No. 23-_____

In the Supreme Court of the United States

CHRISTINA JORDAN, RN,

Petitioner,

v.

KARLA HOWELL, as Administratrix of the Estate of CORNELIUS PIERRE HOWELL,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

To successfully state a constitutional claim for inadequate medical care, a pretrial detainee must show that a correctional healthcare provider was deliberately indifferent to a serious medical condition. In such a case, should the courts employ the historically accepted two-prong deliberate indifference framework, consisting of both an objective component and a subjective state-of-mind component; or, instead, employ the "objective unreasonableness" analysis as first raised in *Kingsley v. Hendrickson*, 576 U.S. 389, 397, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015), despite the fact: (1) *Kingsley*'s holding was narrowly confined to the nature of the claim presented, excessive use of force; (2) *Kingsley* declined to address, let alone promote, the application of a new standard to deliberate indifference claims based upon inaction, such as allegedly inadequate medical care; and (3) an objective standard is unworkable and would only result in the constitutionalizing of a medical malpractice claim?

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellee below

- Christina Jordan, RN

Respondent and Plaintiff-Appellant below

- Karla Howell, as Administratrix of the Estate of Cornelius Pierre Howell

Respondent and Defendant-Appellee below (aligned with Petitioner)

- Daniel Erwin (Note: Mr. Erwin will be filing a separate petition for writ of certiorari)

Dismissed Defendants-Appellees (non-parties to this petition)

- NaphCare, Inc.
- Pierette Arthur
- Jim Neil
- Matthew Collini
- Brad Buchanan
- Justin Hunt

CORPORATE DISCLOSURE STATEMENT

The Petitioner Christina Jordan, RN is an individual who was employed by NaphCare, Inc., which was dismissed from the case. Petitioner's Counsel also represented NaphCare, Inc. and states that NaphCare, Inc. is a private company with no parent company, and no public company owns 10% or more of its stock.

LIST OF PROCEEDINGS

United States Court of Appeals for the Sixth Circuit

No. 21-4132, 22-3306

Karla Howell, as Administratrix of the Estate of Cornelius Pierre Howell, *Plaintiff-Appellant* v. NaphCare, Inc.; Christina Jordan, RN and Pierette Arthur, LPN, individually and in their official capacities; Jim Neil, Matthew Collini, and Daniel Erwin, Individually and in their official capacities in the Hamilton County Sheriff's department; Justin Hunt, *Defendants-Appellees*.

Opinion Date: May 1, 2023

Opinion and Order, U.S. District Court for the Southern District of Ohio

No. 1:19-cv-373

Karla Howell, *Plaintiff* v.
NaphCare, Inc., Et Al., *Defendants*

Opinion Date: March 11, 2022

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The published opinion of the United States Court of Appeals for the Sixth Circuit is available at *Howell v. NaphCare, Inc.*, 67 F.4th 302 (6th Cir. 2023). App.1a. The opinion of the United States District Court for the Southern District of Ohio, Western Division, which granted summary judgement in favor of all defendants, is available at *Howell v. NaphCare, Inc.*, S.D. Ohio No. 1:19-cv-373, 2021 WL 5083726 (Nov. 2, 2021). App.54a. The district court order denying Plaintiff's motion for relief from judgment, is available at *Howell v. NaphCare, Inc.*, No. 1:19-CV-373, 2022 WL 740928 (S.D. Ohio Mar. 11, 2022). App.33a.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Sixth Circuit entered its judgment on May 1, 2023, and later denied a petition for rehearing en banc on June 2, 2023. App.108a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254. Petitioner states that the case satisfies the standard set forth in this Court's Rule 10(a), (b) or (c).

INTRODUCTION

The purpose of the Fourteenth Amendment is to prevent abuses of governmental authority. This case provides this Court with the ideal vehicle to resolve a significant split in the authoritative decisions across federal courts, ensure adherence to the amendment's original meaning, and quell constitutionalizing mere medical malpractice claims.

It has long been recognized that the United States government has a constitutional obligation to provide medical care to inmates. *See, e.g., Estelle v. Gamble,* 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Such constitutional protections prohibit corrections facility staff from acting with deliberate indifference to a pretrial detainee's serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

Historically, the Courts, including the Sixth Circuit, have "consistently applied the same deliberate indifference framework to Eighth-Amendment claims brought by prisoners as Fourteenth-Amendment claims brought by pretrial detainees." *Griffith v. Franklin Cnty., Kentucky*, 975 F.3d 554, 567 (6th Cir. 2020) (citing *Richmond v. Huq*, 885 F.3d 928, 937 (6th Cir. 2018)). The Eighth Amendment deliberate indifference framework consists of two components: (1) a sufficiently serious medical need (objective component); and (2) a defendant's sufficiently culpable state of mind (subjective component). *Farmer*, 511 U.S. 825, at 834; *Blackmore v. Kalamazoo Cnty*., 390 F.3d 890, 895 (6th Cir. 2004). The subjective component require-

ment was "designed to prevent the constitutionalizing of medical malpractice claims." *Griffith,* 975 F.3d at 577, n.10 (citations omitted).

However, such historical application has been called into question by a minority of circuit courts following this Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389, 397, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015). *Kingsley* was not a case involving claims of deliberate indifference to medical needs, but instead addressed a pretrial detainee's 42 U.S.C. § 1983 claims involving allegations of excessive use of force. *Kingsley* adopted a new substantive standard—"objective unreasonableness"—solely for the narrow purpose of determining excessive use of force. This change in standard no longer required a pretrial detainee to demonstrate proof of the defendant actor's subjective knowledge or awareness of the level of force used. Instead, a pretrial detainee was only required to show that the alleged force knowingly or purposefully used was objectively unreasonable.

