No. 23-____

In the Supreme Court of the United States

JAMES LEBLANC,
Petitioner,

v.

BRIAN MCNEAL,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A prisoner's "attack on the legality of [his] physical confinement itself … is the long-established function of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 488 n.8 (1973); *see Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005) (an "attack[] [on] the very duration of physical confinement … lies at the core of habeas corpus" (cleaned up)). The question presented is:

Whether, consistent with *Preiser* and its progeny, a state prisoner who alleges that he was unlawfully confined beyond his proper release date may sue for damages under 42 U.S.C. § 1983.

PARTIES TO THE PROCEEDING

Petitioner is Secretary James M. LeBlanc of the Louisiana Department of Public Safety and Corrections. Petitioner was the defendant-appellant below.

Respondent is Brian McNeal. Respondent was the plaintiff-appellee below.

STATEMENT OF RELATED CASES

McNeal v. LeBlanc, No. 22-30180 (5th Cir.). Judgment entered Jan. 5, 2024; order denying petition for rehearing en banc entered Feb. 21, 2024.

McNeal v. Louisiana Department of Public Safety & Corrections et al., No. 18-CV-736 (M.D. La.). Orders entered Feb. 18, 2020, and Apr. 18, 2022.

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PETITION FOR WRIT OF CERTIORARI

For decades, the Court has endeavored to identify and enforce "the dividing line between [42 U.S.C.] § 1983 and the federal habeas statute." *Nance v. Ward*, 597 U.S. 159, 167 (2022). Relevant here, the Court has emphasized that a prisoner's "attack on the legality of [his] physical confinement itself … is the long-established function of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 488 n.8 (1973); *see Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005) (an "attack[] [on] the very duration of physical confinement … lies at the core of habeas corpus" (cleaned up)).

Attacks on confinement, therefore, are subject to the federal habeas statute. That statute "require[s] exhaustion of adequate state remedies as a condition precedent" to federal habeas relief. *Preiser*, 411 U.S. at 489. Indeed, "strong considerations of comity" "require giving the States the first opportunity to correct the errors made in the internal administration of their prisons." *Id.* at 492. Accordingly, attacks on confinement fall within the "specific" purview of the habeas statute and its state-remedy exhaustion requirement, rather than "[t]he broad language of § 1983." *Id.* at 489; *see Heck v. Humphrey*, 512 U.S. 477, 483 (1994) (§ 1983 claims that "call into question the lawfulness of … confinement" are not "cognizable under § 1983").

This case asks whether—notwithstanding *Preiser*/*Heck* and their progeny—a state prisoner who claims that he has been unlawfully confined past his release date can (a) forego administrative and habeas relief while in custody, (b) wait until his release, and (c) then sue for compensatory and punitive damages under § 1983.

Louisiana (and by extension, the Fifth Circuit) has been "plagued" with claims from prisoners alleging that they were unlawfully confined beyond their proper release dates. *Hicks v. LeBlanc*, 81 F.4th 497, 510 (5th Cir. 2023); App.17 (Duncan, J., concurring) (There "will likely [be] many more."). This is an exemplar case. Respondent Brian McNeal served prison time for drug charges. He claims the prison unlawfully confined him for 41 days after his release date. But he did not invoke the prison grievance system or seek habeas relief to obtain immediate release during those 41 days, even though all agree such relief was available. Instead, after his release, he sued petitioner—Secretary James LeBlanc, head of the Louisiana Department of Public Safety and Corrections (DPSC)—under § 1983, seeking compensatory and punitive damages for each day of his alleged "overdetention."

By denying rehearing en banc—over vigorous dissents from Judges Jones and Oldham on behalf of seven judges—the Fifth Circuit blessed this election-of-remedies. The Fifth Circuit acknowledges *Preiser*/*Heck*, but holds that those cases have "no place here." *Hicks*, 81 F.4th at 506. In the Fifth Circuit's view, "*Heck* does not bar claims by an overdetained prisoner who 'does not challenge the validity of his sentence, [but] merely the *execution* of his release.'" App.7. And "[s]uch is the case here, where McNeal does not challenge his conviction or attendant sentence, but rather the 41 days he was imprisoned *beyond* his release date." *Id.*

The Fifth Circuit's decision below cements a circuit split over whether a state prisoner may seek damages under § 1983 for his alleged confinement beyond his

release date. On one side, the Seventh Circuit joins the Fifth Circuit in holding that claims like McNeal's do not implicate *Preiser*/*Heck* because they seek to "vindicate," "not attack," a sentence. *Courtney v. Butler*, 66 F.4th 1043, 1049 (7th Cir. 2023). Accordingly, McNeal's claim could proceed in the Seventh Circuit as in the Fifth Circuit. The Ninth, Tenth, and Eleventh Circuits, by contrast, stake out a middle ground that depends on the availability of habeas relief while the prisoner was in custody and his diligence in pursuing it. Under that standard, McNeal would lose outright in the Tenth Circuit. *See Kilman v. Williams*, 831 F. App'x 396, 398 (10th Cir. 2020) (per curiam) (holding § 1983 claim like McNeal's barred by *Preiser*/*Heck* because of prisoner's "lack of diligence in filing any habeas petitions during his incarcerations" (citing *Cohen v. Longshore*, 621 F.3d 1311, 1317 (10th Cir. 2010))). And he would arguably lose in the Ninth and Eleventh Circuits. *See Galanti v. Nev. Dep't of Corr.*, 65 F.4th 1152, 1156 (9th Cir. 2023) (permitting § 1983 claim like McNeal's where, unlike McNeal, prisoner allegedly could not have obtained habeas relief in custody); *Morrow v. Fed. Bureau of Prisons*, 610 F.3d 1271, 1272 (11th Cir. 2010) (same). Finally, the Third and Eighth Circuits summarily reject claims like McNeal's. *See Deemer v. Beard*, 557 F. App'x 162, 163, 166 (3d Cir. 2014) (rejecting prisoner's § 1983 claim that "he was confined for a year and a day beyond the date on which his prison sentence should have expired" under *Preiser*/*Heck* (citing *Williams v. Consovoy*, 453 F.3d 173 (3d Cir. 2006); *Gilles v. Davis*, 427 F.3d 197 (3d Cir. 2005))); *Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007) (same). These divergent outcomes illustrate the need for this Court's intervention.

The Fifth Circuit's view also is wrong. It depends on the mistaken assumption that *Preiser*/*Heck* bar only § 1983 challenges to a prisoner's *conviction* or *sentence*. But that bar covers § 1983 claims that challenge a prisoner's "physical confinement itself," *e.g.*, *Preiser*, 411 U.S. at 489—whether sanctioned by a conviction or sentence or not—because that is the bread and butter of habeas. The Fifth Circuit has thus "twisted itself into knots to avoid a conclusion that should be obvious: A prisoner who has a habeas remedy cannot sue under § 1983." App.102 (Oldham, J., dissenting from the denial of rehearing en banc). The Fifth Circuit's view also raises a host of other problems, not least of which is its affront to common sense and comity. It gives prisoners like McNeal "an election of remedies": invoke the federal habeas statute "to get out of jail," or "stay in jail and then sue for compensation later" under § 1983. *Id.* at 93. But that turns *Preiser* on its head. If States, in fact, deserve "the first opportunity to correct the errors made in the internal administration of their prisons," *Preiser*, 411 U.S. at 492, then a prisoner cannot refuse administrative and habeas relief because he has grander aspirations of cashing in under § 1983. Whether a complete bar (as in the Third and Eighth Circuits) or a diligence-based rule (as in the Ninth, Tenth, and Eleventh Circuits) is the right answer, the Fifth and Seventh Circuits' blanket blessing of claims like McNeal's is wrong.

This issue, moreover, is exceedingly important. Its importance is reflected in the numerous and recurring times that the issue arises in federal courts across the country. It also is important to Louisiana and the Fifth Circuit, which are entangled in claims like McNeal's that should be dismissed at the outset of litigation. In

addition, it is important to every State and municipality given the high monetary stakes involved: If prisoners may forego administrative and habeas relief (*i.e.*, immediate release) in favor of money damages under § 1983 after their release, then that portends a seismic shift in how this Court, States, and municipalities traditionally have understood the proper remedy for challenges to confinement. Last, the issue presented is important to States, municipalities, and prisoners alike who are subject to different (and conflicting) rules across the country simply because of the jurisdiction in which they happen to reside.

Finally, this is an ideal vehicle to address the question presented. In the panel opinion below and the opinions accompanying both the panel decision and the 8-9 en banc vote, the Fifth Circuit squarely addressed the issue and entrenched its own mistaken position over the dissenting views of seven judges. Moreover, this petition avoids the mismatch in the petition arising from the Ninth Circuit's *Galanti* case, which asked a question that did not directly address the nature of claims like McNeal's. The critical question on which the Fifth Circuit and others are split is whether a state prisoner who challenges his alleged confinement beyond his release date may do so under § 1983. He may not. This Court should grant the petition.

OPINIONS BELOW

The Fifth Circuit's panel opinion is reported at 90 F.4th 425 and reproduced at App.1–25. The Fifth Circuit's order denying the petition for rehearing en banc is reported at 93 F.4th 840 and reproduced at App.91–

102. The district court's April 18, 2022, order is reported at 598 F. Supp. 3d 428 and reproduced at App.26–53. The district court's February 18, 2020, order is not reported but is available at 2020 WL 798321 and reproduced at App.54–90.

JURISDICTION

The Fifth Circuit issued its panel opinion on January 5, 2024, App.1–25, and denied the petition for rehearing en banc on February 21, 2024, App.91–102. On May 17, Justice Alito granted petitioner's application to extend the deadline for filing a petition for writ of certiorari from May 21, 2024, to July 5, 2024. *See LeBlanc v. McNeal*, No. 23A1017 (U.S.). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2241 provides in relevant part:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
>
> …
>
> (c) The writ of habeas corpus shall not extend to a prisoner unless—
>
> …

> (3) He is in custody in violation of the Constitution or laws or treaties of the United States[.]

28 U.S.C. § 2254 provides in relevant part:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> (b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—
>
> > (A) the applicant has exhausted the remedies available in the courts of the State; or
> >
> > (B)(i) there is an absence of available State corrective process; or
> >
> > > (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the

> party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Factual Background

1. In recent years, States and the courts of appeals have been inundated with § 1983 claims (and related state-law claims) from state prisoners alleging that they were unlawfully confined beyond their release dates. This is especially true as to Louisiana and the Fifth Circuit, which has called the claims a "plague[]." *Hicks*, 81 F.4th at 510. And the Fifth Circuit has lamented that still more will come. *See* App.1 ("We face another suit against a Louisiana official for overdetention"); App.17 (Duncan, J., concurring) ("We will likely have many more.").

Among the Louisiana cases are two putative class actions, which are stayed pending the outcome of this petition. *See* Order at 2, *Humphrey v. LeBlanc*, No. 3:20-cv-233 (M.D. La. Jan. 22, 2024), ECF No. 217; Order at 2, *Giroir v. LeBlanc*, No. 3:21-cv-108 (M.D. La. Jan. 22, 2024), ECF No. 120. In each case, the named plaintiffs allege that they are or were unlawfully confined for several weeks beyond their release dates.

Second Amended Class Action Complaint at 3 ¶¶ 7–9, *Humphrey*, ECF No. 43; Amended Class Action Complaint at 4 ¶ 15, *Giroir*, ECF No. 46. In each case, the plaintiffs seek to represent all state prisoners since 2019 who were or will be released more than 48 hours beyond their alleged release date.

No court has yet rendered final judgment in these cases, and the merits of the prisoners' claims are not at issue here. *See* App.18 (Duncan, J., concurring) ("The question is not whether overdetention is a serious problem (it is) nor whether it should be fixed (it should)."). Instead, the litigation thus far has turned on the remedy that the prisoners have elected to *invoke* (§ 1983) and the remedies that they have elected to *bypass* (administrative and habeas relief).

2. Under this Court's precedents, "a state prisoner's § 1983 action is barred (absent prior invalidation [of a prisoner's confinement])—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate the invalidity of confinement or its duration." *Wilkinson*, 544 U.S. at 81–82. This familiar *Preiser*/*Heck* principle forecloses § 1983 claims that challenge a prisoner's "physical confinement itself." *Preiser*, 411 U.S. at 489. Such challenges are instead the stuff of habeas.

That distinction matters because a claim that sounds in habeas is subject to the federal habeas statute. That statute "require[s] exhaustion of adequate state remedies as a condition precedent" to federal habeas relief. *Id.* at 489. As this Court has emphasized, "strong considerations of comity" "require giving the

States the first opportunity to correct the errors made in the internal administration of their prisons." *Id.* at 492; *see id.* ("Since these internal problems of state prisons involve issues so peculiarly within state authority and expertise, the States have an important interest in not being bypassed in the correction of those problems."). Accordingly, attacks on a prisoner's confinement fall within the "specific" purview of the habeas statute and its state-remedy exhaustion requirement, rather than "[t]he broad language of § 1983." *Id.* at 489. Put plainly, a prisoner cannot use § 1983 to challenge his confinement.

3. The Fifth Circuit, however, has developed an exception to *Preiser*/*Heck* for a prisoner who claims that he was unlawfully confined beyond his proper release date and seeks damages under § 1983.

The Fifth Circuit previewed this exception in *Crittindon v. LeBlanc*, 37 F.4th 177 (5th Cir. 2022). There, the majority suggested that "*Heck* does not bar this suit" because "Plaintiffs do not challenge their underlying conviction nor the length of their sentence." *Id.* at 190. But the majority claimed that the issue was not properly presented. *Id.* In dissent, Judge Oldham explained that, under *Preiser*/*Heck*, "any action challenging the length of confinement—or legality of continued confinement—lies in habeas corpus rather than § 1983." *Id.* at 194 (Oldham, J., dissenting). And "[t]hat is the beginning and the end of the *Heck* bar" in a case like this: "The fact that plaintiffs' claims were cognizable in habeas means they're non-cognizable in § 1983." *Id.*

Despite stating that the *Heck* issue was not before the court in *Crittindon*, the Fifth Circuit subsequently

reversed course. The following year, the Fifth Circuit held in a materially similar case that "*Crittindon* controls this case." *Hicks*, 81 F.4th at 507. Specifically, "[a]s in *Crittindon*," a § 1983 plaintiff who challenges his confinement beyond his release date "does not challenge the validity of his sentence, [but] merely the *execution* of his release." *Id.* at 506. Under that view, such a prisoner "seeks to vindicate—not undermine—his sentence." *Id.* Thus, "*Heck* is no bar here" and "*Heck* has no place here." *Id.* at 506–07.

B. Procedural Background[1]

1. This is one of the § 1983 lawsuits challenging a prisoner's alleged confinement beyond his release date. In 2015, respondent Brian McNeal pleaded guilty to possessing cocaine and drug paraphernalia. App.2. He received a five-year suspended sentence with five years of probation. *Id.* He violated his probation in 2017 and was sentenced to serve 90 days at the Steve Hoyle Program—a substance abuse program at the Bossier Parish Correctional Center. *Id.* Shortly thereafter, DPSC sent a letter to Hoyle identifying November 1, 2017, as McNeal's release date. *Id.*

In the meantime, McNeal was evaluated at the Elayn Hunt Correctional Center, where DPSC determined that a mental impairment rendered him unfit for Hoyle. *Id.* As a result, McNeal remained at Hunt, while his release letter remained at Hoyle. App.2–3.

McNeal was not released on November 1, 2017. App.3. He alleges that his girlfriend called the parole office to complain. *Id.* He also alleges that he wrote the

[1] The allegations detailed below come from McNeal's complaint, which petitioner takes as true at this motion-to-dismiss stage.

Hunt warden on November 15, 2017, "complaining he had not yet been taken to court and released." *Id.* Approximately one month later, his probation officer notified DPSC of the delay. *Id.* On December 11, 2017, DPSC emailed McNeal's release letter to Hunt giving Hunt the authority to release McNeal. *Id.* McNeal was then released on December 12—41 days after November 1, 2017. *Id.*

2. McNeal later filed this lawsuit in Louisiana state court against various defendants, including petitioner Secretary James LeBlanc. His original complaint (like his operative complaint) asserted claims under § 1983 and the federal Constitution, as well as state-law causes of action such as false imprisonment and negligence. App.4. The defendants removed the case to federal district court, App.3, which rendered a series of decisions relevant here.

First, on February 18, 2020, the district court denied summary judgment to the defendants, rejecting their argument that *Preiser*/*Heck* bar McNeal's claim that he was unlawfully confined beyond his release date. App.3–4. The district court recognized that McNeal did not "previously invalidate[] the nature and duration of his confinement," nor "has [he] been a part of any other civil action." App.57. In fact, "[o]utside of his letter to the Warden, Plaintiff did not utilize the grievance procedure or file any Administrative Remedy Procedures pertaining to his incarceration." App.57–58. In addition, McNeal brought to the district court's attention that DPSC has released prisoners like him within hours of the filing of a habeas petition, demonstrating there is no reason to think "that overdetained prisoners cannot get habeas relief"

promptly since these claims differ dramatically "from claims arising in the mine-run state prisoner's case." *See* App.97 & n.1 (Oldham, J., dissenting from the denial of rehearing en banc). Nonetheless, the district court excused McNeal from *Preiser*/*Heck* because he "'challenges neither his conviction nor the length of his court-ordered sentence; he simply alleges that the overdetention by his jailers' failure to timely process his release following his court-ordered time-served judgment exceeds constitutional bounds.'" App.80.

Second, on March 30, 2020, the district court granted McNeal leave to amend his complaint, App.4, expressly rejecting the defendants' argument that amendment would be futile under *Preiser*/*Heck*, *see* Dist. Ct. ECF No. 58 at 7 (futility "has been decided adversely to Defendants, as the Court's February 18, 2020 Ruling and Order squarely rejected Defendants' argument that Plaintiff's claims are *Heck*-barred").

Third, on April 18, 2022—and after allowing McNeal to amend yet again—the district court denied the defendants' motion to dismiss the second amended complaint, denying (as relevant here) qualified immunity to Secretary LeBlanc. App.6; App.26–53.

3. Secretary LeBlanc appealed to the Fifth Circuit, reurging his argument that *Preiser*/*Heck* bars McNeal's § 1983 claim (and related state-law claims). In response, McNeal acknowledged that, "if you are currently in prison past the end of your sentence and your goal is to get released, that is [] habeas—because you are trying to get your body out of prison." C.A. Appellee's Br. at 24; C.A. Oral Arg. at 25:03–07 ("That's right. Habeas is the remedy to get you out."). According to McNeal, however, that changes once "you are a

free person and wish to sue for damages for the period you were overdetained"; at that point, "Section 1983 is your procedural vehicle." C.A. Appellee's Br. at 24.

Given *Crittindon* and *Hicks*, the Fifth Circuit panel found itself "bound" to reject the Secretary's argument. App.7. The panel noted that, "[i]n *Hicks*, we held that *Heck* does not bar claims by an overdetained prisoner who 'does not challenge the validity of his sentence, [but] merely the *execution* of his release.'" *Id.* "Accordingly, *Heck* raises no bar to McNeal's claims against LeBlanc based on his alleged overdetention." *Id.*

Judge Jones wrote separately, however, to call for the en banc Court to overrule *Crittindon* and *Hicks*.[2] "This seems to me, as to Judge Oldham, a classic situation that *Heck* intended to address," she said. App.16–17 (Jones, J., concurring). McNeal's "case concerns a challenge to 'the fact and length of his confinement.'" App.15. "That means [his] *only* remedy lies in habeas. And the *Heck* doctrine plainly bars [him] from ignoring the specific terms of the habeas statute,

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[2] Judge Duncan likewise wrote separately to call for en banc review of the Fifth Circuit's position that the Secretary may—consistent with *Connick v. Thompson*, 563 U.S. 51 (2011)—be held personally liable. App.17 (Duncan, J., concurring). He also led a seven-judge dissent from the denial of rehearing en banc to underscore the Fifth Circuit's serious misapplication (and indeed, "underruling") of *Connick*. App.92–93; *id.* at 93 (referencing *Connick's* own reversal of the en banc Fifth Circuit: "If this were a movie, it would be called *The Fifth Circuit Strikes Back*."). Because that issue is better suited for summary judgment where the Secretary is not limited by mischaracterizations in McNeal's complaint, the Secretary will preserve the issue for this Court's review (if necessary) in summary-judgment papers.

which '*must* override the general terms of § 1983.'" *Id.* (quoting Judge Oldham's *Crittindon* dissent). That is especially so, she emphasized, because "McNeal made no good faith efforts to seek state habeas relief." *Id.* In her view, "[t]his court should not enable overdetained prisoners to neglect their obligation to seek habeas relief and instead bypass that remedy in order to pursue Section 1983 damages by filing for the wrong type of relief in the wrong court at the wrong time." App.16.

The Fifth Circuit subsequently denied the Secretary's petition for rehearing en banc in an 8-9 vote. App.91–92. Relevant here, Judge Oldham—joined by Judges Jones, Smith, Ho, Duncan, Engelhardt, and Wilson—dissented. Judge Oldham underscored that "[a]ll agree McNeal *could* have sought habeas relief during [the] 41 days." App.93 (Oldham, J., dissenting from the denial of rehearing en banc). Yet "he chose not to do that. He instead slept on his habeas rights, got out of jail, and then sought declaratory relief, compensatory and punitive damages, and attorneys' fees under 42 U.S.C. § 1983." *Id.* And the Fifth Circuit has "blessed that approach, effectively holding the federal habeas statute and § 1983 offer prisoners like McNeal an election of remedies: The former allows prisoners to get out of jail, while the latter allows prisoners to stay in jail and then sue for compensation later." *Id.* "This court," he concluded, "has twisted itself into knots to avoid a conclusion that should be obvious: A prisoner who has a habeas remedy cannot sue under § 1983." App.102.

REASONS FOR GRANTING THE PETITION

I. THE CIRCUITS ARE SQUARELY SPLIT.

There is a clear, three-way circuit split over whether a state prisoner who says he was unlawfully confined beyond his release date may sue for damages under § 1983 after his release. Do *Preiser*/*Heck* bar such claims? The Fifth and Seventh Circuits say no; the Ninth, Tenth, and Eleventh Circuits say yes and no depending on the availability of habeas relief during the prisoner's custody and his diligence in pursuing it; and the Third and Eighth Circuits say yes.

A. The Fifth and Seventh Circuits Permit Such Claims.

In the Fifth and Seventh Circuits, prisoners like McNeal may forego available administrative and habeas relief by waiting until their release to sue for damages under § 1983. That is because, according to those courts, a prisoner's claim that he was unlawfully confined past his release date does not implicate *Preiser*/*Heck* at all.

Fifth Circuit. As detailed above, the Fifth Circuit has now entrenched its view that claims like McNeal's are not subject to *Preiser*/*Heck*. Specifically, the Fifth Circuit's view is that a § 1983 plaintiff who challenges his confinement beyond his release date "does not challenge the validity of his sentence, [but] merely the *execution* of his release." *Hicks*, 81 F.4th at 506. Because such a prisoner "seeks to vindicate—not undermine—his sentence," "*Heck* is no bar here" and "*Heck* has no place here." *Id.* at 506–07; *see also* App.7 ("Such is the case here, where McNeal does not challenge his

conviction or attendant sentence, but rather the 41 days he was imprisoned *beyond* his release date.").

