No. 25-532

IN THE
Supreme Court of the United States

DIANA SNOW, RN AND CHRISTINA WATSON, LPN,
Petitioners,
v.
DENNIS WIERTELLA, AS FATHER AND ADMINISTRATOR OF THE ESTATE OF RANDY WIERTELLA, DECEASED,
Respondent.

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

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A motion for summary judgment on qualified immunity grounds must be denied if, viewing the facts in the light most favorable to the plaintiff, a reasonable jury could conclude that the defendant violated the victim's constitutional rights, and those rights were clearly established at the time of the violation. *Tolan* v. *Cotton*, 572 U.S. 650, 655-657 (2014). In this case, petitioners sought summary judgment on the ground that they were entitled to qualified immunity from respondent's claim that they had violated the Eighth Amendment by failing to provide essential medications to a prisoner in their care, leading to the prisoner's death. The questions presented are:

1. Whether the court of appeals correctly affirmed the district court's determination that the evidence, viewed in the light most favorable to respondent, would permit a reasonable jury to conclude that petitioners were deliberately indifferent to the prisoner's serious medical needs in violation of the Eighth Amendment.

2. Whether the court of appeals correctly determined that the "clearly established" prong of the qualified immunity analysis was satisfied because the facts of this case are sufficiently similar to those underlying the court of appeals' decision in *Richmond* v. *Huq*, 885 F.3d 928 (6th Cir. 2018).

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INTRODUCTION

Randy Wiertella died in the custody of the Lake County Adult Detention Facility because petitioners—two nurses at the Facility—denied him access to his essential blood pressure medications. Wiertella's medical intake form at the jail indicates that he had high blood pressure for which he was taking medication, and the jail classifies blood pressure medications as "essential." Pet. App. 2a. Both petitioners testified that they were aware of the severity of high blood pressure and the need for prompt medical treatment for this serious condition. *Id.* at 7a-8a. Yet despite Wiertella's repeated requests for his blood pressure medication, it was not given to him. *Id.* at 2a-4a. Instead, he was scheduled for a nurse sick call a week out. *Id.* at 3a. Wiertella died the morning of his appointment without ever receiving his essential medication. *Id.* at 4a. Wiertella's father—respondent Dennis Wiertella—therefore sued, alleging deliberate indifference to his son's serious medical needs in violation of the Eighth Amendment.

Petitioners now ask this Court to grant certiorari to decide whether the lower courts correctly denied their motion for summary judgment on qualified immunity grounds based on the courts' determination that—viewing the facts in the light most favorable to respondent—a reasonable jury could conclude that petitioners violated Wiertella's clearly established Eighth Amendment rights. That request boils down to a plea for fact-bound error correction in an interlocutory posture and in the absence of any error. The court of appeals' decision correctly articulated the standards for deliberate indifference and qualified immunity and applied them to the dramatic facts of

this case. Nor does the decision implicate any conflict in the circuits. What petitioners portray as a split is nothing more than the application of the same deliberate indifference standard to very different facts. And, in any event, petitioners' dispute of the court of appeals' understanding of the facts and this case's interlocutory posture make this a bad vehicle for resolving any Eighth Amendment or qualified immunity issues. The petition for certiorari should be denied.

STATEMENT

A. Factual Background

On December 2, 2018, Randy Wiertella was booked at the Lake County Adult Detention Facility to begin serving a 27-day sentence. Pet. App. 2a. As part of the booking process, Wiertella underwent a medical screening. *Ibid.* Wiertella's medical screening form explained that he had been taking "essential medications" for high blood pressure, heart disease, diabetes, and a psychiatric disorder and that those medications needed to be continuously administered. *Ibid.* Wiertella did not, however, have those essential medications with him when he entered the facility. *Ibid.*

Once Wiertella entered the facility, he was under the care of petitioners, both nurses at the jail. Petitioner Diane Snow, RN, was the medical coordinator, responsible for ensuring that all inmate medical screening forms were reviewed. *Id.* at 2a-3a, 7a. Petitioner Christina Watson, LPN, working under and trained by Snow, reviewed and signed Wiertella's medical screening form. *Ibid.*

