No. _____

In the
Supreme Court of the United States

MANDY ENGLAND, IN HER INDIVIDUAL CAPACITY,
Petitioner,

v.

ANNISSA COLSON,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a correctional officer violated a constitutional right of an inmate for not requesting further treatment for a non-life-threatening injury to the inmate's knee when the correctional officer reasonably relied upon the medical determination of a qualified nurse after a medical examination.

2. Whether it was "clearly established" for qualified immunity purposes that a correction officer could not rely upon the medical determination of a qualified nurse based on the relevant precedent and the "particularized facts of this case."

PARTIES TO THE PROCEEDING

Mrs. Annissa Colson is the plaintiff-appellee below. City of Alcoa, Tennessee, and its officers Chief Phillip K. Potter, Keith Fletcher, Dustin Cook, Arik Wilson, in their individual capacity, are defendants. The remaining City of Alcoa officers Dustin Cook and Arik Wilson currently have an appeal in the Sixth Circuit. The docket number for that appeal before the Sixth Circuit is 20-5585.

Jennifer Russell, an employee of independent medical provider Southern Health Partners, is a defendant in the District Court. Mrs. Russell has not filed an appeal.

Blount County, Tennessee, Sheriff James Berrong, and Mrs. Mandy England, in her individual capacity, are defendants below. England filed an appeal to the Sixth Circuit.

England, in her individual capacity, is filing this *petition for writ of certiorari.* Colson is the respondent here.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court Rule 29.6, petitioners state that there are no publicly held corporation involved in this proceeding. England is an individual.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

-*Colson v. England*, No. 20-6085 (6th Cir.) (opinion affirming judgment of District Court, issued September 1, 2021);

-*Colson v. City of Alcoa, et. al.* No. 3:16-cv-377-RLJ-CCS (E.D. Tenn.) (order denying summary judgment to Officer England, filed Sept. 14, 2020).

-*Colson v. City of Alcoa, et. al.* No. 20-5585 (6th Cir.) (pending appeal for City of Alcoa officers Dustin Cook and Arik Wilson)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Officer Mandy England, in her individual capacity, respectfully petitions for a *writ of certiorari* to the review the judgment of the United States Court of Appeals for the Sixth Circuit.

The Fourteenth Amendment protects pretrial detainees from actions that amount to "punishment." *Kingsley v Hendrickson*, 576 U.S. 389, 397 (2015) (citing *Graham v. Connor*, 490 U.S. 386, 395 n. 10 (1989); *Bell v. Wolfish*, 441 U.S. 520, 535-539 (1979). While "proof of intent (or motive) to punish is [not] required," the "lack of due care by prison officials" does not support a violation under the Due Process Clause of the Fourteenth Amendment. *Davidson v. Cannon*, 474 U.S. 344, 348 (1986); *Daniels v. Williams*, 474 U.S. 327, 333 (1986).

As stated by the *Farmer v. Brennan* Court, "an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." 511 U.S. 825, 837-838 (1994). Based on this, negligence by a health care provider in diagnosing and treating an individual does not constitute a wrongful denial of medical care under constitutional standards. *Estelle v. Gamble*, 429 U.S. 97, 106-107 (1976).

Following these dictates, Circuit Courts, including the Sixth Circuit, have consistently held that correctional officers of a jail do not violate the constitutional rights of an inmate (whether a pretrial

detainee or convicted prisoner) when they rely on the medical determinations of the medical staff.

In its decision in this case, the Sixth Circuit has rendered an opinion that is contrary to these holdings. The Sixth Circuit's opinion stands for the proposition that correction officers have a constitutional duty to second-guess the judgment of medical professionals based on a *should have known* or otherwise negligence standard. This is improper and inconsistent with this Court and other Courts' precedent.

Perhaps more significantly, the Sixth Circuit's opinion is directly contrary to the warnings from this Court about the application of the qualified immunity doctrine. This Court has reiterated that, under the qualified immunity doctrine, the plaintiff, not the defendant, has the burden to prove that "every reasonable" officer in the officer's position would have understood that she violated the plaintiff's constitutional rights based on relevant precedent and the "particularized facts of the case." *City of Tahlequah v. Bond*, 142 S.Ct. 9, 11 (2021) (finding that "We have repeatedly told courts not to define clearly established law at too high a level of generality"); *Rivas-Villegas v. Cortesluna*, 142 S.Ct. 4, 9 (2021) (providing the "precedent" must be "sufficiently similar" to support that there is a violation of the a "clearly established" constitutional right); *White v. Pauly*, 196 L. Ed. 2d 463, 468 (2017); *Mullenix v. Luna*, 136 S.Ct. 305, 312 (2015); *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 614-617 (2015).

The Sixth Circuit's Majority Opinion disregards the mandates from this Court regarding the application of

the qualified immunity doctrine. The Sixth Circuit relied on "high levels of generality" to find that England violated a "clearly established" constitutional right. Not only this, the Sixth Circuit shifted the burden to England by causing her to distinguish cases that relied on "high levels of generality" for which the facts were not "sufficiently similar.

This is an ideal vehicle for this Court to issue a ruling that makes clear that a correction officer does not violate the Federal Constitution for deferring to the medical determination of medical personnel under a negligence standard. This is an important question because of the effect it will have on correctional healthcare and wrongful denial of medical care claims. Correction officers deserve clear guidance. At the least, England is entitled to qualified immunity "based on the particularized facts of this case." This Court should grant certiorari.

OPINIONS BELOW AND JURISDICTION

The decision of a panel of the Court of Appeals for the Sixth Circuit is reported with a citation of *Colson v. City of Alcoa, et. al.*, 2021 U.S. App. LEXIS 26532 (6th Cir. Sept. 1, 2021) and is reproduced in the Appendix at 1-29. The decision of the United States District Court for the Eastern District of Tennessee regarding England's *Renewed Motion for Summary Judgment* is reported at 2020 U.S. Dist. LEXIS 167162 (E.D. Tenn. Sept. 14, 2020) and is reproduced in the Appendix at 30-50. The District Court's denial of England's initial *Motion for Summary Judgment* is reported at 2018 U.S. Dist. LEXIS 49391 (E.D. Tenn. March 26, 2018) and is reproduced in the Appendix at 55-101. The

denial for a *Petition for Rehearing En Banc* hearing is reported at 2021 U.S. App. LEXIS 32575 (6th Cir. Nov. 1, 2021) and is reproduced in the Appendix at 53-54.