Seventh Circuit. The Seventh Circuit holds the same view. In *Courtney*, 66 F.4th 1043, the prisoner sued prison officials under § 1983 for "wrongfully prolong[ing] his detention" beyond his parole release date by a year. *Id.* at 1048. Like McNeal, he argued that he could avoid *Preiser*/*Heck* because "[h]is theory was and is that his claim for wrongful detention past his scheduled release date seeks to vindicate his underlying sentence, not attack it." *Id.* at 1049. And the Seventh Circuit agreed as to the prisoner's claim that the defendants unlawfully "caused him to spend an extra year in prison rather than on mandatory supervised release." *Id.* at 1053.

Judge Brennan acknowledged in a concurrence that this claim comes "very close to the *Heck* bar." *Id.* at 1054 (Brennan, J., concurring). But he reasoned that, although the prisoner challenged the period of his so-called overdetention, the prisoner did not seek to "imply[] the invalidity" of his conviction or sentence. *Id.* at 1055. The prisoner's only claim was that the "defendants' unconstitutional conduct [] caused him to stay in prison longer than he otherwise might have." *Id.* And that § 1983 claim—like McNeal's in the Fifth Circuit—is viable in the Seventh Circuit. Indeed, the Seventh Circuit's language virtually echoes in the Fifth Circuit's own cases. *Compare id.* at 1049 (maj. op.) ("His theory was and is that his claim for wrongful detention past his scheduled release date seeks to vindicate his underlying sentence, not attack it."), *with Hicks*, 81 F.4th at 506 ("He seeks to vindicate—not undermine—his sentence.").

B. The Ninth, Tenth, and Eleventh Circuits Adopt a Middle Ground.

The viability of claims like McNeal's is more nuanced in the Ninth, Tenth, and Eleventh Circuits, each of which inquire into the availability of habeas relief while the prisoner was in custody and the prisoner's diligence in seeking that relief. As a result, some state prisoners may succeed in claiming that they were unlawfully confined beyond their release dates, while others may not—and McNeal's own claim would likely meet different fates from jurisdiction to jurisdiction.

Ninth Circuit. In the Ninth Circuit, prisoners may use § 1983 to challenge their allegedly unlawful confinement beyond their release dates. Such claims may thus target "'loss of good-time credits, revocation of parole[,] or similar matters.'" *Galanti*, 65 F.4th at 1156; *compare Edwards v. Balisok*, 520 U.S. 641 (1997) (barring a *current* prisoner from using § 1983 to challenge the deprivation of good-time credits). And those claims survive in the Ninth Circuit on two conditions: (a) the prisoner does not challenge his conviction or underlying sentence, and (b) he "timely" pursues habeas relief. *Galanti*, 65 F.4th at 1156.

That rule allowed the prisoner in *Galanti* to survive a motion to dismiss his § 1983 claim. He claimed that "his sentence should have expired June 1, 2018," rather than "August 22, 2018"—all because the prison supposedly failed to give him credit for completing education courses, which would have bumped up his release date. *Id.* at 1153–54. The Ninth Circuit reversed the district court's dismissal of that claim. In particular, the Ninth Circuit emphasized that the prisoner

"challenges the deprivation of credit-deductions, not his underlying sentence." *Id.* at 1156. In addition, "to the extent" Ninth Circuit precedent "imposes a diligence requirement," the court determined that the prisoner "had little time to obtain habeas relief"—"only a few months." *Id.* The Ninth Circuit also stated that any such habeas petition "would have been dismissed as moot" since his sentence likely would have "expired during the pendency of his case." *Id.* And the Ninth Circuit observed that the prisoner allegedly "made complaints and took other efforts to rectify the situation while in custody." *Id.* For all these reasons, the Ninth Circuit concluded that "*Heck* does not bar this suit." *Id.*

Galanti points in opposite directions for McNeal's fate. On one hand, the Ninth Circuit would agree with the Fifth Circuit that McNeal's challenge to the validity of his confinement beyond his release date does not implicate *Preiser*/*Heck*. But, unlike in *Galanti*, it is undisputed here that McNeal could have sought (and obtained) administrative and habeas relief—*i.e.*, immediate release—but he did not do so. So, McNeal would either lose his claim in the Ninth Circuit (splitting with the Fifth and Seventh Circuits), or he would present a close call on habeas availability and diligence in custody (again splitting with the Fifth and Seventh Circuits, which take none of that into account).

Tenth Circuit. In the Tenth Circuit, McNeal would simply lose. The Tenth Circuit adopts the general rule that "*Heck* does not apply when a plaintiff has no available habeas remedy, but the plaintiff must show that the lack of a habeas remedy is 'through no lack of diligence on his part.'" *Kilman*, 831 F. App'x at

398 (quoting *Cohen*, 621 F.3d at 1317). And that rule dictates the fate of claims like McNeal's. In *Kilman*, the prisoner claimed "he was deprived of 56 months of statutory good-time and earned-time credits," which resulted in him being confined beyond his proper release date. *Id.* at 397. Like McNeal and the Fifth Circuit, he insisted that "*Heck* does not apply to his action because he did not seek to invalidate either his convictions or his sentences but only the manner in which his sentences were imposed." *Id.*

The Tenth Circuit rejected this argument. The Tenth Circuit emphasized that "the Supreme Court has made clear that under its precedent, including *Heck*, a writ of habeas corpus is the sole federal remedy in cases where a state prisoner seeks any relief, damages or otherwise, that would 'necessarily demonstrate the invalidity of confinement or its duration.'" *Id.* at 398 (quoting *Wilkinson*, 544 U.S. at 82). And the court reasoned that a judgment stating that prison officials "held [the prisoner] longer than they should have" would "necessarily demonstrate that the duration of [his] confinement was invalid." *Id.* "Accordingly, to obtain federal relief, [he] had to pursue a writ of habeas corpus." *Id.* But that he is where he ran aground: He never sought habeas relief, much less did so diligently. "The only statement in [his] appellate brief that could be construed as relevant to the *Cohen* exception is his claim that he was simply unaware of the CDOC's 'corrupt time-computation practices until he had already [been] discharged.'" *Id.* But that "lack of awareness … show[ed] nothing more than a lack of diligence in filing any habeas petitions during his incarcerations." *Id.* And that spelled the end of his § 1983 claim. *Id.*

McNeal's claim would meet the same demise in the Tenth Circuit. That court would say that a judgment stating prison officials "held [McNeal] longer than they should have" would "necessarily demonstrate that the duration of [his] confinement was invalid," thus implicating *Preiser*/*Heck*. *Id.* And because McNeal undisputedly did not avail himself of administrative and habeas relief while in custody, the Tenth Circuit's *Cohen* cases would bar his § 1983 claim.

Eleventh Circuit. Finally, in the Eleventh Circuit, McNeal would either lose or present a close call. In *Morrow*, 610 F.3d 1271, the Eleventh Circuit considered a prisoner's claim[3] for "damages for about ten days of allegedly unjustified incarceration beyond the end of his lawful sentence." *Id.* at 1272. The Eleventh Circuit saved it from dismissal it in two short sentences: "[W]e do not understand *Heck*'s rule to extend to a case like this one: where Plaintiff is not in custody and where Plaintiff's action—even if decided in his favor—in no way implies the invalidity of his conviction or of the sentence imposed by his conviction." *Id.* If the opinion stopped there, it would align with the Fifth and Seventh Circuits. But the Eleventh Circuit went on to say that "[t]his case is one in which the alleged length of unlawful imprisonment—10 days—is obviously of a duration that a petition for habeas relief could not have been filed and granted while Plaintiff was unlawfully in custody." *Id.*; *see also id.* n.* (caveat noting that "[w]e say nothing about potential cases in

[3] The damages claim arose under the Federal Tort Claims Act rather than § 1983, but the Eleventh Circuit assumed *arguendo* that *Preiser*/*Heck* extends to claims under the Act. *Id.* at 1272.

which ample time was available, although the law might ultimately not turn on that circumstance").

Morrow appears to hold (as the Fifth and Seventh Circuits do) that claims like McNeal's are wholly exempt from *Preiser*/*Heck*. But it is not clear that the Eleventh Circuit would go that far. One reason is *Morrow* is limited to cases in which "a petition for habeas relief could not have been filed and granted while Plaintiff was unlawfully in custody," *id.* at 1272—a condition that does not exist here since McNeal could have sought administrative and habeas relief (and thus release) while in custody. Another reason is Judge Anderson specially concurred to emphasize that any exception to *Preiser*/*Heck* extends only to "plaintiffs that are no longer in custody and who, despite due diligence, could not have obtained habeas corpus relief"—a condition satisfied in *Morrow* because the plaintiff alleged that he discovered the constitutional error only "two days before his release." *Id.* at 1274 (Anderson, J., specially concurring). Again, that compressed timeframe does not exist here.

In the Eleventh Circuit, therefore, it is unclear how McNeal's claim would fare—and that ambiguity underscores the broader confusion among the circuits.

C. The Third and Eighth Circuits Bar Such Claims.

On the far side of the ledger, the Third and Eighth Circuits make quick work of claims like McNeal's: They simply reject them across the board under *Preiser*/*Heck*, regardless of the availability (or not) of habeas relief while the prisoner was in custody.

Third Circuit. The Third Circuit takes the hardest line. In a series of decisions, the Third Circuit has reasoned that "*Heck* applie[s] across the board," which means "that 'a § 1983 remedy is not available to a litigant to whom habeas relief is no longer available.'" *Deemer*, 557 F. App'x at 166 (cleaned up) (citing *Williams*, 453 F.3d 173; *Gilles*, 427 F.3d 197). Across these decisions, the Third Circuit does not "find at all salient the reason why the § 1983 claimant could not access the federal courts' habeas corpus jurisdiction." *Id.* at 167. Thus, the Third Circuit "see[s] no cause to distinguish" between § 1983 plaintiffs "who seem to have voluntarily relinquished the ability to launch a federal habeas challenge" (such as those who "sat on [their] habeas rights") and those "who arguably lacked access to federal habeas relief solely due to the short duration of [their] confinement." *Id.* & n.4. Each plaintiff is out of § 1983 luck.

That baseline rule is fatal for claims like McNeal's, as *Deemer* itself illustrates. Similar to McNeal, the § 1983 plaintiff there "alleg[ed] that he was confined for a year and a day beyond the date on which his prison sentence should have expired." *Id.* at 163. He claimed that he failed to receive time served and, "while in prison, he directed correspondence to various agencies and individuals, explaining that he had served his full sentence and asking to be released." *Id.* at 164. Like McNeal, that plaintiff "filed this § 1983 action for damages following his release," having never sought habeas relief. *Id.* But the Third Circuit quickly affirmed the dismissal of his claim, adding that *Preiser*/*Heck* unquestionably cover "individuals who had access to federal habeas relief" (like McNeal) as well as those who did not. *Id.* at 166–67 & n.5.

McNeal's claim would thus meet the same fate in the Third Circuit. *See also Glenn v. Pa. Bd. of Prob. & Parole*, 410 F. App'x 424, 426 (3d Cir. 2011) (per curiam) ("Were we to agree with [the prisoner] that he has been imprisoned beyond the expiration of his sentence, that would necessarily imply that the Par[o]le Board has incorrectly determined his release date or has failed to timely release him. Because no court has so held, [the prisoner's] action is barred by *Heck*."); *Dare v. United States*, 264 F. App'x 183, 184 (3d Cir. 2008) (same as to claim that prisoner "was confined in prison more than 20 months past his parole eligibility date").

Eighth Circuit. The Eighth Circuit takes a similarly strong view. In *Entzi*, 485 F.3d 998, the Eighth Circuit confronted a prisoner's § 1983 claim that "the loss of [] credits extended his term of imprisonment by more than a year." *Id.* at 1003. He could have obtained relief during his incarceration "by petitioning for a writ of habeas corpus." *Id.* But he "argue[d] that because the writ of habeas corpus is no longer available to him on a claim challenging the length of his imprisonment, *Heck* does not bar his § 1983 suit against the prison officials." *Id.* The Eighth Circuit nonetheless dismissed the prisoner's claim, citing this Court's statement that *Preiser*/*Heck* are "not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." *Id.* (quoting *Heck*, 512 U.S. at 490 n.10); *see also Marlowe v. Fabian*, 676 F.3d 743, 744, 746–47 (8th Cir. 2012) (holding that § 1983 claim that prison officials "[u]nlawfully imprison[ed] [a prisoner] 375 days beyond the date on which he became eligible for supervised release" is barred by *Preiser*/*Heck*).

In a subsequent decision, moreover, the Eighth Circuit underscored that *Entzi* is "not" limited to plaintiffs who "fail[ed] to pursue habeas relief while incarcerated." *Newmy v. Johnson*, 758 F.3d 1008, 1011 (8th Cir. 2014). In that case, the prisoner "attempt[ed] gamily to distinguish *Entzi* by suggesting that the decision is limited to circumstances in which an individual could have accessed federal habeas but failed to do so." *Id.* But the Eighth Circuit said no, confirming that no matter how diligent (or not) a prisoner is in seeking relief while in custody, a challenge to confinement as in *Entzi* cannot properly be brought under § 1983.

As in the Third Circuit, therefore, McNeal's § 1983 claim would be dead on arrival in the Eighth Circuit.

* * *

In short, McNeal's claim would be dismissed outright in the Third, Eighth, and Tenth Circuits. But he would survive a motion to dismiss in the Fifth and Seventh Circuits, and potentially in the Ninth and Eleventh Circuits as well. That nationwide conflict is clear and it cries out for this Court's review.

II. THE FIFTH CIRCUIT'S VIEW IS WRONG.

The Fifth Circuit also is profoundly wrong to hold that *Preiser*/*Heck* have "no place," *Hicks*, 81 F.4th at 506, where prisoners expressly challenge the validity of their confinement beyond their alleged release dates.

First, the Fifth Circuit misunderstands *Preiser*/*Heck*. Its cases rest on an artificial conception of *Preiser*/*Heck*: that those decisions govern only chal-

lenges to the validity of a prisoner's conviction or sentence. And the Fifth Circuit solemnly repeats its incantation that prisoners like McNeal "do[] not challenge the validity" of their convictions and sentences and thus do not implicate *Preiser*/*Heck*. *Hicks*, 81 F.4th at 506.

But habeas corpus is about freeing the body from confinement—whether that confinement is judicially authorized or not. Indeed, this Court has emphasized that an "attack[] [on] the very duration of physical confinement … lies at the core of habeas corpus." *Wilkinson*, 544 U.S. at 79 (cleaned up). And that is true "no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)." *Id.* at 82. In cases like McNeal's, it is the prison's internal processes that the plaintiffs target to challenge the duration of their physical confinement—and that brings them squarely within *Preiser*/*Heck*.

Second, the Fifth Circuit's election-of-remedies regime makes a mockery of basic litigation rules and this Court's precedents. *See* App.16 (Jones, J., concurring) ("*Heck* imposes [a] duty to mitigate such that any overdetained prisoner must seek habeas relief at the earliest possible opportunity…. This court should not enable overdetained prisoners to neglect their obligation to seek habeas relief and instead bypass that remedy in order to pursue Section 1983 damages by filing for the wrong type of relief in the wrong court at the wrong time."); App.93 (Oldham, J., dissenting from the denial of rehearing en banc) (Fifth Circuit precedent "effectively hold[s] that the federal habeas statute and § 1983 offer prisoners like McNeal an election of remedies: The former allows prisoners to get out of

jail, while the latter allows prisoners to stay in jail and then sue for compensation later.").

As McNeal told the Fifth Circuit, habeas relief was the available and proper remedy while he was in custody. C.A. Appellee's Br. at 24 ("[I]f you are currently in prison past the end of your sentence and your goal is to get released, that is [] habeas—because you are trying to get your body out of prison."); C.A. Oral Arg. at 25:03–07 ("That's right. Habeas is the remedy to get you out."). And "[a]ll also agree, of course, that McNeal has *zero* remedy under § 1983" during his custody. App.98 (Oldham, J., dissenting from the denial of rehearing en banc). It thus "turns" this Court's cases "upside down to say that McNeal's world flips on Day 42 (the day of his release)—such that he then had zero habeas remedy but limitless § 1983 remedies." *Id.*

And yet, that is McNeal's (and the Fifth Circuit's) unabashed position: Once "you are a free person and wish to sue for damages for the period you were overdetained," "then Section 1983 is your procedural vehicle." C.A. Appellee's Br. at 24. But that is not how the law works. It is backwards to allow, as the Fifth Circuit does, a prisoner to "sleep on his rights until his (ostensible) release date passes" and then, "voila—the prisoner is no longer forced to choose the specific habeas remedy over the general § 1983 remedy." App.101 (Oldham, J., dissenting from the denial of rehearing en banc).

After all, this would never fly in ordinary civil litigation. As Judge Jones noted, "[i]t is well established in civil cases that litigants have a duty to mitigate their damages after an injury occurs." App.16 (Jones, J., concurring). Why not here?

What is more, the election of remedies allows prisoners to circumvent this Court's own precedents. Take *Edwards v. Balisok*: There, the Court barred a current prisoner from using § 1983 to challenge the deprivation of his good-time credits; that is the stuff of habeas. 520 U.S. at 647–48. So long as the prisoner bides his time, however, he can just bring his § 1983 challenge to the deprivation of good-time credits *after* his release. That is the Ninth Circuit's precise view notwithstanding that *Edwards* bars such a claim while the prisoner is in custody. *See Galanti*, 65 F.4th at 1155–56 (acknowledging *Edwards*'s holding, but permitting the otherwise-barred § 1983 claim so long as the prisoner has been released). The message that the Fifth, Seventh, and Ninth Circuit precedents send to this Court? "What chumps!" *Arizona State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 825 (2015) (Roberts, C.J., dissenting).

Finally, the Fifth Circuit's rule abridges the "federal-state comity" that *Preiser* sought to protect. 411 U.S. at 491. Throughout that decision, this Court emphasized that "[t]he strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct its own errors thus also require giving the States the first opportunity to correct the errors made in the internal administration of their prisons." *Id.* at 492. Indeed, "because most potential litigation involving state prisoners arises on a day-to-day basis, it is most efficiently and properly handled by the state administrative bodies and state courts, which are, for the most part, familiar with the grievances of state prisoners and in a better physical and practical position to deal with those grievances." *Id.* And the Court minced no words:

"[T]he States have an important interest in not being bypassed in the correction of those problems." *Id.*

But the Fifth Circuit's election-of-remedies regime allows the exact opposite. It incentivizes prisoners like McNeal to bypass available administrative and habeas relief so that they can cash in under § 1983 after their release. Federal-state comity means nothing if prisoners can dodge State and federal habeas relief altogether in hopes of money damages under § 1983.

With all due respect to the Fifth Circuit, it seriously misapprehends *Preiser*/*Heck* and it has done lasting damage to this Court's cases.

III. THE ISSUE PRESENTED IS IMPORTANT.

The pressing importance of the issue presented is apparent from the foregoing discussion. It is principally important because courts all over the country frequently encounter claims by prisoners who complain about some period of incarceration that they believe was unlawful, wholly apart from what they perceive to be their lawful conviction and sentence. Just look at the numerous recent opinions throughout the courts of appeals that comprise the circuit split. *See supra* Section I. This issue arises again and again. And regardless of how this Court resolves the question presented, a serious number of the courts of appeals are currently applying the wrong legal standard every time the issue arises. That problem requires correction now.

The issue also is critically important to the State of Louisiana. As the Fifth Circuit has observed, these kinds of claims have "plagued" courts within the Fifth Circuit for years—and there seemingly is no end to the

onslaught. Indeed, the two pending putative class actions, which have been stayed for this petition, are a clear example of the potentially sweeping damage from the Fifth Circuit's underruling of *Preiser*/*Heck*. *See supra* at 8–9. By denying en banc review of this issue, the Fifth Circuit has entrenched its position, thereby ensuring—absent this Court's intervention—that both the Fifth Circuit and Louisiana will be forced to continue to process § 1983 claims that never should have made it past the motion-to-dismiss stage.

The monetary implications of this issue, too, are extraordinarily important for every State and municipality. Section 1983 is alluring because it offers what habeas does not: compensatory and punitive damages, plus attorney's fees. The Fifth Circuit's rule thus entices prisoners to ride out an alleged constitutional violation in exchange for money. That incentive is perverse in itself, because the law should incentivize all relevant actors to immediately *resolve* alleged constitutional violations, not *tolerate* them. But more fundamentally, the risk of monetary liability—by settlement or final judgment—sows deep uncertainty in States' and municipalities' expectations about the proper remedy for challenges to confinement. They need, and deserve, clarity on the proper mechanism for resolving such challenges.

Finally, the differential treatment of this issue across the country is deeply important to prisoners, States, and municipalities alike. If the Fifth and Seventh Circuits are correct, then prisoners in the Third, Eighth, Ninth, Tenth, and Eleventh Circuits are (a) outright losing claims that would survive in the Fifth and Seventh Circuits or at least (b) being subject

to heightened legal standards that are incorrect. So, too, States and municipalities in the Fifth and Seventh Circuits are forced to litigate claims that would not survive motions to dismiss in the Third, Eighth, Ninth, Tenth, and Eleventh Circuits. And all this is due to the fortuity of happening to be in an unfavorable circuit. That arbitrary and differential treatment across the country is unfair to everyone involved. And for that additional reason it is imperative that this Court definitively resolve the issue once and for all.

IV. THIS IS AN IDEAL VEHICLE.

Last, this is an excellent vehicle to resolve the important circuit split outlined above. The Fifth Circuit squarely decided the issue presented, reinforcing that all future Fifth Circuit panels are "bound" to follow suit. App.7. And again, with the 8-9 denial of rehearing en banc, the Fifth Circuit has confirmed that its erroneous view is now set in stone absent this Court's intervention.

In addition, it bears noting that this petition avoids the mismatch issue in the *Galanti* petition. *See* Pet. for Writ of Cert., *Nevada Dep't of Corr. v. Galanti*, No. 23-186 (U.S.). There, the petitioners framed the question presented in terms of whether *Preiser*/*Heck* bars § 1983 claims by prisoners who are no longer in custody. *Id.* at i. That is a valid question—and there is a circuit split on it, as the *Galanti* petition detailed. In fact, the Fifth Circuit currently is considering that question en banc, at least as to a plaintiff who allegedly could not have discovered the basis of her constitutional claim while she was in custody. *See Wilson v. Midland Cnty., Tex.*, 89 F.4th 446 (5th Cir. 2023), *reh'g en banc granted* 92 F.4th 1150 (5th Cir. 2024).

But that is not the key question in cases like this one. The key question is instead an antecedent one: Does a prisoner's challenge to his confinement beyond a release date implicate *Preiser*/*Heck* in the first place? The Fifth and Seventh Circuits say no because the prisoner does not challenge his conviction or sentence, which means those courts never get to the question whether a former prisoner's non-custodial status affects his ability to bring a § 1983 claim. Indeed, that is exactly how the district court sidestepped the custody issue in this case. *See* App.73–76 n.3. And notably, McNeal did not preserve an argument that his non-custodial status alone entitles him to sue under § 1983. That is because binding Fifth Circuit precedent (unless reconsidered in *Wilson*) expressly forecloses that argument. *See Randell v. Johnson*, 227 F.3d 300 (5th Cir. 2000). Whatever the outcome in *Wilson*, therefore, McNeal's fate in this appeal rises and falls with his (and the Fifth Circuit's) deeply misguided claim that his challenge to confinement beyond his release date does not implicate *Preiser*/*Heck* at all.

