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SUPREME COURT, U.S.

Supreme Court of the United States

William Joshua Alston, Petitioner

v.

Elizabeth Lawson, et al, Respondents

No 25-6837

August 31, 2026

On Writ of Certiorari

to the

United States Court of Appeals
for the Fourth Circuit

Brief of Petitioner

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SUPREME COURT, U.S.

Questions Presented

1) A. Whether the requirements of a 42 U.S.C. § 1983 deliberate indifference to conditions of confinement claims like adequate medical care, brought by a plaintiff, who was a pretrial detainee at the time of an incident are satisfied by a showing that the state actors actions or failure to act in the face of an unjustifiably high risk of harm was "objectively unreasonable" as per the objective standard adopted in *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S.Ct. 2466, 192 L.Ed. 2d 416 (2015), and is the proper showing to prove the "objective" test, that which was adopted by the Fourth Circuit in *Short v. Hartman*, 87 F. 4th 593 (4th Cir 2023) ?

1) B. Did the Fourth Circuits Court of Appeals err in its review of the circumstances of this case, by not properly applying the "objective standard," which they adopted from *Kingsley*?

2) Whether the requirements of a 42 U.S.C. § 1983 deliberate indifference to serious medical needs claims, specifically claims of delays for non-medical reasons, brought by a plaintiff who was a pretrial detainee at the time of the incidents are satisfied by a showing that the state actor admits through Requests for Admissions, Interrogatories, Sick-Call responses, or in person as alleged in a Verified Complaint, to changing a surgeons prescribed pain medication schedule, simply to align with the facilities scheduled administration times, by requiring the plaintiff to order over-the-counter medication off commissary to supplement the

the remaining prescribed times between facilities scheduled times as a justification?

3) Whether the requirements of a 42 U.S.C. § 1983 supervisor liability claim brought by a plaintiff who was a pretrial detainee at the time of the incidents are satisfied by a showing of a state actors admitted use of a Constitutional violating policy?

4) Has the Fourth Circuits Court of Appeals holding in this case, truncated the Pro Se plaintiff's pleadings in so stark a manner from the standards mandated in the Federal Rules of Appellate Procedure, where the facts alleged in the Verified Complaint explicate the defendants, acting under the color of law, when literally construed and not liberally as required, denying and delaying access to adequate medical care, by Affirming a Motion to Dismiss.

5) Is the Fourth Circuits Court of Appeals Local Rule 40(c) unduly burdensome on Pro Se incarcerated litigants by enforcing a very strict and literal 14 day filing timeframe for Rehearing when denying application of Rule 26(a)(1)(A) and 26(c) of the Federal Rules of Appellate Procedure?

Parties to the Proceeding

Petitioner

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Pro Se Petitioner

Respondents

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Opinions and Orders below

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the judgement of the United States District Court for the District of South Carolina is unreported and reprinted in the Joint Appendix (JA) at JA #1. The court of appeals order denying the petition for Rehearing and Rehearing En Banc is unreported and reprinted at JA #1. The judgment of the district court is unreported and reprinted at JA #1.

Jurisdiction

The court of appeals entered its judgment on June 1, 2026 (JA#1) and denied Mr Alstons petition for Rehearing and Rehearing en banc on June 26, 2026 (JA #1). Jurisdiction is conferred under 28 U.S.C. § 1254 (1)

Constitutional and Statutory Provisions Involved.

The Eighth Amendment to the U.S. Constitution provides :
"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. "

U.S. Const. amend VIII

The Fourteenth Amendment to the U.S. Constitution provides in relevant part : "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any state deprive any person of life, liberty or property without the due process of law "

U.S. Const. amend XIV § 1

The statutory provision involved is 42 U.S.C. § 1983 which provides in relevant part : "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, or the District of Columbia, subjects or causes to be

subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress "

Introduction

This case presents an important question of federal law that has not been, but should be settled by this Honorable Court. The pages herein, will detail how the Fourth Circuits Court of Appeal, has adopted the objective test from *Kingsley v. Hendrickson*, in their opinion in *Short v. Hartman*, for pretrial detainees claims of deliberate indifference under the Fourteenth Amendment. However, due to the divide amongst the circuits, and the long history of applying a subjective test from *Farmer v. Brennan*, the Fourth Circuit still reviewed this case under an Eighth Amendment deliberate indifference standard.

Statement of Case

Mr Alston, on July 19, 2024, reported to Nurse Mixell at AM Medpass, that the left side of my mouth was numb and I could not open it. She asked him some questions of history, and Mr Alston informed her about his brain tumor surgery in 2018. She called Elizabeth Lawson and Dr Steve Garman on the phone, and they all immediately ruled out a stroke or brain tumor, and diagnosed him with Bells Palsy. Steroid taper and anti-biotics were ordered to start on July 20, 2024 at PM Medpass. (JA # 3 ECF 1 at 29)

During afternoon rec Mr Alston told Officer Riggins that the entire left side of his face had become numb, and she sent him to Nurse Mixell, who went ahead and started the steroid. (JA # 3 ECF 1 at 29).

On July 21, 2024 at AM Medpass, Mr Alston told Nurse Mixell that his left bicep was numb and discolored. She told him it would get worse before it gets better and to let the medicine kick in. (JA # 3 ECF 1 at 29). At approx 11:45 am Mr Alston showed Corporal Shover his arm. Corporal Shover said it didn't look good, and he would talk to medical. Corporal Shover was a lay person who recognized the obvious need for medical attention. At approx 1:30 pm Corporal Shover came back and said Nurse Mixell told him its normal to get worse, but Mr Alston was being treated and needed to wait for the medicine to kick in. Corporal Shover instructed Officer Riggins to write it in the log book. (JA # 3 ECF 1 at 29-30). Mr Alston showed Nurse

Jennifer Royster his left bicep at PM Medpass, and she said it happens with Bells Palsy. (JA #3 ECF 1 at 30). Mr Alston received no treatment for the exacerbated symptoms on July 21, 2024.

On July 22, 2024 at AM Medpass, Mr Alston showed Nurse Danielle that his entire left arm was purple and numb. She was concerned with it being purple, and he explained the progression of the numbness, and the brain tumor history. She told him there was no provider in that day, but she would add him to the provider list. (JA #3 ECF 1 at 30). At approx 3:15 pm, Mr Alston showed Officer Barfield that his hand had now turned purple, and he called medical and told Nurse Danielle, that he's not a doctor, but there was something wrong, and sent Mr Alston to medical. Upon arriving at medical Mr Alston was seen by Nurse Practitioner (NP) Jennifer Lawson, who quickly determined he needed to go to Conway Medical for a stroke workup. (JA #3 ECF 1 at 30). Mr Alston was ultimately transferred to MUSC, where he had his 2018 brain surgery, and was scheduled for an emergency brain surgery on July 31, 2024. (JA #3 ECF 1 at 30).

Mr Alston arrived back at J. Reuben Long Detention Center (JRLDC), around noon on July 31, 2024. August 1, 2024 was the first day he was under JRLDC's medical care, and only received pain medication at AM and PM Medpass. Mr Alston was given no medicine for over twelve hours despite being in excruciating pain. (JA #3 ECF 1 at 31).

