No. 23-50

IN THE

Supreme Court of the United States

JASCHA CHIAVERINI, ET AL.,

Petitioners,

v.

CITY OF NAPOLEON, OHIO, ET AL.,

Respondents.

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

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
BRIAN R. FRAZELLE
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

February 7, 2024 * Counsel of Record

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICUS CURIAE*	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	8
I. The Text of Section 1983 Requires the Charge-Specific Approach to Fourth Amendment Claims Arising from Legal Process	8
A. Section 1983 Imposes Liability When an Officer Causes a Deprivation of a Person's Fourth Amendment Rights	9
B. When an Officer's Baseless Charges Result in a Search or Seizure that Probable Cause Does Not Support, the Officer Has Caused a Deprivation of a Person's Fourth Amendment Rights	11
C. Baseless Charges Can Cause Deprivations of Fourth Amendment Rights Even When Combined with Legitimate Charges	14
II. The Validity of Warrantless Arrests Supported by Probable Cause for Only One Offense Does Not Entitle Officers to Make Baseless Charges When Instigating Legal Process	18
CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

Cases

Albright v. Oliver,
510 U.S. 266 (1994) 14, 17

Ashcroft v. al-Kidd,
563 U.S. 731 (2011) 19

Atwater v. City of Lago Vista,
532 U.S. 318 (2001) 7, 18, 22, 23

Bailey v. United States,
568 U.S. 186 (2013) 12

Bd. of Cnty. Comm'rs v. Brown,
520 U.S. 397 (1997) 10

Berkemer v. McCarty,
468 U.S. 420 (1984) 22

Bond v. United States,
529 U.S. 334 (2000) 19

Boogher v. Bryant,
86 Mo. 42 (1885) 8

Brigham City v. Stuart,
547 U.S. 398 (2006) 6, 21-22

California v. Hodari D.,
499 U.S. 621 (1991) 16

Cnty. of Riverside v. McLaughlin,
500 U.S. 44 (1991) 12, 20

Connick v. Thompson,
563 U.S. 51 (2011) 10

TABLE OF AUTHORITIES – cont'd

Page(s)

Devenpeck v. Alford,
543 U.S. 146 (2004) 5, 18-20, 23

Ex parte Bollman,
8 U.S. 75 (1807) 16

Franks v. Delaware,
438 U.S. 154 (1978) 6, 12, 13, 21, 24

Gerstein v. Pugh,
420 U.S. 103 (1975) 6, 11, 12, 17, 20

Graham v. Connor,
490 U.S. 386 (1989) 7, 23

Heien v. North Carolina,
574 U.S. 54 (2014) 7, 19, 23

Henry v. United States,
361 U.S. 98 (1959) 12

Horton v. California,
496 U.S. 128 (1990) 5, 19

Howse v. Hodous,
953 F.3d 402 (6th Cir. 2020) 2, 19

Johnson v. United States,
333 U.S. 10 (1948) 13

Kelly v. Curtis,
21 F.3d 1544 (11th Cir. 1994) 16

Lozman v. City of Riviera Beach,
138 S. Ct. 1945 (2018) 10, 23

TABLE OF AUTHORITIES – cont'd

Page(s)

Malley v. Briggs,
475 U.S. 335 (1986) 7, 10, 11, 13, 21, 23

Manuel v. City of Joliet,
580 U.S. 357 (2017) 3, 11, 13, 14, 16, 17

Monell v. Dep't of Soc. Servs.,
436 U.S. 658 (1978) 9

Monroe v. Pape,
365 U.S. 167 (1961) 11

Nieves v. Bartlett,
139 S. Ct. 1715 (2019) 7, 23

Pembaur v. City of Cincinnati,
475 U.S. 469 (1986) 10

Riley v. California,
573 U.S. 373 (2014) 13

Thompson v. Clark,
596 U.S. 36 (2022) 2, 14

Torres v. Madrid,
592 U.S. 306 (2021) 16

United States v. U.S. Dist. Ct.,
407 U.S. 297 (1972) 12

Virginia v. Moore,
553 U.S. 164 (2008) 22

Whren v. United States,
517 U.S. 806 (1996) 5, 19

TABLE OF AUTHORITIES – cont'd

Page(s)

Williams v. Aguirre,
965 F.3d 1147 (11th Cir. 2020)........... 8, 15, 24

Wong Sun v. United States,
371 U.S. 471 (1963)................................ 13

Statutes and Constitutional Provisions

42 U.S.C. § 1983.................. 1, 3, 9-11, 13, 18, 24

An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes, ch. 22, 17 Stat. 13 (1871)... 9

U.S. Const. amend. IV.............................. 12

Other Authorities

William Blackstone, *Commentaries on the Laws of England* (1791)......................... 20

John Bouvier, *Institutes of American Law* (Daniel A. Gleason ed., 1870) 2, 3

Thomas M. Cooley, *A Treatise on the Law of Torts* (1879) 11

Matthew Hale, *History of the Pleas of the Crown* (1736)... 22

TABLE OF AUTHORITIES – cont'd

Page(s)

