

No. _____

In the Supreme Court of the United States

NICOLE SANCHEZ, CASY SIMPSON, AND EDWARD LAROY
SIMPSON, II, INDIVIDUALLY AND AS THE REPRESENTATIVES OF
THE ESTATE OF DIANA LYNN SIMPSON,
Petitioners,

v.

YOUNG COUNTY, TEXAS AND YOUNG COUNTY
SHERIFF'S DEPARTMENT,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Kingsley v. Hendrickson*, the Court made clear that only objective considerations should apply when deciding 42 U.S.C. § 1983 excessive-force claims brought under the Due Process Clause of the Fourteenth Amendment because “pretrial detainees (unlike convicted prisoners) cannot be punished at all.” The Fifth Circuit, in affirming the district court’s summary judgment, applied a *subjective* deliberate indifference standard, requiring Petitioners to show that Young County jailers subjectively intended that harm occur to Diana Simpson, a pretrial detainee, who was arrested for public intoxication after admitting to ingesting twenty-four capsules of seven different prescription drugs with alcohol but was left alone in a cell where she died hours later.

Should the Fifth Circuit have applied an *objective* standard to determine whether the actions or inactions of jail personnel amounted to deliberate indifference of a pretrial detainee’s serious medical needs under the Fourteenth Amendment?

As the Sixth and Seventh Circuits have explicitly acknowledged, this question post-*Kingsley* has hopelessly divided the courts of appeals. The Second, Third, and Ninth Circuits require only objective deliberate indifference; the Fifth Circuit and five other circuits require subjective deliberate indifference.

**PARTIES TO THE PROCEEDING AND RULE
29.6 STATEMENT**

All the parties to the proceeding are listed in the caption. The petitioners are not a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Nicole Sanchez, Casy Simpson, Edward Laroy Simpson, II, individually and as representatives of the Estate of Diana Lynn Simpson, respectfully petition for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The per curiam opinion of the United States Court of Appeals for the Fifth Circuit is reported at 866 F.3d 274 and is reproduced in the appendix to this petition at Pet. App. 1–40. The summary judgment of the Northern District of Texas is unpublished and is reproduced at Pet. App. 41–71.

JURISDICTION

A divided United States Court of Appeals for the Fifth Circuit denied Petitioners' timely petition for rehearing en banc on March 5, 2018. Pet. App. at 71–72. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the U.S. Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

The Fourteenth Amendment to the U.S. Constitution provides, in relevant part: "No 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” U.S. Const. amend. XIV, § 1.

The statutory provision involved is 42 U.S.C. § 1983, which provides in relevant part:

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

STATEMENT OF THE CASE

In *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), the Court held that in an excessive-force claim brought by a pretrial detainee under 42 U.S.C. § 1983, a plaintiff “can prevail by providing objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose.” *Id.* at 2473–74. The Court held that “the defendant’s state of mind” should be assessed using an “objective standard” from “the perspective of a reasonable officer on the scene.” *Id.* at 2472–73.

After *Kingsley*, the circuit courts of appeals have become deeply split on whether the requirements of a failure-to-protect claim brought under the Fourteenth Amendment are satisfied by a showing of objective—as

opposed to subjective—deliberate indifference to a pretrial detainee’s serious medical needs.

Here, Young County jail personnel left Mrs. Diana Simpson, a pretrial detainee, alone in her cell where she died after being arrested for public intoxication and admitting to ingesting twenty-four capsules of seven different prescription drugs with alcohol. In affirming the district court’s summary judgment, the Fifth Circuit applied a *subjective* deliberate indifference standard, requiring Petitioners, the family of Mrs. Simpson, to show that Young County jailers subjectively intended that harm occur.

The decision of the Fifth Circuit represents one of two opposing opinions highlighting the deep fracture among the federal courts of appeals on the appropriate constitutional standard for failure-to-protect claims involving deliberate indifference to a pretrial detainee’s serious medical needs. In light of this Court’s decision in *Kingsley*, three circuit courts have held that to prove a constitutional violation, a plaintiff need not establish subjective intent to cause harm to a pretrial detainee because under the Fourteenth Amendment a pretrial detainee should not be punished at all. But the Fifth Circuit, along with five other circuits, continue to require a plaintiff to prove subjective intent that harm occur to a pretrial detainee, borrowing from this Court’s Eighth Amendment precedent.

Because of these inconsistent constitutional standards, the success of a failure-to-protect claim is driven, in part, by where the claim is filed.

I. BACKGROUND OF THE CASE

This case arises out of the death of Diana Simpson—a fifty-year-old mother of two children—who was arrested and jailed for public intoxication due to an overdose of prescription drugs combined with alcohol in an apparent suicide. Mrs. Simpson, a pretrial detainee at Young County Jail, died alone in her cell due to the failure of jail staff to appropriately screen, monitor, and treat her serious medical needs during the eight-hour period she was in custody and denied the freedom to act on her own behalf or seek emergency medical attention with the help of her family. That failure was not an unintended error, but the predictable result of Young County policies and customs that denied Mrs. Simpson the adequate screening and monitoring necessary to treat her serious medical needs.

A. Factual Background

Mrs. Simpson battled depression and previously attempted suicide. Pet. App. at 2. In the weeks preceding her death, Mrs. Simpson warned her husband, Edward Simpson, that if she were to try to take her own life again, she would withdraw cash from the ATM, check into a motel, and take a lethal dose of pills. *Id.*

Several weeks later, Mr. Simpson checked his bank account online and noticed there had been a cash withdrawal. *Id.* Believing his wife was at work, he tried to call her cell phone; she did not answer. *Id.* Mr. Simpson then called the hospital where his wife worked, but he learned that she had left the hospital after her shift. Pet. App. at 2–3.

Mr. Simpson frantically traced his wife's cell phone location and determined she was in some unspecified location in rural west Texas. Pet. App. at 17. Mr. Simpson again tried to call and text his wife but received no response. ROA.219–20. He then contacted multiple local law enforcement agencies in several different counties and told them his wife was missing and at risk for suicide. Pet. App. at 17–18. Mr. Simpson later filed a BOLO (Be On the Look Out) report so law enforcement could attempt to make contact with Mrs. Simpson to determine if she was safe. Pet. App. at 18–19. Officers began searching but were unable to locate Mrs. Simpson. *Id.* An entire day went by, but Mr. Simpson still did not hear from her. Pet. App. at 19.

