No. ____

In the Supreme Court of the United States

JAMES LEBLANC; PERRY STAGG; ANGELA GRIFFIN,
Petitioners,

v.

JESSIE CRITTINDON; LEON BURSE; EDDIE COPELIN; PHILLIP DOMINICK, III; DONALD GUIDRY,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Because of overcrowding in Louisiana prison facilities, locally elected sheriffs incarcerate some state prisoners in parish jails in accordance with agreements between the sheriffs and the Louisiana Department of Public Safety and Corrections (DPSC). But in this case, the sheriffs mistakenly delayed informing DPSC officials of many of the prisoners' existence. Some of those prisoners, including the plaintiffs, were overdetained as a result.

The plaintiffs seek damages against high-ranking DPSC officials under 42 U.S.C. § 1983, contending that the officials violated their Fourteenth Amendment due process rights by failing to adopt policies—duplicative of state law—to ensure that the sheriffs did their jobs. Some of the plaintiffs also contend that certain DPSC officials did not react quickly enough—17 days—to their mothers' phone calls to DPSC alerting them to the fact that their sons lacked release dates.

The Fifth Circuit upheld the district court's denial of qualified immunity to the DPSC officials—though the officials' *en banc* rehearing petition garnered seven votes in favor of rehearing.

(1) Do high-ranking state prison officials violate a prisoner's constitutional rights by failing to promulgate policies cajoling independent, locally-elected sheriffs to do their jobs timely and efficiently?

(2) Did any clearly established law warn the DPSC officials they would be held personally liable for failing to promulgate such policies?

(3) Does any clearly established law warn state prison officials they will be held personally liable for failing to respond for 17 days to reports of phone calls from family members of persons incarcerated in a local parish jail?

PARTIES TO THE PROCEEDING

The petitioners are James M. LeBlanc, Perry Stagg, and Angela Griffin. They are defendants in the district court and appellants in the Fifth Circuit.

The respondents are Jessie Crittindon, Leon Burse, Eddie Copelin, Phillip Dominick, III, and Donald Guidry. They are plaintiffs and appellees in the courts below.

STATEMENT OF RELATED PROCEEDINGS

Crittindon v. LeBlanc, United States Court of Appeals for the Fifth Circuit, No. 20-30304.

Crittindon v. Gusman, United States District Court for the Middle District of Louisiana, No. 17-cv-512-SDD-EWD.

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PETITION FOR WRIT OF CERTIORARI

Due to overcrowding in state prison facilities, the State has adopted an agreement with local sheriffs to house some state prisoners in parish jails. In this case, however, certain parish sheriffs failed to inform DPSC officials that they were housing some state prisoners in their parish jails. As a result, prisoners were overdetained. Five of them sued high-ranking DPSC officials for damages under § 1983 for allegedly violating their Fourteenth Amendment due process rights.

Over Judge Oldham's dissent, the lower court denied qualified immunity to the DPSC officials. The court reasoned that, as supervisors and high-ranking DPSC officials, they should have instituted policies requiring the locally-elected, independent sheriffs to timely notify state officials of the prisoners' existence. All parties here agree that such policies would be duplicative of the sheriffs' state law obligations. The lower court further held that two DPSC officials do not enjoy qualified immunity because they waited 17 days before responding to reports of phone calls by the mothers of two prisoners claiming that their sons had been convicted and sentenced but lacked a discharge date.

This Court should grant certiorari for three reasons.

1. The lower court's decision contravenes numerous of this Court's qualified immunity precedents and therefore warrants summary reversal. No clearly established law warned the DPSC officials that they could be held personally liable under a

supervisory liability theory for failing to promulgate policies affecting locally-elected sheriffs who are beholden to nobody except their own constituents. Nor did any clearly established law warn the high-ranking DPSC officials that they would be held personally liable for waiting 17 days to investigate calls from the family members of inmates.

In concluding otherwise, the lower court went astray several times over. It wrongly held the DPSC officials *caused* the plaintiffs' injury—even though the DPSC officials are not the sheriffs' supervisors, they have no control over the operations of sheriffs' offices or parish jails, and the DPSC officials' actions were not deliberately indifferent. The lower court wrongly defined the clearly established law at too high a level of generality—the "right to timely release." App. 12. And the lower court wrongly held the DPSC officials to a *negligence* standard at the second step of the qualified immunity analysis, even though that standard is incompatible with this Court's qualified immunity jurisprudence and this Court has expressly rejected the negligence standard in the context of Fourteenth Amendment due process claims. *See Daniels v. Williams*, 474 U.S. 327, 335–36 (1986); *Malley v. Briggs*, 475 U.S. 335, 341 (1986) (Qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law.").

