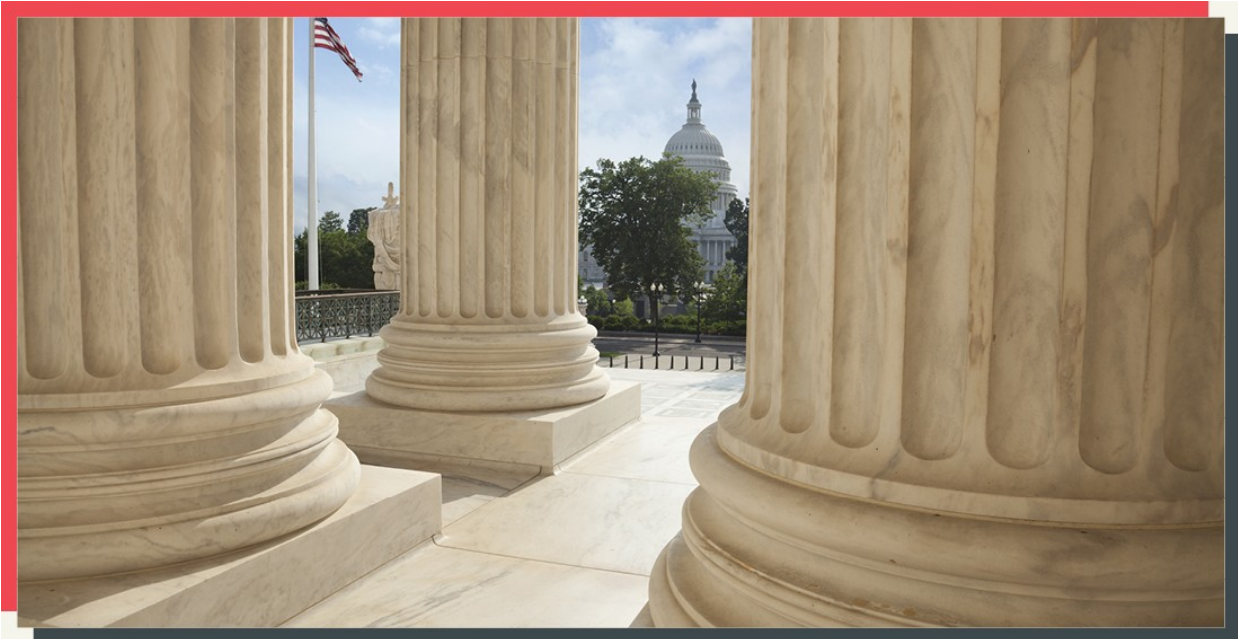


Two High Court Rulings Boost Protections Against Government Reprisal

08/22/24



By **Corey Stoughton**, *special counsel*, and **Amanda Miner**, *associate* This article was originally published by Law360. Two U.S. Supreme Court rulings handed down on June 20 — *Gonzalez v. Trevino*, and *Chiaverini v. City of Napoleon, Ohio* — have significant implications for civil rights litigation by clarifying legal standards in cases involving retaliatory arrests and malicious prosecution. Both rulings highlight important legal principles that will help ensure individuals are protected against retaliatory government actions.

***Gonzalez*: Protecting Free Speech Against Retaliatory Law Enforcement Action**

In *Gonzalez*, the court addressed the issue of retaliatory arrests and the circumstances under which such arrests violate constitutional rights.

The case involved Sylvia Gonzalez, a city council member in Texas, who found herself at the center of a legal battle after leading a petition to remove the city manager.

Following a contentious city council meeting, Gonzalez was arrested under a Texas anti-tampering statute typically used in fake ID cases for allegedly keeping the removal petition in her possession after it was presented at the city council meeting.

Gonzalez argued that her arrest was retaliatory, aimed at suppressing her political speech, and brought a claim under Title 42 of the U.S. Code, Section 1983, for violation of her First and Fourth Amendment rights against the public officials and police chief involved in her arrest. Section 1983 authorizes private parties to enforce their federal constitutional rights against municipalities, state and local officials, and other defendants who acted under color of state law, like the defendants in *Gonzalez*.

In general, federal courts have held that probable cause for an arrest or prosecution is an absolute defense to a malicious prosecution claim, even if there is evidence that law enforcement had improper intent, including an intent to retaliate based on political viewpoint.

Although Gonzales conceded that law enforcement had probable cause for her arrest, she argued that she satisfied the exception to the general rule articulated in the Supreme Court's 2019 *Nieves v. Bartlett* decision, which provides that probable cause will not defeat a plaintiff's false arrest claim if the plaintiff produces objective evidence that they were arrested when other people engaged in the same conduct — but not engaged in the same protected speech — were not arrested.

The theory behind this rule is that the failure to arrest, or to consistently arrest, people engaged in the underlying conduct gives rise to an inference that a plaintiff's arrest was in fact motivated by the speech rather than the regulated conduct.

Because Gonzales offered a survey of county misdemeanor and felony data showing that the statute at issue had only been enforced in situations involving falsified documents, and had never been used to criminally charge someone for mishandling a nonbinding government petition, the U.S. District Court for the Western District of Texas agreed with Gonzalez and denied the defendants' motion to dismiss.

