No. 20–659

In the Supreme Court of the United States

LARRY THOMPSON,

Petitioner,

v.

PAGIEL CLARK, ET AL.,

Respondents.

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

BRIEF OF NATIONAL, STATE, AND LOCAL CIVIL RIGHTS, RACIAL JUSTICE, AND CRIMINAL DEFENSE ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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January 4, 2021

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are leading criminal defense, civil rights, and public policy organizations whose interest in this case arises from their dedication to defending the constitutional rights of individuals engaged in the American criminal legal system. They are the Bronx Defenders, Brooklyn Defender Services, Cato Institute, the Center for Appellate Litigation, the Chief Defenders Association of New York, the Center on Race, Inequality, and the Law at New York University School of Law, the Legal Aid Society, the National Association of Criminal Defense Lawyers, the National Police Accountability Project, the New York State Association of Criminal Defense Lawyers, and the Office of the Appellate Defender.

REASONS FOR GRANTING THE PETITION

This case asks whether an individual seized during criminal proceedings in violation of the Fourth Amendment must prove that the criminal proceedings ended in a manner indicative of their innocence in order to succeed in a section 1983 action to redress the violation of their constitutional rights. A majority of lower courts have wrongly decided that a termination demonstrating innocence is an element of such constitutional claims. This Court should grant certiorari and hold that no such element exists.

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[1] Pursuant to Rule 37.6, *amici* certify that no counsel for a party has authored this brief in whole or part and that no one other than *amici* and their counsel has made any monetary contribution to the preparation and submission of this brief. All parties have consented to the filing of this brief.

First, the lower courts' conclusion contradicts the deeply rooted principle that our criminal system presumes innocence and adjudicates only whether a defendant is guilty beyond a reasonable doubt. It also ignores the practical reality that criminal proceedings, except in exceedingly rare circumstances, never end in a way that permits an adjudication of innocence. And it imposes a huge burden on state criminal courts while setting poor incentives for prosecutors and defendants.

Second, because it is usually impossible to show that criminal proceedings terminated in a manner indicating innocence, the lower courts' innocence requirement forecloses section 1983 claims for many individuals whose detention and prosecution violate their Constitutional rights. Congress passed Section 1983 to remedy and deter the corruption of criminal proceedings by state actors who commit misconduct. Unfortunately, this problem persists today. Eliminating a federal remedy for this misconduct inflicts severe harm on individuals whose constitutional rights are violated and invites state actors to deviate from federal law during state criminal proceedings.

Third, the lower courts' conclusion that a termination indicating innocence is an element of federal constitutional claims contradicts many of this Court's cases. The innocence requirement runs afoul of this Court's warning that section 1983 should not be used to federalize common-law torts. It ignores that this Court's cases defining constitutional claims for illegal seizure or deprivation of liberty during criminal proceedings have never required proof of innocence. Moreover, it irreconcilably conflicts with this Court's decisions defining the accrual of section 1983 claims alleging

such constitutional violations, which hold that a favorable termination of criminal proceedings need not indicate innocence.

I. AN INNOCENCE REQUIREMENT IS INCONSISTENT WITH THE LEGAL FOUNDATION AND PRACTICAL REALITY OF OUR CRIMINAL SYSTEM

The American criminal legal system is designed to adjudicate one principal question: whether the state has established a defendant's guilt beyond a reasonable doubt. Individuals facing prosecution are never asked to prove their innocence. Instead, they are presumed innocent. These bedrock principles alone should foreclose any requirement that a criminal defendant turned section 1983 plaintiff demonstrate that past criminal proceedings terminated in a manner indicative of innocence. And because innocence is not a question that our criminal system aims to resolve, except in rare circumstances, defendants almost never have the opportunity to prove their innocence.

Nor should federal courts saddle state criminal courts, prosecutors, and defendants with the job of adjudicating innocence. Doing so would needlessly impose a substantial burden on state criminal proceedings, create perverse incentives for state prosecutors and defendants, and undermine the presumption of innocence and the requirement of proof beyond a reasonable doubt. This Court should grant certiorari to ensure that section 1983 claims do not require proof of an innocence element inconsistent with the design and function of our criminal system.