On December 3, Wiertella sent his first inmate-request form for his medications. *Id.* at 2a. He asked

for "diabetic, and other meds." *Ibid.* Watson received this request and put in an order for diabetes medication and a diabetic diet, which the jail doctor approved. *Id.* at 2a-3a. Watson admitted that she could have addressed Wiertella's blood pressure condition as well, but the jail preferred inmates' family members to bring them their medication because that was less expensive than ordering the medications from the jail pharmacy. *Id.* at 3a.

Wiertella put in his second medications request later that same day. *Ibid.* This request specifically listed five other medications, including his blood pressure medications. *Ibid.* Two days later, Wiertella put in his third request, again asking for his blood pressure medications. *Ibid.* He reminded the medical staff that they could call the Wasau, Wisconsin Veterans Administration (VA) pharmacy to get his medication records. *Ibid.*

Despite these repeated requests, no member of the jail staff ever ordered Wiertella's blood pressure medications or contacted the Wasau VA pharmacy. *Ibid.* Instead, Wiertella was scheduled for a nurse sick call on December 10, eight days after he had entered the facility. *Ibid.* The purpose of the sick call was "BP check, no meds," which Snow testified meant that Wiertella "need[ed] his blood pressure checked because he[ ] [had] some sort of history of high blood pressure and he brought no meds in with him." *Ibid.* (first alteration in original). The record does not reveal why Wiertella was forced to wait until December 10 to receive his medication. *Id.* at 4a. Nurse sick call was available every day, and doctor sick call was available every weekday. *Ibid.* Nurses could check inmates' blood pressure at any time to see if they needed medication and could verify

medications in under ten minutes. *Ibid.* Watson even testified that she could decide she did not need to verify medications to order them. *Ibid.*

Wiertella was found dead in his cell early in the morning of December 10. *Ibid.* Respondent's expert, Dr. Jonathan Arden, concluded that Wiertella died of hypertensive cardiovascular disease. *Ibid.* Dr. Arden testified that "the discontinuance and failure to provide medications contributed to Wiertella's blood pressure spiking and his risk of sudden death." *Ibid.* (brackets omitted). Dr. Arden concluded that, in his opinion, "but for the failure to provide those medications and a CPAP machine, * * * Wiertella would not have died how and when he did." *Ibid.* (brackets omitted).

B. Procedural History

In 2021, respondent filed an amended complaint in the United States District Court for the Northern District of Ohio. Pet. App. 52b. As relevant here, the complaint asserts a claim against petitioners under 42 U.S.C. 1983, alleging petitioners violated Wiertella's Eighth and Fourteenth Amendment rights through their deliberate indifference to Wiertella's serious medical needs. *Id.* at 52b, 54b-55b.

1. Petitioners moved for summary judgment, arguing they were entitled to qualified immunity from respondent's deliberate indifference claim. *Id.* at 55b-56b. The district court denied their motion. *Id.* at 54b-70b. With respect to the first qualified immunity prong—the requirement that a defendant violated constitutional rights—the district court found that a reasonable jury could conclude petitioners knew of Wiertella's (undisputedly) serious medical need and the attendant risks of not resuming his treatment and

unreasonably failed to take steps to obtain Wiertella's essential medications. *Ibid.* On the second prong—the requirement that the constitutional right be "clearly established"—the district court held that, if the jury accepted the facts as respondents alleged them, the violation would be clearly established because the case closely resembled *Richmond* v. *Huq*, 885 F.3d 928 (6th Cir. 2018), a prior case in which an inmate suffered serious harm after being deprived of essential medications. Pet. App. 63b-68b (quotation marks and citation omitted).

2. Petitioners filed an interlocutory appeal, and the court of appeals affirmed. Pet App. 1a-34a.

a. i. Petitioners first asserted that the district court "erred in finding that they subjectively appreciated a substantial risk of harm to Wiertella and that they failed to reasonably respond." Pet. App. 5a. The court of appeals disagreed.

