No. 19-1014

In the Supreme Court of the United States

TERESA BERRY,
Petitioner,

v.

DELAWARE COUNTY SHERIFF'S OFFICE,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether compelling reasons exist to exercise jurisdiction on writ of certiorari where Petitioner raises only an alleged conflict between the decision of the United States Court of Appeals for the Sixth Circuit in this matter and two, factually distinct cases issued within the same Circuit.

2. Whether the United States Court of Appeals for the Sixth Circuit correctly concluded that Respondent was not liable under the Eighth Amendment for an alleged failure to train its officers to recognize and address serious medical conditions where the arresting officer immediately secured the care of a licensed practical nurse and corrections officers subsequently relied upon the medical judgments of the medical professionals who provided continued medical attention.

CORPORATE DISCLOSURE STATEMENT

Respondent, the Delaware County Sheriff's Office, is a government agency and, pursuant to United States Supreme Court Rule 29.6, is exempt from having to provide a corporate disclosure statement.

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RELEVANT CONSTITUTIONAL PROVISION

The Eighth Amendment to the Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

INTRODUCTION

None of the four questions presented by Petitioner offer a compelling reason to grant review of the lower court decisions in this matter. Petitioner identifies only an alleged conflict between the decision of the United States Court of Appeals for the Sixth Circuit in Case No. 19-3096 and two prior decisions issued within the Sixth Circuit—one of which is an unpublished district court decision. The conflict allegedly created by the Sixth Circuit's decision in Case No. 19-3096 does not satisfy the "high degree of selectivity [ ] enjoined upon [this Court]" in granting a petition for a writ of certiorari because the alleged conflict is not "with a decision of another court of appeals." *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Roberts, C.J., dissenting); see also *Allapattah Servs. v. Exxon Corp.*, 362 F.3d 739, 752 (11th Cir. 2004) ("Of course, the mere existence of even a gaping interpretive chasm has never been sufficient in itself to assure of grant of certiorari from the Supreme Court."). Given the number of petitions for certiorari received every Term, the requirement that the alleged conflict be with another court of appeals "is a necessary concomitant of the limited capacity in this Court." *Id.*

Furthermore, the alleged conflict does not even exist. Petitioner's arguments for a writ of certiorari are based on a flawed understanding of *Jimenez v. Hopkins County*, No. 4:11-cv-00033, 2014 U.S. Dist. LEXIS 3722 (W.D. Ky. Jan., 13, 2014) and *Shadrick v. Hopkins County*, 805 F.3d 724 (6th Cir. 2015), as well as the record in the underlying matter. Because the *Jimenez* and *Shadrick* cases are factually distinguishable from this matter, they are not at odds with the Sixth Circuit's decision in Case No. 19-3096. Consequently, the Petition for a Writ of Certiorari should be denied.

The decision below was correctly decided and does not call for Supreme Court review. As an initial matter, Respondent, as a county sheriff's office, is not amenable to suit. See *Petty v. County of Franklin*, 478 F.3d 341, 347 (6th Cir. 2007). The district court granted Petitioner leave to substitute the elected sheriff for the county sheriff's office, explicitly instructing Petitioner to "file her Second Amended Complaint within **SEVEN DAYS** of this Opinion and Order." (Pet. App. 4a) (emphasis in original) The district court's instruction was accompanied by the following warning: "**Failure to comply with this Opinion and Order will result in the Amended Complaint being dismissed, without additional notice, for naming a party that is not *sui juris*.**" (Id.) (emphasis in original) Despite the warning, Petitioner did not meet the deadline to substitute into her case a suable defendant, and the district court granted Respondent summary judgment (Pet. App. 23a) The district court still engaged in an alternative analysis, as if Petitioner named an entity subject to suit, and determined that Petitioner failed to establish municipal liability under

Monell v. New York City Department of Social Services, 436 U.S. 658 (1978) and its progeny.

