No. 20-

IN THE

Supreme Court of the United States

ANTONIO DEWAYNE HOOKS,
Petitioner,

v.

KAYODI ATOKI, BETHANY POLICE DEPARTMENT, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

VIRGINIA A. SEITZ *
JEFFREY T. GREEN
GORDON D. TODD
DANIEL S. BROOKINS
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
vseitz@sidley.com

Counsel for Petitioner

*Counsel of Record

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QUESTION PRESENTED

In *Kingsley* v. *Hendrickson*, 576 U.S. 389 (2015), this Court held that "pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically,'" and therefore that a pretrial detainee's excessive-force claim arises under the Due Process Clause of the Fourteenth Amendment, not under the Cruel and Unusual Punishment Clause of the Eighth Amendment. *Id.* at 400 (citation omitted). As a result, this Court held that a pretrial detainee bringing an excessive-force claim is not required to prove that the defendants were *subjectively* aware that the amount of force used was unreasonable, but instead only that the defendants' conduct was *objectively* unreasonable. Since *Kingsley*, the courts of appeals have been divided about whether its holding applies only to excessive-force claims, or whether it also governs claims that defendants were deliberately indifferent to dangers to pretrial detainees while imprisoned (failure-to-protect claims), to their serious medical needs, or to their conditions of confinement.

The question presented, accordingly, is whether, in light of *Kingsley*, pretrial detainees claiming that defendants were deliberately indifferent to the dangers that their confinement presented must show that defendants were subjectively aware of those dangers and failed to respond reasonably, or only that defendants' conduct was objectively unreasonable.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Antonio Dewayne Hooks, an inmate incarcerated at the Davis Correctional Facility in Holdenville, Oklahoma.

Respondents are Kayodi Atoki, Correctional Officer, Oklahoma County Jail; Unknown Booking Guard; Unknown Classification Guard; Unknown Booking Nurses; John Whetsel, Former Sheriff, Oklahoma County; Tommie Johnson III, Sheriff, Oklahoma County; Dr. Jerry Childs, Oklahoma County Jail, Armor Correctional Health Inc.; Oklahoma County Jail.

Armor Correctional Health Services, Inc. is not a publicly held corporation or other publicly held entity. It does not have any parent corporations and no other publicly held corporation owns 10% or more of its stock. There are no other corporate parties in this case.

RULE 14.1(b)(iii) STATEMENT

This case directly relates to these proceedings:

Hooks v. *Atoki*, No. CIV-17-658-D (W.D. Okla. June 7, 2018)

Hooks v. *Atoki*, No. 18-6128 (10th Cir. July 18, 2018) *Hooks* v. *Atoki*, No. CIV-17-658-D (W.D. Okla. June 4, 2019)

Hooks v. *Atoki*, No. 19-6093 (10th Cir. Dec. 29, 2020)

Hooks v. *Atoki*, No. CIV-17-658-D (W.D. Okla., currently proceeding on remand from the Tenth Circuit as to the arresting officers only).

No other proceedings in state or federal trial or appellate courts, or in this Court, directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Antonio Dewayne Hooks respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The Tenth Circuit's decision is reported as *Hooks* v. *Atoki*, 983 F.3d 1193 (10th Cir. 2020), and reproduced at Petition Appendix ("Pet. App.") 2a–25a. The Tenth Circuit's judgment is reproduced at Pet App. 27a–28a. The Report and Recommendation of the Magistrate Judge of the United States District Court for the Western District of Oklahoma is reported at *Hooks* v. *Atoki*, No. CIV-17-658-D, 2018 WL 11258375 (W.D. Okla. May 15, 2018), and reproduced at Pet. App. 30a–50a. The district court's Order adopting the Report and Recommendation is reproduced at Pet. App. 52a–53a.

JURISDICTION

The Tenth Circuit entered judgment on December 29, 2020. Pet. App. 27a–28a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides, in relevant part: "[N]or shall any state deprive any person of life, liberty, or prop-

erty, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

The statutory provision involved is 42 U.S.C. § 1983, which provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . .

42 U.S.C. § 1983.

INTRODUCTION

On October 5, 2016, petitioner, Mr. Hooks, was brutally beaten at the Oklahoma County Detention Center where he was being held as a pretrial detainee. Thereafter, he received wholly inadequate medical care that exacerbated his injuries. The Court of Appeals for the Tenth Circuit held that a pretrial detainee who claims that defendant prison employees were deliberately indifferent in both their duty to protect him and in addressing his serious medical needs, in violation of the Fourteenth Amendment, must show that the defendants were *subjectively* aware of the risks facing the detainee and unreasonably failed to address them.

Mr. Hooks submits that this decision is contrary to this Court's decision in *Kingsley* v. *Hendrickson*, 576 U.S. 389 (2015). It also broadens a deep, existing split among the circuit courts of appeals. The Second, Seventh, and Ninth Circuits expressly disagree with the Tenth Circuit, while the Fifth, Eighth, and

Eleventh Circuits agree. The question presented is important and arises frequently, as the number of cases addressing the question since *Kingsley* was decided in 2015 reveals. And, the legal standard for these constitutional claims often determines their outcome. As it stands, the outcome of these regularly recurring cases may differ based upon only the circuit in which their claims arise.

