**No. 23-11452**

**IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

DeShawn Gervin,

Plaintiff–Appellee,

v.

Pamela Florence, *et al.*,

Defendants–Appellants.

On Appeal from an order of the
United States District Court for the Middle District of Georgia
Case No. 1:21-cv-00067, Hon. Leslie A. Gardner

# BRIEF OF *AMICUS CURIAE* THE NATIONAL POLICE ACCOUNTABILITY PROJECT IN SUPPORT OF PLAINTIFF-APPELLEE

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## CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1, this is an alphabetical list of judges, attorneys, persons, and firms with any known interest in the outcome of the case:

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## CORPORATE DISCLOSURE STATEMENT

The undersigned counsel for *amicus curiae* respectfully submits the National Police Accountability Project is a non-profit organization. It has no parent corporation, and no publicly held corporation owns ten percent or more of its stock because it has no stock. *Amicus* does not have a financial interest in the outcome of this litigation.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), the undersigned counsel for *amicus curiae* submits that (i) no party's counsel authored this brief in whole or in part; (ii) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and (iii) no person—other than the *amicus curiae*, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

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## INTEREST OF THE *AMICUS CURIAE*[1]

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil-rights lawyers. NPAP has approximately 550 attorney members practicing in every region of the United States, including dozens in the Eleventh Circuit. Every year, NPAP members litigate the thousands of cases of law enforcement and detention facility abuse that do not make news headlines as well as many of the high-profile cases that capture national attention. NPAP provides training and support for its member attorneys and resources for non-profit organizations and community groups working on law enforcement and detention facility accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as amicus curiae in cases, such as this one, presenting issues of particular importance for its members and their clients.

[1] All parties consented to the National Police Accountability Project's participation as amicus curiae in this case. Accordingly, Amicus is permitted to file this brief without moving for leave pursuant to FRAP 29(a)(2).

## SUMMARY OF THE ARGUMENT

Plaintiff-Appellant DeShawn Gervin was arrested and incarcerated for 104 days solely because of Defendant-Appellants' patently false statements. Georgia probation officer Defendant-Appellant Pamela Florence applied for, and obtained, a warrant to arrest Mr. Gervin for alleged violations of his probation. But the probation conditions Defendant-Appellant Florence swore Mr. Gervin had violated *did not exist*. Those same non-existent conditions formed the basis of Defendant-Appellant Tandria Milton's petition to revoke Mr. Gervin's probation. Neither officer scanned Mr. Gervin's sentencing documents, nor did they conduct any other reasonable investigation to determine the actual terms of Mr. Gervin's probation, before intentionally and falsely asserting that probable cause existed to arrest Mr. Gervin and revoke his probation.

As the district court below correctly determined, these facts amount to malicious prosecution under the Fourth Amendment. Mr. Gervin was seized pursuant to legal process that was plainly constitutionally infirm, based entirely on Defendants-Appellants' fabrications.

Defendants-Appellants do not contest the fact that they lacked even arguable probable cause to arrest and detain Mr. Gervin. Nor do they contest that he was seized pursuant to the warrant that was issued solely on the basis of Defendant-Appellant Florence's intentional and material misstatements, and then detained pending the probation revocation hearing initiated by Defendant-Appellant Milton's false statements. Instead, they insist Mr. Gervin is disqualified from bringing his Fourth Amendment malicious prosecution claim because the common law requires he show that Defendants-Appellants initiated criminal process against him, and a probation revocation is not a criminal prosecution.

This argument is plainly without merit. The Fourth Amendment right to be free of unreasonable seizures unequivocally applies to probationers. And although probation revocation may not demand the full procedural protections required in a criminal prosecution, it is a seizure that is sufficiently criminal in nature to require probable cause, just like any other seizure bearing the threat of incarceration. Where the seizure is made pursuant to infirm legal process, such as a warrant based on an officer's fabrications, the constitutional harm is

characterized as malicious prosecution under the Fourth Amendment. The Court cannot elevate an exceedingly constricted definition of the common law's "criminal process" requirement to the point that it eviscerates the Fourth Amendment, which provides universal protection—including to probationers—from deprivations of liberty pursuant to unjustifiable seizures. To do so would fly in the face of the Fourth Amendment and 42 U.S.C. § 1983. It would also leave millions of probationers, like Mr. Gervin, without any legal recourse for baseless and arbitrary deprivations of their liberty.

