No. 22-1145

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 Court of Appeals for the Eleventh Circuit

BRIEF OF *AMICI CURIAE* DAVID SOSA, DAVID SOSA, DAVID SOSA, DAVID SOSA, & THE INSTITUTE FOR JUSTICE IN SUPPORT OF PETITIONER DAVID SOSA

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INTEREST OF AMICI CURIAE

Amici are David Sosas.[1] Like Petitioner David Sosa, they share their name with the subject of the warrant the Respondents relied on to wrongfully arrest Petitioner. They include David Sosa, age 32, from Iredell County, North Carolina; David Sosa, age 51, from Mecklenburg, North Carolina; David Sosa, age 32, from Los Angeles, California; and David Sosa, age 50, also from Los Angeles, California.

As David Sosas, they're interested in this case because the ruling below puts them at risk of a lawless three-day detention whenever they're in Florida, Georgia, or Alabama. With two David Sosas from North Carolina, two from Los Angeles, and each about the same age as another, the *amici* David Sosas have more in common with each other than Petitioner David Sosa had in common with the David Sosa with an outstanding warrant in Texas.

The Institute for Justice is a national nonprofit law firm that litigates to protect Americans' liberty. The Institute is interested in this case because it implicates its work to uphold the Fourth Amendment, to guarnatee the due process of law, and to combat qualified immunity—a doctrine that frustrates accountability and bars the vindication of constitutional rights.

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[1] No party or its counsel authored any of this brief; and no person other than the Institute for Justice. its members, or its counsel contributed monetarily to this brief. The undersigned contacted every parties' counsel of record with timely notice that IJ was filing this brief in support of Petitioner.

SUMMARY OF ARGUMENT

This case is about the constitutionality of Florida police arresting and detaining David Sosa of Martin County, Florida, on a Texas warrant from 1992 for a man named David Sosa. To be clear, that's not the David Sosa who chairs the philosophy department at the University of Texas.[2] Nor is it the New York-based songwriter David Sosa.[3] It's also not the David Sosa who's a cardiologist in Albuquerque,[4] the one who works at the USDA,[5] the law student at University of Miami,[6] or the David Sosa who owns a construction company in Winston-Salem.[7]

None of the David Sosas who submitted this brief are wanted in Texas, either. Two are from North Carolina and two from Los Angeles. Two of the *amici* David Sosas have even been confused for each other before! There are a lot of David Sosas in this country—at least 924,[8] if not more. Only one of them is suspected of selling crack cocaine in Harris County, Texas, back in the 1990s. Yet every David Sosa now

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[2] David Sosa, Department of Philosophy, University of Texas at Austin, https://bit.ly/46tWxAr (visited June 21, 2023).

[3] Ben Tyree, *In Conversation with David Sosa*, The Daring (Feb. 22, 2021), https://bit.ly/3XhYsDM (visited June 21, 2023).

[4] Dr. David Sosa, U.S. News & World Report, https://bit.ly/3PkbTkJ (visited June 21, 2023).

[5] David Sosa, Nat'l Inst. of Food & Agric., U.S. Dep't of Agric., https://bit.ly/3Xhg8Q3 (visited June 21, 2023).

[6] David Sosa, LinkedIn, https://bit.ly/43OKjQU (visited June 21, 2023).

[7] Sosa Construction, Inc., https://bit.ly/3CJjGkB (visited June 21, 2023).

[8] LexisNexis, SmartLink Comprehensive Person Report for David Sosa (accessed on June 13, 2023).

faces up to three days in jail without any recourse under § 1983 anytime police in Florida, Georgia, or Alabama run a warrant check.

Ten of the 11 judges on the Eleventh Circuit ruled that Petitioner David Sosa has no legal recourse for police wrongfully arresting him *twice* based on the same blatant mistake of identity. Seven of those judges went much further and ruled that state officials do not even violate the Constitution if they hold an innocent person in jail for three days simply because that person shares a name with someone else in the country who has an outstanding warrant.

