

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.)

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9

10 Washington, D.C.

11 Monday, April 15, 2024

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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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22 United States, as amicus curiae, supporting
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 -- or
24 seized with this length of time based on a
25 warrantless arrest. So the way -- the way the

1 Eleventh Circuit articulates it is, look, this
2 legal 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 as?

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
7 know why this statute is called "money
8 laundering" because it doesn't seem to have
9 anything to do with money laundering. But
10 what's wrong with that logic? It seems to
11 follow step by step.

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

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

1 party the opportunity to weigh the law
2 enforcement interests against the privacy
3 interests.

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

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

22 JUSTICE ALITO: What if the -- the
23 other charges on which there were -- there was
24 probable cause were also felonies and maybe even
25 more serious felonies than the so-called

1 money-laundering charge? Would you make the
2 same argument?

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

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

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

12 JUSTICE ALITO: Why?

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

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

1 laundrying. The same result?

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

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

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

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

25 MS. ANAND: So that's correct, but we

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

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

23 And so I don't think you can have a
24 kind of categorical more serious/less serious
25 charge rule. And, again, I think what the

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

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

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

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

25 JUSTICE ALITO: Yeah. Well, it'll

1 protect the officer, but it won't protect the
2 municipality.

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

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

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

24 And that's a different situation than
25 we have here, right, because, here, he -- there

1 was a valid warrant for the misdemeanors, right?
2 It was just the money laundering.

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

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

17 JUSTICE BARRETT: Mm-hmm.

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

21 So it's true that in Williams, there
22 was also this uncharged offense --

23 JUSTICE BARRETT: Mm-hmm.

24 MS. ANAND: -- but Williams just says
25 you have to prove one of the two charges in the

1 actual arrest warrant was bogus.

2 JUSTICE BARRETT: Okay. And then I --
3 I want to understand a distinction or -- or that
4 I think is a distinction between your position
5 and, say, the SG's.

6 Do you agree that a seizure -- that
7 you have to show a seizure for purposes of
8 making out your claim?

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

18 JUSTICE BARRETT: Well, the search
19 clause, sure, but, I mean, is it going farther?
20 We've said that before. I mean, you have to
21 make out a Fourth Amendment claim. And, here,
22 your claim is for seizure of the person, and
23 it's -- you didn't make, I don't think, a
24 separate claim about the seizure of his effects
25 being unreasonable?

1 MS. ANAND: So -- so, below, we did
2 argue at the seizure of his effects as well as
3 about the unreasonable search. What's come
4 before this Court is --

5 JUSTICE BARRETT: The Court is just
6 this one.

7 MS. ANAND: Yeah. And so --

8 JUSTICE BARRETT: Yeah.

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

12 JUSTICE BARRETT: Okay.

13 MS. ANAND: You shouldn't reach out
14 and affirmatively say there can be no other
15 Fourth Amendment malicious prosecution claim.

16 JUSTICE SOTOMAYOR: Can you -- I'm
17 sorry. Is one of your elements that you have to
18 prove is lack of probable cause with respect to
19 the one crime?

20 MS. ANAND: Mm-hmm.

21 JUSTICE SOTOMAYOR: And that that
22 caused an unreasonable seizure?

23 MS. ANAND: The language in Thompson
24 is, and "the malicious prosecution resulted in a
25 seizure," which we think is consistent with any

1 of the rules of authority.

2 JUSTICE SOTOMAYOR: So you're fighting
3 with saying that it caused an unreasonable
4 seizure?

5 MS. ANAND: Yes, with the malicious
6 prosecution caused an unreasonable seizure.

7 JUSTICE SOTOMAYOR: Are you accepting
8 that language or are you fighting that language?

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

11 JUSTICE SOTOMAYOR: It is important.

12 MS. ANAND: It is important. So I
13 think the Thompson formulation is correct,
14 "resulted in a seizure." The other elements get
15 you to the unreasonable part.

16 JUSTICE SOTOMAYOR: What -- what are
17 the other elements? If it doesn't cause an
18 unreasonable seizure, how -- I -- you're not
19 making --

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

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

23 MS. ANAND: Right. So the appropriate
24 mens rea, which this Court hasn't resolved;
25 favorable termination; initiation of legal

1 process; lacking probable cause, so that's where
2 the unreasonable part comes in; resulted in a
3 seizure.

4 All we're saying is don't double-count
5 the unreasonable. You don't have to prove
6 something separate from the mens rea plus lack
7 of probable cause.

8 JUSTICE JACKSON: So, Ms. Anand, I
9 have a question about the element that brings us
10 here today --

11 MS. ANAND: Sure.

12 JUSTICE JACKSON: -- which is the
13 initiation of legal process lacking probable
14 cause, right? Am -- am I --

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

16 JUSTICE JACKSON: Okay. And that's
17 separate from the causation --

18 MS. ANAND: Exactly.

19 JUSTICE JACKSON: -- that we've been
20 discussing. I guess you're now saying that
21 everybody's on the same page that the Sixth
22 Circuit was wrong about that.

23 MS. ANAND: Yep.

24 JUSTICE JACKSON: Is that -- is that
25 --

1 MS. ANAND: That's correct.

2 JUSTICE JACKSON: Okay. And I -- I'm
3 trying to understand why the Sixth Circuit was
4 wrong, and I think I have a theory, and I'm
5 hoping you can help me to determine whether or
6 not I'm right about this.

7 MS. ANAND: Sure.

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

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

1 theory. It's the unlawful arrest theory.

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

5 MS. ANAND: That's exactly right.

6 JUSTICE JACKSON: Okay.

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

9 JUSTICE JACKSON: Yes.

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

24 JUSTICE JACKSON: And, I mean, is one
25 of them because the malicious prosecution

1 context is really about the culpability of the
2 process server? It's about the person who is
3 initiating process maliciously?

