

No. 17-1638

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*

**MOTION FOR LEAVE TO FILE AND BRIEF OF *AMICI CURIAE*
THE NATIONAL ALLIANCE ON MENTAL ILLNESS OF TEXAS,
DISABILITY RIGHTS TEXAS, THE TEXAS CHAPTER OF THE
NATIONAL ASSOCIATION OF SOCIAL WORKERS, THE TEXAS
CHAPTER OF THE NATIONAL ASSOCIATION OF SOCIAL
WORKERS, THE TEXAS CRIMINAL JUSTICE COALITION,
AND JAIL PROJECT OF TEXAS D/B/A TEXAS JAIL
PROJECT IN SUPPORT OF PETITIONERS**

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**MOTION FOR LEAVE TO FILE BRIEF OF
*AMICI CURIAE***

Pursuant to Supreme Court Rule 37.2, The National Alliance on Mental Illness of Texas, Disability Rights Texas, The Texas Chapter of the National Association of Social Workers, The Texas Chapter of the National Association of Social Workers, The Texas Criminal Justice Coalition, and Jail Project of Texas d/b/a Texas Jail Project move for leave to file the accompanying brief as *Amici Curiae* in support of Petitioners' petition for a writ of certiorari. Petitioners have filed with the Clerk a blanket consent to *amicus curiae* briefs in this case. Respondents have withheld consent.

Amici Curiae are a group of unaffiliated non-profit organizations which share a common goal of protecting the health and welfare of people, like Diana Simpson, who become entangled in the gears of the Texas criminal justice system due to a mental illness and are deprived of timely medical care for their serious medical needs. *Amici* respectfully request this Court grant the Petitioners' petition for writ of certiorari and reverse the Fifth Circuit's decision in *Sanchez v. Young Cty., Tex.*, 866 F.3d 274 (5th Cir. 2017).

The National Alliance on Mental Illness of Texas ("NAMI") is the Texas affiliate of the nation's largest grassroots mental health organization. NAMI is dedicated to building better lives for the millions of Americans affected by mental illness, and works every day to advocate on behalf of those struggling with mental illness as well as their loved ones and friends whose lives are affected.

Disability Rights Texas (“DRT”) works to protect and advance the civil rights of people with disabilities. DRT strives to inform people of the fact that disability—including disability caused by mental illness—is a natural part of the human experience that requires society to respond with concern, compassion, and protection. DRT fights to eradicate the neglect and exploitation of people with disabilities to ensure their full and equal participation in society.

The Texas Chapter of the National Association of Social Workers (“NASW/TX”) promotes, among other things, sound public policy related to promoting human rights and social and economic justice that is designed to ensure that Texas is a state where the basic needs of each individual are met and where all people are treated with dignity. NASW/TX likewise advocates against any threat to the standards that have been put in place to protect incarcerated persons with disabilities.

The Texas Criminal Justice Coalition (“TCJC”) and Jail Project of Texas d/b/a Texas Jail Project (“TJP”) advocate for a fair Texas criminal justice system that holds itself accountable to all those it serves. TCJC and TJP work tirelessly to improve Texas standards for incarceration, including jail standards that are designed to identify and protect people who have been incarcerated during a mental or physical health crisis. Among TCJC’s and TJP’s commitments is the idea that mental health disorders should not be addressed through incarceration but through professional and compassionate care in a setting that protects people from neglect and exploitation.

Amici have a strong public-policy interest in protecting Texans who have been incarcerated as a result of a mental health crisis. *Amici* are uniquely qualified to address important Texas jail standards enacted by the Texas Legislature to protect the rights and health of incarcerated persons suffering from mental or physical disabilities. *Amici* are likewise qualified to draw attention to the existential threat to those important standards posed by the Fifth Circuit's opinion in *Sanchez*.