## ARGUMENT AND CITATIONS OF AUTHORITY

### I. Probation Revocation is a Deprivation of Liberty That is Sufficiently Criminal in Nature to Give Rise to a Malicious Prosecution Claim Under the Fourth Amendment of the U.S. Constitution.

#### A. Probation Revocation Meets the Fourth Amendment's Criteria for Malicious Prosecution Because it is a Deprivation of Liberty Pursuant to Legal Process.

The constitutional provision animating the § 1983 claim to malicious prosecution is the Fourth Amendment "right to be free of unreasonable seizure of the person—i.e., the right to be free of unreasonable or unwarranted restraints on personal liberty." *Uboh v.*

*Reno*, 141 F.3d 1000, 1003 (11th Cir. 1998) (quoting *Singer v. Fulton Cty. Sheriff*, 63 F.3d 110, 116 (2d Cir. 1995)). The chief function of this provision is to "prohibit[] government officials from detaining a person in the absence of probable cause." *Manuel v. City of Joliet*, 580 U.S. 357, 367 (2017). Legal process—the probable cause determination of "a neutral and detached magistrate," either preceding arrest, through the warrant application process, or following a warrantless arrest, at a probable cause hearing—generally functions "[t]o implement the Fourth Amendment's protection against unfounded invasions of liberty and privacy." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975). But sometimes, "legal process itself goes wrong—when, for example, a judge's probable-cause determination is predicated solely on a[n] . . . officer's false statements." *Manuel*, 580 U.S. at 367. This "deprivation of liberty pursuant to legal process," *Lasker v. Hurd*, 972 F.3d 1278, 1284 (11th Cir. 2020), where the legal process fails "to satisfy the Fourth Amendment's probable-cause requirement," *Manuel*, 580 U.S. at 367, is the harm that gives rise to a § 1983 malicious prosecution claim.

Probation revocation is, unequivocally, a "serious deprivation" of liberty, *Gagnon v. Scarpelli*, 411 U.S. 778, 781 (1973) (superseded by

statute on other grounds), as is the probationer's "continued detention and return to the state correctional institution pending" his probation revocation hearing, *Morrissey v. Brewer*, 408 U.S. 471, 487 (1972). Accordingly, just as "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest," *Gerstein*, 420 U.S. at 114, the continued detention of a probationer pending the revocation hearing must also be supported by "probable cause to believe that he has committed a violation of his [probation]," *Gagnon*, 411 U.S. at 781-82 (discussing *Morrissey*, 408 U.S. at 487).

This Circuit has recognized that the probationer's right to a determination of probable cause is a Fourth Amendment right, citing *Morrissey* for the proposition that "[t]here is no question that the Fourth Amendment's protection against unreasonable searches and seizures applies to probationers." *Owens v. Kelley*, 681 F.2d 1362, 1367 (11th Cir. 1982). *See also Hyland v. Sec'y for the Dep't of Corr.*, No. 06-14455, 2007 U.S. App. LEXIS 20745, at *7-8 (11th Cir. Aug. 29, 2007) (analyzing claim of probationer, who was arrested pursuant to warrant obtained by the probation officer's allegedly false statements, as a

Fourth Amendment claim). The Fourth Amendment protects probationers, as it protects criminal defendants, from arrest and detention on the whim of a state officer acting unilaterally, without probable cause to suspect any wrongdoing. And when a probationer is detained without probable cause of any probation violation or other criminal violation, the Fourth Amendment demands a remedy. If the probationer's unjustified arrest was made pursuant to infirm legal process, such as a warrant "predicated solely on a [probation] officer's false statements," the vehicle for that remedy is a Fourth Amendment malicious prosecution claim. *Manuel*, 580 U.S. at 367. *See also Williams v. Aguirre*, 965 F.3d 1147, 1158 (11th Cir. 2020) (citing *Manuel*).

