No. _____

In The
Supreme Court of the United States

HYRUM JAMES GEDDES,

Petitioner,

v.

WEBER COUNTY, WAYNE MOSS, ROBERT SHANER, KARLEE DRAKE, AND JAMIE TOONE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Mr. Geddes filed a civil action pursuant to 42 U.S.C. § 1983 against Respondent Weber County and against the individual jailers employed by Weber County. Mr. Geddes claimed that he suffered serious injuries as a result of "objectively unreasonable force" employed by the individual jailers after custody was relinquished to and he was being detained by the Weber County Jail. (App. 36-37, 69-85.) This case presents the following issues:

I.

Is the test of objective reasonableness applicable to a claim of excessive force enunciated by this court in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015) (decided under the Fourteenth Amendment) the same objective standard as the test of objective reasonableness enunciated by this court in *Graham v. Connor*, 490 U.S. 386 (1989) (decided under the Fourth Amendment) as applied to the specific circumstances presented in the context of an individual being held in a detention facility?

II.

After this Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), do the protections afforded by the Fourth Amendment against use of objectively

QUESTIONS PRESENTED – Continued

unreasonable force end and those afforded by the Fourteenth Amendment begin no later than the point at which custody has been relinquished by an arresting officer to a detention facility?

PARTIES TO THE PROCEEDING

All parties to the civil action before the United States District Court for the District of Utah, to the appeal before the United States Court of Appeals for the Tenth Circuit, and to this proceeding appear on the cover to this Petition.

RELATED CASES

Geddes v. Weber County, et al., Case No. 1:18-cv-00136-HCN-JCB, United States District Court for the District of Utah. Judgment entered August 3, 2020.

Geddes v. Weber County, et al., Case No. 20-4083, United States Court of Appeals for the Tenth Circuit. Judgment entered August 3, 2022. Petition for Rehearing *En Banc* denied September 9, 2022.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Hyrum James Geddes respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Tenth Circuit and resolve the issues that this case presents.

OPINIONS BELOW

The panel majority opinion of the United States Court of Appeals for the Tenth Circuit denying Mr. Geddes' appeal from the grant of summary judgment by the United States District Court for the District of Utah is reproduced at App. 1-36. The dissenting opinion that is part of the Tenth Circuit's decision is reproduced at App. 36-54. The decision is not reported. *Geddes v. Weber County, et al.*, Case No. 20-4083, 2022 U.S. App. LEXIS 22719, 2022 WL 3371010 (10th Cir. Aug. 16, 2022). The opinion of the United States District Court for the District of Utah granting summary judgment on Mr. Geddes' claims is reproduced at App. 55-65. The decision is not reported. *Geddes v. Weber County, et al.*, Case No. 1:18-cv-136, 2020 U.S. Dist. LEXIS 137972, 2020 WL 4437405 (D. Utah Aug. 3, 2020). The Tenth Circuit's Order denying Petitioner's Petition for Rehearing *En Banc* is reproduced at App. 66-67.

JURISDICTION

Jurisdiction is proper pursuant to 28 U.S.C. § 1254(1). The Tenth Circuit entered its judgment and

opinion affirming the judgment on August 16, 2022. (App. 1.) The Tenth Circuit entered an Order denying Mr. Geddes' petition for rehearing *en banc* on September 9, 2022. (App. 65.) This Petition is being filed within 90 days of that date and, accordingly, is timely. *See* Sup. Ct. R. 13.1.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

A. Fourth Amendment

This case calls for an interpretation of the Fourth Amendment to the United States Constitution. It states the following:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

B. Fourteenth Amendment, Section 1

This case calls for an interpretation of Section 1 of the Fourteenth Amendment to the United States Constitution. It states the following:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall

> make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Introduction

The essence of Mr. Geddes' claim is that he was mistreated while in the custody of Weber County following his arrest. Alleged mistreatment of this type may be challenged under the Fourth Amendment, Eighth Amendment, or Fourteenth Amendment. The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const., amend. IV. The Eighth Amendment prohibits the infliction of "cruel and unusual punishments," U.S. Const., amend. VIII, and this Court has interpreted it to prohibit the use of excessive force against convicted prisoners. *E.g.*, *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). For those in confinement following an arrest, claims regarding mistreatment while in custody generally do not come within the protection of the Fourth Amendment or the Eighth Amendment. "[T]he Fourth Amendment . . . pertains to the events leading up to and including an arrest of a citizen previously at liberty," while the Eighth Amendment is the source of protection for "prisoners already convicted of a crime who claim that their punishments involve excessive force." *Porro v. Barnes*, 624 F.3d 1322,

1325-26 (10th Cir. 2010) (Gorsuch, J.). When, as here, a "plaintiff finds himself in the criminal justice system somewhere between the two stools of an initial seizure and post-conviction punishment[,] we turn to the due process clauses of the Fifth or Fourteenth Amendment and their protection against arbitrary governmental action by federal or state authorities" to evaluate claims of mistreatment. *Id*. at 1326.

