No. 20-____

IN THE
Supreme Court of the United States

DEVAR HURD,

Petitioner,

v.

STACEY FREDENBURGH, IN HER INDIVIDUAL CAPACITY,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

It is uncontroverted that New York kept Petitioner incarcerated for almost a year past a release date required by state statutes. These statutes operate in a "mathematical" fashion to produce a "statutorily mandated release date," as the court of appeals recognized. Pet. App. 5a. But the court nonetheless affirmed the dismissal of Petitioner's Eighth Amendment claim on qualified immunity grounds, holding that "[i]t was not clearly established . . . that an inmate suffers harm of a constitutional magnitude under the Eighth Amendment" by being incarcerated for eleven months past a statutorily-mandated release date. Pet. App. 21a. The court also affirmed the dismissal of Petitioner's Due Process claim, reasoning that in these circumstances it was not clearly established under the Fourteenth Amendment that Petitioner "ha[d] a liberty interest" in avoiding unauthorized incarceration for nearly a year past his mandatory release date. Pet. App. 21a.

The questions presented are:

1. Whether prolonged incarceration past a statutorily-mandated release date is an objectively serious deprivation under clearly established Eighth Amendment law.

2. Whether there is a liberty interest in avoiding prolonged incarceration past a statutorily-mandated release date under clearly established Fourteenth Amendment law.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Devar Hurd respectfully petitions this Court for a writ of certiorari to review the judgment of the Second Circuit in this case.

OPINIONS BELOW

The Second Circuit opinion (Pet. App. 1a-27a) is published at 984 F.3d 1075. The district court opinion (Pet. App. 28a-46a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on January 12, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

The Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV.

INTRODUCTION

The Second Circuit recognized that New York State "lacked authority to detain" Petitioner Devar Hurd past his "statutorily mandated release date." Pet. App. 2a, 5a. The court acknowledged that "[Petitioner] was incarcerated for almost a year past the date on which state law mandated his release." Pet. App. 1a. The court cogently explained that he "alleged a harm of constitutional magnitude under the Eighth Amendment" *and* "had a liberty interest in his right to conditional release" under the Fourteenth Amendment. Pet. App. 2a. But then the court held that the district court correctly dismissed Petitioner's case with prejudice. Pet. App. 2a.

What?

Enter qualified immunity. The court of appeals reasoned that clearly established law did not recognize Petitioner's eleven-month imprisonment past his mandatory release date as a sufficiently serious "harm of a constitutional magnitude under the Eighth Amendment." Pet. App. 21a. Nor was it clearly established that this period of lawless imprisonment implicated a liberty interest cognizable under the Fourteenth Amendment. *Id.*

This Court should summarily vacate the court of appeals decision. Freedom from prolonged, unlawful incarceration is a clearly established and ancient liberty that the Constitution unambiguously enshrines. "[O]nce it were left in the power of . . . the highest[] magistrate"—to say nothing of a bureaucratic administrator like Respondent here—"to imprison arbitrarily whomever he or his officers thought proper, . . .

there would soon be an end of all other rights and immunities." 1 WILLIAM BLACKSTONE, COMMENTARIES *131 (hereinafter BLACKSTONE). Qualified immunity should not be pressed to the hilt to protect desk-chair decisions in an administrative bureaucracy—the polar opposite of split-second decisions made in dangerous situations out in the field.

STATEMENT OF THE CASE

1. New York law mandates the immediate and automatic release of state prisoners based on a formulaic interaction of three variables: (1) the prisoner's sentence, (2) the number of days the prisoner has served with good behavior, and (3) the number of days the prisoner spent in pretrial detention before transfer to state prison custody. Pet. App. 3a-6a; N.Y. Penal Law § 70.30; N.Y. Correct. Law § 803. This "mathematical concept" yields the prisoner's "statutorily mandated release date." Pet. App. 5a.

Somewhat confusingly, New York law calls this form of mandatory release "conditional release." Pet. App. 5a. This does not mean that the discharge of prisoners entitled to "conditional release" is optional, discretionary, or non-automatic. Pet. App. 5a. It simply means that people who have been discharged risk being reincarcerated if they violate the conditions of their release. *See* 83 N.Y. Jur. 2d Penal and Correctional Institutions § 359.