By focusing on the circuit split specifically involving prisoners' challenges to confinement beyond their release dates, therefore, this petition presents a pristine vehicle.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-30180

[Filed January 5, 2024]

BRIAN MCNEAL,
Plaintiff—Appellee,

versus

JAMES LEBLANC,
Defendant—Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:18-CV-736

Before JONES, STEWART, and DUNCAN, *Circuit Judges*.

PER CURIAM:

We face another suit against a Louisiana official for overdetention, "now a euphemism for prisoners illegally incarcerated beyond the terms of their sentence." *Hicks v. LeBlanc*, 81 F.4th 497, 500 (5th Cir. 2023). Pursuant to 42 U.S.C. § 1983 and state law, Brian McNeal sued Louisiana Department of Public Safety and Corrections ("DPSC") Secretary James

LeBlanc in his individual capacity for wrongfully detaining McNeal 41 days after his sentence expired. The district court denied LeBlanc's motion to dismiss premised on qualified immunity. Following our precedent, we AFFIRM.

I.

A.

McNeal pled guilty of possessing cocaine and drug paraphernalia in 2015.[1] The Orleans Parish Criminal District Court sentenced him to a five-year suspended sentence, with five years of probation. In 2017, McNeal was arrested for violating probation. His probation was revoked, and on August 3, 2017, he was sentenced to serve 90 days at the Steve Hoyle Program ("Hoyle")—an in-patient substance abuse program at the Bossier Parish Correctional Center. A few days later, the DPSC generated a release letter that set McNeal's release date as November 1, 2017. A DPSC employee, anticipating his eventual transfer, sent the release letter to Hoyle.

Rather than transfer him directly to Hoyle, however, DPSC directed the Orleans Sheriff to transfer McNeal to the Elayn Hunt Correctional Center ("Hunt"), where McNeal would be classified before enrolling in Hoyle. While at Hunt, authorities determined McNeal was unfit for Hoyle due to a mental impairment. So, McNeal remained at Hunt and was

[1] The facts are taken from the allegations in McNeal's complaint, which we accept as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

never transferred to Hoyle. But his release letter remained at Hoyle, and no DPSC official took steps to ensure the letter made its way to Hunt.

McNeal was not released on November 1, 2017. Sometime thereafter, his girlfriend called the New Orleans Probation and Parole Office, asking why he had not been released. On November 15, 2017, McNeal wrote the Hunt warden, complaining he had not yet been taken to court and released. The warden's office responded: "If your presence was required in court, the proper documents would have been sent for you to be transported."

On December 6, 2017, after his girlfriend's further inquiry, McNeal's probation officer and lawyer investigated the situation. Realizing McNeal's release date had passed, his probation officer notified DPSC. On December 11, 2017, a DPSC employee emailed McNeal's release letter to Hunt, stating, "This is your authority to release the offender on 11/01/2017, as having completed said sentence that was imposed at the time of revocation." The email explained that DPSC thought McNeal was at a different facility. McNeal was released on December 12, 2017, 41 days after his proper release date.

B.

In 2018, McNeal sued LeBlanc and other Louisiana officials in state court. The defendants removed the case to federal court. In 2020, the federal district court granted McNeal's motion for partial summary judgment but denied the defendants' summary judgment motion. In that order, the court ruled that

McNeal's overdetention claims were not barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

A month later, the district court granted McNeal's motion to amend his complaint. McNeal's first amended complaint, the district court found, "failed to state a viable claim of supervisor liability against LeBlanc." But the court again granted McNeal leave to amend, and McNeal filed a second amended complaint (the operative complaint) against LeBlanc and others. In this complaint, McNeal sued LeBlanc for false imprisonment, negligence, violation of his Fourteenth Amendment due process rights, violations of the Louisiana Constitution, violations of *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and failure to train or supervise. McNeal sought declaratory relief, compensatory and punitive damages, and attorney fees.

McNeal alleges that, in 2012, DPSC performed an internal review called the "Lean Six Sigma," examining how long it took to calculate prisoner release dates. The review was "champion[ed]" by LeBlanc, who had been DPSC Secretary since 2008. Lean Six Sigma "found a widespread pattern of people being held past their legal release date," with 83% of DPSC prisoners being overdetained. The review determined that, on average, inmates were held 71.69 days past their release dates. After learning of the issue, LeBlanc set the goal to detain "450 persons per year, for an average of 31 days per person." LeBlanc's changes reduced the number of overdetained persons from "2,252 per year to 1,612, and the average number of overdue days was reduced from 71.7 to 60.52 days." Despite these efforts, LeBlanc

conceded that "the 'functional processes' around the transmission of documents" at the DPSC "remain as antiquated as they were in 1996."

Even after the Lean Six Sigma review, overdetention issues persisted. For example, four DPSC employees testified in a 2015 state case, *Chowns v. LeBlanc*, La. 37th JDC 26-932, that DPSC employees were well aware of prisoner overdetention. In 2017, a report by the Louisiana Legislative Auditor documented DPSC's problems calculating and processing prisoners' release dates. DPSC itself conducted an internal review, which "confirmed that the pattern of overdetention it learned about in 2012" from Lean Six Sigma "was ongoing." In a grant application to the U.S. Department of Justice, DPSC disclosed that in 2017 it "had an average of 200 cases per month considered an 'immediate release' due to [processing] deficiencies," and the prisoners in these cases "were held an 'average of 49 days past the end of their sentences.'" In 2018, then-Louisiana Attorney General Jeff Landry wrote an op-ed with U.S. Senator John Kennedy, stating there was "a layer of incompetence so deep that the Corrections Department doesn't know where a prisoner is on any given day of the week or when he should actually be released from prison."

McNeal further alleges that LeBlanc knew overdetention issues still plagued the DPSC as of November 2017. Specifically, after Lean Six Sigma, LeBlanc learned that thousands of people in the custody of DPSC "were being held past their release date." LeBlanc also admitted that, even after the

changes he instituted, the DPSC "still had 'people being held an average of about two months past their release date.'" Yet, LeBlanc never fired, demoted, penalized, or reprimanded anyone for holding inmates past their release dates. Between 2012 and 2017, multiple officials reached out to LeBlanc about overdetained prisoners. LeBlanc was also personally involved in "the back-and forth with the auditor," which eventually led to the 2017 Louisiana Legislative Audit.

LeBlanc moved to dismiss McNeal's second amended complaint for failure to state a claim, arguing he enjoyed qualified immunity. The district court denied LeBlanc's motion to dismiss. LeBlanc now appeals, arguing that (1) *Heck* bars McNeal's claims and (2) the district court erred by denying him qualified immunity.

II.

We have jurisdiction to review by interlocutory appeal the denial of a motion to dismiss based on qualified immunity. *Ramirez v. Escajeda*, 921 F.3d 497, 500 (5th Cir. 2019). We review such denials *de novo*, "accepting all well-pleaded facts as true and viewing them in the light most favorable to the plaintiff." *Brown v. Miller*, 519 F.3d 231, 236 (5th Cir. 2008). On interlocutory appeal, "our review is restricted to determinations of questions of law and legal issues." *Ramirez*, 921 F.3d at 500 (citation and internal quotation marks omitted). In this posture, we review only "whether the facts pleaded establish a violation of clearly-established law." *Id.* at 501 (quoting *Ashcroft*, 556 U.S. at 673) (cleaned up).

III.

A.

We first address whether McNeal's claims are barred under *Heck*. LeBlanc frames McNeal's challenge as to both the validity and the duration of his sentence. McNeal counters that *Heck*'s bar does not apply because he merely challenges his overdetention, not the underlying conviction or sentence. Following our recent caselaw, we are bound to agree with McNeal.

In *Hicks*, we held that *Heck* does not bar claims by an overdetained prisoner who "does not challenge the validity of his sentence, [but] merely the *execution* of his release." *Hicks*, 81 F.4th at 506; *see also Crittindon v. LeBlanc*, 37 F.4th 177, 190 (5th Cir. 2022) ("The *Heck* defense 'is not . . . implicated by a prisoner's challenge that threatens no consequence for his conviction or the duration of his sentence.'" (quoting *Muhammad v. Close*, 540 U.S. 749, 751 (2004))), *cert. denied*, 144 S. Ct. 90 (2023). Thus, "*Heck* is no bar" where success on a § 1983 claim is based on the period a prisoner "was held beyond his original sentence [because] it would not invalidate the conviction or its attendant sentence." *Hicks*, 81 F.4th at 506. Such is the case here, where McNeal does not challenge his conviction or attendant sentence, but rather the 41 days he was imprisoned *beyond* his release date. Accordingly, *Heck* raises no bar to McNeal's claims against LeBlanc based on his alleged overdetention.

B.

LeBlanc also raises a qualified immunity argument similar to those we have rejected in prior DPSC

overdetention cases. LeBlanc argues he enjoys qualified immunity because McNeal fails to allege a pattern of similar overdetentions at DPSC. We have already addressed this argument based on almost identical allegations made in *Parker v. LeBlanc*, 73 F.4th 400 (5th Cir. 2023). We held there, as we are bound to hold here, that the overdetained prisoner alleged a pattern of similar violations at the DPSC sufficient to deny LeBlanc qualified immunity at the motion to dismiss stage. *See id.* at 406.

Qualified immunity protects public officials from liability if "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) (citation omitted). To overcome qualified immunity, the plaintiff must allege facts showing (1) "a violation of a constitutional right," and (2) that "the right at issue was 'clearly established' at the time of defendant's alleged misconduct." *Id.* at 232. A right is clearly established if "it would be clear to a reasonable official that his conduct was unlawful in the situation he confronted." *Porter v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011) (alteration adopted) (citation omitted).

1.

At prong one, we ask whether McNeal has alleged facts showing a Fourteenth Amendment violation. 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. Our precedent establishes, accordingly, "that a jailer has a duty to ensure that inmates are timely released from

prison." *Porter*, 659 F.3d at 445. Relevant to LeBlanc's liability, we recently "held that 'it is without question that holding without legal notice a prisoner for a month beyond the expiration of his sentence constitutes a denial of due process.'" *Parker*, 73 F.4th at 404 (quoting *Crittindon*, 37 F.4th at 188); *see also Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980) ("Detention of a prisoner thirty days beyond the expiration of his sentence in the absence of a facially valid court order or warrant constitutes a deprivation of due process."). McNeal alleges that LeBlanc, as DPSC Secretary, violated his Fourteenth Amendment rights.

It is black-letter law, however, that § 1983 does not create *respondeat superior* liability. *Jason v. Tanner*, 938 F.3d 191, 197 (5th Cir. 2019) (citing *Monell*, 436 U.S. at 694–95). That being said, a supervisory official may, in limited circumstances, be liable under § 1983 for failure to train or to adopt policies if a plaintiff shows (1) the supervisor "failed to train the officers involved," (2) "that failure to train . . . caused the violation of the plaintiff's rights," and (3) "the failure to train . . . constituted deliberate indifference." *Id.* at 196.

Supervisory officials are deliberately indifferent if they retain a program for which they are on "notice that a particular omission in their training program causes [their] employees to violate citizens' constitutional rights." *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Ordinarily, to show deliberate indifference, a plaintiff must point to "[a] pattern of similar constitutional violations by untrained employees." *Id.* at 62. Constitutional violations must be

"very similar" to "jointly form a pattern." *Jason*, 938 F.3d at 198 (citing *Connick*, 563 U.S. at 62).

In *Parker*, we held that LeBlanc's knowledge of three facts put him on notice of "a pattern of similar constitutional violations by untrained employees." *Parker*, 73 F.4th at 405. In *Parker*, the plaintiff alleged that, in September 2017, a DPSC employee improperly labeled him a sex offender. *Id.* at 402. This error caused the plaintiff, who should have been released on October 9, 2017, to remain incarcerated until September 10, 2018. *Id.* at 402–03. The plaintiff alleged LeBlanc knew about the following:

> (1) an October 2017 legislative audit report on the Louisiana DPSC entitled "CFE Management of Offender Data: Processes for Ensuring Accuracy Department of Corrections"; (2) a 2018 editorial by Senator John Kennedy and Attorney General Landry entitled, "Criminal Justice Reform Actually Hurting Public Safety," published in the newspaper "The Advocate"; and (3) testimony by DPSC employees admitting to rampant over-detention in a similar suit in Louisiana state court, *Chowns v. LeBlanc*, La. 37th JDC 26-932.

Id. at 405. Relying on *Crittindon*, we held these allegations demonstrated LeBlanc's notice of a pattern of similar overdetentions to survive prong one of qualified immunity at the motion to dismiss stage. *Ibid.*

We are faced with two of the same relevant factual allegations made in *Parker*, and more.[2] Like the plaintiff there, McNeal alleges that LeBlanc knew about the October 2017 legislative audit and testimony by DPSC employees in *Chowns v. LeBlanc*, La. 37th JDC 26-932, admitting to rampant overdetention. McNeal also alleges LeBlanc had intimate knowledge about the results from the Lean Six Sigma report before McNeal's overdetention occurred. Finally, McNeal alleges that before 2017, multiple public officials reached out to LeBlanc regarding overdetained prisoners. The *Parker* panel found fewer allegations sufficient to establish LeBlanc's knowledge of a pattern of overdetention. We are thus bound under the rule of orderliness to find McNeal's more numerous allegations sufficient to show deliberate indifference and to survive prong one of qualified immunity. *See ibid.*; *see also United States v. Traxler*, 764 F.3d 486, 489 (5th Cir. 2014).

2.

At prong two, we ask whether McNeal's right was clearly established at the time of LeBlanc's alleged deliberate indifference. We determine "what constitutes clearly established law" by "first look[ing] to Supreme Court precedent and then to our own." *Shumpert v. City of Tupelo*, 905 F.3d 310, 320 (5th Cir. 2018). The touchstone at this prong is "fair warning" to

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[2] While McNeal also alleges LeBlanc knew about the 2018 Kennedy-Landry editorial, that knowledge is not relevant to LeBlanc's liability in this case. According to McNeal's complaint, the op-ed was not published until 2018, after McNeal's November 2017 overdetention and December 2017 release.

the official "that his conduct deprived his victim of a constitutional right." *Hope v. Pelzer*, 536 U.S. 730, 740 (2002). In other words, the law can be clearly established "despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights." *Ibid.* We must determine, accordingly, "whether it would be clear to a reasonable official that his conduct was unlawful in the situation he confronted." *Porter*, 659 F.3d at 445 (alteration adopted) (citation omitted).

We held in *Parker* that by the fall of 2017 our law was "clear that a jailer like LeBlanc ha[d] a duty to ensure inmates [were] timely released from prison." 73 F.4th at 407 (citation omitted). At the time of the overdetention in *Parker*, there was "sufficient clearly established law regarding the constitutional right to a timely release from prison." *Id.* at 408. LeBlanc therefore had "fair warning that his failure to address" overdetention at the DPSC "would deny prisoners . . . their immediate or near-immediate release upon conviction." *Ibid.* (cleaned up) (quoting *Crittindon*, 37 F.4th at 188). LeBlanc's alleged deliberate indifference thus violated the prisoner's clearly established right to a timely release. *Ibid.*

Parker constrains us to reach the same result in this case. McNeal's alleged overdetention occurred in the fall of 2017, the same period the overdetention occurred in *Parker*. As in *Parker*, LeBlanc at that point had "fair warning that his failure to address" rampant overdetention in the DPSC "would deny prisoners like

[McNeal] their immediate or near-immediate release upon conviction." *Ibid.* (cleaned up) (quoting *Crittindon*, 37 F.4th at 188). Therefore, we are bound to follow that panel's decision at prong two of qualified immunity. *See Traxler*, 764 F.3d at 489.

Accordingly, under our precedents, the district court did not err in denying LeBlanc qualified immunity at this stage.

IV.

The district court's judgment is AFFIRMED.

EDITH H. JONES, *Circuit Judge*, concurring:

I concur that our precedent currently requires that Secretary LeBlanc be denied qualified immunity. *See Parker v. LeBlanc*, 73 F.4th 400 (5th Cir. 2023); *Crittindon v. LeBlanc*, 37 F.4th 177 (5th Cir. 2022), *cert. denied*, --- S. Ct. --- (2023). I further agree with Judge Duncan's special concurrence advocating en banc review of this "mistaken" precedent, which "makes LeBlanc answerable for the errors of subordinates, creating vicarious liability in contravention of *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018 (1978), and *Connick v. Thompson*, 563 U.S. 51, 131 S. Ct. 1350 (2011)." In this case, for instance, there is nothing at all to connect LeBlanc with the events that resulted in McNeal's overdetention.

But I also write separately because McNeal's claims fail for an additional reason: they are barred by *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2394 (1994). Judge

Oldham explained in depth the reasons for *Heck* bar in *Crittindon v. LeBlanc*, as he stated "[b]oth the federal habeas statute, 28 U.S.C. § 2241, and the Civil Rights Act of 1871, 42 U.S.C. § 1983, create causes of action for prisoners with constitutional claims. But the remedies offered by those two statutes—and Congress's limitations on them—differ radically." 37 F.4th 177, 192 (5th Cir. 2022) (Oldham, J., dissenting). Specifically, "the habeas statute offers a singular equitable remedy: release from custody. But § 1983 goes further and *also* offers money damages and attorney's fees." *Id*. at 193 (citations omitted). Moreover, § 1983 "comes with none of" the "numerous severe limitations" that Congress has placed on federal habeas. *Id*. at 193, 192 (citing The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104–132, 110 Stat. 1214).

In *Heck*, the U.S. Supreme Court "recognized this 'potential overlap between' habeas and § 1983, and it cut off access to the latter in cases where the prisoner's claim sounds in the former." *Id*. at 193 (quoting *Heck*, 512 U.S. at 481, 114 S. Ct. at 2369–70). "The upshot is that, where a prisoner can obtain relief through habeas, he cannot sue under § 1983." *Id*. *Heck* built on the rule announced twenty years earlier in *Preiser v. Rodriguez*: "Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the terms of § 1983." 411 U.S. 475, 490–91, 93 S. Ct. 1827, 1836 (1973). The U.S. Supreme Court has repeatedly reaffirmed this principle, stating that "we have insisted that § 1983 contains an 'implicit

exception' for actions that lie 'within the core of habeas corpus.'" *Nance v. Ward*, 597 U.S. 159, 167, 142 S. Ct. 2214, 2221 (2022) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 79, 12 S. Ct. 1242, 1246 (2005)).

In this case, McNeal was released from custody 41 days late because the Louisiana Department of Public Safety and Corrections sent his release paperwork to the wrong facility. Thus, his case concerns a challenge to "the fact and length of his confinement." *Id.* "That means [his] *only* remedy lies in habeas. And the *Heck* doctrine plainly bars [him] from ignoring the specific terms of the habeas statute, which '*must* override the general terms of § 1983.'" *Crittindon*, 37 F.4th at 193 (quoting *Preiser*, 411 U.S. at 491, 93 S. Ct. at 1836).

But McNeal made no good faith efforts to seek state habeas relief. Unlike some of the *Crittindon* plaintiffs, who at least filed petitions for writs of habeas corpus in Louisiana state court, 37 F.4th at 194, McNeal never made any such filings. At most, he alleges that he "wrote a letter" to the warden of the facility where he was detained and spoke with some of the officers. These actions fall well short of a good faith effort to seek state habeas relief. Under *Heck*, only after McNeal successfully obtained such relief via a valid state court order declaring the confinement "invalid" could he state a claim under § 1983. 512 U.S. at 477, 114 S. Ct. at 2372.

Allowing McNeal and other "overdetention" plaintiffs to obtain § 1983 relief without requiring them to make even a good faith effort to obtain state habeas relief not only violates the unambiguous language of *Heck* and *Preiser*—as well as centuries of habeas

jurisprudence—, it yields perverse incentives for litigants as well. It is well established in civil cases that litigants have a duty to mitigate their damages after an injury occurs. *See, e.g.*, *Energy Intel. Grp., Inc. v. Kayne Anderson Capital*, 948 F.3d 261, 274 (5th Cir. 2020). In the criminal context, *Heck* imposes an analogous duty to mitigate such that any overdetained prisoner must seek habeas relief at the earliest possible opportunity.[1] State habeas, after all, comprises the most traditional and effective tool to obtain the equitable relief a prisoner ultimately seeks: release from custody. This court should not enable overdetained prisoners to neglect their obligation to seek habeas relief and instead bypass that remedy in order to pursue Section 1983 damages by filing for the wrong type of relief in the wrong court at the wrong time.

Louisiana has serially defaulted in its obligation to release prisoners on time. It is beyond this panel's purview to analyze, much less solve this critical problem. However, we should have demonstrated confidence in the state courts' ability, through habeas corpus, to resolve individual cases by remitting individuals like McNeal to the state court system for exhaustion of remedies. This seems to me, as to Judge Oldham, a classic situation that *Heck* intended to

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[1] Federal habeas relief is textually available to any federal or state prisoner who is "in custody" in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3). The definition of custody does not textually depend on the length or nature of the confinement. I assume state habeas statutes are similarly expansive. The Great Writ, after all, began with Magna Carta to limit the king's ability to imprison people.

address. We should revisit *Crittindon* en banc and overrule it.

STUART KYLE DUNCAN, *Circuit Judge*, concurring:

I concur in denying Secretary LeBlanc qualified immunity but only because our precedent requires that result. *See Parker v. LeBlanc*, 73 F.4th 400 (5th Cir. 2023); *Crittindon v. LeBlanc*, 37 F.4th 177 (5th Cir. 2022), *cert. denied*, 144 S. Ct. 90 (2023). Our precedent is mistaken, however. It makes LeBlanc answerable for the errors of subordinates, creating vicarious liability in contravention of *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), and *Connick v. Thompson*, 563 U.S. 51 (2011). To repair that far-reaching error, our court should rehear this case *en banc*.

We have had several overdetention cases involving DPSC and LeBlanc.[1] We will likely have many more. *See Hicks v. LeBlanc*, 81 F.4th 497, 510 (5th Cir. 2023) ("[O]ur Court remains plagued by claims arising from inexplicable and illegal over-detention in Louisiana

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[1] *See, e.g.*, *Hicks v. LeBlanc*, 81 F.4th 497 (5th Cir. 2023); *Parker*, 73 F.4th 400; *Crittindon*, 37 F.4th 177; *Frederick v. LeBlanc*, 2023 WL 1432014 (5th Cir. Feb. 1, 2023) (per curiam) (unreported) (vacating denial of qualified immunity where plaintiff alleged his release date was miscalculated); *Traweek v. LeBlanc*, 2022 WL 2315444 (5th Cir. June 28, 2022) (per curiam) (unreported) (vacating denial of summary judgment and remanding for further proceedings in light of *Crittindon* where plaintiff alleged DPSC and Orleans Parish improperly calculated time served credits); *Grant v. LeBlanc*, 2022 WL 301546 (5th Cir. Feb. 1, 2022) (per curiam) (unreported) (granting qualified immunity to LeBlanc where plaintiff alleged DPSC improperly placed a parole hold on him).

prisons[.]"). The question is not whether overdetention is a serious problem (it is) nor whether it should be fixed (it should). The question, instead, is about the proper remedy: whether LeBlanc, the head of a large and complex state agency, can be held personally liable under § 1983 for causing a prisoner's overdetention.

