

No. _____

**In The
Supreme Court of the United States**

LADDIE HUFFMAN, FORMER SHERIFF, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITIES;
EDDIE SCOTT, SHERIFF, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITIES,

Petitioners,

v.

RACHEL HARRIS, GUARDIAN OF STEVEN JESSIE
HARRIS ON BEHALF OF STEVEN JESSE HARRIS,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In a Section 1983 action against county sheriffs arising from the detention of an incompetent criminal defendant, a court must grant qualified immunity unless the county sheriffs violated constitutional duties that were clearly established by the existing law. In this case, the Fifth Circuit found that due to the length of the detention, the Due Process Clause obligated county sheriffs to release a violently dangerous schizophrenic inmate against whom criminal charges remained pending and whose criminal prosecution and civil commitment proceedings had stalled for reasons outside the sheriffs' knowledge or control. Further, the Fifth Circuit impermissibly affirmed the denial of qualified immunity by defining the county sheriffs' constitutional obligations at a "high level of generality" and without case law to clearly delineate their constitutional duties particularly under the unusual circumstances. In so doing, the Fifth Circuit not only deviated from the appropriate qualified immunity analysis but enshrined new obligations within the Due Process Clause of the Fourteenth Amendment that are both impractical and undefined. Petitioners, therefore, ask the Court to review the Fifth Circuit's qualified immunity analysis, including whether Petitioners owed the constitutional duties found to exist, so as to correct the injustice in this case and avoid complications and errors in future cases. The questions are:

1. Whether the Fifth Circuit erred in finding that the Due Process Clause imposes an obligation on county sheriffs to release a violently

QUESTIONS PRESENTED—Continued

dangerous schizophrenic inmate whose criminal charges remained pending and whose court proceedings were stalled, and then denying qualified immunity in the absence of clearly established law?

2. Whether the Fifth Circuit erred in imposing an obligation on jailers to inquire as to the status of an inmate's court proceedings without providing any guidance or parameters for compliance?

PARTIES TO THE PROCEEDINGS

Petitioner Laddie Huffman is the former Sheriff for Clay County, Mississippi. Petitioner Huffman was named as a defendant in this lawsuit in his individual and official capacities.

Petitioner Eddie Scott is the Sheriff, and former Deputy Sheriff, for Clay County, Mississippi. Petitioner Scott was named as a defendant in this lawsuit in his individual and official capacities.

Respondent is Rachel Harris, the mother of Steven Jesse Harris. Respondent filed this lawsuit as the Guardian of Steven Jessie Harris on behalf of Steven Jesse Harris.

No corporations are parties to the proceedings.

STATEMENT OF RELATED CASES

- *Harris v. Clay County*, Case No. 1:18-cv-167-MPM-RP, United States District Court for the Northern District of Mississippi. Judgment entered May 19, 2021.
- *Harris v. Clay County*, Case No. 21-60456, Court of Appeals for the Fifth Circuit. Judgment entered August 24, 2022.

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OPINIONS AND JUDGMENTS BELOW

The United States District Court for the Northern District of Mississippi denied Petitioners' motion for summary judgment on qualified immunity grounds on May 19, 2021. *Harris v. Clay County*, Case No. 1:18-cv-167-MPM-RP, 2021 WL 2004111 (N.D. Miss. May 19, 2021). The United States Court of Appeals for the Fifth Circuit affirmed in an initial opinion issued on July 11, 2022, *Harris v. Clay County*, 40 F.4th 266 (5th Cir. 2022). In response to a request for rehearing *en banc*, the panel changed the analysis in a substituted opinion dated August 24, 2022. *Harris v. Clay County*, 47 F.4th 271 (5th Cir. 2022).

**STATEMENT OF JURISDICTION**

The Fifth Circuit had appellate jurisdiction because the district court's denial of qualified immunity was a final decision within the meaning of 28 U.S.C. § 1291. *See Mitchell v. Forsyth*, 472 U.S. 511, 524-30 (1985). Petitioners timely requested rehearing *en banc* on July 25, 2022. In response, the panel issued a substituted opinion on August 24, 2022. This petition is being timely filed within 90 days thereafter which, if granted, will provide jurisdiction for this Court to review the Fifth Circuit's opinion. SUP. CT. R. 13(1), (3); 28 U.S.C. § 1254(1).



CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

Respondent seeks damages for alleged violations of the Due Process Clause of the Fourteenth Amendment of the United States Constitution which provides in pertinent part that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . .” U.S. Const. amend. XIV, § 1.

Title 42 U.S.C. § 1983 provides in pertinent part that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof 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 proper proceeding for redress.”

STATEMENT OF THE CASE

A. Introduction

After being arrested for a violent crime spree that included the murder of his father, stabbings, carjacking, shootings, and kidnapping, Steven Jessie Harris was ordered to the custody of the Clay County Sheriff to be held without bond. (Pet. App. at 2-3.) After a mental health evaluation was conducted, the Circuit Court of Clay County found him to be incompetent to stand trial and ordered the State of Mississippi to file a civil commitment petition in the Chancery Court of Clay

County. (Pet. App. at 3.) The Chancery Court dismissed the petition, however, finding it lacked jurisdiction because Harris' criminal charges remained pending in the Circuit Court, and entered an order transferring Harris' case back to the Circuit Court. (Pet. App. at 39-40.) The transfer order (dated October 20, 2010), however, went no further than the Chancery Court's file as it was not forwarded to the Circuit Court, let alone Petitioners. (Pet. App. at 39-40.) Consequently, Harris continued to be detained in the Clay County jail for several years until a new prosecutor asked the Chancery Court, on May 20, 2016, to reconsider its dismissal of the civil commitment petition. (Pet. App. at 4-5.) The Chancery Court reconsidered that dismissal and committed Harris to a mental health facility on June 15, 2016. (Pet. App. at 5.) A year later, on July 25, 2017, the Circuit Court dismissed the criminal charges but without prejudice should Harris regain his competency to stand trial. (Pet. App. at 5, 50-51; District Court ECF Doc. 335-22.) As noted in that order, the Chancery Court had failed to serve the transfer order or otherwise advise the Circuit Court that Harris had not been committed to a mental health facility. (Pet. App. at 40.)

During the time that Harris' court cases were in limbo, Petitioners (Sheriff Huffman and then his successor Sheriff Scott) were informed by the prosecutor's office that Harris' case was being continued to the next term. (District Court ECF Doc. 330-17, 93:9-12.) It was not until a new district attorney was elected in 2016 that Mississippi finally got Harris' case moving by asking the Chancery Court to reconsider its earlier

dismissal of the State’s civil commitment petition. (Pet. App. 48-49.)

The district court in this Section 1983 action squarely faulted the prosecutor “in not filing an emergency appeal with the Mississippi Supreme Court regarding the impasse in the state court, once he learned of it” (Pet. App. at 77) and noted that “it seems likely that this sad circumstance would have been prevented had Allgood appealed the state court impasse to the Mississippi Supreme Court.” (Pet. App. at 97.) Although the district court did not find case law that clearly established a constitutional obligation by the sheriffs in this circumstance, it nevertheless found they had a “duty to clarify” Harris’ status with the courts, noting that it “strongly suspects that, if the County had taken this action, then this would have been sufficient to get this moving in circuit and/or chancery court.” (Pet. App. 99.) Qualified immunity was denied accordingly.

Initially, the Fifth Circuit affirmed on a different basis, finding that *Jauch v. Choctaw County*, 874 F.3d 425 (5th Cir. 2017)—decided after the Harris’ detention in this case—clearly established the law with respect to Petitioners’ constitutional duties. (Pet. App. 31-34.) The Fifth Circuit also cited *Jackson v. Indiana*, 406 U.S. 715 (1972), where this Court ruled that a State could not detain an individual indefinitely who is incompetent to stand trial without a civil commitment. (Pet. App. 31.) In seeking rehearing *en banc*, Petitioners noted that *Jackson* did not clearly establish the law with respect to jailers under the unusual

circumstances presented in the case, and that *Jauch* was not decided until after the events here. Six judges dissented from the denial of rehearing *en banc* in *Jauch*, which caused Petitioners to ask, “If six judges so believed in 2017 [that *Jauch* should be reheard] then how could Appellants have had reasonable notice during Harris’ detention in 2010?”