In adopting this change to the use of force analysis, however, *Kingsley* expressly declined to extend its analysis to claims of deliberate indifference based upon alleged inadequate medical care. *See Kingsley*, 576 U.S. 389, at 396. The obvious reason for this is that use of force cases deal with affirmative action while claims of deliberate indifference based upon allegedly inadequate medical care often deal with alleged inaction—or the failure to act. In fact, the *Kingsley* Court expressly chose not to address Fourteenth Amendment deliberate indifference claims premised upon allegedly inadequate medical care—*i.e.*, a failure to act—and gave no meaningful consideration to what lower federal courts have interpreted

as a "civil recklessness" framework. *Id.*, 576 U.S. at 396. The Court unequivocally stated, "whether [a recklessness] standard might suffice for liability in the case of an alleged mistreatment of a pretrial detainee need not be decided here." *Id.*

Despite the limiting language expressly used in *Kingsley*, several circuit courts have since extended *Kingsley*'s confined holding to support the application of a "civil recklessness" standard to a pretrial detainee's claim for allegedly inadequate medical care. *See Darnell v. Pineiro*, 849 F.3d 17, 36 (2d Cir. 2017); *Brawner v. Scott County, Tenn.*, 14 F.4th 585, 592 (6th Cir. 2021); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016). Pertinent here, the Sixth Circuit became the latest circuit court to extend *Kingsley* to § 1983 claims of a pretrial detainee for allegedly inadequate medical care in *Brawner*, 14 F.4th 585, at 592 (citing *Kingsley*, 576 U.S. 389, at 397). Therein, the 2-to-1 majority panel court applied a "civil recklessness" standard for determining whether correctional staff were deliberately indifferent to a pretrial detainee's serious medical needs, wholly based upon this Court's 5-4 decision in *Kingsley,* six years prior. *Id.* The matter herein on appeal is no different. The Sixth Circuit once again relied upon its conflicting interpretation of *Kingsley,* and improperly applied a civil recklessness standard to Respondent's § 1983 deliberate indifference claims asserted against Petitioner. *See* Sixth Circuit Opinion, App.8a.

The circuit courts are split on the question presented in this case. The Sixth, Second, Seventh, and Ninth Circuits have all departed from the traditional deliberate indifference standard, and abandoned the

two-pronged objective and subjective evaluation set forth in *Farmer v. Brennan,* 511 U.S. 825, 834 (1994). *See* Sixth Circuit Opinion, App.8a**.**

However, the Fourteenth Amendment's "guarantee of due process has never been understood to mean that the State must guarantee due care on the part of its officials." *Davidson v. Cannon,* 474 U.S. 344, 348 (1986). To be held individually liable for a constitutional violation, a jail official must have acted *deliberately* to deprive a person of life, liberty, or property. While deliberateness may be inferred through the use of objectively unreasonable force in keeping with *Kingsley v. Hendrickson,* 576 U.S. 389 (2015), in the context of an alleged failure to act, a deliberate deprivation can only be shown by subjective evidence, aptly done through the traditional standard of deliberate indifference set forth in *Farmer*. Anything less would result in the unintended constitutionalizing of medical negligence.

Without the subjective component of the deliberate indifference evaluation, there is no basis to infer that mere inaction is "punishment," which, historically, is the *sine qua non* of a pretrial detainee's claim. Ultimately, the failure to require proof of subjective intent in such a case would create the sole area of the law in which a defendant may be held individually liable for a constitutional violation without any intentional act. By misapplying *Kingsley*, which is premised on an action theory, to the pretrial detainee's deliberate indifference to medical care claims, the Sixth, Second, Seventh, and Ninth Circuits have attempted to "transform constitutional prohibitions against punishment into a free standing right to be free from jailhouse medical malpractice." *Brawner v.*

Scott County, Tennessee, 14 F.4th 585, 610 (Readler, J., concurring in part and dissenting in part).

This Court's review is necessary to resolve what is now a clear and entrenched circuit court split on the question presented, and to determine whether the narrow holding in the excessive force case, *Kingsley*, should be broadly extended to claims by pretrial detainees for cases involving alleged inadequate medical care. In departing from any subjective inquiry, the Second, Sixth, Seventh, and Ninth Circuits have failed to consider the differences between cases premised on action, such as excessive force, and those premised on inaction, such as a lack of adequate medical care as alleged here. The difference between these types of cases makes applying the same standard for both constitutionally suspect.

STATEMENT OF THE CASE

On or about December 2, 2018, Cornelius Howell was booked into the Hamilton County Justice Center ("HCJC") following an arrest by the Cincinnati Police Department for criminal damaging and aggravated menacing after causing damage to property and threatening to kill someone. *See* Death Invest. Rep. App.233a, 239a. Mr. Howell initially refused his medical screens upon intake. Employees of NaphCare, Inc. ("NaphCare"), the HCJC's contracted medical services provider, fully assessed Mr. Howell's medical and mental health condition the following day. Declaration of Maria Perdikakis, RE. 79-1, 1276-1284, 1289-1293; App.883a-901a. This included, in pertinent

part, a medical screen, a chronic care assessment, and a mental health screening. *Id.* During the medical screen, Mr. Howell conveyed that he had a pre-existing sickle cell disease diagnosis, as well as a more recent ADHD diagnosis. *Id.*

On December 7th, Mr. Howell's chronic care assessment revealed that his physiological systems were "normal." Mr. Howell self-marked his sickle cell disease control as "good" overall. Declaration of Maria Perdikakis, RE. 79-1, 1276-1284, 1289-1293, App.883a-901a. During his mental health assessment, Mr. Howell reported that he felt "a little messed up" about his current situation and rated his depression as a "7-10/10." *Id.*, at PageID # 1281, App.888a.

Overall, the correctional medical staff's screening process did not reveal any conditions that would preclude Mr. Howell from continuing to be housed in the general population. Declaration of Maria Perdikakis, RE. 79-1, PageID # 1280-1284, App.888a-891a.

Mr. Howell remained in general population without issue for the next two days. On December 9th, however, Mr. Howell stabbed his cellmate, Demarcus Grant, with a pencil, and without provocation. *See* Jordan Depo., App.478a, 491a. Following this physical altercation, at or around 5:00 p.m., correctional officers transported Mr. Howell and his cellmate to the medical sallyport of the HCJC for assessment and care. *Id.* Petitioner was a charge nurse at the HCJC and assessed Mr. Howell and his cellmate after their fight. *Id.*

Upon Mr. Howell's presentation to the medical sallyport, Petitioner observed Mr. Howell acting erratically and combatively, including but not limited to:

yelling, rolling around on the ground, refusing medical intervention or treatment, and refusing to answer the questions posed by Petitioner for purposes of further investigating his condition. Jordan Depo., App. 479a-482a, 499a, 515a, 522a. Mr. Howell's vital signs were reported to be within normal range. *Id.*, App.496a, App.522a; Sixth Circuit Opinion, App.35a. To better inform her professional nursing judgment, Petitioner revisited Mr. Howell's correctional medical chart. *Id.* Although a sickle cell disease diagnosis had been noted in Mr. Howell's chart, Petitioner "saw other issues" of large concern, such as his documented history of previous incarcerations during which he had hoarded narcotics and tested positive for opioids. *Id.*

Based upon his presenting symptoms, his documented history of opioid misuse, and her professional nursing judgment, Petitioner subjectively perceived Mr. Howell to be suffering from an acute psychiatric event, requiring observation and behavioral compliance. Jordan Depo., *Id.*, App.479a-482a, 493a, 517a, 522a-523a; *compare* NaphCare's Undisputed Facts, App.144a *with* Response to Undisputed Facts, App.153a.

