No. 21-____

IN THE
Supreme Court of the United States

FAYE STRAIN, as guardian of Thomas Benjamin Pratt,

Petitioner,

v.

VIC REGALADO, in his official capacity; ARMOR CORRECTIONAL HEALTH SERVICES, INC.; CURTIS MCELROY, D.O.; PATRICIA DEANE, LPN; KATHY LOEHR, LPC,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Because U.S. jails incarcerate more than 725,000 people at any given time, federal courts frequently hear claims in which pretrial detainees allege that jail medical staff provided constitutionally deficient treatment. But the legal standard for such claims presents a 4-3 split among the circuits. In the Fifth, Eighth, Tenth, and Eleventh Circuits, pretrial detainees must plead and prove that jail defendants who denied them medical care *subjectively knew* that their deficient treatment would pose a substantial risk of serious harm. Not so in the Second, Seventh, and Ninth Circuits. In this case, the Tenth Circuit explicitly acknowledged that "the circuits are split" on the issue and resolved it "head-on." Pet. App. 10a-11a.

The question presented is:

Whether a pretrial detainee can prevail against a jail official who disregarded an obvious risk of serious harm or whether the pretrial detainee must prove that the official subjectively knew of and disregarded a serious risk of harm.

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Petitioner Faye Strain respectfully petitions this Court for a writ of certiorari to review the judgment of the Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The Tenth Circuit opinion (Pet. App. 3a-26a) is published at 977 F.3d 984. The district court's opinion (Pet. App. 27a-44a) is unpublished.

JURISDICTION

The Tenth Circuit entered judgment on October 9, 2020 and denied a petition for panel rehearing and rehearing *en banc* on December 8, 2020. On March 19, 2020, this Court extended the time to file any petition for certiorari to 150 days, making this petition due on May 7, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Eighth Amendment provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

INTRODUCTION

This case presents a clear and entrenched circuit split over an important question of constitutional law. In *Kingsley v. Hendrickson*, this Court held that "the relevant standard" for assessing a pretrial detainee's excessive force claim "is objective not subjective." 576 U.S. 389, 395 (2015). In the decision below, the Tenth Circuit determined that pretrial detainees' medical care claims are still governed by a subjective standard of fault, notwithstanding this holding.

The issue is profoundly important. At any given time, pretrial detention facilities in the United States incarcerate roughly 725,000 people. Their claims of constitutionally inadequate medical care often involve matters of life and death. The standard for such claims should not depend, as it does now, on where a given detainee happens to be incarcerated. The Court should grant certiorari.

STATEMENT OF THE CASE

A. Legal Framework

When convicted prisoners challenge their treatment while incarcerated, their claims arise under the Cruel and Unusual Punishments Clause of the Eighth Amendment. *See Helling v. McKinney*, 509 U.S. 25, 31 (1993). Establishing fault in such cases "mandate[s] inquiry into a prison official's state of mind." *Wilson v. Seiter*, 501 U.S. 294, 299 (1991). This is so because "the Eighth Amendment . . . bans only cruel and unusual *punishment*." *Id.* at 300 (emphasis in original). As this Court has explained, "[i]f the pain inflicted is not formally meted out as punishment by the statute or the sentencing judge," but rather by a prison official, "some mental element must be attributed to the inflicting officer before it can qualify" as punishment. *Id.*

Thus, when convicted prisoners claim to have received medical care so deficient as to violate the Eighth Amendment, they must establish both that they: (1) "faced a substantial" and objective "risk of serious harm" and (2) that the defendant subjectively knew of and "disregard[ed] that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). The courts of appeals

uniformly recognize this standard for medical care claims brought by post-conviction prisoners.[1]

In contrast to post-conviction imprisonment, Blackstone wrote that where confinement is imposed in the "dubious interval between [] commitment and trial," it should be with "the utmost humanity." 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 300 (1769) [hereinafter BLACKSTONE]. Pretrial detention therefore operates in a separate constitutional realm than post-conviction imprisonment: The Fourteenth Amendment's Due Process Clause, not the Eighth Amendment's Cruel and Unusual Punishments Clause, governs treatment claims brought by pretrial detainees. *Bell v. Wolfish*, 441 U.S. 520, 537 n.16 (1979). Whereas a convicted prisoner's claim requires a "mental element," *Wilson*, 501 U.S. at 299, "the defendant's state of mind is not a matter that a [pretrial detainee] plaintiff is required to prove" to demonstrate the constitutional excessiveness of an officer's use of force. *Kingsley v. Hendrickson*, 576 U.S. 389, 395 (2015).

