No. 24-1107

In the Supreme Court of the United States

JONATHAN PEOPLES, PETITIONER,

v.

COOK COUNTY AND THOMAS J. DART

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

REPLY BRIEF FOR THE PETITIONER

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This case presents a significant conflict over a recurrent question of federal law. Respondents do not dispute the split, do not dispute its importance, and do not claim further percolation would aid the Court's review. The Court should resolve this substantial, entrenched, decades-long circuit conflict. The petition for certiorari should be granted.

The Seventh and Third Circuits have adopted the categorical view that the Eighth Amendment entirely displaces due process in cases of overdetention, even when the detention is not part of a sentence, not punishment, and not intended to be punishment. That holding breaks sharply with the approach taken in the Second, Fifth, Sixth, and Eighth Circuits, where courts have recognized that the Constitution protects a liberty interest in timely release from custody and that arbitrary failures to honor that interest are properly analyzed under the Fourteenth Amendment. The circuit split is openly acknowledged, outcome-determinative, and entrenched. Only this Court can resolve it.

The decision below is wrong and profoundly destabilizing. By eliminating any due process scrutiny of post-sentence detention, the Seventh Circuit has stripped one of the Constitution's oldest guarantees—the right not to be deprived of liberty without due process of law—from precisely the kind of government conduct it was meant to prevent. Respondents offer no defense of that holding, no claim it is unimportant, and no argument that there is no split or that further percolation is needed. Instead, they urge the Court to deny review based on a grab bag of supposed vehicle problems. But respondents' claims are demonstrably false and would be no basis to deny review even if they were not. *See* pp. 7-10, *infra*.

The rest of respondents' brief confirms just how cert-worthy this case is. They do not contest that thousands of individuals are jailed each year past their release dates. They do not deny that the Department of Justice has brought enforcement actions alleging that such detentions violate the Due Process Clause. They do not even attempt to defend the Seventh Circuit's reasoning. Instead, they double down on a theory that the Sheriff's conduct was justified—arguments the Seventh Circuit considered only through the lens of the Eighth Amendment and its exceptionally stringent "criminally reckless" standard. Pet. App. 13a, 17a, 34a. But whether a four-day liberty deprivation imposed for bureaucratic convenience violates due process is a question that was never answered. This Court should grant review to ensure it is.

ARGUMENT

I. THE CIRCUIT CONFLICT IS UNDISPUTED

The courts of appeals are openly divided over whether the Fourteenth Amendment protects against unjustified overdetention. Respondents do not dispute the circuit conflict. The district court recognized it. *See*

Pet. App. 32a-33a. The court of appeals also recognized it. *See* Pet. App. 11a-12a.

The Second, Fifth, Sixth, and Eighth Circuits all recognize that individuals have a liberty interest protected by the Due Process Clause when held beyond their lawful release dates. Pet. 16-17; *see Hicks v. LeBlanc*, 81 F.4th 497, 504 (5th Cir. 2023); *Shorts v. Bartholomew*, 255 F. App'x 46, 51 (6th Cir. 2007); *Scott v. Baldwin*, 720 F.3d 1034, 1036 (8th Cir. 2013); *Akande v. United States Marshals Serv.*, 659 F. App'x 681, 683-84 (2d Cir. 2016). The Fifth Circuit recently reaffirmed that the Fourteenth Amendment due process right against overdetention is "foundational," "[c]lear as day," "clearly established," and "a holding we have long-held and repeatedly reaffirmed." *Hicks*, 81 F.4th at 504. Same for the Eighth Circuit: the right under the Fourteenth Amendment is "clearly established." *Scott*, 720 F.3d at 1036.

The Seventh and Third Circuits take the opposite view. The Third Circuit recently doubled down on its position, recognizing that its rule conflicts with that of "other courts." *Wharton v. Danberg*, 854 F.3d 234, 246-47 (3d Cir. 2017). And like the Third Circuit, in the decision below, the Seventh Circuit also expressly declined to recognize a Fourteenth Amendment claim in the teeth of the considerable contrary authority in other circuits. Pet. App. 11a-12a.

