No. 23-

IN THE

Supreme Court of the United States

EDWARD LITTLE,
on behalf of himself and all others similarly situated,
Petitioner,

v.

ANDRE' DOGUET; LAURIE HULIN; MARK GARBER,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *Younger* v. *Harris*, 401 U.S. 37 (1971), and its progeny require federal courts to abstain from adjudicating petitioner's constitutional challenges to respondents' pretrial detention of many thousands of presumptively innocent people.

PARTIES TO THE PROCEEDING

Petitioner, plaintiff-appellant below, is Edward Little, on behalf of himself and others similarly situated. Sheila Ann Murphy, also a plaintiff-appellant below, died during the proceedings below.

Respondents, defendant-appellees below, are Andre' Doguet, Laurie Hulin, and Mark Garber, in their official capacities.

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INTRODUCTION

Petitioner Edward Little filed this lawsuit challenging the constitutionality of the bail practices in Lafayette Parish, Louisiana—where people are routinely jailed pretrial, often for weeks or even months, solely because they cannot pay cash bail. This mass deprivation of physical liberty occurs without any determination that the detention is necessary to protect public safety or prevent flight. It also occurs without the most basic procedural protections, such as representation by counsel or an opportunity to be heard *at all*, including regarding why detention is not necessary. And it curtails

people's ability to defend against the charges, of which they are presumed innocent. Finally, the detention inflicts irreparable harm, cutting people off from their jobs and homes (both of which they often lose), families, medical care, and houses of worship.

The Fifth Circuit, however, did not reach the merits of petitioner's claims that respondents' bail practices are unconstitutional. It instead held—based on its recent en banc decision in *Daves* v. *Dallas County*, 64 F.4th 616 (5th Cir. 2023)—that *Younger* v. *Harris*, 401 U.S. 37 (1971), required abstention, i.e., that in cases like this, federal courts are powerless to safeguard people's fundamental right to physical liberty.

That *Younger* holding deepens an established circuit conflict. It also flouts this Court's precedent. For example, in *Gerstein* v. *Pugh*, 420 U.S. 103 (1975), this Court held that a similar challenge to pretrial detention did *not* trigger *Younger* abstention, *see id.* at 108 n.9. This Court has also held that for abstention to be required, there must be an opportunity to have the federal claim at issue "timely decided," *Gibson* v. *Berryhill*, 411 U.S. 564, 577 (1973), in the same "state proceedings" that federal review would allegedly disrupt, *Middlesex County Ethics Committee* v. *Garden State Bar Association*, 457 U.S. 423, 432 (1982). The Fifth Circuit's *Younger* holding required abstention despite that prerequisite not being present.

Review here is also warranted because the question presented is both recurring and important. Every year, governments arrest and detain thousands of people who cannot afford cash bail and who must wait weeks or months to have a meaningful opportunity to challenge whether there is any need for them to be deprived of their right to physical liberty. And as noted, such

detention inflicts grievous harms, such as the loss of one's job, housing, ability to care for young children or elderly parents, and the ability to effectively prepare one's defense. This Court's review is needed to ensure that federal courts nationwide (not just in the circuits that have rejected the Fifth Circuit's *Younger* holding) have the authority to safeguard presumptively innocent individuals' fundamental right to physical liberty.

OPINIONS BELOW

The Fifth Circuit's opinion (App.1a-13a) is published at 71 F.4th 340. The court's second en banc opinion in *Daves* v. *Dallas County*—on which, as noted, the court here relied for its *Younger* ruling—is published at 64 F.4th 616, and reproduced in the appendix (App.117a-193a).

The district court's post-trial opinion (App.15a-51a) is available at 2020 WL 605028. Its orders denying abstention (App.53a-66a, 67a-68a) are available at 2018 WL 1188077 and 2018 WL 1221119. The magistrate judge's reports and recommendations regarding abstention (App.69a-86a, 87a-115a) are available at 2017 WL 8161160 and 2017 WL 9772104.

JURISDICTION

The Fifth Circuit entered judgment on June 21, 2023. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT

A. Background On *Younger* Abstention

Younger held that federal courts, as a matter of comity, must sometimes abstain from hearing claims that would interfere with pending state proceedings. But as this Court explained in its most recent in-depth

discussion of *Younger*—*Sprint Communications, Inc.* v. *Jacobs*, 571 U.S. 69 (2013)—"abstention … is the 'exception, not the rule.'" *Id.* at 82. The "general rule" is instead that "'[t]he pendency of an action in … state court is no bar to proceedings concerning the same matter in the Federal court[s].'" *Id.* at 73 (quoting *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 817 (1976)). And because "a federal court's 'obligation' to hear and decide a case is 'virtually unflagging'" so long as jurisdiction exists, *id.* at 77, "only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States," *New Orleans Public Service, Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 368 (1989), *quoted in Sprint*, 571 U.S. at 70.

More specifically, *Younger* abstention is not warranted unless three conditions are met: (1) federal adjudication of the plaintiff's claims would unduly interfere with a pending state-court proceeding, (2) the pending proceeding implicates an important state interest, and (3) the pending proceeding gives the plaintiff an adequate opportunity to raise the federal claim. *Middlesex*, 457 U.S. at 431-432.

2. In *Gerstein*, this Court held that *Younger* abstention was not required with claims challenging the constitutionality of pretrial detention without a prompt probable-cause finding. *See* 420 U.S. at 108 n.9. The *Gerstein* plaintiffs (individuals arrested in Florida) were subject to weeks of pretrial detention before they could challenge the probable cause underlying their arrests. *Id.* at 105-106. The district court invalidated this practice, ordering prompt probable-cause hearings. *Id.* at 107-108. Affirming the district court's rejection of *Younger* abstention, this Court explained that federal adjudication of the constitutional claim would not unduly interfere with pending prosecutions because the claim

"was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution." *Id.* at 108 n.9. Accordingly, "[t]he order to hold [prompt] hearings could not prejudice the conduct of the trial on the merits." *Id.* Abstention was therefore not appropriate.