The decision below ignored the Petitioner's Fourth Amendment rights based on a misstatement of law in one of this Court's decisions that has been abrogated but never expressly overruled. The constitutional provision that the Eleventh Circuit did address—the Due Process Clause—should have also protected Sosa's right to be free from arbitrary detainment, but the court below flouted centuries of precedent establishing that fundamental right. It should have been obvious to both the arresting officers and the court below that police cannot jail an innocent person for three days before they verify his identity.

Petitioner David Sosa stated two claims for relief, and qualified immunity should not bar his recovery for the obvious violation of his rights. Unless this Court grants his petition to correct the *en banc* court's egregious errors, none of the *amici* David Sosas are safe within the Eleventh Circuit. Neither is anyone else who shares a name with someone who has an outstanding warrant.

ARGUMENT

I. This Court's Erroneous Treatment of the Fourth Amendment in *Baker* Has Bred Confusion & More Wrong Decisions

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Yet the ruling below gives "persons" far less protection than this Court and the lower courts afford to "houses" and "effects."

Searches and seizures are constitutional under the Fourth Amendment only if probable cause supports the scope of the government's intrusion. The government must maintain its legal justification for the entire duration of its search or seizure. In *Maryland* v. *Garrison*, for example, this Court considered how the Fourth Amendment applied when police search the wrong house. The Court observed that police "were required to discontinue the search of [an] apartment as soon as they * * * were put on notice of the *risk* that they *might be* in a unit erroneously included within the terms of the warrant." 480 U.S. 79, 87 (1987) (emphasis added). The Fourth Amendment requires officers executing a warrant to make "a reasonable effort to ascertain and identify the place intended to be searched[.]" *Id.* at 88. Once officers should know that their search or seizure has exceeded its original justification, they must correct their error and end the intrusion.

This Court applied a similar rule to the prolonged seizure of someone's "effects" in *United States* v.

Place, 462 U.S. 696 (1983). Officers in *Place* continued to seize a traveler's luggage after their justification lapsed. *Id.* at 709. Evaluating the over-detention, the Court ruled that the seizure became constitutionally unreasonable due to its duration and the officers' lack of diligence. *Ibid.*

Applying *Place*'s rationale to the seizure of motor vehicles, the Ninth Circuit has held that the government needs a constitutionally sufficient reason not merely to seize a car but also to retain it. *Brewster* v. *Beck*, 859 F.3d 1194, 1197 (CA9 2017). The challenged seizure in *Brewster* was pursuant to Los Angeles' policy of impounding vehicles for 30 days whenever a person was caught driving with a suspended license. *Ibid.* The Ninth Circuit emphasized that "[t]he Fourth Amendment doesn't become irrelevant once an initial seizure has run its course." *Id.* at 1197. Although the "community caretaking exception" allowed officers to seize the vehicles initially, that exigency "vanished once the vehicle arrived in impound and [someone] showed up with proof of ownership and a valid driver's license." *Id.* at 1196. At that point, the government was required to "cease the seizure or secure a new justification." *Id.* at 1197.

What's true for apartments, suitcases, and cars must be equally true for persons, whom the Fourth Amendment entitles to identical protection against ongoing unreasonable seizures.

But in *Baker* v. *McCollan*, this Court concluded erroneously that the Fourth Amendment has nothing to say about an ongoing seizure so long as police relied

initially on a facially valid arrest warrant. 443 U.S. 137, 144 (1979). In just a few sentences, the Court brushed aside the idea that the Fourth Amendment applies to prolonged detentions—even if officers learn or should have known that the probable cause on which they relied ceased to exist. *Ibid.* According to the majority, there is an apparent constitutional dead-zone between the time the government executes a valid arrest warrant and when it eventually provides a speedy trial. See *ibid.*

The Court's drive-by holding in *Baker* offered no serious analysis or doctrinal support for its curbed reading of the Fourth Amendment. More importantly, though, *Baker*'s holding is contrary to this Court's current jurisprudence and is no longer good law.

