No. _____

IN THE

Supreme Court of the United States

KORI ANDERSON, DAN BUNNELL, KYLE FULLER, TYLER CONLEY, RICHARD GOWEN, and UINTAH COUNTY

Petitioners,

v.

TRISTEN CALDER, as personal representative of the estate of Coby Lee Paugh,

Respondent.

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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QUESTION PRESENTED

Is qualified immunity wrongfully denied to Petitioners in an alcohol withdrawal case based upon a general determination that ignoring serious medical needs is clearly established as a constitutional violation, but there is no particularized analysis comparing Petitioners' actions with other cases involving withdrawal?

PARTIES TO THE PROCEEDING

Petitioners are Kori Anderson, Dan Bunnell, Kyle Fuller, Tyler Conley, Richard Gowen, and Uintah County, Utah. All individual Petitioners are deputies employed by Uintah County. Respondent is Tristen Calder, personal representative of the estate of Coby Lee Paugh.

PROCEEDINGS DIRECTLY RELATED TO THIS CASE

- *Paugh, et al. v. Uintah County, et al.*,
  2:17-cv-1249-JNP-CMR
  In the United States District Court for the District of Utah.
  Qualified immunity denied per memorandum decision and order entered August 11, 2020. (Document 104.)

- *Calder v. Uintah County, et al.*,
  No. 21-4067
  In the United States Court of Appeals for the Tenth Circuit.
  Opinion entered September 7, 2022.
  (Document: 010110734963.)

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The opinion of the United States Court of Appeals for the Tenth Circuit, App. 1a-59a, is reported at 74 F.4th 1139 (10th Cir. 2022).

The opinion of the United States District Court for the District of Utah, App. 60a-179a, is reported at 2020 U.S. Dist. LEXIS 145141, 2020 WL 4597062 (D. Utah 2020).

JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331. The Tenth Circuit had appellate jurisdiction under 28 U.S.C. § 1291 and filed its opinion on September 7, 2022, which upheld the judgment of the district court. The Tenth Circuit denied Petitioner's petition for rehearing through its Order of November 3, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to United States Constitution, First Section, in part, provides:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

42 U.S.C. § 1983 provides, in relevant part:

> Every 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 . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . .

INTRODUCTION

Petitioners are five jailors and a county who provided care for Decedent Coby Paugh while he was briefly incarcerated at a small rural jail in Uintah County, Utah. Unfortunately, Decedent passed away from alcohol withdrawal while sleeping at night.

Petitioners moved for summary judgment, arguing that the law surrounding alcohol withdrawal in jails is not clearly established, and therefore they are entitled to qualified immunity. The district court and the Tenth Circuit Court of Appeals disagreed, stating the law was clearly established, despite the lack of a case dealing with alcohol withdrawal. Petitioners argued that no caselaw in the Tenth Circuit or United States Supreme Court has established what protocols or procedures are required for dealing with alcohol withdrawal or determined what constitutes typical versus severe symptoms of withdrawal.

The lower courts misapplied the doctrine of qualified immunity, effectively denying this important affirmative defense from Petitioners. Specifically, the courts did not really look at comparable withdrawal caselaw to determine whether the law was clearly established. Instead they determined whether the Petitioners acted with deliberate indifference for failing to take specific actions in response to Decedent's serious medical needs. The courts disregarded the conclusions of

circuit caselaw addressing withdrawal issues. This Court should grant this petition to either clarify the law regarding the clearly established analysis, or to order a summary reversal.

STATEMENT OF THE CASE

This lawsuit stems from the unfortunate death from alcohol withdrawal of Decedent Coby Lee Paugh while he was incarcerated for a day at the Uintah County Jail located in the State of Utah. Decedent's Estate sued several jailors and the county, alleging violations of his Fourteenth Amendment rights under 42 U.S.C. § 1983 based upon his care while suffering from alcohol withdrawal. Five of these jailors are Petitioners – Kori Anderson, Dan Bunnell, Kyle Fuller, Tyler Conley, and Richard Gowen.

Paugh's Arrest on July 24, 2015:

Paugh was arrested in the early morning of July 24, 2015 and taken the hospital. A doctor diagnosed Paugh with alcohol withdrawal. Paugh was prescribed [Librium] to help mitigate [his] alcohol-withdrawal symptoms." (App. at 4.)

