No. _____

IN THE

Supreme Court of the United States

OTIS CRANDEL, AS DEPENDENT ADMINISTRATOR OF, AND ON BEHALF OF BILLY WAYNE WORL, JR., EMILY GARCIA, JAMES MATTHEW GARCIA, AND JARED ANDREW GARCIA, INDIVIDUALLY, THE ESTATE OF BRENDA KAYE WORL, AND BRENDA KAY WORL'S HEIRS-AT-LAW; BILLY WAYNE WORL, JR., INDIVIDUALLY,

Petitioners,

v.

DALENA HALL AND CARI RENEA MCGOWEN,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

T. Dean Malone
Jennifer Kingaard
LAW OFFICES OF DEAN MALONE, P.C.
900 Jackson Street
Suite 730
Dallas, TX 75202

Bruce K. Thomas
LAW OFFICE OF BRUCE K. THOMAS
12900 Preston Road
Suite 590
Dallas, TX 75230

Michael Dreeben
Counsel of Record
Andrew R. Hellman
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5300
mdreeben@omm.com

Melissa C. Cassel
O'MELVENY & MYERS LLP
Two Embarcadero Center
San Francisco, CA 94111

(Additional Caption Information on Inside Cover)

OTIS CRANDEL, AS DEPENDENT ADMINISTRATOR OF, AND ON BEHALF OF BILLY WAYNE WORL, JR., EMILY GARCIA, JAMES MATTHEW GARCIA, AND JARED ANDREW GARCIA, INDIVIDUALLY, THE ESTATE OF BRENDA KAYE WORL, AND BRENDA KAY WORL'S HEIRS-AT-LAW; BILLY WAYNE WORL, JR., INDIVIDUALLY,

Petitioners,

v.

VEGAS HASTINGS AND DANIEL PIPER,

Respondents.

SHANON EDMISTON, INDIVIDUALLY; HELEN HOLMAN, AS DEPENDENT ADMINISTRATOR OF, AND ON BEHALF OF LISA WILLIAMS A/K/A LISA SCHUBERT, E.S., J.S. #1, J.S. #1; SHANON EDMISTON, THE ESTATE OF JOHN ROBERT SCHUBERT, JR., AND JOHN ROBERT SCHUBERT, JR.'S HEIRS-AT-LAW,

Petitioners,

v.

OSCAR BORREGO, SR., OSCAR E. CARRILLO, AND PETER E. MELENDEZ,

Respondents.

QUESTION PRESENTED

Whether the objective reasonableness test of *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), applies to pretrial detainees' claims about their treatment while in custody, including failure to protect from the risk of suicide.

RELATED PROCEEDINGS

Crandel v. Callahan Cnty., Tex., No. 1:21-cv-075-C (N.D. Tex.)

Crandel v. Hall, No. 22-10360 (5th Cir.)

Crandel v. Hastings, No. 22-10361 (5th Cir.)

Edmiston v. Culberson Cnty., Tex., No. 3:21-cv-00132-KC (W.D. Tex.)

Edmiston v. Borrego, No. 22-50102 (5th Cir.)

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES (continued)

Page(s)

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page(s)

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgments of the United States Court of Appeals for the Fifth Circuit in these cases.

OPINIONS BELOW

The Fifth Circuit's opinion in the consolidated appeals *Crandel v. Hall* and *Crandel v. Hastings* is reported at 75 F.4th 537 and reprinted in the Appendix to the Petition ("Pet. App.") at 1a-25a. The Fifth Circuit's opinion in *Edmiston v. Borrego* is reported at 75 F.4th 551 and reprinted at Pet. App. 26a-46a. The district court's unpublished decisions in *Crandel v. Callahan County* are reprinted at Pet. App. 47a-66a. The district court's decision in *Edmiston v. Culberson County* is reported at 580 F. Supp. 3d 411 and reprinted at Pet. App. 67a-113a.

JURISDICTION

The court of appeals entered its judgments on August 1, 2023, Pet. App. 1a and Pet. App. 26a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourteenth Amendment provides in relevant part: "No state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

INTRODUCTION

This petition presents a longstanding, entrenched, and extensive conflict over the due process standards governing claims brought by pretrial detainees, particularly in the context of failure to protect against the

risk of suicide. The nation's detention facilities face this vexing problem regularly, all too often with tragic results. This Court's intervention is needed to restore uniform and clear constitutional standards in this vital area of detention-facility conduct.

