No. 21-48

IN THE

Supreme Court of the United States

SHENANDOAH VALLEY JUVENILE CENTER COMMISSION,
Petitioner,

v.

JOHN DOE 5, JOHN DOE 6, and JOHN DOE 7, By and Through Their Next Friend, NELSON DOLORES LOPEZ, Individually and on Behalf of All Persons Similarly Situated,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Did the Fourth Circuit correctly hold that the *Youngberg* professional judgment standard applies to a facility charged with providing care for unaccompanied immigrant minors who are in state custody for caretaking purposes, rather than punitive purposes, and who require a secure setting due to concerns that they pose a safety risk to themselves or others?

(2) Did the Fourth Circuit correctly determine that respondents' claim of inadequate mental health care is redressable because petitioner can unilaterally implement much of the relief respondents seek, and with respect to any relief that might require approval from the Department of Health and Human Services' Office of Refugee Resettlement, petitioner "plays the determinative role" in proposing what mental health services to provide?

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INTRODUCTION

In *Youngberg v. Romeo*, 457 U.S. 307, 321-23 (1982), this Court held that persons in government custody for caretaking purposes "are entitled to more considerate treatment and conditions of confinement than criminals," whose confinement conditions are "designed to punish" and therefore need satisfy only a deliberate indifference standard. In caretaking settings, the Court ruled, the provision of treatment shall not be "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Id.* at 323.

In the decision below, the Fourth Circuit concluded that because respondents are minors in government custody for caretaking purposes rather than punishment, the *Youngberg* professional judgment standard applies to their claim that petitioner failed to provide them with adequate mental health care. The court of appeals then remanded to the district court to determine in the first instance whether the evidence supports petitioner's argument that it is entitled to summary judgment under that standard.

The petition offers no reason for this Court to review that decision. Petitioner's claimed circuit split is based on one Third Circuit decision involving a facility for juveniles detained pursuant to delinquency proceedings, which that court described as akin to "a prison setting." *A.M. ex rel. J.M.K. v. Luzerne Cty. Juvenile Det. Ctr.*, 372 F.3d 572, 579 (3d Cir. 2004). By contrast, respondents are in government custody not

because they are awaiting adjudication on criminal charges, but because they have no adult caretaker. As this Court recognized in *Reno v. Flores*, 507 U.S. 292, 298 (1993), "'[l]egal custody' rather than 'detention' more accurately describes" the residential services provided to unaccompanied immigrant children, which are similar to "shelter care, foster care, group care, and related services to dependent children." *Cf. Allen v. Illinois*, 478 U.S. 364, 373 (1986) (describing juvenile detention system as one where "the State intended to punish its juvenile offenders," rather than "treat[]" them).

Petitioner emphasizes that respondents are in a secure facility due to concerns that they pose a safety risk to themselves or others, but as the court of appeals explained, that was equally true for the *Youngberg* plaintiff, who was institutionalized due to violent behavior that made it difficult to care for him in a less secure setting. Pet. App. A26-27. As with the mentally incapacitated *Youngberg* plaintiff, "treatment is a primary objective for the traumatized youth placed at" petitioner's facility. Pet. App. A28. Respondents are thus categorically different from the *A.M.* plaintiff for *Youngberg* purposes.

Not only does *A.M.* fail to establish any division of authority, it is also sufficiently unreasoned and outdated that if the Third Circuit is confronted with a similar case in the future, it may well reach a different result. In particular, *A.M.*'s conclusory treatment of juvenile criminal detainees as identical to adult criminal detainees predates this Court's precedent establishing that the Constitution imposes higher standards for the confinement of children, as well as

position statements by the U.S. Department of Justice recognizing that the *Youngberg* standard of care governs juvenile-detention facilities.

Petitioner also asks this Court to review the Fourth Circuit's determination that respondents' claim is redressable. The court of appeals relied on two separate rationales in reaching this conclusion. First, it found that much of the relief respondents seek is implementable by petitioner without approval from the United States Department of Health and Human Service's Office of Refugee Resettlement ("ORR"). Pet. App. A20. Second, even for any limited relief that might require ORR approval, SVJC "plays the determinative role in deciding what treatment measures are proposed for implementation." Pet. App. A21. Petitioner does not purport to identify any division of authority implicated by this finding, and it fails to demonstrate any other basis for this Court's review of the Fourth Circuit's fact-bound application of settled law to respondents' requested relief.

Finally, even if the Court had an interest in the questions presented, this case would be a poor vehicle for review. The petition's interlocutory posture is such that this Court's resolution of the questions presented may be irrelevant to this litigation, and the unique nature of petitioner's facility—the only one of its kind nationwide—would render any ruling by this Court applicable only to petitioner.

The Court should deny the petition.

STATEMENT OF THE CASE

Respondents Are Unaccompanied Immigrant Minors Who Suffered Significant Past Trauma[1]

Respondents are minors who fled their native countries (primarily Honduras, Guatemala, Mexico, and El Salvador) without their parents to escape "appalling horrors," including brutal assault and witnessing the killings of friends and family members. Pet. App. A3.[2]

At the time petitioner moved for summary judgment, the plaintiff class was represented by John Doe 4, who is from Honduras.[3] Pet. App. A8. His mother abandoned him when he was young, and his father died in prison when he was about four years old. *Id.*

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[1] Because it is petitioner that seeks summary judgment, the facts and inferences in the record must be viewed in the light most favorable to respondents as the non-moving party. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

[2] Respondents cite to petitioner's Appendix (Pet. App.) and the Joint Appendix (J.A.) filed in the Fourth Circuit on January 6, 2020.

[3] On August 30, 2021, respondents filed an amended complaint removing Doe 4 as the class representative because he no longer resides at SVJC, and substituting in the current respondents. As the Fourth Circuit recognized and petitioner does not contest, "[b]ecause the class of unnamed persons described in the certification acquires a legal status separate from the interest asserted by the named plaintiff, a live controversy continues to exist, even if the claim of the named plaintiff becomes moot." Pet. App. A9 (citing *Genesis Healthcare Corp v. Symczyk*, 569 U.S. 66, 74 (2013) (internal alterations omitted)).

