanor charge. Every one of those charges terminated in Petitioner's favor: eight felony charges were resolved by jury acquittal rendered after a mere 18 minutes of deliberations, and the remainder were nolled by the State and later formally dismissed.

While the underlying criminal proceedings were still pending, Petitioner was struck by a truck driven by a sworn Glastonbury police officer during a Memorial Day bicycle rally while Petitioner was riding his bicycle — eleven days after Petitioner had asked state authorities to convene a grand jury investigation into the Town's conduct and Petitioner's allegations that a key witness as to the local corruption was murdered before he could testify under court order in a related civil case. Respondent Neal Cavanaugh, another Glastonbury police officer, then arrested Petitioner for filing a false complaint regarding having been struck by the truck while he was riding his bicycle. In his arrest warrant affidavit, Cavanaugh claimed Petitioner was not struck by the truck. While said arrest terminated in

Petitioner's favor, Petitioner did suffer serious injuries, requiring two knee replacements, a hip replacement, hernia surgery, and a closed head injury, and was later arrested twice more in 2023 by defendants and hospitalized for related complications. As a direct result of these arrests, Petitioner suffered heart attacks and underwent heart surgery in 2019, 2023 and 2026. These injuries, the Covid Shutdown and defendant's actions in bankruptcy, stripped the Petitioner's ability to sue between 2019-2021 and the pendency of the underlying criminal proceedings delayed Petitioner's ability to bring the civil claims at issue here.

**B. The Bankruptcy Proceeding**

The felony charges, and particularly the larceny charges, arising from Petitioner's arrests effectively barred him from refinancing his estate and real-estate holdings, then valued at approximately $12 million. While those felony charges remained pending, Petitioner was unable to obtain refinancing because, as a practical matter and under federal banking, underwriting, and compliance constraints, many lending institutions will not extend credit to a borrower facing unresolved felony charges. This inability to refinance prevented Petitioner from curing the alleged tax arrearages. The defendant Town of Glastonbury was therefore able to foreclose on the holdings for unpaid back taxes so as to seize the properties, and that foreclosure directly necessitated Petitioner's Chapter 11 filing.

Petitioner filed a Chapter 11 bankruptcy petition on September 19, 2019, while his malicious-prosecution claims were still within the limitations period the panel below applied. In his bankruptcy schedules, Petitioner identified the Town of

Glastonbury as a party connected to his malicious-prosecution claim — listing the Town both as a potential asset/claimant with respect to that cause of action and, separately, as a creditor of the estate. The Town of Glastonbury — a respondent here, the party Petitioner named in connection with the malicious-prosecution claim in the bankruptcy proceeding, and a creditor in that proceeding — moved to convert the case to Chapter 7, which the bankruptcy court granted on May 28, 2020, placing Petitioner's malicious-prosecution claims under the control of a Chapter 7 trustee and subjecting them to the automatic stay of 11 U.S.C. § 362. Upon motion, the bankruptcy court ordered those claims abandoned back to Petitioner by order dated August 1, 2021.

**C. District Court Proceedings**

Petitioner, proceeding pro se, filed this action under 42 U.S.C. § 1983 in the United States District Court for the District of Connecticut on January 26, 2023 (No. 3:23-cv-00107-AWT), alleging malicious prosecution against seventeen defendants arising from his nine false arrests. Petitioner was granted leave to proceed in forma pauperis.

The Statue of Limitations for malicious prosecution in Connecticut is governed by Connecticut General Statute § 52-577f which says "*Notwithstanding the provisions of Section 52-577, no action to recover damages for malicious prosecution may be brought later than three years from the date of termination of the criminal proceeding that is the subject of such action.*" The date of termination has been found to be the date of dismissal by Connecticut's Supreme and Appellate

Courts. Lopes v. Farmer, 286 Conn. 384 (2008); Washington v. Ivancic, 113 Conn. App. 131, 133–34 (2009). In addition, the statute of limitations in Connecticut was extended in 2020 for 347 days by gubernatorial order due to the closure of the Connecticut Civil courts as a result of the COVID crisis.

