No. 22-

In the Supreme Court of the United States

DAVID SOSA,
PETITIONER
v.
MARTIN COUNTY, FLORIDA, ET AL.,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS OF THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Baker v. McCollan, 443 U.S. 137, 145 (1979), held that mistaken "detention pursuant to a valid warrant but in the face of repeated protests of innocence" violates the Constitution.

The en banc Eleventh Circuit's application of *Baker* to this case presents two questions for review.

1. Does *Baker*'s right against overdetention require courts to apply a reasonable, totality-of-the-circumstances analysis, or does the case only protect against mistaken overdetention for longer than three days?

2. Does *Baker*'s right against overdetention fall under the Fourth Amendment's proscription against unreasonable searches and seizures, or the Fourteenth Amendment's guarantee of substantive due process?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

David Sosa, petitioner on review, was the movant-appellant below.

Martin County, Florida; Sheriff William Snyder; Deputy M. Killough, and Deputy Sanchez, respondents on review, were the respondents-appellees below.

No party is a corporation.

RULE 14.1(B)(III) STATEMENT

This case arises from the following proceedings in the United States District Court for the Southern District of Florida and the United States Court of Appeals for the Eleventh Circuit:

Sosa v. Snyder, 2020 WL 6385696 (S.D. Fla. June 25, 2020)

Sosa v. Martin County, 13 F.4th 1254 (11th Cir. 2021)

Sosa v. Martin County, 57 F.4th 1297 (11th Cir. 2023) (en banc)

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PETITION FOR WRIT OF CERTIORARI

David Sosa respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the en banc Eleventh Circuit is published at 57 F.4th 1297 and is reproduced in the appendix to this petition at Pet. App. 1a–76a. The panel opinion of the Eleventh Circuit is published at 13 F.4th 1254 and is reproduced at Pet. App. 79a–137a. The order of the district court is unpublished and is reproduced at Pet. App. 138a–150a.

JURISDICTION

The Eleventh Circuit, sitting en banc, issued its opinion and judgment on January 29, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no

> Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section One of the Fourteenth Amendment of the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 provides, in relevant part:

> 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.

INTRODUCTION

David Sosa did nothing wrong: "Everyone agrees that" he "is an innocent man." *See* Pet. App. 25a (Rosenbaum, J., dissenting). But Respondents here twice arrested and detained him anyway because of a mistaken identity on their part.

In 2014, a Martin County deputy sheriff stopped Sosa for a traffic violation, ran his license through the system, and found a hit for "a warrant issued 22 years earlier in Harris County, Texas for another man named David Sosa." *Id.* at 2a–3a. Even though "the wanted man's date of birth, height, weight, social security number, and tattoo information did not match" Sosa's "own identifiers," the deputy arrested him anyway. *Id.* at 3a. Sosa was detained for three hours, before officers "confirmed his identity and released him." *Id.*

In 2018, it all happened again. Sosa, indeed, "must have felt like he had been dropped into a Kafka novel." *Id.* at 15a (Newsom, J., concurring). "[F]ollowing a routine traffic stop, Sosa was arrested and detained by his hometown sheriff's deputies for [a] *second* time on the *same* decades-old drug-dealing warrant issued for *another* David Sosa—one who lived hundreds of miles away in a different state." *Id.* But this time, rather than holding him for a few hours, officers "detained Sosa for three days." *Id.*

There is no question that "[w]hat happened to Sosa" was "awful." *Id.* But was it unconstitutional? And, if so, which constitutional right was violated? Both of these questions have divided state and federal courts.

On question one, the en banc Eleventh Circuit plucked a rigid, three-day safe harbor period out of *Baker v. McCollan*, 443 U.S. 137 (1979), to deny relief. Such relief would have likely been granted in many of the other circuits to have grappled with the question. These courts take a more fact-intensive, totality-of-the-circumstances approach to overdetention claims, with success or failure of the claim depending on the reasonableness of defendants' actions. The same physical differences that were at issue here, like height or weight, would have been "red flag[s]" in those courts, requiring "further investigation" and giving rise to potential constitutional redress. *Garcia v. Cnty. of Riverside*, 817 F.3d 635, 642 (9th Cir. 2016); *see also Buenrostro v. Collazo*, 973 F.3d 49, 56 (1st Cir. 1992).

The second question—where the right against overdetention resides—is linked to the first. Although *Baker* held that overdetention claims should be brought under the Fourteenth Amendment, more recent case law from this Court instructs that the Fourth Amendment is the "explicit textual source of constitutional protection" for pretrial rights. *Graham v. Connor*, 490 US. 386, 395 (1989).

Consistent with that instruction, several circuits situate *Baker* claims under the Fourth Amendment. *See, e.g.*, *Russo v. City of Bridgeport*, 479 F.3d 196, 208–09 (2d Cir. 2007). Given that Amendment's protection against "unreasonable searches and seizures," U.S. Const. amend. IV, these courts also typically apply a flexible, totality-of-the circumstances frame to *Baker* claims.

On the other hand, the Eleventh Circuit, among others, examines *Baker* cases under the Fourteenth Amendment's substantive due process clause. But

"[s]ubstantive due process is a slippery, shape-shifting doctrine." Pet. App. 16a (Newsom, J., concurring). And its slippery nature is why someone like David Sosa can be arrested and detained, again and again, for no good reason and with no constitutional recourse unless certain judicially-imposed bright-line conditions are met.

This case is an ideal vehicle for the Court to resolve both questions. The Eleventh Circuit's en banc opinion tackled both questions and did not base its decision on an alternative ground, such as qualified immunity. Even if it did, the circumstances spotlight the shortcomings of such immunity.

After all, an innocent man was deprived of his liberty for several hours and then several days, because he shared the simple, common name of a drug dealer. No doctrine should shield Defendants from answering for that (mis)conduct. And certainly no doctrine bars this Court from weighing in, clarifying critical questions of constitutional law, and preventing the "awful" scenario here from recurring. *Id.* (Newsom, J., concurring).

STATEMENT OF THE CASE

A. Factual background

Petitioner David Sosa resides in Martin County, Florida. He works in research and development and, when he filed suit, was making jet engines for Pratt & Whitney. *Id.* at 27a (Rosenbaum, J., dissenting). He is not and has never been a drug trafficker.

But he (and thousands of other Americans) unfortunately shares a name with one. *Id.* There is another David Sosa who is wanted in Harris County, Texas, for selling crack cocaine. *Id.* at 29a. Harris County officials issued a warrant for that Sosa's arrest in 1992, and that warrant remains open.[1] *Id.*

Yet other than sharing a name, the wanted Sosa and Petitioner have virtually nothing in common. They have different birth dates. *Id.* They are of different heights. *Id.* There is a forty-pound weight difference. *Id.* at 92a. And the wanted Sosa had tattoos, while Petitioner had none. *Id.*

These differences did not stop Martin County officers from mistakenly arresting and detaining Petitioner on two separate occasions.

First, in November 2014, a Martin County deputy "pulled" Petitioner "over for a traffic violation." *Id.* at 79a. "When the officer ran Sosa's name, the computer" revealed the outstanding drug trafficking warrant. *Id.* at 80a. Sosa, in turn, pointed out that—besides a shared

[1] In a wrinkle befitting the twists and turns of this case, Harris County officials in fact issued a warrant for Carlos Maradiaga. Maradiaga, in an apparent effort to throw authorities off the scent, adopted "David Sosa" as an alias.

name—*none* of his identifying information matched that from the (more than two-decades-old) warrant. Despite Sosa's protestations of innocence, the deputy arrested Sosa, "took him to the station," and detained him in a jail cell. *Id.* at 82a. At the station, Sosa "told two Martin County jailers that he was not the wanted Sosa." *Id.*

Three hours later, officers ran Sosa's fingerprints against those of the wanted individual. Within minutes, they concluded that they had detained the wrong individual, and Sosa was released. "But no one created a file or otherwise documented" the mistaken identity, "[n]or did the Sheriff's Department" put in place "any system to prevent" a "mistaken arrest" in the future. *Id.*

And so, "perhaps not that surprisingly," on April 20, 2018, Sosa "had a similar"—albeit much worse—"misadventure." *Id.* Martin County Deputy M. Killough stopped Sosa for a traffic violation. As before, Deputy Killough identified a warrant attached to a David Sosa, from Texas. Sosa "explained that he was not the wanted Sosa and told Deputy Killough he had previously been incorrectly arrested on that warrant and released when deputies realized the error." *Id.* at 30a. He again noted that he "did not share the same birthdate, Social Security number, tattooed status, or other identifying information." *Id.* But Sosa was again arrested, his truck impounded.

During booking, Sosa "repeatedly explained to many Martin County employees" that he was not the wanted David Sosa. *Id.* Another officer, Deputy Sanchez, told Sosa that they "would follow up on the matter," but no action appears to have been taken. *Id.*

Sosa spent the night in jail. The next morning, Sosa was brought before a magistrate, in a video hearing. *Id.*

Sosa wanted to explain to the judge that this case of mistaken identity could be easily resolved by comparing the information on the warrant with his identification. But several Martin County jail officers "threatened" Sosa and "told him not to talk to the judge during [the] hearing." *Id.* at 30a–31a. Sosa, believing he could face criminal consequences for speaking out of turn, stayed silent. *Id.* at 31a.

Sosa spent a second night in jail. He had one cold comfort. After Sosa finished speaking to his wife on the phone, a deputy who overheard his conversation pulled him aside, exclaiming that "[y]our rights were violated, man." Still Sosa remained detained for another day and night.

Finally, after spending three nights in jail, Sosa was fingerprinted and released. During his detention, Sosa missed work and could not inform his employer of his absence. *Id.* He needed to pay to retrieve his impounded truck. And though Sosa had been wrongfully detained a second time, there is no evidence Martin County created a record to prevent a third mistaken arrest. *Id.* at 82a.

B. Proceedings below

Having "had enough," Sosa "filed suit" in November 2019 "against Martin County and the individual deputies." *Id.* at 84a. He sought damages and injunctive relief under Section 1983 for violation of his Fourth and Fourteenth Amendment rights. *Id.* The operative complaint stated claims for overdetention, false arrest, and *Monell* liability.

In March 2020, Defendants moved to dismiss. The district court granted dismissal, and Sosa appealed to the Eleventh Circuit.

There, a panel affirmed the district court's decision as to the false-arrest and *Monell* claims. But it reversed on the overdetention cause of action. As the panel explained, "[d]etention—and particularly protracted detention—of an innocent person obviously seriously interferes with that person's liberty interests." *Id.* at 81a. Consequently, "when a law-enforcement officer receives information that suggests that he has the wrong person in custody, the Fourteenth Amendment requires him to take *some* action to resolve those doubts." *Id.* (emphasis added).

More to the point, the *only* similarities between Sosa and the wanted individual were their race, names, and gender. *Id.* at 91a. Dates of birth, height, weight, Social Security information, tattoos—all different. *Id.* at 96a. These "critical" differences were all the more suspect given that "the warrant was out of Texas, while Sosa was a Florida resident." *Id.* at 92a (citing *Rodriguez v. Farrell*, 280 F.3d 1341, 1347 (11th Cir. 2002)). Such differences created a "substantial possibility . . . that Sosa was not the wanted Sosa and . . . [the deputies] had the means readily available to rapidly confirm Sosa's identity." *Id.* at 97a. Taking "no action for three days and three nights while Sosa sat in jail" should, at the very least, give rise to a plausible cause of action. *Id.*

The panel further held that the officers were not entitled to qualified immunity. *Id.* at 112a. As it reasoned, *Baker v. McCollan* and *Cannon v. Macon County,* 1 F.3d 1558 (11th Cir. 1993), clearly established the unconstitutional nature of "fail[ing] to take any steps to identify a detainee as the target of a warrant." *Id.*

In January 2022, the Eleventh Circuit *sua sponte* vacated the panel opinion and voted to rehear the case en banc. Pet. App. at 4a. Following briefing and oral argument, the en banc court reversed the panel and

ordered that the case be dismissed. *Id.* at 11a. But in getting to that result, the en banc court produced four separate opinions—a majority, two concurrences, and a dissent.

1. Writing for the majority, Chief Judge Pryor held that *Baker* "squarely control[led]," with this case "begin[ning] and end[ing] with *Baker*." *Id.* at 2a, 5a.

Baker, as Chief Judge Pryor explained, involved the mistaken identification of two brothers, Leonard and Linnie McCollan. *Id.* at 5a. Leonard had "procured a driver's license that bore his own picture but, in all other respects, the information of his brother, Linnie." *Id.* (internal quotation marks omitted). Police then issued a valid arrest warrant for Leonard, but—given Leonard's earlier duplicity—under Linnie's name. Linnie was later arrested, and detained "from December 30 until January 2," before Linnie was finally released. *Id.* (citing *Baker*, 443 U.S. at 143–44 (ellipses omitted)). This Court held that Linnie's constitutional rights were not violated, yet also acknowledged that individual plaintiffs "could not be detained indefinitely in the face of repeated protests of innocence." 443 U.S. at 144. That is so "even [if] the warrant under which [the individual] was arrested and detained met the standards of the Fourth Amendment." *Id.*

From these circumstances, Chief Judge Pryor inferred a bright-line rule for how many days that the government can hold an individual on a facially valid warrant. Pet. App. 7a. In short: "Under *Baker*, no violation of due process occurs if a detainee's arrest warrant is valid and his detention lasts an amount of time no more than the three days that Linnie was detained." *Id.*

Other factors—such as technological developments, the timing of Linnie's detention (over a holiday weekend), and Linnie's "claims of innocence"—were "largely irrelevant." *Id.* at 6a; *see also id.* ("The Constitution does not guarantee that innocent people will never be arrested.").

2. Judge Jordan, joined by Judges Wilson and Jill Pryor, read *Baker* differently from the majority. *Id.* at 12a (Jordan, J., concurring). In their view, *Baker* did not "foreclose[] a substantive due process claim for 'overdetention' based on misidentification." *Id.* As Judge Jordan observed, prior circuit precedent in *Cannon* "correctly recognized" this right, as have consonant decisions from "a number of [] sister circuits." *Id.*

But Sosa was nevertheless precluded from obtaining relief because, "under the legal fiction created by qualified immunity, a reasonable police officer who read [the relevant] cases would not know for certain that detaining Mr. Sosa for three days was unlawful." *Id.* at 13a.

Judge Jordan's concurrence, though, was "a reluctant one." *Id.* He criticized qualified immunity as "far removed from [the legal] principles existing in the early 1870s, when Congress enacted . . . § 1983." *Id.* And drawing on recent scholarship and case law, Judge Jordan urged "the Supreme Court" to "correct" this "regrettable" turn in its jurisprudence. *Id.* at 14a (citing, *e.g.*, *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1870–72 (2017) (Thomas, J., concurring), and Ilan Wurman, *Qualified Immunity and Statutory Interpretation*, 37 Seattle U. L. Rev. 939, 961–72 (2014)).

3. Judge Newsom likewise concurred. The gist of his concurrence was that, although "[w]hat happened to Sosa was . . . awful," it did not infringe his "so-called

'substantive due process' rights." *Id.* at 15a (Newsom, J., concurring). Judge Newsom proceeded to criticize substantive due process's underpinnings, arguing that courts "should be particularly reluctant to indulge substantive-due-process arguments when an *actual* constitutional provision addresses the sort of injury that a complainant alleges." *Id.* at 20a–21a. Judge Newsom concluded by reviewing (and rejecting) possible claims under the Fourth, Sixth, and Eighth Amendments. *Id.* at 21a–22a.

4. Judge Rosenbaum dissented. To her, the facts were clear. Sosa, an "innocent man," had remained in jail for roughly 72 hours while "Martin County Sheriff's officials refused to confirm Sosa's identity." *Id.* at 25a (Rosenbaum, J., dissenting). Such confirmation would have "require[d] an officer to perform less than a minute of work," a point made plain when Sosa was, in 2014, detained for only three hours rather than three days. *Id.*

Furthermore, Respondents here had "good reason to believe they had arrested the wrong man" because of descriptive differences between Sosa and the wanted man. *Id.* These differences, along with Sosa's repeated protestations of innocence and his prior detention, "should have set off alarm bells in the Martin County jail officials' heads that they needed to make sure they had the right David Sosa." *Id.* at 28a; *see also id.* ("Sosa's jailers could not ignore the[] flashing neon signs that they likely had the wrong Sosa and remain deliberately indifferent to Sosa's identity for three nights and three days.").

"[T]he Constitution does not," as Judge Rosenbaum explained, "have an aircraft-carrier-sized loophole in its guarantee that no person shall be deprived of their liberty without due process of law." *Id.* at 25a–26a. Instead, "the

Constitution require[s]" officers "to take *reasonable* action[s]," such as "the simple and quick computerized process of running Sosa's fingerprints against the fingerprints of the wanted Sosa." *Id.* at 28a (emphasis added).

Judge Rosenbaum rejected the majority's reading of *Baker*—i.e., foreclosing any overdetention claim whenever that detention lasts three days or fewer. As she observed, this Court did not, in *Baker*, demark three days as some "magic number." *Id.* at 44a. Instead, *Baker* set forth a series of limiting principles that delineate when it "becomes unreasonable, under the totality of the circumstances, not to verify the arrestee's identity." *Id.* at 48a.

Here, those circumstances included: (1) the many technological advancements in fingerprinting and identification since the early 1970s; (2) the fact that officers were not actively looking for the wanted Sosa; (3) that the warrant here was significantly older and from a much further geographic distance; (4) that almost none of the identifiers matched in this case; (5) that "David Sosa" is a common name; and (6) that Sosa was not detained over a holiday weekend. *Id.* at 55a–60a.

Judge Rosenbaum further observed that *Cannon*, among other precedents, clearly established a constitutional right against overdetention, precluding qualified immunity. *Id.* at 65a. And finally, though *Baker* and *Cannon* were "substantive-due-process right" cases, Judge Rosenbaum urged that, in light of more recent case law, protection against overdetention "should be rehomed as a Fourth Amendment right." *Id.* at 66a.

REASONS FOR GRANTING THE PETITION

The opinion below implicates two separate yet related splits within the law. The first is how to read *Baker*: as a case embodying a reasonableness analysis or one imposing a bright-line rule, regardless of any other relevant factual circumstances. The second is whether to rehome *Baker* claims, from the Fourteenth to the Fourth Amendment. The Eleventh Circuit's decision on both questions is wrong, and the en banc posture of this case makes review by this Court all the more critical.

I. COURTS ARE DIVIDED ON WHETHER *BAKER* IMPOSES A BRIGHT-LINE RULE OR A REASONABLENESS ANALYSIS.

A. Most courts read *Baker* to require a detailed, fact-specific, totality-of-the-circumstances analysis.

It is true that, in *Baker*, Linnie was wrongfully detained for three days—and that those circumstances did not arise in that case to the level of a constitutional violation. But this Court did not impose a three-day grace period for every possible overdetention claim.

To the contrary, it held that "detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of *a certain amount of time* deprive the accused of 'liberty . . . without due process of law.'" *Baker*, 443 U.S. at 145 (emphasis added).

How much time is necessarily context- and fact-dependent. *Baker*, for instance, involved detention over a New Year's weekend. *Id.* That circumstance would affect the nature of an overdetention claim since "traditionally,

less essential public services are not fully staffed" during this time. Pet. App. 103a; *see also Patton v. Przybylski*, 822 F.2d 697, 700 (7th Cir. 1987) (construing *Baker* not to count holidays in overdetention cases). But a three-day detention over a non-holiday could (and should) dictate a different result.

Consistent with this understanding, most courts to address the question have read *Baker* as applying a totality-of-the-circumstances analysis. These courts require officers to investigate when a similarly named, but significantly different-looking person is detained and makes repeated protestations of mistaken identity. Those circuits—the **First**, **Second**, **Third**, **Eighth**, and **Ninth**—would likely have ruled for a plaintiff in Sosa's shoes.

For instance, in *Garcia v. County of Riverside*, 817 F.3d 635, 638 (9th Cir. 2016), plaintiff shared the same name and date of birth as the warrant subject. But he was several inches taller and forty pounds heavier than the warrant subject. *Id.* at 641. That is exactly the same weight difference between Sosa and the wanted individual here. Given those discrepancies, "[e]ven a cursory comparison of [plaintiff] to the warrant subject should have led officers to question whether the person described in the warrant was [plaintiff]." *Id.* Information such as differences in height and weight "raised questions about . . . identity" which "should have prompted [officers] to investigate more deliberately." *Id.*

But the officers in *Garcia*—just like the officers here—failed to promptly compare fingerprints even after plaintiff protested his innocence and stated he had been mistakenly detained on the same warrant before. *Id.* at 638, 642. Relying on *Baker* and relevant circuit precedent, the **Ninth Circuit** concluded that plaintiff

"had sufficiently pleaded" a constitutional violation. *Id.* at 643. The court also denied qualified immunity. *Id.* at 637.

Gant v. County of Los Angeles, 772 F.3d 608 (9th Cir. 2014), and *Fairley v. Luman*, 281 F.3d 913 (9th Cir. 2002) (per curiam), are of a piece. In *Gant*, plaintiff's height and weight differed from the wanted man, characteristics plaintiff pointed out in insisting on his innocence. 772 F.3d at 623. Officers did not take steps in response to verify the mistaken identity, giving rise to a genuine dispute of fact related to a constitutional violation. *Id.*

Likewise, in *Fairley*, the Ninth Circuit concluded that plaintiff had pleaded a constitutional violation after he had been booked on his identical twin's warrant. The men, of course, shared the same birthdate, race, height, age, and other physical characteristics. But the booking sergeant failed to perform a fingerprint analysis for days, overdetaining plaintiff. 281 F.3d at 915, 918.

Finally, and importantly, unlike the Eleventh Circuit, the Ninth Circuit has explicitly declined "to read *Baker* as creating a bright-line rule regarding the length of detention." *Alvarado v. Bratton*, 299 F. App'x 740, 742 (9th Cir. 2008).

In *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001), officials mistakenly identified the detainee as a fugitive. *Id.* at 678. The men shared the same last name, but their physical characteristics and fingerprints—much like Sosa—differed. *Id.* The detainee was held for just one day. But as *Lee* explains, "[t]he argument that [a] due process claim must fail at the pleading stage because [plaintiff] was incarcerated for only one day before his extradition hearing is . . . unavailing." *Id.* at 684. That is because, though *Baker* involved a three-day detention, that did not create some 72-hour safe harbor. Instead,

"mistaken incarceration of an individual in other circumstances may violate" the Constitution, "depending on what procedures the State affords defendant." *Id.* (quoting *Baker*, 443 U.S. at 144–45); *accord Alvarado*, 299 F. App'x at 742.

Case law in the **First Circuit** tracks that of the Ninth Circuit. In *Buenrostro v. Collazo*, 973 F.3d 49, 56 (1st Cir. 1992), plaintiff and the suspect shared the same name and date of birth. But their photos were "completely different," *id.*, and their fingerprints did not match. The facts, in other words, are a near facsimile of both the circumstances here and in *Garcia*, *Gant*, and *Fairley*. *Buenrostro v. Collazo*, 777 F. Supp. 128, 130 (D.P.R. 1991). And just as in *Garcia*, *Gant*, and *Fairley* (and unlike the Eleventh Circuit in this case) the First Circuit determined that plaintiff had presented a triable issue of fact on whether his detention violated the Constitution. 973 F.3d at 45.

Similarly, in *Andujar v. City of Boston*, 760 F. Supp. 238, 239 (D. Mass. 1991), plaintiff was detained for over a week on a validly issued warrant. During this detention, officers took no steps to obtain photographic evidence or to match fingerprints, despite plaintiff having previously been arrested "under the same warrant, and detained for approximately four and one-half hours." *Id.* at 242. Under these circumstances, plaintiff "ha[d] sufficiently alleged the necessary elements of a § 1983 action." *Id.* The district court added that, because "the warrant on which plaintiff was arrested was three years old," "special procedures" might well have been warranted. *Id.* Sosa, to be clear, was also detained twice, on a warrant that was more than *twenty* years old—a fact that Judge Rosenbaum highlighted in her dissent. Pet. App. at 27a.

The **Third Circuit** similarly recognizes that "an apparently valid warrant does not render an officer immune from suit if his reliance on it is unreasonable in light of the relevant circumstances." *Berg v. County of Allegheny*, 219 F.3d 261, 273 (3d Cir. 2000). In *Berg*, the plaintiff's name, birth date, criminal complaint number, social security number, and address all differed from the wanted individual. *Id.* at 267. The plaintiff, though, spent five days in jail, including New Year's Day, after being brought in on an erroneously issued warrant. *Id.* at 268. The Third Circuit held that the officer's reliance on a facially valid warrant was unreasonable. *Id.* at 273; *see also Kelly v. Jones*, 148 F. Supp. 3d 395, 399, 404 (E.D. Pa. 2015) (denying qualified immunity to officers who failed to investigate whether plaintiff was the right "Anthony Kelly," despite having the wanted man's mugshot in their possession).

Likewise, in *Kennell v. Gates*, 215 F.3d 825, 830 (8th Cir. 2000), the **Eighth Circuit** upheld a jury verdict for plaintiff Sharon Kennell, who was detained for six days on an arrest warrant issued for her sister, Deborah. Though Sharon and Deborah's physical characteristics were substantially similar, their fingerprints differed. *Id.* at 827 n.2.

Finally, the **Second Circuit** has held that a *Baker* claim arises whenever officers fail "to investigate specific, readily-verifiable claims of innocence in a *reasonable* time period." *Russo*, 479 F.3d at 209 (emphasis added). Consequently, plaintiffs may prosecute a § 1983 claim when officers fail to review "easily available" surveillance footage showing an older, shorter, and balder perpetrator, without the detainee's distinctive tattoos. *Id.* at 200, 209; *accord Harewood v. City of New York*, 2012

WL 12884356, at *3, *5 (E.D.N.Y. Feb. 10, 2012) (suspect younger and taller than detainee).

B. A handful of courts, including the Eleventh Circuit, read *Baker* in a far more cramped, formalistic manner.

Juxtaposed against these circuits are a minority of courts which read *Baker* in a much more rigid manner. The **Washington Supreme Court**, for instance, has held that when a person is "held only three days," there is no *Baker* violation—full stop. *Stalter v. State*, 86 P.3d 1159, 1164 (Wash. 2004).[2]

Somewhat similarly, in *Harris v. Payne*, 254 F. App'x 410 (5th Cir. 2007), a misidentified plaintiff was wrongfully detained for four months. Although plaintiff and the warrant suspect shared a name and general physical build, their Social Security numbers and birthdates differed. *Id.* at 412. Most damningly, however, plaintiff was white. The warrant suspect was Black. *Id.* It would be hard to imagine a more glaring "discrepanc[y]," "apparent" to "all of the" defendants in that case. *Id.* at 421. Nevertheless, because plaintiff had not, as in *Baker*, repeatedly protested his innocence by pointing to this fact, the **Fifth Circuit** dismissed plaintiff's overdetention claim. *Id.*

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[2] Washington's approach departs from that of the Ninth Circuit which, depending on the circumstances, allows plaintiffs to proceed with a *Baker* claim "for only one day" of detention. *Lee*, 250 F.3d at 684. That division between state and federal law only tips further in favor of granting certioriari. Wayne A. Logan, *A House Divided: When State and Lower Federal Courts Disagree on Federal Constitutional Rights*, 90 Notre Dame L. Rev. 235, 240 (2014).

The Eleventh Circuit's decision stitches together the worst aspects of both approaches. Like Washington, it holds that a detention that "lasts only three days . . . gives rise to no claim under the United States Constitution." Pet. App. 27a (internal quotation marks omitted). And like in the Fifth Circuit, that safe harbor applies even when a panoply of other traits—height, weight, age, and other personal identifying information—"should have set off alarm bells" to jail officers. *Id.* at 55a (Rosenbaum, J., dissenting).

All the worse, the Eleventh Circuit's framework bucks both its own precedent and common sense. Critically, in *Cannon v. Macon County*, a prior Eleventh Circuit case, the plaintiff's Social Security number, driver's license number, and physical description all differed from the warrant under which she was mistakenly arrested. 1 F.3d at 1560. Ruling in plaintiff's favor, the Eleventh Circuit emphasized these differences, observing that they tended to show a "deliberate indifference toward the plaintiff's due process right." *Id.* at 1564. Such deliberate indifference, in turn, flouted the "constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release." *Id.* at 1563.

To be sure, the Eleventh Circuit here *tried* to distinguish *Cannon*. First, it questioned the validity of the arrest warrant in *Cannon*. Pet. App. 10a. But such questioning amounts to no more than a tenuous, post hoc rationalization, unsupported by either the record or the resulting opinion. After all, neither party in *Cannon* doubted the warrant's validity; the issue played no role in the final opinion. 1 F.3d at 1561. Second, the en banc court pointed out that plaintiff in *Cannon* "was held for seven days, a period more than twice greater than the

duration" in *Baker*. Pet. App. 11a. But that distinction too is unavailing. As *Cannon* makes clear, overdetention claims arise not after three days or seven days or any other set number of days, but whenever defendants know or should know that a plaintiff is "entitled to release." 1 F.3d at 1563.

Ultimately, the en banc court's reasoning here—by its own words—"give[s] no weight to facts beyond" two factors: (1) whether a warrant is valid and (2) whether a party's detention was less than three days. Pet. App. 8a. That directly contradicts both *Cannon* and the case law of several other circuits.

It also produces absurd results. Under the Eleventh Circuit's reasoning, police could arrest Sosa a third, fourth, or fifth time. They could, indeed, arrest him each week if they wanted to—so long as there is a single outstanding warrant for *a* David Sosa. Because, so long as they release him within three days, there can *never* be a constitutional violation. That would be so even if Sosa looks nothing like the wanted individual, repeatedly explains and protests his innocence, and officers could verify the mistaken identity in "less than a minute of work." *Id.* at 25a (Rosenbaum, J., dissenting). It would be so even if the warrant were issued in another state, decades ago. A reasonable reading of *Baker*—as reflected in the Ninth, First, and other circuits—does not sanction such an outcome.

II. COURTS ARE DIVIDED ON WHETHER OVERDETENTION CLAIMS ARISE UNDER THE FOURTEENTH OR FOURTH AMENDMENT.

The Eleventh Circuit's en banc opinion implicates a second, related split: the constitutional provision under which overdetention claims arise. Plaintiff in *Baker* brought suit under the Fourteenth Amendment, and the Court examined plaintiff's claim through the lens of substantive due process. 443 U.S. at 145.

But *Graham v. Connor*, 490 U.S. 386 (1989), signaled a move away from that analytical frame. That case involved an excessive-force claim against an officer for conduct during an investigatory stop. Plaintiff sought relief under the Fourteenth Amendment but, on review, *Graham* explained that plaintiff had sued under the wrong constitutional provision.

As it observed, claims arising "in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." *Id.* at 395. That is "[b]ecause the Fourth Amendment provides an explicit textual source of constitutional protection against . . . physically intrusive governmental conduct," rather than "the more generalized notion of 'substantive due process.'" *Id.* Case law post-*Graham* has only further affirmed that approach, eschewing the Fourteenth Amendment in favor of a more specific constitutional provision in § 1983 cases. *See, e.g.*, *Albright v. Oliver*, 510 U.S. 266, 273 (1994); *Pinkston v. Kuiper*, __ F.4th ____, 2023 WL 3274644, at *2 (5th Cir. May 5, 2023) ("[T]he Supreme Court has instructed us not to apply the

Fourteenth Amendment's substantive-due-process catchall when another, more specific constitutional provision applies.").

A. A growing number of courts home overdetention claims under the Fourth Amendment.

Consistent with *Graham*, more and more courts have recognized *Baker* claims under the Fourth Amendment.