As the Second Circuit explained in this case, conditional release is not "a discretionary decision." Pet. App. 5a. On the contrary, a conditional release date is "'the statutorily mandated release date, calculated by applying both [an inmate's] good behavior time and his jail time, or time served awaiting trial.'" Pet. App.

5a (quoting *Eiseman v. New York*, 70 N.Y.2d 175, 180 (1987)). For many New York prisoners, the mandatory release date yielded by the statutory formula arrives before the prisoner's so-called "maximum expiration date," which is the date on which one's prison term ends if he has not been awarded good time credit. Thus, New York prisoners often have a statutorily-mandated release date that occurs before their maximum expiration date.

2. Petitioner Devar Hurd was arrested on July 23, 2013, and ultimately convicted of one felony and various misdemeanors. Pet. App. 3a; 49a. He had an automatic right to mandatory conditional release as of April 19, 2016—a fact that has never been disputed in this litigation. Pet. App. 6a; 54a.[1]

For more than eleven months past this mandatory conditional release date, Respondent Stacey Fredenburgh, a New York State Inmate Records Coordinator, kept Petitioner incarcerated without any legal authorization by working with a city corrections official to improperly reduce the amount of credit Petitioner received for the time he spent in pretrial detention in the custody of New York City. Pet. App. 6a-7a; 54a-

[1] More specifically, Petitioner received a total maximum sentence of four years. Pet. App. 4a. Under New York Penal Law § 70.30(3), the amount of time he would spend in prison was to be reduced by his jail time credit (the amount of time he spent in pretrial detention). *See* Pet. App. 4a. Under New York Corrections Law § 803, his prison time would also be reduced by his "good time credit" based on good behavior while incarcerated. Pet. App. 4a. The interaction of Petitioner's sentence, his jail time credit, and his approved good time credit meant that he was entitled to mandatory conditional release on April 19, 2016. Pet. App. 6a.

57a. Respondent then took no action to rectify this error once a different city official, and Petitioner, repeatedly pointed out the error. Pet. App. 54a-55a.

Specifically, the state corrections department had received a Jail Time Certification from the city corrections department that accurately stated the amount of time Petitioner had spent in pretrial detention. Pet. App. 6a; 52a. Nonetheless, Respondent and the city corrections official agreed to alter records so as to reduce the amount of credit Petitioner received for the time he spent in pretrial detention. Pet. App. 6a; 54a. The city corrections official sent Respondent a series of false Jail Time Certifications, all three of which purported to reduce Petitioner's jail time credit. Pet. App. 6a-7a; 54a-56a.

Although a different city corrections official then repeatedly confirmed to Respondent that the original certification was correct, and although Petitioner repeatedly argued the same thing in detailed written grievances, Respondent did nothing to rectify the error she had caused. Pet. App. 55a. As a result, Petitioner remained unlawfully incarcerated in state prison for nearly a year past his mandatory conditional release date. Pet. App. 7a; 57a-58a. Petitioner was finally released only when appellate counsel in his criminal case intervened. Pet. App. 7a; 57a-58a.

3. Following his release, Petitioner brought suit in the United States District Court for the Eastern District of New York to challenge his extralegal incarceration under 42 U.S.C. § 1983. Pet. App. 28a. Petitioner's amended complaint, which is the operative pleading, asserted claims under the Eighth Amendment and Due Process Clause. Pet. App. 28a. The defendants moved to dismiss the complaint. Before the

motion was decided, Petitioner voluntarily dismissed two defendants pursuant to settlement, leaving Respondent as the only remaining defendant. Pet. App. 28a.

The district court granted Respondent's motion to dismiss the complaint, rejecting Petitioner's Eighth and Fourteenth Amendment claims as follows:

a. Petitioner's Eighth Amendment claim required him to plead an objective component and a subjective component. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). *See also* Pet. App. 11a, 43a. The objective component requires the plaintiff to have suffered, at the hands of a government official, a "sufficiently serious" deprivation that rises to the level of a constitutional harm. *See Farmer*, 511 U.S. at 834; *see also* Pet. App. 11a, 43a. The subjective component requires showing that the official acted with deliberate indifference. *See Farmer*, 511 U.S. at 834; *see also* Pet. App. 11a, 43a.

