No. 21A_____

IN THE

Supreme Court of the United States

PATSY K. COPE; ALEX ISBELL, as Dependent Administrator of, and on behalf of, Estate of DERREK QUINTON GENE MONROE, and his heirs at law,

Applicants,

v.

LESLIE W. COGDILL; MARY JO BRIXEY; JESSIE W. LAWS,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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October 13, 2021

APPLICATION

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicants Patsy K. Cope, individually, and Alex Isbell, on behalf of the estate of Derrek Quinton Gene Monroe, respectfully request a 30-day extension of time, to and including December 13, 2021, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

1. The Fifth Circuit entered judgment on July 2, 2021. *See Cope* v. *Cogdill*, 3 F.4th 198 (App. 1a–53a). The court denied Applicants' petition for rehearing en banc on August 13, 2021. *See* App. 54a. Unless extended, the time to file a petition for certiorari will expire on November 11, 2021. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Derrek Monroe committed suicide by strangling himself with a telephone cord in a jail cell in Coleman County, Texas. During his intake, he informed the jail officials that he wanted to kill himself and had attempted suicide only two weeks earlier. Almost immediately upon entering his jail cell, Monroe attempted suicide—just as he said he would—by trying to strangle himself with jail-supplied bedding.

3. Nonetheless, after his first suicide attempt, jail officials placed Monroe in a jail cell with a telephone and 30-inch cord attached to the wall. That evening,

Jessie Laws, the jail official on duty, looked on as Monroe wrapped the telephone cord around his neck and slumped down to strangle himself. Laws did not immediately call for medical assistance. In fact, he did not immediately call or alert anyone. Instead, he continued mopping the floor. Eventually, Laws called Mary Jo Brixey, the jail administrator, and Sheriff Leslie Cogdill. Neither Cogdill nor Brixey instructed Laws to call 911 and did not call for emergency medical assistance themselves until after they arrived at the jail. Brixey called 911 ten minutes after Monroe began strangling himself; EMS arrived five minutes after that. EMS was unable to resuscitate Monroe. He died the next day.

4. Monroe's estate administrator and his mother, Patsy Cope, filed suit in the United States District Court for the Northern District of Texas, alleging Cogdill, Brixey, and Laws violated Monroe's Fourteenth Amendment rights in part by failing to promptly intervene to prevent his ongoing suicide and, separately, by isolating him in a cell with a ligature despite his known suicide risk.

5. Respondents asserted the defense of qualified immunity and moved for summary judgment, which the District Court denied. For Laws, the District Court ruled that a reasonable officer would have known that "watching Monroe wrap the phone cord around his neck and then failing to assist Monroe," or otherwise promptly intervene, violated his constitutional rights. For all three Respondents, the District Court ruled that a reasonable officer would have known that "housing suicidal inmates in a cell with a phone (and attached cord)" demonstrates "a high and obvious risk of suicide," and thus also violated Monroe's clearly established rights.

6. In a divided 2-1 decision, the Fifth Circuit reversed. App. 1a–19a. For Laws's failure to intervene in Monroe's ongoing suicide, the panel acknowledged that "promptly failing to call for emergency assistance when a detainee faces a known, serious medical emergency—e.g., suffering from a suicide attempt—constitutes unconstitutional conduct." App. 14a. But, the panel went on, "[e]xisting case law * * * was not so clearly on point" as to make the right clearly established. App. 15a. Laws was therefore entitled to qualified immunity, the panel held, even if his failure to promptly call for emergency assistance during Monroe's suicide attempt violated Monroe's constitutional rights.

7. The panel also held that Respondents were entitled to qualified immunity for their decision to place Monroe—who had already attempted to strangle himself while in their custody—in a cell with a telephone cord. App. 16a–17a. The panel recognized that the Fifth Circuit had previously "held that a sheriff was deliberately indifferent when he was 'fully aware that [the detainee] had actually attempted suicide once before, regarded her as a suicide risk at all times during her detention, and yet still * * * ordered loose bedding to be given to her.' " App. 16a (quoting *Jacobs* v. *W. Feliciana Sheriff's Dep't*, 228 F.3d 390, 396 (5th Cir. 2000)). Even so, the panel held that Respondents had qualified immunity because the self-strangulation "danger posed by the phone cord was not as obvious as the dangers posed by bedding." App. 17a.

