No. 22A956

In The
Supreme Court of the United States

PERCY TAYLOR,

Applicant,

v.

JAMES LEBLANC,

Respondent.

On Application for an Extension of Time to File Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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To the Honorable Samuel Alito, as Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, applicant Percy Taylor respectfully requests that the time to file his petition for a writ of certiorari be extended by thirty (30) days, up to and including Wednesday, September 13, 2023. The Court of Appeals issued its original opinion on February 14, 2023 (Appendix B). The Court of Appeals withdrew its original opinion and replaced it with a new one on May 15, 2023 (Appendix A). Absent an extension of time, the petition would be due on Monday, August 14, 2023. This application is being filed more than 10 days before the petition is due. The jurisdiction of this Court is based on 28 U.S.C. 1254(1).

Background

This case presents an important question regarding qualified immunity: whether, after deciding that (1) there was a violation of a constitutional right and that (2) the state of the law at the time of the violation clearly established the existence of that right, courts can still grant qualified immunity because (3) the defendant's conduct was objectively reasonable in light of the clearly established law.

Although this Court has made clear that the qualified immunity test asks just two questions—(1) whether there was a constiutional violation and (2) whether the law was clearly established at the time of the violation, see *Tolan* v. *Cotton*, 572 U.S. 650, 655-656 (2014)—the circuits are divided over the inclusion or operation of a third "objective reasonableness" inquiry. According to the Seventh Circuit, "the reasonableness of an official's actions [is not] an independent factor in determining whether

a right is clearly established." *Jones* v. *Wilhelm*, 425 F.3d 455, 461 (7th Cir. 2005). The Tenth Circuit, on the other hand, can grant qualified immunity even if plaintiff showed a violation of a clearly established right, so long as defendant proves that "her conduct was nonetheless objectively reasonable." *Roska ex rel. Roska* v. *Peterson*, 328 F.3d 1230, 1251 (10th Cir. 2003). The First Circuit, in a new twist, "abandon[ed]" its "three-step analysis," replacing it with a "two-part test." *Maldonado* v. *Fontanes*, 568 F.3d 263, 269 (1st Cir. 2009). This change was form over substance, however, as the second prong looks not only to "the clarity of the law at the time of the alleged civil rights violation" but also to "whether a reasonable defendant would have understood that his conduct violated the plaintiffs' constitutional rights." *Ibid.*

In the case below, where a prisoner was detained more than two years beyond the expiration of his sentence, App. B at 4, the Fifth Circuit originally followed the Tenth Circuit's approach, only instead of shifting the burden to defendant to show that he acted reasonably in light of the law that clearly established the unconstitutionality of overdetention, it was plaintiff who had to prove that defendant acted objectively unreasonably. *Id.* at 6-7. The Fifth Circuit concluded that plaintiff had not satisfied his burden in proving the third step of qualified immunity because he had inadequately briefed, and therefore forfeited, it. *Id.* at 7.

When the court substituted the original opinion with a new one,[1] however, it sided with the First Circuit: the prisoner had to still show that defendant acted

[1] The Fifth Circuit issued the new opinion on May 15, 2023, ninety days after the original opinion was filed. Prior to that, on April 29, 2023, applicant filed a pro se motion asking Justice Alito to extend the deadline for filing a petition for certiorari—which was due on May 15, 2023—to July 14,

objectively unreasonably, but under the auspices of an expanded second prong, not as a stand-alone inquiry. App. A at 3. Fundamentally, however, the analysis was the same: instead of looking to *the state of the law* at the time of the conduct and in light of the specific facts of the case, as the Seventh Circuit would, the Fifth Circuit below also looked to defendant's *state of mind*, as the First Circuit and Tenth Circuit would.