In response, the panel withdrew its initial opinion and abandoned its reliance on *Jauch* as clearly establishing the applicable law. (Pet. App. at 2, 15-16.) Instead, in the substituted opinion, the panel relied on *Jackson and Whirl v. Kern*, 407 F.2d 781 (5th Cir. 1968) to hold that “the sheriffs’ actions were an ‘obvious’ constitutional violation” pursuant to the “rare case” exception recognized in *Hope v. Pelzer*, 536 U.S. 730 (2002). (Pet. App. at 15-16.) *Whirl*—which was decided before the present-day Section 1983 jurisprudence was established in such cases as *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978)—was cited for the broad proposition that “sheriffs can be held responsible for unlawful detentions.” (Pet. App. at 15.) The Fifth Circuit concluded that Harris “should have been released under Supreme Court precedent” such that qualified immunity was properly denied. (Pet. App. at 16.)

The Fifth Circuit’s overly generalized articulation of the clearly established law disregards this Court’s oft-repeated admonitions that clearly established law cannot be defined at a high level of generality. See *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018). Even

beyond that, the Fifth Circuit has imposed new affirmative constitutional requirements upon jailers to release even violent and mentally ill individuals who pose a grave danger to the community despite a detention order entered in a stalled criminal proceeding over which they have no control. This untenable bind threatens to wreak havoc, particularly in larger jurisdictions with thousands of inmates, and cannot be squared with the denial of qualified immunity which protects “all but the plainly incompetent or those who knowingly violated the law.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015).

Accordingly, this petition for a writ of certiorari should be granted.

B. Facts and procedural history

Harris was arrested after a “horrific crime spree in 2005” and charged with “murdering his father, shooting three law enforcement officers, shooting into occupied vehicles, carjacking, and kidnapping.” (Pet. App. at 2.) After the Circuit Court denied bail and commanded Harris to the custody of Clay County, a psychiatric evaluation was ordered as Harris “had a long history of suffering from schizophrenia.” (Pet. App. at 3.) That process took several years until October 12, 2010, when the Circuit Court declared Harris incompetent to stand trial and ordered Mississippi to pursue civil commitment. (Pet. App. at 3.) The Circuit Court also ordered Harris to “remain in custody until the termination of said civil proceedings.” (Pet. App. at 3.)

That same day, the district attorney filed a civil commitment petition in the Chancery Court,¹ which entered an order two days later requiring Harris to be “confined and retained at Clay County Jail and there held (and given such treatment by physician as is indicated by standard medical practice), pending the hearing to be set and held according to law.” (Circuit Court Record at ROA 7122.)

Instead of hearing the petition, however, the Chancery Court determined that jurisdiction was absent because Harris’ criminal charges remained pending in the Circuit Court. (Pet. App. at 39.) On that basis, in an order dated October 20, 2010, the Chancery Court transferred the case back to the Circuit Court. (Pet. App. at 40.) *Critically, however, the order was not sent to the Circuit Court² and was never communicated to the Sheriff.* (Pet. App. at 40.) And because Harris’ case had been removed from the Circuit Court’s active docket that court “never caught wind of the Chancery Court’s dismissal.” (Pet. App. at 4.) This confluence of events sent “Harris into legal limbo” (Pet. App. at 4) as neither the prosecutor nor Harris’ counsel challenged

¹ “[C]ircuit courts hear felony criminal proceedings and civil lawsuits. Chancery courts have jurisdiction over matters of equity, including, as relevant here, civil commitment proceedings.” (Pet. App. at 3 n.2.) (citations omitted).

² As the district court observed, “as a result of the failure to serve the chancery court transfer order . . . , [the circuit court judge] was unaware that the chancery court had declined to conduct the commitment proceedings.” (Pet. App. at 40.)

the Chancery Court's ruling nor involved the Circuit Court. (Pet. App. at 56.)

Harris' court cases remained inactive until October 8, 2012, when the prosecutor (Forrest Allgood) asked the Circuit Court to re-evaluate Harris' competency. (Pet. App. at 4.) Allgood took no action to have the motion heard, however, even though he knew Harris was being held in jail without a civil commitment order. (Pet. App. at 4-5.)

Meanwhile, Petitioner Huffman who was the sheriff when Harris was initially detained, had contacted both the prosecutor and the judge because he "didn't need to be housing him over there in the jail if he's insane or incompetent." (Pet. App. at 65.) When Petitioner Scott became the sheriff in January 2012, he was repeatedly told by the prosecutor that Harris was being "continued to the next term." (District Court ECF Doc. 330-17, 93:9-12.)

