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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 20-30304

[Filed June 10, 2022]

JESSIE CRITTINDON; LEON BURSE; EDDIE COPELIN; PHILLIP DOMINICK, III; DONALD GUIDRY *Plaintiffs—Appellees*,	)
versus	)
JAMES LEBLANC; PERRY STAGG; ANGELA GRIFFIN, *Defendants—Appellants*.	)

Appeal from the United States District Court
for the Middle District of Louisiana
USDC Nos. 3:17-CV-512, 3:17-CV-602

Before HIGGINBOTHAM, COSTA, and OLDHAM, *Circuit Judges*.

PATRICK E. HIGGINBOTHAM, *Circuit Judge*:

Jails typically house pretrial detainees, but in Louisiana, the Department of Public Safety and Corrections (DPSC) also regularly engages local parish jails to house convicted state prisoners. Five of the

locally housed prisoners brought claims under 42 U.S.C. § 1983 against local jail officials and DPSC officials. They allege that the DPSC officials, in violation of the Fourteenth Amendment, looked away from the administrative failure they knew was leaving prisoners in jail who had served their sentences. Here, the defendant DPSC officials challenge the district court's denial of qualified immunity. We affirm in part, reverse in part, and remand.

I.

A.

As the Orleans Parish Sheriff's Office has more people in its custody than beds in its facility, the Sheriff's Office regularly houses those arrested elsewhere. In September 2015, Orleans Parish entered into an agreement with the East Carroll Parish Sheriff's Office to house Orleans pretrial detainees in East Carroll at the River Bend Detention Center. Although these detainees remained in the legal custody of Orleans Parish, they were in the physical custody of East Carroll Parish.

About once a week, East Carroll Parish transported Orleans inmates to the Orleans Parish Criminal District Court for any necessary trial proceedings. Inmates convicted and sentenced during these proceedings were no longer in Orleans Parish's legal custody. They were rather in the legal custody of DPSC.[1] But DPSC, lacking enough beds to house all its

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[1] *See* LA. REV. STAT. § 15:1824(A) ("[A]ny individual subject to confinement in a state adult penal or correctional institutional

prisoners in state facilities, often did not take physical custody of these prisoners. Instead, Orleans, as the parish of conviction, regularly transferred DPSC-sentenced prisoners back to East Carroll to be housed at River Bend.[2] DPSC then paid East Carroll a daily rate to house each of its prisoners.[3]

But this arrangement, simple in concept, suffered in execution. This, with other difficulties, led to a 1996 settlement that ended over 20 years of court supervision and consent decrees in almost all of Louisiana's jails and prisons.[4] As part of the settlement, the State established a formal partnership with the Louisiana Sheriffs' Association for the housing of DPSC prisoners in local jails. Pursuant to this partnership, the State and Sheriffs adopted the "Basic Jail Guidelines" "designed to assure that the fundamental constitutional rights of [DPSC] offenders

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shall be committed to the Department of Public Safety and Corrections and not to any particular institution within the jurisdiction of the department.").

[2] These prisoners typically have shorter sentences and less complex medical and mental health needs than those housed in state facilities.

[3] Under Louisiana law, DPSC has statutory authority to "enter into a contract with a law enforcement district, municipal, or parish governing authority to house additional prisoners." LA. REV. STAT. § 15:824(D). Such a contract exists between DPSC and East Carroll Parish.

[4] *See Hamilton Plaintiffs v. Williams Plaintiffs*, 147 F.3d 367, 368–70 (5th Cir. 1998) (explaining litigation that led to settlement).

housed in local jails would not be jeopardized by such housing arrangements."[5]

DPSC officials, including the Department's Secretary, Assistant Secretary, and Chief of Operations, are responsible for determining the content of the Guidelines, and DPSC employees regularly audit local jails housing state prisoners to ensure compliance. If DPSC discovers a jail's noncompliance with the Guidelines, it must work with the jail to reach compliance; should a jail fail to comply with the Guidelines, DPSC will remove DPSC prisoners from the institution.

The Guidelines cover an array of correctional operations, including provisions related to the admission, processing, and release of prisoners. One provision is especially relevant here: parish jails housing state prisoners must send pre-classification paperwork to DPSC so that DPSC can enter the prisoner's information into its computer system, calculate the prisoner's release date, and issue the release.[6]

But when Orleans Parish transferred DPSC-sentenced prisoners to East Carroll to be housed there, neither Orleans nor East Carroll Parish immediately sent the prisoner's pre-classification paperwork to

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[5] The Guidelines became effective on April 1, 1997.

[6] Although it is unclear from the Guidelines which parish is responsible for sending pre-classification paperwork to DPSC, DPSC officials testified that the parish of conviction bears responsibility for sending DPSC the paperwork.

DPSC. The two offices differed in their understanding of which parish was responsible for communicating with DPSC about the new DPSC prisoners housed by East Carroll.[7] And DPSC had no system in place to ensure it had pre-classification paperwork from local jails for its newly-sentenced prisoners. DPSC simply waited on the local jail to send the paperwork.[8]

DPSC officials knew that local jails often transmitted pre-classification paperwork to them in an

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[7] According to Orleans Parish officials, its office provided pre-classification paperwork to East Carroll Parish to be sent on to DPSC. But East Carroll Parish officials believed Orleans Parish sent the paperwork directly to DPSC.

[8] Deposition testimony of a DPSC pre-classification specialist, Angela Smith, is telling:

> Q: If a local parish somehow lost or didn't send in the pre-classification paperwork for a newly sentenced DOC inmate, this inmate could sit at that local parish serving their Department of Corrections sentence indefinitely, unless the inmate or their family made a phone call to the Department of Corrections alerting you that there was a delay in time calculation?
>
> A: Yes.
>
> Q: And so if pre-classification paperwork is not received by the Department of Corrections, there's no check mechanism to make sure that no inmate sentenced to the Department of Corrections are in existence that you are not performing pre-classification and time calculation for?
>
> A: Right. If we're not aware of the offender being sentenced to the Department of Corrections, we don't know he's out there until we receive that paperwork.

untimely manner. In 2012, DPSC investigated overdetentions caused by delays in processing sentencing paperwork. Known as the Lean Six Sigma study, DPSC's investigation exposed widespread overdetentions of DPSC prisoners. The Lean Six Sigma study attributed these overdetentions to delays in transmitting local jail pre-classification paperwork and to DPSC's own delays in processing this paperwork on its receipt. DPSC considered placing oversight mechanisms to ensure that local jails timely transmitted pre-classification paperwork to DPSC, but did not to do so. Instead, DPSC chose to address only its own internal workflow problems.

Plaintiffs in this case, Jessie Crittindon, Leon Burse, Eddie Copelin, Phillip Dominick, and Donald Guidry, were among prisoners that suffered the consequences of that decision, lost in the shuffle between Orleans Parish and East Carroll Parish. Each was arrested in Orleans Parish and initially placed in the custody of Orleans. Each was subsequently transferred to East Carroll to be housed at River Bend as Orleans pretrial detainees. Between July and October 2016, each Plaintiff was transferred back to Orleans Parish to enter a plea in Orleans Parish Criminal District Court. Four of the Plaintiffs (Crittindon, Burse, Copelin, and Dominick) were entitled to immediate release upon sentencing.[9] Plaintiff Guidry was entitled to release less than two

[9] Crittindon was entitled to release on August 2, 2016, Burse on August 8, 2016, Copelin on October 14, 2016, and Dominick on September 1, 2016.

months after his sentencing.[10] Once their pleas were entered and sentences handed down, they became DPSC-sentenced prisoners and were automatically under the legal custody of DPSC.[11] Orleans Parish then transferred the Plaintiffs back to East Carroll to be housed at River Bend as DPSC-sentenced prisoners. But neither Orleans nor East Carroll Parish promptly sent their pre-classification paperwork to DPSC. Since DPSC did not timely receive this paperwork, DPSC did not timely issue their release, and Plaintiffs remained imprisoned beyond the terms of their sentences.

On November 21, 2016, Crittindon's mother called DPSC about her son, complaining that he had been sentenced in August 2016, was housed in East Carroll at River Bend, and still lacked a release date. The next day, Burse's mother called DPSC, complaining that her son had been sentenced in August 2016, was housed at River Bend, and still lacked a release date.[12] Burse's mother contacted DPSC again on November 28 and December 7. Both Crittindon and Burse had been entitled to immediate release upon their sentencing in August. Perry Stagg, then-Assistant Secretary of DPSC, and Angela Griffin, DPSC's Director of the

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[10] Guidry was entitled to release on September 4, 2016.

[11] *See* LA. REV. STAT. § 15:1824(A) ("[A]ny individual subject to confinement in a state adult penal or correctional institutional shall be committed to the Department of Public Safety and Corrections and not to any particular institution within the jurisdiction of the department.").

[12] The record suggests this was not the first time Burse's mother had contacted DPSC about her son.

Pre-Classification Department, were both notified of each of these calls.

On December 8, 2016, DPSC's Pre-Classification Department Manager e-mailed the East Carroll Sherriff's Office, asking for "an updated list of offenders that are housed with [East Carroll] from Orleans parish that are DOC without paperwork." Within hours, East Carroll replied with a spreadsheet, naming 57 DPSC prisoners who were transferred from Orleans to River Bend during November but who were not yet in the CAJUN system.[13] The list included Plaintiffs Copelin, Crittindon, and Dominick. On December 27, 2016, DPSC received another list of DPSC-sentenced prisoners held at River Bend from Orleans that were not in DPSC's system. This list named roughly 100 prisoners, including Plaintiff Guidry. Stagg testified that DPSC then "realized we had a systematic problem."

Now aware that many DPSC prisoners were being held in East Carroll without a release date, Stagg testified that he "established a line of communication" with Orleans. Over a month later, DPSC received each Plaintiff's required pre-classification paperwork. On its receipt, DPSC calculated each Plaintiff's (now-past) release date and then discharged them within approximately one day. All told, Plaintiffs were held months beyond their release dates: Crittindon for 164 days, Burse for 156 days, Guidry for 143 days, Dominick for 97 days, and Copelin for 92 days.

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[13] CAJUN is DPSC's tracking and record software.

B.

On August 2, 2017, Plaintiffs Crittindon and Burse filed their § 1983 suit with supplemental state claims against the Orleans Parish Independent Jail Compliance Director, several East Carroll and Orleans officials, as well as three DPSC officials: Secretary James LeBlanc, then-Assistant Secretary Stagg, and Pre-Classification Director Griffin.[14] On August 31, 2017, Plaintiffs Copelin, Dominick, and Guidry brought similar claims against the same officials. The cases were consolidated on October 18, 2017.

All the defendants filed motions to dismiss Plaintiffs' complaints. The district court granted the Compliance Director's motion, finding him entitled to absolute immunity as a quasi-judicial officer, but the court denied the rest of the defendants' motions. After extensive discovery, Plaintiffs moved for summary judgment on a narrow subset of their claims, and the defendants moved for summary judgment as to all of Plaintiffs' claims. As to Plaintiffs' federal law claims, each official claimed that they were entitled to qualified immunity in their individual capacities. The district court disagreed, denying all summary judgment motions. The DPSC Defendants then filed this interlocutory appeal, challenging the district court's denial of qualified immunity.

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[14] Plaintiffs sued the Compliance Director and local jail officials in their individual and official capacities but sued the DPSC officials in their individual capacities only.

II.

The rules attending appellate review of denials of qualified immunity are now rote. "Ordinarily, we do not have jurisdiction to review a denial of a summary judgment motion because such a decision is not final within the meaning of 28 U.S.C. § 1291."[15] However, we may review a denial of qualified immunity under the collateral order doctrine,[16] with review limited to "the materiality of factual disputes the district court determined were genuine."[17] Stated differently, although we lack jurisdiction to consider "whether there is enough evidence in the record for a jury to conclude that certain facts are true," we do have jurisdiction to decide "whether the defendants are entitled to qualified immunity on the facts that the district court found sufficiently supported in the summary judgement record."[18] "Like the district court, we must view the facts and draw reasonable inferences in the light most favorable to the plaintiff and ask whether the defendant would be entitled to qualified

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[15] *Perniciaro v. Lea*, 901 F.3d 241, 251 (5th Cir. 2018) (internal quotation marks omitted) (quoting *Palmer v. Johnson*, 193 F.3d 346, 350 (5th Cir. 1999)).

[16] *Kinney v. Weaver*, 367 F.3d 337, 346 (5th Cir. 2004) (en banc).

[17] *Cole v. Carson*, 935 F.3d 444, 452 (5th Cir. 2019) (en banc).

[18] *Kinney*, 367 F.3d at 347.

immunity on those facts."[19] Within this narrow inquiry, our review is *de novo*.[20]

Qualified immunity shields government officials performing discretionary functions from civil damages liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated."[21] Determining whether an officer is entitled to qualified immunity requires a two-step inquiry. First, "we ask whether the officer's alleged conduct has violated a federal right."[22] Second, "we ask whether the right in question was clearly established at the time of the alleged violation, such that the officer was on notice of the unlawfulness of his or her conduct."[23]

"In determining what constitutes clearly established law, this [C]ourt first looks to Supreme Court precedent and then to our own."[24] When there is no direct controlling authority, "this [C]ourt may rely on decisions from other circuits to the extent that they constitute a robust consensus of cases of persuasive

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[19] *Cole*, 935 F.3d at 452.

[20] *Id.*

[21] *Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

[22] *Cole*, 935 F.3d at 451.

[23] *Id.* (internal quotation marks omitted).

[24] *Shumpert v. City of Toledo*, 905 F.3d 310, 320 (5th Cir. 2018).

authority."[25] "Ultimately, the touchstone is 'fair warning': The law can be clearly established 'despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights.'"[26]

III.

Plaintiffs proceed against Defendants under two theories, arguing that LeBlanc, Stagg, and Griffin violated the Plaintiffs' clearly established right to timely release from prison by: (1) failing to adopt policies ensuring the timely release of DPSC prisoners; and (2) directly participating in the conduct that caused their overdetention. We first turn to the claim of failure-to-adopt-policies.

A. Failure-to-Adopt-Policies

Supervisory officials may be liable under § 1983 for their failure to adopt policies if that failure causally results in a constitutional injury.[27] Liability only arises when the officials act, or fail to act, with "deliberate indifference," a "disregard [for] a known or obvious consequence of [their] action[s]."[28] Plaintiffs must

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[25] *Id.* (internal quotation marks and citation omitted).

[26] *Id.* at 321 (quoting *Hope v. Pelzer*, 536 U.S. 730, 740 (2002)).

[27] *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011).

[28] *Id.* (internal quotation marks and citation omitted); *see also Southard v. Tex. Bd. of Crim. Just.*, 114 F.3d 539, 551 (5th Cir. 1997) ("[A] supervisory official may be liable under § 1983 if that

introduce evidence that each Defendant had "actual or constructive notice" that their failure to adopt policies would result in constitutional violations.[29] This typically requires showing notice of "[a] pattern of similar constitutional violations" due to deficient policies, permitting the inference that Defendants deliberately chose policies causing violations of constitutional rights.[30]

1.

Plaintiffs argue that Defendants were deliberately indifferent to their right to timely release by failing to adopt policies that would ensure local jails' timely transmission of pre-classification paperwork to DPSC; that all three officials knew that local jails were failing to timely send paperwork but did nothing, well aware that their policies (or lack thereof) led to overdetentions. They contend that LeBlanc and Stagg, as officials responsible for the content of the Basic Jail Guidelines, should be held liable for failing to require local jails to transmit pre-classification paperwork to DPSC by a stated deadline, and that Stagg and Griffin, as the officials responsible for running DPSC's Pre-Classification Department, should be held liable for their deliberate indifference to the reality that newly-sentenced DPSC prisoners lacked initial time

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official, by action or inaction, demonstrates a deliberate indifference to a plaintiff's constitutionally protected rights.").

[29] *Porter*, 659 F.3d at 447.

[30] *Id.*

computations and release dates, meaning that they were being jailed unlawfully.

Viewing the evidence in the light most favorable to Plaintiffs, we conclude that a reasonable jury could find that Defendants knew of a "pattern of similar constitutional violations," such that their inaction amounted to a disregard of an obvious risk. DPSC's Lean Six Sigma study revealed that 2,252 DPSC prisoners were annually held past their release date. On average, these prisoners were detained 72 days past the expiration of their court-imposed sentence. The study attributed this overdetention to delays in determining prisoners' release dates, finding that on average, it took 110 days to determine a prisoner's release date after his conviction. This included approximately 31 days for documents to be transmitted from the Clerk of Court to the local jail to DPSC's Pre-Classification Department.[31]

LeBlanc, Griffin, and Stagg were each familiar with the Lean Six Sigma study. Secretary LeBlanc was a "champion" of the project and apprised of its findings. Pre-Classification Director Griffin was a member of the Lean Six Sigma team and helped present its findings and recommendations to DPSC staff. And then-Assistant Secretary Stagg testified that, although he joined DPSC after the study was conducted, he was made aware of the deficiencies it uncovered.

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[31] It is not entirely clear from the study what amount of delay is attributable to the Clerk of Court and to the local jail, but it appears that both entities account for some delay.

Defendants concede that, because of the study, they each knew that on average, it took a month for DPSC to receive the paperwork necessary to begin calculating a prisoner's release date after his conviction. Defendants also knew that some prisoners would be entitled to immediate release upon conviction. Therefore, in cases like Plaintiffs', where prisoners were entitled to immediate or near-immediate release upon conviction, it was obvious that a failure to address those processing delays would lead to unconstitutional overdetentions. Despite this awareness, years after the Lean Six Sigma project, Defendants have not pointed to a single effort that any of them took to identify immediate releases more quickly during that month-long delay. And this is despite the fact that LeBlanc and Stagg were responsible for the Basic Jail Guidelines, while Stagg and Griffin were responsible for running DPSC's Pre-Classification Department. They were each in a position to adopt policies that would address this delay.

Defendants persist that they are insulated from liability because the Lean Six Sigma study was aimed at investigating DPSC's internal—not external—delays in processing prisoner paperwork. Defendants contend because the study focused on internal processes, that it did not reveal a "pattern of similar constitutional violations" to those Plaintiffs complain of here, overdetentions caused by delay from the local jails.[32] But this misses the point; Defendants cannot avoid the evidence that the study exposed unlawful detentions of prisoners. A reasonable factfinder could conclude that

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[32] *See Connick v. Thompson*, 563 U.S. 51 (2011).

Defendants' awareness of this pattern of delays and their conscious decision not to address it rises to the level of deliberate indifference.

2.

So, we turn to whether a reasonable factfinder could find that Defendants' conduct was objectively unreasonable in light of clearly established law. This Court has recognized the "clearly established right to timely release from prison."[33] Of course, "timely release" is not the same as instantaneous release: it is reasonable for jailers to have some administrative delay in processing an inmate's discharge.[34] While courts have declined to define the amount of delay that is reasonable,[35] it is without question that holding without legal notice a prisoner for a month beyond the expiration of his sentence constitutes a denial of due process.[36] Indeed, Defendants knew not just of delay,

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[33] *Porter*, 659 F.3d at 445.

