No. 21-783

In the Supreme Court of the United States

PATSY K. COPE; ALEX ISBELL, as Dependent Administrator of, and on behalf of, Estate of DERREK QUINTON GENE MONROE, and his heirs at law,
Petitioners,

v.

LESLIE W. COGDILL; MARY JO BRIXEY; JESSIE W. LAWS,
Respondents.

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

BRIEF IN OPPOSITION

SCOTT M. MCELHANEY
JACKSON WALKER LLP
2323 Ross Ave., Suite 600
Dallas, Texas 75201

JON MARK HOGG
Counsel of Record
AMANDA N. CROUCH
JACKSON WALKER LLP
136 W. Twohig, Suite B
San Angelo, Texas 76903
(325) 481-2560
jmhogg@jw.com

Counsel for Respondents

QUESTIONS PRESENTED

The court of appeals held that a jailer—who was alone on duty when a disruptive and angry inmate wrapped a telephone cord in his cell around his own neck—was entitled to qualified immunity because it would not have been clear to every reasonable jailer that he would violate the Due Process Clause by calling for and awaiting backup before entering the cell and calling 911. The court of appeals also held that jail administrators who had previously moved the inmate to a single-occupancy cell without bedsheets (after the inmate tried to strangle himself with a sheet in the general-population cell) were entitled to qualified immunity because there was no evidence that any inmate had previously attempted suicide by strangulation with a phone cord.

The Petition presents the following questions:

1. Whether the Court should grant the Petition and review Petitioners' factbound arguments that the court of appeals erred in granting qualified immunity.

2. Whether the Court should review Petitioners' arguments that the objective test for excessive-force claims set forth in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), should be extended to claims that officers were deliberately indifferent to a risk of harm to a suicidal detainee, thereby eroding the deliberate-indifference standard and the distinction between constitutional § 1983 claims and mere negligence claims, even though the Court's answer to that question would not affect the court of appeals' ultimate decision in this case.

3. Whether the Court should reimagine its qualified immunity case law through a fact-intensive case that underscores the dilemmas officers face when they lack notice of their constitutional obligations.

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INTRODUCTION

Coleman County, Texas sits about two hours west of Waco and an hour south of Abilene. It spans over 1,200 square miles but is home to fewer than 8,000 people. When the events here took place, the county jail was in a 127-year-old building. Male inmates were held in one of two cells: a large cell for several inmates or a smaller, single-occupancy cell. Each cell had a telephone to facilitate inmates' contact with their families and lawyers. The County could afford to staff the jail with two jailers on weekdays, but only a single jailer on nights and weekends. If that single jailer ever needed to enter a cell, jail policy required him to seek and obtain backup first.

One Sunday morning in 2017, Respondent Jessie Laws was the single jailer on duty. An inmate named Derrek Monroe, arrested days earlier, was in the single-occupancy cell. Laws's supervisors had moved Monroe to that cell because he presented a suicide risk and could be removed from the presence of bedsheets there.

Early that morning, Laws escorted Monroe to the shower and then back to his cell. Monroe had defecated on himself, and Laws gave him a clean smock. But Monroe became angry with Laws for not returning his original clothes.

Monroe grew increasingly agitated and violent inside his cell. He deliberately overflowed the toilet. He slammed a wooden plunger against the walls and bars of the cell. After that, he picked up the telephone receiver and repeatedly slammed it against the wall. He then wrapped the telephone's cord around his

neck. At this point, Laws did not want to violate jail policy and enter the cell alone, lest he become vulnerable to a violent attack. *See*, *e.g.*, Matt Surtel, *NYSCOPBA: Fake suicide attempt used to attack officers in new Attica Correctional Facility incident*, The Daily News Online (May 12, 2021), https://tinyurl.com/3xyzzjpk. So he immediately called for backup. Another jailer arrived in just ten minutes. They entered the cell, found Monroe unresponsive, called 911, and began resuscitation efforts. Paramedics then arrived and took Monroe to the hospital, which was 60 miles away.

After Monroe died at the hospital, Petitioners sued Laws and his supervisors. They alleged that Laws violated the Fourteenth Amendment's Due Process Clause by failing to enter Monroe's cell alone and failing to call paramedics at the same time he called for backup. They alleged that Laws's supervisors violated the Clause by keeping Monroe in a cell with a 30-inch telephone cord—18 inches longer than a state commission had recommended two years earlier—and because they failed to adopt other measures, such as transferring Monroe to a mental health facility or hiring more jailers.

A split panel of the court of appeals held that Laws and his supervisors were entitled to qualified immunity because no case clearly established that their actions in these volatile circumstances violated Monroe's due process rights. The court of appeals was correct. If anything, Petitioners' contentions illustrate the propriety of qualified immunity. With the benefit of hindsight, Petitioners seek to micromanage

decisions of small-town jailers handling a series of precarious situations. If the Constitution indeed forces jailers like Laws to enter a jail cell alone when they are unsure whether an angry inmate poses a threat, they should be on notice of that before being held liable. And if the Constitution indeed dictates how long cords can be on telephones in jail cells, they should be on notice of that too. They were not, so qualified immunity was proper.

Petitioners also erroneously contend that this case creates a circuit split. Petitioners' cited cases show only that inmate-suicide case law is intensely fact-sensitive and that cases with different facts come out differently. So, for instance, when defendant jailers fail to take "*any* action that might have actually forestalled" an inmate's suicide attempt, courts deny them qualified immunity. *Penn v. Escorsio*, 764 F.3d 102, 112 (1st Cir. 2014) (emphasis added). So too when defendants leave an obviously distressed inmate "entirely unmonitored for nearly eight hours." *Sandoval v. Cty. of San Diego*, 985 F.3d 657, 663 (9th Cir. 2021). But here, Laws and his supervisors *did* take steps to forestall Monroe's suicide attempts, and they called for backup and paramedics within *minutes* of Monroe's wrapping the telephone cord around his neck. Rather than establish a circuit split, Petitioners have shown only that case outcomes in this area of law turn on the facts. That is a sign of a well-functioning judiciary, not a need for this Court's review.