A. Criminal Cases Are Designed to Assess Guilt Beyond a Reasonable Doubt and Not to Adjudicate Innocence

"'[A]xiomatic and elementary,' the presumption of innocence 'lies at the foundation of our criminal law.'" *Nelson v. Colorado*, 137 S. Ct. 1249, 1255-56 (2017) (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895)); see also *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978) ("The *Coffin* Court traced the venerable history of the presumption from Deuteronomy through Roman law, English common law, and the common law of the United States."). The presumption persists until a conviction, *Herrera v. Collins*, 506 U.S. 390, 398-99 (1993), and it applies again once a conviction is set aside, *Nelson*, 137 S. Ct. at 1255 n.8; *id.* at 1259 n.1 (Alito, J., concurring in the judgment).

Equally fundamental and an essential correlate is the requirement of proof beyond a reasonable doubt, which "plays a vital role in the American scheme of criminal procedure" and "provides concrete substance for the presumption of innocence." *In re Winship*, 397 U.S. 358, 363 (1970); *Apprendi v. New Jersey*, 530 U.S. 466, 477-78 (2000) ("[T]he historical foundation for our recognition of these principles extends down centuries into the common law[.]"). "[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. at 364. No principle is more cherished in American criminal law than the presumption of innocence and the requirement of proof beyond a reasonable doubt.

By design, then, the huge number of criminal proceedings occurring each day in the United States assess one and only one question with respect to liability: whether the government can show through reliable evidence that the presumptively innocent defendant is guilty beyond a reasonable doubt. A criminal proceeding that fails to adequately address that question cannot stand. *Jackson v. Virginia*, 443 U.S. 307, 321-24 (1979). Given that our criminal system is fundamentally uninterested in whether a defendant can prove innocence, this Court has made painstakingly clear that defendants cannot be required to introduce evidence of their innocence, *Sandstrom v. Montana*, 442 U.S. 510, 524 (1979), even after a conviction has been reversed, *Nelson*, 137 S. Ct. at 1256. A rule that an individual facing prosecution must establish that criminal proceedings concluded in a manner indicating innocence to make out a federal constitutional violation is antithetical to these foundational principles.

B. When Criminal Proceedings Terminate in Favor of a Defendant There Is Rarely an Opportunity to Adjudicate Innocence

Requiring proof that criminal proceedings terminated in a manner indicating innocence also ignores what actually occurs each day in criminal courtrooms. Criminal cases that do not result in a judgment of conviction nearly always end without any opportunity to adjudicate a defendant's innocence. This is true whether the criminal case terminates favorably before a criminal trial, with an acquittal, or by some grant of post-conviction relief.

1. When a case terminates in favor of a defendant after legal process issues but before trial, there is never an opportunity for a defendant to offer evidence of innocence, and such pretrial resolutions will categorically fail to establish the defendant is innocent of the offenses charged. Aside from defendants who plead guilty,[2] when a criminal case ends before trial, it ends favorably for the defendant but without any opportunity to adjudicate innocence.

A case may end before trial because a grand jury declines to indict, in which case it will have considered only evidence presented by the prosecutor, without cross-examination, and its rationale for refusing to indict will not appear in any opinion, order, or statement. See 38 AM. JUR. 2d Grand Jury § 3. Or a defendant might successfully move to dismiss charges before trial, but the grounds for dismissal will almost never be that the defendant is actually innocent of the crime. E.g., N.Y. Crim. Proc. Law §§ 210.20(1)(a)-(i) (outlining procedural and jurisdictional defects justifying dismissal).

