A New Era for Malicious Prosecution Claims?

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If prevailing in a Section 1983 case is akin to climbing a Himalayan peak, winning a malicious prosecution claim is like summitting K2. Absolute prosecutorial immunity, qualified immunity for investigators, and complex causation standards create obstacles that are often insurmountable.

These doctrinal challenges are powered by a cultural presumption that law enforcement officials—and particularly prosecutors—are public servants acting in good faith. Judges filter their assessments of allegations and evidence through that presumption, heightening pleading standards and recalibrating standard burdens of proof.

That assessment is not an accusation of bias—the presumption of prosecutorial good faith is baked into the law. In United States v. Armstrong, 517 U.S. 456 (1996), the Supreme Court emphasized that prosecutorial decisions carry a “presumption of regularity” and "in the absence of clear evidence to the contrary, courts presume that [prosecutors] have properly discharged their official duties."

The court grounded that presumption in deference to prosecutorial expertise and judicial deference to the executive law enforcement function. In Bordenkircher v. Hayes, 434 U.S. 357 (1978), and United States v. Mezzanatto, 513 U.S. 196 (1995), the Supreme Court relied on that presumption to decide that pressuring a defendant to take a plea deal or waive procedural rights by threatening to seek more serious charges was simply the “give-and-take” of negotiation rather than a presumptively vindictive attack on the important procedural protections.

Although Armstrong and Bordenkircher both arose in the context of a prosecution, the presumption that prosecutors act in good faith shapes civil claims of malicious prosecution as well. The doctrine of prosecutorial immunity, first articulated by the Supreme Court in the 1976 case Imbler v. Pachtman, 424 U.S. 409, is grounded in an assessment that, unlike most other lawyers, a prosecutor carries out “public duties” and exercises “the independence of judgment required by his public trust,” akin to the role of a judge.

And in the recent case of Petsche v. Hruby, 172 F.4th 475 (6th Cir. 2026)), a federal appeals court cited the presumption of prosecutorial good faith to limit plaintiffs’ ability to use allegations of an official policy of retaliation to overcome the general rule that retaliatory or malicious prosecution claims require proof of the absence of probable cause.

Not so long ago, this presumption of prosecutorial good faith seemed unassailable. But a spate of recent cases involving apparent misconduct by federal prosecutors has put that presumption under greater scrutiny than it has faced in the lifetime of any living lawyer, resulting in judges taking concrete steps that suggest an erosion of this longstanding presumption.

If that erosion is real, the causal question for civil litigants is straightforward to state, if not to answer: because the presumption informs how courts apply the doctrines that defeat malicious prosecution claims, a weakening of the presumption in criminal courtrooms could, over time, alter how those doctrines are applied in civil ones.

The most prevalent manifestation of this phenomenon, at least so far, is verbal condemnation preceding the compelled dismissal of criminal charges. Earlier this year, in United States v. Rabbitt involving a prosecution of anti-ICE protesters known widely as “the Broadview Six,” a federal judge in Chicago described being “incredibly shocked” by misconduct and ethics violations revealed by the disclosure of

grand jury minutes, which ultimately forced the dismissal of all charges. Rabbitt shows a court willing to look behind the grand jury process rather than defer to it.

Moving north, in a case called United States v. Ahmed, 2026 WL 1724159, a federal judge in Minnesota found before dismissing similar charges that prosecutors “violated a Court order, likely violated the Department of Justice's own policies, and undermined the presumption of innocence that lies at the heart of our criminal justice system.” Ahmed goes a step further, making specific findings of misconduct of the kind a civil plaintiff would need to allege.

Cases from the District of Columbia suggest the pattern is not isolated: the court’s lament in United States v. Beidleman, 806 F.Supp.3d 11 (D.D.C. 2025) that “judges in this District have seen case after case involving unprecedented prosecutorial action,” was followed by at least two additional excoriations for ethical lapses and violations of court orders in United States v. Butler 2025 WL 2835678 (D.D.C. 2025) and United States v. Rios-Esquivel, 2025 WL 2451152 (D.D.C. 2025).

And the prosecution of Kilmar Abrego Garcia, whose deportation to El Salvador made national headlines, moves from condemnation to doctrine: a district court in Tennessee ruled after an evidentiary hearing that the government was not entitled to a presumption of regularity, finding objective evidence showed that the prosecutor was acting at the direction of Trump administration officials who sought retaliation for Abrego Garcia’s successful lawsuit challenging his deportation. U.S. v. Abrego Garcia, 2026 WL 1454303 (M.D. Tenn. 2026). (That case is on appeal in the Sixth Circuit, the same court that decided Petsche, so its durability remains uncertain). Each of these rulings, however, concerns whether a prosecution may continue; none decides whether anyone is civilly liable for having brought it.

One might be tempted to dismiss this as a phenomenon confined to condemnations of especially egregious behavior in exceptionally weak cases. That limitation would matter for malicious prosecution, because weak cases are the ones in which a plaintiff can already show the absence of probable cause.