In *Russo v. City of Bridgeport*, 479 F.3d 196, 208 (2d Cir. 2007), for instance, the **Second Circuit** concluded that a mistaken identity case "fits comfortably under the coverage of the Fourth Amendment." That Amendment, consonant with *Graham*, offers an "explicit textual source of constitutional protection." *Id.* at 209 (citing 490 U.S. at 395). Further, the Fourth Amendment's prohibition against *unreasonable* searches and seizures complements the sort of totality-of-the-circumstances analysis necessary in *Baker* cases. Plaintiff in *Russo* was "unreasonably seized" in light of "the length of time of" his detention, the availability of exculpatory evidence, and the "alleged intentionality" of the officers' behavior. *Id.*

The **Third Circuit** likewise nestles the *Baker* right in the Fourth Amendment. As it observes, "the constitutionality of arrests by state officials is governed by the Fourth Amendment rather than due process analysis." *Berg v. Cnty. of Allegheny*, 219 F.3d 261, 269 (3d Cir. 2000). And *Berg*, of course, held that plaintiff could proceed with a *Baker* claim for mistaken identity, given the unreasonable actions of the defendant officers.

The **Fourth Circuit** has similarly suggested that overdetention claims should be viewed under the Fourth,

not Fourteenth, Amendment. *Safar v. Tingle*, 859 F.3d 241, 245 (4th Cir. 2017).

B. Some courts continue to review overdetention under the Substantive Due Process Clause.

By contrast, several circuits continue to home overdetention claims under the Fourteenth Amendment, including the **Eleventh Circuit** here. Pet. App. 1a–6a; *see also Harris*, 254 F. App'x at 420; *Seales v. City of Detroit*, 724 F. App'x 356, 362 (6th Cir. 2018). But doing so produces discordant results, in at least three ways.

First, as Judge Newsom pointed out in his concurrence, the Supreme Court has, even outside the arrest and pre-arrest context, cabined substantive due process causes of action. *See* Pet. App. 17a (Newsom, J., concurring) (citing *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022)). Continuing to examine claims under the Fourteenth Amendment therefore bucks both the specific prescription outlined in *Graham* and this Court's more general guidance.

Second, and relatedly, substantive due process is an inherently "vague" doctrine; it is "hardly a recipe for principled decisionmaking." *Id.* That helps explain why circuits that continue to analyze *Baker* claims under the Fourteenth Amendment employ a dizzying range of approaches. *Compare Martinez v. Santiago*, 51 F.4th 258, 262 (7th Cir. 2022) (applying a "deliberate indifference" standard), *with Hayes* v. *Faulkner Cnty.*, 388 F.3d 669, 674–75 (8th Cir. 2004) (deploying a circuit-made three-step analysis), *and* Pet. App. at 7a (three-day bright line rule).

By contrast, because the "touchstone of the Fourth Amendment is 'reasonableness,'" *Brigham City v. Stuart*,

547 U.S. 398, 403 (2006), that Amendment provides natural direction in cases like this one. The text of the Amendment, after all, forbids unreasonable searches and seizures. Reasonableness questions turn invariably on a totality-of-the-circumstances analysis, not—as the Eleventh Circuit did here—a bright-line rule. And "by any real-world standard, confining an innocent person to jail for days based on no more than that he shares the same name, sex, and race with thousands of others is an unreasonable seizure, when a ten-second fingerprint comparison could definitively show he is entitled to release." Pet. App. 75a (Rosenbaum, J., dissenting) (cleaned up). In other words, resolving this split—and homing overdetention claims under the Fourth Amendment—could affect the result here.

And *third*, this Court has not hesitated to step in and clarify the constitutional provisions under which specific rights reside. It did so, of course, in *Graham* itself, when it redirected excessive force claims against police officers from the Fourteenth Amendment to the Fourth Amendment. And it did so more recently in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). There, the Seventh Circuit originally examined a state handgun regulation under the Fourteenth Amendment's Privileges and Immunities Clause, rather than the Second Amendment. *Nat'l Rifle Ass'n of Am., Inc. v. City of Chicago*, 567 F.3d 856, 860 (7th Cir. 2009).

As the Seventh Circuit noted, then-prevailing precedent prevented it from conducting a proper and thorough Second Amendment analysis. *Id.* at 857. That changed once this Court incorporated the Second Amendment against the states. In so doing, it made clear how such challenges should be examined. That was

critical in resolving the regulation at issue in *McDonald*, 561 U.S. at 758–59, and allowing the law more generally to develop in this area, *cf. N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). This case presents a similar opportunity to clarify and unify the law.

III. THIS CASE IS AN EXCELLENT VEHICLE FOR REVIEW.

A. Qualified immunity does not preclude review.

As canvassed above, this case implicates two splits meriting review: how to apply *Baker* and under which constitutional provision *Baker* claims arise. Given the en banc nature of the decision below, there is little chance that either split will resolve organically. And the Eleventh Circuit directly answered both questions presented, without resorting to an alternative ground to resolve this case.

To be sure, Judge Jordan's concurrence and Judge Rosenbaum's dissent touched on qualified immunity. But their reference to that defense does not preclude review. This Court, after all, routinely grants cases to resolve constitutional questions, while leaving immunity questions for remand. It has done so even after *Pearson v. Callahan*, 555 U.S. 223, 236 (2009), which determined that courts may answer the two-part qualified immunity inquiry in either order.

For instance, just last Term, this Court held in *Thompson v. Clark* that "a Fourth Amendment claim under § 1983 for malicious prosecution does not require the plaintiff to show that the criminal prosecution ended with some affirmative indication of innocence." 142 S. Ct.

1332, 1341 (2022). Instead, "[a] plaintiff need only show that the criminal prosecution ended without a conviction." *Id.* While this Court determined that the plaintiff had satisfied the requisite showing, it remanded to either the "Second Circuit or the District Court as appropriate" to address whether respondent was entitled to qualified immunity. *Id.*

This Court made a similar move in another § 1983 case, *Torres v. Madrid*, 141 S. Ct. 989, 993, 1003 (2021). In *Torres*, this Court held that "the application of physical force to the body of a person with intent to restrain is a seizure [under the Fourth Amendment] even if the person does not submit and is not subdued." *Id.* at 1003. Per the Court, the plaintiff was seized when officers shot her "with intent to restrain her movement." *Id.* Yet it nonetheless remanded the case for further proceedings, so that the lower court could address "any questions regarding the reasonableness of the seizure, the damages caused by the seizure, and the officers' entitlement to qualified immunity." *Id.*

Consistent with *Thompson* and *Torres*, lower appellate courts routinely address constitutional questions in § 1983 cases while remanding to district courts to consider qualified immunity. *See, e.g.*, *Kerns v. Bader*, 663 F.3d 1173, 1181–82 (10th Cir. 2011) (remanding to the district court on qualified immunity); *Jones v. Sandusky Cnty., Ohio*, 541 F. App'x 653, 663 (6th Cir. 2013) (remanding to the district court to "determine whether, assuming [the plaintiff's Fourteenth Amendment] right not to endure the use of a flash-bang device was violated, that right was clearly established."). In short, this Court can resolve the two splits presented

here without needing to address whether any legal violation was clearly established.

B. This case demonstrates why qualified immunity should be reconsidered.

That said, even if the Court were to consider qualified immunity, this case illustrates precisely why that doctrine on its face merits a second look. After all, (1) "the nature of" the doctrine, (2) "the quality of" the doctrine's "reasoning" and (3) its "workability" counsel in favor of reconsideration. *Dobbs*, 142 S. Ct. at 2265.

1. Qualified immunity is a legal fiction, based on a clerical error.

Begin with a point several judges on the Eleventh Circuit recognized: qualified immunity is a "legal fiction." Pet. App. 13a (Jordan, J., concurring); *accord Amore v. Novarro*, 624 F.3d 522, 535 (2d Cir. 2010); *Werner v. Wall*, 836 F.3d 751, 768 (7th Cir. 2016) (Hamilton, J., dissenting). Why?

Because "statutory interpretation, as we always say, begins with the text," *Ross v. Blake*, 578 U.S. 632, 638 (2016), and often "ends" there as well, *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 553 (2014). And Section 1983's text is clear: "Every person who, under color of *any* statute . . . subjects . . . *any* citizen of the United States . . . to the deprivation of *any* rights, privileges, or immunities . . . shall be liable to the party injured in an action at law." 42 U.S.C. § 1983 (emphasis added). Nowhere in that text did Congress mention or provide for immunity. *See, e.g.*, *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2421 (2021) (Thomas, J., concurring in denial of certiorari) (contemporary two-part qualified immunity "test cannot be located in § 1983's text and may have little

basis in history."); William Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45, 47 (2018) (examining and rejecting various rationales for qualified immunity as a proper textualist interpretation of § 1983).

But it is even worse than that. Section 1983's original text held actors liable when acting under color of state law, "any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary *notwithstanding*." Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 201, 235 (2023) (quoting Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13) (emphasis added). That phrase was "meant to encompass" existing common law defenses and immunities—and make them unavailable to defendants. *Id.*

Yet the statute on the books today contains no such language, a "product of a decision by the first Reviser of Federal Statutes to, for unclear reasons, remove the [abrogating] language when the first edition of the Revised Statutes of the United States was published in 1874." *Id.* at 237. Consequently, "modern [qualified] immunity jurisprudence is not just *a*textual but *counter*textual." *Rogers v. Jarrett*, 63 F.4th 971, 980 (5th Cir. 2023) (Willett, J., concurring) (emphasis in original). That point alone should call the doctrine's continuing validity into question.

2. The reasoning behind qualified immunity has been widely criticized.

But on top of its counter-textual, counter-historical nature, qualified immunity's underpinnings "stand[] on shaky ground." *Hoggard*, 141 S. Ct. at 2421. As Justice Sotomayor has outlined, the immunity leads courts to "strain[] mightily" and reach "fanciful" conclusions to find that officers' conduct violates no clearly established law.

Kisela v. Hughes, 138 S. Ct. 1148, 1159, 1161 (Sotomayor, J., dissenting). The upshot is that the doctrine "tells officers that they can shoot first and think later." *Id.* at 1162.

Lower courts have expressed similar frustration. As one federal judge has put it, "[i]t strains credulity to believe that a reasonable officer, as he is approaching a suspect to arrest, is thinking to himself: 'Are the facts here anything like the facts in *York v. City of Las Cruces*?'" *Manzanares v. Roosevelt Cnty. Adult Detention Center*, 331 F. Supp. 3d 1260, 1294 n.10 (D.N.M. 2018). In fact, in *McKinney v. City of Middletown*, Judge Calabresi recently catalogued the more than a dozen opinions where district and circuit judges have called qualified immunity into question. 49 F.4th 730, 756–57 (2d Cir. 2022) (Calabresi, J., dissenting).

As these opinions underscore, "the profound issues with qualified immunity are recurring and worsening," with immunity precedents "creat[ing] a carte blanche which can be scripted and negotiated to counter the public interest." *Cox v. Wilson*, 971 F.3d 1159, 1165 (10th Cir. 2020) (Lucero, J., dissenting from the denial of rehearing en banc). Such doctrinal expansion comes at the expense of the constitutional rights of everyday citizens. *Zadeh v. Robinson*, 902 F.3d 483, 498 (5th Cir. 2018) (Willett, J., concurring). "[I]mmunity ought not be immune from thoughtful reappraisal." *Id.*

3. Qualified immunity has become increasingly unworkable.

Finally, qualified immunity privileges "split-second decisions of trained professionals" over "the collective judgments of those very professionals and their administrative and governing agencies." *Jefferson v.*

Lias, 21 F.4th 74, 93 (3d Cir. 2021) (McKee, J., concurring). It freezes the case law at a point in time, potentially turning a blind eye to developments in technology and police work. Those words, indeed, speak to the circumstances here.

What happened to David Sosa was wrong. Qualified immunity is unworkable precisely because it gives officers too little credit for their ability to know right from wrong. Even when the violation is obvious, and even when there was plenty of time to figure out both the law and Mr. Sosa's identity, qualified immunity might bar the courthouse doors.

That bar, given the en banc majority opinion, does not apply here. But if this Court were to hold otherwise or to in any way be concerned about the doctrine's implications for Sosa, the circumstances here underscore why that bar need not—and should not—exist.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 22, 2023

APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12781

DAVID SOSA,

Plaintiff-Appellant,

versus

MARTIN COUNTY, FLORIDA, SHERIFF WILLIAM SNYDER, of Martin County, Florida in an official capacity, DEPUTY M. KILLOUGH, individually, DEPUTY SANCHEZ, individually, JOHN DOE MARTIN COUNTY DEPUTIES,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:19-cv-14455-DMM

Before WILLIAM PRYOR, Chief Judge, WILSON, JORDAN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, LUCK, LAGOA, and BRASHER, Circuit Judges.

WILLIAM PRYOR, Chief Judge, delivered the opinion of the Court, in which NEWSOM, BRANCH, GRANT, LUCK, LAGOA, and BRASHER, Circuit Judges, join.

JORDAN, Circuit Judge, filed an opinion concurring in the judgment, in which WILSON and JILL PRYOR, Circuit Judges, join.

NEWSOM, Circuit Judge, filed a concurring opinion, in which WILLIAM PRYOR, Chief Judge, and LAGOA, Circuit Judge, join.

ROSENBAUM, Circuit Judge, filed a dissenting opinion.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether an individual detained for three days based on mistaken identity for a valid arrest warrant has stated a claim for relief under the Fourteenth Amendment for his over-detention. Deputy sheriffs arrested David Sosa based on a warrant for another man of the same name, detained him, and released him when his identity was verified three days later. Sosa sued the deputies for violating his alleged due-process right to be free from over-detention. But in *Baker v. McCollan*, the Supreme Court held that a detention due to mistaken identity "gives rise to no claim under the United States Constitution" when it lasts only "three days" and is "pursuant to a warrant conforming . . . to the requirements of the Fourth Amendment." 443 U.S. 137, 144–45 (1979). The district court dismissed Sosa's complaint for failure to state a claim. Because *Baker* squarely controls this case, we affirm and remand to the panel for the disposition of any remaining issues.

I. BACKGROUND

This appeal is from a dismissal for failure to state a claim, *see* FED. R. CIV. P. 12(b)(6), so we accept the allegations of the complaint as true. *Henley v. Payne*, 945 F.3d 1320, 1326 (11th Cir. 2019).

The Martin County Sheriff's Department twice has arrested David Sosa based on an arrest warrant for a different man with the same name. In 2014, a deputy sheriff stopped Sosa, a resident of Martin County, Florida, for a traffic violation. The deputy checked Sosa's driver's license using the sheriff's computer system and discovered a warrant issued 22 years earlier in Harris County, Texas for another man named David

Sosa. Although Sosa protested during the traffic stop that the wanted man's date of birth, height, weight, social security number, and tattoo information did not match his own identifiers, deputies arrested, detained, and fingerprinted Sosa. After three hours, the sheriff's department confirmed his identity and released him.

Four years later, on Friday, April 20, 2018, another deputy sheriff checked Sosa's driver's license during a traffic stop and found the same Texas warrant. Again, Sosa objected that the identifiers listed on the warrant did not describe him. Sosa also told the deputies about the misidentification in 2014. Deputies arrested Sosa and brought him to the Martin County jail, where, despite Sosa's continued insistence to deputies and jailers that he was not the wanted man, his detention lasted three days over a weekend. On Monday, April 23, 2018, Sosa was fingerprinted, and the sheriff's department released him after the fingerprints confirmed that the warrant was for a different man.

Sosa filed a civil-rights action, *see* 42 U.S.C. § 1983, alleging violations of his rights under the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment against Martin County; the Martin County Sheriff in his official capacity; Deputy Killough, the officer who arrested Sosa in 2018; Deputy Sanchez, an officer to whom Sosa protested his innocence during his three-day detention; and other unnamed deputies. Sosa alleged that the defendants "searched and detained and arrested him without probable cause or reasonable suspicion," that they took "an [u]nconstitutionally lengthy time" "to check [his] identity," and that the Sheriff and County "did not have adequate written policies, or train or

supervise the deputies properly" to prevent Sosa's arrest.

The district court dismissed the complaint. *See* FED. R. CIV. P. 12(b)(6). It determined that Sosa had not plausibly alleged that the deputies had violated Sosa's rights under the Fourth or Fourteenth Amendments. And it held that because the deputies were not liable, there was no basis for liability against the Sheriff and County.

A panel of this Court affirmed in part and reversed in part. *Sosa v. Martin Cnty.*, 13 F.4th 1254, 1279 (11th Cir. 2021), *reh'g en banc granted, op. vacated*, 21 F.4th 1362 (11th Cir. 2022). The panel opinion explained that the arrest was reasonable under the Fourth Amendment, *id.* at 1266, and that Sosa's claims against the County and the Sheriff were not viable, *id.* at 1279. The panel majority also concluded that Sosa stated a valid claim for violating his "substantive due-process right to be free from continued detention after it should have been known that [he] was entitled to release," *id.* at 1266, based on our precedent in *Cannon v. Macon County*, 1 F.3d 1558 (11th Cir. 1993). But the panel dissent concluded *Baker* foreclosed Sosa's over-detention claim. *Sosa*, 13 F.4th at 1279 (Luck, J., dissenting).

We voted in favor of rehearing the case en banc and vacated the panel opinion. *Sosa*, 21 F.4th at 1362. We instructed the parties to brief only issues related to the over-detention claim. And we heard oral argument only on those issues.

II. STANDARD OF REVIEW

We review *de novo* a dismissal for failure to state a claim. *Henley*, 945 F.3d at 1326.

III. DISCUSSION

Our decision begins and ends with *Baker*. There, Leonard McCollan "procured" a driver's license that bore his own picture but, in all other respects, the information of his brother, Linnie. 443 U.S. at 140. "Leonard, masquerading as Linnie, was arrested . . . on narcotics charges," "booked as Linnie," and "released on bail as Linnie . . . ." *Id.* at 140–41. Evidently, Leonard violated the terms of his bond because an arrest warrant was soon after issued for Linnie McCollan. *See id.* at 141. When Linnie ran a red light, the police checked his driver's license, discovered the warrant, and arrested him, despite his protests of mistaken identity. *Id.* On Saturday, December 30, 1972, the police defendants took custody of Linnie "until [Tuesday,] January 2, 1973, when officials compared his appearance against a file photograph of the wanted man and, recognizing their error, released him." *Id.* Linnie later filed a civil-rights action alleging a violation of the Fourteenth Amendment. *Id.* After the Fifth Circuit reversed a directed verdict against Linnie on the theory that the police must "mak[e] sure that the person arrested and detained is actually the person sought under the warrant," *McCollan v. Tate*, 575 F.2d 509, 513 (5th Cir. 1978), the Supreme Court reversed and held that he had no constitutional right not to be detained for three days:

> Absent an attack on the validity of the warrant under which he was arrested, respondent's complaint is simply that despite his protests of mistaken identity, he was detained . . . from December 30 . . . until January 2, when the validity of his protests was ascertained. Whatever claims this situation might give rise to under state tort law, we think it gives

> rise to no claim under the United States Constitution.

Id. at 143–44.

The *Baker* Court rejected Linnie's over-detention claim based on its consideration of only two criteria: the validity of Linnie's arrest warrant and the length of his detention. *Id.* It recognized that Linnie was "deprived of his liberty for a period of days," which spanned three days from Saturday to Tuesday. And it recognized that his detention was "pursuant to a warrant conforming . . . to the requirements of the Fourth Amendment." *Id.* at 144. It concluded based on these two facts that Linnie had no cognizable Fourteenth Amendment claim for over-detention.

As the Court explained, any other conclusion would read too much into the constitutional guarantee of due process. The Constitution does not guarantee that innocent people will never be arrested, so a detainee's claims of innocence are "largely irrelevant." *Id.* at 145. Nor does the Constitution guarantee that officers will "investigate independently every claim of innocence . . . based on mistaken identity." *Id*. at 146. When officers do investigate, the Constitution does not guarantee an "error-free investigation." *Id*. And regardless of whether errors are made, the Fourteenth Amendment is not a constitutional bulwark against a few-days detention, "[g]iven the requirements that arrest be made only on probable cause [under the Fourth Amendment] and that one detained be accorded a speedy trial [under the Sixth Amendment.]" *Id.* at 145. Even though the Due Process Clause affords protections to people deprived of their liberty, those protections do not extend to detainees in Linnie's particular situation.

Under *Baker*, no violation of due process occurs if a detainee's arrest warrant is valid and his detention lasts an amount of time no more than the three days that Linnie was detained. *Id.* at 144. And both conditions are met here. Like Linnie, Sosa was arrested pursuant to a valid warrant supported by probable cause under the Fourth Amendment. *See id.* at 143. And like Linnie, who was held from Saturday to Tuesday, *see* 443 U.S. at 144, Sosa was held for three days from Friday to Monday. So, under *Baker*, Sosa has no claim for a violation of his due-process rights.

Baker's holding did not clarify when prolonged detentions *unlike* Linnie's would give rise to a constitutional violation. The *Baker* Court "assume[d], *arguendo*, that, depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty without due process of law.'" *Id.* at 145 (alteration adopted). But the Court did not decide that issue.

Neither do we. Like the *Baker* Court, we limit our inquiry to the material facts of the case before us. And as the *Baker* Court was "quite certain that [Linnie's] detention of three days over a New Year's weekend does not and could not amount to such a deprivation," *id.*, we are sure that Sosa's commensurate three-day detention did not violate the Fourteenth Amendment. We need not go any further.

That *Baker* did not draw a bright line between lawful and unlawful detentions does not mean that it instituted a fact-intensive, totality-of-the-circumstances analysis for over-detention claims, as our dissenting colleague proposes. *See* Dissenting Op. at 34–40. Of

course, there are some factual differences between *Baker* and this case. For example, Linnie was detained over a holiday, 443 U.S. at 141, and Linnie's detention began in 1972, when technology was less advanced and identification may have taken longer, *id.* at 141. But the Court did not treat these facts as material. *See id.* at 143–44. Nor did the Court rely on the unstated "limiting principle" of reasonableness that our dissenting colleague has discerned from *Baker*. Dissenting Op. at 27.

If we treated every factual distinction with a precedential decision as necessarily material, the doctrine of precedent would lose most of its function. Glanville L. Williams, *Learning the Law* 93 (A.T.H. Smith ed., 14th ed. 2010) ("We know that in the flux of life all the facts of a case will never recur; but the legally material facts may recur and it is with these that the doctrine [of precedent] is concerned."). Judges would be freed from the requirement that they apply the law, so long as they could unearth any factual discrepancy between binding caselaw and the case they wanted to decide a different way. Bryan A. Garner, *et al.*, *The Law of Judicial Precedent* § 7, at 92 (2016) ("For one decision to be precedent for another, the facts in the two cases need not be identical. But they must be substantially similar, without material difference."). So, where the two conditions identified by the Supreme Court in *Baker* are met, we give no weight to facts beyond those material to the two conditions.

And even if *Baker* had introduced a fact-intensive, totality-of-the-circumstances analysis for over-detention claims, the circumstances of Sosa's detention would still convince us that he has no such claim. None of the facts differentiating *Baker* from this case are material. For instance, Linnie was held over the New

Year's holiday, *id.* at 141, and Sosa was held over a non-holiday weekend. But detainees have the same due-process rights on holidays as they do every other day of the year, so the incidence of a holiday does not change our constitutional analysis. Nor is the lower technological standard for police investigations in 1972, in contrast to 2018, a material distinction. It was permissible for the police to hold Linnie for three days, not because computers were unavailable back then, but because "a detention of three days" is objectively shorter than the duration that might give rise to an unlawful deprivation of liberty without due process. 443 U.S. at 143–45. Indeed, the identification in *Baker* required only a low-technology photograph comparison, so *Baker* did not depend, even implicitly, on a technological standard. And it does not matter that the warrant in this case was comparatively older than the *Baker* warrant or that it listed a comparatively more common name. "Absent an attack on the *validity* of the warrant under which [a detainee] was arrested," *id.* at 144 (emphasis added), we make no inquiry into the warrant. After distinctions immaterial to the *Baker* Court's holding are set aside, the facts of *Baker* and this case are strikingly similar. So, our holding is the same too.

Sosa and the dissent argue that our precedent in *Cannon* supports Sosa's over-detention claim. *See* Dissenting Op. at 13–16. In *Cannon*, officers questioned a traveler named Mary Parrott at a highway rest stop in Alabama, learned that a Mary Parrott was wanted in Kentucky for theft, arrested the traveler, filled out an arrest report with the information of the wanted Mary Parrott instead of the traveler, and used that arrest report purportedly to support detaining the Alabama traveler for seven days and sending her to Kentucky, despite her accurate insistence that she had

been misidentified. *Id.* at 1560–61. We held that a jury could have found that the arresting officer had violated the woman's constitutional rights. *Id.* at 1565. Specifically, the officer erred by keeping her detained "after it was or should have been known that [she] was entitled to release." *Id.* at 1563. Sosa and the dissent contend that, under *Cannon*, he was entitled to release because the deputies who detained him knew he may have been misidentified based on his protests and did not verify his identity.

Sosa and the dissent misread *Cannon*: we could decide *Cannon* as we did because the two conditions required for *Baker*'s holding were not met. First, it is not evident that the *Cannon* detainee was arrested on a valid warrant supported by probable cause. The officer who wrote the report that the county judge used as the basis for the arrest warrant did not record the information for the woman the officer sought to arrest. Instead, he copied from a computer database the personal information of the woman wanted in Kentucky—plus, a social security number that belonged to a third person, an unrelated fugitive also in the database. *Id.* at 1560–61; *see Wilkerson v. Seymour*, 736 F.3d 974, 978 (11th Cir. 2013) (asserting that probable cause exists where a prudent person would believe, based on "trustworthy information," that "the suspect has committed" an offense) (internal quotation marks omitted). We explained that the plaintiff had "essentially a claim of false imprisonment rising to the level of a liberty deprivation." *Cannon*, 1 F.3d at 1562; *cf. Luke v. Gulley*, 50 F.4th 90, 95 (11th Cir. 2022) (stating that a detainee's right to be free from process-based seizure is violated where "the legal process justifying his seizure was constitutionally infirm" and "his seizure would not otherwise be justified . . .") (internal quotation marks omitted). Second, the *Cannon*

detainee was held for seven days, a period more than twice greater than the duration sheltered from liability in *Baker*. *Cannon*, 1 F.3d at 1561. In short, the *Cannon* detention satisfied neither of the two *Baker* conditions for lawful detentions.

Baker controls this case. Unlike the *Cannon* detainee, Sosa was arrested on a valid warrant and held for only three days. So, under *Baker*, Sosa's complaint did not state a claim for a violation of his due-process rights.

IV. CONCLUSION

We AFFIRM the dismissal of Sosa's claim that his detention violated the Fourteenth Amendment, and we REMAND all remaining issues to the panel.

JORDAN, Circuit Judge, joined by WILSON and JILL PRYOR, Circuit Judges, concurring in the judgment:

For the reasons set out by Judge Rosenbaum in Part II.A of her dissent, I do not think that *Baker v. McCollan*, 443 U.S. 137, 143–46 (1979), forecloses a substantive due process claim for "over-detention" based on misidentification. In my opinion, we correctly recognized such a claim in *Cannon v. Macon Cty.*, 1 F.3d 1558 (11th Cir. 1993), *as modified on rehearing*, 15 F.3d 1022 (11th Cir. 1994), and *Ortega v. Christian*, 85 F.3d 1521, 1526 (11th Cir. 1996). And so have a number of our sister circuits. *See generally* 1 Sheldon H. Nahmood, Civil Rights & Civil Liberties Litigation: The Law of Section 1983 § 3:57 (Sept. 2022 update) (citing cases). As we explained in *Reeves v. City of Jackson*, 608 F.2d 644 (5th Cir. 1979), the Supreme Court in *Baker* said that detention "pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty . . . without due process of law.'" *Id*. at 651 (quoting *Baker*, 443 U.S. at 145) (internal quotation marks omitted).

I nevertheless concur in the judgment affirming dismissal of Mr. Sosa's "overdetention" claim. The Supreme Court's recent qualified immunity decisions require that the facts of prior cases be very, very close to the ones at hand to give officers reasonable notice of what is prohibited. *See Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7–9 (2021); *City of Tahlequah v. Bond*, 142 S. Ct. 9, 11–12 (2021). Although the inquiry does not—at least not yet—demand "a case directly on point," it requires that "existing precedent . . . place[ ] the statutory or constitutional question beyond debate." *Rivas-Villegas*, 142 S. Ct. at 8. If the only relevant case here was *Cannon*, then maybe a reasonable police

officer would know that Mr. Sosa's continued detention was unlawful. But reading *Cannon* in conjunction with *Baker*, as we must, makes the issue less clear. Mr. Sosa was detained for three days, the same time period at issue in *Baker*, while *Cannon* involved a detention of seven days. Those two cases, taken together, would not have provided reasonable officers adequate notice that they were violating Mr. Sosa's substantive due process rights by not releasing him—at least not "beyond debate" as the Supreme Court's decisions require. *See Rivas-Villegas*, 142 S. Ct. at 8; *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018); *White v. Pauly*, 580 U.S. 73, 79 (2017). In other words, under the legal fiction created by qualified immunity, a reasonable police officer who read these cases would not know for certain that detaining Mr. Sosa for three days was unlawful. *Cf. City of Tahlequah*, 142 S. Ct. at 12 ("Suffice it to say, a reasonable officer could miss the connection between that case and this one.").

My concurrence is a reluctant one because the Supreme Court's governing (and judicially-created) qualified immunity jurisprudence is far removed from the principles existing in the early 1870s, when Congress enacted what is now 42 U.S.C. § 1983. *See, e.g., Zigler v. Abassi*, 137 S. Ct. 1843, 1870–72 (2017) (Thomas, J., concurring in part and concurring in the judgment); William Baude, *Is Qualified Immunity Unlawful*, 106 Cal. L. Rev. 45, 55-61 (2018); Ilan Wurman, *Qualified Immunity and Statutory Interpretation*, 37 Seattle U. L. Rev. 939, 961–72 (2014); Akhil Reed Amar, The Constitution and Criminal Procedure 40–42 (1997). If federal statutes are supposed to be interpreted according to ordinary public meaning and understanding at the time of enactment, *see, e.g., Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067, 2071 (2018), and if § 1983 preserved common-

law immunities existing at the time of its enactment, *see Pierson v. Ray*, 386 U.S. 547, 554–55 (1967), the qualified immunity doctrine we have today is regrettable. Hopefully one day soon the Supreme Court will see fit to correct it.

NEWSOM, Circuit Judge, joined by WILLIAM PRYOR, Chief Judge, and LAGOA, Circuit Judge, concurring:

On April 20, 2018, David Sosa must have felt like he had been dropped into a Kafka novel, for "without having done anything truly wrong, he was arrested." Franz Kafka, *The Trial* 3 (Breon Mitchell, trans., 1998). Worse than that, following a routine traffic stop, Sosa was arrested and detained by his hometown sheriff's deputies for the *second* time on the *same* decades-old drug-dealing warrant issued for *another* David Sosa—one who lived hundreds of miles away in a different state, was a different age, height, and weight, and had conspicuously different tattoo markings. Just as he had the first go round, our Sosa naturally (and repeatedly) told the arresting officers that they had the wrong guy but to no avail. The deputies detained Sosa for three days over a weekend before they eventually got around to fingerprinting him, recognized their mistake, and released him.

What happened to Sosa was, in a word, awful. Without prejudging the issue, I'd be willing to assume that the officers' conduct—jailing Sosa for three full days on a warrant issued for someone else, despite his repeated pleas of innocence and without bothering to do much of anything to verify his identity—might even have been tortious. The question before the Court today, though, is whether their conduct violated the United States Constitution in particular, whether it infringed Sosa's so-called "substantive due process" rights. The majority quite correctly concludes that it didn't. As its opinion straightforwardly explains, the Supreme Court's decision in *Baker v. McCollan*, 443 U.S. 137 (1979), which rejected a due-process challenge to a materially identical "overdetention," is essentially on point, and our later decision in *Cannon*

v. Macon County, 1 F.3d 1558 (11th Cir. 1993), which recognized a substantive-due-process claim based on a detention more than twice as long as Sosa's, is eminently distinguishable. *See* Maj. Op. at 8–12. It really is as simple as that.

