No. 23-0210

IN THE UNITED STATES COURT OF APPEALS
FOR THE AMES CIRCUIT

TRISTON JAX,
Plaintiff-Appellant
v.
STANLEY M. WILDWOOD, IN HIS INDIVIDUAL CAPACITY, AND TOWN OF SEA PINES,
Defendants-Appellees

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF AMES

BRIEF FOR THE DEFENDANTS-APPELLEES

The Honorable Judge Constance Baker Motley Memorial Team

ELLE BUELLESBACH
VAISHALEE CHAUDHARY
ANDREW COGUT
ALEX FREDMAN
SOPHIA KWENDE
ALEXANDRA ("MAC") TAYLOR

Counsel for the Defendants-Appellees

MARCH 5, 2024, 6:30 P.M.
THE AMES COURTROOM
AUSTIN HALL
HARVARD LAW SCHOOL

Oral Argument

QUESTIONS PRESENTED

1. Whether a plaintiff can unilaterally convert an interlocutory ruling into an appealable final decision of the district court by giving notice under Federal Rule of Civil Procedure 41(a)(1) purporting to dismiss the remaining claim without prejudice.
2. Whether the district court correctly dismissed a Fourth Amendment malicious prosecution claim under 42 U.S.C. § 1983 where the plaintiff's pre-trial detention was pursuant to a legitimate finding of probable cause for two crimes.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

TREATISES

CONSTITUTIONAL PROVISIONS

INTRODUCTION

This case does not belong in a federal court of appeals. The issue before this Court is not whether Appellant was wronged, but whether this Court has jurisdiction to hear the appeal and statutory authority to grant the remedy requested. Federal courts of appeals are courts of limited jurisdiction. Congress has set the boundaries of that jurisdiction and has provided pathways to appeal, which balance the interests of both litigants and the judicial system. Appellant contravenes these statutes by seeking to appeal an interlocutory ruling through an invalid tactic devoid of district court involvement. Moreover, claims brought under Section 1983 must be based on specific, demonstrable violations of the U.S. Constitution. For a malicious prosecution claim brought under the Fourth Amendment, a plaintiff must allege that an unfounded charge itself caused an unreasonable seizure. Appellant has not done so, because his detention was pursuant to a legitimate finding of probable cause that he had committed two crimes.

OPINIONS AND ORDERS

The opinion and order of the United States District Court for the District of Ames granting in part and denying in part Defendants-Appellees Stanley M. Wildwood and the Town of Sea Pines' motion to dismiss is reproduced on pp. 10–11 of the Joint Appendix ("JA"). This Court's procedural order is reproduced at JA-16.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction over the action under 28 U.S.C. §§ 1331, 1343(a), and 1367.[1] JA-3. Appellant timely appealed on January 8, 2023. JA-3. Appellant argues that this Court has jurisdiction under 28 U.S.C. § 1291. There is no final decision of the district court; jurisdiction is disputed.

RELEVANT PROVISIONS

This case involves the Fourth Amendment to the United States Constitution, 28 U.S.C. §§ 1291, 1292(b), and 1367, 42 U.S.C. § 1983, Fed. R. Civ. P. 3, 8, 15, 18, 23(f), 41, 54(b), and 58, and Ames General Laws Chapters 94C, 258, 260, 266, and 268. These provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

Facts

One day in January 2021, Appellant Triston Jax was walking down Lancaster Street in the Town of Sea Pines with a bag containing cocaine in his jacket and a stolen engagement ring. JA-5. Officer Wildwood, who was responding to a dispatch of suspected jewelry theft at an apartment complex along Lancaster Street, spotted Appellant about a half mile from the area of the alleged theft. JA-4. Wildwood approached Appellant and instructed him to stop walking. JA-4.

---

[1] While not mentioned in the complaint, *see* JA-3–8, the district court had supplemental jurisdiction over Count Two under 28 U.S.C. § 1367.

After an altercation, the bag containing cocaine fell out of Appellant's jacket pocket, and an engagement ring, which had been stolen from the apartment complex, was also found. JA-4. Wildwood placed Appellant under arrest and took him into custody, swearing out an affidavit to charge Appellant criminally in Ames state court. JA-5. Appellant was charged with three criminal counts: (1) larceny of property valued at more than $250; (2) possession of a class B substance, to wit, cocaine; and (3) resisting arrest. JA-5. Appellant was arraigned the following day, and cash bail was set at $10,000. JA-6. Appellant acknowledges there was probable cause to charge him with larceny and possession. JA-6.

Wildwood's body cam recorded the interaction with Appellant. This footage revealed that Wildwood engaged in misconduct during the arrest, including tackling Appellant to the ground and striking him in the face three times with the butt of Wildwood's pepper spray canister. JA-5. The body cam footage contradicted Wildwood's affidavit as to the resisting arrest charge. JA-5.

Although there was probable cause to charge Appellant for larceny and possession of cocaine, on March 7, 2021, the prosecutor voluntarily dismissed all criminal charges against Appellant with prejudice, likely because of Wildwood's misconduct. JA-6. Appellant was then released, having been held on pretrial detention for 37 days. JA-6.

District Court Proceedings

On April 1, 2022, Appellant filed an action in the United States District Court for the District of Ames. JA-2. Count One, brought against Wildwood, alleged a violation of Appellant's Fourth Amendment rights, as incorporated by the Fourteenth Amendment, under 42 U.S.C § 1983. JA-7. Count Two, brought against the Town of Sea Pines, alleged negligence under Ames General Laws Chapter 258. JA-8.

Wildwood and the Town of Sea Pines moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. JA-9. The district court issued an interlocutory ruling dismissing Count One with prejudice but maintaining Count Two as "a plausible claim for negligence." JA-10–11.

On January 7, 2023, Appellant gave notice under Federal Rule of Civil Procedure 41(a)(1)(A)(i) purporting to "voluntarily dismiss[] Count Two of the Complaint without prejudice." JA-12 (emphasis omitted). The next day, Appellant filed a timely notice of appeal from the dismissal of Count One. JA-13.

SUMMARY OF ARGUMENT

This Court lacks jurisdiction to hear this appeal. Federal appellate jurisdiction exists only to the extent created by statute. This case exists outside the bounds set by Congress and the Rules Committee. Appellant's unilateral notice under Rule 41(a)(1) cannot convert an interlocutory ruling into an appealable final decision.

First, such notice has no legal effect, and Count Two remains pending. Rule 41(a) concerns the dismissal of actions; it does not concern the dismissal of individual claims or defendants. The distinction between a claim and an action is consistent across the Federal Rules. The plain text of the rule begins and ends this inquiry.

Second, the district court must confer appellate jurisdiction. A unilateral dismissal bypasses the district court and defies the statutory scheme. Congress and the Rules Committee have recognized the importance of the district court's role as "dispatcher," *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 435 (1956), in protecting the interests of the parties and the judicial system.

Third, in a multi-claim suit, finality requires each claim be decided on the merits or rendered legally deficient at the time of dismissal. Count Two was neither decided on the merits nor rendered legally deficient. At the time of dismissal, the claim was not time-barred, and the district court retained jurisdiction.

Appellant did not fall into a so-called "trap." He had an array of proper procedural mechanisms to pursue this appeal, including § 1292(b), Rule 54(b), and Rule 15. Appellant made a strategic choice to pursue this faulty appeal. Parties must be responsible for their intentional litigation choices.

The district court correctly dismissed Appellant's Section 1983 claim. Appellant's pre-trial detention was pursuant to valid probable cause that he had committed two crimes. Because Appellant brought this claim under the Fourth Amendment, he bears the burden of plausibly demonstrating that the alleged malicious prosecution caused an unreasonable seizure. When a plaintiff alleging malicious prosecution was prosecuted with both legitimate and unfounded charges, there is no cognizable violation of the Fourth Amendment unless the plaintiff can demonstrate that the unfounded charges meaningfully affected his seizure.

The "any-crime" rule, as applied by the district court, is well-rooted in Section 1983 cases. *See Howse v. Hodous*, 953 F.3d 402, 409 (6th Cir. 2020). The rule's application to malicious prosecution accords with the Fourth Amendment's "values and purposes" by striking a reasonable balance between law enforcement and privacy interests.

In evaluating Section 1983 claims, courts should not adopt a common-law tort rule when the rule does not accord with the constitutional right at issue. At common law, Appellant's proposed "charge-specific" rule was applied in a context distinct from the Fourth Amendment's protections, and thus should not be adopted.

The charge-specific rule provides an inappropriate remedy for unreasonable seizures because it relieves plaintiffs of their burden to

demonstrate that the existence of an unfounded charge caused a constitutional violation. In this case, Appellant, who was detained pursuant to two charges based on valid probable cause, failed to allege that the addition of the unfounded resisting arrest charge caused his seizure to be unreasonable under the Fourth Amendment. In the event this Court exercises jurisdiction, it should affirm the district court.

STANDARD OF REVIEW

A district court's grant of a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is reviewed de novo. *See Kim v. United States*, 632 F.3d 713, 715 (D.C. Cir. 2011).

