

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*

SUPPLEMENTAL BRIEF BY PETITIONERS

Joseph F. Cleveland, Jr.*
Kevin C. Smith
Bracket & Ellis, P.C.
100 Main Street
Fort Worth, Texas 76102
(817) 338-1700
jcleveland@belaw.com

Christine Stetson
David E. Bernsen
The Bernsen Law Firm
420 North MLK, Jr. Pkwy
Beaumont, Texas 77701
(409) 212-9994
cstetson@bernsenlaw.com

Counsel for Petitioners

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*Counsel of Record

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SUPPLEMENTAL BRIEF FOR THE PETITIONERS

Petitioners file this supplemental brief to bring to the Court's attention "intervening matter[s] not available at the time" of Petitioners' last filing. Rule 15.8. Counsel for Petitioners understand they "have a continuing duty to inform the Court of any development which may conceivably affect the outcome" of the case. *Bd. of License Comm'rs of Tiverton v. Pastore*, 469 U.S. 238, 240 (1985) (quoting *Fusari v. Steinberg*, 419 U.S. 379, 391 (1975) (Burger, C.J., concurring)).

I. The Seventh Circuit abandons the subjective deliberate indifference test, joining the Second, Third, and Ninth Circuits.

On August 10, 2018, the Seventh Circuit acknowledged that in light of this Court's holding in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), a pretrial detainee's claim for inadequate medical care could no longer be determined using Eighth Amendment standards. *Miranda v. Cty. of Lake*, ___ F.3d ___, 2018 WL 3796482, *9-*12 (7th Cir. Aug. 10, 2018). The Seventh Circuit panel, consisting of Chief Judge Wood and Judges Easterbrook and Hamilton, concluded that the circuit's previous "borrowing exercise" failed to pay due "attention to the difference that exists between the Eighth and the Fourteenth Amendment standards." *Miranda*, 2018 WL 3796482 at *9.

The Seventh Circuit noted that since *Kingsley*, “the Supreme Court has been signaling that courts must pay careful attention to the different status of pretrial detainees.” *Id.* The court observed that in *Kingsley*, this Court “cautioned that the Eighth Amendment and Due Process analyses are not coextensive.” *Id.* at *11 (citing *Kingsley*, 135 S. Ct. at 2475 (“The language of the two Clauses differs, and the nature of the claims often differs.”)). The court reasoned that “nothing in the logic the Supreme Court used in *Kingsley*” supports the “dissection of the different types of claims that arise under the Fourteenth Amendment’s Due Process Clause.” *Id.*

Accordingly, the Seventh Circuit announced: “We thus conclude, along with the Ninth and Second Circuits, that medical-care claims brought by pretrial detainees under the Fourteenth Amendment are subject only to the objective unreasonableness inquiry identified in *Kingsley*.” *Id.*

The court of appeals also noted that applying the objective standard will not “impermissibly constitutionalize medical malpractice claims [and] allow mere negligence to suffice for liability.” *Id.* at *12. The court explained that this concern was unwarranted because “the state-of-mind requirement for constitutional cases remains higher” as proven by the circuits that have adopted an objective standard post-*Kingsley*. *Id.* at *12; see, e.g., *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018); *Darnell v. Pineiro*, 849 F.3d 17, 36 & n.16 (2d Cir. 2017); *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc), cert. denied sub nom. *Los Angeles Cty. v. Castro*, 137 S. Ct. 831 (2017).

Applying this Court’s two-step state-of-mind inquiry from *Kingsley*,¹ the court of appeals found that the first step asks whether the defendants “acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [the pretrial detainee’s] case.” *Id.* (citing *Kingsley*, 135 S. Ct. at 2472, 2474). “As *Kingsley* instructs, the second step is the objective one.” *Id.* Applying this objective standard, the court found that:

The allegations here easily fit the mold of *Gordon*, *Darnell*, and *Castro*. A properly instructed jury could find that [the medical defendants] made the decision to continue observing [the pretrial detainee] in the jail, rather than transporting her to the hospital, with purposeful, knowing, or reckless disregard of the consequences. (The jury could also reject such a conclusion.) It would be a different matter if, for example, the medical defendants had forgotten that [the pretrial detainee] was in the jail, or mixed up her chart with that of another detainee, or if [the medical defendants] forgot to take over coverage for [the jail doctor] when he went on vacation. Such negligence would be insufficient to support liability under the Fourteenth Amendment, even though it might support state-law liability. Here, there is

¹ “The first [question] concerns the defendant’s state of mind with respect to his physical acts—i.e., his state of mind with respect to the bringing about of certain physical consequences in the world. The second question concerns the defendant’s state of mind with respect to whether his use of force was ‘excessive.’” *Kingsley*, 135 S. Ct. at 2472.

evidence that [the medical defendants] deliberately chose a “wait and see” monitoring plan, knowing that [the pretrial detainee] was neither eating nor drinking nor competent to care for herself. . . . Because the Estate does not claim merely negligent conduct, a jury must decide whether the doctors’ deliberate failure to act was objectively reasonable.

Id. (citations omitted).

II. Although the Seventh Circuit joined the Second, Third, and Ninth Circuits, other circuit courts remain entrenched, deepening the division on this critical issue of constitutional law.

