

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ALBRIGHT v. OLIVER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 92-833. Argued October 12, 1993—Decided January 24, 1994

Upon learning that Illinois authorities had issued an arrest warrant charging him with the sale of a substance which looked like an illegal drug, petitioner Albright surrendered to respondent Oliver, a policeman, and was released after posting bond. At a preliminary hearing, Oliver testified that Albright sold the look-alike substance to a third party, and the court found probable cause to bind Albright over for trial. However, the court later dismissed the action on the ground that the charge did not state an offense under state law. Albright then filed this suit under 42 U. S. C. §1983, alleging that Oliver deprived him of substantive due process under the Fourteenth Amendment—his “liberty interest”—to be free from criminal prosecution except upon probable cause. The District Court dismissed on the ground that the complaint did not state a claim under §1983. The Court of Appeals affirmed, holding that prosecution without probable cause is a constitutional tort actionable under §1983 only if accompanied by incarceration, loss of employment, or some other “palpable consequenc[e].”

Held: The judgment is affirmed.
975 F. 2d 343, affirmed.

CHIEF JUSTICE REHNQUIST, joined by JUSTICE O’CONNOR, JUSTICE SCALIA, and JUSTICE GINSBURG, concluded that Albright’s claimed right to be free from prosecution without probable cause must be judged under the Fourth Amendment, and that substantive due process, with its “scarce and open-ended” “guideposts for responsible decisionmaking,” *Collins v. Harker Heights*, 503 U. S. ___, ___, can afford Albright no relief. Where a particular Amendment “provides an explicit textual source of constitutional protection” against a particular sort of government behavior, “that Amendment, not the more

generalized notion of 'substantive due process,' must be the guide for analyzing" such a claim. *Graham v. Connor*, 490 U. S. 386, 395. The Fourth Amendment addresses the matter of pretrial deprivations of liberty, and the Court has noted that Amendment's relevance to the liberty deprivations that go hand in hand with criminal prosecutions. See *Gerstein v. Pugh*, 420 U. S. 103, 114. The Court has said that the accused is not "entitled to judicial oversight or review of the decision to prosecute." *Id.*, at 118-119. But Albright was not merely charged; he submitted himself to arrest. No view is expressed as to whether his claim would succeed under the Fourth Amendment, since he has not presented the question in his certiorari petition. Pp. 4-8.

JUSTICE KENNEDY, joined by JUSTICE THOMAS, determined that Albright's due process claim concerns not his arrest but instead the malicious initiation of a baseless criminal prosecution against him. The due process requirements for criminal proceedings do not include a standard for the initiation of a prosecution. Moreover, even assuming, *arguendo*, that the common-law interest in freedom from malicious prosecution is protected by the Due Process Clause, there is neither need nor legitimacy in invoking 42 U. S. C. §1983 in this case, given the fact that Illinois provides a tort remedy for malicious prosecution and the Court's holding in *Parratt v. Taylor*, 451 U. S. 527, 535-544, that a state actor's random and unauthorized deprivation of such a due process interest cannot be challenged under §1983 so long as the State provides an adequate post-deprivation remedy. Pp. 1-6.

JUSTICE SOUTER concluded that, because this case presents no substantial burden on liberty beyond what the Fourth Amendment is generally thought to redress already, petitioner has not justified recognition of a substantive due process violation in his prosecution without probable cause. Substantive due process should be reserved for otherwise homeless substantial claims, and should not be relied on when doing so will duplicate protection that a more specific constitutional provision already bestows. Petitioner's asserted injuries—including restraints on his movement, damage to his reputation, and mental anguish—are not alleged to have flowed from the formal instrument of prosecution, as distinct from the ensuing police seizure of his person; have been treated by the Courts of Appeals as within the ambit of compensability under 42 U. S. C. §1983 for Fourth Amendment violations; and usually occur only after an arrest or other seizure. Pp. 1-6.

REHNQUIST, C. J., announced the judgment of the Court and delivered an opinion, in which O'CONNOR, SCALIA, and GINSBURG, JJ., joined. SCALIA, J., and GINSBURG, J., filed concurring opinions. KENNEDY, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined. SOUTER, J., filed an opinion concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which BLACK-

MUN, J., joined.

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