In *Manuel* v. *City of Joliet*, all nine Justices agreed that "[t]he protection provided by the Fourth Amendment continues to apply after * * * the issuance of an arrest warrant." 580 U.S. 357, 374 (2017) (Alito, J., joined by Thomas, J., dissenting). Police arrested Manuel during a traffic stop after they discovered pills in his vehicle, even though a field test revealed that the pills were not a controlled substance. *Id.* at 360 (majority). After his arrest, another test confirmed the negative result; yet the arresting officer still swore out an affidavit that, based on his training and experience, he knew the pills were ecstasy. *Id.* at 361. This fabrication led a local magistrate to find probable cause to continue detaining Manuel. *Ibid.* As a result, Manuel spent 48 days in pretrial detention until a prosecutor eventually dismissed his charges. *Id.* at 362.

After the Seventh Circuit held that unlawful-detention claims cannot be brought under the Fourth Amendment, this Court granted *certiorari* and reversed. *Id.* at 363. As the Court explained, it had been settled "some four decades ago that a claim challenging pretrial detention fell within the scope of the Fourth Amendment." *Id.* at 364–65 (citing *Gerstein* v. *Pugh*, 420 U.S. 103, 106 (1975)). The Fourth Amendment, the Court continued, "prohibits government officials from detaining a person in the absence of probable cause," whether that happens through an arrest without probable cause or "when legal process itself goes wrong" and a person's continued detention is "without constitutionally adequate justification." *Id.* at 367. The simple fact that legal process continued past an initial probable-cause determination "cannot extinguish the detainee's Fourth Amendment claim." *Ibid.*

Accordingly, the Court concluded that "Manuel stated a Fourth Amendment claim when he sought relief not merely for his (pre-legal-process) arrest, but also for his (post-legal-process) pretrial detention." *Id.* at 368. Because his 48 days of pretrial detention were "unsupported by probable cause," the ongoing seizure of his person was "*also* constitutionally unreasonable." *Ibid.* See also *DeLade* v. *Cargan*, 972 F.3d 207, 212 (CA3 2020) (holding that "the Fourth Amendment always governs claims of unlawful arrest and pretrial detention * * * before the detainee's first appearance before a court," as "the Supreme Court in *Manuel* unanimously agreed").

The same is true here. The Fourth Amendment required the Respondents to make "a reasonable

effort to ascertain and identify" that the person in their custody was the subject of a valid warrant. See *Garrison*, 480 U.S. at 88. Even putting aside whether it was reasonable to begin with for officers to rely on a probable-cause determination from an out-of-state and out-of-date warrant that described a *different* David Sosa with particularity,[9] any probable cause they had to believe that the Floridian David Sosa committed a crime in Texas in the 1990s dissipated almost immediately. As soon as the Respondents knew or should have known that Sosa was not the subject of an arrest warrant, his continued detention became constitutionally unreasonable and, consequently, actionable under § 1983.

The Court below, however, overlooked Sosa's Fourth Amendment claim entirely because of this Court's erroneous construction of the Fourth Amendment in *Baker*. Although this Court's subsequent decision in *Manuel* abrogated that portion of *Baker*, the misstatements in *Baker* continue to breed confusion in the lower courts about whether the Fourth Amendment applies to over-detention claims.

This case presents a perfect opportunity for this Court to correct its error in *Baker* and clear up the ongoing confusion. This Court should grant Sosa's petition and clarify that the Fourth Amendment requires the government to be reasonably attentive to

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[9] The Fourth Amendment's particularity requirement "prevents the seizure of one thing [or person] under a warrant describing another." *Marron* v. *United States,* 275 U.S. 192, 196 (1927).

the risk that they may have made an error in their initial assessment of probable cause.

II. *Certiorari* Is Necessary Because the Eleventh Circuit Made a Mockery of the Due Process Clause

The Court should also grant *certiorari* because the decision below completely flouted well-settled principles of due process. The seven-judge majority determined that *Baker* lets police take three days to verify whether the person they've arrested was the subject of the warrant they were enforcing.

That a super-majority of the Eleventh Circuit could conclude that the egregious facts in this case did not violate Sosa's constitutional rights shows why this Court's intervention is necessary. This Court should grant *certiorari* to remind lower-court judges that, whatever they might think about substantive due process, they are bound to apply settled law in cases squarely within the scope of the Due Process Clause.

