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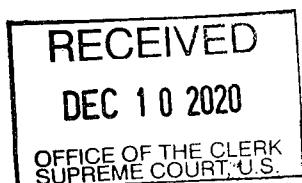
**In The
Supreme Court of the United States**

Eboni Nicole Baldwin (PRO SE), Petitioner
v.
LaToisha Dorsey, Respondent

*ON PETITION FOR
A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented for Review

1. How many hours of delayed mental health care is reasonable before a state actor can be held liable for deliberately indifferent or objectively unreasonable for inadequate medical care for an pre-Gerstein arrestee's serious medical condition under the U.S. Constitution, Fourth and Fourteenth Amendments?
2. Can a state actor be granted immunity from deliberate indifference to a pre-Gerstein arrestee's serious medical need under the U.S. Constitution, Fourth and Fourteenth Amendments if the state actor delays medical care of the pre-Gerstein arrestee to collect non-medical information to fulfil the state actor's governmental objectives and is "abating a risk" the same as providing medical treatment under the U.S. Constitution, Fourth and Fourteenth Amendments?

List of Parties to Proceeding

Petitioner Eboni Nicole Baldwin was the Appellee and Respondent LaToisha Dorsey was the Appellant in the Fifth Circuit Court of Appeals proceedings.

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1. Southern District of Texas Houston Division; Case # 4:16 – CV – 02966
2. United States Court of Appeal from the Fifth Circuit; Case # 19-20465

STATEMENT OF THE BASIS FOR THE JURISDICTION

The Judgement of the Court of Appeals was entered on JULY 1, 2020. A petition for a rehearing extension due to the impact of COVID-19 on the petitioner was denied on JULY 16, 2020. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment III, provides,

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

United States Constitution, Amendment IIII, provides, in pertinent state,

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

STATUTES

42 U.S.C. § 1983, provides,

“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, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE

This petition arises from an unfortunate moment of circumstances. On September 26, 2014, Petitioner Eboni Nicole Baldwin, an United States Army POST 9/11 war Veteran, suffering from Post-Traumatic Stress Disorder (PTSD), a serious medical condition covered under the American Disability Act (ADA) Title II, was en route to the hospital after experiencing an adverse reaction from a mixture of newly prescribed anti-psychotic medications to treat her newly diagnosed mental illness, PTSD.

While at a red light, Petitioner Baldwin began exhibiting symptoms of her ADA Title II serious medical condition, in which she appeared unresponsive and unconscious, with her foot on the brake at a red light, Petitioner Baldwin states she began feeling weird and incoherent as she sat in her at a red light on the side of the intersection waiting for medical help.

A stranger noticed Petitioner Baldwin parked at the red light with her eyes closed. After speaking with Petitioner Baldwin, the pedestrian assured Petitioner Baldwin he was calling 911 to get her medical help. 911 dispatched Emergency Medical Technicians [EMT] to the scene where Petitioner Baldwin informed them [EMT] that she was a Veteran diagnosed with PTSD, that she had ingested prescribed medication to treat her PTSD, alerting EMT that one of these indigested medications contained Ambien and that she needed to go to the hospital because she felt like she was dying. Petitioner Baldwin sat in her car as EMT gathered information about her medical emergency; Petitioner Baldwin's mental health continued to deteriorate as Petitioner Baldwin exhibited symptoms of her serious medical condition, such as dissociative, a symptom of PTSD that forced Petitioner Baldwin to subconsciously go in and out at the scene of her medical emergency.

Upon arriving at Petitioner Baldwin's medical emergency, The Respondent, Deputy LaToisha Dorsey, violated Petitioner Baldwin's Fourth and Fourteenth United States Constitutional rights when Respondent Dorsey delayed, denied, and interfered with Petitioner Baldwin receiving adequate medical care to treat Petitioner Baldwin diagnosed PTSD medical condition, at the scene, while Petitioner Baldwin was a pre-Gerstein arrestee.

Respondent Dorsey interfered with Petitioner Baldwin receiving adequate medical care not once, but twice so that she could gather the evidence needed to prosecute Petitioner Baldwin with criminal charges of Possession of Petitioner Baldwin's prescribed medication and for driving under the influence of only one

of Petitioner Baldwin's prescribed medications Petitioner Baldwin had indigested that evening to treat her PTSD, Ambien. These charges would later be dismissed after evidence proved the medication in Petitioner Baldwin's possession was prescribed to Petitioner Baldwin to treat her PTSD symptoms. Lab test returned with results that showed Petitioner Baldwin's prescribed Ambien being below the therapeutic level of intoxication for a controlled substance and below Petitioner Baldwin's 5mg prescribed amount for treating insomnia, a symptom of Petitioner Baldwin's PTSD.

Respondent Dorsey's account of what occurred at the scene of Petitioner Baldwin's medical emergency is slightly different than Petitioner Baldwin's claim. Respondent Dorsey claims that although she had located Ambien scattered around Petitioner Baldwin's car, Petitioner Baldwin was not responding, she was informed that Petitioner Baldwin had indigested several prescribed Ambiens and Respondent Dorsey had to request assistance to help Petitioner Baldwin from her car, she believed she had probable cause to charge Petitioner Baldwin for a crime at the scene of Petitioner Baldwin's medical emergency.

Respondent Dorsey claims she was unaware Petitioner Baldwin needed to go to the hospital and she had asked Petitioner Baldwin if she wanted to go the hospital, but Petitioner Baldwin stated "No".

