No._____

In The
US Supreme Court of the United States

MICHAEL CHARLES WARD,
Petitioner,

v.

JAMES V. CHAFIN, ET AL.,

Respondents.

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In 2010, Petitioner Charlie Ward was convicted of aggravated stalking and sentenced to 10 years in prison. The prosecutors who obtained that conviction knew they had obtained it in violation of double jeopardy. Ward filed a timely motion for new trial raising the double jeopardy argument, but the prosecutors were able to prevent that motion from being heard for seven years. That delay caused Ward to serve his entire 10-year sentence before the Georgia Court of Appeals decided his appeal and reversed his conviction on double jeopardy grounds.

Ward filed this §1983 suit against the prosecutors. Ward made specific factual allegations regarding how the prosecutors violated his constitutional rights in investigating and prosecuting him, and in delaying his appeal. The district court granted the defendant prosecutors' motion to dismiss, and the Eleventh Circuit affirmed, relying in large part on this Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

The Question Presented is whether the Eleventh Circuit overextended the holding of *Iqbal* such that § 1983 plaintiffs like Ward are unjustly deprived of an opportunity to conduct discovery and prove their case, particularly where the defendants are prosecutors claiming absolute immunity?

PARTIES TO THE PROCEEDING

The parties to the proceeding are Petitioner Michael Charles Ward, who is the Plaintiff-Appellant in the Eleventh Circuit; and James V. Chafin, Jon Forwood, and Kenneth W. Mauldin, who are Defendants-Appellees in the Eleventh Circuit.

CORPORATE DISCLOSURE STATEMENT

None of the parties is a nongovernmental corporation.

RELATED CASES

- *Ward v. Chafin*, No. 3:21-CV-111, U.S. District Court for the Middle District of Georgia. Judgment entered August 11, 2022.
- *Ward v. Chafin*, No. 22-12993, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered March 28, 2023.

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The opinion of the Eleventh Circuit from which petitioner seeks review is the unpublished March 28, 2023 order entered in Ward v. Chafin, Case Number No. 22-12993. That opinion is found at Appendix at 1.

The order of the district court from which Ward appealed is dated August 11, 2022, and entered in Case Number 3:21-cv-00111-CAR, docket entry 24. That order is at Appendix at 16.

JURISDICTION

Ward seeks review of the judgment from the Eleventh Circuit entered on March 28, 2023. Therefore, this Court has jurisdiction pursuant to Title 28, Code Section 1254(1) to review this petition for a writ of certiorari. *See* 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Ward asserts claims under 42 U.S.C. § 1983 against three state-court prosecutors—James Chafin, Jon Forwood, and Kenneth Mauldin—alleging malicious prosecution and a conspiracy to delay his direct appeal. Ward challenges the dismissal of his complaint based on absolute prosecutorial immunity. Ward also challenges the dismissal of his complaint under the doctrine of qualified immunity because the defendants violated his clearly established rights against unreasonable seizures and double jeopardy.

The Fourth Amendment to the United States Constitution provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Amend. IV.

The Double Jeopardy Clause of the Fifth amendment provides that:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand

> Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., Amend. V.

The part of the Civil Rights Act of 1871 relevant to this action provides that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to

> the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

STATEMENT OF THE CASE

Petitioner Charlie Ward was convicted of aggravated stalking in 2010 in a Georgia state court and was sentenced to 10 years in prison. App. at 3. The three prosecutors in that case (defendants in this § 1983 case) knew that Ward's conviction and sentence were unconstitutional, and yet they delayed a hearing and a decision on Ward's motion for new trial for over 7 years. *Id.* at 4-5. (Under Georgia law, Ward's direct appeal could not begin until the trial court decided his motion for new trial. *See id.* at 18) The trial court eventually denied Ward's motion for new trial in December 2017—over seven years after he was convicted. *Id.* at 3.

The court of appeals decided Ward's direct appeal on July 19, 2019. *Id.* at 2-3. The court reversed Ward's conviction because it was in clear violation of the Double Jeopardy Clause. *Id.* at 3-4. By the time the Court of Appeals issued this decision, however, Ward had completed his sentence and had been released from prison for nearly a year. *Id.* at 18. The Supreme Court of Georgia later denied a petition for writ of certiorari, so Georgia Court of Appeal's decision became final on March 13, 2020. *Id.* at 23.