Most commonly, as in Petitioner's case, a prosecution ends before trial because a prosecutor dismisses the charges. State prosecutors appropriately have wide discretion to dismiss for any number of reasons. The defendant might have successfully moved to suppress evidence necessary to the prosecution. An essential witness might be uncooperative or not credible. Evidence might be lost or destroyed. The case may have a legal defect. The

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[2] Of those cases ending in a judgment of conviction, ninety-seven percent in federal courts and ninety-four percent in state courts occur by plea. *Missouri v. Frye*, 566 U.S. 134, 143 (2012).

prosecutor's caseload might call for the allocation of resources elsewhere. Further investigation or review of evidence might reveal that the evidence is insufficient to take the case to trial or might identify a more likely perpetrator. The list of reasons goes on *ad infinitum*, but whatever the specific reasons, a prosecutor will rarely state them on the record. Instead, as in Petitioner's case, a prosecutor will likely make a general statement that the dismissal is "in the interests of justice," for the law requires no more. Pet. App. At 18a-19a; N.Y. Crim. Proc. Law §§ 170.40 & 210.40. In large jurisdictions, the majority of misdemeanor and felony cases are dismissed. Surell Brady, *Arrests Without Prosecution and the Fourth Amendment*, 59 MD. L. REV. 1, 3 (2000). At best, there will be exceedingly little procedural or factual record in these cases, and the prosecutor's reasons for dismissal will be unknown or ambiguous. And given the dismissal, there will be no further proceedings at which innocence might be shown.

2. The same is true of cases that end with an acquittal. Given the government's burden to prove guilt beyond a reasonable doubt, "an acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361 (1984); see also *Savory v. Cannon*, 947 F.3d 409, 429 (7th Cir. 2020) (en banc) (noting that the acquittal discussed in *McDonough v. Smith*, 139 S. Ct. 2149, 2161 (2019), is "another resolution that does not necessarily imply innocence"). This Court has acknowledged that a judge may acquit (and that double jeopardy bars re-prosecution) for reasons

unrelated to innocence. *Evans v. Michigan*, 568 U.S. 313, 318-21 (2013). All told, an individual facing prosecution may introduce strong evidence of innocence at trial, but the acquittal itself does not reflect a conclusion that the individual is innocent.

3. Similarly, relief granted following a conviction usually does not adjudicate innocence (though in this context there are rare exceptions where "actual innocence" is established). The most common grounds for relief on direct appeal are trial errors, which entitle the defendant to a new trial without evaluation of guilt or innocence. Even where a conviction is reversed because the evidence was insufficient to sustain a conviction, that decision does not reflect a subjective determination of innocence. *Jackson*, 443 U.S. at 310 n.13. A conviction may be subject to collateral attack in state or federal court on any number of grounds unrelated to innocence. See, *e.g.*, *Strickland v. Washington*, 466 U.S. 668 (1984) (ineffective assistance of counsel); *Kyles v. Whitley*, 514 U.S. 419 (1995) (suppression of exculpatory evidence); *Brewer v. Williams*, 430 U.S. 387 (1977) (violation of the right to counsel). A person convicted might secure executive clemency, which in most instances is an act of forgiveness, rather than an acknowledgment of innocence. *Logan v. United States*, 552 U.S. 23, 26 (2007).

Of the myriad ways post-conviction relief from a criminal judgment might be secured, the only ones permitting a defendant to adjudicate innocence are a finding of "actual innocence" in post-conviction proceedings, which is available in some jurisdictions, and a pardon based on innocence.

These resolutions are exceedingly rare. As with pretrial resolutions and acquittals, for each of the common mechanisms for post-conviction relief, a defendant has no opportunity to show innocence, and a decision granting relief will not reflect innocence.

In light of the practical reality that innocence is never adjudicated before a criminal trial or with an acquittal, and hardly ever during post-conviction proceedings, it makes little sense to condition a constitutional claim on proof that prior criminal proceedings ended in a manner indicating innocence. Such an innocence requirement contradicts both the legal design of our criminal system and the way that it functions in practice.

