

No. _____

**In The
Supreme Court of the United States**

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RICHARD LOPEZ, FRANK SALINSKY,
MARGARITA DIAZ-BERG, ALEXANDER C. AYALA,
FROILAN SANTIAGO, CRYSTAL JACKS,
COREY KROES, RICK BUNGERT, LUKE LEE,
JACOB IVY, and KARL ROBBINS,

Petitioners,

v.

ESTATE OF JAMES FRANKLIN PERRY
and JAMES FRANKLIN PERRY, JR.,

Respondents.

◆

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

◆

PETITION FOR A WRIT OF CERTIORARI

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GRANT F. LANGLEY,
City Attorney
SUSAN E. LAPPEN,
Assistant City Attorney
Counsel of Record
OFFICE OF THE
MILWAUKEE CITY ATTORNEY
Room 800, City Hall
200 East Wells Street
Milwaukee, WI 53202
(414) 286-2601
slappe@milwaukee.gov
Attorneys for Petitioners

QUESTIONS PRESENTED FOR REVIEW

An arrestee being held in a Milwaukee Police Department (MPD) temporary holding facility 1) was taken by ambulance to a nearby hospital for medical treatment after experiencing an epileptic seizure; 2) suffered additional seizures while at the hospital; 3) was given more than one dose of anti-seizure medication by hospital personnel; and 4) was subsequently medically cleared and released back into police custody by hospital personnel, even though the arrestee was not fully responsive in his communication with the officers, and was drooling, screaming, and unable to either dress himself or walk on his own. The MPD officers who 1) transported him back to the temporary holding facility; 2) escorted him as he was processed at that facility; and 3) then transported him to a nearby county jail for long term detention, observed no objective change in the arrestee's condition which suggested to them that the arrestee was experiencing another medical emergency, which would have required them to call again for emergency medical practitioners to respond to the arrestee's medical needs. Upon arrival at the county jail, approximately 75 minutes after the arrestee was released from the hospital, and within five minutes after two county jail nurses each observed the arrestee and did not conclude that he was experiencing a medical emergency, the arrestee collapsed and died at the scene from a blood clot in his heart and hardening of his arteries. The questions presented are:

1. Did the Seventh Circuit opinion improperly find that the actions of the eleven MPD Petitioners in not engaging any emergency

QUESTIONS PRESENTED FOR REVIEW –
Continued

medical response mechanism were objectively unreasonable, after failing to consider each of their actions from the perspective of a reasonable police officer encountering a similar situation?

2. Did the opinion consider clearly established law at too high a level of generality, rather than giving particularized consideration to the facts and circumstances of this case as they applied to each MPD officer, and thus deny each of the eleven Petitioners qualified immunity?

PARTIES TO THE PROCEEDING

Petitioners Richard Lopez, Frank Salinsky, Margarita Diaz-Berg, Alexander C. Ayala, Froilan Santiago, Crystal Jacks, Corey Kroes, Rick Bungert, Luke Lee, Jacob Ivy, and Karl Robbins at all times relevant hereto were sworn law enforcement officers employed by the Milwaukee Police Department, and they were Defendants-Appellees in the Court of Appeals.

Respondents Estate of James Franklin Perry and the decedent's son, James Franklin Perry, Jr., were the Plaintiffs-Appellants in the Court of Appeals.

Cheryl Wenzel and Nicole Virgo were also Defendants-Appellees in the Court of Appeals, but they were employees of Milwaukee County and represented by separate counsel.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

No petitioner is a nongovernmental corporation. No petitioner has a parent corporation, or shares held by a publicly-traded company.

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OPINIONS BELOW

The opinion of the United States Seventh Circuit Court of Appeals is a reported decision, *Estate of James Franklin Perry, et al. v. Cheryl Wenzel, et al.*, 872 F.3d 439 (7th Cir. 2017), and it is reproduced in the appendix hereto at App. 1-46. The opinion of the United States District Court for the Eastern District of Wisconsin on the City of Milwaukee defendants' motion for summary judgment is a reported decision, *Estate of James Franklin Perry, et al. v. Cheryl Wenzel, et al.*, 185 F.Supp.3d 187 (E.D. Wis. 2016), and it is reproduced in the appendix hereto at App. 47-75.



BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Seventh Circuit had appellate jurisdiction because the opinion of the district court, which granted Petitioners' motion for summary judgment, was a "final decision" within the meaning of 28 U.S.C. § 1291 and the collateral order doctrine. *Mitchell v. Forsyth*, 472 U.S. 511, 527-30 (1985). In its decision dated September 18, 2017, the Seventh Circuit overturned the ruling of the district court, as to both its determination of the objective reasonableness of the Petitioners' actions, and its grant of qualified immunity to the Petitioners. Accordingly, Petitioners filed this timely petition for a writ of certiorari on December 15, 2017. *See* Sup. Ct. R. 13(1), (3). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).



CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondents filed the underlying action under the Fourteenth Amendment to the United States Constitution, which provides that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST. amend. XIV, Section 1.

Respondents also filed this action under 42 U.S.C. § 1983, which provides, in relevant part, that:

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 . . . 42 U.S.C. § 1983.



STATEMENT OF THE CASE

A. Material Facts

Mr. Perry suffered a seizure while a pretrial detainee at the Prisoner Processing Section (PPS) of the Milwaukee Police Department. (App. 4-5) There is no dispute that Mr. Perry was lawfully arrested at approximately 2:30 a.m. on September 10, 2013, regarding the armed robbery of an automobile, and booked into the PPS at 5:36 a.m. (*Id.*; D:95) During his initial processing, at approximately 5:45 a.m., Mr. Perry participated in a medical intake screening interview, and stated that he suffered from seizures and took medication to treat his condition. (App. 4-5) There is no evidence that Mr. Perry requested either medical treatment or medication at that time, or that he indicated that he suffered from any condition which required immediate medical care. At about 3:00 p.m., Mr. Perry suffered a seizure while he was located in the male “bullpen,” which was a large cell that could hold many arrestees. (*Id.*) PPS personnel called for emergency medical technicians, who responded to the PPS and treated Mr. Perry. (*Id.*) Mr. Perry was then transported to a nearby hospital. (*Id.*) In the ambulance, Mr. Perry was awake, appeared tired, and did not talk much. (*Id.* 5) After arriving at the hospital, Mr. Perry was cooperative with medical professionals and was able to answer their questions. (*Id.*) Officers Kroes and Jacks accompanied Mr. Perry to the hospital, where they observed him experience at least two more seizures, and receive more than one dose of anti-seizure medication. (*Id.* 5-6) After each seizure, Mr. Perry became more

