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

REPLY BRIEF OF PETITIONER

Jason A. Botkins
Counsel of Record
Litten & Sipe LLP
410 Neff Avenue
Harrisonburg, VA 22801
(540) 434-5353
jason.botkins@littensipe.com

Harold E. Johnson
Meredith M. Haynes
Williams Mullen
200 South 10th Street,
Suite 1600
Richmond, VA 23219
(804) 420-6000
hjohnson@williamsmullen.com
mhaynes@williamsmullen.com

Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

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REPLY BRIEF FOR THE PETITIONER

The professional judgment standard was last endorsed by this Court nearly 40 years ago in a case involving an individual with profound mental disabilities who was involuntarily and permanently committed to a state psychiatric hospital. *Romeo v. Youngberg*, 457 U.S. 307 (1982). Like the court of appeals below, Respondents maintain that the *Youngberg* professional judgment standard is appropriate in this case by construing Shenandoah Juvenile Detention Center's (SVJC) primary responsibility in housing Respondent John Doe 4 (Doe 4) and other violent detainees[1] as therapeutic mental health treatment. Br. in Opp. 18.

The fundamental problem is that this argument mischaracterizes SVJC's role in housing unaccompanied alien children (UAC) who remain in the legal custody of the Office of Refugee Resettlement (ORR). ORR places UAC at secure facilities like SVJC when they pose a safety risk, not for purposes of treatment. 45 C.F.R. §410.203(a). Indeed, "secure facilities" like SVJC do not need to meet the requirements for "licensed programs," which serve purposes other than secure detention

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[1] The Fourth Circuit's decision reversed the district court's dismissal of Doe 4's claim of inadequate mental healthcare for lack of an underlying constitutional violation, which is a prerequisite to consideration of evidence concerning unconstitutional custom or practice along with the other elements of a *Monell* claim. Pet. App. A80; *Monell v. Dept. of Soc. Servs.*, 436 U.S. 568 (1978). Nonetheless, Respondents continue to present salacious allegations regarding treatment of other minor detainees despite their irrelevance to whether Doe 4's individual constitutional rights have been violated. *See* Br. in Opp. 10-11.

and provide various care and mental health treatment. 45 C.F.R. §410.101; 45 C.F.R. §410.402. SVJC is not a hospital, nor is it intended to be a hospital. Rather, in the words of Respondents themselves, "SVJC is, both structurally and functionally, a prison." J.A. A31.

ORR placed Doe 4 at SVJC not because he required specialized mental health treatment, but because he had engaged in multiple physical altercations with staff and other minors at less secure detention facilities. Pet. App. A46.[2] By mischaracterizing SVJC's role with respect to UAC, Respondents impermissibly broaden this Court's very limited application of the professional judgment standard in *Youngberg* to apply a standard designed for a psychiatric hospital to a secure juvenile detention facility.

This expansion of the professional judgment standard runs counter to Third Circuit precedent applying the deliberate indifference standard to a claim of inadequate mental healthcare by a minor detained in a state-run juvenile detention center. *A.M. ex rel. J.M.K. v. Luzerne Juvenile Detention Center* 372 F.3d 572 (3d Cir. 2004). Respondents' attempt to distinguish that decision relies on factual distinctions that are constitutionally insignificant. Moreover, Respondents incorrectly characterize the deliberate indifference standard as punitive when the standard has been applied routinely to claimants whose detention is non-punitive in nature.

Respondents also endorse the court of appeals' assessment that the professional judgment standard

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[2] Petitioners cite to the Appendix (Pet. App.) filed with its Petition and the Joint Appendix (J.A.) filed in the Fourth Circuit.

is more appropriate in cases involving minors. Br. in Opp. 14. While distinctions have been previously recognized between minors and adults in other due process contexts, the reasoning underlying those distinctions does not support an age-based distinction in the context of medical treatment. All detainees, regardless of age, should enjoy the same constitutional right to medical and mental health treatment. The newly-announced age-based distinction could have far-reaching consequences for juvenile detention facilities, schools, and other institutions responsible for the care of minors.

Finally, Respondents cannot establish redressability for Doe 4's claim of inadequate mental healthcare without his legal custodian, ORR, joined as a party to this case. Respondents cite no legal precedent for the proposition that a court may order that medical treatment be provided to a minor in the absence of a parent, legal guardian, or legal custodian as a party to the case.