To answer that question, our circuit borrows the standard for finding a municipality liable under § 1983. *See, e.g.*, *Southard v. Tex. Bd. of Crim. Just.*, 114 F.3d 539, 551 (5th Cir. 1997) (noting "the close relationship between the elements of municipal liability and an individual supervisor's liability," and holding "the same standards of fault and causation should govern" (quotation omitted)). Under that framework, LeBlanc cannot be vicariously liable for an overdetention caused by a subordinate's error. *See Thompson v. Upshur County*, 245 F.3d 447, 459 (5th Cir. 2001). LeBlanc must have caused the overdetention himself. To establish that, one must show that LeBlanc's "deliberately indifferent" failure to train subordinates caused the overdetention. *See Jason v. Tanner*, 938 F.3d 191, 196 (5th Cir. 2019) (holding warden could be liable only if his deliberately indifferent failure to train "caused the violation of the plaintiff's rights").[2] And the

[2] True, there are other ways to make a supervisory official liable. One could show the violation was caused by an actual policy promulgated by the official or by the official's own policymaking decision. *See Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 407 (1997); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986); *Johnson v. Deep E. Tex. Reg'l Narcotics Trafficking Task Force*, 379 F.3d 293, 309 (5th Cir. 2004). But neither ground is alleged here. So, the only way to find LeBlanc liable is through a failure-to-train theory.

usual way of establishing failure-to-train liability is to show "[a] pattern of similar constitutional violations by untrained employees." *Connick*, 563 U.S. at 62.[3]

That's where the problem begins. The pattern requirement is critical because it keeps failure-to-train from collapsing into *respondeat superior*. *See Jason*, 938 F.3d at 197–98 (holding a pattern of "very similar" violations is required to avoid "pure *respondeat superior* liability under § 1983"); *cf. Connick*, 563 U.S. at 60 (warning against holding municipal governments "vicariously liable under § 1983 for their employees' actions"). The prior violations must be closely similar to the present one. Otherwise, a supervisor would not be on notice of a flaw in the agency's training program, nor would he have any idea how to change the training to fix the problem. *See Connick*, 563 U.S. at 62

Here, McNeal has sued LeBlanc under both failure-to-train and failure-to-supervise theories. I assume for present purposes those are distinct theories. But like failure-to-train, a failure-to-supervise claim must point to a "causal link" between a supervisor's failure to supervise, amounting to "deliberate indifference," and a subordinate's acts that "cause[d] plaintiff's constitutional injury." *Tuttle v. Sepolio*, 68 F.4th 969, 975 (5th Cir. 2023) (citation omitted). McNeal does not allege facts showing LeBlanc's individual failure to supervise led to this particular delayed release. I therefore only discuss whether McNeal sufficiently alleged a claim for failure to train.

[3] Yes, there's a rare alternative where a single incident is enough to show that a supervisor was deliberately indifferent. *See Connick*, 563 U.S. at 63 n.7 (discussing *City of Canton v. Harris*, 489 U.S. 378, 395 (1989) (O'Connor, J., concurring in part and dissenting in part)). But no one argues that unusual exception applies here.

("Without notice that a course of training is deficient in a particular respect, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights."). In other words, absent an alarm bell rung by a pattern, the supervisor's liability would depend solely on his subordinate's error, not on anything the supervisor himself failed to do. That is *respondeat superior* liability, and it is excluded in § 1983 claims. *See Monell*, 436 U.S. at 694–95.

The paradigm illustration of the pattern requirement comes from *Connick*, 563 U.S. 51. A line prosecutor violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose exculpatory evidence. Could the district attorney's office be liable for that misdeed because the office failed to properly train prosecutors on *Brady*? The answer turned on whether the office had a *pattern* of previous violations. Critically, though, it wasn't enough to say, "The office had past *Brady* violations." *Cf. Connick*, 563 U.S. at 62–63. The Supreme Court demanded more. Prior violations had to be specific enough to "put [the district attorney] on notice that the office's *Brady* training was inadequate *with respect to the sort of* Brady *violation at issue here*." *Id.* at 62 (emphasis added); *see also Jason*, 938 F.3d at 198 (holding no deliberate indifference where the specific kind of complained-of prison attack had not previously occurred).

Respectfully, our circuit has not correctly applied *Connick*'s pattern requirement in DPSC overdetention cases. Overdetentions occur for many reasons, as our cases show. A department employee may misclassify a

prisoner. *See Parker*, 73 F.4th at 402. Or an employee may fail to apply time-served credits. *See Hicks*, 81 F.4th at 501. Or an employee may misapply the law for calculating time-served credits. *See Taylor v. LeBlanc*, 68 F.4th 223, 225 (5th Cir. 2023), *withdrawn by* 2023 WL 4155921 (5th Cir. June 23, 2023). Or local jails may fail to timely transmit pre-classification paperwork to DPSC. *See Crittindon*, 37 F.4th at 183. To make LeBlanc liable for any one of these overdetentions, *Connick* requires evidence of a pattern of closely similar violations sufficient to notify LeBlanc that his department's flawed training caused the particular violation. *See, e.g.*, *Jason*, 938 F.3d at 198 ("[T]he Supreme Court in *Connick* required that only very similar violations could jointly form a pattern." (citing *Connick*, 563 U.S. at 62)). Our cases, however, have watered down this pattern requirement.

Parker is a good example. Parker was overdetained because a DPSC employee allegedly "misclassif[ied] him as a sex offender." 73 F.4th at 402. Although reciting *Connick*'s pattern requirement, *id.* at 405, the panel rejected the argument that Parker failed to allege a pattern of similar misclassifications. *See id.* at 406 (rejecting LeBlanc's "distinction" between overdetention due to "misclassification" and overdetention due to other causes). Instead, the panel held that Parker satisfied *Connick* by pointing to "three pieces of evidence": (1) an audit of DPSC; (2) the Kennedy-Landry op-ed; and (3) the *Chowns* testimony. *Id.* at 405; *see also* Op. at 8–9 (discussing this evidence). This evidence, the panel explained, supported a pattern of "similar" overdetentions by showing "LeBlanc was aware of the deficiencies of

implemented policies that routinely led to errors like the one that violated [Parker's] constitutional rights." *Ibid.*

That reasoning misapplies *Connick*. "[O]nly very similar violations could jointly form a pattern [under *Connick*]," as our court has correctly explained. *Jason*, 938 F.3d at 198. So, what is "very similar" about the pattern of prior overdetentions in *Parker* and the overdetention at issue there? The pattern evidence, the panel claimed, showed LeBlanc knew about "deficiencies in the way . . . DPSC calculated and implemented release dates." *Id.* at 403. That is plainly insufficient. The violation in *Parker* wasn't caused by generic errors in "calculating and implementing release dates." It was caused by an employee's misinterpreting Parker's criminal history to include an offense requiring sex-offender registration. *See id.* at 403–04. *Parker* did not explain how its pattern evidence had the slightest thing to do with that classification mistake.[4]

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[4] Our decision in *Crittindon* similarly misapplies the *Connick* pattern requirement. *Crittindon* involved an overdetention caused by a communication breakdown between DPSC and parish prisons. 37 F.4th at 186–88. Focusing on the Lean Six Sigma review, we found LeBlanc on notice merely that "DPSC prisoners were annually held past their release date" due "to delays in determining prisoners' release dates." *Id.* at 187. But the panel did not ask, as *Connick* requires, whether this particular cause of the delays had cropped up before, much less whether a pattern of similar occurrences should have put LeBlanc on notice that this was an issue. Instead, we merely addressed overdetention writ large and found the evidence sufficient to show a "pattern of delays" in determining release dates. *See id.* at 187–88 (holding "[a] reasonable factfinder could conclude that [LeBlanc's] awareness of this pattern of delays [and unlawful detentions of

Without the pattern evidence required by *Connick*, a failure-to-train claim against LeBlanc collapses into vicarious liability. That is, under our precedent, LeBlanc can be liable as a supervisory official based merely on the fact that overdetentions and delays in processing release dates, writ large, have occurred within DPSC. If that were enough to prove deliberate indifference, though, *Connick* would have come out the other way. The district attorney would have been liable for failing to train prosecutors merely because previous *Brady* violations had occurred in his office. Of course, that is not what *Connick* held. The required pattern had to show, instead, that "the office's *Brady* training was inadequate *with respect to the sort of* Brady *violation at issue [t]here*." *Connick*, 563 U.S. at 62 (emphasis added). That stringent evidentiary foundation is missing here because our precedent, in contravention of *Connick*, rejects it. Our *en banc* court should correct that farreaching error.

One final note. Our cases speak in the same breath of a supervisor's liability for "failure to train" and for "failure to adopt policies." *See Parker*, 73 F.4th at 404–05 (discussing a supervisor's liability for "failure to adopt policies if that failure causally results in a constitutional injury" (quoting *Crittindon*, 37 F.4th at 186)); *see also Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011) (discussing "[l]iability for failure to promulgate policy and failure to train or supervise"). It is unclear to me whether those are meant to be different theories of supervisory liability or different

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prisoners] and [his] conscious decision not to address it rises to the level of deliberate indifference").

articulations of the same theory. *See, e.g.*, *Parker* 73 F.4th at 405–06 (toggling between LeBlanc's liability for "failure to train" and "failure to adopt policies"). If the former, then I seriously doubt that a "failure to adopt policy" theory has any basis in the Supreme Court's case law. *Connick* is quite specific that it was addressing liability for a "failure to train." *See Connick*, 563 U.S. at 61–63. It said nothing about a generic "failure to adopt or promulgate policies."

Imposing liability because a supervisor "fails to adopt policies" opens a much broader vista of supervisory liability than for "failing to train" subordinates. Indeed, *Connick* explained that the "most tenuous" type of deliberate-indifference liability was "failure to train." *Id.* at 61; *see also Oklahoma City v. Tuttle*, 471 U.S. 808, 822–23 (1985) (plurality opinion) (holding inadequate training is "far more nebulous, and a good deal further removed from the constitutional violation, than was the policy in *Monell*"). That is because the theory is based not on a municipality's *action* but its *omission*. Premising liability on failing to "adopt policies," however, is even more tenuous. At least a failure to train is focused on a supervisor's omissions with respect to a particular duty (training employees) and in response to a problem that training could solve (a pattern of prior employee violations linked to inadequate training). A "failure to adopt policies," by contrast, appears to open supervisors to liability merely for failing to be clairvoyant. That cannot meet the stringent standard of deliberate indifference. *See Connick*, 563 U.S. at 62 ("Without notice that a course of training is deficient in a particular respect, decisionmakers can hardly be said

to have deliberately chosen a training program that will cause violations of constitutional rights.").

That problem aside, however, our precedent is clear that a supervisor's liability in a case like this must be grounded on a pattern of prior, similar violations. *See Jason*, 938 F.3d at 198 (citing *Connick*, 563 U.S. at 62). That requirement has not been met here.

We should rehear this case to fix the problem. As noted, we will likely have many more overdetention cases against LeBlanc and others. We need to clarify when officials can be liable for overdetaining prisoners. If we fail to do that, we risk turning § 1983 into a source of vicarious liability for the heads of State agencies. In addition to violating Supreme Court precedent, such a misguided project would be futile. The overdetention problem is obviously a serious one. But if evidence does not connect the problem to something LeBlanc *himself* has done or failed to do, then making him personally liable for overdetentions will solve nothing.

I urge our court to rehear this pressing issue *en banc*.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION NO. 18-736-JWD-EWD

[Filed April 18, 2022]

BRIAN MCNEAL	)
	)
VERSUS	)
	)
LOUISIANA DEPARTMENT OF	)
PUBLIC SAFETY & CORRECTIONS ET AL	)
	)

RULING AND ORDER

This matter comes before the Court on the *Motion to Dismiss Plaintiff's Second Amended Complaint* (Doc. 93) filed by Defendants, State of Louisiana, through the Department of Public Safety & Corrections ("DPSC" or "DOC"), Secretary James M. LeBlanc ("LeBlanc"), and Breunkia Collins ("Collins") (collectively, "Defendants"). Plaintiff Brian McNeal ("Plaintiff") opposes the motion. (Doc. 97.) Defendants filed a reply. (Doc. 98.) Defendants also filed a supplemental memorandum in support of their motion. (Doc. 106.) Plaintiff filed a response to Defendants' supplemental memorandum. (Doc. 107.) Oral argument is not necessary. The Court has carefully considered the law, the facts alleged in the *Second Amended Complaint*

("Amended Complaint") (Doc. 91), and the arguments and submissions of the parties and is prepared to rule. For the following reasons, the motion is granted in part and denied in part.

I. Relevant Factual Background

This lawsuit arises from an over-detention claim brought by Plaintiff. (Doc. 91 at ¶ 14.) In the Amended Complaint, Plaintiff alleges that he was held in prison for 41 days beyond his legal release date. (*Id*. at 4–7.) The Amended Complaint alleges that, following Plaintiff's arrest for a parole violation, on August 3, 2017, Plaintiff's probation was revoked, and he was sentenced to serve 90 days at the Steve Hoyle program in the Bossier Parish Correctional Center. (*Id*. at ¶¶ 21–23.)

Plaintiff alleges that, on August 22, 2017, Collins, a DOC employee (*id*. at ¶ 17), sent a release letter to the Steve Hoyle program directing that Plaintiff be released on November 1, 2017. (*Id*. at ¶ 24.) A week later, however, Plaintiff was transferred from the Orleans Parish Prison to the DOC's Elayn Hunt Correctional Center ("Hunt") near Baton Rouge. (*Id*. at ¶ 26.) Plaintiff was not transferred to the Steve Hoyle program thereafter; instead, he remained incarcerated at Hunt. (*Id*. at ¶ 27.) Plaintiff alleges that Collins specifically knew that his release letter had been sent to the Steve Hoyle program and that Plaintiff was being housed at Hunt, but she did nothing to correct this problem. (*Id*. at ¶¶ 30–32.) Nor did any other Defendant take steps to ensure that Plaintiff's release letter got to the correct facility, according to the Amended Complaint. (*Id*. at ¶ 32.) As a result, Plaintiff

alleges that he was not released on November 1, 2017, as legally required. (*Id*. at ¶ 36.)

After several inquiries were made on Plaintiff's behalf (*id*. at ¶¶ 37–45), on December 11, 2017, DOC headquarters emailed a letter to Hunt authorizing Plaintiff's release as of November 1, 2017 and explaining that he "was thought to be at a different facility." (*Id*. at ¶ 46.) The following day—41 days after his legal release date—Plaintiff's lawyer called the Warden's Office at Hunt to ask why Plaintiff was still in custody, and Plaintiff was released. (*Id*. at ¶¶ 50–51.)

Plaintiff alleges that DPSC has a well-documented and known pattern of over-detention. (*Id*. at ¶ 73.) In the Amended Complaint, Plaintiff details the findings of the Louisiana Legislative Auditor report (*id*. at ¶¶ 85–94), which found that "the DOC had a serious problem of not knowing where its inmates were located, or when their proper release date was." (*Id*. at ¶ 9.) Plaintiff also alleges that "the DOC's own counsel," Attorney General Jeff Landry, admitted to the pattern of over-detention in a March 8, 2018 op-ed, in which he conceded that there "is a layer of incompetence so deep that the Corrections Department doesn't know where a prisoner is on any given day of the week or when he should actually be released from prison." (*Id*. at ¶ 12.)

Plaintiff filed his *Second Amended Complaint* on December 22, 2020, asserting various causes of action against Defendants DPSC, LeBlanc, and Collins. (Doc. 91.) Plaintiff asserts a claim for violation of his Fourteenth Amendment Due Process rights under the

U.S. Constitution (Count 3) (*id*. at ¶¶ 195–97) and a *Monell* failure to train/supervise claim (Count 5) (*id*. at ¶¶ 201–32) against LeBlanc. Plaintiff also asserts state law claims for false imprisonment (Count 1) (*id*. at ¶¶ 185–89), negligence (Count 2) (*id*. at ¶¶ 190–94), violation of his rights under the Louisiana Constitution (Count 4) (*id*. at ¶¶ 198–200), *respondeat superior* (Count 6) (*id*. at ¶¶ 233–34), and indemnification (Count 7) (*id*. at ¶¶ 235–37). Defendants now move for dismissal with prejudice of all claims in Plaintiff's Amended Complaint. (Doc. 93.)

II. Rule 12(b)(6) Standard

"Federal pleading rules call for a 'short and plain statement of the claim showing that the pleader is entitled to relief,' Fed. R. Civ. P. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of a legal theory supporting the claim asserted." *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014) (citation omitted).

Interpreting Rule 8(a) of the Federal Rules of Civil Procedure, the Fifth Circuit has explained:

> The complaint (1) on its face (2) must contain enough factual matter (taken as true) (3) to raise a reasonable hope or expectation (4) that discovery will reveal relevant evidence of each element of a claim. "Asking for [such] plausible grounds to infer [the element of a claim] *does not impose a probability requirement* at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal [that the elements of the claim existed]."

Lormand v. U.S. Unwired, Inc., 565 F.3d 228, 257 (5th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

Applying the above case law, the Western District of Louisiana has stated:

> Therefore, while the court is not to give the "assumption of truth" to conclusions, factual allegations remain so entitled. Once those factual allegations are identified, drawing on the court's judicial experience and common sense, the analysis is whether those facts, which need not be detailed or specific, allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." [*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)]; *Twombly*, 55[0] U.S. at 556. This analysis is not substantively different from that set forth in *Lormand*, *supra*, nor does this jurisprudence foreclose the option that discovery must be undertaken in order to raise relevant information to support an element of the claim. The standard, under the specific language of Fed. R. Civ. P. 8(a)(2), remains that the defendant be given adequate notice of the claim and the grounds upon which it is based. This standard is met by the "reasonable inference" the court must make that, with or without discovery, the facts set forth a plausible claim for relief under a particular theory of law provided that there is a "reasonable expectation" that "discovery will reveal relevant evidence of

> each element of the claim." *Lormand*, 565 F.3d at 257; *Twombly*, 55[0] U.S. at 556.

Diamond Servs. Corp. v. Oceanografia, S.A. De C.V., No. 10-00177, 2011 WL 938785, at *3 (W.D. La. Feb. 9, 2011) (citation omitted).

In deciding a Rule 12(b)(6) motion, all well-pleaded facts are taken as true and viewed in the light most favorable to the plaintiff. *Thompson v. City of Waco*, 764 F.3d 500, 502–03 (5th Cir. 2014). The task of the Court is not to decide if the plaintiff will eventually be successful, but to determine if a "legally cognizable claim" has been asserted. *Id.* at 503.

III. Discussion

A. Plaintiff's Requested Remedies

Defendants argue that certain "remedies" requested in the Amended Complaint should be dismissed as a matter of law. (Doc. 93-1 at 5.)

First, Defendants assert that Plaintiff's demand for "declaratory relief" should be dismissed because it fails to provide notice of "the legal or factual basis of the claim." (*Id.* at 6 (referencing Doc. 91 at ¶ 238(A)).) In response, Plaintiff states that "he will withdraw his claim for declaratory relief." (Doc. 97 at 2.) Accordingly, Defendants' motion on this issue is granted, and Plaintiff's claim for declaratory relief is dismissed.

Second, Defendants contend that Plaintiff's claim for attorney's fees under Louisiana law must be dismissed because Louisiana law provides for recovery of such fees only if they are authorized by statute or

contract. (Doc. 93-1 at 6 (referencing Doc. 91 at ¶ 238(D)).) In response, Plaintiff clarifies that his Amended Complaint does not suggest that he seeks recovery of attorney's fees under Louisiana law. (Doc. 97 at 2.) Accordingly, Defendants' motion on this issue is denied as moot.

Third, Defendants argue that Plaintiff's demand for "other and further relief, at law or in equity (but not injunctive relief), to which Plaintiff may be justly entitled" should be dismissed for failure to provide notice of the claim and the grounds upon which it is based. (Doc. 93-1 at 6 (referencing Doc. 91 at ¶ 238(E)).) Defendants likewise seek dismissal of Plaintiff's request for relief as to "any and all other causes of action [that] may become known through a trial of this matter on its merits against any and all other parties which are herein named . . . ." (*Id*. (citing Doc. 91 at ¶ 239).) Defendants seek dismissal of this allegation on the same grounds. (*Id*. at 6–7.) Notably, Defendants cite no authority to support their contention that such general prayers for relief are impermissible and fail to satisfy the minimum pleading requirements of Federal Rule of Civil Procedure 8. Additionally, as Plaintiff points out in his opposition, this general prayer for other relief mirrors the text of Rule 54(c). (Doc. 97 at 2–3 (referencing Fed. R. Civ. P. 54(c)).). Accordingly, Defendants' motion on this issue is denied.

B. Official Capacity Claims Against LeBlanc

Defendants submit that all claims against LeBlanc in his official capacity as Secretary of the DPSC either

have been or should be dismissed because they are duplicative of the claims against DPSC. (Doc. 93-1 at 8.) In response, "Plaintiff agrees that there are no official capacity claims against Secretary LeBlanc." (Doc. 97 at 3.) Accordingly, Defendants' motion on this issue is granted, and any official capacity claims against LeBlanc are dismissed.

C. State Law Claim for False Imprisonment Against DPSC and LeBlanc

Defendants move to dismiss Plaintiff's false imprisonment claim against DPSC and LeBlanc. (Doc. 93-1 at 9.) Defendants first argue that the Court may properly dismiss Plaintiff's false imprisonment claim as to both Defendants, notwithstanding the Court's prior ruling granting partial summary judgment in Plaintiff's favor, since an amended complaint generally renders moot a motion for summary judgment on the original complaint. (*Id.* at 9–10.)

Defendants then assert that "there is no cause of action for 'false imprisonment' pleaded in this lawsuit," such that Count 1 of Plaintiff's Amended Complaint should be dismissed with prejudice in its entirety as to all defendants. (*Id.* at 10.) In support of this assertion, Defendants argue that Plaintiff's over-detention claim is not actionable under Louisiana's false imprisonment law. (*Id.*) Defendants further contend that because plaintiff "was duly convicted and sentenced to DPSC custody, DPSC had the legal authority to detain the Plaintiff and the false arrest/imprisonment claim should be dismissed." (*Id.* at 11.)

Defendants further argue that the legality of Plaintiff's detention and the liability of each Defendant for Plaintiff's over-detention claim should be evaluated under Louisiana's duty-risk analysis. (*Id.* at 11–12.) Alternatively, Defendants argue that LeBlanc is entitled to judgment on this claim, even under Plaintiff's theory of liability for false imprisonment. (*Id.* at 12.)

