

Seizure or Due Process? Section 1983 Enforcement Against Pretrial Detention Caused by Fabricated Evidence

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*Can an individual who was held in pretrial detention but not criminally convicted as a result of fabricated evidence raise a due process claim under 42 U.S.C. § 1983? The answer is unclear. In 2017, the Supreme Court in *Manuel v. City of Joliet* held that claims for unlawful pretrial detention are governed by the Fourth Amendment. Since then, the Seventh Circuit has asserted that the Fourth Amendment is the only source of redress under § 1983 for wrongful pretrial detention caused by fabricated evidence. By contrast, several circuits have opined that *Manuel* does not foreclose the possibility that individuals held in pretrial detention due to fabricated evidence may raise § 1983 Fourteenth Amendment claims for due process injuries caused by fabricated evidence. These claims would be in addition to § 1983 Fourth Amendment claims for wrongful pretrial detention. A circuit split has thus emerged regarding what § 1983 claims may be brought by plaintiffs who were placed in pretrial detention because of fabricated evidence. This Comment argues that pretrial detention that is caused by fabricated evidence implicates both the Fourth Amendment and Fourteenth Amendment. Accordingly, injured parties should be entitled to raise claims under § 1983 based on violations of either (or both) of these amendments.*

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INTRODUCTION

In his 2000 *Dave Chappelle: Killin' Them Softly* special, comedian Dave Chappelle performed a routine about his distrust of police. Chappelle joked about a Black homeowner who called police to report a burglary, only for the police to misidentify him as a suspect.¹ Chappelle's "joke" ended with officers knocking out the homeowner and "sprinkl[ing] some crack on him" before leaving the scene.²

Chappelle's segment may have garnered tremendous laughter from the audience, but the police misconduct he described is no joking matter. The comedian's choice to poke fun at officers fabricating evidence is suggestive of the pervasiveness of such misconduct in American society. Although research on the prevalence of police falsification of evidence is difficult to locate, a substantial percentage of wrongful convictions can be attributed, in part, to false or misleading evidence.³

Redress for individuals injured by the deliberate use of fabricated evidence by law enforcement has common law and statutory origins. The Supreme Court has suggested that there is no common law precedent which completely immunizes "a prosecutor's fabrication of false evidence during the preliminary investigation of an unsolved crime."⁴ Moreover, at common law, it was generally accepted that anyone, including a government official, "who procured the issuance of an arrest warrant by submitting a complaint" could be liable under a tort action "if the complaint was made maliciously and without probable cause."⁵ Separately, in 1871, Congress enacted the Ku Klux Klan Act,⁶

¹ DAVE CHAPPELLE: KILLIN' THEM SOFTLY (HBO 2000).

² *Id.*

³ See *Overturing Wrongful Convictions Involving Misapplied Forensics*, INNOCENCE PROJECT (2022), <https://perma.cc/5F4H-KTB4> ("False or misleading forensic evidence was a contributing factor in 24% of all wrongful convictions nationally.").

⁴ *Buckley v. Fitzsimmons*, 509 U.S. 259, 275 (1993).

⁵ *Malley v. Briggs*, 475 U.S. 335, 340–41 (1986).

⁶ Ku Klux Klan Act of 1871, Pub. L. No. 42-22, 17 Stat. 13 (codified as amended at 42 U.S.C. § 1983).

which enabled Americans to sue state government officials who had deprived them of their constitutional rights.⁷ The relevant portion of the Klan Act for this Comment is now codified at 42 U.S.C. § 1983.

Section 1983 serves as a “remedial statute for asserting federal civil rights claims” against state and local officials.⁸ It provides a cause for legal action to plaintiffs who are deprived of their constitutional rights by anyone acting “under color of any statute,”⁹ and indeed “has become the primary vehicle for legal challenges to police misconduct.”¹⁰ Section 1983 has safeguarded constitutional rights in wide-ranging contexts, and it has specifically been invoked to prohibit law enforcement from fabricating evidence to deprive individuals of liberty.¹¹ Around the mid- to late twentieth century, federal courts began recognizing that the deliberate fabrication of evidence by government officials undermines the fairness of the trial process.¹² Accordingly, some courts held that fabrication of evidence violates the Fourteenth Amendment because it deprives defendants of their due process rights.¹³ In determining that such a constitutional violation is cognizable under § 1983, the Second Circuit explained that, “[l]ike a prosecutor’s knowing use of false evidence to obtain a tainted conviction, a police officer’s fabrication and forwarding to prosecutors of known false evidence works an unacceptable ‘corruption of the truth-seeking function of the trial process.’”¹⁴ Other courts linked fabrication of evidence to the Fourth Amendment, particularly in situations where it results in pretrial

⁷ See Melia Cerrato, Comment, *Individual Liberties v. Federalism: Are Section 1983 Civil Rights Claims Under Attack by New Federalist Judges?*, 67 LOY. L. REV. 513, 516–18 (2021); see also Tiffany R. Wright, Ciarra N. Carr & Jade W.P. Gasek, *Truth and Reconciliation: The Ku Klux Klan Hearings of 1871 and the Genesis of Section 1983*, 126 DICK. L. REV. 685, 711 (2022) (quoting *Mitchum v. Foster*, 407 U.S. 225, 242 (1972)) (noting that the Ku Klux Klan Act was the first time in history that Congress empowered federal courts to guard federal rights from state infringement).

⁸ Michael D. Bersani & Michael W. Condon, Presentation to CCSMI, Fundamentals of Section 1983 Litigation: Common Claims, Defenses and Immunities (Nov. 22, 2016).

⁹ 42 U.S.C. § 1983.

¹⁰ Jennifer Hickey, *From Apples to Orchards: A Vulnerability Approach to Police Misconduct*, 26 TEX. J. C.L. & C.R. 1, 5 (2020) (citing MICHAEL AVERY & DAVIS RUDOVSKY, POLICE MISCONDUCT: LAW AND LITIGATION § 3.7 (2d ed. 1986)); see also Marshall Miller, *Police Brutality*, 17 YALE L. & POL’Y REV. 149, 155 (1998).

¹¹ See *Ricciuti v. N.Y.C. Transit Auth.*, 124 F.3d 123, 130 (2d Cir. 1997).

¹² See *id.* (listing cases).

¹³ See *Black v. Montgomery County*, 835 F.3d 358, 370–71 (3d Cir. 2016).

¹⁴ *Ricciuti*, 124 F.3d at 130 (quoting *United States v. Agurs*, 427 U.S. 97, 104 (1976); and then citing *Giglio v. United States*, 405 U.S. 150, 153 (1972); and *Mooney v. Holohan*, 294 U.S. 103, 112 (1935)).

detention, on the theory that defendants have a right to be free from “detention without probable cause.”¹⁵

By the early twenty-first century, nearly all circuits to have addressed the issue acknowledged, to some degree, that deprivation of liberty caused by fabricated evidence can give rise to a § 1983 Fourteenth Amendment claim.¹⁶ Yet, despite this unanimity, a disagreement emerged as to *who* could raise such a claim. In 2016, the Seventh Circuit held that individuals who are acquitted at trial have not been deprived of liberty because they ultimately were found not guilty, and therefore they have not suffered a Fourteenth Amendment injury.¹⁷ However, that same year the Third Circuit—as part of a growing opposition to the Seventh Circuit’s stance—held that a § 1983 Fourteenth Amendment claim may proceed even without a conviction because “corruption of the trial process [] occurs whether or not one is convicted.”¹⁸ A key question therefore arose that this Comment addresses: Can an individual who suffers pretrial detention because of fabricated evidence but is not convicted raise a § 1983 Fourteenth Amendment claim?

The aforementioned question pertains to a broader circuit split regarding the appropriate § 1983 claim(s) that plaintiffs may raise—if they can raise one at all—when placed in pretrial detention based on fabricated evidence. One view is that such plaintiffs might be entitled to a § 1983 Fourth Amendment claim because their detention lacked probable cause.¹⁹ A competing view is that these plaintiffs might be able to bring *both* § 1983 Fourth and Fourteenth Amendment claims given that they were subjected to unlawful detention and that the intentional misuse of falsified evidence by law enforcement undermines due process.²⁰

¹⁵ *Lewis v. City of Chicago*, 914 F.3d 472, 474 (7th Cir. 2019) (citing *Manuel v. City of Joliet*, 580 U.S. 357, 366–67 (2017)).

¹⁶ See *Ricciuti*, 124 F.3d at 130; *Halsey v. Pfeiffer*, 750 F.3d 273, 292 (3d Cir. 2014); *Massey v. Ojaniit*, 759 F.3d 343, 354 (4th Cir. 2014); *Morgan v. Chapman*, 969 F.3d 238, 250 (5th Cir. 2020); *Jackson v. City of Cleveland*, 925 F.3d 793, 815–16 (6th Cir. 2019); *Saunders-El v. Rohde*, 778 F.3d 556, 560 (7th Cir. 2015); *McGhee v. Pottawattamie County*, 547 F.3d 922, 932–33 (8th Cir. 2008); *Spencer v. Peters*, 857 F.3d 789, 798–80 (9th Cir. 2017); *Klen v. City of Loveland*, 661 F.3d 498, 515–16 (10th Cir. 2011); *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1328 (11th Cir. 2015).

¹⁷ *Bianchi v. McQueen*, 818 F.3d 309, 319–20 (7th Cir. 2016).

¹⁸ *Black*, 835 F.3d at 370; see also *Klen*, 661 F.3d at 516; *Weiland*, 792 F.3d at 1328.

¹⁹ See *Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 99–100 (1st Cir. 2013).

²⁰ See *Black*, 835 F.3d at 368, 371.

The Supreme Court seemed poised to settle the dispute in 2017. In *Manuel v. City of Joliet*,²¹ the Court confronted the case of a man who was detained for seven weeks after false statements were used to find probable cause that he had committed a crime.²² In *Manuel*, the Court concluded that, “[i]f . . . legal process [has] resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment.”²³ Circuit split resolved?

Not so fast. The Seventh Circuit has understood *Manuel* to mean that “the Fourth Amendment, not the Due Process Clause, is the source of the right in a § 1983 claim for unlawful pretrial detention, whether before or after the initiation of formal legal process.”²⁴ Accordingly, the Seventh Circuit has allowed fabricated-evidence detainees who were ultimately *not* convicted to raise § 1983 Fourth Amendment claims, but has prevented them from also raising § 1983 Fourteenth Amendment claims.²⁵ However, other circuits have held that *Manuel* permits the possibility of raising a § 1983 Fourteenth Amendment claim *in addition to* a § 1983 Fourth Amendment claim in such circumstances because the deliberate use of fabricated evidence violates one’s right to a fair trial process even if no trial ever occurs.²⁶ *Manuel* therefore failed to resolve the pre-2017 circuit split.

This Comment argues that as a legal and policy matter, pretrial detention caused by fabricated evidence violates both the Fourth Amendment and the Fourteenth Amendment. It therefore should give rise to two separate § 1983 claims. Put another way, individuals harmed by pretrial detention stemming from fabricated evidence are constitutionally injured on two separate fronts, and accordingly should be entitled to raise distinct § 1983 claims for each violated right. When a defendant is placed in pretrial detention because of fabricated evidence, he suffers a Fourth Amendment injury because he has been wrongfully placed in pretrial detention without probable cause. However, the defendant simultaneously suffers a Fourteenth Amendment

²¹ 580 U.S. 357 (2017).

²² *Id.* at 359.

²³ *Id.* at 367.

²⁴ *Lewis*, 914 F.3d at 479.

²⁵ *Id.*

²⁶ See, e.g., *Smalls v. Collins*, 10 F.4th 117, 140–41 (2d Cir. 2021); *Cole v. Carson*, 935 F.3d 444, 451 n.25 (5th Cir. 2019) (en banc).

injury because the introduction and usage of fabricated evidence subverts his due process rights—even prior to a trial.²⁷

Considering that pretrial detention caused by fabricated evidence implicates multiple constitutional rights, and that the Seventh Circuit is the most active circuit in this area of law,²⁸ the post-*Manuel* split is of tremendous importance. In its most recent rulings, the Seventh Circuit has interpreted *Manuel* too literally by concluding that the Fourth Amendment is the *exclusive* source for a § 1983 claim under these circumstances.²⁹ This erroneous reading of *Manuel* devalues the Fourteenth Amendment rights of individuals under the Seventh Circuit’s jurisdiction by permitting only Fourth Amendment § 1983 claims in instances where pretrial detention is caused by fabricated evidence. Contrary to the Seventh Circuit’s interpretation, the Constitution does not draw an explicit preconviction and post-conviction temporal distinction between the Fourth Amendment and Fourteenth Amendment.³⁰

In fact, *McDonough v. Smith*,³¹ a 2019 Supreme Court case, undermines the Seventh Circuit’s post-*Manuel* rationale from multiple angles. First, the case involved a § 1983 Fourteenth Amendment claim brought by a plaintiff who was acquitted of all charges, thus dispelling the notion that a wrongful conviction is required for a plaintiff to raise a § 1983 Fourteenth Amendment claim.³² Second, the *McDonough* Court implied that where deliberate fabrication of evidence results in a pretrial deprivation of liberty, multiple constitutional injuries might have occurred, and thus multiple claims might have accrued.³³ Curiously,

²⁷ For instance, fabricated evidence may influence the bail amount that a judge sets and can affect the course of plea negotiations—both of which occur pretrial. See *Barnes v. City of New York*, 68 F.4th 123, 130 (2d Cir. 2023) (“There may be a violation of due process based on fabricated evidence even without the use of fabricated evidence at trial” (citations omitted)).