This case presents the important, recurring, and as yet unresolved issues of the standard that applies to an excessive force claim that arises in the situation presented here and when, if ever, the standard changes in the course of an individual's arrest and detention.[1] Lawsuits by persons filed under Section 1983 by persons being held in custody in a detention facility following an initial arrest are common, consume substantial resources of the courts and Defendants, and could be handled more efficiently under a settled rule of law without the confusing interpretation added by the panel majority's opinion at issue here. More

[1] There is also a clear interplay between the two issues presented. If, in the context of a claim alleging unreasonable force, the objective standard applicable to an arrestee under the Fourth Amendment is the same objective standard as that applicable to a pretrial detainee under the Fourteenth Amendment, a dividing line is not, as a practical matter, necessary. Some courts have so concluded. *E.g.*, *Morabito v. Holmes*, 628 F. App'x 353, 357, 2015 U.S. App. LEXIS 17737, *9 (6th Cir. 2015) (stating that, in *Kingsley*, "[t]he Supreme Court has recently clarified that no dividing line is necessary" by adopting the rule that "a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable").

particularly, this case merits full consideration by this Court, for the following reasons:

First, the panel majority opinion of the decision at issue here, in one essential pillar of the decision, conflicts with this Court's decisions in *Graham* and *Kingsley* and with decisions of other courts of appeals. In particular, the panel majority concluded that, because Mr. Geddes cited to the Fourteenth Amendment and not the Fourth Amendment in his Complaint, Mr. Geddes did not state a claim alleging use excessive force while he was being held in jail after his arrest and did not provide sufficient notice of his claim. The panel majority concluded that the objective reasonableness test applicable to a claim of excessive force by an arrestee under *Graham* and the Fourth Amendment differs substantively in material ways from the objective reasonableness standard applicable to a claim by a pretrial detainee under *Kingsley* and the Fourteenth Amendment. Yet, that conclusion conflicts with the reasoning of this Court in *Kingsley* in applying the objective reasonableness standard enunciated in *Graham* and tailoring the *Graham* factors, which apply to a person being arrested and taken into custody, to the situation in which the person is being held following his or her arrest in a detention facility. The standard applicable to a claim of excessive force is the same under either the Fourth or Fourteenth Amendments: was the force objectively reasonable? Only the factors applicable to the particular circumstances change after an individual is in a detention facility. As a consequence, the Tenth Circuit has taken an

approach to analyzing claims of excessive force in the situation presented here that diverges both from the approach taken by this Court in *Kingsley* and by other circuits.

Second, the panel majority opinion, in a second essential pillar of its decision, applied a prior, pre-*Kingsley* decision by the Tenth Circuit that had addressed the question of when the objective reasonableness standard ended and the pre-*Kingsley*, subjective standard applied. In that context, the Tenth Circuit concluded that the Fourth Amendment provides the test for excessiveness of force between the arrest and a finding of probable cause by a court and, after such a judicial finding, that the Fourteenth Amendment provides the test. There is a deeply-entrenched split in the circuits as to whether that is a proper line to draw.[2] After *Kingsley*, it is not. As this Court noted in *Graham* and Justice Alito again noted in *Kingsley*, this Court has "not resolved the question whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive force beyond the point at which arrest ends and pretrial

[2] K. Lambroza, "Pretrial Detainees and the Objective Standard After *Kingsley v. Hendrickson*," *Am. Crim. L. Rev.*, Vol. 52:429, at 434 n.19 (2021) (noting that "[t]here is considerable debate as to when an individual is arrestee rather than a pretrial detainee; stating that "[t]he distinction is significant because it changes the constitutional grounds on which the individual brings their claim"; and discussing the split in the circuits) (citing E. Haber, "Demystifying a Legal Twilight Zone: Resolving the Circuit Court Split on When Seizure and Pretrial Detention Begins in § 1983 Excessive Force Cases," 19 *N.Y. L. Sch. J. Hum. Rts.* 939, 948 (2003)).

detention begins." 490 U.S. at 395 n.10; *see also Kingsley*, 576 U.S. at 408 (Alito, J., dissenting) (so stating). This case presents an opportunity to resolve that question. In reality, the line of demarcation set by the Tenth Circuit is inappropriate when, as here, the arrest and seizure has ended, custody has been transferred to a jail, and the individual is being held in a cell. Indeed, the factors set out by this Court in *Kingsley* under the Fourteenth Amendment, rather than the factors set out by the Court in *Graham* under the Fourth Amendment, actually fit the situation presented here. Accordingly, to prevent confusion and achieve consistency with this Court's approach in *Kingsley* and resolve the split in the circuits, the Court should set the point at which custody is relinquished to a detention facility following an arrest, at the outer limit, as an appropriate line of demarcation in excessive force cases between the point at which the protections afforded by the Fourth Amendment end and those afforded by the Fourteenth Amendment begin.[3]

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[3] Of course, setting that line in this case leaves open the question for another day of when the protections afforded by the Fourth Amendment end and those afforded by the Fourteenth Amendment begin when someone has been seized following an arrest and, having been subject to the initial seizure, is still in the custody of the arresting officer but is being transported or held in a law enforcement vehicle. *E.g.*, *Patel v. Lanier Cnty.*, 969 F.3d 1173, 1178, 1181-82 (11th Cir. 2020) (applying the *Kingsley* objective reasonableness standard to a situation involving a detainee in a hot car).