The district court (Thompson, J.) dismissed both the State and Federal claims relating to eight of the nine arrests (Counts One through Eight) as time-barred, holding — following Spak v. Phillips, 857 F.3d 458 (2d Cir. 2017) — that each malicious-prosecution claim accrued on the date the State entered a nolle prosequi, rather than on the later date each charge was formally dismissed. The court separately dismissed the claim arising from Petitioner's ninth arrest (Count Nine, against Officer Peter Brander and the Town of Glastonbury) for failure to state a claim, holding that Officer Brander had probable cause as a matter of law because he obtained a judicial warrant supported by complaints from Petitioner's brother and former spouse. The district court also struck Petitioner's proposed amended complaint as untimely and, in the alternative, futile. Petitioner had raised 11 U.S.C. § 108(a) in further support of the Stature of Limitations which the district court failed to address. The District Court entered Judgment on August 19, 2024.

**D. Proceedings In The Court Of Appeals**

The Second Circuit (Sullivan and Pérez, Circuit Judges, and Castel, District Judge for the Southern District of New York, sitting by designation) affirmed by summary order on February 17, 2026. As to Counts One through Eight, the panel held that federal law determines when a § 1983 malicious-prosecution claim

accrues, that a nolle prosequi is a favorable termination that starts the accrual clock under Spak, and that this Court's intervening decision in Thompson v. Clark, 596 U.S. 36 (2022), "if anything, reinforces Spak" rather than abrogating it. As to Count Nine, the panel agreed that Officer Brander's warrant application was adequately supported and that Petitioner had not pleaded facts showing Officer Brander knew of the specific intra-family financial dispute underlying the arrest.

Petitioner timely petitioned for rehearing and rehearing en banc, arguing, among other things, that the panel had overlooked the tolling effect of 11 U.S.C. § 108(a) during the pendency of Petitioner's bankruptcy case; that the panel's dismissal of the State Tort claim could not be reconciled with Conn. Gen. Stat. § 52-577f or with the Connecticut Appellate Court's and Connecticut Supreme Court's own construction that the State claim accrues from dismissal and not from the nolle, see Lopes v. Farmer, 286 Conn. 384 (2008); Washington v. Ivancic, 113 Conn. App. 131 (2009); and that a Connecticut Superior Court, examining the identical October 22, 2018 arrest and warrant affidavit at issue in Count Nine, had subsequently denied summary judgment to the complaining defendant — Petitioner's brother, James Sakonchick, whose complaint had procured the ninth arrest — finding disputed issues of fact as to probable cause. In denying summary judgment, the Superior Court (Farley, J.) identified discrepancies in that same arrest warrant affidavit, including that it omitted Petitioner's undisputed practice of depositing rents into his own account and paying the property's expenses from it, with annual reconciliation were reflected in the parties' filed tax returns; that

neither the forensic accountant retained by the complainant nor the police officer who secured the warrant had ever sought Petitioner's explanation before the arrest; and that the officer's own application acknowledged he had declined to interview Petitioner first. See Sakon v. Sakonchick, No. HHD-CV-23-5079403-S (Conn. Super. Ct. Nov. 7, 2025). The petition also noted that a directly related appeal presenting the identical state-law accrual question, Sakon v. Roberts, No. AC 48957 (Conn. App. Ct.), was then pending before the Connecticut Appellate Court, with a decision expected in late fall 2026 or early 2027.

The Court of Appeals denied rehearing en banc on March 24, 2026, without opinion.