3. A year before deciding *Gerstein*, this Court held in *O'Shea* v. *Littleton*, 414 U.S. 488 (1974), that *Younger* abstention was warranted in a case seeking federal oversight of virtually every aspect of a local criminal legal system, including arrest, bail, trial, and sentencing, *see id.* at 488, 491-492. In particular, the Court mandated abstention because the injunction that "the Court of Appeals thought should be available if [the plaintiffs] proved their allegations" was "aimed at controlling or preventing the occurrence of specific events that might take place in the course of future state criminal trials." *Id.* at 500. Abstention would be required with such an injunction, *O'Shea* stated, because "the normal course of criminal proceedings in the state courts would … be disrupted." *Id.*

B. Respondents' Bail Practices

After a bench trial, the district court here made detailed factual findings about respondents' pretrial-detention practices. Those findings—none of which was set aside on appeal—include the following:

1. In Louisiana's Fifteenth Judicial District, which covers three parishes including Lafayette, most people arrested for misdemeanors are automatically released with a summons. App.4a, 18a-19a. But for certain misdemeanor and all felony arrests (at least 6,500 per year), money bail is set by the commissioner. App.4a, 18a-20a. Each day, the commissioner—Thomas Frederick at the

time of trial and now respondent Andre' Doguet—calls the Lafayette Parish Correctional Center to set bail for recently arrested individuals. App.4a, 20a-21a. For each person arrested without a warrant or on a warrant without a specified bond amount, the commissioner chooses an amount based on the charges and (sometimes) the individual's criminal history. App.4a, 20a-21a. He does not ask about any individual's financial status, App.4a, 21a, and he "routinely set[s] secured-money-bail (of at least $500) without considering individuals' ability to pay," App.3a. ("Secured" bail means payment is required before release, where "unsecured" bail means payment is required only if a required court appearance is missed.) Arrested individuals are given no notice of these calls and do not participate in them. App.5a.

People who cannot pay the bail the commissioner imposes remain locked up until their first appearance before the commissioner, a video appearance that is supposed to occur within 72 hours of arrest. App.22a. Like the commissioner's daily calls to the jail, the district court here found, "[f]irst-appearance hearings … provide no opportunity to provide or contest evidence, dispute the amount of secured-money bail imposed, or argue for alternative conditions." App.5a. The commissioner simply reads the charges, tells people the bail amount he has set, and refers them to the public defender's office as needed. App.5a, 22a-23a. Arrested individuals are not represented by counsel at their first appearance, the commissioner makes no oral or written findings on the record of any kind, and no hearing transcripts or recordings are kept. App.5a, 22a, 27a.

2. Starting in May 2019, if an arrested person told the commissioner during her first-appearance hearing that she could not pay the bail amount, the commissioner referred to a "modification" form that lists alternatives

to bail. App.5a, 25a-27a. The commissioner never uses the form, however, to reduce the bail amount (and in fact he testified that he lacks authority to do so), instead referring such a person to a listed alternative, including release on personal surety or a program that allows certain people to apply for release without having to pay upfront cash bail: the Sheriff's Tracking Offenders Program, or STOP. App.5a-6a, 24a, 27a.

The commissioner's secretary processes applications for personal-surety bonds—using unknown criteria. App.24a-25a. She does not notify the commissioner about applications she denies, and those denials cannot be appealed. App.5a, 24a-25a. For individuals referred to STOP, the sheriff (respondent Mark Garber) controls admission. The commissioner has no knowledge about STOP's admission criteria and never reviews Garber's decisions to deny admission. App.5a-6a, 29a-30a.

C. District Court Proceedings

Petitioner filed this action in June 2017, alleging under 42 U.S.C. §1983 that respondents' bail practices violate the equal protection and due process. *See* C.A. Record on Appeal ("ROA") 44. Petitioner sought an injunction preventing the use of money bail to detain an arrested person pretrial unless a court finds, after providing various procedural protections, that detention is necessary to serve the government's interests. ROA.44-45; ROA.1537-1562. Petitioner argued that detention absent such a necessity finding is unconstitutional under *Williams* v. *Illinois*, 399 U.S. 235 (1970); *Tate* v. *Short*, 401 U.S. 395 (1971); *Bearden* v. *Georgia*, 461 U.S. 660 (1983); *United States* v. *Salerno*, 481 U.S. 739 (1987); and *Foucha* v. *Louisiana*, 504 U.S. 71 (1992). ROA.1537-1544. At petitioner's request, the district court certified a class of "[a]ll people who are or will be detained in the

Lafayette Parish [Correctional Center] because they are unable to pay a sum of money required by post-arrest secured money bail setting procedures." ROA.640.

The district court dismissed petitioner's claims against Garber on the ground that, despite his control of the STOP program, he lacked the requisite causal connection to the alleged violations. App.67a-68a, 82a-86a; ROA.828-840,1864. But the court denied the judicial defendants' motions to dismiss. App.66a. Of particular relevance here, the district court adopted the magistrate judge's rejection of respondents' argument that *Younger* required abstention. App.66a, 67a-68a. The magistrate had reasoned that neither *Younger*'s undue-interference prerequisite (i.e., that federal adjudication would unduly interfere with pending state proceedings) nor its adequacy requirement (i.e., that the state proceedings provide an adequate opportunity to raise the federal claim) was met. App.76a-78a. "The plaintiff's allegations," the magistrate wrote, "like those in *Gerstein*, do not present an issue directed at the merits of his criminal prosecution" and so do not unduly interfere with an ongoing state proceeding. App.77a. "Furthermore," the magistrate concluded, the plaintiff "does not have an adequate opportunity to raise his constitutional challenges in state court." *Id.* "Even though the plaintiff can file a motion to reduce bail," the magistrate elaborated, "the time period it takes for … a ruling on the motion … would not address the constitutional challenges." App.77a-78a. That delayed "time period," during which "he remains detained solely due to his inability to pay," is the alleged "violation of his constitutional rights." App.77a.

The district court later denied summary judgment, ROA.1927, and held a one-day bench trial on petitioner's claims, ROA.2475. The court then entered judgment on

the merits for defendants, holding that the bail practices in place at the time of trial satisfy equal protection and due process, App.44a-51a.

D. Fifth Circuit Proceedings

1. After petitioner's appeal was briefed and argued but before a decision issued, the en banc Fifth Circuit held in *Daves* (by an 8-7 vote) that *Younger* required abstention with constitutional claims similar to those here. App.123a-144a. *Daves* also held the plaintiffs' claims there moot, based on Texas's enactment of a statute addressing pretrial detention. App.144a-148a.

Regarding *Younger*, the *Daves* majority deemed this Court's most on-point precedent to be *O'Shea* rather than *Gerstein*, even though *O'Shea* included challenges to myriad aspects of a criminal-justice system whereas *Gerstein*—which other circuits have deemed this Court's most relevant precedent in cases like this one—involved a challenge only to pretrial detention. App.129a-132a. *Daves* also rejected the plaintiffs' argument there that under this Court's precedent, *Younger* applies only if the relevant state proceedings provide a *timely* opportunity to raise the federal claim. "All that *Younger* … mandate[s]," *Daves* stated, "is *an* opportunity to raise federal claims in the course of state proceedings." App.136a (emphasis added). *Daves* deemed this requirement satisfied because people arrested in Dallas County could (after enduring weeks or months in jail) challenge their pretrial detention by filing a bond-reduction motion or a separate habeas case. App.137a-138a. As to the separate *Younger* requirement that federal adjudication result in undue interference with pending state proceedings, *Daves* ruled that the preliminary injunction issued there constituted "federal court involvement to the point of ongoing interference and 'audit' of state criminal

procedures." App.139a. Lastly, *Daves* stated that it "disagree[d] with some or all of the reasoning" of the circuits that had rejected abstention in similar cases, while also asserting that those cases "are factually far afield." App.141a.

