No. 22-513

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

REPLY BRIEF OF THE PETITIONER

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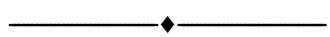
INTRODUCTION

Petitioner Hyrum James Geddes respectfully submits this Reply Brief in further support of his Petition 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. In their Brief in Opposition ("BIO"), Respondents have failed to cast doubt on the correctness of the conclusion that this case merits full consideration by the Court. It remains clear that (1) this case presents the important and recurring issue of the proper 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, relinquishment of custody by the arresting officers, and detention; and (2) this case presents an opportunity to adopt a textual approach to the determination when the protections against use of excessive force afforded by the Fourth Amendment end and those afforded by the Fourteenth Amendment begin no later than the point at which custody is relinquished by the arresting officers; and, in so doing, resolve a deeply-entrenched split in the circuits as to the proper line of demarcation. Finally, (3) the alternative contentions proffered by Respondents for not granting Mr. Geddes' Petition are wholly unpersuasive.



ARGUMENT

I.

APPLICATIONS OF THE TEST OF OBJECTIVE REASONABLENESS THAT TURN ON THE FACTS AND CIRCUMSTANCES OF EACH PARTICULAR CASE

Respondents contend that there are material differences between the standard applicable to a determination of whether force was excessive when analyzed under the Fourth Amendment and the standard applicable to the determination of whether force was excessive when analyzed under the Fourteenth Amendment. In support of this contention, Respondents assert that the Fourth Amendment standard is "arguably more favorable" because, they say, it protects free citizens, while the Fourteenth Amendment standard considers whether the use of force was related to the legitimate need to manage a detention facility. Respondents conclude, therefore, that the objective reasonableness standard enunciated by this Court in *Kingsley* is different from the standard enunciated by the Court in *Graham*. (BIO 2-6.)

Respondents, however, miss the point. In *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), this Court held that, when bringing an excessive force claim, a "pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable." *Id*. at 396-97. Describing the application of the objective reasonableness standard applicable to a pretrial detainee, the Court stated that ***"[a] court***

(judge or jury) cannot apply this standard mechanically. Rather, objective reasonableness turns on the facts and circumstances of each particular case." *Id.* at 397 (emphasis added). As this Court made clear in *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 facts and circumstances that a law enforcement officer or jailer confronts. Thus, a determination of objective reasonableness in the context of a pretrial detainee merely raises particular considerations than does the objective reasonableness standard when applied to someone who is being arrested. *Id.* at 397-400. That inquiry does not make the standards different; rather, it merely makes the particularized application of the same standard, to a particular set of facts and circumstances, different. As the dissent to the Tenth Circuit's decision at issue here concluded, the standard – objective reasonableness – remains the same. (App. 36-39.)

II.

THE PROPER, TEXTUAL APPROACH TO A DEMARCATION BETWEEN THE PROTECTIONS AFFORDED BY THE FOURTH AND FOURTEENTH AMENDMENTS IN SITUATIONS INVOLVING AN ALLEGED USE OF EXCESSIVE FORCE

Respondents also contend that the Tenth Circuit's conclusion that the line of demarcation of where the

protections afforded by the Fourth Amendment end and those afforded by the Fourteenth Amendment is the point at which there is a judicial finding of probable cause. In particular, while recognizing that in fact there is a split in the circuits, Respondents assert that the Tenth Circuit's view is in line with "[a]t least seven other circuits" and that only the Fourth and Fifth Circuits have reached a contrary conclusion. (BIO 6-11.) Respondents also assert that setting the line of demarcation at the point at which custody is relinquished by the arresting officers "would unnecessarily muddy the lines of protection" by requiring the district court to analyze when a seizure ends and detention begins. (BIO 11-12.) As shown below, Respondents are mistaken on both points:

First, Respondents are wrong when they say that the Tenth Circuit's view is in line with at least seven other circuits and that only the Fourth and Fifth Circuits have reached a contrary conclusion. (See BIO 6-11.) In fact, the Fourth and Fifth Circuits appear to have landed at the position that the Fourteenth Amendment applies in the situation presented here.[1]

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[1] *E.g.*, *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"); *Valencia v. Wiggins*, 981 F.2d 1440, 1443-44 (5th Cir. 1993) ("We do not believe that the Fourth Amendment provides an appropriate constitutional basis for protecting against deliberate official uses of force occurring . . . *after* the incidents of arrest are completed, *after* the plaintiff has been released from the arresting officer's custody, and *after* the plaintiff