Defendants-Appellants make much ado of *Gagnon*'s determination that "[p]robation revocation, like parole revocation, is not a stage of a criminal prosecution." *Gagnon*, 411 U.S. at 782. But their faith in this holding is misplaced. The Court's distinction does not extinguish any constitutional rights of the probationer. To the contrary, it affirms these rights, and simply explains why the procedures safeguarding them may be more flexible than those safeguarding the rights of criminal defendants. *Gagnon* confirms that the Fourth Amendment, without

question, protects probationers from groundless government seizures. 411 U.S. at 781-82. And it confirms that the standard of adequate justification for the seizure—the core of this Fourth Amendment protection—is the same for probationers as it is for everyone else: probable cause. *Id*. That the procedure for determining the existence of probable cause is more informal for probationers than it is for non-convicted civilians does not in any way impact the existence of the core right. Nothing in the *Gagnon* decision suggests otherwise.

Defendants-Appellants seek to place into controversy a principle that is beyond debate: an individual's conviction for one crime does not grant the state free reign to arbitrarily prosecute, and detain, the individual for any other offense. The state must have probable cause of the precise offense allegedly justifying the probationer's detention awaiting the revocation of probation, because this detention is a stand-alone deprivation of liberty. *Gagnon*, 411 U.S. at 781-82. *Cf Williams*, 965 F.3d at 1162 ("[T]he any-crime rule does not apply to claims of malicious prosecutions under the Fourth Amendment."). Any other rule would "allow[] defendants to 'escape liability' 'by uniting groundless accusations with those for which probable cause'"—or, in the case of a

convicted probationer, proof beyond a reasonable doubt—"'might exist,'" which "would make 'almost a mockery' of malicious prosecution" and the Fourth Amendment's protections against unreasonable seizures. *Williams*, 965 F.3d at 1161 (quoting *Boogher v. Bryant*, 86 Mo. 42, 50 (1885)).

### B. Defendants-Appellants' Narrow Definition of "Criminal Process" Impermissibly Elevates the Common-Law Elements of Malicious Prosecution Over Those of the Fourth Amendment.

Despite the Fourth Amendment's clear application to detentions pending probation revocation, Defendants-Appellants seek to bulldoze Mr. Gervin's Fourth Amendment rights by elevating the common law over the Constitution. Precedent from both this Court and the Supreme Court squarely forecloses Defendants-Appellants' argument.

"In defining the contours and prerequisites of a § 1983 claim" for malicious prosecution, the Court must consider "the common law of torts," but it cannot simply "adopt wholesale the rules that would apply in a suit involving the most analogous tort" without first ensuring that those common-law rules align with "the values and purposes of the constitutional right at issue." *Manuel v. City of Joliet*, 580 U.S. 357, 370

(2017). *See also Hartman v. Moore*, 547 U.S. 250, 258 (2006) ("[W]e certainly are ready to look at the elements of common-law torts when we think about elements of actions for constitutional violations, but the common law is best understood here more as a source of inspired examples than of prefabricated components"). Indeed, "[b]ecause '[c]ommon-law principles are meant to *guide* rather than to *control* the definition of § 1983 claims,' [the Court] must define the elements of this claim in the light of the constitutional provision at issue." *Williams Aguirre*, 965 F.3d 1147, 1157 (11th Cir. 2020) (quoting *Manuel*, 580 U.S. at 370) (emphasis added).