As for Watson, the court of appeals relied on several key pieces of evidence in affirming the district court's finding that the evidence was sufficient for a reasonable jury to conclude that she acted with deliberate indifference. The court noted Watson's testimony "that she was aware that Wiertella had been booked without his medications, that he was on medications that needed to be continuously administered, and that these medications were classified as 'essential' under the Jail's policies." *Id.* at 7a. Watson also testified that Wiertella's medical conditions were "all serious medical conditions" and his blood pressure medications (among others) were "essential medications." *Ibid.* Watson recognized "the importance of taking medications for serious medical conditions because the failure to take those medications could lead to serious harm or even death"

and "the general principle that the medical staff should intervene sooner rather than later." *Ibid.* The court also noted Watson's testimony regarding her past concerns that "inmates at the Jail were not getting their blood-pressure medicine in a timely manner." *Ibid.* Based on all that evidence, the court held that a jury could find that Watson was aware of a substantial risk to Wiertella if he did not timely receive his medications and that she acted unreasonably in failing to ensure Wiertella timely received his blood pressure medications. *Ibid.*

The court of appeals likewise determined, after a careful review of the record, that there was sufficient evidence to permit a jury to find that petitioner Snow was deliberately indifferent. *Id.* at 7a-8a. The court noted that Snow "was responsible as the medical coordinator for making sure that every inmate's medical-screening form was reviewed." *Id.* at 7a. Snow "was also responsible for making sure that all the sick calls were set up correctly." *Ibid.* The court observed that Watson and Snow gave conflicting testimony about whether Snow had seen Wiertella, but, viewing the evidence in the light most favorable to respondent (as was required in this summary judgment posture), the court found that a jury could credit Watson's testimony that Snow had seen Wiertella. *Id.* at 7a-8a. And Snow herself testified "that untreated high blood pressure can cause a substantial risk of harm to patients and that, if an inmate identified a need for high-blood-pressure medication, it would be something that would need to be addressed as soon as possible." *Id.* at 8a (quotation marks omitted). The court therefore determined that a jury could reasonably find that Snow was aware of the substantial risk that Wiertella faced by not

resuming his blood pressure medications and that Snow unreasonably failed to ensure that Wiertella received his essential medications in a timely manner. *Ibid.*

ii. Petitioners also argued that "the caselaw ha[d] not 'clearly established' that" their conduct violated Wiertella's constitutional rights. Pet. App. 5a. The court of appeals again disagreed, holding that its prior decision in *Richmond* involved "a similar fact pattern that gave Snow and Watson a fair and clear warning that failing to ensure that Wiertella timely received his essential medications was a violation of his constitutional rights under the Eighth and Fourteenth Amendments." *Id.* at 10a (quotation marks and citation omitted).

The court of appeals noted "the district court['s] extensive[] analy[sis]" of the "similarities between this case and *Richmond*" and catalogued some of the main commonalities. *Id.* at 9a. As here, Richmond's medical records indicated that she had been taking needed medications before she arrived at the jail. *Ibid.* As here, Richmond's doctor had an obligation to take reasonable steps to ensure that Richmond timely received her medications. *Ibid.* As here, Richmond's doctor could have prescribed the medications herself or requested another medical staff member verify Richmond's prescriptions. *Ibid.* And as here, the medical staff unreasonably postponed addressing Richmond's conditions—there, until an appointment scheduled for 14 days later. *Ibid.*

b. Judge Readler dissented, explaining that on his view of the evidence, there was no deliberate indifference and the facts of this case were not sufficiently similar to *Richmond* to render any violation clearly established. Pet. App. 10a-32a.