## REASONS FOR GRANTING THE PETITION

### I. The Decision Below Cannot Be Reconciled With This Court's Decision In Thompson v. Clark.

In Thompson v. Clark, this Court held that a plaintiff asserting a Fourth Amendment malicious-prosecution claim under § 1983 need only show that the underlying prosecution "ended without a conviction," and reaffirmed that the relevant common-law touchstone is whether the prosecution has been disposed of in a manner such that it "cannot be revived." 596 U.S. at 44–49. The panel below read Thompson as reinforcing, rather than displacing, this Circuit's holding in Spak v. Phillips that a nolle prosequi itself starts the accrual clock — even though, under Connecticut practice, a nolled prosecution remains subject to revival by the State for a further thirteen months before it is finally dismissed. See Conn. Practice Book § 39-31; Conn. Gen. Stat. § 54-142a. Petitioner respectfully submits that a disposition which remains revivable for thirteen months is not, under Thompson's own terms, a disposition that "cannot be revived," and that the panel's contrary conclusion warrants this Court's review to clarify whether, and to what extent, Thompson abrogated the accrual rule this Circuit announced in Spak. As discussed below, the Connecticut Appellate Courts and the Connecticut Legislature have both found the dismissal starts the accrual clock as after dismissal the charges "cannot be revived."

## II. The Decision Below Cannot Be Reconciled With Erie Railroad Co. v. Tompkins.

The Second Circuit's own precedent recognizes that a § 1983 malicious-prosecution claim incorporates the elements of the underlying state-law tort. Roberts v. Babkiewicz, 582 F.3d 418, 420 (2d Cir. 2009). Indeed, in Roberts, the Second Circuit adjudicated the favorable-termination issue by applying Connecticut substantive law, and later, in Spak v. Phillips, 857 F.3d 458, 463–64 (2d Cir. 2017), the Court expressly characterized Roberts as addressing the merits of the plaintiff's underlying state-law claim. In the present case, however, the lower courts applied Spak's federal-common-law accrual rule not only to Petitioner's federal § 1983 claim, but also to his state-law malicious-prosecution claim, thereby applying a federal common-law rule to a state-law claim governed by Connecticut substantive law. This is error.

Before Spak was decided, Connecticut's Supreme Court and Appellate Court had already established under Connecticut law that the limitations period for a state malicious-prosecution action runs from the dismissal of the underlying criminal proceeding, rather than from the earlier nolle. See Lopes v. Farmer, 286 Conn. 384 (2008); Washington v. Ivancic, 113 Conn. App. 131, 133–34 (2009). In Washington, the plaintiff's underlying charge was nolled on September 9, 2004, and dismissed one year later, on September 9, 2005; the Appellate Court held: *"the plaintiff argues that the court should have used the date the charges were dismissed, September 9, 2005, to calculate the running of the statute of limitations. We agree."* Washington v. Ivancic, 113 Conn. App. 131, 133–34, 965 A.2d 618, 619–20 (2009).

Connecticut's Legislature subsequently amended its malicious prosecution statute Conn. Gen. Stat. § 52-577 to §52-577f in 2021, in response to Spak, to provide that the limitations period runs from the date the criminal proceeding "ends," consistent with the rule previously recognized in Lopes and Washington. In the Legislative history, it is noted the change was for the purposes of extending the time for a party to prosecute a malicious prosecution claim. Neither the district court nor the panel below cited or discussed Washington or Lopes anywhere in their decisions, and neither engaged with Conn. Gen. Stat. § 52-577f—the very statute governing when the state cause of action accrues. In dismissing both the State and Federal Claims, the lower panels affirmed exclusively on the strength of the Second Circuit's precedent in Spak, without acknowledging that Connecticut's highest and intermediate appellate courts, and ultimately its Legislature, had already spoken directly to the question of when the state-law tort accrues. The panel affirmed exclusively on the strength of this Circuit's precedent in Spak, without acknowledging that Connecticut's highest and intermediate appellate courts, and ultimately its Legislature, had already spoken directly to the question of when the state-law tort accrues and had reached the opposite conclusion.

*Rule applied below (nolle accrual, Spak, with 347-day COVID tolling):* nolle prosequi entered January 3, 2019, plus the three-year period of Conn. Gen. Stat. § 52-577f, plus 347 days of COVID-19 tolling under Connecticut Governor's Executive

Order No. 7G [1], yields a deadline of December 16, 2022. The lower panel ruled Petitioner's complaint, filed January 26, 2023, was 41 days late — time-barred.