[34] *See Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1968) (concluding that a jailer does not commit "an instant tort at the moment" the prisoner is entitled to release; instead, a jailer's "duty to his prisoner is not breached until the expiration of a reasonable time for the proper ascertainment of the authority upon which his prisoner is detained.").

[35] *See Berry v. Baca*, 379 F.3d 764, 771 (9th Cir. 2004) ("Courts have not settled on any concrete number of permissible hours of delay in the context of post-release detentions.").

[36] *Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980) ("Detention of a prisoner 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.").

but that there was, on average, a month-long delay in receiving paperwork from the local jails. Therefore, they had "fair warning" that their failure to address this delay would deny prisoners like Plaintiffs their immediate or near-immediate release upon conviction.[37] We conclude that because a reasonable jury may find that Defendants' inaction was objectively unreasonable in light of this clearly established law, they have failed to show they are entitled to qualified immunity on these claims.[38]

B. Direct Participation

Plaintiffs next contend that each official should be liable for directly participating in the violation of their rights. A supervisory official may be held liable if he "affirmatively participates in the acts that cause the constitutional deprivation."[39] A plaintiff must show the defendant's deliberate indifference to plaintiff's constitutional rights. This requires evidence that an official "disregarded a known or obvious consequence of [their] action[s]."[40] Although Plaintiffs brought direct participation claims against all three DPSC officials, only Griffin and Stagg have moved for summary judgment on the basis of qualified immunity on these claims.

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[37] *See Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

[38] *See Porter*, 659 F.3d at 446.

[39] *Porter*, 659 F.3d at 446.

[40] *Porter*, 659 F.3d at 446–47, quoting *Connick*, 563 U.S. at 61.

1.

Defendants assert that they are entitled to qualified immunity on Plaintiffs' direct participation claims because once they became aware of a risk that these five Plaintiffs were being overdetained, they took prompt action, and therefore, they did not *disregard* a known risk. As to Plaintiffs Dominick, Copelin, and Guidry, this argument is well taken, as we will explain.

First, there is no evidence that Defendants were ever specifically aware of the risk that Dominick was being overdetained, as he was released before Defendants discovered the "River Bend Fiasco" and there is no evidence of any inquiries directed to DPSC about his release date prior to his actual release. Thus, Dominick was released before his overdetention was a known risk.

Second, as to Plaintiffs Copelin and Guidry, Defendants only became aware of the risk that they were being overdetained in the wake of the "River Bend Fiasco." Copelin's name appeared on the original spreadsheet from River Bend listing prisoners that were not in CAJUN. Guidry's name only appeared on a later spreadsheet that River Bend sent to DPSC on December 27, 2016. The district court found that once Defendants became aware of the "River Bend Fiasco," they appropriately responded as "the record demonstrates that after they became aware of the issue, Defendants communicated with the relevant parties to obtain the necessary paperwork, calculate a

release date, and release the Plaintiffs."[41] Therefore, because Defendants promptly contacted Orleans after learning of the risk of overdetention to Plaintiffs Copelin and Guidry, their conduct as to these Plaintiffs does not support a finding of deliberate indifference.

However, viewing the evidence in the light most favorable to the Plaintiffs, neither Griffin nor Stagg acted promptly in responding to the risk of overdetaining Plaintiffs Crittindon and Burse. On November 21, Griffin and Stagg were notified that Crittindon's mother called about her son, who was detained in River Bend. The next day, they were notified that Burse's mother called about her son, who was also detained in River Bend. Both mothers complained that their sons were sentenced in August and that nearly three months later they still did not have release dates. Both Crittindon and Burse were entitled to immediate release upon their sentencing, due to time served in pre-trial detention. There is evidence that Griffin and Stagg discussed this amongst themselves, 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. A reasonable factfinder could find that their conduct sums to deliberate indifference to Crittindon and Burse's overdetention.

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[41] Although not explicit, this finding likely relied on evidence of Defendants' communication with Orleans's Classification Manager Amacker in the wake of the River Bend Fiasco.

With regards to Dominick, Copelin, and Guidry, Defendants did not disregard any known risk and cannot be found to have acted with deliberate indifference. With regards to Crittindon and Burse, a jury could reasonably conclude that Defendants disregarded a known risk and could be found to be deliberately indifferent to this risk.

2.

We next ask whether Defendants' inaction, with regards to Crittindon and Burse, was objectively unreasonable in light of clearly established law. As we have explained, there is a clearly established right to a timely release from prison, which "establishes that a jailer has a duty to ensure that inmates are timely released from prison."[42] Due to the mothers' phone calls, Defendants knew that Crittindon and Burse were at risk of overdetention. Nonetheless, despite their knowledge that the two had been illegally held for three months, for 17 days they failed to address this risk.[43] They had "fair warning" that their failure to address this delay would result in the illegal detention of Crittindon and Burse.[44] Because a factfinder may find that Defendants' inaction in response to the risk of

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[42] *Porter*, 659 F.3d at 445; *Douthit*, 619 F.2d at 532.

[43]After defendants Griffin and Stagg took action on December 8, it was over a month until Crittindon and Burse were actually released, on January 13, 2017 and January 11, 2017, respectively. However, at this point, defendants had taken reasonable action to effectuate their releases.

[44] *See Hope*, 536 U.S. at 741.

overdetention was objectively unreasonable in light of this clearly established law, Defendants have failed to show they are entitled to qualified immunity on these claims.[45]

IV.

Finally, we turn to the dissent of our colleague. With respect, we cannot agree that Plaintiffs' overdetention claims are barred by *Heck* and *Edwards*, a contention no party makes.[46] The Supreme Court recently reminded us that our task is not to come up with arguments the parties should have made, but to decide the ones they make.[47] When it comes to *Heck* in particular, our court and others have recognized that it is a defense a party must assert as opposed to some sort of jurisdictional bar.[48] In any event, *Heck* does not bar this suit: The *Heck* defense "is not . . . implicated by a prisoner's challenge that threatens no consequence

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[45] *See Porter*, 659 F.3d at 446.

[46] *Heck v. Humphrey*, 512 U.S. 477 (1994); *Edwards v. Balisok*, 520 U.S. 641 (1997).

[47] *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (emphasizing that "we rely on the parties to frame the issues for decision and assign to courts the rule of neutral arbiter of matters the parties present" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))).

[48] *See, e.g., Scribner v. Dillard*, 141 F App'x 240, 241 n.1 (5th Cir. 2005); *Topa v. Melendez*, 739 F. App'x 516 (11th Cir. 2018) (reversing dismissal of complaint when court raised *Heck* sua sponte at the Rule 12 stage); *Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011) (explaining that Heck is not jurisdictional and thus may be forfeited).

for his conviction or the duration of his sentence."[49] Here, the parties agree that Plaintiffs were held in excess of their sentences and Plaintiffs do not challenge their underlying conviction nor the length of their sentence.

With respect, we believe that our colleague misreads our qualified immunity analysis, one that poses a question that looks to a complete review of the record. The dissent's treatment of the record elides the underlying fact that the Plaintiffs were detained months past their release date. Defendants were fully aware knowledge of a systemic failure to calculate release dates and that Crittindon and Burse had been held for months after serving their sentence, yet Griffin and Stagg did nothing for 17 days. When they finally did "pick up the phone" the Plaintiffs were released within 24 hours.

Each defendant was aware of the delays in processing identified by the Lean Six Sigma Study.[50] The Lean Six Sigma Study found that it took, on average, 110 days to process a release date, including approximately 31 days for documents to be transmitted from the local jail to DPSC's Pre-Classification Department. The Lean Six Sigma Study also revealed an 83.44% occurrence of immediate release upon processing "due to an earlier release date." DPSC considered whether to put oversight mechanisms in

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[49] *Muhammad v. Close*, 540 U.S. 749, 751 (2004); *Bourne v. Gunnels*, 921 F.3d 484, 490–1, n.3 (5th Cir. 2019).

[50] *Supra* at 12.

place to ensure that local jails transmitted pre-classification paperwork to DPSC in a timely manner, but it decided not to do so. Instead, the Department chose to address only its own internal workflow problems, but each defendant here was well-aware that the majority of this delay was due to the local jails' failure to timely transmit pre-classification paperwork. The relevance of the Lean Six Sigma Study is obvious—that the defendants were each keenly aware of the flaws of the system that failed to timely release prisoners.

The dissent's description of the relationship between DPSC and the local jails is inaccurate. DPSC is responsible for the local jails once they house DPSC prisoners. DPSC enters into contracts with local jails to house DPSC's prisoners. Specifically, this contract states: "If, in the determination of [DPSC], the Sheriff fails to fulfill in a timely and proper manner its obligations to operate and maintain the Jail Facility in accordance with [the Basic Jail Guidelines], the Department shall have the right to terminate this contract. . . ."[51] Through the promulgation of the Basic Jail Guidelines and DPSC's audits of local parish jails, there is ample evidence that these DPSC officials had power to control the facilities in which DPSC housed its prisoners. The Basic Jail Guidelines are not "irrelevant."[52] The content of the Guidelines is

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[51] Furthermore, DPSC has the right to inspect, review, and audit all of East Carroll's books and records. All work by subcontractors also needs prior written approval by DPSC.

[52] Dissent at 15.

determined by defendants LeBlanc and Stagg. According to LeBlanc, even jails without DPSC contracts were required to comply with the Guidelines as long as they housed DPSC prisoners. DPSC would regularly audit these local facilities to ensure their compliance, and when a jail was not in compliance, DPSC helped the facility reach compliance. Stagg testified that in rare scenarios DPSC-sentenced prisoners would be pulled from a jail if the local facilities did not comply with the Guidelines. Through the promulgation of the Basic Jail Guidelines and DPSC's audits of local parish jails, there is ample evidence that these DPSC officials had power to control the facilities in which DPSC housed its prisoners.[53]

Finally, our colleague questions if any policy could be put in place to avoid overdetentions, given the current requirements imposed by Louisiana law.[54] Our colleague misreads the demands of both due process and Louisiana law. First, the suggested thirty-day deadline would still likely result in deprivations of due process. This Court recognizes that overdetention by

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[53] Alternatively, what our colleague does is to analyze the sufficiency of evidence supporting a fact dispute identified by the district court below: whether DPSC has authority to control local sheriffs' offices. This Court lacks jurisdiction to consider such a dispute, as it may not review a denial of qualified immunity that "rests on the basis that genuine issues of material fact exist." *Amador v. Vasquez*, 961 F.3d 721, 726 (5th Cir. 2020) (internal quotations and citation omitted).

[54] Dissent at 14.

thirty days is a per se deprivation of due process.[55] Four of the five plaintiffs were entitled to immediate release on the day they were sentenced. A statutory deadline requiring the sheriff's office to turn in pre-classification paperwork to DPSC within thirty days would not prevent unconstitutional overdetentions. Furthermore, under section 15:566(B), a thirty-day deadline only applies when the prisoner is being delivered to a "state correctional institution." But when "the prisoner is retained in the parish pursuant to R.S. 15:824(B)," the thirty-day deadline does not apply. This is the exact scenario here, as La. Rev. Stat. § 15:824(B) controls when prisoners are kept in the custody of a local parish because the DPSC is "unwilling or unable to take physical custody of prisoners sentenced to hard labor." There was no statutory directive or DPSC policy that directed jails to submit pre-classification paperwork to DPSC by a given deadline.

Although the determination of qualified immunity must be made at the earliest stage determinable, reading the record before us, we cannot say now that these Defendants have qualified immunity, however the case may develop in further trial proceedings.[56]

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[55] *See Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980) ("Detention of a prisoner 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.").

[56] *Melton v. Phillips*, 875 F.3d 256, 260 (5th Cir. 2017)

We AFFIRM in part, REVERSE in part, and REMAND for proceedings consistent with this opinion.

ANDREW S. OLDHAM, *Circuit Judge*, dissenting:

Across the five plaintiffs in this case, DPSC was responsible for an average of *less than one day's delay*. Nonetheless, the majority concludes three DPSC defendants violated plaintiffs' clearly established right to timely release from prison and denies them qualified immunity. It reaches that conclusion by faulting DPSC for actions by parties not before us on appeal and over which DPSC exercises no authority or control.

That approach is deeply flawed for two reasons. First, plaintiffs' claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). And second, even if plaintiffs' claims are not *Heck*-barred, the DPSC defendants are entitled to qualified immunity.

I.

Heck v. Humphrey bars plaintiffs' § 1983 claims. That's because (A) plaintiffs' claims sound in habeas, so they have no § 1983 claim for damages. And (B) the majority's counterarguments are meritless.

A.

Both the federal habeas statute, 28 U.S.C. § 2241, and the Civil Rights Act of 1871, 42 U.S.C. § 1983, create causes of action for prisoners with constitutional claims. But the remedies offered by those two statutes—and Congress's limitations on them—differ radically.

The habeas statute offers prisoners a singular equitable remedy: release from custody. *See, e.g.*, *DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1969 (2020) ("The writ [of habeas corpus] simply provide[s] a means of contesting the lawfulness of restraint and securing release."). As powerful as the habeas remedy is, however, it comes with numerous severe limitations. *See, e.g.*, The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214.

Like the habeas statute, § 1983 offers equitable relief. *See* 42 U.S.C. § 1983. But § 1983 goes further and *also* offers money damages and attorney's fees. *See id.* §§ 1983, 1988. What's more, § 1983 comes with none of AEDPA's strictures. So if a prisoner could simply choose which statute to use for his constitutional claims, every prisoner in his right mind would choose § 1983; he could use it to get out of jail, get money damages, and get attorney's fees—all without having to confront AEDPA and the numerous common-law restrictions on habeas.

Heck recognized this "potential overlap between" habeas and § 1983, and it cut off access to the latter in cases where the prisoner's claim sounds in the former. *Heck*, 512 U.S. at 481 (holding the *Heck* bar eliminates "the potential overlap between these two provisions"). The upshot is that, where a prisoner can obtain relief through habeas, he cannot sue under § 1983: "Congress has determined that habeas corpus is the appropriate remedy for state prisoners *attacking the . . . length of their confinement*, and that specific determination must override the general terms of § 1983." *Preiser v.*

Rodriguez, 411 U.S. 475, 490 (1973) (emphasis added); *see also Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) ("[A] prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement . . . He must seek federal habeas corpus relief (or appropriate state relief) instead." (quotation omitted)); *Damond v. LeBlanc*, 552 F. App'x 353, 354 (5th Cir. 2014) (per curiam) ("[H]abeas petitions are the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983." (quotation omitted)).[1]

The five plaintiffs in this case are challenging the fact and duration of their confinement. And they sought immediate or speedier release. They were in jail, and they wanted to get out. That means their *only* remedy lies in habeas. And the *Heck* doctrine plainly bars them from ignoring the specific terms of the habeas statute, which "*must* override the general terms of § 1983." *Preiser*, 411 U.S. at 490 (emphasis added).

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[1] The only way around the *Heck* bar is by way of the "favorable-termination requirement." To bring a claim that would otherwise be barred, a "§ 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 486–87. Unless and until a § 1983 plaintiff satisfies that requirement, *Heck* stands in his way. *See Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) (per curiam) (explaining that a § 1983 plaintiff who "has not satisfied the favorable termination requirement of *Heck* . . . is barred from any recovery.").

The district court misunderstood the *Heck* doctrine. All of the defendants raised this issue in their summary-judgment motions and argued that plaintiffs' claims are *Heck*-barred. The district court mistakenly held otherwise. Why? Because, the district court found, plaintiffs are not challenging their sentences; they're instead complaining about overdetention *beyond* their sentences.

The Ninth Circuit previously committed this precise legal error. *See Balisok v. Edwards*, 70 F.3d 1277 (9th Cir. 1995) (mem.). In *Edwards*, an inmate brought a § 1983 suit challenging the validity of prison procedures used to deprive him of good-time credits. The Ninth Circuit concluded *Heck* didn't apply because the prisoner did not challenge the sentence imposed by his convicting court; he instead challenged the State's failure to let him out in a timely fashion based on his good-time credits. *Ibid.* (citing *Gotcher v. Wood*, 66 F.3d 1097, 1099 (9th Cir. 1995)).

The Supreme Court reversed. *Edwards v. Balisok*, 520 U.S. 641 (1997). It explained that a win for the prisoner would "necessarily imply the invalidity of the deprivation of his good-time credits" and get him out of prison 30 days sooner. *Id.* at 646; *see also Colvin v. LeBlanc*, 2 F.4th 494, 498 (5th Cir. 2021) (noting the § 1983 claim in *Edwards* was *Heck*-barred because "the reinstatement of good-time credits" would "change the duration of [the prisoner's] incarceration"). Because success on the prisoner's claim would entitle him to speedier release, the Court concluded habeas was the exclusive remedy available to him, and his claim was not cognizable under § 1983. *Edwards*, 520 U.S. at 648.

The key takeaway from the *Preiser-Heck-Edwards* line is that any action challenging the length of confinement—or legality of continued confinement—lies in habeas corpus rather than § 1983. *See Preiser*, 411 U.S. at 489.

Here, plaintiffs challenged their continued confinement after their release dates, so they were eligible to seek relief through habeas. And if any doubt remains that plaintiffs here *could* have sought habeas relief, it's eliminated by the fact that some of them *did*. Counsel for plaintiffs Crittindon and Copelin filed petitions for writs of habeas corpus in the Orleans Parish Criminal District Court on January 12, 2017. After both plaintiffs were released from custody *the very next day* on January 13, 2017, both petitions were voluntarily dismissed. That is the beginning and the end of the *Heck* bar: The fact that plaintiffs' claims were cognizable in habeas means they're non-cognizable in § 1983.[2]

B.

The majority disputes none of this. Instead, it declines to reach the *Heck* issue because (it says) the

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[2] All this remains true even though plaintiffs are no longer in jail. The *Heck* bar applies uniformly to inmates currently in prison and to litigants who have been released. *Heck* itself set out this rule, noting "the principle barring collateral attacks—a longstanding and deeply rooted feature of both the common law and our own jurisprudence—is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." 512 U.S. at 490 n.10; *see also Randell*, 227 F.3d at 301 (per curiam) (reaffirming this rule despite contrary dicta in subsequent Supreme Court concurring and dissenting opinions).

DPSC defendants forfeited it.[3] *See ante*, at 17. That's wrong for three reasons.

1.

First, if the *Heck* bar applies, plaintiffs lack a cause of action under § 1983. *See Heck*, 512 U.S. at 489 (denying "the existence of a cause of action . . . unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus."); *see also Colvin*, 2 F.4th at 498–99; *Johnson v. McElveen*, 101 F.3d 423, 424 (5th Cir. 1996) (per curiam). And if the plaintiffs lack a cause of action, we should say so and no more. *See Angulo v. Brown*, 978 F.3d 942, 954 (5th Cir. 2020) (Oldham, J., concurring in part); *see also Elhady v. Unidentified CBP Agents*, 18 F.4th 880, 884–85 (6th Cir. 2021) (Thapar, J.). That's because Article III prohibits courts from deciding "questions that cannot affect the rights of litigants in the case before them or giv[ing] opinions advising what the law would be upon a hypothetical state of facts." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quotation omitted). And here, the entirety of the majority's analysis "is hypothetical [because plaintiffs] can't sue." *Elhady*, 18 F.4th at 885.