I therefore concur in the Court's decision and join its opinion in full. I write separately to reiterate (once again) my grave reservations about the role that "substantive due process" has come to play in constitutional decisionmaking.

I

Substantive due process is a slippery, shape-shifting doctrine. It can take on any of a number of different forms. In what is, I suppose, its most conventional instantiation, it's the method by which the Supreme Court has gradually "incorporated" most of the substantive protections of the Bill of Rights against the states through the Fourteenth Amendment's Due Process Clause. *See, e.g.*, *McDonald v. City of Chicago*, 561 U.S. 742, 759–80 (2010) (holding that the Due Process Clause incorporates the Second Amendment right to keep and bear arms). Some observers—including me—have criticized the Court's reliance on substantive due process even for that limited purpose and have urged it to refocus its attention on the long-lost Privileges or Immunities Clause. *See id*. at 805–50 (Thomas, J., concurring in part and concurring in the judgment); Kevin Newsom, *Setting Incorporationism Straight: A Reinterpretation of the* Slaughter-House Cases, 109 Yale L.J. 643, 658–87 (2000).

More controversially, substantive due process has been deployed as a means of protecting certain unenumerated interests like, say, "the sanctity of the

family"—that are deemed to be "deeply rooted in this Nation's history and tradition," *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977), or, even more obscurely, "implicit in the concept of ordered liberty," *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). *Cf. Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022) (recognizing a limited role for the Due Process Clause in "guarantee[ing] some rights that are not mentioned in the Constitution"). As I've explained elsewhere, resort to these sorts of "vague shibboleths" is hardly a recipe for principled decision-making. *Sierra v. City of Hallandale Beach*, 996 F.3d 1110, 1128 (11th Cir. 2021) (Newsom, J., concurring).

Still further afield, substantive due process has (too) often been invoked as a failsafe doctrine of sorts—a way to plug some perceived gap in the written Constitution and thereby rectify some alleged unfairness that the document's terms, for one reason or another, just don't address. "Surely," the thinking goes, "the Constitution doesn't permit ____!" A court is confronted with some injustice—say, for instance, an individual's three-day detention in the face of his repeated protestations of innocence and his jailers' refusal to make any real effort to verify basic facts—and is told that the Constitution simply *must* provide a remedy. And because the court can't find another avenue by which to right the alleged wrong, it defaults to substantive due process.

II

I'm a confessed (and longtime) skeptic of substantive due process—in all its various forms. *See, e.g.*, *id.* at 1126–29; *Hillcrest Prop., LLP v. Pasco Cnty.*, 915 F.3d 1292, 1304–07 (11th Cir. 2019) (Newsom, J., concurring in the judgment); *see also* Newsom, *Incorporationism*, at 733–42. Why? What's so bad about it? Well, a lot.

First, and most obviously—and most seriously from my perspective—substantive due process has no footing in constitutional text. Quite the contrary, in fact, it makes a hash of the provision from which it purportedly emanates. The Fourteenth Amendment's Due Process Clause states, simply, that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Two notes about that language: One, as Dean Ely observed, "there is simply no avoiding the fact that the word that follows 'due' is 'process.'" John Hart Ely, *Democracy and Distrust* 18 (1980). And two, as Professor Tribe has explained, "the expressly conditional, purely procedural cast of the Due Process Clause . . . leaves no doubt that life, liberty, and property may all be extinguished, providing only that the government do so *with* 'due process of law.'" Laurence H. Tribe, 1 *American Constitutional Law* 1320 (3d ed. 2000). In light of the linguistic misfit, Ely famously dubbed substantive due process a "contradiction in terms—sort of like 'green pastel redness.'" Ely, *Democracy and Distrust*, at 18. If the Constitution's text matters at all, Ely's quip captures what seems to me to be an intractable problem: The Due Process Clause's plain language renders it positively incapable of absolutely protecting substantive rights.

Second, "there's the matter of history." *Hillcrest*, 915 F.3d at 1305 (Newsom, J., concurring in the judgment). "The best indications," as I've explained by reference to verifiable historical sources, "are that those who framed the Fourteenth Amendment's Due Process Clause envisioned it as a guarantee (as its phrasing and moniker indicate) of fair process, not a font of substantive rights." *Id.*; *accord, e.g.*, Newsom, *Incorporationism*, at 739–40. I won't belabor the point here, except to say that people smarter and more

steeped in the history than I am share my assessment. *See, e.g.*, Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 173 (1998) (making the same point, by reference to many of the same sources).

Third, substantive due process has, let's just say, a checkered past. "At least in the Supreme Court, substantive-due-process doctrine traces its roots to the fateful—and repugnant—decision" in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), in which the Court somehow teased out of the terms of the Fifth Amendment's Due Process Clause a "white man's 'right' to own a black man." *Hillcrest*, 915 F.3d at 1305 (Newsom, J., concurring in the judgment); *see also* Tribe, *American Constitutional Law*, at 1334 (describing *Dred Scott*, which "embraced a substantive reading of the due process requirement," as "more nightmare than precedent in 1866"). And things didn't get much better from there, as substantive due process provided the quicksand on which the Court later built the oft-criticized—and since-overruled—decisions in *Lochner v. New York*, 198 U.S. 45 (1905), and *Roe v. Wade*, 410 U.S. 113 (1973). *See* Newsom, *Incorporationism*, at 740–42 (tracing substantive due process's doctrinal pedigree). Notably, even defenders of those decisions—including *Roe*—have confessed a sense of dread (or embarrassment, or both) that they share a doctrinal foundation with *Dred Scott*. *See, e.g.*, Tribe, *American Constitutional Law*, at 1318.

Finally, on top of the textual, historical, and ancestral difficulties, substantive due process's freewheelingness (witness the dissent's "six facts," *see* Dissenting Op. at 33–40) poses a serious practical problem. As Justice Stevens explained for a unanimous Supreme Court in *Collins v. City of Harker Heights*, the "guideposts for responsible decisionmaking in this

unchartered area are scarce and open-ended." 503 U.S. 115, 125 (1992). Accordingly, he emphasized, "[t]he doctrine of judicial self-restraint requires [courts] to exercise the utmost care whenever we are asked to break new ground" wielding a substantive-due-process shovel. *Id*. As I've summarized the Supreme Court's concern, "there is always a risk that a court asked to recognize a substantive-due-process violation—but without traditional interpretive guardrails—will simply read into the Constitution its own view of good government." *Hillcrest*, 915 F.3d at 1306 (Newsom, J., concurring in the judgment). Even more grimly, Professor Tribe has warned that "[t]here is a very real threat that that the doctrinal shakiness of substantive due process may . . . undermine public confidence in the institution of judicial review and in the ability of judges honestly to interpret the dictates of the Constitution." Tribe, *American Constitutional Law*, at 1317.

Long story short: Substantive due process is a doctrine shot through with problems and chock full of risks.

III

I'd be game for ditching substantive due process altogether and exploring what I think to be more promising—and principled—vehicles for protecting individual rights against state interference. *See* Newsom, *Incorporationism*, at 658–87. Short of that, though, what can be done to avert the harm that the doctrine threatens? The Supreme Court has emphasized one important means of cabining substantive due process—one that, as the dissent seems to recognize, has direct application here. *See* Dissenting Op. at 48 n.18. Reviewing courts, it has said, should be particularly reluctant to indulge substantive-due-

process arguments when an *actual* constitutional provision addresses the sort of injury that a complainant alleges. So, for instance, the Court has held that "[w]here a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims.'" *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (plurality op.) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)). Accordingly, the Court has stressed, "if a constitutional claim is covered by a specific constitutional provision . . . the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997).

That, it seems to me, is pretty much exactly where we find ourselves today. Sosa complains, in essence—and not without some justification—that he was arrested for a crime that he didn't commit and was then detained in jail for an unfairly long time. As it turns out, the Constitution addresses those types of complaints. The Fourth Amendment, of course, generally prohibits "unreasonable . . . seizures" and, more specifically, requires that warrants be issued only on a showing of "probable cause." U.S. Const. amend. IV. And the Sixth Amendment guarantees every "accused" the "right to a speedy . . . trial." *Id.* amend. VI. It's even possible that a complaint like Sosa's could, in extreme circumstances, implicate the Eighth Amendment, which prohibits "excessive bail." *Id.* amend. VIII.

Now, to be sure, as matters currently stand, none of those express textual guarantees provides Sosa a ready remedy. As far as the Fourth Amendment is

concerned, Sosa's arrest pursuant to a valid warrant would appear to end the inquiry. The Supreme Court has held that those arrested *without* a warrant must be given a probable-cause hearing before a neutral magistrate, usually within 48 hours, *see County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991), but no similar temporal protection applies to those, like Sosa, who were initially arrested pursuant to a magistrate-issued warrant. The Sixth Amendment would have prohibited Sosa's "indefinite[]" detention, *see Baker*, 443 U.S. at 144, but the Speedy Trial Clause wouldn't itself have imposed any hard outer limit, *see Barker v. Wingo*, 407 U.S. 514, 530 (1972) (prescribing an "ad hoc" "balancing test"). And the Eighth Amendment, while perhaps in the general ballpark, likewise wouldn't have offered Sosa any relief. Although the Supreme Court seems to have been willing to assume that states "are required by the United States Constitution to release an accused criminal defendant on bail" in appropriate circumstances, *Baker*, 443 U.S. at 144 n.3, that right almost certainly wouldn't have attached unless and until Sosa was formally charged, *cf. Carlson v. Landon*, 342 U.S. 524, 545 (1952) ("The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country."); 18 U.S.C. § 3142 (providing bail for a "person charged with an offense").[1]

But—and this is important—from the premise that the Fourth, Sixth, and Eighth Amendments don't provide Sosa any relief, it does *not* follow that "substantive due process" must do so. To the contrary, the

[1] *Cf. also Schultz v. Alabama*, 42 F.4th 1298, 1323–25 (11th Cir. 2022) (upholding the constitutionality of a money-bail regime against a constitutional challenge and collecting additional precedents doing likewise).

fact that the Constitution expressly addresses specific, discrete issues that arise in criminal investigations and prosecutions is a sufficient reason not to contort the open-textured Due Process Clause to force it to reach other adjacent (but unaddressed) matters. In explaining that substantive due process has no role to play when a party's claim is "covered" by a specific constitutional provision, *Lanier*, 520 U.S. at 272 n.7, the Supreme Court can't have meant that the doctrine takes a back seat *only* when that provision provides a sure-fire winner; that understanding would render the Court's prudent limitation on substantive-due-process decisionmaking wholly superfluous. Rather, as I've explained elsewhere, "[i]f (for whatever reason) the claim can't proceed in its natural textual and doctrinal 'home,' then, well, it can't proceed"—the claimant "can't just repackage it in substantive-due-process garb and attempt to relitigate it." *Hillcrest*, 915 F.3d at 1306 (Newsom, J., concurring in the judgment).

So, to be clear, while substantive due process is bad on its best day, this case represents the doctrine at "its abject worst." *Id.* at 1306. We're not *just* being asked to twist the Due Process Clause's plain meaning to incorporate some specific substantive freedom enshrined in the Bill of Rights. And we're not even *just* being asked to plumb the depths of "history," "tradition," and "ordered liberty" to identify and protect some favored unenumerated right. Here, rather, we're being asked to use substantive due process as a constitutional gap-filler—to hold, in essence, that because what happened to David Sosa was unfair, it *must* violate the Constitution. That, in

short, is "not how constitutional law works." *Id.* at 1304.[2]

IV

I'll end where I began: What happened to David Sosa was awful. But as I've said before, "[n]ot everything that s[tink]s violates the Constitution." *Hillcrest*, 915 F.3d at 1303 (Newsom, J., concurring in the judgment). As soon as courts come to believe that the Constitution must—simply *must*—right every societal wrong and cure every societal ill, they put themselves at grave risk of making it up as they go along, penciling in their reasoning in reverse to justify their preferred outcomes. "And if there is any fixed star in my own constitutional constellation, it's that unelected, unaccountable federal judges shouldn't make stuff up." *Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231, 1261 (11th Cir. 2022) (Newsom, J., concurring) (citing *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

[2] From everything I've said here, I suppose this goes without saying, but I'll say it anyway: I think that *Cannon v. Macon County*, 1 F.3d 1558—in which a panel of this Court recognized a substantive-due-process claim for an alleged "overdetention"—was wrongly decided. Today isn't the day, I suppose, but if and when the issue is squarely presented, I would vote to overrule it.

ROSENBAUM, Circuit Judge, Dissenting:

Everyone agrees that David Sosa is an innocent man. Yet police officers arrested and detained him in jail on a warrant for another man. He was not allowed to leave that day. Or the next. Or the one after that. In all, Sosa spent three nights and days confined to a jail cell. Sosa remained in jail for roughly 72 hours because, despite good reason to believe they had arrested the wrong man, Martin County Sheriff's officials refused to confirm Sosa's identity—a process that requires an officer to perform less than a minute of work.

Faced with this sequence of events, my colleagues in the Majority wring their hands and say too bad for Sosa but insist the Constitution allows it. Even worse, three of my colleagues claim that the Constitution permits officials to hold people in Sosa's position without *ever* verifying their identity. *See* Newsom Op. at 8–11. According to these judges, no constitutional violation occurs until the detained person's *speedy-trial* rights are violated—that is, about *a year or more later*. *See id.* at 8–9 (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)).[1] A year in jail! And for no reason other than that law-enforcement officials refused to engage in less than a minute of work to confirm their prisoner's identity.

This misguided view of the Constitution is horrifying. It's also wrong. Our precedent shows that the

[1] *See also United States v. Knight*, 562 F.3d 1314, 1323 (11th Cir. 2009) (W. Pryor, J.) (stating that a speedy-trial delay cannot violate the Sixth Amendment if it is not "presumptively prejudicial," which cannot happen until the delay "approaches one year," but holding that the two-year delay of the defendant's trial there did not violate the Sixth Amendment right to a speedy trial).

Constitution does not have an aircraft-carrier-sized loophole in its guarantee that no person shall be deprived of their liberty without due process of law. The Majority Opinion unceremoniously casts our precedent aside. But when an officer suspects he has detained the wrong person and has the means to quickly and easily verify the prisoner's identity, the Constitution does not allow the officer to sit on his hands while the detainee spends days, weeks, or months in jail.

Indeed, over the last thirty years, we have repeatedly recognized that the Constitution protects the "right to be free from continued detention after it was or should have been known that the detainee was entitled to release." *Cannon v. Macon Cnty.*, 1 F.3d 1558, 1563 (11th Cir. 1993).[2] And under this principle,

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[2] *See*, *e.g.*, *Ortega v. Christian*, 85 F.3d 1521, 1526 (11th Cir. 1996) ("In light of the sparse information Christian had when he made the arrest, Christian knew or should have known that the imprisonment of Ortega may have constituted an unlawful imprisonment under section 1983 in violation of the Fourteenth Amendment."); *Campbell v. Johnson*, 586 F.3d 835, 840 (11th Cir. 2009) ("The Fourteenth Amendment Due Process Clause includes the 'right to be free from continued detention after it was or should have been known that the detainee was entitled to release.'") (quoting *Cannon*, 1 F.3d at 1563); *Case v. Eslinger*, 555 F.3d 1317, 1330 (11th Cir. 2009) (W. Pryor, J.) (acknowledging that, under our precedent, "'under certain circumstances, a detention following a valid arrest may present a viable section 1983 claim where the detainee protests the detention on the basis of misidentification'") (quoting *Ortega*, 85 F.3d at 1527); *May v. City of Nahunta*, 846 F.3d 1320, 1329 (11th Cir. 2017) (noting that a plaintiff can make out a claim for violation of her Fourteenth Amendment due-process rights by "prov[ing] that the defendant acted with deliberate indifference in violating the plaintiff's right to be free from continued detention after the defendant knew or should have known that the detained was entitled to release").

an officer's "failure to take any steps to identify [the arrested person] as the wanted fugitive [is] sufficient to raise a question of fact as to [the officer's] deliberate indifference toward the plaintiff's due process rights." *Id.* at 1564.

Here, jail officials had good reason to know that the David Sosa in custody—the plaintiff here—was not the alleged-crack-cocaine-trafficker David Sosa from Texas (the "wanted Sosa"). For one, the warrant was more than a quarter-of-a-century old, from halfway across the country, and Sosa—who worked in research and development of airplane engines for Pratt and Whitney and its affiliates—matched almost none of the descriptors for the wanted Sosa (like height, weight, or tattoos). For another, Sosa repeatedly told his jailers that he did not match the identifiers for the wanted Sosa and that the same sheriff's office had wrongly arrested him on the very same warrant just a few years earlier. And third, Sosa is one of *thousands* of individuals who share the name "David Sosa" and lived in or visited the United States when Sosa's 2018 arrest and detention occurred. In other words, the deputies had a better shot at winning money in Florida Lottery games than they did of having the wanted Sosa in custody.[3] Pair those odds with the descriptive differences between Sosa and the wanted Sosa and account for Sosa's repeated statements that he had

[3] *See*, *e.g.*, Florida Lottery Game #5048 – Florida 300X THE CASH, with a 1 in-500 chance of winning $1,000.00; Florida Lottery Game #1485 – BILLION DOLLAR GOLD RUSH SUPREME, with a 1-in-821 chance of winning $1,000; Florida Lottery Game #5029 – 500X THE CASH, with a 1-in-1,000 chance of winning $1,000.00; Florida Lottery Game # 1454 - $500 MADNESS, with a 1 in-136 chance of winning $500.00. *Scratch-offs*, FLORIDA LOTTERY, https://www.flalottery.com/scrat ch-offs (last visited Jan. 19, 2023).

wrongly been arrested on the same warrant just a few years earlier, and it's almost like the jail deputies knowingly bought losing lottery tickets. These facts should have set off alarm bells in the Martin County jail officials' heads that they needed to make sure they had the right David Sosa. But instead, the jailers did nothing for three nights and days.

Sosa's jailers could not ignore these flashing neon signs that they likely had the wrong Sosa and remain deliberately indifferent to Sosa's identity for three nights and days. Rather, the Constitution required them to take reasonable action—like the simple and quick computerized process of running Sosa's fingerprints against the fingerprints of the wanted Sosa—to confirm whether Sosa was the wanted Sosa. Our precedent establishes that when the officers failed to do even that, they violated Sosa's constitutional rights. *See Cannon*, 1 F.3d at 1563.

The Majority Opinion relies on *Baker v. McCollan* to excuse its failure to apply *Cannon* (and its progeny) to recognize the violation of Sosa's constitutional rights. Maj. Op. at 8 (citing 443 U.S. 137, 144 (1979)). But *Baker* does not justify the Majority's result. To the contrary, *Baker* supports the opposite answer—that Sosa sufficiently alleged that Sanchez and the other jail officers who did nothing for three nights and days to confirm Sosa's identity while Sosa sat in jail violated Sosa's constitutional rights. So I would conclude that Sosa has sufficiently alleged a claim, and Sanchez and the other jail officers are not entitled to qualified immunity at this time. I therefore respectfully dissent.

I organize my dissent in three sections. Section I sets forth the relevant background here. In Section II, I show why *Cannon* and *Baker* require the conclusion

that Sanchez and the other jail deputies are not entitled to qualified immunity, and their motion to dismiss should have been denied. And Section III explains why, if we were writing on a clean slate, the Fourth Amendment more appropriately serves as the source of the right to be free from continued detention when it was known or should have been known that the person was entitled to release.

I. Background

Sosa has lived in Martin County, Florida, since 2014.[4] Things did not start well for him there. In November of that year, a Martin County Sheriff's deputy pulled Sosa over for a routine traffic stop. During the encounter, the deputy ran Sosa's name through the Office's computer system.

The computer told the deputy of an outstanding 1992 warrant issued out of Harris County, Texas, for a "David Sosa" in connection with the wanted Sosa's conviction for selling crack cocaine. The warrant described the wanted Sosa, including his date of birth, height, weight, tattoo information (he had at least one), and other details. When the deputy went to arrest Sosa on the warrant, Sosa pointed out that his own date of birth, height, and weight did not match the information for the wanted Sosa and that, unlike the wanted Sosa, he had no tattoos. The deputies arrested Sosa, anyway, and took him to the station.

While detained at the station, Sosa told two Martin County jailers that he was not the wanted Sosa. And he explained that the wanted Sosa's identifiers differed from his own. Then a deputy fingerprinted Sosa and

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[4] Because this case comes to us on a motion to dismiss, we accept all well-pleaded facts in the complaint as true. *Henley v. Payne*, 945 F.3d 1320, 1326 (11th Cir. 2019).

determined that he was not the wanted Sosa. So roughly three hours after Sosa was initially detained, he was released.

Three-and-a-half years passed. Then, the same thing happened again—only this time, Sosa was not lucky enough to be released within three hours. On April 20, 2018, a different deputy of the Martin County Sheriff's Department, Deputy Killough, pulled Sosa over for a traffic stop. When Deputy Killough ran Sosa's name, he discovered the same 1992 open warrant. Sosa explained that he was not the wanted Sosa and told Deputy Killough he had previously been incorrectly arrested on that warrant and released when deputies realized the error. Sosa again noted that he and the wanted Sosa did not share the same birthdate, Social Security number, tattooed status, or other identifying information. But once again, his explanation did not work; Deputy Killough arrested Sosa and impounded his truck anyway.

When Deputy Killough took Sosa to the Martin County jail, Sosa "repeatedly explained to many Martin County employees . . . that his date of birth and other identifying information [were] different than the information on the warrant for the wanted . . . Sosa." Among those Martin County employees were Deputy Sanchez and the other Martin County deputies in the booking area. They wrote down Sosa's information and told him they would follow up on the matter.

But Sosa spent the remainder of April 20 in jail.

The next day, Sosa appeared by video before a magistrate judge. Though Sosa tried to explain the mistaken identity, "several Martin County jailers threatened him and told him not to talk to the judge

during his hearing." As a result, Sosa "thought it was a crime to talk to the judge."

Sosa spent the rest of that day in jail.

And then he spent the next day in jail as well.

Finally, after detaining Sosa for three nights, deputies fingerprinted him on April 23 and released him in the late afternoon. In the meantime, Sosa missed work and had to pay to retrieve his truck from impoundment.

II. Under our binding precedent, Sosa alleged sufficient facts to survive the Martin County jailers' motion to dismiss based on qualified immunity.

Qualified immunity shields from liability "all but the plainly incompetent or one who is knowingly violating the federal law." *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002) (internal quotation and citation omitted). But it does not extend to an officer who "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff]." *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982) (internal quotation marks and citation omitted) (alteration in original).

To receive qualified immunity, a public official must first establish that he was acting within the scope of his discretionary authority when the challenged action occurred. *Maddox v. Stephens*, 727 F.3d 1109, 1120 (11th Cir. 2013). When we speak of "discretionary authority," we mean all actions the official took (1) in performing his duties and (2) in the scope of his authority. *Jordan v. Doe*, 38 F.3d 1559, 1566 (11th Cir. 1994). Deputy Sanchez and the other deputies at the

jail satisfied this requirement, as they detained Sosa while performing their official duties.

Because the deputies were acting within the scope of their discretionary authority, the burden shifts to Sosa to show that qualified immunity is inappropriate. *See id.* To do that, the factual allegations in Sosa's complaint must establish two things: (1) the deputies violated his constitutional rights by detaining him for three nights and days on a warrant for a different David Sosa when the deputies knew or should have known that he was not the wanted Sosa; and (2) those rights were "clearly established," in that "every reasonable official would have understood that what he [wa]s doing violate[d] that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (cleaned up).

As I explain below, Sosa's complaint does both.

A. Sosa sufficiently alleged that deputies violated his constitutional rights by continuing to detain him when they knew or should have known that he was entitled to release.

Sosa's complaint alleged sufficient facts to establish that the Martin County jail deputies violated his constitutional rights by continuing to detain him when they knew or should have known that he was entitled to release. That is so for two reasons. First, our holding in *Cannon* requires the conclusion that Sosa stated a claim for violation of his constitutional rights. And second, the Supreme Court's decision in *Baker* independently supports the same outcome.

1. *Cannon* and its progeny require the conclusion that Sosa sufficiently alleged that jail deputies violated his constitutional right to be free from continued detention when it was or should have been known that he was entitled to release.

Though a warrant can support an arrest, we have long recognized that, "under certain circumstances, a detention following a valid arrest may present a viable section 1983 claim where the detainee protests the detention on the basis of misidentification." *Case*, 555 F.3d at 1330 (W. Pryor, J.) (quoting *Ortega*, 85 F.3d at 1527). As we've explained, "after the lapse of a certain amount of time, continued detention in the face of repeated protests [of misidentification that turn out to be true and are ignored] will deprive the accused of liberty without due process." *Cannon*, 1 F.3d at 1562. This is so, we've said, because substantive due process protects the "right to be free from continued detention after it was or should have been known that the detainee was entitled to release." *Id.* at 1563. A state official violates that right when he shows "deliberate indifference" to the plaintiff's right to be free from unwarranted continued detention. *Id.*

And we are not alone in concluding that the Constitution protects detainees against continued detention once it is or should be known that the detainee is entitled to release. At least four of our sister circuits agree. *See*, *e.g.*, *Gray v. Cuyahoga Cnty. Sheriff's Dep't*, 150 F.3d 579 (6th Cir. 1998), *amended by* 160 F.3d 276, 276 (6th Cir. 1998) ("[T]he trier of fact could find that the failure by [the jailers] to ascertain that they were holding the wrong person violated Gray's due-process rights under the Fourteenth

Amendment. . . . On remand, . . . the principal question for the trier of fact will be whether [the defendant jailers] acted with something akin to deliberate indifference in failing to ascertain that the Dwayne Gray they had in custody was not the person wanted by the Michigan authorities on the outstanding parole-violation warrants.");[5] *Garcia v. Cnty. of Riverside*, 817 F.3d 635, 639–43 (9th Cir. 2016) ("[A]n obvious physical discrepancy between a warrant subject and a booked individual, such as a nine-inch difference in height, accompanied by a detainee's complaints of misidentification, should prompt officers to engage in readily available and resource-efficient identity checks, such as a fingerprint comparison, to ensure that they are not detaining the wrong person."); *Russo v. City of Bridgeport*, 479 F.3d 196, 209 (2d Cir. 2007) (concluding that plaintiff sufficiently alleged a constitutional violation based on his lengthy detention, given "(1) the length of time of [his] wrongful incarceration, (2) the ease with which the evidence exculpating [him] which was in the officers' possession—could have been checked, and (3) the alleged intentionality of [the defendants'] behavior"); *Schneyder v. Smith*, 653 F.3d 313 (3d Cir. 2011) (noting in the context of a material witness's § 1983 suit for unreasonable seizure that "numerous courts have reached the almost tautological conclusion that an individual in custody has a constitutional right to be released from confinement 'after it was or should have been known that the

[5] *See also Seales v. City of Detroit*, 959 F.3d 235, 241 (6th Cir. 2020) ("By our lights, Seales sued the wrong person. Officer Zberkot merely helped to arrest Seales and initiated the booking procedures, all legitimately under the Fourth Amendment. He wasn't Seales' jailor. . . . Seales offers no explanation why Zberkot, as opposed to the jailers, bears responsibility for the fifteen-day detention.").

detainee was entitled to release'") (quoting *Cannon*, 1 F.3d at 1563).[6]

As *Cannon* demonstrates, state officials violate this right by displaying deliberate indifference to the likelihood that a detainee's identity does not match that of the suspect. In *Cannon*, a deputy encountered the plaintiff—then known as Mary Rene Parrott—at a rest stop in Georgia. *Id.* at 1560. When he ran her name through the National Crime Information Center database ("NCIC"), he learned that Kentucky wanted

[6] Like we concluded in *Cannon*, the Sixth Circuit determined that the right finds its home in Fourteenth Amendment substantive due process. *See Gray*, 160 F.3d at 276. Other circuits have held that different provisions of the Constitution protect the right. The Ninth Circuit, for instance, has relied on the Fourteenth Amendment's guarantee of procedural due process, *Garcia*, 817 F.3d at 640, and the Second Circuit, which once agreed that the right is one of substantive due process under the Fourteenth Amendment, currently views the right as grounded in the Fourth Amendment's protection against unreasonable seizures, *Russo*, 479 F.3d at 208–09. So does the Third Circuit. *Schneyder*, 653 F.3d at 330. Regardless, though, as the Second Circuit has explained, some disagreement over the source of the right "is of no consequence" to whether the right exists. *See Russo*, 479 F.3d at 212 (quoting *Wilson v. Spain*, 209 F.3d 713, 716 (8th Cir. 2000), for the proposition that "there is no question that plaintiff's right to be free from excessive force was clearly established, even if there is some ongoing uncertainty about which constitutional text is the source of that right." (cleaned up), and citing *Alexander v. Perrill*, 916 F.2d 1392, 1398 n.11 (9th Cir. 1990), as "noting that the only issue before it with respect to qualified immunity was 'whether there was a clearly established duty to investigate'; that its prior decision in *Haygood v. Younger,* 769 F.2d 1350 (9th Cir. 1985) (en banc), 'answer[ed] that question in the affirmative'; and that '[f]or purposes of this appeal, it is unimportant that the *Haygood* court found the prison officials ultimately violated the plaintiff's right to be free from cruel and unusual punishment, rather than the right to due process and to be free from double jeopardy as alleged in this case'").

a Mary E. Mann, also known as Mary E. Parrott, for crimes. *Id.* So he validly arrested Parrott and took her to jail. *Id.* At the jail, the arresting deputy handed Parrott off to the jailer, Deputy Collins, who completed Parrott's arrest report. *Id.* Parrott repeatedly protested that she was not Mann. *Id.* Still, the officer stated that he identified Parrott as Mann because the two had matching Social Security numbers and birth dates; and because Mann used the alias Mary E. Parrott. *Id.*

As it turned out, though, Deputy Collins failed to take any steps to identify Parrott as the wanted Mann. Parrott and Mann did not share matching Social Security numbers or birth dates. *Id.* They had different colored eyes. *Id*. And they were different heights. *Id*. Parrott was also twelve years younger than Mann. *Id.* Yet despite these distinctions, Parrot's arrest report reflected Mann's identification information. *Id.* Deputy Collins initially testified that he had filled out the arrest report with information he had obtained directly from Parrott. *Id.* But the information in the arrest report matched the information in the NCIC report (except that the Social Security number matched the Social Security number of another individual listed on the NCIC report for Mann). *Id.* This mismatch, we said, suggested that Deputy Collins hadn't gotten the information from Parrott at all; he had simply "copied it directly from the NCIC report." *Id.* Deputy Collins also attested to a local judge that he believed Parrott to be the wanted Mann, so the judge issued a fugitive warrant for Parrott's arrest. *Id.* at 1561. Ultimately, Parrott spent a total of seven days in the Georgia jail before she was transferred to Kentucky, where authorities promptly released her when they discovered that she was not Mann. *Id.*

When we considered Parrott's case, we explained that "Collins' failure to take any steps to identify [Parrott] as the wanted fugitive was sufficient to raise a question of fact as to his deliberate indifference toward [Parrott's] due process rights." *Id*. at 1564. In reaching this conclusion, we recognized that *Baker* did not "preclude all § 1983 claims based on false imprisonment." *Id.* at 1562. To be sure, we acknowledged that "those responsible for maintaining custody of detainees are not constitutionally required 'to investigate independently every claim of innocence.'" *Id*. (quoting *Baker*, 443 U.S. at 146). Still, though, we emphasized that "after the lapse of a certain amount of time, continued detention in the face of repeated protests will deprive the accused of liberty without due process." *Id.* at 1562 (citation omitted). In short, we held that Parrott had a "constitutional right to be free from continued detention after it was or should have been known that [she] was entitled to release . . . ." *Id.* at 1563.

