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 A FINAL JUDGMENT
OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF AMES

BRIEF FOR PLAINTIFF-APPELLANT

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MARCH 5, 2024, 6:30 P.M.
THE AMES COURTROOM
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Oral Argument

QUESTIONS PRESENTED

1. Whether an order dismissing with prejudice a plaintiff's claims against one defendant is final under 28 U.S.C. § 1291 when the plaintiff voluntarily dismisses without prejudice all claims against remaining defendants and is effectively excluded from federal court.

2. Whether a malicious prosecution claim under 42 U.S.C. § 1983 can proceed against a police officer when that officer fabricated the probable cause for a resisting arrest charge but had probable cause for other, unrelated charges.

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INTRODUCTION

"I'm going to charge you with resisting and there's nothing you can do about that." Officer Stanley Wildwood said this to Mr. Tristan Jax while he beat him. And so far, Wildwood has been proven right twice.

The first time came in January 2021, shortly after Wildwood stopped Jax on the street. Jax complied with all orders, but Wildwood beat him anyway. Wildwood then filed a perjured affidavit to tack on a baseless resisting arrest charge, though he only had probable cause for other offenses. Jax could do nothing. He sat in jail for thirty-seven days before the charges were dropped.

The second time Wildwood was proven right came when the district court dismissed Jax's malicious prosecution claim. The district court held that probable cause for one charge barred Jax from vindicating his Fourth Amendment right to be free from prosecution for other, fabricated charges. On this view, if an individual appears to make just one mistake, there is no limit to the number of false charges he can face without legal remedy.

That cannot be. The law does not empower police officers to violate rights with impunity. Wildwood and the Town of Sea Pines know this too. That is why they want Jax's appeal dismissed on procedural grounds. Under their theory of appellate jurisdiction, Jax's dismissal of a claim against the Town bars him from appealing the district court's

dismissal of his malicious prosecution claim against Wildwood. But Jax cannot undo his voluntary dismissal, so the theory would render the district court's order forever non-final and unreviewable. Such an approach would be contrary to the practical, rather than technical, nature of finality.

The Fourth Amendment must meaningfully protect against unreasonable seizures. The district court's order contravenes this principle and the values that support it. Wildwood should not be proven right a third time. This Court should exercise jurisdiction and reverse.

OPINIONS AND ORDERS

The order of the United States District Court for the District of Ames granting Wildwood's motion to dismiss and denying the Town's motion to dismiss is reproduced at pages 10–11 of the Joint Appendix. This Court's procedural order is reproduced at JA-16.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction over Jax's claim against Wildwood under 28 U.S.C. §§ 1331 and 1343. JA-3. The district court's order dismissing all claims against Wildwood was entered on December 30, 2022, JA-10–11, and Jax's dismissal of all claims against the Town was entered on January 7, 2023, JA-12. Jax filed the notice of appeal on January 8, 2023. JA-13. This Court has jurisdiction under 28 U.S.C. § 1291.

RELEVANT PROVISIONS

This case involves U.S. Const. amends. IV, XIV, § 1; 42 U.S.C. § 1983; 28 U.S.C. §§ 1291, 1292(a)(1), (b), 1331, 1343, 1367; Fed. R. Civ. P. 8(c), 23(f), 41, 54(b); Ames Gen. Laws ch. 94C, § 34, ch. 258, §§ 2, 4, ch. 260, § 2A, ch. 266, § 30, ch. 268, § 32B. These provisions are reproduced in the Appendix below.

STATEMENT OF THE CASE

The Beating

One evening in January 2021, Officer Wildwood, a police officer for the Town of Sea Pines, responded to a dispatch call. JA-3. The call indicated that a person "wearing a black ski mask" was trespassing and stealing from an apartment on Lancaster Street. *Id.* After five minutes patrolling the street, Wildwood spotted Jax. JA-4. Jax was neither "wearing a black ski mask," nor at the apartment building. *Id.* He was half a mile away, wearing a green knit beanie. *Id.*

Wildwood ordered Jax to stop. *Id.* Jax complied. *Id.* He then turned to Wildwood and asked, "What the hell do you want?" *Id.* Wildwood's body camera captured what followed. *Id.* Wildwood ordered Jax to put his hands up. *Id.* Jax complied. *Id.* Wildwood demanded Jax "shut [his] damn mouth." *Id.* Jax again complied. *Id.*

Informing Jax that he "did not like [his] damn attitude," Wildwood pepper sprayed him in the face. *Id.* Screaming in pain, Jax

momentarily dropped his hands to cover his eyes. *Id.* Wildwood tackled him, shouting, "I told you to put and keep your hands up!" *Id.*

Having pinned Jax to the ground, Wildwood began striking him in the face with the butt of his pepper spray canister. JA-5. As he beat Jax, Wildwood said, "That's right, I'm going to charge you with resisting and there's nothing you can do about that." *Id.* Jax never attempted to resist. *Id.*

During the beating, a baggie containing cocaine fell out of Jax's pocket. *Id.* A ring allegedly stolen from the apartment building was also recovered. *Id.* Wildwood arrested Jax and took him into custody. *Id.*

The Perjured Affidavit

At the station, Wildwood swore out an affidavit "replete with lies." *Id.* He charged Jax with resisting arrest, larceny, and possession of cocaine. *Id.* Wildwood supported the resisting arrest charge with five lies, which were later exposed by the body camera footage. *Id.* Specifically, Wildwood falsely claimed Jax: (1) attempted to punch him; (2) kicked him; (3) refused to comply when ordered to raise his hands; (4) attempted to flee; and (5) attempted to escape by arching his back. *Id.*

The Pretrial Detention and Dismissal of Charges

Charged with a violent crime, Jax was held on $10,000 cash bail. JA-6. He could not afford to pay, so he spent thirty-seven days in jail waiting for trial. *Id.*

On March 6, 2021, after receiving the body camera footage through discovery, Jax's attorney forwarded the footage to the prosecutor in charge of Jax's case. *Id.* The next day, March 7, 2021, the prosecutor dismissed all charges against Jax with prejudice. *Id.*

The Proceedings Below

On April 1, 2022, Jax sued Wildwood and the Town. JA-7–8. Against Wildwood, Jax proceeded under 42 U.S.C. § 1983, seeking compensatory and punitive damages. JA-3, 7. In his complaint, Jax admitted there was likely probable cause for the larceny and possession charges, JA-6, but alleged the resisting arrest charge was a malicious prosecution that violated his Fourth Amendment rights, JA-7. Against the Town, Jax sued under Chapter 258 of the Ames Tort Claims Act, alleging the Town's negligent failure to train or supervise Wildwood resulted in Wildwood's intentional misconduct. JA-8, 18–20. The Ames Tort Claims Act has a three-year statute of limitations. JA-20.

On May 5, 2022, Wildwood and the Town moved to dismiss Jax's complaint for failure to state a claim. JA-9. The district court granted Wildwood's motion and denied the Town's motion on December 30, 2022. JA-10–11. The district court dismissed Jax's § 1983 claim with prejudice because there was probable cause to arrest Jax for other, unrelated crimes. JA-10.

Not wanting to move forward on his negligence claim against the Town, Jax voluntarily dismissed it under Federal Rule of Civil Procedure 41(a)(1)(A)(i) on January 7, 2023. JA-12. Jax then appealed the district court's dismissal of his claim against Wildwood on January 8, 2023. JA-13. Wildwood moved to dismiss Jax's appeal, claiming that the district court's order was not final because Jax voluntarily dismissed his claim against the Town. JA-14.