The district court found that Petitioner's allegations satisfied the subjective component: "[Respondent's] alleged conduct is troublesome and would certainly satisfy deliberate indifference if not willfulness, as [Petitioner] alleges [Respondent] *agreed* with [a New York City corrections official] to keep [Petitioner] incarcerated past his conditional release date." Pet. App. 44a. However, the district court dismissed Petitioner's Eighth Amendment claim under the objective element, determining that his incarceration past his release date did not constitute a sufficiently serious deprivation. Pet. App. 44a-45a. The district court also found Respondent entitled to qualified immunity on this objective element. Pet. App. 45a.

b. Petitioner's Fourteenth Amendment substantive due process claim required him to plead (1) that he had a "liberty interest" in avoiding eleven months of incarceration past his mandatory release date and (2) that Respondent's conduct in continuing his incarceration "shock[ed] the conscience." *Cnty. of Sacramento v. Lewis,* 523 U.S. 833, 847 n.8 (1998).

The district court found that Petitioner adequately pled the second element: "[T]he court finds that, if true, [Petitioner's] allegations that [Respondent] *intentionally* took actions to keep plaintiff imprisoned without justification might shock the judicial conscience." Pet. App. 39a. However, the district court held that Petitioner had not pled a liberty interest in his release in the first place and therefore had "no substantive due process right to conditional release." Pet. App. 39a.

4. Petitioner appealed the dismissal of the amended complaint to the Second Circuit, which affirmed the district court, albeit on different grounds.

a. The Second Circuit explained that the governing state statute employs the word "shall," and that "[i]t is the mandatory nature of that release, not the label of 'conditional' or 'maximum,' that is dispositive." Pet. App. 13a. Thus, "[i]n effect, [Petitioner's] conditional release date became the operative date on which his maximum term of imprisonment expired." Pet. App. 13a.

The Second Circuit highlighted Respondent's concession that New York "had no authority to keep [Petitioner] incarcerated past his conditional release date." Pet. App. 13a. As a result, the Court concluded

that Petitioner's continued incarceration "was a punishment that was neither authorized by law nor justified by any penological interest asserted by the State." Pet. App. 14a.

b. Turning to the Eighth Amendment claim, the Second Circuit stated that Petitioner's allegations "could amount to deliberate indifference" under the subjective element. Pet. App. 16a. Thus, the appellate court did not disturb the district court's finding that Petitioner adequately pled the subjective element of his Eighth Amendment claim. Pet. App. 16a.

Addressing the objective element, the court determined that "[Petitioner's] unauthorized imprisonment for almost one year certainly qualifies under that standard." Pet. App. 13a. Therefore, contrary to the district court, the Second Circuit concluded that Petitioner "suffered a harm of constitutional magnitude under the Eighth Amendment." Pet. App. 14a. The court explicitly rejected a distinction between a mandatory conditional release date commanded by statute and a maximum expiration date mandated by statute: "It matters not that [Petitioner] was detained past his statutory conditional release date as opposed to the expiration of the maximum sentence imposed on him by the sentencing judge." Pet. App. 13a.

But when the court turned to qualified immunity under the same objective element of the Eighth Amendment claim, it reversed analytical course. The distinction between types of mandatory release statutes that "matter[ed] not" to the constitutional analysis, *id.*, turned out to be *dispositive* of the qualified immunity analysis. The court acknowledged a "uniform legal principle that no federal, state, or local authority can keep an inmate detained past the expiration of the

sentence imposed on them." Pet. App. 22a. Nonetheless, it fretted that no prior case had "confirm[ed] that prolonging an inmate's detention past their conditional release date might violate the inmate's rights under the Eighth Amendment." Pet. App. 22a. The court therefore concluded that clearly established law did not recognize eleven months of extralegal incarceration past a mandatory conditional release date as an objectively serious "harm of constitutional magnitude under the Eighth Amendment." Pet. App. 16a. Accordingly, the Second Circuit affirmed the dismissal of Petitioner's Eighth Amendment claim on qualified immunity grounds.

b. The Second Circuit's disposition of Petitioner's Due Process claim followed a similar pattern. First, the court recited, but did not address or disturb, the district court's conclusion that Petitioner adequately pled that Respondent's behavior could "shock the judicial conscience." Pet. App. 20a.