STATEMENT OF THE CASE

A. Factual Background[1]

Mr. Hooks arrived at the Oklahoma County Detention Center on October 1, 2016. As a result of the arresting officers' use of excessive force, Mr. Hooks was in poor medical condition when he arrived, and should have been placed in medical housing. See Pet. App. 138a–139a, 144a. The booking nurses, however, ignored Mr. Hooks' serious and obvious injuries and failed to recommend that he be housed in the medical unit. See *id.* at 144a.

Similarly, the booking guard failed to follow protocol and did not inquire into Mr. Hooks' gang affiliation, or take note of the Detention Center's own records of Mr. Hooks' gang affiliation. See *id.* at 141a. These errors were particularly egregious in light of the ongoing gang violence in the facility and the gang-driven segregation necessitated by it. See *id.* at 142a.

As a result of these errors, Mr. Hooks was neither housed in a medical unit nor placed in a proper prison pod. See *id.* at 141a–144a. Instead, he was placed

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[1] These facts are based upon the complaint and videos of the attack. The district court was required to treat all well-pleaded factual allegations as true at the motion to dismiss stage.

in pod 4D for temporary housing, where he stayed for four days. See *id.*

On the morning of October 5, 2016, a classification guard moved Mr. Hooks from pod 4D to pod 4A. See *id.* at 143a–144a. The classification guard knew Mr. Hooks was a member of a gang called the Rollin' 90s Crips; specifically, he had access to Mr. Hooks' records and pictures that showed that Mr. Hooks was a member of the Rollin' 90s Crips.[2] See *id.* Despite this knowledge, and despite the fact that the Bloods and the Crips were segregated because of ongoing violence, see *id.* at 142a–143a, the classification guard placed Mr. Hooks in pod 4A—a "segregated pod for [B]lood gang members." See *id.* at 143a.[3]

The results were catastrophic. On his *first* morning in pod 4A, Mr. Hooks got in line to order items from the commissary. As he was waiting in line, Demilio Woodward, a Blood gang member, approached Mr.

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[2] Although Mr. Hooks repeatedly submitted requests seeking the names of the classification guard and the booking guard, the jail never provided that information. *See*, *e.g.*, Pet. App. 151a, 153a, 154a.

[3] The rivalry, and accompanying violence, between Bloods and Crips is well documented, and well known among law enforcement officials and jail personnel. *See generally* Florida Department of Corrections, *Los Angeles-based Gangs — Bloods and Crips* (2017), https://web.archive.org/web/20170402220525/http://www.dc.state.fl.us/pub/gangs/la.html; *see also* The North Carolina Gang Investigators Association, *Bloods* (2012), https://web.archive.org/web/20141217000730/http:/www.ncgangcops.org/Bloods.html ("[The Bloods] aligned with several neighborhood gangs in an attempt to unite against the Crips."). Oklahoma City is no exception to this national problem. *See* Okla. State Bureau of Narcotics and Dangerous Drugs Control, *Preliminary Analysis of the Crips and Bloods Street Gang Activity in Oklahoma*, at 10–14 (1991) (discussing the prevalence of the Bloods and Crips street gangs in Oklahoma City).

Hooks from behind and hit him, knocking him instantly unconscious. See Pod 4A Cameras 2 & 4 at 9:42:03 a.m.[4] Within four seconds, two other Bloods—Anthony Durham and Dewayne Smith—joined in the attack on Mr. Hooks. See Pod 4A Cameras 1 & 3 at 9:42:05–07 a.m. While Mr. Hooks lay unconscious on the ground, the three men stomped on his face and kicked him. See Pod 4A Camera 4 at 9:42:07-14 a.m. At 9:42:14 a.m., Mr. Woodward and Mr. Durham began to move away from Mr. Hooks, but Mr. Smith continued stomping on Mr. Hooks' face until 9:42:17 a.m. See Pod 4A Camera 4 at 9:42:14–17 a.m.

Mr. Hooks almost died as a result of this brutal attack. See *id.*; see Pet. App. 149a; *id.* at 148a. Deputy Lira, one of the prison officials who responded to the incident, described Mr. Hooks' injuries as follows:

> I observed Inmate Hooks to be bleeding heavily from his nose and mouth. Inmate Hooks was unresponsive, and appeared to be having a seizure, as his body was rigid. I observed a large pool of blood underneath his head. Inmate Hooks was unable to breathe due to the amount of blood coming from his mouth and nose.

Id. at 149a.[5]

Mr. Hooks was rushed to the Oklahoma University Health Center ("OU Health") for medical treatment.

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[4] This footage was filed with the Tenth Circuit in CD-ROM format and is part of the record below.

[5] Similarly, Captain Hardin stated "his face [was] covered in blood, a pool of blood on the floor just under his head. [He] was making noise as if he were struggling to breath[e] and several officers were . . . holding him . . . to assist him in maintaining an open airway." Pet. App. 148a.

