No. 18-689

IN THE

Supreme Court of the United States

MARIANO MOYA AND LONNIE PETRY,

Petitioners,

v.

ROBERT GARCIA, SANTA FE COUNTY SHERIFF; MARK CALDWELL, WARDEN OF SANTA FE COUNTY ADULT CORRECTIONAL FACILITY; MARK GALLEGOS, FORMER WARDEN OF SANTA FE COUNTY ADULT CORRECTIONAL FACILITY; BOARD OF COMMISSIONERS OF SANTA FE COUNTY,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioners were detained on bench warrants for failure to appear at a criminal judicial proceeding. The courts that issued the warrants were duly notified of their arrests and detention, and petitioners were given counsel who entered appearances on their behalf. New Mexico law required that petitioners be arraigned within fifteen days, but the courts set arraignment dates more than fifteen days after petitioners' arrests—with no alleged complaint, at any time, from either petitioners or their counsel. Thereafter, petitioners sought to hold their jailers liable under 42 U.S.C. §1983 for their detention beyond fifteen days, although these jailers did nothing more than comply with the orders of the local courts and in no way prevented petitioners from seeking a speedier hearing, bail, or release. The question presented is:

May an arrestee detained prior to arraignment for longer than state law allows, but no longer than a court has ordered, sue their jailer under §1983 without alleging that they complained to the jailer or that the jailer in any way prevented them from seeking appropriate relief?

TABLE OF CONTENTS

QUESTION PRESENTED i
TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iii
INTRODUCTION 1
BACKGROUND 1
REASONS FOR DENYING THE WRIT 13
I. There Is No Meaningful Circuit Conflict 15
II. The Question Presented Is Of Limited Importance 24
III. The Decision Below Was Correct 27
CONCLUSION 32

TABLE OF AUTHORITIES

Cases

Armstrong v. Squadrito,
152 F.3d 564 (7th Cir. 1998) 9, 20, 21, 27

Ashcroft v. Iqbal,
556 U.S. 662 (2009)... 5, 6

Edwards v. Balisok,
520 U.S. 641 (1997)... 29

Hayes v. Faulkner County,
388 F.3d 669 (8th Cir. 2004) ....*passim*

Heck v. Humphrey,
512 U.S. 477 (1994)... 14, 29

Jauch v. Choctaw County,
874 F.3d 425 (5th Cir. 2017) ....*passim*

Miranda v. Arizona,
384 U.S. 436 (1966)... 3

Mireles v. Waco,
502 U.S. 9 (1991).. 29

Monell v. Dep't of Soc. Servs.,
436 U.S. 658 (1978).................................... 12, 14, 25

Oviatt ex rel. Waugh v. Pearce,
954 F.2d 1470 (9th Cir. 1992)..........................*passim*

Preiser v. Rodriguez,
411 U.S. 475 (1973)... 26

United States v. Salerno,
481 U.S. 739 (1987)... 26

Statutes

42 U.S.C. §1983 .... *passim*
N.M. Stat. Ann. §31-1-3 3
N.M. Stat. Ann. §31-1-4(C) 4

Rules

NMRA, Rule 5-303(A) 3

INTRODUCTION

The question petitioners present here is exceedingly narrow, of limited importance in future cases, and was recently denied. *See* Pet. i, *Choctaw County v. Jauch*, *cert. denied*, No. 18-7 (Dec. 10, 2018). The purported disagreement among the circuits raised in the petition for certiorari involves only a handful of cases over the last quarter century, and those cases were persuasively distinguished by the court of appeals below. Most important, petitioners' presentation entirely ignores the other remedies for their over-detention that they failed to pursue in their cases—including both state and federal petitions for habeas corpus, and even the simple step of having their lawyers complain to anyone about the arraignment date they were assigned prior to this post-hoc request for monetary compensation.

Properly framed, the question presented concerns only claims for damages—not efforts to avoid prolonged detention—against parties who were powerless under state law to shorten that detention. The decision below also relies on factors specific to New Mexico law that limit the reach of that holding to one set of plaintiffs in one State. Accordingly, even if there were a meaningful disagreement among the courts of appeals (and there is not), it would not merit this Court's review in this case.

BACKGROUND

Petitioners' brief discussion of the background facts at issue (*see* Pet. 4-6) omits important context that necessarily affects the question this Court would decide if this petition were granted. We thus begin with a more complete account of the facts underlying petitioners' damages claims, as well as the decisions below.

1. These cases began when petitioners Mariano Moya and Lonnie Petry failed to show up for felony criminal proceedings against them in Santa Fe, New Mexico. *See* Pet. App. 87a-89a. They were indicted by grand juries in the First Judicial District, their trial courts scheduled arraignments, summons were mailed to them, and they nonetheless failed to appear. *See id.* They have never alleged that they did not receive notice of these first arraignments, nor otherwise challenged any aspect of them. *Id.* at 88a n.1. Because they did not appear for these hearings, however, bench warrants were issued for their arrest. *Id.* at 88a-89a.

Law enforcement arrested both petitioners, placed them in custody, and notified the courts with reasonable expedition that the bench warrants had been executed. Petitioner Moya was arrested and booked on September 15, 2014, and the district court was so notified by at least September 23, 2014. Pet. App. 88a. (The notification is reflected on the district court's docket on that date; actual notice might have been provided earlier. *See id.*) Petitioner Petry was arrested on July 22, 2015, and the district court was notified of that arrest by at least July 31, 2015. *Id.* at 89a.

Both petitioners had or were provided counsel who entered appearances on their behalf prior to their first scheduled arraignments—the ones they missed, before the relevant bench warrants were even issued. A public defender entered an appearance for Moya on August 25, 2014, prior to his first scheduled arraignment on that date. *See* Pet. App. 89a. And an attorney made an appearance for Petry on July 16, 2015, prior to his first scheduled arraignment on July 17, 2015. *Id.* at 89a-90a. Petitioners' complaint does not allege that either

attorney ever sought to expedite—or otherwise complained about—the second arraignment dates that were ultimately set for petitioners after they were arrested for failure to appear at their first arraignment dates. *See id.* at 130a-144a (Complaint). Nor have petitioners alleged that they ever complained to their respective state district courts, their jailers, or anyone else regarding the timing of those second arraignments. *See id.* Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), they would have been affirmatively informed of their right to discuss any aspect of their arrests or detention with their counsel.