Matthew Hale, *Pleas of the Crown* (1st Am. ed. 1847).. 21

Sheldon Nahmod, *Constitutional Torts, Over-Deterrence and Supervisory Liability After* Iqbal, 14 Lewis & Clark L. Rev. 279 (2010) 9

Teressa E. Ravenell, *Cause and Conviction: The Role of Causation in § 1983 Wrongful Conviction Claims*, 81 Temp. L. Rev. 689 (2008) 10

James Fitzjames Stephen, *A History of the Criminal Law of England* (1883) 21

Horace L. Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 541 (1924) ... 6, 21

INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring meaningful access to the courts, in accordance with constitutional text and history, and in the proper interpretation of 42 U.S.C. § 1983, a landmark law enacted to vindicate the rights guaranteed by the Constitution. Accordingly, CAC has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a narrow question—with a straightforward answer. When officers make false accusations and file groundless charges against someone who is then subjected to a search of his premises, a seizure of his property, a custodial arrest, and a period of detention in jail, are those officers *necessarily* exempt from liability if their baseless charges were combined with other charges supported by probable cause? Put differently, is a claim under 42 U.S.C. § 1983 for unreasonable seizure pursuant to legal process *always* defeated by the inclusion of valid charges alongside fabricated ones, no matter what effect the fabricated charges had on the searches and seizures that ensued?

---

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

The Sixth Circuit answered yes. Even though the warrant for Petitioner Jascha Chiaverini was requested because of the felony charge that Respondents lodged against him, *see* J.A. 16, a charge that he maintains was based entirely on the officers' lies, the court below let the officers off the hook for the sole reason that they also charged Chiaverini with two misdemeanors that were supported by probable cause. *See* Pet. App. 10a (citing *Howse v. Hodous*, 953 F.3d 402, 409-10 (6th Cir. 2020)). According to the court below, even one legitimate accusation, however minor and however inconsequential its role in the events that follow, shields officers from accountability under Section 1983 for every false statement and every groundless charge they bring against the same person at the same time. *See id.* at 16a (probable cause that Chiaverini lacked a license is a "complete defense" to his claim that Respondents lied under oath to fabricate a felony money-laundering charge against him). The text of Section 1983, together with the Fourth Amendment rights it enforces, says otherwise.

Chiaverini persuasively argues for reversal based on this Court's "most analogous tort" approach to Section 1983 claims. *See Thompson v. Clark*, 596 U.S. 36, 43 (2022). As he demonstrates, courts in 1871 took a charge-specific approach to claims of malicious prosecution, which this Court has identified as the closest common law analog to Fourth Amendment claims for unreasonable seizure pursuant to legal process. As one authority explained, a complainant who brings a valid charge "is not authorized to add a groundless one, and prosecute both together." 1 John Bouvier, *Institutes of American Law* 610 (Daniel A. Gleason ed., 1870). Instead, "if that part which is groundless has subjected the plaintiff to an inconvenience, to which he

would not have been exposed had the valid cause of complaint alone been insisted on, it is injurious." *Id.*

But Chiaverini should not need to demonstrate that nineteenth-century courts took a charge-specific approach to malicious prosecution because he is entitled to prevail even apart from that analogy. The "any crime" rule adopted below cannot be reconciled with the plain text of Section 1983 or the Fourth Amendment standards it enforces. When individuals are seized pursuant to legal process but without probable cause, they are deprived of their Fourth Amendment rights. *Manuel v. City of Joliet*, 580 U.S. 357, 366-67 (2017). And under Section 1983, an officer who "causes" a person to be deprived of their constitutional rights "shall be liable to the party injured." 42 U.S.C. § 1983. At a minimum, therefore, when an officer's baseless charges cause a search or seizure that legitimate charges supported by probable cause would not alone have justified, the person searched or seized as a result of those baseless charges has a claim against the officer under Section 1983 for causing a deprivation of his or her Fourth Amendment rights.

The Sixth Circuit's blanket rule forecloses that possibility, cutting off any inquiry into the effects of an officer's false accusations and whether they led to a search or seizure that the officer's valid charges would not have produced. Because this categorical rule exempts officers from liability even when they cause deprivations of a person's constitutional rights, it is at odds with the text of Section 1983. On that basis alone, the decision below should be reversed.

Unfounded charges can cause deprivations of Fourth Amendment rights in a number of ways despite being combined with charges that are supported by probable cause. The allegations in a warrant affidavit, for instance, will determine which of a person's papers

and effects the government may seize. Probable cause for retaining stolen property (one of the misdemeanors Chiaverini was charged with) will not justify seizing the same items as probable cause for a licensing violation (the other misdemeanor). Nor will probable cause for either of those charges justify seizing the same items as probable cause for a felony charge of money laundering. Under the warrant in this case, officers seized not only the allegedly stolen jewelry that prompted the investigation, but also "documents, computers, and other jewelry." Pet. App. 25a. If any of those items were seized as a result of the money-laundering charge, the addition of that baseless charge deprived Chiaverini of his Fourth Amendment rights.

