

In the  
Supreme Court of the United States

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VICTOR HILL,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether any broad principle of law gives fair warning that it constitutes “excessive force” in violation of the Fourth Amendment of the Constitution for a correctional officer to use passive restraint chairs to restrain pretrial detainees whom the officer determined posed a threat to jail security based on their conduct before and during arrest, during booking and interviewing, and other specific indicators based on the officer’s experience, although the detainees were not actively resisting at the time of the restraint.

## **LIST OF PROCEEDINGS**

United States Court of Appeals (11th Cir.)  
No. 23-10934

*United States*, Plaintiff-Appellee *v.*  
*Victor Hill*, Defendant-Appellant

Final Judgment: April 29, 2024

Rehearing En Banc Denied: August 22, 2024

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U.S. District Court (N.D. Georgia, Atlanta Division)

No. 1:21-CR-00143-ELR-CCB-1

*United States*, Plaintiff *v.* *Victor Hill*, Defendant

Final Judgment: March 15, 2023

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED .....	i
LIST OF PROCEEDINGS.....	ii
TABLE OF AUTHORITIES .....	v
OPINIONS BELOW .....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	1
STATEMENT OF THE CASE.....	3
I. Factual Background.....	3
A. Petitioner Brought Order to the Clayton County Jail.....	4
B. Petitioner’s Use of the Restraint Chair .....	4
II. Case History .....	5
REASONS FOR GRANTING THE PETITION .....	7
I. The Circuits Do Not Agree with One Another on This Issue .....	7
II. The Opinion Below Departs from Established Precedent in This Court and in the Eleventh Circuit .....	10
A. This Court’s Precedent Does Not “Squarely Govern” or Apply with “Obvious Clarity” to the Specific Facts in This Case .....	14
B. Eleventh Circuit Precedent Does Not “Squarely Govern” or Apply with “Obvious Clarity” to the Specific Facts in This Case .....	23
CONCLUSION.....	30

**TABLE OF CONTENTS – Continued**

Page

**APPENDIX TABLE OF CONTENTS****OPINIONS AND ORDERS**

Opinion, U.S. Court of Appeals for the Eleventh Circuit (April 29, 2024) .....	1a
Concurring Opinion, Judge Marcus .....	46a
Judgment in a Criminal Case, U.S. District for the Court Northern District of Georgia Atlanta Division (March 15, 2023) .....	54a
Order, U.S. District Court for the Northern District of Georgia, Atlanta Division (May 5, 2022) .....	64a
Order and Final Report and Recommendation, U.S. District Court for the Northern District of Georgia, Atlanta Division (December 29, 2021) .....	73a

**REHEARING ORDER**

Order Denying Petition for Rehearing, U.S. Court of Appeals for the Eleventh Circuit (August 22, 2024) .....	103a
--	------

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Anderson v. Creighton</i> ,	
483 U.S. 635, 107 S.Ct. 3034,	
97 L.Ed.2d 523 (1987) .....	11
<i>Ashcroft v. al-Kidd</i> ,	
563 U.S. 731, 131 S.Ct. 2074,	
179 L.Ed.2d 1149 (2011) .....	12
<i>Bell v. Wolfish</i> ,	
441 U.S. 520, 99 S.Ct. 1861,	
60 L.Ed.2d 447 (1979) .....	23, 25
<i>Blakeney v. Rusk Cnty. Sheriff</i> ,	
89 F.Appx. 897 (5th Cir. 2004).....	7
<i>Britt v. Hamilton Cnty.</i> ,	
No. 21-3424, 2022 WL 405847	
(6th Cir. Feb. 10, 2022) .....	9
<i>Compare Jacoby v. Keers</i> ,	
779 F.Appx. 676 (11th Cir. 2019).....	7
<i>Crocker v. Beatty</i> ,	
995 F.3d 1232 (11th Cir. 2021) .....	12, 13, 26
<i>Danley v. Allen</i> ,	
540 F.3d 1298 (11th Cir. 2008) .....	26, 27
<i>Diaz v. Dir. Fed. Bureau of Prisons</i> ,	
716 F.Appx. 98 (3d Cir. 2017) .....	9
<i>Graham v. Connor</i> ,	
490 U.S. 386, 109 S.Ct. 1865,	
104 L.Ed.2d 443 (1989) .....	15, 16, 17, 22
<i>Haynes v. Volpelleto</i> ,	
No. 23-11063, 2024 WL 1911200	
(11th Cir. May 1, 2024) .....	27

**TABLE OF AUTHORITIES – Continued**

	Page
<i>Hope v. Pelzer</i> , 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002) .....	8, 10, 12, 14, 18, 19
<i>Jacoby v. Mack</i> , 755 F.Appx. 888 (11th Cir. 2018).....	7
<i>Jones v. Anderson</i> , 116 F.4th 669 (7th Cir. 2024).....	9
<i>Kingsley v. Hendrickson</i> , 576 U.S. 389, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015) .....	14-20, 22, 23
<i>Kisela v. Hughes</i> , 584 U.S. 100, 138 S.Ct. 1148, 200 L.Ed.2d 449 (2018) .....	13
<i>Long v. Slaton</i> , 508 F.3d 576 (11th Cir. 2007) .....	13
<i>Mercado v. City of Orlando</i> , 407 F.3d 1152 (11th Cir. 2005) .....	12
<i>Mullenix v. Luna</i> , 577 U.S. 7, 136 S.Ct. 305, 193 L.Ed.2d 255 (2015) .....	13
<i>Patel v. Lanier Cnty. Georgia</i> , 969 F.3d 1173 (11th Cir. 2020) .....	27
<i>Pearson v. Callahan</i> , 555 U.S. 223, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009) .....	24
<i>Piazza v. Jefferson Cnty., Alabama</i> , 923 F.3d 947 (11th Cir. 2019) ...	19, 23, 24, 27, 28

