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 U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

RANDALL KALLINEN
ALEX JOHNSON
KALLINEN LAW PLLC
511 Broadway Street
Houston, TX 77012

XIAO WANG
Counsel of Record
UNIVERSITY OF VIRGINIA SCHOOL OF LAW SUPREME COURT LITIGATION CLINIC
580 Massie Road
Charlottesville, VA 22903
(434) 924-8956
x.wang@law.virginia.edu

Counsel for Petitioner

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INTRODUCTION

Respondents' opposition confirms the need for this Court's review, for three reasons.

First, Respondents misstate the law. They insist *Baker*'s admonition—that "detention pursuant to a valid 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'"—is "dicta." Resp. Br. at 15–16 (quoting *Baker v. McCollan*, 443 U.S. 137, 145 (1979)). That's incorrect.

Baker determined, from the circumstances at issue, that plaintiff's claim did not give rise to a constitutional violation. But that did not, as Respondents suggest, mean that no claim could ever possibly lie. Quite the contrary: "*Obviously*, one in [plaintiff's] position could not be detained indefinitely." *Baker*, 443 U.S. at 144 (emphasis added). This Court thus outlined two aspects to its holding: no violation under the facts presented, yet an "obvious[]" constitutional claim "depending on what procedures the State affords defendants," the "amount of time" one is detained, and other factors. *Id.* at 144–45.

Consistent with that determination, "numerous courts have reached the almost tautological conclusion that an individual in custody has a constitutional right to be released from confinement 'after it was or should have been known that the detainee was entitled to release.'" *Schneyder v. Smith*, 653 F.3d 313, 330 (3d Cir. 2011) (citing *Baker*).

If Respondents are right, then every one of these "numerous courts," *id.*, has gotten it wrong because, per Respondents, "[t]here is no . . . constitutional duty" to investigate "a claim of mistaken identity or innocence,"

Resp. Br. at 16. Worse, any such duty "would be unworkable." *Id.* at 19.

Were this true, then it would support, not undercut, certiorari, so that this Court could reject all the wrong decisions that lower courts have made. And if Respondents are wrong, then this case offers an ideal opportunity to clarify that *Baker* circumscribes, rather than expands, government power.

Second, as the opening brief outlines, courts are divided on (1) whether to evaluate *Baker* claims under a bright-line or totality-of-the-circumstances analysis, and on (2) which constitutional provision—the Fourth or Fourteenth Amendment—applies when such claims arise.

The opposition fails to address either split. Instead, Respondents dedicate paragraph upon paragraph to sleuthing for meaningless distinctions between the cases discussed in the petition.

Respondents, for instance, concede that *Garcia v. County of Riverside*, 817 F.3d 635 (9th Cir. 2016), recognized a *Baker* claim. They likewise acknowledge that plaintiff's "fingerprints" in *Garcia* "did not match the wanted subject." Resp. Br. at 20. That was—in Respondents' own telling—a critical fact, because police "could access" a "computer system" that could confirm the mismatch "in a matter of seconds." *Id.* at 20–21.

Those circumstances parallel the facts here. After all, Sosa's "fingerprints confirmed that the warrant was for a different man." Pet. App. at 3a. Had Respondents "compared" the two sets of fingerprints at booking, they would have received a "response [in] *less than 10 seconds*," using a similar fingerprint identification system—a factual circumstance Respondents do not dispute. *Id.* at 56a (emphasis in original) (Rosenbaum, J.,

dissenting). In other words, in the Ninth Circuit, plaintiffs may proceed with suit based on (1) mismatched prints that (2) police could have identified in seconds. In the Eleventh Circuit, they may not. That is a split, full stop.

Respondents similarly concede that, in *Russo v. City of Bridgeport*, 479 F.3d 196 (2d Cir. 2007), and *Berg v. County of Allegheny*, 219 F.3d 261 (3d Cir. 2000), the Second and Third Circuits applied a Fourth Amendment analysis to plaintiff's *Baker* claims. Resp. Br. at 21, 22. That departs from the Eleventh, which examines the "right to be free from continued detention" through the Fourteenth Amendment. Pet. App. at 66a (Rosenbaum, J., dissenting). That distinction makes a difference, in this case and others, and represents yet another issue ripe for review.

Third, Respondents answer questions not asked. They spend nearly half their Argument examining whether qualified immunity should be overturned. Resp. Br. at 24–29. But that is not a question presented. To the contrary, the petition underscored that "[q]ualified immunity does not preclude review," and explained why this affirmative defense did not apply here. Pet. Br. at 27.