ARGUMENT

I. THIS COURT LACKS JURISDICTION UNDER 28 U.S.C. § 1291.

"[I]t is well settled that there is no constitutional right to an appeal." *Abney v. United States*, 431 U.S. 651, 656 (1977). Instead, appellate jurisdiction is conferred by statute. 28 U.S.C. § 1291 authorizes appellate jurisdiction over "final decisions of the district courts." This statue codifies the final-judgment rule, which is foundational. The Supreme Court has emphasized that "the object and policy of the acts of congress . . . have been to save the expense and delays of repeated appeals in the same suit, and to have the whole case and every matter in controversy in it decided in a single appeal." *McLish v. Roff*, 141 U.S. 661, 665–66 (1891). The final-judgment rule ensures deference to trial judges, prevents piecemeal appeals, and avoids

harassment of defendants. *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 373–74 (1981). As a ruling dismissing only one claim in a multi-claim action, JA-10, the district court's order was "interlocutory," JA-16, and thus non-final.

Whether a plaintiff's unilateral notice under Rule 41(a)(1) can convert an interlocutory ruling into an appealable final decision is a matter of first impression in this circuit. Existing approaches have rightly been described as "a crazy quilt" and "hopelessly complicated." Appellant's Br. 9 (citation omitted). This Court should hesitate to adopt an approach which has caused decades of litigation in other circuits. Such complex doctrine can benefit only well-resourced litigants. This Court should hew closely to the text and purpose of jurisdiction-conferring statutes and rules. Plain meaning cuts through the morass.

Appellant's notice under Rule 41(a)(1) fails to confer appellate jurisdiction. First, Rule 41(a)(1) permits the dismissal only of an entire action, so Count Two remains pending before the district court. Second, appellate jurisdiction requires district court involvement; a party's unilateral action does not suffice. Third, Appellant's notice was not an independently final order and thus could not convert the interlocutory ruling into a final decision of the district court. Rejecting appellate jurisdiction in this case provides clear guidelines to future plaintiffs.

A. An improper invocation of Rule 41(a)(1) cannot confer appellate jurisdiction.

Appellant cannot dismiss a single claim or party under Rule 41(a)(1). The Federal Rules of Civil Procedure should be given their "plain meaning," and where the text is "unambiguous, judicial inquiry is complete." *Pavelic & LeFlore v. Marvel Ent. Group*, 493 U.S. 120, 123 (1989) (citation and internal quotation marks omitted). Courts must follow the "plain language" of the Rule and "accept the Rule as meaning what it says." *Schiavone v. Fortune*, 477 U.S. 21, 30 (1986).

Rule 41(a) permits a plaintiff to voluntarily dismiss an "action." An action is a "civil or criminal judicial proceeding." *Action*, *Black's Law Dictionary* (11th ed. 2019). It refers to the entire lawsuit. By contrast, a claim is the "part of a complaint in a civil action specifying what relief the plaintiff asks for." *Claim*, *Black's Law Dictionary* (11th ed. 2019). It is a fragment of an action. *See Brownback v. King*, 592 U.S. 745, 751 (2021) (Sotomayor, J., concurring).

The Rules maintain this distinction. Rule 41(b) permits a defendant to "move to dismiss *the action or any claim* against it" in the event a "plaintiff fails to prosecute." Fed. R. Civ. P. 41(b) (emphasis added). Similarly, Rule 54(b) applies "[w]hen an action presents more than one claim for relief . . . or when multiple parties are involved." Fed. R. Civ. P. 54(b); *see also Williams v. Seidenbach*, 958 F.3d 341, 360 (5th Cir. 2020) (en banc) (Oldham, J., dissenting) (performing this textual

analysis). Further, "an action is commenced by filing a complaint," Fed. R. Civ. P. 3, and a complaint may contain multiple claims against multiple parties, Fed. R. Civ. P. 8, 18, 21.

By its plain and unambiguous language, Rule 41(a)(1) permits a plaintiff to dismiss only an entire action, not an individual claim or party. The Second and Sixth Circuits take this position. *Harvey Aluminum, Inc. v. Am. Cyanamid Co.*, 203 F.2d 105, 108 (2d Cir. 1953); *Philip Carey Mfg. Co. v. Taylor*, 286 F.2d 782, 785 (6th Cir. 1961). The Sixth Circuit has recently reiterated that under its precedents, Rule 41(a) applies only to entire actions. *Griesmar v. City of Stow, Ohio*, No. 22-3151, 2022 WL 17581658, at *4 (6th Cir. Dec. 12, 2022). Further, judges in the Fifth and Eleventh Circuits are open to this interpretation. *See Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1238 (11th Cir. 2020) (Pryor, J., concurring) ("Our decision is largely grounded on the force of precedent, and an en banc court would have colorable arguments to reconsider our approach."); *Seidenbach*, 958 F.3d at 350 (Ho, J., concurring). Judicial inquiry should end here.

In the present case, Appellant gave notice under Rule 41(a)(1) purporting to dismiss Count Two of the complaint. JA-12. But under the plain text of the Rule, he could not do so. Since "an invalid Rule 41(a) dismissal is a nullity," *Seidenbach*, 958 F.3d at 345, Count Two remains pending before the district court. Therefore, the only order before this

Court is an interlocutory ruling on Count One. JA-16. There has been no "final decision[] of the district court." 28 U.S.C. § 1291.

Appellant asserts that an action means "all claims against a party." Appellant's Br. 12. This is incorrect as a matter of text and purpose. Such a definition is inconsistent with the scheme of the Federal Rules in which a single complaint commences a muti-party action. *See* Fed. R. Civ. P. 3, 8, 18, 21. To be sure, a federal court on a motion to dismiss may dismiss an individual defendant. *See* Appellant's Br. 13. To the extent this power derives from the text, it originates from Rule 41(b), which concerns involuntary dismissals, not 41(a), which contemplates a plaintiff's voluntary dismissals. *See* Fed. R. Civ. P. 41.

Further, Appellant's distinction between the dismissal of an individual claim and the dismissal of an individual defendant is premised on an incorrect extra-textual argument. Appellant defends this distinction on the grounds that Rule 41(a) was designed "to permit a disengagement of the parties at the behest of the plaintiff." Appellant's Br. 13 (citation omitted). This is an oversimplification.

Rule 41(a) was enacted "to permit a plaintiff to take the case out of court at an early stage if no other party will be prejudiced." *Exxon Corp. v. Maryland Cas. Co.*, 599 F.2d 659, 662 (5th Cir. 1979). Before adoption of the Rules, a plaintiff's right to voluntary dismissal in federal court was controlled by state statutes. *District of Columbia Elecs., Inc.*

v. Narton Corp., 511 F.2d 294, 296 (6th Cir. 1975). In some states, a plaintiff could dismiss an action at any point before the jury verdict was rendered. *Id.* This practice severely prejudiced defendants who exhausted their resources defending the suit. Rule 41(a) was designed to protect against this abuse. This risk remains when a plaintiff is permitted to dismiss a single defendant. Here, the Town of Sea Pines is prejudiced as they retain a significant financial interest in this litigation. *See* Ames Gen. Laws c. 258. Defendants-Appellees retain the same counsel, the Sea Pines Town Solicitor. JA-9, 14, 15.

Under the plain text of Rule 41(a), Appellant cannot dismiss a single claim in a multi-claim suit. Appellant's position is an expansion of the Rule. But expanding the scope of a Rule must be accomplished "by the process of amending the Federal Rules, and not by judicial interpretation." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 n.14 (2007) (citation omitted). Because a claim remains pending, there is no appellate jurisdiction.

B. The district court alone can confer appellate jurisdiction.

District court involvement in facilitating appellate jurisdiction is mandatory, not "salutary," Appellant's Br. 14. Independent of a plaintiff's right to dismiss, *id.* at 14–15, there is no right to an appeal outside the bounds of statute. The Supreme Court has made clear that "the right to a judgment from more than one court is a matter of grace

and not a necessary ingredient of justice." *Cobbledick v. United States*, 309 U.S. 323, 325 (1940). Congress has given appellate courts jurisdiction over "final decisions of the district court." 28 U.S.C. § 1291. A party gives notice under Rule 41(a)(1) unilaterally, without district court approval. Fed. R. Civ. P. 41(a)(1). A party's unilateral decision cannot convert an interlocutory ruling into a final decision because it lacks the requisite district court involvement. Therefore, Appellant's unilateral notice, JA-12, did not convert the interlocutory ruling on Count One, JA-16, into an appealable final decision.

The statutory scheme underpinning appellate jurisdiction requires the district court to serve as the "dispatcher." *Sears*, 351 U.S. at 435. The given pathways for appealing interlocutory rulings demonstrate the necessity of district court control. First, Rule 54(b) requires that "*the court* expressly determine[] that there is no just reason for delay" to convert an interlocutory ruling into an appealable final judgment. Fed. R. Civ. P. 54(b) (emphasis added). Second, 28 U.S.C. § 1292(b) requires that "*a district judge* . . . be of the opinion that such [interlocutory] order involves a controlling question of law" to certify the order as appealable. 28 U.S.C. § 1292(b) (emphasis added).[2] Through § 1292(b), "Congress thus chose to confer on district courts first

[2] Alternative routes to appellate jurisdiction such as the collateral order doctrine are tailored to highly specific circumstances.

line discretion to allow interlocutory appeals." *Swint v. Chambers County Comm'n*, 514 U.S. 35, 47 (1995).