This split is as entrenched as a split can be—there is no prospect that either side will join the other. *See* Pet. 17 (noting that "this division has persisted for decades"). Only this Court can resolve this conflict.

II. THE DECISION BELOW IS WRONG

Respondents do not defend the decision below.

They do not explain how the Eighth Amendment—which applies only to punishment—could supply the

exclusive framework for a liberty deprivation that was neither punitive, nor part of petitioner's sentence, nor the result of any penal purpose. Nor do they attempt to reconcile the Seventh Circuit's rule with this Court's holding in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), which made clear that the more-specific-provision rule bars resort to due process *only if* the claim is truly "covered by" another constitutional amendment. *Id.* at 843. They do not attempt to show how overdetention of a man who has already completed the carceral portion of his sentence is "covered by" the Eighth Amendment at all. And they offer no response to the petition's showing that the Seventh Circuit's conclusion rests on a misreading of this Court's precedent and threadbare circuit authority that provides no serious constitutional analysis. *See* Pet. 9-15.

Respondents likewise do not dispute that overdetention is a paradigmatic due process violation—an arbitrary deprivation of liberty, often caused by bureaucratic error or indifference, and precisely the sort of government conduct that the Fourteenth Amendment forbids. They do not deny that the Eighth Amendment's deliberate-indifference standard is substantially more stringent than the Fourteenth Amendment's more protective standards. It is precisely because of that difference—because the constitutional standard determines whether a claim survives or fails—that the question presented is so consequential. The Seventh Circuit never applied the correct standard. It refused even to consider it. Pet. App. 12a. That is error. And it matters.[1]

[1] The Department of Justice agrees. In a 2023 findings letter and a follow-on federal lawsuit, DOJ concluded that the Louisiana Department of Public Safety and Corrections was violating the Fourteenth Amendment by routinely incarcerating people past

III. THE ISSUE'S IMPORTANCE IS UNDISPUTED

The decision below is not only wrong; it is profoundly important. By eliminating any due process scrutiny of post-sentence detention, the Seventh Circuit has stripped one of the Constitution's oldest guarantees—the right not to be deprived of liberty without due process of law—from precisely the kind of government conduct it was meant to prevent.

Respondents do not dispute that thousands of people are jailed each year past their release dates. They do not deny that these detentions are often the result of administrative delay, policy inertia, or simple indifference. Nor do they contest that the constitutional source of protection—whether the Eighth or Fourteenth Amendment—is outcome-determinative in many of those cases. The standard that applies matters. And yet under the rule adopted below, individuals held days, weeks, or even months past the expiration of their sentences may have no constitutional claim at all unless they can meet the Eighth Amendment's high bar of proving subjective criminal recklessness.

The consequences are real. This case was brought as a class action because Cook County knowingly overdetains *every person* sentenced to time served on Friday afternoons.[2] That is unconscionable. The problem

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their release dates—often for weeks or months—due to systemic administrative failures. DOJ rejected the idea that such detentions were covered exclusively by the Eighth Amendment or subject only to a subjective state-of-mind requirement. It concluded instead that these unjustified post-sentence detentions violated the Due Process Clause. The federal government's position—unmentioned by respondents—only underscores the urgency of the question presented and the need for this Court's review. *See* Pet. 18-19.

[2] Complaint at 1, *Peoples v. Cook County*, No. 19-cv-07712 (N.D. Ill. Nov. 22, 2019), Dkt. 1-1; Pl.'s Mem. Opp. Defs.' Mot. Sum. J. at

is not limited to Cook County. As the petition highlighted, the Department of Justice recently investigated and sued the Louisiana Department of Public Safety and Corrections for routinely holding people in custody beyond their release dates—often for extended periods—and concluded that this systemic overdetention violated the Fourteenth Amendment. *See* Pet. 18-19. DOJ has made similar conclusions and taken similar enforcement action outside of Louisiana. U.S. Dep't of Justice, Letter from Principal Deputy Assistant Att'y Gen. Vanita Gupta re Investigation of the Hinds Cnty. Adult Det. Center at 17-21 (May 21, 2015), http://bit.ly/3UcVaAZ (concluding Mississippi county's overdetention of prisoners violates Due Process Clause of Fourteenth Amendment); Joint Mot. Entry of Settlement Agreement at ¶ 92(c)(i), *United States v. Hinds County*, No. 3:16-cv-489 (S.D. Miss. June 23, 2016), Dkt. 2 (requiring county to ensure timely release of individuals who have completed their sentences). The right at stake here is not some abstract doctrinal disagreement but a pressing constitutional question that affects countless people in the real world.