On this point, the parties agree. As Respondents acknowledge, this case "was not dismissed by the District Court based upon qualified immunity and the Eleventh Circuit's en banc majority opinion . . . did not affirm based upon qualified immunity." Resp. Br. at 27. It was dismissed instead on a reading of *Baker* which departs from the reading given by several other circuits.

This matter thus squarely presents two circuit splits for review, both involving significant constitutional issues. The Court should grant review on both questions.

I. *BAKER*'S PROHIBITION OF INDEFINITE DETENTION IS NOT DICTA.

Baker explained that "[o]bviously, one . . . could not be detained indefinitely in the face of repeated protests of innocence." 443 U.S. at 144. To Respondents, that statement is no more than "dicta." Resp. Br. at 15. That is so, they claim, because what *Baker* actually "held [was] that no such constitutional right existed" against state or local officers. *Id.* at 18. Further, "imposing a duty to investigate" would be "unnecessary, [] burdensome," and "unworkable." *Id.* at 18–19.

Virtually no jurisdiction, though, has taken such a blinkered view. Instead, as the Seventh Circuit has outlined, the "analysis utilized in *Baker* indicates that the duration of the detention and the burden placed on state officials in providing procedural safeguards are highly relevant to a constitutional examination of post-arrest detentions." *Coleman v. Frantz*, 754 F.2d 719, 724 (7th Cir. 1985).

Consequently, "*Baker* supports, if not requires, [the] conclusion that [an] 18-day detention was a violation of . . . due process." *Id.*; *accord Armstrong v. Squadrito*, 152 F.3d 564, 572 (7th Cir. 1998) ("The *Baker* Court explained that the Due Process Clause could guard against an extended detention."). Other courts are of a piece. *Russo*, 479 F.3d at 208 (referring to "right mentioned in *Baker*"); *Schneyder*, 653 F.3d at 330–31 (citing cases from Fifth, Sixth, Ninth, and Eleventh Circuits).

The upshot of these decisions is that *Baker* has not, as Respondents urge, provided officials with an unfettered license to arrest and detain. It has instead operated as a limit upon government power—a commonsense reading given the case's language and reasoning.

Respondents' offhand citation to *Atkins v. City of Chicago*, 631 F.3d 823 (7th Cir. 2011), does not counsel otherwise. For one, that case, concerning a parole violation, was resolved on qualified immunity grounds—the same grounds Respondents concede do not apply here. *Compare id.* at 829 ("[E]ven if the question were answered in the plaintiff's favor, . . . defendants [are] protected from liability . . . by the doctrine of qualified immunity."), *with* Resp. Br. at 25 ("The dismissal of Mr. Sosa's case . . . did not turn on . . . qualified immunity."). Further, the crux of the claims in *Atkins* was not mistaken identification, but prison mistreatment. 631 F.3d at 829. To resolve those claims, the court drew not on *Baker* or its progeny, but on governing Eighth Amendment case law. *Id.* at 830.

To be sure, the suspect's identification did play a role in some of the claims at issue in *Atkins*. But it was not the sort of misidentification *Baker* was concerned about. In *Atkins*, plaintiff *claimed* he had been wrongly apprehended. *Id.* at 826. But authorities subsequently confirmed they had arrested the right individual. Only weeks later, following a far more "exhaustive investigation," did officials discover deficiencies in the warrant itself. *Id.* at 828.

That sort of exhaustive investigation is a far cry from the seconds long process that would have made plain the misidentification here or in any of the other *Baker* decisions cited in the petition. *Atkins* was, in other words, not a *Baker* case. And in case there was any doubt on that point, the Seventh Circuit has continued to recognize the viability of *Baker* claims post-*Atkins*. *Martinez v. Santiago*, 51 F.4th 258, 261–62 (7th Cir. 2022).

Finally, and incredibly, Respondents note that "[t]here are many common surnames in this country," including "Jackson, Roberts, [and] Thomas," as though such a fact tips in their favor. Resp. Br. at 2 n.6. Yet as amici point out, *Baker* did not create some freewheeling right for the police to arrest and detain anyone who merely "shares a name with someone else in the country who has an outstanding warrant." IJ Br. at 3. Were that so, then "[m]istaken detentions," already "frequent" with "consequences often catastrophic," would become only more frequent and catastrophic—with no recourse for the innocent party. Rutherford Br. at 3.

