

1 IN THE SUPREME COURT OF THE UNITED STATES
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3 JASCHA CHIAVERINI, ET AL.,)
4 Petitioners,)
5 v.) No. 23-50
6 CITY OF NAPOLEON, OHIO, ET AL.,)
7 Respondents.)
8 - - - - -

9
10 Washington, D.C.
11 Monday, April 15, 2024

12
13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 11:45 a.m.

16
17 APPEARANCES:

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19 of the Petitioners.

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23 vacatur.

24 MEGAN M. WOLD, ESQUIRE, Washington, D.C.; on behalf of
25 the Respondents.

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P R O C E E D I N G S

(11:45 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 23-50, Chiaverini versus the City of Napoleon.

Ms. Anand.

ORAL ARGUMENT OF EASHA ANAND
ON BEHALF OF THE PETITIONERS

MS. ANAND: Mr. Chief Justice, and may it please the Court:

Everyone in this case now agrees that as the lack of probable cause element of a malicious prosecution claim under the Fourth Amendment, the charge-specific rule governs. That is, a plaintiff may make out a malicious prosecution claim by proving that one charge is not supported by probable cause, even if other charges are, provided, of course, that the plaintiff also makes out the other elements of the claim.

As no one appears to dispute, that charge-specific rule is supported, as Chief Judge Pryor put the point, by both centuries of common law and by bedrock Fourth Amendment principles. That's all this Court needs to

1 address to resolve this case.

2 Respondents urge this Court to go
3 beyond that ruling to weigh in on a series of
4 open questions about a different element of the
5 Fourth Amendment malicious prosecution claim,
6 the resulted in a seizure element.

7 No one disputes Mr. Chiaverini is
8 going to have to prove that on remand. But
9 weighing in on the kind of precise contours of
10 that question would require this Court to go
11 beyond the question presented to address issues
12 not aired at all below, that haven't percolated
13 in the courts of appeal, and to do so on the
14 sort of briefing that doesn't have the kinds of
15 text, history, common law arguments that you'd
16 expect before weighing in on an element of a
17 constitutional tort.

18 As in Thompson, this case involves a
19 narrow dispute over one element of a Fourth
20 Amendment malicious prosecution claim. This
21 Court should simply hold that a plaintiff can
22 make out a claim by showing that at least one
23 charge lacks probable cause, again, assuming
24 they can make out the other elements of the
25 claim, and remand for consideration of

1 everything else.

2 I welcome this Court's questions.

3 CHIEF JUSTICE ROBERTS: Well, what do
4 you have to show, if anything, about causation?
5 If you have a situation where you've got three
6 crime -- three allegations and two are
7 concededly valid and they justify the seizure,
8 you still get relief? Don't you have to show
9 some kind of causation?

10 MS. ANAND: Yes, Your Honor. So we
11 agree there has to be some kind of causation.
12 We think the formulation in Thompson is correct.
13 You have to show that the malicious prosecution
14 resulted in a seizure.

15 Our position is that if you want to
16 weigh in on precisely what the counterfactual
17 is, the Eleventh Circuit's position is correct,
18 that the correct counterfactual is, could this
19 have been done as a warrantless arrest? The
20 Eleventh Circuit said --

21 CHIEF JUSTICE ROBERTS: What's "it"?

22 MS. ANAND: Could the plaintiff have
23 been seized for this length of time or seized
24 with this length of time based on a warrantless
25 arrest. So the way Thom -- the way the Eleventh

1 Circuit articulates it is, look, this legal
2 process was corrupted, we know this legal
3 process was necessary if the detention is longer
4 than 48 hours, right, that's a Fourth Amendment
5 requirement, you've got to have legal process
6 for a detention that's longer than 48 hours, and
7 so, because this legal process was necessary,
8 what you have to show is you prevail unless this
9 could have been done as a warrantless arrest.

10 CHIEF JUSTICE ROBERTS: Well, I
11 thought the -- the evidence was that the -- the
12 first two of the crimes would certainly support
13 what was done in this case without regard to the
14 third.

15 MS. ANAND: So that's correct, Your
16 Honor. Would support in the sense that a
17 magistrate could constitutionally have signed
18 this arrest warrant. But, in fact, no
19 magistrate did sign this arrest warrant based on
20 just those two charges.

21 So, based on this kind of courts' case
22 law, so, for instance, we cite the Eastern
23 District of Michigan case in our opening brief,
24 where the court says -- that's the case,
25 remember, where the attorney general says, I can

1 sign warrants to authorize wiretaps. This Court
2 says surely, a magistrate would have signed off
3 on these warrants, right? Surely, a magistrate
4 would have caved to the national security
5 concerns and signed these things. Still a
6 Fourth Amendment violation because a magistrate
7 didn't do so.

8 Again, I think this is all beyond the
9 scope of the question presented. And, frankly,
10 because there are indications from precedent and
11 common law to support the Eleventh Circuit's
12 rule, at the very least, this Court shouldn't go
13 any further than it did in Thompson in defining
14 the kind of precise contours of the resulted in
15 a seizure element.

16 JUSTICE SOTOMAYOR: Are you giving up
17 on the SG's position that -- as an alternative
18 to the Eleventh Circuit's view, that if you can
19 show that you were retained for longer or that,
20 as you argued below, I understand, at least in
21 one of your arguments, that you would have never
22 been arrested, you would have been given a
23 summons to appear, as the person who sold you
24 the jewelry was, so you would have never been in
25 jail, that that would be enough? Are you giving

1 up on that?

2 MS. ANAND: No, Your Honor. So we
3 think -- we don't have much of a dog in this
4 fight. We think that we win under the Eleventh
5 Circuit's rule, we win under the SG's rule. As
6 between the two, we think the Eleventh Circuit's
7 rule is more consistent with this Court's
8 precedent and with the common law.

9 But, again, we think that you should
10 make that decision on the basis of some briefing
11 about the text of the Fourth Amendment,
12 Founding-era practice, common law, none of which
13 you have before you.

14 JUSTICE SOTOMAYOR: We shouldn't reach
15 it, is what you're saying?

16 MS. ANAND: Yes, that's right.

17 JUSTICE ALITO: Well, what if I think
18 it is subsumed within the question presented?
19 What is wrong with the logic of the Solicitor
20 General's position?

21 Under Thompson, an element of the
22 claim at issue is a seizure, and that's
23 necessary to bring this within the Fourth
24 Amendment. So your client was seized when he
25 was arrested, and under Thompson, he experienced

1 a continuing seizure during the period when he
2 was in jail.

3 And so the question is whether either
4 his arrest or the length of his detention was
5 the result of the charge -- the so-called
6 money-laundering charge -- this -- I don't know
7 why this statute is called money laundering
8 because it doesn't seem to have anything to do
9 with money laundering. But what's wrong with
10 that logic? It seems to follow step by step.

11 MS. ANAND: So, again, Your Honor, I
12 think we win under that test, right? So the
13 police officer's affidavit in this case says we
14 are seeking a warrant because there is a felony
15 of the third degree. So I don't want to push
16 too hard on this. You know, I think that that
17 -- that's a totally acceptable result from our
18 point of view.

19 The reason that we think that it's not
20 -- that is not the best way to interpret that
21 "resulted in a seizure" language is twofold.
22 The first is what Williams explains is that the
23 entire point of requiring a neutral and detached
24 magistrate to weigh in is to give that neutral
25 party the opportunity to weigh the law

1 enforcement interests against the privacy
2 interests.

3 And so doing this sort of
4 counterfactual predicting what the magistrate
5 would have done kind of undermines that goal.
6 And so I think the Williams rule, which
7 basically says, look, if you could have done
8 this as a warrantless arrest, right, if you
9 didn't need the warrant, you didn't need to have
10 a Gerstein hearing, you know, and you only
11 detained him for a few hours, then it's fine if
12 the warrant process was totally corrupt. That
13 was just something bonus you were doing.

14 But where the warrant was necessary to
15 the detention, you could not have detained him
16 for four days without a warrant, then we're not
17 going to kind of peer in and try to figure out
18 would the magistrate have reached this exact
19 same result if it knew the actual charges
20 against.

21 JUSTICE ALITO: What if the -- the
22 other charges on which there were -- there was
23 probable cause were also felonies and maybe even
24 more serious felonies than the so-called
25 money-laundering charge? Would you make the

1 same argument?