We should be especially careful about deciding hypothetical cases where, as here, "the cause-of-action-lacking plaintiff wants us to answer a *constitutional*

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[3] We have an obligation to consider jurisdictional questions *sua sponte*, but this court has recently clarified that the *Heck* doctrine is not jurisdictional. *See Colvin*, 2 F.4th at 498–99 ("*Heck* implicates a plaintiff's ability to state a claim, not whether the court has jurisdiction over that claim.").

question." *Angulo*, 978 F.3d at 954 (Oldham, J., concurring in part). To reach the conclusion it does today, the majority ignores *Heck* and analyzes whether there was a constitutional violation. That flips the order of operations: Normally we "will *not* decide a constitutional question if there is some other ground upon which to dispose of the case." *Escambia Cnty. v. McMillan*, 466 U.S. 48, 52 (1984) (per curiam) (emphasis added). Indeed, we normally will decide "an antecedent statutory issue, *even one waived by the parties*, if its resolution could preclude a constitutional claim." Adrian Vermeule, *Saving Constructions*, 15 GEO. L.J. 1945, 1948–49 & n.20 (1997) (emphasis added).

When this case goes back to the district court, the defendants will obviously re-raise their *Heck* defenses, and those defenses will obviously bar plaintiffs from recovering anything. Perhaps the district court will recognize that its first *Heck* ruling was plainly wrong; perhaps the district court will adhere to it, and we'll reverse it in the officers' next appeal. But either way, today's decision will prove no less advisory than the opinion the first Supreme Court refused to give President Washington in 1793. *See Correspondence of the Justices*, *in* R. FALLON, J. MANNING, D. MELTZER, & D. SHAPIRO, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 50–52 (7th ed. 2015).

2.

Second, officers asserting qualified immunity can't forfeit the argument that *Heck* bars plaintiffs' claims. That's because qualified immunity is no "mere defense to liability"—it's an "immunity from suit." *Pearson v.*

Callahan, 555 U.S. 223, 237 (2009) (quotation omitted). And once officers have asserted the qualified-immunity defense, it's plaintiffs' burden to negate that assertion. *See King v. Handorf*, 821 F.3d 650, 653 (5th Cir. 2016). That means plaintiffs must overcome any and all antecedent hurdles before they can subject the immunity-asserting officers to suit.

And the question whether plaintiffs have a cause of action is obviously antecedent to the qualified-immunity question. In that respect, it's no different from *Bivens*. *See Hernandez v. Mesa*, 137 S. Ct. 2003, 2006 (2017); *Angulo*, 978 F.3d at 948-49 n.3 (*Bivens* question is "an antecedent matter" to qualified immunity); *Egbert v. Boule*, --- S. Ct. ---, --- n.3 (2022) (*Bivens* defendant "is not limited to the precise arguments he made below" and cannot forfeit an argument that would "foreclose applying *Bivens*" (citing *Oliva v. Nivar*, 973 F.3d 438, 443 n.2 (5th Cir. 2020))). Plaintiffs who lack a cause of action under § 1983 cannot sue state officers—just as plaintiffs who lack a cause of action under *Bivens* cannot sue federal officers. So where the plaintiffs have no cause of action, we should never even get to the qualified immunity question. *See Elhady*, 18 F.4th at 884 (discussing *Bivens*) ("Why analyze qualified immunity when it is an utterly unnecessary exercise?"). True, that means the officers get the benefit of *Heck* without invoking that doctrine. But longstanding precedent often requires dismissal of official-action suits where the officers fail to argue *anything*. *Cf. Cass v. City of Abilene*, 814 F.3d 721, 733 (5th Cir. 2016) (per curiam) (plaintiffs failed to satisfy their burden to "show that the defendant is not entitled to qualified immunity"

even though defendant "entirely failed to argue that [the constitutional] right was not clearly established" (quotation omitted)).

Longstanding Supreme Court precedent likewise requires this approach in other areas. For example, the Court directs us to "consider an issue antecedent to and ultimately dispositive of the dispute before [us], even an issue the parties fail to identify and brief." *U.S. Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 447 (1993) (quotation omitted); *see also Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991) ("When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains independent power to identify and apply the proper construction of governing law."); *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77 (1990) (recognizing that only "two questions were presented" to the Court, but nonetheless reaching and deciding "another question antecedent to these and ultimately dispositive of the present dispute"). And both of my esteemed colleagues have recognized this rule before. *BP Expl. & Prod., Inc. v. Claimant ID 100315902*, 774 F. App'x 169, 171–72 (5th Cir. 2019) (Costa, J., joined by Higginbotham, J.) (quoting *U.S. Nat'l Bank of Oregon*, 508 U.S. at 447); *see also id.* at 172 ("[A] court might look past forfeiture . . . when the proper resolution is beyond any doubt and when injustice might otherwise result." (quotation omitted)). I see no basis for departing from it here.

3.

Finally, fairness. The collateral-order doctrine provides our jurisdiction to review the summary-

judgment order denying qualified immunity. *See Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). But our jurisdiction in this posture is "significantly limited." *Kinney v. Weaver*, 367 F.3d 337, 346 (5th Cir. 2004) (en banc). We have jurisdiction "only to the extent that the denial of summary judgment turns on an issue of law." *Ibid.* (quotation omitted). Over and over, we restate the rule the Supreme Court gave us in *Johnson v. Jones*, 515 U.S. 304, 313–14 (1995): We're permitted to "examin[e] the *materiality* of factual disputes the district court determined were genuine." *Cole v. Carson*, 935 F.3d 444, 452 (5th Cir. 2019) (en banc) (emphasis added). But we "lack jurisdiction to review the *genuineness* of a fact issue." *Melton v. Phillips*, 875 F.3d 256, 261 (5th Cir. 2017) (en banc) (quotation omitted).

Our court has been inconsistent about whether we have jurisdiction to address *Heck* issues in this posture. *See Poole v. City of Shreveport*, 13 F.4th 420, 426 (5th Cir. 2021) (highlighting inconsistencies); *compare Sappington v. Bartee*, 195 F.3d 234, 236 (5th Cir. 1999) (per curiam) (holding a "denial of a summary judgment is reviewable and subject to reversal if the claim is barred under *Heck*"), *with Southall v. Arias*, 256 F. App'x 674, 676 (5th Cir. 2007) (per curiam) (no jurisdiction to "review the applicability of *Heck*" on interlocutory appeal), *and Latham v. Faulker*, 538 F. App'x 499, 500 (5th Cir. 2013) (per curiam) ("The district court has dismissed [the] claim as precluded by the *Heck* doctrine," but "we have no jurisdiction of that in this interlocutory appeal." (quotation omitted)). Only recently—and well after the briefing in this case was completed—has our court attempted to cure this

conflict by stating that *Heck* issues are reviewable on interlocutory appeal from a denial of qualified immunity. *See Poole*, 13 F. 4th at 426 (concluding that *Sappington* controls under our rule of orderliness).

Despite the confusion in this circuit, the prevailing approach in our sister circuits has been to say that *Heck* issues are *not* reviewable on interlocutory appeal. *See Dennis v. City of Philadelphia*, 19 F.4th 279, 287 (3d Cir. 2021) ("Accordingly, although we have jurisdiction in this interlocutory appeal to consider the District Court's denial of the detectives' qualified immunity defense, we do not have jurisdiction at this time to consider their arguments under *Heck*."); *Sayed v. Virginia*, 744 F. App'x 542, 547–58 (10th Cir. 2018) ("The *Heck* analysis does not bear on the qualified immunity inquiry, and because *Heck* issues are effectively reviewable on appeal while the denial of qualified immunity is not, courts generally decline to exercise jurisdiction over *Heck* issues raised on interlocutory appeal from the denial of qualified immunity."); *Harrigan v. Metro Dade Police Dept.*, 636 F. App'x 470, 476 (11th Cir. 2015) (per curiam) ("The district court's *Heck* ruling is not a final decision and, unlike its order denying qualified immunity, does not fall within the collateral order doctrine."); *Norton v. Stille*, 526 F. App'x 509, 514–15 (6th Cir. 2013)) ("[T]he district court's holding on the *Heck* issue is not independently reviewable under the collateral order doctrine," and the court cannot exercise pendent appellate jurisdiction over it.); *Limone v. Condon*, 372 F.3d 39, 50–51 (1st Cir. 2004) (declining interlocutory review of *Heck* issue); *Cunningham v. Gates*, 229 F. 3d 1271, 1285 (9th Cir. 2000) ("[W]e lack jurisdiction to

review the district court's denial of defendants' motion for summary judgment pursuant to *Heck v. Humphrey*.").

At the time this case was filed, our circuit's most recent statement on the question indicated quite clearly that we don't have jurisdiction to review *Heck* issues on interlocutory appeal. *Latham*, 538 F. App'x at 500 ("The district court has dismissed [the] claim as precluded by the *Heck* doctrine," and "we have no jurisdiction of that in this interlocutory appeal." (quotation omitted)). And we have not hesitated to admonish government officials who ask us to resolve issues that cannot be resolved under our understanding (right or wrong) of the collateral-order doctrine. *See, e.g.*, *Fuentes v. Riggle*, 611 F. App'x 183, 189–90 (5th Cir. 2015) (per curiam) (dismissing interlocutory appeal raising factual disputes and faulting defendant for "attempt[ing] to circumvent our jurisdictional limitations"); *Juarez v. Aguilar*, 666 F.3d 325, 332–33 (5th Cir. 2011) ("Our jurisdiction does not permit us to consider several issues raised by Appellants . . . . Appellants' attempt to avoid this jurisdictional limitation is unavailing."); *Reyes v. City of Richmond*, 287 F.3d 346, 351 (5th Cir. 2002) (dismissing interlocutory appeal challenging genuineness of factual disputes and faulting officer for merely "giving lip service to the correct legal standard" while raising issues outside the court's limited jurisdiction); *cf. United States v. Contreras-Rojas*, 16 F.4th 479 (5th Cir. 2021) (per curiam) (urging litigants "not to damage their credibility with this court" by pressing arguments our court has made clear will fail (quotation omitted)).

So, perhaps understandably, defendants in this case did not brief this issue on appeal. But they did brief it below. And the district court spent multiple pages discussing whether plaintiffs' claims are *Heck*-barred. There's no unfair surprise to plaintiffs if we consider arguments they pressed thoroughly and successfully before the district court. Nor is there any reason to make these defendants proceed in district court on claims that are obviously barred. Nor is there any reason to adjudicate constitutional questions in the face of an obvious and insurmountable hurdle to plaintiffs' claims.

In short, the majority faults defendants for failing to brief an issue our precedent told them not to brief. We've since clarified that we have jurisdiction to review this issue in this procedural posture. But rather than recognize that we ourselves caused the problem, the majority faults *the defendants* for failing to predict our jurisdictional switcheroo; then it renders an advisory constitutional decision in the face of the insuperable *Heck* bar; and then it says that the whole thing is somehow compelled by the forfeiture doctrine. That, with deepest respect, is wrong.

II.

Even assuming plaintiffs' claims are not *Heck* barred—or assuming, as the majority does, that we can't reach the issue—the majority's qualified-immunity analysis is also wrong.

When analyzing claims of qualified immunity, we must assess each defendant individually. *See Darden v. City of Fort Worth*, 880 F.3d 722, 731 (5th Cir. 2018)

("In cases where the defendants have not acted in unison, qualified immunity claims should be addressed separately for each individual defendant." (quotation omitted)); *Joseph v. Bartlett*, 981 F.3d 319, 325 & n.7 (5th Cir. 2020) (clarifying that "[t]o the extent [*Darden*] could be read as suggesting that collective analysis is appropriate for defendants acting in unison, we don't read it that way"). Here, however, 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. Assessing each defendant separately compels the conclusion that none violated the plaintiffs' constitutional rights under (A) the failure-to-adopt-policies theory or (B) the direct-participation theory. And in any event, (C) the defendants did not violate clearly established law.

A.

The majority denies qualified immunity to LeBlanc, Stagg, and Griffin because, it says, they were "deliberately indifferent" in failing to adopt policies that would ensure plaintiffs' timely release. *Ante*, at 10–14. Neither the plaintiffs nor the majority, however, can show that (1) the DPSC defendants were deliberately indifferent about anything. And (2) the majority's various attempts to blame the DPSC defendants rests on a fundamental misunderstanding of who's who; it turns the three DPSC defendants into scapegoats for the State's problems writ large.

1.

As in all qualified-immunity cases, our inquiry should start with the Constitution. It's not immediately obvious which constitutional provision is implicated by plaintiffs' "deliberate indifference on a failure-to-adopt-policies" theory. It appears to be an amalgamation of the Fourth and Fourteenth Amendments. Neither the majority nor the parties pause to explain how either part of the Constitution, standing alone or combined with some other part, says anything to urge prison officials to adopt particular policies with particular alacrity. The majority and the parties likewise point to no Supreme Court precedent that requires any of the DPSC defendants to do anything at any time. Everyone instead points only to our precedent.[4]

Our precedent, in turn, requires two things. First, plaintiffs must show that defendants had "actual or constructive notice" of a constitutional violation. *Porter v. Epps*, 659 F.3d 440, 447 (5th Cir. 2011). Second, there must be an "obvious" causal link between the failure to adopt a *particular* policy and that same constitutional violation. *See id.* at 446 ("A failure to adopt a policy can be deliberately indifferent when it is *obvious that the likely consequences* of not adopting a

[4] The Supreme Court has never said that we can hold executive officers liable under § 1983 for violating the commands of *our* precedent (as opposed to theirs). *See Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) (per curiam) (assuming without deciding that "controlling Circuit precedent clearly establishes law for purposes of § 1983"). For purposes of the present discussion, I'll assume that our precedent can "clearly establish" the meaning of the relevant constitutional provisions.

policy will be a deprivation of constitutional rights." (emphasis added) (quoting *Rhyne v. Henderson Cnty.*, 973 F.2d 386, 392 (5th Cir. 1992))).

First, notice. As to our three DPSC defendants, their only conceivable "notice" of a constitutional problem is the 2012 Lean Six Sigma study. *See ante*, at 12. That study found that DPSC added 7.27 days on average to prisoners' processing time—and hence created a 7.27-day delay for releasing prisoners entitled to immediate release upon sentencing. But the district court denied summary judgment in this case in 2019—*seven years after* the Lean Six Sigma study. In those intervening seven years, DPSC all but eliminated its portion of the delay: It's undisputed that DPSC was responsible for an average of *less than one day's delay* across the five plaintiffs in this case. It's downright bizarre to (1) ignore the undisputed fact that DPSC all but eliminated its portion of the problem and then (2) pretend the DPSC defendants did *nothing* after receiving "notice" of the 2012 Lean Six Sigma study. If the majority were to acknowledge the actual facts in the actual summary judgment record, where would it find that these three DPSC defendants were on "notice" of a constitutional problem *in 2019*? On that question, which is the only relevant one, the summary judgment record and the majority opinion are equally and deafeningly silent.

Second, the purportedly "obvious" causal link. The majority says "it was obvious that a failure to address [the] processing delays [identified in the Lean Six Sigma study] would lead to unconstitutional overdetentions." *Ante*, at 12. But how can anyone say

the DPSC defendants failed to address the Lean Six Sigma study? They absolutely addressed it. They reduced DPSC's average delays from 7.27 days (in 2012) *to less than one day* (in 2019). The majority appears to hold that anything short of absolute, 100% complete perfection—that is, a reduction from 7.27 *to zero*—is an "obvious" violation of the Constitution. The majority can cite nothing to support that breathtaking conclusion. It has no basis in law or logic.

2.

In its attempts to avoid these conclusions, the majority offers three arguments. Each is meritless.

The majority first faults LeBlanc and Stagg for not amending the Basic Jail Guidelines to require "local jails to transmit pre-classification paperwork to DPSC by a stated deadline." *Ante*, at 11. This makes no sense because the plaintiffs concede that Louisiana state law *already imposes* such a deadline on the sheriffs. If the sheriffs are ignoring a stated deadline that already exists, why does the majority think that it would change anything if DPSC added a second deadline for the sheriffs to ignore?

The plaintiffs conceded that state law obliges the sheriff of the parish of conviction to deliver a prisoner to the state correctional institution designated by DPSC *within thirty days* of the sentence. LA. REV. STAT. § 15:566(B). At the time of delivery, the sheriff is required to provide DPSC with certain documentation. Those documents include (1) the indictment; (2) the Uniform Sentencing Commission Order; (3) the sheriff's jail credit letter showing the amount of pre-

trial credit the inmate earned for time awaiting sentencing; (4) the basic interview form containing the inmate's personal information; and (5) fingerprints. *See* LA. CODE CRIM. PRO. art. 892(C). This is the information DPSC uses to calculate release dates. Given that the sheriffs already have a statutory obligation to turn over this material in a timely manner, it's not at all "obvious" that LeBlanc and Stagg's decision not to add a duplicative deadline to the guidelines "causally result[ed] in the constitutional injury." *Porter*, 659 F.3d at 446. So if anything is obvious, it's that the sheriffs are ignoring *concededly binding* deadlines,[5] and DPSC's failure to add another one for the sheriffs to ignore did nothing to cause plaintiffs' injuries.

Next, the majority faults Stagg and Griffin for failing to adopt processes aimed at identifying "newly-sentenced DPSC prisoners lack[ing] initial time

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[5] The parties agree these deadlines already exist. *See, e.g.*, Bl. Br. at 12 ("Under Louisiana law, it is the duty of the sheriff of the Parish of conviction (in this case, the OPSO) to deliver the prisoner to the state correctional institution designated by DPSC within thirty days of the date upon which sentence to imprisonment at hard labor has been imposed (with exceptions not relevant here). The sheriff must also provide DPSC with certain documentation at the time he delivers the inmate to DPSC."); Oral Arg. at 21:45–21:53 (Q: "Do you dispute that the sheriffs' office has a statutory obligation to provide this information?" Plaintiffs' counsel: "We do not dispute that."). I do not understand how the majority can purport to countermand these representations and suggest the thirty-day deadline does not apply. *See ante*, at 21. And in any event, regardless of how the plaintiffs in this case were detained, their central contention is that the sheriffs were ignoring statutory deadlines that apply more generally.

computations and release dates." *Ante*, at 11. But these aren't "DPSC prisoners"; they're *sheriffs'* prisoners in local jails. Louisiana state law is undisputedly clear that a sheriff has "absolute authority over [such an] inmate without any control whatsoever exercised by the DPSC." Bl. Br. 11; *see Harper v. State, Dep't of Pub. Safety & Corr.*, 679 So.2d 1321, 1323 (La. 1996) (citing *Cooley v. State*, 533 So.d 124, 126 (La. App. 4th Cir. 1988)). And state law is equally clear that sheriffs are independently elected parish officers who are in no way accountable to DPSC.