That is because, under Respondents' theory, *anyone* with a common name may be arrested and detained for days, without constitutional consequence, so long as *someone* with that same name (even as an alias) has an outstanding warrant for their arrest. This roving right to arrest would attach regardless of differences in height, weight, age, and other characteristics.

That is not how *Baker* should be or has been applied. 443 U.S. at 144. Instead, as most courts recognize, an unreasonable failure to investigate mistaken identity claims can give rise to a constitutional violation. And no wonder: The Constitution does not extend a weaker set of protections for individuals born with a common name than those with a unique name. This Court should, in clarifying *Baker*'s nature and scope, reject Respondents' efforts to forge such a path.

II. COURTS ARE DIVIDED ON HOW TO EXAMINE *BAKER* CLAIMS.

A. Courts are split on whether *Baker* applies a bright-line rule or requires a totality-of-the-circumstances analysis.

Though *Baker*'s admonition against indefinite detention is well-settled, what is less clear is how and where to draw the constitutional metes and bounds. On those questions, Respondents' haphazard efforts only confirm the need for review.

As noted, the Eleventh Circuit's reasoning conflicts directly with Ninth Circuit precedent. One court allows plaintiffs to proceed with a Section 1983 suit when a fingerprint scan can confirm a mistaken identity within seconds. The other does not. More generally, in the Ninth, "incarceration on a warrant without a reasonable investigation of identity, when the circumstances demand it, is subject to review." *Garcia*, 817 F.3d at 641. But in the Eleventh, no such investigation is required. Pet. App. at 7a.

Next, Respondents point to *Buenrostro v. Collazo*, 973 F.2d 39, 41 (1st Cir. 1992). There, they say, plaintiff could prosecute a damages action based on "the length and circumstances of [his] detention." Resp. Br. at 21.

What "circumstances" were those? "[S]ignificant discrepancies between the description of the suspect . . . and [plaintiff's] physical characteristics, and available (but unused) fingerprint evidence." *Buenrostro*, 973 F.2d at 41. These circumstances, by Respondents' own admission, mattered in the First Circuit, because that court applies a reasonableness test to *Baker* claims. They do not matter in the Eleventh because, as the en banc

court explained, "no violation of due process occurs" so long as "a detainee's arrest warrant is valid and his detention" is "no more than three days." Pet. App. at 7a.

This same rubric applies to *Berg v. County of Allegheny*, 219 F.3d 261 (3d Cir. 2000), and *Kennell v. Gates*, 215 F.3d 825 (8th Cir. 2000). There were significant differences between the plaintiff and the wanted subject in both cases. In *Berg*, these differences included date of birth, residence, and Social Security number. 219 F.3d at 267. *Kennell* involved different names and mismatched fingerprints. 215 F.3d at 827.

This case, of course, features an even longer list of discrepancies. *See* Pet. App. at 2a–3a (noting that warrant was issued in Texas, while Sosa was a resident of Florida, and that "the wanted man's date of birth, height, weight, social security number, and tattoo information did not match [Sosa's] own identifiers.").

Plaintiffs in *Berg* and *Kennell* were able to proceed with their claims for relief. Sosa was not. Why? Because, as *Berg* notes, "an apparently valid warrant does not render an officer immune from suit if his reliance on it is unreasonable *in light of the relevant circumstances*." 219 F.3d at 273 (emphasis added). In the Eleventh, on the other hand, the only conditions that matter are the warrant's validity and the length of detention. Courts, indeed, must "give *no* weight to facts beyond those material to th[ese] two conditions." Pet. App. at 8a (emphasis added).

Respondents dispute none of these distinctions. If anything, their brief draws them out, making clear that in some courts, plaintiffs such as Sosa can seek constitutional redress through a totality-of-the-circumstances analysis. In others, like the Eleventh and

Fifth, no such claim is available, regardless of the patent differences between suspect and plaintiff. Respondents even suggest there would be nothing to stop officers from arresting Sosa a third time without consequence, Resp. Br. at 7 n.9, because of the rigid, bright-line rule these circuits employ. That divide is the sort of quintessential split of authority that calls for Supreme Court review.

B. Courts are split on whether *Baker* claims arise under the Fourth or Fourteenth Amendment.

On the second split at issue—the constitutional provision *Baker* implicates—Respondents' concessions are even more explicit.

Baker looked to whether plaintiff's detention satisfied "due process" as guaranteed by the Fourteenth Amendment. 443 U.S. at 145. Yet as Respondents' opposition acknowledges, overdetention cases in the First, Second, and Third Circuits are examined not through the lens of substantive due process, but the Fourth Amendment's guarantee against unreasonable searches and seizures. Resp. Br. at 21–22; *see also id.* at 23 (noting that, though not a "clean[]" fit under the Fourth Amendment, the Fourth Circuit has rejected a Fourteenth Amendment analysis of *Baker* claims).

