

No. 20-7368

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**

REPLY BRIEF OF PETITIONER

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REPLY BRIEF

Respondents' opposition brief ("Opp.") does not refute the petition's demonstration that the petition for certiorari should be granted. Respondents do not dispute the existence of a deep, acknowledged conflict among the courts of appeals on the question presented. Nor do respondents deny that this question is important and often outcome determinative in cases involving the duty to protect pretrial detainees in custody.

Instead, respondents argue the merits, contending that: (i) Mr. Hooks did not state a claim for deliberate indifference under either standard, only a claim for negligence (and thus the conflict is not presented here); and (ii) in any event, the Tenth Circuit correctly decided that an objective test for deliberate indifference to dangers of confinement is the equivalent of a negligence test this Court has already rejected. Opp. 9–10. They are wrong on both counts.

In making the first argument, respondents entirely ignore Mr. Hooks' claim that respondents were deliberately indifferent to a substantial risk of serious harm from his placement in a rival gang's cell block where he was brutally beaten, almost to his death; they also ignore his specific allegations of recklessness in connection with the medical care to treat those injuries. See *infra* Part I. Furthermore, the Tenth Circuit dismissed Mr. Hooks' deliberate indifference claims because it thought *Kingsley* does not apply "to Fourteenth Amendment deliberate indifference claims" and there was no showing of respondents' "subjective awareness" of the substantial risk of harm to Mr. Hooks. Pet. App. 18a, 21a. The court certainly did not find that Mr. Hooks alleged mere negligence.

As to respondents' second argument, an objective standard for deliberate indifference is not the functional equivalent of a negligence standard. It is akin to recklessness, which is more than negligence, but less than knowledge or intent. To meet it, a plaintiff must show that prison officials recklessly disregarded a substantial risk of serious bodily harm to a pretrial detainee that was known or so obvious that it should have been known. See *infra* Part II.

Respondents are incorrect as to each of their substantive arguments. But the petition here should be granted because the standards for a grant have been met: a deep and mature split on an important question of law, as demonstrated in our petition and unrefuted by respondents.

ARGUMENT

I. THIS CASE PRESENTS A GOOD VEHICLE FOR RESOLVING THE UNDISPUTED CIRCUIT SPLIT

The petition sets forth the conflict among the courts of appeals about how this Court's decision in *Kingsley* affects due process claims alleging that prison officials were deliberately indifferent to a substantial risk of harm to pretrial detainees in their custody. Three circuits have held that because *Kingsley* applied an objective standard for due process claims alleging that prison officials used excessive force on pretrial detainees, an objective standard should also be used for due process claims alleging that prison officials acted (or failed to act) with deliberate indifference to a substantial risk of serious harm that was either known or so obvious that it should have been known. Pet. 13–15. Four circuits disagree, holding that the *Kingsley* objective standard is limited to excessive-force claims, and that pretrial detainees making deliberate indifference claims must allege that

defendants acted in reckless disregard of a substantial risk of serious harm of which the defendants were *subjectively* aware. *Id.* at 15–17.

Respondents nowhere deny the existence of a conflict. Instead, they suggest it is not implicated because Mr. Hooks alleged only that defendants were negligent. Opp. 2–3. Respondents are mistaken.

First, respondents ignore Mr. Hooks’ claim that the classification guard at the jail acted with deliberate indifference by assigning Mr. Hooks (a member of the Crips gang) to a cell block expressly designated for members of a rival gang (Bloods). The classification guard acted in direct contravention of prison protocols that required separation of rival gangs. Pet. 3–4, 9 (citing Pet. App. 141a). And the guard made the assignment even though there had been violence between the gangs and the Detention Center’s own records revealed Mr. Hooks’ gang affiliation (including photos of his gang tattoos). Pet. 4. Mr. Hooks was brutally assaulted and almost killed by three Bloods gang members on his first morning in that block. *Id.* at 4–5. This reckless disregard of Mr. Hook’s safety is not merely a claim of negligence; and, surely, “the alleged deprivation” is “sufficiently serious’ to constitute a deprivation of constitutional dimension.” Opp. 4 (quoting *Self v. Crum*, 439 F.3d 1227, 1230 (10th Cir. 2006) (quoting *Farmer v. Brennan*, 522 U.S. 825, 834 (1994)).

In addition, respondents mischaracterize Mr. Hooks’ claim that the prison doctor was deliberately indifferent to a serious threat of harm to him. When he was sent to the hospital for treatment of the injuries inflicted by the gang beating, Mr. Hooks was referred to a team of plastic surgeons who wired his broken jaw closed. Pet. 6. After he returned to the detention center, the wires broke, but the prison doctor,

Dr. Childs, did not send Mr. Hooks back to the hospital’s plastic surgery team or another specialist; instead, he reattached and tightened the wires himself, so tightly that the screws holding the wires in place broke free from Mr. Hooks’ jaw, resulting in another emergency room trip. *Id.* Doctors there documented significant damage that required more specialized treatment and immediately referred Mr. Hooks to a specialist in reconstructive oral surgery. *Id.* Mr. Hooks’ claim, again, is not for negligence, but for the deliberate indifference of the prison doctor, a general practitioner who recklessly engaged in medical treatment that falls into the purview of specialists—a reality that the emergency room doctors quickly recognized. *Id.*

In sum, as the petition explains (Pet. 7), Mr. Hooks did not make claims of negligence.¹ Instead, he claimed that defendants were deliberately indifferent to substantial risks that he would suffer serious bodily harm. And, in the Tenth Circuit, he expressly argued that under *Kingsley*, he was not required to show that defendants were subjectively aware of the substantial risk of serious harm he faced—but only that defendants objectively should have been aware of those risks. *Id.* at 8. The Tenth Circuit rejected these arguments, holding that *Kingsley* applies only to excessive force claims, and that a detainee claiming that prison officials acted with deliberate indifference to a substantial risk of serious harm “must demonstrate a defendant’s subjective awareness.” Pet. App. 20a–21a.

