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

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

The decision below reflects a split of authority on a critically important issue, and the opposition brief does not show otherwise. Four circuits have held that when a person has suffered an extended pretrial detention—without access to any court or an opportunity to post bail—he can assert a § 1983 claim against the jailers who unconstitutionally detained him. The Tenth Circuit has held the opposite. It reached this conclusion through an analytical sleight-of-hand, reframing the issue in a way that courts in other circuits may now be tempted to follow. This recurring issue has broad implications, not only for lawsuits like this one, but for all pretrial detainees, who rely on the incentives such lawsuits provide to jailers to avoid unlawful detentions in the first place.

Try as they might, Respondents cannot explain away this conflict. They focus most heavily on what they say is a "critical fact[]"—the absence of any allegation that Petitioners protested their illegal detention at the time. *E.g.*, Opp. 13. This fact, they say, constitutes a significant distinction among the cases and renders any conflict "illusory." *Ibid.*; see also *id.* at 1, 6, 15–21. Not so. The Tenth Circuit's decision does not even mention—much less depend on—this supposedly "critical" distinction. Indeed, such a distinction has not found its way into *any* of the decisions addressing causation for over-length detentions. This is no surprise; it would be absurd to conclude that whether jailers cause unconstitutional detention hinges on whether their detainees know their rights and have the wherewithal to complain.

Respondents are also wrong when they say that the question in this case is of "limited importance"

and arises "infrequently." *Id.* at 1, 23. An issue is not "infrequent" when the courts of appeals have encountered it repeatedly (and twice in the last year). Nor is the issue "infrequent" from the perspective of the more than 150 detainees in Santa Fe County alone who have been subject to illegal overdetention in the last few years. See Pet. App. 138a. The issue implicates the fundamental liberty interests of hundreds or even thousands of Americans, so it cannot be dismissed as having "limited importance." It speaks volumes that the same sheriff and wardens who oversaw Petitioners' illegal detention now view it as such.

The Tenth Circuit's decision creates a clear circuit split on an issue of exceptional importance—an issue that implicates the "serious" and deleterious effects of pretrial confinement that this Court has long recognized. See *Gerstein* v. *Pugh*, 420 U.S. 103, 114 (1975). It departs from the consistent and appropriate approach to causation adopted by other circuits, and it creates a real risk that other courts will do the same. This Court should intervene.

I. There is a meaningful conflict of law among the circuits.

A. The decision below does not depend on whether Petitioners protested their detention at the time.

Respondents devote most of their opposition to the argument that there is no real conflict for this Court to resolve. According to Respondents, the Tenth Circuit's decision turns on case-specific factors, "the most important of which [is] that petitioners and their counsel failed to complain about the length of their detention" at the time. Opp. 13. Respondents return

to this supposedly "critical" and "dispositive" distinction again and again, even asserting that it defines the question presented. *Id*. at i, 10, 13, 16–21, 23, 31. The Tenth Circuit, they argue, "expressly based" its decision on this distinction, which cabins its effect in future cases. *Id.* at 13; see also *id*. at 10 (asserting that the court distinguished *Jauch* v. *Choctaw Cty.*, 874 F.3d 425 (5th Cir. 2017), on this basis).

This argument is belied by even the most cursory review of the decision below. The Tenth Circuit did not even *mention* the distinction that Respondents claim is dispositive, let alone "expressly base" its decision on it. Pet. App. 1a–43a. Respondents' argument that this distinction will somehow limit the decision's future effects is thus simply wrong. No court could reasonably conclude that this distinction was important to the Tenth Circuit's holding.

It is no surprise that the decision below does not depend on this distinction, because it is a distinction without a difference. Respondents say that "it seems to have been of great significance to all the other circuits whether and how prison officials responded to actual complaints of overdetention"—whereas here, Respondents assert, Petitioners "failed to notify anyone that they wanted to be immediately arraigned." Opp. 22. To begin with, this is a dramatic understatement of the deprivation Petitioners experienced. The problem is not simply that Petitioners "wanted" a chance to end their detention; the Constitution and state law guaranteed it. And in any event, none of the other decisions actually attributed "great significance" to these kinds of facts.

