No. 23-1204

IN THE

Supreme Court of the United States

DANIEL KINSINGER,

Petitioner,

v.

SHERELLE THOMAS, ADMINISTRATOR OF THE ESTATE OF TERELLE THOMAS, *et al.*,

Respondents.

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

BRIEF OF THE NATIONAL FRATERNAL ORDER OF POLICE AS *AMICUS CURIAE* SUPPORTING PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

The sociologist Egon Bittner once described the role of police as handling "something that ought not to be happening and about which someone had better do something now!" Egon Bittner, *Aspects of Police Work* (Boston: Northeastern University Press, 1990). Over time, police officers have assumed primary responsibility for many noncriminal societal challenges. People have come to rely upon the police as the one agency to address such problems, including homelessness, mental illness, and drug addiction. Officers are often called to intervene in domestic disputes and assist individuals experiencing a mental health crisis. As the scope of police responsibilities has expanded, officers have evolved into community problem solvers with the ability to use their unique authorities to augment and enhance the work of other service providers. Police officers carrying naloxone to prevent overdoses and assisting in getting individuals experiencing drug addiction into treatment are examples of this problem-solving approach. Police Executive Research Forum, *Policing on the Front Lines of the Opioid Crisis* 1 (2021), https://www.policeforum.org/assets/PolicingOpioidCrisis.pdf.

In 2019, U.S. police officers had 61.5 million citizen contacts (Harrell, E. & Davis, E., *Contacts between police and the public*, U.S. Dep't of Justice 3 (December 2020),

1. In accordance with Rule 37.6, the Office of General Counsel to the National Fraternal Order of Police authored this Brief in its entirety. There are no other entities which made monetary contributions to the preparation or submission of this Brief. Additionally, in accordance with Rule 37.2, the counsel of record received notice on May 23, 2024, of the FOP's, as *amicus curiae,* notice of its intent to file its Amicus Brief.

https://bjs.ojp.gov/content/pub/pdf/cbpp18st.pdf and made 1.63 million arrests for drug-related offenses. Federal Bureau of Investigation, *Crime in the United States 2019* (2020), https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-29/table-29.xls. These numbers demonstrate the regularity of police-citizen encounters in the United States, and that they often involve drug-related issues. The ongoing opioid epidemic experienced across the country means that officers increasingly interact with individuals struggling with substance abuse disorders. Balancing the efforts to enforce drug laws so that less opioids and amphetamines make it onto the streets with the desire to help people living with a drug addiction is a monumental task that we ask law enforcement to perform on a daily basis. In return, police officers want clarity on the rules and standards by which departments and courts will assess their actions.

The Third Circuit's decision does not provide that clarity. In fact, it does the opposite. Without prior notice or a single precedent to support its ruling, the Third Circuit told Officer Kinsinger and the other officers on scene that night that not taking Terelle Thomas to the hospital violated his constitutional rights. The lower court effectively prescribed that Officer Kinsinger and his fellow officers have the 20/20 vision of hindsight.

The National Fraternal Order of Police ("FOP") is the world's largest organization of sworn law enforcement officers, with more than 361,000 members in more than 2,100 lodges across the United States. The FOP is the voice of those who dedicate their lives to protecting and serving our communities, representing law enforcement personnel at every level of crime prevention and public safety nationwide. The FOP offers its service as *amicus*

curiae when important police and public safety interests are at stake, as in this case. It is with these concerns and interests in mind that the voice of law enforcement respectfully requests to be heard.

SUMMARY OF ARGUMENT

Officer Kinsinger's actions on December 14, 2019, should be protected under the doctrine of qualified immunity. The defense is designed to shield all government officials but the "plainly incompetent" from personal liability and unnecessary litigation. The Third Circuit's decision to deny qualified immunity in this case contradicts established Supreme Court precedent and imposes unreasonable expectations on law enforcement officers, which could have significant adverse effects on police operations and public safety. The following is a summary of the National FOP's support for Officer Kinsinger's petition for writ of certiorari and why this Court should summarily reverse the Third Circuit's ruling.