tired, weak, and less responsive. (*Id.* 5) After he was medicated, Mr. Perry began to mumble, occasionally screamed out, and began to drool. (*Id.* 6) Officers Jacks and Kroes were concerned about Mr. Perry's condition, and why he did not seem to be improving. (*Id.*) Officer Jacks expressed her concerns to hospital personnel, who told her that his condition had changed because of the medication he had been given. (*Id.*) Mr. Perry was medically-cleared and discharged by hospital personnel at approximately 6:45 p.m. (*Id.* 7) Prior to his discharge, Officers Kroes and Jacks observed that Mr. Perry could not walk on his own, could not dress himself, and was not communicating with them appropriately. (*Id.* 6-7; D:107 – Jacks Aff., ¶¶ 25-44; D:93 – Kroes Aff., ¶¶ 27-39) After being assured that Mr. Perry was simply under the influence of his medication and that he would be drowsy and want to sleep, Officers Kroes and Jacks returned him to the PPS, and remained there until he was placed into cell A3. (App. 6-10) They believed that Mr. Perry was recovering from several seizures, and under the influence of anti-seizure medication. (D:107 – ¶¶ 60-63; D:93 – ¶¶ 53-56)

Officers Bungert and Santiago helped Officers Kroes and Jacks remove Mr. Perry from the squad car and carry him into the elevator in the parking garage, down the hallway in the PPS, and later into cell A3. (App. 8-10) They perceived that Mr. Perry was a resistant prisoner. (App. 8; D:96 – ¶ 32) The Circuit Court concluded that “while still on the floor of the PPS hallway, Perry defecated and urinated in his pants. No one inquired as to whether Perry had done that

intentionally, or whether this was an unintentional action that might suggest that he needed further medical treatment.” (App. 8-9) The Circuit Court also concluded that the smell was so strong that Officer Jacks eventually became physically ill and vomited. (App. 9) However, the court ignored the fact that such smells are common in the PPS, and no officer concluded that they were evidence of a medical emergency. (D:104 – Robbins Aff., ¶ 18; D:98 – Salinsky Aff., ¶ 15; D:96 – Santiago Aff., ¶ 28; D:93 – Kroes Aff., ¶ 13; D:92 – Lee Aff., ¶ 13; D:97 – Lopez Aff., ¶ 17; D:106 – Ivy Aff., ¶ 11; D:107 – Jacks Aff., ¶ 13; D:94 – Bungert Aff., ¶¶ 13-14; D:108 – Diaz-Berg Aff., ¶ 12; D:100 – Ayala Aff., ¶ 23). Also, the Court ignored the facts that while Mr. Perry was seated on the floor outside of the booking room, officers: (1) heard him grunting, making noises, and making statements; (2) observed that he did not respond to their directions; (3) saw him kicking; and (4) felt resistive tension in his arms and legs. (D:96 – Santiago ¶¶ 29-34; D:107 – Jacks. Aff., ¶¶ 51, 55; D:93 – Kroes Aff., ¶¶ 46, 49; D:94 – Bungert ¶¶ 17-18; D:108 – Diaz-Berg Aff., ¶ 12; D:92 – Lee Aff., ¶ 15; D:104 – Robbins Aff., ¶¶ 17-19; D:100 – Ayala Aff., ¶¶ 16-19). Thus, Officers perceived that Mr. Perry was being resistive or combative with regard to their efforts to detain him at the PPS. (D:108 – Diaz-Berg Aff., ¶¶ 12, 16; D:92 – Lee Aff., ¶ 15; D:96 – Santiago ¶ 32; D:106 – Ivy Aff., ¶ 11; D:100 – Ayala Aff., ¶ 24).

Officer Ayala noticed that Mr. Perry was spitting and drooling, and he requested an expectorant shield (spit mask). (App. 9) Police Aide Ivy’s involvement was

to obtain the shield, and assist with placing it on Mr. Perry. (App. 9-10) Mr. Perry said things like “I can’t breathe,” “help me,” “I can’t see,” and “you’re killing me.” (App. 10) The Circuit Court ignored the fact that these statements were made only after the expectorant shield was placed over Mr. Perry’s head (D:137), and that in Officer Kroes’ experience, prisoners often made comments like that after they had the paper and mesh expectorant shield placed over their heads, while having no medical issues whatsoever, simply because of the uncomfortable feeling of having a foreign object placed over their heads. (*Id.*) Officer Kroes responded to Mr. Perry’s statements with “if you are talking, you’re breathing.” (App. 9)

Officer Lee helped carry Mr. Perry from hallway to cell, and later from cell to elevator. (D:92 – ¶¶ 10-18) Officers Ayala and Diaz-Berg observed Mr. Perry while he was located in cell A3, and as they conducted regular cell-block wellness checks. (App. 10-11) Before Mr. Perry was placed in cell A3, his handcuffs and shackles were removed. (App. 10) Later, Mr. Perry himself removed his spit mask. (App. 11) Officers Ayala and Diaz-Berg also concluded that Mr. Perry was being resistive, and/or under the influence of medication. (D:108 – ¶¶ 13-18; D:100 – ¶ 24) The Circuit Court ignored the fact that while Mr. Perry was in cell A3, he spoke to a PPS janitor, Andy Puechner, and asked him about the time, while Mr. Perry was standing and not wearing his expectorant shield. (D:136 – Response to PPFOF Nos. 64-65)

Lieutenant Robbins was present at the PPS, but had no physical contact with Mr. Perry. (D:104) He also concluded that Mr. Perry was exhibiting inappropriate behavior, and he directed that once Mr. Perry's paperwork was completed, he should be transferred to the Milwaukee County Criminal Justice Facility (CJF). (App. 8-10) Lieutenant Robbins knew that Mr. Perry had minutes earlier been medically-cleared and released from the hospital. (App. 6) Officers Salinsky and Lopez transported Mr. Perry to the CJF, which was about one block, or a one-minute drive, from the PPS. (App. 12; D:108 – ¶ 23; D:98 – ¶¶ 11-12, 23; D:97 – ¶ 29) AFTER Mr. Perry was removed from cell A3, Officer Diaz-Berg and Lieutenant Robbins, along with PPS janitor Andy Puechner, saw spots of blood, saliva, urine and feces on the cell floor. (App. 11)

