NO. _____

IN THE
Supreme Court of the United States

SHENANDOAH VALLEY
JUVENILE CENTER COMMISSION,

Petitioner,

v.

JOHN DOE 4, by and through his next friend,
NELSON LOPEZ, on behalf of himself and all persons
similarly situated,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether professional judgment rather than deliberate indifference is the proper constitutional standard for a claim of inadequate medical care brought against a secure juvenile detention center by a minor immigrant detainee in federal custody; and

(2) Whether a minor's claim for injunctive relief seeking constitutionally-adequate medical treatment from a secure juvenile detention center may be redressed by the Court without a parent, guardian, or legal custodian joined as a party to the case.

PARTIES TO THE PROCEEDING

Petitioner is the Shenandoah Valley Juvenile Center Commission, which was the defendant in the district court.

Respondents are John Doe 4, by and through his next friend, Nelson Lopez, on behalf of himself and all persons similarly situated, who were the plaintiffs in the district court.

RELATED PROCEEDINGS

United States District Court (W.D. Va.):

> *John Doe 4, et al. v. Shenandoah Valley Juvenile Center Commission*, No. 5:17cv97 (July 23, 2019)

United States Court of Appeals (4th Cir.):

> *John Doe 4, et al. v. Shenandoah Valley Juvenile Center Commission,* No. 19-1910 (January 14, 2021)

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JURISDICTION

The judgment of the court of appeals was entered on January 12, 2021. A petition for rehearing was denied on February 9, 2021. Pet. App. A87. On March 19, 2020, this Court extended the time within which to file any petition for a writ of certiorari due on or after that date to 150 days from the date of, as relevant here, the order denying rehearing. Pursuant to that order, the deadline for filing a petition for writ of certiorari is July 9, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reprinted in an appendix to this petition. *See* Pet. App. A90-A117.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

Petitioner Shenandoah Valley Juvenile Center Commission (Commission) is a governmental entity created under Virginia law that operates Shenandoah Valley Juvenile Center (SVJC). Pet. App. A5. SVJC serves as a secure placement for youth from the Commission's member jurisdictions who have been charged with a crime

and are awaiting adjudication. *Id.* As a secure juvenile detention facility, SVJC maintains the safety and security of residents and staff by utilizing sanctions which range from verbal redirection to removal from daily programming and room confinement when necessary. *Id.* at A7; 6 VAC 35-101-1080, -1100, -1110. SVJC follows a program approved by the Virginia Department of Juvenile Justice called "Handle With Care", which allows the use of force as a last resort and requires the least amount of force reasonably necessary. Pet. App. A63; 6 VAC 35-101-1090, -1130. SVJC staff receive annual training on trauma, common traumatic experiences of residents, and how to engage with those who have experienced trauma. Pet. App. A6.

The Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services is the legal custodian of unaccompanied alien children (UAC) without lawful immigration status for whom there is no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2). ORR is required to place each UAC in the least restrictive facility appropriate to their age and needs and reviews each placement every 30 days. 45 C.F.R. 410.203(c)-(d). ORR contracts with SVJC to serve as a "secure" facility for UAC. This is the most restrictive setting in which ORR places UAC, and it is a placement option for UAC who, in ORR's determination, have either (1) committed a crime, are the subject of delinquency proceedings, have been adjudicated delinquent, or are chargeable with a delinquent act, and ORR deems those circumstances to demonstrate a danger to self or others; (2) made credible threats to

commit a violent or malicious act; (3) engaged in unacceptably disruptive conduct that poses a danger to self or others in a less secure placement; or (4) are otherwise a danger to self or others. Pet. App. A5; 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.203(a).

SVJC provides a range of services to UAC, including living accommodations, food, clothing, routine medical and dental care, weekday classroom education, individual and group counseling sessions, and access to religious services in accordance with ORR's obligations under the *Flores* Settlement Agreement.[1] Pet. App. A119. ORR remains the legal custodian for UAC placed at SVJC and makes all transfer decisions except in cases of emergency. 45 C.F.R. § 410.207. As legal custodian, ORR approval is required before UAC may be psychologically evaluated, given specialized medical treatment, or offered particular mental health therapies, and ORR retains ultimate authority regarding all medical care provided to UAC. Pet. App. A6, A20.

ORR placed Respondent John Doe 4 (Doe 4) at SVJC following numerous physical altercations with other minors and staff at a less-secure facility in New York. *Id*. at A46. After being transferred to SVJC, Doe 4 was involved in several major incidents that required staff to temporarily utilize restraints, room confinement, and removal from daily programming. *Id*. at A10. In two instances,

[1] The *Flores* Settlement Agreement concluded a class action lawsuit brought on behalf of all immigrant minors in federal custody challenging the constitutionality of a variety of conditions of confinement. Upon being approved by a federal district court in 1997, the *Flores* Settlement Agreement established minimum national standards for the detention, housing, and treatment of immigrant minors in federal custody. Pet. App. A22 (*citing Flores v. Sessions,* 862 F.3d 863, 866 (9th Cir. 2017)).

