NO. 20-839

IN THE SUPREME COURT OF THE UNITED STATES

KENNETH GREENWAY,

Petitioner,

vs.

BANKS COUNTY, GEORGIA, *et al.*,

Respondents.

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

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RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI BY BANKS COUNTY SHERIFF'S DEPUTIES

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QUESTIONS PRESENTED

1) Whether the District Court correctly held that the record lacks evidence that any Individual Officer[1] had warning that there was a strong likelihood that Tammy Greenway would commit suicide at the Banks County Jail, where Mrs. Greenway repeatedly denied suicidal intent, gave no suicidal indications during three days in jail, was not placed on suicide watch, and Petitioner's alleged warnings were vague, conclusory and based on dubious motivation.

2) Whether the District Court correctly held that qualified immunity protects each Individual Officer from Petitioner's deliberate indifference claim because the evidence fails to show that any Individual Officer violated clearly established law.

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[1] The Individual Officers are Respondents Boyer, Langston, Muse, Chapman, Rice, and Brooks.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

United States Supreme Court

Eleventh Circuit Court of Appeals

Other Circuit Courts of Appeal

United States District Courts

STATEMENT OF THE CASE

The following is a statement of facts pertinent to the Officer Respondents.

Fight Between Petitioner and Tammy Greenway

On the morning of Saturday, January 23, 2016, decedent Tammy Greenway and her daughter Crystal Beauchamp used drugs together. Later that day, Petitioner Kenneth Greenway ("Petitioner") and his wife Tammy got into a physical fight. Mrs. Beauchamp heard the fighting, and eventually tried to break up the fight but she could not. Eventually another relative called 911.

Arrest of Tammy and Kenneth Greenway

Deputy Christopher Boyer, an officer with the Sheriff's Office of Banks County, Georgia, responded to the scene. After investigating, Deputy Boyer arrested Petitioner and Tammy Greenway, charging both with aggravated assault for attacking one another with improvised weapons. Boyer Video at 21:00-30:30.[2] While Tammy Greenway's daughter Crystal Beauchamp and Petitioner claim that they told Deputy

[2] The arrest incident was captured on video, which the lower courts credited over Petitioner's false testimony.

Boyer that Tammy Greenway was suicidal at the arrest scene, video from Deputy Boyer's vehicle conclusively proves otherwise.

Petitioner's False Testimony About Suicide Warnings

The video conclusively refutes Petitioner's testimony that he provided any suicide warning to Deputy Boyer, the arresting officer.

> [V]ideo evidence contradicts Kenneth's assertions that he and Beauchamp told Deputy Boyer at the scene of the arrest that Tammy was suicidal. … Kenneth testified that while he was in the yard with Beauchamp, before Deputy Boyer placed him in the patrol car, he and Beauchamp told Deputy Boyer that Tammy was threatening to hurt herself and that she had attempted suicide before. But the video directly contradicts that testimony. Though Kenneth now contends that the video did not record all of his interactions with Deputy Boyer and parts of it are unintelligible, the video is clear when Kenneth and Beauchamp were talking to Deputy Boyer in the yard before he was arrested. And there is no evidence they told him Tammy was suicidal.

Greenway v. S. Health Partners, Inc., 827 F. App'x 952, 956 n. 1 (11th Cir. 2020).

Telephone Calls From the Jail Show No Mention of Suicide Risk

Petitioner and Crystal Beauchamp also lied under oath about suicide warnings in Petitioner's phone calls from the jail. Calls were recorded, and no call ever mentions Tammy Greenway being at risk to

harm herself. Put bluntly, video and audio conclusive show that Petitioner and Mrs. Beauchamp presented false testimony.

Tammy Greenway Never Indicated She Was Suicidal

Tammy Greenway spent three days in the jail without showing any indication she was suicidal. There is no evidence that Tammy Greenway indicated to anyone during her arrest and incarceration that she wanted to harm herself. Until her suicide, Greenway never made an attempt or expressed an intent to commit suicide. In her response to questions during booking, Greenway denied prior suicide attempts and denied she was currently contemplating suicide.

