No. 22-1145

IN THE
Supreme Court of the United States

DAVID SOSA, *Petitioner*,
v.
MARTIN COUNTY, FLORIDA, ET AL. *Respondent.*

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

BRIEF OF THE RUTHERFORD INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

John W. Whitehead
William Winters
THE RUTHERFORD INSTITUTE
109 Deerwood Road
Charlottesville, VA 22911
(434) 978-3888
legal@rutherford.org

James C. Martin
Counsel of Record
REED SMITH LLP
225 Fifth Ave, Suite 1200
Pittsburgh, PA 15222
(412) 288-3546
jcmartin@reedsmith.com

Taylor A. Marcusson
REED SMITH LLP
10 S. Wacker Dr., 40th Fl.
Chicago, IL 60606
(312) 207-2885

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

INTERESTS OF *AMICUS CURIAE*[1]

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its president, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose civil liberties have been threatened or violated and educates the public about constitutional and human-rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on rights guaranteed by the Constitution and laws of the United States.

The Rutherford Institute is vitally interested in this case because it is committed to ensuring citizens' constitutional protections from oppression. The Eleventh Circuit's ruling avoids any meaningful constitutional analysis and eviscerates these protections at their core. It permits law enforcement to detain individuals for three days—and perhaps more—without verifying they've detained the right person. The ruling has far-reaching implications for the constitutional rights of all people to be free from unjustified

---

[1] No party or counsel for a party authored any part of this brief, and no person or entity other than amicus and its counsel made a monetary contribution intended to fund the preparation or submission of the brief. Counsel for amicus notified counsel for each party at least 10 days before the filing deadline of amicus' intention to file this brief.

and unreasonable government detentions. The Rutherford Institute urges this Court to grant certiorari to ensure courts properly evaluate the right to be free from over-detention and preserve the fundamental right to constitutional redress if an unreasonable over-detention occurs.

SUMMARY OF ARGUMENT

The Constitution is clear: the Fourth Amendment secures the right of people to be free from unreasonable seizures, and the Fourteenth Amendment secures the right of people not to be deprived of liberty without due process of law. Here, the Eleventh Circuit superseded and amended those rights: persons have the right to be free from unreasonable seizures and deprivations of their liberty without due process only when their detention lasts longer than three days.

Petitioner brought a 42 U.S.C. § 1983 claim alleging violations of his Fourth and Fourteenth Amendment rights following his three-day detention on a warrant for someone else. But a majority of the Eleventh Circuit, sitting *en banc*, held that law enforcement's detention of a person for up to three days, while refusing to verify the detainee's identity, does not violate a person's constitutional rights. The majority's decision to impose this bright-line rule is not provided for in this Court's case which the majority relies on, *Baker v. McCollan*, 443 U.S. 137 (1979), and it undermines the reasonableness principles that

Baker and later cases insist should control the constitutional analysis.

The certiorari petition makes clear the division in the Circuits that the Eleventh Circuit decision reflects and deepens. It also underscores, and emphatically so, why this Court's intervention is necessary to clarify and settle the law. An incarceration that is unreasonable and potentially triggers constitutional redress in Bangor, Maine should provide the same result in Miami, Florida. The right to be free from unreasonable seizure is a nationwide command—one that the Constitution establishes as fundamental to the rights of all citizens, wherever they reside. The inconsistency in results is also intolerable, because it cannot be rationally explained to the citizens whose rights are impacted.

The manifest inconsistency is reason enough for this Court to intervene. But added compulsion for intervention comes from an unfortunate reality: Mr. Sosa's case is not unique. Mistaken detentions are frequent and the consequences often catastrophic. Two recent examples make the point. In 2023, Stephanie Johnson, a Ph.D. student from Philadelphia could not find housing nor employment due to an outstanding warrant. *Philadelphia Woman Jailed in Case of Mistaken Identity Speaks out About 'Terrible' Experience*,