Doe 4 punched a staff member in the face after arguing with staff in response to verbal redirection. *Id*. at A10-A12. On another occasion, Doe 4 began choking another minor after approaching the minor from behind. *Id*. at A57.

Shortly after he arrived at SVJC, Doe 4 was psychologically evaluated by Dr. Joseph Gorin. *Id*. at A9. Despite Doe 4's lack of cooperation with the evaluation, Dr. Gorin was able to diagnose Doe 4 with Attention Deficit Hyperactivity Disorder (ADHD) and Post-Traumatic Stress Disorder (PTSD) based on his clinical history. *Id*. at A71. Dr. Gorin recommended that Doe 4 be transferred from SVJC to a residential treatment center. *Id* at A9. SVJC attempted to transfer Doe 4 to residential treatment centers on several occasions, but none would accept him due to the violent behavior Doe 4 continued to exhibit at SVJC. *Id*. at A10. ORR approval would have also been required if any residential treatment center had been willing to accept Doe 4. *See* 45 C.F.R. § 410.207.

Dr. Timothy Kane, a licensed psychiatrist, visits SVJC for individual meetings with UAC about once every three to six weeks. Pet. App. A7. Doe 4 met with Dr. Kane on twelve occasions during a ten-month period at SVJC. *Id*. at A56. During each visit, Dr. Kane obtained an updated patient history and evaluated any symptoms that Doe 4 reported including difficulty sleeping, anger, anxiety, or problematic feelings. *Id*. at A57. Dr. Kane counseled Doe 4 on risk reduction, affective mood instability, and anxiety. *Id*. Dr. Kane also prescribed Doe 4 with medication for ADHD and PTSD. *Id*. at A56. Additional visits with Dr. Kane were available upon request. *Id*.

While at SVJC, Doe 4 also met with an assigned mental health clinician for one-on-one counseling for about an hour at least once per week. *Id*. at A6, A57. Both of Doe 4's clinicians were licensed professional counselors with master's degrees and 3,400 supervised clinical hours. *Id*. at A57. Doe 4's clinicians focused on helping Doe 4 with his ability to control his anger which, according to Doe 4, improved while he was at SVJC. *Id*. The clinicians also led group counseling sessions twice per week. *Id*. at A7.

II. RELEVANT PROCEDURAL HISTORY

Respondents filed this class action against the Commission seeking declaratory and injunctive relief under 42 U.S.C. § 1983 alleging (1) excessive use of force, restraints, and room confinement, (2) failure to provide adequate mental health services, and (3) discrimination on the basis of race and national origin. Pet. App. A14-A15. The district court subsequently entered an Order defining the certified class as "[l]atino unaccompanied alien children (UACs) who are currently detained or will be detained in the future at Shenandoah Valley Juvenile Center who either: (i) have been, are, or will be subject to disciplinary policies and practices used by SVJC staff; or (ii) have needed, currently need, or will in the future need care and treatment for mental health problems while detained at SVJC." *Id*. at A15. Following class certification, prior named plaintiffs John Does 1, 2, and 3 were transferred or removed from SVJC. Doe 4 was substituted as the sole class representative. *Id*.

For the purpose of his mental health care claim, Doe 4 contended that he needed to see a psychologist in addition to the psychiatrist and mental health clinician who were available to him. *Id.* at A80. Dr. Gregory Lewis, a psychologist retained by Doe 4's counsel, evaluated Doe 4 and concluded that the mental health services and treatment provided at SVJC were insufficiently trauma-informed. *Id.* at A14, A58. According to Dr. Lewis, an adequately trauma-informed approach to mental health treatment would require SVJC "(1) to screen, assess for and treat the consequences of prior trauma; and (2) to avoid correctional practices that retraumatize juveniles." *Id.* at A49.

The Commission filed a motion for summary judgment at the conclusion of discovery. At the summary judgment hearing, Doe 4 abandoned his race and national origin discrimination claims. *Id.* at A15, A61 n.3. The district court denied the Commission's motion for summary judgment with respect to Doe 4's claims of excessive use of force and unconstitutional conditions of confinement. *Id.* at A15, A77-A78. The district court granted summary judgment on Doe 4's mental health care claim based on the court's application of the deliberate indifference standard, which had been previously applied to other civil detainees, including immigrant detainees. *Id.* at A15-A16. The district court concluded that Doe 4 failed to establish an individual, underlying constitutional violation based on the mental health treatment he received at SVJC. *Id.* at A80-A81.

Following the dismissal of his mental health care claim, Doe 4 abandoned his claims of excessive use of force and unlawful conditions of confinement, which were

then dismissed with prejudice. *Id.* at A17, A86. Doe 4 appealed the district court's dismissal of his mental health care claim. *Id.* at A17. For his appeal, Doe 4 relied on evidence regarding the use of force and conditions of confinement at SVJC to claim that those practices caused a detrimental impact on his mental health, as well as Dr. Lewis's testimony regarding the trauma-informed approach to juvenile detention. *Id.* at A8.