It's true that DPSC and the Louisiana Sheriffs' Association jointly adopted the "Basic Jail Guidelines" to protect the constitutional rights of criminals in the sheriffs' custody. It's also irrelevant. The majority cites nothing to suggest that DPSC has any power whatsoever to unilaterally amend the jointly-adopted Guidelines. And it cites nothing to suggest that such a unilateral DPSC amendment, even if possible, would have caused any sheriff to do anything to help any prisoner. To 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." That's far from deliberate indifference. And it's far from "obvious" that DPSC failed to do anything that caused any plaintiff to suffer any injury.

Third and finally, the majority commits the tell-tale mistake that courts make when all else fails to deny qualified immunity: It lumps the defendants together. For example, the majority says that the three DPSC

defendants were "aware[] of this pattern of delays" and made a "conscious decision not to address it," *ante*, at 13—without saying anything about which defendant knew what at what time, and without explaining how we can infer anything about any particular defendant's consciousness. The law squarely prohibits such group pleading. *See, e.g.*, *Bartlett*, 981 F.3d at 325; *cf. Yang v. Nobilis Health Corp.*, 2021 WL 3619863, at *2 (5th Cir. Aug. 13, 2021) (per curiam) ("Our review is particular to each defendant."). What's worse, the majority lumps the three DPSC defendants together with others—like the sheriffs—who are not before us. *See ante,* at 18. That's the only way the majority can fault our three defendants for delays that were undisputedly caused by others. Our precedent squarely forecloses this entire enterprise to impose joint-and-several liability under § 1983.

B.

The plaintiffs' second constitutional theory is that Griffin and Stagg were deliberately indifferent to their overdetention because they "directly participated" in it. This theory is even weaker than plaintiffs' "deliberate-indifference-for-failure-to-adopt-policies" theory.

To find deliberate indifference, there must be evidence that particular defendants "disregarded" a "known or obvious consequence of his action"—namely, that particular plaintiffs would be overdetained. *Porter*, 659 F.3d at 446–47; *accord Connick v. Thompson*, 563 U.S. 51, 61 (2011) (quotation omitted). Here, the majority points to two plaintiffs—Crittindon and Burse—and says two defendants—Griffin and Stagg—deliberately and directly participated in

17 days of overdetention by disregarding phone calls from the inmates' mothers, the known or obvious consequence of which was their overdetention. But the majority cites no evidence Griffin and Stagg knew anything about any risk that Crittindon and Burse could be overdetained. And even if there *were* evidence they knew of that risk, there is nothing to suggest they disregarded it. To the contrary, as soon as Griffin and Stagg learned that Crittindon's and Burse's family members called DPSC, they acted promptly and reasonably to identify the inmates, calculate their release dates, and ensure their release.

First, the phone calls did not make it "known or obvious" to these particular defendants that these particular plaintiffs were being (or would be) overdetained. *Porter*, 659 F.3d at 446–47. The message Griffin and Stagg received regarding Crittindon informed them that he had "been in Riverbend DC since July of 2014," "was sentenced in August of 2016," that he could not be found in the CAJUN system, and that his mother had called regarding "her son's time not being calculated." That alerted them that he might be a DPSC offender missing paperwork. It did not make it "obvious" that he was being detained past his released date. So too with plaintiff Burse: Griffin and Stagg were on notice that he "was sentenced August 8, 2016 and ha[d] no DOC number or time calculated as of yet." That did nothing to alert anyone that this particular plaintiff was being overdetained.

And even if family members had called and explicitly claimed that Crittindon and Burse were being detained past their release dates, that would not

make it "obvious" that they were in fact being overdetained. DPSC had no way of verifying plaintiffs' release dates until they obtained the preclassification paperwork. The only way to lay the fault at the feet of Griffin and Stagg is to make those two officials responsible for *the entire State's* contribution to this problem. That is, we'd have to presume that Griffin and Stagg were aware of each link in the causal chain that caused overdetention in Louisiana; that both had control over every link (or should bear joint-and-several liability with those who did); and that two phone calls put them on such obvious notice that they were "deliberately indifferent" for not snapping their fingers and releasing Crittindon and Burse immediately. We have zero basis for presuming such omniscience, omnipotence, or omniliability.

Second, even if we presume that Griffin and Stagg were both omniscient and omnipotent, they *still* behaved reasonably. They took prompt and reasonable steps as soon as they were made aware of the phone calls from plaintiffs' mothers. Even the district court recognized this, noting the "evidence in the record demonstrates that after they became aware of the issue, Defendants communicated with the relevant parties to obtain the necessary paperwork, calculate a release date, and release the Plaintiffs." And of course, it's undisputed that as soon as DPSC was able to obtain the preclassification packets for Crittindon and Burse, DPSC released both plaintiffs within *one day*.

C.

For all those reasons, it's absurd to charge Griffin and Stagg with 17 days of deliberate indifference. But

let's say, for the sake of argument, that Griffin and Stagg knew their actions could cause 17 days of overdetention. Even still, defendants are entitled to qualified immunity, because it is not clearly established that it violates the Constitution to hold a prisoner for 17 days while employing reasonable efforts to verify his sentence and calculate his release date.

To show a violation of clearly established law, plaintiff must "identify a case—usually, a body of relevant case law—in which an officer acting under similar circumstances was held to have violated the Constitution." *Bartlett*, 981 F.3d at 330 (quotation omitted). Whether the challenged conduct was unlawful must be obvious and without doubt: "[E]xisting precedent must squarely govern the specific facts at issue, such that only someone who is plainly incompetent or who knowingly violates the law would have behaved as the official did." *Id.* at 337 (quotation omitted); *see also Aschroft v. al-Kidd*, 563 U.S. 731, 741 (2011) ("We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate."). An official "cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Plumhoff v. Rickard*, 572 U.S. 765, 778–79 (2013). It is not sufficient to define "clearly established law at a high level of generality." *al-Kidd*, 563 U.S. at 742.

The majority makes *precisely* that mistake, concluding "there is a clearly established right to a timely release from prison." *Ante*, at 16; *see also Porter*,

659 F.3d at 446 ("[A] jailer has a duty to ensure that inmates are timely released from prison."). That general rule of law is undisputed—and gets us nowhere. What matters here is when release is sufficiently "timely," because as the majority concedes, "'timely release' is not the same as instantaneous release." *Ante*, at 13. That's why we held more than fifty years ago that a jailer's "duty to his prisoner is not breached until the *expiration of a reasonable time* for the proper ascertainment of the authority upon which his prisoner is detained." *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1968) (emphasis added).

So where's the line between timely (no constitutional violation) and untimely (constitutional violation)? Is 17 days reasonable or unreasonable? Courts have declined to draw a bright line. *See Berry v. Baca*, 379 F.3d 764, 771 (9th Cir. 2004) ("Courts have not settled on any concrete number of permissible hours of delay in the context of post-release detentions."). Without a bright line, we're left to infer from precedent. And in considering that precedent, we can consider *only* holdings. *See Morrow v. Meachum*, 917 F.3d 870, 875 (5th Cir. 2019) ("[C]learly established law comes from holdings, not dicta.").

In the majority's *only* case, we 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." *Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980). Just as a case regarding the unreasonableness of (say) ten taser strikes says nothing about the reasonableness of (say) one, so too does *Douthit*'s 30-day holding say

nothing about our 17-day case. Moreover, *Douthit* says nothing about DPSC's efforts during those 17 days to obtain plaintiffs' preclassification paperwork. *Douthit* is, in a word, irrelevant.

But once again, all of this is beside the point because even if a precedent involving a 30-day overdetention somehow renders unconstitutional a 17-day overdetention, there is no conceivable basis for saying that result is "obvious." At very most, the majority can say that it wants to extend the 30-day case to give future plaintiffs the benefit of its new 17-day shot clock. But the whole point of qualified immunity is that, when courts change the law like that, it cannot fault the defendants before it with failing to predict the change. Section 1983 does not require officers to be Nostradamus. *See Greenberg v. Kmetko*, 922 F.2d 382, 385 (7th Cir. 1991) (Easterbrook, J.) ("Governmental employees must obey the law in force at the time but need not predict its evolution, need not know that in the fight between broad and narrow readings of a precedent the broad reading will become ascendent.").

* * *

A frequent criticism of our qualified-immunity doctrine is that it leaves some plaintiffs without a meaningful remedy for constitutional violations. That concern is irrelevant here. These plaintiffs had an obvious habeas remedy, as discussed in Part I. And even though the DPSC defendants are entitled to qualified immunity as discussed in Part II, the plaintiffs have viable claims against other defendants—namely the sheriffs. The district court

denied the sheriffs' motions for summary judgment, and the sheriffs did not appeal. That 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.

That makes the majority's decision all the more inexplicable. I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION 17-512-SDD-EWD

[Filed April 13, 2020]

JESSIE CRITTINDON, *et al.*)
)
VERSUS)
)
MARLIN GUSMAN, *et al.*)
)

RULING

This matter is before the Court on the following *Motions*:

- The *Motion for Partial Summary Judgment*[1] filed by Plaintiffs Jessie Crittindon ("Crittindon"), Leon Burse ("Burse"), Eddie Copelin ("Copelin"), Phillip Dominick III ("Dominick"), and Donald Guidry ("Guidry")(collectively, "Plaintiffs"). There are three *Oppositions* to the *Motion*: one by Defendants Marlin Gusman ("Sheriff Gusman") and Corey Amacker ("Amacker") of the Orleans Parish Sheriff's Office ("OPSO")(collectively, "the OPSO

[1] Rec. Doc. No. 111.

Defendants");[2] one by Defendants Wydette Williams ("Sheriff Williams"), Johnny Hedgemon ("Hedgemon"), and Edward Knight ("Knight") of the East Carroll Parish Sheriff's Office ("ECPSO")(collectively, "the ECPSO Defendants");[3] and another by Defendants James LeBlanc ("Secretary LeBlanc"), Angela Griffin ("Griffin"), and Perry Stagg ("Stagg") of the Louisiana Department of Public Safety and Corrections ("DPS&C" or "DOC")(collectively, "the DPS&C Defendants");[4]

- The *Motion for Summary Judgment*[5] filed by the DPS&C Defendants. Plaintiffs filed an *Opposition*,[6] to which the DPS&C Defendants filed a *Reply*.[7] Plaintiffs also filed a *Sur-Reply*;[8]

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[2] Rec. Doc. No. 146.

[3] Rec. Doc. No. 131.

[4] Rec. Doc. No. 141.

[5] Rec. Doc. No. 110.

[6] Rec. Doc. No. 142.

[7] Rec. Doc. No. 149.

[8] Rec. Doc. No. 155.

- The *Motion for Summary Judgment*[9] filed by the OPSO Defendants, to which Plaintiffs filed an *Opposition*;[10]
- The *Motion for Summary Judgment*[11] filed by the ECPSO Defendants, to which Plaintiffs filed an *Opposition*.[12]

For the reasons that follow, the Court finds that the motions shall be DENIED.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are former prisoners who allege that they were "incarcerated for months beyond the date when each was legally entitled to release."[13] Their individual cases played out in similar fashion: Plaintiffs were all arrested and initially placed in the custody of the Orleans Parish Sheriff's Office (OPSO) before being transferred to the River Bend Detention Center ("River Bend") in Lake Providence, Louisiana, where they were held by the East Carroll Parish Sheriff's Office (ECPSO) as Orleans pretrial detainees.[14] Later, each

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[9] Rec. Doc. No. 104.

[10] Rec. Doc. No. 144.

[11] Rec. Doc. No. 102.

[12] Rec. Doc. No. 143.

[13] Rec. Doc. No. 111-1, p. 2.

[14] *Id.* at pp. 3-5.

Plaintiff was transported back to Orleans Parish to enter a plea in Orleans Parish Criminal District Court. Once the plea was entered and a sentence handed down, each Plaintiff was transported back to River Bend, where, they allege, they remained in custody even though they were entitled to immediate release, having been sentenced to time served (in the case of Plaintiffs Crittindon, Burse, Copelin, and Dominick).[15] Plaintiff Guidry was not entitled to immediate release upon sentencing, but he alleges that he was entitled to release on September 4, 2016, and was not actually released from River Bend until January 24, 2017.[16] All five Plaintiffs were no longer pretrial detainees but DOC-sentenced inmates when, they allege, they were held in custody beyond their lawful sentences.

In their *Complaints*,[17] Plaintiffs bring four claims against Defendants, in both their individual and official capacities: (1) violation of their federal due process rights under the Fourteenth Amendment pursuant to 42 U.S.C. § 1983; (2) violation of their state due process rights under Article 1, Section 2 of the Louisiana Constitution; and (3) and (4), state law claims for false imprisonment and intentional infliction of emotional distress. In their *Motion for Partial Summary*

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[15] Rec. Doc. No. 111-1, pp. 3-5.

[16] *Id.* at p. 5.

[17] Rec. Doc. No. 1; Rec. Doc. No. 4; Case No. 17-cv-602, Rec. Doc. No. 1. This case began as two separate cases -- 17-cv-512 (with Plaintiffs Crittindon and Burse) and 17-cv-602 (with Plaintiffs Copelin, Dominick III, and Guidry) -- which were consolidated on October 18, 2017. *See* Rec. Doc. No. 23.

Judgment, however, Plaintiffs seek summary judgment on a narrow subset of the claims at issue:

> Plaintiffs seek partial summary judgment from this Court on three issues of liability: (1) whether, as a matter of law, Defendants violated the due process rights guaranteed to Plaintiffs by the federal and state constitutions; (2) whether, as a matter of law, Defendants falsely imprisoned Plaintiffs; and (3) whether the liability of OPSO, ECPSO, and the DPS&C Defendants is solidary. . .[18]

Notably, Plaintiffs' *Motion* seeks summary judgment against the OPSO Defendants and the ECSPO Defendants *in their official capacities only*; as to the DPS&C Defendants,[19] Plaintiffs seek summary judgment against them in their *individual* capacities.[20]

Plaintiffs argue that the OPSO Defendants had "a practice of 'releasing' newly-sentenced DOC prisoners from Orleans Parish" directly to River Bend, "without proper completion and provision of the paperwork and documentation required by state law and necessary to ensure their release from custody."[21] Similarly, they argue that the ECPSO Defendants are liable because,

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[18] Rec. Doc. No. 111-1, p. 2.

[19] The parties and the Court use "DPS&C" and "DOC" interchangeably to refer to the Louisiana Department of Public Safety and Corrections.

[20] Rec. Doc. No. 111-1, p. 2.

[21] *Id.* at p. 22.

"[d]espite promulgating a written policy that requires documentation of 'the legal basis for commitment' for the intake of prisoners," the ECPSO Defendants allegedly had an "official practice of accepting persons into [River Bend] without obtaining this information."[22] The OPSO and ECPSO Defendants counter that Plaintiffs cannot prevail on their official capacity § 1983 claims because they have "failed to establish that there was a specific policy or a pattern of similar overdetention incidents which arose out of specifically similar circumstances, sufficient to put" them on notice that their practice was constitutionally deficient.[23] Further, both OPSO and ECPSO Defendants contend that Plaintiffs have failed to establish that they "acted with the requisite deliberate indifference necessary to find the parties liable in their official capacity."[24]

As for the individual capacity claims against the DPS&C Defendants, Plaintiffs argue that they are entitled to summary judgment based on these Defendants' "direct participation in the acts which caused the deprivations of Plaintiffs' due process rights," as well as summary judgment on

> three separate theories of supervisory liability: (1) failure to adopt policies that could have prevented the Plaintiffs' injuries; (2) failure to train and supervise department employees,

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[22] *Id.* at p. 33.

[23] Rec. Doc. No. 146, p. 2 (OPSO Defendants); Rec. Doc. No. 131, p. 9 (ECPSO Defendants).

[24] *Id.*

> resulting in the Plaintiffs' injuries; and (3) direct participation in DPS&C intolerably slow response to the discovery of scores of DOC-sentenced prisoners held at River Bend without having been pre-classified, resulting in the Plaintiffs being held even longer than if DPS&C had taken swift action.[25]

The DPS&C Defendants counter that summary judgment is improper because they are entitled to qualified immunity. Specifically, they argue that there is no evidence that they acted with deliberate indifference; instead, they claim, they "promptly processed" Plaintiffs' release paperwork "after receiving the necessary documentation"[26] from the other Defendants. Because DPS&C "is dependent upon the Sheriff to provide necessary paperwork to calculate an offender's time," Defendants argue that they cannot be liable for the overdetention of Plaintiffs based on the Sheriffs' failure to provide that paperwork. Additionally, the DPS&C Defendants argue that Plaintiffs cannot show a failure to adopt effective policies, explaining that "there is no indication of a pattern or practice of DOC staff wholly failing to reach to local official to obtain paperwork. Indeed, DOC staff remained in communication with Orleans Parish throughout December 2016 and into January 2017."[27]

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[25] Rec. Doc. No. 111-1, p. 42.

[26] Rec. Doc. No. 141, p. 12.

[27] *Id.* at p. 17.

According to Plaintiffs, all Defendants are also liable for false imprisonment under Louisiana law based on their constitutionally deficient practices. Plaintiffs ask this Court to find that all Defendants are solidarily liable for the harm to Plaintiffs, explaining that:

> The OPSO, ECPSO, and DPS&C Defendants each played a role in preventing each Plaintiff from going free on his respective lawful release date. None of the Plaintiffs' releases could be 'partially executed.' The obligation owed to Plaintiffs, therefore, is a joint, indivisible obligation and OPSO, ECPSO, and the DPS&C Defendants are solidarily liable.[28]

The Defendants disagree, noting that in 1996, the Louisiana Civil Code "was amended to eliminate solidary liability of joint tortfeasors, except for intentional or willful acts."[29]

For their part, the ECPSO Defendants move for summary judgment on the claims against them for the following reasons: (1) because "Plaintiffs' claims are barred by *Heck v. Humphrey* and should be dismissed on that basis";[30] (2) because "plaintiffs fail to state a claim against either Sheriff Williams, in his individual capacity, or the East Carroll Defendants collectively in

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[28] Rec. Doc. No. 111-1, p. 13.

[29] Rec. Doc. No. 146, p. 14.

[30] Rec. Doc. No. 102-1, p. 4.

their official capacities";[31] (3) because the ECPSO Defendants "are entitled to qualified immunity in their individual capacities";[32] and (4) because the "plaintiffs fail to state a cause of action for intentional infliction of emotional distress under Louisiana law."[33]

Similarly, the OPSO Defendants' *Motion for Summary Judgment* posits that they are entitled to summary judgment on the claims against them for the following reasons: (1) because "Plaintiffs' claims are barred by *Heck v. Humphrey* and should be dismissed on that basis";[34] (2) because "Plaintiff [sic] has failed to state facts which support an official capacity claim against the Sheriff";[35] and (3) because the "Sherriff and Amacker are entitled to qualified immunity in their individual capacities."[36]

Lastly, the DPS&C Defendants move for summary judgment, arguing that "(1) the Plaintiffs' claims are barred by the principles set forth in the United States Supreme Court case *Heck v. Humphrey* and its progeny, (2) the defendants are entitled to qualified immunity, (3) the DPS&C Defendants are not the 'jailers' for purposes of the state law false

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[31] *Id.* at p. 10.