At 8:41 p.m., approximately one hour and fifteen minutes after he was released from the hospital, Mr. Perry arrived at the CJF. (App. 11-12) The Circuit Court concluded that the cameras at the CJF captured images which showed that “[t]wo City officers, Officers Salinsky and Lopez, dragged Perry into the CJF.” (App. 12) While that is true, the Circuit Court failed to mention that the camera images also showed that initially, Mr. Perry can be seen walking into the CJF with an officer escorting him on each side, but after a few steps, his knees buckle, and he then was immediately dragged into the pre-booking area of the CJF, directly to the nurses station. After a brief examination, Nurse Virgo (a CJF employee) determined that, while Mr. Perry did not appear to be experiencing a medical

emergency, he should return to the hospital for additional evaluation. (App. 13-14; D:86 – pp. 45, 61, 78-79, 135) By 8:48 p.m., an ambulance was called for transporting Mr. Perry back to the hospital. (App. 14) At approximately 8:51 p.m., Mr. Perry stopped breathing, and he died at the CJF after life-saving measures proved to be unsuccessful. (App. 15)

The Circuit Court ignored that Mr. Perry’s autopsy revealed no significant injuries related to his cause of death, including no evidence of injury to his head. (D:111 – DPFOF 112). Rather, the medical examiner concluded that Mr. Perry died of natural causes. (*Id.*; App. 15-16) Specifically, he died from a blood clot in his heart and hardening of his arteries. (*Id.*)

The Circuit Court ignored the fact that like most law enforcement officers in this country, MPD officers are provided with “first responder” training developed by the American Heart Association and the Red Cross, and trained that they must attend to a person who is experiencing a medical emergency, like a seizure, stroke, asthma attack, or heart attack, but only until more advanced medical practitioners, like EMTs, arrive on scene. (D:111 – DPFOF 19-23) Training provides that if an MPD officer does not observe any objective behavior indicating that a prisoner is experiencing a medical emergency, then they are not required to take any “first responder” action, including calling for an ambulance. (*Id.*)

B. Pertinent Procedural History

The Estate of James Franklin Perry and his son filed this action with the Milwaukee County Circuit Court on June 8, 2012 against the City of Milwaukee, the County of Milwaukee, and various employees of each of the two governmental entities. The plaintiffs alleged violations of Mr. Perry's civil rights under federal law, and raised negligence and wrongful death claims under Wisconsin law. Respondents asserted in their complaint that their federal claims were raised under the Eighth Amendment, even though Mr. Perry was an arrestee, and not a prisoner. A notice of removal was filed with the United States District Court for the Eastern District of Wisconsin by the City of Milwaukee Defendants on June 28, 2012.

On December 1, 2015, the City Defendants filed a motion for summary judgment and materials in support thereof. The plaintiffs opposed the motion. On May 6, 2016, the District Court issued a Decision and Order granting the motion in its entirety. The District Court analyzed the claims raised against the City Defendants under the Fourth Amendment, and held that

“the Court must consider four factors to determine whether the defendants' responses to Perry's medical needs were objectively reasonable: (1) whether the officer had notice of the detainee's medical needs; (2) the seriousness of the medical need; (3) the scope of the requested treatment; and (4) police interests, including administrative, penological, or investigatory

concerns. *Ortiz v. City of Chi.*, 656 F.3d 523, 530 (7th Cir. 2011).

Far from ignoring Perry's medical issues, MPD officers took Perry to the hospital for treatment after he suffered a seizure. Perry was discharged, so it was reasonable for the officers to presume that Perry was fine for the time-being. It was also reasonable for the officers to attribute Perry's behavioral issues to any of the following: the side effects of medication, the after-effects of multiple seizures, or the possibility that Perry was simply a combative prisoner resisting arrest." (App. 63-64)

Citing to the Supreme Court's decisions in *Taylor v. Barkes* and *Mullenix v. Luna*, the District Court held that the City Defendants were entitled to qualified immunity as follows:

"[t]he theme of plaintiffs' case is that the defendants should have done more to help Perry, especially after his discharge from the hospital. However, none of Perry's symptoms were or should have been particularly alarming to the City Defendants. Instead, and as explained by hospital personnel, it was reasonable for the City Defendants to perceive that Perry's symptoms were simply the side effects of medication. At minimum, reasonable officers would disagree as to whether the actions of the City Defendants, both before and after discharge, were objectively unreasonable. 'To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing

violates that right. . . . We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.’ *Taylor v. Barkes*, ___ U.S. ___, 135 S. Ct. 2042, 2044 (2015); *Mullenix v. Luna*, ___ U.S. ___, 136 S. Ct. 305, 308 (2015) (The dispositive question is ‘whether the violative nature of *particular* conduct is clearly established.’ This inquiry ‘must be undertaken in light of the specific context of the case, not as a broad general proposition’)” (App. 63)

The plaintiffs appealed to the United States Court of Appeals for the Seventh Circuit. The Circuit Court issued its Opinion on September 18, 2017. As to the claims raised against the City Defendants, the Seventh Circuit upheld the dismissal of 1) all claims against Officer Bell, Chief Flynn, and the City of Milwaukee, including the policy and training claims raised under *Monell v. Dep’t of Social Services of City of New York*, 436 U.S. 658 (1978), and 2) all state-law claims raised against all of the individually-named City Defendants. (App. 38-41) However, the Seventh Circuit overturned the dismissal of the Fourth Amendment failure-to-provide-medical-care claim raised against City Defendants Lopez, Salinsky, Diaz-Berg, Ayala, Santiago, Robbins, Jacks, Kroes, Bungert, Lee, and Ivy. The Circuit Court determined that its ultimate inquiry was “‘whether the conduct of each defendant was objectively reasonable under the circumstances.’” (Citing *Ortiz v. City of Chicago*, 656 F.3d 523, 530 (7th Cir. 2011)) (App. 22) However, the Circuit Court found that

the district court improperly credited the officers' testimony that they never *perceived* that Perry was in distress while he was in their custody and prior to collapsing on the floor of the CJF. This was an error, as it ignores the district court's obligation at summary judgment to consider the evidence in the light most favorable to Perry and to refrain from making credibility determinations." (App. 23)

