No. 24-19

IN THE
Supreme Court of the United States

JAMES LEBLANC,
Petitioner,
v.

BRIAN MCNEAL,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

It is undisputed that respondent Brian McNeal's 90-day sentence for violating probation ended on November 1, 2017. Prison officials, however, failed to convey his release date to the facility holding him, and as a result, he was unlawfully imprisoned an additional 41 days. After his release, McNeal brought a damages suit against the prison officials under 42 U.S.C. § 1983. The questions presented are:

1. Whether *Preiser v. Rodriguez*, 411 U.S. 475 (1973), forecloses McNeal's damages claim even though that decision expressly excludes damages claims from its holding.

2. Whether *Heck v. Humphrey*, 512 U.S. 477 (1994), forecloses McNeal's suit even though his claim assumes the validity of his 90-day sentence and challenges only his continued detention *after* the date on which prison officials acknowledge that he was lawfully entitled to release.

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INTRODUCTION

Respondent Brian McNeal pleaded guilty to drug possession in a Louisiana state court and received a five-year suspended sentence and five years of probation. After he was arrested two years later, he was sentenced to serve 90 days at a prison-based in-patient substance abuse program, with a release date of November 1, 2017. Prison officials did not take McNeal to that program. Instead, they left him at a correctional center that had no information about when his sentence expired, and they failed to forward paperwork conveying his release date to that facility. Although McNeal told his jailers that his sentence ended on November 1, that date came and went without his release. Over the next six weeks, McNeal and his girlfriend sought help from the parole office, the warden, McNeal's probation officer, and McNeal's lawyer—until finally, on December 11, a probation supervisor emailed McNeal's release letter to the correctional center, explaining that they "thought McNeal was at a different facility" and that the center had authority "to release the offender on 11/01/2017, as having completed said sentence that was imposed at the time of revocation." Pet. App. 3 (internal quotation marks omitted). McNeal was released the next day, 41 days after his sentence ended.

McNeal filed suit under 42 U.S.C. § 1983 and state law against petitioner James LeBlanc, the Secretary of Louisiana's Department of Public Safety & Corrections ("DPSC"), as well as other DPSC officials, seeking damages for the 41 days he was imprisoned without any lawful authority after his release date.

LeBlanc's petition does not dispute the lower courts' determinations that McNeal adequately alleged that his unlawful imprisonment is directly attributable to LeBlanc's deliberate indifference toward DPSC's pattern and practice of unlawfully detaining prisoners beyond their release dates. LeBlanc instead asks this Court to hold that, even if he is personally responsible for McNeal's unlawful imprisonment and even if that unlawful imprisonment violated McNeal's clearly established constitutional rights, McNeal's suit is barred by *Preiser v. Rodriguez*, 411 U.S. 475 (1973), and *Heck v. Humphrey*, 512 U.S. 477 (1994).

These cases provide no support for LeBlanc's position, but rather confirm the Fifth Circuit's decision to allow McNeal's claim to proceed. The plaintiffs in *Preiser* were state prisoners who sought injunctive relief compelling the restoration of good-conduct-time credits they lost pursuant to disciplinary proceedings—relief that, if granted, would result in each prisoner's immediate release. The question before the Court was "whether state prisoners seeking such redress may obtain *equitable* relief under [§ 1983], even though the federal habeas corpus statute, 28 U.S.C. § 2254, clearly provides a specific federal remedy." 411 U.S. at 477 (emphasis added). The Court answered no: Where an action "goes directly to the constitutionality of [a prisoner's] physical confinement itself and seeks either immediate release from that confinement or the shortening of its duration," the "more specific" provisions of § 2254 govern the claim. *Id*. at 489. In so holding, the Court explicitly distinguished § 1983 claims by plaintiffs like McNeal, who do not seek release from imprisonment but rather seek damages for

a prior unlawful imprisonment. Because "habeas corpus is not an appropriate or available federal remedy," *id.* at 494, for such claims, recovery under § 1983 poses no conflict with § 2254.

Heck subsequently identified a subset of § 1983 damages claims that may not proceed for a different reason. The plaintiff, who had been convicted of voluntary manslaughter, filed a § 1983 damages suit against the prosecutors and investigator responsible for his criminal case, alleging an unlawful investigation leading to his arrest, the knowing destruction of exculpatory evidence, and the use of an illegal procedure at his criminal trial. 512 U.S. at 478-79. Although the plaintiff's claim was "clearly not covered by the holding of *Preiser*," *id.* at 481, the Court nevertheless held that the claim was not cognizable because § 1983 "creates a species of tort liability" that incorporates the elements of the most analogous common law tort at the time of § 1983's enactment in 1871, *id.* at 483. And the closest analogue to the plaintiff's claim, the common law tort of malicious prosecution, required "termination of the prior criminal proceeding in favor of the accused." *Id.* at 484. Because the plaintiff could not make that showing, his § 1983 claim failed.

Heck is inapplicable for the reason identified by the Fifth Circuit: McNeal does not challenge his conviction or sentence, but rather his continued imprisonment *after* the undisputed expiration of his sentence. But *Heck* also reveals a more profound problem with LeBlanc's position. *Heck*'s favorable termination rule arises from the elements of a common law malicious prosecution claim, which permits damages for detention "by wrongful institution of legal process,"

Wallace v. Kato, 549 U.S. 384, 390 (2007) (emphasis omitted), because that was the most analogous tort to the plaintiff's prosecutorial misconduct allegations. McNeal's claim, by contrast, is akin to the common law tort of false imprisonment, which permits damages for "detention without legal process." *Id.* at 389. The common law tort of false imprisonment did not include any favorable termination requirement; rather, where a defendant is "under a duty to release the other from confinement, ... his refusal to do so with the intention of confining the other is a sufficient act of confinement to make him subject to liability." Restatement (Second) of Torts § 45 (1965). Perhaps most fatal to LeBlanc's position, the common law permitted an unlawfully detained person to seek release via habeas corpus *and also* damages for the tort of false imprisonment; the two causes of action co-existed in harmony.

