No. 23-259

IN THE
Supreme Court of the United States

LEWIS COUNTY, KENTUCKY, ET AL.,
Petitioners,
v.
JULIE HELPHENSTINE,
Administratrix of the Estate of Christopher Dale Helphenstine and Guardian of B.D.H., the Minor Son of Christopher Dale Helphenstine,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Sixth Circuit correctly held that the subjective intent requirement that applies to Eighth Amendment deliberate indifference claims by convicted prisoners under *Farmer v. Brennan*, 511 U.S. 825 (1994), does not extend to Fourteenth Amendment conditions-of-confinement claims by pretrial detainees under *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), and *Bell v. Wolfish*, 441 U.S. 520 (1979).

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INTRODUCTION

In *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), this Court held that the subjective intent requirement for Eighth Amendment excessive force claims by convicted prisoners does not extend to Fourteenth Amendment excessive force claims by pretrial detainees because "[t]he language of the two Clauses differs." *Id.* at 400. Unlike convicted prisoners, the Court explained, pretrial detainees are entitled under the Fourteenth Amendment to be free from *any* punishment, *see id.*, and as such, "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one," *id.* at 397.

Since *Kingsley*, six circuits have considered whether Fourteenth Amendment conditions-of-confinement claims by pretrial detainees are likewise governed by an objective test instead of the subjective test that applies to Eighth Amendment deliberate indifference claims by convicted prisoners. Five of those circuits followed *Kingsley* in adopting an objective test for such claims, recognizing that "nothing in the logic the Supreme Court used in *Kingsley*" supports "dissection of the different types of claims that arise under the Fourteenth Amendment's Due Process Clause." *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *see Short v. Hartman*, No. 21-1396, 2023 WL 8488148, at *4–11 (4th Cir. Dec. 8, 2023); *Brawner v. Scott Cnty.*, 14 F.4th 585, 596–97 (6th Cir. 2021); *Darnell v. Pineiro*, 849 F.3d 17, 34–35 (2d Cir. 2017); *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc). Only the Tenth Circuit disagreed. *See Strain v. Regalado*, 977 F.3d 984, 991–93 (10th Cir. 2020).

In seeking certiorari, petitioners attempt to pad the minority side of this lopsided split by invoking cases in which the question presented was unaddressed, non-dispositive, or both. Proving the point, although the petition purports to cite caselaw demonstrating that the Fourth Circuit answered the question in petitioners' favor, the Fourth Circuit just issued a decision, *Short v. Hartman*, confirming that it had "not reached the issue" previously, 2023 WL 8488148, at *4, and that it now agrees with the majority circuits: "The only way to respect the distinction *Kingsley* drew between the Eighth and Fourteenth Amendments is to recognize that *Kingsley*'s objective test extends" to pretrial detainee conditions-of-confinement claims, *id.* at *9.

Of the other five circuits petitioners claim on their side, four have not yet meaningfully considered *Kingsley*'s application to Fourteenth Amendment conditions-of-confinement claims by pretrial detainees. The First Circuit has not reached the question at all, and the Fifth, Eighth, and Eleventh Circuits have held only in footnotes that *Kingsley* is not so directly on point as to permit a panel to ignore binding pre-*Kingsley* circuit precedent that may only be reconsidered en banc—which there has been little opportunity to do in these circuits so far. The question presented is thus a classic example of an issue that warrants further percolation before the Court determines whether to intervene.

This is especially so because the majority circuits are right. *Farmer v. Brennan*, 511 U.S. 825 (1994), explains that the Court adopted a subjective test for deliberate indifference claims by convicted prisoners based on the Eighth Amendment's text: The infliction

of "cruel and unusual punishments," the Court held, occurs only if the prison official "consciously disregar[ds] a substantial risk of serious harm." *Id.* at 839 (internal quotation marks omitted). This standard is "a misfit" for conditions-of-confinement claims by pretrial detainees, who have a right to be free from *any* punishment under the Fourteenth Amendment, and thus "stand in a different position than convicted prisoners." *Pittman ex rel. Hamilton v. Cnty. of Madison*, 970 F.3d 823, 827 (7th Cir. 2020) (Barrett, J.) (internal quotation marks omitted).

Kingsley confirms this reading of *Farmer*. Relying on a Fourteenth Amendment conditions-of-confinement case, *Bell v. Wolfish*, 441 U.S. 520 (1979), the Court held that the subjective intent requirement for Eighth Amendment excessive force claims by convicted prisoners does not extend to Fourteenth Amendment excessive force claims because the Fourteenth Amendment due process rights held by pretrial detainees are more robust than the Eighth Amendment's protection against cruel and unusual punishments. *See Kingsley*, 576 U.S. at 397–400. The appropriate standard for such claims is thus "solely an objective one." *Id.* at 397.

In seeking to nonetheless impose a subjective test on pretrial detainee conditions-of-confinement claims, petitioners ignore *Kingsley*'s reasoning and the nature of the due process right conferred to pretrial detainees by the Fourteenth Amendment. Pretrial detainee excessive force claims and conditions-of-confinement claims both arise from that due process right and involve the same harm: the deprivation of the pretrial detainee's life or liberty by jail officials.

Limiting the objective standard for determining a violation of that right to excessive force claims would not only defy *Kingsley*, *Farmer*, and *Bell*, but would also mean that officials receive the least deference when making split-second "misjudgment[s] about the degree of force required to maintain order or protect other inmates," *Kingsley*, 576 U.S. at 406 (Scalia, J., dissenting), and the most deference when making considered decisions about the conditions and care they provide to non-convicted persons in their custody. Petitioners offer no reason for the Court to inject such incoherence into Fourteenth Amendment jurisprudence.

Finally, although petitioners urge the Court's review based on the aggregate number of cases asserting constitutional violations by prison officers, they do not and cannot show that the question presented makes much of a difference in these cases. The courts of appeals regularly note that the disposition of the claims would be the same regardless of which standard applies, and even in the circuits that have rejected a subjective requirement, the objective recklessness standard they apply instead is so rigorous that pretrial detainees usually lose anyway, either on the merits or because of qualified immunity. Conversely, when the evidentiary record demonstrates that prison officials objectively acted "recklessly in the face of an unjustifiably high risk of harm that is … so obvious that it should be known," *Brawner*, 14 F.4th at 596 (internal quotation marks omitted), that evidence usually suffices to prove subjective intent as well: "Whether a prison official had the requisite knowledge of a substantial risk" can be demonstrated by "inference from circumstantial evidence," and "a

factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at 842 (citation omitted).