Similarly, on Monday, January 25, during her screening by the nurse, Greenway told the nurse that she had never considered or attempted suicide. Consistent with her screenings, Tammy Greenway never mentioned suicide in any of her phone calls from the Jail.

No Officer Was Informed that Greenway Was Suicidal

All officers who dealt with Tammy Greenway, Petitioner and/or Mrs. Beauchamp deny anyone mentioning Greenway being at risk of suicide. Tammy Greenway was never identified as a suicide risk, and

therefore the Sheriff's Office suicide prevention precautions were never triggered.

Petitioner's Alleged Warnings

Some of Petitioner's alleged warnings about Tammy Greenway are not subject to falsification through video evidence. Consequently, the lower courts credited Petitioner's testimony, the substance of which follows.

Contrary to officer testimony, Petitioner claims that during his booking at the Jail he told **Sergeant Langston**[3] "y'all need to watch Tammy." According to Petitioner, when he was asked during his booking whether *he* had tried to commit suicide in the past, he stated "no… but she has and that's why I'm telling you you need to keep an eye on her." **Corporal Chapman** also was involved with Petitioner's booking. Petitioner claims he told the officers during his booking that Tammy Greenway "needed to be put on suicide watch."

Petitioner asserts that later he told **Sergeant Jason Muse** "that [Tammy Greenway] had mental problems, that she'd had an argument

[3] Officer names are emboldened to assist in keeping them distinct, since each officer must be considered based on her or his own particular circumstances.

with her boyfriend [a man other than Petitioner, her husband], and that she was a danger to herself and to others, that she was -- the whole time she was hitting on me she had nothing to live for, nothing left to live for. . . .” Petitioner claims he told Sergeant Muse that “Tammy needed to be put on suicide watch.”

In fact Sergeant Muse put *Petitioner* on suicide watch. Petitioner claims that during his own suicide watch “Officer Muse would make rounds,” and Petitioner asked “Have you put her on suicide watch? She’s a danger to herself.”

Petitioner also claims that when he bonded out late Monday night, he and “Crystal [Beauchamp]. . .told them that she needed to be on suicide watch till somebody could get there to talk to her.” One of the officers involved in Petitioner’s release was **Corporal Chapman.**

Medical Services for Inmates

The Sheriff’s Office contracted with Respondent SHP to evaluate and provide for medical and mental health needs of inmates. If a need was brought to the attention of jail personnel, then they would make sure that the inmate received the appropriate mental health care or

evaluation.

SHP staff normally performed a medical screening process on newly admitted inmates, part of which incorporated questions about mental health. The Sheriff's Office deferred to SHP professionals in regard to decisions about inmate health care and application of medical policies.

Policy and Practice Regarding Potentially Suicidal Inmates

Between Tammy Greenway's booking and the SHP nurse's assessments, Greenway was screened for suicide risk on three occasions at the jail. The Sheriff's Office had policies regarding prevention of inmate suicide, and responses to suicide attempts. Among other things, inmates identified as suicidal were to be placed on suicide watch.

Suicide watch involves an officer of the same sex placing the inmate in an isolation cell in the booking area, where a jail officer checks the inmate every 15 minutes and completes a log reflecting the checks.

The inmate on suicide watch is required to wear a "turtle suit"—a garment designed so that it cannot be used for self harm—and officers would remove from the cell anything that could be used for self harm.

Overall, inmates identified as suicidal have significantly less privacy and access to personal items than other inmates, due to overriding concern of preventing self-harm.

SUMMARY OF THE ARGUMENT

The Eleventh Circuit Court of Appeals' decision, which affirms the District Court's thorough summary judgment ruling, presents no basis for granting certiorari. The Petition presents argument based solely on "erroneous factual findings or the misapplication of a properly stated rule of law," which normally does not merit the Court's review. Rule 10. The Petition does not hint at any circuit conflict, and the Eleventh Circuit did not break any new legal ground in its decision.