REASONS FOR DENYING THE PETITION

Petitioners' request for certiorari seeks nothing more than fact-bound error correction in an interlocutory posture and in the absence of error. The court of appeals correctly articulated the legal standards for qualified immunity at the summary judgment stage in an Eighth Amendment deliberate indifference case. Indeed, petitioners barely suggest otherwise. Instead, they focus (Pet. 9-11, 13-14) on the assertion that the court misapplied the deliberate indifference standard because—on their view of the record—there was insufficient evidence to support a finding that petitioners were aware of Wiertella's serious medical needs and acted unreasonably in failing to provide him with essential medications. But this Court does not grant review to second-guess the lower courts' understanding of the evidentiary record. And petitioners' contention (Pet. 14-15) of a circuit split on this issue fails because the (mostly unpublished) decisions on which they rely simply reflect different courts applying the same standards to different facts.

As for their other fact-intensive question regarding whether the alleged Eighth Amendment violation was clearly established, petitioners do not even allege a circuit split on that issue. And they offer no good reason for this Court to revisit the court of appeals' conclusion that petitioners had "fair and clear warning" that their conduct was unconstitutional based on court of appeals precedent holding that a jail doctor was deliberately indifferent to a prisoner's needs when she failed to provide her with essential medications. Pet. App. 10a (citation omitted).

Finally, even setting all of that aside, this case is a doubly bad vehicle for this Court's review given its

interlocutory posture and petitioners' dispute of the facts. The petition for certiorari should be denied.

I. THE COURT OF APPEALS' APPLICATION OF THE DELIBERATE INDIFFERENCE STANDARD DOES NOT WARRANT THIS COURT'S REVIEW.

A district court should deny a motion for summary judgment on qualified immunity grounds if it determines that: (1) viewing the facts in the light most favorable to the plaintiff, a reasonable jury could conclude that the defendant violated the victim's constitutional rights, and (2) the right was clearly established. *Tolan* v. *Cotton*, 572 U.S. 650, 655-657 (2014). Petitioners do not challenge this standard or the court of appeals' articulation of it. Rather, they primarily argue that the court erred in finding that the summary judgment record in this case was sufficient to show deliberate indifference in violation of the Eighth Amendment when viewed in the light most favorable to respondent. That fact-bound contention is wrong, and it does not warrant this Court's review.

A. At the first step of its qualified immunity analysis, the court of appeals correctly articulated the deliberate indifference standard in determining that a reasonable jury could find that petitioners violated Wiertella's constitutional rights. Under this Court's decision in *Farmer* v. *Brennan*, a prison official violates a prisoner's Eighth Amendment right to adequate medical care where "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." 511 U.S. 825, 837 (1994). In other words, a prison official, subjectively, "must have a

sufficiently culpable state of mind." *Id.* at 834 (quotation marks and citation omitted).[1]

The court of appeals correctly recognized that "*Farmer* * * * requires the plaintiff to prove that '[the] officer knew of the facts creating the substantial risk of serious harm,' that 'the officer believed that this substantial risk existed,' and that 'the officer "responded" to the risk in an unreasonable way.'" Pet. App. 6a-7a (alteration in original) (quoting *Lawler ex rel. Lawler* v. *Hardeman County*, 93 F.4th 919, 929 (6th Cir. 2024)). And the court correctly applied *Farmer*'s standard in determining that, based on its construction of the facts and evidence adduced at the district court, a reasonable juror could find that petitioners violated Wiertella's constitutional rights. *Id.* at 6a-10a. As for Watson, the court found, based on Watson's testimony, that Watson's actions were "unreasonable" because she "was aware of a substantial risk to Wiertella if he did not timely receive his essential medication," yet "did nothing to ensure that Wiertella received his * * * medications * * * in a timely manner." *Id.* at 7a. With respect to Snow, the court of appeals noted there was conflicting testimony about whether she had seen Wiertella. *Id.* at 7a-8a. But the court accurately observed that it had to "view the evidence in the light most favorable to [respondent]." *Id.* at 8a. The court therefore determined, based on all of the evidence presented to

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[1] The inmate also must have, objectively, faced "a substantial risk of serious harm," which includes a risk due to "serious medical needs." *Farmer*, 511 U.S. at 834-835 (quotation marks and citation omitted). Petitioners did not dispute below, nor do they dispute here, that Wiertella had a serious medical need sufficient to establish *Farmer*'s objective condition. See Pet. 11-12; Pet. App. 6a.

the district court, that a "jury could * * * find that Snow was aware that Wiertella had been booked without 'essential medications' that needed to be continuously administered" and "unreasonably failed to ensure that Wiertella timely received all his essential medications." *Ibid*.