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[1] *Leite v. Bergeron*, 911 F.3d 47, 52 (1st Cir. 2018); *Salahuddin v. Goord*, 467 F.3d 263, 280 (2d Cir. 2006); *Chavarriaga v. New Jersey Dep't of Corr.*, 806 F.3d 210, 226–27 (3d Cir. 2015); *Anderson v. Kingsley*, 877 F.3d 539, 545 (4th Cir. 2017); *Brewster v. Dretke*, 587 F.3d 764, 769–70 (5th Cir. 2009); *Rhinehart v. Scutt*, 894 F.3d 721, 738 (6th Cir. 2018); *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016), *as amended* (Aug. 25, 2016); *Washington v. Denney*, 900 F.3d 549, 559 (8th Cir. 2018); *Peralta v. Dillard*, 744 F.3d 1076, 1097 (9th Cir. 2014); *Mata v. Saiz*, 427 F.3d 745, 751 (10th Cir. 2005); *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003)

Following *Kingsley*, the circuits have split over medical care claims brought by pretrial detainees. While every circuit agrees such claims arise under the Due Process Clause as opposed to the Eighth Amendment,[2] they part ways on the legal standard: Some courts require the plaintiff to prove the defendant's subjective state of mind to establish fault, whereas others find objective evidence sufficient. *See infra* § I.

B. Factual Background

1. On December 11, 2015, Thomas Benjamin Pratt was booked into the Tulsa County Jail. Pet. App. 5a. The next morning, he reported to jail personnel that he was experiencing alcohol withdrawal and submitted a request for detox medication. Pet. App. 5a. He was admitted to the medical unit and his withdrawal symptoms were documented. *Id.*

Over the next four days, medical records show that Pratt experienced severe tremors, "acute panic states as seen in severe delirium or acute schizophrenic reactions," "continuous hallucinations," constant nausea, "drenching sweats," vomiting, and

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[2] *Burrell v. Hampshire Cnty.*, 307 F.3d 1, 7 (1st Cir. 2002); *Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017); *Hubbard v. Taylor*, 399 F.3d 150, 167 (3d Cir. 2005); *Hill v. Nicodemus*, 979 F.2d 987, 990–91 (4th Cir. 1992); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419 (5th Cir. 2017); *Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 350–51 (7th Cir. 2018); *Whitney v. City of St. Louis, Missouri*, 887 F.3d 857, 860 (8th Cir. 2018); *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1067–68 (9th Cir. 2016); *Quintana v. Santa Fe Cnty. Bd. of Commissioners*, 973 F.3d 1022, 1028 (10th Cir. 2020); *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1326 (11th Cir. 2007)

disorientation. Pet. App. 6a, 53a. Jail staff observed Pratt staring into the distance and "reaching into space." Pet. App. 34a, 57a. He raved about being "locked in the store" Pet. App 33a, 54a, and wondered aloud "what movie are we watching tonight." Pet. App. 33a, 55a. Staff found him down on the ground, acting as if he was "pulling up tile" from the floor. Pet. App. 33a, 55a. Medical records also document that Pratt hit his head on something, sustaining a "large hematoma" that left him "non-verbal and lethargic." Pet. App. 35a, 60a.

The three individual respondents in this case personally observed these serious symptoms and injuries. Pet. App. 6a-7a, Pet. App. 52a-59a. But they decided not to send Pratt to the hospital or provide additional care, such as neurological testing or a neurological consult. Pet. App. 6a-7a, 56a-58a.

Respondent Patricia Dean, a nurse, conducted an assessment and documented that Pratt was experiencing "constant nausea, frequent dry heaves and vomiting," "severe" tremors, "acute panic states as seen in severe delirium or acute schizophrenic reactions, "drenching sweats," confusion about "place/or person" and "continuous hallucinations." Pet. App. 33a, 53a. She did not contact a physician, check his vitals, or perform any additional assessments. Pet. App. 6a, 53a-54a. Respondent Curtis McElroy, a medical doctor, documented a laceration on Pratt's forehead and a pool of blood in the cell, and was aware of Pratt's earlier symptoms, *but still* did not send him to the hospital. Pet. App. 6a-7a, 55a-57a. Respondent Kathy Loehr, a mental health counselor, also failed to seek additional care for

Pratt despite observing the obvious signs and symptoms of brain injury. Pet. App. 7a, 57a-58a.[3]

That night, a detention officer found Pratt lying motionless on his bed and first responders rushed him to a hospital. Pet. App. 7a. Pratt, who was 35 years old at the time, suffered cardiac arrest, a seizure disorder, renal failure, paralysis, and a brain injury. Pet. App. 36a, 60a. He remains unable to work, requires assistance with everyday activities, cannot live safely on his own, and has been homeless. *Id*. His disability is permanent. Pet. App. 8a.