In preserving district court involvement in Rule 54(b) and § 1292(b), Congress has made clear that if a plaintiff seeks to convert or otherwise appeal an interlocutory ruling, the district court must take action. As Congress was considering the bill that ultimately became § 1292(b), it "had before it a proposal . . . to give the courts of appeals sole discretion to allow interlocutory appeals." *Swint*, 514 U.S. at 47 n.5. But this proposal was rejected in favor of the present law requiring district court certification. Where Congress and the Rules Committee determined district court involvement was unnecessary, they spoke clearly. For instance, Rule 23(f) dictates that "a court of appeals may permit an appeal from an [interlocutory] order granting or denying class-action certification." Fed. R. Civ. P. 23(f). This places an appeal within "the sole discretion of the court of appeals." *Id.* advisory committee's notes to the 1998 amendment.

The district court as "dispatcher" serves important ends. The district court can "balance the benefits of quick review of an order disposing of part of a case against the risks of multiple appeals." *Blue v. District of Columbia Pub. Schs.,* 764 F.3d 11, 18 (D.C. Cir. 2014). Requiring district court involvement "can offer a clear indication of finality, which would avoid confusing the parties and the public." *Galaza*

v. Wolf, 954 F.3d 1267, 1272 (9th Cir. 2020) (citation and internal quotation marks omitted). The Supreme Court has emphasized that district court involvement should not be circumvented, because "[i]f courts of appeals had discretion to [exercise jurisdiction over] rulings of a kind neither independently appealable nor certified by the district court," then the scheme of § 1292(b) would be "severely undermined." *Swint*, 514 U.S. at 47. An appeal in the present case does exactly that.

Appellant contends that a district court cannot "confer appellate jurisdiction through a Rule 54(b) order." Appellant's Br. 24. But this is precisely what the Rule does. *See* Fed. R. Civ. P. Rule 54(b). Contrary to Appellant's suggestion, *see* Appellant's Br. 24, the ability of a court of appeals to reverse a district court's 54(b) certification for abuse of discretion does not imply otherwise. Appellate courts regularly review the exercise of district court powers. *See e.g.*, *United States v. Head*, 817 F.3d 354, 357 (D.C. Cir. 2016).

Appellant further contends that "a court's 'apparent acquiescence' to dismissal 'does not speak to finality.'" Appellant's Br. 14 (citing *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC*, 733 F.3d 658, 662 (6th Cir. 2013)). However, *Page Plus* merely rejected the proposition that a district court's approval of a dismissal under 41(a)(2) is a *sufficient* condition to create finality. 733 F.3d at 662. The court never rejected the proposition that district court involvement is a *necessary* condition for

finality. *See id*. In fact, another case cited by Appellant reiterated this necessity by highlighting the "requirement that [a] district court assess the desirability of immediate judgment and unequivocally give an affirmative answer." *Loc. P-171, Amalgamated Meat Cutters & Butcher Workmen v. Thompson Farms Co.*, 642 F.2d 1065, 1073 (7th Cir. 1981).

Appellate courts further recognize the necessity of district court involvement by distinguishing between dismissals with district court approval under Rule 41(a)(2) and unilateral dismissals under Rule 41(a)(1). *See, e.g.*, *Dukore v. District of Columbia*, 799 F.3d 1137, 1141 (D.C. Cir. 2015). The Ninth Circuit, in *Galaza*, recently addressed the finality of a unilateral notice given under Rule 41(a)(1). 954 F.3d at 1271. The court held that such a notice could not convert an interlocutory ruling into a final decision because "entry of a final judgment by the district court is still needed to make appealable an order that otherwise would have been non-final." *Id*.

Here, like *Galaza*, Appellant is seeking appellate review of an interlocutory order through notice under Rule 41(a)(1), *see* JA-12, 16, which circumvents the role of the district court. This Court should reaffirm the proper role of the district court and dismiss this appeal for lack of jurisdiction.

C. Appellant has not converted the interlocutory ruling into an appealable final decision.

1. To convert an interlocutory ruling into a final decision, all claims must be independently final at time of dismissal.

Absent a certification under Rule 54(b), finality is conferred by an order, or group of orders considered together, that "disposes of all claims as to all parties." *Meeks v. Blazin Wings, Inc.*, 821 F. App'x 771, 773 (9th Cir. 2020) (citing *Romoland Sch. Dist. v. Inland Empire Energy Ctr., LLC*, 548 F.3d 738, 747 (9th Cir. 2008)). Ordinarily, a decision is considered final when it "terminates the litigation between the parties on the merits of the case." *St. Louis, I.M. & S. Ry. Co. v. S. Express Co.*, 108 U.S. 24, 28 (1883). A decision not otherwise on the merits is final when the claim has been rendered "legally deficient." *Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 639 (4th Cir. 2020). A claim must be more than "practically over," it must be "legally over." *Id.* As Appellant notes, this position has widespread support. *See* Appellant's Br. 17–18 (a claim becomes final when it is "effectively excluded from federal court").

The legal deficiency and therefore finality of a claim should be determined at the time of the claim's dismissal. As a general matter, a party cannot "retroactively create appellate jurisdiction." *Galaza*, 954 F.3d at 1276 (Collins, J., concurring). Instead, "[t]he ability to recharacterize a without-prejudice dismissal as being a with-prejudice

dismissal applies only if it is clear at the time of dismissal." *Id.*; *cf. Fassett v. Delta Kappa Epsilon* (New York), 807 F.2d 1150, 1155 (3d Cir. 1986) ("[A]lthough all parties had stipulated to a dismissal without prejudice against [a defendant], the two-year Pennsylvania statute of limitations had already run *as of the time of [a defendant]'s dismissal*.") (emphasis added); *Gray v. Fid. Acceptance Corp.*, 634 F.2d 226, 227 (5th Cir. 1981) ("Since the district court's order . . . was handed down after the statute of limitations had run, the dismissal is a final order for purposes of appeal."). While a "subsequent event[] can validate a prematurely filed appeal," such an event must be a ruling of the district court. *Anderson v. Allstate Ins. Co.*, 630 F.2d 677, 681 (9th Cir. 1980). This bright-line approach supports consistency, predictability, and administrability.

Appellant's position runs contrary to the purposes of the final judgment rule. Appellant takes the position that a voluntary dismissal is final if the underlying claim becomes time-barred two days post-oral argument. Appellant's Br. 21. Such an approach results in disparate outcomes depending on the speed of appellate proceedings. It rests the existence of appellate jurisdiction entirely on the actions of an appellate court in deciding when to hear argument. This approach undermines the role of the district court and runs contrary to a foundational principle of our judicial system. As Chief Justice Marshall wrote in *Marbury v.*

Madison, "[i]t is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and *does not create that cause*." 5 U.S. (1 Cranch) 137, 175 (1803) (emphasis added). The actions of an appellate court cannot create jurisdiction.

Appellate jurisdiction is statutory and must depend on the actions of the district court, not the subjective intent of the parties. *Cf.* 13 Wright & Miller § 3522 (3d ed.) ("The subject matter jurisdiction of the federal courts is too fundamental a concern to be left to the whims and tactical concerns of litigants."). Circuits that consider the manipulative intent of parties invite significant litigation. Such intent is contestable. For example, while Appellant argues there is no evidence of manipulation in the present case, Appellant's Br. 21–23, Appellant's actions appear highly strategic. Appellant filed the notice of appeal only one day after filing for voluntary dismissal without prejudice. JA-12–13. If intent is left to contest, finality cannot be determined until the appellate court hears argument. *See, e.g.*, *First Health Grp. Corp. v. BCE Emergis Corp.*, 269 F.3d 800, 802 (7th Cir. 2001); *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1329 (11th Cir. 2000). A bright-line rule is not only more administrable, but also more equitable. Permitting debate over the intent of the parties benefits well-resourced litigants. A final decision requires that all claims be independently final at time of dismissal.

2. Appellant has not appealed from a final decision.

Assuming arguendo that Appellant voluntarily dismissed the negligence claim (Count Two), it was not legally deficient at time of dismissal. The district court retained subject matter jurisdiction; the statute of limitations had not expired; and the ruling on Count One did not preclude a favorable ruling on Count Two. Voluntarily dismissed without prejudice, Count Two was neither adjudicated on the merits nor legally deficient at time of dismissal. Because the dismissal of Count Two was not independently final, Appellant seeks review of an interlocutory ruling.

The district court did not lack subject matter jurisdiction at time of dismissal. As the Fourth Circuit observed, "trial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished." *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995); *see also* 28 U.S.C. § 1367(c). Retaining jurisdiction is not extraordinary. *See, e.g.*, *Patel v. Mahendra Wagha*, 866 F.3d 846, 847 (7th Cir. 2017); *Delgado v. Pawtucket Police Dep't*, 668 F.3d 42, 48 (1st Cir. 2012). Appellant speculates that the district court was "likely" to have dismissed the claim. Appellant's Br. 19. Such speculation is insufficient; the district court did not dismiss the claim. *See* JA-10–11.

Furthermore, voluntary dismissal of a state law claim cannot convert an interlocutory ruling on a federal claim into a final decision.