Finally, this is not the case for Petitioners' recycled questions about whether to extend *Kingsley v. Hendrickson* or reimagine the doctrine of qualified

immunity. The *Kingsley* issue did not affect the court of appeals' decision. To the contrary, it held that even if Respondents had acted unconstitutionality—under either an objective *or* a subjective standard—they were entitled to qualified immunity due to a lack of case law addressing the specific situations they faced. And whatever the merits of reimagining qualified immunity, this case is not the right starting point. This case presents fact-intensive areas of Fourteenth Amendment law, involves at least four discrete allegations of unconstitutionality, and illustrates the understandable confusion officers face when confronting difficult situations without notice of their constitutional obligations. The Court should deny the Petition.

STATEMENT

I. FACTUAL BACKGROUND.

1. Coleman County is a rural county in west central Texas. When Derrek Monroe was arrested, the jail was in a 127-year-old, two-story building. ROA.914. Two jailers were on duty during the weekdays but only one was on duty at night and on weekends because the Sheriff, Respondent Cogdill, lacked the budget to staff the jail with two jailers at all times. ROA.899, 901.

The cells are located on the second floor. Two cells were available for men: a large cell for several inmates and a smaller, single-occupancy cell. ROA.904. A telephone was installed in each cell for inmate use. ROA.903, 943, 980. The phone in the single-occupancy

cell was mounted to a wall above a table and had a cord roughly 30 inches long. ROA.908, 983.

Monroe was arrested in 2017 for the manufacture and delivery of a controlled substance. He was taken to the jail. ROA.947, 965. When Monroe arrived, the jail intake officer determined that he was a potential suicide risk, prepared a required report, and notified the Texas Department of Mental Health and Mental Retardation. ROA.952. Monroe was placed in the general population cell and put on suicide watch. ROA.950-954.

The following day, Monroe wrapped a bedsheet from a mattress around his neck and appeared to attempt to strangle himself. In response, Cogdill and Laws moved Monroe to the single-occupancy cell, removed the bedsheet, and replaced his clothes with a safety smock. ROA.903.

The next day was a Sunday, so Laws was the sole jailer on duty. ROA.985. Early that morning, Monroe defecated on himself and asked for permission to shower. ROA.979. Laws determined that Monroe would be compliant if let out of his cell and obtained approval by telephone for the shower from the Jail Administrator, Respondent Brixey. ROA.979, 982. After his shower, Monroe demanded that Laws return his clothes, but Laws told Monroe he could not and instead gave Monroe a clean smock. Laws observed from Monroe's body language that Monroe was annoyed that Laws would not return his clothes. *Id.*

Once back in his cell, Monroe became visibly angry and flooded his cell from the toilet. He then used the

wooden-handled plunger kept in the cell—because flushing the toilet required use of a plunger—to bang against the cell walls and bars. ROA.922, 983, 988, 1032. Monroe also picked up the phone receiver and violently beat the phone and cell walls with it. ROA.955, 1032. Then, Monroe wrapped the phone cord around his neck and sat at the table below the phone.

Jail policy provides that a jailer must not enter a cell without backup. Laws followed that policy. ROA.983, 993, 944-946. Fake suicide attempts are known to occur as a tactic to enable inmates to attack jailers. *See*, *e.g.*, Matt Surtel, *NYSCOPBA: Fake suicide attempt used to attack officers in new Attica Correctional Facility incident*, *supra.* Laws believed that it would have been unsafe for him to have entered the cell without backup based on Monroe's increasingly violent behavior. ROA.993-994. So Laws immediately called Cogdill, Brixey, and the deputy on call for assistance. ROA.983.

Brixey arrived within ten minutes. She and Laws then entered the cell. Laws found that Monroe had a pulse, but was not breathing, and asked Brixey to get the breathing resuscitator. She did so and immediately called 911. Laws and Brixey then began efforts to resuscitate Monroe. EMTs arrived within seven minutes. Monroe was transported to a hospital about 60 miles away, where he died the following day. ROA.955-957, 966, 986.

2. The Petition makes several factual assertions that are belied by the record. Because outcomes in qualified immunity cases depend overwhelmingly on

the facts, Respondents highlight these erroneous assertions to "address…misstatement[s] of fact…in the petition that bear[] on what issues properly would be before the Court if certiorari were granted." S. Ct. R. 15.2.

First, the Texas Commission on Jail Standards issued a memorandum in 2015 recommending that telephone cords inside cells be no more than twelve inches long. ROA.961. Citing the dissent in the court of appeals, Petitioners suggest that Cogdill and Brixey knew about this recommendation, Pet. 7 (citing Pet. App. 25a-26a), but they were not aware of it until it was sent to Cogdill after Monroe's death. ROA.909, 936; Pet. App. 19a-20a n.11.

Second, Petitioners claim that "jail policy required that suicidal detainees 'be transferred to a facility better equipped to manage an inmate with mental disabilities.'" Pet. 6 (citing Pet. App. 26a-27a (dissenting op.)). But the policy cited relates to inmates with mental disabilities who become violent. In that event, the policy provides that "Mental Health Services should be requested as soon as possible," and "[i]f necessary, for the protection of the inmate, he/she will be transferred to a facility better equipped to manage an inmate with mental disabilities." The policy does not specifically address suicide attempts. ROA.946.

Third, Petitioners also assert that "jail policy" would have allowed Laws to have an inmate-trustee assist him with entering Monroe's cell. Pet. 10. Petitioners' statement appears to arise from an unsupported assertion in Petitioners' own summary

judgment briefing and the unrelated fact that another prisoner had been designated as an inmate-trustee. ROA.868. But there is no evidence that jail policy would have permitted a trustee to perform the duties of a jailer in such a precarious situation.

II. PROCEDURAL HISTORY.

1. Petitioners sued Coleman County and the three individual Respondents under 42 U.S.C. § 1983, alleging that they violated Monroe's rights under the Fourteenth Amendment's Due Process Clause. Pet. App. 4a. Respondents moved for summary judgment based on qualified immunity. The district court denied the motion, and Respondents filed an interlocutory appeal. *Id.* at 5a.

