

*SOSA V. MARTIN COUNTY—MISTAKEN IDENTITIES AND THE  
THREE-DAY RULE*

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## Introduction

In 2014, [David Sosa](#) was stopped for a traffic violation in Martin County, Florida. After running his license, police discovered an outstanding warrant issued twenty-two years earlier in Harris County, Texas. Sosa was arrested, fingerprinted, and detained for three hours.

In 2018, the same David Sosa was once again pulled over. Police found the same Texas warrant in their system. This time, Sosa was detained in county jail for three days over the weekend.

The problem with these two encounters? The Texas warrant, which was over a quarter-century old by 2018, was for a different David Sosa. That David Sosa was suspected of selling crack cocaine in Texas during the 1990s. This David Sosa—who protested that he was innocent during both traffic stops—had a different birthdate, was of a different height, and was missing the tattoos identified in the warrant.

After he was detained for the second time, Sosa sued the county and the deputies who arrested him under [42 U.S.C. § 1983](#), alleging violations of his Fourth, Fifth, and Fourteenth Amendment rights. The district court granted the defendants’ motion to dismiss, and a divided panel of the Eleventh Circuit [reversed](#) in part, holding that Sosa had stated a valid due process claim. The Eleventh Circuit then [reviewed](#) the case en banc, vacating the panel’s opinion and holding that, under Supreme Court precedent in [Baker v. McCollan](#) (1979), Sosa had failed to present a cognizable constitutional claim.

This Case Note first reviews *Baker*, the key Supreme Court case concerning overdetention claims under § 1983. It then describes lower court application of this precedent, including by the Eleventh Circuit in [Sosa v. Martin County](#) (11th Cir. 2023). This Case Note identifies two circuit splits that have developed. First, lower courts have disagreed about whether overdetention is an unreasonable seizure under the Fourth Amendment, or a due process violation under the Fifth and Fourteenth Amendments. Second, lower courts are divided on whether *Baker* established a totality-of-the-circumstances balancing test to determine when an overdetention violation occurs, or whether it

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instead calls for one of several bright-line rules. Finally, following the Supreme Court's denial of certiorari in *Sosa*'s case in October 2023, this Case Note discusses several consequences of the unsettled law on mistaken arrests.

### **I. *Baker v. McCollan***

In 1979, the Supreme Court decided [\*Baker v. McCollan\*](#). In *Baker*, plaintiff-respondent McCollan's brother had obtained a fake driver's license bearing McCollan's name. The brother was arrested on narcotics charges but was erroneously booked in McCollan's name based on the misleading license. Subsequently, an arrest warrant was issued, and McCollan was taken into custody for his brother's charges. He was left in jail for three days over a holiday weekend before the sheriff's department discovered its mistake and released him.

In a § 1983 action, McCollan claimed that he had been deprived of liberty without due process of law in violation of his Fourteenth Amendment rights. The district court directed a verdict for the defendant sheriff, but the Fifth Circuit reversed. The Supreme Court granted certiorari to determine whether McCollan had succeeded in alleging a violation of his Fourteenth Amendment rights.

The Supreme Court concluded that, even assuming a facially valid arrest warrant, detention "in the face of repeated protests of innocence" may, after a long enough time has lapsed, result in a deprivation of the detainee's due process rights. However, the detention of three days in the instant case was not long enough to amount to such a constitutional violation. While the Court mused that McCollan's allegations may well have given rise to a state tort claim for false imprisonment, it reversed the Fifth Circuit's holding that McCollan had plausibly alleged a constitutional claim.

### **II. Lower Court Application**

Since *Baker* was decided over forty years ago, lower courts have struggled to make sense of the Court's holding. There are two distinct circuit splits related to the issue of overdetention. First, courts disagree about whether overdetention cases should be adjudicated under the standards of the Fourth Amendment or the Fourteenth Amendment. Second, courts have reached contrary decisions over whether *Baker* established a bright-line rule that erroneous detentions of three days and under do not violate the Constitution. The remainder of this Part will examine each of the two splits.