²⁸ A November 14, 2023 Westlaw inquiry with the search term “Section 1983 Claims for Pretrial Detention Caused by Fabricated Evidence” reveals twenty-eight Court of Appeals cases. Of those, the Seventh Circuit has heard fifteen cases. The next most active circuit is the Second Circuit, which has heard five cases on the matter.

²⁹ See *Young v. City of Chicago*, 987 F.3d 641 (7th Cir. 2021).

³⁰ See *Lewis*, 914 F.3d at 479–80.

³¹ 139 S. Ct. 2149 (2019).

³² *Id.* at 2153–54.

³³ See *id.* at 2155 n.2 (2019)) (“In accepting the Court of Appeals’ treatment of McDonough’s claim as one sounding in denial of due process, we express no view as to what other constitutional provisions (if any) might provide safeguards against the creation or use of fabricated evidence.” (citing *Soldal v. Cook County*, 506 U.S. 56, 70 (1992))). Although *McDonough* provides guidance for resolving the post-*Manuel* split, the Seventh

however, the Seventh Circuit has not addressed *McDonough* in the context of pretrial detention caused by fabricated evidence despite having heard at least one post-*McDonough* case on the matter.³⁴

Granted, the remedy for a § 1983 action primarily involves monetary damages. A counterpoint to this Comment is therefore that an additional § 1983 claim is unnecessary since courts can simply award greater damages under a Fourth Amendment claim when pretrial detention is caused by fabricated evidence. This view assumes that providing § 1983 plaintiffs with greater damages where pretrial detention is caused by fabricated evidence is functionally equivalent to allowing them to raise an additional claim while still accounting for the particularized severity of the harm. Moreover, since litigation saps judicial resources, it might be considered judicially expedient to limit § 1983 causes of action in this context to a single (Fourth Amendment) claim.

However, a dual § 1983 legal regime remains warranted for several reasons. First, raising multiple claims in a cause of action may prove advantageous to litigants by increasing the probability that they prevail in § 1983 lawsuits.³⁵ There could, for instance, be situations in which a plaintiff's Fourth Amendment claim proves unavailing but where a Fourteenth Amendment claim convinces the trier of fact.³⁶ Second, a potential increase in successful § 1983 lawsuits could, in the aggregate, enhance government accountability and serve “as an effective deterrent”

Circuit has insisted post-*McDonough* that wrongful pretrial detention claims involving fabricated evidence are exclusively governed by the Fourth Amendment. *See Young*, 987 F.3d at 646 (“[P]retrial detention [] is protected by the Fourth Amendment alone.”).

³⁴ *See Young*, 987 F.3d at 645–46.

³⁵ *See* Christina L. Boyd, David A. Hoffman, Zoran Obradovic & Kosta Ristovski, *Building a Taxonomy of Litigation: Clusters of Causes of Action in Federal Complaints*, 10 J. EMPIRICAL LEGAL STUD. 253, 255 (2013) (“[L]awyers are told that increasing the number of causes per case will lead to higher rates of recovery.”); *see also* F. Patrick Hubbard, *Designing and Implemented an Expanded System for Civil Court Data Collection: A South Carolina Study*, 47 S.C. L. REV. 537, 541 (1996) (“[W]hen a complaint has multiple causes of action, it could be that the defendant prevails on some causes although the plaintiff prevails on others.”).

³⁶ *See generally infra* notes 237–42 and accompanying text. Although shotgun pleadings are generally frowned upon, this Comment merely argues that plaintiffs should be able to raise *one* additional § 1983 claim in a setting where such an additional claim is warranted. *See* Eoin Moynihan, *The Perils of Shotgun Pleadings: The Case for the Focused over the Scattershot Approach*, AM. BAR ASS'N (Feb. 17, 2021), <https://perma.cc/6PVU-Q8TR>.

against police and prosecutorial misconduct.³⁷ Relatedly, enhanced accountability mechanisms could demonstrate to the public that federal courts are not turning a blind eye to police and prosecutorial misconduct.³⁸ Third, police and prosecutorial fabrication of evidence has a negative effect on society at large by corrupting the integrity of the trial process, upon which the rule of law depends.³⁹ This societal injury could, in turn, have downstream effects since “attitudes about the fairness of the justice system are likely to color citizens’ views of much of the rest of the political system.”⁴⁰ Given that the Fourteenth Amendment “demands [] fairness and integrity [of] officials wielding state power,” it stands to reason that the guarantees of this Amendment should be invoked when the legitimacy of the trial process is compromised by usage of fabricated evidence against an accused.⁴¹ Fourth, fidelity to the Constitution requires strict adherence to its text.⁴² On principle, whenever an individual is deprived of a constitutional right, he should be entitled to a remedy that is sourced in that right regardless of what other remedies might be available to him.⁴³

The external costs of pretrial detention further demonstrate why this area of law warrants uniformity under a legal regime that favors dual § 1983 claims. Namely, pretrial detention

³⁷ See Jon O. Newman, *Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers’ Misconduct*, 87 YALE L.J. 447, 453 (1978).

³⁸ See *infra* notes 255–56 and accompanying text.

³⁹ Samantha Joy Cheesman, *An Overview of Fair Trial Standards and National Security from a Comparative Perspective*, in FAIR TRIAL AND JUDICIAL INDEPENDENCE: HUNGARIAN PERSPS. 77, 85 (Attila Badó ed., 2014) (“[T]he right to a fair trial is considered to be one of the most fundamental principles for ensuring that the rule of law is observed when it comes to protecting the rights of suspected criminals.” (citing Rowan Cruft, *Liberalism and the Changing Character of the Criminal Law: Response to Ashworth and Zedner*, 2 CRIM. L. & PHIL. 59 (2008))).

⁴⁰ Jon Hurwitz & Mark Peffley, *Explaining the Great Racial Divide: Perceptions of Fairness in the U.S. Criminal Justice System*, 67 J. POL. 762, 764 (2005).

⁴¹ *The Supreme Court, 1985 Term – Leading Cases*, 100 HARV. L. REV. 125, 135 (1986).

⁴² Although strict adherence to text has not always been considered a primary method of constitutional interpretation, in recent years judges from across the ideological spectrum have embraced textualism to varying degrees. See A DIALOGUE WITH JUSTICE ELENA KAGAN ON THE READING OF STATUTES (Harvard Law School 2015) (stating that “we’re all textualists now”).

⁴³ See *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 49 (1993) (“We have rejected the view that the applicability of one constitutional amendment pre-empts the guarantees of another.”).

imposes severe economic and social impacts on detainees.⁴⁴ The ramifications of pretrial detention also extend to due process itself, as detainees tend to have considerably worse legal outcomes—such as higher rates of pleading guilty and longer prison sentences—compared to non-detainees.⁴⁵ Individuals placed in pretrial detention precisely because of fabricated evidence may encounter additional consequences specific to this appended injury compared to pretrial detainees not facing fabricated evidence.⁴⁶ For instance, a detainee dealing with charges stemming from both fabricated and legitimate evidence likely must spend more time (and money) preparing their defense than if they only had to prepare a defense against charges based on legitimate evidence. Given that a pretrial detainee experiences collateral injuries when his detention is caused by fabricated evidence, he should be entitled to raise multiple claims for the multiple injuries suffered.

Part I of this Comment provides an overview of § 1983 and discusses the relevant Fourth Amendment and Fourteenth Amendment claims that are cognizable under the statute. Part II describes the evolution of the circuit split with respect to § 1983 claims brought by individuals who have been wrongfully detained due to fabricated evidence. Although this split surfaced in 2016, it has persisted despite the Supreme Court’s intervention in *Manuel*. Lastly, Part III argues that this circuit split should be resolved to enable individuals who have been detained because of fabricated evidence to raise both a Fourth Amendment claim and a Fourteenth Amendment claim under § 1983.

I. BACKGROUND AND RELEVANT LAW

This Part discusses the emergence of 42 U.S.C. § 1983 as a mechanism to deter government actors from violating the “rights, privileges, or immunities” of citizens as secured by the Constitution or other laws.⁴⁷ Part I.A begins by describing the historical origins of § 1983, before Parts I.B and I.C examine

⁴⁴ See Jaden M. Lessnick, Comment, *Pretrial Detention by a Preponderance: The Constitutional and Interpretive Shortcomings of the Flight-Risk Standard*, 89 U. CHI. L. REV. 1245, 1261 (2022).

⁴⁵ *Id.* (quoting Ellen A. Donnelly & John M. MacDonald, *The Downstream Effects of Bail and Pretrial Detention on Racial Disparities in Incarceration*, 108 J. CRIM. L. & CRIMINOLOGY 775, 789, 804–05 (2019)); see also *infra* notes 233–34 and accompanying text.

⁴⁶ See *infra* notes 235–36 and accompanying text.

⁴⁷ 42 U.S.C. § 1983.

relevant § 1983 Fourth Amendment claims and § 1983 Fourteenth Amendment claims, respectively, that have been recognized over time.

A. 42 U.S.C. § 1983

This Section describes the development of 42 U.S.C. § 1983—the federal statute that this Comment is concerned with. It first discusses the origins of § 1983, detailing how the statute was designed to combat violence against Black people by the Ku Klux Klan. This Section then chronicles § 1983’s expansion in the mid-twentieth century as a broader remedial instrument against state-sanctioned official misconduct.

Section 1983 operates as a federal remedial statute, providing causes of action against state actors who commit constitutional violations while acting “under color of state law.”⁴⁸ It currently reads in relevant part:

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.⁴⁹

Section 1983 originated from the Ku Klux Klan Act of 1871,⁵⁰ which marked the first time that “Congress sought to ‘interpose the federal courts between the States and the people, as the guardians of the people’s federal rights.’”⁵¹ The Klan Act arose during Reconstruction, which saw the passage of consequential constitutional amendments but also violent backlash from domestic terrorist groups like the Klan.⁵² Notwithstanding the protections embedded in the Fourteenth Amendment, state officials—particularly in the South—failed to protect the civil interests of Black people and often turned a blind eye to heinous

⁴⁸ See *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted).

⁴⁹ 42 U.S.C. § 1983.

⁵⁰ Pub. L. No. 42-22, § 1, 17 Stat. 13 (1871) (codified as amended at 42 U.S.C. § 1983).

⁵¹ *Wright et al.*, *supra* note 7, at 711 (quoting *Mitchum v. Foster*, 407 U.S. 225, 242 (1972)).

⁵² Katherine A. Macfarlane, *Accelerated Civil Rights Settlements in the Shadow of Section 1983*, 2018 UTAH L. REV. 639, 660 (2018).

acts committed against them.⁵³ Recognizing that “strict federalism would allow states unfettered authority to restrict the rights of Black people with the state police powers,”⁵⁴ Congress passed the Klan Act to enforce the Fourteenth Amendment’s provisions against state actors who threatened to undermine it.⁵⁵

Section 1983 has evolved since its inception, but initial interpretations of the statute made it difficult for plaintiffs to successfully allege constitutional violations against state officials. This underwhelming debut was caused, in part, by the Supreme Court’s “narrowed construction of both the Fourteenth Amendment and the civil rights statutes enacted pursuant to it” during the late nineteenth century.⁵⁶ Specifically, the Court “interpreted § 1983 to exclude claims against state and local officials unless the state had authorized the tortious conduct.”⁵⁷ Consequently, federal courts ruled on just twenty-one § 1983 claims between 1871 and 1920.⁵⁸

Yet, true to its original purpose of targeting race discrimination,⁵⁹ successful § 1983 claims surged in the 1960s.⁶⁰ In 1961, the Supreme Court reversed its stance on state authorization of tortious conduct in *Monroe v. Pape*⁶¹ and interpreted § 1983 as providing recourse to parties “deprived of constitutional rights . . . by an official’s abuse of his position.”⁶² By removing the requirement that constitutional violations be linked to state-sanctioned misconduct, *Monroe* significantly expanded the scope of § 1983 liability.⁶³ *Monroe* enabled § 1983 claims to be brought against law enforcement officials who deprive civilians of their rights, even where such misconduct exceeds the duties that

⁵³ See Cerrato, *supra* note 7, at 516–17.

⁵⁴ *Id.* at 515 (citing JOHN R. HOWARD, *THE SHIFTING WIND: THE SUPREME COURT AND CIVIL RIGHTS FROM RECONSTRUCTION TO BROWN* 43 (1999)).

⁵⁵ *Id.* at 515–18.

⁵⁶ Macfarlane, *supra* note 52, at 662 (citing Eugene Gressman, *The Unhappy History of Civil Rights Legislation*, 50 MICH. L. REV. 1323, 1342 (1952)).

⁵⁷ Cerrato, *supra* note 7, at 519 (citing *Barney v. City of New York*, 193 U.S. 430 (1904)).