To permit otherwise creates a "disjointed approach to appellate review [which] violates the finality requirement and wastes appellate court resources." *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 428 (6th Cir. 2021). An appellant who dismisses her state-law claim is given "a risk-free means of obtaining piece-meal review," as the appellant will "certainly reinstate her state-law claims." *Id.*

Here, Appellant correctly observes that district courts may reinstate dismissed supplemental claims on remand. Appellant's Br. 20. However, such reinstatements occur after district court-initiated involuntary dismissals, not voluntary dismissals. *See, e.g.*, *St. Augustine Sch. v. Underly*, 78 F.4th 349, 356 (7th Cir. 2023). In addition, Appellant cites several cases to support the proposition that a plaintiff's unilateral voluntary dismissal of a supplemental claim converts a ruling on the anchoring claim into a final decision. Appellant's Br. 18–20. But the published cases cited differ crucially from the present scenario because they both involved district court approval of the dismissal. *See Amazon, Inc., v. Dirt Camp, Inc.*, 273 F.3d 1271, 1275 (10th Cir. 2001) ("[T]he district court declined to exercise supplemental jurisdiction over the state law claims."); *Dukore*, 799 F.3d at 1142 ([T]he [district] court alone determined when the case was over and its order became final."). In contrast to a voluntary dismissal, "involuntary dismissal does not risk empowering parties to take over the district court's 'dispatcher

function[].'" *Blue*, 764 F.3d at 18 (D.C. Cir. 2014). District court involvement reduces the risk that an appeal will undermine the purposes of the final judgment rule. *See id.*

Additionally, the claim is not time barred. Under 28 U.S.C. § 1367(d), the statute of limitations for a supplemental claim is tolled while in federal court. *Artis v. District of Columbia*, 583 U.S. 71, 75, 83 (2018) (interpreting the "ordinary meaning" of the statute). Appellant states that a voluntary dismissal does not toll the statute of limitations. Appellant's Br. 19. This assertion lacks binding authority, and the text suggests otherwise. Tolling occurs "while the claim is pending and for a period of 30 days after it is dismissed." 28 U.S.C. § 1367(d). The tolling provision applies to "any claim asserted under subsection (a)" which includes all supplemental claims. 28 U.S.C. § 1367(a), (d). In the tolling provision, the general "dismissed" should be understood to encompass the specific "voluntarily dismissed," a method of dismissal which is elsewhere explicitly referenced in subsection (d). This position has garnered support. *See Blinn v. Fla. DOT*, 781 So. 2d 1103, 1108 (Fla. Dist. Ct. App. 2000); Brian A. Beckcom, *Pushing the Limits of the Judicial Power: Tolling State Statutes of Limitations Under 28 U.S.C. § 1367 (d)*, 77 Tex. L. Rev. 1049, 1075 n.168 (1999). Thus, a state-law claim may be tolled while in federal court even if voluntarily dismissed.

Under this interpretation of § 1367(d), Appellant has nearly two years to refile the state-law claim before it is time-barred. Assuming the three-year statute of limitations on the negligence claim began to run on March 7, 2021, Appellant's Br. 21, it tolled on April 1, 2022, with the filing of the initial complaint, JA-8. It began to run again on January 7, 2023, with the notice of dismissal. JA-12. Even if the negligence claim did not toll while in federal court, it will expire on March 7, 2024. Appellant's Br. 21. Thus, the claim was not expired at time of dismissal, and will not expire until more than a year after Appellant gave notice. *See* JA-12.

Further, as Appellant notes, the statute of limitations is a waivable defense. Appellant's Br. 20; Fed. R. Civ. P. 8(c). Supposing a claim was time-barred, an appellee could waive her defense on appeal, effectively destroying finality. A party should not be permitted to unilaterally control appellate jurisdiction. Such a scenario supports the proposition that finality should be determined at the time of dismissal, rather than left uncertain until time of appeal.

Finally, the negligence claim has not been otherwise rendered legally deficient by the dismissal of the malicious prosecution claim. The district court stated that Count Two contained "a plausible claim for negligence." JA-10–11. Thus, at time of dismissal, Count Two was not independently final because it was not legally deficient. As a result, the

dismissal did not convert the interlocutory ruling on Count One into a final decision, and so, this court lacks jurisdiction.

3. The principles underlying *Microsoft v. Baker* counsel against finality.

In *Microsoft Corp. v. Baker*, the Supreme Court considered whether the voluntary dismissal with prejudice of plaintiffs' individual claims could generate jurisdiction over an appeal from a denial of class certification. 582 U.S. 23 (2017). The Court concluded that the dismissal "subvert[ed] the final-judgment rule and the process Congress has established for refining that rule and for determining when nonfinal orders may be immediately appealed." *Id.* at 37. It reasoned that permitting voluntary dismissal to create appellate jurisdiction would result in piecemeal appeals, "disturb[] the appropriate relationship between the respective courts," and undermine the statutory scheme. *Id.* at 37, 39 (citation and internal quotation marks omitted).

Appellant's unilateral dismissal produces the exact harms that concerned the *Baker* Court. It risks piecemeal appeal; it robs the district court of its proper role; and it undermines the balance Congress and the Rules Committee have struck through § 1292(b) and Rule 54(b). As Judge Moore of the Sixth Circuit noted, "*Baker* portends that the Supreme Court would not look favorably upon the practice" of permitting jurisdiction over an appeal following a voluntary dismissal. *Rowland*, 4 F.4th at 435 (Moore, J., dissenting); *see also* Brief in

Opposition to a Petition for Writ of Certiorari at 16–18, *CBX Resources, LLC v. ACE Insurance Co.*, No. 20-478 (Jan 11, 2021).

The reasoning in *Baker* has broad applicability beyond the class action context. Indeed, the *Baker* Court analogized to *Swint*, *id*. at 39, a case concerning a Section 1983 suit, which rejected a novel pathway to appellate jurisdiction because allowing the appeal would "drift away from the statutory instructions Congress has given to control the timing of appellate proceedings." *Swint*, 514 U.S. at 45. By contrast, Appellant suggests that *Baker* is limited to "bespoke procedural scheme[s]." Appellant's Br. 25–26. But the cases cited in support do not mention such a limitation. *See Keena v. Groupon, Inc.*, 886 F.3d 360, 365 (4th Cir. 2018) (rejecting appeal where plaintiff "pursued her own version of the voluntary-dismissal tactic that the Supreme Court soundly repudiated"); *Kiviti v. Bhatt*, 80 F.4th 520, 530 (4th Cir. 2023). In *Keena*, § 1292(b) was the "bespoke procedural scheme" contemplated for appeals pursuant to the Federal Arbitration Act. 886 F.3d at 365. There is nothing "bespoke" about § 1292(b), an option also available to Appellant.

The principles underlying *Baker* apply here. Appellant cannot circumvent the final-judgment rule. Appellant's unilateral notice under Rule 41(a)(1) does not create an appealable final decision.

D. The so-called "finality trap" occurs when a plaintiff misuses procedural mechanisms.

Appellant has not lost his right to appeal. Count Two remains pending before the district court. Therefore, Appellant remains free to pursue the same pathways to appellate jurisdiction that were open to Appellant upon the initial dismissal of Count One. These include litigating Count Two to completion in federal court, seeking certification under § 1292(b) or Rule 54(b), and seeking amendment under Rule 15. Even assuming the claim is no longer pending, Appellant still has the option of litigating Count Two in Ames state court to completion. The district court could then recognize the preclusive effect by entering judgment on Count One under Rule 58, a final judgment appealable to this Court. *See* Fed. R. Civ. P. 58.

Section 1292(b) is a proper vehicle for pursuing appeal on Count One. The dispute over malicious prosecution is a "controlling question of law as to which there is substantial ground for difference of opinion." 28 U.S.C. § 1292(b). As the Ninth Circuit explained, "[c]ourts traditionally will find that a substantial ground for difference of opinion exists where the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on the point." *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th Cir. 2010) (citations and internal quotation marks omitted). Congress tailor-made this pathway for precisely this circumstance. Appellant did not pursue it.

Rule 54(b) may also provide a pathway to appeal. While Appellant relies on Seventh and Eleventh Circuit precedent to suggest otherwise, Appellants Br. 23, this is speculation as Appellant did not request certification. Speculation does not suffice because "the Supreme Court has explicitly recognized that the fact that a similar claim remains before the district court does not necessarily preclude Rule 54(b) certification." *H & W Indus., Inc. v. Formosa Plastics Corp., USA*, 860 F.2d 172, 175 (5th Cir. 1988) (citing *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 n.2 (1980)).

Furthermore, Rule 15 is the proper procedural mechanism for dismissing individual claims and disjoining defendants. *Perry v. Schumacher Group of Louisiana*, 891 F.3d 954, 958 (11th Cir. 2018). This is "the easiest and most obvious" way to dismiss a claim. *Id.* In the present circumstance, dismissal of a claim or a party under Rule 15 would be permitted by the district court only on such terms as would not threaten the interests of the defendants and the judicial system. *See* Fed. R. Civ. P. 15. A court may consider such factors including "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies . . . , undue prejudice to the opposing party . . . , [and] futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

A bright-line rule benefits all litigants, especially those who cannot retain counsel for complex appellate arguments. Appellant has made a strategic decision. Parties must be responsible for their own litigation choices. *See Alt v. United States E.P.A.*, 758 F.3d 588, 591 (4th Cir. 2014). This so-called "procedural 'trap'" is not a "canary in a coalmine." Appellant's Br. 27. Unlike *Knick v. Scott*, cited by Appellant, the present case does not involve a plaintiff who is all-together prevented from vindicating her rights independent of her choices. 139 S.Ct. 2162, 2167 (2019). Here, Appellant had an array of options to seek appellate review and did not employ them.

This Court lacks jurisdiction because the negligence claim remains pending before the district court. Moreover, Appellant's unilateral dismissal cannot create finality because it did not involve the district court and the negligence claim was not independently final at time of dismissal. Appellant lost a calculated gamble "to pursue his more significant claim." Appellant's Br. 16. He did not fall into a trap.