4 It's not really about whether you were
5 committing bad behavior, whether you were -- so,
6 in other words, you could have a person who
7 actually is a criminal, right, he's committing
8 crimes, but, here -- for Charges 2, 3, and 4,
9 but if Charge 1, there was no basis for it,
10 baseless, and maliciously added on to the thing,
11 that person would still -- added on to the
12 indictment, that person would still have at
13 least theoretically a claim for malicious
14 prosecution with respect to that charge?

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

24 The Fourth Amendment says what makes a
25 seizure of any duration reasonable is that

1 someone neutral and detached weighed in and
2 signed off on this. It's not just the police
3 officer's discretion.

4 And what the any-crime rule would do
5 would basically move this back into police
6 officers' discretion if they could just lie to
7 the magistrate about the set of charges they
8 have on --

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

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

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

20 MS. ANAND: So I don't think so
21 because, you know, I -- I do think Respondents
22 are arguing for an affirmance on a sort of
23 waiver plus this other element theory. I think
24 that this just means it's an easy opinion to
25 write. So just last week, in Sheetz, this Court

1 said, when there's radical agreement that the
2 court below erred in applying a categorical
3 premise, we leave all the kind of additional
4 nuanced arguments for remand. I think this
5 Court should follow the same course here.

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

17 Isn't that -- isn't that the argument
18 on the other side?

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

1 JUSTICE ALITO: Yeah, okay, so there's
2 a dispute about whether they -- what they did
3 here, whether they were following -- I've
4 forgotten the name of the earlier Sixth Circuit
5 decision.

6 MS. ANAND: Howse. Yeah.

7 JUSTICE ALITO: Okay. Whether they
8 were following that or not. So there's not
9 really radical agreement as much as one might
10 like to have it.

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

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

1 JUSTICE BARRETT: And just to clarify
2 on the -- the caused the seizure point, your
3 position -- say we don't reach it -- on remand
4 would be it doesn't matter if it actually caused
5 the seizure, it doesn't matter if these
6 misdemeanor offenses would have led to the same
7 amount of the three days in detention? That
8 would be your position, right?

9 MS. ANAND: So I'd articulate it
10 slightly differently.

11 JUSTICE BARRETT: Okay.

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

17 JUSTICE BARRETT: And why? Wouldn't
18 -- would -- would three or -- what was it, three
19 days or four days?

20 MS. ANAND: Four days.

21 JUSTICE BARRETT: Four days. Okay.
22 So would four days be an unreasonable length of
23 time for a detention for the two misdemeanors?

24 MS. ANAND: It's not that it would be
25 an unreasonable length of time. It's that

1 Gerstein and County of Riverside say that length
2 of detention must be authorized by a neutral and
3 detached magistrate. And, here, a neutral and
4 detached magistrate didn't say you can detain
5 him or even arrest him for this length of time
6 except for -- you know, without knowing that the
7 felony charge was bogus.

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

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

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Justice Alito?

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

5 MS. ANAND: That's correct.

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

10 MS. ANAND: That's right.

11 JUSTICE ALITO: What happens with
12 people who are arrested on a Friday?

13 MS. ANAND: So, remember, County of
14 Riverside says that a Florida statute that says
15 you can exclude weekends from the two-day
16 calculation is unconstitutional.

17 JUSTICE ALITO: I mean, what -- what
18 happens in -- in that town?

19 MS. ANAND: So --

20 JUSTICE ALITO: All right. Let's --
21 that's -- that's -- it's irrelevant.

22 I -- I am somewhat curious about
23 the --

24 MS. ANAND: Sure.

25 JUSTICE ALITO: -- the facts of this

1 -- this case. This is a crazy little -- crazy
2 little incident. Why didn't your client just
3 give the police officers the ring?

4 MS. ANAND: Well, Your Honor, he asked
5 for the opportunity to consult with counsel
6 because the hold letter was ambiguous, right?
7 It said both hold this as evidence --

8 JUSTICE ALITO: Yeah.

9 MS. ANAND: -- and return it.

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

16 MS. ANAND: So, Your Honor --

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

1 MS. ANAND: So, Your Honor, maybe that
2 goes to the reason why the Sixth Circuit found
3 probable cause for the retaining stolen property
4 charge, but it has nothing about felony money
5 laundering.

6 JUSTICE ALITO: No, I under --

7 MS. ANAND: And it certainly doesn't
8 --

9 JUSTICE ALITO: -- I -- I understand.
10 And this is not really a money-laundering
11 statute, right?

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

21 JUSTICE ALITO: No, no.

22 MS. ANAND: -- seizing his property.

23 JUSTICE ALITO: I -- I'm not getting
24 at -- I'm getting -- I'm just wondering about
25 the --

1 MS. ANAND: Sure.

2 JUSTICE ALITO: -- the facts of this.
3 What -- you said it wasn't as I suggested. What
4 did I suggest that wasn't factually --

5 MS. ANAND: So -- so it wasn't that he
6 refused to give back the jewelry. It's that he
7 asked for time to consult with counsel before he
8 did so.

9 JUSTICE ALITO: Okay.

10 CHIEF JUSTICE ROBERTS: Justice
11 Sotomayor?

12 JUSTICE SOTOMAYOR: Having worked many
13 a Saturday night to arraign people before
14 judges, that's what some jurisdictions do.

15 (Laughter.)

16 CHIEF JUSTICE ROBERTS: Justice Kagan?
17 Justice Gorsuch?

18 JUSTICE GORSUCH: Maybe an
19 idiosyncratic question, but on this causation
20 element, one way I think of it is this, that
21 malicious prosecution at common law was all
22 about protecting the judicial process.

23 MS. ANAND: Mm-hmm.

24 JUSTICE GORSUCH: And so the Eleventh
25 Circuit or your view of the Eleventh Circuit's

1 causation holding makes a great deal of sense in
2 light of that common law background --

3 MS. ANAND: Mm-hmm.

4 JUSTICE GORSUCH: -- that it doesn't
5 matter what actually happened. What mattered
6 was the process was tainted.

7 MS. ANAND: Mm-hmm.

8 JUSTICE GORSUCH: The problem I have
9 is that we've thrown malicious prosecution into
10 the Fourth Amendment context. And a seizure's
11 got to come around someplace in the Fourth
12 Amendment because that's what it says, right?