A panel of the court of appeals reversed the district court in a divided vote. *Id.* at A1. The majority first concluded that the absence of ORR – the legal custodian for Doe 4 and the certified class – as a party to this case does not preclude the court from redressing the alleged harms to the class. *Id.* at A18-A21. According to the court of appeals, ORR's role as legal custodian for Doe 4 and the certified class "is limited to approving measures" and "ORR would have to approve any changes SVJC proposes[.]" *Id.* at A21.

The majority next held that the professional judgment standard formulated by this Court in *Youngberg v. Romeo*, 457 U.S. 307 (1982), applies to Doe 4's claim for inadequate medical treatment rather than the deliberate indifference standard used by the district court. *Id.* at A30. The majority determined that SVJC, which is specifically designed to house minors too dangerous for less secure settings, is not only responsible for mitigating safety threats posed by violent behavior but "should also treat the child's underlying trauma that gives rise to the misbehavior." *Id.* at A26; 45 C.F.R. § 411.5. The majority's adoption of the professional judgment standard was not confined to the mental health treatment provided to Doe 4, but to

any use of force or condition of confinement which may arguably worsen Doe 4's underlying mental health condition. Pet. App. A8. The majority also determined that trauma-informed care is a relevant standard of professional judgment based on its use in 12 states and endorsements by a national task force and several advocacy groups. *Id*. at A35-A36. The majority expressly declined to address the extent, if any, to which the trauma-informed approach should be incorporated into the professional judgment standard. *Id*. at A36.

The dissent characterized the majority's ruling as "a judicial wish list" which "effectively ordered an overhaul of SVJC's very nature from the bench" by requiring "SVJC to focus on treating the underlying traumas of its residents instead of controlling dangerous behaviors." *Id*. at A40-A42. The dissent concluded that, although the deliberate indifference standard was appropriate for Doe 4's claim, the treatment provided by SVJC also satisfied the higher professional judgment standard. *Id*. at A42, A55. By holding otherwise, the dissent viewed the court as embarking upon "a new front of judicial supervision over mental healthcare in juvenile detention systems" similar to those previously foreclosed by this Court in the context of schools and prisons. *Id*. at A41, A55.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD RESOLVE THE CIRCUIT SPLIT REGARDING THE CONSTITUTIONAL STANDARD APPLICABLE TO A MINOR DETAINEE'S CLAIM OF INADEQUATE MEDICAL CARE.

The decision below creates a split with another court of appeals that has decided the appropriate constitutional standard for a minor detainee's claim of

inadequate medical care, specifically in the context of mental health care. The court below adopted the professional judgment standard and reversed the decision of the district court which had applied the deliberate indifference standard to Doe 4's claim of inadequate mental health care. As recognized by the dissent, the majority's holding below conflicts with a prior decision by the U.S. Court of Appeals for the Third Circuit in *A.M. v. Luzerne County Juvenile Detention Center*, 372 F.3d 572 (3d Cir. 2004). Pet. App. A42, A48.

In *Luzerne*, the court was likewise presented with a claim of inadequate mental health care brought by a minor detainee against a state-run juvenile detention center. 372 F.3d at 579. The minor plaintiff, A.M., was detained at the Luzerne County Juvenile Detention Center after being charged with indecent conduct. *Id*. at 575. Prior to being detained, A.M. was being treated by a psychologist, taking prescription medicine for ADHD, and had been hospitalized 11 times at a psychiatric inpatient facility. *Id*. at 576. A.M. also suffered from anxiety disorder, depressive disorder, atypical bipolar disorder, and intermittent explosive disorder. *Id*. A.M. did not receive his prescription medication for ADHD for almost two weeks after being admitted to the Luzerne detention center. *Id*. In addition, A.M. was not treated by mental health professionals apart from one psychiatric evaluation, despite the administrators' awareness that he had serious mental health problems requiring medication and psychiatric care. *Id*.

A.M. filed an action under 42 U.S.C. § 1983 against the Luzerne detention center and certain administrators and staff alleging violations of his constitutional

right to receive adequate medical treatment. *Id*. at 577. After first observing that "the contours of a state's due process obligations to detainees with respect to medical care have not been defined by the Supreme Court[,]" the Third Circuit determined that deliberate indifference was the proper standard for A.M.'s claim that the Luzerne detention center violated his constitutional right to receive appropriate medical treatment. *Id*. at 584. The Third Circuit affirmed the district court's application of the deliberate indifference standard, but reversed the lower court's ruling that A.M. had presented insufficient evidence to establish genuine issues of fact material to the claim. *Id*. at 584-85.

The decision below applying a professional judgment standard cannot be meaningfully reconciled with the Third Circuit's decision adopting deliberate indifference as the appropriate constitutional standard for a minor detainee's claim of inadequate mental health care. Acknowledging the *Luzerne* case in a footnote, the court below distinguished this case upon the fact that the minor in *Luzerne* was not an immigrant. Pet. App. A29 n.14. However, that distinction creates an even greater due process problem by subjecting substantively identical claims to different constitutional standards based upon the citizenship status of the claimant. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (applying Due Process Clause to all persons present within the United States regardless of citizenship). As applied here, the Fourth Circuit's distinction provides Doe 4 with broader substantive due process rights – based solely upon his immigration status – than were afforded to A.M. in the *Luzerne* case. The majority's attempt to harmonize its decision with *Luzerne*

creates a citizenship litmus test for substantive due process that finds no support in either the Constitution or the case law of this Court.