On September 13, 2023, this Court reserved decision on the motion to dismiss the appeal, ordering parties to address the Court's jurisdiction along with the dismissal of Jax's § 1983 claim against Wildwood. JA-16. This case is scheduled for oral argument on March 5, 2024.

SUMMARY OF THE ARGUMENT

I. The district court's order dismissing Jax's § 1983 claim against Wildwood is a final decision. This Court therefore has appellate jurisdiction. Circuits disagree on whether a plaintiff's dismissal of all claims against all remaining defendants can confer finality to a previous court order dismissing other claims. Nevertheless, all courts treat finality as a functional, pragmatic inquiry. *Forgay v. Conrad*, 47 U.S. (6 How.) 201, 203 (1848).

The district court's order dismissing Jax's § 1983 claim became final when Jax dismissed the only remaining defendant, concluding the case before the district court. Preventing Jax from exercising his right

to dismiss a defendant he was never obligated to join would waste judicial resources and limit federal courts' ability to resolve cases involving federal and state law claims.

This Court can exercise jurisdiction on another, independent ground: the district court's order is final because the state law claim that Jax voluntarily dismissed is functionally excluded from federal court. The claim lacks independent subject matter jurisdiction and is almost certainly barred by the statute of limitations.

Here, Jax did not manipulate the appellate process. He did not collude with the defendants or the district court to manufacture jurisdiction, nor did he circumvent other avenues for appellate review.

Furthermore, finding the district court's order final would protect Jax and future litigants from procedural traps that functionally deprive them of their right of appeal. Wildwood endorses a theory of jurisdiction under which Jax can neither litigate nor ever appeal his § 1983 claim. This procedural paradox is a canary in the coal mine, warning that Wildwood's theory is unsound.

II. The district court erroneously held that Jax's § 1983 claim was barred because probable cause existed to charge him with other, unrelated offenses.

Federal courts define § 1983 claims by looking "to the elements of the most analogous tort as of 1871" and examining "the values and

purposes of the constitutional right at issue." *Thompson v. Clark*, 596 U.S. 36, 43 (2022).

The most analogous tort as of 1871 to the constitutional tort of malicious prosecution is the common law tort of malicious prosecution. Both claims hinge on the institution of charges lacking probable cause. In 1871, malicious prosecution claims could proceed so long as probable cause was lacking for at least one charge.

Allowing malicious prosecution claims like Jax's to proceed even when there was probable cause for other offenses aligns with the purposes and values of the Fourth Amendment. This approach provides a remedy when false charges trigger unreasonable seizures. Additionally, this rule prevents arbitrary outcomes by maintaining the integrity of the probable cause requirement. Finally, this standard does not disturb the robust protections available to law enforcement forced to make hard split-second decisions.

STANDARD OF REVIEW

This Court reviews the district court's grant of Wildwood's motion to dismiss de novo. *See, e.g.*, *Leal v. McHugh*, 731 F.3d 405, 410 (5th Cir. 2013); *Jackson v. Ford Motor Co.*, 842 F.3d 902, 906 (6th Cir. 2016). This Court "must accept as true" the facts alleged, drawing all reasonable inferences in Jax's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

I. The district court's order dismissing Jax's claim against Wildwood is a final decision.

At first glance, the rule of finality appears straightforward. A final decision under § 1291 is one that "ends the litigation on the merits and leaves nothing for the [district] court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). The apparent simplicity is misleading. Scholars and judges describe finality doctrine as "a crazy quilt" and "hopelessly complicated." Adam N. Steinman, *Reinventing Appellate Jurisdiction*, 48 B.C. L. Rev. 1237, 1238–39 (2007) (citations and internal quotation marks omitted). Courts of appeals assess finality differently, producing rules that are difficult for courts to apply and litigants to navigate.

There are at least three approaches to assessing finality when a plaintiff's dismissal without prejudice concludes a case.

The Fifth Circuit holds the strictest view, requiring that the plaintiff dismiss all remaining claims with prejudice for a previous district court order to become final. *See, e.g.*, *Williams v. Seidenbach*, 958 F.3d 341, 344 (5th Cir. 2020) (en banc). But the rigid formalism of its rule has generated a series of ad hoc exceptions. *See, e.g.*, *Fed. Sav. & Loan Ins. Corp. v. Tullos-Pierremont*, 894 F.2d 1469, 1476 (5th Cir. 1990) (finding finality where a plaintiff dismissed unserved defendants

without prejudice); *Picco v. Glob. Marine Drilling Co.*, 900 F.2d 846, 849 n.4 (5th Cir. 1990).

In the Eighth and Ninth Circuits, district court orders dismissing claims against one defendant are final after plaintiffs voluntarily dismiss all claims against remaining defendants without prejudice. *See, e.g.*, *State ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1106 (8th Cir. 1999); *Duke Energy Trading and Mktg., L.L.C. v. Davis*, 267 F.3d 1042, 1049–50 (9th Cir. 2001).

Meanwhile, other circuits exercise jurisdiction only if the voluntarily dismissed claims are effectively barred from federal court. *See, e.g.*, *Chappelle v. Beacon Commc'ns Corp.*, 84 F.3d 652, 654 n.3 (2d Cir. 1996); *Fassett v. Delta Kappa Epsilon (N.Y.)*, 807 F.2d 1150, 1156 (3d Cir. 1986); *Robinson-Reeder v. Am. Council on Educ.*, 571 F.3d 1333, 1340 (D.C. Cir. 2009).

Though the doctrine is muddled, the principles behind it are not. All courts of appeals balance the same factors in assessing finality: allowing trial court proceedings to conclude, preventing manipulation of the appellate process, and promoting efficient judicial administration. *See Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981). With these values in mind, federal courts have taken a functional, pragmatic approach to finality for close to two centuries. *See Forgay v.*

Conrad, 47 U.S. (6 How.) 201, 203 (1848); *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009). This Court should do the same.

The district court's order dismissing Jax's claim against Wildwood is final because Jax subsequently dismissed the remaining defendant, concluding the case before the district court. And even if dismissal of all remaining defendants were not enough, this Court has jurisdiction because the dismissed claim is effectively excluded from federal court. Each of these rationales would be appropriate because Jax did not manipulate the appellate process. Both approaches to finality would empower this Court to protect Jax and future litigants from procedural traps.

A. The district court's order is final because Jax's dismissal of the remaining defendant concluded the case.

A court order dismissing all claims against one defendant with prejudice becomes final when the plaintiff then dismisses all remaining claims against all remaining defendants. *See Nixon*, 164 F.3d at 1106. "That the dismissal was without prejudice to filing another suit does not make the cause unappealable, for denial of relief and dismissal of the case ended this suit so far as the [d]istrict [c]ourt was concerned." *United States v. Wallace & Tiernan Co.*, 336 U.S. 793, 794 n.1 (1949). The inquiry is whether "the district court has finished with the case," not the substance of a particular order or whether that order "address[es] all the claims before the court." *Chase Manhattan Mortg. Corp. v. Moore*, 446

F.3d 725, 726 (7th Cir. 2006) (Posner, J.). Some circuits have gone so far as to permit a plaintiff's appeal after a district court resolves some claims against a defendant, and the plaintiff subsequently dismisses without prejudice the remaining claims against the *same defendant*. *See, e.g.*, *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1229–31 (11th Cir. 2020); *Hicks v. NLO, Inc.*, 825 F.2d 118, 120 (6th Cir. 1987).