13 And that's where I struggle on how to
14 put those two things together because, to me, a
15 malicious prosecution claim naturally flows from
16 the Due Process Clause, and it wouldn't require
17 you to show anything other than the process was
18 tainted.

19 MS. ANAND: Right.

20 JUSTICE GORSUCH: So help me out with
21 that. What -- what -- that's not what we've
22 done, okay?

23 MS. ANAND: So that's the first-line
24 answer.

25 JUSTICE GORSUCH: That battle's been

1 lost. I understand that.

2 MS. ANAND: So setting aside --

3 JUSTICE GORSUCH: Yeah.

4 MS. ANAND: -- this Court's cases, I
5 do think that Gerstein and County of Riverside
6 say, as a matter of the Fourth Amendment,
7 process matters, right? So Gerstein says, yes,
8 you can make a warrantless arrest, but you've
9 got to bring the person in front of a magistrate
10 as soon as possible, certainly no longer than 48
11 hours.

12 And Gerstein doesn't say: And it's
13 okay if you actually did the crime, no need to
14 bring them before the magistrate. It wants the
15 process --

16 JUSTICE GORSUCH: See, that --

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

18 JUSTICE GORSUCH: I'm wholly with you
19 on due process, right?

20 MS. ANAND: But -- but Gerstein is a
21 --

22 JUSTICE GORSUCH: As a matter of
23 process.

24 MS. ANAND: So -- but I'll just say
25 Gerstein --

1 JUSTICE GORSUCH: Yeah.

2 MS. ANAND: -- situates that right in
3 the Fourth Amendment.

4 JUSTICE GORSUCH: In the Fourth
5 Amendment. Okay. All right.

6 Let me ask you another --

7 MS. ANAND: Sure.

8 JUSTICE GORSUCH: -- idiosyncratic
9 question.

10 MS. ANAND: Yeah.

11 JUSTICE GORSUCH: So you -- you
12 brought a straight-up malicious prosecution
13 claim under the common law in Count 1, your
14 client did.

15 MS. ANAND: Mm-hmm.

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

19 MS. ANAND: Mm-hmm.

20 JUSTICE GORSUCH: I -- I don't
21 understand why -- why. Malicious prosecution in
22 state law is a pretty easy tort to prove. Not
23 -- not always, but -- but you might have had a
24 really good shot and got punitive damages and
25 your attorney's fees and everything. Why are we

1 making a federal case out of this?

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

5 JUSTICE GORSUCH: I -- I -- I -- I'm
6 not questioning them. I'm not questioning them.

7 MS. ANAND: Sure.

8 JUSTICE GORSUCH: I'm -- I'm just
9 asking purely strategically. I -- I -- I --
10 I've struggled to understand why some of these
11 cases wind up in federal court when, as an old
12 plaintiffs' lawyer, I might have wanted to bring
13 them in front of a state court.

14 MS. ANAND: To keep them in state
15 court?

16 JUSTICE GORSUCH: Yeah.

17 MS. ANAND: So there's a couple of
18 reasons just speaking at a high level of
19 generality. So many states don't allow
20 malicious prosecution against law enforcement,
21 so, like, California doesn't allow that.

22 In many states, there's a high --
23 there's a heightened mens rea. So, in the Sixth
24 Circuit, the mens rea for the federal malicious
25 prosecution tort is lower than for the state

1 malicious prosecution tort.

2 JUSTICE GORSUCH: Can you tell me a
3 little bit about that? What -- what is that
4 split?

5 MS. ANAND: The -- the -- I can tell
6 you that -- the precise split, which is that the
7 Fourth, Sixth, and D.C. Circuits say that the
8 mens rea element is purely objective. Other
9 circuits have imposed some sort of malice or
10 heightened requirement.

11 JUSTICE GORSUCH: An objective mens
12 rea, okay. Okay. Got it. All right. And did
13 you have anything else you wanted to add? I'm
14 sorry. I interrupted you.

15 MS. ANAND: All I wanted to say on
16 that front is just that, you know, it was our
17 right to bring the Fourth Amendment malicious
18 prosecution case. And that's not just from
19 Thompson and Manuel, where I understand that
20 Your Honor disagrees, but dating back to
21 Gerstein and County of Riverside from the '80s
22 and '90s, saying, and Justice Scalia explains it
23 that, you know, the idea of a reasonable seizure
24 at the time of the Founding, what the Framers
25 anticipated was you arrest someone, you bring

1 them before the magistrate right away, that's
2 what constitutes a reasonable seizure. So this
3 is a matter of what is a reasonable seizure, not
4 just as a function of the Due Process Clause.

5 JUSTICE GORSUCH: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Kavanaugh?

8 Justice Barrett?

9 Justice Jackson?

10 MS. ANAND: Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel.

13 Mr. Suri.

14 ORAL ARGUMENT OF VIVEK SURI
15 FOR THE UNITED STATES, AS AMICUS CURIAE,
16 SUPPORTING VACATUR

17 MR. SURI: Mr. Chief Justice, and may
18 it please the Court:

19 I'd like to address Justice Alito's
20 and Justice Jackson's questions about what
21 exactly everyone is fighting about here today.
22 I think the main disagreement is about how far
23 the Court ought to go in its opinion and what
24 issues it should decide.

25 I understood Petitioner to be saying

1 that the Court should say simply that it is
2 possible to bring a Fourth Amendment malicious
3 prosecution claim even when a valid charge is
4 accompanied by a baseless charge and to stop
5 there.

6 We think it's important for the Court
7 to take one step further and to say that the
8 plaintiff bears the burden of proving that the
9 baseless charge caused an unreasonable seizure.

10 That's an important step to take
11 because, if there's no unreasonable seizure,
12 there's no violation of the Fourth Amendment.
13 But it's also not a significant step to take
14 because you'd just be reaffirming what you've
15 already said in Thompson.