Notably, Respondent Dorsey claims the videorecorded evidence that would have proven Petitioner Baldwin claim of denial for medical care was unavailable because Respondent Dorsey violated Harris County Sheriff Department internal policies by turning off Respondent Dorsey's mandatory audio and video recording devices. Texas Code of Criminal Procedures, ART 2. 131 – 2.138.1 Furthermore, Respondent Dorsey, a former pretrial detainee herself, admitted to receiving mental health training from Harris County Sheriff Department, but denied believing someone allegedly "overdosing" themselves on a prescribed medication was not a sign of suicidal ideation. Therefore, while collecting information for her *government objectives*, Respondent Dorsey violated Harris County Sheriff Department internal policies that states, "when a deputy arrives on a scene involving someone in mental crisis, after the scene has been stabilized, the deputy shall contact his supervisor and request the Crisis Intervention Response Team"² CALEA Standard

¹ Texas Code of Criminal Procedure, ART 2. 131 – 2.138 states, "The digital video camera will be activated prior to every traffic stop or citizen encounter, to record the behavior of the vehicle or the person. The video recorder will remain activated until the person and/or vehicle is released. Failure to activate the video camera sound prior to the traffic stop or citizen encounter may result in disciplinary action up to and including termination."

² When a deputy arrives on a scene involving someone in mental crisis, and after the scene has been stabilized, the

41.2.7c.

Respondent Dorsey searched Petitioner Baldwin's vehicle with the following evidence confirming Petitioner Baldwin's serious medical condition: (1) handicap placard visible on Petitioner Baldwin's rearview mirror, (2) Respondent Dorsey was told by EMT that Petitioner Baldwin had allegedly tried to overdose herself on Ambien medication, (3) Respondent Dorsey contacted poison control to identify the medication Petitioner Baldwin had allegedly indigested 3x its prescribed amount (4) Respondent Dorsey requested assistance to have Petitioner Baldwin forcibly removed from her car because Petitioner Baldwin was unable to do so on her own, (5) EMT reports confirmed Petitioner Baldwin's serious medical condition of PTSD; and (6) Petitioner Baldwin's claim of informing Respondent Dorsey that she felt like was dying, was a Veteran with PTSD and needed to go to the hospital.

Respondent Dorsey, fixated on taking Petitioner Baldwin to jail, ignored Petitioner Baldwin's cries for help in the back seat of her patrol car, drove Petitioner Baldwin to Harris County Intox Center, where Petitioner Baldwin was handcuffed to a bench and forced to sit in a dark room with other unhandcuffed intoxicated arrestees while awaiting blood withdrawal.

Petitioner Baldwin alleges she continued demanding psychiatric treatment from Respondent Dorsey and stating she was a Veteran with PTSD, but Respondent Dorsey continued to ignore and deny Petitioner Baldwin's medical care request. After Petitioner Baldwin arrived at Harris County Jail In-processing, while speaking with a nurse, Petitioner Baldwin informed the Nurse that Respondent Dorsey had refused to take her to the hospital, she was feeling suicidal, and having an adverse reaction from her prescribed medications to treat her PTSD. The Nurse then asked Respondent Dorsey why she had not taken Petitioner Baldwin to the hospital and Respondent Dorsey became irate, Stating she was not going to be at the hospital all day with Petitioner Baldwin, she had to get home to prepare for her son's sports game, and Petitioner Baldwin was going to jail no matter what. Respondent Dorsey went on to state that if Petitioner Baldwin were not done within one hour of receiving medical care, she would leave Petitioner Baldwin at the hospital and issue a warrant for

deputy shall contact his supervisor and request the Crisis Intervention Response Team. At the on scene supervisor's request, and when available, CIRT Deputies will be dispatched to a scene and provide assistance, direction and guidance during the initial patrol response to events including, but not limited to, Special Threat Situations, hostage/crisis negotiations, barricaded person and persons threatening suicide. CIRT Deputies may also self-initiate a response to an active call for service which includes possible conduct of persons in mental crisis. [CALEA Standard 41.2.7c]

Petitioner Baldwin's arrest because she was not going to be at the hospital all day waiting on Petitioner Baldwin.

At the hospital, Petitioner Baldwin explains that she has PTSD, and ingested her prescribed medication to treat her PTSD and am now feeling depressed and suicidal to hospital staff. Respondent Dorsey interfered with Petitioner Baldwin receiving adequate medical care by refuting Petitioner Baldwin's suicidal ideation claims to medical staff. Respondent Dorsey informed hospital staff that Petitioner Baldwin was being treated for substance abuse, not suicidal ideation. Petitioner Baldwin leaves the hospital in less than 45 minutes and returns to Harris County Jail in-processing untreated as her mental health deteriorates and PTSD is exacerbated.

On September 27, 2016, Petitioner Baldwin, Pro Se, submitted a claim against Respondent Dorsey for violation of Petitioner Baldwin's United States Constitution Fourth and Fourteenth Amendments with the United States District Court for the Southern District of Texas Houston Division, claiming Respondent Dorsey was deliberately indifferent to Petitioner Baldwin's serious medical condition, including also claims of a false arrest and malicious prosecution.

Petitioner Baldwin claimed Respondent Dorsey's deliberate indifference to her serious medical condition exacerbated Petitioner Baldwin's PTSD, triggering several years of emotional distress, hardship, pain and suffering, humiliation, embarrassment, and agoraphobia from the substantial harm of her arrest.