**TABLE OF AUTHORITIES – Continued**

	Page
<i>Reynolds v. Wood Cnty., Texas,</i> No. 22-40381, 2023 WL 3175467 (5th Cir. May 1, 2023) .....	8
<i>Rice ex rel. Rice v. Corr. Med. Servs.,</i> 675 F.3d 650 (7th Cir. 2012) .....	9
<i>Rogers v. New Jersey Dep’t of Corr.,</i> No. 21-2891, 2022 WL 4533848 (3d Cir. Sept. 28, 2022).....	9
<i>Skrtich v. Thornton,</i> 280 F.3d 1295 (11th Cir. 2002) .....	24, 25
<i>United States v. Aguillard,</i> 217 F.3d 1319 (11th Cir. 2000) .....	26
<i>United States v. Hill,</i> 99 F.4th 1289 (11th Cir. 2024)... 10-12, 14-18, 20, ..... 22, 24, 26, 28, 29	
<i>United States v. Lanier,</i> 520 U.S. 259, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997) .....	11, 12
<i>White v. Pauly,</i> 580 U.S. 73, 137 S.Ct. 548, 196 L.Ed.2d 463 (2017) .....	14
<i>Whitley v. Albers,</i> 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986) .....	23, 25
<i>Williams v. Burton,</i> 943 F.2d 1572 (11th Cir. 1991) .....	23-25, 28, 29
<i>Youmans v. Gagnon,</i> 626 F.3d 557 (11th Cir. 2010) .....	11, 13

**TABLE OF AUTHORITIES – Continued**

	Page
<i>Young v. Martin,</i> 801 F.3d 172 (3d Cir. 2015).....	9

**CONSTITUTIONAL PROVISIONS**

U.S. Const. amend. IV .....	i, 1, 15, 29
U.S. Const. amend. XIV.....	2, 8, 24

**STATUTES**

18 U.S.C. § 242.....	2, 5, 11
28 U.S.C. § 1254.....	1
42 U.S.C. § 1983.....	2, 12



## OPINIONS BELOW

The opinion of the Court of Appeals is reported at 99 F.4th 1289. (App.1a). The District Court judgment resulted from a trial. The Court of Appeals' denial of rehearing *en banc* is unreported. Two orders pertaining to the District Court's proceedings are available at 2022 WL 1421771 (May 5, 2022) and 2021 WL 8825265 (Dec. 29, 2021). (App.64a, 73a).



## JURISDICTION

The Court of Appeals entered its judgment on April 29, 2024 (App.1a) and denied rehearing *en banc* on August 22, 2024. (App.103a). This Court has jurisdiction in this case based upon 28 U.S.C. § 1254.



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### CONSTITUTIONAL PROVISIONS

#### U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**U.S. Const. amend. XIV**

[N]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

**STATUTORY PROVISIONS****18 U.S.C. § 242**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, . . . and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; . . .

**42 U.S.C. § 1983**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, . . .



## STATEMENT OF THE CASE

### I. Factual Background

The government chose Petitioner Victor Hill, the former sheriff of Clayton County, Georgia, to test a novel theory of prosecution: whether placing pretrial detainees in a restraint chair — with no other violence and no significant harm visited on the detainee — constitutes excessive force in violation of Due Process. The government took the unprecedented step of a first-of-its-kind criminal prosecution when no circuit has even held an officer *civilly* liable for so little.

A law enforcement officer cannot be prosecuted without fair warning that the officer's conduct was criminal, and there is no law clearly establishing that the use of a restraint chair constitutes excessive force against detainees whom a reasonable officer determined exhibited specific threat indicators, although they were not physically resisting at the moment of the restraint. The government has argued, and the Circuit panel agreed, that fair warning existed that the law forbids restraint of pretrial detainees who are compliant and not resisting (without directly addressing the countervailing circumstances). In doing so, the panel departed from this Court's (and its own) precedent substantially, and conflicts with relevant case law in other circuits. The panel's opinion further creates a new precedent that virtually eliminates the requirement for finding "fair warning" in future excessive force cases and endangers jail security by supplanting the expert judgment of jail officers in matters of internal security

and order with its own hindsight and the chilling threat of criminal prosecution.

### **A. Petitioner Brought Order to the Clayton County Jail.**

After beginning his policing career with “proactive policing” in Charleston, South Carolina, Petitioner joined the Clayton County police department in 1992. He was elected sheriff in 2004. At the time, nowhere was proactive policing needed more than in the jail, where only 17 correctional officers faced responsibility for as many as 2,000 detainees with few tools to maintain order and control in the jail. Further, the jail was out of control; inmates threw feces, attacked officers and each other, sexually intimidated female staff, and engaged in other disruptive behavior. Petitioner reformed the jail environment with strict policies and practices that set a tone of order starting at intake. He patrolled his jail daily and spoke personally to detainees if he was aware of problematic behavior.

At trial, Petitioner owned the fact that his jail was stricter than most. He took pride in the cleanliness and calmness of the jail, and he took seriously his responsibility to keep staff and detainees safe.

### **B. Petitioner’s Use of the Restraint Chair.**

Petitioner’s 30 years of law enforcement experience and extensive training in use of force consistently taught him that officers may use some force, including restraints, as a *preventative* measure to avoid the risk of violence, destruction, or escape. He was trained to look for “pre-attack indicators”—signs, often subtle, such as clenching, heavy breathing, or posturing—that indicate that a person is a risk and needs to be

controlled. Petitioner kept informed of detainees' prior destructive or violent behavior, and any such pre-attack indicators.

In 2017, Petitioner introduced safety restraint chairs to the jail, which are common devices used in correctional institutions across the country as a preventative tool to preempt dangerous, destructive, and disruptive behavior without using violence or causing harm.