⁵⁸ Evelyn Michalos, Note, *Time over Matter: Measuring the Reasonableness of Officer Conduct in § 1983 Claims*, 89 FORDHAM L. REV. 1031, 1037 (2020) (citing Comment, *The Civil Rights Act: Emergence of an Adequate Federal Civil Remedy?*, 26 IND. L. J. 361, 363 (1951)).

⁵⁹ *Crawford-El v. Britton*, 523 U.S. 574, 595 n.16 (1998) (citing *Monroe v. Pape*, 365 U.S. 167, 174–75 (1961)).

⁶⁰ See Macfarlane, *supra* note 52, at 666.

⁶¹ 365 U.S. 167 (1961).

⁶² *Id.* at 172.

⁶³ See Macfarlane, *supra* note 52 at 641; Alan W. Clarke, *The Ku Klux Klan Act and the Civil Rights Revolution: How Civil Rights Litigation Came to Regulate Police and Correctional Officer Misconduct*, 7 SCHOLAR 151, 158 (2005).

were granted to those officials by their respective states.⁶⁴ Additionally, *Monroe* was monumental because it dealt with violence by police officers as opposed to violence by the Klan.⁶⁵ In this sense, *Monroe* implicitly transformed § 1983 from a statute that was primarily concerned with thwarting Klan activity into a “general federal remedy for violations of all constitutional rights.”⁶⁶

Since the *Monroe* decision in 1961, § 1983 has operated as a catchall apparatus for official wrongdoing resulting in violations of federal rights. The statute has been implicated in various contexts, including suits alleging First Amendment violations,⁶⁷ actions to restrain prosecutions under certain state laws,⁶⁸ and challenges to mandatory maternity leave policies.⁶⁹ Indeed, *Monroe* ushered in a swarm of civil rights litigation by initiating an era of redressability for constitutional violations,⁷⁰ and today § 1983 is regarded as “the most well known and commonly litigated civil rights statute.”⁷¹

⁶⁴ Macfarlane, *supra* note 52, at 666 (citing *Monroe*, 365 U.S. at 188).

⁶⁵ *Id.* (citing *Monroe*, 365 U.S. at 169).

⁶⁶ *Id.* at 667 (quoting Theodore Eisenberg, *Section 1983: Doctrinal Foundations and an Empirical Study*, 67 CORNELL L. REV. 482, 486–87 (1982)).

⁶⁷ Harry A. Blackmun, *Section 1983 and Federal Protection of Individual Rights—Will the Statute Remain Alive or Fade Away?*, 60 N.Y.U. L. REV. 1, 19–20 (1985) (first citing *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967) (holding declaratory and injunctive relief appropriate where university employees had been threatened with termination for refusing to comply with a state-mandated program requiring them to reveal if they were or had been “Communist”); and then *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503 (1969) (holding that a school board’s policy prohibiting armbands and suspending students who refused to remove them violated students’ right to freedom of expression)).

⁶⁸ *Id.* at 20 (citing *Dombrowski v. Pfister*, 380 U.S. 479, 482–83 (1965) (holding declaratory and injunctive relief appropriate where state officials threatened to arrest and prosecute appellants to “discourage [appellants] from asserting . . . the[ir] constitutional rights [as] Negro citizens of Louisiana”).

⁶⁹ Blackmun, *supra* note 67, at 20 (citing *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974) (holding that a school board’s policy requiring pregnant women to take mandatory unpaid maternity leave violated the Fourteenth Amendment)).

⁷⁰ Cerrato, *supra* note 7, at 523 (citing MARTIN A. SCHWARTZ & KATHRYN R. URBONYA, *SECTION 1983 LITIGATION* (2d ed. 2008)).

⁷¹ Catherine E. Smith, *(Un)Masking Race-Based Intracorporate Conspiracies Under the Ku Klux Klan Act*, 11 VA. J. SOC. POL’Y & L. 129, 139 n.48 (2004). More recently, the outer limits of § 1983 liability have been called into question. *See generally* *Vega v. Tekoh*, 142 S. Ct. 2095 (2022). However, *Vega* involved a § 1983 plaintiff who sued over an “allegedly improper admission of an ‘un-Mirandized’ statement in a criminal prosecution.” *Id.* at 2099 (citing *Miranda v. Arizona*, 384 U.S. 436 (1966)). In concluding that a *Miranda* violation is not equivalent to a constitutional violation, *Vega* declined to extend § 1983 liability to the *Miranda* context. *Id.* at 2105–07. Since this Comment is concerned with specific constitutional injuries, the factual background and holding of *Vega* are beyond the scope of this Comment.

B. Fourth Amendment Claims

This Section discusses § 1983 claims pertaining to unreasonable seizures in violation of the Fourth Amendment. It focuses on Fourth Amendment wrongful pretrial detention claims, which can arise from various acts of official misconduct including fabrication of evidence. This Section concludes by detailing how wrongful pretrial detention claims are relevant to this Comment's focus.

The Supreme Court's decision in *Tennessee v. Garner*⁷² provides preliminary guidance for evaluating Fourth Amendment unreasonable seizure claims brought pursuant to § 1983. The Fourth Amendment protects, among other things, "[t]he right of the people to be secure in their persons . . . against *unreasonable* searches and *seizures*."⁷³ *Garner* involved a plaintiff who raised an excessive force claim on behalf of his deceased son who was fatally shot while fleeing the police.⁷⁴ The case concerned the Fourth Amendment's seizure component because "[w]henver an officer restrains the freedom of a person to walk away, he has seized that person."⁷⁵ In *Garner*, the Court explained that "[t]o determine the constitutionality of a seizure 'we must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.'"⁷⁶ The Court had previously "described 'the balancing of competing interests' as 'the key principle of the Fourth Amendment.'"⁷⁷ Guided by *Garner*'s framework, federal courts have recognized numerous Fourth Amendment unreasonable seizure injuries redressable under § 1983.⁷⁸

This Comment concerns itself with a Fourth Amendment claim pertaining to wrongful pretrial detention. The relevant inquiry for a wrongful pretrial detention claim rests upon an

⁷² 471 U.S. 1 (1985).

⁷³ U.S. CONST. amend. IV (emphasis added).

⁷⁴ *Garner*, 471 U.S. at 3–4.

⁷⁵ *Id.* at 7 (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)).

⁷⁶ *Id.* at 8 (alteration omitted) (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)).

⁷⁷ *Id.* (quoting *Michigan v. Summers*, 452 U.S. 692, 700 n.12 (1981)).

⁷⁸ One example is excessive force claims, which may arise when "law enforcement officials use[] excessive force in the course of making an arrest, investigatory stop, or other 'seizure' of [a] person." *Graham v. Connor*, 490 U.S. 386, 388 (1989). Courts have also recognized § 1983 claims for false arrest based on "the Fourth Amendment right of an individual to be free from unreasonable seizures, including arrest without probable cause." *Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996).

absence of probable cause.⁷⁹ Specifically, a judge must find probable cause to justify an “extended restraint of liberty following arrest.”⁸⁰ Therefore, plaintiffs can bring § 1983 wrongful pretrial detention claims when held in pretrial detention without probable cause.⁸¹ Wrongful pretrial detention may occur prior to the formal legal process when, for instance, “the police hold someone without any reason before the formal onset of a criminal proceeding,” or after the start of the legal process, such as when a judge makes an erroneous probable cause determination.⁸²

Section 1983 wrongful pretrial detention claims may arise from various circumstances including clerical error,⁸³ the withholding of exculpatory evidence,⁸⁴ continued seizure notwithstanding a court order granting release,⁸⁵ or when evidence is fabricated against someone.⁸⁶ Wrongful pretrial detention claims specifically related to fabricated evidence differ from other types of wrongful pretrial detention claims. Instead of resulting from carelessness or malicious *inaction* (such as the withholding of exculpatory evidence), pretrial detention caused by fabricated evidence involves the deliberate *creation* of inculpatory testimony, documents, or physical evidence against an accused individual.⁸⁷ In this sense, pretrial detention caused by fabricated evidence should be considered a particularly egregious form of official misconduct.

Section 1983 claims of wrongful pretrial detention specifically caused by fabricated evidence have been litigated across numerous federal courts,⁸⁸ including in the recent Supreme

⁷⁹ See *Lewis v. City of Chicago*, 914 F.3d 472, 476–77 (7th Cir. 2019) (citing *Manuel*, 580 U.S. at 365).

⁸⁰ *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

⁸¹ See *id.* at 107; see also *Manuel*, 580 U.S. at 365 (noting that the Fourth Amendment “guarantee[s] ‘a fair and reliable determination of probable cause as a condition for any significant pretrial restraint’” (quoting *Gerstein*, 420 U.S. at 125)).

⁸² *Manuel*, 580 U.S. at 367.

⁸³ See *Vasquez v. Will Cnty. Sheriff’s Off.*, 2019 WL 4189477, at *4 (N.D. Ill. Sept. 5, 2019).

⁸⁴ See *Russo v. City of Bridgeport*, 479 F.3d 196, 199–201 (2d Cir. 2007). Exculpatory evidence refers to evidence “tending to establish a criminal defendant’s innocence.” *Exculpatory Evidence*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁸⁵ See *Williams v. Dart*, 967 F.3d 625, 630–32, 636 (7th Cir. 2020).

⁸⁶ See *Lewis*, 914 F.3d at 475–76.

⁸⁷ Inculpatory evidence refers to evidence “showing or tending to show one’s involvement in a crime.” *Inculpatory Evidence*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁸⁸ See generally, e.g., *DeLade v. Cargan*, 972 F.3d 207 (3d Cir. 2020); *Patrick v. City of Chicago*, 974 F.3d 824 (7th Cir. 2020); *Martin v. Julian*, 18 F.4th 580 (8th Cir. 2021);

Court case *Manuel v. City of Joliet*.⁸⁹ However, the Seventh Circuit and its accompanying district courts are the most active in the country with respect to § 1983 wrongful pretrial detention claims originating from fabricated evidence.⁹⁰ The concentration of wrongful pretrial detention litigation in the Seventh Circuit is notable because, as explained in the forthcoming sections, the circuits are fractured on the appropriate theory of liability for wrongful pretrial detention caused by fabricated evidence. While the Seventh Circuit has held that the only recourse for pretrial detention caused by fabricated evidence is a § 1983 Fourth Amendment claim,⁹¹ several circuits have concluded that this harm may give rise to *both* a § 1983 Fourth Amendment claim and a § 1983 Fourteenth Amendment claim.⁹² As previously mentioned, this Comment advocates for the latter regime because it may increase plaintiffs' odds of successfully alleging a constitutional injury, deter officers and prosecutors from committing this type of misconduct in the future, and, broadly speaking, protect the rule of law from subversion.⁹³

C. Fourteenth Amendment Claims

This Section attempts to define the Fourteenth Amendment's due process safeguards and apply them to the preconviction fabricated-evidence setting. Although due process in the context of fabrication of evidence first arose in cases involving individuals who were wrongfully *convicted*, the Supreme Court has never explicitly held that the Fourteenth Amendment's protections are limited to post-conviction scenarios. This Section surveys the Court's landmark due process fabricated-evidence cases, which reveal that the Court has maintained an ambiguous position on whether the Fourteenth Amendment extends to the pretrial

Myers v. Koopman, 738 F.3d 1190 (10th Cir. 2013); Hoskins v. Knox County, 2020 WL 1442668 (E.D. Ky. Mar. 23, 2020); Roe v. Johnson County, 2020 WL 5542333 (N.D. Tex. Sept. 15, 2020).

⁸⁹ *Manuel*, 580 U.S. at 367.

⁹⁰ See *supra* note 28.

⁹¹ *Lewis*, 914 F.3d at 479 ("The injury of wrongful pretrial detention may be remedied under § 1983 as a violation of the Fourth Amendment, not the Due Process Clause.").

⁹² *Smalls v. Collins*, 10 F.4th 117, 141 (2d Cir. 2021) ("*Manuel* did not rule out the possibility that . . . the Constitution *also* permits a due process claim that the plaintiff was deprived of life, liberty, or property as a result of the use of fabricated evidence." (emphasis added)).

⁹³ See *supra* note 35 and accompanying text.

context. This ambiguity has, in turn, fueled the ongoing circuit split addressed by this Comment.

*Mooney v. Holohan*⁹⁴ offers initial insight into the Supreme Court's conception of due process. In *Holohan*, the Court explained that the Due Process Clause "embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions."⁹⁵ The Court specifically noted that where a state has sought "to procure the conviction and imprisonment of a defendant" through knowingly perjured testimony, "[s]uch a contrivance . . . is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."⁹⁶ Although *Holohan* did not precisely define when state action deprives citizens of due process, the case involved a defendant who was wrongfully convicted through perjured testimony and the suppression of exculpatory evidence.⁹⁷

Decades after *Holohan*, the Supreme Court further clarified what, exactly, constitutes a due process injury by state officials. In *Napue v. Illinois*,⁹⁸ the Court opined that an individual has been deprived of due process when "the State, although not soliciting false evidence, allows it to go uncorrected when it appears."⁹⁹ Notably, this statement was unqualified, suggesting that a Fourteenth Amendment due process injury occurs whenever fabricated evidence is permitted to stand against an accused despite police or prosecutorial knowledge of its false character—regardless of the defendant's outcome at trial. Moreover, *Napue* posited that "[a] lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth."¹⁰⁰ Nevertheless, *Napue* and the cases it cited to support this proposition involved *convicted* defendants.¹⁰¹

⁹⁴ 294 U.S. 103 (1935).