Defendants-Appellants zero in on Mr. Gervin's common-law obligation to prove they "instituted or continued a criminal prosecution against him." App. Br. at 14-15 (quoting *Williams*, 965 F.3d at 1157). They then insist that, because *Gagnon* held that "[p]robation revocation . . . is not a stage of a criminal prosecution" for the sake of determining a probationer's right to counsel, *Gagnon*, 411 U.S. at 782, Mr. Gervin is disqualified from asserting any claim to malicious prosecution for his baseless probation-revocation detention, App. Br. at 14-15. This argument fails for at least two reasons.

First, in imposing the common-law element of "criminal prosecution" onto Mr. Gervin's § 1983 claim pursuant to the Fourth Amendment, Defendants-Appellants ask the Court to elevate the common law to the point that it forecloses an otherwise viable Fourth Amendment claim. This Court has already held, in unequivocal terms, that when determining the requirements of a § 1983 malicious prosecution claim, it "cannot elevate the common law over the Constitution." *Williams*, 965 F.3d at 1157. In so holding, the Court explained that it "uses 'malicious prosecution' as only 'a shorthand way of describing' certain claims of unlawful seizure under the Fourth Amendment." *Id.* (quoting *Whiting v. Traylor*, 85 F.3d 581, 584 (11th Cir. 1996)). As discussed in Section IA., *supra*, the Fourth Amendment requires that every individual detention predicated on a new alleged offense must be justified by probable cause, including detentions for alleged violations of probation. When, as with Mr. Gervin, probation officers arrest and incarcerate a probationer in complete absence of probable cause, they violate the Fourth Amendment. The Court may not impose a restricted and inflexible definition of the common-law "criminal prosecution" requirement onto a Fourth Amendment

"malicious prosecution" claim to frustrate the purpose of the Fourth Amendment, which unquestionably protects probationers from arbitrary deprivations of liberty. *See Laskar v. Hurd*, 972 F.3d 1278, (11th Cir. 2020) (where "the common-law understanding" of malicious prosecution does not "comport[]" with the Fourth Amendment, the Court must "depart[]" from the common law).

Second, Defendants-Appellants' entire argument rests on *Gagnon*—a case that concerns not malicious prosecution but a probationer's right to counsel, and even *affirms* the probationer's Fourth Amendment right to be free from unreasonable seizures. 411 U.S. at 782. *Gagnon*'s distinction between probation revocation and criminal prosecution was for the purpose of explaining why the procedures protecting a probationer's constitutional rights with respect to his probation revocation are more lax than the procedures of his pre-conviction criminal prosecution. *Id.* at 781. *Gagnon* did not hold that a probationer has no Fourth Amendment protection from arrest, detention, and probation revocation without cause. *See id.* at 782. To the contrary, *Gagnon* affirmed that arrests and detentions of probationers must be supported by probable cause, even if the

particular procedures for determining the existence of probable cause are more flexible. *Id*. *See also Morrissey*, 408 U.S. at 485 ("[A]fter the arrest, the determination that reasonable ground exists for revocation of parole should be made by someone not directly involved in the case"). Defendants-Appellants misread *Gagnon*'s holding to disclaim a probationer's constitutional rights, impose it onto malicious prosecution, a context unrelated to the issue presented in *Gagnon*, and then inexplicably insert it into the *common law*'s definition of "criminal prosecution."

This Court has already determined the proper definition of common law "criminal prosecution" in the context of a § 1983 claim: "If a plaintiff establishes that a defendant violated his Fourth Amendment right to be free from seizures pursuant to legal process, he has also established that the defendant instituted criminal process against him with malice and without probable cause." *Luke v. Gulley*, 975 F.3d 1140, 1144 (11th Cir. 2020). It is this binding precedent, not *Gagnon*'s unrelated holding, that must direct the Court's assessment of Mr. Gervin's malicious prosecution claim. Mr. Gervin was deprived of his liberty pursuant to the infirm legal process of a warrant obtained solely

through Defendants-Appellants' false statements, in violation of his Fourth Amendment rights. Under this Court's precedent, then, "he has also established that [Defendants-Appellants] instituted criminal process against him with malice and without probable cause." *Id.*

### C. As Other Circuits Presented With This Issue Have Correctly Determined, Probation Revocation is Sufficiently Criminal to Satisfy the Common Law Malicious Prosecution Requirement.