Mr Alston wrote a Kiosk Correspondence (KC), to Corporal Falvo about lack of care for pain. "Ms Falvo, my first day under Mediko, they changed my meds from every 4 hours to morning and night...." (JA #3 ECF 1 at 34). On August 2, 2024 Mr Alston asked Nurse Beverly about getting more pain medicine during the day and she said NPJ. Lawson has him down for AM and PM medpass. (JA #3 ECF 1 at 31). Around midmorning, Corporal Falvo and Health Services Administrator (HSA) Elizabeth Lawson came to his cell, where B. Lawson began waving discharge paperwork around saying they were going above and beyond by giving medicine twice a day instead of as needed. Mr Alston then pulled out his duplicate copy and told E. Lawson medication was recommended every four hours for tylenol for fourteen days and every six hours for ibuprofen for seven days. She told Mr Alston to buy over the county medication off of commissary to supplement. (JA #3 ECF 1 at 31). On August 4, 2024 Mr. Alston threw up from the pain at approx 3pm. (JA #3 ECF 1 at 32). On August 5, 2024 Nurse Beverly provided nausea medication around 10:15am. His pain level was 30 out of 10. (JA #3 ECF 1 at 32 and JA #2 at 91). On August 6, 2024 Mr Alston threw up around 3:15pm. He showed Nurse Jennifer Royster, and she said there was nothing she could do, despite having medicine on the cart, and she left. (JA #3 ECF 1 at 32).

E. Lawson on August 20, 2024, responded to a KC "the orders for tylenol doses and administering times were

discussed with you. Medicine administration times are twice a day which you are well aware of, and for over the counter medications that you wish to take at times other than medication administration times can be purchased off of commissary...." (JA #3 ECF 1 at 33 and JA #2 at 93). This is an admittance of a Constitutional violation documented in Mr Alstons Verified Complaint

This Honorable Court will see that the lower courts truncated Mr Alstons pleading in so stark a manner as to amount to a rubber stamping of approval for the defendants unconstitutional actions.

Despite having identical questions as case No 25-6835 Mr Alston could not combine the two cases and still comply with the rules of this Honorable Court and he hopes this Honorable Court will forgive the repeatativeness in its review of both cases.

Argument

Question 1 Supporting Argument

Whether *Kingsley v. Hendrickson* abrogated the prior precedent and requires Courts to recognize that pretrial detainees can state a claim based on a purely objective test under the Fourteenth Amendment for prison officials' deliberate indifference to excessive risks of harm to the inmate 576, U.S. 389, 135 S. Ct. 2466, 192 L. Ed.2d 416 (2015), is the basis of the question before this Honorable Court. Before turning to *Kingsley*, one must examine the jurisprudential history leading up to the adoption of

the subjective deliberate indifference standard for pretrial detainees claims under the Fourteenth Amendment.

This Honorable Court recognized a claim for deliberate indifference to a prisoners serious medical needs in *Estelle v. Gamble* - an Eighth Amendment case, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). The *Estelle* opinion, however, did not establish a standard for evaluating those claims. Two years later, the Fourth Circuit extended *Estelle* from Eighth Amendment claims to Fifth and Fourteenth Amendment Due Process Clause claims, reasoning that "due process is at least as co-extensive as the guarantees of the Eighth Amendment." *Loe v. Armistead*, 582 F.2d 1291, 1294 (4th Cir 1978).

After a few years without clarification from this Honorable Court, courts began filling the gap and adopted an objective test for Fourteenth Amendment claims of Deliberate Indifference to serious medical needs. See *Whisenant v. Guam*, 739 F.2d 160, 164 (4th Cir 1984). The objective test was adopted from this Honorable Courts decision in *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). In *Bell*, this Honorable Court held that in evaluating the Constitutionality of conditions or restrictions of pretrial detainees... the proper inquiry is whether those conditions amount to punishment. "The Fourteenth Amendment Due Process Clause protects pretrial detainees from being punished at all. *Id.* at 535-37 and n.16, 99 S.Ct. 1861. As a result, any pretrial detention conditions that "amount to punishment" violate due process. In reading *Bell*, "to establish that a particular condition or restriction of his confinement is

constitutionally impermissible "punishment," the pretrial detainee must show either that it was (1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate nonpunitive governmental objective, in which case an intent to punish may be inferred. " *Martin v. Gentile*, 849 F.2d at 870 (4th Cir 1988) (citing *Bell*, 441 U.S. at 538-40, 99 S.Ct. 1861).

Applying *Bell*, it was held that deliberate indifference to serious medical needs violates the Fourteenth Amendment even in the subjective intent to punish "because no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need for such treatment is apparent." *Id.* at 871 (citing *Whisenant*, 739 F.2d at 164). And in *Gordon v. Kidd*, the court dispelled any doubt about whether that test required the plaintiff to show that the defendant knew of and consciously disregarded the health risk at issue. 971 F.2d 1087 (4th Cir 1992). "Stated succinctly," the key to deliberate indifference in a prison suicide case is whether the defendants knew, or reasonably should have known of the detainees suicidal tendencies. " *Id.* at 1094 (emphasis added) (quoting *Elliott v. Cheshire County*, 940 F.2d 7, 10-11 (1st Cir 1991)). See also *Hill v. Nicodemus*, 979 F.2d 987, 991-92 (4th Cir 1992).

In 1994, this Honorable Court finally adopted a test for Eighth Amendment deliberate indifference claims in *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L. Ed. 2d 811 (1994). That test is subjective: "a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless 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. *id.* at 837-38, 114 S.Ct. 1970.

The Eighth Amendment drove Farmer's reasoning and circumscribed its holding. After identifying "deliberate indifference" with recklessness, Farmer observed that there are two forms of recklessness. Criminal recklessness is subjective, regarding conscious disregard of a risk which the defendant is aware. *Id.* at 836-37, 114 S.Ct. 1970. By contrast, civil recklessness, encompassing action or failure 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, 114 S.Ct. 1970. Farmer held that Eighth Amendment deliberate indifference required criminal recklessness - the subjective form - because the Eighth Amendment restricts only cruel and unusual punishment, *id.* at 837, 114 S.Ct. 1970, and the courts precedents "mandated inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment," *id.* at 839, 114 S.Ct. 1970. Having previously "rejected a reading of the Eighth Amendment, that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions," the court concluded that only a subjective test for Eighth Amendment grounds. For deliberate indifference would respect its preexisting Eighth Amendment rules. *id.* at 839, 114 S.Ct. 1970. In sum, Farmer adopted a subjective test for Eighth Amend-

ment claims on Eighth Amendment grounds.