16 Now I understand Respondents to ask
17 the Court to take one step further still and to
18 determine that the seizure in this particular
19 case was reasonable. But we don't think the
20 Court should reach that question because it
21 hasn't been the focus of the briefing and wasn't
22 passed on below.

23 I welcome the Court's questions.

24 JUSTICE SOTOMAYOR: Would your --
25 would your formulation leave open the Eleventh

1 Circuit rationale?

2 MR. SURI: Yes, it would leave open
3 the Eleventh Circuit rationale. We do think
4 that, as Justice Barrett was --

5 JUSTICE SOTOMAYOR: But she fought
6 you -- she fought on that, and she may in -- in
7 reply explain, but --

8 MR. SURI: Yes.

9 JUSTICE SOTOMAYOR: -- why do you
10 think she fought it?

11 MR. SURI: We think that the Eleventh
12 Circuit --

13 JUSTICE SOTOMAYOR: It's an unfair
14 question, but --

15 MR. SURI: We -- we think the Eleventh
16 Circuit rationale makes sense in the context
17 where there is an uncharged crime for which
18 there was probable cause and the police officer
19 wants to defend manufacturing the crime that was
20 charged on the ground that there was also this
21 uncharged crime.

22 We don't think the Eleventh Circuit
23 rationale makes sense in the context where there
24 are multiple charges on which the magistrate did
25 pass and it turns out there was no probable

1 cause for one of them. We don't think the Court
2 needs to get into that issue in order to resolve
3 this case.

4 JUSTICE ALITO: In this case, there is
5 evidence from which one could infer that the
6 magistrate would not have issued an arrest
7 warrant were it not for the felony charge as to
8 which there was not probable cause.

9 But it does strike me that in many
10 other cases, there -- it will be very difficult
11 -- and I don't know how a plaintiff would prove
12 that the -- the charge that -- for which there
13 was no probable cause was the one that resulted
14 in the decision to arrest as opposed to just
15 issue a cite -- a summons.

16 MR. SURI: Justice Alito, I appreciate
17 that it may be difficult for the plaintiff to
18 make that showing, and since it's an element of
19 the claim, the failure to make the showing would
20 mean that the plaintiff would lose.

21 But I could point out a few ways in
22 which a plaintiff might be able to make that
23 showing.

24 First, if there's a bail determination
25 and the -- and the judge sets higher bail

1 because of a felony charge that was added to a
2 misdemeanor charge, but it turns out that the
3 felony charge was fabricated, that might be a
4 circumstance where it's possible to show that
5 the felony charge was the cause of the
6 detention.

7 In addition, state law might provide
8 that certain minor offenses result only in a
9 citation or a summons, but more serious offenses
10 can result in pretrial detention. That's
11 another way in which the plaintiff could make
12 that showing.

13 Ultimately, however, it would depend
14 on the facts and circumstances of the case.

15 JUSTICE ALITO: Presumably, the -- the
16 plaintiff would not be able to depose the
17 magistrate and ask the magistrate what would you
18 have done?

19 MR. SURI: That's right, Justice
20 Alito. We see this kind of inquiry in other
21 areas of criminal procedure. For example, in an
22 ineffective assistance of counsel claim, you ask
23 what would the court have done but for counsel's
24 error, or in a Brady claim, what would the jury
25 have done but for the suppression of particular

1 evidence.

2 And you don't have people deposing the
3 judge or the jury. You just ask objectively
4 what would have happened in those circumstances.
5 We envision a similar inquiry here.

6 JUSTICE BARRETT: So would it be -- so
7 I -- I -- to make sure that I understand your
8 response to Justice Alito, because I was trying
9 to figure out from your brief exactly what your
10 position was and if it was distinct from
11 Respondents'.

12 You see it as kind of a but-for
13 inquiry? Like, you -- you don't see it as
14 asking would it have been reasonable to detain
15 him, say, for four days based on these two
16 misdemeanors. You think the right inquiry is to
17 say would he, in fact, have said four days is
18 sufficient?

19 MR. SURI: Would the magistrate, in
20 fact, have authorized the additional detention.
21 And the bail example might make that
22 particularly clear, what the distinction between
23 us and Respondents would be.

24 We would say, if the magistrate says,
25 I'm issuing this higher bail, which it turns out

1 the defendant can't pay because of the felony
2 charge, that should be enough to show that
3 that's an unreasonable seizure if the felony was
4 a fabricated charge.

5 But I take Respondents to be saying
6 that if the magistrate could have simply denied
7 bail outright as a matter of federal
8 constitutional law, then there's no Fourth
9 Amendment violation.

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

13 MR. SURI: Correct.

14 JUSTICE KAGAN: And why not?

15 MR. SURI: It's not been the focus of
16 the briefing and it's not what the court below
17 decided.

18 In addition, the unreasonable seizure
19 question raised -- raises a variety of nuanced
20 issues: for example, distinguishing between a
21 -- a fabricated charge that was presented to the
22 magistrate and a fabricated charge for which
23 there was probable cause that wasn't presented
24 to the magistrate, distinguishing between the
25 first 48 hours after the arrest and the pretrial

1 detention that happens after, between bail and
2 other procedures that might happen during the
3 pretrial procedure. It's just too complicated
4 to get into without briefing.

5 JUSTICE KAGAN: And as to the two
6 questions that you think we -- we should
7 address, the one that Ms. Anand agrees with and
8 then you added that, of course, this would have
9 to cause a seizure, but there's no disagreement
10 on that one either, is there?

11 MR. SURI: I take Petitioner to be
12 suggesting that it's also possible to bring a
13 Fourth Amendment malicious prosecution claim
14 under the warrant clause based on the issuance
15 of a warrant that's never executed and when no
16 seizure was --

17 JUSTICE KAGAN: I see. I -- I took
18 her to say something like we -- we should just
19 leave that to the side. And you think we
20 shouldn't leave that to the side?

21 MR. SURI: I think that the Court
22 should say that to bring this particular type of
23 claim, the Manuel, Thompson, Fourth Amendment
24 malicious prosecution claim, an unreasonable
25 seizure is required. That's in Thompson itself.