Even if the Court adopts the common law's "criminal process" requirement, Mr. Gervin's detention pending probation revocation satisfies this element. Although this Court has not directly ruled on this issue, other circuits presented with § 1983 malicious prosecution claims based on probation revocation proceedings have assumed probation revocation proceedings are sufficiently criminal to give rise to a malicious claim.

In the Seventh Circuit, probation revocation is—unquestionably—a "criminal proceeding" for the purpose of a § 1983 malicious prosecution claim. *Hamilton v. Daley*, 777 F.2d 1207, 123 (7th Cir. 1985). In *Hamilton*, the Seventh Circuit held that "[p]robation revocation is a criminal proceeding" in granting absolute immunity to

the defendant prosecutor who initiated the plaintiff's probation revocation proceedings. *Id*. The court thus accepted without equivocation that the plaintiff probationer had satisfied the common law's "criminal prosecution" element of his § 1983 malicious prosecution claim. *Id. See also Tobey v. Chibucos,* 890 F.3d 634, 650 (7th Cir. 2018) ("Federal courts generally may not intervene in ongoing state criminal proceedings," such as probation oversight).

The Second Circuit presumes that probation revocation proceedings amount to criminal prosecution. In *Dettelis v. Sharbaugh*, 919 F.3d 161 (2d Cir. 2019), a probationer filed a § 1983 malicious claim against the probation officers who charged him with a probation violation. The court first laid out the familiar standard: "a plaintiff must plead both 'a violation of her rights under the Fourth Amendment' and 'the elements of a malicious prosecution under state law," which include "(1) *the initiation or continuation of a criminal proceeding* against plaintiff" and "(3) lack of probable cause for commencing the proceeding." *Id*. at 163-64 (emphasis added). The court then proceeded to analyze the plaintiff's claim, without even questioning whether the probation revocation proceeding was a qualifying "criminal

prosecution." *Id.* at 164.[2] Instead, the court focused its analysis on the existence of probable cause, ultimately deciding the defendants were entitled to qualified immunity because they had arguable probable cause to suspect the plaintiff of violating his probation. *Id.* at 164-65.

The Third Circuit, too, presumes that probation revocation proceedings are criminal prosecutions that can give rise to a § 1983 malicious prosecution claim. *See*, *e.g.*, *Tsakonas v. Cicchi*, 308 F. App'x 628, 631 (3d Cir. 2009) (analyzing plaintiff's malicious prosecution claim stemming from probation revocation proceedings and dismissing plaintiff's malicious prosecution claim stemming from probation revocation proceedings only because plaintiff failed to establish that the revocation lacked probable cause, not because the proceeding was not a qualifying criminal prosecution).

More recently, the Fifth Circuit considered whether a probationer's Fourth Amendment malicious prosecution claim challenging her probation revocation was *Heck*-barred. *Ray v. Recovery*

[2] Defendants-Appellants dismiss this case because it did not squarely address whether probation revocation qualifies as a criminal proceeding. *See* App. Br. 29 n.5. But the court's acceptance of the probationer's claim without any question is a clear indication of the Second Circuit's position on the matter.

*Healthcare Corp.*, No. 22-10303, 2022 U.S. App. LEXIS 31557 (5th Cir. Nov. 15, 2022). The court concluded the claim was barred, because the probation revocation "should be considered a 'sentence or conviction' for *Heck* purposes." *Id*. at *7. In support of this decision, the court explained: "probation revocation hearings carry relevant indicia of criminal proceedings: the State is represented by a prosecutor, the defendant does have a right to counsel, the hearing is before the judge, formal rules of evidence do apply, and the judge makes an ultimate finding whether the probationer violated her terms of probation." *Id*. at *7-8 (internal citations and quotation marks omitted).