Petitioners do not contend that the court of appeals applied the wrong legal standard. Rather, they argue that the court misapplied the standard to the facts here. Pet. 12-14. That itself is an argument that "rarely" warrants this Court's review, S. Ct. R. 10, but, worse still, petitioners' argument reduces to a dispute with how the district court and the court of appeals viewed the evidentiary record. For instance, petitioners argue that the evidence "*does not show* that Watson thought any medications besides Metformin" (Wiertella's diabetes medication) "needed to be continuously administered." Pet. 13 (emphasis added). The court of appeals found otherwise. Pet. App. 7a. Similarly, petitioners argue that "Snow did not appreciate a substantial risk of harm to Wiertella" because "*[t]he undisputed evidence shows* that Nurse Snow had no knowledge of or involvement with Wiertella at any time during his detention." Pet. 13 (emphasis added). But the court of appeals found the evidence about whether Snow had knowledge of or involvement with Wiertella *was disputed*, making summary judgment inappropriate. Pet. App. 7a-8a.

This Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); see S. Ct. R. 10. The Court should not do so here.

B. Petitioners next argue that the court of appeals' decision "directly contradicts the standing rules established by other circuit courts." Pet. 14 (listing

cases). As a threshold matter, three of the four allegedly conflicting decisions—those from the First,[2] Tenth, and Eleventh Circuits—are unpublished and therefore non-precedential. But even setting that aside, petitioners do not point to any courts of appeals that have *actually* applied a different legal standard in deliberate indifference cases like this one. Instead, they allege a conflict based on decisions that explicitly applied the same standard from *Farmer* to different facts, leading to different results in most (but not all) of the cases.

Petitioners first cite *Pandey* v. *Freedman*, 66 F.3d 306 (1st Cir. 1995) (Table) (per curiam), where the First Circuit affirmed the dismissal of an inmate's Eighth Amendment claim. In *Pandey*, the inmate (1) received medical attention the day after he first requested it, (2) received his medication four days after he indicated that the medication *he had already been given* was about to run out, and (3) suffered no sufficiently serious consequences as a result of that four-day delay. *Id.* at *2. And, critically, the inmate "did not allege that he informed the warden that he would experience a serious medical reaction if he did not immediately receive the proper medicine." *Ibid.* Unlike the inmate in *Pandey*, Wiertella (1) was not given medical attention immediately after his initial request, (2) *never received his proper medication at any point*, and (3) tragically, died as a result of his lack of medication. Pet. App. 2a-4a. And Wiertella alleged, and the evidence supports a finding, that Watson and Snow both were aware of the substantial

[2] The Petition incorrectly identifies (Pet. 14) *Pandey* v. *Freedman*, 66 F.3d 306 (1st Cir. 1995) (Table) (per curiam), as a decision of the Fifth Circuit, when in fact it was decided by the First Circuit.

risk to Wiertella if he did not timely receive his essential medications. *Id.* at 7a-8a.