Amici believe they offer a unique perspective on the issues in the present case and will be of assistance to the Court. *Amici* will argue that the Fifth Circuit's opinion in *Sanchez* will erode important Texas jail standards designed to protect the health and welfare of pretrial detainees who are "at risk" due to a mental illness or physical impairment. *Amici* will also argue that the Fifth Circuit's subjective deliberate indifference standard, pertaining to pretrial detainees' reasonable medical needs under the Fourteenth Amendment, actually deters compliance with these critical Texas jail healthcare standards. *Amici* will argue that the Fifth Circuit's subjective deliberate indifference standard incentivizes ignorance and lack of communication among jail staff when it comes to the serious medical needs of pretrial detainees. Thus, *Amici* will argue in favor of the adoption of an objective deliberate indifference standard, which they believe would ultimately support Texas jail standards and encourage Texas jail personnel to appropriately screen and monitor at-risk pretrial detainees.

Amici's interest in this matter has already been established and accepted by the Fifth Circuit Court of

Appeals. At the Fifth Circuit, Respondents likewise opposed *Amici's* motion to file an amicus curiae brief. However, the Fifth Circuit granted *Amici's* motion for leave and thereafter accepted *Amici's* brief in support of the Petitioners' petition for rehearing en banc.

For the foregoing reasons, *Amici* respectfully request that the Court grant leave to participate as *amicus curiae* and to file the accompanying *amicus curiae* brief in support of the Petitioners' petition for a writ of certiorari.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*¹

Amici Curiae are a group of unaffiliated non-profit organizations which share a common goal of protecting the health and welfare of people, like Diana Simpson, who become entangled in the gears of the Texas criminal justice system due to a mental illness and are delayed or denied medical care for their serious medical needs. *Amici* respectfully request this Court grant the Petitioners' petition for writ of certiorari and reverse the Fifth Circuit's decision in *Sanchez v. Young Cty., Tex.*, 866 F.3d 274 (5th Cir. 2017).

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¹ Pursuant to Supreme Court Rule 37.6, *Amici Curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *Amici Curiae* and/or counsel for *Amici Curiae*, made any monetary contribution toward the preparation and/or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received notice of the intent to file this brief at least 10 days before it was due. Petitioners have filed with the Clerk a blanket consent to *amicus* briefs in this case. Respondents have withheld consent.

illness—is a natural part of the human experience that requires society to respond with concern, compassion, and protection. DRT fights to eradicate the neglect and exploitation of people with disabilities to ensure their full and equal participation in society.

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Amici have a strong public-policy interest in protecting Texans who have been detained or incarcerated as a result of a mental health crisis. *Amici* are uniquely qualified to address important Texas jail standards enacted by the Texas Legislature to protect

the rights and health of detained or incarcerated persons suffering from mental or physical disabilities. *Amici* are likewise qualified to draw attention to the real threat to those important standards posed by the Fifth Circuit’s opinion in *Sanchez v. Young County*.

SUMMARY OF ARGUMENT

The Texas criminal justice system, like all others in the United States, is constitutionally required to provide the basic necessities of life, including healthcare, for all prisoners and pretrial detainees. The good news is that over the last decade Texas has achieved substantial success in the screening, care, and treatment needs for incarcerated individuals struggling with mental or physical illness or impairment. The Texas Legislature, in landmark legislation, mandated important standards and screening tools to identify “at risk” individuals so that necessary and essential healthcare can be provided on a timely basis. For example, and relevant to this case, Texas law mandates a “Screening Form for Suicide and Medical and Mental Impairments” “be completed immediately on all inmates admitted.” The screening instrument itself expressly requires “ALL Questions SHALL be Completed in Full Immediately Upon Admission of Inmate.” In addition, Texas law requires Texas jails to run a continuity-of-care query (CCQ) to determine whether a detainee had previously been treated by state mental health officials. Each of these standards and screening tools is a critical and essential component of healthcare provided to Texas pretrial detainees for their protection. This case illustrates the fact that the best healthcare standards and screening

tools are pointless if they are not utilized. And the results can be deadly.

