No. 26–187

In the Supreme Court of the United States

CHASITY CONGIOUS, BY AND THROUGH HER GUARDIAN, KIMBERLY HAMMOND, ON BEHALF OF HERSELF AND AS MOTHER AND NEXT FRIEND OF Z. C. H., DECEASED,

Petitioners,

v.

AARON IVY SHAW, DO.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner asks this Court to extend the reach of *Kingsley* v. *Hendrickson*, 576 U. S. 389 (2015), an excessive-force case, to claims involving a pretrial detainee's right to medical care under the Fourteenth Amendment. Petitioner advocates for the use of *Kingsley*'s objective standard, rather than the subjective standard that the Fifth Circuit used in affirming the dismissal of her denial-of-medical-care claim against respondent.

Petitioner's request presents the following questions for the Court's more immediate consideration:

1. Petitioner did not raise her *Kingsley*-based constitutional challenge in the courts below, and, consequently, the Fifth Circuit did not address it. Should this Court decline to consider the constitutional question in the first instance?

2. Respondent receives qualified immunity no matter how the constitutional question is ultimately decided. Should the Court decline to grant certiorari on the basis that resolving the constitutional challenge will not affect the outcome of *this* case?

3. The record demonstrates that respondent's conduct was constitutional regardless of whether an objective or subjective standard is applied. Should the Court decline to consider petitioner's constitutional challenge given that it will not change the result of this case?

4. Is the constitutional issue that petitioner raises so fact-bound that resolving it would offer little guidance for future cases?

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INTRODUCTION

This case undoubtedly involves a tragedy. But as the courts below rightly concluded, that tragedy did not result from any deliberate indifference on the part of respondent (Dr. Shaw). And that is true no matter which circuit's law is applied.

For a host of reasons, this case is a poor vehicle for resolving the circuit split over *Kingsley*'s application to denial-of-medical-care claims. For starters, petitioner did not argue in the courts below that *Kingsley* applies (or should apply) to her denial-of-medical-care claim. As a result, the Fifth Circuit did not address it. This Court is "a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). Accordingly, the Court should decline to take the first pass on the constitutional question that petitioner raises.

Furthermore, any resolution of the constitutional question will not affect the outcome of *this* case. The District Court (and one member of the Fifth Circuit panel) determined that Dr. Shaw was entitled to qualified immunity. And this will not change, no matter how the constitutional question is decided, because qualified immunity is assessed based solely upon the "clearly established law" in existence *at the time* of the underlying events.

The outcome also would remain unaffected by a grant of certiorari because, even if *Kingsley*'s objective standard were applied, Dr. Shaw's conduct would pass constitutional muster. Petitioner gives the impression that the record only exonerates Dr. Shaw if a subjective standard is applied—but the objective

reasonableness of Dr. Shaw's conduct is well established in the record.

Lastly, the constitutional question here is tightly bound to the unique facts of this case. As the adage goes, "tragic facts make bad law." *Wyeth* v. *Levine*, 555 U. S. 555, 604 (2009) (ALITO, J., dissenting). And here, any resolution of the constitutional question would be so tied to the facts of this case that it would provide very little guidance in future cases. The Court should deny the petition for a writ of certiorari.

STATEMENT OF THE CASE

I. Dr. Shaw, as Medical Director, issued standing delegation orders and relied on nurses and other providers to provide direct care to patients in the female infirmary.

Dr. Shaw was the Medical Director at the Tarrant County Jail (TCJ) in Fort Worth, Texas, when petitioner Chasity Congious (Ms. Congious or petitioner) was incarcerated in early 2020. Record 1588–1589, at 11:25–12:6. Dr. Shaw never directly treated Ms. Congious. Record 1610, at 73:8–9. In fact, at that time, Dr. Shaw did not provide direct care to *any* patients in the female infirmary. Record 1607, at 70:2–4; Record 1635, at 16:3–6. While Dr. Shaw provided oversight, he relied upon nurses, physician assistants, and other providers to provide direct care. Record 1605–1606, at 68:8–23; Record 1595, at 18:4–16.