[32] *Id.* at p. 12.

[33] *Id.* at p. 14.

[34] Rec. Doc. No. 104-1, p. 4.

[35] *Id.* at p. 6.

[36] *Id.* at p. 9.

imprisonment analysis, and (4) the DPS&C Defendants did not intentionally inflict emotional distress upon the Plaintiffs."[37]

Having reviewed the parties' memoranda and the applicable law, the Court finds that all of the motions before the Court shall be DENIED. The Court will address the parties' arguments in turn below.

II. LAW AND ANALYSIS

A. Summary Judgment Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[38] "When assessing whether a dispute to any material fact exists, we consider all of the evidence in the record but refrain from making credibility determinations or weighing the evidence."[39] A party moving for summary judgment "must 'demonstrate the absence of a genuine issue of material fact,' but need not negate the elements of the nonmovant's case."[40] If the moving party satisfies its

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[37] Rec. Doc. No. 110-1, p. 2.

[38] FED. R. CIV. P. 56(a).

[39] *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 398-99 (5th Cir. 2008).

[40] *Guerin v. Pointe Coupee Parish Nursing Home*, 246 F.Supp.2d 488, 494 (M.D. La. 2003)(quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)(en banc)(quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25)).

burden, "the non-moving party must show that summary judgment is inappropriate by setting 'forth specific facts showing the existence of a genuine issue concerning every essential component of its case.'"[41] However, the non-moving party's burden "is not satisfied with some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence."[42]

Notably, "[a] genuine issue of material fact exists, 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'"[43] All reasonable factual inferences are drawn in favor of the nonmoving party.[44] However, "[t]he Court has no duty to search the record for material fact issues. Rather, the party opposing the summary judgment is required to identify specific evidence in the record and to articulate precisely how this evidence supports his claim."[45]

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[41] *Rivera v. Houston Independent School Dist.,* 349 F.3d 244, 247 (5th Cir. 2003)(quoting *Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir. 1998)).

[42] *Willis v. Roche Biomedical Laboratories, Inc.,* 61 F.3d 313, 315 (5th Cir. 1995)(quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994).

[43] *Pylant v. Hartford Life and Accident Insurance Company*, 497 F.3d 536, 538 (5th Cir. 2007)(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

[44] *Galindo v. Precision American Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985).

[45] *RSR Corp. v. Int'l Ins. Co.*, 612 F.3d 851, 857 (5th Cir. 2010).

"Conclusory allegations unsupported by specific facts … will not prevent the award of summary judgment; 'the plaintiff [can]not rest on his allegations … to get to a jury without any "significant probative evidence tending to support the complaint."'"[46]

B. Official Capacity Claims Under 42 U.S.C. § 1983

A suit against a government official in his official capacity is the equivalent of filing suit against the government agency of which the official is an agent.[132] Accordingly, the claims against the defendants in their official capacities are, in effect, claims against the municipal entity they represent. A plaintiff asserting a Section 1983 claim against a municipal official in his official capacity or a Section 1983 claim against a municipality "must show that the municipality has a policy or custom that caused his injury."[134] To establish an "official policy," a plaintiff must allege either of the following:

> 1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated the policymaking authority; or
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> 2. A persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted and

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[46] *Nat'l Ass'n of Gov't Employees v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 713 (5th Cir. 1994)(quoting *Anderson*, 477 U.S. at 249).

> promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy-making authority.[47]

For municipal liability, the policymaker must have final policymaking authority.[48] "[W]hether a particular official has final policymaking authority is a question of *state law*."[49] Moreover, "each and any policy which allegedly caused constitutional violations must be specifically identified by a plaintiff" for the necessary determination to be made on the policy's relative constitutionality.[50]

Although "a single decision may create municipal liability if that decision were made by a final policymaker responsible for that activity,"[51] absent an official policy, actions of officers or employees of a municipality do not render the municipality liable

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[47] *Bennett v. City of Slidell*, 735 F.2d 861, 862 (5th Cir.1984).

[48] *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988).

[49] *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989) (internal quotations omitted) (emphasis in original).

[50] *Piotrowski v. City of Houston*, 237 F.3d 567, 579 (5th Cir. 2001).

[51] *Bennett v. Pippin*, 74 F.3d 578, 586 (5th Cir.1996) (internal quotations and citations omitted).

under Section 1983.[52] A municipality cannot be held liable under Section 1983 for the tortious behavior of its employees under a theory of *respondeat superior*.[53] "Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort."[54] However, a plaintiff may establish a policy or custom based on isolated decisions made in the context of a particular situation if the decision was made by an authorized policymaker in whom final authority rested regarding the action ordered.[55]

C. Analysis

i. OPSO Defendants

The OPSO Defendants contend that the official capacity § 1983 claim against them fails because Plaintiffs have not successfully demonstrated that OPSO's alleged practice of releasing pretrial detainees to the River Bend Detention Center without the proper paperwork was widespread or persistent enough to give rise to municipal liability. The OPSO Defendants argue that their alleged practice or custom cannot give rise to official capacity liability without an "allegation of prior similar constitutional violations which would have put

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[52] *Id.*

[53] *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978).

[54] *Id.*

[55] *Cozzo v. Tangipahoa Parish Council–President Gov't*, 279 F.3d 273, 289 (5th Cir. 2002)(citing *City of Saint Louis v. Praprotnik*, 485 U.S. 112, 124–25 (1988); *Pippin*, 74 F.3d at 586.

Sheriff Gusman on notice that his policy . . . was inadequate."[56] Indeed, the Fifth Circuit has held that "[i]solated violations are not the persistent, often repeated, constant violations, that constitute custom and policy as required for municipal section 1983 liability,"[57] and that a "customary municipal policy cannot ordinarily be inferred from single constitutional violations."[58]

To be sure, there is evidence that the practice was relatively widespread; for example, Plaintiffs cite a spreadsheet, generated by DOC in December 2016, listing offenders sentenced in Orleans and housed at River Bend who were in "DOC [custody] without paperwork."[59] There are 57 prisoners on the list. However, a finding of municipal liability based on a pattern or practice requires that "[a]ctual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy-making authority."[60] The record evidence suggests that Orleans Parish Sheriff Gusman was aware of issues with inmate transfer paperwork, though the timing and specificity of his knowledge of

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[56] Rec. Doc. No. 146, p. 7.

[57] *Piotrowski v. City of Houston*, 237 F.3d 567, 581 (5th Cir. 2001) (quoting *Bennett,* 728 F.2d at 768 n.3).

[58] *Id.*

[59] Rec. Doc. No. 111-37, p. 3-5.

[60] *Bennett*, 735 F.2d at 862.

the specific problems with inmate transfers to River Bend is a question of fact. In his deposition, Sheriff Gusman testified under oath that "the information that I was getting did not indicate that we were having a problem"[61] with providing the requisite paperwork before transferring prisoners. However, the evidence also reflects that OPSO promulgated a new policy in July 2016 (OPSO No. 501.13, "Department of Corrections Pre-Classification") that set forth the process that OPSO deputies were to follow when preparing pre-classification information for inmates transferred to state prisons.[62] Asked in his deposition if the policy was promulgated due a problem with the collection of pre-classification documents, Sheriff Gusman testified, "I don't think it was a problem that was brought to my attention but just a – I would call it more of a concern that we wanted to make sure we got the fingerprints done, that we had the order from the court, certified order, those kind of things . . ."[63] Gusman stated that "every once in a while someone would tell me as I walked through the jail that 'Hey, I haven't been fingerprinted yet,' and I would get them fingerprinted . . ."[64] Asked whether the new OPSO policy for pre-classification, if followed, would put OPSO in compliance with the Basic Jail Guidelines, Gusman answered, "Yes. And that was certainly our

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[61] Rec. Doc. No. 146-2, p. 59.

[62] Rec. Doc. No. 111-23.

[63] Rec. Doc. No. 146-2, p. 48.

[64] *Id.* at p. 47.

intention."[65] Although Sherriff Gusman denied being aware of an issue with providing paperwork for transfers to River Bend, he admitted that at some point, he "certainly became aware of a problem, and as soon as I became aware of the problem, I said, 'Look, we've got to take care of this immediately'. . . we dispatched one of our staff to go up there and – to East Carroll Parish and to resolve this as quickly as we could."[66]

Ultimately, Gusman's testimony presents a somewhat mixed picture of his awareness of the alleged practice of transferring inmates to River Bend without proper paperwork. The evidence in this case demonstrates that the "arrangement" of OPSO sending pretrial detainees to River Bend began in September 2015 with a verbal agreement between OPSO and ECPSO. The question of whether, by the time the spreadsheet showing 57 OPSO prisoners "without paperwork" at River Bend was generated in December 2016, Gusman, Amacker, and OPSO officials had the requisite knowledge of the alleged practice for the Court to conclude that this practice was a persistent, widespread, well-settled municipal policy is a disputed question of fact to be determined at trial. Therefore, Plaintiffs' *Motion for Partial Summary Judgment* is denied with respect to their official capacity claim against the OPSO Defendants. The

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[65] *Id.* at p. 51.

[66] *Id.* at p. 62-63.

OPSO Defendants' *Motion for Summary Judgment*[67] on the official capacity claims against them is likewise denied, for the same reasons, as discussed more fully *infra*.

ii. ECPSO Defendants

Plaintiffs move for summary judgment against the ECPSO Defendants in their official capacities based on their alleged practice "of imprisoning persons without verifying or establishing the legal authority to detain them."[68] Per Plaintiffs, this practice was the "official policy of the ECPSO,"[69] and ECSPO undertook this practice in violation of their own written Policy No. 17-14, which requires documentation including "the date of arrest and admission, duration of confinement, and a copy of the court order or other legal basis for commitment"[70] for individuals booked into the River Bend Detention Center.

The ECPSO Defendants' *Opposition* is not particularly responsive to the policy and practice claim against them. In fact, they do not deny that they had the above-described practice of accepting transfers from OPSO without the requisite paperwork. Instead, they repeatedly emphasize that their duty was "only to

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[67] Rec. Doc. No. 104.

[68] Rec. Doc. No. 111-1, p. 33.

[69] *Id.*

[70] *See* Rec. Doc. 105-26.

operate as a housing unit"[71] and that they "were not the party responsible for the packets [of paperwork] at issue in this matter."[72] Their conceded practice of accepting prisoners without paperwork does not give rise to liability, they argue, because it was "not unreasonable for the ECPSO to have relied upon the substantial codal and statutory authority, common understanding, shared expectations, customary practices, Basic Jail Guidelines, and written agreements in forming their belief that they were not the entity responsible for compiling the packets at issue and sending them to DPS&C."[73]

But Plaintiffs do not argue that ECPSO should have been *compiling* paperwork; rather, they seek summary judgment against ECPSO based on its practice of accepting prisoners without documentation of their legal authority to detain them. As to that claim, ECPSO argues only that "there are no allegations that the sheriff had any notice that any policy (or lack thereof) adopted by his office would or could lead to unlawful detention."[74] Again, as discussed with respect to the OPSO Defendants above, the Fifth Circuit has held that "[i]solated violations are not the persistent, often repeated, constant violations, that constitute custom and policy as required for municipal section

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[71] Rec. Doc. No. 131, p. 7.

[72] Rec. Doc. No. 131 p. 9.

[73] *Id.* at p. 8.

[74] Rec. Doc. No. 131, p. 9.

1983 liability,"[75] and that a "customary municipal policy cannot ordinarily be inferred from single constitutional violations."[76]

Plaintiffs cite ample testimony establishing that this practice was persistent, repeated, even "constant." For example, they note the testimony of Sheila Bell, an ECPSO employee handling intake, who testified at her deposition as follows:

> A. Right. And a lot of times we don't get no paperwork from some of these people, for some of these parishes. Sometimes they come here empty handed –
> Q. Okay.
> A. – so we don't always get this.
> Q. Okay.
> *A. Lots of times, we don't get this information.*
> Q. Okay. So it's the responsibility of the lieutenant to get as much information in booking as he can; is that correct?
> A. Yes. But, like I said, again, *a lot of times when these offenders come in, they – the parishes don't give the transportation guys anything.*
> Q. Okay.
> A. They are just "here, take your man," that's it.[77]

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[75] *Piotrowski v. City of Houston,* 237 F.3d 567, 581 (5th Cir. 2001) (quoting *Bennett,* 728 F.2d at 768 n.3).

[76] *Id.*

[77] Rec. Doc. No. 111-25, p. 53, lines 2-20 (emphasis added).

And:

> Q. Okay. So it's possible that a prisoner would be booked into Riverbend, go through the bullpen, get their picture taken with you and have their file passed on to records without it having these pieces of information such as are listed in this checklist?
> A. Of course.[78]

Other ECPSO staff testified along the same lines. For example, Captain Robert A. Russell, who identified himself at his deposition as the Chief of Security at River Bend, was asked whether every person in ECPSO custody at River Bend should have the documents described in ECPSO's internal policy before booking, he answered:

> A. Ideally, yes. But like anything, when you are dealing with people. They omit some things, so you can't – I can't say that all that information is in every file.[79]

Likewise, Warden Hedgemon, the warden at River Bend, was asked in his deposition how he knows "that Orleans has the right to be detaining the person that they're transferring into your custody."[80] He responded:

> A. I don't know. The only thing I know is they send them here . . .

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[78] *Id.* at p. 54, lines 15-21.

[79] Rec. Doc. No. 111-22, p. 60, lines 14-17.

[80] Rec. Doc. No. 111-26, p. 76.

Q. And you take Orleans' word for it?
A. I take many parishes' words, yes, ma'am.[81]

Warden Edward Knight, also of River Bend, testified that the prisoner files are "turned over" to an employee named Mary Brown. Asked if it is Brown's responsibility to review those files to see if the required documentation is present, Knight answered, "She should," and, "Apparently, according to this, she doesn't."[82]

The testimony from the ECPSO employees who work at and oversee River Bend Detention Center clearly establishes a widespread practice of accepting prisoners into the facility without documentation. Perhaps most egregiously, Warden Hedgemon stated under oath that he "takes the word" of the parishes transferring the inmates that there is a legal basis for their detention. The ECPSO Defendants argue that despite the evidence of this practice, there is no official capacity liability because Plaintiffs have not shown that they acted with deliberate indifference. But the deliberate indifference standard may also attach to the *failure* to promulgate a policy.[83] Plaintiffs do not argue that ECPSO failed to promulgate a policy; in fact, they show that ECPSO had a policy governing the necessary documentation for incoming pretrial detainees. What Plaintiffs argue is that the ECPSO Defendants are liable under *Monell* for employing a widespread and

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[81] Rec. Doc. No. 111-26, p. 76.

[82] Rec. Doc. No. 111-28, p. 117.

[83] See *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011).

persistent municipal practice that was the moving force behind the violation of Plaintiffs' rights.

The "moving force" element gives the Court pause. There is no genuine dispute, based on the record evidence, that ECPSO had a practice of accepting prisoners without documentation of their legal right to detain them. What is less clear, based on that same evidence, is whether ECPSO's failure to collect that paperwork was the moving force behind the overdetention of Plaintiffs. Plaintiffs present evidence that, via the billing process by which ECPSO was paid by DOC for housing DOC inmates, ECPSO was aware of the instances where a prisoner was present at River Bend but not "showing up" in the DOC system. Per Plaintiffs, overdetention was the "predictable result" of ECPSO detaining prisoners even when they knew "that DOC-sentenced prisoners had not been processed by DPS&C such that their time would be calculated and their releases issued."[84] Of course, ECPSO could and arguably should have alerted DOC when they learned a prisoner in their custody had not been processed by DOC. But Plaintiffs also repeatedly argue that the parish of conviction (not the parish of detention) is responsible for providing notice to the DOC. Plaintiffs explain: the DOC "pre-classification department receives notification of a newly-sentenced DOC prisoner by the receipt (by paper copy, e-mail, or fax) of a 'packet' from the Sheriff's Office of the parish of conviction."[85] Elsewhere, Plaintiffs again note that "the

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[84] Rec. Doc. No. 111-1, p. 41.

[85] *Id.* at p. 47.

parish of conviction is responsible for providing certain paperwork and documentation to the DPS&C so that the person's time calculation can be completed and his release issued. Multiple state statutory provisions govern this obligation of the OPSO Defendants."[86]

So, even if ECPSO had followed its own policy and collected the requisite documentation for prisoners that it accepted into its River Bend facility, it is not clear from the record that their *possession* of those documents would have avoided the overdetention of Plaintiffs. And Plaintiffs' argument for official capacity liability centers around just that – their failure to obtain the documents. It does not elude the Court that the parties in this case at times seek to avoid liability by pointing the finger at one another, arguing that, although their actions may have been flawed, they were not ultimately responsible for the alleged Constitutional violations. Nevertheless, as irresponsible as ECPSO's practices may have been, material fact issues surrounding the communication between DOC, Orleans, and East Carroll Parish prevent the Court from concluding that those practices were the moving force behind Plaintiffs' overdetention. More importantly, the Court finds that the issue of which agency's, or combination of agencies', conduct was the moving force behind the alleged violations calls for significant credibility determinations and weighing of evidence, making this issue inappropriate for resolution on summary judgment. Therefore, Plaintiffs' *Motion for Partial Summary Judgment* is denied with respect to the official capacity claims against ECPSO.

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[86] *Id.* at p. 24.

Likewise, the ECPSO Defendants' *Motion for Summary Judgment* on the official capacity claims against them is denied, for the same reasons, as discussed more fully below.

D. Individual Capacity Claims Under 42 U.S.C. § 1983

i. Whether Plaintiffs' Claims are Barred by Heck v. Humphrey[87]

In their respective *Motions* and *Oppositions*, all Defendants argue that Plaintiffs' claims are barred by the doctrine announced by the Supreme Court in *Heck v. Humphrey*. Under *Heck*, a § 1983 claim for damages cannot directly attack the constitutionality of a conviction, imprisonment, or other harm caused by unlawful actions unless that conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus."[88] Defendants argue that because Plaintiffs have not provided evidence showing that any of the above is the case, *Heck* stands as a bar to their suit.

Plaintiffs, on the other hand, claim, and the Court agrees, that *Heck* does not apply. Plaintiffs emphasize that they "do not dispute how long they should have been imprisoned or challenge that their calculated

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[87] 512 U.S. 477.

[88] *See Hudson v. Hughes*, 98 F.3d 868, 872 (5th Cir.1996) (quoting *Heck*, 512 U.S. at 487) (internal quotations omitted).

release dates were invalid."[89] Their claim that "Defendants failed in their duties to effect the Plaintiffs' release when the legally-mandated period of detention had expired"[90] does not, they argue, imply the invalidity of their convictions or sentences. The Court agrees.