Plaintiff responds that "the law of the case doctrine bars Defendants' collateral attacks" on the issue of false imprisonment, which was already resolved by this Court's ruling granting partial summary judgment in Plaintiff's favor on the tort of false imprisonment. (Doc. 97 at 3 (referencing Doc. 56).) Next, Plaintiff contends that, even if Defendants' false imprisonment arguments were not barred by the law of the case doctrine, they lack merit. (*See id.*) Plaintiff cites to Louisiana Supreme Court case law for the proposition that, under Louisiana law, false imprisonment is "restraint without color of legal authority." (*See id.* at 3–4.) Plaintiff adds that "[a]n order of temporary imprisonment does not give the DOC permission to incarcerate someone indefinitely." (*Id.* at 4.) Plaintiff also rejects Defendants' assertion that his claim should be analyzed under Louisiana's duty-risk framework for general negligence. (*See id.*) Plaintiff maintains that no such analysis is required because negligence is not a requisite element of the false imprisonment tort under Louisiana law. (*See id.*) Finally, Plaintiff argues that he does not need to prove LeBlanc personally detained him to assert a false imprisonment claim against LeBlanc, since part of LeBlanc's responsibilities as

Secretary involve holding inmates for the length of their sentences. (*See id.* at 4–5.)

"Under Louisiana law, '[f]alse imprisonment is the unlawful and total restraint of the liberty of the person.'" *Hernandez v. Theriot*, 709 F. App'x 755, 757–58 (5th Cir. 2017) (quoting *Kelly v. W. Cash & Carry Bldg. Materials Store*, 745 So.2d 743, 750 (La. Ct. App. 1999) (emphasis omitted)). "It consists of the following two essential elements: (1) detention of the person; and (2) the unlawfulness of the detention." *Id.* (quoting *Kennedy v. Sheriff of E. Baton Rouge*, 935 So.2d 669, 690 (La. 2006)).

Initially, the Court declines to revisit its previous *Ruling and Order* granting summary judgment in Plaintiff's favor on his claim for false imprisonment. (*See* Doc. 56.) Moreover, upon further consideration of the matter, the Court agrees with its prior *Ruling and Order* granting summary judgment on the issue of false imprisonment under Louisiana law. (*See id.*) For that reason, Defendants' motion is denied as to this claim.

D. State Law Claim for Negligence Against All Defendants

Defendants also move to dismiss Plaintiff's negligence claim against DPSC, LeBlanc, and Collins. (Doc. 93-1 at 13.) Defendants argue that Plaintiff engaged in impermissible "shotgun" pleading in violation of Rule 8. (*Id.*) Specifically, they contend that Plaintiff's negligence allegations fail to distinguish between the actions of each Defendant. (*See id.*) The Amended Complaint, according to Defendants, "offers no explanation for the apparent allegation that [DPSC],

[LeBlanc], and [Collins] share 'duties' that would subject them to personal liability under Louisiana law." (*Id*.)

Next, in response to Plaintiff's allegation that "due to their professional roles as jailors, Defendants owed duties to avoid overdetention to persons in their custody," Defendants assert that no facts in the Amended Complaint identify LeBlanc or Collins as a "jailor." (*Id*. at 14.) Instead, "DPSC was the undeniable jailor of the Plaintiff," according to Defendants (*Id*.)

Similarly, in response to Plaintiff's allegation that "Defendants had a duty to ensure that [Plaintiff's] release letter wound up in the facility he was actually held in," Defendants assert that there are no facts to support the contention that LeBlanc "owed the Plaintiff some special duty with regard to paperwork." (*Id*. at 14–15.) Finally, Defendants re-urge their "shotgun pleading" argument and aver that Plaintiff must be required to distinguish the negligence claims against each Defendant, or else all such claims should be dismissed. (*Id*. at 15.)

In response, Plaintiff maintains that the concept of LeBlanc and other DPSC employees sharing in the responsibility of ensuring inmates' timely release is reflected in testimony given by LeBlanc himself in another case. (*See* Doc. 97 at 5–6.) Plaintiff also cites to federal and state court case law recognizing the duty to timely release inmates as to DPSC employees and jailors. (*See id*. at 6.) Plaintiff thus concludes that Defendants' motion as to this claim should be denied. (*Id*.)

Construing the allegations of the Amended Complaint in a light most favorable to Plaintiff and drawing all inferences in his favor, the Court finds that the Amended Complaint, on its face, contains enough factual matter, when accepted as true, to raise a reasonable expectation that discovery will reveal relevant evidence that each Defendant breached the duties they owed to Plaintiff to ensure his timely release. Regarding LeBlanc, specifically, the Court finds that the Amended Complaint contains enough factual matter to support a reasonable inference that LeBlanc breached the duties he owed as the DPSC Secretary to Plaintiff and other inmates by implementing policies that were a legal cause of Plaintiff's over-detention. *See Lormand*, 565 F.3d at 257; *Tredick v. Ekugbere*, No. 17-103, 2018 WL 5504157, at *3–4 (M.D. La. Oct. 29, 2018) (deGravelles, J.) (describing elements of negligence claim). Consequently, the Court denies the motion to dismiss Plaintiff's negligence claim against all three Defendants.

E. LeBlanc's Entitlement to Qualified Immunity

1. Parties' Arguments

In support of their motion, Defendants argue that, despite Plaintiff's opportunity to amend to cure the deficiencies identified in the Court's previous ruling, Plaintiff's Amended Complaint fails to overcome LeBlanc's qualified immunity defense. (*See* Doc. 93-1 at 15–16.) Specifically, Defendants maintain that "Plaintiff has failed to plead the violation of a constitutional right whose contours were so clear that

every official would know that [LeBlanc's] negligence could violate that right." (*Id*. at 20.) Defendants further contend that Plaintiff's Amended Complaint fails to demonstrate that LeBlanc acted with deliberate indifference to violations of others' constitutional rights by sufficiently alleging a pattern of similar constitutional violations. (*Id*. at 20–22.) Plaintiff's allegations claiming that DPSC has a well-documented pattern of overdetention are conclusory, according to Defendants, and insufficient to overcome LeBlanc's qualified immunity. (*Id*. at 22.) Finally, Defendants assert that the Amended Complaint lacks factual allegations to support Plaintiff's claim against LeBlanc for failing to train or supervise subordinates. (*Id*. at 23.) Defendants contend that "Plaintiff does not allege or explain what training was given, or not given, and how the training affected, or should have affected, Plaintiff's detention." (*Id*.) Defendants conclude that the failure to train/supervise claim must be dismissed. (*Id*.)

Plaintiff responds that LeBlanc should be denied qualified immunity. (*See* Doc. 97 at 6.) In support of this assertion, he points to the allegations added to his Amended Complaint, which, according to Plaintiff, further detail (1) the pattern and scope of the overdetention problem, (2) LeBlanc's personal knowledge of the problem, and (3) how failures in training and discipline led to over-detentions like Plaintiff's. (*Id*. at 7 (citing Doc. 91 at ¶¶ 52–72, 75–183).) Plaintiff maintains that these allegations remedy the issues identified in the Court's ruling on Defendants' previous motion to dismiss. (*See id*. at 6–7 (referencing Doc. 88 at 38–39).)

In reply, Defendants reiterate that Plaintiff's allegations regarding "a broad pattern of overdetention," "knowledge," and causation do not satisfy Plaintiff's burden of overcoming LeBlanc's qualified immunity defense. (Doc. 98 at 7.) Defendants add: "The Plaintiff has completely failed to identify a *particular* problem with a policy or the training program and to explain how that problem caused the alleged constitutional violation in this case." (*Id*. at 9–10.) Defendants therefore maintain that LeBlanc is entitled to qualified immunity. (*See id*. at 10.)

2. Applicable Law

"Qualified immunity provides government officials performing discretionary functions with a shield against civil damages liability, so long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Gobert v. Caldwell*, 463 F.3d 339, 345 (5th Cir. 2006) (citing *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). "In determining whether an official enjoys immunity, we ask (1) whether the plaintiff has demonstrated a violation of a clearly established federal constitutional or statutory right and (2) whether the official's actions violated that right to the extent that an objectively reasonable person would have known." *Id.* (citing *Hope v. Pelzer*, 536 U.S. 730 (2002)). Courts are "permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

"A supervisory official may be held liable ... only if (1) he affirmatively participates in the acts that cause the constitutional deprivation, or (2) he implements unconstitutional policies that causally result in the constitutional injury." *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011) (quoting *Gates v. Tex. Dep't of Prot. & Reg. Servs.*, 537 F.3d 404, 435 (5th Cir. 2008)). "In order to establish supervisor liability for constitutional violations committed by subordinate employees, plaintiffs must show that the supervisor act[ed], or fail[ed] to act, with *deliberate indifference* to violations of others' constitutional rights committed by their subordinates." *Id.* (quoting *Gates*, 537 F.3d at 435 (internal quotation marks and citation omitted)).

"'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Estate of Davis ex rel. McCully v. City of N. Richland Hills*, 406 F.3d 375, 381 (5th Cir. 2005) (quoting *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 410 (1997)). "For an official to act with deliberate indifference, the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* (quoting *Smith v. Brenoettsy*, 158 F.3d 908, 912 (5th Cir. 1998)). "Deliberate indifference requires a showing of more than negligence or even gross negligence." *Id.* (citing *City of Canton v. Harris*, 489 U.S. 378, 388 (1989); *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 453 (5th Cir. 1994) (en banc)). "Actions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference and do not divest

officials of qualified immunity." *Id.* (quoting *Alton v. Tex. A&M Univ.*, 168 F.3d 196, 201 (5th Cir. 1999)).

Additionally, "[a] failure to adopt a policy can be deliberately indifferent when it is obvious that the likely consequences of not adopting a policy will be a deprivation of constitutional rights." *Porter*, 659 F.3d at 446 (quoting *Rhyne v. Henderson Cnty.*, 973 F.2d 386, 392 (5th Cir. 1992)). Nevertheless, "[l]iability for failure to promulgate policy ... require[s] that the defendant ... acted with deliberate indifference." *Id.* As the Fifth Circuit stated with respect to "failure-to-train" claims:

> To establish that a state actor disregarded a known or obvious consequence of his actions, there must be actual or constructive notice that a particular omission in their training program causes ... employees to violate citizens' constitutional rights and the actor nevertheless chooses to retain that program. A pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference, because without notice that a course of training is deficient in a particular respect, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights. Without cabining failure-to-train claims in this manner (or, logically, failure-to-promulgate-policy claims), a standard less stringent than deliberate indifference would be employed, and a failure-to-train claim would result in *de facto respondeat* superior liability.

Porter, 659 F.3d at 447 (citations, alterations, and quotations omitted).

As to the other prong of the Court's analysis, "[q]ualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam) (quoting *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam) (alterations and internal quotation marks omitted)). "Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct." *Id.* (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam)).

"Although '[the Supreme] Court's caselaw does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.'" *Id.* (quoting *White*, 137 S. Ct. at 551 (internal quotation marks omitted)). "'In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law.'" *Id.* (quoting *White*, 137 S. Ct. at 551 (internal quotation marks omitted)). "Of course, general statements of the law are not inherently incapable of giving fair and clear warning to officers." *Id.* at 1153 (quoting *White*, 137 S. Ct. at 552 (internal quotation marks omitted)). "But ... [a]n officer 'cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it.'" *Id.*

(quoting *Plumhoff v. Rickard*, 572 U.S. 765, 779 (2014)).

In this Court's prior ruling on Defendants' Rule 12(b)(6) motion, *McNeal v. Louisiana Dept. of Pub. Safety & Corr.*, No. 18-736, 2020 WL 7059581 (M.D. La. Dec. 2, 2020) (Doc. 88), the Court applied the foregoing standard and found that Plaintiff failed to allege a constitutional violation by LeBlanc to support his individual capacity claim. *See McNeal*, 2020 WL 7059581, at *19–*23. Regarding the deliberate indifference component of Plaintiff's claim, this Court explained:

> Plaintiff has, at this point, failed to adequately allege deliberate indifference. Plaintiff points to a state court law suit where DPSC employees testified about the deficiencies, but he fails to link this suit and this pattern to LeBlanc in such a way to establish that LeBlanc actually drew the inference that there was a substantial risk of harm to Plaintiff and other inmates. Further, Plaintiff alleges that Attorney General Landry was aware of the problem and that there was a Louisiana Audit report documenting it, but he fails to allege, even on information and belief, that LeBlanc was aware of what Landry said in the op-ed or of what was contained in the audit.

Id. at *21.

3. Analysis

Having carefully considered the matter, and upon further consideration of the Court's prior ruling, the

Court finds that Plaintiff has stated a viable individual capacity claim against LeBlanc.

First, Plaintiff has sufficiently alleged a constitutional violation by LeBlanc. The Amended Complaint describes a widespread pattern of overdetention at the DPSC, which was so well-settled as to constitute "*de facto* policy." (*See* Doc. 91 at ¶ 202.) Plaintiff alleges that, the day before he was incarcerated, "the Louisiana Legislative Auditor released a report finding that the DOC had a serious problem of not knowing where its inmates were located, or when their proper release date was." (*Id*. at ¶ 9.) Further, Plaintiff's allegations suggest that LeBlanc was aware of this report. (*See id*. at ¶¶ 127, 129–30, 228.) Plaintiff also avers that in 2018, Defendants' own lawyer, the Attorney General, wrote an op-ed conceding that there "is a layer of incompetence so deep that the Corrections Department doesn't know where a prisoner is on any given day of the week or when he should actually be released from prison." (*Id*. at ¶ 12.)

Additionally, Plaintiff alleges that "multiple DOC employees testified" in *Chowns v. LeBlanc*, La. 37th JDC 26-932—a case in which LeBlanc was sued (*see id*. at ¶ 122)—regarding a well-documented pattern of over-detention. (*See id*. at ¶ 73.) For instance, DOC employee Tracy Dibenetto testified that DOC staff "discovered approximately one case of overdetention per week for the last nine years," with some inmates "incorrectly incarcerated for periods of up to a year." (*Id*. at ¶ 73(a).) Similarly, DOC records analyst Cheryl Schexnayder testified that in the course of her job, she

reviewed inmate sentences and found that they had been "done wrong" and that "the inmate was entitled to immediate release." (*Id.* at ¶ 73(c).) The Amended Complaint also alleges that in a grant application to the federal government, the DPSC disclosed that in 2017, it "had an average of 200 cases per month considered an 'immediate release'" due to its pattern of overdetention. (*See id.* at ¶ 91.)

Finally, Plaintiff alleges that LeBlanc championed the "Lean Sigma Six" review of the DPSC's inmate time calculation processes project. (*See id.* at ¶¶ 54–55.) This review project found that when the DPSC calculated the release date of inmates, 83% were eligible for immediate release due to an earlier release date. (*See id.* at ¶ 56; *see also id.* at ¶¶ 57–60.) Plaintiff alleges that despite being alerted to this problem, LeBlanc did not set of a goal of fixing it. (*Id.* at ¶¶ 61–65.) For example, in 2015, the DPSC tried an electronic record management system for a short period before ultimately going back "to its old 1990s era CAJUN system." (*Id.* at ¶ 69.) "As a result, the functional processes around the transmission of documents remain as antiquated as they were in 1996." (*Id.* at ¶ 70 (citations omitted); *see also id.* at ¶¶ 71–72.)

In sum, construing these allegations in a light most favorable to Plaintiff and drawing all reasonable inferences in his favor, the Court finds that a reasonable juror could conclude that LeBlanc implemented defective policies and training that lead to the over-detention of Plaintiff and others in violation of their due process rights. A reasonable juror could also find from the facts alleged in the Amended

Complaint that LeBlanc was deliberately indifferent based on the long-standing pattern of sufficiently similar incidents described in the Amended Complaint. As a result, Plaintiff has satisfied the first prong of the qualified immunity analysis by alleging sufficient facts to support the reasonable inference that LeBlanc, as a supervisory official, violated Plaintiff's federal and state due process rights.

Additionally, Defendants filed a supplemental memorandum in support of their motion, directing the Court to the Fifth Circuit's recent decisions in *Grant v. LeBlanc*, 21-30230, 2022 WL 301546 (5th Cir. Feb. 1, 2022), and *Hicks v. LeBlanc*, 832 F. App'x 836 (5th Cir. 2020). (*See* Doc. 106.) Defendants submit that the *Grant* opinion and its analysis regarding the deliberate indifference standard further supports their arguments that LeBlanc is entitled to qualified immunity on Plaintiff's Section 1983 claims. (*See id.*) Plaintiff, by contrast, contends that the Fifth Circuit's "non-precedential decision in *Grant* does not substantially change the legal framework regarding the motion before this Court" because the *Grant* case is distinguishable on its facts. (*See* Doc. 107.) The Court agrees with Plaintiff.

In *Grant*, the Fifth Circuit reversed the district court's denial of qualified immunity for LeBlanc on the plaintiff's federal and state due process claims. 2022 WL 301546, at *7. The Fifth Circuit found that, because the plaintiff failed to show that LeBlanc, in his individual capacity, violated the claimed due process rights by overdetention, LeBlanc was entitled to qualified immunity. *See id.* at *1. In applying the

deliberate indifference standard to the plaintiff's claim, the Fifth Circuit explained:

> Moreover, Grant has not presented the requisite pattern of due-process violations similar to the one he asserts: DPSC's failing to timely release an individual, specifically as a result of *the Secretary's failure* to promulgate policy, or train subordinates, to prevent overdetention due to delayed delivery of the charging document. Again, as reflected above, the delay in receiving Grant's bill of information was caused by external entities—not by the Secretary.
>
> Along that line, Grant points to items in the summary-judgment record relied upon by the district court in concluding the Secretary was deliberately indifferent because he had notice of instances of DPSC's overdetention . . . .
>
> Regarding the three items cited by Grant, the district court mainly relied upon a 2012 Six Sigma study of DPSC, a 2017 report by the Louisiana Legislative auditor, and a grant application DPSC submitted to the federal government in 2019, all referencing overdetention within DPSC. The first, however, examined DPSC's internal-release procedures, not policies of external offices. The latter two, as the Secretary notes correctly, are insufficient to establish deliberate indifference on the part of the Secretary. Both occurred after Grant's overdetention, and they fail to show, prior to Grant's overdetention, that the Secretary had

> knowledge of due-process violations of the type claimed by Grant . . . .

Id. at *6 (citations omitted).

The Court observes that the *Grant* case is distinguishable in several respects. First, in this case, unlike in *Grant*, the Legislative Auditor released the report before Plaintiff was incarcerated. (*See* Doc. 91 at ¶ 9.) Similarly, the grant application described in the Amended Complaint references instances of overdetention occurring in 2017 (*see id*. at ¶ 91), which is during the period Plaintiff was incarcerated. Further, the crux of the plaintiff's constitutional challenge in *Grant* "ultimately rest[ed] on the local sheriff's and clerk's offices' failure to deliver his bill of information to DPSC in a timely manner." *See* 2022 WL 301546, at *6. Whereas, here, Plaintiff objects to the widespread pattern of continuous errors made by DPSC and its employees; consequently, the 2012 Sigma Six examination of DPSC's internal-release procedures are significantly more pertinent to the Court's deliberate indifference analysis.

In *Hicks v. LeBlanc*, the other case cited in Defendants' supplemental memorandum (*see* Doc. 106 at 2, 6), the Fifth Circuit reversed the district court's judgment denying qualified immunity for LeBlanc, finding that he could not be held individually liable under Section 1983 for failing to promulgate adequate policies or failing to train and supervise employees based on a DOC employee's intentional sentencing miscalculation and over-detention of the plaintiff in violation of his due process rights. *See* 832 F. App'x

836, 838, 841–42. In reaching this conclusion, the Fifth Circuit observed:

> Whether LeBlanc acted with deliberate indifference is a close call. Hicks alleged that LeBlanc knew of the DPSC's long history of over-detaining inmates; that DPSC employees used different methods to calculate release dates; and that the DPSC had not disciplined employees who miscalculated sentences. However, the alleged facts—which included processing delays, data errors, inconsistent calculation methodologies, and unspecified deficiencies—speak to the incompetence of DPSC employees and the lack of adequate training and supervision. Based on these allegations, LeBlanc could be held liable for *incompetent* over-detention, such as the failure to process a prisoner's release or immediately compute an inmate's sentence after being sentenced to time served. But it cannot be said that LeBlanc had notice that his employees were purposely disregarding sentencing orders out of retaliatory intent. The complaint was devoid of allegations supporting the reasonable inference that a pattern of *intentional* over-detention existed in the DPSC; that is, the alleged facts suggest a pattern of over-detention caused by quality control deficiencies and the lack of training and supervision, not a pattern of over-detention stemming from the blatant refusal to credit offenders with time served contrary to sentencing orders. In the absence of such a pattern, LeBlanc could not have acted with

> deliberate indifference to [the DOC employee's] intentional sentencing miscalculation and over-detention of Hicks. Accordingly, the district court erred in denying LeBlanc's defense of qualified immunity.

Id. at 842 (citation omitted).

Here, the facts alleged in the Amended Complaint, accepted as true and viewed in the light most favorable to Plaintiff, support the reasonable inference that a pattern of over-detention existed at the DPSC that was caused by a lack of adequate policies, training, and supervision to ensure inmates were timely released from custody. Moreover, the Plaintiff's Amended Complaint includes numerous factual allegations detailing the scale of the DPSC's overdetention problem, including the findings of the Legislative Auditor's report, the Lean Sigma Six review project, the state court testimony by DOC employees, and so forth. Unlike in *Hicks*, these well-pleaded facts allow the Court to draw the reasonable inference that LeBlanc's continuous failures to implement policies amounted to an intentional choice, as opposed to mere negligent oversight. *See Rhyne v. Henderson Cnty.*, 973 F.2d 386, 392 (5th Cir. 1992) (citations omitted). Put differently, Plaintiff has plausibly alleged that LeBlanc acted with deliberate indifference to constitutional violations.

Having established that Plaintiff has met the first qualified-immunity prong, the Court turns to the second prong of the analysis: whether LeBlanc's actions were objectively unreasonable in light of clearly established law. *See Grant v. LeBlanc*, 2022 WL

301546, at *5 (5th Cir. Feb. 1, 2022) (citations omitted). "The Fourteenth Amendment Due Process Clause is violated where a prisoner remains incarcerated after the legal authority to hold him has expired." *Hicks*, 832 F. App'x 836, 840 (citation omitted). Further, "[a] prisoner's right to timely release was clearly established well before 2017," when the actions sued upon occurred. *See id.* at 841. As previously discussed, the allegations of Plaintiff's Amended Complaint describe numerous instances in which the DPSC's longstanding overdetention problem was publicly highlighted or brought to the DPSC's attention, such as the Legislative Auditor's report, the federal grant application, and the state court testimony. Again, the Court can reasonably infer from these allegations that LeBlanc's deliberate decision to allow defective policies and procedures to remain at DPSC—despite having notice of the substantial risk they posed to the constitutional rights of others—was objectively unreasonable in light of the clearly established law at the time. Accordingly, Defendants' motion to dismiss Plaintiff's Section 1983 claims against LeBlanc in his individual capacity based on qualified immunity is denied.

F. Remaining State Law Claims Against DPSC

Defendants' motion seeks dismissal of Plaintiff's Amended Complaint in its entirety pursuant to Rule 12(b)(6) (*see* Doc. 93), including Plaintiff's state law claims against DPSC for violation of the Louisiana Constitution (Doc. 91 at ¶¶ 198–200), *respondeat*

superior (*id*. at ¶¶ 233–34), and indemnification (*id*. at ¶¶ 235–37).