2. Pratt's mother and guardian, Petitioner Faye Strain, brought suit in the U.S. District Court for the Northern District of Oklahoma, asserting claims for constitutionally deficient medical care under the Fourteenth Amendment and related state law claims against Dean, Loehr, McElroy, Armor Correctional Health Service, and Sheriff Vic Regalado. *Id*. Respondents moved to dismiss. The district court dismissed the Fourteenth Amendment claim on the ground that Petitioner did not satisfy the subjective component of the deliberate indifference test, specifically, that she did "no[t] establish that defendants *intentionally* denied or delayed access to treatment or intentionally interfered with the treatment once prescribed." Pet. App. 43a. Per the district court, this subjective component "require[d]

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[3] The individual defendants are employees of Armor Correctional Health Service, which contracts with the Tulsa County Sheriff's Office to provide medical services at the jail. Pet. App. 5a n.1. As the Tenth Circuit noted, "[t]he parties do not dispute that all individual healthcare professionals who interacted with Mr. Pratt were agents of Armor and thus state actors subject to the strictures of the Fourteenth Amendment." Pet. App. 5a n.1.

showing the prison official 'knew [the inmate] faced a substantial risk of harm and disregarded that risk by failing to take reasonable measures to abate it.'" *Id*. at 42a (quoting *Redmond v. Crowther*, 882 F3d 927, 939-40 (10th Cir. 2018)). The district court declined to exercise supplemental jurisdiction over Petitioner's state law claims and dismissed the case. *Id*. at 42a.

3. Petitioner appealed. The Tenth Circuit, in its own words, "addressed *Kingsley* head-on," concluding that—"even after *Kingsley*"—pretrial detainees' claims of constitutionally deficient medical care require proof of the defendant's culpable state of mind. Pet. App. 8a, 11a.

The court noted that "the circuits are split" on this question. Pet. App. 10a. It explained that "[t]he Fifth, Eighth, and Eleventh Circuits" require proof of state of mind to establish fault. Pet. App. 11a n.4 (citing *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018); *Dang ex rel. Dang v. Sheriff, Seminole Cnty*., 871 F.3d 1272, 1279 n.2 (11th Cir. 2017); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017)). "On the other hand," the appellate court continued, "the Second, Seventh, and Ninth Circuits" line up on the other side of the split, concluding that medical care claims brought by pretrial detainees do not require the plaintiff to establish the defendants' state of mind. Pet. App. 11a n.4 (citing *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018); *Darnell v. Pineiro*, 849 F.3d 17, 34–35 (2d Cir. 2017)).

The Tenth Circuit decided the issue unequivocally: "We reject Plaintiff's arguments and hold that deliberate indifference to a pretrial detainee's serious

medical needs includes both an objective and a subjective component, even after *Kingsley*." Pet. App. 8a. The court explicitly "join[ed] [its] sister circuits that have declined to extend *Kingsley*" to medical care claims. Pet. App. 17a. Then, the Tenth Circuit determined that the individual defendants were not liable under the subjective standard. Pet. App. 25a-26a. The panel also affirmed the district court's decision to decline supplemental jurisdiction over the state law claims. Pet. App. 26a.

The court of appeals denied Petitioner's request for rehearing and rehearing en banc. Pet. App. 2a.

REASONS FOR GRANTING THE PETITION

This is a flawless vehicle to review an acknowledged, mature, and intractable circuit split on the standard for medical care claims brought by pretrial detainees. The Tenth Circuit called out the 4-3 circuit split on the question presented, considered other appellate courts' conflicting views with the benefit of complete briefing, and decided the issue "head-on." Pet. App. 10a-11a.

The Tenth Circuit determined that Petitioner had to prove Respondents' state of mind to establish fault. That decision is wrong. It grafts an Eighth Amendment rule governing the punishment of convicts onto a Due Process case about the health and safety of a pretrial detainee. As a result, Respondents escaped liability, even at the motion to dismiss stage, for permanently disabling a man presumed innocent of any crime.

The question presented is exceptionally important. Each year, the legal standard at issue affects thousands of cases involving medical care claims by

pretrial detainees. Many of these cases quite literally involve life and death. States, counties, and sheriff's associations have asked this Court to answer the question, decrying the "patchwork of constitutional standards throughout the country."[4] This Court should grant *certiorari* because only its intervention will settle the issue.