*Connecticut's own rule (dismissal accrual, Lopes/Washington), with the same 347-day COVID tolling:* the January 3. 2019 nolle converts to a dismissal thirteen months later, on February 3, 2020, Conn. Gen. Stat. § 54-142a; Cislo v. Shelton, 240 Conn. 590 (1997); adding the three-year period yields February 3, 2023; adding the same 347-day COVID tolling yields a final deadline of January 16, 2024. Petitioner's complaint, filed January 26, 2023, was 356 days before that deadline — timely.

The panel rejected Petitioner's dismissal-date argument by borrowing Spak's characterization of the § 54-142a erasure as "purely administrative" — without addressing that Connecticut's own Supreme Court has held the opposite: an automatic erasure under § 54-142a(c) occurring thirteen months after a nolle prosequi "constitutes a dismissal." Cislo v. Shelton, 240 Conn. 590, 598 (1997).

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[1] Although the federal court remained operational, Connecticut's state courts were subject to emergency restrictions during the COVID-19 pandemic. Executive Order No. 7G suspended non-critical state court operations and suspended statutory time requirements, statutes of limitation, and other deadlines relating to court proceedings and filings. See Conn. Exec. Order No. 7G, §§ 1–2 (Mar. 19, 2020). The following day, Executive Order No. 7H directed Connecticut residents to "Stay Safe, Stay Home," required nonessential businesses to cease in-person operations, and restricted ordinary movement by directing residents to avoid traveling in groups and to use public transportation only when absolutely necessary. See Conn. Exec. Order No. 7H, §§ 1, 3 (Mar. 20, 2020). These extraordinary restrictions provide the context for the 347-day tolling period applied below.

Under Lopes and Washington, it is that dismissal — not the nolle — that is the "favorable termination" triggering accrual under state law.

Connecticut's Legislature confirmed this same accrual rule by statute. Responding directly to Spak, it enacted P.A. 21-104, § 60 (2021), moving the limitations trigger to "the date the criminal proceeding ... ends" so as to give "additional time for an aggrieved criminal defendant to bring a civil action against the person who falsely prosecuted him or her." 2021 Conn. Legis. Serv. P.A. 21-104 (H.B. 6505). That stated purpose confirms Washington and Lopes, and shows that the panel's Spak-based rule dismissing the state-law claim cannot be reconciled with the State's own definition of this claim.

Under Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938), a federal court adjudicating the state-law elements of a claim is not free to supply an accrual rule that conflicts with the forum State's own definition of its cause of action. Petitioner respectfully submits that the lower courts' contrary approach warrants review. That the panel resolved this conflict by unpublished summary order, carrying no precedential weight under 2d Cir. Local Rule 32.1.1, only sharpens the need for review: the conflict between Spak's federal accrual rule and Connecticut's own accrual law binds no future panel and will recur, unresolved, until this Court settles it.

## III. The Panel Failed To Address A Dispositive, Squarely Presented Question Of Federal Bankruptcy Law.

The panel's summary order completely ignored a squarely raised, potentially dispositive federal statute: 11 U.S.C. § 108(a). When Petitioner's claims against Respondents became property of the Chapter 11 bankruptcy estate on September 19, 2019, they were unquestionably timely and Petitioner was able to pursue said claims as Debtor in Possession. It was Respondent Town of Glastonbury—acting also as a creditor—that affirmatively moved on May 28, 2020, to convert the case to Chapter 7. This conversion stripped Petitioner of standing and subjected the claims to the automatic stay until the bankruptcy court abandoned them back to Petitioner fourteen months later. Under the plain terms of § 108(a)(2), the limitations period for estate property does not expire until at least two years after the order for relief.

Crucially, there is a dearth of case law clarifying a debtor's ability to pursue those abandoned claims, and specifically whether a debtor inherits the trustee's § 108(a) statutory grace period once the claims revert to them. Because the timeliness of Counts One through Eight turns entirely on whether this statutory extension protects a debtor upon abandonment, this case presents an important, unresolved question of first impression regarding the intersection of federal bankruptcy law and civil limitations periods. The Second Circuit's failure to address this unsettled statutory question—leaving debtors in a jurisdictional limbo when trustees abandon claims—is itself a compelling ground for this Court's review.