2. The court of appeals reversed. As it explained, under circuit precedent, jailers have a "duty to tend to a pretrial detainee posing a risk of suicide." Pet. App. 10a. When, as here, plaintiffs allege that jailers have violated that duty by "episodic acts or omissions," the "proper" legal inquiry "'is whether the official had a culpable state of mind in acting or failing to act.'" *Id.* at 10a-11a (quoting *Hare v. City of Corinth*, 74 F.3d 633, 643 (5th Cir. 1996) (en banc)).[1] In other words, plaintiffs must ultimately prove that "the official had subjective knowledge of a substantial risk of serious harm to the detainee and responded to that risk with deliberate indifference." *Id.* at 11a (citation omitted).

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[1] The court of appeals contrasted Petitioners' episodic-acts claims from claims challenging "general conditions, practices, rules or restrictions of pretrial confinement," which Petitioners did not allege. *Id.*

The court of appeals applied that rule to each Respondent. Beginning with Laws, it determined that sufficient evidence existed to create a genuine issue of fact "as to whether Laws had subjective knowledge of the risk of serious harm" and noted that Laws "appears to concede this point." *Id.* at 13a. But it nevertheless held that Laws was entitled to qualified immunity for Petitioners' deliberate-indifference claim because "the unlawfulness" of his conduct was not "clearly established at the time." *Id.*

First, no clearly established law required Laws to contravene jail policy and enter the cell before back-up arrived. *Id.* at 15a. To the contrary, recent circuit precedent held that "requiring a jailer to enter a cell without back-up 'would create an unenviable Catch-22: Either enter the cell alone and risk potential attack, or take appropriate precautions and incur liability under § 1983.'" *Id.* (citation omitted). It was thus far from "'sufficiently clear that every reasonable official would have understood that' waiting for a backup officer to arrive in accordance with prison policy 'violates [a pretrial detainee's] right.'" *Id.* (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)).

Next, the court of appeals concluded that, once he saw Monroe with the cord around his neck, Laws should have called 911 in addition to immediately calling Cogdill, Brixey, and the deputy on call for assistance. *Id.* at 15a-18a. It held that the failure to promptly "call for emergency assistance when a detainee faces a known, serious medical emergency—e.g., suffering from a suicide attempt—constitutes unconstitutional conduct." *Id.* at 16a. But it also

invoked this Court's admonition that, when evaluating "whether the law was clearly established at the time that the conduct occurred, constitutional rights must not be defined at a high level of generality." *Id.* (citing *Mullenix*, 577 U.S. at 12).

Although it had held that doing "nothing at all" to secure medical help in the face of a dire need was deliberately indifferent conduct, *id.* at 17a, the court of appeals had not until this case "spoken directly on whether failing to call for emergency assistance in response to a serious threat to an inmate's life constitutes deliberate indifference." *Id.* at 16a. Its decision about "the 911 issue" here puts future officers on notice, but no clearly established law taught Laws that a lone officer at a jail acts with deliberate indifference to a detainee's medical emergency by calling his supervisors for assistance but not simultaneously calling 911. *Id.*

As to Cogdill and Brixey, the court of appeals explained that, even assuming they had subjective knowledge of a substantial risk of serious harm and responded to that risk with deliberate indifference, they were still entitled to qualified immunity if the unlawfulness of their conduct was not "clearly established." Pet. App. 18a.

The court of appeals held that the supervisors' decision to move Monroe to the single-occupancy cell did not violate clearly established law. The supervisors moved Monroe after he tried to strangle himself with a bedsheet in the general population cell; the change let them remove all bedsheets (eliminating access to the risk he had just used) and replace his

clothes with a safety smock. By shielding Monroe from those risks, the cell reassignment followed circuit precedents finding that officers had violated clearly established law by (a) providing loose bedding to a suicidal detainee and placing her in a cell where the officer knew another detainee had hung himself with a sheet, and (b) providing a blanket to a suicidal inmate, where the officer knew that "'bedding hanging was the most frequent method of suicide' in Texas jails." *Id.* at 19a (citations omitted). To be sure, the phone in the single-occupancy cell (like the phone in the general-population cell) had a cord, but the record in this case did "not suggest that any inmate had previously attempted suicide by strangulation with a phone cord," and there was separately no "non-speculative evidence Brixey and Cogdill were aware of this danger." *Id.* Under "these facts and circumstances," the "danger posed by the phone cord was not as obvious as the dangers posed by bedding," so moving Monroe to the single-occupancy cell "did not violate a clearly established constitutional right." *Id.* at 19a-21a.[2]

3. Judge Dennis dissented. He would have held that Respondents violated clearly established law,

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[2] The court of appeals also held that Cogdill and Brixey did not violate a clearly established constitutional right by staffing the jail with only one weekend jailer. *See* Pet. App. 21a-22a. The Petition does not appear to contest this holding, so Petitioners have waived any challenge to it. They have similarly failed to contest—and thus have waived their right to challenge—the conclusion that Brixey should prevail because she "was not involved in placing [Monroe] in the [single-occupancy] cell." Pet. App. 12a n.6.

suggesting that an officer's "subjective knowledge" of a detainee's suicide risk, coupled with "effective[] disregard" of that risk by not taking the actions retrospectively advocated by Petitioners, alone constitutes a "violat[ion of] clearly established law." *Id.* at 34a. He also would have held that there was "no need for a prior case to put an officer on notice that a situation presents a risk of inmate suicide or that a particular sort of response is unreasonable[.]" *Id.* at 35a; *see id.* at 37a-38a n.6.

ARGUMENT

I. THE COURT OF APPEALS REACHED THE CORRECT CONCLUSION AND NO CIRCUIT HAS HELD OTHERWISE IN SUCH CIRCUMSTANCES.

The legal rules applied by the court of appeals accord precisely with this Court's jurisprudence and other circuits' precedent. Like other circuits, the court of appeals recognizes that "[s]uicide is an objectively serious harm implicating the state's duty to provide adequate medical care," and that state officers have a "duty to tend to a pretrial detainee posing a risk of suicide." Pet. App. 10a (citations omitted). Like other circuits, the court of appeals holds that, to establish a constitutional violation, Petitioners had to show that Respondents responded to that risk with deliberate indifference. *Id.* at 11a. And the court of appeals applied the same qualified immunity test every circuit applies.