The Circuit Court concluded that the District Court

"placed too much emphasis on the fact that the City sought medical care for the seizure. . . . [and that] his hospitalization must be considered among the other facts when determining whether or not the officers were reasonable in the way they treated Perry *after* his return from the hospital." (App. 23-24)

As to the qualified immunity defense raised by the City Defendants, the Circuit Court noted that

"in September 2010, it was clearly established that the Fourth Amendment governed claims by detainees who had yet to receive a judicial probable cause determination. *See Williams*, 509 F.3d at 403 ('Claims regarding conditions of confinement for pretrial detainees such as Williams, who have not yet had a judicial determination of probable cause (a *Gerstein* hearing), are instead governed by the Fourth Amendment and its objectively unreasonable standard.'). In 2007, in *Williams*, we identified

the four factors later articulated in *Ortiz*, and upon which we have relied to evaluate the merits of Perry's claims. And, if by 2010, it was clearly established that an officer or prison nurse's actions were judged by the objectively reasonable standard of the Fourth Amendment, the failure to take *any* action in light of a serious medical need would violate that standard. Because Perry has met his burden at summary judgment of establishing that there was a violation of his constitutional rights and that that right was clearly established in 2010, his claims must be submitted to a jury for consideration." (App. 38)

However, the Court provided no citation to any authority which established for law enforcement officers, prior to September, 2010, that any of the statements made by Mr. Perry or behaviors exhibited by him presented clear evidence of a "serious medical need," much less one that required any Petitioner to obtain emergency medical services. Also, the Circuit Court failed to analyze the actions of the Petitioners independently, from their individual perspectives, and considering all undisputed facts, including their training and professional experience.

C. Basis For Federal Jurisdiction

Respondents filed their complaint in the Milwaukee County Circuit Court. Petitioners and the other defendants removed the case to the United States District Court for the Eastern District of Wisconsin based upon federal question jurisdiction, pursuant to 28

U.S.C. § 1331. The Petitioners sought qualified immunity and summary judgment. The District Court granted Petitioners' motion. Respondents appealed to the United States Court of Appeals for the Seventh Circuit, pursuant to Fed. R. App. P. 4, and the Seventh Circuit exercised jurisdiction pursuant to 28 U.S.C. § 1291.



REASONS FOR ALLOWANCE OF THE WRIT

The Seventh Circuit Court of Appeals confronted the issue of whether eleven City of Milwaukee police officers, who each had separate and distinct contact with Mr. Perry after he was medically-cleared by hospital personnel and released back into police custody, were objectively unreasonable in their determination that Mr. Perry was not experiencing another emergency medical situation, which would have required each of them to obtain additional emergency medical services for him. The Circuit Court noted that officers can be placed on notice of a serious medical condition either by word or through observation of the detainee's physical symptoms, and that both were present in this case, without articulating the specific words or symptoms observed by each Petitioner, which objectively and clearly established for each of them that Mr. Perry was suffering from a medical emergency. (App. 21) The Circuit Court ignored undisputed facts, and did not analyze the actions of each Petitioner independently from one another, or from the perspective of a reasonable police officer.

The Circuit Court also considered whether any caselaw existed which clearly established prior to September, 2010 that those officers were required to call for emergency medical services, and that their failure to do so violated the Constitution. However, in that regard, the analysis of the Circuit Court was conducted at a too-highly-generalized level, because it did not present any Supreme Court or Courts of Appeals decisions which involved any scenario even remotely similar to the facts of this case, where an arrestee experienced a seizure while in custody, was transported to a medical facility where he experienced more seizures and was treated with multiple doses of anti-seizure medication, and then after he was medically-cleared and released back into police custody, and within 75 minutes of his release, that arrestee collapsed due to a blood clot in his heart and hardening of his arteries, without exhibiting any behavioral change that objectively suggested he was suffering from yet another medical emergency.

- A. The Seventh Circuit decision stands in opposition to the precedent of the Supreme Court and its own precedent, which establish that a law enforcement officer is not objectively unreasonable for not obtaining emergency medical treatment for an arrestee, when the officer did not observe any objective indicia which suggested that the arrestee, who minutes earlier was medically-cleared by hospital personnel and who was under the influence of medication, was suffering from yet another medical emergency, which required emergency medical care**

Courts have never required law enforcement officers to obtain medical degrees, or be able to diagnose medical conditions. The Supreme Court has held only that “when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). The Seventh Circuit has held that when considering whether medical care obtained by government employees for arrestees comported with the objectively reasonable requirement of the Fourth Amendment, courts “are guided by four factors: (1) whether the officer had notice of the detainee’s medical needs; (2) the seriousness of the medical need; (3) the scope of the requested treatment; and (4) police interests, including administrative, penological, or investigatory concerns.” *Ortiz*, 656 F.3d at 530.

Mr. Perry never requested either medical treatment or medication. As illustrated by the MPD response to his first seizure, calling for emergency medical practitioners and/or transporting a prisoner to the hospital was not burdensome for PPS officers, and did not raise administrative concerns. Therefore, in this case, only the first and second of the *Ortiz* factors – notice and the seriousness of the medical need – are at issue. In analyzing these factors, the Circuit Court incorrectly concluded that the District Court erred by crediting the Petitioners with their subjective perceptions that Mr. Perry was not experiencing a medical emergency. The Circuit Court concluded that, even though no evidence created a question of fact as to the truthfulness of the officers’ descriptions of their observations of Mr. Perry’s behaviors, and/or the conclusions they derived therefrom, a jury was required to resolve “credibility determinations.” (App. 22-23) The Court cited to *Deets v. Massman Construction* 811 F.3d 978, 982 (7th Cir. 2016) and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) in support of this premise. However, *Deets* involved an employment discrimination case, where witness Todt denied making a statement that was attributed to him by plaintiff Deets (*Deets*, at 982), and thus conflicting evidence was presented regarding a significant fact. In the instant case, there is no conflicting evidence regarding the Petitioners’ statements that they did not perceive that Mr. Perry was experiencing an emergency medical condition. Also, while this Court did rule in *Anderson* that credibility determinations are jury functions (*Anderson*, at 255), it clarified that “a party opposing a

properly supported motion for summary judgment . . . must set forth specific facts showing that there is a genuine issue for trial,” (*Id.* at 256) and that a plaintiff could not

“defeat a defendant’s properly supported motion for summary judgment in a conspiracy or libel case, for example, without offering any concrete evidence from which a reasonable juror could return a verdict in his favor and by merely asserting that the jury might, and legally could, disbelieve the defendant’s denial of a conspiracy or of legal malice.” (*Id.*)

