No. 20-6872

IN THE

SUPREME COURT OF THE UNITED STATES

Scott Hildreth
(Your Name) — PETITIONER

vs.

Kim Butler, Lori Oakley and
Wexford Health Sources Inc
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Scott Hildreth
(Your Name)

P O BOX 1000
(Address)

Menard ILL 62259
(City, State, Zip Code)

(Phone Number)

Questions Presented

1) Is it right that the defendant Wexford health service,(Menard C C) have returned to their same old song and dance and have been not properly or timely refilling plaintiffs Parkinsons medications ?The plaint if has not been recieving his full perscribed doses of Mirapex for months now he is supposed to take 3.75 mg a day thats a 1 mg tab and a .25 mg tab 3 x a day he has only recieved the 1 mg tabs for the months of July Aug and spept its now Oct still no .25 put in orig sticker put in requests, told nurses ,filed emergency grievance warden concured energency I recieved from clincal services a summary 09/30 20, emergency griev dated 9 25 20 supposed to respond within 48 hrs ? regardless its now oct 12 20 no reply no meds / What am I supposed to do give up ? just accept that n't one cares no ones going to do anything about it ?(Griev # 319 9 20)

2) Is it just a matter of a convicted person in the State of Illinois can be treated anyway,that a person is not supposed to be treated accordng to the 8th amend. of the U S Constitution ?

3) Isn't a convicted person entitled to consideration to decent treatment, medically and humanly under the 8th amend. ?

4) If it would please the court and if the plaintiff had known he was obligated to show or includeother peoples problems in his own personal complaint, making it basically a class action he would have done so is this the case on an individuals personal claim under the 8th Amend.?

5) Isn't it a privacy issue ,even a legal or confidentil issue of another inmates medical history or file from population or other random inmates how is one inmate supposed to get information on another inmates medical or medicine perscriptions delivery or any other form of his medical situation ? So he can use it in a personal law suit ? And what does John Convict Doe's medical history or medicine history have to do with Scott Hildreths ?

6) Was U S Court of Appeals Judge David F Hamilton correct in his dissent pg 22 thru 41,May 19 2020,,Hildreth v Butler/Wexford,No. 18 2660,7th Cir Court of Appeals,where in a rare en bonch,three more judge joined in dissent ? (Rovner,Scudder,and Wood)

7) Should plaintiff Scott Hildreths complaint have been dismissed on Summary Judgementwhen Magistrate judge Wilkerson denied and set for trial on his reccomodation when in fact he did all the work on the case hearings having Mr Hildreth before him personally via video confrense court,and acctually made a sound decision on facts related directly to him by all parties including incarcerated plaintiff,defendant Wexford ect.and then Judge Rosentstengle over rode that decision on her say so of ?
Then the U S Court of Appeal for the 7th Circuit went against their own prior decisions on point the made their ruling based upon?

LIST OF PARTIES

A) Wexford Health Services, Inc

B) Kim Butler at time of icident and suit Warden Menard C C

B) Lori Oakley Employee IDOC, MEnard C C Grievance Officer

C) Original ruling denying Summary Judgement by Magistrate Judge Wilkinson early in court hearings. The magistrate Judge denied the motion for summary judgement before U.S. Circuit Judge for Southern Illlinois NANCY Rosenstengle over rode his decision in motion for reconsideration, where she didnt have anything good to say about him and wrongly granted the summary motion which changed the case from being set for trial to the Appeal process now long in standing. He is not mentioned or his denying Summary Judgement .
Magistrate Judge Wilkinson Beging of case being litiggated by Court

D) U S Southern Illinois District Judge Nancy Rosenstengle

E) U S Court of Appeals 7th Cir Diane S Sykes, Chief Judge, David F.-Hamilton Cir Judge, and Michael B Brennan Cir Judge.

F) U S Court of Appeals 7th Cir EnBonch Panel Before, Sykes Chief Judge, Flaum, Esterbrook, Kanne, Rovner, Wood, Hamilton, Barrett, Brennan, Scudder, and St Eve Cicuit Judges

TABLE OF CONTENTS

=Petition Certiorari

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at U S COURT OF APPEALS 7th Cir; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[X] reported at HILDRETH V BUTLER 960 F 3d 420; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was May 19 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Aug 19 2020, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION:

Amendment V; ....nor be deprived of life,liberty,or property,without due process of law..

Amendment VIII ; Excessive bail shall not be required, nor excessive finesimposed,nor cruel and unusual punishments be inflicted.