It is undisputed that Mr. Howell then refused to be treated, refused to accept hydration, and refused to accept glucose treatments. Sixth Circuit Opinion, App.3a, 12a. It is also undisputed that Mr. Howell refused to provide medical staff with a urine sample. *Id.* Above all, it is undisputed that Petitioner only subjectively believed Mr. Howell to be suffering from an acute psychiatric event at all relevant times in which she provided care. *Id.* The Sixth Circuit made clear in its decision, "There is no dispute that Jordan

subjectively believed Howell was experiencing a psychiatric episode." *Id.*

In fact, Petitioner testified that, within her professional knowledge, individuals suffering from sickle cell are in too much pain to move or "do anything." This was in gross contrast to Mr. Howell's presentation during her assessment in the medical sallyport. Jordan Depo., App.473a, 474a, 479a-482a, 483a, 493a. Additionally, Mr. Howell never asked to go to the hospital, and never complained to be suffering from a sickle cell crisis. *Id.*, App.497a, 515a, 518a; *compare also* NaphCare's Undisputed Facts, App.143a *with* Response to Undisputed Facts, App.152a.

Due to his combative nature and overall refusal to provide a necessary urine sample, correctional officers and medical staff determined Mr. Howell to be a risk to his own safety, as well as the safety of jail staff. This led to Mr. Howell's placement into a restraint chair and his subsequent transport to the Psych Unit for further monitoring. Jordan Depo., App.479a-482a, 490a, 493a, 517a, 522a-523a.

At 5:43 p.m., Mr. Howell was placed into a restraint chair for his transport to the Psych Unit. Jordan Depo., App.479a-482a, 490a, 493a, 517a, 522a-523a. Both Petitioner and correctional officers agreed that this was a warranted safety measure. *Id.*, App.481a, 489a; District Court's Opinion and Order, App.35a. Correctional officers were authorized to consult with Petitioner for purposes of restraint chair use, but only correctional officers were authorized to place Mr. Howell into the restraint chair. *Id.*, App.471a, 522a; Arthur Depo., App.545a, 580a; Dr. Everson, MD Depo., App.603a-604a.

According to the existing jail policy for restraint chair use, Mr. Howell was to be routinely monitored by correctional officers posted near his observation cell in the Psych Unit. *Id.*, App.486a; Arthur Depo., App.549a, 551a, 580a; Dr. Everson, MD Depo., App. 604a. Additionally, a nurse was required to conduct a check on Mr. Howell every two hours, unless nursing staff was notified that the patient needed medical attention prior to the scheduled assessment. *Id.*

Petitioner did not have further interaction with Mr. Howell after his transport to the Psych Unit, as she had other charge nurse duties. However, Petitioner ensured that a psychiatric nurse staffed in the Psych Unit, Pierrette Arthur, LPN ("Nurse Arthur"), conducted a check on Mr. Howell at or around 6:20 p.m., prior to the end of Nurse Arthur's shift. At the time of Nurse Arthur's check, Mr. Howell was not exhibiting signs of physical distress. Arthur Depo., App.566a. Nurse Arthur reported this information back to Petitioner before the end of Nurse Arthur's shift. *Id.*

Mr. Howell's next medical check was to take place at or about 8:20 p.m. Mr. Howell, however, suddenly died prior to 8:20 p.m. *See* Stephens Declaration, App.714a ("death occurred . . . closer to the time he was last noted to be moving and yelling than the time he was discovered to be without pulse or respirations.") Ultimately, Mr. Howell's cause of death remains disputed. Evans Declaration, App.823a-842a; Kiss Declaration, App.852a. Petitioner's medical experts opined Mr. Howell's sudden death was a result of an unforeseen cardiac event due to a chest stab wound injury Mr. Howell had suffered a year prior. Evans Declaration, App.823a-842a; Kiss Declaration, App.851a. Conversely, Respondent's medical

experts opined Mr. Howell suddenly died from complications of a sickle cell crisis leading to rhabdomyolysis, a condition that requires an extended period of time "to become histologically apparent" and develop into a serious medical issue. Evans Declaration, App.823a-842a; Kiss Declaration, App.851a.

There is no dispute that Mr. Howell's death was sudden.

Critically, following Mr. Howell's transport to the Psych Unit, Petitioner did not receive any notification from the monitoring correctional staff of any serious or emergent medical issue, and did not receive notification of his code event until at or around 9:47 p.m. Evans Declaration, App.823a-842a; Kiss Declaration, App.850a; Jordan Depo., App.477a. Furthermore, Petitioner had no means to determine any potential for rhabdomyolysis complicated by sickle cell disease given the fact Mr. Howell had refused to provide a urinalysis. Jordan Depo., App.484a-485a.

Upon these facts, on or about May 20, 2019, Respondent filed a Complaint in the United States District Court, Southern District of Ohio, Western Division, asserting deliberate indifference claims based upon the sudden and unforeseeable death of her brother, Mr. Howell. *See* Complaint, RE 1. On or about March 15, 2021, Petitioner moved for summary judgment on all claims asserted by Respondent. On November 2, 2021, the District Court issued its Order granting summary judgment in favor of all named Defendants-Appellees, including Petitioner, as to all claims asserted by Respondent. District Court's Memorandum and Opinion, App.54a.

At the time of summary judgment briefing, the Sixth Circuit, like the majority of circuit courts, had historically and "consistently applied the same deliberate indifference framework to Eighth-Amendment claims brought by prisoners as Fourteenth-Amendment claims brought by pretrial detainees." *Griffith v. Franklin Cnty., Kentucky*, 975 F.3d 554, 567 (6th Cir. 2020) (internal citations omitted).). The Eighth Amendment deliberate indifference framework consists of both the objective and a subjective component, as previously outlined above. *Blackmore v. Kalamazoo Cnty*., 390 F.3d 890, 895 (6th Cir. 2004). The subjective component, which requires an inmate show a defendant actor's "sufficiently culpable state of mind," was specifically "designed to prevent the constitutionalizing of medical malpractice claims." *Griffith* 975 F.3d at 577, n.10 (citations omitted).

On September 22, 2021, with summary judgment briefing pending before the district court, the Sixth Circuit issued its decision in *Brawner,* 14 F.4th 585 (6th Cir. 2021). In *Brawner*, the majority panel adopted a civil recklessness standard for purposes of analyzing § 1983 deliberate indifference claims brought by pretrial detainees for allegedly inadequate medical care. This was based upon the conflicting interpretation of *Kingsley,* and further supported by other sister circuit courts. *See Brawner,* 14 F.4th at 603 (Readler, J. concurring, in part, and dissenting, in part).

