No. 22-1145

In the
Supreme Court of the United States

DAVID SOSA,

Petitioner,

v.

MARTIN COUNTY, FLORIDA, ET AL.,

Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Baker v. McCollan, 443 U.S. 137, 145 (1979), did not hold that mistaken detention pursuant to a valid arrest warrant, but in the face of repeated protests of innocence, violates the Constitution. Rather, this court in *Baker* held that McCollan was not deprived of a right secured under the United States Constitution. *Baker* did not clearly establish a Fourteenth Amendment substantive due process right which requires a jailer to investigate a claim of mistaken identity or a claim of innocence made by a person arrested by a law enforcement officer pursuant to a facially valid warrant who is then presented to a jailer for detention.[1]

This court in *Baker*, at 145, in *dicta* "…assumed *arguendo*[2] that, depending on what procedures the State affords defendants[3] following arrest and prior to actual trial, mere detention pursuant to a valid

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[1] It is a crime in Florida for a jailer to refuse to accept an arrestee presented for incarceration pursuant to facially valid process. F.S. §839.21 (2018).

[2] A statement or observation made by a judge as a matter of argument or hypothetical illustration, is said to be made *arguendo*. *Black's Law Dictionary,* Fifth Edition, 1979.

[3] Pursuant to Rule 3.130 of the Florida Rules of Criminal Procedure, the public defender's office is required to attend all first appearance hearings, and to represent such persons where necessary for that limited purpose. These hearings are to occur within 24 hours of arrest. Petitioner David Sosa attended first appearance on Saturday, the day after his arrest. Resp. App., Amended Complaint, at ¶ 44.

warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of liberty without due process of law". This Court continued and held that "…we are quite certain that a detention of three days over a New Year's weekend does not and could not amount to such a deprivation." [internal quote omitted, footnotes 2 and 3 added].

1. Did the Eleventh Circuit, sitting en banc, commit reversable error when it affirmed the District Court's Order dismissing David Sosa's over-detention claim with prejudice for failure to state a claim pursuant to 42 U.S.C.§1983 based upon *Baker,* thereby never reaching the defense of qualified immunity?

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STATEMENT OF THE CASE

A. STATEMENT OF THE FACTS[4]

Plaintiff David Sosa was pulled over on a traffic stop by Deputy Killough of the Martin County Sheriff's Office on Friday April 20, 2018. During the traffic stop, Deputy Killough discovered a warrant out of Texas for David Sosa. As a result, Deputy Killough arrested Plaintiff on the warrant and transported him to the Martin County Jail for booking. *See*, Resp. App. Amended Complaint, pg. 7-8, ¶39-43. On Monday, April 23, 2018, David Sosa was fingerprinted and then released at approximately 3 p.m. *Id.* pg. 8, ¶ 45.[5]

Plaintiff's Amended Complaint, under the sub-heading "Nutshell (some facts)," begins by alleging

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[4] Petitioners factual background statement cites only to the en banc dissenting opinion and to the vacated panel opinion for support. Cert Petition at pages 7-9.

[5] The Sheriff is an independently elected constitutional officer in Florida. *See*, Article VIII, Section 1(d), Florida Constitution. Thus, Sheriff Snyder is not an employee of Martin County, Florida, which owns the jail. The Sheriff was designated as the County's Chief Correctional Officer pursuant to F.S. 951.061 (2018). Operation of the jail is a separate function from the Sheriff's law enforcement function under Florida law. The Sheriff employs his own deputies pursuant to F.S. 30.53 (2018).

that many people have the name "David Sosa." Resp. App. Amended Complaint, pg.1-3, ¶¶ 1-20.[6]

Plaintiff's Amended Complaint otherwise contains the following pertinent facts in support of his single cause of action brought pursuant to 42 U.S.C. §1983, attempting to state a claim for false arrest and over-detention in jail, as well as a *Monell*[7] government liability claim.[8]

"Plaintiff David Sosa has been arrested and jailed *TWICE* by the Martin County Sheriff's Department because his name is "David Sosa," the same name as that of a person wanted in Harris County (Houston), Texas after being convicted of selling crack cocaine in

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[6] There are many common surnames in this country such as Smith, Anderson, Jackson, Roberts, Thomas, Scott, Jones, Nelson, Fowler, Clark and Mason, as well as any number of common first names to go with a common surname such as John, Clarence, Jack, Allen, Scott, David and Joe. Certainly, society should not void all arrest warrants or particularly old arrest warrants issued in a common name because it may be statistically more likely that the wrong John Smith, for example, is arrested pursuant to a facially valid arrest warrant based upon probable cause.

[7] *Monell v. Department of Social Services*, 436 U.S. 658 (1978)

[8] The District Court noted that Plaintiff failed to plead separate causes of action and appeared to be bringing three distinct claims in a single count, pursuant to 42 U.S.C. §1983, consisting of false arrest, over-detention and *Monell* liability. Pet. App. pg. 140a. Plaintiff did not attempt to bring any state law claims regarding his alleged false arrest and over-detention in the Martin County jail. Resp. App., Amended Complaint, pg. 1-17.

1992 (27 years ago). Both times, David informed the deputies that the person they were looking for, as identified on the warrant that came back for a different David Sosa, had an entirely different date of birth, substantial height difference, 40 pound weight difference, non- existent tattoo, and other identifying characteristics easily viewed on the warrant, David's driver's license and David himself (no tattoo, height, weight). Both times, Martin County deputies arrested him anyway and on the last occasion jailed Mr. Sosa for 3 days." Resp. App., Amended Complaint, ¶22.

"Plaintiff David Sosa still lives in Martin County, plans to stay there and drive on the streets and based upon average life expectancies will live for 28 more years. It is much more likely than not that in this time a Martin County Sheriff's deputy will check the identity of Plaintiff David Sosa and, if nothing is changed, be arrested and jailed again. Resp. App., Amended Complaint, ¶23.

"Martin County Sheriff's deputies still patrol Martin County and have the power of detention and arrest." Resp. App., Amended Complaint, ¶24.

"Plaintiff David Sosa, no middle name, is 49 years old and lives in Martin County, Florida." Resp. App., Amended Complaint, ¶32.

"Both the given name David and the surname Sosa are common in the United States (*see* Nutshell above). There are thousands of Hispanic adult males named "David Sosa" who have lived in the United States or visited the United States during the times relevant to

this lawsuit. Millions of different people are physically present in Martin County each year. After Texas, Florida has the most people named David Sosa in the United States. Simple statistics would predict that several individuals besides Plaintiff named "David Sosa" are present in Martin County, Florida every year." Resp. App., Amended Complaint, ¶33.

"The use of identifiers such as date of birth, social security number, height, weight, and tattoos have been commonplace for over a hundred years in the United States to avoid confusion that would arise from attempting to keep track of individuals with similar or identical names. This is also one of the practical reasons for government identification to include a person's height, weight, eye color, hair color, and a photo. These and other individual identifiers are recorded not only on government issued identification, but also logged in court records and prison records and databanks readily available to law enforcement officers. Criminal offenders on parole or probation are tracked even more closely, with photographs and other identifying data updated frequently to ensure better tracking in the event of changes in an individual's appearance." Resp. App., Amended Complaint, ¶34.

"In November 2014, David was stopped by a Martin County, Florida sheriff's deputy in a routine traffic stop. As is standard procedure, the deputy obtained David's driver license during the traffic stop. The driver's license clearly showed that David was a resident of Martin County, Florida. A second Martin County Florida deputy showed up." Resp. App., Amended Complaint, ¶35.