The doctor found Paugh was "currently stable and safe for incarceration." (*Id.*) However, the doctor warned the arresting officers, who were never defendants, that if Paugh's "alcohol withdrawal condition got any worse they'd have to bring him back to [the hospital]." (*Id.*) The doctor also gave discharge instructions to the arresting officers stating that "jail officials were to administer Librium to Paugh '[a]s needed' and to bring him back to the hospital if his condition worsened." (*Id.*) Paugh was discharged from

the hospital around 2:10 a.m. and taken the Uintah County Jail.

Paugh's arrival at the Uintah County Jail Night Shift on July 24, 2015 (2:20 a.m. to 6:00 a.m.):

Paugh arrived at the jail with his arresting officers around 2:20 a.m. Two Petitioners–Bunnell and Anderson–were working the 6:00 p.m. to 6:00 a.m. shift. Anderson was shift supervisor for the first time in her career, and Bunnell was the designated medical officer, meaning he handed out medication to inmates. (*Id.* at 5.) No medical staff was working at the jail.

Paugh "was walking, talking[, and] [d]idn't seem unsteady on his feet." (*Id.*) Anderson described Paugh as seeming "just fine." (*Id.*)

The arresting officers told Anderson and Bunnell (1) Paugh's blood-alcohol content upon arrest, (2) that he had been to the hospital, and (3) that he was prescribed Librium. The arresting officers gave Anderson and Bunnell the doctor's written discharge instructions, which were placed in Paugh's file. (*Id.* at 6.)

Anderson understood these orders to mean that if Paugh exhibited "red flags" of alcohol withdrawal, meaning that if his "condition worsened . . . in any way," he needed to return to the hospital. (*Id.*) After this Paugh was placed in a detoxification cell so he could sleep. Bunnell and Anderson did not interact with him the rest of their shift. (*Id.*)

Day Shift on July 24, 2015 (6:00 a.m. to 6:00 p.m.):

At 6:00 a.m., the three other Petitioners—Gowen, Conley, and Fuller—started working a twelve-hour shift at the Jail. Fuller was a designated medical officer. "Gowen, Conley, and Fuller later 'reviewed at least part of Paugh's medical file or otherwise learned that' Paugh was experiencing alcohol withdrawal." (*Id.* at 6-7.)

Conley served Paugh breakfast around 6:30 a.m., but it was not eaten. Conley stated Paugh "seemed normal and well." (*Id.* at 7.)

Fuller served Paugh lunch around 11:00 a.m. and noticed shakiness in his hands, so Fuller told him to "drink fluids and stay hydrated." (*Id.*)

Gowen also noticed Paugh's hands were shaking "and he knew that [he] had already 'retched, or dry-heaved' 'two or three times' within the last 'two or three hours.'" (*Id.*)

Fuller left the Jail to fill Paugh's Librium prescription at 11:30 a.m. Conley then started the booking process with Paugh. "While answering the jail's screening questions, Paugh had to go back to his cell to vomit" once. (*Id.* at 7-8.)

Upon returning from his cell, Paugh told Conley "he was 'currently going through withdrawals,' that he was in 'lots of pain from three broken ribs,' that he had medical problems related to seizures, that he was feeling 'restlessness/anxiety,' and that he suffered from alcoholism." (*Id.* at 8.)

Fuller gave Paugh Librium around 1:40 p.m. and "noticed that Paugh's hands shook the entire time." (*Id.*) After this, Fuller noticed there was conflicting information about how often the medication should be administered. To resolve the issue, Fuller called the on-call physician-assistant (PA). The PA asked Fuller whether he had seen "any symptoms of withdrawal," including "any shaking, any issues like that." Fuller said "that he had seen no withdrawal symptoms," and that Paugh had been "walking around good," "ha[d] been eating," hadn't been throwing up, and "seem[ed] to be doing good." (*Id.* at 8-9.) The PA told Fuller to give Paugh the Librium three times a day and that he "expected to be notified if there was any change to Paugh's symptoms." (*Id.* at 9.)

Gowen served Paugh dinner around 4:00 p.m. Paugh told Gowen "that he was 'feeling sick and nauseous' and that 'he had not [yet] hit [the] peak' of his alcohol-withdrawal symptoms." (*Id.*) Gowen saw that Paugh's "hands and forearms were 'visibly shaking.'" (*Id.* at 9-10) He also noted that Paugh seemed "'really sick from detoxing,' given that he had vomited and 'not eaten much throughout the day.'" (*Id.* at 10.)