Six judges (across three opinions) expressly disagreed with the *Daves* majority's choice to address abstention despite its mootness holding. *See* App.150a (Richman, C.J., concurring in judgment), 151a-189a (Southwick, J., concurring in judgment), 190a-191a (Higginson, J., concurring in part and dissenting in part). A seventh judge dissented from the dismissal, explicitly addressing only mootness but necessarily (because it was a dissent) also disagreeing with the *Younger* ruling. App.192a-193a (opinion of Graves, J.).

2. Following the decision in *Daves*, the panel here ordered briefing on the decision's impact on this case. App.7a. Both sides told the panel that *Daves*'s *Younger* holding required abstention here, although petitioner also stressed that that holding is wrong. *Id.*; C.A. Dkt. 191 at 1-3.

Agreeing with the parties, the panel remanded with instructions to dismiss on the ground that *Daves* "mandated" abstention. App.13a. Specifically, the panel held that "[a]ll three *Younger* conditions are satisfied" given that "the claims in *Daves* are substantively identical to the claims here" and "[g]iven the analogous [state] remedies technically available in Louisiana and Texas." App.9a, 13a (quotation marks omitted).

As to *Younger*'s first prerequisite (undue interference with state proceedings), the panel stated (quoting *Daves*) that "the requested injunction," because it would require "procedural and substantive safeguards" before detaining someone via unaffordable bail, would "'permit

a pre-trial detainee who claimed the order was not complied with to proceed to the federal court.'" App.8a-9a (quoting App.139a). Under *Daves*, the panel held, that commonplace reality—that a litigant who obtains an injunction can return to the issuing court if the injunction is being violated—"'constitutes an ongoing federal audit of state criminal proceedings … indirectly accomplish[ing] the kind of interference that *Younger* … and related cases sought to prevent.'" App.8a-9a (quoting App.131a) (other quotation marks omitted).

As to *Younger*'s second condition (which petitioner has never disputed is satisfied here), the panel recited *Daves*'s conclusion that "'states have a vital interest in regulating their pretrial criminal procedures including assessment of bail bonds.'" App.9a (quoting App.132a n.21).

Finally, as to an adequate opportunity to raise the federal claim in the state proceedings, the panel held that under *Daves*, Louisiana law provides such an opportunity. App.9a-12a. The panel stressed that "[w]hat having 'an opportunity' means is explained in part by what we held in *Daves* was *not* required." App.11a. In particular, *Daves* rejected the argument "'that *timeliness* of state remedies is required,'" holding that "'arguments about delay and timeliness'" are "irrelevant … 'to the adequacy of a state proceeding.'" App.11a-12a (quoting App.143a). As in *Daves*, then, the district court's conclusion—both here and in *Daves*—that "a ruling on [a] motion to reduce bail" would be "too slow" was "irrelevant." App.10a-12a. The panel further noted that *Daves* also rejected the argument "that an opportunity to litigate constitutional claims is inadequate unless it is provided 'in' the state proceedings—as opposed to a separate proceeding like habeas." App.11a (quoting App. 137a n.27). The panel thus held that an adequate

opportunity existed here because (as in *Daves*) state law "allows constitutional claims to a pretrial-detention regime to be brought in a separate habeas proceeding." App.10a-11a. And because timeliness is irrelevant under *Daves*, the panel held, that opportunity was adequate even if the habeas proceeding could be resolved "only long after the allegedly unconstitutional detention and the irreparable harm it inflicts." App.11a.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT'S *YOUNGER* RULING JOINS THE WRONG SIDE OF A CIRCUIT CONFLICT

Adhering to its en banc decision in *Daves*, the Fifth Circuit held here that *Younger* permanently closes the federal courthouse doors to claims that the government violates fundamental constitutional rights when it detains presumptively innocent individuals before trial when doing so is not necessary to protect public safety or prevent flight—even if there is no opportunity to challenge that detention prior to enduring weeks or even months of it. That holding conflicts with other circuits' decisions and is wrong under this Court's cases.

A. The Fifth Circuit's Holding Deepens An Established Lower-Court Divide

Three other courts of appeals have addressed *Younger*'s applicability in cases like this. One of the three held (almost 50 years ago) that abstention is required; the other two (each five years ago) disagreed.

1. In conflict with the decision below, the Ninth and Eleventh Circuits have rejected *Younger* abstention with claims like petitioner's.

The Eleventh Circuit did so in *Walker* v. *City of Calhoun*, 901 F.3d 1245 (11th Cir. 2018). There, the plaintiff challenged the constitutionality of Calhoun's practice of

"jailing the poor [pretrial] because they cannot pay" secured-money bail. *Id.* at 1251-1252 (quotation marks omitted). Speaking through Judge O'Scannlain (sitting by designation), the court rejected the city's *Younger* defense, stating that *Younger* "has become disfavored in recent Supreme Court decisions." *Id.* at 1254 (citing *Sprint*, 571 U.S. at 77-78). And "*Younger* d[id] not readily apply" in *Walker*, the court held, "because Walker is not asking to enjoin any prosecution." *Id.* Rather, "[a]s in *Gerstein*, Walker merely asks for a prompt pretrial determination of a distinct issue, which will not interfere with subsequent prosecution." *Id.* at 1255; *see also id.* at 1254 (citing *Gerstein*). Accordingly, "Walker does not ask for the sort of pervasive federal court supervision of State criminal proceedings that was at issue in *O'Shea*." *Id.* at 1255.

The Ninth Circuit reached the same conclusion in *Arevalo* v. *Hennessy*, 882 F.3d 763 (9th Cir. 2018). There too, a criminal defendant being detained pretrial solely because he could not pay secured-money bail brought a federal action, "argu[ing] that financial release conditions are unconstitutional absent both specific procedural protections and a finding that non-financial conditions could not reasonably serve the State's interest." *Id.* at 764. Relying on *Gerstein* to reject abstention, the court held that "the issues raised in the bail appeal are distinct from the underlying criminal prosecution and would not interfere with it." *Id.* at 766. "Regardless of how the bail issue is resolved," the court elaborated, "the prosecution will move forward unimpeded." *Id.*[1]

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[1] Several other circuits have similarly deemed *Younger* inapplicable to pretrial-detention challenges, albeit outside the bail context. *See* App.141a-142a (citing *Habich* v. *City of Dearborn*, 331 F.3d 524, 530-532 (6th Cir. 2003); *Stewart* v. *Abraham*, 275 F.3d 220,

2. The Fifth Circuit stated in *Daves* that it "disagree[d] with … the reasoning in … cases where *Younger* abstention was rejected." App.141a. But it also tried to obscure the circuit conflict by claiming that those cases were "factually far afield." *Id.* That is incorrect; with respect to abstention, *Walker* and *Arevalo* are each materially identical to *Daves*, which in turn (as the panel here observed) is "substantively identical" to this case, App.9a.