The approach of this Court's sister circuits makes good sense. The freedom granted a probationer may be conditional, but it is nevertheless "substantial." *Whitehorn v. Harrelson*, 758 F.2d 1416, 1420 (11th Cir. 1985). A probationer, like a free civilian, "can be 'gainfully employed'; he is 'free to be with his family and friends' and to enjoy other freedoms subject to the conditions of his . . . probation." *Id*. n.7 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). And probation revocation, like a custodial sentence immediately following criminal prosecution, results in incarceration. The Court should consider these indicia of criminal

proceedings, rather than *Gagnon*'s inapposite holding, when determining whether probation revocation qualifies as "criminal process" for the purposes of common-law malicious prosecution.

### D. Defendants-Appellants Are Not Entitled to Qualified Immunity Because the Law Clearly Established Mr. Gervin's Right to Be Free From Seizure Pursuant to a Warrant Obtained Solely by State Officers' Intentional and Material Misstatements.

Qualified immunity only protects government officials from suit "if their 'conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The intended purpose of qualified immunity is to allow "government officials to perform their duties without the fear of constant, baseless litigation." *Kingsland v. City of Miami*, 382 F.3d 1220, 1231 (11th Cir. 2004). Accordingly, although qualified immunity "'gives ample room for mistaken judgments'" where reasonable officers might disagree on the lawfulness of a particular course of conduct, it "does not protect 'the plainly incompetent or those who knowingly violate the law.'" *Id*. (quoting *Malley v. Briggs*, 475 U.S. 335, 343, 341 (1986)).

This case does not turn on any gray areas of law about which reasonable officers might disagree. To the contrary, "it is obvious that no reasonably competent officer would have concluded that a warrant should issue," *Malley*, 475 U.S. at 341, because any reasonable officer would have consulted Mr. Gervin's probation sentence before swearing to a judge that he had violated its terms. The Fourth Amendment "require[s] the officer applying for the warrant to minimize th[e] danger [of an unlawful arrest] by exercising reasonable professional judgment." *Id*. at 346. Defendants-Appellants disregarded this requirement completely, refusing to conduct even the most cursory of investigations before applying to arrest and detain Mr. Gervin on completely fabricated allegations.

The law of this Circuit could not be more clear: "falsifying facts to establish probable cause is patently unconstitutional and has be so long before [Mr. Gervin's] arrest." *Kingsland*, 382 F.3d at 1232. "[T]he law was clearly established in 1993 that the Constitution prohibits a police officer from knowingly making false statements in an arrest affidavit about the probable cause for an arrest in order to detain a citizen." *Jones v. Cannon*, 174 F.3d 1271, 1285 (11th Cir. 1999). *See also*

*Kingsland*, 382 F.3d at 1232 ("[T]he defendants were on notice in 1995 that manufacturing probable cause is unconstitutional"); *Williams*, 965 F.3d at 1168-69 ("[T]he law is clearly established that the Constitution prohibits a police officer from knowingly making false statements in an arrest affidavit about the probable cause for an arrest in order to detain a citizen if such false statements are necessary to the probable cause") (cleaned up).

In their attempt to escape liability for their grievous Fourth Amendment violations despite this clear precedent, Defendants-Appellants ask the Court to adopt an exceedingly narrow frame for its analysis of clearly established law. They insist the relevant question is not whether this Court's precedent clearly established that an officer who falsifies facts in a warrant application is liable for malicious prosecution, but whether this Court's precedent clearly established that probation revocations are criminal proceedings for the purposes of a § 1983 malicious prosecution claim. This fine parsing of the issue essentially dissects the "clearly established" question into oblivion.