Diana Simpson was detained at Young County Jail during a mental and physical health crisis. Prior to her detention, Mrs. Simpson ingested a deadly combination of drugs and alcohol in an effort to commit suicide. To succeed in her suicide plan, Mrs. Simpson needed one thing: indifference. Young County supplied the needed indifference by giving Mrs. Simpson sufficient time for the alcohol and overdose of drugs to take their deadly effect while simultaneously denying her life-sustaining healthcare.

A police officer found Mrs. Simpson in her vehicle parked on the side of a country road, and she was taken into custody for public intoxication. At the jail, Mrs. Simpson was not appropriately screened for her serious medical needs because Young County had a policy and custom of repeatedly failing to complete critical portions of the state-mandated screening instrument in violation of Texas law, and failing to run the CCQ—ultimately claiming to be ignorant about Texas CCQ requirements. Though Mrs. Simpson's husband alerted county jail staff about her plan to kill herself and the arresting officer reported that Mrs. Simpson had ingested 24 pills of seven different prescription drugs with alcohol, jail staff failed to protect Mrs. Simpson by ignoring her serious medical needs. An unconscious, half-nude, and exposed Mrs. Simpson lay dying on the floor of her jail cell. During those critical hours the only real interest shown in Mrs. Simpson was libidinous in nature. Instead of dying alone in her car on the side of a remote Young County road, Mrs. Simpson died alone in a Young County jail

cell. In the end, Young County failed to protect Mrs. Simpson by affording her the indifference she needed to carry out her plan to kill herself.

Though undisputed evidence demonstrated Young County Jail officials repeatedly failed to complete critical portions of the state-mandated screening instrument and CCQ requirement in violation of Texas law, ignored the warnings and pleas of Mrs. Simpson's husband, and even exploited her while she was unconscious, the Fifth Circuit's opinion in *Sanchez* determined that the jail personnel's indifference did not meet the Fifth Circuit's "extremely" difficult "subjective deliberate indifference" standard for liability pertaining to pretrial detainees' reasonable medical needs under the Fourteenth Amendment. The Fifth Circuit discounts the importance of Young County's serial violations of Texas statutory healthcare requirements for pretrial detainees. If allowed to stand, the Fifth Circuit's opinion will diminish the importance of healthcare screening instruments to tedious and ministerial "file documentation," which must only be "substantially completed." *Amici Curiae* believe that the Fifth Circuit's opinion in *Sanchez* seriously undermines the successful efforts undertaken by the Texas Legislature, the Texas criminal justice system, and mental health officials designed to provide timely healthcare to protect at-risk pre-trial detainees like Mrs. Simpson. Indeed, *Amici* believe that the Fifth Circuit has essentially granted jail personnel a license *both* to accept at face value an impaired detainee's statements denying suicidal ideation *and* to ignore known contradictory information that would lead a reasonable person to doubt the veracity of the detainee's statements.

Amici believe that the outcome of this case would be entirely different under an objective deliberate indifference standard. An objective indifference standard would not only comport with the Constitution and this Court's precedent but also would be more congruous with Texas's efforts to protect at risk pretrial detainees. Texas's statutorily-mandated screening instruments and CCQ requirements are designed to enlighten and inform jail personnel of important health information to reveal the presence of a pretrial detainee who is at risk. However, the Fifth Circuit's "extremely high" subjective deliberate indifference standard actually incentivizes ignorance and lack of communication among jail staff. Ultimately, this "extremely high" standard deters compliance with Texas's critical jail standards designed to protect a pretrial detainee's health. Thus, *Amici* believe that an objective indifference standard would support Texas jail standards and encourage Texas jail personnel to appropriately screen, monitor, communicate, and protect at-risk pretrial detainees.