Respondents do not contest any of this. They ignore the DOJ's suits. They do not dispute that overdetention has become a recurring nationwide problem, that the governing standard is outcome-determinative, or that the Seventh Circuit's categorical approach eliminates due process protection altogether in precisely the kinds of cases where it is most urgently needed. That silence speaks volumes. The question presented is exceptionally important and warrants the Court's attention now. This is not an issue in need of further percolation; it is an issue in need of definitive resolution.

3-4, *Peoples v. Cook County*, No. 19-cv-07712 (N.D. Ill. May 11, 2022), Dkt. 83.

IV. THIS CASE IS AN IDEAL VEHICLE

This case is the perfect vehicle to decide this question. The issue was preserved. It was passed upon. It was dispositive. The facts are undisputed. There are no jurisdictional obstacles and no competing theories that would complicate review. If this Court wants to resolve the entrenched circuit conflict over the constitutional basis for overdetention claims, this is the case to do it.

Respondents' only argument against certiorari is that the outcome of this case supposedly would not change if the Court ruled that the Seventh Circuit should have permitted petitioner to mount a Fourteenth Amendment claim. *First*, they argue that even if the Fourteenth Amendment applies, petitioner conceded below that he would still have to prove "deliberate indifference" under the Fourteenth Amendment—and the Seventh Circuit already said he cannot make that showing. Opp. 8-9, 11-12. *Second*, they argue that the Sheriff acted pursuant to a facially valid court order, meaning petitioner's claim will fail regardless of which amendment applies. Opp. 9-10.

Those claims are meritless. Respondents' concerns are questions for a future remand. None are obstacles to the Court's review of the question presented. This Court typically takes and resolves questions that were decisive below without speculating about the likelihood of future success on subsidiary issues on remand. *See Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 186 & n.3 (2024); *Chafin v. Chafin*, 568 U.S. 165, 175 (2013); *Powell v. McCormack*, 395 U.S. 486, 500 & n.16 (1969). But even taken on their own terms, they fail.

A. Respondents' claim that petitioner "repeatedly conced[ed] that the Fourteenth Amendment requires deliberate indifference," Opp. 11, is demonstrably false. Petitioner clearly and repeatedly preserved the argument that a Fourteenth Amendment analysis should "mirror" the more protective Fourth Amendment analysis.

He argued this in opposition to summary judgment. Pl.'s Mem. Opp. Defs.' Mot. Sum. J. at 10, *Peoples v. Cook County*, No. 19-cv-07712 (N.D. Ill. May 11, 2022), Dkt. 83 ("If the Court finds that the Fourth Amendment is inapplicable, the Court should nonetheless deny summary judgment because the Sheriff violated Plaintiff's substantive due process rights under the Fourteenth Amendment. The Court's analysis here should mirror its analysis under the Fourth Amendment.").

He argued it on appeal. Br. Appellant at 20, *Peoples v. Cook County*, No. 23-1454, 2023 WL 6965984 (7th Cir. Oct. 13, 2023), Dkt. 12 ("The Court's [Fourteenth Amendment] analysis . . . should mirror its analysis under the Fourth Amendment"); Br. Appellees at 35, *Peoples v. Cook County*, No. 23-1454, 2024 WL 1024683 (7th Cir. Mar. 1, 2024), Dkt. 21 ("As an initial matter Peoples concedes, Plaintiff Br. 20, that analysis under the Fourteenth Amendment 'mirror[s]' analysis under the Fourth Amendment.").