Ward filed this timely § 1983 case on November 15, 2021, against the three prosecutors involved in obtaining his constitutionally infirm conviction. *Id.* at 18. Ward alleged that the defendant prosecutors investigated, indicted, and prosecuted Ward for aggravated stalking without probable cause and in violation of his constitutional rights to be free from unlawful seizures and double jeopardy. *Id.* at 5, 18.

Ward also alleged that the three prosecutors conspired with unidentified court personnel to delay ruling on his motion for new trial for over seven years. *Id.*

Ward's amended complaint set out in great detail the defendant prosecutors' conduct, which is summarized here as follows:

Police arrested Ward in November 2007 for making unsolicited contacts with an ex-girlfriend who wanted to cut off further contact. *Id.* at 2. The defendant prosecutors then indicted Ward in state court for various crimes, including misdemeanor stalking. *Id.* at 19. (In Georgia, for the state to prove misdemeanor stalking it must show that the defendant engaged in a pattern of harassing conduct. *See Ward v. State,* 351 Ga.App. 490, 496 (2019). Later in November 2007, the state court released Ward on a "no contact" bond for those charges. App at 19.

In early December 2007, Ward ordered a book called "Re-deeming Love" from Amazon and had it delivered to his ex-girlfriend's home—an act that was at least arguably in violation of his "no contact" bond order. *Id.* at 2, 19.

From December 3, 2007, through January 23, 2008, the defendant prosecutors investigated Ward for sending the book to the alleged victim. *Id.* at 19. Based on their own investigation, the defendant prosecutors had Ward arrested and indicted for one count of aggravated stalking based on the single act

of sending a book in violation of a protective order. *Id.* at 19-20.

Importantly, this second indictment (for aggravated stalking) did not allege a pattern of harassing conduct as required by Georgia law and therefore was deficient on its face, and the defendant prosecutors knew it. *See id.* at 20. (In Georgia, aggravated stalking requires proof of a pattern of harassing conduct plus a violation of a court order. *See id.* at 11.) Ward specifically alleged that the defendant prosecutors intended on prosecuting him for both cases from the outset and that they knew the second indictment was not supported by probable cause (because they were already using the alleged pattern of harassment to support the first indictment). *See id.* at 48. This allegation is not only plausible but likely because the second indictment omitted any mention of a pattern of harassing conduct and because the defendant prosecutors later did in fact later proceed with both cases. *See id.* at 20-21.

In August 2009, the defendant prosecutors tried Ward on the misdemeanor stalking charge and the other crimes alleged in the first indictment, and a jury acquitted Ward of misdemeanor stalking and convicted him of one of the other charges. *Id.* at 3, 20.

Despite the acquittal on misdemeanor stalking, the defendant prosecutors pressed forward with the aggravated stalking case and in January 2010 tried that case to a jury. *Id.* at 3. To obtain this conviction, the defendant prosecutors had to and did present to the jury the pattern of harassing conduct that they

had already presented at the first trial. *See id.* at 21. This time the defendant prosecutors obtained a stalking conviction—one that they knew well was unlawful. *Id.* at 28. The court sentenced Ward to ten years' imprisonment. *Id.* at 17.

Ward timely filed a motion for new trial, and the trial court set the motion for a hearing on April 20, 2010. *Id.* at 3. The defendant prosecutors knew that in Georgia the right to direct appeal does not begin until the trial court hears the defendant's motion for new trial. *See id.* at 18, 21-22. Ward alleged in his amended § 1983 complaint that at this point the defendant prosecutors "acted in concert with each other and Defendant John Does 1-4 to have Plaintiff's Motion for New Trial continued from the set April 20, 2010 date." *Id.* at 21. Their efforts were successful. No hearing on the motion was held for over seven more years, and the defendant prosecutors never filed a response. *Id.* at 22. The defendant prosecutors knew Ward was unconstitutionally imprisoned and they let him stay there for seven years without the ability to file a direct appeal, knowing that the direct appeal would eventually bring their misdeeds to light. *Id.* at 21-22.

The trial court eventually held a hearing on Ward's motion in September 2017 and denied Ward's motion for new trial in December 2017. *Id.* at 22. Ward timely appealed to the Georgia Court of Appeals. *Id.* at 22. The Court of Appeals—applying this Court's over 80-year-old test from *Blockburger v. United States*, 284 U.S. 299 (1932)—held that Ward's aggravated stalking conviction was in violation of the Double Jeopardy Clause because the defendant

prosecutors used the same alleged pattern of harassing conduct to prove aggravated stalking as they did at the first trial to try prove misdemeanor stalking. App. at 22-23; *see also Ward v. State*, 351 Ga. App. 490, 497 (2019) ("with a few exceptions, the State relied on almost the exact same evidence to prove Ward's alleged harassing and intimidating course of conduct at both the stalking and aggravated stalking trials"). The Georgia Court of Appeals reversed Ward's conviction and vacated his sentence, but by that time Ward had completed his sentence and been released. App. at 18.