Instead, this Court ruled that “the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment.” (*Id.*) No evidence has been presented in this case which puts the subjective perceptions of the Petitioners in this regard into question. In other words, there is no evidence which rebuts the Petitioners’ statements, and suggests that any Petitioner thought that Mr. Perry was experiencing a medical emergency, but intentionally did not engage any emergency response mechanism. With no conflicting evidence regarding the officers’ subjective perceptions, there was/is no need to make any “credibility determinations” regarding them. Rather, the focus of the Fourth Amendment analysis here is whether the undisputed behaviors exhibited by Mr. Perry provided each of the Petitioners with objective evidence of an emergency medical condition, thus making them objectively unreasonable for not engaging any emergency response mechanism. In resolving this Fourth

Amendment issue, the test is whether reasonable law enforcement officers, seeing what each Petitioner saw and hearing what each Petitioner heard, and given the totality of the circumstances – which include their training and experience – would conclude that Mr. Perry was experiencing an emergency medical situation. See *Humphrey v. Staszak*, 148 F.3d 719, 725 (1998) (The question is whether an officer “acted reasonably under settled law in the circumstances, not whether another reasonable, or more reasonable, interpretation of the events can be construed several years after the fact.”); *Mahoney v. Kesery*, 976 F.2d 1054, 1057 (7th Cir. 1992) (The reasonableness of an officer’s action is evaluated “not on the facts as an omniscient observer would perceive them, but on the facts as they would have appeared to a reasonable person in the position of the arresting officer – seeing what he saw, hearing what he heard.”); *Ortiz*, at 531 (Everything each officer knew about both the arrestee’s health status and their employer’s policies is considered when examining if the conduct of each officer was objectively reasonable under the circumstances.) and *Pauly v. White*, ___ F.3d ___, p. 42 (10th Cir. Oct. 31, 2017) (an officer’s actions leading up to an alleged constitutional violation is “absolutely relevant” in determining the reasonableness of his actions).

The first of the two *Ortiz* factors involved with this case involves notice of a medical need. Several of the Petitioners knew that Mr. Perry had been treated at the hospital for seizures and was medicated by hospital personnel, and also that he had been

medically-cleared and released back into police custody. No MPD officer knew that Mr. Perry had hardening of the arteries, or that a blood clot may have been forming inside his body. Therefore, no Petitioner had notice of the condition which caused Mr. Perry's death.

Regarding the second *Ortiz* factor, no Petitioner had notice that Mr. Perry was experiencing a serious medical need, from the time of his discharge from the hospital, to the time of his collapse at the CJF. Officers Kroes and Jacks accompanied Mr. Perry to the hospital, knew that he experienced seizures and was medicated for same, and observed that his condition appeared to deteriorate. Prior to his discharge from the hospital, Mr. Perry was not able to walk or dress on his own, appeared to have difficulty comprehending the officers' statements to him, was not appropriately responsive to Officers Kroes and Jacks, and he was drooling and screaming out. Officer Jacks was assured by hospital personnel that his change in condition since arriving at the hospital was due to the effects of having had more seizures, and being under the influence of anti-seizure medication. Hospital personnel medically-cleared Mr. Perry and released him. The officers brought Mr. Perry to their squad car via wheelchair, and Officers Bungert and Santiago met them in the garage of the police building, and assisted in bringing Mr. Perry up to the PPS. Officers Bungert and Santiago knew that Mr. Perry had just come from the hospital. The four officers took care to see that Mr. Perry's back and head were supported while he was seated on the floor of the elevator. There is no evidence that from the

time of his discharge from the hospital until he was brought to the PPS, Mr. Perry requested any medical treatment.

While in the hallway of the PPS, Mr. Perry was seated on the floor, and emitted an odor of feces and/or urine. Such odors are commonly smelled on arrestees held at the PPS, and there is no precedent which establishes that the smell of feces and/or urine from an arrestee in a temporary holding facility is evidence of a medical emergency. Mr. Perry was conscious and talking, he did not have any open wounds, and he did not request medication or medical attention. Mr. Perry was drooling and spitting. He tensed his muscles and did not follow the direction of the officers. He said he could not breathe, in addition to words like “you are killing me” and “help me,” but only after a mesh and paper spit mask was placed over his head. (D:137 – Second Kroes Aff.) This undisputed fact was ignored by the Circuit Court. However, the context in which such statements are made is significant in evaluating the reasonableness of an officer’s response to same. See *Williams v. Rodriguez*, 509 F.3d 392, 402 (7th Cir. 2007). In Officer Kroes’ experience, arrestees often made comments like that after they had the paper and mesh shield placed over their heads, while having no medical issues whatsoever, simply because of the uncomfortable feeling of having a foreign object placed over their heads. (D:137 – Second Kroes Aff.) There is no evidence that Mr. Perry continued to make these types of statements at any time after he was removed from the hallway area. In the context of this particular

situation, especially considering the fact that Mr. Perry had minutes earlier been medically-cleared and discharged from a hospital, the officers did not believe that Mr. Perry's behaviors or statements indicated that he was experiencing a serious medical condition. Rather, his tense movements, his spitting, and his failure to obey their orders to calm down and not struggle with them, led officers to believe that in addition to recovering from seizures and being under the influence of anti-seizure medication, he was simply being a resistive prisoner. (D:111 – DPFOF 75, 86, 87, 97, 104).

Only Officer Ayala observed a slight red tint to Mr. Perry's saliva, as he was assisting in placing the expectorant shield over Mr. Perry's head, while he was seated in the PPS hallway. (D:138 – Second Ayala Aff.) However, in Officer Ayala's mind, that light red tinting in the saliva was consistent with other situations he had experienced, which involved prisoners who had inadvertently bitten the inside of their cheeks or their tongues during the course of police processing. (*Id.*) Given the totality of circumstances then and there present for Officer Ayala, he did not believe that the light red tinting in Mr. Perry's saliva indicated that Mr. Perry was experiencing a medical emergency, or that he was otherwise in need of medical assistance. (*Id.*) These undisputed facts were ignored by the Circuit Court. No officer saw Mr. Perry have another seizure, lose consciousness, or actively bleeding, nor did anyone see any type of wound on his person. In fact, Officer Ayala saw that Mr. Perry's condition appeared to improve by the time he was taken out of his cell for the

trip to the Milwaukee County Criminal Justice Facility (CJF), because he had removed his expectorant shield by himself, and he was able to ambulate on his own two feet. (D:111 – DPFOF 98; D:136 – Response to PPFOF 64-65). The Circuit Court largely ignored these undisputed facts as well. Those observations were consistent with the effects of the anti-seizure medication wearing off, and not a man who was in the process of dying.