We must apply that rule—under which state officials violate the Fourteenth Amendment's Due Process Clause by displaying deliberate indifference about a detainee's (mis)identification—in this case. That is so because our prior-precedent rule requires us to follow *Cannon* "unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc." *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (citation omitted).

And that hasn't happened—the Majority Opinion has not overruled *Cannon*. *See* Majority Op. at 11–13; *but see* Newsom Op. at 11 n.2 (advocating for a *Cannon*-less world). *Cannon* remains good law. And applying its holding requires the answer the panel

reached: Sosa sufficiently alleged a violation of his substantive-due-process rights.

Indeed, Sosa alleged enough facts to bring his case squarely under *Cannon*'s control. Like Parrott, Sosa asserted that "from the time of [his] initial detention at the [traffic stop], []he repeatedly maintained that []he was not [the wanted Sosa]." *Cannon*, 1 F.3d at 1560. In the same way that Parrott's Social Security Number and birth date differed from Mann's Social Security Number and birth date, Sosa's "Social Security Number and date of birth were different from the Social Security Number and date of birth of [the wanted Sosa]." *Id.* at 1564. And just as "Cannon's physical makeup did not match the physical description for Mann," *id.* at 1563, Sosa's physical makeup did not match the physical description for the wanted Sosa's. The two had different heights, weights, and tattooed status (Sosa had none). In fact, according to Sosa, he "explained this in detail to a Martin County deputy named Sanchez as well as some other Martin County jailers and employees in the booking area, who took down his information and claimed they would look into the matter." Not only that, but the warrant on which Sosa was arrested was 26 years old, from halfway across the country, and sought a person with a name thousands of people shared.

On top of all this—and this is the kicker—Sosa also informed the deputies that the Martin County Sheriff's Office had previously mistakenly arrested him on the same wanted Sosa's warrant. Let that sink in: The Martin County Sheriff's Office had already made this same mistake once before.

Despite this sea of urgently waving red flags signaling that Sosa was unlikely the wanted, allegedly crack-cocaine-trafficking Sosa, the deputies did nothing

for three nights and days to confirm Sosa's identity as the wanted Sosa. So there Sosa sat.

These allegations sufficiently establish that Sanchez and other deputies at the jail had enough information to know (1) that a substantial likelihood existed that Sosa was not the wanted Sosa and (2) that they had the means readily available to rapidly confirm Sosa's identity. After all, the same sheriff's office had verified Sosa's identity by fingerprinting just three-and-a-half years earlier when it arrested him in error the first time. And in 2018, finally, after Sosa spent three nights and days in jail, an unnamed deputy took Sosa's fingerprints—a standard police tool long used by every U.S. police force. When the deputy did so, he confirmed with ease that Sosa was not the wanted Sosa.

Under these circumstances, the jailers acted with deliberate indifference towards Sosa's due-process rights when they failed for three nights and days to verify that Sosa was the wanted Sosa—in the same way that Collins violated Parrott's due-process rights when he failed, "in the face of [Parrott's] assertions of mistaken identity," to take "any steps to verify" her identity. *Id*. at 1565. Given these parallels, Sosa's allegations about the Martin County Sheriff's Office's "failure to take any steps to identify [Sosa] as the wanted fugitive [are] sufficient" to state a claim that the deputies acted with "deliberate indifference toward [Sosa's] due process rights." *Id.* at 1564.

Relying on two irrelevant facts, the Majority Opinion tries to distinguish Sosa's case from *Cannon*. In the Majority Opinion's view, *Cannon* does not govern here because (1) "the *Cannon* detainee was [not] arrested on a valid warrant supported by probable cause," Maj. Op. at 12, and (2) "the *Cannon* detainee was held for seven

days," *id.* But neither distinction excuses compliance with *Cannon*'s rule.

First, the Majority Opinion's distinction between an arrest based on a warrant supported by probable cause (Sosa's case) and a warrantless arrest also supported by probable cause (*Cannon*) is meaningless under *Cannon*. The warrant/warrantless distinction doesn't matter because the arrests in both cases were supported by probable cause, so they were valid. And we're not talking about the arrests; we're talking about the detentions after the arrests. That is so because, as the Majority Opinion's author has explained, "a detention following a valid arrest may present a viable section 1983 claim where the detainee protests the detention on the basis of *misidentification*." *Case*, 555 F.3d at 1330 (W. Pryor, J.) (citing *Ortega*, 85 F.3d at 1527) (emphasis added).

Both *Cannon* and this case concern a valid arrest accompanied by a later, unconstitutional detention. Just as Sosa was arrested roadside on an outstanding warrant, Parrott was arrested at a roadside rest area after a deputy established probable cause. The deputy in *Cannon* established probable cause after receiving an NCIC "hit" advising that Kentucky wanted a woman with an alias of Mary Parrott. *Cannon*, 1 F.3d at 1560. And as our predecessor Court has explained, "NCIC printouts are reliable enough to form the basis of the reasonable belief which is needed to establish probable cause for arrest." *United States v. McDonald*, 606 F.2d 552 (5th Cir.1979) (citation and quotation marks omitted).

In short, a warrant established the probable cause in Sosa's case while an NCIC information established the probable cause in *Cannon*. That is a distinction without a difference for a claim arising from an

unconstitutional overdetention. Rather, what matters is that both Sosa and Parrott were validly arrested based on probable cause. And after that happened, they were transported to the jail, where their jailers were deliberately indifferent to the many indications that Sosa and Parrott were not their sought-after name doppelgangers.

The Majority Opinion's second fact-bound attempt to wriggle out of *Cannon*'s holding—"the *Cannon* detainee was held for seven days"—fares no better. True, Parrott was held for seven days, while Sosa was held for three. But the right *Cannon* recognizes—the "right to be free from continued detention after it was or should have been known that the detainee was entitled to release," *Cannon*, 1 F.3d at 1563—is not triggered by the passing of a specific amount of time.[7] Rather, by its terms, the right accrues when the officers knew or should have known that the detainee was entitled to release, and they do nothing. *Id.* ("The deliberate indifference requirement was adopted based on analogies to eighth amendment situations where the defendant's state of mind was relevant to the issue of whether a constitutional violation has occurred in the first place.").

And here—especially given this appeal's posture, which requires us to view Sosa's allegations in the light most favorable to him—it's clear that the officers knew or should have known that Sosa was not the wanted Sosa well before three nights and days passed. We know this because, during Sosa's arrest in 2014 on the same warrant, the same sheriff's office

[7] As I explain later in this dissent, *see infra* at 23–24, it makes no sense—and has no constitutional grounding—to base a constitutional right on some arbitrary amount of time that the Majority Opinion has plucked out of a hat.

fingerprinted and released him no more than *three hours* after detaining him.

If the deputies' knowledge was enough to alert them within three hours that they had the wrong Sosa in 2014, the deputies' knowledge was enough to alert them of that same problem in 2018 well before three nights and three days passed. In fact, in 2018, the deputies had even more reason to know that they had the wrong Sosa: unlike in 2014, Sosa told the officers that their office had previously made the same mistake when they arrested him on the same warrant in 2014. Plus, the 1992 warrant had only gotten older by 2018, increasing the need to confirm Sosa's identity. And based on his 2014 experience, in 2018, Sosa was able to explain to officers that he knew he did not match the wanted Sosa's identifiers. Yet despite these added indicators that they had the wrong man, Martin County deputies held Sosa not for three hours but for three days.

So here, whether Sosa was held for three days or seven days makes no difference to whether the officers violated Sosa's constitutional rights when they continued to detain him after they knew or should have known that he was entitled to release: in both cases, the jailers knew or should have known well before the passage of the entire detention period that the person detained was entitled to release.

To sum up, then, I can't say it better than the Majority Opinion: "If we treated every factual distinction from a precedential decision as necessarily material, the doctrine of precedent would lose most of its function." Maj. Op. at 9 (citations omitted). The Majority Opinion's efforts to distinguish *Cannon* fail because the two factual distinctions it invokes are irrelevant to *Cannon*'s analysis. So the prior-precedent

rule requires the conclusion that *Cannon* controls Sosa's case.

2. *Baker* does not require—or even support—the conclusion that Sosa had no Fourteenth Amendment due-process right to be free from continued detention when it was or should have been known that he was entitled to release.

Given this failure to circumvent our controlling precedent, the Majority Opinion tries another tack. In its second effort, the Majority Opinion misreads *Baker* and once again invokes immaterial facts—this time to argue that *Baker* supports the decision the Majority Opinion arrives at and precludes the answer I reach. But *Baker* neither supports the Majority Opinion's answer nor precludes mine.

According to the Majority Opinion, "[u]nder *Baker*, no violation of due process occurs if a detainee's arrest warrant is valid and his detention lasts an amount of time no more than the three days that [the *Baker* plaintiff] was detained." Maj. Op. at 8. Of course, Sosa was arrested on a valid arrest warrant, and his detention lasted for three nights and days, so the Majority Opinion points to these two facts and declares "mission accomplished" in rejecting Sosa's position. But the Majority Opinion declares victory too soon. Below, I explain why each of the two factual similarities between *Baker* and Sosa's case—the existence of an arrest warrant and a detention for three days—are immaterial to *Baker*'s reasoning and outcome, and why *Baker*'s reasoning actually requires us to conclude that the jail deputies here violated Sosa's constitutional rights.

I start with the three days. As we explained in *Cannon*, *Baker* "recognized . . . that after the lapse of a certain amount of time, continued detention in the face of repeated protests will deprive the accused of liberty without due process." *Cannon*, 1 F.3d at 1562. The Majority Opinion says *Baker* holds that three days can never be enough to qualify as a constitutional deprivation. *See* Maj. Op. at 8.

But the Majority Opinion confuses *Baker*'s *outcome* (three days was not enough under the circumstances in *Baker*) with *the limiting principle* the Supreme Court applied to reach that outcome. In so doing, the Majority Opinion treats three days as some type of magic number that the Supreme Court arbitrarily shook out of a magic 8 ball—or, to use my colleague Judge Newsom's terminology, "ma[d]e . . . up." *See* Newsom Op. at 11.

That is not how the law works, and that is not what the Supreme Court did. Rather, as other courts have acknowledged, *see Lee v. City of Los Angeles*, 250 F.3d 668, 684 (9th Cir. 2001), and *infra* at 27–29, the Supreme Court applied a legal reason—or limiting principle—to determine that, for the circumstances present in *Baker*, a three-day detention wasn't a constitutional deprivation of liberty.

Recognizing the limiting principle the Supreme Court employed in *Baker* to arrive at that decision is critical to properly applying *Baker* here or in any other case. Only after we identify that limiting principle can we apply it to the facts here to determine whether Sosa's period of detention amounted to an unconstitutional deprivation of liberty. But that's a step the Majority Opinion skips.

I therefore turn to *Baker*'s limiting principle. Some might think that *Baker* offers two possible answers. One possible limiting principle could be viewed as simply the Sixth Amendment: that a "detention pursuant to a valid warrant but in the face of repeated protests of innocence will . . . deprive the accused of 'liberty . . . without due process of law," *Baker*, 443 U.S. at 145, when it transgresses the Sixth Amendment right to a speedy trial. The second possible limiting principle is a reasonableness principle: that the time after which "detention pursuant to a valid warrant but in the face of repeated protests of innocence will . . . deprive the accused of 'liberty . . . without due process of law," *id*., arises when it becomes unreasonable, under the totality of the circumstances, not to verify the arrestee's identity. For the reasons I explain below, *Baker*'s limiting principle must be the latter.

I begin with the possible answer that the limiting principle is tied to the Sixth Amendment speedy-trial right. This possible answer comes from this passage in *Baker*, which mentions the right to a speedy trial:

> Obviously, one in respondent's position could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment. For the Constitution likewise guarantees an accused the right to a speedy trial . . . .

443 U.S. at 144. But for two reasons, the speedy-trial right cannot be the limiting principle governing when the right to be free from continued detention after it was or should have been known that the detained person is entitled to release kicks in.

First, our binding precedent forecloses that reading of *Baker*. To begin with, we certainly did not understand *Baker* that way in *Cannon*. Not only did Parrott not invoke her speedy-trial rights, but *Cannon* lacks any reference to that right. *See generally Cannon*, 1 F.3d 1558. And more to the point, if we thought *Baker*'s limiting principle were the speedy-trial right, we could not have decided *Cannon* the way that we did: the seven days Parrott spent in custody were not nearly enough to establish that Collins violated Parrott's speedy-trial rights. As we explained in *Knight*, a delay in bringing a defendant to trial does not become "presumptively prejudicial"—and therefore does not violate his speedy-trial rights until the delay "approaches one year." 562 F.3d at 1323 (citation omitted). Obviously, seven days is appreciably less than a year, so it is not "presumptively prejudicial." So if we had read *Baker*'s limiting principle to be based on the right to a speedy trial, we could not have concluded that the seven-day detention period in *Cannon* violated Parrott's constitutional rights. But of course, we did conclude that the seven-day detention period in *Cannon* violated Parrott's constitutional rights. So we obviously did not view *Baker*'s limiting principle as resting on the Sixth Amendment speedy-trial right.

And *second*, even without considering *Cannon*, this reading of *Baker* is still wrong. That is because *Baker* follows its mention of the speedy-trial right with this statement:

> We may even assume, *arguendo*, that, depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated

> protests of innocence will after the lapse of a certain amount of time deprive the accused of "liberty . . . without due process of law."

443 U.S. at 145.[8] This passage does not invoke the speedy-trial right. Rather, it recognizes that neither that right nor other post-arrest procedures may be enough to protect a misidentified person arrested under a warrant against deprivation of liberty without due process of law. Put simply, an overdetention claim exists independently of a claim for any other constitutional violation, including a speedy-trial violation.

This brings me to what *Baker*'s limiting principle actually is: a reasonableness test. The Supreme Court's decision in *Baker* turned on the notion that "detention pursuant to a valid warrant but in the face of repeated protests of innocence will . . . deprive the

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[8] Of course, I recognize that this statement is dicta. But as we have explained, "there is dicta and then there is dicta, and then there is Supreme Court dicta." *Schwab v. Crosby*, 451 F.3d 1308, 1325 (11th Cir. 2006). And "[w]e have previously recognized that 'dicta from the Supreme Court is not something to be lightly cast aside.'" *Id.* (citation omitted). Indeed, we applied this dicta in *Cannon*. 1 F.3d at 1562 ("The *Baker* Court recognized, for example, that after the lapse of a certain amount of time, continued detention in the face of repeated protests will deprive the accused of liberty without due process."). And we aren't the only ones. At least seven of our sister circuits have also applied the same dicta. As I've noted, some have done it in the same situation as we have here. *See*, *e.g.*, *Russo*, 479 F.3d at 209; *Gray*, 150 F.3d at 582; *Fairley v. Luman*, 281 F.3d 913, 917–18 (9th Cir. 2002). And others have applied *Baker*'s dicta in other contexts. *See*, *e.g.*, *Schneyder*, 653 F.3d at 330–31; *Armstrong v. Squadrito*, 152 F.3d 564, 575–76 (7th Cir. 1998); *Jauch v. Choctaw Cnty.*, 874 F.3d 425, 433, 433 n.5 (5th Cir. 2017) (also citing *Baker* to "reject any suggestion that the Sixth Amendment's speedy-trial clause serves as the only limit on prolonged pretrial detention"); *Hayes v. Faulkner Cnty.*, 388 F.3d 669, 673 (8th Cir. 2004).

accused of 'liberty . . . without due process of law,'" *id*., when it becomes unreasonable, under the totality of the circumstances, not to verify the arrestee's identity. *Baker* shows why that is so.

In *Baker*, Leonard McCollan obtained a duplicate of his brother—the plaintiff—Linnie's driver's license. *Id.* at 140. Leonard's[9] version of the license was the same as Linnie's in every way, except that the photo was of Leonard. *Id.* So when Leonard was arrested on narcotics charges, he was booked as Linnie. *Id.* at 140–41. Leonard also signed documents during his arrest as Linnie and was released on bail as Linnie. *Id.* at 141. As a result, the police (reasonably) believed that they had arrested Linnie.

Then Leonard skipped bond after his release on bail, and Leonard's bondsman procured a warrant out of Potter County, Texas, for the arrest of "Linnie Carl McCollan." About two months later, a police officer pulled over Linnie for a traffic stop in Dallas, Texas. *Id.* The police officer arrested Linnie on Leonard's warrant (issued against Linnie). *Id.* Linnie was then transferred to the custody of the deputies in the county from where the warrant issued. *Id.* He remained there for three nights over the New Year's holiday weekend, until officials, in comparing Linnie's appearance to the file photo of the wanted person, realized that Linnie was not that man. *Id*. Linnie sued the county sheriff under § 1983, alleging that the county's custody of him violated his Fourteenth Amendment rights. *Id.* The Supreme Court disagreed. *Id.* at 146–47.

In reaching this conclusion, the Court acknowledged that "**one in [Linnie's] position** could not be

[9] To avoid confusion, I use the McCollans' first names in my discussion of *Baker*.

detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment." *Id.* at 144 (emphasis added). Then, the Court suggested that a state's procedures or lack thereof, depending on what those procedures were, could violate a detainee's due-process right to liberty. *Id.* at 145. And finally, it concluded, "[W]e are quite certain that a detention of **three days over a New Year's weekend** does not and could not amount to such a deprivation." *Id.* (emphasis added).

In other words, in determining that Baker had not violated Linnie's constitutional rights when he did not release Linnie for three days after Linnie was arrested, the Court accounted for the peculiarities of each of the following three things: (1) Linnie's situation; (2) the procedures the state provided to ensure Linnie was the wanted person; and (3) the period during which Linnie was detained. On its face, this, of course, is a totality-of-the-circumstances analysis. *See Lee*, 250 F.3d at 684 (recognizing that the *Baker* Court considered the circumstances in evaluating whether Linnie's constitutional rights had been violated).

In applying that totality-of-the-circumstances reasonableness test, the Supreme Court implicitly considered the following: (1) that Linnie's name was on the warrant he was arrested on; (2) that Linnie's name was on there because his brother Leonard had "masquerad[ed] as Linnie" and had a driver's license with Linnie's name on it when he was booked on drug charges and released on bail; and (3) that the three-day period over which Linnie was held was the three-day 1973 "New Year's weekend." *See id.* at 140–45. The first two considerations explained why determining

whether Linnie was, in fact, the wanted person was not simple and straightforward. The third consideration evaluated the reasonableness, under the circumstances, of expecting the officers to "investigate" Linnie's claims of innocence. *See id.* at 145–46.

In 1972 and 1973, when Linnie was arrested and detained, that effort was significant enough that the Supreme Court referred to it as a need to "investigate." *Id.* at 146. No wonder. For those who weren't around in the pre-digital days of typewriters (and Liquid Paper for correcting errors), "snail" mail, and records rooms filled floor to ceiling with files, I briefly detour to describe what verifying identity required back then.

In the early '70s, an officer who wanted to confirm that he had the right detainee first would have had to obtain a paper copy of the file for the wanted person because that's where the wanted person's identification information would have been located.[10] But the paper file very well might not be stored at the jail. If the jail didn't have the file, the officer would have had to ask, and then wait, for the file to be mailed or messengered to her. Depending on the circumstances (like whether it was a three-day holiday weekend), the time that process took could vary appreciably.

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[10] In 1972 and 1973, even facsimile machines were not widely used and were extremely expensive (about $18,000 then). Lynn Simross, "*The Fax Revolution: At Home and at Work, Facsimile Machines Have Become the Essential Business Tools*," LOS ANGELES TIMES (Sept. 11, 1991), https://www.latimes.com/archives/la-xpm-1991-09-11-vw-1950-story.html. And the best ones took about six minutes to transmit a single page and weighed in at about 100 pounds. *Id.* Fortune 500 companies were the ones who used them. *Id.* This remained the case until the late 1980s. *Id.*

And even if the officers stored the paper file on the jail premises, the file likely would have been in a restricted-access records room (so law enforcement could keep track of who had the paper file at any particular time). That meant that our officer would have needed to (1) physically go to the records room and (2) hope or plan that someone would be there to sign the file out. Then, if the officer compared a photograph of the wanted person to the arrested person, that officer might not have been unable to make a definitive identification. So the officer might have needed to conduct a fingerprint comparison. And if the officer had wanted to do that, he generally would have had to send the fingerprint cards of both the wanted person and the arrested person to an expert (or the FBI) for a manual comparison. Of course, that added time for physical shipment in each direction. On top of that, the expert then would have had to engage in the time-intensive process of manually examining both sets of fingerprints to see whether they shared at least a certain number of the same features. This type of investigation could require "weeks or months." *Maryland v. King*, 569 U.S. 435, 459 (2013).

And that burden mattered in the Supreme Court's assessment of whether, under the totality of the circumstances, the actions of the *Baker* officers were reasonable. As the Court explained, again showing it was applying a totality-of-the-circumstances analysis, "[d]ue process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." *Baker*, 443 U.S. at 145 (emphasis added) (quoting *Patterson v. New York*, 432 U.S. 197, 208 (1977)). In this respect, the Court emphasized that Linnie was detained for not just three days but for "three days over a New Year's weekend." *Id.* at 145.

The Majority Opinion just dismisses this fact. It justifies its refusal to acknowledge the importance of the holiday period—one that the Supreme Court itself relied on—by saying that "detainees have the same due-process rights on holidays as they do every other day of the year, so the incidence of a holiday does not change our constitutional analysis." *See* Maj. Op. at 10. But we have no business ignoring the Supreme Court's treatment of the New Year's holiday period as material to its decision. After all, "the principle of the case[] is not found in the reasons or the rule of law set forth in the opinion, nor by a consideration of all of the ascertainable facts of the case and the judge's decision. . . . [T]he principle of the case is found *by taking account of the facts treated by the judge as material* and his decision upon them, taking also into account those facts treated by him as immaterial." *Tex. BA P. Ry. Co. v. La. Oil Refin. Corp.*, 76 F.2d 465, 467 (5th Cir. 1935) (citation and quotation marks omitted) (emphasis added).

And more significantly, the Majority Opinion's excuse for ignoring the Supreme Court's reliance on the New Year's holiday weekend in its rationale doesn't pan out anyway: the constitutional right the Supreme Court identified (that detainees have on holidays and every other day) is the right to that amount of process that is reasonable under the totality of the circumstances. And as *Baker* indicates, what is reasonable during a New Year's weekend may be quite different from what is reasonable during a non-holiday period.

New Year's weekend is known for being a time when, traditionally, less essential public services are not fully staffed. So during that holiday period, it was unreasonable to expect officers operating in a lightly staffed jail to leave the jail to physically locate the file

on Leonard (or find an officer outside the jail to retrieve the file and take it to the jail), review it, compare the photograph of the wanted individual to Linnie, possibly analyze the fingerprints, and recognize that the two were different people. But as I discuss below, now, confirming identity is worlds easier and faster (and requires far less effort).

Other courts have also recognized that the nature of the particular three-day period for which Linnie was detained mattered to the Supreme Court's conclusion that the sheriff in *Baker* did not violate Linnie's constitutional rights. For example, in *Patton v. Przybylski*, the Seventh Circuit construed *Baker* as having discounted non-business days in determining the length of the period the *Baker* jailers had to confirm Linnie's identity. 822 F.2d 697, 700 (7th Cir. 1987). And in *Lee*, the Ninth Circuit rejected the defendants' argument there that, under *Baker*, the plaintiff's "due process claim must fail at the pleading stage because he was incarcerated for only one day before his extradition hearing . . . ." 250 F.3d at 684. Rather, the Ninth Circuit explained, Linnie's claim in *Baker* failed based on the "circumstances" there. *See id.* That is, the Ninth Circuit applied *Baker*'s totality-of-the-circumstances test to conclude that a one-day incarceration violated the plaintiff's due-process rights there.

Yet in a single, conclusory sentence, the Majority Opinion announces, "Nor did the Court rely on the unstated 'limiting principle' of reasonableness that our dissenting colleague has discerned from *Baker*." Maj. Op. at 9 (citation omitted). The Majority Opinion fails to grapple with the Court's deliberate word choices and analysis showing that it applied a reasonableness-under-the-totality-of-the-circumstances test. Instead,

as I've mentioned, it asks us to consider only *Baker*'s result while disregarding the rest of the opinion as though it is fluff. Based on the Majority Opinion's interpretation of *Baker*, the Supreme Court arrived at an unreasoned conclusion that three days' detention after a valid arrest can never, under any circumstances, be enough to state a constitutional claim, and it did so by applying no rule, instead engaging in a judicial game of magic 8 ball. Most respectfully, I cannot agree to do that. The Supreme Court's *Baker* analysis is reasoned, and we must abide by the reasoning that animates it.

When we apply *Baker*'s reasonableness-under-the-totality-of-the-circumstances limiting principle here, we must conclude that Sosa has stated a constitutional claim. Six facts make the circumstances in this case differ materially from those in *Baker*—all in ways that favor Sosa's claim. [11] Indeed, even the Majority

[11] The Newsom Concurrence points to these six differences between *Baker* and Sosa's case as evidence of the "freewheelingness" of the substantive-due-process analysis. Newsom Conc. at 6. But totality-of-the-circumstances tests (which necessarily depend on the factual circumstances of the given case) like the limiting principle that controls *Baker* are not unique to substantive-due-process analysis in constitutional law. Totality-of-the-circumstances tests also govern the analysis when a litigant raises an allegation of the violation of certain enumerated constitutional rights. The Fourth Amendment provides a good example. We determine whether a search or seizure is constitutionally permissible under the Fourth Amendment by evaluating the totality of the circumstances. *See*, *e.g.*, *Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231, 1250 (11th Cir. 2022). We also assess excessive-force claims under the Fourth Amendment by looking to reasonableness under the totality of the circumstances. *Tillis on behalf of Wuenschel v. Brown*, 12 F.4th 1291, 1298 (11th Cir. 2021). Similarly, we apply a totality-of-the-circumstances test when we consider whether a person has waived his Fifth Amendment right against self-incrimination.

Opinion does not argue that Sosa's claim fails under a reasonableness-underthe-totality-of-the-circumstances test. So we turn to the six material differences.

First, Sosa was arrested and detained in 2018, not 1972 and '73. While fingerprinting was standard practice upon booking at both times,[12] confirming identity was a lot more time-consuming in 1972 and '73 than it was in 2018. Unlike the labor-intensive, multi-day process in the early '70s, in 2018, pressing a button on the computer to see if a detainee's fingerprints matched a wanted person's fingerprints was all it took to confirm identity.

That is so because the FBI launched the Integrated Automated Fingerprint Identification System ("IAFIS") in 1999. *King*, 569 U.S. at 459. And that heralded the start of "rapid analysis" of fingerprints. *Id.* "Prior to this time, the processing of fingerprint submissions was largely a manual, labor-intensive process, taking weeks or months to process a single submission." *Id.* (cleaned up). Still, as speedy as IAFIS was, its creation was only a pit stop in the government's race to rapidly provide identification information to law-enforcement

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United States v. Smith, 821 F.3d 1293, 1304–05 (11th Cir. 2016). Totality-of-the-circumstances tests are prevalent in and significant to constitutional jurisprudence because we have recognized the sometimes-competing needs and interests of our government and of individuals' rights to be free from government tyranny. And totality-of-the-circumstances tests help to strike a balance between these sometimes-dueling interests.

[12] *See*, *e.g.*, *Police Booking Procedure*, FINDLAW, https://www.findlaw.com/criminal/criminal-procedure/booking.html (last visited Jan. 19, 2023); *see also King*, 569 U.S. at 459 ("By the middle of the 20th century, it was considered elementary that a person in lawful custody may be required to submit to photographing and fingerprinting as part of routine identification processes.") (cleaned up).

officials. The government continued to make improvements, and in 2016—still before Sosa's 2018 arrest—the government renamed IAFIS the Next Generation Identification ("NGI") system "to more fully describe the features and capabilities of the system" at that time. Privacy Act of 1974; Implementation, 82 Fed. Reg. 35,651 (Aug. 1, 2017). Those features include "the increased retention and searching of fingerprints" and other biometric services. *Id.* And as the name reflects, a major purpose of the system is to definitively "[i]dentif[y]" individuals who make their way to the criminal-justice system. *Id*. at 35,652.

As particularly relevant here, NGI has a rapid search function that is accessible to law-enforcement officers nationwide. Next Generation Identification (NGI), FBI, https://le.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/biometrics/next-generation-identification-ngi (last visited Jan. 19, 2023). Notably, that function allows for fingerprints from a detainee to be compared to those in a "national repository of wants and warrants" and has "response times of *less than 10 seconds*." *Id.* (emphasis added). So unlike in 1972, when the process could have required "weeks or months," in 2018, an officer like Sosa's jail deputies could confirm an identity (or as relevant here, clear up a misidentification) with less than a minute's work.[13]

Second, the circumstances here also differ from those in *Baker* in that no one "set up" Sosa the way that Leonard did his brother Linnie. In *Baker*, the

[13] And even if a given search were to require longer to return results, that would not increase by any more than a negligible amount the effort the jail officer who input the fingerprint information would have to invest. Rather, it would simply require the officer to check the results a little while later.

officers who put out the be-on-thelookout warning thought they were, in fact, looking for Linnie. But in Sosa's case, the officers were not under the mistaken impression that they were looking for Sosa; they were simply looking for someone with the name "David Sosa." That is, the officers weren't purposefully misled the way the *Baker* officers were.

That difference is key. When a person has been framed—or even when officers otherwise mistakenly believe the wrong person has committed a crime—a substantive "investigation," in the Supreme Court's words, *Baker*, 443 U.S. at 146, is necessary to clear the person wrongly suspected of having committed the crime. An "investigation" can require a lot of time, effort, and leg work. And it would be neither practical nor reasonable to expect jailers to engage in these activities, along with their other duties.

But when officers never believed they were looking for the arrested person and arrested him only because they misidentified him as the person they were looking for, no "investigation" to clear up the mistake is necessary. *See Investigation*, OXFORD DICTIONARIES, https://premium.oxforddictionaries.com/us/definition/american_english/investigation (last visited Jan. 19, 2023) (describing an "investigation" as "[a] formal inquiry or systematic study"). Rather, a simple NGI fingerprint comparison definitively, easily, and quickly resolves the misunderstanding. And because fingerprinting is standard operating procedure in American jails today, performed for the very purpose of identifying detainees, expecting jailers to engage in this activity imposes no additional burden on them.

The third circumstance that distinguishes this case from *Baker* is that Sosa's arrest occurred in Florida 26 years after Texas issued the warrant he was arrested

on, while Linnie's happened only two months after Leonard skipped bail in the same state. That lapse of time and geographical difference further amplified the likelihood in Sosa's case that an identity error may have occurred.

Fourth, unlike Linnie, Sosa matched almost none of the identifiers for the wanted Sosa. And he repeatedly advised officers of this fact and that they had previously mistakenly arrested him on the same warrant just a few years earlier.

Fifth, Sosa's name is much more common than Linnie's— there were thousands of "David Sosas" in the United States during the relevant period. That made it statistically far less likely that any particular arrested person named "David Sosa" would be the wanted Sosa than that Linnie McCollan was the wanted Linnie McCollan. Given the thousands of David Sosas in the United States (and especially in light of Sosa's protests and the differences in identifiers between Sosa and the wanted Sosa), the officers' chances of getting selected to play *Jeopardy!* would have been greater than their chances of having the correct David Sosa in custody.[14]

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[14] According to now-*Jeopardy!* host Ken Jennings, "it's 10 times harder to get on 'Jeopardy!' than to get into Yale." *See* Lottie Elizabeth Johnson, *The online 'Jeopardy!' test is about to happen and Ken Jennings is here to help you succeed*, DESERET NEWS (Apr. 4, 2019), https://www.deseret.com/2019/4/4/206701 00/the-online-jeopardy-test-is-about-to-happen-and-ken-jennings-is-here-to-help-you-succeed#in-advance-of-the-online-jeopardy-test-which-is-available-april-9-11-jeopardy-legend-ken-jennings-shared-test-taking-tips-with-the-deseret-news.