B. Statement of Facts

Mr. Geddes was arrested for speeding and driving under the influence and taken into custody by a Trooper with the Utah State High Patrol. After his arrest was completed, the Trooper released Mr. Geddes into the custody of the Weber County Jail. The individual jailers employed by Weber County at the Jail handcuffed Mr. Geddes behind his back and put him in a holding cell. While Mr. Geddes was still handcuffed behind his back and detained in the cell, two jailers responded to his inability to remove his boots as they had demanded by throwing him to the floor using a violent take-down technique. With no way to shield himself, Mr. Geddes hit his head on the concrete floor and wall. Mr. Geddes suffered serious injuries as a result. Although Mr. Geddes had been arrested and taken into custody by the Trooper, the magistrate judge did not make a probable cause determination until shortly after the incident. (App. 2-3, 36-37.) As noted below, though both sides had argued in their summary judgment memoranda filed in the district court and in their briefs filed in the Tenth Circuit as to the objective reasonableness of the actions by the individual jailers, the case was not resolved on the merits but, instead, based on an erroneous resolution of the issues presented here.

C. District Court Jurisdiction and Proceedings

Mr. Geddes sued the individual jailers and Weber County under 42 U.S.C. § 1983. (App. 2, 68-85.) The

district court had original jurisdiction over this civil action based on the following provisions: (a) 28 U.S.C. § 1331, because Mr. Geddes' civil action arises under the Constitution and laws of the United States; (b) 28 U.S.C. § 1343(a)(3), because his civil action arises under a law of the United States providing for equal rights; and (c) 42 U.S.C. §§ 1983 and 1988, because the civil action was brought pursuant to Section 1983.

Section 1983 provides that "[e]very person who. . . . 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. . . ." To state a claim under Section 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States. *E.g.*, *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted).

In his Complaint, Mr. Geddes alleged that the incident that gave rise to his claims occurred after his initial seizure by the Utah State Highway Patrol Trooper and after the Trooper had relinquished custody to the Weber County Jail. Mr. Geddes alleged that, at that point, he was subjected to excessive force that was "objectively unreasonable" under the circumstances presented, set out the facts that he alleged supported his claims, and identified the serious physical injuries that he received as a result of the jailers' use of such force. The only reference to the jailers' intent was made only in connection with Mr. Geddes' claim

for punitive damages. (App. 4-5, 36-37, 69, 72, 76, 77.)[4] Finding himself in the twilight zone between a clear applicability of the Fourth Amendment or the Fourteenth Amendment, Mr. Geddes alleged that he was subjected to objectively unreasonable force proscribed by the Fourteenth Amendment. After the close of fact discovery, the jailers moved for summary judgment, arguing that (1) Mr. Geddes had cited to the wrong Amendment in his Complaint; and (2) even if he had pleaded his claims sufficiently, they were entitled qualified immunity because the record showed that they did not use objectively unreasonable force when analyzed under the factors enunciated in *Graham*. (App. 37.)

As noted above, in *Graham*, this Court made clear that it has "not resolved the question whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive force beyond the point at which arrest ends and pretrial detention begins." 490 U.S. at 395 n.10; *see also Kingsley*, 576 U.S. at 408 (Alito, J., dissenting) (so stating). Under its pre-*Kingsley* decision of the Tenth Circuit, however, the Fourth Amendment still provides the test for excessiveness of force between the arrest and a finding of probable cause and, after that finding, the Fourteenth Amendment provides the test. (App. 39) (citing *Estate of Booker v. Gomez*, 745 F.3d 405, 419

[4] The only references to "deliberate indifference" in the Complaint occurred when it described the County's "deliberate indifference" to the rights of Mr. Geddes through inadequate training, supervision, and so on. (App. 69, 75, 76, 84.)

(10th Cir. 2014)). Thus, under that pre-*Kingsley* decision of the Tenth Circuit, the Fourth Amendment (not the Fourteenth) would apply. *Id*.[5]

In his opposition to the jailers' motion, Mr. Geddes argued, among other points, that (1) regardless of the Amendment that applies, his Complaint clearly put Defendants on notice that he was pursuing a claim under 42 U.S.C. § 1983 for use of excessive force that was "objectively unreasonable" (the Fourth Amendment standard under *Graham* and the Fourteenth Amendment standard under *Kingsley*); and (2) there is no practical difference between the standards applicable under the Fourth and Fourteenth Amendments to a claim of excessive force, rendering any error in pleading immaterial. (App. 37-40.)

The district court granted the Defendants' motion. The district court concluded that Mr. Geddes had relied on the Fourteenth Amendment in his Complaint when he should have cited to the Fourth Amendment. Therefore, the court concluded, Mr. Geddes had not properly pled his claims and Defendants were not put on notice of his claims because the tests applicable to claims under the two Amendments are different. (App. 59-63.)

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[5] A Fourth Amendment claim against a state or county officer is actually a Fourteenth Amendment, because the Fourth Amendment's protections apply to the states and political subdivisions through the Fourteenth Amendment's Due Process Clause. *E.g.*, *Mapp v. Ohio*, 367 U.S. 643, 650-55 (1961). Accordingly, Mr. Geddes' Complaint actually correctly invoked the Fourteenth Amendment as the constitutional source of his protection against excessive force. (App. 39.)