A. *Baker* Did Not Create a Three-Day Exception to Due Process

The primary error of the seven-judge majority was treating *Baker* as if it created a bright-line exception to the Due Process Clause under which police always enjoy a three-day grace period before they must confirm an arrestee's identity. See Pet. App. 2a. The majority determined that the three days allowed on the facts in *Baker* "squarely control[led]" this case. Pet. App. 2a. But *Baker* did not create some

generalizable exemption to due process, and its reasoning does not extend to this case.

Baker involved unique facts: Linnie McCollan's brother Leonard forged a license to masquerade as Linnie while he committed crimes, causing police to mistakenly obtain an arrest for Linnie. 443 U.S. at 140–41. The McCollan brother the police arrested was, in fact, the subject of the warrant. Linnie just wasn't the one who police should have been looking for. But Leonard's forged license made it difficult for police to realize that they arrested the wrong person, since the warrant described Linnie with particularity. Police also didn't have internet access or even digital files to quickly confirm their mistake. Based on those specific facts, this Court ruled simply that it was not constitutionally unreasonable for police to take a three-day holiday weekend to match Linnie's identity against Leonard's booking photograph in their paper files. *Id.* at 142.

By contrast, the Respondents arrested a random David Sosa just because someone else with his name was wanted in another state decades prior. The two Sosas are a different age, height, and weight, and have different social security numbers, tattoos, and states of residence. A warrant that described the wanted Sosa with particularity should have given officers enough information to determine immediately that the Sosa they pulled over was not wanted in Texas. (And if the warrant's description was not particular enough, then it couldn't have constitutionally supported the arrest anyway). Whatever the merit of excusing police from their duties over a holiday weekend, the Respondents

arrested and detained Sosa during the work week. All the information the Respondents needed was right there at their fingertips—especially since they'd already made the same mistake before!

Had the Eleventh Circuit considered the particular facts of David Sosa's case instead of "begin[ning] and end[ing]" its analysis "with *Baker*," Pet. App. 5a, the due-process violation should have been obvious. As the next subsection explains, this Court's precedent clearly establishes that government officials violate due process when they detain someone arbitrarily, out of indifference to their innocence.

B. Due Process Forbids Police from Detaining Someone They Should Know Is Innocent

This case should have been easy (and for the original panel, it was). Although there are difficult decisions about how far the Due Process Clause extends, this case is not one of them. The rights at issue firmly form the very foundation of due process, which exists to prevent arbitrary deprivations of life, liberty, and property. When government officials should know that they are arresting an innocent person, and they choose to do so anyway, their conduct violates due process.

Volumes of this Court's precedent establish as much. But a super-majority of the Eleventh Circuit—responsible for the liberty of 37 million residents—got these basic points completely wrong. This Court

needs to grant *certiorari* to reemphasize the fundamental role of due process.

1. The Core Function of Due Process Is to Protect Against the Arbitrary Deprivation of Life, Liberty & Property

The founders adopted the concept of due process from Magna Carta "to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." *Bank of Columbia* v. *Okely*, 17 U.S. (4 Wheat.) 235, 244 (1819). The provision reflects that our constitutional principles do not "leave room for the play and action of purely * * * arbitrary power." *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370 (1886).

Although it can be difficult, "perhaps impossible," to define the full scope the Due Process Clause's protection, *Mo. Pac. Ry. Co.* v. *Humes*, 115 U.S. 512, 519 (1885), the provision "undoubtedly" forbids the "arbitrary deprivation of life or liberty, or arbitrary spoliation of property." *Barbier* v. *Connolly*, 113 U.S. 27, 31 (1884). Indeed, this Court has been consistent for centuries that a "protection against arbitrary action" is "the core of the concept" of due process. *Sacramento County* v. *Lewis*, 523 U.S. 833, 845 (1998); see also *Jackson* v. *Virginia*, 443 U.S. 307, 314 (1979) ("[F]reedom from a wholly arbitrary deprivation of liberty" is "the most elemental of due process rights.").

Even when the Court has wrangled over the provision's reach in certain cases, the consensus has remained that due process prevents the government from depriving persons arbitrarily of their life, liberty, and property. Compare *Truax* v. *Corrigan*, 257 U.S. 312, 329–30 (1921) ("[A] purely arbitrary or capricious exercise of [governmental] power [resulting in] a wrongful and highly injurious invasion of property rights * * * is wholly at variance" with due process.), with *id.* at 355 (Brandeis, J., dissenting) ("arbitrary or unreasonable" government interference with liberty or property violates due process).