The decision below also criticized the Third Circuit's decision in *Luzerne* as failing to address "the propriety of the standard in a case involving children." Pet. App. A29 n.14. However, the Third Circuit expressly addressed contentions in *Luzerne* that the minor "was not a convicted prisoner but merely a juvenile detainee" in reaching its holding. 372 F.3d at 584. As a result of the decision below, the constitutional standard applicable to a minor's claim of inadequate mental health care now differs between neighboring circuits based on the citizenship status of the claimant. Accordingly, this Court should grant a writ of certiorari to resolve the conflict between the ruling below and the prior decision of the Third Circuit.

II. THE CONSTITUTIONAL STANDARD APPLICABLE TO A MINOR DETAINEE'S CLAIM OF INADEQUATE MEDICAL CARE HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

This Court has not yet decided the appropriate constitutional standard for claims of inadequate medical care pursued by civil detainees, including minor immigrant detainees. This Court has held that the states must provide medical care to detainees, but has declined to decide whether detainee claims for inadequate medical care must be adjudged based on the deliberate indifference standard or some other standard. *See, e.g., City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) (declining to define due process obligation to provide medical attention to pretrial detainees); *City of Canton v. Harris*, 489 U.S. 378, 388 n.8 (1989) (referring to the *Revere* case and again declining to define the standard). The Court has only

gone so far to say that the due process rights of a detainee are "at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere*, 463 U.S. at 244. The lack of definitive guidance from the Court on this issue has allowed lower courts to adopt three different constitutional standards for claims of inadequate medical care brought by detainees.

Under both the Eighth and Fourteenth Amendments, courts have historically adjudicated allegations of inadequate medical care by those in state custody under a deliberate indifference standard. *Estelle v. Gamble,* 429 U.S. 97, 104 (1976). Every circuit court of appeals except the D.C. Circuit and the Federal Circuit has issued decisions applying the deliberate indifference standard to pretrial detainees' claims of constitutionally inadequate medical care. *See, e.g., Ruiz-Rosa v. Rullán*, 485 F.3d 150, 155-56 (1st Cir. 2007); *Caiozzo v. Koreman*, 581 F.3d 63, 72 (2d Cir. 2009); *Groman v. Township of Manalapan*, 47 F.3d 628, 637 (3d Cir. 1995); *Brown v. Harris*, 240 F.3d 383, 388-90 (4th Cir. 2001); *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010); *Spears v. Ruth*, 589 F.3d 249, 254 (6th Cir. 2009); *Smith v. Knox Cnty. Jail*, 666 F.3d 1037, 1039 (7th Cir. 2012) (per curiam); *Krout v. Goemmer*, 583 F.3d 557, 567 (8th Cir. 2009); *Lolli v. County of Orange*, 351 F.3d 410, 419 n.6 (9th Cir. 2003); *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1315 (10th Cir. 2002); *Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1317 (11th Cir. 2010) (per curiam). Three circuit courts of appeal have adopted a variant of deliberate indifference for detainee claims of inadequate medical care that uses objective reasonableness rather than the defendant's subjective state of mind. *See Miranda v. County of*

Lake, 900 F.3d 335, 353-54 (7th Cir. 2018), *reh'g en banc denied*; *Darnell v. Pineiro*, 849 F.3d 17, 34-35 (2d Cir. 2017); *Bruno v. City of Schenectady*, 727 F. App'x 717, 720 (2d Cir. 2018); *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018). By contrast, the professional judgment standard adopted below had not been previously applied to detainees of any age by any circuit court of appeals. Pet. App. A41.

The deliberate indifference standard is also the preferred constitutional test for claims by civil detainees, including immigrant detainees. *See, e.g., E.D. v. Sharkey*, 928 F.3d 299 (3d Cir. 2019); *Harvey v. Chertoff*, 263 Fed. Appx. 188 (3d Cir. 2008); *Zikianda v. County of Albany*, 2015 U.S. Dist. LEXIS 122363 (N.D. N.Y. 2015); *Adekoya v. Herron*, 2013 U.S. Dist. LEXIS 164575 (W.D. N.Y. 2013); *Ramos v. Winiewicz*, 2012 U.S. Dist. LEXIS 43101 (W.D. N.Y. 2012); *Lizama v. Hendricks*, 2014 U.S. Dist. LEXIS 22955 (D. N.J. 2014); *Adegbuji v. Middlesex Cty.*, 2006 U.S. Dist. LEXIS 70527 (D. N.J. 2006); *Baptiste v. Essex Cty.*, 2013 U.S. Dist. LEXIS 175154 (D. N.J. 2005); *Crosby v. Georgakopoulos*, 2005 U.S. Dist. LEXIS 32238 (D. N.J. 2005); *Carlos v. York Cty.*, 2017 U.S. Dist. LEXIS 143136 (M.D. Pa. 2017); *Souleman v. Chronister*, 2012 U.S. Dist. LEXIS 81079 (M.D. Pa. 2012); *Newbrough v. Piedmont Regional Jail Authority*, 822 F. Supp. 2d 558 (E.D. Va. 2011); *Asturias v. Smith*, 2016 U.S. Dist. LEXIS 109251 (N.D. Ala. 2016); *Lijadu v. INS*, 2007 U.S. Dist. LEXIS 23162 (W.D. La. 2007); *Perry v. Barr*, 2019 U.S. Dist. LEXIS 202952 (S.D. Tex. 2019). The rationale underlying these cases is that "immigration detainees are more similarly situated to pretrial detainees than to involuntarily