Although the dockets reflect that the state courts were notified of petitioners' arrests within the allotted time, those courts did not schedule subsequent arraignments for the petitioners within the fifteen-day window that New Mexico law allows. *See* N.M. Stat. Ann. §31-1-3; NMRA, Rule 5-303(A) (requiring arraignment within fifteen days of arrest). Petry's second arraignment was scheduled on August 3, 2015 (twelve days after his arrest) for August 21, 2015—a total of 30 days after his arrest. Pet. App. 89a. Moya's second arraignment was scheduled on October 28, 2014 (43 days after his arrest), and calendared for November 17, 2014—a total of 63 days after his arrest. *Id.* at 88a-89a. Petitioners have never alleged that respondents themselves played any affirmative role in these scheduling delays. *See id.* at 130a-144a (Complaint).

Neither petitioner asked the state court to accelerate their second arraignment after it was scheduled, and both arraignments were held on their initially scheduled dates. *See* Pet. App. 89a. At those arraignments, bonds were set for both petitioners, and they were released. *See id.*

Approximately one year after Petry's release—and two years after Moya's—petitioners together filed a putative class action in federal court under 42 U.S.C. §1983 seeking relief on behalf of themselves and an unknown class of other inmates who petitioners believed were similarly situated. *See, e.g.*, Pet. App. 138a ("The precise size of the class is unknown."). Their prayer for relief did seek injunctive relief, but only in the form of unspecified "policies to ensure that detainees are always brought before a court within fifteen days after being indicted or arrested." *Id.* at 144a. Principally, however, they sought money damages, including classwide awards "for all special, general, and consequential damages incurred, or to be incurred, by Plaintiffs and members of the class," as well as "punitive damages," "attorney's fees and costs" and "[p]re- and post-judgment interest." *Id.*

The defendants in these damages actions were not the courts or judges that had scheduled petitioners' arraignments outside the permitted windows—likely because judicial officers are immune from such suits. Nor did they sue the arresting officers, who are charged by New Mexico law with bringing defendants before the courts "without unnecessary delay." N.M. Stat. Ann. §31-1-4(C); *see* Pet. App. 13a. Instead, they sued their jailers: Robert Garcia, the Santa Fe County sheriff; Mark Caldwell, the warden of the Santa Fe County Adult Correctional Facility; Mark Gallegos, the former warden of that facility; and the Board of Commissioners of Santa Fe County. *See* Pet. App. 130a.

Again, petitioners did not allege that these defendants had played any *affirmative* role in the scheduling of their second arraignment dates outside the fifteen-day window following their arrest. For example, they

neither alleged that respondents waited too long to notify the state courts following their arrests on their bench warrants, nor alleged that respondents failed to notify them of the dates on which their arraignments were scheduled. Nor did they allege that respondents in any way interfered with their ability—or their assigned lawyers' ability—to secure an earlier arraignment date. Instead, their *sole* relevant allegation was that respondents "share personal responsibility for promulgating, implementing, and maintaining policies and procedures on behalf of Santa Fe County to ensure that detainees are brought before a court within fifteen days," Pet. App. 134a (¶21), and that defendants "have never promulgated, let alone implemented or maintained, any policies or procedures to ensure that persons detained … appear in court within fifteen days." *Id.* (¶23). Put otherwise, petitioners' sole theory of liability faulted respondents not for affirmative conduct that *caused* any delay beyond fifteen days, but for "*fail[ing] to ensure* that Mr. Moya and Mr. Petry appeared in district court without unnecessary delay." *See id.* at 137a (¶39) (emphasis added).

2. Recognizing the threadbare nature of petitioners' allegations, the federal district court dismissed. The district court emphasized that, under this Court's precedents, "blanket statements that the Sheriff and Warden 'share responsibility for ensuring' detainees are brought before the court within fifteen days are conclusory and cannot survive a motion to dismiss." Pet. App. 103a (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009)). The court noted that there were no allegations that respondents in any way failed to respond to "any order directing [petitioners'] release." *Id.* Instead, it was clear from the minimum facts alleged that "the District

Court was on notice Plaintiffs were awaiting pretrial process and Individual Defendants did what was required of them to get Plaintiffs in front of the District Court." *Id.* at 104a. Indeed, the court observed, the state courts had been notified that Petry was in custody within four days, and that Moya was in custody within eight days. *See id.* The federal district court thus viewed petitioners' allegations as "unadorned, the-defendant-unlawfully-harmed-me accusation[s]," *id.* (quoting *Iqbal*, 556 U.S. at 678), lacking any explanation of how respondents had themselves played an affirmative, causative role in petitioners' alleged constitutional injuries.

The district court then distinguished petitioners' cases from situations in which "bail had already been set" and "due to affirmative jail policies, the plaintiffs were deprived of their right to post bail." Pet. App. 104a. While it was possible to fault the jailers in *that* situation, it was not similarly possible to fault respondents where plaintiffs "protest the length of time they had to wait *until* bail was set in the first place." *Id.* at 105a.

Finally, and most importantly, the district court distinguished certain out-of-circuit authorities on which petitioners relied below and here. *See* Pet. 11-19. The critical facts from the district court's perspective were that the state courts "knew both Plaintiffs were in …. custody," and that there were "*no allegations Plaintiffs protested their confinement*." Pet. App. 105a (emphasis added). The district court further emphasized that "[b]oth plaintiffs had counsel throughout these events" and yet still there were "no allegations Plaintiffs ever protested their status or demanded to be brought before a court." *Id.* at 106a. These facts made this case different from the precedents petitioners had

identified because, in the district court's view, they made it inappropriate to blame the respondents here for (somehow) failing to procedurally expedite petitioners' arraignment hearings where petitioners' own attorneys had not done so:

> [I]f both Plaintiffs had criminal defense counsel at all relevant times, then the Court cannot help but ask the question why Plaintiffs' counsel didn't do something to effectuate earlier arraignment hearings for Plaintiffs. A simple motion for an expedited arraignment filed by criminal defense counsel on behalf of Plaintiffs would have probably alerted the District Court of the need to arraign Plaintiffs sooner. Individual Defendants are not responsible to ensure that Plaintiffs had effective assistance of counsel and if Plaintiffs' court appointed criminal defense counsel somehow failed to adequately protect the due process rights of the Plaintiffs, that is not the fault of the Individual Defendants. Under these circumstances, the alleged delays in the arraignments do not shock the Court's conscience.