Because of an incident with another inmate, who was taken to the hospital, jail staff inadvertently neglected to give Paugh his dinner-time dose of Librium, which should have happened at 5 p.m. (*Id.*)

Conley retrieved Paugh's dinner tray around 5:30 p.m. and noticed he was "shaking pretty bad," and Paugh told him he "had not peaked yet." (*Id.*)

Night Shift on July 24, 2015 to July 25, 2015 (6:00 p.m. to 6:00 a.m.):

At 6:00 p.m. Gowen, Conley, and Fuller went off-shift, and Anderson, Bunnell, and others, came on duty. (*Id.*) Gowen, Conley, and Fuller never saw Paugh alive again.

Gowen, told Anderson about Paugh's withdrawal symptoms, and told her "to 'get up' and check on Paugh 'as often as she [could]' to make sure he was 'breathing and in no distress.'" (*Id.* at 11.)

Around 7:00 p.m., Paugh told Bunnell and Anderson that his Librium medication had been missed. Around 8:00 p.m. Bunnell gave Paugh his Librium. Bunnell noticed that Paugh was shaking and pale and stated, "he was detoxing." (*Id.*)

Bunnell spoke to Paugh again sometime between 9:45 and 10:00 p.m. He was still shaking and stated "he was getting the chills then hot again." (*Id.* at 12.) Anderson joined the conversation and Paugh told her he was nauseous, and she observed that he "seemed 'shaky,' had the chills, and looked sick." (*Id.*) As a result, Anderson and Bunnell moved Paugh to a different cell "so that he could be in 'a cell alone while he was sick.'" (*Id.*) "Bunnell also gave Paugh another blanket." (*Id.*)

Later in the evening, "Anderson thought she heard Paugh vomit. And throughout that night, she heard him 'coughing,' 'sneezing,' and sounding like he was 'trying to get phlegm out of his throat to spit.'" (*Id.*) Bunnell recalled hearing the same thing.

Bunnell felt ill and went home around 2:00 a.m. Bunnell looked into Paugh's cell before he left the Jail. (*Id.*) The jailor that took over for Bunnell (Riddle) was not informed Paugh was withdrawing. (*Id.*)

Decedent's death:

Around 6:10 a.m., Conley, who was back on-duty, came to give Paugh his medication, but found Paugh had passed away while apparently sleeping. (*Id.*)

Procedural history:

Paugh's estate sued alleging violations of the Fourteenth Amendment under 42 U.S.C. § 1983. Petitioners moved for summary judgment asserting the affirmative defense of qualified immunity. The United States District Court for the District of Utah denied Petitioners' motion, determining their actions violated clearly established law.[1] Petitioners appealed to the Tenth Circuit Court of Appeals, which affirmed the decision of the district court. This Petition follows.

REASON FOR GRANTING THE PETITION

I. It was not clearly established that Defendants' individual actions could violate the Fourteenth Amendment.

This Court "often corrects lower courts when they wrongly subject individual officers to liability" in qualified immunity cases. *City and County of San*

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[1] Defendant Justin Riddle was dismissed by stipulation in the district court and is not a part of this petition for certiorari.

Francisco v. Sheehan, 575 U.S. 600, 611, n.3 (2015) (citing cases).[2] "The Court has found this necessary both because qualified immunity is important to society as a whole, and because as an immunity from suit, qualified immunity is effectively lost if a case is erroneously permitted to go to trial." *White v. Pauly*, 580 U.S. 73, 79 (2017).

This case should be the next such reversal. As in those prior decisions, the manifest error in the lower court's denial of qualified immunity justifies the Court's intervention. Petitioners ask the Court to reverse the decision below on a specific but crucial issue: Whether Petitioners/Defendants were entitled to qualified immunity for the way they treated Paugh's alcohol withdrawal. Because the level of alcohol withdrawal care Decedent was constitutionally owed was not clearly established with the required specificity, Petitioners are entitled to qualified immunity.

The Tenth Circuit's ruling hinges on the misguided notion that it was clearly established how an inmate withdrawing from alcohol must be treated. However, the caselaw on this point is far from clear. Instead, the

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[2] Cases include: *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500 (2019) (per curiam); *Kisela v. Hughes*, 138 S. Ct. 1148 (2018) (per curiam); *Mullenix v. Luna*, 577 U.S. 7 (2015) (per curiam); *Carroll v. Carman*, 574 U.S. 13 (2014) (per curiam); *Wood v. Moss*, 572 U.S. 744 (2014); *Plumhoff v. Rickard*, 572 U.S. 765 (2014); *Stanton v. Sims*, 571 U.S. 3 (2013) (per curiam); *Reichle v. Howards*, 566 U.S. 658 (2012); *City of Tahlequah v. Bond*, 142 S. Ct. 9 (2021); and *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4 (2021).