Next, the Second Circuit rejected the district court's liberty interest analysis and held that Petitioner "had a liberty interest in freedom from detention upon his conditional release date, as guaranteed by New York law." Pet. App. 20a. Here again, the court of appeals explicitly rejected any distinction between mandatory conditional release and other statutory mechanisms for mandatory release: "Because New York's conditional release scheme is mandatory," the court reasoned "there is *no meaningful difference* in [Petitioner's] liberty interest in release from prison at the expiration of his maximum sentence and conditional release when he became entitled to an earlier release date." Pet. App. 19a (emphasis added).

Though not "meaningful" by the court's own reckoning, *id.*, the same distinction proved dispositive when it came to qualified immunity. Noting Petitioner's admission that "no decision has held that imprisonment past a mandatory conditional release date violates the Fourteenth Amendment's substantive protections," the court opined that the law did not clearly establish Petitioner's "liberty interest in conditional release." Pet. App. 27a. Therefore, the appellate court affirmed the dismissal of Petitioner's due process claim based on qualified immunity.[2]

REASONS FOR GRANTING THE PETITION

The decision below is an affront to ancient liberty that must not stand. "Chief" among "freedom's first principles" is "freedom from arbitrary and unlawful restraint." *See Boumediene v. Bush*, 553 U.S.723, 797 (2008). "[O]nce it were left in the power of any, the highest, magistrate to imprison arbitrarily whomever he or his officers thought proper, . . . there would soon be an end of all other rights and immunities." 1 WILLIAM BLACKSTONE, COMMENTARIES *131.

Consistent with centuries of Anglo-American legal history, clearly established Eighth Amendment law bans punishments "totally without penological justification." *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

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[2] Respondent also argued in the Second Circuit that a New York Court of Claims decision rendered after the district court decision collaterally estopped Petitioner's Eighth Amendment and Due Process Claims. Appellee's Br. 17. Petitioner countered that the record did not permit consideration of this issue for the first time on appeal, and that the Court of Claims ruling was not preclusive in any event. Appellant's Reply Br. 7-17. The Second Circuit declined to address the issue. *See* Pet. App. 15a-16a, 20a-21a.

Similarly, clearly established law interpreting the Due Process Clause prohibits prolonged confinement "without any lawful authority." *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 252 (1972). These may be "general constitutional rule[s]," but they defeat qualified immunity here because they have already been "identified in the decisional law" and "apply with obvious clarity to the specific conduct in question" in this case. *Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020). Indeed, it is undisputed that Petitioner remained incarcerated without any legal basis for eleven months past his mandatory release date. Pet. App. 7a.

The Second Circuit should have recognized that under clearly established law, Petitioner's prolonged imprisonment past a statutorily-mandated release date gave rise to a Fourteenth Amendment liberty interest and constituted an objectively serious Eighth Amendment deprivation. Instead, the court granted qualified immunity based on a constitutionally insignificant distinction between the maximum expiration of a full-term sentence and the arrival of an earlier mandatory release date. Stunningly, the court explained that this very difference—the sole basis for its award of qualified immunity—was not "meaningful" and "matter[ed] not" to the constitutional analysis. Pet. App. 13a, 19a.

This is the rare jaw-dropper of a case that warrants summary vacatur. The right against prolonged, unauthorized incarceration past a legally mandated release date has been clearly established for centuries. It cannot be nullified by administrative officials who would meddle in release dates, thereby disregarding both sentences imposed by courts and penal

statutes drafted by democratically-elected legislatures. And the clearly-established right must not be defeated by pressing qualified immunity so far that it turns on a distinction so minute that the lower court literally deemed it meaningless—especially in a case that involves not split-second decisions made in dangerous situations but administrative decisions made at a desk. The Court should summarily vacate the Second Circuit's decision, as it has done in recent cases where lower courts took qualified immunity to absurd extremes. *See Sause v. Bauer*, 138 S. Ct. 2561, 2563 (2018) (summary reversal); *Taylor*, 141 S. Ct. at 54 (summary vacatur); *McCoy v. Alamu*, 141 S. Ct. 1364 (Mem) (2021) (granting the petition, vacating, and remanding in light of *Taylor*).

I. Under Clearly Established Law, Prolonged Incarceration Past A Mandatory Release Date Constitutes An Eighth Amendment Harm and Violates a Fourteenth Amendment Liberty Interest.