JURISDICTION

The Court of Appeals for the Sixth Circuit issued its judgment on defendant's *Petition for Rehearing En Banc* on November 1, 2021. App. 53-54. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The statue involved is the Civil Rights Act of 1871, which provides in relevant part as follows:

> 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 with the jurisdiction therefore 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 proceeding for redress . . .

42 U.S.C. § 1983.

STATEMENT OF THE CASE

A. Factual Background

On June 23, 2015, Plaintiff was arrested by the City of Alcoa police officer for a DUI after her child had jumped out of the vehicle due to the fear of Plaintiff's driving. App. 2. At the scene of the arrest, Plaintiff had

consented to have her blood drawn at the local hospital. App. 2. After being taken out of the patrol vehicle in the parking lot at the local hospital, Plaintiff revoked her consent for a blood draw. App. 2. Plaintiff refused multiple requests to get into the patrol vehicle voluntarily. App. 2. As Plaintiff physically resisted the arresting officers' efforts to get her into the vehicle, Plaintiff's knee was injured. App. 2, 3. The Alcoa officers drove her to the Blount County Jail. App. 2, 3.

On way to the Blount County Jail, the arresting officers advised the Blount County Jail officers that Plaintiff was "combative" but did not say anything about Plaintiff's knee injury or the manner for which it was injured. App. 2. As shown in the video and as admitted by Plaintiff herself, Plaintiff was escorted from the patrol car in the sally-port to the pat-down room of the Blount County Jail without Plaintiff having any trouble walking. App. 2. In the pat-down room, Plaintiff complained of knee pain due to a struggle with the arresting officers. App. 3. Plaintiff removed her own shoes without assistance despite offers from a correction officer. App. 4.

The Blount County correction officers asked for a nurse[1] over the radio. App. 18. The nurse responded and evaluated Plaintiff's knee injury. App. 4, 22. There is video of the entirety of the examination. App. 22, 23. Officer Mandy England was present in the pat-

[1] The nurse was an employee of an independent medical provider Southern Health Partners. The nurse and Southern Health Partners are not party to this appeal.

down room along with her supervisor Corporal Michelle Bishop. App. 4, 22, 23.

The video shows that, as Plaintiff cursed and struggled, an officer directed the nurse to evaluate Plaintiff's knee injury. App. 22. Over resistance and abusive language from Plaintiff, the nurse examined Plaintiff's range of motion by directing Plaintiff to straighten her leg, to bend her knee back, and to move it from side to side. App. 22. The nurse also bent down to examine Plaintiff's sore knee, compared the two knees, and touched both knees. App. 22. The nurse asked her to stand still so that she could examine both knees. App. 22, 23.

After compliance by Plaintiff, the nurse examined Plaintiff's knees for several more seconds and then provided a medical conclusion that, "I don't see no swelling." App. 23. Plaintiff never contested that her knee did not have any swelling. App. 23. Based on her medical determination, the nurse did not give the correction officers any instructions. App. 23. England and the other correction officers relied upon the nurse's medical determination. App. 4.

The District Court and the Sixth Circuit did not consider the undisputed evidence that Plaintiff did not complain of further knee pain and did not ask for more medical assistance after being in the pat-down room.[2]

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[2] The Sixth Circuit's Majority Opinion highlights that England disputes "what really happened between the parties" regarding whether Plaintiff had trouble walking and whether she kicked at the officers after she was examined. App. 11, 12. The video in this matter demonstrates that Plaintiff did not have trouble walking

CA 6 Dkt. 9, p. 28; CA 6 Dkt. 14, pgs. 28-31 & 38-39; CA 6 Dkt. 16, pgs. 7, 8, 12, 13, 21, 22, 23.

Plaintiff was released from the Blount County Jail early the next morning wherein she did not go to a medical provider until later the next day. App. 45. From the blood draw taken many hours after the last consumption of alcohol, Plaintiff had a BAC of .151% (almost twice the legal limit). App.64, 65. Plaintiff was later diagnosed with a fractured tibia, torn anterior cruciate ligament, and a torn lateral collateral ligament. App. 5.

B. Proceedings Below

District Court: On June 23, 2016, Plaintiff filed her *Complaint* against England, Sheriff James Berrong, Blount County, Tennessee and other defendants for events that occurred on June 23, 2015. App 65. The *Complaint* alleged that these defendants violated her constitutional rights under 42 U.S.C. § 1983 and committed various state-law torts related to her arrest for driving under the influence and subsequent incarceration at the Blount County Jail. App. 65.

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after she was examined. *Scott v. Harris*, 550 U.S. 372, 380 (2007). Plaintiff never refuted that she did kick at the officers after being examined in the pat-down room. CA 6 Dkt. 9, p. 28; CA 6 Dkt. 14, pgs. 28-31 & 38-39; CA 6 Dkt. 16, pgs. 7, 8, 12, 13, 21, 22, 23. Whatever the case, as stressed by the Dissenting Opinion from Judge Readler, these purported disputes of fact are not material as to whether England is entitled to qualified immunity based on her deferring to the medical determination after the medical exam.

After answers and certain motions to dismiss, England, on August 16, 2017, filed her initial *Motion for Summary Judgment* asserting that she was entitled to summary judgment as to (1) the excessive force claims against her, (2) the wrongful denial of medical care claim, (3) the state-law negligence claim, (4) the state-law intentional infliction of emotional distress ("IIED") claim, and (5) any punitive damages claim. App. 65, 66.

After briefing as to the initial *Motion for Summary Judgment*, the District Court dismissed the § 1983 excessive force claim against England. App. 71-79. The District Court denied summary judgment as to Plaintiff's inadequate medical care claim and punitive damages' claim under § 1983 along with the pending state-law claims. App. 79-101. As to the wrongful denial of medical care claim, the District Court found that, despite the medical exam and determination by the nurse, there was a question of fact about whether England violated Plaintiff's constitutional rights in not overriding the nurse's judgment to get Plaintiff more help for her knee injury due to England's deposition statement that the examination was "quick" and due to Plaintiff's behavior in the pat-down room. App. 83-88.