Regarding Plaintiff's claim arising under the Louisiana Constitution, DPSC suggests that it is entitled to qualified immunity on this claim because it is "indistinguishable from the due process claim under the United States Constitution." (Doc. 93-1 at 15.)[1] The Court disagrees. Having determined that the allegations of the Amended Complaint are sufficient to overcome LeBlanc's assertion of qualified immunity as to Plaintiff's due process claim under the U.S. Constitution, it follows that Plaintiff's claim against DPSC for violation of his due process rights under the Louisiana Constitution survives dismissal based on qualified immunity as well. Accordingly, Defendants' motion as to this claim is denied.

Finally, Defendants' memorandum in support of their motion does not substantively address the merits of Plaintiff's *respondeat superior* and indemnification claims against DPSC. Therefore, Defendants' motion as

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[1] Defendants appear to offer an additional argument in support of dismissal on this issue: "Plaintiff's claim under the Louisiana Constitution is an alternative theory of recovery under Louisiana Law. All of plaintiff's alternative theories under Louisiana law are moot now that this Honorable Court has entered summary judgment on Plaintiff's false imprisonment claim." (Doc. 93-1 at 15 n.39.) Plaintiff's opposition failed to address this argument. Still, the Court notes that Defendants do not cite any law for the proposition that because this Court granted Plaintiff summary April 13, 2022 judgment on one Louisiana law claim, the others are now moot. Additionally, the Federal Rules of Civil Procedure permit plaintiffs to plead in the alternative. *See* Fed. R. Civ. P. 8(d)(2).

to these claims is denied without prejudice because they have not made a sufficient legal showing to justify dismissal.

IV. Conclusion

Accordingly,

IT IS ORDERED that the *Motion to Dismiss Plaintiff's Second Amended Complaint* (Doc. 93) filed by Defendants DPSC, LeBlanc, and Collins is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** in that the following claims are **DISMISSED**: (1) Plaintiff's demand for declaratory relief; (2) Plaintiff's Section 1983 claims for monetary damages against LeBlanc in his official capacity; and (3) Plaintiff's state law claims for monetary damages against LeBlanc in his official capacity. In all other respects, the motion is **DENIED**.

Signed in Baton Rouge, Louisiana, on April 13, 2022.

/s/ John W. deGravelles
JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION NO. 18-736-JWD-EWD

[Filed February 18, 2020]

BRIAN MCNEAL	)
	)
VERSUS	)
	)
LOUISIANA DEPARTMENT OF	)
PUBLIC SAFETY & CORRECTIONS	)
JAMES LEBLANC, TIM HOOPER	)
ROBIN MILLIGAN, UNKNOWN DOES 1-10,	)
ABC INSURANCE COMPANIES	)
	)

RULING AND ORDER

This matter is before the Court on a *Motion for Summary Judgment on False Imprisonment Claim* (Doc. 12) filed by Brian McNeal ("Plaintiff" or "Mr. McNeal") In response, Defendant Louisiana Department of Public Safety & Corrections (the "Department of Corrections" filed a *Memorandum in Opposition to Plaintiff's Motion for Summary Judgment* (Doc. 21.) In reply, Plaintiff filed a *Reply in Support of Plaintiff's Motion for Summary Judgment*

on False Imprisonment. (Doc. 25.)[1] In addition, the Department of Corrections, James LeBlanc, Timothy Hooper, and Robin Milligan (together "Defendants") filed a *Motion for Summary Judgment*. (Doc. 17.) In response, Plaintiff filed an *Opposition to Defendants' Motion for Summary Judgment*. (Doc. 24.) In reply, Defendants filed *Reply to Plaintiff's Memorandum in Opposition to Summary Judgment*. (Doc. 36.) Oral argument is not necessary. Having considered the facts, the parties' arguments, the applicable law, and for the reasons explained below, the Court will grant Plaintiff's *Motion for Summary Judgment on False Imprisonment Claim* (Doc. 12) and deny Defendants' *Motion for Summary Judgment* (Doc. 17).

RELEVANT FACTS

Mr. McNeal brought this action against the Department of Corrections, Secretary James LeBlanc, Timothy Hooper, and Robin Milligan on June 20, 2018 in state court. (Doc. 1-2.) Defendants removed the case to this Court on August 8, 2018. (Doc. 1.)

On October 26, 2015, Mr. McNeal pled guilty to possession of cocaine and drug paraphernalia in Orleans Criminal District Court, and was sentenced to a five-year sentence, suspended, and with five years of active probation. (Doc. 1-2 at ¶ 19.) Pursuant to a July 2017 arrest, on August 3, 2017, Mr. McNeal's probation was revoked and he was sentenced to be incarcerated for ninety days at the Steve Hoyle Program, in the

[1] Plaintiff also filed two supplements providing legal authority relating to the application of *Heck v. Humphrey* in the overdetention context. (Docs. 45 and 48.)

Bossier Parish Correctional Center. (Doc. 1-2 at ¶ 20-21.) On August 22, 2017, the Department of Corrections sent a release letter to the Steve Hoyle program directing it to release Mr. McNeal on November 1, 2017. (Doc. 12-3 at 3.) The letter states, "This is your authority to release the offender on 11/01/2017, as having completed said sentence that was imposed at the time of revocation." (Doc. 12-7 at 1.) On September 5, 2017, Mr. McNeal was determined to be unfit for the Steve Hoyle Program and was incarcerated at the Elayn Hunt Correctional Center (Doc. 1-2 at ¶23.) The Department of Corrections did not forward Mr. McNeal's release letter to the Elayn Hunt Correctional Center. (Doc. 12-3 at 7.)

November 1, 2017 was Mr. McNeal's correct and legal release date. (Docs. 12-7 at 1; and 12-3 at 3.) Mr. McNeal was not released on November 1, 2017. (Doc. 12-7 at 1.) On November 15, 2017, Mr. McNeal wrote the Warden asking why he was not allowed to go to court, because he was "suppose[d] to be released into a drug program." (Doc. 12-5 at 1) Mr. McNeal asked the Warden for his help to "find out what's going on" and "fix this matter." (Doc. 12-5 at 1.) Mr. McNeal also informed the Warden that his phone pin stopped working so he could not call anyone for help. (*Id.*) A handwritten response to the letter rejecting it reads, "the transfer documents would have been sent for you to be transported" and "you must contact the phone department in regards to your telephone." (*Id.*)

After November 1, 2017, Plaintiff's girlfriend Crystal made phone calls on his behalf. (Doc. 12-6 at 4.) For example, on December 6, 2017, Crystal spoke with

Mr. Peter Pobocik, Plaintiff's probation officer and a Department of Corrections employee, who informed her that Mr. McNeal was supposed to have been released on November 1, 2017. (Doc. 12-6 at 4.) Mr. Pobocik's Narrative Report details, "CC with subject's GF Crystal. She reports that he is still being held at Hunt. Subject was doing a 402 and scheduled to be released 11/1/17. Cajun shows he was released on that date. Forwarded to supervisor for clarification." (Doc. 12-6 at 4.) On December 8, 2017, Department of Corrections was made aware of Mr. McNeal's overdetention. (Doc. 12-4 at 3-4.) On December 11, 2017, Jennifer Bush at the Department of Corrections emailed Elayn Hunt Correctional Center writing, "the offender was thought to be at a different facility," and the attached release letter states, "[t]his is your authority to release the offender as of 11/1/2017, as having completed said sentence that was imposed at the time of revocation." (Doc. 12-7.)

The Louisiana Department of Corrections imprisoned Mr. McNeal from November 1, 2017 to December 12, 2017, excepting for trips to court. (Doc. 12-3 at 2.) Mr. McNeal was released from Elayn Hunt Correctional Center on December 12, 2017. (Doc. 12-3 at 7.) Therefore, Mr. McNeal was held for 41 days past his legal release date. (Doc. 12-3 at 8.)

Plaintiff does not allege that he previously invalidated the nature and duration of his confinement. (Doc. 1-2.) He has not been a part of any other civil action, other than the present action. (Doc. 1-2.) Outside of his letter to the Warden, Plaintiff did not utilize the grievance procedure or file any

Administrative Remedy Procedures pertaining to his incarceration. (Doc. 17-3 at 9.)

PARTIES' ARGUMENTS

a. Plaintiff's arguments in support of summary judgment on false imprisonment.

Plaintiff argues that there is no genuine dispute of material fact as to either element of the tort of false imprisonment under Louisiana law. (Doc. 12-1 at 3-4.) Plaintiff maintains that false imprisonment occurs "when one 'restrains another against his will without a warrant or other statutory authority. Simply stated it is restraint without color of legal authority.'" (Doc. 12-1 at 4 (quoting *Kyle v. City of New Orleans*, 353 So.2d 969, 971 (La., 1977)).) As such, the elements to prove false imprisonment are "(1) proof of imprisonment and (2) lack of legal authority." (Doc. 12-1 at 4 (citing *Prisk v. Palazzo*, (La. App. 4 Cir. 1/19/96668) So.2d 415, 417).) Plaintiff argues that under Louisiana law, there is no intent or other knowledge requirement. Therefore,

> The fact that the jailer is without personal knowledge that the prisoner is held unlawfully does not constitute a defense to an action for false imprisonment . . . In such circumstance, as in the one before us, ignorance of the law is no excuse.

(Doc. 12-1 at 4 (quoting *Whirl v. Kern*, 407 F.2d 781, 791 (5th Cir. 1968)).)

Plaintiff argues that the first element, whether there was an imprisonment, is undisputed. (Doc. 12-1

at 5.) The parties agree that Mr. McNeal was imprisoned at the Ealyn Hunt Correctional Center from August 1, 2017 to December 12, 2017. (Doc. 12-1 at 5.) Likewise, Plaintiff argues that the second element, whether there was a lack of legal authority, is met because the sentence expired on November 1, 2017. (Doc. 12-1 at 5.) The parties agree that Mr. McNeal was held for 41 days past his legal release date. (Doc. 12-1 at 6.) As both elements for the tort of false imprisonment have been met, Plaintiff argues his *Motion for Summary Judgment on False Imprisonment Claim* should be granted. (*Id.*)

b. Defendants' response and arguments in support of summary judgment.

1. Plaintiff's claim is barred by *Heck v. Humphrey* and its progeny.

Defendant argues that *Heck v. Humphrey* applies to bar the Plaintiff's claim because the false imprisonment claim bears on the validity and duration of his confinement. (Docs. 17-1 at 4- 5; 21 at 2-3.) Defendants assert that *Heck v. Humphrey* "held that a prisoner's § 1983 claims [are] not cognizable where 'a judgment in favor of the Plaintiff would necessarily imply the invalidity of his conviction or sentence.'" (Doc. 17-1 at 4 (quoting *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)).) Defendants maintain that the progeny of *Heck*, hold:

> [A] state prisoner's § 1983 action is barred (absent prior invalidation—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct

> leading to a conviction or internal prison proceedings)—if success in that action would *necessarily demonstrate the invalidity of the confinement or its duration*.

(Doc. 17-1 at 5 (quoting, *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005)).) Defendants' argue that if Plaintiff proves his case, then he would "inherently demonstrate that (1) the *nature* of his confinement was illegal (that the defendants had no authority to hold him) and that (2) the *duration* of his confinement was illegal (he was held for 41 days past his release date)." (Doc. 17-1 at 5.) Therefore, Defendants argue *Heck* applies. (Doc. 17-1.)

Defendants point to the fact that Plaintiff's confinement has not been previously invalidated. (Doc 17-1 at 6.) Defendants argue that "[u]nder *Heck*, a § 1983 case is barred unless the plaintiff can demonstrate that the nature and duration of his confinement has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal or called into question by a federal court's issuance of a writ of habeas corpus." (Doc. 17-1 at 6.). Because Plaintiff has not sought to invalidate his confinement, Defendants maintain that *Heck* applies and the claim is barred. (Doc. 17-1 at 6-7.)

2. <u>Plaintiff's claim is barred because he failed to exhaust his administrative remedies prior to filing suit.</u>

Defendants argue in the alternative that because Plaintiff failed to pursue available administrative remedies under the Louisiana Prison Litigation Reform

Act ("LA PLRA"), his claims should be dismissed. (Doc. 17-1 at 7.) The LA PLRA states:

> No prisoner suit shall assert a claim under state law until such administrative remedies as are available are exhausted. If a prisoner suit is filed in contravention of this Paragraph, the court shall dismiss the suit without prejudice.

(Doc. 17-1 at 7 (quoting La. R.S. 15:1184(A)(2)).) Defendants assert that the LA PLRA defines "civil action with respect to prison conditions" or "prisoner suit" to mean

> any civil proceeding with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include post conviction relief or habeas corpus proceedings challenging the fact or duration of confinement in prison.

(Doc. 17-1 at 7 (citing La. R.S. 15:1181).) Defendants reason that because this is a civil proceeding challenging the effects of actions by government officials on the lives of persons confined in prison it is a "prisoner suit" under the LA PLRA. (Doc. 17-1 at 7.) The LA PLRA further defines "prisoner" to mean:

> any person subject to incarceration, detention, or admission to any prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms or conditions of parole, probation, pretrial release, or a diversionary program. Status as a "prisoner" is determined as of the time the cause

> of action arises. Subsequent events, including post trial judicial action or release from custody, shall not affect such status.

(Doc. 17-1 at 8 (quoting La. R.S. 15:1181(6)).) Again, Defendants reason that because the state law causes of action arose during his confinement at the Elayn Hunt Correctional Center, Plaintiff is a prisoner under the LA PLRA. (Doc. 17-1 at 8.) Therefore, Defendants maintain that Plaintiff was required to exhaust the available administrative remedies before filing the civil suit, which he did not. (Doc. 17-1 at 8-9.) Defendants argue that it is appropriate to therefore dismiss Plaintiff's claims under the LA PLRA. (*Id.*)

c. Plaintiff's response and reply to Defendants' arguments.

1. *Heck* does not apply because Plaintiff does not challenge his conviction or his sentence.

Plaintiff argues that the application of *Heck v. Humphrey* is an affirmative defense that was not pled in Defendants' answer and is therefore waived pursuant to Fed. R. Civ. P. 15(h). (Doc. 24 at 2.) Plaintiff also argues that in challenging his overdetention, he does not seek to invalidate either his conviction or sentence, so therefore *Heck v. Humphrey* does not apply. (Doc. 24 at 3.) Plaintiff also argues that applying *Heck* to an overdetention case would lead to absurd results because a 41-day overdetention is not sufficient to obtain a ruling from a tribunal. (Doc. 24 at 3.) Further, Plaintiff details that there is no cause of action allowing an overdetention to be expunged or reversed. (Doc. 24 at 3.)

2. LA PLRA's exhaustion requirement does not apply to the Plaintiff.

a. The federal PLRA not the Louisiana PLRA applies in federal court.

Plaintiff argues that under Fifth Circuit precedent, the federal and not the LA PLRA applies in federal Court. (Doc. 24 at 4.) Plaintiff directs the Court to *Ferrington v. Louisiana Department of Corrections*, 315 F.3d 529 (5th Cir. 2002), which states, "*Ferrington* is proceeding in federal, not state court, and his claim is procedurally governed by federal law." 315 F.3d 529, 532 (5th Cir. 2002). Plaintiff argues that under the federal PLRA, a former prisoner does not have to exhaust administrative remedies. (Doc. 24 at 4-5 (citing *Bernal v. Bexar Cty.*, 757 F. App'x 316, 320 (5th Cir. 2018) ("At the time of his complaint, Bernal was not incarcerated. Rather, he had served his time. And he sued after his release. The district court was wrong that Bernal had to exhaust his administrative remedies. It thus erred in dismissing his complaint.")).) As such, Plaintiff maintains that Mr. McNeal did not have to exhaust administrative remedies to bring his claim. (Doc. 24 at 4-5.)

b. The Louisiana PLRA applies to suits by current prisoners, not former prisoners

In the alternative, if the Court applies the LA PLRA, Plaintiff argues that the LA PLRA applies only to suits by current prisoners, not former prisoners. (Doc. 24 at 5.) Plaintiff cites *Hebert v. Maxwell*, No. 03-1739, 2008 WL 1733233, at *1–2 (W.D. La. Apr. 14, 2008), which states:

> The plain language of these statutes suggests that the limitations apply only to suits by current prisoners, not former prisoners, and the jurisprudence bears this out. Because the Louisiana statute is so similar to the federal statute, and because we can find no Louisiana cases on point, we rely on federal jurisprudence.

(Doc. 24 at 5.) Because there is no case law applying the LA PLRA to former prisoners, Plaintiff maintains that it does not apply. (Doc. 24 at 5.)

c. Plaintiff was not a prisoner during his overdetention

In the alternative, Plaintiff argues that under the plain language of the LA PLRA, Mr. McNeal was not a prisoner during his overdetention. (Doc. 24 at 6.) As previously discussed, prisoner is defined by the LA PLRA as:

> any person subject to incarceration, detention, or admission to any prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms or conditions of parole, probation, pretrial release, or a diversionary program.

(Doc. 24 at 6 (citing La. R.S. 15:1181(6).) Plaintiff argues that under this definition, to be a prisoner there must be "(1) actual imprisonment, (2) resulting from legal process. (The actual imprisonment must be linked [to] the legal process, because otherwise a person locked in a private person's basement who was separately accused of a crime would be subject to the L[A] PLRA – an absurd result.)." (Doc. 24 at 6.)

Plaintiff outlines that "once Mr. McNeal's sentence expired, he was no longer a person "accused of, convicted of, sentenced for, or adjudicated delinquent" of any crime. (Doc. 24 at 6.) Therefore, he no longer fit within the definition of prisoner. (*Id.*) This interpretation is consistent, Plaintiff maintains, with the interpretation of the federal PLRA. (Doc. 24 at 6 (citing *Williams v. Block*, No. 97-3826 WJR, 1999 WL 33542996, at *6 (C.D. Cal. Aug. 11, 1999) ("Once Plaintiffs were entitled to be released, any "jail term" that may have existed expired. Therefore, they were not prisoners at the time the alleged injury occurred."); *Watson v. Sheahan*, No. 94 C 6891, 1998 WL 708803, at *3 (N.D. Ill. Sept. 30, 1998) ("This case, however, involves claims by persons who were legally released from the above correctional facilities but were detained over 10 hours before being physically released from custody. Thus, the PLRA is not applicable to this case."); *Lee v. State, Dep't of Corr. Servs.*, No. 97 CIV. 7112, 1999 WL 673339, at *4 (S.D.N.Y. Aug. 30, 1999) ("Second, and more importantly, the PLRA does not apply to the instant case. Section 1997e(h) defines the term "prisoner" as "any person incarcerated, or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law." 42 U.S.C. § 1997e(h). Here, Plaintiff's son does not fall within the express terms of the statutory definition, because even though he was detained, he was never accused or convicted of a crime.")

d. The Louisiana PLRA does not bar Plaintiff's claims because the 90-day administrative grievance window had not passed when he was released.

In the alternative, Plaintiff argues that the LA PLRA does not apply because Mr. McNeal was released before the deadline expired to file a grievance under La. R.S. 15:1172(B)(1). (Doc. 24 at 7.) Plaintiff asserts that under La. R.S. 15:1172(B)(1), an offender has 90 days to file an administrative grievance. (Doc. 24 at 7.) Therefore, because he was released before that deadline, he did not have access to the prison grievance system. (Doc. 24 at 7.) Further, Plaintiff maintains that under the Louisiana Administrative Code § 101(C), the Administrative Remedy Procedure is for offenders and not ex-offenders. (Doc. 24 at 7, (citing *see also Evans v. Cameron*, No. 3:09- CV-17-KRG-KAP, 2009 WL 3415160, at *2 (W.D. Pa. Oct. 22, 2009)).)

e. Plaintiff sent the warden a letter asking for help.

Plaintiffs also argue that because Mr. McNeal sent the Warden a letter asking him to correct the overdetention, which was rejected, the purpose of the LA PLRA was satisfied. (Doc. 24 at 7-8.)

d. *Defendants' reply to Plaintiff's response in opposition*

1. *Heck v. Humphrey* applies to bar Plaintiff's claim.

Defendants argue that because *Heck* applies to imprisonment, and substantive determinations as to

the length of confinement, it applies in this case. (Doc. 36 at 2, (citing *Wilkinson v. Dotson*, 544 U.S. 74, 84 (2005)).) Defendants point the Court to *Randell v. Johnson* in which the Fifth Circuit held, "Because Randell is seeking damages pursuant to § 1983 for unconstitutional imprisonment and has not satisfied the favorable termination requirement of *Heck,* he is barred from any recovery." (Doc. 36 at 2 (citing *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000)).) Defendants maintain that courts in Texas, Louisiana, and Mississippi apply *Heck* to claims of illegal imprisonment. (Doc. 36 at 3.)[2]

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[2] Defendant cites among other cases from Texas: *Gurrola v. Perry*, No. V-13-006, 2013 U.S. Dist. LEXIS 46374, at *3 (S.D. Tex. Feb. 4, 2013) (applying *Heck* to bar claim for illegal imprisonment when Plaintiff "pursuant to prior Texas law, [] would now be entitled to release on parole because his good-time credits plus flat time served equals or exceeds his ten-year sentence."); *Redo v. BOT Warehouse Classification Dep't*, No. H-09-0679, 2009 U.S. Dist. LEXIS 51450, at *2 (S.D. Tex. June 17, 2009) (applying *Heck* when Plaintiff sued for illegal imprisonment when his supervised release date was changed because an "audit revealed an error in his first jail date. The records were corrected to reflect that his first jail date was October 7, 1991, not August 2, 1990. This caused Redo's projected release date and maximum discharge date to be postponed."); *Gaddis v. Beaumont*, No. 1:12cv547, 2012 U.S. Dist. LEXIS 183015, at *1 (E.D. Tex. Dec. 3, 2012) (applying *Heck* to bar a claim that prison officials did not properly calculate his sentence under the good time law.). Defendant cites among other cases from Louisiana: *Sam v. Avoyelles Corr. Ctr.*, No. 10-CV-1264, 2010 U.S. Dist. LEXIS 138554, at *1-2 (W.D. La. Nov. 8, 2010) (applying *Heck* to bar a claim when "Plaintiff was convicted of an unknown sex offense and is currently serving the resulting prison sentence. . .. He alleges that his good time release date has passed, yet he is still confined at AVC."); *Fox v. Terrell*, No. 2:12-cv-3161, 2013 U.S. Dist. LEXIS 128536, at *2 (W.D. La. Aug. 7, 2013)

Defendants also argue that the *Heck* procedural bar is not waived when it is not pled as an affirmative defense because it is similar to sovereign immunity and cannot be waived through removal. (Doc. 36 at 4-5.)

2. Plaintiff was required to exhaust remedies under the LA PLRA.

Defendants also argue that the LA PLRA applies, and that Plaintiff was required to exhaust his administrative remedies before bringing state law claims. (Doc. 36 at 6.) First Defendants insist that the federal PLRA applies to claims brought under federal law, not claims brought in federal court. (Doc. 36 at 6 (citing 42 U.S.C. 1997e(a)).)