D. The Tenth Circuit's Opinion

In a two-to-one decision that reflects strikingly divergent opinions, the Tenth Circuit affirmed the judgment of the district court. The panel majority concluded that Mr. Geddes had cited to the wrong constitutional amendment and, as a consequence, did not state a viable claim for relief. In addition, the panel majority concluded that, because the Fourth Amendment and Fourteenth Amendment each call for application of a different test, Mr. Geddes did not provide the Defendants with proper notice of his legal claim for excessive force. (App. 7-24.) By contrast, reflecting a sharp difference of opinion, the dissent stated that, in the context of a claim alleging use of excessive force, the objective standard applicable under the Fourth Amendment is the same objective standard as that applicable under the Fourteenth Amendment. Therefore, the dissent concluded, Mr. Geddes had sufficiently pled his claims alleging use of objectively unreasonable use of force against him while he was being held in the jail; that Mr. Geddes further clarified his claims in his memorandum filed in opposition to Defendants' motion for summary judgment as alleging an objectively unreasonable use of force; that both parties had actually argued in the district court as to the objective reasonableness of the force used; and that the Defendants were properly put on notice of those claims. (App. 36-40.)

REASONS FOR GRANTING THE PETITION

I.

THE TEST OF OBJECTIVE REASONABLENESS APPLICABLE TO A CLAIM OF EXCESSIVE FORCE ENUNCIATED BY THIS COURT IN *KINGSLEY* REFLECTS A PARTICULARIZED APPLICATION OF THE SAME OBJECTIVE STANDARD ENUNCIATED BY THIS COURT IN *GRAHAM*.

One indispensable premise of the majority opinion of the Tenth Circuit's decision at issue here is that the test applicable to a claim of excessive force of an arrestee differs in material ways from the standard applicable to a claim of excessive force brought by a pretrial detainee. Yet, under the decisions of this Court in *Graham* and *Kingsley* and a proper reading of the Fourth Amendment and Fourteenth Amendment, that premise is erroneous.

Prior to this Court's decision in *Kingsley*, the circuits had analyzed claims of excessive force brought by pretrial detainees as if they were brought under the Eighth Amendment.[6] Under that approach, use of force

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[6] The Eighth Amendment protects an inmate from "cruel and unusual punishments," which includes a right to be free from deliberate indifference to an inmate's serious medical needs. A deliberate-indifference claim under the Eighth Amendment has an objective and a subjective component. To meet the objective component, the plaintiff must show that the medical need is "sufficiently serious." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To meet the subjective component, the plaintiff must show that "an official kn[ew] of and disregard[ed] an excessive risk to inmate health or safety." *Id*. at 837. An express intention to inflict

against a pretrial detainee was excessive under the Fourteenth Amendment if it "shocked the conscience" or was "applied maliciously and sadistically to cause harm." *E.g.*, *Fennell v. Gilstrap*, 559 F.3d 1212, 1216 n.5, 1217 (11th Cir. 2009) (quotation omitted). In *Kingsley*, this Court made clear that the Eighth Amendment's malicious-and-sadistic standard – which applies to incarcerated prisoners – does not extend to pretrial detainees. 576 U.S. at 400-01. Instead, the *Kingsley* Court held, when bringing an excessive force claim, a "pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable," rather than demonstrate deliberate indifference. *Id.* at 396-97.

Importantly, the *Kingsley* Court described the application of the objective reasonableness standard as follows: "A court (judge or jury) cannot apply this standard mechanically. Rather, objective reasonableness turns on the facts and circumstances of each particular case." 576 U.S. at 397. In so doing, the Court left no doubt that the objective-reasonableness standard in the context of a person being detained in a jail merely raises particular considerations than does the objective-reasonableness standard when applied to someone who is being arrested. *See id.* at 397-400. The Court recognized that "[r]unning a prison is an

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unnecessary pain is not required. *E.g.*, *Whitley v. Albers*, 475 U.S. 312, 319 (1986). Still, the plaintiff must demonstrate that the official was aware of facts from which an inference of substantial risk of serious harm to inmate health or safety could be drawn and that the official actually drew the inference. *Farmer*, 511 U.S. at 837.

inordinately difficult undertaking[.]" *Id.* at 399 (quoting *Turner v. Safley*, 482 U.S. 78, 84-85 (1987)). Accordingly, the Court held that courts must "acknowledg[e] as part of the objective reasonableness analysis" the deference due "to policies and practices needed to maintain order and institutional security" at a jail. *Id*. at 399-400.

The objective tests set out initially in *Graham* and applied in *Kingsley* are thus the same objective standard. Indeed, the test applicable to claims of excessive force under the Fourteenth Amendment under *Kingsley* is whether "the force purposely or knowingly used against [the claimant] was objectively unreasonable . . . from the perspective of a reasonable officer on the scene." *Kingsley*, 576 U.S. at 397. Likewise, the test applicable to claims of excessive force under the Fourth Amendment under *Graham* is whether the force was objectively unreasonable "in light of the facts and circumstances confronting [the officers], without regard to their underlying intent or motivation." *Graham*, 490 U.S. at 397. Under both *Graham* and *Kingsley*, *"[o]bjective reasonableness turns on the 'facts and circumstances of each particular case.'" Kingsley*, 576 U.S. at 397 (quoting *Graham*, 490 U.S. at 396) (emphasis added).