It is thus unsurprising that the Court has repeatedly and recently denied petitions for certiorari presenting the same question. The Court should deny this one too.

STATEMENT OF THE CASE

I. Factual Background

Chris Helphenstine was admitted to the Lewis County Detention Center ("the jail") on Friday, April 14, 2017, after his arrest for a drug offense. Pet. App. 2a. By Sunday evening, he began showing withdrawal symptoms. *Id.* at 3a. After Helphenstine "vomit[ed] all over the floor" of a general population cell around 8:30pm, Deputy Jailer Mark Riley moved him to a single-person "detox" cell. *Id.* (alteration in original). According to Riley, he asked Helphenstine if he wanted to see a doctor or go to the hospital, and Helphenstine declined, saying that he was "dope sick" and wanted to be alone. *Id.* The jailers on duty that night observed Helphenstine vomiting again at 10:34pm, 12:17am, 2:44am, and 5:42am. *Id.* at 3a–4a. One filled out a "withdrawal monitoring" sheet indicating that Helphenstine was weak, drowsy, nauseated, and shaking. RE124-7.

No jail employee had any medical training beyond first aid and CPR. Pet. App. 3a. The County instead paid Tommy von Luhrte, an osteopath whose medical license was revoked in Ohio due to inappropriate patient contact, $600 a month to attend to any sick detainees. RE102 at 21–24, 32–35, 45. Von Luhrte was

supposed to visit the jail every Tuesday, but did not. Pet. App. 3a; *see also* RE 124-1 (showing six visits during the first four months of 2017).

Accordingly, when Helphenstine became ill on Sunday, "the jailers knew he would not receive any medical care for at least two days unless someone reached out to Dr. von Luhrte." Pet. App. 3a. Riley testified that he believed von Luhrte should have been called when Helphenstine went into withdrawal, but he could not remember if he or anyone else did so, RE107 at 10–13, and there is no record of any call. Jailer Jeff Lykins testified that when an inmate is experiencing withdrawal and von Luhrte is unavailable, jail staff are supposed to call emergency medical services, RE103 at 50, but no one did.

By midnight on Monday, Helphenstine's condition had deteriorated even further. Pet. App. 4a. At that point, Deputy Jailer Amanda McGinnis faxed "a non-emergency but 'urgent' medical request" to von Luhrte's office stating that Helphenstine "was in withdrawal …, vomiting and soiling himself, refusing to eat or drink, and had not gotten out of bed for twenty-four hours." *Id.* As it was the middle of the night, McGinnis knew that no one would be at von Luhrte's office to receive the fax. *Id.*

Between 6:00am and 7:00am Tuesday morning, Helphenstine, who was sweaty and smelled of vomit and feces, took a shower for almost an hour while jail staff cleaned his cell. *Id.* At around 9:15am, Deputy Sheriff John Byard escorted Helphenstine to the courthouse for his arraignment. *Id.* Byard noticed that Helphenstine was lethargic and drooling. *Id.* Before the arraignment began, Byard told the judge that

Helphenstine was "acting like he's just clear out of it," had "[s]tuff coming out of his mouth," and was "really not coherent." *Id.* (alteration in original). The judge postponed the arraignment and Byard walked Helphenstine back to the jail. *Id.* at 4a–5a.

By von Luhrte's account, he received McGinnis's fax Tuesday mid-morning, *id.* at 5a, and he understood from McGinnis's description of Helphenstine's condition that he needed treatment that only a hospital could provide, RE102 at 81–86, 92, 101, 127–28. But, von Luhrte claimed, when he called the jail with instructions to take Helphenstine to the hospital for IV fluids, he was told that Helphenstine refused to go. Pet. App. 5a. Von Luhrte could not, however, recall whom he spoke with and he did not document the call. *Id.* There is also no record of the call at the jail, and no one at the jail recalls receiving such a call or Helphenstine refusing treatment at any point after he told Riley he wanted to be left alone Sunday night. *Id.*

In any event, von Luhrte faxed a prescription for Reglan (an antiemetic) to the jail and suggested that Helphenstine rest, sip liquids, and eat bland food. *Id.* Although von Luhrte had concerns about Helphenstine "getting dehydrated," he did not instruct the jailers to monitor Helphenstine's food or fluid intake. *Id.*

Helphenstine received a dose of Reglan around 3:00pm, but his condition worsened. *Id.*; RE102 at 116, 127–28. According to von Luhrte, someone who identified themselves as "the jailer," possibly Lykins, then called von Luhrte, who told the caller that Helphenstine needed to go to the hospital, and the caller responded that Helphenstine still refused; von Luhrte claims that he then told the caller to try again,

and Helphenstine refused a third time. Pet. App. 5a–6a. There is no record of this call taking place and Lykins denies ever speaking with von Luhrte. *Id*. at 6a.

Although it was a Tuesday and he was aware of Helphenstine's condition, von Luhrte did not visit the jail that day. *Id.* He prescribed Zofran by phone, which Helphenstine received at 9:00pm along with a second dose of Reglan. *Id.* Helphenstine was standing and alert at the time; at 11:00pm, he drank some soda and said he was "feeling all right now." *Id.* Around midnight, however, Helphenstine laid face-down on a mat in the cell and then remained largely motionless for the next few hours. *Id.* Occasionally his body twitched and his feet shook. *Id.* At around 2:45am, McGinnis and another deputy, likely Anthony Ruark,[1] entered the cell and offered Helphenstine a drink, but he refused. *Id.* at 7a. Ruark lifted Helphenstine's head while McGinnis put a straw to his mouth. *Id*. At 2:56am, McGinnis helped Helphenstine drink a small amount again. *Id*. Deputy Jailer Sandy Bloomfield, the shift supervisor, watched the interaction on video from the control room. *Id.*

Around 3:30am, Ruark and McGinnis found Helphenstine nonresponsive and without a pulse. *Id.* They began CPR while Bloomfield called 911. *Id.* EMTs arrived to transport Helphenstine to the hospital, but he was pronounced dead en route. *Id.*

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[1] Ruark testified that he was unsure whether he did this; McGinnis testified that he did. Pet. App. 7a.