Tenth Circuit makes generalized statements like "it is 'clearly established that when a detainee has obvious and serious medical needs, ignoring those needs necessarily violates the detainee's constitutional rights.'" (App. at 49 (*quoting* *Quintana v. Santa Fe County Bd. of Comm'rs*, 973 F.3d 1022, 1033 (10th Cir. 2020)).)[3]

This general statement of law from the Tenth Circuit's ruling is too broad to put Petitioners on notice that their actions were clearly established as violative of the constitution. This is particularly true for a condition like alcohol withdrawal since it is extremely common in jails and usually treated the same way Petitioners addressed it. Treating a common jailhouse issue the same way as it is usually handled should not result in liability for Petitioners, particularly since there is no caselaw that unequivocally indicates alcohol withdrawal should be treated as anything other than routine. Nobody had ever died of alcohol withdrawal at the Uintah County Jail before Paugh.

The Tenth Circuit's ruling cannot be squared with the well-known principles of qualified immunity. Qualified immunity must be granted "if a reasonable officer might not have known for certain that the conduct was unlawful." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1867 (2017). It "does not require a case directly on point for a right to be clearly established, [but]

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[3] This statement also ignores that *Quintana* actually concludes that vomiting, without blood, was not clearly established as a serious medical need prior to the year 2020. *Id.* at 1029-1030.

existing precedent must have placed the statutory or constitutional question beyond debate." *White*, 580 U.S. 73 at 79 (internal citation omitted). This Court has repeatedly told lower courts "not to define clearly established law at a high level of generality." *Sheehan*, 575 U.S. at 613 (internal citation omitted). "[T]he clearly established law must be 'particularized' to the facts of the case." *White*, 580 U.S. at 79. That is, "the clearly established right must be defined with specificity." *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019).

The Tenth Circuit's ruling violated these principles. For example, the appellate court erred when it stated that "the lack of a case involving alcohol withdrawal does not preclude [the Court] from finding the law to be clearly established." (App. at 54.) Likewise, it also stated that "'[s]ome level of generality is appropriate.'" (*Id.* at 53 (*quoting* *Baptiste v. J.C. Penney Co.*, 147 F.3d 1252, 1257 n.9 (10th Cir. 1998).) These statements are incorrect as a matter of law.

The Tenth Circuit's reasoning is inconsistent with the principle of qualified immunity. "[Q]ualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). This standard does not require officers to be constitutional scholars who interpret scenarios they are presented with in light of the reasoning of caselaw.

The Tenth Circuit's decision essentially guts the defense of qualified immunity as it relates to issues surrounding alcohol withdrawal. There is no case on point that clearly and unequivocally puts Petitioners

on notice that their conduct could violate the Constitution.

For example, the Tenth Circuit acknowledges that only the arresting officers directly received the doctor's orders, who then relayed them to Petitioners Anderson and Bunnell. (App. at 4, 6.) While there were written instructions, they were simply a generic form given out to all inmates withdrawing from alcohol. The Tenth Circuit denied Petitioners qualified immunity because they concluded that Petitioners failed to perfectly follow indirectly received orders, for a common affliction within jails. In essence the Tenth Circuit's opinion faults Petitioners for failing to interpret contradictory medical guidance from the doctor, which was not directly received by any Petitioner. This link becomes particularly tenuous when applied to Gowen, Conley, and Fuller since they were not even present when Paugh arrived at the jail, and they never received any information about the doctor's orders beyond the generic written instructions in Paugh's file. There is no caselaw that even suggests this is a constitutional violation.

The lower courts paint with too broad a gloss when denying every individual Petitioner qualified immunity. The underlying reality is that their alleged violation of the constitution was not clearly established at the time of the conduct. No appellate caselaw found their "conduct" to have violated the constitution. Some Petitioners, like Conley or Bunnell, had minimal interactions with Decedent, and did not think there was anything unusual about an inmate experiencing alcohol withdrawal. Their

actions should not amount to constitutional liability. Qualified immunity serves an important shield against liability, but the rule offered by the Tenth Circuit in this case would subject an officer to liability anytime there is a tragic event in a jail setting, even though no such tragic event had previously occurred at that Jail. However, tragedy does not equate to liability. This is exactly the sort of case for which qualified immunity is designed to prevent liability.