"[A] general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question." *Taylor*, 141 S. Ct. at 53-54 (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). That is precisely the case here. First, the general constitutional rules that govern this case are clearly identified in the decisional law: the Eighth Amendment prohibits punishment with no penological justification, and the Fourteenth Amendment prohibits prolonged, extralegal detention. *See Gregg*, 428 U.S. at 173; *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981); *McNeil*, 407 U.S. at 252; *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975). Second, those principles apply with obvious clarity in this case, where no

one contends that a valid basis existed for confining Petitioner past his mandatory release date. Petitioner's eleven months of extralegal confinement therefore constitute an objectively serious Eighth Amendment deprivation and give rise to a Fourteenth Amendment liberty interest under clearly established law.

1. The Eighth Amendment prohibits the "inflict[ion]" of "cruel and unusual punishments." U.S. Const. amend. VIII. It bans punishments that are "totally without penological justification." *Gregg*, 428 U.S. at 173; *Rhodes*, 452 U.S. at 346. It is obvious that state officials have no penological justification for locking up a person "for almost a year past the date on which state law mandated his release." Pet. App. 1a. Eleven months of extralegal incarceration therefore amounts to an Eighth Amendment deprivation under clearly established law.

If that were not enough, unauthorized incarceration beyond a mandatory release date is obviously both cruel and unusual: "A lawless extension of custody is certainly unusual, and it is cruel in the sense of being imposed without any legal authority." *Hankins v. Lowe*, 786 F.3d 603, 605 (7th Cir. 2015). In addition, even in its slenderest form, the Eighth Amendment's "narrow proportionality principle," *see Ewing v. California*, 538 U.S. 11, 20 (2003); *Graham v. Florida*, 560 U.S. 48, 59-60 (2010), prohibits keeping someone locked up for a year after state statute guarantees their freedom.

2. Being "confined . . . without any lawful authority to support that confinement" also violates clearly established Fourteenth Amendment law. *McNeil*, 407 U.S. at 252. Confinement cannot "constitutionally

continue" when its "basis no longer exist[s]." *O'Connor*, 422 U.S. at 575.

In this case, no one contends that "any lawful authority," *McNeil*, 407 U.S. at 252, supported Petitioner's confinement after April 19, 2016. It is undisputed that the "basis" for Petitioner's confinement "no longer existed" at this point. *See O'Connor*, 422 U.S. at 575. Freedom from bodily restraint "has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action," *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992), and here Petitioner languished in prison for eleven months after the state's authorization to incarcerate him had expired. In light of this Court's precedents, the Second Circuit's denial of a clearly established liberty interest in avoiding incarceration for nearly a year past a mandatory release date simply makes no sense. After all, the Fourteenth Amendment's protection of liberty would mean very little with an exception for eleven-month chunks of lawless incarceration meted out at the whim of officialdom.

3. No reasonable state official could possibly think it lawful to keep a person incarcerated for nearly a year after the authorization for their imprisonment expired. "Qualified immunity shields an officer from suit when she makes a decision that . . . reasonably misapprehends the law governing the circumstances she confronted." *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). "[T]he focus" of this analysis "is on whether the officer had fair notice that her conduct was unlawful." *Id.* There was obviously fair notice here. No one—much less a reasonable official—thinks it is lawful to keep people incarcerated without a legal basis.

II. The Second Circuit Wrongly Allowed A Meaningless Distinction To Defeat Clearly Established Law.

The Second Circuit acknowledged that under clearly established law, "'imprisonment beyond one's term constitutes punishment within the meaning of the eighth amendment.'" Pet. App. 23a (quoting *Sample v. Diecks*, 885 F.2d 1099, 1108 (1989)). The court explained that the distinction between a maximum release date mandated by statute and a conditional release date mandated by statute "matter[ed] not." Pet. App. 13a. In case the reader missed it, the Court helpfully reiterated that the distinction was not "meaningful." Pet. App. 19a. Then the court wrongly concluded that eleven months of extralegal incarceration caused no injury to Petitioner under clearly established law because "no decision" had previously addressed "imprisonment past a mandatory conditional release date." Pet. App. 27a.

The Second Circuit erred in awarding qualified immunity based on a meaningless distinction. The court of appeals should have recognized that "general constitutional rule[s] already identified in the decisional law" prohibit prolonged, extralegal detention and "apply with obvious clarity to the specific conduct in question" in this case. *Taylor*, 141 S. Ct. at 53-54.