And sixth, though two of the days Sosa was imprisoned fell over the weekend,[15] unlike in *Baker*, no holiday was involved. Nor is there any other indication that the jail was understaffed in comparison to other days (and certainly not so understaffed as not to be able to run a ten-second fingerprint comparison), as the Supreme Court's remark about the "three-day holiday weekend" reflects it concluded the jail likely was in *Baker*.

So when we apply *Baker*'s limiting principle—the time after which "detention pursuant to a valid warrant but in the face of repeated protests of innocence will . . . deprive the accused of 'liberty . . . without due process of law,'" *Baker*, 443 U.S. at 145, accrues when it becomes unreasonable, under the totality of the circumstances, not to verify the arrestee's identity—here, we can reach only one conclusion: that the officers violated Sosa's constitutional rights.

In sum, unlike in *Baker*, no one was trying to trick the officers into thinking Sosa was the wanted Sosa; the several signs suggesting that Sosa was not the wanted Sosa practically hit the officers over the head; the officers could have easily confirmed that Sosa was not the wanted Sosa with less than a minute of an officer's time engaging in a standard jail operating procedure; and nothing in the record reveals that the jail was short-staffed or was experiencing any kind of crisis during the period Sosa was there. Under these circumstances, it was simply unreasonable for the officers to have waited three nights and three days

[15] Sosa was arrested on a Friday—a weekday—and released at 3:00 p.m. on a Monday.

while Sosa sat in jail before they even tried to confirm Sosa's identity.[16]

The Majority Opinion errs because it does not bother to determine and apply *Baker*'s limiting principle. Rather, it rigidly insists on substituting the *result Baker* reached after applying its limiting principle—that the three days in *Baker* did not violate Linnie's rights—for the *limiting principle* itself. Then, it incorrectly describes the results of *Baker*'s application of its limiting principle as the limiting principle itself: that three days can never violate a detainee's constitutional rights. And because Sosa spent three days in jail, the Majority Opinion incorrectly concludes that *Baker* precludes the finding that the jail officers violated Sosa's constitutional rights.

Properly read, though, *Baker* and its reasonableness-under-the-totality-of-the-circumstances principle support the conclusion that Sosa sufficiently alleged that Sanchez and the other jailers violated his constitutional rights. After all, despite strong reason to suspect Sosa was not the wanted Sosa, the officers refused for three nights and three days to invest less than a minute of work to confirm Sosa's identity, while all the time, Sosa remained in jail. Under the totality of the circumstances, that is not just unreasonable but extraordinarily so. And *Baker*'s limiting principle does not tolerate it.

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[16] Of course, because *Baker* applies a totality-of-the circumstances test, some circumstances might justify longer periods of detention before identity confirmation. For example, confirming identity on the date of arrest might not be reasonable in situations where a prolonged power outage persisted, a natural disaster with life-safety issues occurred, or an unavoidable lack of staff that potentially jeopardized safety happened.

B. Sosa's Fourteenth Amendment due-process right to be free from continued detention when it was or should have been known that Sosa was entitled to release was clearly established when the Martin County jailers violated it.

Because Sosa sufficiently alleged that Sanchez and the other jail deputies violated his Fourteenth Amendment due-process rights under our precedent, I next consider whether that right was clearly established when the alleged violation occurred. I conclude that it was.

A right is clearly established when "the contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019) (cleaned up). So though the Supreme Court or we need not have held "the very action in question" to be unlawful, the unlawfulness of the action "must be apparent" under the law in existence at the time of the violation. *Id*. at 1312 (cleaned up).

As relevant here, we have recognized that a plaintiff can show that a constitutional right was clearly established when the violation occurred by pointing to "a broader, clearly established principle [that] should control the novel facts" of the case under review. *Keating v. City of Miami*, 598 F.3d 753, 766 (11th Cir. 2010) (citation and quotation marks omitted). To be sure, the Supreme Court has recently emphasized that the clearly established inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 8 (2021) (citation and quotation marks omitted). At the same time, though, the Court has

continued to recognize that its "case law does not require a case directly on point for a right to be clearly established." *Id.* at 7–8. And we have not said that *RivasVillegas* abrogated our case law that holds that a plaintiff may show that a right is clearly established by "point[ing] to a broader, clearly established principle that should control the novel facts of the situation," *Leslie v. Hancock Cnty. Bd. of Educ.*, 720 F.3d 1338, 1345 (11th Cir. 2013) (W. Pryor, J.) (cleaned up). So the question we must focus on is whether "every reasonable official would have understood that what he is doing violates [the particular] right." *Rivas-Villegas*, 142 S. Ct. at 7 (citation and quotation marks omitted).

In satisfying the burden to prove his right was clearly established, the plaintiff must rely on "law as interpreted by the Supreme Court, the Eleventh Circuit, or the Supreme Court of Florida." *Keating*, 598 F.3d at 766. (citation and quotation marks omitted).

Here, *Cannon* recognized "[t]he constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release." *Cannon*, 1 F.3d at 1563. We also held in *Cannon* that the deputy's "failure [there] to take any steps to identify [the detained person] as the wanted fugitive was sufficient to raise a question of fact as to his deliberate indifference toward [the detained plaintiff's] due process rights." *Id.* at 1564.

These principles we announced more than 25 years before the jail deputies encountered Sosa in 2018 control Sosa's case and put the deputies on notice. They require a showing of two things: (1) the officer had good reason to know that he had a misidentified person wrongly in custody, and (2) despite that knowledge, he did nothing to confirm the person's

identity as the wanted person. *See Cannon*, 1 F.3d at 1563–64. Sosa has sufficiently alleged both these things.

First, Sosa alleged that (a) he matched almost none of the identifiers for the wanted Sosa; (b) he repeatedly advised Sanchez and other jail deputies that he matched almost none of the identifiers for and was not the wanted Sosa; (c) he repeatedly told these same deputies that their Sheriff's Office had previously mistakenly arrested him on the same warrant a few years earlier; (d) and these deputies acknowledged to him at the time he was booked into the jail that they would look into it. Second, despite knowing of the substantial likelihood that Sosa was not the wanted Sosa and promising to address that concern, for three nights and days, Deputy Sanchez and the other jail deputies took no action to identify Sosa as the wanted Sosa. Instead, they decided to remain deliberately indifferent to Sosa's entitlement to release. And they did that even though they could have confirmed that he was not the wanted Sosa in under a minute. The deputies' deliberate indifference here maps directly and specifically onto the principles we announced in *Cannon*. Indeed, the type of deliberate inaction that the deputies engaged in is precisely the type we denounced in *Cannon*.

Cannon informed these deputies that they were violating Sosa's rights as soon as they knew they had strong reason to believe Sosa was not the wanted Sosa and they chose to do nothing.[17] *Cf. Patel v. Lanier*

[17] As I've noted, I base my analysis on the facts as alleged by Sosa and viewed in the light most favorable to him. *See Lanfear v. Home Depot Inc.*, 679 F.3d 1267, 1275 (11th Cir. 2012). Should the actual facts establish that Sanchez and the other deputies did not fail to take any readily available, easy steps to confirm Sosa's identity, in response to the information Sosa provided, within a

Cnty., 969 F.3d 1173, 1190 (11th Cir. 2020) (holding that the "broad principle" that "[t]he knowledge of the need for medical care and intentional refusal to provide that care" constitutes deliberate indifference had put "all law-enforcement officials on notice that if they actually know about a condition *that poses a substantial risk of serious harm* yet do *nothing* to address it, they violate the Constitution") (first emphasis added). And as I've noted, we reaffirmed *Cannon*'s holding repeatedly after we issued it in 1993 and before Sosa was detained in 2018. *See Ortega*, 85 F.3d at 1526–27; *Campbell*, 586 F.3d at 840; *Case*, 555 F.3d at 1330; *May*, 846 F.3d at 1329.

Not only that, but at least five of our sister circuits have recognized that *Cannon* established "[t]he constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release." *See*, *e.g.*, *Russo*, 479 F.3d at 207 ("Following *Baker*, the Eleventh Circuit recognized a Fourteenth Amendment due process right 'to be free from continued detention after it was or should have been known that the detainee was entitled to release.'"); *Schneyder*, 653 F.3d at 330 (citing *Cannon* and noting that "numerous courts have reached the almost tautological conclusion that an individual in custody has a constitutional right to be released from confinement 'after it was or should have been known that the detainee was entitled to release'"); *Martinez v. Santiago*, 51 F.4th 258, 262 n.2 (7th Cir. 2022) (describing *Cannon* as "recognizing right to be free from 'continued detention after it was or should have been known that the detainee was entitled to release'"); *Davis v. Hall*, 375 F.3d 703, 714

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reasonable period (considering their other pressing obligations), they would have qualified immunity from suit.

(8th Cir. 2004) ("[T]he Eleventh Circuit has held that prisoners have a 'constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release.'"); *Lee*, 250 F.3d at 683 (noting that the Eleventh Circuit has "explained [that] a detainee has 'a constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release'"); *see also Gray*, 160 F.3d at 276 (citing *Cannon* to support remand for "trier of fact" to determine "whether [defendants] acted with something akin to deliberate indifference in failing to ascertain that the Dwayne Gray they had in custody was not the person wanted by the Michigan authorities on the outstanding parole-violation warrant"). It's hard to see how the principle could not have been clearly established for Deputy Sanchez and the other jail deputies when at least four other circuits understood it to be so before Sosa's 2018 encounter (and a fifth recognized as much just last year).

In sum, over the past 30 years, we have repeatedly reaffirmed *Cannon*'s principle that detainees have a "constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release," and even our sister circuits have recognized that *Cannon* established that right. Given these facts, our precedent "placed the . . . constitutional question beyond debate." *Reichle*, 566 U.S. at 664. And it is not unfair to Deputy Sanchez and the other jail deputies to hold them to these principles. Deputy Sanchez and the other deputies at the jail are not entitled to qualified immunity.

For these reasons, I would reverse the district court's dismissal of Sosa's overdetention claim and remand for further proceedings.

III. The right to be free from continued detention after it was known or should have been known that the defendant was entitled to be released should be rehomed as a Fourth Amendment right.

As I've explained, our precedent long ago clearly established the substantive-due-process right to be free from continued detention when it was known or should have been known that the person was entitled to release. *See supra* at Section II. But if we were writing on a clean slate, I would conclude that this right finds its home in the Fourth Amendment.[18]

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[18] As I've noted, it makes no difference to the qualified-immunity analysis where the right lives, as long as the right was clearly established before the deputies' actions (or inactions, in this case). *See supra* at n.6 (citing *Russo*, 479 F.3d at 208–09; *Wilson*, 209 F.3d at 716; and *Alexander*, 916 F.2d at 1398 n.11). The Second and Third Circuits—I believe correctly—root the right in the Fourth Amendment. *Russo*, 479 F.3d at 208–09; *Schneyder*, 653 F.3d at 319– 22, 330. The right more appropriately belongs under the Fourth Amendment because, as I explain above, it falls naturally within the Fourth Amendment's prohibition against "unreasonable . . . seizures," U.S. Const. amend. IV. And "[w]here a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims.'" *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (citing *Graham v. Connor*, 490 U.S. 386, 395 (1989)). Though, in my view, the Fourth Amendment more appropriately encompasses the right, to be clear, I do not vote to abrogate *Cannon*. That is so because, as I've noted, the specific constitutional source of the right does not affect whether the right is clearly established, and abrogating *Cannon* without recognizing that the right falls under the Fourth Amendment (as the Newsom Concurrence suggests) would wrongly purport to erase the right altogether.

The Fourth Amendment protects against "unreasonable . . . seizures." U.S. Const. amend. IV. As the Supreme Court has explained, the "touchstone of the Fourth Amendment is 'reasonableness.'" *Brigham City v. Stuart*, 547 US. 398, 403 (2006). And seizures—including those of the person—that are not supported by probable cause are unreasonable.

When we speak of probable cause, we refer to the existence of "facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed . . . an offense." *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) (cleaned up). Notably, this definition requires probable cause to believe two things: first, that a crime was committed, and second, that the person in custody is the one who committed the crime. At the risk of stating the obvious, if only probable cause to believe that a crime was committed were required for an arrest, anyone could be arrested, without respect to who committed the crime. So when it comes to the probable-cause inquiry as it relates to arrests on valid warrants—where the warrant itself evidences the existence of probable cause that a crime was committed by a certain person—we focus on the probable cause to believe the person in custody is the certain one who committed the crime.

In making that assessment, once again, reasonableness is our guiding light. We look to "the totality of the circumstances to determine the reasonableness of the officer's belief" that the suspect is, in reality, the person sought in the warrant. *See Paez v. Mulvey*, 915 F.3d 1276, 1286 (11th Cir. 2019); *see also Illinois v. Gates*, 462 U.S. 213, 238 (1983) ("reaffirm[ing] the totality-of-the-circumstances that traditionally has informed probable cause determinations").

Because reasonableness under the circumstances drives our determination of whether probable cause exists in any particular situation, the Supreme Court has described probable cause as a "flexible, common-sense standard." *Gates*, 462 U.S. at 239; *see also Tillman v. Coley*, 886 F.2d 317, 321 (11th Cir. 1989) (noting that "probable cause determination depends on the circumstances"). "This standard . . . represents a necessary accommodation between the individual's right to liberty and the State's duty to control crime." *Gerstein*, 420 U.S. at 112.

So, for example, in a roadside arrest on a warrant—where an officer's safety can be very much at issue and an officer may be alone or present with only one other officer—the probable-cause standard for ensuring the arrested person is the wanted person requires less from officers. *See*, *e.g.*, *Rodriguez v. Farrell*, 280 F.3d 1341, 1347 n.15 (11th Cir. 2002) ("Trials of guilt or innocence cannot be undertaken by police officers on the side of the road in the middle of the night before an officer can effect a lawful arrest pursuant to a valid warrant."). For this reason, under our precedent, Deputy Killough's roadside arrest of Sosa on the wanted Sosa's warrant satisfied probable cause, even though Sosa matched only the name, sex, and race of the wanted Sosa.

But in a non-emergency situation, when an officer has more time and resources available to ensure she is arresting the person whom the warrant actually seeks, the probable-cause standard demands more. *See*, *e.g.*, *Tillman*, 886 F.2d at 321 ("This is not a case where time was of the essence in making the arrest. Sheriff Coley had at least three months to resolve his doubts about [the plaintiff's] identity."). And there is no doubt that, on this record, arresting Sosa on the wanted

Sosa's warrant in a non-emergency situation would have failed miserably to satisfy the Fourth Amendment's probable-cause standard.

To be sure, the Supreme Court has said that "the probable cause standard for pretrial detention is the same as that for arrest." *Baker*, 443 U.S. at 143. But for four reasons, under the Fourth Amendment, that cannot excuse jailers from timely verifying the identity of those in custody when they can reasonably do so.

First, a lot has changed since the 70s, when the Supreme Court issued *Baker*, but it remains the case that the lifeblood of the Fourth Amendment continues to be reasonableness. And "reasonable" now means the same thing it did when the Fourth Amendment was adopted: "agreeable to the Rules of Rea[s]on; ju[s]t, right, con[s]cionable." *Compare Reasonable*, N. Bailey, UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (1770), *with Reasonable,* BLACK'S LAW DICTIONARY (11th ed. 2019) ("1. Fair, proper, or moderate under the circumstances; sensible <reasonable pay>.").

So in 1972 or '73, asking a jail deputy to drop everything to fetch a physical file, send off fingerprints, and wait for confirmation of identity was unreasonable because (1) it required a lot of time that deputies needed for their other responsibilities, and (2) engaging in this exercise wouldn't have confirmed identity with certainty for weeks or months. But now, running a fingerprint comparison requires less than a minute of work for a jail deputy, and its results can definitively prove that an arrestee is or is not the wanted person. As a result, refusing to perform such a comparison before subjecting an arrested person to days and nights in jail simply isn't "just, right, or conscionable,"—i.e., "reasonable,"—and it doesn't

comply with the Fourth Amendment's promise against "unreasonable" seizures.

That changes the Fourth Amendment reasonableness calculus considerably. Take this case, for instance. As a reminder, Sosa was arrested because he shared the same name, sex, and race as the wanted Sosa. But so did thousands of other people. And while, under our precedent, that satisfies probable cause for roadside-arrest purposes, it is certainly not the type of "safeguard . . . from rash and unreasonable interferences with privacy and from unfounded charges of crime," *Gerstein*, 420 U.S. at 112, that the Fourth Amendment's reasonableness standard anticipates when definitively exculpatory identity information is instantaneously available to jail deputies. Indeed, jailing the wrong person for three nights and days when it is now possible to instantaneously and easily determine that he is not wanted has to be pretty high up on the list of "unreasonable interferences with privacy and . . . unfounded charges of crime" that the Fourth Amendment protects against. *Id.*; *see also Carpenter v. United States*, 138 S. Ct. 2206, 2214 (2018) (recognizing that the Fourth Amendment "seeks to secure 'the privacies of life' against 'arbitrary power'") (citation omitted). Even setting aside the emotional stress of a three-day detention that results from a misidentification, three days confined to a jail cell can inflict other serious consequences on a person. *See Gerstein*, 420 U.S. at 114 (noting that "pretrial confinement may imperil the [arrestee's] job, interrupt his source of income, and impair his family relationships").

So if the Fourth Amendment's reasonableness standard means anything, it cannot tolerate confining an innocent person to a jail cell for three nights and three days (based solely on the fact that he shares common

characteristics without thousands of other men), when a ten-second fingerprint comparison could definitively reveal that the arrestee is not the wanted person. By any measure, that is outrageously unreasonable. And it is hard to see how legal process in the form of a valid warrant for some David Sosa—when thousands exist and Sosa matched only the wanted Sosa's name, sex, and race—could satisfy the Fourth Amendment for purposes of continuing to detain Sosa for days after the jail deputies reasonably could have confirmed that Sosa was not the wanted Sosa. *Cf. Manuel v. City ofjoliet*, 137 S. Ct. 911, 919–20 (where judge detained plaintiff based on criminal complaint that was supported solely by arresting officer's lies, holding that "[i]f the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment").

Second and relatedly, the Fourth Amendment's concept of probable cause inherently requires identity confirmation at the earliest reasonable time to support an ongoing seizure of a person especially when the person is arrested in an emergency type of situation. As I've noted, our precedent finds probable cause satisfied in a situation like Sosa's roadside arrest. The Supreme Court has explained these types of seizures in part by pointing to roadside arrests of individuals like Timothy McVeigh and Joel Rifkin, *see King*, 569 U.S. at 450–51—in other words, the balance of law-enforcement and public-safety needs against individuals' rights favors arrest in these circumstances.

But once the arrested person is brought to jail, that more generalized standard of probable has served its purpose: it has detained the person long enough for the jail deputies to confirm his identity as a wanted

person. And if we're being candid, that type of roadside probable cause—where the arrested person matches only the wanted person's name, sex, and race—isn't really much of a basis for a *reasonable* belief that the arrested person is actually the wanted individual. So if the Fourth Amendment's guarantee against "unreasonable" seizures has teeth, it requires reasonable identity confirmation before continued detention.

Third, the Supreme Court has recognized that blind adherence to past practices can, in the face of new technology, defy constitutional guarantees under the Fourth Amendment. Consider cell phones, for example. In *Riley v. California*, 573 U.S. 373 (2014), the Supreme Court held that officers must obtain a search warrant to search a cell phone found on a person at the time of arrest. The Court reached this conclusion even though it continued to recognize an exception to the Fourth Amendment's warrant requirement for searches of other items found on an arrested person. *See id* at 391–92. And in *Carpenter v. United States*, 138 S. Ct. 2206 (2018), the Supreme Court declined to apply the third-party doctrine of *Smith v. Maryland*, 442 U.S. 735 (1979), and *United States v. Miller*, 425 U.S. 435 (1976), under the Fourth Amendment to authorize law enforcement's warrantless obtaining of cell-site records from cell-service providers.[19] *See also*, *e.g.*, *Kyllo v. United States*, 533 U.S. 27 (2001) (rejecting a "mechanical interpretation" of the Fourth Amendment to hold that use of a thermal imager to detect heat

[19] Under the "third-party doctrine," the government, without a warrant, can obtain items like bank records for a subject from a third-party witness like a bank. *See Miller*, 425 U.S. 435. "The third-party doctrine partly stems from the notion that an individual has a reduced expectation of privacy in information knowingly shared with another." *Carpenter*, 138 S. Ct. at 2219.

radiating from the side of the defendant's home was a search because any other conclusion would leave homeowners "at the mercy of advancing technology").

The same is true here. Blindly allowing arrestees to be detained for days even though new technology allows a jail deputy to reasonably confirm in less than a minute that the detainee is not the wanted person violates the Fourth Amendment's guarantee of security "against unreasonable . . . seizures." U.S. Const. amend. IV.

And *fourth*, historically, federal courts have recognized the importance of identity confirmation early in the criminal-justice process. In this respect, federal courts have treated identification confirmation of at least some type—limited as that ability has been on short notice in earlier times—as critical before a magistrate judge can order a person arrested on a valid warrant transferred to another district. Rule 5, Fed. R. Crim. P. (and its earlier iterations in other rules like Rule 40(a), Fed. R. Crim. P. (2001)), requires magistrate judges to confirm "that the defendant [who appears before her at an initial appearance] is the same person named in the indictment, information, or warrant" before she may transfer that person to the district where the charged offense was allegedly committed. FED. R. CRIM. P. 5(c)(3)(D)(ii). This rule is based on years of judicial precedent predating it. *See* Rule 40, FED. R. CRIM. P. (2001), Advisory Committee Notes, 1944 Adoption ("The scope of a removal hearing, the issues to be considered, and other similar matters are governed by judicial decisions.") (gathering cases). And it highlights the importance with which courts have long viewed early identification confirmation—even when identity-confirmation avenues were far more limited.

It is also no answer to the continued unreasonable detention of an arrestee when a reasonable identity check would reveal his innocence that the detainee will, at some later point or points, appear before a magistrate judge or other judicial official. That is so for two reasons.

First, even without considering what might or might not happen in front of the judicial official, insisting that a misidentified person wait until at least her initial court appearance before even the possibility of release still requires the misidentified person to spend days and nights in jail before she gets to go to court. And for what purpose? Given the ease with which a jailer can confirm that the arrested person is not the wanted person, the continued seizure of the person for days and nights is simply unreasonable under the Fourth Amendment.

Second, appearing before a judicial officer provides no guarantee of release when a person has been misidentified and no one has confirmed his identity. And even when it results in release, that release is not immediate. After all, judicial officers don't have the means in court to confirm a person's identity. Rather, all they can do is instruct the government to have the person's fingerprints compared to those of the wanted person. But the deputy cannot do so until after all arrestees have their court appearances and the deputy is able to return to the jail with the arrestees. It makes no sense (and isn't reasonable) that a protesting detainee's identity need not be confirmed until after a judicial officer orders a jailer to do what the jailer reasonably could and should do in the first instance. *Cf. Malley v. Briggs*, 475 U.S. 335, 345–46 (1986) (holding that a reasonably well-trained officer who would have known that his affidavit failed to establish

probable cause and that he shouldn't have applied for a warrant violates an arrestee's Fourth Amendment right against unreasonable seizures and does not enjoy qualified immunity when he arrests someone based on the warrant he nonetheless procured from a judicial officer).

Plus, sometimes, as in Sosa's case (where his jailers instructed him that he could not speak), detainees don't know that they can speak at appearances. And even when they do, judicial officers who don't know what the arrestee is going to say and who are trying to protect the arrestee's Fifth Amendment rights often suggest that the arrestee not speak without conferring first with an attorney—which often, the arrestee will not have. Most people comply in court with what a judge suggests.

Nor does bail solve the problem. Consider Sosa's case. If a judicial officer thinks that a person has been on the run from criminal charges for 26 years and has moved to another state to avoid them, how likely is it that the judicial officer will deem bail a good idea? Plus, even when the court grants bail, it can be days before that happens and a detained person can post it—days in jail (and the potential expenditure of money to be able to post bail) that could have been prevented if the jail deputies ran a simple fingerprint comparison.

Ultimately, the Fourth Amendment promises protection "against unreasonable . . . seizures." U.S. Const. amend. IV. And by any real-world standard, confining an innocent person to jail for days based on no more than that he shares the same name, sex, and race with thousands of others is an "unreasonable . . . seizure[]," *id.*, when a ten-second fingerprint comparison could definitively show he is entitled to release.

So I would join the Second and Third Circuits in concluding that the right to be free from continued detention once it was or should have been known that the detainee was entitled to release dwells within the Fourth Amendment's shelter against "unreasonable . . . seizures." *See Russo*, 479 F.3d at 209; *Schneyder*, 653 F.3d at 319–22, 330.

IV.

Cannon and its progeny make this a very easy case: they require us to conclude that Sanchez and the other jail deputies violated Sosa's clearly established substantive-due-process right to be free from continued detention when they knew or should have known that he was entitled to release. But even in the absence of our binding precedent, the Fourth Amendment cannot tolerate detention for days when jail deputies have the means available to definitively and easily determine that the person in custody is not the wanted person. Any other conclusion reads the Fourth Amendment's prohibition on "unreasonable" seizures out of the Constitution. I respectfully dissent.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12781

DAVID SOSA,

Plaintiff-Appellant,

versus

MARTIN COUNTY, FLORIDA,
SHERIFF WILLIAM SNYDER,
of Martin County, Florida in an official capacity,
DEPUTY M. KILLOUGH,

individually,

DEPUTY SANCHEZ,

individually,

JOHN DOE MARTIN COUNTY DEPUTIES,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida
D.C. Docket No. 2:19-cv-14455-DMM

Before WILLIAM PRYOR, CHIEF JUDGE, WILSON, JORDAN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT LUCK, LAGOA, AND BRASHER, CIRCUIT JUDGES.

BEFORE THE COURT:

A judge of this Court having requested a poll on whether this appeal should be reheard en banc, and a majority of the judges of this Court in active service having voted in favor, the Court sua sponte ORDERS that this appeal will be reheard en banc. The panel's opinion is VACATED.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12781
D.C. Docket No. 2:19-cv-14455-DMM

DAVID SOSA,

Plaintiff-Appellant,

versus

MARTIN COUNTY, FLORIDA, SHERIFF WILLIAM SNYDER, of Martin County, Florida in an official capacity, DEPUTY M. KILLOUGH, individually, DEPUTY SANCHEZ, individually, JOHN DOE MARTIN COUNTY DEPUTIES,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(September 20, 2021)

Before MARTIN, ROSENBAUM, and LUCK, Circuit Judges.

ROSENBAUM, Circuit Judge:

David Sosa may have cursed his luck when the Martin County Sheriff's Department pulled him over for a traffic violation in November 2014. "[W]hen ill

luck begins, [though,] it does not come in sprinkles, but in showers."[1] And so it was for Sosa.

When the officer ran Sosa's name, the computer indicated an outstanding Harris County, Texas, warrant from 1992 for a different David Sosa (the "wanted Sosa"). Though some of the identifying details for the wanted Sosa and Sosa differed, the deputy arrested Sosa and took him back to the station. There, deputies fingerprinted Sosa, and he spent three hours in jail before they determined that he was not the wanted Sosa.

Three-and-a-half years later, it happened again! On April 20, 2018, the same Martin County Sheriff's Department (though a different deputy) stopped Sosa as he drove. Once again, the deputy checked Sosa's name in the computer system and found the same outstanding warrant for the wanted David Sosa. Sosa told the deputy about his mistaken 2014 arrest on that warrant and advised the deputy of differences between himself and the wanted Sosa. But once again, the deputy arrested him and took him back to the station. This time, though, Sosa had to spend three days and nights in jail before the Department acknowledged that he was not the wanted Sosa and finally released him.

Trying to avoid a third stay at the county jail for someone else's misdeeds, Plaintiff-Appellant Sosa filed this 42 U.S.C. § 1983 suit against the Defendants-Appellees Martin County Sheriff's Department and the deputies involved in the second incident. In it, Sosa alleged that the Defendants-Appellees violated his Fourth and Fourteenth Amendment rights by falsely

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[1] Mark Twain, *The Tragedy of Pudd'nhead Wilson,* American Publishing Co., Hartford, Conn. (1894), 181.

arresting him, overdetaining him, and failing to institute policies and train deputies to prevent these things from happening (the "*Monell* claim"[2]). The district court dismissed the case with prejudice for failure to state a claim. We now affirm the district court's rulings on the false-arrest and *Monell* claims and reverse on the overdetention claim.

Detention—and particularly protracted detention—of an innocent person obviously seriously interferes with that person's liberty interests. So when a law-enforcement officer receives information that suggests that he has the wrong person in custody, the Fourteenth Amendment requires him to take some action to resolve those doubts. Because Sosa sufficiently alleged facts establishing that Defendants-Appellees failed to take any action for three days and nights after they learned of information that raised significant doubts about Sosa's identity, we vacate the district court's order dismissing the overdetention claim and remand for further proceedings.

I.

As we've mentioned, Sosa had the misfortune to be arrested and detained twice by Defendants on the same outstanding warrant for a different David Sosa. Before we summarize the allegations in more detail, we pause to note that this is an appeal of an order dismissing Sosa's case for failure to state a claim, so for purposes of our analysis, we accept as true the factual allegations from Sosa's First Amended Complaint. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

According to that filing, Sosa has lived in Martin County, Florida, since 2014. There, he works for Pratt

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

and Whitney and its affiliates in research and development on airplane engines.

While Sosa was driving in Martin County, in November 2014, a Martin County Sheriff's deputy pulled him over for a routine traffic stop. During the encounter, the deputy reviewed Sosa's driver's license. After running Sosa's name through the Department's computer system, the deputy learned that an outstanding warrant for a David Sosa had been issued out of Harris County, Texas, in connection with that David Sosa's conviction for selling crack cocaine in 1992. The warrant set forth identifying characteristics for the wanted David Sosa, including his date of birth, height, weight, tattoo information (he had at least one), and other details. Plaintiff-Appellant Sosa pointed out to the officer that his own date of birth, height, and weight—a 40-pound difference between himself and the wanted David Sosa existed—did not match the information for the wanted Sosa and that, unlike the wanted Sosa, he had no tattoos. The deputies arrested Sosa, anyway, and took him to the station.

There, they fingerprinted and detained him. Sosa told two Martin County jailers that he was not the wanted Sosa and explained that identifiers like date of birth differed between the two. After about three hours, a deputy determined that Sosa was not the wanted Sosa and released him.

But no one created a file or otherwise documented that Sosa was not the wanted Sosa. Nor did the Sheriff's Department have any system to prevent Sosa's future mistaken arrest on the wanted Sosa's warrant.

So perhaps not that surprisingly, Sosa had a similar misadventure not long after his 2014 incident. On

April 20, 2018, a different deputy of the Martin County Sheriff's Department, Deputy Killough, pulled Sosa over for a traffic stop. Sosa provided Killough with his license, and when Killough ran it, he discovered the open warrant for the wanted Sosa. Sosa explained that he was not the wanted Sosa and told Killough he had previously been incorrectly arrested on that warrant and released when deputies realized the error. Sosa also noted that he and the wanted Sosa did not share the same birthdate, Social Security number, or other identifying information.

But Killough arrested Sosa and impounded his truck, anyway. When Killough took Sosa to the Martin County jail, Sosa "repeatedly explained to many Martin County employees . . . that his date of birth and other identifying information was different than the information on the warrant for the wanted . . . Sosa." In particular, Sosa so advised Deputy Sanchez and some other Martin County deputies in the booking area. They wrote down Sosa's information and told him they would follow up on the matter.

The next day, Sosa appeared by video before a magistrate judge. Though Sosa attempted to explain the mistaken identity, "several Martin County jailers threatened him and told him not to talk to the judge during his hearing." As a result, Sosa believed it was a crime to talk to the judge.