Those circuits may well be correct, but this case can be decided on narrower grounds. Rather than dismissing some claims against a remaining defendant, Jax dismissed *the* remaining defendant. Jax had the right to dismiss the Town as a defendant. When he did so, the case before the district court was concluded. This approach to finality protects the "absolute right" of plaintiffs to unjoin parties, *Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003), and furthers judicial economy, *Duke Energy*, 267 F.3d at 1050.

1. Jax exercised his right to dismiss the Town as a defendant.

Federal Rule of Civil Procedure 41(a)(1)(A) allows "the plaintiff" to dismiss "an action without a court order" by filing a notice or stipulation of dismissal. Of the eight circuits to interpret Rule 41(a)(1)(A), six have correctly read it to enable plaintiffs to dismiss fewer than all defendants, interpreting the word "action" to mean "all claims against a party." *See, e.g.*, *Sanchez v. Discount Rock & Sand, Inc.*, 84 F.4th 1283, 1293 n.4 (11th Cir. 2023); 9 Charles Alan Wright & Arthur

R. Miller, Fed. Prac. & Proc. Juris. § 2362 (4th ed. 2023) (collecting cases).

This meaning of "action" is apparent when Rule 41 is read in context. Words are presumed "to bear the same meaning throughout a text." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012). Rule 41(a)(2) empowers district courts to dismiss "actions . . . on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). The district court can undoubtedly dismiss an action "as to less than all defendants upon motion." *Plains Growers, Inc. ex rel. Florists' Mut. Ins. Co. v. Ickes-Braun Glasshouses, Inc.*, 474 F.2d 250, 254 (5th Cir. 1973). It is "undesirable and unnecessary" to base this power, which "plainly exists," in some notion of federal courts' inherent powers rather than in Rule 41(a)(2), within the federal rule entitled, "Dismissal of Actions." 9 Wright & Miller § 2362 (4th ed.). And if "action" means "all claims against a party" in Rule 41(a)(2), the term must bear the same meaning in Rule 41(a)(1)(A). Reading Rule 41(a)(1)(A) to allow only dismissals of all defendants also contravenes its purpose, which was "to permit a disengagement of the parties at the behest of the plaintiff." *Welsh v. Correct Care, L.L.C.*, 915 F.3d 341, 343 (5th Cir. 2019) (citations and internal quotation marks omitted).

The Second and Sixth Circuit panels that have interpreted Rule 41(a)(1)(A) as forbidding dismissal of fewer than all defendants read

"action" to mean "all claims against all defendants." *See 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). But both circuits have since retreated, permitting dismissals of fewer than all defendants. *See Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, 778 F.3d 390, 394 (2d Cir. 2015); *Banque de Depots v. Nat'l Bank of Detroit*, 491 F.2d 753, 757 (6th Cir. 1974).

Rule 41(a)(1)(A) permits dismissal of fewer than all defendants. And that is precisely what Jax did.

2. Jax's dismissal of the Town concluded the case before the district court.

A plaintiff's dismissal of all remaining defendants concludes the case before the district court. *See Nixon*, 164 F.3d at 1106. This is because voluntary dismissal of a defendant under Rule 41(a)(1) puts the case "in the same posture as if suit had never been brought against the dismissed defendant." *Id.* Though a district court acting as "dispatcher" in a dismissal under Rule 41(a)(2) may be salutary, a court's "apparent acquiescence" to dismissal "does not speak to finality." *Page Plus of Atlanta v. Owl Wireless, LLC*, 733 F.3d 658, 662 (6th Cir. 2013). Either way, the district court "loses jurisdiction over the dismissed claims and may not address [their] merits." *Duke Energy*, 267 F.3d at 1049. When that happens, a district court's previous dismissal of one defendant with

prejudice becomes a final order. *Nixon*, 164 F.3d at 1106. To decide otherwise would be "construing § 1291 as implicitly limiting a plaintiff's absolute right to dismiss a defendant without prejudice." *Duke Energy*, 267 F.3d at 1049.

The district court's order here is final. Jax made one claim against Wildwood and one claim against the Town. The district court dismissed the claim against Wildwood. Jax then exercised his right to unjoin the Town as a defendant from the case. It was as if Jax's suit against the Town had never been brought. There was nothing left for the district court to do, and its order dismissing Jax's § 1983 claim against Wildwood became final. *See id.* at 1050. This Court should not limit Jax's absolute right to dismiss a defendant.

3. Treating the district court's order as non-final would waste resources and inhibit federal courts from fully resolving cases.

It is a plaintiff's prerogative to bring separate claims, even if they are related, against separate defendants in separate proceedings. 7 Wright & Miller § 1602 (3d ed. 2023). Nevertheless, courts favor liberal joinder of parties because it promotes "complete, consistent, and efficient settlement of controversies." *Provident Tradesmens Bank & Tr. Co. v. Patterson*, 390 U.S. 102, 111 (1968). Dismissing appeals on jurisdictional grounds after plaintiffs exercise their right to unjoin defendants not only fails to encourage joinder but actively disincentivizes the practice. It forces litigants to take claims of "minor

significance" through to trial just to secure appellate review. *See Doe v. United States*, 513 F.3d 1348, 1354 (Fed. Cir. 2008). To avoid that outcome, future plaintiffs may file separate suits, even for claims arising out of the same facts, in state and federal court to protect their right of appeal over their federal claim.

Dividing a would-be federal plaintiff's lawsuit in this way also discourages use of the federal forum and undermines the purpose of supplemental jurisdiction. *See City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 172–73 (1997). As Justice Stevens argued in dissent in *Finley v. United States*, federal courts should not hamstring their ability to fully redress all of a plaintiff's claims when federal rights intended to be litigated in federal court, like those protected by § 1983, are at stake. *See* 490 U.S. 545, 576–77 (1989) (Stevens, J., dissenting). Congress vindicated his view when it passed 28 U.S.C. § 1367, giving federal courts supplemental jurisdiction and "overturn[ing] the result in *Finley*." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 558 (2005).

Jax's case demonstrates how preventing plaintiffs from unjoining defendants would undermine judicial economy and federal interests. Jax dismissed his claim against the Town so that he could pursue his more significant claim against Wildwood. He seeks compensatory and punitive damages against Wildwood for a violation of his constitutional

rights. Unlike the dismissed negligence claim against the Town, the claim Jax pursues against Wildwood has no statutory damages cap and allows for recovery of attorney's fees. *Compare* Ames Gen. Laws ch. 258, § 2, *with* 42 U.S.C. § 1983. Forcing Jax to continue litigating a claim he already dismissed would waste his resources, the Town's resources, and the judicial system's resources.

B. The district court's order is final because Jax is excluded from federal court.

Plaintiffs who voluntarily dismissed remaining claims after an adverse order can appeal if those claims are "effectively excluded from federal court under the present circumstances." *Jackson v. Volvo Trucks N. Am., Inc.*, 462 F.3d 1234, 1238 (10th Cir. 2006) (citations and internal quotation marks omitted). Some circuits require that voluntary dismissal "come at a cost" to disincentivize plaintiffs from immediately appealing every adverse order by dismissing claims without prejudice. *E.g.*, *Page Plus*, 733 F.3d at 661; *accord Fassett*, 807 F.2d at 1155. A dismissal without prejudice does not preclude finality when a plaintiff cannot refile his voluntarily dismissed claim. For example, when the voluntarily dismissed claim lacks an independent "basis for federal jurisdiction," a district court's dismissal of the plaintiff's anchoring federal claim is conclusive as to finality. *Dukore v. District of Columbia*, 799 F.3d 1137, 1142 (D.C. Cir. 2015). The same is true when the plaintiff's voluntarily dismissed claim is quite likely to be barred by the

statute of limitations. *See, e.g.*, *Fassett*, 807 F.2d at 1155. And judgment can also be final when the plaintiff renounces intent to refile the voluntarily dismissed claim. *See, e.g.*, *Arrow Gear Co. v. Downers Grove Sanitary Dist.*, 629 F.3d 633, 637 (7th Cir. 2010).