Petitioner would decide whether to order a detainee into the chair based on "a totality of circumstances," including his training and experience, prior knowledge about the person and what led that individual to the jail, and other information he received from officers regarding prior aggressive or destructive behavior. Facts underlying Petitioner's decision in each of the six counts of conviction are incorporated below.

Jail supervisors used the restraint chair at Clayton County jail roughly 600 times over the four-year period 2017–2020, thus constituting a routine feature used, on average, every two to three days. At trial, the government alleged only seven times, between December 2019 and May 2020, where Petitioner himself directed its use.

## **II. Case History**

A federal grand jury indicted Petitioner on April 19, 2021, alleging the use of unreasonable force by a law enforcement officer amounting to punishment in violation of 18 U.S.C. § 242.

Petitioner moved to dismiss the indictment because he lacked fair warning that passive restraint without any other force was unconstitutional. The magistrate

judge recommended that Mr. Hill’s motion be denied, concluding that continued force may not be used against a detainee who has stopped resisting. 2021 WL 8825265 (Dec. 29, 2021). The district court agreed, concluding that the government need only allege that the restraint lacked a legitimate, nonpunitive governmental purpose. 2022 WL 1421771 (May 5, 2022).

The case proceeded to trial, after which the jury convicted Petitioner on six of the seven counts in the indictment, on October 26, 2022. The district court sentenced Mr. Hill and entered final judgment on March 15, 2023. Mr. Hill filed a notice of appeal the next day.

The Eleventh Circuit issued its opinion affirming the conviction on April 29, 2024. 99 F.4th 1289. The Circuit denied the petition to rehear the case *en banc* on August 22, 2024.



## REASONS FOR GRANTING THE PETITION

### I. The Circuits Do Not Agree with One Another on This Issue.

Among the federal circuits, the sparse cases involving restraint chairs provide conflicting or inconclusive opinions on what constitutes excessive force and when certain applications of force are legally excessive.

To begin with, the Eleventh Circuit itself has arrived at opposite conclusions in at least two separate cases with substantially similar facts arising from the same inmate. *Compare Jacoby v. Keers*, 779 F.Appx. 676 (11th Cir. 2019) (no constitutional violation where pretrial detainee, incapacitated by pepper spray, was subsequently handcuffed and placed in restraint chair for eight hours), *with Jacoby v. Mack*, 755 F.Appx. 888 (11th Cir. 2018) (excessive force where inmate, incapacitated by pepper-spray, was handcuffed and placed in restraint chair for eight hours). With opposite conclusions existing in Petitioner’s own Circuit, he could not have had “fair warning” that similar conduct clearly violated the constitution.

This lack of clarity regarding the use of restraint chairs exists in other circuits. The Fifth Circuit, for example, has held that jail officials did not violate the Constitution when they confined an inmate to a restraint chair for 20 hours. *Blakeney v. Rusk Cnty. Sheriff*, 89 F.Appx. 897, 899 (5th Cir. 2004). Although originally confined due to particularly destructive behavior such as setting fires and flooding his cell, the Court determined that leaving the inmate for 20 hours

even after he had calmed down still served a legitimate, non-punitive governmental purpose. *Id.*

More recently, the same Circuit found no constitutional violation when jail officials confined an unruly inmate to a restraint chair, but kept him there 14 hours, even after he had calmed down. That panel notably distinguished its case from this Court's precedent:

[D]etention in the restraint chair resulted from his unsafe behavior and, though temporarily uncomfortable, was not objectively severe enough to violate the Fourteenth Amendment. Further, as the district court correctly noted, “nothing in *Hope* indicates at what point a restraint would become unconstitutional once an inmate quiets down.” Thus, *Hope* provides no support for Reynolds’s contention that remaining in the restraint chair under these circumstances violated his clearly established constitutional rights.

*Reynolds v. Wood Cnty., Texas*, No. 22-40381, 2023 WL 3175467, at \*4 (5th Cir. May 1, 2023), referencing *Hope v. Pelzer*, 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).

While these Fifth Circuit cases involved inmates confined to the restraint chair initially due to disruptive outbursts in the jail, both also eventually involved restraints upon a detainee who was calm and no longer actively resisting—even for several hours. Each is closely analogous to using a restraint chair against detainees responsible for violent crimes, and who displayed mixed levels of threatening or disruptive

indicators along with outward compliance and non-resistance.

The ambiguity involving levels of restraint continues in other circuits, eliminating any concept of “fair warning” on the issue in this case: *Rogers v. New Jersey Dep’t of Corr.*, No. 21-2891, 2022 WL 4533848 (3d Cir. Sept. 28, 2022) (no constitutional violation when inmate, who had been attacked by other inmates but was himself nonresistant, was nevertheless handcuffed and ankle-cuffed and left in a cell alone three hours after medical treatment); *Diaz v. Dir. Fed. Bureau of Prisons*, 716 F.Appx. 98 (3d Cir. 2017) (no constitutional violation where officers placed inmate in four-point restraints after he attacked a guard, but kept him in those restraints 24 hours, then ambulatory restraints for another 20 hours, merely because he remained “defiant” by cursing and threatening guards); *Young v. Martin*, 801 F.3d 172 (3d Cir. 2015) (grant of summary judgment for officers was inappropriate where officers confined inmate to restraint chair for 14 hours despite him threatening officers because the district court should have construed all facts in favor of the inmate); *Jones v. Anderson*, 116 F.4th 669 (7th Cir. 2024) (use of restraint chair constitutional where inmate with knee brace refused to climb stairs to a cell); *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 667–68 (7th Cir. 2012) (no excessive force where pretrial detainee, subdued by pepper spray, was strapped in restraint chair and left for 18 hours); *See also Britt v. Hamilton Cnty.*, No. 21-3424, 2022 WL 405847 (6th Cir. Feb. 10, 2022) (no constitutional violation where jail officer placed non-resisting, detoxing inmate in restraint chair based only on concern for

potential self-harm after nurses felt he may be faking injury to get sent to hospital).