II. District Court Proceedings

Respondent Julie Helphenstine—Helphenstine's wife, the guardian of their minor child, and the administratix of his estate—brought suit under 42 U.S.C. § 1983 against the County, von Luhrte, and the various county officers[2] who oversaw Helphenstine's detention. The complaint alleges, as relevant, that the defendants' conduct in denying Helphenstine appropriate medical care as he was dying violated Helphenstine's due process rights under the Fourteenth Amendment. Pet. App. 40a; Compl. ¶¶ 23–25. The complaint describes the defendants' conduct as "intentional, reckless, deliberate, wanton and/or malicious, and … indicative of their total, deliberate and reckless disregard of and indifference to Mr. Helphenstine's life as well as his rights and the risk of harm to him occasioned by such conduct." Compl. ¶ 23.

The district court granted summary judgment to the defendants. Pet. App. 76a. The court explained that under *Trozzi v. Lake County*, 29 F.4th 745 (6th Cir. 2022), a pretrial detainee's "inadequate-medical-care claim under the Fourteenth Amendment" has three elements: (1) the detainee must have had "'an objectively serious medical need'"; (2) "'a reasonable officer at the scene (knowing what the particular jail official knew at the time of the incident) would have understood that the detainee's medical needs subjected the detainee to an excessive risk of harm'"; and

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[2] As still relevant, the individual defendants included von Luhrte, Riley, McGinnis, Ruark, Bloomfield, and Lykins. *See* Pet. App. 38a.

(3) "'the prison official knew that his failure to respond would pose a serious risk to the pretrial detainee and ignored that risk.'" Pet. App. 54a–55a (quoting *Trozzi*, 29 F.4th at 757).

The court first concluded that the summary judgment record supported a finding that Helphenstine had an objectively serious medical need. *Id.* at 55a. The court then turned to the "subjective component" of the *Trozzi* inquiry, which it described as a "modified deliberate-indifference test." *Id.* at 56a. For each of the individual defendants, the court concluded that the evidence did not suffice to allow a jury to conclude that the defendant's conduct was deliberately indifferent as defined by the second and third elements of the *Trozzi* test. *Id.* at 60a–69a, 72a–75a. The court also found that the County did not have a policy or custom that would support municipal liability for Helphenstine's death. *Id.* at 70a–72a.

III. Court of Appeals Proceedings

The Sixth Circuit affirmed in part and reversed in part. It began by noting a conflict between the *Trozzi* subjective deliberate indifference test applied by the district court and the objective deliberate indifference test announced in *Brawner v. Scott County*, 14 F.4th 585, 591 (6th Cir. 2021). Pet. App. 11a–14a. Prior to *Brawner*, the Sixth Circuit "analyzed both pretrial detainees' and [convicted] prisoners' claims of deliberate indifference under the same rubric": The objective component required proof "that the alleged deprivation of medical care was serious enough to violate the Constitution," and the subjective component required proof "that [the] defendant knew of and disregarded an excessive risk to inmate health or safety." *Id.* at

10a–11a (internal quotation marks and alterations omitted). In *Brawner*, the Sixth Circuit considered whether *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), required "modification of the subjective prong of the deliberate-indifference test for pretrial detainees." Pet. App. 11a (internal quotation marks omitted). *Kingsley* held that although a prison officer's use of force against a convicted prisoner must be both objectively and subjectively unreasonable to violate the Eighth Amendment's Cruel and Unusual Punishments Clause, excessive force against pretrial detainees need only be objectively unreasonable to violate the Fourteenth Amendment's Due Process Clause. Pet. App. 11a.

Given *Kingsley*'s "clear delineation" between the Eighth Amendment rights of convicted prisoners and the Fourteenth Amendment rights of pretrial detainees, *Brawner* concluded, "applying the same analysis to these constitutionally distinct groups is no longer tenable." *Id.* at 12a (quoting *Brawner*, 14 F.4th at 596). *Brawner* thus "modified the subjective prong of the test for pretrial detainee "inadequate-medical-care" claims to require proof that the prison officer "acted deliberately (not accidentally), and also recklessly in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." Pet. App. 12a (internal quotation marks and alteration omitted). The *Trozzi* framework, the panel below explained, was "irreconcilable with *Brawner*." *Id.* at 13a. And "[b]ecause *Brawner* was decided before *Trozzi*, *Brawner* controls." *Id.* at 14a.

Applying the *Brawner* standard to each individual defendant, the panel found that reasonable jurors could conclude that jailers Mark Riley, Amanda

McGinnis, Anthony Ruark, Sandy Bloomfield, and Jeff Lykins each acted with reckless disregard when they failed to seek medical assistance for Helphenstine despite the obvious severity of his withdrawal symptoms. *Id.* at 16a–24a. The panel also found that reasonable jurors could conclude that the medical care Tommy von Luhrte provided to Helphenstine was so grossly inadequate that it amounted to deliberate indifference in violation of the Fourteenth Amendment. *Id.* at 26a–28a. And the panel found that reasonable jurors could conclude that Helphenstine's death was the result of the County's deliberate indifference, in particular its failure to provide training to its jailers on how to identify and address medical emergencies. *Id.* at 28a–35a. None of the individual defendants enjoyed qualified immunity because "[i]t has been true since 1972" in the Sixth Circuit that "'where the circumstances are clearly sufficient to indicate the need of medical attention for injury or illness, the denial of such aid constitutes the deprivation of constitutional due process.'" *Id.* at 37a (quoting *Greene v. Crawford Cnty.*, 22 F.4th 593, 615 (6th Cir. 2022)).

The panel affirmed summary judgment in favor of two other defendants, John Byard and Andy Lucas, finding that neither had reason to know that Helphenstine was suffering a serious medical need. *Id.* at 24a–26a.

The Sixth Circuit denied the defendants' petitions for rehearing en banc. *Id.* at 79a. Judge Readler filed

a statement regarding the denial, expressing his disagreement with *Brawner*. *Id.* at 80a–95a.

REASONS FOR DENYING THE PETITION

I. The Petition Vastly Overstates the Circuit Split.

The circuits are not, as petitioners assert, deeply divided over the question presented.