The petition should be granted.

I. The court of appeals' decision is wrong.

A. Respondents improperly equate this case with *Youngberg*.

Respondents suggest that this case is controlled by *Youngberg,* where this Court determined that the professional judgment standard was appropriate "for determining whether a State adequately has protected the rights of the involuntarily committed mentally retarded." 457 U.S. at 311. Thus, this Court's approval of the professional judgment standard was limited to a specific institutionalized

population rather than "the care of persons in state custody for caretaking purposes[.]" Br. in Opp. 25. *See Deshaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 200 (1989) (characterizing *Youngberg* as requiring the services necessary to ensure the reasonable safety of involuntarily committed mental patients).

The claimant in *Youngberg* was involuntarily committed based on certifications by a physician and psychologist that the claimant's profound mental disabilities required commitment in a psychiatric hospital. 457 U.S. at 309-310. By contrast, ORR's detention of Doe 4 arose from (i) his unlawful immigration status and (ii) the absence of an available parent or guardian to take custody over him. 6 U.S.C. § 279(g)(2). Moreover, ORR's placement of Doe 4 at SVJC was necessitated by Doe 4's numerous physical altercations with other minors and staff at a less-secure facility rather than a medical or psychiatric diagnosis. Pet. App. A46. *See also* 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.203(a) (setting forth limited bases for secure placement). As Respondents concede, "respondents were placed specifically at SVJC out of concern they posed a safety risk to themselves or others[.]" Br. in Opp. 18.

ORR's characterization of SVJC as a "care provider" does not transform the facility from a secure detention center to a psychiatric hospital or change the fact that Doe 4 was placed there to address safety concerns rather than treatment needs. Like any detention facility, SVJC provides occupants with a range of services including living accommodations, food, clothing, education, and routine medical and dental care. Pet. App. A119. Those services accord with ORR's obligations under

the *Flores* Settlement Agreement, which applies to all UAC in ORR custody and not just to those in a secure placement like SVJC. Pet. App. A22 (*citing Flores v. Sessions,* 862 F.3d 863, 866 (9th Cir. 2017)); J.A. A127-184. There is simply no basis for the Fourth Circuit's conclusion – cited repeatedly in the Brief in Opposition – that UAC are transferred to SVJC primarily for treatment purposes when such treatment is both available and required at all other placements under the *Flores* Settlement Agreement. *Id.*

Ultimately, the reasoning of *Youngberg* does not apply because SVJC is not a hospital or treatment facility. It is a juvenile detention center whose primary responsibility is to provide a safe environment for minors in state custody who are too dangerous to be housed elsewhere. As such, SVJC's provision of medical care should be assessed under the deliberate indifference standard.

B. Respondents rely on a false dichotomy between punitive and non-punitive detention.

Respondents argue repeatedly that the non-punitive nature of Doe 4's detention requires application of the professional judgment standard rather than deliberate indifference. Br. in Opp. 1, 2, 16, 17, 18, 19, 20, and 25-26. The deliberate indifference standard is not confined to claims arising from punitive detentions. Instead, the deliberate indifference standard is routinely applied to claims of individuals whose detention is non-punitive in nature, including pretrial detainees and civil detainees such as undocumented immigrants.

See, e.g., Ruiz-Rosa v. Rullán, 485 F.3d 150, 155-56 (1st Cir. 2007); *Caiozzo v. Koreman*, 581 F.3d 63, 72 (2d Cir. 2009); *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2nd Cir. 2019); *Groman v. Township of Manalapan*, 47 F.3d 628, 637 (3d Cir. 1995); *E.D. v. Sharkey*, 928 F.3d 299, 308-309 (3d Cir. 2019); *Brown v. Harris*, 240 F.3d 383, 388-90 (4th Cir. 2001); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000); *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010); *Spears v. Ruth*, 589 F.3d 249, 254 (6th Cir. 2009); *Smith v. Knox Cnty. Jail*, 666 F.3d 1037, 1039 (7th Cir. 2012) (per curiam); *Abdelkader Rachid Belbachir v. County of McHenry*, 726 F.3d 975, 980 (7th Cir. 2013); *Krout v. Goemmer*, 583 F.3d 557, 567 (8th Cir. 2009); *Chavero-Linares v. Smith*, 782 F.3d 1038, 1041 (8th Cir. 2015); *Lolli v. County of Orange*, 351 F.3d 410, 419 n.6 (9th Cir. 2003); *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1315 (10th Cir. 2002); *Porro v. Barnes*, 624 F.3d 1322, 1328 (10th Cir. 2010); and *Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1317 (11th Cir. 2010) (per curiam). The non-punitive nature of Doe 4's detention is no different than that of pretrial detainees, immigrant detainees, or other civil detainees whose constitutional claims are subject to the deliberate indifference standard.