FOX 29 Philadelphia (Jan. 23, 2023).[2] When she visited a local precinct to clear the air, they detained her for a week. *Id.* Similarly, in 2017, law enforcement involuntarily committed Joshua Spriestersbach from Hawaii for two years to a state mental hospital because he "looked like" a wanted Thomas Castleberry. Alyssa Lukpat, *Man Was Held for More Than 2 Years Over Mistaken Identity, His Lawyer Says*, N.Y. Times (2021).[3] Yet, these examples are only the tip of the iceberg, as other sources reveal.[4]

In sum, in the instance of unreasonable detentions, the need for uniformity in what the Constitution compels is paramount and the price of inconsistency in outcomes is unconscionable. Because individual liberty is at stake, the need for this Court to respond is acute. An unlawful detention, where liberty is lost without constitutional justification should be redressable—and if it is not, then nothing will stop

---

[2] https://www.fox29.com/news/philadelphia-woman-jailed-mistaken-identity-texas-suspect-julie-hudson-speaks-out (last visited June 23, 2023).

[3] https://www.nytimes.com/2021/08/06/us/hawaii-mistaken-identity-release.html (last visited June 23, 2023).

[4] The Marshall Project has a web link that chronicles mistaken identity arrests nationwide and the number of articles collected is staggering. Mistaken Identity, *A Curated Collection of Links, Marshall Project*, https://www.themarshallproject.org/records/3506-mistaken-identity (last visited June 23, 2023). *See* Brandon V. Stracener, *It Wasn't Me – Unintended Targets of Arrest Warrants*, 105 Cal. L. Rev. 229 (2017) (explaining the need for viable legal redress).

or deter law enforcement from continuing these reckless practices, as this case makes clear where Mr. Sosa was detained twice by the same law enforcement agency. For the benefit of those who are unreasonably detained, this Court should grant the writ for certiorari and set the law on its proper course.

ARGUMENT

I. The Eleventh Circuit's bright-line three-day grace period for improper detention irrationally prohibits viable constitutional claims with drastic consequences.

The Eleventh Circuit majority holds that this Court's decision in *Baker* creates a bright-line rule for over-detention claims: when police make an arrest pursuant to a warrant, the police may then detain the person for up to three days without any constitutional violation, even in the face of repeated protestations of mistaken identity. This bright-line rule will govern individual cases in Florida, Georgia, and Alabama, and the cities and towns within their counties. Amicus believes that such a bright-line rule, where constitutional liberty is at stake, is bad law and bad policy.

A litmus three-day grace period for unlawful detentions will disincentivize prompt investigations and releases and lead inevitably to the kind of unfortunate travesty that befell Mr. Sosa. "By specifying a sharp line between forbidden and permissible conduct, rules

[in contrast to standards] permit and encourage activity up to the boundary of permissible conduct." Pierre Schlag, *Rules and Standards*, 33 UCLA L. Rev. 379, 384 (1985). And the adverse consequences are not theoretical. "Arrest and pending criminal charges can produce emotional and psychological harm for the arrestee and for family members," which is "not necessarily 'healed' if charges are dismissed without prosecution." Surell Brady, *Arrests Without Prosecution and the Fourth Amendment*, 59 Md. L. Rev. 1, 62 (2000). "Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships." *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

In marked contrast to a bright-line rule, with a totality-of-the-circumstances standard "the distinction between permissible and impermissible conduct is not fixed, but is 'case-specific'" and "persons will be deterred from engaging in borderline conduct and encouraged to substitute less offensive types of conduct." Schlag, *Rules and Standards*, at 385. This common sense point embodies the wisdom of this Court's decisions in which "police actions are judged based on fact-intensive, totality of the circumstances analyses rather than categorical rules, including in situations that are more likely to require police officers to make difficult split-second judgments." *Missouri v. McNeely*, 569 U.S. 141, 158 (2013) (citing *Illinois v. Wardlow*, 528 U.S. 119, 123-25 (2000); *Ohio v. Robinette*, 519 U.S. 33, 39-40 (1996); *Tennessee v. Garner*,

471 U.S. 1, 8-9 (1985)); *see also Howes v. Fields*, 565 U.S. 499, 505 (2012) ("[W]e have repeatedly declined to adopt any categorical rule with respect to whether the questioning of a prison inmate is custodial."); *Neil v. Biggers*, 409 U.S. 188, 196 (1972) ("We have considered on four occasions the scope of due process protection against the admission of evidence deriving from suggestive identification procedures …. This, we held, must be determined on the totality of the circumstances.") (citation omitted).