LeBlanc does not identify any circuit decision in conflict with the Fifth Circuit's rejection of his *Preiser*/*Heck* argument. In almost every case LeBlanc cites, the plaintiff challenged a sentencing determination made by an administrative body (e.g., a parole board) or prison officials, typically involving the bestowal or revocation of good-time credits. These decisions address whether *Heck*'s favorable termination requirement applies to § 1983 suits challenging nonjudicial sentencing determinations even after the plaintiff is released from custody. This caselaw is irrelevant here for the obvious reason that McNeal does not challenge any administrative determination regarding the length of his sentence; to the contrary, his claim assumes the *validity* of his sentence and challenges only the 41 days he was imprisoned *beyond* the

date on which prison officials acknowledge that he was lawfully entitled to release. The Eleventh Circuit is the only other court of appeals to have addressed a similar claim, and it agrees with the Fifth Circuit that such suits may proceed.

LeBlanc's policy arguments amount to little more than a plea for judicial activism, and they are also wrong. According to LeBlanc, this Court's intervention is necessary to ensure that state prisoners in the Fifth Circuit do not attempt to remain in custody past the expiration of their sentences so they can "cash in" under § 1983 after they are released. Pet. 29. Unsurprisingly, LeBlanc fails to identify a single real-world example of a plaintiff forgoing his freedom—his time with family and loved ones, his opportunity to work, his enjoyment of hobbies and leisure activities—to preserve the tenuous possibility of a monetary recovery after years of litigation. And in the event that some future litigant tries LeBlanc's imagined stunt, a jury could reduce or even eliminate any damages award based on the prisoner's failure to mitigate harm. If any regime "makes a mockery of basic litigation rules," *id.* at 26, it is LeBlanc's proposal to solve his hypothetical mitigation problem by judicially eliminating the cause of action altogether.

Making matters worse, LeBlanc's proposal would eviscerate the incentives that § 1983 imposes on prison officials to ensure that prisoners are not unlawfully detained beyond their sentences. In LeBlanc's preferred world, prison officials would not need to make any effort at all to release prisoners after their sentences expired. Instead, they could simply wait to see who files a habeas petition and

then eventually release that prisoner without facing any liability or consequence.

As dystopian as that sounds, it is a well-documented reality in Louisiana. The "plague" that the panel referenced in *Hicks v. LeBlanc*, 81 F.4th 497 (5th Cir. 2023), is the "endemic" problem of "inexplicable and illegal overdetention in Louisiana prisons … where the process for calculating release dates is so flawed (to put it kindly) that roughly one in four inmates released will have been locked up past their release dates—for a collective total of 3,000-plus years." *Id.* at 510. LeBlanc's desire to avoid liability for this astonishing constitutional breach is unsurprising, but it does not make his novel theory of impunity worthy of this Court's review.

STATEMENT OF THE CASE

I. Factual Background

In 2015, respondent Brian McNeal pleaded guilty in the Orleans Parish Criminal District Court to possessing cocaine and drug paraphernalia. Pet. App. 2. He received a five-year suspended sentence and five years of probation. *Id.* Two years later, he was arrested for violating probation. *Id.* On August 3, 2017, McNeal was sentenced to serve 90 days at the Steve Hoyle Program ("Hoyle"), a prison-based in-patient substance abuse program. *Id.*

A few days later, the Louisiana Department of Public Safety and Corrections ("DPSC") sent a letter to Hoyle notifying the facility that McNeal's release date was November 1, 2017. *Id.* But instead of sending McNeal directly to Hoyle, DPSC directed the Orleans Sheriff to transfer McNeal to the Elayn Hunt

Correctional Center ("Hunt") for classification. *Id.* DPSC authorities then decided to keep McNeal at Hunt on the ground that he was unfit for Hoyle due to a mental impairment. *Id.* at 2-3. No one at DPSC made any effort to transfer McNeal's release letter to Hunt. *Id.* at 3; *see also* R. Doc. 140-7 at 28:19-30:3.

In October, McNeal informed a Hunt deputy that his sentence would end on November 1. Second Am. Compl. ("Compl.") ¶ 35. But when November 1 arrived, McNeal was not released. Pet. App. 3. McNeal's girlfriend began making phone calls to find out why McNeal was still in custody. *Id.* She called the automated inmate information phone line, which said only that McNeal was under the supervision of the New Orleans parole office. Compl. ¶ 37. She called the parole office and told them that McNeal was being detained past his release date. *Id.* The parole office told her to call the automated phone line. *Id.* She again called the automated phone line, which provided no new information, so she called the parole office back. *Id.* The parole office told her that they couldn't help her. *Id.*

On November 15, McNeal wrote a letter to the Hunt warden, explaining that he should have been taken to court and released. Pet. App. 3. McNeal asked the warden for his help to "find out what's going on" and "fix this matter." *Id.* at 56 (internal quotation marks omitted). McNeal informed the warden that he could not call anyone for help because his phone pin had stopped working. *Id.* The warden's office responded, "If your presence was required in court, the proper documents would have been sent for you to be transported," and directed McNeal to contact "the phone department" about the pin problem. *Id.* at 3, 56

(internal quotation marks omitted). McNeal tried speaking with another Hunt official about the fact that his release date had passed, to no avail. Compl. ¶ 40.

On December 6, McNeal's girlfriend went to the courthouse and told McNeal's probation officer (a DPSC employee) that McNeal should have been released over a month earlier. Pet. App. 56-67; Compl. ¶ 41. She also spoke with McNeal's lawyer at the Orleans Public Defender's Office. *Id.*

McNeal's probation officer looked up McNeal in the computer system and confirmed that his release date was November 1. *Id.* ¶ 42. He informed his supervisor, and on December 8, the probation office notified DPSC headquarters that McNeal should no longer be detained. *Id.* ¶¶ 42, 44. McNeal's lawyer also spoke with various DPSC employees, as well as the judge who sentenced McNeal, about McNeal's unlawful detention. *Id.* ¶ 45.

Finally, on December 11, DPSC emailed McNeal's release letter to Hunt, explaining that they "thought McNeal was at a different facility" and that Hunt had authority "to release the offender on 11/01/2017, as having completed said sentence that was imposed at the time of revocation." Pet. App. 3 (internal quotation marks omitted).

Hunt released McNeal the next day, 41 days after his proper release date. *Id.*

II. District Court Proceedings

In 2018, McNeal filed suit in state court against petitioner James LeBlanc, who has served as the Sec-

retary of DPSC since 2008, and other Louisiana officials, asserting claims under 42 U.S.C § 1983 and state law for wrongfully detaining McNeal for 41 days after his sentence expired. *Id.* at 1, 3, 4. The defendants removed the case to the U.S. District Court for the Middle District of Louisiana. *Id.* at 3.