Amendment XIV ; .....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.

APPENDICIES

A) Reply of Appellant Scott Hildreth,aug 12 2016.

B) appeal decision Majorityfinding May 19 2020 pgs 1 through 21

C) Judge Hamilton *Dissenting May 19 2020*pgs 22 through 41

D) Panel Opinion ,petition rehearing En Bonch aug 19 2020

E) case docketing statement district court.

F) REPORT AND RECOMMENDATION OF U S DIST COURT MAGISTRATE WILKERSON 10 pgs

G) U S DISTRICT COURT JUDGES MEMORANDUM AND ORDER 18 pgs

INTRODUCTION AND RULE 35(b)(1) STATEMENT

Dissenting in this case, Judge Hamilton explained that the Majority's decision "adopts a highly restricted approach to establishing a *Monell* custom" in prison health-care cases that is "at odds with [this Court's] precedent," that "reward[s] ... deliberate ignorance" by prison medical contractors, and that incorporates reasoning that is "just clearly wrong." Dissent 33, 38-39. Rehearing is necessary.

Indeed, the Majority's ruling cannot be squared with this Court's en banc decisions in *Glisson* v. *Indiana Corrections Department*, 849 F.3d 372 (7th Cir. 2017), and *J.K.J.* v. *Polk County*, --- F.3d ----, 2020 WL 2563256 (7th Cir. 2020). Both rulings applied *Monell*'s policy-or-custom framework to reinstate Eighth Amendment liability against prison entities whose institutional systems reflected deliberate indifference, even without evidence of a pattern of prior similar violations. And both decisions expressly rejected arguments that the Majority revived here—arguments derived from the *dissenting opinions* of *Glisson* and *J.K.J. See Glisson*, 849 F.3d at 383-90 (Sykes, J., dissenting); *J.K.J.*, 2020 WL 2563256, at *17-44 (Brennan, J., dissenting in part). The Majority's decision thus threatens to turn these dissenting views into the law of this Circuit, even after the en banc Court rejected them in *Glisson* and *J.K.J.* To restore uniformity to this Court's precedent in this important area of the law, rehearing should be granted.

BACKGROUND

As summarized below, Judge Hamilton's dissent captures the key points of this complex summary-judgment record. Dissent 25-30; *see also* Hildreth Br. 2-12. (The panel's opinion is attached to this petition.)

SEE APP C ... APP A

BRIEF BACKGOUND OF CASE HISTORY

Petitioner Scott Hildreth,was having problems geting hismedic-tion ,he suffers fromParkinsons Disease,which causes,problems walk-ing,with balance ,can not makelegible communications by hand (Writting), ,the fact of not recieving medication on tie is a at least two fold thing.it exasserbates his condition,the illness,and symtoims,and added a new one the most disturbing one or symtom ofwhich he has not previou-sly had ! called"freazwhrepheogess" stuckin midstride while walking ,and can not move foward ,his feet go in placeand he can not propel himself ahead ,it's like sort of running in place no foward motion it's very humiliating and he has been teased about it alot,but not by other convicts butby officers and staff at Menard C C.

So petitoner files grievances gets in response ,every excuse or no response at allmost grievancees are illegible unless he had library time and could use a typewriter.At the original Hearing infront of Magistrate Judge wilkinson on video court over the internet ,some of the grievances that were gone over between counsel's ,court,and petitionerwere illegible the petitioner and Magistrate Judge could not interpret what grievance said or was attempting to convey some of them had to be abandoned

The Magistrate Judge was a very reasonable man honorable held many hearings in his court and came to the determination when Wexford and Butler moved for Summary Judgement,that it be denyed and set the matter for trial then the respondent Wexford filed for reconsider-ation and thats when Judge Rosestengle stepped in and over rode the Magistrate Judge and granted Summary judgementshe with no actual knowledge of what transpired at all the prior hearings as magistrate judge did

So petitioner asks for leave to appeal gets it and apeals
At that point petitione gets a real good law firm appointetorepre-sent him JONES DAY and he is very pleased with the representation he recievedeven though the outcome so far
They fileApppeal and rehearing En Bonch and we find the case here at the UnitedStatesSupreme Court

Nowhere in the latest filings does it say anywhere or mention MAGISTRATE Judge Wilkinson denying the SummaryJUdgement and setting case for triall ?