There is no dispute that Mr. Perry was picked up and carried to cell A3 by Officers Kroes, Jacks, Bungert, Santiago, and Lee. Officer Lee just happened to be in the PPS at the time Mr. Perry was brought in by the other officers. He saw that officers were physically lifting Mr. Perry and moving him to a cell, so he helped them with that process. About an hour later, Officer Lee also assisted with escorting Mr. Perry from cell A3 to the elevator, which took Mr. Perry and other officers down to the garage on their way to the CJF.

While in his cell, Mr. Perry did speak to the janitor, and asked him about the time. It was not objectively unreasonable for any Petitioner who observed Mr. Perry after he arrived at the PPS, but before he was removed from his cell, which was everyone except for Petitioners Salinsky and Lopez, to conclude that Mr. Perry's behaviors were consistent with someone who was recovering from experiencing several seizures that day and/or under the influence of medication and/or resistant to going back to jail and/or uncomfortable with having a spit mask placed over his head, and not that he was experiencing a medical emergency.

During the course of the approximately one hour that Mr. Perry was located in cell A3, Officer Ayala and Officer Diaz-Berg both looked in on him, and checked on his condition. Officer Diaz-Berg saw that Mr. Perry was moving, breathing, and moaning. She did not observe that Mr. Perry lost consciousness or was bleeding. He did not complain to her about any medical issue, nor did he request medical assistance. As noted above, he had a conversation with the janitor about the time, while standing and not wearing his expectorant shield. Neither Officer Ayala nor Officer Diaz-Berg saw anything about Mr. Perry's behavior while he was in his cell which suggested to them that he was experiencing a medical emergency.

Lieutenant Robbins was the commanding officer assigned to PPS that night. He knew that Mr. Perry had been treated at the hospital for his seizure condition, and that he had been medicated. After Mr. Perry had been brought to the PPS, Lieutenant Robbins walked to his location near the booking desk, and observed that Mr. Perry was drooling and spitting. Lieutenant Robbins perceived that Mr. Perry was intentionally trying to spit on officers, and that he was being resistive to their directions. Lieutenant Robbins did make an unprofessional statement to Mr. Perry. However, Lieutenant Robbins never touched Mr. Perry. Lieutenant Robbins never observed anything about Mr. Perry's behavior which objectively suggested that Mr. Perry was experiencing a medical emergency.

Officer Ivy was a young police aide on the night in question. At the direction of a senior officer, he

retrieved an expectorant shield, and assisted in placing it over Mr. Perry's head. Police Aide Ivy did not observe anything about Mr. Perry which objectively indicated to him that Mr. Perry was experiencing a medical emergency.

After Mr. Perry was placed in cell A3, his shackles and handcuffs were removed by officers, and he removed the spit mask himself. Mr. Puechner cleaned cell A3 after Mr. Perry was taken to the PPS. During his deposition, Mr. Puechner testified that he observed: (1) three quarter-sized "gobs" of spit on the floor; (2) four or five pea-sized drops of blood in the middle of the cell, and one nickel-sized drop of blood near the door; (3) a 1' by 1' puddle of urine near the toilet; and (4) a 1½" by ½" dropping of feces near the toilet. (D:136 – Responses to PPFOF 64-65) This specific description of the items cleaned was ignored by the Circuit Court, but it clarified why no officer saw the items before Mr. Perry left his cell. Officer Diaz-Berg confirmed that she observed a dime-sized drop of blood on the floor near the door to the jail cell, but this observation was made AFTER Mr. Perry had been removed from the cell, and was taken to the CJF. (*Id.*)

When Officers Salinsky and Lopez came to cell A3, they had Mr. Perry stand, after reapplying his handcuffs and leg shackles. (D:111 – DPFOF 92-99) Mr. Perry had removed the expectorant shield on his own, while he was in the cell, so the expectorant shield had to be reapplied. (*Id.*) Mr. Perry walked to the elevator, which brought the officers and Mr. Perry down to the parking garage, and he walked to the conveyance

vehicle, which brought them after about one minute of driving time to the CJF. (*Id.*) The Circuit Court ignored these undisputed facts as well. As is evident by the videotaped images filed in support of the Petitioners' initial summary judgment briefing, along with the testimony and affidavits of Mr. Puechner and Officers Ayala, Salinsky, and Lopez, Mr. Perry walked into and stood in that elevator while bearing his own weight. He appeared to be wobbly, but his wobbliness was consistent with the fact that he had experienced several seizures that day, and that he had been given more than one dose of anti-seizure medication.

The Circuit Court concluded that Officers Bell, Salinsky and Lopez, like the County officers, were entitled to rely upon the professional medical judgment of the CJF nurses, and therefore were entitled to summary judgment regarding their actions at the CJF. (App. 33-34) However, the Court refused to affirm summary judgment for Officers Salinsky and Lopez regarding their actions "prior to arriving at the CJF," without analyzing the significant facts, and apparently refused to credit any other Petitioner with relying on the professional medical judgment of the practitioners who released Mr. Perry from the hospital.

The Circuit Court simply ignored the Petitioners' training, experience, and perceptions in analyzing the objective reasonableness of their actions. Petitioners assert that none of them were objectively unreasonable in not obtaining emergency medical care for Mr. Perry within the 75 minutes following his discharge from the hospital, because his behavior did not change

during those 75 minutes such that he exhibited any objective sign of experiencing another medical emergency. No caselaw put any Petitioner on notice that when an arrestee is treated and medicated by hospital personnel, and within a few hours is medically-cleared and released back into police custody, even though he appears to be under the influence of medication and/or recovering from seizure activity, that if he spits, drools, appears drowsy, or needs assistance dressing and walking (all behaviors Mr. Perry exhibited while in the hospital under professional medical care) or if he emits an odor of feces and/or urine (which was the only new observation of Mr. Perry made by officers at the PPS), that these behaviors are obvious signs of a medical emergency, which required the officers to obtain emergency medical assistance.