As relevant here, McNeal alleges that his unlawful detention resulted from LeBlanc's deliberate indifference to DPSC's widespread and well-known pattern, policy, and practice of unlawfully detaining people past their release date. Compl. ¶¶ 52-183. Under LeBlanc's leadership, DPSC performed an internal review in 2012 called the "Lean Six Sigma" that "found a widespread pattern of people being held past their legal release date," with 83 percent of DPSC prisoners being unlawfully detained for an average of 71.69 days past their release dates. Pet. App. 4 (internal quotation marks omitted).

In response to these findings, LeBlanc set a goal not to eliminate the problem, but rather to reduce the number of unlawfully detained persons to 450 annually, for an average of 31 days per person. Compl. ¶ 63. The changes he implemented, however, only reduced the number of unlawfully detained persons from "2,252 per year to 1,612" and "the average number of overdue days" from 71.7 to 60.52 days. Pet. App. 4 (internal quotation marks omitted).

LeBlanc conceded that "the functional processes around the transmission of documents at the DPSC remain as antiquated as they were in 1996." *Id.* at 5 (internal quotation marks omitted). In 2017, the year that McNeal was unlawfully detained, DPSC "had an

average of 200 cases per month considered an immediate release due to processing deficiencies, and the prisoners in these cases were held an average of 49 days past the end of their sentences." *Id.* (internal quotation marks and brackets omitted). These processing deficiencies and the resulting unlawful detentions were directly attributable to LeBlanc's refusal to improve DPSC's systems and to adequately train and supervise DPSC employees. Compl. ¶¶ 52-183, 201-32 (laying out factual allegations establishing LeBlanc's deliberate indifference to DPSC's overdetention problem).

The district court denied in relevant part LeBlanc's motion to dismiss McNeal's complaint, holding that McNeal had stated a viable individual capacity claim against LeBlanc based on his implementation of the defective policies and training that resulted in McNeal's unlawful detention. Pet. App. 43-51. The district court also rejected LeBlanc's argument that McNeal's claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). *See* Pet. App. 73-81. Noting agreement with other Louisiana district courts adjudicating factually similar cases, the court explained that *Heck* bars only a collateral attack on a defendant's conviction or sentence. *Id.* at 76-77, 81. Here, DPSC agreed that McNeal's sentence expired on November 1, 2017, and that "McNeal was imprisoned … for 41 days following his correct release date." *Id.* at 73. Far from attacking his sentence, then, McNeal's claim assumed its validity. *Id.* at 76 n.3.

III. Court of Appeals Proceedings

The Fifth Circuit affirmed. The court reiterated its holding in *Hicks v. LeBlanc*, 81 F.4th 497 (5th Cir.

2023), that *Heck* has no application where, as here, the plaintiff "does not challenge the validity of his sentence, but merely the *execution* of his release." Pet. App. 7 (internal quotation marks and brackets omitted); *see also Crittindon v. LeBlanc*, 37 F.4th 177, 190 (5th Cir. 2022) ("The *Heck* defense 'is not … implicated by a prisoner's challenge that threatens no consequence for his conviction or the duration of his sentence.'" (quoting *Muhammad v. Close*, 540 U.S. 749, 751 (2004)), *cert. denied*, 144 S. Ct. 90 (2023)). The court of appeals also rejected LeBlanc's qualified immunity argument, explaining that it had already held in prior decisions that similar factual allegations sufficed to demonstrate that LeBlanc was deliberately indifferent to DPSC's pattern and practice of unlawfully detaining prisoners beyond their release dates in violation of their clearly established Fourteenth Amendment rights. Pet. App. 7-13.

Judge Duncan wrote a concurring opinion acknowledging that prior Fifth Circuit precedent compelled the panel's holding, but expressing his view that LeBlanc was entitled to qualified immunity. *Id.* at 17-25. Judge Jones wrote a concurring opinion noting that she agreed with Judge Duncan on qualified immunity and that in the absence of controlling circuit precedent, she would also hold that *Heck* bars McNeal's claim. *Id.* at 13-17.

In a 9-8 vote, the Fifth Circuit denied LeBlanc's petition for rehearing en banc. *Id.* at 92. Joined by six judges, Judge Duncan wrote separately to state his view that LeBlanc should not be liable for "the rising tide of suits by overdetained prisoners against Louisiana officials." *Id.* Also joined by six judges, Judge Oldham wrote separately to state his view that *Preiser v.*

Rodriguez, 411 U.S. 475 (1973), bars McNeal's claim. *Id.* at 93-102.

LeBlanc filed a petition for a writ of certiorari presenting the following question: "Whether, consistent with *Preiser* and its progeny, a state prisoner who alleges that he was unlawfully confined beyond his proper release date may sue for damages under 42 U.S.C. § 1983." Pet. i. LeBlanc declined to seek the Court's review of the Fifth Circuit's holding that LeBlanc may be held personally liable for McNeal's unlawful detention, as "that issue is better suited for summary judgment." *Id.* at 14 n.2.

REASONS FOR DENYING THE PETITION

I. This Court's Precedent Forecloses LeBlanc's Arguments.

1. Congress enacted 42 U.S.C. § 1983 as part of an "alteration in our federal system wrought in the Reconstruction era," which established "the role of the Federal Government as a guarantor of basic federal rights against state power." *Mitchum v. Foster*, 407 U.S. 225, 238-39 (1972). The provision states in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State … subjects, or causes to be subjected, any citizen of the United States … 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…."

This Court has long recognized that this statutory text is the "starting point" of any analysis of § 1983's scope, *Owen v. City of Indep.*, 445 U.S. 622, 635

(1980), and that it "compel[s]" a "broad construction," *Dennis v. Higgins*, 498 U.S. 439, 443 (1991). "[I]f Congress had intended to limit the 'broad and unqualified' language of § 1983, 'it is not unreasonable to assume that it would have made this explicit.'" *Id.* at 445 n.4 (quoting *St. Paul Fire & Marine Ins. Co. v. Barry*, 438 U.S. 531, 550 (1978)). Accordingly, apart from "exceptional cases," § 1983 is "a generally and presumptively available remedy for claimed violations of federal law." *Livadas v. Bradshaw*, 512 U.S. 107, 133 (1994).