The existence of “fair warning” — an essential element of the offense in this case — was non-existent in the face of such diverse caselaw, especially where several cases appear to clearly permit the prolonged restraint chair use even on pretrial detainees who had already been subdued.

## **II. The Opinion Below Departs from Established Precedent in This Court and in the Eleventh Circuit.**

Whether a defendant had fair warning that his conduct violated a constitutional right presents a question of law that this Court reviews *de novo*. *See United States v. Hill*, 99 F.4th 1289, 1300 (11th Cir. 2024).

Evaluating whether a public official has “fair warning” that specific conduct violates the Constitution (or alternatively, whether a particular violation is “clearly established”), this Court has made clear that apart from previous cases with “materially similar” or “fundamentally similar” facts, “fair warning” may still exist where “a general constitutional rule already identified in the decisional law” applies “with obvious clarity to the specific conduct in question.” *Hope v. Pelzer*, 536 U.S. 730, 741, 122 S.Ct. 2508, 2516, 153 L.Ed.2d 666 (2002).

The opinion below cited no cases presenting materially similar or fundamentally similar facts to this case, and therefore was left to address this case

as an “obvious clarity” case by default.<sup>1</sup> That opinion departs from this Court’s precedent, however, by finding “fair warning” without “obvious clarity” regarding the specific facts of this case. Further, the court below departed from its own precedent by finding the alleged acts unlawful by novel implication rather than its own “truly obvious” standard that requires tying “clear law” to a “specific factual context” in a “particularized” and “relevant” way. *Youmans v. Gagnon*, 626 F.3d 557 (11th Cir. 2010); *see Anderson v. Creighton*, 483 U.S. 635, 639–40, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987).

By departing from established analyses of objective legal reasonableness, the Court of Appeals’ decision undermines the balance that this Court strikes “between the interests in vindication of citizens’ constitutional rights and in public officials’ effective performance of their duties,” and makes “it impossible for officials reasonably to anticipate when their conduct may give rise to” criminal liability. *See Anderson*, 483 U.S. at 639, 107 S.Ct. at 3039, 97 L.Ed.2d 523 (1987) (internal punctuation omitted).

Criminal liability attaches under 18 U.S.C. § 242 only if case law provides the defendant “fair warning” that his actions violated a constitutional right. *United States v. Lanier*, 520 U.S. 259, 267, 117 S.Ct. 1219,

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<sup>1</sup> The Eleventh Circuit asserts a third way to determine “clearly established” law, namely where conduct is “so egregious that a constitutional right was clearly violated, even in the total absence of case law.” *United States v. Hill*, 99 F.4th 1289, 1301 (11th Cir. 2024); *see United States v. Lanier*, 520 U.S. 259, 271, 117 S.Ct. 1219, 1227–28, 137 L.Ed.2d 432 (1997). That way, did not factor into the decision below.

137 L.Ed.2d 432 (1997); *United States v. Hill*, 99 F.4th 1289, 1300 (11th Cir. 2024).

To determine the adequacy of such a “fair warning,” courts must use the same standard for determining whether a constitutional right was “clearly established” in civil litigation under 42 U.S.C. § 1983. *Hope v. Pelzer*, 536 U.S. 730, 740, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002) (citing *Lanier*, 520 U.S. at 270–71, 117 S.Ct. 1219). That standard in civil litigation operates to shield all but the plainly incompetent or those who knowingly violate the law. *Ashcroft v. al-Kidd*, 563 U.S. 731, 743, 131 S.Ct. 2074, 2085, 179 L.Ed.2d 1149 (2011); *Crocker v. Beatty*, 995 F.3d 1232, 1239 (11th Cir. 2021).

A Government official’s conduct violates a clearly established right when precedent existing at the time of the challenged conduct placed the constitutional question “beyond debate” such that *every reasonable officer* in the official’s position would have understood that what he is doing violates that right. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S.Ct. 2074, 2083, 179 L.Ed.2d 1149 (2011); *Crocker v. Beatty*, 995 F.3d 1232 (11th Cir. 2021).

While the Eleventh Circuit identifies three ways a court could find “fair warning” for a constitutional violation, the court below relied only on one: the “broad statement of principle” or “general rule” standard arising from *Hope*. *Hill*, 99 F.4th at 1301; *see Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005). *Hope* reiterated that the “clearly established” standard does not require showing previous cases with “fundamentally similar” facts. 536 U.S. 730, 741, 122 S.Ct. 2508, 2516, 153 L.Ed.2d 666 (2002). Rather, a general constitutional rule previously established

may apply in “novel factual circumstances” in some cases. *Id.* This Court warned, however, that such a general rule could supply “fair warning” in new cases only when that rule applied “with obvious clarity to the specific conduct in question.” *Id.*; *accord Youmans v. Gagnon*, 626 F.3d 557 (11th Cir. 2010) (acknowledging that any “clear law” must still be “tied to the specific factual context”: “The unlawfulness of a given act must be made truly obvious, rather than simply implied, by the preexisting law.”); *Long v. Slaton*, 508 F.3d 576, 584 (11th Cir. 2007) (acknowledging the need for a broad principle of law to “establish[] clearly the unlawfulness of Defendants’ conduct.”)