Petitioner Baldwin's claims of False Arrest and Malicious Prosecution were both dismissed, with Petitioner Baldwin's claim of deliberate indifference to her serious medical condition surviving under a violation of Petitioner Baldwin's U.S. Constitutional Fourteenth Amendment. Petitioner Baldwin was informed about the challenges Petitioner Baldwin would face trying to prove Respondent Dorsey was deliberately indifferent to Baldwin's serious medical condition, Pro Se. Petitioner Baldwin was later ordered by the courts to work with a court-appointed attorney to represent her case if she wanted to proceed with Petitioner Baldwin's civil rights violation claims against Respondent Dorsey. On March 13, 2018, Christian Latham of Jones Day was appointed by United States District Court for the Southern District of Texas Houston Division to represent Petitioner Baldwin, Pro Bono.

On July 1, 2020, Petitioner Baldwin received an Opinion from the United States Court of Appeal from the Fifth Circuit, **REVERSING** and **REMANDING** an

entry of an order of dismissal of the ruling made by that the United States District Court For the Southern District of Texas Houston Division.

The United States Court of Appeal from the Fifth Circuit stated the following,

” Baldwin has failed to show either that Dorsey’s actions, which led to a three-hour delay in medical treatment, manifested deliberate indifference or that Dorsey’s conduct was objectively unreasonable under clearly established law. The United States Court of Appeal from the Fifth Circuit opined that Respondent Dorsey’s “governmental objectives” delayed Respondent Dorsey from giving Petitioner Baldwin adequate medical care, thus entitling Respondent Dorsey to qualified immunity”.

REASONS FOR GRANTING THE WRIT

- 1. How many hours of delayed mental health care is reasonable before a state actor can be held liable for deliberately indifferent or objectively unreasonable for inadequate medical care for an pre-Gerstein arrestee's serious medical condition under the U.S. Constitution, Fourth and Fourteenth Amendments?**

Review should be granted because there is a heighten rise of police brutality among the mentally ill in the United States. People with untreated mental illness are sixteen times more likely to be killed by law enforcement than any other demographic. The suicide rate among inmates in Texas local jails is steadily increasing, while there is a growing mental illness crisis plaguing jails all over the U.S. For decades there has been a split decision between the courts on what constitutes a delay in medical care and inadequate medical care under the Fourth and Fourteenth Amendment.

United States Court of Appeal from the Fifth Circuit opinions, “three hours’ delay in directly responding to a medical need — to gather information about an arrestee—is a legitimate governmental objective and justifies a delay in an arrestee receiving adequate medical care”.

The United States Court of Appeal from the Fifth Circuit also opinions, handcuffing an arrestee in a patrol car and to a bench for hours are both reasonable measures to “*abate the risk*” of psychological harm to an arrestee while in police care.

This court should decide whether or not there is a time limit for an arrestee or pretrial detainee to receive medical care for a serious medical condition and if a delay in medical care is objectively unreasonable and constitutes and substantiates a claim of deliberate indifference.

In *Estelle v. Gamble*, 429 U.S. 97 (1976), this court agreed with Gamble and held that the government has a functional obligation to provide medical care to prisoners in its custody. I.d. at 103. The court explained, “an inmate must rely on prison authorities to treat his medical

needs; if the authorities fail to do so, those needs will not be met." I.d. at 104. In *Villegas v. Metro. Gov't of Nashville*, 709 F. 3d 563, 570 (6th Cir. 2013).

Respondent Dorsey failed to meet the mental health medical needs of Petitioner Baldwin while Petitioner Baldwin was in Respondent Dorsey's Care. Petitioner Baldwin alleges she informed Respondent Dorsey of her serious medical condition of PTSD while at the scene of Petitioner Baldwin medical emergency and that Respondent Dorsey denied, delayed and then interfered with Petitioner Baldwin getting adequate medical care once Respondent Dorsey was ordered by a Harris County Jail Nurse Staff member to take Petitioner Baldwin to the hospital.

A medical condition is deemed to be objectively serious if it is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Henderson v. Sheahan*, 196 F.3d 839, 846 (7th Cir.1999) (quoting *Gutierrez v. Peters*, 111 F.3d 1364, 1374 (7th Cir.1997)). In Petitioner Baldwin's defense, circumstantial evidence proves that an unknown driver, lay person, identified Petitioner Baldwin at a red light and recognized the necessity for a doctor's treatment when he called 911 requesting emergency medical service for Petitioner Baldwin.

Texas Health and Safety Code, Title 7. Mental Health and Intellectual Disability Sec. 571.003.14 (A)(B) states,

"Mental illness" means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

- (A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or
- (B) grossly impairs behavior as demonstrated by recent disturbed behavior."

PTSD is a mental illness and serious medical condition that requires ongoing treatment and medical care. courts have recognized that immediate psychological trauma (a sudden event that causes a lot of stress) also deserves mental health treatment, generally "serious" mental illnesses last longer, affect behavior, and have noticeable symptoms or risks. *Carnell v. Grimm*, 872 F. Supp. 746, 755-56 (D. Haw. 1994).

Mental health concerns can qualify as serious medical needs. For

example, several courts have held that a risk of suicide is a serious medical need for the purposes of the Eighth Amendment. *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254 (7th Cir. 1996); *Gregoire v. Class*, 236 F.3d 413 (8th Cir. 2000).

Most federal circuits have held the right to adequate medical care includes any psychiatric care that is necessary to maintain prisoners' health and safety. In *Bowring v. Godwin*, an important early decision, the Fourth Circuit Court of Appeals included treatment of mental illnesses as part of the right to medical care. The court noted that there is "no underlying distinction between the right [of a prisoner] to medical care for physical ills and its psychological or psychiatric counterpart."