Ward timely filed this § 1983 action on November 15, 2021. *Id.* at 18. Defendants moved to dismiss Ward's amended complaint, and the district court granted that motion on August 11, 2022, finding among other things that the defendants enjoyed absolute immunity. *Id.* at 17-18.

Ward appealed to the Eleventh Circuit, and that court on March 28, 2023, affirmed the dismissal of Ward's § 1983 complaint. *Id.* at 1-2. The Eleventh Circuit held that the defendant prosecutors were entitled to absolute immunity because their conduct was intimately associated with the judicial process. *Id.* at 8. The Eleventh Circuit noted that Ward's amended complaint alleged that the defendant prosecutors' actions went beyond the traditional role of prosecutors, but the court found those allegations to be conclusory and therefore insufficient to prevent dismissal. *Id.* at 14-15. On that point, the Eleventh Circuit cited this Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). App at 6, 14-15. The

district court also had relied heavily on *Iqbal* in dismissing Ward's Complaint. *Id.* at 23-24, 38-39.

REASONS FOR GRANTING THE PETITION

1. The Eleventh Circuit has extended Iqbal too far, such that it deprives § 1983 plaintiffs of discovery even where the facts alleged make it plausible that the defendants intentionally deprived the plaintiff of his constitutional rights.

As discussed above, the 11th Circuit affirmed the dismissal of Ward's amended complaint based absolute immunity and on *Iqbal's* heightened pleading standard. If *Iqbal* is to be read and applied as the Eleventh Circuit did here, § 1983 plaintiffs would almost never be able to get past a motion to dismiss in prosecutorial misconduct cases. This unjust and unwarranted extension of *Iqbal* cannot be allowed to continue.

Iqbal should not be extended to justify dismissal of a complaint where the facts alleged make it plausible that the defendant prosecutors intentionally violated a criminal defendant's constitutional rights—especially where, as in this case, those violations produced a tragically unjust result of a decade of imprisonment in violation of the constitution.

This appeal involves the intersection of two lines of this Court's cases that the Eleventh Circuit and other courts have extended beyond any reasonable bounds. The first concerns when absolute immunity

will apply to prosecutors' conduct, and the second is this Court's recently enacted heightened pleading standard described in *Iqbal*.

Although the argument below focuses this Court's pleading standard as it applies to absolute immunity, the same arguments apply with equal force to the courts' rulings below regarding qualified immunity. Moreover, the Eleventh Circuit's ruling on qualified immunity is in error because the right not to be put in jeopardy twice for the same offense was clearly established by this Court's decision in *Blockburger v. United States*, 284 U.S. 299 (1932).

A. The Repeal of Notice Pleading

In 1938, the Federal Rules of Civil Procedure established notice pleading for federal courts. *See* Fed.R.Civ.P. 8(a)(2). This Court approved the notice pleading system in 1957 in *Conley v. Gibson*, 355 U.S. 41, 47 (1957), where this Court held that plaintiffs could satisfy Rule 8 without providing detailed facts as long as they gave adequate notice to the defendant of the nature of the lawsuit. Motions to dismiss would be denied unless it "appeared beyond doubt the plaintiff could prove no set of facts in support of his claim that would entitle him to relief." *Id.* at 45–46. Although some lower courts made exceptions for certain types of cases, notice pleading was the standard for the next 50 years – until *Twombly*. *See* Alexander Reinert, *The Burdens of Pleading*, 162 U. Pa. L. Rev. 1767, 1771 (2014) (notice pleading was "the standard, subject to some detours by lower courts, for the fifty years between *Conley* and *Twombly*").

In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, 563 (2007), this Court in an antitrust case dispensed with the test of whether "the plaintiff can prove no set of facts" and, instead, created a plausibility test. *Id.* at 556-57. This Court stated that deciding whether a complaint states a plausible claim is context specific, and courts must draw on their own experience and use common sense. *Id.,* at 556.