Adding meritless charges to legitimate ones can also determine whether a suspect is arrested and jailed. Here, for example, the decision to issue an arrest warrant appears to have hinged on the inclusion of the felony money-laundering charge. Groundless charges can likewise affect whether bail is made available and thus whether a person remains incarcerated pending trial. And even if bail is offered, unfounded charges can increase the amount of bail, putting it beyond a defendant's means and thereby lengthening the period of pretrial detention.

In all these ways, and others, baseless accusations can cause deprivations of Fourth Amendment rights even when combined with charges that are supported by probable cause. But the "any crime" rule precludes examination of how an officer's false charges affected the existence, scope, or duration of the search or seizure that followed. It thus shields officers from accountability regardless of whether the charges they brought without probable cause resulted in a deprivation of the victim's Fourth Amendment rights. That

categorical exemption from liability cannot be squared with Section 1983.

The Sixth Circuit justified its approach through a flawed comparison with the standards governing warrantless arrests. Because such arrests are reasonable under the Fourth Amendment if supported by probable cause for a single offense, *Devenpeck v. Alford*, 543 U.S. 146, 155 (2004), the court reasoned that false charges cannot violate the Amendment when they are combined with at least one valid charge—even if the false charges actually caused the seizure or expanded its scope. Pet. App. 10a.

That comparison does not hold up. None of the historical or pragmatic rationales for the warrantless arrest rule translates to the very different scenario in which an officer files groundless charges or makes false allegations while initiating legal process.

First, the main reason that warrantless arrests supported by probable cause for a single offense do not offend the Fourth Amendment is that the Amendment imposes "objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton v. California*, 496 U.S. 128, 138 (1990). Allowing challenges to an objectively valid arrest because an officer had in mind a different offense not supported by probable cause would be at odds with that principle, making liability turn on each officer's "subjective intent." *Whren v. United States*, 517 U.S. 806, 814 (1996).

But holding officers accountable for the results of their false accusations does not require probing their subjective intent. Instead, liability turns on objective standards of conduct and the real-world effects of an officer's actions. Baseless charges can result in a search or seizure whose existence, scope, or duration

was not justified by the charges that probable cause supported. And just as with warrantless arrests, an officer's liability rests on an objective appraisal of whether the facts known at the time of the incident justified the officer's actions.

Second, the lenient standards for evaluating a warrantless arrest are reasonable precisely because *legal process serves as a backstop*, protecting arrestees from any long-term detention based on a police officer's judgment alone. Unlike seizures pursuant to legal process, a warrantless arrest is capable of inflicting only a temporary intrusion on an arrestee's freedom: officers must promptly bring the arrestee before a neutral magistrate for an independent determination of probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Critical to that safeguard is the requirement that the judicial determination be based on "a *truthful* showing" of the facts. *Franks v. Delaware*, 438 U.S. 154, 164-65 (1978). It would be perverse to allow police officers to undermine the integrity of that safeguard by infecting it with falsehoods, free from liability, simply because the law refuses to probe their reasons for making the initial arrest. And this Court has never endorsed such an approach.

Third, the rules for evaluating warrantless arrests reflect a common law heritage that has always given law enforcement officers ample room to keep the peace by immediately taking offenders into custody. "The role of a peace officer includes preventing violence and restoring order," *Brigham City v. Stuart*, 547 U.S. 398, 406 (2006), and officers have long been "specially protected in the lawful execution of their powers" to ensure they can fulfill that role, Horace L. Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 541, 560 (1924). In contrast, there is no venerable tradition of shielding law enforcement officers from accountability when

they file groundless charges or make false accusations that lead to an arrest or other harms. Instead, the common law has historically made such conduct actionable, and this Court has rejected entreaties to insulate groundless charges "from any scrutiny whatsoever in a § 1983 damages action." *Malley v. Briggs*, 475 U.S. 335, 344 (1986).

Fourth, and relatedly, the standards for warrantless arrests reflect practical considerations that militate against second-guessing the actions of officers who make arrests in the field. Such officers must decide factual and legal questions "on the fly," *Heien v. North Carolina*, 574 U.S. 54, 66 (2014), exercising judgment about whether to make an arrest "on the spur (and in the heat) of the moment," *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001), amid "circumstances that are tense, uncertain, and rapidly evolving," *Nieves v. Bartlett*, 139 S. Ct. 1715, 1725 (2019) (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)). But when officers advance baseless claims in the process of filing charges, submitting warrant affidavits, or testifying in preliminary hearings, no similar imperatives justify turning a blind eye to the effects of their falsehoods on the search or seizure that follows.

Finally, distinguishing among multiple charges that an officer brought against someone—separating the baseless ones from the legitimate ones—does not create the administrability problems that would flow from closer scrutiny of warrantless arrest decisions. Arrests in the field can be made by multiple officers working together, each of whom may have a different subjective motive or a different understanding of the legal basis for the arrest. As a result, it may be impossible to say which officer's motive or understanding caused the arrest. This difficulty does not arise in cases of search or seizure pursuant to legal process,

because there is only one decisionmaker: the judge who approves the warrant or pretrial detention. Analysis can therefore focus on the information put before the judicial officer and whether that information, stripped of any baseless charges, would have justified the search or seizure that ensued.