After discovery was completed, England filed a *Renewed Motion for Summary Judgment* on November 9, 2018. App. 7. England provided that the more developed factual record supported that England did not violate any constitutional right in not overriding the nurse's judgment because she should have been able to reasonably upon the medical determination of the nurse when the nurse performed an examination,

there was no objective symptoms of a knee injury, and Plaintiff admittedly did not ask for ask for more assistance and did not complain anymore. App. 35, 38.

The District Court, on September 14, 2018, issued its *Memorandum Opinion* and *Order* regarding England's *Renewed Motion for Summary Judgment*. App. 30-50.[3] Relevant to this petition, the District Court rejected the arguments from England that she should have been able to reasonably rely upon the medical determination of the nurse and that the Court's holding amounted to "second-guessing" the medical judgment of a medical professional. App. 38. The District Court found that there was nothing that England presented that refuted the initial holding that there was a genuine issue of fact as to whether England was deliberately indifferent. App. 36, 37, 38. In addition to not acknowledging the video evidence that showed a medical examination by the nurse, the District Court did not consider the newly developed factual record wherein Plaintiff admitted that (1) she did not have objective symptoms of a knee injury, (2) she did not have trouble walking after the examination, (3) she did not ask for more assistance after being examined, and (4) she did not complain any more of pain after being examined. App. 36, 37, 38.

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[3] While dismissing all other claims against England, the District Court denied summary judgment as to the remaining claims: (1) § 1983 claim for the wrongful denial of medical care, (2) state-law negligence claim, (3) state-law IIED claim, and (4) as to any punitive damages claim. App. 49-52.

As to the second prong of the qualified immunity doctrine, the District Court held that the cases cited by Plaintiff showed that it was "clearly established" that a "pretrial detainee has a right to adequate medical care when it is obvious that the detainee needs medical attention." App. 43. The cases, however, cited in by the District Court concerned instances where the officer "*failed* to consult a medical professional in a timely manner" regarding life threatening conditions—non-breathing detainee, inmate suffering obvious cardiac arrest, and a hanging inmate. App. 21, 40-42.[4] These cases did not concern the "particularized facts" where a correction officer summoned a medical professional and then relied upon her determination.

Without any analysis, the District Court held that the cases cited by England were not sufficiently similar to show that she did not violate a "clearly established" constitutional right. App. 44.

Sixth Circuit: England filed an appeal pursuant to the qualified immunity doctrine. App. 1. The Sixth Circuit affirmed the denial of qualified immunity with a Dissenting Opinion. The Majority Opinion of the Sixth Circuit stated that a non-medically trained official does not violate a constitutional right of an inmate when she "'reasonably believes" that a "medical recommendation" is "appropriate." App. 16, 17. The Majority Opinion found, however, that it did not have jurisdiction over whether England knowingly

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[4] *Estate of Owensby v. City of Cincinnati*, 414 F.3d 596 (6th Cir. 2005); *Estate of Carter*, 408 F.3d 305 (6th Cir. 2005); *Heflin v. Stewart County*, 958 F.2d 709 (6th Cir. 1992).

disregarded any "serious medical need" of Plaintiff because it said there was purported "factual dispute both as to whether [the nurse] issued a medical opinion at all and, if she did, whether that opinion was appropriate." App. 17.

England does not and did not dispute what occurred factually.[5] England only challenges the legal conclusions from the District Court and the Sixth Circuit about whether she violated the constitutional right of Plaintiff in relation to Plaintiff's medical care based on the undisputed *material facts* that are on video or otherwise undisputed. App. 21-23.

Significant, the Majority Opinion of the Sixth Circuit held that England violated a "clearly established" constitutional right of Plaintiff because the Sixth Circuit has previously given a general statement that a "'pretrial detainee's right to medical treatment for a serious medical need has been established since at least 1987.'" App. 19. Wrongfully shifting the burden to England, the Majority Opinion of the Sixth Circuit attempted to distinguish several analogous cases relied upon by England to try to support that England had not shown that she did not violate a "clearly established" constitutional right. App. 20.

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[5] The events before and during the exam by the nurse is on the video. *Scott*, 550 U.S. at 380. As to relevant events after the exam, it was undisputed that Plaintiff did not have trouble walking after the exam. She did not complain after the exam. Plaintiff did not request further medical treatment after the exam.

Of note, there was Dissenting Opinion from Judge Chad A. Readler that highlighted the Majority Opinion's egregious errors that necessitate review by this Court. Judge Readler illustrated that, even if there was genuine issue of material fact as to whether the nurse's examination was "inadequate," the video evidence undisputedly showed that a medical examination was performed and that a medical assessment was given. App. 24. With that, Justice Readler demonstrated that England is entitled to qualified immunity because "A reasonable officer in England's position would not have understood the Fourteenth Amendment to require her to override [the nurse's] assessment—condensed as it may have been—of [Plaintiff's] knee injury." App. 25.

In supporting this conclusion, Judge Readler explained that the cases relied upon by the Majority Opinion "relied upon too high level of generality." App. 25, 26. Specifically, the cases relied upon by the Majority Opinion concerned events where officers failed to contact medical professionals when a detainee exhibited obvious symptoms of serious distress—nonbreathing detainee[6], inmate experiencing cardiac arrest[7], and inmate hanging in a shower[8]. App. 25, 26. This case involves a situation where the correction officer contacted medical professionals and then relied

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[6] *Estate of Owensby*, 414 F.3d at 596.

[7] *Estate of Carter*, 408 F.3d at 305.

[8] *Heflin*, 958 F.2d at 709.

upon their medical determination concerning a non-life-threatening injury. App. 25, 26.

Judge Readler stressed that, while the *Estate of Carter* decision relied upon by the majority provided that "a detainee's right to medical treatment has been established since 1987," he criticized this reliance on this opinion because it was the "high level of generality" for which this Court has consistently held is not sufficient to show that a public official has violated a "clearly established" constitutional right. App. 26, 27.

Judge Readler explained that the Majority Opinion requiring England to "*disprove* the general contours of the broadly defined right to detainee medical care" was in "error" because it put the "inquiry in reverse" in that it placed the burden on England rather than Plaintiff regarding the "clearly established" prong. App. 27.

Judge Readler also demonstrated that any reliance on *Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020) (per curiam) and *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) was misplaced in finding that the Sixth Circuit could rely upon such "high levels of generality." App. 23. As illustrated, *Taylor* and *Hope* involved events that were so "egregious" that any "reasonable officer" would have understood that their actions violated the Constitution. App. 27, 28. The "shocking circumstances [of *Taylor* and *Hope*] are worlds apart from this case." App. 28.