In *Graham*, in the context of an initial seizure during an arrest, the Court stated that "[d]etermining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment

interests' against the countervailing governmental interests at stake." 490 U.S. at 396 (citation and internal quotation marks omitted). The Court added that "[o]ur Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Id*. (citation omitted). The Court then set out the familiar *non-exclusive* list of factors that a court should consider in evaluating the reasonableness of force used in connection with a seizure, "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. In reality, the particular non-exclusive factors identified in *Graham* cannot legitimately be applied as written and without modification to the situation presented when, as here, a person is being held in jail. *See id.*

In *Kingsley*, this Court took the *Graham* factors and applied them to the circumstances presented when a person is being detained in a jail. In particular, this Court cited to, quoted from, and applied the factors set out by the Court in *Graham* to a claim of excessive force brought by a pretrial detainee – tailoring those factors to the circumstances presented (that of a pretrial detainee in a jail). 576 U.S. at 396-403. In particular, the Court provided a *non-exclusive* list of factors that may inform the objective reasonableness analysis

in the context of a person who is being held in jail as a pretrial detainee:

> Considerations such as the following may bear on the reasonableness or unreasonableness of the force used: the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting. *See*, *e.g.*, *Graham*, 490 U.S. at 396. We do not consider this list to be exclusive. We mention these factors only to illustrate the types of objective circumstances potentially relevant to a determination of excessive force.

Kingsley, 576 U.S. at 397 (citing *Graham*, 490 U.S. at 396). In that analysis, the "court must also account for the 'legitimate interests that stem from [the government's] need to manage the facility in which the individual is detained,' appropriately deferring to 'policies and practices that in th[e] judgment' of jail officials 'are needed to preserve internal order and discipline and to maintain institutional security.'" *Kingsley*, 576 U.S. at 397 (citation omitted); *see also Lombardo v. City of St. Louis*, ___ U.S. ___, 141 S. Ct. 2239, 2241, 210 L. Ed. 2d 609 (2021) (summary disposition addressing the *Kingsley* factors in the context of an excessive force claim brought on behalf of a person who died after being held in a jail following his arrest). The test enunciated in *Kingsley* is thus an application of the test

enunciated in *Graham* – tailored to the circumstances presented in a detention situation.

Seemingly in keeping with this approach, the Tenth Circuit had previously stated the following in *McCowan v. Morales*, 945 F.3d 1276 (10th Cir. 2019):

> The Fourteenth, instead of the Fourth, Amendment, applies to an excessive-force claim brought by a pretrial detainee "one who has had a 'judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest.'" *Estate of Booker*, 745 F.3d at 419 (quoting *Bell v. Wolfish*, 441 U.S. 520, 536 (1979)). Applying that definition of pretrial detainee, this court, in *Estate of Booker*, explained that the Fourth Amendment applied to an excessive-force claim brought by an individual like McCowan, who complained of force used after his warrantless arrest but before any probable-cause determination has been made because that person was still an arrestee and not yet a pretrial detainee. . . . The distinction we drew in *Estate of Booker* between an arrestee and a pretrial detainee was critical in that case because, while we apply only an objective standard to an arrestee's Fourth Amendment excessive-force claim, at the time we decided *Estate of Booker*, we applied both an objective and subjective test to a pretrial detainee's Fourteenth Amendment excessive-force claim. *See* 745 F.3d at 423. The distinction between arrestee and pretrial detainee is less important in this case because the

> Supreme Court has now clarified that only the objective (and not a subjective) standard applies to a pretrial detainee's Fourteenth Amendment excessive-force claim. *See Kingsley v. Hendrickson*, 576 U.S. 389, 396-403 (2015). *Thus, the* same objective standard *now applies to excessive-force claims brought under either the Fourth or the Fourteenth Amendment.*

McCowan, 945 F.3d at 1283 (emphasis added).

Narrowing that reading of *Kingsley* and *Graham* in its prior, published decision in *McCowan*, the panel majority stated the following in the opinion at issue here:

> [I]n *McCowan*, we made clear that the distinction that no longer mattered between an arrestee and pretrial detainee related to the application of the objective and subjective standards. *See McCowan*, 945 F.3d at 1283 n.6. Specifically, in *McCowan*, we reversed the district court's judgment because it "considered [the officer's] subjective intent." *Id*. Thus, nowhere in that case did we hold that the distinction between an arrestee and pretrial detainee no longer matters in all respects. More specifically, nowhere did we hold that there is no substantive difference in the particulars of the objective tests applied to these two classes of plaintiffs.

(App. 30 n.5.) Thus, the panel majority concluded that the standard applicable to an arrestee is *different* from and not the "same objective standard" as that

applicable to a pretrial detainee. Yet, the panel majority's reasoning is not well taken. If the distinction was being made in *McCowan* only as to applicability of the subjective versus the objective standards, then *Estate of Booker* likewise would only apply to create a dividing line between the subjective and objective standards. Nonetheless, as the foregoing statement by the panel majority makes clear, the Tenth Circuit has concluded that there is a substantive difference between the objective standard applicable to an excessive force claim under the Fourth Amendment and that applicable under the Fourteenth Amendment. The dissent disagreed, stating that the same objective standard applies to excessive force claims under either the Fourth or Fourteenth Amendments. (App. 36-39.)