The next morning, Mr. Simpson filed a missing-persons report. *Id.* Mr. Simpson also put a picture of his wife's vehicle on Facebook, requesting that anybody who saw the vehicle to contact the authorities. *Id.* Later that afternoon, Mr. Simpson received a call from a woman informing him she saw a vehicle matching the description posted on Facebook parked on the side of a road under a tree in Graham, Texas, the county seat of Young County. *Id.*

Police officers found Mrs. Simpson unconscious in her car. Pet. App. at 3. She admitted consuming alcohol and ingesting 24 capsules of seven different prescription drugs. Pet. App. at 22, 76. She had slurred speech, was slow in her answers, was talking quietly, had a hard time keeping her eyes open, had difficulty getting a cup of water to her mouth, and was unsteady on her feet, almost falling down while walking. Pet. App. 22, 75–76.

Concerned for her safety and well-being, the responding police officers contacted emergency medical services to evaluate Mrs. Simpson. Pet. App. at 3. While being evaluated by paramedics, the officers searched Mrs. Simpson's vehicle and found a substantial number of empty and partially-empty blister packs of prescription drugs. Pet. App. at 4, 22, 76. The officers collected, photographed, and inventoried this evidence, which was catalogued in the arrest report. *Id.*

An officer at the scene asked Mrs. Simpson "how much of the medicine she had taken." Pet. App. at 4, 76. She initially denied trying to hurt herself but ultimately confessed that she had taken "all of it that was missing" that day. *Id.* Mrs. Simpson also admitted that she had consumed alcohol the night before "to help her sleep." *Id.* She was asked if she wanted to go to the hospital; she said no. *Id.* The paramedic told one of the police officers that although "Simpson's vital signs were fine" at that time, "Simpson did not need to be left there." Pet. App. at 76; ROA.100.

The arresting officer concluded that "Simpson was a danger to herself or others if [he were] to leave her in the public due to her being on some type of medication." Pet. App. at 76. Mrs. Simpson was arrested for public intoxication at 6:09 p.m. and booked into Young County Jail at 6:30 p.m. Pet. App. at 73, 78.

The arrest report documenting the facts and circumstances of her arrest was completed by the arresting officer at Young County Jail and was signed by Young County jail staff. Pet. App. at 22, 73–77.

Yet, despite having direct knowledge of all the information contained in the arresting officer's report, the jailers did not closely observe Mrs. Simpson, periodically rouse her, or monitor her serious medical condition. Pet. App. at 20–22, 34, 37–39. Instead, they simply put her in a jail cell alone to “sleep it off.” Pet. App. at 45.

After learning of Mrs. Simpson's arrest and that she would be transported to the Young County Jail, Mr. Simpson repeatedly called the police department and the Young County Jail, attempting to check on his wife's well-being and to inform them about her earlier suicide threats, warning “she said she was going to take drugs.” Pet. App. at 6, 16, 34, 44–45. Mr. Simpson even requested that jail staff contact the Texas Department of Mental Health and Mental Retardation (MHMR) to assist his wife. Pet. App. at 6. But the jailer responded that MHMR would not see her until she was sober and that she was just drunk and needed to sleep it off. *Id.*

Early the next morning, Mrs. Simpson was found unresponsive in her cell. *Id.* There is no evidence in the record when she became unconscious, how long she had remained unconscious, or when she died. The autopsy report found that Mrs. Simpson died due to “mixed drug intoxication” with the manner of death being “consistent with and highly suspicious of suicide.” *Id.*

On the same day Mrs. Simpson died, the Texas Commission on Jail Standards conducted a routine inspection of the jail. Pet. App. at 23. The Commission found Young County Jail noncompliant because the inspection revealed that jail staff were not trained for

emergencies and the “approved mental disabilities/suicide prevention screening form” was not being completed immediately and in its entirety for all detainees. Pet. App. at 23, 35.

In Texas, correctional facilities are legally required to complete screening instruments for all pretrial detainees at the time of booking. TEX. ADMIN. CODE § 273.5(b) (“An approved mental disabilities/suicide prevention screening instrument shall be completed immediately on all inmates admitted.”). In addition, all jails are required to implement the continuity of care query (CCQ) on all detainees. TEX. HEALTH & SAFETY CODE § 614.013, .017; TEX. ADMIN. CODE § 273.5(c)(1) (“Each jail shall . . . check each inmate upon intake into the jail against the Department of State Health Services CCQ system to determine if the inmate has previously received state mental healthcare . . .”).

The purpose of the screening instrument is to evaluate a detainee through questioning and visual observation for physical or psychological problems, and to document a detainee’s health history. ROA.123–24; ROA.119. The screening instrument is used to “alert oncoming jailers of any significant medical problems or suicidal tendencies of inmates.” ROA.123. Jail officials rely on the screening instrument to assist in providing continuity of care for detainees who suffer from significant medical problems or suicidal tendencies. ROA.347; ROA.351–52.

CCQ is a state-created information-sharing service providing “real-time identification of individuals who are arrested and also have received state mental health services.” Pet. App. at 5. The purpose of conducting a

CCQ is to determine whether the detainee has been treated by a state mental-health agency or psychiatric hospital for mental illness so they can receive appropriate care. *Id.*

Combined, these state-mandated and critically important screening tools are an integral part of Texas's comprehensive statutory and regulatory regime used to identify at-risk detainees to ensure timely and effective intervention, treatment, and continuity of care. TEX. HEALTH & SAFETY CODE §§ 614.001(3-a)(A)–(C), .013, .017; TEX. CODE CRIM. PROC. §§ 16.22–23; TEX. ADMIN. CODE § 273.5(b), (c)(1).

The first question on Mrs. Simpson's screening instrument asked: "Does arresting officer or any other person believe that the inmate is at risk due to medical condition, mental illness, mental retardation, or suicide concern?" Pet. App. at 78. The jailer, however, failed to document whether the arresting officer believed Mrs. Simpson was at risk due to a medical condition or suicide concern even though the arresting officer documented in his arrest report—which a jailer *signed*—that Mrs. Simpson was a danger to herself because she had ingested 24 capsules of seven different prescription drugs with alcohol. Pet. App. at 73–78. In addition, jail staff received numerous telephone calls throughout the night from Mr. Simpson alerting the jail that his wife was suicidal and may have taken drugs to kill herself. Pet. App. at 6, 16, 34, 44–45. By leaving this portion of Mrs. Simpson's screening instrument completely blank, the jailer failed to inform other jail staff that the arresting officer believed Mrs. Simpson was at risk due to her drug overdose and that Mr. Simpson believed she was at risk due to a suicide

concern. Pet. App. at 78. And inexplicably, the jailer marked “no” on the screening instrument as to whether Mrs. Simpson had taken any medications. Pet. App. at 20, 78.