The Eleventh Circuit has analyzed the use of force in a hot car following an arrest under the Fourteenth Amendment, while, at the same time, acknowledging that the law in the Circuit was not settled.[2] The Sixth Circuit appears to have changed its prior approach and arrived at the position that the Fourteenth Amendment would apply to the situation presented here.[3] The Seventh Circuit has concluded that the Fourth Amendment is inapplicable after the act of arrest and has analyzed post-arrest claims of excessive force under the Fourteenth Amendment.[4] Contrary to Respondents' suggestion, the Ninth Circuit has concluded that the Fourth Amendment applies so long as the arrestee

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has been in detention awaiting trial for a significant period of time.") (italics in original).

[2] *E.g.*, *Crocker v. Beatty*, 995 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*).

[3] *E.g.*, *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.").

[4] *E.g.*, *Wilkins v. May*, 872 F.2d 190, 192-93 (7th Cir. 1989) (rejecting the idea that a Fourth Amendment seizure can continue beyond the point of arrest, endorsing the position that the Fourth Amendment's text is limited to the act of seizure; and 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"); *see also*, *e.g.*, *Reed v. City of Chicago*, 77 F.3d 1049, 1052 n.3 (7th Cir. 1996) (reaffirming *Wilkins* on this point).

is in the custody of the arresting officers.[5] The Eighth Circuit's resolution of the issue is not as clear as Respondents contend.[6] And the Second Circuit appears to have taken a hybrid approach that depends either on a judicial determination of probable cause or relinquishment of custody.[7]

Second, Respondents are also wrong when they say that setting the line of demarcation when custody is relinquished by the arresting officers would "muddy the lines of protection" by requiring the district court to analyze when a seizure ends and detention begins. (BIO 11-12.) In making this argument, Respondents are asking this Court to adopt a standard that conflicts with the text of the Fourth Amendment and, as we discuss above, with this Court's decisions in *Graham* and *Kingsley.* The protections afforded by the Fourth Amendment should end, based on the text of the Amendment, when the seizure ends. And, in reality, this case does not present a gray area at all, because the line, based on the test of the Fourth Amendment,

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[5] *E.g.*, *Pierce v. Multnomah County*, 76 F.3d 1032, 1042-43 (9th Cir.) (concluding that the "seizure" continued so long as the arrestee was in the custody of the arresting officers), *cert. denied*, 519 U.S. 1006 (1996).

[6] *E.g.*, *Wilson v. Spain*, 209 F.3d at 714-16 (holding that the Fourth Amendment applies to an application of force that occurred in a holding cell after booking, but declining to set a bright line rule).

[7] *E.g.*, *Powell v. Gardner*, 891 F.2d 1039, 1044 (2d Cir. 1989) ("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).

has to be drawn no later than the point at which custody is relinquished. In the end, the Court is perfectly capable of enunciating factors that would guide the lower courts in addressing when seizure ends in cases that do involve a gray area (a hot police vehicle, for example) – rather than rely on the fiction that seizure ends only when there has been a judicial determination of probable cause.

III.

THE LACK OF PERSUASIVE EFFECT OF THE ALTERNATIVE CONTENTIONS PROFFERED BY RESPONDENTS

Respondents also contend that, in the alternative, the Court should deny Mr. Geddes' Petition for other reasons. In particular, Respondents assert that (1) they are entitled to protection based on application of the defense of qualified immunity; (2) there is no basis for liability against Weber County; and (3) Mr. Geddes raised, in his appeal with the Tenth Circuit, a new legal issue that was not before the district court. (BIO 13-16.) As shown below, these alternative reasons proffered by Respondents lack persuasive effect:

First, Respondents assert that this Court should deny Mr. Geddes' Petition, because, they proclaim, they are entitled to protection from Mr. Geddes' claims based on application of the defense of qualified immunity. (BIO 13-14.) Yet, of course, the fact that Respondents say that they are entitled to the protection afforded by that defense does not make it so. Indeed,

though both parties addressed that argument both in the district court and in the Tenth Circuit, neither the district court nor the Court of Appeals decided the issue. Moreover, the dissent to the Tenth Circuit's decision at issue here actually rejected the jailers' argument that they are entitled to qualified immunity, concluding based on the record before the Court of Appeals that "Mr. Geddes has met his burden to overcome summary judgment based on qualified immunity." (App. 47.) In particular, contrary to Respondents' suggestion now, the dissent concluded that the use of force against Mr. Geddes was contrary to clearly established decisions protecting against use of force against a suspect who is already subdued and against sustained pressure on a suspect's back after he or she has been detained. Indeed, also contrary to Respondents' suggestion, this Court's decision to grant Mr. Geddes' Petition would do nothing to cast doubt on the fact that those principles prohibiting use of objectively unreasonable force in the circumstances presented here were clearly established. As a consequence, Respondents' pronouncement that they are entitled to the protections afforded by the defense is plainly not a valid reason for denying Mr. Geddes' Petition.

Second, Respondents also assert that this Court should deny Mr. Geddes' Petition, because, they also proclaim, there is no basis for liability against Weber County. (BIO 14-15.) Yet, again, the fact that Respondents say that the County is not liable for the conduct of the jailers, which Mr. Geddes has contended was ratified by the County, does not make it so. And, again,

though both parties addressed that argument both in the district court and in the Tenth Circuit, neither the district court nor the Court of Appeals decided the issue. Accordingly, again, Respondents' mere contention that the County is not liable here is plainly not a valid reason for denying Mr. Geddes' contention.

Third, Respondents also assert that Mr. Geddes never raised before the district court his contention before the Court of Appeals that the standards applicable to claims of excessive force under the Fourth and Fourteenth Amendments are the same. (BIO 15-16.) Not so. To be sure, as Respondents note, neither Mr. Geddes nor Respondents cited to this Court's decision in *Kingsley* in the district court. Yet, contrary to Respondents' contention, the issue presented here was plainly presented to the district court, by both sides, before it was also clearly presented to the Tenth Circuit. As the district court itself noted, "Mr. Geddes argues that his invocation of the Fourteenth Amendment does not matter because 'in light of the facts presented here, there is really no practical difference between application of the standards applicable under the Fourth and Fourteenth Amendment to a claim of use of excessive force.' " (App. 62-63.) And the district court actually addressed the issue, rejecting Mr. Geddes' argument; and, in so doing, made that conclusion an essential pillar of its decision granting summary judgment, just as that conclusion was an essential pillar of the Tenth Circuit's decision. (*Id.*) In fact, for that reason, the dissent to the Tenth Circuit's decision at issue here rejected the same argument when the jailers presented it there. (App. 39

n.2 (citing the 10th Cir. App., vol. 2, at 139 n.5, 143-44 n.6).) In addition, both parties here addressed the issue before the Tenth Circuit, citing *Kingsley* among other pertinent decisions; and, in turn, both the panel majority and the dissent likewise considered the very issue presented here. (App. 7-24; and 36-40.) Thus, this is not a case in which the issue presented was not ruled upon by the lower courts. *See*, *e.g.*, *Springfield v. Kibbe*, 480 U.S. 257, 259 (1987) (addressing an issue pertaining to a jury instruction to which the party did not object in the district court) (cited by Respondents here (BIO 16)). Accordingly, especially in light of the facts and circumstances presented, this is an ideal case for the Court to exercise its discretion to undertake review of a critical issue expressly decided by both the district court and Court of Appeals. *See*, *e.g.*, *United States v. Williams*, 504 U.S. 36, 44-45 (1992) (so concluding).

Finally, also contrary to Respondents' contention, Mr. Geddes never, ever contended that "deliberate difference" was the applicable standard by which to evaluate his claim that the jailers used excessive force. (BIO 16.) To the contrary, Mr. Geddes has always maintained that their conduct is properly evaluated under the standard of "objective reasonableness." Indeed, the only reference in Mr. Geddes' Complaint to the jailers' intent was made solely in connection with Mr. Geddes' claim for punitive damages. In fact, in his Complaint, Mr. Geddes alleged that the incident that gave rise to his claims occurred after his initial seizure by the Trooper and after the Trooper had relinquished custody to the Jail. Mr. Geddes alleges 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 (App. 4-5, 36-37, 69, 72, 76, 77.) As the dissent to the Tenth Circuit's decision at issue here noted, 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 and made that position crystal clear in his memorandum filed in opposition to Respondents' motion for summary judgment filed in the district court. (App. 36-40.)

CONCLUSION

The Court should grant Mr. Geddes' Petition.

Respectfully submitted this 12th day of January 2023:

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