committed patients[.]" *Newbrough*, 822 F. Supp. 2d. at 575 (*citing Patten v. Nichols*, 274 F.3d. 829, 840-41 (4th Cir. 2001)).

The professional judgment standard adopted below for Doe 4's claim of inadequate mental health care has been utilized by this Court on only one occasion. In *Youngberg v. Romeo*, this Court first articulated the professional judgment standard and applied it to the claim of a person with profound mental disabilities who had been permanently committed to a psychiatric hospital. 457 U.S. 307 (1982). The Court arrived at the professional judgment standard as "the proper standard for determining whether a State adequately has protected the rights of the involuntarily committed mentally retarded." *Id.* at 311. Thus, the Court's adoption of the professional judgment standard in *Youngberg* was limited to a specific institutionalized population as opposed to being generally applicable to all civil detainees. *See Deshaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 200 (1989) (characterizing *Youngberg* as requiring the services necessary to ensure the reasonable safety of involuntarily committed mental patients). This Court has not expanded the application of the professional judgment standard in the nearly 40 years since the *Youngberg* case was decided, which has caused at least one circuit court of appeals to question its continuing vitality. *See Hare v. City of Corinth*, 74 F.3d 633, 647 (5th Cir. 1996). In addition, prior to the ruling below, no circuit court of appeals had applied the professional judgment standard to juvenile detention, and the only other circuit court of appeals court to consider the issue – the Third

Circuit – concluded that deliberate indifference is the appropriate standard. *Luzerne*, 372 F.3d at 584.

This Court should decide the appropriate constitutional standard for minor detainee claims of inadequate mental health care because it affects the administration of public detention centers nationwide. *See Deshaney v. Winnebago Dep't of Social Servs.*, 489 U.S. 189, 194 (1989) (granting certiorari because of "the importance of the issue to state and local governments" and the "inconsistent approaches taken by lower courts" to the issue). In addition to resolving a circuit split with respect to the claims of minor detainees, a decision by the Court would provide clarification in the larger context of the due process rights of civil detainees. As set forth above, the standards delineating the contours of those rights vary not only among circuit courts of appeal, but within the Fourth Circuit below based on citizenship status. The varying standards adopted at the court of appeals level have created confusion with respect to the substantive due process rights of civil detainees. A decision by the Court is necessary for consistency and uniformity in the law.

III. THE DECISION BELOW IS INCORRECT.

A. ORR's absence in this case creates a redressability issue that left the court below without jurisdiction to adjudicate Doe 4's claim.

Standing is a "jurisdictional requirement which remains open to review at all stages of the litigation." *Nat'l Org. for Women v. Scheidler*, 510 U.S. 249, 255 (1994) (citing *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 546-47 (1986)).

Article III of the United States Constitution limits federal courts to "adjudicating actual cases and controversies." *Allen v. Wright*, 468 U.S. 737, 750 (1984) (internal quotations removed). This Court characterizes standing as "an essential and unchanging part" of the case-or-controversy requirement. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To satisfy this requirement and establish standing, a plaintiff must demonstrate (i) a concrete actual or imminent injury, (ii) a causal connection between that injury and the defendant's conduct, and (iii) that the injury is likely to be redressed by a favorable decision. *Id.* at 560-61.

Redressability requirements "become problematic when third persons not party to the litigation must act in order for an injury to arise or be cured." *Doe v. Va. Dep't of State Police*, 713 F. 3d 745, 755 (4th Cir. 2012). *See also Lujan*, 504 U.S. at 569 (finding a redressability problem where agencies funding projects at issue were not parties to the case and would not be bound by relief). Doe 4's claim of inadequate mental health care is not redressable due to his election not to join ORR as a party to this case. *See Lujan*, 504 U.S. at 561 (providing that the party seeking relief bears the burden of establishing constitutional standing). ORR is the legal custodian of all UAC placed at SVJC and was the legal custodian for Doe 4 until he reached 18. *See* 45 C.F.R. § 410.207 ("A UAC who is placed in a licensed program … remains in the custody of ORR"). ORR is the sole decision-maker regarding the placement of UAC and is ultimately responsible for their care, including mental health care. 45 C.F.R. § 410.102(a) ("ORR coordinates and implements the care and placement of UAC who are in ORR custody by reason of their immigration status").