Equally settled is the principle that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas* v. *Davis*, 533 U.S. 678, 690 (2001). "While the contours of this historic liberty interest * * * have not been defined precisely, they always have been thought to encompass freedom from bodily restraint and punishment." *Ingraham* v. *Wright*, 430 U.S. 651, 673–74 (1977); cf. *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923) ("Without doubt, [liberty] denotes not merely freedom from bodily restraint but also * * * those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.").

Just as it's certain that due process protects against arbitrary government conduct, the Court has never wavered in its consensus that—whatever the contours of "liberty"—it includes freedom from physical restraint. Compare *Foucha* v. *Louisiana*,

504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action."), with *id.* at 90 (Kennedy, J., dissenting) ("[W]e ought to acknowledge at the outset that freedom from this restraint is essential to the basic deprivation of liberty in the Fifth and Fourteenth Amendments of the Constitution."). Even those Justices who read the provision more restrictively recognize that it reaches "freedom from physical restraint." See, *e.g.*, *Obergefell* v. *Hodges*, 576 U.S. 644, 725 (2015) (Thomas, J., dissenting) ("[T]his Court's earliest Fourteenth Amendment decisions appear to interpret the Clause as using 'liberty' to mean freedom from physical restraint.").

It should be beyond dispute, then, that freedom from arbitrary physical detention—like Sosa's in this case—is a foundational due-process right. The Respondents arrested Sosa simply because someone else with his name has an outstanding warrant; they ignored every fact indicating his innocence; and they held him in jail for three days without bothering to confirm his identity. Despite all that, seven judges on the Eleventh Circuit disregarded settled law to determine that Sosa's three-day detention did not even implicate the Due Process Clause.

2. Due Process Provides Both Procedural & Substantive Protections for Core Liberty Interests

Due process means "more than fair process." *Washington* v. *Glucksberg*, 521 U.S. 702, 719–20

(1997). The Clause protects against arbitrary physical detainment regardless of "whether the fault lies in a denial of fundamental procedural fairness or in the exercise of power without any reasonable justification in service of a legitimate governmental interest." *Lewis*, 523 U.S. at 845–46.

Again, there have been countless cases debating just how *substantive* the provision's substantive component is.[10] But that debate is beyond the scope of a case like this one, which concerns a core liberty interest.

The due-process violation in this case was clear, whether framed as a substantive or procedural failing by Martin County police. The Respondents arrested the wrong man on someone else's warrant, and they imprisoned him for three days before they checked to see if he was the person described in the warrant. Whether framed as a substantive right to be free from arbitrary detention or a procedural right to have police confirm an arrestee's identification *prior* to detaining them, the result is the same. After all, such an arbitrary deprivation was possible only because the Respondents' booking procedures did not adequately safeguard Sosa's constitutional rights. His arbitrary detention on someone else's warrant violates due process—whether you want to call it a procedural or substantive failing. See, *e.g.*, *Harvey* v.

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[10] The due-process right against arbitrary punishment has, for instance, applied to limit punitive damages—even when a litigant had notice and an opportunity to be heard. See *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 586 (1996) (Breyer, J., concurring).

Horan, 285 F.3d 298, 315, 318–19 (CA4 2002) (Luttig, J., concurring in rehearing denial) ("[T]he claimed right of access to evidence partakes of both procedural and substantive due process. And with a claim such as this, the line of demarcation is faint.").

While this Court sometimes views substantive-due-process claims circumspectly, that's out of a reluctance to expand the Due Process Clause's "more generalized notion" of liberty to reach new activity covered more explicitly by another amendment. *Graham* v. *Connor*, 490 U.S. 386, 395 (1989). Sosa's due-process claim, however, does not raise those concerns because it does not "break new ground in th[e] field." *Collins* v. *Harker Heights*, 503 U.S. 115, 125 (1992). In cases like this one concerning a central liberty interest, the Court has "always been careful not to 'minimize the importance and fundamental nature'" of due process. *Foucha*, 504 U.S. at 80 (citation omitted).