At the time of Ms. Congious's incarceration, she was about twenty weeks pregnant. Record 1547. Because she had problems communicating and was not

eating enough, Ms. Congious was housed within the female infirmary, which was the highest level of care for a pregnant patient at the TCJ. Record 1633–1634, at 14:13–15:5; Record 1561. Every day, nurses regularly made rounds and monitored the patients in the infirmary. See, *e. g.*, Record 1601, at 33:7–15; Record 1645, at 29:21–23.

To ensure proper care of pregnant patients like Ms. Congious, Dr. Shaw had written a routine "Standing Delegation Order" for "Pregnant Inmates," which was entered into Ms. Congious's chart by a registered nurse on January 26, 2020, and later reviewed and signed by Dr. Shaw. Record 1542–1545; Record 1594–1595, at 17:5–18:16. Among other things, Dr. Shaw ordered staff to: "[i]mmediately place [her] on next OB clinic schedule"; "[n]otify JPS [Hospital] OB triage department PRN [as needed for] inmate transfer to JPS OB Triage"; "[i]mmediately transfer to JPS OB Triage PRN [as needed] suspected labor"; and "[t]ransfer to JPS OB Triage PRN [as needed, in the event of] suspected labor, water breaks, vaginal bleeding, abdominal bleeding, or T [temperature] >101 [degrees]." Record 1544–1545.

In addition to housing her in the female infirmary, Dr. Shaw ensured that she was referred for treatment in the TCJ's obstetrics and gynecology (OB/GYN) clinic. Record 1597, at 20:4:7. Ms. Congious was directly treated by OB/GYN residents, nursing staff, and providers, such as physician assistants, who rounded on the female infirmary. Record 1610, at 73:10–13. Over the course of four months, Ms. Congious received more than twenty-five visits and interactions from providers, including OB/GYN residents,

physician assistants, and mental-health providers. Record 1645, at 29:10–14.[1]

II. Ms. Congious's OB/GYN planned to schedule an induced labor to occur between weeks 39 and 40 of her pregnancy, but Ms. Congious unexpectedly went into labor while she was still in week 37 of her pregnancy.

On May 13, 2020, while Ms. Congious was at a gestational age of 37 weeks and 1 day, she was seen by OB/GYN Melanie Carter, M. D. (Dr. Carter) for a routine obstetrics examination. Record 1549–1553. While Ms. Congious could respond to some extent, Dr. Carter noted that Ms. Congious was largely "unable to express her symptoms and may not recognize when she goes into labor." Record 1553, Record 1648, at 32:21–22.

Dr. Carter recommended that Ms. Congious have an elective induction of labor "between 39 and 40 weeks." Record 1553. Dr. Carter wrote that she would "plan to check cervix and schedule this [induction] at next visit." Record 1553. As in previous routine examinations by Dr. Carter, the baby was progressing normally and seemed in good health. Record 1552, Record 150, at 34:3–8.[2]

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[1] The mental health care was separately provided. Record 1610, at 73:17–22.

[2] Petitioner's cursory Statement of the Case omits this material fact (*i. e.*, that Dr. Carter did not recommend an induction of labor prior to 39 weeks). Petitioner misleadingly gives the impression that Dr. Carter recommended that petitioner's

All of Dr. Carter's notes were entered into Ms. Congious's chart for nurses and other providers to see. Record 1947, at 49:23–25. Dr. Shaw documented his agreement with Dr. Carter's plan of care. Record 1553, Record 1549–1550.[3]

Just four days after Ms. Congious's visit with Dr. Carter, on the morning of May 17, a nurse and a correctional officer noticed a pinkish color on Ms. Congious's blanket and an odor in her cell. Record 1556. This occurred around 9:05 a.m. Record 1556. When the nurse asked Ms. Congious if she was okay, she responded by covering her head with the blanket. Record 1556. As it turns out, Ms. Congious had gone into labor. Record 1556. Her baby was transported by ambulance to Cook Children's Medical Center where, tragically, she died days later. Record 1556, Record 1115.