Instead, after giving Petitioner's evidence all the credit it was due, the lower courts found that no Individual Officer[4] had information revealing a sufficient likelihood that Tammy Greenway was at risk for imminent suicide. Mrs. Greenway repeatedly denied suicidal intent, made no suicidal gestures during three days of incarceration, and was not placed on suicide watch. Moreover, Petitioner's alleged warnings to

[4] The Individual Officers are Respondents Boyer, Langston, Muse, Chapman, Rice, and Brooks.

jail officers were vague and conclusory. Beyond that, Petitioner was Tammy Greenway's attacker in a domestic violence incident, making his motivation quite dubious. Consequently, the lower courts properly held that Petitioner could not meet the "deliberate indifference" standard against any Individual Officer.

The Eleventh Circuit did not reach qualified immunity, which poses an independent bar to Petitioner's claims. The District Court correctly held that existing legal precedent in January 2016 did not clearly establish "beyond debate" that any Individual Officer's relevant conduct violated Tammy Greenway's federally protected right against deliberate indifference to a strong likelihood of self harm. In opposition to qualified immunity, at best Petitioner relied on one jail suicide case, *Edwards v. Gilbert*, 867 F. 2d 1271 (11th Cir. 1989). *Edwards* held that the individual jail officers **were** entitled to qualified immunity.

Moreover, Petitioner failed to distinguish cases where officers similarly situated to the Individual Officers in this case were granted summary judgment. *See Snow ex rel. Snow v. City of Citronelle, AL*, 420 F.3d 1262, 1269 (11th Cir. 2005); *Haney v. City of Cumming*, 69 F.3d

1098 (11th Cir. 1995). Therefore, qualified immunity entitled the Individual Officers to summary judgment, and this Court's review of the grounds raised in the Petition is unlikely to change the judgment below.

Overall, there is no legitimate ground for review, much less reversal. Respondents request the Court to deny the Petition.

REASONS FOR DENYING THE PETITION

Petitioner attempts to raise questions of evidentiary sufficiency, but the Eleventh Circuit properly affirmed summary judgment to the Individual Officers on the basis of well-settled standards. Aside from its dismissal of the merits of Plaintiff's deliberate indifference claims, the Eleventh Circuit just as easily could have affirmed on the basis of qualified immunity. There is no circuit conflict, no unresolved legal issue, and no error that warrants the Court's review.

I. PETITIONER'S ARGUMENT TURNS ON EVIDENTIARY SUFFICIENCY, WHICH PRESENTS NO BASIS FOR REVIEW

The Petition presents issues based solely on supposedly "erroneous factual findings or the misapplication of a properly stated rule of law," which normally does not merit the Court's review. Rule 10. Petitioner

quibbles that the lower courts failed to credit his testimony, or failed to give it sufficient weight. Even if Petitioner is correct (he is not), this case does not present an unsettled question that will tend to provide guidance to the lower courts, and therefore it does not merit the Court's review.

II. THERE IS NO EVIDENCE THAT ANY OFFICER HAD INFORMATION SHOWING A LIKELIHOOD OF SUICIDE

The Eleventh Circuit correctly held that Petitioner's case fails because he did not produce evidence that any Individual Officer was deliberately indifferent to a strong likelihood that Tammy Greenway would commit suicide. At the heart of Petitioner's argument is the erroneous premise that jail officers have an obligation under the federal Constitution to believe everything they (allegedly) hear from an abuser (Petitioner) about his victim's suicide risk, even when the abuser's statements are vague and unsubstantiated, the domestic violence victim denies suicidal intent, and all other—far more credible—information indicates there is no substantial risk of suicide. The lower courts properly rejected Petitioner's doubtful premise, which finds no basis in clearly established law.

The legal standards governing this case are well-settled, and the Eleventh Circuit's ruling is well within this Court's deliberate indifference precedents. Therefore, the case presents no reason to grant certiorari.