See *id.* at 137a. As part of their medical care, the plastic surgery team at OU Health wired Mr. Hooks' jaw closed. See *id.* Those wires, however, broke shortly after Mr. Hooks returned to the Oklahoma County Detention Center. See *id.* Dr. Jerry Childs, the onsite physician, had Mr. Hooks pulled from his cell and brought to the jail clinic. See *id.* Dr. Childs reattached and tightened the wires. See *id.* In doing so, however, he made the wires so tight that one of the screws holding the wires in place later came out altogether. See *id.* Again, Mr. Hooks was taken to the emergency room. See *id.* at 137a–138a. At the emergency room, the attending physicians refused to operate on Mr. Hooks because the damage caused by Dr. Childs was so severe and required the immediate attention of a specialist. See *id.* at 138a. The attending physicians immediately sent Mr. Hooks to a team with greater expertise in reconstructive oral surgery. See *id.*

B. Procedural Background

On June 15, 2017, Mr. Hooks filed a *pro se* civil rights complaint under 42 U.S.C. § 1983, see *id.* at 71a, which he amended just over a month later, see *id.* at 71a–72a. The Magistrate Judge recommended dismissing, without prejudice, the entirety of Mr. Hooks' amended complaint for failure to state a claim. *Id.* at 72a. The district court adopted that report and recommendation. *Id.* at 75a.

Mr. Hooks then filed a second amended complaint (the "operative complaint"). *Id.* at 126a. In the operative complaint, Mr. Hooks listed multiple defendants, including the booking nurses, Dr. Childs, Armor Correctional Health, Inc.,[6] the booking guard, and the

[6] Armor Correctional employs the booking nurses and Dr. Childs.

classification guard. See *id.* at 126a–128a. Relevant to this petition, he asserted the following claims that defendants were deliberately indifferent to dangers to his personal safety (failure-to-protect) and to his serious medical needs:[7] (1) by Armor Correctional Health, Inc. and the booking nurses who, despite observing his injuries from the altercation with the arresting officers, failed to place him in medical housing; (2) by the booking guard who failed to ask his gang affiliation or properly house him; (3) by the classification guard who housed Mr. Hooks with a rival gang despite having knowledge of Mr. Hooks' gang affiliation; and (4) by Dr. Childs and Armor Correctional Health, Inc. for failing to provide adequate medical care in the aftermath of the gang assault. See *id.* at 126a–145a.

On May 15, 2018, the Magistrate Judge recommended dismissal of all claims. See *id.* at 30a. *First*, the judge improperly treated the claims against the classification guard and the booking guard as claims against the Oklahoma County Sheriff, and never considered whether Mr. Hooks had adequately pleaded claims against the classification guard or the booking guard. Cf. *id.* at 34a–38a. He held that claims against the Sheriff could not proceed because Mr. Hooks had failed to sufficiently allege the Sheriff's personal participation in the events.

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[7] Mr. Hooks asserted several other claims against the two arresting officers (excessive-force) and the guard who was in the monitoring booth at the time of the attack (deliberate-indifference constituting a failure-to-protect). The claim against the monitoring guard was resolved on grounds that would not be affected by this Court's decision of the issue presented for review. And the claims against the arresting officers arise out of a separate factual nexus and are currently proceeding before the U.S. District Court for the Western District of Oklahoma.

Second, the judge analyzed the claims against Dr. Childs and the booking nurses under the Eighth Amendment's standard for claims of deliberate indifference, rather than under the Fourteenth Amendment's due process standard. *See id.* at 39a. Although the judge acknowledged Mr. Hooks' status as a pretrial detainee, *id.* at 31a, he never considered whether that meant Mr. Hooks' claims should have been analyzed under the Fourteenth Amendment or whether the Fourteenth Amendment imposes a different standard than the Eighth Amendment. See, *e.g.*, *id.* at 39a.

Applying the Eighth Amendment standard, the judge held that Mr. Hooks failed to allege facts that could establish subjective intent on the part of Dr. Childs or the booking nurses, as is required to state a claim under the Eighth Amendment. See *id.* at 41a–45a. And because Mr. Hooks had not established subjective intent, the judge held that Mr. Hooks had not stated claims of deliberate indifference as to these defendants. See *id.* Over Mr. Hooks' objections, the District Judge adopted the Magistrate Judge's report and recommendation in full. See *id.* at 51a–52a.

On appeal, Mr. Hooks—for the first time represented by counsel—argued that the district court was wrong to require a pretrial detainee alleging that he was punished in violation of the Fourteenth Amendment to allege that a defendant prison employee or agent was *subjectively* aware of a substantial risk of harm to the detainee, and failed to address it. See *id.* at 90a–98a. Mr. Hooks argued that this Court's decision in *Kingsley* changed the standard for such claims of deliberate indifference brought by pretrial detainees, and that no showing that the defendant was subjectively aware of the risk to the detainee is required. See *id.*

Mr. Hooks further argued that applying the correct standard, the court should not dismiss the claims against the booking nurses and Dr. Childs, because viewed objectively, their conduct was deliberately indifferent to Mr. Hooks' health and safety as a matter of law. See *id.* at 41a–45a. Accordingly, Mr. Hooks asked the Tenth Circuit to remand these claims for reconsideration under *Kingsley*'s objective standard.