Regarding *Walker*, *Daves* stated that, "contrary to this case, … the injunction sought" there "did not contemplate ongoing interference with the prosecutorial process," App.141a, by which the court apparently meant "ongoing reporting or supervisory components," App.141a n.34. That was wrong. The complaint in *Daves* sought an injunction that (as relevant here) would bar Dallas County from detaining people pretrial solely because they are poor, absent a finding (made after providing essential procedural safeguards) that detention is necessary to serve a government interest. *See* Doc.10 at 61, *Daves*, No. 3:18-cv-00154-N (N.D. Tex. Jan. 30, 2018). And as the panel here recognized, the "relief requested … in this case is identical to the relief requested by the *Daves* plaintiffs." App.9a. That relief—like the analogous relief in *Gerstein* that this Court held did not trigger abstention—involves no "ongoing reporting or supervisory components," App.141a n.34. Nor does it "contemplate ongoing interference with the prosecutorial process," App.140a-141a, certainly not to any greater degree than the injunction sought in *Walker* (or in *Schultz* v. *Alabama*, 42 F.4th 1298 (11th Cir. 2022) (subsequent

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225-226 (3d Cir. 2001); and *Fernandez* v. *Trias Monge*, 586 F.2d 848, 851-553 (1st Cir. 1978)).

history omitted), which likewise rejected abstention in a case like this, *id.* at 1312-1313).[2]

In any event, the panel here did not understand *Daves*'s holding to hinge on the en banc majority's attempted distinction of *Walker*. The panel here held that, under *Daves*, there is undue interference *whenever* the requested injunction "would permit a pre-trial detainee who claimed that the order was not complied with to proceed to the federal court." App.8a (quoting App.139a). That holding unquestionably conflicts with *Walker*, which held *Younger* was no obstacle to such a federally enforceable injunction. *See* 901 F.3d at 1253 (describing the injunction).

As to *Arevalo*, *Daves* deemed it "distinguishable because the plaintiff … had fully exhausted his state remedies …, so there remained no state remedies available in which to raise his individual constitutional claims." App.141a. *Arevalo*, however, rejected abstention not because of the lack of an adequate opportunity to raise the federal claim—as the statement just quoted suggests—but because federal adjudication would not unduly interfere with state prosecutions. *See supra* pp.13-

[2] Respondents have at times suggested that the relief petitioner seeks would allow federal judges to second-guess the *amount* of money bail set in individual cases. In reality, the relief sought would simply prohibit *pretrial detention* absent the constitutionally required substantive findings and procedural safeguards. That, again, is directly analogous to *Gerstein*, where the injunction mandated certain procedural safeguards and a substantive finding if a state chose to impose pretrial detention but did not authorize federal courts to review the correctness of probable-cause findings in individual cases. Likewise here, the relief sought (as the Fifth Circuit required in a prior similar case) "will not require federal intrusion into pre-trial decisions on a case-by-case basis." *ODonnell* v. *Harris County*, 892 F.3d 147, 156 (5th Cir. 2018) (op. on reh'g).

14 (quoting *Arevalo*). *Daves* said nothing about *that* holding, which conflicts with the decision below.

In short, *Daves* failed to distinguish the other circuits' decisions that reached the opposite holding regarding *Younger*.

3. The lone circuit to reach the same conclusion as the Fifth Circuit is the Second Circuit. It held in *Wallace* v. *Kern*, 520 F.2d 400 (2d Cir. 1975), that abstention was required on claims asking federal courts to "mandat[e] a variety of new bail procedures in" New York state courts, *id.* at 400. *Wallace* concluded that an injunction governing bail proceedings constituted impermissible "continu[ous] surveillance" of state prosecutions. *Id.* at 406. The court attempted to reconcile its decision with *Gerstein* by observing that the plaintiffs in *Gerstein* had no right to institute state habeas proceedings, and so the only available state remedy for most arrested individuals in that case was "a preliminary hearing which could take place only after 30 days or an application at arraignment, which was often delayed a month or more after arrest." *Id.* *Wallace*, that is, asserted that *Gerstein*'s undue-interference holding—that abstention was not required because adjudicating pretrial-detention challenges "could not prejudice" any pending prosecution, 420 U.S. at 108 n.9—depended on the unrelated fact (one never mentioned in *Gerstein*'s *Younger* discussion) that no adequate opportunity existed there.

Courts have criticized *Wallace*'s holding. For example, the First Circuit explained that, "contrary to the Second Circuit's reading," *Gerstein* "did not reject *Younger* … because state habeas relief was unavailable." *Fernandez*, 586 F.2d at 851-854. And although *Wallace* has not been overruled, another Second Circuit panel explained that "*Wallace* cannot be squared with

more recent Supreme Court authority." *DeSario* v. *Thomas*, 139 F.3d 80, 86 n.2 (2d Cir. 1998) (subsequent history omitted). When the plaintiffs in *Daves* made this point to the en banc court, the court deemed it "misleading" because *DeSario* "also made clear that *Younger* abstention is required where a plaintiff may avail himself of remedies in an ongoing state criminal proceeding" and because the Second Circuit "express[ly] approv[ed]" *Wallace* post-*DeSario*. App.142a n.36. But none of that has anything to do with the validity of *DeSario*'s repeated critique of *Wallace*.

The circuit conflict just described means that federal courts in the Ninth and Eleventh Circuits can prohibit unconstitutional deprivations of presumptively innocent individuals' physical liberty, while federal courts in the Fifth (and possibly Second) Circuits cannot. The fundamental right to physical liberty should not depend on such geographic happenstance.

B. The Fifth Circuit's *Younger* Holding Is Wrong

The Fifth Circuit held here that—under *Daves*—adjudicating petitioner's claims would unduly interfere with state prosecutions and Louisiana law provides an adequate opportunity to eventually raise those claims in state proceedings. Each holding departs from this Court's precedent. The additional rationales that *Daves* offered in defense of its *Younger* ruling, meanwhile, are likewise infirm.