These cases illustrate the stakes:

Brenda Worl arrived at the Callahan County Jail in Texas at 11:00 p.m. after she called 911 to report that her husband threw her across their trailer. She was angry, agitated, and non-cooperative and appeared to have been drinking. When the jailer asked her whether she had ever attempted suicide, she presented her arms and yelled, "I DON'T KNOW, HAVE I?" Jail personnel left her alone in a visitation room; when they came back fourteen minutes later, she was sitting on the floor with a phone cord wrapped tightly around her neck. Worl was pronounced dead the next day.

The same scenario unfolded three months later 354 miles across Texas. John Robert Schubert, Jr. was arrested after wandering shirtless around the streets of Van Horn, telling people that someone "was trying to kill him," and asking for help. He was brought to the Culberson County Jail, where he again pleaded that someone was trying to kill him. Jail personnel left him alone; when they checked on him ten minutes later, he was half-kneeling with a white sheet mangled around his neck and tied to a shelf. EMTs pronounced him dead later than evening.

Reasonable officers would have seen the red flags. They would not have left Worl and Schubert alone, especially with phone cords and bedding. But when

Worl's and Schubert's families sued the jailers for failing to protect them from the risk of suicide, the Fifth Circuit rejected their claims. According to the Fifth Circuit, whether the officers acted reasonably did not matter; instead, plaintiffs could hold them accountable only if they could prove the officers actually *knew* that leaving Worl and Schubert alone could end in suicide. The Fifth Circuit believed that they could not, so their claims failed.

This Court should grant certiorari to review those holdings. A widely acknowledged split exists over the scope of this Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). In *Kingsley*, the Court held that pretrial detainees' claims for excessive force are measured by the officer's objective reasonableness, not subjective intent. Since then, courts have fractured over whether and how *Kingsley*'s standard applies to pretrial detainees' other claims, including failure to protect from the risk of suicide. Four circuits cabin *Kingsley* to excessive force claims, while four others apply *Kingsley* to other claims brought by pretrial detainees challenging their treatment in custody.

As Judge Readler explained in recently calling on the Court to resolve this very question, "the *Kinglsey* split is more than mature—it is having offspring." *Helphenstine v. Lewis County*, 65 F.4th 794, 801 (6th Cir. 2023) (Readler, J., respecting denial of rehearing en banc). "Disagreements abound, from whether to apply *Kingsley* to deliberate indifference claims, to the test to apply if so, to whether the same test applies in various settings." *Id.* Accordingly, he wrote, "[w]ith confusion rampant coast-to-coast, the

Supreme Court would appear to be the proper forum" to intervene, and it should grant certiorari "soon." *Id.*

The issue is profoundly important and recurring. The volume of cases on federal dockets each year concerning detainees' treatment in custody—nearly 17% of all civil appeals—confirms the frequency with which courts confront the question presented. And the answer to that question has real-world effects: American jails house more than a million people with mental illness—people who are more likely to put themselves and others in danger. Defining the constitutional standards that govern official conduct in this setting is vital for custodians, detainees, and their families nationwide.

This petition provides the ideal vehicle for review. The decisions below directly implicate the circuit split over *Kingsley*'s scope. The Fifth Circuit held that *Kingsley* does not sweep beyond excessive force claims. The panel's refusal to apply *Kingsley*'s objective-reasonableness standard was outcome-determinative in both cases, where the officials' conduct—leaving pretrial detainees showing clear signs of mental distress unsupervised in rooms with "obvious ligatures"—would go to a jury under an objective-unreasonableness standard. And in four other circuits, that is exactly what would have happened.

Review is also warranted because the decisions below are wrong. *Kingsley*'s objective-reasonableness standard is not limited to excessive-force claims. *Kingsley* based its standard on settled due process principles applicable to pretrial detainees, and it rejected importing a subjective standard from Eighth Amendment precedents applicable to convicted

prisoners. There is one due process clause in the Fourteenth Amendment, and its objective test should not vary depending on the nature of the claim—whether the conduct alleged is excessive force, inadequate medical care, inhumane sleeping conditions, or the failure to protect from the risk of suicide. The relevant factor is the status of the person in custody: pretrial detainee or sentenced prisoner. The factors that make conduct reasonable or unreasonable will vary depending on the context, but the *legal standard* will not. Reaffirming that basic point will resolve the confusion in the lower courts and provide a clear and stable framework for courts, officials, and detainees.