Had the Tenth Circuit adopted the test applied in any of the Ninth, Second or Seventh Circuits, it

¹ Indeed, the petition expressly stated that it was not relying on claims of negligence. Pet. 13–14 n.10.

would have held that Mr. Hooks stated a claim. Each of these courts of appeals has held that the logic of *Kingsley* means that deliberate indifference claims must be judged under an “objective” standard of deliberate indifference that equates to recklessness, and not mere negligence. See *Castro v. City of L.A.*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc); *Darnell v. Pineiro*, 849 F.3d 17, 36 (2d Cir. 2017); *Miranda v. City of Lake*, 900 F.3d 335, 351–52 (7th Cir. 2018).

Mr. Hooks would state due process claims in those circuits because the defendant prison officials should have known that: (i) the placement of Mr. Hooks in a Bloods cell block and (ii) the attempted repair by a general prison doctor of broken jaw-wiring installed by a team of oral surgeon specialists would create a substantial risk of serious harm to Mr. Hooks. Their reckless disregard of those risks was deliberate indifference to Mr. Hooks’ safety that would state a due process claim in the Second, Seventh, and Ninth Circuits.

In contrast, the Tenth Circuit held that Mr. Hooks failed to state a due process claim because he did not allege that respondents had “subjective awareness” that their actions created a substantial risk of serious harm to him. Pet. App. 21a. Mr. Hooks’ claims thus squarely implicate the conflict in the circuits on the application of *Kingsley* to due process claims of pre-trial detainees who are seriously injured because prison officials were deliberately indifferent to substantial risks to the detainees’ safety. The conflict is entrenched and acknowledged, and this Court should grant the petition and resolve it.²

² Respondents’ argument that Mr. Hooks did not make “a claim under a specific constitutional provision,” Opp. 5, is puzzling. His claims under Section 1983 allege violations of the Due

II. AN OBJECTIVE STANDARD OF DELIBERATE INDIFFERENCE IS NOT THE FUNCTIONAL EQUIVALENT OF THE NEGLIGENCE STANDARD THAT THIS COURT HAS HELD INSUFFICIENT TO STATE A DUE PROCESS CLAIM

Respondents also err in claiming that *Kingsley* cannot apply to deliberate indifference claims because an objective standard of deliberate indifference would be the “functional equivalent” of a negligence standard, which “is categorically beneath the threshold of constitutional due process.” Opp. 10 (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 396 (2015), in turn quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)). As noted, the circuits that have held that *Kingsley* applies to deliberate indifference claims have all stated that more than negligence is required—“something akin to reckless disregard.” *Miranda*, 900 F.3d at 353 (quoting *Castro*, 833 F.3d at 1071); *accord Darnell*, 849 F.3d at 36 & n.16. See also Pet. 13–14 n.10.

Applying an objective standard does not transform the standard to one of negligence. Rather, it comports with the recklessness standard for civil liability which is “somewhere between the poles of negligence at one end and purpose or knowledge at the other.” *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). “The civil law generally calls a person reckless who acts or (if the person has a duty to act) fails to act in the face of an unjustifiably high risk of harm that is either

Process Clause. If respondents are arguing that Mr. Hooks did not allege sufficiently egregious misconduct, *id.* at 5–6, the answer is that he alleged that defendants’ deliberate indifference caused him to be beaten and nearly killed by other inmates and then to suffer additional injury and substantial pain at the hands of a reckless prison doctor. *See supra* at 3–4.

known or so obvious that it should be known.” *Id.* “It is this high risk of harm, objectively assessed, that is the essence of recklessness” in civil law. *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 69 (2007).

Respondents note (Opp. 4) that in cases involving claims of deliberative indifference toward convicted prisoners seeking relief under the Eighth Amendment prohibition on cruel and unusual punishment, this Court has applied the subjective standard of recklessness used in the criminal law, which imposes liability “only when a person disregards a risk of harm of which he is aware.” *Farmer*, 511 U.S. at 837. And *County of Sacramento* held that “a purpose to cause harm unrelated to the legitimate object of arrest” is needed to state a due process claim for “deliberate or reckless indifference to life in a high-speed automobile aimed at apprehending a suspected offender.” *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 836 (1998). But this Court expressly declined to extend that holding to pretrial detainees in light of “the markedly different circumstances of normal pretrial custody and high-speed chases” and the fact that pretrial incarceration “incapacitates a prisoner to exercise ordinary responsibility for his own welfare.” *Id.* at 851. And *Kingsley* held that proof of the prison official’s subjective “intent (or motive)” is not “required for a pretrial detainee to prevail on a claim that his due process rights were violated.” *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015).

In the end, respondents are left to argue that *Kingsley* should be limited to due process claims for excessive force and should not extend to due process claims for deliberate indifference to the safety and health of pretrial detainees. Opp. 10. That is a merits point and respondents do not deny that the question of whether *Kingsley* applies to deliberate indifference

claims of pretrial detainees is an important one upon which the circuit courts are divided.

CONCLUSION

For these reasons and those set forth in the petition for certiorari, the petition should be granted.

Respectfully submitted,

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