"As early as age seven or eight, Doe 4 saw gang members kill his friends, including beating them to death with rocks, or dismembering them into pieces with machetes." *Id.* "When defending himself and his friends" from one such attack, "Doe 4 was 'hacked with a machete . . . and cut with a switchblade on his arm.'" *Id.*

Fearing for his life, Doe 4 fled with his friend to the United States. Pet. App. A8. They journeyed through Guatemala and Mexico for a year and experienced many horrors along the way, including being "robbed, beaten, and shot." *Id.*

Aware Of Respondents' Serious Mental Health Needs, Petitioner Agrees To Serve As Their Care Provider

Upon arriving in the United States, respondents entered the custody of the Department of Health and Human Services' Office of Refugee Resettlement, which coordinates the care and placement of unaccompanied immigrant children. Pet. App. A4. ORR keeps children in state custody "when neither parent, close relative, or state-appointed guardian is immediately available" to provide supervision and care. *Reno v. Flores*, 507 U.S. 292, 310-11 (1993). In such cases, the child must be "'promptly placed in the least restrictive setting that is in the[ir] best interest'" and that is "'capable of providing for the[ir] . . . physical and mental well-being.'" Pet. App. A24 (quoting 8 U.S.C. § 1232(c)(2)(A), (c)(3)(A)). "Within all placements," these children "shall be treated with dignity, respect, and special concern for their particular vulnerability." 45 C.F.R. § 410.102(d).

ORR placed respondents at Shenandoah Valley Juvenile Center (SVJC), a secure facility that houses unaccompanied immigrant children pursuant to a cooperative agreement between ORR and petitioner Shenandoah Valley Juvenile Center Commission. Petitioner is a governmental entity formed under Virginia law to oversee and operate SVJC. Pet. App. A5. Many of the children placed at SVJC require a secure setting because they "struggle with severe mental illnesses, resulting in frequent self-harm and attempted suicide." Pet. App. A3; *see* 45 C.F.R. § 410.203(a)(4)-(5) (authorizing placement of unaccompanied immigrant children at secure facilities if they "pose[] a risk of harm to self or others").

The agreement between ORR and petitioner designates SVJC as a "care provider." Pet. App. A25. The agreement accordingly requires SVJC to provide the children in its care with: "[p]roper physical care and maintenance"; "[a]ppropriate routine medical and dental care"; "appropriate mental health interventions when necessary"; "[a]n individualized needs assessment"; "[e]ducational services appropriate to the minor's level of development and communication skills"; "[a]t least one individual counseling session per week conducted by trained social work staff with the specific objective of reviewing the minor's progress, establishing new short term objectives, and addressing both the development and crisis-related needs of each [child]"; and "[g]roup counseling sessions at least twice a week." Pet. App. A133-34.

SVJC recognizes that "[t]he majority of unaccompanied children in a secure setting [such as SVJC] have histories of repeated and various forms of abuse

and neglect; life-threatening accidents or disasters; and interpersonal losses at an early age or for prolonged periods of time." Pet. App. A6 (quoting testimony of SVJC's Deputy Director of Programs, Kelsey Wong, before a Senate Subcommittee on Investigations). SVJC learns of children's mental health conditions from their medical, disciplinary, and mental health records sent from the child's prior placement. Pet. App. A5. "If a child is accepted by SVJC, resident supervisors perform an initial intake—including a mental health questionnaire and interview—followed by an assessment by case managers and clinicians." *Id.* Thus, SVJC knows about a child's social or experiential history, presenting behaviors, history of trauma, evaluation and treatments, if any, and history of significant incidents prior to the child's arrival. *Id.* SVJC may "reject the placement of a child at SVJC if [it] determine[s] that [it] cannot provide the necessary services for a child's mental health needs." *Id.*

Doe 4 was transferred to SJVC after brief placements at detention facilities in Arizona and New York where he displayed behavior problems. Pet. App. A9. SVJC clinical staff know that aggressive or self-harming behaviors—the very acts which cause children like Doe 4 to be placed at SVJC—are often the manifestations of trauma. J.A. A1455-56 (trauma "can manifest itself in self-harm, anger . . . [and] [o]ppositional defiance[.]"). Doe 4, for example, had incidents where he cut himself, punched a wall so hard he broke bones, and attempted suicide. Pet. App. A9-12.

SVJC Declines To Provide Respondents With Meaningful Mental Health Treatment

SVJC employs clinicians who are the only staff members purportedly providing day-to-day mental health-related services at the facility. J.A. A1651-53, A1815. SVJC clinicians acknowledge, however, that they do not treat or discuss the trauma underlying a child's mental health issues. J.A. A1491; *see also* Pet. App. A14 ("[Respondents'] expert . . . reviewed the disciplinary records for John Does 1, 2, 3, and 4 and concluded that the facility failed to treat the children in a manner accounting for the trauma they experienced."). A child's mental health issues—*e.g.*, visual hallucinations or suicidal ideations documented as occurring the prior week—are not discussed or worked through with the child in an individual session. J.A. A1491-92. Even when clinicians receive diagnoses or treatment recommendations from a child's occasional psychological evaluation, they do not provide counseling specific to individual diagnoses. Indeed, they may be unqualified to provide the therapeutic services recommended by the psychologist. J.A. A1487-88.

SVJC's clinicians further acknowledge that—contrary to its agreement with ORR—SVJC does not provide regular group therapy. J.A. A1677-78. Rather, SVJC offers informal, voluntary meetings, sometimes lasting no more than fifteen minutes, at which there rarely is any discussion of the children's mental health conditions, and which are sometimes led by non-clinical staff. J.A. A1677, A1680-81.

Moreover, although non-clinical "floor staff" (i.e., guards) have the most frequent interactions with the children, they are not able to identify or effectively address the children's mental health needs. J.A. A598 (quoting statement of a guard who "acknowledged [that] he didn't have the type of training required to calm down a child who seemed . . . reluctant or mad"). Guards are "provided no information about the child's prior trauma or experiences." J.A. A599. "They do not know which children have mental health issues . . . [or] the kinds of mental health issues experienced [by] the[] children . . . [T]his information is kept 'confidential' from them." J.A. A598-99.