2 MS. ANAND: So I don't think we'd be
3 able to make the same argument about why we win
4 under the United States' rule. But I think that
5 the -- I think that the Eleventh Circuit --

6 JUSTICE ALITO: But you think you
7 should win anyway?

8 MS. ANAND: I think under the Eleventh
9 Circuit's rule that the defense holds. And you
10 can imagine, right --

11 JUSTICE ALITO: Why?

12 MS. ANAND: -- I mean, let's say some
13 of them are --

14 JUSTICE ALITO: I mean, why? What if
15 the -- one of the charges is murder and there's
16 probable cause to support the murder charge and
17 then they throw in this money-laundering charge?
18 Or let's -- let's say it's an assault, and let's
19 say there's a video when the -- the -- the
20 legitimate owners of the ring came to the store
21 and they were causing a fuss and your client
22 pulled out a gun and he -- he said, get out of
23 my store, I'm going to blow your head off. So
24 he's charged with an assault as well as money
25 laundering. The same result?

1 MS. ANAND: So just as a preface, I
2 think that this is the reason you should let
3 these rules percolate, right? We should make --
4 we should figure out how these rules actually
5 play out in practice.

6 The reason I think it's the same
7 result, what -- what the Williams Court would
8 say, is there's a reason police officers lied
9 about this charge, right, and so we're going to
10 assume that they lied about it in part because
11 they needed it to be able to detain the person.

12 JUSTICE ALITO: Well, that -- I mean,
13 you may be -- this is -- the facts of this case
14 are -- are disturbing and you may well win. But
15 we're talking about what the general rule should
16 be.

17 So your rule would apply in a case
18 where the police officers act in good faith, but
19 they just don't have probable cause? It's not
20 limited to a case in which there was perjury or
21 the false -- or the -- the manufacture of false
22 evidence, right? Your rule is not limited in
23 that way?

24 MS. ANAND: So that's correct, but we
25 think another element, right, the mens rea

1 element, which this Court hasn't weighed in on
2 yet and on which there's a circuit split, is the
3 proper element to do the filtering that Your
4 Honor's talking about.

5 And the reason why I think the more
6 serious/less serious charge rule -- so, to be
7 clear, I think that's a rule we could certainly
8 live with. We win under that rule. There's
9 some evidence in the common law, the Newell
10 Treatise, for instance, seems to suggest that
11 the charge lacking probable cause should be the
12 more serious charge, so we think there's some
13 warrant for it, but the reason we don't think
14 it's the best option is because you can imagine
15 a situation, for instance, where the felony
16 charge is a white-collar offense on which, you
17 know, no one's ever going to be detained. The
18 misdemeanor is a resisting arrest charge that --
19 and the -- the magistrate says, you know, that
20 indicates some kind of dangerousness, that's the
21 reason I'm going to detain him.

22 And so I don't think you can have a
23 kind of categorical more serious/less serious
24 charge rule. And, again, I think what the
25 Eleventh Circuit's rule does is it says: Look,

1 at the point where this legal process has been
2 tainted, remember, this Court's cases like
3 Gerstein and County of Riverside say, if there
4 was no legal process, right, if there's no
5 arrest or Gerstein hearing, we actually don't
6 care if there's all the probable cause in the
7 world.

8 JUSTICE ALITO: Well, you're talking
9 about being tainted. Now you're -- then you're
10 back to the idea that Officer Everhard --
11 Evanoff lied, right? But what if he hadn't? I
12 mean, what if there's just a -- you know,
13 there's no indication that there was a -- that
14 there's a lie, there just wasn't probable cause.

15 MS. ANAND: Sure, Your Honor. So I
16 think, in that circumstance, first, probable
17 cause, remember, is a low bar, right? It's just
18 a reasonable belief.

19 And, second, qualified immunity will
20 almost certainly protect the officer in a
21 situation where there's no probable cause, but
22 even the judge is confused and thinks there's
23 probable cause.

24 JUSTICE ALITO: Yeah. Well, it'll
25 protect the officer, but it won't protect the

1 municipality.

2 MS. ANAND: That's true, Your Honor.
3 But I'm having trouble thinking of a situation
4 where a judge signs this thing, right, signs the
5 arrest warrant, signs off on the Gerstein
6 hearing knowing all the facts the police officer
7 accurately reported, and yet there's not even
8 probable cause.

9 JUSTICE BARRETT: Ms. Anand, can I ask
10 you a question about the Eleventh Circuit rule?
11 I just want to make sure I'm understanding it.

12 I had thought that one distinction --
13 and maybe it doesn't matter, and so you can --
14 you can tell me if it does -- is that in
15 Williams, it was actually the -- the crime for
16 which he was being detained and for which
17 probable cause had been manufactured was the
18 tainted crime, and the -- the other crime for
19 which there would have been probable cause if a
20 warrant had been pursued was the one that had
21 not had the adequate process.

22 And that's a different situation than
23 we have here, right, because, here, there was a
24 valid warrant for the misdemeanors, right? It
25 was just the money laundering.

1 And so you actually had that process
2 observed for the two misdemeanors in a way that
3 Williams, it was kind of like, it was blank,
4 right, on -- on the other side, and so there was
5 no valid process holding him. Does that -- why
6 does that not matter? I gather you think it
7 doesn't.

8 MS. ANAND: So I don't think it does
9 because Williams is very clear. This is at 1165
10 that Williams will prevail if he establishes a
11 genuine dispute about whether at least one of
12 the two charges against him for attempted
13 murder, right, so, remember, there's attempted
14 murder as to two different officers.

15 JUSTICE BARRETT: Mm-hmm.

16 MS. ANAND: The holding is he only has
17 to prove that one of those lack probable cause.
18 This is at 1165.

19 So it's true that in Williams, there
20 was also this uncharged offense, but Williams
21 just says you have to prove one of the two
22 charges in the actual arrest warrant was bogus.

23 JUSTICE BARRETT: Okay. And then I
24 want to understand a distinction or that I think
25 is a distinction between your position and, say,

1 the SG's.

2 Do you agree that a seizure -- that
3 you have to show a seizure for purposes of
4 making out your claim?

5 MS. ANAND: So we -- we agree that you
6 could just continue to reiterate the Thompson
7 language, which is "resulted in a seizure." We
8 don't think this Court should use this case to
9 go further and say that there cannot be a
10 malicious prosecution claim predicated on, for
11 instance, the unreasonable search clause or the
12 warrant clause. We don't have a -- we don't
13 think that this is the case that tees that up.

14 JUSTICE BARRETT: Well, the search
15 clause, sure, but, I mean, is it going farther?
16 We've said that before. I mean, you have to
17 make out a Fourth Amendment claim. And, here,
18 your claim is for seizure of the person.

19 You didn't make, I don't think, a
20 separate claim about the seizure of his effects
21 being unreasonable?

22 MS. ANAND: So -- so, below, we did
23 argue at the seizure of his effects as well as
24 about the unreasonable search. What's come
25 before this Court is --

1 JUSTICE BARRETT: The Court is just
2 this one.

3 MS. ANAND: Yeah. And so --

4 JUSTICE BARRETT: Yeah.

5 MS. ANAND: -- all we're saying is
6 that you shouldn't -- and I think we agree with
7 the SG on this.

8 JUSTICE BARRETT: Okay.

9 MS. ANAND: You shouldn't reach out
10 and affirmatively say there can be no other
11 Fourth Amendment malicious prosecution claim.

12 JUSTICE SOTOMAYOR: Can you -- I'm
13 sorry. Is one of your elements that you have to
14 prove is lack of probable cause with respect to
15 the one crime?

16 MS. ANAND: Mm-hmm.

17 JUSTICE SOTOMAYOR: And that that
18 caused an unreasonable seizure?

19 MS. ANAND: The language in Thompson
20 is, "and the malicious prosecution resulted in a
21 seizure," which we think is consistent with any
22 of the rules of authority.

23 JUSTICE SOTOMAYOR: So you're fighting
24 with saying that it caused an unreasonable
25 seizure?

1 MS. ANAND: Yes, with the malicious
2 prosecution caused an unreasonable seizure.

3 JUSTICE SOTOMAYOR: Are you accepting
4 that language or are you fighting that language?

5 MS. ANAND: So I don't mean to
6 quibble. Thompson has resulted --

7 JUSTICE SOTOMAYOR: It is important.

8 MS. ANAND: It is important. So I
9 think the Thompson formulation is correct,
10 "resulted in a seizure." The other elements get
11 you to the unreasonable part.