Judge Readler concluded his opinion by showing that an opinion from the Sixth Circuit[9] after the events

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[9] *McGaw v. Sevier County*, 715 F. App'x 495, 498 (6th Cir. 2017).

in this case held that a non-medically trained officer can "reasonably defer" to a medical professional's opinion, so long as she "had no reason to know or believe that [the] recommendation was inappropriate." App. 29.

REASONS FOR GRANTING THE PETITION

This Court provides that negligent conduct cannot support a constitutional violation under the Fourteenth Amendment. *Davidson*, 474 U.S. at 348; *Daniels*, 474 U.S. at 333. Based on this, Circuit Courts hold that non-medical officials within a correctional facility do not violate the Constitution for the wrongful denial of medical care related to an inmate by deferring to the medical determination of medical personnel.

Against these rulings, the Sixth Circuit found that England should be denied qualified immunity because there is a dispute of fact about whether she *should have known* that the medical personnel's examination of Plaintiff's knee was *inadequate*. The Sixth Circuit made this ruling despite the undisputed material facts that Plaintiff's knee was examined, the knee had no objective symptoms of injury, and Plaintiff did not make further complaints/requests for treatment for her knee. In doing so, the Sixth Circuit constitutionalized negligent acts by finding that England could not reasonably rely upon a medical examination by a qualified nurse.

Moreover, this Sixth Circuit's Majority Opinion represents another rebuke of this Court's "warnings" regarding the "clearly established" prong of the qualified immunity doctrine. This Court has

"reiterated" several times that Courts may not rely upon "high levels of generality" to support that a defendant officer violated a "clearly established" constitutional right. *City of Tahlequah*, 142 S.Ct. at 11; *Rivas-Villegas*, 142 S.Ct. at 9. In denying qualified immunity, the Sixth Circuit and District Court in this case exclusively relied upon the "high levels of generality'" that it was "clearly established" that inmates have a constitutional right to medical care. The Sixth Circuit did not rely upon a case with the "particularized facts of this case" wherein a non-medical official summoned medical personnel and then deferred to their medical determination after a medical examination. *Pauly*, 196 L.Ed. 2d at 468.

Given its conflict and egregious departure with binding precedent, the Majority Opinion of the Sixth Circuit should be reviewed by this Court. This case presents an excellent opportunity for this Court to exercise its supervisory power regarding an important question of federal law concerning the constitutional standards governing medical care claims against non-medical personnel and regarding the qualified immunity doctrine itself. The Court should grant certiorari.

I. The Sixth Circuit's Opinion Conflicts with this Court's Holdings, Sixth Circuit Precedent, and other Court's authorities on an Important Question of Federal Law as to whether a Correction Officer Violates the Constitutional Rights of an Inmate for Reasonably Relying upon a Medical Determination of a Medical Professional.

A. The Sixth Circuit's Majority Opinion Violates this Court's Mandate that a Fourteenth Amendment Violation requires More than a "Lack of Due Care."

The Fourteenth Amendment protects pretrial detainees from actions that amount to "punishment." *Kingsley*, 576 U.S. at 397 (citing *Graham*, 490 U.S. at 395 n. 10; *Bell*, 441 U.S. at 535-539. The "lack of due care by prison officials" does not support a violation under the Due Process Clause of the Fourteenth Amendment. *Davidson*, 474 U.S. at 348; *Daniels,* 474 U.S. at 333.

As stated, "an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." *Farmer*, 511 U.S. at 837-838. Following these principles, negligence by a health care provider in diagnosing and treating an individual does not constitute a wrongful denial of medical care under constitutional standards. *Estelle*, 429 U.S. at 106-107.

The Sixth Circuit's opinion in this case directly conflicts with this Court's holdings. This Court may have not ruled on the narrow issue of whether a non-medical trained correctional officer violates the Constitution when she reasonably relies upon the medical determinations of a medical professional. Notwithstanding, this Court's holdings provide that there is no constitutional violation under the Fourteenth Amendment under a negligence standard. *Davidson*, 474 U.S. at 348; *Daniels*, 474 U.S. at 333.

The Sixth Circuit opinion provides that it did not have jurisdiction because there is a dispute of fact about whether there was any medical determination. App. 17. However, the video evidence shows that a nurse performed a medical examination and provided a medical assessment for which England reasonably relied upon. App. 21-23. With those undisputed material facts, the Sixth Circuit's Majority Opinion found that a correction officer violates an inmate's right to medical care for not overriding a medical professional's determination because she *should have known* that the medical determination was inadequate/inappropriate.

If not reversed, the Sixth Circuit would be ultimately constitutionalizing negligence actions wherein correction officers could be held liable based on a *should have known* standard. This conflicts with this Court's precedent that a "lack of due care" does not support a constitutional violation. *Davidson*, 474 U.S. at 348; *Daniels*, 474 U.S. at 333. This conflicts with this Court's precedent that an inadequate care claim against a medical professional is not sufficient to

support a constitutional violation. *Farmer*, 511 U.S. at 837-838; *Estelle*, 429 U.S. at 106-107. Court intervention is necessary to sanction this egregious departure from this Court's precedent under the Sixth Circuit's guise that there is a dispute of material fact.

B. The Sixth Circuit's Majority Opinion's Holding that England could not Reasonably Rely Upon the Medical Determination of a Medical Professional Conflicts with other Court's Precedent Abiding by this Court's Holding that Negligence Cannot Support a Violation of the Fourteenth Amendment.

The First Circuit provides that, under the Constitution, "Non-medical prison officials are generally justified in relying on the expertise and care of prison medical providers." *Snell v. Neville*, 998 F.3d 474, 498 (1st Cir. 2021).[10]

The Third Circuit has consistently found that, "If a prisoner is under the care of the medical experts . . ., a non-medical prison official will generally be justified in believing that the prisoner is in capable hands." *Spruill v. Gillis*, 372 F.3d 218, 236 (3rd Cir. 2004). See also, *Pearson v. Prison Health Serv.*, 850 F.3d 526, 543 (3rd Cir. 2017); *Durmer v. O' Carroll*, 991 F.2d 64, 69 (3rd Cir. 1993).