III. Dr. Shaw had no reason to believe—and, in fact, did not believe—that Ms. Congious was substantially at risk of going into labor on May 17; and, in any event, there were medical personnel on site whom Dr. Shaw relied on to initiate emergency care.

Dr. Shaw never knew of any facts indicating that Ms. Congious was in labor or even seriously at risk of

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induction be scheduled to occur as soon as possible. See Pet. for Cert. 3–4.

[3] Because information was communicated to nurses and other providers through the patient chart, petitioner is wrong in asserting that "Dr. Shaw did not inform anyone at the jail that Chasity would not be able to understand or tell anyone when she was in labor." Pet. for Cert. 4.

going into labor on May 17, 2020. Record 1611, at 74:1–4, 74:16–21. As of May 17, Ms. Congious was still in week 37 of her pregnancy and was planned to have an elective induction scheduled to occur between weeks 39 and 40. Record 1611, at 74:12–15. Dr. Shaw did not conclude, at any point prior to learning that Ms. Congious had delivered in her cell, that this was reasonably likely to happen. Record 1611, at 74:16–21.

Regularly, nursing staff would circulate a daily report to nurses, providers, and correctional staff concerning inmates in the female and male infirmaries in the TCJ. Record 1607, at 70:5–11. The body of these emails would contain a subset of patients with more pressing (though not emergent) issues. Record 1607, at 70:19–21. Attached to the emails would be charts of the full set of inmates in the infirmaries, with notes on each of the patients. Record 1607, at 70:22–71:3.

The main purpose of the daily report emails was to convey information among the nurses as they changed shifts. Record 1608, at 71:4–15. Dr. Shaw did not, in his role, regularly open the attachments to these daily report emails and typically only reviewed the body of the emails to see if he needed to sign off on any requests to transport patients from the hospital. Record 1608–1609, at 71:20–72:2.

On the morning of May 17, 2020, around 7:29 a.m., the daily report email for May 17, 2020 was circulated. Record 1559. That email went to Dr. Shaw's email inbox. Record 1559. Ms. Congious was not listed among the patients in the body of the email. Record 1559.

In one of the five attachments to that email, Ms. Congious was listed among the numerous other inmates in the 55D female infirmary. Record 1561. One of the columns next to Ms. Congious's name stated that she "Took PM ENSRE but Refused Breakfast" and "C/O ABD CRAMPS." Record 1561.

Dr. Shaw did not see or read this email or its attachment—or even know the email had been sent—until after Ms. Congious had delivered. Record 1612–1613, at 75:17–76:2. For context, May 17, 2020, was a Sunday, and Dr. Shaw was not working. Record 1613, at 76:11–12. There was a physician assistant on duty that morning, by phone before 8:00 a.m. and then onsite beginning around 8:00 a.m. Record 1613–164, at 76:22–77:2.

Typically, if a situation became urgent, the physician assistant would be the provider to handle the matter with nurses on site and, if warranted, the physician assistant would call Dr. Shaw. Record 1614, at 77:8–16. Dr. Shaw, as Medical Director, was generally on call for emergencies 24/7 and was available on the weekend of May 16–17, 2020, to take a call had any personnel on site elected to escalate Ms. Congious's condition to him. Record 1614, at 77:21–25. But Dr. Shaw did not receive a call on May 16 or 17, 2020, prior to the delivery at issue. Record 1614, at 77:17–20. The daily report email was never meant to address emergencies. Record 1615, at 78:1–4.

IV. Relevant Procedural History

In her live complaint, Ms. Congious asserted a §1983 claim against Dr. Shaw premised on an alleged denial of her right to medical care under the

Fourteenth Amendment. Record 1115–1130. After discovery, Dr. Shaw filed a motion asking the District Court to grant summary judgment on the basis that Ms. Congious could not create a dispute of fact to support her claim for denial of medical care and also on the basis of qualified immunity. Record 1497–1521. Ms. Congious also filed a motion for summary judgment on the issues of liability and punitive damages. Record 1243–1255.