Additionally, Mr. Hooks argued that the district court did not liberally construe his complaint when it read the claims against the booking guard and the classification guard as raising claims against the Sheriff only. See *id.* at 34a–38a. In context, it was clear that Mr. Hooks intended to sue the booking guard and the classification guard—not the Sheriff. See *id.* at 141a (identifying the booking guard specifically and calling out particular failures of the booking guard); *id.* at 141a (unambiguously isolating the classification guard and pinpointing specific failures of the classification guard).[8]

Mr. Hooks asked the court to remand these claims as well, and argued that, on remand, the district court should be instructed to (1) apply *Kingsley* appropriately, and (2) consider all proper defendants (*i.e.*, including not only the booking nurses and Dr. Childs, but also the booking guard and the classification guard). See *id.* at 96a–98a. He argued that once

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[8] Mr. Hooks was likewise imprecise in pleading his claim against the guard in the monitoring booth: he listed the Sheriff as the defendant, but it was apparent that he intended to sue the monitoring guard. *Id.* at 139a. There, however, the district court liberally construed the claim, appropriately recognizing that Mr. Hooks intended to sue the monitoring guard. *See id.* at 112a–124a. It made no sense to treat these claims differently, and indeed violated the applicable liberal pleading standards for pro se plaintiffs to do so.

his claims were correctly understood (that is, viewed as directed at the proper defendants) and analyzed under *Kingsley*'s objective standard, he had stated a claim because he had alleged facts that showed that all, including the booking guard and the classification guard, had acted with reckless disregard for his well-being. See *id.* at 97a.[9]

After the case was fully briefed (but before oral argument), the Tenth Circuit held that *Kingsley* should not be extended to pretrial detainees' claims that defendants were deliberately indifferent to their medical needs. See *Strain* v. *Regalado*, 977 F.3d 984, 990–91 (10th Cir. 2020). In response to this decision, Mr. Hooks filed a Rule 28(j) letter arguing that even if *Strain* declined to extend *Kingsley* to pretrial detainees' claims of deliberate indifference to medical needs, it did not address the question of whether *Kingsley* applied to claims that jail personnel had failed to protect an inmate from harm at the hands of a rival gang—and that any statements indicating otherwise were *dicta*. See Pet. App. 55a–56a.

C. The Decision Below

The *Strain* panel discussed and acknowledged the mature circuit split, 977 F.3d at 990. Although Mr. Hooks relied on numerous decisions in other courts of appeals interpreting *Kingsley* as he did, the Tenth Circuit decided that *Kingsley* should not be extended

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[9] Mr. Hooks also argued, in the alternative, that the Tenth Circuit should reverse the dismissal of the classification officer regardless of whether it agreed that *Kingsley* applies. *See* Pet. App. at 97a n.14 ("Construed liberally, Mr. Hooks' allegation is that the classification officer knew of his gang affiliation but still chose to house him with a rival gang. That was sufficient to state a claim under even the Eighth Amendment's subjective standard."). The Tenth Circuit held this specific argument was waived. *See id.* at 21a n.10.

to pretrial detainees' claims that prison officials were deliberately indifferent to dangers to detainees' safety (failure-to-protect claims). Accordingly, the Tenth Circuit held here that *Strain* applies broadly to all pretrial detainee claims of deliberate indifference, whether medical in nature or not. Pet. App. 18a–20a. It stated that the "reasoning in *Strain* could not have been limited to the medical context," and that "*Strain*'s interpretation of *Kingsley* was essential to its holding that a plaintiff claiming deliberate indifference must demonstrate a defendant's subjective awareness." *Id.* at 20a–21a. Accordingly, the Tenth Circuit affirmed the district court's dismissal of the claims against the booking nurses, the booking guard, the classification guard, and Dr. Childs. See *id.* at 18a–25a.

Because the Court rejected Mr. Hooks' *Kingsley* arguments, it did not reach Mr. Hooks' argument that the district court improperly analyzed the claims against the booking guard and the classification guard as claims against the Sheriff.

In similar fashion, the Court did not offer any additional analysis of Mr. Hooks' claims against the booking nurses or Dr. Childs. Those claims, too, could have proceeded only if the court of appeals had agreed with Mr. Hooks that a pretrial detainee may state a claim for deliberate indifference under the Fourteenth Amendment without showing that the defendants were *subjectively* aware of the substantial risk to the detainee and nonetheless failed to address that risk.