A. The Tenth Circuit's Decision conflicts with its own precedent.

The Tenth Circuit's decision is inconsistent with its other qualified immunity decisions. The decision incorrectly interprets four prior Tenth Circuit cases: *Sealock v. Colorado*, 218 F.3d 1205 (10th Cir. 2000), *Mata v. Saiz*, 427 F.3d 745 (10th Cir. 2005), *Al-Turki v. Robinson*, 762 F.3d 1188 (10th Cir. 2014), and *Quintana v. Santa Fe County Bd. of Comm'rs*, 973 F.3d 1022 (10th Cir. 2020). The Tenth Circuit opinion states that these cases are controlling because they all clearly established that preventing an inmate from receiving treatment or denying him access to medical personnel constitutes deliberate indifference. (App. at 48-52.) Again, this statement is too broad and contrary to this Court's caselaw.

The problem with the Tenth Circuit's approach is that such broad statements have nothing to do with the particular acts of each defendant; an analysis mandated by this Court. Examining the particularity of these cases demonstrates that they do not clearly establish the law as it relates to Defendants' conduct in the case at hand.

First, the *Quintana* Court held "[n]o Tenth Circuit authorities have concluded that heroin withdrawal presents a 'sufficiently serious' medical need." *Quintana*, 973 F.3d at 1029. Furthermore, it noted that "frequent vomiting alone does not present an obvious risk of severe and dangerous withdrawal." *Id.* However, bloody vomit, observed by the officer who was denied qualified immunity, "does present an obvious risk." *Id.* at 1029-1030. It is undisputed that "bloody vomit" was never observed with Paugh, yet this fact is ignored by the Tenth Circuit's decision in this case. *Quintana* alone mandates application of qualified immunity for Petitioners.

The other three cases are distinguishable from the instant case, demonstrating that the law was not clearly established. *Sealock* and *Mata* deal with medical professionals and chest pain; *Al-Turki* also deals with medical professionals and an inmate with abdominal pain. These are different facts that do not involve alcohol withdrawal, or any sort of withdrawal, and cannot clearly establish the law as it relates to this case. This is particularly true because Petitioners were not medical professionals. At most, Bunnell and Fuller were designated medical officers, but this only meant it was their responsibility to hand out medications to inmates. They cannot be held to the same standard as a licensed medical professional.

Moreover, the defendants in both *Mata* and *Sealock* disregarded policy and did not communicate all symptoms to a doctor, yet they were still entitled to qualified immunity, or a finding of no constitutional violation at all. *See* *Mata*, 427 F.3d at 759 (where a jail nurse was granted qualified immunity, even

though she did not communicate all of the decedent's symptoms to a doctor, contrary to policy); *and* *Sealock*, 218 F.3d at 1208-1211 (no deliberate indifference for a nurse who omitted critical information related to an inmate's chest pain)

The Tenth Circuit also failed to consider two of its prior cases that discuss the legal rules of alcohol withdrawal prior to 2015. In *Garcia v. Salt Lake Cty.*, 768 F.2d 303 (10th Cir. 1985), the Tenth Circuit held it was deliberate indifference to admit a drunk and "passed out" or "semi-conscious" inmate and not send him to a hospital. Paugh was not "semi-conscious" or passed out, yet was initially sent to the hospital. Applying the facts of this case through the lens of *Garcia* does not show a constitutional violation.

However, the Tenth Circuit case that most demands the application of qualified immunity in this case is *Martinez v. Beggs*, 563 F.3d 1082 (10th Cir. 2009). In *Martinez*, the Court ruled that the jailors were not deliberately indifferent (and thus entitled to qualified immunity) when a decedent displayed "characteristics that are common to many intoxicated individuals," because this meant that the decedent did not exhibit "symptoms that would predict his imminent heart attack or death." *Id.* at 1091. Alcohol withdrawal is a common occurrence in jails and often does not rise to the same level of seriousness as heart conditions. This legal rule was recognized in this Court's caselaw prior to 2015.