12 JUSTICE SOTOMAYOR: What -- what are
13 the other elements? If it doesn't cause an
14 unreasonable seizure, how -- you're not
15 making --

16 MS. ANAND: So what's caused the --

17 JUSTICE SOTOMAYOR: Why don't you just
18 list what you think the elements are.

19 MS. ANAND: Right. So the appropriate
20 mens rea, which this Court hasn't resolved;
21 favorable termination; initiation of legal
22 process; lacking probable cause, so that's where
23 the unreasonable part comes in; resulted in a
24 seizure.

25 All we're saying is don't double-count

1 the unreasonable. You don't have to prove
2 something separate from the mens rea plus lack
3 of probable cause.

4 JUSTICE JACKSON: So, Ms. Anand, I
5 have a question about the element that brings us
6 here today --

7 MS. ANAND: Sure.

8 JUSTICE JACKSON: -- which is the
9 initiation of legal process lacking probable
10 cause, right? Am I --

11 MS. ANAND: That's correct, yes.

12 JUSTICE JACKSON: Okay. And that's
13 separate from the causation --

14 MS. ANAND: Exactly.

15 JUSTICE JACKSON: -- that we've been
16 discussing. I guess you're now saying that
17 everybody's on the same page that the Sixth
18 Circuit was wrong about that.

19 MS. ANAND: Yep.

20 JUSTICE JACKSON: Is that -- is that
21 --

22 MS. ANAND: That's correct.

23 JUSTICE JACKSON: Okay. And I -- I'm
24 trying to understand why the Sixth Circuit was
25 wrong, and I think I have a theory, and I'm

1 hoping you can help me to determine whether or
2 not I'm right about this.

3 MS. ANAND: Sure.

4 JUSTICE JACKSON: I'm wondering
5 whether the Sixth Circuit -- whether they were
6 just taking what is a basic principle related to
7 probable cause in another context, the other
8 kind of Fourth Amendment claim that one might
9 bring is the unlawful seizure, false arrest, et
10 cetera.

11 There, you have no probable cause.
12 And we would say that if there are three or four
13 different charges being brought and your claim
14 was unlawful arrest, when you proved lack of
15 probable cause with respect to only one of those
16 three or four charges, we would say: Too bad,
17 you still lose, right? So it's sort of like the
18 same idea that the Sixth Circuit was latching
19 onto because it -- there are cases that say
20 that, but it seems like they're in a different
21 context. They're not malicious prosecution
22 theory. It's the unlawful arrest theory.

23 So it's like probable cause is doing
24 different work depending upon the theory. Am I
25 -- does that make any sense?

1 MS. ANAND: That's exactly right.

2 JUSTICE JACKSON: Okay.

3 MS. ANAND: So that's exactly how the
4 Sixth Circuit justified this rule.

5 JUSTICE JACKSON: Yes.

6 MS. ANAND: It said the same rules
7 apply to false arrest and malicious prosecution.
8 But both at common law and in this Court's
9 Fourth Amendment cases, there has always been a
10 distinction between the warrantless arrest
11 context, where, as Your Honor notes, doesn't
12 matter if the officer had one charge or 10
13 charge or zero charges in mind, what matters is
14 if there's probable cause out there somewhere,
15 and the legal process cases, like Gerstein and
16 Franks and County of Riverside, where you're
17 required to specify the charges, and that's for
18 a couple of good reasons that I'm happy to -- to
19 explain.

20 JUSTICE JACKSON: And, I mean, is one
21 of them because the malicious prosecution
22 context is really about the culpability of the
23 process server? It's about the person who is
24 initiating process maliciously?

25 It's not really about whether you were

1 committing bad behavior, whether you were -- so,
2 in other words, you could have a person who
3 actually is a criminal, right, he's committing
4 crimes, but, here -- for Charges 2, 3, and 4,
5 but if Charge 1, there was no basis for it,
6 baseless, and maliciously added on to the thing,
7 that person would still -- added on to the
8 indictment, that person would still have at
9 least theoretically a claim for malicious
10 prosecution with respect to that charge?

11 MS. ANAND: That's exactly right. And
12 that's reflected, again, in this Court's Fourth
13 Amendment cases. So, to take an extreme
14 example, Gerstein says that if you don't have
15 process, right, no warrant, no hearing. It
16 doesn't matter if you're actually guilty of
17 absolutely everything. It's still a Fourth
18 Amendment violation because we care about the
19 process.

20 The Fourth Amendment says what makes a
21 seizure of any duration reasonable is that
22 someone neutral and detached weighed in and
23 signed off on this. It's not just the police
24 officer's discretion.

25 And what the any-crime rule would do

1 would basically move this back into police
2 officers' discretion if they could just lie to
3 the magistrate about the set of charges they
4 have on that side.

5 JUSTICE JACKSON: So what are we
6 disputing here? Both sides agree that the Sixth
7 Circuit got it wrong. I guess I'm trying to
8 understand why we're continuing on.

9 MS. ANAND: I don't think --

10 JUSTICE JACKSON: Like, what is --
11 what is left of this case if the fundamental
12 issue has been essentially resolved? There's no
13 one -- should we have appointed someone on the
14 other side of the question that was presented
15 here?

16 MS. ANAND: So I don't think so
17 because, you know, I -- I do think Respondents
18 are arguing for an affirmance on a sort of
19 waiver plus this other element theory. I think
20 that this just means it's an easy opinion to
21 write. So just last week, in Sheetz, this Court
22 said, when there's radical agreement that the
23 court below erred in applying a categorical
24 premise, we leave all the kind of additional
25 nuanced arguments for remand. I think this

1 Court should follow the same course here.

2 JUSTICE ALITO: Well, radical
3 agreement is -- is a good thing if -- if it
4 exists, but I'm not quite sure there was --
5 there is radical agreement here. I thought the
6 argument on the other side, which is presented
7 in Respondents' brief and also in one of the
8 amicus briefs, which I -- I don't have with me,
9 is that the Sixth Circuit had a prior decision
10 in which they essentially adopted the Solicitor
11 General's position, and what they did here
12 should be understood in light of that.

13 Isn't that -- isn't that the argument
14 on the other side?

15 MS. ANAND: So I think the other side
16 is making two arguments. One is the one that
17 Your Honor articulated, which is that somehow
18 the lower court secretly was applying a
19 different rule. But, as the United States says
20 at page 23, that description conflicts with the
21 language of the decision below.

22 JUSTICE ALITO: Yeah, okay, so there's
23 a dispute about whether they -- what they did
24 here, whether they were following -- I've
25 forgotten the name of the earlier Sixth Circuit

1 decision.

2 MS. ANAND: Howse. Yeah.

3 JUSTICE ALITO: Okay. Whether they
4 were following that or not. So there's not
5 really radical agreement as much as one might
6 like to have it.

7 MS. ANAND: So I think that there is
8 disagreement at about how the "caused a
9 seizure," "resulted in a seizure" element works
10 in the nuances, right? What counterfactual you
11 run, how exactly -- whether it's the legal
12 process could or the bogus charge would have or
13 the bogus charge could have.

14 But that's a separate element from
15 lack of probable cause. And I think everyone
16 agrees that the decision below, which said,
17 because probable cause existed on at least one
18 charge, his malicious prosecution claim failed,
19 full stop, right? That's the holding of the
20 decision below. Everyone agrees that's not
21 correct. That's not the rule.

22 JUSTICE BARRETT: And just to clarify
23 on the -- the caused the seizure point, your
24 position -- say we don't reach it -- on remand
25 would be it doesn't matter if it actually caused

1 the seizure, it doesn't matter if these
2 misdemeanor offenses would have led to the same
3 amount of the three days in detention? That
4 would be your position, right?

5 MS. ANAND: So I'd articulate it
6 slightly differently.

7 JUSTICE BARRETT: Okay.

8 MS. ANAND: I would say that the --
9 the tainted legal process surely caused the
10 seizure. So, in other words, he could not have
11 been held for four days but for this arrest
12 warrant or some other form of process.

13 JUSTICE BARRETT: And why? Wouldn't
14 -- would three or -- what was it, three days or
15 four days?

16 MS. ANAND: Four days.

17 JUSTICE BARRETT: Four days. Okay.
18 So would four days be an unreasonable length of
19 time for a detention for the two misdemeanors?