⁹⁵ *Id.* at 112 (citing *Hebert v. Louisiana*, 272 U.S. 312, 316–17 (1926)).

⁹⁶ *Id.*

⁹⁷ *Id.* at 110–11.

⁹⁸ 360 U.S. 264 (1959).

⁹⁹ *Id.* at 269 (first citing *Alcorta v. Texas*, 355 U.S. 28 (1957); then citing *United States ex rel. Thompson v. Dye*, 221 F.2d 763 (3d Cir. 1955); then citing *United States ex rel. Almeida v. Baldi*, 195 F.2d 815 (3d Cir. 1952); and then citing *United States ex rel. Montgomery v. Ragen*, 86 F. Supp. 382 (N.D. Ill. 1949)).

¹⁰⁰ *Id.* at 269–70 (quotation marks omitted) (quoting *People v. Savvides*, 136 N.E.2d 853, 854–55 (N.Y. 1956)).

¹⁰¹ See, e.g., *Alcorta*, 355 U.S. at 30–32 (finding a due process violation where the prosecutor knowingly allowed a witness to testify falsely at trial, resulting in the

Four years after *Napue*, the Court decided *Brady v. Maryland*,¹⁰² which held that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment.”¹⁰³ In reaching this outcome, the Court noted in dicta that “the administration of justice suffers when any accused is treated unfairly.”¹⁰⁴ However, *Brady*, like *Napue* and *Holohan*, dealt with a defendant who was wrongfully convicted due to misconduct by public officials.¹⁰⁵ These three cases therefore left unresolved whether an individual who has false evidence levied against him, but who is not convicted of a crime, can assert a Fourteenth Amendment injury. Nevertheless, the broad language used by the Court in *Brady*, *Napue*, and *Holohan* provides some preliminary indication that it might not have considered wrongful conviction to be a requirement for § 1983 Fourteenth Amendment claims.

More recently, the Court’s plurality in *Albright v. Oliver*¹⁰⁶ opined on whether the Fourth Amendment or Fourteenth Amendment governs in preconviction settings. The plaintiff in *Albright* surrendered to state authorities upon being notified of a warrant for his arrest, was released on bail, and later had his charges dismissed because the state did not articulate a valid criminal offense.¹⁰⁷ Following the dismissal of these charges, Albright sued under § 1983 on the grounds that he had a “substantive right under the Due Process Clause . . . to be free from criminal prosecution except upon probable cause.”¹⁰⁸ However, the plurality rejected Albright’s theory, “hold[ing] that it is the Fourth Amendment, and not substantive due process, under

petitioner’s wrongful conviction and death sentence); *Thompson*, 221 F.2d at 767–68 (reversing and remanding the denial of habeas relief after vital testimony favorable to the relator-appellant was withheld and suppressed by the state); *Almeida*, 195 F.2d at 819 (holding that the petitioner was denied due process after the state deliberately suppressed evidence vital to his defense); *Montgomery*, 86 F. Supp. at 387 (holding that the petitioner was wrongfully convicted of rape, in violation of his due process rights, after prosecutors withheld and suppressed vital exculpatory evidence which “would certainly have resulted in [his] acquittal”).

¹⁰² 373 U.S. 83 (1963).

¹⁰³ *Id.* at 87.

¹⁰⁴ *Id.*

¹⁰⁵ *See id.* at 84–85.

¹⁰⁶ 510 U.S. 266 (1994) (plurality opinion).

¹⁰⁷ *Id.* at 268.

¹⁰⁸ *Id.*

which [his] claim must be judged.”¹⁰⁹ In reaching its decision, the *Albright* plurality noted that “[t]he Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it.”¹¹⁰ As such, *Albright* supports a narrow interpretation of due process in cases alleging preconviction constitutional injuries.

Despite *Albright*’s restricted view of due process, it did not resolve the question raised by this Comment for several reasons. First, *Albright* merely complained of being criminally prosecuted without probable cause; the case did not involve any allegation of intentional police or prosecutorial misconduct.¹¹¹ By contrast, this Comment deals with deliberately fabricated evidence levied against the accused, which arguably corrupts the trial process¹¹² and has downstream effects if the accused’s case proceeds to trial.¹¹³ Second, *Albright* was a plurality opinion, meaning that it is not binding on the Court in the same way that a majority opinion is.¹¹⁴ Lastly, *Albright*’s theory of liability rested on *substantive* due process, whereas fabrication of evidence arguably implicates *procedural* due process.

In any event, Justice John Paul Stevens’s dissent in *Albright* adopted an opposing view which thought it clear “that the interests protected by the Due Process Clause extend well beyond freedom from an improper criminal conviction.”¹¹⁵ Although Justice Stevens conceded that the contours of the Due Process Clause “have never been defined precisely,” he elucidated an expanded conception of due process that regarded “the formal commencement of a criminal proceeding” as the moment when a Fourteenth Amendment injury may occur.¹¹⁶ In other words, Justice Stevens’s broader interpretation of due process did not require a wrongful conviction in order for an individual to allege

¹⁰⁹ *Id.* at 271. *But see* Seales v. City of Detroit, 959 F.3d 235, 240 (6th Cir. 2020) (treating a § 1983 claim for wrongful pretrial detention as a due process injury).

¹¹⁰ *Albright*, 510 U.S. at 274.

¹¹¹ *See id.* at 269.

¹¹² *See infra* notes 230–231, 234 and accompanying text.

¹¹³ *See infra* notes 235–36 and accompanying text.

¹¹⁴ *See* CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 81 (1987) (noting that because a prior “plurality opinion . . . did not represent the views of a majority of the Court,” the Supreme Court was “not bound” by that prior reasoning).

¹¹⁵ *Id.* at 294 (Stevens, J., dissenting).

¹¹⁶ *Id.* at 294–95.

Fourteenth Amendment injuries; an unjust “arrest, prosecution, [or] trial” could qualify.¹¹⁷

Numerous federal courts have adopted a view of due process consistent with Justice Stevens’s position, particularly in cases where law enforcement concocted false evidence to deprive individuals of liberty. For instance, the Second Circuit in *Ricciuti v. N.Y.C. Transit Authority*¹¹⁸ concluded that an officer’s creation and forwarding of false evidence to prosecutors amounts to a cognizable Fourteenth Amendment injury, even where no wrongful conviction occurred.¹¹⁹ *Ricciuti* concerned two men who were wrongfully detained after police fabricated inculpatory evidence, but whose charges were ultimately dismissed before a trial took place.¹²⁰ Finding in favor of the plaintiffs, the Second Circuit noted that “[n]o arrest, no matter how lawful or objectively reasonable, gives an arresting officer . . . license to deliberately manufacture false evidence against an arrestee.”¹²¹ *Ricciuti*’s holding is therefore significant because it suggests that mere pretrial detention caused by fabricated evidence can give rise to a Fourteenth Amendment claim.

Other circuits have followed *Ricciuti*’s path. In 2001, the Ninth Circuit held that “there is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government.”¹²² In 2004, the Eighth Circuit in *Moran v. Clark*¹²³ denied a motion for summary judgment based on qualified immunity by officers who had tried to cover up misconduct by manufacturing evidence against another (innocent) officer “to effect his suspension, arrest, and prosecution.”¹²⁴ As background, “[q]ualified immunity protects government officials performing discretionary functions . . . from liability if their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have

¹¹⁷ Hon. Timothy Tymkovich & Hayley Stillwell, *Malicious Prosecution as Undue Process: A Fourteenth Amendment Theory of Malicious Prosecution*, 20 GEO. J.L. & PUB. POL’Y 225, 253–54 (2022) (citing *Albright*, 510 U.S. at 294–96).

¹¹⁸ 124 F.3d 123 (2d Cir. 1997).

¹¹⁹ *Id.* at 130.

¹²⁰ *Id.* at 125–27.

¹²¹ *Id.* at 130.

¹²² *Devereaux v. Abbey*, 263 F.3d 1070, 1074–75 (9th Cir. 2001) (en banc).

¹²³ 359 F.3d 1058 (8th Cir. 2004).

¹²⁴ *Id.* at 1059.

known.”¹²⁵ The Eighth Circuit’s summary judgment denial in *Moran* was premised on the fact that “it was clearly established at all relevant times that the conduct at issue . . . would amount to a substantive due process violation.”¹²⁶ Two years later, the Eleventh Circuit agreed with the Florida Supreme Court that “due process is violated if a prosecutor permits a defendant to be tried upon an indictment which he or she knows is based on perjured, material testimony without informing the court, opposing counsel, and the grand jury.”¹²⁷

II. CIRCUIT SPLIT EMERGENCE, INTERVENTION, AND CONTINUATION

As Part I demonstrates, modern federal courts have acknowledged that pretrial detention due to fabricated evidence may give rise to a § 1983 Fourth Amendment claim for wrongful pretrial detention. Some courts have additionally recognized a § 1983 Fourteenth Amendment claim for the due process injuries caused by fabricated evidence. However, in recognizing these distinct claims, a disagreement has emerged among the circuits as to the proper recourse for individuals placed in pretrial detention because of fabricated evidence. Could an individual under these circumstances raise a Fourth Amendment claim due to the unreasonable seizure they experienced? Could they raise a Fourteenth Amendment claim on the grounds that fabrication of evidence constitutes a due process injury? Or could they raise both a Fourth Amendment claim *and* a Fourteenth Amendment claim given that, where fabricated evidence leads to pretrial detention, the due process injury is intertwined with the unreasonable seizure?

Part II.A commences by explaining the circuit split that emerged under § 1983 with respect to individuals placed in pretrial detention because of fabricated evidence. Part II.B then describes the Supreme Court’s unsuccessful attempt in *Manuel v. City of Joliet* to provide clarity on this area of law. Finally, Part II.C surveys the post-*Manuel* legal landscape, which has merely perpetuated the preexisting § 1983 split.

¹²⁵ *Jacoby v. Baldwin County*, 835 F.3d 1338, 1343–44 (11th Cir. 2016) (quotation marks omitted) (quoting *Foy v. Holston*, 94 F.3d 1528, 1532 (11th Cir. 1996)).

¹²⁶ *Moran*, 359 F.3d at 1059.

¹²⁷ *Anderson v. Sec’y for Dep’t of Corr.*, 462 F.3d 1319, 1324 (11th Cir. 2006) (quotation marks omitted) (quoting *Anderson v. State*, 574 So.2d 87, 91–92 (Fla. 1991)).

A. Origins of the Circuit Split

In 2016, a disagreement emerged among the circuits over whether an individual could be deprived of due process absent a (wrongful) conviction. Whereas the Seventh Circuit posited that a conviction is required for an individual to bring forth a § 1983 Fourteenth Amendment claim,¹²⁸ other circuits have disagreed with this interpretation.¹²⁹

1. The Seventh Circuit's narrower interpretation of due process.

In 2016, the Seventh Circuit ruled on *Bianchi v. McQueen*,¹³⁰ which concerned a motion to dismiss a § 1983 suit brought by the former Illinois State's Attorney for McHenry County and several of his colleagues, all of whom had been indicted by a grand jury for official misconduct (which in Illinois requires an underlying crime), based on fabricated evidence.¹³¹ Specifically, the plaintiffs in *Bianchi* had been arrested and released on bond that same day, and were eventually acquitted at trial.¹³² Although the plaintiffs alleged Fourteenth Amendment injuries under § 1983 based on the fabricated evidence and their subsequent indictment, arrest, and trial, the Seventh Circuit rejected their claim because they "suffered no deprivation of liberty; they were acquitted at trial."¹³³ Judge Diane Sykes, writing for the majority, added that Seventh Circuit precedent recognized that "[i]t would be anomalous to hold that attending a trial deprives a criminal defendant of liberty without due process of law, when the purpose of trial is to *effectuate* due process."¹³⁴ Accordingly, even though *Bianchi* did not involve pretrial detention since the plaintiffs were

¹²⁸ See *Bianchi v. McQueen*, 818 F.3d 309, 319 (7th Cir. 2016) (quoting *Whitlock v. Brueggeman*, 682 F.3d 567, 580 (7th Cir. 2012)) ("[A]n act of evidence fabrication doesn't implicate due-process rights *unless* the fabricated evidence 'is later used to deprive the [criminal] defendant of her liberty in some way.'" (alteration and emphasis in original)).

¹²⁹ See *Black v. Montgomery County*, 835 F.3d 358, 370 (3d Cir. 2016) ("We see no reason to require a conviction as a prerequisite to a stand-alone due process claim against a state actor for fabrication of evidence."); *Klen v. City of Loveland*, 661 F.3d 498, 516 (10th Cir. 2011) ("[W]e cannot agree that a defendant's remedy under § 1983 for denial of due process based on the use of false evidence extends only to evidence presented as part of the prosecution's case at trial.").