Id.

The district court's reference to "conscience shocking" behavior stemmed from confusion in petitioners' complaint around whether they were proceeding on a theory of a substantive due process violation or a procedural due process violation. The court concluded, however, that "Plaintiffs' procedural due process claims appear to overlap with their substantive due process claims." Pet. App. 111a. It thus analyzed petitioners' claims under the rubric of substantive due process, concluded that respondents' behavior did not "shock [the]

Court's conscience," and then proceeded to dispose of the overlapping procedural due process claims in similar fashion. *See id.* at 111a-114a.

In the end, the district court concluded that respondents here had not done anything at all to extend petitioners' detention. In its words, "Plaintiffs … failed to plausibly allege these particular Defendants did anything at all to effectuate the alleged deprivation." Pet. App. 106a. Likewise, it found that "if there was any violation here, the facts alleged show it was due to the District Court's scheduling delays and not Defendants' conduct." *Id.* at 107a. Accordingly, the district court found that petitioners' allegations were insufficient to support individual or supervisory liability for the respondents, and dismissed petitioners' claims. *Id.* at 107a-111a.

3. The Tenth Circuit affirmed. Judge Bacharach wrote for the majority, joined by Judge Matheson. Judge McHugh dissented only in part.

The majority noted an agreement among all the judges that petitioners were "imprecise about their asserted right, conflating the right to an arraignment within fifteen days of arrest and the right to pretrial release (or bail)." Pet. App. 15a. It proceeded to analyze the case in terms of a right to an arraignment within fifteen days because "[i]n district court, the plaintiffs based their claim on the delays in arraignments[,] … [a]nd on appeal, the plaintiffs have consistently framed their argument based on the arraignment delays." *Id.* at 17a. The majority also noted that this interpretation was required by how petitioners had defined their class action, which they brought on behalf of everyone who had been detained any longer than fifteen days before arraignment. *See id.* at 16a & n.9. The majority then noted that—even according to the dissent—there would

not be "a due-process violation from a delay in an arraignment," but the majority felt constrained to "interpret the claim and appeal based on what the plaintiffs have actually said rather than which possible interpretation could succeed." *Id.* at 16a-17a.

The majority then found that—particularly when petitioners' claim was conceptualized as a failure to arraign the petitioners within fifteen days—it was clear that this claim failed based on an obvious lack of causation. Unlike the state courts, respondents "were powerless to cause timely arraignments because arraignments are scheduled by the court rather than jail officials." Pet. App. 17a. The majority noted that this was a point on which "[t]he dissent agrees." *Id.*; *see also id.* at 7a (noting petitioners' claim failed because "the arraignments could not be scheduled by anyone working for the sheriff or wardens; scheduling of the arraignments lay solely with the state trial court"); *id.* at 8a ("[T]he court was firmly in control here. Grand juries indicted Mr. Moya and Mr. Petry, and both individuals were arrested based on outstanding warrants issued by the court. And after these arrests, jail officials notified the court that Mr. Moya and Mr. Petry were in custody."); *id.* at 9a ("At most, the sheriff and wardens failed to remind the court that it was taking too long to arraign Mr. Moya and Mr. Petry. But even with such a reminder, the arraignments could only be scheduled by the court itself.").

The majority carefully distinguished the out-of-circuit precedents on which petitioners relied below, and on which they rely here. It first noted that in *Armstrong v. Squadrito*, 152 F.3d 564 (7th Cir. 1998), and *Oviatt ex rel. Waugh v. Pearce*, 954 F.2d 1470 (9th Cir.

1992), "a clerical error prevented the court from discovering the arrests and the need to schedule arraignments." Pet. App. 10a. That meant causation could be attributed to the jailers rather than the courts. This was the opposite case, however, because "here, Mr. Moya and Mr. Petry do not allege a failure to tell the court of their arrests in sufficient time to conduct the arraignments within fifteen days." *Id.*

The majority then addressed *Jauch v. Choctaw County*, from the Fifth Circuit. 874 F.3d 425 (5th Cir. 2017), *cert. denied*, 2018 WL 3223405 (2018). It noted that, there, "jail officials reject[ed] the defendant's requests to be brought before a judge," Pet. App. 10a, whereas here, petitioners made no allegation that they ever complained to anyone about not being arraigned, even though they were represented by counsel. The majority also noted that, in *Jauch*, Mississippi law permitted the jailers to release defendants who had not been arraigned in timely fashion, whereas New Mexico law expressly forbade the same result—and petitioners therefore "expressly disavowed this theory in their opening brief." *Id.* at 11a. The majority thus concluded that "*Jauch* provides little guidance on what the sheriff and wardens could have done to avoid the due process violations other than remind the state trial court of *its* failure to schedule timely arraignments." *Id.* at 11a-12a.

Finally, the majority distinguished *Hayes v. Faulkner County*, 388 F.3d 669 (8th Cir. 2004). It noted that *Hayes* "apparently relied on a state procedural rule" which the Eighth Circuit interpreted differently from how the Tenth Circuit interpreted New Mexico law. Pet. App. 13a. The difference went to "*who* is required to bring the arrestee to court," *id.*: In Arkansas, it was interpreted to be the jailer or sheriff, *see* 388 F.3d at

675, whereas in New Mexico, it was "the *arresting officer*." Pet. App. 13a. Accordingly, as with *Jauch*, the majority concluded that the difference in state law meant that "*Hayes* provide[s] little guidance to us in addressing the issue." *Id.* at 14a.