Petitioners' alleged circuit split relies on cases involving a variety of pretrial detainee claims that are collectively described as conditions-of-confinement challenges. *See* Pet. 17–23; *see generally Wilson v. Seiter*, 501 U.S. 294, 303 (1991) ("[T]he medical care a prisoner receives is just as much a 'condition' of his confinement as the food he is fed, the clothes he is issued, the temperature he is subjected to in his cell, and the protection he is afforded against other inmates."). At the time the petition was filed, five circuits had considered the standard for such claims following *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), and four agreed that the test is objective, focusing on whether the defendant prison officials acted or failed to act in the face of an unjustifiably high risk of harm to the detainee. *See Brawner v. Scott Cnty.*, 14 F.4th 585, 596–97 (6th Cir. 2021); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Darnell v. Pineiro*, 849 F.3d 17, 34–35 (2d Cir. 2017); *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc). Only the Tenth Circuit disagreed. *See Strain v. Regalado*, 977 F.3d 984, 991–93 (10th Cir. 2020).

After the petition was filed, the Fourth Circuit decided *Short v. Hartman*, No. 21-1396, 2023 WL 8488148, at *4–11 (4th Cir. Dec. 8, 2023), in which it

joined the majority circuits in adopting an objective standard. Although petitioners had claimed the Fourth Circuit on their side of the split, Pet. 18, they did so based on a decision that merely declined to resolve the issue because it did not affect the outcome of the appeal. *See Younger v. Crowder*, 79 F.4th 373, 381–84 & n.11 (4th Cir. 2023) (upholding the jury verdict because, although "the precise scope of [the] protection" afforded to pretrial detainees under the Fourteenth Amendment is "unclear," the jury had reasonably concluded that the trial evidence satisfied the Eighth Amendment deliberate indifference standard, and "a pretrial detainee has at least as much protections as a convicted prisoner"). The Fourth Circuit had similarly found the issue non-dispositive and therefore unnecessary to reach in numerous earlier cases, including *Tarashuk v. Givens*, 53 F.4th 154, 163–66 (4th Cir. 2022), *Michelson v. Coon*, No. 20-6480, 2021 WL 2981501, at *3 (4th Cir. July 15, 2021), *Moss v. Harwood*, 19 F.4th 614, 624 n.4 (4th Cir. 2021), and *Mays v. Sprinkle*, 992 F.3d 295, 300–01 (4th Cir. 2021).

In *Short*, the Fourth Circuit finally and definitively weighed in, explaining at length why it concluded that "[t]he only way to respect the distinction *Kingsley* drew between the Eighth and Fourteenth Amendments is to recognize that *Kingsley*'s objective test extends to all pretrial detainee claims under the Fourteenth Amendment … for deliberate indifference to an excessive risk of harm." 2023 WL 8488148, at *9; *see id* at *4–11.

This holding puts the Fourth Circuit on the majority side of what is now a 5-1 split. Petitioners attempt to pad the minority side of this lopsided split by citing

cases from other circuits, but in each one the question presented was unaddressed, non-dispositive, or both.

First Circuit. In *Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64 (1st Cir. 2016), the family members and estate of a deceased arrestee alleged that the defendant officers used excessive force in detaining him and then failed to seek medical care for him as he was dying from the resulting injuries. *Id.* at 67–69. Although the plaintiffs relied on an objective reasonableness standard for the excessive force claim, they framed their conditions-of-confinement claim as governed by the subjective *Farmer* test for Eighth Amendment deliberate indifference claims by convicted prisoners. *See* Plaintiffs/Appellants' Brief at 32–45, *Miranda-Rivera*, 813 F.3d 64 (No. 14-1535). The First Circuit accordingly applied that standard to the conditions-of-confinement claim without considering whether the *Kingsley* standard might apply instead. *Miranda-Rivera*, 813 F.3d at 74. Moreover, the court found that the plaintiffs prevailed under the *Farmer* test, *id.* at 75, making the standard irrelevant in any event.

Fifth Circuit. In *Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415 (5th Cir. 2017), the panel merely observed in a footnote that, until the en banc Fifth Circuit reconsidered its pre-*Kingsley* precedent applying a subjective deliberate indifference standard to pretrial detainee conditions-of-confinement claims, it was bound by its rule of orderliness to continue applying that standard. *Id.* at 419–20 & n.4. The panel noted, moreover, that applying the objective *Kingsley* standard instead "would not change the outcome of the case" because the plaintiff could not satisfy that standard either. *Id.* at 420 n.4. Judge

Graves wrote a concurrence urging the Fifth Circuit to reconsider its pre-*Kingsley* precedent imposing a subjective test on pretrial detainee conditions-of-confinement claims; he noted that the Ninth Circuit had recently gone en banc to do the same. *Id.* at 424–25.

The most that any Fifth Circuit panel has said about *Kingsley*'s application to pretrial detainee conditions-of-confinement claims is a footnote in *Cope v. Cogdill*, 3 F.4th 198 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 2573 (2022), observing that *Kingsley* did not suffice to "abrogate [the Fifth Circuit's] deliberate-indifference precedent" because it "discussed a different type of constitutional claim," *id.* at 207 n.7. This footnote is little more than an articulation of the rule of orderliness that *Alderson* already applied, and a far cry from a considered holding on the question presented here.

Subsequent Fifth Circuit panels have continued to apply a subjective test to pretrial detainee conditions-of-confinement claims based on the rule of orderliness, without further inquiry. *See Crandel v. Hall*, 75 F.4th 537, 544 (5th Cir. 2023); *Edmiston v. Borrego*, 75 F.4th 551, 559 (5th Cir. 2023). So far *Cope* is the only opportunity the Fifth Circuit has had to reconsider its pre-*Kingsley* precedent en banc, and that case was a poor vehicle because the panel ultimately determined that the defendants were entitled to qualified immunity due to the dearth of in-circuit case law addressing prison officials' obligations to suicidal prisoners, *see* 3 F.4th at 207–12. The plaintiffs in *Crandel* and *Edmiston* did not seek en banc rehearing before filing the joint petition for certiorari that is currently pending before this Court. *See* Petition for Writ

of Certiorari, *Crandel v. Hall*, No. 23-317 (U.S. filed Sept. 22, 2023).