"David informed the deputies that he was not the wanted David Sosa and asked if the warrant information matched anything other than his name. The information did not match. David Sosa's date of birth is May 31, 1970, which, among other discrepancies, does not match that of the David Sosa for who a warrant had been issued decades ago in Texas." Resp. App., Amended Complaint, ¶36.

"Despite explaining to both deputies that he was not the wanted David Sosa and the identifiers were different they arrested David anyway, and took him to the station, where he was detained and fingerprinted. David told two Martin County jailers that he was not the wanted David Sosa and the identifiers, such as date of birth, were different." Resp. App., Amended Complaint, ¶37.

"After approximately three hours, it was determined by a Martin County Sheriff's deputy that David was not the wanted David Sosa and he was released. No one at the Martin County Sheriff's office created any file or made any other notation that Plaintiff David Sosa was not the wanted David Sosa out of Texas. There was no system in place at the Martin County Sheriff's Department to put David into so as to alert deputies in the future that Plaintiff David Sosa was not the wanted David Sosa. The four deputies that came into contact with Plaintiff David Sosa knew he lived in Martin County and realized that it was probable that David, given his decades of life left, would come into contact with the Martin County Sheriff's deputies again and be unlawfully detained again. Resp. App., Amended Complaint, ¶38.

"On Friday, April 20, 2018, David was pulled over on traffic stop by Martin County Sheriff's Deputy Killough. Once again, as part of the traffic stop, David provided his driver license, and the deputy ran David's name." Resp. App., Amended Complaint, ¶39.

"As before, the deputy identified a warrant attached to a different David Sosa, from Texas." Resp. App., Amended Complaint, ¶40.

"David explained once again that he was not that David Sosa and made Deputy Killough aware of the prior arrest and that he was let was let go by Martin County. David explained that Martin County, specifically, had arrested him before because of the David Sosa warrant. Again David explained that the David Sosa was not him who was wanted in Texas and did not have the same date of birth, social security number, or other identifying information." Resp. App., Amended Complaint, ¶41.

"Deputy Killough arrested David again and had David's truck impounded." Resp. App., Amended Complaint, ¶42.

"David was then taken to the Martin County jail to be processed, as he repeatedly explained to many Martin County employees to that his date of birth and other identifying information was different than the information on the warrant for the wanted David Sosa. He explained this in detail to a Martin County deputy named Sanchez as well as some other Martin County jailers and employees in the booking area, who took down his information and claimed they would

look into the matter." Resp. App., Amended Complaint, ¶43. [9]

"The following day, while still in custody, David was taken to see a magistrate. At his hearing, which was conducted by video conference, David attempted to explain to the judge that this case of mistaken identity could be easily resolved by comparing the information on the warrant with his identification, but several Martin County jailers threatened him and told him not to talk to the judge during his hearing. Based upon these assertions by the Martin County jailers and employees David thought it was a crime to talk to the judge." Resp. App., Amended Complaint, ¶44.

"On Monday, April 23, 2018 while still in custody, David was fingerprinted a second time, then released at approximately 3 pm." Resp. App., Amended Complaint, ¶45.

"Despite the deputies looking into David's problems by informing their supervisors and the Sheriff no files or other system was created to prevent David and those like him from being wrongfully arrested." Resp. App., Amended Complaint, ¶47.

"David has suffered and continues to suffer great anxiety over his past arrests and detentions by the Martin County Sheriff's Department and that at any

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[9] Based upon the allegations in ¶ 38, Deputy Sanchez would not have had access to a non-existent document indicating that Plaintiff had previously been excluded as the true wanted person nearly four years earlier in 2014.

time he could arrested again and jailed for days." Resp. App., Amended Complaint, ¶48.

"The Sheriff is responsible for the policies and practices of the office including identifying people arrested on warrants, creating filing systems, and the speed of checking a suspect's claim they are not the person identified in a warrant. Despite knowing about the Martin County Sheriff's office arresting people wrongfully for other people's warrants when there is warrant and other information pointing away from the innocent the Sheriff and his staff have determined they will do nothing to prevent David from being arrested and jailed again for the David Sosa warrant out of Texas and talking up to three days to clear David before release." Resp. App., Amended Complaint, ¶49.

"Defendant The Sheriff and Martin County and individual defendant deputies violated David's Fourth Amendment and Fourteenth Amendments rights, at least, when they searched and detained and arrested him without probable cause or reasonable suspicion. Also, Defendants took 3 days to check David's identity and get him out-an Unconstitutionally lengthy time. There was no warrant for the plaintiff, only a warrant for a similarly named person with a different date of birth, height, and weight, all identifiable from the driver license provided to the deputies." Resp. App., Amended Complaint, ¶53.

"Defendant The Sheriff and County and Individual deputies arrested David without a warrant and without probable cause in violation of his clearly

established rights." Resp. App., Amended Complaint, ¶54.

"Defendant The Sheriff and County and Individual deputies had no objectively reasonable belief that the arrest was lawful. The facts and circumstances as described above would not lead a prudent person to believe that an offense had been committed. The totality of circumstances in this case, viewed from the standpoint of an objectively reasonable police officer, would not and did not amount to probable cause." Resp. App., Amended Complaint, ¶55.

"While David was eventually released and no charges were filed the defendants had plenty of time to look up whatever they needed to clear David but they did not." Resp. App., Amended Complaint, ¶56.

"Defendant Sheriff and County did not have adequate written policies, or train or supervise the deputies properly such that they arrested David a second time without any probable cause because they refused to consider the fact that all of the identifying information on the warrant for the different David Sosa was different from what was displayed on the plaintiff's driver license, which was in possession of the deputies and the department." Resp. App., Amended Complaint, ¶57.

"Defendant Sheriff and County clearly condoned and ratified the actions of the Defendant Deputies by allowing the arrest and subsequent detention to take place despite having full knowledge of the facts and circumstances surrounding the situation. The

deliberately indifferent training and supervision was a direct and proximate cause of the deprivation of David's federally protected rights. As such, the execution of official policy caused the constitutional violations." Resp. App., Amended Complaint, ¶58.

"Upon information and belief Martin County has arrested many innocent individual because they failed to exclude a person based upon different identifying information between detainee and the actual person wanted for a warrant." Resp. App., Amended Complaint, ¶59.[10]

"Defendant Sheriff and County have established a pattern and practice of arresting people without probable cause." Resp. App., Amended Complaint, ¶60.

Plaintiff alleged in his operative Amended Complaint that he had been previously stopped and arrested by Martin County Sheriff's deputies in November of 2014 on the Texas arrest warrant and had been fingerprinted and released in three hours[11].

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[10] Allegations made upon "information and belief" are insufficient to satisfy Plaintiff's pleading burden. *Smith v. City of Sumiton,* 578 Fed. Appx. 933, 945 n. 4 (11th Cir. 2014).