As noted above, the majority theorized the case differently from the dissent: It understood petitioners to argue that respondents were responsible for the delay in their arraignment beyond fifteen days, rather than for an unconstitutionally long detention more generally. *See* Pet. App. 14a-17a. The majority nonetheless explained that the dissent's theory attributing responsibility to the jailers for over-detention in a case like this—which was, again, "*not the theory presented by the plaintiffs*," *id.* at 17a (emphasis added)—suffered from critical problems. One was that a jailer would be forced "to choose between committing a crime and facing civil liability under § 1983," given New Mexico's law prohibiting jailers from releasing a prisoner without a court order. *Id.* at 17a-18a. Another was the "dissent's acknowledgment that there is no bright-line rule for when a delayed arraignment becomes a due-process violation." *Id.* at 18a. The majority thus concluded that petitioners' claims failed, and affirmed. *Id.* at 18a-20a.

Judge McHugh dissented only in part. By conceptualizing the petitioners' claim as based on an unconstitutionally long detention rather than an arraignment delay beyond fifteen days in particular, Judge McHugh concluded that there was causative responsibility with the respondents for the violation. *See* Pet. App. 33a-34a. Notably, however, Judge McHugh took the view that the majority had not actually considered and resolved how a claim so conceptualized would be decided. *See id.* at 33a. In Judge McHugh's words, the majority's

analysis "works fine as far as it goes," but was simply "incomplete" because the majority did not "consider whether the individual defendants' alleged conduct deprived Plaintiffs" of the "more fundamental right" to be free from prolonged detention, rather than the "violation of state procedural law." *Id.* Put otherwise, Judge McHugh thought that, given how it conceptualized petitioners' claims, the majority's conclusion made sense. *See, e.g.*, *id.* at 34a ("By focusing on the arraignment rather than the detention, the majority naturally finds that the causal force lies with the state court's conduct, rather than with the jailers' conduct."). But she viewed that conceptualization as incorrect and as the source of the tension between the majority's conclusion and the result in other cases. *See id.* at 34a-39a.

In any event, Judge McHugh concluded that all of the individual respondents would have been protected by qualified immunity, given that "[n]o opinion from this court or the Supreme Court has ever clearly established that a jailer violates the Constitution by detaining an individual lawfully arrested in anticipation of an untimely scheduled arraignment." Pet. App. 43a. She would have remanded *solely* to consider municipal liability, *id.*, which would of course require the further showing that it was the municipal government's "official policy" or custom to detain individuals like petitioners for an unconstitutionally long period, *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694-95 (1978). *See* Pet. App. 19a-20a (majority affirming denial of leave to amend the complaint).

4. Petitioners sought rehearing en banc. They did not seek exclusively the remand on municipal liability that Judge McHugh had said would be appropriate. In-

stead, they argued that, in other courts, claims by plaintiffs in similar situations "survived summary judgment and could *not be defeated by qualified immunity*." C.A. Pet. for Reh'g En Banc 10 (emphasis added). Rehearing en banc was denied. Four judges voted to grant rehearing en banc, but none authored any opinion respecting the denial. *See* Pet. App. 2a.

REASONS FOR DENYING THE WRIT

Petitioners offer essentially three reasons why certiorari should be granted in this case. They principally argue that there is a circuit conflict in which the Tenth Circuit is an isolated outlier, identifying four contrary cases in other circuits reaching back as far as 1992. *See* Pet. 11-19. They then argue briefly that this is an "exceptionally important issue" because of the rights at stake. *See* Pet. 22-24. And in their discussion of the alleged circuit split, they suggest that the Court should grant because the putative analysis of the other circuits is correct, while the Tenth Circuit's is not. Pet. 19-22.

These are inadequate bases on which to grant certiorari. Most importantly, the split petitioners allege is largely illusory and of limited practical importance. The Tenth Circuit expressly based its decision on highly case-specific factors—the most important of which were that petitioners *and their counsel* failed to complain *to anyone* about the length of their detention before their second arraignments. Aspects of the Tenth Circuit's decision were also highly dependent on precise details of New Mexico law, and on precise details of how petitioners chose to plead their claims—indeed, the dissent recognized that the majority had not even decided how a differently framed claim would have come out. *See supra* pp.11-12. Accordingly, it is not at all clear that any other circuit would reach a similar outcome on the same

facts, nor that even the Tenth Circuit would reach a similar outcome in other Tenth Circuit jurisdictions, or in other New Mexico cases pleaded differently. And given that the Tenth Circuit is (allegedly) alone on the short end of a limited circuit disagreement, even the most compelling case that a split exists would be of minor import.

Petitioners also vastly overstate the importance of the question presented itself—a question this Court has already recently denied. *See supra* p.1. In emphasizing the practical stakes of prolonged pretrial detention, they ignore entirely that—in any case of alleged over-detention—petitioners like those here could obtain immediate release through state or federal habeas. Indeed, that kind of release is precisely what habeas is for, and the availability of habeas alone often precludes monetary relief under §1983. *See, e.g.*, *Heck v. Humphrey*, 512 U.S. 477 (1994). There is also nothing in the Tenth Circuit's opinion to suggest that merely *raising* their over-detention would have been insufficient for petitioners to secure immediate arraignment or release. Indeed, this case lacks any allegation that respondents did *anything* to in any way interfere with petitioners' ability to secure a timely arraignment. The stakes for the question presented as it is actually presented here thus seem relatively low. Nor is it clear that the question is even dispositive here, given the unanimous view below regarding qualified immunity, and the difficulty of proving municipal liability under *Monell v. Department of Social Services*, 436 U.S. 658, 694-95 (1978).

Finally, to the extent the merits are relevant, there is no merit to petitioners' arguments. In the absence of any complaint by petitioners or their counsel, respondents fully discharged their responsibility by alerting the

state courts to petitioners' incarceration. Petitioners are seeking an end run around doctrines of absolute judicial immunity that prevent them from suing the state courts that failed to timely schedule their arraignments. But the alternative the law provides based on that immunity is the core, paradigmatic use of the writ of habeas corpus, not a suit for money damages against an innocent state actor or taxpayer-funded municipality. Particularly given that petitioners had fully competent counsel that failed to ask *anyone* to release their clients, it is unlikely that this Court would find any fault at all in respondents' behavior, let alone a violation of petitioners' rights under §1983.