Whether a particular medical action qualifies as "treatment" depends on whether it is medically necessary and whether it will substantially help or cure a medical condition. Medical necessity usually involves a serious medical need, which "could well result in the deprivation of life itself" if untreated. *Fitzke v. Shappell*, 468 F.2d 1072, 1076 (6th Cir. 1972) (quoting *McCollum v. Mayfield*, 130 F. Supp. 112, 115 (N.D. Cal. 1955)).

The test to determine whether treatment is "necessary" is not whether a prisoner suffers from mental illness but instead whether that mental illness "requires care and treatment." *U.S. ex rel. Schuster v. Herold*, 410 F.2d 1071, 1084 (2d Cir. 1969).

However, The United States Court of Appeals for the Fifth Circuit states:

"Three hours' delay in directly responding to a medical need — to gather information about Baldwin's level of intoxication—is a legitimate governmental objective. Cf. *Rhyne v. Henderson County*, 973 F.2d 386, 391 (5th Cir. 1992) (Pre-trial detainees "must be provided with 'reasonable medical care, unless the failure to supply it is reasonably related to a legitimate government objective.'").

The United States Court of Appeals for the Fifth Circuit further states:

"In particular, because Dorsey clearly kept Baldwin safe from self-harm, the question is whether Dorsey had fair notice that she was required to provide professional medical care within three hours. We hold that no such fair notice was available."

However, other circuits have ruled," A delay in providing care can

result in death or substantial damage". In *Ortiz v. the City of Chicago*, #04-C-7423, U.S. Dist. Ct. (N.D. Ill. Nov. 4, 2013).

A delay of treatment for a known serious medical need for nonmedical reasons violates the Eighth Amendment if it exacerbates the inmate's pain and suffering. *Perez v. Fenoglio*, 792 F.3d 768, 777 (7th Cir. 2015).

United States Court of Appeal from the Fifth Circuit seems to believe that a delay in medical treatment for non-medical reasons is reasonable and does not substantiate a claim of deliberate indifference.

Respondent Dorsey's choice to delay medical treatment for Petitioner Baldwin's serious medical condition violated Harris County Sheriff Department internal Policies for responding to a Medical Emergency and Crisis Intervention as well as violated Petitioner Baldwin's constitutional rights by unnecessarily prolonging her pain and suffering. An arrestee's obvious" injuries may be serious enough that even a three-hour delay in treatment constitutes "deliberate indifference" and states an eighth amendment claim. *Dailey v. Byrnes*, 605 F.2d 858, 860 (5th Cir. 1979); *Spicer v. Hilton*, 618 F.2d 232 (3d Cir. 1980).

In *Lewis Vs. McLean* the seventh circuit held that Cichanowicz and McLean exhibited deliberate indifference by delaying Lewis's treatment for approximately one and a half hours—the time that passed between their learning of Lewis's condition and Dr. Joseph's directive prompting action—thus causing Lewis unnecessary suffering." *Lewis v. McLean*, 864 F.3d 556, 558 (7th Cir. 2017).

No matter if Respondent Dorsey was gathering information as part of her *governmental objective*, there is no dispute in the matter, Respondent Dorsey arrived to a medical emergency in which Petitioner Baldwin was experiencing symptoms of a serious medical condition that required immediate treatment. The collection of information and a blood draw could have continued while Petitioner Baldwin received medical care.

The United States Court of Appeals for the Fifth Circuit justifies Respondent Dorsey deliberate indifference to Petitioner Baldwin's serious medical need by stating Respondent Dorsey's delay of Petitioner Baldwin receiving medical treatment actually "abated a risk". However, Petitioner Baldwin's medical records prove Respondent Dorsey actions exacerbated her PTSD.

The United States Court of Appeals for the Fifth Circuit supports handcuffing and forcing an arrestee suffering from a mental illness in the

back seat of a patrol car and then handcuffing the arrestee to a bench inside of a Intox cell as an alternative solution for providing adequate medical care while trying to collect evidence needed to prosecute the arrestee. However, the United States Court of Appeal from the Fifth Circuit's misconception that Respondent Dorsey's actions toward Petitioner Baldwin was to "abate risk", is far from the truth, especially based on the fact that Respondent Dorsey stated she did not believe Petitioner Baldwin was at risk. Therefore, how could Respondent Dorsey "abate a risk" she stated did not exist?

State Actors are not medical personnel, and their duty is ordinarily to summon medical assistance or transport the arrestee to it, not to provide the medical aid themselves. *Wilson v. Meeks*, #95-3390, 98 F.3d 1247 (10th Cir.1996).

Respondent Dorsey took Petitioner Baldwin to jail because she believed Petitioner Baldwin, while exhibiting symptoms of her serious medical condition, was guilty of a crime. No matter if Respondent Dorsey's governmental objectives took one hour to ten hours to complete, Respondent Dorsey had a duty of care, and that duty of care involved getting Petitioner Baldwin immediate medical treatment for her serious medical condition.

Gil v. Reed, 381 F. 3d 649, 662 (7th Cir. 2004), recognized that "hours of needless suffering" can constitute harm.

The 7th Circuit also ruled in *Williams v. Liefer*, "Williams treatment or affected his ability to work, a reasonable jury could have concluded from the medical records that the delay unnecessarily prolonged and exacerbated Williams pain and unnecessarily prolonged his blood pressure." *Williams v. Liefer*, 491F.3d 710 (7th Cir.2007).