C. The ruling below presents a clear departure from Third Circuit precedent.

Respondents' attempt to harmonize the clear split between the decision below and the Third Circuit's holding in *A.M. ex rel. J.M.K. v. Luzerne Juvenile Det. Ctr.,* 372 F.3d 572 (3d Cir. 2004) is

unavailing. In *A.M.*, the Third Circuit adopted deliberate indifference as the appropriate constitutional standard for a minor's claim of inadequate mental healthcare against a state-run juvenile detention facility. *Id.* at 584. That ruling cannot be reconciled with the Fourth Circuit's application of the professional judgment standard below.

Respondents initially assert that *A.M.* "addressed a different circumstance" because the detention facility at issue was "akin to 'a prison setting.'" Br. in Opp. 18 (*quoting A.M.*, 372 F.3d at 579). As mentioned above, however, this purported distinction is belied by Respondents' own assertion that "SVJC is, both structurally and functionally, a prison." J.A. A31.

Respondents next argue that this case is distinguishable because the minor in the *A.M.* case was placed in juvenile detention while awaiting adjudication of a criminal charge. Br. in Opp. 18. This attempt to distinguish *A.M.* also fails to withstand scrutiny. Conditions of detention must remain non-punitive even where a detainee is the subject a criminal charge. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("[A] detainee may not be punished prior to an adjudication of guilt in accordance with due process of law."). Thus, the fact that A.M. was charged with a crime was not determinative of the constitutional standard that applied to his claim of inadequate mental health care. The minor in *A.M.* was entitled to the same constitutional protections as Doe 4 despite having been charged with a crime. Respondents' repeated reference to the criminal charge in the *A.M.* case is a

red herring that fails to harmonize the decision below with the prior decision of the Third Circuit.

Respondents also resort to characterizing the Third Circuit's decision as lacking "reasoned analysis" regarding the proper standard for A.M.'s claim of inadequate mental healthcare. Br. in Opp. 21. However, the Third Circuit's opinion makes it clear that A.M. argued for the application of a heightened standard under the Fourteenth Amendment based upon his status as a minor. *A.M.*, 372 F.3d at 584 ("the District Court applied the deliberate indifference standard …. A.M. takes issue with the application of this standard, noting that he was not a convicted prisoner but merely a juvenile detainee."). *See also* Brief for the Appellant at 19, 35, *A.M.*, 372 F.3d 572 (3rd Cir. 2004) (No. 03-3075), 2003 WL 24301184, at *19, *35 (arguing that A.M.'s claims were subject to a less-deferential standard under *Youngberg* and characterizing application of Eighth Amendment standard to pre-adjudicatory juveniles as "barbarous."). Thus, the Third Circuit squarely addressed the application of *Youngberg* to juvenile detainees, and its decision on that issue is directly at odds with the ruling below.

Respondents speculate that the Third Circuit might decide the case differently if the same facts were presented today. Respondents make this contention based on rulings by this Court in cases involving minors and the death penalty, life imprisonment without parole, and the *Miranda* custody analysis. Br. in Opp. 22-23. None of those cases support an age-based distinction on the constitutional right of detainees to be provided adequate medical care. In addition, statements by the U.S. Department of Justice arising from

investigations of facilities in Indiana, Louisiana, and Mississippi would likely hold little sway if the Third Circuit were to revisit its holding.[3]

D. Respondents' claims cannot be redressed without the involvement of their legal custodian.

Respondents, like the court of appeals, fail to cite any case in which a court has ordered that medical treatment be provided to a minor without a parent, legal guardian, or legal custodian being a party to the case. ORR is the legal custodian of UAC placed in third-party facilities, and Respondents concede that ORR acts as their guardian. 45 C.F.R. § 410.207; Br. in Opp. 18. In that capacity, ORR retains ultimate authority regarding all medical care provided to UAC. *Id.* SVJC cannot order or provide psychological evaluations, specialized medical treatment, or particularized mental healthcare without ORR approval. Pet. App. A6, A20. SVJC has no authority to implement any relief awarded on Doe 4's claim of inadequate mental healthcare without ORR's involvement and approval.