The jailer also failed to document any staff observations about whether Mrs. Simpson was under the influence of drugs or alcohol, despite the fact that the arresting officer concluded she “was a danger to herself or others if [he] was to leave her in the public due to her being on some type of medication.” Pet. App. at 76, 79.

During intake, Mrs. Simpson provided answers to the self-report questions on the screening instrument. Pet. App. at 78–79. Mrs. Simpson said she was pregnant even though she was a fifty-year-old woman with no uterus. Pet. App. at 20, 78, 89. She also said she was not taking any medication even though the jailers knew or should have known—based on the arrest report *signed* by one of the jailers—that Mrs. Simpson admitted to ingesting at least twenty-four capsules of seven different prescription drugs that day and had been arrested for public intoxication due to her being on some type of medication. Pet. App. at 73–78. Mrs. Simpson also denied that she had ever attempted suicide or had any thought of killing herself, yet her husband specifically told jail officials that she was suicidal and threatened “she was going to take drugs.” Pet. App. at 16, 79. In addition, jail officials knew or should have known, based on the arrest report, that she admitted to taking prescription drugs with alcohol in quantities highly suspicious of suicide. Pet. App. at 73–77. In her highly intoxicated condition and based on what the jail knew or should have known from the

arresting officer's report and from repeated warnings by Mr. Simpson, no reasonable jailer would have relied on anything Mrs. Simpson said that was inconsistent with a suicide attempt.

And the Young County sheriff testified that if a family member called the jail and notified a staff member that an inmate may be attempting suicide, he would expect the staff member to "[c]heck into it, monitor it." ROA.404; ROA.407. Despite repeated phone calls from Mr. Simpson, however, there is a disputed issue of material fact whether jail staff ever entered Mrs. Simpson's cell to monitor her condition at all. Pet. App. at 21, 37. The sheriff also admitted that no CCQ was run on Mrs. Simpson. Pet. App. at 54; ROA.358. In fact, the sheriff was unaware that, since 2010, Texas law required a CCQ for all detainees. Pet. App. at 23.

The sheriff also admitted Young County took no steps to train jail staff with regard to completing the intake instrument, and never asked the jailers any questions to verify whether they were properly trained. Pet. App. at 23. The sheriff acknowledged that the jail had "been out of compliance ever since '05 We've been out of compliance on various things and I do not know what they are." *Id.* The sheriff confessed that the county simply waited until state jail officials found the jail non-compliant in some area and then he would just fix it. *Id.* Despite these stunning admissions, the sheriff acknowledged that the consequences of failing to complete the intake instrument were "deadly serious." Pet. App. at 61.

Although official Young County policy requires jailers to utilize a log "to indicate the frequencies of

inmate checks made by staff during each watch period,” ROA.125, ¶2, the only contemporaneous documentation in the record of any jail staff actually “checking” on Mrs. Simpson is a report prepared by Officer Chris Post of the Graham Police Department. Pet. App. at 37–38. On May 20, 2013, at approximately 12:15 AM, Officer Post arrived at the jail. *Id.* While in the book-in area, Deputy Wacaster of the Young County Sheriff’s Department asked that Officer Post come see something in a female holding cell. *Id.* Deputy Wacaster then invited Officer Post to look through the window while he opened a metal door over the window. *Id.* Officer Post peered into Mrs. Simpson’s holding cell and “observed a white female, later identified as . . . Diana Simpson, lying on the ground at the foot of the window in only a t-shirt with her genital area exposed.” *Id.* Deputy Wacaster was later indicted for two counts of aggravated sexual assault of a former Young County detainee. Pet. App. at 24.

A reasonable jury could have concluded that Deputy Wacaster was not “checking” on Mrs. Simpson’s well-being, but instead was inviting others to peer at Mrs. Simpson’s partially nude body for their own personal prurient interests. *Id.* Deputy Wacaster did not have the decency to enter Mrs. Simpson’s cell to cover her up, check to see if she was breathing, or to take any other humane action to ascertain the circumstances of her prolonged unconsciousness. *Id.* A reasonable jury could find his “observation” was inadequate, deliberately indifferent, and resulted in the delay or denial of life-saving medical treatment.

Less than two and a half hours later, a jailer went to the cell to complete Mrs. Simpson's book-in process¹ and found her unresponsive. Pet. App. at 6. Mrs. Simpson was taken to the hospital where she was pronounced dead. *Id.* The sheriff testified that none of the jailers were disciplined and that he made no effort to investigate. Pet. App. at 36–37.

Diana Simpson was a pretrial detainee arrested for public intoxication who was last observed unconscious and half-naked on her cell floor. She died in the custody of Young County jail staff hours after her husband specifically warned the jail staff—a warning explicitly confirmed by the arresting officer's report *signed* by jail staff—that she may have taken drugs to kill herself and “begged” them to take her to the hospital for treatment. Pet. App. at 34. Mrs. Simpson's death was the inevitable consequence of the deliberate indifference of Young County jail staff resulting from the county's policies and customs of failing to adequately screen, monitor, and treat pretrial detainees with serious medical needs.

¹ The book-in process began at 6:30 p.m., but for some reason it was not completed. Pet. App. at 78. The arrest report documents Mrs. Simpson's severely-intoxicated condition during her arrest at 6:09 p.m. Pet. App. at 73–76. Young County disputes the characterization of Mrs. Simpson's presentation at the jail as reported in the arrest report. Pet. App. at 73, 78. Over two years after Mrs. Simpson's death and after the lawsuit was filed, a jailer signed a declaration stating that Mrs. Simpson was “responsive, talking coherently, and providing satisfactory answers” during book-in. Pet. App. at 21, 60.