The fact that only three times were the count of incdents of meds failure too refill or recieve timely is because many or most of the grievances wereillegible

A. Hildreth suffers from Parkinson's disease and requires medication

Appellant Scott Hildreth is a 62-year-old state prisoner with Parkinson's disease, an incurable neurological disorder. He shuffles to walk, has poor balance, and suffers from muscle tremors and freezing episodes that cause him to, for example, slide out of chairs and get stuck in place. Hildreth Br. 2.

"Parkinson's has no known cure"—but "medication can help control the symptoms," and "Hildreth needs a drug called Mirapex." Dissent 26; Hildreth Br. 3. "Without Mirapex," Hildreth's "Parkinson's symptoms return within a day or two" alongside painful withdrawal symptoms—"poor balance, stiffness, shaking, fevers," hot flashes, "memory problems, and freezing episodes"—"leav[ing] him 'immobile' and 'balled up in bed.'" Dissent 26; Hildreth Br. 3. "*Any* lapse in medication causes [Hildreth] pain and puts him at risk of injury." Dissent 26. "For Hildreth, the difference between having medication and not having it" is therefore "day and night." Dissent 26; Hildreth Br. 3.

B. Wexford is responsible for chronically ill inmates' medications

Appellee Wexford Health Sources—a private medical contractor—has "primary responsibility for overseeing prisoner treatment, including prescribing medication and setting prescription policies," at Hildreth's state prison, Menard Correctional Institute. Dissent 27; Hildreth Br. 4. Wexford knows about Hildreth's disease and his Mirapex prescription, which calls for three pills per day (about 90 pills per month), and knows that Mirapex is effective to treat symptoms of Parkinson's disease. Dissent 35-36; Hildreth Br. 5; A208, 265, 275, 277. Wexford also knows what happens when a patient is deprived of Mirapex: the swift return of Parkinson's symptoms alongside painful withdrawal symptoms. Dissent 35-36; Hildreth Br. 5; A265-66.

1. ***Wexford has a medication-refill policy with numerous potential points of failure and no backups or warning channels***

Demonstrating its awareness of the serious health and safety risks of untimely medication delivery, Wexford has a medication-refill policy for chronically ill inmates, like Hildreth, who rely on medication. Dissent 27; Hildreth Br. 5-6, 34-35. Judge Hamilton detailed this policy's operation and explained how it applied to Hildreth:

> Wexford treats the Mirapex that Hildreth needs as a "nonformulary medication." This means that the drug is not kept in stock at the prison but is shipped as needed from an outside provider, Boswell Pharmacy Services. *Wexford's nonformulary medication refill policy requires a sequence of actions to get the medicine to an inmate.* Hildreth receives one month's supply of Mirapex at a time. When he receives the pack of pills, he also receives a sticker that he must turn in to a nurse *at most* seven days before he runs out. After he returns the sticker to a nurse, Wexford is supposed to send the sticker to Boswell. Boswell is then supposed to ship a refill to Menard, and the nursing staff is supposed to deliver the refill to Hildreth. Dissent 27.

Hildreth has complied with this refill policy by timely turning in his refill stickers. Dissent 30. But nurses have "refused to accept [Hildreth's] refill sticker[s]," "refused to check on the status of his refill" after his medication supply lapsed, and repeatedly told him "only to 'wait and see' if the refill would come," without further action. Dissent 33, 38.

2. ***Wexford has a separate medication-renewal policy with numerous potential points of failure and no backups or warning channels***

Wexford has also adopted a separate medication-renewal policy for chronically ill inmates, like Hildreth. Dissent 28; Hildreth 5-6. Judge Hamilton detailed this policy, too:

> In addition to the refill policy, Wexford has a prescription renewal policy for inmates like Hildreth with chronic illnesses. Such inmates are supposed to be signed up automatically for clinic visits at least every six months.

> These visits serve a key function in coordinating care for chronically ill patients and making sure their medical needs are met. At these clinics, patients are seen by a Wexford physician or nurse practitioner who will then write any necessary prescriptions, which will last between six months and one year. Dissent 28.

Hildreth has complied with Wexford's renewal policy as well by attending his chronic clinics when Wexford has sent him a pass to attend. Dissent 30. But Hildreth "did not regularly receive [chronic-clinic] passes" for his medication's renewal, as the policy prescribed; he was instead "seen by doctors" at "irregular intervals" and sometimes not at all. Dissent 28.

C. Despite complying with Wexford's refill and renewal policies, Hildreth experiences multiple medication lapses while in Wexford's care

Wexford's system for medication refills and renewals failed to "reliably supply Hildreth with his Parkinson's medication," despite his compliance with them. Dissent 28-29. As Judge Hamilton explained, "Wexford policy relied on what a manufacturer would call 'just-in-time' supply control," operating with many moving parts, and thus many opportunities for employee "mistakes [that could] shut down the assembly line" entirely. Dissent 28.