1. Undue Interference

a. *Daves*'s undue-interference holding cannot be reconciled with *Gerstein*. This Court held there that abstention was not required with a claim much like petitioner's, a claim challenging the constitutionality of

pretrial detention without a prompt probable-cause finding. *See* 420 U.S. at 108 n.9. The *Gerstein* plaintiffs (arrested individuals in Florida) were subject to weeks of pretrial detention before they could challenge the probable cause underlying their arrests. *Id.* at 105-106. The district court held this practice unconstitutional and enjoined pretrial detention absent prompt probable-cause hearings. *Id.* at 107-108. On appeal, this Court explained that the lawsuit would not unduly interfere with pending prosecutions because it "was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution." *Id.* at 108 n.9. "The order to hold [prompt] hearings," *Gerstein* further expounded, "could not prejudice the conduct of the trial on the merits." *Id.* Abstention was therefore not appropriate.[3]

Gerstein's *Younger* reasoning applies equally here. The order petitioner seeks is that respondents cannot continue detaining arrested individuals without a judicial finding (made after providing essential procedural safeguards) that detention is necessary to protect public safety or prevent flight. ROA.44-45, ROA.1537-1562. Such an order—like the one in *Gerstein* barring pretrial detention absent a prompt probable-cause finding—is not "directed at the state prosecutions as such, but only at the legality of pretrial detention without" an appropriate "judicial hearing," *Gerstein*, 420 U.S. at 108 n.9. As was true of the claim in *Gerstein*, then, adjudicating

[3] This Court later elaborated on *Gerstein*'s holding that the Fourth Amendment required a "prompt[]" probable-cause finding, 420 U.S. at 125, ruling that the finding presumptively must be made within 48 hours of arrest, *County of Riverside* v. *McLaughlin*, 500 U.S. 44, 56 (1991).

petitioner's claims cannot "prejudice the conduct of the trial on the merits," *id.* In fact, pretrial detention's separateness from criminal prosecutions is why federal bail orders are immediately appealable. *See Stack* v. *Boyle*, 342 U.S. 1, 6 (1951). As Justice Jackson explained, "an order fixing bail can be reviewed without halting the main trial—its issues are entirely independent of the issues to be tried." *Id.* at 12 (concurrence).

Because there is no meaningful distinction for purposes of *Younger*'s undue-interference prong between a probable-cause determination and a bail determination, *Gerstein* precludes abstention here.

The Fifth Circuit asserted in *Daves*, however, that "*Gerstein* is distinguishable on a number of grounds." App.133a. But it never offered any distinction. It recited the Second Circuit's *conclusion* that "*Gerstein* did not authorize a … district court to require an evidentiary hearing on bail determinations within a certain period of time." App.133a-134a. That conclusion, however, does not show any distinction between this case and *Gerstein*. *Daves* also stated that "other Supreme Court decisions extend[] the principles of *Younger* abstention, two of which were decided within a few months of *Gerstein*." App.135a. But neither of those two decisions affects *Gerstein*'s *Younger* holding. The first, *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975), held that *Younger* can apply in some civil cases, *see id.* at 603-605. And the second, *Schlesinger* v. *Councilman*, 420 U.S. 738 (1975), held that *Younger* can apply to federal courts-martial, *see id.* at 753-760. Neither holding relates to *Gerstein*'s reasons for *rejecting* abstention in cases like this; even *Daves* did not claim otherwise.

Daves also quoted this Court's observation that "the teaching of *Gerstein* was that the federal plaintiff must

have an opportunity to press his claim in the state courts." *Moore* v. *Sims*, 442 U.S. 415, 432 (1979), *quoted in* App.135a-136a; *see also* App.136a & n.26 (citing *Middlesex* in similarly trying to limit *Gerstein*'s *Younger* holding to the lack of an adequate opportunity). Such an opportunity is indeed a requirement, as later *Younger* cases confirm. But *Moore* did not abrogate the separate *Younger* requirement that federal adjudication would interfere with the pending state proceeding. In fact, in the same paragraph of *Moore* that *Daves* cited, this Court confirmed that *Gerstein* rejected "*Younger* because the injunction … would not interfere with the criminal prosecutions themselves. 'The order … could not prejudice … the trial on the merits.'" *Moore*, 442 U.S. at 431 (quoting *Gerstein*, 420 U.S. at 108 n.9). This Court, moreover, has repeatedly stated since *Moore*—including in its seminal *Middlesex* decision—that both the interference and adequacy requirements must be met for *Younger* to even potentially apply.

Finally, contrary to *Daves*'s suggestion that *Younger* broadly forbids federal courts "from getting involved in state criminal prosecutions," App.127a, this Court confirmed in *Sprint*—by repeatedly describing *Younger* as barring federal courts from "enjoining" or "restrain[ing]" prosecutions, 571 U.S. at 72, 77—that only such direct interference is what *Younger* forbids in the criminal context, i.e., what *Gerstein* called "prejudic[ing] the conduct of the trial on the merits," 420 U.S. at 108 n.9. In other words, more than just what *Daves* called "[f]riction … with state criminal courts," App.124a-125a, is required to trigger *Younger*.

Put simply, the Fifth Circuit in *Daves* (like the court of appeals that this Court reversed in *Sprint*) gave *Younger* far greater "breadth" than this Court's precedent allows. *Sprint*, 571 U.S. at 81.

b. *Daves* also relied heavily on *O'Shea*, deeming it "closely on point." App.129a. As the Ninth and Eleventh Circuits recognized, however, *O'Shea* is "easily distinguished." *Arevalo*, 882 F.3d at 766 n.2; *accord Walker*, 901 F.3d at 1255. As discussed, *O'Shea* involved challenges to almost every aspect of a local criminal-justice system, and this Court held abstention warranted because the posited injunction was "aimed at controlling or preventing the occurrence of specific events that might take place *in the course of future state criminal trials*." 414 U.S. at 500 (emphasis added). The claims there thus *were* "directed at the state prosecutions as such," *Gerstein*, 420 U.S. at 108 n.9. But as explained, *Gerstein*—which was decided after *O'Shea*—made clear that narrower claims like those here, claims directed "only at the legality of pretrial detention without a judicial hearing," cannot "prejudice the conduct of the trial on the merits," *id.*, i.e., "will not interfere with [the] prosecution," *Walker*, 901 F.3d at 1255.

In discussing *O'Shea*, however, *Daves* raised the possibility that a litigant who secured an injunction in a case like this and "became dissatisfied with the officials' compliance with [the] federal injunction[] would have recourse to federal court seeking compliance or even contempt." App.130a; *see also* App.139a. And the panel here, as noted, held *Younger*'s undue-interference condition satisfied based on this part of *Daves*, i.e., based on *Daves*'s conclusion that an injunction "permit[ting] a pre-trial detainee … to proceed to the federal court" would constitute the "extensive federal oversight … *Younger* … sought to prevent." App.8a-9a (quoting App.131a). But that conclusion is manifestly wrong. The possibility that a litigant who secures an injunction might ask the issuing court to enforce it—a possibility that was equally present in *Gerstein*—does not alone

raise the federalism concerns that underlie abstention (nor does it constitute what *Daves* deemed "considerable mischief," App.139a). It simply vindicates federal courts' jurisdiction and authority. Indeed, if that possibility sufficed, abstention would be widespread, because "[a]ny plaintiff who obtains equitable relief … enforcing his constitutional rights … may need to return to court to ensure compliance." *Courthouse News Service* v. *Planet*, 750 F.3d 776, 792 (9th Cir. 2014). But again, *Sprint* holds that abstention "is the 'exception, not the rule.'" 571 U.S. at 81-82.

c. Lastly, *Daves* relied heavily on *Wallace*. As explained, however, courts have recognized that *Wallace* both misread *Gerstein* and is inconsistent with this Court's recent precedent. *See supra* pp.16-17. And the Fifth Circuit's only response was denying that *Wallace* is no longer good law. *See id.* That does nothing to answer other courts' explanations of why *Wallace*'s *Younger* holding (good law or no) is wrong under this Court's precedent.