Harris' court cases remained dormant until May 20, 2016, when the new district attorney asked the Chancery Court to reconsider its determination (in October 2010) that it lacked jurisdiction to conduct a civil commitment hearing. (Pet. App. at 5.) By order dated June 15, 2016, the Chancery Court finally held the hearing on the State's petition that the Circuit Court had ordered almost six years earlier, at which point Harris was committed to a mental health facility. (Pet. App. at 5.) A year later, the Circuit Court dismissed the criminal charges but without prejudice in the event

that Harris regained competency. (Pet. App. at 5; District Court ECF Doc. 335-22.)

Although the district court faulted the district attorney for not appealing the Chancery Court's dismissal, it found the prosecutor enjoyed absolute immunity for his inaction. (Pet. App. at 57-63.) Turning to Petitioners, the district court acknowledged that there was no pre-existing law that clearly established a constitutional obligation on jailers to inquire into an inmate's court-ordered detention. (Pet. App. at 101.) The district court nevertheless faulted Petitioners for not doing more given the length of Harris' detention:

In the court's view, the Clay County Sheriff could, and should, have gone to [the County's] attorney for advice on plaintiff's incarceration, and, if he had done so, then even a cursory review of the law in this context would have raised grave concerns in that counsel's mind that plaintiff's constitutional rights were being violated. In that scenario, the County's attorney could have contacted the circuit and chancery court judges involved in the impasse and raised concerns that plaintiff's constitutional rights were being violated by his indefinite incarceration with no apparent prospects of either a trial or civil commitment proceedings being held.

This court strongly suspects that, if the County had taken this action, then this would have been sufficient to get this moving in circuit and/or chancery court.

(Pet. App. 99-100.) Further, the district court stated that “the County could have filed an emergency appeal to the Mississippi Supreme Court seeking to order one of the courts involved to take action in this matter. Even if, for whatever reason, neither of these steps were sufficient to resolve this matter and plaintiff remained in jail, then this court would be hard pressed to place the blame upon the County in this matter.” (Pet. App. at 100.)

In denying qualified immunity to Petitioners, the district court did not cite to any case law to support these obligations, let alone clearly establish them as due process requirements, and instead relied on the “obvious case” that is an “exception to the exceedingly stringent showing of prior precedent which applies in most qualified immunity cases.” (Pet. App. at 102-04.)

Initially, the Fifth Circuit affirmed the denial of qualified immunity but disagreed with the district court’s reasoning. Specifically, the Fifth Circuit criticized the district court for “mistakenly believing” that Petitioners’ constitutional obligations were not clearly established by the case law, citing *Jauch, supra*. (Pet. App. at 30-31 n.9.) As such, it found that “[r]esorting to obviousness is unnecessary.” (Pet. App. at 31.) The panel also relied upon the general rule from *Jackson v. Indiana*, 406 U.S. 715 (1972), that an “incompetent defendant, who has no reasonable expectation of restored competency, must be civilly committed or released.” (Pet. App. at 31.)

Petitioners moved for rehearing *en banc*, contending in the main that even if *Jauch* applied to the facts, “*Jauch* could not have clearly established a constitutional violation because it was decided in 2017, *after* Harris had been released to civil confinement in 2016.” Petitioners noted that six judges had dissented from the denial of rehearing *en banc* in *Jauch*, which further calls into question the cases cited within *Jauch* to the facts at bar. Petitioners further emphasized that this Court’s decision in *Jackson* addressed the obligations of the State as the prosecutor and could not clearly establish the law with respect to jailers particularly under the circumstances presented in this case.

The Fifth Circuit panel responded to the petition for rehearing *en banc* by withdrawing its original opinion and substituting an opinion that again affirmed the denial of qualified immunity. (Pet. App. at 1-2, 15-16.) This time, the panel abandoned its reliance on *Jauch* as clearly establishing the law and instead relied on *Jackson* as allowing “no wiggle room; its line is as bright as they come: An incompetent defendant who has no reasonable expectation of restored competency must be civilly committed or released.” (Pet. App. at 15.) It further cited to a 1968 decision in *Whirl v. Kern*, 407 F.2d 781 (5th Cir. 1968), as holding that sheriffs can be liable for unlawful detentions. (Pet. App. at 15-16.) On these twin bases, the Fifth Circuit affirmed the denial of qualified immunity to Petitioners, finding that “the circuit court’s order informed the jailers that Harris should remain detained only so long as his

commitment proceeding was pending.”³ (Pet. App. at 15-16.)