Unfortunately, Wexford's medication system did indeed fail Hildreth repeatedly, causing medication lapses and needless suffering: the swift return of debilitating Parkinson's symptoms, compounded by painful withdrawal symptoms. Indeed, the "record contains evidence of *at least* three [such] medication lapses over a period of nineteen months." Dissent 29.* At one point, Hildreth went without his

*In total, the record reveals eight instances of either medication "delay[]" or "obstruct[ion]" since October 2009. Hildreth Br. 7-12; Reply 7-10. *But see* Majority Op. 15-17 (declining to consider five of these instances). The Majority's exclusion of two of these instances, taken from inmate Michael McGowan's affidavit, is "just clearly wrong" as a

medication for "*at least ten days*"—a "long lapse" that was "exceptionally painful and dangerous for [him]." Dissent 30.

"In each instance," Hildreth undisputedly "did the only things he could" under Wexford's medication system to "bring the lapse to the attention of those responsible for his care": "speaking to the nurses on duty and filing grievances." Dissent 29. But neither approach worked. Nurses brushed him off or outright refused his pleas for help. Dissent 33, 38. And Wexford "ignored Hildreth's grievances" altogether, "seemingly by design," as it was "not involved in the grievance process" in any way, despite its responsibility for medications. Dissent 37, 39. Thus, as Judge Hamilton vividly described, Hildreth's grievances "give the impression of a person in pain, screaming into a void." Dissent 38.

D. The Majority rules for Wexford, holding that Hildreth cannot prevail without also proving harm to *other inmates* and a *pattern* of prior similar violations

Notwithstanding all this undisputed evidence, the Majority affirmed summary judgment for Wexford on Hildreth's Eighth Amendment *Monell* claim, rejecting Hildreth's arguments "on two axes." Maj. Op. 10. First, the Majority held that, regardless of what Hildreth undisputedly established about his own medication lapses, he could not prevail without also showing that *other inmates* suffered medication lapses as well. Maj. Op. 10-11. Second, the Majority held that Hildreth could not prevail by showing only three medication lapses over 19 months. Maj. Op. 11-18. Having treated these two "axes" as threshold requirements, the Majority did not analyze Wexford's system of policies for medication refills and renewals in any

---

"matter of elementary evidence law" for all the reasons that Judge Hamilton explains, Dissent 32-33, and that Hildreth explained previously, Hildreth Br. 38-39; Reply 5.

way. Nor did the Majority make any attempt to distinguish *Glisson* or *J.K.J.*, even though they bore directly on the Court's analysis.

E. Judge Hamilton dissents, explaining that Wexford's medication system is *itself* deliberately indifferent and that the Majority's approach is "at odds" with *Glisson*

Judge Hamilton dissented, explaining that the Majority's approach was "at odds with [this Court's] precedent" in *Glisson* and other cases. Dissent 39, 22. He explained that Hildreth "offered sufficient evidence that Wexford knew of his serious health needs—which required reliable, timely refills of his Parkinson's medication—and acted unreasonably in response to those needs," as "Wexford established prescription refill and renewal systems, *i.e.*, policies, that did not include warnings and back-ups to correct inevitable and serious mistakes." Dissent 22.

Judge Hamilton "[c]ompare[d] Hildreth's situation to that of a hospital patient on a ventilator that is keeping the patient alive." Dissent 36. "The machine runs on electricity," "[e]lectrical power will be interrupted from time to time by storms and equipment failures," and "[m]achines like ventilators occasionally break down." *Id.* Accordingly, "[a]ny reasonable hospital must anticipate the possibility of those interruptions and breakdowns, and it must have alerts and a back-up system in place." *Id.* "Similarly here, Wexford may be deemed to have actual knowledge of both the obvious possibility, even the inevitability, of mistakes or lapses in its renewal and refill systems and of the serious consequences for patients if those were not corrected." *Id.* "Wexford thus had [an Eighth Amendment] duty to take reasonable steps—warnings and back-up systems—to mitigate the effects of inevitable mistakes and oversights"—yet it undisputedly did nothing. *Id.* "That's enough," Judge Hamilton explained, "to show deliberate indifference" under *Glisson* and the Eighth Amendment. Dissent 22.