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[3] One Letter of Findings cited by Respondents expressly declined to resolve which standard applies, noting that "Neither the Supreme Court nor the Seventh Circuit has determined definitively whether the Eighth Amendment or the Fourteenth Amendment provides the governing constitutional standard for conditions in juvenile facilities." 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 3-4 (Sept. 9, 2005), https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/split_indiana_southbend_juv_findlet_9-9-05.pdf [https://perma.cc/4XGH-SW6A]

Respondents point to several cases to assert that redressability is satisfied, but none implicate the "fundamental" right of parents, guardians, and legal custodians to make decisions concerning the care of minors. *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Instead, Respondents rely upon cases involving claims against the U.S. Fish and Wildlife Service for biological opinions on negative impacts on endangered fish (*Bennett v. Spear*, 502 U.S. 154, 157 (1997) and *San Luis & Delta-Mendota Water Auth. v. Salazar*, 638 F.3d 1163, 1169 (9th Cir. 2011)), a claim brought on behalf of sea turtles against a locality for artificial beachfront light (*Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla.*, 148 F.3d 1231, 1234, 1253 (11th Cir. 1998)) and a claim against a state agency for failing to conduct a review that was a condition of permit approval for a natural gas terminal (*Weaver's Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council*, 589 F.3d 458, 465-66 (1st Cir. 2009)). Rather than endangered wildlife or permitting for a natural gas terminal, the circumstances of this case are akin to a lawsuit seeking to compel a school to provide particularized medical treatment without involving the student's parents.

ORR's retention of legal custodial rights serves as both a safeguard and an accountability measure to ensure that UAC receive appropriate services after being placed in third-party facilities. Under the analysis announced by the court of appeals, SVJC and other third-party contractors are authorized and perhaps even required to subject UAC to medical treatment without ORR's prior consent and approval. In light of this untenable result, the court of appeals concluded that "ORR would have to

approve any changes SVJC proposes." Pet. App. A21. However, that conclusion finds no support in the regulatory structure, which endows ORR with legal custody and authority to make medical decisions for UAC. It also impermissibly trivializes ORR's role as legal custodian and all but eliminates the intended safeguard of ORR's continuing oversight for UAC placed in third-party facilities.

II. The decision below warrants this Court's review.

Contrary to Respondents' assertions, the precedential value of this case will likely be far reaching. In addition to creating an age-based distinction on the constitutional right to adequate medical care, the decision below uses a standard not revisited by this Court in decades to apply the constitutional responsibilities of a psychiatric hospital to a juvenile detention center designed around safety rather than treatment. Absent an impermissible distinction based upon citizenship status, the decision below may be readily applied to any public facility housing minors. As the dissent below correctly recognized, the Fourth Circuit's decision represents an "initial step" in opening "a new front of judicial supervision over mental healthcare in juvenile detention systems" despite efforts by this Court to deter judicial micromanagement of public institutions. Pet. App. A41, A55; *Lewis v. Casey*, 518 U.S. 343 (1996); *Missouri v. Jenkins*, 515 U.S. 70 (1995). *See also* Pet. App. A11 n.7 (describing instance in which Doe 4 did not earn an incentive point for good behavior).

CONCLUSION

For the foregoing reasons, and those stated in the petition for writ of certiorari, the petition should be granted

Respectfully submitted,

Jason A. Botkins
Counsel of Record
Litten & Sipe LLP
410 Neff Avenue
Harrisonburg, VA 22801
(540) 434-5353
jason.botkins@littensipe.com

Harold E. Johnson
Meredith M. Haynes
Attorneys
Williams Mullen
200 South 10th Street, Suite 1600
Richmond, VA 23219
(804) 420-6000
hjohnson@williamsmullen.com
mhaynes@williamsmullen.com

Attorneys for Petitioner