As a result of the *Brawner* decision, on January 18, 2022, Respondent filed a motion for relief from judgment based upon the civil recklessness standard endorsed by the *Brawner* majority panel. The district court denied Respondent's motion for relief from

judgment, having determined the district court would have reached the same result under either substantive standard. Opinion and Order Denying Relief, App.34a.

On appeal to the Sixth Circuit, Respondent argued that the district court erred in granting summary judgment to the named defendants because it either failed to consider or misapplied the civil recklessness standard of *Kingsley* and *Brawner*. Appellant's Brief, Doc. 44, Page 25. Conversely, Petitioner argued (1) *Kingsley* did not apply to deliberate indifference claims for inadequate medical care; and (2) *Brawner* was not binding precedent within the Sixth Circuit, since the 2-to-1 *Brawner* panel decision constituted mere dicta. Appellees' Brief, Doc. 47, Page 36-40. Furthermore, that even assuming *arguendo* that *Brawner* constituted the law of the Sixth Circuit, the district court correctly granted summary judgment to the named defendants based upon the prevailing necessity that some aspect of state of mind evidence is still required when determining recklessness and the adequacy of medical care. *Id.*, at Page 51-58.

On May 1, 2023, the unanimous Sixth Circuit panel issued its decision affirming summary judgment in favor of NaphCare, Inc. and Pierrette Arthur, LPN, and reversing, in part, as to Respondent's § 1983 claims for alleged inadequate medical care against Petitioner. This was done despite the fact it is undisputed Petitioner perceived Mr. Howell to be suffering from an acute psychiatric event. Sixth Circuit Opinion, App.13a, 16a.

The panel court's decision conflicts with the stated intent and limited holding of *Kingsley,* authoritative

decisions of other United States Courts of Appeals, and binding precedent within the Sixth Circuit.

First, the *Kingsley* Court did not eliminate the subjective state-of-mind requirement for Fourteenth Amendment deliberate indifference claims for inadequate medical care, or any § 1983 claim premised upon *an alleged failure to act*. *Kingsley*, 576 U.S. 389, at 395, 135 S. Ct. 2466 ("Consider the series of physical events that take place in the world . . . ."). More glaringly, the *Kingsley* Court never actually determined whether a recklessness standard would suffice for liability for alleged medical mistreatment of a pretrial detainee. It was undisputed in the facts of *Kingsley* that the underlying alleged act of excessive force had been committed purposefully or knowingly. *Id.,* 576 U.S. at 396. In fact, the *Kingsley* court explicitly stated, "Whether [a recklessness] standard might suffice for liability in the case of an alleged mistreatment of a pretrial detainee need not be decided here." *Id.*, 576 U.S. at 396. Despite *Kingsley's* clear self-limitation on its decision, in the near decade since *Kingsley*, competing interpretations over the intent, scope, and applicability of *Kingsley* have resulted in a remarkable circuit split, leaning on the level of chasm.

The Second, Sixth, Seventh, and Ninth Circuits have each held that *Kingsley* requires modification of the subjective component for pretrial detainees bringing Fourteenth Amendment deliberate-indifference claims. *See Darnell v. Pineiro*, 849 F.3d 17, 36 (2d Cir. 2017) ("A detainee must prove that an official acted intentionally or recklessly, and not merely negligently"); *Brawner*, 14 F.4th 585, 592 (6th Cir. 2021); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th

Cir. 2018); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) ("Thus, the test to be applied under *Kingsley* must require a pretrial detainee who asserts a due process claim for failure to protect to prove more than negligence but less than subjective intent—something akin to reckless disregard."). In all these decisions, these circuit courts interpreted *Kingsley*'s "objective unreasonableness" standard to mean civil recklessness, and broadly applied this transformed legal rule beyond the limited nature of the claim the *Kingsley* Court had only been asked to address. *Id.*

Refusing to accept such false equivalencies, the Third, Fourth, Fifth, Eighth, Tenth, and Eleventh Circuits have declined to extend *Kingsley* beyond its limited holding, either (1) outrightly rejecting the adoption of a lower substantive standard; or (2) declining to adopt the lower standard in adherence to its binding circuit precedent—**or until this Court resolves the question.** *See Moore v. Luffey*, 767 F. App'x 335, 340, n.2 (3d Cir. 2019) ("we decline to address whether we should apply the new standard here"); *Mays v. Sprinkle*, 992 F.3d 295, 301 (4th Cir. 2021) ("we have not decided whether *Kingsley*'s excessive force claim rationale extends to deliberate indifference claims"); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017) ("the Fifth Circuit has continued to . . . apply a subjective standard post-*Kingsley*"); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018) ("*Kingsley* does not control because it was an excessive force case, not a deliberate indifference case"); *Strain v. Regalado*, 977 F.3d 984 (10th Cir.2020); *Dang ex rel. Dang v. Sheriff, Seminole City*, 871 F.3d 1272, 1279 n.2 (11th

Cir. 2017) ("*Kingsley* involved an excessive-force claim, not a claim of inadequate medical treatment due to deliberate indifference").

REASONS FOR GRANTING THE PETITION

I. The Sixth Circuit's Decision Reversing, in Part, Summary Judgment in Favor of Petitioner Conflicts with This Court's Decision in *Kingsley*.

It has long been recognized that the United States government has a constitutional obligation to provide medical care to inmates. *See, e.g., Estelle,* 429 U.S. 97, 104 (1976). An inmate's constitutional rights are violated "when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety." *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989). Inmates are afforded such protections under the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment. *Id.*

Under the Eighth Amendment, convicted prisoners are provided certain protections from "cruel and unusual" punishment. *See e.g., Bell v. Wolfish*, 441 U.S. 520, 535, 99 S. Ct. 1861, 1872, 60 L. Ed. 2d 447 (1979) (citing U.S. Const. amend. VIII). Particularly, prison officials are prohibited from "unnecessarily and wantonly inflicting pain" by acting with "deliber-

ate indifference" toward an inmate's serious medical needs. *Estelle*, 429 U.S. 97, at 104. In order to determine whether an Eighth Amendment violation has occurred in the context of correctional medical care, federal courts always apply a two-prong test requiring the showing of: (1) an objective component—a "'sufficiently serious medical need"—and (2) a subjective component—a "sufficiently culpable state of mind." *Blackmore v. Kalamazoo Cnty*., 390 F.3d 890, 895 (6th Cir. 2004) (quoting *Farmer*, 511 U.S. 825, at 834).

The Eighth Amendment does not apply to pretrial detainees awaiting adjudication. Instead, the Due Process Clause of the Fourteenth Amendment applies. *Wolfish,* 441 U.S. 520, at 535, n.16 ("Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment."). Indeed, the Fourteenth Amendment does not contain the word "punishment." *See* U.S. Const. amend. XIV.