The District Court entered a Memorandum Opinion and Order granting Dr. Shaw's motion for summary judgment and denying Ms. Congious's motion. App. to Pet. for Cert. 10a. Ms. Congious appealed.

The Fifth Circuit affirmed the District Court. App. to Pet. for Cert. 7a. The panel majority held that Dr. Shaw did not violate Ms. Congious's Fourteenth Amendment rights. *Id.*, at 2a–7a. Judge Wiener concurred in the judgment, explaining that he would affirm the District Court on the basis of qualified immunity. *Id.*, at 7a–9a. Ms. Congious then filed her petition for writ of certiorari.

REASONS FOR DENYING THE PETITION

I. Petitioner did not raise—and thus the Fifth Circuit did not address—whether *Kingsley* applies to denial-of-medical-care claims; the Court should decline to review that question in the first instance.

This Court is "a court of review, not of first view," and on that basis it regularly and appropriately declines to consider issues that the court of appeals did not address. *Cutter*, 544 U. S., at 718, n. 7; see

United States v. *Oakland Cannabis Buyers' Cooperative*, 532 U. S. 483, 494 (2001) (declining to review constitutional issues because the court of appeals did not address them).

During her appeal to the Fifth Circuit, petitioner did not challenge the standard that the District Court applied—only the District Court's *application* of that standard. That is, petitioner never asked the Fifth Circuit to consider whether *Kingsley*'s objective standard should apply to denial-of-medical-care claims. And because the question was never raised, the Fifth Circuit did not address it.

Respectfully, it would not be "a sensible exercise of this Court's discretion" to consider petitioner's challenge "without the benefit" of "lower court determinations." *Lytle* v. *Household Mfg., Inc.*, 494 U. S. 545, 552, n. 3 (1990); see also *Yee* v. *Escondido*, 503 U. S. 519, 538 (1992) ("Prudence also dictates awaiting a case in which the issue was fully litigated below, so that we will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question").

There have been, and will continue to be, opportunities to review the post-*Kingsley* split in cases where the matter was briefed and addressed in the courts below. See, *e. g.*, *Crandel* v. *Hall*, 601 U. S. 1018 (2024); *Cope* v. *Cogdill*, 597 U. S. 930 (2022). This Court should decline to give a "first view" to the issue in this case.

II. Petitioner's constitutional challenge—regardless of how it is resolved—will not affect the outcome of this case because Dr. Shaw remains entitled to qualified immunity.

Granting certiorari in this case would expend "scarce judicial resources" on a constitutional question that has "no effect on the outcome of the case." *Pearson* v. *Callahan*, 555 U. S. 223, 236–237 (2009). No matter how the constitutional question is decided, Dr. Shaw will receive qualified immunity.

"Government officials enjoy qualified immunity from suit under §1983 unless their conduct violates clearly established law. A right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Zorn* v. *Linton*, 607 U. S. 568, 571–572 (2026) (citation and internal quotation marks omitted).

This Court has often explained that "[a] right is not clearly established if *existing* precedent does not place the constitutional question beyond debate." *Id.*, at 572 (emphasis added; internal quotation marks omitted). State officials "receive qualified immunity unless they could have 'read' the relevant precedent *beforehand* and 'know[n]' that it proscribed their specific conduct." *Ibid.* (quoting *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 616 (2015); emphasis added).

Were the Court to grant certiorari in this case, Dr. Shaw would prevail regardless of how the Court decided the constitutional question. If the Court were to uphold the Fifth Circuit's subjective standard, then

Dr. Shaw would prevail, not only because the matter would have been correctly decided below, but also because petitioner abandoned her challenge to Dr. Shaw's conduct under the subjective standard. Pet. for Cert. 6.