II. THE DISTRICT COURT CORRECTLY DISMISSED THE SECTION 1983 CLAIM.

The Fourth Amendment protects against unreasonable seizures. U.S. Const. amend. IV. Appellant has brought his Section 1983 malicious prosecution claim under the Fourth Amendment. Thus, he has the burden of plausibly demonstrating that an unreasonable seizure occurred as a result of legal process. Appellant has failed to do so.

Appellant has not met his burden because a malicious prosecution claim cannot proceed if the seizure—here, a pre-trial detention—resulted from a legitimate finding of probable cause. In Fourth Amendment malicious prosecution cases involving both legitimate and unfounded charges, a plaintiff must demonstrate that the unfounded charge meaningfully affected his seizure. Where the state could have reasonably detained a plaintiff pre-trial pursuant to legitimate charges, there is no constitutional injury. This is the essence of the "any-crime" rule as applied by the district court when dismissing this claim.

If this Court exercises jurisdiction, it should affirm the district court's dismissal of the Section 1983 claim. First, the "any-crime" rule, as applied by the district court, accords with Section 1983 and Fourth Amendment jurisprudence. Second, the common-law history of Appellant's proposed "charge-specific" rule demonstrates that it developed in a context divorced from the Fourth Amendment. Third, the charge-specific rule provides an inappropriate remedy for unreasonable

seizures. And fourth, Appellant has failed to plausibly allege that the resisting arrest charge directly affected his pre-trial detention, which occurred pursuant to probable cause on charges of drug possession and larceny.

A. Dismissal of the malicious prosecution claim is consistent with Section 1983 and Fourth Amendment jurisprudence.

Section 1983 permits individuals to sue state officials for violations of their federal constitutional rights, 42 U.S.C. § 1983, and the "first step in any such claim is to identify the specific constitutional right allegedly infringed." *Albright v. Oliver*, 510 U.S. 266, 271 (1994). The constitutional right at issue here is the Fourth Amendment's prohibition against unreasonable seizures.

When evaluating the scope of a Section 1983 claim, "courts must closely attend to the values and purposes of the constitutional right at issue." *Manuel v. City of Joliet*, 580 U.S. 357, 370 (2017). *See also Thompson v. Clark*, 596 U.S. 36, 43 (2022). The any-crime rule, as applied by the Sixth Circuit and the district court below, establishes liability if, and only if, a plaintiff can demonstrate that an unfounded charge meaningfully affected an otherwise reasonable seizure pursuant to valid charges. This rule is consistent with Section 1983 caselaw and strongly aligns with the "values and purposes" of the Amendment, the core of which is the balancing of law enforcement and privacy interests.

1. The underlying rationale of the "any-crime" rule applies to Fourth Amendment malicious prosecution claims.

When evaluating Section 1983 claims alleging violations of the Fourth Amendment, courts frequently employ the any-crime rule. In *Devenpeck v. Alford*, the Supreme Court established that courts must dismiss Section 1983 claims challenging warrantless arrests when probable cause existed as to at least one criminal charge. 543 U.S. 146, 152–53 (2004). The Court reasoned that once the validity of the arrest is established through probable cause as to at least one charge, the seizure is reasonable and no constitutional right has been violated. *Id.* at 155. As other circuits acknowledge, this "any-crime" rule "undisputedly applies to warrantless arrests under the Fourth Amendment." *Williams v. Aguirre*, 965 F.3d 1147, 1162 (11th Cir. 2020). *See also Holmes v. Vill. of Hoffman Est.*, 511 F.3d 673, 682 (7th Cir. 2007); *Johnson v. Knorr*, 477 F.3d 75, 85 (3d Cir. 2007) (noting "there need not have been probable cause supporting charges for every offense for which an officer arrested a plaintiff for the arresting officer to defeat a claim of false arrest"). Thus, under the "any-crime" rule, when there is a claim for false arrest under Section 1983, the relevant inquiry is only whether probable cause existed with respect to at least one individual charge. *See Jaegly v. Couch,* 439 F.3d 149, 154 (2d Cir. 2006). What matters is the validity of the seizure, not the validity of every charge.

The same logic applies to Fourth Amendment malicious prosecution claims. False arrest and malicious prosecution are distinct torts because they arise from different stages of the criminal process. Yet the essence of a Fourth Amendment malicious prosecution claim is still an "unreasonable seizure." Similar logic should therefore apply between false arrest and malicious prosecution claims alleging Fourth Amendment violations. The constitutional harm to the defendant remains the same: the unreasonableness of the seizure. In *Howse*, the Sixth Circuit articulated this clearly: claims for false arrest and malicious prosecution both "rise and fall on whether there was probable cause supporting the detention." 953 F.3d at 409. This is not to say these claims are directly parallel. Whereas a person is no more seized when arrested on multiple charges instead of a singular charge, it is possible a person may experience a greater seizure when detained on multiple charges due to potential increases in bail or lengthier detention.

The any-crime rule functions to preclude claims in which the reasonableness of the seizure was unaffected by the addition of baseless charges. In this sense, the rule operates slightly differently when applied to Fourth Amendment malicious prosecution claims as compared to false arrest claims. The Sixth Circuit recognized as much in *Howse*, when it found that "[t]acking on meritless charges . . . does not change the nature of the seizure. If hypothetically it were to change

the length of detention, that would be a different issue." *Id.* at 409 n.3; *see Chiaverini v. City of Napoleon*, Ohio, No. 21-3996, 2023 WL 152477, at *4 (6th Cir. Jan. 11, 2023), *cert. granted*, No. 23-50, 2023 WL 8605742 (U.S. Dec. 13, 2023) (holding that a Section 1983 claim for malicious prosecution as to one charge was precluded by legitimate probable cause for two other charges, which justified the search, arrest, and prosecution of appellant); *see also Armstrong v. Ashley*, 60 F.4th 262, 279, n.15 (5th Cir. 2023). In other words, a plaintiff can still establish liability under this rule so long as he can demonstrate that the unfounded charge changed the otherwise reasonable seizure pursuant to the valid charges.

A variation of the any-crime rule has also been applied in Fourth Amendment cases regarding search warrants. In *Franks v. Delaware*, the Supreme Court held that when material that is "the subject of the alleged falsity or reckless disregard is set to one side, [and] there remains sufficient content in the warrant affidavit to support a finding of probable cause, no [evidentiary] hearing is required." 438 U.S. 154, 171–72 (1978). Citing *Franks*, the Eleventh Circuit in a Section 1983 case held that an officer's misstatement or omission was "not relevant to the existence of probable cause to believe that [other] crimes had been committed." *Madiwale v. Savaiko*, 117 F.3d 1321, 1326–28 (11th Cir. 1997). These cases reiterate that the existence of false information does not necessarily defeat probable cause or raise Section 1983 liability.

2. Dismissing the Section 1983 claim accords with the "values and purposes" of the Fourth Amendment.

The Fourth Amendment seeks to strike a balance between the competing interests of law enforcement, public safety, and individual privacy. The rule applied by the Sixth Circuit and the district court is faithful to these "values and purposes" of the Amendment.

The Supreme Court has consistently recognized that Fourth Amendment analysis involves balancing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Tennessee v. Garner*, 471 U.S. 1, 8 (1985) (citing *United States v. Place*, 462 U.S. 696, 703 (1983)). Indeed, the "balancing of competing interests" is "the key principle of the Fourth Amendment." *Garner*, 471 U.S. at 8 (citation omitted). Likewise, the Court has characterized the Amendment's purpose as protecting personal privacy against arbitrary governmental invasions. *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967). These "values and purposes" indicate that, when evaluating the scope of Section 1983 liability under the Fourth Amendment, courts must weigh individuals' privacy interests against the government's interest in prosecuting crimes and upholding public safety.

The any-crime rule, as stated by the Sixth Circuit and applied by the district court below, accords with these "values and purposes." The

rule recognizes that law enforcement officials should not be held liable when an individual is lawfully detained for charges based on probable cause. *See Howse*, 953 F.3d at 409. The rule strikes an appropriate balance between the government's interest in detaining individuals based on reasonable findings of probable cause and plaintiffs' interest in vindicating their constitutional rights. Further, the rule protects law enforcement officials from "unwarranted civil suits," *Thompson*, 596 U.S. at 49, by recognizing that it is reasonable to hold an individual in pre-trial detention pursuant to valid probable cause.

When an individual has been seized following both justifiable and unfounded charges, the government still has a legitimate interest in detaining that individual based on the justifiable charges. In such a situation, the seizure is unreasonable if, and only if, the prosecution of unfounded charges demonstrably affected the individual's seizure. *See Howse*, 953 F.3d at 409, n.3. Otherwise, it cannot be said that law enforcement officials were acting unreasonably, since a reasonably prudent official could still detain the individual absent the unfounded charges. *See* William Alter, *Reasonable Seizure on False Charges*, 56 Ind. L. Rev. 391, 412–13 (2023). Therefore, it is inappropriate in such circumstances to find any Fourth Amendment violation.

The Fourth Amendment's prohibitions are specific to unreasonable governmental invasions. Appellant errs in his

characterization of the Fourth Amendment's "values and purposes." To support his proposed "charge-specific" rule, Appellant directly cites *Thompson* for the proposition that "[t]he heart of the Fourth Amendment is protection against arbitrary law enforcement tactics." Appellant's Br. 39.[3] But *Thompson* does not mention the word arbitrary once. Rather, in the cited passage, the Court discussed the consequences of explanations by courts and prosecutors regarding why charges were dismissed. *Thompson*, 596 U.S. at 48. Then, again without support, Appellant transforms this principle into the prevention of "arbitrary outcomes." Appellant's Br. 40.