Instead of providing any meaningful mental health care, SVJC staff focus on behavior control to manage the symptoms of mental illness: "the predominant approach utilized at SVJC is that of punishment and behavioral control through such methods as solitary confinement, physical restraint, strapping to a restraint chair, and loss of behavioral levels." Pet. App. A14.

Doe 4, for example, was diagnosed with post-traumatic stress disorder and attention deficit hyperactivity disorder, but received no meaningful treatment for those illnesses. Pet. App. A9-10. Instead, staff simply punished him when he exhibited symptoms, including placement in isolation for extended periods of time and the use of physical force and mechanical restraints. Pet. App. A10-12, A63-70; J.A. A1136. Over the course of seven months, Doe 4 was removed from regular programming approximately 21 times primarily for incidents that began as minor infractions. Pet. App. A12; J.A. A741-43.

One incident arose because Doe 4 was upset, did not want to eat his food, and allegedly refused several requests to return to his room. Pet. App. A10. "Eventually, two [SVJC] staff physically grabbed Doe 4 in a full nelson hold and dragged him to his room as he kicked and struggled." *Id.* While he was isolated, Doe 4 tied a shirt around his neck, prompting staff to place him in a suicide blanket. *Id.* A few months later, Doe 4 tried to speak calmly with staff members, but the exchange escalated into a physical altercation where SVJC staff punched and hit Doe 4 in the ribs, face, and hand, restricted him from breathing (and told him it was "good" he could not breathe), and ultimately placed him in isolation for 4 hours. Pet. App. A11; J.A. A817. In total, Doe 4 spent more than 176 hours in solitary confinement over the course of seven months. J.A. A741-43. When combined with the number of days in which his contact with others and his mobility were severely limited, the time he spent in isolation "totaled over 800 hours—or more than a month." Pet. App. A12.

SVJC staff subjected the most seriously mentally ill children in its care to significant periods of solitary confinement: almost 40 percent of instances involving solitary confinement for more than 7 hours involved self-harming children, J.A. A1791, including Doe 1 (over 2,400 hours in solitary for over 74 incidents), J.A. A1787, Doe 2 (over 175 hours in solitary confinement for over 15 incidents), *id.*, and Doe 3 (over 280 hours in solitary confinement for over 21 incidents), *id.*

Other children at SVJC also "experienced and displayed deep distress from their severe mental health

needs." Pet. App. A13. "Between June 2015 and May 2018, at least 45 children intentionally hurt themselves or attempted suicide" while placed under SVJC's care. *Id.* For example, "Doe 1 repeatedly cut himself and slammed his head against the wall. . . . He talked about suicide on several occasions, and his clinician observed that he became 'more and more frequently self-harming while at SVJC.'" *Id.* (citation omitted).

SVJC staff reacted with indifference when children harmed themselves. Pet. App. A13. A former staff member testified that when shift supervisors learned of a child self-harming, they responded with comments such as "let them cut themselves" and [l]et them [] bleed out." *Id.* A supervisor once "laughed in [the staff member's] face" when she reported a child's suicidal thoughts, and the supervisor refused to check on the child. *Id.* Staff "pok[ed] fun" at a child confined to an emergency restraint chair for six hours while bleeding from his arm. Pet. App. A14. And when a child displayed "erratic behavior, like smearing his ejaculate on his face, SVJC staff members 'joked about it.'" *Id.*

Respondents File Suit Challenging Petitioner's Failure To Provide Mental Health Treatment To Children In Its Care

In October 2017, Doe 1 filed a class action complaint on behalf of the immigrant children detained at SVJC, seeking declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and the Due Process Clause of the U.S. Constitution. The complaint alleged that members of the putative class were subject to (i) an

ongoing pattern of unlawful discipline and punishment imposed by staff at the facility, including unnecessary and excessive use of physical force and restraints and excessive imposition of solitary confinement, (ii) a constitutionally inadequate level of care for the children's acknowledged and recognized serious mental health needs, and (iii) discrimination on the basis of race and national origin.[4] Pet. App. A14-15.

The district court granted respondents' consent motion for class certification, defining the class as "Latino unaccompanied alien children (UACs) who are currently detained or will be detained in the future at [SVJC] [and] who either: (i) have been, are, or will be subject to the disciplinary policies and practices used by SVJC staff; or (ii) have needed, currently need, or will in the future need care and treatment for mental health problems while detained at SVJC." Pet. App. A15. Thereafter, Doe 1 was transferred from the facility, substitute plaintiffs Does 2 and 3 were removed to their native countries, and Doe 4 became the substituted class representative. *Id.*

After the parties completed discovery, petitioner moved for summary judgment. The district court granted the motion with respect to respondents' inadequate mental health care claim, holding that the evidence was insufficient as a matter of law to establish that petitioner was deliberately indifferent to respondents' mental health needs. Pet. App. A79-81. In

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[4] Respondents later withdrew their claim of discrimination based on race and national origin. Pet. App. A15.

so holding, the court rejected respondents' argument that their claim was subject to the standard articulated in *Youngberg*, 457 U.S. at 323, which asks whether the treatment decisions represent a "substantial departure from accepted professional judgment," rather than the deliberate indifference standard. *See* Pet. App. A78 n.12.

The district court denied summary judgment with respect to respondents' claims of excessive physical force, restraints, and imposition of solitary confinement. Pet. App. A76-78. Respondents then dismissed those claims and timely appealed the court's grant of summary judgment as to their inadequate mental health care claim. Pet. App. A17.

The Fourth Circuit Reverses The District Court's Grant Of Summary Judgment

The Fourth Circuit reversed on appeal. The court of appeals held that the district court erred in applying the deliberate indifference standard rather than the *Youngberg* professional judgment standard to respondents' inadequate mental health care claim. Pet. App. A23-24. The court explained that in *Youngberg*, this Court announced that the professional judgment standard applies to the care of persons in state custody for caretaking purposes rather than punishment. *Id.* Here, "[t]he statutory and regulatory scheme governing unaccompanied children expressly states that these children are held to give them care." Pet. App. A24. Accordingly, the professional judgment standard controls.