[11] Plaintiff alleged that he was arrested pursuant to the Texas warrant in 2014, however, he failed to include the day of the week. Although not a part of the record, Martin County Sheriff's office records for Plaintiff Sosa's first arrest in 2014 indicate that the arrest occurred on November 13, 2014—a Thursday. Plaintiff specifically alleges that his birthday is May 31, 1970, and that his birthday is different from the true wanted David Sosa, implying that he is aware of the actual birth date of the true

Resp. App. Amended Complaint ⁋⁋35-38. About 3 ½ years later, on Friday April 20, 2018, when he was again arrested on the Texas arrest warrant by Martin County Sheriff's Deputy Killough, he was fingerprinted and released three days later on Monday, April 23rd. Resp. App. Amended Complaint ⁋⁋35-39-45. The operative Amended Complaint does not otherwise contain *any allegations whatsoever* regarding the jail's fingerprinting system. Resp. App. Amended Complaint pg. 1-17. The operative Amended Complaint contains no allegations in regard to what fingerprinting system existed at the jail, what was involved in the process of comparing Plaintiff Sosa's fingerprints in a Florida jail with those of the man wanted on the 27-year-old Texas warrant, or whether such a comparison could be made over a weekend. *Id.* The Amended Complaint, contains no allegations regarding whether Defendant Sanchez was allowed access to such a system, knew how to utilize the system or how anyone at the jail could go about utilizing fingerprints to determine whether or not Plaintiff David Sosa was in fact the individual wanted by the decades old out of state warrant. *Id.* Although it is true to say that names, dates of birth, social security numbers and other identifiers are utilized in the criminal justice system to identify people, it is also true to say that many criminals utilize alias names,

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wanted David Sosa. Resp. App. Amended Complaint, ¶36. Records reflect that the true wanted David Sosa was also born in May of 1970, less than two weeks before Plaintiff. Furthermore, records reflect that there is only a 3-inch height difference between the two men.

dates of birth and social security numbers to avoid identification. As the District Court noted, changes in weight and the removal of tattoos are also reasonable possibilities, particularly regarding execution of a 27 year old arrest warrant, and regarding the determination of probable cause to arrest pursuant to an arrest warrant. Pet. App. 143a-145a.

B. PROCEEDINGS BELOW

On March 9, 2000, Plaintiff filed his First Amended Complaint in the United States District Court, Southern District of Florida once as a matter of course, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, thereby rendering the Defendants' pending motions to dismiss his initial Complaint moot. *See*, Resp. App., Amended Complaint, pages 1-17.

On June 24, 2000, the District Court granted the Defendants/Respondents motion to dismiss the Amended Complaint with prejudice for failure to state a claim. *See*, Pet. App., 138a-150a. The District Court noted that the Plaintiff failed to divide his Amended Complaint into distinct claims and rather, in a single count brought pursuant to 42 U.S.C. §1983, appeared to be bringing, "three distinct claims: 1) false arrest, 2) over-detention, and 3) *Monell* liability." *Id.* 140a. The District Court specifically stated regarding the dismissal of the Plaintiff's false arrest 1983 claim that "…I find that the Defendant Officers did not commit any constitutional violations by arresting and subsequently booking Plaintiff at the Martin County jail. Accordingly, I need not consider whether the Defendant Officers are entitled to qualified

immunity." *Id.* 145a. Similarly, while addressing the Plaintiff's over-detention claim the District Court specifically stated regarding the dismissal of this 1983 claim that "…as no constitutional violation was committed, I need not address qualified immunity." *Id.* 148a. The District Court dismissed the *Monell* claim(s) for failure to state a claim as the Plaintiff could not show that his constitutional rights were actually violated. *Id.* 149a.

The Plaintiff appealed the order dismissing the Amended Complaint with prejudice for failure to state a claim. The Eleventh Circuit panel opinion affirmed the District Court's order dismissing the 1983 false arrest and *Monell* claims for failure to state a claim. However, it reversed as to the 1983 over-detention claim. Pet. App. 79a-137a.

The Eleventh Circuit, *sua sponte*, vacated the panel opinion and decided to rehear the case regarding the over-detention claim, en banc. Pet. App. 4a and 77a-78a. After briefing the over-detention claim issue, the en banc court in its majority opinion held that *Baker* controlled because the Plaintiff's claim that he was detained for three days in jail over a weekend, on a facially valid arrest warrant, despite his assertion that a mistake in identification had been made, failed to state a due process claim. The majority en banc opinion did not resolve this case based upon qualified immunity. Pet. App. 1a-11a.

Judge Jordan in his concurring opinion was critical of the defense of qualified immunity despite the fact that both the District Court and the Eleventh Circuit

sitting en banc did not resolve the Defendants' motion to dismiss the Amended Complaint on qualified immunity grounds. Pet. App. 12a-14a. Further, as stated, *Baker* did not clearly establish the actual existence of a substantive due process right to be free from over-detention by a Jailer in the face of repeated claims of innocence or mistake, let alone the contours of such a due process right, if any. *Baker* was not a qualified immunity case. *Baker* simply determined that McCollan was not deprived of a right secured under the United States Constitution, and as a result, he had no cognizable claim pursuant to §1983. *Baker,* 146-47. Judge Newsom, in his concurrence addressed his views regarding the pivotal issue, that being the use of the due process clause as a means to constitutionalize all societal wrongs, concluding that "[s]ubstantive due process is a doctrine shot through with problems and chock full of risks." Pet. App. 15a-24a. Judge Rosenbaum, who wrote the panel opinion, and was the lone dissenter in the en banc opinion, ultimately concluded that a jailer owed a constitutional duty to investigate Mr. Sosa's claims of mistaken identity, and thus that he stated an over-detention claim in his Amended Complaint. Pet. App. 25a-76a and 79a-118a.

REASONS FOR DENYING THE PETITION

Baker v. McCollan, 443 U.S. 137, 145 (1979), did not hold that mistaken detention pursuant to a valid arrest warrant, but in the face of repeated protests of innocence, violates the Constitution. Rather, this court in *Baker* held that McCollan was not deprived of a right secured under the United States Constitution. *Baker* did not clearly establish a Fourteenth Amendment substantive due process right which requires a jailer to investigate a claim of mistaken identity or a claim of innocence made by a person arrested by a law enforcement officer pursuant to a facially valid warrant who is then presented to a jailer for detention.[12]

This court in *Baker*, at 145, in *dicta* "…assumed *arguendo*[13] that, depending on what procedures the State affords defendants[14] following arrest and prior to actual trial, mere detention pursuant to a valid

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[12] It is a crime in Florida for a jailer to refuse to accept an arrestee presented for incarceration pursuant to facially valid process. F.S. §839.21 (2018).

[13] A statement or observation made by a judge as a matter of argument or hypothetical illustration, is said to be made *arguendo*. *Black's Law Dictionary,* Fifth Edition, 1979.

[14] Pursuant to Rule 3.130 of the Florida Rules of Criminal Procedure, the public defender's office is required to attend all first appearance hearings, and to represent such persons where necessary for that limited purpose. These hearings are to occur within 24 hours of arrest. Petitioner David Sosa attended first appearance on Saturday, the day after his arrest. Resp. App., Amended Complaint, at ¶ 44.

warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of liberty without due process of law". This Court continued and held that "…we are quite certain that a detention of three days over a New Year's weekend does not and could not amount to such a deprivation." [internal quote omitted, footnotes 13 and 14 added].

I. Did the Eleventh Circuit, sitting en banc, commit reversable error when it affirmed the District Court's Order dismissing David Sosa's over-detention claim with prejudice for failure to state a claim pursuant to 42 U.S.C. §1983 based upon *Baker,* thereby never reaching the defense of qualified immunity?