The Fourth Circuit follows the rule that non-medical professionals in a correctional facility may not

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[10] Despite extensive research, England did not find a 2nd Circuit opinion on this direct issue.

be held liable for relying upon the medical determinations of medical professionals. *Shakka v. Smith*, 71 F.3d 162, 167 (4th Cir. 1995); *Miltier v. Beorn*, 896 F.2d 848, 855 (4th Cir. 1990); *Boyce v. Alizaduh*, 595 F.2d 948, 953 (4th Cir. 1979).

The Fifth Circuit states that acting on the advice of a medical specialist does not support a constitutional violation. *Brauner v. Coody*, 793 F.3d 493, 499-500 (2015); *Norton v. Dimazna*, 122 F.3d 286, 292 (5th Cir. 1997).

The Sixth Circuit has held that correctional officers of a jail are entitled to assume that members of the medical staff are performing their duties properly and thus do not violate an inmate's constitutional rights for failure to provide medical care for "relying on the judgments" of the medical staff. *Winkler v. Madison County*, 893 F.3d 877, 895 (6th Cir. 2018); *Graham v. County of Washtenaw*, 358 F.3d 377, 384 (6th Cir. 2004).

The Seventh Circuit provides that, "We have long recognized that the division of labor within a prison necessitates that non-medical officials may reasonably defer to the judgment of medical professionals regarding inmate treatment." *Giles v. Godinezm*, 914 F.3d 1040, 1049-1050 (7th Cir. 2019). See also, *Hayes v. Snyder*, 546 F.3d 516, 526-528 (7th Cir. 2008); *Johnson v. Doughty*, 433 F.3d 1001, 1012 (7th Cir. 2006); *Greeno v. Daley*, 414 F.3d 645, 655-656 (7th Cir. 2005).

The Eighth Circuit finds that a "prison official may rely on a medical professional's opinion if such reliance is reasonable." *McRaven v. Sanders*, 577 F.3d 974, 981 (8th Cir. 2009); *Meloy v. Bachmeier*, 302 F.3d 845, 949

(8th Cir. 2002) (finding that, "The law does not clearly require an administrator with less medical training to second-guess or disregard a treating physician's treatment decision").

Consistent with other Circuits, the Ninth Circuit has held that non-medical professionals do not violate the inmate's constitutional rights when they "reasonably rel[y] on the expertise of the prison's medical staff." *Lemire v. Ca. Dep't of Corr. & Reha.*, 726 F.3d 1062, 1084 (9th Cir. 2013). See also, *Peralta v. Dillard*, 744 F.3d 1076, 1086-1087 (9th Cir. 2014); *Mayfiled v. Craven*, 433 F.2d 873 (9th Cir. 1970).

While in unpublished cases, the Tenth Circuit has consistently found that "reasonable reliance on the judgment of prison medical staff" does not support that non-medical staff may be held liable for a constitutional violation related to medical care. *Estate of Vallina v. Cty. Of Teller Sheriff's Office & Its Det. Facility*, 757 Fed. Appx. 643, 647 (2018); *Phillips v. Tiona*, 508 Fed. Appx. 737, 744 (10th Cir. 2013); *Arocho v. Nazfiger*, 367 Fed. Apx. 942, 956 (10th Cir. 2010); *Weatherford v. Taylor*, 347 Fed. Appx. 400, 403 (10th Cir. 2009).

The Eleventh Circuit provides that non-medical officials have a "right to rely on medical professionals for *clinical determinations*." *Howell v. Evans*, 922 F.2d 712, 723 (11th Cir. 1991). See also, *Dolihite v. Maughon ex. Rel. Videon*, 74 F.3d 1027, 1054 (11th Cir. 1996); *Acosta v. Watts*, 281 Fed. Appx. 906, 908 (11th Cir. 2008).

The Sixth Circuit's Majority Opinion conflicts with Courts that has considered this issue, including the

Sixth Circuit. The Sixth Circuit's Majority Opinion does not directly overrule its precedent regarding the issue. Rather, the Sixth Circuit's Majority Opinion essentially issues a ruling that, in effect, contradicts its and other Circuit's ruling by saying correction officers may not defer to the medical determinations of medical professionals on the grounds there is an alleged dispute of fact about whether there was any medical assessment performed. The problem, however, with the Sixth Circuit's position is that there is video evidence of the medical examination performed by the medical professional that "blatantly contradicts" any alleged dispute of fact. *Scott*, 550 U.S. at 380. Moreover, there is undisputed proof that, after the medical examination, Plaintiff did not have trouble walking, she did not complain any more of pain, and she did not ask for more treatment. CA 6 Dkt. 9, p. 28; CA 6 Dkt. 14, pgs. 28-31 & 38-39; CA 6 Dkt. 16, pgs. 7, 8, 12, 13, 21, 22, 23.

Under these undisputed material facts, England was able to "reasonably rely" upon the medical determination of the nurse in this case. This is not a case wherein there is a dispute about whether an exam was performed or even what was involved in the examination. This not a case wherein the inmate was having trouble breathing and the nurse said, "so what." This is not a case wherein the inmate's symptoms got worse or wherein the inmate requested further treatment. This case concerns a non-life-threatening knee injury. Significant, this case concerns a medical examination and assessment by a medical professional that is captured by video evidence.

If not reversed, the Sixth Circuit's Majority Opinion will support that correction officers/public officials may be held liable under a negligence standard, as they will be unable to "reasonably rely" upon the medical determinations of the medical professionals. Courts can deny summary judgment on the grounds that there is an alleged dispute of fact of whether correction officers/public officials should have overridden a medical professional's judgment because they *should have* known that it was deficient. This is despite video evidence confirming that there was a medical examination and assessment performed.

The Majority Opinion may have not directly overruled the rule that a non-medical public official may "reasonably rely" upon the medical judgment of a medical judgment. However, the Sixth Circuit's ruling that there is a dispute of fact directly contradicts its and other Courts' rulings on this narrow issue when there is video evidence showing that was a medical examination and assessment. This Court should accept this *writ of certiorari* to decide this important federal question of law.

II. The Sixth Circuit's Opinion Conflicts with this Court's Repeated Warnings that a Plaintiff Must Prove that a Defendant Violated a "Clearly Established" Constitutional Right "Based on the Particularized Facts" of the Case and Relevant Precedent and Not by Relying Upon a "High Level of Generality."