Second, petitioners cite *Lindwurm* v. *Wexford Health Sources, Inc.*, 84 F. App'x 46 (10th Cir. 2003), where the Tenth Circuit affirmed summary judgment for the prison officials. There, the inmate "on occasion * * * did not receive the medication doctors had prescribed" him. *Id.* at 48. But the Tenth Circuit found that those occasions "were isolated and brief," that there was insufficient evidence to prove "such lapses * * * posed 'an excessive risk' to his health, let alone that defendants knew of this risk and disregarded it," and that the inmate "failed to proffer any evidence suggesting that any brief and isolated delays in receiving his medications substantially harmed him." *Ibid.* (citation omitted). Wiertella, by contrast, never received his medication at any point in the full week prior to his death, despite petitioners' awareness that Wiertella did not have his medications; that his conditions were "serious"; that his medications were "essential" and "needed to be continuously administered"; and that the failure to take those essential medications could lead to serious harm or even death. Pet. App. 7a-8a. Thus, unlike *Lindwurm*, there was evidence that petitioners knew that their delay in providing medication could pose an "excessive risk" to Wiertella, which, tragically, resulted in Wiertella's death.

Third, petitioners cite *Duncan* v. *Correctional Medical Services*, 451 F. App'x 901 (11th Cir. 2012) (per curiam). There, however, the Eleventh Circuit *denied* the defendants' motion for summary judgment, holding that there was sufficient evidence to support a deliberate indifference claim. *Id.* at 905-906. Undeterred, petitioners quote the Eleventh Circuit's

observation in dictum that there would be "no showing of deliberate indifference" "if [the court] were dealing with an isolated instance where [an inmate] had not received the proper medication and then suffered a medical emergency." *Id.* at 905; see Pet. 14. But "dicta is not binding on anyone for any purpose," *Rudolph* v. *United States*, 92 F.4th 1038, 1045 (11th Cir. 2024) (quotation marks and citation omitted), which is why "dicta does not a circuit split make," *Pac. Coast Supply, LLC* v. *N.L.R.B.*, 801 F.3d 321, 334 n.10 (D.C. Cir. 2015) (Garland, C.J.). See also *Glus* v. *Brooklyn E. Dist. Terminal*, 359 U.S. 231, 235 (1959). In any event, petitioners' denial of Wiertella's medication was not "isolated"—Wiertella asked for his essential medication *three* times without receiving it before dying of the condition it was meant to treat.

Finally, petitioners cite *Fourte* v. *Faulkner County*, 746 F.3d 384 (8th Cir. 2014), where the Eighth Circuit granted summary judgment to prison officials on a deliberate indifference claim. There a jail doctor had developed a practice of monitoring blood pressure levels for 30 days before prescribing medication unless blood pressure reached "an emergency level." *Id.* at 386. The plaintiff alleged that practice amounted to deliberate indifference because it delayed his receipt of medication and because, even after his blood pressure reached the emergency level, the staff gave him a single pill but did not give him a full prescription for several more days. *Id.* at 386-387. The Eighth Circuit held that the inmate's evidence "[a]t best, * * * show[ed] that [the defendants] should have known they were committing malpractice—but medical malpractice is not deliberate indifference." *Id.* at 389.

That holding, however, was predicated on the Eighth Circuit's view that the medical staff had developed and implemented a plan of care—blood pressure monitoring—that the plaintiff simply alleged was inadequate. Here, petitioners did not determine that they needed to monitor Wiertella's blood pressure before prescribing medication. Instead, they recognized it was essential and simply delayed the procedures necessary to prescribe it. See Pet. App. 2a-8a.

Because petitioners' alleged "circuit split" merely amounts to various courts of appeals applying the same legal standard to different sets of facts, certiorari is unwarranted.

II. THE COURT OF APPEALS' HOLDING THAT PETITIONERS MAY HAVE VIOLATED CLEARLY ESTABLISHED LAW DOES NOT WARRANT THIS COURT'S REVIEW.

The court of appeals also correctly articulated and applied the test for "clearly established" law. The court required respondent "to 'identify a case with a similar fact pattern that would have given "fair and clear warning to officers" about what the law requires.'" Pet. App. 9a (quoting *Arrington-Bey* v. *City of Bedford Heights*, 858 F.3d 988, 993 (6th Cir. 2017) (Sutton, J.)). And it found this standard was met by *Richmond* v. *Huq*, 885 F.3d 928 (6th Cir. 2018).