Finally, on April 23, deputies fingerprinted Sosa and then released him at about 3:00 p.m. In the meantime, he had missed work and then had to pay to retrieve his truck from impoundment.

Though the Sheriff's Department twice arrested and detained Sosa in error on the wanted Sosa's Texas warrant, the Sheriff's Department still created no file

or other documentation to prevent the same thing from happening yet again.

Sosa had enough, and he filed suit against Martin County and the individual deputies. In his Amended Complaint, he brought a single count under 42 U.S.C. § 1983 for violations of his constitutional rights. The claim asserted that Martin County, the Sheriff's Department, and the individual deputies violated Sosa's Fourth and Fourteenth Amendment rights by arresting and detaining him without probable cause or reasonable suspicion. It also alleged that the Sheriff and the County lacked adequate written policies and failed to train and supervise the deputies properly concerning arrests on outstanding warrants.

Sosa's complaint sought injunctive relief precluding the Martin County Sheriff's Department from arresting and detaining Sosa on the wanted Sosa's warrant, requiring the Sheriff and the County to maintain a file on Sosa as it relates to the wanted Sosa's warrant, and directing the Sheriff and the County to implement policies and train employees to avoid arresting and detaining individuals who are not wanted but who have the same names as those for whom a warrant is outstanding. The complaint also demanded compensatory and punitive damages and attorney's fees and costs.

Besides that, Sosa indicated his intentions to seek to represent and certify two classes: (1) a class of all David Sosas who are not the wanted Sosa and (2) a class of all "individuals falsely arrested or detained on warrants," where the person arrested or detained, or both, was not the person identified in the outstanding warrant.

Martin County moved to dismiss and separately, the Sheriff, Killough, and Sanchez filed their own motion to dismiss. The County first asserted that it could not be held responsible for the Sheriff's actions. In the alternative, it, along with the Sheriff, contended Sosa failed to make out a *Monell* claim because he did not establish that they had a policy or custom that caused the deprivation of his rights. Deputies Killough and Sanchez asserted that they were entitled to qualified immunity.

The district court granted the motions to dismiss. It concluded that the deputies did not violate Sosa's constitutional rights with either their arrest or detention of Sosa, so it did not reach the question of qualified immunity on either issue. As for Sosa's *Monell* claim against Martin County and the Sheriff in his official capacity, the court determined that Sosa could not succeed on it because he failed to show that the deputies had violated his constitutional rights.

Sosa now appeals.

II.

We review *de novo* an order dismissing a case under Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim. *Lanfear v. Home Depot, Inc.*, 679 F.3d 1267, 1275 (11th Cir. 2012). In so doing, for purposes of our analysis, we accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Id.* To survive a motion to dismiss, the complaint must include enough factual matter "to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

III.

We begin with the false-arrest and overdetention claims. As we have noted, the deputies assert qualified-immunity defenses to each.

A. The Doctrine of Qualified Immunity

Qualified immunity exists in part "to prevent public officials from being intimidated—by the threat of lawsuits . . . —from doing their jobs." *Foy v. Holston*, 94 F.3d 1528, 1534 (11th Cir. 1996). In the course of their jobs, officers must sometimes rely on imperfect information to make quick decisions. *See*, *e.g.*, *Graham v. Connor*, 490 U.S. 386, 396–97 (1989). Nevertheless, those decisions must be reasonable to fall within qualified immunity's ambit. *See id.* at 396; *see also Saunders v. Duke*, 766 F.3d 1262, 1266 (11th Cir. 2014). So when we consider whether an officer is entitled to qualified immunity, we balance "the need to hold [officers] accountable when they exercise power irresponsibly and the need to shield [them] from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

Qualified immunity shields from liability "all but the plainly incompetent or one who is knowingly violating the federal law." *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002) (citation and quotation marks omitted). But it does not extend to an officer who "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff]." *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982) (citation and quotation marks omitted) (alteration in original).

To invoke qualified immunity, a public official must first establish that he was acting within the scope of his discretionary authority when the challenged action occurred. *Maddox v. Stephens*, 727 F.3d 1109, 1120 (11th Cir. 2013). When we speak of "discretionary authority," we mean all actions the official took (1) in performing his duties and (2) in the scope of his authority. *Jordan v. Doe*, 38 F.3d 1559, 1566 (11th Cir. 1994). Here, the deputies satisfied this requirement, as they arrested and detained Sosa while performing their official duties.

Because the deputies were acting within the scope of their discretionary authority, the burden shifts to Sosa to demonstrate that qualified immunity is inappropriate. *See id.* To do that, the factual allegations in Sosa's complaint must establish two things: (1) the deputies violated his constitutional rights not to be arrested and not to be detained for three days and nights on a warrant for a different David Sosa; and (2) those rights were "clearly established . . . in light of the specific context of the case, not as a broad general proposition[,]" at the time of the deputies' actions, so as to have provided fair notice to the deputies that their actions violated Sosa's rights. *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in part on other grounds by Pearson*, 555 U.S. 223; *Perez v. Suszczynski*, 809 F.3d 1213, 1218 (11th Cir. 2016).

We separately consider in Section III.B. whether the deputies are entitled to qualified immunity on Sosa's false-arrest claim and in Section III.C on his overdetention claim.

B. The deputies are entitled to qualified immunity on Sosa's false-arrest claim

As relevant here, the Fourth Amendment, incorporated to apply to the States through the Fourteenth Amendment, *Baker v. McCollan*, 443 U.S. 137, 142 (1979), protects individuals against unreasonable seizures, U.S. Const. amend. IV. Because they involve unreasonable seizures, constitutional claims for false arrest against state public officials arise under the Fourth Amendment. *See Carter v. Butts Cnty.*, 821 F.3d 1310, 1319 (11th Cir. 2016) ("An arrest is a seizure[.]").

An arrest complies with the Fourth Amendment if it is supported by probable cause. *Barnett v. MacArthur*, 956 F.3d 1291, 1296-97 (11th Cir. 2020). But when the arresting officer raises a qualified-immunity defense, a § 1983 plaintiff must allege sufficient facts to establish that the deputies did not have even arguable probable cause to arrest him. *Cozzi v. City of Birmingham*, 892 F.3d 1288, 1293-94 (11th Cir. 2018). Probable cause for an arrest exists when the totality of the circumstances renders the arrest objectively reasonable. *Barnett*, 956 F.3d at 1296 97. And "a probability or substantial chance of criminal activity, not an actual showing of such activity," satisfies that standard. *D.C. v. Wesby*, ___ U.S. ___, 138 S. Ct. 577, 586 (2018) (citation and quotation marks omitted). As for arguable probable cause, that exists when "reasonable officers in the same circumstances and possessing the same knowledge" as the arresting officer could have thought there was probable cause to arrest the plaintiff. *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010) (citation and quotation marks omitted).

Where, as here, a warrant has issued, that warrant represents a determination of probable cause. *See United States v. Leon*, 468 U.S. 897, 922-23 (1984). But because the warrant involved here was for a different David Sosa than Plaintiff-Appellant Sosa, we must engage in an extra layer of analysis to determine whether Deputy Killough's arrest of Sosa on the wanted Sosa's warrant violated Sosa's Fourth Amendment rights. *See Rodriguez v. Farrell*, 280 F.3d 1341, 1345 (11th Cir. 2002).

When a valid warrant underlies an arrest, but law-enforcement officers mistakenly arrest the wrong person because of a misidentification, a "reasonable mistake" standard governs the constitutionality of the arrest. *Id.* at 1345-46. To assess whether a misidentification mistake is "reasonable," we consider the totality of the circumstances concerning the arrest. *Id.* at 1347.

Rodriguez aptly illustrates how we have applied this test in practice. There, Joe John Rodriguez was riding as a passenger in a car that an officer pulled over for a traffic stop. *Id.* at 1343. During the stop, the officer asked Rodriguez for identification. *Id.* Rodriguez responded with more than ten pieces of identification, including his Florida driver's license, birth certificate, military-discharge papers, Social Security card, credit card, and V.A. patient-data card. *Id.* Upon receiving these items, the officer ran a check on Rodriguez's driver's license information. *Id.* at 1344. At some point, he was advised that three warrants existed for a Victor Heredia who used the alias "Joe Rodriguez." *Id.* Among these, a six-year-old warrant out of St. Johns County, Florida, sought Heredia for driver's license-related charges and possession of cocaine. *Id.*; *see also id.* at 1344 nn.6 & 7. After considering the

warrant's identifying information for Heredia, the officer believed Rodriguez was Heredia and arrested him. *Id.* at 1345.

We held the officer's misidentification of Rodriguez to be a "reasonable mistake," though we recognized that merely matching the name on the warrant with the arrestee's name, with nothing more, would not have been reasonable. *See id.* at 1346-48. First, we found that "four critical" identifiers for both men were the same: name, sex, age, and race. *Id.* at 1347. We also observed that "[s]ignificant other information was similar," including similar Social Security numbers, addresses in neighboring Florida towns, the same birth state, and similarities in tattoos. *Id.* And even with respect to the different towns for each man's address, we thought "it would not be surprising" for a person who uses an alias to also use a false address and birthdate. *Id.* at 1347 n.13 (citation and internal quotation marks omitted). We did not find differences in eye color or in scars to be meaningful, considering the availability of contact lenses and cosmetic surgery. *Id.* at 1347 n.14. And we were similarly unimpressed with weight differences, since weight varies, "especially over six years." *Id.* In contrast, we found only one material difference in the identifying information for the two men: Rodriguez said he was 5'11", and Heredia was 5'6". *Id.*

But considering all the other similarities and the officer's on-the-fly assessment of Rodriguez's height, we concluded that the officer's arrest of Rodriguez was "a reasonable mistake." *Id.* at 1347-49. As we explained, "[t]he question is not whether the police could have done more; but whether they did just enough." *Id*. at 1347 n.15. And "small difference[s]" between the person arrested and the person listed on

the warrant—especially ones that can easily be explained—are not enough to render an arrest on a valid warrant unreasonable. *Id.* at 1347-48.

Applying *Rodriguez* here, we conclude that Killough's mistaken arrest of Sosa on the wanted Sosa's warrant was "reasonable" within the bounds of the Fourth Amendment. We begin by recognizing that the arrest occurred during a roadside stop, which limited Killough's ability to investigate Sosa's claims of mistaken identity. *See id.* at 1347 n.15 ("Trials of guilt or innocence cannot be undertaken by police officers on the side of the road in the middle of the night before an officer can effect a lawful arrest pursuant to a valid warrant."); *cf. Tillman v. Coley*, 886 F.2d 317, 321 (11th Cir. 1989) ("This is not a case where time was of the essence in making the arrest. [The defendant] had at least three months to resolve his doubts about [the plaintiff's] identity." (citation omitted)).

Next, we look at the similarities and discrepancies between the warrant information and Sosa's descriptive information. Sosa's name and sex were the same as the wanted Sosa's. Sosa also did not allege any difference between his and the wanted Sosa's race. And while Sosa alleged that the two men's birthdates were "entirely different,"[3] he did not assert that there

[3] Sosa's First Amended Complaint averred that, in contrast to the wanted Sosa, Sosa "had an entirely different date of birth, substantial height difference, . . . and other identifying characteristics easily viewed on the warrant, [Sosa]'s driver license and [Sosa] himself." These allegations are conclusory and do not impart meaningful factual information that allows us to evaluate whether, in fact, the differences between the two men's dates of birth, heights, and "other identifying characteristics" not otherwise specified would qualify as material under the reasonable-mistake test. *Iqbal*, 556 U.S. at 578-79 (a plaintiff "does not unlock the doors of discovery . . . armed with nothing more than conclusions").

was any significant difference in the men's ages. We have previously described the name, sex, race, and age characteristics as "critical." *Rodriguez*, 280 F.3d at 1347. As for differences, Sosa identified a forty-pound weight difference and the fact that the wanted Sosa had a tattoo while Sosa had none. We also note that the warrant was out of Texas, while Sosa was a Florida resident.

These differences Sosa alleged were not material, viewed in the totality of the circumstances. Significantly, 26 years had passed between when Harris County issued the warrant for the wanted Sosa and when Sosa was arrested. That figures heavily into our analysis. We have previously observed that weight is "easily variable," particularly over a number of years, so that is a difference of not "much importance." *Rodriguez*, 280 F.3d at 1347 n.14.

We have also characterized as a difference of not "much importance," in view of the passage of time, an arrestee's lack of a scar where the wanted individual had one, since cosmetic surgery allows for changes in skin appearance. *Id.* Tattoos can likewise be removed using similar procedures. And here, not only had 26 years elapsed, but also Sosa did not allege the location of the tattoo, so we do not know whether the area

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For instance, though the two birthdates are "entirely different," we do not know whether that means a one-year or a 25-year difference between the ages of Sosa and the wanted Sosa exist. Nor do we know whether the height difference between the two was three inches, five inches (as in *Rodriguez*), or a foot, so we cannot assess whether that difference is legally "substantial," for purposes of our analysis. For that reason, these allegations "are not entitled to the assumption of truth" that generally attaches to factual allegations in a complaint on a motion to dismiss, and we cannot consider them. *Id*. at 679.

where the tattoo was supposed to have been was even readily observable at the time of the arrest. Finally, the passage of time also renders insignificant the fact that the warrant issued out of Texas, while Sosa lived in Florida. Sosa easily could have relocated from Texas to Florida in the intervening 26 years. When we consider all these circumstances, keeping in mind that that Killough compared the warrant information to Sosa's information on the side of the road during a traffic stop, we must conclude that his error in arresting Sosa on the wanted Sosa's warrant was not unreasonable by Fourth Amendment standards.

C. The deputies are not entitled to qualified immunity on Sosa's overdetention claim

1. The individual deputies violated Sosa's Fourteenth Amendment right to be free from overdetention when they did not act for three days to investigate and follow up on information indicating that Sosa was not the wanted Sosa

We start by describing the nature of Sosa's overdetention claim. Overdetention means continued detention after entitlement to release, even though probable cause supported the charge underlying the original detention. *Alcocer v. Mills*, 906 F.3d 944, 953 (11th Cir. 2018).

Claims of overdetention under § 1983 can arise under the Fourth Amendment's right to be free from detention without probable cause or under the Fourteenth Amendment's substantive due-process right to be free from continued detention after it should have been known that the detainee was entitled to release. *See id.* at 952; *see also Cannon v. Macon Cnty.*, 1 F.3d 1558, 1563 (11th Cir. 1993), *opinion modified on reh'g*

on other grounds, 15 F.3d 1022 (11th Cir. 1994). Here, the claim arises under the Fourteenth Amendment. That is so because Sosa asserts that even if a valid warrant supported his arrest, he had the right to be free from continued detention once the deputies knew there was a serious risk Sosa was misidentified as the target of the warrant but continued to detain him, anyway. *See Baker*, 443 U.S. at 145.

Proving a violation requires a plaintiff to establish that the defendant was deliberately indifferent to his due-process rights. *Alcocer*, 906 F.3d at 953. To satisfy that standard, a plaintiff must show three things: (1) the defendant's subjective knowledge of a risk of serious harm in the form of continued detention even after the plaintiff had a right to be released; (2) disregard of that risk; and (3) disregard by conduct that is more than mere negligence. *Id.*

Cannon provides a good example of how the standard works in practice. There, a deputy encountered Mary Cannon, then known as Mary Rene Parrott, at a rest stop in Georgia. 1 F.3d at 1560. When he ran her name through the National Crime Information Center ("NCIC"), he learned that a Mary E. Mann, a.k.a. Mary E. Parrott, was wanted by Kentucky for crimes. *Id.* The deputy took Parrott to jail, despite her repeated protests that she was not Mann. *Id.* At the jail, Deputy Collins completed Parrott's arrest report. *Id.* He stated that he identified Parrott as Mann based on a match in Social Security numbers and birthdates, as well as on the fact that Mann used the alias Mary E. Parrott. *Id.* And he also testified that had the Social Security numbers and birthdates not matched, Cannon would not have been arrested and held in jail. *Id.*

As it turned out, though, the Social Security numbers and dates of birth did not match. *Id.* Not only

that, but there was a four-inch height difference between the two women, one had brown eyes and the other blue, and Parrott was twelve years younger than Mann. *Id.* Despite these differences, the arrest report for Parrott reflected Mann's identification information. *Id.* Collins initially testified that he had filled out the arrest report with information he had obtained directly from Parrott. *Id.* But since the information in the arrest report matched the information in the NCIC report (except for the Social Security number, which matched the Social Security number of another individual listed on the NCIC report for Mann), the evidence suggested that Collins simply copied the NCIC report when he prepared the arrest report. *Id.* Collins also attested to a local judge that he believed Parrott to be the wanted Mann, so the judge issued a fugitive warrant for Parrott's arrest. *Id.* at 1561. Parrott spent a total of seven days in the Georgia jail before she was transferred to Kentucky, where she was promptly released when authorities there discovered she was not Mann. *Id.*

She sued Collins under § 1983, asserting a Fourteenth Amendment overdetention claim. *See id.* Following a trial, a jury returned a verdict for Parrott. *Id.* But the district court entered a judgment for Collins notwithstanding the verdict. *Id.* We reversed. *See id.* at 1566.

In applying the Fourteenth Amendment deliberate-indifference standard, we concluded, based on the facts we have described above, that "the jury finding that Collins acted with deliberate indifference to [Parrott's] due process rights [was] supported by substantial evidence." *Id*. at 1563. As we explained, "Collins' failure to take any steps to identify [Parrott] as the wanted fugitive was sufficient to raise a

question of fact as to his deliberate indifference toward [Parrott's] due process rights." *Id*. at 1564. In particular, we took issue with Collins's completion of the arrest procedure and his obtaining of a fugitive warrant without making any effort to identify Parrott as Mann. *Id.* We said that Parrott had a "constitutional right to be free from continued detention after it was or should have been known that [she] was entitled to release . . . ." *Id.* at 1563. Indeed, "numerous courts have [also] reached the almost tautological conclusion that an individual in custody has a constitutional right to be released from confinement 'after it was or should have been known that the detainee was entitled to release.'" *Schneyder v. Smith*, 653 F.3d 313, 330 (3d Cir. 2011) (quoting *Cannon*, 1 F.3d at 1563, and collecting cases).

We think Sosa has alleged sufficient facts to bring his case squarely within the ambit of *Cannon*. Like Parrott, Sosa has alleged that he repeatedly advised deputies, including those at the jail on the date of his arrest, that he was not the wanted person. Notably, he also informed them that he had previously been mistakenly arrested by the Martin County Sheriff's Department on the wanted Sosa's warrant and that he and the wanted Sosa had different birthdates, Social Security numbers, and other identifying information, including a difference in height, weight, and tattoos (the wanted Sosa had one, while Sosa did not). In fact, Sosa asserted that on that same day, he "explained this in detail to a Martin County deputy named Sanchez as well as some other Martin County jailers and employees in the booking area, who took down his information and claimed they would look into the matter."

In assessing these allegations at the motion-to-dismiss stage, we must make every reasonable inference from the alleged facts in favor of the plaintiff. And when we do that here, these allegations sufficiently establish that Sanchez and other deputies at the jail had enough information to know (1) that a substantial possibility existed that Sosa was not the wanted Sosa and (2) that they had the means readily available to rapidly confirm Sosa's identity. Yet they took no action for three days and nights while Sosa sat in jail. Finally, after Sosa spent three nights in jail, an unnamed deputy followed up on the information Sosa had provided them. And when an unidentified deputy did so by taking Sosa's fingerprints—a standard police tool long used by every U.S. police force—that deputy was easily and quickly able to confirm that Sosa was not the wanted Sosa.[4]

Under these circumstances, Sanchez's and the other deputies' failure to act for three days and nights to verify that Sosa was the wanted Sosa is reminiscent of Collins's failure to take any steps to identify Parrott as Mann in *Cannon*. We said in *Cannon* that "Collins' failure to take any steps to identify [Parrott] as the wanted fugitive was sufficient to raise a question of fact as to his deliberate indifference toward [Parrott's]

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[4] U.S. law enforcement has commonly used fingerprints as a means of identification since the first half of the twentieth century. Kenneth R. Moses et al., *Automated Fingerprint Identification System (AFIS), in* The Fingerprint Sourcebook 6-1, 6-3–6-4, https://www.ojp.gov/pdffiles1/nij/225326.pdf (last visited Sept. 20, 2021). And the Automated Fingerprint Identification System ("AFIS"), which electronically digitizes, stores, and analyzes fingerprints, has been operational since the 1980s. *Id.* at 6-9. Standard-print inquiries (as from fingerprints taken during law-enforcement processing) under AFIS "can often return a search of a million records in under a minute." *Id.* at 6-10.

due process rights." *Id.* at 1564. Sanchez's and the other deputies' failure for three days and nights to undertake any steps to confirm Sosa's identity as the wanted Sosa, despite having information indicating he was not, is no less sufficient to support Sosa's claim that these defendants were deliberately indifferent towards Sosa's due-process rights.

Defendants-Appellees and the Dissent contend that *Baker*, 443 U.S. 137, requires a different answer. We disagree.

In *Baker*, Leonard McCollan obtained a duplicate of his brother Linnie's driver's license. *Id.* at 140. Leonard's[5] version of the license was the same as Linnie's in every way, except that it bore a picture of Leonard instead of Linnie. *Id.* So when Leonard was arrested on narcotics charges, he was booked as Linnie. *Id.* at 140-41. Leonard also signed documents in conjunction with his arrest and was released on bail as Linnie. *Id.* at 141.

About two months after Leonard's bondsman procured a warrant out of Potter County, Texas, for the arrest of "Linnie Carl McCollan," who must have violated his bond conditions, a police officer pulled over Linnie for a traffic stop in Dallas, Texas. *Id.* The police officer arrested Linnie on Leonard's (in the name of Linnie) warrant. *Id.* Linnie was then transferred to the custody of the deputies in the county from where the warrant issued. *Id.* He remained there for three nights, until officials, in comparing Linnie's appearance to the file photo of the wanted person, realized that Linnie was not that man. *Id*. Linnie sued the county sheriff under § 1983, alleging that the county's

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[5] To avoid confusion, we use the McCollans' first names in our discussion of *Baker*.

custody of him violated his Fourteenth Amendment rights. *Id.* The Supreme Court disagreed. *Id.* at 146-47.

First, it assumed that, "depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty . . . without due process of law.'" *Id.* at 145. But after acknowledging that, it said it was "quite certain that a detention of three days *over a New Year's weekend* does not and could not amount to such deprivation." *Id.* (emphasis added).

Our colleague reads this sentence to stand for the proposition that, no matter the circumstances, three days' detention can never amount to an unconstitutional deprivation of liberty without due process of law, as long as the person was detained on a valid warrant. We respectfully disagree for three reasons.

First, in its assumption for purposes of its analysis, the Court linked the acceptable period of detention to the "procedures the State affords defendants following arrest and prior to detention." *Id.* at 145. In contrast to establishing a bright-line rule that a three-day detention can never amount to an unlawful liberty deprivation, this qualification indicates that the acceptability of any period of detention depends at least in part on process and circumstances. *Lee v. City of Los Angeles*, 250 F.3d 668, 684 (9th Cir. 2001) (explaining that the language from *Baker* stating that "after the lapse of a certain amount of time," "depending on what procedures the State affords defendant [] following arrest and prior to trial," means that "the mistaken incarceration of an individual in other circumstances

may violate his or her right to due process"). In *Lee*, for example, after the Ninth Circuit applied these considerations to the case before it, it held that a plaintiff who had been mistakenly detained for *one* day on a facially valid warrant for another person with a similar name stated a due-process claim under the Fourteenth Amendment. *See id.*

Second (and relatedly), "the 'holding' of a prior decision can reach only as far as the facts and circumstances presented to the Court in the case which produced that decision." *United States v. Caraballo-Martinez*, 866 F.3d 1233, 1244 (11th Cir. 2017); *see also Edwards v. Prim, Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010) ("We have pointed out many times that regardless of what a court says in its opinion, the decision can hold nothing beyond the facts of that case.") (collecting cases). *Baker*'s facts and circumstances were not broad enough to cover Sosa's situation.

In *Baker*, the Supreme Court explained the basis for its decision as follows:

> Given the requirements that arrest be made only on probable cause and that one detained be accorded a speedy trial, we do not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent. . . . *The ultimate determination of such claims of innocence is placed in the hands of the judge and the jury.*

Baker, 443 U.S. at 145-46 (emphasis added).

Claims based on "a defense such as lack of requisite intent" or the specific type of mistaken-identity claim Linnie made differ in a material way from Sosa's claim of mistaken identity: the kinds of cases *Baker* described might ultimately require a jury to resolve their claims of innocence, as the quotation above expressly recognizes. After all, the state in *Baker* had been duped and was under the (mistaken) impression that it was, in fact, looking for Linnie McCollan because his brother had framed him. Those kinds of circumstances could understandably call for a jury to make factual findings about who actually committed the charged crime. A defense of lack of intent also presents a jury question.[6]

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[6] For this reason (among others), the Dissent's reliance on *Pickens v. Hollowell*, 59 F.3d 1203 (11th Cir. 1995), Dissent at 58-59, is also misplaced. There, Pickens was arrested on five-year-old bad-check charges for checks written on her accounts. *Pickens*, 59 F.3d at 1205. She told the arresting officer that she had reported the checks stolen and had filed forgery charges and that she thought the statute of limitations on the offenses was two years. *Id.* Nevertheless, the officer arrested her, and she was held in the jail for several hours before being released on a bond. *Id.* The district attorney ultimately dismissed the charges because the statute of limitations had run. *Id.* Obviously, *Pickens* was not a straight-forward misidentification case like Sosa's. First, law-enforcement officials were, in fact, looking for Pickens. And second, Pickens's case required some police investigation to substantiate Pickens's factual defense, and the district attorney was the one qualified to make the decision about the statute-of-limitations defense. Contrary to the Dissent's suggestion, *see* Dissent at 59 n.2, this material difference between the facts of *Pickens* and the facts here—*Pickens* could have required a trial on the facts, or at least a legal determination on the statute-of-limitations defense before resolution, while Sosa's case required a one-minute standard-practice fingerprint comparison for resolution—does matter to understanding what we said about *Baker* in *Pickens*. Our point in *Pickens* was that *Baker* did not require the state to conduct a full-blown factual investigation or

But in Sosa's case, no jury even conceivably should have been necessary because it was a straight-forward case of mistaken identity: Houston County was not looking for David Sosa but for the wanted Sosa, and a simple fingerprint comparison would (and did, as it had in 2014 as well[7]) indisputably resolve Sosa's claim. Indeed, it is doubtful that a one-minute fingerprint comparison that is standard upon jail processing could even fairly be characterized as an "investigat[ion]" of a "claim of innocence," *Baker*, 443 U.S. at 145-46. *See Investigate*, https://www.merriam-webster.com/dictionary/investigate (last visited Sept. 20, 2021) ("to observe or study *by close examination and systematic inquiry*") (emphasis added). The Dissent's overly broad reading of *Baker* to somehow equate Sosa's situation with those that could understandably require a true investigation and a jury trial to be resolved, *see* Dissent at 48-50, is misplaced.

Third, the Supreme Court was careful to point out that the detention period at issue in *Baker* consisted of "three days over a New Year's weekend." Not "three days." Not even "three days over a weekend." But "three days over a New Year's weekend." This suggests

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legal evaluation before arresting *Pickens* (*Pickens* wasn't even an overdetention case). But no full-blown factual investigation or legal evaluation was necessary in Sosa's case because a simple fingerprint comparison would have revealed the misidentification instantly.

[7] The Dissent makes much of the fact that Sosa's release the first time he was misidentified took three hours. *See* Dissent at 50. It misses the point: while it may have taken three hours from the time Sosa was wrongly arrested the first time until he was released, Sosa does not allege—and it makes no sense to suggest—that for the entire period he was in custody, deputies were running his fingerprints. And in any case, bigger point is that it did not require three days.

something significant about the fact that the three-day period was a long holiday weekend.

We are not the first to reach this conclusion. In *Patton v. Przybylski*, 822 F.2d 697, 700 (7th Cir. 1987), the Seventh Circuit construed *Baker* not to count holidays or weekends in identifying days of detention.

So what is different about holiday weekends than other days of the year? New Year's weekend is known, among other things, for being a period when, traditionally, less essential public services are not fully staffed,[8] so it may not have been reasonable under those circumstances to expect officers operating in a lightly staffed jail[9] to leave the jail to, or find an officer outside

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[8] The Dissent argues that more officers, not fewer, would be available during the New Year's weekend to investigate arrestees' claims of misidentification. *See* Dissent at 51-53. In support, it cites articles reporting that, because of post-9/11 antiterrorism efforts, "shoppers and travelers will see more police and tougher security checks in public places"; police make more DUI traffic stops during New Year's weekend; and law enforcement increases patrols to stop purse snatchings, robberies and car thefts. *See id.* Setting aside the fact that Linnie's arrest happened in 1972—twelve years before the first of these articles was published, twenty-nine years before 9/11 occurred, and eight years before even MADD was formed, in part to put pressure on government to increase sober-driving enforcement—that all these officers are on the road and patrolling shopping malls and neighborhoods only makes the point that they are not at the jail on New Year's weekend. Plus, the upshot of the Dissent's argument is that the Supreme Court emphasized New Year's weekend in *Baker* because it thought that the jail would be more heavily staffed and officers were more likely to discover their error over the three-day New Year's weekend. That makes no sense in the context of the sentence quoted from the Court's opinion.

[9] Notwithstanding the Dissent's unsupported supposition that in 1972, there would have been more officers "at the jail to process ["scofflaws"]," Dissent at 53, the Supreme Court's emphasis on

the jail to, physically locate the file on Leonard, review it, compare the photograph of the wanted individual with Linnie, and recognize that the two were different people. In other words, the nature of the particular three days over which Linnie was detained factored into the Court's consideration of the process he was due during that period.[10]

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the fact that Linnie's detention over "New Year's weekend" did not violate the Fourteenth Amendment under the circumstances in *Baker* clearly supports the notion that the Supreme Court did not think that jails were more heavily staffed during that holiday period.

[10] Our second (the nature of the allegation of innocence) and third (the difference between New Year's weekend and three nonholiday days that include a regular weekend) points above independently render irrelevant one of the Dissent's two alleged "key differences" between Sosa's case and *Cannon*, *see* Dissent at 62: "that Parrott was held for seven days and not for three." The other alleged "key difference"—that we "didn't say [in *Cannon*] that Parrott was arrested on a facially valid warrant," *id.*—is likewise immaterial. First, we have held that an arrestee's name matching an NCIC wanted report as in *Cannon* establishes probable cause. *See United States v. Roper*, 702 F.2d 984, 989 (11th Cir. 1983) ("NCIC printouts are reliable enough to form the basis of the reasonable belief which is needed to establish probable cause.") (citation and quotation marks omitted). And second, even other Circuits have recognized that *Cannon* stands for the proposition that "a detainee has 'a constitutional right to be free from continued detention after it was or should have been known that the detainee was entitled to release.'" *Lee*, 250 F.3d at 683 (quoting *Cannon*, 1 F.3d at 1563); *see also Russo v. City of Bridgeport*, 479 F.3d 196, 207 (2d Cir. 2007) ("Following *Baker*, the Eleventh Circuit recognized a Fourteenth Amendment due process right 'to be free from continued detention after it was or should have been known that the detainee was entitled to release.'") (quoting *Cannon*, 1 F.3d at 1563); *Doe v. Att'y Gen. of U.S.*, 659 F.3d 266, 273 (3d Cir. 2011) (noting that *Cannon* held "that a detainee has a constitutional right to be released from confinement 'after it was or should have been known that [he] was

Application of these principles here shows *Baker* cannot save Defendants-Appellees from the rule we announced in *Cannon*. Besides the overbreadth problem we described in our second point above (*Baker* by its reasoning does not apply when, as here, under no circumstances would the type of misidentification that happened to Sosa have required a jury trial), Sosa was detained for three days. And though two of those days fell over the weekend, it was not a holiday weekend like it was in *Baker*. At the motion-to-dismiss stage, there are no allegations (and, of course, no evidence) that the Martin County Sheriff's Department was so lightly staffed over the April weekend Sosa spent in jail as to make it reasonable for Sanchez or any of the other officers who told Sosa they would look into the alleged mistaken identity to take no steps to confirm Sosa's identity for three days. To the contrary, Sosa alleged that during his stay, several deputies, including Sanchez, told Sosa that they would look into the misidentification issue.