The protection of qualified immunity applies regardless of whether the government official's error is

"a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). "'Qualified immunity" gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law.'" *Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009). As proclaimed by this Court, qualified immunity is to protect officers from the "hazy border" between constitutional and unconstitutional conduct. *Mullenix*, 136 S.Ct. at 312.

Based on these principles, ***Plaintiff must carry the burden*** to plead and prove that the individual defendant violated a "clearly established" constitutional right "***in the situation he confronted***." *Saucier v. Katz*, 533 U.S. 194, 201-202 (2001) (emphasis added). The constitutional right must be "clearly established" within the specific context of the case and not just broad general proposition. *Saucier*, 533 U.S. at 201. This Court holds:

> **To be clearly established, a right must be sufficiently clear "that *every* 'reasonable official would [have understood] that what he is doing violates that right.'"** *Ashcroft v. Al-Kidd,* 563 U.S. 731, 741 (quoting *Anderson v. Creighton,* 483 U.S. 635, 640 (1987)). **In other words, "existing precedent must have placed the statutory or constitutional question beyond debate."** *Al-Kidd*, 563 U.S. at 741. This "clearly established" standard protects the balance between vindication of constitutional rights and government officials'

> effective performance of their duties by ensuring that officials can "'reasonably ... anticipate when their conduct may give rise to liability for damages.'" *Anderson, supra,* at 639 (quoting *Davis v. Scherer,* 468 U.S. 183, 195 (1984)).

Reichle v. Howards, 566 U.S. 658, 664 (2012) (emphasis added). To show that a constitutional right is "clearly established," the existing precedent that places the constitutional question "beyond debate" must be based on United States Supreme Court precedent, the precedent within the specific jurisdiction, or possibly on "a robust consensus of persuasive authority." *Sheehan*, 575 U.S. at 614-617.

Despite these rulings, this Court has had to issue stern warnings to Courts about their application of the qualified immunity doctrine. For example, this Court proclaimed:

> Today, it is again necessary to reiterate the longstanding principle that "clearly established law" should be not be defined "at a high level of generality." *Ashcroft*, 563 U.S. at 742. As this Court explained decades ago, the clearly established law must be "particularized" to the facts of the case. *Anderson*, 483 U.S. at 640. Otherwise, "[p]laintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging a violation of extremely abstract rights." *Id*. at 639.

Pauly, 196 L.Ed. 2d at 468.

Very recently, this Court proclaimed, "We have repeatedly told courts not to define clearly established law at too high a level of generality." *City of Tahlequah*, 142 S.Ct. at 11. As declared by this Court in *Rivas-Villegas*, 142 S.Ct. at 9, "precedent" must be "sufficiently similar" to support that there is a violation of the a "clearly established" constitutional right.

Against these warnings, the Sixth Circuit's Majority Opinion relied upon "high levels of generality" to hold that England violated a "clearly established" constitutional right. In its discussion, the Majority Opinion cites to *Estate of Cater*, 408 F.3d at 313 for the general principle that "since at least 1987," it has been established that a "detainee has a right to medical care." App. 19. This "high level of generality" that an inmate is entitled to medical care is exactly what this Court "reiterated" was improper in conducting a qualified immunity analysis as to whether a defendant has violated a "clearly established" constitutional right. *Pauly*, 196 L.Ed. 2d at 468 (*Ashcroft*, 563 U.S. at 742). The clearly established law must be ***"particularized" to the facts of the case***." *Id.*

As stressed by Justice Readler, the Sixth Circuit's Majority Opinion did not consider the "particularized facts of the case" and relevant case law concerning whether England reasonably relied upon the medical determination of the nurse in this case. App. 24, 25. Rather, the Sixth Circuit's Majority Opinion and the District Court improperly relied upon "broadly described contours of the constitutional right." App. 25.

The Majority Opinion 's failure to properly consider the "particularized facts of the case" is contrary to the directives of this Court. *Pauly*, 196 L.Ed. 2d at 468 (citing *Anderson*, 483 U.S. at 640). The cases cited in by the Majority and District Court concern instances where the officer "*failed* to consult a medical professional in a timely manner" regarding life threatening conditions—non-breathing detainee,[11] inmate suffering obvious cardiac arrest,[12] and a hanging inmate[13]. App. 25, 26. The present case involves a corrections officer that properly summoned medical care regarding a *knee injury*, saw the nurse conduct an examination of the knee, and then relied upon her medical determination. "Nothing in [Sixth Circuit] pre-2015 case law instructed England to disregard a medical professional's assessment." App. 28. Thus, the cases cited by the Majority Opinion and the District Court do not put constitutional question in this case "beyond debate" within the "particularized facts of this case."

Likewise, the Majority Opinion 's finding that the cases[14] that England relied upon were "distinguishable"

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[11] *Estate of Owensby*, 414 F.3d at 596.

[12] *Estate of Carter*, 408 F.3d at 305.

[13] *Heflin*, 958 F.2d at 709.

[14] *McGaw*, 715 F. Appx' at 498; *Durham v. Nu'man*, 97 F.3d 862, 869 (6th Cir. 1996); *Alspaugh v. McConnell*, 643 F.3d 162, 169 (6th Cir. 2011); *Loukas v. Gundy*, 70 F. App'x 245, 247 (6th Cir. 2003); *Brooks v. Jones*, 2014 U.S. Dist. LEXIS 173968, at *15-18 (W.D. Mich. Dec. 14, 2014).

from cases "broadly" defining the contours of the constitutional right at issue is an improper application of the qualified immunity law. App. 20, 21. England does not have the burden to show that the cases she relies upon are directly on point or otherwise indistinguishable from cases generally concerning medical care claims. As stated by Justice Readler, this "puts the inquiry in reverse." App. 27.

Plaintiff has the burden to prove that "every reasonable officer" in England's position would have understood she violated a constitutional right based on the "particularized facts of the case." *Pauly*, 196 L.Ed. 2d at 468 (citing *Anderson*, 483 U.S. at 640; *Reichle*, 566 U.S. at 664. Plaintiff failed to do so. Now, the Majority Opinion has affirmed a District Court's opinion that failed to properly consider whether Plaintiff carried this burden.