The court of appeals simply held that Respondents are entitled to qualified immunity because, to the extent their conduct violated the Due Process Clause,

the unlawfulness of their conduct was not clearly established at the time. *Id.* at 13a-15a, 20a-22a. That holding was a straightforward—and proper—application of this Court's well-established qualified-immunity case law. Nor does this case create a split with other decisions considering jailhouse suicides.

A. The Decision Below Comports with This Court's Precedents.

1. Qualified immunity shields officers from civil liability so long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). A right "is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.'" *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) (per curiam) (quoting *Mullenix*, 577 U.S. at 11).

"Although 'this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.'" *Id.* at 7-8 (quoting *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam)). "In other words, immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *White*, 137 S. Ct. at 551 (quoting *Mullenix*, 577 U.S. at 12) (cleaned up).

Earlier this Term, the Court reemphasized that it has "repeatedly told courts not to define clearly established law at too high a level of generality." *City of Tahlequah v. Bond*, 142 S. Ct. 9, 11 (2021) (per

curiam) (citation omitted). "It is not enough that a rule be suggested by then-existing precedent; the rule's contours must be so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* (internal quotation marks and citation omitted). This "inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Rivas-Villegas*, 142 S. Ct. at 8 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam)); *see White*, 137 S. Ct. at 552 (explaining that "the clearly established law must be 'particularized' to the facts of the case") (citation omitted). "Otherwise, 'plaintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtual unqualified liability simply by alleging violation of extremely abstract rights.'" *White*, 137 S. Ct. at 552 (citation omitted) (cleaned up).

Here, no clearly established law "'particularized' to the facts of the case" made it "sufficiently clear that every reasonable official would have understood that" Respondents' conduct "in the situation [they] confronted" violated the Due Process Clause.

As to Laws, upon seeing that Monroe had wrapped a phone cord around his neck (after he became angry at Laws for not returning his clothes), Laws immediately called his supervisors and the deputy on call for assistance—in compliance with jail policy not to enter a cell without backup—but did not simultaneously call 911. When his supervisor arrived, they entered together and called 911. No clearly established law confirmed that Laws violated Monroe's rights by either (a) "waiting for a backup

officer to arrive in accordance with prison policy," Pet. App. 15a, or (b) calling his supervisors and the jailer on call for assistance, but not 911. *Id.* at 16a-17a. It simply is not true, as Petitioners' arguments imply, that Laws made no response at all.

As to Cogdill and Brixey, after Monroe used a bedsheet to strangle himself, he was moved to the single-occupancy cell without sheets. That cell had a phone, as did the general population cell. But because no evidence suggested any other inmate had attempted suicide by strangulation with a phone cord, the "danger held by the phone cord was not as obvious as the dangers posed by bedding," and there was further no "non-speculative evidence that Brixey or Cogdill were aware" of such a danger. Qualified immunity thus applied. *Id.* at 19a-21a.

This clearly-established-law inquiry comports with this Court's cases. Take *White v. Pauly*, which reemphasized that a proper inquiry must account for case-specific circumstances. There, the court of appeals (a) cited general statements from this Court that the reasonableness of an officer's use of deadly force in response to a threat by a suspect with a weapon turned in part on whether, if feasible, the officer had given some warning; and (b) held that it was clearly established that the defendant officer could not have reasonably used deadly force without first warning the suspect to drop his weapon. 137 S. Ct. at 551. This Court reversed because the court of appeals failed to account for the fact that the officer arrived late to an ongoing police action at which other officers had already engaged with the suspect. *Id.*

at 552. The proper question was thus whether clearly established law "prohibit[ed] a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper police procedures, such as officer identification, have already been followed." *Id.* Clearly established law did not prohibit officers from making such an assumption, so the Court vacated the court of appeals' denial of qualified immunity. *Id.* at 552-53.

The Fifth Circuit's analysis here follows the approach in *White*: It appropriately accounts for the circumstances of this case and does not impermissibly rely on "broad general proposition[s]" abstracted from "the specific context of the case," *Rivas-Villegas*, 142 S. Ct. at 8, to analyze whether Respondents' conduct violated clearly established law.

2. Even so, Petitioners contend that the court of appeals misapplied the Court's precedents. They invoke a line of cases recognizing that "'general statements of the law are not inherently incapable of giving fair and clear warning' to officers." But under this Court's cases, such generalized statements make clearly established law only in "'an obvious case.'" *White*, 137 S. Ct. at 552 (quoting *Brosseau*, 543 U.S. at 199); *accord Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020) (per curiam). In effect, Petitioners latch on to that general principle and urge the Court to expand the narrow class of "obvious" cases to cover far more nuanced and complicated situations. Pet. 14-19.

To see how Petitioners seek to stretch this rule, compare this case with *Taylor*, where prison officers allegedly confined an inmate in a cell covered in

"massive amounts" of feces, and then in a frigidly cold cell that overflowed with raw sewage, for six days. 141 S. Ct. at 53. There was no evidence that "the conditions of Taylor's confinement were compelled by necessity or exigency" or that those conditions "could not have been mitigated, either in degree or duration." *Id.* at 54. Given those "extreme conditions," any reasonable corrections officer would have concluded that it was not "constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time." *Id.* at 53. The Court thus reversed the court of appeals' conclusion that the officers did not have fair warning that their conduct was unconstitutional. *Id.* Accordingly, *Taylor* merely reaffirms that, in extreme and obvious cases, a generalized statement of a constitutional rule can clearly establish—and thus provide notice—that conduct is unlawful.

But Petitioners' assertion that this case involves the "obvious unconstitutionality of the defendants' conduct," Pet. 13-14, does not make it so. The argument that Laws's conduct was "manifestly unreasonable," Pet. 16, fails to account for what happened. The claim that Laws "had no basis for refusing to enter the cell to come to Monroe's aid," *id.*, ignores (a) the jail policy against entering a cell without backup (which is justified by the fact that fake suicide attempts have been used to attack jailers), (b) Monroe's display of anger towards Laws for not returning his clothes, and (c) Monroe's violent outbursts banging the wooden toilet plunger and telephone against the cell walls and bars, which gave rise to a reasonable fear for Laws's safety (and

Monroe's). Petitioners' claim that Laws could have enlisted the aid of an inmate-trustee fares no better. That claim finds no support in the record. ROA.868, 979, 982-83.