First, the Third Circuit's ruling directly conflicts with the Supreme Court's decisions in *Hope v. Pelzer*, *Taylor v. Riojas*, and *McCoy v. Alamu*. These cases established that qualified immunity does not protect actions that are clearly beyond the bounds of reasonable conduct and plainly violate constitutional rights. The Third Circuit ignored precedent when it found that the duty to render medical care in this case applied with "obvious clarity" to a situation in which officers knew an arrestee is likely experiencing an overdose. However, the circumstances before Officer Kinsinger, and the other officers on scene, do not come close to the scenarios in *Hope*, *Taylor*, and *McCoy*, such that precedent providing prior notice is not required.

Officer Kinsinger followed protocol by attempting to retrieve suspected drugs from Mr. Thomas's mouth and informing other officers of his observations. His actions were methodical and did not demonstrate the kind of indecency or unreasonableness that would strip him of qualified immunity. Therefore, the Third Circuit's ruling misapplies the standards set forth in these seminal Supreme Court decisions.

Second, the Third Circuit erroneously treats department policy violations as equivalent to constitutional violations. Supreme Court precedent clearly distinguishes between these types of violations. In *Davis v. Scherer* and subsequent cases, this Court held that an official does not lose qualified immunity merely for violating statutory or administrative provisions. The Third Circuit's decision to treat internal policy breaches as grounds for denying qualified immunity sets a dangerous precedent. It risks transforming every policy violation into a potential constitutional issue, which could lead to a floodgate of protracted and unnecessary litigation.

Third, this approach also undermines the purpose of qualified immunity by making it difficult for officers to predict legal consequences and by burdening them with the threat of constant litigation. If officers must navigate an array of internal policies and state laws to avoid personal liability, it will impede their ability to make quick, decisive actions in critical situations. This could have particularly detrimental effects during emergencies, where delays can mean the difference between life and death.

Fourth, the Third Circuit failed to individually assess the actions of each officer involved in Mr. Thomas's arrest. The Supreme Court has emphasized the importance of evaluating the reasonableness of ***each*** officer's conduct based on the specific information available to them at the time. By lumping all officers' actions together, the Third Circuit overlooked the unique circumstances and decisions the individual officers faced. Had the court examined Officer Kinsinger's actions separately, it would have found that a reasonable officer in his position would not have deemed it necessary to take Mr. Thomas to the hospital, especially given Mr. Thomas's denials of drug ingestion and lack of obvious distress.

Fifth, the Third Circuit's ruling poses significant practical challenges for law enforcement agencies. It places an unrealistic expectation on officers to have medical knowledge and training that exceeds their standard first-aid capabilities. The ruling effectively mandates that officers take any suspect who might have ingested drugs to the hospital, regardless of the circumstances, to avoid liability. This is neither feasible nor practical for many departments, particularly those smaller jurisdictions with limited resources.

Sixth, the decision exacerbates the already heavy burdens on police officers who are managing multiple roles during the opioid crisis plaguing communities across the country. Officers are not only tasked with law enforcement but also with emergency response and public safety duties. Adding extensive medical responsibilities to their roles, without adequate training or resources, is untenable and could lead to worse outcomes for both officers and the communities they serve.

Lastly, allowing for personal liability of all officers involved in an arrest, as the Third Circuit's ruling suggests, undermines the protective intent of qualified immunity. It exposes officers to the burdens of discovery, depositions, and potential trials, which can have severe personal and professional consequences. This not only impacts their ability to perform their duties effectively but also discourages individuals from pursuing careers in law enforcement at a time when recruitment and retention is at an all-time low.