These courts reason that, though *Baker* might have originally rooted its protection in the Fourteenth Amendment, the Court itself has drifted away from the "generalized notion of substantive due process." *Russo*, 479 F.3d at 208 (citing *Graham v. Connor*, 490 U.S. 386, 395 (1989), and *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (plurality op.)) (internal quotation marks omitted). Consequently, any constitutional claims "arising before or during arrest" should be analyzed "under the [F]ourth [A]mendment." *Id.* at 209.

Not all jurisdictions, however, have embraced such a shift. Every judge on the Eleventh reviewed Sosa's overdetention claim through the framework of the Fourteenth Amendment. Pet. App. at 6a; *id.* at 12a ("I do not think that *Baker* forecloses a substantive due process claim for 'over-detention.'") (citation omitted) (Jordan, J., concurring); *id.* at 16a (Newsom, J., concurring); *id.* at 66a (Rosenbaum, J., dissenting). That tracks the approach taken by the Sixth, Seventh, and Eighth Circuits. *See Seales v. City of Detroit*, 724 F. App'x 356, 363 (6th Cir. 2018); *Martinez*, 51 F.4th at 262; *Hayes v. Faulkner Cnty.*, 388 F.3d 669, 674–75 (8th Cir. 2004).

This divergence carries with it significant consequences. The Fourth Amendment, after all, offers an "explicit textual source of constitutional protection," *Graham*, 490 U.S. at 395. And it tells courts how to apply that protection: through the "touchstone of . . . reasonableness." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (internal quotation marks omitted). It should be little surprise, then, that jurisdictions that review *Baker* cases under the Fourth Amendment tend to employ a totality-of-the-circumstances, rather than bright-line, analysis. Respondents' opposition, again, disputes none of these points.

Such circumstances would, on their own, merit the Court's attention. But review here is perhaps all the more necessary because the present split is unlikely to resolve on its own, given the en banc nature of the Eleventh Circuit's decision.

Even outside the Eleventh Circuit, there are significant barriers to properly situating the *Baker* right under the Fourth Amendment. True: This Court has shifted away from substantive due process as a fount of constitutional protection. But to examine overdetention

claims under the Fourth, rather than Fourteenth, Amendment, lower courts would need to explicitly rebuke a core aspect of *Baker*'s holding.

Tempting as that might be, the Court has cautioned against such action. Instead, "if a precedent of this Court has direct application in a case . . . the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson / Am. Exp., Inc.*, 490 U.S. 477, 484 (1989). That is the case even if the precedent at issue "appears to rest on reasons rejected in some other line of decisions." *Id.* The Court has stressed this point as recently as this past Term. *Mallory v. Norfolk Southern Ry. Co.*, 2023 WL 4187749, at *7 (June 27, 2023). And its instruction means that this Court, and not any other, must be the one to make clear what *Baker* means and how it should be applied.

III. THIS CASE IS AN EXCELLENT VEHICLE FOR REVIEW.

As a final matter, Respondents devote considerable space to defending qualified immunity on the merits and arguing that, as a result, this case is a poor vehicle for review. Resp. Br. at 26–27. But such reasoning gets the calculus exactly backwards.

As the opening petition explains, *if* qualified immunity were an obstacle to tackling the questions presented, then this case would present a fitting opportunity to reconsider that doctrine. Pet. Br. at 29. Yet as Respondents acknowledge, it isn't a hurdle at all, because "[t]his case was not dismissed on qualified immunity grounds." Resp. Br. at 26.

That makes this case not a poor vehicle for review, but an ideal one. The Court can address robust splits over the scope and nature of *Baker* without burdening itself with qualified immunity. It should do so rather than waiting for more lower courts to flout Supreme Court precedent. And this case, involving a twice-detained innocent man, is a proper opportunity for it take up the questions at hand.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

RANDALL KALLINEN
ALEX JOHNSON
KALLINEN LAW PLLC
511 Broadway Street
Houston, TX 77012

XIAO WANG
Counsel of Record
UNIVERSITY OF VIRGINIA SCHOOL OF LAW SUPREME COURT LITIGATION CLINIC
580 Massie Road
Charlottesville, VA 22903
(434) 924-8956
x.wang@law.virginia.edu

Counsel for Petitioner

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