A. The Eleventh Circuit Did Not "Redefine" the Deliberate Indifference Standard

Far from "redefining" deliberate indifference as Petitioner claims, the Eleventh Circuit applied well established rules that it summarized in 2005:

> "[I]n a prisoner suicide case, to prevail under section 1983 for violation of substantive rights, under … the … [F]ourteenth [A]mendment, the Petitioner must show that the jail official displayed 'deliberate indifference' to the prisoner's taking of his own life." *Cook ex rel. Estate of Tessier v. Sheriff of Monroe County, Fla.*, 402 F.3d 1092, 1115 (11th Cir.2005) (internal quotation marks and citation omitted). "To establish a defendant's deliberate indifference, the Petitioner has to show that the defendant had (1) subjective knowledge of a risk of serious harm; [and] (2) disregard[ed] … that risk; (3) by conduct that is more than mere negligence." *Id.* (internal quotation marks and citation omitted). "[I]n a prison suicide case, deliberate indifference requires that the defendant deliberately disregard '**a strong likelihood rather than a mere possibility that the self-infliction of harm will occur**.' '[T]he mere opportunity for suicide, without more, is clearly insufficient to impose liability on those charged with the care of prisoners.' " *Id.* (citations omitted). An officer "cannot be liable under [section] 1983 for the suicide of a prisoner who never had

> threatened or attempted suicide and who had never been considered a suicide risk." *Id.* at 1116 (internal quotation marks and citation omitted).

Snow ex rel. Snow v. City of Citronelle, AL, 420 F.3d 1262, 1268-69 (11th Cir. 2005) (alterations in original; emphasis supplied).

"Because [the court] must consider each officer individually, [the Eleventh Circuit] analyze[d] what each officer knew about [Tammy Greenway's] risk for suicide at the time of [her] death." *Jackson v. West,* 787 F.3d 1345, 1354 (11th Cir. 2015).

Both the Eleventh Circuit and the District Court credited Petitioner's evidence, except where clearly contradicted by video evidence. *See Greenway v. S. Health Partners, Inc.*, 827 F. App'x 952, 956 n. 1 (11th Cir. 2020); *Tolan v. Cotton*, 572 U.S. 650, 134 S. Ct. 1861 (2014); *cf. Scott v. Harris,* 550 U.S. 372, 380, 127 S.Ct. 1769 (2007) ("[W]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record as with a video recording of the incident, so that no reasonable jury could believe it, a court should not adopt that version of the facts.").

As discussed below, Petitioner's arguments do not hold water.

B. No Individual Officer Had Information Showing a Strong Likelihood that Greenway would Commit Suicide

1. Standards Governing the Subjective Inquiry

Petitioner had to show that each individual Defendant had *actual subjective awareness* of an objectively strong likelihood, not the mere possibility, that Tammy Greenway was suicidal. *Snow*, 420 F.3d at 1268-69; *see also Farmer v. Brennan,* 511 U.S. 825, 837, 114 S.Ct. 1970 (1994) ("the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference"). Deliberate indifference requires inquiry into "the level of knowledge possessed by the" individual officer. *Tittle v. Jefferson County Commission*, 10 F.3d 1535, 1564 (11th Cir. 1994).

The subjective analysis has at least two components:

> To decide the issue of subjective mental intent under *Farmer,* a jury would inquire (1) whether [the defendant] was aware of facts about [the alleged victim] from which he could draw the inference [of] a substantial risk of serious harm to [the alleged victim] and (2) whether he actually drew that inference but [ignored the particular risk].

Campbell v. Sikes, 169 F.3d 1353, 1370 (11th Cir. 1999) (alterations supplied).

2. Petitioner's Claimed Warnings Did Not Reveal a Likelihood of Suicide

The lower courts credited Petitioner's testimony—at least to the extent it was not contradicted by video evidence—but held that Petitioner's claimed warnings to jail officers did not add up to a strong likelihood of Tammy Greenway's imminent suicide. They were right.