C. Requiring Defendants to Adjudicate Innocence In Criminal Cases Harms Our Criminal System

Requiring defendants to pursue adjudications of innocence at the conclusion of criminal proceedings harms our system of justice. The investigation, litigation, and resolution of a defendant's innocence imposes a substantial new burden on criminal courts, prosecutors, and defendants. The process requires a massive commitment of resources to a project that has never before been part of American criminal jurisprudence. Trial courts have to decide whether the conclusion of the criminal case has come about in a way indicating the defendant's innocence—a determination that might require a new record of additional evidence and testimony. It is unclear what legal standards should govern the proceeding or who should bear the burden of proving what. Criminal proceedings that had already ended would instead continue to demand resources from an

already taxed system of courts, prosecutors, and public defenders. And the ultimate resolution of criminal cases would be delayed.

Moreover, adjudicating innocence at the conclusion of criminal proceedings creates incentives for prosecutors and defense attorneys at odds with their established roles. Although all parties should seek the prompt dismissal of charges when warranted, a prosecutor who believes it is in the interest of justice to dismiss a criminal case might be delayed from doing so by a defendant who seeks an adjudication of innocence. A prosecutor who is aware that dismissing a case might lead to future civil litigation in federal court might be inclined to conceal the reasons for dismissal in an attempt to defeat future liability for state actors, even though the prosecutor's sole focus should be the neutral administration of criminal justice.

A criminal legal system based on the deeply rooted presumption that a defendant is innocent and must be proven guilty beyond a reasonable doubt cannot be made to also determine whether or not the defendant is actually innocent based on a different evidentiary standard. Such an approach would undermine these fundamental principles. This court should grant certiorari to ensure that does not happen.

II. AN INNOCENCE REQUIREMENT INVITES CONSTITUTIONAL VIOLATIONS IN STATE CRIMINAL CASES AND LEAVES DEFENDANTS WHO SUFFER THOSE VIOLATIONS WITHOUT FEDERAL RECOURSE

Congress enacted section 1983 to create a federal remedy for individuals wronged by constitutional

violations and to deter official misconduct. The statute was aimed at state actors who interfere with the administration of justice in state courts. People who are wrongly detained or deprived of their liberty because of unconstitutional criminal prosecutions are therefore paradigmatic section 1983 plaintiffs. But grafting an innocence requirement onto section 1983 claims deprives them of a remedy and permits unconstitutional conduct to persist.

A. Section 1983 Exists to Remedy and Deter Violations of the Constitution by State Actors During Criminal Proceedings

Section 1983 remedies deprivations of rights secured by federal law, including the Constitution. 42 U.S.C. § 1983; *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985). As this Court noted in *Carey v. Piphus*, "the basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights[.]" 435 U.S. 247, 254 (1978). Equally important, section 1983 deters state actors from depriving individuals of federally guaranteed rights. *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

Section 1983 plays an important role in remedying deprivations of rights that concern justice in state courts, including state criminal proceedings. Congress's "main goal" in enacting the Ku Klux Klan Act "was to override the corrupting influence of the Ku Klux Klan and its sympathizers on the governments and law enforcement agencies of the Southern States." *Allen v. McCurry*, 449 U.S. 90, 98 (1980). "[S]tate courts were being used to harass and injure individuals either because the state courts were powerless to stop deprivations or were

in league with those who were bent upon abrogation of federally protected rights." *Mitchum v. Foster*, 407 U.S. 225, 240 (1972); see also *Briscoe v. Lahue*, 460 U.S. 325, 337 (1983) ("[A]cts of lawlessness went unpunished . . . because Klan members and sympathizers controlled or influenced the administration of state criminal justice."). To combat these conditions, section 1983 "provide[d] a federal remedy where the state remedy, though adequate in theory, was not available in practice." *Monroe v. Pape*, 365 U.S. 167, 174 (1961). The remedy was purposefully broad to "aid . . . the preservation of human liberty and human rights." *Owen v. City of Independence*, 445 U.S. 622, 636 (1980).