20 MS. ANAND: It's not that it would be
21 an unreasonable length of time. It's that
22 Gerstein and County of Riverside say that length
23 of detention must be authorized by a neutral and
24 detached magistrate. And, here, a neutral and
25 detached magistrate didn't say you can detain

1 him or even arrest him for this length of time
2 except for -- you know, without knowing that the
3 felony charge was bogus.

4 JUSTICE BARRETT: So you mean, just to
5 make sure that I understand, it -- it's possible
6 that he could have been held for the four days
7 if the magistrate had only had in front of him
8 the two misdemeanors, but you're saying that the
9 presence of the third necessarily corrupts
10 everything else and so the causation element
11 doesn't run there?

12 MS. ANAND: That's exactly right.
13 And, again, the only published circuit court
14 case analyzing this question came to that
15 result. So, you know, I think, again, this
16 Court should weigh in on that question with the
17 benefit of kind of full briefing, argument, some
18 sort of historical analysis, and we just don't
19 think that's presented here.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Justice Alito?

23 JUSTICE ALITO: Well, just out of
24 curiosity, the four days are Friday to Monday,
25 right? It's over -- it's over the weekend?

1 MS. ANAND: That's correct.

2 JUSTICE ALITO: And what happens in
3 the city of Napoleon -- I looked up how many
4 people there are. It's not a big city, right?

5 MS. ANAND: That's right.

6 JUSTICE ALITO: What happens with
7 people who are arrested on a Friday?

8 MS. ANAND: So, remember, County of
9 Riverside says that a Florida statute that says
10 you can exclude weekends from the two-day
11 calculation is unconstitutional.

12 JUSTICE ALITO: I mean, what -- what
13 happens in -- in that town?

14 MS. ANAND: So --

15 JUSTICE ALITO: All right. Let's --
16 that's -- that's -- it's irrelevant.

17 I am somewhat curious about the --

18 MS. ANAND: Sure.

19 JUSTICE ALITO: -- the facts of this
20 -- this case. This is a crazy little -- crazy
21 little incident. Why didn't your client just
22 give the police officers the ring?

23 MS. ANAND: Well, Your Honor, he asked
24 for the opportunity to consult with counsel
25 because the hold letter was ambiguous, right?

1 It said both hold this as evidence --

2 JUSTICE ALITO: Yeah.

3 MS. ANAND: -- and return it.

4 JUSTICE ALITO: I know. I mean,
5 there's crazy behavior on this -- on both sides,
6 but, look, when the police officers are there
7 and say give the ring to the -- the people who
8 -- you know, why doesn't he just give it to
9 them? He paid \$45 for this, right?

10 MS. ANAND: So, Your Honor --

11 JUSTICE ALITO: What did he think was
12 going to happen? I'm going to be -- something
13 bad is going to happen to me because I've got
14 this ambiguous letter that says hold the ring or
15 give the ring to the -- I forget their names --
16 give the ring to them, something terrible is
17 going to happen to me if I give them this ring
18 when the police are telling me to give them the
19 ring?

20 MS. ANAND: So, Your Honor, maybe that
21 goes to the reason why the Sixth Circuit found
22 probable cause for the retaining stolen property
23 charge, but it has nothing about felony money
24 laundering.

25 JUSTICE ALITO: No, I under --

1 MS. ANAND: And it certainly doesn't

2 --

3 JUSTICE ALITO: -- I -- I understand.

4 And this is not really a money-laundering
5 statute, right?

6 MS. ANAND: That's correct, Your
7 Honor. It's about purchasing with knowledge.
8 And, again, even if Your Honor is correct, and
9 I'd -- you know, I just want to say that the
10 facts aren't quite as Your Honor is suggesting
11 they are, it certainly doesn't justify the
12 police officers going out, doctoring a report,
13 securing an arrest warrant, finding a way to
14 detain him for four days --

15 JUSTICE ALITO: No, no.

16 MS. ANAND: -- seizing his property.

17 JUSTICE ALITO: I -- I'm not getting
18 at -- I'm kidding. I'm just wondering about
19 the --

20 MS. ANAND: Sure.

21 JUSTICE ALITO: -- the facts of this.
22 What -- you said it wasn't as I suggested. What
23 did I suggest that wasn't factually --

24 MS. ANAND: So -- so it wasn't that he
25 refused to give back the jewelry. It's that he

1 asked for time to consult with counsel before he
2 did so.

3 JUSTICE ALITO: Okay.

4 CHIEF JUSTICE ROBERTS: Justice
5 Sotomayor?

6 JUSTICE SOTOMAYOR: Having worked many
7 a Saturday night to arraign people before
8 judges, that's what some jurisdictions do.

9 (Laughter.)

10 CHIEF JUSTICE ROBERTS: Justice Kagan?
11 Justice Gorsuch?

12 JUSTICE GORSUCH: Maybe an
13 idiosyncratic question, but on this causation
14 element, one way I think of it is this, that
15 malicious prosecution at common law was all
16 about protecting the judicial process.

17 MS. ANAND: Mm-hmm.

18 JUSTICE GORSUCH: And so the Eleventh
19 Circuit or your view of the Eleventh Circuit's
20 causation holding makes a great deal of sense in
21 light of that common law background --

22 MS. ANAND: Mm-hmm.

23 JUSTICE GORSUCH: -- that it doesn't
24 matter what actually happened. What mattered
25 was the process was tainted.

1 MS. ANAND: Mm-hmm.

2 JUSTICE GORSUCH: The problem I have
3 is that we've thrown malicious prosecution into
4 the Fourth Amendment context. And a seizure's
5 got to come around someplace in the Fourth
6 Amendment because that's what it says, right?

7 And that's where I struggle on how to
8 put those two things together because, to me, a
9 malicious prosecution claim naturally flows from
10 the Due Process Clause, and it wouldn't require
11 you to show anything other than the process was
12 tainted.

13 MS. ANAND: Right.

14 JUSTICE GORSUCH: So help me out with
15 that. That's not what we've done, okay?

16 MS. ANAND: So that's the first-line
17 answer.

18 JUSTICE GORSUCH: That battle's been
19 lost. I understand that.

20 MS. ANAND: So setting aside --

21 JUSTICE GORSUCH: Yeah.

22 MS. ANAND: -- this Court's cases, I
23 do think that Gerstein and County of Riverside
24 say, as a matter of the Fourth Amendment,
25 process matters, right? So Gerstein says, yes,

1 you can make a warrantless arrest, but you've
2 got to bring the person in front of a magistrate
3 as soon as possible, certainly no longer than 48
4 hours.

5 And Gerstein doesn't say: And it's
6 okay if you actually did the crime, no need to
7 bring them before the magistrate. It wants the
8 process --

9 JUSTICE GORSUCH: See, that --

10 MS. ANAND: -- even if the --

11 JUSTICE GORSUCH: I'm wholly with you
12 on due process, right?

13 MS. ANAND: But -- but Gerstein is a
14 --

15 JUSTICE GORSUCH: As a matter of
16 process.

17 MS. ANAND: So -- but I'll just say
18 Gerstein --

19 JUSTICE GORSUCH: Yeah.

20 MS. ANAND: -- situates that right in
21 the Fourth Amendment.

22 JUSTICE GORSUCH: In the Fourth
23 Amendment. Okay. All right.

24 Let me ask you another --

25 MS. ANAND: Sure.

1 JUSTICE GORSUCH: -- idiosyncratic
2 question.

3 MS. ANAND: Yeah.

4 JUSTICE GORSUCH: So you -- you
5 brought a straight-up malicious prosecution
6 claim under the common law in Count 1, your
7 client did.

8 MS. ANAND: Mm-hmm.

9 JUSTICE GORSUCH: Also brought this --
10 this Fourth Amendment hybrid thing in Count 3, I
11 think it was, and got removed to federal court.

12 MS. ANAND: Mm-hmm.

13 JUSTICE GORSUCH: I -- I don't
14 understand why -- why. Malicious prosecution in
15 state law is a pretty easy tort to prove. Not
16 always, but -- but you might have had a really
17 good shot and got punitive damages and your
18 attorney's fees and everything. Why are we
19 making a federal case out of this?

20 MS. ANAND: Well, Your Honor, again,
21 setting aside this Court's recent cases saying
22 we're entitled to do that --

23 JUSTICE GORSUCH: I -- I -- I -- I'm
24 not questioning them. I'm not questioning them.

25 MS. ANAND: Sure.

1 JUSTICE GORSUCH: I'm just asking
2 purely strategically. I -- I -- I -- I've
3 struggled to understand why some of these cases
4 wind up in federal court when, as an old
5 plaintiffs' lawyer, I might have wanted to bring
6 them in front of a state court.