In short, the answer to this question is no. The en banc Eleventh Circuit Court did not rigidly apply *Baker* to this case. Rather, the Eleventh Circuit correctly applied the actual narrow holding in *Baker* to the facts of this case as pled in Mr. Sosa's Amended Complaint. Resp. App. Amended Complaint, pg. 1-17; Pet. App. 1a-11a, en banc Oder. There is no reason, supported by the record in this case, that this court should overrule *Baker* or worse, expand it by recognizing a constitutional duty imposed upon a jailer to investigate, or reinvestigate, a claim of mistaken identity or innocence, particularly in the form of a substantive due process claim, which is a doctrine that is "shot through with problems and chock full of risks." Newsom, concurring opinion, Pet. App. 20a. There is also no sound reason to impose a Fourth Amendment constitutional duty upon a jailer

to reinvestigate the question of probable cause to arrest upon receipt of a claim made by an arrestee that the arresting officer made a mistake or that the arrestee is innocent, particularly in light of the record in this case, which involved an arrest pursuant to a facially valid warrant that was not obtained or procured by any Defendant in this case. *See*, *Hill v. California,* 401 U.S. 797 (1971) [finding that where an arresting officer has a reasonable good faith belief that the arrestee is the correct person, even though it turns out they were not, the arrest is still a valid arrest in accordance with the Fourth Amendment]. *See also*, Pet. App. 143a-145a regarding the District Court's dismissal of the Fourth Amendment false arrest claim, and the cases cited therein regarding the existence of probable cause despite differences between the identifiers of the true wanted person in a warrant and the arrestee.

Mr. Sosa was arrested on a Friday. He was brought to his first appearance hearing before a Judge on Saturday and was released on Monday after the fingerprint unit determined that he was not the Sosa wanted by the Texas warrant. Resp. App. Amended Complaint, ¶¶39, 44 and 45. This court should not grant the Petition and take up these issues based upon the record in this case.

The Constitution does not guarantee that only the guilty will be arrested. *Baker,* at 145. If it did, §1983 would provide a cause of action for every defendant acquitted or every suspect released. *Id.* "Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of

convicting an innocent person." *Baker,* quoting *Patterson v. New York,* 432 U.S. 197, 208 (1977).

The Petitioner's suggestion that *Baker* does not provide clear guidance to the Circuit Courts regarding whether a person mistakenly arrested pursuant to a valid arrest warrant, who is then released after a 3 day weekend, should have a cause of action pursuant to §1983, is not supported by the actual holding of *Baker,* which decided this very issue. *Baker* held that no such constitutional right existed. *Baker,* 146-47. As a result, the Eleventh Circuit, sitting en banc, properly applied *Baker* to Mr. Sosa's case. In fact, this Court in *Baker* rejected the Court of Appeals summary of its opinion wherein it stated that, "[w]e are saying that the sheriff or arresting officer has a duty to exercise due diligence in making sure that the person arrested and detained is actually the person sought under the warrant and not merely someone of the same or similar name." *Baker* at 146. This Court should not recognize such a duty now. To do so would most certainly result in the expansion of any such constitutional duty imposed upon jailers to investigate any number of claims of mistake or innocence made by persons detained in jails. In fact, courts have concluded that imposing a duty to investigate upon jailers is unnecessary, and burdensome. *Atkins v. City of Chicago,* 631 F.3d 823, 828 (7th Cir. 2011)[rejecting the plaintiff's contentions, the court noted that "a continuing constitutional duty, even when there are constitutionally adequate formal administrative remedies against unjustified imprisonment, to conduct an exhaustive investigation of a prisoner's claim of misidentification, [p]risons would be

unmanageable."]. In addition, it is a matter of public record, or a simple Google search, to determine that there are several other law enforcement agencies in Martin County, Florida, in addition to the Sheriff's law enforcement function, which is separate and apart from his corrections function. These agencies include the City of Stuart Police Department, Sewalls Point Police Department, the Florida Highway Patrol (FHP) and FWC officers (Florida Fish and Wildlife Conservation Commission). Each of these agencies are independent of the Sheriff, they conduct their own investigations and make their own arrests. However, where the arrest occurs in Martin County, they all bring their arrestees to the Martin County Jail for booking. Any constitutional duty to investigate claims of mistaken identity or innocence would necessarily include the duty to reinvestigate the probable cause determination of law enforcement officers employed by completely different law enforcement entities. This would be unworkable.

The en banc Eleventh Circuit properly read *Baker* to involve two key factors: 1) the validity of the arrest warrant, and 2) the length of detention, being 3 days. In addition, the en banc Eleventh Circuit properly applied *Baker* which otherwise did not consider issues of technology in the identification to be a material factor. Pet. App. 5a-9a. Likewise, the en banc Eleventh Circuit, when addressing the minor factual difference between Mr. Sosa's case and that of Mr. McCollan, as it would relate to their respective 3 day detentions, one involving a holiday weekend while the other did not, was not significant enough to find a

distinction because it would mean that "the doctrine of precedent would lose most of its function." *Id.* 8a.[15]

A review of the cases cited by the Plaintiff in his Petition lead to the conclusion that most courts distinguish *Baker* factually and rely on *dicta* when addressing either a substantive due process claim or a Fourth Amendment over detention claim. These Courts are not trying to apply the actual holding in *Baker,* nor are they confused by the actual holding in *Baker*. *Baker* did not hold that a substantive due process right exists, let alone the contours of such a right, in the context of a three-day detention in jail pursuant to a facially valid arrest warrant despite repeated protests to jailers that a mistake in identity was made by the arresting officer. In fact, the cases cited by the Plaintiff are distinguishable on many levels. Some of those distinctions are worthy of comment here.

Garcia v. Cnty. Of Riverside, 817 F.3d 635 (9th Cir. 2016). While recognizing that the Supreme Court in *Baker* expressed reluctance to impose a duty to conduct an error free investigation of claims of mistaken identity upon jailers, the court in *Garcia* noted that the Plaintiff alleged that LASD knew that his fingerprints did not match the wanted subject as this information was available in a computer system

[15] The en banc Eleventh Circuit did not disturb the affirmance of the dismissal of Mr. Sosa's Amended Complaint by the panel opinion regarding his Fourth Amendment false arrest and *Monell* §1983 claims. Pet. App. 4a.

LASD operated and could access in a matter of seconds.

Buenrostro v. Collazo, 973 F.2d 39, 41 (1st Cir. 1992). The Plaintiff in this case was arrested inside his home pursuant to a wanted person request, rather than a warrant. He was detained for 31 days. The court noted that the length and circumstances of Buenrostro's detention as a Fourth Amendment claim are best examined at trial as part of a determination of his damages as the result of an alleged false arrest.

Russo v. City of Bridgeport, 479 F.3d 196 (2d Cir. 2007). This case involved a 217-day detention under circumstances where involved officers intentionally misstated facts related to the investigation regarding video evidence of the crime and the identification of the suspect. In addition, the court applied the Fourth Amendment because of the length of time of the detention and the intentional acts of the investigators regarding the misidentification resulting in an unreasonable seizure.

Cannon v. Macon Cnty., 1 F.3d 1558 (11th Cir. 1993), *opinion modified on reh'g*, 15 F.3d 1022 (11th Cir. 1994). This case involved a situation where Officer Collins intentionally copied information from NCIC rather than using the correct identifying information belonging to the Plaintiff such that the fugitive warrant for Cannon's arrest was based upon the incorrect information. *Cannon* is not a case like *Baker* where McCollan's brother caused the misidentification. In addition, the detention was longer than 3 days.

Ziglar v. Abbasi, 582 U.S. 120 (2017). This case involved the detention of illegal aliens for several months without a warrant based upon suspected ties to terrorism following September 11, 2001. The case also involved claims of a conspiracy. The defense of qualified immunity was not abolished in this case.

Lee v. City of Los Angeles, 250 F.3d 668 (9th Cir. 2001). Kerry Sanders, a severely mentally disabled person was wrongfully arrested pursuant to warrant out of New York for a different person with a different name and no effort to identify him was made in California before his extradition to New York from California, where he was detained for two years.