1. In addressing the objective prong of the Eighth Amendment, the Second Circuit got off on the right foot by concluding that "[Petitioner's] unauthorized imprisonment for almost one year certainly qualifies" as an objectively serious deprivation under the Eighth Amendment. Pet. App. 13a. The court explained that the distinction between the expiration of a sentence and a mandatory release date literally did not matter:

"It matters not that [Petitioner] was detained past his statutory conditional release date as opposed to the expiration of the maximum sentence imposed on him by the sentencing judge." Pet. App. 13a.

But then the court inexplicably decided that qualified immunity turned on this same irrelevant distinction. The court acknowledged a clearly established "legal principle that no federal, state, or local authority can keep an inmate detained past the expiration of the sentence imposed on them." Pet. App. 22a. It further concluded that under clearly established law, "'imprisonment beyond one's term constitutes punishment within the meaning of the eighth amendment.'" Pet. App. 23a (quoting *Sample*, 885 F.2d at 1108). But then the court split the thinnest of hairs, concluding that clearly established law did not prohibit unlawful detention based on a mandatory conditional release date because no case "confirm[ed] that prolonging an inmate's detention past their conditional release date might violate the inmate's rights under the Eighth Amendment." Pet. App. 22a. Notably absent from the court's analysis was any explanation of why a meaningless distinction suddenly proved dispositive.

2. The Second Circuit's Fourteenth Amendment analysis followed the same pattern. The court of appeals rightly concluded that Petitioner "had a liberty interest in freedom from detention upon his conditional release date, as guaranteed by New York law." Pet. App. 20a. Here again, the distinction between one mandatory release scheme and another mandatory release scheme did not amount to a meaningful difference: "Because New York's conditional release scheme is mandatory, there is *no meaningful difference* in Hurd's liberty interest in release from prison at the

expiration of his maximum sentence and conditional release when he became entitled to an earlier release date." Pet. App. 19a (emphasis added). But, per the court of appeals, this meaningless difference nonetheless entitled Respondent to qualified immunity because "no decision has held that imprisonment past a mandatory conditional release date violates the Fourteenth Amendment's substantive protections." Pet. App. 27a.

3. Unlike the Second Circuit, other courts correctly characterize the clearly-established right as freedom from unlawful incarceration past a statutorily mandated release date, not just past the maximum expiration of a sentence. *E.g.*, *Figgs v. Dawson*, 829 F.3d 895, 902, 906 (7th Cir. 2016) (denying qualified immunity and stating: "[i]ncarceration beyond the date when a person is entitled to be released violates the Eighth Amendment if it is the product of deliberate indifference."); *Porter v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011) ("There is a [c]learly [e]stablished [r]ight to [t]imely [r]elease from [p]rison").[3]

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[3] *See also Scott v. Baldwin*, 720 F.3d 1034, 1036 (8th Cir. 2013) ("Under the Eighth and Fourteenth Amendments, the plaintiffs had a clearly established right to be 'free from wrongful, prolonged incarceration.'"); *Hankins*, 786 F.3d at 605 ("[A] state officer who unlawfully keeps a person in custody beyond the date at which he . . . is entitled to be released imposes a form of cruel and unusual punishment, and thus violates the Eighth Amendment."); *Childress v. Walker*, 787 F.3d 433, 439 (7th Cir. 2015) ("A plaintiff states a claim for an Eighth Amendment violation if he is detained in jail for longer than he should have been due to the deliberate indifference of corrections officials."); *see also Todd v. Hatin*, No. 13-CV-05, 2014 WL 5421232, at *4 (D. Vt. Oct. 24, 2014) (Sessions, J.) ("[C]ourts look not at whether a prisoner was released beyond his maximum possible release date, but rather

The Second Circuit should have done the same. Clearly established law does not turn on such meaningless distinctions.

III. The Court Should Summarily Reverse The Second Circuit.

The decision below is an affront to constitutional liberty that cannot stand. "Chief" among "freedom's first principles" is "freedom from arbitrary and unlawful restraint." *See Boumediene v. Bush*, 553 U.S. 723, 797 (2008). The decision below denies the clearly-established status of this right, which dates at least to the Magna Carta. It denigrates that right based on a distinction that the court of appeals rightly recognized as meaningless. It protects unscrupulous or indifferent administrative officials who may falsify sentence calculations, thereby aggrandizing themselves at the expense of both penal laws enacted by the legislature and sentences imposed by courts. And it takes qualified immunity to new extremes, not to protect split-second measures taken in dangerous situations but to shield administrative decisions made in office chairs.