B. Proceedings Below

Petitioners, the family of Diana Simpson, sued respondents Young County, Texas and the Young County Sheriff's Department for, among other things, a violation of 42 U.S.C. § 1983. Pet. App. at 1–2. Petitioners claimed that the county violated Mrs. Simpson's constitutional rights when it ignored state-mandated intake and screening procedures and provided inadequate medical monitoring and treatment of Mrs. Simpson's serious medical needs before she died alone in a cell from a probable suicide-related overdose the evening after she was arrested for public intoxication. Pet. App. at 2.

Petitioners based their § 1983 claim on two theories—an episodic-acts-or-omissions claim and an unconstitutional conditions-of-confinement claim. *Id.* Petitioners claimed that Young County was liable for the acts and omissions of its jail personnel who jailed Mrs. Simpson without sufficient medical screening, monitoring, and treatment of her severe condition. *Id.* Petitioners also asserted that the county's unconstitutional conditions of pretrial confinement, arising from the county's policies and customs, caused Mrs. Simpson's death. *Id.*

Respondents filed a summary-judgment motion. ROA.59–85. In their response to the motion, Petitioners argued that “the jail staff *should have* appreciated the risk Mrs. Simpson posed to herself, especially in light of her husband calling to inform them of the danger multiple times.” Pet. App. at 94 (emphasis added). Petitioners contended that “[a] jury should determine whether the jail staff's inaction in the face of all the information they possess[ed] regarding

Mrs. Simpson's medical condition amounts to deliberate indifference to the medical risk Mrs. Simpson faced." Pet. App. at 96. Petitioners also argued that the actions and inactions of Young County and its staff amounted to deliberate indifference to Mrs. Simpson's serious medical needs. Pet. App. at 99. Petitioners claimed that this indifference was the direct result of Young County's jail policy of only "observing" pretrial detainees through a cell window regardless of whether a detainee was in danger and needed to be taken to a hospital, Pet. App. at 97–98, and of a de facto custom of failing to properly complete state-mandated health-suicide intake procedures. Pet. App. at 99.

Additionally, Petitioners argued that a county acts with objective deliberate indifference when it promulgates (or fails to promulgate) such policies or customs despite the known or obvious consequences that constitutional violations would result. Pet. App. at 98–99.

The district court granted Respondents' motion and entered final judgment dismissing all claims. Pet. App. at 41–69. Petitioners timely filed a notice of appeal. Pet. App. at 7.

On appeal, Petitioners again argued that an objective standard should apply. Pet. App. at 103–04. Specifically, Petitioners asserted that if a suicidal person consumes alcohol with twenty-four capsules of seven different prescription drugs and was found unconscious, common sense would dictate that the person was at a serious risk of bodily harm. Pet. App. at 105. Petitioners maintained that "constructive notice is sufficient based on what the Sheriff, the

policymaker for the Young County Jail, *should have* known.” Pet. App. at 103 (emphasis added). Petitioners asserted that there was a “triable issue of fact about whether Young County jailers *should have* contacted medical personnel in response to Simpson’s condition or, at least, *should have* tried to engage Simpson verbally or entered her cell to monitor her well-being.” Pet. App. at 106 (emphasis added).

On July 31, 2017, a divided three-judge panel of the Fifth Circuit in a per curiam opinion affirmed in part and vacated and remanded in part the district court’s summary judgment. Pet. App. at 12. The entire panel vacated and remanded for consideration as to whether there were genuine issues of material fact as to Petitioners’ unconstitutional conditions-of-confinement claim because the district court did not analyze this claim at all. Pet. App. at 9.

The panel split on the Petitioners’ episodic-acts-or-omissions claim. *Id.* The majority affirmed the district court’s dismissal of this claim under the Fifth Circuit’s subjective deliberate indifference standard. *Id.* According to the majority, this standard required Petitioners to show that the Young County jailers were “aware of facts from which an inference of a substantial risk of serious harm to an individual could be drawn; that they actually drew the inference; and that their response indicates subjective intention that the harm occur.” Pet. App. at 10 (citing *Thompson v. Upshur Cty.*, 245 F.3d 447, 458–59 (5th Cir. 2001)). Judge Barksdale dissented. Pet. App. at 13–40.

The majority prefaced its decision by characterizing the Fifth Circuit’s subjective deliberate indifference standard as “an extremely high standard to meet.” Pet.

App. at 10 (citing *Stewart v. Murphy*, 174 F.3d 530, 534 (5th Cir. 1999)). The majority noted that in the Fifth Circuit, “[a] municipality is almost never liable for an isolated unconstitutional action on the part of an employee.” *Id.* (quoting *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009) (alteration in original)).

Applying this “extremely high standard,” the majority first discounted evidence that Young County had an established policy of “observation” only, in which jailers would simply check detainees periodically through the cell window regardless of the detainees’ medical condition and a de facto custom of failing to complete the state-mandated screening procedures. Pet. App. at 9–10. Despite evidence showing that Young County was cited for repeatedly failing to complete state-mandated intake screening instruments or run CCQs on all detainees, Pet. App. at 23, 35–38, the majority concluded that this evidence did not create genuine issues of material fact because Petitioners’ claims arose from a “single case” involving Mrs. Simpson and that Petitioners “offered no evidence about the alleged maltreatment of any other detainees” Pet. App. at 9–10.

Second, the majority held that regardless of whether there was sufficient evidence to create fact issues on whether the jailers’ failure to follow state-mandated intake procedures reflected county policies and customs, the failure to complete Mrs. Simpson’s intake instrument and to run a CCQ were merely “matters of file documentation.” Pet. App. at 10. The majority held that the intake instrument was

“substantially completed”² and that Petitioners did not adduce “evidence that Mrs. Simpson’s name would have appeared on a CCQ inquiry.” *Id.* In fact, the majority determined that Young County’s violation of Texas law weighed *against* holding the county liable because the incomplete “intake screening [showed] only an indication of intoxication,” serving as evidence that the jailers’ failure to follow the law revealed they did not, in fact, have subjective knowledge of a substantial risk of serious harm to Mrs. Simpson. *See* Pet. App. at 10–11.