Moreover, the Tenth Circuit neglected to take into account the positive, if imperfect, actions Petitioners took to care for Decedent. Indeed, the appellate court's precedent tends to support the notion such actions are

adequate basis for the application of qualified immunity. *See* *Mata*, 427 F.3d at 761 (determining that district court correctly concluded nurse was entitled to qualified immunity when the record showed she "made a good faith effort to diagnose and treat Ms. Mata's medical condition"); *and* *Silverstein v. Fed. Bureau of Prisons*, 559 Fed. Appx. 739, 754 (10th Cir. 2014) (observing that "if an official is aware of the potential for harm but takes reasonable efforts to avoid or alleviate that harm, he bears no liability").

These positive actions taken by Petitioners include: Fuller encouraging Paugh to "drink fluids and stay hydrated." (App. at 7.) Fuller traveling to get his prescription and giving Paugh his Librium. (*Id.* at 7-8.) Fuller calling the PA to determine how often to administer the Librium. (*Id.* at 8-9.) Gowen telling Anderson "to 'get up' and check on Paugh 'as often as she [could]' to make sure he was 'breathing and in no distress.'" (*Id.* at 11.) Bunnell giving Paugh his missed dose of Librium. (*Id.*) Anderson and Bunnell moving Paugh to a different cell 'so that he could be in 'a cell alone while he was sick.'" (*Id.* at 12.) Additionally, Bunnell gave Paugh an extra blanket. (*Id.*) Finally, Bunnell looked in Paugh's cell before he left the Jail sick before Paugh had died, to ensure he was alright. (*Id.*).

While these actions are not perfect care, they are also not zero care, and are reasonable considering the circumstances presented to the officers. Petitioners recognized Decedent's condition and attempted to care for it as they thought was appropriate based upon their routine experience with intoxicated individuals. All this mandates the application of qualified

immunity because Petitioners' actions were not clearly established as a constitutional violation based upon the Tenth Circuit's own precedent.

B. The Tenth Circuit's Decision also conflicts with the precedent of other circuits.

The Tenth Circuit references several opinions from other circuits to claim that the law is clearly established. However, all these cited cases are either stating the law too broadly or are distinguishable from this case in important ways. Additionally, a further examination of other circuit court authority, reveals there is not a robust consensus on the issue.

The Tenth Circuit cites the following cases for the general notion that there may be liability if a jailor has knowledge of a serious medical condition and does not take action: *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002); *Garretson v. City of Madison Heights*, 407 F.3d 789, 797-98 (6th Cir. 2005); *Jones v. Minn. Dep't of Corr.*, 512 F.3d 478, 482 (8th Cir. 2008); *Williams v. City of Yazoo*, 41 F.4th 416, 424, 426 (5th Cir. 2022); *Phillips v. Roane* County, 534 F.3d 531, 545 (6th Cir. 2008); *Johnson v. Schwarzenegger*, 366 F. App'x 767, 770 (9th Cir. 2010); *Orlowski v. Milwaukee County*, 872 F.3d 417, 422 (7th Cir. 2017); *and* *Schaub v. VonWald*, 638 F.3d 905, 918 n.6 (8th Cir. 2011). (App. at 27, 29, 31, 36, 38, 49-50.) This is a very broad legal statement, too broad to ever establish that the law was clearly established in a particular case.

And certainly, Petitioners do not disagree with the broad propositions for which these cases stand.

However, the problem with the Tenth Circuit's approach is that none of these cited cases involve alcohol withdrawal.

Gibson involves a heart attack. *Garretson* and *Phillips* involved an unmedicated diabetic. *Jones* involved a pulmonary edema. *Williams* involved an inmate who died from internal bleeding after being assaulted with a metal pipe. *Johnson* involved denial of medication related to life-threatening blood-ammonia levels. *Orlowski* involved an inmate who died from a methadone overdose. *Schaub* involved oozing pressure sores on a paraplegic.

Taken together the medical conditions in these cases are more unique and certainly more facially dangerous than alcohol withdrawal. Without a specific case on point relating to withdrawal, the law surrounding treatment in a jail setting cannot be said to be clearly established.[4]

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[4] The Tenth Circuit also briefly mentions in a footnote two out-of-circuit cases that discuss deliberate indifference as it relates to alcohol withdrawal that were relied on by the district court – *Harper v. Lawrence County*, 592 F.3d 1227 (11th Cir. 2010), and *Stefan v. Olson*, 497 F. App'x 568 (6th Cir. 2012). (App. at 49 n.27) However, they are distinguishable from this case.