I. The Question Presented Is The Subject Of An Acknowledged and Intractable 4-3 Circuit Split.

The Tenth Circuit explicitly stated that "the circuits are split" on the question presented and cited cases from three other circuits on either side of the split. Pet. App. 10a. Many other courts have also acknowledged the circuit split.[5]

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[4] Amicus Brief of Indiana et al., *County of Orange, California v. Gordon*, 139 S.Ct. 794 (No. 18-337) 2018 WL 5026287 (U.S.), 4-5. *See also* Amicus Brief of California State Association of Counties et. al., *Gordon*, 2018 WL 5016251 (U.S.), 10.

[5] *See, e.g.*, *Beck v. Hamblen Cnty., Tennessee*, 969 F.3d 592, 601 (6th Cir. 2020) (remarking that that courts "are split over whether *Kingsley*'s holding for excessive-force claims should also modify the subjective element . . . traditionally applied to pretrial detainees' deliberate-indifference claims."); *Mays v. Sprinkle*, 992 F.3d 295, 302 n.4 (4th Cir. 2021) (noting the split); *Hollingsworth v. Henry Cnty.*, (Case No. 1:20-cv-01041-STA-cgc) 2020 WL 7233357 at *6 (W.D. Tenn. Dec. 8, 2020) (same); *Sams v. Armor Corr. Health Servs., Inc.*, (Case No. 3:19cv639) 2020 WL 5835310, at *19 n.19 (E.D. Va. Sept. 30, 2020) (same); *Jackson v. Corizon Health Inc.*, (Case No. 2:19-CV-13382-TGB) 2020 WL 3529542, at *4 (E.D. Mich. June 30, 2020) (same); *Solis-Martinez v. Adducci*, (Case No. 1:20cv1175) 2020 WL 4057551, at *6 n.7 (N.D. Ohio July 20, 2020) (same).

1. The Second, Seventh, and Ninth Circuits hold *Kingsley*'s logic precludes a state-of-mind requirement for medical care claims brought by pretrial detainees.

a. The Second Circuit holds that "punishment has no place in defining the *mens rea* element of a pretrial detainee's claim under the Due Process Clause." *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017). Just as "*Kingsley* held that an officer's appreciation of the officer's application of excessive force against a pretrial detainee in violation of the detainee's due process rights should be viewed objectively," the Second Circuit reasoned, "[t]he same objective analysis should apply to an officer's appreciation of the risks associated with an unlawful condition of confinement in a claim for deliberate indifference under the Fourteenth Amendment." *Id*. at 35. The Second Circuit later relied on the same reasoning to apply objective standards to claims of constitutionally deficient medical care. *See Bruno v. Schenectady*, 727 F. App'x 717 (2d Cir. 2018); *Charles v. Orange Cnty.*, 925 F.3d 73 (2d Cir. 2019).

b. The Ninth Circuit also holds that *Kingsley* mandates a purely objective standard for medical care claims brought by pretrial detainees. *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018). First, the *en banc* Ninth Circuit concluded, over a dissent by Judge Ikuta, that all conditions claims brought by pretrial detainees must be evaluated objectively. *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). The Ninth Circuit then specifically applied this rule to a medical care claim, explaining that after *Kingsley*, "logic dictates" an objective standard for such claims. *Gordon*, 888 F.3d at 1124.

c. The Seventh Circuit followed suit, explaining that *Kingsley* "disapproved the uncritical extension of Eighth Amendment jurisprudence to the pretrial setting." *Miranda v. Cnty. of Lake*, 900 F.3d 335, 351 (7th Cir. 2018). Because "pretrial detainees (unlike convicted prisoners) cannot be punished at all," it reasoned, objective standards must govern their claims. *Id.* at 352 (quoting *Kingsley*, 576 U.S. at 400). It has since applied an objective test to other claims challenging pretrial detention conditions as there is "no principled reason not to do so." *Hardeman v. Curran*, 933 F.3d 816, 822 (7th Cir. 2019).

2. In contrast, the Fifth, Eighth, Tenth, and Eleventh Circuits all hold that pretrial detainees must demonstrate that jail staff subjectively knew of and disregarded a substantial risk of serious harm, reasoning that *Kingsley* applies only to excessive force claims. *See Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017) (stating that "the Fifth Circuit has continued to . . . apply a subjective standard post-*Kingsley*" and declining to change course because it "is bound by [its] rule of orderliness" in a case concerning failure-to-protect and medical care claims); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018) ("*Kingsley* does not control because it was an excessive force case, not a deliberate indifference case."); *Karsjens v. Lourey*, 988 F.3d 1047 (8th Cir. 2021); *Briesemeister v. Johnston*, 827 Fed. Appx. 615 at *1 n.2 (8th Cir. 2020); *Nam Dang v. Sheriff, Seminole Cnty.*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) (declining to apply an objective standard because "*Kingsley* involved an excessive-force claim, not a claim of inadequate medical treatment due to deliberate indifference").