Contrary to Petitioner's contention that the Eleventh Circuit has altered the "deliberate indifference" standard, the truth is that the specific facts and circumstances of this case did not provide any officer with a substantial basis to conclude there was a strong likelihood that Mrs. Greenway would commit suicide. The relevant facts follow.

i. Tammy Greenway Repeatedly Denied Suicidal Intent

Where the inmate denies suicidal desires and gives no other indication of suicidal intent, counsel for Respondents has been unable to locate any Eleventh Circuit case holding that an officer had knowledge of a strong likelihood of suicide.[5] Certainly there is no case of that type

[5] Likewise, other circuit courts generally have granted summary judgment where the inmate denied suicidal desire and there was no recent attempt. *Hott v. Hennepin Cty.*, 260 F.3d 901, 906 (8th Cir.2001) (granting summary judgment where the inmate denied suicidal ideation during booking, and depressing circumstances did not indicate suicide

from this Court.

Here, Tammy Greenway *denied suicidal intentions in her booking*. Doc. 69-1 at 5-7. She also denied suicidal intentions in her separate medical screening, and the nurse concluded that Mrs. Greenway displayed no signs of suicide risk.

Tammy Greenway was never placed on suicide watch, so officers dealing with her after the booking had no reason to view her as a suicide risk. Likewise, over the course of three days at the jail Mrs. Greenway never gave any officer the indication that she wanted to harm herself. The objective evidence about the actual prisoner in question completely contradicted Petitioner's self-serving contentions that his own alleged warnings revealed a strong likelihood of Tammy Greenway's imminent suicide.

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risk); *Estate of Novack v. Cty. of Wood,* 226 F.3d 525, 530 (7th Cir.2000) (noting, regarding an inmate who had been prescribed medication for obvious psychiatric problems, that "strange behavior alone, without indications that that behavior has a substantial likelihood of taking a suicidal turn," could not give rise to deliberate-indifference liability; inmate denied suicidal thoughts or attempts at screening, and two weeks passed between arrest and suicide).

ii. Petitioner's Adversarial Relationship to Tammy Greenway

Petitioner was in jail for aggravated assault on Tammy Greenway. Given that adversarial relationship, as well as the discomfort and stigma involved with "suicide watch,"[6] Petitioner volunteering Tammy Greenway for suicide watch would reasonably be viewed with a great deal of suspicion.

Typically, the perpetrator of domestic violence is not likely to be looking out for the best interests of his victim, and the perpetrator's comments about his victim's mental state should be viewed with skepticism. That is particularly so when the victim denies suicidal intent and takes no action toward self harm. That is, a reasonable officer could view Petitioner's alleged attempt to trigger a "suicide watch" on Tammy Greenway—with its discomfort and restrictions, despite no real articulable basis from Tammy's conduct—as vindictive, rather than altruistic.

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[6] Placement on "suicide watch" involves being stripped of all clothing and personal items, and wearing a "turtle suit" in an otherwise empty cell. Privacy is severely compromised because of 15-minute officer checks.

iii. Deputy Boyer, Captain Rice and Officer Brooks Had No Information About Tammy Greenway's Alleged Suicide Risk

There is no evidence that Deputy Boyer,[7] Captain Rice or Officer Brooks had any information about Tammy Greenway posing a suicide risk. Therefore, there is no arguable basis for those Respondents to be liable.[8]

iv. Petitioner's Comments About Putting Greenway on "Suicide Watch" Did Not Indicate a Likelihood of Suicide

Petitioner claims he and Crystal Beauchamp told Respondents Langston and Chapman that Tammy was suicidal and needed to be watched. With one elaboration noted below, the alleged comments to these officers consisted of stating that "Tammy needed to be put on suicide watch." Crystal Beauchamp's alleged statement during

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[7] As the lower courts held, the video conclusively establishes that nobody said anything to Deputy Boyer (the arresting officer) about suicide risk.