The Town's affirmative role in orchestrating this delay sharply underscores the need to resolve this statutory vacuum. Both federal and Connecticut law rest on

the bedrock equitable maxim that no party may take advantage of its own wrong, and a defendant who causes a plaintiff's delay may not then invoke that delay as a defense. Glus v. Brooklyn E. Dist. Terminal, 359 U.S. 231, 232–35 (1959); Dillman v. Combustion Eng'g, Inc., 784 F.2d 57, 60–61 (2d Cir. 1986). Under Connecticut law, a defendant is equitably estopped from invoking the statute of limitations where its conduct was "directed to the very point of obtaining the delay" it now relies upon. Bound Brook Ass'n v. Norwalk, 198 Conn. 660, 666 (1986); see also Morris v. Costa, 174 Conn. 592, 599 (1978).

Unlike Bound Brook, where the municipal defendant merely engaged in passive inaction regarding a latent defect, 198 Conn. at 664–70, the Town's conduct here was an affirmative litigation act. By moving as a creditor to convert Petitioner's bankruptcy, the Town triggered the very statutory stay and loss of standing that prevented Petitioner from pursuing these claims. Allowing a governmental defendant to actively engineer a plaintiff's inability to sue, and to subsequently weaponize that manufactured delay to secure a dismissal, presents a textbook question of bad faith. See Buttry v. Gen. Signal Corp., 68 F.3d 1488, 1493 (2d Cir. 1995).

Finally, the panel compounded its error by resolving this equitable question against Petitioner at the pleading stage. Whether the Town's bankruptcy maneuver was a good-faith creditor action or a tactical maneuver "directed to the very point of obtaining the delay," Bound Brook, 198 Conn. at 666, requires a factual inquiry into the Town's intent and motive. By dismissing Petitioner's claims as time-barred

without allowing evidentiary development on the Town's motive for forcing the conversion, the courts below improperly resolved a disputed issue of fact in the moving party's favor at the pleading stage—an independent legal error that warrants this Court's intervention.

## IV. Officer Brander's Warrant Application Could Not Establish Probable Cause For Count Nine As A Matter Of Law.

Prior to the lower court's ruling, a Connecticut Superior Court had examined the identical October 22, 2018 arrest and warrant affidavit at issue in Count Nine and denied summary judgment to the complainant — Petitioner's brother, James Sakonchick, whose complaint had procured the ninth arrest — finding disputed issues of fact as to probable cause. In denying summary judgment, the Connecticut Superior Court (Farley, J.) identified discrepancies in that same arrest warrant affidavit, including that it omitted Petitioner's undisputed practice of depositing rents into his own account and paying the property's expenses from it, with annual reconciliation reflected in the parties' filed tax returns; that neither the forensic accountant retained by the complainant nor the police officer who secured the warrant had ever sought and accounting of expenses, Petitioner's explanation before the arrest; never sought the filed tax returns of the Petitioner or the alleged victim which provided a full accounting of income and expenses and that the officer's own application acknowledged he had declined to interview Petitioner first. Sakon v. Sakonchick, No. HHD-CV-23-5079403-S (Conn. Super. Ct. Nov. 7, 2025)

(Farley, J.), reprinted at Appendix F.[2] This is the same investigation, by the same officer, on the same warrant, that the panel below characterized as "thorough" and sufficient to establish probable cause as a matter of law.

The procedural posture of the two rulings sharpens the conflict. The district court's dismissal of Count Nine — affirmed by the panel below — was decided on the pleadings alone: it rested on Officer Brander's arrest warrant application as attached to the complaint, without affidavits, without discovery, and without any adversarial evidentiary submissions from the parties. Judge Farley, by contrast, ruled on a motion for summary judgment after the parties had submitted competing affidavits addressing the same underlying facts, including the undisputed tax returns which provided a full accounting and no missing funds, and in doing so acted as a fact-finder examining a developed evidentiary record rather than merely reviewing the four corners of a pleading. On that developed record, Judge Farley could not conclude as a matter of law that probable cause existed for the identical arrest; the federal courts reached the opposite conclusion on a materially thinner record.