Nevertheless, in the years that followed, a consensus emerged among the courts of appeal, that Farmers subjective Eighth Amendment standard applied to Fourteenth Amendment claims. See e.g., *Upham v. Gallant*, 99-2224, 2000 WL 1425759, at *4 (1st Cir 2000); *Caiozzo v. Koreman*, 581 F.3d 63, 66 (2d Cir 2009); *Serafin v. City of Johnstown*, 53, F.App'x 211, 213-14 (3rd Cir 2002); *Martin v. Boweman*, No. 94-6246, 1995 WL 82444 (4th Cir 1995); *Hare v. City of Corinth*, 74 F.3d 633, 636 (5th Cir 1996); *Polk v. Parnell*, No. 96-5711, 1997 WL 778511 at *1 (6th Cir 1997); *Henderson v. Sheahan*, 196 F.3d 839, 844-45 (7th Cir 1999); *Crow v. Montgomery*, 403 F.3d 598, 601 (8th Cir 2005); *Schell v. Richards*, No 97-15743, 1997 WL 664988 at *1 (9th Cir 1997); *Dean v. Hamblin*, No. 95-2088, 1995 WL 623650 at *2 (10th Cir 1995); *Cottrell v. Caldwell*, 85 F.3d 1480, 1490 (11th Cir 1996).

The most thorough justification that can be gleaned from prior case law is that courts relied on this Honorable Courts assertion in *City of Revere v. Massachussettes General Hospital*, that protections for pretrial detainees under the Fourteenth Amendment are "at least as great as the Eighth Amendment protections available to a convicted prisoner." 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed. 2d 605 (1983). At least with respect to deliberate indifference claims, courts have consistently read this to mean that protections under the Fourteenth Amendment are the same as those under the Eighth Amendment and, consequently as the Fourth Circuit held, should be evaluated under the same standard. See e.g., *Stevens v. Holler* 68 F.4th 921, 931

(4th Cir 2023) (citing *City of Revere* for this proposition and then applying *Farmer* standard).

It is true that if a Fourteenth Amendment claimant is entitled to at least as much protection as the Eighth Amendment claimant, then whatever violates the Eighth violates the Fourteenth. But it does not follow that treatment violates the Fourteenth only if it violates the Eighth. The Fourth Circuit in *Young v. City of Mt. Rainier*, 238 F.3d 567, 575-76 (4th Cir 2001) and *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir 1999), elided the distinction between the Eighth Amendment claims of post-conviction detainees and the Fourteenth Amendment claims of pretrial detainees.

Now we turn to whether *Kingsley* abrogates the courts' prior precedent and requires the recognition that pretrial detainees can state a claim under the Fourteenth Amendment, based on a purely objective standard for prison officials' deliberate indifference to excessive risks of harm.

The Second, Fourth, Sixth, Seventh, Ninth and D.C. Circuits have all agreed that *Kingsley* has in fact abrogated the prior precedent. See *Gordon v. County of Orange*, 888 F.3d 1118, 1120, 1122-25 (9th Cir 2018); *Darnell v. Pinniero*, 849 F.3d 17, 34-35 (2d Cir 2017); *Short v. Hartman*, 87 F.4th 593 (4th Cir 2023); *Miranda v. County of Lake*, 900 F.3d 335, 351-52 (7th Cir 2018); *Browner v. Scott County*, 14 F.4th 585, 596 (6th Cir 2021); *Bah v. District of Columbia*, 2024 WL 483329 at 5 (D.C. 2024).

These six circuits have found that *Kingsley* is irreconcilable with precedent requiring pretrial detainees to meet a subjective

standard to succeed on claims under the Fourteenth Amendment for prison officials deliberate indifference to excessive risks of harm to the inmate. Kingsley refers broadly to "challenged government action" and speaks of claims under the Fourteenth Amendment generally, when coupled with its heavy reliance on *Bell v. Wolfish*, demonstrate that Kingsley's objective standard extends not just to excessive force claims; it applies equally to deliberate indifference claims. 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d. 447 (1979).

This Honorable Court's ruling in *Kingsley v. Hendrickson* upends the assumption that Fourteenth Amendment Due Process Clause claims should be treated the same as Eighth Amendment claims. In *Kingsley* this Honorable Court held that, to state a Fourteenth Amendment Due Process Clause claim for excessive use of force, a pretrial detainee need allege only that the officer used objectively unreasonable force. *Kingsley*, 576 U.S. at 396-97, 135 S.Ct. 2466. If that were all *Kingsley* did, then it would not only "be possible for us to read our [deliberate indifference] precedent harmoniously," it would be easy. *Carrera v. E.M.D. Sales*, 75 F.4th 345, 353 (4th Cir 2023). But *Kingsley* did more. It reiterated that a pretrial detainee may state a claim under the Fourteenth Amendment by satisfying Bell's objective standard. *Kingsley*, 576 U.S. at 398, 135 S.Ct. 2466. (citing *Bell*, 441 U.S. at 561, 99 S.Ct. 1861). And *Kingsley* rejected the only ground for replacing the objective Bell test for Fourteenth Amendment deliberate indifference claims with Farmers subjective Eighth Amendment test. See *id.* at 400, 135 S.Ct. 2466 (stating that because the language of the Eighth and Fourteenth Amendments differ

"the nature of the claims often differs". For those two reasons, it is "impossible to reconcile" *Kingsley* with the subjective deliberate indifference test for Fourteenth Amendment claims. *Carrera*, 75 F.4th at 352.

Kingsley is clear: The Fourteenth Amendment Due Process Clause protects pretrial detainees from "governmental action" or that is "excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398, 135 S.Ct. 2466 (quoting *Bell*, 441 U.S. at 561, 99 S.Ct. 1861) (external quotation marks omitted). That test is "solely an objective one" *id.* at 397, 135 S.Ct. 2466. As *Kingsley* observed, *Bell* applied that "objective standard" to a challenge to "a variety of prison conditions, including a prison's practice of double bunking"—not just to excessive force claims. *id.* "In doing so, [Bell] did not consider the prison officials' subjective beliefs about the policy," *id.* And, notably, *Kingsley* itself likewise speaks broadly of "challenged governmental action," as opposed to only the government's use of excessive force. *id.* at 398, 135 S.Ct. 2466. Of course, a showing of subjective intent can still help a pretrial detainee state a claim for action that "amounts to punishment" because "'punishment' can amount of actions taken with 'expressed intent to punish'" *id.* (quoting *Bell*, 441 U.S. at 538, 99 S.Ct. 1861). But such a showing is not necessary.

The subjective deliberate indifference test for pretrial detainees' Fourteenth Amendment claims is irreconcilable with the *Kingsley*-*Bell* objective test. Under *Kingsley*, "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 is excessive in relation to that purpose. "id. Under the subjective test, however, a pretrial detainee must also show that the defendant "knew of and disregarded a substantial risk to the inmates health or safety." *Stevens v. Holler*, 68 F.4th, 921, 931 (4th Cir 2023). The showing sufficient to satisfy Kingsley's objective test is necessary, but insufficient to satisfy the subjective test. It is "impossible to reconcile" post-Farmer cases with Kingsley. *Carrera*, 75 F.4th at 352

Further, Kingsley repudiated the reasoning in adopting the subjective test for deliberate indifference claims in the first place. That precedent extended Farmers Eighth Amendment test to Fourteenth Amendment claims by dismissing the distinction between the two Amendments as a distinction without a difference. See *Grayson*, 195 F.3d at 695; *Young*, 238 F.3d at 575-76. Kingsley commands the opposite. "The language of the two Clauses differs, and the nature of the claims often differs" *Kingsley*, 576 U.S. at 400, 135 S.Ct. 2466. Specifically, Kingsley directs us to be more solicitous of the Fourteenth Amendment claims of a pretrial detainee than the Eighth Amendment claims of a post-conviction detainee, for "pretrial detainees (unlike convicted prisoners) cannot be punished at all." *id.* In fact, when the defendant officials in *Kingsley* argued that Eighth Amendment case law supplies the Fourteenth Amendment standard, Kingsley rejected the maneuver out of hand for failing to respect the distinctions between the amendments. *id.* at 400-01, 135 S.Ct. 2466. Because "there is no need here, as there might be in an Eighth Amendment case, to determine when punishment is constitutional," the heightened, subjective Eighth Amendment deliberate indifference standard does not

extend to Fourteenth Amendment cases. *id.* For a Fourteenth Amendment claim, it is enough that the challenged action is not rationally related to a legitimate nonpunitive purpose or is excessive in relation to that purpose. *id.* at 398, 135 S.Ct. 2466.