Section 1983's text plainly encompasses McNeal's claim: LeBlanc is a person who, under color of state law, deprived McNeal, a United States citizen, of his Fourteenth Amendment due process rights by unlawfully imprisoning him after his sentence expired. LeBlanc does not and cannot identify any indication in the text or history of § 1983 that Congress intended to exclude McNeal's claim from its purview.

LeBlanc instead argues that this Court foreclosed McNeal's claim in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), and *Heck v. Humphrey*, 512 U.S. 477 (1994). These cases provide no support for LeBlanc's position, but rather confirm the Fifth Circuit's decision to allow McNeal's claim to proceed.

2. In *Preiser*, state prisoners sought injunctive relief compelling the restoration of good-conduct-time credits they lost pursuant to disciplinary proceedings—relief that, if granted, would result in each prisoner's immediate release. 411 U.S. at 476-77. The question before the Court was "whether state prisoners seeking such redress may obtain equitable relief under [§ 1983], even though the federal habeas corpus statute, 28 U.S.C. § 2254, clearly provides a specific

federal remedy." *Id.* at 477. The Court answered no: Where an action "goes directly to the constitutionality of [a prisoner's] physical confinement itself and seeks either immediate release from that confinement or the shortening of its duration," the "more specific" provisions of § 2254 govern the claim. *Id*. at 489. Because § 2254 "clearly require[s] exhaustion of adequate state remedies as a condition precedent" to seeking release, "[i]t would wholly frustrate explicit congressional intent" to allow prisoners to "evade this requirement by the simple expedient of putting a different label on their pleadings." *Id.* at 489-90.

Significantly, the Court expressly limited *Preiser*'s rationale to equitable claims by current prisoners seeking release. "[T]he essence of habeas corpus," the Court explained, "is an attack *by a person in custody* upon the legality of that custody," and "the traditional function of the writ is to *secure release* from illegal custody." *Id.* at 484 (emphasis added). For former prisoners like McNeal, who do not seek release from imprisonment but rather seek damages for a prior unlawful imprisonment, "habeas corpus is not an appropriate or available federal remedy." *Id.* at 494. Accordingly, where "a state prisoner is seeking damages" under § 1983, it generally does not implicate habeas, and the claim may proceed "without any requirement of prior exhaustion of state remedies." *Id.*; *see also Wolff v. McDonnell*, 418 U.S. 539, 554 (1974) (affirming dismissal of claims for the restoration of good-time credits as "foreclosed under *Preiser*" but permitting the related damages claim to proceed).

Heck subsequently excluded a subset of § 1983 damages claims from those that may otherwise proceed under *Preiser*'s rationale. The plaintiff in *Heck*,

who had been convicted of voluntary manslaughter, filed a § 1983 damages suit against the prosecutors and investigator responsible for his criminal case, alleging an unlawful investigation leading to his arrest, the knowing destruction of exculpatory evidence, and the use of an illegal procedure at his criminal trial. 512 U.S. at 478-79. The question before the Court was whether the suit could proceed if the plaintiff "challenge[d] the constitutionality of his conviction." *Id.* at 479.

The Court emphasized at the outset that the plaintiff's claim was "clearly not covered by the holding of *Preiser*" because the plaintiff sought "not immediate or speedier release, but monetary damages." *Id.* at 481. But, the Court held, the claim was not cognizable for a different reason: Section 1983 "creates a species of tort liability" that incorporates the elements of the most analogous common law tort at the time of § 1983's enactment in 1871. *Id.* at 483; *see also Thompson v. Clark*, 596 U.S. 36, 43 (2022). And the closest analogue to the plaintiff's claim, the common law tort of malicious prosecution, required "termination of the prior criminal proceeding in favor of the accused." *Heck*, 512 U.S. at 484. Because the plaintiff could not make that showing—to the contrary, his conviction had been upheld on direct appeal and both of his federal habeas petitions had been denied, *id.* at 479—his § 1983 claim failed.

Heck is inapplicable for the reason identified by the Fifth Circuit: McNeal does not challenge his conviction or sentence, but rather his continued imprisonment *after* the undisputed expiration of his sentence. Pet. App. 7. In other words, McNeal "seeks to vindicate—not undermine—his sentence." *Hicks v.*

LeBlanc, 81 F.4th 497, 506 (5th Cir. 2023). Where, as here, "the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff," *Heck* holds that "the action should be allowed to proceed, in the absence of some other bar to the suit." 512 U.S. at 487 (footnote omitted); *see also, e.g.*, *Muhammad v. Close*, 540 U.S. 749, 751 (2004) ("*Heck*'s requirement to resort to state litigation and federal habeas before § 1983 is not, however, implicated by a prisoner's challenge that threatens no consequence for his conviction or the duration of his sentence.").

In arguing otherwise, LeBlanc selectively quotes from this Court's opinions to give the impression that *Preiser* and *Heck* hold that any challenge involving "physical confinement" cannot proceed under § 1983. *See* Pet. 1, 4, 9. That is not what the Court said. A plaintiff's challenge to the duration of his "physical confinement" implicates those decisions only if he seeks immediate or speedier release, *see Preiser*, 411 U.S. at 482, or if his claim would necessarily demonstrate the invalidity of his conviction or sentence, *see Heck*, 512 U.S. at 487. Neither is true here. McNeal is not currently incarcerated, and he does not seek release. Instead, he seeks damages for the unconstitutional manner in which his "prescribed incarceration [was] carried out"—namely, that the State failed to release him at the required time. *Nance v. Ward*, 597 U.S. 159, 171-72 (2022); *see also Preiser*, 411 U.S. at 494 ("If a state prisoner is seeking damages, he is attacking something *other* than the fact or length of his confinement…." (emphasis added)).