The court of appeals acknowledged petitioner's argument that respondents were placed at SVJC because of safety concerns, but explained that this was equally true for the *Youngberg* plaintiff, who had to be institutionalized due to violent behavior. *See* Pet. App. A26-27 (citing *Youngberg*, 457 U.S. at 320 n.27 ("the purpose of [plaintiff's] commitment was to provide reasonable care *and* safety") (emphasis added by Fourth Circuit)). Petitioner's argument thus presented "a false binary." Pet. App. A26.

Moreover, the court of appeals observed, "the fact that this case is about children" further compels application of the professional judgment standard. Pet. App. A29. Citing precedent from this Court recognizing "'the peculiar vulnerability of children,'" *id.* (quoting *Bellotti v. Baird*, 443 U.S. 622, 634 (1979)), and the "state's strong interest in protecting the youngest members of society from harm," the court explained that children are "constitutionally different" from adults. Pet. App. A29.

Having determined that the district court applied the incorrect legal standard, the court of appeals remanded to the district court for further proceedings. The court declined to reach respondents' argument that trauma-informed care represents the relevant standard of professional judgment for their inadequate mental health care claim, instead remanding "to the trial court to determine in the first instance to what extent, if any, the trauma-informed approach should be incorporated into the professional judgment in this particular case." Pet. App. A36. Likewise, the court of appeals left it to the district court to deter-

mine on remand whether the evidence supports petitioner's contention that its mental health services satisfy the professional judgment standard. Pet. App. A39.

The Fourth Circuit also rejected petitioner's argument that respondents' claim is not redressable because ORR "retains ultimate responsibility for [respondents'] placement and mental health treatment . . . ." Pet. App. A18. The court explained that because respondents allege injuries resulting from the actions of SVJC, not ORR, and because respondents seek relief that would require SVJC, not ORR, to improve its treatment and services, respondents meet the requirements for redressability. *Id.* The court emphasized that although ORR coordinates the placement of unaccompanied immigrant children, "implementing the care and treatment at the facility" is SVJC's responsibility. Pet. App. A19.

Indeed, the court found, much of the relief sought by respondents is "not subject to ORR approval." Pet. App. A20. And even for the forms of relief that may require ORR approval, SVJC "plays the determinative role in deciding what treatment measures are proposed for implementation." Pet. App. A21. Accordingly, the court concluded, respondents "seek relief likely to redress their injuries." Pet. App. A18.

Judge Wilkinson dissented with respect to the panel's holding that the professional judgment standard governs respondents' inadequate mental health care claim, but expressed no disagreement with the majority opinion's redressability determination. Pet. App. A40-59.

Petitioner sought rehearing en banc, which the Fourth Circuit denied on February 9, 2021.

REASONS FOR DENYING THE PETITION

I. The Fourth Circuit's holding that the *Youngberg* standard applies to respondents' inadequate mental health care claim does not merit this Court's review.

Petitioner offers no good reason for this Court to review the Fourth Circuit's application of the *Youngberg* standard to respondents' inadequate mental health care claim. Petitioner bases its alleged circuit split on a single Third Circuit decision that involved juveniles detained on criminal charges—a categorically different type of custody than under *Youngberg*—and that the Third Circuit is unlikely to find controlling in future cases given superseding developments in this Court's caselaw and Department of Justice policy. Petitioner likewise fails to identify any error in the Fourth Circuit's holding, which faithfully applies this Court's precedent regarding the standard of care for individuals institutionalized for caretaking rather than punitive purposes.

A. The Court of Appeals' holding does not implicate any circuit split.

The Fourth Circuit's application of *Youngberg* to assess the mental health care SVJC provides to unaccompanied immigrant minors in its care does not conflict with the decision of any other circuit. In fact, no other court of appeals has addressed what standard of care applies to residential facilities statutorily

charged with caring for immigrant children who are in government custody for caretaking purposes rather than any punitive purpose, and who have been placed in a secure setting due to concerns they pose a safety risk to themselves or others.[5]

Petitioner incorrectly argues that the decision below is at odds with the Third Circuit's decision in *A.M. ex rel. J.M.K. v. Luzerne Juvenile Det. Ctr.*, 372 F.3d 572 (3d. Cir. 2004). That case addressed a different circumstance, specifically claims of inadequate physical protection and medical care at a secure facility for juveniles detained in connection with delinquency proceedings. *See id.* at 575 (noting the plaintiff had been arrested for indecent conduct and was placed at the defendant facility for five weeks while awaiting adjudication of the charges against him). The Third Circuit applied a deliberate indifference standard on

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[5] Although ORR also has authority to place children in a secure setting based on criminal or delinquency charges, *see* 45 C.F.R. § 410.203(a)(1), there is no evidence in the summary judgment record that any of respondents were transferred to SVJC in connection with criminal or delinquency proceedings, and petitioner has never suggested otherwise. Rather, respondents were placed at SVJC pursuant to a provision authorizing transfer to a secure setting if ORR determines the child "poses a risk of harm to self or others," *id.* § 410.203(a)(3)-(4). *See, e.g.*, J.A. A28 (Doe 4 transferred to SVJC because he was a "flight risk" and disrespectful to staff at prior facility); J.A. A1101 (Doe 2 transferred to SVJC "due to behavioral problems"); J.A. A1108 (Doe 3 transferred to SVJC "for the safety of others"). In any event, the regulatory framework confirms that regardless of the basis for transferring a particular child to SVJC, the custodial purpose continues to be caretaking rather than punishment. *See* Pet. App. A24-30.

the ground that the juvenile detention facility at issue was akin to "a prison setting." *Id.* at 579.

By contrast, respondents are not in government custody because they are under arrest or have been adjudicated guilty of any criminal activity. They are in state custody because they do not have an adequate adult caretaker: "The statutory and regulatory scheme governing unaccompanied children expressly states that these children are held to give them care." Pet. App. A24.