For all those reasons, the Court should grant certiorari and reverse the judgments below.

STATEMENT

A. Legal Framework

1. When convicted prisoners challenge their treatment in custody under the Eighth Amendment, establishing a claim "mandate[s] inquiry into a prison official's state of mind." *Wilson v. Seiter*, 501 U.S. 294, 299 (1991). That is because the Eighth Amendment bans "cruel and unusual punishment"—punishment imposed maliciously, sadistically or with deliberate indifference. *See id.* at 300 ("if a guard accidentally stepped on a prisoner's toe and broke it, this would not be punishment") (internal quotation marks and alterations omitted). When convicted prisoners claim to have received medical care so deficient as to violate the Eighth Amendment, for example, they must establish that prison officials "knew of" and "disregard[ed]" a substantial risk of harm "by failing to take

reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

2. When *pretrial* detainees challenge their treatment in custody, however, the Eighth Amendment and its textually driven legal requirements do not apply. Pretrial detainees have not been convicted and therefore cannot be punished at all, much less maliciously and sadistically. *See Bell v. Wolfish*, 441 U.S. 520, 535-37 (1979) ("a detainee may not be punished prior to an adjudication of guilt"). Accordingly, the Fourteenth Amendment protects pretrial detainees from all punishment, not just the cruel and unusual kind.

3. Following this logic, the Supreme Court addressed what state of mind a pretrial detainee must establish to prove a claim of excessive force in *Kingsley*. The Court first held that such a case implicates "two separate state-of-mind questions." 576 U.S. at 395. The first pertains to the official's mental state "with respect to his physical acts"—the conduct that harms the plaintiff. *Id.* On that issue, the Court held that "the defendant must possess a purposeful, a knowing, or possibly a reckless state of mind." *Id.* at 396. That is because due process does not protect against *negligent* conduct. *Id.* But on the second state of mind—that is, on the issue of whether the force applied was "constitutionally speaking, 'excessive'"—*Kingsley* held that "the appropriate standard for a pretrial detainee's excessive-force claim is solely an objective one." *Id.* at 396-97. As the Court explained, "proof of intent (or motive) to punish" is not "required for a pretrial detainee to prevail on a claim that his due process rights were violated"; rather, pretrial

detainees "can prevail by providing only objective evidence that the challenged government action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Id.* at 398. "Thus, there is no need here, as there might be in an Eighth Amendment case, to determine when punishment is unconstitutional." *Id.* at 401.

4. Following *Kingsley*, the circuits have fallen into a deep and intractable conflict over whether pretrial detainees' claims about their treatment in custody—including failure to protect from the risk of suicide—should be evaluated under the Eighth Amendment's deliberate indifference standard or *Kingsley*'s objective reasonableness standard. *See infra* at 12-16.

B. Facts And District Court Proceedings

The Fifth Circuit saw the facts of these cases as follows.

1. Edmiston v. Borrego

a. On the evening of July 6, 2019, a jailer at the Culberson County Jail in Van Horn, Texas, received three calls. Pet. App. 28a. In the first, at 11:05 p.m., John Robert Schubert, Jr. asserted that "someone was trying to kill him." *Id.* In the second, at 11:09 p.m., an off-duty trooper stated that "a man was at his door saying someone was trying to kill him." *Id.* And in the third, at 11:12 p.m., someone at a local hotel said that "a man told the hotel clerk someone was trying to kill him." *Id.* Schubert, who had been wandering the streets of Van Horn, shirtless, knocking on doors, and asking strangers for help, was the subject of the second and third calls. *Id.*; ROA 19, 24.

The jailer sent the sheriff's deputy to the hotel to talk with Schubert. Pet. App. 28a-29a. Schubert appeared nervous, told the deputy that people were trying to kill him, and was unable to accurately recall the year of his birth. Pet. App. 29a. The deputy did not seek to have Schubert mentally evaluated, but instead took him to a border patrol station for identification and, upon learning that Schubert had an active arrest warrant for an alleged parole violation, arrested him and transported him to the Culberson County Jail. *Id.*

Schubert and the deputy arrived at 12:14 a.m. on July 7, and Schubert was placed in the booking area; the sheriff, who had been monitoring the events by radio, soon joined the other officers at the jail. *Id.* While Texas state law requires officers to either complete a screening form for suicide and medical, mental, and developmental impairments for a detainee or, if the form cannot be completed, place the detainee on suicide watch, the officers here did neither. Pet. App. 30a. Rather, the officers gave Schubert jail-issued clothing, escorted him to a cell, and provided him with a mattress around 1:42 a.m. *Id.* Around this time, Schubert repeated to the deputy that someone was trying to kill him. *Id.*