If this Majority Opinion is not reversed, a plaintiff will be able to rely on "high levels of generality" to defeat a claim for qualified immunity. If this Majority Opinion is not reversed, Courts will be able to deny an officer qualified immunity not because Plaintiff carried his burden to show that "every reasonable officer in would have understood" that the officer violated a constitutional right within the situation he confronted. *Reichle*, 566 U.S. at 664. Rather, Courts will be able to deny an officer qualified immunity because, contrary to this Court's precedent, the Majority Opinion in this case shifted the burden to officers to demonstrate how cases that rely upon "high levels of generality" are distinguishable.

Precedent makes it clear that Sixth Circuit's Majority Opinion violates this Court's "warnings" regarding qualified immunity when considering the "particularized facts of the case." This Court holds that any negligent medical care by a public official (medical providers included) does not support a constitutional violation under the Fourteenth Amendment or otherwise. *Davidson*, 474 U.S. at 348; *Daniels*, 474 U.S. at 333. See also, *Farmer*, 511 U.S. at 837-838; *Estelle*, 429 U.S. at 106-107. As shown, all Circuits holds that a correction officer such as England does not violate an inmate's constitutional rights for deferring to the medical determination of a medical professional.

Of importance, the Sixth has consistently upheld this principle. *Winkler*, 893 F.3d at 895; *Graham*, 358 F.3d at 384. Specifically, although unreported cases, recent Sixth Circuit precedent illuminate how the Sixth Circuit's opinion in this case is contrary to the qualified immunity requirements.

In one recent case, the Sixth Circuit found, "An officer who seeks out the opinion of a doctor is generally entitled to rely on a specific medical opinion for a reasonable period of time after it is issued, absent circumstances such as the onset of new and alarming symptoms." *Stojcevski v. MaComb County*, 827 F. App'x 515, 522 (6th Cir. 2020) (quoting *Barberick v. Hilmer*, 727 F.App'x 160, 163-64 (6th Cir. 2018)). In this case, the nurse gave an opinion. In addition, there were no "circumstances" such as the "onset of new and alarming symptoms." Despite *Stojcevski*, the Sixth Circuit held that England was not entitled to qualified

immunity. This is in direct contravention of this Court's warnings.

Moreover, a comparison of this case to *McGaw*[15], 715 Fed. Appx. at 495 from the Sixth Circuits unequivocally reveals that the Majority Opinion violates the qualified immunity doctrine. In *McGaw*, the plaintiff arrived at the jail visibly intoxicated and the officers summoned a jailhouse nurse to examine him. Despite the plaintiff's pupils being non-reactive to light and his speech being slurred, the nurse advised that the plaintiff did not need to see a doctor or be taken to a hospital. The plaintiff died later that evening after suffering full cardiac arrest. 715 Fed. Appx. at 496.

The District Court denied qualified immunity to the officers on the grounds that the *McGaw* plaintiff had a clearly established right to medical treatment and the officers violated that right when they left the plaintiff in an observation cell, despite knowing of his intoxication. *Id.* at 497. The Sixth Circuit reversed, finding that the correction officers could not be held liable for deferring to the medical determination of the nurse. *Id.* at 497-498. In doing this, the Sixth Circuit proclaimed that a defendant correction officer does not violate the constitutional right of an inmate "when he does not override a medical recommendation that he reasonably believes to be appropriate*, even if in retrospect that recommendation was inappropriate.*" *Id.* at 498.

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[15] *Sevier County is the neighboring county to Blount County, where the jail at issue in this case is located.*

Qualified immunity is to protect officers from the ''hazy border" between constitutional and unconstitutional conduct. *Mullenix*, 136 S.Ct. at 312. The Majority Opinion directly conflicts with this standard in making the "border" of constitutional and unconstitutional standards even "hazier." Based on the Majority Opinion, even counties that "border" each other (Sevier County and Blount County) will be governed by different standards. As it stands, a correction officer in one county can rely upon the medical determinations of his medical personnel regarding life-threatening medical issues, *McGaw*, 715 F. Appx' at 498, but England in the neighboring county cannot rely on the medical determination concerning non-life-threatening injuries. App. 29.

"'Qualified immunity" gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law.'" *Chappell*, 585 F.3d at 907.[16] If the Sixth Circuit Opinion is not reversed, the qualified immunity will not stand for this principle. Rather, a correction officer, especially within this context, will be held liable because she *should have known* their conduct violated a constitutional right due to Courts being able to rely upon "high levels of generality" to deny qualified immunity.

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[16] The fact that there was a Dissenting Opinion illuminates that England did not violate a "clearly established" constitutional right. If Judges from a Circuit with the benefit of hindsight cannot agree on whether an official violated a "clearly established," then an officer facing the situation in real time would not understand whether the constitutional question was "beyond debate."

Consideration by this Court is necessary to uphold this Court's mandates regarding the qualified immunity doctrine within the context of wrongful denial of medical care claims that involve correction officers relying upon the medical determination of a medical professional.

III. This Case is Appropriate for this Court to Confirm that, under any Constitutional Standard, Non-Medical Personnel do not violate an Inmate's Constitutional Right to Medical Care by Deferring to Medical Determinations of Medical Personnel.

The factual record supports that this case is an appropriate vehicle to issue a ruling that correction officers do not violate an inmate's constitutional right to medical care by reasonably relying upon medical determinations of medical personnel. In this case, there is video evidence showing only that there was a medical examination and medical assessment performed. *Scott*, 550 U.S. at 380. The Sixth Circuit and the District Court may deem that there is a dispute of fact. However, this "incontrovertible evidence" provides that the medical assessment was, at most, inadequate. *Scott*, 550 U.S. at 380. With that, there is no concern about whether a medical assessment was performed or what the examination entailed. As such, this Court has factual record wherein it can issue a ruling consistent with its precedent that "lack of due care" does not support a constitutional violation. *Davidson*, 474 U.S. at 348; *Daniels*, 474 U.S. at 333.

Of note, this case does not concern circumstances where the inmate is suffering from an obvious life-threatening medical issue such as cardiac arrest or a stroke and then the medical professional ignored the issue. This case concerns a non-life-threatening knee injury where a medical professional performed an examination and issued a medical opinion, even if it was inartful or purportedly inadequate. Based on this, the Court would not have to issue any ruling that involved circumstances wherein the correction office did not act reasonably in deferring to the judgment of the nurse.