I. There Is No Meaningful Circuit Conflict.

1. Petitioners purport to identify four circuits that have reached a different conclusion regarding whether "jailers can[] pass off their responsibility for unlawful detention to the state courts that schedule detainees' initial appearances." Pet. 11 (heading); Pet. i (question presented is whether "jailer [can] avoid liability under § 1983 on the ground that the state court caused the violation"). For reasons explained below, there is limited difference if any in how the circuits have answered the question this case actually presents, and petitioners are able to suggest otherwise only by ignoring essential, case-specific facts that made all the difference here.

Petitioners begin with *Jauch v. Choctaw County*, a Fifth Circuit case that isolates well the difference in dispositive facts between this case and the others in petitioners' alleged circuit conflict. 874 F.3d 425 (5th Cir. 2017), *cert. denied*, 2018 WL 3223405 (2018). It is evident within the first two paragraphs of the Fifth Circuit's background section that *Jauch* is a remarkably different case.

As the Fifth Circuit explained, the plaintiff in *Jauch* complained vociferously that she was not allowed to post bail on her outstanding warrant. She made "requests to be brought before a judge and allowed to post bail" which "were denied." 874 F.3d at 428. The sheriff personally "confirmed she could not be taken before a judge until ... the next term of the Circuit Court," which was in August, even though she was arrested *months* earlier in April. *Id.* Indeed, "a friend of Jauch's reached the sheriff on the telephone, [and] he told her the same thing." *Id.* "Jauch's protestations of innocence were [also] ineffectual." *Id.* And, unlike here, Jauch *was not provided counsel* until her arraignment a full ninety-six days after being taken into custody. *Id.*

These are not even the end of the important distinctions. Unlike here, it is evident from the Fifth Circuit's opinion that the sheriff in *Jauch* had an *official policy* of simply holding arrestees until the next term of the state circuit court—however long that might be, and whatever their complaints—without even informing the court that the suspect was in custody. *See* 874 F.3d at 435. Finally, and critically, the Fifth Circuit in *Jauch* clarified that, unlike here, there was "no dispute that Sheriff Halford [wa]s the relevant policy maker." *Id.* In other words, the Fifth Circuit did not even perceive that there was any argument that Jauch's detention was rooted in the behavior of the courts rather than the jailers. Petitioners only imply otherwise with a citation to the appellees' brief in *Jauch*, *see* Pet. 12, not the Fifth Circuit's opinion. And in fact, when the sheriff attempted to argue that Jauch had only sued him because she could not sue the judges in that case, the Fifth Circuit directly attributed Jauch's overlong detention not to anything done by any Mississippi court, but to the

sheriff's own "idiosyncratic understanding of state law requirements." 874 F.3d at 437. No such "idiosyncratic understanding" was alleged here.

Clearly, the present case could not be more different. Most critically, counsel entered appearances for petitioners well before their fifteen-day arraignment periods had run, and there is no argument that petitioners' jailers failed to inform the courts of their arrests, or that respondents in any way resisted *any* complaints about petitioners' inability to post bail. In *Jauch*, the defendant personally confirmed the detention policy in a phone call after Jauch repeatedly demanded to be brought before a judge; here, there is not even an allegation that anyone refused petitioners anything after they made even a single complaint—themselves or through their available counsel.

This difference in fact pattern obviously creates a huge difference in whether causation can be attributed to the jailers' behavior. In *Jauch*, the Fifth Circuit reasoned that "we cannot know what [the jailers] could have done to allow bail, or legal or judicial action," because the jailers *refused* to do anything at all in light of an "idiosyncratic understanding of state law requirements." 874 F.3d at 437 & n.10. Here, we know that the problem stemmed from the state courts, because we know law enforcement *told the courts* that petitioners were in custody, *see supra* p.2, and that petitioners' jailers did not in any way *refuse* to do anything in the face of any complaint. Accordingly, there is no indication that the Fifth Circuit would have decided this case any differently from the Tenth Circuit.

Hayes v. Faulkner County, 388 F.3d 669 (8th Cir. 2004), on which petitioners similarly rely, is virtually

identical in this respect. Within its opening paragraphs, it makes clear that Hayes wrote repeated grievances to his jailers, and eventually demanded a court appearance in remarkably precise, legal terms. *See id.* at 672. Here's what Hayes wrote to the jail administrator:

> I've been here for 23 days and have not been to court. According Prompt First Appearance Rule 8.1 I should seen a judge within 72 hrs. I have yet to be told when I will go to court. I also know that the arresting told booking to hold me back. I want to know when you plan to ob[e]y the law and allow me to go to court?

Id. The jail administrator then personally responded that he would not help Hayes to get a court date scheduled, and that Hayes could write to the booking officer himself about his court date. *Id.*

This complaint—and the jailer's conscious and deliberate indifference to it—was essential to the Eighth Circuit's decision. The court emphasized that, "[r]eceiving Hayes's specific appearance grievance, Kelley made a conscious decision to do nothing." 388 F.3d at 674. Indeed, "Kelley testified that he would have followed the same course of conduct even if Hayes were held for 99 days. While Hayes sat in the Center for 38 days, Kelley *consciously disregarded* the violation of his constitutional rights." *Id.* (emphasis added).

Once again, nothing like these facts is presented here. The courts below emphasized that, unlike in *Hayes*, there was no allegation here that petitioners' jailers in any way interfered with their ability to communicate with the state courts. In fact, petitioners here were provided counsel, who were well positioned to alert the courts immediately to any detention that exceeded

state time limitations. *See supra* p.2. Likewise, there is no evidence here that petitioners complained to their jailers at all, nor that anyone at the jail would have treated their complaints with anything like the indifference that the jail administrator showed in *Hayes*.