In conclusion, the Third Circuit's decision should be reversed to preserve the doctrine of qualified immunity and support law enforcement officers in their crucial, yet challenging, roles. The ruling misapplies Supreme Court precedent, imposes unrealistic expectations on officers, and risks significant negative impacts on daily police operations and public safety moving forward.

ARGUMENT

I. Officer Kinsinger's actions do not meet the standard set by this Court in *Hope v. Pelzer*, and reaffirmed in *Taylor v. Riojas*, such that the law is clearly established.

At the time of the arrest on December 14, 2019, neither this Court nor the Third Circuit had clearly established that an arrestee whom officers believe to have ingested drugs, but does not appear to require emergency medical care, must be taken to a hospital instead of a nearby prison with onsite medical staff. Yet the majority for the Third Circuit held that it would be obvious to every reasonable police officer that the decedent, Terrelle Thomas ("Mr.

Thomas"), should have been taken to a hospital. This case is another example of a lower court misconstruing clear Supreme Court direction on granting qualified immunity in cases where it is uncertain that "every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 577 U.S. 7, 11 (2015).

A. The Third Circuit ignored this Court's holdings in *Hope*, *Taylor*, and *McCoy*.

Qualified immunity protects all but "the plainly incompetent." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). The law enforcement community recognizes that there are circumstances where it is so obvious that an officer's actions violate an individual's rights, that controlling authority or a case-on-point is not required. In those situations, an officer does not need prior notice to know that their conduct is wrong. If the officer's actions are plainly incompetent, they are not afforded the protections of qualified immunity, nor should they be. This Court has identified examples of what that might look like.

In *Hope v. Pelzer*, this Court noted that "Hope was treated in a way antithetical to human dignity -- he was hitched to a post for an extended period of time in a position that was painful, and under circumstances that were both degrading and dangerous. This wanton treatment was not done of necessity, but as punishment for prior conduct." *Hope v. Pelzer*, 536 U.S. 730, 745 (2002) ("The obvious cruelty inherent in this practice should have provided respondents with some notice that their alleged conduct violated Hope's constitutional protection against cruel and unusual punishment."). In *Taylor v. Riojas*, this Court held that the Fifth Circuit erred in granting

the correctional officers qualified immunity where "no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for an extended period of time." *Taylor v. Riojas*, 141 S.Ct. 52, 54 (2020) (Taylor alleged that, for six full days, correctional officers confined him in a pair of shockingly unsanitary cells, covered nearly floor to ceiling in massive amounts of feces).

In *McCoy v. Alamu*, this Court again vacated an award of qualified immunity by the Fifth Circuit in light of its decision in *Taylor*. *McCoy v. Alamu*, 141 S.Ct. 1364 (2021). There, a Texas prisoner alleged that a correctional officer sprayed him in the face with a chemical agent without provocation. *McCoy v. Alamu*, 950 F.3d 226, 228 (5th Cir. 2020). Thus, law enforcement officers know that in instances where an officer acts so outside the bounds of reasonableness and decency, they will not enjoy the protections of qualified immunity. Here, however, Officer Kinsinger's actions on December 14, 2019, were not plainly incompetent, indecent, or so outside the bounds of reasonableness that prior notice that his actions violate an individual's constitutional rights is unnecessary.

Robust qualified immunity is essential to police officers and the public they are sworn to protect. It gives them breathing room to make quick decisions in dangerous and sometimes life-threatening circumstances. Cases like *Hope*, *Taylor*, and *McCoy* exemplify scenarios where no officer should be afforded the qualified immunity defense. This case is not one of the scenarios. As Judge Phipps noted in his dissent, the Third Circuit majority does not say that the officers' actions were obviously cruel toward

Mr. Thomas such that "the extraordinary circumstances exception" to the clearly established prong of the qualified immunity analysis can be appropriately applied. And note the words this Court has used to describe officer conduct that would put them on notice that their conduct is outside the bounds of what is constitutionally permissible—antithetical to human dignity, obvious cruelty, deplorably unsanitary. You will not find similar words to describe the actions of Officer Kinsinger, nor any officer that interacted with Mr. Thomas.