The other half of the circuits have remained firm, that *Kingsley*, was strictly an excessive force case, and denied its application to other types of Constitutional claims. See *Estate of Sacco v. Hillsborough County House of Corrections*, 561 F.Supp. 3d, 71, 81 (1st Cir 2021). "Neither the Supreme Court nor the First Circuit Court of Appeals, has extended *Kingsley's* holdings to other contexts."; *Cyr v. Schuylkill County*, 2025 WL 2810671 at 4 (3rd Cir 2025) "analyzing Fourteenth Amendment deliberate indifference claims under the Eighth Amendment Framework."; *Cope v. Cogdill*, 3 F.4th 198, 207 (5th Cir 2021) "it did not abrogate our deliberate indifference precedent."; *Whitney v. City of St Louis Missouri*, 887 F.3d 857, 860 n. 4 (8th Cir 2018) "it was an excessive force claim, not a deliberate indifference case."; *Nam Dang by and through Vina Dang v. Sheriff, Seminole County FL*, 871 F.3d 1272, 1279 n. 2 (11th Cir 2017) "we can not and need not reach this question."

The Tenth Circuit's decision in *Strain v. Regalado* is the most thoroughly reasoned opinion declining to apply *Kingsley's* objective test to deliberate indifference claims. 977 F.3d 984 (10th Cir 2020). The Tenth Circuit brushed aside any conflict between *Kingsley* and the courts subjective test for Fourteenth Amendment deliberate indifference claims, primarily by construing *Kingsley* narrowly: as addressing only excessive force claims, "nothing more nothing less." *id.* at 991. But that reading reduces *Kingsley's* reasoned judgement to an arbitrary fiat. *Kingsley*

did not decree on a whim that we must use an objective test for excessive force claims. Kingsley found that a pretrial detainee may state a claim for excessive force on a purely objective basis because "our precedent" (above all, Bell) already recognizes that a pretrial detainee may state a due process claim against "a variety of prison conditions" by an "objective standard." Kingsley, 576 U.S. at 397-98, 135 S.Ct. 2466. The conflict between Kingsley and current case law can not be avoided by ignoring Kingsley's rationale.

The Tenth Circuit also tried to cabin Kingsley by distinguishing the purposes of excessive force claims and deliberate indifference claims. "The deliberate indifference cause of action does not relate to punishment," Strain says, "but rather safeguards a pretrial detainee's access to adequate medical care." 977 F.3d at 991. For that reason, the Tenth Circuit reasoned the Kingsley-Bell objective test for treatment that "amounts to punishment" does not govern deliberate indifference claims. *id.* While it is certainly true that the deliberate indifference cause of action does not relate to punishment, this Honorable Court recognized an Eighth Amendment claim for deliberate indifference because the "denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose" - that is because it would amount to unjust punishment. *Estelle*, 429 U.S. at 103-04, 97 S.Ct. 285.

In yet another attempt to harmonize Kingsley with a subjective test for deliberate indifference, Strain emphasizes "excessive force requires an affirmative act, while deliberate indifference often stems from inaction." Strain, 977 F.3d at 991. To the Tenth Circuit, "the Kingsley standard is not applicable to cases where a government

official fails to act 'because 'a person who unknowingly fails to act - even when such a failure is objectively unreasonable - is negligent at most." *id.* (quoting *Castro v. County of Los Angeles*, 833 F.3d 1060, 1086 (9th Cir. 2016) (en banc) (Ikuta, J., dissenting)). Yet Kingsley and Farmer expressly rejected that proposition. *Kingsley*, 576 U.S. at 395-96 135 S.Ct. 2466; *Farmer*, 511 U.S. at 837, 114 S.Ct. 1970. This Honorable Court recognized that an objective test requires civil recklessness, observing "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." *Farmer*, 511 U.S. at 836-37, 114 S.Ct. 1970 (emphasis added). Courts can not reconcile the deliberate indifference precedents with *Kingsley* by artificially limiting *Kingsley*'s objective test to claims that require "affirmative acts," *Strain*, 977 F.3d at 991, on the spurious grounds that deliberate indifference would collapse into negligence otherwise. Recklessness is a lower bar than intent, but a higher bar than negligence.

Petitioner would be a charlatan, if he failed to give credit for the body of this argument to Judge Gregory, Judge Heytons, and Judge Boardman, of Petitioner's own Fourth Circuit Court of Appeals. There comprehensive breakdown of *Kingsley*, and its irreconcilability with prior precedent is from *Short v. Hartman*, 87 F. 4th 593 602-11 (4th Cir 2023). It is well put, that petitioner would fail to bring forth a better argument to support the reasoning for need of clarification by this Honorable Court, as to the appropriate standards required for a pretrial detainee to show deliberate indifference. Clarification will unify the circuits for claims from future similarly

situated pretrial detainees.

Kingsley is irreconcilable with the prior precedent. Kingsley repudiates a subjective requirement for pretrial detainees

Fourteenth Amendment claims and permits pretrial detainees to state Fourteenth Amendment claims for deliberate indifference to a serious risk of harm on the purely objective basis that the "governmental action" they challenge is not "rationally related to a legitimate nonpunitive governmental purpose" or is "excessive in relation to that purpose." Kingsley, 576 U.S. at 398, 135 S.Ct. 2466 (quoting Bell, 441 U.S. at 561, 99 S.Ct. 1861).

In Short, the Fourth Circuit broke down the specific requirements, the circuit has established as the new precedent for Fourteenth Amendment deliberate indifference claims. *id.* 87 F.4th 593 (4th Cir 2023).

Question 1 B Support Argument

The second part of the question presented to this Honorable Court, was whether the Fourth Circuit properly applied the "objective standard" adopted from Kingsley?