The *Harper* Court was ruling on a motion to dismiss, and two defendants were not dismissed at this preliminary stage because there were allegations in the complaint that they had completely ignored the deceased inmate's alcohol withdrawal. *Harper*, 592 F.3d at 1234-1235. It should be noted that three other defendants were dismissed because there were no allegations that they knew

To be sure, the Tenth Circuit does attempt to narrow the issue slightly, but neglects authority that holds differently.

For example, the opinion favorably cites *Phillips v. Roane County*, 534 F.3d 531 (6th Cir. 2008) for the notion that a policy violation is persuasive evidence of a constitutional violation. (App. at 37.) However, this Court has said "[o]fficials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision." *Davis v. Scherer*, 468 U.S. 183, 194 (1984). Indeed, the idea that a policy violation does not equate to a constitutional violation has been previously recognized by the Tenth Circuit

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of the deceased inmate's withdrawal. *Id.* However, this matter is distinguishable because no Petitioners completely ignored Paugh.

Stefan, meanwhile, is an unpublished case, where summary judgment was denied to a jail nurse who admitted an inmate to jail with a .349 blood-alcohol level. The defendant nurse said she would treat the inmate at the jail, never sent him to the hospital, never had a medical doctor evaluate him, never gave him medication, and he suffered a seizure and collapsed in his cell a little over 12 hours after he was booked into the jail, and he eventually died five days later. *Stefan*, 497 F. App'x at 569-574. *Stefan* is completely opposite to this case where Paugh was taken to the hospital and examined by a medical doctor, treated, and released with written definitions of when to seek medical attention. Additionally, the individual non-medical jailers in *Stefan* were granted summary judgment by the district court, and their posture is much more similar to Petitioners in this case. 497 F. App'x at 574.

prior to this case. *See* *Ernst v. Creek County Pub. Facilities Auth.*, 697 F. App'x 931, 934 (10th Cir. 2017); *and* *Hovater v. Robinson*, 1 F.3d 1063, 1068 n.4 (10th Cir. 1993) ("A failure to adhere to administrative regulations does not equate to a constitutional violation.").

Likewise, the opinion favorably cites *Winkler v. Madison County*, 893 F.3d 877 (6th Cir. 2018) to argue that it was clearly established that a jailor must fully disclose an inmate's medical condition to a medical practitioner. (App. at 41-43.) However, *Winkler* is descriptive rather than prescriptive. That is, the fact-pattern of *Winkler* happens to involve a jailor who relayed all relevant information about a particular inmate suffering from opiate-withdrawal to a doctor. *Winkler*, 893 F.3d at 895-96. *Walker* is completely silent about whether there is liability when information is omitted to a medical provider. As such, *Walker* cannot create liability for Fuller who failed to disclose all information to the PA. Rather, it should be the PA's responsibility to elicit all relevant information from a jailor who is not a medical professional.

Finally, the opinion identifies *Wakefield v. Thompson*, 177 F.3d 1160, 1165 (9th Cir. 1999) to claim that it is clearly established that ignoring the instructions of a physician are sufficient to show deliberate indifference. (App. at 38.) However, other authority suggests disregarding a doctor's orders may not amount to deliberate indifference. *See* *Zentmyer v. Kendall County*, 220 F.3d 805 (7th Cir. 2000) (No deliberate indifference stemming from jail deputies' failure to properly administer medication prescribed

by a doctor, that led to inmate losing hearing in one ear.)

Moreover, there is authority that suggests alcohol withdrawal does not amount to a serious medical need. *See* *Meier v. Cty. of Presque Isle*, 376 F. App'x 524 (6th Cir. 2010) (no deliberate indifference for jail deputies, where an inmate with a BAC of 0.31 ultimately died. For one defendant this was because intoxication by itself was not enough to put him on notice that the decedent needed medical attention, and he reasonably deferred to the judgment of the booking clerk who regularly encountered intoxicated detainees. For two other defendants, there was no deliberate indifference because the decedent reported he was not feeling well, but they "attributed his malaise to typical alcohol withdrawal.")

These circuit decision reveal there is not a broad consensus among the circuits on the issue of how to treat an inmate suffering from alcohol withdrawal. Therefore, it cannot be said the law surrounding the issue is clearly established. As such, Petitioners are entitled to qualified immunity.

II. Only this Court can establish what is clearly established.

Finally, there is a colorable argument that no circuit court authority can clearly establish the law, and without a specific case on point issued by this Court, a defendant should be entitled to qualified immunity. This Petition provides this Court an opportunity to better define the parameters of the clearly established inquiry and when a Supreme

Court decision is necessary to make the law clearly established in a certain area.