Nor does McNeal challenge the duration of his sentence. As this Court explained in *Wilkinson v. Dotson*,

544 U.S. 74 (2005), *Heck* uses the words "sentence," "confinement," and "imprisonment," to refer to "*substantive determinations* as to the length of confinement." *Id.* at 83 (emphasis added). While McNeal's claim is related to the length of his confinement because he was unconstitutionally held beyond the end of his sentence, he does not challenge any judicial or administrative determination about how long he should have been held, only his continued imprisonment past his undisputed release date. *Heck* has never been understood to bar that sort of challenge.[1]

LeBlanc is similarly selective in his quotations when he argues that the decision below "abridges the 'federal-state comity' that *Preiser* sought to protect." Pet. 28 (quoting 411 U.S. at 491). Although *Preiser* describes § 2254's exhaustion requirement as reflecting Congress's determination that states should have "the first opportunity to correct the errors made in the internal administration of their prisons," 411 U.S. at 492, this observation was not a freestanding proclamation about the unavailability of damages actions to

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[1] LeBlanc also asserts that the Fifth Circuit's rule would allow a prisoner to "circumvent" this Court's decision in *Edwards v. Balisok*, 520 U.S. 641 (1997), by waiting until after release to bring a § 1983 suit challenging an administrative proceeding that affected the length of his confinement rather than proceeding via habeas. Pet. 28. But *Edwards* said nothing about a situation like McNeal's, where no judicial or administrative determination is challenged. And the Fifth Circuit has separately held that an individual may *not* bring a § 1983 suit challenging a sentencing determination by an administrative body once he leaves custody. *Randell v. Johnson*, 227 F.3d 300 (5th Cir. 2000) (per curiam). McNeal is not "circumvent[ing]" the *Heck* bar—it simply does not apply to his circumstances.

correct unconstitutional conduct by prison administrators, as LeBlanc suggests, *see* Pet. 1, 4, 9-10, 28. It was directed, rather, at the plaintiffs' efforts to obtain release through federal judicial review of the state disciplinary proceedings that resulted in the revocation of their good-conduct-time credits. 411 U.S. at 476-78. For this sort of claim, which challenges the State's judicial or administrative proceedings, the Court explained that "Congress has made the specific determination in § 2254(b) that requiring the exhaustion of adequate state remedies … will best serve the policies of federalism." *Id.* at 493 n.10.

In the same breath, however, the Court made clear that this comity rationale does *not* apply to "cases, brought pursuant to § 1983, [where] no other, more specific federal statute … reflect[s] a different congressional intent." *Id.* In particular, "[i]n the case of a damages claim, habeas corpus is *not* an appropriate or available federal remedy," and accordingly, "a damages action by a state prisoner could be brought under [§ 1983] in federal court *without* any requirement of prior exhaustion of state remedies." *Id.* at 494 (emphasis added). In other words, *Preiser* disavows the comity argument that LeBlanc asserts here—an argument that would obviate § 1983's application to all prison condition claims, in contravention of the statutory text, congressional intent, and ample precedent from this Court allowing such claims to proceed.

3. *Heck* reveals an additional and more profound problem with LeBlanc's position. *Heck*'s favorable termination rule arises from the elements of a common law malicious prosecution claim, because that was the most analogous tort to the plaintiff's prosecutorial misconduct allegations. *Heck*, 512 U.S. at 484; *see also*

Thompson, 596 U.S. at 43 ("To determine the elements of a constitutional claim under § 1983, this Court's practice is to first look to the elements of the most analogous tort…."). McNeal's claim, by contrast, is akin to the common law tort of false imprisonment. That tort permits damages for "detention without legal process" and is distinct from the tort of malicious prosecution, which permits damages for detention "by wrongful institution of legal process." *Wallace v. Kato*, 549 U.S. 384, 389-90 (2007). McNeal seeks damages for the 41 days that prison officials kept him incarcerated without legal authority, or even purported legal authority, of any kind—a quintessential false imprisonment.

The common law tort of false imprisonment did not include a favorable termination requirement, but rather provided a monetary remedy upon showing (1) a confinement or restraint of movement that (2) was unlawful. 3 William Blackstone, *Commentaries on the Laws of England* 127 (1st ed. 1765); 1 Francis Hilliard, *The Law of Torts or Private Wrongs* 219-20 (1861). Of particular relevance here, the common law recognized that an initially lawful detention could become unlawful upon exceeding its lawful scope, as "[e]very unlawful detainer of a prisoner after he has gained a right to be discharged is a fresh imprisonment." C.G. Addison et al., *Treatise on the Law of Torts or Wrongs and Their Remedies* 147 (7th ed. 1893).

The Second Restatement of Torts likewise explains that if a defendant is "under a duty to release the other from confinement, ... his refusal to do so with the intention of confining the other is a sufficient act of confinement to make him subject to liability."

Restatement (Second) of Torts § 45 (1965); *see also id.* § 45, illus. 1 ("A is confined in jail under a sentence for a term. At the end of the term B, the jailor, is under a legal duty to release A, but refuses to do so. B is subject to liability to A."); *Weigel v. McCloskey*, 166 S.W. 944, 946 (Ark. 1914) ("[W]hen the time for which a convict has been sentenced has expired ... he is in law no longer a convict, and cannot be held as such."); *Birdsall v. Lewis*, 246 A.D. 132, 135 (N.Y. App. Div. 1936) ("Defendant could not confine [Plaintiff] for a longer period than six months without making himself liable for false imprisonment. A jailer may not detain one received upon a commitment for six months for six months and one day."), *aff'd*, 3 N.E.2d 200 (N.Y. 1936).

Perhaps most fatal to LeBlanc's position, the common law permitted an unlawfully detained person to seek release via habeas corpus *and also* damages for the tort of false imprisonment; the two causes of action co-existed in harmony. As Blackstone explained, the remedies for unlawful detention are "of two sorts; the one removing the injury," for example, a habeas proceeding, and "the other making satisfaction for it," through a false imprisonment claim. 3 Blackstone, *supra*, at 128. That is, at common law, "[i]n addition to the benefit of the writ of habeas corpus, which operates merely to *remove* all unlawful imprisonment, the party aggrieved is entitled to his private action of trespass to recover damages for the false imprisonment." 1 James Kent, *Commentaries on American Law* 625 (11th ed. 1867).

Moreover, success in a habeas corpus action was not a prerequisite to pursuing damages for false imprisonment. To the contrary, although the release of

a person on habeas conclusively established the unlawfulness of the detention, *e.g., Castor v. Bates*, 86 N.W. 810, 811 (Mich. 1901), even the refusal of a court to grant habeas corpus did not prelude a later recovery of damages for that detention, *e.g., Bradley v. Beetle*, 26 N.E. 429, 430 (Mass. 1891) ("[R]emanding the prisoner, is not, as matter of law, a bar to subsequent proceedings of the same kind, founded on the same facts…."). LeBlanc's effort to eliminate any damages remedy for unconstitutional false imprisonment is thus irreconcilable with the common law backdrop that governs the scope of § 1983 and habeas corpus under this Court's precedent.