In the decision below, the Tenth Circuit joined the Fifth, Eighth, and Eleventh Circuits. The court held that jail medical staff provide constitutionally inadequate medical care only when they subjectively know of, but nonetheless disregard, a substantial risk of serious harm to the patient. Pet. App. 10a-12a.

3. Only this Court can resolve the split. Courts on both sides of the issue have expressly acknowledged the courts on the other side before taking a position. *See, e.g.*, *Miranda*, 900 F.3d at 352 (recognizing that some circuits "have chosen to confine *Kingsley* to . . . excessive force allegations," but nonetheless choosing to apply *Kingsley*'s rationale to conditions claims); Pet. App. 10a-12a, 11a n.4 (acknowledging that "the Second, Seventh, and Ninth Circuits have extended *Kingsley* to the deliberate indifference context," but choosing not to do the same).

The rationales advanced by these courts likewise reflect a fundamental disagreement about the meaning of *Kingsley*, a question that only this Court can resolve. For instance, while the Tenth Circuit declined to extend objective standards to the medical care context based on its understanding that "*Kingsley* turned on considerations unique to excessive force cases," Pet. App. 12a, the Second Circuit reached the exact opposite conclusion based on its understanding "that *Kingsley*'s broad reasoning extends beyond the excessive force context in which it arose," *Darnell*, 849 F.3d at 35-36. Because the circuit split reflects conflicting interpretations of this Court's precedent, only this Court can definitively pronounce which interpretation is correct.

II. The Decision Below Adopted The Incorrect Standard.

Over the last half century, this Court has clearly distinguished the rights that convicted prisoners enjoy under the Cruel and Unusual Punishments Clause from the rights that pretrial detainees enjoy under the Due Process Clause. The Tenth Circuit erred in this case by grafting a subjective Eighth Amendment rule onto a Fourteenth Amendment case.

1. The Eighth Amendment prohibits "cruel and unusual punishments." As this Court repeatedly has explained, the word "punishment" "mandate[s] inquiry into a prison official's state of mind." *Wilson v. Seiter*, 501 U.S. 294, 299 (1991). The intent requirement is not tied to "the predilections of this Court," *Wilson* explained, but to the text of "the Eighth Amendment itself, which bans only cruel and unusual *punishment.*" *Id.* at 300 (emphasis in original). Thus, "[i]f the pain inflicted is not formally meted out *as punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify." *Id.* (emphasis in original).

Similarly, in *Farmer v. Brennan*, 511 U.S. 825 (1994), the Court reiterated the subjective intent requirement in addressing a claim brought by a prisoner who alleged that officials failed to protect her from obvious risks of being raped. It determined that an official will not be held liable where he fails "to alleviate a significant risk that he should have perceived but did not." *Id.* at 838. Instead, a prison official may "be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement" only if he "knows of and

disregards an excessive risk to inmate health or safety." *Id.* at 837. As in *Wilson*, this Court explained that this approach "comports best with the text of the [Eighth] Amendment." *Id.* at 837. Every court of appeals holds that the *Farmer* standard applies to convicted prisoners' medical care claims: The defendant must know of and disregard a risk of serious harm to the plaintiff's health. *See supra* n.1.

2. In contrast to the Cruel and Unusual Punishments Clause, there is nothing in the text of the Due Process Clause that suggests a subjective-intent requirement for establishing fault. In fact, this Court has *never* applied such a subjective test to a case about treatment in pretrial detention.

In *Bell v. Wolfish*, the Court evaluated a variety of pretrial detention conditions. 441 U.S. 520, 535 (1979). Because "the State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt," the Court explained, a pretrial detainee bringing suit under the Due Process Clause "may not be punished" at all. *Id.* at 535 & n.16. Accordingly, the relevant question is whether pretrial detention conditions "are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose." *Id.* at 561. This standard does not require inquiry into the subjective intent of prison officials.

