20-5846
No.

In the Supreme Court of the United States

Anthony C. Green,

Petitioner,

v.

Kelly Lake, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

Anthony C. Green
1111 Highway 73
Moose Lake, Minnesota 55767-9452
PROPER/PER/SONA
Facility Voice: (218) 565-6000

Daniel P. Kurtz
Attorney at Law
145 University Ave. West
St. Paul, Minnesota 55103-2044
(Attorney for Moose Lake Defs.)

Nathan Midolo
Attorney at Law
9321 Ensign Ave. South
Bloomington, Minnesota 55438
(Attorney for Carlton County Defs.)

Brandon Boese
Assistant Attorney General
Att. Reg. No. 0396385
1800 NCL Tower
445 Minnesota Street
St. St. Paul, Minnesota 55101-3124

QUESTION PRESENTED

The question presented is whether the 8th Circuits' decision is contrary to this Court's decision in *Kingsley.*

In 2015, the United States Supreme Court reversed a lower court decision by the 7th Circuit Court of Appeals and the U.S. Dist. Court for the District of Wisconsin. This Court held that in a civil commitment context the standard for excessive force was "objectively unreasonableness." Since then there has been numerous cases around the Country that have been confronted with this issue, but have adhered to this Court's holding in *Kingsley.* However, the U.S. District Court for the District of Minnesota and now the 8th Circuit Court of Appeals have all but washed this Court's decision in *Kingsley* down the toilet.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Anthony C. Green petitions for a writ of certiorari to the United States Court of Appeal for the Eighth Circuit in *Green v. Lake, et al.* **19-2001**.

OPINIONS BELOW

The Judgment of the District Court is reported at 2019 U.S. Dist. LEXIS 48762 (U.S. Dist. Ct. for the Dist. of Minn. Marc. 25, 2019). Petitioner does not have the 8th Circuit Court of Appeals judgment, but was affirmed on February 18, 2020.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on February 18, 2020. Petitioner was unable to timely file a petition for re hearing enbanc. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

This case involves the scope and strength of the bedrock constitutional principle that mandates that the deliberate misconduct for those assigned to care for the civilly committed be assessed under an objective reasonableness standard. The 8th Circuit and the District Court of Minnesota has decided to go against this Court's decision in *Kingsley* and state that the objective reasonable standard does not apply to those civilly committed to the Minnesota Sex Offender Program (MSOP). The fatal flaw of the lower court's decisions, and the crux of this Petition, is its failures—by implementation to meaningfully ensure that objective reasonableness standard is used and not the subjective standard component. After lengthy court proceedings regarding this issue (the case was stayed prior because of *Karsjens et al. v. Piper, et al.*, 845 F.3d 394 (8th Cir. 2017).

Now is the particularly important time for this Court to set out clearly that the objective reasonableness standard must apply to all persons civilly committed, no matter where they are committed. *i.e. Wisconsin, Washington State, etc.* the Eight Circuit's ruling makes clear that it will not abide or apply by the standards set out by this Court in *Kingsley*. Such a ruling cannot stand under our Constitution, especially when its subjects are some of the most politically powerless, despised, and vulnerable among us.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

REASONS FOR GRANTING THE PETITION

I. The Eight Circuit's Ruling Conflicts With This Court's Standards Already Set In *Kingsley*.

There have been a number of substantial cases regarding the "subjective reasonableness" and "objective unreasonableness" standards. There have been numerous cases regarding the objective unreasonable standard and persons who are civilly committed. This Court held that a pretrial detainee's excessive force claim need only meet a lesser "objectively unreasonable" standard under the Fourteenth Amendment. *Kingsley*, confirmed that using an Eight Amendment criminal recklessness standard for those who have not been convicted of a crime provides insufficient protection from abuse of power. Some courts have acknowledged that where the claim involves excessive force, the substantive due process analysis is the same for pretrial detainees and the civilly committed, and thus, *Kingsley's* objective standard governs. Further, *Kingsley* should not be restricted to excessive force claims, but rather, should be interpreted as a general rejection of the Eighth Amendment's criminal recklessness *mens rea* for all claims brought by detainees as well as the civilly committed.

This Court in *Kingsley* rejected the analysis of a defendant's subjective state of mind in excessive force cases and concluded "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one." *See also Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1069-71 (9th Cir. 2016) (en banc) (applying *Kingsley* to deliberate indifference claims).