The court of appeals recognized and rejected the argument *on the merits*. Pet. App. 12a ("As we understand it, Peoples asks us to conclude not only that the Fourteenth Amendment applies to his claim but also that the inquiry should essentially mirror a Fourth Amendment reasonableness test."). The court of appeals declined to recognize a Fourteenth Amendment claim precisely because "the Eighth Amendment test sets a higher bar for plaintiffs" and, therefore, recognizing a Fourteenth Amendment claim with a lower bar would mean there would be no reason to bring an Eighth Amendment claim at all. Pet. App. 12a.[3]

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[3] Even if petitioner *had* conceded he needed to meet a higher standard in this case—which he never did—no court relied on that "concession," meaning nothing precludes petitioner from abandoning that position. *See Reed Elsevier, Inc. v. Muchnick*, 559

B. Respondents' other claim that petitioner cannot possibly prevail on remand because "the detention [here] was authorized by 'a facially valid court order,'" Opp. 9, is similarly false. The sentencing order directed that petitioner be taken "into custody" and "deliver[ed]" to the Illinois Department of Corrections ("IDOC"). Defs.' R. 56.1 Statement of Undisputed Material Facts at ¶ 67, *Peoples v. Cook County*, No. 19-cv-07712 (N.D. Ill. Mar. 4, 2022), Dkt. 7. It did not require that he be jailed for four days. And the Sheriff's own pandemic policy proves it: during COVID, the Sheriff released detainees with identical orders to await IDOC pickup from home on electronic monitoring. *See* Pet. App. 4a, 15a-16a. That practice shows the Sheriff had discretion—and that his decision to hold petitioner in jail was a policy choice, not a legal requirement.

The Seventh Circuit recognized it was a "policy choice." Pet. App. 15a-17a. It thus did not treat the court order as dispositive. *See id.* Rather, it held that even if the Sheriff's policy lacked any penological justification, "the stringent deliberate indifference standard would still prevent recovery" unless petitioner could show that the Sheriff was "essentially criminally reckless in his policy choice." Pet. App. 17a. That holding confirms the real barrier was the constitutional framework. The court applied the wrong rule, and that error determined the outcome. There is no way to know how this case would come out under the correct standard because no court has ever applied it.

C. No one can say what standard the Seventh Circuit would apply to a Fourteenth Amendment overdetention claim—because the Seventh Circuit does not recognize such claims. Asking whether petitioner would lose under

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U.S. 154, 170 (2010); *Zedner v. United States*, 547 U.S. 489, 490-91 (2006).

a standard governing a claim the court has never recognized is like asking whether a chain-smoking centaur will get lung cancer. *Cf.* Tr. Oral Arg. at 53:18-54:17, *Thompson v. Clark*, 596 U.S. 36 (2022) (No. 20-659). It is a hypothetical built on a hypothetical.

If this Court grants review and reverses, the Seventh Circuit will have to do something it has never done: determine the appropriate standard for a Fourteenth Amendment overdetention claim. That standard might require deliberate indifference—but to a liberty interest, not to punishment. Or the court could adopt a different formulation of deliberate indifference, one less demanding than the Eighth Amendment's "criminal recklessness" threshold. *See Armstrong v. Squadrito*, 152 F.3d 564, 577 (7th Cir. 1998) ("Under the Eighth Amendment, deliberate indifference amounts to criminal recklessness .... Under other constitutional provisions, however, the standard for deliberate indifference appears closer to tort recklessness."). Or the court could follow the Fifth Circuit's approach and find that no deliberate indifference is required at all. *See Hicks v. LeBlanc*, 832 F. App'x 836, 840-41 (5th Cir. 2020); *Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980).

Whatever the Seventh Circuit might do on remand, there is no basis to assume the outcome is foreordained. Petitioner is not guaranteed to lose—he has simply never had the opportunity to litigate his claim under the correct standard. The only thing the courts below decided is that the Fourteenth Amendment does not apply. That is the question presented. And it is cleanly preserved, squarely decided, and dispositive. The Court should not defer review of a nationally important constitutional question based on respondents' speculation about how the case might unfold on remand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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