The dissent is correct. In reality, an excessive force claim brought under the Fourth Amendment is analyzed under the same objective standard as such a claim brought under the Fourteenth Amendment. As this Court made clear *Kingsley*, the particular non-exclusive factors applicable to the circumstances involving a pretrial detainee being held in jail necessarily have to change from those non-exclusive factors identified in *Graham* – just as they change to accommodate any set of circumstances that a law enforcement officer confronts. *See*, *e.g.*, *Kingsley*, 576 U.S. at 408 (Alito, J., dissenting) (noting that a Fourth Amendment claim "apparently would be indistinguishable from the substantive due process claim that the [majority] discusses").

In light of all of this, it is clear that the panel majority's opinion of the Tenth Circuit at issue creates a conflict with this Court's decisions in *Graham* and *Kingsley*. In so doing, the panel majority's opinion also creates a conflict between its decisions and decisions of the federal courts of appeals that have read *Graham* and *Kingsley* as applying the same objective standard – the First, Fourth, and Sixth Circuits, for example. *E.g.*, *Brooks v. Johnson*, 924 F.3d 104, 114 n.4 (4th Cir. 2019) (stating that "the Supreme Court has extended the Fourth Amendment's objective reasonableness standard to excessive force claims by pre-trial detainees"); *Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64, 70 (1st Cir. 2016) ("[T]he Supreme Court has held that the appropriate standard for a pretrial detainee's Fourteenth Amendment excessive force claim is simply objective reasonableness"); *Clay v. Emmi*, 797 F.3d 364, 369 (6th Cir. 2015) (concluding that, in light of *Kingsley*, a pretrial detainee's excessive force claim brought under the Fourteenth Amendment's Due Process Clause is subject to the same objective standard as an excessive force claim brought under the Fourth Amendment). In particular, the panel majority opinion at issue here creates a test for assessing claims of excessive force that depends on a dividing line between an arrestee and pretrial detainee and not, as this Court made clear in *Graham* and *Kingsley*, on the particular circumstances presented. Yet, under *Graham* and *Kingsley*, the test is the same – whether the use of force was objectively reasonable under the circumstances – and only the circumstances have changed, as they inevitably will from case to case.

Thus, this case presents an opportunity to address that issue and resolve the divergence reflected in the Tenth Circuit's opinion from this Court's approach in *Graham* and *Kingsley*, resolve the apparent difference between the Tenth Circuit's reading of those decisions with other courts of appeals, and provide guidance to the courts of appeals and district courts. In so doing, the Court would also be making clear to the courts of appeals and district courts that, because the objective standards are the same, it is not really necessary to pick a dividing line between the Fourth Amendment and Fourteenth Amendment in the context of a claim alleging excessive force.

II.

THE PROTECTIONS AFFORDED BY THE FOURTH AMENDMENT AGAINST USE OF OBJECTIVELY UNREASONABLE FORCE END AND THOSE AFFORDED BY THE FOURTEENTH AMENDMENT BEGIN NO LATER THAN THE POINT AT WHICH CUSTODY HAS BEEN RELINQUISHED BY THE ARRESTING OFFICER TO THE DETENTION FACILITY.

The second indispensable premise of the majority opinion of the Tenth Circuit decision at issue here is that the Fourth Amendment provides the test for excessiveness of force between an arrest and a finding of probable cause by a court and, after that finding, the Fourteenth Amendment provides the test – regardless of the circumstances in which the allegedly excessive force occurs. (App. 12, 16-17, 39 (citing *Estate of Booker*,

745 F.3d at 419).) As shown below, however, that premise reflects an erroneous interpretation of the decisions of this Court; and, as a consequence, creates a need for this Court to intervene to prevent confusion among the courts of appeals and district courts.

In reaching this conclusion, the panel majority relied on its pre-*Kingsley* decision in *Estate of Booker*. There, the Tenth Circuit addressed the issue of whether to apply the subjective test then applicable under the Fourteenth Amendment to claims of excessive force and the objective test applicable to such claims under the Fourth Amendment. To arrive at a dividing line, the Tenth Circuit had relied on dicta from this Court's decision in *Bell v. Wolfish*, 441 U.S. 520, 536 (1979), to set the dividing line between arrestee and pretrial detainee at the point at which a court makes a finding of probable cause. In *Bell*, this Court stated that the Fourteenth Amendment governs a claim of excessive force brought by a pretrial detainee, which the Court described a pretrial detainee as a person who had received "a 'judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest.'" *Bell*, 441 U.S. at 536 (1979) (citation omitted). Yet, given that *Bell* involved a claim challenging conditions of confinement, not a claim alleging use of excessive force, the statement by the Court in *Bell* is simply dicta when taken in the context of the situation presented here. 441 U.S. at 535. And, in *Graham*, as noted above, this Court stated that it has "not resolved the question whether the Fourth Amendment continues to provide

individuals with protection against the deliberate use of excessive force beyond the point at which arrest ends and pretrial detention begins." 490 U.S. at 395 n.10; *see also Kingsley*, 576 U.S. at 408 (Alito, J., dissenting) (so stating).[7]