In *Stevenson v. Cty. Sheriff's Office of Monmouth,* 2020 U.S. Dist. LEXIS 1517 (U.S. Dist. Ct. for the Dist. of New Jersey, Jan. 3, 2020), the District Court denied defendants motion for summary judgment. A pretrial detainee may prevail on his Fourteenth Amendment excessive force claim by showing "only that the force purposely or knowingly used against him was objectively unreasonable." Id. Whether actions

were objectively reasonable "turns on the 'facts and circumstances of each particular case.'" *Id.* (quoting *Graham*, 490 U.S. at 396). Courts are instructed to consider:

> the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting. *Id.*

In *Aruanno v. Maurice,* 2019 U.S. Dist. LEXIS 32486 (U.S. Dist. Ct. for the Dist. of New Jersey, Oct. 30, 2019) *rev. & rem. for further proceedings,* the Court held that a non-convicted detainee need only show that the "use of force was unreasonable in light of the facts and circumstances at the time." **Citing** *Kingsley.* However, "[i]n the Ninth Circuit, the standard for excessive force claims is derived from the Fourth Amendment whether the claim is brought under the Fourth or the Fourteenth Amendments." *Endsley v. Luna,* 750 F. Supp. 2d 1074, 1094-95 (C.D. Cal. 2010), aff'd, 473 F. App'x 745 (9th Cir. 2012). Hence, because Plaintiff's claims arise under the Fourteenth Amendment, the standard is one of objective reasonableness. Id. (analyzing excessive force claims by civilly committed detainee using objective reasonableness standard); *see also Hydrick*, 500 F.3d at 997-98 (stating that an objective reasonableness standard applies to excessive force claims by persons who are involuntarily civilly committed).[1]

The Eighth Circuit Court of Appeals has held that a reasonable jury could find officers had no reasonable basis to believe, at the time that jailers entered the cell and allegedly beat a detainee, that force was needed to prevent the detainee from endangering himself or others, if the jury believed the detainee's testimony that he was simply sitting in his cell and not yelling or kicking the walls and doors at the time that

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[1] *Smith v. Oreol,* 2018 U.S. Dist. LEXIS 226670 (U.S. Dist. Ct. for the Cent. Dist. of Cal., Marc. 20, 2018) defendants motion to dismiss denied. Discussing *Kingsley* and the proper standard for those civilly committed.

jailers used force against him, although he had done so previously. *Thompson v. Zimmerman*, 350 F.3d 734, 735 (8th Cir. 2003).

II. DEFENDANTS WERE NOT ENTITLED TO QUALIFIED IMMUNITY.

It has been long held that officials who violate clearly established law (constitutional rights) are not entitled to qualified immunity. *Knutson v. Ludeman,* U.S. Dist. LEXIS 20285 (D. Minn. Jan. 12, 2011) *report and recommendation adopted* (2011 U.S. Dist. LEXIS 20627 (D. Minn. Mar. 1, 2011) (citing *Pearson v. Callahan*, 555 U.S. 223, , 129 S. Ct. 808, 815, 172 L. Ed. 2d 565 (2009), quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982) and holding that finding that even if defendants were found to have acted in good faith, causing the monetary damages claims against them to be dismissed based on qualified immunity, plaintiff's efforts to enjoin defendants' future conduct would still remain alive. Denying defendants motion for qualified immunity. *See also Williams v. Johnston,* U.S. Dist. LEXIS 38440 (D. Minn. Jan. 28, 2015) *report and recommendation adopted* 2015 U.S. Dist. LEXIS 37585 (D. Minn., Mar. 25, 2015) (same, denying qualified immunity).

"'Qualified immunity protects a government official from liability in a [section] 1983 claim unless his or her conduct violated a clearly established statutory or constitutional right of which a reasonable person would have known.'" *Vaughn v. Greene Cty., Ark.*, 438 F.3d 845, 849-50 (8th Cir. 2006) (alteration in original) (quoting *Pool v. Sebastian Cty., Ark.*, 418 F.3d 934, 942 (8th Cir. 2005)). "To overcome qualified immunity, plaintiffs must demonstrate both that '(1) there was a deprivation of a constitutional or statutory right, and (2) the right was clearly established at the time of the deprivation.'" *Dean v. Cty. of Gage, Neb.*, 807 F.3d 931, 936 (8th Cir. 2015) (quoting *Parker v. Chard,* 777 F.3d 977, 980 (8th Cir. 2015)).