Third, the majority found that Mrs. Simpson’s “treatment by employees of the County did not indicate subjective deliberate indifference.” Pet. App. at 10. Although the arrest report signed by a Young County jailer documented that Mrs. Simpson admitted that she ingested a lethal dose of prescription drugs, the majority discounted this knowledge, relieved Young County from responsibility, and faulted Mrs. Simpson because she did not repeat her confession in-person to jail officials. Pet. App. at 3–4, 5, 10–11, 12. Moreover, the majority downplayed the arrest report—*signed* by Young County jail staff—detailing her slurred speech, slow response time, difficulty keeping her eyes open while speaking, difficulty drinking water, and the substantial amount of drugs she had admittedly ingested with alcohol that led the arresting officer to conclude that Mrs. Simpson should not be left alone on the side of the road because she was a danger to herself

² Although known to the jailer who signed the arrest report, the most crucial information—that Mrs. Simpson had ingested 24 capsules of seven different prescription drugs with alcohol—was omitted from the state-mandated screening instrument and therefore not shared with any other jailers. Pet. App. at 73–80.

and others. Pet. App. at 3–5, 10–11. Instead, the majority credited a jailer who claimed two years after Mrs. Simpson’s death and after the litigation had ensued that she was “responsive, talking coherently, and providing satisfactory answers” to her questions during book-in. Pet. App. at 5.

The majority also emphasized that Mrs. Simpson denied the need to go to the hospital or that she was attempting to commit suicide. Pet. App. at 3–5. The majority appeared to suggest that a severely-impaired detainee’s denial of suicidal ideation must be taken at face value, and contradictory information that would lead a reasonable jailer to doubt the veracity of the statement can be ignored. Pet. App. at 3–5, 12.

Fourth, despite the fact that the sheriff served as Young County’s policymaker, the majority concluded that liability could not be imposed on the county for any failures by the sheriff because he was not personally involved and did not have any knowledge of Mrs. Simpson’s situation until after her death. Pet. App. at 11. The majority dismissed what the dissent referred to as the sheriff’s “unapologetic and flagrant disregard” for state-mandated intake procedures which, in the dissent’s view, raised genuine issues of material fact that the county failed to maintain policies and customs to adequately screen, monitor, and treat at-risk detainees. Pet. App. at 31.

According to the majority, the evidence that Mr. Simpson “begged” the jailers to take his wife to the hospital also did not raise a genuine issue of material fact either. Pet. App. at 6. The majority criticized Mrs. Simpson’s husband because “[h]e told the officer she was a suicide risk, but he did not say that she might

have taken drugs or overdosed because he did not know that” even though the arrest report—in Young County’s possession—contained this exact information. Pet. App. at 6, 73–77.

Finally, the majority found that Deputy Wacaster did not respond with subjective deliberate indifference to Mrs. Simpson’s serious medical needs when he engaged in “lurid” misconduct by inviting others to “star[e] at Mrs. Simpson’s semi-exposed body.” *See* Pet. App. at 10; *see also* Pet. App. at 24 (Barksdale, J., dissenting). This exploitive “observation” amounted to the only contemporaneous evidence in the record of Mrs. Simpson being observed by anyone during the eight-hour period she was left alone in her jail cell. Pet. App. at 37–38. Yet the majority concluded that her serious medical condition was not obvious to jail employees.³ Pet. App. at 12.

In its opinion, the majority revealed why deliberate indifference in the Fifth Circuit is such an “extremely high standard” to meet:

The Constitution does not require that officers always take arrestees suspected to be under the influence of drugs or alcohol, or reported by relatives to be at risk, to a hospital against their wishes. . . . Mrs. Simpson’s decision to take her own life is tragic. The County, however, cannot

³ The majority incorrectly stated that the jail personnel had information about Mrs. Simpson from several sources, including the emergency medical technicians (EMTs). Pet. App. at 11. This finding is not supported by the record evidence. As Judge Barksdale noted in his dissent, unlike the arrest report, the EMTs “incident report does not indicate if or when the jail received it.” Pet. App. at 23.

be held responsible for fatal decisions she made that were, under all the circumstances, not *obvious* to government employees.

Pet. App. at 12 (emphasis added).

In a strongly-worded dissent, Judge Barksdale observed that the facts of this case “point toward a county’s customs and its jailers’ resulting misconduct toward Simpson—a pretrial detainee who had already taken steps to commit suicide before being arrested—being not only unconstitutional but unconscionable.” Pet. App. at 40. Recognizing that the majority opinion conflicts with the Fifth Circuit’s own precedent relating to standards applicable to episodic-acts-or-omissions claims, Judge Barksdale emphasized that “[t]his disagreement highlights the need for an updated articulation by our court . . . on the nature and standard of [episodic-acts-or-omissions] law pertaining to the county’s liability.” Pet. App. at 24.

Petitioners timely filed a petition for rehearing en banc, specifically arguing, in part, that this Court’s recent decision in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), required the Fifth Circuit to adopt an objective deliberate indifference standard for medical care of pretrial detainees under the Fourteenth Amendment. Pet. App. at 107, 109–12.

On March 5, 2018, the Fifth Circuit denied the petition, with four judges voting in favor of rehearing and eleven judges voting against.⁴ Pet. App. at 71–72.

⁴ Although *Kingsley* was not specifically cited until Petitioners’ motion for rehearing en banc, Pet. App. at 107, 109–12, Petitioners repeatedly argued in briefs to the district court and the Fifth Circuit panel that an objective deliberate indifference standard

REASONS FOR GRANTING THE PETITION

I. **After *Kingsley v. Hendrickson*, a deep split has emerged, dividing the circuits on the applicable constitutional standard for deliberate indifference claims brought under the Fourteenth Amendment.**

After this Court’s decision in *Kingsley*, a serious constitutional disagreement has emerged among the federal courts, deeply fracturing the circuits on the applicable standard for deliberate-indifference claims brought under the Fourteenth Amendment and resulting in directly conflicting and entrenched rulings by the federal courts of appeals. Specifically, the courts do not agree on whether the governing test for

should apply under the Fourteenth Amendment, which was acknowledged in Judge Barksdale’s dissent. Pet. App. at 30, 32 (noting that Plaintiffs “attempt[ed] to broaden the [episodic-acts-or-omissions] standard of *subjective* knowledge by the official for government-entity liability to mere *constructive* knowledge,” but “[d]espite erroneously urging constructive knowledge . . . plaintiffs ground their [episodic-acts-or-omissions] analysis in our court’s proper standard”). In *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415 (5th Cir. 2017), the Fifth Circuit declined the dissent’s invitation to revisit Fifth Circuit precedent in light of *Kingsley*, noting that “[b]ecause the Fifth Circuit has continued to rely on *Hare* and to apply a subjective standard post-*Kingsley*, this panel is bound by [the Fifth Circuit’s] rule of orderliness.” *Id.* at 419 n.4 (citing *Estate of Henson v. Wichita Cty.*, 795 F.3d 456 (5th Cir. 2015); *Hyatt v. Thomas*, 843 F.3d 172 (5th Cir. 2016); *Zimmerman v. Cutler*, 657 F. App’x 340 (5th Cir. 2016)).