Eighth Circuit. As in the Fifth Circuit, the extent of the Eighth Circuit's analysis of the question presented is a footnote stating without elaboration that *Kingsley* did not suffice to abrogate circuit precedent applying a subjective test to pretrial detainee conditions-of-confinement claims because *Kingsley* "was an excessive force case, not a deliberate indifference case." *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018), *reh'g en banc denied*, No. 17-2019 (June 14, 2018).

The other Eighth Circuit case cited by petitioners, *Karsjens v. Lourey*, 988 F.3d 1047 (8th Cir.), *cert. denied*, 142 S. Ct. 232 (2021), involved conditions-of-confinement claims by civilly committed sex offenders. The parties did not mention *Kingsley* in their briefing, *see* Brief of Plaintiffs-Appellants, Brief of Defendants-Appellees, and Reply Brief of Plaintiffs-Appellants, *Karsjens*, 988 F.3d 1047 (No. 18-3343), and there is no indication that the panel considered its application to the plaintiffs' claim of inadequate medical care, *Karsjens*, 988 F.3d at 1051–52.

Eleventh Circuit. Like the Fifth and Eighth Circuits, the Eleventh Circuit has done no more than observe in a footnote that it was not "free to consider what, if any, implications *Kingsley* might have for the claims of pretrial detainees involving inadequate medical treatment" because *Kingsley* did not "actually abrogate or directly conflict with" pre-*Kingsley* circuit precedent regarding Fourteenth Amendment pretrial detainee claims outside the excessive force context. *Dang ex rel. Dang v. Sheriff, Seminole Cnty.*, 871 F.3d

1272, 1279–80 n.2 (11th Cir. 2017) (internal quotation marks omitted); *see Swain v. Junior*, 961 F.3d 1276, 1285 n.4 (11th Cir. 2020) (same); *see also Wade v. Daniels*, 36 F.4th 1318, 1326 n.3 (11th Cir. 2022) (no mention of *Kingsley*'s application to conditions-of-confinement claim); *Ireland v. Prummell*, 53 F.4th 1274, 1287 n.4 (11th Cir. 2022) (same).

Notably, none of these cases presented the Eleventh Circuit with a meaningful opportunity to reconsider its pre-*Kingsley* precedent en banc. Only the plaintiffs in *Dang* and *Ireland* sought en banc rehearing, and both cases were bad vehicles: The *Ireland* plaintiff did not raise *Kingsley* in his panel briefing, *see* Plaintiff/Appellant's Initial and Reply Briefs, *Ireland*, 53 F.4th 1274 (No. 20-10539), and the panel in *Dang* held that the plaintiff's claims failed regardless of the standard, *see* 871 F.3d at 1280 n.2 ("[E]ven if we were free to consider what, if any, implications *Kingsley* might have for the claims of pretrial detainees involving inadequate medical treatment due to deliberate indifference, *Kingsley* could not help *Dang*," as the record showed "at most, negligence.").

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In sum, of the six circuits petitioners claim as supporting their side of their purported circuit split, the Fourth Circuit has now definitively rejected petitioners' position and four of the other five circuits have not yet meaningfully considered *Kingsley*'s application to Fourteenth Amendment conditions-of-confinement claims by pretrial detainees. The First Circuit has not reached the question at all, and the Fifth, Eighth, and Eleventh Circuits have held only that *Kingsley* is not so directly on point as to permit a

panel to ignore binding pre-*Kingsley* circuit precedent that may only be reconsidered en banc. This is a classic example of an issue that warrants further percolation before the Court determines whether to intervene.

II. Supreme Court Precedent Forecloses Petitioners' Arguments.

There is a reason that, of the six circuits to substantively consider the question presented post-*Kingsley*, five have rejected the position urged by petitioners: It is wrong.

1. *Farmer v. Brennan*, 511 U.S. 825 (1994), establishes by its own terms that the subjective deliberate indifference test it announced for Eighth Amendment claims does not extend to Fourteenth Amendment conditions-of-confinement claims by pretrial detainees.

Farmer involved an Eighth Amendment cruel and unusual punishment claim by a convicted prisoner who alleged injuries resulting from prison officials' deliberate indifference to the serious safety risks the prisoner faced in a general population setting. *Id.* at 829–31. In determining the appropriate standard for assessing the prisoner's claim, *Farmer* explained that the level of culpability required for deliberate indifference depends on the source of the underlying duty of care. *Id.* at 835–37.

As a general matter, the Court observed, "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.

"[T]he term recklessness," however, "is not self-defining," and has different meanings in different contexts. *Id.* In civil cases, recklessness means "act[ing] or … fail[ing] to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* In criminal cases, by contrast, a finding of recklessness requires that the defendant "disregard[] a risk of harm of which he is aware." *Id.* at 837. In other words, the criminal liability standard is subjective, focusing on "what a defendant's mental attitude actually was (or is)," while the civil liability standard is objective, focusing on "what it should have been (or should be)." *Id.* at 839.

Although Eighth Amendment deliberate indifference claims by convicted prisoners arise under civil law, *Farmer* concluded that the criminal liability test nonetheless applies to such claims by virtue of the Eighth Amendment's text. *See id.* at 837. The infliction of "cruel and unusual punishment," the Court held, requires more than the "failure to alleviate a significant risk that [a prison official] should have perceived but did not." *Id.* at 838. Rather, a reckless act (or failure to act) amounts to punishment only if the official "consciously disregard[s] a substantial risk of serious harm." *Id.* at 839 (internal quotation marks and alteration omitted).

This reasoning has no application to conditions-of-confinement claims asserted by pretrial detainees, which arise under the Fourteenth Amendment's right to "due process of law" before being deprived of life or liberty. *Farmer*'s delineation of the objective and subjective recklessness standards instead establishes that the subjective criminal liability standard is im-

proper in civil cases where, as in the pretrial detention context, the plaintiff is not punishable at all because he has not been found guilty of any crime.

2. *Kingsley* confirms this reading of *Farmer*. In *Kingsley*, the Court held that the subjective intent requirement for Eighth Amendment excessive force claims by convicted prisoners does not extend to Fourteenth Amendment excessive force claims by pretrial detainees because "[t]he language of the two Clauses differs." 576 U.S. at 400. While the Eighth Amendment prohibits only punishment that is "cruel and unusual," the Court explained, "pretrial detainees (unlike convicted prisoners) cannot be punished at all." *Id.* (internal quotation marks omitted). As such, "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one." *Id.* at 397.