Equally misplaced is Petitioners' argument that Laws's immediately calling his supervisors and the on-call jailer for emergency assistance without also calling 911 is as extremely and egregiously unconstitutional as placing an inmate in feces- and raw-sewage-covered cells for six days. Pet. 17. If they had analyzed this case on its own facts and acknowledged existing circuit precedent—as this Court's precedents require—Petitioners should have noted that (a) Laws *did* immediately call for assistance (and once assistance arrived, he entered the cell, checked for a pulse, and applied a breathing resuscitator) and (b) the court of appeals had previously held that doing "'*nothing* to secure medical help'" for a pretrial detainee with a medical emergency was a clearly established constitutional violation, but had not previously reached such a conclusion when an officer calls other officers who in turn call for medical assistance—all within ten minutes. *See* Pet. App. 17a. If the Constitution compels an optimal order of operations in calling for emergency personnel, the court of appeals had never before indicated as much.

Petitioners' argument that Cogdill and Brixey's conduct was obviously unconstitutional suffers from the same deficiencies. Pet. 17-19. Petitioners fault Cogdill and Brixey for moving Monroe to the single-occupancy cell, but they fail to acknowledge that

(a) there were only two cells available (both with phones), (b) Monroe was removed from the presence of bedsheets (which he had just used to try to strangle himself), (c) there was no evidence in the record that other prisoners had tried to strangle themselves with a phone cord, and (d) there was also no evidence Cogdill and Brixey were aware of the danger of suicide by strangulation from a phone cord. In fact, the court of appeals rejected Petitioners' claim that there was a factual dispute about whether Cogdill and Brixey saw a memorandum recommending short phone cords, explaining that there was no "non-speculative evidence" Brixey and Cogdill saw the memorandum. Pet. App. 19a & n.11. This is not the stuff of "obvious" constitutional violations like those in *Taylor*.

3. Because any violation of the Due Process Clause was not obviously beyond debate, the court of appeals had to consider whether any such violations were clearly established "in light of the specific context of the case, not as a broad general proposition." *Rivas-Villegas*, 142 S. Ct. at 8 (citation omitted). It had to follow this Court's instructions that "the clearly established law must be 'particularized' to the facts of the case," *White*, 137 S. Ct. at 552 (citation omitted), and must be "sufficiently clear that every reasonable official would have understood that what" he or she did "in the situation he [or she] confronted" violated the Constitution. *City of Tahlequah*, 142 S. Ct. at 11 (citation omitted). Petitioners point to no cases addressing the situations Respondents faced here to put them and every other reasonable official on notice of a constitutional violation. Petitioners thus

fail to show that the court of appeals erred in granting qualified immunity.

In short, Petitioners' contention that the court of appeals' holding that Respondents were entitled to qualified immunity is "plainly wrong," Pet. 19, rests on Petitioners' failure to properly analyze whether the unlawfulness of Respondents' conduct was clearly established. Petitioners' argument presents a fact-bound disagreement with the court of appeals' analysis, which does not merit plenary review. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). Petitioners' attempt to fit this case into the rubric of *Taylor* and its predecessors does not demonstrate a certworthy issue.

B. There Is No Circuit Split.

Petitioners' claim that the court of appeals' decision creates a circuit split about the rule applicable to jailhouse suicide cases also does not withstand scrutiny, so it does not present an issue warranting the Court's review.

1. In *Penn v. Escorsio*, 764 F.3d 102 (1st Cir. 2014), the First Circuit applied what the defendants conceded to be clearly established law—that officers with knowledge of a substantial risk of suicide must take "*some action*" to abate that risk—but concluded that there was a factual dispute as to whether the defendants there had taken "*no action*" to forestall the risk that an inmate would attempt suicide. *Id.* at 113 (emphasis in original). Here, the court of appeals

agreed to precisely the same legal rule. *See* Pet. App. 17a, 19a-21a. The difference is that Respondents here *did* take some action—indeed, a series of actions—to abate the suicide risk.

Nor does this case conflict with the Ninth Circuit cases Petitioners invoke. In *Lemire v. California Department of Corrections and Rehabilitation*, 726 F.3d 1062 (9th Cir. 2013), a staff meeting resulted in an hours-long absence of all floor officers, and an inmate attempted suicide during the absence. When officers returned, two of them discovered the inmate unconscious in his cell. *Id.* at 1068-71. There was a factual dispute about how long it took them to call for medical assistance and about what they did between (a) when they discovered the inmate (and accessed his cell consistent with the prison policy to open a cell door only with backup present) and (b) when medical personnel arrived. *Id.* at 1071-73. The Ninth Circuit reasoned that a jury could have found that the officers "took no life saving action while waiting for" medical personnel while standing near the inmate inside the cell, and did not attempt to resuscitate him. *Id.* at 1083. Contra Petitioners' protestations, Respondents' actions here differ from the officers' in *Lemire*; as soon as jail policy allowed them to enter, Respondents immediately attempted to resuscitate Monroe.

The Ninth Circuit's discussion in *Sandoval v. City of San Diego*, 985 F.3d 657 (9th Cir. 2021), of what constitutes clearly established law for qualified-immunity purposes is also not meaningfully distinct from the decision below. In *Sandoval*, jail nurses (a) failed for eight hours to monitor an inmate who

had overdosed on methamphetamine and (b) delayed calling paramedics for 45 minutes after being told by other medical personnel that paramedics were required to attend to an unresponsive patient and transport him to a hospital. *Id.* at 662-64. The Ninth Circuit held that the nurse who could have cared for the inmate but left him unattended for hours was not entitled to qualified immunity because "all reasonable nurses would understand that [his] minimal—almost non-existent—course of treatment violated the Constitution." *Id.* at 679. And the nurses responsible for failing to call paramedics were likewise not entitled to qualified immunity because "every reasonable nurse would have understood that paramedics were the only individuals capable of transporting [the prisoner] to the hospital." *Id.* Nothing about that approach differs meaningfully from the analysis below. The outcome here differs only because nobody left Monroe unattended for hours or failed to call anyone for 45 minutes after being told that paramedics were needed.