This division between the circuits is not a mere formality. As the First Circuit itself explained, the objective reasonableness inquiry is "often the most difficult one for the plaintiff to prevail upon" and "Section 1983 actions frequently turn on the third prong . . . which channels the analysis from abstract principles to the specific facts of a given case." *Wilson* v. *City of Boston*, 421 F.3d 45, 57-58 (1st Cir. 2005) (internal quotation marks omitted). Similarly, then-Judge Sonia Sotomayor criticized the Second Circuit's "*ad hoc* inquiry into the reasonableness of the officer's conduct." *Walczyk* v. *Rio*, 496 F.3d 139, 166-167 (2d Cir. 2007) (Sotomayor, J., concurring). "By introducing reasonableness as a separate step, we give defendants a second bite at the immunity apple, thereby thwarting a careful balance that the Supreme Court has struck 'between the interests in vindication of citizens' constitutional rights and in public officials' effective performance of their duties.'" *Id*. at 169 (quoting *Anderson* v. *Creighton*, 483 U.S. 635, 639 (1987)). Although the Second Circuit has never explicitly disavowed the third step, it criticized it as being controversial, *Ricciuti* v. *Gyzenis*, 834 F.3d 162, 170 (2d Cir. 2016), and has not invoked it since.

2023. Justice Alito granted the motion on May 3, 2023, see Docket No. 22A956, but the extension has been overwritten by the Fifth Circuit's replacement of its opinion.

Given the disagreements between—and within[2]—the circuits on the basic mechanics of the qualified immunity test, this case is a serious candidate for review.

Reasons Why an Extension of Time Is Warranted

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel at the Institute for Justice—recently retained by applicant for the purposes of filing the petition—need additional time to fully familiarize themselves with the record, the decisions below, and the relevant case law, while still pursuing other litigation in trial and appellate courts. In addition to this case, counsel's obligations include:

- Ongoing work related to a petition for certiorari in the United States Supreme Court in *Gonzalez* v. *Trevino*, Fifth Circuit Case No. 21-50276;
- Ongoing work related to a petition for certiorari in the United States Supreme Court in *King* v. *United States*, Sixth Circuit Case No. 17-2101;
- Ongoing work related to litigation in the Eighth Circuit Court of Appeals in *Pollreis* v. *Marzolf*, No. 21-3267;
- Ongoing work related to litigation in the Fourth Circuit Court of Appeals in *Gibson* v. *Goldston*, No. 22-1757;
- Ongoing work related to litigation in the Tenth Circuit Court of Appeals in *Rosales* v. *Bradshaw*, No. 22-2027;
- Ongoing work related to litigation in the Northern District of California in *Quinonez* v. *Does 1 through 5*, No. 3:22-cv-03195;
- Ongoing work related to litigation in the Western District of Louisiana in *Rosales* v. *Lewis*, No. 1:22-cv-5838;

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[2] See, *e.g.*, *Dunigan* v. *Noble*, 390 F.3d 486, 491 n.6 (6th Cir. 2004) (discussing how "some panels of this Court have continued to rely on a three step analysis of qualified immunity claims," while other panels have not).

- Ongoing work related to litigation in the District of Minnesota in *Mohamud* v. *Weyker*, No. 17-cv-2069.

For these reasons, applicant requests that the due date for the petition for a writ of certiorari be extended to September 13, 2023.

Conclusion

Applicant requests that the time to file a writ of certiorari in the above-captioned case be extended 30 days to and including Wednesday, September 13, 2023.

May 25, 2023

Respectfully submitted,

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APPENDIX A

Taylor v. _LeBlanc_, __ F.4th__ (5th Cir. 2023)

Opinion of the United States Court of Appeals for the Fifth Circuit, Issued May 15, 2023

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 15, 2023
Lyle W. Cayce
Clerk

No. 21-30625

PERCY TAYLOR,

Plaintiff—Appellee,

versus

JAMES LEBLANC, *Secretary*,

Defendant—Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:21-CV-72

Before GRAVES, HO, and DUNCAN, *Circuit Judges*.

JAMES C. HO, *Circuit Judge*:

We withdraw our prior opinion in this case, *Taylor v. LeBlanc*, 60 F.4th 246 (5th Cir. 2023), and substitute the following in its place.