In the Ninth Circuit case, for example, there is no indication that Mr. Oviatt, a schizophrenic, lodged

any complaint. See *Oviatt* v. *Pearce*, 954 F.2d 1470, 1473 (9th Cir. 1992). To the contrary, the court's principal concern in that case was for detainees who, for any number of reasons, did *not* complain. *Id.* at 1476 (policy of relying on inmates to alert jailers to overdetention is insufficient because it ignores the "enormous" risk of overdetention for those detainees who are "unlikely to know of their legal rights," "mentally impaired," or "not in contact with their families or lawyers"). The jailer was liable, not for ignoring complaints, but for his deliberate indifference to overdetention—whether or not the detainees had complained. *Id.* at 1478–1479.

Nor did detainees' complaints drive the analysis in the Fifth, Seventh, and Eighth Circuits' decisions. See *Jauch*, 874 F.3d 425; *Hayes* v. *Faulkner Cty.*, 388 F.3d 669 (8th Cir. 2004); *Armstrong* v. *Squaditro*, 152 F.3d 564 (7th Cir. 1998). Respondents start with *Jauch*, which they say notes "within the first two paragraphs" that Ms. Jauch complained to the sheriff about her extended detention. Opp. 15–16. It is true that *Jauch* mentions this in the factual summary that begins the opinion—but nowhere else. 874 F.3d at 428. The distinction that Respondents say was "dispositive" thus *played no part at all* in the Fifth Circuit's analysis. *Id.* Nor could it have, because *Jauch* relied on a prior case, *Jones*, which held that extended pretrial detention without access to a judge violated due process. 874 F.3d at 430 ("*Jones* is binding * * *.") (citing *Jones* v. *City of Jackson*, 203 F.3d 875 (5th Cir. 2000)). And *Jones*, like *Oviatt*, made no mention of any complaint by the plaintiff. Indeed, the defendants in *Jones* did not even know about the plaintiff's overdetention. 203 F.3d at 881-882 (Garza, J., dissenting).

As for *Hayes*, Respondents are correct that the record included specific complaints by the detainee. Opp. 17–19. But *Hayes* relied on those complaints only in determining that the jail administrator, individually, was deliberately indifferent to Mr. Hayes's due process rights, not in analyzing causation. 388 F.3d at 674. The latter is the question raised by this case. See Pet. i. And even if deliberate indifference were the relevant issue here, before it addressed the *individual* claims against the jailer, *Hayes*, with no mention of detainees' complaints, held that the county's policy "to submit the names of confinees to the court and then wait for the court to schedule a hearing" was enough *by itself* to constitute deliberate indifference by the county. 388 F.3d at 674. For this holding, *Hayes* relied on *Oviatt*, which focused specifically on detainees who made no complaint. *Ibid.*

A similar analysis pertains for *Armstrong*, which likewise relied on the detainee's complaints only in determining that there was deliberate indifference, not in analyzing causation. 152 F.3d at 578–580. Moreover, *Armstrong* recognized that detainees can show deliberate indifference not only through actual knowledge (*e.g.*, a formal complaint) but also through disregard for obvious dangers. *Id.* at 577. And unlike *Armstrong*, which involved an "isolated incident in Allen County" (*id.* at 578), the current case involves more than 150 detainees in a single jail over a period of only three years. Pet. App. 138a. That is more than sufficient, especially at the pleading stage, to show disregard of a "known or obvious risk of injury." See *Bd. of Cty. Comm'rs* v. *Brown*, 520 U.S. 397, 412 (1997); *Oviatt*, 954 F.2d at 1478 (finding deliberate indifference when there were "at least 19 incidents" of overdetention in an eight-year period).