There is also a deeply-entrenched split in the circuits as to where that line should be drawn in the situation that is presented when, as here, a person brings an excessive force claim based on events that occur after the initial act of arrest but before he or she has received a judicial determination of probable cause.[8] The applicable line depends on the forum in which a person finds himself or herself. The Fourth, Fifth, and Eleventh Circuits appear to have landed at the position that the Fourteenth Amendment applies in that situation; the Sixth, Ninth, and Tenth Circuits appear to have landed at the position that the Fourth Amendment applies; the Sixth Circuit appears to

[7] The Eleventh Circuit has acknowledged that this issue has remained unanswered: "*Bell*'s suggestion notwithstanding, we've acknowledged that 'the line is not always clear as to when an arrest ends and pretrial detainment begins.'" *Crocker v. Beatty*, 995 F.3d 1232, 1247 (11th Cir. 2021) (quoting *Garrett v. Athens-Clarke Cnty.*, 378 F.3d 1274, 1279 n.11 (11th Cir. 2004)). "As a result, the line – for excessive-force purposes – between an arrestee and a pretrial detainee isn't always clear, either." *Crocker*, 995 F.3d at 1247 (citing *Hicks v. Moore*, 422 F.3d 1246, 1254 n.7 (11th Cir. 2005) ("The precise point at which a seizure ends (for purposes of Fourth Amendment coverage) and at which pretrial detention begins (governed until a conviction by the Fourteenth Amendment) is not settled in this Circuit.")).

[8] In the decision of the Tenth Circuit at issue here, the panel majority made note of the split in the circuits concerning this issue. (App. 17-18 n.4.)

have changed its position to the Fourteenth Amendment; and the Second Circuit appears to have taken a hybrid approach that depends both on a judicial determination of probable cause and on relinquishment of custody. *See*, *e.g.*, *Wilson v. Spain*, 209 F.3d 713, 715 n.2 (8th Cir. 2000);[9] and *compare Crocker v. Beatty*, 995

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[9] In *Wilson*, a case decided by the Eighth Circuit prior to *Kingsley*, the Court noted the following:

> Some circuits hold that after the act of arrest, substantive due process is the proper constitutional provision because the Fourth Amendment is no longer relevant. *See Riley v. Dorton*, 115 F.3d 1159, 1161-64 (4th Cir.) (*en banc*), *cert. denied*, 522 U.S. 1030, 139 L. Ed. 2d 611, 118 S. Ct. 631 (1997); *Cottrell v. Caldwell*, 85 F.3d 1480, 1490 (11th Cir. 1996); *Wilkins v. May*, 872 F.2d 190, 192-95 (7th Cir.), *cert. denied*, 493 U.S. 1026, 107 L. Ed. 2d 752, 110 S. Ct. 733 (1989). Other circuits hold that the Fourth Amendment applies until an individual arrested without a warrant appears before a neutral magistrate for arraignment or for a probable cause hearing, or until the arrestee leaves the joint or sole custody of the arresting officer or officers. *See Barrie v. Grand County*, 119 F.3d 862, 866 (10th Cir. 1997); *Pierce v. Multnomah County*, 76 F.3d 1032, 1042-43 (9th Cir.), *cert. denied*, 519 U.S. 1006, 136 L. Ed. 2d 397, 117 S. Ct. 506 (1996); *Powell v. Gardner*, 891 F.2d 1039, 1044 (2d Cir. 1989); *McDowell v. Rogers*, 863 F.2d 1302, 1306-07 (6th Cir. 1988). The Fifth Circuit, while generally taking the position that substantive due process applies after the act of arrest, *see Valencia v. Wiggins*, 981 F.2d 1440, 1443-45 (5th Cir.), *cert. denied*, 509 U.S. 905, 125 L. Ed. 2d 691, 113 S. Ct. 2998 (1993), has concluded that the relevant constitutional provisions overlap and blur in certain factual contexts. *See Petta v. Rivera*, 143 F.3d 895, 910-914 (5th Cir. 1998) (noting that Fourth Amendment standards are sometimes

F.3d 1232, 1247 (11th Cir. 2021) (analyzing an excessive force claim concerning a person detained in a hot car following his arrest under the Fourteenth Amendment and the factors enunciated in *Kingsley*); and *Ondo v. City of Cleveland*, 795 F.3d 597, 610 n.4 (6th Cir. 2015) ("Once an arrest ends, and a person in police custody transitions from arrestee to pretrial detainee, the Fourteenth Amendment thenceforth governs any excessive-force claims that arise during the pretrial detention."); and *Orem v. Rephann*, 523 F.3d 442, 446 (4th Cir. 2008) (acknowledging that, though "[t]he point at which Fourth Amendment protections end and Fourteenth Amendment protections begin is often murky," an excessive force claim based on events during post-arrest transport "requires application of the Fourteenth Amendment"); *with Aldini v. Johnson*, 609 F.3d 858, 866 (6th Cir. 2010) (establishing "the line between Fourth and Fourteenth Amendment protection at the probable-cause hearing" for those arrested without a warrant); and *Powell*, 891 F.2d at 1044 ("We think the Fourth Amendment standard probably should be applied at least to the period prior to the time when the person arrested is arraigned or formally charged, and *remains in the custody (sole or joint) of the arresting officer*") (emphasis added).[10]

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used in analyzing claims technically governed by substantive due process).