7 MS. ANAND: To keep them in state
8 court?

9 JUSTICE GORSUCH: Yeah.

10 MS. ANAND: So there's a couple of
11 reasons just speaking at a high level of
12 generality. So many states don't allow
13 malicious prosecution against law enforcement,
14 so, like, California doesn't allow that.

15 In many states, there's a high --
16 there's a heightened mens rea. So, in the Sixth
17 Circuit, the mens rea for the federal malicious
18 prosecution tort is lower than for the state
19 malicious prosecution tort.

20 JUSTICE GORSUCH: Can you tell me a
21 little bit about that? What is that split?

22 MS. ANAND: The -- I can tell you the
23 -- the precise split, which is that the Fourth,
24 Sixth, and D.C. Circuits say that the mens rea
25 element is purely objective. Other circuits

1 have imposed some sort of malice or heightened
2 requirement.

3 JUSTICE GORSUCH: An objective mens
4 rea, okay. Okay. Got it. All right. And did
5 you have anything else you wanted to add? I'm
6 sorry. I interrupted you.

7 MS. ANAND: All I wanted to say on
8 that front is just that, you know, it was our
9 right to bring the Fourth Amendment malicious
10 prosecution case. And that's not just from
11 Thompson and Manuel, where I understand that
12 Your Honor disagrees, but dating back to
13 Gerstein and County of Riverside from the '80s
14 and '90s, saying, and Justice Scalia explains it
15 that, you know, the idea of a reasonable seizure
16 at the time of the founding, what the Framers
17 anticipated was you arrest someone, you bring
18 them before the magistrate right away, that's
19 what constitutes a reasonable seizure. So this
20 is a matter of what is a reasonable seizure, not
21 just as a function of the Due Process Clause.

22 JUSTICE GORSUCH: Thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Kavanaugh?

25 Justice Barrett?

1 Justice Jackson?

2 MS. ANAND: Thank you.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Mr. Suri.

6 ORAL ARGUMENT OF VIVEK SURI
7 FOR THE UNITED STATES, AS AMICUS CURIAE,
8 SUPPORTING VACATUR

9 MR. SURI: Mr. Chief Justice, and may
10 it please the Court:

11 I'd like to address Justice Alito's
12 and Justice Jackson's questions about what
13 exactly everyone is fighting about here today.
14 I think the main disagreement is about how far
15 the Court ought to go in its opinion and what
16 issues it should decide.

17 I understood Petitioner to be saying
18 that the Court should say simply that it is
19 possible to bring a Fourth Amendment malicious
20 prosecution claim even when a valid charge is
21 accompanied by a baseless charge and to stop
22 there.

23 We think it's important for the Court
24 to take one step further and to say that the
25 plaintiff bears the burden of proving that the

1 baseless charge caused an unreasonable seizure.

2 That's an important step to take
3 because, if there's no unreasonable seizure,
4 there's no violation of the Fourth Amendment.
5 But it's also not a significant step to take
6 because you'd just be reaffirming what you've
7 already said in Thompson.

8 Now I understand Respondents to ask
9 the Court to take one step further still and to
10 determine that the seizure in this particular
11 case was reasonable. But we don't think the
12 Court should reach that question because it
13 hasn't been the focus of the briefing and wasn't
14 passed on below.

15 I welcome the Court's questions.

16 JUSTICE SOTOMAYOR: Would your --
17 would your formulation leave open the Eleventh
18 Circuit rationale?

19 MR. SURI: Yes, it would leave open
20 the Eleventh Circuit rationale. We do think
21 that, as Justice Barrett was --

22 JUSTICE SOTOMAYOR: But she fought
23 you -- she fought on that, and she may in -- in
24 reply explain, but --

25 MR. SURI: Yes.

1 JUSTICE SOTOMAYOR: -- why do you
2 think she fought it?

3 MR. SURI: We think that the Eleventh
4 Circuit --

5 JUSTICE SOTOMAYOR: It's an unfair
6 question, but --

7 MR. SURI: We think the Eleventh
8 Circuit rationale makes sense in the context
9 where there is an uncharged crime for which
10 there was probable cause and the police officer
11 wants to defend manufacturing the crime that was
12 charged on the ground that there was also this
13 uncharged crime.

14 We don't think the Eleventh Circuit
15 rationale makes sense in the context where there
16 are multiple charges on which the magistrate did
17 pass and it turns out there was no probable
18 cause for one of them. We don't think the Court
19 needs to get into that issue in order to resolve
20 this case.

21 JUSTICE ALITO: In this case, there is
22 evidence from which one could infer that the
23 magistrate would not have issued an arrest
24 warrant were it not for the felony charge as to
25 which there was not probable cause.

1 But it does strike me that in many
2 other cases, there -- it will be very difficult
3 -- and I don't know how a plaintiff would prove
4 that the -- the charge that -- for which there
5 was no probable cause was the one that resulted
6 in the decision to arrest as opposed to just
7 issue a cite -- a summons.

8 MR. SURI: Justice Alito, I appreciate
9 that it may be difficult for the plaintiff to
10 make that showing, and since it's an element of
11 the claim, the failure to make the showing would
12 mean that the plaintiff would lose.

13 But I could point out a few ways in
14 which a plaintiff might be able to make that
15 showing.

16 First, if there's a bail determination
17 and the -- and the judge sets higher bail
18 because of a felony charge that was added to a
19 misdemeanor charge, but it turns out that the
20 felony charge was fabricated, that might be a
21 circumstance where it's possible to show that
22 the felony charge was the cause of the
23 detention.

24 In addition, state law might provide
25 that certain minor offenses result only in a

1 citation or a summons, but more serious offenses
2 can result in pretrial detention. That's
3 another way in which the plaintiff could make
4 that showing.

5 Ultimately, however, it would depend
6 on the facts and circumstances of the case.

7 JUSTICE ALITO: Presumably, the -- the
8 plaintiff would not be able to depose the
9 magistrate and ask the magistrate what would you
10 have done?

11 MR. SURI: That's right, Justice
12 Alito. We see this kind of inquiry in other
13 areas of criminal procedure. For example, in an
14 ineffective assistance of counsel claim, you ask
15 what would the court have done but for counsel's
16 error, or in a Brady claim, what would the jury
17 have done but for the suppression of particular
18 evidence.

19 And you don't have people deposing the
20 judge or the jury. You just ask objectively
21 what would have happened in those circumstances.
22 We envision a similar inquiry here.

23 JUSTICE BARRETT: So would it be -- so
24 I -- I -- to make sure that I understand your
25 response to Justice Alito, because I was trying

1 to figure out from your brief exactly what your
2 position was and if it was distinct from
3 Respondents'.

4 You see it as kind of a but-for
5 inquiry? Like, you don't see it as asking would
6 it have been reasonable to detain him, say, for
7 four days based on these two misdemeanors. You
8 think the right inquiry is to say would he, in
9 fact, have said four days is sufficient?

10 MR. SURI: Would the magistrate, in
11 fact, have authorized the additional detention.
12 And the bail example might make that
13 particularly clear, what the distinction between
14 us and Respondents would be.

15 We would say, if the magistrate says,
16 I'm issuing this higher bail, which it turns out
17 the defendant can't pay because of the felony
18 charge, that should be enough to show that
19 that's an unreasonable seizure if the felony was
20 a fabricated charge.

21 But I take Respondents to be saying
22 that if the magistrate could have simply denied
23 bail outright as a matter of federal
24 constitutional law, then there's no Fourth
25 Amendment violation.

1 JUSTICE KAGAN: But just to make sure
2 I have this right, you do not think that we
3 should engage on that issue?

4 MR. SURI: Correct.

5 JUSTICE KAGAN: And why not?

6 MR. SURI: It's not been the focus of
7 the briefing and it's not what the court below
8 decided.

9 In addition, the unreasonable seizure
10 question raised -- raises a variety of nuanced
11 issues: for example, distinguishing between a
12 -- a fabricated charge that was presented to the
13 magistrate and a fabricated charge for which
14 there was probable cause that wasn't presented
15 to the magistrate, distinguishing between the
16 first 48 hours after the arrest and the pretrial
17 detention that happens after, between bail and
18 other procedures that might happen during the
19 pretrial procedure. It's just too complicated
20 to get into without briefing.