There is ample precedent within the Fifth Circuit for a finding that *Heck* does not bar the claims in the instant case. Indeed, this Court rejected the same argument when raised by the defendants in *Thomas v. Gryder*,[91] a 2019 case where the plaintiff claimed that "he was illegally imprisoned for 589 days past the end of his actual sentence."[92] There, the Court explained:

> The "favorable termination" requirement of *Heck* prohibits a criminal defendant's collateral attack on the defendant's conviction or sentence.[93] Here, however, Plaintiff does not seek to collaterally attack either his conviction or his sentence. Instead, all parties agree that on January 23, 2013, Plaintiff pleaded guilty in Orleans Criminal District Court and was sentenced as follows: (1) Count 1: sexual

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[89] Rec. Doc. No. 144, p. 5.

[90] *Id.*

[91] 2019 WL 5790351 (M.D. La. Nov. 6, 2019).

[92] *Id.* at *1.

[93] *Id.* at *5 (citing *Heck*, 512 U.S. at 484-485 ("This Court has long expressed similar concerns for finality and consistency and has generally declined to expand opportunities for collateral attack.")).

> malfeasance in prison – five years; (2) Count 2: sexual battery – two years; and (3) Count 3: second degree kidnapping – five years.[94] The parties further agree that Plaintiff's correct release date was June 5, 2015.[95] Nothing in the instant action would invalidate either Plaintiff's conviction or sentence[96] . . . Accordingly, the Court finds that Plaintiff's claims are not *Heck* barred.[97]

The district court for the Eastern District of Louisiana reached the same conclusion in *Traweek v.*

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[94] 2019 WL 5790351 at *5 (citing R. Doc. 62-1, p. 1).

[95] *Id.* (citing *supra*, n. 22).

[96] *Id.* (citing *e.g., Chappelle v. Varano*, 4:11-cv-00304, 2013 WL 5876173, at * 13 (M.D. Pa. Oct. 30, 2013) (plaintiff's § 1983 action for damages where parole board recalculated plaintiff's maximum sentence to be July 14, 2009 and defendants released plaintiff on either July 30 or 31, 2009 was not barred by *Heck* because "the Plaintiff does not dispute the validity of his conviction or his corresponding sentence at all. The conflict centers on the amount of time he was held in excess of his valid conviction and sentence. The disputed period of confinement is both temporally and legally separate from the Plaintiff's actual conviction and sentence. A finding for Plaintiff under § 1983 based on the period he was held beyond his original sentence would not imply the invalidity of the conviction or sentence, and therefore does not trigger the application of the favorable termination rule.") (internal citation omitted); *Griffin v. Allegheny County Prison*, Civil Action No. 17-1580, 2018 WL 6413156, at *4 (W.D. Pa. Nov. 5, 2018) (same)).

[97] *Gryder*, 2019 WL 5790351 at *3-4.

Gusman,[98] where the plaintiff alleged that he was held in Orleans Parish Prison for twenty days beyond the date he was eligible for release under his time-served sentence. The Eastern District sharply rejected the defendants' argument that Traweek's claims were *Heck*-barred:

> By seeking to impose the *Heck* procedural bar to Mr. Traweek's claims, the defendants emphasize form over substance, begin from a faulty assumption, and ignore a critical component of *Heck* that is absent here. If Mr. Traweek succeeds on the merits, neither his underlying conviction for aggravated battery nor his seven-month sentence will be impliedly invalidated. Here, Mr. Traweek challenges neither his conviction nor his sentence. He accepts both. Therefore, the reasoning underlying Heck's favorable termination prerequisite is simply not implicated: it would be illogical to require Mr. Traweek to first seek to invalidate his conviction or sentence in order to proceed in this lawsuit. The constitutional violation he advances here is that he was imprisoned 20 days past his release date; he does not take issue with his criminal judgment of conviction or the sentence rendered, but, rather, challenges the constitutionality of the administration of his release after he had served his sentence. Mr. Traweek alleges that his jailers failed to timely release him once the

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[98] *Traweek v. Gusman*, No. CV 19-1384, 2019 WL 5430590 (E.D. La. Oct. 23, 2019)(internal citations omitted).

> legal basis to incarcerate him had expired by court order.[99]

In this case, Plaintiffs' *Statement of Uncontested Material Facts* makes clear that they admit to their underlying convictions and do not dispute the sentences they received.[100] At issue is the time they allegedly served *beyond their sentence*. This Court finds, as in the cases cited above, that such claims do not run afoul of *Heck's* prohibition on collateral attacks of a plaintiff's conviction and sentence. Heck is neither a bar to the suit nor a defense to the Plaintiffs' *Motion for Summary Judgment*. Therefore, the *Motions for Summary Judgment* by the OPSO Defendants, ECPSO Defendants, and DPS&C Defendants[101] shall be DENIED as to their arguments that Plaintiffs' claims are barred by *Heck*.

ii. Individual Capacity Claims Against DPS&C Defendants

Plaintiffs argue that Defendants LeBlanc and Stagg are liable as supervisors in their individual capacities for their "failure to implement policies to ensure timely release of prisoners committed to DPS&C."[102] Specifically, they seek to hold LeBlanc and Stagg liable for not making changes to the Basic Jail Guidelines,

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[99] *Traweek*, 2019 WL 5430590 at *5.

[100] *See* Rec. Doc. No. 111-2.

[101] Rec. Doc. Nos. 104, 102, and 110, respectively.

[102] Rec. Doc. No. 111-1, p. 59.

which govern the parish prisons holding inmates on behalf of DOC, to ensure that sheriffs' offices provide documentation to DOC. For example, Plaintiffs argue, LeBlanc and Stagg "could have issued regulations establishing a specific timeline for Defendants Williams and Gusman, and all other Sheriffs holding DOC-sentenced prisoners, to send the pre-classification packets to DPS&C."[103] Plaintiffs maintain that the Defendants' failure to implement a deadline for pre-classification packets amounts to deliberate indifference in light of what Defendants already knew based on a 2012 study which found, among other deficiencies, that "DPS&C was failing to timely release over two thousand DOC-sentenced prisoners per year, by an average of 71 days' overdetention per prisoner."[104] Additionally, Plaintiffs assert that Defendants Stagg and Griffin "could have employed simple measures which would have brought to their attention that a DOC-sentenced prisoner was in a parish jail without having been pre-classified."[105]

The DPS&C Defendants assert that they are entitled to qualified immunity. Specifically, they argue that there has been no showing that they acted with deliberate indifference; in fact, they argue, "the record reflects that throughout the month of December, the DOC remained in communication with Orleans Parish, who represented on separate occasions that paperwork

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[103] Rec. Doc. No. 111-1, p. 57.

[104] *Id.* at p. 59.

[105] *Id.* at p. 60.

for DOC offenders housed in Riverbend would be forthcoming."[106] Even if they did act with deliberate indifference, they argue, they are entitled to qualified immunity because "it is not clearly established that the reliance on other entities (such as a Sheriff) to provide the necessary paperwork is objectively unreasonable."[107] As will be discussed below, the Court is not persuaded that the right is so narrowly defined.

In *Saucier v. Katz*, the Supreme Court set forth a two-part framework for analyzing whether a defendant was entitled to qualified immunity.[108] Part one asks the following question: "Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?"[109] Part two asks whether the allegedly violated right is "clearly established" such that "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[92] A court need not address these two questions sequentially; it can proceed with either inquiry first. [110] "If the defendant's actions violated a clearly established constitutional

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[106] Rec. Doc. No. 141, p. 10.

[107] *Id.* at p. 22.

[108] *Saucier v. Katz*, 533 U.S. 194 (2001).

[109] *Id.* at 201.

[110] *See Pearson*, 555 U.S. at 236 ("On reconsidering the procedure required in *Saucier*, we conclude that, while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory."); *see also Cutler v. Stephen F. Austin State Univ.*, 767 F.3d 462, 469 (5th Cir. 2014).

right, the court then asks whether qualified immunity is still appropriate because the defendant's actions were 'objectively reasonable' in light of 'law which was clearly established at the time of the disputed action.'"[111] Officials "who reasonably but mistakenly commit a constitutional violation are entitled to immunity."[112]

The Fifth Circuit in *Porter v. Epps* instructs that there is a clearly established right to timely release from prison.[113] There can be no serious dispute on this point. The DPS&C Defendants contend, however, that "*Porter* does not clearly establish that prison employees, ultimately responsible for completing the time computation of parish offenders, act objectively unreasonable by not calculating an offender's release in the absence of the necessary paperwork."[114] DPS&C re-frames the question arguing that although there is a clearly established obligation to release inmates timely, that neglect by another agency in the completion of paperwork somehow excuses this obligation. The right to timely release is utterly meaningless without an attendant obligation on the jailer to effectuate that

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[111] *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010) (citing *Williams v. Bramer*, 180 F.3d 699, 703 (5th Cir. 1999)).

[112] *Williams*, 180 F.3d at 703 .

[113] *Porter v. Epps,* 659 F.3d 440, 445 (5th Cir. 2011).

[114] Rec. Doc. No. 141, p. 23.

timely release.[115] Defendants complain that "DOC cannot process paperwork it does not have."[116] But Plaintiffs do not suggest it was unreasonable, or deliberately indifferent, for Defendants to wait until they had the necessary paperwork to calculate their sentences. What they argue is that Defendants were unreasonable and deliberately indifferent insofar as they failed to put in place policies that would ensure their receipt of the necessary paperwork in a timely fashion which would protect and give meaning to the plaintiff's clearly established right to timely release. The Court agrees.

Liability for failure to promulgate policy requires a showing of deliberate indifference on the part of Defendants.[117] As to Plaintiffs' first policy claim, which argues that Defendants LeBlanc and Stagg are liable for not implementing a timeline or deadline for Sheriffs to provide pre-classification paperwork to DOC, the Court concludes that the DPS&C Defendants are not entitled to qualified immunity because Plaintiffs have demonstrated that Defendants acted with deliberate indifference and that their actions were objectively unreasonable in light of the clearly established right to timely release.

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[115] *Porter*, 659 F.3d at 445. ("There is a clearly established right to timely release from prison" and "a jailer has a duty to ensure that inmates are timely released...").

[116] Rec. Doc. 111-1 p. 22.

[117] *Id.* at p. 446 ("Liability for failure to promulgate policy and failure to train or supervise both require that the defendant have acted with deliberate indifference.").

In large part, Plaintiffs center their argument for deliberate indifference around Defendants' awareness of a 2012 study[118] that revealed significant deficiencies in DOC's processes resulting in widespread overdetention. The record evidence establishes that the DPS&C Defendants were aware of the LSS study. While the LSS study results did not specifically identify the problem of over detention at River Bend *per se*,[119] there is ample evidence that the DPS&C Defendants knew there were significant issues with respect to over detention. Plaintiffs summarized the results of the LSS Study in their *Motion for Partial Summary Judgment*:

> According to the study, DPS&C encountered 2252 immediate releases annually, with prisoners being held beyond their release date for an average of 71 days. As of January 2012, there was a backlog of 1,446 prisoners who did not have their time computed; it took on average 110 days for DPS&C to conduct time calculation for prisoners after sentencing; and there was an 83.44% occurrence of an "immediate release" upon processing a prisoner's time calculation. Thus, according to the LSS study, "once time was calculated 83 percent of the cases were due for immediate release either because the release date had passed or it was within ten days."[120]

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[118] The "Lean Six Sigma 2012 PreClassification" study (hereinafter "LSS" or "LSS study").

[119] Rec. Doc. No. 111-1, p. 55.

[120] *Id.* at p. 53 (citing Rec. Doc. No. 111-29).

Further, Angela Griffin, the administrative director of pre-classification for DOC, testified at her deposition that DOC was aware of the issue with overdetention and immediate releases, and that the problem continued even after changes were put in place following the LSS Study:

> Q: And so am I correct in understanding that the Department of Corrections knew at the time of this study that one of the consequences of the delays in time computation was that prisoners were at risk for release beyond their due dates?
> A. Correct.
> Q. And am I correct based on the slides that we reviewed in this presentation that even with the various pilot programs and changes in processes that were part of this study, immediate releases continued?
> A. Yes. We still have immediate releases.[121]

Specifically, Plaintiffs seek to hold Defendants accountable for their failure "to include a deadline for the submission of pre-classification packets in the Basic Jail Guidelines, so that Sheriffs could be penalized with the loss of DPS&C income if pre-classification packets were not consistently sent by a particular deadline."[122] Defendants point out that such a measure would not necessarily have affected any improvement, given that Sheriffs were *already* failing to comply with the provisions of the Basic Jail Guidelines, and there is no

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[121] Rec. Doc. No. 111-8, p. 111-112.

[122] Rec. Doc. No. 111-1, p. 59.

reason to believe that a change in the Guidelines would have changed their behavior. But, both Secretary LeBlanc and Defendant Stagg testified in their depositions that they were familiar with a proposal by the legislative auditor that such a deadline be implemented, and both men expressed approval for the idea.[123] In fact, when Secretary LeBlanc was asked at his deposition if it has "ever been considered to include a timeframe for the submission of these materials to DOC," he responded: "Not that I'm aware of, but **there's no reason why we couldn't**. **I mean, I'm not sure why we don't, to be honest with you**."[124] Secretary LeBlanc added: "I'm not sure that we could enforce it to begin with, but we could certainly, at least, make an attempt."[125] The DPS&C's argument is that since there is no assurance that responsive measures would work, hence the failure to adopt responsive measures is not deliberate indifference. By this logic, a plea of perceived futility owing to the apathy of another would defeat a finding of deliberate indifference. This Court is aware of now jurisprudence which supports this notion. The term "indifference" refers to a lack of interest, concern, or sympathy.[126] It refers to the state of mind of the actor,

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[123] *See* Rec. Doc. No. 111-21, p. 54 (Stagg testified that a deadline "was intended to be a procedure that we put in place"); Rec. Doc. No. 111-19, p. 77 (LeBlanc).

[124] Rec. Doc. No. 111-19, p. 70, lines 18-23 (emphasis added).

[125] *Id.* at p. 70-71, lines 25, 1-2.

[126] The "absence of compulsion to or toward one thing or another". "Indifference," *Meriam-Webter.com* (available at https://www.merriam-webster.com/dictionary/indifference).

not, as the DPS&C suggests, the apathetic the state of mind another. It is no excuse not to discipline the child because the parent fears the child will not heed.

Secretary LeBlanc's somewhat coy statements underplay DOC's role. Louisiana law is clear that, no matter where State inmates are physically housed, they are legally in the custody of the DOC. The plaintiffs in this case were sentenced by State District Judges for violations of State penal codes. The plaintiffs were State prisoners. Louisiana Revised Statute §15:1824(A) states that "any individual subject to confinement in a state adult penal or correctional institution shall be committed to the Department of Public Safety and Corrections and not to any particular institution within the jurisdiction of the department." Under the law, DOC has the authority to "enter into a contract with a law enforcement district, municipal, or parish governing authority to house additional prisoners."[127] The proverbial buck stops with the DOC. While the established process and workflow was such that DOC relied upon the parishes of conviction to send pre-classification packets, DOC cannot simply passively wait around for the packets to be sent. DOC compensates local Sheriffs for holding DOC-sentenced inmates; surely that money could be made to talk, whether in the form of fines for later pre-classification packets, refusal to house inmates in non-compliant parishes, or some other measure. At the end of the day, DOC was the jailer of Plaintiffs, and the Fifth Circuit has found that "'[w]hile not a surety for the legal correctness of a prisoner's commitment, [a jailer] is

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[127] LA. REV. STAT. § 15:824(D).

most certainly under an obligation, often statutory, to carry out the functions of his office. Those functions include not only the duty to protect a prisoner, but also the duty to effect his timely release.'"[128]

To be sure, deliberate indifference is a high bar; the Fifth Circuit has held that "[a]ctions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference and thus do not divest the official of qualified immunity."[129] But the DPS&C Defendants fail to show that their failure to implement a deadline for the production of pre-classification packets by the Sheriffs was anything but deliberately indifferent. Their own testimony establishes that there is "no reason" why they couldn't implement such a policy, and the Secretary of the Department testified that he is "not sure why [they] don't."[130] In light of the clearly established right to timely release and Defendants' demonstrated awareness of overdetention issues in their system, Defendants' failure to implement a deadline, even after such a policy was suggested to them, clearly demonstrates that they were aware of the consequences of their failure to act and disregarded them. The measures that DPS&C Defendants state they have taken in response to the LSS Study, including providing "training to the Sheriff's

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[128] *Porter*, 659 F.3d at 445 (citing *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1969)).

[129] *Whitley v. Hanna*, 726 F.3d 631, 643 (5th Cir. 2013).

[130] Rec. Doc. No. 111-19, p. 70, lines 18-23.

Association relating to pre-classification paperwork, which included training on what paperwork to send to DPS&C,"[131] are woefully inadequate in light of the clearly established right to timely release and the scope of overdetention revealed by the Study. Asked whether Sheriffs generally attempt to comply with changes to the Basic Jail Guidelines, LeBlanc stated, "Some of them do; some of them don't. But usually we work with them, and we get them in compliance. And that happens on a fairly regular basis. I mean, we do it, I think it's once every 6 months, once a year, depending on what the issues are."[132] One or two meetings per year is not a proportional response to the recurring and widespread Constitutional violations uncovered by the LSS Study.

Stagg testified that the issue with receiving pre-classification paperwork was limited to Orleans Parish and "we didn't really have a problem with collecting this data from 63 other jurisdictions."[133] He emphasized: "we didn't have that problem [failure to prepare and transmit pre-classification paperwork] except with this one jurisdiction. And I don't know we had that problem before with this jurisdiction until this particular case came up, these particular individuals."[134] Stagg frames the issue in an overly narrow fashion. DOC was alerted to systemic

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[131] Rec. Doc. No. 141, p. 21.

[132] Rec. Doc. No. 111-19, p. 71, lines 3-10.

[133] *Id*. at p. 47, lines 10-11.

[134] *Id*. at p. 50, lines 11-15.

overdetention in 2012. The failure of Orleans to prepare and transmit pre-classification packets is merely a subset of the larger problem of unconstitutional overdetention. Given proof of the DOC's actual knowledge of widespread over-detention in 2012, it was deliberately indifferent to the clearly established right of timely release, for the DOC to fail to inquire further, identify this subset cause of the constitutional violations, and failure to take steps to remedy the violations of this clearly established right. The fact that this exact problem with pre-classification packets was allegedly limited to Orleans Parish, as Stagg suggests, does not absolve the DPS&C Defendants of their duty to ensure a timely release for prisoners convicted and sentenced there. A clearly established constitutional right to timely release gives rise to a clearly established duty on the part of the jailer to affect that release. The Fifth Circuit has held that, in cases "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."[135] Moreover, the court explained, "If [the jailer] negligently establishes a record keeping system in which errors of this kind are likely, he will be held liable."[136] It is clear from the evidence adduced by Plaintiffs that "errors of this kind" are inherently likely in the existing DOC system. The Court concludes that Defendants LeBlanc and Stagg are not entitled to qualified immunity on the individual capacity claims against them for failing discern the failures which

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[135] *Bryan v. Jones*, 530 F.2d 1210, 1215 (5th Cir. 1976).

[136] *Id*.

caused known violations of the clearly established right and for their failure to implement a policy to rectify the failure, such as requiring a specific timeline for the submission of pre-classification documents to DOC.