This Court has also repeatedly warned courts not to define “clearly established” law at a high level of generality. *Kisela v. Hughes*, 584 U.S. 100, 104, 138 S.Ct. 1148, 1152, 200 L.Ed.2d 449 (2018); *see also Crocker v. Beatty*, 995 F.3d 1232, 1240 (11th Cir. 2021). Instead, in the context of excessive force claims, as in this case, “specificity is especially important.” *Kisela*, 584 U.S. at 104. Because officers have difficulty determining how the relevant legal doctrine applies in the factual circumstances they face in use of force scenarios, this Court upholds qualified immunity (and thus would find no fair warning) “unless existing precedent ‘squarely governs’ the specific facts at issue.” *Id.*

In light of these principles, this Court has decided, “The dispositive question is ‘whether the violative nature of *particular* conduct is clearly established.’” *Mullenix v. Luna*, 577 U.S. 7, 12, 136 S.Ct. 305, 308, 193 L.Ed.2d 255 (2015). Indeed, this Court has stated generally that a “unique set of facts and circumstances” alone serves as an “important indication” inconsistent with an alleged right being “clearly established.” *White*

*v. Pauly*, 580 U.S. 73, 80, 137 S.Ct. 548, 552, 196 L.Ed.2d 463 (2017).

In this case, Sheriff Hill’s conduct was not clearly established as illegal or constitutionally excessive.

In fact, far from any notion of “fair warning,” the trial court at sentencing referred to the convictions as “novel” on four separate occasions. The trial judge’s comments that all parties understood the novelty of this prosecution underscore the complete lack of fair warning:

As I think we all know, the convictions with which we are dealing in this case are pretty novel. I don’t know that any of us has seen a prosecution, let alone a criminal conviction, related to use of a restraint chair. And, in fact, I’m not aware of any civil lawsuits on that basis, either, except for the ones now pending against Mr. Hill. . . . [T]his type of prosecution is, in this court’s estimation, novel, at best, and that this type of charge does often involve violence, assaultive behavior, such as beating, tasing, shooting, et cetera, or an unlawful arrest, none of which is involved here.

*United States v. Hill*, No. 1:21-cr-00143-ELR-CCB, March 14, 2023, Doc. 139, at 9, 55.

**A. This Court’s Precedent Does Not “Squarely Govern” or Apply with “Obvious Clarity” to the Specific Facts in This Case.**

The court below wrongly applied precedent from *Hope* and *Kingsley* to determine that Sheriff Hill had fair warning in this matter. Neither case “squarely

governs” the specific conduct in this case, nor applies with “obvious clarity.”

In the use of force context, officers violate the Constitution when they knowingly and purposefully employ objectively unreasonable force. *Kingsley v. Hendrickson*, 576 U.S. 389, 397, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015); *Hill*, 99 F.4th at 1301–02. In the context of pretrial detainees, force will prove unconstitutionally excessive only where such force does not rationally relate to a legitimate, nonpunitive governmental purpose, or where it appears excessive in relation to that purpose. *Kingsley*, 576 U.S. at 398; *Hill*, 99 F.4th at 1302.

Further, courts must consider an officer’s use of force from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight. *Kingsley v. Hendrickson*, 576 U.S. 389, 397, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015); *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). When considering the reasonableness of an officer’s use of force against detainees, courts must carefully balance the nature and quality of the intrusion into the individual’s Fourth Amendment interests against the countervailing governmental interests at stake. *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). This balancing inquiry “requires careful attention to the facts and circumstances of each particular case,” weighing such factors as the “severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.*, at 396.

In *Kingsley*, dealing specifically with a pretrial detainee context, this Court expanded upon *Graham*'s factors, including such considerations as

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 v. Hendrickson*, 576 U.S. 389, 397, 135 S.Ct. 2466, 2473, 192 L.Ed.2d 416 (2015). This Court specifically explained, however, that the list was not exclusive and should only be considered an illustration of the “types of objective circumstances potentially relevant to a determination of excessive force.” *Id.*

The *Kingsley* Court further provided that, in a pretrial detainee context, the countervailing governmental interests at stake include the government's need to manage the facility in which the individual is detained. *Id.* In considering these governmental interests, courts should “appropriately defer[] to policies and practices that jail officials have determined they need to preserve internal order and discipline and to maintain institutional security.” *Id.*

The Circuit panel, however, stated that this Court's decision in *Kingsley* “clearly established” precedent that Hill could not use force against a “non-resistant, compliant detainee.” *Hill*, 99 F.4th at 1303–04. In particular, the panel determined that “the relevant factors weigh against Hill here: no need for force existed, the detainees were not ‘actively resisting,’ and

Hill could not have ‘reasonably perceived’ any ‘threat’ from the detainees’ compliant behavior.” *United States v. Hill*, 99 F.4th 1289, 1304 (11th Cir. 2024). The panel decided that Hill thus violated clearly established law when he “ordered each detainee into a restraint chair for at least four hours with his hands cuffed behind his back, without medical observation, and without bathroom (or other) breaks.” *Id.*, at 1304. Further, the panel declined to find the “protracted restraint-chair use” described above to have a “legitimate” purpose of maintaining jail security because it was “excessive in relation to that purpose.” *Id.*

The Circuit panel departed from precedent in multiple ways. First, the panel departed from this Court’s precedent when it treated the *Kingsley/Graham* factors as a test for precedent for “fair warning” in this case. The issue in *Kingsley* was whether the Court should use a subjective or objective standard in determining excessive force claims. 576 U.S. at 396–97. After concluding that an objective standard is proper, this Court provided the “*Kingsley* factors” as an illustration of how the objective test would work—when deciding future, and often novel, excessive force questions. *Id.*, at 397. In short, the *Kingsley* factors serve to analyze excessive force, not for gauging fair warning for novel instances of excessive force. Even if, therefore, Mr. Hill’s conduct failed the *Kingsley* test, that would not indicate that he had fair warning that his conduct was unconstitutional.

The Court of Appeals, however, used *Kingsley* to determine that Mr. Hill had no legitimate, non-punitive purpose for placing the detainees in a restraint chair, or that his conduct was excessive for any such purpose. It then used that same determination to decide that

Mr. Hill had fair warning that his conduct violated the Constitution. The lower court, therefore, erred in finding that Mr. Hill had fair warning based on its *Kingsley* factors analysis.