21 JUSTICE KAGAN: And as to the two
22 questions that you think we -- we should
23 address, the one that Ms. Anand agrees with and
24 then you added that, of course, this would have
25 to cause a seizure, but there's no disagreement

1 on that one either, is there?

2 MR. SURI: I take Petitioner to be
3 suggesting that it's also possible to bring a
4 Fourth Amendment malicious prosecution claim
5 under the warrant clause based on the issuance
6 of a warrant that's never executed and when no
7 seizure was --

8 JUSTICE KAGAN: I see. I -- I took
9 her to say something like we -- we should just
10 leave that to the side. And you think we
11 shouldn't leave that to the side?

12 MR. SURI: I think that the Court
13 should say that to bring this particular type of
14 claim, the Manuel, Thompson, Fourth Amendment
15 malicious prosecution claim, an unreasonable
16 seizure is required. That's in Thompson itself.

17 Of course, there may be a separate
18 claim under the warrant clause that's cognizable
19 under 1983, but that may have a different common
20 law analogue. It may be that the common law
21 analogue for that isn't malicious prosecution.
22 There's a separate tort that I found preparing
23 for this case called malicious procurement of a
24 warrant. Maybe that's the appropriate analogue.

25 That's why we suggested you limit your

1 focus to the seizure provision.

2 JUSTICE JACKSON: But you're ask --
3 you're saying that we should not, just to
4 piggyback on Justice Kagan's last point, that
5 you would have us stop at just saying that for
6 this kind of claim, you have to have caused --
7 the baseless charge has to have caused an
8 unreasonable seizure but not get into how one
9 would go about proving that?

10 MR. SURI: That's correct. That would
11 be enough to resolve the circuit split.

12 JUSTICE KAGAN: I took Ms. Anand to be
13 agreeing with all of that. So maybe I'll just
14 put in a request with Ms. Anand to say on
15 rebuttal whether you agree with all of that.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 counsel.

18 Justice Alito, anything further?

19 Okay. Thank you, counsel.

20 Ms. Wold.

21 ORAL ARGUMENT OF MEGAN M. WOLD

22 ON BEHALF OF THE RESPONDENTS

23 MS. WOLD: Mr. Chief Justice, and may
24 it please the Court:

25 When a plaintiff brings a Section 1983

1 malicious prosecution claim under the Fourth
2 Amendment, the plaintiff must show that the
3 alleged malicious prosecution resulted in the
4 plaintiff's seizure, as this Court held in
5 Thompson.

6 The Sixth Circuit correctly concluded
7 that Petitioner cannot make that showing because
8 probable cause supported his detention.
9 Petitioner was arrested and detained for three
10 days pursuant to a warrant supported by probable
11 cause for two first degree misdemeanor crimes,
12 each carrying a sentence up to six months'
13 imprisonment.

14 In light of that, the presence of a
15 third charge, allegedly lacking probable cause,
16 could not have resulted in Petitioner's
17 detention. This result flows directly from
18 existing Fourth Amendment precedents, including
19 Devenpeck versus Alford and Whren versus United
20 States, which make clear that a seizure does not
21 violate the Fourth Amendment "as long as the
22 circumstances viewed objectively justify that
23 action."

24 Or, as those precedents also state,
25 Fourth Amendment reasonableness allows certain

1 actions to be taken in certain circumstances,
2 whatever the subjective intent an arresting
3 officer is alleged to have had.

4 Moreover, in Baker versus McCollan,
5 the Court concluded that a three-day seizure
6 like Petitioner's did not violate the Fourth
7 Amendment because the arrest and detention was
8 pursuant to a warrant supported by probable
9 cause, even though police in that case had
10 actually detained an innocent individual based
11 on a mistaken identification.

12 Applying the correct Fourth Amendment
13 rule here means setting aside the charge that
14 Petitioner alleges to have lacked probable cause
15 and assessing whether the remaining charges
16 objectively justify his detention. They clearly
17 do, and so I urge the Court to affirm the
18 decision below.

19 And I welcome your questions.

20 CHIEF JUSTICE ROBERTS: What happened
21 to this radical agreement we heard of?

22 (Laughter.)

23 MS. WOLD: It was news to me that
24 there was radical agreement. I think what has
25 happened is that Petitioner has created this

1 any-crime rule that was, in fact, a rule that
2 the Sixth Circuit had not adopted. Under this
3 any-crime strawman rule, it would mean that the
4 presence of one charge supported by probable
5 cause automatically justifies any detention. I
6 don't think that's what the Sixth Circuit
7 thought. That's not what the relevant Sixth
8 Circuit precedent had held that the panel below
9 was applying.

10 And I would point the Court to the
11 decision below at Cert Appendix pages 9a and
12 10a, where the court articulates in a paragraph
13 the standard that it's applying for malicious
14 prosecution, and it says that the success of the
15 malicious prosecution claim depends on whether
16 probable cause supported his detention.

17 And so we need to know what the
18 Petitioner's detention was. And, here, it was
19 this few days' detention pursuant to a warrant
20 supported by probable cause on two charges. And
21 that satisfies Fourth Amendment reasonableness.
22 So there can be no Fourth Amendment malicious
23 prosecution claim.

24 JUSTICE SOTOMAYOR: What do I do with
25 the language of the court that says, moreover,

1 we can affirm the district court's decision if
2 probable cause supports one or more of the three
3 charges?

4 MS. WOLD: I --

5 JUSTICE SOTOMAYOR: That's a -- that's
6 an every crime exception.

7 MS. WOLD: I realize that. I would
8 again point the Court to the paragraph that I
9 referenced because that's where they articulate
10 the standard. And if there's anything that
11 might be somewhat unsatisfactory about the lower
12 court opinion, it's that they are joining
13 together the false arrest, false imprisonment,
14 and malicious prosecution analyses, and I think
15 that may cause some shorthand to appear later in
16 the opinion that gives that impression.

17 But I think it's important to note
18 what --

19 JUSTICE SOTOMAYOR: So do you disagree
20 with the Solicitor General that if -- I don't
21 know how we get to this proof, but assuming it
22 could be made -- that absent the felony charge,
23 no arrest warrant would have issued?

24 MS. WOLD: Oh, no. I absolutely --

25 JUSTICE SOTOMAYOR: That a summons

1 would have issued? Do you think then that it's
2 an unreasonable seizure to have gotten the
3 warrant?

4 MS. WOLD: No, I disagree. And -- and
5 that's not the way Fourth Amendment precedents
6 operate in this area. We look at the detention
7 and we ask whether it is objectively justified.
8 I would point out as well that even on the face
9 of the warrant --

10 JUSTICE SOTOMAYOR: So what makes -- a
11 -- a seizure can be permitted but the detention
12 unreasonable.

13 MS. WOLD: Absolutely. And I think
14 that might arise in circumstances where a -- a
15 particular offense is maybe a fine-only offense,
16 for example, and that's the only charge that --
17 that can provide probable cause. A more serious
18 charge that accompanied it lacks probable cause,
19 well, certainly, at some point, the detention,
20 and, certainly, beyond 48 hours for an uncharged
21 crime, is always going to be unreasonable under
22 the Fourth Amendment. I did --

23 JUSTICE KAGAN: Just -- just to get
24 back to the question that Justice Sotomayor
25 asked about, that language, I understand that

1 you're saying we shouldn't take that language at
2 face value, but if that language were taken at
3 face value to -- to mean what Justice Sotomayor
4 suggested it meant, which is that any crime gets
5 you out of -- you do disagree with that?

6 MS. WOLD: You're talking about the
7 language in the Sixth Circuit opinion. If it
8 meant an any-crime rule the way Petitioner
9 defines it, that any probable cause
10 automatically insulates any detention, yes, we
11 agree that would be incorrect. We don't think
12 that's what the Sixth Circuit applied.

13 If, however, you look at the Sixth
14 Circuit opinion and you disagree and you think
15 that is the standard that the Sixth Circuit
16 applied, then we think you should announce the
17 right rule. And we, I think, largely agree with
18 the United States about what that rule is.

19 But we also think you should apply it
20 in this case. There's ample precedent for --
21 for doing that in Crawford and Employment
22 Division versus Smith, Terry versus United
23 States, Katz versus United States, and we think
24 that would be appropriate to do here.

25 JUSTICE KAGAN: So you would say,

1 first, we knock off the any-crime. Then we say
2 that the -- that there has to be a showing of
3 causation as to the detention or the seizure.

4 But then you want us to go further
5 than the Solicitor General by saying what the
6 right way to show causation is. Is that right?