2. The lower court's decision exacerbated at least two circuit splits. First, there is a "debate" between the circuit courts "over whether the theory of supervisory liability advanced must itself be clearly established at

the time of the violation." *Dodds v. Richardson*, 614 F.3d 1185, 1208 (10th Cir. 2010) (Tymkovich, J., concurring). The lower court's decision assumed that merely the constitutional right—and not the theory of supervisory liability—must be clearly established. Nearly every circuit to consider that question has come out the other way.

Second, there is another circuit split about whether state officials can violate an incarcerated, overdetained person's constitutional rights by failing to cajole independent third parties to follow the law. Two circuit have said yes; two circuit have said no. This is an ideal case to resolve that burgeoning split.

3. Finally, the administrators of Louisiana's prison system face the threat of significant personal liability for potentially thousands of overdetention claims. The United States Department of Justice recently issued a report concluding that the State "incarcerates thousands of individuals each year beyond their legal release dates." USDOJ Civil Rights Division, Investigation of the Louisiana Department of Public Safety Corrections, at 1 (Jan. 25, 2023), https://shorturl.at/iGHS2.

The State is currently fighting many overdetention cases in the courts below. This is the first case in which Secretary James LeBlanc has lost qualified immunity in the Fifth Circuit, and the lower court's holding is likely to have an outsized impact on the host of cases currently pending. This Court should ensure that state officials are not, in the words of Judge Oldham, turned "into scapegoats for the State's problems writ large." App 39 (Oldham, J., dissenting).

OPINIONS BELOW

The Fifth Circuit's opinion is published, *Crittindon v. LeBlanc*, 37 F.4th 177 (5th Cir. 2022), with Judge Oldham dissenting, and it is reproduced in the appendix to this petition ("App.") at pages 1–51.

The district court's ruling denying summary judgment to petitioners is not reported, and it is reproduced in the appendix at pages 52–123.

The Fifth Circuit's order denying *en banc* rehearing is published, *Crittindon v. LeBlanc*, 58 F.4th 844 (5th Cir. 2023), and it is reproduced in the appendix at pages 123–24. Seven judges voted in favor of rehearing (Jones, Smith, Ho, Duncan, Engelhardt, Oldham, and Wilson).

STATEMENT OF JURISDICTION

The Fifth Circuit had appellate jurisdiction because the district court's order denying the petitioners' motion for summary judgment was a final decision within the meaning of 28 U.S.C. § 1291 and the collateral order doctrine. *Mitchell v. Forsyth*, 472 U.S. 511, 527–30 (1985).

On January 31, 2023, the Fifth Circuit issued an order denying *en banc* rehearing. App. 123–24. On April 20, 2023, Justice Alito granted the petitioners' application to extend the time to file a petition for a writ of certiorari until May 31, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The respondents brought this lawsuit under 42 U.S.C. § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

The respondents allege that the petitioners violated their right to timely release from prison, which they claim is protected by the due process clause of Section I of the Fourteenth Amendment to the United States Constitution:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

1. The plaintiffs in this case were each arrested in New Orleans. In Louisiana, pretrial detainees are

exclusively housed in sheriffs' physical and legal custody. For that reason, they were incarcerated as pretrial detainees in the custody of the Orleans Parish Sheriff.

The Orleans Parish Sheriff's Office was under a federal consent decree at the time the plaintiffs were housed there. The consent decree limits the number of prisoners who may be housed at the Orleans Parish Jail, so the plaintiffs were among a group of prisoners transferred to the River Bend Detention Center in Lake Providence, Louisiana. River Bend is the East Carroll Parish Jail, which is operated by the East Carroll Parish Sheriff.

The Orleans and East Carroll Parish Sheriffs coordinated the transport of the prisoners back and forth to New Orleans for their ongoing criminal proceedings. Between July and October 2016 each of the plaintiffs was sentenced, and all were eligible for discharge from prison at or very near the time of sentencing.

When a prisoner is sentenced to a term of imprisonment at hard labor, legal custody of the prisoner automatically transfers from the sheriff to DPSC, even though the prisoner remains in the physical custody of the sheriff for at least some time. It is undisputed by the parties that state law requires the sheriff to compile a packet of paperwork—known as a preclassification packet—and transfer it to DPSC within 30 days of sentencing. La. R.S. § 15:566(B); *see* La. C.Cr. P. art. 892(C).

The preclassification packet includes jail credit paperwork, sentencing paperwork from the court, and

other documents. *See* La. C.Cr. P. art. 892(C). DPSC uses the preclassification packet to confirm the identity of the prisoner, to calculate the prisoner's sentence, and to determine his discharge date, among other things.

Because of overcrowding in state facilities, DPSC partners with local sheriffs to house state prisoners in local jails. The State and sheriffs adopted the "Basic Jail Guidelines"—which amount to a contract between the State and the parish sheriffs who house DPSC inmates. The parish sheriffs agree to house state inmates in accordance with the Guidelines in exchange for a fixed negotiated rate. The Guidelines require the sheriffs to transfer preclassification packets to DPSC officials, in accordance with Louisiana law.