Consistent with the Fifth Circuit’s rule of orderliness and the court’s prior precedent, Petitioners timely and appropriately raised in their petition for rehearing en banc the argument that, following *Kingsley*, an objective standard should apply to § 1983 cases alleging inadequate medical care of pretrial detainees under the Fourteenth Amendment. Pet. App. at 107, 109–12.

deliberate-indifference claims should require a plaintiff to prove that jail personnel were subjectively aware that harm would occur or, alternatively, that their actions or inactions were objectively unreasonable.

Three circuits—the Second, Third, and Ninth—no longer require a plaintiff to prove subjective intent in a variety of cases involving an alleged violation of a pretrial detainee’s constitutional rights under the Fourteenth Amendment. *See Darnell v. Pineiro*, 849 F.3d 17, 35–36 (2d Cir. 2017) (holding that in light of *Kingsley*, a pretrial detainee’s conditions-of-confinement claim for “deliberate indifference should be defined objectively”); *Kedra v. Schroeter*, 876 F.3d 424, 437–40 (3d Cir. 2017) (acknowledging that the Third Circuit previously adopted an objective standard for reviewing pretrial-detainee suicide claims in *Palakovic v. Wetzel*, 854 F.3d 209, 224 (3d Cir. 2017), consistent with the Court’s holding in *Kingsley*); *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018) (holding that claims for violations of the right to adequate medical care brought by pretrial detainees against individual defendants under the Fourteenth Amendment must be evaluated under an objective deliberate indifference standard); *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1070–71 (9th Cir. 2016) (en banc) (holding that the test to be applied under *Kingsley* for a pretrial detainee who asserts a failure-to-protect claim under the Fourteenth Amendment does not include a subjective intent element), *cert. denied sub nom. Los Angeles Cty. v. Castro*, 137 S. Ct. 831 (2017).

Alternatively, six circuits—the Fifth, Sixth, Seventh, Eighth, Tenth and Eleventh—continue to

require proof of subjective deliberate indifference when evaluating an alleged violation of a pretrial detainee's constitutional rights under the Fourteenth Amendment. *See Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419–20 (5th Cir. 2017) (“To succeed in a § 1983 action based on ‘episodic acts or omissions’ in violation of Fourteenth Amendment rights, a pretrial detainee must show subjective deliberate indifference . . . That is, the plaintiff must show that the official knew of and disregarded a substantial risk of serious harm.”); *Richmond v. Huq*, 885 F.3d 928, 937–38 (6th Cir. 2018) (acknowledging that the Sixth Circuit has “historically analyzed Fourteenth Amendment pretrial detainee claims and Eighth Amendment claims under the same rubric,” which is “comprised of an objective and a subjective component” (internal quotations, citations, and footnote omitted)); *Smego v. Jumper*, 707 F. App’x 411, 412 (7th Cir. 2017) (holding in an unpublished opinion “that the protections afforded by [the Eighth and Fourteenth Amendments] are ‘functionally indistinguishable’ in the context of a claim about inadequate medical care [by a pretrial detainee]” (citations omitted)); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 (8th Cir. 2018) (requiring both an objective and subjective analysis to determine whether an official acted with deliberate indifference); *Rife v. Okla. Dep’t of Pub. Safety*, 854 F.3d 637, 647 (10th Cir. 2017) (following a “two-pronged test for deliberate indifference claims” brought by pretrial detainees that includes both an objective and subjective prong); *Dang ex rel. Dang v. Sheriff, Seminole Cty. Fla.*, 871 F.3d 1272, 1279–80 (11th Cir. 2017) (requiring a plaintiff to prove “subjective knowledge of a risk of serious harm” to establish

deliberate indifference to a pretrial detainee's serious medical needs).

Two circuits have limited *Kingsley* to its facts. See *Whitney*, 887 F.3d at 860 n.4 (“*Kingsley* does not control because it was an excessive force case, not a deliberate indifference case.”); *Dang ex rel. Dang*, 874 F.3d at 1279 n.2 (“*Kingsley* involved an excessive-force claim, not a claim of inadequate medical treatment due to deliberate indifference.”).

Several circuits, however, have indicated that this Court's decision in *Kingsley* may have “called into question” whether the subjective standard remains viable to claims brought by pretrial detainees under the Fourteenth Amendment. See *Smego*, 707 F. App'x at 412; see also *Richmond*, 885 F.3d at 938 n.3 (discussing that “[s]everal of our sister courts have [considered whether *Kingsley* abrogates the subjective intent requirement] and are split” and that “[the panel] recognize[s] that this shift in Fourteenth Amendment deliberate indifference jurisprudence calls into serious doubt whether [a plaintiff] need even show that the individual defendant-officials were subjectively aware of [a plaintiff's] serious medical conditions and nonetheless wantonly disregarded them.”); see also *Alderson*, 848 F.3d at 419 n.4 (declining to extend *Kingsley* to failure-to-protect claims absent en banc reconsideration of controlling precedent in the Fifth Circuit); *id.* at 424–25 (Graves, J. dissenting to footnote four) (suggesting the Fifth Circuit reconsider the deliberate indifference standard in light of *Kingsley*, noting that the Court's decision “appears to call into question this court's holding in *Hare v. City of Corinth*[, 74 F.3d 633 (5th Cir. 1996) (en banc),]” and “support[s]

the conclusion that an objective standard would apply in failure-to-protect” claims).