B. The presence of clerical errors is not a meaningful distinction.

Respondents next argue that any conflict with *Armstrong* and *Oviatt* is illusory because those cases involved clerical errors by the jailers. Opp. 20–22. This is inconsistent with both courts' reasoning. Both cases state specifically that they are not basing liability on a clerical error. In *Armstrong*, the court explained that the plaintiff was complaining not "about the transposition of his case number," but about "the entire procedure" adopted by his jailers to respond (or rather, not to respond) to the risk of overdetention when such errors occurred. 152 F.3d at 578. Similarly, the court in *Oviatt* rejected the defendants' argument that a clerical error was the "true cause" of injury, concluding that the sheriff was liable for his deliberate failure to adopt policies to mitigate the risks of overdetention posed by such errors. 954 F.2d at 1478–1479.

Respondents are also wrong on the facts. Although *Armstrong* may have involved an error by the jail, *Oviatt* did not. Rather, it involved a clerical error by the court. 954 F.2d at 1473 ("[T]he court clerk who prepared the docket sheet * * * failed to place plaintiff's name on the docket."). Respondents are clearly wrong to assert that *Oviatt* held the jailer liable for overdetention caused by "the jail's own mistakes." Opp. 21.

In any case, as the Petition explains, the lack of a clerical error in the current case cuts in Petitioners' favor. The jailers in *Armstrong* and *Oviatt* failed to adopt policies necessary to avoid overdetention only in the case of a *mistake*. In the present case, Respondents failed to respond to a repeated problem in

the *system*—a problem that recurred over 150 times in just a few years. *Brown*, 520 U.S. at 407 ("If a program does not prevent constitutional violations, municipal decisionmakers may eventually be put on notice that a new program is called for.").

C. The pleadings did not compel the Tenth Circuit's divergent analysis.

Respondents incorrectly argue that the Tenth Circuit's opinion can be explained (and cabined) by Petitioners' "decision" to "frame their argument based on arraignment delays" rather than "freedom from prolonged detention." Opp. 23. Petitioners' complaint and briefing repeatedly referred to a liberty interest in freedom pending trial. Pet. 20–21; Pet. App. 33a (this theory is "fairly alleged in the complaint and presented in Plaintiffs' briefing"). The majority's refusal to analyze Petitioners' claim through this lens was thus based on its divergent view of causation, not on anything unique about the pleadings. Indeed, the decision below implicitly recognizes this by denying Petitioners' leave to amend on grounds of futility, finding that there was nothing Petitioners could have added or changed to save their claims. Pet. App. 20a.

In fact, the Tenth Circuit's refusal to analyze Petitioners' claims based on a liberty interest in pretrial freedom makes this case even more worthy of this Court's attention. Nearly every claim of extended pretrial detention—including all the cases discussed in the Petition—involves *both* a court's failure to set a timely hearing *and* a jailer's actions in holding the detainee. The Tenth Circuit's myopic focus on the scheduling of arraignments is not based on any relevant factual distinctions and will only create confu-

sion and division among courts that face this issue in the future.

II. This case raises an issue of exceptional importance.

As the Petition showed, this case raises an exceptionally important issue of fundamental constitutional rights. Pet. 22–24. Respondents make four arguments in response. All are mistaken.

First, Respondents argue that the question presented is of limited importance because it has been decided in published opinions by the federal courts of appeals "only" five times (though twice in the last year).* Opp. 24. Putting aside the irony of this argument—given that the underlying practice has affected more than 150 detainees in Santa Fe County alone in the last three years—an issue that arises repeatedly in several jurisdictions and implicates fundamental liberty interests is not unimportant. Even Respondents themselves acknowledge that "every detention center at every state and municipal jail or prison in the Nation presents a possible source of over-detention claims." Opp. 24. Precisely so. The issue this case raises is fundamentally important to pretrial detention, with all of its heavy consequences, at jails nationwide.