At 2:42 a.m., another jail employee went to check on Schubert. Pet. App. 31a. Upon arriving at his cell, she found him "half-kneeling with a white sheet mangled on his neck and tied to a top grey shelf." *Id.* Schubert was pronounced dead. *Id.*

b. Schubert's mother and estate filed suit against the officers and Culberson County, relying on the Fourteenth Amendment's Due Process Clause and 42

U.S.C. § 1983 and alleging, in part, failure to protect Schubert from suicide. *Id.* As relevant here, the officers moved to dismiss the complaint. *Id.* The district court partially denied their motions, concluding that they were not entitled to qualified immunity on the failure-to-protect claims. Pet. App. 31a-32a. Applying a subjective deliberate indifference standard, the court concluded the complaint plausibly alleged that the officers knew the risk of suicide or serious harm "was obvious" yet failed to take action to abate that risk. Pet. App. 32a.

The officers appealed to the Fifth Circuit. *Id.*

2. Crandel v. Hall

a. At 10:13 p.m. on April 2, 2019, Brenda Worl called 911 and said she had been beaten by her husband with a banjo, "knocked across the kitchen," and thrown "from one end of the[ir] trailer to the other." Pet. App. 4a; ROA 469. The jailer-dispatcher sent two officers. Worl's husband told the officers that she had a history of mental health issues. ROA 477. Although it seemed "that the incident involved conduct by both parties," "jail-capacity concerns" meant "there was only room for one of the Worls." Pet. App. 4a. The male officers arrested Brenda, notwithstanding that she had been the one who called the police for help. *Id.*

Worl and the officers arrived at the Callahan County Jail around 11:00 p.m. Pet. App. 4a-5a. While Worl waited to be booked, one of her hands slipped out of her handcuffs. But rather than securing it, a jailer-dispatcher removed the handcuffs. Pet. App. 5a. An officer and a jailer then escorted Worl to the booking

area, where Worl grew increasingly agitated and refused to answer questions, including those for the jail's "screening form for suicide and medical/mental/developmental impairments." *Id.* One jailer asked whether World "had ever attempted suicide." Worl "presented her arms" and yelled, "I don't know. Have I?" *Id.* Worl was not placed on suicide watch.

At 11:33 p.m., Worl was placed in the jail's visitation room, which contains two corded phones mounted on the wall, and left unwatched and unrestrained. Pet. App. 6a. Fourteen minutes later, two officers entered the visitation room. *Id.* Worl was sitting on the floor, nonresponsive, with a phone cord wrapped tightly around her neck. *Id.*

Worl was transported to the hospital, where she was placed on life support. *Id.* She died the next day. *Id.*

b. Worl's spouse and estate filed suit against the jailers and officers. Pet. App. 6a-7a. As relevant here, relying on due process and Section 1983, plaintiffs alleged that the officers failed to protect Worl from the risk of suicide. The district court granted summary judgment in favor of defendants. In so doing, the court concluded that "there [was] no evidence . . . to raise a genuine issue of material fact as to whether [defendants] appreciated that Worl was a suicide risk or that the phone cord would likely be an instrument of suicide" and that Worl's belligerent behavior was insufficient to make defendants subjectively aware of a substantial risk of self-harm. Pet. App. 7a.

Plaintiffs appealed to the Fifth Circuit.

C. Fifth Circuit Rulings

The court of appeals rendered contemporaneous opinions, reversing in *Edmiston* and affirming in *Crandel*. In both cases, the court first observed that it was "bound by" the circuit's "rule of orderliness" on what standard governed the failure-to-protect claims. Pet. App. 11a, 37a. Accordingly, the panel followed prior Fifth Circuit opinions applying the subjective deliberate-indifference standard in cases like this and rejected the application of the objective-unreasonableness standard adopted in *Kingsley*.