Second, Defendants argue that the LA PLRA applies to "prisoners" and to "prisoner suits" as defined under the statute. (Doc. 36 at 6.) Defendants assert

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(applying *Heck* to bar a claim against prison officials who "refused to credit him with time served in custody in Arkansas."); *Adger v. LeBlanc*, No. 15-0390-BAJ-EWD, 2016 U.S. Dist. LEXIS 182334, at *1 (M.D. La. Dec. 6, 2016) (applying *Heck* to bar a claim that "prison officials have violated his constitutional right to due process by improperly confiscating an excessive amount of his accrued good time credits toward early release."). Defendant cites among other cases from Mississippi: *Hudson v. Mississippi*, No. 3:15CV151-MPM-JMV, 2017 U.S. Dist. LEXIS 30439, at *1 (N.D. Miss. Mar. 3, 2017) (applying *Heck* to bar a claim where "The plaintiff alleges that the defendants improperly revoked his post-release supervision on a cyberstalking charge."); *Loucks v. Epps*, No. 2:12-cv-63-KS-MTP, 2013 U.S. Dist. LEXIS 8456, at *1 (S.D. Miss. Jan. 22, 2013) (applying *Heck* to bar a claim that "MDOC will not place him in "trusty status" or provide him with good-time credits or earned time credits because they have incorrectly classified his offense as a sex offense.")

that the definition of "prisoner" provides that "status as a prisoner is determined as of the time the cause of action arises. Subsequent events including post trial judicial action or release from custody, shall not affect such status." (Doc. 36 at 6 (citing La. R.S. 15: 1181(6)).) Similarly, Defendants contend that the Louisiana Corrections Administrative Remedy Procedure defines "offender" as "an adult or juvenile offender who is in the physical or legal custody of the Department of Public Safety and Corrections, . . . Any subsequent event, including posttrial judicial action or release from custody, shall not affect status as an "offender" for the purposes of this Part." (Doc. 36 at 6 (citing La. R.S. 15:1174(2)).) "Prisoner suit" under the LA PLRA is defined as "any civil proceeding with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include post conviction relief or habeas corpus proceedings challenging the fact or duration of confinement in prison." (Doc. 36 at 7 (quoting La. R.S. 15:1181(5)).) Defendants argue that because he was confined at Elayn Hunt Correctional Center, Mr. McNeal was a prisoner under the Act and that this is a prisoner suit under the Act. (Doc. 36 at 6-7.)

Third, Defendants maintain that the Louisiana Administrative Code provides that under La. R.S. 15:1174(2)'s definition of "offender," Mr. McNeal still had to abide by the exhaustion procedure because release from custody does not change the status of the "offender." (Doc. 36 at 7.) Defendants also outline that an offender who has been released from custody has

access to the grievance system because the Louisiana Administrative Code provides:

> If an offender is discharged before the review of an issue is completed that affects the offender after discharge, or if he files a request after discharge on an issue that affects him after discharge, the institution shall complete the processing and shall notify the offender at his last known address. All other requests shall be considered moot when the offender discharges and the process shall not be completed.

La. Admin. Code Tit. 22, Pt I, § 325. As such, Defendants maintain that Plaintiff needed to, at a minimum, follow the administrative remedy procedure before filing the suit, alerting the Department of Corrections that he was seeking damages. (Doc. 36 at 7-8.)

Last, Defendants maintain that regardless of whether Plaintiff's letter to the warden constituted an action under the LA PLRA, he did not take action at the departmental level, so he failed to exhaust his administrative remedies. (Doc. 36 at 8.)

APPLICABLE STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the mover bears his burden of showing that there is no genuine issue of fact, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts ... [T]he nonmoving party must

come forward with 'specific facts showing that there is a genuine issue for trial.'" *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (internal citations omitted). The nonmover's burden is not satisfied by "conclusory allegations, by unsubstantiated assertions, or by only a 'scintilla' of evidence." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir.1994) (citations and internal quotations omitted). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.' " *Matsushita Elec. Indus. Co.*, 475 U.S. at 587. Further:

> In resolving the motion, the court may not undertake to evaluate the credibility of the witnesses, weigh the evidence, or resolve factual disputes; so long as the evidence in the record is such that a reasonable jury drawing all inferences in favor of the nonmoving party could arrive at a verdict in that party's favor, the court must deny the motion.

International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1263 (5th Cir. 1991).

ANALYSIS

a. The elements of false imprisonment under Louisiana law.

Under Louisiana law, "[a]claim for false arrest requires the following elements: (1) detention of the person; and (2) the unlawfulness of the detention. *Richard v. Richard*, 11-0229 p. 5 (La. 10/25/11), 74 So. 3d 1156, 1159 (citing *Kennedy v. Sheriff of East Baton*

Rouge, 05– 1418 (La.7/10/06), 935 So.2d 669.) Further, "[m]alice is not a necessary element of the tort of false imprisonment and is immaterial except as it may affect the question of damages." *Tabora v. City of Kenner*, 94-613 p. 8 (La. App. 5 Cir. 1/18/95), 650 So. 2d 319, 322, *writ denied,* 95-0402 (La. 3/30/95), 651 So. 2d 843. The Fifth Circuit has explained:

> Detention of a prisoner for over "thirty days beyond the expiration of his sentence in the absence of a facially valid court order or warrant constitutes a deprivation of due process." *Douthit v. Jones,* 619 F.2d 527, 532 (5th Cir.1980). Our precedent establishes that a jailer has a duty to ensure that inmates are timely released from prison. We have explained that "[w]hile not a surety for the legal correctness of a prisoner's commitment, [a jailer] is most certainly under an obligation, often statutory, to carry out the functions of his office. Those functions include not only the duty to protect a prisoner, but also the duty to effect his timely release." *Whirl v. Kern,* 407 F.2d 781, 792 (5th Cir.1969) (internal citations and footnote omitted).

Porter v. Epps, 659 F.3d 440, 445 (5th Cir. 2011). *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1968) ("The tort of false imprisonment is an intentional tort. It is committed when a man intentionally deprives another of his liberty without the other's consent and without adequate legal justification. Failure to know of a court proceeding terminating all charges against one held in custody is not, as a matter of law, adequate legal

justification for an unauthorized restraint. Were the law otherwise, Whirl's nine months could easily be nine years, and those nine years, ninety-nine years, and still as a matter of law no redress would follow. The law does not hold the value of a man's freedom in such low regard.")

There is no genuine dispute as to any material fact regarding the elements of false imprisonment. Both parties agree that Mr. McNeal was imprisoned at the Ealyn Hunt Correctional Center for 41 days following his correct release date. Although the elements of false imprisonment are established, Defendants' *Motion for Summary Judgment* and the Department of Correction's opposition, argue that there are procedural bars that apply to prohibit Plaintiff's claims.

b. Does Heck v. Humphrey bar Plaintiff's claim?

Defendants seek to apply *Heck v. Humphrey* to bar Plaintiff's claims relating to his overdetention in the Ealyn Hunt Correctional Center.[3] Chief Judge Shelly

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[3] As is clear from the complaint, Plaintiff was released from incarceration at the time his lawsuit was filed and one might understandably argue that, since he is no longer in custody and cannot seek habeas corpus relief, it is impossible for him to satisfy the favorable termination rule and therefore, if *Heck* applies literally, he is left with no remedy for his overdetention. Indeed, in his concurring opinion in *Heck*, Justice Souter anticipated this problem and thought *Heck* should not apply to persons released from custody because such persons, no longer having access to the habeas remedy, would be denied any federal forum in which to pursue their claim for deprivation of federal rights. 512 U.S. at 500 (Souter, J., concurring). Such a result would clearly run afoul of the aspiration, if not the rule, announced in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 162-63 (1823): "If he has a right, and the

right has been violated, do the laws of this country afford him a remedy? The very essence of civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." This ideal derives from the British common law: "that every right, when with-held, must have a remedy, and every injury its proper redress." William Blackstone, Commentaries on the Laws of England, 23; *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 162-63 (1823).

> However, Justice Scalia, writing for the Court in *Heck*, countered Souter's concern this way: Justice Souter also adopts the common-law principle that one cannot use the device of a civil law tort action to challenge the validity of an outstanding criminal conviction, but thinks it necessary to abandon that principle in those cases (of which no real-life example comes to mind) involving former prisoners who, because they are no longer in custody, cannot bring postconviction challenges. We think the principle of barring collateral attacks – a longstanding and deeply rooted feature of both the common law and our own jurisprudence – is not rendered inapplicable by the fortuity that a criminal is no longer incarcerated."

Id. at 490 n.10. A February 17, 2019 article from The Times-Picayune gives examples of prisoners who served more time than they were sentenced to serve. Richard Webster and Emily Lane, *Louisiana Routinely Jails People Weeks, Years After Their Release Dates*, https://expo.nola.com/news/g66I-2019/02/3eb5c1dfa86460/louisiana-routinelyjails- people-weeks-months-years-after-their-release-dates.html (last visited March 16, 2019).

Since *Heck*, some circuits (the Second, Fourth, Sixth, Seventh, Ninth, Tenth, and Eleventh) have adopted the approach suggested by Justice Souter's concurring opinion in *Heck*. *See Burd v. Sessler*, 702 F.3d 429, 435 n.3 (7th Cir. 2012); *Cohen v. Longshore*, 621 F.3d 1311, 1316–17 (10th Cir. 2010); *Wilson v. Johnson*, 535 F.3d 262, 267–68 (4th Cir. 2008); *Powers v. Hamilton Cty. Pub. Defender Comm'n*, 501 F.3d 592, 602–03 (6th Cir. 2007); *Harden v. Pataki*,

320 F.3d 1289, 1301–02 (11th Cir. 2003); *Nonnette v. Small*, 316 F.3d 872, 876–77 (9th Cir. 2002); *Huang v. Johnson*, 251 F.3d 65, 75 (2nd Cir. 2001); *see also* Alice Huang, *When Freedom Prevents Vindication: Why the Heck Rule Should Not Bar a Prisoner's § 1983 Action in Deemer v. Beard*, 56 B.C. L. Rev. E. Supplement 65 (2015); John P Collins, *Has All Heck Broken Loose? Examining Heck's Favorable Termination Requirement In the Second Circuit after Proventud v. City of New York*, 42 Fordham Urban L.R. 451 (December 2014).

But the Fifth Circuit is not among those which have taken the Souter view of *Heck*. *See Randell v. Johnson*, 227 F.3d 300 (5th Cir. 2000); *Black v. Hathaway*, 616 F. App'x 650 (5th Cir. 2015). In Black, the plaintiff argued that the 2004 case of *Muhammad v. Close*, 540 U.S. 749 (2004), had made clear that the issue of whether Heck applied to one released from incarceration is an undecided one, relying on footnote 2, which states "Members of the Court have expressed the view that unavailability of habeas for other reasons may also dispense with the *Heck* requirement. This case is no occasion to settle the issue." 540 U.S. at 752 n.2 (citations omitted). But the Fifth Circuit rejected that argument, albeit with some hesitation: "We recognize that *Muhammad* comes into tension with our decision in *Randell*. Muhammed indicates that *Heck*'s statement that the favorable termination rule applies to former prisoners is dicta; *Randell*, in contrast, relied on the fact that the *Heck* court had reached an 'unequivocal []' holding to conclude that the rule extended to former prisoners. But *Muhammed* only stated that the application of the favorable-termination rule after a prisoner's release remains unsettled. *Muhammed* failed to effect a change in the law that would allow this panel to revisit the court's decision in *Randell*." Id. at 653-54; *See Walker v. Munsell*, No. 06-867-JJB-SCR, 2007 WL 3377202 (M.D. La. Oct. 1, 2007).

Were the Court deciding this issue with a clean state, it would endorse the conclusion and language of Judge Bennet of the Northern District of Iowa who, in adopting Justice Souter's position in *Heck*, stated that "[i]n order to ensure the protection of an individual right, more than mere enumeration of that right is

Dick, of this District recently explained the applicability of *Heck v. Humphrey* in an overdetention case that is factually similar to this case. Judge Dick stated:

> Defendants also move to dismiss Plaintiff's claims, arguing that the *Heck v. Humphrey* doctrine bars Plaintiff's claims because they bear on both the validity and duration of his confinement. In *Heck*, the Supreme Court held that a convicted person cannot collect damages for an unconstitutional conviction or imprisonment under Section 1983 unless "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal ..., or called into question by a federal court's issuance of a writ of habeas corpus." Such a complaint must be dismissed if a "judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." Plaintiff

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required. Without also a means of redress, an individual right becomes illusory due to the inability to enforce that right." *Dible v. Scholl*, 410 F. Supp. 2d 807, 808 (N.D. Iowa 2006). Applying *Heck* to those no longer incarcerated would render those rights, in Judge Bennet's words, "nothing more than a mirage – appearing to exist at first glance, but transforming into an illusion upon careful inspection due to the lack of a federal forum in which to enforce them." *Id.* But, of course, the Court is bound by the Fifth Circuit's opinions in *Randell* and *Black*. If this case merely involved a formerly incarcerated individual bringing a § 1983 action, the Court would be bound to apply *Heck*. However, as the Court explains in this case, *Heck* does not apply because the false imprisonment claim does not challenge the validity or duration of his confinement.

maintains that he does not, in any way, challenge his underlying conviction or sentence, and this *Heck* argument has been rejected by Louisiana district courts. Plaintiff is correct.

This Court rejected the same arguments raised by the DOC and LeBlanc in *Thomas v. Gryder*. The Court explained:

> The "favorable termination" requirement of Heck prohibits a criminal defendant's collateral attack on the defendant's conviction or sentence. Here, however, Plaintiff does not seek to collaterally attack either his conviction or his sentence. Instead, all parties agree that on January 23, 2013, Plaintiff pleaded guilty in Orleans Criminal District Court and was sentenced as follows: (1) Count 1: sexual malfeasance in prison – five years; (2) Count 2: sexual battery – two years; and (3) Count 3: second degree kidnapping – five years. The parties further agree that Plaintiff's correct release date was June 5, 2015. Nothing in the instant action would invalidate either Plaintiff's conviction or sentence, and Defendants cite the Court to no cases in which the unique fact pattern at issue here was considered. Accordingly, the Court finds that Plaintiff's claims are not *Heck* barred.

The *Traweek* court reached the same conclusion:

> By seeking to impose the *Heck* procedural bar to Mr. Traweek's claims, the defendants emphasize form over substance, begin from a faulty assumption, and ignore a critical component of *Heck* that is absent here. If Mr. Traweek succeeds on the merits, neither his underlying conviction for aggravated battery nor his seven-month sentence will be impliedly invalidated. *See id.* at 486, 114 S.Ct. 2364 (the favorable termination rule does not bar a § 1983 suit when "the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff."). Here, Mr. Traweek challenges neither his conviction nor his sentence. He accepts both. Therefore, the reasoning underlying *Heck*'s favorable termination prerequisite is simply not implicated: it would be illogical to require Mr. Traweek to first seek to invalidate his conviction or sentence in order to proceed in this lawsuit. The constitutional violation he advances here is that he was imprisoned 20 days past his release date; he does not take issue with his criminal judgment of conviction or the sentence rendered, but, rather, challenges the constitutionality of the administration of his release after he had served his sentence. Mr. Traweek

alleges that his jailers failed to timely release him once the legal basis to incarcerate him had expired by court order. The only conduct the factfinder will probe is that performed by jail officials in administering his release after his release date.

Another Section of this Court has rejected Secretary LeBlanc's attempt to invoke Heck in a factually-similar overdetention context, *Grant v. Gusman*, 17-cv-02797, R. Doc. 46 (E.D. La. March 27, 2018) (Brown, C.J.). There, the plaintiff, who had served seven years in state custody, was arrested upon his release based on a warrant issued years earlier for a different crime predating the one for which he served the seven-year prison term. The plaintiff pled guilty and the state court sentenced him to "a one year sentence, with credit for time served for the seven years he had just served." *Id.* at 3. Like Mr. Traweek, an administrative logjam between OPSO and DOC caused the plaintiff to be detained an additional 27 days after his sentencing, notwithstanding the state trial court's order (and the judge's email directly to OPSO's attorney directing) that Grant's release be expedited. *Id.* at 3-5. In moving to dismiss Grant's § 1983 claims, Secretary LeBlanc also invoked *Heck*. Chief Judge Brown rejected the

> argument, noting "[p]laintiff does not argue that his conviction or sentence were invalid.... [H]e contends that DOC Defendants violated his constitutional rights by failing to release him from prison. Therefore, *Heck v. Humphrey* is not applicable to this case." *Id.* at 32. This reasoning applies equally to Mr. Traweek, who, like Grant, challenges neither his conviction nor the length of his court-ordered sentence; he simply alleges that the overdetention by his jailers' failure to timely process his release following his court-ordered time-served judgment exceeds constitutional bounds.
>
> Mr. Traweek's lawsuit, if successful, will not demonstrate or imply the invalidity of any criminal judgment or court-imposed sentence. He simply alleges that the procedures and action (or inaction) that caused him to be incarcerated for 20 days longer than his criminal judgment permitted unconstitutionally deprived him of his right to due process. *Heck*'s procedural bar is patently inapplicable.
>
> Based on the foregoing, the Court finds that *Heck v. Humphrey* does not bar Plaintiff's claims relating to his alleged over-detention.

Ellis Ray Hicks v. Department Of Public Safety & Corrections, No. 19-108-SDD-RLB, 2020 WL 428116, at *6–9 (M.D. La. Jan. 27, 2020) (internal footnotes omitted); *see Thomas v. Gryder*, No. CV 17-1595-EWD,

2019 WL 5790351, at *4–5 (M.D. La. Nov. 6, 2019); *Chappelle v. Varano*, No. 4:11-CV-00304, 2013 WL 5876173, at *12–13 (M.D. Pa. Oct. 30, 2013); *Leamer v. Fauver,* 288 F.3d 532, 542 (3d Cir. 2002); *Griffin v. Allegheny Cty. Prison*, No. CV 17 - 1560, 2018 WL 6413156, at *4 (W.D. Pa. Nov. 5, 2018), *report and recommendation adopted,* No. CV 17-1560, 2018 WL 6411363 (W.D. Pa. Dec. 6, 2018).

The Court agrees with Judge Dick's analysis and holds that *Heck v. Humphrey* does not bar Plaintiff's claims relating to his overdetention. Defendant's *Motion for Summary Judgment* is DENIED on this issue.

c. Is Plaintiff's claim barred because he failed to exhaust his administrative remedies?

Plaintiff brings the following causes of action under federal law: (1) a § 1983 claim for the violation of Mr. McNeal's 14th Amendment Rights; and (2) a *Monell* liability claim and a failure to train/supervise claim against Secretary LeBlanc and Warden Hooper. (Doc. 1 at 6.) Defendants do not argue that Plaintiff's federal law claims should be dismissed for failure to exhaust administrative remedies, and therefore the Court does not address the applicability of the federal PLRA to Plaintiff's claims under federal law.

Plaintiff also brings the following causes of action under state law: (a) false imprisonment; (b) negligence; (c) violation of Article One, Section Two of the Louisiana Constitution; (d) *respondeat superior* liability against Secretary LeBlanc and Warden Hooper; and (e) indemnification of claims against any state

employees. (Doc. 1.) Defendants argue that the LA PLRA applies to these state law claims and therefore the Court must dismiss the Plaintiff's state law claims because he did not exhaust his administrative remedies prior to filing suit.

1. The LA PLRA applies to state law claims pursued in federal court.

Plaintiff argues that the Court should apply the federal PLRA, not the LA PLRA, because the case is proceeding in federal court. The Fifth Circuit explained that state law concerning an exhaustion requirement applies when courts apply state law, stating:

> Under the Supreme Court's decision in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), federal courts hearing state-law claims apply state substantive law and federal procedural law. But the line between substance and procedure can be a murky one, and exhaustion requirements are among those "matters which, though falling within the uncertain area between substance and procedure, are rationally capable of classification as either." *Hanna v. Plumer*, 380 U.S. 460, 472, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965). Because the Federal Rules of Civil Procedure do not address administrative exhaustion, we determine whether we should treat the issue as substantive or procedural by looking to "the twin aims of the Erie rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws" . . . . *Id.* at 468, 85 S.Ct. 1136. Litigants would engage in forum

> shopping if federal courts and state courts applied different administrative exhaustion regimes, because some claims could proceed in one court system but not the other. Further, it would be unfair for non-diverse litigants to be able to proceed in state court when diverse but otherwise identically situated litigants could not proceed because their case was in federal court. Thus, we treat administrative exhaustion as substantive for *Erie* purposes and therefore apply Mississippi law. *See Autobahn Imports, L.P. v. Jaguar Land Rover N. Am., L.L.C.*, 896 F.3d 340, 345 (5th Cir. 2018) ("Sitting in diversity, we apply Texas substantive law on the exhaustion question....").

Lamar Co., L.L.C. v. Mississippi Transportation Comm'n, 786 F. App'x 457, 460–61 (5th Cir. 2019). Therefore, although this case is in federal court, the Court will apply the LA PLRA and not the federal PLRA to the alleged state law claims. *See Morales v. McCulloh*, No. CV 18-808- SDD-RLB, 2019 WL 2774324, at *3 (M.D. La. July 2, 2019) (applying the LA PLRA to a former inmates state law claims); *Kleinpeter v. Kilbourne*, No. 13-357-JWD-RLB, 2015 WL 7568656, at *8 (M.D. La. Nov. 24, 2015) (applying the LA PLRA).

2. <u>The LA PLRA does not apply because Mr. McNeal was not a "prisoner", and this is not a "prisoner suit."</u>

The LA PLRA states "No prisoner suit shall assert a claim under state law until such administrative remedies as are available are exhausted. If a prisoner suit is filed in contravention of this Paragraph, the

court shall dismiss the suit without prejudice." La. R.S. 15:1184A.(b)(2). Prisoner suit is defined under the statute as:

> [A]ny civil proceeding with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include post conviction relief or habeas corpus proceedings challenging the fact or duration of confinement in prison.

La. R.S. 15:1181(2). Further, prisoner is defined as

> [A]ny person subject to incarceration, detention, or admission to any prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms or conditions of parole, probation, pretrial release, or a diversionary program. Status as a "prisoner" is determined as of the time the cause of action arises. Subsequent events, including post trial judicial action or release from custody, shall not affect such status.

La. R.S. 15:1181(6); *see See Morales v. McCulloh*, No. CV 18-808-SDD-RLB, 2019 WL 2774324, at *3 (M.D. La. July 2, 2019) ("The Court finds that the provisions of the Louisiana PLRA apply to Morales' state law claims because her claims arose while she was incarcerated.")

Louisiana courts consistently hold that the LA PLRA exhaustion requirement applies to prisoner suits. *See Duhe v. St. John the Baptist Par. Sheriff's Dep't*, 17-599 p.8 (La. App. 5 Cir. 4/11/18), 245 So. 3d

1244, 1247, writ denied, 18-0764 (La. 9/21/18), 252 So. 3d 898 ("In the present case, the record is devoid of any evidence that Mr. Duhe pursued administrative remedies prior to filing this lawsuit in the trial court. Because Mr. Duhe failed to exhaust his administrative remedies prior to filing suit, the trial court lacked subject matter jurisdiction to consider his claims."); *see Morales v. McCulloh*, No. CV 18-808-SDD-RLB, 2019 WL 2774324, at *3 (M.D. La. July 2, 2019).