Berg v. Cnty. Of Allegheny, 219 F.3d 261 (3d Cir. 2000). Mr. Berg was arrested pursuant to a Violation of Parole (VOP) warrant at his home that was erroneously issued based upon a clerical error made by a government employee regarding his identity. He was held in custody for 5 days. In addition, the Fourth Amendment was applied because the VOP warrant was not valid and the arresting officer should have known the warrant was erroneous.

Kennell v. Gates, 215 F.3d 825 (8th Cir. 2000). Officer Gates was sent a message by a fingerprint technician that the Plaintiff's fingerprints did not match the person wanted by the warrant on which she was arrested. Gates failed to take action and falsely stated that the prints matched. Plaintiff was held for 6 days, including a period of time after the fingerprint technician determined that the prints did not match. The court otherwise agreed with Gate's legal analysis

that an unreasonable or negligent refusal to investigate claims of innocence or mistaken identity of an individual detained pursuant to a facially valid warrant for a few days does not amount to a constitutional violation.

Safar v. Tingle, 859 F.3d 241 (4th Cir. 2017). The court in this case noted that the Fourteenth Amendment did not apply regarding withholding exculpatory information unless the officer's failure to disclose the information deprived the Plaintiff of a right to a fair trial. In addition, the court noted that the case does not cleanly fit within established Fourth Amendment claims related to the failure to withdraw an arrest warrant that was not based upon probable cause.

Hayes v. Faulkner Cnty., Ark., 388 F.3d 669 (8th Cir. 2004). This case involved a 38-day detention with no court appearance. Mr. Sosa attended First Appearance, pursuant to Fla. R. Crim. P. 3.130, on Saturday April 21, 2018. Resp. App. Amended Complaint ¶44.

Brigham City, Utah v. Stuart, 547 U.S. 398 (2006). This case did not involve an arrest pursuant to a facially valid warrant or a case of mistaken identity as it would relate to an arrest warrant. It also did not involve the question of whether a jailer owes a constitutional duty of any type to an arrestee regarding the lawfulness of their incarceration pursuant to a facially valid arrest warrant.

The Petition should be denied regarding the over-detention claim issue.

Regarding the attempt to convince this court that this case is a proper vehicle to take on the question of the viability of the individual capacity qualified immunity defense, it should be noted that this court has denied certiorari in the following cases challenging qualified immunity on principle in recent years: *Zadeh v. Robinson*, 928 F.3d 457 (5th Cir. 2019), *cert. denied,* 2020 WL 3146691 (2020); *Corbitt v. Vickers,* 929 F.3d 1304 (11th Cir. 2019), *cert. denied,* 2020 WL 3146693 (2020); *West v. City of Caldwell,* 931 F. 3d 978 (9th Cir. 2019), *cert. denied,* 2020 WL 3146698 (2020); *Mason v. Faul,* 929 F.3d 762 (5th Cir. 2019), cert. denied, 2020 WL 3146722 (2020); *Anderson v. City of Minneapolis,* 934 F.3d 876 (8th Cir. 2019), *cert. denied,* 2020 WL 3146690 (2020); *Jessop v. City of Fresno,* 918 F.3d 1031 (9th Cir. 2019), *cert. denied*, 2020 WL 2515813 (2020); *Kelsay v. Ernst,* 933 F.3d 975 (8th Cir. 2019), *cert. denied*, 2020 WL 2515455 (2020); *Clarkston v. White,* 943 F.3d 988 (5th Cir. 2019) (per curiam), *cert. denied,* 2020 WL 2515530 (2020); *Baxter v. Bracey,* 751 F. App'x 869 (6th Cir. 2018), *cert. denied,* 2020 WL 3146690 (2020); *Brennan v. Dawson,* 752 F. App'x 276 (6th Cir. 2018), *cert. denied,* 2020 WL 3146681 (2020). Furthermore, qualified immunity is available to many government actors other than law enforcement officers and jailers further complicating the issue in terms of the record in this case. *See*, *O'Connor v. Donaldson,* 422 U.S. 563, 577 (1975) [recognizing qualified immunity for the superintendent of a state hospital], and *Harlow v. Fitzgerald,* 457 U.S. 800 (1982) [granting qualified

immunity to presidential aides]. Given the complexity of this issue and the doctrine of stare decisis, it is clear that this case is not the case that presents the best factual and legal foundation upon which this court should consider abolishing the defense in its entirety. *See*, Aaron L. Nelson & Christopher J. Walker, *A Qualified Defense of Qualified Immunity,* 93 Notre Dame L. Rev. 1853, 1858 (2018). It is clear that qualified immunity seeks to balance two important interests, that being the need to hold public officials accountable for their intentional acts in contravention of the Constitution while providing some protection from harassment, distraction and liability when they perform their duties reasonably. Ultimately, qualified immunity is designed to protect "all but the plainly incompetent or those who knowingly violate the law." *Mally v. Briggs,* 475 U.S. 335, 341 (1986).

The dismissal of Mr. Sosa's case for failure to state a constitutional claim, and the en banc affirmance of that dismissal, did not turn on the application of the defense of qualified immunity. Pet. App. 138a-150a; 1a-11a. As a result, this court should not grant this Petition in order to take up the question of the continuing legal validity of the defense of qualified immunity which was not squarely addressed by the District Court or en banc Eleventh Circuit Court below. Ultimately, a cause of action brought pursuant to 42 U.S.C. §1983 requires a Plaintiff, among other things, to demonstrate that a violation of a constitutional or federal right has occurred. It is the role of the courts to determine what the Constitution means and whether a particular right exists or what the parameters of such a right might be. *Marbury v.*

Madison, 5 U.S. 137 (1803). Thus, it is the court which must decide whether a particular §1983 Plaintiff states a claim that a violation of the Constitution has occurred. The courts will most certainly be called upon by defendants to make this determination as a matter of law, particularly in the absence of the defense of qualified immunity, at some point during a case brought pursuant to §1983. This could result in numerous decisions recognizing any number of constitutional rights around the country, many of which may vary from Circuit to Circuit.[16]

The question regarding whether some form of immunity for government officials should be recognized[17] or abolished, is not squarely before this court given the record in Mr. Sosa's case, since his case was not dismissed on qualified immunity grounds. In that regard, the Petition suggests, at pg. 30, that the defense of qualified immunity is counter textual to §1983 citing *Rogers v. Jarrett,* 63 F.4th 971 (5th Cir. 2023). This suggestion asserted in Judge Willett's concurring opinion in *Rogers* is based upon words that

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[16] Consider *Pearson v. Callahan,* 555 U.S. 223 (2009), regarding the determination of the existence of or defining an actual constitutional right before reaching the qualified immunity question. *See also*, *Albright v. Oliver,* 510 U.S. 266, 271 (1994)(plurality op.) noting that the first step in any §1983 claim is to identify the constitutional right allegedly infringed. This identification process, in the absence of qualified immunity, will necessarily lead to more and more opinions regarding the actual existence of a Constitutional right or further expansion of the scope of existing rights.

[17] *See*, *Butz v. Economou,* 438 U.S. 478 (1978); *Harlow v. Fitzgerald,* 457 U.S. 800 (1982).

were never codified in §1983, as argued in a published paper by Professor Reinert. The issue regarding whether the common law provides any support for qualified immunity should be left for another day involving a case that squarely addresses the defense under factual circumstances that would warrant such a review, and in recognition of the principle of stare decisis. Alternatively, the issue should be left to Congress.