II. The Decision Below Does Not Implicate Any Circuit Split.

LeBlanc does not identify any decision in conflict with the Fifth Circuit's rejection of his *Preiser*/*Heck* argument.

In almost every circuit case LeBlanc cites, *see* Pet. 16-25, the plaintiff challenged a sentencing determination made by an administrative body (e.g., a parole board) or prison officials, typically involving eligibility for or revocation of parole or good-time credits. These decisions address whether *Heck*'s favorable termination requirement applies to § 1983 damages suits challenging these sorts of non-judicial sentencing determinations when the plaintiff is no longer in custody.

This caselaw is irrelevant here for the obvious reason that McNeal does not challenge any administrative determination regarding the length of his sentence; to the contrary, his claim assumes the *validity*

of his sentence, and challenges only the 41 days he was imprisoned *beyond* the date on which prison officials acknowledge he was lawfully entitled to release. The Eleventh Circuit is the only other court of appeals to address a similar claim, and it agrees with the Fifth Circuit that such claims may proceed.

Third and Eighth Circuits. According to LeBlanc, the Third and Eighth Circuits reject "claims like McNeal's … across the board." Pet. 22. LeBlanc rests this assertion solely on cases that are decidedly not "like McNeal's" because they involved challenges to substantive sentencing determinations, not to continued imprisonment after the plaintiff's undisputed release date. *See Williams v. Consovoy*, 453 F.3d 173, 177 (3d Cir. 2006) (challenging parole board's revocation and denial of parole); *Deemer v. Beard*, 557 F. App'x 162, 164 (3d Cir. 2014) (challenging parole board's rejection of request for credit against sentence); *Glenn v. Pa. Bd. of Prob. & Parole*, 410 F. App'x 424, 425 (3d Cir. 2011) (challenging parole board's extension of sentence); *Dare v. United States*, 264 F. App'x 183, 184 (3d Cir. 2008) (challenging parole commission's denial of parole); *Newmy v. Johnson*, 758 F.3d 1008, 1009 (8th Cir. 2014) (challenging parole revocation); *Marlowe v. Fabian*, 676 F.3d 743, 745-46 (8th Cir. 2012) (challenging supervised release revocation); *Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007) (challenging loss of sentence-reduction credits).

None of these decisions support LeBlanc's reliance on *Heck* to foreclose damages claims that assume the validity of the plaintiff's release date and challenge only the period of incarceration *beyond* that date.

Ninth, Tenth, and Eleventh Circuits. LeBlanc describes the Ninth, Tenth, and Eleventh Circuits as having adopted "a middle ground" where "the viability of claims like McNeal's" turns on whether habeas relief was available while the plaintiff was imprisoned and, if so, whether the plaintiff diligently sought that relief. Pet. 18.

LeBlanc's Ninth and Tenth Circuit cases are, like his Third and Eighth Circuit cases, off-topic challenges to substantive sentencing determinations. *See Galanti v. Nev. Dep't of Corrs.*, 65 F.4th 1152, 1153 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 527 (2023) (challenging failure to deduct education credits plaintiff earned from his sentence); *Kilman v. Williams*, 831 F. App'x 396, 397 (10th Cir. 2020) (challenging good-time and earned-time credit policies). Again, these cases provide no support for LeBlanc's petition because McNeal does not challenge any sentencing determination, but rather premises his claim on the validity of his undisputed release date.

It is worth pausing, however, on a second problem with LeBlanc's discussion of *Galanti*. As LeBlanc acknowledges, Pet. 18-19, the Ninth Circuit allowed Galanti's damages claim to proceed because, even though the challenged credit determination theoretically implicated *Heck*'s favorable termination rule, the plaintiff was no longer in custody and had no meaningful window for obtaining a favorable habeas determination, as he was released only 82 days after the date he claimed his sentence should have expired. *See Galanti*, 65 F.4th at 1155-56 (explaining that any habeas petition would have "been dismissed as moot" since Galanti's sentence likely would have "expired

during the pendency of his case"). That holding is irrelevant here because McNeal's challenge is not to a substantive sentencing determination and therefore does not implicate the *Heck* bar at all. That said, the Ninth Circuit's rationale for allowing Galanti's claim to proceed would certainly apply to McNeal's claim as well, given that McNeal is no longer in custody and had only a 41-day window for seeking a favorable habeas determination.

LeBlanc asserts otherwise, claiming that "it is undisputed that McNeal could have sought (and obtained) administrative and habeas relief—i.e., immediate release—but he did not do so." Pet. 19. To be clear, McNeal adamantly disputes that he or any other prisoner in his circumstance could file a habeas petition in state court and obtain a favorable judgment in fewer than 41 days; not even LeBlanc claims that the Louisiana court system adjudicates habeas petitions that quickly. LeBlanc's reference to "administrative and habeas relief" appears instead to be a carefully worded conflation of favorable habeas court orders with voluntary decisions by prison officials to release someone who claims that their ongoing detention is unlawful. *See id.*; *see also Crittindon v. LeBlanc*, 37 F.4th 177, 194 (5th Cir. 2022) (Oldham, J., dissenting) (citing prison officials' decisions to voluntarily release plaintiffs after they filed habeas petitions as evidence that "plaintiffs' claims were cognizable in habeas").

LeBlanc's proffered distinction between *Galanti* and this case is therefore baseless. Like Galanti, McNeal and his girlfriend actively sought his release through inquiries and complaints. Pet. App. 3; *see Galanti*, 65 F.4th at 1156 ("Galanti alleges that he

made complaints and took other efforts to rectify the situation while in custody."). And McNeal could no more obtain court-ordered habeas relief in 41 days than Galanti could in 82 days.