In this case, communication between the Orleans Parish and East Carroll Parish sheriffs' offices broke down. Neither notified DPSC officials that the prisoners had been sentenced. Neither transmitted the preclassification paperwork to DPSC officials as required by the Guidelines and state law.

Without the preclassification paperwork, or even the knowledge of the plaintiffs' existence, DPSC's calculation of the plaintiffs' discharge dates was delayed and none of the plaintiffs was discharged timely.

On November 21, 2016, Plaintiff Jessie Crittindon's mother called DPSC asking why her son did not have a release date. Plaintiff Leon Burse's mother also called DPSC a few times in late November and early December. Two DPSC officials—Perry

Stagg, the Assistant Secretary of DPSC, and Angela Griffin, DPSC's Director of the Pre-Classification Department—were notified of these calls.

On December 8, 2016, a DPSC employee reached out to the East Carroll Sheriff's Office, seeking "an updated list of offenders that are housed with [East Carroll] from Orleans parish that are DOC without paperwork." App. 8. East Carroll identified 57 such prisoners, including plaintiffs Eddie Copelin, Phillip Dominick, and Crittindon. DPSC received another list of such prisoners from River Bend on December 27, 2016, that contained roughly 100 prisoners, including plaintiff Donald Guidry.

Each plaintiff was discharged within a day of DPSC's receipt of his preclassification packet. Ultimately, Crittindon was overdetained for 164 days, Burse for 156 days, Guidry for 143 days, Dominick for 97 days, and Copelin for 92 days. App. 8.

2a. Upon release, each of the plaintiffs sought money damages for his overdetention under § 1983 and state law against numerous officials, including the sheriffs of Orleans Parish and East Carroll Parish and some high-ranking DPSC employees: Secretary James LeBlanc, Perry Stagg, and Angela Griffin. The plaintiffs claimed their overdetention violated the due process clause of the Fourteenth Amendment and other state law provisions.

All DPSC officials moved for summary judgment on the grounds that they enjoy qualified immunity from suit. The sheriffs also sought qualified immunity. The plaintiffs filed cross-motions for summary judgment.

The district court concluded that the DPSC officials were not entitled to qualified immunity, and it denied all the parties' motions for summary judgment. The district court defined the right at issue at a very high level of generality: "[T]here is a clearly established right to timely release from prison." App. 83 (quoting *Porter v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011)). The district court concluded that the DPSC officials caused the plaintiffs' overdetention through deliberate indifference. App. 73 ("[T]he deliberate indifference standard may also attach to the *failure* to promulgate a policy."). Specifically, the district court agreed with plaintiffs' argument that DPSC officials were "deliberately indifferent insofar as they failed to put in place policies that would ensure their receipt [from the sheriffs] of the necessary paperwork in a timely fashion." App. 84. The district court acknowledged the DPSC officials' point that it could be futile to adopt additional policies requiring the sheriffs to submit the preclassification packets timely because they are already bound to do so under state law and the Guidelines. App. 86–87. But, according to the district court, DPSC officials were deliberately indifferent for failing to try anyway. App. 88 ("It is no excuse not to discipline the child because the parent fears the child will not heed.").

When determining whether the DPSC officials' conduct was objectively reasonable in light of the "clearly established right to timely release," the district court relied on Fifth Circuit precedent holding that, "where there is no discretion and relatively little time pressure, the jailer will be held to a high level of reasonableness as to his own actions." App. 91

(quoting *Bryan v. Jones*, 530 F.2d 1210, 1215 (5th Cir. 1976) (*en banc*)). Indeed, the district court observed that, "[i]f [the jailer] *negligently* establishes a record keeping system in which errors of this kind are likely, he will be held liable." *Id.* (emphasis added).

DPSC officials timely appealed. None of the sheriffs appealed.

2b. Over Judge Oldham's dissent, a panel of the Fifth Circuit upheld the district court's denial of qualified immunity under the theory that all three DPSC officials failed to adopt policies designed to encourage the independently elected parish sheriffs to do their jobs. The Fifth Circuit did not address each DPSC official's liability individually. Instead, the Fifth Circuit lumped them together, observing "LeBlanc and Stagg were responsible for the Basic Jail Guidelines, while Stagg and Griffin were responsible for running DPSC's Pre-Classification Department." According to the Fifth Circuit, that meant "[t]hey were each in a position to adopt policies that would address this delay." App. 15. The court faulted all three DPSC officials for failing to put a "system in place to ensure it had pre-classification paperwork from local jails for its newly-sentenced prisoners." App. 5. Like the district court, the Fifth Circuit said this failure amounted to deliberate indifference.

The panel majority also defined the clearly established law at a high level of generality: "This Court has recognized the clearly established right to timely release from prison." App. 16 (internal quotation marks omitted). The panel majority held that, in view of this clearly established law, the DPSC

officials' conduct was objectively unreasonable because they knew "there was, on average, a month-long delay in receiving paperwork from the local jails." App. 17. And, according to the panel majority, the Fifth Circuit "recognizes that overdetention by thirty days is a per se deprivation of due process." App. 24.