In *Kingsley*, this Court squarely rejected a subjective standard of fault in evaluating a pretrial detainee's claim of excessive force, explaining that "the relevant standard" to determine excessiveness "is objective not subjective." 576 U.S. at 395. That is, "the defendant's state of mind is not a matter that a

[pretrial detainee] plaintiff is required to prove." *Id.* The Court distinguished previous excessive force cases that required a subjective element because they were "brought by convicted prisoners under the Eighth Amendment's Cruel and Unusual Punishment Clause, not claims brought by pretrial detainees under the Fourteenth Amendment's Due Process Clause." *Id.* at 400. This is a key distinction as the "language of the two Clauses differs" and "pretrial detainees (unlike convicted prisoners) cannot be punished at all." *Id.*

This is not to suggest that *Kingsley* creates constitutional liability for inadvertent mistakes. Rather, *Kingsley* explains that the act of using force raises "two separate state-of-mind questions" and thus two separate elements that a plaintiff must establish. *Kingsley,* 576 U.S. at 395-96. The first "concerns the defendant's state of mind with respect to his physical acts." *Id.* at 395. Unintentional or accidental force does not violate the Constitution. *See id.* at 396. For example, "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim." *Id.* "The second question concerns the defendant's state of mind with respect to whether his use of force was 'excessive'"—in other words, whether the defendant's intentional act rises to the level of constitutional fault. *Id.* at 395. This is the inquiry that requires an objective examination of whether the force was justified or excessive. *Id.*

Though *Kingsley* itself was an excessive force case, it requires that objective standards of fault govern all treatment claims brought by pretrial detainees.

Kingsley's reliance on *Bell*—a conditions of confinement case—proves the point. *Kingsley* observed that "[t]he *Bell* Court applied [an] objective standard to evaluate a variety of prison conditions." 576 U.S. at 398. Accordingly, it explained, "as *Bell* itself shows (and as our later precedent affirms), a pretrial detainee can prevail [on a due process claim] by providing only objective evidence." *Id*. In fact, the Court analyzed previous cases on topics including contact visitation in jails, bail, and judicial authorization of pretrial detention, noting that in this wide range of pretrial detention matters, "[t]he Court did not suggest in any of these cases, either by its words or its analysis, that its application of *Bell*'s objective standard should involve subjective considerations" of fault. *See Kingsley*, 576 U.S. 389, 398–99 (2015) (citing *Block v. Rutherford*, 468 U.S. 576, 585–586 (1984); *Schall v. Martin*, 467 U.S. 253, 269–271 (1984); *United States v. Salerno*, 481 U.S. 739, 747 (1987)).

In short, *Kingsley* followed this Court's long history of applying an objective standard of fault to claims brought by pretrial detainees. In light of this history, the Tenth Circuit's decision to continue applying a subjective standard to medical care claims brought by pretrial detainees was erroneous.

3. Centuries of Anglo-American jurisprudence support this Court's sharp distinction between the constitutional rights of prisoners and pretrial detainees with regard to their treatment while incarcerated. As Eden wrote, "it is contrary [] to public justice" to "throw the accused and convicted . . . into the same dungeon." 2 WILLIAM EDEN, PRINCIPLES OF PENAL LAW 51-52 (1771) "[P]revious to the conviction

of guilt," therefore, "the utmost tenderness and lenity are due" to the pretrial detainee. *See id.* at 51. Similarly, Blackstone wrote that where confinement is imposed in the "dubious interval between [] commitment and trial," it should be with "the utmost humanity." 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 300 (1769). Blackstone explained that because pretrial detention is "only for safe custody, and not for punishment," those detained awaiting trial should not be "subjected to other hardships than such as are absolutely requisite for the purpose of confinement only." *Id.*

Many other eighteenth-century sources likewise explain that pretrial incarceration should be "attended with as little severity as possible." 2 CAESAR BECCARIA, ET AL., ESSAY ON CRIMES AND PUNISHMENTS, CH. XIX at 74 (1764). "[N]eglect or abuse" unnecessary to ensuring secure custody of pretrial detainees was considered "wholly repugnant to the spirt of the constitution."[6]

4. Artificially limiting *Kingsley* and the objective analysis it demands to excessive force cases would create a bizarre and illogical disparity between use of force claims and other claims about treatment during pretrial detention. If detainees can win excessive force cases with only objective evidence of fault, but must provide state-of-mind evidence in all other types of conditions cases, jail staff will enjoy the *least* deference in excessive force litigation. That cannot be

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[6] George Onesiphorous Paul, Proceedings of the Grand Juries, Magistrates, and other Noblemen and Gentlemen, of the County of Gloucester on the Construction and Regulation of The Prisons for the Said County 16 (1808).

right. This Court has stated that corrections personnel must have the most deference in the excessive force context, where guards must act "quickly and decisively," *Hudson v. McMillian*, 503 U.S. 1, 6 (1992), making split-second decisions "in haste, under pressure, and frequently without the luxury of a second chance," *Whitley v. Albers*, 475 U.S. 312, 320 (1986).