1 Of course, there may be a separate
2 claim under the warrant clause that's cognizable
3 under 1983, but that may have a different common
4 law analogue. It may be that the common law
5 analogue for that isn't malicious prosecution.
6 There's a separate tort that I found preparing
7 for this case called malicious procurement of a
8 warrant. Maybe that's the appropriate analogue.

9 That's why we suggested you limit your
10 focus to the seizure provision.

11 JUSTICE JACKSON: But you're ask --
12 you're saying that we should not, just to
13 piggyback on Justice Kagan's last point, that
14 you would have us stop at just saying that for
15 this kind of claim, you have to have caused --
16 the baseless charge has to have caused an
17 unreasonable seizure but not get into how one
18 would go about proving that?

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

21 JUSTICE KAGAN: I took Ms. Anand to be
22 agreeing with all of that. So maybe I'll just
23 put in a request with Ms. Anand to say on
24 rebuttal whether you agree with all of that.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Alito, anything further?

3 Okay. Thank you, counsel.

4 Ms. Wold.

5 ORAL ARGUMENT OF MEGAN M. WOLD

6 ON BEHALF OF THE RESPONDENTS

7 MS. WOLD: Mr. Chief Justice, and may
8 it please the Court:

9 When a plaintiff brings a Section 1983
10 malicious prosecution claim under the Fourth
11 Amendment, the plaintiff must show that the
12 alleged malicious prosecution resulted in the
13 plaintiff's seizure, as this Court held in
14 Thompson.

15 The Sixth Circuit correctly concluded
16 that Petitioner cannot make that showing because
17 probable cause supported his detention.
18 Petitioner was arrested and detained for three
19 days pursuant to a warrant supported by probable
20 cause for two first degree misdemeanor crimes,
21 each carrying a sentence up to six months'
22 imprisonment.

23 In light of that, the presence of a
24 third charge, allegedly lacking probable cause,
25 could not have resulted in Petitioner's

1 detention. This result flows directly from
2 existing Fourth Amendment precedents, including
3 Devenpeck versus Alford and Whren versus United
4 States, which make clear that a seizure does not
5 violate the Fourth Amendment "as long as [the]
6 circumstances, viewed objectively, justify that
7 action."

8 Or, as those precedents also state,
9 Fourth Amendment reasonableness "allows certain
10 actions to be taken in certain circumstances,
11 whatever the subjective intent" an arresting
12 officer is alleged to have had.

13 Moreover, in Baker versus McCollan,
14 the Court concluded that a three-day seizure
15 like Petitioner's did not violate the Fourth
16 Amendment because the arrest and detention was
17 pursuant to a warrant supported by probable
18 cause, even though police in that case had
19 actually detained an innocent individual based
20 on a mistaken identification.

21 Applying the correct Fourth Amendment
22 rule here means setting aside the charge that
23 Petitioner alleges to have lacked probable cause
24 and assessing whether the remaining charges
25 objectively justify his detention. They clearly

1 do, and so I urge the Court to affirm the
2 decision below.

3 And I welcome your questions.

4 CHIEF JUSTICE ROBERTS: What happened
5 to this -- radical agreement we heard of?

6 (Laughter.)

7 MS. WOLD: It was news to me that
8 there was radical agreement. I think what has
9 happened is that Petitioner has created this
10 any-crime rule that was, in fact, a rule that
11 the Sixth Circuit had not adopted. Under this
12 any-crime strawman rule, it would mean that the
13 presence of one charge supported by probable
14 cause automatically justifies any detention. I
15 don't think that's what the Sixth Circuit
16 thought. That's not what the relevant Sixth
17 Circuit precedent had held that the panel below
18 was applying.

19 And I would point the Court to the
20 decision below at Cert Appendix pages 9a and
21 10a, where the court articulates in a paragraph
22 the standard that it's applying for malicious
23 prosecution, and it says that the success of the
24 malicious prosecution claim depends on whether
25 probable cause supported his detention.

1 And so we need to know what the
2 Petitioner's detention was. And, here, it was
3 this few days' detention pursuant to a warrant
4 supported by probable cause on two charges. And
5 that satisfies Fourth Amendment reasonableness.
6 So there can be no Fourth Amendment malicious
7 prosecution claim.

8 JUSTICE SOTOMAYOR: What do I do with
9 the language of the court that says, moreover,
10 we can affirm the district court's decision if
11 probable cause supports one or more of the three
12 charges?

13 MS. WOLD: I --

14 JUSTICE SOTOMAYOR: That's a --
15 probable -- that's an every crime exception.

16 MS. WOLD: I realize that. I would
17 again point the Court to the paragraph that I
18 referenced because that's where they articulate
19 the standard. And if there's anything that
20 might be somewhat unsatisfactory about the lower
21 court opinion, it's that they are joining
22 together the false arrest, false imprisonment,
23 and malicious prosecution analyses, and I think
24 that may cause some shorthand to appear later in
25 the opinion that gives that impression.

1 But I think it's important to note
2 what --

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

8 MS. WOLD: Oh -- oh, no. I absolutely
9 --

10 JUSTICE SOTOMAYOR: That a summons
11 would have issued? Do you think then that it's
12 an unreasonable seizure to have gotten the
13 warrant?

14 MS. WOLD: No, I disagree. And -- and
15 that's not the way Fourth Amendment precedents
16 operate in this area. We look at the detention
17 and we ask whether it is objectively justified.
18 I would point out as well that even on the face
19 of the warrant --

20 JUSTICE SOTOMAYOR: So what makes -- a
21 -- a seizure can be permitted but the detention
22 unreasonable.

23 MS. WOLD: Absolutely. And I think
24 that might arise in circumstances where a -- a
25 particular offense is maybe a fine-only offense,

1 for example, and that's the only charge that --
2 that can provide probable cause. A more serious
3 charge that accompanied it lacks probable cause,
4 well, certainly, at some point, the detention,
5 and, certainly, beyond 48 hours for an uncharged
6 crime, is always going to be unreasonable under
7 the Fourth Amendment. I did --

8 JUSTICE KAGAN: Just -- just to get
9 back to the question that Justice Sotomayor
10 asked about, that language, I understand that
11 you're saying we shouldn't take that language at
12 face value, but if that language were taken at
13 face value to -- to mean what Justice Sotomayor
14 suggested it meant, which is that any crime gets
15 you out of -- you do disagree with that?