8. Judge Dennis dissented. He explained that "the majority erroneously grants the officers' qualified immunity defense by embracing an excessively narrow

definition of the clearly established rights at issue and the risk of harm Monroe faced." App. 29a. Judge Dennis reasoned that Laws's failure to promptly intervene in Monroe's ongoing suicide was an "obvious" violation, in that "any reasonable officer should have realized that" their conduct "offended the Constitution." App. 37a (quoting *Taylor* v. *Riojas*, 141 S. Ct. 52, 54 (2020) (per curiam)). Similarly, he concluded that any reasonable officer would have known that isolating Monroe, or any other suicidal inmate, in a cell with "an obvious potential ligature for suicide"—whether it be bedsheets, a phone cord, or some other obvious ligature—violated his constitutional rights. App. 22a.

9. The Fifth Circuit's decision conflicts with the precedents of this Court, splits with decisions from several other circuits, and presents a question of tremendous importance on the scope and operation of qualified immunity. As this Court has recently reaffirmed (in another case coming from the Fifth Circuit): Officials are not entitled to qualified immunity where the constitutional violation they committed is so obvious that "any reasonable officer should have realized that" their conduct "offended the Constitution." *Taylor*, 141 S. Ct. at 54. The Fifth Circuit misapplied that precedent by requiring precisely analogous cases to overcome qualified immunity even for the obvious violations at issue here. Regardless of the case law on point, any reasonable jail official would know that a pre-trial detainee's rights are violated if an official does not promptly intervene during his ongoing suicide attempt, or if an official places him in a cell with a phone cord despite his recent, and well-known, attempts to strangle himself. The Fifth Circuit's opinion also splits with several other

circuits, which have concluded that officials are not entitled to qualified immunity under circumstances similar to those presented here. *See, e.g.*, *Sandoval* v. *County of San Diego*, 985 F.3d 657, 678–680 (9th Cir. 2021) (holding that officials who failed to call for medical assistance during a suicide were not entitled to qualified immunity even though the court had "never before addressed the specific factual circumstances" presented).

10. The decision below gives rise to a second question that merits this Court's review. In *Kingsley* v. *Hendrickson*, this Court held that "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one." 576 U.S. 389, 397 (2015). In its decision below, the Fifth Circuit held that *Kingsley*'s objective standard does not extend to a pre-trial detainee's deliberate indifference claim. *See* App. 11a, n.7. Applying a subjective standard, the Fifth Circuit held that because Applicants had not proven Respondents subjectively knew that a phone cord presented a suicide risk, Respondents were entitled to qualified immunity. App. 16a–17a & n.11. In doing so, the Fifth Circuit waded into an entrenched circuit split on an important issue of law that only this Court can resolve. The decision below joined the Eighth, Tenth, and Eleventh Circuits, which have also held that deliberate-indifference claims brought by pre-trial detainees require a showing of the defendant's subjective knowledge. *See Strain* v. *Regalado*, 977 F.3d 984, 989 (10th Cir. 2020); *Whitney* v. *City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018); *Nam Dang ex rel. Vina Dang* v. *Sheriff, Seminole Cnty.*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017). And it parted with the Second, Sixth, Seventh, and Ninth Circuits, which apply *Kingsley*'s

solely objective standard to a pre-trial detainee's deliberate-indifference claims. *See Brawner* v. *Scott County*, No. 19-5623, 2021 WL 4304754, at *7 (6th Cir. Sept. 22, 2021); *Darnell* v. *Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017); *Miranda* v. *County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Castro* v. *County of Los Angeles*, 833 F.3d 1060, 1070–71 (9th Cir. 2016) (en banc).

11. Catherine E. Stetson of Hogan Lovells US LLP, Washington, D.C., was retained on behalf of Applicants Patsy K. Cope and Alex Isbell, on behalf of the estate of Derrek Quinton Gene Monroe, to file a petition for certiorari. Over the next several weeks, counsel is occupied with briefing deadlines and arguments for a variety of matters, including: (1) oral argument in *LifeWatch Services Inc.* v. *Highmark Inc.*, No. 21-1142 (3d Cir.), scheduled for October 14; (2) a petition for certiorari in *In re Alphabet, Inc. Securities Litigation*, No. 20-15638 (9th Cir.), due October 21; (3) oral argument in *Citadel Securities LLC* v. *SEC*, No. 20-1424 (D.C. Cir.), scheduled for October 25; (4) oral argument in *BASF Plant Science, LP* v. *Commonwealth Scientific & Industrial Research Organisation*, Nos. 20-1415, 20-1416, 20-1919, 20-1920 (Fed. Cir.), scheduled for November 1; and (5) a petition for certiorari in *Ramirez* v. *Guadarrama*, No. 20-10055 (5th Cir.), currently due November 22. Applicants request this extension of time to permit counsel to research the relevant legal and factual issues and to prepare a petition that fully addresses the important questions raised by the proceedings below.

12. For these reasons, Applicants respectfully requests that an order be entered extending the time to file a petition for certiorari to and including December 13, 2021.

Respectfully submitted,

/s/ Catherine E. Stetson

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