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at whether a prisoner was detained after he should have been released."); *Haygood v. Younger*, 769 F.2d 1350, 1355, 1359 (9th Cir. 1985) (rejecting qualified immunity and stating "when the state itself creates a statutory right to release from prison, the state also creates a liberty interest and must follow minimum due process appropriate to the circumstances to ensure that liberty is not arbitrarily abrogated"). Even the Second Circuit itself suggested in a previous case that the Eighth Amendment guarantees against imprisonment "beyond that authorized by law," *Sudler v. City of New York*, 689 F.3d 159, 169 n.11 (2d Cir. 2012), not merely imprisonment beyond the maximum sentence imposed by the court.

A. The Court Has Recently Used Summary Reversal In Cases Like This One, Where The Lower Court Took Qualified Immunity To An Improper Extreme.

The Second Circuit's error in this case replicates the same mistake that necessitated summary vacatur in *Sause v. Bauer*, 138 S. Ct. 2561 (2018), and *Taylor v. Riojas*, 141 S. Ct. 52 (2020). The Second Circuit failed to recognize that "[a] general constitutional rule already identified in the decisional law . . . appli[ed] with obvious clarity to the specific conduct in question." *Taylor*, 141 S. Ct. at 53-54 (quoting *Hope*, 536 U.S. at 741). Instead, the court brushed aside general but clearly established rules based on a minute factual difference between one's maximum expiration date and one's mandatory conditional release date, declared that no previous case had considered the same precise circumstance, and then awarded qualified immunity. Pet. App. 27a.

That analysis is dead wrong and flies in the face of *Sause* and *Taylor*. In *Sause*, the Court did not need to cite previous case law for the obvious proposition that "[t]here can be no doubt that the First Amendment protects the right to pray. Prayer unquestionably constitutes the 'exercise' of religion." *See* 138 S. Ct. at 2562. Nor did the Court need to identify a previous case in which police interfered with prayer in a home. *See id.* at 2563. Similarly, in *Taylor*, the Court did not need to cite a previous case about unsanitary prison conditions to find that prison staff violated clearly established Eighth Amendment law by keeping a prisoner in "deplorably unsanitary conditions for . . . an extended period of time." 141 S. Ct. at 53; *see also*

McCoy, 141 S. Ct. at 1364 (granting the petition, vacating, and remanding in light of *Taylor*). After all, "officials can . . . be on notice that their conduct violates established law even in novel factual circumstances." *Hope*, 536 U.S. at 741. Defeating qualified immunity does not require a case with "fundamentally similar" or "materially similar" facts. *Id.*

By the same token, Petitioner did not need to cite a case about prolonged detention past a mandatory conditional release date. It is equally obvious in both scenarios—a maximum expiration date and an earlier mandatory conditional release date—that the government has no penological ground or lawful basis to keep people locked up when the law says they must be free. Therefore, the law is just as clear in both scenarios that prolonged, extralegal detention constitutes an objectively serious Eighth Amendment deprivation and gives rise to a Fourteenth Amendment liberty interest.

The Second Circuit decided this case barely two months after this Court decided *Taylor*, which summarily vacated a court of appeals decision that failed to recognize that prolonged and horrific conditions in a prison cell violated the Eighth Amendment. The decision in this case underscores the need for this Court to repeat the message of *Taylor*: When a general rule governs a case with obvious clarity, qualified immunity is inappropriate. It would have been obvious to a reasonable officer that the Constitution prohibits holding someone past their mandatory release date. End of story.

B. The Decision Below Tramples Ancient, Clearly Established Liberty.

For centuries, Anglo-American law has recognized the right to be free from lawless detention as a fundamental liberty. The Second Circuit's dismissal of the right as less than clearly established is a stunning affront to liberty that calls for this Court's summary intervention.