16 MS. WOLD: I -- you're talking about
17 the language in the Sixth Circuit opinion. If
18 it meant an any-crime rule the way Petitioner
19 defines it, that any probable cause
20 automatically insulates any detention, yes, we
21 agree that would be incorrect. We don't think
22 that's what the Sixth Circuit applied.

23 If, however, you look at the Sixth
24 Circuit opinion and you disagree and you think
25 that is the standard that the Sixth Circuit

1 applied, then we think you should announce the
2 right rule. And we, I think, largely agree with
3 the United States about what that rule is.

4 But we also think you should apply it
5 in this case. There's ample precedent for --
6 for doing that in Crawford and Employment
7 Division versus Smith, Terry versus United
8 States, Katz versus United States, and we think
9 that would be appropriate to do here.

10 JUSTICE KAGAN: So you would say,
11 first, we knock off the any-crime. Then we say
12 that the -- that there has to be a showing of
13 causation as to the detention or the seizure.

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

17 MS. WOLD: Well, certainly not the
18 right way in every case, but I think the way we
19 ask you to then apply the rule you would set out
20 is according to existing Fourth Amendment
21 precedents.

22 And even if you weren't willing to go
23 ahead and apply the rule in this case, we do
24 think the Court should make clear that when
25 Manuel and then Thompson in particular

1 recognized a Fourth Amendment malicious
2 prosecution claim, they weren't recognizing a
3 brand-new body of Fourth Amendment law that was
4 going to create standards that are different
5 than in other areas.

6 We think the applicability of
7 reasonability should continue to be as it
8 already is in the Fourth Amendment. And to the
9 extent that's dissatisfactory, it would be, as
10 Justice Gorsuch suggests, potentially possible
11 to locate the claim in the Fourteenth Amendment.
12 And there may be efforts to do so. The Court
13 has explicitly reserved that possibility.

14 JUSTICE JACKSON: So how is it that it
15 applies here? Can you -- so what is your
16 standard for causation?

17 MS. WOLD: So we just think it's the
18 application of ordinary Fourth Amendment
19 principles. So you would look at the warrant
20 just as you do under Franks and exclude the
21 information that is alleged to be false. It's
22 alleged to be the malicious prosecution
23 evidence, if you will. And you would look at
24 what remains, and you would ask whether there is
25 probable cause and whether that supports the

1 detention.

2 JUSTICE JACKSON: But I guess, to look
3 at ordinary principles, a lot of those ordinary
4 principles come up in a different context, so
5 it's hard to really say that they should
6 translate and drive the analysis here.

7 I mean, I had a -- a whole colloquy
8 with Ms. Anand about false arrest, probable
9 cause, and what we look at and what we care
10 about being different than the -- the probable
11 cause element. And I understand we're talking
12 about the causation element, but the -- the
13 gravamen of a malicious prosecution claim is not
14 the same as the gravamen of an unlawful arrest
15 claim.

16 And so, when you're thinking about
17 unreasonableness for the standpoint -- from the
18 standpoint of causation, I guess I'm a little
19 worried about treating them the same.

20 MS. WOLD: So the Fourth Amendment, as
21 we know, prohibits unreasonable seizures but not
22 unreasonable charges. And we think that's the
23 difference. And if there's any kind of misfit
24 between these things, I think the Court was well
25 aware of that in Thompson, understanding that

1 the common law malicious prosecution --

2 JUSTICE JACKSON: No, but isn't it --
3 isn't it -- isn't it, in the malicious
4 prosecution context, the malicious and
5 unreasonable charge has caused, as you say, the
6 unlawful seizure. And so, when we're looking at
7 causation, it's very hard for me to understand
8 how you can take out of the picture, as you --
9 as you did with your definition, the malicious
10 prosecution.

11 What Ms. Anand is saying is that when
12 you have a malicious initiation of charges, that
13 sort of taints the process. And it's very -- it
14 -- you know, it's almost like you have to
15 presume that almost everything that happened
16 afterwards was -- was tainted by that, unless we
17 have clear evidence that you could have
18 proceeded without the -- the malicious
19 prosecution.

20 And you seem to be saying the opposite
21 in a -- in a way.

22 MS. WOLD: I think that those same
23 kinds of arguments could have been put forward,
24 I think were put forward, in Devenpeck versus
25 Alford, about the way we handle this in the

1 context of a false arrest. And the answer was a
2 Fourth Amendment answer about reasonableness and
3 that Fourth Amendment reasonableness does not
4 depend on the subjective intent of a particular
5 officer. We know that from Whren, from
6 Devenpeck, from numerous other cases. It also
7 doesn't --

8 JUSTICE JACKSON: But that's because
9 that's not a malicious prosecution scenario. I
10 mean, this is the -- this is the precise point,
11 right? When you take the jurisprudence that
12 relates to the reasonableness of just an
13 unlawful arrest, I totally buy what you're
14 saying. We're not -- because we're not really
15 focusing on the intent of the officer, we're
16 looking at the circumstances and whether or not
17 an objective officer with those circumstances
18 would have arrested you and behaved in that way.

19 But, when you're beginning in the
20 world of malicious prosecution, the thing that
21 we care about is the intent and the
22 maliciousness and what the process is doing to
23 you for baseless reasons.

24 And so, once we're -- we're starting
25 there, it seems to me you can't really judge the

1 causation by those other standards, by standards
2 that -- that say, well, we don't really care
3 what the officer was thinking. We're -- we've
4 already crossed that bridge because we're in the
5 world of malicious prosecution.