The panel majority further concluded that DPSC officials Stagg and Griffin were not entitled to qualified immunity from two of the plaintiffs' so-called "direct participation" claims. App. 17–21. The panel majority reasoned DPSC officials Stagg and Griffin were deliberately indifferent to two of the plaintiffs' constitutional rights—Crittindon and Burse—when they did not respond quickly enough to reports of phone calls to DPSC from individuals claiming to be the mothers of the prisoners. The panel majority noted that Griffin and Stagg discussed the phone calls, "but there is no evidence that they took any further action until 17 days later, on December 8, when they finally e-mailed River Bend, asking if it was housing any persons without release dates." App. 19.

Judge Oldham dissented, explaining that "the majority fails to engage in the required defendant-by-defendant analysis, instead faulting three DPSC employees for actions by other parties over which DPSC had no authority or control." App. 39 (Oldham, J., dissenting). According to Judge Oldham, DPSC officials weren't deliberately indifferent because "it's not at all obvious that the decision not to add a duplicative deadline to the guidelines causally resulted in the constitutional injury." App. 43 (cleaned up). On the contrary, "the undisputed record evidence

shows that when local jails fail to adhere to the Guidelines, all DPSC can do is 'work with them' to try to 'get them in compliance'—something DPSC does 'on a fairly regular basis.'" App. 44. Judge Oldham further explained that the panel majority defined the right too broadly: The right to timely release "is undisputed—and gets us nowhere." App. 49.

3. The DPSC officials sought rehearing from the *en banc* panel of the Fifth Circuit. Without explanation, the court denied the petition by a 9-7 vote. App. 123–24.

REASONS FOR GRANTING THE WRIT

I. THE MAJORITY OPINION CONTRAVENED THIS COURT'S PRECEDENTS AND WARRANTS SUMMARY REVERSAL.

A. The Lower Court Erred by Holding DPSC Employees Responsible as "Supervisory Officials" for the Alleged Mistakes of Independently Elected Sheriffs.

1. Under the first prong of the familiar qualified immunity test, a state official will not be held personally liable unless the official *caused* a plaintiff's constitutional injury. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (explaining officials "are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights"); *Saucier v. Katz*, 533 U.S. 194, 201 (2001) ("[D]o the facts alleged show the officer's conduct violated a constitutional right?"). For the purposes of § 1983, "masters do not answer for the torts of their servants" and so "the term 'supervisory

liability' is a misnomer." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). Instead, "each Government official, his or her title notwithstanding, is only liable for his or her own misconduct." *Id.*

The court below contravened this Court's precedent by holding DPSC officials liable as "supervisory officials" for the mistakes of the locally-elected sheriffs—who do not work for DPSC and who are accountable only to their own constituents. App. 12. The lower court wrongly held that the DPSC officials were "deliberately indifferent" to the plaintiffs' constitutional rights by failing to adopt policies to ensure the sheriffs did their jobs timely. App. 12–13. And the lower court further erred by concluding that Griffin and Stagg's failure to respond for 17 days to two of the plaintiffs' mothers' calls to DPSC amounted to deliberate indifference.

2. To begin, under this Court's precedent, it is not clear that deliberate indifference is the correct standard. This Court has applied the deliberate indifference standard to *municipal* policymakers. *See Connick v. Thompson*, 563 U.S. 51, 61–62 (2011) (observing that a city's "policy of inaction in light of notice that its program will cause constitutional violations is the functional equivalent of a decision by the city itself to violate the Constitution." (cleaned up)). A municipal actor is deliberately indifferent if he "disregard[s] a known or obvious consequence of his action." *Connick*, 563 U.S. at 61 (internal quotation marks omitted). In short, a municipal policymaker can be held liable for failing to implement a policy only if

he has "actual or constructive notice" of a problem and yet "choose[s]" to do nothing. *Id.*

But this Court has held that a high-ranking government supervisor must act with "*purpose*" not mere "*knowledge*" of a subordinate's illegal actions. *Iqbal*, 556 U.S. at 677 (emphasis added); *see Dodds v. Richardson*, 614 F.3d 1185, 1194 (10th Cir. 2010) (observing there are "important questions about the continuing vitality of supervisory liability under § 1983 after *Ashcroft v. Iqbal*"). Thus, something more than deliberate indifference is required before such an official can be said to have caused a plaintiff's constitutional injury.

At any rate, the independently elected sheriffs are not subordinates of the DPSC officials. Even if § 1983 allowed for respondeat superior liability, it would not apply here. This Court has certainly never applied the deliberate indifference standard under circumstances remotely similar to the facts of this case.