5. The correct objective standard for pretrial detainees' medical care claims requires more than negligence. After all, Fourteenth Amendment rights are "not implicated by a negligent act of an official." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). In a Fourteenth Amendment medical care case, a pretrial detainee must show that the defendant made an intentional decision regarding medical care that both created an objectively obvious risk of serious harm to the detainee and ultimately caused the harm. *See Castro*, 833 F.3d at 1071; *Gordon*, 888 F.3d at 1124–25; *Darnell*, 849 F.3d at 36; *Miranda*, 900 F.3d at 353–54. This standard differs from negligence in two important ways: (1) the defendant's decision regarding the plaintiff's medical care must be intentional, and (2) in making the decision, the defendant must disregard an objectively obvious risk of serious harm.

First, the defendant must make an intentional decision about the plaintiff's medical treatment. Courts derive this rule by mapping *Kingsley*'s analysis onto medical care claims. As *Kingsley* explained, the act of using force raises "two separate state-of-mind questions." *Kingsley,* 576 U.S. at 395. As a threshold matter, the force must not be accidental or inadvertent: "[I]f an officer's Taser goes off by accident

or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim." *Id.* at 396.

Similarly, courts reason that jail medical providers would not be liable if they "had forgotten that [a given detainee] was in the jail, or mixed up her chart with that of another detainee, or if [one doctor] forgot to take over coverage for [another doctor] when he went on vacation." *Miranda*, 900 F.3d at 354; *see also Castro*, 833 F.3d at 1070; *Darnell*, 849 F.3d at 36. By the same token, jail medical personnel would not violate the Constitution by accidentally misreading a laboratory result, inadvertently handing a detainee the wrong pill, or mistakenly removing the wrong tooth in a dental procedure.

In this case, Respondents made an intentional decision not to send Pratt to a hospital and not to provide additional care. Respondents do not contend that they meant to send Pratt to the hospital but inadvertently forgot to do so or that they intended to provide one type of treatment but accidentally provided a different treatment. *See* Pet. App. 6a-7a.

Aside from requiring an intentional act, the proper standard also requires a greater degree of fault than negligence. The plaintiff must show that the defendant disregarded an *obvious* risk. *See Castro*, 833 F.3d at 1071; *Gordon*, 888 F.3d at 1124–25; *Darnell*, 849 F.3d at 36; *Miranda*, 900 F.3d at 353–54. Disregard of obvious risks goes past mere negligence and rises to the level of civil law recklessness: "The civil law generally calls a person reckless who acts or (if the person has a duty to act) fails to act in the face of an unjustifiably high risk of harm that is either known *or so obvious that it should be known*. *Farmer*

v. Brennan, 511 U.S. 825, 836 (1994) (citing *Prosser & Keeton on the Law of Torts* § 34, pp. 213–214 (5th ed. 1984); Restatement (Second) of Torts § 500 (1965)).

6. The Tenth Circuit made at least three analytical errors in applying a subjective Eighth Amendment rule to a Fourteenth Amendment claim.

First, the panel opined that "*Kingsley* relies on precedent specific to excessive force claims." Pet. App. 13a. Not so. The *Kingsley* Court explicitly interpreted *Bell* to mandate the use of an objective standard for a broad range of claims brought by pretrial detainees: "The *Bell* Court applied [an] objective standard to evaluate a *variety of prison conditions*." *Kingsley*, 576 U.S. at 398 (emphasis added) (citing *Bell*, 441 U.S. at 541-43). Accordingly, it explained, "as *Bell* itself shows (and as our later precedent affirms), a pretrial detainee can prevail [on a due process claim] by providing only objective evidence." *Id.*

Second, the panel posited that a "deliberate indifference claim presupposes a subjective component." Pet. App. 15a. This is circular. Cases brought by post-conviction prisoners are sometimes called "deliberate indifference" cases because deliberate indifference is the standard for such claims under the Eighth Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976). This Court has never decided what the standard is for medical care claims brought by pretrial detainees.

Third, the panel cited "principles of *stare decisis*" in confining *Kingsley* to excessive force claims, Pet. App. 12a, explaining that it could not overrule its own precedent on the proper standard for medical care claims because *Kingsley* did not expressly pronounce

its application to the medical care context, Pet. App. 17a. Of course, this Court is not bound by pre-*Kingsley* Tenth Circuit precedent.