Because *Hayes* was decided under a substantive due process theory, this deliberate indifference to Hayes's rights—absent here—was in fact critical to the Eighth Circuit's analysis finding that the jail administrator could be held liable under §1983. The court explained that "[d]eliberate indifference to prisoner welfare may sufficiently shock the conscience to amount to a substantive due process violation," *Hayes*, 338 F.3d at 674, and then found that the administrator's "conscious disregard" *of Hayes's complaints* was "deliberate indifference violating the standards of due process." *Id.* In *Hayes*, the administrator himself had made clear (in response to Hayes's complaints) that he had an *official* policy of *never* reporting such complaints of overlong detention, and instead simply waiting for the courts to schedule appearances. Nothing like that deliberately indifferent policy is in evidence here, and these distinct facts in *Hayes* made all the difference.

Moreover, as the Tenth Circuit explained, *Hayes* depended on an interpretation of an Arkansas rule of procedure that has an important difference from New Mexico law. In Arkansas, that rule creates a generic requirement—applicable to all—that an arrestee be brought speedily before a court. In New Mexico, that requirement is expressly directed at the *arresting officer*, not respondents here. The Tenth Circuit thus emphasized in its holding that, "[u]nlike the Arkansas rule, New Mexico's version of the rule does not impose any duties on the sheriff or warden." Pet. App. 13a.

That both creates an important distinction from *Hayes* and limits the reach of the decision below to only those Tenth Circuit States that happen to have identical legal regimes to New Mexico's.

The two other cases petitioners place in their alleged circuit conflict are even more easily distinguished. As petitioners themselves recognize, the Tenth Circuit's decision in this case "turned narrowly on the issue of causation," Pet. 11—that is to say, the Tenth Circuit only found against the plaintiffs because there was no argument that petitioners' jailers had caused them to wait more than fifteen days for their arraignment. But that causation issue cut precisely the other way in *Armstrong v. Squadrito*, 152 F.3d 564 (7th Cir. 1998), and *Oviatt ex rel. Waugh v. Pearce*, 954 F.2d 1470 (9th Cir. 1992). As petitioners themselves admit, the source of the overlong detention in *Armstrong* was that "*the sheriff* made a mistake in filing Armstrong's records with the court," Pet. 16 (emphasis added), which resulted in Armstrong being detained for 57 days. In that instance, there is no way to argue that anything or anyone *caused* the overlong detention apart from the sheriff. And as the Tenth Circuit emphasized, *Oviatt* likewise involved "a clerical error" that "prevented the court from discovering the arrests and the need to schedule arraignments," whereas "here, [petitioners] do not allege a failure to tell the court of their arrests in sufficient time." Pet. App. 10a.

These, however, are not the only material distinctions between these cases and the one at bar.

In fact, *Armstrong* is a particularly vivid example of what is missing from this case. Unlike petitioners here, Armstrong complained over and over about his pre-trial detention: The Seventh Circuit emphasized

that "Armstrong made *almost daily complaints* to jail officers about why he had no court date." 152 F.3d at 568 (emphasis added). The Seventh Circuit then went on to consider whether—in the absence of Armstrong's complaints and the evidence that his jailers were indifferent to his many voiced concerns—their failure to ensure the scheduling of his court date would have been sufficient under §1983. And although petitioners do not report this fact, the Seventh Circuit quite explicitly held that a prison policy that relied on prisoner complaints to avoid over-detention would *not* violate substantive due process. *See id.* at 579 ("In sum, we believe that *this particular complaint procedure saved the will call system* from being deliberately indifferent.") (emphasis added). The Seventh Circuit then found a violation only because *Armstrong's complaints* had been treated as insufficient and ignored—the exact kind of fact that is fully absent here. *Id.* at 579-80. Thus, *Armstrong* actually supports the lower courts' reasoning here, and it is in fact some of the best evidence that the split is illusory and that petitioners are not fully describing the cases' dispositive analyses.

This leaves *Oviatt*, a 25-year-old case from the Ninth Circuit about a schizophrenic inmate who was held for a remarkably long period of 114 days. *See* 954 F.2d at 1472. Among other things, it was clear that the sheriff in *Oviatt* was deliberately indifferent to a situation where "'from time to time' individuals were not arraigned because of *mistakes made* by the court *or the jail*." *Id.* at 1473 (emphasis added). Put otherwise, the allegation in *Oviatt* was that the sheriff knew that the jail's own mistakes were causing inmates to be over-detained, and deliberately failed to do anything about that. From the standpoint of the "narrow[] … issue of

causation," Pet. 11, there is thus a radical difference between *Oviatt* and this case, where there is no dispute that the petitioners' detention was timely and adequately communicated to the state courts, and that any delay is thus causally attributable to the courts and not the jail.

In sum, these cases reach a different conclusion because of their different facts, and there is little evidence that other circuits would have decided this case differently. Likewise, there is little evidence the Tenth Circuit would have decided any of these other cases in a different fashion from its sister circuits, given the dispositive distinctions the court itself identified as important. Most critically, it seems to have been of great significance to all the other circuits whether and how prison officials responded to actual complaints of overdetention. And the record here demonstrates that petitioners were unusually equipped to complain—having been assigned *counsel*—and simply failed to notify anyone that they wanted to be immediately arraigned. There is no circuit conflict regarding a fact pattern like that, and it seems unlikely that one would arise.

2. The foregoing demonstrates that the alleged split is largely illusory. Even assuming (incorrectly) that there were a real distinction, however, it would be of little practical significance.

This is so because the grounds of the Tenth Circuit's decision were exceedingly narrow, turning upon distinctions in the facts of cases, distinctions between state law regimes, and distinctions about the precise way in which petitioners framed and litigated their case in the district court and on appeal. *See* Pet. App. 13a (noting importance of differences in state law regimes); *id.* at 15a-17a (noting important complications arising

from particular elements of petitioners' legal theory); *id.* at 17a-18a (noting importance of state law that forbid jailers from releasing inmates without a court order); *id.* at 8a-9a (noting absence of evidence that sheriff did anything affirmative to cause over-detention). As a result, it is not clear that this opinion will extend to any State beyond New Mexico, or even to New Mexico cases in which petitioners or their counsel raise even a minor complaint about the length of an arrestee's detention. Even the dissent recognized that the majority had limited its analysis based on its understanding of how petitioners had framed their case below—and that, as framed, the majority's discussion was correct. *See supra* pp.11-12. Thus, even if there were any distance between the Tenth Circuit and other courts of appeals, it is not clear that this distance will lead to different outcomes in any more than a tiny handful of future cases.