To be sure, respondents were placed specifically at SVJC out of concern they posed a safety risk to themselves or others, but that was also true for the *Youngberg* plaintiff, who was institutionalized due to violent behavior that made it difficult to care for him in a less secure setting. *See* Pet. App. A26-27; *Youngberg*, 457 U.S. at 309-11. Indeed, the determination that respondents "require a secure placement due to safety concerns" was made "in the discretion of ORR" in its capacity as their guardian, Pet. App. A5, not via any delinquency adjudication. *Cf. In re Gault*, 387 U.S. 1, 30-31 (1967)) (requiring due process safeguards for juvenile delinquency determinations). As the Fourth Circuit explained, "[t]hese conditions reinforce the conclusion that mental health treatment is the primary objective for the traumatized youth placed at SVJC," not punishment. Pet. App. A28.[6]

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[6] Petitioner emphasizes that SVJC also houses non-immigrant juveniles who are in government custody pursuant to delinquency proceedings, Pet. 1-2, but those juveniles are not part *(cont'd)*

It is precisely because SVJC carries out this unique mission—providing care for unaccompanied children with serious mental health problems, as opposed to detaining them pursuant to criminal proceedings—that the Fourth Circuit applied the *Youngberg* standard. Pet. App. A23-25 (analogizing unaccompanied children held at SVJC to "involuntarily committed psychiatric patients" as opposed to "pretrial detainees"); *see also Patten v. Nichols*, 274 F.3d 829, 841 (4th Cir. 2001) (concluding, in deciding whether to apply *Youngberg*, that a person committed to state custody for care and mental health treatment was not "similarly situated" to a pre-trial detainee who was "taken into custody because the state believes the detainee has committed a crime, and the detainee is kept in custody to ensure that he appears for trial").

Petitioner asserts that this distinction provides undocumented children with more constitutional protection than citizen children, Pet. 10, but that is plainly not what the Fourth Circuit held. The decision distinguishes respondents from juvenile delinquency detainees not based on citizenship status, but because respondents have been placed at SVJC for caretaking reasons, like the *Youngberg* plaintiff, not in relation to any criminal proceedings. Pet. App. A29 n.14. That distinction is well-anchored in this Court's precedent. As the Court explained in *Flores*, 507 U.S. at 298, "'[l]egal custody] rather than 'detention' more accurately describes" residential care for unaccompanied

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of the plaintiff class and the standard of care they receive is not at issue in this litigation.

immigrant children, since these services are not correctional institutions but rather facilities" akin to "shelter care, foster care, group care, and related services to dependent children." *Cf. Gault*, 387 U.S. 1 (juveniles charged with delinquent conduct are entitled to the same due process safeguards as adults given the similar confinement consequences); *Allen v. Illinois*, 478 U.S. 364, 373 (1986) (the juvenile detention system in *Gault* was one where "the State intended to punish its juvenile offenders," rather than "treat[]" them).

Petitioner suggests that this case also implicates a split among the courts of appeals regarding the standard of medical care for adult pre-trial detainees. Pet. 11-13. Those cases are inapplicable here for the reasons just discussed: the respondent class consists of juveniles who are in state custody for caretaking purposes, not adults in state custody due to criminal charges. Whatever division of authority may exist in the adult pre-trial detainee context, it has no relevance to this case.

Similarly, petitioner's string citation of decisions involving adults detained on immigration matters, Pet. 13, is inapplicable for the reason petitioner identifies: "The rationale underlying these cases is that 'immigration detainees are more similarly situated to pretrial detainees than to involuntarily committed patients.'" Pet. 13-14 (citation omitted). Again, as this Court recognized in *Flores*, that is not true with respect to unaccompanied immigrant children, who are held in a "legal custody" arrangement akin not to "detention," but rather to "shelter, foster care, group

care, and related services to dependent children." 507 U.S. at 298.

Indeed, the Fourth Circuit's approach below accords with case law involving other types of state custody where the primary mission is to provide care for children unrelated to criminal proceedings. *See, e.g.*, *Winston ex rel. Winston v. Child. & Youth Servs. of Delaware Cty.*, 948 F.2d 1380, 1381-82, 1390-91 (3d Cir. 1991) (applying *Youngberg* standard to children in foster care); *Soc'y for Good Will to Retarded Child., Inc. v. Cuomo*, 737 F.2d 1239, 1243 (2d Cir. 1984) (applying *Youngberg* standard to children with intellectual disabilities living in state-sponsored residential care); *Milonas v. Williams*, 691 F.2d 931, 942 (10th Cir. 1982) (*Youngberg* standard applied to reformatory school responsible for providing mental health care and related services to troubled children).

B. Even if *A.M.* conflicted with the decision below, it would not merit this Court's attention.

Even if petitioner were correct that some tension exists between *A.M.* and the decision below, it would not merit this Court's attention. The purported division of authority involves only two circuits, and *A.M.* contains no reasoned analysis. *See* 372 F.3d at 579 (stating only that the juvenile-detention facility in question was like "a prison setting"). Moreover, the parties' briefing in *A.M.* made no mention of whether the *Youngberg* standard should govern the plaintiff's Fourteenth Amendment claims instead of the deliberate indifference standard. *See* Brief for the Appellant at 19, *A.M.*, 372 F.3d 572 (3d Cir. 2004) (No. 03-3075),

2003 WL 24301184, at *19; Brief of Appellee at 4, 6, *A.M.*, 372 F.3d 572 (3d Cir. 2004) (No. 03-3075), 2003 WL 24301186, at *4, *6; Reply Brief for Appellant at 12, *A.M.,* 372 F.3d 572 (3d Cir. 2004) (No. 03-3075), 2004 WL 3757228, at *12.