One constitutional right does not lose its force whenever government conduct violates multiple fundamental rights. If, for example, police arrest someone without probable cause in retaliation for their political speech, the arrest violates both the First and Fourth Amendment. See, *e.g.*, *Nieves* v. *Bartlett*, 139 S. Ct. 1715, 1731 (2019) (Gorsuch, J., concurring in part) ("[The *First* Amendment operates independently of the Fourth and provides different protections."). Similarly, an arbitrary detainment may sometimes implicate the Fourth Amendment,

the Due Process Clause, or both,[11] depending on things like whether probable cause supported the arrest and how far "legal process" progressed before officers disregard the detainee's innocence. See *Manuel*, 580 U.S. at 368.

To artificially erase the core function of one constitutional protection over an entire category of cases just because another may, in some circumstances, provide overlapping protection risks creating an "aircraft-carrier-sized loophole" in the Constitution. Pet. App. 26a. Judge Newsom's concurrence below (Pet. App. 15a–20a) is a perfect encapsulation of how certain judges' opposition to substantive due process undermines our freedom from arbitrary government conduct. His concurrence ignores all this Court's precedent confirming that due process provides substantive protection against arbitrary physical detainment, and then warns that granting Sosa redress for an obvious violation of that fundamental right would—somehow—lead to a freewheeling parade of terribles. Whatever the legitimacy of the Court's concerns in *Graham* and *Collins* about recognizing "new" liberty interests, they have nothing to do with cases about a core liberty

[11] Indeed, the related protections of the two rights helps explain why the Fourteenth Amendment's Due Process Clause incorporated the Fourth Amendment against the states. See, *e.g.*, *Elkins* v. *United States*, 364 U.S. 206, 213 (1960) (explaining that the Fourteenth Amendment prohibits unreasonable searches and seizures because "[t]he security of one's privacy against arbitrary intrusion by the police is implicit in the concept of ordered liberty." (cleaned up)).

interest like the freedom from arbitrary physical confinement.

When police violate the most basic right to be free from incarceration, there should be no debate that due process applies. Nor should there be any debate that due process requires something more substantive than notice and an eventual opportunity to be heard when police jail someone for no good reason—even if the wrongful detention lasts for "only" three days. Pet. App. 2a.

An average person on the street would hear the facts of this case and understand that the Respondents violated our social compact. The *amici* David Sosas are certainly now aware of just how arbitrary it is to let officers arrest anyone who shares a name with a criminal suspect.

Any interpretation of the Constitution that concludes the Respondents' conduct was okay because they *only* took three days to determine that they imprisoned the wrong person should be discarded. No sound constitutional principle permits the government to violate someone's fundamental rights for three days but not four. While the duration of an injury can affect the remedy, it does not eliminate the underlying right. That seven judges on the Eleventh Circuit misunderstood such fundamental points confirms the need for this Court to grant *certiorari*.

3. Knowing or Deliberate Indifference to Innocence Violates Due Process

The Respondents violated Sosa's due-process rights because they deliberately detained him when they knew or should have known he was innocent.

Historically, due process has "applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property." *Daniels* v. *Williams*, 474 U.S. 327, 331 (1986). An officer's "intentional or reckless" decision to either ignore or fail to investigate evidence of a detainee's innocence violates due process. *Winslow* v. *Smith*, 696 F.3d 716, 732 (CA8 2012).

Due process requires an officer's forethought whenever feasible. *Lewis*, 523 U.S. at 851. Purposeful, deliberate, and even reckless intrusions on life, liberty, or property can violate due process. See *Kingsley* v. *Hendrickson*, 576 U.S. 389, 396 (2015). Accordingly, the Court assesses "unhurried judgments, upon the chance for repeated reflection, largely uncomplicated by the pulls of competing obligations" under a stricter standard than those "necessarily made in haste, under pressure, and [] without the luxury of a second chance." *Lewis*, 523 U.S. at 852–53. Officers responding to a prison riot or a sudden high-speed chase enjoy a "much higher standard of fault" than those with time to deliberate who should know that their actions will violate someone's rights. *Ibid.*

Had the Eleventh Circuit applied that established standard here, the Respondents' potential for liability

should have been obvious. They knew or should have known that they had the wrong David Sosa based on information that was readily available to them. Sosa even explained the exact issue since they'd already made the same mistake before. Yet, the Respondents made a deliberate choice to ignore all exculpatory evidence and detain the wrong Sosa anyway. That indifference to innocence violates due process.

