No. 24-677

In the Supreme Court of the United States

VICTOR HILL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

Petitioner, Victor Hill, was the Sheriff of Clayton County, Georgia and was in charge of the jail in which all pretrial detainees were housed awaiting trial, or transfer (post-trial), to a state prison.

At all times, he was required to exercise his judgment about the need for security – both for the detainees and the guards and visitors. On a daily basis, new inmates would arrive whether charged with DUI (and possibly inebriated), or murder. Some inmates were repeat violent offenders and gang members, others might be a first-time shoplifter. There are men and women; some detainees who do not speak English; and others who are white supremacists. Many detainees are addicted to drugs, and some are beginning the process of withdrawal.

The Sheriff, as well as his hundreds of deputies are engaged in triage. They are tasked with ensuring that inmates are not likely to harm themselves, harm other inmates, harm deputies, endeavor to flee, or otherwise endanger the safety of people inside and outside the jail.

Undoubtedly, in hindsight, it may well be that some inmates were given too much freedom of movement, while others were more restricted than necessary. Decisions must be made about every incoming inmate based on remarkably little data.

The Eleventh Circuit explained that the jail had "restraint chairs" that were used to control detainees based on a perceived risk of actual violence for the detainee or others if it was determined that being

placed in isolation was not sufficient to minimize or eliminate the risk. *United States v. Hill*, 99 F.4th 1289, 1292-1297 (11th Cir 2024).

The restraint chair was employed approximately 600 times since the chairs were first brought to the jail. *Id*. As a matter of jail policy, the restraint chair was ordered to be used as a preventative measure based on "pre-attack indicators" and the "totality of the circumstances." *Id.* at 1294.

Sheriff Hill was indicted for restraining several detainees in the chair on seven occasions that, in the view of the government, were not only unnecessary, but a criminal civil rights violation. The jury convicted Sheriff Hill for six of those episodes and the Sheriff was imprisoned because the use of the restraint chair on those six occasions amounted to a "willful deprivation of the detainees' constitutional right to be free from the use of unreasonable force by law enforcement officers amounting to punishment." 18 U.S.C. § 242.

The factual recitation in the Government's Opposition to the Petition for Certiorari (BIO.3–5), accurately recites the facts as recounted in the Eleventh Circuit opinion, (Pet.App.1a-53a, 99 F.4th at 1295-1297), which viewed the evidence in the light most favorable to the prosecution. The evidence at trial, however, was far more detailed about the history of each of the detainees, as explained in the Petitioner's opening brief (Pet.20). The Government's Brief in Opposition fails to note what the record actually shows about each of the detainees' background, in addition to the limited information noted in the Eleventh Circuit opinion.[1]

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[1] All of the following facts are recounted in Petitioner's brief filed in the Eleventh Circuit with citations to the trial transcript.

For example, Raheem Peterkin had threatened to kill two people the day of his arrest, fled when approached by the police, and the Sheriff was at the scene of the arrest which involved a "stand-off" with the detainee.

Desmond Bailey fled the scene when approached by the police and led the police on a high-speed chase which the Sheriff monitored on the radio prior to his arrest.

Cryshon Hollins went on a rampage in his mother's house after the slightest provocation, causing the Sheriff concern about how volatile he was.

Glen Howell appeared to the Sheriff to be "crazy" and involved in "bizarre behavior" including destroying a deputy's yard and going on a profane tirade at the time of his arrest, and repeatedly calling the Sheriff in a harassing manner.

Walter Thomas failed to comply with a deputy's commands when he arrived at the jail.

None of these detainees were restrained for purely punitive reasons. All were perceived by the Sheriff to pose a threat to others' safety.

The issue in this case, as explained in the Eleventh Circuit opinion, requires an assessment of whether Sheriff Hill knew on those six occasions — six out of 600 occasions that the restraint chair was used – that placing the detainee in the restraint chair violated the constitutional rights of the detainees. The government was required to prove that the Sheriff not only knew what was occurring on each occasion that the restraint chair was used, but also that he had "fair

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notice" that any injury suffered by a detainee (there were no permanent or serious injuries of any kind suffered by any detainee), or any such restraint, amounted to the use of excessive force in violation of the Constitution.

The Government's brief in Opposition restates the Question Presented (BIO.I) in a way that pre-ordains the answer, but omits a critical component of the issue that is present in this case. The issue is not simply whether the pretrial detainees were "compliant and nondisruptive" at the time the restraint chair was used. Rather, the issue is whether Sheriff Hill, based on his experience and training (both of which were fully revealed during trial), believed, based on the background of the case, and the safety of the jail and its occupants (guards, visitors, and other detainees), that the use of the restraint chair for a limited period of time was appropriate given the surrounding circumstances. In other words, the question is whether the use of the restraint chair was permissible even if, at the moment that restraint was initiated, the detainee was not disruptive or dangerous, but the Sheriff nevertheless believed, based on the immediate background of the detainee and the circumstances of the arrest, that the detainee posed a danger to the occupants of the jail.

The training of law enforcement officers – and the abundant precedents that address the need to rely on experience in assessing possible danger – support the use of restraints in various circumstances, even if there is not imminent danger presented by the detainee. Thus, prisoners who are transported from a jail to a courthouse, even fully compliant, docile prisoners,

are shackled.[2] Within a courthouse, even in the "lock-up," detainees are handcuffed when they are escorted into a lawyer's visiting room. When a search warrant is executed in a home, it is permissible for the police to handcuff occupants for hours. *Muehler v. Mena,* 125 S.Ct. 1465 (2005). On the side of the road, drivers and occupants of cars are frequently handcuffed without exhibiting imminent signs of danger if troopers, based on experience, are concerned for their safety. *United States v. Davis*, 997 F.3d 191 (4th Cir. 2021). *See also United States v. Johnson*, 921 F.3d 991 (11th Cir. 2019). And in jail circumstances, detainees who may have been aggressive at some point prior to arrival at the jail (or conduct in the jail), may be placed in solitary confinement ("in the hole") for days or weeks based on the guards' assessment of the detainee's dangerousness to himself or others.