For the reasons presented below, the Fifth Circuit “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” SUP. CT. R. 10(c). Review is warranted to address these critical and recurring procedural and substantive issues in the due process and qualified immunity contexts.

◆

REASONS FOR GRANTING THE WRIT

A. The Fifth Circuit erred by creating a due process obligation to fit the facts of the case under the guise of a qualified immunity analysis.

This Court has repeatedly admonished district and circuit courts not to define clearly established law “at a high level of generality.” *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018); *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018); *White v. Pauly*, 137 S. Ct. 548,

³ The Fifth Circuit also noted that an arrest warrant that was issued for Harris while he was in custody was returned on October 25, 2010, with an indication that Harris could not be located. (Pet. App. at 4.) The Fifth Circuit seized on this as a possible intent to keep Harris “hidden” from the courts—but the courts knew Harris’ whereabouts as the Circuit Court had only days prior (on October 12, 2010) ordered Mississippi to commence civil commitment proceedings, and the Chancery Court dismissed the civil commitment petition on October 20, 2010. (Pet. App. at 3.) At best, the statement in the declaration was an administrative oversight that had nothing to do with Harris’ existing detention.

552 (2017). Yet the Fifth Circuit did precisely that by extrapolating from obligations of the State as the prosecutor in *Jackson* and from a general principle in the 1968 decision in *Whirl* to deprive Petitioners of qualified immunity in the highly unusual circumstances presented in this case over which they had no control. Indeed, on the facts presented in this case, Petitioners' constitutional obligations were anything *but* "obvious."

1. *Jackson* does not define Petitioners' obligations.

In *Jackson*, a criminal defendant who had been declared incompetent to stand trial had been "committed to the Indiana Department of Mental Health until such time as that Department should certify to the court that 'the defendant is sane.'" 406 U.S. at 719. The Court determined that an inmate's indefinite commitment "solely on account of his incompetency to stand trial does not square with the Fourteenth Amendment's guarantee of due process." *Id.* at 731. Instead, absent a "substantial probability" that competency will be attained, "then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant." *Id.* at 738.

Consistent with *Jackson*, the State of Mississippi *did* "institute the customary civil commitment proceeding that would be required to commit [Harris] indefinitely." The paradox is that the Chancery Court did not fulfill *its* responsibility to commit Harris civilly, but

instead erroneously dismissed the petition and ordered the case to be transferred back to the Circuit Court. (Pet. App. at 40.) The Chancery Court never forwarded the order to the Circuit Court, however, nor did Mississippi appeal or ask the Chancery Court to reconsider, which left Harris within the sheriffs' custody. (Pet. App. at 40, 56.)

To release Harris under these circumstances Petitioners would have had to: (1) know of the Chancery Court's dismissal for lack of jurisdiction; and (2) interpret the Circuit Court's order as requiring Harris' release despite the Chancery Court's transfer back to Circuit Court in light of the pending criminal charges. The Circuit Court's order did not account for the contingency that Harris would not be committed and his case would be returned to the Circuit Court for prosecution. Yet county sheriffs are charged with following detention orders, not resolving jurisdictional conflicts between courts or extrapolating the meaning of vague court orders—especially when they have no knowledge thereof. *Jackson* obligates the State to petition the courts to commit incompetent criminal defendants; neither jailers nor sheriffs are involved in that process; it says nothing at all on the obligations of the inmate's custodian under the unique and unusual circumstances presented in this case. Therefore, the Fifth Circuit's finding that *Jackson* clearly established a constitutional duty owed by Petitioners runs afoul of qualified immunity jurisprudence.

Jackson is inapplicable as well because it did not involve a defendant who was charged with murder,

shooting three law enforcement officers, carjacking two college students and committing a plethora of other violent crimes that demonstrated his inherent dangerousness and who was denied bail because of his dangerousness. Indeed, the doctors who examined Harris in 2008 found that he was at risk for future violence. (Pet. App. at 38.) Eight years later, the Chancery Court concluded that Harris was still a danger to himself and others and committed him to the State hospital. (Pet. App. at 5, 50.) In contrast, the defendant in *Jackson* was charged with robbing two women of a total of seven dollars, which the Supreme Court held was insufficient to establish the petitioner's dangerousness. *Jackson* did not place a reasonable jailer in Petitioners' position on notice that they were constitutionally obligated to release an extremely dangerous individual with schizophrenia charged with numerous violent crimes into the community because of a jurisdictional snafu between two courts.