In a country of 332 million people, arresting someone based solely on their name is a surefire way to arrest the wrong person. The Respondents' decision to do so—after ample opportunity for reflection—with no personal knowledge of the underlying probable cause and in complete disregard of all of Sosa's identifying characteristics was wholly arbitrary. There are over 920 David Sosas in the country.[12] It's a common name, and officers had no reason to believe that the David Sosa they pulled over was the one suspected of dealing drugs four states away 25 years prior.

The bright-line exception to due process that this case created puts everyone's liberty at risk whenever they interact with law enforcement in the Eleventh Circuit. There are, for instance, well over 17,000 people named John Roberts in this country.[13] Odds are that at least one of them has an outstanding warrant, and that it won't be the one who police pull

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[12] *Supra* note 8.

[13] LexisNexis, SmartLink Comprehensive Person Report for John Roberts (accessed on June 13, 2023).

over. This Court should grant *certiorari* to correct the Eleventh Circuit's grievous error.

III. This Court Should Reiterate that Qualified Immunity Does Not Protect Officers Who Should Know They Are Violating Someone's Rights

The Court should also grant *certiorari* to enunciate that the Respondents' violations of Sosa's constitutional rights were obvious and, as a result, are ineligible for qualified immunity. Even if the Court does not reach qualified immunity, a decision that emphasizes the obviousness of the violations would provide valuable guidance to the Eleventh Circuit on remand. That clarity is important not just for Petitioner David Sosa, but for *amici* David Sosas as well.

Qualified immunity does not shield state officers for conduct they should know violates federal law. When Congress enacted the Ku Klux Klan Act of 1871, now codified at § 1983, its explicit purpose was to provide a right of action against state officers who violate federally protected rights. This Court then created an exception to that unqualified right of action, one which allows officers to cross unclear constitutional lines in "the spur (and in the heat) of the moment" without fear of "surviving judicial second-guessing." *Atwater* v. *Lago Vista*, 532 U.S. 318, 347 (2001). But that grant of immunity is still qualified; it's not a one-size-fits-all "license to lawless conduct." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 819 (1982).

Under qualified immunity, officers are not "wholly free from concern for [] personal liability" when they have the chance to deliberate before they act. *Mitchell* v. *Forsyth*, 472 U.S. 511, 524 (1985). The balance the Court struck between remedying constitutional injuries and protecting state officers is a "fair notice" standard. See *Hope* v. *Pelzer*, 536 U.S. 730, 739–41 (2002). Qualified immunity denies redress to individuals injured by the government *only* when an officer could not be "expected to know that certain conduct would violate * * * constitutional rights." *Harlow*, 457 U.S. at 819. When officers should know their conduct will intrude on federally protected rights, they must still "be made to hesitate" and will be liable if they don't. *Ibid.*

Officers with time to deliberate have a fair chance to consider whether their actions will violate the Constitution. When internal deliberations or legal advice should resolve how the law applies, there's no reason to treat state officers any more leniently than when the law is readily apparent. Cf. *Hope*, 536 U.S. at 741 ("A general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question." (cleaned up)); *Hoggard* v. *Rhodes*, 141 S. Ct. 2421, 2422 (2021) (statement of Thomas, J.) (distinguishing between calculated choices and split-second ones). There is nothing unfair about holding officers accountable when they "knew, or should have known," that their actions were unconstitutional. *Crawford-El* v. *Britton*, 523 U.S. 574, 591 (1998).

Officers remain subject to liability when they had "fair warning" of how the law applies, *Hope*, 536 U.S.

at 739–41, regardless of whether the notice comes from a factually analogous case, *ibid.*, or because the violation should have been obvious, see, *e.g.*, *McCoy* v. *Alamu*, 141 S. Ct. 1364 (2021); *Taylor* v. *Riojas*, 141 S. Ct. 52, 54 (2020).