Delaying medical treatment can violate the Eighth Amendment if the delay itself "reflect[s] deliberate indifference which results in substantial harm." *Olson v. Stotts*, 9 F.3d 1475, 1477 (10th Cir. 1993). The Tenth Circuit has defined substantial harm to mean a "lifelong handicap, permanent loss, or considerable pain." *Garrett v. Stratman*, 254 F.3d 946, 949-50 (10th Cir. 2001).

PTSD is a progressive serious medical condition that causes substantial psychological harm. PTSD is complicated, with dangerous physical and psychological consequences if not treated properly. left untreated, the symptoms can become much worse with time.

Handcuffing and forcing an arrestee into the back seat of a police car for over three hours while the arrestee is begging and pleading to go

to the hospital while describing how they feel suicidal, like they are dying, and delaying the arrestee medical care while a state actor gathers information, needed to prosecute that arrestee, is not a reasonable measure to abate the long-term psychological harm of an arrestee suffering from a mental illness, instead, it exacerbates it causing the arrestee substantive psychological injury. Both medical records and expert witnesses have confirmed the serious harm afflicted upon Petitioner Baldwin from Respondent Dorsey's disregard of that risk and failing to take reasonable measures to abate that risk with immediate medical care.

Petitioner Baldwin's ongoing mental health treatment for PTSD that was exacerbated during this unfortunate event has caused a strenuous and challenging road to mental health recovery for Petitioner Baldwin.

However, The United States Court of Appeals for the Fifth Circuit opined:

"three hours in delay of adequate medical care for Petitioner Baldwin clearly kept Petitioner Baldwin safe from self-harm."

Other court rulings have established prisoners have a right to reasonably adequate health care, meaning "services at a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards" (*United States v. DeCologero*, 821 F.2d 39, 43.) and "a level of health services reasonably designed to meet routine and emergency medical, dental and psychological or psychiatric care" *Tillery v. Owens*, 719 F.Supp. 1256, 1301 (W.D.Pa. 1989), aff'd, 907 F.2d 418 (3d Cir. 1990); acc.

The State is required to provide adequate medical care to those it confines. Handcuffing and forcing an arrestee into the backseat of a patrol car and then handcuffing the arrestee to a bench inside of an intoxication cell, who is already experiencing psychiatric distress, does not abate risk, nor can it be compared with "adequate health service" or a "services at a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards." *United States v. DeCologero*, 821 F.2d 39, 43.

The United States Court of Appeals for the Fifth Circuit is correct, gathering information for a crime is a legitimate governmental objective, but it does not justify a delay in an arrestee receiving adequate medical care and a governmental objective does not supersede providing adequate medical care for a medical emergency.

Gathering information can cause a delay in prison systems and in-processing pre-Gerstein arrestees, generally, most non-life-threatening medical conditions are subject to significant delays in the providing of treatment. The Fifth Circuit failed to acknowledge that when significant delay and substantial pain are present in these non-life-threatening situations, a Fourteenth Amendment violation may exist. Respondent Dorsey's was deliberate indifferent and objectively unreasonable when Respondent Dorsey denied and significantly delayed providing medical treatment for Petitioner Baldwin so that Respondent Dorsey could complete her "governmental objective".

In deciding whether delay in medical care rises to the level of deliberate indifference, The United States Court of Appeals for the Fifth Circuit failed to analyze the length of delay to determine if the length of the delay was reasonable. *Liscio v. Warren*, 901 F.2d 274, 276-77 (2d Cir. 1990).

The Fifth Circuit also ignored to address the detrimental effect of such a delay. *Sealock v. Colorado*, 218 F.3d 1205, 1210. The Fifth Circuit opined that Respondent Dorsey successfully abated the risk, but the courts did not address the potential risk and harm that inadequate treatment for a psychological injury could also cause. A psychological injury is not the same as physical injury. Psychological injuries are stress-related emotional conditions resulting from real or imagined threats or injuries. Handcuffing an arrestee already suffering from a mental illness and then handcuffing the arrestee to a bench inside a dark room to collect evidence is both terrifying and emotionally distressing for any human being.

Most importantly, the Fifth Circuit did not consider the pain as a result from such a delay. *Shannon v. Lester*, 519 F.2d 76 (6th Cir. 1975). Petitioner Baldwin's medical records and expert witness both prove that the aftermath of Petitioner Baldwin's inadequate treatment caused several years of ongoing and unnecessary psychological injury, that could have easily been resolved if Respondent Dorsey, at the scene of Petitioner Baldwin's medical emergency, had taken Petitioner Baldwin to the hospital as Petitioner Baldwin requested.

While many other courts have applied an objective standard of intent to all Fourteenth Amendment pretrial detainee claims. The Fifth Circuit, however, continues to apply a subjective deliberate indifference to Fourteenth Amendment pretrial detainee deliberate indifference claims. *Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415, 419-20 (5th Cir. 2017). The Fifth Circuit has made it even more

challenging to seek justice for a state actors deliberate indifference to their serious medical needs, by (1) applying a subjective deliberate indifference prong to pretrial detainees deliberate indifference case and (2) justifying a delay in receiving adequate medical care based on time constraints and collecting information pertaining to a state actor's *governmental objective*.