* * *

The Fourteenth Amendment guarantees that no state may "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV. § 1. So it should go without saying that the government cannot hold a prisoner without the legal authority to do so, for

that would "deprive" a person of his "liberty . . . without due process of law." *Id.*

Consistent with these principles, "[o]ur precedent establishes that a jailer has a duty to ensure that inmates are timely released from prison." *Porter v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011). "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." *Douthit v. Jones*, 619 F.3d 527, 532 (5th Cir. 1980).

The Louisiana Department of Public Safety and Corrections recently conducted a study that uncovered a substantial number of inmates who were detained long past the expiration of their sentences. *See Crittindon v. LeBlanc*, 37 F.4th 177, 183 (5th Cir. 2022). Many inmates are detained in jail during trial or sentencing, and then transferred to the Department to serve the rest of their sentence in prison. But the study discovered that some local jails in Louisiana were often slow to communicate with the Department. As a result, some inmates would not get credit for their jailtime in a timely manner, and would therefore remain in prison past the length of their sentences.

Percy Taylor was detained beyond the expiration of his sentence, but for a different reason: Department officials gave him credit for time served in pre-trial detention, but only for one (rather than both) of his two consecutive sentences. That was the right thing to do under the law then in effect. But Taylor was entitled to the more generous provision in effect at the time his sentence was entered. As a result, he served over a year longer than he should have.

After his release, Taylor brought suit against various Louisiana officials under 42 U.S.C. § 1983, among other claims. This appeal concerns only one of those claims: Taylor's claim against the head of the Department,

Secretary James LeBlanc. LeBlanc appeals the denial of qualified immunity arguing, *inter alia*, that his conduct wasn't objectively unreasonable in light of clearly established law.

The right to timely release is clearly established. But Taylor does not show how LeBlanc's conduct was objectively unreasonable in light of clearly established law. Taylor contends that LeBlanc was objectively unreasonable because he failed to assign the task of calculating release dates to an attorney. But nothing in the Constitution requires that such actions be undertaken by a member of the bar. Accordingly, we reverse.

I.

For purposes of this appeal, we accept the factual allegations in Plaintiff's complaint as true. *See*, *e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Taylor was imprisoned for a Louisiana felony conviction. He was later released on parole for good behavior.

While on parole, Taylor was arrested, detained pending trial, and eventually convicted on another felony offense. His parole for his first offense was revoked, and he was additionally sentenced to a second, consecutive term of imprisonment.

During his imprisonment, Taylor concluded that Department officials had miscalculated his release date. So he filed a grievance. He argued that the time he spent in pre-trial detention prior to his second conviction should have been credited to both of his sentences, rather than just his second sentence. Relatedly, he also argued that his parole on his first conviction should have been deemed revoked as of his arrest on the second offense, rather than at the time of his conviction. A non-attorney Department

employee denied the grievance, seemingly misconstruing it as a request for good time credits he wasn't entitled to.

Taylor appealed his grievance unsuccessfully. The denial order explained that, under current law, the time Taylor spent in pre-trial detention could not be credited toward his first sentence. *See* LA. CODE CRIM. PROC. art. 880(E). The order noted that overlapping credits are prohibited when the sentences are consecutively, rather than concurrently, imposed. *See id.* at 880(B).

Taylor sought review from the state district court. A commissioner issued a report recommending that the court grant the petition for review. The report concluded that Taylor's time in jail should have been credited toward both sentences, under the law in effect at the time his sentence was entered.

The court adopted the recommendation and ordered that Taylor's release date be recalculated. According to the correctly calculated release date, Taylor should have been released over a year earlier.

Taylor sued, bringing various claims seeking damages for false imprisonment, including a § 1983 claim against LeBlanc. The operative complaint alleged, *inter alia*, that LeBlanc—a final policymaker—failed to implement policies to ensure his timely release, and failed to train or supervise the employees who administer the grievance process. The complaint alleged that LeBlanc was aware of concerns that a substantial number of inmates were being overdetained.