While the Amendment prevents *some* arbitrary tactics like the general warrant, *see id.* at 39, the Amendment does not proscribe *all* arbitrary law enforcement tactics. Otherwise, for example, prosecutors would not be permitted to selectively drop valid charges against some defendants to save trial time, or selectively stack charges to gain leverage in plea bargaining. *See United States v. Goodwin*, 457 U.S. 368, 380 (1982). Both of these sanctioned practices could be characterized as

[3] A similar argument was raised by Petitioners in a pending case before the Supreme Court on whether the any-crime or charge-specific rule should be adopted in Fourth Amendment malicious prosecution cases. *See* Brief for Petitioners at 24–25, *Chiaverini v. City of Napoleon, Ohio*, No. 23-50 (Jan. 31, 2024) ("In *Thompson*, this Court identified two 'values and purposes of the Fourth Amendment': the avoidance of arbitrary results and the protection of law-enforcement interests."). Respondents' brief has not been filed as of the date of this filing.

arbitrary. Nor does the Amendment seek to prevent all "arbitrary outcomes." To this point, the Court has recognized that the reasonableness standard for officers making warrantless arrests could lead to outcomes dependent solely on the subjective mindset of individual officers. *See Devenpeck*, 543 U.S. at 154. Moreover, *Camara* stands for the proposition that the Amendment's purpose is to protect against arbitrary governmental *invasions*. 387 U.S. at 528. Thus, the Amendment's prohibition of arbitrary tactics is specific to searches and seizures. As noted above, a pre-trial detention cannot be considered arbitrary or unreasonable unless it is unsupported by probable cause.

Appellant asserts that the any-crime rule allows government officials to prosecute unfounded charges with impunity. *See* Appellant's Br. 36. But officials who do so could still face liability based on different legal theories, such as a violation of the Eighth Amendment or due process rights, or under a state tort law malicious prosecution claim. There is thus no compelling reason to depart significantly from the Fourth Amendment's any-crime norm to incentivize officials to behave reasonably.

Appellant also offers various theories as to how adding unfounded charges to legitimate ones *might* affect an individual's seizure. *See* Appellant's Br. 34–41. But this speculation flies in the face of the Fourth Amendment's objectivity standard for probable cause. *See Devenpeck*,

543 U.S. at 153. Section 1983 demands more as well. To state a Section 1983 claim, a plaintiff must identify an infringement of a "specific constitutional right," *Albright*, 510 U.S. at 271, and establish that the defendant "subject[ed], or cause[d] to be subjected" a violation of that right. 42 U.S.C. § 1983. *See* Brief for the United States as Amicus Curiae Supporting Vacatur at 11–12, *Chiaverini v. City of Napoleon, Ohio*, No. 23-50 (Feb. 7, 2024) ("Filing a baseless criminal charge does not, by itself, 'subject' anyone to the denial of Fourth Amendment rights.").

The "values and purposes" of the Fourth Amendment are clear. It balances law enforcement and privacy interests. The any-crime rule preserves this balance.

B. Common-law history demonstrates that the "charge-specific rule" does not accord with Fourth Amendment aims.

The common-law history of malicious prosecution demonstrates that the charge-specific rule arose in a context significantly distinct from the Fourth Amendment's protections. Appellant asserts that because state courts at the time of Section 1983's enactment used a charge-specific rule for malicious prosecution claims, federal courts must now adopt this rule. *See* Appellant's Br. 31–33. This is incorrect.

When evaluating the scope of Section 1983, courts tend to look first to the common law of the analogous alleged tort for guidance—but they may only adopt a common-law rule if doing so is consistent with "the values and purposes of the constitutional right at issue." *Thompson*,

596 U.S. at 43. Importantly, the Supreme Court has noted that reviewing the common law does not always lead a court to adopt common-law rules in a Section 1983 case, because "[c]ommon-law principles are meant to guide rather than to control the definition of § 1983 claims." *Manuel*, 580 U.S. at 370. The common law serves "more as a source of inspired examples than of prefabricated components." *Id.* (citation omitted). And the Court has nowhere "suggested that § 1983 is simply a federalized amalgamation of pre-existing common-law claims." *Rehberg v. Paulk*, 566 U.S. 356, 366 (2012).

Appellant's reliance on the common law ignores the Fourth Amendment. This reliance exemplifies why a court should hesitate to adopt a common-law rule "wholesale" unless the rule is consistent with the context of the constitutional right allegedly violated. *See Manuel*, 580 U.S. at 370. At common law, malicious prosecution actions were primarily intended to address harms outside the scope of those which the Fourth Amendment prevents. As such, the "charge-specific" rule, while understandable in the common-law context, has no grounding when applied to Fourth Amendment malicious prosecution claims brought under Section 1983.

Two features of the common-law history of the tort of malicious prosecution indicate why this is the case. First, dating from the tort's development in medieval England to 19th-century America, malicious

prosecution actions could be brought by individuals harmed by both criminal prosecutions *and* civil suits. *See* Timothy Tymkovich and Hayley Stillwell, *Malicious Prosecution as Undue Process,* 20 Geo. J. L. & Pub. Pol'y 225, 229–32 (2022). The action developed in England as a means to protect "the innocent and the courts against wrongful litigation." *Id.* at 231. Many plaintiffs in 19th-century America brought cases accusing "other private actors of bringing false civil suits." *Id.* at 232; *see, e.g.*, *Burt v. Place*, 4 Wend. 591, 591–92 (N.Y. Sup. Ct. 1830).

Tellingly, three of the four 19th-century state cases cited by Appellant, *see* Appellant's Br. 31–32, were brought by plaintiffs alleging harms either from civil suits or complaints by nongovernmental actors. *See Barron v. Mason*, 31 Vt. 189, 190 (1858) (malicious prosecution of a patent infringement case); *Bauer v. Clay*, 8 Kan. 580, 581–82 (1871) (defendant, who was not a government official, had alleged to a justice of the peace that plaintiff stole his hogs); *Pierce v. Thompson*, 23 Mass. (6 Pick.) 193, 196 (1828) (malicious prosecution of suit between former business partners to recover money and rent). It is far from clear why this Court should adopt a rule developed in the context of faulty civil suits to determine the scope of Section 1983 liability under the Fourth Amendment, which is solely concerned with criminal prosecutions and acts by government officials.

Second, malicious prosecution actions at common law, following both civil and criminal actions, were primarily intended to redress *reputational* harms to individuals—not the unreasonable searches, seizures, and warrants that the Fourth Amendment prohibits. As one leading treatise contemporary to Section 1983's enactment put it, malicious prosecution "is primarily, more especially in case of a criminal prosecution, a wrong to character or reputation." 1 F. Hilliard, *The Law of Torts or Private Wrongs* 433 (Bos., Little, Brown & Co. 4th ed. 1874). *See also* T. Cooley, Law of Torts 180 (1879) (malicious prosecution can cause injury by "affecting materially one's standing and credit"); *Albright*, 510 U.S. at 283 (Kennedy, J., concurring) ("The common law of torts long recognized that a malicious prosecution, like a defamatory statement, can cause unjustified torment and anguish—both by tarnishing one's name and by costing the accused money in legal fees and the like.").

Two 19th-century state supreme courts likewise recognized the connection between malicious prosecution and reputational harm. *See Stancliff v. Palmeter*, 18 Ind. 321, 324 (1862) (noting "an action for malicious prosecution is much in the nature of an action for slander"); *Sheldon v. Carpenter*, 4 N.Y. 579, 580–81 (1851) (observing that injury to fame and character from malicious prosecution is "in many cases, the gravamen of the action").

Appellant essentially concedes this point: "Malicious prosecution suits remedy damage to the detainee's reputation." Appellant's Br. 41. But the Fourth Amendment does not protect against reputational harms, nor did Appellant allege in his complaint that his reputation was harmed. JA-7. In attempting to argue that reputational harms are protected by the Fourth Amendment, Appellant cites only a concurring opinion written by a single Justice arguing that the Amendment "should" protect against reputational harm. Appellant's Br. 41. This is insufficient evidence that the Amendment's protections are significantly broader than the unreasonable searches and seizures and baseless warrants enumerated in its text. *See Becker v. Kroll*, 494 F.3d 904, 915 (10th Cir. 2007) (noting that Justice Ginsburg's Fourth Amendment analysis in *Albright* has not been widely accepted by courts).

This history demonstrates that the charge-specific rule identified by Appellant arose in the context of a common-law tort applied in scenarios outside the scope of the Fourth Amendment's protections. The charge-specific rule may have made sense to address the distinct reputational harms stemming from each unfounded charge—which are no less reputationally harmful when there also exists a legitimate charge. But it does not make sense in the context of a Fourth Amendment malicious prosecution claim, where the harm at issue is an unreasonable seizure.

C. Appellant's proposed charge-specific rule provides an inappropriate remedy for unreasonable seizures.

The charge-specific rule improperly creates a special carve out for Section 1983 malicious prosecution claims by relieving plaintiffs of their burden to demonstrate a constitutional violation. As the Supreme Court explained in *Thompson*, "[b]ecause this claim is housed in the Fourth Amendment, the plaintiff also *has* to prove that the malicious prosecution resulted in a seizure of the plaintiff." 596 U.S. at 43 n.2 (emphasis added). The charge-specific rule impermissibly departs from this threshold requirement. *See* Brief for the United States, *Chiaverini v. City of Napoleon, Ohio*, at 14.