¹³⁰ 818 F.3d 309 (7th Cir. 2016).

¹³¹ *Id.* at 313–16.

¹³² *Id.*

¹³³ *Id.* at 319.

¹³⁴ *Id.* at 320 (alteration and emphasis in original) (quotation marks omitted) (quoting *Alexander v. McKinney*, 692 F.3d 553, 557 n.2 (7th Cir. 2012)).

immediately released on bond, the Seventh Circuit seemed to imply that the Fourteenth Amendment's guarantees do not come in unless a wrongful *conviction* occurs.

2. Other circuits' broader interpretations of due process.

Whereas the Seventh Circuit held that an acquittal forecloses a § 1983 Fourteenth Amendment claim, several other circuits, such as the Third, Tenth, and Eleventh, rejected this theory. While these circuits offered somewhat differing explanations for recognizing § 1983 Fourteenth Amendment claims for plaintiffs injured by fabricated evidence, each seemed to premise its holding on the idea that fabrication of evidence corrupts a defendant's right to a fair trial process.

The Third Circuit decided *Black v. Montgomery County*¹³⁵ only months after *Bianchi*, and the two cases shared roughly parallel procedural setups. Namely, the plaintiff in *Black* was allegedly arrested based on fabricated evidence, released on bail, and later acquitted.¹³⁶ Yet unlike *Bianchi*, the Third Circuit in *Black* held that “an acquitted criminal defendant may have a stand-alone fabricated evidence claim against state actors under the due process clause of the Fourteenth Amendment if there is a reasonable likelihood that, absent that fabricated evidence, the defendant would not have been criminally charged.”¹³⁷ In reaching this holding, the Third Circuit emphasized that “[t]here is no meaningful reason why due process protections precluding fabricated evidence should turn on whether or not one is convicted at trial” because “corruption of the trial process [] occurs whether or not one is convicted.”¹³⁸ As the court seemed concerned with protecting due process rights at all stages of the criminal justice process, the Third Circuit conceptualized due process more broadly than the Seventh Circuit did in *Bianchi*.

The Eleventh Circuit in *Weiland v. Palm Beach County Sheriff's Office*¹³⁹ also allowed a § 1983 Fourteenth Amendment claim to stand where a plaintiff was criminally charged because of fabricated evidence, despite the plaintiff's acquittal.¹⁴⁰ Christopher Weiland was allegedly shot, tasered, and beaten by

¹³⁵ 835 F.3d 358 (3d Cir. 2016).

¹³⁶ *Id.* at 362–63.

¹³⁷ *Id.* at 371.

¹³⁸ *Id.* at 370.

¹³⁹ 792 F.3d 1313 (11th Cir. 2015).

¹⁴⁰ *See id.* at 1317.

officers without justification, and officers thereafter attempted to conceal their brutality by concocting a false story—supplemented with fabricated evidence—that painted Weiland as the initial aggressor.¹⁴¹ Based on the officers’ misconduct, Weiland was held in pretrial detention for almost two years until he was ultimately acquitted.¹⁴² Importantly, Weiland sought redress under the Fourteenth Amendment on the grounds that the officers’ fabrication of evidence and attempted cover up resulted in his unlawful detention.¹⁴³ Then–Chief Judge Ed Carnes held that “the specific injury identified by Weiland—i.e., unjust incarceration—is a deprivation of liberty redressable under the Due Process Clause of the Fourteenth Amendment.”¹⁴⁴ In reaching this outcome, then–Chief Judge Carnes emphasized the “causal connection between the alleged cover up and the specific deprivation of Weiland’s constitutional rights.”¹⁴⁵

The Tenth Circuit reached an outcome similar to those reached by the Third and Eleventh Circuits in the context of fabricated evidence used before trial.¹⁴⁶ *Klen v. City of Loveland*¹⁴⁷ concerned a plaintiff who alleged due process injuries after fabricated evidence was used to initiate a prosecution and secure a no-contest plea against him.¹⁴⁸ Notwithstanding Klen’s no-contest plea, the Tenth Circuit noted that the “[u]se of an indictment based on perjured testimony to bring *charges* . . . represents a denial of due process.”¹⁴⁹ In doing so, the *Klen* court rejected the idea that the “remedy under § 1983 for denial of due process based on the use of false evidence extends only to evidence presented as part of the prosecution’s case at trial.”¹⁵⁰

To summarize, a circuit split existed prior to *Manuel* as to whether an individual could raise a § 1983 Fourteenth Amendment claim where evidence had been deliberately

¹⁴¹ *Id.*

¹⁴² *Id.* at 1327.

¹⁴³ *Id.* at 1327–28.

¹⁴⁴ *Weiland*, 792 F.3d at 1328 (citing *Campbell v. Johnson*, 586 F.3d 835, 840 (11th Cir. 2009)).

¹⁴⁵ *Id.* (citing *Hadley v. Gutierrez*, 526 F.3d 1324, 1332 (11th Cir. 2008)).

¹⁴⁶ See generally *Klen*, 661 F.3d 498.

¹⁴⁷ 661 F.3d 498 (10th Cir. 2011).

¹⁴⁸ *Id.* at 507, 515. A no-contest plea is a plea that enables a defendant to “admit the truth of the facts alleged in [an] indictment” but not admit guilt. Robert A. Beattley, *What You Should Know About Pleading “No Contest”*, OHIO BAR (Sept. 27, 2016), <https://perma.cc/444D-EJFV>.

¹⁴⁹ *Klen*, 661 F.3d at 516 (emphasis added) (citing *Anderson*, 462 F.3d at 1324).

¹⁵⁰ *Id.*

fabricated and used against him, but where he ultimately was not wrongfully convicted. The Seventh Circuit¹⁵¹ rejected such a possibility, whereas the Third,¹⁵² Tenth,¹⁵³ and Eleventh¹⁵⁴ Circuits agreed that § 1983 Fourteenth Amendment claims based on false evidence did not require wrongful conviction.¹⁵⁵

B. *Manuel v. City of Joliet*

Amid growing disagreement between the circuits, the Supreme Court granted certiorari to determine whether an individual could “bring a claim based on the Fourth Amendment to contest the legality of his pretrial confinement.”¹⁵⁶ *Manuel* was directly relevant to the split between the Seventh Circuit and Eleventh Circuit over whether wrongful pretrial detention establishes a constitutional claim under the Fourth or Fourteenth Amendment.¹⁵⁷ The case involved a man who was held in jail for nearly two months after a judge relied “entirely on made-up evidence” to find probable cause that he had unlawfully possessed controlled substances before the charge against him was ultimately dropped.¹⁵⁸ *Manuel* held that “[i]f the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment.”¹⁵⁹ Thus, the Court made clear that the right against wrongful pretrial detention is protected by the Fourth Amendment. In doing so, *Manuel* seemingly overturned the Eleventh Circuit’s conclusion in *Weiland* that “unjust [pretrial] incarceration [] is a deprivation of liberty redressable under the Due Process Clause of the Fourteenth Amendment.”¹⁶⁰

¹⁵¹ See *Bianchi*, 838 F.3d at 319.

¹⁵² See *Black*, 835 F.3d at 370.

¹⁵³ See *Klen*, 661 F.3d at 516.

¹⁵⁴ See *Weiland*, 792 F.3d at 1328.

¹⁵⁵ To be clear, other circuits weighed in on this split pre-*Manuel*. For instance, the Fourth Circuit agreed with the Seventh Circuit that a plaintiff must have been wrongfully convicted and incarcerated before he can bring a § 1983 Fourteenth Amendment claim. See *Massey v. Ojaniit*, 759 F.3d 343, 354 (4th Cir. 2014). By contrast, the Second, Eighth, and Ninth Circuits did not think that a wrongful conviction was necessary for a plaintiff to raise a § 1983 Fourteenth Amendment claim. See, e.g., *Ricciuti*, 124 F.3d at 130; *Moran*, 359 F.3d at 1061; *Devereaux v. Abbey*, 263 F.3d 1070, 1074–75 (9th Cir. 2001) (en banc). This Section merely introduces the circuit split that existed prior to the Supreme Court’s *Manuel* decision in 2017, which is why not every circuit decision is discussed at length.

¹⁵⁶ *Manuel*, 580 U.S. at 359–60.

¹⁵⁷ *Id.* at 359–62.

¹⁵⁸ *Id.* at 362.

¹⁵⁹ *Id.* at 367.

¹⁶⁰ *Weiland*, 792 F.3d at 1328 (citing *Campbell*, 586 F.3d at 840).

Apart from casting doubt on *Weiland*'s position, the Supreme Court in *Manuel* drew an implicit temporal distinction between § 1983 claims grounded in the Fourth Amendment and those grounded in the Fourteenth Amendment. Whereas the Court viewed the Fourth Amendment as controlling claims of unlawful pretrial detention regardless of the originating cause of the detention, it added that "once a trial has occurred, the Fourth Amendment drops out: [a] person challenging the sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment."¹⁶¹ *Manuel* thus explained that § 1983 claims at the post-conviction stage are governed by the Fourteenth Amendment.

However, the Court failed to clarify whether its holding also means that the Fourth Amendment provides the *only* recourse for an individual who suffered pretrial detention because of fabricated evidence but who was never convicted. In such a situation, the wrongful pretrial detention presumably counts as an unreasonable seizure under the Fourth Amendment. But, given that fabricated evidence was used to deprive the individual of liberty and corrupted the integrity and fairness of his trial process, could an individual under these circumstances additionally raise a § 1983 Fourteenth Amendment claim? This dilemma ignited a controversy among the circuits which persists to this day.

C. A Deepening Rift: Post-*Manuel* Circuit Disagreements

Following *Manuel*, federal courts still had to decide whether an individual who was placed in pretrial detention—but not convicted—because of fabricated evidence could raise a § 1983 Fourteenth Amendment claim (in addition to a § 1983 Fourth Amendment claim). The Seventh Circuit has maintained post-*Manuel* that the Fourth Amendment is the exclusive path to redressability for an individual who has been held in pretrial detention due to fabricated evidence. However, other circuits have not interpreted *Manuel* in such stringent terms, allowing Fourteenth Amendment claims based upon pretrial detention caused by fabricated evidence.

¹⁶¹ *Manuel*, 580 U.S. at 369 n.8.

1. The Seventh Circuit's stricter reading of *Manuel*.

In *Lewis v. City of Chicago*,¹⁶² the Seventh Circuit heard the case of a man who was arrested for illegally possessing a firearm after police searched an apartment with him (and others) inside and found a gun.¹⁶³ Despite the man's insistence—and seemingly no evidence to the contrary—that he did not reside at the apartment, officers allegedly filed false reports stating, in part, that the man had admitted to living there.¹⁶⁴ After spending two years in pretrial detention until his charges were dropped, the man sued under § 1983, asserting Fourth Amendment injuries for unlawful pretrial detention and Fourteenth Amendment injuries for the police-fabricated reports that led to his detention.¹⁶⁵ Nevertheless, the Seventh Circuit declared that, under *Manuel*, “the Fourth Amendment, not the Due Process Clause, is the source of the right in a § 1983 claim for unlawful pretrial detention.”¹⁶⁶ Drawing upon the temporal distinction suggested by *Manuel*,¹⁶⁷ the Seventh Circuit added that “a claim for wrongful pretrial detention based on fabricated evidence is distinct from a claim for wrongful *conviction* based on fabricated evidence.”¹⁶⁸ In doing so, the Seventh Circuit maintained its pre-*Manuel* stance that an acquittal forecloses the possibility of raising a § 1983 Fourteenth Amendment claim.¹⁶⁹

After *Lewis*, the Seventh Circuit has on several occasions reaffirmed its position that only a Fourth Amendment claim can be raised in a case involving pretrial detention caused by fabricated evidence. For example, *Patrick v. City of Chicago*¹⁷⁰ asserted that a “claim for . . . pretrial detention based on fabricated evidence sounds in the Fourth Amendment right to be free from seizure without probable cause.”¹⁷¹ Building on the temporal distinction set forth in *Manuel* and *Lewis*, the Seventh Circuit in *Patrick* continued that “[i]f fabricated evidence is later used at trial to obtain a conviction, the accused may have suffered

¹⁶² 914 F.3d 472 (7th Cir. 2019).

¹⁶³ *Id.* at 475.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 476, 478.

¹⁶⁶ *Id.* at 479.

¹⁶⁷ *Manuel*, 580 U.S. at 369 n.8 (citing *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)).

¹⁶⁸ *Lewis*, 914 F.3d at 479 (emphasis in original).

¹⁶⁹ See *Bianchi*, 818 F.3d at 319–20.

¹⁷⁰ 974 F.3d 824 (7th Cir. 2020).