Here, Jax cannot refile his voluntarily dismissed claim against the Town in federal court. The claim lacks subject matter jurisdiction and will likely be barred by the statute of limitations.[1]

1. Jax's voluntarily dismissed claim cannot be refiled because it lacks independent subject matter jurisdiction.

As a "general rule," district courts decline to exercise jurisdiction over pendent state law claims after anchoring federal claims have been dismissed. *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 585 (5th Cir. 1992); *see* 28 U.S.C. § 1367(c). Courts of appeals therefore review dismissals of anchoring claims, treating them as final even when the pendent state claims are dismissed without prejudice. *See, e.g.*, *Amazon, Inc. v. Dirt Camp, Inc.*, 273 F.3d 1271, 1275 (10th Cir. 2001); *Dukore*, 799 F.3d at 1142. Jurisdiction exists "where the jurisdiction-supplying federal claims have been adjudicated and the lingering supplemental state law claims have been voluntarily dismissed without prejudice" by the plaintiff. *Nation v. Piedmont Indep. Sch. Dist. No. 22*, No. 21-6123, 2022 WL 4075595, at *2 (10th Cir. Sept.

[1] Given this Court's procedural order, Jax will not address any intent to renounce his voluntarily dismissed claim. JA-16.

6, 2022). "[T]here would otherwise be no avenue for appeal in federal court" and the "district court's order dismissing federal claims would be effectively unreviewable." *Id.* at *2–3 (citations and internal quotation marks omitted).

Jax is barred from refiling his state law claim against the Town due to a lack of subject matter jurisdiction. The district court had original jurisdiction over Jax's § 1983 claim against Wildwood under §§ 1331 and 1343(a)(3). JA-3. The district court exercised supplemental jurisdiction over Jax's negligence claim under § 1367(a), as there was neither diversity of citizenship, *see id*., nor an embedded federal issue, *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005). Had Jax not dismissed his state law claim, the district court likely would have done so. *See Parker & Parsley*, 972 F.2d at 585. Jax's dismissal allowed him to sooner appeal the district court's order, but "at a cost." *Page Plus*, 733 F.3d at 661. Dismissal by the district court would have tolled the statute of limitations for his claim. 28 U.S.C. § 1367(d). Jax's dismissal did not.

The possibility that Jax could restart his litigation in state court does not affect the "critical determination" of whether Jax is excluded from federal court. *See Facteau v. Sullivan*, 843 F.2d 1318, 1319–20 (10th Cir. 1988). Additionally, a plaintiff's ability to revive the voluntarily dismissed claim only upon reversal does not undermine the

purposes of the finality doctrine. 15A Wright & Miller § 3914.8.1 (3d ed. 2023); *see Purdy v. Zeldes*, 337 F.3d 253, 258 (2d Cir. 2003). If it did, an appellate court could not exercise jurisdiction when a district court dismisses an anchoring federal claim with prejudice and the pendent state claims without prejudice. Yet, they routinely do so even when plaintiffs could refile their state claims upon reversal. *See, e.g.*, *St. Augustine Sch. v. Underly*, 78 F.4th 349, 356 (7th Cir. 2023).

As Jax's anchoring claim was dismissed with prejudice, Jax cannot refile his state law claim in district court. Under the present circumstances, he is functionally excluded from the federal forum. *Jackson*, 462 F.3d at 1238. The district court's order creating these circumstances is final.

2. Jax's voluntarily dismissed claim cannot be refiled because it is almost certainly time-barred.

Claims dismissed without prejudice that are likely to be time-barred while the appeal is pending are functionally dismissed with prejudice and are treated as such. *See, e.g.*, *Fassett*, 807 F.2d at 1155; *Palka v. City of Chicago*, 662 F.3d 428, 433–34 (7th Cir. 2011). In taking this position, nearly every circuit relies on the high likelihood that defendants will raise a statute of limitations defense. But they can never be certain. The statute of limitations is an affirmative, waivable defense. Fed. R. Civ. P. 8(c).

The statute of limitations effectively bars Jax from refiling in any court. A plaintiff's cause of action accrues when the plaintiff has "a complete and present cause of action," or "when the plaintiff can file suit and obtain relief." *Wallace v. Kato*, 549 U.S. 384, 386 (2007) (citations and internal quotation marks omitted). Wildwood's tort of common law malicious prosecution was complete on March 7, 2021, when the prosecutor dropped the criminal charges against Jax. JA-6. This constituted favorable termination, the final element of the tort. *Thompson v. Clark*, 596 U.S. 36, 44 (2022). The three-year limitations period runs from that date. *See* Ames Gen. Laws ch. 258, § 4. As such, Jax's claim will become time-barred on March 7, 2024, within two days of this Court hearing argument. Thus, Jax is like any other time-barred plaintiff; it is exceptionally unlikely his claim will return to federal court.

As Jax's voluntarily dismissed claim is effectively excluded from federal court, the district court order is final.

C. Jax did not manipulate the appellate process.

In *Microsoft Corp. v. Baker*, the Supreme Court noted that "changes" to finality under § 1291 "are to come from rulemaking . . . not judicial decisions in particular controversies or inventive litigation ploys." 582 U.S. 23, 39 (2017) (citations omitted). But exercising jurisdiction here would not be a change to finality under § 1291. Jax did not scheme to manufacture finality through an inventive litigation ploy,

and he could not have appealed via other avenues. Jax's appeal is therefore consistent with *Microsoft*.

1. Jax did not collude with the opposing parties or the district court to put his voluntarily dismissed claim on ice.

Some circuits decline to exercise appellate jurisdiction when there are signs that the parties, potentially with the district court's blessing, "schemed to create jurisdiction." *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1066 (9th Cir. 2002). After a district court order dismisses one claim with prejudice, some parties manufacture finality: the plaintiff dismisses all remaining claims and defendants stipulate to waiving a statute of limitations defense upon reversal. *Id.* This keeps the plaintiff's claims "on ice." *Id.* Another sign of collusion is when a district court dismisses counts with explicit "leave to later reinstate them." *Horwitz v. Alloy Auto. Co.*, 957 F.2d 1431, 1435 (7th Cir. 1992). With no bar to refiling, parties are incentivized to immediately appeal non-final orders. By contrast, requiring plaintiffs to "assume[] the risk" that the statute of limitations may bar their remaining claims deters manufacturing finality. *James*, 283 F.3d at 1066.

Here, there are no signs of a scheme to manufacture jurisdiction. Jax did not collude with Wildwood or the Town. Indeed, Wildwood is now contesting this Court's jurisdiction. JA-14–15. Nor did Jax scheme with the district court, as he unilaterally dismissed his claim. JA-12. Jax has taken on significant risk that he may never be able to file his claim

against the Town again. His claim is likely time-barred, and in a fact-bound police brutality case like this, Jax's dismissal also imperils his claim in a more conventional sense. Memories fade, witnesses scatter, and documents go missing. *State Treasurer of Mich. v. Barry*, 168 F.3d 8, 21 (11th Cir. 1999) (Cox, J., concurring).