Jackson is distinguishable for a whole host of other reasons, including that it did not involve the constitutional duties of a jailer or sheriff where a court dismissed a civil commitment petition on an erroneous jurisdictional ground and not on the merits, and then failed to notify the criminal court or Petitioners of its ruling. Nor did *Jackson* address whether a jailer has a constitutional duty to release a criminal defendant who has been denied bond before the criminal charges against him have been dismissed by the court.

Certiorari is warranted to review the Fifth Circuit's reliance on *Jackson* to deprive Petitioners of qualified immunity,

2. *Whirl* does not define Petitioners' obligations.

The other case cited by the Fifth Circuit to deny qualified immunity was its 1968 decision in *Whirl v. Kern* that was issued well before *Harlow v. Fitzgerald* ushered in the contemporary concept and framework for analyzing qualified immunity defenses. Moreover, it is plainly distinguishable on its facts as the inmate had been held in jail for nine months *after his charges had been dismissed*. The core issue in *Whirl* was whether the plaintiff could sustain a Section 1983 claim for false imprisonment based on negligence and without evidence that the sheriff acted with an improper motive. Analyzing Section 1983 "against the backdrop of tort liability," the Fifth Circuit held that improper motive was not a prerequisite. *Whirl* did not address qualified immunity nor been cited for federal constitutional principles.

Additionally, *Whirl* involved evidence that the sheriff's office *was* notified that the criminal charges had been dismissed. No such evidence exists in this case; indeed, the Chancery Court specifically stated it lacked jurisdiction over the civil commitment petition *because "criminal charges are pending."* This fact further renders *Whirl* inapposite especially given the horrendously violent nature of the crimes with which

Harris was charged and the procedural complications involved with his competency proceedings, neither of which were present in *Whirl*.

Certiorari is warranted to review the Fifth Circuit's reliance on *Whirl* to deprive Petitioners of qualified immunity.

3. The rare “obvious case” exception does not apply to the highly unusual circumstances presented.

Without prior case law to clearly establish a constitutional obligation that Petitioners breached, the lower courts resorted to the “obvious case” exception to deprive Petitioners of qualified immunity, citing to *Hope v. Pelzer*. *Hope* involved the handcuffing of an inmate to a hitching post for seven hours in the hot Alabama sun, without regular water or bathroom breaks, as punishment for not working on a “chain gang.” This Court reversed the grant of immunity finding there did not need to be a case with identical facts as long as the government official had “fair warning” that their conduct is unlawful. In *Hope*, for example, the Court noted that a Department of Justice report to the Alabama Department of Corrections, which found that the use of a hitching post “constituted improper corporal punishment.” *Id.* at 745. “Accordingly, the DOJ advised the ADOC to cease use of the hitching post in order to meet constitutional standards,” lending “support to the view that reasonable officials in the ADOC should have realized that the use of the hitching post under the

circumstances alleged by Hope violated the Eighth Amendment prohibition against cruel and unusual punishment.” *Id.* Finally, the Court noted:

The obvious cruelty inherent in this practice should have provided respondents with some notice that their alleged conduct violated Hope’s constitutional protection against cruel and unusual punishment. Hope was treated in a way antithetical to human dignity—he was hitched to a post for an extended period of time in a position that was painful, and under circumstances that were both degrading and dangerous. This wanton treatment was not done of necessity, but as punishment for prior conduct.

Id. at 745-46. The combination of these factors provided sufficiently “fair and clear warning” to preclude qualified immunity. *Id.* at 745.

The Court has since characterized *Hope*’s exception as limited to “rare ‘obvious cases’” (*Wesby*, 138 S. Ct. at 590) involving “extreme circumstances” or “particularly egregious facts.” *Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020). Although it may have been “obvious” that Harris should have been committed to a mental health facility, it is far from “obvious” that Petitioners were obligated—as a constitutional duty—to see to it that the State of Mississippi and the courts followed through on the civil commitment petition. Nothing remotely akin to the DOJ report in *Hope* gave Petitioners “fair and clear warning” that the Due Process Clause required them to prompt the courts to process the

State's petition, let alone release a dangerously violent schizophrenic from jail in the absence of action by the courts.