ARGUMENT

Suicide is a leading cause of death in the United States, and the suicide rates have spiked in nearly every state from 1999 through 2016.² According to the Texas Legislature, suicide is a major preventable cause of premature death in Texas.³ Approximately 30 Texans attempt suicide every day, and on average six attempts are completed.⁴ Death by suicide stands as the 11th leading cause of mortality in Texas.⁵ Suicide is among one of the most preventable public health tragedies.⁶ One of the most important steps to preventing suicide is to “[i]dentify and support people at risk of suicide.”⁷

Among those who die by suicide, 90% are suffering from an underlying mental health or substance abuse condition.⁸ The most common mental health problem affecting those who commit suicide is a depressive

² *Suicide rising across the US*, Centers for Disease Control and Prevention, CDC Vital signs (June 2018), p. 1, <https://www.cdc.gov/vitalsigns/suicide/>

³ H.C.R. 40, 82nd Leg. (Tex. 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Suicide rising across the US*, at 2, 4.

⁸ H.C.R. 40, 82nd Leg. (Tex. 2011).

disorder.⁹ Sadly, the stigma attached to mental illness often discourages individuals who are afflicted from seeking help.¹⁰

According to the Centers for Disease Control, “[t]he United States is experiencing an epidemic of drug overdose (poisoning) deaths. Since 2000, the rate of deaths from drug overdoses has increased 137%”¹¹ In Texas, approximately one million adults are affected by a serious mental illness.¹² Therefore, county jails around Texas, including the smallest rural jails, regularly house inmates with mental disorders and co-occurring substance-use disorders.¹³ In fact, Texas health officials estimate that 30% of jail inmates have one or more serious mental illnesses.¹⁴ These inmates have substantial needs for health care, and when those

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Increases in Drug and Opioid Overdose Deaths – United States, 2000-2014*, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (Jan. 1, 2016), p. 1, <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6450a3.htm>

¹² *Mental Health Committee Report & Recommendations*, Texas Judicial Council (Oct. 2016), at 1, <http://hogg.utexas.edu/wp-content/uploads/2016/11/report-and-recommendations-of-tjc-mental-health-committee-final-w-cover.pdf>.

¹³ *Preventable Tragedies: How to Reduce Mental Health-Related Deaths in Texas Jails*, The University of Texas School of Law Civil Rights Clinic, at 5 (Nov. 2016), <http://law.utexas.edu/wp-content/uploads/sites/11/2016/11/2016-11-CVRC-Preventable-Tragedies.pdf>.

¹⁴ *Id.* at 7.

needs are unmet, the consequences can be fatal.¹⁵ Consequently, the importance of meeting the medical needs of inmates with serious mental illness and substance abuse cannot be overstated.¹⁶

Unfortunately, some jails lack a culture, instituted by jail leadership, that promotes the human dignity of all inmates, including those coping with mental illness and substance-use disorders.¹⁷ As a result, inmates with mental health needs may be ignored and untreated, subjected to abuse, attempt to inflict self-harm, or even lose their lives.¹⁸

Recognizing the importance of treating pretrial detainees with serious mental and physical healthcare needs, including those at risk for suicide, the Texas Legislature, beginning in 2007, enacted legislation designed to address this public health crisis.¹⁹ An important aim of this landmark legislation was to enable jail personnel to identify pretrial detainees with mental illness or serious health issues at their initial point of intake at the jail and to divert these at risk

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 5; see also K. Murphy and C. Barr, *Overincarceration of People with Mental Illness*, Texas Public Policy Foundation, at 12-13 (June 2015), <https://www.texaspolicy.com/library/doclib/overincarceration-of-people-with-mental-illness.pdf> (identifying a number of non-compliant county jails in Texas).

¹⁸ *Preventable Tragedies*, at 5.