In *Estate of Miller v. Tobiasz*, 680 F.3d 984 (7th Cir. 2012), the court paraphrased this Court's well-established rule that there does not need to be "a case directly on point for a right to be clearly established," so long as existing cases place the "constitutional question beyond debate." *Rivas-Villegas*, 142 S. Ct. at 7-8. The gist of the Seventh Circuit's decision was that the plaintiff had pleaded facts sufficient to survive a Rule 12(b)(6) motion to dismiss. The complaint alleged that the deceased had a long history of suicide attempts known by the defendants, and that security-staff defendants left him unattended

between 11:00 p.m. and 11:58 p.m. and failed to call for medical attention despite finding him with no pulse and not breathing on the floor of his cell. At the pleading stage, those allegations sufficed to show that every reasonable official would have understood that what each security defendant did in the situation he or she confronted was deliberately indifferent. *Estate of Miller*, 680 F.3d at 990-91. But here, there was no 58-minute period of inattention and no failure to call paramedics after discovering that the inmate was not breathing. Again, different facts reasonably led to a different result.

Short v. Smoot, 436 F.3d 422 (4th Cir. 2006), repeats the pattern. There, a jailer did nothing, even though he knew from the video monitor that a detainee was preparing to commit suicide by removing his shoelaces, climbing the cell bars, tying his shoelaces to a bar, placing a noose around his neck, and testing the weight of the rope. *Id.* at 429. The Fourth Circuit noted it was clearly established that "the conscious failure by a jailer to make any attempt to stop an ongoing suicide attempt by one of his detainees would constitute deliberate indifference" and thus affirmed the denial of summary judgment to the officer on qualified immunity. *Id.* at 429-30. But again, Fifth Circuit precedent is the same. *See* Pet. App. 17a (noting that circuit law has held that officers who were "aware of [a] detainee's dire condition" but "'did nothing to secure medical help' at all were on 'fair warning' that their behavior was deliberately indifferent") (citation omitted). The distinction between this case and *Short* is factbound because, as the Fifth Circuit noted, Laws did not "do nothing." He

immediately called for backup and entered as soon as jail policy allowed.

In *Turney v. Waterbury*, 375 F.3d 756 (8th Cir. 2004), the defendant sheriff knew that the inmate had recently tried to commit suicide, but, among other things, (a) took him to a cell that contained a bedsheet and exposed ceiling bars, (b) ordered the jailer on duty not to enter the cell alone under any circumstances, and (c) failed to tell the deputy sheriff on duty that the inmate was suicidal or that the jailer had been instructed not to enter the cell alone. Consequently, when the deputy sheriff departed for a time, it left a single jailer on duty. *Id.* at 758-60. There was no suggestion that the sheriff's conduct was compelled by necessity or exigency. The court held there was a fact issue as to whether he was deliberately indifferent to what the parties agreed was a clearly established right to be protected from the risk of suicide. *See id.* Here, in contrast, Respondents moved Monroe to a cell *without* bedsheets after he used a bedsheet to try to strangle himself. And although that cell had a telephone with a cord, the danger from that cord was "not as obvious" as the bedding in the other cell, and Cogdill and Brixey were not aware of the danger. Pet. App. 19a-21a. Those factbound differences produced a different conclusion about whether it was "sufficiently clear that every reasonable official would have understood that what" Respondents did violated Monroe's rights. *Rivas-Villegas*, 142 S. Ct. at 7.

Finally, Petitioners cite *Greason v. Kemp*, 891 F.2d 829 (11th Cir. 1990), but only for the proposition that overcoming a qualified immunity defense does

not require "a factually identical case to prove deliberate indifference." Pet. 23. *Greason* involved a claim that jail officials provided grossly inadequate psychiatric care over a four-month period to an inmate they knew to be suicidal. 891 F.2d at 835-36. The court denied summary judgment on qualified immunity grounds because there was a factual dispute over whether the psychiatric standard of care had been met and whether a reasonable person in the defendants' position "would have known that the care delivered constituted deliberate indifference to Greason's" rights. *Id.* The court rejected the argument that there was a "clearly established constitutional right to adequate psychiatric care" only if "some prior court has expressly so held on 'materially similar' facts." *Id.* at 834 n.10. *Greason* is otherwise factually inapposite, and the Eleventh Circuit has not held that what Respondents did here clearly violates the Due Process Clause. And the Fifth Circuit's decision adheres to this Court's more recent and precise articulation of the same idea articulated in *Greason*: "Although 'this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.'" *Rivas-Villegas*, 142 S. Ct. at 7-8 (citation omitted); *see* Pet. App. 7a (noting same).

2. The distinctions between the court of appeals' holding here and the decisions Petitioners cite are factbound differences resulting from applications of the same legal rules. When defendant officers engage in egregious misconduct, such as failing to take any mitigating steps for hours or even months, courts

understandably reach different conclusions about whether it is "sufficiently clear that every reasonable official would have understood that what he is doing violates" the applicable right. *Rivas-Villegas*, 142 S. Ct. at 7 (citation omitted). There is no circuit split.

II. THIS IS NOT A PROPER VEHICLE TO ADDRESS ANY PERCEIVED CIRCUIT SPLIT OVER THE APPLICATION OF *KINGSLEY*.

In *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), the Court held that pretrial detainees who make excessive force claims under the Fourteenth Amendment must show that the force applied was objectively unreasonable. Petitioners argue that a circuit split exists on whether an "objective" standard applies to a pretrial detainee's claim outside of the excessive-force context and that their claims against Respondents should turn on the "objective unreasonableness of [Respondents'] conduct." Pet. 31. The Court should not grant review on this issue because it was not determinative in the court of appeals, that court's longstanding case law correctly resolved the issue, and this Court has already denied review of the same issue this Term.

A. The Court of Appeals Analyzed Whether Respondents Had a Subjectively "Culpable State of Mind," But Its Analysis Was Not Outcome Determinative.