Applying the plain language of the statute and with this history in mind, this Court has repeatedly recognized that section 1983 supplies a remedy for individuals wrongly subjected to criminal proceedings because of unconstitutional misconduct. See *McDonough*, 139 S. Ct. at 2156 (holding that a section 1983 claim for deprivation of liberty during a prosecution based on fabricated evidence accrued upon acquittal); *Manuel v. City of Joliet*, 137 S. Ct. 911, 918-19 (2017) (holding that a section 1983 plaintiff can challenge an unlawful detention after the formal onset of criminal proceedings under the Fourth Amendment); *Heck v. Humphrey*, 512 U.S. 477, 478-79 (1994) (recognizing that a defendant convicted in violation of the Constitution may pursue section 1983 remedies once the conviction has been invalidated); *cf. Mitchum*, 407 U.S at 242-43 (holding that section 1983 authorizes injunctions against state criminal proceedings "to prevent great, immediate, and irreparable loss of a person's constitutional rights"). These precedents illustrate that victims of unconstitutional evidence

suppression or fabrication who are wrongly seized or deprived of liberty during state criminal prosecutions are a core group for whom section 1983 exists to provide a remedy. It is precisely this type of misconduct that the statute exists to prevent.

B. Constitutional Violations Affecting Criminal Proceedings Remain a Pervasive Problem

Although section 1983 was enacted in the context of Reconstruction-era racial terrorism, the problem of unconstitutional misconduct corrupting state criminal proceedings persists today. It is an unfortunate reality that individuals are regularly charged with and convicted of crimes they did not commit because law enforcement officers violate the Constitution during criminal proceedings. This insidious phenomenon puts the need for a federal remedy in stark relief.

While constitutional violations affect criminal cases against both the innocent and the guilty, data regarding the innocent victims of misconduct provides a helpful reference. A 2020 report of the National Registry of Exonerations found that thirty-five percent of exonerations of innocent defendants involved revelations of misconduct by police officers. Samuel R. Gross, *et al.*, *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement*, NAT'L REGISTRY OF EXONERATIONS (Sept. 2020), at 11-12. This misconduct includes evidence fabrication, which tainted one in ten wrongful convictions arising from officer misconduct, and the suppression of exculpatory evidence, which factored into nearly forty-five percent of such convictions. *Id.* at 30. And these statistics reflect only the subset of detected

cases; "the aggregate of such misconduct could easily generate a very large number of wrongful convictions" beyond those contained in available data. Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U. L. REV. 1133, 1145 (2013).

In a study of two large-scale revelations of police misconduct that produced dozens of wrongful convictions, Professor Covey found that the misconduct took many forms, including preparing false reports, planting drugs or weapons, manufacturing witness statements, and extracting false confessions. *Id.* at 1155-56, 1160. Covey concluded that law enforcement misconduct caused a much larger proportion of wrongful prosecutions than was previously believed. *Id.* at 1160-61. As a result, "efforts to reform the criminal justice system in order to prevent wrongful convictions should include greater focus on the prevention of police misconduct." *Id.* at 1161.

Moreover, in an echo of the circumstances that motivated the passage of the Ku Klux Klan Act, these forms of police misconduct occur in systemically racist patterns. For drug and murder convictions, Black exonerees are significantly more likely to be victims of official misconduct, which is "[o]ne of the mechanisms that leads to the disproportionate conviction of innocent Black defendants." Gross, *supra*, at 28. In New York, for example, a disgraced police detective engaged in systemic investigative misconduct—including evidence fabrication—against primarily Black defendants, resulting in at least twelve exonerations for serious crimes. Alan Feuer, *Another Brooklyn Murder Conviction Linked to Scarcella Is Reversed*, N.Y. TIMES (Jan. 11, 2018). And in Chicago, former

police sergeant Ronald Watts has been found by state prosecutors to have framed 80 individuals, most of them Black, for more than 100 drug and gun crimes over the course of a decade. Matthew Hendrickson, *Six More Cases Tied to Former CPD Sgt. Ronald Watts Tossed by Cook County Prosecutors*, CHI. SUN-TIMES (Dec. 15, 2020).

C. Requiring Defendants to Prove That Their Criminal Cases Terminated in a Manner Indicating Innocence Forecloses Federal Remedies

Despite the frequency with which official misconduct subjects innocent individuals to criminal proceedings, it is rare that those individuals will be able to show that the criminal proceedings terminated in a manner that affirmatively indicates their innocence. *Supra* Part I.B. The result is that people ensnared in unconstitutional prosecutions by police misconduct will simply have no federal recourse to remedy those constitutional violations. Such a result is impossible to square with the remedial and deterrence aims of section 1983.