The U.S. Court of Appeals for the Fifth Circuit reversed in 2022, demanding instead specific comparator evidence of other individuals who had engaged in the same conduct as the plaintiff, but were not arrested, to overcome the showing of probable cause.

Gonzalez's case ultimately reached the Supreme Court, supported by several leading civil rights organizations. She argued that the Fifth Circuit's standard was too restrictive and undermined the protective intent of the *Nieves* exception.

The Supreme Court vacated the Fifth Circuit's ruling and remanded the case. It held that Gonzalez's evidence was sufficient to overcome a motion to dismiss.

The court noted that the virtually identical comparator evidence required by the Fifth Circuit was excessively stringent and counterproductive to the *Nieves* exception's purpose.

Justice Samuel Alito, in his concurring opinion, emphasized that the *Nieves* exception, while narrow, should not be rendered ineffective by unrealistic evidentiary demands.

Takeaways

This decision is an important reaffirmation of the principle that probable cause does not automatically defeat a retaliatory arrest claim if there is a demonstrable pattern of nonarrests for similar conduct, or if an arrest represents a departure from the general enforcement pattern under a particular criminal law.

It safeguards the protective intent of the *Nieves* exception, shielding individuals from police officers who might exploit arrest power as a means of suppressing disfavored speech.

It likewise clarifies the evidentiary standards required to pursue First Amendment retaliation claims and provides a clearer pathway for plaintiffs to challenge retaliatory arrests — as well as malicious prosecution claims, which are generally held to the same standard.

If, under *Gonzalez*, a plaintiff shows objective evidence that gives rise to an inference that speech — and not conduct — was the moving force behind law enforcement's behavior, that is enough to defeat a showing of probable cause.

Chiaverini: Clarifying Malicious Prosecution Claims

Chiaverini concerns Fourth Amendment malicious prosecution claims brought under Section 1983.

Jascha Chiaverini, a jewelry store owner in Napoleon, Ohio, was charged with two misdemeanors as well as a felony count of money laundering, the latter of which he claimed was based on false statements made by the police.

Chiaverini argued that the allegedly fabricated evidence supporting the felony charge led to his unjust arrest and detention, violating his Fourth Amendment rights, and he sued the officers under Section 1983.

To prevail on that claim, Chiaverini had to show, among other things, that the officers brought the charges without probable cause.

The U.S. District Court for the Northern District of Ohio granted summary judgment to the officers, and the U.S. Court of Appeals for the Sixth Circuit affirmed in 2023, holding that probable cause for any one of the charges — in this case, two misdemeanors — was enough to defeat a malicious prosecution claim related to the other charge, i.e., the felony. Chiaverini appealed.

The Supreme Court ruled in his favor, holding that the presence of probable cause for one charge does not automatically defeat a Fourth Amendment claim for seizures by other, illegitimate charges. The court emphasized that malicious prosecution claims under Section 1983 must be evaluated on a charge-specific basis, meaning that each charge must be assessed individually to determine whether it lacked probable cause.

Takeaways

Looking forward, *Chiaverini* sets a precedent that may reshape how malicious prosecution claims are litigated.

In requiring each charge to be evaluated individually, *Chiaverini* ensures that law enforcement officers cannot shield themselves from malicious prosecution liability for fabricating charges simply because they had probable cause for lesser or different offenses.

This bolsters protections against malicious overcharging, which can exert enormous pressure on criminal defendants to plead guilty, even when they are not.

The decision also compels greater scrutiny over the initiation and continuation of criminal charges, particularly in cases where the charges may be politically motivated or lack a substantive basis.

Looking Forward

Together, the Supreme Court's rulings in *Gonzalez* and *Chiaverini* significantly strengthen legal protections against retaliatory arrests and malicious prosecution, and establish clear precedents that promote accountability and transparency in law enforcement.

These rulings will likely influence how lower courts handle retaliatory arrest and malicious prosecution claims, encouraging them to scrutinize law enforcement motives more closely and demand concrete evidence of probable cause for each charge.

The additional legal clarity provided by these cases provides criminal defendants — including white collar defendants, who often face overlapping charges related to financial crimes or corporate malfeasance — greater assurance of a fair and level playing field.

Chiaverini prevents law enforcement from shielding themselves behind one legitimate charge to justify the prosecution of fabricated charges, or from using fabricated or grossly overstated charges as leverage to compel a guilty plea or coerce cooperation.

Corporate defense teams can leverage this ruling to more effectively challenge illegitimate charges and protect their clients from prosecutorial overreach.

More broadly, these decisions reaffirm that no individual should suffer undue harm or persecution due to their political beliefs or expressive actions. This reaffirmation comes at a critical time when increasing political extremism — sometimes manifesting as attacks on election workers, prosecutors and other civil servants — exposes more Americans to abuses of power motivated by political disagreement.

This is especially true for marginalized communities and advocacy groups, whose members may face heightened risks of unjustified legal retaliation due to activism or social justice work.

Ultimately, the decisions represent a step toward a more equitable justice system, setting the standard for the protection of civil liberties against governmental overreach. They serve as a reminder of the judiciary's role in upholding democratic values and ensuring fair treatment for all, regardless of political stance or social status.

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