REASONS FOR GRANTING THE PETITION

I. COURTS ARE DEEPLY CONFLICTED ABOUT THE CORRECT STANDARD FOR DELIBERATE-INDIFFERENCE CLAIMS BROUGHT BY PRETRIAL DETAINEES

In *Kingsley*, this Court explained that "pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically.'" 576 U.S. at 400 (citation omitted). Thus, pretrial detainees' claims involving abusive conditions and conduct during their confinement arise under the Fourteenth Amendment to the Constitution, not the Eighth Amendment. *Id.* at 400–01. *Kingsley* involved a pretrial detainee's claim for the use of excessive force, and held that a pretrial detainee bringing such a claim is not required to show that the defendant was subjectively aware that the amount of force used was unreasonable. *Id.* at 391–92. Instead, the Court held, the question is whether the defendants' conduct was objectively reasonable. *Id.* at 399–400.

Since this Court decided *Kingsley*, the courts of appeals and district courts have disagreed about the scope of its application. Indeed, numerous courts that have addressed the question presented have acknowledged that they are contributing to an existing and growing split about the import of *Kingsley*. See, *e.g.*, *Miranda* v. *Cty. of Lake*, 900 F.3d 335, 351–52 (7th Cir. 2018); *Richmond* v. *Huq*, 885 F.3d 928, 937–38 n.3 (6th Cir. 2018). And at least two other circuits have acknowledged the split and noted that they will inevitably have to take a position. See *Griffith* v. *Franklin Cty.*, 975 F.3d 554, 570 (6th Cir. 2020) ("The district court adopted the test from [*Kingsley*] . . . . Griffith cannot prevail under either test, and [we] therefore reserve the question for another day."); *Duff* v. *Potter*, 665 F. App'x 242, 244–45

(4th Cir. 2016) (dismissing plaintiff's deliberate-indifference claim based upon *Kingsley* on other grounds). This conflict is ripe for this Court's resolution.

A. Three Circuits Have Properly Applied the Objective Intent Test Stated in *Kingsley* to Deliberate-Indifference Claims.

Three circuits—the Ninth, the Second, and the Seventh—have correctly held that *Kingsley*'s adoption of an objective standard for excessive-force claims necessarily applies to all deliberate-indifference claims brought by pretrial detainees.

In *Castro* v. *Cty. of L.A.*, 833 F.3d 1060 (9th Cir. 2016) (en banc), the Ninth Circuit held that "*Kingsley* applies, as well, to failure-to-protect claims brought by pretrial detainees against individual defendants under the Fourteenth Amendment." *Id.* at 1070. It explained that while there were some differences between excessive-force claims and deliberate-indifference claims alleging failure to protect, "there are significant reasons to hold that the objective standard applies to failure-to-protect claims as well." *Id.* at 1069. It noted that "[t]he underlying federal right [due process of law], as well as the nature of the harm suffered, is the same for pretrial detainees' excessive-force and failure-to-protect claims"; that "[b]oth categories of claims arise under the Fourteenth Amendment's Due Process Clause, rather than under the Eighth Amendment's Cruel and Unusual Punishment Clause"; and that "most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all." *Id.* at 1069–70.[10]

[10] The court also held that although "[u]nder *Kingsley*, a pretrial detainee need not prove th[e] subjective elements about the

Two years later, the Ninth Circuit applied its holding in *Castro* to claims of deliberate indifference to a pretrial detainee's serious medical needs, stating that "logic dictates extending the objective deliberate indifference standard articulated in *Castro* to medical care claims." See *Gordon* v. *Cty. of Orange*, 888 F.3d 1118, 1120, 1122–25 (9th Cir. 2018) (explaining that both types of deliberate-indifference claims arise under the Fourteenth Amendment, that *Kingsley* expressed its holding with "broad wording," and that the Supreme Court treats claims involving conditions of confinement "substantially the same").

The Second Circuit likewise has concluded that "*Kingsley* altered the standard for deliberate indifference claims under the Due Process Clause." *Darnell* v. *Pineiro*, 849 F.3d 17, 30 (2d Cir. 2017). After examining the bases of *Kingsley*, it concluded that "there is no basis for the reasoning . . . that the subjective intent requirement for deliberate indifference claims under the Eighth Amendment . . . must apply to deliberate indifference claims under the Fourteenth Amendment." *Id.* at 36 (agreeing with *Castro* that "[t]he underlying federal right, as well as the na-

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officer's actual awareness of the level of risk," it is also true that "'mere lack of due care by a state official does not 'deprive' an individual of life, liberty, or property under the Fourteenth Amendment." *Castro*, 833 F.3d at 1071 (citing *Daniels* v. *Williams*, 474 U.S. 327, 330–31 (1986) ("mere lack of due care by a state official" is insufficient to "'deprive' an individual of life, liberty, or property under the Fourteenth Amendment")). Thus, the court concluded "a pretrial detainee who asserts a due process claim for failure to protect [must] prove more than negligence but less than subjective intent – something akin to reckless disregard." *Id.* The courts of appeals are in accord on this point. *See also Darnell* v. *Pineiro*, 849 F.3d 17, 36 (2d Cir. 2017) ("A detainee must prove that an official acted intentionally or recklessly, and not merely negligently."); *Miranda*, 900 F.3d at 352 (similar).