¹⁷¹ *Id.* at 834 (citing *Lewis*, 914 F.3d at 476–78).

a violation of his due-process right to a fair trial.”¹⁷² The Seventh Circuit reiterated this view in *Young v. City of Chicago*¹⁷³ by asserting that *Manuel* “did not say that the right [against wrongful pretrial detention] ‘could lie’ in the Fourth Amendment[;] [i]t said that the right *lies* there.”¹⁷⁴

2. Other circuits’ looser readings of *Manuel*.

In 2021, the Second Circuit in *Smalls v. Collins*¹⁷⁵ articulated an expansive view of due process that extends beyond the confines of a trial. Namely, *Smalls* recognized that “a criminal defendant’s right to a fair trial protects more than the fairness of the trial itself[;] [i]ndeed, a criminal defendant can bring a fair trial claim even when no trial occurs at all.”¹⁷⁶ *Smalls* concerned a plaintiff who had been falsely charged, arraigned, and detained because of fabricated evidence prior to having his case dismissed and case file sealed.¹⁷⁷ While *Smalls* acknowledged *Manuel*’s holding, it nevertheless opined that “*Manuel* did not rule out the possibility that . . . the Constitution also permits a due process claim that the plaintiff was deprived of life, liberty, or property as a result of the use of fabricated evidence.”¹⁷⁸

The Second Circuit reached an outcome similar to *Smalls* in *Barnes v. City of New York*.¹⁷⁹ In that case, Tommy Barnes alleged that New York City police officers “falsely claimed that they observed Barnes selling a controlled substance” and forwarded their claims to a county prosecutor, “resulting in Barnes’s prosecution” for drug possession and sale.¹⁸⁰ After being placed in pretrial detention, Barnes was convicted of drug *possession* but acquitted of drug *sale*.¹⁸¹ Barnes then sued under § 1983 for fabrication of evidence based on the officers’ allegedly false statements that they had witnessed him selling drugs.¹⁸² Despite

¹⁷² *Id.* (citing *Lewis*, 914 F.3d at 479).

¹⁷³ 987 F.3d 641 (7th Cir. 2021).

¹⁷⁴ *Id.* at 646 (emphasis added).

¹⁷⁵ 10 F.4th 117 (2d Cir. 2021).

¹⁷⁶ *Id.* at 141 (alteration in original) (quotation marks omitted) (quoting *Frost v. N.Y.C. Police Dep’t*, 980 F.3d 231, 249 (2d Cir. 2020)).

¹⁷⁷ *Id.* at 129, 140.

¹⁷⁸ *Id.* at 141.

¹⁷⁹ 68 F.4th 123 (2d Cir. 2023). Although *Barnes* did not cite *Manuel* in its opinion, the broad conception of due process *Barnes* lays forth is directly relevant to the post-*Manuel* circuit split.

¹⁸⁰ *Id.* at 126.

¹⁸¹ *Id.*

¹⁸² *Id.*

the district court's dismissal of Barnes's claim on the grounds that "he failed to allege a deprivation of liberty"¹⁸³ because he "would have been held in the same place for the same amount of time"¹⁸⁴ due to his drug possession charge and conviction, the Second Circuit reversed.¹⁸⁵ Writing for the majority, Judge Eunice Lee reasoned that "[t]he use of fabricated evidence in initiating a prosecution or at trial may amount to a deprivation of liberty even in the absence of a conviction based on the fabricated evidence and even when, as here, a plaintiff simultaneously was charged, detained, tried, and convicted for a separate offense."¹⁸⁶ Judge Lee added that "Barnes's *prosecution* for drug sale on the basis of allegedly fabricated evidence deprived him of liberty in violation of his right to due process," and that such a disposition was true "even without reference to the time Barnes spent in pretrial detention for both the drug sale charge and the drug possession charge."¹⁸⁷ In reaching this outcome, *Barnes* noted that fabrication of evidence can violate an individual's due process rights "by consequences beyond custody" such as reputational damage, the need to "mount a defense," and being placed "in the power of a court of law."¹⁸⁸

The Fifth Circuit has adopted a position analogous to that of the Second Circuit. In *Cole v. Carson*,¹⁸⁹ the en banc Fifth Circuit insisted that *Manuel* "does not hold that the Fourth Amendment provides the *exclusive* basis for a claim asserting pre-trial deprivations based on fabricated evidence."¹⁹⁰ *Carson* involved a plaintiff who alleged Fourteenth Amendment injuries based on false charges stemming from fabricated evidence and Fourth Amendment injuries based on an unreasonable seizure caused by excessive force.¹⁹¹ Notwithstanding *Manuel*'s ruling, the en banc

¹⁸³ *Id.* at 128.

¹⁸⁴ *Barnes*, 68 F.4th at 127.

¹⁸⁵ *Id.* at 133–34.

¹⁸⁶ *Id.* at 129–30; *see also id.* at 130 ("Barnes was prosecuted for two different charges and suffered different deprivations of liberty as a result. One of these prosecutions was allegedly based on fabricated evidence, in violation of due process.").

¹⁸⁷ *Id.* at 130 (emphasis added).

¹⁸⁸ *Barnes*, 68 F.4th at 130 (quotation marks omitted) (quoting *Garnett v. Undercover Officer C0039*, 838 F.3d 265, 279 (2d Cir. 2016)).

¹⁸⁹ 935 F.3d 444 (5th Cir. 2019) (en banc).

¹⁹⁰ *Id.* at 451 n.25 (emphasis added); *see also Jauch v. Choctaw County*, 874 F.3d 425, 429 (5th Cir. 2017) ("*Manuel* does not address the availability of due process challenges after a legal seizure, and it cannot be read to mean . . . that *only* the Fourth Amendment is available to pre-trial detainees." (emphasis in original)).

¹⁹¹ *Carson*, 935 F.3d at 450.

court recognized both the Fourth Amendment *and* Fourteenth Amendment claims as legitimate for § 1983 purposes.¹⁹²

The Ninth Circuit in *Richards v. County of San Bernardino*¹⁹³ joined the Second Circuit and Fifth Circuit by affirming that “[t]here is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government.”¹⁹⁴ *Richards* concerned a § 1983 plaintiff who alleged that law enforcement attempted to frame him for his wife’s murder by planting fibers from the shirt he was wearing on the night of the murder under his deceased wife’s fingernails.¹⁹⁵ The Ninth Circuit, in ruling for the § 1983 plaintiff on the defendants’ motion for summary judgment, reasoned that “[i]t would be anomalous to turn away a plaintiff who has been injured by deliberately fabricated evidence simply because that evidence alone was not sufficient to cause [a] conviction—the right to a fair trial is impinged either way.”¹⁹⁶ Curiously, however, the Ninth Circuit did not mention *Manuel*, and the case did not even involve someone who had faced pretrial detention before ultimately being acquitted; the plaintiff had been convicted and served twenty years in prison prior to his release.¹⁹⁷ Consequently, the Ninth Circuit’s post-*Manuel* stance on whether individuals held in pretrial detention based on fabricated evidence can raise § 1983 Fourteenth Amendment claims is not entirely certain. However, prior to *Manuel*, the Ninth Circuit answered this question in the affirmative, so one might assume its stance has remained consistent.¹⁹⁸

III. INTERPRETATION OF THE POST-MANUEL SPLIT

As it stands, a circuit split has persisted post-*Manuel* regarding whether pretrial detention caused by fabricated evidence can give rise to a § 1983 Fourteenth Amendment claim in addition to a § 1983 Fourth Amendment claim. The Seventh

¹⁹² *Id.* at 451. Note, however, that *Carson* dismissed the plaintiff’s § 1983 Fourth Amendment claim because of qualified immunity, while it allowed the plaintiff’s § 1983 Fourteenth Amendment claim to proceed. *See id.*

¹⁹³ 39 F.4th 562 (9th Cir. 2022).

¹⁹⁴ *Id.* at 569 (alteration in original) (quotation marks omitted) (quoting *Devereaux*, 263 F.3d at 1074–75).

¹⁹⁵ *Id.* at 566–67.

¹⁹⁶ *Id.* at 573.

¹⁹⁷ *Id.* at 568.

¹⁹⁸ *See Bradford v. Scherschligt*, 803 F.3d 382, 388–89 (9th Cir. 2015).

Circuit has held that a Fourteenth Amendment claim cannot be raised, whereas the Second Circuit, Fifth Circuit, and Ninth Circuit have suggested that it can. This Part will present legal and policy arguments in favor of a legal regime which allows these two § 1983 claims to coexist in instances where fabricated evidence has resulted in pretrial detention against an accused individual. The legal arguments focus on *McDonough v. Smith*, a 2019 Supreme Court case that undercuts the Seventh Circuit's narrow position, as well as pragmatic considerations flowing from the Constitution's text. On the policy side, this Comment argues that a bifurcated § 1983 legal regime could increase plaintiffs' chances of succeeding on their causes of action, deter misconduct by law enforcement officials, and help safeguard the rule of law.

A. Legal Arguments for Fourth and Fourteenth Amendment Claims

As made clear in *Manuel*, the Fourth Amendment serves as a source of redress for individuals who have been held in wrongful pretrial detention, regardless of what caused the detention.¹⁹⁹ This Comment does not dispute *Manuel*'s position. Rather, this Comment argues that where pretrial detention has been caused by fabricated evidence, plaintiffs may *additionally* raise a Fourteenth Amendment claim because the fabricated evidence has corrupted the criminal justice process and deprived them of liberty. *Manuel* did not foreclose this possibility, and such an outcome is warranted based on a closer inspection of *McDonough v. Smith*, as well as a textualist reading of the Constitution.

1. *McDonough v. Smith*.

At present, the Seventh Circuit has incorrectly interpreted *Manuel* to preclude Fourteenth Amendment § 1983 claims at the pretrial stage.²⁰⁰ However, *Manuel* never explicitly drew such a distinction; the Seventh Circuit merely assumed that it did.²⁰¹ Additionally, the Seventh Circuit's post-*Manuel* temporal

¹⁹⁹ *Manuel*, 580 U.S. at 367–68.

²⁰⁰ See *Lewis*, 914 F.3d at 479; see also *Patrick*, 974 F.3d at 835 (stating that a § 1983 Fourteenth Amendment claim requires a defendant to be “convicted and imprisoned based on knowingly falsified evidence”).

²⁰¹ *Manuel* states that “once a trial has occurred, the Fourth Amendment drops out” and a challenge to the sufficiency of the evidence used to support a conviction is governed by the Fourteenth Amendment. *Manuel*, 580 U.S. at 369 n.8. However, it does not necessarily follow that the Fourth Amendment exclusively governs pretrial contexts.

division has been seriously undermined by *McDonough v. Smith*, decided by the Supreme Court two years after *Manuel*.

In *McDonough*, the Supreme Court considered a § 1983 claim from a plaintiff who alleged that a state prosecutor had fabricated evidence against him, resulting in a grand jury indictment.²⁰² Following the indictment, Edward McDonough was “arrested, arraigned, and released (with restrictions on his travel)” until he was eventually acquitted at trial.²⁰³ Although McDonough “d[id] not ground his fabricated-evidence claim in a particular constitutional provision,” the Second Circuit treated the claim as one arising out of the *Fourteenth Amendment*, a position the Supreme Court “assume[d] without deciding . . . [was] sound.”²⁰⁴ In any case, the question considered by *McDonough* was whether the statute of limitations for a Fourteenth Amendment claim begins to run when an individual learns that evidence was fabricated against him and resulted in his loss of liberty, or whether the claim does not accrue “until the criminal proceedings against the [§ 1983 plaintiff] have terminated in his favor.”²⁰⁵ The Court decided on the latter option, settling on an outcome that is more favorable towards § 1983 plaintiffs because it pushes back the expiration date for the statute of limitations.

At first glance, it might appear that *McDonough* provides little guidance for resolving the post-*Manuel* split because the plaintiff was not held in pretrial detention and the Supreme Court grappled with an accrual issue rather than the merits of a § 1983 Fourteenth Amendment claim.²⁰⁶ However, the fact that the Court did not outright dismiss McDonough’s claim given his acquittal undercuts the Seventh Circuit’s temporal distinction between the Fourth Amendment and Fourteenth Amendment. That is, notwithstanding the Seventh Circuit’s interpretation of *Manuel*, the *McDonough* Court—at least implicitly—did not believe that McDonough’s acquittal forbade him from raising a § 1983 Fourteenth Amendment claim. This assertion is bolstered

²⁰² *McDonough*, 139 S. Ct. at 2153–54.

²⁰³ *Id.* at 2154.

²⁰⁴ *Id.* at 2155.

²⁰⁵ *Id.* at 2154–55.

²⁰⁶ Indeed, Justice Clarence Thomas’s dissent in *McDonough* chastises the majority for acceding to “McDonough’s failure to specify which constitutional right [Smith] allegedly violated.” *Id.* at 2161 (Thomas, J., dissenting).

by the fact that the *McDonough* petitioners explicitly briefed the Court on the very circuit split this Comment focuses on.²⁰⁷

McDonough also subtly referenced the post-*Manuel* circuit split in a footnote. The Court stated that “[i]n accepting the . . . treatment of *McDonough*’s claim as one sounding in denial of due process, [the Court] express[ed] no view as to what other constitutional provisions (if any) might provide safeguards against the creation or use of fabricated evidence enforceable through a 42 U.S.C. § 1983 action.”²⁰⁸ Furthermore, *McDonough* recognized that “[c]ertain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution’s commands.”²⁰⁹ The implication, then, is that both Fourth Amendment and Fourteenth Amendment claims can be cognizable where pretrial detention is caused by fabricated evidence.