Wilson v. Spain, 209 F.3d at 715 n.2.

[10] In *Kingsley*, the Court did not decide whether the objective standard should apply to claims by pretrial detainees concerning conditions of confinement, inadequate medical care, and failure to

The reasoning of circuits embracing the Fourteenth Amendment as the operable standard in this situation is persuasive. Those circuits have reasoned that neither the text nor the "core concerns" of the Fourth Amendment apply to custodial treatment. *E.g.*, *Riley*, 115 F.3d at 1162-63, 1166; *see also*, *e.g.*, *Wilkins v. May*, 872 F.2d 190, 192-93 (7th Cir. 1989) (stating that "[a] natural although not inevitable interpretation of the word "seizure" would limit it to the initial act of seizing, with the result that subsequent events would be deemed to have occurred after rather than during the seizure"). Those courts see the Fourth Amendment and the body of case law it has generated as directed at the "initial act of restraining an individual's liberty" rather than conditions occurring after a seizure or arrest is made and the individual is being held in a detention facility. *E.g.*, *Valencia*, 981 F.2d at 1443-45; *Riley*, 115 F.3d at 1162-63.

Other courts have read the word "seizure" in the Fourth Amendment to extend beyond the initial moment of arrest. As noted, the Tenth Circuit recognized that a "seizure" "may extend beyond arrest up until a

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protect. As a result, there is also a split in the circuits as to whether to apply the objective reasonableness standard set out in *Kingsley* to such cases or, alternatively, the subjective deliberate indifference standard that had been applied by the courts of appeals prior to *Kingsley*. *E.g.*, K. Lambroza, "Pretrial Detainees and the Objective Standard After *Kingsley v. Hendrickson*," *Am. Crim. L. Rev.*, Vol. 52:429, at 441-50 (2021) (discussing the circuit split, collecting cases, and advocating for application of an objective standard to all such cases). Where the line is drawn thus has implications for those sorts of cases, as well.

probable cause determination." *Estate of Booker*, 745 F.3d at 420. Other circuits have taken the same sort of approach. *E.g.*, *Aldini*, 609 F.3d at 866; *Pierce*, 76 F.3d at 1043. Thus, at present, geography determines when, in the context of claim of excessive force, the applicable standard changes, if it does.

The reasoning of the former circuits is consistent with this Court's approach in *Graham*. Indeed, the particular non-exclusive factors enunciated in *Graham* in addressing an excessive force claim under the Fourth Amendment – (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to flee – are really aimed at evaluating the objective reasonableness of the use of force in effectuating a seizure under the Fourth Amendment. *E.g.*, *Graham*, 490 U.S. at 396. Yet, those factors simply and fairly obviously do not fit when, as here, the seizure has ended, custody has been transferred to a pretrial detention facility, and force is used against a person being held by a detention facility.

By contrast, the reasoning of those courts that embrace the Fourth Amendment as the operable Amendment even after custody has been relinquished to a detention facility runs afoul of this Court's approach in *Kingsley*. In particular, the non-exclusive factors set out by this Court in *Kingsley* as applicable to a pretrial detainee under the Fourteenth Amendment are a perfect fit to the situation presented here – (1) the relationship between the need for the use of force and the

amount of force used; (2) the extent of the plaintiff's injury; (3) any effort made by the officer to temper or to limit the amount of force; (4) the severity of the security problem at issue; (5) the threat reasonably perceived by the officer; and (6) whether the plaintiff was actively resisting. *Kingsley*, 576 U.S. at 397 (citing *Graham*, 490 U.S. at 386). In reality, those factors, reflecting an application of the *Graham* objective reasonable test, allow for a thorough analysis of the circumstances actually confronted by the individual jailers.

In light of all this, it is clear that adherence to a line of demarcation that changes at the instant of a judicial finding of probable cause creates a disconnect from this Court's decision in *Kingsley*. Instead, the Court should apply a dividing line between the Fourth and Fourteenth Amendments in excessive force cases that fits the actual situation – with the Fourth Amendment applicable until an individual has been seized and the Fourteenth Amendment applicable no later than the point at which the person is transferred to a detention facility. *See*, *e.g.*, *Powell*, 891 F.2d at 1044 (concluding that the Fourth Amendment applies until a person is arrested, arraigned, or formally charged and remains in the custody of the arresting officer). As this Court made clear in *Kingsley*, when evaluating whether use of force is objectively reasonable or not in the context of a person being held in a detention facility, a court is called upon to address considerations that that situation calls into question. Thus, this case presents an opportunity for the Court to establish the

line of demarcation that is consistent with the Court's approach in *Kingsley* and *Graham*.

CONCLUSION

For the foregoing reasons, Petitioner Hyrum James Geddes respectfully requests that the Court grant this Petition, review the Tenth Circuit's decision, and decide the questions identified above that this case presents.

Respectfully submitted this 30th day of November 2022:

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