On the other hand, if the Court were to side with the circuits that have extended *Kingsley* to denial-of-medical-care claims, then Dr. Shaw would still receive qualified immunity because Dr. Shaw "cannot have been 'expected to predict the future course of constitutional law.'" *Wilson* v. *Layne*, 526 U. S. 603, 617 (1999) (quoting *Procunier* v. *Navarette*, 434 U. S. 555, 562 (1978)); see also *Reynoldsville Casket Co*. v. *Hyde*, 514 U. S. 749, 757 (1995) (recognizing that a holding on the constitutionality of an arrest applies retroactively, but "the police officer still wins on grounds of qualified immunity because the new rule of law was not 'clearly established' at the time of the arrest" (citation omitted)).

As this Court has astutely observed, "[i]f judges thus disagree on a constitutional question, it is unfair to subject [state officials] to money damages for picking the losing side of the controversy." *Wilson*, 526 U. S., at 618; see also *Morgan* v. *Swanson*, 659 F. 3d 359, 372 (CA5 2011) ("Where no controlling authority specifically prohibits a defendant's conduct, and when the federal circuit courts are split on the issue, the law cannot be said to be clearly established" (citing *Wilson*, 526 U. S., at 617–618)).

Given that the constitutional question petitioner raises has no impact on the outcome of this case, the Court should decline to hear it. See *Pearson*, 555 U. S., at 241 (emphasizing "the general rule of

constitutional avoidance" and "the older, wiser judicial counsel 'not to pass on questions of constitutionality . . . unless such adjudication is unavoidable'" (quoting *Scott* v. *Harris*, 550 U. S. 372, 388 (2007) (Breyer, J., concurring)); some internal quotation marks omitted).

III. Picking a side in the circuit split will not change the outcome of this case because Dr. Shaw's conduct is constitutional under either standard.

Applying Fifth Circuit precedent, the Court of Appeals held that Dr. Shaw did not violate petitioner's Fourteenth Amendment rights because he did not have subjective knowledge of a substantial risk of harm to petitioner. But even if the Court were to apply the objective standard of *Kingsley* to petitioner's denial-of-medical-care claim, Dr. Shaw's conduct would be constitutional.

Under *Kingsley*, "objective reasonableness turns on the facts and circumstances of each particular case. A court must make this determination from the perspective of a reasonable [official] on the scene, including what the [official] knew at the time, not with the 20/20 vision of hindsight." *Kingsley* v. *Hendrickson*, 576 U. S. 389, 397 (2015) (citation and internal quotation marks omitted).

The record establishes that Dr. Shaw acted in an objectively reasonable manner. He wrote standing delegation orders for pregnant patients that were entered into Ms. Congious's chart, and he reasonably relied upon on-site providers to monitor and provide direct care to Ms. Congious throughout her time at the

TCJ. Record 1542–1545, Record 1594–1595, Record 1605, Record 1610.

Dr. Shaw followed the plan and timeline that OB/GYN Dr. Carter implemented, which contemplated that Dr. Carter would see Ms. Congious again and schedule an induced labor between 39 and 40 weeks. Record 1553, Record 1549–1550. Ms. Congious was only 37 weeks along when she went into labor on Sunday morning, May 17, 2020, an outcome that a reasonable official in Dr. Shaw's position would have had no reason to expect. Record 1550, Record 1555–1556, Record 1610–1611.

The routine daily report email that was circulated to a large group of recipients that morning is a red herring. The record demonstrated that emails like this (with their voluminous attachments) were not meant to address emergencies. Record 1615, at 78:1–4. Their main purpose was to convey information among the nurses as they changed shifts. Record 1608, at 71:4–15. Dr. Shaw did not, in his role, regularly open the attachments to these daily report emails and typically only reviewed the body of the emails to see if he needed to sign off on any requests to transport patients from the hospital. Record 1608–1609, at 71:20–72:2.