This is even more the case when we compare Sosa's circumstances to those of Linnie. In *Baker*, Linnie was arrested within two months of the issuance of the warrant by another county in his same state, and his brother had set him up so the state would think it was looking for Linnie. That is a very different situation from the one we have here, where Sosa was arrested 26 years after the warrant issued, in a state halfway across the country from where the warrant issued, and no one made any effort to fool the detaining officers into thinking Sosa was the wanted Sosa. A 26-year-old warrant issued five states and almost 1,400 miles away from the arrest location—particularly for an

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entitled to release'") (quoting *Cannon*, 1 F.3d at 1563); *Davis v. Hall*, 375 F.3d 703, 714 (8th Cir. 2004) (same).

individual with such a common name as David Sosa[11]—inherently raises more identity questions than a two-month-old warrant issued in the much less common name of Linnie McCollan, from the same state as the arrest location.[12]

Not only that, but to state the obvious, 2018, when Sosa was detained, was not 1972, when Linnie was detained. The technology law-enforcement officers used every day in 2018 remained entirely the stuff of science fiction in 1972.[13] Indeed, when *Baker* was decided—before AFIS—to the extent Linnie's case was going to be resolved short of a jury trial, it necessarily would have demanded at least a few days to sort out for whom the state was truly looking. After all, the state itself was under the mistaken impression that it was looking for Linnie. And even assuming a simple fingerprint or photograph comparison necessarily would have been enough to resolve the problem, a fingerprint comparison would have required prints to be copied, physically mailed or otherwise messengered, and compared by a human being with Leonard's

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[11] Sosa's complaint alleges that LinkedIn includes more than 800 professional listings for people named "David Sosa" and thousands of people named "David Sosa" have lived in or visited the United States during the period relevant to Sosa's lawsuit.

[12] The Dissent's citation of *Rodriguez* in its discussion of the overdetention claim is inapposite. *See* Dissent at 54. *Rodriguez* involved no claim of overdetention.

[13] Many Trekkies have compiled lists of such technology. *See*, *e.g.*, Mun Keat Looi, "Here are all the technologies Star Trek accurately predicted," *Quartz*, Sept. 8, 2016, https://qz.com/766831/star-trek-real-life-technology/ (listing, among many other technologies, flip communicators (and wearable badge communicators), tablet computers, biometric data tracking for health and verifying identity, teleconferencing, Bluetooth headsets, portable memory, Google Glass, GPS, real-time universal translators).

prints—a process that could easily take three days, even if all three days were workdays.

Similarly, in 1972, comparing Linnie's appearance to a photograph of his wanted brother could not have been done from the jail (as a fingerprint comparison could have been in 2018) if the file were not located there—and presumably, it wouldn't have been.[14] In that case, comparing Linnie's appearance to the file photo would have required retrieval of the physical case file, wherever that may have been located (perhaps a detective's office; perhaps a central filing room; perhaps elsewhere); finding within that paper file a photograph for comparison; and then comparing the detainee's face with that of the person intended to have been arrested. That, too, would have been a process that required some time. Indeed, hunting down the file alone would have taken time.

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[14] The Dissent argues that the file must have been at the jail because "the lower court faulted the *Baker* sheriff for not, 'immediately upon [Linnie's] arrival in Amarillo,' comparing him 'with the file photograph and the fingerprints of the wanted man.'" Dissent at 55-56. But *Baker* reports the old Fifth Circuit's discussion as follows: "Noting that the error would have been discovered if Potter County officials . . . had immediately upon respondent's arrival in Amarillo compared him with the file photograph and fingerprints of the wanted man, the Court of Appeals determined that a jury could reasonably conclude that the sheriff had behaved unreasonably in failing to institute such measures." *Baker*, 443 U.S. at 142. This does not in any way suggest that the case file was at the jail. Rather, it indicates only that our predecessor Court thought that the sheriff's office that booked Leonard, as a standard operating procedure, should have compared his case-file photograph to that of Linnie as a first order of business, regardless of where the sheriff's office happened to keep the case file.

In contrast, in 2018, fingerprinting was standard practice upon booking. *See*, *e.g.*, *Police Booking Procedure*, FindLaw, https://www.findlaw.com/criminal/criminal-procedure/booking.html (last visited Sept. 20, 2021). And as we have noted, law enforcement regularly ran fingerprints through AFIS or compared them with a single set of prints almost instantaneously, with the push of a button or two. In fact, during Sosa's first Martin County arrest on the same David Sosa warrant three-and-half years earlier, Sosa was correctly identified and released within three hours because of the fingerprint-comparison process. Under these circumstances, where the simple process of comparing prints would have—and indeed, ultimately did—immediately reveal that Sosa was not the wanted Sosa, officers who have reason to know a straight-up mistaken identity may have occurred cannot do nothing for three days.

In and of themselves, and as in the cases the Seventh and Ninth Circuits decided, these reasons explain why *Baker* cannot immunize Defendants-Appellees. But we also note that *Baker* involved facts distinguishable in another way as well. As Justice Blackmun explained in his concurrence (and unlike here), the deputies who left Linnie in jail for days without checking into his claims at all were not named as defendants. *Baker*, 443 at 148 (Blackmun, J., concurring). Rather, the sheriff was the sole defendant. And he had not "turned a deaf ear to [Linnie's] protests." Rather, he had "checked the files and released [Linnie] as soon as [he] became aware of [Linnie's] claim." *Id.* Indeed, Justice Blackmun noted, "there [was] no indication that [the sheriff] was aware, or should have been aware, either of the likelihood of misidentification or of his subordinates' action[s]." *Id.* And of course, in the absence of personal participation

or a causal connection between a supervisor's actions and the misdeeds of those she supervises, § 1983 does not allow for supervisors in their individual capacity to be held vicariously liable for the unconstitutional acts or omissions of their subordinates.[15] *Henley v. Payne*, 945 F.3d 1320, 1331 (11th Cir. 2019).

Justice Blackmun also observed that the Court's opinion did not "foreclose the possibility that a prisoner in [Linnie's] predicament might prove a due process violation by a sheriff who deliberately and repeatedly refused to check the identity of a complaining prisoner against readily available mug shots and fingerprints."[16] *Baker*, 945 F.3d at 148 (Blackmun, concurring). After all, and as we have noted, "[w]hatever their opinions say, judicial decisions cannot make law beyond the facts of the cases in which those decisions are announced." *Watts v. BellSouth Telecomms., Inc.*, 316 F.3d 1203, 1207 (11th Cir. 2003).

Consistent with these reasons for why *Baker* does not govern Sosa's situation, we interpreted *Baker* in *Cannon* as not precluding a jury from finding that Parrott's Fourteenth Amendment rights were violated when Deputy Collins held Parrott for seven days without taking steps to identify her as the wanted fugitive, even though he could have easily and readily ruled her out just by obtaining information directly

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[15] The Dissent compares Sanchez and the other detention deputies in Sosa's case with the sheriff in Linnie's case, Dissent at 47 ("Sosa's jailer, like Linnie's sheriff, didn't investigate the mistaken identity claim for three days"). But for the factual and legal reasons laid out above, this comparison is not correct.

[16] And this was before AFIS, *see supra* at n.4, was available.

from Parrott (instead of from the NCIC report on Mann).[17] *See* 1 F.3d at 1564.

Sosa's case raises the same problem. He alleges that Sanchez and the other deputies at the jail did nothing to resolve the identity dispute for three days and nights while he sat in jail. And they did not act, even though Sosa repeatedly and insistently advised them of the Martin County Sheriff's Department's prior mistaken arrest of him on the same warrant and of the differences between himself and the wanted Sosa—and even though a quick, easy, and readily available comparison of Sosa's fingerprints to those of the wanted Sosa would have cleared up the entire problem immediately (as it ultimately did when an unidentified deputy finally did get around to printing Sosa and comparing his prints to the wanted Sosa's). So *Baker* does not allow for the conclusion that the deputies

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[17] We also respectfully disagree with the Dissent's contention that our reading of *Baker* in *Douthit v. Jones*, 619 F.2d 527 (5th Cir. 1980), requires the conclusion that *Baker* precludes Sosa's claim. *See* Dissent at 58. From *Douthit*, the Dissent plucks from the context of the opinion this sentence: "In *Baker* the [Supreme] Court held that the detention of an individual for three days on the basis of a valid arrest warrant despite his protestations of innocence did not amount to a deprivation of liberty without due process." *Id.* (quoting *Douthit*, 619 F.2d at 532). The two sentences in *Douthit* immediately following the quoted sentence from *Baker* say, "This case presents a substantially different factual context from Baker since Douthit has alleged that the defendants imprisoned him for thirty days beyond the sentence imposed upon him without a valid commitment order. Detention of a prisoner thirty days beyond the expiration of his sentence in the absence of a facially valid court order or warrant constitutes a deprivation of due process." *Douthit*, 619 F.2d at 532. That is the entirety of *Douthit*'s discussion of *Baker*. In other words, we had no occasion to analyze *Baker* because even a superficial reading of it revealed it could not possibly be applicable in *Douthit*.

here did not violate Sosa's Fourteenth Amendment substantive-due-process right.

2. Sosa's right to be free from prolonged detention without any effort by the holding deputies to resolve doubts about his identity was clearly established by Cannon *at the time of the alleged violation.*

Because we conclude that Sosa sufficiently alleged that Sanchez and the other deputies at the jail violated his Fourteenth Amendment due-process right, we next consider whether that right was clearly established when the alleged violation occurred.

A right is clearly established when "the contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019) (cleaned up). So though the Supreme Court or we need not have held "the very action in question" to be unlawful, the unlawfulness of the action "must be apparent" under the law in existence at the time of the violation. *Id*. at 1312 (cleaned up).

We have recognized three ways in which a plaintiff can show that a constitutional right was clearly established at the time of the violation. *Keating v. City of Miami*, 598 F.3d 753, 766 (11th Cir. 2010). First, a plaintiff can point to "a materially similar" precedent. *Id.* (citation and quotation marks omitted). Second, he can turn to "a broader, clearly established principle [that] should control the novel facts" of the case under review. *Id.* (citation and quotation marks omitted). Or third, he can demonstrate that the officer's conduct "so obviously violates the Constitution that prior case law is unnecessary." *Id.* (cleaned up). In satisfying this

burden to prove his right was clearly established, the plaintiff must rely on "law as interpreted by the Supreme Court, the Eleventh Circuit, or [as relevant here] the Supreme Court of Florida." *Id.* (citation and quotation marks omitted).

Here, "a broader, clearly established principle . . . control[s] the novel facts." *See id.* As we have noted, *Cannon* held that the deputy's "failure [there] to take any steps to identify [the detained person] as the wanted fugitive was sufficient to raise a question of fact as to his deliberate indifference toward [the detained plaintiff's] due process rights." *Cannon*, 1 F.3d at 1564. Sosa has alleged the same situation here: despite knowing of the significant possibility that Sosa was not the wanted Sosa, Sanchez and other deputies took no action confirm Sosa's identity. So for three days and nights, Sosa remained in jail until finally, a different, unidentified deputy took Sosa's fingerprints and checked them against those of the wanted Sosa.

Based on *Cannon*, Sanchez and the other deputies who failed to take any steps to identify Sosa as the wanted Sosa were on notice that completely shirking their responsibilities—over a period of three days—while a potentially misidentified, innocent person was imprisoned could constitute deliberate indifference and violate the detainee's Fourteenth Amendment substantive due-process rights.[18] *Cf. Patel v. Lanier*

[18] As we have explained, we base our analysis on the facts as alleged by Sosa and viewed in the light most favorable to him. Should the actual, uncontroverted facts establish that Sanchez and the other deputies did not fail to take any readily available, easy steps to confirm Sosa's identity, in response to the information Sosa provided, within a reasonable period (considering their other pressing obligations), they would be entitled to qualified immunity.

Cnty., 969 F.3d 1173, 1190 (11th Cir. 2020) (holding that the "broad principle" that "[t]he knowledge of the need for medical care and intentional refusal to provide that care" constitutes deliberate indifference had put "all law-enforcement officials on notice that if they actually know about a condition that poses a substantial risk of serious harm yet do *nothing* to address it, they violate the Constitution").

Because *Cannon* made it clear that an officer's "failure to take any steps to identify" a detainee as the target of warrant is unconstitutional, Deputy Sanchez and the other deputies at the jail are not entitled to qualified immunity. 1 F.3d at 1564. For these reasons, we reverse the district court's dismissal of Sosa's over-detention claim and remand for further proceedings.

IV.

Finally, we consider Sosa's Fourteenth Amendment substantive-due-process *Monell* claim against Martin County and the Sheriff. Under *Monell*, a plaintiff may maintain a § 1983 action against a municipal government when it has a policy, custom, or practice that causes a constitutional injury. 436 U.S. at 690-91. But a municipality cannot be held liable under § 1983 on a theory of vicarious liability. *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 403 (1997).

To succeed on a *Monell* claim, a plaintiff must prove that (1) something that qualifies as an official local-government policy (2) was the "moving force" that "actually caused" (3) the plaintiff's constitutional injury. *See Connick v. Thompson*, 563 U.S. 51, 59 n.5 (2011) (citations and quotation marks omitted); *see also McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004).

An official local-government policy can be a decision by a municipality's lawmaking body, an act by a policymaking official, or a municipal custom—that is, a "practice[] so persistent and widespread as to practically have the force of law." *Connick*, 535 U.S. at 61. Besides these things, a municipality's decision not to train employees on their legal duty not to violate citizens' rights can also constitute an official government policy subjecting the municipality to liability under § 1983. *Id.*; *see also Lewis v. City of W. Palm Beach*, 561 F.3d 1288, 1293 (11th Cir. 2009). But to qualify as a policy, the municipality's failure to train must "evidence[] a deliberate indifference to the rights of its inhabitants." *Lewis*, 561 F.3d at 1293 (citation omitted).

Establishing deliberate indifference requires the plaintiff to "present some evidence that the municipality knew of a need to train and/or supervise in a particular area and . . . made a deliberate choice not to take any action." *Id.* (citation and quotation marks omitted). A plaintiff may do this by pointing to evidence that municipal policymakers "are on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights[.]" *Connick*, 563 U.S. at 61.

Generally, to satisfy this notice requirement, a plaintiff must prove a pattern of similar constitutional violations by untrained employees. *Id.* at 62. But "in a narrow range of circumstances," a plaintiff may avoid the need to show a pattern of similar violations to prove deliberate indifference. *Id.* at 63 (citation omitted). That is so when "the unconstitutional consequences of failing to train [are] . . . patently obvious," *id.* at 64, meaning that a high likelihood exists that the

situation will recur frequently and that the officer's lack of specific tools to respond to that situation will predictably violate citizens' constitutional rights, *Brown*, 520 U.S. at 409. The Supreme Court has identified but a single example of this situation: a municipality's failure to train officers about the constitutional limits on the use of deadly force though arming the officers with guns and expecting to use them in the course of their duties. *See Connick*, 563 U.S. at 63; *see also City of Canton v. Harris*, 489 U.S. 376, 390 n.10 (1989).

As for *Monell*'s causation prong, when it comes to a failure-to-train claim, the plaintiff must establish that a hypothetically well-trained officer would have acted in a way that would have prevented the injury to the plaintiff. *See City of Canton*, 489 U.S. at 391.

Sosa argues that two of the County's and Sheriff's alleged "policies" caused him constitutional injury: (1) the failure to train deputies to properly verify that an individual arrested based on an outstanding warrant is, in fact, the subject of that warrant, and (2) the lack of a policy or custom of keeping records to identify those who have previously been arrested because of misidentification on outstanding charges for another person with the same or similar name.

Here, the first alleged policy Sosa challenges—the Sheriff and Martin County's ("County Defendants") alleged failure to train deputies to correctly identify a person as a wanted person—cannot support a *Monell* claim. For starters, Martin County cannot be liable for Sosa's arrest because Sosa did not suffer a constitutional injury when he was arrested. As we explained in Section III.B, *supra*, Deputy Killough did not violate Sosa's Fourth Amendment right when he arrested Sosa on the wanted Sosa's warrant.

Martin County also cannot be liable for the lack of action by its deputies at the jail who failed to correctly identify Sosa. That is so because Sosa has failed to sufficiently allege a pattern of similar constitutional violations that would have put Martin County on notice of its need to train its deputies to correctly identify the target of a warrant. Indeed, the only constitutional violation Sosa alleges in his First Amended Complaint is the conduct that gave rise to this case. But "contemporaneous . . . conduct cannot establish a pattern of violations that would provide notice to [a municipality] and the opportunity to conform to constitutional dictates." *Connick*, 563 U.S. at 63 n.7 (cleaned up); *Knight through Kerr v. Miami-Dade Cnty.*, 856 F.3d 795, 820 (11th Cir. 2017) (holding that a plaintiff cannot show a pattern of constitutional violations when its only evidence "is this case itself"). As a result, Sosa has failed to allege enough facts to make out a plausible *Monell* claim on this first alleged policy.

So we turn to Sosa's second alleged policy: the failure to keep records so that those who have previously been misidentified as a wanted person will not be so misidentified again on the same warrant. This alleged policy was not passed by the local government. Nor does the need for keeping a records system to ensure a person is not mistakenly arrested twice on the same warrant for someone else with the same or similar name rise to the level of obviousness that the Supreme Court's example of the need to train officers with guns does.

So we consider whether Sosa sufficiently alleged a pattern of similar constitutional violations that should have put Martin County on notice that its deputies were regularly violating people's rights by rearresting

them on the same outstanding warrant because of a misidentification error. For purposes of our analysis, we assume a meaningful difference between the duty of an individual deputy to avoid unreasonably mistakenly arresting a person as a wanted person and the duty of a sheriff's department as an entity to prevent the unreasonably mistaken rearrests of a person on a wanted person's warrant. *See Barnett*, 956 F.3d at 1301 (explaining that "municipal liability can exist if a jury finds that a constitutional injury is due to a municipal policy, custom, or practice," even if "no officer is individually liable for the violation").

But even assuming that a county may inflict constitutional injury on a person by mistakenly arresting him a second time or more on the same warrant because of a misidentification, the district court did not err in dismissing Sosa's *Monell* claim. Sosa did not allege enough facts to show that the Sheriff's Department had a pattern of rearresting the wrong person on a warrant because of mistaken identity based on the arrestee's name.

True, Sosa himself was rearrested once. But as to the County's notice *at the time of Sosa's rearrest*, which is what we must evaluate, Sosa alleges only that "[u]pon information and belief Martin County has arrested many innocent individual[s] because they failed to exclude a person based upon different identifying information between the detainee and the actual person wanted for a warrant." To be sure, facts based "upon information and belief" may support a claim when facts "are not within the knowledge of the plaintiff but he has sufficient data to justify" an allegation on the matter. 5 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1224 (3d ed. 2012); *see also Innova Hosp. San Antonio, Ltd.*

P'ship v. Blue Cross & Blue Shield of Ga., Inc., 892 F.3d 719, 730 (5th Cir. 2018). But here, Sosa points to no data other than his own rearrest (which, obviously and as we have noted, did not occur before his own rearrest) to support his information-and-belief allegation. *Connick*, 563 U.S. at 63 n.7; *Knight through Kerr*, 856 F.3d at 820. For that reason, Sosa did not plead enough facts to set forth a *Monell* practice claim,[19] and the district court did not err in dismissing that claim.[20]

V.

We affirm the district court's dismissal of Sosa's Fourth Amendment and *Monell* claims, and we reverse the district court's dismissal of Sosa's Fourteenth Amendment overdetention claim. We remand the case to the district court for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

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[19] Nevertheless, if the Sheriff has no policy on or practice of maintaining records concerning those who have been mistakenly arrested on a warrant for another person, because the two have the same or similar names, he takes his chances that another mistakenly rearrested person may be able to establish a pattern and practice based on Sosa's rearrest and, if appropriate, on information and belief.

[20] The County also argues that Sosa's *Monell* claim should fail because it is not a proper defendant in this case since it does not control the Sheriff's office. We need not reach this argument because we conclude that, in any event, Sosa's *Monell* claim fails because he has not sufficiently alleged a municipal policy or custom. As we have explained, Sosa has not alleged a pattern of similar constitutional violations that would show that the County's decision not to train its deputies constitutes an official government policy.

LUCK, Circuit Judge, concurring in part and dissenting in part:

The district court dismissed David Sosa's Fourth Amendment false arrest claim against Deputy Killough, his Fourteenth Amendment overdetention claim against Deputy Sanchez, and his *Monell* liability claim against the sheriff and the county for failing to institute policies and train deputies to prevent false arrests and overdetentions. The majority opinion affirms the dismissal of Sosa's false arrest and *Monell* claims and reverses the dismissal of his overdetention claim. I agree we should affirm the dismissal of Sosa's false arrest and *Monell* claims. But, because Sosa has not alleged a violation of the Due Process Clause of the Fourteenth Amendment, I would also affirm the dismissal of his overdetention claim. As to that part of the majority opinion, I respectfully dissent.

Sosa has not alleged a violation of his due process rights under Baker v. McCollan

Baker v. McCollan, 443 U.S. 137 (1979) controls this case. There, Leonard "procured" his brother Linnie's driver's license. *Id.* at 140. Leonard was arrested on "narcotics charges" and was booked into the jail "masquerading" as Linnie. *Id.* at 140–41. Leonard, still posing as Linnie, signed paperwork and was released on bond. *Id.* at 141. Later, the bondsman "sought and received an order allowing him to surrender his principal and a warrant was issued for the arrest of" Linnie. *Id.*

Then, the real Linnie ran a red light in another county. *Id.* The officer who stopped the real Linnie saw the warrant and took the real Linnie "into custody over his protests of mistaken identification." *Id.* On December 30, 1972, the real Linnie was transferred to

the county where the warrant originated and held in the county jail. *Id.* The real Linnie "remained there until January 2, 1973, when officials compared his appearance against a file photograph of the wanted man[, his brother,] and, recognizing their error, released him." *Id.*

Linnie sued the sheriff for damages under the Fourteenth Amendment and section 1983, *id.,* claiming that the sheriff "intentional[ly] fail[ed] to investigate and determine that the wrong man was imprisoned," *id.* at 143 (quoting Linnie's brief). The district court directed a verdict for the sheriff, but our predecessor court reversed. *Id.* at 141–42. The Supreme Court sided with the district court.

"[I]t is necessary," the Court began, "to isolate the precise constitutional violation with which [the defendant] is charged." *Id.* at 140. For Linnie, the Court said, "[a]bsent an attack on the validity of the warrant under which he was arrested, [his] complaint is simply that despite his protests of mistaken identity, he was detained in the [county] jail from December 30 . . . until January 2, when the validity of his protests was ascertained." *Id.* at 143–44. "Whatever claims this situation might give rise to under state tort law," the Court explained, "we think it gives rise to no claim under the United States Constitution." *Id.* at 144. Linnie "was indeed deprived of his liberty for a period of days, but it was pursuant to a warrant conforming, for purposes of our decision, to the requirements of the Fourth Amendment." *Id.*

"The Constitution does not guarantee that only the guilty will be arrested," the Court continued, and "[t]he Fourteenth Amendment does not protect against all deprivations of liberty." *Id.* at 145. "Given the requirements that arrest be made only on probable

cause and that one detained be accorded a speedy trial," the Court did "not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent." *Id.* at 145–46.

The *Baker* Court ended by quoting from our predecessor court's opinion: "We are saying that the sheriff or arresting officer has a duty to exercise due diligence in making sure that the person arrested and detained is actually the person sought under the warrant and not merely someone of the same or a similar name." *Id.* at 146 (quoting *McCollan v. Tate,* 575 F.2d 509, 513 (5th Cir. 1978)). Rejecting our reasoning, the Supreme Court concluded, "false imprisonment does not become a violation of the Fourteenth Amendment merely because the defendant is a state official." *Id.*

But the *Baker* Court left open a narrow exception. "Obviously, one in [Linnie]'s position could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment." *Id.* at 144. The Court assumed that "mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty . . . without due process of law.'" *Id.* at 145 (omission in original). "But," the Court emphasized, "we are quite certain that a detention of three days over a New Year's weekend does not and could not amount to such a deprivation." *Id.*

Given the Supreme Court's certainty, I think we are bound to conclude that Sosa's three-day detention on a facially valid warrant, despite his repeated claims of mistaken identity, did not and could not amount to a

deprivation of his liberty without due process. Sosa, like Linnie, was arrested on a facially valid warrant. Sosa, like Linnie, repeatedly protested his innocence. Sosa's jailer, like Linnie's sheriff, didn't investigate the mistaken identity claim for three days. And Sosa's jailer, like Linnie's sheriff, could easily have determined that he had the wrong person in custody by doing a simple identification match. Taken together, the Supreme Court concluded that these facts did not allege a violation of the Fourteenth Amendment.

The majority opinion's attempts to distinguish Baker are unavailing

The majority opinion gives six reasons why *Baker* is distinguishable from the facts of this case. None of them are persuasive.

First, the majority opinion argues that *Baker's* holding isn't broad enough to cover Sosa's case because the "specific type of mistaken-identity claim Linnie made" "might" have required a jury to resolve it, but no jury was necessary here to resolve Sosa's "straightforward case of mistaken identity." Majority Op. at 25–26. But *Baker* didn't hold that Linnie's mistaken-identity claim required jury factfinding to resolve. Rather, the *Baker* Court held that the Constitution doesn't require a sheriff executing an arrest warrant "to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent." 443 U.S. at 145–46. "[S]uch claims of innocence," *Baker* explained, are "placed in the hands of judge and the jury," *id.* at 146, not the sheriff or the jailer.

The crux of *Baker* is not that Linnie's mistaken-identity claim raised a jury question. The crux is that Linnie was afforded all of the protections that he was

entitled to under the Fourteenth Amendment. The Supreme Court said that while Linnie's factual innocence could be relevant to a false imprisonment claim under state tort law, it was "largely irrelevant to his claim of deprivation of liberty without due process of law." *Id.* at 145. Linnie's factual innocence was irrelevant to his Fourteenth Amendment due process claim, the Supreme Court explained, because he received all of the process that he was due: (1) his arrest on a facially valid warrant justified his "pretrial restraint of liberty"; and (2) the Constitution guaranteed Linnie "the right to a speedy trial," the invocation of which "need not await indictment or other formal charge." *Id.* at 142–44.

So too here. Sosa was arrested on a valid warrant and there is no allegation that the state abridged his right to a speedy trial in any way. Like Linnie's claim, Sosa's claim that law enforcement didn't "investigate independently [his] claim of innocence" while detaining him for three days did not establish a constitutional violation. *See id.* at 146. Like Linnie's claim, Sosa has "no claim cognizable under [section] 1983" because, having received the same process that Linnie received under similar circumstances and over the same three-day period, he was "deprived of no rights secured under the United States Constitution." *See id.* at 146–47.

Baker held that, for the three days that Linnie was in custody, so long as the arrest was made on probable cause and he was accorded a speedy trial, the sheriff was not required to investigate independently Linnie's mistaken-identity claim. *Id.* at 145–46. But *Baker* acknowledged the "[o]bvious[]," that Linnie "could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the

Fourth Amendment." *Id.* at 144. And the *Baker* Court "assume[d]" that "mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty . . . without due process of law.'" *Id.* at 145 (omission in original). But a detention of only three days over a long weekend "does not and could not amount of such a deprivation." *Id.* Because Sosa was held for the same three days that Linnie was held, *Baker* controls.

In any event, Linnie's factual innocence was just as straightforward as Sosa's. The sheriff in *Baker* found out he had the wrong man when he compared Linnie to the booking photo. And Deputy Sanchez found out he had the wrong Sosa based on a fingerprint match. Even if Sosa had alleged, as the majority opinion contends, that a fingerprint comparison would have taken only one minute—he didn't; Sosa alleged that during the first arrest it took three hours to determine that he wasn't the wanted Sosa—it would have taken no longer than a minute for the *Baker* sheriff to look at the booking photo and see that he had the wrong man. Still, the Supreme Court held that the Due Process Clause didn't require the *Baker* sheriff to conduct an independent investigation during the three days that Linnie was detained because he was arrested on probable cause and afforded a speedy trial. *Id.* at 145–46.

Second, the majority opinion contends that *Baker* is distinguishable because the Supreme Court "point[ed] out" that Linnie's detention took place over New Year's weekend. Majority Op. at 26–27. But the holding in *Baker* didn't depend on Linnie being detained over New Year's weekend any more than it depended on Linnie being arrested in Texas or that the underlying

crime was drug related. It would be strange for a Supreme Court holding to apply only on federal holidays.

Instead, the Supreme Court held: "Given the requirements that arrest be made only on probable cause and that one detained be accorded a speedy trial, we do not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent." *Baker,* 443 U.S. at 145–46. And the Supreme Court rejected the former Fifth Circuit's holding—"that the sheriff or arresting officer had a duty to exercise due diligence in making sure that the person arrested and detained is actually the person sought under the warrant and not merely someone of the same or a similar name"—because "false imprisonment does not become a violation of the Fourteenth Amendment merely because the defendant is a state official." *Id.* at 146. *Baker's* holding didn't mention the New Year's holiday. The *Baker* sheriff wasn't required to conduct an independent investigation because Linnie was given all the process that he was due under the Constitution—not because it was the New Year.

And nothing in *Baker* indicates that New Year's weekend is known "for being a period when, traditionally, public services are not fully staffed." Majority Op. at 27. Indeed, the opposite appears to be true. Whether it's to combat crime, drunk driving, or terrorism threats, law enforcement is more, not less, active around January 1. *See, e.g.,* Christi Parsons, *Obama: U.S. in 'new phase of terrorism',* Orlando Sentinel, Dec. 18, 2015, at A7, *at* 2015 WLNR 37625982 ("Ahead of Christmas and New Year's day, Department of Homeland Security officials are warning that shoppers

and travelers will see more police and tougher security checks in public places."); *Police gear up for drunks,* Florida Today (Melbourne, FL), Dec. 31, 2011, *at* 2011 WLNR 26911868 ("Police will ring in the new year with extra officers to make DUI traffic stops tonight and Sunday morning throughout Brevard County."); *Police add patrols,* S. Fla. Sun-Sentinel, Nov. 23, 1994, at 3, *at* 1994 WLNR 4565736 ("Police are beefing up patrols to help stop purse snatchings, robberies and car thefts over the holidays. Crime usually increases between Thanksgiving and New Year's Day. As a result, extra uniformed and plainclothes officers are patrolling retail areas, as well as residential areas."); Leonardo Vazquez, *Police prepare for holiday crime,* Miami Herald, Nov. 28, 1987, at 5, *at* 1987 WLNR 608393 ("Police in Broward have begun their unfortunate holiday tradition—stepped-up patrols to fight the seasonal increase in crime. From Thanksgiving to New Year's Day, the number of 'smash and grab' thefts grows, Broward Sheriff's Office spokesman Al Gordon said. . . . The sheriff's office, Hollywood police and other city police departments are appointing more officers, uniformed and plainclothes, to shopping centers for the holidays."); *Police work intensifying for holidays,* Miami Herald, Dec. 16, 1984, at 10, *at* 1984 WLNR 249604 ("For most, the Christmas holiday season means paying less attention to work and more to play. Not so for 18 police agencies in Palm Beach County. From now until the day after New Year's, those police departments will increase their road patrols and will establish safety checkpoints during the early morning hours."). And if there are more officers on the streets arresting scofflaws around New Year's, there are also more at the jail to process them.