Viewed in its entirety, *McDonough* seems to dispel the Seventh Circuit’s justification for not allowing a § 1983 Fourteenth Amendment claim to be raised alongside a § 1983 Fourth Amendment claim where an individual has been held in pretrial detention due to fabricated evidence. Namely, *McDonough* contradicts the temporal rationale that the Seventh Circuit has relied on to reject preconviction § 1983 Fourteenth Amendment claims.²¹⁰ Yet equally important is *McDonough*’s endorsement of the idea that certain wrongs can implicate several constitutional rights. A reasonable extension of this principle is that where a wrong violates multiple rights, an individual harmed by the wrong should be able to raise a separate claim for each right violated. Hence, where someone is unlawfully held in pretrial detention due to fabricated evidence, they should be able to raise two § 1983 claims: one for the Fourth Amendment injury and another for the Fourteenth Amendment injury.

Although the Seventh Circuit has had at least one occasion post-*McDonough* to hear a case involving pretrial detention due to fabricated evidence where the plaintiff alleged both Fourth Amendment and Fourteenth Amendment injuries,²¹¹ it did not even acknowledge *McDonough*. In *Young v. City of Chicago*, the

²⁰⁷ Brief for Petitioner at 41–43, *McDonough v. Smith*, 139 S. Ct. 2149 (2019) (No. 18–485).

²⁰⁸ *McDonough*, 139 S. Ct. at 2155 n.2 (citing *Soldal v. Cook County*, 506 U.S. 56, 70 (1992)).

²⁰⁹ *Id.* (quotation marks omitted) (quoting *Soldal*, 506 U.S. at 70).

²¹⁰ See *Lewis*, 914 F.3d at 479.

²¹¹ See *Young*, 987 F.3d at 642–43.

Seventh Circuit merely reiterated its read of *Manuel* and restated the (incorrect) premise that the Fourth Amendment exclusively governs § 1983 claims dealing with wrongful pretrial detention.²¹² To add insult to injury, the Seventh Circuit trivialized the importance of the plaintiff's § 1983 Fourteenth Amendment claim, noting that it would not "add[] a due process claim to the mix just so [the plaintiff] can have another bite at the apple."²¹³ Considering that the Constitution does not give preference to certain amendments at the expense of others, and that the plaintiff in *Young* genuinely alleged Fourteenth Amendment injuries as a result of evidence being fabricated against him, his claim should have merited more discussion than an idiom downplaying the constitutional violation. *Young's* stance is therefore, at best, a misreading of the law in light of *McDonough*, and at worst, a disregard for the protections safeguarded by the Fourteenth Amendment.

2. Constitutional pragmatism.

Beyond the inferences that one might draw from *McDonough*, the text of the Constitution itself suggests that individuals held in pretrial detention because of fabricated evidence have suffered two constitutional injuries. In plain terms, the Fourth Amendment protects against "unreasonable . . . seizures,"²¹⁴ and the Fourteenth Amendment prohibits states from "depriv[ing] any person of [] liberty . . . without due process of law."²¹⁵ Nowhere does the Constitution say that when a person has been seized without probable cause, the Fourth Amendment forecloses the possibility that she has also suffered a Fourteenth Amendment injury unless wrongful conviction occurs. If the Fourteenth Amendment is concerned with ensuring the just treatment of defendants²¹⁶ and preserving the integrity of the trial process,²¹⁷ and the deliberate use of fabricated evidence against an individual inherently subverts the individual's right to a fair trial process, then a defendant held in pretrial detention because

²¹² *Id.* at 646 ("We will continue to heed [*Manuel's*] instruction.").

²¹³ *Id.*

²¹⁴ U.S. CONST. amend. IV.

²¹⁵ U.S. CONST. amend. XIV, § 1.

²¹⁶ *See Brady*, 373 U.S. at 87.

²¹⁷ *See Smalls*, 10 F.4th at 141 (quoting *Frost v. N.Y.C. Police Dep't*, 980 F.3d 231, 249 (2d Cir. 2020)).

of fabricated evidence is deprived of his Fourteenth Amendment rights—in addition to being unreasonably seized.

Comparisons to other constitutional rights in the criminal process context demonstrate the absurdity of holding that the Fourth and Fourteenth Amendments are mutually exclusive in this context. For instance, the Supreme Court has held that the Sixth Amendment's right to counsel "covers pretrial interrogations."²¹⁸ It would be absurd for someone who was unconstitutionally detained and interrogated without access to counsel to be prevented from raising both Fourth and Sixth Amendment claims under § 1983. By similar logic, it is unreasonable for an individual who was placed in pretrial detention because of fabricated evidence to be prevented from bringing both Fourth Amendment and Fourteenth Amendment claims under § 1983. While the Seventh Circuit might counter that the Fourteenth Amendment, unlike the Sixth Amendment, has not been explicitly recognized in pretrial settings, *McDonough* clearly suggests that the Fourteenth Amendment *can* plausibly extend to the pretrial context.²¹⁹

Simply put, the Fourth Amendment and Fourteenth Amendment function as separate components that safeguard different constitutional rights, and these rights happen to overlap when an individual is held in pretrial detention due to fabricated evidence. This rationale is emphasized by the fact that, generally speaking, a detainee's due process rights may be violated even if her initial seizure was reasonable, or a seizure may be unreasonable yet *not* violate due process. When someone is placed in pretrial detention after fabricated evidence is used to secure a probable cause finding against her, she has been unreasonably seized in violation of the Fourth Amendment. *Manuel* makes this clear. However, as articulated by the Second Circuit's conception of due process, in which "a criminal defendant's right to a fair trial protects more than the fairness of the trial itself,"²²⁰ she may further assert that the legitimacy of the trial process has been tainted by the deliberately fabricated evidence, thus implicating the Fourteenth Amendment's protections.

²¹⁸ *Kansas v. Ventris*, 556 U.S. 586, 591 (2009).

²¹⁹ See *McDonough*, 139 S. Ct. at 2155.

²²⁰ *Smalls*, 10 F.4th at 141 (quotation marks omitted) (quoting *Frost*, 980 F.3d at 249); see also *Black*, 835 F.3d at 370 (explaining that Fourteenth Amendment protections extend beyond mere wrongful conviction because "corruption of the trial process [] occurs whether or not one is convicted").

A simple exercise more readily distinguishes the rights safeguarded by the Fourth Amendment and Fourteenth Amendment. When a person is detained based on a legitimate finding of probable cause, and the criminal justice process is not tainted by official misconduct, she has neither suffered a Fourth Amendment injury nor a Fourteenth Amendment injury. But if an individual is held in pretrial detention following a *legitimate* finding of probable cause, and evidence is later fabricated against her prior to trial, she arguably may have suffered a Fourteenth Amendment injury even if her Fourth Amendment right was not infringed upon.²²¹ By contrast, if an individual is held in pretrial detention due to, say, a clerical error, but no evidence is ever fabricated against her, her Fourth Amendment rights have been violated even though she has not necessarily been deprived of due process under the Fourteenth Amendment.²²² In each instance, the Fourth Amendment and Fourteenth Amendment protect against separate and distinct harms. It therefore stands to reason that an individual who is wrongfully detained after evidence is fabricated against her is doubly injured under the Fourth Amendment *and* Fourteenth Amendment.

B. Policy Considerations Favor a Dual § 1983 Regime

This Section evaluates a number of policy rationales that justify a § 1983 legal regime in which plaintiffs can bring both a Fourteenth Amendment claim and a Fourth Amendment claim for unconstitutional pretrial detention as proposed by this Comment. It discusses the social and economic harms of pretrial detention, emphasizing that these harms are amplified when pretrial detention is caused by fabricated evidence. Additionally, it explores how the addition of a Fourteenth Amendment claim

²²¹ See *Ricciuti*, 124 F.3d at 129–30:

Each of the [§ 1983] defendants insists that so long as there was probable cause for [the § 1983 plaintiff's] arrest—independent of the allegedly fabricated evidence—the fabrication of evidence is legally irrelevant. . . . This argument—an ill-conceived attempt to erect a legal barricade to shield police officials from liability—is built on the most fragile of foundations.

See also *Hoyos v. City of New York*, 999 F. Supp. 2d 375, 394 (E.D.N.Y. 2013) (suggesting that a plaintiff may raise a Fourteenth Amendment claim notwithstanding independent probable cause against him if “fabrications led him to be charged with a more serious crime or detained for a longer period of time”).

²²² See *Berg v. County of Allegheny*, 219 F.3d 261, 269, 271 (3d Cir. 2000) (finding a Fourth Amendment violation after a clerical error generated an erroneous warrant which led to the defendant's arrest and five-day detention).

may increase the probability that victims of police or prosecutorial misconduct obtain redress for their injuries. This Section next contends that the added threat of liability imposed by a dual legal regime could help deter official misconduct, before discussing how fabrication of evidence threatens to undermine the rule of law more generally, and why the Fourteenth Amendment—not the Fourth Amendment—is best situated to address this threat.

Notwithstanding the ambiguity surrounding this area of law, certain Justices have been willing to consider normative implications in arguing that pretrial detention implicates the Fourteenth Amendment. For example, in *Baker v. McCollan*,²²³ the Supreme Court heard the case of an individual who was arrested and detained for several days due to mistaken identity.²²⁴ The individual sued under § 1983, asserting Fourteenth Amendment injuries because of his wrongful continued detention.²²⁵ Although the Court ultimately rejected this argument, noting that “[t]he Constitution does not guarantee that only the guilty will be arrested,”²²⁶ Justice John Paul Stevens argued in dissent that “[p]retrial detention unquestionably involves a serious deprivation of individual liberty.”²²⁷ Specifically, Justice Stevens noted that “[p]retrial confinement may imperil [a] suspect’s job, interrupt his source of income, and impair his family relationships.”²²⁸ Contemplating the heavy societal costs associated with detention, Justice Stevens claimed that “[t]he burdens of pretrial detention are substantial ones to impose on a presumptively innocent man.”²²⁹

Indeed, individuals placed in pretrial detention—wrongfully or not—suffer significant repercussions from their detention.²³⁰ Pretrial detention in and of itself increases a detainee’s likelihood of pleading guilty, being convicted, and receiving a lengthier sentence upon conviction.²³¹ The downstream effects of pretrial

²²³ 443 U.S. 137 (1979).

²²⁴ *Id.* at 141.

²²⁵ *Id.* at 143–44.

²²⁶ *Id.* at 145.

²²⁷ *Id.* at 153 (Stevens, J., dissenting).

²²⁸ *Baker*, 443 U.S. at 153 (Stevens, J., dissenting) (quotation marks omitted) (quoting *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975)).

²²⁹ *Id.*

²³⁰ See Lessnick, *supra* note 44, at 1261.

²³¹ *Id.* (first citing Stephanie Holmes Didwania, *Discretion and Disparity in Federal Detention*, 115 NW. U. L. REV. 1261, 1264 (2021); and then citing Will Dobbie, Jacob Goldin & Crystal S. Yang, *The Effects of Pretrial Detention on Conviction, Future Crime*,

detention even carry intergenerational consequences, as “children of incarcerated parent[s] . . . exhibit more negative behavioral, academic, and emotional outcomes, and are more likely than their peers to end up in prison.”²³² Separately, pretrial detention may cause detainees to suffer unemployment, housing uncertainty, and reputational damage after they are released.²³³ It also “significantly curtails a defendant’s ability to converse with his or her lawyer, gather evidence, and devise a trial strategy.”²³⁴

Pretrial detention produces additional challenges when the detention is specifically caused by fabricated evidence. Fabricated evidence may heighten the likelihood that a prosecutor proceeds with charges against a detainee because the prosecutor feels better equipped to secure a conviction given the additional (fabricated) evidence. A detainee faced with falsified evidence will also likely have to expend greater resources to prepare for trial than if that evidence didn’t exist—even if the fabricated evidence is ultimately dropped before trial commences.²³⁵ This greater resource expenditure may, in turn, further increase a detainee’s chances of pleading guilty or being convicted, either because he cannot afford sophisticated counsel that can advise him not to plead guilty or cannot prepare an adequate defense in light of the fabricated evidence.²³⁶

A dual § 1983 legal regime is further warranted because it may benefit victims who experience this type of misconduct—

and Employment: Evidence from Randomly Assigned Judges, 108 AM. ECON. REV. 201, 224–26 (2018)).

²³² ALISON SIEGLER, FED. CRIM. JUST. CLINIC, FREEDOM DENIED: HOW THE CULTURE OF DETENTION CREATED A FEDERAL JAILING CRISIS 71 (2022) (alteration in original) (quotation marks omitted) (quoting CHARLES COLSON TASK FORCE ON FED. CORR., TRANSFORMING PRISONS, RESTORING LIVES 15 (2016)).

²³³ Lessnick, *supra* note 44, at 1260 (first citing *United States v. Motamedi*, 767 F.2d 1403, 1406, 1414 (9th Cir. 1985) (Boochever, J., concurring in part and dissenting in part); then citing Alison Siegler & Erica Zunkel, *Rethinking Federal Bail Advocacy to Change the Culture of Detention*, CHAMPION 47 & nn.21–24 (July 2020), <https://perma.cc/GA48-BY6Z> (collecting studies); and then citing Alexander M. Holsinger & Kristi Holsinger, *Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes*, 82 FED. PROB. 39, 41–42 (2018)).