II. This Case is a Bad Vehicle for Review

The Plaintiff's Amended Complaint was dismissed with prejudice by the District Court for failure to state a claim for over-detention in the Martin County Jail based upon the actual holding in *Baker*. In addition, the Plaintiff's case was not dismissed by the District Court based upon qualified immunity and the Eleventh Circuit's en banc majority opinion, which affirmed the District Court, did not affirm based upon qualified immunity. Pet. App. 138a-150a; 1a-11a. Therefore, this court should not take up the issue of qualified immunity as a result of the ultimate disposition of this case which did not involve that defense.

This case does not involve a factual situation that warrants the recognition of a constitutional duty upon a jailer to investigate a claim of mistaken identity in the form of a substantive due process claim[18] or to hold

[18] For the reasons advanced by Judge Newsom in his concurring opinion, this court should not recognize a due process right in this case. Pet. App. 15a-24a. To do so would certainly invite the lower

that the Fourth Amendment requires such a subsequent investigation by a jailer regarding an arresting officer's previous determination that probable cause existed, which would blur the line between the role of an investigating arresting officer and that of a jailer in the context of a Fourth Amendment lack of probable cause claim. Such a determination would turn the role of a jailer on its head as most jailers are not certified law enforcement officers and are not trained in investigative techniques. Such a Fourth Amendment claim against a jailer would vitiate countless opinions on the subject of probable cause to arrest pursuant to a facially valid warrant regarding matters relating to the identification of the arrestee as the true wanted person, despite differences in dates of birth, social security numbers or even height. [*See*, Pet. App. 143a-145a wherein the District Court addressed Plaintiff's Fourth Amendment false arrest claim.]. *See also*, *Hill v. California, supra.* Ultimately, a jailers role, in addition to the care, custody and control of the jail population, is to ensure the appearance of an accused in court.

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courts to expand such a substantive due process right beyond the facts of this case to include any number of claims of innocence or mistake made by an arrestee in jail.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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June 23, 2023 *Counsel for Respondents*

APPENDIX

APPENDIX

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APPENDIX 1

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA FORT PIERCE DIVISION

Civil Action No. 2:19cv1445

[Filed March 9, 2020]

DAVID SOSA,
Plaintiffs,

V.

SHERIFF WILLIAM SNYDER OF MARTIN COUNTY, FLORIDA, *in an official capacity,* MARTIN COUNTY, FLORIDA, DEPUTY M. KILLOUGH, *individually,* DEPUTY SANCHEZ, *individually,* and JOHN DOE MARTIN COUNTY DEPUTIES
Defendants.

PLAINTIFF'S FIRST AMENDED[1] ORIGINAL COMPLAINT

NOW COMES Plaintiff DAVID SOSA amending his complaint "as a matter of course" complaining of

[1] Plaintiff amends "as a matter of course" pursuant to FRCP15(a). There are pending motions to dismiss and the complaint amendment renders them moot.

Defendants Sheriff William Snyder of Martin County, Florida, *in an official capacity,* Martin County, Florida, Deputy M. Killough, *Individually,* Deputy Sanchez, *Individually,* and John Doe Martin County Deputies, and bringing causes of action for DAMAGES, INJUNCTIVE RELIEF, and a CLASS ACTION and will show the Court the following:

NUTSHELL (some FACTS)

1. There is a "David Sosa" who is currently Professor of Philosophy and Chair of the Department of Philosophy at the University of Texas, Austin, and starred in the critically acclaimed movie Waking Life[2] as himself.

2. There is another "David Sosa" who is a financial expert witness in San Francisco.

3. There is another "David Sosa" who is lawyer in the Bronx, New York.

4. There is another "David Sosa" who is chiropractor in San Diego, CA.

5. There is another "David Sosa" who is a Captain and Commandant at the United States Merchant Marine Academy in New York.

[2] One of the undersigned lawyer's favorite movies.

6. There is another "David Sosa" who is a well-known artist:

7. There is another "David Sosa" who is a supervisor at the United States Department of Agriculture.

8. There is another "David Sosa" who is a physician of internal medicine in La Crosse, Wisconsin.

9. There is another "David Sosa" who passed away in El Paso, Texas in 2018.

10. There is another "David Sosa" who is an events manager at The Events Company in Houston.

11. There is another "David Sosa" with is a graphic designer with a Bachelor of Arts and Science Degree in Houston, Texas.

12. There is another "David Sosa" who is a beverage manager in Houston, Texas.

13. There is another "David Sosa" with is a graphic designer with a Bachelor of Arts and Science Degree in Houston, Texas.

14. There is another "David Sosa" who is as heating and air conditioning manager in Houston, Texas.

15. There is another "David Sosa" who is an accountant with Exxon/Mobil in Houston, Texas. is a graphic designer with a Bachelor of Arts and Science Degree in Houston, Texas.

16. There is another "David Sosa" who is sales support manager at Stake USA in Houston, Texas.

17. There is another "David Sosa" who is practice director at Randstad in the Miami/Fort Lauderdale Area.

18. There is another "David Sosa" who is a web designer at Cognition Creative in Houston, Texas.

19. There are over EIGHT HUNDRED professional listings for individuals named "David Sosa" on LinkedIn, a professional social media platform.

20. There are THOUSANDS of individuals named "David Sosa" who have lived in the United States or have visited the United States in the years relevant to the instant civil action.

21. Plaintiff David Sosa is a resident of Martin County, Florida, since 2014 and has worked for Pratt and Whitney and its affiliates in research and development on airplane engines for 21 years. David Sosa has two associate degrees in aviation technology and a bachelor of science degree in business administration. He is married with two children, seven and eight years old, and lives is his house in Stuart, Florida in Martin County.

22. Plaintiff David Sosa has been arrested and jailed *TWICE* by the Martin County Sheriff's Department because his name is "David Sosa," the same name as that of a person wanted in Harris County (Houston), Texas after being convicted of selling crack cocaine in 1992 (27 years ago). Both times, David informed the deputies that the person they were looking for, as identified on the warrant that came back for a different David Sosa, had an entirely different date of birth, substantial height difference, 40 pound weight difference, non-existent tattoo, and other identifying characteristics easily viewed on the warrant, David's driver license and David himself (no tattoo, height, weight). Both times, Martin County deputies arrested him anyway and on the last occasion jailed Mr. Sosa for 3 days.

23. Plaintiff David Sosa still lives in Martin County, plans to stay there and drive on the streets and based upon average life expectancies will live for 28 more years. It is much more likely than not

that in this time a Martin County Sheriff's deputy will check the identity of Plaintiff David Sosa and, if nothing is changed, be arrested and jailed again.

24. Martin County Sheriff's deputies still patrol Martin County and have the power of detention and arrest.

JURISDICTION AND VENUE

25. This Court has jurisdiction over Plaintiffs' federal claims, under 28 U.S.C. § 1331, 42 U.S.C. §§ 1983 and 1988, and supplemental jurisdiction, under 28 U.S.C. § 1367(a), to hear Plaintiffs' state law claims, if any.

26. Venue is proper in this Court, under 28 U.S.C. § 1391(b), because the incident at issue took place in Martin County, Florida, within the United States Southern District of Florida.

PARTIES

27. Plaintiff David Sosa is a resident of Martin County, Florida.

28. Defendant Sheriff William Snyder of Martin County, Florida, and future sheriffs ("The Sheriff"), in an official capacity, is a resident of Martin County, Florida, has been served with process at 800 SE Monterey Road, Stuart, Florida, or in person wherever he is found.