Thus, ORR maintains sole discretion whether to approve medical care, including mental health services for UAC, subject to its obligations under the *Flores* settlement agreement. Doe 4's placement at SVJC and the treatment he received was by exercise of ORR's decision-making authority as legal custodian rather than any independent determination by SVJC.

As legal custodian, ORR has "the ultimate authority" in determining the appropriate provision of medical care to a child in its legal custody. *See United States v. Savage*, 737 F.3d 304, 308 (4th Cir. 2013) (defining legal custody as "the ultimate authority" over a person being detained); *United States v. Welsh*, 879 F.3d 530, 535 (4th Cir. 2018) (defining legal custody as sole responsibility for the "custody, care, subsistence, education, treatment, and training" as opposed to "mere physical custody"); *Perez v. Cuccinelli*, 949 F.3d 865, 875 (4th Cir. 2020) (characterizing legal custody as decision-making authority). Because ORR is not a party to this case, the redressability requirement for Article III subject matter jurisdiction is lacking for Doe 4's claim of inadequate medical care.

The court below concluded that Doe 4 is likely to redress his injuries because the relief sought focuses on treatment and services provided by SVJC. *Id.* at A18. However, as set forth above, SVJC's role as a service provider does not override ORR's rights as legal custodian. Except in emergencies, ORR retains the authority to approve or reject requests for additional or different mental health treatment for UAC in SVJC's physical custody. *Id.* at A21. Under the legal framework adopted below, SVJC and other contracting facilities are now authorized and possibly

required to provide treatment to minors without ORR's prior consent and approval. The trivialization of ORR's decision-making role all but eliminates the intended safeguard of ORR's legal custody and continuing oversight with respect to the medical care provided to unaccompanied minors in detention facilities.

The court of appeals erroneously equated SVJC's role in this case to that of the physical custodian in a habeas corpus action challenging confinement. *Id.* at A18 n.10. However, the federal habeas corpus statute expressly provides that the proper respondent in such an action is the person with immediate physical custody. 28 U.S.C. §§ 2242, 2243; *see also Rumsfeld v. Padilla*, 542 U.S. 426, (2004). By contrast, ORR expressly retains its custodial rights after placing UAC in a third-party facility under the relevant regulatory framework. 45 C.F.R. § 410.207.

The court of appeals also concluded that Doe 4's claim may be redressed because "ORR's actions are not wholly independent from those of SVJC." Pet. App. A20-A21. The court of appeals premised its "wholly independent" test of redressability upon this Court's decision in *Bennett v. Spear*, 520 U.S. 154 (1997). *Id.* In *Bennett*, the plaintiffs challenged a biological determination issued by the Fish and Wildlife Service for a project overseen by the Bureau of Reclamation. 520 U.S. at 158-59. The plaintiffs filed suit against the Fish and Wildlife Service, but did not name the Bureau of Reclamation as a defendant. Both the Fish and Wildlife Service and Bureau of Reclamation are within the jurisdiction of the Department of the Interior, which was also named as a defendant. *Id.* at 159 (*citing* 43 U.S.C. § 371). This Court concluded that the plaintiffs' claim was likely redressable without

the Bureau of Reclamation named as a party due to the "powerful coercive effect" of the Fish and Wildlife Service's determination. *Id*. at 169. In particular, the Court found that, although the Bureau could technically disregard that determination, doing so could result in significant civil fines and criminal punishment including imprisonment. *Id*. at 170.

Pertinent to this case, this Court concluded in *Bennett* that the causation element of standing requiring that an injury be fairly traceable to the defendant "does not exclude injury produced by determinative or coercive effect upon the power of someone else." 520 U.S. at 169. That holding added a caveat to the general principle that such causation is lacking "if the injury complained of is 'the result [of] the independent action of some third party not before the court[.]'" *Id*. (*quoting Lujan*, 504 U.S. at 560-61). Thus, the court of appeals below mistakenly relied upon holdings by this Court with respect to the causation requirement of standing to formulate a new redressability standard. Although the two inquiries are closely related, they yield disparate conclusions in this case due to the fact that physical and legal custody is vested in two different entities.[2] Furthermore, the principle that causation is lacking where an injury is caused by independent action of a third party does not support the Fourth Circuit's conclusion that redressability

[2] The causation and redressability analyses are distinct in that causation "examines the causal connection between the assertedly unlawful conduct and the alleged injury" while redressability "examines the causal connection between the alleged injury and the judicial relief requested." *Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984). Thus, the Court has previously recognized that "it is important to keep the inquiries separate if the 'redressability' component is to focus on the requested relief." *Id*.

requirements are met when third-party actions are not "wholly independent" from those of a party.

The circumstances considered in *Bennett v. Spear* also differ in ways that are fundamentally meaningful to a redressability analysis. There is simply no support in *Bennett* or elsewhere for the Fourth Circuit's conclusion that "ORR would have to approve any changes SVJC proposes[.]" Pet. App. A21. There are no statutory or regulatory provisions which subject ORR to any penalty for disregarding a recommendation by SVJC or any other service provider with respect to medical or mental health treatment. The absence of such a provision is not surprising given that the regulatory framework expressly reserves the authority for ORR to make such determinations. Thus, unlike *Bennett*, ORR may lawfully reject any recommendation given by SVJC without fear of civil fines or criminal penalties. In short, SVJC's authority in the context of medical care and mental health treatment falls far short of the powerful coercive impact, substantial civil fines, and criminal imprisonment that were operative to this Court's analysis in *Bennett*.