²³⁴ *Id.* (citing Donnelly & MacDonald, *supra* note 44, at 789).

²³⁵ Since a detainee cannot anticipate whether a prosecutor will proceed with fabricated charges or drop them, the detainee will, in the interim, have to prepare to refute the fabricated evidence at trial.

²³⁶ See, e.g., *In re Watts Coordinated Pretrial Proceedings*, 2022 WL 9468206, at *14 (N.D. Ill. Oct. 14, 2022) (recognizing a Fourteenth Amendment violation when “fabricated evidence is used to coerce the defendant to plead guilty”).

should they seek legal recourse—by presenting them with multiple opportunities to prevail on a cause of action. This notion tracks with the long-standing practice of raising multiple counts in a cause of action “in the hope that perhaps [a litigant] may be fortunate enough to hit upon a statement of facts sufficiently accurate to sustain his case.”²³⁷ Considering that “qualified immunity doctrine . . . has proven impossible to apply with predictability or consistency,”²³⁸ the prospect of raising an additional § 1983 claim may prove crucial to some plaintiffs’ chances of recovering damages for sustained constitutional injuries. It is plausible to imagine a scenario where a Fourth Amendment claim is dismissed because of qualified immunity, yet a Fourteenth Amendment claim is allowed to stand on the theory that individuals have a “clearly established”²³⁹ right to be free from police or prosecutorial fabrication of evidence. Take, for instance, *Zoellner v. City of Arcata*,²⁴⁰ in which a federal district court dismissed a Fourth Amendment claim against a detective on qualified immunity grounds—even though the detective “included false information in his police report”²⁴¹—yet allowed a Fourteenth Amendment claim against the detective to proceed.²⁴²

One possible counterpoint is that multicclaim litigation increases the length, complexity, and cost of a trial. Based on this consideration, one might argue that a dual legal regime may be judicially inefficient, and that in any case the average § 1983 plaintiff might not be able to afford multicclaim litigation. However, this Comment merely advocates for plaintiffs to have the *option* to raise both a Fourth Amendment claim and Fourteenth Amendment claim if they so wish. In other words,

²³⁷ Adolph Loeb, Comment, *The Use of Multiple Counts to State a Single Cause of Action Under the Illinois Civil Practice Act*, 4 J. MARSHALL L.Q. 55, 63 (1938).

²³⁸ Jay Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, CATO INST. (Sept. 14, 2020), <https://perma.cc/48DE-9KGW>.

²³⁹ *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)).

²⁴⁰ 588 F. Supp. 3d 979 (N.D. Cal. 2022).

²⁴¹ *Id.* at 997.

²⁴² *Id.* at 996–99; see also *Haliw v. City of South Elgin*, 2020 WL 1304697, at *6–7, *10–11 (N.D. Ill. Mar. 18, 2020) (rejecting the plaintiff’s Fourth Amendment claim due to qualified immunity despite credible allegations that officers conspired to cause him damage by “arresting him without probable cause and filing false police reports against him,” because “[l]iability [wa]s not clearly established for conspiracies amongst police officers of a single municipality”); *Rowe v. City of Fort Lauderdale*, 279 F.3d 1271, 1281–82 (11th Cir. 2002) (invoking qualified immunity to discard a Fourth Amendment claim against a prosecutor notwithstanding the prosecutor’s awareness and indifference to a detective “tampering with evidence”).

rather than increasing the barriers to entry for a § 1983 plaintiff, this Comment seeks to enhance a plaintiff's ability to decide whether a multiclaim action is appropriate for her.

A dual § 1983 legal regime could also gesture to the public that federal courts will not tolerate this type of police and prosecutorial misconduct. As recently as June 2020, two-thirds of Americans believed that “civilians need to have the power to sue police officers to hold them accountable for misconduct.”²⁴³ Although this statistic alone does not justify a dual legal regime, it demonstrates public enthusiasm for government accountability. In this respect, a legal regime that increases the threat of civil liability against police departments and municipalities could, to some degree, deter police and prosecutorial fabrication of evidence.²⁴⁴

Even if a dual § 1983 regime proves insufficient in deterring police or prosecutorial misconduct, it could nevertheless help increase public confidence in America's legal institutions by signaling that courts are interested in protecting the rights of Americans and not allowing public officials to engage in misconduct with impunity.²⁴⁵ The rule of law is contingent on public confidence in the legal system, and “[a]ny loss in [public] confidence . . . makes the rule of law somewhat more vulnerable and detracts from the [judiciary's] legitimacy.”²⁴⁶ Yet official misconduct such as fabrication of evidence directly disrupts truth seeking and undermines public confidence by subverting the fairness of the trial process.²⁴⁷ As articulated in *United States v. Harbin*,²⁴⁸ “[t]he procedures and constitutional protections afforded defendants operate to provide a fair process for

²⁴³ *Majority of Public Favors Giving Civilians the Power to Sue Police Officers for Misconduct*, PEW RSCH. CTR. (July 9, 2020), <https://perma.cc/NAH6-3PL4>.

²⁴⁴ Newman, *supra* note 37, at 451 (“The private suit for civil damages can both compensate and deter. In the battle to restrain official misconduct, it is our most promising weapon.”). *But cf.* Miller, *supra* note 10, at 155 (“[S]uccesses in individual [§ 1983] damage claims have yet to translate into an effective system for controlling police misconduct.”).

²⁴⁵ JUD. CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 9 (2020) (describing how judicial “[t]ransparency in efforts to ensure accountability for misconduct . . . helps foster public trust and confidence”).

²⁴⁶ Raymond J. Lohier Jr., Jeffrey S. Sutton, Diane P. Wood & David F. Levi, *Losing Faith: Why Public Trust in the Judiciary Matters*, 106 JUDICATURE 71, 72 (2022).

²⁴⁷ Aimee Ortiz, *Police or Prosecutor Misconduct Is at Root of Half of Exoneration Cases*, *Study Finds*, N.Y. TIMES (Sept. 16, 2020), <https://www.nytimes.com/2020/09/16/us/exonerations-report-misconduct.html>.

²⁴⁸ 250 F.3d 532 (7th Cir. 2001).

adjudicating the defendants' guilt or innocence, but also to ensure that society *perceives* the process to be fair, thus promoting respect for the rule of law.”²⁴⁹ The idea, then, is that a fair trial process is not just an individual constitutional guarantee, but also a sacred principle that is fundamentally tied to our system of government.²⁵⁰ Considering that fabricated evidence violates a defendant's right to a fair trial, and that the Fourteenth Amendment safeguards this very right, it follows that such misconduct is properly redressed by a § 1983 Fourteenth Amendment claim.²⁵¹ Recall too, that § 1983 was originally enacted with a “clear purpose [] to provide a civil enforcement mechanism for the *Fourteenth Amendment*.”²⁵² This legislative intent further justifies use of a Fourteenth Amendment claim where pretrial detention is caused by fabricated evidence.

In the end, this Comment argues, and several circuits agree, that two meaningful constitutional injuries occur when someone is placed in pretrial detention because of fabricated evidence.²⁵³ It should not matter whether the Fourth Amendment's protections overlap with the Fourteenth Amendment's protections in such a scenario: if both rights are violated, a plaintiff should be entitled to raise a separate claim for each violated right. In the criminal context, for example, if someone is suspected of committing battery and burglary, prosecutors do not merely charge the suspect with battery and call it a day. Rather, prosecutors will usually charge the suspect with battery *and* burglary because the suspect has allegedly committed two distinct crimes, and justice requires such a charging decision.²⁵⁴ By similar logic, § 1983

²⁴⁹ *Id.* at 543 (emphasis added).

²⁵⁰ And, although the Fourth Amendment protects certain aspects of the trial, it is ultimately the Fourteenth Amendment's Due Process Clause that protects the right to a fair trial itself. See *Smalls*, 10 F.4th at 141 (quoting *Frost*, 980 F.3d at 249, 251 n.14).

²⁵¹ *Morse v. Fusto*, 804 F.3d 538, 548 (2d Cir. 2015) (quoting *Ricciuti*, 124 F.3d at 130).

²⁵² Charles W. Thomas, *Resolving the Problem of Qualified Immunity for Private Defendants in Section 1983 and Bivens Damage Suits*, 53 LA. L. REV. 449, 456 (1992) (emphasis added).

²⁵³ *Smalls*, 10 F.4th at 141; *Carson*, 935 F.3d at 450, 451 n.25.

²⁵⁴ Granted, prosecutors often tack on additional charges with the intent of securing a heavier sentence against a criminal defendant, whereas in the § 1983 context there is no guarantee that an additional claim will result in increased compensatory damages. However, even if prosecutors charge defendants with multiple crimes in the hopes of obtaining lengthier sentences, it is not necessarily true that defendants convicted of multiple crimes will serve more time in prison than those convicted of one crime. After all, “[j]udges have long been understood to have discretion to select whether the sentences they impose will run concurrently or consecutively.” *Setser v. United States*, 566 U.S. 231, 236 (2012) (citing *Oregon v. Ice*, 555 U.S. 160, 168–69 (2009)).

plaintiffs should be entitled to assert both a Fourth Amendment claim *and* a Fourteenth Amendment claim in the context of pretrial detention caused by fabricated evidence because, on principle, they have suffered two separate constitutional injuries.

What message is sent to a victim of police or prosecutorial misconduct when he is foreclosed by a court of law from raising a Fourteenth Amendment claim—even though he asserts a genuine violation of his due process rights—because he already has access to a Fourth Amendment claim? It is worth emphasizing that “*perceptions* of the [trial] process, not the *outcome*, shape judgments of the legal system.”²⁵⁵ And, importantly, perceptions of the trial process may be influenced by whether an individual is granted “the opportunity to express [his] views in court” and to be heard by “decision makers who are concerned with fair treatment and hearing [his] side of the story.”²⁵⁶ To ensure that litigants are able to fully air out their grievances in court, and to adhere faithfully to the Constitution’s protections, a dual § 1983 legal regime should be favored where pretrial detention results from the deliberate fabrication of evidence.

CONCLUSION

In 2017, *Manuel* clarified that a § 1983 claim for wrongful pretrial detention stems from a Fourth Amendment violation, regardless of what caused the detention. Despite this holding, *Manuel* failed to resolve a preexisting circuit split regarding whether wrongful conviction is required before an individual can raise a § 1983 Fourteenth Amendment claim. The significance of this continuing split becomes evident when an individual is held in pretrial detention because evidence is fabricated against him. Some circuits, like the Seventh, have insisted that the Fourth Amendment *exclusively* governs such a scenario, whereas others, like the Second and Fifth, have concluded that a detainee in these circumstances may assert Fourteenth Amendment injuries in addition to Fourth Amendment injuries.

²⁵⁵ Hurwitz & Peffley, *supra* note 40, at 765 (emphasis added) (citing Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT’L J. PSYCH. 117 (2000)).

²⁵⁶ Todd Brower, *It’s Not Just Shopping, Urban Lofts, and the Lesbian Gay-By Boom: How Sexual Orientation Demographics Can Inform Family Courts*, 17 J. GENDER, SOC. POL’Y & L. 1, 8 n.39 (2009) (citing DAVID B. ROTTMAN, NAT’L CTR. FOR STATE CTS., TRUST AND CONFIDENCE IN THE CALIFORNIA COURTS: A SURVEY OF THE PUBLIC AND ATTORNEYS 26 (2005)); see Roger K. Warren, *Public Trust and Procedural Justice*, 37 CT. REV. 12, 13 (2000).

This Comment advocates for circuit uniformity under a legal regime that enables individuals who have been held in pretrial detention due to fabricated evidence to raise both Fourth Amendment and Fourteenth Amendment § 1983 claims. As a practical matter, the fact that wrongful pretrial detention and fabrication of evidence constitute distinct harms justifies having multiple § 1983 claims when pretrial detention is caused by fabricated evidence. Equally important, however, is that a bifurcated legal regime is conceivably warranted in light of *Manuel*, *McDonough*, and the text of the Constitution. Such a legal regime could advance accountability by increasing the threat of civil liability against police departments, municipalities, and corrupt government actors. It may also enhance the judiciary's institutional legitimacy by demonstrating that federal courts are concerned with protecting the constitutional interests of American citizens from government misconduct and overreach.

The bottom line is that accountability matters. When the constitutional rights of innocent Americans are threatened by deliberate government (mis)conduct rather than malfeasance, accountability matters all the more. At a time when many Americans are demanding increased legal accountability mechanisms against law enforcement,²⁵⁷ a bifurcated regime for the scenario discussed in this Comment may help in addressing these societal concerns. It is worth reiterating that § 1983 was originally enacted to enforce the provisions of the Fourteenth Amendment.²⁵⁸ This legislative intent could, in addition to the legal and policy arguments laid forth in this Comment, provide grounds for a resolution of this circuit split toward a bifurcated § 1983 legal regime.

²⁵⁷ See *supra* note 243.

²⁵⁸ See Cerrato, *supra* note 7, at 515–18.