3. Even assuming the lower court correctly concluded that deliberate indifference is the applicable standard, it "is a stringent standard of fault." *Connick*, 563 U.S. at 61. Under that benchmark, a plaintiff must satisfy "rigorous standards of culpability and causation." *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 405 (1997). A plaintiff must "demonstrate a direct causal link" between an official's actions and the "deprivation of federal rights." *Id.* at 404. The deliberate indifference standard is not satisfied unless a plaintiff demonstrates that an official had constructive knowledge of a problem but actively chose to do

nothing about it. *Connick*, 563 U.S. at 61 (internal quotation marks omitted).

As Judge Oldham explained in dissent, the plaintiffs in this case have failed to satisfy the notice and causality requirements of the deliberate indifference standard. App. 41–42 (Oldham, J., dissenting).

Start with notice. Because of the sheriffs' failure to pass along the preclassification packets, DPSC officials did not even know of the plaintiffs' existence. The panel majority concluded that DPSC officials had the requisite notice anyway because they "knew that local jails often transmitted pre-classification paperwork to them in an untimely manner." App 5–6. The DPSC officials were aware of the delays because of the so-called "Lean Six Sigma study"—which "exposed widespread overdetentions of DPSC prisoners." App. 6. The study—conducted in 2012—showed that many of the overdetentions were caused by the sheriffs' "delays in transmitting local jail pre-classification paperwork" and "DPSC's own delays in processing this paperwork on its receipt." App. 6. The panel majority faulted the DPSC officials for choosing "to address only its own internal workflow problems" and not additionally "placing oversight mechanisms to ensure that local jails timely transmitted pre-classification paperwork to DPSC." App. 6.

In 2019, however, the study was seven years old. It did not—indeed, could not—warn state officials of the facts of this case. Nothing in the study suggested that the sheriffs might simply miscommunicate and fail

altogether to inform DPSC of some prisoners' existence.

Even assuming DPSC officials had notice in 2012, there is no "obvious" causal link between the Lean Six Sigma study and the plaintiffs' overdetention. As Judge Oldham explained, there is nothing in the record to suggest that any of the DPSC officials "has any power whatsoever to unilaterally amend the jointly-adopted Guidelines." App. 44 (Oldham, J., dissenting). Moreover, the majority opinion never said anything "about which defendant knew what at what time." App. 45 (Oldham, J. dissenting). Instead, it "lump[ed] the defendants together" by saying the three DPSC defendants were "aware of this pattern of delays and made a conscious decision not to address it." *Id.* (cleaned up). Every circuit court to address the question has said that lumping officials together when considering their qualified immunity is prohibited. *See, e.g.*, *Schulkers v. Kammer*, 955 F.3d 520, 533 (6th Cir. 2020) ("[W]e assess each actor's liability on an individual basis."); *Jones v. Williams*, 297 F.3d 930, 935 (9th Cir. 2002) (citing *Chuman v. Wright*, 76 F.3d 292, 294 (9th Cir. 1996)); *Pahls v. Thomas*, 718 F.3d 1210, 1232–33 (10th Cir. 2013).

Even assuming the DPSC officials had authority to act, it is not "obvious" that putting any policy in place encouraging the sheriffs to follow the Guidelines or state law would have made any difference. As the district court acknowledged, the likely futility of such actions is precisely why DPSC chose not to implement the policies. App. 87. Even if the DPSC officials had made the attempt, the alleged overdetentions could

have happened anyway because the sheriffs are not under the direction or control of DPSC. That breaks the causal chain.

In short, even under a deliberate indifference standard, the plaintiffs' supervisory claims against DPSC officials should fail. The Fifth Circuit reversibly erred by concluding otherwise.

4. The panel majority was also wrong to conclude that DPSC officials Griffin and Stagg, as "supervisory official[s]"—App. 17—were deliberately indifferent to Crittindon and Burse's constitutional rights merely because it took 17 days to address the plaintiffs' mothers' phone calls.

As discussed, Griffin and Stagg are not the sheriffs' supervisors. And deliberate indifference is not the correct standard under this Court's precedent. *See Iqbal*, 556 U.S. at 677. *Purpose*, not mere *knowledge*, is required. *Id.*

Even assuming the deliberate indifference standard applies, as explained, it requires notice and an obvious causal link. No case law suggests that a high-ranking prison official must personally investigate calls answered by other DPSC employees from people claiming to be family members of prisoners. That is especially true because Louisiana prisons house tens of thousands of inmates. Such calls cannot amount to notice for the rigorous deliberate indifference standard. Nor did failing to immediately investigate those family members' calls *cause* the plaintiffs' overdetention.

B. No Clearly Established Law Warned the DPSC Officials Their Conduct Was Unreasonable.

1. Even if the Court concludes that the DPSC officials violated the plaintiffs' constitutional rights by failing to promulgate policies cajoling the locally elected sheriffs to do their jobs, no clearly established law warned the DPSC officials that they would be held personally liable for that failure. Nor did any clearly established law warn DPSC officials that they would be held personally liable for failing to immediately investigate every call from an inmate's family member. No case would have alerted DPSC officials that their conduct was unreasonable.