In addition, ORR and the Commission are legally independent entities with no obligation to one another apart from the Commission's contractual agreement to provide secure placement services at SVJC. ORR is not a party to this case and would not be bound by any relief awarded to the certified class. Unlike the Bureau of Reclamation in *Bennett*, ORR is not a subordinate component of a named party that can simply be directed to comply with any relief awarded. As a result, ORR may lawfully withhold consent or refuse to fund additional treatment awarded to

the certified class even if Doe 4 were to prevail. The court of appeals failed to cite any case in which a court directed that medical treatment be provided to a minor without a parent, legal guardian, or legal custodian being a party to the case. ORR's absence precludes Doe 4 from meeting the redressability element required for standing under Article III of the U.S. Constitution, and this matter should have been dismissed for lack of jurisdiction.

Thus, apart from deciding the appropriate constitutional standard, this case also involves the significant question of whether a federal court has jurisdiction to direct a party with physical custody of a minor to provide medical or mental health care without joining the minor's parent, guardian, or legal custodian as a party to the proceeding. The precedent announced below impacts the "fundamental" right of parents, guardians, and legal custodians to make decisions concerning the care of children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000). This important jurisdictional question also has an extraordinary impact on detention facilities, hospitals, treatment centers, schools, and other public institutions that have physical but not legal custody of minors. Those facilities may now be subject to a constitutional requirement to provide medical treatment to minors without meaningful oversight from a legal custodian.

B. The professional judgment standard adopted by the court of appeals supplants the objective reasonableness test adopted by this Court for detainee claims of excessive force.

The adoption of the professional judgment standard in the decision below is not confined to the provision of mental health care, but also any use of force

impacting mental health. Pet. App. A8 (citing allegations that SVJC's disciplinary responses worsened mental health issues). This creates overlap between claims of inadequate mental health care and claims of excessive use of force which have been previously adjudged under a discrete constitutional standard formulated by this Court in *Kingsley v. Hendrickson,* 135 S. Ct. 2466 (2015). Thus, the Fourth Circuit's adoption of the professional judgment standard for allegations that a use of force worsened mental health conditions supplants the constitutional standard previously adopted by this Court.

Excessive force claims and inadequate medical care claims have historically been subject to entirely different constitutional standards. The Court first adopted the deliberate indifference standard for prisoner claims of inadequate medical care in *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976). The Court has expressly declined to extend the deliberate indifference standard to claims of excessive use of force in an Eighth Amendment context. *Whitley v. Albers*, 475 U.S. 312, 320 (1986). There is good reason for the distinction. The use of force implicates countervailing safety interests that are not present with respect to the provision of medical care and other conditions of confinement. *Id*. In particular, the deliberate indifference standard "does not adequately capture the importance of such competing obligations, or convey the appropriate hesitancy to critique in hindsight decisions necessarily made in haste, under pressure, and frequently without the luxury of a second chance." *Id*. *See also County of Sacramento v. Lewis*, 523 U.S. 833, 851 (1988) ("[a]s the very

term 'deliberate indifference' implies, the standard is sensibly employed only when actual deliberation is practical").

Excessive force claims brought by pretrial detainees under the Fourteenth Amendment have typically been adjudicated based upon the test of objective reasonableness set forth in *Kingsley v. Hendrickson,* 135 S. Ct. 2466 (2015). Unlike its Eighth Amendment counterpart, the objective reasonableness standard does not inquire into the defendant's subjective state of mind. *Id.* at 2472. However, the other elements of the objective reasonableness standard reflect the countervailing safety considerations and necessary deference that make application of the deliberate indifference standard inappropriate. For instance, factors that may be considered include (i) the relationship between the need for the use of force and the amount of force used, (ii) the extent of a plaintiff's injury, (iii) any effort made by the officer to temper or to limit the amount of force, (iv) the severity of the security problem at issue, (v) the threat reasonably perceived by the officer, and (vi) whether the plaintiff was actively resisting. *Id.*

The Fourth Circuit's adoption of the professional judgment standard may apply to allegations that the use of force has caused a civil detainee's mental health to deteriorate. In that context, the decision below effectively requires juvenile detention facilities to "refrain from imposing any sanctions that someone might regard as strict, because that would awaken some past traumatic episode." Pet. App. A53. Like deliberate indifference, the professional judgment standard is ill-suited to adjudicate such allegations because it does not reflect the competing safety

considerations or necessary deference that has warranted discrete standards under both the Eighth and Fourteenth Amendments under prior decisions of this Court. If left intact, the decision below will replace the constitutional standard announced by the Court in *Kingsley* with the professional judgment standard whenever a mental health impact is attributed to the use of force. This Court should decide this important issue because it abrogates and replaces an existing constitutional standard.