Tellingly, the Fifth Circuit retreated from its initial reliance on its 2017 decision in *Jauch* to deny qualified immunity once Petitioners pointed out in the rehearing request that *Jauch* post-dated Harris' detention in this case. In *Jauch*, the plaintiff had been detained for 96 days during which time "her requests to be brought before a judge and allowed to post bail were denied." *Id.* at 428. The sheriff justified her detention based on his policy to wait until the next term of the Circuit Court commenced before taking arrestees before a judge. *Id.* at 428, 435. The Fifth Circuit found that "[p]rolonged pre-trial detention without the oversight of a judicial officer and the opportunity to assert constitutional rights is facially unfair." *Id.* at 434. It then denied qualified immunity based on its finding that the "prolonged detention *without the benefit of a court appearance* violates the detainee's Fourteenth Amendment right to due process." *Id.* at 435-37 (emphasis added).

Of course, Harris was not held without a court appearance or a bail hearing as would have been necessary for *Jauch* to apply on its facts. Moreover, six judges joined a dissent from the denial of rehearing *en banc*, stating in part that existing law "fails to put every, and I would say any, reasonable official on notice as the constitutionally permissible limit of detention following a *capias* warrant." *Jauch*, 886 F.3d at 539 (Southwick, J., dissenting). If six circuit judges who

consider constitutional principles day in and day out thought the law was not clearly establish before *Jauch*, how could this case fall within the “obvious case” exception that is intended to apply in “rare” cases as this Court has cautioned? Certiorari review is warranted to explore the Fifth Circuit’s retreat from relying on *Jauch* as clearly established law to the “obvious case” exception to affirm the denial of qualified immunity to Petitioners.

B. Left unreviewed, the Fifth Circuit’s opinion imposes new affirmative constitutional obligations on jailers regarding criminal defendants within their custody without any procedural guidance.

The Fifth Circuit’s decision has important implications for every government official well beyond Petitioners. As this Court has recognized, running a prison is “an inordinately difficult undertaking” (*Turner v. Safley*, 482 U.S. 78, 84-85 (1987)) such that courts “must take account of the [government’s] legitimate interests in managing a jail.” *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015). Yet the Fifth Circuit has not taken heed of that instruction by exponentially complicating the already-difficult task of managing a jail. The decision now imposes upon every government an affirmative constitutional duty to become involved in resolving jurisdictional questions, questioning slowdowns in the judicial process, and ascertaining the status of criminal proceedings.

Larger jails and prisons that process thousands of inmates in various stages of detention, interface with burdened court dockets, transport inmates to court, and book people into notoriously overcrowded jails, now have added to their statutory duties a constitutional duty not just to execute court orders but to monitor the court's progress. Whereas the district court suggested that Petitioners could have retained counsel to bring legal proceedings, the Fifth Circuit found that they were "clearly" obligated to release Harris, a dangerous and violent individual, from their custody. Such a requirement would put custodians between Scylla and Charybdis by risking an exposure to Section 1983 liability by creating a danger to the public. See *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189 (1989). Either way, the Fifth Circuit's opinion, left unreviewed, provides no guidance on how these competing obligations can be satisfied.

◆

CONCLUSION

Harris was detained for a sustained period of time because the State of Mississippi did not see to it that he was civilly committed following a determination that he was incompetent to stand trial. Neither the State nor Harris' own counsel took action to resolve the conflict between the Circuit Court and the Chancery Court as to Harris' status. Yet after finding that the prosecutor enjoyed absolute immunity, the district court candidly stated that "it is *essential* that someone involved in the unlawful detention of citizens in this

state face a real prospect that they might have to explain their actions to a jury some day.” (*Id.* at 43) (emphasis in original.) That “someone” happened to be the Petitioners who were not parties to Harris’ court cases and had no control over their progress. Certainly, nothing in the case law prescribed how Petitioners were obligated to proceed under the Due Process Clause, let alone gave “fair and clear warning” that they could be liable under Section 1983.

From a legal perspective, the Fifth Circuit’s decision conflicts with fundamental principles of the qualified immunity analysis that has been established by this Court. Even beyond that, the decision creates obligations on all jailers in all types of jurisdictions to confirm the status of an inmate’s criminal proceedings without providing any reference points as to how the duty is to be met. Accordingly, Petitioners respectfully request that a writ of certiorari to review the Fifth Circuit’s denial of qualified immunity in this matter.

Respectfully submitted,

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