Two years later, in *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009), this Court held that that *Twombly*'s heightened pleading standards applied to all civil actions. *Iqbal* mandated that courts conduct a plausibility analysis assessing the relationship between the facts alleged and the relief claimed, excluding from that analysis any allegations that are judged to be "conclusory." *Id.* at 678-79.

B. The Functional approach to Absolute Immunity for Prosecutors

This Court has held that, in determining whether a §1983 defendant enjoys absolute immunity, it examines "the nature of the function performed," not the defendant's job title. *See Kalina v. Fletcher*, 522 U.S. 118, 127 (1997). The central inquiry is "whether the prosecutor's actions are closely associated with the judicial process." *Burns v. Reed*, 500 U.S. 478, 495 (1991). Absolute immunity does not apply to "those aspects of the prosecutor's responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate." *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976).

Thus, a prosecutor who is alleged to have knowingly presented false testimony in a criminal trial is immune from suit because presenting testimony at trial is "intimately associated with the judicial phase of the criminal process." *Id.* at 430. On the other hand, a prosecutor who gives legal advice to the police that a suspect's statements under hypnosis constituted probable cause is not immune from liability for those actions. *Burns*, 500 U.S. at 495. A prosecutor who "makes statements to the press" or "acts as a complaining witness" may lose absolute immunity. *Van de Kamp v. Goldstein*, 555 U.S. 335, 343–44 (2009).

This Court in *Kalina v. Fletcher*, 522 U.S. 118 (1997), considered whether a prosecutor had absolute immunity from claims arising out of the filing of three documents in court. The Court held that the prosecutor was immune for filing an information and motion for an arrest warrant, but the prosecutor was not absolutely immune for filing a "Certification for Determination of Probable Cause," which summarized the evidence supporting the charge and stated that the prosecutor personally vouched for the truth of the facts set forth in the certification under penalty of perjury." *Id.* at 129-30.

This Court has emphasized that not all prosecutorial conduct associated with the judicial process is entitled to absolute immunity:

> Almost any action by a prosecutor, including his or her direct participation in purely investigative activity, could be said to be in

> some way related to the ultimate decision whether to prosecute, but we have never indicated that absolute immunity is that expansive.

Burns, 500 U.S. at 495. Rather, the prosecutor's actions must be "closely associated" with the judicial process.

C. Ward plausibly alleged that the defendant prosecutors acted outside the traditional role of advocate when they violated his constitutional rights.

The Eleventh Circuit concluded, relying on *Iqbal*, that the "factual allegations in [Ward's] amended complaint do not permit a reasonable inference that the defendants functioned in a capacity unrelated to their roles as advocates for the state." App at 8. But this is an unwarranted extension of *Iqbal* whose plausibility test is inherently subjective and ill-defined. *See* Reinert*, supra* at *1773, 1785-86* (citing commentator's criticism of *Iqbal* for its subjectivity, difficulty of application, and emphasis on disposing of cases as efficiently as possible).

In *Iqbal*, the plaintiff alleged that that the former Attorney General of the United States and the Director of the Federal Bureau of Investigation designated the plaintiff as a "person if high interest" based on his race, religion, and national origin, and that they developed and implemented a policy of holding such persons in harsh confinement conditions. *Id.* at 666. The complaint did not make any specific allegations as to those two defendants,

except to allege that the former Attorney General was the "principal architect" and the Director was "instrumental" in executing the policy. *Id.* at 680-81. This Court found those allegations too conclusory to plausibly show that those two defendants purposefully adopted a policy of classifying detainees "of high interest" based on their race, religion, or national origin. *Id.* at 682-83.

Ward's allegations against the three defendant prosecutors here are more specific and plausibly show that they violated Ward's constitutional rights under color of state law. Ward alleged that the defendant prosecutors investigated his sending of the book to his ex-girlfriend and instigated his arrest on the constitutionally infirm aggravated stalking charge. App. at 7, 19. These allegations are supported by the fact that Ward had been arrested and the District Attorney's Office was already prosecuting him. *See id.* at 19. Therefore, there was no reason for the defendant prosecutors to get the police involved again. Common sense then supports Ward's allegation that the prosecutors and not the police investigated and had Ward re-arrested for aggravated stalking. Further, the second indictment made no mention of a pattern of conduct, a fact that indicates the defendant prosecutors knew they could not use the same pattern of harassing conduct in support of both indictments and therefore knew they did not have probable cause for the aggravated stalking arrest. *See id.* at 20. Accordingly, Ward's allegations show that this is not a case where there is a "close" association between the prosecutor's actions and the judicial process. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 275-76 (1993) (prosecutor

not entitled to absolute immunity where complaint alleged misconduct by prosecutor when investigating whether a bootprint at the crime scene was the suspect's).