C. The professional judgment standard applied below is contrary to this Court's decision in *Youngberg*.

The professional judgment standard announced by the court of appeals departs markedly from what was formulated by this Court in *Youngberg*. The court of appeals concluded that the professional judgment standard requires a court to "determine whether the treatment provided is adequate to address a person's needs under a relevant standard of professional judgment." Pet. App. A33. This Court rejected similar language adopted in *Youngberg* by the lower court, which held that the claimant could prevail if he "did not receive a form of treatment that is regarded as acceptable for him in light of present medical or other scientific knowledge." 457 U.S. at 313; *Romeo v. Youngberg*, 644 F.2d 147, 169 (3d Cir. 1980). If anything, the articulation of the professional judgment standard adopted in this case is less deferential and more akin to a medical malpractice standard than what this Court rejected in *Youngberg*. *See* 457 U.S. at 314 (referring to Chief Judge Seitz's characterization of the Third Circuit standard as "indistinguishable from those applicable to medical malpractice claims.").

The Fourth Circuit's articulation of the professional judgment standard also fails to afford the deference and the presumption of validity required by this Court in *Youngberg*. This Court was careful in *Youngberg* to "emphasize that courts must show deference to the judgment exercised by a qualified professional[.]" 457 U.S. at 322-23. While at SVJC, Doe 4 was evaluated and treated for mental health issues by no less than four qualified professionals including a psychologist, psychiatrist, and two licensed professional counselors. Pet. App. A56-A57. Under *Youngberg*, the decisions made by those professionals in the course of Doe 4's evaluation and treatment are entitled to a "presumption of correctness." *Youngberg*, 457 U.S. at 324. The failure of the court below to afford the deference and presumption required in *Youngberg* is plainly evident in the court's reliance upon Dr. Lewis's testimony while largely ignoring testimony by the professionals who actually provided treatment at SVJC.

The primary focus of the mental health professionals at SVJC was to take proactive measures to help Doe 4 control anger issues that had caused him to assault staff and other minors. Pet. App. A57. According to Dr. Lewis, the treatment approach employed at SVJC was insufficiently trauma-informed because it did not adequately treat underlying trauma in addition to addressing behavior and acute needs. *Id.* at A14, A26. Dr. Lewis conceded that Doe 4's mental health clinicians at SVJC made efforts to "appropriately respond" to him, only claiming that they didn't "go far enough." *Id.* at A58. Thus, rather than confirming "that professional judgment in fact was exercised", the court of appeals undertook the prohibited task

of specifying "which of several professionally acceptable choices should have been made." *Youngberg*, 457 U.S. at 321. As a result, the decision below creates constitutional consequences for professional disagreement regarding a treatment approach in contravention of the limitations of *Youngberg*.[3] The court of appeals should have affirmed the dismissal of Doe 4's claim of inadequate mental health care even under the professional judgment standard.

IV. THE DECISION BELOW WARRANTS THIS COURT'S REVIEW

The Court should review the decision below to identify the proper constitutional standard for claims of constitutionally-inadequate medical care brought by civil detainees, including minor immigrant detainees. A decision by the Court on that issue is necessary to resolve the current conflict between the decision below adopting the professional judgment standard and a Third Circuit decision adopting the deliberate indifference standard. In addition, a decision would provide clarification in the larger context of substantive due process rights for civil detainees, which are currently subject to three varying constitutional standards adopted at the court of appeals level. As adopted by the court below, the professional judgment standard supplants the objective reasonableness standard prescribed by this Court for claims of excessive use of force brought under the Fourteenth Amendment.

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[3] In addition to running afoul of *Youngberg*, the court of appeals also disregarded its own prior admonitions regarding the constitutional reach of the professional judgment standard. *See Patten v. Nichols*, 274 F.3d 829, 845 (4th Cir. 2001) (professional judgment "does not mean some standard employed by a reasonable expert or a majority of experts in the community ... but rather that the choice in question was not a sham or otherwise illegitimate").

When coupled with its acceptance of trauma-informed care as a relevant standard, the Fourth Circuit's adoption of the professional judgment standard for juvenile detention implicates any administrative policy, practice, or decision impacting mental health. *See, e.g.,* Pet. App. A11 n.7 (describing instance in which Doe 4 did not earn an incentive point for good behavior). The Fourth Circuit's decision may force "a complete redesign of juvenile detention systems" in contravention of efforts by this Court to curtail overly intrusive judicial oversight into public institutions such as prisons and schools. Pet. App. A52, A54; *see also Lewis v. Casey*, 518 U.S. 343 (1996); *Missouri v. Jenkins*, 515 U.S. 70 (1995).

The decision below represents a significant expansion of substantive due process rights when this Court has repeatedly urged that "the utmost care" be observed when doing so. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (*quoting Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)). While a fundamental right to medical care has long been recognized, the decision below greatly expands the scope of that right outside the bounds of current precedent and utilizes a standard that has not been revisited by the Court in several decades. The court of appeals has expanded substantive due process in "an uncharted area" where "guideposts for responsible decisionmaking … are scarce and open-ended." *Washington*, 521 U.S. at 720 (*quoting Collins*, 503 U.S. at 125).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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