#### **A. Unreasonable Seizures or Due Process?**

In *Baker*, the Supreme Court analyzed the petitioner-respondent's claims under the Due Process Clause of the Fourteenth

Amendment. However, over a decade later, the Court handed down an opinion in *Graham v. Connor* (1989) that cast some doubt on *Baker*'s correctness. In *Graham*, the plaintiff claimed that a police officer had used excessive force against him during a traffic stop, in violation of his Fourteenth Amendment rights. The Supreme Court, however, held that the plaintiff had erred in bringing his case under the Fourteenth Amendment rather than the Fourth Amendment. This case is generally used as a stand-in for the proposition that due process analysis should not be employed when a more specific constitutional provision applies.<sup>1</sup>

This is why, in *Russo v. City of Bridgeport* (2d Cir. 2007), the Second Circuit concluded that overdetention cases “fit[ ] comfortably under the coverage of the Fourth Amendment.” According to the Second Circuit, wrongful detention of an innocent person for an extended period is simply a type of unreasonable seizure. The Third Circuit similarly [utilizes](#) the Fourth Amendment’s reasonableness standard, although the court “recognize[s] the possibility that some false arrest claims might be subject to a due process analysis.”

Other federal courts of appeals—including the Eleventh Circuit in *Sosa*—have situated overdetention cases within the Fourteenth Amendment’s Due Process Clause. In *Seales v. City of Detroit* (6th Cir. 2020), for instance, the Sixth Circuit held that the Fourth Amendment applies to a mistaken identity arrest only when the arrest was *itself* unreasonable. An overdetention claim is concerned with the amount of time the plaintiff was detained *after* the arrest, and thus concerns due process rights rather than the right to be free from unreasonable seizures.

The constitutional standard that a court chooses to apply to an overdetention claim may be outcome determinative. When courts adjudicate these claims under the Fourth Amendment, they use a [totality-of-the-circumstances approach](#) to determine whether the officer acted in an objectively reasonable manner. When these cases are adjudicated under the Fourteenth Amendment, however, *Baker* is treated as controlling precedent. The next Section will examine how courts have interpreted *Baker* differently—resulting in further divergence among the circuits that view the Due Process Clause as the appropriate constitutional hook.

## B. Bright-Line Rule or Totality of the Circumstances?

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<sup>1</sup> See generally, e.g., Peter J. Rubin, *Square Pegs and Round Holes: Substantive Due Process, Procedural Due Process, and the Bill of Rights*, 103 COLUM. L. REV. 833 (2003).

The second split in authority, and the one that strikes closer to the heart of claims like David Sosa’s, concerns whether *Baker* established any bright-line rules for overdetention cases.

In [Sosa v. Martin County](#) (11th Cir. 2023), the Eleventh Circuit, sitting en banc, held that *Baker* clearly established only two relevant criteria in overdetention cases: (1) whether the arrest itself was valid; and (2) the length of time for which the plaintiff was wrongfully detained. According to the court, Sosa was arrested pursuant to a valid warrant based on probable cause. And, since he was in jail for only three days, like the plaintiff in *Baker*, his overdetention claim was barred. In its holding, the court established a firm rule that erroneous detentions of three days or less do not violate the Fourteenth Amendment.

The Fifth Circuit, meanwhile, has held that *Baker* establishes a different bright-line rule. In [Harris v. Payne](#) (5th Cir. 2007), the plaintiff was wrongfully detained for four months after being confused for a shoplifting suspect who shared his name. However, the court held that he had no cognizable constitutional claim, because *Baker* allows relief only for suspects who make “repeated protests” of innocence. The plaintiff in *Harris* protested that he was innocent only once to the prison transport officials and once to the sheriff’s deputy—therefore, his case could not fall within “the exception created in *Baker*.” As such, he could sustain a Fourteenth Amendment claim only if he proved that the defendants knew or should have known that he was innocent, a standard he was also unable to satisfy.

The Seventh Circuit has an even more interesting take on *Baker*: that weekends and holidays do not count towards the total number of days for overdetention cases. In [Patton v. Przybylski](#) (7th Cir. 1987), the plaintiff had been mistakenly detained for a total of five days. However, since two of these days were during the weekend and one was Election Day, the court held that only the two nonholiday weekdays counted for purposes of its constitutional analysis. [District courts](#) within the Seventh Circuit have confirmed that, under *Patton*, “no holidays may be said to toll the period” of detention when the plaintiff brings an overdetention claim.