Second, the Court of Appeals departed from this Court's precedent by defining fair warning at too high a level of generality. Although warned by this Court not to indulge in broad generalities to create "clearly established" precedents, the panel below did just that. The Court of Appeals in fact reduced the very specific circumstances in *Hope* to manipulable generalities, and then applied a general rule as precedent for Mr. Hill's case.

*Hope*, of course, involved far more specific circumstances, including the fact that the prisoner's disruption was an acute physical altercation which had long been quelled, and "by the time petitioner was handcuffed to the hitching post . . . Hope had already been subdued, handcuffed, placed in leg irons, and transported back to the prison." *Hope v. Pelzer*, 536 U.S. 730, 738, 122 S.Ct. 2508, 2514, 153 L.Ed.2d 666 (2002). Further, Hope was cuffed to the hitching post in a torturous position with his hands above his shoulders, for 7 hours in the blazing sun, and guards taunted him with water but gave him little to none (giving it to dogs instead while Hope watched). *Id.*, at 734-35, 738.

According to the lower court, however, *Hope* "stands for the [general] proposition that restraint, especially prolonged and painful restraint, without any legitimate penological purpose is constitutionally impermissible punishment." *Hill*, 99 F.4th at 1302.

If a court must distill the specifics of Case A down to a new generality in order to apply to Case B, then no “broad principle” was clearly established to begin with, and Case A itself cannot have been fair warning for Case B. *Hope* requires the broad principle to be clearly established first. The court’s freshly-distilled rule is novel and thus not “fair warning” for Case B.

In light of this obvious deficiency, the court below cited an allegedly “clearer line” in its own precedent, stating that “force in the pretrial detainee context may be defensive or preventative—but never punitive—[so] the continuing use of force is impermissible when a detainee is complying, has been forced to comply, or is clearly unable to comply.” *Piazza v. Jefferson Cnty., Alabama*, 923 F.3d 947, 953 (11th Cir. 2019). But *Piazza*, like *Hope*, involved an actively resisting detainee who had already been subdued (indeed, was motionless) through the use of force, against whom the officer then “continued” the use of force, in particular a taser, and killed the detainee. The holding in *Piazza* applies specifically when a detainee has “stopped resisting,” implying a scenario in which resistance already existed and required subduing. 923 F.3d at 953 (emphasis original). In this case, in contrast, the Sheriff Hill used the restraint chair only preemptively, not punitively and not based on prior behavior that was prompting punishment.

Third, the Court of Appeals departed from this Court’s precedent by failing to apply all relevant factors, including countervailing government interests, under *Kingsley*. To begin with, the lower court relied on a factual analysis more akin to a sufficiency of evidence review, in light of a conviction, construing the facts in light of the verdict, rather than a *de novo*

review. The appellate court's recitation of facts recites only those facts from trial which support conviction; and the panel's *Kingsley* analysis is built upon this bias. *Hill*, 99 F.4th 1293–97, 1303–04.

Omitted from the panel's *Kingsley* analysis was any consideration of the following crucial facts from the totality of the circumstances:

- Rahim Peterkin had made multiple death threats, pointed guns at people's heads, kept police in an armed standoff, and when interviewed by Mr. Hill, displayed pre-attack indicators (based on Hill's 30 years of experience) and aggressive behavior toward him as well.
- Desmond Bailey led police on a high-speed chase with drugs and guns, and continued with "very, very aggressive behavior," with verbal threats and aggressive body language toward Mr. Hill at jail.
- Joseph Arnold had punched an 80-year old lady in a wheelchair and her 62-year old daughter because he thought the cut in front of him in line at the grocery store, then fled. Mr. Hill had been shown a video of the incident before Arnold arrived at the jail. When Mr. Hill spoke with him, Arnold kept arguing and yelling loudly, and flailed his hands so much another deputy had to handcuff him again. Mr. Hill considered him a continuing danger due to his behavior and suspected mental health episodes.
- Cryshon Hollins, a 17-year old, destroyed his home, broke windows, and had strewn debris all through the front yard and street

all because his mother would not pay for internet access. Mr. Hill had been shown pictures of the scene before intake. The decision to place him in the chair derived from concern over his demonstrated volatility and violent outburst over so slight a provocation.

- Glenn Howell, a landscaper, had a dispute with one of Mr. Hill's deputies after which he destroyed the deputy's front yard, ran his girlfriend off the road, and stalked his house by driving by repeatedly. After local police (it was a different county) did not respond, Mr. Hill called Howell, who cussed out Mr. Hill over the phone and harassed him with numerous return calls. Howell's dangerous and contemptuous actions toward law enforcement officials along with his interactions with Mr. Hill at the jail led Hill to find him to be a continued threat to officers.
- Walter Thomas repeatedly refused to comply with the commands of a female officer who informed Hill that the detainee had been such a problem all day. When Hill overheard the officer yelling at Thomas to get him to comply yet again, he ordered Thomas to be restrained.

Mr. Hill knew all of these facts and circumstances at the time he made the decisions to restrain each detainee in the chair. All these facts are clearly demonstrated in the record, and were conspicuously briefed by Appellant Hill's attorneys below. Yet the panel omitted these facts, which clearly carry weight

regarding *Graham* and *Kingsley* factors such as “the severity of the crimes at issue,” “the severity of the security problem,” and “the threat reasonably perceived by the officer.” *Kingsley*, 576 U.S. at 397. The panel simply did not consider the perspective of a reasonable officer at the scene under the totality of the circumstances.