15

ARGUMENT

Rehearing should be granted. As Judge Hamilton explained, the Majority's mechanical approach is "at odds with [this Court's] precedent" applying *Monell* in prison cases, including *Glisson*. Dissent 39. Rehearing is thus "necessary to secure … uniformity of [this Court's] decisions." Fed. R. App. P. 35(a)(1). Indeed, the Majority's decision turns on reasoning from the *dissenting opinions* in *Glisson* and *J.K.J.* *See Glisson*, 849 F.3d at 383-90 (Sykes, J., dissenting); *J.K.J.*, 2020 WL 2563256, at *17-44 (Brennan, J., dissenting in part). And this case presents issues of "exceptional importance," Fed. R. App. P. 35(a)(2), as demonstrated by this Court's decisions to rehear *Glisson* and *J.K.J.* en banc. Because the Majority's decision violates *Glisson* and *J.K.J.* and muddies the waters in this important area of Circuit law, rehearing should be granted and the Majority's errors rectified.

THE MAJORITY'S DECISION EFFECTIVELY ABROGATES *GLISSON* AND *J.K.J.*

A. *Glisson* and *J.K.J.* held that deliberately indifferent institutional systems are actionable under *Monell*, even if they injure just one inmate without a pattern of prior similar violations

1. In *Glisson*, the en banc Court held that, "if institutional policies are *themselves* deliberately indifferent to the quality of care provided" to prisoners, "institutional liability" under *Monell*'s policy-or-custom framework "is possible." 849 F.3d at 378. There, a prison medical contractor had no system in place "requir[ing] any kind of formal coordination of medical care" for prisoners with "serious health problems." *Id.* at 374, 379. "One [did] not need to be an expert" to see the obvious risks for inmates that these policy gaps created, about which the contractor chose "to do nothing." *Id.* at 382.

For Nicholas Glisson, a prisoner with "severe disabilities" known to all, the results were deadly. *Id.* at 374-75. Just 37 days after entering prison, he died due to

inadequate, uncoordinated medical treatment. *Id.* at 373-75. The Court reversed summary judgment for the medical contractor, holding that *Monell* "require[s]" prison medical providers "to ensure that a well-recognized risk for a defined class of prisoners not be deliberately left to happenstance." *Id.* at 382.

Judge Sykes dissented, advancing arguments just like those that the Majority embraced in the present case. There was "no evidence" in *Glisson*, Judge Sykes wrote, "that *other inmates* were harmed," and the "plaintiff's own injury, standing alone," was not enough to sustain a *Monell* claim in her view. *Id.* at 386, 388 (Sykes, J., dissenting). *Glisson*'s factual record also did not reveal a pattern of prior similar harm, and Judge Sykes argued that a *Monell* plaintiff should be required to prove "*more than one* constitutional injury." *Id.*

The full Court in *Glisson* explicitly rejected these dissenting views. It did not matter, the en banc Court held, that only one prisoner (Glisson) was harmed or that the plaintiff did not prove a pattern of prior injuries, as "*[t]here is no magic number of injuries that must occur before [a] failure to act can be considered deliberately indifferent.*" *Id.* at 382.

2. *J.K.J.* reaffirmed *Glisson*. There, the en banc Court reinstated two prisoners' Eighth Amendment *Monell* claims asserting "gaps in the County's [prison] sexual abuse policy." 2020 WL 2563256, at *7. Specifically, the policy "prohibited sexual contact between inmates and guards" but "failed to address the prevention and detection of such conduct." *Id.* at *1; *id.* at *5, *8, *10. The need for these measures, the Court held, was "as obvious as obvious could be" (as the "confinement setting is a tinderbox for sexual abuse"), yet the County "chose the one unavailable option—doing nothing." *Id.* at *10-11. As a result, a prison guard sexually abused the plaintiffs, with no County response. *Id.* at *1-2. Affirming a jury verdict for the

17

plaintiffs, the full Court held that *Monell* liability was warranted for the County's "choice to stand idly by while the female inmates under its care were exposed to an unmistakable risk that they would be sexually assaulted." *Id.* at *13.

Judge Brennan dissented, with Judge Sykes joining his opinion, again offering arguments that the Majority in the present case applied to reject Hildreth's *Monell* claim. Judge Brennan argued that *Monell* liability could not lie absent a *"pattern of prior similar violations"*—one injury to one prisoner was not enough. 2020 WL 2563256, at *27; *id.* *17. And Judge Brennan argued that there were "no prior instances of similar sexual assaults" or "rape" of other inmates in *J.K.J.*, thus precluding *Monell* liability under his reading of precedent. *Id.* at *30, *32.