Suppose, for example, that a defendant is detained, charged, and prosecuted solely because an investigating officer fabricated police reports and false witness statements, as happens with alarming regularity. No matter how the criminal case terminates, the person detained and prosecuted because of evidence suppression and fabrication suffers a constitutional violation. Yet showing that the termination occurred because of innocence will prove impossible in all but the rarest cases.

As a result, an innocence requirement almost always forecloses section 1983 claims against

officers who manufacture or suppress evidence. Further, the official misconduct that caused the wrongful prosecutions will be entirely free from federal oversight. Even plaintiffs who have definitive evidence of innocence to present in a civil trial will be out of luck unless the termination of their criminal proceedings was explicitly grounded in that evidence of innocence, as simply possessing evidence of innocence does not prove that prior criminal proceedings ended in a manner indicating innocence.

The lower courts' decisions requiring section 1983 plaintiffs to establish that a prosecution terminated in a manner indicating innocence undermines the federal remedy that exists precisely to deter and to provide relief from unconstitutional misconduct in state criminal proceedings. Moreover, imposing a nearly impossible-to-prove element and eliminating section 1983 claims as a result removes a deterrent to the use of manufactured evidence and the suppression of exculpatory evidence during state criminal proceedings.

III. AN INNOCENCE REQUIREMENT CONFLICTS WITH THIS COURT'S PRECEDENTS GOVERNING CONSTITUTIONAL CLAIMS

The rule that individuals who seek to prove violations of their constitutional rights must demonstrate that prior criminal proceedings terminated in a manner indicating their innocence also contradicts this Court's precedents. First, this Court has rejected the idea that common-law torts dictate the elements of a constitutional violation. Second, imposing an innocence requirement for claims alleging seizures without probable cause or

violations of due process attendant to criminal proceedings runs afoul of this Court's cases defining the elements of such constitutional claims. Third, this Court has concluded that section 1983 claims impugning criminal proceedings accrue upon favorable termination of those proceedings, without ever suggesting that favorable termination includes an innocence component. This established body of law on favorable termination in the accrual context is contradicted by lower court cases that require proof of a termination indicating innocence as an element of such constitutional claims.

A. This Court Has Resisted Efforts to Define the Elements of Federal Constitutional Violations Using Common Law

As the Eleventh Circuit has held, there was no prevailing innocence requirement when section 1983 was adopted, as explained in *Laskar v. Hurd*, 972 F.3d 1278, 1286-89 (11th Cir. 2020). But even if there had been, this Court has resisted attempts to define the elements of federal constitutional claims by reference to common-law torts. To be sure, common law has served as a reference to establish the scope of official immunity, *Kalina v. Fletcher*, 522 U.S. 118, 123-29 (1997); to set the time at which various section 1983 claims accrue, *McDonough*, 139 S. Ct. at 2156; to define individual and municipal defenses, *Nieves v. Bartlett*, 139 S. Ct. 1715, 1726 (2019); *Owen*, 445 U.S. at 647 n.30; and to decide what categories of damages are available, *Carey*, 435 U.S. at 253-64. But at the same time this Court has repeatedly cautioned against rote incorporation of the elements of common-law torts into federal constitutional claims. *Hartman v. Moore*, 547 U.S.

250, 258 (2006) ("[T]he common law is best understood here more as a source of inspired examples than of prefabricated components of [constitutional] torts."); *Rehberg v. Paulk*, 566 U.S. 356, 366 (2012) ("[T]he Court has not suggested that § 1983 is simply a federalized amalgamation of pre-existing common-law claims[.]"). And it has observed that federal claims under section 1983 are often broader than common-law torts, given that section 1983 "reaches constitutional and statutory violations that do not correspond to any previously known tort." *Id.* at 366; *Owens v. Okure*, 488 U.S. 235, 249-50 (1989); *Wilson v. Garcia*, 471 U.S. 261, 272 (1985). The elements of federal constitutional claims depend on federal law. See *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 231-32 (1970) ("Where [denial of equal protection] is the basis for recovery, relief should not depend on the vagaries of the general common law but should be governed by uniform and effective federal standards."); *Howlett v. Rose*, 496 U.S. 356, 375-76 (1990) ("The elements of, and the defenses to, a federal cause of action are defined by federal law.").