In *Taylor v Barkes*, 575 U.S. 822 (2015), this Court reversed the Third Circuit Court of Appeals, which had ruled it was clearly established that an incarcerated person had a "'right to the proper implementation of adequate suicide prevention protocols.'" 575 U.S. at 825. This decision was reversed because "[n]o decision of [the Supreme Court] establishes a right to the proper implementation of adequate suicide prevention protocols. No decision of [the Supreme Court] even discusses suicide screening or prevention protocols." *Id.* at 826. As such, this Court reversed the decision of the Third Circuit and granted petitioners qualified immunity.

Taylor illustrates well the level of specificity required for the clearly established analysis. It stands to reason that if the right to suicide screening protocols while incarcerated are not clearly established, then without specific caselaw regarding alcohol withdrawal treatment of inmates, such practices or protocols, or lack thereof, cannot be considered clearly established either. Suicide cases should be used to judge the actions of defendants in suicide cases and withdrawal cases should be used to judge the actions of defendants in alcohol withdrawal cases. If the conduct is not clearly illegal, then qualified immunity attaches.

In this case, Decedent was withdrawing from alcohol. There are no cases which set minimal standards and protocols in treating inmates

withdrawing from alcohol.[5] Whether categorized as typical or severe symptoms of alcohol withdrawal, neither condition has been found to establish liability if medical care was not sought in the face of these symptoms prior to 2015. Nor has there been clarity in caselaw in determining exactly what symptoms are typical or severe. Without this clarification, an officer could not have been on notice as to whether her actions in response to those symptoms violated clearly established law.

The Tenth Circuit's reasoning conflicts with this Court's qualified immunity caselaw and should be reversed. It is true that *Taylor* noted there was an extent to which a "'robust consensus of cases of persuasive authority' in the Court of Appeals 'could itself clearly establish" a federal right." *Id.* (*quoting Sheehan*, 575 U.S. at 617). However, this language does not prevent a reversal in this case for two reasons.

First, there is no "robust consensus" on the issue of alcohol withdrawal as illustrated in Point (I)(B). Second, even if there were a "robust consensus," the language from *Taylor* indicates that this Court may want to answer the question of whether a robust consensus of circuit courts can even clearly establish the law. This case serves as a good vehicle for the Court to determine requirements for the clearly

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[5] Furthermore, to the extent that there are cases within the Tenth Circuit which set the legal standards for alcohol withdrawal, they demonstrate Petitioners are entitled to qualified immunity, as explained in Point (I)(A).

established test in instances where the issue has only been addressed inconsistently by the circuit courts.

III. The claims against Uintah County are inextricably intertwined with the individual Petitioners and should be dismissed.

Finally, and briefly, the claims against Uintah County are inextricably intertwined with the claims against the individual Petitioners, meaning this Court can further define the bounds of pendent appellate jurisdiction and review the claims against Uintah County. *See* *Swint v. Chambers County Comm'n*, 514 U.S. 35, 50-51 (1995) ("We need not definitively or preemptively settle here whether or when it may be proper for a court of appeals, with jurisdiction over one ruling, to review, conjunctively, related rulings that are not themselves independently appealable.") And assuming there is jurisdiction, if the Court grants individual Petitioners qualified immunity, it should also find that there is no basis for liability against Uintah County since there is no underlying constitutional violation by a county employee. *See* *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986).

CONCLUSION

The Tenth Circuit's decision defines the law at too high of a level of generality by claiming it is clearly established that ignoring medical needs violates the constitution. Such a determination, while true, is too broad to be helpful to the clearly established analysis of qualified immunity. Instead, the lower courts should have focused on the particularized actions of each defendant, and determined whether they

violated clearly established law surrounding alcohol withdrawal.

Further, the Tenth Circuit's decision conflicts with decisions inside and outside the circuit. There is not a robust consensus among the circuits that the acts of each defendant violated the constitution. Not only is the law not clearly established in the Tenth Circuit, but it is not clear among all of the circuits. This is a case where this Court needs to weigh in and state whether the law is clearly established as it relates to protocols and actions when supervising a drunk inmate. This Court further needs to determine what constitutes severe symptoms of alcohol withdrawal as opposed to typical symptoms. The Court should, therefore, grant this petition, or summarily reverse the lower court decision.

Respectfully submitted this 1st day of February, 2023.

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