Ward's allegations that the prosecutors unlawfully delayed his direct appeal also plausibly allege a constitutional violation. A prosecutor's actions in the court are closely associated with the judicial process, but unlawfully delaying the docketing of an appeal is not a traditional prosecutorial function. *See Garcia v. Casey*, 439 F.Supp.3d 1283, 1295-96 (N.D. Ala. 2020) (applying this Court's *Imbler* and *Burns* decisions to conclude that a prosecutor's participation in an arrest without probable cause was not protected by absolute immunity because those actions were not prosecutorial). It is more akin to an administrative action for which there is no absolute immunity. Thus, Ward's allegations regarding the defendant prosecutors' post-conviction conduct in delaying his appeal are even more problematic for the defendants. On this point, Ward alleged that the defendant prosecutors worked together with each other and others to have his motion for new trial continued from its original hearing date. App. at 14-15.

Of course, without discovery, Ward was not able to allege further details, but the other supported, factual allegations make the defendant prosecutors' involvement in this extraordinary delay not only plausible, but likely. There is no dispute that the motion was not heard for over seven years. *Id.* at 4. Also, the defendants were aware of the motion and therefore as experienced prosecutors they of course

knew that Ward could not directly appeal until the motion was decided. Ward also alleged that the defendant prosecutors knew they could not use the pattern of harassing conduct for which Ward was acquitted in the first trial to support an aggravated stalking conviction in the second trial. *Id.* at 20. (How could they not know? They were experienced prosecutors and therefore well versed in this Court's *Blockburger* test.) Given the constitutionally infirm aggravated stalking conviction, the defendant prosecutors' knowledge of that fact, the defendant prosecutor's knowledge that the motion for new trial had been filed, the defendant prosecutors' failure to file a response, and the defendant prosecutors' inaction as the motion sat for seven years, Ward's amended complaint sufficiently alleged a § 1983 claim relating to the delay of his direct appeal.

The Eleventh Circuit's decision below is one of many lower court decisions that has extended *Iqbal* farther than its holding and justice permit. Commentators have widely and correctly criticized *Iqbal*'s effect on lower courts and the judicial process. *See* Cara Shepley, *Ashcroft v. Iqbal: How the Supreme Court Rewrote Rule 8 to Immunize High-level Executive Officials from Post-9/11 Liability (A Plausible Interpretation)*, 69 Md. L. Rev. Online 69, 102 (2010) (criticizing *Iqbal*'s pleading standard as being inherently subjective); *see also* Stephen Subrin, *Ashcroft v. Iqbal: Contempt for Rules, Statutes, the Constitution, and Elemental Fairness,* Nevada Law Journal, Vol. 12, No. 3, at 575-76, 579, (2012) (condemning *Iqbal* as particularly unfair to plaintiffs in cases in which key evidence is largely in the "minds and files" of defendants and criticizing the

majority in *Iqbal* for ignoring the plain language of the Federal Rules of Civil Procedure and effectively amending the rules by judicial fiat).

The lower courts' unreasonable extension of *Iqbal* is particularly harmful in § 1983 cases alleging prosecutorial misconduct because many of the specific facts of the constitutional violations are in the hands of the state actors who would be the defendants. Under this Court's decisions addressing prosecutorial misconduct, prosecutors may only be held liable for conduct that is not closely associated with the judicial process. See *Burns*, 500 U.S. at 495. The details of such conduct are generally in the hands of the state. Thus, *Iqbal,* as applied to prosecutorial misconduct cases, presents a chicken-and-egg problem when *Iqbal's* heightened pleading standard has been extended too far as the Eleventh Circuit has done here. The pleading standard demands a nearly complete factual picture of the unconstitutional conduct before a plaintiff is granted discovery, but the plaintiff does not have access to most of those facts without discovery.

The question presented in this petition does not only affect Ward, but it also controls the fate of thousands of civil rights complaints filed in federal courts each year. Indeed, *Iqbal* had been cited in approximately 70,000 reported opinions in less than five years after it was decided. *See* Reinert, *supra* at 1773.

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari.

Petitioner Charles Ward presents this petition on June 26, 2023.

Respectfully submitted,

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