ture of the harm suffered, is the same for pretrial detainees' excessive-force and failure-to-protect claims"). It therefore applied *Kingsley*'s objective standard to pretrial detainees' claims arising from the allegedly punitive conditions of their confinement. *Id.*

Finally, in *Miranda*, 900 F.3d at 352, the Seventh Circuit, too, rejected the argument that pretrial detainees' excessive-force and deliberate-indifference claims should be treated differently, stating: "We see nothing in the logic the Supreme Court used in *Kingsley* that would support this kind of dissection of the different types of claims that arise under the Fourteenth Amendment's Due Process Clause." It expressly agreed with the Ninth Circuit's analysis in *Castro* and *Gordon*, and the Second Circuit's decision in *Darnell*. *Id.*

B. Four Circuits Have Declined to Apply *Kingsley* to Pretrial Detainees, Continuing to Employ the Eighth Amendment's Subjective Intent Standard.

Four circuits have misread *Kingsley* and—usually without extensive analysis—limited its holding to excessive-force claims. See *Whitney* v. *City of St. Louis, Mo.*, 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"); *Dang* v. *Sheriff, Seminole Cty. Fla.*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) ("*Kingsley* involved an excessive-force claim, not a claim of . . . deliberate indifference"); *Alderson* v. *Concordia Par. Corr. Facility*, 848 F.3d 415, 419–20 & n.4 (5th Cir. 2017) (per curiam) (acknowledging that another panel had affirmed the subjective test post-*Kingsley* without acknowledging *Kingsley*'s existence, but affirming because of the circuit's rule of congruence).

The Tenth Circuit is the only circuit to have considered the issue in depth and nonetheless "declined to extend *Kingsley* to [Fourteenth Amendment] deliberate indifference claims." *Strain*, 977 F.3d at 990 n.4; Pet. App. 19a–20a. In *Strain*, it concluded that "*Kingsley* turned on considerations unique to excessive force claims," that "the nature of a deliberate indifference claim infers a subjective component," and that "principles of *stare decisis* weigh against overruling precedent to extend a Supreme Court holding to a new context or new category of claims." 977 F.3d at 991.

However, the Ninth, Second, and Seventh Circuits all rejected the argument that deliberate-indifference claims inherently involve a subjective component. All concluded that in addressing a claim that a defendant had violated a detainee's Due Process rights—not whether the defendant had imposed cruel and unusual punishment—the question was whether the defendant's failure to act was objectively unreasonable. See *supra* at I.A. The Tenth Circuit's reasoning places it in direct conflict with those courts of appeals.

Finally, the *Strain* court's conclusion that it is bound by *stare decisis* is wrong. It offends no principle of *stare decisis* for a lower court to assess whether a decision of this Court has undermined the lower court's prior decisions, warranting reconsideration. See, *e.g.*, *Al Hela* v. *Trump*, 972 F.3d 120, 142 (D.C. Cir. 2020) ("[W]e have no authority to undermine or to ignore controlling decisions of the Supreme Court."); *United States* v. *Villareal-Amarillas*, 562 F.3d 892, 898 n.4 (8th Cir. 2009) ("[the Courts of Appeals] may reconsider a prior panel's decision if a supervening Supreme Court decision 'undermines or casts doubt on the earlier panel decision.'" (quoting *K.C. 1986 Ltd. P'ship* v. *Reade Mfg.*, 472 F.3d 1009,

1022 (8th Cir. 2007))). Indeed, here, numerous courts of appeals have recognized their obligation to engage in such reconsideration in light of *Kingsley*. See, *e.g.*, *Darnell*, 849 F.3d at 29 (three-judge panel overruling *Caiozzo* v. *Koreman*, 581 F.3d 63 (2d Cir. 2009) because "the Supreme Court's decision in *Kingsley* altered the standard for deliberate indifference claims under the Due Process Clause"). Respectfully, the Tenth Circuit's failure to do so is erroneous.[11]

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This clear, widespread conflict warrants this Court's review and resolution.

II. THE QUESTION PRESENTED IS RECURRING, IMPORTANT AND RIPE FOR RESOLUTION

As noted above, since this Court decided Kingsley in 2015, seven circuit courts of appeals have confronted and addressed the question presented. And the question is undoubtedly an important one. Ac-

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[11] Like the courts of appeals, district courts regularly grapple with this issue, expressing their uncertainty and reaching conflicting results where they lack circuit court guidance. *See*, *e.g.*, *Johnson* v. *Clafton*, 136 F. Supp. 3d 838, 844 (E.D. Mich. 2015) ("After *Kingsley*, it is unclear whether courts should continue to use the Eighth Amendment's deliberate-indifference standard to analyze inadequate-medical-care claims brought by pretrial detainees pursuant to the Due Process Clause."); *see also Stile* v. *U.S. Marshals Serv.*, No. 15-cv-494-SM, 2016 WL 3571423, at *3 n.2 (D.N.H. May 9, 2016) (noting *Kingsley*'s potential effect on claims of pretrial detainees); *Saetrum* v. *Raney*, No. 1:13-425 WBS, 2015 WL 4730293, at *11 n.5 (D. Idaho Aug. 7, 2015) ("A recent Supreme Court decision calls into question whether it is appropriate to borrow the Eighth Amendment standard when the claim is brought by an arrestee, not a convicted prisoner, and whether the Due Process Clause may afford greater protection than the Eighth Amendment.")