Petitioner is quoting the Fourth Circuits requirements as thoroughly outlined in Short 87 F.4th 593 at 611-12:

To state a claim for deliberate indifference to a medical need, the specific type of deliberate indifference claim at issue in this case, a pretrial detainee must plead that (1) they had a medical condition or injury that posed a substantial risk of serious harm; (2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed; (3) the defendant knew or should have known (a) that the detainee had that condition, and (b) that the defendant's action or inaction posed an unjust-

ifiably high risk of harm; and (4) as a result, the detainee was harmed. We take this test to be the same test as our sister circuits have adopted. See *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir 2017); *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir 2018); *Miranda v. County of Lake*, 900 F.3d 335, 352-53 (7th Cir 2018); *Brawner v. Scott County*, 14 F.4th 585 596-97 (6th Cir 2021).

The objective test we adopt today differs from our prior subjective test in one respect only. The plaintiff no longer has to show that the defendant had actual knowledge of the detainees serious medical condition and consciously disregarded the risk that their action or failure to act would result in harm. That showing remains sufficient but is no longer necessary. Now it is sufficient that the plaintiff show that the defendant's action or inaction was, in *Kingsley's* words "objectively unreasonable," 576 U.S. at 397, 135 S.Ct. 2466; that is the plaintiff must show that the defendant should have known of that condition and that risk and acted accordingly. Or as the Supreme Court put it when describing civil recklessness in *Farmer*, it is enough that the plaintiff show that the defendant acted or failed to act "in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known," *Farmer*, 511 U.S. at 836, 114 S.Ct. 1970. We go no farther.

To be clear, it is still not enough for the plaintiff to allege that the defendant negligently or accidentally failed to do right by the detainee. See *Kingsley*, 576 U.S. at 396, 135 S.Ct. 2466; *Brawner*, 14 F.4th at 596; *Gordon*, 888 F.3d at 1125; *Miranda*, 900 F.3d at 353-54; Negligence was not enough before 68 F.4th at 931, and it is not enough now.

Dr. Garman was made aware of Mr. Alston's unilateral left-sided facial paralysis, when Nurse Mixell called Dr. Garman on his phone, on the morning of July 19, 2024. (JA # 2 at 45 #3). Nurse Mixell also informed Dr. Garman of Mr. Alston's left-sided brain tumor history from 2018. (JA # 2 at 88, and 45 #4).

Defense and the lower courts took to the decision to consider Dr. Garman's misdiagnosis of Bell's Palsy, was at worst, a case of negligence. Under a case in the Third, First, Fifth, Eighth, Tenth or Eleventh Circuits, where they have chosen not to extend Kingsley's "objective standard" to any claims beyond excessive force claims, that may be true. See *Estate of Sacco*, 561 F. Supp. 3d at 81; *Cyr*, 2025 WL 2810671 at 4; *Cope*, 3 F.4th at 207; *Whitney*, 887 F.3d at 860 n.4; *Strain*, 977 F.3d at 991; *Nam Dang*, 871 F.3d 1279 n.2. In this case however, Garman admittedly was aware that Alston had a history of brain tumors, specifically an Acoustic Neuroma, (JA #2 at 33 #3). Garman, also admits that he "did not rule out brain tumor, but it was not high on the differential...." (JA #2 at 32 #2).

When applying *Short*, Mr. Alston need only show that Garman should have known of a possible brain tumor recurrence, and acted accordingly. *id.* at 611. Garman, by admitting that he chose to "[NOT] rule out brain tumor, but it was not high on the differential...." (JA #2 at 32 #2). In that statement, Garman inadvertently admits that he was aware of the risk of it being a tumor. He did not say it was not on the differential. He says it was on the differential, "but it was not high on the differential." Mr. Alston submitted articles to underscore the

fact that Garman's action, at the very least, was "objectively unreasonable." Short at 611. "When medical information can be gleaned from the websites of highly reputable medical centers it is not imperative that it instead be presented by a testifying witness." *Rowe v. Gibson*, 798 F.3d 622, 628 (7th Cir 2013).

JA # 2 at 20 and 21 under section "3. Patient with Brain Tumor History: If a patient has a history of brain tumors, the diagnostic approach to Bells Palsy changes - Imaging (MRI with Contrast) is strongly recommended to rule out recurrence or mass effect. - diagnosis of exclusion is critical; Bells Palsy should [NOT] be presumed without imaging." JA # 2 at 23-31, are more medical articles underscoring the standard of care in diagnosing Bells Palsy in patients with a history of brain tumors like Mr. Alston, presenting with unilateral facial paralysis would clinically indicate immediate imaging or diagnostics to rule out tumor recurrence. Mr Alston has shown that through his own admittance, knew failed to rule out (act) in the face of an unjustifiably high risk of harm that was admittedly known.

Garman is attempting, and the lower courts have allowed him, to bury his head in the sand and skirt liability by claiming negligence. "Prison officials may not bury their heads in the sand to skirt liability." *Makdessi v. Fields*, 789 F.3d 126, 133 (4th Cir. 2015). "A prison official may not avoid liability if he refused to verify underlying facts that he strongly expected to exist," *id.* at 134 (quoting *Brice v. Virginia Beach Corr. Ctr.*, 58 F.3d 101, 105 (4th Cir 1995)). Farmer, explains that the Eighth Amendment doesn't allow prison officials to "take refuge in the zone

between ignorance of obvious risks and actual knowledge of risks." 511 U.S. at 842, 114 S.Ct. 1970.

In the Sixth Circuit, the court held that if the defendant had "the one very critical piece of information, "of the plaintiffs previous treatment of a serious medical condition that could produce the symptoms he was experiencing, it could "allow the court to draw the conclusion, " that the defendant consciously disregarded his needs. *Rouster v. Saginaw*, 749 F.3d 437, 449 (6th Cir 1994)

Rouster is instructive in this case because Garman was admittedly aware of Mr Alston's brain tumor history. It is however distinguishable in one regard. *Rouster* was applying a subjective test on a pretrial detainee's Fourteenth Amendment claims. *Rouster* was also pre *Kingsley*. With the Fourth Circuit's adoption of the objective standard from *Kingsley*, in *Short v. Hartman*, Mr Alston need only show that Dr Garman should have known of a brain tumor recurrence and acted accordingly. "A prisoner is not required to show that he was literally ignored by the staff to prove an Eighth Amendment violation, only that his serious medical needs were consciously disregarded. "id at 448 (quoting *Le Marbe v. Wineski*, 266 F.3d 429, 439 (6th Cir 2001)). *Short*, does not require the subjective intent as held in *Rouster*.

Furthermore, here in this case, the district court cited *Jackson v. Lightsey*, 775 F.3d 170, 178-79 (4th Cir 2014), as instructive. (JA #1 ECF 81 at 8-9). "After careful consideration, the court agrees with the magistrate judge. In *Jackson*, the Fourth Circuit addressed the district court's dismissal of a deliberate indifference claim

by a state prisoner... even a gravely mistaken diagnosis does not rise to deliberate indifference where it reflects medical judgment rather than willful disregard... "Alston v. Lawson, 2025 WL 2437751 at *4-5 (4th Cir 2025). The district court was clearly applying an objective standard, by stating "willful disregard", and they go on to state "does not satisfy the high deliberate indifference standard," *id.* (quoting Jackson, 775 F. 3d at 178; *Wester v. Jones*, 554 F. 2d 1285, 1286 (4th Cir 1977)). Jackson and Jones, are both Eighth Amendment cases brought by State inmates, and when reviewing Jackson, it states "it is not enough that an official [SHOULD] have known of a risk..." Jackson, 775 F. 3d at 178 (quoting *Farmer*, 511 U.S. at 837-39, 114 S.Ct. 1970.