This Court has not hesitated to summarily reverse lower courts that have denied qualified immunity to state officials absent clearly established law warning the officials that their conduct was unreasonable. *See, e.g.*, *City of Tahlequah v. Bond*, 142 S. Ct. 9, 11 (2021); *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) *Mullenix v. Luna*, 577 U.S. 7, 19 (2015). The Court should do the same again here.

2. Under the second prong of the qualified immunity test, a plaintiff may win damages from state officials only if he can show that the "contours of the right" were "sufficiently clear that . . . reasonable official[s]" in their position would have known that their actions violated his rights. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987); *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) ("A right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what

he is doing violates that right.'" (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)). The "salient question," is whether the officials have "fair warning" that their specific actions are unconstitutional. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

This Court has "repeatedly told courts not to define clearly established law at too high a level of generality." *Bond*, 142 S. Ct. at 11 (collecting cases). The question "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam) (internal quotation marks omitted). "A rule is too general if the unlawfulness of the officer's conduct 'does not follow immediately from the conclusion that [the rule] was firmly established.'" *D.C. v. Wesby*, 138 S. Ct. 577, 590 (2018) (quoting *Anderson*, 483 U.S. at 641).

Judge Oldham explained in dissent that the panel majority made "precisely" the mistake of defining the clearly established law at too high a level of generality: a "right to a timely release from prison." App. 48 (Oldham, J., dissenting). It is undisputed here, as a general matter, that a right to timely release from prison is clearly established. But that "gets us nowhere." App. 49 (Oldham, J. dissenting). The problem with defining the law at that high level of generality is it does not provide DPSC officials with fair notice of what they should do when the independent sheriffs house state prisoners without notifying DPSC officials of their existence.

The Fifth Circuit did not point to any precedent of this Court when holding that the DPSC officials

violated clearly established law. It relied on two of its own cases, neither of which can be said to have provided "fair warning" to the DPSC officers that their conduct was unreasonable.

First, the Fifth Circuit pointed to *Porter v. Epps*, 659 F.3d 440 (5th Cir. 2011). But that case *granted* qualified immunity to the secretary of the Mississippi Department of Corrections (MDOC)—despite a jury verdict finding him liable for overdetaining the plaintiff by fifteen months beyond the expiration of his sentence. An MDOC records department employee had miscalculated the plaintiff's sentence, which resulted in his overdetention. The plaintiff alleged—and a jury agreed—that the MDOC secretary failed to adequately train and supervise his subordinates.

Porter explained that "[d]etention of a prisoner for over 'thirty days beyond the expiration of his sentence in the absence of a facially valid court order or warrant constitutes a deprivation of due process.'" 659 F.3d 445 (quoting *Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980)). But the court concluded that the MDOC secretary enjoyed qualified immunity because "the evidence did not show that a reasonable person would have had actual or constructive notice that MDOC's policies with regard to the records department would result in instances of false imprisonment." *Id.* at 447.

Nothing in *Porter* could have given the defendants notice that they were required to implement policies to ensure DPSC obtained paperwork from parish officials within a particular amount of time. Nothing in *Porter* had anything to do with issuing policies purporting to affect third parties. The case is

insufficient to provide the DPSC officials with any guidance for dealing with the facts of this case.

Second, the Fifth Circuit said that the DPSC officials violated the clearly established law from *Douthit v. Jones*, 619 F.2d 527 (5th Cir. 1981). That was error. In *Douthit*, Dallas County sheriffs overdetained a prisoner because they believed—wrongly—that they had a valid "commitment order issued by the clerk of the Dallas County Criminal Court." *Id.* at 536. The court held the sheriffs to a high standard of liability and denied qualified immunity. But the case, like *Porter*, does not provide fair warning to state officials that they must issue policies purporting to control independent third parties. Thus, it does not count as clearly established law for the purposes of the present case.

Moreover, *Douthit*—decided in 1980—applies standards which have since been squarely rejected by this Court's case law. The court denied qualified immunity to the Dallas County sheriff under a now defunct version of the qualified immunity doctrine. *See id.* at 533 (placing the burden to demonstrate qualified immunity on the *defendant*).

Worse, the court in *Douthit* explained that if a jailer "*negligently* establishes a record keeping system in which errors of this kind are likely, he will be held liable." *Id.* (emphasis added). This Court has since squarely held that a state official cannot violate an inmate's due process rights through a *negligent* act. *Daniels v. Williams*, 474 U.S. 327, 335–36 (1986); *see*

Porter, 659 F.3d 449 (Owen,[1] J., concurring) (explaining, "[i]n light of subsequent Supreme Court decisions," the negligence standard "is not a correct statement of the law").