¹⁹ Tex. Health & Safety Code §§ 614.001(3-a), 614.013-.017; Tex. Code Crim. Proc. §§ 16.22-.23.

detainees from the criminal-justice system to a more appropriate setting for treatment.²⁰

Specifically, the Texas Health and Safety Code was amended to require that the Department of State Health Services work with the Department of Public Safety to design and implement a data exchange process that would allow county jail personnel to obtain real-time public health service match data at the point of an individual's booking into jail.²¹ This data exchange process, called the continuity of care query (CCQ), allows the jail to identify individuals with a current or past history of state mental health care who are arrested and booked into jail.²² The CCQ is critical to ensuring continuity of care for these pretrial detainees during their detention, and to provide a mechanism for diversion of those individuals out of the criminal justice system to appropriate treatment facilities.²³ On September 21, 2010, the Texas Commission on Jail Standards issued a directive to all jails requiring the implementation of CCQ by the end of the year, or risk being found noncompliant.²⁴

²⁰ *Id.*

²¹ Tex. Health & Safety Code § 614.017.

²² Mentally Ill Offender Screening and Information Exchange Rider 43, 83rd Legislative Session, at 1-2, www.dshs.texas.gov/legislative/83rd/Rider-43-Report-Final-013014.pdf (last visited Aug. 16, 2017).

²³ *Id.*

²⁴ ROA.486.

The CCQ is complemented by mental-health screening that is conducted for every detainee at the time of booking into the local jail.²⁵ The screening instrument, provided by the Texas Commission on Jail Standards, is called the Screening Form for Suicide and Medical and Mental Impairments.²⁶ This screening instrument is designed to achieve three main goals: (1) create an objective suicide risk assessment with clear guidance for front-line personnel of when to notify superiors, mental health providers, and magistrates; (2) assist sheriffs to meet all statutory requirements such as Texas Code of Criminal Procedure 16.22; and (3) be user friendly for the typical range of experience of a Texas county jailer.²⁷ This screening instrument is the crucial first step to determine which pretrial detainees require further mental-health assessment, to allow the correctional staff to triage those who may be at significant risk for suicide, to identify pretrial detainees who may be in distress from a mental health disorder/psychosis or complications from recent substance abuse, and to assist with the continuity of care of special-needs detainees.²⁸

Texas is fighting to protect the lives of at risk pretrial detainees. Texas law requires that the

²⁵ Tex. Admin. Code § 273.5(b).

²⁶ *Id.*; ROA.119.

²⁷ *Instructions for Suicide and Medical/Mental/Developmental Impairments Form*, at 1, http://www.tcjs.state.tx.us/docs/InstructionsSuicide_Medical_and_Mental_Impairments_Form.pdf (last visited Aug. 16, 2017) (“Instructions”); ROA.119.

²⁸ *Instructions*, at 1.

screening instrument must be completed on all inmates immediately upon admission into a jail and must be filled out completely.²⁹ Indeed, the instructions specifically emphasize the need to complete the instrument as follows: “fill out the form completely and in its entirety.”³⁰ Texas law, therefore, requires county jail personnel to use the screening instrument to educate themselves, obtain relevant knowledge about their detainees’ medical needs, and use the acquired knowledge to both identify and protect at risk pretrial detainees.

The screening instrument is required to be completed by a trained booking officer or medical/mental-health personnel.³¹ The screening instrument includes observations by the arresting officer or any other person, staff observations, and self-report questions answered by the pretrial detainee.³² If the pretrial detainee is unable to answer questions, the booking officer must notify a supervisor and place the detainee on suicide watch until the instrument can be completed.³³ And the booking officer must document the reason why the instrument cannot be completed.³⁴ If for any reason an officer believes a

²⁹ *Instructions*, at 1; Tex. Admin. Code § 273.5(b).

³⁰ *Id.*; ROA.119.