The Fourth Circuit's use of Jackson in dismissing this case, is in direct conflict with its own ruling in *Short v. Hartman*, where the court adopted the objective test from *Kingsley*, "the plaintiff must show that the defendant should have known of that condition and acted accordingly." *Short*, 87 F. 4th at 611. The fact that the Fourth Circuit failed to apply the objective standard from *Kingsley*, which was adopted in *Short v. Hartman*, and instead reverted back to the long used subjective standard, by citing *Jackson v. Lightsey*, is an ironclad reason the question as to whether *Kingsley* abrogates the subjective standard requirement for pretrial detainees Fourteenth Amendment deliberate indifference claims, needs to be addressed by this Honorable Court. A defined precedent for All circuits to follow would eliminate confusion between circuits and amongst themselves. It will also require the courts to practice

more caution in their review of claims, by properly applying caselaw to the appropriate types of claims for which they review. Fourteenth Amendment claims of deliberate indifference by pretrial detainees should no longer be compared to Eighth Amendment claims of convicted prisoners, as they are "impossible to reconcile." *Carrera*, 75 F.4th at 352.

Nurse Mixell first became aware of Mr Alston's unilateral left sided facial paralysis at AM Medpass on July 19, 2024. (JA # 2 at 45 #1). Nurse Mixell, who was not capable of diagnosing or prescribing medications. (JA # 2 at 47 #9), called Dr Garman on the phone who diagnosed Mr Alston with Bells Palsy, a condition involving cranial nerves. (JA # 2 at 32-33 #2).

Nurse Mixell was first made aware of Mr Alston's left bicep becoming numb and discolored at AM Medpass on July 21, 2024. (JA # 3 ECF 1 at 29). She was notified by Corporal Shover about Mr Alston's exacerbated symptoms "between 12 and 2 pm" (JA # 2 at 47 #12). Nurse Mixell told Corporal Shover "that plaintiff was being treated, and needed to let the medicine work." (JA # 2 at 48 #13). Nurse Mixell did not make note of the symptoms or report the symptoms to someone capable of diagnosing and treating the condition. (JA # 2 at 54 #1 and 55 #2). "A prison official who serves solely as a gatekeeper for other medical personnel capable of treating the condition, may be held liable under the deliberate indifference standard if she delays or refuses to fulfill that gatekeeper role." *Mata v. Saiz*, 427 F.3d 745, 751 (10th Cir 2005). Nurse Mixell did not fulfill her gatekeeper role, which was clearly deliberate, because she called Dr Garman on his phone

on July 19, 2024 (JA #2 at 45 #1), despite Garman admitting that he is "available 24/7 via telephone... when patients need medication or treatment outside the nursing guidelines." (JA #2 at 32 #1).

Mr Alston was presenting with symptoms that Corporal Shover was concerned enough to get involved and seek medical attention. (JA #2 at 47 #12). Corporal Shover is a non-medical lay person. A serious medical need is "one that has been diagnosed by a physician as mandating treatment, or one that is so serious and obvious that even a lay person would easily recognize the necessity for a doctor's attention." Short at 612. Due to Nurse Mixell not documenting or referring Mr Alston's exacerbated symptoms to someone capable of treating them, he was delayed adequate medical care for over twenty four hours, until he was seen by NP J. Lawson around 3:30 pm on July 22, 2024 (JA #2 at 49 #19). Deliberate indifference is shown when "the delay results in some substantial harm to the patient such as marked exacerbation of the prisoners medical condition...."

Webb v. Hamidullah, 281 F. App'x 159, 166-67 (4th Cir 2008).

Here, Mr Alstons symptoms exacerbated from a numb and discolored left bicep around noon on July 21, 2024, when Corporal Shover, a lay person, got involved, to total left arm numbness and discoloration on July 22, 2024 due to Nurse Mixell failing to act in the face of an unjustifiably high risk of harm. (JA #2 at 55 #2).

In applying Kingsleys objective test that was adopted in Short v. Hartman, Mr Alston has shown how both Dr Garman's diagnosis of Bells Palsy, and Nurse Mixell's failure to act to refer Mr Alstons exacerbated symptoms were both "objectively

unreasonable." Short at 611. The lower courts failure to apply the objective test, that they have already adopted, was erroneous, and requires clarification to correct for future similarly situated pretrial detainees.

Question 2A Supporting Argument

It is clearly established throughout the circuits that denying or delaying medical care for non-medical reasons can amount to deliberate indifference. See e.g. *Watson v. Caton*, 984 F.2d 537, 540 (1st Cir 1993); *Burton v. Clinger*, 2023 WL 4399221 (3rd Cir 2023); *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 582 (3rd Cir 2003); *Hunt v. Sandhir*, 295 Fed. App'x 584, 586 (4th Cir 2008); *Ford v. Anderson County*, 102 F.4th 292 (5th Cir. 2024); *Farrow v. West*, 320 F.3d 1235, 1246 (11th Cir 2003).

The seventh circuits Court of appeals held "administrative convenience can be a permissible factor in a prison treatment decision, but the Constitution is violated when it is considered to the exclusion of reasonable medical judgment about inmate health." *Machicote v. Rothlisberger*, 969 F.3d 822, 827-28 (7th Cir 2020) (quoting *Roe v. Elyea*, 631 F.3d 843, 863 (7th Cir 2011)).

Mr Alston noted in his Verified Complaint, that on August 2, 2024 E. Lawson stated "they were going above and beyond by giving meds twice a day instead of as needed...." and Mr Alston produced his own copy of the discharge instructions, and stated "pain medications were recommended every 4 hours as needed...." (JA#3 at 31). Mr Alston was literally ~~ab~~ complaining about not getting enough pain medication, yet she felt twice a day was

going above and beyond. Earlier that morning Nurse Beverly at AM Medpass stated "[Nurse Practitioner] Jennifer [Lawson] has me down for AM and PM Medpass," (JA #3 at 31). Every four hours would be six medication administrations per day as opposed to "going above and beyond by giving meds twice a day" (JA #3 at 31).

Machicote is particularly instructive in this case, as it details the same medical scenario of altering post surgery pain medications, for non-medical reasons, the first day under the defendants care. In Machicote, the Nurse, was aware that the Dr. ordered tylenol every six hours. Despite her knowledge of the orders, the Nurse only administered the medication at the AM and PM facility medication administration times, leaving the plaintiff to suffer needless pain. The court ruled that "a reasonable jury could easily infer the Nurse changed the dosage schedule simply because she did not want to administer the medication outside of the prisons normal distribution times...." Machicote at 827.

This is distinguishable in the instant case, as a jury need not infer that E. Lawson and J. Lawson changed the medication dosage schedule so they did not need to administer medication outside the facilities normal distribution times. Mr Alston provided evidence that shows B. Lawson and J. Lawson admitted to doing exactly that. (JA #2 at 82-83). "The policy at the jail is to administer morning and evening medications (twice a day)," it goes on to justify the change by stating "patients can purchase tylenol and ibuprofen from the commissary to take during the remaining hours," (JA #2 at 50 #32). "Denying inmate pain medication as ordered by a doctor could support an inference that medical personnel recklessly ignored his pain."