Here, at the instruction of another officer, Officer Kinsinger detained Mr. Thomas. That officer told Officer Kinsinger that he thought Mr. Thomas was concealing something in his mouth. Officer Kinsinger yelled at Mr. Thomas to spit out the items inside of his mouth. Mr. Thomas spit out a white liquid. As other officers arrived on scene, Officer Kinsinger advised that he thought Mr. Thomas had ingested crack cocaine due to a white powdery substance around Mr. Thomas' mouth, but Mr. Thomas denied swallowing any drugs. Officer Kinsinger unzipped Mr. Thomas's hoodie and small crack cocaine rocks fell out of Mr. Thomas's shirt. That is the extent of Officer Kinsinger's actions in this matter. His actions do not demonstrate plain incompetence. His actions were not indecent. Officer Kinsinger was not obviously cruel. Thus, this is not a case like *Hope*, *Taylor*, and *McCoy.* Because there is no precedent to support the proposition that the law was clearly established at the time of Officer Kinsinger's actions, the Third Circuit must be summarily reversed.

B. The existence of a department policy or state law does not clearly establish the law for purposes of a constitutional violation, nor does conduct that violates a department policy or statute equate to a constitutional violation.

"Officials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision." *Davis v. Scherer*, 468 U.S. 183, 194 (1984); *see also Elder v. Holloway*, 510 U.S. 510, 515 (1994) ("The Court held in *Davis* that an official's clear violation of a state administrative regulation does not allow a § 1983 plaintiff to overcome the official's qualified immunity."); *Case v. Kitsap Cty. Sheriff's Dep't*, 249 F.3d 921, 929 (9th Cir. 2001) ("Whether the deputies violated a state law or an internal departmental policy is not the focus of our inquiry."); *see also Wilson v. Meeks*, 52 F.3d 1547, 1554 (10th Cir. 1995) (finding qualified immunity; "Violation of a police departmental regulation is insufficient for liability under section 1983."); *Gagne v. City of Galveston*, 805 F.2d 558, 560 (5th Cir. 1986) ("Allegations about the breach of a statute or regulation are simply irrelevant to the question of an official's eligibility for qualified immunity in a suit over the deprivation of a constitutional right."); *Backlund v. Barnhart*, 778 F.2d 1386, 1390 n.5 (9th Cir. 1985) (concluding that any state violation of its own policy is "irrelevant" to the question of whether state officials are entitled to qualified immunity).

The Third Circuit's decision represents a further departure from this Court's existing qualified immunity framework and continues a dangerous precedent that some circuits are adopting. *See, e.g., Irish v. Fowler*, 979 F.3d

65, 77 (1st Cir. 2020) ("A defendant's adherence to proper police procedure bears on all prongs of the qualified immunity analysis."); *Stamps v. Town of Framingham*, 813 F.3d 27, 32 n.4, 42 (1st Cir. 2016) (A lack of compliance with state law or procedure does not, in and of itself, establish a constitutional violation, but when an officer disregards police procedure, it bolsters the plaintiff's argument both that an officer's conduct "shocks the conscience" and that "a reasonable officer in [the officer's] circumstances would have believed that his conduct violated the Constitution."). If that proposition is to become the law across the country, this *amicus curiae* must call attention to at least three unforeseen consequences.

First, if the issue of whether an officer enjoys qualified immunity depends on the interpretation of a department policy, judges will be unable to resolve that issue even on summary judgment. Meaning, every case will have to go to trial. This defeats the purpose of the qualified immunity doctrine and does not promote judicial economy. The qualified immunity doctrine recognizes that officials can act without fear of harassing litigation only if they can reasonably anticipate when their conduct may give rise to liability for damages and only if unjustified lawsuits are quickly terminated. Moreover, this will not only impact police officers, but all government officials that are entitled to qualified immunity. For example, a teacher's alleged violation of district code may support a student's argument that their constitutional rights were violated under the new Third Circuit's rule.