The district court granted in part and denied in part the motion to dismiss. As relevant here, the court denied the motion as to the claim against LeBlanc, finding that he wasn't entitled to qualified immunity.

LeBlanc appealed the denial of qualified immunity.[1]

II.

"Under the collateral order doctrine, we have jurisdiction to review orders denying qualified immunity." *Carswell v. Camp*, 54 F.4th 307, 310 (5th Cir. 2022). We review de novo a district court's denial of a motion to dismiss on qualified immunity grounds, accepting as true all well-pleaded facts and drawing all reasonable inferences in favor of the nonmoving party. *Morgan v. Swanson*, 659 F.3d 359, 370 (5th Cir. 2011) (en banc).

"The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quotation omitted). "A public official is entitled to qualified immunity unless the plaintiff demonstrates that (1) the defendant violated the plaintiff's constitutional rights and (2) the defendant's actions were objectively unreasonable in light of clearly established law at the time of the violation." *Porter*, 659 F.3d at 445. We are free to decide which prong of the qualified immunity analysis to address first. *See Pearson*, 555 U.S. at 242

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[1] Taylor argues that the district court shouldn't have dismissed the other claims. We lack jurisdiction to review those dismissals on interlocutory appeal. This court has jurisdiction to review final decisions of a district court. *Tracy v. Lumpkin*, 43 F.4th 473, 475 (5th Cir. 2022). But the collateral-order doctrine presents a "narrow" exception to that principle. *Id.* Under the collateral-order doctrine, "non-final orders are immediately appealable if they: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) are effectively unreviewable on appeal from a final judgment." *Id.* (cleaned up). Taylor's remaining claims don't fall within this exception. Nor does pendant jurisdiction exist, because those other claims are not "inextricably intertwined" with the denial of qualified immunity for Secretary LeBlanc. *Cutler v. Stephen F. Austin State Univ.*, 767 F.3d 462, 468 (5th Cir. 2014).

("[T]he judges of the district courts and the courts of appeals are in the best position to determine the order of decisionmaking that will best facilitate the fair and efficient disposition of each [qualified immunity] case.").

It is clearly established that inmates have the right to timely release from prison consistent with the terms of their sentences. *See Crittindon*, 37 F.4th at 188; *Porter*, 659 F.3d at 445. But under prong two of the qualified immunity analysis, Taylor must also show how Secretary LeBlanc's "actions were objectively unreasonable in light of clearly established law at the time of the violation." *Porter*, 659 F.3d at 445.

The Supreme Court has repeatedly made clear that "[w]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the *objective legal reasonableness* of the action, assessed in light of the legal rules that were clearly established at the time it was taken." *Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012) (cleaned up, emphasis added).

So a plaintiff must show that "the conduct of the defendants was objectively unreasonable in the light of . . . clearly established law." *Hare v. City of Corinth, Miss.*, 135 F.3d 320, 326 (5th Cir. 1998) (emphasis omitted). *See also*, *e.g.*, *Roque v. Harvel*, 993 F.3d 325, 334 (5th Cir. 2021) (defendant "is entitled to qualified immunity unless his actions were objectively unreasonable in light of clearly established law") (quotations omitted); *Blake v. Lambert*, 921 F.3d 215, 219 (5th Cir. 2019) (qualified immunity turns on whether defendant's conduct is "objectively unreasonable in light of clearly established law"); *Hinojosa v. Livingston*, 807 F.3d 657, 669 (5th Cir. 2015) (same).

But the objectively unreasonable standard is not "that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful; but it is . . . that in the light of pre-existing

law the unlawfulness must be apparent." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (citation omitted). The critical consideration is fair warning. *See id.* at 739–41.

III.

Department officials declined to credit Taylor's pre-trial detention to both of his consecutive sentences. That was correct under current law. *See* LA. CODE CRIM. PROC. art. 880(B). But it was wrong here, because Taylor's release date should have been governed by the law applicable at the time of his sentence. That would have allowed Taylor to credit his jail time to both of his sentences.