"[T]he 'clearly established' inquiry for qualified immunity focuses on the defendant's *conduct* and whether given a particular factual

situation, a reasonable official would know his conduct was unlawful and unconstitutional." *Al-Amin v. Smith*, 511 F.3d 1317, 1335 (11th Cir. 2008) (emphasis added). The Eleventh Circuit has "never required that, in order for an official to know his conduct is unlawful, a reasonable official must be able to cite by chapter and verse all of the constitutional bases that make his conduct unlawful." *Id*. Moreover, this Court already rejected Defendants-Appellants' line of reasoning in *Williams*, holding that although its "precedents on malicious prosecution were unsettled" with respect to the "relationship between Fourth Amendment violations and malicious prosecution," it "ha[s] never wavered about the prohibition of misstatements in warrant applications." 965 F.3d at 1169. Defendants-Appellants had clear notice that Mr. Gervin could not be arrested or stripped of his probation absent probable cause, *see Gagnon*, 411 U.S. at 781-82, and clear notice that their conduct—affirmatively falsifying facts to establish probable cause—was patently unconstitutional, *see Williams*, 965 F.3d 1169.[3] "Notwithstanding the

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[3] Moreover, this Court has already applied its precedent on falsifying facts in an arrest affidavit to the probation revocation context, thus defeating any claim Defendants-Appellants make regarding notice. In *Hyland v. Secretary for the Department of Corrections*, 2007 U.S. App. LEXIS 20745 (11th Cir. Aug. 29, 2007), this Court considered a probationer's § 1983 claim against a probation officer who

ambiguity in [the Eleventh Circuit's] standard of malicious prosecution [Mr. Gervin] had a clearly established right to be free from a seizure based on intentional and material misstatements in a warrant application." *Williams*, 965 F.3d at 1169-70.

## II. Barring a Malicious Prosecution Claim Based on an Unlawful Probation Revocation Would Lead to Absurd Results.

### A. Interpreting a § 1983 Malicious Prosecution Claim as Narrowly as Defendants Insist Eviscerates the Purpose of § 1983 as a Vehicle for Vindicating Constitutionally Guaranteed Rights.

Section 1983 improved the Constitution by ensuring that people have a remedy when the government violates their civil rights. It is a statutory cause of action against government officials and government entities that remains vital to making real the promise of Section 1 of the Civil Rights Act: "to provide a remedy . . . against all forms of

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allegedly lied in his affidavit to obtain a probation-revocation arrest warrant (but analyzed it as a Fourth Amendment false arrest claim rather than a malicious prosecution claim). When discussing the probation officer's claim to qualified immunity, the Court explained: "Knowingly making false statements to obtain an arrest warrant can lead to a Fourth Amendment violation." *Id.* at *7 (quoting *Whiting v. Traylor*, 85 F.3d 581, 585 n.5 (11th Cir. 1996))."[T]he Constitution prohibits a police officer from knowingly making false statements in an arrest affidavit about the probable cause for an arrest in order to detain a citizen . . . if such false statements were necessary to the probable cause." *Id.* (quoting *Jones*, 174 F.3d at 1285).

official violation of federally protected rights." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 700-01 (1978).

Congress intended Section 1983 to be construed broadly and provide for a remedy of any constitutional violations. *See* Cong. Globe App. 42d Cong., 1st Sess. 68, 317 (Mar. 28, 1871) (statement of Rep. Shellabarger) (stating § 1983 should be "liberally and beneficently construed" because it is "remedial and in aid of the preservation of human liberty and human rights"); *id*. at 217 (statement of Sen. Thurman) (stating that § 1983's language is without limit and "as broad as can be used"); *see also Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 934 (1982) ("To read the 'under color of any statute' language of the Act in such a way as to impose a limit on those Fourteenth Amendment violations that may be redressed by the § 1983 cause of action would be wholly inconsistent with the purpose of § 1 of the Civil Rights Act of 1871 . . . from which § 1983 is derived.").