Despite those differing constitutional protections based upon an inmate's status, federal courts have historically interchangeably applied the deliberate indifference two-component framework to both pretrial detainees' and convicted prisoners' deliberate indifference claims for allegedly inadequate medical care, as it has long been accepted that the Fourteenth Amendment's analysis, as founded in *Bell v. Wolfish*, is wholly analogous to the Eighth Amendment's deliberate indifference framework. *See*, *e.g*., *Roberts v. City of Troy*, 773 F.2d 720, 724–25 (6th Cir. 1985) (citing *Bell*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979)); *see also Blackmore*, 390 F.3d 890, at 895 (citing *Bell*, 441 U.S. 520, at 545); *Inmates of Allegheny Cnty. Jail v.*

Pierce, 612 F.2d 754, 761 (3d Cir. 1979); *Scott v. Moore*, 114 F.3d 51, 53 (5th Cir. 1997); *Lock v. Jenkins*, 641 F.2d 488, 492 (7th Cir. 1981). Stated another way, "**applying the *Bell v. Wolfish* test would yield the same deliberate-indifference standard**." *Griffith*, 975 F.3d 554, at 569 (citing *Roberts*, 773 F.2d 720, at 724-25) (emphasis added).

This long-held acceptance in federal law remained unquestioned until this Court's 5-4 decision in *Kingsley*, wherein the Court was tasked with re-examining the legally required state-of-mind requirements for § 1983 excessive use of force claims brought by a pretrial detainee. *Kingsley,* 576 U.S. at 390. Unlike the Eighth Amendment's deliberate indifference framework, the then-existing substantive standard utilized for determining Fourteenth Amendment excessive use of force claims required a pretrial detainee to show two separate state-of-mind components: (i) the defendant's state of mind for the physical act "with respect to the bringing about of certain physical consequences in the world"; and (ii) the subjective state of mind as to a defendant's interpretation of the level of force used and whether such force was excessive. *Id.*, 576 U.S. at 395 (internal citations omitted).

The *Kingsley* Court ultimately determined that the initial state-of-mind component would remain unchanged and maintained that a pretrial detainee was still required to demonstrate that the physical act at issue had been committed purposefully or knowingly. *Kingsley,* 576 U.S. at 396 ("If the use of force is deliberate—*i.e.*, purposeful or knowing—the pretrial detainee's claim may proceed."). As to the second state-of-mind component, however, a pretrial detainee was no longer required to submit proof of the

actor's subjective knowledge or awareness of the level of force used. Instead, *Kingsley* only required a showing "that *the force* purposely or knowingly used was objectively unreasonable." *Id*., 576 U.S. at 395–97 (emphasis added).

In support of its holding, the *Kingsley* Court went to great lengths to explain that, in the context of an affirmative act, such as an alleged excessive use of force, it is not necessary to consider the actor's subjective motivation because "facts and circumstances of each particular case" demonstrate whether force—such as a punch or push or shot of a taser—is an objectively unreasonable course of action. *Kingsley*, 576 U.S. at 396-98.

Nowhere in its decision did the *Kingsley* Court endorse the use of sole objective measures for determining Fourteenth Amendment deliberate indifference claims for allegedly inadequate medical care.

Accordingly, this Court should grant this Petition because: (1) the *Kingsley* Court only addressed the nature of claim presented, excessive use of force, and gave no consideration to Fourteenth Amendment deliberate indifference claims for allegedly inadequate medical care; (2) none of the deductive reasoning found in *Kingsley* can be workably applied to correctional medical care; and (3) the improper extension of *Kingsley* to claims of a pretrial detainee for allegedly inadequate medical care has and will only continue to result in the constitutionalizing of medical malpractice.

A. The *Kingsley* Court only addressed the nature of claim presented, excessive use of force, and gave no consideration to, let alone abrogated, the necessity for subjective state-of-mind evidence under Fourteenth Amendment deliberate indifference claims based upon allegedly inadequate medical care.

Kingsley in no way addressed, considered, or equivocated, other deliberate indifference frameworks to that of excessive use of force. This is overwhelmingly apparent from a plain reading of the decision, wherein its author, Justice Breyer, expressly confined the Court's holding to "the nature of the case," based upon: (1) the excessive force factors considered, (2) the facts and circumstances presented, and (3) the various examples of affirmative force posited therein.

First and foremost, *Kingsley*'s plain language alone patently confines its holding to the nature of the case, excessive use of force:

> In deciding whether the force deliberately used is, constitutionally speaking, "excessive," should courts use an objective standard only, or instead a subjective standard that takes into account a defendant's state of mind?

Kingsley, 576 U.S. 389, at 396 ("It is with respect to *this* question that we hold that courts must use an objective standard.") (emphasis original). This Court has repeatedly rejected attempts to circumvent the confines or limiting nature of its past decisions. *See, e.g., Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 269, 113 S. Ct. 753, 759, 122 L. Ed. 2d 34 (1993) (citing

Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S.Ct. 1790, 1798, 29 L.Ed.2d 338 (1971) and *Carpenters v. Scott*, 463 U.S. 825, 833, 103 S.Ct. 3352, 3358, 77 L.Ed.2d 1049 (1983)).

Bray is a cogent example of this Court upholding prior confinements of its rulings. In *Bray*, this Court was tasked to determine whether the threshold requirements for asserting a cognizable § 1985(3) private conspiracy claim extended beyond its holdings in *Griffin*, 403 U.S. 88, at 102, thus requiring a plaintiff to show (1) "some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action," and in *Carpenters*, 463 U.S. 825, at 833, (2) "that the conspiracy 'aimed at interfering with rights' that are "protected against private, as well as official, encroachment." *Bray,* 506 U.S. 263, at 267 (internal citations omitted). The Court was specifically asked to determine whether the respondents, consisting of abortion clinics and abortion rights organizations, qualified as a "class" under § 1985(3), as narrowly determined in *Griffin* and *Carpenters*. *Id.*

The *Bray* Court ultimately refused to expand past the confines of its prior rulings, finding, in pertinent part, that the plain language of *Griffin* defined "invidiously discriminatory animus," in the context of racism, and that abortion rights did not qualify as a "class" or as a derogatory association with racism. *Bray*, 506 U.S. 263, at 274 (internal citations omitted) ("This is not the stuff out of which a § 1985(3) "invidiously discriminatory animus" is created."). Likewise, the *Bray* Court held that the plain language of *Carpenter* required a plaintiff claiming private conspiracy under § 1985(3) to show an "intent to

deprive" and not merely incidental harm. *Id*., at 506 U.S. 263, at 275 (internal citations omitted).