In so doing, the panel held that to satisfy the deliberate-indifference standard, plaintiffs must allege (or show, at summary judgment) that the officers had subjective knowledge of a substantial risk of serious harm and failed "to take reasonable measures to abate" the risk. Pet. App. 11a, 36a. In the panel's view, the *Edmiston* plaintiffs "fail[ed] to plausibly allege [the officers] had the requisite subjective knowledge of a substantial risk of suicide," Pet. App. 38a, and the *Crandel* plaintiffs failed "to establish genuine disputes of material fact regarding defendants' subjective knowledge of a substantial risk of suicide," Pet. App. 13a. Accordingly, the panel held that none of the failure-to-protect claims was viable. The panel in *Edmiston* thus vacated the district court's order denying the officers' motions to dismiss and in *Crandel* affirmed the district court's grant of summary judgment.

REASONS FOR GRANTING THE PETITION

The courts of appeals are deeply divided on the due process standard that governs claims brought by

pretrial detainees challenging their treatment in custody. In the wake of *Kingsley*, the circuits have divided into two camps—those applying *Kingsley*'s test of objective reasonableness to these due process claims, and those adhering to a subjective deliberate-indifference test drawing on Eighth Amendment standards for convicted prisoners. The issue has surpassing significance for officers across the nation dealing with pretrial detainees evidencing serious mental-health issues raising a suicide risk, and for the detainees themselves and their families. This case clearly and squarely presents the issue. And the decision below is wrong. This state of affairs benefits no one. This Court should grant certiorari to settle the issue, provide uniform national due process standards, and correct the errors below.

A. The Courts Of Appeals Are Intractably Divided On This Question

The courts of appeals have acknowledged that "the circuits are split" on whether *Kingsley*'s objective standard applies to pretrial detainees' failure-to-protect claims. *Strain v. Regalado*, 977 F.3d 984, 990 (10th Cir. 2020); *see Helphenstine v. Lewis County*, 60 F.4th 305, 316 (6th Cir. 2023) ("our sister circuits are all over the map on this issue"). As Judge Readler recently put it, "[w]ith signs pointing in all directions, even the most careful reader would likely find herself at a crossroads." *Helphenstine*, 65 F.4th at 801 (Readler, J., respecting denial of rehearing en banc). Until "Supreme Court intervention comes to pass, we are left to muddle on, following paths leading in any and all directions." *Id.* at 802.

1. Since *Kingsley*, "at least four circuit courts (arguably five, depending on who you ask)" hold that *Kingsley*'s logic extends to pretrial-detainee claims of inadequate care. *Helphenstine*, 65 F.4th at 795 (Readler, J., respecting denial of rehearing en banc).

a. *Second Circuit*: In *Darnell v. Pineiro*, 849 F.3d 17 (2d Cir. 2017), the court reasoned that *Kingsley* made it "plain that punishment has no place in defining the *mens rea* element of a pretrial detainee's claim under the Due Process Clause." *Id.* at 35. Accordingly, while *Kingsley* specifically concerned an excessive force claim, the Second Circuit concluded that the "same objective analysis should apply to an officer's appreciation of the risks associated with . . . a claim for deliberate indifference under the Fourteenth Amendment." *Id.* Although "*Darnell* did not specifically address medical treatment," the Second Circuit later reasoned that "the same principle applies" to claims of inadequate care. *Charles v. Orange County*, 925 F.3d 73, 87 (2d Cir. 2019).

b. *Sixth Circuit*: In *Brawner v. Scott County*, 14 F.4th 585 (6th Cir. 2021), the Sixth Circuit acknowledged its "precedent applying a subjective standard to deliberate-indifference claims by pretrial detainees," but concluded that *Kingsley* "require[d] modification of [its] caselaw." *Id.* at 596. "Given *Kingsley*'s clear delineation between claims brought by convicted prisoners under the Eighth Amendment and claims brought by pretrial detainees under the Fourteenth Amendment," the Sixth Circuit held that *Kingsley*'s objective standard governs pretrial detainees' claims of inadequate care. *Id.*

c. *Seventh Circuit*: In *Miranda v. County of Lake*, 900 F.3d 335 (7th Cir. 2018), the Seventh Circuit reasoned that "the logic the Supreme Court used in *Kingsley*" called for different analysis of Eighth Amendment claims and Fourteenth Amendment claims—not "dissection of the different types of claims that arise under the Fourteenth Amendment's Due Process Clause." *Id.* at 352. Heeding the Court's directive "that courts must pay careful attention to the different status of pretrial detainees," the Seventh Circuit held "that medical-care claims brought by pretrial detainees under the Fourteenth Amendment are subject only to the objective unreasonableness inquiry identified in *Kingsley*." *Id.*

d. *Ninth Circuit*: In *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016) (en banc), the Ninth Circuit rejected the notion that *Kingsley* reached no further than excessive force claims; the court was instead "persuaded that *Kingsley* applies, as well, to failure-to-protect claims brought by pretrial detainees against individual defendants under the Fourteenth Amendment." *Id.* at 1070. The Ninth Circuit later followed *Castro*'s reasoning to hold that *Kingsley* equally applies to and requires an objective standard for pretrial detainees' Fourteenth Amendment "claims for violations of the right to adequate medical care." *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018).