Undoubtedly, had Mrs. Simpson been arrested and jailed for public intoxication in the Second, Third, or Ninth Circuits, the district court would have reviewed the facts and circumstances of the case from the perspective of a reasonable jailer without regard to any underlying intent or motivations. Using this objective standard, the district court would have likely determined that genuine issues of material fact existed on whether Young County jail personnel knew or should have known from the arrest report and Mr. Simpson’s repeated warnings throughout the night that Mrs. Simpson was suffering from a toxic combination of drug overdose and alcohol that presented a substantial risk of serious bodily injury or death. The district court would have also likely determined fact issues existed on whether it was objectively unreasonable for a jailer to ignore state-mandated intake procedures designed to protect at-risk detainees that directly resulted from Young County’s policies and customs.⁵ Finally, the district court would likely have

⁵ Contrary to the majority’s opinion, Young County’s policies and customs did not arise solely “from the treatment of Mrs. Simpson” or from a “single case.” Pet App. at 9. *But see Bd. of Cty. Comm’rs of Bryan Cty., Okla. v. Brown*, 520 U.S. 397, 409 (1997) (noting that evidence of a single violation of federal rights can, in some circumstances, trigger municipal liability when the challenged conduct involves recurring situations presenting an obvious potential for such a violation to occur again in the future).

As Judge Barksdale explained, genuine disputes of material fact exist “regarding the enduring nature of the alleged customs about intake” because the summary-judgment record showed “other instances in which the county was taken to task for failure to complete intake forms.” Pet. App. at 35. According to Judge

concluded that there were disputed fact issues on whether it was objectively unreasonable to leave Mrs. Simpson in a cell alone to fend for herself, ignore her husband's pleas for help, and fail to adequately screen, monitor, or treat her serious medical needs. Because she was jailed in Texas, however, the court of appeals applied its "extremely high standard" of subjective deliberate indifference and affirmed the district court's summary judgment.

American citizens' constitutional rights should not depend on the jurisdiction in which they reside. Review by this Court is warranted to resolve the circuit

Barksdale, "[t]he summary-judgment record, especially through the deposition of [the sheriff], demonstrates the custom of neglecting intake and screening procedures." Pet. App. at 36. Likewise, "the summary-judgment record demonstrates genuine disputes of material fact for whether [Mrs. Simpson] was *ever* monitored by [the jail staff]—which . . . was a *de facto* custom." Pet. App. at 37. Judge Barksdale found "genuine disputes of material fact that the customs of the county jail were unconstitutional." Pet. App. at 32. Judge Barksdale concluded that:

A reasonable juror could determine from this evidence, along with the sheriff's admitted ignorance of the jail's non-compliance, that the county's *de facto* policy did not follow the alleged official policy put forward by [the county's employee], and instead could determine that the jail did not provide adequate monitoring for pretrial detainees.

Pet. App. at 38. "[W]hile this Court is not equipped to correct every perceived error coming from the lower federal courts," the Court should "intervene here because the opinion below reflects a clear misapprehension of summary judgment standards in light of [the Court's] precedents." *Tolan v. Cotton*, 134 S. Ct. 1861, 1868 (2014) (per curiam) (internal citations and quotations omitted).

split and finally answer the “question that the Court has repeatedly left open,” *Hare*, 74 F.3d at 640 (citations omitted), whether the subjective deliberate indifference test that governs convicted prisoners’ claims for cruel and unusual punishment under the Eighth Amendment should apply to citizens like Mrs. Simpson, a pretrial detainee, whose constitutional rights are protected under the Fourteenth Amendment and who should therefore not be punished at all.

II. The Fifth Circuit’s reliance on the Court’s Eighth Amendment precedent to define its subjective deliberate indifference standard for pretrial detainees is fundamentally flawed.

Beginning with *Bell v. Wolfish*, 441 U.S. 520 (1979), the Court has historically drawn a clear dichotomy between claims brought by convicted prisoners under the Eighth Amendment and claims brought by pretrial detainees under the Fourteenth Amendment. *Id.* at 534–35. The Fifth Circuit, however, erred by blurring this important distinction and adopted the subjective deliberate indifference test because the court erroneously found “no constitutionally significant distinction between the rights of pretrial detainees and convicted inmates to basic human needs.” *Hare*, 74 F.3d at 643.

But this Court in *Bell* held that “when an aspect of pretrial detention that is not alleged to violate any express guarantee of the Constitution is challenged,” the proper inquiry becomes whether the aspect of pretrial detention “amount[s] to punishment of the detainee” because “under the Due Process Clause, a detainee may not be punished prior to an adjudication

of guilt in accordance with due process of law.” 441 U.S. at 534–35. The Court’s decision in *Bell*, overlooked by the Fifth Circuit in *Hare*, highlights the fundamental flaw in the Fifth Circuit’s subjective deliberate indifference test—the “constitutionally significant distinction” that a “detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” *Id.* at 535 (footnote and citations omitted).

In *Kingsley*, the Court reiterated this “constitutionally-significantly distinction,” holding that:

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.

135 S. Ct. at 2473–74 (citing *Block v. Rutherford*, 468 U.S. 576, 585–86 (1984); *Schall v Martin*, 467 U.S. 253, 269–71 (1984); *United States v. Salerno*, 481 U.S. 739, 747 (1987)).

This broad language and reliance on cases outside of the excessive-force context lent emphasis to the Court’s conclusion that it “did not suggest in any of these cases, either by its words or its analysis, that its application of *Bell*’s objective standard should involve subjective considerations.” *Id.* at 2474. Instead, the

Court held that “the defendant’s state of mind” should be assessed using an “objective standard” from “the perspective of a reasonable officer on the scene.” *Id.* at 2472–73.

Moreover, just as the Fifth Circuit relied on the Supreme Court’s Eighth Amendment precedent to define the subjective deliberate indifference standard for pretrial detainees, *Hare*, 74 F.3d at 643, the respondents in *Kingsley* invited the Court to rely on Eighth Amendment precedent to adopt a uniform subjective standard for excessive-force claims. 135 S. Ct. at 2475. But the Court rejected that approach. Distinguishing claims brought under the Eighth and Fourteenth Amendments, the Court held:

The language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, ... Thus, there is no need here, as there might be in an Eighth Amendment case, to determine when punishment is unconstitutional.

Id. (internal citations omitted).

The Court’s holding flowed naturally from earlier precedent the Court relied upon in *Kingsley*, such as *Graham v. Connor*, 490 U.S. 386 (1989). *Kingsley*, 135 S. Ct. at 2473–75. In *Graham*, the Court held that “the terms ‘cruel’ and ‘punishments’ clearly suggest some inquiry into [a] subjective state of mind.” 490 U.S. at 398. The Court explained that “the less protective Eighth Amendment standard applies ‘only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.’”