[8] *Snow*, 420 F.3d at 1269 (granting summary judgment to officers who had no information about decedent's suicide risk); *Bearden v. Anglin*, 543 F. App'x 918, 921 (11th Cir. 2013) (granting summary judgment to supervisor, and stating "perfect efforts are not required of jailers, and where the jail has standard operating procedures to protect at-risk detainees, these usually will be sufficient to confer qualified immunity, even when aspects of the system are imperfect.").

Petitioner's release on bond was the same.

The lower courts found that, in light of the record, third party claims that Tammy Greenway should be "on suicide watch" were insufficient to put any officer on notice of a strong likelihood of imminent suicide by Tammy. Contrary to Petitioner's argument, the Eleventh Circuit did not equate officer disbelief to lack of deliberate indifference. Rather, the courts ruled that Petitioner's assertions did not raise a "strong likelihood of a suicide risk." *Greenway*, 827 F. App'x at 959.

Usually "circumstance recognized as providing a sufficiently strong likelihood of an imminent suicide attempt [are] a prior attempt or threat." *Holland v. City of Atmore*, 168 F. Supp. 2d 1303, 1311 (S.D. Ala. 2001), *aff'd,* 37 F. App'x 505 (11th Cir. 2002) (emphasis supplied; citing *Edwards v. Gilbert,* 867 F.2d 1271, 1275 (11th Cir.1989), and *Hardin v. Hayes,* 957 F.2d 845, 851 (11th Cir.1992)). Neither circumstance existed here.

Beyond that, a "previous suicide attempt … without more, is not sufficient to put [an officer] on notice of 'a strong likelihood' " of an imminent suicide by an inmate. *Snow*, 420 F.3d at 1269. Rather, "the

prior threat or attempt [had to have been] **somewhat recent** ...." *Greffey v. Alabama Department of Corrections*, 996 F.Supp. 1368, 1382 (N.D.Ala.1998) (emphasis supplied; collecting caselaw). This "somewhat recent" criteria excludes Tammy Greenway's 2008 suicide attempt (the only such attempt) as a basis for any officer to consider her a strong suicide risk in January 2016. *See Fowler v. Chattooga Cty., Ga.*, 307 F. App'x 363, 365 (11th Cir. 2009) (known suicide attempt in jail less than two months prior to suicide was not sufficiently recent to warrant suicide precautions).

In regard to Tammy Greenway's 2008 attempt, Petitioner testified that he explained to Sergeant Langston during booking that in the past Tammy had attempted suicide "and that's why I'm telling you you need to keep an eye on her." Where an officer does not know *when* the prior suicide attempt occurred, the prior attempt information does not put the officer on notice of a likelihood of imminent suicide. *Snow*, 420 F.3d at 1269 (granting summary judgment to officer who heard of prior suicide attempt but "did not know when the attempt had taken place"); *Fowler*, 307 F. App'x at 365.

It follows that the Eleventh Circuit properly affirmed summary judgment to Respondents Langston and Chapman. Even under Petitioner's story, these officers lacked information that Tammy Greenway was likely to commit suicide in the jail.

v. Petitioner's Alleged Statements to Sergeant Muse Did Not Present a Likelihood of Suicide

Aside from his general "suicide watch" warning, Petitioner claims that he told Sergeant Muse that Tammy Greenway had stated during her fight with Petitioner that she had "nothing left to live for."[9] That statement of course is not a suicide threat. Accordingly, the question presented is whether clearly established law required Sergeant Muse to draw the inference of a strong likelihood of Greenway's imminent suicide from Petitioner's alleged comment that Greenway said she had "nothing

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[9] Mrs. Beauchamp claims that in a phone call she told Sergeant Muse that Tammy Greenway was "suicidal again. She's threatened to kill herself." Beauchamp claims she got this information from Petitioner's phone call(s) from the jail. That is impossible, because none of Petitioner's 15 phone calls—all recorded—ever mentioned Tammy Greenway being suicidal or threatening to kill herself. Beauchamp's story is simple perjury. Yet even if Beauchamp made such a statement to Sergeant Muse, the claimed "threatened to kill herself" comment was nothing more than a second-hand reiteration of Tammy Greenway's alleged "nothing to live for" comment during her pre-arrest fight with Petitioner.

left to live for" during a fight with Petitioner three days prior. As the Eleventh Circuit and the District Court found, the answer is no.

