No.

IN THE

Supreme Court of the United States

RONALD JONES; JOHN CAYANNE; JIM GLASSCOCK,
PETITIONERS

v.

MICHAEL KEITZ; JOHN ANDERSON, SHERIFF; ROBERT BIEHM; MADERA COUNTY; SHERIFF'S DEPARTMENT MADERA COUNTY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. What facts must a plaintiff allege to state a claim for malicious prosecution against a California county and its sheriff under 42 U.S.C. § 1983, especially considering the heightened pleading standard this Court established in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)?

2. When a county sheriff is the country's chief law enforcement officer, can a plaintiff hold a California County liable under *Monell v. New York City Department of Social Services*, 436 U.S. 658, 694 (1978), by pleading he was wrongfully prosecuted based on an investigation led by the sheriff?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is unpublished. That opinion is found in the Appendix to the Petition for a Writ of Certiorari (or "Pet. App."), at 1a. The opinions of the United States District Court for the Eastern District of California, (Pet. App. 4a-37a), are unpublished.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 2018 (Pet. App. 1a-2a.) The court of appeals denied Petitioners' timely petition for rehearing on January 18, 2019. (Pet. App. 38a.) This Court has jurisdiction under 28 U.S.C. § 1254 (1).

RELEVANT PROVISIONS INVOLVED

The Fourth Amendment, U.S. Const. amend. IV, provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend XIV, § 1, states:

> [N]or shall any State deprive any person of life, liberty, or property without due process of law.

42 U.S.C. §1983 states:

> 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.

STATEMENT

A. Petitioners' lawsuit

Petitioners Ron Jones, John Cayanne, and Jim Glasscock ("Petitioners") were appointed police officers for the Chukchansi Tribal Police Department. (Pet. App. 6a.) They were former military police or civilian police officers. (*Ibid.*) The Chukchansi Tribe owns and operates a casino in Coarsegold, California. (*Ibid.*)

Tribal officials directed them to go to the tribe's casino and retrieve an audit report. (*Ibid.*) The Tribe needed the report to keep its gaming license. (*Ibid.*) Security guards under the control of a hostile faction of the tribe were at the casino. (Pet. App. 6a-7a.) When

petitioners came to the casino, the security guards threatened them. (*Ibid.*) Appellants, acting as tribal police officers, detained the guards. (Pet. App. 6a.)

Petitioners called John Anderson, the Madera County Sheriff, to the casino. (Pet. App. 6a). Petitioners asked Anderson to remove the security guards from the casino. (*Ibid.*). Anderson told the tribal police officers they had no authority to arrest the security guards and had committed kidnapping. (Pet. App. 7a.) The guards were released. (*Ibid.*)

The sheriff then conducted a biased investigation and recommended criminal charges against the tribal police officers with no reasonable grounds for prosecution. (*Ibid.*) The Madera County District Attorney accepted his investigation and had the officers arrested. (*Ibid.*) That prosecutor lost his bid for reelection, and the new prosecutor dropped all charges. (*Ibid.*)

Petitioners sued the sheriff, John Anderson, Robert Blehm, one of his deputies, and Michael Keitz, the Madera County District Attorney who prosecuted appellants. (Pet. App. 5a-6a.) They alleged claims under 42 U.S.C. § 1983 and California law for malicious prosecution. (*Ibid.*)

B. The District Court sustains the defendants' motion to dismiss.

The District Court sustained a motion to dismiss the original complaint with leave to amend. Appellants filed a first amended complaint, which the District Court dismissed without leave to amend. The District Court found that appellants had to state facts showing that Keitz, the District Attorney, had not exercised independent judgment in prosecuting. It noted that

petitioners had alleged that the Sheriff "misrepresented the facts and evidence" to the District Attorney, but it thought this allegation was a conclusion, rather than a statement of fact. (Pet. App. 13a.)

The District Court ignored petitioners' allegations that the Sheriff was biased against them because he planned on retiring and intended to ask the rival faction of the tribe to appoint him Chief of Police. (*Ibid.*) The court also disregarded the allegation that the Sheriff knew under federal and California law the tribe had the power to remove non-members from its reservation, including the casino, and could hire police officers for that purpose. (*Ibid.*)

The District Court concluded that petitioners had not alleged facts to state a claim for relief plausible under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). (Pet. App. 14a-17c.) The District Court also ruled petitioners had not alleged a county policy or custom that would subject Madera County to liability under *Monell v. New York City Department of Social Services*, 436 U.S. 658, 694 (1978). (Pet. App. 16a.) It made this ruling even though Anderson, the Sheriff, was Madera County's chief law enforcement officer, and his investigation and recommendation led to the charges against petitioners. (*Ibid.*)

C. The Ninth Circuit affirms the District Court.

The Ninth Circuit affirmed the District Court. It concluded that petitioners had not alleged enough facts to establish that the District Attorney had failed to exercise independent judgment in prosecuting, as required by *Smiddy v. Varney*, 665 F.2d 261, 266 (9th

Cir. 1981) ("*Smiddy*"). The court stressed that petitioners had failed to meet the heightened pleading standards imposed by *Ashcroft v. Iqbal*. Finally, the court ruled that petitioners had not pleaded a county policy, long-standing practice or custom, or that defendants had final authority to "establish municipal policy with respect to the [arrest]." (Pet. App. 2a, *quoting Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986).)

Petitioners filed a petition for rehearing, which the Ninth Circuit denied. (Pet. App. 38a.)