The warrant application itself confirms the defect. Officer Brander sought Petitioner's arrest based solely on the income Petitioner received from the property, without any accounting for the expenses Petitioner paid on the property's behalf — even though Brander knew that Petitioner, as the property's manager, was responsible for paying those expenses. Brander also knew the property was held in

[2] The Written Decision of Judge Farley, as presented to the lower court, is reprinted at Appendix F.

tenancy in common, an ownership form in which either co-tenant may direct the use of funds generated by the property, yet his affidavit was not the product of any examination of how the disbursed funds were actually used before he swore that Petitioner had committed larceny. An arrest for larceny solely on "income" from a business, that ignores the correlative expenses, and that ignores a tenant in common's authority over disbursements from the co-owned property, cannot supply probable cause as a matter of law.

The stakes of this rule extend well beyond Petitioner. If an officer may obtain a felony larceny warrant against a business manager based solely on the income the manager received, without any accounting for the expenses attributable to that income, then any business manager, property manager, or bookkeeper in the country who receives or disburses funds he also controls is exposed to arrest for theft whenever a co-owner or business partner complains — regardless of whether a full accounting would show the funds were properly used. That risk is especially unjustified here because the expenses said to offset the "stolen" income of the commercial subject property were a matter of municipal record subject to subpoena: the taxes, utilities, maintenance costs, and debt financing on a real estate property are all readily ascertainable without any cooperation from the target of the investigation. These records are not merely available in principle; Connecticut law affirmatively requires that they be compiled and filed with the town. In Connecticut, owners of income-producing real property must annually submit their actual rental income and operating expenses — which encompass utility and

maintenance costs — to the town assessor for property-tax valuation purposes. Conn. Gen. Stat. § 12-63c. The resulting property tax levies are separately recorded on the town's own public grand list and tax rolls, and mortgage and other debt-financing obligations are recorded in the town's public land records. Brander needed only to consult his own town's records to learn what he never once asked Petitioner. Brander's failure to consult those municipal records, or seek a warrant to examine the filed income and expense reports of the property owners held by his municipality, before swearing out the warrant was not a mere oversight; it reflects the kind of reckless disregard for readily available facts that vitiates probable cause. See Franks v. Delaware, 438 U.S. 154 (1978); Golino v. City of New Haven, 950 F.2d 864, 871 (2d Cir. 1991).

Brander's application compounded the defect. In support of probable cause for the ninth arrest, Brander cited a prior felony larceny charge of larceny for $32,000 he had brought against Petitioner in 2016 on a complaint by Petitioner's former spouse. He did not disclose to the issuing judge that this earlier dispute had since been resolved in civil court: in November 2017, Petitioner's former spouse settled that claim — and a pending counter-claim for malicious-prosecution against her — by paying Petitioner approximately $200,000. Petitioner alleges Brander knew of that settlement before applying for the 2018 warrant. An officer who cites a prior criminal complaint as evidence of a defendant's pattern of conduct, while omitting that the complainant had since paid substantial funds to the defendant to resolve that very complaint, withholds information plainly material to probable cause.

Brander's failure to disclose that settlement in the warrant application was, at minimum, a dereliction of his duty of candor to the issuing court.

An officer's arrest warrant cannot supply probable cause as a matter of law where it accounts for a target's income but ignores the correlative expenses the officer knew the target was responsible for paying, where the officer refused to request tax returns dispositive of the issue for either of the parties and where the officer failed to consult readily available municipal records that would have supplied that very accounting. And under Erie, a federal court is in any event not free to reach a contrary probable-cause conclusion, on a thinner record, than a prior state court reached in denying summary judgment on the identical warrant and the identical facts. Petitioner respectfully submits that this independently warrants the Court's review.