The Sixth Circuit, in its de novo review, agreed with the district court that Petitioner "failed to name a suable party." (Pet. App. 6a) The Sixth Circuit also set aside Petitioner's pleading mistakes and fully analyzed the sole claim Petitioner pursued on appeal: An Eighth Amendment failure to train claim. (Id.) Ultimately, the Sixth Circuit correctly concluded that Respondent exhibited no deliberate indifference to the training of its officers since the arresting officer "perceived something might be medically wrong with [the decedent]," medical care was immediately secured for the decedent, and corrections staff subsequently relied upon the medical judgments of the medical professionals who provided the decedent with continued attention. (Pet. App. 9a, 16a, 18a) As such, the medical training received by officers working at a jail with on-site medical professionals 24 hours a day, seven days a week that, at a minimum, includes CPR and First Aid is not constitutionally deficient. (Pet. App. 15a)

The training at issue in the *Shadrick* case relied upon by Petitioner concerns licensed practical nurses rather than officers; therefore, the *Shadrick* holding has no bearing on the Sixth Circuit's decision in the underlying matter. Relatedly, the *Jimenez* case, as a Western District of Kentucky case, is not binding upon either the Southern District of Ohio or the Sixth Circuit. Plus, the facts surrounding the municipal liability claim in *Jimenez* are significantly different

than those found in this record. The Petition for a Writ of Certiorari should thus be denied.

STATEMENT OF THE CASE

Petitioner's request for a grant of certiorari is laden with factual errors and misunderstandings of law. Important to the disposition of Petitioner's request are the following facts: The decedent was arrested at her home, pursuant to a warrant, by Deputy Darren Mohnsen and transported to the jail operated by Respondent. Authenticated video footage from the jail documents that the decedent walked into the facility unassisted and Deputy Mohnsen immediately asked for a nurse to evaluate the decedent. Within minutes of the decedent's arrival at the jail, a licensed practical nurse attended to the decedent, and Deputy Mohnsen relayed to the nurse the information he possessed about the decedent's health status. The nurse performed a medical screening and determined that the decedent did not present a medical problem that required ambulatory care or hospitalization. Consequently, a nurse, prior to the decedent's acceptance into the jail, made a rudimentary medical judgment that any symptoms presented by the decedent could be adequately addressed at the jail.

The authenticated video footage of the decedent's booking, which includes audio, documents the absence of any complaint from the decedent or request for medical attention. The footage also documents the decedent's ability to remove her clothing and complete the booking process without issue. Objectively, the decedent did not exhibit symptoms of a serious medical need.

While the decedent displayed no signs of a serious medical need, she was still housed in a holding cell in the jail's booking area where she received near-constant monitoring because the decedent was suspected of bringing narcotics into the jail during her prior incarcerations. The decedent was placed in a "dry cell," whereby the decedent could not flush the toilet or run water from the sink. Importantly, the video footage and deposition testimony confirms that the decedent always had a pitcher full of water available, the pitcher was routinely refilled with water by corrections staff, and the decedent consumed water. Petitioner's assertions that Respondent failed to monitor the decedent for drug withdrawal is irrelevant, given that the decedent's "cause of death was peritonitis." (Petition at 20)

Despite being corrected at both the trial and appellate court level, Petitioner continues to contend that the decedent "had an uncontrollable bowel movement" during intake and endured long stretches of time without nurse or corrections officer interaction. (Petition at 17-18) Such contentions are wholly disproven by the record. As for the alleged "uncontrollable bowel movement," Petitioner accedes that "[t]here is no information in the record, other than the recording of the call for assistance in the shower and Officer Coontz['s] testimony related to this incident." (Id.). In effect, Petitioner admits the only support for the alleged "uncontrollable bowel movement" is contained in inadmissible evidence: an unauthenticated audio recording of unidentifiable voices. See Fed. R. Civ. P. 56(c) and (e); *Alexander v. CareSource*, 576 F.3d 551, 558 (6th Cir. 2009).

Corrections Officer Coontz testified at deposition that she could not quite discern what was said in the audio recording, but she believed the recorded voice "may have said shut herself in the shower." (R#37-6 Pg. ID 1676 Lns 2-3) Corrections Officer Coontz further explained that a fellow officer may have been the subject of the recording "[b]ecause if we go in there, we're also stuck in until someone opens the door, because the lock is on the outside." (Id. at lns 4-6) The recording does not identify the decedent as the person "in the shower," and Petitioner is without support for her allegation that the decedent manifested a serious medical need through an "uncontrollable bowel movement."

With respect to the frequency of the decedent's interactions with nursing and corrections staff, the record establishes that the decedent received almost non-stop monitoring due to her housing location in the booking officers' direct line of sight. The decedent, after receiving her lunch on February 20, 2016, communicated with a female corrections officer, exited her cell to make several phone calls in the booking area, and, once back inside her cell, signaled to a corrections officer through the cell window to obtain a cup of water. The nurse who conducted the initial medical screen made at least one check on the decedent after the decedent's intake on February 20, 2016. The decedent also received a dinner tray, followed by medication pass by a nurse at approximately 8:00 p.m. Several observation checks were also conducted by various corrections officers, with at least one check completed every 60 minutes.