The full Court expressly rejected these dissenting views. *Monell* liability was warranted, the Court held, even though the inmates "present[ed] *no such pattern*" of prior similar violations. *Id.* at *9 (majority opinion). Indeed, under this Court's precedents, *it did "not matter that no one had been hurt before." Id.* at *9-10.

B. The Majority's decision turns on *precisely* what *Glisson* and *J.K.J.* rejected: proof of harm to only one inmate, and a failure to prove an unstated "magic number" of prior injuries

The Majority ruled against Hildreth only by introducing limits on *Monell* liability that the full Court expressly rejected in *Glisson* and *J.K.J.* Indeed, the Majority applied arguments advanced in *Glisson*'s and *J.K.J.*'s *dissenting opinions* as though those opinions carried the day—without even attempting to distinguish these en banc decisions' majority opinions. To restore uniformity to this Court's precedents in this important area of Circuit law, rehearing should be granted.

According to the Majority, and as discussed above, Hildreth's *Monell* claim "fails on two axes": (1) "his allegations of delays ... *involve only him*," and (2) he "substantiated" "*only three*" medication lapses and thus failed to demonstrate a

16

pattern of prior constitutional injuries. Maj. Op. 10. *Glisson* and *J.K.J.*, however, foreclose both "axes."

1. In *Glisson*, too, there was no evidence that *other inmates* suffered as a result of the prison contractor's inadequate system for "formal coordination of medical care" for prisoners with "serious health problems." 849 F.3d at 374, 379. The evidence was limited to only one prisoner's personal experiences. *Id.* at 374-78. Judge Sykes argued that this foreclosed *Monell* liability in her dissent: There was "no evidence that *other inmates* were harmed," and the *"plaintiff's own injury*, standing alone," was insufficient. *Id.* at 386, 388 (Sykes, J., dissenting). But the majority disagreed and held that the plaintiff's claim could proceed *regardless* of whether anyone else had suffered due to the prison's inadequate health-care system. *Id.* at 380 (majority opinion). Other decisions of this Court have held the same. *See, e.g., Daniel* v. *Cook Cty.*, 833 F.3d 728, 734-35 (7th Cir. 2016) (with proof of "systemic and gross deficiencies" in prison-medical "procedures," a plaintiff "need not present evidence that these systemic failings affected other specific inmates"); *Davis* v. *Carter*, 452 F.3d 686, 695 (7th Cir. 2006) (same). The Majority's decision thus directly conflicts with *Glisson* and these other precedents, injecting substantial uncertainty into this Court's *Monell* jurisprudence.

2. The same is true for the Majority's conclusion that proving "only three" medication lapses categorically precludes *Monell* liability. Maj. Op. 10. The plaintiff in *Glisson* proved only *one* constitutional violation. 849 F.3d at 382. This prompted *Glisson*'s dissenters to argue that *Monell* plaintiffs must "produce evidence of *more than one* constitutional injury." *Id.* at 387 (Sykes, J., dissenting). But the full Court disagreed, emphasizing that "[t]here is no magic number of injuries that must occur before [a] failure to act can be considered deliberately indifferent."

19

Id. at 382 (majority opinion); *id.* at 381 (the record need not "reflect[] numerous examples" of harm).

This occurred in *J.K.J.* as well. There, the dissenters argued that a plaintiff must prove a "*pattern* of prior similar violations" to establish *Monell* liability. 2020 WL 2563256, at *17, *27 (Brennan, J., dissenting). But the full Court rejected this view, finding liability even though the plaintiffs "present[ed] *no such pattern*." 2020 WL 2563256, at *9 (majority opinion).

Accordingly, Judge Hamilton's dissent in this case captures the Majority's errors well: "Where there is an obvious risk created by a health-care policy gap—like coordinated care in *Glisson* or medication refill oversight here—a plaintiff need not show some minimum number of injuries to prevail." Dissent 36. Indeed, the "issue is not exactly *how often* the policy failed" but "*whether* the system established by Wexford policymakers reflected deliberate indifference to the inevitability of human mistakes." Dissent 34. The Majority's decision to treat the *frequency* of Wexford's failures as dispositive thus directly conflicts with *Glisson* and *J.K.J.* Yet the Majority did not even attempt to distinguish either en banc ruling. Rehearing is thus warranted. Indeed, frequency might affect the *damages* that a plaintiff is entitled to—but *Glisson* and *J.K.J.* make clear that it is not a prerequisite to *liability*.