The decisions of lower courts importing a common-law innocence element into constitutional claims alleging that state actors corrupted criminal proceedings misunderstand how this Court has used common law in the past, and they improperly and reflexively federalize common law. See *Fulton v. Robinson*, 289 F.3d 188, 195 (2d Cir. 2002) ("In order to prevail on a § 1983 claim against a state actor for malicious prosecution, a plaintiff must . . . establish the elements of a malicious prosecution claim under state law."); see also *Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 100-01 (1st Cir. 2013); *Donahue v. Gavin*, 280 F.3d 371, 383 (3d Cir. 2002); *Novitsky v.*

City of Aurora, 491 F.3d 1244, 1257–58 (10th Cir. 2007). The common law should not dictate the elements that a person facing prosecution must prove to show an illegal seizure or a violation of due process.

B. This Court's Cases Do Not Include Innocence as an Element of Claims Challenging Unconstitutional Detention

An innocence requirement also contradicts this Court's cases defining the elements of constitutional violations concerning unlawful pretrial and post-conviction detention. A showing of innocence has never been required to establish an illegal seizure or a deprivation of liberty without due process.

1. To show that the Fourth Amendment has been violated, an individual need only show (1) a seizure (2) without probable cause. Although a section 1983 claim alleging such a violation may not accrue until criminal proceedings come to an end (an issue discussed below), a constitutional violation has occurred once these two elements are satisfied. The constitutional text supplies the standard: "The right of the people to be secure in their persons . . . against unreasonable . . . seizures, shall not be violated, and no Warrants shall issue, but upon probable cause[.]" U.S. Const. Amend. IV. And given that text, this Court has long held that a Fourth Amendment violation occurs when a person is seized pending trial without probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 111-16 (1975); see also *Manuel*, 137 S. Ct. at 917-20; *Ex parte Bollman*, 4 Cranch 75 (1807); *Ex parte Burford*, 3 Cranch 448 (1806). The Fourth Amendment is violated whether or not the person

suspected of the crime is innocent. *McDonald v. United States*, 335 U.S. 451, 453 (1948); *cf. Miller v. United States*, 357 U.S. 301, 314 (1958).

2. Nor is innocence an element of a constitutional claim that a criminal prosecution based on fabricated evidence was a deprivation of liberty without due process. See *Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("[I]t is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment."); *Baker v. McCollan*, 443 U.S. 137, 145 (1979) (noting that innocence "is largely irrelevant to [a] claim of deprivation of liberty without due process of law"); *McDonough*, 139 S. Ct. at 2155 & n.2. The same is true when the liberty deprivation is caused by the suppression of exculpatory evidence. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment[.]"); *Wearry v. Cain*, 136 S. Ct. 1002, 1006 (2016) (holding that a person need not show they would have been acquitted had evidence been disclosed, but "only that the new evidence is sufficient to 'undermine confidence' in the verdict").

The Constitution and this Court's cases govern what elements are required to make out a claim of unconstitutional detention, whether in violation of the Fourth Amendment or the Due Process Clause. Never has a showing of innocence been required to establish that the Constitution has been violated.

