

No. 20-1562

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IN THE  
**Supreme Court of the United States**

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FAYE STRAIN, as guardian of Thomas Benjamin Pratt,  
*Petitioner,*

v.

VIC REGALADO, in his official capacity; ARMOR  
CORRECTIONAL HEALTH SERVICES, INC.; CURTIS  
MCELROY, D.O.; PATRICIA DEANE, LPN; KATHY  
LOEHR, LPC,

*Respondents.*

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On Petition for a Writ of Certiorari to the  
Tenth Circuit Court of Appeals

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**SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITION FOR A WRIT OF CERTIORARI**

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## SUPPLEMENTAL BRIEF FOR THE PETITIONER

Pursuant to this Court’s Rule 15.8, Petitioner files this supplemental brief to address the Sixth Circuit’s decision in *Brawner v. Scott Cnty., Tennessee*, --- F.4th ---, No. 19-5623, 2021 WL 4304754 (6th Cir. Sept. 22, 2021), issued after Petitioner filed his petition and reply brief in this case. The decision deepened the pre-existing circuit split; now, the federal appellate courts are divided 4-4 on the standard to apply to medical care claims brought by pretrial detainees under the Fourteenth Amendment.

1. The petition set forth an intractable 4-3 split of authority that was acknowledged by several federal appellate courts including the Court of Appeals for the Tenth Circuit in the decision below. Pet. 10-13. Respondent Armor agreed that a split existed and, indeed, argued the split was even deeper than that set out by Petitioner. Armor Opp. at 18–20. And while Respondent Regalado attempted to contest the split by arguing that three federal appellate courts decided the question in a “conclusory fashion,” that contention failed to undermine the split in any meaningful way. Regalado Opp. at 14-15. Thus, even before the Court of Appeals for the Sixth Circuit issued its decision in *Brawner*, the federal appellate courts were locked in a split requiring this Court’s intervention.

2. The reasoned, published decision in *Brawner* deepens the split. The decision acknowledges that the “Tenth Circuit [recently] joined the Fifth, Eighth, and Eleventh Circuits,” on one side of the split and goes on to squarely “reject the Tenth Circuit’s argument.” *Brawner*, --- F.4th ---, 2021 WL 4304754 at \*5, \*7. It “agree[d],” instead, “with the Second, Seventh, and

Ninth Circuits that *Kingsley* requires modification of the subjective prong of the deliberate indifference test for pretrial detainees.” *Id.* There can be no clearer statement of its position or the split of authority.

3. Absent the Court’s intervention, the conflict will persist, and the rights of pretrial detainees will turn arbitrarily on the jurisdiction in which the detainee happens to reside.

### CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

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