This appeal, however, does not concern the conduct of lower-level officials at the Department. Rather, the question before us is whether LeBlanc was objectively unreasonable in how he supervised the entire Department.

Taylor contends that LeBlanc should have delegated the calculation of release dates to lawyers rather than non-lawyers—and that his failure to do so was objectively unreasonable. But Taylor does not point to anything that suggests the Constitution requires these determinations be made by attorneys.

We reverse.

APPENDIX B

***Taylor* v. *LeBlanc,* 60 F.4th 246 (5th Cir. 2023)**

Withdrawn Opinion of the United States Court of Appeals for the Fifth Circuit, Issued February 14, 2023

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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February 14, 2023
Lyle W. Cayce
Clerk

No. 21-30625

PERCY TAYLOR,

Plaintiff—Appellee,

versus

JAMES LEBLANC, SECRETARY,

Defendant—Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:21-CV-72

Before GRAVES, HO, and DUNCAN, *Circuit Judges*.

JAMES C. HO, *Circuit Judge*:

The Fourteenth Amendment guarantees that no state may "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV. § 1. So it should go without saying that the government cannot hold a prisoner without the legal authority to do so, for that would "deprive" a person of his "liberty . . . without due process of law." *Id.* Consistent with these principles, "[o]ur precedent establishes that a jailer has a duty to ensure that inmates are timely released from prison." *Porter v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011). "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." *Douthit v. Jones*, 619 F.3d 527, 532 (5th Cir. 1980). *See also Crittindon v. LeBlanc*, 37 F.4th 177, 188 (5th Cir. 2022) ("[I]t 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.").

As our court has recently observed, however, the Louisiana Department of Public Safety and Corrections has identified and exposed a pattern of Louisiana inmates being detained past the expiration of their sentences. *See id.* (describing study that "exposed widespread overdetentions of DPSC prisoners").

Percy Taylor was detained beyond the expiration of his sentence. After his release, he sought redress for this violation of his rights by bringing a lawsuit against various Louisiana officials under 42 U.S.C. § 1983 and Louisiana state law. The district court dismissed most of Taylor's claims, but allowed a supervisory liability claim against Department Secretary James LeBlanc to proceed by denying qualified immunity. Now Secretary LeBlanc appeals the denial of qualified immunity arguing, *inter alia*, that his conduct wasn't objectively unreasonable in light of clearly established law.

The right to timely release is clearly established. But Taylor failed to adequately brief—and has thus forfeited—any meritorious argument that Secretary LeBlanc's behavior was objectively unreasonable in light of that right. Accordingly, we must reverse.

I.

For purposes of this appeal, we accept the factual allegations in Plaintiff's complaint as true. *See*, *e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiff Percy Taylor was sentenced in 1995 to 10 years imprisonment for a drug felony offense in Louisiana, but he was later released on parole for good behavior. While on parole, Taylor committed a new felony offense in July 2001 but wasn't arrested until February 20, 2002. Taylor was detained pending trial, convicted on October 15, 2003, and subsequently sentenced as a habitual offender. He was sentenced to life imprisonment and his parole for the 1995 offense was revoked. Eventually, his life sentence for the 2003 felony conviction was amended to 20 years of imprisonment with "'credit for all time served.'"

In 2017, Taylor learned that his full-term release date was March 16, 2021, and that his good time adjusted date was May 5, 2020. But he believed that his release date "should have been the last of October 2017 and no later than January 1, 2018" had his good time credit been correctly calculated. So he filed an Administrative Remedy Procedure grievance with the warden of the facility where he was held. He contended that he should have received credit toward the completion of his 10-year sentence for the 1995 drug conviction based on the time he spent in jail between February 2002 and October 2003 awaiting trial for his most recent felony offense. He contended that he'd been wrongfully denied double credit for his period of pretrial detention for his 1995 and 2003 sentences. The warden assigned the grievance to a non-attorney employee of the Louisiana Department of Public Safety and Corrections, who denied the grievance in July 2018. The denial explained that Taylor wasn't entitled to good time credit because the relevant law didn't go into effect until 2010, after both sentences were imposed.