III. Unreasonable Search and Seizure Claims.

Involuntarily civilly committed persons retain the Fourth Amendment right to be free from unreasonable searches, analogous to the right retained by pretrial detainees. *Serna*, 567 F.3d at 948. Therefore, while such persons are entitled to more considerate treatment and conditions than criminals, their rights must still be balanced against the interests of the state. *See Youngberg*, 457 U.S. at 321–22. Accordingly, "not all search techniques may be swept under the rug of deference to the detention-center decisionmakers[.]" *Serna*, 567 F.3d at 955. This case was only at the pleading stage, and the Supreme Court in *Bell* instructed that the balancing that needs to be done to determine the reasonableness of a search must be done on a case-by-case basis and requires at least some evidentiary record:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. Facts relating to the scope of the search, the manner in which it was conducted, the justification for the search, and the places in which it was conducted were not developed.[2]

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[2] *Allen v. Ludeman*, No. 10-176 (ADM/JJK), 2011 WL 978658, at *2 (D. Minn. Mar. 17, 2011) (denying motion to dismiss strip search claim where plaintiff alleged defendants forced him to do a strip search before and after leaving the Annex at the Moose Lake Prison facility in order to attend Native American ceremonies at MSOP's main building); *Beaulieu v. Ludeman*, No. 07-1535 (JMR/JSM), 2008 WL 2498241, *12 (D. Minn. June 18, 2008) (surviving motion to dismiss because there was insufficient information at the pleading stage to evaluate the reasonableness of the strip searches).

CONCLUSION

The lower courts should have left the qualified immunity issue would have been more suited for disposition through summary judgment. Claims by prisoners who are not convicted-such as pretrial detainees or civilly committed sex offenders under Wis. Stat. Ch. 980-are ordinarily governed by the Fourteenth Amendment, under which plaintiffs need not prove the defendant's subjective state of mind; they need show only that the defendant's actions were "objectively unreasonable."[3] As stated, the Eighth Circuit's ruling created an irreconcilable conflict with a number of Federal Courts, Appellate Courts and this Court's holding in *Kingsley*. The Eight Circuit's ruling holds the opposite of what this Court has ruled and the standard set forth by this Court in *Kingsley*.[4]

The Eight Circuit ignored this Court's standard which is in direct conflict of *Kingsley*. This Court has a unique and unequivocal obligation to guard the most vulnerable, despised, and politically powerless among us against majoritarian encroachment on fundamental rights and liberties. *See United States v. Carolene Products, Inc.*, 304 U.S. 144, 152 n.4 (1938) (noting that "prejudice against discrete and insular minorities . . . which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities . . .may call for a correspondingly more searching judicial inquiry"); *McCleskey v. Kemp*, 481 U.S. 279, 343 (1987) (Brennan, J., dissenting) ("[t]hose whom we would banish from society or from the human community itself often speak in too faint a voice to be heard above society's demand for punishment. It is

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[3] *Apkarian v. Mcallister*, 2019 U.S. Dist. LEXIS 152914 (U.S. Dist. Ct. for the W. Dist. of Wis. Sept. 9, 2019) (citing *Kingsley*); *see also Miranda v. Cty. of Lake*, 900 F. 3d 335, 352 (7th Cir. 2018) (expanding *Kingsley's* rationale to medical care claims).

[4] The Eight Circuit's ruling holds that the subjective component instead of the objectively unreasonable component is to be used by persons civilly committed, especially at the MSOP.

the particular role of courts to hear these voices, for the Constitution declares that the majoritarian chorus may not alone dictate the conditions of social life."). The Eighth Circuit did the opposite in this case. By finding that no objectively unreasonable component existed, applying rational basis review and requiring Petitioner to prove subjective state of mind behavior, the circuit court sent a clear and dangerous message that federal courts are not going to intervene in objectively unreasonable cases - even when the result is effectively permanent without any basis. This Court should not allow that dangerous impression to stand.

This case is the ideal vehicle for the Court to address this important issue. Furthermore, the dispositive issue is the appropriate standard of *Kingsley* to apply. This case thus presents a straightforward way to resolve the issue and prevent proliferation of confusing rulings such as the one reached by the Eighth Circuit.

For the foregoing reasons, the petition for writ of certiorari should be granted.

Re-Executed on July 10, 2020

Anthony C. Green
1111 Highway 73
Moose Lake, Minnesota 55767-9452
PROPER/PER/SONA
Facility Voice: (218) 565-6000