No. 23-

IN THE

Supreme Court of the United States

J. D. HARTMAN, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY, *et al.*,

Petitioners,

v.

CHARLES WILLIS SHORT, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF VICTORIA CHRISTINE SHORT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has long required a convicted inmate alleging deliberate indifference to prove that prison officials actually knew of a significant risk of harm to the inmate and nonetheless intentionally disregarded it. That tried-and-true framework has proven to be straightforward in application.

However, when a pretrial detainee brings the exact same claim, the circuits are split on what showing he or she must make. Some circuits still require proof of actual knowledge by the defendants, but other circuits—including the Fourth Circuit panel below—hold that the detainee need only prove that officials should have known of such a risk.

That objective test has proven unpredictable and costly for local governments, and it is also untethered from the Eighth Amendment origins of a claim for deliberate indifference, which requires a culpable mindset by prison officials.

The Court should grant this Petition, which squarely presents this important legal issue for resolution.

The question presented is: Whether a pretrial detainee alleging deliberate indifference must prove the defendant actually knew of a significant risk of harm, as five circuits have held, or instead must prove only that the defendant objectively should have known of such a risk, as five other circuits (including the Fourth Circuit panel in this case) have held.

PARTIES TO THE PROCEEDING

Petitioners are J. D. HARTMAN, Sheriff of Davie County, in his individual and official capacity; CAMERON SLOAN, Captain, Chief Jailer with the Davie County Sheriff's Department, in his individual and official capacity; DANA KELLY RECKTENWALD, Lieutenant, Operations Supervisor of the Detention Center with the Davie County Sheriff's Department, in her individual and official capacity; TERESA MORGAN, a/k/a Teresa M. Godbey, Sergeant, Jailer-Detention Officer with the Davie County Sheriff's Department, in her individual and official capacity; CRYSTAL COOK MEADOWS, Sergeant, Detention Officer with the Davie County Sheriff's Department, in her individual and official capacity; MATTHEW TRAVIS BOGER, Jailer-Detention Officer with the Davie County Sheriff's Department, in his individual and official capacity; WESTERN SURETY COMPANY; and ANDREW C. STOKES, Sheriff of Davie County, in his individual and official capacity.

Respondent is CHARLES WILLIS SHORT, individually, and as Administrator of the Estate of Victoria Christine Short.

CORPORATE DISCLOSURE STATEMENT

Petitioner Western Surety Company is a private corporation, owned by Continental Casualty Corporation, which is owned by The Continental Corporation, which is a wholly owned subsidiary of CNA Financial Corporation, which is a publicly traded company, 90 percent of which is owned by Loews Corporation.

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings:

- *Short v. Hartman*, No. 21-1396(L), No. 21-1397 (4th Cir.) (Opinion issued December 8, 2023; rehearing en banc denied January 9, 2024).

- *Short v. Hartman*, No. 1:18-cv-741 (M.D.N.C.) (Memorandum Order denying Motion for Relief from Judgment Pursuant to Rule 60(b), issued on April 9, 2021).

- *Short v. Hartman*, No. 1:18-cv-741 (M.D.N.C.) (Memorandum Opinion and Order granting the defendants' Rule 12(c) motion issued on February 17, 2021).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in the above proceeding on December 8, 2023.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit that gave rise to this petition is published at *Short v. Hartman*, 87 F.4th 593 (4th Cir. 2023) and is reproduced in the Appendix filed herewith ("App.") at App. 1a. The opinion of the District Court in this case, granting Petitioners' motion for judgment on the pleadings, is reproduced at App. 51a, and is unreported but available at 2021 WL 620933. The District Court's Order denying the plaintiff's Rule 60(b) motion is reproduced at App. 44a, and is unreported but available at 2021 WL 1341800.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 8, 2023. App. 1a. The Fourth Circuit denied a petition for rehearing on January 9, 2024. App. 80a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment provides in relevant part: "No state shall…deprive any person of life, liberty,

or property, without due process of law." U.S. Const. Amend. XIV, § 1.

42 U.S.C. § 1983 states in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

INTRODUCTION

The circuit courts are divided on the frequently recurring legal question of the showing a pretrial detainee must make when alleging prison officials were deliberately indifferent to his medical needs. Five circuits require the officials to have actually known of a significant risk of harm to the detainee, but five other circuits (including the panel opinion in this case) require only that the officials objectively *should have known* of such a risk.

The Court should grant this Petition and hold that actual knowledge is required. That framework is straightforward in application. This Court has long required actual knowledge when convicted inmates bring claims of deliberate indifference. There is no reason to impose a different test, with a lower but more unpredictable standard, simply because the plaintiff is a pretrial detainee.

The circuits' disagreement stems from whether such claims are controlled by *Farmer v. Brennan*, 511 U.S. 825 (1994), or instead by *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). Neither decision directly addressed this precise issue. In *Farmer*, this Court held that a convicted inmate can prevail on a claim of deliberate indifference only when a prison official is actually "aware" and "knows of" an excessive risk to an inmate's safety and then intentionally disregards it. 511 U.S. at 836-37. The Court rejected liability where there was merely a "significant risk that [the official] should have perceived but did not." *Id.* at 838.

In *Kingsley*, this Court held that a pretrial detainee (not a convicted inmate) could make out a claim for *excessive force* under the Fourteenth Amendment by showing that "the force purposely or knowingly used against [the detainee] was objectively unreasonable," regardless of whether the official actually knew or intended the force to be unreasonable. 576 U.S. at 397.

After *Kingsley*, five circuits hold that the *Farmer* standard applies to all deliberate indifference claims, regardless of whether the plaintiff is a pretrial detainee or a convicted inmate, and thus there must be a showing

that a prison official was actually aware of a substantial risk and ignored it. However, five other circuits (including the Fourth Circuit panel opinion below) hold that *Kingsley* implicitly modified *Farmer* for deliberate indifference claims brought by pretrial detainees, who now must show merely that a prison official objectively should have known of a substantial risk and that the prison official (either consciously or unconsciously) took inappropriate action or failed to take appropriate action.

This Court should resolve the split. The proper framework for such claims is an issue that arises frequently in the lower courts, as there are hundreds of thousands of pretrial detainees in local jails at any given moment. Providing a clear test is especially important for the prison officials whose conduct is at issue. The steady stream of lawsuits by pretrial detainees asserting constitutional violations for what often amounts at most to negligent conduct puts an extraordinary burden on local government resources, not to mention the federal judiciary that must decide these cases, and yields inconsistent results, making it difficult for officials to predict whether certain actions may result in liability. As Judge Readler explained in recently calling on the Court to resolve this very question, "the *Kinglsey* split is more than mature—it is having offspring." *Helphenstine v. Lewis County*, 65 F.4th 794, 801 (6th Cir. 2023) (Readler, J., respecting denial of rehearing en banc). "Disagreements abound, from whether to apply *Kingsley* to deliberate indifference claims, to the test to apply if so, to whether the same test applies in various settings." *Id.* Accordingly, he wrote, "[w]ith confusion rampant coast-to-coast, the Supreme Court would appear to be the proper forum" to intervene, and it should grant certiorari "soon." *Id.*

Furthermore, review of this important issue is warranted because the decision below is incorrect. *Kingsley* is a case involving excessing force, and does not address the framework for deliberate indifference claims, which had already been addressed in *Farmer* and which by its very terms presuppose actual knowledge -- i.e., deliberation. Further, *Kingsley's* adoption of an objective test for excessive force claims reflected the Fourth Amendment origins of that type of claim, but it makes no sense to apply a Fourth Amendment reasonableness framework to a claim like deliberate indifference whose origins are in the Eighth Amendment, which requires a "sufficiently culpable state of mind." *Farmer*, 511 U.S. at 834. Applying *Kingsley's* test to deliberate indifference claims thus contradicts *Kingsley's* own logic.

Additionally, since the Fourth Circuit panel decision below articulates a test that allows plaintiffs to prevail on Due Process deliberate indifference claims by showing that an officer negligently failed to act, the Fourth Circuit decision is in conflict with Supreme Court precedent, which clearly states that a negligent failure to act does not implicate the Due Process Clause. *Daniels v. Williams*, 474 U.S. 327, 328 (1986).

For all those reasons, and as explained at length below, the Court should grant certiorari and reverse the judgment below.

STATEMENT OF THE CASE

This is a case in which the Plaintiff, as Administrator of the Estate of Victoria Christine Short, seeks to hold a detention officer liable under 42 U.S.C. § 1983 for the

suicide of Victoria Short, who was a pretrial detainee at the time of her suicide.

A. Background Facts

Victoria Short was arrested and brought to the Davie County Detention Center on the evening of August 22, 2016. Upon arriving at the Detention Center, just after midnight on August 23, 2016, Ms. Short underwent in-processing, including medical screening by Linda Barnes, a licensed practical nurse ("LPN") working for Southern Health Partners ("SHP"). SHP had a contract with Davie County to provide medical care to detainees at the Detention Center. App. 54a.

LPN Barnes started Ms. Short's medical screening at 12:09 a.m. on August 23, documenting the medical screening on a Medical Staff Receiving Screening form. LPN Barnes noted on Ms. Short's initial medical evaluation forms that Short was exhibiting "severe" signs of withdrawal. LPN Barnes reported on the screening form that Ms. Short was suffering from nausea, vomiting, and diarrhea and should be placed on alcohol and drug withdrawal monitoring. App. 55a.

On the same form completed during in-processing, LPN Barnes marked "[n]o" to the question of whether Ms. Short "show[ed] signs of illness, injury…or other symptoms suggesting the need for immediate emergency medical referral." LPN Barnes also documented that Ms. Short had "scabs/sores on face, arms, legs, trunk"; had visible signs of being under the influence of, or withdrawing from, "drugs"; had considered or attempted suicide a "month ago"; and had been hospitalized for a suicide

attempt in "July 2016." LPN Barnes also documented that Ms. Short used "heroin, Xanax, opana," and "alcohol" "daily." Of note, LPN Barnes did not fill in the section of the form which asked if the detainee "exhibited any signs that suggest the risk of suicide, assault or abnormal behavior." She did write that Ms. Short should be placed on "ETOH/Benzo/Opiate detox protocol and [withdrawal] monitoring." App. 56a.

LPN Barnes also completed a second assessment around 12:09 a.m. that evaluated Ms. Short's withdrawal severity. The form provided a scale of zero to seven for withdrawal symptoms in nine categories, with "zero" representing the least severe symptoms and "seven" representing the most severe symptoms, and zero to four in a tenth category, measuring "Orientation and Clouding of Sensorium." According to LPN Barnes, Ms. Short was exhibiting the following withdrawal symptoms on the scale of zero to seven: 1) intermittent nausea with dry heaves (score: 5); 2) moderate tremors (score: 5); 3) paroxysmal sweats (score: 3); 4) high anxiety (score: 6); 5) moderately fidgety and restless (score: 4); 6) moderately severe hallucinations (score: 4); 7) moderate harshness or ability to frighten (score: 3); 8) moderate sensitivity (score: 3); and 9) headache (score: 0); and in the tenth category, she noted Ms. Short registered an inability to do serial additions or was uncertain about the date (score: 1). The form states that "[p]atients scoring less than 10 do not usually need additional medication for withdrawal." Ms. Short scored thirty-four points out of a maximum possible score of sixty-seven. Based on the Physicians Order LPN Barnes completed, "medical providers knew that [Ms. Short] suffered from a complex withdrawal situation involving several different types of drugs." App. 56a, 57a.

After medically assessing Ms. Short, which included being made aware of Ms. Short's recent suicide attempts, LPN Barnes made the medical assessment that Ms. Short was not suicidal, and made the medical decision to *not* place Ms. Short on suicide watch or take other precautions relating to any potential suicide risk. Instead, Barnes authorized that Ms. Short could be moved to female isolation, purportedly due to having "open draining sores all over her body." Ms. Short was placed in a cell by herself with no one else on the hallway. App 57a.

Defendant Bailey, a licensed practical nurse employed by SHP, saw Ms. Short at 7:15 a.m. and 8:30 a.m. on August 24, 2016. Nurse Bailey also did not assess Ms. Short as being suicidal. Instead, Nurse Bailey noted "overt…signs of withdrawal." App. 59a. LPN Bailey did not put Ms. Short on suicide watch, nor did she issue different medical instructions regarding Ms. Short. App. 73a.

At some point on August 23 – following LPN Barnes' assessment – Sergeant Morgan, a layperson, completed a "Medical Questionnaire" form, evaluating Ms. Short's mental health. At around 1:30 a.m., Sergeant Morgan completed a second form pertaining to Ms. Short's mental health and suicide risk. Essentially, Ms. Short gave Sergeant Morgan the same medical information that she gave to the medical care providers. Sergeant Morgan noted that Ms. Short had "considered or attempted suicide" "last month," that Ms. Short used drugs and alcohol (presumably quoting Ms. Short as saying "whatever can get my hands on"), had visible signs of skin lesions, and appeared to be under the influence of or withdrawing from drugs. App. 57a, 58a.

On August 24, 2016 at around 10:10 a.m., Officer Boger discovered, while making his rounds, that Ms. Short had attempted suicide by hanging herself with a bed sheet. The officers of the Davie County Detention Center and the EMS tried to save Ms. Short. Short was taken to Wake Forest Baptist Medical Center by ambulance. Ms. Short died on September 7, 2016 at Wake Forest Baptist Medical Center. App. 60a.

B. District Court Proceedings

Plaintiff filed this action against multiple defendants, asserting claims under 42 U.S.C. § 1983 arising out of the suicide of Ms. Victoria Short. Plaintiff settled with, and dismissed, all of the medical defendants. App. 12a. Plaintiff has abandoned his individual capacity claims against all the laypersons except for Detention Officer Morgan in her individual capacity. App. 13a. Thus, the claim pertinent to this petition is the Plaintiff's claim for deliberate indifference to medical needs brought against Detention Officer Teresa Morgan. App. 13a.

On September 24, 2019, the non-medical defendants moved for judgment on the pleadings pursuant to Rule 12(c). App. 12a. On February 17, 2021, the District Court granted the non-medical defendants' motion for judgment on the pleadings. App. 52a. The District Court, applying the *Farmer* Eighth Amendment deliberate indifference test (which had been the standard for decades in the Fourth Circuit for deliberate indifference claims brought by pretrial detainees), held that Plaintiff failed to state a claim under 42 U.S.C. § 1983 against any individual non-medical defendant and dismissed these claims with prejudice. Specifically with regard to Sergeant Morgan,

the district court noted that Ms. Short had been assessed by LPN Barnes, who had "medically assessed her and ordered only withdrawal protocol and isolation," App. 74a, and indicated that since Morgan lacked the authority to interfere with Ms. Short›s medical treatment, Morgan was entitled to rely upon the health care providers' expertise. App. 74a. The district court also reasoned that Plaintiff failed to state a claim against Morgan under the *Farmer* deliberate indifference test because "a failure to recognize warning signs" and/or a failure to alleviate a risk she "should have perceived but did not" did not constitute deliberate indifference under *Farmer*. App. 73a, 74a. The district court also held that because there was no underlying constitutional violation, the Plaintiff's *Monell* claims also failed. App. 78a. The district court also elected not to exercise pendent or supplemental jurisdiction over Plaintiff's remaining state law claims. App. 79a.

Plaintiff filed a Motion for Relief from Judgment Pursuant to Rule 60(b), which was denied by the district court on April 9, 2021. App. 44a.

C. Decision of the Fourth Circuit Panel

On March 10, 2021, Plaintiff filed a notice of appeal as to the District Court's Order granting the Motion for Judgment on the Pleadings. Plaintiff filed a notice of appeal as to the District Court's Order denying Plaintiff's Motion for Relief from Judgment Pursuant to Fed. R. Civ. P. 60(b) on April 9, 2021. The two appeals by Plaintiff generated two cases at the United States Court of Appeals for the Fourth Circuit – Case 21-1396(L) and Case 21-1397. By Order dated April 12, 2021, the Fourth Circuit consolidated Case 21-1397 with Case 21-1396(L). As noted

above, on appeal, Plaintiff abandoned all Section 1983 individual capacity claims except his Section 1983 claim for deliberate indifference to medical needs against one lone individual defendant, Defendant Teresa Morgan. App. 13a.

On August 24, 2023, a few weeks before the scheduled oral argument, the Fourth Circuit issued an Order directing the parties to file supplemental briefing addressing new issues, including: "Whether the purely objective test announced by the United States Supreme Court in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), applies.…" App. 13a.

On December 8, 2023, the Fourth Circuit panel issued its opinion, which is published at *Short v. Hartman*, 87 4th 593 (4th Cir. 2023). App. 1a. Prior to the Fourth Circuit panel opinion in this case, the Fourth Circuit had long applied the *Farmer* deliberate indifference standard to deliberate indifference claims brought under Section 1983 by pretrial detainees. *See, e.g., Stevens v. Holler*, 68 F.4th 921, 930-933 (4th Cir. 2023); *Brown v. Harris*, 240 F.3d 383, 388 (4th Cir. 2001). However, the Fourth Circuit panel opinion below purported to change this longstanding Fourth Circuit law. The Fourth Circuit panel held that the purely objective test articulated by the United States Supreme Court in an excessive force context in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015) also now applies to Due Process claims of deliberate indifference brought by pretrial detainees in the Fourth Circuit. App. 17a, 18a, App. 26a-33a. In so holding, the Fourth Circuit panel below acknowledged that there was a split among the Circuits on this important and recurring federal issue, with the Second, Sixth, Seventh, and Ninth Circuits holding that the *Kingsley* objective standard applies to deliberate

indifference to medical needs claims of pretrial detainees, while the Fifth, Eighth, Tenth, and Eleventh Circuits have held that after the Supreme Court's *Kingsley* decision, the *Farmer* deliberate indifference standard continues to apply to claims of deliberate indifference to medical needs brought by pretrial detainees, citing *Darnell v. Pineiro*, 849 F.3d 17, 35 (2nd Cir. 2017); *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018); *Miranda v. County of Lake*, 900 F.3d 335, 352-53 (7th Cir. 2018); *Brawner v. Scott County*, 14 F.4th 585, 596-97 (6th Cir. 2021); *Strain v. Regalada*, 977 F.3d 984, 991 (10th Cir. 2020); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n. 4 (8th Cir. 2018); *Dang ex. rel. Dang v. Sheriff, Seminole County*, 871 F.3d 1272, 1279 n. 2 (11th Cir. 2017); *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419 n. 4 (5th Cir. 2017). App. 19a, 29a-30a.

The Fourth Circuit panel opinion below changed the test for Due Process claims in the Fourth Circuit brought by pretrial detainees for deliberate indifference to medical needs, stating as follows:

> To state a claim for deliberate indifference to a medical need, the specific type of deliberate indifference claim at issue in this case, a pretrial detainee must plead that (1) they had a medical condition or injury that posed a substantial risk of serious harm; (2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed; (3) the defendant knew or should have known (a) that the detainee had that condition and (b) that the defendant's action or inaction posed an unjustifiably high risk

> of harm; and (4) as a result, the detainee was harmed. We take this test to be the same test our sister circuits have adopted. *See Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017); *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018); *Miranda v. County of Lake*, 900 F.3d 335, 352-53 (7th Cir. 2018); *Brawner v. Scott County*, 14 F.4th 585, 596-97 (6th Cir. 2021).

App. 32a. Crucially, the Fourth Circuit test eliminated the requirement that an officer must actually know that the pretrial detainee suffered from a serious medical condition or injury, and intentionally took inappropriate actions. Instead, under the Fourth Circuit panel test, a pretrial detainee need only show that the officer "should have known" of the medical condition or injury – a negligence standard – and that the officer's action or inaction "posed an unjustifiably high risk of harm." App. 32a. As the Fourth Circuit panel put it, under the Fourth Circuit's new objective test, "[t]he plaintiff no longer has to show that the defendant had actual knowledge of the detainee's serious medical condition and consciously disregarded the risk that their action or failure to act would result in harm." App. 33a.

The Defendants filed a petition for rehearing en banc, which was denied on January 9, 2024. App. 80a.

REASONS FOR WHY THE PETITION SHOULD BE GRANTED

The courts of appeals are deeply divided on the due process standard that governs claims brought by pretrial detainees challenging their treatment in custody.

In the wake of *Kingsley*, the circuits have divided into two camps—those applying *Kingsley's* test of objective reasonableness to these due process claims, and those adhering to a subjective deliberate indifference test drawing on Eighth Amendment standards for convicted prisoners. The issue has great significance for officers across the nation dealing with pretrial detainees, and for the detainees themselves and their families. This case clearly and squarely presents the issue. Furthermore, the decision below is wrong. This state of affairs benefits no one; therefore, this Court should grant certiorari to settle the issue, and provide uniform national due process standards.

I. THE CIRCUITS ARE OPENLY AND DEEPLY DIVIDED ON THE QUESTION PRESENTED; THEREFORE, CERTIORARI IS WARRANTED TO RESOLVE THIS CONFLICT AMONG THE CIRCUITS

The courts of appeals have acknowledged that "the circuits are split" on whether *Kingsley's* objective standard applies to pretrial detainees' deliberate indifference claims. *See* App. 19a, 29a-30a*; Strain v. Regalado*, 977 F.3d 984, 990 (10th Cir. 2020); *see Helphenstine v. Lewis County*, 60 F.4th 305, 316 (6th Cir. 2023) ("our sister circuits are all over the map on this issue"). As Judge Readler recently put it, "[w]ith signs pointing in all directions, even the most careful reader would likely find herself at a crossroads." *Helphenstine*, 65 F.4th at 801 (Readler, J., respecting denial of rehearing en banc). Until "Supreme Court intervention comes to pass, we are left to muddle on, following paths leading in any and all directions." *Id.* at 802.

A. Five Circuits Do Not Apply *Kingsley* to Deliberate Indifference Claims

The First, Fifth, Eighth, Tenth, and Eleventh Circuits all hold post-*Kingsley* that *Farmer* still controls for pretrial detainees' claims of deliberate indifference, meaning that pretrial detainees must demonstrate that jail staff actually knew of and disregarded a substantial risk of serious harm.

First Circuit. The First Circuit has acknowledged that *Kingsley* controls pretrial detainee excessive force claims but retained the *Farmer* standard for deliberate indifference claims brought by such individuals. *See Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64, 70, 74 (1st Cir. 2016); *see also, e.g., Sacco v. Hillsborough Cnty. House of Corr.*, 561 F.Supp.3d 71, 81 (D.N.H. 2021) ("Neither the Supreme Court nor the First Circuit Court of Appeals has extended the *Kingsley* holding to other contexts" beyond excessive force).

Fifth Circuit. "[T]he Fifth Circuit has continued to…apply a subjective standard post-*Kingsley*," meaning the prison official must actually have been aware of the substantial risk to the detainee. *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419 n. 4 (5th Cir. 2017). "*Kingsley* did not address claims regarding medical treatment. Rather, the Supreme Court held that plaintiffs alleging excessive force must show that the force was objectively excessive. Since *Kingsley* discussed a different type of constitutional claim, it did not abrogate our deliberate-indifference precedent" requiring "subjective knowledge." *Cope v. Cogdill*, 3 F.4th 198, 207 n. 7 (5th Cir. 2021). Subsequent precedential decisions from the Fifth

Circuit have adhered to that requirement in a variety of contexts. *See, e.g., Crandel v. Hall*, 75 F.4th 537, 544 (5th Cir. 2023); *Edmiston v. Borrego*, 75 F.4th 551, 558–59 (5th Cir. 2023).

Eighth Circuit. The Eighth Circuit has also held that for pretrial detainees' deliberate indifference claims, "*Kingsley* does not control because it was an excessive force case, not a deliberate indifference case." *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n. 4 (8th Cir. 2018); *see also Karsjens v. Lourey*, 988 F.3d 1047, 1052 (8th Cir. 2021).

Tenth Circuit. The Tenth Circuit's decision in *Strain v. Regalado*, 977 F.3d 984 (10th Cir. 2020), acknowledged the circuit split and provided an extensive explanation as to why *Kingsley* should not be extended to pretrial detainees' deliberate indifference claims. *Id.* at 990–93 & n. 4. *First*, *Kingsley* itself was expressly limited to excessive force, and it "relie[d] on precedent specific to excessive force claims." *Id.* at 991.

Second, "the two categories of claims protect different rights for different purposes," and thus "the claims require different state-of-mind inquiries." *Id.* Although both excessive force and deliberate indifference look at whether a detainee has been punished, excessive force claims are aimed at "affirmative act[s]" that more naturally fall within the punishment category, whereas deliberate indifference involves "the mere failure to act," "where the claim generally involves inaction divorced from punishment." *Id.* at 991–92. To ensure the latter category is actionable only when it does amount to punishment, the court must require the prison official to have actually

known of the risk of harm to the detainee and disregarded it.

Third, a deliberate indifference claim "presupposes a subjective component." *Id.* at 992. "After all, deliberate means 'intentional,' 'premeditated,' or 'fully considered,' [a]nd as an adjective, 'deliberate' modifies the noun 'indifference.'" *Id.* (quoting *Black's Law Dictionary* 539 (11th ed. 2019)).

Subsequent Tenth Circuit decisions have reaffirmed and applied *Strain*'s holding. *See, e.g., Estate of Beauford v. Mesa Cnty.*, 35 F.4th 1248, 1262–63 (10th Cir. 2022); *Hooks v. Atoki*, 983 F.3d 1193, 1203–04 (10th Cir. 2020).

Eleventh Circuit. The Eleventh Circuit has held that "*Kingsley* involved an excessive-force claim, not a claim of inadequate medical treatment due to deliberate indifference," and thus the *Farmer* standard remains appropriate for deliberate indifference claims brought by pretrial detainees. *Dang ex. rel. Dang v. Sheriff, Seminole County*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017). Subsequent decisions have reaffirmed that the test for deliberate indifference is "the same" for both pretrial detainees and convicted prisoners. *Wade v. Daniels*, 36 F.4th 1318, 1326 n. 3 (11th Cir. 2022); *see also Ireland v. Prummell*, 53 F.4th 1274, 1287 (11th Cir. 2022); *Swain v. Junior*, 961 F.3d 1276, 1285 n. 4 (11th Cir. 2020).

B. Five Circuits (Including the Panel Opinion Below) Hold that *Kingsley* Abrogated *Farmer* for Deliberate Indifference Claims by Pretrial Detainees

Five circuits view *Kingsley* as requiring them to lower the *mens rea* showing a pretrial detainee must make for a deliberate indifference claim.

Second Circuit. The Second Circuit has held that "punishment has no place in defining the *mens rea* element of a pretrial detainee's claim under the Due Process Clause," and just as "*Kingsley* held that an officer's appreciation of the officer's application of excessive force against a pretrial detainee in violation of the detainee's due process rights should be viewed objectively," "[t]he same objective analysis should apply to an officer's appreciation of the risks associated with an unlawful condition of confinement in a claim for deliberate indifference under the Fourteenth Amendment." *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017). Although "*Darnell* did not specifically address medical treatment," the Second Circuit later reasoned that "the same principle applies" to claims of inadequate medical care. *Charles v. Orange County*, 925 F. 3d 73, 87 (2d Cir. 2019).

Fourth Circuit. As explained above, the Fourth Circuit panel in this case articulated an objective test in which "[t]he plaintiff no longer has to show that the defendant had actual knowledge of the detainee's serious medical condition and consciously disregarded the risk that their action or failure to act would result in harm." App. 33. Prior to the Fourth Circuit panel opinion is this case, the Fourth Circuit had long applied the *Farmer*

Eighth Amendment subjective deliberate indifference standard to deliberate indifference claims brought by pretrial detainees. This was true in the Fourth Circuit before and after *Kingsley*, and applied to various types of claims for deliberate indifference brought by pretrial detainees. *See, e.g., Younger v. Crowder*, 79 F.4th 373, 382 (4th Cir. 2023); *Stevens v. Holler*, 68 F.4th 921, 930-33 (4th Cir. 2023); *Mays v. Sprinkle*, 992 F.3d 295, 300-301 (4th Cir. 2021); *Moss v. Harwood*, 19 F.4th 614, 624-25 (4th Cir. 2021); *Brown v. Harris*, 240 F.3d 383, 388 (4th Cir. 2001). Nevertheless, the Fourth Circuit panel purported to overrule the earlier Fourth Circuit panel decisions on this issue, even though the clear law in the Fourth Circuit is that one panel cannot overrule a precedent set by a prior panel, *see, e.g., Bell v. Jarvis*, 236 F.3d 149, 159 (4th Cir. 2000) (en banc), and that when there are conflicts between Fourth Circuit panel opinions, "the earliest opinion controls." *McMellon v. United States*, 387 F.3d 329, 333 (4th Cir. 2004). Therefore, it is fair to say that there is some confusion in the Fourth Circuit on this issue.

Sixth Circuit. In *Brawner v. Scott County*, 14 F.4th 585 (6th Cir. 2021), the Sixth Circuit acknowledged its "precedent applying a subjective standard to deliberate-indifference claims by pretrial detainees," but concluded that *Kingsley* "require[d] modification of [its] caselaw." *Id*. at 596. "Given *Kingsley's* clear delineation between claims brought by convicted prisoners under the Eighth Amendment and claims brought by pretrial detainees under the Fourteenth Amendment," the Sixth Circuit held that *Kingsley's* objective standard governs pretrial detainees' claims of inadequate care. *Id*. In *Helphenstine v. Lewis County, Kentucky*, 60 F.4th 305 (6th Cir. 2023), the Sixth Circuit chronicled its changing caselaw on

Kingsley's application to pretrial detainees' claims of deliberate indifference. *Id.* at 315-316. The court ultimately concluded that *Kingsley* requires "'something akin to reckless disregard,'" *Id.* at 315, although in practice this test is largely indistinguishable from a negligence standard. Liability exists whenever a "reasonable officer" "should have known" of the risk and "recklessly failed to act reasonably" by not responding.

This view is not unanimous in the Sixth Circuit, however. *See, e.g., Westmoreland v. Butler Cnty.*, 35 F.4th 1051, 1053 (6th Cir. 2022) (Bush, J., dissenting from denial of rehearing *en banc*).

Seventh Circuit. The Seventh Circuit holds that *Kingsley* "disapproved the uncritical extension of Eighth Amendment jurisprudence to the pretrial setting." *Miranda v. Cnty. of Lake*, 900 F.3d 335, 351 (7th Cir. 2018). *Miranda* acknowledged the circuit split, but nonetheless chose to apply *Kingsley's* objective standard to all claims brought by pretrial detainees because they "cannot be punished at all." *Id.* at 352. Thus, in the Seventh Circuit, a court need only "determine whether the defendants' actions were 'objectively reasonable.'" *Pittman v. Cnty. of Madison*, 970 F.3d 823, 827 (7th Cir. 2020) (Barrett, J.) (following *Miranda* as binding circuit precedent); *see McGee v. Parsano*, 55 F.4th 563, 569 (7th Cir. 2022); *Kemp v. Fulton Cnty.*, 27 F.4th 491, 495 (7th Cir. 2022); *Hardeman v. Curran*, 933 F.3d 816, 822 (7th Cir. 2019).

Ninth Circuit. The *en banc* Ninth Circuit has held that all pretrial detainee claims must be evaluated under an objective standard because *Kingsley* "expressly rejected…the notion that there exists a single 'deliberate

indifference' standard applicable to all § 1983 claims, whether brought by pretrial detainees or by convicted prisoners." *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016) (*en banc*). The Ninth Circuit later followed *Castro's* reasoning to hold that *Kingsley* equally applies to and requires an objective standard for pretrial detainees' Fourteenth Amendment "claims for violations of the right to adequate medical care." *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018).

That view is not unanimous within the Ninth Circuit, however. In *Castro*, Judges Ikuta, Callahan, and Bea dissented and argued that the majority had "inexplicably" held that "we must analyze a claim that a government official's failure to act constituted punishment under the standard applicable to excessive force claims, relying on the Supreme Court's recent decision in *Kingsley*." 833 F.3d at 1085 (Ikuta, J., dissenting). "But *Kingsley* applies to a different category of claims: those involving intentional, objectively unreasonable actions." *Id.* at 1087. The proper test for deliberate indifference claims "is whether the situation at issue amounts to a punishment of the detainee. While punitive intent may be inferred from affirmative acts that are excessive in relationship to a legitimate government objective, the mere failure to act does not raise the same inference. Rather, a person who unknowingly fails to act—even when such a failure is objectively unreasonable—is negligent at most." *Id.* at 1086.

Only this Court can resolve the stark divide between the circuits on this important and frequently recurring issue. Thus, the petition for writ of certiorari should be granted.

II. CERTIORARI IS WARRANTED BECAUSE THIS ISSUE ARISES FREQUENTLY AND IS EXCEPTIONALLY IMPORTANT

A. The Question Presented Arises Frequently

The question presented is important because it arises frequently, and officials need to know the proper test against which their actions will be judged.

"This is no small matter": pretrial detainee cases "populate every docket across the federal courts." *Helphenstine*, 65 F.4th at 801 (Readler, J., respecting denial of rehearing en banc). Since 2008, more than 76,000 "prisoner civil rights" and "prison condition" claims have reached federal appellate courts—approximately 16.8% of all civil appeals. IDB Appeals 2008-Present, Fed. Jud. Ctr., http://www.fjc.gov/research/idb/interactive/21/IDB-appeals-since-2008; *see also* Zhen Zeng, Bureau of Justice Statistics, NCJ 251774, Jail Inmates in 2017, at 1 (2019) (reporting that almost two-third of jail inmates were "unconvicted"). "That so many [courts] have said so much in so little time" since *Kingsley* confirms "the frequency with which these cases appear on [federal] docket[s]." *Helphenstine*, 65 F.4th at 797 (Readler, J., respecting denial of rehearing en banc). As of mid-year 2021, local jails held over 630,000 prisoners, and over 70% of them were pretrial detainees. Zhen Zeng, *Jail Inmates in 2021*, U.S. Department of Justice Bureau of Justice Statistics, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ji21st.pdf. That amounts to nearly half a million pretrial detainees in local prisons at any given moment.

Not only are these claims recurring and frequent, but for detainees and prison officials alike, the applicable standard is not just a "theoretical concept[] to debate"; it "govern[s] [jailers'] everyday conduct." *Id.* at 801; *see* PEW Charitable Trusts, *Jails: Inadvertent Health Care Providers* 9 (Jan. 2018) (more than 90% of large jails have been sued for denial of medical care). Jails, officials, institutional supervisors, and pretrial detainees all need guidance on the applicable standard.

B. Clarity Is Important to Officials and Detainees Alike

A clear test is particularly needed in this area of law, as officials must know what behavior will lead to triable claims of deliberate indifference. In the context of convicted inmates, courts have long required subjective knowledge on the part of prison officials, and that framework has proven straightforward to apply. Applying that same test to pretrial detainees would accordingly ensure a significant measure of stability and predictability.

On the other hand, under the objective test adopted by the Fourth Circuit and other circuits, lay prison officials face significant unpredictability about what behavior will result in a triable claim of deliberate indifference, and even decisions within the same circuit are "hard to square with one another." *Helphenstine*, *supra.*, Readler, J., respecting denial of rehearing en banc.).

The Petitioners respectfully submit that this Court should grant this petition, and provide clarity on this important issue.

III. CERTIORARI IS WARRANTED BECAUSE THE DECISION OF THE FOURTH CIRCUIT PANEL RULE IS WRONG, AND BECAUSE THE DECISION IS IN CONFLICT WITH BINDING SUPREME COURT PRECEDENT

Review is warranted for the additional reason that the decision below is wrong. *Kingsley* said nothing about the *Farmer* standard for pretrial detainees' claims of deliberate indifference, and incorporating *Kingsley's* standard for such claims contradicts the logic of *Kingsley* itself. The *Farmer* test provides a straightforward and logical framework for deliberate indifference claims regardless of whether the inmate is a pretrial detainee or a convicted prisoner. Indeed, Justices of this Court have acknowledged as recently as 2020 that *Farmer* provides the "well-established law" that a "pretrial detainee[ ]" must demonstrate "the Jail *knew of* and disregarded an 'excessive risk to inmate health or safety.'" *Barnes v. Ahlman*, 140 S.Ct. 2620, 2621, 2622 (2020) (Sotomayor, J., joined by Ginsburg, J., dissenting from grant of stay) (quoting *Farmer*, 511 U.S. at 837) (emphasis added).

A. *Kingsley* Did Not Abrogate the *Farmer* Test for Deliberate Indifference

The opinion in *Kingsley* addressed an excessive force claim and said nothing about deliberate indifference, even going out of its way to note the narrow scope of its holding. 576 U.S. at 402 (declining to address claims "not confront[ing]" the precise issue of excessive force in the context of pretrial detainees).

Nor does *Kingsley's* logic indicate that the *Farmer* subjective test is inapplicable to pretrial detainees' deliberate indifference claims. If anything, *Kingsley* suggests the opposite. *Kingsley* turned more on the nature of the claim than on the status of the detained individual. *See Strain*, 977 F.3d at 990–92. "*Kingsley* turned on considerations unique to excessive force claims" and "relie[d] on precedent specific to excessive force claims" in the Fourth Amendment context, *id.* at 991, which naturally looks to objective reasonableness in accordance with the text of the Fourth Amendment itself. *See Kingsley*, 576 U.S. at 397–401 (extensively citing *Graham v. Connor*, 490 U.S. 386 (1989), which set the standard for excessive force in the Fourth Amendment context). Given those origins, there was logic in imposing an objective reasonableness test for excessive force claims.

Contrast that with a deliberate indifference claim, which has its origins in Eighth Amendment jurisprudence requiring a "sufficiently culpable state of mind", *Farmer*, 511 U.S. at 834, and thus "presupposes a subjective component," *Strain*, 977 F.3d at 992. "After all, deliberate means 'intentional,' 'premeditated,' or 'fully considered,' [a]nd as an adjective, 'deliberate' modifies the noun 'indifference.'" *Id.* (quoting *Black's Law Dictionary* 539 (11th ed. 2019)). Even when applied through the Due Process Clause to a pretrial detainee, such a claim by its very nature still requires the official to have actually known of a significant risk.

Thus, excessive force and deliberate indifference claims "protect different rights for different purposes," and "the claims require different state-of-mind inquiries" for that very reason. *Strain*, 977 F.3d at 991–92. Although

both look at whether a pretrial detainee has been punished in violation of the Fourteenth Amendment, excessive force claims are aimed at "affirmative act[s]" that more naturally fall within the punishment category and thus can arguably be gauged using an objective test, whereas deliberate indifference involves "the mere failure to act" "where the claim generally involves inaction divorced from punishment." *Id.* at 991–92. A subjective knowledge requirement filters out the failures that are punitive from those that are "negligent at most." *Castro*, 833 F.3d at 1086 (Ikuta, J., dissenting).

By importing *Kingsley* to the deliberate indifference context, courts like the Fourth Circuit have thus disregarded both (1) why *Kingsley* imposed an objective standard for excessive force claims and (2) the distinct origin of deliberate indifference claims. This converts the knowledge-based deliberate indifference claim into a negligence-based unreasonable inattentiveness claim. *See, e.g., Westmoreland v. Butler Cnty.*, 29 F.4th 721, 734–35 (6th Cir. 2022) (Bush, J., dissenting) (comparing the Sixth Circuit's test to the definition of "negligence" in the *Restatement (Third) of Torts: Phys. & Emot. Harm* (2010)).

In short, the Fourth Circuit panel opinion below was wrong in holding that *Kingsley* abrogated the *Farmer* test for deliberate indifference.

B. The Fourth Circuit's Objective Test for a Due Process Deliberate Indifference Claim Allows a Pretrial Detainee to Prevail By Showing that an Official Was Negligent, Which is in Direct Conflict with Supreme Court Authority

As noted above, the Fourth Circuit panel's objective deliberate indifference test includes the holding that a pretrial detainee can state a Due Process claim for deliberate indifference to a serious medical need against a jail official by alleging and/or showing that the jail official "should have known" of a condition or risk, but failed to take appropriate measures, even if the official did not intentionally or consciously make the decision to act or fail to act. App. 33a. As the Fourth Circuit panel put it, under the Fourth Circuit's new objective test for deliberate indifference under the Due Process Clause, "[t]he plaintiff no longer has to show that the defendant had actual knowledge of the detainee's serious medical condition and consciously disregarded the risk that their action or failure to act would result in harm." App. 33a.

Even though the Fourth Circuit panel states that this objective standard is not a negligence standard, *id.*, it is in fact a textbook negligence standard. As the Restatement (Third) of Torts: Phys and Emot. Harm 83 (2010) explains, "negligence" is defined as a situation where a "person does not exercise reasonable care under the all the circumstances," whereas "reasonable care" is "conduct that avoids creating an unreasonable risk of harm.…" Therefore, the Fourth Circuit panel's new objective deliberate indifference test is indistinguishable from the test for common law negligence. *See Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir 2020) (stating that the *Kingsley*

standard is not applicable to a pretrial detainee's claim for deliberate indifference to medical needs, in part because "a person who unknowingly fails to act – even when such a failure is objectively unreasonable – is negligent at most"), citing *Castro, supra*., at 1086 (Ikuta, J., dissenting). The fact that the Fourth Circuit panel test allows a pretrial detainee to prevail on a claim of deliberate indifference by showing that an officer was at most negligent is of crucial importance, because this Court has clearly and specifically held that a negligent failure to act does not implicate the Due Process Clause of the Fourteenth Amendment. *Daniels v. Williams*, 474 U.S. 327, 328, 334 (1986). *See also, e.g., County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) ("[L]iability for negligently inflicted harm is categorically beneath the threshold of constitutional due process").

In sum, the Fourth Circuit panel test conflicts with clear Supreme Court precedent. Thus, the petition for writ of certiorari should be granted.

CONCLUSION

In short, as Judge Readler stated, "[f]or the sake of litigants and courts alike, the Supreme Court should soon grant certiorari in a case involving allegedly unconstitutional deliberate indifference toward a pretrial detainee." *Helphenstine*, 65 F.4th at 801 (Readler, J., respecting denial of rehearing en banc).

The Petitioners respectfully submit that the time to grant certiorari on this issue is now. The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED DECEMBER 8, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1396

CHARLES WILLIS SHORT, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF VICTORIA CHRISTINE SHORT,

Plaintiff-Appellant,

v.

J. D. HARTMAN, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; CAMERON SLOAN, CAPTAIN, CHIEF JAILER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; DANA KELLY RECKTENWALD, LIEUTENANT, OPERATIONS SUPERVISOR OF THE DETENTION CENTER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; TERESA MORGAN, A/K/A TERESA M. GODBEY, SERGEANT, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CRYSTAL COOK MEADOWS, SERGEANT, DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; MATTHEW TRAVIS BOGER, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S

Appendix A

DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; JOHN OR JANE DOES 1-5, JAILERS-DETENTION OFFICERS WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES; WESTERN SURETY COMPANY; ANDREW C. STOKES, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

Defendants-Appellees.

AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION; AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA; RIGHTS BEHIND BARS; RODERICK & SOLANGE MACARTHUR JUSTICE CENTER,

Amici Supporting Appellant.

No. 21-1397

CHARLES WILLIS SHORT, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF VICTORIA CHRISTINE SHORT,

Plaintiff-Appellant,

v.

J. D. HARTMAN, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; CAMERON SLOAN, CAPTAIN, CHIEF JAILER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; DANA KELLY

Appendix A

RECKTENWALD, LIEUTENANT, OPERATIONS SUPERVISOR OF THE DETENTION CENTER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; TERESA MORGAN, A/K/A TERESA M. GODBEY, SERGEANT, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CRYSTAL COOK MEADOWS, SERGEANT, DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; MATTHEW TRAVIS BOGER, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; JOHN OR JANE DOES 1-5, JAILERS-DETENTION OFFICERS WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES; WESTERN SURETY COMPANY; ANDREW C. STOKES, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

Defendants-Appellees.

AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION; AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA; RIGHTS BEHIND BARS; RODERICK & SOLANGE MACARTHUR JUSTICE CENTER,

Amici Supporting Appellant.

Appendix A

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:18-cv-00741-NCT-JLW).

Argued September 19, 2023 Decided December 8, 2023

Before GREGORY and HEYTENS, Circuit Judges, and Deborah L. BOARDMAN, United States District Judge for the Maryland District, sitting by designation.

Reversed and remanded by published opinion. Judge Gregory wrote the opinion, in which Judge Heytens and Judge Boardman joined.

GREGORY, Circuit Judge:

On the morning of August 24, 2016, Victoria Short[1] attempted suicide while in custody at the Davie County Detention Center ("Jail"). She died of her injuries about two weeks later. Her husband, Charles Short, individually and as the administrator of her estate, filed suit, bringing claims under 42 U.S.C. § 1983 against the Davie County Sheriff's Department, which is responsible for the care and custody of inmates in the Jail, and several employees of the Sheriff's Department individually. He also alleged violations of state law. Defendant-Appellees moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). The district court dismissed

1. We refer to Victoria Short as "Ms. Short" to distinguish her from her husband, Appellant Charles Short, whom we refer to as "Mr. Short."

all of Mr. Short's claims, including the claim under the Fourteenth Amendment for the detention officer's deliberate indifference to Ms. Short's risk of suicide, which is at issue in this appeal. Because the district court erred in concluding that the Complaint failed to state a claim, we reverse.

I.

On July 6, 2016, Victoria Short attempted suicide for the first time.[2] A deputy of the Davie County Sheriff's Department, who had been dispatched to her home, called EMS and had Ms. Short transported to Forsyth County Hospital for emergency mental health treatment. At the hospital, it was determined that Ms. Short had taken between 50 and 100 prescription medicine pills during her suicide attempt. She remained in the hospital for four days to receive in-patient treatment.

About six weeks later, on August 22, 2016, at approximately 11:45 p.m., two officers in the Sheriff's Department responded to another call at the Shorts' home—this time because of a domestic disturbance between Ms. Short and her husband. Ms. Short told one of the officers that "she used a syringe found in the kitchen to 'shoot up on Xanax pills,'" that "she was having withdraw[al]s from shooting up," and that "she had not shot up since yesterday." J.A. 145. The deputy's report also noted that Ms. Short was "extremely upset and appeared to be on some type of narcotic as she was

2. Unless stated otherwise, all facts are taken from the Amended Complaint.

shaking uncontrollably, twitching from the neck area, and had needle marks all down both her arms." *Id.*

The deputies took both Mr. and Ms. Short into custody and transported them to the Jail. On the way to the Jail, Ms. Short's brother and Mr. Short told the deputies that Ms. Short was suicidal and had recently attempted suicide. Ms. Short appeared before a magistrate upon arriving at the Jail, and he placed her on a forty-eight-hour domestic hold. Mr. Short was released from custody after approximately four or five hours.

The Amended Complaint alleges that, at 12:09 a.m. on August 23 (approximately half an hour after the deputies responded to the Shorts' home), Ms. Short was examined by licensed practical nurse Linda Barnes.[3] Following the

3. After Defendant-Appellees moved for judgment on the pleadings but before the district court ruled on the motion, the parties conducted and completed discovery, which revealed that Nurse Barnes had in fact examined Ms. Short at 12:09 p.m., twelve hours later than what was alleged in the Complaint. In their Answer to the Amended Complaint, the medical defendants, who included Nurse Barnes, denied the relevant allegation of the Amended Complaint but without explanation. J.A. 278. The Law Enforcement Defendants admitted the allegation that the examination occurred at 12:09 a.m. in their Answer, even though it has subsequently been revealed that this is incorrect. J.A. 46. Because this case comes to us on appeal from a Federal Rule of Civil Procedure 12(c) dismissal, facts revealed during summary judgment are not properly part of the record. *See Massey v. Ojaniit*, 759 F.3d 343, 347 (4th Cir. 2014). Whether Nurse Barnes examined Ms. Short at 12:09 a.m. or 12:09 p.m. is not outcome determinative here, and we rely on the allegation that this examination occurred at 12:09 a.m. for purposes of this appeal. On summary judgment however, the facts revealed during discovery will be properly before the court.

examination, Nurse Barnes placed Ms. Short on the Jail's withdrawal protocol, which included detoxing medications and heightened monitoring by Jail staff. However, Jail staff did not comply with the protocol's monitoring requirements, which included checking on the inmate every fifteen minutes. Instead, a member of the Jail staff conducted walk-by observations, usually lasting only a few seconds, 30 minutes or more apart.

Also in the early morning hours of August 23, Sergeant Teresa Morgan completed two forms evaluating Ms. Short's health. On the first form, some of the questions are addressed to the inmate (e.g., "Are you diabetic?"), while others are addressed to the officer (e.g., "Is the inmate . . ."). J.A. 221-22. Both Ms. Short and Sergeant Morgan signed the form. J.A. 223. One question, directed at the inmate, asks whether the inmate ever considered or attempted suicide. The response states "yes," and the comment "last month" was added. J.A. 221. In response to the question of whether she uses drugs and, if so, how much, Ms. Short responded "yes" and "what ever can [sic] get my hands on." J.A. 222. With respect to alcohol, she commented that she uses alcohol "every other day." *Id.* Another question, directed at the officer, asks, "does the inmate appear to be under the influence of, or withdrawing from drugs or alcohol? If yes explain." *Id.* The response states "yes" and "drugs." *Id.*

The second form required Ms. Short to check "yes" or "no" in response to several questions relating to her mental health. J.A. 225. She checked "yes" for questions 5 and 6: "Do you currently feel like you have to talk or move more slowly than you usually do?" and "Have there

currently been a few weeks when you felt like you were useless or sinful?" *Id.* She checked "no" for "have you ever been in a hospital for emotional or mental health problems?" (question 8), but in the adjacent comment box she wrote, "when I tried to com[mit] suicide stayed in hospital [sic] 4 days." *Id.* The second section of the form provides a space for the officer's comments and impressions, including a line to indicate whether the detainee is under the influence of alcohol or drugs, but nothing is marked in this section. *Id.* The form then states that the detainee "should be referred for further mental health evaluation" if they answered "yes" to question 7, "yes" to question 8, or "yes" to at least two of questions 1 to 6. *Id.* Based on these instructions, Ms. Short should have been referred. The next line of the form, which provides space for an officer to indicate whether the detainee was referred, is blank, but Sergeant Morgan signed on the appropriate signature line at the bottom of the page. *Id.* At the conclusion of these evaluation processes, in the early morning hours of August 23, Ms. Short was placed in an isolation cell.

Detention Officer Sarah Cook arrived for her shift at around 6:45 a.m. on August 24. She overheard Officer Michael Brannock tell another detention officer that he had responded to the Shorts' home in July following Ms. Short's first suicide attempt. Based on what she overheard, Officer Cook realized that Ms. Short was at risk of attempting suicide and, upon learning that Ms. Short was in an isolation cell and was not being observed as often as the Jail policy mandated, asked why Ms. Short was in isolation. She was told that Lieutenant Dana Recktenwald

had ordered that Ms. Short be placed in isolation because Ms. Short was "being mouthy." Ms. Short remained in isolation.

At 9:30 a.m. on August 24, Detention Officer Matthew Boger conducted a walk-by observation in the female isolation unit to check on Ms. Short. He observed her sitting on her bed in the cell. According to the complaint, the CCTV footage shows that Ms. Short attempted suicide by hanging herself from the cell door with a bedsheet between 9:49 and 9:56 a.m. During his next walk-by observation at 10:10 a.m., Officer Boger discovered Ms. Short hanging from the door. She was rushed to Wake Forest Baptist Medical Center and died on September 7, about two weeks later. She never regained consciousness.

Davie County Detention Center Policy ("Policy" or "Prison Policy") Section 4.10 provides that inmates "identified as a suicide risk" must be "place[d] in a populated cell, never . . . in a single cell" and prison guards must check on inmates every ten to fifteen minutes and log their rounds. J.A. 227; *see also* J.A. 228 ("It is important to begin 10-15 minute checks on a suicidal inmate, even if he or she is in a multi-occupant cell. This must be documented."). For inmates identified as a suicide risk, the Policy also instructs officers to "remove all articles that the inmate has that may be used to commit suicide" and requires evaluation by a mental health professional. J.A. 168. The Policy also provides that all detention officers will receive "training to recognize signs that an inmate may be suicidal" and provides a list of non-exclusive factors that "may indicate that an inmate is considering

suicide," and further instructs medical personnel and officers to "look carefully for any other indicators of potentially suicidal behavior." J.A. 227. One of the factors is "previous attempts to commit suicide." *Id.* Another is "drug or alcohol intoxication or withdrawal." J.A. 228. Under this Policy, Ms. Short should have been placed on suicide watch—she should have been in a populated cell, the bed sheet should have been removed from her cell, and prison guards should have conducted checks every 10-15 minutes.

An internal investigation, conducted by a Sheriff's Department employee, claimed that Ms. Short was placed in isolation because she had "a multitude of sores all over her body, some of which were oozing fluid. She was isolated for the safety of other inmates to avoid exposing them to a possible communicable disease." J.A. 154-55. But this rationale contradicts what Officer Cook was told the morning of August 24: that Ms. Short was in isolation because she was "being mouthy."[4] The investigation also

4. The Amended Complaint also alleges that, "at some point on August 23," Nurse Barnes authorized that Ms. Short be moved to isolation "allegedly due to having open draining sores all over her body." J.A. 155. To reconcile this allegation with the allegation that Ms. Short was moved to isolation for "being mouthy," and because we must make all reasonable inferences in favor of the plaintiff at this stage, we assume that Nurse Barnes's authorization occurred after Ms. Short's initial assignment to an isolation cell and that the initial decision was made because Ms. Short was "being mouthy." This inference in no way contradicts the Amended Complaint because the allegation that Nurse Barnes's authorization occurred "at some point" is entirely consistent with its occurrence later in time than Ms. Short's initial assignment to an isolation cell.

concluded that officers and medical personnel followed all protocols—Ms. Short had displayed only "common withdrawal symptoms from narcotics and alcohol" and had no "current suicidal indicators." J.A. 161. When the Sheriff's Department finally reported Ms. Short's death to state regulators five months later, the state's independent investigation refuted the findings of this internal investigation.

II.

Mr. Short, individually and in his capacity as administrator of Ms. Short's estate, sued various Sheriff's Department employees with authority over the Jail and its inmates, including Sergeant Morgan (collectively, the "Law Enforcement Defendants"), in both their official and individual capacities.[5] The suit also named Southern Health Partners,[6] Nurse Barnes, Nurse Bailey, and Physician Assistant Manuel Maldonado as defendants (collectively, the "Medical Defendants"). Appellant alleged claims under Section 1983 for violations of Ms. Short's Fourteenth

5. Specifically, the Law Enforcement Defendants are Sheriff Andrew Stokes, the Davie County Sheriff at the time of Ms. Short's death; Sheriff J.D. Hartman, the Sheriff at the time Mr. Short sued and a deputy at the time of Ms. Short's death; Captain Cameron Sloan, Chief Jailer of the Sheriff's Department; and Lieutenant Dana Recktenwald, Sergeant Crystal Meadows, Sergeant Teresa Morgan, and Officer Matthew Boger, who were allegedly present at the Jail at various times during Ms. Short's detention.

6. Southern Health Partners (SHP) provided medical services to inmates at the Jail. Nurse Barnes, Nurse Bailey, and PA Maldonado were employees of SHP.

Amendment rights and related claims under state law. In March and April 2020, Appellant filed stipulations of voluntary dismissal of the Medical Defendants "based on negotiated settlement agreements with those parties." Stipulation of Dismissal of LPN Linda Barnes, LPN Susan Desiree Bailey, & P.A. Manuel Maldonado at 2, *Short v. Hartman*, 1:18-cv-00741 (M.D.N.C. Mar. 25, 2020), ECF No. 77; Stipulation of Dismissal of Southern Health Partners, Inc. at 2, *Short v. Hartman*, 1:18-cv-00741 (M.D.N.C. Apr. 1, 2020), ECF No. 78. Accordingly, only the Law Enforcement Defendants remain as parties to this case.

While discovery was ongoing, the Law Enforcement Defendants moved for judgment on the pleadings. Without ruling on the motion, the district court allowed the parties to continue discovery. After discovery closed, the Law Enforcement Defendants moved for summary judgment. Rather than ruling on the summary judgment motions, the district court ruled on the 17-month-old motion for judgment on the pleadings.

The district court dismissed the individual capacity claims against Lieutenant Recktenwald, Sergeant Crystal Meadows, Officer Boger, and Sergeant Morgan, reasoning that "none of them is alleged to have personally deprived Mrs. Short of her constitutional rights." *Short v. Stokes*, No. 1:18-cv-00741, 2021 U.S. Dist. LEXIS 29600, 2021 WL 620933, at *7 (M.D.N.C. Feb. 17, 2021). The District Court also dismissed the individual capacity claims against Sheriff Stokes, Sheriff Hartman, and Captain Sloan because "the allegations against each of them appear to

be based on a theory of *respondeat superior*, which cannot be a basis for individual liability under § 1983." 2021 U.S. Dist. LEXIS 29600, [WL] at *6. The court then dismissed the official capacity claims on the basis that there were no sufficient allegations that "any individual defendants violated Mrs. Short's constitutional rights." 2021 U.S. Dist. LEXIS 29600, [WL] at *11. Finally, it declined to exercise supplemental jurisdiction over any state law claims because no federal law claims remained. *Id.*

Appellant timely appealed, arguing that he properly alleged that Sergeant Morgan, in her individual capacity, violated Ms. Short's constitutional rights. Appellant says that, if we agree with him and reverse the district court, we ought to remand with instructions to reconsider the official capacity and state law claims over which the district court declined to exercise jurisdiction.

We requested that the parties submit supplemental briefing addressing:

> (1) Whether the Fourteenth Amendment claims should be evaluated under the objective test announced in *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015);
>
> (2) If *Kingsley* applies, whether this Court should remand for the court below to address, in the first instance, whether the objective test is met;

(3) This Court's recent decision in *Stevens v. Holler*, 68 F.4th 921 (4th Cir. 2023), decided after the parties' briefs were submitted.

III.

We review *de novo* a district court's ruling on a Rule 12(c) motion for judgment on the pleadings. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). In doing so, we "apply the standard for a Rule 12(b)(6) motion." *Id.* That standard requires that we accept all facts pled in the complaint as true and "draw all reasonable inferences in favor of the plaintiff." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009). To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient facts to state a claim that is "plausible on its face." *Id.* at 570. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

IV.

We first address the issue raised by our request for supplemental briefing—whether *Kingsley v. Hendrickson* abrogated our prior precedent and requires us to recognize that pretrial detainees can state a claim based on a purely objective test under the Fourteenth Amendment for prison officials' deliberate indifference to excessive risks of harm to the inmate. 576 U.S. 389, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015). Several cases

have squarely presented this Court with the opportunity to decide whether *Kingsley* applies to pretrial detainees' claims for deliberate indifference to an excessive risk of harm. So far, though, we have not reached the issue, instead resolving each case on alternative grounds. *See, e.g.*, *Moss v. Harwood*, 19 F.4th 614, 624 n.4 (4th Cir. 2021) ("Because Moss has expressly endorsed application of the Eighth Amendment standard—including its subjective component—to his Fourteenth Amendment claim, we have no occasion to consider that question today."); *Mays v. Sprinkle*, 992 F.3d 295, 300-01 (4th Cir. 2021) ("We need not resolve this argument as [*Kingsley*'s] standard would make no difference here because of qualified immunity."). Leaving this question unresolved creates uncertainty in our jurisprudence and allows the issue to slip past both practitioners and courts, as happened in this case below. More than eight years after *Kingsley*, it is time we lay this issue to rest.

A.

Before we turn to the merits of *Kingsley*'s applicability, we must assure ourselves that the issue is properly before us. As the Supreme Court has cautioned, "[c]ourts do not, or should not, sally forth each day looking for wrongs to right." *Greenlaw v. United States*, 554 U.S. 237, 244, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008). Rather, under the party presentation principle, we generally address only the issues raised by the parties. *Id.* at 243. However, "[c]ourts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging

their traditional responsibilities." *Degen v. United States*, 517 U.S. 820, 823, 116 S. Ct. 1777, 135 L. Ed. 2d 102 (1996). This inherent power permits courts to "independently consider an issue not raised by the parties when necessary to protect important institutional interests." *United States v. Oliver*, 878 F.3d 120, 124 (4th Cir. 2017). One such institutional interest is "a court's fundamental obligation to ascertain controlling law." *Dan Ryan Builders, Inc. v. Crystal Ridge Development, Inc.*, 783 F.3d 976, 980 (4th Cir. 2015). That is what we are doing here.

Of course, "'[j]ust because' we have the inherent authority to act 'does not mean that it is appropriate to use that power in every case.'" *Oliver*, 878 F.3d at 126 (quoting *Dietz v. Bouldin*, 579 U.S. 40, 48, 136 S. Ct. 1885, 195 L. Ed. 2d 161 (2016)). In our adversarial system, "we rely on the parties to frame the issues for decision and assign courts the role of neutral arbiter of matters the parties present." *Greenlaw*, 554 U.S. at 243. "Such adversary proceedings not only increase public confidence in the justice system, but they implicitly recognize that 'parties know what is best for them and are responsible for advancing the facts and arguments entitling them to relief.'" *Oliver*, 878 F.3d at 126 (quoting *Greenlaw*, 554 U.S. at 244). "Habitual sua sponte consideration of a forfeited issue disincentivizes vigorous advocacy and thereby chips away at the foundation of our justice system." *Id.*

But we cannot sacrifice the integrity of our jurisprudence to the party presentation principle. *See Dan Ryan Builders*, 783 F.3d at 980. For that reason, we have stated that the party presentation principle does

not constrain our "fundamental obligation to ascertain controlling law." *Id.* "When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99, 111 S. Ct. 1711, 114 L. Ed. 2d 152 (1991). The Supreme Court has long recognized that a "court may consider an issue 'antecedent to . . . and ultimately dispositive of' the dispute before it, even an issue the parties fail to identify and brief." *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am. Inc.*, 508 U.S. 439, 447, 113 S. Ct. 2173, 124 L. Ed. 2d 402 (1993) (quoting *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77, 111 S. Ct. 415, 112 L. Ed. 2d 374 (1990)) (alteration in original). The question we have raised—whether *Kingsley* applies to the type of claim asserted in this case—is antecedent to our consideration of the district court's disposition of Mr. Short's claims. Accordingly, this issue is properly before us.

B.

We now turn to whether *Kingsley* abrogates our Circuit's prior precedent and requires us to recognize that pretrial detainees can state a claim under the Fourteenth Amendment, based on a purely objective standard, for prison officials' deliberate indifference to excessive risks of harm.[7] Like the Second, Sixth, Seventh, and Ninth

7. The Tenth Circuit has observed that "a deliberate indifference claim presupposes a subjective component." *Strain v. Regalado*, 977 F.3d 984, 992 (10th Cir. 2020). But the Supreme Court has recognized that, outside of the Eighth Amendment context, the

Circuits, we find that it does. *See Gordon v. County of Orange*, 888 F.3d 1118, 1120, 1122–25 (9th Cir. 2018); *Darnell v. Pineiro*, 849 F.3d 17, 34–35 (2d Cir. 2017); *Miranda v. County of Lake*, 900 F.3d 335, 351–52 (7th Cir. 2018); *Brawner v. Scott County*, 14 F.4th 585, 596 (6th Cir. 2021).

Under our precedent, "[o]ne 'panel cannot overrule the decision of a prior panel' . . . '[a]bsent contrary law from an en banc or Supreme Court decision.'" *Carrera v. EMD Sales, Inc.*, 75 F.4th 345, 352 (2023) (quoting

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term "deliberate indifference" is not necessarily subjective. Instead, it is "the equivalent of reckless[ness]," which is an objective standard in the civil law context, but a subjective standard in the criminal law context. *Farmer v. Brennan*, 511 U.S. 825, 836-37, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). Indeed, in the context of municipal liability, the same term is used to describe a purely objective test. *See id.* at 840 (citing *Canton v. Harris*, 489 U.S. 378, 389, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989)). As the Sixth Circuit noted, "the *Farmer* Court adopted the subjective component of the test for deliberate indifference under the Eighth Amendment based on the language and purposes of that amendment, focusing particularly on 'punishments,' and not on any intrinsic meaning of the term." *Brawner v. Scott County*, 14 F.4th 585, 595 (6th Cir. 2021). Accordingly, like the Second, Sixth, Seventh, and Ninth Circuits we retain the term "deliberate indifference" despite adopting *Kingsley*'s purely objective standard. We nonetheless acknowledge that, to the average reader, the term "deliberate indifference" suggests subjectivity, and that an alternative term such as "objective indifference" may be preferable if we were writing on a clean slate. Circuits, we find that it does. *See Gordon v. County of Orange*, 888 F.3d 1118, 1120, 1122-25 (9th Cir. 2018); *Darnell v. Pineiro*, 849 F.3d 17, 34-35 (2d Cir. 2017); *Miranda v. County of Lake*, 900 F.3d 335, 351-52 (7th Cir. 2018); *Brawner v. Scott County*, 14 F.4th 585, 596 (6th Cir. 2021).

Desmond v. PNGI Charles Town Gaming, 564 F.3d 688, 691 (4th Cir. 2009) and *Taylor v. Grubbs*, 930 F.3d 611, 619 (4th Cir. 2019)). Previous "panel precedent . . . is not binding if it subsequently proves untenable considering Supreme Court decisions," *Rose v. PSA Airlines*, 80 F.4th 488, 506 (4th Cir. 2023) (Heytens, J., concurring in part and dissenting in part) (internal quotation omitted), but "[w]e do not lightly presume that the law of our circuit has been overturned or rendered no longer tenable," *Carrera v. E.M.D. Sales Inc.*, 75 F.4th 345, 352 (4th Cir. 2023) (internal quotation omitted). A Supreme Court decision overrules or abrogates our prior precedent only if our precedent is "impossible to reconcile" with a subsequent Supreme Court decision. *Id.* If it is "possible for us to read our precedent harmoniously" with Supreme Court precedent, we must do so. *Id.* at 353 (internal quotation omitted). This is a high bar.

But here that bar has been met, and we hold, as four of our sister circuits[8] have previously, that *Kingsley* is irreconcilable with precedent requiring pretrial detainees to meet a subjective standard to succeed on claims under the Fourteenth Amendment for prison officials' deliberate indifference to excessive risks of harm to the inmate.

8. Notably, these four circuits all adopted *Kingsley*'s purely objective test, without considering the question en banc. *See Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017); *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018); *Miranda v. County of Lake*, 900 F.3d 335, 352-53 (7th Cir. 2018); *Brawner v. Scott County*, 14 F.4th 585, 596-97 (6th Cir. 2021). They thus recognized, as we do here, that *Kingsley* mandates a departure from prior circuit precedent and eliminates the need for en banc consideration of the issue.

The fact that *Kingsley* refers broadly to "challenged governmental action" and speaks of claims under the Fourteenth Amendment generally, coupled with its heavy reliance on *Bell v. Wolfish*, demonstrate that *Kingsley*'s objective standard extends not just to excessive force claims; it applies equally to deliberate indifference claims. 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979).

i.

Before turning to *Kingsley*, we examine the jurisprudential history leading up to our adoption of the subjective deliberate indifference standard for pretrial detainees' claims under the Fourteenth Amendment. The Supreme Court first recognized a claim for deliberate indifference to a prisoner's serious medical needs in *Estelle v. Gamble*—an Eighth Amendment case. 429 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). The *Estelle* Court, however, did not establish a standard for evaluating those claims. Two years later, this Court extended *Estelle* from Eighth Amendment claims to Fifth and Fourteenth Amendment Due Process Clause claims, reasoning that "due process is at least as co-extensive as the guarantees of the [E]ighth amendment." *Loe v. Armistead*, 582 F.2d 1291, 1294 (4th Cir. 1978). Like the Supreme Court before, we did not establish a standard for evaluating those claims.

After a few years without clarification from the Supreme Court, we filled the gap and adopted an objective test for Fourteenth Amendment claims of deliberate indifference to serious medical needs. *See Whisenant v. Yuam*, 739 F.2d 160, 164 (4th Cir. 1984); *Martin v. Gentile*,

849 F.2d 863, 870 (4th Cir. 1988). We drew that test from the Supreme Court's decision in *Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). In *Bell*, the Supreme Court held that "[i]n evaluating the constitutionality of conditions or restrictions of pretrial detention . . . the proper inquiry is whether those conditions amount to punishment of the detainee." *Id.* at 535. The Court in *Bell* explained that whereas the Eighth Amendment only protects post-conviction detainees from "cruel and unusual punishment," the Fourteenth Amendment Due Process Clause protects pretrial detainees from being punished at all. *Id.* at 535-37 & n.16. As a result, any pretrial detention conditions that "amount to punishment" violate due process. As we read *Bell*,

> [t]o establish that a particular condition or restriction of his confinement is constitutionally impermissible "punishment," the pretrial detainee must show either that it was (1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate nonpunitive governmental objective, in which case an intent to punish may be inferred.

Martin, 849 F.2d at 870 (citing *Bell*, 441 U.S. at 538-40).

Applying *Bell*, we held that deliberate indifference to serious medical needs violates the Fourteenth Amendment even in the absence of subjective intent to punish "because no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need for such treatment is apparent." *Id.* at

871 (citing *Whisenant*, 739 F.2d at 164). And in *Gordon v. Kidd*, we dispelled any doubt about whether that test required the plaintiff to show that the defendant knew of and consciously disregarded the health risk at issue. 971 F.2d 1087 (4th Cir. 1992). "Stated succinctly, '[t]he key to deliberate indifference in a prison suicide case is whether the defendants knew, *or reasonably should have known*, of the detainee's suicidal tendencies.'" *Id.* at 1094 (emphasis added) (quoting *Elliott v. Cheshire County*, 940 F.2d 7, 10-11 (1st Cir. 1991)). *See also Hill v. Nicodemus*, 979 F.2d 987, 991-92 (4th Cir. 1992).

In 1994, the Supreme Court finally adopted a test for Eighth Amendment deliberate indifference claims in *Farmer v. Brennan*. 511 U.S. 825, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). That test is subjective:

> [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Id. at 837-38.

The Eighth Amendment drove *Farmer*'s reasoning and circumscribed its holding. After identifying "deliberate indifference" with recklessness, *Farmer*

observed that there are two forms of recklessness. Criminal recklessness is subjective, requiring conscious disregard of a risk of which the defendant is aware. *Id.* at 836-37. By contrast, civil recklessness is objective, encompassing action or failure to act "in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* at 836. *Farmer* held that Eighth Amendment deliberate indifference required criminal recklessness—the subjective form—because the Eighth Amendment restricts only cruel and unusual punishment, *id.* at 837, and the Court's precedents "mandate[d] inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment," *id.* at 839. Having previously "rejected a reading of the Eighth Amendment that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions," the Court concluded that only a subjective test for Eighth Amendment deliberate indifference would respect its preexisting Eighth Amendment rules. *Id.* at 839. In sum, *Farmer* adopted a subjective test for Eighth Amendment claims on Eighth Amendment grounds.

Nevertheless, in the years that followed, a consensus emerged among the courts of appeal that *Farmer*'s subjective Eighth Amendment standard applied to Fourteenth Amendment claims. *See, e.g., Upham v. Gallant*, 99-2224, 2000 U.S. App. LEXIS 23915, 2000 WL 1425759, at *1 (1st Cir. 2000); *Caiozzo v. Koreman*, 581 F.3d 63, 66 (2d Cir. 2009); *Serafin v. City of Johnstown*, 53 F. App'x 211, 213-14 (3d Cir. 2002); *Hare v. City of Corinth*, 74 F.3d 633, 636 (5th Cir. 1996); *Polk v. Parnell*, No. 96-

5711, 1997 U.S. App. LEXIS 34812, 1997 WL 778511, at *1 (6th Cir. 1997); *Henderson v. Sheahan*, 196 F.3d 839, 844-45 (7th Cir. 1999); *Crow v. Montgomery*, 403 F.3d 598, 601 (8th Cir. 2005); *Schell v. Richards*, No. 97-15743, 1997 U.S. App. LEXIS 29932, 1997 WL 664988, at *1 (9th Cir. 1997); *Dean v. Hamblin*, No. 95-2088, 1995 U.S. App. LEXIS 29433, 1995 WL 623650, at *2 (10th Cir. 1995); *Cottrell v. Caldwell*, 85 F.3d 1480, 1490 (11th Cir. 1996).

We, too, extended *Farmer* to Fourteenth Amendment claims, but, like several of our sister circuits, we did not provide extensive reasoning. The most satisfying justification that we can glean from our prior caselaw is that we relied on the Supreme Court's assertion in *City of Revere v. Massachusetts General Hospital* that protections for pretrial detainees under the Fourteenth Amendment are "at least as great as the Eighth Amendment protections available to a convicted prisoner." 463 U.S. 239, 244, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983). At least with respect to deliberate indifference claims, we have consistently read this to mean that protections under the Fourteenth Amendment are the same as those under the Eighth Amendment and, consequently, should be evaluated under the same standard. *See, e.g., Stevens v. Holler*, 68 F.4th 921, 931 (4th Cir. 2023) (citing *City of Revere* for this proposition and then applying the *Farmer* standard).

Our decision in *Martin v. Bowman* adopted *Farmer*'s Eighth Amendment holding and applied it to pretrial detainees. No. 94-6246, 1995 U.S. App. LEXIS 3714, 1995 WL 82444 (4th Cir. 1995). We did this despite recognizing

that (1) *Farmer* confined itself to the Eighth Amendment context, and (2) "deliberate indifference" did not have to be a subjective standard—in fact, it was, and still is, an objective standard in *Monell* claims. *Id.*; *see Farmer*, 511 U.S. at 841 (stating that it "would be hard to describe" the test for municipal liability for failure to train, which "permit[s] liability to be premised on obviousness or constructive notice, as anything but objective")).

We revisited *Farmer*'s applicability to the Fourteenth Amendment in *Ervin v. Magnum* but did not provide substantially more reasoning. No. 93-7129, 1997 U.S. App. LEXIS 29363, 1997 WL 664606 (4th Cir. 1997). There, we wrote:

> As a practical matter . . . we do not distinguish between the Eighth and Fourteenth Amendments in the context of a pretrial detainee's § 1983 claim. Despite the Supreme Court's suggestion that pretrial detainees may be afforded greater protection than convicted prisoners, the circuit courts have generally analyzed both situations under the same "deliberate indifference" standard.

1997 U.S. App. LEXIS 29363, [WL] at *4 (citations omitted).

It is true that if a Fourteenth Amendment claimant is entitled to at least as much protection as an Eighth Amendment claimant, then whatever treatment violates the Eighth violates the Fourteenth. But it does not follow

that treatment violates the Fourteenth only if it violates the Eighth. In *Ervin* and the cases that followed, *see Young v. City of Mount Ranier*, 238 F.3d 567, 575-76 (4th Cir. 2001); *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999), we elided the distinction between the Eighth Amendment claims of post-conviction detainees and the Fourteenth Amendment claims of pretrial detainees.

That brings us to *Kingsley*.

ii.

The Supreme Court's ruling in *Kingsley v. Hendrickson* upends the assumption that Fourteenth Amendment Due Process Clause claims should be treated the same as Eighth Amendment claims. In *Kingsley*, the Supreme Court held that, to state a Fourteenth Amendment Due Process Clause claim for excessive use of force, a pretrial detainee need allege only that the officer used objectively unreasonable force. *Kingsley*, 576 U.S. at 396-97. If that were all *Kingsley* did, then it would not only be "possible for us to read our [deliberate indifference] precedent harmoniously," it would be easy. *See Carrera*, 75 F.4th at 353. But *Kingsley* did more. It reiterated that a pretrial detainee may state a claim under the Fourteenth Amendment by satisfying *Bell*'s objective standard. *Kingsley*, 576 U.S. at 398 (citing *Bell*, 441 U.S. at 561). And *Kingsley* rejected our only ground for replacing the objective *Bell* test for Fourteenth Amendment deliberate indifference claims with *Farmer*'s subjective Eighth Amendment test. *See id.* at 400 (stating that because the language of the Eighth and Fourteenth Amendments

differs, "the nature of the claims often differs"). For those two reasons, it is "impossible to reconcile" *Kingsley* with our subjective deliberate indifference test for Fourteenth Amendment claims. *See Carrera*, 75 F.4th at 352.

Kingsley is clear: The Fourteenth Amendment Due Process Clause protects pretrial detainees from "governmental action" that is not "rationally related to a legitimate nonpunitive governmental purpose" or that is "excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398 (quoting *Bell*, 441 U.S. at 561) (internal quotation marks omitted). That test is "solely an objective one." *Id.* at 397. As *Kingsley* observed, *Bell* applied that "objective standard" to a challenge to "a variety of prison conditions, including a prison's practice of double bunking"—not just to excessive force claims. *Id.* "In doing so, [*Bell*] did not consider the prison officials' subjective beliefs about the policy." *Id.* And, notably, *Kingsley* itself likewise speaks broadly of "challenged governmental action," as opposed to only the government's use of excessive force. *Id.* at 398. Of course, a showing of subjective intent can still help a pretrial detainee state a claim for action that "amounts to punishment," because "'punishment' can consist of actions taken with an 'expressed intent to punish.'" *Id.* (quoting *Bell*, 441 U.S. at 538). But such a showing is not necessary.

Our subjective deliberate indifference test for pretrial detainees' Fourteenth Amendment claims is irreconcilable with the *Kingsley-Bell* objective test. Under *Kingsley*, "a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective

or that it is excessive in relation to that purpose." *Id.* Under our subjective test, however, a pretrial detainee must also show that the defendant "knew of and disregarded [a] substantial risk to the inmate's health or safety." *Stevens v. Holler*, 68 F.4th 921, 931 (4th Cir. 2023). The showing sufficient to satisfy *Kingsley*'s objective test is necessary but insufficient to satisfy our subjective test. It is "impossible to reconcile" our post-*Farmer* cases with *Kingsley. See Carrera*, 75 F.4th at 352.

Further, *Kingsley* repudiated the reasoning we followed in adopting the subjective test for deliberate indifference claims in the first place. Our precedent extended *Farmer*'s Eighth Amendment test to Fourteenth Amendment claims by dismissing the distinction between the two amendments as a distinction without a difference. *See Martin*, 1995 U.S. App. LEXIS 3714, 1995 WL 82444, at *3; *Ervin*, 1997 U.S. App. LEXIS 29363, 1997 WL 664606, at *4; *Grayson*, 195 F.3d at 695; *Young*, 238 F.3d at 575-76. *Kingsley* commands the opposite. "The language of the two Clauses differs, and the nature of the claims often differs." *Kingsley*, 576 U.S. at 400. Specifically, *Kingsley* directs us to be more solicitous of the Fourteenth Amendment claims of a pretrial detainee than the Eighth Amendment claims of a post-conviction detainee, for "pretrial detainees (unlike convicted prisoners) cannot be punished at all." *Id.* In fact, when the defendant officials in *Kingsley* argued that Eighth Amendment case law supplies the Fourteenth Amendment standard, *Kingsley* rejected that maneuver out of hand for failing to respect the distinctions between the amendments. *Id.* at 400-01. Because "there is no need here, as there might be in an Eighth Amendment case, to determine when punishment

is unconstitutional," the heightened, subjective Eighth Amendment deliberate indifference standard does not extend to Fourteenth Amendment cases. *Id.* For a Fourteenth Amendment claim, it is enough that the challenged action is not rationally related to a legitimate nonpunitive purpose or is excessive in relation to that purpose. *Id.* at 398.

Now that *Kingsley* requires us to properly distinguish Eighth Amendment claims from Fourteenth Amendment claims, our prior precedent applying a subjective deliberate indifference standard is "no longer tenable." *Carrera*, 75 F.4th at 352 (quotation omitted). We cannot harmonize *Kingsley* with our prior Fourteenth Amendment deliberate indifference precedent. The only way to respect the distinction *Kingsley* drew between the Eighth and Fourteenth Amendments is to recognize that *Kingsley*'s objective test extends to all pretrial detainee claims under the Fourteenth Amendment claims for deliberate indifference to an excessive risk of harm. We therefore conclude that *Kingsley* abrogated our prior precedent.

iii.

To persuade us that *Kingsley* does not disturb the law of our circuit, Appellees extensively quote the Tenth Circuit's decision in *Strain v. Regalado*, the most thoroughly reasoned opinion declining to apply *Kingsley*'s objective test to deliberate indifference claims. 977 F.3d 984 (10th Cir. 2020).[9] The Tenth Circuit brushed aside any

9. Three other circuits have retained the subjective test with little analysis or none at all. *See Whitney v. City of St. Louis*, 887 F.3d

conflict between *Kingsley* and that court's subjective test for Fourteenth Amendment deliberate indifference claims primarily by construing *Kingsley* narrowly: as addressing only excessive force claims, "nothing more, nothing less." *Id.* at 991. But that reading reduces *Kingsley*'s reasoned judgment to an arbitrary fiat. *Kingsley* did not decree on a whim that we must use an objective test for excessive force claims. *Kingsley* found that a pretrial detainee may state a claim for excessive force on a purely objective basis because "our precedent" (above all, *Bell*) already recognizes that a pretrial detainee may state a due process claim against "a variety of prison conditions" by an "objective standard." *Kingsley*, 576 U.S. at 397-98. We cannot avoid the conflict between *Kingsley* and our case law by ignoring *Kingsley*'s rationale.

The Tenth Circuit also tried to cabin *Kingsley* by distinguishing the purposes of excessive force claims and deliberate indifference claims. "The deliberate indifference cause of action does not relate to punishment," *Strain* says, "but rather safeguards a pretrial detainee's access to adequate medical care." 977 F.3d at 991. For that reason, the Tenth Circuit reasoned, the *Kingsley-Bell* objective test for treatment that "amounts to punishment" does not govern deliberate indifference claims. *Id.* While it is certainly true that the deliberate indifference cause of action safeguards a detainee's right to medical care, it is not true that this cause of action does not relate to punishment. The Supreme Court recognized an Eighth

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857, 860 n.4 (8th Cir. 2018); *Dang ex rel. Dang. v. Sheriff, Seminole Cnty.*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017); *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017).

Amendment claim for deliberate indifference because the "denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose"—that is, because it would amount to unjust punishment. *Estelle*, 429 U.S. at 103-04.

In yet another attempt to harmonize *Kingsley* with a subjective test for deliberate indifference, *Strain* emphasizes that "[e]xcessive force requires an affirmative act, while deliberate indifference often stems from inaction." *Strain*, 977 F.3d at 991. To the Tenth Circuit, "'the *Kingsley* standard is not applicable to cases where a government official fails to act' because 'a person who unknowingly fails to act—even when such a failure is objectively unreasonable—is negligent at most.'" *Id.* (quoting *Castro v. County of Los Angeles*, 833 F.3d 1060, 1086 (9th Cir. 2016) (*en banc*) (Ikuta, J., dissenting)). Yet *Kingsley* and *Farmer* expressly rejected that proposition. *Kingsley*, 576 U.S. at 395-96; *Farmer*, 511 U.S. at 837. The Supreme Court has recognized that an objective test requires civil recklessness, observing that "civil law generally calls a person *reckless* who acts or (if the person has a duty to act) *fails to act* in the face of an unjustifiably high risk of harm that is either known or *so obvious that it should be known*." *Farmer*, 511 U.S. at 836-37 (emphasis added). We cannot reconcile our deliberate indifference precedents with *Kingsley* by artificially limiting *Kingsley*'s objective test to claims that require "affirmative act[s]," *Strain*, 977 F.3d at 991, on the spurious ground that deliberate indifference would collapse into negligence otherwise. Recklessness is a lower bar than intent, but a higher bar than negligence.

In short, we find *Strain*'s reasoning unpersuasive and hold that *Kingsley* is irreconcilable with our prior precedent. *Kingsley* repudiates a subjective requirement for pretrial detainees' Fourteenth Amendment claims and permits pretrial detainees to state Fourteenth Amendment claims for deliberate indifference to a serious risk of harm on the purely objective basis that the "governmental action" they challenge is not "rationally related to a legitimate nonpunitive governmental purpose" or is "excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398 (quoting *Bell*, 441 U.S. at 561) (internal quotation marks omitted).

IV.

To state a claim for deliberate indifference to a medical need, the specific type of deliberate indifference claim at issue in this case, a pretrial detainee must plead that (1) they had a medical condition or injury that posed a substantial risk of serious harm; (2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed; (3) the defendant knew or should have known (a) that the detainee had that condition and (b) that the defendant's action or inaction posed an unjustifiably high risk of harm; and (4) as a result, the detainee was harmed. We take this test to be the same test our sister circuits have adopted. *See Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017); *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018); *Miranda v. County of Lake*, 900 F.3d 335, 352-53 (7th Cir. 2018); *Brawner v. Scott County*, 14 F.4th 585, 596-97 (6th Cir. 2021).

The objective test we adopt today differs from our prior subjective test in one respect only. The plaintiff no longer has to show that the defendant had actual knowledge of the detainee's serious medical condition and consciously disregarded the risk that their action or failure to act would result in harm. That showing remains sufficient, but it is no longer necessary. Now, it is sufficient that the plaintiff show that the defendant's action or inaction was, in *Kingsley*'s words, "objectively unreasonable," 576 U.S. at 397: that is, the plaintiff must show that the defendant should have known of that condition and that risk, and acted accordingly. Or as the Supreme Court put it when describing civil recklessness in *Farmer*, it is enough that the plaintiff show that the defendant acted or failed to act "in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Farmer*, 511 U.S. at 836. We go no further.

To be clear, it is still not enough for the plaintiff to allege that the defendant negligently or accidentally failed to do right by the detainee. *See Kingsley*, 576 U.S. at 396; *Brawner*, 14 F.4th at 596; *Gordon*, 888 F.3d at 1125; *Miranda*, 900 F.3d at 353-54. Negligence was not enough before, *Stevens*, 68 F.4th at 931, and it is not enough now.

V.

Having determined that the proper test for pretrial detainees' claims under the Fourteenth Amendment is an objective one, we could remand without considering anything further, because the district court improperly applied a subjective standard. But because we conclude

that the allegations in the Complaint suffice to state a claim under any test—including the subjective Eighth Amendment deliberate indifference test—we additionally explain why the district court erred in granting judgment on the pleadings, and why, as a result, this case can proceed past the pleadings stage.

As explained above, the objective test is not the sole means of showing a Fourteenth Amendment violation. We have previously stated that "a pretrial detainee makes out a violation *at least* where he shows deliberate indifference to serious medical needs under cases interpreting the Eighth Amendment." *Mays v. Sprinkle*, 992 F.3d 295, 300 (4th Cir. 2021) (emphasis added). Though the Supreme Court instructed in *Kingsley* that an objective test is proper for pretrial detainees' claims under the Fourteenth Amendment, a pretrial detainee can still state a claim if they can meet the more demanding Eighth Amendment standard. In other words, satisfying the Eighth Amendment test remains sufficient, but is no longer necessary, for a pretrial detainee to state a claim for deliberate indifference to a serious medical need. Because the facts alleged in the Complaint are sufficient to satisfy even the Eighth Amendment deliberate indifference test against Sergeant Morgan, we conclude that the district court erred in dismissing the Complaint for failure to state a claim, and reverse.

The deliberate indifference test "includes objective and subjective elements." *Mays*, 992 F.3d at 300. The objective element requires an objectively "serious"

medical condition. *Id.* A condition is objectively serious if it is "diagnosed by a physician as mandating treatment" or is "so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Scinto v. Stansberry*, 841 F.3d 219, 225 (4th Cir. 2016). The subjective element requires that the prison official acted with deliberate indifference to inmate health or safety, meaning that the official "had actual subjective knowledge of both the inmate's serious medical condition and the excessive risk posed by the official's action or inaction." *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014).

In applying the deliberate indifference test, we first ask whether Ms. Short had an objectively serious medical condition. *See Mays*, 992 F.3d at 303. "A substantial risk of suicide is certainly the type of 'serious harm' that is contemplated by the first prong" of the deliberate indifference test. *Brown v. Harris*, 240 F.3d 383, 389 (4th Cir. 2001). The Complaint alleges that Ms. Short had very recently attempted suicide, was undergoing severe withdrawal, and was experiencing feelings of uselessness or sinfulness. These allegations demonstrate a substantial risk of suicide, and, by extension, satisfy the objective prong of the deliberate indifference test.

Turning to the second element, Sergeant Morgan "had actual subjective knowledge of both the inmate's serious medical condition and the excessive risk posed by the official's action or inaction." *Jackson*, 775 F.3d at 178. Ms. Short conveyed all of these facts—her recent suicide attempt, her daily drug use and consequent withdrawal,

and her feelings of worthlessness—to Sergeant Morgan when Sergeant Morgan processed Ms. Short and completed two health screening forms evaluating Ms. Short's mental health. The Complaint therefore sufficiently alleges that Sergeant Morgan had actual subjective knowledge of Ms. Short's condition.

Sergeant Morgan also knew the excessive risk posed by her action or inaction. Section 4.10 of the Prison Policy clearly laid out suicide risk factors of which officers should be aware. These risk factors include "previous attempts to commit suicide," "depression," and "drug or alcohol intoxication or withdrawal." An officer's failure to act "if they demonstrably knew or had reason to know that a suicide was imminent" constitutes deliberate indifference. *Buffington v. Baltimore County*, 913 F.2d 113, 120 (4th Cir. 1990). Based on the Prison Policy, on which Sergeant Morgan had been trained, Sergeant Morgan knew that Ms. Short posed a serious suicide risk if Sergeant Morgan did not act. And Sergeant Morgan was not powerless to mitigate this risk—the Prison Policy lays out several steps Sergeant Morgan could have taken, including placing Ms. Short in a populated cell, removing items such as bedsheets with which Ms. Short could hang herself from the cell, and conducting regular checks every ten to fifteen minutes. J.A. 228. Sergeant Morgan took none of these steps.

We recently stated, in *Stevens v. Holler*, that "protocol violations" demonstrate that a defendant "knew of and disregarded a substantial risk of serious injury to the detainee or that they actually knew of and ignored a

detainee's serious need for medical care." *Stevens v. Holler*, 68 F.4th 921, 932 (4th Cir. 2023) (quoting *Young v. City of Mount Rainier*, 238 F.3d 567, 575-76 (4th Cir. 2001)); *see also Younger v. Crowder*, 79 F.4th 373, 384 (4th Cir. 2023) (stating that failure to follow "unwritten policy" was evidence supporting jury's finding that second prong was satisfied). As in *Stevens*, the allegation that Sergeant Morgan failed to follow established protocol that unambiguously applied to the situation at hand is sufficient to satisfy the subjective prong of the deliberate indifference test. *Stevens*, 68 F.4th at 933.

Though a violation of a local policy does not by itself violate the Constitution or give rise to a § 1983 claim, it is nevertheless instructive both in determining the seriousness of the risk posed and in determining whether an officer knew of "the excessive risk posed by the official's action or inaction." *Jackson*, 775 F.3d at 178. The Jail established the Prison Policy to create a baseline of when a risk of suicide is sufficiently severe such that additional steps must be taken. These judgments can serve as a proxy for when an inmate's medical need is so "obvious that even a lay person would easily recognize" it. *See Mays*, 992 F.3d at 300. This Policy was implemented for a reason; we cannot now cast it aside as entirely irrelevant to the question of whether additional action was necessary, even though the Policy unambiguously provides that it was.

Appellees contend that Ms. Short's risk of suicide was not sufficiently imminent to require Sergeant Morgan to act in any way to mitigate the risk. Faced with a previous suicide attempt, active and severe withdrawal, and a

Prison Policy that unambiguously instructs officers that in this exact situation additional steps must be taken, it seems that Appellees ask us to hold that a risk of suicide is only sufficiently imminent when a detainee expressly tells a prison official that they are planning to commit suicide at that time. But if someone were lying on the ground, gasping for air, and clutching their chest, we wouldn't require them to tell the prison official "I am having a heart attack right now" before concluding that the prison official should have taken action. So too here. A very recent suicide attempt, alone or coupled with feelings of worthlessness and severe withdrawal symptoms, are sufficiently obvious indicators of suicide that a lay person could recognize them.[10] *See Scinto*, 841 F.3d at 225.

Appellees further contend that Sergeant Morgan was entitled to defer to Nurse Barnes's and Nurse Bailey's professional judgments that Ms. Short did not pose a suicide risk. In support, Appellees principally cite *Shakka v. Smith*. 71 F.3d 162 (4th Cir. 1995). There, this Court held that prison officials were not deliberately indifferent in withholding the inmate's wheelchair, where they were acting on the express instructions of a prison psychologist. *Id.* at 167. The psychologist had ordered the wheelchair "be removed temporarily for Shakka's own protection and the protection of others." *Id.*

10. Of course, this would be a very different situation if Sergeant Morgan were not aware of Ms. Short's recent suicide attempt or her withdrawal symptoms. *See Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999) ("The law cannot demand that officers be mind readers."). But the Complaint alleges that Sergeant Morgan was aware of these facts.

Though the Amended Complaint in this case contains some conflicting allegations regarding why Ms. Short was placed in solitary confinement, it alleges that "being mouthy" was at least one reason. J.A. 159. At this stage in the proceedings, we must credit this version of events and construe the allegations in favor of Appellant. *Nemet Chevrolet, Ltd.*, 591 F.3d at 253 (stating that we must "draw all reasonable inferences in favor of the plaintiff"). Because this justification has nothing to do with a medical judgment, Sergeant Morgan cannot hide behind *Shakka* to justify her failure to place Ms. Short in a populated area of the prison. Unlike in *Shakka*, Sergeant Morgan was not acting on the express instruction of a medical provider—Appellees merely contend that Sergeant Morgan did not violate Ms. Short's constitutional rights because the nurses who examined Ms. Short did not take or order these additional steps either. But Sergeant Morgan cannot use the Medical Defendants' conduct or failure to act to shield her from liability on these facts. Holding otherwise would shield non-medical defendants from liability whenever a medical provider was at some point consulted.

This Court's decision in *Iko v. Shreve* supports this conclusion. 535 F.3d 225 (4th Cir. 2008). There, an inmate was pepper sprayed in the course of a cell extraction and transfer to a different cell. *Id.* at 231-32. As part of the cell-extraction procedure, the inmate was taken "to a nearby medical room to be examined by a nurse." *Id.* at 232. In the medical room, in the nurse's presence, the inmate collapsed. *Id.* "The officers caught him and directed him into a nearby wheelchair for transportation to the" new cell. *Id.* Neither the officers nor the nurse

provided or requested any medical treatment. *Id.* The officers argued that they were not deliberately indifferent because they "were entitled to defer to the actions and medical decisions of the nurse." *Id.* at 242. This Court rejected this argument, because *Iko* did not "present a situation in which prison officials might be held liable for the actions or inactions of a medical professional. The officers face liability for *their own* decisions, made while Iko was in their charge." *Id.* This Court also stated that *Iko* was "further distinguishable from the precedent on which the officers seek to rely because it is undisputed that Iko received *no* medical treatment whatsoever. There was *no* medical opinion to which the officers could have deferred." *Id.*

The same is true here. Appellant seeks to hold Sergeant Morgan accountable for her own decision not to take steps to mitigate Ms. Short's risk of suicide. Further, there is no allegation that Sergeant Morgan communicated with either nurse prior to placing Ms. Short in isolation. In the absence of an allegation that Sergeant Morgan knew of and relied on a medical provider's evaluation *in the moment*, she cannot use the medical provider's inaction to justify her own post-hoc. We thus conclude that the Complaint sufficiently alleges that Sergeant Morgan was deliberately indifferent to Ms. Short's serious medical needs by failing to follow the steps outlined in the Prison Policy to mitigate Ms. Short's suicide risk.

VI.

Appellees also argue in their supplemental brief, for the first time, that Sergeant Morgan is entitled to qualified

immunity because it was not "clearly established" that she could not rely on the judgment of medical professionals. This argument was not raised in Appellees' initial brief, nor has Appellant had the opportunity to address the issue before this Court. "A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue." *Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) (cleaned up). This principle applies to both parties, not just to the appellant. *See United States v. Legins*, 34 F.4th 304, 319 n.18 (4th Cir. 2022) (applying the principle of waiver to an argument the appellee failed to raise in its brief). Accordingly, we make only two small observations concerning the availability of qualified immunity but decline to decide whether qualified immunity is in fact available to Appellees.

First, under *Iko*, where officers are being held accountable "for *their own* decisions," they cannot rely on medical professionals' lack of action as a shield for liability. *Iko*, 535 F.3d at 242. Under this precedent, Sergeant Morgan may be hard pressed to explain why she was entitled to rely on Nurse Barnes's and Nurse Bailey's lack of action under "clearly established" precedent. Second, under this Court's precedent, qualified immunity is generally not available at all for deliberate indifference claims. We held in *Thorpe v. Clarke* that "when 'plaintiffs have made a showing sufficient to' demonstrate an intentional violation of the Eighth Amendment, 'they have also made a showing sufficient to overcome any claim to qualified immunity.'" 37 F.4th 926, 934 (4th Cir. 2022) (quoting *Beers-Capitol v. Whetzel*, 256 F.3d 120, 142 n.15 (3d Cir. 2001)). Accordingly,

"[B]ecause the Eighth Amendment's deliberate-indifference standard requires knowing conduct, an official who was deliberately indifferent could not also believe 'that [their] actions comported with clearly established law.'" *Pfaller Amonette*, 55 F.4th 436, 446 (4th Cir. 2022) (quoting *Thorpe*, 37 F.4th at 939). Nonetheless, we decline to decide the availability of qualified immunity in this particular case, because the issue is not properly presented.

VII.

For the foregoing reasons, we reverse and remand the district court's dismissal of Appellant's claims against Sergeant Morgan. Additionally, because the district court dismissed Appellant's *Monell* claim and state law claims only on the basis that Appellant had not properly alleged an individual capacity claim, we reverse and remand the district court's dismissal of the *Monell* and state law claims. Finally, we recognize that the Supreme Court's decision in *Kingsley* abrogated our prior precedent, which is irreconcilable with *Kingsley*'s mandate that pretrial detainees' Fourteenth Amendment claims be evaluated under the objective framework we identify in this opinion.

REVERSED AND REMANDED

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, FILED APRIL 9, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA

1:18CV741

CHARLES WILLIS SHORT, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF VICTORIA CHRISTINE SHORT,

Plaintiff,

v.

ANDREW C. STOKES, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; J.D. HARTMAN, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; CAMERON SLOAN, CAPTAIN, CHIEF JAILER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; DANA RECKTENWALD, LIEUTENANT, OPERATIONS SUPERVISOR OF THE DETENTION CENTER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; TERESA MORGAN A/K/A TERESA M. GODBEY, SERGEANT, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S

Appendix B

DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CRYSTAL MEADOWS, SERGEANT, DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; MATTHEW TRAVIS BOGER, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; JOHN OR JANE DOES 1-5, JAILERS-DETENTION OFFICERS WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY; AND WESTERN SURETY COMPANY,

Defendants.

April 9, 2021, Decided
April 9, 2021, Filed

MEMORANDUM ORDER

Plaintiff Charles Willis Short ("Mr. Short"), acting individually and as the Administrator of the Estate of Victoria Christine Short ("Ms. Short"), filed the instant Motion for Relief from Judgment Pursuant to Rule 60(b) [Doc. #124] ("60(b) Motion") of the Court's earlier Memorandum Opinion and Order granting Defendants' Motion for Judgment on the Pleadings Pursuant to Rule 12(c) [Doc. #54] ("12(c) Motion"). For the reasons set forth below, the motion is denied.

This action arises from the events at Davie County Detention Center which allegedly led to Ms. Short's

attempted suicide while detained and her eventual death in August 2016. Defendants moved for judgment on the pleadings, which was granted. (*See* Mem. Op. and Order (Feb. 17, 2021) [Doc. #122] ("Opinion").) Mr. Short now moves for partial reconsideration to "allow the remaining issues to proceed to trial, or at least consider the summary judgment arguments which were pending at the time the Court entered its Judgment." (60(b) Mot. at 1 (footnote omitted).)

Prior to Defendants' motion for judgment on the pleadings, the parties began discovery during which, according to his memorandum in support of his 60(b) Motion, Mr. Short learned that a fact he alleged in his Amended Complaint was wrong. (*See* Pl.'s Mem. in Supp. of Mot. for Relief from J. Pursuant to R. 60(b)(1) at 1-2 [Doc. #125] ("Pl's. Mem. in Supp.").) Specifically, discovery showed that Linda Barnes, LPN ("LPN Barnes") evaluated Ms. Short around noon on August 23, 2016, after Defendant Sergeant Morgan's assessment, not around midnight on August 23 as stated in the Amended Complaint. (*Compare* Am. Compl. ¶¶ 46-47 *with* Pl's. Mem. in Supp. at 1-2.) Mr. Short did not seek leave to amend the Amended Complaint. While the Rule 12(c) motion was pending, Defendants moved for summary judgment.

The Court's having granted judgment on the pleadings, Mr. Short now asks the Court to reconsider the allegations in light of the correct timing of LPN Barnes' evaluation of Ms. Short. He objects to the Court's use of the facts as alleged in the Amended Complaint in paragraphs 46 and 47 as an "undisputed fact" and argues

that it "shows that the Court's Judgment was based on a mistake." (Pl's. Mem. in Supp. at 2.) He states further that he did not amend his original pleadings to correct this fact "because that was not necessary when all of the parties understood what the actual facts were early in discovery" and he directs the Court to his response in opposition to the motion to dismiss filed by now-dismissed defendant Southern Health Partners, Inc. ("SHP") that was on the docket at the time of the 12(c) Motion. (Pl.'s Reply in Supp. of Mot. for Relief from J. Pursuant to R. 60(b) at 2 [Doc. #129].) In that brief, Mr. Short clarifies the timing in a footnote and notes that the "allegations remain factually correct in all other respects" and that "there is no difference in the import of these actions . . . other than to highlight that SHP's employees should have been trained to look at and pay attention to information in the detention medical intake forms." (Pl.'s Resp. in Opp'n to Def. SHP's Partial Mot. to Dismiss at 2-3 n.1 [Doc. #49].) In the alternative, Mr. Short requests the Court consider the summary judgment arguments which, as noted above, were pending at the time of the Court's judgment. (60(b) Mot. at 1.)

Defendants contend that even if the Court used the facts as stated in Mr. Short's response to SHP's motion to dismiss—and the Court should not, given that the facts do not come from the pleadings—Defendants would still be entitled to judgment on the pleadings because Ms. Short had access to and was regularly evaluated by medical care providers. (Resp. in Opp'n to Pl.'s Mot. for Relief from J. Pursuant to R. 60(b) at 2-8 [Doc. #128]). Defendants also argue that the Court should decline Mr. Short's request

to review the summary judgment motion and briefings given that they do not wish to convert their motion on the pleadings into one for summary judgment. (*Id.* at 8.)

Mr. Short invokes Rule 60(b)(1) and (b)(6) of the Federal Rules of Civil Procedure and the Court's inherent authority to reconsider its earlier Opinion. (Pl's. Mem. in Supp. at 10.) The remedy permitted by Rule 60(b) is "extraordinary and is only to be invoked upon a showing of exceptional circumstances." *Compton v. Alton S.S. Co. Inc.*, 608 F.2d 96, 102 (4th Cir. 1979) (citing cases). To grant such a remedy under Rule 60(b), "a moving party must show that his motion is timely, that he has a meritorious defense to the action, and that the opposing party would not be unfairly prejudiced by having the judgment set aside." *Park Corp. v. Lexington Ins. Co.*, 812 F.2d 894, 896 (4th Cir. 1987); *see also Anderson v. Pruitt*, 1:10-cv-553, 2013 U.S. Dist. LEXIS 24343, 2013 WL 664191, at *1 (M.D.N.C. Feb. 22, 2013). If that threshold showing is made, Rule 60(b)(1) states that a court "may relieve a party or its legal representative from a final judgment, order, or proceeding" for a "mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1) requires "an acceptable excuse" for a party's failure to correct a mistake. *Park Corp.*, 812 F.2d at 896-97 (citing 11 C. Wright & A. Miller, *Federal Practice & Procedure* § 2858, at 170 (1973) (explaining that the party seeking relief from judgment under Rule 60(b)(1) "must make some showing of why he was justified in failing to avoid mistake or inadvertence")). Rule 60(b)(6) allows for the same relief if "any other reason justifies [it]." With respect to this catch-all provision, the Fourth Circuit has found the "context [of Rule 60(b)(6)]

requires that it may be invoked in only 'extraordinary circumstances' when the reason for relief from judgment does not fall within the list of enumerated reasons given in Rule 60(b)(1)-(5)." *Aikens v. Ingram*, 652 F.3d 496, 500 (4th Cir. 2011) (citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 n.11, 108 S. Ct. 2194, 100 L. Ed. 2d 855 (1988)).

There is no dispute that Mr. Short's motion is timely. However, relief is not warranted under either Rule 60(b)(1) or (b)(6). The "mistake" here was a fact in the Amended Complaint left uncorrected despite an opportunity to do so, *see* Fed. R. Civ. P. 15(a)(2). As Mr. Short said, he was aware of the mistaken fact early in discovery. He could have sought leave to amend the Amended Complaint to cure the error prior to the Court's disposition of the 12(c) Motion during which the Court necessarily would rely on the allegations in the Amended Complaint. Under the Rule 12(c) standard, a court is "limited to considering the sufficiency of the allegations set forth in the complaint and the 'documents attached or incorporated into the complaint.'" *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 606-07 (4th Cir. 2015) (quoting *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 448 (4th Cir. 2011)); *see also Massey v. Ojaniit*, 759 F.3d 343, 347 (4th Cir. 2014). In other words, the complaint is the operative document in a motion on the pleadings. *See Zak*, 780 F.3d at 606-07; *Massey*, 759 F.3d at 347.

While Mr. Short argues that amending the pleadings was unnecessary "when all the parties understood what the actual facts were early in discovery," that is not the standard

to which the Court is bound. Clarifying a fact in the footnote of a response to a motion to dismiss filed by a defendant who is no longer a party to the case is insufficient for the purposes of a Rule 12(c) motion. Moreover, Mr. Short's own language in the footnote limits the import of the fact to the now-dismissed defendant. Further, a party "may not amend h[is] complaint through argument in a brief opposing summary judgment," *Barclay White Skanska, Inc. v. Battelle Mem'l Inst.*, 262 F. App'x 556, 563 (4th Cir. 2008) (unpublished), or "a motion to dismiss," *Morgan Distrib. Co. v. Unidynamic Corp.*, 868 F.2d 992, 995 (8th Cir. 1989) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107 (7th Cir. 1984)). *See also Gilmour v. Gate, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004) (finding that "a plaintiff may not amend her complaint through argument in a brief opposing summary judgment"). To allow otherwise "would mean that a party could unilaterally amend a complaint at will, even without filing an amendment, and simply by raising a point in a brief." *Morgan Distrib. Co.*, 868 F.2d at 995 (internal citations omitted). As such, the circumstances here are neither justified by an "acceptable excuse" nor are sufficiently "exceptional" to warrant relief under Rule 60(b).

Nevertheless, even if it had been alleged that LPN Barnes saw Ms. Short around noon on August 23, 2016 after Sergeant Morgan had already completed an evaluation, it would not have changed the conclusion that Mr. Short failed to sufficiently allege a claim for deliberate indifference. Ms. Short would still be alleged to have received ongoing medical treatment and evaluation by LPN Barnes and other medical professionals while

detained and that it was LPN Barnes who authorized Ms. Short to be put on withdrawal protocol—rather than suicide watch—and moved to isolation. Therefore, it would still be true that while Sergeant Morgan's alleged actions—or inaction—may have violated Detention Center policy, it was not a violation of Ms. Short's constitutional rights.

The Court also declines Mr. Short's request to consider the summary judgment arguments which were pending when the Court ruled on the 12(c) Motion. To do so would make the motion on the pleadings futile, in effect eviscerating Rule 12(c). Moreover, the Court did not consider or need to consider any material outside the pleadings in granting Defendants' 12(c) Motion. *See* Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment."); *E.I. du Pont de Nemours & Co.*, 637 F.3d at 448.

For the reasons explained above, IT IS HEREBY ORDERED that Plaintiff Charles Willis Short's Motion for Relief from Judgment Pursuant to Rule 60(b) [Doc. #124] is DENIED.

This the 9th day of April, 2021.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge

APPENDIX C — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES COURT DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, FILED FEBRUARY 17, 2021

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA

1:18CV741

CHARLES WILLIAM SHORT, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF VICTORIA CHRISTINE SHORT,

Plaintiff,

v.

ANDREW C. STOKES, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; J.D. HARTMAN, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; CAMERON SLOAN, CAPTAIN, CHIEF JAILER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; DANA RECKTENWALD, LIEUTENANT, OPERATIONS SUPERVISOR OF THE DETENTION CENTER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; TERESA MORGAN A/K/A TERESA M. GODBEY, SERGEANT, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CRYSTAL MEADOWS,

Appendix C

SERGEANT, DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; MATTHEW TRAVIS BOGER, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; JOHN OR JANE DOES 1-5, JAILERS-DETENTION OFFICERS WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY; AND WESTERN SURETY COMPANY,

Defendants.

February 17, 2021, Decided;
February 17, 2021, Filed

MEMORANDUM OPINION AND ORDER

Plaintiff Charles Willis Short ("Mr. Short"), acting individually and as the Administrator of the Estate of Victoria Christine Short ("Mrs. Short"), filed this action against multiple defendants allegedly involved in the events at the Davie County Detention Center, which led to Mrs. Short's suicide in 2016. (Am. Compl. [Doc. #6].) This matter is before the Court on a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure filed by Defendants Sheriff Andrew C. Stokes, Sheriff J.D. Hartman, Captain Cameron Sloan, Lieutenant Dana Recktenwald, Sergeant Teresa Morgan, Sergeant Crystal Meadows, Officer Matthew Travis Boger, and Western Surety Company, (collectively, "Defendants"). (Mot. for J. on the Pleadings ("Motion")

[Doc. #54].) Specifically, Defendants seek to have all remaining claims (Counts Two, Three, Eight, Nine, and Ten) dismissed. For the reasons explained below, the federal claims (Counts Two and Three) are dismissed with prejudice and the remaining state law claims (Counts Eight, Nine, and Ten) are dismissed without prejudice pursuant to 28 U.S.C. § 1367.

I.

The facts relevant to Defendants' Motion are presented in the light most favorable to Mr. Short,[1] who brings this action as the administrator of his late wife's estate. Mrs. Short attempted suicide on August 24, 2016 while being detained in the Davie County Detention Center ("Detention Center") and died as a result of her injuries on September 7, 2016. (*See* Am. Compl. ¶ 2.)

On July 6, 2016, approximately six weeks prior to her arrest on August 22, 2016, the Davie County Sheriff's Department responded to a call from Mr. Short because Mrs. Short attempted suicide by taking a large number of pills. Mrs. Short was hospitalized for four days following the attempted suicide. (*Id.* ¶¶ 33-37.)

On August 22, 2016, Deputy Moxley and Corporal Tellinger of the Davie County Sheriff's Department

1. When considering Defendants' Motion under Rule 12(c), the well-pleaded facts in the Amended Complaint are accepted as true and are viewed in the light most favorable to Mr. Short. *See Priority Auto Grp., Inc. v. Ford Motor Co.,* 757 F.3d 137, 139 (4th Cir. 2014) (citing *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999)); see also *Lucero v. Early*, 873 F.3d 466, 469 (4th Cir. 2017).

responded to the Shorts' home again, this time regarding a domestic dispute between Mr. and Mrs. Short. (*Id.* ¶ 38.) When Deputy Moxley and Corporal Tellinger arrived, Mrs. Short was "extremely upset and appeared to be on some type of narcotic as she was shaking uncontrollably, twitching from the neck area, and had needle marks all down both her arms." (*Id.* ¶ 39; Ex. B to Am. Compl. at 3.) At that time, Mrs. Short informed the deputies that she had used Xanax the day before, and she declined any medical attention. (*Id.;* Ex. B to Am. Compl. at 3.) Before Mr. and Mrs. Short were taken into custody, Mr. Short and his brother-in-law, Dwight Ross, informed the deputies that Mrs. Short "was suicidal and had recently attempted suicide." (*Id.* ¶¶ 40, 41.) After their first appearances before a magistrate, Mr. Short was released while Mrs. Short was placed on a 48-hour domestic hold at the Detention Center. (*Id.* ¶¶ 42-43.)

Upon arriving at the Detention Center, just after midnight on August 23, 2016, Mrs. Short underwent in-processing, including medical screening by Linda Barnes, LPN ("LPN Barnes"), a licensed practical nurse ("LPN") working for Southern Health Partners ("SHP"). (*Id.* ¶¶ 11, 12.) SHP had a contract with Davie County to provide medical treatment to detainees at the Detention Center. (*Id.* ¶ 11.) According to the Amended Complaint, LPN Barnes, Susan Bailey, LPN ("LPN Bailey"), and Manuel Maldonado, PA ("PA Maldonado") "provided medical care to inmates and detainees held in Sheriff Stokes custody at the Jail" and were employees and agents of SHP, Sheriff Stokes and Sheriff Hartman.[2] (*Id.* ¶¶ 12-14.)

2. LPN Barnes, LPN Bailey, and PA Maldonado were named as defendants in this case and have since entered into stipulations

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LPN Barnes started Mrs. Short's medical screening at 12:09 a.m. on August 23 on a Medical Staff Receiving Screening form. (*Id.* ¶ 45.) During an internal investigation conducted following Mrs. Short's death, LPN Barnes told another individual, Sergeant Kimel, that at this point in the intake, Mrs. Short "was doubled over in pain while sitting in the chair due to abdominal pains." (*Id.* ¶ 60.) However, LPN Barnes did not report or record that information anywhere or to anyone else on August 23. (*Id.)* Nevertheless, LPN Barnes noted on Mrs. Short's initial medical evaluation forms that she was exhibiting "severe" signs of withdrawal. (*Id.* ¶¶ 46-49.) LPN Barnes reported on the screening form that Mrs. Short was suffering from nausea, vomiting, and diarrhea and should be placed on alcohol and drug withdrawal monitoring. (*Id.* ¶ 46.)

On the same form completed during in-processing, LPN Barnes marked "[n]o" to the question of whether Mrs. Short "show[ed] signs of illness, injury . . . or other symptoms suggesting the need for immediate emergency medical referral." (*Id.* ¶ 46.) LPN Barnes handwrote, however, that Mrs. Short had "scabs/sores on face, arms, legs, trunk"; had visible signs of being under the influence of, or withdrawing from, "drugs"; had considered or attempted suicide a "month ago"; and had been hospitalized for a suicide attempt in "July 2016." (*Id.)* LPN Barnes also documented that Mrs. Short used "heroin, Xanax, opana," and "alcohol" "daily." (*Id.;* Ex. C to Am. Compl. at 2.) Of note, LPN Barnes did not fill in the

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of dismissal with Plaintiff. (Stipulation of Dismissal of LPN Linda Barnes, LPN Susan Desiree Bailey, and P.A. Manuel Maldonado by Charles William Short [Doc. #77].)

section of the form which asked if the detainee "exhibited any signs that suggest the risk of suicide, assault or abnormal behavior." (*Id.)* She did write that Mrs. Short should be placed on "ETOH/Benzo/Opiate detox protocol and [withdrawal] monitoring." (Ex. C to Am. Compl. at 2; *see also* Ex. E to Am. Compl. at 2.)

LPN Barnes also completed a second assessment at 12:09 a.m. that evaluated Mrs. Short's withdrawal severity. (*See* Am. Compl. ¶ 47; Ex. D to Am. Compl. at 2.) The form provided a scale of zero to seven for withdrawal symptoms in nine categories, with "zero" representing the least severe symptoms and "seven" representing the most severe symptoms, and zero to four in a tenth category, measuring "Orientation and Clouding of Sensorium." (Ex. D to Am. Compl. at 2.) According to LPN Barnes, Mrs. Short was exhibiting the following withdrawal symptoms on the scale of zero to seven: 1) intermittent nausea with dry heaves (score: 5); 2) moderate tremors (score: 5); 3) paroxysmal sweats (score: 3); 4) high anxiety (score: 6); 5) moderately fidgety and restless (score: 4); 6) moderately severe hallucinations (score: 4); 7) moderate harshness or ability to frighten (score: 3); 8) moderate sensitivity (score: 3); and 9) headache (score: 0); and in the tenth category, she noted Mrs. Short registered an inability to do serial additions or was uncertain about the date (score: 1). (*Id.;* Am. Compl. ¶¶ 47, 49.) The form states that "[p]atients scoring less than 10 do not usually need additional medication for withdrawal." (Ex. D. to Am. Compl. at 2.) Mrs. Short scored thirty-four points out of a maximum possible score of sixty-seven. (*Id.)* Mr. Short alleges that based on the Physicians Order LPN Barnes

completed, (*see* Ex. E to Am. Compl.), "the Jail and medical providers knew that [Mrs. Short] suffered from a complex withdrawal situation involving several different types of drugs." (Am. Compl. ¶ 59.) LPN Barnes additionally authorized that Mrs. Short could be moved to female isolation, purportedly due to having "open draining sores all over her body." (*Id.* ¶ 73.) Mrs. Short was placed in a cell by herself with no one else on the hallway, (*id.* ¶ 69), and was provided a bedsheet in violation of the Detention Center's policy, (*id.* ¶ 123).

At some point on August 23—following LPN Barnes' assessments—Sergeant Morgan completed a "Medical Questionnaire" form, evaluating Mrs. Short's mental health. (*Id.* ¶ 62.) Sergeant Morgan noted that Mrs. Short had "considered or attempted suicide" "last month," that Mrs. Short used drugs and alcohol (presumably quoting Mrs. Short as saying "whatever can get my hands on"), had visible signs of skin lesions, and appeared to be under the influence of or withdrawing from drugs. (Ex. G to Am. Compl. at 2-3.) Sergeant Morgan failed to complete the sections of the form asking whether Mrs. Short had been treated for mental health problems, had been hospitalized within the last year, was unconscious or showing visible signs requiring immediate emergency medical attention, or was exhibiting signs of a risk of suicide. (*Id.)*

At around 1:30 a.m., Sergeant Morgan completed a second form pertaining to Mrs. Short's mental health and suicide risk. (*Id.* ¶ 63; Ex. H to Am. Compl. at 2.) This form included referral instructions, requiring that "[t]his detainee should be referred for further mental

health evaluation if he/she answered: 'yes' to ever being hospitalized for emotional or mental health problems, 'yes' to at least two of the first six questions, or for any other reason deemed necessary." (*Id.* ¶ 64; Ex. H to Am. Compl. at 2.) While Mrs. Short's form indicated "no" to being hospitalized for emotional or mental health problems, either Mrs. Short or Sergeant Morgan wrote in, "When I tried to com. suicide stayed in hospital 4 days." (*Id.* ¶ 65; Ex. H to Am. Compl. at 2.) Regarding the first six questions on the form, Mrs. Short answered "yes" to question 5 ("Do you currently feel like you have to talk or move more slowly than you usually do?") and question 6 ("Have there currently been a few weeks where you felt like you were useless or sinful?"). (*Id.* ¶ 63; Ex. H to Am. Compl. at 2.) Mr. Short alleges that based on the responses, "S[ergeant] Morgan should have referred [Mrs. Short] for further mental health evaluation." (*Id.)* However, Sergeant Morgan neither referred Mrs. Short for further mental health evaluation nor marked "NOT REFERRED," which was another option provided on the form. (*Id.* ¶ 66; Ex. H to Am. Compl. at 2). Sergeant Morgan also did not mark where indicated that Mrs. Short was "under the influence of drugs/alcohol." (*Id.* ¶ 67; Ex. H to Am. Compl. at 2). Mr. Short alleges that "S[ergeant] Morgan either chose to not pay attention to this safety measure when she should have been doing her job, or even worse, she paid attention, but simply did not care and chose to ignore the simple instructions." (*Id.)* Mr. Short further contends that "[e]ither way, S[ergeant] Morgan's choice led to Victoria's death." (*Id.)*

According to the Amended Complaint, LPN Barnes ordered Mrs. Short to be placed on withdrawal protocol at

or around 12:09 a.m. when she filled out the first forms at intake. (*Id.* ¶¶ 46, 71.) Withdrawal protocol was to include a medical evaluation at least three times per day, but Mrs. Short was evaluated only twice in a 32-hour period. (*Id.* ¶¶ 71, 75.) Mr. Short alleges that even though Mrs. Short's symptoms persisted "for at least 32 hours, the SHP medical staff and Jail employees did nothing." (*Id.* ¶ 80; Ex. J to Am. Compl.)

On August 24, 2016 at 8:30 a.m., LPN Bailey—who took over LPN Barnes's shift sometime between midnight of August 23 and 8:00 a.m. of August 24—noted that Mrs. Short was still exhibiting the same "overt and dangerous signs of withdrawal:" weakness, restlessness, sweating, shakiness/muscle twitching, anxiety, vomiting, nausea, slurred speech, and complaints of being cold. (*Id.* ¶¶ 74, 79, 81.) Yet, she did not make any changes to Mrs. Short's treatment and did not notify any other medical personnel. (*Id.* ¶¶ 80, 81.)

Mr. Short alleges that "the Jail staff should have observed [Mrs. Short] at least once every fifteen minutes"; however, "often times they only saw her every thirty minutes, and . . . sometimes only every forty-five minutes" in violation of the detention policy. (*Id.* ¶ 92.) He contends that, also in violation of the Detention Center's policy, the staff "took [Mrs. Short] off of withdrawal monitoring without any doctor's order to so do." (*Id.* ¶ 72.)

Officer Sarah Cook, a detention officer working at the Detention Center, arrived for her shift at 6:45 a.m. on August 24, 2016 and learned of Mrs. Short's previous

suicide attempt from another officer working at the jail. (*Id.* ¶¶ 84-86.) Officer Cook observed that Mrs. Short was being housed in a cell by herself and asked Sergeant Meadows why she was not with the general population given her previous suicide attempt. (*Id.* ¶ 90.) Someone informed Officer Cook that Lieutenant Recktenwald had ordered Mrs. Short to be placed in isolation "because [she] was being mouthy." (*Id.* ¶ 91.)

At 9:30 a.m. on August 24, 2016, Officer Boger "made a 'round' in the female isolation unit," where he "claims he observed [Mrs. Short] sitting on her bed." (*Id.* ¶ 93.) This was followed by another round at 10:09 a.m. or 10:10 a.m., during which Officer Boger "observed [Mrs. Short] standing by her cell door." (*Id.* ¶ 94.) As Officer Boger was leaving the isolation unit though, "he appears to have looked back at her cell," noticing "instead of standing, [Mrs. Short] was hanging by a bed sheet attached to her neck from the cell door." (*Id.)* After requesting assistance, Officer Boger "grabbed her from behind and held her," and when assistance arrived, resuscitation was performed on Mrs. Short until Emergency Medical Services arrived and took her to the hospital. (*Id.* ¶¶ 95-96.) Mrs. Short never regained consciousness and died on September 7, 2016. (*Id.* ¶ 100.)

Throughout the Amended Complaint, Mr. Short alleges that despite established policies for handling detainees who are suicidal and/or undergoing drug withdrawal, Sheriff Stokes' employees and agents failed to follow the Detention Center's polices, which resulted in Mrs. Short's death. (*See, e.g., id.* ¶¶ 25, 68.) The Detention

Center's policy Section 4.10-C, for example, lists nine indicators of potentially suicidal behaviors,[3] and Mr. Short asserts that despite only needing to present with one of these risk factors in order to be identified as a suicide risk, Mrs. Short was exhibiting "at least five" of those indicators, which "the Sheriff's agents and employees ignored." (*Id.* ¶ 116.)

The policy further requires the observation of "inmates closely for signs of potentially suicidal behavior during the following high-risk periods," which include during the "[f]irst 24 hours of confinement," [b]efore anticipated release," and "[d]uring intoxication or withdrawal." (Ex. I to Am. Compl. at 3 (Section 4.10-D).) Mr. Short alleges that in light of these directives, "the Sheriff's employees and agents should have recognized" that Mrs. Short was at risk of suicide as she "had just arrived at the jail," "had serious medical issues [including] active withdrawal symptoms," and was to be released within forty-eight hours. (Am. Compl. ¶ 118.)

The policy also dictates that if a detainee or inmate is identified as a suicide risk, he or she should be "place[d]

3. Those nine factors include: "1) Actual threats to commit suicide or active discussion of suicidal intent[,] 2) Previous attempts to commit suicide[,] 3) Depression . . . [,] 4) Giving away all personnel property[,] 5) Signs of serious mental health problems such as paranoid delusions or hallucinations[,] 6) Drug or alcohol intoxication or withdrawal[,] 7) History of mental illness[,] 8) Severe aggressiveness and difficulty relating to others[,] [and] 9) Speaking unrealistically about the future or about getting out of detention when it is obvious there is no legal way out[.]" (*Id.* ¶ 115; Ex. I to Am. Compl.)

in a populated cell [and] (depending on the severity) never place[d] . . . in a single cell," the "nurse will be notified" depending on the severity, and "10-15 minute checks" should be initiated and logged. (Ex. I to Am. Compl. at 3 (Section 4.10-E).) Moreover, the policy required that any articles that "may be used to commit suicide" be removed from the detainee or inmate, and in underlined-and-bolded print noted that "***It is important to begin 10-15 minute checks on a suicidal inmate, even if he or she is in a multi-occupant cell. This must be documented***." (*Id.* (Section 4.10-F, G).) Mr. Short alleges that despite these policies, Mrs. Short was not monitored, was placed in isolation, (*id.* ¶¶ 119-20, 126), and was given a bedsheet, resulting in her death, (*id.* ¶¶ 123, 126-27).

After Mrs. Short's suicide, an internal investigation concluded that no violations of policy occurred, though Mr. Short argued that the findings "show either an utter lack of understanding of or any attempt to bother to actually review the records . . . or a willful attempt to cover up the choices[] made" by Defendants. (*Id.* ¶¶ 101-07.) In February 2017, however, a newspaper reporter discovered Sheriff Hartman had not submitted proper paperwork about Mrs. Short's death to the North Carolina Department of Health and Human Services Division of Health Service Regulation ("DHSR"), which he was required to do. (*Id.* ¶ 108.) The DHSR conducted its own independent death investigation after Sheriff Hartman's failure to timely submit the paperwork. (*Id.* ¶ 109.) The investigation found that the Detention Center had failed to comply with 10A N.C. Admin. Code 14J.0601(c) because the Jail "should have observed [Mrs. Short] at least four

times per hour" and they failed to report her death within five days. (*Id.* ¶ 110.) Mr. Short filed suit alleging violations of state and federal law associated with the death of his wife. Defendants have moved to dismiss pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

II.

A motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is analyzed according to the same standard as a Rule 12(b)(6) motion. *Priority Auto Grp.,* 757 F.3d at 139 (citing *Edwards,* 178 F.3d at 244). Generally, under Rule 12(b)(6), "courts are limited to considering the sufficiency of allegations set forth in the complaint and the 'documents attached or incorporated into the complaint.'" *Zak v. Chelsea Therapeutics Int'l, Ltd.,* 780 F.3d 597, 606-07 (4th Cir. 2015) (quoting *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.,* 637 F.3d 435, 448 (4th Cir. 2011)).

To survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly,* 550 U.S. at 556). When the facts in the complaint are "'merely consistent with' a defendant's liability, it 'stops short of

the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Twombly,* 550 U.S. at 557). Thus, if the well-pleaded facts only allow the court to infer that misconduct is "possible," the "complaint has alleged — but has not 'show[n]' — that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

III. *Individual Capacity Claims*

In the Amended Complaint, Mr. Short has alleged two similar claims under 42 U.S.C. § 1983 against Defendants[4] in their official and individual capacities. Count Two alleges that Sheriff Stokes, Sheriff Hartman, Captain Sloan, Lieutenant Recktenwald, Sergeant Morgan, and Sergeant Meadows had "de facto" policies in effect that were a direct cause of the unlawful conduct of the officers and medical care providers at the Detention Center, including the "de facto" policy of failing to train and supervise the detention officers and medical care providers at the Detention Center. (*See* Am. Compl. ¶ 140.) Count Two further alleges that these Defendants had knowledge that the conduct of the officers and medical care providers at the Detention Center posed a risk of constitutional injury to inmates and detainees, and that their responses were so inadequate as to show deliberate indifference. Count Two also alleges that these Defendants created a culture of neglect and indifference, to the point of covering up their violations, and that a "remotely appropriate" application of the policy for suicidal inmates would have prevented Mrs. Short's suicide. (*Id.* ¶ 144.)

4. "Defendants" used in Sections III and IV refers to the individual defendants only.

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The allegations in Count Three similarly describe "de facto policies"; namely, a "de facto" policy of failing to comply with the Detention Center policies (such as the Davie County Detention Center Health Services Policy for suicidal inmates) that were in place at the time. (*See id.* ¶ 150.) Specifically, Count Three alleges that Sheriff Hartman, Captain Sloan, Lieutenant Recktenwald, Sergeant Morgan, Sergeant Meadows, and Officer Boger "had in effect de facto policies, practices and customs that were a direct and proximate cause of the . . . unlawful conduct of the officers or medical care providers who worked at the Jail." (*Id.* ¶¶ 149-50.) The wrongful conduct cited in Count Three includes, among other allegations, the "failure to comply with the proper methods or policies" for evaluating, assisting and treating mental health issues, suicide risk, and serious medical conditions "in inmates and detainees at the Jail," and the failure to "ensure that inmates and detainees were provided appropriate . . . medical care." (*Id.* ¶ 150.)

Defendants filed the present Motion challenging the collective individual capacity claims in Counts Two and Three, arguing that "there are no specific factual allegations showing that these individual defendants were personally involved in the deprivation of M[r]s. Short's constitutional rights," and therefore are entitled to qualified immunity. (Motion at 2.) As for the official capacity claims in Counts Two and Three against the officers of the Davie County Sheriff's Office, Defendants seek dismissal given that "there are no allegations that M[r]s. Short's death was caused by an official policy of the Davie County Sheriff's Office." (*Id.)*

Mr. Short, however, opposed Defendants' 12(c) Motion, challenging Defendants' reading of the *Iqbal/Twombly* standard and arguing that he "easily crossed the minimum threshold [required under *Iqbal/Twombly]* by alleging facts that 'plausibly suggest an entitlement to relief.'" (Pl.'s Mot. in Response to Def.'s 12(c) Motion [Doc. #61] ("Response to Mot.") at 3-10.) Mr. Short also sought to distinguish between the facts of the cases cited by Defendants in support of their Motion and Mrs. Short's case, contending that the jury, rather than this Court, should determine whether Defendants acted with deliberate indifference towards Mrs. Short. (*Id.* at 6-10.)

Title 42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage[] . . . 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 in an action at law . . . [.]" *See Grayson v. Peed,* 195 F.3d 692 (4th Cir. 1999) (assessing deceased detainee's Constitutional claims under § 1983). Individual capacity claims brought under § 1983 must allege a constitutional violation as to each defendant. *See, e.g., Wright v. Collins,* 766 F.2d 841, 850 (4th Cir. 1985). A showing of respondeat superior is not sufficient for a § 1983 claim against an officer in his or her individual capacity; therefore, personal deprivation of a detainee's constitutional rights is required to be shown as to each defendant. *Iqbal,* 556 U.S. at 676; *see also Williamson v. Stirling,* 912 F.3d 154, 171 (4th Cir. 2018) ("[T]he plaintiff must 'affirmatively show[] that the official charged acted personally in the deprivation of the plaintiff's rights.'") (quoting *Wright,* 766 F.2d at 850).

Appendix C

A. *Claims against Sheriff Stokes, Sheriff Hartman, and Captain Sloan in their Individual Capacities*

Neither Sheriff Stokes, nor Sheriff Hartman, nor Captain Sloan is alleged to have acted personally in the deprivation of Mrs. Short's rights. They are not even alleged to have been present during her detention. Instead, the allegations against each of them appear to be based on a theory of respondeat superior, which cannot be the basis for individual liability under § 1983. Therefore, the § 1983 claims against Sheriff Stokes, Sheriff Hartman, and Captain Sloan in their individual capacities are dismissed with prejudice.

B. *Claims against Lieutenant Recktenwald, Sergeant Meadows, Officer Boger, and Sergeant Morgan in their Individual Capacities*

Unlike Sheriff Stokes, Sheriff Hartman, and Captain Sloan who are not alleged to have been present during Mrs. Short's detention, Lieutenant Recktenwald, Sergeant Meadows, Officer Boger—who is only named in Count Three—and Sergeant Morgan are alleged to have been present at various times in the Detention Center on August 23 and August 24, 2016, when Mrs. Short was taken into custody and/or while she was a detainee. However, none of them is alleged to have personally deprived Mrs. Short of her constitutional rights as required for individual liability under § 1983.

In the context of a jail suicide, "[p]rison officials violate the civil rights of inmates when they display 'deliberate

indifference to serious medical needs.'" *Gordon v. Kidd,* 971 F.2d 1087, 1094 (4th Cir. 1992) (quoting *Estelle v. Gamble,* 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)). The relevant civil rights violation falls under the purview of the Eighth Amendment prohibition against "cruel and unusual punishment." *Scinto v. Stansberry,* 841 F.3d 219, 225 (4th Cir. 2016) ("[A] prison official's 'deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.'") (quoting *Estelle,* 429 U.S. at 104). In the case of a pretrial detainee, the issue is framed as a Due Process Clause violation, but the deliberate indifference analysis is the same. *Gordon,* 971 F.2d at 1094 ("Pretrial detainees . . . are entitled to medical attention, and prison officials violate detainees' rights to due process when they are deliberately indifferent to serious medical needs.") (citing *Loe v. Armistead,* 582 F.2d 1291, 1294 (4th Cir. 1978)).