2. Four other circuits confine *Kingsley* to excessive-force claims, with most of these courts addressing the issue in cursory footnotes.

a. *Fifth Circuit*: In *Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415 (5th Cir. 2017), a

Fifth Circuit panel majority ruled, over a vigorous dissent, that it was "bound by [the court's] rule of orderliness" to apply a subjective standard to a pretrial detainee's failure-to-protect claims, because "the Fifth Circuit ha[d] continued . . . to apply a subjective standard post-*Kingsley*," albeit in cases that did not confront the *Kingsley* issue at all. *Id.* at 419 n.4. The Fifth Circuit later reiterated that position in another split decision, in which the panel majority cabined *Kingsley* to claims "alleging excessive force" and rejecting the contention that *Kingsley*'s logic reached "claims regarding medical treatment." *Cope v. Cogdill*, 3 F.4th 198, 207 n.7 (5th Cir. 2021). "Since *Kingsley* discussed a different type of constitutional claim," the *Cope* majority deemed it irrelevant to the court's "deliberate-indifference precedent." *Id.*

b. *Eighth Circuit*: In *Whitney v. City of St. Louis*, 887 F.3d 857 (8th Cir. 2018), the Eighth Circuit similarly refused to apply *Kingsley* to inadequate-care claims, dismissing the argument that *Kingsley* swept beyond the specific claim it addressed. *Id.* at 860 n.4 ("*Kingsley* does not control because it was an excessive force case, not a deliberate indifference case.").

c. *Tenth Circuit*: In *Strain v. Regalado*, 977 F.3d 984 (10th Cir. 2020), the Tenth Circuit expressly "decline[d] to extend *Kingsley* to Fourteenth Amendment deliberate indifference claims," insisting that "*Kingsley* turned on considerations unique to excessive force claims" and thus did not reach beyond them. *Id.* at 991.

d. *Eleventh Circuit*: In *Dang ex rel. Dang v. Sheriff, Seminole County*, 871 F.3d 1272 (11th Cir. 2017), the Eleventh Circuit, like the Fifth and Eighth

Circuits, rejected in a footnote an argument for applying *Kingsley*. Emphasizing that "*Kingsley* involved an excessive-force claim, not a claim of inadequate medical treatment," the court ruled that *Kingsley* did not require or even permit it to revisit its precedent on claims of inadequate care. *Id.* at 1279 n.2.

Only this Court can resolve the stark divide between the circuits on this frequently recurring issue.

B. The Question Presented Is Exceptionally Important And Recurring

"This is no small matter": pretrial detainee cases "populate every docket across the federal courts." *Helphenstine*, 65 F.4th at 801 (Readler, J., respecting denial of rehearing en banc). Since 2008, more than 76,000 "prisoner civil rights" and "prison condition" claims have reached federal appellate courts—approximately 16.8% of all civil appeals. *IDB Appeals 2008-Present*, Fed. Jud. Ctr., http://www.fjc.gov/research/idb/interactive/21/IDB-appeals-since-2008; *see also* Zhen Zeng, Bureau of Justice Statistics, NCJ 251774, Jail Inmates in 2017, at 1 (2019) (reporting that almost two-third of jail inmates were "unconvicted"). "That so many [courts] have said so much in so little time" since *Kingsley* confirms "the frequency with which these cases appear on [federal] docket[s]." *Helphenstine*, 65 F.4th at 797 (Readler, J., respecting denial of rehearing en banc).

Not only are these claims recurring and frequent, but for detainees and prison officials alike, the applicable standard is not just a "theoretical concept[] to debate"; it "govern[s] [jailers'] everyday conduct." *Id.* at 801; *see* PEW Charitable Trusts, *Jails: Inadvertent*

Health Care Providers 9 (Jan. 2018) (more than 90% of large jails have been sued for denial of medical care). Jails, officials, institutional supervisors, and pretrial detainees all need guidance on the applicable standard.