In sum, the "any crime" rule has no foundation in either the Fourth Amendment or the text of Section 1983. By allowing officers to escape liability even when they demonstrably cause the deprivation of a person's Fourth Amendment rights, it undermines the baseline protection afforded by the statute. For that reason alone, this sweeping rule should be rejected, and the decision below should be reversed.

ARGUMENT

I. The Text of Section 1983 Requires the Charge-Specific Approach to Fourth Amendment Claims Arising from Legal Process.

As Chiaverini demonstrates, the common law tort of malicious prosecution was governed by a charge-specific approach when Section 1983 was enacted. Someone who initiated baseless criminal charges could not "escape liability" by "uniting groundless accusations with those for which probable cause might exist." *Williams v. Aguirre*, 965 F.3d 1147, 1161 (11th Cir. 2020) (quoting *Boogher v. Bryant*, 86 Mo. 42, 50 (1885)). But Chiaverini does not need to rely on the rules of this analogous tort to prevail. The text of Section 1983 itself, in conjunction with the Fourth Amendment rights it protects, demands rejection of the Sixth Circuit's "any crime" rule. That categorical rule forecloses liability when officers cause the deprivation of a person's constitutional rights. It is therefore incompatible with the statute Congress enacted.

A. Section 1983 Imposes Liability When an Officer Causes a Deprivation of a Person's Fourth Amendment Rights.

Anyone who, under color of state law, deprives someone else of their constitutional rights—or who *causes* such a deprivation—is liable to that person under Section 1983. The statute provides that an officer "shall be liable" if the officer "subjects, *or causes to be subjected*," any person to such a deprivation. 42 U.S.C. § 1983 (emphasis added). This language dates back to the birth of Section 1983 in the Civil Rights Act of 1871, which imposed liability on every state and local official who "shall subject, *or cause to be subjected*, any person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution." An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes, ch. 22, § 1, 17 Stat. 13, 13 (1871) (emphasis added).

The text of Section 1983 thus "plainly imposes liability" when an officer "causes" a third party "to violate another's constitutional rights." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 692 (1978) (quotation marks omitted). Liability attaches not only when officers personally deprive someone of a constitutional right, but also when they cause such a deprivation through the acts of an intermediary: the statute "specifically provide[s] that A's tort became B's liability if B caused A to subject another to a tort." *Id.* (quotation marks omitted). In other words, Section 1983 expressly covers situations "in which defendants either personally, or through intervening actors, causally bring about constitutional deprivations." Sheldon Nahmod, *Constitutional Torts, Over-Deterrence and Supervisory Liability After* Iqbal, 14 Lewis & Clark L. Rev. 279, 299-302 (2010).

A municipality, for instance, is liable under Section 1983 "if the governmental body itself 'subjects' a person to a deprivation of rights or 'causes' a person 'to be subjected' to such deprivation." *Connick v. Thompson*, 563 U.S. 51, 60 (2011) (quoting 42 U.S.C. § 1983). Victims can therefore prevail if they "demonstrate a direct causal link between the municipal action and the deprivation." *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 404 (1997); *e.g.*, *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945, 1954, 1951 (2018) ("Lozman does not sue the officer who made the arrest" but rather "the City itself," alleging that the officer's arrest resulted from an "official municipal policy").

Individual officers are likewise made liable if they indirectly "cause[] [a person] to be subjected" to a constitutional deprivation, 42 U.S.C. § 1983, through the acts of intermediaries. Liability can thus arise not only from "direct personal participation in the deprivation," but also from "setting in motion a series of acts by others." Teressa E. Ravenell, *Cause and Conviction: The Role of Causation in § 1983 Wrongful Conviction Claims*, 81 Temp. L. Rev. 689, 712-13 (2008). For example, when a prosecutor instructed law enforcement officers to forcibly enter a place of business to make an arrest without a warrant, "[t]hat decision directly caused the violation of [the owner]'s Fourth Amendment rights." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 484 (1986).

In short, the plain text of Section 1983 mandates liability for causing deprivations of constitutional rights, whether directly or indirectly. *Cf. Malley*, 475 U.S. at 337 (rejecting immunity from claim that "the officer caused the plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit which failed to establish probable cause").

That understanding accords with the statute's common law backdrop, which similarly imposed liability for injuries based on indirect causation. *See, e.g.*, Thomas M. Cooley, *A Treatise on the Law of Torts* 70 (1879) ("If the original act was wrongful, and would naturally, according to the ordinary course of events, prove injurious . . . and does actually result in injury through the intervention of other causes which are not wrongful, the injury shall be referred to the wrongful cause, passing by those which were innocent."). As this Court has repeatedly held, Section 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Malley*, 475 U.S. at 344 n.7 (quoting *Monroe v. Pape*, 365 U.S. 167, 187 (1961)). And because "the common law recognized the causal link between the submission of a complaint and an ensuing arrest," this Court "read[s] § 1983 as recognizing the same causal link." *Id.*

In sum, the text of Section 1983 dictates that when a state or local officer "causes [a person] to be subjected" to the deprivation of a constitutional right, that officer "shall be liable to the party injured." 42 U.S.C. § 1983.

B. When an Officer's Baseless Charges Result in a Search or Seizure that Probable Cause Does Not Support, the Officer Has Caused a Deprivation of a Person's Fourth Amendment Rights.