Although the Seventh Circuit acknowledged that this Court “took pains to reiterate the basic principles that apply to pretrial detainees” and “disapproved the uncritical extension of Eighth Amendment jurisprudence to the pretrial setting,” *Id.* at *9, other circuits continue to limit *Kingsley* to its facts. See *Johnson v. City of Bessemer*, No. 17–13122, 2018 WL 3359672, *3 n.5 (11th Cir. July 10, 2018) (unpublished) (holding that “*Kingsley* does not undermine [the Eleventh Circuit’s] earlier Eighth Amendment deliberate indifference precedents” when determining that a jailer’s failure to provide medical care to a suicidal pretrial detainee did not amount to deliberate indifference).

The Tenth Circuit has twice addressed *Kingsley*’s impact on failure-to-protect and inadequate medical care claims brought by pretrial detainees. First, the court of appeals “question[ed] whether, in light of the

Supreme Court’s decision in *Kingsley*,” a plaintiff need establish that a defendant acted with subjective deliberate indifference, but the court declined to reach the issue because it “would have no impact on the result of th[e] appeal.” *Perry v. Durborow*, 892 F.3d 1116, 1122 n.1 (10th Cir. June 12, 2018). In a more recent decision, the court of appeals declined to “revisit the applicable law” to determine whether *Kingsley* “held open the possibility that an objective-only standard should apply to [a] medical needs claim,” absent a specific showing that “*Kingsley* actually displaced any precedent regarding medical care during pretrial detention.” *Clark v. Colbert*, 895 F.3d 1258, 1269 (10th Cir. July 17, 2018) (internal citations and quotations omitted). Thus, the Fifth, Tenth, and Eleventh Circuits remain entrenched and refuse to adopt an objective standard.

III. The current landscape reveals a deepening split among the circuit courts regarding the appropriate constitutional standard to apply in failure-to-protect claims involving pretrial detainees.

Recent decisions by the circuit courts of appeals reveal a persistent lack of uniformity on this substantial question of constitutional law. Without guidance from this Court, the federal courts below will continue to reach different and often conflicting outcomes, arbitrarily affecting the rights of pretrial detainees depending on where a claim is brought. Compare *Darnell*, 849 F.3d at 35–36 (**objective**); *Kedra v. Schroeter*, 876 F.3d 424, 437–40 (3d Cir. 2017) (**objective**); *Miranda*, 2018 WL 3796482 at *9–*12 (**objective**); *Castro*, 833 F.3d at 1070–71 (**objective**),

with Suprenant v. Rivas, 424 F.3d 5, 18–19 (1st Cir. 2005) (**subjective**); *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 302–03 (4th Cir. 2004) (**subjective**); *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419–20 (5th Cir. 2017) (**subjective**); *Richmond v. Huq*, 885 F.3d 928, 937–38 (6th Cir. 2018) (**subjective**); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 (8th Cir. 2018) (**subjective**); *Clark v. Colbert*, 895 F.3d 1258, 1269 (10th Cir. July 17, 2018) (**subjective**); *Dang ex rel. Dang v. Sheriff, Seminole Cty. Fla.*, 871 F.3d 1272, 1279–80 (11th Cir. 2017) (**subjective**).²

Numerous circuit courts and circuit court judges have recognized this split, particularly since this Court’s decision in *Kingsley*. See, e.g., *Perry v. Durborow*, 892 F.3d 1116, 1122 n.1 (10th Cir. 2018); *Richmond*, 885 F.3d at 938 n.3; *Alderson*, 848 F.3d at 424 n.1 (Graves, J. dissenting); *Barton v. Taber*, 820 F.3d 958, 964 n.3 (8th Cir. 2016).

² Although Petitioners do not characterize their medical-needs claim as a failure-to-protect claim, many circuits have concluded that there is no meaningful difference between the two. See, e.g., *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018) (noting that “claims that government officials failed to address pretrial detainees’ medical needs us[e] the same standard as cases alleging that officials failed to protect pretrial detainees in some other way”); *Young v. City of Mount Ranier*, 238 F.3d 567, 575 (4th Cir. 2001) (concluding that a failure-to-protect claim was “no different in any meaningful respect from the indifferent-to-medical-needs claim”); *Hare v. City of Corinth*, 74 F.3d 633, 644 (5th Cir. 1996) (en banc) (noting “the absence of a constitutionally significant distinction between failure-to-protect and medical care claims”).

In fact, four circuits are in direct conflict on the precise question presented in this case: 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? *Compare* Pet. App. at 1–12 (**subjective**) *with Miranda*, 2018 WL 3796482 at *9–*12 (**objective**); *Bruno v. City of Schenectady*, 727 Fed. App'x. 717, 720–21 (2d Cir. 2018) (**objective**) (unpublished); *Gordon*, 888 F.3d at 1124–25 (**objective**).

The question of what constitutional standard applies in those types of cases continues to hopelessly divide the circuit courts, frequently arises in the courts below, and implicates the fundamental right of due process protected by the Fourteenth Amendment. Resolving this circuit split is of national importance because it will eliminate the continued uncertainty in this area of the law and the untenable lack of uniformity among the lower courts. Therefore, this petition warrants the Court's review.

CONCLUSION

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

Respectfully submitted,

Joseph F. Cleveland, Jr.*	Christine Stetson
Kevin C. Smith	David E. Bernsen
Bracket & Ellis, P.C.	The Bernsen Law Firm
100 Main Street	420 North MLK, Jr. Pkwy
Fort Worth, Texas 76102	Beaumont, Texas 77701
(817) 338-1700	(409) 212-9994
jcleveland@belaw.com	cstetson@bernsenlaw.com

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