³¹ *Instructions*, at 1.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

pretrial detainee to be at risk of suicide, regardless of how the detainee answers the questions, the instructions require the officer to place the detainee on suicide watch and notify a supervisor.³⁵

The efforts of the Texas Legislature have been highly successful. As of December 2016, Texas county jails have seen an almost 60% decline in inmate suicides.³⁶ This sharp decline has been attributed to increased vigilance in use of the required screening tools and close observation of detainees identified as suffering from mental illness, including suicidal ideation, and substance-use disorders.³⁷

The success of this nationally-recognized program to protect the health of at risk pretrial detainees demonstrates the effective collaboration between the Texas Legislature, law enforcement, and mental health authorities. The judiciary also plays an important role because it is a significant stakeholder in a highly fragmented system intended to meet the needs and facilitate the recovery of those suffering from or affected by suicide, mental illness and substance-use

³⁵ *Id.*

³⁶ Johnathan Silver, *Revised screening, vigilance lead to drop in Texas jail suicides*, The Texas Tribune (Dec. 4, 2016), <https://www.texastribune.org/2016/12/04/suicides-county-jails/>

³⁷ *Id.*

disorders.³⁸ Judicial decisions that support Texas’s program will undoubtedly help save lives. Judicial decisions that erode Texas’s program will undoubtedly have the opposite effect.

The Fifth Circuit’s *Sanchez* opinion will erode Texas’s program to protect the health of pretrial detainees. In its published opinion, the Fifth Circuit determined that the Texas Screening Form for Suicide and Medical and Mental Impairments and Continuity-of-Care Queries are mere “matters of file documentation” that need only be “substantially completed.” Pet. App. at 10. *Amici* are extremely dismayed by this dismissive attitude toward carefully-crafted efforts by the Texas Legislature, Texas law enforcement, and mental-health authorities to identify and appropriately treat at-risk detainees in an effort to save lives.

The Texas screening instrument and CCQ are not mere matters of “file documentation.” Rather, they are state-mandated and critically important assessment tools used to identify at-risk detainees to ensure timely and effective intervention, treatment, and continuity of care. In addition, they are important communication tools to inform other jail personnel about the detainees’ health risks. In other words, the Texas screening instrument and CCQ constitute *healthcare* for at-risk pretrial detainees.

³⁸ *Mental Health Committee Report & Recommendations*, Texas Judicial Council (Oct. 2016), at 3, <http://hogg.utexas.edu/wp-content/uploads/2016/11/report-and-recommendations-of-tjc-mental-health-committee-final-w-cover.pdf>.

The Fifth Circuit discounted the importance of state-mandated Texas screening instrument and CCQ requirements and emphasized Young County's evidence that Mrs. Simpson denied the need to go to the hospital or that she was attempting to commit suicide. Pet. App. at 10,11. But the Fifth Circuit's recitation of the facts demonstrate that Mrs. Simpson was seriously impaired and not a reliable source of information for her serious medical needs. *Id.* at 3-4 (noting that "Mrs. Simpson's speech was slurred, she responded slowly, and she had a hard time keeping her eyes open when speaking" and told the arresting officer that "she [Mrs. Simpson] had a drink the night before to help her sleep but at that point denied ingesting medicine" then noting that Mrs. Simpson later admitted "she had taken two Benadryl earlier in the day to help her sleep" then noting that Mrs. Simpson ultimately admitted she took "all [the medication] that was missing from the packages that morning.").

The Fifth Circuit appears to have granted jail personnel a license both to accept at face value an impaired detainee's statements denying suicidal ideation and to ignore known contradictory information that would lead a reasonable person to doubt the veracity of the detainee's statements. This is a highly dangerous proposition. It is well known that some people, due to the stigma associated with suicide, may be reluctant to communicate the fact that they have attempted suicide or intend to commit suicide in the future. In one published study, the majority of persons (78%) "denied suicidal thoughts and intent as their last

communication before their suicide.”³⁹ In fact, healthcare providers when confronted by a patient denying suicidal ideation are encouraged to obtain relevant information from family members because it is known that people who eventually commit suicide are more likely to tell their families of their suicidal plans than they are to tell their physicians.⁴⁰ In this case, Mrs. Simpson’s husband and the Texas screening instrument and CCQ would have identified Mrs. Simpson as an at-risk detainee in need of careful physical assessment and close monitoring that would have led to emergency intervention to save her life.