Third, the majority opinion maintains that the warrant in this case was twenty-six years old and

called for the arrest of a man with "such a common name," David Sosa. Majority Op. at 29. The differences in the age and name on the warrant "raise[] more identity questions" than in *Baker,* the majority opinion says. *Id.* But the *Baker* Court didn't mention the warrant's age or how common Linnie's name was as factors in whether his liberty was violated without due process of law. "Absent an attack on the validity of the warrant under which he was arrested," the *Baker* Court explained, being held from December 30 to January 2, "despite [Linnie's] protests of mistaken identity," "gives rise to no claim under the United States Constitution." 443 U.S. at 144.

Here, as the majority opinion concludes, the warrant was valid and there was probable cause for arresting Sosa because he matched the wanted Sosa's name and sex. *See* Majority Op. at 15–16. The amount of probable cause supporting the arrest didn't affect the analysis in *Baker* because, like here, there was no attack on the validity of the warrant.

Also, the fact that the warrant was an old one raises fewer, and not more, questions about Sosa's identity. In *Rodriguez v. Farrell,* 280 F.3d 1341 (11th Cir. 2002), for example, we explained that differences in identity—like eye color, weight, and even scars—were "all easily variable, especially over six years" from when the warrant was first issued until the time of the arrest. *Id.* at 1347 n.14. "This variability lessens the importance of differences in these characteristics." *Id.* We expect people's appearances to change over time. And a common name doesn't defeat probable cause for an arrest. In *Rodriguez,* the plaintiff, Joe John Rodriguez, was arrested because his name matched the alias on a warrant for Joe Rodriguez. *Id.* at 1344. The name Joe Rodriguez is as common, if not more so,

as David Sosa, yet we still held that there was probable cause to hold Rodriguez because other identifying features, in addition to his name, matched the warrant. *Id.* at 1347. Just like here.

Fourth, the majority opinion argues that *Baker* does not control because Linnie was detained in 1972 and Sosa was detained in 2018. Majority Op. at 30–31. This is important, the majority opinion explains, because "the technology law-enforcement officers used every day in 2018 remained entirely the stuff of science fiction in 1972." *Id.* at 30. But the police officers in *Baker* discovered that Linnie was innocent by "compar[ing] his appearance against a file photograph of the wanted man[.]" 443 U.S. at 141. Pulling a photograph out of a file and comparing it to a detainee does not require space-age technology that Gene Roddenberry could only dream of in 1972. If anything, the procedure used to clear Linnie's name (a photo comparison) was lower-tech and easier than the procedure used to clear Sosa's (a fingerprint comparison).

The majority opinion's focus on progress in fingerprint technology confuses best police practices with the demands of due process. It is certainly good policy for the police to use the most current technology to investigate promptly a detainee's mistaken-identity claim. A legislature could (and maybe should) mandate that they do so by statute. But, as *Baker* tells us, the Constitution doesn't require sheriffs to investigate independently claims of mistaken identity where the arrest was made on probable cause and the arrestee enjoyed the right to a speedy trial. *Id.* at 145–46. That is no less true now as it was in 1972 when all the sheriff holding Linnie had to do was look at the earlier booking photo.

The majority opinion also says that, in 1972, it would have taken some time—"a few days"—for the sheriff to hunt down Linnie's case file, wherever it was, which justified the delay in identifying him. Majority Op. at 30–31. But, as the majority opinion implicitly acknowledges, the *Baker* Court never said that the file had to be hunted down or was in some other location far from Linnie. *See id.* at 31 *("[I]f* the file were not located there," *"presumably,* it wouldn't have been," "*perhaps* a detective's office") (emphasis added). We don't have to presume. As the *Baker* Court explained, the lower court faulted the *Baker* sheriff for not, "immediately upon [Linnie's] arrival in Amarillo," comparing him "with the file photograph and the fingerprints of the wanted man." 443 U.S. at 142. And Linnie claimed that the sheriff "intentional[ly] fail[ed] to investigate and determine that the wrong man was imprisoned." *Id.* at 143 (quoting Linnie's brief). Linnie sued, and the lower court ruled in his favor, because the sheriff had the file and didn't bother to investigate, despite Linnie repeatedly saying that they had the wrong man.

Fifth, the majority opinion asserts that *Baker's* reach is limited because, as Justice Blackmun explained in his concurring opinion, the sheriff in that case was the sole defendant and there was no indication that he was aware, or should have been aware, either of the likelihood of misidentification or of his deputies' actions. And, again relying on Justice Blackmun's concurring opinion, the majority opinion says that *Baker* did not foreclose the possibility that a prisoner might prove a due process violation by a sheriff who deliberately and repeatedly refused to check the identity of a complaining prisoner against readily available mug shots and fingerprints. Majority Op. at 32–33.

But Justice Blackmun's concurring opinion does not limit or modify *Baker's* holding. It's just a concurring opinion, not the holding of the Court, and, as the Supreme Court has explained, statements "contained in a concurrence" do not "constitute[] binding precedent."[1] *See, e.g., Maryland v. Wilson,* 519 U.S. 408, 412–13 (1997) ("We agree with respondent that the former statement was dictum, and the latter was contained in a concurrence, so that neither constitutes binding precedent.").

Regardless, Linnie did allege in *Baker* an intentional failure to investigate after repeated claims of mistaken identity. His section "1983 claim against the sheriff [was] . . . for the intentional failure to investigate and determine that the wrong man was imprisoned." 443 U.S. at 143 (quoting Linnie's brief). The *Baker* Court held that, even if Linnie told the sheriff he had the wrong man, the sheriff did not have an independent duty to investigate where the arrest was based on probable cause and the arrestee had the right to a speedy trial. *See id.* at 145–46.

And the sheriff's intent or deliberate indifference did not affect the *Baker* Court's holding. The *Baker* Court explained that "[t]he first inquiry in any [section] 1983 suit . . . is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws.'" *Id.* at

[1] There are, of course, concurring opinions that can limit a majority's holding. Where the concurring judge is the fifth judge necessary for a majority opinion, a separate opinion by the fifth judge explaining her position may limit the reach of the holding. Or, if the concurring judge is the fifth vote for the judgment but on separate and narrower grounds, the concurring opinion may end up as the opinion for the court. But Justice Blackmun's opinion is neither of those kinds of concurring opinions. He was the sixth vote in a six-vote majority opinion.

140. "If there has been no such deprivation," the Court said, "the state of mind of the defendant is wholly immaterial." *Id.* (footnote omitted). Because Linnie "ha[d] failed to satisfy this threshold requirement of [section] 1983"—that is, he had shown no deprivation of a right secured by the Constitution—the Court concluded that it didn't need to decide the level of mens rea necessary for this kind of claim. *Id.* Even if the sheriff was no more than negligent, Linnie did not allege a violation of his due process rights.

Finally, the majority opinion relies on the Seventh and Ninth Circuits' reading of *Baker* to find that it doesn't control. Majority Op. at 24, 27. But I think we should follow our consistent reading of *Baker,* rather than how other circuits read the opinion. In *Douthit v. Jones,* 619 F.2d 527 (5th Cir. 1980), for example, our predecessor court explained that "[i]n *Baker* the [Supreme] Court held that the detention of an individual for three days on the basis of a valid arrest warrant despite his protestations of innocence did not amount to a deprivation of liberty without due process." *Id.* at 532. In *Pickens v. Hollowell,* 59 F.3d 1203 (11th Cir. 1995), we described *Baker* the same way:

The Supreme Court rejected the plaintiff's argument that the sheriff's failure to investigate his protests of misidentification constituted a violation of due process, and explained:

> Given the requirements that arrest be made only on probable cause and that one detained be accorded a speedy trial, we do not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent. . . .

> The ultimate determination of such claims of innocence is placed in the hands of the judge and the jury.
>
> Although the plaintiff in *Baker* did not challenge the validity of his arrest or bring a claim under the Fourth Amendment, the Supreme Court's decision in that case does suggest that the two deputies in this case—who otherwise had probable cause to arrest Pickens pursuant to facially valid arrest warrants—did not have a duty to investigate and decide the potential viability of a defense, such as the statute of limitations, before arresting Pickens.

Id. at 1207 (citation omitted; omission in original).[2] And in *Cannon v. Macon County,* 1 F.3d 1558 (11th Cir. 1993), *modified,* 15 F.3d 1022 (11th Cir. 1994), we said that *Baker* "held that detention pursuant to a valid warrant but in the face of protests of innocence does not necessarily deprive one of liberty without due process. Arresting officers and those responsible for maintaining custody of detainees are not constitutionally required 'to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent.'" *Id.* at 1562 (quoting *Baker,* 443 U.S. at 146). Critically, in none of our cases discussing *Baker's* holding did we mention New Year's weekend, the suspect's name, the warrant's age, fingerprint technology, or Justice Blackmun's concurring opinion.

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[2] *Pickens* isn't relevant to Sosa's case because of its holding; it's relevant because it shows how we have understood *Baker's* holding. Our understanding of Baker—rather than any other circuit's understanding—is what matters.

Sosa's case is not squarely within the ambit of Cannon v. Macon County

The majority opinion also says that Sosa has alleged a constitutional violation because his case is squarely within the ambit of *Cannon.* But it is not.

There, Mary Parrott and her family spent the night at a rest area in Georgia waiting for local relatives to come and lend them some money. *Id.* at 1560. While Parrott was waiting, a sheriff's deputy came by and offered to get the family aid from the local human resources department. *Id.* The deputy radioed in Parrott's name to the sheriff's office and got back a hit from the National Crime Information Center that "Mary E. Mann, a.k.a Mary E. Parrott, was wanted for theft by deception in Kentucky." *Id.* The deputy arrested Parrott and "transported her" to the jail. *Id.*

Deputy Collins took over at the jail. *Id.* Parrott "repeatedly" told Deputy Collins that she was not Mary Mann. *Id.* Despite Parrott's protests that Deputy Collins had the wrong woman and despite Parrott's driver's license—with her legal name and actual height, eye color, social security number, and date of birth—being in the sheriff's office files, Deputy Collins filled out the arrest report with the name, height, eye color, social security number, and date of birth that were listed for Mary Mann in the National Crime Information Center database. *Id.* at 1560–61, 1563. The evidence strongly suggested that Deputy Collins used the information from the NCIC, even though it "differed significantly" from Parrott's actual physical description and the information on her driver's license in the sheriff's files. *Id.* at 1563.

Because the arrest report now matched the "hit" from Kentucky, Deputy Collins held Parrott in the jail

and swore out an affidavit for a fugitive warrant saying that Parrott was Mary Mann. *Id.* at 1560–61, 1564. Deputy Collins told Parrott that if she did not waive extradition, she would be "played back and forth like on a baseball field" between the court and the jail. *Id.* at 1561. So Parrott waived extradition. *Id.* After seven days in custody, she was transported to Kentucky. *Id.* The Kentucky authorities "promptly released" Parrott "when it became evident that [she] was not Mary E. Mann." *Id.* Parrott sued Deputy Collins for depriving her of liberty without due process because he held her "in jail for seven days without making any effort to attempt to determine [Parrott]'s identity." *Id.* at 1561–62.

There are two key differences that take Sosa's case out of the ambit of *Cannon.* First, here and in *Baker,* the arrest was made "pursuant to a facially valid warrant" and the arrest was not constitutionally deficient. *See* 443 U.S. at 143 ("In this case, respondent was arrested pursuant to a facially valid warrant, and the Court of Appeals made no suggestion that respondent's arrest was constitutionally deficient."). "[A] person arrested pursuant to a warrant issued by a magistrate on a showing of probable-cause is not constitutionally entitled to a separate judicial determination that there is probable cause to detain him pending trial." *Id.* (footnote omitted).

In *Cannon,* on the other hand, the court didn't say that Parrott was arrested on a facially valid warrant. The deputy sheriff who questioned Parrott at the rest area and offered to help had a "'hit' from the National Crime Information Center" that "Mary E. Mann, a.k.a. Mary E. Parrott, was wanted for theft by deception in Kentucky" and arrested her because of the "hit." *Cannon,* 1 F.3d at 1560. And, unlike Sosa and Linnie,

Parrott was being held based on a constitutionally deficient fugitive warrant. "There was substantial evidence that [Deputy] Collins did not obtain the identifying information from" Parrott, as he said he did, "but copied" the wrong information to create a match "directly from the NCIC report" and then used the wrong information to get the warrant. *Id.* at 1560–61, 1563–64; *see Madiwale v. Savaiko,* 117 F.3d 1321, 1326 (11th Cir. 1997) ("In *Franks v. Delaware,* 438 U.S. 154, 171 (1978), the Supreme Court held that a search warrant is void under the Fourth Amendment if the affidavit supporting the warrant contains 'deliberate falsity or . . . reckless disregard' for the truth." (omission in original)).

The second key difference in *Cannon* is that Parrott was held for seven days and not for three like Linnie and Sosa. This difference is constitutionally significant. Describing *Baker's* holding, we acknowledged in *Cannon* that "detention pursuant to a valid warrant in the face of protests of innocence does not necessarily deprive one of liberty without due process" and "[a]rresting officers and those responsible for maintaining custody of detainees are not constitutionally required 'to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent.'" 1 F.3d at 1562 (quoting *Baker,* 443 U.S. at 146).

But the *Cannon* court also acknowledged the narrow exception in *Baker* that "[u]nder certain circumstances . . . detention on the basis of misidentification may present a viable [section] 1983 claim." *Id.* As we said in *Cannon:* "The *Baker* Court recognized . . . that after the lapse of a certain amount of time, continued detention in the face of repeated protests will deprive the accused of liberty without due process." *Id.* (citing

Baker, 443 U.S. at 144). Deputy Collins's detention of Parrott for seven days without "tak[ing] any steps to identify [Parrott] as the wanted fugitive," the *Cannon* court concluded, was a lapse long enough to trigger *Baker's* narrow exception. *Id.* at 1564.

Unlike Parrott, Linnie and Sosa were both only held for three days (and they were held on a facially valid warrant). "In *Baker* the [Supreme] Court held that the detention of an individual for *three days* on the basis of a valid arrest warrant despite his protestations of innocence did not amount to a deprivation of liberty without due process." *Douthit,* 619 F.2d at 532 (emphasis added). As the *Baker* Court explained, "we are quite certain that a detention of three days over a New Year's weekend does not and could not amount to such a deprivation." 443 U.S. at 145.

The majority opinion rightly reminds us that a holding can reach no further than the facts and circumstances presented to the court. Majority Op. at 24. For that reason, *Cannon* is limited to cases where the arrestee is held on an invalid warrant and where she is held for at least seven days. That's how we've understood *Cannon.* In *Rodriguez,* we found that any constitutional violation in that case was not clearly established by *Cannon* because *"Cannon* concluded that an official *at a police station* was liable for failing to identify correctly the plaintiff during *seven days of incarceration* under the official's care." 280 F.3d at 1350 (emphasis in original). (The *Rodriguez* plaintiff was held by the roadside and he wasn't held for seven days.) The *Rodriguez* Court italicized *"seven days of incarceration"* to emphasize why *Cannon* didn't apply

in that case.[3] I underline it here to emphasize why Sosa's case is not squarely within the ambit of *Cannon*.

* * * *

Under *Baker,* Sosa's three-day detention on a facially valid warrant did not violate his due process rights. Because we are bound by *Baker,* I would affirm the district court's dismissal for Deputy Sanchez on Sosa's overdetention claim.

[3] The majority opinion relies on how other circuits have described *Cannon's* holding, Majority Op. at 27 n.7, but not on how we've understood our own precedent.

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-14455-MIDDLEBROOKS

DAVID SOSA,

Plaintiff,

v.

SHERIFF WILLIAM SNYDER OF MARTIN COUNTY, FLORIDA, in an official capacity, MARTIN COUNTY, FLORIDA, DEPUTY M. KILLOUGH, individually, DEPUTY SANCHEZ, individually, and JOHN DOE MARTIN COUNTY DEPUTIES,

Defendants.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

THIS CAUSE comes before the Court on Defendants' Motions to Dismiss. On March 16, 2020, Defendant Martin County, Florida ("Defendant County") filed a Motion to Dismiss. (DE 19). Plaintiff David Sosa ("Plaintiff") responded in opposition on March 30, 2020 (DE 23) and Defendant County replied on April 4, 2020 (DE 26). On March 19, 2020, Defendants Sheriff William Snyder ("Defendant Sherriff"), in his official capacity, and Defendant Deputy Killough ("Defendant Killough") and Defendant Deputy Sanchez ("Defendant Sanchez"), in their individual capacities (collectively "Defendant Officers"), also filed a Motion to Dismiss. (DE 22). Plaintiff responded on April 13, 2020 (DE 27) and Defendant Officers replied (DE 28) on

April 20, 2020. For the following reasons, Defendants' Motions are granted.

BACKGROUND

This case arises out of the mistaken arrest of Plaintiff, David Sosa, pursuant to a warrant for the arrest of another individual by the same name. On April 20, 2018, Defendant Killough stopped Plaintiff for committing a traffic violation in Martin County, Florida. (DE 18 ¶39). Defendant Killough ran Plaintiff's name during the traffic stop and identified a warrant out of Texas for a "David Sosa." (*Id.* at ¶¶39-41). It appears the warrant was issued approximately 27 years ago and included personal identifiers for the wanted David Sosa. (*Id.* at ¶22). According to the complaint, the Plaintiff's date of birth, height, weight, and social security number differed from those listed on the warrant, along with other physical identifiers, such as a tattoo. (*Id.* at ¶¶22, 41). However, other than a clearly stated 40-pound weight discrepancy, the extent of these differences is unclear based on the facts pled.

Despite Plaintiff's protests that the warrant was for another individual, as evidenced by the difference in date of birth, social security number, and other identifiers, Defendant Killough nonetheless arrested Plaintiff on the basis of this warrant. (*Id.* at ¶41). Plaintiff was processed at the Martin County jail. (*Id.* at ¶43). During the booking process, Plaintiff unsuccessfully attempted to explain to Defendant Sanchez and other Martin County employees that his identifying information did not match the warrant. *Id.* At his first appearance, Plaintiff alleges that he wanted to explain the case of mistaken identity to the judge, but he was threatened by Martin County jailers not to speak to the judge during the hearing. (*Id.* at

¶44). Plaintiff was released from custody on April 23, 2018. (*Id.* at ¶45).

Although Plaintiff has failed to divide his Amended Complaint into separate causes of action, it appears that Plaintiff intends to bring three distinct claims: 1) false arrest, 2) over-detention, and 3) *Monell* liability.[1] Plaintiff also attempts to plead class action claims on behalf of all individuals "named David Sosa" and "individuals falsely arrested or detained on warrants, where the warrants and the arrestee/detainee were two different individuals." (*Id.* at ¶ 46).

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the allegations in a complaint. *See* Fed. R. Civ. P. 12(b)(6). In assessing legal sufficiency, the Court is bound to apply the pleading standard articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). That is, the complaint "must . . . contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 570). "Dismissal is therefore permitted when on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." *Glover v. Liggett Grp., Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006) (internal quotations omitted) (citing *Marshall Cnty. Bd. of Educ. v. Marshall Cnty. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993)).

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[1] A plaintiff may not raise or amend his causes of action in a Response to a Motion to Dismiss. Therefore, to the extent that Plaintiff raises new arguments therein, these arguments are disregarded.

When reviewing a motion to dismiss, a court must construe plaintiff's complaint in the light most favorable to plaintiff and assume the truth of plaintiff's factual allegations. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997). However, pleadings that "are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal*, 556 U.S. at 678; *see also Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11th Cir. 2009) (stating that an unwarranted deduction of fact is not considered true for purposes of determining whether a claim is legally sufficient).

ANALYSIS

I. 42 U.S.C. § 1983 Claim

Plaintiff asserts that Defendant Officers violated his Fourth, Fifth, and Fourteenth Amendment Constitutional protections by falsely arresting and detaining Plaintiff in custody for three days. (DE 18 ¶¶50-3). In response, Defendant Officers collectively assert that Plaintiff has failed to adequately state a claim upon which relief can be granted and assert a defense of qualified immunity. (DE 22 ¶3).

In order to state a claim under §1983, a plaintiff must allege a violation of a right secured by the Constitution and the laws of the United States, and that the alleged deprivation was committed by a person acting under color of law. *West v. Atkins,* 487 U.S. 42, 48-49 (1988). Even if a plaintiff has properly alleged a violation of a right by a person acting under color of law, he must also show that the person acting

under color of law is not protected by qualified immunity. "Qualified immunity protects government officials performing discretionary functions from suits in their individual capacities unless their conduct violates 'clearly established statutory or constitutional rights of which a reasonable person would have known'." *Dalrymple v. Reno*, 334 F.3d 991, 995 (11th Cir. 2003) (citing *Hope v. Pelzer*, 536 U.S. 730 (2002)). To receive qualified immunity, the government official must first prove that he was acting within his discretionary authority. *See Id.* If the Defendant establishes that he was acting within his discretionary authority, then the burden shifts to the Plaintiff to show that qualified immunity is not appropriate. *See Id.*

The Supreme Court has set forth a two-part analysis for determining whether qualified immunity is appropriate. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The court first asks the threshold question whether the facts alleged, taken in the light most favorable to the plaintiff, show that the government official's conduct violated a constitutional right. *Id.* If the constitutional violation can be demonstrated by the facts alleged, the court must undertake the second step of the process and decide if the constitutional right was clearly established at the time of the violation. *Id.* However, the court need not proceed to an analysis of qualified immunity provided it finds that no constitutional violation occurred. *See Rodriguez v. Farrell,* 280 F.3d 1341, 1345 (11th Cir. 2002) (citing *Hudson v Hall,* 231 F.3d 1289, 1294 (11th Cir. 2000)). Accordingly, I begin my analysis by determining whether the Defendant Officers' violated Plaintiff's constitutional rights when they arrested and detained him.

A. False Arrest

Plaintiff alleges Defendants Sheriff, Killough, and Sanchez violated his constitutional rights when they falsely arrested him. "The cause of action for [false] arrests sounds in the Fourth Amendment." *Chapman v. City of Atlanta, Georgia*, 192 F. App'x 922, 924 (11th Cir. 2006). To establish a constitutional violation in a §1983 false arrest claim, a plaintiff ordinarily must prove that the officers arrested him without probable cause to believe he had committed or was committing a crime. *Skop v. City of Atlanta,* 485 F.3d 1130, 1137 (11th Cir. 2007) ("In Fourth Amendment terminology, an arrest is a seizure of the person, and the 'reasonableness' of an arrest is, in turn, determined by the presence or absence of probable cause for the arrest."). The existence of probable cause constitutes an absolute bar to a §1983 claim for false arrest. *Marx v. Gumbinner,* 905 F.2d 1503, 1505 (11th Cir. 1990).

In analyzing whether probable cause existed, the court must determine whether the arrest was objectively reasonable under the totality of the circumstances subjectively known to the arresting officer at the time of the arrest. *See Rankin v. Evans*, 133 F.3d 1425, 1433, 1436 (11th Cir. 1998). "Probable cause [to arrest] exists where 'the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Marx*, 905 F.2d at 1506 (quoting *Brineger v. United States*, 338 U.S. 160, 175-76 (1949)). Probable cause does not require overwhelmingly convincing evidence, but only "reasonably trustworthy information." *Marx*, 905 F.2d at 1506 (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)).

One manner in which probable cause is established is when an arrest is conducted pursuant to a valid warrant. *See Rodriguez v. Ritchey*, 539 F.2d 394, 401 (5th Cir. 1976), on reh'g, 556 F.2d 1185 (5th Cir. 1977) ("The law is plain that an officer who arrests someone pursuant to a valid warrant has no liability for false arrest even though the suspect is later proved innocent."). However, the question becomes more complicated when one individual is mistakenly arrested pursuant to a warrant for the arrest of another.

The Eleventh Circuit addressed this issue in *Rodriguez v. Farrell*, 280 F.3d 1341, 1343 (11th Cir. 2002). There, an officer mistakenly arrested a man named Joseph Rodriguez based on an outstanding warrant for the arrest of another individual, who went by the alias Joe Rodriguez. *Id.* at 1344-45. In analyzing whether the arrest was reasonable, the Eleventh Circuit conducted a fact-intensive analysis. Specifically, the Court considered that the plaintiff's name, sex, age, and race were identical to the warrant. *Id.* Although there were various differences such as social security number, date of birth, eye color, weight, and number of tattoos, the court found that a five-inch height difference was the *only material difference* between the plaintiff and the individual described in the warrant. *Id.* (emphasis added). The Court found that, in light of the other similarities, this difference did not "transfor[m] [the arrest] into an unreasonable mistake over such a small difference." *Id.* at 1347-48.

Similarly, in an unpublished Eleventh Circuit opinion, the Court considered whether a false arrest occurred when a white woman was arrested based on a warrant for the arrest of an African-American woman with the same name. *Chapman*, 192 Fed. Appx. at 923 (11th Cir. 2006). There too, the Court

found that the officers acted reasonably in arresting plaintiff subject to the warrant. *Id.* at 925. In reaching this determination, the Court relied on consistency between the name, sex and date of birth, and similarities in social security number and physical description (other than race). Thus, notwithstanding the "glaring inconsistency" in race, the Court concluded that "the warrant's description of [the plaintiff] was close enough." *Id.* at 925.

Here, Plaintiff concedes that his name and sex are identical to those on the warrant. Plaintiff highlights a 40-pound weight difference and he generally alleges that there existed a "substantial height difference" (DE 18 ¶22), but otherwise Plaintiff's Complaint lacks specific factual details as to any other material differences between the Plaintiff and the individual described in the warrant. I find it particularly significant that the warrant was outstanding for 27 years. Such a significant passage of time would render differences such as the 40-pound weight discrepancy virtually meaningless, as weight could certainly fluctuate significantly within such a long period. Further, the fact that the warrant lists one tattoo is relatively insignificant given that tattoos can be covered or even removed. Therefore, I find that the Defendant Officers did not commit any constitutional violations by arresting and subsequently booking Plaintiff at the Martin County jail. Accordingly, I need not consider whether the Defendant Officers are entitled to qualified immunity.

Finally, I must consider, based on the allegations in Plaintiff's complaint, whether amendment would be futile. Plaintiff has laid out the differences between his identifying characteristics as compared with the individual named in the warrant, stating that he has

an "entirely different date of birth, substantial height difference, 40 pound weight difference, non-existent tattoo, and other identifying characteristics easily viewed on the warrant . . ." (DE 18 ¶22). As the Eleventh Circuit has found that officers acted reasonably even in light of significant discrepancies between the individual described in the warrant and the individual arrested, I find that Plaintiff could allege no facts to demonstrate that this arrest was unreasonable. Accordingly, I find that amendment would be futile.

B. Over-Detention

Plaintiff also alleges that Defendants Sherriff, Killough, and Sanchez violated his constitutional rights by booking and holding him in custody at the Martin County jail for a period of three days. Although Plaintiff refers to this claim as one for "over detention," it is commonly referred to a constitutional claim for false imprisonment.

In *Baker v. McCollan*, the United States Supreme Court considered a similar claim of unconstitutional detainment following an arrest pursuant to a valid warrant. 443 U.S. 137, 142 (1979). There, the plaintiff was falsely arrested after a warrant was issued in his name for crimes committed by his brother, who was using the plaintiff's identity. *Id.* at 140. Following his arrest, the plaintiff was held in custody by the defendant sheriff for a period of four days until the veracity of his claim of innocence was validated. *Id.* at 141. The plaintiff filed a § 1983 false imprisonment action, asserting that the prolonged period of detention deprived him of liberty without due process of law. *Id.* at 142.

Significantly, the plaintiff in *Baker* did not dispute the validity of the warrant, but instead only argued that defendant sheriff "had negligently failed to establish certain identification procedures which would have revealed that respondent was not the man wanted in connection with the drug charges on which he was arrested." *Id.* at 139. The Court acknowledged that "[o]bviously, one in [the plaintiff's] position could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment." *Id.* However, the Court explained that "a sheriff executing an arrest warrant is [not] required by the Constitution to investigate independently every claim of innocence... [n]or is the official charged with maintaining custody of the accused named in the warrant required by the Constitution to perform an error-free investigation of such a claim." *Id.* at 146. Ultimately, the Court held that the plaintiff did not have a claim cognizable under § 1983 because he did not suffer a constitutional violation. *Id.*

Here, Plaintiff was held in custody for three days while Defendants confirmed he did not match the identity of the wanted "David Sosa." As discussed in the previous section, the Defendant Officers did not commit a constitutional violation by arresting Plaintiff pursuant to the warrant in question. Therefore, as in *Baker*, absent a constitutional defect in the "validity of the warrant under which he was arrested, respondent's complaint is simply that despite his protests of mistaken identity, he was detained [for four days] . . . ." *Id.* at 144. The Supreme Court did not find that this four-day period constituted excessive detention. Accordingly, I do not find a three-day detainment to be a violation of any constitutional protection that would

serve as a basis for a cognizable § 1983 claim. Therefore, as no constitutional violation was committed, I need not address qualified immunity. Further, as Plaintiff was explicit in his Amended Complaint that he was detained for three days, I do not find it necessary to grant leave to amend.

Notably, in *Baker* the Supreme Court went out of its way to emphasize that "[u]nder a tort-law analysis" plaintiff "may well have" a viable claim. *Id.* at 142, 146 ("Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be sought in state court under traditional tort-law principles."). Accordingly, if Plaintiff so choses, he may attempt to bring a tort claim in state court. However, given that I am dismissing all of Plaintiff's constitutional claims by way of this Order, I decline to allow amendment for the purpose of exercising supplemental jurisdiction over an exclusively state law tort action. 28 U.S.C. § 1367 ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims over which it has original jurisdiction . . . .").

II. Governmental Liability

Although the heading of Plaintiff's single cause of action states only that he intends to bring a claim for wrongful arrest and over detention, Plaintiff also alleges that "Defendant Sheriff and County have established a pattern and practice of arresting people without probable cause." (DE 18 ¶ 60). Construing the pleadings liberally, I will consider whether Plaintiff has stated a claim for governmental liability against Martin County or Sherriff Snyder in his official capacity.

"Ordinarily, a governmental entity cannot be held liable for the unconstitutional actions of its employees under 42 U.S.C. § 1983." *Simmons v. Bradshaw*, 879 F.3d 1157, 1173 (11th Cir. 2018). "However, a governmental entity can be held liable if a plaintiff can show that the unconstitutional act at issue is a result of a policy or custom promulgated by the entity." *Id.* (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978)). Such a claim is often referred to as a *Monell* claim.

To succeed on a *Monell* claim, "a plaintiff must show: (1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004) (citation omitted).

As previously discussed, the first element of a *Monell* claim has not been satisfied as plaintiff has not shown that his constitutional rights were violated. Accordingly, I find that Plaintiff has failed to state a claim. Moreover, per my earlier analysis, amendment would be futile.

III. Class Action Allegations

Plaintiff seeks to certify two classes of individuals: "(Class 1) [those] named David Sosa and, also, (Class 2) individuals falsely arrested or detained on warrants, where the warrants and the arrestee/detainee were two different individuals." (DE 18 ¶64). Although Plaintiff's proposed classes appear to be deficient in multiple regards, the most straightforward deficiency is that David Sosa could not serve as the representative of either class, as his claims have been dismissed.

CONCLUSION

Upon careful consideration of the Parties' written submissions, the record, and applicable law pertaining to the claims at issue, it is hereby ORDERED AND ADJUDGED that

1) Defendant Martin County's Motion to Dismiss (DE 19) is GRANTED.

2) Defendants Sheriff, Killough and Sanchez's Motion to Dismiss (DE 22) is GRANTED.

3) Plaintiff's Amended Complaint (DE 18) is DISMISSED WITH PREJUDICE.

4) The Clerk of Court shall CLOSE THIS CASE.

5) All pending motions are DENIED AS MOOT.

SIGNED in Chambers, at West Palm Beach, Florida, this 24th day of June, 2020.

/s/ Donald M. Middlebrooks
DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE