NO. 23-1097

# 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**

## BRIEF OF AMICUS CURIAE THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONERS

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## TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... ii

IDENTITY AND INTEREST OF THE AMICUS CURIAE ..... 1

SUMMARY OF ARGUMENT ..... 2

I. This Court Established a Clear Distinction Between a Use of Force Analysis and a Deliberate Indifference Analysis as Early as 1986. ..... 3

II. The *Kingsley* Objective Test for Excessive Force Claims Cannot Be Applied in Deliberate Indifference to Medical Needs Claims. ..... 5

III. Even After *Kingsley*, Many Circuits Have Properly Recognized That *Kingsley* Cannot Be Applied to Medical "Deliberate Indifference" Claims to Eliminate the Subjective Component and Impose Resulting Liability on the Defendants. ..... 14

IV. There Is No Constitutional Basis for a Distinction Between Pretrial and Convicted Inmates Other Than Use of Force Under *Kingsley*. ..... 17

CONCLUSION ..... 20

## TABLE OF AUTHORITIES

Page

**CASES**

*Agostini v. Felton*,
521 U.S. 203, 117 S.Ct. 1997,
138 L.Ed.2d 391 (1997) ..... 13

*Bell v. Wolfish*,
441 U.S. 520, 99 S.Ct. 1861,
60 L.Ed.2d 447 (1979) ..... 10, 17, 20

*Castro v. Cty. of Los Angeles*,
833 F.3d 1060 (9th Cir. 2016) ..... 9, 10

*Cutter v. Wilkinson*,
544 U.S. 709 (2005) ..... 19, 20

*Estate of Hocker by Hocker v. Walsh*,
22 F.3d 995 (10th Cir. 1994) ..... 6

*Estelle v. Gamble*,
429 U.S. 97, 97 S.Ct. 285,
50 L.Ed.2d 251 (1976) ..... 2-6, 17, 18, 20, 21

*Farmer v. Brennan*,
511 U.S. 825, 114 S.Ct. 1970,
128 L.Ed.2d 811 (1994) ..... 2, 4, 5, 11, 12, 13, 18

*Florence v. Board of Chosen Freeholders of the County of Burlington*,
132 S.Ct. 1510 (2012) ..... 19, 20

*Garcia v. Salt Lake Cty.*,
768 F.2d 303 (10th Cir. 1985) ..... 6, 9

*Graham v. Connor*,
490 U.S. 386, 109 S.Ct. 1865,
104 L.Ed.2d 443 (1989) ..... 8, 9

*Griffith v. Franklin Cty.*,
975 F.3d 554 (6th Cir. 2020) ..... 16, 17

**TABLE OF AUTHORITIES – Continued**

Page

*Holt v. Hobbs*,
135 S.Ct. 853 (2015) ..... 19, 20

*Hudson v. McMillian*,
503 U.S. 1, 112 S.Ct. 995,
117 L.Ed.2d 156 (1992) ..... 2, 4, 5

*Hudson v. Palmer*,
468 U.S. 517 (1984) ..... 3

*Ireland v. Prummell*,
53 F.4th 1274
(11th Cir. November 14, 2022)..... 14, 15, 16

*Kingsley v. Hendrickson*,
576 U.S. 389, 135 S.Ct. 2466,
192 L.Ed.2d 416 (2015) .... 2, 5, 7, 8, 9, 10, 12, 13, 14, 17, 20

*R.A.V. v. City of St. Paul, Minn.*,
505 U.S. 377, 112 S.Ct. 2538,
120 L.Ed.2d 305 (1992) ..... 13

*Sanchez v. Oliver*,
995 F.3d 461 (5th Cir. 2021) ..... 16

*Strain v. Regalado*,
977 F.3d 984 (10th Cir. 2020) ..... 5-14

*Turner v. Safley*,
482 U.S. 78 (1987) ..... 17, 20

*United States v. White*,
782 F.3d 1118 (10th Cir. 2015) ..... 13

*Whitley v. Albers*,
475 U.S. 312, 106 S.Ct. 1078,
89 L.Ed. 251 (1986) ..... 2-5

**TABLE OF AUTHORITIES – Continued**

Page

*Williams v. Young*,
695 Fed. Appx. 503 (11th Cir. 2017) ..... 15

*Wilson v. Seiter*,
501 U.S. 294 (1991) ..... 18, 20

**CONSTITUTIONAL PROVISIONS**

U.S. Const. amend. I ..... 17

U.S. Const. amend. IV ..... 19

U.S. Const. amend. VIII ..... 4, 5, 6, 16, 17, 18, 19

U.S. Const. amend. XIV ..... 2, 6-9, 12-14, 16, 18-20

**STATUTES**

26 U.S.C. § 501(c)(4) ..... 1

42 U.S.C. § 1983 ..... 5, 6, 14, 17, 18

42 U.S.C. § 2000cc ..... 19

**JUDICIAL RULES**

Sup. Ct. R. 37.2(a) ..... 1

**OTHER AUTHORITIES**

BLACK'S LAW DICTIONARY (11th ed. 2019) ..... 11

CHICAGO MANUAL OF STYLE § 5.79
(16th ed. 2010) ..... 11

## IDENTITY AND INTEREST OF THE AMICUS CURIAE

The NATIONAL SHERIFFS' ASSOCIATION (the "NSA") is a non-profit association formed under 26 U.S.C. § 501(c)(4).[1] Formed in 1940 the NSA seeks to promote the fair and efficient administration of criminal justice throughout the United States and in particular to advance and protect the Office of Sheriff throughout the United States. The NSA has over 20,000 members and is the advocate for 3,083 sheriffs throughout the United States.

The NSA also works to promote the public interest goals and policies of law enforcement throughout the nation. It participates in the judicial process where the vital interests of law enforcement and its members are affected.

*Amicus* represents the nation's sheriffs who operate more than 3,000 local correctional facilities throughout the country. The vast majority of these facilities house both convicted as well as pretrial inmates. Sheriffs, as the custodians of the inmates housed within these facilities, are charged with providing a safe and secure environment for both the inmates and for their staff.

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[1] This brief was not authored in whole or in part by counsel for any party. No person or entity other than amicus curiae made a monetary contribution to this brief's preparation or submission. Pursuant to Supreme Court Rule 37.2(a), counsel of record for all parties have received timely notice of the intent to file this brief.

## SUMMARY OF ARGUMENT

Deliberate indifference to medical needs claims must contain both an objective test and a subjective test as well-established since *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). The subjective test requires an official both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and they must also reasonably, using a reasonable person standard, draw the inference. This Court's holding in *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015) that pretrial detainees claiming excessive force only have to establish an objective component did not eliminate the subjective component required in all other constitutional claims by pretrial detainees, including deliberate indifference to medical needs claims.

This Court's well-established precedent makes clear that a use of force analysis is necessarily different than a deliberate indifference analysis in *Whitley v. Albers*, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed. 251 (1986), *Hudson v. McMillian*, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992), and *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). Accordingly, *Kingsley*'s use of force analysis cannot be superimposed over a deliberate indifference analysis to eliminate the subjective component of deliberate indifference.

This Court should decline to extend *Kingsley* to Fourteenth Amendment deliberate indifference claims for several reasons. First, *Kingsley* turned on consider-

ations unique to excessive force claims: whether the use of force amounted to punishment, not on the status of the detainee. Next, the nature of a deliberate indifference claim infers a subjective "deliberate" component. Finally, principles of *stare decisis* weigh against overruling precedent to extend a Supreme Court holding to a new context or new category of claims.

## I. This Court Established a Clear Distinction Between a Use of Force Analysis and a Deliberate Indifference Analysis as Early as 1986.

In *Whitley*, this Court explained that a use of force analysis is necessarily different than a deliberate indifference analysis. This Court reasoned:

> "[D]eliberate indifference to a prisoner's serious illness or injury," *Estelle*, *supra*, at 105, can typically be established or disproved without the necessity of balancing competing institutional concerns for the safety of prison staff or other inmates. But, in making and carrying out decisions involving the use of force to restore order in the face of a prison disturbance, prison officials undoubtedly must take into account the very real threats the unrest presents to inmates and prison officials alike, in addition to the possible harms to inmates against whom force might be used. As we said in *Hudson v. Palmer*, 468 U.S. 517, 526-527 (1984), prison administrators are charged with the responsibility of ensuring the safety of the prison staff, administrative personnel, and visitors, as well as the "obligation to take reasonable measures to guarantee the safety of the inmates themselves." In this

> setting, a deliberate indifference standard does not adequately capture the importance of such competing obligations, or convey the appropriate hesitancy to critique in hindsight decisions necessarily made in haste, under pressure, and frequently without the luxury of a second chance.

*Whitley*, 475 U. S. at 320.

This Court again explained why a use of force analysis is necessarily different from a deliberate indifference analysis in *Hudson*.

In *Hudson*, the Court stated, "Because society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are "serious." *Hudson*, 503 U.S. at 9, *citing*, *Estelle* 429 U.S. at 103-104. "In an excessive force context, society's expectations are different." *Hudson*, 503 U.S. at 9.

Again in *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994), this Court provided:

> While *Estelle* establishes that deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. That point underlies the ruling that application of the deliberate indifference standard is inappropriate in one class of prison cases: when officials stand accused of using excessive physical force.

*Farmer*, 511 U.S. at 835.

Based on *Whitley, Hudson and Farmer*, *Kingsley*'s elimination of the subjective component in a use of force analysis cannot be applied to a deliberate indifference analysis.

## II. The *Kingsley* Objective Test for Excessive Force Claims Cannot Be Applied in Deliberate Indifference to Medical Needs Claims.

Rather than accepting the reasoning of the Fourth Circuit, the Court would be far better off accepting the thinking of another Court of Appeals as reflected in *Strain v. Regalado*, 977 F.3d 984 (10th Cir. 2020).

In *Strain*, the Tenth Circuit considered whether the district court erred by dismissing Plaintiff's federal claims under a standard for deliberate indifference that included both an objective and a subjective component. Plaintiff contended the court should analyze her claims under a purely objective standard given the Supreme Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015). The Tenth Circuit rejected Plaintiff's arguments and held that deliberate indifference to a pretrial detainee's serious medical needs includes both an objective and a subjective component, even after *Kingsley*. *Strain*, 977 F.3d at 989.

The court in *Strain* noted that the Supreme Court first recognized a § 1983 claim for deliberate indifference under the Eighth Amendment, which protects the rights of convicted prisoners, *citing*, *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (holding that deliberate indifference to a convicted prisoner's serious medical needs constitutes cruel and unusual punishment in violation of Eighth Amendment).

*Strain*, 977 F.3d at 989. The Tenth Circuit later granted pretrial detainees access to the claim under the Fourteenth Amendment in *Garcia v. Salt Lake Cty.*, 768 F.2d 303, 307 (10th Cir. 1985) (holding that, although the Eighth Amendment protects the rights of convicted prisoners and the Fourteenth Amendment protects the rights of pretrial detainees, pretrial detainees are "entitled to the degree of protection against denial of medical attention which applies to convicted inmates"). *Strain*, 977 F.3d at 989. In a later decision, the Tenth Circuit applied the same deliberate indifference standard to U.S.C. § 1983 claims no matter which amendment provided the constitutional basis for the claim. *Strain*, 977 F.3d at 989, *citing Estate of Hocker by Hocker v. Walsh*, 22 F.3d 995, 998 (10th Cir. 1994) (holding that a pretrial detainee's Fourteenth Amendment "claim for inadequate medical attention must be judged against the deliberate indifference to serious medical needs test of *Estelle*").

In *Strain* the court said that to state a cognizable constitutional claim, the Plaintiff must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. *Strain*, 977 F.3d at 989. This standard includes both an objective component and a subjective component. *Id.* The subjective component requires that Plaintiff to establish that a medical 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 she must also draw the inference and failed to act to the point that harm or injury was caused to the plaintiff. *Strain*, 977 F.3d at 990.

In *Strain*, the Plaintiff argued that the Supreme Court's *Kingsley* decision altered the standard for pretrial detainees' Fourteenth Amendment claims. In *Kingsley*, the Court held that a plaintiff may establish an excessive force claim under the Fourteenth Amendment based exclusively on objective evidence. *Kingsley*, 576 U.S. at 397 (explaining that "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one"). But the Tenth Circuit in *Strain* noted that *Kingsley* did not address the standard for deliberate indifference to serious medical needs. *Strain*, 977 F.3d at 990. And the court also noted that the circuits are split on whether *Kingsley* eliminated the subjective component of the deliberate indifference standard by extending to Fourteenth Amendment claims outside the excessive force context. *Id.*

The court in *Strain* declined to extend *Kingsley* to Fourteenth Amendment deliberate indifference claims for several reasons. *Strain*, 977 F.3d at 991. First, *Kingsley* turned on considerations unique to excessive force claims: whether the use of force amounted to punishment, not on the status of the detainee. *Id.* Next, the nature of a deliberate indifference claim infers a subjective component. *Id.* Finally, principles of *stare decisis* weigh against overruling precedent to extend a Supreme Court holding to a new context or new category of claims. *Id.*

In *Strain*, the court stated that "[f]irst, we recognize that *Kingsley* involved an excessive force claim, not a deliberate indifference claim." *Id.* "By its own words, the Supreme Court decided that 'an objective standard is appropriate in the context of excessive force claims brought by pretrial detainees pursuant to the Fourteenth Amendment'—nothing more, nothing less." *Strain*, 977

F.3d at 991, *citing*, *Kingsley*, 576 U.S. at 402. The Tenth Circuit in *Strain* reasoned that, although the Court did not foreclose the possibility of extending the purely objective standard to new contexts, the Court said nothing to suggest it intended to extend that standard to pretrial detainee claims generally or deliberate indifference claims specifically. *Strain*, 977 F.3d at 991, *citing*, *Kingsley*, 576 U.S. at 395 (explaining that the question before the Court [in *Kingsley*] concerns the defendant's state of mind with respect to whether his use of force was 'excessive' and concluding with respect to that question that the relevant standard is objective not subjective). So whether *Kingsley* applies to Fourteenth Amendment claims outside the excessive force context is not readily apparent from that opinion according to the court's reasoning in *Strain*. *Strain*, 977 F.3d at 991.

In *Strain*, the Tenth Circuit explained in a very cogent way that this Court is urged to adopt why *Kingsley* cannot be applied outside the excessive force context as follows:

> Even though both causes of action arise under the Fourteenth Amendment, a pretrial detainee's cause of action for excessive force serves a different purpose than that for deliberate indifference. The excessive force cause of action "protects a pretrial detainee from the use of excessive force that amounts to punishment." *Id.* at 397 (quoting *Graham v. Connor*, 490 U.S. 386, 395 n.10, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)). The deliberate indifference cause of action does not relate to punishment, but rather safeguards a pretrial detainee's access to adequate medical care.

> *Garcia*, 768 F.2d at 307. Excessive force requires an affirmative act, while deliberate indifference often stems from inaction. *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016) (*en banc*). Although "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." *Id.* at 1086 (Ikuta, J., dissenting) (reasoning that "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" and "the Supreme Court has made clear that liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process"). Because the two categories of claims protect different rights for different purposes, the claims require different state-of-mind inquiries.

*Strain*, 977 F.3d at 991.

The *Strain* court stated, "Indeed, *Kingsley* relies on precedent specific to excessive force claims. *Id.* The Court reasoned that the Due Process Clause is particularly concerned with improper punishment of pretrial detainees through use of force and physical means. *Id. citing*, *Kingsley*, 576 U.S. at 398 (*citing Graham*, 490 U.S. at 395 n.10 (concluding that "the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment"))." *Strain*, 977 F.3d at 991. "And pretrial detainees should receive greater protection against excessive force than

convicted criminals because the government lacks the same legitimate penological interest in punishing those not yet convicted of a crime." *Strain*, 977 F.3d at 991-992, *citing*, *Kingsley*, 576 U.S. at 398-99.

The *Strain* court further stated, "So a pretrial detainee may prevail on an excessive force claim 'in the absence of an expressed intent to punish' if an official's actions 'appear excessive in relation to [a legitimate government] purpose.'" *Strain*, 977 F.3d at 992, *citing, Kingsley*, 576 U.S. at 398 (*quoting Bell v. Wolfish*, 441 U.S. 520, 561, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979) (considering only objective evidence to determine "whether particular restrictions and conditions accompanying pretrial detention amount to punishment in the constitutional sense of that word" (*Id*. at 538)))." *Strain*, 977 F.3d at 992.

In *Strain* the court further noted that

> [T]hroughout the *Kingsley* opinion, the Court's focus on 'punishment' provides the basis for removing the subjective requirement from a pretrial detainee's excessive force claims. *Id*. (providing excessive force examples in which purely objective evidence showed that the government's punitive actions were intentional, even if the motivation behind those actions was not to punish).

*Strain*, 977 F.3d at 992. The Tenth Circuit further stated, "But the Court has never suggested that we should remove the subjective component for claims addressing inaction." *Strain*, 977 F.3d at 992, *citing*, *Castro*, 833 F.3d at 1086 (Ikuta, J., dissenting). "Thus, the force of *Kingsley* does not apply to the deliberate indifference context, where the claim generally involves

inaction divorced from punishment." *Strain*, 977 F.3d at 992.

The Tenth Circuit in *Strain* next observed that a deliberate indifference claim presupposes a subjective component. *Strain*, 977 F.3d at 992. "After all, deliberate means 'intentional,' 'premeditated,' or 'fully considered.'" *Strain*, 977 F.3d at 992, *citing*, BLACK'S LAW DICTIONARY 539 (11th ed. 2019). "And as an adjective, 'deliberate' modifies the noun 'indifference.'" *Strain*, 977 F.3d at 992, *citing*, CHICAGO MANUAL OF STYLE § 5.79 (16th ed. 2010) ("An adjective that modifies a noun element usually precedes it."). So a plaintiff must allege that an actor possessed the requisite intent, together with objectively indifferent conduct, to state a claim for deliberate indifference according to the *Strain* court. *Strain*, 977 F.3d at 992.

The *Strain* court stated, "To that end, the Supreme Court previously rejected a request to adopt a 'purely objective test for deliberate indifference.'" *Strain*, 977 F.3d at 992, *citing*, *Farmer v. Brennan,* 511 U.S. 825, 839, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). "Instead, deliberate indifference requires an official to subjectively disregard a known or obvious, serious medical need. *Id.* at 837 (explaining that "deliberate indifference [lies] somewhere between the poles of negligence at one end and purpose or knowledge at the other" (*Id.* at 836))." *Strain*, 977 F.3d at 992. The *Strain* court provided, "So an official's intent matters not only as to what the official did (or failed to do), but also why the official did it. *Farmer*, 511 U.S. at 839 (explaining that a deliberate indifference claim focuses "on what a defendant's mental attitude actually was")." *Strain*, 977 F.3d at 992.

The Tenth Circuit in *Strain* reasoned further as follows:

> An excessive force claim, on the other hand, does not consider an official's "state of mind with respect to the proper interpretation of the force." *Kingsley*, 576 U.S. at 396 (emphasis in original). So the Supreme Court distinguished deliberate indifference cases—where an official's subjective intent behind objectively indifferent conduct matters—from the distinct class of cases involving excessive force, which does not require that an official subjectively intended for force to be excessive. *Farmer*, 511 U.S. at 835 (explaining that the "application of the deliberate indifference standard is inappropriate in one class of prison cases: when officials stand accused of using excessive physical force" (internal quotation marks and citation omitted)). Removing the subjective component from deliberate indifference claims would thus erode the intent requirement inherent in the claim. *Id.*; *see also Kingsley*, 576 U.S. at 408 (Scalia, J., dissenting) (warning that the Fourteenth Amendment's "Due Process Clause is not a font of tort law to be superimposed upon that state system" (internal quotation marks and citation omitted)).

*Strain*, 977 F.3d at 992-993.

The Tenth Circuit in *Strain* correctly recognized that the Supreme Court has cautioned against reaching the resolution that Plaintiff sought. *Id.* at 993. The court stated, "Extending *Kingsley* to eliminate the subjective component of the deliberate indifference stan-

dard in the Tenth Circuit would contradict the Supreme Court's rejection of a purely objective test in *Farmer* and our longstanding precedent. *Id.* at 993, *citing, Agostini v. Felton*, 521 U.S. 203, 237, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997) ("We reaffirm that if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."). The *Strain* court said, "Although other circuits have relied on the 'broad language' of *Kingsley* to apply a purely objective standard to Fourteenth Amendment deliberate indifference claims, we choose forbearance. *Strain*, 977 F.3d at 993, *citing*, *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386 n.5, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) ("It is of course contrary to all traditions of our jurisprudence to consider the law on this point conclusively resolved by broad language in cases where the issue was not presented or even envisioned.").

The *Strain* court concluded:

> At no point did *Kingsley* pronounce its application to Fourteenth Amendment deliberate indifference claims or otherwise state that we should adopt a purely objective standard for such claims, so we cannot overrule our precedent on this issue. *United States v. White*, 782 F.3d 1118, 1126-27 (10th Cir. 2015) (holding that one "panel of this court cannot overrule the judgment of another panel absent *en banc* consideration or an intervening Supreme Court decision that is contrary to or invalidates our previous analysis" (citation omitted)). We therefore join our sister circuits

> that have declined to extend *Kingsley* to deliberate indifference claims and will apply our two-prong test to Plaintiff's claims.

*Strain*, 977 F.3d at 933.

This Court should adopt the sound reasoning of the Tenth Circuit in *Strain* as superior to Petitioners' reasoning in the instant case for the very reasons so well-articulated by that court.

## III. Even After *Kingsley*, Many Circuits Have Properly Recognized That *Kingsley* Cannot Be Applied to Medical "Deliberate Indifference" Claims to Eliminate the Subjective Component and Impose Resulting Liability on the Defendants.

The Fourteenth Amendment requires government officials to provide basic necessities, including medical care, to pretrial detainees. *Ireland v. Prummell*, 53 F.4th 1274, 1287 (11th Cir. November 14, 2022). A failure to provide such care violates that amendment, which is actionable under § 1983. *Id*. To prevail on such a claim, a litigant must satisfy both an objective and a subjective inquiry. *Id.* The objective inquiry requires a plaintiff to establish the existence of an "objectively serious medical need." *Id.* The subjective inquiry requires a plaintiff to prove that a government official was "deliberatively indifferent" to that need. *Id.*

The Eleventh Circuit in *Ireland* provided:

> We have synthesized this "deliberate indifference" inquiry into four elements: (1) the official was aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, (2) the official actually drew that inference, (3) the official disregarded the risk of serious harm, and (4) the official's conduct amounted to more than gross negligence.

*Id*.

In *Williams v. Young*, 695 Fed. Appx. 503 (11th Cir. 2017), the court explained deliberate indifference as to a pre-trial detainee as follows:

> For medical treatment to rise to the level of a constitutional violation, the care must be so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness. Mere incidents of negligence or malpractice do not rise to the level of constitutional violations. Nor does a simple difference in medical opinion between the prison's medical staff and the inmate as to the latter's diagnosis or course of treatment support a claim of cruel and unusual punishment. To show deliberate indifference to a serious medical need, therefore, a plaintiff must demonstrate that defendants' response to a serious medical need was poor enough to constitute an unnecessary and wanton infliction of pain, and not merely accidental inadequacy, negligence in diagnosis or treat-

> ment, or even medical malpractice actionable under state law.

*Id*. at 505-506.

It has been clearly established in the Fifth Circuit since at least 1989 that pretrial detainees have a Fourteenth Amendment right to be protected from a known risk of suicide, and it is well-settled law that jail officials violate this right if they have actual knowledge of the substantial risk of suicide and respond with deliberate indifference. *Sanchez v. Oliver*, 995 F.3d 461, 466 (5th Cir. 2021). A state jail official's constitutional liability to pretrial detainees for episodic acts or omissions should be measured by a standard of subjective deliberate indifference. *Id*. at 473. To satisfy this standard a prison 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.* Deliberate indifference is a high standard to meet. *Id.* Unsuccessful medical treatment, acts of negligence or medical malpractice do not constitute deliberate indifference. *Id.* However, if an official has subjective knowledge that a pretrial detainee is a substantial suicide risk, the official shows a deliberate indifference to that risk by failing to take reasonable measures to abate it. *Id*.

The Sixth Circuit has consistently applied the same "deliberate indifference" framework to Eighth Amendment claims brought by convicted prisoners as Fourteenth Amendment claims brought by pretrial detainees. *Griffith v. Franklin Cty.*, 975 F.3d 554, 567 (6th Cir. 2020). This two-part framework contains both an objective component—a sufficiently serious medical need—and a subjective component—a sufficiently culpable state of mind. *Id.* The court further

stated that whatever *Kingsley* requires, it is more than negligence because liability for negligently inflicted harm is categorically beneath the threshold of a constitutional due process violation so as to impose liability under 42 U.S.C. § 1983. *Griffith*, 975 F.3d at 570.

## IV. There Is No Constitutional Basis for a Distinction Between Pretrial and Convicted Inmates Other Than Use of Force Under *Kingsley*.

Decisions of this Court regarding convicted inmates' Constitutional rights have long been applied to pretrial detainees. This appropriate application is also true as countless lower court cases evidence. In the seminal case of *Bell v. Wolfish*, 441 U.S. 520 (1979), this Court recognized that "simply because prison inmates retain certain Constitutional rights does not mean that these rights are not subject to restrictions and limitations." This Court went on to hold that this principle applies equally to pretrial detainees and convicted prisoners. *Id*. at 546.