29. Defendant Martin County, Florida is a governmental unit existing within the U.S. Southern District of Florida and has been served

with process by serving the Chairperson of the Martin County Board of County Commission who is currently Edward V. Ciampi at 2401 SE Monterey Road, Stuart, Florida, 34996.

30. Defendant Killough, ("Deputy Killough") Individually, at all times relevant was a Martin County Sheriff's deputy and has been served with process at 800 SE Monterey Road, Stuart, Florida, or in person wherever he is found.

31. Defendant Sanchez, ("Deputy Sanchez") Individually, at all times relevant was a Martin County Sheriff's deputy and has been served with process at 800 SE Monterey Road, Stuart, Florida, or in person wherever he is found.

ADDITIONAL FACTS

32. Plaintiff David Sosa, no middle name, is 49 years old and lives in Martin County, Florida.

33. Both the given name David and the surname Sosa are common in the United States (see Nutshell above). There are thousands of Hispanic adult males named "David Sosa" who have lived in the United States or visited the United States during the times relevant to this lawsuit. Millions of different people are physically present in Martin County each year. After Texas, Florida has the most people named David Sosa in the United States. Simple statistics would predict that several individuals besides Plaintiff named "David Sosa" are present in Martin County, Florida every year.

34. The use of identifiers such as date of birth, social security number, height, weight, and tattoos have been commonplace for over a hundred years in the United States to avoid confusion that would arise from attempting to keep track of individuals with similar or identical names. This is also one of the practical reasons for government identification to include a person's height, weight, eye color, hair color, and a photo. These and other individual identifiers are recorded not only on government issued identification, but also logged in court records and prison records and databanks readily available to law enforcement officers. Criminal offenders on parole or probation are tracked even more closely, with photographs and other identifying data updated frequently to ensure better tracking in the event of changes in an individual's appearance.

35. In November 2014, David was stopped by a Martin County, Florida sheriff's deputy in a routine traffic stop. As is standard procedure, the deputy obtained David's driver license during the traffic stop. The driver's license clearly showed that David was a resident of Martin County, Florida. A second Martin County Florida deputy showed up.

36. David informed the deputies that he was not the wanted David Sosa and asked if the warrant information matched anything other than his name. The information did not match. David Sosa's date of birth is May 31, 1970, which,

among other discrepancies, does not match that of the David Sosa for who a warrant had been issued decades ago in Texas.

37. Despite explaining to both deputies that he was not the wanted David Sosa and the identifiers were different they arrested David anyway, and took him to the station, where he was detained and fingerprinted. David told two Martin County jailers that he was not the wanted David Sosa and the identifiers, such as date of birth, were different.

38. After approximately three hours, it was determined by a Martin County Sheriff's deputy that David was not the wanted David Sosa and he was released. No one at the Martin County Sheriff's office created any file or made any other notation that Plaintiff David Sosa was not the wanted David Sosa out of Texas. There was no system in place at the Martin County Sheriff's Department to put David into so as to alert deputies in the future that Plaintiff David Sosa was not the wanted David Sosa. The four deputies that came into contact with Plaintiff David Sosa knew he lived in Martin County and realized that it was probable that David, given his decades of life left, would come into contact with the Martin County Sheriff's deputies again and be unlawfully detained again.

39. On Friday, April 20, 2018, David was pulled over on traffic stop by Martin County Sheriff's Deputy Killough. Once again, as part of the

traffic stop, David provided his driver license, and the deputy ran David's name.

40. As before, the deputy identified a warrant attached to a different David Sosa, from Texas.

41. David explained once again that he was not that David Sosa and made Deputy Killough aware of the prior arrest and that he was let was let go by Martin County. David explained that Martin County, specifically, had arrested him before because of the David Sosa warrant. Again David explained that the David Sosa was not him who was wanted in Texas and did not have the same date of birth, social security number, or other identifying information.

42. Deputy Killough arrested David again and had David's truck impounded.

43. David was then taken to the Martin County jail to be processed, as he repeatedly explained to many Martin County employees to that his date of birth and other identifying information was different than the information on the warrant for the wanted David Sosa. He explained this in detail to a Martin County deputy named Sanchez as well as some other Martin County jailers and employees in the booking area, who took down his information and claimed they would look into the matter.

44. The following day, while still in custody, David was taken to see a magistrate. At his hearing, which was conducted by video conference, David attempted to explain to the judge that this case

of mistaken identity could be easily resolved by comparing the information on the warrant with his identification, but several Martin County jailers threatened him and told him not to talk to the judge during his hearing. Based upon these assertions by the Martin County jailers and employees David thought it was a crime to talk to the judge.

45. On Monday, April 23, 2018 while still in custody, David was fingerprinted a second time, then released at approximately 3 pm.

46. David missed work and was unable to personally inform his employer of his absence. David was deprived of his liberty for the duration of the period when he was wrongfully held. David paid money to get his truck out of impoundment.

47. Despite the deputies looking into David's problems by informing their supervisors and the Sheriff no files or other system was created to prevent David and those like him from being wrongfully arrested.

48. David has suffered and continues to suffer great anxiety over his past arrests and detentions by the Martin County Sheriff's Department and that at any time he could arrested again and jailed for days.

49. The Sheriff is responsible for the policies and practices of the office including identifying people arrested on warrants, creating filing systems, and the speed of checking a suspect's claim they are not the person identified in a

warrant. Despite knowing about the Martin County Sheriff's office arresting people wrongfully for other people's warrants when there is warrant and other information pointing away from the innocent the Sheriff and his staff have determined they will do nothing to prevent David from being arrested and jailed again for the David Sosa warrant out of Texas and talking up to three days to clear David before release.

CAUSES OF ACTION
DEFENDANT MARTIN COUNTY
AND THE INDIVIDUAL DEPUTIES
42 U.S.C. §1983: 4th, 5th and 14th AMENDMENT
VIOLATIONS FALSE ARREST
and OVER DETENTION

50. Plaintiff reasserts all previous paragraphs as if fully set forth herein.

51. The Fourth Amendment guarantees everyone the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *U.S. Const. amend. IV*. Fourth Amendment violation are actionable under 42 U.S.C. Section 1983.

52. The Fourteenth Amendment and 5th Amendment guarantees everyone the right to Due Process of Laws." *U.S. Const. amend. XIV*. Fourth and Fourteenth Amendment violation are actionable under 42 U.S.C. Section 1983.

53. Defendant The Sheriff and Martin County and individual defendant deputies violated David's Fourth Amendment and Fourteenth

Amendments rights, at least, when they searched and detained and arrested him without probable cause or reasonable suspicion. Also, Defendants took 3 days to check David's identity and get him out-an Unconstitutionally lengthy time. There was no warrant for the plaintiff, only a warrant for a similarly named person with a different date of birth, height, and weight, all identifiable from the driver license provided to the deputies.

54. Defendant The Sheriff and County and Individual deputies arrested David without a warrant and without probable cause in violation of his clearly established rights.

55. Defendant The Sheriff and County and Individual deputies had no objectively reasonable belief that the arrest was lawful. The facts and circumstances as described above would not lead a prudent person to believe that an offense had been committed. The totality of circumstances in this case, viewed from the standpoint of an objectively reasonable police officer, would not and did not amount to probable cause.

56. While David was eventually released and no charges were filed the defendants had plenty of time to look up whatever they needed to clear David but they did not.

57. Defendant Sheriff and County did not have adequate written policies, or train or supervise the deputies properly such that they arrested

David a second time without any probable cause because they refused to consider the fact that all of the identifying information on the warrant for the different David Sosa was different from what was displayed on the plaintiff's driver license, which was in possession of the deputies and the department.