That said, *Galanti*'s *Heck* exception would be a separate and independent basis for allowing McNeal's claim to proceed if *Heck* applied—which, the Fifth Circuit correctly recognized, it does not. Accordingly, any circuit disagreement over the propriety or scope of that exception is not presented by LeBlanc's petition, as LeBlanc concedes. *See* Pet. 31-32.[2]

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[2] LeBlanc's assertion that McNeal "did not preserve an argument that his non-custodial status alone entitles him to sue under § 1983," Pet. 32, is inconsequential given LeBlanc's concession that his petition does not present an opportunity to resolve the circuit split on that issue. But it is also wrong. As LeBlanc acknowledges, binding Fifth Circuit precedent foreclosed that argument, *see id.* (citing *Randell*, 227 F.3d 300), and as such McNeal had no obligation to brief it before the court of appeals in order to preserve it. *See US Airways, Inc. v. McCutchen*, 569 U.S. 88, 101 n.7 (2013) (considering an argument "adequately preserved and presented" because it was raised in a brief in opposition, though the respondent had "shifted ground on appeal" and had not raised the argument explicitly after the district court ruled that "[c]ircuit precedent foreclosed" it). There was also no reason for McNeal to emphasize the non-custodial argument in his appellate brief: He prevailed before the district court even after that court held that *Randell* foreclosed the non-custodial argument, *see* Pet. App. 73-75 n.3; and binding circuit precedent provided that McNeal would prevail on appeal regardless of *Randell*, *see id.* at 7 ("Following our recent caselaw, we are bound to agree with McNeal."); *see also* Resp. Br. of the Pl.-Appellee 15 (explaining that the majority opinion in *Crittindon* resolves the case in McNeal's favor and is binding).

LeBlanc names one other "middle ground" circuit—the Eleventh. Pet. 21-22. The case that LeBlanc cites, *Morrow v. Fed. Bureau of Prisons*, 610 F.3d 1271 (11th Cir. 2010), is the only decision he identifies outside the Fifth Circuit that addresses a claim similar to McNeal's: The plaintiff, who had been released from custody, sought damages based on allegations that prison officials made a clerical error that kept him incarcerated for ten days past the expiration of his sentence. *Id.* at 1272. Like the Fifth Circuit, the Eleventh Circuit recognized that *Heck* does not apply to such claims because they "in no way impl[y] the invalidity" of the plaintiff's conviction or sentence. *Id.*

LeBlanc describes this holding as a "middle ground" because the Eleventh Circuit also noted that "the alleged length of unlawful imprisonment" was "obviously of a duration that a petition for habeas relief could not have been filed and granted while Plaintiff was unlawfully in custody." *Id.* The decision makes clear, however, that this observation is dicta, *see id.* at 1272 n*, and in any event, 41 days is also "obviously … a duration" in which a habeas petition could not have been filed and granted.

Seventh Circuit. In the final leg of his purported three-way circuit split, LeBlanc aligns the Seventh Circuit with the Fifth Circuit. LeBlanc premises this alignment on *Courtney v. Butler*, 66 F.4th 1043, 1050 (7th Cir. 2023), a case in which the plaintiff challenged inaction by defendants that prevented him from identifying a suitable place to live on supervised release and the resulting decision by the prisoner review board to revoke his supervised release. *Id.* at 1046. The Seventh Circuit held that challenges to the board's procedures were barred by *Heck*, as they

would imply that the board's substantive revocation decision was improper. *Id.* at 1050. But it allowed the plaintiff's challenge to defendants' inaction to proceed, reasoning that the inaction could have *led to* the revocation decision without calling that decision into question if the inaction was improper. *Id.* at 1051-52.

LeBlanc's comparison of *Courtney* to this case fails because the plaintiff in *Courtney* remained in custody not by error like McNeal, but pursuant to a revocation determination by a prisoner review board—a distinction that, as explained above, is significant. To be sure, having rejected *Heck*'s application to the defendants' inaction in that context, the Seventh Circuit would most likely agree with the Fifth Circuit's holding in this much easier case. But it is inaccurate to say that the Seventh Circuit has weighed in on the specific question presented here.

III. LeBlanc's Policy Arguments Are Misplaced, Wrong, And Matter Only To Louisiana.

The dispute between the parties is a straightforward matter of statutory interpretation: Did Congress provide a cause of action in § 1983 for false imprisonment damages claims like McNeal's? The answer is surely yes. McNeal's claim falls squarely within § 1983's text and purpose, *supra* pp. 12-13; not a word in the federal habeas statutes indicates that Congress intended those statutes to eliminate false imprisonment damages claims under § 1983, *supra* p. 14; and the common law backdrop confirms that such claims have harmoniously co-existed with habeas remedies for centuries, *supra* pp. 20-21.

LeBlanc's policy arguments thus amount to little more than a plea for judicial activism. By LeBlanc's account, this Court should eliminate the cause of action that Congress conferred to McNeal in § 1983 so that the "incentive[s]" of unlawfully detained prisoners align with LeBlanc's policy preferences. *See* Pet. 26-31. That is, of course, not this Court's job. But LeBlanc's policy arguments are also wrong on their own terms.

According to LeBlanc, without this Court's intervention, state prisoners in the Fifth Circuit will attempt to remain in custody past the expiration of their sentences in an effort to "cash in" after they are released. *Id.* at 29. As an initial matter: Who would actually do this? Certainly not McNeal—he and his girlfriend repeatedly and persistently notified prison officials that McNeal was being unlawfully detained past the expiration of his sentence, efforts that eventually prompted McNeal's release. *See supra* pp. 7-8.[3]

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[3] Other plaintiffs have been similarly diligent. *See, e.g.*, *Parker v. LeBlanc*, 73 F.4th 400, 402-03 (5th Cir. 2023) (plaintiff "consistently disputed" his erroneous classification, "submitted several inmate request forms" regarding his release date, "filed two other forms" with DPSC attempting to secure his timely release, and had his former public defender email DPSC); *Hicks*, 81 F.4th at 500-01 (plaintiff "questioned [his] new release date" after it was miscalculated, formally requested that DPSC recalculate his sentence, "moved to clarify the record" in state court, and filed multiple administrative grievances about his release date, all while family and friends regularly called DPSC); *Crittindon*, 37 F.4th at 183 n.9, 184 (plaintiffs' family members called multiple times after proper release dates asking why they had not been released); *Frederick v. LeBlanc*, No. 21-30660, 2023 WL *(cont'd)*

Indeed, conspicuously missing from LeBlanc's parade of horribles is a single real-world example of a plaintiff forgoing his freedom—his time with family and loved ones, his opportunity to work, his enjoyment of hobbies and leisure activities—to preserve the tenuous possibility of a monetary recovery after years of litigation.