Plaintiff argues that he is not a prisoner under the statute because once Mr. McNeal's sentence expired, he was no longer a person "accused of, convicted of, sentenced for, or adjudicated delinquent" of any crime. Defendant argues that because Plaintiff was confined in the Elayn Hunt Correctional Center, he is considered a prisoner and that this is a "prisoner suit."[4]

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[4] The Louisiana Third Circuit Court of Appeals ruled that the LA PLRA did not apply to a suit in which the plaintiff alleged malicious prosecution and false imprisonment against the district attorney and sheriff for his arrest and prosecution. *Godfrey v. Reggie*, 11-1575 p. 12 (La. App. 3 Cir. 5/2/12), 94 So. 3d 82, 84. The court reasoned:

> the PLRA defines a "prisoner suit" or a "civil action with respect to prison conditions" as "any civil proceeding with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include post conviction relief or habeas corpus proceedings challenging the fact or duration of confinement in prison." La.R.S. 15:1181. The plaintiff's suit does not, as contemplated by La.R.S. 15:1181, challenge the conditions of his confinement or the effects of actions by government officials on his life. Accordingly, we find no merit to the plaintiff's argument concerning the applicability of the PLRA to his suit.

The plain language of the statute supports Plaintiff's reasoning that he was not a prisoner. Once he had served all 90 days of his sentence, he was no longer a prisoner because he was not "subject to incarceration, detention, or admission to any prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for" any criminal law. *See Williams v. Block*, No. CIV.97-3826 WJR, 1999 WL 33542996, at *6 (C.D. Cal. Aug. 11, 1999) ("Here, Plaintiffs were entitled to be released and were then detained for varying periods of time until their release could be effectuated. Therefore, Plaintiffs were not "prisoners" within the meaning of § 1997e(h) as they did not fit into any of the definitions provided therein. Indeed, "[c]ontinued confinement cannot legally make [a plaintiff] a 'prisoner' when the jail term has expired; in the eyes of the law plaintiff is no longer a 'prisoner." ' *Sullivan,* 12 Cal.3d at 717."); *see Porter v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011) ("[A] jailer has a duty to ensure that inmates are timely released from prison.")

As Defendant points out, however, the definition of "prisoner suit" is broader and encompasses "the effects of actions by government officials on the lives of persons confined in prison." Therefore, Defendant reasons that although Mr. McNeal was no longer a prisoner, during his overdetention he was a "person confined in prison" making this case a prisoner suit.

Godfrey, 94 So. 3d 82, 91. While *Godfrey* acknowledges that the tort of false imprisonment may fall outside the bounds of the LA PLRA, the plaintiff in *Godfrey* did not allege any claims against the Department of Corrections and is therefore not applicable.

However, Louisiana courts also recognize that the PLRA does not extend to all matters concerning incarceration. *Frederick v. Ieyoub*, 99-0616 p.7 (La. App. 1 Cir. 5/12/00), 762 So. 2d 144, 149, *writ denied,* 00-1811 (La. 4/12/01), 789 So. 2d 581. Specifically, when examining if the PLRA's strike provisions applied to suits challenging the duration of confinement, the Louisiana First Court of Appeals explained:

> The PLRA was enacted by Acts 1997, No. 731, § 1, and became effective on July 9, 1997. The purpose of enacting the PLRA was to provide for civil actions with respect to prison conditions. The definition provision of the PLRA, La.R.S. 15:1181, shows that the legislative intent was to provide for civil actions with respect to prison conditions or effects of officials' actions on prisoners' lives, as opposed to matters concerning incarceration vel non.
>
> The language of La.R.S. 15:1187, when read in the context of the PLRA as a whole, indicates that the [PLRA strike] sanction is not to apply to all types of civil actions that a prisoner possibly could bring, but only those with respect to prison conditions or officials' actions affecting the lives of those confined in prison. Thus, an action concerning supervision of a person no longer incarcerated does not appear to be an action that might trigger the sanction. Certainly, the sanction would not appear to apply if a person waited until after release from incarceration (even if still on parole) to bring the action.

> The legislative intent of enacting the PLRA and the definition section of the act create, at the very least, an ambiguity as to whether the sanction provisions in La.R.S. 15:1187 are to apply to all civil actions filed by prisoners who are incarcerated or detained, or just to those civil actions that challenge a condition of their confinement or the effects of actions by government officials on their lives.

Frederick v. Ieyoub, 99-0616 p.8-9 (La. App. 1 Cir. 5/12/00), 762 So. 2d 144, 149, *writ denied,* 00-1811 (La. 4/12/01), 789 So. 2d 581; *see Williams v. LaSalle Corr. Ctr. L.L.C.*, 51,260 p.4 (La. App. 2 Cir. 4/5/17), 217 So. 3d 1219, 1222, *writ denied,* 17-0759 (La. 9/22/17), 227 So. 3d 825, ("The definition provision of the PLRA, La. R.S. 15:1181, shows that the legislative intent was to provide for civil actions with respect to prison conditions or effects of officials' actions on prisoners' lives, as opposed to matters concerning incarceration *vel non*.").

The Fifth Circuit addressed Louisiana's administrative remedies in *Dillon v. Rogers,* 596 F.3d 260 (5th Cir. 2010). There, the Fifth Circuit explained the availability of administrative remedies under the Louisiana grievance process:

> When "the relevant administrative procedure lacks authority to provide any relief or to take any action whatsoever in response to a complaint," exhaustion is not required under the PLRA because there is no "available" remedy. *Booth v. Churner*, 532 U.S. 731, 736, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001); *see also Days v.*

> *Johnson*, 322 F.3d 863, 867–68 (5th Cir.2003) (per curiam) (finding remedy "unavailable" when prisoner's injury prevented him from filing grievance), overruled by implication on other grounds by *Jones*, 549 U.S. at 216, 127 S.Ct. 910.

Dillon, 596 F.3d at 267 (emphasis added). Because a prisoner suit excludes an action seeking a writ of habeas corpus, the Administrative Remedy Procedure is not available as it does not apply to any action seeking habeas corpus relief. La. Admin. Code Pt I, tit. 22, § 325.

As recognized by the Louisiana Courts of Appeals, suits brought challenging the duration of an individual's confinement do not challenge the "the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison." La. R.S. 15:1181. Although this is not a habeas corpus case, Plaintiff's state law claims challenge the fact that he was confined without authority, not the conditions of his confinement or the effects of actions of the government officials on his life while he was confined in prison. If Plaintiff were still incarcerated and seeking to be released, he would file a writ of habeas corpus and the LA PLRA would not apply. It seems illogical to the Court that the exhaustion provisions of the LA PLRA would apply to an action of an individual who is no longer confined to prison, seeking damages for the 41 days that the Department of Corrections kept him in prison admittedly without legal authority, when it would not apply to the same

facts for a person currently incarcerated seeking habeas corpus relief.

This case is not like the case of a currently incarcerated prisoner, who is seeking a recalculation of good time credits or damages because the Department of Corrections calculations differ from those of the plaintiffs. The Department of Corrections made no administrative decisions in calculating the amount of time Mr. McNeal would serve; both parties agree that Mr. McNeal was sentenced to and served his 90-day incarceration.

Therefore, the Court holds that the LA PLRA does not apply to Mr. McNeal on his state law claims relating to his overdetention in the Elayn Hunt Correctional Center. Defendants' *Motion for Summary Judgment* is DENIED on this issue.

CONCLUSION

IT IS ORDERED that Plaintiff's *Motion for Summary Judgment on False Imprisonment Claim* (Doc. 12) is **GRANTED**;

IT IS FURTHER ORDERED that the *Motion for Summary Judgment* (Doc. 17) is **DENIED**.

Signed in Baton Rouge, Louisiana, on February 18, 2020.

/s/ John W. deGravelles
JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-30180

[Filed February 21, 2024]

BRIAN MCNEAL,
Plaintiff—Appellee,

versus

JAMES LEBLANC,
Defendant—Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:18-CV-736

ON PETITION FOR REHEARING EN BANC

Before JONES, STEWART, and DUNCAN, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. The petition for rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and

a majority did not vote in favor of rehearing (FED. R. APP. P. 35 and 5TH CIR. R. 35).

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

STUART KYLE DUNCAN, *Circuit Judge*, joined by RICHMAN, *Chief Judge*, and JONES, SMITH, ENGELHARDT, OLDHAM, and WILSON, *Circuit Judges*, dissenting from denial of en banc rehearing:

As I've explained before, in the rising tide of suits by overdetained prisoners against Louisiana officials, our court routinely misapplies *Connick v. Thompson*, 563 U.S. 51 (2011). *See McNeal v. LeBlanc*, 90 F.4th 425, 435–39 (5th Cir. 2024) (Duncan, J., concurring). Yes, we pay lip service to *Connick*'s requirement of a "pattern" of similar violations, *see Parker v. LeBlanc*, 73 F.4th 400, 405 (5th Cir. 2023), but in the same breath we read that requirement out of existence. *See id.* at 406 (rejecting any "distinction" between overdetention due to "misclassification" and overdetention due to other causes). *But see McNeal*, 90 F.4th at 437 (Duncan, J., concurring) (explaining that "[o]verdetentions occur for many reasons," and collecting decisions). The result is that our court has now "turn[ed] § 1983 into a source of vicarious liability for the heads of State agencies." *McNeal*, 90 F.4th at 439 (Duncan, J., concurring). That mocks *Connick* and

decades of prior precedent. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

Ironically, *Connick* overruled our en banc court. *See Thompson v. Connick*, 578 F.3d 293 (5th Cir. 2009) (mem.) (affirming district court by 8-8 vote). Now that a 9-8 majority has refused to rehear this case and correct our pattern of underruling *Connick*, our court may have the last word. If this were a movie, it would be called *The Fifth Circuit Strikes Back*.

I dissent.

ANDREW S. OLDHAM, *Circuit Judge*, joined by JONES, SMITH, HO, DUNCAN, ENGELHARDT, and WILSON, *Circuit Judges*, dissenting from the denial of rehearing en banc.

Brian McNeal sued the Secretary of the Louisiana Department of Public Safety and Corrections ("DPSC"). McNeal alleged the Secretary wrongfully detained him for 41 days. All agree McNeal *could* have sought habeas relief during those 41 days. But he chose not to do that. He instead slept on his habeas rights, got out of jail, and then sought declaratory relief, compensatory and punitive damages, and attorneys' fees under 42 U.S.C. § 1983. A panel of our court blessed that approach, effectively holding that the federal habeas statute and § 1983 offer prisoners like McNeal an election of remedies: The former allows prisoners to get out of jail, while the latter allows prisoners to stay in jail and then sue for compensation later. That conflicts with multiple Supreme Court cases, so we should have reheard this case en banc.

I.

This case lies at the intersection of the federal habeas statute, 28 U.S.C. § 2241, and the principal federal civil rights statute, 42 U.S.C. § 1983. "At the time of § 1983's adoption, the federal habeas statute mirrored the common-law writ of habeas corpus, in that it authorized a single form of relief: the prisoner's immediate release from custody." *Wilkinson v. Dotson*, 544 U.S. 74, 85 (2005) (Scalia, J., concurring). The singular habeas remedy of release is a powerful one—so powerful that it transformed the common-law courts from agents of the Crown to independent guardians of liberty. *See, e.g.*, *Darnel's Case*, 3 How. St. Tr. 1 (K.B. 1627). Habeas is so powerful that its 1679 codification in England was the "second magna carta." 1 W. BLACKSTONE, COMMENTARIES *133. And today, the habeas remedy is so powerful that it allows federal courts to vitiate long-final judgments from co-sovereign state courts notwithstanding *res judicata* principles that would otherwise apply. *See, e.g.*, 28 U.S.C. § 2254. Perhaps owing to its extraordinary power, the habeas remedy of release carries with it a host of limitations from both common law and statutory law that can make it difficult to win. *See, e.g.*, Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104–132, 110 Stat. 1217; *Beras v. Johnson*, 978 F.3d 246, 251–52 (5th Cir. 2020) (per curiam) (holding common-law limitations on habeas survive AEDPA's enactment).

Section 1983, by contrast, has none of this history. Congress enacted it 1871 as part of its wide-ranging efforts to fight the Ku Klux Klan. And perhaps owing

to those wide-ranging efforts, § 1983 does not embrace one remedy—it embraces many, including money damages and equitable relief. And it carries with it the promise of attorney's fees under 42 U.S.C. § 1988.

Despite their radically different histories and scopes, § 2241 and § 1983 have one very important commonality: On their faces, they both apply to a prisoner who says he's in state custody in violation of the federal Constitution. *Compare* 28 U.S.C. § 2241(c)(3) (authorizing federal judges to grant habeas remedies to a state prisoner who "is in custody in violation of the Constitution"), *with* 42 U.S.C. § 1983 (authorizing federal judges to grant money damages and equitable relief against any state actor who deprives any person of "any rights, privileges, or immunities secured by the Constitution"). The Supreme Court has recognized this overlap and held that here, as in so many other areas, the specific controls the general. *See Preiser v. Rodriguez*, 411 U.S. 475, 489(1973). That is, where a prisoner seeks or could seek the specific, singular remedy of habeas (release), he cannot fall back on the general, broader remedies offered by § 1983 (damages, injunctions, declarations, &c.).

Consider for example *Preiser*. There the state prisoners filed suit under § 1983 and sought an injunction restoring good-time credits. The Court rejected that effort and held that what the prisoners really wanted was to get out of jail earlier—and that is a habeas remedy. *Id.* at 488–90. Instead, the Court held the federal habeas corpus statute supplies the "exclusive [federal] remedy" for such claims. *Id.* at 489;

see Wilkinson, 544 U.S. at 78 ("[A] prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement . . . He must seek federal habeas corpus relief (or appropriate state relief) instead." (quotation omitted)). *Preiser* limited its holding to claims seeking equitable relief. *See* 411 U.S. at 494 ("[R]espondents here sought no damages, but only equitable relief—restoration of their good-time credits—and our holding today is limited to that situation."). In other words, *Preiser* held only that a prisoner cannot bring a claim under § 1983 if judgment for the prisoner would entitle him to "immediate release or a speedier release from that imprisonment." *Id.* at 500.

The Court later extended that to hold a claim is not cognizable under § 1983 if judgment for the plaintiff would "necessarily imply" that the prisoner is entitled to immediate or speedier release. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997). For example, in *Edwards* a state prisoner sued prison officials under § 1983, alleging they revoked his good-time credits without affording him constitutionally adequate process. The prisoner requested only damages and so contended his § 1983 claim was not barred under *Preiser*. *Id.* at 643–44. But the Court rejected the claim anyway because "a win for the prisoner would 'necessarily imply the invalidity of the deprivation of his good-time credits' and get him out of prison 30 days sooner." *Crittindon v. Leblanc*, 37 F.4th 177, 194 (2022) (Oldham, J., dissenting) (quoting *Edwards*, 520 U.S. at 646). Thus, under *Preiser* and *Edwards*, a prisoner who sues to get out of jail (or to get out of jail sooner) must

use the specific remedy Congress enacted for that purpose: Habeas.

All agree that McNeal had a habeas remedy on the first day of his overdetention, call it Day 1. On Day 1, McNeal could have sued in state habeas court to get a specific remedy—release. McNeal concedes the fact. *See* ROA.244 (Brief in Opposition to Defendants' Motion for Summary Judgment) (citing an example in which the DOC "release[ed an] overdetained person within hours of the filing of a habeas petition"). And if for whatever reason prison officials denied him release, and the state courts were either unwilling or unable to give him that remedy,[1] McNeal could have sued in federal court

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[1] It is baseless to suggest, as a panel of our court did, that overdetained prisoners cannot get habeas relief. *See Hicks v. LeBlanc*, 81 F.4th 497, 509 & n.76 (5th Cir. 2023). It is of course true that a would-be § 2241 petitioner like McNeal would have to exhaust his remedies in state court first. *See Thomas v. Crosby*, 371 F.3d 782, 812 (11th Cir. 2004) (Tjoflat, J., specially concurring) ("Although there is a distinction in the statutory language of §§ 2254 and 2241, there is no distinction insofar as the exhaustion requirement is concerned."). But we have no basis to think the state courts would have turned a blind eye to a properly filed habeas petition. And even if they did, the federal courts certainly would not have. *Cf.* 28 U.S.C. § 2254(b)(1)(B)(i)–(ii) (excusing federal habeas applicant from exhausting state remedies where "there is an absence of available State corrective process" and where "circumstances exist that render such process ineffective to protect the rights of the applicant"). McNeal's Day 1 habeas claim differs from claims arising in the mine-run state prisoner's case. In the latter kind of case, the prisoner is being held "pursuant to the judgment of a State court," *id.* § 2254(a), and the prisoner can be held until that judgment is set aside or otherwise held infirm. By contrast, once McNeal's sentence expired, he was being held without any authorization whatsoever—which has been a

under § 2241 on Day 2 or 3 or 10 or 41. All also agree, of course, that McNeal had *zero* remedy under § 1983 on Day 1, 2, 3, 10, or 41. It turns *Preiser* and *Edwards* upside down to say that McNeal's world flips on Day 42 (the day of his release)—such that he then had zero habeas remedy but limitless § 1983 remedies. The panel's holding allows a prisoner to forgo the specific remedy afforded by § 2241, wait six weeks, and then choose the general remedy afforded by § 1983. We have no basis for that general-controls-the-specific rule.

II.

You might reasonably wonder how we got so far afield. The answer is a warning about our court's understanding of the party-presentation principle and the rule of orderliness.

We started this mistake in *Crittindon*. In that case, the panel majority held itself powerless to consider whether overdetention claims are non-cognizable under § 1983 because no party presented the question. *See id.* at 190. Still, the *Crittindon* panel majority discussed the purportedly non-presented problem. *See id.* at 190–92. And then *Hicks* returned to the *Crittindon*'s discussion of the purportedly non-presented problem and held it binding on all future panels of our court. *See Hicks v. LeBlanc*, 81 F.4th 497, 507 (5th Cir. 2023) ("*Crittindon* controls this case.").

This is a surreal double-whammy. Our court underruled *Preiser* and *Edwards* in *Crittindon* but

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cognizable habeas claim since at least *Darnel's Case*, and which forms the heartland of § 2241.

shushed the dissent by insisting the question wasn't properly presented. Then *Hicks* blew past the party-presentation problem and held *Crittindon* binding on all the world. So one party's failure to brief a question to the panel's satisfaction in the first case somehow means all parties in all future cases must live with the doctrinal dictates of the very *Crittindon* panel that insisted it didn't have proper briefing to decide the relevant question in the first place. It raises serious questions about the interaction between our misunderstanding of the party-presentation principle and the rule of orderliness when a panel can pronounce a binding answer to a question it disclaimed authority to consider in the first place. *See also Solis v. Curtis*, --- F.4th ---, --- (5th Cir. Feb. 14, 2024) (Oldham, J., dissenting) (criticizing our court's misunderstanding of party presentation).

And even aside from these procedural shenanigans, the *Crittindon-Hicks* rule is indefensible on the merits. In those cases, our court held that prisoners can turn their habeas claims into § 1983 claims by (1) waiting until they get out jail and then (2) asking for money damages (a non-habeas remedy) to compensate for illegal confinement. *See Hicks*, 81 F.4th at 507–09. The *Crittindon-Hicks* theory appears to be that the prisoner did not request a habeas remedy; the prisoner did not allege a problem in his conviction or sentence; the prisoner only claimed he was held in jail too long and in excess of his sentence; and therefore, § 1983's gates are wide open to him. The problem, of course, is that the § 1983 plaintiffs in *Preiser* and *Edwards* tried the same move and lost. In *Preiser*, the prisoner alleged only "that the deprivation of [his] good-conduct-time

credits was causing or would cause [him] to be in illegal physical confinement." 411 U.S. at 487. And in *Edwards* the prisoner alleged only a defect in the revocation of his good-time credits. Neither prisoner challenged his underlying conviction or sentence—just that he wanted to get out of jail sooner than his custodian planned. Nevertheless, the Court held that neither claim could proceed under § 1983. So it is no answer for the *Hicks* panel to say the § 1983 claim can forward because it does not challenge the validity of Hicks' sentence.[2]

It is true that neither *Preiser* nor *Edwards* considered overdetention claims. But it's also irrelevant because any prisoner could easily reframe any sentence-execution challenge into an overdetention claim. Consider the following hypothetical: Prison officials revoke a year's worth of good-time credits from a prisoner (call her Patricia) following administrative proceedings Patricia thinks were constitutionally defective. So Patricia's release date changes from September 1, 2024, to September 1, 2025. Patricia never files a habeas petition; she simply sleeps on her rights until September 2, 2024. On that date, she brings an overdetention claim seeking damages under § 1983 alleging: (1) that she was entitled to release on September 1, 2024, because the prison officials' revocation of her good-time credits was *ultra vires*, and

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[2] *Hicks* tried to ground the distinction in *Muhammad v. Close*, 540 U.S. 749 (2004) (per curiam), but *Muhammad* is plainly irrelevant. The Court in that case held *Edwards* did not apply only because the prisoner's claim had no necessary implication for the duration of his confinement. *Id.* at 754.

(2) by holding her beyond September 1, 2024, prison officials detained her in excess of her sentence, in violation of her constitutional rights.

If McNeal's claim is cognizable under § 1983, it is hard to see why Patricia's claim is not.[3] Like McNeal, Patricia does not challenge her conviction or its attendant sentence. She alleges only that she should have been released on September 1, 2024, and that she is accordingly entitled to damages. Put differently, Patricia challenges only "the execution of h[er] release." *Hicks*, 81 F.4th at 506. But that is obviously a problem because judgment for Patricia would "necessarily imply" the unlawfulness of his confinement, and of the deprivation of his good-time credits. *Edwards*, 520 U.S. at 648. So allowing Patricia's claim to proceed would be flatly inconsistent with *Edwards*. And that is true even though Patricia (like McNeal) seeks only damages to compensate for her alleged overdetention.

The upshot is that if our precedents are right, a clever prisoner can challenge all manner of things related to his conviction and sentence through § 1983 instead of habeas. All he must do is sleep on his rights until his (ostensible) release date passes. And voila—the prisoner is no longer forced to choose the specific habeas remedy over the general § 1983 remedy.

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[3] The only material difference between Patricia and McNeal is that McNeal is no longer in custody. But that distinction is legally irrelevant because our precedents currently dictate that the limits on § 1983 cognizability apply irrespective of custodial status. *See Wilson v. Midland Cnty., Texas*, 89 F.4th 446, 454 (5th Cir. 2023).

* * *

This court has twisted itself into knots to avoid a conclusion that should be obvious: A prisoner who has a habeas remedy cannot sue under § 1983. *See Crittindon*, 37 F.4th at 193 n.1 (Oldham, J., dissenting). Our precedents embrace a contrary rule and should be overruled. It is a shame that we failed to do that here. And we will not be able to avoid reconfronting these issues when we rehear *Wilson v. Midland Cnty., Texas*, 89 F.4th 446 (5th Cir. 2024) (en banc rehearing granted Feb. 14, 2024).

For now, I respectfully dissent.