Part of the state actor's governmental objective is a duty of care. As stated in *Estelle v. Gamble*, First, "prison officials have a duty to provide adequate medical care" *Estelle v. Gamble*, 429 U.S. 97, 103–06, 97 S. Ct. 285, 290–92, 50 L. Ed. 2d 251, 259–61 (1976). If Respondent Dorsey's delay in granting Petitioner Baldwin adequate medical care was indeed due to fulfilling her *governmental objective* of collecting information, then Respondent Dorsey also had a governmental objective to conduct an investigation at the scene of Petitioner Baldwin's medical emergency to make an informed judgment about Petitioner Baldwin's medical care. Respondent Dorsey chose to ignore Petitioner Baldwin's medical emergency to collect criminal information for the prosecution of Petitioner Baldwin, in lieu of collecting medical information that truly would have abated Petitioner Baldwin's psychological injury, both legitimate reasons for Respondent Dorsey to fulfil her *governmental objectives*. Respondent Dorsey's failure to investigate enough to make an informed decision regarding Petitioner Baldwin's medical care make Respondent Dorsey deliberate indifferent to Petitioner Baldwin's serious medical condition. *Liscio v. Warren*, 901 F.2d 274, 276–77 (2d Cir. 1990).

The Fifth Circuit justification of the time calculated that Respondent Dorsey delayed Petitioner Baldwin from receiving adequate medical care goes against other court rulings, In *Spann v. Roper*, 453 F.3d 1007, 1008–09 (8th Cir. 2006), the court held that a jury could find a three-hour delay in addressing a medication overdose to be objectively sufficiently serious. *Spann v. Roper*, 453 F.3d 1007, 1008–09 (8th Cir. 2006).

Seventh Circuit held that "a condition is considered serious, even if not life threatening, if a lack of treatment would result in "further significant injury or unnecessary and wanton infliction of pain". *Gomez v. Randle*, 680 F.3d 859, 865 (7th Cir. 2012) (citation omitted).

Furthermore, the Fifth Circuit assertion that Respondent Dorsey reasoning for delaying Petitioner Baldwin were due to fulfilling governmental objectives, failed to clarify which part of Respondent Dorsey's governmental objectives gave her the right to interfere with Petitioner Baldwin receiving adequate medical care, suggesting

Respondent Dorsey handcuffing Petitioner Baldwin to a chair as adequate medical care is oblivious to the fact, Respondent Dorsey was deliberately indifferent to Petitioner Baldwin's serious medical condition.

In *Jervis v. Mitcheff*, The Seventh Circuit held, "deliberate indifference to a serious medical need is, by its nature, a continuing violation that ends only when treatment is provided, or the inmate is released. *Jervis v. Mitchedff*, 258F.d (7th Cir.2007). "Abating the risk" and providing "treatment" are not the same.

Furthermore, Respondent Dorsey interfered with Petitioner Baldwin receiving adequate medical care at St. Joseph's hospital. Defendant Dorsey told medical staff that Petitioner Baldwin was there for accidentally overdosing on prescribed medication and substance abuse. This caused medical staff to line out Petitioner Baldwin's request for help for suicidal ideation while at the hospital. Respondent Dorsey's interfered with Petitioner Baldwin receiving adequate medical care while at the hospital so that Respondent Dorsey could return back to fulfilling her *governmental objectives* to prosecute Petitioner Baldwin for a crime. Respondent Dorsey urgency to fulfil her *governmental objectives* forced Petitioner Baldwin to return to Harris County Jail untreated for PTSD and suicidal ideation.

Just as handcuffing an arrestee to abate a risk while a state actor fulfils their governmental objectives is not equivalent to proving medical treatment, transporting an arrestee to a medical facility may also not be enough if an officer intentionally engages in actions designed to interfere with providing of medical care. *Nielson v. Rabin*, #12-4313, 746 F 3d. 58 (2d Cir. 2014). Respondent Dorsey's "governmental objectives" interfered with Petitioner Baldwin receiving adequate treatment for Petitioner Baldwin's serious medical condition.

The Fifth Circuit states, Respondent Dorsey had a governmental objective to complete, that governmental objective also includes a duty to care. Petitioner Baldwin had access to qualified medical specialist who were qualified to address Petitioner Baldwin's mental health problems and suicidal ideation while at St. Joseph's hospital. Respondent Dorsey's interference in Petitioner Baldwin access to a qualified mental health medical specialist while at St. Josephs, violated Petitioner Baldwin's Fourth and Fourteenth Amendment right, making Respondent Dorsey deliberate indifferent to Petitioner Baldwin's serious medical needs. *Mata v. Saiz*, 427 F.3d 745, 756-59 (10th Cir. 2005).

The 11th Circuit held, "even where medical care is ultimately

provided, a state actor may nonetheless act with deliberate indifference by delaying the treatment of serious medical needs, even for a period of hours, though the reason for the delay and the nature of the medical need is relevant in determining what type of delay is constitutionally intolerable" *Harris v. Coweta County*, 21 F.3d 388, 393-94 (11th Cir.1994); *Brown v. Hughes*, 894 F.2d 1533, 1537-39 (11th Cir.1990).

Lancaster v. Monroe County, Ala., states, "knowledge of the need for medical care and intentional refusal to provide that care constitute deliberate indifference" *Lancaster v. Monroe County, Ala.*, 116 F.3d 1419, 1425 (11th Cir.1997).

The Fifth Circuit debates, "whether Dorsey had fair notice that she was required to provide professional medical care within three hours."

However, *Boretti v. Wiscomb*, the sixth circuit court recognized that "a prisoner who suffers pain needlessly when relief is readily available has a cause of action against those whose deliberate indifference is the cause of his suffering." *Boretti v. Wiscomb*, 930 F.2d 1150, 1154-55 (6th Cir.1991). Respondent Dorsey's delay, denial and interference with Petitioner Baldwin receiving adequate medical care caused serious consequences that had a long-term effect of psychological trauma on Petitioner Baldwin, beyond release from Respondent Dorsey's care.