In any event, should some future litigant try LeBlanc's imagined stunt, a jury would be entitled to consider the prisoner's failure to mitigate the harm in determining any damages award. "As Judge Jones noted, '[i]t is well established in civil cases that litigants have a duty to mitigate their damages after an injury occurs.'" Pet. 27 (quoting Pet. App. 16 (Jones, J., concurring)). Because § 1983 "creates a species of tort liability," "when § 1983 plaintiffs seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to principles derived from the common law of torts." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 306 (1986). And as a "general principle[]" of damages calculation, a plaintiff may "suffer a reduction of damages if he fails to minimize his damages." Dan B. Dobbs, *Law of Remedies* 186-87 (1973).[4]

1432014, at *1 (5th Cir. Feb. 1, 2023) (plaintiff filed an administrative grievance with prison officials 10 days after his release date was amended).

[4] *See also, e.g.*, *Meyers v. City of Cincinnati*, 14 F.3d 1115, 1119 (6th Cir. 1994) (providing that a § 1983 plaintiff "has a duty to mitigate damages" and the defendant bears the burden of proving failure to mitigate); *Fleming v. Cnty. of Kane*, 898 F.2d 553, *(cont'd)*

If any regime "makes a mockery of basic litigation rules and this Court's precedents," Pet. 26, it is LeBlanc's proposal to solve this hypothetical mitigation problem by judicially eliminating the cause of action altogether.[5] As explained, *see supra* p. 14, *Preiser* expressly recognizes that Congress provided both an equitable remedy for unlawful imprisonment under § 2254(b) *and* a monetary remedy under § 1983, consistent with the common

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561 (7th Cir. 1990) (applying mitigation doctrine to a § 1983 case involving wrongful termination in violation of the First Amendment); *Dowsey v. Wilkins*, 467 F.2d 1022, 1026 (5th Cir. 1972) (defendants in a false imprisonment suit may present evidence of surrounding circumstances to mitigate potential damages).

[5] In his dissent from the denial of rehearing en banc, Judge Oldham similarly hypothesized that under McNeal's reasoning, a prisoner (named "Patricia") whose good-time credits were revoked could bring a § 1983 suit claiming that she was being unlawfully detained past her sentence expiration because the revocation was *ultra vires*. Pet. App. 100-01. "The only material difference between Patricia and McNeal," he argued, "is that McNeal is no longer in custody." *Id.* at 101 n.3. But there is an additional and quite significant distinction between them: Because Patricia's challenge would be to the administrative determination revoking her good time credits rather than mistaken overdetention, her § 1983 claim would be barred by *Heck* absent a favorable termination. Indeed, Judge Oldham described almost the exact fact pattern of *Edwards*, in which this Court rejected the plaintiff's § 1983 claim. *See Edwards*, 520 U.S. at 643. That the hypothetical Patricia might use the word "overdetention" to describe her situation does not change the nature of her claim. *See, e.g.*, *Deemer*, 557 F. App'x at 163 (holding that a § 1983 suit alleging that an inmate "was confined for a year and a day beyond the date on which his prison sentence should have expired" was barred by *Heck* because it would invalidate a parole board decision about the length of his sentence).

law. The Court should reject LeBlanc's efforts to dishonor that legislative determination.

Making matters worse, LeBlanc's proposal is itself a policy nightmare, as it would eviscerate the incentives that § 1983 imposes on prison officials to ensure that prisoners are not unlawfully detained beyond their sentences. Congress's purpose in enacting § 1983 was to make state actors federally accountable when they infringe individual constitutional rights, and the centerpiece of that accountability is financial liability for any resulting harms. *See Carey v. Piphus*, 435 U.S. 247, 254 (1978). LeBlanc asks this Court to create a carve-out for false imprisonment; in his preferred world, prison officials would be free to make no effort at all to release prisoners after their sentences expire, as they could simply wait to see who files a habeas petition and then eventually release that prisoner without any liability or consequence.

To be sure, it appears that in most states, prison officials do not deliberately and systemically ignore problems that lead to the unlawful detention of prisoners beyond the expiration of their sentences. As explained above, *supra* pp. 21-27, there is exactly one circuit decision outside the Fifth Circuit involving a claim like McNeal's, and it involved federal custody.

Louisiana, however, is in a class of its own. When the Fifth Circuit referenced a "plague" in *Hicks v. LeBlanc*, 81 F.4th 497 (5th Cir. 2023), it was referring to the "endemic" problem of "inexplicable and illegal overdetention in Louisiana prisons … where the process for calculating release dates is so flawed (to put it kindly) that roughly one in four inmates released will have been locked up past their release dates—for

a collective total of 3,000-plus years." *Id.* at 510. Indeed, under LeBlanc's leadership, DPSC's policy and practice of unlawfully detaining prisoners past their release dates is so well-known and widespread that Louisiana's then-Attorney General Jeff Landry (who was LeBlanc's counsel of record until he was elected Governor) and U.S. Senator John Kennedy have publicly decried the "layer of incompetence so deep that the Corrections Department doesn't know where a prisoner is on any given day of the week or when he should actually be released from prison." Pet. App. 5.[6] LeBlanc's argument that states should be given the "first opportunity" to correct erroneous confinements, *see* Pet. 1, 4, 9-10, 28, rings especially hollow under these circumstances, where LeBlanc knew about and failed to address DPSC's widespread practice of over-detention for years before it happened to McNeal and thousands of other Louisianans.

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[6] *See also, e.g.*, U.S. Dep't of Just. Civ. Rights Div., *Investigation of the Louisiana Department of Public Safety & Corrections* (Jan. 25, 2023), https://www.justice.gov/opa/press-release/file/1564036/dl; Hassan Kanu, *Louisiana's Over-Incarceration Is Part of a Deeply Rooted Pattern*, Reuters (Feb. 1, 2023), https://www.reuters.com/legal/government/louisianas-over-incarceration-is-part-deeply-rooted-pattern-2023-02-01; Glenn Thrush, *Some Prisoners Remain Behind Bars in Louisiana Despite Being Deemed Free*, N.Y. Times (Dec. 11, 2022), https://www.nytimes.com/2022/12/11/us/politics/louisiana-prison-overdetention.html; Jacqueline DeRobertis, *Louisiana Has Known It Overdetains Inmates for a Decade. Will the Feds Force It to Stop?*, The Advocate (Feb. 4, 2023), https://www.theadvocate.com/baton_rouge/news/crime_police/will-feds-finally-fix-louisianas-overdetention-crisis/article_9e4be0ea-a18c-11ed-a1a9-831fa48913ce.html.

LeBlanc's desire to avoid liability for this astonishing constitutional breach is unsurprising. It does not, however, make his novel theory of impunity exceptionally important or otherwise worthy of this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

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