In sum, nothing in *Daves* (which the panel here followed) justifies the Fifth Circuit's departure from *Gerstein*'s holding that federal claims challenging pretrial detention do not unduly interfere with state prosecutions. That holding alone precludes abstention here.

2. Adequate Opportunity

a. This Court held in *Gibson* that *Younger* abstention is available only if the pending state proceedings provide an "opportunity to raise *and have timely decided* … the federal issues." 411 U.S. at 577 (emphasis added). The plaintiffs in *Gibson* were optometrists seeking to enjoin license-revocation proceedings before a state board that was alleged to be biased. *Id.* at 569-570. Although de novo appellate review by an impartial

tribunal was available, this Court rejected abstention because there was no opportunity to have the federal claim "timely decided." *Id.* at 577 & n.16. The availability of unbiased appellate review was insufficient, *Gibson* held, because by then the "irreparable damage" to the optometrists (in the form of negative publicity and a temporary loss of their licenses) could not be undone. *Id.*

Likewise here, respondents do not provide arrested individuals a timely opportunity to raise federal constitutional challenges to pretrial detention. The district court found that "the time period it takes for … a ruling on [a bond-reduction] motion" means "a ruling on the motion would not address the constitutional challenges" plaintiffs assert. App.77a-78a. Specifically, in Lafayette Parish, it takes at least a week after filing a bond-reduction motion (which itself takes substantial time after arrest) to get a hearing on the motion. ROA.39, 1606. A separate habeas proceeding would likewise be resolved "only long after the allegedly unconstitutional detention and the irreparable harm it inflicts have begun." App.11a. Those harms, in fact, occur soon after detention begins. As this Court has explained, "'*[a]ny* amount of actual jail time'" imposes "'exceptionally severe consequences.'" *Rosales-Mireles* v. *United States*, 138 S.Ct. 1897, 1907 (2018) (emphasis added) (quoting *Glover* v. *United States*, 531 U.S. 198, 203 (2001)). That is just commonsense: When a person cannot care for her baby or toddler because she is in jail, that can be catastrophic even if it is "only" for a few days (let alone weeks or months). Similarly, "[m]any detainees lose their jobs even if jailed for a short time." Wiseman, *Pretrial Detention and the Right to Be Monitored*, 123 Yale L.J. 1334, 1356-1357 (2014). As in *Gibson*, then, even assuming federal claims can be raised in the pending state proceedings here, that can only occur after the very harms

challenged as unconstitutional have been inflicted. Under *Gibson*, that is not an adequate opportunity for *Younger* purposes. The lack of such an opportunity is an independent reason why abstention is unwarranted here.

The panel in this case held, however, that under *Daves*, the lack of a timely opportunity to raise federal claims is "irrelevant" to the *Younger* analysis. App.12a. *Daves*, the panel elaborated, held that "'arguments about delay and timeliness'" and "the actual availability in practice of state-law remedies" do not "'pertain … to the adequacy of a state proceeding.'" *Id.* (quoting App.143a). In so holding, *Daves* had brushed *Gibson* aside, criticizing the district court there for supposedly "fix[ing] talismanic significance" on "one line in one Supreme Court case," App.142a, namely *Gibson*'s statement that *Younger* "presupposes the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved," 411 U.S. at 577. That criticism was unfounded.

To begin with, the requirement that the pending state proceedings provide a *timely* opportunity to raise and have a federal claim decided does not appear in just "one line in one Supreme Court case." App.142a. It was also part of this Court's holding in *Middlesex* (again, a foundational *Younger* decision); in fact, this *Middlesex*'s articulation of that holding leaves no doubt that a timely decision in the state proceedings is indeed a prerequisite to abstention. In its concluding paragraph, *Middlesex* summarized its *Younger* holding as follows: "*Because* respondent Hinds had an 'opportunity to raise and have timely decided by a competent state tribunal the federal issues involved,' and because no bad faith, harassment, or other exceptional circumstances dictate to the

contrary, federal courts should abstain." 457 U.S. at 437 (emphasis added) (quoting *Gibson*).

More generally, this Court has explained that "[w]hen an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which [courts] are bound." *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44, 67 (1996). The "timely decided" language was, as just shown, "necessary to th[e] result" in *Middlesex*. It was likewise necessary to the result in *Gibson*, which held that abstention was not required because the plaintiffs would have had to wait too long to present their federal claim to an unbiased tribunal. *See* 411 U.S. at 570. Although *Daves* contended that *Gibson*'s rejection of *Younger* abstention rested on the alleged bias rather than on "untimely state remedies," App.142a, that is untrue. Both sides in *Gibson* assured this Court that "Alabama law provide[d] for de novo court review of delicensing orders issued by the Board." 411 U.S. at 577 n.16. If *Gibson*'s *Younger* ruling had rested on the lack of "a competent state tribunal," App.142a (emphasis omitted), that review would have sufficed. But *Gibson* explained that that review did *not* suffice. 411 U.S. at 577 n.16. *Gibson* thus refutes *Daves*'s claim that the plaintiffs there had not "cite[d] a single case in which the alleged untimeliness of state remedies rendered *Younger* abstention inapplicable." App.143a. *Gibson* itself is such a case.

There are many similar cases, moreover, from the courts of appeals. The Ninth Circuit, for example, rejected abstention in one case because "Oregon law provides [plaintiff] with several options for … presenting his federal constitutional claims in state court. None of these options, however, provided him with 'timely' adjudication of his federal claims." *Meredith* v. *Oregon*, 321 F.3d 807, 818-819 (9th Cir. 2003). Likewise, the Sixth

Circuit rejected *Younger* abstention where the plaintiffs did "not have an adequate opportunity to … have timely decided the federal issue involved[] [s]ince any further delay may … cause … irreparable injury." *Martin-Marietta Corporation* v. *Bendix Corporation*, 690 F.2d 558, 564 (6th Cir. 1982). And the Eleventh Circuit has similarly explained that "resolving … constitutional challenges speedily is an important consideration … in assessing the adequacy of state remedies" because "abstention 'presupposes the opportunity to … have timely decided … the federal issues involved.'" *Butler* v. *Alabama Judicial Inquiry Commission*, 245 F.3d 1257, 1263 n.6 (11th Cir. 2001) (quoting *Gibson*). These decisions—each contrary to the decision below—underscore the disuniformity that will pervade *Younger* jurisprudence absent this Court's review here.