As five circuits have recognized, "nothing in the logic the Supreme Court used in *Kingsley* … would support … dissection of the different types of claims that arise under the Fourteenth Amendment's Due Process Clause." *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *see also Short v. Hartman*, No. 21-1396, 2023 WL 8488148, at *4–11 (4th Cir. Dec. 8, 2023); *Brawner v. Scott Cnty.*, 14 F.4th 585, 596–97 (6th Cir. 2021); *Darnell v. Pineiro*, 849 F.3d 17, 34–35 (2d Cir. 2017); *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc).

Indeed, *Kingsley* even attributes the objective standard it adopted to a Fourteenth Amendment conditions-of-confinement case, *Bell v. Wolfish*, 441 U.S. 520 (1979). *See Kingsley*, 576 U.S. at 398–99. The plaintiffs in *Bell* were pretrial detainees who challenged numerous conditions of their confinement in a

short-term custodial facility. *Bell*, 441 U.S. at 523. The Court explained that pretrial detention conditions violate due process if they are not "reasonably related to a legitimate governmental objective." *Id.* at 539. Under such circumstances, "a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees," even "[a]bsent a showing of an expressed intent to punish on the part of detention facility officials." *Id.* at 538–39.

This heightened standard of care for pretrial detainees, as compared to convicted prisoners, is compelled not only by *Bell*, *Farmer*, and *Kingsley*, but also by centuries-old common law. A 1771 treatise written by William Eden, the first Baron of Auckland, observed that it would be "contrary [] to public justice … to throw the accused and convicted … into the same Dungeon," because "previous to the conviction of guilt[,] the utmost tenderness and lenity are due to the person of the prisoner." Principles of Penal Law 45 (2d ed. 1771) (emphasis omitted). Blackstone agreed: A person confined during the "dubious interval between [] commitment and trial," must be treated with "the utmost humanity," 4 William Blackstone, Commentaries on the Laws of England 297 (1769). Because pretrial detention is "only for safe custody, and not for punishment," Blackstone explained, pretrial detainees cannot be "subjected to other hardships than such as are absolutely requisite for the purpose of confinement only." *Id.*

3. In arguing otherwise, petitioners simply ignore both the textual basis for *Farmer*'s adoption of a subjective test for Eighth Amendment deliberate indiffer-

ence claims by convicted prisoners and the substantially different due process rights conferred on pretrial detainees by the Fourteenth Amendment.

As an initial matter, although petitioners emphasize that this Court has described violations of pretrial detainees' due process rights as unconstitutional punishment, *see* Pet. 33, *Bell* and *Kingsley* are explicit that evidence of subjective intent is unnecessary to establish punitive conditions under the Fourteenth Amendment: "*Bell*'s focus on 'punishment' does not mean that proof of intent (or motive) to punish is required for a pretrial detainee to prevail on a claim that his due process rights were violated." *Kingsley*, 576 U.S. at 398. "Rather, as *Bell* itself shows (and as our later precedent affirms), a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Id.*

Kingsley's reliance on *Bell* is reason alone that petitioners' efforts to cabin *Kingsley* fail: As *Kingsley* explains, the Court adopted an objective standard for pretrial detainee excessive force claims because it had *already* adopted an objective test for pretrial detainee conditions-of-confinement claims. *See id.* at 398–99. But the distinctions petitioners try to draw between excessive force claims and conditions-of-confinement claims also fail even apart from that precedent.

a. Petitioners assert that deliberate indifference claims are inherently distinct from excessive force claims because the word "deliberate" requires that the prison officials' conduct be "intentional." Pet. 31. This argument first fails because, although the courts of

appeals sometimes label pretrial detainee conditions-of-confinement claims as "deliberate indifference claims," neither *Bell* nor *Kingsley* suggests that such claims require a showing of deliberate indifference. *See Bell*, 441 U.S. at 539 (holding that "a particular condition or restriction of pretrial detention" violates due process if it is not "reasonably related to a legitimate governmental objective"); *Kingsley*, 576 U.S. at 396–97 ("a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable"); *see also Farmer*, 511 U.S. at 840 ("'deliberate indifference' is a judicial gloss, appearing neither in the Constitution nor in a statute").

Moreover, and in any event, the word "deliberate" simply means that the officials must have intentionally imposed the challenged confinement conditions, a requirement that applies equally to pretrial detainee excessive force claims under *Kingsley*. *See* 576 U.S. at 396 ("[I]f an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim."). As petitioners cannot claim that they accidentally failed to take Helphenstine to the hospital while he was dying from withdrawal, petitioners' parsing of the word "deliberate" is beside the point.

Petitioners argue that indifference is only "deliberate" if the defendant not only acts intentionally, but also subjectively disregards the risk of harm created by that action. Pet. 31. This view is irreconcilable with the objective deliberate indifference standard widely used for civil liability. *See Farmer*, 511 U.S. at 836–37. As *Farmer* explains, outside the Eighth Amendment context, non-criminal deliberate indifference

claims generally are governed by an objective recklessness test: "[A]cting 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," and "[t]he civil law generally calls a person reckless who acts or (if the person has a duty to act) fails to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* at 836; *see also id.* at 841 (noting that "[it] would be hard to describe" the civil deliberate indifference standard for municipality liability "as anything but objective").

This objective recklessness standard is the exact standard adopted by the Sixth Circuit for pretrial detainee conditions-of-confinement claims: "A defendant must have not only acted deliberately (not accidentally), but also recklessly 'in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" *Brawner*, 14 F.4th at 596 (quoting *Farmer*, 511 U.S. at 836).[3] The Second, Fourth, Seventh, and Ninth Circuits also include recklessness in their objective tests for pretrial detainee conditions-of-confinement claims. *See Short*, 2023 WL 8488148, at *11 (detainee must show that "the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed"); *Miranda*, 900 F.3d at 354

[3] This civil recklessness standard is arguably too deferential to prison officers given *Bell* and *Kingsley*'s focus on the objective reasonableness of the officers' conduct. *See Kingsley*, 576 U.S. at 403–04; *Bell*, 441 U.S. at 539.