Put another way, this split—in which the Tenth Circuit is alleged to be an outlier in disagreement with all its sister circuits—has limited and unclear significance, if any. In part because these cases seem to arise quite infrequently, *see infra* p.25, the rule in the Tenth Circuit and other courts has not been extended beyond the confines of one or two examples, and small factual details of those cases appear essential to the decision in each case. Here, for example, the entire outcome may have turned on petitioners' decision to "consistently frame[] their argument based on the arraignment delays" rather than a "right to freedom from prolonged detention" in general. Pet. App. 16a-17a.

In sum, whatever distinction there might be among the circuits here appears highly factbound—or, at least, there is no evidence that the rules in the circuits will

lead with any frequency to divergent outcomes on similar facts. Accordingly, there is no need for this Court's immediate intervention. If this issue is important enough to arise with any frequency, this Court can and should await clarification from the only circuit alleged to differ from the others on what facts make the difference. In reality, the Tenth Circuit's reasoning in this opinion was already narrowly cabined—relying on waiver of an argument, among other case-specific factors, *see supra* p.23—and that strongly suggests that any divergent outcome here is of limited practical significance going forward.

II. The Question Presented Is Of Limited Importance.

Petitioners briefly argue that the question presented is important because it affects liberty interests and pre-trial detention can have potentially "life-altering consequences for pretrial detainees." Pet. 22. Respondents of course do not dispute that pretrial detentions can be very consequential for arrestees. But petitioners' arguments miss the important points from the perspective of this Court's certiorari inquiry.

First, while petitioners suggest that the cases in their alleged split demonstrate that this issue arises frequently, they have the upshot of the facts exactly backwards. Petitioners have (at best) identified five cases presenting this issue going all the way back to 1992. Meanwhile, every detention at every separate state and municipal jail or prison in the Nation represents a possible source of over-detention claims. The evidence thus suggests that this precise legal issue arises very rarely.

This case and the others in the alleged circuit conflict also demonstrate that, as here, this issue almost always comes freighted with other potentially dispositive issues like qualified immunity or *Monell* liability. Indeed, these latter doctrines mean that the issue in this case will only arise in the rare circumstance where there is an alleged policy or other intentional conduct that deliberately leads to a substantive due process violation. The more likely policy problem is not such outlier cases, but the more common (and yet no less serious) issue of occasional and *unintentional* instances of incarceration that last beyond the limits set by state law. And both qualified immunity and *Monell*'s limitations ensure that this case can do nothing about that issue.

Second, even if the problem of pre-trial incarceration can be serious or life-altering in many cases, it is not necessarily so in *all* cases, and the best way to sort the cases in this regard is to insist on the very complaint that petitioners failed to lodge here regarding the length of their detention. It might be typical that pretrial detainees want to be released immediately. But it is not hard to imagine situations where a homeless, mentally troubled, or criminally targeted person at least temporarily prefers pre-trial incarceration to being returned to a more difficult or dangerous situation on the streets. The sheriff, in his individual capacity, should not (and thus does not) play a role in determining when such individuals should be released or their court appearances accelerated. Indeed, he has no power under New Mexico law to release anyone without a court order. *See supra* p.11. Conversely, if securing a quick arraignment *is* an important issue to any given arrestee, they—or their counsel—can be expected to at

least ask *someone* for that relief. That they did not request that relief here demonstrates that this issue is not always as important as it seems—particularly in the factual posture at issue here.

Third, and relatedly, petitioners are transparently catastrophizing when they suggest that the decision below could lead to arrestees being "held indefinitely with impunity" while jailers "take refuge behind judges cloaked with absolute immunity." Pet. 24 (internal quotation marks omitted). Petitioners conveniently ignore that the best remedy for illegal detention is not retrospective damages actions against individuals or cash-strapped, taxpayer-funded municipalities, but rather the writ of habeas corpus—the core purpose of which is to secure the immediate release of individuals being unlawfully detained. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("The essence of habeas corpus 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."). There is, again, no evidence that petitioners or their counsel lodged even an informal complaint with anyone regarding their incarceration. But even supposing that they did, and supposing the unlikely scenario that a jailer nonetheless decided to detain them "with impunity," Pet. 24, there is nothing to suggest that an emergency application by their counsel for state or federal habeas relief would not have secured their immediate release.

In sum, the stakes of this issue are relatively low. While no one questions "the 'importance and fundamental nature' of the right to liberty pending trial," Pet. 23 (quoting *United States v. Salerno*, 481 U.S. 739, 750 (1987)), that fundamental right is protected by the Great Writ, not exclusively by *ex post* damages suits.

And the decision below does not even limit petitioners' access to damages if they can show that they complained and that their jailers affirmatively ignored their requests or interfered with their ability to obtain bail pending trial. This issue arises very infrequently—at best, an average of once every five years—and yet was recently denied in *Jauch*. *See supra* p.1. So even if there were a meaningful disagreement among the courts of appeals (and there is not), it would not merit this Court's attention.

III. The Decision Below Was Correct.

Finally, certiorari is unwarranted because there was no error in the decision below. Indeed, this is the necessary upshot of recognizing the core distinction between this case and the others that petitioners cite. In each of those cases, one could say that the jailer did something affirmative to either directly cause the arrestee's unlawfully extended detention, *see Armstrong*, 152 F.3d at 579, or to interfere with the arrestee's ability to seek immediate arraignment from the state court. *See, e.g.*, *Jauch*, 874 F.3d at 428; *Hayes*, 388 F.3d at 672. That minimum level of responsibility was established by the way that jailers ignored repeated complaints from detainees, *see supra* Part I, or by their knowing unwillingness to deal with extended incarceration caused by the jail's *own* mistakes, *see Oviatt*, 954 F.2d at 1473. But here, in the absence of any complaint by petitioners or their counsel, respondents fully discharged their responsibility by timely alerting the state courts to petitioners' incarceration.