In sum, given the district court's finding here about the lack of a timely opportunity to raise petitioner's claims in the state proceedings (a finding the Fifth Circuit accepted but deemed irrelevant), *Gibson* forecloses abstention here independently of *Gerstein*.

b. *Daves* offered several additional grounds for deeming the adequate-opportunity requirement satisfied there. But none of these additional grounds matters, given the lack of an opportunity to raise the federal claims *before* enduring the alleged constitutional violation (and harm). In any event, none of the additional grounds has merit.

For starters, the court stated—citing *Juidice* v. *Vail*, 430 U.S. 327 (1977)—that "[a]ll that *Younger* … mandate[s] … is *an* opportunity to raise federal claims in the course of state proceedings." App.136a (emphasis added). But *Moore* and *Middlesex* each explained (post-*Juidice*) that the "pertinent inquiry is whether the state

proceedings afford an *adequate* opportunity to raise the constitutional claims." *Moore*, 442 U.S. at 430, *quoted in Middlesex*, 457 U.S. at 432 (emphasis added). *Juidice* itself, moreover, clarified in the same paragraph that *Daves* quoted (in language the court replaced with an ellipsis, App.136a) that what is required is "an opportunity to *fairly* pursue [the] constitutional claims in the ongoing state proceedings." 430 U.S. at 337 (emphasis added). *Juidice* even supported this statement by citing *Gibson*'s discussion of a "timely" opportunity, *see id.*, confirming that there must be not just "an" opportunity, as the Fifth Circuit claimed, but a *timely* one. Under *Daves* and the decision below, by contrast, there would be an adequate opportunity even if a person could not challenge her pretrial detention until the middle of trial (or even at sentencing), long after any meaningful remedy could be provided. That cannot be correct. Indeed, the Fifth Circuit's view rewrites this Court's holding that an "adequate opportunity" is required, *Moore*, 442 U.S. at 430, *quoted in Middlesex*, 457 U.S. at 432, to simply "an opportunity" (and in fact not even that, at least not in the pending state proceedings, as this Court has also required, *see infra* pp.28-29.

Next, *Daves* held that Texas provides an "adequate opportunity" through both bond-reduction motions and separate state habeas proceedings. App.136a-137a. The panel here accordingly held that the availability of analogous bond-reduction motions and habeas proceedings in Louisiana similarly satisfied *Younger*'s adequate opportunity requirement. App.9a-13a. But neither opportunity is adequate for *Younger* purposes because neither allows federal claims to be *timely* raised and decided, as *Gibson* requires.

State habeas is also inadequate because it requires initiating a separate civil proceeding. Under *Younger*,

however, the adequacy question is whether a federal claim can be raised in the *pending* state proceedings. This Court has consistently articulated the inquiry that way, assessing the adequacy of state proceedings based on whether "the federal plaintiff will have a full and fair opportunity to litigate his constitutional claim" "in the course of those proceedings." *Ohio Civil Rights Commission* v. *Dayton Christian Schools, Inc.*, 477 U.S. 619, 627 (1986); *see also Middlesex*, 457 U.S. at 432; *Deakins* v. *Monaghan*, 484 U.S. 193, 202 (1988); *Steffel* v. *Thompson*, 415 U.S. 452, 460 (1974). Indeed, this Court has *never* mandated abstention on the ground that the plaintiff could have filed a separate state proceeding—likely because that rule would defy one of *Younger*'s purposes: "avoid[ing] a duplication of legal proceedings … where a single suit would be adequate to protect the rights asserted," *Younger*, 401 U.S. at 44.

Requiring the initiation of separate proceedings, in fact, would impose an exhaustion requirement on §1983 claims—which this Court has repeatedly rejected. *E.g.*, *Patsy* v. *Board of Regents of State of Florida*, 457 U.S. 496, 500 (1982). The Court has even reconciled *Younger* with §1983 by explaining that while a §1983 plaintiff "need not first initiate state proceedings," *Younger* deals with "state proceedings which have already been initiated." *Huffman*, 420 U.S. at 609 n.21. Finally, because most states provide *some* separate proceeding in which federal constitutional claims can eventually be raised, the Fifth Circuit's ruling that a separate proceeding can provide an adequate opportunity would obliterate this Court's command that abstention "is the 'exception, not the rule,'" *Sprint*, 571 U.S. at 81-82. Indeed, it would render the adequacy prong virtually meaningless, given that most any §1983 claim brought in federal court could have instead been brought in a state court: States not only

have concurrent "jurisdiction over § 1983 cases," *Howlett* v. *Rose*, 496 U.S. 356, 358 (1990), but in fact cannot discriminate against the ability to bring such federal claims, *Haywood* v. *Drown*, 556 U.S. 729, 735 (2009).

All this explains why the Fifth Circuit's treatment of a separate proceeding as "adequate" itself conflicts with other circuits' precedent holding that a separate proceeding cannot be adequate. *See Jonathan R. ex rel. Dixon* v. *Justice*, 41 F.4th 316, 335 (4th Cir. 2022) (subsequent history omitted); *Esso Standard Oil Company* v. *Lopez-Freytes*, 522 F.3d 136, 145 (1st Cir. 2008); *Habich*, 331 F.3d at 531-532; *Fernandez*, 586 F.2d at 852-853. Again, then, this Court's review is required to bring much-needed uniformity to these issues.

3. Additional Flaws

Two other points regarding *Daves*'s *Younger* analysis bear mention.

First, *Daves* repeatedly bemoaned the supposedly intrusive injunctions imposed there and "in *ODonnell*." App.140a-141a; *see also*, *e.g.*, App.138a. If an injunction is too broad, however, the remedy is not to dismiss the underlying claims but to narrow the injunction—as, in fact, *Daves* acknowledged had happened in a later appeal in *ODonnell*, App.139a. The Fifth Circuit instead implicitly assumed (with no sound basis) that *any* injunction in cases like this will necessarily be as intrusive as the court perceived the injunction there to be. For example, *Daves* wrongly stated that the plaintiffs' "claims for relief including on-the-record hearings and detailed factual opinions concerning bail determinations reify how far federal courts would have to intrude into daily magistrate practices." App.139a n.30. In reality, accepting petitioner's claims here (which closely resemble those in *Daves*) would not require federal judges to order state

courts to adopt or follow *any* particular bail "practices," *id.* It would require doing only what this Court did in *Gerstein*: delineating what the Constitution mandates to justify pretrial detention, and prohibiting jurisdictions from detaining people *without* complying with those requirements (in whatever way a particular jurisdiction deemed fit). *See* 420 U.S. at 124-125. Such a negative injunction, leaving jurisdictions ample flexibility regarding implementation, is (as *Gerstein* confirms) not remotely intrusive enough to warrant abstention. In fact, what petitioner says the Constitution requires is largely the regime that has been in place—by statute—in the federal criminal system for nearly four decades, *see Salerno*, 481 U.S. at 742-743.