The Texas-mandated screening instruments and CCQ create the circumstances of Young County jail personnel being charged with a knowledge of the peril Mrs. Simpson was facing prior to her death. State law required Young County jail personnel to assess Mrs. Simpson and obtain the knowledge of the peril resulting from her serious medical needs. Their refusal to obtain such knowledge combined with the other known facts about her, would lead a reasonable person to believe that they were conscious of the inevitable or probable results of a failure to intervene.

Amici believe that the Fifth Circuit’s subjective deliberate indifference standard, as applied to pretrial detainees like Mrs. Simpson, was an erroneous

³⁹ Busch, Fawcett, and Jacobs, *Clinical Correlates of Inpatient Suicide*, *Journal of Clinical Psychiatry*, 2003; 64:14-19, p. 16.

⁴⁰ Gliatto and Rai, *Evaluation and Treatment of Patients with Suicidal Ideation*, (Mar. 15, 1999), <http://www.aafp.org/afp/1999/0315/p1500.html>.

standard in light of this Court’s opinion in *Kingsley v. Hendrickson*, which, if followed in this case, would require an objective deliberate indifference standard.⁴¹ Using an objective deliberate indifference standard in this case would support the advancements the Texas jail standards program has made and will help save lives in the future.

Amici believe that a decision from this Court reversing the Fifth Circuit’s use of a subjective deliberate indifference standard will have an immediate and beneficial effect for at risk pretrial detainees like Mrs. Simpson. The subjective deliberate indifference standard incentivizes and rewards willful ignorance and lack of communication among jail personnel who are charged with the duty to be informed about and communicate important facts that identify pretrial detainees who, like Mrs. Simpson, are in danger because of a mental or physical health crisis. An objective deliberate indifference standard would strike the correct balance between an unduly permissive standard for liability and the subjective deliberate indifference standard which encourages jail personnel to “hear no evil, see no evil, speak no evil.”

Judge Barksdale’s careful and thoughtful dissent details the abysmal screening and exploitative “monitoring” of Mrs. Simpson and other “unconscionable” acts and omissions of the Young County Jail and its staff. Judge Barksdale’s dissent provides a much more fair and accurate picture of Mrs. Simpson’s eight-hour incarceration at the Young

⁴¹ *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 2471-76 (2015).

County jail, which led to her tragic death.⁴² And Judge Barksdale was right to issue a call to the Fifth Circuit to provide an “updated articulation” of the standard to impose government-entity liability in episodic act or omission cases such as this. Because the Fifth Circuit ultimately rejected the opportunity to abandon its erroneous subjective deliberate indifference standard, *Amici* request this Court to take this case and provide the needed “updated articulation.”

The Texas legislature, in coordination with Texas law enforcement and mental health authorities, designed a comprehensive system to prevent tragedies like this from occurring. This case highlights the need for court decisions to further those important legislative efforts to provide effective screening and monitoring for all pretrial detainees. The Fifth Circuit’s opinion, if allowed to stand, will have a significant and corrosive impact on the justice system and Texas public health in the future. A decision reversing the Fifth Circuit’s decision and requiring an objective deliberate indifference standard will likely save lives.

⁴² As detailed in Judge Barksdale’s dissent, the conduct of the Young County jail personnel was far worse than the Fifth Circuit’s description. Pet. App. at 13-40. It appears to *Amici* that another problem with the Fifth Circuit’s opinion is that it evinces the panel engaging in the improper practices of evidence weighing, making credibility determinations, giving credence to the evidence favoring the summary judgment movant (Respondents), and indulging inferences in favor of the Respondents, rather than Petitioners. See *Tolan v. Cotton*, 134 S. Ct. 1861, 1868 (2014); *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150-51 (2000).

CONCLUSION

For the reasons stated, Amici respectfully request this Court to grant Petitioners' petition for a writ of certiorari and reverse the Fifth Circuit's opinion.

Respectfully submitted,

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