"[P]ersonal liberty," wrote Blackstone, "consists in the power of loco-motion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law." 1 BLACKSTONE *130. "[I]n this kingdom, it cannot ever be abridged at the mere discretion of the magistrate, without the explicit permission of the laws." *Id.*. Quoting from "the humane language of our antient lawgivers," Blackstone made clear that the same restriction applied to jailers: "Custodes poenam sibi commissorum non augeant nec eos torqueant; sed omni saevitia remot pietateque adhibita, judicia debite exequantur. [Gaolers are not to torture or augment the punishment of those entrusted to their keeping, but let the sentence of the law be duly yet mercifully executed.]" 4 BLACKSTONE *297.

The Magna Carta recognized this fundamental liberty: "Here again the language of the great charter is, that no freeman shall be taken or imprisoned, but by the lawful judgment of his equals, or by the law of the land." 1 BLACKSTONE *130-31. "English liberty" included "security of [one's] person from imprisonment" and demanded that "no man shall be imprisoned contrary to law." 4 BLACKSTONE *431-32. The Second Circuit erred grievously in splitting hairs in order to deny

the age-old right against prolonged incarceration unauthorized by law.

C. Decisions Made From Office Chairs Do Not Deserve Qualified Immunity On Steroids.

If qualified immunity should be taken to new extremes, it is not to protect decisions like those at issue in this case—ones that are made slowly, free from danger, and without any need for split-second decisions.

1. In a series of qualified immunity cases involving use of force by police officers in the field, this Court has expressed concern about courts second-guessing split-second decisions by police officers, stating that "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quoting *Graham v. Connor*, 490 U.S. 386, 396-97 (1989)). But there's nothing "tense, uncertain, and rapidly evolving," *id.*, about desk-chair arithmetic used to calculate a release date. These decisions move at the speed of administrative bureaucracy. They are not made in "an atmosphere of confusion, ambiguity, and swiftly moving events." *See Scheuer v. Rhodes*, 416 U.S. 232, 247 (1974), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800 (1982). "[U]nlike a policeman," a prison official doing release computations in the serenity of an office, "acts at his leisure" and is "not subject to the stresses and split second decisions of an arresting officer." *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1968).

2. Because a prison functionary's "acts in discharging a prisoner are purely ministerial," *see Whirl*, 407 F.2d at 792, they do not involve the sort of official discretion that calls for substantial "breathing room," *see Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). Respondent deprived Petitioner of his freedom for nearly a year not by exercising policy discretion, but by refusing to acknowledge the amount of time he had spent in jail. Other courts have recognized the refusal to accurately credit jail time as a constitutional violation.[4]

Qualified immunity "reflect[s] an attempt to balance competing values: not only the importance of a damages remedy to protect the rights of citizens, but also 'the need to protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority.'" *Harlow*, 457 U.S. at 807 (citation omitted). "[T]he discretion that a jailer may lawfully exercise in imprisoning an individual is more limited in scope than even the discretion that a policeman may exercise in effectuating an arrest, much less the discretion accorded to a prison administrator in managing the prison." *Douthit v. Jones*, 619 F.2d 527, 535 (5th Cir.

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[4] *See Burke v. Johnston*, 452 F.3d 665, 667 (7th Cir. 2006) (reversing summary judgment against a plaintiff who "claim[e]d he was detained in jail longer than he should have been due to the 'deliberate indifference and delay' of [corrections] officials in granting him the jail credit); *Alexander v. Perrill*, 916 F.2d 1392, 1397 (9th Cir. 1990) (denying qualified immunity where failure to provide credit for time served in a foreign jail extended the plaintiff's incarceration); *Brown v. Perrill*, 21 F.3d 1008, 1010 (10th Cir. 1994) (holding that the plaintiff "presented a viable claim of a due process violation" based on the prison's unlawful refusal to credit him for jail time).

1980). Indeed, such calculations are strictly "mathematical." Pet. App. 5a. They do not require qualified immunity on steroids.

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The Court should intervene in this case so that the Second Circuit's shocking rejection of the fundamental liberty to be free from lawless imprisonment past a mandatory release date does not stand. The Court should declare that the clearly established right not to be incarcerated by government officials does not rise or fall based on the vagaries of a particular statutory scheme. When the law unambiguously guarantees freedom, keeping a person locked up violates clearly established rights.

CONCLUSION

The petition for a writ of certiorari should be granted and the decision below summarily vacated.

Respectfully submitted,

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June 2021