Appellant's charge-specific approach fails to foreclose claims where the baseless charge did not result in an unreasonable seizure. The rule operates without regard to the underlying validity of the seizure. Instead, it applies a presumption that "[f]alse charges result in seizures that would not have otherwise occurred." Appellant's Br. 34. While that may be true in some cases, Section 1983 assigns plaintiffs the burden to demonstrate such an infringement of a constitutional right. The charge-specific approach improperly absolves plaintiffs of this burden. It allows claims to proceed so long as a plaintiff can show that a single charge was unsupported by probable cause, even if the entire seizure itself remained lawful.

Appellant reasons that baseless charges should always be grounds for a Fourth Amendment malicious prosecution suit because multiple charges cause greater reputational injury and higher financial burden. Appellant's Br. 41. But such a presumption would directly conflict with Supreme Court precedent on other Fourth Amendment Section 1983 claims. Consider false arrest claims. The risk of additional reputational and financial harm exists when someone is arrested on both legitimate and baseless charges. *See* Alter, *Reasonable Seizure on False Charges*, *supra*, at 413. Yet the Supreme Court has clearly established that these additional harms do not give rise to a claim when the arrest itself was supported by probable cause. *See Devenpeck*, 543 U.S. 146, 153-55. When the seizure was supported by probable cause on other charges, courts dismiss such claims. *Id.*

Additionally, courts have repeatedly noted that a plaintiff cannot base a Section 1983 malicious prosecution claim on "the financial cost from the legal process . . . , a detriment to a person's employment, and income [or] emotional harm[]." *Adams v. Lexington-Fayette Cnty. Urb. Gov't,* No. 5:22-CV-00241-GFVT, 2023 WL 6205415, at *3 (E.D. Ky. Sept. 22, 2023) (citing *Noonan v. Cnty. of Oakland*, 683 F. App'x 455, 463 (6th Cir. 2017)) (internal quotation marks omitted); *see also Lamar v. Boles*, No. 3:23-CV-00747, 2024 WL 386923, at *19 (M.D. Tenn. Jan. 31, 2024). While in these cases courts found no constitutional violation

because plaintiffs were prosecuted without *any* pre-trial detention, this Court should find no constitutional violation here because Appellant's pre-trial detention was supported by probable cause. The Fourth Amendment provides a right against being *detained* without probable cause. "[T]here is no such thing as a constitutional right not to be prosecuted without probable cause." *Serino v. Hensley*, 735 F.3d 588, 593 (7th Cir. 2013). Thus, the existence of a baseless charge does not itself give rise to a constitutional claim unless it causes an unreasonable seizure.

Even the circuit courts applying the charge-specific rule allowed claims to proceed only when the plaintiff had demonstrated that the baseless charge lengthened pre-trial detention. In *Williams*, the valid charge of carrying an unlicensed firearm was used to tack on the meritless charge of attempted murder. 965 F.3d at 1162. The plaintiff spent 16 months in prison after being unable to pay his $250,000 bail. *Id.* The Eleventh Circuit explicitly recognized that sixteen months was longer than the plaintiff would have served had he been convicted of the unlicensed firearm offense. *Id.* The court also noted that the bail amount would not have been $250,000 without the addition of a violent attempted murder charge. *Id.*; *see also Posr v. Doherty*, 944 F.2d 91, 100 (2d Cir. 1991) (finding the higher baseless charge of assault "would support a high bail or a lengthy detention"); *Knorr*, 477 F.3d at 82, 83

(noting that assault was a more "serious, unfounded charge[] which would support a high bail or a lengthy detention").

Appellant also suggests that the increased complexity of a prosecution involving multiple charges can itself improperly extend pre-trial detention in violation of the Fourth Amendment. Appellant's Br. 36. But the case that Appellant cites for this conclusion rejected such a theory, finding that the plaintiff's "bare assertion" that he "need[ed] more time" to mount a defense was inadequate, and "without more," it was "not enough" to state a claim. *United States v. Jeri*, 869 F.3d 1247, 1258 (11th Cir. 2017). In *Jeri*, the Eleventh Circuit rejected the plaintiff's claims that the district court's denial of a continuance infringed on his "right to counsel by impairing his ability to present a defense." *Id.* at 1247. The Court reasoned that the plaintiff had failed to show "specific, substantial prejudice stemming from the delay." *Id.* at 1258. Here, too, this Court must require a plaintiff to plausibly demonstrate that the baseless charge itself lengthened the seizure.

Lastly, Appellant's argument that additional charges impact plea negotiations is not a compelling reason to reduce the plaintiff's burden to demonstrate a constitutional violation. While upholding the practice of plea negotiations, the Supreme Court recognized that "'additional' charges obtained by a prosecutor could not necessarily be characterized as an impermissible 'penalty.'" *Goodwin*, 457 U.S. at 379 (quoting

Bordenkircher v. Hayes, 434 U.S. 357, 364–65 (1978)). This is even more evident in the Fourth Amendment context, where additional charges only create constitutional violations when they cause an unreasonable extension in detention.

Appellant's own hypothetical reveals just how far the charge-specific rule departs from the Fourth Amendment. Appellant argues that under the any-crime rule "an individual who jaywalked could find himself facing a murder charge without legal recourse." Appellant's Br. 40. Not so. The any-crime rule as stated by the Sixth Circuit would allow a claim to proceed because the plaintiff can demonstrate that the much more serious charge of murder caused his lengthy detention. On the other hand, if a man who committed murder was lawfully arrested, the charge-specific rule would allow him to still bring suit so long as he also faced a baseless charge of jaywalking. Such results are inconsistent with the Fourth Amendment.

The any-crime rule as stated by the Sixth Circuit, in contrast, is sensible. It allows claims when there is an unreasonable seizure and forecloses them when there is not, preserving fidelity to the constitutional text.

D. Appellant has failed to plausibly demonstrate that an unreasonable seizure has occurred.

Because Appellant has brought this claim under the Fourth Amendment, he has the burden of plausibly demonstrating that the

resisting arrest charge caused an unreasonable seizure. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (citations omitted). However, a complaint cannot "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.*

To demonstrate a Fourth Amendment violation here, Appellant must be able to show that the resisting arrest charge meaningfully affected his seizure. If Appellant had not been charged with resisting arrest, he still could have been legitimately detained on possession and larceny charges. Thus, Appellant can only plausibly allege a Fourth Amendment violation if the resisting arrest charge itself caused the detention (by making bail higher than he could afford) or lengthened it. Appellant has failed do so here. Conclusory assertions are not "enough to state a claim." Appellant's Br. 36.

Appellant has not plausibly alleged that the resisting arrest charge caused his bail to be higher or the length of his detention to be longer than it otherwise would have been. Nor has he plausibly alleged that, in the absence of such increase, he would have been able to afford bail and avoid pre-trial detention. Instead, Appellant argues that "[f]abricated charges *can* trigger substantial increases in bail that cause pretrial detention" and that "[a] resisting arrest charge *can* have a

particularly outsized impact on bail." Appellant's Br. 34–35 (emphases added). These arguments cannot save the defects of Appellant's complaint. The complaint does not plausibly allege that bail was higher than it otherwise would have been, and further, it states no facts to suggest such increase is what made Appellant unable to post bail.

Following his arrest, Appellant was charged with three criminal counts: (1) larceny of property valued at more than $250; (2) possession of a class B substance (cocaine); and (3) resisting arrest. JA-5. Appellant was arraigned, and cash bail was set at $10,000. JA-6. Under Ames law, where the value of stolen property exceeds $250, larceny is punishable by "imprisonment in the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars and imprisonment in jail for not more than two years." Ames Gen. Laws c. 266. Possession of a Class B Substance is punishable "by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both." Ames Gen. Laws c. 94C. In contrast, resisting arrest is punishable in Ames by "imprisonment in a jail or house of correction for not more than two and one-half years or a fine of not more than five hundred dollars, or both." Ames Gen. Laws c. 268.

When properly construing the character and penalties associated with the charges Appellant is faced with, it is clear he was not the kind of plaintiff that "jaywalked [and found] himself facing a murder charge

without legal recourse." Appellant's Br. 40. Rather, solely on the legitimate charges of larceny and possession, Appellant faced some combination of up to nine years in prison or a $27,000 fine. Given the severity of these legitimate charges, $10,000 cash bail was reasonable regardless of the addition of any lesser charges. Unlike instances where the baseless charge was the more serious offense, Appellant has not plausibly demonstrated that "bail likely would have been much lower" without the addition of the lesser charge of resisting arrest. *Id.* at 36. *See also Posr*, 944 F.2d at 100; *Williams*, 965 F.3d at 1155 (finding that a valid charge for carrying an unlicensed firearm is no reason to preclude a malicious prosecution claim for far more serious, but fraudulent, charges for attempted murder).

Here, Appellant did not allege in the complaint that his bail was meaningfully affected by the addition of a resisting arrest charge. Nor did he raise an Eighth Amendment claim of excessive bail. *Cf. Stack v. Boyle*, 342 U.S. 1, 6 (1951). While Appellant discusses at length how flight risk and public safety concerns could have affected bail due to the addition of a resisting arrest charge, *see* Appellant Br. 34–39, the original complaint does not allege these facts. Moreover, Appellant cannot cure this deficiency on the facts. It is well known that trial judges have wide discretion surrounding bail determinations. *See e.g.*, *Harris v. United States*, 404 U.S. 1232, 1232 (1971); *see also* Samuel R.