For a deliberate indifference claim, the plaintiff must first allege facts showing that the detainee suffered from a serious medical condition or injury. *See Grayson,* 195 F.3d at 695; *Clark v. M Dep't of Pub. Safety and Corr. Servs.,* 316 F. App'x 279, 283 (4th Cir. 2009) (unpublished). In the suicide context, this is described as a "substantial risk of suicide," *Brown,* 240 F.3d at 389 (citing *Gordon,* 971 F.2d at 1094), where the risk is "imminent" enough to be considered actionable, *Buffington v. Baltimore Cty.,* 913 F.2d 113, 120 (4th Cir. 1990) ("In *Belcher [v. Oliver,* 898 F.2d 32 (4th Cir. 1990)], we declined to impose on the police officers a duty to screen detainees for suicidal tendencies, but we did not imply that officers would have

had no constitutional duty at all if they demonstrably knew or had reason to know that a suicide was imminent.").

Second, the plaintiff must demonstrate that the officer subjectively knew of both the serious medical condition and the excessive risk posed. *Scinto,* 841 F.3d at 226; *Gordon,* 971 F.2d at 1095 (declining to find deliberate indifference for officer who "had no knowledge of Gordon's suicide threat"). The officer must "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan,* 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994); *see also Rich v. Bruce,* 129 F.3d 336, 339-40 (4th Cir. 1997). Courts evaluating the suicide of a detainee have required that the defendant "*actually knew* of the detainee's suicidal intent, not merely that he should have recognized it." *Hearn v. Lancaster Cty.,* 566 F. App'x 231, 236 (4th Cir. 2014) (emphasis added) (unpublished). In fact, "an officer's failure to appreciate a warning sign is not sufficient to establish deliberate indifference." *Id.* at 239. Similarly, an officer who has knowledge of underlying facts, but fails to recognize the risk those facts present will not satisfy the second prong of the deliberate indifference test. *Rich,* 129 F.3d at 338 (citing *Farmer,* 511 U.S. at 844).

Third, and finally, the officer in question must subjectively recognize that his or her actions were "inappropriate in light of that risk [of harm]." *Rich,* 129 F.3d at 340 n.2. Simply put, "[i]t is not enough that the official *should have* recognized that his actions were inappropriate; the official *must have* recognized that his

actions were insufficient." *Brown v. J.P. Morgan,* No. 11-cv-3140 (JFM), 2013 U.S. Dist. LEXIS 111236, 2013 WL 4026952, at *3 (D. Md. Aug. 6, 2013) (citing *Brown,* 240 F.3d at 390-91) (emphasis in original). Thus, "[e]ven officials who acted with deliberate indifference may be 'free from liability if they responded reasonably to the risk.'" *Scinto,* 841 F.3d at 226 (quoting *Farmer,* 511 U.S. at 844).

1.

Here, assuming arguendo that the first prong of a deliberate indifference claim is met, the factual allegations, taken in the light most favorable to Mr. Short, do not create a plausible inference that Lieutenant Recktenwald, Sergeant Meadows, or Officer Boger actually knew of or subjectively recognized Mrs. Short's suicidal intent, or that they ignored a serious need or imminent suicide risk. There is no allegation that the arresting officers (who are not named as defendants) told anyone working at the Detention Center that Mrs. Short's husband and brother-in-law had stated, during her arrest, that Mrs. Short was suicidal.[5] Mrs. Short was evaluated by LPN Barnes, a member of the medical staff, within minutes of her arrival at the Detention Center. (Am. Compl. ¶¶ 11, 12.) LPN Barnes stated on the intake form that Mrs. Short

5. The Amended Complaint alleges that the Davie County Sheriff's Department also responded to Mrs. Short's suicide attempt on July 6, 2016; however, Deputy Hannah Whittington responded to the call and Mrs. Short was sent by EMS to the hospital. Whittington is not mentioned as an officer who was present during the events on August 22 and 23, 2016.

was not in need of emergency care, that she had attempted suicide six weeks before, and that she was experiencing severe withdrawal symptoms. She also placed Mrs. Short on "detox protocol with withdrawal monitoring" but, despite knowing of Mrs. Short's recent suicide attempt, did not place her on monitoring for suicide. (*Id.* ¶¶ 39-46.) Further, it was LPN Barnes who approved Mrs. Short to be placed in an isolated cell. (*Id.* ¶ 73.)

On the other hand, there are no allegations that Lieutenant Recktenwald knew Mrs. Short was suicidal when she allegedly recommended Mrs. Short be placed in isolation because she was "being mouthy." The only allegation as to Sergeant Meadows is that Officer Cook asked her why Mrs. Short had been placed in a cell by herself, but Officer Cook does not remember who responded to her question. Thus, there are no allegations that Sergeant Meadows actually knew Mrs. Short was suicidal. Although the jail staff should have observed Mrs. Short every fifteen minutes, there are no allegations or suggestions that Officer Boger knew Mrs. Short had attempted suicide six weeks before or that she was presently suicidal.

Moreover, "the mere failure" to comply with the protocol outlined in the Davie County policy manual or a comparable "statutory or administrative provision" is not, alone, "a constitutional violation." *See, e.g., Davis v. Scherer,* 468 U.S. 183, 194, 104 S. Ct. 3012, 82 L. Ed. 2d 139 (1984); *see also Roberts v. City of Troy,* 773 F.2d 720, 726 (6th Cir. 1985). *Cf. Booker v. S.C. Dep't of Corr.,* 855 F.3d 533, 546 (4th Cir. 2017) (finding that internal

regulations can be relevant, particularly in combination with binding case law, in determining a prisoner's claim for a constitutional violation). Failing to follow the policy is therefore a separate issue from violating Mrs. Short's constitutional rights given that the standard for a constitutional violation is not necessarily contained in the policy. *See, e.g., Jackson v. Sampson,* 536 F. App'x 356, 357-58 (4th Cir. 2013) (unpublished) (citing *Gardner v. Howard,* 109 F.3d 427, 430 (8th Cir. 1997)).

Even if these allegations were sufficient to show that these officers knew the risk of Mrs. Short's suicide, there are no allegations beyond what has been described above as to any specific defendant to plausibly infer that they subjectively recognized that their actions were inappropriate in light of that risk of harm. *See Rich,* 129 F.3d at 340 n.2. There are general assertions, such as "the Jail" had notice of Mrs. Short's withdrawal condition, "the Sheriff's agents and employees" ignored the risk factors evaluated on the medical forms, and they "should have recognized" the risks. As discussed in *Iqbal* and *Twombly,* such general assertions and "mere conclusory statements" are not sufficient to survive a motion to dismiss. *Iqbal,* 556 U.S. at 678.

2.

With respect to Sergeant Morgan, viewing the allegations in the light most favorable to Mr. Short, the claim is closer but similarly fails. In the Amended Complaint, Mr. Short alleges that Sergeant Morgan partially completed two forms evaluating Mrs. Short's

mental health and suicide risk and that the information on those forms show that Sergeant Morgan knew that Mrs. Short considered or attempted suicide "last month," had "stayed in [the] hospital [for] four days" for the suicide attempt, used "what[]ever [drugs] [she] c[ould] get [her] hands on," drank alcohol "every other day," had "sores all over body," and was "under the influence of or withdrawing from" "drugs." (Am. Compl. ¶¶ 62-67.) And yet, Sergeant Morgan failed to refer Mrs. Short for further mental health evaluation as the form required.

However, Mr. Short also alleges in the Amended Complaint that Sergeant Morgan saw Mrs. Short *after LPN Barnes had medically assessed her.* As a result of her assessment of Mrs. Short, LPN Barnes ordered only that Mrs. Short be placed on withdrawal protocol and moved to isolation, rather than be put on suicide watch. When LPN Bailey took over LPN Barnes' shift, she "never attempted to change any protocol[] [or] issue different instructions regarding [Mrs. Short] . . . [.]" (Am. Compl. ¶ 78.)

Deliberate indifference to a serious medical need requires an allegation showing that the defendant knew of the suicidal intent and its risk yet responded in a way that she recognized was inappropriate. *See Farmer,* 511 U.S. at 835-45. A failure to recognize warning signs of suicide is insufficient. *Compare Hearn,* 566 F. App'x at 233, 237-39 (upholding the district court's summary judgment dismissal of the plaintiff's claims despite the presence of a suicide note given that the note did not include "an *explicit* statement that [the plaintiff] was

thinking about harming himself") *with Gordon,* 971 F.2d at 1095 (finding a definite, explicit warning from another officer that Gordon might kill himself, based on Gordon's threats prior to his arrest, was sufficient for finding the jailer knew of Gordon's suicidal tendencies). Likewise, "an officer's failure to alleviate a significant risk that [s] he should have perceived but did not" does not meet the deliberate indifference standard. *Farmer,* 511 U.S. at 838.

Sergeant Morgan's alleged conduct may have violated Detention Center policy, but it is not unconstitutional. She interacted with Mrs. Short after LPN Barnes had medically assessed her and ordered only withdrawal protocol and isolation. *See Shakka v. Smith,* 71 F.3d 162, 167 (4th Cir. 1995) (finding defendants lacked authority to interfere with plaintiff's medical treatment and may have incurred liability had they done so); *Miltier v. Beorn,* 896 F.2d 848, 854 (4th Cir. 1990) (declining to find supervisory liability where plaintiff-inmate received medical treatment and "[n]o record evidence suggests why [defendants] should not have been entitled to rely upon their health care providers' expertise). And it is mere speculation to wonder what would have happened had Sergeant Morgan referred Mrs. Short for further mental health assessment. Later when LPN Bailey took over from LPN Barnes, she made no changes to Mrs. Short's plan of care. *See Grayson,* 195 F.3d at 695-96 (declining to find deliberate indifference given that "the [correctional facility] [to which officers transported detainee] had trained medical personnel on duty 24 hours a day").

In sum, the allegations of deliberate indifference in violation of 42 U.S.C. § 1983 against Sheriff Stokes, Sheriff

Hartman, Captain Sloan, Lieutenant Recktenwald, Sergeant Morgan, and Officer Boger in their individual capacities in Count Two and against Sheriff Hartman, Captain Sloan, Lieutenant Recktenwald, Sergeant Morgan, Sergeant Meadows, and Officer Boger in their individual capacities in Count Three are dismissed with prejudice.[6],[7]

IV. *Official Capacity Claims*

As noted previously, Defendants contend that the official capacity claims fail in part because it would be "axiomatic" for the Court to conclude that no constitutional violation occurred, yet hold the Sheriff of Davie County liable under § 1983 and in part because Mr. Short "failed to allege that any official policy the Sheriff of Davie County caused M[r]s. Short's death." (Motion at 18-20.) Mr. Short did not seem to directly challenge these arguments in the official capacity context, but pointed, for example, to "a specific detention policy relative to treatment of those in custody where there was any indication of possible suicide including specifically any past attempt," (Response to Mot.

6. Count Two also alleges a failure to train violation of § 1983 against these Defendants in their individual capacity; however, a failure to train claim is more appropriately assessed as an official capacity claim. *See City of Canton v. Harris,* 489 U.S. 378, 380-81, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989) (assessing failure to train claim under § 1983 against municipality rather than against officers in their individual capacities)

7. Defendants assert they are protected by qualified by qualified immunity, (*see* Motion at 2); however, because the Court has found Mr. Short did not sufficiently allege that there was a constitutional violation, it need not reach the question of qualified immunity.

at 9.), while reiterating that a constitutional violation had in fact occurred and been sufficiently pled. (*Id.* at 4-10.)

A suit against an officer in his or her official capacity is a suit against the municipality or, in this case, the Sheriff of Davie County.[8] *See Kentucky v. Graham,* 473 U.S. 159, 165-66, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985); *Gantt v. Whitaker,* 203 F. Supp. 2d 503, 508 (M.D.N.C. 2002), *aff'd,* 57 Fed. Appx. 141 (4th Cir. 2003). To impose liability on a municipality, a plaintiff must allege that a policy or custom of the municipality caused the plaintiff's constitutional deprivation. *Monell v. N.Y. City Dep't of Soc. Servs.,* 436 U.S. 658, 690-91, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978); *Owens v. Baltimore City State's Attorney's Office,* 767 F.3d 379, 402-03 (4th Cir. 2014). "[S]upervisors and municipalities cannot be liable under § 1983 without some predicate '*constitutional injury at the hands of the individual [state] officer,' at least in suits for damages.*" *Waybright v. Frederick City,* 528 F.3d 199, 203 (4th Cir. 2008) (emphasis added) (quoting *City of L.A. v. Heller,* 475 U.S. 796, 799, 106 S. Ct. 1571, 89 L. Ed. 2d 806 (1986)). Mr. Short seems to allege that Defendants' policy or custom that caused Mrs. Short's suicide was the policy of failing to supervise or train employees and the pattern of non-compliance with the Detention Center's established policies regarding suicidal detainees.

To assert a failure-to-train claim pursuant to § 1983, a plaintiff must show that a municipality's "failure to train

8. The Amended Complaint notes that Sheriff Stokes retired on December 31, 2016, and then-Chief Deputy J.D. Hartman became Sheriff of Davie County. (Am. Compl. at 3 n.1.)

its employees . . . reflects a deliberate indifference on the part of the local government to the rights of its citizens, that is, only where a failure to train reflects a deliberate or conscious choice by the local government." *Cortez v. Prince George's Cty.,* 31 F. App'x 123, 129 (4th Cir. 2002) (unpublished) (citing *Harris,* 489 U.S. at 388). Thus,

> a plaintiff must plead that: "(1) *the subordinates actually violated the plaintiff's constitutional or statutory rights;* (2) the supervisor failed to properly train the subordinates, illustrating a "deliberate indifference" to the rights of the persons with whom the subordinates come into contact; and (3) this failure to train actually caused the subordinates to violate the plaintiff's rights."

Brown v. Mitchell, 308 F. Supp. 2d 682, 701-702 (E.D. Va. 2004) (citing *Harris,* 489 U.S. at 388-92).

To state a failure to supervise claim, a plaintiff must show

> (1) that the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injuries to citizens like the plaintiff; (2) that the supervisor's response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) that there was an affirmative causal link between

> the supervisor's inaction *and the particular constitutional injury suffered* by the plaintiff.

Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994) (internal citations omitted).

As emphasized in each of these standards, a constitutional injury is required in order to hold a municipality liable in a § 1983 claim. The Court has already determined that Mr. Short has not sufficiently alleged that any individual defendants violated Mrs. Short's constitutional rights. Thus, while the Amended Complaint describes a horrible tragedy and may allege torts that are actionable under North Carolina law, it does not sufficiently allege a violation of 42 U.S.C. § 1983. Therefore, Plaintiff's claims in Counts Two and Three against all individual Defendants in their official capacities under 42 U.S.C. § 1983 are dismissed with prejudice.[9]

V. *Claims under North Carolina State Law*

Having dismissed all of the claims under federal law and recognizing that the remaining claims operate

9. Mr. Short also alleged § 1983 claims against John and Jane Doe in their individual and official capacities. Those claims are also dismissed. *See Goodwin v. Beasley,* No. 1:09-cv-151 (WWD), 2010 U.S. Dist. LEXIS 61140, 2010 WL 2539795, at *6 (June 18, 2010 M.D.N.C.) (allowing claims against unidentified defendants "if it appears that the true identities of the unnamed parties can be ascertained through discovery or through the intervention of the court") (quoting *Schiff v. Kennedy,* 691 F.2d 196, 197-98 (4th Cir. 1982)); *Waller v. Butkovich,* 584 F. Supp. 909, 920 n.1 (M.D.N.C. 1984) (permitting claims against unidentified defendants if wrongful conduct is clear from the allegations in the complaint).

purely under state law principles, the Court declines to exercise jurisdiction over them. 28 U.S.C. § 1367(c)(3); *see also Shanaghan v. Cahill,* 58 F.3d 106, 109 (4th Cir. 1995) (finding that "federal courts generally have discretion to retain *or* dismiss state law claims when the federal basis for an action drops away"). The state law claims are dismissed without prejudice to afford Mr. Short an opportunity to refile his claims in state court within thirty days. 28 U.S.C. § 1367(d); *Artis v. District of Columbia,* 138 S. Ct. 594, 199 L. Ed. 2d 473 (2018).

VI.

For the reasons explained in this Memorandum Opinion, IT IS HEREBY ORDERED that the Motion for Judgment on the Pleadings Pursuant to Rule 12(c) on behalf of Defendants Sheriff Stokes, Sheriff Hartman, Captain Sloan, Lieutenant Recktenwald, Sergeant Morgan, Sergeant Meadows, Officer Boger, and Western Surety Company [Doc. #54] is GRANTED IN PART as to the federal claims and DENIED IN PART AS MOOT as to the state claims. IT IS FURTHER ORDERED that Counts Two and Three alleging violations of 42 U.S.C. § 1983 are DISMISSED WITH PREJUDICE, and Counts Eight, Nine, and Ten alleging violations of state law are DISMISSED WITHOUT PREJUDICE.

This the 17th day of February, 2021.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge

APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JANUARY 9, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1396 (L)
(1:18-cv-00741-NCT-JLW)

CHARLES WILLIS SHORT, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF VICTORIA CHRISTINE SHORT,

Plaintiff-Appellant,

v.

J. D. HARTMAN, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; CAMERON SLOAN, CAPTAIN, CHIEF JAILER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; DANA KELLY RECKTENWALD, LIEUTENANT, OPERATIONS SUPERVISOR OF THE DETENTION CENTER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; TERESA MORGAN, A/K/A TERESA M. GODBEY, SERGEANT, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CRYSTAL COOK MEADOWS, SERGEANT, DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER

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INDIVIDUAL AND OFFICIAL CAPACITY; MATTHEW TRAVIS BOGER, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; JOHN OR JANE DOES 1-5, JAILERS-DETENTION OFFICERS WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES; WESTERN SURETY COMPANY; ANDREW C. STOKES, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

Defendants-Appellees.

AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION; AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA; RIGHTS BEHIND BARS; RODERICK & SOLANGE MACARTHUR JUSTICE CENTER,

Amici Supporting Appellant.

No. 21-1397
(1:18-cv-00741-NCT-JLW)

CHARLES WILLIS SHORT, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF VICTORIA CHRISTINE SHORT,

Plaintiff-Appellant,

v.

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J. D. HARTMAN, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; CAMERON SLOAN, CAPTAIN, CHIEF JAILER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; DANA KELLY RECKTENWALD, LIEUTENANT, OPERATIONS SUPERVISOR OF THE DETENTION CENTER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; TERESA MORGAN, A/K/A TERESA M. GODBEY, SERGEANT, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CRYSTAL COOK MEADOWS, SERGEANT, DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HER INDIVIDUAL AND OFFICIAL CAPACITY; MATTHEW TRAVIS BOGER, JAILER-DETENTION OFFICER WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; JOHN OR JANE DOES 1-5, JAILERS-DETENTION OFFICERS WITH THE DAVIE COUNTY SHERIFF'S DEPARTMENT, IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES; WESTERN SURETY COMPANY; ANDREW C. STOKES, SHERIFF OF DAVIE COUNTY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

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Amici Supporting Appellant.

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Gregory, Judge Heytens, and Judge Boardman.

For the Court

/s/ Nwamaka Anowi, Clerk