2. Jax could not have gained appellate review through Rule 54(b).

To identify manipulative litigation ploys, some courts of appeals consider whether litigants "attempted to circumvent Federal Rule of Civil Procedure 54(b)" in seeking appeal after voluntary dismissal. *See, e.g.*, *James*, 283 F.3d at 1068. Claims that rely on "largely the same" facts generally cannot be certified under Rule 54(b). *Minority Police Officers Ass'n v. City of S. Bend*, 721 F.2d 197, 201 (7th Cir. 1983) (Posner, J.).

The two claims Jax brought centered on Wildwood's intentional misconduct, JA-7–8, and could not have been certified under Rule 54(b). Indeed, in the civil rights context, claims often lack the factual separateness required for appeal via Rule 54(b). A constitutional violation is frequently also a violation of state law. *See, e.g.*, *Ebrahimi v. City of Huntsville Bd. of Educ.*, 114 F.3d 162, 164 (11th Cir. 1997) (per curiam) (holding that alleged violations of state law, Title VII, Title IX, §§ 1981, 1983, and 1985 nonetheless constituted only one claim under Rule 54(b)).

Moreover, Jax's appeal is consistent with the principles of Rule 54(b). The Rule is simply an interpretation of § 1291, providing litigants with clarity as to when judgment has become final. *See Loc. P-171, Amalgamated Meat Cutters & Butcher Workmen v. Thompson Farms Co.*, 642 F.2d 1065, 1072 (7th Cir. 1981) (Wisdom, J.). Rule 54(b) does not create appellate jurisdiction. *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 443–44 (1956) (Frankfurter, J., concurring). If a district court could confer appellate jurisdiction through a Rule 54(b) order, courts of appeals would never find that district courts abused their discretion in issuing these orders. But that is routine practice. *See, e.g., Peden v. Stephens*, 50 F.4th 972, 974 (11th Cir. 2022); *Horn v. Transcon Lines, Inc.*, 898 F.2d 589, 595 (7th Cir. 1990). Here the district court's order was final, and Jax appealed accordingly.

3. Jax's appeal is consistent with Microsoft.

The question presented in *Microsoft* was whether plaintiffs can appeal a district court order striking class allegations by dismissing the entire action while reserving the right to refile. 582 U.S. at 26. The Court answered no. *Id.* at 27. Unlike *Microsoft*, this case does not involve the "careful calibration" of appellate review in the class-action context. *See id.* at 40. Federal Rule of Civil Procedure 23(f), the provision at issue in *Microsoft*, is a bespoke rule balancing interests in interlocutory appeal of class-certification decisions. *Id.* at 32. It strips district courts of the power to block appeals, but explicitly forecloses appeal by right. *Id.*

The Supreme Court expressly limited *Microsoft* to "class-action certification." *Id.* at 41 n.11; *see Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1413–14 (2019); *id.* at 1425 (Breyer, J., dissenting) (arguing, unsuccessfully, that *Microsoft* should apply outside the class-certification context). That makes sense. Rule 23(f) is the exclusive mechanism for interlocutory appeal of class certification and "commits the decision whether to permit" those appeals to the courts of appeals. *Microsoft*, 582 U.S. at 31–33. In an ordinary civil case like this one, there are many other ways a plaintiff might appeal a district court order: Rule 54(b), the *Cohen* collateral-order doctrine, 28 U.S.C. § 1292(a)(1), the *Carson* effective-injunction doctrine, 28 U.S.C. § 1292(b), writs of mandamus, and the *Swint* pendent appellate jurisdiction doctrine. And there is also no analogue to class certification, which is generally "the most significant decision rendered in . . . class-action proceedings." *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980).

Lower courts have applied *Microsoft* accordingly. *See, e.g.*, *Rodriguez v. Taco Bell Corp.*, 896 F.3d 952, 955 (9th Cir. 2018). And they have been particularly reluctant when, as here, the plaintiff will be unable to refile the dismissed claims. *See Brown v. Cinemark USA, Inc.*, 876 F.3d 1199, 1201 (9th Cir. 2017). When circuit courts have applied *Microsoft* outside the class context, it has generally been to protect a bespoke procedural scheme reminiscent of Rule 23(f). *See Keena v.*

Groupon, Inc., 886 F.3d 360, 364 (4th Cir. 2018) (Federal Arbitration Act); *Kiviti v. Bhatt*, 80 F.4th 520, 530, 536 (4th Cir. 2023) (Bankruptcy Code).

Microsoft did not change § 1291 and neither does Jax's appeal.

D. Exercising appellate jurisdiction here would prevent future litigants from falling into procedural traps and losing their right to appeal.

"Efficient judicial administration" matters, *Firestone Tire*, 449 U.S. at 374 (citations omitted), but "[d]ue regard for efficiency in litigation must not be carried so far so as to deny all opportunity for . . . appeal." *Cobbledick v. United States*, 309 U.S. 323, 329 (1940).

Treating orders like the one Jax seeks to appeal as final would prevent unsuspecting plaintiffs from falling victim to the "finality trap." The trap strips unknowing plaintiffs of their right to appeal in federal court after three seemingly routine procedural steps:

1) The plaintiff voluntarily dismisses some claims without prejudice, intending to appeal the district court's decision on other claims.
2) The appellate court holds there was no final decision and dismisses the appeal for lack of jurisdiction.
3) The district court, also lacking jurisdiction, cannot let the plaintiff change the dismissal to one with prejudice.

Bryan Lammon, *Disarming the Finality Trap*, 97 N.Y.U. L. Rev. Online 173, 174 (2022); *CBX Res., L.L.C. v. ACE Am. Ins. Co.*, 959 F.3d 175,

175–76 (5th Cir. 2020) (acknowledging that appellant was "in the so-called finality trap" with no possible relief).

Disarming the finality trap would benefit defendants too. Under a rigid conception of finality, plaintiffs could tactically dismiss claims to deny defendants the opportunity to appeal. Consider the following: A plaintiff files two claims against a defendant, and then dismisses one under Rule 41(a)(1)(a)(i) without prejudice. If a plaintiff's dismissal without prejudice always prevents finality, the defendant is locked away in district court, unable to appeal. *Barry*, 168 F.3d at 21 (Cox, J., concurring). That cannot be right.

Should this Court hold that it lacks jurisdiction, it is quite likely that Jax will be the trap's next victim. More unsuspecting litigants, especially those who proceed pro se, are sure to follow. The Supreme Court observed in *Knick v. Township of Scott* that the very existence of a procedural "trap" is a canary in the coalmine. 139 S. Ct. 2162, 2167 (2019). It "tip[s] us off that the [procedural rule] rests on a mistaken view." *Id.* Here, this Court has an opportunity to disarm the finality trap with a correct view of § 1291. It should take it.

* * * * *

This Court has jurisdiction. Any contrary holding renders the district court's order non-final and yet forever unreviewable.

II. Jax adequately pleaded a Fourth Amendment malicious prosecution claim under § 1983.

Enacted in 1871 as § 1 of the Civil Rights Act, the statute now codified at 42 U.S.C. § 1983 creates a federal remedy for abuses of the criminal legal process by state officials. *See Mitchum v. Foster*, 407 U.S. 225, 238, 242 (1972). Section 1983 "was enacted because of the conditions that [then] existed in the South." *Monroe v. Pape*, 365 U.S. 167, 183 (1961). But Congress spoke "in general language," and the statute has protected fundamental rights for more than 150 years. *Id.* Crucially, § 1983 "was intended not only to provide compensation to the victims of past abuses, but [also] to serve as a deterrent against future constitutional deprivations." *Owen v. City of Independence*, 445 U.S. 622, 651 (1980).