In each of these circumstances, the courts have deferred to the law enforcement officers' experience and training to assess the need for passive restraint which is not prompted by a desire to punish the detainee and does not amount to punishment.

In contrast to these situations, the detainees in this case were restrained for 4–6 hours. Of the 600 detainees who at some point were restrained at the Clayton County Jail, the government chose six occa-

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[2] The Government acknowledges that this is appropriate, BIO.7, BIO.14), as did the Eleventh Circuit 99 F.4th at 1304. The Government suggests that a jail is a "secure environment" that lessens the requirement for any restraint. But even within a jail, inmates are restrained when being transported and, of course, are locked in a small cell for hours or days at a time. Surely the government is not arguing in support of a "least restrictive restraint" principle.

sions where the use of the restraint chair was deemed unnecessary and amounted to a violation of the constitutional rights of the detainee.

The Government (as well as the Eleventh Circuit) cited the "broad statement of principle" that the use of force on compliant, nonresistant detainees is excessive." (BIO.8). 99 F.4th at 1302-1301. In support, the government cites *Hope v. Pelzer*, 546 U.S. 730 (2002), and *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). But these cases do not support an *ad hoc* system in which the law enforcement officer is required to draw an analogy from some form of illegal conduct to the conduct in which he is engaged. Rather, "the unlawfulness of a given act must be made truly obvious, rather than simply implied by the preexisting law." *Youmans v. Gagnon*, 626 F.3d 557 (11th Cir. 2010). This Court, too, has warned not to define "clearly established" law at a high level of generality. *Kisela v. Hughes,* 584 U.S. 100, 104 (2018). In short, "The dispositive question is whether the violative nature of the particular conduct is clearly established." *Mullenix v. Luna*, 577 U.S. 7, 12 (2015); *White v. Pauly*, 580 U.S. 73, 80 (2017).

Thus, the existence of the uncontroversial principle that the "use of force on compliant, nonresistant detainees is excessive" does not provide an answer to the question confronting Sheriff Hill at the time he decided to use the restraint chair: Is it permissible to use restraint with no resulting serious injury to the detainee, when the circumstances that immediately preceded the detainee's arrival reasonably led the Sheriff to believe that the detainee posed a present danger to guards or other inmates?

Many of the cases cited by the government in support of the "fair notice" that guards have regarding the level of force that is permissible in detaining a prisoner involve the infliction of pain: pepper spray, beating, and tasing a detainee. *E.g. Piazza v. Jefferson County*, 923 F.3d 947 (11th Cir. 2019); *Danley v. Allen*, 540 F.3d 1298 (11th Cir. 2008). In this case, there was no assaultive behavior, simply passive restraint.

The government also contends that, "Nothing suggests as a legal matter that [detainees' conduct *before* they entered the jail] could justify petitioner's application of punitive measures *in* the jail." (BIO.14). But this is plainly wrong. A detainees' conduct before entering the jail may very well factor into the Sheriff's evaluation of whether a particular level of restraint is necessary – not as a punitive measure, but as a safety measure. The fact that the detainee is "cooperative" at the moments before being restrained, is not determinative of whether the Sheriff has the authority and the responsibility to ensure safety in the jail environment through the use of various levels of restraint that the Sheriff considers necessary.

The Government also fails to distinguish cases cited in the Petition in which a detainee was disruptive and then placed in a restraint chair for as long as 20 hours, a period of time that endured long after the detainee had calmed down.[3] While these cases may have been documented in unpublished decisions of the appellate courts, they are nevertheless a critical

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[3] *Blakeney v. Rusk County, Sheriff*, 89 F. Appx. 897, 899 (5th Cir. 2004); *Reynolds v. Wood Cnty., Texas*, 2023 WL 3175467 (5th Cir. 2023); *Rice ex rel. Rice v. Corr. Med. Servs,* 675 F.3d 650 (7th Cir. 2012).

component of what a law enforcement officer may consider in deciding what is appropriate and legal and is surely relevant in deciding whether the Sheriff had "fair notice" of what is and what is not legal and permissible. If courts have approved the use of a restraint chair in cases in which the detainee is restrained for twenty hours – long after any disruptive behavior has ended – it is not likely that any sheriff would know (or have fair notice) that a four-or five-hour stint in a restraint chair (not necessarily prompted by contemporaneous violence), would be unconstitutional excessive force.

Not surprisingly, the district court judge candidly acknowledged the unusual circumstances of this case:

> I have also considered that this type of prosecution is in this court's estimation, novel, at best, and that this type of charge does often involve violence, assault of behavior, such as beating, tasing, shooting, etc., or unlawful arrest—none of which is involved here.

United States v. Hill, No:21-cr-143, Doc 139, page 55 (March 14, 2023).

The trial court's expression at sentencing is a quintessential acknowledgement that Sheriff Hill did not have fair notice that the use of a restraint chair for a limited period of time, resulting in *no* permanent or serious injury, is not *per se* unconstitutional and beyond the permissible exercise of the sheriff's responsibility to ensure the safety of the jail.

CONCLUSION

For the foregoing reason, Petitioner Hill urges the Court to grant this Petition.

Respectfully submitted,

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