The Administrative Remedy Procedure process allows for first and second step review. *See* LA. ADMIN. CODE tit. 22, pt. I, § 325(J)(1)(a)–(b). Taylor accordingly appealed to James LeBlanc, the Secretary of the Louisiana Department of Public Safety and Corrections. The appeal was denied. The denial explained that, under a 2011 law, the 18 months of pretrial

detention could apply only toward completion of the 20-year sentence ultimately imposed for the 2003 felony conviction, and not also toward the completion of the 10-year sentence imposed for the 1995 felony conviction. *See* LA. CODE CRIM. PROC. art. 880(E). It noted that overlapping credits are prohibited when the sentences in question are consecutively, rather than concurrently, imposed. *See id.* at 880(B).

Taylor sought review from the state district court. A commissioner of the state district court issued a report recommending that the court grant the petition for review. According to the report, Taylor's parole had been revoked no later than his arrest in February 2002, so he "should have been shown as being in custody on both offenses" as of February 20, 2002, and should have received credit toward the completion of his 1995 sentence as well as his 2003 sentence for the time spent in custody between February 20, 2002 and October 15, 2003. The report noted that the version of the relevant state law in effect when Taylor's parole was revoked and he was convicted of the 2003 felony offence didn't expressly prohibit double counting of credit. The state district court adopted the recommendation and ordered Taylor's master prison record be recalculated to give credit for time served as to both sentences from February 20, 2002.

Taylor was released from prison on February 18, 2020—over two years after the latest date he alleges he should have been released.

In late 2020, Taylor brought various claims against officials in state court seeking damages for false imprisonment—including a § 1983 supervisory liability claim against LeBlanc. Defendants removed to federal district court and moved to dismiss. Plaintiff amended the complaint and responded to the motion to dismiss. The operative complaint alleged, *inter alia*, that Secretary LeBlanc—a final policymaker—failed to initiate policies ensuring inmates' timely releases, that he failed to train or supervise

employees carrying out the Administrative Remedy Procedure process, and that he was aware that inmates were held for longer than their sentences due to reports, public statements, and various cases documenting instances of inmates being detained beyond their sentences. The district court granted in part and denied in part the motion to dismiss.

Relevant here, the district court denied the motion as to the supervisory liability claim against Secretary LeBlanc, finding that he wasn't entitled to qualified immunity. The district court found that Taylor "sufficiently alleged that his unlawful detention and the patterns of unlawful detention in [the Louisiana Department of Public Safety and Corrections] stem from the same source—inadequate training and guidance," noting that the allegations included citations to various cases, reports, and statements suggesting Secretary LeBlanc "was aware of similar constitutional violations but failed to correct them." In its discussion of whether Secretary LeBlanc's conduct was objectively unreasonable, the district court only addressed whether Secretary LeBlanc acted with deliberate indifference to Taylor's constitutional rights. But deliberate indifference and objective unreasonableness are separate inquiries. *See*, *e.g.*, *Hare v. City of Corinth, Miss.*, 135 F.3d 320, 328 (5th Cir. 1998) ("Obviously, the analysis for objective reasonableness is different from that for deliberate indifference (the subjective test for addressing the merits).").

Secretary LeBlanc appealed the denial of qualified immunity. [1]

"Under the collateral order doctrine, we have jurisdiction to review orders denying qualified immunity." *Carswell v. Camp*, 54 F.4th 307, 310

[1] Taylor argues that the district court shouldn't have dismissed the other claims, but he did not file a notice of appeal, so only the district court's denial of Secretary LeBlanc's assertion of qualified immunity is properly before us on this appeal.

(5th Cir. 2022). We review de novo a district court's denial of a motion to dismiss on qualified immunity grounds, accepting as true all well-pleaded facts and drawing all reasonable inferences in favor of the nonmoving party. *Morgan v. Swanson*, 659 F.3d 359, 370 (5th Cir. 2011) (en banc).