Other circuit courts have interpreted the facts of *Baker*—repeated protests of innocence, a facially valid warrant, and a three-day detention over a holiday weekend—not to establish any bright-line rules. Rather, these courts engage in a fact-specific, totality-of-the-circumstances approach. One example is [Lee v. City of Los Angeles](#) (9th Cir. 2001), in which the Ninth Circuit allowed a claim to proceed even though the plaintiff was erroneously detained for only one day in California before extradition proceedings. According to the *Lee* court,

*Baker* does not create a hard-and-fast seventy-two-hour rule; instead, it merely stands for the proposition that not *every* detention based on mistaken identity amounts to an infringement of constitutional rights. Here, although the City of Los Angeles had control over Lee for only one day, his extradition to New York resulted in a wrongful two-year detention. This fact would likely not be relevant under the approach used by the Eleventh Circuit, but it can be considered in a totality-of-the-circumstances analysis like the one employed by the Ninth Circuit.

### III. A Lack of Supreme Court Guidance

The logic of the Eleventh Circuit in *Sosa*, taken to its natural conclusion, may lead to absurd results. Could police mistakenly arrest David Sosa over and over, simply because there is an active warrant for a different David Sosa, and avoid liability so long as the period of detention remained under three days? Similarly, if the case were adjudicated under the Seventh Circuit's rule, would Sosa receive different levels of constitutional protection if he were wrongfully detained on Labor Day, rather than the following weekend?

A [petition for a writ of certiorari](#), filed on behalf of David Sosa, requested that the Supreme Court review the Eleventh Circuit's en banc ruling. Unfortunately, the Court [denied](#) this petition on October 2, 2023, leaving these questions unanswered, and leaving unresolved the current disagreements among the federal courts of appeals. The result is that citizens and law enforcement alike will remain in a state of substantial uncertainty about the constitutional rights that may be infringed by mistaken arrests and detentions.

There is also reason to think that arrests based on mistaken identity may become even more common. In 2020, the American Civil Liberties Union filed a [complaint](#) on behalf of Robert Williams, who was mistakenly arrested because of faulty facial recognition technology. Police believed Williams had stolen several watches from a nearby store, but he was ultimately cleared of all wrongdoing. As facial recognition and computer algorithms become more widespread law enforcement tools, [identification mistakes](#) are all but certain. And, unfortunately, the burden of these mistakes appears likely to [disproportionately impact](#) people of color.

Of course, there are reasonable counterarguments that facial recognition technology may do a better job of identifying the right person than humans can. And, some police departments have [implemented](#) systems where multiple human reviewers must analyze a possible facial match before it can be submitted to investigators. Ideally, liability will be strengthened for cases where law enforcement knowingly relies on faulty technology so that government authorities

are incentivized to use this tool only where it is proven to be effective and accurate.

Going forward, lower courts should learn from *Sosa*'s case and rethink their own interpretations of *Baker*, even absent guidance from the Supreme Court. While imposing bright-line rules on mistaken detention claims may make decision-making more efficient, it artificially restricts the universe of facts that the court may consider with respect to an individual plaintiff's claim. The facts of *Lee*, where a person was wrongfully extradited and imprisoned for two years, would strike most people as significantly more egregious than the facts of *Patton*, in which the plaintiff was wrongfully detained for a total of five days. However, under the Eleventh Circuit's restrictive analysis, *Patton* would have a constitutional claim because his detention lasted more than three days, and *Lee* would not because his detention *in California* lasted only one day.

Indeed, some district courts within the Eleventh Circuit have already begun to limit the sweep of *Sosa*. For instance, in *Jackson v. Dorsey* (N.D. Ga. 2023), the court held that the plaintiff plausibly alleged a violation of his Fourth Amendment rights although he was only mistakenly detained for a few hours.<sup>2</sup> The court distinguished the case from *Sosa* on the grounds that "underlying malice" motivated the officer's decision to arrest and detain the plaintiff.

Hopefully, courts will continue to refine how they adjudicate claims of mistaken detention in order to expand the category of plaintiffs who are entitled to constitutional relief. Until then, the [David Sosas](#) of the world may continue to be punished merely for having the wrong name.

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<sup>2</sup> *Jackson v. Dorsey*, No. 3:22-CV-144-TCB, 2023 WL 6214857, at \*5 n.4 (N.D. Ga. Feb. 15, 2023).