The Eleventh Circuit's bright-line rule is all the more problematic because it elides technological advancements relevant to a detainee's identification. Indeed, as a general matter, totality-of-the-circumstances standards, rather than bright-line rules, are especially helpful when advancements in technology can change what is reasonable (or possible) in terms of police action. "Rules tend toward obsolescence. Standards, by contrast, are flexible and permit decision-makers to adapt them to changing circumstances over time." Kathleen M. Sullivan, *The Supreme Court 1991 Term: Forward: The Justices of Rules and Standards*, 106 Harv. L. Rev. 22, 66 (1992); David S. Han, *Constitutional Rights and Technological Change*, 54 U.C. Davis L. Rev. 71, 117 (2020) ("[T]here reaches a point at which the fit between a bright-line rule and the 'correct' answers in cases to which it applies has grown so attenuated that the rule's benefits no longer justify its costs."); Cass R. Sunstein, *Problems with Rules*, 83 Calif. L. Rev. 953, 993 (1995)

("Rules are often shown to be perverse through new developments that make them anachronistic …. Even well-designed rules in the 1970s may be utterly inadequate for the 1990s.").

The reasons favoring a totality of the circumstances standard, by contrast, align fully with modern identification procedures as they exist in 2023. In contrast to the 1972 arrest in *Baker*, police now have access to increasingly reliable identification technologies. Stephen D. Mastrofski, *Police Organization Continuity and Change: Into the Twenty-first Century*, 39 Crime & Just. 55, 86-87 (2010) (citing operational use of computers among police at 5% in 1990).

Finally, adoption of a factorial, totality-of-the-circumstances standard for evaluating the reasonableness of a detention not only will produce better outcomes and align with current technology, but it reflects what the law should be. As far as Amicus is concerned, individual liberty is a core constitutional value that must be respected and protected. Circumstances in which it is compromised or ignored deserve attention and, more particularly, should support redress. The discipline that will follow from a standard that gives meaning to unreasonableness and reflects the need to limit over-detention not only is protective of cherished individual freedoms but, as the Petition reflects, aligns fully with what the Constitution compels.

II. The *Baker* Court did not create a three-day categorical grace period for improper detention.

As noted, the Eleventh Circuit adopted its bright-line standard in reliance on this Court's decision in *Baker*. In *Baker*, to be sure, the Court held that the plaintiff's three-day detainment based on a mistaken identity did not amount to a constitutional violation in that particular case. 443 U.S. at 144. The Court, however, did not impose a categorical three-day grace period for every possible over-detention claim.

Instead, the Court recognized that a person "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" and "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 144, 145 (emphasis added). As that language reflects, whether a detainment for a "certain moment of time" triggers constitutional redress depends on the circumstances of each case.

The detention in *Baker*, for example, occurred over New Year's weekend, during a time when "essential public services are not fully staffed." Pet'r App. 84a (Rosenbaum, J., dissenting). It also occurred in 1972, long before technology allowed for someone's identity

to be confirmed in a matter of minutes or even seconds. *Baker*, 443 U.S. at 141. And notably, the defect in the *Baker* warrant lay in the warrant itself, as it was issued based on the intended target's use of a stolen identity, rather than the conduct of the arresting or detaining officers. *Id.* In other words, the *Baker* warrant matched all of the identifying information of the detainee and the officers arrested the actual person for whom the warrant was technically issued; though the warrant had been issued for the arrestee based upon fraudulent information, which was not the fault of the law enforcement officers. *Id.*

That was not at all the case for Mr. Sosa because he was not the person named in the warrant. Thus, even though "Sosa was arrested pursuant to a valid warrant supported by probable cause" as the Eleventh Circuit noted, Pet'r App. 7a, the reasons for his arrest were nothing like that of the arrestee's in *Baker*. And the simple fact that the warrant might have been valid for the correct David Sosa does not thereby extend to make the arrest and detention of this David Sosa valid, reasonable, or supported by probable cause. This distinction between Mr. Sosa's case and *Baker* is something that the Eleventh Circuit completely ignored in applying a bright-line rule.