Likewise, the panel did not “appropriately defer[] to policies and practices that jail officials [had] determined they need[ed] in order to preserve internal order and discipline and to maintain institutional security.” *Id.* The court below gave no weight—did not appear to consider at all—the institutional history of the Clayton County jail, its extensive violence, filth, and disruption prior to Mr. Hill, and Mr. Hill’s extensive reform efforts, policies, and practices that restored order, discipline, and maintained institutional security in the jail—even though all this information was in evidence and briefed. In effect, the lower court performed only half of a *Kingsley* analysis, omitting most of the counter-vailing interests on the side of the jail officials. As such, the Circuit opinion can hardly be described as paying “careful attention to the facts and circumstances of each particular case.” *Graham*, 490 U.S. at 396 (emphasis added).

The near-complete omission of all these factors left the lower court with a truncated and simplistic *Kingsley* analysis, concluding: “no need for force existed,” detainees were not actively resisting, Hill could not have reasonably perceived *any* threat, and thus *any* force used against them was excessive. *Hill*, 99 F.4th at 1304.

This Court insists that courts weigh “institutional consideration of internal security within the corrections

facilities themselves” as “[c]entral to all other corrections goals.” *Bell v. Wolfish*, 441 U.S. 520, 546–47, 99 S.Ct. 1861, 1878, 60 L.Ed.2d 447 (1979) (emphasis added). Further, the court below did not “give great deference to the actions of prison officials in applying prophylactic or preventive measures intended to reduce . . . breaches of prison discipline.” *Whitley v. Albers*, 475 U.S. 312, 320–22, 106 S.Ct. 1078, 1085, 89 L.Ed.2d 251 (1986). The panel did not “defer . . . to the expert judgment of these administrators, particularly in matters of internal security and order.” *Williams*, 943 F.2d at 1576. Instead, the lower court substituted its own 20/20 hindsight.

### **B. Eleventh Circuit Precedent Does Not “Squarely Govern” or Apply with “Obvious Clarity” to the Specific Facts in This Case.**

Nor does the panel’s own selected Circuit precedent apply to the specific facts of this case with obvious clarity, an essential element of the criminal offense.

The Circuit, in fact, previously affirmed that in some cases correctional officers may legitimately use force against non-resistant, pretrial detainees for preventative purposes. For example, the Circuit reiterated this Court’s rule that legitimate government interests may require force in a pretrial detainee setting for “preventative” purposes, including the need to preserve internal order and discipline. *Piazza v. Jefferson Cnty., Alabama*, 923 F.3d 947, 953 (11th Cir. 2019), citing *Kingsley*, 576 U.S. at 397.

The same Circuit case, however, went beyond *Kingsley* when it held that force in the pretrial context is impermissible anytime the detainee “is complying, has been forced to comply, or is clearly unable to comply,”

*Piazza*, 923 F.3d at 953, cited in *Hill*, 99 F.4th at 1302, insofar as that holding appears to forbid *any* force *anytime* a detainee is not actively, physically resisting. The Circuit cannot pretend that the conflict—or at the very least, gray area—created by these two positions “clearly establishes,” or gives “fair warning” for, the blanket proposition represented by the Circuit’s latter statement.

Other Circuit caselaw conflicts with such a blanket prohibition. The Circuit has previously found unconstitutional, in any custodial setting, only “gratuitous or disproportionate” force “that has no object but to inflict pain” against a detainee who had already been subdued or incapacitated. *Skrtich v. Thornton*, 280 F.3d 1295, 1304 (11th Cir. 2002), overruled on other grounds by *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009), cited in *Hill*, 99 F.4th at 1303.

The panel next cited *Williams v. Burton*, 943 F.2d 1572 (11th Cir. 1991)—a case which upheld qualified immunity for prison officials who kept a non-resistant prisoner in four-point restraints for 28 hours and taped his mouth shut with only periodic breaks. Reasonable officers could have understood this finding to permit protracted restraint-chair use even after offenders had calmed down. The panel nevertheless preferred to emphasize vague dicta to the contrary from *Williams*: “a Fourteenth Amendment violation *could* occur if . . . officers continue to use force after the necessity for the coercive action has ceased.” *Id.*, at 1576.

The holding in *Williams*, however, actually rested on this Court’s clearly established rules that,

“Once it is established that the force was applied in a good faith effort to maintain discipline and not maliciously or sadistically for the purpose of causing harm, the courts give great deference to the actions of prison officials in applying prophylactic or preventive measures intended to reduce the incidence of riots and other breaches of prison discipline.”

*Id.* (internal citations omitted), citing *Whitley v. Albers*, 475 U.S. 312, 320–22, 106 S.Ct. 1078, 1085, 89 L.Ed.2d 251 (1986).

Likewise, “[I]t is clear that federal courts must defer in many matters to the expert judgment of these administrators, particularly in matters of internal security and order.” *Williams*, 943 F.2d at 1576; see *Bell v. Wolfish*, 441 U.S. 520, 547, 99 S.Ct. 1861, 1878, 60 L.Ed.2d 447 (1979). The Circuit in *Williams*, therefore, instructed that officials had properly considered the detainee’s history of disobedience and potential for causing disruption in deciding to place him in restraints. 943 F.2d at 1576.

Likewise, *Skrtich* did not address the issue of preventative force used with non-resisting, pretrial detainees. In *Skrtich*, correctional officers incapacitated an inmate by using an electronic shock shield, then repeatedly kicked and punched him in the back, side, and torso, picked him up and continued beating him until he fell again three times, and bashed his head into a concrete wall. *Skrtich*, 280 F.3d 1299–1300. He required an airlift to the hospital where he spent nine days and required several months afterward to recover. *Id.*

Next, the panel cited *Danley v. Allen*, 540 F.3d 1298 (11th Cir. 2008), for the rule that “[w]hen jailers continue to use substantial force against a prisoner who has clearly stopped resisting—whether because he has decided to become compliant, he has been subdued, or he is otherwise incapacitated—that use of force is excessive.” *Id.*, at 1309. The panel in *Danley* held that it is unconstitutional when jail officers pepper sprayed a pretrial detainee who refused to obey orders, and then shut the detainee in a small, poorly ventilated cell for 12 to 13 hours. *Id.*, at 1309–10; *Crocker*, 995 F.3d at 1252. The officers then mocked the detainee while he suffered by parodying his choking and refusing him adequate time to shower. *Danley*, 540 F.3d at 1309–10. The holding, therefore, only applies under the facts of that case, and thus only when a resisting prisoner had been subdued and incapacitated. *United States v. Aguillard*, 217 F.3d 1319, 1321 (11th Cir. 2000) (“the holdings of a prior decision can reach only as far as the facts and circumstances presented to the court in the case which produced that decision”). The *Danley* rule’s inclusion of apparently *willfully compliant* detainees was therefore not precedent under Eleventh Circuit law, and thus could not have provided fair warning to Mr. Hill.

