No. 20-990

In the Supreme Court of the United States

THOMAS J. DART, SHERIFF OF COOK COUNTY, ILLINOIS,
Petitioner,

v.

ANTHONY MAYS, INDIVIDUALLY AND ON BEHALF OF A CLASS OF SIMILARLY SITUATED PERSONS, *ET AL.*

Respondents.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Seventh Circuit

PETITIONER'S REPLY BRIEF

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REPLY BRIEF FOR THE PETITIONER

The Seventh Circuit's decision contains everything this Court needs to know about why certiorari is warranted. While it is refreshing that Respondents admit the injunction should be dissolved (BIO, 16), the stakes are far greater than this case. The Seventh Circuit's misapplication of *Kingsley* has caused—and continues to cause—uncertainty and inconsistency in this circuit and among other circuits. The deep divide among the appellate circuits on the correct legal standard for pretrial detainees' conditions claims will not go away on its own. The appellate panel recognized exactly that. (16a, n.1).

Respondents try to soft-pedal the panel's express recognition of a circuit split, remarkably insisting that there is no genuine circuit conflict here. (BIO, 7). Their attempt to realign *Kingsley* and *Bell* as "one and the same" (BIO, 7) is an extended argument on the merits, which they are free to revisit if certiorari is granted. For now, it only matters that years ago the Seventh Circuit cobbled together a post-*Kingsley* standard for analyzing pretrial detainees' conditions claims beyond what this Court intended decades ago when it issued its opinion in *Bell*. (16a). See also *Miranda v. Cty. of Lake*, 900 F.3d 335, 351-52 (2018) (detailing the differing treatment of *Kingsley* outside the excessive force context). Whether the Seventh Circuit (or the Second Circuit or the Ninth Circuit) was right or wrong on the merits in creating its own standard rather than applying the longstanding holding of *Bell*, this is precisely the kind of conflict that this Court sits to resolve. This Court's

intervention is needed to establish a uniform, national rule and to restore the vitality of *Bell*.

As *amici* National Sheriff's Association and California State Association of Counties underscore, this circuit split concerns an issue of immense practical importance. Respondents' suggestion that the issue is unlikely to matter in any meaningful way outside the COVID-19 context is simply not credible. This case calls on the Court to provide guidance to jail administrators in light of a "legal landscape whose contours are 'in a state of evolving definition and uncertainty.'" *St. Louis v. Praprotnik*, 485 U.S. 112, 120 (1988). Without critically examining the effect of its post-*Kingsley* decisions, the Seventh Circuit has undermined fundamental principles of federalism and judicial deference long ago outlined by this Court in *Bell*.

The petition should be granted.

1. As an initial matter, Respondents argue that the petition should be denied because the Sheriff "waived any objection to the Seventh Circuit's standard." (at 5). That assertion is baseless.

a. Contrary to Respondents' contention, the issues here were pressed and passed upon by the lower courts. Respondents argue that the Sheriff "never raised any concerns about the correct standard for pretrial detainee claims in either the district court or the Seventh Circuit." (BIO, 6-7) That is demonstrably false. Respondents evidently forgot that the district court itself was so confused about how to apply the Seventh Circuit's post-*Kingsley* standard that it ordered the parties to separately brief the issue. *Mays v. Dart*, 20-cv-2134, Dkt. 41. From the earliest days of this lawsuit, the Sheriff argued that *Bell* should guide

the district court's objective reasonableness analysis because "the inquiry will look different" in a conditions case versus an excessive force case. *Id*., 3. The Sheriff questioned the Seventh Circuit's uniform application of *Kingsley* to all variety of conditions cases, yet applied the controlling law of the circuit, as he must. *Id*., 10-11. This Court does not require a litigant to make a futile—and perhaps frivolous—argument against the circuit's settled (albeit misguided) statement of law as a condition of certiorari. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 125 (2007) (finding issue preserved where counsel made a "sound assessment" that arguing against the settled law of the jurisdiction was futile); *Henderson v. United States*, 568 U.S. 266, 284 (2013) (Scalia, J., dissenting) ("[w]hen the law is settled against a defendant at trial he is not remiss for failing to bring his claim of error to the court's attention. It would be futile."); see also *St. Louis*, 485 U.S. at 120 (granting certiorari where petitioner raised an important and likely recurring question of municipal liability that "manifestly needs clarification" to guide lower courts and litigants). The Seventh Circuit's abandonment of *Bell*'s principles has been a pervasive issue throughout this litigation.

2. Respondents also argue that there is no circuit split. That assertion cannot be taken seriously.

The Seventh Circuit itself expressly acknowledged a circuit split in the treatment of pretrial detainees' conditions of confinement claims post-*Kingsley*. (16a, n.1). In fact, the court has long been aware of the developing split among the circuits. It recognized the growing divide back in 2018, when it first announced its post-*Kingsley* standard (such as it was), citing not

one but three different post-*Kingsley* standards applied in the circuits. *Miranda*, 900 F.3d at 351-52. The Eighth, Eleventh, and Fifth Circuits chose to confine *Kingsley* to its facts in the excessive force context; other circuits chose not to grapple with *Kingsley*'s potential implications at all. But the Seventh Circuit chose to follow the Second and Ninth Circuits and create its own indiscriminate standard for all pretrial detainee due process claims under *Kingsley*. *Id*., 352. Conflicts do not get any clearer.

Respondents do not dispute this fractured treatment of *Kingsley*, except to say that this is not a genuine split because *Bell* and *Kingsley* are "one and the same" and are discussed "interchangeably." (BIO, 7-8). But this goes to the merits. It does not change the fact that the Seventh Circuit's decision conflicts with "the decision of another United States court of appeals on the same important matter" *and* "relevant decisions of this Court." Sup. Ct. R. 10(a), (c).