The negligence standard is also incompatible with the rationales undergirding the qualified immunity doctrine, which "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley*, 475 U.S. at 341; *accord Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). "Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *al-Kidd*, 563 U.S. at 743. "The protection of qualified immunity applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson*, 555 U.S. at 231 (internal quotation marks omitted).

Although the panel majority here applied the deliberate indifference standard at step one of the qualified immunity analysis, when relying on *Douthit* and *Porter*, it appears to have applied the defunct negligence standard at step two of the qualified immunity analysis. The district court *expressly* relied on the negligence standard at step two. App. 91.

It is an open question whether circuit court case law can count as "clearly established law." *See Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) (assuming without deciding that "controlling Circuit precedent

[1] Then-Judge Owen is now Chief Judge Richman.

clearly establishes law for purposes of § 1983"). But surely a circuit court's precedents squarely *conflicting* with this Court's precedents cannot count as clearly established law. The lower court's step two analysis cries out for summary reversal.

3. The panel majority also concluded that clearly established law warned Stagg and Griffin that it was unreasonable to wait 17 days before reaching out to the sheriffs in response to calls from the plaintiffs' family members. But, once again, the lower court pointed only to *Porter* and *Douthit* as justification for this holding.

As discussed, neither case involved facts similar to those of this case. Neither case warned state officials that failure to act on family members' calls could subject them to personal liability. The lower courts held the DPSC officials to a *negligence* standard that this Court has expressly rejected in the context of Fourteenth Amendment due process claims. *Daniels*, 474 U.S. at 335–36. And, again, the negligence standard is flatly incompatible with this Court's qualified immunity jurisprudence. *Malley*, 475 U.S. at 341; *al-Kidd*, 563 U.S. at 743; *Pearson*, 555 U.S. at 231.

Moreover, as Judge Oldham explained, *Douthit* "held that detaining a prisoner for '*thirty* days beyond the expiration of his sentence in the absence of a facially valid court order or warrant constitutes a deprivation of due process.'" App. 49 (Oldham J., dissenting) (quoting *Douthit*, 619 F.2d at 532). And "*Douthit*'s 30-day holding say[s] nothing about our 17-

day case." App. 49–50. And so, "*Douthit* is, in a word, irrelevant." App. 50.

Summary reversal is warranted for the panel majority's denial of qualified immunity to Stagg and Griffin on the plaintiffs' so-called "direct participation" claims.

II. THE FIFTH CIRCUIT'S OPINION EXACERBATES AT LEAST TWO CIRCUIT SPLITS.

A. Lower Courts Disagree about Whether a Theory of Supervisory Liability Must Itself Be Clearly Established.

There is a "debate" between the circuit courts "over whether the theory of supervisory liability advanced must itself be clearly established at the time of the violation." *Dodds v. Richardson*, 614 F.3d 1185, 1208 (10th Cir. 2010) (Tymkovich, J., concurring). The Tenth Circuit has said no. *See Murrell v. Sch. Dist. No. 1, Denver*, 186 F.3d 1238, 1251 (10th Cir. 1999) ("This argument carries the concept of 'clearly established' to an extreme we decline to adopt."). Several other circuits, including the Fifth Circuit, have said yes. *See, e.g.*, *Camilo–Robles v. Hoyos*, 151 F.3d 1, 6 (1st Cir. 1998); *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 454 (5th Cir. 1994) (*en banc*); *Shaw v. Stroud*, 13 F.3d 791, 801 (4th Cir. 1994); *Poe v. Leonard*, 282 F.3d 123 (2d Cir. 2002) (collecting cases).

The lower court's opinion considered only whether the right at issue—the right to timely release—was clearly established. It did not consider whether the theory of supervisory liability advanced by the plaintiffs was clearly established. In other words, the

lower court's opinion did not consider whether it was clearly established that a supervisor could be held liable for failing to issue policies to independent third parties. Nor did the lower court consider whether it was clearly established that a prison supervisor could be held liable for failing to respond to calls from inmates' family members for 17 days.

If it had done so, as it should have under binding Fifth Circuit precedent, the lower court could only have concluded that the DPSC officials are entitled to qualified immunity. *Doe*, 15 F.3d at 454. Instead, by failing to consider whether the theory of supervisory liability itself was clearly established, the Court exacerbated a split between the circuit courts.

This Court should resolve the debate and clarify the second step of the qualified immunity doctrine. This case is an excellent vehicle for the Court to do exactly that.

B. Lower Courts Disagree about Whether State Officials Can Violate a Prisoner's Constitutional Rights by Failing to Cajole Independent Third Parties into Following the Law.

The majority opinion exacerbated a separate circuit split about whether state officials can violate an incarcerated, overdetained person's constitutional rights by failing to cajole independent third parties to follow the law.

The Tenth and Ninth Circuits say no. *See, e.g.*, *Moya v. Garcia*, 895 F.3d 1229, 1234 (10th Cir. 2018) ("At most, the sheriff and wardens failed to remind the

court that it was taking too long to arraign Mr. Moya and Mr. Petry. But even with such a reminder, the arraignments could only be scheduled by the court itself."); *Est. of Brooks ex rel. Brooks v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999), *as amended* (Dec. 9, 1999) ("[T]he County had no ability itself to bring the prisoner before the appropriate judicial officer.").