A. Petitioners do not challenge the legal standard the court of appeals articulated, nor do they allege a conflict in the circuits regarding this issue. Instead, petitioners assert that the court of appeals erred by considering the facts of this case and its prior precedent at too high a level of generality. Pet. 15-21. That assertion is incorrect. The court of appeals

carefully explained why the specific facts of this case closely track the facts of *Richmond*, a case in which the court of appeals had found deliberate indifference after jail medical staff denied psychiatric medications to a patient who had a history of suicidal behavior.

The court of appeals observed that, in both *Richmond* and this case, medical records indicated the inmate had been taking medications for serious medical conditions before arriving to jail. Pet. App. 7a-10a. In both cases, there was sufficient evidence for a jury to find that the jail's medical staff were aware of the inmate's serious need for continued, timely treatment while in jail. *Ibid.* In both cases, there was also sufficient evidence to find that the medical professionals declined to treat the inmate's serious medical needs for an unreasonable amount of time, and that there were quick, easy ways the medical staff could have continued the treatment. *Id.* at 4a, 9a. The court of appeals correctly concluded that *Richmond*'s facts gave petitioners fair notice "that 'neglecting to provide a prisoner with needed medication' could 'constitute a constitutional violation'" on facts such as these. Pet. App. 10a (quoting *Richmond*, 885 F.3d at 948).

B. Petitioners' only real gripe with the court of appeals' clearly established holding is a disagreement about how the court understood the facts of this case. In their view, the court of appeals got the facts wrong, and their version of the facts makes the case dissimilar to *Richmond*. See Pet. 9-11, 17-20. They assert, for example, that "Watson did schedule Wiertella for sick call," Pet. 19, but the court of appeals found that "the record does not indicate * * * which nurse added" Wiertella "to the sick-call log," Pet. App. 3a. And they assert that Snow "never

interacted with Wiertella, directly or indirectly," Pet. 20, but the court credited Watson's testimony that "Snow had seen Wiertella," Pet. App. 7a-8a.[3]

Again, this Court does not grant certiorari to review factual disputes. S. Ct. R. 10. And even if petitioners' facts did accord with those accepted by the court of appeals, their level-of-generality argument would boil down to an asserted misapplication of a properly stated rule of law. This Court "rarely grant[s] review where the thrust of the claim is that a lower court simply erred in applying a settled rule of law to the facts of a particular case." *Salazar-Limon* v. *City of Houston*, 581 U.S. 946, 947-948 (2017) (mem.) (Alito, J., concurring in the denial of certiorari) (citing S. Ct. R. 10). It should not do so here.

III. THIS CASE IS A POOR VEHICLE.

A. Review is also unwarranted because the decision below is interlocutory. See, *e.g.*, *Am. Constr. Co.* v. *Jacksonville, Tampa & Key W. Ry. Co.*, 148 U.S. 372, 384 (1893). Under this Court's ordinary practice, the interlocutory posture of a case "alone furnishe[s] sufficient ground for * * * denial." *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see *Bhd. of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam) (explaining that a case remanded to the district court "is not yet ripe for review by this Court"). Petitioners do not offer any reason to justify a

[3] Petitioners' concerns (Pet. 20-21) about "how the district court interpreted *Richmond*" and "the broad rule" the district court apparently derived from it are not reasons for this Court to grant certiorari because petitioners do not argue the court of appeals adopted the district court's "broad rule" as its own, and this Court grants certiorari to review the decision of the court of appeals, not the district court.

deviation from this Court's typical practice of awaiting final judgment before deciding whether review is appropriate.

B. Petitioners also heavily dispute the facts, which would—at a minimum—complicate this Court's review. "[T]his Court is" "[a] court of law," not "a court for correction of errors in fact finding." *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949). And sifting through factual disputes in this case would be particularly cumbersome because it would require reviewing the vast summary judgment record to determine whether material disputes of fact exist. The procedural posture in this case thus further supports adherence to this Court's customary practice of "not grant[ing] * * * certiorari to review evidence and discuss specific facts." *Johnston*, 268 U.S. at 227.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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