Respondents' argument offers no basis for denying review, but their response is revealing. They insist that the Sheriff has "never explained what difference there is" between the circuits that apply *Bell* and those that have created a post-*Kingsley* standard. (BIO, 8). The difference, discussed at length in the petition (Pet. 26-36), is simply this: *Kingsley*, applied to conditions claims, fundamentally changes the court's inquiry and perilously expands jail administrators' liability. Both cases recognize that pretrial detainees who have not yet been convicted of crimes cannot be "punished." Both recognize that an objective standard applies to their constitutional claims. But *how* objective reasonableness is evaluated

in a conditions case is very different from how it is evaluated in an excessive force case.

When conditions of confinement are challenged, the court must decide whether the conditions or their underlying policies—necessarily imposed by a jail administrator acting in his official capacity—are "reasonably related to a legitimate governmental objective." *Bell*, 441 U.S. at 539. If they are not, but instead are "arbitrary or purposeless," a court may "infer that the purpose of the governmental action is punishment." *Id*. Because the conditions are "the result of considered deliberation by the authority imposing detention," it is "logical" to evaluate whether they bear any "reasonable relationship to a legitimate, nonpunitive goal." *Id*., 405-06 (Scalia, J., dissenting).

On the other hand, in an excessive force challenge—asserted against an officer acting in his individual capacity—the court must decide: (1) whether the use of force was deliberate rather than accidental; and (2) whether the amount of force used was reasonable under the circumstances, which in that context considers the perceived threat, the detainee's actions, and the severity of the security problem, among other things. *Kingsley*, 576 U.S. at 396. *Bell* makes intent to punish the focus of a due process analysis and in an excessive force claim, the reasonableness of the force used is merely "a heuristic for identifying this intent." *Id*., 406 (Scalia, J., dissenting).

The Seventh Circuit (and the Second and Ninth Circuits) views *Kingsley* as creating a one-size-fits-all objective reasonableness standard for any detainee due process claims. See *Hardeman v. Curran*, 933 F.3d 816, 823 (7th Cir. 2019). It sees "nothing in the

logic" of *Kingsley* that prevents it from extending to all such claims, including conditions claims. (16a); *Miranda*, 900 F.3d at 351-52. But as Justice Scalia recognized in his *Kingsley* dissent, it is indeed "illogical" to force a conditions challenge into an excessive force framework, as the Seventh Circuit has done. *Id.*, 406 (Scalia, J., dissenting). A conditions case analyzed under *Bell* examines the "considered decisions" of jail administrators. The analysis focuses on whether the conditions imposed reflect an intent to punish based on their relationship to a legitimate governmental interest, which makes "good sense," as in a typical rational basis analysis. *Id.* Excessive force claims do not fit that mold. The two types of claims look at different kinds of behavior performed by different kinds of actors, which warrants a different analysis.

This is far from mere semantics. The Seventh Circuit played the telephone game with the *Bell* standard and transformed a policy-based inquiry into one of near strict liability for jail administrators. When *Miranda* and its progeny—including the decision below—reinterpreted *Bell* through the lens of *Kingsley*, a critical part of the inquiry was lost. Under the Seventh Circuit's post-*Kingsley* framework, the court abandoned *Bell*'s paramount concern: whether the policies or conditions implemented by the jail administrator were arbitrary or purposeless relative to a legitimate governmental objective. Instead, the Seventh Circuit collapsed the constitutional inquiry, asking: (1) whether the decision to enact certain policies in response to a risk of harm was deliberate (which it necessarily will be), and (2) whether those policies were objectively adequate to alleviate the

harm. Not only does this elevate the court's judgment above the jail administrator's in contravention of *Bell*'s core principles, but it also creates near strict liability for the jail administrator, particularly if the harm is not alleviated. See *Bell*, 441 U.S. at 562 (the "wide range of 'judgment calls' that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government"). The Court should grant certiorari to restore the *Bell* standard for conditions of confinement claims.

3. Finally, Respondents suggest that the issues raised in the petition are irrelevant because the underlying injunction is no longer necessary. (BIO, 16). Not so. The Sheriff has always maintained that the mandatory injunction was unnecessary because the district court ordered him to do what already was being done. But it was a consequence of the Seventh Circuit's misapplication of *Kingsley* and its ill-conceived standard that allowed the district court to meddle in jail operations. That has lasting consequences, which can and should be addressed by the Court. See *St. Louis*, 485 U.S. at 120.

Other circuits are also reeling from the "mess" created by the appellate courts' treatment of *Kingsley* in conditions cases. *Castro v. City of Los Angeles*, 833 F.3d 1060, 1084 (9th Cir. 2016) (Ikuta, J., dissenting). For example, internal dissent is brewing in the Sixth Circuit, which has to date "stayed out of the fray" by declining to address the issue. *Griffith v. Franklin Cty.*, 975 F.3d 554, 570 (6th Cir. 2020). But colleagues on that court are now accused of "ignor[ing] Supreme Court precedent." *Id.*, 589 (Clay, J., concurring in part

and dissenting in part). The Court's guidance is needed.

Perhaps as importantly, the split among the circuits has vital practical implications for *amici* National Sheriff's Association and the California State Association of Counties. There is widespread confusion among their thousands of members, which are bound by a patchwork of legal standards governing detainee conditions of confinement claims. Jail administrators in every state and county across the country need this Court's guidance on the proper standard for evaluating these claims. The uncertainty can no longer stand.

CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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