In *Haney v. City of Cumming*, 69 F.3d 1098 (11th Cir. 1995), jail officer Griffin found an inmate "standing on the toilet in her cell and noticed that she had torn up her mattress and pillow. When Griffin questioned her about her conduct, Haney replied that she '**might as well kill' herself**." *Id.* at 1100 (emphasis supplied). That expressly suicidal comment, directly from the inmate to an officer shortly before the suicide, stands in sharp contrast to the "nothing left to live for" comment, allegedly made by Tammy Greenway, during a fight days prior and related second-hand from Petitioner, Mrs. Greenway's adversary/abuser husband.

In *Haney*, another officer spoke to the inmate following the inmate's suicidal statement. Shortly after that, the inmate was transferred to a different jail. The two officers who were aware of the inmate's "might as well kill [myself]" statement did not warn anyone else or take suicide prevention precautions. *Id.* Within an hour of her transfer, the inmate hanged herself. *Id.*

The Eleventh Circuit granted qualified immunity. *Haney*, 69 F.3d at 1100. In current terminology, relevant case law had not held alleged officers' conduct of the officers to be unconstitutional "beyond debate." The same was true at the time of Tammy Greenway's suicide in 2016.

It follows that, like the officers in *Haney*, qualified immunity protects Sergeant Muse. Indeed, unlike the officers in *Haney*, when Sergeant Muse dealt with Tammy Greenway face-to-face, he never heard or saw anything from Tammy indicating suicidal intent, nor was Muse provided with information from the nurse or any officer about Greenway being suicidal.

It was not clearly established "beyond debate" that Petitioner's alleged comment to Sergeant Muse imputed knowledge that Tammy Greenway posed a substantial likelihood of suicide, particularly since Greenway denied any suicidal intent and made no threats or attempts until her death. Therefore, the Eleventh Circuit properly affirmed summary judgment to Sergeant Muse.

vi. Summary

Based on binding precedent, in objective terms no Individual

Officer had sufficient information reasonably to conclude that Tammy Greenway posed a strong likelihood of suicide in her cell on January 26, 2016, or any time before that. Put differently, under the facts and circumstances, no Defendant had an objective reason to draw an inference of a strong likelihood that Greenway would take her own life.

Just as important, no Respondent actually drew such an inference. *Cf. Farmer v. Brennan,* 511 U.S. 825, 837, 114 S.Ct. 1970 (1994) ("the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference"). Consequently, the Eleventh Circuit and the District Court properly granted summary judgment.

III. PETITIONER DID NOT OVERCOME RESPONDENTS' QUALIFIED IMMUNITY DEFENSE

The District Court granted qualified immunity, finding:

> Plaintiff has not met his burden to show deliberate indifference here because he devotes only *one sentence* to arguing otherwise. After citing to his "statement of material facts" (much of which is copied and pasted from his medical expert's report), he baldly asserts: "Because there is a genuine factual dispute as to whether the Defendant deputies knew that Tammy Greenway was a suicide risk who had threatened to commit suicide in the jail, [their deliberate indifference] cannot be decided as a matter of law." (Dkt. 83 at 28-29.) He says nothing more about the issue. This is

insufficient.

Petition at App. 42 (emphasis in original). The Eleventh Circuit never reached qualified immunity, but easily could have affirmed summary judgment on that independent ground.

To overcome Respondents' qualified immunity Petitioner had the burden to present evidence that an officer acted with deliberate indifference to "a strong likelihood rather than a mere possibility that the self-infliction of harm will occur.' " *Snow ex rel. Snow v. City of Citronelle, AL*, 420 F.3d 1262, 1268-69 (11th Cir. 2005). Petitioner's entire case rests solely on testimony that he told certain officers that the victim of his violence, Tammy Greenway, "should be put on suicide watch." That falls well short of showing a strong likelihood.