C. Hildreth demonstrated a deliberately indifferent Wexford system for medication delivery under *Glisson* and *J.K.J.*

Contrary to the Majority's ruling, reversal and a remand for trial was warranted in the present case, because a reasonable jury could "easily" rule for Hildreth in light of *Glisson* and *J.K.J.* Dissent 35. As Judge Hamilton explained in dissent, "Wexford's policies for renewing and refilling prescriptions reflect deliberate indifference to the serious medical needs of Hildreth himself *and* other prisoners

20

who depend on reliable refills of prescriptions for medicines that are not kept on-site at the prison." Dissent 25-26.

The analysis is straightforward. "Ample evidence showed that Wexford had *actual knowledge* of Hildreth's Parkinson's disease, his prescription, and the need to ensure a steady supply of the medicine." Dissent 35. And "Wexford surely had actual knowledge that some prisoners would have similarly urgent needs for critical prescriptions not available on-site at the prison." *Id.* "Given that actual knowledge of serious medical needs, Wexford had a constitutional duty" under the Eighth Amendment "to take reasonable steps to avoid or minimize the risk of lapses in medication"—*i.e.*, "to put in place a reasonably reliable system for renewing and refilling such critical non-formulary drugs and to monitor the performance of that system." *Id.*

"A jury could easily find" that Wexford failed to honor this constitutional duty. *Id.* Its medication "system was not reasonably calculated to be reliable because the system had no warning channel and back-up mechanisms by which it could fix mistakes without unnecessary suffering." *Id.* "[F]or a system so critical to health—and one with many possible points of failure—it lacked warnings to alert Wexford to inevitable mistakes or oversights." *Id.* These gaps in Wexford's system "not only prevented Wexford from *catching* mistakes before patients suffered"; it also "prevented Wexford from *learning about* even repeated failures." Dissent 35-37. Indeed, even though Wexford was responsible for inmate medications, "Wexford [was] not involved in the grievance process" *at all*, the only avenue that Hildreth had to communicate problems with his medication supply. Dissent 37; Hildreth Br. 12.

In essence, Wexford started up the medication "assembly line"—and then walked away for good, without leaving its contact information, Dissent 28,

21

"wish[ing]" everyone under its care "Godspeed." *J.K.J.*, 2020 WL 2563256, at *12. "[I]n pain," Hildreth was left to "scream[] into a void." Dissent 38.

That is deliberate indifference under *Glisson* and *J.K.J.* Wexford's "unreasonable 'conscious decision not to take action' in the face of a serious medical risk"—about which Wexford had actual knowledge—"is akin to the decision of the defendant in *Glisson* to forgo a protocol for coordinated care to chronically ill inmates." Dissent 36 (quoting *Glisson*, 849 F.3d at 381). It is also akin to the County's decision in *J.K.J.* to "stand idly by while the female inmates under its care were exposed to an unmistakable risk that they would be sexually assaulted." 2020 WL 2563256, at *13. And the harm that Hildreth suffered from Wexford's medication system was real. Indeed, no one has ever disputed that lapses in his medication were "exceptionally painful and dangerous." Dissent 30.

On this record, a reasonable jury could "easily" rule for Hildreth on his *Monell* claim against Wexford, and the panel should have "reverse[d] and remand[ed] for trial." Dissent 35, 41.

CONCLUSION

The petition for rehearing or rehearing en banc should be granted.

REASONS FOR GRANTING PETITION

1). One of the main reasons for granting the petition,or the best reason for granting the petition is that like it is stated,in page 9 of this petition,INTRODUCTION AND RULE 35 (b)(1) STATEMENT. Judge Hamilton explained that the Majority's decision is at odds with that courts own precedent.That their decision "adopts a highly restricted approach to establishing a MONELL custom",in prison health-care cases that is "at odds with [this Court's]precedent"that "reward[s]... deliberate ignorance" by prison medical contractors,and that incorporparates reasoning that is "just clearly wrong".Rehearing is necessary.

2.) Not because what I (petitioner),says,but what the U S Federal Court Judge David F Hamilton,said in dissent Quote"Hildreth has offered sufficiant evidence that Wexford knew of his serious health needs-which required reliable timely refills of Parkinsons medication acted unreasonably in response to those needs". (see first paragraph ,pg 22 of Apendix C)

3.) Further Judge Hamilton states,"Wexford did not include,warnings and back-ups to correct inevitable mistakes,thats enough to show deliberate indifference under Farmer v Brennan 511 U S 825,843-44(1994) and Glisson v Indiana Dept. of Corrections,849 F 3d 372,382(7th Cir 2017)(en bonck)I respectfully dissent.