Second, *Daves* attacked opponents of a broad abstention doctrine as having "amnesia" about "Our Federalism," which the court described as "the guiding light behind *Younger*." App.125a. In reality, the plaintiffs' arguments there (like petitioner's here) are, as shown, grounded in this Court's cases explaining *Younger*'s limited scope. And as this case demonstrates, those limits on *Younger* are vital given the consequences of mass detention absent criminal conviction—which is why centuries of American legal tradition have generally required conviction for the deprivation of liberty.

Daves's attacks were also misguided because federal courts have a duty not to allow rampant trampling of fundamental constitutional rights. As explained at the outset, the Fifth Circuit's *Younger* holding means that federal courts are powerless to do anything about the many thousands of violations of individuals' core constitutional right to physical freedom that are committed every year by bail systems like Lafayette's. Those violations inflict truly grievous harms. *See infra* pp.32-34. Yet *Daves* said nothing about these devastating harms

to presumptively innocent individuals, instead focusing on the supposed harm to state courts that comes from federal courts adjudicating federal constitutional claims. *See* App.123a-129a. But again, this Court's cases hold that there is no such harm in these circumstances (i.e., no undue interference with federal proceedings), and certainly no harm remotely rivaling the harms inflicted by unconstitutional pretrial detention. The Fifth Circuit's holding that federal courts can do *nothing* about the unconstitutional conduct that engenders those harms is not only misguided as a matter of first principles, but also itself inconsistent with this Court's precedent. In the Court's words, "judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims…. When a prison … practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights." *Procunier* v. *Martinez*, 416 U.S. 396, 405-406 (1974).

II. The Question Presented Is Recurring And Important

Certiorari is warranted to resolve the circuit conflict over the question presented and to correct the Fifth Circuit's departures from this Court's precedent because this case presents important and recurring issues regarding individuals' fundamental rights to pretrial liberty—and federal courts' obligation to safeguard those rights.

The issues here are indisputably recurring. Hundreds of thousands of people are jailed every year in the United States. *See* Zeng, *Jail Inmates in 2021*, at 1, Bureau of Justice Statistics (Dec. 2022), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ji21st.pdf. And roughly one-third of those are locked up solely because they lack access to money. Mathews II & Curiel,

Criminal Justice Debt Problems 6, ABA (Nov. 30, 2019). Whether federal courts can hear claims regarding the constitutional limits on states' power to jail people for long periods absent conviction is thus a matter that affects a huge number of Americans. Yet this Court has not addressed *Younger* in this context for decades—and as explained, *see supra* pp.12-17, lower courts have reached divergent conclusions.

The question presented is also of paramount importance. Physical liberty is among the oldest and most precious of rights—lying at the "core of the liberty protected by the Due Process Clause." *Foucha*, 504 U.S. at 80. And denials of that right via pretrial detention inflict extraordinary harms. This Court, for example, has explained that pretrial detention can mean "loss of a job" and "disrupt[ion to] family life" for detainees. *Barker* v. *Wingo*, 407 U.S. 514, 532 (1972); *accord Gerstein*, 420 U.S. at 114. Other courts have made the same point. *See ODonnell*, 892 F.3d at 154-155, *Curry* v. *Yachera*, 835 F.3d 373, 376-377 (3d Cir. 2016); *Lopez-Valenzuela* v. *Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014) (en banc). And empirical research documents those harms (and many others). For instance, according to one study of several hundred thousand cases, someone "detained for even a few days may lose her job, housing, or custody of her children." Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 713 (2017). The Justice Department has found, meanwhile, that jailed individuals suffer every major type of chronic condition and infectious disease at higher rates than others. Maruschak et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, at 2-4, Bureau of Justice Statistics (rev. Oct. 4, 2016), https://bjs.ojp.gov/content/pub/pdf/mpsfpji1112.pdf. Empirical research also indicates that—even controlling for offense,

criminal history, and other factors—those convicted following pretrial detention receive longer sentences than those convicted after being free pretrial. *See* Heaton et al., *supra*, at 747-748 tbl. 3; Stevenson, *Distortion of Justice*, 34 J. Law Econ. & Org. 511, 527-528 & tbl. 2 (2018). After they are freed, moreover, people who are detained pretrial earn less on average than those who avoided pretrial detention—a 40% decrease in earnings, one study found, *see Collateral Costs* 11, The Pew Charitable Trusts (2010), https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf.

Because of these and other dire consequences, pretrial detainees are more likely to plead guilty—regardless of whether they *are* guilty—to gain speedy release. Indeed, one court found (on an extensive record) that a person charged with a misdemeanor who is detained pretrial pleads guilty 84% of the time, in a median time of just 3.2 days, whereas a person charged with a misdemeanor who is released pleads guilty less than 50% of the time, and in a median of 120 days. *See ODonnell* v. *Harris County*, 251 F.Supp.3d 1052, 1105, 1157-1158 (S.D. Tex. 2017) (subsequent history omitted). For those who do not plead, pretrial detention increases the likelihood of conviction, by hindering access to counsel, witnesses, and exculpatory evidence. *See Barker*, 407 U.S. at 533. In fact, one study found that, controlling for other factors, pretrial detention is associated with a 25% increase in the likelihood of conviction, and increases the chance of future criminal conduct. Heaton et al., *supra*, at 744; *accord* D'Abruzzo, *The Harmful Ripples of Pretrial Detention*, Arnold Ventures (Mar. 24, 2022), https://www.arnoldventures.org/stories/the-harmful-ripples-of-pretrial-detention.

Nor are the harms from pretrial detention limited to those detained (and their loved ones). Detention also

burdens "society[,] which bears the direct and indirect costs of incarceration." *Rosales-Mireles*, 138 S.Ct. at 1907. These costs—including the money needed to pay for mass jailing and the fact that those detained will more likely commit crimes in the future, *see*, *e.g.*, Lowenkamp, *The Hidden Costs of Pretrial Detention Revisited* 4 (2022)—also come with little or no benefit, as experts agree there is no "link between financial conditions of release and appearance at trial or law-abiding behavior before trial," *ODonnell*, 892 F.3d at 162; *see also ODonnell*, 251 F.Supp.3d at 1121-1122, 1152.

All these harms underscore the importance of the question presented. Given that importance, along with the circuit conflict that the decision below implicates and the Fifth Circuit's repeated disregard for this Court's precedent, the Court's review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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