At the time of Mrs. Greenway's suicide, in the Eleventh Circuit "[t]he only circumstance recognized as providing a sufficiently strong likelihood of an imminent suicide attempt is a **prior attempt or threat**." *Holland v. City of Atmore*, 168 F. Supp. 2d 1303, 1311 (S.D. Ala. 2001), *aff'd,* 37 F. App'x 505 (11th Cir. 2002). Here, there was neither a recent prior attempt nor a substantiated threat.

Moreover, Tammy Greenway denied suicidal intentions and denied

having attempted suicide, and the medical screening did not identify Greenway as a suicide threat. Therefore, officers had no reason to believe that she was suicidal. *Cf. Estate of Salter v. Mitchell*, 711 F. App'x 530, 542 (11th Cir. 2017) ("Ms. Salter has not met her burden of pointing to any case law that says "beyond debate" that jail staff is not allowed to rely on a general practitioner's determination about an inmate's mental health.").

Petitioner frames the matter as officers declining to believe Petitioner's alleged warning. The reality is that even when Petitioner's admissible testimony was credited, under controlling law no officer had enough information to conclude that there was a strong likelihood that Tammy Greenway would commit suicide. Consequently, the District Court properly held that qualified immunity protects the Individual Officers from liability. The Eleventh Circuit would have too, had it reached the issue.

To overcome qualified immunity, the Court does "not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S.

731, 741, 131 S.Ct. 2074 (2011); *Taylor v. Barkes*, 575 U.S. 822, 135 S.Ct. 2042 (2015)). The Court has "repeatedly told courts ... not to define clearly established law at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced." *Plumhoff v. Rickard*, 572 U.S. 765, 779, 134 S. Ct. 2012, 2023 (2014) (internal punctuation and citation omitted).

"The burden of showing that an officer violated clearly established law falls on the plaintiff, and a plaintiff's citation of general rules or abstract rights is insufficient to strip a 1983 defendant of his qualified immunity." *Jackson v. Sauls*, 206 F.3d 1156, 1165 (11th Cir. 2000). Petitioner plainly did not meet his burden in the lower courts.

Here, Petitioner's qualified immunity argument turns solely on abstract rules and a single jail suicide case, *Edwards v. Gilbert*, 867 F. 2d 1271 (11th Cir. 1989). The *Edwards* decision **supports** Respondents' qualified immunity. *Edwards* held that jail officers were not deliberately indifferent to suicide risk, where they left a seemingly sleeping inmate, who had never threatened or attempted suicide and who had never been

considered a suicide risk, in a secure cell for 45 minutes with another sleeping juvenile. *Edwards*, 867 F.2d at 1276. No officer in this case could have read *Edwards* and concluded that her or his individual conduct under the circumstances would violate Tammy Greenway's constitutional rights.

Petitioner does not explain how officers who were not warned of a specific suicide threat or informed of a recent suicide attempt by Greenway could conclude that she posed a strong likelihood of suicide. Likewise, Petitioner never tried to distinguish *Haney v. City of Cumming*, 69 F.3d 1098 (11th Cir. 1995), where the Eleventh Circuit granted qualified immunity to officers who heard the decedent say that she "might as well kill" herself. *Id.* at 1100. *Haney*'s statement is far more indicative of possible self-harm than Greenway's alleged "nothing left to live for" comment during her pre-arrest fight with Petitioner. That alleged statement is the closest that Petitioner ever got to making his case, which plainly is foreclosed by qualified immunity.

In sum, Petitioner failed to identify any clear case law that placed any Individual Officer on notice of conduct that was unconstitutional

"beyond debate." Consequently, qualified immunity bars Petitioner's claim, regardless whether the Court accepts Petitioner's request for review.

CONCLUSION

For the above and foregoing reasons, the Banks County Respondents respectfully request the Court to deny the Petition for Certiorari.

Respectfully submitted,

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