1. In recent years, studies have noted that at least 725,000 pretrial detainees are being held in jails across the United States. The Sentencing Project, *U.S. Criminal Justice Data*, http://www.sentencingproject.org/the-facts/#detail; Zhen Zeng & Todd D. Minton, *Jail Inmates in 2019*, U.S. Department of Justice, Bureau of Justice Statistics, http://www.bjs.gov/content/pub/pdf/ji19.pdf; Henry J. Steadman, et al., *Prevalence of Serious Mental Illness Among Jail Inmates*, 60 Psychiatry Servs. 761, 761 (2009). Many suffer from mental health crises. Indeed, "county jails have become the *de facto* mental health care system for large numbers of individuals in many communities." Police Executive Research Forum, *Managing Mental Illness in Jails: Sheriffs Are Finding Promising New Approaches* 5 (2018); *see* Steadman, *supra* (people in jail five times more likely than general population to suffer from serious mental illness).

2. People with mental illness are significantly more likely to put themselves and others in danger. The "grim reality," then, is that jails have high suicide rates—even higher than prisons. Martin Kaste, *The "Shock of Confinement": The Grim Reality of Suicide in Jail*, N.P.R. (July 27, 2015, 5:59 PM ET). "About 1,000 people die in American jails every year and about a third of those are suicides." *Id.* (suicide rates inside jails are "three times worse than on the

outside"). And the arrival at jail with the initial shock of confinement is a particularly dangerous interval. *See Boncher ex rel. Boncher v. Brown County*, 272 F.3d 484, 486 (7th Cir. 2001) (Posner, J.,) ("[T]he risk [of suicide] is concentrated in the early days and even hours of being placed in jail, before the inmate has had a chance to adjust to his dismal new conditions.").

3. Jails that confront these issues have a pressing need to understand the constitutional baseline of care and the scope of their obligations to pay attention to the risks to detainee health posed in confinement. Clear national standards will guide training programs and set standards for accountable behavior. And subjective standards impose needless risks on detainees. In cases like this, where the precarious mental health condition of a detainee is apparent to jailers and no objectively reasonable steps are taken to avert the risk of suicide, the result is needless, preventable tragedy. This Court's intervention to address whether the Fourteenth Amendment's Due Process Clause tolerates that result is imperative.

C. This Case Is An Ideal Vehicle To Address The Question Presented

This case is an excellent vehicle for the Court's review. The issue was preserved below; the panel squarely addressed it; and it was outcome-determinative. This petition is not the first raising the issue, but it is the first to offer the Court an ideal opportunity to finally resolve an important and recurring legal question with profound human stakes.

1. The decisions below starkly implicate the circuit split. In both cases, the Fifth Circuit expressly

refused to "apply the objective-unreasonableness standard the Court adopted in *Kingsley*," describing that standard as limited to "*claims of excessive force (not failure to protect)*." Pet. App. 11a, 36a. And in both cases, the Fifth Circuit reasoned that the "rule of orderliness" bound the court to adhere to its prior ruling that *Kingsley* "did not abrogate [this court's] deliberate-indifference precedent." Pet. App. 11a, 37a (quoting *Cope*, 3 F.4th at 207 n.7).

2. The panel's refusal to apply the *Kingsley* standard was outcome determinative here. In both cases, the panel's analysis started and ended with the subjective-intent inquiry it erroneously undertook. *See* Pet. App. 12a-13a ("Because plaintiffs . . . fail to establish genuine disputes of material fact regarding defendants' subjective knowledge of a substantial risk of suicide, whether defendants responded with deliberate indifference does not come into play."); Pet. App. 38a ("For the reasons that follow, plaintiffs fail to plausibly allege appellants had the requisite subjective knowledge of a substantial risk of suicide. Accordingly, whether they responded to that putative risk with deliberate indifference does not come into play."). And in both cases, the defendants' conduct was objectively unreasonable—at the very least, the defendants' conduct in *Crandel* raised a jury question, and the complaint in *Edmiston* alleged objectively unreasonable conduct plausibly enough to survive a motion to dismiss. Pet. App. 8a (acknowledging that defendants "plac[ed] unsupervised Worl in the visitation room containing a telephone cord, a commonly known obvious ligature"); Pet. App. 32a (describing how district "court concluded the 'risk was obvious,' based on:

Schubert's fragile psychological state; his statements regarding an unidentified assailant; and [defendants'] knowledge about the risk of jail suicides"—yet the defendants "respond[ed] by giving the detainee loose bedding, an obvious ligature").