"The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause." *Manuel*, 580 U.S. at 367. That includes both the initial act of arresting someone and any continuing detention pending trial. *Id.* at 369; *see Gerstein*, 420 U.S. at 123. Likewise, the Amendment generally forbids searching premises and seizing property

without probable cause. *Bailey v. United States*, 568 U.S. 186, 192 (2013).

For searches and seizures conducted under a warrant, the constitutional text makes these requirements explicit. "[I]t is the command of the Fourth Amendment that no warrants for either searches or arrests shall issue except 'upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'" *Henry v. United States*, 361 U.S. 98, 100 (1959) (quoting U.S. Const. amend. IV). Outside of the warrant context, the requirement of probable cause rests on a historical tradition informing the meaning of "unreasonable," *see Bailey*, 568 U.S. at 192-93, and on a recognition that "the definition of 'reasonableness' turns, at least in part, on the more specific commands of the warrant clause," *United States v. U.S. Dist. Ct.*, 407 U.S. 297, 315 (1972).

When officers wish to conduct a search or seizure or to continue detaining an arrestee, "[p]rior review by a neutral and detached magistrate is the time-tested means of effectuating Fourth Amendment rights." *Id.* at 318. To make this safeguard meaningful, the Fourth Amendment demands a "reliable" determination of probable cause. *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (quoting *Gerstein*, 420 U.S. at 125). False accusations cannot satisfy this standard, even if they succeed in deceiving the magistrate to whom they are presented. Instead, "when the Fourth Amendment demands a factual showing sufficient to comprise 'probable cause,' the obvious assumption is that there will be a *truthful* showing," meaning that "the information put forth is believed or appropriately accepted by the affiant as true." *Franks*, 438 U.S. at 164-65.

The rule that only truthful information can support a finding of probable cause is thus central to the Fourth Amendment's operation—it "ensures that the inferences to support a search [or seizure] are 'drawn by a neutral and detached magistrate instead of being judged by the officer.'" *Riley v. California*, 573 U.S. 373, 382 (2014) (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)). After all, the reason "that a warrant affidavit must set forth particular facts and circumstances underlying the existence of probable cause" is "to allow the magistrate to make an *independent* evaluation of the matter," *Franks*, 438 U.S. at 165 (emphasis added), and thus "to assess the weight and credibility of the information which the complaining officer adduces as probable cause," *Wong Sun v. United States*, 371 U.S. 471, 481-82 (1963). This protection would become "a nullity" if "a police officer was able to use deliberately falsified allegations to demonstrate probable cause." *Franks*, 438 U.S. at 168.

In short, "a pretrial restraint on liberty is unlawful unless a judge . . . first makes a reliable finding of probable cause," *Manuel*, 580 U.S. at 365, and findings that rest on baseless accusations are unreliable. In those situations, "a form of legal process [has] resulted in pretrial detention unsupported by probable cause," in violation of the Fourth Amendment. *Id.* at 367. So too when groundless claims form the basis for an arrest warrant. *See Malley*, 475 U.S. at 337.

Section 1983, in turn, imposes liability when an officer "subjects, or causes to be subjected" any person to the deprivation of any constitutional right. 42 U.S.C. § 1983; *see supra* Part I.A.

Thus, when police officers file charges against someone based on a false account of their actions, and that person is "seized as a result," the victim has a Fourth Amendment claim for "unreasonable seizure

pursuant to legal process." *Thompson*, 596 U.S. at 42. That result flows directly from the text of Section 1983 and the Fourth Amendment rights it upholds. Officers who cause a person to be searched or seized pursuant to legal process but without probable cause are liable to that person under Section 1983.

C. Baseless Charges Can Cause Deprivations of Fourth Amendment Rights Even When Combined with Legitimate Charges.

Consistent with the above, this Court has established that Section 1983 imposes liability on officers who file groundless charges when "the malicious prosecution resulted in a seizure." *Thompson*, 596 U.S. at 43 n.2.

Making that showing is fairly simple when *all* of the charges that resulted in a seizure lacked probable cause. For example, if "a judge's probable-cause determination is predicated *solely* on a police officer's false statements," that officer has caused the arrestee to be "confined without constitutionally adequate justification." *Manuel*, 580 U.S. at 367 (emphasis added). Or if police officers file a criminal complaint relying *entirely* on fabricated allegations, and the suspect "remained in custody for two days" as a result, those officers have likewise caused a seizure without probable cause. *Thompson*, 596 U.S. at 40. So too if a court issues an arrest warrant based on a criminal information containing *only* groundless charges, leading to that person's arrest. *Albright v. Oliver*, 510 U.S. 266, 268 (1994) (plurality opinion).

But an officer's baseless charges can deprive victims of their Fourth Amendment rights even when combined with charges that are supported by probable cause.