In the early morning hours of February 21, 2016, a nurse addressed the single medical complaint voiced by the decedent during her approximately 35 hours at the jail. Petitioner's insistence that "[t]here was no interaction between [the decedent] and the corrections officers or nursing staff until 8:20 the next evening" is amiss. (Petition at 18) The decedent received her mediations at approximately 8:00 a.m. on February 21, 2016. Corrections officers continued to observe the decedent at least once every 60 minutes, as reflected in the video footage, and the decedent's activity inside her cell throughout February 21, 2016 is captured.

A sergeant conducted a well-being check on the decedent at approximately 7:20 p.m. on February 21, 2016. When the sergeant opened the cell door and asked how the decedent was doing, the decedent responded that she was "fine" and nothing about the decedent's appearance indicated a need for medical attention. Several minutes after the sergeant's well-being check, another corrections officer conducted a visual check on the decedent.

A nurse and corrections officer then attended to the decedent slightly after 8:00 p.m. on February 21, 2016, to administer the decedent's medications. At that point, the decedent expressed that her tongue felt abnormal and she began to show signs of a serious medical need. Two nurses quickly provided care, and a corrections officer called for an emergency squad at approximately 8:14 p.m. Paramedics arrived less than 10 minutes later, took over life-saving measures, and transported the decedent by ambulance to the hospital where the

decedent was tragically pronounced dead at 9:11 p.m. on February 21, 2016.

Training by Respondent

The record here reveals that Respondent's officers are well-trained. Corrections officers must complete the Ohio Peace Officer Training Commission's corrections academy, which includes medical training. The corrections academy specifically teaches officers the signs and symptoms of inmate distress, as well as what to look for at intake. Each of Respondent's newly hired officers must read, acknowledge, and understand Respondent's policies. There is also a field training officer program at the jail, where new corrections officers shadow a senior officer on all three shifts. As part of the program, new officers are observed by the sergeants and trained on the jail's policies and procedures. Corrections officers are trained by medical staff on the basic medical intake procedures. Petitioner's brash contention that "[t]here is no evidence the employees were ever trained to follow those policies" is easily disproven by the record. (Petition at 30).

Respondent also coordinates quarterly or semi-annual refresher trainings on when officers need to notify the medical staff. In addition, there are online training requirements and in-services conducted by state-certified instructors. Deputy Mohnsen was even certified as a first responder.

Petitioner's sole claim—failure to train—is defeated by the simple fact that Deputy Mohnsen immediately secured the attention of a nurse upon the decedent's

arrival at the jail. The record demonstrates that Respondent trains its officers to both recognize the signs of a medical emergency and identify when a medical professional needs to be contacted. The corrections officers' subsequent reliance on the medical judgments of the medical professionals falls squarely within Eighth Amendment case law. See *Spears v. Ruth*, 589 F.3d 249, 255 (6th Cir. 2009); *Graham v. County of Washtenaw*, 358 F.3d 377, 384 (6th Cir. 2004), citing *Ronaye v. Ficano*, No. 98-1135, 1999 U.S. App. LEXIS 4579, *3 (6th Cir. Mar. 15, 1999). Moreover, in a case decided after the decedent's death but prior to the district court's decision below, the Sixth Circuit rejected a contention akin to Petitioner's claim in this matter. See *Winkler v. Madison County*, 893 F.3d 877, 899-901 (6th Cir. 2018). The lower courts ruled in accordance with "the accepted and usual course of judicial proceedings," and Petitioner's argument for a grant of certiorari falls flat. Sup. Ct. R. 10(a).

Procedural History

In launching her case in the United States District Court for the Southern District of Ohio, Petitioner filed her original complaint naming Respondent and six John Doe officers. Petitioner filed an amended complaint six months later, dismissing the John Doe officers and adding the private, third-party corporation, Corrections Healthcare Companies, Inc. ("CHC"), that was contracted to provide medical services to inmates at Respondent's jail. In August 2018, CHC was dismissed from the case, with prejudice, in light of settlement. (Pet. App. 26a) Any question over the medical care provided under Respondent's contract

with CHC by the physician or nurses employed by CHC is precluded at this stage.