Defendants-Appellants request that this Court adopt such a narrow view of Section 1983 malicious prosecution claims that it undermine the purpose of the statute. Specifically, Defendants-Appellants' position that probation revocation proceedings are not

criminal proceedings flies in the face of the "liberal" and "broad" statutory construction that Congress preferred. Adopting Defendants-Appellants' interpretation of malicious prosecution requirements would preclude all plaintiffs whose rights are violated during probation revocation hearings from seeking Section 1983 relief. Such a holding by this Court would limit the rights of 563,357 individuals within this Court's jurisdiction: 42,576 Alabamans, 177,481 Floridians, and 343,300 Georgians who comprise each state's probation population. U.S. Dep't of Just. Bureau of Just. Stats., *Probation and Parole in the United States, 2021* (Feb. 2023).[4] Congress intended for Section 1983 to protect those individuals' "human liberty and human rights[,]" too. Cong. Globe App. at 217.

### B. Mr. Gervin Does Not Have Any Other Vehicle to Seek Redress Against Defendants-Appellants, Who Affirmatively Lied to Place Him in Prison for 104 Days.

If the Court forecloses Mr. Gervin's malicious prosecution claim, he will be unable to obtain any relief for his patently baseless 104-day-

[4] Available at: https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ppus21.pdf.

long incarceration. Mr. Gervin cannot pursue a Fourteenth Amendment claim to challenge his seizure based on Defendants-Appellants' lies because the Supreme Court has squarely held "that it is the Fourth Amendment, and not substantive due process, under which" claims to unreasonable seizures pursuant to infirm legal process "must be judged." *Albright v. Oliver*, 510 U.S. 266, 271 (1994). *See also Manuel v. City of Joliet*, 580 U.S. 357, 366 (2017). Nor can he challenge his detention as a Fourth Amendment claim for false arrest or imprisonment because his seizure was made pursuant legal process. *See Williams v. Aguirre*, 965 F.3d 1147, 1158 (11th Cir. 2020) (distinguishing "[a] claim of false arrest or imprisonment under the Fourth Amendment," which "concerns seizures without legal process, such as warrantless arrests," from "[m]alicious prosecution," which "requires a seizure 'pursuant to legal process,'" such as a "warrant-based seizure[]"). And, because Georgia courts have determined state officers cannot be held liable for unlawful detentions under the Georgia Tort Claims Act, *see Watson v. Georgia Dep't of Corr.*, 645 S.E.2d 629, 631 (Ga. Ct. App. 2007), Mr. Gervin cannot seek relief under state law.

Notably, an outcome foreclosing all lines of relief to probationers with malicious prosecution claims is in conflict with this Court's own caselaw. This Court *has* considered a probationer's § 1983 claim challenging the constitutionality of his arrest and detention pursuant to a warrant obtained by his probation officer's alleged misstatements. *See Hyland v. Sec'y for the Dep't of Corr.*, No. 06-14455, 2007 U.S. App. LEXIS 20745, at *7-8 (11th Cir. Aug. 29, 2007). The Court analyzed the claim as a Fourth Amendment false arrest claim, but *Williams* has since clarified that the claim is properly styled as a Fourth Amendment malicious prosecution claim. Regardless of how the claim is packaged, it is clear this Court understood that § 1983 creates a pathway for a probationer alleging an unreasonable seizure pursuant to a faulty warrant obtained by a probation officer's false statements. The Court should keep this pathway open, allowing Mr. Gervin to pursue a just outcome that is consistent with the Fourth Amendment's purpose, the spirit of Section 1983, and this Court's precedents.

## CONCLUSION

For the foregoing reasons, the order of the District Court denying summary judgment to Defendants-Appellants should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

In accordance with Federal Rules of Appellate Procedure 32(a)(7)(C) and 29(a)(4), I certify that this brief:

(i) complies with the type-volume limitation of Rules 32(a)(7)(B) and 29(a)(5) and Circuit Rule 32-4 because it contains 4,910 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 16.77.1, set in Century Schoolbook 12-point type.

/s/ David Gespass

David Gespass

## CERTIFICATE OF SERVICE

I certify that on October 2nd, 2023, this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ David Gespass

David Gespass