In the context of a search warrant, for instance, the allegations in the warrant affidavit will determine which of a person's papers and effects the government may seize. Probable cause for "retaining stolen property," Pet. App. 1a, will not necessarily justify seizing the same items as probable cause for "a licensing violation," *id.*, much less the same items as probable cause for a felony count of "money laundering," *id.*

This case is a good example. Based on Officer Evanoff's sworn claims that Chiaverini bought the jewelry at issue "while suspecting that it was stolen," and that he was knowingly "operating without a valid license," the police seized not only "the ring and earring in question" but also "documents, computers, and other jewelry." Pet. App. 5a-6a, 25a. Later, a detective "requested search warrants to investigate the contents of the seized computers." *Id.* at 25a. If any of Chiaverini's papers and effects were seized as a result of the felony money-laundering charge and could not have been seized based on the other two charges alone, then Evanoff's decision to bring this groundless charge caused those papers and effects to be seized without probable cause—violating Chiaverini's rights under the Fourth Amendment.

Adding meritless charges to defensible ones can also determine whether a suspect is arrested and jailed. *See Williams*, 965 F.3d at 1161 ("The charges that support a defendant's pretrial detention . . . meaningfully affect the existence and duration of that seizure."). Here, by all appearances, the decision to issue an arrest warrant hinged on the inclusion of the felony money-laundering charge. *See* J.A. 16 (stating that "[a] warrant is being requested due to this charge being a Felony of Third (3rd) degree"). If the officers had instead charged Chiaverini only with the offenses for which they had probable cause—the two

misdemeanors—he would not have been subjected to an arrest, the "quintessential 'seizure of the person.'" *Torres v. Madrid*, 592 U.S. 306, 311 (2021) (quoting *California v. Hodari D.*, 499 U.S. 621, 624 (1991)).

Groundless charges and false allegations can also affect whether bail is offered and thus determine whether a person is jailed after arrest. *Cf. Ex parte Bollman*, 8 U.S. 75, 130 (1807) ("Although in making a commitment the magistrate does not decide on the guilt of the prisoner, yet he does decide on the probable cause, and a long and painful imprisonment may be the consequence of his decision."). A serious charge will, at least in some cases, result in bail being denied where the accompanying lesser charges would not have. If that serious charge is groundless, the "ensuing pretrial detention" it produces, *Manuel*, 580 U.S. at 368, does not comport with the Fourth Amendment—regardless of whether probable cause supports the other, lesser charges. *Cf.* Pet. Br. 9 (stating that in the preliminary hearing where a judge found probable cause for the money-laundering felony, Respondent Evanoff "repeated the lie that Mr. Chiaverini had confessed to suspecting the property was stolen at the time he purchased it").

Likewise, baseless charges can lengthen a person's pretrial detention. In cases where bail is made available, the gravity of the charges will affect the bail amount. Serious but meritless charges can result in bail being set above the defendant's means. By extending the duration of that person's detention beyond what legitimate charges alone would have occasioned, groundless charges can thus result in a period of seizure "unsupported by probable cause." *Manuel*, 580 U.S. at 366; *see Kelly v. Curtis*, 21 F.3d 1544, 1557 (11th Cir. 1994) (plaintiff charged with two counts, one of which was allegedly baseless, could prevail by

showing that "if the [illegitimate] charge had been dismissed earlier, his bail would have been reduced to an amount he could have posted").

Even if defendants are never jailed, a groundless charge can lead courts to impose restrictive conditions on their freedom pending trial that qualify as Fourth Amendment seizures and therefore demand a showing of probable cause. "There are many kinds of pretrial release and many degrees of conditional liberty," but a "reliable determination of probable cause [is] a condition for *any significant pretrial restraint of liberty*." *Gerstein*, 420 U.S. at 125 & n.26 (emphasis added); *see Manuel*, 580 U.S. at 366 (the Fourth Amendment governs not only "pretrial detention" but also comparable "deprivations of liberty . . . that go hand in hand with criminal prosecutions" (quoting *Albright*, 510 U.S. at 274)). Unfounded charges can lead a court to impose pretrial liberty restrictions where the remaining valid charges alone would not have. *Cf.* Pet. Br. 9 (noting that after Chiaverini was released from jail, he was subjected to pretrial conditions while the prosecution continued).

In all these ways, and likely others, false accusations and groundless charges can cause a deprivation of a person's Fourth Amendment rights even when combined with charges that probable cause supports. The only difference between these scenarios and one in which *all* the charges are false is that here the victims may find it more challenging to show a causal link between the baseless charge and the deprivation of their rights. But that is no reason to prevent them from attempting to make that showing.

Indeed, it is unclear what authority could empower a court to do so. Although courts must flesh out the elements and associated rules of a Section 1983 damages action, *Manuel*, 580 U.S. at 370, Congress

left no gaps to fill on this issue: Under the Fourth Amendment, people who are seized without probable cause pursuant to legal process have been deprived of their constitutional rights. And Section 1983 dictates that an officer who "causes [a victim] to be subjected" to that deprivation "shall be liable to the party injured." 42 U.S.C. § 1983.

The Sixth Circuit's "any crime" rule is inconsistent with this mandate. By foreclosing liability whenever "probable cause did exist for at least one of the charges," Pet. App. 10a, this categorical rule short-circuits any inquiry into the effect of an officer's false charges, even when those charges undeniably caused the deprivation of a person's Fourth Amendment rights. That blanket exemption from liability cannot be squared with the text of Section 1983.