Id. (quoting *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977)). The Court’s opinion in *Kingsley* simply reaffirmed that there are two significantly-distinct constitutional standards at play depending on whether the claim is channeled under either the Eighth or Fourteenth Amendment.

In *Hare*, however, the Fifth Circuit erred by overlooking this key distinction in the Court’s jurisprudence. Instead, it adopted a standard for claims brought by convicted prisoners under the Eighth Amendment and applied it to pretrial detainees for claims under the Fourteenth Amendment, which the Fifth Circuit classifies as episodic-acts-or-omissions claims. *Hare*, 74 F.3d at 643 (holding that “a state jail official’s constitutional liability to pretrial detainees for episodic acts or omissions should be measured by a standard of subjective deliberate indifference as enunciated by the Supreme Court in *Farmer* [*v. Brennan*, 511 U.S. 825 (1994)],” a failure-to-protect case brought by a convicted prisoner under the Eighth Amendment). Consequently, the Fifth Circuit decided an important question of constitutional law that conflicts with relevant decisions by this Court.

III. The Fifth Circuit is on the wrong side of the split, and this case is an ideal vehicle to address the appropriate constitutional standard to apply in deliberate indifference claims involving pretrial detainees.

Three circuits—the Second, Third, and Ninth—now apply an objective deliberate indifference standard for § 1983 claims brought by pretrial detainees under the Fourteenth Amendment.

In *Darnell v. Pineiro*, the Second Circuit abandoned the subjective deliberate indifference test that it previously adopted by explicitly “[r]elying on the analysis of the Court of Appeals for the Fifth Circuit in *Hare v. City of Corinth*,” because it concluded the Court’s analysis in *Kingsley* “undercut the reasoning” of the circuit’s prior precedent. *Darnell*, 849 F.3d at 33 (citations omitted). The court held that “[a]fter *Kingsley*, it is plain that punishment has no place in defining the *mens rea* element of a pretrial detainee’s claim under the Due Process Clause.” *Id.* at 35.

In *Kedra v. Schroeter*, the Third Circuit acknowledged that it had previously adopted an objective standard for reviewing pretrial-detainee suicide claims consistent with the Supreme Court’s holding in *Kingsley*. *Kedra*, 876 F.3d at 437–40 (citing *Wetzel*, 854 F.3d at 224).

The Ninth Circuit, in an en banc opinion, also abandoned its use of the subjective deliberate indifference test for failure-to-protect claims, noting that “[t]he Court [in *Kingsley*] did not limit its holding to ‘force’ but spoke to ‘the challenged governmental action’ generally.” *Castro*, 833 F.3d at 1070 (quoting *Kingsley*, 135 S. Ct. at 2473–74). The court explained that “[u]nder *Kingsley*, a pretrial detainee need not prove th[e] subjective elements about [an] officer’s actual awareness of the level of risk.” *Id.* at 1071.

Most recently, the Ninth Circuit explicitly held that claims for violations of the right to adequate medical care brought by pretrial detainees against individual defendants under the Fourteenth Amendment must be evaluated under an objective deliberate indifference standard. *Gordon*, 888 F.3d at 1124–25. The court

reasoned that “logic dictates extending the objective deliberate indifference standard . . . to medical claims” for several reasons. *Id.* at 1124.

First, the court of appeals, relying on its previous analysis in *Castro* that borrowed from this Court’s holdings in *Board of County Commissioners v. Brown*, 520 U.S. 397, 405 (1997) and *Daniels v. Williams*, 474 U.S. 327, 300 (1986), explained that “Section 1983 itself ‘contains no state-of-mind requirement independent of that necessary to state a violation’ of the underlying federal right.” *Gordon*, 888 F.3d at 1123 (quoting *Castro*, 833 F.3d at 1069). Moreover, the court of appeals noted that medical care claims by pretrial detainees arise under the Fourteenth Amendment and not the Eighth Amendment’s Cruel and Unusual Punishment Clause. *Id.* at 1123–24 (citing *Castro*, 833 F.3d at 1069).

Second, the Ninth Circuit noted that this Court “has treated medical care claims substantially the same as other conditions of confinement violations including failure-to-protect claims.” *Id.* at 1124 (citing *Wilson v. Seiter*, 501 U.S. 294, 303 (1991)). In *Wilson*, the Court saw “no significant distinction between claims alleging inadequate medical care and those alleging inadequate conditions of confinement.” 501 U.S. at 303. *But see Hare*, 74 F.3d at 643 (deciding that a “significant distinction” exists between failure-to-protect claims and unconstitutional conditions-of-confinement claims, requiring § 1983 plaintiffs alleging inadequate medical care to proceed under one of two alternate theories of liability).

Finally, the court explained that, like the Ninth Circuit, other circuits, including the Fourth and Fifth,

treat failure-to-protect claims no different from claims alleging failure to provide adequate medical care. *Gordon*, 888 F.3d at 1124 n.3 (citing *Young v. City of Mount Ranier*, 238 F.3d 567, 575 (4th Cir. 2001); *Hare*, 74 F.3d at 644).

Petitioners' case is an ideal vehicle for this Court to resolve the circuit split and decide the appropriate standard for failure-to-protect claims involving pretrial detainees who are presumed innocent and deserve no punishment at all. Had the Fifth Circuit's "extremely high standard" not required Petitioners to adduce evidence of Young County jailers' subjective intent to cause harm in order to avoid summary judgment, the district court would have likely determined that the record evidence revealed disputed fact issues for a jury to resolve, such as whether the jailers' conduct was objectively unreasonable and whether the "misconduct toward Mrs. Simpson" was "not only unconstitutional, but also unconscionable." Pet. App. at 40 (Barksdale, J., dissenting).

This case is not encumbered by procedural anomalies. The circuit courts have explicitly acknowledged *Kingsley*'s impact on deliberate-indifference jurisprudence and the split of authority following the *Kingsley* decision. Judge Barksdale's thoughtful dissent ably identified the difficulty the Fifth Circuit panel encountered following its own fundamentally flawed precedent. And the Second, Third, and Ninth Circuits have provided compelling analyses for the Court to consider in defining the contours set by the Constitution. Finally, because nearly every circuit has weighed in on the issue, this

important question of constitutional law is ripe for the Court's review and should be settled by this Court.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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