But in recent months, judicial skepticism of the presumption of prosecutorial good faith has appeared even in cases where there is arguable probable cause. The Supreme Court’s decision in Armstrong relied on the presumption of good faith to place significant limitations on criminal defendants’ demands for discovery in furtherance of defenses based on improper prosecutorial motive.

But in United States v. Carey, 816 F.Supp.3d 129 (D.D.C. 2026), a District of Columbia judge permitted the defendant to conduct such discovery, , flipping the presumption of good faith into a presumption of vindictiveness. There, the defendant challenged his prosecution for burning a flag on public property on the grounds that President Trump’s executive order targeting flag burning impermissibly singled him out for prosecution based on speech protected under Texas v. Johnson, 491 U.S. 397, a Supreme Court case from 1989 recognizing that flag burning is protected expressive conduct.

The judge acknowledged that the defendant “lit a risky fire that seemed to damage federal property”—a criminal act for which there appeared to be probable cause—but held that was not sufficient to restore the presumption of good faith, and the defendant was permitted to try to prove that this explanation was pretextual. Carey thus cuts in both directions for civil plaintiffs.

It suggests courts may credit evidence of improper motive notwithstanding probable cause, but in a civil suit the presence of probable cause would ordinarily still defeat the claim—precisely the rule Petsche declined to relax.

Creeping doubts about the presumption of good faith have even reached the Supreme Court. In Trump v. United States, 603 U.S. 593 (2024), the Court’s decision on presidential immunity, the majority refused to allow an assumption of prosecutorial good faith to dilute its concern that exposing the executive to liability risked politically motivated or baseless prosecutions of a former president, stating that it does "not ordinarily decline to decide significant constitutional questions based on the government's promises of good faith."

The context is distinctive, and the skepticism was deployed to expand immunity rather than to narrow it, but the reasoning matters: if the court will not rely on promises of good faith to protect a former president, lower courts may find it harder to treat the same presumption as dispositive against ordinary litigants

And just this year, the Supreme Court narrowed the circumstances in which prosecutors can make a waiver of appeal rights a condition of plea bargaining in Hunter v. United States, 608 U.S. 713 (2026), in a decision that looks at prosecutorial behavior in the plea bargaining process very differently from the lens the court applied in earlier cases like Bordenkircher and Mezzanatto. An interesting line-up of justices—Sotomayor, Gorsuch, and Jackson—joined a concurring decision expressly calling into question the wisdom of the court's analysis in Bordenkircher.

Will this trend continue and, if so, what will remain of the presumption of prosecutorial good faith? How you feel about that question probably depends on whether you view this trend as the erosion of a principle critical to the proper functioning of the justice system, a necessary response to a temporary moment of extreme prosecutorial overreach, or an overdue corrective to a problem that has impacted certain over-criminalized communities long before it was making national headlines.

Whatever your view, the true test will be whether the willingness of judges to terminate criminal prosecutions translates into a willingness to extend civil remedies to the victims of prosecutorial misconduct. That translation is not automatic, because dismissal and civil liability answer different questions.

A court dismissing charges asks whether the prosecution can fairly proceed; a court hearing a malicious prosecution claim must separately ask whether the defendant is immune, whether probable cause was absent, whether the defendant's conduct caused the prosecution, and whether the plaintiff suffered compensable damages.

The availability of due process protections for criminal defendants has rarely corresponded to such civil remedies, as anyone familiar with the gap between the grounds for dismissal based on prosecutorial nondisclosure and the grounds for a malicious prosecution claim on that basis can attest.

Absolute immunity under Imbler may bar the claim against the prosecutor whose misconduct a judge condemned, however vividly; a finding of retaliatory motive does not establish the absence of probable cause; and a dismissal does not itself prove which official's conduct caused the harm or what the harm was worth.

The doctrinal barriers of immunity, probable cause, and causation may be informed by the presumption of prosecutorial good faith, but the precedents supporting them stand independently. As for cultural factors, judges' willingness to dismiss criminal charges may not indicate a willingness to expand civil liability; tempers may cool as time passes and the focus shifts from tainting judicial proceedings in the judges' own courtrooms to remedying the harms visited on the victims.

Still, the evidence that cultural change impacts the doctrine is undeniable. In an earlier era, the Supreme Court opened the door to claims of vindictive and selective prosecution in cases like North Carolina v. Pierce, 395 U.S. 711 (1969) and Blackledge v. Perry, 417 U.S. 21 (1974), both of which showed a willingness to limit criminal prosecutions even in the absence of direct evidence of prosecutorial bad faith.

In the 1980s and 1990s, the court narrowed the paths to bring such claims and showed greater deference to the government and prosecutors in cases such as Armstrong, Wasman v. United States, 468 U.S. 559 (1984), and United States v. Goodwin, 457 U.S. 368 (1982). That era also saw the firm establishment of prosecutorial immunity as a barrier to accountability.

If the presumption that sustained both criminal procedure and civil doctrines is now weakening in criminal cases, pressure on the civil barriers may follow—though, as before, it is likely to arrive slowly and unevenly. The story of the modern era is still being written.

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