III. This Case Is The Ideal Vehicle.

This case is the perfect vehicle to resolve the question presented. The Tenth Circuit "addressed *Kingsley* head-on," Pet. App. 11a., canvassed the deep circuit split, Pet. App. 10a-11a., and engaged in a lengthy analysis before reaching its conclusion, Pet. App. 8a-17a.[7]

The record is simple and clean. The district court decided the case at the motion to dismiss stage, and the relevant facts are set out in the complaint. *See* Pet. App. 45a-76a.

The answer to the question presented will determine the outcome of the motion to dismiss. The allegations in the complaint surely support the conclusion that Respondents breached any objective standard of fault. The complaint alleges that they decided not to send Pratt to the hospital or provide additional care despite observing of symptoms that

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[7] Petitioner thoroughly preserved the issue in the district court, arguing that "the Fourteenth Amendment rights of pretrial detainees, like Pratt, should be analyzed under a purely objective standard" after this Court's decision in *Kingsley*. Response to Loehr MTD 8 (emphasis omitted). On appeal, Petitioner maintained that the "subjective deliberate indifference analysis no longer applies in cases . . . involving pretrial detainees" and that "the Fourteenth Amendment rights of pretrial detainees, like Pratt, must be analyzed under an objective standard of liability." *See* Appellant's Brief 13; see also *id*. 15-22. In seeking rehearing, Petitioner extensively briefed the issue once more. *See* Pet. for Reh'g En Banc 7-15.

made the risk of grave harm objectively obvious—symptoms including severe tremors, acute panic states, hallucinations, vomiting, disorientation, a "2cm forehead laceration," and a "pool of blood" in the cell. Pet. App. 5a-8a, 53a-55a.

IV. The Question Presented Is Profoundly Important.

At any given time, pretrial detention facilities in the United States incarcerate over 725,000 people, the great majority of whom are imprisoned awaiting trial.[8] Compared to those not incarcerated, pretrial detainees are much more likely to suffer from chronic conditions, infectious diseases, and serious mental illness.[9] The standard applied to their claims of poor medical care and other mistreatment is

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[8] The Sentencing Project, https://www.sentencingproject.org/the-facts/#detail; Zhen Zeng, Todd D. Minton, *Jail Inmates in 2019*, U.S. Department of Justice Bureau of Justice Statistics, https://www.bjs.gov/content/pub/pdf/ji19.pdf.

[9] Laura M. Maruschak, Jennifer Unangst & Marcus Berzofsky, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Dept. of Just. Bureau of Just. Stat., Oct. 4, 2016, at 2, 4, https://www.bjs.gov/content/pub/pdf/mpsfpji1112.pdf [hereinafter Justice Bureau, *Medical Problems*]; Alexi Jones, *New BJS report reveals staggering number of preventable deaths in local jails*, Prison Policy Initiative, Feb. 13, 2020, https://www.prisonpolicy.org/blog/2020/02/13/jaildeaths/. Indeed, nearly half of all pretrial detainees suffer from a chronic condition, and two out of every three struggle with a substance use disorder. Justice Bureau, *Medical Problems* at 4; Prison Policy. From 2006 to 2016, more than ten thousand people died in pretrial detention. E. Ann Carson, & Mary P. Cowhig, *Mortality in Local Jails, 2000–2016 Statistical Tables*, U.S. Dept. of Just. Bureau of Just. Stat., Feb. 2020, at 5, https://www.bjs.gov/content/pub/pdf/mlj0016st.pdf

fundamentally important and should not depend on where they happen to be detained.

Pretrial detainees' medical care and conditions claims are legion. Clarifying the standard under which these claims are adjudicated thus serves the interests of both litigants and the courts. The current application of objective standards in some jurisdictions and subjective standards in others results in arbitrary distinctions between pretrial detainees who suffer the same harm based only on where they happen to be detained. Justice dependent on geography is unjust. And such arbitrary distinctions are particularly intolerable where, as here, fundamental constitutional rights are at stake.

A broad range of stakeholders recognizes the critical need for an answer to the question presented. Urging the Court to hear a case involving the same issue, a group of States decried the "patchwork of constitutional standards throughout the country" and argued "the standards for inmate medical care are particularly important owing to the costs and complexities associated with providing such care." Amicus Brief of Indiana et al., *County of Orange, California v. Gordon*, 2018 WL 5026287 (U.S.), 4-5. A group of counties and sheriffs' associations shared that assessment: "[T]he culpability standard for Fourteenth Amendment inadequate medical care claims brought by pretrial detainees differs from state to state, depending on what circuit the particular state lies in. This is an unacceptable result." Amicus Brief of California State Association of Counties et. al., *Gordon*, 139 S.Ct. 794 (No. 18-337) 2018 WL 5016251, 10. Petitioner agrees.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

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