At no time while Mr. Perry was located at the PPS did he: (1) request medical treatment or medication; (2) lose consciousness; (3) exhibit uncontrolled bleeding, or any type of cut or laceration; or (4) exhibit any other behavior which objectively evidenced that he was experiencing a medical emergency, like a heart attack, seizure, stroke, asthma attack, or allergic reaction, which the officers had learned about in their AHA and Red Cross training. Furthermore, within the parameters of their training and experience, the behaviors that were observed by the Petitioners were consistent with those exhibited by someone who had experienced several seizures and/or was under the influence of anti-seizure medication and/or was resisting his return to a jail cell. No evidence has been submitted to any court

below which establishes that any Petitioner has been untruthful, or is otherwise incredible, when asserting that s/he simply did not perceive that Mr. Perry was in need of any additional emergency medical care. Therefore, the Seventh Circuit erred in determining that the one remaining failure-to-provide-medical-care claim raised against the eleven Petitioners must proceed to trial, for a jury to resolve “credibility issues.” Their actions were objectively reasonable. Consistent with the above, the petition should be granted, and ultimately, the opinion of the Seventh Circuit should be reversed.

B. The Seventh Circuit decision improperly denied qualified immunity by assessing the MPD officers’ conduct at a level that was too highly generalized

The Supreme Court has long held that the defense of qualified immunity shields “government officials performing discretionary functions * * * from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (citations and footnote omitted). The principle behind the doctrine is that if the law at the time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he or she fairly be said to know that the law forbade conduct not previously identified as unlawful. *Id.* The Seventh Circuit has noted that “[w]hat is important, in the final analysis, is ‘whether the legal

norms governing [the government official's] behavior were clearly established at the time of the challenged actions.’” *Upton v. Thompson*, 930 F.2d 1209, 1212 (7th Cir. 1991) (citations omitted).

Qualified immunity thus affords a government official broader protection than does the merits defense that no constitutional violation occurred. Regardless of whether the constitutional violation occurred, the government official should prevail if the right asserted by the plaintiff was not clearly established, in the particularized sense that “[t]he contours of the right [were] sufficiently clear that a reasonable official would understand that what he [or she] is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Even where the rights allegedly violated may be clear at some level of abstraction, the government official should prevail if a reasonable officer could have believed that his or her particular conduct was lawful. *Id.* at 641. This is a fact-specific, objective test. *Id.*; *Harlow*, 457 U.S. at 819. Furthermore, the Seventh Circuit has held that the question asked must be “whether the law was clear in relation to the specific facts confronting the public official when he or she acted.” *Apostol v. Landau*, 957 F.2d 339, 341 (7th Cir. 1992) (citations omitted). Accordingly, the question of whether qualified immunity applies is made up of three analytic components: (1) the identification of the specific right allegedly violated; (2) the determination of whether that right was so “clearly established” as to alert a reasonable official to its constitutional parameters; and (3) the ultimate determination of whether a reasonable

official could have believed lawful the particular conduct at issue. See *Gooden v. Howard County*, 917 F.2d 1355, 1361 (4th Cir. 1990); *Burns v. Loranger*, 907 F.2d 233, 235-36 (1st Cir. 1990); *Robison v. Via*, 821 F.2d 913, 920-21 (2d Cir. 1987).

In revisiting the defense of qualified immunity, this Court has held that, even assuming that a constitutional right may have been violated, a lower court must review the second question – whether the right was clearly established – in a case-specific manner. *Saucier v. Katz*, 121 S. Ct. 2151 (2001). This Court held that this inquiry,

it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.

* * *

The relevant dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was lawful in the situation he confronted.

* * *

If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate. (*Id.*, at 2156-57) (citations omitted)

The Seventh Circuit has stated with respect to qualified immunity that it is “designed to shield from civil liability ‘all but the plainly incompetent or those who knowingly violate the law,’” *Hughes v. Meyer*, 880 F.2d 967, 971 (7th Cir. 1989), and that should be applied unless “it has been authoritatively decided that certain conduct is forbidden.” *Upton*, 930 F.2d at 1212 (quoting *Alliance to End Repression v. City of Chicago*, 820 F.2d 873, 875 (7th Cir. 1987)). Qualified immunity thus provides officers with an additional layer of protection against civil liability. *Hughes*, 880 F.2d at 970.

The Seventh Circuit has determined that the plaintiff always bears the burden of establishing the existence of a clearly established constitutional right violated by the public official. *Burritt v. Ditlefsen*, 807 F.3d 239, 249 (7th Cir. 2016); *Clash v. Beatty*, 77 F.3d 1045, 1047 (7th Cir. 1996). However, the Circuit Court also has held that “[w]hen reasonable minds could differ, in the typical summary judgment decision the balance tips in favor of the nonmovant while in the qualified immunity context the balance favors the movant.” *Ellis v. Wynalda*, 990 F.2d 243, 246 n.2 (7th Cir. 1993).

These well-established Constitutional law principles have been reinforced by recent Supreme Court decisions. Within the past six terms, this Court has reminded that “[p]ublic officials are immune from suit under 42 U.S.C. § 1983 unless they have ‘violated a statutory or constitutional right that was clearly established at the time of the challenged conduct.’” *City & Cty. of S.F. v. Sheehan*, 135 S. Ct. 1765, 1774 (2015)

(quoting *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2023 (2014)). A prior case exactly on point is not necessarily required. *See, e.g., Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). However, “[a]n officer cannot be said to have violated a clearly established right unless the right’s contours were sufficiently definite that any reasonable official in [his] shoes would have understood that he was violating it,” *Sheehan*, 135 S. Ct. at 1774, meaning that “existing precedent must have placed the statutory or constitutional question beyond debate.” *Ashcroft*, 563 U.S. at 741. The plaintiff’s burden to rebut a showing of qualified immunity is a demanding standard. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466 at 2474-75 (2015); *see also Vincent v. City of Sulphur*, 805 F.3d 543, 547 (5th Cir. 2015). This standard can only be met by assessing the specific evidence and context of the case, and not by taking refuge in lofty principles wholly divorced from the realities confronted by police officers on a daily basis.