This Court's later decisions further support the conclusion that *Baker* did not establish a bright-line three-day rule. Since 1979, this Court or one of its members has cited *Baker* at least 19 times in majority, concurring, and dissenting opinions. Not once has

the Court or one of its members characterized *Baker* as imposing a bright-line three-day rule for over-detention claims.

Baker is clear that "[t]he first inquiry in any § 1983 suit" is "to isolate the precise constitutional violation with which [the defendant] is charged." 443 U.S. at 140. This Court or one of its members has identified and built upon this rule from *Baker* on numerous occasions. *See, e.g.*, *Manuel v. City of Joliet*, 580 U.S. 357, 378 (2017) (Alito, J., dissenting) ("'The first inquiry in any § 1983 suit,' the Court has explained, is 'to isolate the precise constitutional violation with which the defendant [*sic*] is charged.'") (quoting *Baker*, 443 U.S. at 140); *Graham v. Connor*, 490 U.S. 386, 394 (1989) ("In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by challenged application of force.") (citing *Baker*, 443 U.S. at 140).

Ironically, this is the exact line of analysis that the Eleventh Circuit failed to follow. In contrast to the facts of *Baker* where the plaintiff asserted only a violation of his Fourteenth Amendment rights, the plaintiff here asserted violations of his Fourteenth *and Fourth* Amendment rights. Pet'r App. 140-41a; *see also* Pet'r App. 33-34a. The Fourth Amendment is also on point because, as this Court has 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." *Graham*, 490 U.S. at 395; *see also Kingsley v. Hendrickson*, 576 U.S. 389, 408 (Alito, J., dissenting) ("If a pretrial detainee can bring [a Fourth Amendment] claim, we need not and should not rely on substantive due process.").

"Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances." *Robinette*, 519 U.S. at 39. As the Court has explained, "[i]n applying this test we have consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry." *Id.* Moreover, the Fourth Amendment's reasonableness test more properly accounts for technology developments by permitting courts to adjust for new technology and restore a prior equilibrium. Orin Kerr, *An Equilibrium-Adjustment Theory of the Fourth Amendment*, 125 Harv. L. Rev. 476, 480 (2011).

Here, however, instead of analyzing the plaintiff's claim under the Fourth Amendment (and the reasonableness standard that follows from it), the Eleventh Circuit summarily stated, "[W]e are sure that Sosa's commensurate three-day detention did not violate the *Fourteenth* amendment. We need not go any further." Pet'r App. 7a (emphasis added). The Eleventh Circuit did, however, need to go further and consider the claim under the Fourth Amendment. Moreover, as *Baker* and following decisions make clear, Sosa's detention following his arrest *did* violate the Fourteenth

Amendment. Either way, the Constitution does require a court "to go further." This Court should grant the Petition and say so.

CONCLUSION

Amicus believes that this Court's role in protecting individual liberties is paramount. The Eleventh Circuit's holding—which deepens a split of authority and fails to adequately safeguard recognized and cherished constitutional liberties—is based on a misreading of this Court's own decision and only this Court can rectify that error. For the benefit of those individuals, like Mr. Sosa, who are wrongfully and unreasonably deprived of their liberty, the Petition should be granted and the bright-line rule the Eleventh Circuit fashioned should be rejected.

Respectfully submitted,

John W. Whitehead
William Winters
THE RUTHERFORD INSTITUTE
109 Deerwood Road
Charlottesville, VA 22911
(434) 978-3888
legal@rutherford.org

James C. Martin
Counsel of Record
REED SMITH LLP
225 Fifth Ave., Suite 1200
Pittsburgh, PA 15222
(412) 288-3546
jcmartin@reedsmith.com

Taylor A. Marcusson
REED SMITH LLP
10 S. Wacker Dr., 40th Fl.
Chicago, IL 60606
(312) 207-2885

Counsel for Amicus Curiae

June 23, 2023