(detainee must show that the defendant prison officials acted with "purposeful, knowing, or reckless disregard of the consequences"); *Darnell*, 849 F.3d at 36 ("detainee must prove that an official acted intentionally or recklessly, and not merely negligently"); *Castro*, 833 F.3d at 1071 (detainee must prove "something akin to reckless disregard"). In other words, even assuming that deliberate indifference is necessary for pretrial detainee conditions-of-confinement claims, that requirement is already baked into the objective recklessness test that the courts of appeals have adopted post-*Kingsley*.

b. Petitioners' argument that these circuits have "convert[ed] the knowledge-based deliberate indifference claim into a negligence-based unreasonable inattentiveness claim," Pet. 32, fails for the same reason: The objective recklessness test adopted by the Sixth Circuit and others *is* the deliberate indifference test articulated in *Farmer* for civil claims outside the Eighth Amendment context. This test by definition comports with *Kingsley*'s admonition that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." 576 U.S. at 396 (emphasis omitted) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)).

c. Finally, petitioners' action/inaction distinction, Pet. 31-32, is illusory and unworkable. According to petitioners, excessive force claims "can arguably be gauged using an objective test" because they challenge "affirmative" conduct, whereas conditions-of-confinement claims challenge "inaction" necessitating a subjective inquiry. *Id.* at 32 (internal quotation marks omitted). But whether a conditions-of-confine-

ment claim challenges action or inaction is largely semantic: When petitioners treated Mr. Helphenstine's withdrawal with a faxed prescription and a soda instead of taking him to the emergency room, did they fail to act or did they affirmatively choose one course of action over another? Petitioners' actions and inactions are interchangeable. *Farmer* thus sensibly drew no distinction between action and inaction even under the objective civil deliberate indifference test. *See* 511 U.S. at 836 (the civil standard is satisfied where the defendant "acts *or* … *fails to act* in the face of an unjustifiably high risk of harm") (emphasis added).

4. Far from involving "different rights," Pet. 31 (internal quotation marks omitted), excessive force and conditions-of-confinement claims arise from the same Fourteenth Amendment due process right and involve the same harm: the deprivation of the pretrial detainee's life or liberty by prison officials. Limiting the objective standard for determining a violation of that right to excessive force claims would not only defy *Kingsley*, *Farmer*, and *Bell*, but would also mean that prison officials receive the least deference when making split-second "misjudgment[s] about the degree of force required to maintain order or protect other inmates," *Kingsley*, 576 U.S. at 406 (Scalia, J., dissenting), and the most deference when making considered decisions about the conditions and care they provide to non-convicted persons in their custody.

The Court expressly rejected this upside-down regime for Eighth Amendment claims in *Wilson v. Seiter*, 501 U.S. 294 (1991). Because a prison official's "response to a prison disturbance" is "necessarily taken 'in haste, under pressure,' and balanced against 'competing institutional concerns for the safety of

prison staff or other inmates,'" the Court held, the use of force against a convicted prisoner violates the Eighth Amendment only if it is done with "malicious[] and sadistic[]" intent. *Id.* at 302 (quoting *Whitley v. Albers*, 475 U.S. 312, 320 (1986)). In contrast, "'the State's responsibility to attend to the medical needs of prisoners does not ordinarily clash with other equally important governmental responsibilities,'" and as such, only deliberate indifference is necessary to establish an Eighth Amendment violation. *Id.* (quoting *Whitley*, 475 U.S. at 320). The Court held that this less deferential standard applied to all Eighth Amendment conditions-of-confinement claims because, with respect to "the constraints facing the official," there is "no significant distinction between claims alleging inadequate medical care" and those challenging other "'conditions of confinement.'" *Id.* at 303 (emphasis omitted).

Petitioners urge the opposite result in the Fourteenth Amendment context: The less deferential *Kingsley* standard would be limited to excessive force claims and the more deferential *Farmer* standard would apply to conditions-of-confinement claims. Petitioners offer no reason for the Court to inject such incoherence into Fourteenth Amendment jurisprudence.

III. The Question Presented Rarely Matters.

1. Although petitioners urge the Court's review based on the aggregate number of cases asserting constitutional violations by prison officers, Pet. 24–25, they do not and cannot show that the question presented makes much of a difference in these cases.

To the contrary, as illustrated in Part I's dismantling of petitioners' asserted circuit split, the courts of appeals often note that the disposition of the claims would be the same regardless of which standard applies. *See supra* pp. 14–18 (*Tarashuk*, *Younger*, *Alderson*, *Dang*); *see also, e.g.*, *Moore v. Luffey*, 767 F. App'x 335, 340 n.2 (3d Cir. 2019); *Moy v. DeParlos*, No. 22-1723, 2023 WL 3717517, at *1 (3d Cir. May 30, 2023) (per curiam); *Powell v. Med. Dep't Cuyahoga Cnty. Corr. Ctr.*, No. 18-3783, 2019 WL 3960770, at *2 n.1 (6th Cir. Apr. 8, 2019); *Griffith v. Franklin Cnty.*, 975 F.3d 554, 570 & n.5 (6th Cir. 2020); *Martin v. Warren Cnty.*, 799 F. App'x 329, 337 & n.4 (6th Cir. 2020); *Bowles v. Bourbon Cnty.*, No. 21-5012, 2021 WL 3028128, at *8 (6th Cir. July 19, 2021); *Smego v. Jumper*, 707 F. App'x 411, 412 (7th Cir. 2017); *Collins v. Al-Shami*, 851 F.3d 727, 731 (7th Cir. 2017).