cording to the Department of Justice's most recent Annual Jail Survey, there are over 700,000 inmates in local jails. See Laura M. Maruschak & Todd D. Minton, *Correctional Populations in the United States*, *2017–2018*, U.S. Dep't of Just. Bull., at 15, App. tbl. 4 (Aug. 2020), https://www.bjs.gov/content/pub/pdf/cpus1718.pdf. Over 60% of these inmates are pretrial detainees whose guilt or innocence has not yet been adjudicated. See Todd D. Minton & Daniela Golinelli, Ph.D., *Jail Inmates at Midyear 2013 - Statistical Tables*, U.S. Dep't of Just. Stat. Tbls., at 1 (rev. Aug. 12, 2014), https://www.bjs.gov/content/pub/pdf/jim13st.pdf ("At midyear 2013, about 6 in 10 inmates were not convicted, but were in jail awaiting court action on a current charge—a rate unchanged since 2005."). The vast majority of these 400,000 detainees are accused of non-violent crimes and are indigent. See Br. for the American Civil Liberties Union as *Amicus Curiae* Supporting Petitioner at 4–5, *Kingsley* v. *Hendrickson*, 576 U.S. 389 (2015) (No. 14-6368).

The Fourteenth Amendment's guarantee of Due Process protects the rights of pretrial detainees. This guarantee takes on particular salience when viewed against the dangerous conditions at the local facilities that house citizens awaiting trials. See *id.* at 10–12 (relying on information provided by the Department of Justice's litigation of cases under the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. §§ 1997 *et seq.*).[12]

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[12] *See also* Allen J. Beck, Ph.D., *Use of Restrictive Housing in U.S. Prisons and Jails, 2011–12*, U.S. Dep't of Just. Special Rep., at 8 (Oct. 2015), https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf (providing data from the Bureau of Justice Statistics' 2011–12 survey, where 16.7 percent of jail inmates reported having been in a physical altercation with another inmate, and

Significantly, the standard by which this constitutional right is enforced will often determine whether pretrial detainees can enforce that right while in confinement before any adjudication of guilt. For example, in jail suicide litigation, a study of claims of deliberate indifference before and after this Court's decision in *Farmer* v. *Brennan*, 511 U.S. 825, 837 (1994), adopting a subjective standard, showed a 41.4% drop in the number of successful cases. See Darrell L. Ross, *The Liability Trends of Custodial Suicide*, Mag. Am. Jail Ass'n, Mar.–Apr. 2010, at 39, fig. 1 (observing that the success rate dropped from 29% to 17%).

In addition, allowing the circuit split to continue results in significant unfairness. Now, similarly situated defendants are subject to different standards and will likely receive different outcomes based not on the facts of their cases, but on the fortuity of the geographic region where their claims arose. It was this type of injustice that led the Court to grant certiorari in *Kingsley* originally. See *Kingsley*, 576 U.S. at 395 ("In light of disagreement among the Circuits, we agreed to [grant *certiorari*].").

There is no reason for this Court to wait to resolve this recurring and important issue. It has thoroughly percolated among the circuit courts of appeals, and easily satisfies this Court's criteria for review.

4.7 percent reported having been formally written up for physically assaulting another inmate).

III. THE TENTH CIRCUIT HAS MISUNDERSTOOD *KINGSLEY* AND SET AN INCORRECT STANDARD FOR DELIBERATE-INDIFFERENCE CLAIMS BY PRETRIAL DETAINEES

In *Kingsley*, this Court held that a pretrial detainee who brings an excessive-force claim is not required to prove that the defendants subjectively intended to punish him, as would a convicted prisoner bringing a claim under the Eighth Amendment. Instead, a pretrial detainee need prove only that the defendants' actions were not objectively reasonable under the circumstances, and thus violated the Due Process Clause. 576 U.S. at 398. The Court's reasons for holding that the Eighth Amendment's subjective-intent-to-punish test does not apply to pretrial detainees' excessive-force claims are fully applicable to pretrial detainees' deliberate-indifference claims.

Kingsley is based upon the different liberty interests possessed by pretrial detainees and convicted criminals. *Id.* at 400–01. In *Kingsley*, this Court explained that unlike convicted criminals, pretrial detainees cannot be punished, and that the Fourteenth Amendment's Due Process Clause protects them from use of "force that amounts to punishment." *Id.* at 397 (citation omitted). Thus, while a convicted criminal must show that a defendant using excessive force has a subjective intent to inflict punishment as part of proving an Eighth Amendment violation, a pretrial detainee can demonstrate that his Due Process rights were violated without any showing that the defendant intended to punish him. *Id.* at 398 ("proof of intent (or motive) to punish" is not "required for a pretrial detainee to prevail on a claim that his due process rights were violated."). As a result, this Court held, a pretrial detainee may prevail simply by put-

ting forward "objective evidence that the challenged governmental action [is] not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Id.* at 389 (citing *Bell* v. *Wolfish*, 411 U.S. 520, 541–43 (1979)).