REASONS FOR GRANTING THE PETITION

I. This Court should explain what a plaintiff suing for malicious prosecution must allege under *Ashcroft v. Iqbal*.

In the Ninth Circuit, courts hold that government officials can be sued under 42 U.S.C. § 1983 for malicious prosecution if the plaintiff proves the prosecuting authority did not use independent judgment in bringing a criminal case. *Smiddy v. Varney*, 665 F.2d at 266; *Newman v. County of Orange*, 457 F.3d 991, 994 (9th Cir. 2006) ("*Newman*"); *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004) ("*Awabby*"); *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995) ("*Freeman*").

Other courts hold that a plaintiff can sue under § 1983 for malicious prosecution when the prosecution fabricated evidence. *Castellano v. Fragozo*, 353 F.3d 939, 959-960 (5th Cir. 2003), *Mills v. Barnard*, 869 F.3d 473, 484 (6th Cir. 2017). This Court has assumed a false imprisonment/malicious prosecution claim can be

brought under § 1983 but has not spelled out the factual elements of the claim. *Wallace v. Kato*, 549 U.S. 384 (2007).

Most of these cases are not pleading cases—an appeal of a motion to dismiss for failure to state a claim. *Smiddy* was an appeal of a trial verdict. *Freeman* was an appeal of an order granting judgment as a matter of law after a 22-day trial. *Newman* was an appeal of a summary judgment, not a motion to dismiss for failure to state a claim.

Only *Awabby* is a pleading case, and it is not useful. It concerned a city council member who alleged the defendants retaliated against him because he was Arab-American. He asserted claims under the First Amendment and the Fourteenth Amendment for discrimination based on ethnicity. Petitioners do not make those claims.

Equally important, *Awabby*, *Freeman*, *Smiddy*, and *Newman* were decided before this Court ruled in *Ashcroft v. Iqbal*, 556 U.S. at 678, that a complaint "must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." Although the Ninth Circuit held in *Smiddy* that a plaintiff could pursue a claim under 42 U.S.C. § 1983 if he could prove the prosecutor did not use independent judgment, the court did not explain what allegations will state that claim under the *Ashcroft v. Iqbal* standard.

Petitioners here alleged that the county Sheriff, who investigated their alleged wrongful acts, wanted to become tribal police chief. (Pet. App. 6a-8a.) He used the investigation to discredit the existing trial police force. (*Ibid.*) He did not believe tribal police had any power to remove persons from a tribal casino, even though long-standing federal laws gave tribes the right

to have their police forces. (*Ibid.*) The Sheriff said the tribal police had "kidnapped" the security guards who interfered with them. (*Ibid.*)

Litigants need to know how to plead a malicious prosecution case. Pleading standards for such a case are a pervasive problem. The Ninth Circuit has had to apply the *Smiddy* rule at least four times, in *Smiddy* itself, *Freeman*, *Awabby*, and *Newman*. These four cases indicate that plaintiffs have brought numerous *Smiddy* claims in the Ninth Circuit. Other circuits have faced malicious prosecution claims. *Manuel v. City of Joliet*, 903 F.3d 667, 669-670 (7th Cir. 2018). This Court is considering the statute of limitations for a malicious prosecution claim in *McDonough v. Smith*, case no. 18-845. Malicious prosecution cases against county or state officials are becoming common.

Since *Smiddy* and its successors were not pleading cases, and since *Smiddy* was decided before *Ashcroft v. Iqbal*, plaintiffs operate in the dark trying to plead a malicious prosecution case that will meet the *Ashcroft v. Iqbal* standard. Granting certiorari in petitioners' case offers this Court a chance to give much-needed guidance.

The issue is likely to recur. Petitioners' action arose out of a confrontation between tribal police and a county sheriff attempting to enforce state law. Petitioners were authorized by the tribe to enforce tribal law. Native American reservations and casinos are found across the country. Many new casinos will open. Each casino will be on tribal land, protected by tribal police. Those police forces may have tense relations with local law enforcement, including county sheriffs. If those disputes lead to arrests, tribal police need to know what rights they have to fight against

wrongful arrests or prosecutions. This Court can give them guidance.

II. This Court should explain how plaintiffs can plead cases for county liability when the county sheriff acts as the chief law enforcement officer.

In *Brewster v. Shasta County*, 275 F.3d 803, 812 (9th Cir. 2001), the Ninth Circuit held: "In sum, we conclude that the Shasta County Sheriff acts as a final policymaker when investigating crime within the County. We therefore affirm the district court's holding that the County may be subject to liability under 42 U.S.C. § 1983." The Ninth Circuit reaffirmed this rule in *United States v. County of Maricopa*, 889 F.3d 648, 652-653 (9th Cir. 2018). Under these cases, the conclusion is clear: a sheriff, like Madera County Sheriff Anderson, acts as a county's policymaker.

The Ninth Circuit disregarded these cases in petitioners' appeal. It ruled that petitioners failed to allege a county policy, long-standing practice or custom, or that defendants had final authority to "establish municipal policy with respect to the [arrest]." (Pet. App. 2a, *quoting Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986). The Ninth Circuit panel did not believe it was enough for petitioners to plead that Sheriff Anderson was the chief law enforcement officer for Madera County. *Ibid.* It reached this conclusion even though petitioners alleged Sheriff Anderson led the investigation that resulted in their indictments and shaped the investigation to make sure the District Attorney would file charges. (Pet. App. 6a-8a.)

The Ninth Circuit panel's conclusion cannot be reconciled with *Brewster v. Shasta County* or *United*

States v. County of Maricopa. Petitioners alleged that Sheriff Anderson was the county's chief law enforcement officer. That charge should be enough under *Brewster* and *County of Maricopa.* And, this Court needs to decide if the *Brewster* holding follows *Monell v. New York City Department of Social Services*, 436 U.S. 658, 694 (1978).

CONCLUSION

For these reasons, petitioners RON JONES, JOHN CAYANNE, and JIM GLASSCOCK respectfully request that the Court grant their petition for a writ of certiorari.

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