In their second claim, Plaintiffs argue that DPS&C Defendants Stagg and Griffin are individually liable because they "failed to institute policies which would have given the pre-classification department notice of DOC-sentenced prisoners who had not been pre-classified."[137] Specifically, Plaintiffs argue that Defendants acted with deliberate indifference for not "instructing pre-classification staff and transfer staff to communicate with each other about incomplete CAJUN[138] entries; requiring pre-classification staff and transfer staff to check the CAJUN system for newly-sentenced DOC prisoners without release dates; and closely monitoring parishes which provided untimely pre-classification packets on a regular basis."[139] Based on the evidence in the record and the applicable law, the Court concludes that, for the same reasons described above with respect to the "deadline" claim, Plaintiff's have come forward with evidence that Defendants Stagg and Griffin were deliberately indifferent in failing to implement policies that would increase the likelihood of DOC becoming aware of

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[137] Rec. Doc. No. 111-1, p. 60.

[138] CAJUN (Corrections and Justice Unified Network) is the tracking software used by DOC.

[139] Rec. Doc. No. 111-1, p. 60.

prisoners who had not been pre-classified, and thereby protecting the right to be timely released.

In his deposition testimony, Stagg distanced himself from the nuts and bolts of the pre-classification process, stating, "I never recognized a place where we could focus any single point of attention to try to improve the process, because the people know what they're doing, the ones that are trained. They know what they're doing. They do a good job at it. It's just a matter of having the information to do the job with."[140] Stagg described Defendant Angela Griffin as the "director of preclass."[141] Griffin was deposed in connection with this case, along with Angela Smith, a former DOC employee in the pre-classification department. Their testimony and the associated evidence in the record reveal severe deficiencies in the pre-classification process.

The testimony that Plaintiffs highlight in an attempt to show deliberate indifference from Griffin and Smith's depositions establishes that there are serious flaws in the internal DOC process. For example, Smith testified that the transfer department was separate from the pre-classification department and that there was no system in place for the transfer department of a newly-sentenced DOC inmate;[142] that the pre-classification department does not regularly check DOC's CAJUN program to identify new DOC

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[140] Rec. Doc. No. 111-21, p. 76.

[141] *Id*. at p. 18, line 10.

[142] Rec. Doc. No. 111-32, p. 121, lines 3-18.

inmates;[143] and that the pre-classification department "didn't track" whether it had "become a habit for a local parish to send in their packets a long time after sentencing."[144]

Angela Smith, a former specialist in the pre-classification department at DOC, testified in her deposition that the parish of conviction was responsible for sending pre-classification documents to DOC but that there was no deadline to do so and thus, the pre-classification paperwork could never be "late," *per se*.[145] She testified that if "it became a habit" for a particular parish to be slow in sending pre-classification information

> I guess it would be brought up, but if it was one case -- you know, if we have 15 packets that were going through, and there's one case in there that the offender has been sentenced for 6 months, and we're just now getting his paperwork, I don't think -- I would not have notified anyone unless we received a large, you know, so many packets. If it became an extreme situation, I would think at that point we would bring it to somebody's attention.[146]

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[143] *Id*. at p. 78, lines 2-18.

[144] Rec. Doc. No. 111-32, p. 75, lines 7-11.

[145] *Id*. at p. 73.

[146] *Id*. at p. 75.

In other words, until the obvious possibility of overdetention became an "extreme situation" involving multiple prisoners, DPS&C employees would not raise the issue of late pre-classification packets. Likewise, when asked what DOC's process was for determining whether any newly-sentenced DOC inmates who needed to be processed, Smith answered: "our only process was waiting for that preclass, because we had no way of knowing, without receiving that paperwork, that an offender had been sentenced to the Department of Corrections."[147] Plaintiffs' counsel asked Smith:

> Q. And I guess my question, then, is: If a local parish somehow lost or didn't send in the preclassification paperwork for a newly sentenced DOC inmate, this inmate could sit at that local parish serving their Department of Corrections sentence indefinitely, unless the inmate or their family made a phone call to the Department of Corrections alerting you that there was a delay in time calculation?
> A. Yes.
> Q. And so if preclassification paperwork is not received by the Department of Corrections, there's no check mechanism to make sure that no inmate sentenced to the Department of Corrections are in existence that you are not performing preclassification and time calculation for?
> A. Right. If we're not aware of the offender being sentenced to the Department of Corrections, we

[147] *Id.* at p. 77, lines 12-16.

> don't know he's out there until we receive that paperwork.[148]

None of those facts testified to by Griffin and Smith and are disputed. The state of affairs at the DOC, where DOC's staff were passive and essentially flying blind unless contacted by a concerned family member, evinces a reckless disregard for the likelihood of overdetention in the DOC system. "The Fifth Circuit has recognized that a jailer is 'under relatively little time pressure' and 'has the means, freedom, and the duty to make necessary inquiries.'"[149] The DPS&C Defendants' failure to make the inquiries or implement the policies that would reduce overdetention was objectively unreasonable.

For the same reasons discussed above with respect to the failure to implement a deadline for Sheriffs to transmit pre-classification packets, the Court finds that Defendants' failure to put in place simple processes that would have revealed inmates who were serving time without being pre-classified amounted to deliberate indifference. Plaintiffs have demonstrated that Stagg and Griffin were deliberately indifferent to the clearly established right of timely release by their failure to implement reforms to the pre-classification process.

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[148] Rec. Doc. No. 111-32, p. 80-81.

[149] *Gryder*, No. 17-1595-EWD, 2019 WL 5790351 at *7 (M.D. La. Nov. 6, 2019)(quoting *Douthit v. Jones*, 619 F.2d 527, 535 (5th Cir. 1980).

Lastly, Plaintiffs move for summary judgment on their individual liability claim against the DPS&C Defendants for their direct participation in the acts giving rise to the alleged Constitutional violations, namely, the overdetention of Plaintiffs. Plaintiffs fail to establish that the actions of the DPS&C Defendants after the so-called "River Bend fiasco" was discovered were the moving force behind the alleged Constitutional violations. The evidence in the record demonstrates that after they became aware of the issue, Defendants communicated with the relevant parties to obtain the necessary paperwork, calculate a release date, and release the Plaintiffs. The evidence in the record reflects that each of the Plaintiffs was released the day of or the day after the DPS&C Defendants received the pre-classification paperwork necessary to calculate Plaintiffs' release date:

- DPS&C received the letter of credit for Plaintiff Crittindon on January 12, 2017,[150] and it is not disputed that he was released on January 13, 2017.
- DPS&C received paperwork pertaining to Plaintiff Burse on January 9, 2017, after Angela Griffin asked Corey Amacker to send it over email.[151] Burse was released on January 10, 2017.
- DPS&C received Plaintiff Copelin's documentation was received by Angela Griffin

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[150] Rec. Doc. No. 110-12, pp. 19-20.

[151] Rec. Doc. No. 110-8, pp. 18-19.

on January 13, 2017[152] and he was released the same day.

- DPS&C received Plaintiff Guidry's paperwork on January 24, 2017[153] and he was released the same day.

Plaintiffs have not shown that Defendants' individual actions after the specific overdetentions were brought to their attention was the moving force behind the alleged violations, Plaintiffs' *Motion for Partial Summary Judgment* is denied as to the individual capacity claims against the DPS&C Defendants for their direct participation in the events giving rise to this case.

iii. Individual Capacity Claims Against ECPSO Defendants

The ECPSO Defendants contend that the individual capacity claims against them should be dismissed because the overdetention of Plaintiffs "was through no fault of these defendants, who only learned of the issue much later."[154] Bafflingly, the ECPSO Defendants note that Sheriff Williams learned of the overdetention "when he was contacted by the news media," while Wardens Hedgemon and Knight "learned of it when [they] saw it on the television,"[155] as if this information

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[152] Rec. Doc. No. 110-9, pp. 1-2.

[153] Rec. Doc. No. 110-10, p. 5.

[154] Rec. Doc. No. 102-1, p. 7.

[155] *Id*. at p. 7 n.6.

constitutes proof that they are not liable. The ostrich defense is no defense.

The remainder of the ECPSO Defendants' argument consists of pointing the finger at DPS&C, which, they argue, "is the only actor with the ability to calculate release dates for DPS&C sentenced inmates and the authority to grant them release."[156] As persuasive as that argument may be, it is not responsive to the actual claim against the ECPSO Defendants, which is that they are liable for routinely accepting prisoners into the River Bend facility without legal documentation of their right to detain them. The ECPSO Defendants offer that "[t]here was some question as to whether the ECPSO Defendants were entering the plaintiffs' sentencing information incorrectly into the AFIS system and whether this may have contributed to the plaintiffs' over-detention."[157] In advancing this argument ECPSO demonstrates a material issue fact suggestive of ECPSO's liability. The ECPSO Defendants have not demonstrated that they are entitled to summary dismissal of the individual capacity claims against them.

On cross-motion, the ECPSO Defendants also invoke the doctrine of qualified immunity, arguing that their actions were reasonable because "they had every reason to believe that they had no duty to forward any paperwork to DPS&C."[158] Again, the ECPSO

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[156] *Id.* at p. 8.

[157] *Id.* at p. 9.

[158] Rec. Doc. No. 102-1, p. 14.

Defendants miss the mark by arguing against a straw man claim; Plaintiffs do not claim that ECPSO is liable for failing to forward paperwork. The claim is that ECPSO jailed people without having proper legal documentation confirmed its legal right to do so.

In any event, the ECPSO Defendants are not entitled to qualified immunity because Plaintiffs evince evidence that they were aware that they were detaining inmates at River Bend who had not been pre-classified by DOC – in fact, they were detaining inmates that DOC did not even know existed. The deposition testimony of Laura Sevier, the ECPSO employee who prepares invoices so that ECPSO can receive payment for housing prisoners at River Bend, established that Sevier, who reported to Defendants Hedgemon and Knight and whose invoices were signed off on by Sheriff Williams, was regularly identifying "discrepancies" in the prisoner list maintained by ECPSO versus the DOC prisoner list. Specifically, Sevier's invoices revealed that inmates who appeared on ECPSO's list of the prisoners physically present at River Bend contained individuals who did not appear on DOC's list. Calling this a "discrepancy" seems an egregious understatement. The clear import of this is that the ECPSO was jailing persons whom were not identified by the DOC as being subject to state custody. Despite that "discrepancy," the record evidence demonstrates that neither Sevier nor anyone at ECPSO flagged these individuals for DOC. ECPSO never inquired or verified whether these individuals were rightly or lawfully subject to incarceration. Sevier

testified that she would simply "disallow"[159] the inmates who did not appear on DOC's CAJUN invoice so that ECPSO's invoice, causing them to appear as having spent "zero days"[160] at River Bend during that billing period, and proceed with obtaining reimbursement. Then, "sometime during the next six months," she would "go in to try to determine why he was not on the CAJUN invoice."[161] In other words, ECPSO would routinely hold individuals at River Bend, knowing that they had not been processed by DOC, for up to three months before even beginning the process of investigating why they were not "showing up" in DOC's system. Even if the responsibility of calculating sentences ultimately lies with DOC, as the ECPSO Defendants repeatedly insist, their actions, or failure to act, evidences a reckless disregard for and deliberate indifference toward the constitutional rights of the inmates in their facility. As Plaintiffs note, the Fifth Circuit has looked down upon the type of argument asserted by the ECPSO Defendants. In *Whirl v. Kern*, the Fifth Circuit stated:

> We do not find any cases nor are we referred to any by counsel which provide that 'good faith' is a defense to an imprisonment that is not only without valid process, but contrary to it. Nor do we believe as a matter of federal policy that such a defense should be available to a jailer in

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[159] Rec. Doc. No. 111-29, p. 43.

[160] *Id.*

[161] *Id.* at pp. 45-50.

> circumstances like those before us. The responsibility for a failure of communication between the courts and the jailhouse cannot justifiably be placed on the head of a man immured in a lockup when the action of the court has become a matter of public record. Ignorance and alibis by a jailer should not vitiate the rights of a man entitled to his freedom. A jailer, unlike a policeman, acts at his leisure. He is not subject to the stresses and split second decisions of an arresting officer, and his acts in discharging a prisoner are purely ministerial. Moreover, unlike his prisoner, the jailer has the means, the freedom, and the duty to make necessary inquiries.[162]

The record evidence demonstrates that the ECPSO Defendants were not only accepting prisoners into their facility without documentation but failing to take any action when their own processes revealed that they were detaining individuals of whom DOC was completely unaware. The obvious consequence of such conduct is an increased risk of overdetention. Arguably, detaining an individual not reflected by the DOC as a state inmate is an *ipso facto* overdetention. Furthermore, the deposition testimony of Wardens Hedgemon and Knight, discussed *supra* in the section on official capacity claims, reveals that they were aware of prisoners coming to their facility without being properly documented, and that their response was, in the words of Warden Hedgemon, to "take many

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[162] *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1968).

parishes' words"[163] that the men in their physical custody were not actually entitled to immediate release.

Additionally, the record evidence demonstrates that the ECPSO Defendants were accepting inmates in violation of their own internal policy, Policy No. 17-14, which was issued by the ECPSO on September 15, 2012.[164] The Policy requires that when a prisoner is booked into River Bend, ECPSO must collection information regarding the inmates "duration of confinement, and a copy of the court order or other legal basis for commitment."[165] Sheriff Williams testified that Warden Hedgemon and his staff were responsible for ensuring that the information required by the Policy was actually collected at intake.[166] Yet, when presented with a copy of the policy to review during his deposition, Warden Hedgemon stated, "I've never seen it before."[167] Overall, the Court finds that the ECPSO Defendants' actions and omissions were objectively unreasonable in light of the clearly established right to a timely release. Accordingly, the ECPSO Defendants' *Motion for Summary Judgment* is denied with respect to the individual capacity claims against them.

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[163] *Id*.

[164] Rec. Doc. No. 111-24.

[165] *Id*.

[166] Rec. Doc. No. 111-16, p. 33.

[167] Rec. Doc. No. 111-26, p. 67.

iv. Individual Capacity Claims Against the OPSO Defendants

The OPSO Defendants also argue that the individual capacity claims against them fail because they are shielded by qualified immunity. The Court disagrees. The OPSO Defendants first contend that they are entitled to qualified immunity in their individual capacities because the constitutional rights in question were not clearly established. Specifically, Defendants complain that Plaintiffs discuss their rights with an unfairly high level of generality to create the impression of a clearly established right where, they argue, none exists. Plaintiffs characterize the relevant right as the right to timely release from prison,[168] which the Fifth Circuit in *Porter v. Epps* unambiguously held to be clearly established.[169] Gusman and Amacker posit that the relevant right is *actually* the right of Plaintiffs "to have their post-sentencing packets completed and transmitted to DPS&C by the Sheriff."[170] Per the OPSO Defendants, that right has not been established under the law. The OPSO's attempt to reframe and narrowly define the issue is disingenuous. The completion of the sentencing packets *protects* the clearly established constitutional right, it does not *define* the right.

The Court agrees with Plaintiffs. Defendants cite no authority for the proposition that this right is overly

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[168] Rec. Doc. No. 144, p. 36.

[169] 659 F.3d at 445.

[170] Rec. Doc. No. 104-1, p. 12.

general in the context of this case. Moreover, the Court finds their proposed language – the right "to have their post-sentencing packets completed and transmitted to DPS&C by the Sheriff"[171] – odd. Although it is true that the inquiry into whether a right is clearly established is to be undertaken at a specific, not a general level, the OPSO Defendants provide the Court with no authority for the proposition that a constitutional right need be articulated with reference to specific DPS&C documents in order to be sufficiently specific. The right "to have their post-sentencing packets completed and transmitted to DPS&C by the Sheriff"[172] is, practically speaking, synonymous with the "right to timely release from prison."

The Fifth Circuit has spoken to this issue repeatedly. In *Porter v. Epps*, it held that there is a clearly established right to timely release from prison.[173] The *Porter* court reviewed previous Fifth Circuit cases on the issue, including the 1968 case *Whirl v. Kern*, where it held that a jailer "is most certainly under an obligation, often statutory, to carry out the functions of his office. Those functions include not only the duty to protect a prisoner, but also the duty to effect his timely release."[174] Therefore, the Court concludes for purposes of the qualified immunity analysis that the right to timely release from prison is

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[171] Rec. Doc. No. 104-1, p. 12.

[172] *Id.* at p. 12.

[173] 659 F.3d 440.

[174] 407 F.2d 781, 792 (5th Cir. 1969).

the relevant right and that it was clearly established at the time of the events giving rise to this case.

Having found that Plaintiffs enjoyed a clearly established right, the Court turns to the question of whether Sheriff Gusman and Deputy Amacker's conduct was objectively reasonable. "Even if an official's conduct violates a constitutional right, he is entitled to qualified immunity if the conduct was objectively reasonable."[175] Plaintiffs bear the burden of showing that the OPSO Defendants' conduct was not objectively reasonable.[176] Based on the evidence in the record, the Court concludes that the OPSO Defendants are not entitled to qualified immunity because their actions were objectively unreasonable.

Sheriff Gusman argues that his actions could not possibly have been unreasonable, for the simple reason that "[t]here is no evidence that Sheriff Gusman took any action in this matter."[177] The fact that Gusman took no action is exactly what Plaintiffs claim is unreasonable. Specifically, Plaintiffs point to Gusman's "authorization of the OPSO practice of 'releasing'[178] DOC-sentenced prisoners to another local jail facility, without providing pre-classification documents or

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[175] *Rankin v. Klevenhagen*, 5 F.3d 103, 105 (5th Cir. 1993)(quoting *Spann v. Rainey,* 987 F.2d 1110, 1114 (5th Cir.1993)).

[176] *Burns-Toole v. Byrne*, 11 F.3d 1270, 1274 (5th Cir. 1994).

[177] Rec. Doc. No. 104-1, p. 12.

[178] OPSO conveniently refers to the process as a "release" but in actuality OPSO is transferring state inmates to ECPSO.

transfer notification to DPS&C"[179] and "his failure to supervise subordinate OPSO staff, namely those employees of the OPSO intake and processing and DOC pre-classification sections."[180]

Plaintiffs contend that Gusman's authorization of the practice of transferring prisoners to River Bend without providing the proper documentation was unreasonable because in doing so, Gusman "understood that the provisions of the OPSO written policy on pre-classification would be violated, including the performance of those tasks which require the physical presence of the prisoner such as the collection of fingerprints and the completion of the DOC interview form."[181] Moreover, Plaintiffs argue, Gusman undertook this practice despite the "obvious result being the unconstitutional overdetention of prisoners."[182]

The record reflects that Sheriff Gusman made a verbal agreement to house pretrial detainees at River Bend in 2015.[183] Evidently, Gusman delegated the "logistics" of the arrangement to his staff. At his deposition, Gusman reported talking to East Carroll Parish Sheriff Wydette Williams "in very general

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[179] Rec. Doc. No. 144, p. 27.

[180] *Id*. at p. 28.

[181] Rec. Doc. No. 144, p. 31.

[182] *Id*. at p. 28.