In *Turner v. Safley*, 482 U.S. 78 (1987) this Court examined the constitutionality of regulations affecting inmate correspondence and inmate marriages under the First Amendment. In so doing this Court made no distinction between pretrial detainees and convicted inmates. *Turner* is heralded as a leading Supreme Court decision in the area of correctional law and is universally applied as precedent to both pretrial and convicted inmates.

In *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) this Court examined whether an inmate's Eighth Amendment rights were violated for failure of the correctional

facility to provide adequate medical care. *Estelle* is the foundation for the legal analysis regarding medical care and is universally applied to both pretrial and convicted inmates. Further, "Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Estelle*, 429 U.S. at 106. Matters of medical judgment are, "[a]t most . . . medical malpractice, and as such the proper forum is the state court . . . *Estelle*, 429 U.S. at 107.

In *Wilson v. Seiter*, 501 U.S. 294 (1991), an inmate filed an action against prison officials under 42 U.S.C.S. § 1983. The inmate alleged that a number of the conditions of his confinement constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. In examining the issue, this Court stated that "[W]hether one characterizes the treatment received by [the prisoner] as inhumane conditions of confinement, failure to attend to his medical needs, or a combination of both, it is appropriate to apply the 'deliberate indifference' standard articulated in *Estelle*." *Id*. at 303. The *Wilson* precedent is universally applied to both pretrial and convicted inmates as it relates to conditions of confinement cases and alleged violations of 42 U.S.C. § 1983.

In *Farmer v. Brennan*, 511 U.S. 825 (1994), this Court held that a prison official may be held liable under the Eighth Amendment for acting with "deliberate indifference" to inmate health or safety only if the official knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it. *Farmer* is the foundational precedent that is applied by the courts without distinction as to the inmate's convicted status regarding the duty to protect as well as other claims

alleging constitutional violations of the Eighth Amendment. In that case this court made no distinction between pretrial detainees and convicted inmates.

In *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005) this Court examined the religious rights of "current and former inmates" of institutions operated by the Ohio Department of Rehabilitation and Correction under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc (2000), et seq., without making a distinction between pretrial detainees and convicted inmates. *Cutter*, 544 U.S. at 723. RLUIPA's arms extend to all institutionalized persons, focusing on those incarcerated in jails and prisons. This Court unanimously held that RLUIPA was constitutionally enacted and applied to all correctional facilities.

In *Florence v. Board of Chosen Freeholders of the County of Burlington*, 132 S.Ct. 1510 (2012), this Court echoed *Bell* and affirmed *Turner* by holding that correctional officials have a legitimate governmental interest to maintain safety and security for all who live and work in these institutions. This Court has recognized that under the Fourth and Fourteenth Amendments even arrestees are treated the same as pretrial detainees and convicted inmates for the purpose of strip searches when entering general population. *Florence*, 132 S.Ct. at 1523.

In *Holt v. Hobbs*, 135 S.Ct. 853 (2015) this Court held a Department's policy violated RLUIPA, which prohibits a state or local government from taking any action that substantially burdens the religious exercise of an "institutionalized person," unless the government demonstrates that the action constitutes the least restrictive means of furthering a compelling govern-

mental interest. This Court did so without making a distinction between pretrial and convicted inmates.

In sum, this Court does not distinguish between pretrial and convicted inmates in examining claims of Constitutional violations relating to conditions of confinement (*Bell*), involving rights of freedom of speech and marriage of inmates (*Turner*), inadequate medical care of inmates (*Estelle*), conditions of confinement (*Wilson*), duty to protect inmates (*Farmer*), freedom of religion of inmates (*Cutter* and *Holt*), or strip searches of inmates (*Florence*). Use of force claims stand alone in such distinctions and because of their unique nature, that distinction should remain.

## CONCLUSION

Based on this Court's well-established precedent, deliberate indifference to medical needs claims under the Fourteenth Amendment for pre-trial detainees must contain both an objective test and a subjective test. The subjective test requires an official both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and they must also draw the inference. This Court's holding in *Kingsley* that excessive force claimants only have to establish an objective component did not eliminate the subjective component required in all other constitutional claims by pre-trial detainees. Accordingly, Petitioners' Petition for Certiorari should granted. Further, this Court should reaffirm that deliberate indifference to medical needs claims under the Fourteenth Amendment for pre-trial detainees

must contain both an objective element and a subjective element as well-established by this Court's precedent in *Estelle* and its progeny.

Respectfully submitted,

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