Put another way, respondents did their part and then trusted both the state courts and *petitioners' own appointed counsel* to see that a speedy arraignment was provided. Particularly given that the jailers had no

power under state law to release petitioners without a court order, *see* Pet. App. 17a-18a, their only alternative would have been to go into court in place of petitioners' own attorneys and argue for an order securing petitioners' release. This absurd alternative to trusting petitioners' own lawyers well demonstrates that the causation here lies with the state courts and their officers—petitioners' counsel included. Apart from their passive role in obeying state law and not immediately releasing people absent a court order, respondents did not do anything to cause any injury to respondents. The Tenth Circuit's causation analysis was accordingly correct. *See id.* at 8a-9a.

Petitioners' contrary argument relies on a semantic trick. Petitioners argue that the "'moving force' behind petitioners' extended detention" was respondents "leaving pretrial detainees locked in a jail cell … while taking *no action at all* to ensure timely bail determination." Pet. 21. But this analysis eats itself. As petitioners' own italicization demonstrates, they primarily fault respondents not for *causing* any harm—indeed, for taking "*no action at all*"—but instead for *failing* to affirmatively "ensure" a certain outcome for petitioners. Attributing causal force to respondents' alleged failure to act cannot be so easily accomplished. As the Tenth Circuit explained, it is not the jailer's duty under state law to ensure speedy arraignment—that falls to the arresting officer, to the court, or to petitioners' counsel. *See* Pet. App. 14a. It is thus only through tricks of language that respondents' role in petitioners' incarceration can be phrased in causative terms.

Moreover, petitioners' arguments demonstrably prove too much. In every single case in which a person claims to be illegally detained, it is necessarily true that

the jailer has left them "locked in a jail cell … while taking *no action at all* to ensure" the release that the detainee claims is legally required. Pet. 21. But the law simply does not permit this illegal detention to be remedied by directing a §1983 claim for damages against the jailer—or, often, anyone else. *See Heck*, 512 U.S. 477. Instead, the law makes the jailer the defendant on a petition for the writ of habeas corpus: The jailer's responsibility is not to pay *retrospective damages* for every person who was detained illegally—without regard to his personal role in causing the injury—but instead to produce the habeas petitioner so a court can decide *prospectively* whether the detention is illegal or not. Habeas was fully available here and was the correct remedy for petitioners if they believed their detention had gone on too long. As *Heck* and its progeny make clear, not every illegal detention necessarily results in a cognizable claim for damages under §1983. *See, e.g.*, *Edwards v. Balisok*, 520 U.S. 641, 649 (1997) (noting that *Heck* is not an "exhaustion requirement," and claims regarding illegal detention are sometimes simply "not cognizable" under §1983 "and should be dismissed").

Finally, while it is not true that respondents here are in any way holding anyone for an extended period with "impunity"—nor "tak[ing] refuge behind judges cloaked with absolute immunity"—it *is* true that petitioners are attempting an end run around judicial immunity doctrines. Those doctrines exist for a reason, and it is not simply to channel damages actions under §1983 to other parts of the government. As this Court has expressly acknowledged, it is in the nature of judicial immunity that "unfairness and injustice to a litigant may result on occasion." *Mireles v. Waco*, 502 U.S. 9, 10 (1991) (per curium). Petitioners are essentially

asking this Court to remedy that perceived injustice by giving them someone (anyone) else to sue. But what the law gives them is a different lawsuit altogether—a petition for habeas corpus—not a right to always find an available defendant under §1983.

Moreover, while petitioners' claim fails on its own merits, that is not even the basis on which this case is likely to be resolved. Instead, petitioners are virtually certain to lose for two reasons that are not particularly well connected to the merits of the question they seek to present, making their case unmeritorious and a bad vehicle to boot.

First, as the Tenth Circuit made clear, petitioners waived their present theory that their jailers can be sued because they are responsible for petitioners' overlong detention in general, rather than for failing to ensure that petitioners were arraigned within fifteen days in particular. *See* Pet. App. 17a. Petitioners' conceptualization of the case as based on the arraignment delay was made clear by their own class definition: They did not define the class to include those whose detention was so long and so careless as to violate substantive due process, but rather to include everyone whose detention exceeded fifteen days. *See id.* at 16a & n.9.

But this conceptualization makes it particularly clear that petitioners have no leg to stand on when it comes to causation. Respondents did not cause petitioners to be detained beyond fifteen days because they notified the courts of petitioners' arrests, and there was nothing respondents could have done thereafter to ensure that the courts would schedule petitioners' arraignments within the fifteen-day window because respondents had no role in scheduling arraignments. So this case is likely to be resolved, against petitioners,

based largely on how they chose to characterize their own claims, without reaching the different arguments presented in the petition for certiorari and dissent below. *See* Pet. App. 20a.

Second, and perhaps more important, the dispositive facts in this case are likely to be petitioners' own failure to complain *to anyone* about their detention—even though they had counsel representing them. This appears to be an esoteric fact pattern: In the other cases petitioners have identified, plaintiffs *did* complain, and the jailers' indifference to those complaints was the basis for their §1983 liability. *See supra* Part I. There is no way to attribute causation to respondents in a situation where petitioners themselves neglected to complain about their duration of confinement. And this fact—rather than the particulars of petitioners' legal argument—is likely to dominate the resolution of this case, and ensure petitioners' defeat. If the case for certiorari is that this Court should hold that jailers can sometimes be responsible for this kind of overlong pretrial detention, it should grant in a factual posture where that outcome is plausible, not in a case where petitioners themselves have made their own case as weak as possible.

Ultimately, petitioners present a losing legal argument through a vehicle that makes their claims particularly weak. And this presents yet another reason why certiorari should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for certiorari.

Respectfully submitted,

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