## V. The Question Presented Is Recurring, Important, And Is Cleanly Presented By This Case.

The question of when a Fourth Amendment malicious-prosecution claim accrues following a nolle prosequi — and whether federal courts must defer to a State's own accrual rule for the underlying state-law tort — recurs in every § 1983 case following that common disposition, in Connecticut and in the many other States whose procedure includes an interim disposition short of final dismissal. The conflict identified here creates a trap for both self-represented and represented litigants, whose claims may be simultaneously timely under state law and time-barred under the accrual rule the panel applied below. See Sup. Ct. R. 10(c). This

case presents the question cleanly: the accrual date is outcome-determinative for eight of Petitioner's nine claims, the state-law conflict has been squarely joined by a state trial court applying the identical facts, and a decision of the Connecticut Appellate Court resolving the state-law side of that conflict, Sakon v. Roberts, No. AC 48957, is expected in late fall 2026 or early 2027. Petitioner respectfully submits that this Court may wish to await that decision, or may grant plenary review now in light of the recurring and nationally significant nature of the question presented.

## CONCLUSION

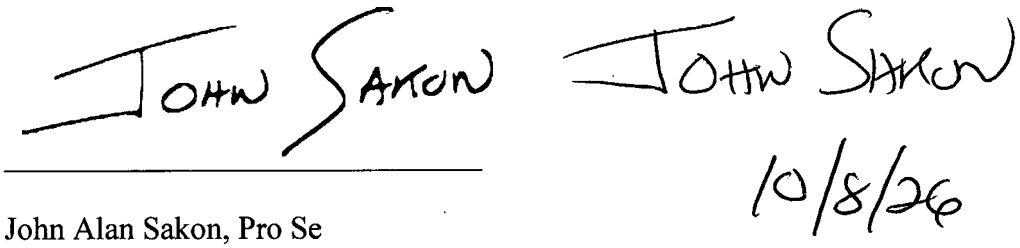
This case presents at least five independent reasons warranting the Court's review:

- The decision below cannot be reconciled with this Court's decision in Thompson v. Clark, 596 U.S. 36 (2022). The panel applied a nolle-based accrual rule for Petitioner's § 1983 malicious prosecution claim that this Court expressly rejected in Thompson, creating a square conflict between the ruling below and this Court's controlling precedent on when such claims accrue.
- The decision below cannot be reconciled with Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938). Rather than applying the controlling Connecticut accrual rule set out in Conn. Gen. Stat. § 52-577f, Washington v. Ivancic, 113 Conn. App. 131 (2009), and Lopes v. Farmer, 286 Conn. 384 (2008), the courts below applied a Second Circuit accrual doctrine of its own making to an element governed by state law — and never addressed Washington, Lopes, or Conn. Gen. Stat. § 52-577f at all.

- Neither court below addressed the tolling effect of 11 U.S.C. § 108(a) on Petitioner's bankruptcy estate claims, nor Petitioner's equitable estoppel argument that the Town's own conduct in delaying return of the property is a disputed question of fact for a jury — not a question of law resolvable on the pleadings — under Bound Brook Ass'n v. Norwalk, 198 Conn. 660 (1986), and Morris v. Costa, 174 Conn. 592 (1978).
- Officer Brander's warrant application for the ninth arrest (Count Nine) could not establish probable cause as a matter of law. It relied solely on income to the subject property with no accounting for expenses, despite readily available municipal records as to income and expenses of the subject property, a review of filed tax returns and a Connecticut Superior Court has since found disputed issues of fact as to probable cause on that same warrant affidavit.
- The questions presented recur in every § 1983 malicious prosecution case following a nolle prosequi, in every case in which a federal claim incorporates an element governed by state law, and in every case in which a business manager faces arrest based on income alone without an accounting of expenses. This case cleanly presents all of them for the Court's resolution, unclouded by procedural complications.

For these reasons, and the reasons more fully set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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Dated: 8/19/2026