The judges who joined Judge Jordan's "reluctant" concurrence below missed this key point due to the mixed signals this Court has sent about fair notice. They agreed that Sosa's detention was unconstitutional but concluded that the officers were entitled to qualified immunity because those judges read this Court's cases to demand that "the facts of prior cases be very, very close to the ones at hand" so that officers have "reasonable notice" of what the law prohibits. Pet App. 12a–13a. Much like the majority, Judge Jordan's concurrence erred by reducing *Baker* to the number of days police detained Linnie McCollan. See *id.* at 13a ("Mr. Sosa was detained for three days, the same time period at issue in *Baker*, while *Cannon* [v. *Macon County*, 1 F.3d 1558 (CA11 1993),] involved a detention of seven days.").

This Court has admonished, however, that such "rigid[] overreliance on factual similarity" is "danger[ous]." *Hope*, 536 U.S. at 742; see also *Timpa* v. *Dillard*, 20 F.4th 1020, 1034 (CA5 2021) ("notable factual distinctions" do not preclude "reasonable warning"). "[A] general constitutional rule * * * may apply with obvious clarity to the specific conduct at issue" without any caselaw directly on point. *Hope*, 536 U.S. at 741 (citation omitted).

Indeed, this Court's recent precedent confirms that officers are on notice of obvious constitutional

violations even when their illegal conduct doesn't last quite as long as similar government conduct that courts have held unconstitutional. In *Taylor* v. *Riojas*, for example, this Court summarily reversed a decision holding that prison officials did not have fair notice that they could not force a prisoner to sleep in a cell overflowing with excrement for "only six days" just because the only prior precedent addressed officers who did so for "months on end." *Taylor* v. *Stevens*, 946 F.3d 211, 222 (CA5 2019), rev'd sub nom. 141 S. Ct. at 54. Similarly, the Respondents should have known their conduct was unconstitutional even though it lasted "only" three days instead of seven.

A constitutional rule can be so obvious that officers don't need a precisely analogous case to provide "fair warning that their alleged [behavior] was unconstitutional." *Hope*, 536 U.S. at 739–41. Judges scrutinizing official conduct do not "exhibit a naiveté from which ordinary citizens are free." *Dep't of Commerce* v. *New York*, 139 S. Ct. 2551, 2575 (2019) (citation omitted). Nor must they conduct a "scavenger hunt" for factually identical precedent to justify their every decision. *Parea* v. *Baca*, 817 F.3d 1198, 1204 (CA10 2016) (citation omitted).

As Section II.A. explained, there are many material factual differences that distinguish the unique circumstances of *Baker* and make the constitutional violation in this case clear cut. Unlike the officers in *Baker*, there was no warrant for the Petitioner's arrest; officers arrested the wrong David Sosa *twice* and held him in jail without bothering to check his identity. The Respondents had immediate

access to all the information they needed to confirm that they arrested the wrong man. Nothing in the Due Process Clause allows them three days to act on that information.

It has been obvious since the founding that government agents cannot lock someone in jail for several days without probable cause to believe that they, personally, committed a crime. The officers here had plenty of time to deliberate, and they chose to ignore all indications that they were putting an innocent man in jail—a clear violation of his constitutional rights. No reasonable officer can rely on an arrest warrant that identifies *a different person* than the one they arrest—simply because two people share the same name. Cf. *Groh* v. *Ramirez*, 540 U.S. 551, 563–65 (2004) (officer could not rely on a warrant that plainly did not comply with the Fourth Amendment).

While *amici* echo Judge Jordan's call for this Court "correct" the "legal fiction" of qualified immunity, Pet. App. 13a–14a, *amici* disagree that qualified immunity is appropriate in this case, even under this Court's "regrettable" precedent. See *id.* at 14a. The Constitution demands more from officers who conduct warrant checks than the Respondents did in this case. It should have been immediately obvious that they had the wrong David Sosa before they arrested him. There's no excuse for taking three days to figure it out.

CONCLUSION

This Court should grant the other David Sosa's petition for *certiorari*.

Respectfully submitted,

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