England recognizes the issue that *Kingsley*, 576 U.S. at 389 has created as to whether the "objectively reasonableness" standard will apply to wrongful denial of medical care claims under the Fourteenth Amendment as opposed to the "deliberate indifference" or some other standard. As this issue was not presented to the lower Courts, England does not purport to have this issue reviewed. Whatever the case, the question of the *Kingsley* decision's application does not upset whether this case is appropriate for this Court to review. This Court has long recognized that negligence does not support a Fourteenth Amendment or Eighth Amendment claim concerning the wrongful denial of medical care. As such, any ruling on this issue before this Court herein would not affect any future ruling on the *Kingsley* issue. The Court can issue a ruling consistent with its precedent that negligence does not support a constitutional right by crystalizing that non-medical personnel can defer to the medical determination of medical personnel.

IV. This Case is an Appropriate Vehicle to Instruct the Sixth Circuit and other Courts that they may not rely upon "High Levels of Generality" to Hold that a Defendant Officer violated a "Clearly Established" Constitutional Right for Deferring to the Medical Assessment of a Medical Professional.

There is video evidence that shows undisputedly that the nurse in this case provided a medical examination and medical assessment. The case law from this Court and other Circuits would typically hold that, based on these undisputed material facts, England did not violate a constitutional right of Plaintiff by deferring to the medical exam and assessment of the nurse. If nothing else, Courts would typically be forced to conclude that, based on this precedent, England was entitled to qualified immunity, as she certainly could not have violated a "clearly established" constitutional right "based on the particularized facts of this case."

However, not heeding this Court's "warnings," the Sixth Circuit relied upon "high levels of generality" when it held that a "'pretrial detainee's right to medical treatment for a serious medical need has been established since at least 1987.'" App.18, 19. Even worse, the Sixth Circuit wrongfully shifted the burden to England by causing her to distinguish cases that relied upon these "high levels of generality." App. 20.

Courts have failed to properly apply follow this Court's "warnings" to not rely upon "high levels of generality." *City of Tahlequah*, 142 S.Ct. at 11; *Rivas-*

Villegas 142 S.Ct. at 9; *Pauly*, 196 L.Ed. 2d at 468. With the Sixth Circuit's egregious departure from precedent, this case is an excellent opportunity for this Court to remind yet another Court about the proper application of the qualified immunity doctrine.

V. The Issue in this Case is an Important Federal Question that will Affect Correctional Healthcare and the Application of the Qualified Immunity Doctrine.

Wrongful denial of medical care claims against correction officers are frequent whether under the Eighth or the Fourteenth Amendments. Inmates with medical issues inside correctional facilities are prevalent, every-day occurrences. To uphold the Federal Constitution, this Court has provided that negligence should not be the basis for wrongful denial of medical care claims. *Farmer*, 511 U.S. at 837-838; *Davidson*, 474 U.S. at 348; *Daniels*, 474 U.S. at 333; *Estelle*, 429 U.S. at 106-107. Courts have advised that, if state common law wants to condemn negligent conduct, then that body of law (not the Federal Constitution) should be the basis for such claims. *Farmer*, 511 U.S. at 838; *Daniels*, 474 U.S. at 333-336. With its holding in this case, the Sixth Circuit has upset the governing standard by making negligent conduct actionable by finding that a correction may be held liable based on a *should have known* standard. Court intervention is necessary to correct this misapplication of clear precedent on an important issue that affects the order of correctional facilities.

A review by this Court is necessary due to the importance of medical care within correctional facilities. Correctional facilities typically have a division of labor between medical personnel and non-medical personnel. In many correctional facilities, the governing entities have contracted with independent medical providers to provide medical services in an effort to improve medical care for inmates. Courts have lauded this arrangement because it "allows prisoners to receive prompt health care" from medical professionals and "ensures that an "independent party" makes the "critical decisions" about whether care within a correctional facility is proper or whether additional care outside the facility is warranted. *Graham*, 358 F.3d at 384.

Seeing the benefit of this division and arrangements, Courts have held that non-medical professionals may defer to the medical determination of medical personnel. Finding that the rule "follows naturally from the division of labor," the Third Circuit aptly explained:

> Inmate health and safety is promoted by dividing responsibility for various aspects of inmate life among guards, administrators, physicians, and so on. Holding a non-medical prison official liability in a case where a prisoner was under a physician's care would strain this division of labor. Moreover, under such a regime, non-medical officials could even have a perverse incentive *not* to delegate treatment responsibility to the very physicians most likely

> to be able to help prisoners, for fear of vicarious liability.

Spruill, 372 F.3d at 236 (emphasis in the original).

If the Sixth Circuit's decision is not reversed, this division of labor would be severely strained because correction officers would be placed in an untenable position of whether to override medical personnel's decisions because they possibly *should have known* that the medical care was inadequate. Closely related, correctional facilities may disfavor the arrangements with independent medical providers. While it may be perceived as perverse, a governmental entity may not want to enter into these contracts with the independent medical providers when there is a question of whether its correction officers can defer to the medical determination of the medical providers.

This Court should intervene in this case so that the "division of labor" is not upset. This Court should intervene so that these arrangements with independent healthcare providers that better serve the inmate population are not upset.

This Court should also review this decision because of its importance related to qualified immunity. The qualified immunity doctrine is to protect officers from the "hazy border" between constitutional and unconstitutional conduct. *Mullenix*, 136 S.Ct. at 312. The "'clearly established' standard protects the balance between vindication of constitutional rights and government officials' effective performance of their duties by ensuring that officials can "'reasonably ... anticipate when their conduct may give rise to liability

for damages.'" *Reichle*, 566 U.S. at 664 (citations omitted).

The Sixth Circuit's ruling in this case upsets this "balance" by relying upon "high levels of generality" to hold that England may be held liable. Based on the Sixth Circuit's Majority Opinion, a correction officer will not be able to rely upon precedent concerning the "particularized facts of a case" where a correction can defer to the medical determinations of medical personnel. Rather, with the constitutional question not being placed "beyond debate," the Sixth Circuit has made the "border" between constitutional and unconstitutional conduct in this context even more "hazier." The "balance" that the qualified immunity seeks to protect is an important element of federal law and the protection of constitutional rights. Court intervention is necessary to protect this balance.

CONCLUSION

The petition for a writ of certiorari should be granted.

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