7 MS. WOLD: Well, certainly not the
8 right way in every case, but I think the way we
9 ask you to then apply the rule you would set out
10 is according to existing Fourth Amendment
11 precedents.

12 And even if you weren't willing to go
13 ahead and apply the rule in this case, we do
14 think the Court should make clear that when
15 Manuel and then Thompson in particular
16 recognized a Fourth Amendment malicious
17 prosecution claim, they weren't recognizing a
18 brand-new body of Fourth Amendment law that was
19 going to create standards that are different
20 than in other areas.

21 We think the applicability of
22 reasonability should continue to be as it
23 already is in the Fourth Amendment. And to the
24 extent that's dissatisfactory, it would be, as
25 Justice Gorsuch suggests, potentially possible

1 to locate the claim in the Fourteenth Amendment.
2 And there may be efforts to do so. The Court
3 has explicitly reserved that possibility.

4 JUSTICE JACKSON: So how is it that it
5 applies here? Can you -- so what is your
6 standard for causation?

7 MS. WOLD: So we just think it's the
8 application of ordinary Fourth Amendment
9 principles. So you would look at the warrant
10 just as you do under Franks and exclude the
11 information that is alleged to be false. It's
12 alleged to be the malicious prosecution
13 evidence, if you will. And you would look at
14 what remains, and you would ask whether there is
15 probable cause and whether that supports the
16 detention.

17 JUSTICE JACKSON: But I guess, to look
18 at ordinary principles, a lot of those ordinary
19 principles come up in a different context, so
20 it's hard to really say that they should
21 translate and drive the analysis here.

22 I mean, I had a whole colloquy with
23 Ms. Anand about false arrest, probable cause,
24 and what we look at and what we care about being
25 different than the probable cause element. And

1 I understand we're talking about the causation
2 element, but the gravamen of a malicious
3 prosecution claim is not the same as the
4 gravamen of an unlawful arrest claim.

5 And so, when you're thinking about
6 unreasonableness for the standpoint -- from the
7 standpoint of causation, I guess I'm a little
8 worried about treating them the same.

9 MS. WOLD: So the Fourth Amendment, as
10 we know, prohibits unreasonable seizures but not
11 unreasonable charges. And we think that's the
12 difference. And if there's any kind of misfit
13 between these things, I think the Court was well
14 aware of that in Thompson, understanding that
15 the common law malicious prosecution --

16 JUSTICE JACKSON: No, but isn't it --
17 isn't it -- isn't it, in the malicious
18 prosecution context, the malicious and
19 unreasonable charge has caused, as you say, the
20 unlawful seizure. And so, when we're looking at
21 causation, it's very hard for me to understand
22 how you can take out of the picture, as you --
23 as you did with your definition, the malicious
24 prosecution.

25 What Ms. Anand is saying is that when

1 you have a malicious initiation of charges, that
2 sort of taints the process. And it's very --
3 you know, it's almost like you have to presume
4 that almost everything that happened afterwards
5 was tainted by that, unless we have clear
6 evidence that you could have proceeded without
7 the -- the malicious prosecution.

8 And you seem to be saying the opposite
9 in a -- in a way.

10 MS. WOLD: I think that those same
11 kinds of arguments could have been put forward,
12 I think were put forward, in Devenpeck versus
13 Alford, about the way we handle this in the
14 context of a false arrest. And the answer was a
15 Fourth Amendment answer about reasonableness and
16 that Fourth Amendment reasonableness does not
17 depend on the subjective intent of a particular
18 officer. We know that from Whren, from
19 Devenpeck, from numerous other cases. It also
20 doesn't --

21 JUSTICE JACKSON: But that's because
22 that's not a malicious prosecution scenario. I
23 mean, this is the -- this is the precise point,
24 right? When you take the jurisprudence that
25 relates to the reasonableness of just an

1 unlawful arrest, I totally buy what you're
2 saying. We're not -- because we're not really
3 focusing on the intent of the officer, we're
4 looking at the circumstances and whether or not
5 an objective officer with those circumstances
6 would have arrested you and behaved in that way.

7 But, when you're beginning in the
8 world of malicious prosecution, the thing that
9 we care about is the intent and the
10 maliciousness and what the process is doing to
11 you for baseless reasons.

12 And so, once we're -- we're starting
13 there, it seems to me you can't really judge the
14 causation by those other standards, by standards
15 that -- that say, well, we don't really care
16 what the officer was thinking. We're -- we've
17 already crossed that bridge because we're in the
18 world of malicious prosecution.

19 MS. WOLD: I think that Thompson
20 answers this question by requiring that there be
21 an unreasonable seizure because Thompson was
22 locating the claim in the Fourth Amendment or at
23 least acknowledging it as a type of Fourth
24 Amendment claim that could be brought.

25 And I think the kinds of things you're

1 discussing might be more at home in the
2 Fourteenth Amendment. But it's not been a part
3 of our Fourth Amendment analysis. And I don't
4 think that Thompson was creating a rule by which
5 there would be a -- a new type of claim and it
6 would have brand-new elements and change the
7 meaning of probable cause.

8 I think Thompson was acknowledging
9 that this claim could be brought under the
10 Fourth Amendment, but I don't think there's any
11 reason to deviate from Fourth Amendment
12 principles --

13 JUSTICE BARRETT: Ms. --

14 MS. WOLD: -- beyond that.

15 JUSTICE BARRETT: -- Ms. Wold, if we
16 do what the SG proposes that we do and say, you
17 know, the any-crime rule is not good, but you do
18 have to show causation and that -- and that this
19 caused a seizure in order to make out the Fourth
20 Amendment claim, what happens on remand? What
21 arguments then do you make?

22 MS. WOLD: Well, I think, on remand,
23 we would continue to argue, as I would ask the
24 Court to also state, that Fourth Amendment --
25 existing Fourth Amendment principles apply, and

1 so the question is whether his detention is
2 justified by probable cause.

3 JUSTICE BARRETT: And so this would be
4 the colloquy that you're having with Justice
5 Jackson right now saying that we look at it
6 objectively and we say: Was this four days, if
7 you cross out, put your hand over the
8 money-laundering charge, would it have been
9 reasonable to hold him for four days for these
10 two misdemeanors?

11 MS. WOLD: Yes, that's exactly right.
12 So you would ask based on the probable cause
13 that we know was determined by a neutral and
14 detached magistrate at the issuance of the
15 warrant, the probable cause in those two charges
16 clearly justifies the entirety of his detention,
17 and that would resolve the issue.

18 JUSTICE BARRETT: Does it get tricky?
19 I mean, I'm not sure any of our precedent
20 squarely addresses this point.

21 When do we stop thinking about the
22 Fourth Amendment and start thinking about, say,
23 speedy trial or is this -- is he being held so
24 long that we're violating the Sixth Amendment or
25 was this fine so high it's actually, you know,

1 an excessive fine problem?

2 Is all this really -- and is that
3 maybe another reason for caution here? Is all
4 this really a Fourth Amendment issue?

5 MS. WOLD: So I think the recognition
6 that pretrial detention could be a Fourth
7 Amendment claim arises in 2017 with Manuel. So
8 some of these questions may be a bit new.

9 I do think, in the past, the Court has
10 resolved some questions about length of
11 detention by asking at some point did that
12 detention become punishment and then it's
13 punishment without a conviction. And that can
14 fall under other provisions of the Constitution.

15 Maybe it's an unsatisfactory answer.
16 I think there are complicating factors here. I
17 think this case and these facts are not
18 difficult because the detention is so limited
19 and it clearly corresponds to the length of
20 detention the Court has found to be reasonable
21 under the Fourth Amendment in other cases, like
22 Baker versus McCollan, where, you know, there,
23 you had the wrong person. That person was
24 completely innocent and saying so from the
25 moment of arrest onward, but the warrant was

1 valid. The warrant was supported by probable
2 cause, and that justified the detention for a
3 matter of days.

4 JUSTICE BARRETT: Thank you.

5 MS. WOLD: Mm-hmm.

6 JUSTICE GORSUCH: I'd just like to
7 understand better the -- if we were to remand
8 for some sort of causation showing here, exactly
9 what your argument would be.

10 Would it be that probable cause
11 existed sufficient on the two charges that
12 remained and that that would be enough to
13 justify four days, or would it be that there's
14 probable cause under any laws that we can point
15 to that would suffice to support four days?