Furthermore, the *Danley* rule applies only to applications of “substantial force.” 540 F.3d at 1309. This element would not apply with obvious clarity to later cases with qualitatively different types of force (e.g., passive restraints versus tasers, fist strikes, or pepper spray). In fact, later Eleventh Circuit precedent distinguishes such types of force and upheld qualified immunity based on that distinction. For example, in *Crocker*, the plaintiff, who had been passively

restrained and locked in a hot police car for an hour, appealed to *Danley* as clearly established precedent. 995 F.3d at 1252. The panel in *Crocker* ruled that the force used in *Danley* (pepper spray) was “altogether different” than the “hot car.” *Id.* The panel cited an earlier case, *Patel*, in which it had similarly declined to find clearly established precedent because the passive restraint force was “altogether different,” even though the plaintiff had been locked in a hot transport van for two hours, found unconscious three times, and refused any water. *Id.*; *Patel v. Lanier Cnty. Georgia*, 969 F.3d 1173, 1187 (11th Cir. 2020).

In *Danley*, in fact, the Circuit reiterated a broad rule which *authorizes* the use of force against non-resisting, pretrial detainees in some cases: “Prison guards may use force when necessary to restore order and need not wait until disturbances reach dangerous proportions before responding.” *Danley v. Allen*, 540 F.3d 1298, 1307 (11th Cir. 2008). The Circuit has recently cited this very precedent for “readily’ concluding that the use of pepper spray following a prisoner’s failure to obey an officer’s order was constitutional.” *Haynes v. Volpelletto*, No. 23-11063, 2024 WL 1911200, at \*7 (11th Cir. May 1, 2024).

Given that *Danley* supports alternate conclusions depending upon the fact-specific findings, and creates a gray area in between those conclusions, its broad rule cannot provide “fair warning” in Mr. Hill’s specific case.

Finally, *Piazza* involved a clear case of the use of a dissimilar type of aggressive force against a clearly incapacitated detainee. In *Piazza*, a correctional officer tased a pretrial detainee who suffered cardiac issues, mental health issues, and alcohol withdrawals, and

who refused to comply with demands to enter a padded cell. 923 F.3d at 950. Upon being tased, the detainee fell to the floor, remained motionless, and urinated on himself. *Id.* When the detainee remained unresponsive, the officer responded by tasing him again, this time in the neck. *Id.* The detainee entered cardiac arrest and was later pronounced dead at the hospital. *Id.* Because of the extremely minimal risk to the officers and corresponding minimal severity of the problem involved, the court found the second taser use objectively unreasonable. *Hill*, 99 F.4th at 1303.

Given the unique facts of that case, the broad rule invoked did not provide fair warning for Mr. Hill. Mr. Hill's case has nothing to do with tasers, second uses of tasers on unconscious detainees, medical or mental health issues, substance abuse issues, etc. Notably, *Piazza* did not address a pretrial detainee setting where an officer, based on objective training and experience, observes "pre-attack indicators" and other behaviors which render passive restraints in a jail setting reasonable in the same way handcuffs are reasonable for transfer, even for hours.

The *Hill* panel, however, ignored these distinctions in *Piazza* and rationalized: "we have never suggested that the longstanding prohibition on a jail officer's use of force on an incapacitated detainee turns on as fine a point as the particular weapon deployed." 923 F.3d at 956. The application of such a principle here, however, requires equating the "force" represented by a passive restraint chair with the offensive force of tasers, pepper spray, fists, or police dogs. *Id.* Whether such an equation would prove to have merit or not is not the issue: The fact that it is an open question proves that the right could not have been clearly

established such that it provided fair warning to Mr. Hill that such conduct is unconstitutional. Further, while *Piazza* mentioned the more similar case of *Williams*—which featured four-point restraints—in the same context does not move the needle. *Williams* found the restraints constitutional and upheld qualified immunity for the officers. 943 F.2d at 1576. Nothing about *Williams* therefore could have provided fair warning of a constitutional violation for the specific circumstances of Mr. Hill’s case.

In short, no caselaw clearly establishes that the “force” of passive restraint chairs was objectively unreasonable under the circumstances. The broad rule standard requires specificity of facts in Fourth Amendment cases, but none of the cases cited have facts that specify anything close to Hill’s case. The only case that does get close (*Williams*) exonerated the officer’s use of force. The Eleventh Circuit has, therefore, applied too general a rule to a case where it does not apply with obvious clarity, and does not “squarely govern,” the specific facts of the case.

The Eleventh Circuit effectively acknowledges the deficiency of its opinion when it conflictively asserts: “we do not suggest that officers may never use ‘passive restraint’ if the restrained individual is not actively resisting.” *Hill*, 99 F.4th at 1304. So much for “fair warning.”

These conflicting cases and pronouncements underscore the fact that Eleventh Circuit caselaw does not provide fair warning on the question. The precedent is not “clearly established.” It is not clear, not established, not fair, and not a warning.



## CONCLUSION

Applicant respectfully, therefore, requests that this Court grant Mr. Hill’s Petition for a Writ of Certiorari.

Respectfully submitted,

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December 18, 2024