II.

"The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quotation omitted). "A public official is entitled to qualified immunity unless the plaintiff demonstrates that (1) the defendant violated the plaintiff's constitutional rights and (2) the defendant's actions were objectively unreasonable in light of clearly established law at the time of the violation." *Porter*, 659 F.3d at 445. "Both steps in the qualified immunity analysis are questions of law." *Wyatt v. Fletcher*, 718 F.3d 496, 503 (5th Cir. 2013). We are free to decide which prong of the qualified immunity analysis to address first. *See Pearson*, 555 U.S. at 242 ("[T]he judges of the district courts and the courts of appeals are in the best position to determine the order of decisionmaking that will best facilitate the fair and efficient disposition of each [qualified immunity] case.").

We proceed to consider whether Secretary LeBlanc's "actions were objectively unreasonable in light of clearly established law at the time of the violation." *Porter*, 659 F.3d at 445. "The second prong of the qualified immunity test is better understood as two separate inquiries: whether the allegedly violated constitutional rights were clearly established at the time of the incident; and, if so, whether the conduct of the defendants was objectively unreasonable in the light of that then clearly established law." *Hare*, 135 F.3d at 326 (emphasis omitted).

It is clearly established that inmates have the right to timely release from prison consistent with the terms of their sentences. *See Crittindon*, 37 F.4th at 188; *Porter*, 659 F.3d at 445. Taylor's claim against Secretary LeBlanc nevertheless fails because he has forfeited any argument that the Secretary's conduct was objectively unreasonable.

The objectively unreasonable standard is not "that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful; but it is . . . that in the light of pre-existing law the unlawfulness must be apparent." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (citation omitted). The critical consideration is fair warning. *See id.* at 739–41. "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable official that his conduct was unlawful in the situation he confronted." *Saucier v. Katz*, 533 U.S. 194, 202 (2001), *overruled in part on other grounds by Pearson*, 555 U.S. at 236.

Taylor does not present any meritorious argument that Secretary LeBlanc acted in an objectively unreasonable manner in this case.

To begin with, he argues that whether Secretary LeBlanc acted objectively unreasonably is a fact question not amenable to appellate review at this stage in the proceedings. But we have long held precisely the opposite. Whether "a given course of conduct would be objectively unreasonable in light of clearly established law" is a "purely legal question" and plainly within our jurisdiction on interlocutory review. *Kinney v. Weaver*, 367 F.3d 337, 347 (5th Cir. 2004). *See also Wyatt*, 718 F.3d at 503 (noting both steps of the qualified immunity analysis "are questions of law").

To the extent that Taylor argues the merits, it's inadequately briefed. Taylor's entire presentation on the issue of objective unreasonableness amounts to just this single conclusory statement: "It is inherently

unreasonable for the secretary . . . to fail to enact policies and procedures to ensure the prompt release of inmates who have served their sentences in accordance to law." A single, unsupported sentence isn't enough to adequately brief the issue. *See Melgar v. T.B. Butler Publ'g Co., Inc.*, 931 F.3d 375, 382 n.6 (5th Cir. 2019) (noting that when an "issue [is] inadequately briefed, it is forfeited"). To be sure, we have said that forfeiture principles may apply "more leniently when the party who fails to brief an issue is the appellee" rather than the appellant. *Hernandez v. Garcia Pena*, 820 F.3d 782, 786 n.3 (5th Cir. 2016). But Taylor bears the burden on the issue of objective unreasonableness. *See*, *e.g.*, *Angulo v. Brown*, 978 F.3d 942, 949 (5th Cir. 2020) ("The plaintiff has the burden to negate a properly raised defense of qualified immunity."). And he has not meaningfully briefed that issue. *See*, *e.g.*, *Hornbeck Offshore Servs., L.L.C. v. Salazar*, 713 F.3d 787, 796 (5th Cir. 2013) (applying forfeiture to the appellee because an issue "has not been meaningfully briefed").

We reverse.