Judge Hamilton again,(Dissent pg 23 #10 2660,second paragraph), Quote,"Wexford argues and the Majority opinion agrees,that plaintiff does not offer evidence of sufficiantly wide spread problems with the timely refills of critical,life changing prescriptoons at Menard C C or other prisons where Wexford contracts.I explain below why I disagree.But if a similar plaintiff must prove that the system infact fails more frequently and not just for him,his demands for broad disscoverl into other inmates experiances with Wexford and its refilll system should be undeniable.

Moreover a good deal of such evidebce appears to be discoverable other federal law suits provide sources of such evidence and describe prescription refill problems at Menard during the times relevent to here see e g First Annual Report of Monitor Pablo Stewart M D at 47,Rasho v Walker No 07 CV 1298,(C D ILL May 22 2017)...see pg 24 first paragraph last sentence,and pg 28 completely of Appendix C

4.) Plaintiff should not have his claim denied,dismissed any negitive order or judgement against his claim based on not getting or having medical confidential medical information on another person or inmate or medication info medical or medication history of another.Especially due to it being confidential and unaccssable to him by law !

5.) Wexford argues that Hildreth's grievances cannot be used to infer that it knew about systematic failure to its medication polacies and this precludes libility:

"Wexford is not invovkved in the greivance process,and would not know of contents of a grievance unless an IDOC employee notifies Wexford about it.Even then,that individual would have been a member of the onsite healthcare staff,not necessarily a polacy maker.

..As such,Wexford polacymakers had no reason to know that any alleged issue existed."

Brief for Appellee,Wexford at 21.This argument has things exactly backwords:Wexford's lack of involvement in the grievance process makes it more culpable strengthens Hildreth's claim.Humans make mistakes.In implementing systems known to be critical to life,health,and safety, a company like Wexford must allow for such mistakes and take reasonable steps to provide warnings and back-up systems.Federal Courts do not and should not design the specifics.As noted through the eighth amemment ,requires reasonable responses to known risks where prisoners cannot protect their own health and safety.Wexford 's addmission that it lacked any polacy to learn about inmates c mplaints supports the conclusion that its prescription polacies created an unacceptible risk of harm resulting from this form of deliberate indifference to Hildreth's(and others),serious medical needs.

Daniel v Cook County addressed this point :if a grievance system is part of a jails or prisons system for communicating and responding to health care requests ,and if the system fails in a way that causes a deprivation of needed health care,then the problem with grievance system may be an important part of plaintiffes;case for delibarate indifference to his health careneeds 833 F 3d at 737.We also said of course,that the dangers of delayed response to medical reqests are readily apparent.Thomas 604 F 3d at 304.In the face of such danger it is unreasonable for a medical polacy maker to cut itself off from important feedback about failiures or lapses in its polaces.

Dividing resposabilities ,between private contractors,and state agencies can increase theese risks.In such cases,the law should and does provide incentves for actors to take resonable steps to mitigate known dangers.The law should not do what the Majority's opinion's reasoning does here:reward divided responsibility and deliberate ignoreance by those who control prisoners only access to health care .Hildreth's grievance 's give the impression of a person in pain,screaming out into the void.Wexford ignored Hildreth's grievances,seemingly by design And when Hildreth used the only other avenew available-communication with nurseshe was told only to"wait and see" if the refill would come.On this record we should reverse summary judgement for wexford.(Judge Hamilton in Dissent)

The majority opinion adopts a highly restricted approach to esablish a MONELL custom that is at odds with our presendent.The majority looks only at the raw number of alleged failures and the time period over which they tok place.Ante11-13 .It views the broader polacy decisions and context surrounding the violations as immaterial.This approach divorces the legal doctrine from its purpose of identifying those cases in which government or corporate polacy causes and fails to address predictable failures to provide needed medical care. After acknowledging that we have adopted no BRITE LINE RULES for establishing a MONELL custom,the majority opinion adopts one by saying that the number of possibly unconstitutiona; inciden ts must be more than three .Ante 11

Furthermore its not just the lone Judge Hamilton,on the rare en bonch we picked up three more U S COURT JUDGES who agreed ,judges,Rovner,Wood, Scudder,also dissenting from denial of rehearing en bonch.

And the original decision concerning this summary judgement was denied by judge magistrate Wilkerson Donald G.see docketing statement Appendix E

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Scott K

Date: 11-7-20