Second, the Third Circuit's rule would grant federal judges significant discretion to extract provisions from various statutory and administrative codes that they

deem sufficiently clear or important to warrant denial of qualified immunity. It will become exceedingly difficult, not only for police officers to anticipate the possible legal consequences of their conduct, but also for trial courts to decide even frivolous lawsuits without protracted litigation. Once again, this principle is applicable to not just police officers, but teachers, firefighters, city officials, and school administrators.

Finally, it is not sound policy to demand official compliance with statute, regulation, or even department policy on fear of money damages. Law enforcement officers are asked to make close decisions in dangerous, changing environments, in the exercise of the broad authority that we have delegated to them in the name of public safety. They are subject to a plethora of rules that are often voluminous, complex, ambiguous, contradictor, and in flux. In these circumstances, we do not want officers to err on the side of caution because waiting to act might mean the loss of innocent lives.

II. A reasonable law enforcement officer in Officer Kinsinger's position on the date of the encounter would not have taken Mr. Thomas to the hospital.

As a preliminary matter, at least six (6) police officers, to varying degrees, came into contact with Mr. Thomas on the night of his arrest. The Third Circuit failed to analyze the conduct of each individual officer separately for purposes of the qualified immunity defense. Each officer is entitled to have the court determine the reasonableness of their actions based on the circumstances and information known to that individual officer at the time. *Grant v. City of Pittsburgh*, 98 F.3d 116, 122 (3d Cir.

1996). Instead, the Third Circuit mentioned each officer individually, but conducted a group analysis of the actions of all officers at the scene. A proper qualified immunity analysis requires more. The majority's approach fails to appreciate the different circumstances of each officer (i.e., time of arrival, amount of interaction with the arrestee, information known to the officers at the time, information learned while on the scene). It is also inconsistent with its own precedent.

The FOP is particularly troubled by the lower court's willingness to treat all officers on scene the same for that is not the reality in matters involving multiple officers. Each officer will have a different job duty and interaction while on scene. One officer might be securing the perimeter while another officer is talking to witnesses. At the same time, an officer will be responsible for detaining any suspects while a different officer writes up a report. If every officer's actions are not analyzed independently for purposes of qualified immunity, when one officer violates a department policy or uses excessive force, every officer on scene will be subject to liability.

Had the Third Circuit assessed Officer Kinsinger's actions individually, it would have concluded that a reasonable law enforcement officer in Officer Kinsinger's position at the time of the encounter with Mr. Thomas would not have taken Mr. Thomas to the hospital. This Court has equated deliberate indifference with "criminal recklessness." *Farmer v. Brennan*, 511 U.S. 825, 837(1994). That is, a defendant must know of and disregard a substantial risk of serious harm. *Id. The inquiry is subjective:* "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. It is* insufficient for a plaintiff to allege that there existed a danger that an officer should have been aware of. *Id.* at 838. Deliberate indifference is something more than negligence. *Id.* at 835. *Also,* "prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted." *Id.* at 844.

The law in other circuits support Officer Kinsinger's actions. For example, in *Dillard v. Florida Dep't of Juvenile Justice*, while in the sheriff's custody, an arrestee experienced seizures and was rushed to a nearby hospital. The deputy, at the time he was told about the arrestee's shaking and sweating, only knew that the arrestee had used a small amount of cocaine nearly nine hours before and had been acting normal up to that point, (2) at no time did the arrestee request any medical assistance from anyone at the juvenile center, and (3) once the arrestee began having seizures and the risk of serious harm became obvious, the deputy and others responded by contacting emergency medical services and providing care to him. *Dillard v. Florida Dep't of Juvenile Justice*, 427 Fed.Appx. 809, 811 (11th Cir. 2011). Thus, the court found that the deputy did not deliberately ignore the health risks to the arrestee. *Id.* at 812; *see also Burnette v. Taylor*, 533 F.3d 1325, 1333 (11th Cir. 2008) ("The Constitution does not require an arresting police officer or jail official to seek medical attention for every arrestee or inmate who appears to be affected by drugs or alcohol.").