16 MS. WOLD: It -- it would be -- well,
17 first, obviously, I don't want to exclude on
18 remand that we might make lots of arguments, but
19 I think the -- the argument I'm -- I'm positing
20 today is that the two charges that were the
21 subject of the warrant, those supply probable
22 cause, not some kind of uncharged conduct, not
23 under any law.

24 JUSTICE GORSUCH: I guess I'm
25 wondering why that would be the case under your

1 logic. If we're going to take the Fourth --
2 we're trying to import Fourth Amendment
3 principles further into this malicious
4 prosecution claim, a false arrest seems to be
5 where you're kind of driving the train and -- or
6 wanting to -- I may be mistaken there.

7 And -- and, there, I'm not sure we
8 would always be limited to the indictment or
9 charge. We would look and see if there's
10 probable cause to support the detention vel non.

11 MS. WOLD: Right. I think, in this
12 case, it wouldn't be enough to look at uncharged
13 conduct because the seizure lasted more than 48
14 hours. So there wouldn't be a probable cause
15 determination by a neutral and detached
16 magistrate as to uncharged conduct, and that's
17 why you couldn't do what you could otherwise do
18 in the false arrest context.

19 JUSTICE GORSUCH: We're not looking
20 necessarily at uncharged conduct, but -- I
21 understand that limitation, but the claims that
22 the -- that the government might bring. Why --
23 why would you be limited on that?

24 MS. WOLD: Maybe I'm failing to
25 understand the question, but I think, when the

1 government is holding someone beyond 48 hours --

2 JUSTICE GORSUCH: No, you've got to
3 come up with a crime. But there's a lot of
4 crimes out there these days, not just those you
5 happen to charge.

6 MS. WOLD: That's correct, but this is
7 all after the fact. And so, here, we know the
8 detention went beyond 48 hours. We are limited
9 to -- to claims that were charged.

10 JUSTICE GORSUCH: Okay. All right.
11 Thank you.

12 JUSTICE JACKSON: So it seems to me
13 that your causation rule eviscerates the kind of
14 plaintiff dynamic that I explored with Ms.
15 Anand, and maybe you can help me understand why
16 that's the case -- why that's not the case.

17 So I said we have a person who is a
18 criminal and he's committing crimes and he's got
19 three or four of them absolutely dead to rights,
20 but one of them, no. One of them, he says, this
21 additional thing, whatever it is, I didn't do
22 it. And because I'm, you know, a career
23 criminal, the police officer knows me from way
24 back when, and he actually tacked that on after
25 he made stuff up and he -- this charge is a

1 malicious prosecution.

2 It seems to me that if we buy your
3 rule of causation, so, first of all, we -- we --
4 we don't say, you know, any charge, he -- he --
5 he still gets to go forward just because there
6 are these other charges, he still gets to go
7 forward on that basis, but you're knocking him
8 out basically for the same reason on the
9 causation prong.

10 You're saying, because you have these
11 other charges for which you could have been
12 arrested, and perhaps he even agrees to that,
13 you're not allowed because you can't say that
14 the baseless charge caused.

15 And I guess I don't understand why
16 that's the case. Why shouldn't he still be able
17 to make his claim on the civil docket with
18 respect to the malicious prosecution of that one
19 charge?

20 MS. WOLD: I think you've absolutely
21 highlighted the distinction between our
22 positions. I think Williams versus Aguirre,
23 which Petitioner embraces, would hold that you
24 could make out a per se constitutional violation
25 for that alleged malicious prosecution.

1 And we think that's incorrect, and we
2 think that's because of the operation of the
3 Fourth Amendment. The correct rule is a Fourth
4 Amendment rule. How could you have a per se
5 constitutional violation for an unreasonable
6 charge, which the Fourth Amendment does not
7 forbid, without an unreasonable seizure? And --
8 and we think it's the Fourth Amendment that does
9 the work there. And --

10 JUSTICE JACKSON: So what if the other
11 crimes are all misdemeanors and he can show --
12 we have this coming up in other cases -- that no
13 one would ever have been prosecuted or held or
14 detained for the three other things? Yes, he
15 says, I did those things, but those are not
16 things for which people get detained. It's the
17 one they made up, and that's, in fact, why they
18 made it up, because they wanted me to go to
19 jail.

20 Does he go forward or no under your
21 causation prong?

22 MS. WOLD: We -- we still think it is
23 the overlay of existing Fourth Amendment
24 precedent that asks about that objectively, and
25 -- and that means that if those misdemeanor

1 charges, regardless of local practice, even if
2 it hadn't been local practice to arrest for
3 those, the Fourth Amendment says you can arrest
4 for even a fine-only offense. That's Atwater
5 versus City of Lago Vista.

6 And the Fourth Amendment also allows
7 an arrest even if it would be unlawful under
8 state law. That's Virginia versus Moore. Those
9 don't violate the Fourth Amendment, so you can
10 hold that individual.

11 Now it would be a different case if
12 the detention is for 18 months, for example, and
13 the only probable cause that supports it are for
14 these very minor misdemeanor offenses.

15 JUSTICE JACKSON: But it doesn't
16 matter to you at all if -- if there's evidence
17 that he puts forward that no one would ever --
18 that -- that this magistrate, in fact, wouldn't
19 have or didn't, you know, go forward with
20 respect to this -- authorizing this detention
21 but for the baseless charge that -- that was put
22 there in order to get him to go to jail?

23 MS. WOLD: That's right. We think
24 that is exactly the kind of analysis that the
25 Fourth Amendment forecloses. And I can point to

1 Whren, Virginia versus Moore, that all say the
2 Fourth Amendment reasonableness does not depend
3 on local practice. It doesn't depend on state
4 law. It doesn't vary from place to place and
5 from time to time. And that's just settled
6 Fourth Amendment law.

7 JUSTICE GORSUCH: Counsel, let's say I
8 -- I understand all that and maybe -- maybe even
9 am slightly sympathetic to it. But what about
10 the Fourteenth Amendment and what about the
11 common law malicious prosecution claims, which
12 didn't depend upon showing that all the charges
13 against me were false?

14 MS. WOLD: I think the standard could
15 definitely be different. Under those, I think,
16 under state law, there is no requirement that
17 you show a seizure, so the analysis would be
18 different. That claim has been abandoned by
19 this stage in the litigation.

20 And, yes, under the Fourteenth
21 Amendment, you wouldn't have this requirement to
22 show a seizure. I think the analysis would be
23 different if the Court were to recognize it in
24 the future.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Alito?

3 Justice Sotomayor, anything more?

4 Justice Kagan?

5 Justice Gorsuch? No?

6 Thank you, counsel.

7 MS. WOLD: Thank you.

8 CHIEF JUSTICE ROBERTS: Rebuttal?

9 REBUTTAL ARGUMENT OF EASHA ANAND

10 ON BEHALF OF THE PETITIONERS

11 MS. ANAND: Thank you, Your Honor.

12 So, to answer Justice Kagan's question
13 first, we are totally fine with the United
14 States' position, answer the question presented,
15 reiterate what you said in Thompson, that the
16 malicious prosecution must have resulted in a
17 seizure, which, as the United States points out,
18 is perfectly consistent with our preferred
19 Eleventh Circuit formulation, and don't touch
20 the question of the warrant clause.

21 We raised the warrant clause to talk
22 about the values and purposes of the Fourth
23 Amendment only, not to suggest that there is
24 necessarily a 1983 claim predicated on it or
25 what constitutional tort applies.

1 As for Respondents' position, I'll
2 just note that what they're now describing as a
3 strawman is precisely what they argued for
4 below. Here's a quote from oral argument: "So
5 long as probable cause exists to one of multiple
6 criminal charges, that is enough to negate the
7 entire malicious prosecution claim."

8 This Court can do a lot of good by
9 just resolving the question presented and saying
10 that the -- the any-crime rule -- as Justice
11 Gorsuch said, you can always come up with some
12 crime for which there's probable cause. And so
13 the any-crime rule allows police officers to
14 entirely insulate their misconduct by just
15 tacking on a charge for which there is probably
16 probable cause for just about anyone.

17 This Court can do a lot of good by
18 just saying that that rule is incorrect, that a
19 plaintiff can make out a malicious prosecution
20 claim even if some charges are supported by
21 probable cause, and we'll fight about all the
22 complexities that Your Honors heard about on
23 remand. Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 The case is submitted.
2 (Whereupon, at 12:44 p.m., the case
3 was submitted.)

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