6 MS. WOLD: I think that Thompson
7 answers this question by requiring that there be
8 an unreasonable seizure because Thompson was
9 locating the claim in the Fourth Amendment or at
10 least acknowledging it as a type of Fourth
11 Amendment claim that could be brought.

12 And I think the kinds of things you're
13 discussing might be more at home in the
14 Fourteenth Amendment. But it's not been a part
15 of our Fourth Amendment analysis. And I don't
16 think that Thompson was creating a rule by which
17 there would be a -- a new type of claim and it
18 would have brand-new elements and change the
19 meaning of probable cause.

20 I think Thompson was acknowledging
21 that this claim could be brought under the
22 Fourth Amendment, but I don't think there's any
23 reason to deviate from Fourth Amendment
24 principles --

25 JUSTICE BARRETT: Ms. --

1 MS. WOLD: -- beyond that.

2 JUSTICE BARRETT: -- Ms. Wold, if we
3 do what the SG proposes that we do and say, you
4 know, the any-crime rule is not good, but you do
5 have to show causation and that -- and that this
6 caused a seizure in order to make out the Fourth
7 Amendment claim, what happens on remand? What
8 arguments then do you make?

9 MS. WOLD: Well, I think, on remand,
10 we would continue to argue, as I would ask the
11 Court to also state, that Fourth Amendment --
12 existing Fourth Amendment principles apply, and
13 so the question is whether his detention is
14 justified by probable cause.

15 JUSTICE BARRETT: And so this would be
16 the colloquy that you're having with Justice
17 Jackson right now saying that we look at it
18 objectively and we say: Was this four days, if
19 you cross out, put your hand over the
20 money-laundering charge, would it have been
21 reasonable to hold him for four days for these
22 two misdemeanors?

23 MS. WOLD: Yes, that's exactly right.
24 So you would ask based on the probable cause
25 that we know was determined by a neutral and

1 detached magistrate at the issuance of the
2 warrant, the probable cause in those two charges
3 clearly justifies the entirety of his detention,
4 and that would resolve the issue.

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

8 When do we stop thinking about the
9 Fourth Amendment and start thinking about, say,
10 speedy trial or is this -- is he being held so
11 long that we're violating the Sixth Amendment or
12 was this fine so high it's actually, you know,
13 an excessive fine problem?

14 Is all this really -- and is that
15 maybe another reason for caution here? Is all
16 this really a Fourth Amendment issue?

17 MS. WOLD: So I think the recognition
18 that pretrial detention could be a Fourth
19 Amendment claim arises in 2017 with Manuel. So
20 some of these questions may be a bit new.

21 I do think, in the past, the Court has
22 resolved some questions about length of
23 detention by asking at some point did that
24 detention become punishment and then it's
25 punishment without a conviction. And that can

1 fall under other provisions of the Constitution.

2 Maybe it's an unsatisfactory answer.

3 I think there are complicating factors here. I
4 think this case and these facts are not
5 difficult because the detention is so limited
6 and it clearly corresponds to the length of
7 detention the Court has found to be reasonable
8 under the Fourth Amendment in other cases, like
9 Baker versus McCollan, where, you know, there,
10 you had the wrong person. That person was
11 completely innocent and saying so from the
12 moment of arrest onward, but the warrant was
13 valid. The warrant was supported by probable
14 cause, and that justified the detention for a
15 matter of days.

16 JUSTICE BARRETT: Thank you.

17 MS. WOLD: Mm-hmm.

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

22 Would it be that probable cause
23 existed sufficient on the two charges that
24 remained and that that would be enough to
25 justify four days, or would it be that there's

1 probable cause under any laws that we can point
2 to that would suffice to support four days?

3 MS. WOLD: It -- it would be -- well,
4 first, I -- obviously, I don't want to exclude
5 on remand that we might make lots of arguments,
6 but I think the -- the argument I'm -- I'm
7 positing today is that the two charges that were
8 the subject of the warrant, those supply
9 probable cause, not some kind of uncharged
10 conduct, not under any law.

11 JUSTICE GORSUCH: I guess I'm
12 wondering why that would be the case under your
13 logic. If we're going to take the Fourth --
14 we're trying to import Fourth Amendment
15 principles further into this malicious
16 prosecution claim, a false arrest seems to be
17 where you're kind of driving the train and -- or
18 wanting to -- I may be mistaken there.

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

23 MS. WOLD: Right. I think, in this
24 case, it wouldn't be enough to look at uncharged
25 conduct because the seizure lasted more than 48

1 hours. So there wouldn't be a probable cause
2 determination by a neutral and detached
3 magistrate as to uncharged conduct, and that's
4 why you couldn't do what you could otherwise do
5 in the false arrest context.

6 JUSTICE GORSUCH: We're not looking
7 necessarily at uncharged conduct, but -- I -- I
8 understand that limitation, but the claims that
9 the -- that the government might bring. Why --
10 why would you be limited on that?

11 MS. WOLD: Maybe I'm failing to
12 understand the question, but I think, when the
13 government is holding someone beyond 48 hours --

14 JUSTICE GORSUCH: No, you've got to
15 come up with a crime. But there's a lot of
16 crimes out there these days, not just those you
17 happen to charge.

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

22 JUSTICE GORSUCH: Okay. All right.
23 Thank you.

24 JUSTICE JACKSON: So it seems to me
25 that your causation rule eviscerates the kind of

1 plaintiff dynamic that I explored with Ms.
2 Anand, and maybe you can help me understand why
3 that's the case -- why that's not the case.

4 So I said we have a person who is a
5 criminal and he's committing crimes and he's got
6 three or four of them absolutely dead to rights,
7 but one of them, no. One of them, he says, this
8 additional thing, whatever it is, I didn't do
9 it. And because I'm, you know, a career
10 criminal, the police officer knows me from way
11 back when, and he actually tacked that on after
12 he made stuff up and he -- this charge is a
13 malicious prosecution.