Likewise, in *Weaver v. Shadoan*, officers arrested an individual after an investigatory stop and transported

him to jail. The officers did not see, or otherwise have knowledge, that the individual ingested cocaine. It was also undisputed that the arrestee repeatedly denied swallowing any drugs. When the man became ill, the officers summoned the paramedics. The officers displayed concern for the man's health. The paramedics' report showed that the man did not exhibit any symptoms of drug ingestion. Thus, the court held that the officers did not act with deliberate indifference. *Weaver v. Shadoan*, 430 F.3d 398, 400 (6th Cir. 2003); *see also Watkins v. City of Battle Creek*, 273 F.3d 682, 684 (6th Cir. 2002) (Officers observed an arrestee licking his lips, a pink foamy drool coming from his mouth, and a white speck near his mouth, but did not see him place drugs into his mouth. The officers warned him that he could die if he swallowed cocaine and offered to take him to the hospital. The arrestee denied swallowing any drugs and refused medical treatment. The court found that because the officers did not see the suspect ingest any cocaine, there was insufficient evidence to conclude that the officers knew the suspect needed medical attention for drug ingestion).

Officer Kinsinger and his fellow officers on scene showed concern for Mr. Thomas. They suspected that he had ingested drugs but had no way to confirm due to Mr. Thomas's vehement denial. The officers advised Mr. Thomas that ingesting drugs could have ill effects on his health such as death. They monitored him for signs of a drug overdose but found none. The officers knew that the jail had medical staff onsite where Mr. Thomas would be assessed. The only moment he showed any sign of potential health risk was when he was being transported to jail and told one of the officers that he was hot despite it being 46 degrees outside. Mr. Thomas was evaluated by medical

staff at the jail where he was once again asked several times if he ingested crack-cocaine and denied doing so. Jail medical staff cleared him to stay at the facility.

Officer Kinsinger took no actions that can be fairly described as deliberately indifferent toward Mr. Thomas's health and well-being. He did not ignore Mr. Thomas. He did not refuse to aid Mr. Thomas in time of medical need. Mr. Thomas displayed no signs of a health risk during his interaction with Officer Kinsinger. It was reasonable for Officer Kinsinger and the fellow officers to allow Mr. Thomas to be transported to jail where he would be medically evaluated and cleared before being put in a holding cell. The Third Circuit's rule creates a novel and unsupported path to liability in cases in which the officers' actions were totally reasonable. It must be soundly rejected.

III. The Third Circuit's precedent will have a disastrous impact on local police departments.

If the Third Circuit's ruling is affirmed there will be ripple effects across all departments throughout Pennsylvania, New Jersey, and Delaware. First, departments are not able to train all officers to accommodate this ruling. As it stands, the law in the Third Circuit states: "[W]hen an officer is aware of the oral ingestion of narcotics by an arrestee under circumstances suggesting the amount consumed was sufficiently large that it posed a substantial risk to health or a risk of death, that officer must take reasonable steps to render medical care." *Thomas v. City of Harrisburg*, 88 F.4th 275, 285 (3d Cir. 2023).. That rule creates a myriad of open questions with few clear answers.

For example, how are officers supposed to know whether a large amount or small amount of drugs was consumed? Officers will need training on what medical signs to watch for. Also, what is considered a large amount? What if an individual swallows five pills? Ten pills? Is there a threshold amount for each type of drug that is considered sufficiently large that it would pose a substantial risk to an individual's health? A medical doctor would say yes. Certain drugs can be consumed in larger quantities than others. Training will be required on what amounts are safe or dangerous. Moreover, does oral ingestion of any drug pose a substantial risk to health? Again, this is a question for someone with a medical degree. Lastly, how will an officer know if there is a risk of death? Officers will need to know the chemistry involved in all drugs—prescription and illicit—which can be consumed up to certain amounts without a risk of death versus drugs than can only be consumed in small doses before death is a risk.