In *Sheehan*, this Court clearly stated that “Qualified immunity is no immunity at all if ‘clearly established’ law can simply be defined as the right to be free from unreasonable searches and seizures.” 135 S. Ct. at 1775-76 (citations omitted). This Court repeated this admonition to the lower courts twice more in 2015. *See Taylor v. Barkes*, 135 S. Ct. 2042 (2015) (per curiam); *Mullenix v. Luna*, 136 S. Ct. 305, 311 (2015) (per curiam). *See also Carroll v. Carman*, 135 S. Ct. 348, 350-52 (2014) (per curiam); *Lane v. Franks*, 134 S. Ct. 2369, 2383 (2014); *Wood v. Moss*, 134 S. Ct. 2056, 2070 (2014); *Plumhoff v. Rickard*, *supra*, 134 S. Ct. at 2024; *Stanton*

v. Sims, 134 S. Ct. 3, 7 (2013). Presumably, the Seventh Circuit recognized the admonitions of this Court in decisions issued since *Sheehan*, *Taylor*, and *Mullenix*. See, e.g., *Werner v. Wall*, No. 14-1746, 2016 WL 4555610, *7 (7th Cir. Sept. 1, 2016); *Zimmerman v. Doran*, 807 F.3d 178, 182 (7th Cir. 2015). However, the Seventh Circuit’s opinion in the instant case simply ignores this Court’s numerous admonitions to not define “clearly established” constitutional rights too generally. This Court’s recent and repeated unanimous awards of qualified immunity (see above listing) emphasize the narrow circumstances in which government officials may be held personally liable for their actions in suits for money damages. Because of the importance of qualified immunity “to society as a whole,” (*Harlow*, at 814) this Court often corrects lower courts when they wrongly subject individual officers to liability, and should do so once again here.

In the present case, the Seventh Circuit opinion simply stated that “in September 2010 it was clearly established that the Fourth Amendment governed claims by detainees who had yet to receive a judicial probable cause determination . . . [and that] if by 2010, it was clearly established that an officer or prison nurse’s actions were judged by the objectively reasonable standard of the Fourth Amendment, the failure to take *any* action in light of a serious medical need would violate that standard.” (App. 38) However, in its scant three-paragraph analysis of the qualified immunity defense, as it applied to more than twenty defendants/appellees, the Seventh Circuit utterly failed to

provide citation to any precedent which defines “serious medical need” or “action,” or conduct a particularized analysis as to the actions of each Petitioner, from the perspective of a reasonable law enforcement officer on scene and considering her/his training and experience. No caselaw holds that the observations made of Mr. Perry by each of the eleven Petitioners clearly evidenced an objectively serious medical condition. Caselaw does establish that an arrestee’s complaint that he suffered from asthma and that he was suffering from an asthma attack when he was arrested and processed, and where he told his booking officer that he needed his medication and that he could not breathe, did not evidence an objectively serious medical condition. (*Williams*, at 401-02) The *Williams* case, by loose comparison, suggests that the observations made of Mr. Perry, where he had minutes earlier been treated and released by medical professionals, did not assert that he was suffering from a medical condition, did not request medical treatment, also did not evidence an objectively serious medical condition. *See also Townsend v. Jefferson County*, 601 F.3d 1152 (11th Cir. 2010) (Jail inmate’s statements that she was experiencing a miscarriage, and the fact that she was spotting, was not a medical emergency, primarily because a jail nurse had reached that conclusion).

This case presents a unique set of facts and circumstances, as applied to each Petitioner. As in *Brosseau v. Haugen*, “[t]he present case is far from the obvious one” that can be decided upon generalities. 543 U.S. 194, 198 (2004) (per curiam). Consequently, the

Circuit Court’s reliance on general principles to define the clearly established law governing this case directly contravenes this Court’s previous rulings. *Mullenix*, 136 S. Ct. at 308 (quoting *Ashcroft*, *supra*, 131 S. Ct. at 2084). By contrast, other Circuits have become far more precise in their definition of clearly established rights. *See, e.g., Estate of Armstrong v. Village of Pinehurst*, 810 F.3d 892, 907-08 (4th Cir. 2016) (“[t]he constitutional right in question in the present case, defined with regard for Appellees’ particular violative conduct, is Armstrong’s right not to be subjected to tasing while offering stationary and non-violent resistance to a lawful seizure”) (citing *Hagans v. Franklin Cnty. Sheriff’s Office*, *supra*, 695 F.3d 505, 509 (6th Cir. 2012) (“[d]efined at the appropriate level of generality – a reasonably particularized one – the question at hand is whether it was clearly established in May 2007 that using a taser repeatedly on a suspect actively resisting arrest and refusing to be handcuffed amounted to excessive force”)).

A fact-specific analysis of the actions of each of the eleven Petitioners reveals that they all should have been afforded qualified immunity in this case. The Petitioners respectfully refer the Court to their fact-specific discussion of each of their actions presented above, as if fully restated here. Minimally, reasonable officers could have believed that the actions of each Petitioner were objectively reasonable, and if reasonable minds differ – as did those of the District Court and

the Circuit Court – the qualified immunity balance tips in favor of the Petitioners.

◆

CONCLUSION

The Seventh Circuit denied qualified immunity to each of the eleven Petitioners, despite the wealth of clearly established Fourth Amendment jurisprudence by this Court and the Circuit Courts, which establishes that when the contours of a right are not clearly defined, an officer is entitled to the protection of qualified immunity. For every police officer on the street, the clear articulation of governing law regarding the definition of the behaviors that objectively present a serious medical condition makes this a matter of exceptional importance such that review and reversal is necessary. The Seventh Circuit's approach in *Perry* is at odds with this Court's decisions because it does not follow this Court's mandate that police officers' actions regarding the provision of medical care to arrestees are reviewed consistent with the objective reasonableness standard under the Fourth Amendment, and that a qualified immunity review cannot be conducted at a too-generalized level. They are both situation-specific analyses, which must consider all undisputed facts, along with the perspective, training and experience of a reasonable officer confronting a similar situation. Thus, this Court should grant this petition to advance understanding of qualified immunity, and also make clear that the Seventh Circuit's analyses were incorrect. This petition presents the

Court with the opportunity to resolve these important questions of federal law, which will give practical direction to legal practitioners and law enforcement officers throughout the United States.

Respectfully submitted,
GRANT F. LANGLEY,
City Attorney
SUSAN E. LAPPEN,
Assistant City Attorney
Counsel of Record
OFFICE OF THE
MILWAUKEE CITY ATTORNEY
Room 800, City Hall
200 East Wells Street
Milwaukee, WI 53202
(414) 286-2601
slappe@milwaukee.gov
Attorneys for Petitioners