II. The Validity of Warrantless Arrests Supported by Probable Cause for Only One Offense Does Not Entitle Officers to Make Baseless Charges When Instigating Legal Process.

The Sixth Circuit rests its position on a flawed comparison with the standards governing warrantless arrests. But this comparison does not withstand scrutiny.

Police officers may arrest people without a warrant if there is probable cause to believe they committed a crime. *Atwater*, 532 U.S. at 354. That remains true even if the officers believe (or say) that a different crime—one *not* supported by probable cause—is the basis for the arrest. As long as the facts known to the officer support probable cause for some offense, even if it was not the one the officer mentioned at the time or was thinking of, the arrest is reasonable under the Fourth Amendment. *Devenpeck*, 543 U.S. at 155.

According to the Sixth Circuit, "[t]he same rules apply here." *Howse*, 953 F.3d at 409. And so, the court reasoned, a person seized under the authority of legal process is not deprived of any Fourth Amendment rights if probable cause supports "at least one of the charges," Pet. App. 10a, regardless of whether the other, baseless charges actually caused the seizure or expanded its scope.

This Court has never adopted such a rule. Nor should it. None of the rationales for the warrantless arrest rule translates to the context of police officers filing groundless charges or making false allegations while instigating legal process.

First, the main reason that warrantless arrests supported by probable cause for a single offense do not offend the Fourth Amendment, even if the arresting officer had another offense in mind, is that the Amendment "regulates conduct rather than thoughts." *Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011) (citing *Bond v. United States*, 529 U.S. 334, 338 n.2 (2000)). Its reasonableness standard "allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Whren*, 517 U.S. at 814. And because "the actual motivations of individual officers" are irrelevant, *id.* at 813, so too are the crimes they have in mind when making an arrest, *Devenpeck*, 543 U.S. at 153, and the crimes they happen to mention if they "inform a person of the reason for his arrest," *id.* at 155. Likewise, an arresting officer's understanding (or misunderstanding) of the law or the facts is not pertinent, so long as the officer's outward actions are "*objectively* reasonable." *Heien*, 574 U.S. at 66. In all these ways, the Amendment imposes "objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton*, 496 U.S. at 138.

But holding officers accountable for the results of their groundless charges and false allegations does not require probing their subjective intent. Regardless of what was going through an officer's mind, what matters is whether the officer's baseless charge caused a search or seizure whose existence, scope, or duration was not justified by the other charges that probable cause supported. *See supra* Part I. This analysis rests on an objective appraisal of "the facts known to the . . . officer at the time," *Devenpeck*, 543 U.S. at 152, just as with warrantless arrests. Thus, in a claim for unreasonable search or seizure pursuant to legal process, the focus is on the objective, real-world effects of an officer's accusations. And that holds true whether *all* of the officer's charges were unfounded or only *some* of them.

Second, the forgiving standards that govern warrantless arrests are reasonable precisely because legal process—with its attendant safeguards—serves as a backstop, protecting arrestees from any long-term detention based on a police officer's judgment alone. Unlike seizures pursuant to legal process, a warrantless arrest is capable of inflicting only a temporary intrusion on an arrestee's freedom: "persons arrested without a warrant must promptly be brought before a neutral magistrate for a judicial determination of probable cause." *Cnty. of Riverside*, 500 U.S. at 53 (citing *Gerstein*, 420 U.S. at 114). That safeguard has long gone hand-in-hand with officers' warrantless arrest authority. *See* 4 William Blackstone, *Commentaries on the Laws of England* 292 (1791) (officers who arrest a lawbreaker without a warrant must "carry him before a justice of the peace"); *Cnty. of Riverside*, 500 U.S. at 60-62 (Scalia, J., dissenting) (surveying traditional rules on "one of the most important" common law protections, "that a person arresting a suspect without a

warrant must deliver the arrestee to a magistrate 'as soon as he reasonably can'" (quoting 2 Matthew Hale, *Pleas of the Crown* 95 n.13 (1st Am. ed. 1847))).

Central to this post-arrest safeguard, of course, is a neutral magistrate's assessment of probable cause, based on "a *truthful* showing" of the facts. *Franks*, 438 U.S. at 165. It would be perverse to allow police officers to undermine the integrity of that process by infecting it with false allegations, free from liability, simply because the law refuses to probe their reasons for making the initial, temporary arrest. Accordingly, when it comes to instigating legal process, this Court has rejected efforts to insulate police conduct "from any scrutiny whatsoever in a § 1983 damages action." *Malley*, 475 U.S. at 344.

Third, the Fourth Amendment's generous rules for warrantless arrests reflect a common law heritage that has long provided wide leeway for officers to keep the peace and prevent violence by immediately taking offenders into custody. That tradition does not support a rule that would allow police officers to pervert the integrity of legal process by lying to judicial officers or otherwise advancing groundless accusations.

"The foundation of the whole system of criminal procedure was the prerogative of keeping the peace," 1 James Fitzjames Stephen, *A History of the Criminal Law of England* 184-85 (1883), which was exercised by peace officers who "had the duty (not merely the permission) by law to arrest felons, and suspected felons," Wilgus, *supra*, at 560. Those peace officers "were subject to severe penalties for neglecting such duties, and were therefore, specially protected in the lawful execution of their powers." *Id.* (footnote omitted).