Indeed, there is good reason to believe that if the Third Circuit is confronted with a similar case in the future, it will reach a different result. Importantly, *A.M.*'s conclusory treatment of juvenile delinquency detainees as identical to adult criminal detainees predates this Court's decisions establishing that "children are constitutionally different from adults." *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

It was not until nearly a year after *A.M.* was decided that this Court identified three "general differences" between adults and minors. *Roper v. Simmons*, 543 U.S. 551, 569 (2005). First, children's "lack of maturity" and "underdeveloped sense of responsibility" lead to "impetuous and ill-considered actions and decisions." *Id.* (internal citation omitted). Second, children are "more vulnerable or susceptible to negative influences and outside pressures," due in part to their limited "control[] over their own environment." *Id.* Lastly, a child's character is "less fixed" than that of an adult, indicating that children have a heightened capacity for reform. *Id.* at 570.[7]

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[7] This Court has repeatedly affirmed these "commonsense" and "self-evident" conclusions concerning juveniles' behavior and perception. *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011). It has likewise observed that these conclusions are corroborated *(cont'd)*

Of particular relevance here, the Court has explained in recent years that children's distinctive attributes compel higher constitutional standards for their confinement. For instance, juveniles who are under the age of eighteen at the time of their crimes cannot be sentenced to execution, *Roper*, 543 U.S. 551, or to mandatory life without parole, *Miller v. Alabama*, 567 U.S. 460 (2012). Furthermore, police must consider a child's age when determining whether that child is in custody for *Miranda* purposes. *J.D.B.*, 564 U.S. 261. The Fourth Circuit correctly relied on this recent precedent "recognizing that children are psychologically and developmentally different from adults" in concluding that "the *Youngberg* standard is particularly warranted" where, as here, the juveniles at issue are in government custody for caretaking purposes. Pet. App. A30. It is likely that the Third Circuit likewise would consider these developments in a future case.

The *A.M.* panel also lacked the benefit of subsequent position statements by the U.S. Department of Justice (DOJ) recognizing that the *Youngberg* standard of care governs juvenile detention facilities. *See, e.g.*, Letter of Findings from Bradley J. Schlozman, Acting Assistant Attorney General, Civil Rights Division, to Mitch Daniels, Governor of Indiana, Re: Investigation of the South Bend Juvenile Correctional Facility at 3, 9-10 (Sept. 9, 2005) ("South Bend Letter"), https://www.justice.gov/sites/default/files/crt/

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by "science and social science," *Miller*, 567 U.S. at 471-72, and are consistent with the "legal disqualifications placed on children as a class," *J.D.B.*, 564 U.S. at 273 & n.6 (listing examples).

legacy/2011/04/14/split_indiana_southbend_juv_findlet_9-9-05.pdf [https://perma.cc/4XGH-SW6A]; Letter of Findings from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, to Michel Claudet, President, Terrebonne Parish, Re: Terrebonne Parish Juvenile Detention Center at 4, 16 (Jan. 18, 2011) ("Terrebonne Letter"), https://www.justice.gov/sites/default/files/crt/legacy/2011/02/01/TerrebonneJDC_findlet_01-18-11.pdf, [https://perma.cc/B5Z9-KVGP]; Letter of Findings from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, to Robert Moore, Chair, Leflore County Board of Supervisors, Re: Investigation of the Leflore County Juvenile Detention Center at 3-4 (Mar. 31, 2011) ("Leflore Letter"), https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/LeFloreJDC_findlet_03-31-11.pdf, [https://perma.cc/KB7T-VYLK].

Specifically, DOJ has invoked *Youngberg*'s "professional judgment" standard to assess the constitutional adequacy of the mental health care provided at such facilities. South Bend Letter at 10 n.8; Terrebonne Letter at 15-16; Leflore Letter at 3-4, 9-13 (stating that the *Youngberg* standard applies but concluding that the facility failed to satisfy even the lower deliberate-indifference standard).

Given these developments, the Third Circuit would have good reason in a future case to adopt the *Youngberg* standard of care for juvenile delinquency detention. Certainly, between these developments and the factual differences between juvenile delinquency detainees and unaccompanied immigrant minors in government custody for caretaking purposes, the Third Circuit would not be bound by *A.M.* to apply

the deliberate indifference standard to a case like this one.

C. The decision below faithfully applies this Court's precedent regarding the standard of care for individuals institutionalized for their own health and safety.

Petitioner's challenge to the merits of the Fourth Circuit's holding fares no better, largely for the same reasons. As the Fourth Circuit explained, the application of the professional judgment standard here follows directly from *Youngberg*. In *Youngberg*, this Court announced that the professional judgment standard applies to the care of persons in state custody for caretaking purposes because "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." 457 U.S. at 321-22. Respondents were institutionalized pursuant to a regulatory scheme authorizing the government to take custody of unaccompanied immigrant children for caretaking purposes, consistent with the government's concern for the particular vulnerability of minors. *See* Pet. App. A23-26. Accordingly, the professional judgment standard governs their care.

Petitioner emphasizes that respondents were placed at SVJC in particular because of safety concerns, but that is no different than the *Youngberg* plaintiff, who had to be institutionalized due to violent behavior. *See* Pet. App. A26-27. The key fact remains that the purpose of the government custody is caretaking. Respondents have not been adjudicated

guilty of any crime and are not being detained in relation to any criminal proceedings. As this Court observed in *Flores*, when undocumented minors are kept in government custody, it is because they have no adult family member to care for them. 507 U.S. at 310-11. The Court explained that "[w]here a juvenile has no available parent, close relative, or legal guardian, where the government does not intend to punish the children," such custody "is rationally connected to a governmental interest in 'preserving and promoting the welfare of the child' and is not punitive." *Id.* at 303 (internal citation omitted).[8]

The primary distinction between respondents and the *Youngberg* plaintiff is that respondents are minors—but that distinction only further compels application of the professional judgment standard. As noted earlier, *supra* at 22-23, this Court has repeatedly recognized that biological and developmental differences between adults and youth require different constitutional thresholds for the treatment of juveniles in confinement. *See, e.g., J.D.B.*, 564 U.S. at 273; *Roper*, 543 U.S. at 569.