Turning back to the matter *sub judice*, *Kingsley* turned on the nature of the claim, excessive use of force, and must likewise be construed narrowly to the confines of the plain language of its holding. *See Brawner*, 14 F.4th 585, 607 (6th Cir. 2021), cert. denied, 214 L. Ed. 2d 13, 143 S. Ct. 84 (2022) (Readler, J. concurring, in part, and dissenting, in part). This is only further made apparent by the dissimilar nature between excessive use of force, which arises from an affirmative act, and inadequate medical care, which arises from an alleged failure to act.

Indeed, "in the excessive force context, society's expectations are different" than the expectations pertaining to the context of correctional medical care. *See e.g., Hudson v. McMillian*, 503 U.S. 1, 9, 112 S. Ct. 995, 1000, 117 L. Ed. 2d 156 (1992) ("This is true whether or not significant injury is evident."); *cf. Estelle, supra*, 429 U.S. 97, at 103. Such differing expectations are clearly observable by the mere fact that excessive use of force is subject to an entirely separate substantive standard analysis, consisting of not one but two state-of-mind inquiries. *Kingsley*, 576 U.S. at 395 ("In a case like this one, there are, in a sense, two separate state-of-mind questions").

Irrespective of the fact *Kingsley* still required pretrial detainees to show a purposeful or knowing act, 576 U.S. 389, at 396, its decision had no bearing on the deliberate indifference framework previously set forth by *Farmer* or *Estelle*, and to reason otherwise would permit the application of an inapposite legal rule to a differing issue. *Smith v. Bayer Corp*., 564 U.S. 299, 131 S. Ct. 2368, 180 L. Ed. 2d 341 (2011)

("Minor variations in the application of what is in essence the same legal standard do not defeat preclusion . . . but where the State's courts would apply a significantly different analysis, the federal and state courts decide different issues.").

> This is further shown through the fact *Kingsley* considered factors only pertaining to excessive force for reasoning what society may consider the "reasonableness or unreasonableness of the force used": the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

Kingsley, 576 U.S. 389, at 397.

> Also, *Kingsley* only provided examples of punitive affirmative acts: consider the series of physical events that take place in the world—a series of events that might consist, for example, of the swing of a fist that hits a face, a push that leads to a fall, or the shot of a Taser that leads to the stunning of its recipient. No one here denies, and we must assume, that, *396 as to the series of events that have taken place in the world, the defendant must possess a purposeful, a knowing, or possibly a reckless state of mind.

Kingsley, 576 U.S. 389, at 395.

Overwhelmingly, the plain language and narrow confines of *Kingsley* establish that it only applies to the nature of the claim in *Kingsley*, the alleged excessive use of force. Moreover, *Kingsley*'s elimination of a state-of-mind component related to a wholly separate standard than the state-of-mind component utilized in determining deliberate indifference based upon allegedly inadequate medical care. *Compare Murray v. Johnson No. 260*, 367 F. App'x 196, 198 (2d Cir. 2010), abrogated by *Kingsley*, 576 U.S. 389, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015), *with Farmer*, 511 U.S. 825, at 834 (1994).

B. *Kingsley* is unworkable for § 1983 claims of a pretrial detainee for allegedly inadequate medical care, irrespective of the fact *Kingsley* did not promote a civil recklessness standard.

In support of its decision, the *Kingsley* Court reasoned an objective standard is "consistent" and "workable," in large reliance upon its reading of *Bell v. Wolfish*, and furthermore determined that "the use of an objective standard adequately protects an officer who acts in good faith." *Kingsley*, 576 U.S. at 389-90. None of these reasons hold true once transposed upon correctional medical care providers.

As argued in the preceding subsection, *Kingsley*, through Justice Breyer's own confined language, found objective measures "consistent" with excessive force standards exclusively, and the Court made no attempt to equivocate to deliberate indifference frameworks. *Kingsley*, 576 U.S. 389, at 389-90. Notwithstanding this obvious truth, it has been shown over the last eight years that *Kingsley*'s objective unreasonableness

standard is not "workable" at all when applied to deliberate indifference claims. This is demonstrated not only by the presenting circuit court split, but also because its application does not adequately protect medical providers who acted in good faith, as shown in this case. Sixth Circuit Opinion, App.13a ("There is no dispute that Jordan subjectively believed Howell was experiencing a psychiatric episode.").

Such unworkability is due to the fact liability attaches under an inverse set of circumstances in the context of allegedly inadequate medical care, as has often been pointed out by prominent members of judiciary. *See Kingsley*, 576 U.S. 389, at 404-08 (Roberts, C.J., Scalia, J. and Thomas, J., Castro dissenting); *see also*, *e.g.*, *Castro*, 833 F.3d 1060, 1086 (9th Cir. 2016) (en banc) (Ikuta, J., dissenting); *see also Strain*, 977 F.3d at 987 ("[T]he word deliberate makes a subjective component inherent in the claim."). In short, "objective reasonableness" only ostensibly works in excessive use of force claims because a "prison official's mindset is likely obvious when the official brutally beats a detainee." *Brawner*, 14 F.4th 585, 607 (6th Cir. 2021) (Readler, J. concurring, in part, dissenting, in part).

Nevertheless, the Circuit Courts that hold in favor of extending *Kingsley* to medical claims have largely done so due to the *Kingsley* Court's reliance on *Bell v. Wolfish*. *See Kingsley*, 576 U.S. 389, at 397 (citing *Bell*, 441 U.S. at 540, 547). It is impossible to deny the large shadow *Bell v. Wolfish* casts over § 1983 claims of a pretrial detainee, especially since this Court revisited *Bell v. Wolfish* once more in *Kingsley,* albeit in a narrow context inapposite to the context of medical care.

In what is now often referred to as "the *Bell v. Wolfish* test," this Court long ago outlined the perimeters for analyzing a Fourteenth Amendment violation of a pretrial detainee, requiring federal courts to determine "whether the disability [of a pretrial detainee] is imposed for the ***purpose*** of punishment or whether it is but an incident of some other legitimate governmental purpose." *Bell*, 441 U.S. at 538 (citations omitted) (emphasis added). Or, "[a]bsent a showing of ***an expressed intent*** to punish on the part of detention facility officials, that determination generally will turn on 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].'" *Id.* (citations omitted) (emphasis added).

In predominant part, the *Kingsley* Court's decision to eliminate the second state-of-mind component in exchange for applying an objective unreasonableness standard for excessive use of force claims of a pretrial detainee traced back to *Bell*:

> *Bell*'s focus on "punishment" does not mean that proof of intent (or motive) to punish is required for a pretrial detainee to prevail on a claim that his due process rights were violated. Rather, as *Bell* itself shows (and as our later precedent affirms), 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.