[183] Rec. Doc. No. 144-3, p. 20.

terms"[184] about the proposed housing agreement and recalled focusing on "trying to come up with a rate"[185] that would include costs of transportation between Orleans and East Carroll Parish. After that, Sheriff Gusman testified, he "basically turned it over to [his] staff to do the logistics."[186] Gusman testified that he had "several discussions"[187] with his staff about the logistics of housing inmates at River Bend. Eventually, in November 2016, the arrangement was memorialized in a written agreement between OPSO and ECPSO.[188]

ECPSO employee Captain Robert Russell testified at his deposition that the procedures surrounding the transfer of Orleans inmates to River Bend was "strictly fly by night"[189]:

> Q. Okay. Was there any standard operating procedure, memo, anything that standardized what Orleans was doing and what the expectation was about what East Carroll was doing?
> A. No.
> Q. Okay.
> A. Only thing -- like I said, the only thing, they

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[184] *Id*. at p. 21.

[185] *Id*.

[186] *Id*.

[187] *Id*. at p. 22.

[188] Rec. Doc. No. 111-17, ("Cooperative Endeavor Agreement").

[189] Rec. Doc. No. 111-22, p. 127, lines 3-10.

> would send me names and/or paperwork telling me I needed these people to be pre-classed and they could -- there wasn't no particular amount they might send me at one particular time. There was no when they was going to send it or what date they was going to send it. It was strictly fly by night.[190]

Further, Deputy Amacker testified that OPSO was not sending any notification to DOC when inmates were transferred to River Bend, nor was OPSO verifying whether ECPSO was actually sending pre-classification packets to DOC.[191] Amacker stated, "I wasn't responsible for verifying whether or not they were doing something properly to – with the Department of Corrections. . ."[192]

The "fly by night" operation put in place by OPSO was patently unreasonable, not just in light of Plaintiffs' clearly established right to timely release, but in light of the fact that the Louisiana Code of Criminal Procedure, the Louisiana Revised Statutes, and multiple provisions of the Basic Jail Guidelines place the responsibility for providing DOC with notice of *transfer* and pre-classification packets squarely on the sentencing and/or sending parish. Plaintiffs correctly summarize the relevant provisions of law:

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[190] *Id*.

[191] Rec. Doc. No. 111-15, pp. 66-68.

[192] *Id*. at pp. 75-76.

LA. CODE CRIM. PROC. art. 892(A) requires the Sheriff of the parish of conviction to "prepare a statement indicating the amount of time a defendant has spent in custody prior to conviction." This letter of credit, as well as a copy of the indictment and a copy of the Uniform Sentencing Commitment Order, is to "accompany any defendant when said defendant is transferred to a penal institution. . ." LA. CODE CRIM. PROC. art. 892(C).

Further, LA.R.S.§15:566(B)provides that the "sheriff of the parish in which the prisoner has been convicted . . . shall deliver with the prisoner all documents and statements required by Article 892 . . . of the Louisiana Code of Criminal Procedure." LA.R.S.§15:566(C). "If said documents are not tendered with the prisoner, the Department of Corrections shall refuse delivery of said prisoner." *Id*. Lastly, LA.R.S.§15:706 allows a sheriff to transfer prisoners to another parish when the jail is unsafe, unfit for detention, or otherwise presents a security risk. As an explicit condition of such transfers, the statute requires the transferring sheriff to notify either the court (for persons not under DPS&C sentence) or DPS&C (for persons under DPS&C sentence) of the transfer.

Two provisions of the [Basic Jail Guidelines] require actions to be taken by local jails relative to the admission, pre-classification, and transfer of DPS&C-sentenced prisoners. First, Section II-A-008 provides a list of the specific documents

> that local jails must maintain as part of "offender case record management" for the admission, processing, and release of prisoners. "This offender record shall be transferred with the offender at such time the offender is transferred to another local or DPS&C facility." *Id*. at 18. Additionally, this Section details other information that "shall be collected and forwarded to the DPS&C Pre-Class Coordinator," including a jail credit letter, AFIS print card, and court minutes or uniform commitment for each conviction. *Id*. at 19. Second, Section II-A-009 requires that "[a]ll transfers of DPS&C offenders to other than DPS&C facilities shall be reported to the Office of Adult Services . . . Such notification shall be the responsibility of the **sending** facility."[193]

In July 2016, Sheriff Gusman enacted a written OPSO policy governing the process of collecting and transmitting information to DOC for transfers.[194] The policy clearly states that a prisoner is to be transferred *only* "once his/her packet has been completed and sent to DOC headquarters"[195] and *only* after "a transfer list has been approved by the Department of

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[193] Rec. Doc. No. 144, p. 17 (emphasis added)(some internal citations omitted).

[194] Rec. Doc. No. 111-23 ("Department of Corrections Pre-Classification" No. 501.13").

[195] Rec. Doc. No. 111-23 at p. 6.

Corrections."[196] At his deposition, Sheriff Gusman testified that "[i]t was supposed to be done according to the policy. . .we didn't do it according to the policy in each instance, it looks like. That's what it looks like."[197] Asked if OPSO's failure to follow the policy "could result in a DOC-sentenced prisoner not having their time calculated by DOC," Gusman said:

> A. I think the purpose of the policy, Basic Jail Guidelines, is to make sure that DOC has the information so that they can properly compute, and if the information doesn't get there, then it's a problem.
> Q. And one of the problems is that DOC will not have the information needed to calculate the prisoner's time?
> A. I think that's what I said.[198]

The OPSO Defendants repeatedly hang their case for qualified immunity on their argument that the constitutional right in question is not clearly established, which the Court finds to be untrue in the context of this case. Moreover, the deposition testimony of the OPSO officers and the ECPSO officers with whom they coordinated reveals that, despite the clear bulk of law indicating OPSO's responsibilities with respect to pre-classification and transfer notification, OPSO had a barely functional and extremely disorganized system that resulted in prisoners being

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[196] *Id*. at p. 7.

[197] Rec. Doc. No. 144-3, p. 64.

[198] *Id*. at pp. 54-55.

sent to River Bend and virtually guaranteed that they would not have their sentences calculated. The Court finds that this conduct was objectively unreasonable. Accordingly, the OPSO's *Motion for Summary Judgment* based on qualified immunity for the individual capacity claims against them shall be denied.

E. State Law Claims

i. Solidary Liability

Plaintiffs urge this Court to find that all Defendants are solidarily liable with respect to the claims in this action. The question of whether Defendants are solidarily liable is not a claim, *per se*, but the Court will analyze it here, in part, because the result affects the fate of the false imprisonment claim, discussed below. Under Louisiana law, "an obligation is solidary for the obligors when each obligor is liable for the whole performance."[199] "Such a solidary obligation is not to be presumed but can arise from either 'a clear expression of the parties' intent or from the law.'"[200] The Civil Code also establishes that "[a]n obligation may be solidary though it derives from a different source for each obligor."[201] Here, Plaintiffs argue that

> OPSO, ECPSO, and the DPS&C Defendants each played a role in preventing each Plaintiff

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[199] LA. CIV. CODE art. 1794.

[200] *P H I, Inc. v. Apical Indus., Inc.*, 946 F.3d 772, 776 (5th Cir. 2020) (quoting LA. CIV. CODE art. 1796).

[201] LA. CIV. CODE art. 1797.

> from going free on his respective lawful release date. None of the Plaintiffs' release could be 'partially executed.' The obligation owed to Plaintiffs, therefore, is a joint, indivisible obligation and OPSO, ECPSO, and the DPS&C Defendants are solidarily liable.[202]

Plaintiffs note that the Fifth Circuit in the 1986 case *Hinshaw v. Doffer* held that a police officer and his supervisor were jointly and severally liable under § 1983. After the supervisor appealed and was dismissed from the case, the court faced the question of whether to hold the officer liable for the entire judgment despite the fact that the jury had apportioned him only 65% of the fault. The court held that the officer was liable for the entire judgment, explaining, "We believe that our holding comports with the goals of section 1983, compensating plaintiffs who suffer a violation of constitutional rights and preventing abuses by those acting under color of state law. Were we to hold [the officer] responsible for only 65% of the damages suffered by [the plaintiff], then [the plaintiff] would not receive full compensation for his injuries."[203]

Hinshaw is distinguishable for its application of Texas law and, as the OPSO Defendants point out, for the fact that the police officer and the supervisor that the court held jointly and severally liable were "from

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[202] Rec. Doc. No. 111-1, p. 13.

[203] *Hinshaw v. Doffer*, 785 F.2d 1260, 1269 (5th Cir. 1986)(internal citations omitted).

the same law enforcement agency,"[204] unlike here, where the allegedly severally liable parties are different agencies and departments entirely. In addition to being distinguishable, *Hinshaw* is also out of date. The OPSO Defendants correctly note that in 1996, Louisiana Civil Code article 2324 was amended to eliminate solidary liability for joint tortfeasors, except for intentional acts.[205] Now, as stated above, solidary liability is "not to be presumed but can arise from either 'a clear expression of the parties' intent or from the law.'"[206] Plaintiffs do not offer evidence or argument to demonstrate how the alleged solidarity of the parties in this action arises.

Plaintiffs expound on how "solidary liability ensures deterrence because any single Defendant may be held liable for the whole, therefore incentivizing Sheriffs and DPS&C supervisors to work together to prevent overdetention, rather than hoping they can escape responsibility by pointing fingers at each other in litigation."[207] The Court agrees on both counts; solidary liability would be a useful tool for plaintiffs in cases like these, which often devolve into finger pointing by the parties; however, Plaintiffs have simply not carried their summary judgment burden of demonstrating that

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[204] Rec. Doc. No. 146, p. 15.

[205] *Id.* at p. 14 (citing *Tufaro v. City of New Orleans*, No. CIV. 03-1429, 2004 WL 1920937, at *3 (E.D. La. Aug. 26, 2004)).

[206] *P H I, Inc.*, 946 F.3d at 776.

[207] Rec. Doc. No. 111-1, p. 15.

a finding of solidary liability is warranted under these facts and the current law.

ii. False Imprisonment Under Louisiana Law

False imprisonment is the "unlawful and total restraint of the liberty of the person."[208] The elements of a false imprisonment claim under Louisiana law are (1) the detention of the Plaintiff, and (2) the unlawfulness of the detention.[209] Based on the evidence in the record, it is not disputed that the physical detention of Plaintiffs occurred at River Bend under the supervision of the ECPSO Defendants.

Plaintiffs argue that "OPSO's liability for this false imprisonment has several sources, but the most obvious is vicarious liability for the acts of its employees."[210] Specifically, Plaintiffs contend, OPSO committed false imprisonment of Plaintiffs due to its "failure . . . to send pre-classification and transfer information on newly-sentenced DOC prisoners to DPS&C."[211] As to the ECPSO Defendants, Plaintiffs argue that they falsely imprisoned Plaintiffs by holding "the Plaintiffs at River Bend for months without any

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[208] *Rice v. ReliaStar Life Ins. Co.,* 770 F.3d 1122, 1136 (5th Cir. 2014) (quoting *Crossett v. Campbell,* 122 La. 659, 664, 48 So. 141, 143 (La.1908)).

[209] *See Kennedy v. Sheriff of East Baton Rouge,* 2005–1418, p. 32 (La.7/10/06); 935 So.2d 669, 690.

[210] Rec. Doc. No. 111-1, p. 31.

[211] *Id.*

legal basis."[212] Likewise, Plaintiffs claim, the DPS&C Defendants are liable for false imprisonment because "[e]ach of the five Plaintiffs became DOC-sentenced prisoners the day after their sentencing" and thus, "[t]here is no genuine issue of material fact that [DPS&C] was a jailer of the five Plaintiffs."[213] The law is clear that "a jailer has a duty to ensure that inmates are timely released from prison."[214]

As to the second element of false imprisonment – the unlawfulness of the detention – the Court concludes that there is no genuine issue of material fact; Plaintiffs were held at River Bend beyond their lawful sentences. In all three sets of Defendants' responses to Plaintiffs' discovery requests, Defendants admitted (with minor quibbles over language) to the following facts:

- Plaintiff Crittindon resolved his criminal charges on August 2, 2016 and was entitled to immediate release. He was released on January 13, 2017.
- Plaintiff Burse resolved his criminal charges on August 8, 2016 and was entitled to immediate release. He was released on January 11, 2017.
- Plaintiff Copelin resolved his criminal charges on October 14, 2016 and was entitled to

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[212] *Id.* at p. 41.

[213] *Id.* at p. 44.

[214] Rec. Doc. No. 111-1, p. 44 (quoting *Epps*, 659 F.3d at 445).

immediate release. He was released on January 13, 2017.

- Plaintiff Dominick resolved his criminal charges on September 1, 2016 and was entitled to immediate release. He was released on December 7, 2016.

- Plaintiff Guidry resolved his criminal charges on July 12, 2016 and was entitled to release on September 4, 2016. He was released on January 24, 2017.[215]

There is no disputed fact issue regarding the unlawful nature of the detention after the arrival of each Plaintiffs' release date. However, the first element of false imprisonment – the detention itself – is more difficult to parse given the landscape of the parties in this case. Although the Plaintiffs were physically held by ECPSO at River Bend, they were serving DOC sentences after being arrested, detained, and convicted by OPSO. Clearly, each set of Defendants played a part in the detention of Plaintiffs, but it is impossible to say whose part definitively resulted in Plaintiffs' overdetention. Plaintiffs do not offer argument on the subject of how, under the law, each party is specifically liable for false imprisonment. They merely set forth the facts of each Plaintiff's case, repeat the elements of false imprisonment, and make the conclusory argument that the over detention gives rise to liability for false imprisonment, without addressing the ambiguities of physical custody, legal custody, and so

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[215] *See* Defendants' Responses, Rec. Doc. Nos. 111-4, 111-5, and 111-6.

on. Nor is it clear from Plaintiffs' *Motion* how the individual Defendants were personally involved, if at all, in the actual detention of Plaintiffs. Therefore, the Court concludes that Plaintiffs have not carried their summary judgment burden of showing that they are entitled to judgment as a matter of law. Accordingly, Plaintiffs' *Motion for Partial Summary Judgment* shall be denied as to their false imprisonment claims under Louisiana law.

The DPS&C Defendants move for summary judgment on the false imprisonment claims, arguing that there is no evidence "that any of DPS&C Defendants personally detained Plaintiffs without lawful authority."[216] Because they did not have "physical custody of an individual housed in Parish Jail,"[217] they argue, the false imprisonment claim against them must be dismissed. The Court is not persuaded that physical custody is dispositive of the issue. Louisiana law is clear that, as DOC-sentenced inmates, Plaintiffs were "committed to the Department of Public Safety and Corrections and not to any particular institution within the jurisdiction of the department."[218] The same law provides that DPS&C may "enter into a contract with a law enforcement district, municipal, or parish governing authority to house additional prisoners."[219] The DPS&C Defendants

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[216] Rec. Doc. No. 110-1, p. 28.

[217] *Id*.

[218] LA. REV. STAT. § 15:824(A).

[219] LA. REV. STAT. § 15:824(D).

fail to articulate why, by virtue of Plaintiffs' physical presence at River Bend, they cannot be liable for the overdetention and false imprisonment. Thus, the DPS&C Defendants' *Motion for Summary Judgment* on this count shall be denied.

iii. Intentional Infliction of Emotional Distress

The DPS&C Defendants also move for summary judgment on the intentional infliction of emotional distress claim against them. Under Louisiana law, to prevail on a theory of IIED, a plaintiff must show "(1) that the conduct of the defendant was extreme and outrageous; (2) that the emotional distress suffered by the plaintiff was severe; and (3) that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct."[220] The DPS&C Defendants argue that there is no evidence that they "actually desired to inflict emotional distress upon the Plaintiffs."[221] Plaintiffs counter that even if DPS&C did not desire to inflict the distress, the third prong of the analysis also creates liability for a party who "knew that severe emotional distress would be certain or substantially certain to result from his conduct."[222] This element is satisfied, Plaintiffs contend, because the "DPS&C Defendants have admitted in deposition testimony that failure to timely

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[220] *White v. Monsanto Co.*, 585 So. 2d 1205, 1209 (La. 1991).

[221] Rec. Doc. No. 110-1, p. 29.

[222] *White*, 585 So. 2d at 1209.

and correctly calculate release dates could lead to the detention of DOC-sentenced prisoners after they had served their lawful sentences."[223] "It cannot be doubted that incarceration without legal authority is likely to cause severe emotional distress,"[224] Plaintiffs add. Because the DPS&C Defendants have not adequately addressed the "substantially certain to result" element of the IIED analysis, the Court finds that their *Motion for Summary Judgment* on this count shall be DENIED.

The ECPSO Defendants also move for summary judgment on the IIED claim against them. Their two-sentence argument states that "the plaintiffs do not establish that the East Carroll Defendants were aware or should have been aware that the plaintiffs faced a risk of overlong detention."[225] The Court, *supra*, found that there is evidence that the ECPSO Defendants were aware of the risk of overdetention.[226] The ECPSO Defendants cite no evidence in support of their argument and do not address the first two prongs of the IIED analysis at all, thus failing to carry their summary judgment burden of showing that they are entitled to judgment in their favor as a matter of law. Accordingly, their *Motion for Summary Judgment* on the IIED count is denied.

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[223] Rec. Doc. No. 142, p. 29.

[224] Rec. Doc. No. 142, p. 29.

[225] Rec. Doc. No. 102-1, p. 15.

[226] *See supra* at p. 33.

III. CONCLUSION

For the reasons set forth above, Plaintiffs' *Motion for Partial Summary Judgment*;[227] the ECPSO Defendants' *Motion for Summary Judgment*;[228] the OPSO Defendants' *Motion for Summary Judgment*,[229] and the DPS&C Defendants' *Motion for Summary Judgment*[230] are hereby DENIED. The matter will be set for trial.

IT IS SO ORDERED.

Signed in Baton Rouge, Louisiana on April 13, 2020.

/s/ Shelly D. Dick
CHIEF JUDGE SHELLY D. DICK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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[227] Rec. Doc. No. 111.

[228] Rec. Doc. No. 102.

[229] Rec. Doc. No. 104.

[230] Rec. Doc. No. 110.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 20-30304

[Filed January 31, 2023]

JESSIE CRITTINDON; LEON BURSE; EDDIE COPELIN; PHILLIP DOMINICK, III; DONALD GUIDRY
Plaintiffs—Appellees,

versus

JAMES LEBLANC; PERRY STAGG; ANGELA GRIFFIN,
Defendants—Appellants.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:17-CV-512
USDC No. 3:17-CV-602

ON PETITION FOR REHEARING EN BANC

Before HIGGINBOTHAM and OLDHAM, *Circuit Judges*.[*]

[*] Judge Costa resigned on August 31, 2022.

PER CURIAM:

The petition for rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and a majority did not vote in favor of rehearing (FED. R. APP. P. 35 and 5TH CIR. R. 35).

In the en banc poll, seven judges voted in favor of rehearing (Jones, Smith, Ho, Duncan, Engelhardt, Oldham, and Wilson), and nine voted against rehearing (Richman, Stewart, Elrod, Southwick, Haynes, Graves, Higginson, Willett, and Douglas).