Walker v. Benjamin, 293 F.3d 1030, 1040-41 (7th Cir. 2002); "deliberate indifference claim can lie where prison officials deliberately ignore the medical recommendations of a prisoners' treating physicians." Johnson v. Wright, 412 F.3d 398, 404 (2d Cir. 2005).

What makes the lower courts dismissal and affirmation even more unsettling, is the fact that Mr. Alston, in his Verified Complaint documented B. Lawson admitting to changing the surgeons orders to fit with the facilities medication administration schedule in her August 20, 2024 KC response "... medicine administration times are twice a day which you are well aware of, and for over the counter medications that you wish to take at times other than medication administration times can be purchased off commissary...." (JA #3 at 33).

The district court granted preliminary discovery in this case, and Mr Alston had received and presented the cooperating evidence in his opposition to the defendants, Motion to Dismiss (ECF 49) and again in his objection to the magistrate Judges Report and Recommendation (ECF 79). The district court ignored the facts in Mr Alstons Verified Complaint and presented cooperating evidence, and granted the defendants Motion to Dismiss. Mr Alston also submitted the evidence to the Court of Appeals who erroneously affirmed the Motion to Dismiss by failing to review the evidence and facts of the Verified Complaint. "When ruling on a defendants motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 127 S.Ct. 1955, 167 L.Ed.2d

929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99 2, L. Ed. 2d. 80 (1957))

It is also worth noting that Mr Alston did attempt to supplement and amend case no 25-6835, also before this Honorable Court, with the events that transpired as documented in the verified complaint through ECF 172, but was denied in ECF 174.

Had this case been combined, a reasonable jury could infer that Dr Garman chose his less efficacious diagnosis of Bells Palsy, instead of sending Mr Alston for diagnostic testing, for what Garman admittedly knew could be a brain tumor (JA #2 at 32 #2 and 33 #3), due to the policy to not send pretrial detainees to outside medical specialists, unless they prepay for the treatment.

Question 3 Supporting Argument

In order to succeed on a §1983 claim for supervisor liability, a plaintiff must show : 1) That the supervisor had actual or constructive knowledge that her subordinate was engaged in conduct that posed "a pervasive and unreasonable risk" of Constitutional injury to citizens like the plaintiff ; 2) that the supervisors response to that knowledge was so inadequate as to show "deliberate indifference or tacit authorization" of the alleged practices ; and 3) that there was an affirmative causal link between the inaction and the particular constitutional injury suffered by the plaintiff. *Shaw v. Stroud*, 13 F. 3d 791, 799 (4th Cir 1994).

As to the first element "establishing a pervasive and unreasonable "risk of harm requires evidence that the conduct is widespread, or at least has been used on several different

occassions and the conduct engaged in by the subordinate poses an unreasonable risk of harm of Constitutional injury. "id. Here Mr Alston can show through B. Lawson, a "jail policy" which makes it widespread. "The policy at the jail is to administer morning and evening medications (twice a day). Patients can purchase tylenol and ibuprofen from the commissary to take during the remaining hours...." (JA # 2 at 50 # 32). B. Lawson, who is the Health Services Administrator (HSA) (JA # 2 at 84 # 2), admits to a widespread policy that she has implicated herself as having the knowledge of.

As to the second element, "plaintiff may establish deliberate indifference by demonstrating a supervisors continued inaction in the faces of documented widespread abuses. "id. Here, it is B. Lawsons action, of admitting the "policy at the jail", as well as her admitted involvement in the changing of Mr. Alstons post-brain surgery prescribed medications simply to align with the facilities regular administration times (JA # 2 at 82-83), that proves her inaction. In a Request for Admissions, Mr Alston asked B. Lawson and J. Lawson if they "changed plaintiffs pain medication to BTD so it was administered at JRL's medication administration times?" (JA # 2 at 59 # 34). The defendants response confirms their Constitutional violation:

"... Jennifer Lawson, NP, made this change...."
(JA # 2 at 51 # 34).

Dr. Garman, who is the medical director (JA # 2 at 32 # 1), when considering the claims of an unconstitutional policy of prepayment for outside medical care in case no 25-6835,

could also be held to supervisor liability by his own use of the unconstitutional policy, because any reasonable jury could infer that Dr Garmans made the less efficacious diagnosis of Bells Palsy, due to jails policy of requiring inmates or detainees to be financially responsible for all outside care.

Question 4 Supporting Argument

Upon review of Mr Alstons claims, it will show without question that he did in fact make a showing for which relief can be granted. Federal Rules of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Specific facts are not necessary; the statement need only "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99 2, L.Ed.2d. 80 (1957)). In addition, "when ruling on a defendants motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." *Bell Atlantic Corp.*, *Supra* at 555-556, 127 S.Ct. 1955 (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 n.1, 122 S.Ct. 992, 152 L.Ed.2d. 1 (2002); *Nietzke v. Williams*, 490 U.S. 319, 327 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)).

The Court of Appeals departure from the liberal pleading standards set forth by Fed. R. C. Proc 8(a)(2) is even more pronounced in this particular case because Mr Alston has been proceeding since litigations outset, without counsel. A document filed pro se is "to be

liberally construed." Estelle, 429 U.S. at 106, 97 S.Ct. 285, and a "prose complaint, however unartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *ibid.* (internal quotation marks omitted). Cf. Fed. R. Civ. Proc. 8(F) "All pleadings shall be construed as to do substantial justice."

Mr Alston filed his Verified Complaint on September 3, 2024, and supplemented the Verified Complaint with additional facts on November 19, 2024. (JA #3 *passim*). Mr Alston issued written discovery requests on January 3, 2025 to the medical defendants. The defendants filed their motion to dismiss December 16, 2024.

On January 9, 2025, the court granted Mr Alstons response deadline extension to February 17, 2025. The court also ordered the medical defendants were to consider Mr Alstons Requests for Admissions served upon them. Mr Alston had already received JRLDC's medical records and KC's through discovery in his case no. 25-6835.

Mr Alston filed his response to the Motion to Dismiss, with all the medical evidence he had obtained. The evidence corroborates the details outlined in his Verified Complaint. Some examples of the details that should have precluded the court granting the motion to dismiss, without the need of medical evidence:

a) July 19, 2024, Mr Alston told Nurse Mixell that the "left side of mouth was numb and I could not open it. She asked questions about history. I told her about my brain tumor surgery in 2018. She called Elizabeth Lawson and Dr. Steve Garman and they all immediately ruled out a stroke and tumor and diagnosed me with Bells Palsy...." (JA #3 ECF 1 at 29)

b) July 21, 2024, at AM Medpass Mr Alston told Nurse Mixell "my left bicep was numb and discolored. She told me it would get worse before it gets better and to let the meds kick in. " (JA #3 at 29).

c) July 21, 2024 "Approx 11:50 am showed Corporal Shover my arm and he said that don't look good. He said he would talk to medical. " (JA #3 ECF 1 at 29)

d) July 21, 2024 "Approx 1:30 pm Cpl Shover came back and said Nurse Mixell told him its normal to get worse, but I was being treated, and needed to wait for medicine to kick in.... " (JA #3 ECF 1 at 30).