Denying, delaying, and interfering with an arrestee receiving medical treatment for a serious medical need to collect information to fulfil a governmental objective, is not a legitimate, nor reason for a state actor to survive not being held liable for deliberate indifference to an arrestees serious medical condition because no minimally competent professional would have agreed, even based on the fact that Respondent Dorsey contacted poison control to identify the medication she allegedly found in Petitioner Baldwin's car, that handcuffing Petitioner Baldwin was the better option than taking her to the hospital. Even poison control agrees that any suspicion of anyone who has overdosed or indigested a poisonous, controlled or unknown substance, should be taken to the hospital immediately to be treated.

It should not have mattered whether or not Respondent Dorsey was given a fair notice if she was required to provide professional medical care to Petitioner Baldwin within a certain amount of time, delaying the treatment of serious medical needs, even for a period of hours, is constitutionally intolerable, especially when Respondent Dorsey was minutes away from the hospital and had direct communication with EMT and medical staff at every minute of her delay in providing adequate

medical care to Petitioner Baldwin.

A state actors deliberate indifference to an arrestees serious medical condition is a continuing violation, and thus can accrue for as long as a state actor knows about an arrestees serious medical condition, has the power to provide treatment, and yet withholds that treatment. *Heard v. Sheaham*, 253 F.3d(7th Cir. 2001)

Petitioner Baldwin clearly established Respondent Dorsey was deliberately indifferent and objectively unreasonable to her serious medical need. The Fifth Circuit Undermined Petitioner Baldwin's civil rights U.S. constitutional violation claims of deliberate indifference against Respondent Dorsey, by justifying Respondent Dorsey's non-medical delay to deny and delay Petitioner Baldwin from receiving adequate medical care.

The Fifth Circuit's attempt to undermine Petitioner Baldwin Fourth and Fourteenth Amendment Civil Rights violation of deliberate indifference against Respondent Dorsey, connivingly creates an atmosphere of dissension and confusion among the lower courts by unfairly analyzing deliberate indifference claims with barriers that makes the already high standard of Fourteenth Amendment, deliberate indifference, an even harder standard for arrestees and pretrial detainees to prove and receive justice.

There is an increase in suicides among Texas inmates and police brutality among the mentally ill, with little to no justice for victims and families because of the Fifth Circuit, nearly impossible to prove, opinion of deliberate indifference among arrestees, pretrial detainees, and prisoners.

The Fifth Circuits undermining of Petitioner Baldwin's already proven deliberate indifference claims against Respondent Dorsey has the potential to create a barrier for arrestees and pretrial detainees to receive justice for deliberate indifference to their serious medical condition, creating more chaos and confusion to the already confusing Fourth and Fourteenth deliberate indifference standard among arrestees and pretrial detainees.

The Fifth Circuit opinion in *Baldwin v. Dorsey* has the potential to decrease accountability among state actors, correctional officers, and jails while increasing the suicidal rate and police brutality among Texas prisoners and citizens with untreated mental illnesses, if lower courts continue to be divided with opinions such as those as the Fifth Circuit, that create barriers for established law Fourth and Fourteenth deliberate

indifference claims.

2. Can a state actor be granted immunity from deliberate indifference to a pre-Gerstein arrestee's serious medical need under the U.S. Constitution, Fourth and Fourteenth Amendments if the state actor is collecting non-medical information for the state actor's governmental objectives?

As the suicide rate continues to increase amongst Texas prisoners and the untreated mentally ill continue to be killed by Texas State Actors, the Fifth Circuit makes an interesting assumption in the *Baldwin v. Dorsey* Opinion.

The Fifth Circuit holds in *Baldwin v. Dorsey*,

“three hours’ delay in directly responding to Petitioner Baldwin’s medical emergency —to gather information about an arrestee—is a legitimate governmental objective and justifies a delay in an arrestee receiving adequate medical care.”

Depending on the severity, psychiatric or psychological conditions can present serious medical needs in light of our contemporary standards. *Cuovo v. Moritsugu*, 222 F.3d 99 (2d Cir.2000) citation omitted. In most cases, the actual medical consequences that flow from the denial of care or highly relevant in determining whether the denial of treatment subjected the detainee to a significant risk of serious harm. *Smith v. Carpenter*, 316 F.3d 178, 187 (2d Cir. 2003).

In an unexpected blow to Petitioner Baldwin’s Fourteenth Amendment, Deliberate Indifference claim, the Fifth Circuit suggest collecting information is a “governmental objective” that justifies Petitioner Baldwin’s denial, delay, and inadequate medical care treatment. However, this court should note that Respondent Dorsey was not dispatched to a crime scene, but a medical emergency where Petitioner Baldwin was exhibiting symptoms of her serious medical condition, therefore Respondent Dorsey’s *governmental objective* should have been also collecting medical information pertaining to Petitioner Baldwin’s medical emergency.

Respondent Dorsey at the scene of Petitioner Baldwin’s medical emergency should have known that failing to provide the omitted medical treatment could have posed a substantial risk to Petitioner Baldwin’s health. Circumstantial evidence showed that Petitioner Baldwin, unable

to move had to be forcibly removed from her car to be handcuffed and placed in the back seat of Respondent Dorsey's patrol car at the scene. The Fifth Circuit assertion that Respondent Dorsey was perhaps "abating the risk" by keeping Petitioner Baldwin handcuffed while performing her "governmental objective" proves that Respondent Dorsey knew there was a substantial risk of "serious harm" concerning Petitioner Baldwin and that risk was obvious enough that Respondent Dorsey kept Petitioner Baldwin handcuffed to "abate" it.