Kingsley, 576 U.S. 389, at 398.

Indeed, under the general parameters of *Bell*, a pretrial detainee *can* prevail only upon objective evidence in the absence of evidence of purpose or intent, but it stands to reason the opposite is certainly just as true—that in the absence of evidence of purpose or intent, a pretrial detainee still *cannot* prevail only upon objective evidence, specifically in the context of a failure to act or an omission. While the *Kingsley* Court reasoned that objective nature of the *Bell v. Wolfish* test should not "involve subjective consideration," it had only done so in reliance upon precedent that predates its decision in *Farmer*, 511 U.S. 825, 847, 114 S. Ct. 1970, 1984, 128 L. Ed. 2d 811 (1994), affirming the use of a subjective component under the traditional Eighth Amendment framework. This is, again, likely not an oversight of the *Kingsley* Court but rather a product of having only been required to analyze *Bell v. Wolfish* in the context of excessive force.

On the other hand, the *Kingsley* Court arguably misconstrued the *Bell v. Wolfish* test in concluding a pretrial detainee, under *Bell*, 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. *Kingsley*, 576 U.S. 389, at 398 (emphasis added). However, *Bell* does not stand for bifurcating the determination of governmental action that "rationally related to a legitimate governmental objective" from one that is "excessive in relation." *See Bell*, 441 U.S. 520, 561. Under *Bell*, excessive action (and not *inaction*) is married to the rational relationship of the legitimate government interest:

> [T]he determination whether these restrictions and practices constitute punishment in

> the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose **and** whether they appear excessive in relation to that purpose.

Id., 441 U.S. 520, at 561. (emphasis added).

Sixth Circuit precedent provides better explanation. *See, e.g., Roberts v. City of Troy*, 773 F.2d 720 (6th Cir. 1985). In *Roberts,* the Sixth Circuit considered the perimeters outlined by *Bell* in the context of an alleged failure to provide adequate medical care to a pretrial detainee. *Id.*, at 723 (Absent proof of intent to punish, we noted, this determination "generally will turn on 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].'") (internal quotations omitted).

Upon its astute reasoning, the Sixth Circuit determined that the secondary analysis outlined by the *Bell v. Wolfish* test cannot be practically applied to medical claims simply because, "if a failure to act is reasonably related to a legitimate governmental objective, the failure to act cannot have the purpose of punishment unless the failure to act was deliberate." *Roberts*, 773 F.2d at 725. Accordingly, in the context of alleged inadequate medical care, absent a pretrial detainee's proof of intent to punish, a failure to provide better care does not amount to a constitutional violation. *Id*. Hence, excessive use of force can turn upon the secondary analysis found in *Bell v. Wolfish,* while failure to provide adequate medical care simply cannot. Better put, in the context of inadequate medical care claims, the *Bell v. Wolfish* test is premised

upon a finding of an "an intent to punish" a pretrial detainee only. *Id*.

Applied here, it is undisputed that Respondent lacks proof Petitioner had any intent to punish Mr. Howell. Sixth Circuit Opinion, App.11a-14a. It is undisputed that Mr. Howell's placement into a restraint chair and transport to the Psych Unit of the HCJC was in furtherance of servicing a governmental interest, which included mitigating Mr. Howell's combativeness and medical treatment refusals in hopes of his compliance, and eventually obtaining a urinalysis sample. *Id*.

Lastly, it goes against logic to hold an objective standard "adequately protects" actors of "good faith" who are within a profession that is largely based upon learned knowledge that informs judgment decisions at issue. Indeed, even a "strong showing that the detainee needed medical attention does not necessarily tell anything about a prison official's state of mind with respect to the need to intervene." *Trozzi v. Lake Cnty., Ohio*, 29 F.4th 745, 757, 760 (6th Cir. 2022).

To conclude otherwise, as the Second, Sixth, Seventh, and Ninth Circuit Courts have ostensibly done, has only resulted in confusion. A prime example can be found in the recent modifications of *Kingsley*'s objective unreasonableness standard just within the Sixth Circuit. Ever since its endorsement of *Kingsley*'s objective standard in *Brawner*, the Sixth Circuit has continually wrestled with how to apply a modified "civil recklessness" approach without resorting to a two-component framework. *Compare Trozzi,* 29 F.4th 745, at 757, 760 (6th Cir. 2022) ("*Brawner*'s [civil recklessness] standard for deliberate indifference contemplates separate inquiries into whether

the jail official (1) 'recklessly failed to act' (2) 'even though' a 'reasonable official' 'would have known' there was a serious medical need.") *with Helphenstine v. Lewis Cnty., Kentucky*, 60 F.4th 305, 316 (6th Cir. 2023) (" . . . reading *Farmer*, *Kingsley*, *Brawner*, and *Greene* [*v. Crawford Cnty*., 22 F.4th 593 (6th Cir. 2022)] together, a plaintiff must satisfy three elements for an inadequate-medical-care claim under the Fourteenth Amendment: (1) the plaintiff had an objectively serious medical need; (2) a reasonable officer at the scene (knowing what the particular jail official knew at the time of the incident) would have understood that the detainee's medical needs subjected the detainee to an excessive risk of harm; and (3) the prison official knew that his failure to respond would pose a serious risk to the pretrial detainee and ignored that risk."), *with Britt v. Hamilton Cnty*., No. 21-3424, 2022 WL 405847, at *6 (6th Cir. Feb. 10, 2022) ("[The dissent] claims that we have "misapplie[d] the applicable law" by failing to apply the *Brawner* recklessness standard and by citing pre-*Brawner* cases in our decision . . . . But from beginning to end, we have applied the recklessness test for determining the existence of deliberate indifference.").

Such persisting confusion demonstrates why an objective standard cannot be applied and still protect those correctional medical care providers acting in good faith without a subjective inquiry. *Helphenstine*, 60 F.4th 305 (6th Cir. 2023), denying en banc, 65 F.4th 794, 796 (6th Cir. 2023), (Readler, J. delivering a separate statement respecting denial of rehearing en banc) ("With signs pointing in all directions, even the most careful reader would likely find herself at a crossroads. For judges and academics, these are theo-

retical concepts to debate. But for prison officials, these decisions—as incongruent as they are—govern their everyday conduct.")

For these reasons, and more fully addressed in the following subsection, *Kingsley* is exceedingly unworkable to Fourteenth Amendment deliberate indifference claims for allegedly inadequate medical care and its extension to those claims has only resulted in the constitutionalizing of medical malpractice.