A Fourth Amendment malicious prosecution claim under § 1983 has at least three elements: (1) the institution of a criminal proceeding without probable cause; (2) malice; and (3) favorable termination. *Thompson*, 596 U.S. at 44. In cases with multiple charges, the courts of appeals are split as to what constitutes a lack of probable cause. Most circuits have adopted the charge-specific rule, which allows Fourth Amendment malicious prosecution claims to proceed so long as one charge was instituted without probable cause. *See, e.g.*, *Posr v. Doherty*, 944 F.2d 91, 100 (2d Cir. 1991); *Davis v. Prince George's Cnty.*, 348 F. App'x 842, 843, 848–49 (4th Cir. 2009); *Holmes v. Vill. of Hoffman Est.*,

511 F.3d 673, 682–83 (7th Cir. 2007); *Williams v. Aguirre,* 965 F.3d 1147, 1161 (11th Cir. 2020). *But see Armstrong v. Ashley,* 60 F.4th 262, 279 n.15 (5th Cir. 2023) (disagreeing without explanation in dicta).

In *Howse v. Hodous,* the Sixth Circuit reached the "contrary conclusion" and adopted the any-crime rule, which dictates that the existence of probable cause on *any* charge forecloses a malicious prosecution claim based on a separate, false charge. 953 F.3d 402, 409 & n.3 (6th Cir. 2020). The district court, citing *Howse,* applied this rule and dismissed Jax's malicious prosecution claim because of probable cause for other offenses. JA-10.

Federal courts define the "contours and prerequisites of a § 1983 claim" using a two-step framework. *Manuel v. City of Joliet*, 580 U.S. 357, 370 (2017). Step one looks "to the elements of the most analogous tort as of 1871 when § 1983 was enacted." *Thompson*, 596 U.S. at 43. At step two, in "applying, selecting among, or adjusting common law approaches, courts must closely attend to the values and purposes of the constitutional right at issue." *Manuel*, 580 U.S. at 370.

This Court should reverse the district court and adopt the charge-specific rule. First, the most analogous tort as of 1871 to Jax's Fourth Amendment malicious prosecution claim is the common law tort of malicious prosecution, which could proceed so long as probable cause

was missing for at least one charge. Second, the charge-specific rule is consistent with the purposes and values of the Fourth Amendment.

A. Jax's § 1983 claim is most analogous to the common law tort of malicious prosecution, which was governed by the charge-specific rule.

The Supreme Court's decisions in *Thompson* and *Wallace* compel the conclusion that the correct analogy is to the common law tort of malicious prosecution. 596 U.S. at 43; 549 U.S. at 389–90. In 1871, the law was clear: the charge-specific rule governed malicious prosecution claims.

1. The correct analogy is the common law tort of malicious prosecution.

In *Thompson*, the plaintiff brought a Fourth Amendment § 1983 claim against the police alleging malicious prosecution. 596 U.S. at 39. He was "charged and detained in state criminal proceedings, but the charges were dismissed before trial without any explanation by the prosecutor or judge." *Id.* The Supreme Court analogized Thompson's claim to the common law tort of malicious prosecution because the gravamen of both claims was "the wrongful initiation of charges without probable cause." *Id.* at 43.

Jax's § 1983 claim mirrors the claim at issue in *Thompson*. Like Thompson, Jax brought a Fourth Amendment malicious prosecution claim against the police. JA-7; *Thompson*, 596 U.S. at 39. Like Thompson, Jax alleges charges without probable cause were wrongfully

instituted. JA-7; *Thompson*, 596 U.S. at 39. Like Thompson, Jax was detained pretrial before all charges against him were dropped without explanation. JA-6; *Thompson*, 596 U.S. at 39. *Thompson* controls. The common law tort of malicious prosecution determines the "contours and prerequisites" of Jax's § 1983 claim. *Manuel*, 580 U.S. at 370.

The Sixth Circuit's analogy to the common law tort of false imprisonment, *Howse*, 953 F.3d at 409, is inconsistent with binding precedent. This analogy was rejected in *Thompson*. 596 U.S. at 43. And it also contravenes *Wallace*. 549 U.S. at 389–90. There, the Supreme Court declared that "false imprisonment consists of detention without legal process," while the "entirely distinct tort of malicious prosecution . . . remedies detention [caused] . . . by wrongful institution of legal process." *Id.* (citations and internal quotation marks omitted). Jax was "formally arraigned in state court . . . [b]ased on [Wildwood's] false statements." JA-6. He seeks damages not for "detention without legal process," but for detention caused by the "wrongful institution of legal process." *Wallace*, 549 U.S. at 389–90. Accordingly, a § 1983 malicious prosecution claim, like Jax's, should be analogized to the common law tort of malicious prosecution, not the tort of false imprisonment.

2. Malicious prosecution suits in 1871 were resolved using the charge-specific rule.

Throughout the nineteenth century, the charge-specific rule governed malicious prosecution suits. In *Barron v. Mason*, the Supreme

Court of Vermont concluded that "the want of probable cause need not be shown to extend to all the particulars charged. Nor is it any defence that there was probable cause for part of the prosecution." 31 Vt. 189, 198 (1858) (citing *Ellis v. Abrahams* (1846), 115 Eng. Rep. 1039, 1041 (QB)); *accord Bauer v. Clay*, 8 Kan. 580, 583 (1871). In *Pierce v. Thompson*, the Supreme Judicial Court of Massachusetts similarly rejected the idea that probable cause for a single charge could defeat a malicious prosecution claim. 23 Mass. (1 Pick.) 193, 197 (1828). The court reasoned that this rule would empower an individual to "protect himself from the consequences of prosecuting a malicious action by commencing at the same time an action founded on a valid demand." *Id.*; *accord Boogher v. Bryant*, 86 Mo. 42, 50 (1885).

Leading treatises from this period confirm widespread approval of the charge-specific approach. Their description of the law was simple: "If groundless charges are maliciously and without probable cause coupled with others, which are well founded, they are not on that account the less injurious, and therefore [give rise to] a valid cause of action." 2 Simon Greenleaf, Treatise on the Law of Evidence § 449, at 400 (Bos., Little, Brown & Co. 10th ed. 1868); *accord* Herbert Stephen, The Law Relating to Actions for Malicious Prosecution 12 (1888).

The 1871 consensus reflects a tradition that reaches back to the Founding. In 1791, a British court concluded "that a prosecution for one

offence was not justified by the fact that there might have been reasonable cause for prosecuting for a different one." Douglas C. Hay, *Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850*, in Policing and Prosecution in Britain, 1750-1850, at 384 (1989) (citing *Wicks v. Fentham* (1791), 100 Eng. Rep. 1000, 1000 (KB)). Chief Judge Pryor of the Eleventh Circuit summarized the relevant cases from this period: "English courts refused to allow accusers to raise the existence of probable cause on other charges as a defense to liability." *Williams*, 965 F.3d at 1160 (citing *Reed v. Taylor* (1812), 128 Eng. Rep. 472, 473 (CP)).

In sum, malicious prosecution claims in 1871 applied the charge-specific rule.

B. The charge-specific rule serves the purpose and values of the Fourth Amendment.

The core purpose of the Fourth Amendment is to protect against unreasonable seizures. U.S. Const. amend. IV. The Supreme Court has identified two key values underpinning this right: protection from arbitrary law enforcement tactics and the prevention of unwarranted civil suits against the police. *See Thompson*, 596 U.S. at 48–49. The charge-specific rule prevents unreasonable seizures and embodies the "bedrock" principles of the Fourth Amendment. *Williams*, 965 F.3d at 1162.