"Abating" a risk of a symptom of a serious medical condition is not the same as providing "treatment" or "medical care" to a serious medical condition. Petitioner Baldwin needed "treatment" for her "medical condition," not "abatement" of her "symptoms." When an arrestee taken into custody obviously needs medical attention, especially urgent medical attention, state actors in charge of them have a constitutional duty to see that it is provided. *Carter v. City of Detroit*, #04-105 408 F.3d 305 (6th Cir, 2005).

Therefore, Respondent Dorsey also had a governmental objective to collect medical information to make an informed decision regarding Petitioner Baldwin's medical state as well. Respondent Dorsey's could not have possibly collecting information to fulfil her government objectives when she skipped two steps of fulfilling her government objective per *Harris County Sheriff Policy for Mentally Disturbed Persons*. *Harris County Sheriff Policy for Mentally Disturbed Persons* states, (1) If, in the deputy's opinion, the person is not in need of immediate psychological attention by mental health personnel call the Inmate Processing Center (IPC) and notify the supervisor on duty that they are enroute with a mentally unstable person. Respondent Dorsey did not notify her supervisor, the District Attorney, Harris County Sheriff CRIT, Poison Control or IPC of Petitioner Baldwin's alleged "suicidal risk" nor that Petitioner Baldwin had allegedly taken more than the legal amount of a controlled substance. Respondent Dorsey had a governmental objective to notify all respective parties of this information.

(2) Respondent Dorsey did not Complete an incident report with a CIT Incident Form scanned into the e-files section of the report another requirement per *Harris County Sheriff Policy for Mentally Disturbed Persons* and part of the information collection process of Respondent Dorsey's governmental objective. *Harris County Sheriff Policy for Mentally Disturbed Persons*. Policy #209.

Furthermore, this court should also consider that majority of the preliminary information needed for Petitioner Baldwin had been collected

by EMT and briefed to Respondent Dorsey at the scene of Petitioner Baldwin's medical emergency and the remainder could have been collected while Petitioner Baldwin received medical treatment for her serious medical condition.

In *Bell V. Wolfish*, If pretrial conditions or restrictions are “not reasonably related to a legitimate goal” or are excessive, “a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees.” *Bell v. Wolfish*, 441 U.S. 520 (1979). As the Court subsequently noted, *Bell* “carefully outlined the principles to be applied in evaluating the constitutionality of conditions of pretrial confinement.” *Block v. Rutherford*, 468 U.S. 576, 584 (1984).

In 2015, this court held in *Kingsley v. Hendrickson* that an objective, rather than subjective, standard applies to determine whether an official’s use of force against a pretrial detainee was excessive—a lesser standard than the subjective standard used for convicted prisoners. *Kingsley v. Hendrickson*. 576 U.S. 389 (2015).

The Supreme Court has now twice held that a pretrial detainee’s claim under the Fourteenth Amendment requires analysis using an objective standard to determine if the inmate was unconstitutionally punished. *Kingsley*, 135 S. Ct. at 2473.

Collecting information may have been a legitimate goal for Respondent Dorsey, but it was unconstitutional for Respondent Dorsey to deny, delay, and interfere with Petitioner Baldwin receiving adequate medical care, especially since Respondent Dorsey could have fulfilled her governmental objective as Petitioner Baldwin was receiving medical care.

A court can infer punishment “if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless” Id. at 539 n.20.

Court emphasized that this decision was not meant to allow officials to “justify punishment” since “retribution and deterrence are not legitimate nonpunitive government objectives.”

The Court has never held that a pretrial detainee would have to prove the official’s intent to punish.

The *Kingsley* decision’s affirmation of *Bell*’s holding that the Fourteenth Amendment requires an objective analysis to determine punishment and that “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.

Petitioner Baldwin clearly established for several years in litigation that Respondent Dorsey was both objectively unreasonable and deliberate indifferent to Petitioner Baldwin's serious medical needs. The Fifth Circuit's justification of Respondent Dorsey's deliberate indifference to Petitioner Baldwin's serious medical condition with collecting information, as part of Respondent Dorsey's "governmental objectives," a non-medical objective, is in violation of Petitioner Baldwin's U.S. Constitutional Fourth and Fourteenth Amendments rights. State Actors have a duty to care within their scope of governmental objectives, especially at the scene of a medical emergency.

The recent rift between citizens and state actors has caused a major division within the United States of America. More citizens with untreated mental illness have died at the hands of state actors, than every other demographic combined. Suicide is the leading cause of death among inmates and has increased in local jails across the state of Texas. The Fifth Circuit court of appeals has a huge duty and obligation to provide justice for both state actors and citizens. However, the Fifth Circuit refusal to adopt this court standard of applying the objective standard to analyze fourteenth amendment violations among arrestees and pretrial detainees and justifying "deliberate indifference" with "governmental objectives," has the potential to threaten the appropriate justice for arrestees and pretrial detainees bringing forward constitutional deliberate indifference, fourteenth amendment violations against state actors, and adds to the already high standard of proving deliberate indifference, making it nearly impossible for arrestees and pretrial detainees to receive justice.

The Fifth Circuit has created a scapegoat and another loophole for state actors to receive immunity for being deliberate indifferent to an arrestees or pretrial detainee serious medical condition and medical emergencies, among their already biased opinions in favor of state actors.

No human being should be forced to suffer with a physical or psychological injury during or after the scene of a medical emergency so that a state actor can collect non-medical information to suffice their governmental objectives, especially when the state actor has the means to suffice her governmental objective in conjunction with the medical emergency.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,



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