Wiseman, *Fixing Bail*, 84 Geo. Wash. L. Rev. 417, 423–424 (2016) (even in jurisdictions where judges assess defendant's flight risk or dangerousness, judges still generally "retain full discretion to detain the defendant"). A judge could have reasonably exercised discretion to assign $10,000 bail solely on the legitimate charges of larceny and possession. Appellant does nothing to show the contrary.

Further, other than Appellant's "naked assertions," his claim that the resisting arrest charge itself would trigger "flight risk" or public safety concerns is unsupported by the caselaw he relies on. Appellant's Br. 35. In *United States v. Clum*, the defendant was charged with conspiring to defraud the United States, forty-one counts of making false claims related to a fraudulent tax return scheme evaluated at $130 million, and repeated, adamant refusals to cooperate with law enforcement. 492 F. App'x 81, 85 (11th Cir. 2012). This posture bears scant resemblance to Appellant's on any metric. Similarly, in *United States v. Wesson*, the defendant was charged with "multiple drug-related charges—including distribution of [crack] and heroin," as well as "weapons charges, including possession of firearms in further[ance] of a drug trafficking crime." No. 4:19-CR-309, 2020 WL 1814153, at *1 (N.D. Ohio Apr. 9, 2020). A defendant charged with multiple violent offenses, including charges focused on drug trafficking (a factor Appellant points

out as consequential for bail increase, *see* Appellant's Br. 38) is likewise not an apt comparison.

Appellant contends nonetheless that the fact he "cannot, at the outset, disaggregate the causes of the harm that he suffered should not be grounds to dismiss his § 1983 claim." Appellant's Br. 39. But Appellant chose to bring his claim in the posture he did, as a Section 1983 claim under the Fourth Amendment. This posture carries with it the burden of plausibly demonstrating that an unreasonable seizure has occurred. Gesturing at the likelihood of such a seizure through "naked assertions" is not enough to meet this burden. A Section 1983 claim under the Fourth Amendment is not concerned with probability; plausible proof of an unreasonable seizure is needed.

Ultimately, the question before this Court is not whether Appellant was wronged but whether Section 1983 affords him a remedy. Under the Fourth Amendment, it does not. Just as he must bear responsibility for the risks of his strategy to create appellate jurisdiction, Appellant chose to bring this specific cause of action, and he must bear responsibility for that choice.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed, or, in the alternative, the judgment of the district court should be affirmed.

February 19, 2024 Respectfully submitted,

The Honorable Judge Constance Baker Motley Memorial Team

/s/ Elle Buellesbach

/s/ Vaishalee Chaudhary

/s/ Andrew Cogut

/s/ Alex Fredman

/s/ Sophia Kwende

/s/ Alexandra ("Mac") Taylor

APPENDIX

U.S. Con. amend. IV

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

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. § 1292

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

> (1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing,

modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C. § 1367

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought

against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Fed. R. Civ. P. 3

A civil action is commenced by filing a complaint with the court.

Fed. R. Civ. P. 8

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) In General. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials—Responding to the Substance. A denial must fairly respond to the substance of the allegation.

(3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny. An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) In General. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) Mistaken Designation. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) In General. Each allegation must be simple, concise, and direct. No technical form is required.

(2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

Fed. R. Civ. P. 15

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) Notice to the United States. When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Fed. R. Civ. P. 18

(a) In General. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

Fed. R. Civ. P. 23

(f) Appeals. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal d

Fed. R. Civ. P. 41

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the

defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

Fed. R. Civ. P. 54

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Demand for Judgment; Relief to Be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Costs; Attorney's Fees.

(1) Costs Other Than Attorney's Fees. Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

(2) Attorney's Fees.

(A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) Proceedings. Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge. By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney's fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.

(E) Exceptions. Subparagraphs (A)–(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. §1927.

Fed. R. Civ. P. 58

(a) Separate Document. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney's fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(b) Entering Judgment.

(1) Without the Court's Direction. Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(A) the jury returns a general verdict;

(B) the court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) Court's Approval Required. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) the jury returns a special verdict or a general verdict with answers to written questions; or

(B) the court grants other relief not described in this subdivision (b).

(c) Time of Entry. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) Request for Entry. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) Cost or Fee Awards. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4 (a)(4) as a timely motion under Rule 59.

Possession of Class B Substance, Ames Gen. Laws c. 94C

Section 34. No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except as provided herein, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. Any person who violates this section by possessing a Class A or Class B2 substance shall for the first offense be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both, and for a second or subsequent offense shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years or by a fine of not more than five thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years. Any person who violates this section by possession of more than one ounce of marihuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving a controlled substance in Class E of section thirty-one, whoever violates

the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

Tort Claims Act, Ames Gen. Laws c. 258

Section 2. Public employers shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment, in the same 19 manner and to the same extent as a private individual under like circumstances, except that public employers shall not be liable to levy of execution on any real and personal property to satisfy judgment, and shall not be liable for interest prior to judgment or for punitive damages or for any amount in excess of $100,000. The remedies provided by this chapter shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the public employer or, the public employee or his estate whose negligent or wrongful act or omission gave rise to such claim, and no such public employee or the estate of such public employee shall be liable for any injury or loss of property or personal injury or death caused by his negligent or wrongful act or omission while acting within the scope

of his office or employment; provided, however, that a public employee shall provide reasonable cooperation to the public employer in the defense of any action brought under this chapter. Failure to provide such reasonable cooperation on the part of a public employee shall cause the public employee to be jointly liable with the public employer, to the extent that the failure to provide reasonable cooperation prejudiced the defense of the action. Information obtained from the public employee in providing such reasonable cooperation may not be used as evidence in any disciplinary action against the employee. Final judgment in an action brought against a public employer under this chapter shall constitute a complete bar to any action by a party to such judgment against such public employer or public employee by reason of the same subject matter. Notwithstanding that a public employee shall not be liable for negligent or wrongful acts as described in the preceding paragraph, if a cause of action is improperly commenced against a public employee of the commonwealth alleging injury or loss of property or personal injury or death as the result of the negligent or wrongful act or omission of such employee, said employee may request representation by the public attorney of the commonwealth. The public attorney shall defend the public employee with respect to the cause of action at no cost to the public employee; provided, however, that the public attorney determines that the public employee was acting within the scope of his

office or employment at the time of the alleged loss, injury, or death, and, further, that said public employee provides reasonable cooperation to the public employer and public attorney in the defense of any action arising out of the same subject matter. If, in the opinion of the public attorney, representation of the public employee, under this paragraph would result in a conflict of interest, the public attorney shall not be required to represent the public employee. Under said circumstances, the commonwealth shall reimburse the public employee for reasonable attorney fees incurred by the public 20 employee in his defense of the cause of action; provided, however, that the same conditions exist which are required for representation of said employee by the public attorney under this paragraph. Section 4. A civil action shall not be instituted against a public employer on a claim for damages under this chapter unless the claimant shall have first presented his claim in writing to the executive officer of such public employer within two years after the date upon which the cause of action arose, and such claim shall have been finally denied by such executive officer in writing and sent by certified or registered mail, or as otherwise provided by this section; provided, however, that a civil action against a public employer which relates to the sexual abuse of a minor, as provided in section 4C of chapter 260, shall be governed by section 4C1/2 of said chapter 260 and shall not require presentment of such claim pursuant to this section. The failure

of the executive officer to deny such claim in writing within six months after the date upon which it is presented, or the failure to reach final arbitration, settlement or compromise of such claim according to the provisions of section five, shall be deemed a final denial of such claim. No civil action shall be brought more than three years after the date upon which such cause of action accrued.

Limitations of Actions, Ames Gen. Laws c. 260

Section 2A. Except as otherwise provided, actions of tort, actions of contract to recover for personal injuries, and actions of replevin, shall be commenced only within three years next after the cause of action accrues.

Larceny, Ames Gen. Laws c. 266

Section 30. (1) Whoever steals, or with intent to defraud obtains by a false pretence, or whoever unlawfully, and with intent to steal or embezzle, converts, or secretes with intent to convert, the property of another, whether such property is or is not in his possession at the time of such conversion or secreting, shall be guilty of larceny, and shall, if the value of the property stolen exceeds $250, be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars and imprisonment in jail for not more than two years; or, if the value of the property stolen

does not exceed $250 shall be punished by imprisonment in jail for not more than one year or by a fine of not more than $1,500.

Resisting Arrest, Ames Gen Laws c. 268

Section 32B. (a) A person commits the crime of resisting arrest if he knowingly prevents or attempts to prevent a police officer, acting under color of his official authority, from effecting an arrest of the actor or another, by:

(1) using or threatening to use physical force or violence against the police officer or another; or

(2) using any other means which creates a substantial risk of causing bodily injury to such police officer or another.

(b) It shall not be a defense to a prosecution under this section that the police officer was attempting to make an arrest which was unlawful, if he was acting under color of his official authority, and in attempting to make the arrest he was not resorting to unreasonable or excessive force giving rise to the right of selfdefense. A police officer acts under the color of his official authority when, in the regular course of assigned duties, he is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him.

(c) The term "police officer'" as used in this section shall mean a police officer in uniform or, if out of uniform, one who has identified himself by

exhibiting his credentials as such police officer while attempting such arrest.

(d) Whoever violates this section shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years or a fine of not more than five hundred dollars, or both.