1. The charge-specific rule protects against unreasonable seizures.

Malicious prosecution claims target unreasonable seizures instituted pursuant to legal process, *id.* at 1161, including pretrial detention, *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). False charges can cause pretrial detention. The any-crime rule, even subject to exceptions, would deny detainees a remedy after those seizures. The only rule that offers sufficient redress is the charge-specific rule.

a. False charges result in seizures that would not have otherwise occurred.

Fabricated charges can trigger substantial increases in bail that cause pretrial detention. By increasing the complexity of cases, false charges delay trial and thus extend pretrial detention.

i. Fabricated charges increase bail and create seizures.

Additional charges increase the likelihood a criminal defendant will be detained at all.[2] As the number of charges increases, bail increases accordingly. M.R. Williams, *From Bail to Jail: The Effect of Jail Capacity on Bail Decisions*, 41 Am. J. Crim. Just. 484, 491 (2016). The higher the bail, the less likely a detainee can afford to avoid pretrial incarceration.

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[2] Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* 27 (U. Pa. L. Sch. Working Paper, 2016), https://www.prisonpolicy.org/scans/Distortion-of-Justice-April-2016.pdf [https://perma.cc/KZ84-6QE8].

The nature of the additional false charges also matters. Bail determinations are holistic inquiries heavily influenced by the specific charges a defendant faces. *See, e.g.*, Mass. Gen. Laws ch. 276, § 57 (2014); Lauryn P. Gouldin, *Disentangling Flight Risk from Dangerousness*, 2016 B.Y.U. L. Rev. 837, 841. Violent charges are particularly influential in this analysis because of public safety concerns. Curtis E.A. Karnow, *Setting Bail for Public Safety*, 13 Berkeley J. Crim. L. 1, 10 (2008). So too is flight risk. *See., e.g.*, Ky. Rev. Stat. § 431.066.

Thus, when officers fabricate charges, especially violent offenses or offenses that signal flight risk, they can make bail unaffordable and trigger pretrial detentions. A resisting arrest charge can have a particularly outsized impact on bail. Resisting arrest is a violent offense that necessarily involves non-compliance with lawful orders, signaling flight risk. *See United States v. Clum*, 492 F. App'x 81, 85 (11th Cir. 2012); *cf. United States v. Wesson*, No. 4:19-CR-309, 2020 WL 1814153, at *2 (N.D. Ohio Apr. 9, 2020) (barring compassionate release because resisting arrest charge indicated flight risk).

Here, the fabricated charge likely increased Jax's bail. Resisting arrest was the only violent offense Jax faced. *Compare* Ames Gen. Laws ch. 268, *with id.* ch. 94C, *and* ch. 266. The resisting arrest charge indicated that Jax defies lawful orders and thus was a flight risk. *See*

Clum, 492 F. App'x at 85. Without this offense, bail likely would have been much lower. That was enough to state a claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ii. Fabricated charges lengthen detentions.

Additional charges also increase the duration of seizure. *Williams*, 965 F.3d at 1161. "[N]o two prosecutions share the exact same character." *Howse*, 953 F.3d at 416 (Cole, C.J., dissenting in part). The collection, disclosure, and analysis of evidence is time-consuming. As the number of charges increases, the resources required to mount a defense increase too. Courts are also more likely to delay complex trials, thereby extending pretrial detention. *See United States v. Jeri*, 869 F.3d 1247, 1257 (11th Cir. 2017).

The fabricated resisting arrest charge likely lengthened Jax's pretrial detention. The addition of a resisting arrest charge, different in kind and susceptible to different forms of evidence, complicated discovery. *See Williams*, 965 F.3d at 1161. To mount a defense, Jax's attorney needed more time. Jax was forced to bear the cost of this added complexity.

b. Alternatives to the charge-specific rule fail to provide a remedy for seizures resulting from fabricated charges.

When the any-crime rule is applied, an officer with probable cause for one offense can tack on baseless charges with impunity. *E.g.*, *Posr,* 944 F.2d at 100; *Holmes*, 511 F.3d at 683; *Johnson v. Knorr*, 477 F.3d

75, 84 (3d Cir. 2007). Even when these fabricated charges lengthen pretrial detentions and cause detentions that would not have otherwise occurred, the any-crime rule forecloses the possibility of a malicious prosecution claim. The *Howse* panel gestured in dicta at an exception for plaintiffs at the pleading stage who provide "evidence" that the fabricated charge extended the "length of detention." 953 F.3d at 409 n.3. However, in dismissing Jax's § 1983 claim, the district court did not mention this exception. JA-10. Even the Sixth Circuit has never applied this exception, let alone made clear how it would.

To the extent this exception even exists, it is inaccurate, unworkable, and ultimately collapses into the any-crime rule. First, an additional charge itself increases bail. Note, *Stacked: Where Criminal Charge Stacking Happens — And Where it Doesn't*, 136 Harv. L. Rev. 1390, 1394 (2023). Second, at the motion-to-dismiss stage, without the benefit of discovery, it is exceptionally difficult for a plaintiff to prove how much the fabricated charge increased his bail. It might be feasible in extreme cases, like when a single violent felony is tacked onto a misdemeanor offense. *See, e.g.*, *Williams*, 965 F.3d at 1157, 1161. But that endeavor is generally futile, particularly in cases like Jax's, which involve multiple, distinct felonies. Bail determinations are a black box. Armed with only a single figure, Jax cannot be expected to plead what bail would have been in the alternative. The exception would impose a

pleading burden high enough to be indistinguishable from the any-crime rule. That result would nullify the remedial nature of § 1983, which "must be given a liberal construction." *Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 399–400 (1979).

The possible penalty associated with an offense is an unreliable proxy for whether it extended pretrial detention when falsely charged. Post-conviction sentencing and pretrial detention serve distinct purposes. The former advances objectives related to retribution, deterrence, and rehabilitation. The latter promotes public safety and mitigates the risk a detainee flees before trial. Consider drug dealing and domestic violence. The distribution of narcotics generally carries a higher penalty than misdemeanor domestic assault. *Compare, e.g.*, Minn. Stat. § 152.021 (establishing a maximum punishment of thirty years for selling seventeen grams of cocaine), *with, e.g.*, *id.* §§ 609.2242, 609.02 (punishing intentional infliction of bodily harm on a household member for no more than ninety days). But the latter offense could have a greater effect on the bail determination because a judge could reasonably conclude that a putative abuser is more dangerous than an individual accused of a non-violent drug offense. *See, e.g.*, Minn. R. Crim. P. 6.02. This approach to the any-crime rule drags the courts into indeterminate inquiries and therefore cannot be administered consistently.

As with bail determinations, plaintiffs cannot allege exactly how much trial was delayed, legal preparation was complicated, or the discovery process was lengthened due to an additional, false charge. Nor should they be expected to do so. Around the time of § 1983's passage, the Missouri Supreme Court concluded that malicious prosecution suits could proceed even if the "injured party[] . . . [could not] divide his damages between [groundless accusations and well-substantiated offenses] with delicate nicety." *Boogher*, 86 Mo. at 50. The fact that Jax cannot, at the outset, disaggregate the causes of the harm that he suffered should not be grounds to dismiss his § 1983 claim.

Because the charge-specific rule, unlike the any-crime rule, allows for malicious prosecution claims whenever there is a fabricated charge, only the charge-specific rule remedies all unreasonable seizures.

2. The charge-specific rule upholds the values of the Fourth Amendment by preventing arbitrary outcomes and promoting truthfulness in law enforcement.