1. Given the nature of Petitioners' claims, the court of appeals recited and applied longstanding circuit law inquiring into Respondents' subjective states of mind. Petitioners based their claims on Respondents'

"episodic acts or omissions" that allegedly violated Respondents' duty under the Due Process Clause to "tend to a pretrial detainee posing a risk of suicide." Pet. App. 10a (citation omitted). The "proper inquiry" in such a case includes "whether the official had a culpable state of mind in acting or failing to act." *Id.* at 10a-11a (quoting *Hare*, 74 F.3d at 643). In other words, since *Hare*, a state "official violates a pretrial detainee's constitutional right to be secure in his basic human needs only when the official had subjective knowledge of a substantial risk of serious harm to the detainee and responded to that risk with deliberate indifference," which requires "egregious conduct" such as a "wanton disregard for [an inmate's] serious medical needs." *Id.* at 11a (citations omitted). The court of appeals has termed the deliberate-indifference standard in this context a standard of "subjective deliberate indifference." *Hare*, 74 F.3d at 643, 648-50.

But after setting out this standard, the court of appeals turned to the law governing Respondents' request for qualified immunity. In doing so, it reasoned that Laws "appears to concede" he "had subjective knowledge of the risk of serious harm," Pet. App. at 13a, but ultimately decided the qualified-immunity issue on the grounds that it was not "sufficiently clear that every reasonable official would have understood" that (a) "waiting for a backup officer to arrive in accordance with prison policy 'violates [a pretrial detainee's] right,'" *id.* at 15a (citation omitted), or (b) a lone officer at a jail acts with deliberate indifference to a medical emergency when

the officer calls his supervisor for assistance, but not also 911. *Id.* at 15a-18a.

The court of appeals also effectively assumed Cogdill's and Brixey's actions were "constitutionally unlawful," but still held that they were entitled to qualified immunity based on the "clearly established right" analysis. The single-occupancy cell had a corded phone, but the record did not "suggest that any inmate had previously attempted suicide by strangulation with a phone cord." *Id.* at 19a. And the "danger posed by the phone cord was not as obvious as the dangers posed by bedding," so under these "facts and circumstances," placing Monroe in that cell did not violate a clearly established constitutional right—i.e., not every reasonable official would have understood that moving Monroe to the single-occupancy cell violated his rights. *Id.* at 19a-21a.

There was also no non-speculative evidence Cogdill and Brixey were aware of the danger that Monroe would strangle himself with the phone cord. *Id.* at 19a & n.11. But that fact just supported a separate and additional reason for qualified immunity on that claim: Cogdill and Brixey could not in fact be shown to have had "subjective knowledge of the risk posed by the phone cord in Monroe's cell." *Id.* at 20a n.11.

2. As this discussion shows, the court of appeals' decision would have been the same under any interpretation of *Kingsley*. The court of appeals' decision ultimately turned on the lack of clearly established law addressing the circumstances Respondents faced. Because no cases paralleled the

facts of this case, an objective standard would not have changed the analysis or the outcome.

Indeed, Petitioners' claim that a "subjective standard" was determinative in the court of appeals' discussion of Laws's qualified immunity misreads the opinion below. It held that Laws was entitled to qualified immunity *even though* Petitioners had "presented evidence to create a genuine dispute of material fact" about Laws's subjective knowledge. Pet. App. 13a. Unable to point to any textual support for their assertion, Petitioners only speculate, without elaboration, that the court of appeals "may have" reached a different result under a different standard. Pet. 31. And as to Cogdill and Brixey, the court of appeals observed that the record did not "suggest that any inmate had previously attempted suicide by strangulation with a phone cord." Pet. App. 19a. Given those "facts and circumstances," Petitioners could not show that every reasonable officer would have understood that moving Monroe to the other cell violated his rights. *Id.* at 19a-21a. Petitioners fail to grapple with that reasoning. Instead, they cite only the footnote in the court of appeals' decision noting that Cogdill and Brixey *also* did not have subjective knowledge of the recommendation to shorten prison-cell phone cords. But that was an alternative rationale; it was not outcome determinative. Because the subjective-objective standard was not outcome-determinative here, any decision by the Court on that issue would be advisory.

Finally, by their own admission, Petitioners' attempt to fit this case into any *Kingsley* split is based

on hypothetical events. Petitioners argue that they "more than satisfied [the] subjective standard" the court of appeals applied to this case, but note that this Court may still "conclude[]" that Petitioners have not satisfied that standard. Pet. 25. If the Court were to do so, Petitioners continue, the Court should then grant review to analyze the subjective-objective issue that they do not fully delineate in the context of this case. Their invitation for this Court to revise the court of appeals' decision to *create* a dispositive issue that implicates a circuit split gets the goals of certiorari review exactly backwards.

B. The Court of Appeals' Longstanding Case Law Is Correct.

The underlying framework that established the standards for the court of appeals' legal analysis came from its en banc decision in *Hare.* Like this case, *Hare* involved a pretrial detainee's suicide. *Hare* explained that (a) a state's "power to hold detainees" carries with it a constitutional duty to "tend to the essentials of their well-being," 74 F.3d at 638-39; (b) when claims for either a "failure to protect" a suicidal detainee from attempting suicide, or a later "denial of medical care" after such an attempt, are "based on a jail official's episodic acts or omissions," the "proper inquiry is whether the official had a culpable state of mind in acting or failing to act," *id.* at 643; (c) the applicable culpable state of mind with which a jail official must act to be liable under § 1983 is "deliberate indifference," *id.* at 643; and (d) "a standard of subjective deliberate indifference" guides the deliberate-indifference inquiry. *Id.*

Hare also explained why the "subjective deliberate indifference" standard was proper for the relevant culpable state of mind. To prevail on a claim that a prison official violated a convicted inmate's Eighth Amendment right to humane prison conditions—i.e., that the official impermissibly inflicted a "punishment"—the inmate must show that the official "knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). *Farmer* noted that "acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk," *id.* at 836, and held that the appropriate recklessness standard is a "subjective recklessness" test that requires an officer to "disregard[] a risk of harm of which he is aware," *id.* at 837; *see id.* at 839 (noting that, to act recklessly under this standard, "a person must 'consciously disregard' a substantial risk of serious harm").