14 It seems to me that if we buy your
15 rule of causation, so, first of all, we -- we --
16 we don't say, you know, any charge, he -- he --
17 he still gets to go forward just because there
18 are these other charges, he still gets to go
19 forward on that basis, but you're knocking him
20 out basically for the same reason on the
21 causation prong.

22 You're saying, because you have these
23 other charges for which you could have been
24 arrested, and perhaps he even agrees to that,
25 you're not allowed because you can't say that

1 the baseless charge caused.

2 And I guess I don't understand why
3 that's the case. Why shouldn't he still be able
4 to make his claim on the civil docket with
5 respect to the malicious prosecution of that one
6 charge?

7 MS. WOLD: I think you've absolutely
8 highlighted the distinction between our
9 positions. I think Williams versus Aguirre,
10 which Petitioner embraces, would hold that you
11 could make out a per se constitutional violation
12 for that alleged malicious prosecution.

13 And we think that's incorrect, and we
14 think that's because of the operation of the
15 Fourth Amendment. The correct rule is a Fourth
16 Amendment rule. How could you have a per se --

17 JUSTICE JACKSON: Right.

18 MS. WOLD: -- constitutional violation
19 for an unreasonable charge, which the Fourth
20 Amendment does not forbid, without an
21 unreasonable seizure? And -- and we think it's
22 the Fourth Amendment that does the work there.
23 And that's a clear distinction.

24 JUSTICE JACKSON: So what if the other
25 crimes are all misdemeanors and he can show --

1 we have this coming up in other cases -- that no
2 one would ever have been prosecuted or held or
3 detained for the three other things? Yes, he
4 says, I did those things, but those are not
5 things for which people get detained. It's the
6 one they made up, and that's, in fact, why they
7 made it up, because they wanted me to go to
8 jail.

9 Does he go forward or no under your
10 causation prong?

11 MS. WOLD: We -- we still think it is
12 the overlay of existing Fourth Amendment
13 precedent that asks about that objectively, and
14 -- and that means that if those misdemeanor
15 charges, regardless of local practice, even if
16 it hadn't been local practice to arrest for
17 those, the Fourth Amendment says you can arrest
18 for even a fine-only offense. That's Atwater
19 versus City of Lago Vista.

20 And the Fourth Amendment also allows
21 an arrest even if it would be unlawful under
22 state law. That's Virginia versus Moore. Those
23 don't violate the Fourth Amendment, so you can
24 hold that individual.

25 Now it would be a different case if

1 the detention is for 18 months, for example, and
2 the only probable cause that supports it are for
3 these very minor misdemeanor offenses.

4 JUSTICE JACKSON: But it doesn't
5 matter to you at all if -- if there's evidence
6 that he puts forward that no one would ever --
7 that -- that this magistrate, in fact, wouldn't
8 have or didn't, you know, go forward with
9 respect to this -- authorizing this detention
10 but for the baseless charge that -- that was put
11 there in order to get him to go to jail?

12 MS. WOLD: That's right. We think
13 that is exactly the kind of analysis that the
14 Fourth Amendment forecloses. And I can point to
15 Whren, Virginia versus Moore, that all say the
16 Fourth Amendment reasonableness does not depend
17 on local practice. It doesn't depend on state
18 law. It doesn't vary from place to place and
19 from time to time. And that's just settled
20 Fourth Amendment law.

21 JUSTICE GORSUCH: Counsel, let's say I
22 -- I -- I -- I understand all that and maybe --
23 maybe even am slightly sympathetic to it. But
24 what about the Fourteenth Amendment and what
25 about the common law malicious prosecution

1 claims, which didn't depend upon showing that
2 all the charges against me were false?

3 MS. WOLD: I think the standard could
4 definitely be different. Under those, I think,
5 under state law, there is no requirement that
6 you show a seizure, so the analysis would be
7 different. That claim has been abandoned by
8 this stage in the litigation.

9 And, yes, under the Fourteenth
10 Amendment, you wouldn't have this requirement to
11 show a seizure. I think the analysis would be
12 different if the Court were to recognize it in
13 the future.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Justice Alito?

17 Justice Sotomayor, anything more?

18 Justice Kagan?

19 Justice Gorsuch? No?

20 Thank you, counsel.

21 MS. WOLD: Thank you.

22 CHIEF JUSTICE ROBERTS: Rebuttal?

23 REBUTTAL ARGUMENT OF EASHA ANAND

24 ON BEHALF OF THE PETITIONERS

25 MS. ANAND: Thank you, Your Honor.

1 So, to answer Justice Kagan's question
2 first, we are totally fine with the United
3 States' position, answer the question presented,
4 reiterate what you said in Thompson, that the
5 malicious prosecution must have resulted in a
6 seizure, which, as the United States points out,
7 is perfectly consistent with our preferred
8 Eleventh Circuit formulation, and don't touch
9 the question of the warrant clause.

10 We raised the warrant clause to talk
11 about the values and purposes of the Fourth
12 Amendment only, not to suggest that there is
13 necessarily a 1983 claim predicated on it or
14 what constitutional tort applies.

15 As for Respondents' position, I'll
16 just note that what they're now describing as a
17 strawman is precisely what they argued for
18 below. Here's a quote from oral argument: "So
19 long as probable cause exists to one of multiple
20 criminal charges, that is enough to negate the
21 entire malicious prosecution claim."

22 This Court can do a lot of good by
23 just resolving the question presented and saying
24 that the -- the any-crime rule -- as Justice
25 Gorsuch said, you can always come up with some

1 crime for which there's probable cause. And so
2 the any-crime rule allows police officers to
3 entirely insulate their misconduct by just
4 tacking on a -- a charge for which there is
5 probably probable cause for just about anyone.

6 This Court can do a lot of good by
7 just saying that that rule is incorrect, that a
8 plaintiff can make out a malicious prosecution
9 claim even if some charges are supported by
10 probable cause, and we'll fight about all the
11 complexities that Your Honors heard about on
12 remand. Thank you.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 The case is submitted.

16 (Whereupon, at 12:44 p.m., the case
17 was submitted.)

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