The Fifth and Eighth Circuits say yes. *See, e.g.*, *Jauch v. Choctaw Cnty.*, 874 F.3d 425 (5th Cir. 2017) (holding sheriff and wardens liable for due process violations of pretrial detainees even though there was nothing they could have done other than remind the state trial court of its failure to schedule timely arraignments.); *Hayes v. Faulkner Cnty.*, 388 F.3d 669, 672 (8th Cir. 2004) (concluding that liability for an arrestee's overdetention fell on the jailers, who could not delegate responsibility for the first appearance to the court).

To be fair, the factual circumstances of this case are somewhat different than those of *Jauch*, *Hayes*, *Moya*, and *Brooks*—which consider whether a jailer can be held liable when pretrial detainees are not timely brought before a judicial officer even though the jailers have no say over the schedule of the judicial officer. But the core question at the heart of these cases is also present in this case: Does a jailer violate incarcerated persons' constitutional rights by failing to cajole an independent third party into following the law?

Judicial officers, of course, enjoy absolute immunity from liability for damages under § 1983, and so it is difficult to hold them responsible when they fail

to adhere to constitutional requirements. *See Mireles v. Waco*, 502 U.S. 9, 9 (1991) ("A long line of this Court's precedents acknowledges that, generally, a judge is immune from a suit for money damages."). But holding jailers personally liable for the mistakes of independent third parties flies in the face of all the principles underlying qualified immunity. *See Pearson*, 555 U.S. at 231 ("Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.").

In this case, as Judge Oldham pointed out, "even though the DPSC defendants are entitled to qualified immunity" it is nevertheless true that "the plaintiffs have viable claims against other defendants—namely the sheriffs." App. 50 (Oldham, J., dissenting). And "[t]hat means that *regardless* of what happens with the DPSC defendants here, these plaintiffs will get to go to trial and litigate their claims against officials at the Orleans Parish Sheriff's Office and the East Carroll Parish Sheriff's Office who *actually* caused their overdetention." App. 51. The fact that the sheriffs can be held liable for their own mistakes in this case makes it an ideal vehicle to resolve the split and reaffirm the principles underlying the qualified immunity doctrine.

III. THE STATE POTENTIALLY FACES MASSIVE LIABILITY FROM THOUSANDS OF OVERDETENTION CASES.

After the Fifth Circuit handed down its decision in

this case, the United States Department of Justice issued the results of an investigation into the DPSC, which concluded that the State "incarcerates thousands of individuals each year beyond their legal release dates." USDOJ Civil Rights Division, Investigation of the Louisiana Department of Public Safety Corrections, at 1 (Jan. 25, 2023), https://shorturl.at/iGHS2. According to the USDOJ, "[s]ince at least 2012, more than a quarter of the people set for release from [the State's] custody each year are instead held past their release date." *Id.*

The State disputes aspects of the USDOJ's report, which relied heavily on the Fifth Circuit's decision in this case. But assuming its factual assertions are correct, the State could potentially face significant liability for these overdetentions. At the time of this writing, the United States Attorney General has not instituted any lawsuit against DPSC. But numerous private litigants, such as the plaintiffs in this suit, have brought claims against high-ranking DPSC officials for their alleged overdetentions.

Until this case, Secretary LeBlanc has not lost qualified immunity in any overdetention case in the Fifth Circuit.[2] But numerous related cases are

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[2] *See, e.g.*, *Traweek v. LeBlanc*, No. 21-30096, 2022 WL 2315444, at *1 (5th Cir. June 28, 2022) (vacating the district court denial of qualified immunity because it "did not articulate which facts it found to be genuinely disputed"); *Grant v. LeBlanc*, No. 21-30230, 2022 WL 301546, at *1 (5th Cir. Feb. 1, 2022) (concluding that the plaintiff failed to show that Secretary LeBlanc was deliberately indifferent by failing to promulgate policy, or train his subordinates, to prevent overdetention); *Taylor v. LeBlanc*, No. 21-30625, 2023 WL 3510679, at *4 (5th Cir. May 15, 2023)

currently being litigated in the courts below. The lower court's decision is certain to have a large impact on these cases in the Fifth Circuit. In light of the potential flood of liability, it is exceptionally important to the State that its officials are not held liable for mistakes not of their own making.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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(concluding it was not objectively unreasonable for Secretary LeBlanc to delegate the calculation of release dates to lawyers rather than non-lawyers); *Frederick v. LeBlanc*, No. 21-30660, 2023 WL 1432014, at *1 (5th Cir. Feb. 1, 2023) (vacating denial of qualified immunity because "the district court relied on the absence of evidence to find genuine disputes of material fact").