Mr Alston was dealing with a serious medical condition that was obvious enough that Cpl Shover, a lay person, recognized the need for medical attention, yet Nurse Mixell chose not to call Dr Garman and report the symptoms, that had exacerbated, like she did on July 19, 2024. (JA #3 ECF 1 at 29), thus delaying Mr Alston ready access to adequate medical care, "a serious medical need is one... that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. " Short v. Hartman, at 612

By the time Mr Alston was seen by NP J. Lawson on July 22, 2024, his "arm was numb and purple "and his "hand had now turned purple," (JA #3 ECF 1 at 30). Deliberate indifference is shown when "the delay results in some substantial harm to the patient, "such as "marked exacerbation of the prisoners medical condition.... " Webb v. Hamidullah, 281 F. App'x at 166-67. The Verified Complaint alone shows Mr Alstons facial symptoms, on July

19, 2024 (JA #3 ECF 1 at 29), exacerbated to a numb and discolored bicep on July 21, 2024 (JA #3 ECF 1 at 29, where Nurse Mixell did nothing, despite Corporal Shower, a lay person, getting involved, delaying Mr Alston adequate medical care, until he was finally seen by NP J. Lawson around 3:20 pm on July 22, 2024. (JA #3 ECF 1 at 30), By that time, Mr Alston's symptoms exacerbated to his arm and hand being numb and discolored. Events a-d alone, outline a claim for which relief could be granted, and should have precluded a Motion to Dismiss.

e) August 1, 2024, Mr Alston filed a KC "Ms Falvo, my first day under Mediko and they changed my meds from every 4 hours to morning and night....." (JA #3 ECF 1 at 34).

f) August 2, 2024 B. Lawson was "saying they were going above and beyond by giving meds twice a day instead of as needed" and in response Mr Alston stated "pain medications were recommended every 4 hours as needed for tylenol for 14 days....." (JA #3 ECF 1 at 31)

g) August 20, 2024 B. Lawson responded to a KC "The orders for tylenol doses and administering times were discussed with you. Medicine administration times are twice a day which you are well aware of, and for over the counter medications that you wish to take at times other than medication administration times can be purchased off of commissary....." (JA #3 ECF 1 at 33).

This KC which is documented in the Verified Complaint is an admittance of changing Mr Alston's pain medication simply to align with the facilities administration times, not out of

medical judgement. "Deliberate Indifference claim can lie where prison officials deliberately ignore the medical recommendations of a prisoner's treating physicians." *Johnson v. Wright*, 412 F.3d 398, 404 (2d Cir 2005); "Administrative convenience can be a permissible factor in a treatment decision, but the Constitution is violated when it is considered to the exclusion of reasonable medical judgement about inmate health." *Machicote v. Roethlisberger* 969 F.3d 822, 827-28 (7th Cir 2020).

Mr Alston's Verified Complaint did not need any of the submitted evidence, to corroborate his claims, in order for him to make a showing for which relief can be granted. When the Verified Complaint is literally construed, not liberally as required, Mr Alston has presented multiple Constitutional claims for which relief may be granted. The district court failed to construe the Verified Complaint properly and denied Mr Alston substantial justice. "In considering a motion to dismiss, [the courts] accept the complainant's well-pleaded allegations as true and views the complaint in the light most favorable to the non-moving party." *Alston v. Lawson*, 2025 WL 2437751 at *3 (4th Cir 2025) (quoting *Stansbury v. McDonalds Corp.*, 36 F. App'x 98, 98-99 (4th Cir 2002)).

Question 5 Supporting Argument

After extensive research, Mr Alston has not found much information or caselaw to properly support this question. The closest information can be gleaned from this Honorable Courts ruling in *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988). *Houston* laid the framework for the prisoners mailbox rule. In *Houston*,

it was held, "the lack of control of pro se prisoners over delays extends much further than that of the typical civil litigant: pro se prisoners have no control over delays between the prison authorities receipt of the notice and its filing, and there lack of freedom bars them from delivering the notice to the court clerk personally." *id.* at 273-74. So would it not be suffice to say the same of incoming mail to prisoners?

Here in the instant case, The Fourth Circuits Court of Appeals decided on this case June 1, 2026 (JA#1). Local Rule 40(c) of the Fed. R. App. Proc. for the Fourth Circuit states "The court strictly enforces the time limits of filing petitions for rehearing and petitions for rehearing en banc... 14 days after the entry of judgement..." Mr Alston did not receive the court of appeals decision until Friday June 5, 2026. Pro se prisoners do not have access to electronic filings, at least not in South Carolina, and have no control of mail arriving to a jail or prison, versus when they are actually given the mail. Here at Perry Correctional, they send Orders to Report to mail room the next business day after receiving mail at the facility. Inmates are also only allotted one time per day to deposit outgoing legal mail.

The strict requirement of 14 days required Mr Alston to draft his petition for rehearing and rehearing en banc in six days, so that he could get up and deposit in the mailroom at nine AM on Friday June 12, 2026. Without allowing inmates to rely on Fed. R. App. Proc. Rule 26(a)(1)(A), which is the exclusion of the day of the event that triggers the period, Mr Alston was required, according to the clerks office, to have his petition submitted no later than June

14, 2026, which was a Sunday. Pro Se inmates are also not allowed to rely on Rule 26(c), which is where the undue burden arises. Rule 26(c) extends time for filing by three days, when the paper is not served electronically on the party or delivered to the party on the date stated in the proof of services. This drastically reduces the amount of time pro se inmates are afforded to file a petition for rehearing. The Fourth Circuit is not the only circuit with a strict time to file rule, however they are the ONLY circuit with a 14 day time frame without allowing the application of Federal Rules of Appellate Procedure 26.

Regrettably Mr Alston does not have any further argument on this question beyond his simple logic, and seeks this Honorable Courts opinion.

Conclusion

When the courts summarily close their doors to valid prisoners claims of violations of their paramount Federal Constitutional rights, involving extreme maltreatment and procedural unfairness, a climate is created in which horrendous abuses are permitted and encouraged to flourish in the nations penal institutions, with calamitous results for the rehabilitation process. We do not suggest that the federal courts should be prime movers in the growing prison reform movement. However, when prisoners are subjected to inhumane treatment, and are denied fundamental procedural safeguards, which deprivations are not justified by the necessities of prison discipline and security, and which infringe up constitutionally protected liberties, then the courts must

exercise their remedial jurisdiction, clearly conferred by Congress to establish a due process minimum level of human dignity and procedural fairness, below which the states may not go.

For the foregoing reasons, the judgments below should be reversed, and the case remanded to the district court for further proceedings, and certiorari should be granted for this case.

August 31, 2026

Respectfully Submitted



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Petitioner Pro Se

I hereby declare under the penalty of perjury, the information herein is true and correct to my knowledge and experience.

Executed at Perry Correctional on August 31, 2026