And even in the circuits that have rejected a subjective standard for pretrial detainee conditions-of-confinement claims, the objective recklessness standard they have adopted instead is so difficult to satisfy that the outcome is usually the same as it would be under the subjective deliberate indifference test. As one example: Of the 20 Second Circuit decisions on Westlaw that apply the objective test announced in *Darnell*, 849 F.3d at 35–36, to pretrial detainee conditions-of-confinement claims, the pretrial detainees ultimately lost in all but three of them,[4] and in one of

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[4] *See Kenlock v. Mele*, No. 22-2799, 2023 WL 8538182, at *4 n.3 (2d Cir. Dec. 11, 2023); *Swinton v. Livingston Cnty.*, No. 21-1434, 2023 WL 2317838, at *2–3 (2d Cir. Mar. 2, 2023); *Haslinger v. Westchester Cnty.*, No. 22-131, 2023 WL 219198, at *2 (2d Cir. *(cont'd)*

the three wins, the pretrial detainees would also have prevailed under the subjective test.[5]

Indeed, when the evidentiary record demonstrates that prison officials objectively acted "recklessly in the face of an unjustifiably high risk of harm [to the pretrial detainee] that is … so obvious that it should be known," *Brawner*, 14 F.4th at 596 (internal quotation marks omitted), that evidence often suffices to

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Jan. 18, 2023); *Callwood v. Meyer*, No. 20-2091-CV, 2022 WL 1642558, at *3 (2d Cir. May 24, 2022); *Ungar v. City of New York*, No. 21-1384-CV, 2022 WL 10219749, at *1–2 (2d Cir. Oct. 18, 2022); *Darby v. Greenman*, 14 F.4th 124, 128–29 (2d Cir. 2021); *Allen v. Stringer*, No. 20-3953, 2021 WL 4472667, at *1 (2d Cir. Sept. 30, 2021); *Yancey v. Robertson*, 828 F. App'x 801, 803–04 (2d Cir. 2020); *Kramer v. Dep't of Corr.*, 828 F. App'x 78, 80 (2d Cir. 2020); *Shakir v. Stankye*, 805 F. App'x 35, 40–41 (2d Cir. 2020); *Roice v. Cnty. of Fulton*, 803 F. App'x 429, 432 (2d Cir. 2020); *Horace v. Gibbs*, 802 F. App'x 11, 14–15 (2d Cir. 2020); *Sims v. City of New York*, 788 F. App'x 62, 64 (2d Cir. 2019); *Monaco v. Sullivan*, 737 F. App'x 6, 15 (2d Cir. 2018); *McMillian v. Cnty. of Onondaga*, 710 F. App'x 458, 460 (2d Cir. 2017); *Lewis v. Cavanugh*, 685 F. App'x 12, 13–14 (2d Cir. 2017). In one case where the Second Circuit vacated a district court decision applying the pre-*Darnell* standard, the plaintiff ultimately lost on remand at summary judgment. *See Bruno v. City of Schenectady*, 727 F. App'x 717, 720–21 (2d Cir. 2018); *Bruno v. City of Schenectady*, No. 1:12-CV-0285, slip op. at 28–33 (N.D.N.Y. Nov. 14, 2019).

[5] *See Vega v. Semple*, 963 F.3d 259, 273–77 (2d Cir. 2020) (putative class of post-conviction prisoners and pretrial detainees stated claims under Eighth Amendment standard); *Charles v. Orange Cnty.*, 925 F.3d 73, 88–89 (2d Cir. 2019) (pretrial detainees stated claims under objective standard); *Valdiviezo v. Boyer*, 752 F. App'x 29, 32–33 (2d Cir. 2018) (same).

prove subjective intent as well: "Whether a prison official had the requisite knowledge of a substantial risk" can be demonstrated by "inference from circumstantial evidence," and "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at 842; *see also, e.g.*, *Younger v. Crowder*, 79 F.4th 373, 383 (4th Cir. 2023) ("actual knowledge" of the risk "can be established by circumstantial evidence").

In *Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64 (1st Cir. 2016), for example, there was evidence that the arrestee was "sweaty, nervous, delusional, and yelling incoherently," his face was "extremely pale and purplish around the forehead and temple area, his eyes were bulging, and his lips were black." *Id.* at 74–75. Applying the subjective *Farmer* test, the panel concluded that the plaintiff's claim survived summary judgment because "a rational jury could conclude based on [the arrestee's] appearance and symptoms and [one officer's] suggestion that they take [him] to a medical facility that a substantial risk of serious harm was obvious and that the Defendants were aware of and disregarded that risk." *Id.* at 75.

Similarly, in *Mays v. Sprinkle*, 992 F.3d 295 (4th Cir. 2021), the Fourth Circuit found that the complaint sufficiently alleged subjective intent based on the defendants' knowledge that the pretrial detainee "was extremely intoxicated, had taken large amounts of prescription medication and possibly mixed that medication with alcohol." *Id.* at 305 (internal quotation marks omitted). "[T]he amended complaint did not allege that the officers knew [the plaintiff] had consumed enough drugs to put him at serious risk of

harm," but that "logical inference" was supported by the plaintiff's visible intoxication and the bottles of narcotics the officers found. *Id.* These facts are very similar to the circumstantial evidence of reckless disregard and knowledge in this case. *See supra* pp. 5–8, 12.

2. Petitioners' argument that the Sixth Circuit's objective recklessness standard warrants review because it creates more "unpredictability" for prison officials, Pet. 25–26, likewise fails. If anything, the objective standard is more predictably applied because it looks to what an objectively reasonable official in the defendant's position would understand rather than the vagaries of an individual's subjective state, creating consistency across cases. The "lose-lose scenario" hypothesized by petitioners, Pet. 26—where a prison officer potentially faces liability for compelling a detainee to undergo life-saving medical treatment—has nothing to do with whether the standard for pretrial detainee conditions-of-confinement claims is subjective or objective. And under either standard, a prison officer will enjoy qualified immunity for all but the easiest calls on how to respond to a medical emergency. *See Malley v. Briggs*, 475 U.S. 335, 341 (1986) (qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law").

There is thus no reason to grant the petition. Indeed, this Court has repeatedly and recently denied petitions for certiorari raising the same question. *See, e.g.*, *Scott Cnty. v. Brawner*, 143 S. Ct. 84 (2022); *Cope v. Cogdill*, 142 S. Ct. 2573 (2022); *San Diego Cnty. v. Sandoval*, 142 S. Ct. 711 (2021); *Heidel v. Mazzola*, 142 S. Ct. 483 (2021); *Strain v. Regalado*, 142 S. Ct.

312 (2021); *Dart v. Mays*, 142 S. Ct. 69 (2021); *Saunders v. Ivey*, 139 S. Ct. 1325 (2019); *Cowlitz Cnty. v. Crowell*, 139 S. Ct. 802 (2019); *Cnty. of Orange v. Gordon*, 139 S. Ct. 794 (2019); *Los Angeles Cnty. v. Castro*, 580 U.S. 1099 (2017).

The Court should deny this one too.

CONCLUSION

The petition for a writ of certiorari should be denied.

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