C. The extension of *Kingsley*'s holding adopting a civil recklessness standard for application in § 1983 deliberate indifference claims brought by a pretrial detainee for allegations of inadequate medical care undermines this Court's longstanding admonition against constitutionalizing medical malpractice.

As this Court long ago reasoned, "[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Estelle*, 429 U.S. 97, at 106. More precisely, "a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment." *Id*. Ultimately, this Court has maintained its reluctance to second guess to second guess the medical judgment of prison officials. *Graham ex rel. Est. of Graham v. Cnty. of Washtenaw*, 358 F.3d 377, 384–85 (6th Cir. 2004) (citing *City of Canton v. Harris*, 489 U.S. 378, 390–91, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989) (citations omitted)).

However, this prevailing uptick in conflicting authoritative decisions of various circuit courts mis-

interpreting or improperly extending *Kingsley*'s holding and applying a civil recklessness standard to § 1983 deliberate indifference claims brought by a pretrial detainee for allegedly inadequate medical care has resulted in precisely what this Court once vowed to preclude: the constitutionalizing of medical malpractice. This was precisely the fear the late Justice Scalia forewarned in his dissenting opinion: "Today's majority overlooks this in its tender-hearted desire to tortify the Fourteenth Amendment." *Kingsley*, 576 U.S. 389, at 408 (Scalia, J. dissenting).

It is firstly important to note that in the decades that followed *Estelle*, this Court remained resolute in upholding its admonition against constitutionalizing claims for medical malpractice, particularly in the context of alleged misdiagnoses. *See, e.g., Farmer*, 511 U.S. 825, at 835 ("ordinary lack of due care" is insufficient to establish an Eighth Amendment claim); s*ee also Hudson v. McMillian*, *supra*, 503 U.S., at 6, 112 S.Ct., at 998 (quoting *Whitley v. Albers*, 475 U.S. 312, 320, 106 S. Ct. 1078, 1084-85, 89 L. Ed. 2d 251 (1986)). Likewise, the circuit courts have abstained from constitutionalizing medical malpractice. *See Sanderfer v. Nichols*, 62 F.3d 151, 154 (6th Cir. 1995) (emphasis added) (citing *Estelle,* 429 U.S. 97, at 106) (""Deliberate indifference does not include negligence in diagnosing a medical condition."); *see also United States ex. Rel. v. Fayette County*, 599 F.2d 573, 575 n.2 (3d Cir. 1979); *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir.1976); *Steele v. Choi*, 82 F.3d 175, 179 (7th.Cir. 1996) ("the Supreme Court's holding in *Estelle* that the Eighth Amendment does not constitutionalize medical malpractice implies that there will be cases in which treatment falls below accept-

able standards that do not state a claim for constitutional purposes"); *Heidtke v. Corr. Corp. of America*, 489 Fed.Appx. 275 (10th Cir. 2012) ("As in the past, we *refuse* to constitutionalize a medical malpractice claim") (emphasis in original); *Murphy v. Turpin*, 159 Fed. App'x 945 fn.4 (11th Cir. 2005) ("[W]here a prisoner has received medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and constitutionalize claims that sound in tort law.").

Following *Kingsley*, however, "a relative flood of claims" sounding in tort law have been filed across all courts. This is despite *Kingsley*'s noted rebuttal that the Prison Litigation Reform Act of 1995 ensured gatekeeping of frivolous claims of inmates that do not meet constitutional redress. *Kingsley*, 576 U.S. 389, at 402. This is despite the decisions from this Court post-*Kingsley*, wherein the Court reaffirmed its continued admonition against constitutionalizing medical malpractice. *See e.g., Edmo v. Corizon, Inc*., 935 F.3d 757, 786 (9th Cir. 2019) (citing *Estelle*, 429 U.S. 97, at 106) ("An inadvertent or negligent failure to provide adequate medical care is insufficient . . . .").

These recent tort-based medical malpractice claims, disguised as constitutional violations, only further demonstrate the need for this Court's resolution. For example, post-*Kingsley*, courts within the Sixth Circuit have continued to uphold the sound reasoning that disagreements over a "best" course of medical treatment still do not rise to the level of a cognizable deliberate indifference claims and yet, the application of the Sixth Circuit's interpretation of *Kingsley* has nevertheless led to exceedingly inconsistent results.

Compare, e.g., Sedore v. Campbell, No. 19-10311, 2022 WL 4483815, at *2 (E.D. Mich. Sept. 27, 2022) (upholding dispute of material fact over deliberate indifference since the physician knew that another medication had been previously successful but still chose not to prescribe that medication) (citing to *Darrah v. Krisher*, 865 F.3d 361, 372 (6th Cir. 2017) (finding that a "disagreement . . . over the proper course of treatment alleges, at most, a medical-malpractice claim, which is not cognizable under § 1983") *with Rucker v. Lindamood,* No. 1:16-CV-00090, 2022 WL 3701597, at *6 (M.D. Tenn. Aug. 26, 2022) (citing *Darrah*, 865 F.3d at 372) (upholding dispute of material fact over deliberate indifference despite there being "no evidence that *Incruse Ellipta* is a less effective or categorically inferior treatment option.").

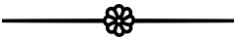
Applied here, the Sixth Circuit's decision reversing summary judgment in favor of Petitioner is based largely upon a difference of opinion over the best course of treatment. In effect, that is constitutionalizing a claim for medical malpractice. Sixth Circuit Opinion, App.11a-14a, App.16a. This is notwithstanding the fact Mr. Howell's sudden cause of death was still factually up for debate. *Id.*, App.6a. It also ignores the fact Mr. Howell refused treatment from Petitioner. *Id.*, App.3a.

Ultimately, as the Sixth Circuit's Judge Readler declared in his first dissenting opinion on the issue in *Brawner*, "I remain unconvinced that the Fourteenth Amendment confers any freestanding right to be free from jailhouse medical malpractice." *Brawner*, 14 F.4th 585, at 610 (6th Cir. 2021); *see also J.H. v. Williamson County*, 951 F.3d 709, 726 (6th Cir. 2020) (Readler, J., concurring) ("[S]ubstantive due process does not

tie the hands of public officials in weighing the many considerations before them as they resolve a difficult episode.").

As shown on its face, *Kingsley* did not rebuke this Court's longstanding admonition against constitutionalizing medical malpractice, and this Court has not made any suggestion that it should provide constitutional relief to inmates for tort claims based upon medical care.

Therefore, the Eighth Amendment's deliberate indifference framework is the only substantive standard federal courts must apply to § 1983 deliberate indifference claims for allegedly inadequate medical care, regardless of the inmate's status as either convicted prisoner or pretrial detainee.



CONCLUSION

For all the above reasons, the Petition for a Writ of Certiorari should be granted.

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