The reality is that departments do not have the resources or capabilities to train all officers to comply with the standard set forth by the Third Circuit. While law enforcement officers receive basic first-aid training, the tactical medical response training needed to appropriately assess the medical needs of an individual that may or may not have ingested drugs is not available to every department. Thus, the likely result will be officers taking every suspect that might have ingested ***any*** drug at ***any*** quantity to the hospital to avoid liability.

Second, the Third Circuit's standard puts an enormous amount of medical-centered responsibility on the officers' shoulders at the scene. This is yet another burden we ask of law enforcement. Police responsibility in the time

of the opioid crisis has evolved to three separate roles: emergency response, public safety, and law enforcement. *See* Police Executive Research Forum, *Policing on the Front Lines of the Opioid Crisis* 53 (2021), https://www.policeforum.org/assets/PolicingOpioidCrisis.pdf. The task of managing these three different roles—emergency response, public safety, and law enforcement—is unique to local police agencies. While federal and state agencies have specific law enforcement roles in addressing opioids, they generally do not have emergency response or public safety responsibilities—at least not to the extent that local agencies do. Local agencies truly are on the front lines of addressing the opioid crisis, and with that comes the conflict that serving one of these roles may work against their other roles.

Finally, the ruling from the Third Circuit allows any officer involved during the course of a traffic stop, arrest, and transport to jail, to be held personally liable for failing to render medical care. Here, at least six police officers came into contact with Mr. Thomas. Each interaction was different. Not all officers had an opportunity to render medical care to Mr. Thomas. Not all officers were able to appropriately examine Mr. Thomas's medical needs. The purpose of the qualified immunity defense, in part, is to allow government officials leeway to do their jobs and to prevent frivolous cases from going forward in costly, protracted litigation. The burdens of discovery and the prospect of personal liability are real. In this matter, all six officers will be subject to written discovery, depositions, and possibly a trial. At a time when recruitment and retention of law enforcement officers is at an all-time low, decisions like this from the lower courts will only exacerbate the hiring crisis. Associated Press, *The U.S.*

Is Experiencing a Police Hiring Crisis, NBC News (Sept. 6, 2023, 8:49 AM), https://www.nbcnews.com/news/us-news/us-experiencing-police-hiring-crisis-rcna103600. Qualified immunity is not absolute immunity. It balances the public interest in holding police officers accountable for egregious, irresponsible exercise of power, against the need to allow them latitude to perform their public safety function. The doctrine is not served by the Third Circuit's decision and should be reversed.

CONCLUSION

To be effective, law enforcement officers must be allowed to enforce the law and carry out public safety functions without fear of being sued when a mistake or tragedy occurs. Officers know that there is no protection for those that knowingly and willfully violate the law. Those cases are few and far between, and where they have occurred this Court has stepped in.

Increasingly, we ask officers to perform a number of functions beyond traditional law enforcement duties including responding to domestic disturbances, people experiencing a mental health crisis, or individuals battling a drug addiction. Officers are grappling with the parameters and expectations of those interactions. Where officers are expected to follow precedent, it must be clear enough that every reasonable officer would interpret it to establish the particular rule the plaintiff seeks to apply.

It would not have been clear to every reasonable officer on December 14, 2019, that Mr. Thomas's suspected oral ingestion of drugs required transport to a hospital. There was no controlling case on this issue. Nor can Officer

Kinsinger's and the fellow responding officers' actions be fairly characterized as deliberately indifferent, inhumane, indecent, or obviously cruel. The petition for a writ of certiorari should be granted and the Third Circuit should be summarily reversed.

Respectfully submitted,

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