The district court, in ruling on Respondent's motion for summary judgment, managed to decipher Petitioner's claims and distinguished the two cases Petitioner still argues are in conflict with the lower courts' decisions. (Pet. App. 42a, 44a) The district court determined that Petitioner presented no evidence in support of her claims and Respondent or, in the alternative, the elected county sheriff, is entitled to judgment as a matter of law. (Pet. App. 23a, 46a)

Petitioner pursued a single claim against Respondent on appeal: failure to train. She specifically challenged the district court's alleged failure to consider certain evidence and the *Jimenez* and *Shadrick* cases. The Sixth Circuit, in its de novo review, agreed with the district court's grant of summary judgment to Respondent, explaining that the "inadequacy-of-training analysis" within the *Shadrick* case, which was an appeal from the Western District of Kentucky *Jimenez* case, "concerned the adequacy of training provided to licensed practice nurses, not police officers." (Pet. App. 10a) The issues identified in the Petition for a Writ of Certiorari have neither merit nor the "peculiar gravity and general importance" needed for this Court's review; therefore, the Petition for a Writ of Certiorari should be denied. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see also *Hubbard*, 514 at 720.

ARGUMENTS FOR DENYING CERTIORARI

The Petition for a Writ of Certiorari should be denied because there is neither an identified division amongst United States courts of appeal nor a "depart[ure] from the accepted and usual course of judicial proceedings." Sup. Ct. R. 10(a) The decision below was correctly decided and does not call for this Court's review. Given that the "jurisdiction to review the judgments and decrees of the Circuit Court of Appeals by certiorari . . . is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision," Petitioner's request for certiorari should be denied. *Hamilton-Brown*, 240 U.S. at 258.

There is no compelling reason to exercise jurisdiction on writ of certiorari.

Petitioner does not meet any of the standards embodied in United States Supreme Court Rule 10 to warrant a grant of certiorari. See *Hubbard*, 514 U.S. at 720. No "conflict with another United States court of appeals" is alleged; rather, only a supposed conflict between the Sixth Circuit's decision below and the Sixth Circuit's decision in the *Shadrick* case, which was an appeal taken from the *Jimenez* case, is cited[1]. First, the supposed conflict, even if it existed, does not impel a grant of certiorari. Chief Justice Roberts has clarified that a United States court of appeals decision will not be reviewed unless it conflicts with a decision

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[1] Petitioner did not seek an en banc determination under Fed. R. App. 35.

from another United States court of appeals. *Hubbard*, 514 U.S. at 720. "This fact is a necessary concomitant of the limited capacity in this Court," as thousands of petitions for certiorari are received "every Term" with "only a tiny fraction" able to be granted. *Id.*

Petitioner locates no case outside the Sixth Circuit that conflicts with the decision below. "Of course, the mere existence of even a gaping interpretive chasm has never been sufficient in itself to assure a grant of certiorari from the Supreme Court" since "only 'important matters' or 'important questions of federal law'" will be entertained. *Allapattah Servs. v. Exxon Corp.*, 362 F.3d 739, 752 (11th Cir. 2004), quoting Sup. Ct. R. 10(a) (dissenting opinion urging a grant of certiorari to resolve a jurisdictional controversy). Here, neither a Circuit split nor "an important federal question" has been raised by Petitioner; thus, the Petition for a Writ of Certiorari should be denied.

Second, the alleged conflict cited by Petitioner does not exist. Petitioner's arguments for a grant of certiorari are based on a flawed understanding of the *Shadrick* and *Jimenez* cases. As succinctly provided by Circuit Judge Griffin in the case below, "*Shadrick's* inadequacy-of-training analysis concerned the adequacy of training provided to licensed practical nurses, not police officers." (Pet. App. 10a) *Shadrick v. Hopkins County*, 805 F.3d 724 (6th Cir. 2015) is an appeal from *Jimenez v. Hopkins County*, No. 4:11-cv-00033, 2014 U.S. Dist. LEXIS 3722 (W.D. Ky., Jan. 13, 2014), and *Shadrick* concerns only the grant of summary judgment in favor of the "private, for-profit corporation" that was contracted "to provide medical

services to inmates housed" at a Kentucky county detention center. *Shadrick*, 805 F.3d at 728. Because corrections officers cannot be held to the same standards as certified nurses, *Shadrick* has no bearing on the decision below. (Pet. App 10a)

Moreover, the *Jimenez* case denied summary judgment to a county where jailers who were "the only persons in somewhat regular and direct contact with the inmates" received no policies or training "as to what constitutes a medical emergency, what constitutes a medical symptom or condition that should be reported to medical, and what to do in the event that the medical staff does not respond." *Jimenez*, 2014 U.S. Dist. LEXIS 3722, at *49, 54. The undisputed facts of the underlying matter are dissimilar from those in *Jimenez* in significant ways: (1) Respondent's jail is staffed with on-site medical professionals 24 hours a day, seven days a week; (2) Respondent issues and provides training on its policies concerning medical emergencies and when to contact medical staff; and (3) Deputy Mohnsen "perceived that something might be medically wrong with [the decedent], contacted nursing staff, and "the nurses had multiple interactions with [the decedent]." (Petition at 6-7; Pet. App. 9a, 15a, 16a) Petitioner's allegation of a conflict demanding Supreme Court review is unfounded.