In *Hare*, the court of appeals held that *Farmer*'s subjective state-of-mind standard "provides the appropriate standard for measuring the duty owed to pretrial detainees under the Due Process Clause" for the suicide claims at issue here. 74 F.3d at 648. Two reasons supported that conclusion. First, although pretrial detainees and convicted prisoners derive rights from "distinct constitutional sources" (the Fourteenth Amendment and the Eighth Amendment, respectively), state "officials owe the same duty to provide the same quantum of human needs and humane conditions of confinement for both groups."

Id. at 649. Second, the subjective deliberate-indifference standard "properly captures the essence of the inquiry as to whether a pretrial detainee has been deprived of his due process rights to medical care and protection from violence," because a deliberate-indifference standard "cannot be inferred from a prison guard's failure to act reasonably. If it could, the standard applied would be more akin to negligence than deliberate indifference." *Id.*; *see Farmer*, 511 U.S. at 835 (noting that "deliberate indifference entails something more than mere negligence").

Kingsley addressed an excessive force claim brought by a pretrial detainee under the Fourteenth Amendment. 576 U.S. at 391. The Court observed that excessive force cases involve "two separate state-of-mind questions"—one concerns an officer's "state of mind with respect to the bringing about of certain physical consequences in the world," and the other "concerns the defendant's state of mind with respect to whether his use of force was 'excessive.'" *Id.* at 395. The Court did not address the first question because the officers undisputedly used deliberate force against the detainee. *Id.* at 396. As to the second question, the Court held that a detainee must show that the force applied was objectively unreasonable. *Id.* at 396-97.

The Court analogized Due Process Clause-based excessive force cases to general conditions-of-confinement cases, under which courts employ an objective standard to evaluate whether conditions for pretrial detainees are "'rationally related to a legitimate nonpunitive governmental purpose'" or "'appear excessive in relation to that purpose.'" *Id.* at

398 (citation omitted). The Court explained that an objective standard regarding the reasonableness of the application of force was suitable in excessive force cases brought by detainees, because officers in such cases must already be shown to have engaged in an "intentional and knowing act." *Id.* at 400. In other words, where subjective intent is already effectively part of the analysis, an objective standard for the level of force applied is appropriate. *Id.* The Court did not, however, purport to change the rule that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *Id.* at 396.

But because the Court did not purport to allow mere negligence to establish a Fourteenth Amendment violation, there is no basis to hold that an "objective" standard applies in the context of the claims in this case. The Fourteenth Amendment prohibits deliberate indifference to, for example, a pretrial detainee's serious medical needs. Adopting an "objective" standard in this context as to the reasonableness of the officer's conduct—where there is no preliminary requirement that a detainee show that an officer committed an "intentional and knowing act," as there is in the excessive force context—erodes the deliberate-indifference requirement and the distinction between constitutional claims under 42 U.S.C. § 1983 and mere negligence claims. *See Daniels v. Williams*, 474 U.S. 327, 332 (1986) (noting that the Fourteenth Amendment is not "a font of tort law to be superimposed" on state systems and that its protections "are not triggered by lack of due care by" prison officials).

The court of appeals thus correctly explained that *Kingsley* "did not abrogate our deliberate indifference precedent" in the context of failure-to-provide-medical-treatment cases because *Kingsley* did not address such claims. Pet. App. 13a n.7 (citing *Hare*, 74 F.3d at 643). The court of appeals did not err, and there are no well-grounded reasons to extend *Kingsley*'s limited holding to claims of deliberate indifference for an alleged failure to protect against a serious risk of suicide or to provide medical care.

C. This Court Has Already Denied Review of This Issue This Term.

Finally, as Petitioners acknowledge, the Court denied certiorari on the subjective-objective issue earlier this Term. *See Strain v. Regalado*, 142 S. Ct. 312 (2021). The Petition gives no reason for the Court to change course and grant review of the issue now. Even if the issue were certworthy, the Court would benefit from further percolation of the issue in cases applying *Kingsley* to the wide variety of § 1983 cases that arise outside of the excessive-force context, and the Court should address the issue in a case where a court has extended *Kingsley* and reached a different result than would otherwise apply.

III. This Is Not a Good Starting Pointing for Reimagining Qualified Immunity Law.

Petitioners' broad-based attack on qualified immunity also does not justify review. The Court recognizes "the importance of qualified immunity 'to society as a whole.'" *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 611 n.3 (2015) (citation

omitted). While qualified immunity has come under academic criticism, and certain members of the Court have suggested that the issue might at some point merit revisiting, *see*, *e.g.*, *Ziglar v. Abassi*, 137 S. Ct. 1843, 1872 (2017) (Thomas, J., concurring), this case is ill-suited for that task. The court of appeals applied the Court's "clearly established law" cases to a fact-intensive inquiry into a jailhouse suicide and found that qualified immunity applied because it was not sufficiently clear that every reasonable official would have understood that what each Respondent did in the situation he or she confronted violated Monroe's rights. The facts of this case illustrate both the complexity of the legal doctrines under which officers must operate and the nuance and trade-offs they confront in making decisions on the job. If the Constitution obliges rural jailers to buy telephones with shorter cords and enter the cell of a potentially violent inmate before backup arrives, then a doctrine like qualified immunity must exist to avoid blindsiding them with crippling liability.

Moreover, *stare decisis* for the Court's qualified immunity case law as applied to § 1983 claims carries enhanced force because, "unlike in a constitutional case, critics of [the Court's] ruling[s] can take their objections across the street, and Congress can correct any mistake it sees." *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 456 (2015). In fact, Congress has pending before it legislation that would address law enforcement officer qualified immunity. *See* George Floyd Justice in Policing Act, H.R. 1280, 117th Cong. (2021). At a minimum, then, the Court should wait and see what Congress does with law-enforcement

qualified immunity before considering whether to undertake a wholesale review of the doctrine.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

SCOTT M. MCELHANEY
JACKSON WALKER LLP
2323 Ross Ave., Suite 600
Dallas, Texas 75201

JON MARK HOGG
Counsel of Record
AMANDA N. CROUCH
JACKSON WALKER LLP
136 W. Twohig, Suite B
San Angelo, Texas 76903
(325) 481-2560
jmhogg@jw.com

Counsel for Respondents

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