Still today, "[t]he role of a peace officer includes preventing violence and restoring order." *Brigham*

City, 547 U.S. at 406. And still today, the law exempts their subjective decision-making from scrutiny in deference to the challenges of fulfilling that role. *See, e.g.*, *Atwater*, 532 U.S. at 348 ("we cannot expect every police officer to know the details of frequently complex penalty schemes"); *Berkemer v. McCarty*, 468 U.S. 420, 431 n.13 (1984) ("officers in the field frequently have neither the time nor the competence to determine the severity of the offense for which they are considering arresting a person" (quotation marks omitted)). Thus, when police officers in the field have probable cause for at least one crime, even if identified only in hindsight, "the balancing of private and public interests is not in doubt," and "[t]he arrest is constitutionally reasonable." *Virginia v. Moore*, 553 U.S. 164, 171 (2008).

In contrast, there is no venerable tradition of shielding law enforcement officers, or anyone else, from accountability when they file groundless charges or make false accusations. Indeed, from earliest times, a complainant who raised the hue and cry on an innocent person was "severely punishable by fine and imprisonment, if the information be false." 2 Matthew Hale, *History of the Pleas of the Crown* 102 (1736). In more recent centuries, the torts of conspiracy, malicious prosecution, and abuse of process have sought to deter corruptions of the legal process achieved through unfounded or pretextual charges. No historical justification exists, therefore, for throwing a blanket of immunity over police officers when they set the machinery of legal process in motion by fabricating charges, simply because probable cause supports another charge they brought at the same time.

Fourth, the traditional standards for warrantless arrests also reflect practical considerations that militate against second-guessing the actions of arresting officers. Those considerations underlie the rule that

probable cause for any offense, no matter how minor, and even when identified only in retrospect, shields an arrest from further inquiry under the Fourth Amendment. But they do not justify turning a blind eye when officers introduce falsehoods into the legal process.

"Officers in the field must make factual assessments on the fly," and they often "suddenly confront" situations in which they also "have to make a quick decision on the law." *Heien*, 574 U.S. at 66. "In deciding whether to arrest," therefore, "police officers often make split-second judgments." *Lozman*, 138 S. Ct. at 1953. This is "a dangerous task that requires making quick decisions in 'circumstances that are tense, uncertain, and rapidly evolving.'" *Nieves*, 139 S. Ct. at 1725 (quoting *Graham*, 490 U.S. at 397). "To ensure that officers may go about their work without undue apprehension of being sued," *id.*, this Court permits arrests based on probable cause, objectively viewed, for even a minor offense—recognizing that an officer's "discretionary judgment in the field" about whether to make an arrest "has to be applied on the spur (and in the heat) of the moment." *Atwater*, 532 U.S. at 347.

The same imperatives do not arise when officers make baseless claims in the course of filing charges, submitting warrant affidavits, or testifying in preliminary hearings. In those situations, there is no reason the existence of probable cause for one offense should foreclose inquiry into the effects of the officer's other, baseless claims. *See Malley*, 475 U.S. at 344.

Fifth, and finally, a stricter approach to warrantless arrests would create administrability problems that a charge-specific approach to legal-process claims does not. Arrests in the field can be made by multiple officers working in tandem who may have different personal motives or understandings of the basis for the arrest. *See Devenpeck*, 543 U.S. at 155-56 (one officer

"was motivated entirely by the suspicion that [the suspect] was impersonating a police officer," while the other cited a privacy statute in support of the arrest). In that scenario, it may be impossible to say which officer's motive or understanding caused the arrest.

But this difficulty is not presented in cases of search or seizure pursuant to legal process, because there is only one decisionmaker: the judge who authorizes the warrant or pretrial detention. Analysis can therefore focus on "the information before the judicial officer that issued the legal process," *Williams*, 965 F.3d at 1158, and on whether that information—stripped of any baseless charges—would have justified the search or seizure that ensued. Courts are eminently capable of undertaking this analysis. When criminal defendants challenge the veracity of a warrant affidavit, courts have long assessed whether the "allegedly false statement [was] necessary to the finding of probable cause." *Franks*, 438 U.S. at 156. In a damages action, courts can similarly evaluate whether false charges caused a search or seizure that legitimate charges alone would not have produced.

* * *

In sum, an arrestee is not deprived of any Fourth Amendment rights if probable cause for at least one offense supported the decision to make a warrantless arrest. But none of the historical or practical considerations supporting that rule extends to the context of searches and seizures carried out pursuant to legal process. When an officer's baseless charges cause a search or seizure that would not have resulted from legitimate charges supported by probable cause, the officer has caused the deprivation of a person's Fourth Amendment rights. The text of Section 1983 demands that such officers "shall be liable to the party injured." 42 U.S.C. § 1983.

CONCLUSION

For the foregoing reasons, the judgment of the Sixth Circuit should be reversed.

Respectfully submitted,

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
BRIAN R. FRAZELLE
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

February 7, 2024 * Counsel of Record