Third, Petitioner does not provide any information to support her conclusory allegation that the decision below "departed from the accepted and usual course of judicial proceedings." (Petition at 21) It is also worth noting that Petitioner may not later "raise additional questions or change the substance of the questions

already presented" in her Petition for a Writ of Certiorari. Sup. Ct. R. 24.1(a) While not raised by Petitioner, resolution of Petitioner's request for certiorari does not require this Court's decision on "whether finding a municipality liable under §1983 requires proof that an individual defendant committed a constitutional violation." (Pet. App. 7a) See *Anderson v. Jones*, No. 1:17-cv-327, 2020 U.S. Dist. LEXIS 28015, *28 (S.D. Ohio, Feb. 19, 2020), citing *Brawner v. Scott County*, No. 3:17-cv-00108, 2019 U.S. Dist. LEXIS 85020 (E.D. Tenn., May 21, 2019), *app. filed*, No. 19-5623 (6th Cir., June 11, 2019). Because both the Sixth Circuit and district court assumed *arguendo* that Petitioner "made whatever showings are necessary on this issue" and still concluded that Respondent was entitled to judgment as a matter of law, this case is not the appropriate one for this Court to explore the question of whether municipal liability under 42 U.S.C. § 1983 is always contingent on a finding of individual liability. (Pet. App. 7a, 28a). The Petition for a Writ of Certiorari should thus be denied.

The decision below was correctly decided.

The decision below does not warrant Supreme Court review because it was correctly decided. Beyond Petitioner's pleading mistakes, which provided a sufficient basis for the grant of summary judgment to Respondent, Petitioner fails to show a municipal policy of inadequate training in combination with a direct causal link between the policy and the alleged constitutional deprivation. See *City of Canton v. Harris*, 489 U.S. 378, 385 (1989); *Winkler v. Madison County*, 893 F.3d 877, 901 (6th Cir. 2018). Regardless of

whether the claim on which Petitioner seeks this Court's review is taken against the county sheriff's office or the elected sheriff, himself, the record reveals no unconstitutional failure to train.

The officers' training that Petitioner challenges, which does not encompass the totality of the officers' training, has previously been deemed by the Sixth Circuit to pass constitutional muster. See *Winkler*, 893 F.3d at 903; *Miller v. Calhoun County*, 408 F.3d 803 (6th Cir. 2005). Plus, Respondent's jail "has even more in-person medical coverage; it has nursing coverage 24 hours a day, seven days a week." (Pet. App. 15a) Deputy Mohnsen's "conduct was precisely the opposite of deliberate indifference," as he immediately "contacted a licensed practical nurse and conveyed that he believed that [the decedent] was in questionable health." (Pet. App. 18a) Petitioner does not identify another time during the decedent's approximately 35-hour incarceration when a corrections officer should have consulted a nurse but did not. The record proves that "the nurses had multiple interactions with [the decedent]," and case law confirms that officers are entitled to rely on a jail nurse's medical assessment. (Pet. App. 16a) See *Spears v. Ruth*, 589 F.3d 249, 255 (6th Cir. 2009); *Graham v. County of Washtenaw*, 358 F.3d 377, 384 (6th Cir. 2004), citing *Ronaye v. Ficano*, No. 98-1135, 1999 U.S. App. LEXIS 4579, *3 (6th Cir. Mar. 15, 1999). Ultimately, there is no compelling reason to grant certiorari, and the Petition for a Writ of Certiorari should be denied.

CONCLUSION

Respondent respectfully requests that the Petition for a Writ of Certiorari be denied. The sole identified conflict allegedly presented by the decision below involves only cases within the Sixth Circuit; therefore, Petitioner does not even allege a sufficient conflict under United States Supreme Court Rule 10. Further, the conflict does not, in fact, exist, given the factual distinctions between the decision below and the *Shadrick* and *Jimenez* cases to which Petitioner clings. Because the decision below was correctly decided, in accordance with controlling case law, there is no departure from the accepted and usual course of judicial proceedings, and the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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