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[8] Although the dissent suggests that *Flores* supports the application of rational basis review in this case, Pet. App. A44-45, petitioner does not press that argument before this Court, and for good reason. As the panel majority explained, *Flores* applied rational basis review only with respect to decisions about where to place unaccompanied children, after determining that children do not have a fundamental right to be placed with a private custodian rather than kept in state custody. The Court did not remotely suggest that rational basis review should apply to a well-established fundamental right like adequate medical care. *See* Pet. App. A25 n.12.

Petitioner offers two criticisms of the Fourth Circuit's *Youngberg* analysis, neither of which has merit. First, petitioner asserts that the court's application of *Youngberg* to respondents' inadequate medical care claims improperly "supplants the objective reasonableness test adopted by this Court for detainee claims of excessive force." Pet. 21. As petitioner acknowledges, Pet. 6-7, however, no excessive force claims were before the Fourth Circuit; the court of appeals applied the professional judgment standard solely to respondents' inadequate mental health care claim. Pet. App. A33.

Petitioner's argument appears to be that the Fourth Circuit's decision nonetheless determines the standard of care for excessive force claims because respondents' inadequate mental health care claim includes allegations that petitioner often resorted to physical restraint as a substitute for providing mental health treatment to respondents. Pet. 21-24. But that is precisely the factual posture of *Youngberg*: Plaintiffs argued that Youngberg was physically restrained rather than provided with appropriate treatment, in violation of his constitutional right to adequate medical care. 457 U.S. at 310-11. In any event, if anything, it is *easier* to establish liability under the objective reasonableness standard than under the professional judgment standard, so this argument provides no help to petitioner's defense.

Second, petitioner asserts that the Fourth Circuit mischaracterized the *Youngberg* standard. Pet. 24. The court's statement of the professional judgment standard, however, is a direct quote from *Youngberg*: To establish a constitutional violation, the evidence

must show "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." Pet. App. A30 (quoting 457 U.S. at 323). The court emphasized that "evidence establishing mere departures from the applicable standard of care is insufficient to show a constitutional violation." *Id.* (internal quotation omitted). Instead, "the proper inquiry is whether the decision was so completely out of professional bounds as to make it explicable only as an arbitrary, nonprofessional one." *Id.*[9]

Petitioner's primary quibble with the Fourth Circuit's discussion of the *Youngberg* standard is that petitioner believes the court should have held that SVJC satisfied that standard. Pet. 24-26. The Fourth Circuit expressly declined to reach that question, however, reasoning that the district court should determine in the first instance whether the evidence supports summary judgment for either party. Pet. App. A3. Certainly, there is no reason for *this* Court to make that determination in the first instance. *See Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005) ("[W]e are a court of review, not of first view.").

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[9] The Fourth Circuit's observation that the *Youngberg* standard does not require proof of subjective intent is in accord with the other courts of appeals. *See, e.g.*, *Ammons v. State of Washington Dep't of Soc. & Health Servs.*, 648 F.3d 1020, 1029 (9th Cir. 2011); *Battista v. Clarke*, 645 F.3d 449, 453 (1st Cir. 2011).

II. Petitioner offers no reason for this Court to review the Fourth Circuit's determination that respondents' claim is redressable.

Petitioner also asks the Court to review the court of appeals' conclusion that respondents' claim is redressable. But petitioner does not purport to identify any division of authority implicated by that determination, nor does the petition point to any other basis that would warrant the Court's review. None exists. The Fourth Circuit's redressability determination is nothing more than the fact-bound application of settled law. Indeed, not even the dissenting judge below expressed any disagreement on this point.

Petitioner argues that respondents' claim is not redressable in this litigation because ORR "retains ultimate responsibility for [respondents'] placement and mental health treatment." Pet. App. A18. But as the court of appeals explained, respondents allege injuries resulting from the actions of SVJC, not ORR, and their proposed declaratory and injunctive relief focuses on the treatment and services that SVJC provides. *Id.* "[W]hile ORR may be charged with placing children in a facility and supervising these facilities, ORR is not responsible for directly implementing the care and treatment at the facility—that job is SVJC's." Pet. App. A19 (internal citations omitted).

Consistent with this allocation of responsibility, the court of appeals found that much of the relief sought by respondents is "not subject to ORR approval," Pet. App. A20, and therefore may be implemented by petitioner upon order of the court in this

litigation. And even for the forms of relief that may require ORR approval, the court observed, SVJC "plays the determinative role in deciding what treatment measures are proposed for implementation." Pet. App. A21. Respondents have thus shown that "they personally would benefit in a tangible way from the court's intervention." Pet. App. A18 (internal quotation marks omitted); *see Utah v. Evans*, 536 U.S. 452, 464 (2002) (holding that redressability is satisfied when a decision's "practical consequence[s] . . . would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered").

Petitioner's emphasis on ORR's legal custody over respondents, Pet. 16-17, is irrelevant. Respondents' claim is based on SVJC's failure to provide adequate care in its capacity as respondents' *physical* custodian—i.e., the day-to-day care provider and decisionmaker regarding what services respondents receive and how they are treated when they exhibit symptoms of mental illness. Petitioner's only response to this point is to repeat its legally and factually erroneous contention that ORR has sole authority to implement improved mental health services for minors "in SVJC's physical custody." Pet. 17. The Fourth Circuit thoroughly explained why the statutory and regulatory framework forecloses that argument: ORR's role is to coordinate the care of children placed "in facilities that meet minimum standards of care," but it does not make decisions for the "day-to-day treatment of children at SVJC." Pet. App. A19 (citing 6 U.S.C. § 279(b)(1)(G)-(H); 45 C.F.R. §§ 410.102(c), 410.200-410.209).

As petitioner implicitly concedes, the court's redressability determination does not implicate any division of authority. To the contrary, it flows directly from this Court's decision in *Bennett v. Spear*, 520 U.S. 154 (1997). *See* Pet. App. A20. In *Bennett*, this Court held that ranchers in Oregon had standing to challenge a Biological Opinion issued by the Fish and Wildlife Service (Service) because the Opinion caused the Bureau of Reclamation to reduce water flows, which injured the ranchers. 520 U.S. at 168-69, 179. The Court explained that "while the Service's Biological Opinion theoretically serves an 'advisory function,' in reality it has a powerful coercive effect on the [Bureau]" because the statutory scheme "presupposes that the biological opinion will play a central role in the [Bureau's] decisionmaking process." *Id.* at 169.