58. Defendant Sheriff and County clearly condoned and ratified the actions of the Defendant Deputies by allowing the arrest and subsequent detention to take place despite having full knowledge of the facts and circumstances surrounding the situation. The deliberately indifferent training and supervision was a direct and proximate cause of the deprivation of David's federally protected rights. As such, the execution of official policy caused the constitutional violations.

59. Upon information and belief Martin County has arrested many innocent individual because they failed to exclude a person based upon different identifying information between detainee and the actual person wanted for a warrant.

60. Defendant Sheriff and County have established a pattern and practice of arresting people without probable cause.

INJUNCTIVE RELIEF

61. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

62. Plaintiff needs injunctive relief as at any time a Martin County Sheriff's deputy could come into contact with Plaintiff David Sosa, or any David Sosa, and be detained and arrested on the warrant for the wanted David Sosa.

63. The Sheriff and Martin County could create a file on David Sosa or a file for all wrongfully detained individuals due to misidentification related to warrants. This could be an electronic file or a paper file. The deputies then could receive a memorandum that explains the simple system to check so as not to detain, arrest and/or jail the wrong person.

CLASS ACTION

64. Pursuant to Fed.R.Civ.P. Rule 23(a) and 23(b)(1) and (2), Class Representative Plaintiff David Sosa brings this class action on his behalf and on behalf of other similarly situated individuals (Class 1) named David Sosa and, also, (Class 2) individuals falsely arrested or detained on warrants, where the warrants and the arrestee/detainee were two different individuals.

65. The exact number of members in Class 1 identified in the preceding paragraph is not presently known, but upon information and belief, Class 1 includes up to or more than 2000 individuals named David Sosa, who are in danger of being detained or arrested now and in the future and is therefore so numerous that pursuant to Fed. R. Civ. P. 23(a)(1) joinder of

individual members in this action is impracticable.

66. The exact number of members in Class 2 identified is not presently known, but upon information and belief, Class 2 includes up to or hundreds of individuals have been arrested or detained in the last 4 years based upon a warrant that was not a Class 2 member, and is therefore so numerous that pursuant to Fed. R. Civ. P. 23(a)(1) joinder of individual members in this action is impracticable. All Putative Class 2 Members are known to the defendants and in fact defendants are in possession of details about each putative class member.

67. There are common questions of law and fact in the action that relate to and affect the rights of each member of the Classes. The relief sought is common to the Classes, as all Putative Class Members were exposed to the same type of conduct by Defendants The Sheriff and Martin County and experienced the same due process, equal protection, 4th Amendment and statutory violations by Defendants The Sheriff and Martin County. Accordingly, pursuant to Fed. R. Civ. P. 23(a)(2), there are questions of law and fact common to the Classes.

68. The claims of the Class Representative are typical of the Class he represents as the Class Representative claims that Martin County violated the rights held by the Putative Class Members under the Fourth, Fifth, and Fourteenth Amendments to the United States

Constitution, 42 U.S.C. §1983, 42 U.S.C. §1988, and state law. There is no conflict between the putative Class Representative and any other members of the Classes with respect to this action.

69. David Sosa is an adequate representative of the Classes because his interests do not conflict with the interests of the Classes that he seeks to represent and he intends to prosecute this action vigorously. Accordingly, pursuant to fed. R. Civ. P. 23(a)(4), the Class representatives will fairly and adequately protect the interests of the Class.

70. This action is properly maintained as a class action in that the prosecution of separate actions by individual Putative Class Members would create a risk of different adjudications with respect to individual members of the Classes that, as a practical matter, would be dispositive of the interests of other members not party to the adjudication, or would substantially impair or impede their ability to protect their interests, or would establish incompatible standards of conduct for The Sheriff and Martin County.

71. This action is properly maintainable under Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) because The Sheriff and Martin County, has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the Classes as a whole and because questions of law and fact

predominate over questions affecting individual members and a class action is superior to other available methods for the fair and efficient adjudication of this case.

72. The questions of law or fact common to the Classes and which predominate over any other questions affecting individual Putative Class Members, include without limitation:

a. Whether The Sheriff and Martin County had a custom, policy and practice of detaining and arresting individuals on someone else's warrant;

b. Whether The Sheriff's and Martin County's custom, policy and practice of keeping individuals in jail for 24 hours or longer when checking the identity of a person detained/arrested due to a warrant;

c. Whether The Sheriff and Martin County had a custom, policy and practice of not noting when a person was falsely detained/arrested on someone else's warrant so it would not happen again violated constitutionally protected rights of the Class under 42 U.S.C. § 1983;

d. Whether The Sheriff and Martin County failed to properly train their employees or correct their abuses including arresting/detaining people due to warrants that were for other persons;

73. This action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. Individual litigation would increase the delay and expense to all parties and the court system, would create the potential for inconsistent or contradictory judgments and would possibly impair or impede the ability of individual Putative Class Members to protect their interests. The class action presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale and comprehensive supervision by a single court.

74. The attorney for the Class representatives is experienced and capable in the field of constitutional law and civil rights and has been recognized as knowledgeable, capable counsel who has carried out his duties.

PUNITIVE DAMAGES

75. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

76. All individual defendants are liable for punitive damages. In addition, the Martin County employee defendants were consciously indifferent to the plaintiff's constitutional rights and they did the acts knowingly, such acts being extreme and outrageous and shocking to the conscious.

ATTORNEY'S FEES

77. The plaintiff is entitled to recover attorneys' fees and costs to enforce his Constitutional rights and under 42 U.S.C. Sections 1983 and 1988, from Defendants.

JURY TRIAL

78. The plaintiff demands trial by jury on all issues triable to a jury.

PRAYER FOR RELIEF

79. WHEREFORE, Plaintiff David Sosa request that the Court:

A. Enter judgment for Plaintiff against Martin County and every individually named defendant jointly and severally;

B. Find that Plaintiff is the prevailing parties in this case and award attorneys' fees and costs, pursuant to federal law, as noted against defendants The Sheriff and Martin County and the individually named defendant deputies jointly and severally;

C. Award monetary damages to Plaintiffs and class members for the violations of their Constitutional rights claim in an aggregate amount of at least $100,000,000;

D. Award Pre- and post-judgement interest;

E. Award Punitive damages against all individually named defendants;

F. Order The Sheriff and Martin County to implement policies and train employees in looking at identifying data in existing warrants to verify whether a warrant is for a given person before arrest or detention and to create a filing system where deputies can check if they have arrested David Sosa, or any one, before on a warrant for someone else;

G. Order injunctive relief to prevent David Sosa from being wrongfully detained based upon someone else's warrant;

H. Certify the Classes; and

I. Grant such other and further relief as appears reasonable and just, to which, Plaintiff shows himself entitled.

Respectfully Submitted,

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Attorneys for plaintiff

CERTIFICTE OF SERVICE

I HEREBY CERTIFY that I have electronically filed a copy of the foregoing with the Clerk of the Court by using the CM/ECF system, which will send electronic notice to: Summer Barranco, PURDY, JOLLY, GIUFFREDA, BARRANCO & JTSA, P.A.. Counsel for Defendants 2455 East Sunrise Boulevard, Suite 1216, Fort Lauderdale, Florida 33304; and David Arthur, counsel for Martin County, 2401 SE Monterey Road, Stuart, FL 34996, on this 9th day March 2020.

/s/ Randall L. Kallinen
Randall L. Kallinen
Kallinen Law PLLC
511 Broadway Street
Houston, TX 77012,