Likewise, a pretrial detainee making a deliberate-indifference claim based upon failure to protect, failure to address serious medical needs, or conditions of confinement is not a convicted criminal and may not be punished. See also *Bell*, 441 U.S. at 535 ("[A] detainee may not be punished prior to an adjudication of guilt in accordance with due process of law."). Thus, he is not required to show that a defendant has a *subjective intent* to inflict punishment or violate the detainee's constitutional rights in order to prove a Due Process violation. He need only show that the defendants' failure to protect him or address serious medical needs or defendants' imposition of certain conditions of confinement was objectively unreasonable under the circumstances.

The Court's use of broad language in *Kingsley* also supports the conclusion that its holding applies generally to pretrial detainees' claims about their confinement, and is not limited to the excessive-force context. For example, it explains that "a pretrial detainee can prevail by providing only objective evidence that *the challenged governmental action* is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose," 576 U.S. at 398 (emphasis added), using the general term "challenged governmental action," rather than referring specifically to "the challenged excessive force." See also *id.* at 389 ("[P]roof of intent (or motive) to punish is [not] required for a pretrial detainee to prevail on a *claim that his due process rights were violated*.") (emphasis added).

Tellingly, too, this Court cites and draws its objective standard from cases involving pretrial detainees' conditions of confinement, not cases involving excessive force. See *id.* at 399 ("[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"); *Schall* v. *Martin*, 467 U.S. 253, 255 (1984); *United States* v. *Salerno*, 481 U.S. 739, 739 (1987).

As described above, several courts of appeals correctly understood that although *Kingsley* involved an excessive-force claim, the logic of the decision extends to pretrial detainees' other claims about their conditions of confinement, including claims involving deliberate indifference. As the Seventh Circuit summarized in rejecting the argument that the Eighth Amendment's subjective intent standard should apply to pretrial detainees' deliberate-indifference claims, "[w]e see nothing in the logic the Supreme Court used in *Kingsley* that would support this kind of dissection of the different types of claims that arise under the Fourteenth Amendment's Due Process Clause." *Miranda*, 900 F.3d at 352. To the contrary, the Court said that "[t]he language of the [Eighth and Fourteenth Amendments] differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically.'" *Id.* (quoting *Kingsley*, 586 U.S. at 400); see also, *e.g.*, *Bell*, 441 U.S. at 537 ("This Court has recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory restraints that may.").

In the decision below, however, the Tenth Circuit, like the Eighth, Eleventh, and, Fifth, decided that

Kingsley did not require application of an objective standard to the Due Process Claims of pretrial detainees. It instead held that the subjective standard that applies to the deliberate-indifference claims of convicted criminals claiming violations of the Eighth Amendment also applies when such claims are brought by pretrial detainees. That standard requires pretrial detainees to show that (1) the conditions of their confinement were sufficiently serious, under an objective standard, to amount to a constitutional deprivation (*i.e.*, they were punished), and (2) that the responsible official had subjective knowledge of these conditions (*i.e.*, they were punished with subjective intent). See *Self* v. *Crumb*, 439 F.3d 1227, 1230–31 (10th Cir. 2006); *Oxendine* v. *Kaplan*, 241 F.3d 1272, 1276 (10th Cir. 2001) (relying on this Court's Eighth Amendment jurisprudence in, *e.g.*, *Farmer*, 511 U.S. at 837); see also, *e.g.*, Pet. App. 20a ("In *Strain*, we rejected a broad reading of *Kingsley*, in part, because it would contradict *Farmer*.").

The Tenth Circuit's reliance on Eighth Amendment standards in pretrial detainee cases is in substantial tension with *Kingsley*. Its argument that "[t]he deliberate indifference cause of action does not relate to punishment, but rather safeguards a pretrial detainee's access to adequate medical care," *Strain*, 977 F.3d at 991, is directly contradicted by this Court's cases. See, *e.g.*, *Estelle* v. *Gamble*, 429 U.S. 97, 104 (1976) ("We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment.") (internal citation omitted).[13] Indeed, this Court's primary focus

[13] This case provides a prime example of how a deliberate-indifference claim can implicate punishment.

in pretrial detainees' claims of deliberate indifference under Fourteenth Amendment is *always* whether the conditions amount to punishment. See *Bell*, 441 U.S. at 535 ("[T]he proper inquiry is whether those conditions amount to punishment of the detainee. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.").

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In sum, *Kingsley* applies with full force to claims of deliberate indifference brought by pretrial detainees, and this Court should grant the petition to resolve the conflict on this important, recurring question.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

VIRGINIA A. SEITZ *
JEFFREY T. GREEN
GORDON D. TODD
DANIEL S. BROOKINS
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
vseitz@sidley.com

Counsel for Petitioner

* Counsel of Record

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