Second, Respondents incorrectly argue that this case is unimportant because overdetention cases will

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* This issue has arisen repeatedly in district courts as well. See, *e.g.*, *Covington* v. *Wallace*, 2014 WL 5306720, at *1 (E.D. Ark. Oct. 15, 2014); *Shobe* v. *Seneca Cty. Sheriff's Office*, 2008 WL 4981362, at *5-6 (N.D. Ohio Nov. 19, 2008); *Roberson* v. *Cty. of Essex*, 2006 WL 2844425, at *8 (D.N.J. Oct. 2, 2006).

typically feature issues of qualified immunity or *Monell* liability in addition to causation. Opp. 25. But almost every case of *any* variety has multiple, potentially dispositive issues. An issue is not unimportant simply because other legal issues matter too. Nor is there any reason to think that the hurdles posed by *Monell* or qualified immunity are insurmountable in overdetention cases. Indeed, *Monell* liability was an issue in every case the Petition discusses, and in every case, the court found that *Monell* liability was established. *Jauch*, 874 F.3d at 435; *Hayes*, 388 F.3d at 674; *Armstrong*, 152 F.3d at 579; *Oviatt*, 954 F.2d at 1479. Similarly, qualified immunity did not bar those claims. *Jauch*, 874 F.3d at 437; *Hayes*, 388 F.3d at 676; *Armstrong*, 152 F.3d at 582.

Third, and incredibly, Respondents argue that this case is unimportant because, while *some* detainees might not want to spend weeks or months in illegal detention, others might "temporarily prefer" a jail cell to freedom. Opp. 25–26. This, Respondents argue, is the only explanation for why a detainee held too long would not immediately file a habeas petition. *Ibid.* This ignores the obvious other explanations—including ignorance of legal rights, diminished capacity, language barriers, fear of retribution, overloaded public defender systems, and even attorney malpractice. *Ibid.* To recite this argument is to refute it.

Finally, Respondents argue that this case is unimportant because the "best remedy for illegal detention" is the writ of habeas corpus rather than a § 1983 claim. Opp. 26. This is a non sequitur. Petitioners are not seeking release; they have already been released (although long after they should have been). Instead, they are seeking an injunction requir-

ing Respondents to adopt policies to prevent overdetention in the future and monetary compensation for their past illegal detention. Pet. App. 144a. Those remedies are not available through a writ of habeas corpus. Nor does § 1983 require a victim of unlawful detention to have sought habeas in order to assert a viable claim after his release. *Heck* v. *Humphrey*, 512 U.S. 477, 480-481 (1994); Civil Rights Act of 1971, 42 U.S.C. § 1983. Respondents may wish that § 1983 claims did not allow for damages, but that is Congress's prerogative.

III. Respondents' policy of inaction is actionable.

Respondents close their opposition by arguing the merits of the § 1983 claims, though this argument is flawed as well. They assert that Petitioners' claims must fail because they would require the Court to find liability based on an "alleged failure to act." Opp. 28. But what Respondents characterize as a "failure to act" is precisely what the courts of appeals have repeatedly held is actionable. *Hayes* found liability based on a county policy "to submit the names of confinees to the court and then wait for the court to schedule a hearing." 388 F.3d at 674. Similarly, *Oviatt* found liability based on "policy of inaction" despite the clear risk of overdetention. 954 F.2d at 1477; *see also Jauch*, 874 F.3d at 437 n.10 ("Sheriff Halford has argued that he was not responsible for what happened to Jauch, but we cannot know what he could have done to allow bail, or legal or judicial action because he did nothing at all."). All of this adheres to this Court's prior decisions. Counties and their officials cannot simply maintain deficient policies when those policies present a risk of constitu-

tional violations at their own hands. *Brown*, 520 U.S. at 407 ("If a program does not prevent constitutional violations, municipal decisionmakers may eventually be put on notice that a new program is called for."). In short, even if the merits were an appropriate basis for opposing a petition for certiorari, Respondents' argument on the merits is incorrect.

CONCLUSION

Respondents' arguments do not diminish the importance of the question presented or the need for this Court's immediate review. This Court should grant certiorari.

Respectfully submitted.

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