The heart of the Fourth Amendment is protection against arbitrary law enforcement tactics. *Thompson*, 596 U.S. at 48. Before the Founding, one particularly odious tactic was the general warrant, which authorized officers to search and seize unspecified persons and places with impunity. The Crown's practice of using these "hated" general warrants catalyzed the Revolutionary War. *Stanford v. Texas*, 379 U.S. 476, 481–82 (1965). To ensure this practice would not be reinstated, the Framers drafted the Fourth Amendment to require reasonableness,

probable cause, and truthfulness. The charge-specific rule alone is compatible with these requirements.

a. Only the charge-specific rule contains a limiting principle and thereby avoids arbitrary outcomes.

The charge-specific rule honors the Fourth Amendment's commitment to probable cause, which rises above "common rumor or report, suspicion, or even strong reason to suspect." *Henry v. United States*, 361 U.S. 98, 101 (1959) (citations and internal quotation marks omitted). But it is only meaningful if it remains tethered to each charge. The any-crime rule erodes the probable cause requirement, and thus sanctions a return to the reviled general warrant. It empowers officers to charge individuals with limitless, fabricated offenses after finding probable cause for a single charge—no matter how slight. *E.g.*, *Posr,* 944 F.2d at 100. For example, an individual who jaywalked could find himself facing a murder charge without legal recourse. Without a limiting principle, the any-crime rule thus leads inexorably to arbitrary outcomes. Consider how the Framers would have responded to such conduct by the Crown. *See Paxton's Case*, Mass. (Quincy) 51 (1761). For arbitrary seizures, their reaction was clear: revolution.

The consequences of the any-crime rule in today's criminal justice system likewise reflect its arbitrariness. To begin, the any-crime rule's charge-stacking effect puts the detainee "in a much worse negotiating posture for plea bargaining." *Howse*, 953 F.3d at 416 (Cole, C.J.,

dissenting in part). Empirically, "more charges correlate with a higher rate of guilty pleas." *Stacked*, 136 Harv. L. Rev. at 1406. In other words, charging additional, baseless offenses can become a useful tactic for law enforcement officers to arbitrarily strong-arm detainees into guilty pleas.

Furthermore, a detainee's reputation and economic wellbeing cannot be at the mercy of the officer's choice to bring false charges. *Cf. Thompson*, 596 U.S. at 48 (arguing malicious prosecution claim "cannot reasonably turn on the fortuity of whether the prosecutor or court happened to explain why the charges were dismissed"). Malicious prosecution suits remedy damage to the detainee's reputation. *Albright v. Oliver*, 510 U.S. 266, 277 (1994) (Ginsburg, J., concurring) (asserting Fourth Amendment should protect against defendant "suffer[ing] reputational harm"). They have done so for centuries. *Savile v. Roberts* (1698), 91 Eng. Rep. 1147, 1149–50 (KB) (holding that "[t]he damage to a man's fame" supports malicious prosecution claim). The addition of baseless charges on an officer's whim also subjects the individual to "the 'civil death' of discrimination by employers, landlords, and whoever else conducts a background check." *Utah v. Strieff*, 579 U.S. 232, 253 (2016) (Sotomayor, J., dissenting). In the face of the tyrannical Crown, the Framers could have envisioned few greater arbitrary invasions.

b. Only the charge-specific rule protects the value of truthfulness embedded in the Fourth Amendment.

The Fourth Amendment requires that, when seeking a warrant for a seizure, officers support probable cause "by Oath or affirmation." U.S. Const. amend. IV. Officers who seek arrest warrants must tell the truth. *Franks v. Delaware*, 438 U.S. 154, 165 (1978). Although the Fourth Amendment's "Oath or affirmation" requirement resides in the Warrant Clause, there is no meaningful distinction between seizure pursuant to a warrant and seizure pursuant to the institution of criminal charges; they are both "legal process." *See Wallace*, 549 U.S. at 389. To demand truthfulness from an officer when he swears to a warrant but not when he swears to criminal charges makes little sense.

Only the charge-specific rule promotes truthfulness. The Fourth Amendment's "Oath or affirmation" requirement would be "reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause." *Franks*, 438 U.S. at 168. Because charges based on deliberate falsehoods are offensive to the Fourth Amendment, the presence of another, truthful charge should not vitiate the defendant's malicious prosecution claim. The charge-specific rule would apply the *Franks* truthfulness requirement to each charge. The any-crime rule, however, would tolerate falsehoods.

Truthfulness has proven particularly elusive in resisting arrest cases like this one. Unfortunately, there is reason to believe that some

police officers have falsely charged this very offense to cover up excessive force.[3] This is an issue of direct importance to Jax's case: Wildwood's bodycam footage showed him beating Jax, proving that he lied about the resisting arrest charge. JA-5. But according to Wildwood, those lies do not matter. That conclusion falls disappointingly short of the Fourth Amendment's requirement of truthfulness.

3. The charge-specific rule does not encroach on the interests of law enforcement.

One final value of the Fourth Amendment is to protect officers from "unwarranted civil suits." *Thompson*, 596 U.S. at 49. Officers are protected from malicious prosecution suits by qualified immunity and the requirement that plaintiffs prove the "absence of probable cause." *Id.* The charge-specific rule does not affect either, and it respects the difficult split-second decisions that officers must make on the job. *See Tennessee v. Garner*, 471 U.S. 1, 20 (1985). The charge-specific rule only kicks in after the arrest, once the officer has had a chance to reflect. It has no impact on officers' ability to keep their communities safe.

Wildwood, on the other hand, had the opportunity to reflect before initiating the baseless charge. He charged Jax anyway, filing a perjured affidavit "replete with lies" in support. JA-5. The charge-specific rule

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[3] *See, e.g.*, Michelle Quinn, *In San Jose, Resisting Arrest Is Often the Only Reason for an Arrest*, N.Y. Times (Nov. 1, 2009, 9:44 AM), https://archive.nytimes.com/bayarea.blogs.nytimes.com/2009/11/01/san-jose-police-and-resisting-arrest-cases/ [https://perma.cc/7RFD-WT2Z].

would allow Jax's § 1983 claim to go forward. Put simply, Wildwood's disappointing misconduct does a disservice to police officers nationwide. This Court should not mistake protecting Wildwood for protecting the interests of law enforcement.

* * * * *

Wildwood said "there's nothing [Jax] can do about" the fabricated resisting arrest charge. JA-5. Section 1983 and the Fourth Amendment suggest otherwise. This Court should adopt the charge-specific rule and hold that Jax stated a claim for malicious prosecution.

CONCLUSION

This Court should reverse the district court's grant of Wildwood's motion to dismiss, and remand for additional proceedings.

February 12, 2024

Respectfully submitted,

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APPENDIX

U.S. Const. 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.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 – Civil action for deprivation of rights

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.

28 U.S.C. § 1291 – Final decisions of district courts

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 – Interlocutory decisions

(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;

(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. § 1331 – Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1343 – Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the

United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. § 1367 – Supplemental jurisdiction

(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.

Fed. R. Civ. P. 8 – General Rules of Pleading

(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.

Fed. R. Civ. P. 23 – Class Actions

(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 does not stay

proceedings in the district court unless the district judge or the court of appeals so orders.

Fed. R. Civ. P. 41 – Dismissal of Actions

(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 – Judgment; Costs

(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.

Ames Gen. Laws ch. 94C – Possession of Class B Substance

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.

Ames Gen. Laws ch. 258 – Tort Claims Act

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 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 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.

Ames Gen. Laws ch. 260 – Limitations of Actions

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.

Ames Gen. Laws ch. 266 – Larceny

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.

Ames Gen. Laws ch. 268 – Resisting Arrest

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 self defense. 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.