C. This Court's Cases Governing Accrual of Section 1983 Claims for Unconstitutional Detention Do Not Require a Showing of Innocence

Requiring that criminal proceedings terminated in a manner indicating innocence is also incompatible with this Court's cases determining the accrual of section 1983 claims challenging criminal proceedings or their resulting judgments. For such a claim to accrue, favorable termination of the criminal case is required, but not proof of innocence. "[T]o recover damages for allegedly unconstitutional conviction or imprisonment," *Heck* holds, "a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus[.]" 512 U.S. 477, 486-87 (1994). Recently, *McDonough* extended this rule to claims challenging ongoing criminal proceedings, holding that such claims accrue "[o]nly once the criminal proceeding has ended in the defendant's favor, or a resulting conviction has been invalidated within the meaning of *Heck*[.]" 139 S. Ct. at 2158. *McDonough* holds that an acquittal causes section 1983 claims challenging criminal proceedings to accrue. *Id.* at 2161.[3]

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[3] This favorable-termination requirement is not an element of any constitutional claim alleged. Instead, *Heck* and *McDonough* defer the accrual of section 1983 claims raising constitutional challenges to criminal proceedings until a time

None of these claim-accrual rules requires a showing that the criminal proceedings terminated in a way that establishes the innocence of the section 1983 plaintiff. In fact, whether a criminal proceeding ends in acquittal, dismissal of charges, reversal on direct appeal, vacatur in state or federal post-conviction proceedings, or expungement via executive clemency, rarely will there be an adjudication of innocence. *Supra* Part I. Yet *Heck* and *McDonough* hold that each of these outcomes constitutes favorable termination.

Consistent with this Court's cases, the courts of appeals generally have explicitly acknowledged that, for accrual purposes, favorable termination has no innocence component, or they have conducted their accrual analysis without considering innocence. See *Savory*, 947 F.3d at 430 (holding that the requirement of common-law malicious prosecution that "proceedings terminated in a manner *indicative of the innocence* of the accused" is "a higher standard than *Heck's* favorable termination accrual rule"); *Spak v. Phillips*, 857 F.3d 458, 466 (2d Cir. 2017); *Winfrey v. Rogers*, 901 F.3d 483, 493 (5th Cir. 2018); *Randall v. City of Philadelphia Law Dep't*, 919 F.3d 196, 198 (3d Cir. 2019); *Roberts v. City of Fairbanks*, 947 F.3d 1191,

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when those criminal proceedings have concluded or their resulting judgments have been set aside, *McDonough*, 139 S. Ct. at 2155, and the favorable-termination requirement is merely a showing prerequisite to filing suit under section 1983.

1202 (9th Cir. 2020); *Mondragon v. Thompson*, 519 F.3d 1078, 1083 (10th Cir. 2008).[4]

Highlighting the problem of attempting to graft an "indicative of innocence" requirement on constitutional claims in the face of this Court's accrual precedents, the Second Circuit has attempted to draw a distinction between "favorable termination" for accrual purposes and "favorable termination" for purposes of demonstrating a constitutional violation, explaining that "the favorable termination requirement that is a *substantive* element of the claim . . . is distinct from favorable termination for purposes of *accrual*." *Thompson v. Rovella*, 734 F. App'x 787, 790 (2d Cir. 2018). But there is no basis in reason or this Court's precedents for applying two radically different meanings to a single term with respect to the same constitutional claim.

By requiring a termination of criminal proceedings indicating innocence as an element of constitutional claims, the lower court decisions at issue in this case contradict this Court's accrual precedents, which define favorable termination without reference to innocence.

* * *

The lower courts' innocence requirement contradicts this Court's precedents, the realities of

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[4] The Fourth Circuit is the exception, where in at least one case, the court asserted that "favorable termination . . . constitutes both a predicate for recovery under § 1983 and the accrual date of the claim" and is established only if the criminal case "has been disposed of in a way that indicates the plaintiff's innocence." *Snider v. Seung Lee*, 584 F.3d 193, 202 (4th Cir. 2009). This understanding of accrual is plainly invalid under *Heck* and *McDonough*.

criminal procedure, and bedrock principles of American criminal law. If left to stand, it would foreclose the only federal remedy for many individuals facing criminal prosecution whose constitutional rights are violated, and it would invite misconduct in state criminal proceedings.

CONCLUSION

Amici urge this Court to grant certiorari and hold that an individual seized during criminal proceedings in violation of the Fourth Amendment need not prove that those proceedings terminated in a manner indicative of innocence.

Respectfully submitted,

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January 4, 2021