As the Fourth Circuit observed, "ORR is similarly situated to the Bureau of Reclamation in *Bennett*." Pet. App. A21. "While [ORR] may have final say over the provision of certain medical or mental health services, its decision is not independent of that made by [petitioner]." *Id.* As the regulatory framework and cooperative agreement make clear, it is petitioner who decides "what treatment measures are proposed for implementation." *Id.* It is petitioner who "provide[s] residential shelter and services for [unaccompanied immigrant children] in compliance with respective State residential care licensing requirements, . . . pertinent federal laws and regulations, and the ORR's policies and procedures[.]" Pet. App. A19. And it is petitioner who "must provide . . . appropriate mental health interventions when necessary." *Id.* (quoting cooperative agreement between ORR and petitioner).

Indeed, other circuits are fully aligned that redressability is satisfied under these circumstances. *See, e.g.*, *Loggerhead Turtle v. Cty. Council of Volusia Cty., Fla.*, 148 F.3d 1231 (11th Cir. 1998) (holding that although the alleged harm—refusal to eliminate sources of artificial beachfront light—took place within nonparty municipalities which had supplemental authority to regulate artificial beachfront lighting restrictions, plaintiff's claims were redressable because defendant had a determinative role in the decision-making of the municipalities); *San Luis & Delta-Mendota Water Auth. v. Salazar*, 638 F.3d 1163, 1172 (9th Cir. 2011) (holding that farmers' claims that they experienced substantially reduced water deliveries because of the Fish & Wildlife Services' (Service) biological opinion were redressable because, although it was the Bureau of Reclamation (not the Service) that reduced water delivery, the Service's ability to enforce the opinion has a "determinative or coercive effect" that compelled the Bureau to reduce water flows); *Weaver's Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council*, 589 F.3d 458, 467-68 (1st Cir. 2009) (holding that Natural Gas Act permit applicant, challenging regulatory barriers imposed by defendant which stalled applicant's plan to build a liquefied natural gas terminal, satisfied redressability element because defendant's inaction in certifying terminal project had a "determinative or coercive" effect on the non-party federal agency's ultimate approval of the permit application).

In short, petitioner's second question presented is a fact-bound request for error correction where no error occurred.

III. This case is a poor vehicle for the Court's review.

Even if the questions presented by petitioner merited the Court's review, this case would be a poor vehicle for review for three reasons.

First, the petition's interlocutory posture is such that this Court's resolution of the questions presented may be irrelevant to this litigation. Following the Fourth Circuit's decision, proceedings resumed in the district court, where petitioner has a pending motion to dismiss the complaint on numerous grounds, including that respondents' claim fails even under the *Youngberg* standard. *See* Defendant's Motion to Dismiss at 13-14, Doe *ex rel.* Lopez v. Shenandoah Valley Juvenile Ctr. Comm'n, No. 5:17-cv97-0009 (August 13, 2021). Conversely, the decision below indicates that SVJC's mental health care likely fails even under the deliberate indifference standard. *See* Pet. App. A36-39 (explaining that in granting summary judgment to SVJC based on the deliberate indifference standard, the district court "misread the record and failed to construe it in the light most favorable to the moving party"). Accordingly, even if this Court were to grant review and hold that the deliberate indifference standard applies, the Fourth Circuit would most likely reinstate its reversal of the district court's summary judgment ruling.

Second, the Fourth Circuit explicitly left it for the district court to determine on remand what the *Youngberg* standard requires under the circumstances of this case. In particular, the district court is

tasked with determining, based on a review of the record evidence, the relevance of trauma-informed research and practices to SVJC's caretaking responsibilities given respondents' mental health needs relating to past trauma. Pet. App. A33-36. It would make little sense for the Court to review this case until that issue has been considered and resolved by the lower courts.

Finally, as the dissent acknowledges, SVJC is a highly unusual facility. At the time of the Fourth Circuit's decision, it was one of only three nationwide of its kind—i.e., facilities housing unaccompanied immigrant children with such severe behavioral and mental health problems that they are a danger to themselves or others. Pet. App. A53. And it is now the only such facility still in operation. *See* Defendant's Motion to Dismiss at 2, Doe *ex rel.* Lopez v. Shenandoah Valley Juvenile Ctr. Comm'n, No. 5:17-cv97-0009 (August 13, 2021) ("Currently, SVJC is the only secure facility housing [unaccompanied immigrant children] in the country."). Thus, petitioner's suggestion that this case "affects the administration of public detention centers nationwide," Pet. 15, greatly overstates its reach. The decision below does not consider the standard of care for all juvenile detention centers (let alone for all public detention centers), but solely the narrow category of juveniles housed at SVJC because they require a secure caretaking setting due to behavioral and mental health problems that pose a safety risk to themselves and others.

The dissent similarly mischaracterizes the scope of this litigation when it asserts that the decision below "will likely force a complete redesign of juvenile

detention systems." Pet. App. A52. Again, there is exactly one facility in the entire country subject to the professional judgment standard by the Fourth Circuit's reasoning: SVJC. And even with respect to SVJC, the dissent overstates the impact of the *Youngberg* standard. The professional judgment standard does not authorize courts to impose "the best course of mental health treatment for institutions," Pet. App. A54, but rather to determine whether the mental health care provided "is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment," *Youngberg*, 457 U.S. at 323; *see also id.* at 321-22 (expressly rejecting a standard that would require "courts to specify which of several professionally acceptable choices should have been made").

This is a determination courts easily can and do make based on the expert evidence submitted by the parties. It is hardly prescriptive. And there is nothing unusual about a court determining whether a party's argument about a standard of care is supported by the opinions of relevant professionals. Whether SVJC can proffer evidence that the mental health care it provides to respondents is within the realm of accepted professional judgment is a determination the lower courts should make before this Court considers intervening.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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