For additional context, May 17, 2020, was a Sunday, and Dr. Shaw was not working. Record 1613, at 76:11–12. There was a physician assistant on duty that morning, by phone before 8:00 a.m. and then on-site beginning around 8:00 a.m. Record 1613–164, at 76:22–77:2. Typically, if a situation became urgent, the physician assistant would be the provider to handle the matter with nurses on site and, if warranted,

the physician assistant would call Dr. Shaw. Record 1614, at 77:8–16. Dr. Shaw could have taken a call had staff escalated the matter to him, but he did not receive such a call until after Ms. Congious had delivered. Record 1614, at 77:21–25.

Dr. Shaw's actions as Medical Director were at all times objectively reasonable. Dr. Shaw offered the testimony of a correctional medical care expert, David M. Mathis, M. D., F. A. A. F. P., C. C. H. P.-C. P., who testified that it was unreasonable to expect that a medical director of a correctional facility like the TCJ would see and respond in emergent fashion to an email like the one referenced above. Record 1531, at ¶10. In Dr. Mathis's opinion, the standard of care for dealing with possible emergencies is for the on-site clinical providers to assess and care for patients with suspected labor, such as an R.N., an on-site medical provider, or an on-call medical provider. Record 1530–1531, at ¶¶ 9, 11. This allocation of duties is what Dr. Shaw facilitated by virtue of his standing delegation orders. Record 1531, at ¶¶ 12–13. Dr. Mathis opined that Dr. Shaw did not have a clinical relationship with Ms. Congious and that he did not deviate from the accepted and appropriate standard of conduct as the Medical Director with respect to Ms. Congious or her baby. Record 1531, at ¶¶ 14–16. Petitioner did not offer expert testimony to rebut Dr. Mathis.

While Dr. Shaw met the standard of care applicable to a Medical Director under the circumstances, he did not have to. It is enough that this involved an exercise in medical judgment at all. See *Dyer* v. *Houston*, 964 F. 3d 374, 381 (CA5 2020) (noting that deliberate

indifference cannot be met by showing even "a grossly negligent response to a substantial risk of serious harm" and that "the decision whether to provide additional treatment 'is a classic example of a matter for medical judgment,'" which fails to give rise to a deliberate-indifference claim); *Domino* v. *Texas Dept. of Criminal Justice*, 239 F. 3d 752, 756 (CA5 2001) ("It is indisputable that an incorrect diagnosis by prison medical personnel does not suffice to state a claim for deliberate indifference"). Dr. Shaw exercised his medical judgment in issuing the standing delegation orders and accepting Dr. Carter's recommendation of an induced labor between weeks 39 and 40 of pregnancy. He likewise exercised his judgment in carrying out his administrative duties, such as staffing on weekends.

As for the impact of *Kingsley*, "[n]egligence was not enough before, and it is not enough now." *Short* v. *Hartman*, 87 F. 4th 593, 612 (CA4 2023) (citations omitted). Regardless of how the Court rules on the constitutional question, the outcome will be the same: Dr. Shaw acted reasonably and did not violate petitioner's Fourteenth Amendment rights.

IV. The constitutional question that petitioner raises is highly fact-intensive such that it will offer limited guidance in future cases.

This is a case "in which the constitutional question is so fact-bound that the decision provides little guidance for future cases." *Pearson*, 555 U. S., at 237 (citation omitted). As the foregoing discussion on objective reasonableness demonstrates, the facts underlying petitioner's constitutional challenge are unusual

and nuanced, if not unwieldy. A constitutional assessment of Dr. Shaw's oversight of Ms. Congious's care and her unexpected Sunday morning delivery is not likely to be readily applicable to a future fact pattern.

The challenged conduct in this case does not stem from a one-time transaction or incident that could provide guidance for future similar interactions. This accident occurred after months of care, carried out by numerous individuals in different roles, with a number of factual developments along the way. Any decision about the constitutionality of that care and the tragedy that occurred in May 2020 would be too factbound to offer much guidance in future cases.

CONCLUSION

For these reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted.

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