In any event, the outcome in the Fifth Circuit plausibly would come out the opposite way under a *Kingsley*-derived objective-reasonableness standard. That is an issue for remand if this Court rejects the Fifth Circuit's legal standard.

3. Many parties on both sides of the split have sought the Court's review of this question, including in at least ten petitions in the last five Terms. But those petitions suffered from flaws not present here.

To begin, many prior petitions sought the Court's review of decisions issued before the question presented had adequately percolated through the lower courts and before the circuit split had fully crystallized. *See, e.g.*, Pet. Writ Cert., *County of Orange v. Gordon*, No. 18-337 (U.S. Sept. 12, 2018); Pet. Writ. Cert., *Cowlitz County v. Crowell*, No. 18-476 (U.S. Oct. 10, 2018); Pet. Writ. Cert., *Saunders v. Ivey*, No. 18-760 (U.S. Dec. 13, 2018). Timing issues similarly made *Grochowski v. Clayton County*, 961 F.3d 1311 (11th Cir. 2020), a poor vehicle for this issue, because that case involved conduct that occurred before *Kingsley* was decided. *Id.* at 1318 n.4 ("We decline to apply *Kingsley* because Grochowski's death occurred in 2012 and *Kingsley* was decided in 2015. We are not aware of any court that has ruled that *Kingsley* has retroactive effect. We therefore do not consider whether *Kingsley* would otherwise be applicable.").

Other petitions did not cleanly present the *Kingsley* question for this Court's review. The petitioner seeking review of the Seventh Circuit's application of *Kingsley* in *Mays v. Dart*, 974 F.3d 810 (7th Cir. 2020), for example, had not preserved the issue below. *See* Br. Opp., *Dart v. Mays*, No. 20-990, at 5-7 (U.S. June 11, 2021) (detailing how the petitioner had "affirmatively embraced" *Kingsley* in the Seventh Circuit and "argu[ed] only that the district court misapplied it," *id.* at 6). Other petitions sought review of cases where the applicable standard may not—or even clearly would not—have been outcome-determinative. *See Brawner*, 14 F.4th at 592 ("[T]he facts here, viewed in the light most favorable to Brawner, support a finding of deliberate indifference under either *Farmer*'s subjective or *Kingsley*'s objective standard." (footnote omitted)); *Sandoval v. County of San Diego*, 985 F.3d 657, 679-80 & n.16 (9th Cir. 2021) (describing how reasonable jury could have found that defendants subjectively knew detainee urgently needed medical treatment); *Heidel v. Mazzola*, 851 F. App'x 837, 840 (10th Cir. 2021) (facts at summary judgment at least arguably insufficient to satisfy even an objective standard); *Strain*, 977 F.3d at 996-97 (same, for allegations in complaint).

Cope v. Cogdill, 3 F.4th 198 (5th Cir. 2021), involved facts that were deeply troubling—and troublingly similar to the facts here—but similarly suffered from vehicle problems absent here. Most saliently, even if the Fifth Circuit had applied the objective standard there and found a constitutional violation, that would not have affected the ultimate analysis or result because the court rested its decision on

the lack of clearly established law under qualified immunity's second prong. *See id.* at 208 (because one defendant "appear[ed] to concede" his subjective knowledge of the detainee's suicide risk, the court's "analysis turn[ed] to this second prong: whether the unlawfulness was clearly established"); *id.* at 210 (reasoning that even if other defendants' "actions were constitutionally unlawful, they are entitled to qualified immunity if the constitutional right at issue was not 'clearly established'"). The petition in that case also did not focus on the *Kingsley* issue, which the petition presented as the second of three questions. *See* Pet. Writ Cert., *Cope v. Cogdill*, No. 21-783 (U.S. Nov. 22, 2021).

Yet as one Justice of this Court recognized in dissenting from the denial of certiorari in *Cope*, the "uniquely troubling facts" of that case made it an exceptionally compelling candidate for review—and the recurrence of strikingly similar circumstances here shows that those facts sadly are not unique, which makes them even more troubling. *See Cope v. Cogdill*, 142 S. Ct. 2573, 2576 (2022) (Sotomayor, J., dissenting from denial of certiorari). There, as here, a pretrial detainee showed signs of mental distress, including a risk of self-harm, to Texas jailers. *Id.* at 2573. There, as here, jailers confined the detainee in quarters that "contained an obvious risk for suicide by strangulation"—"a 30-inch telephone cord" in that case. *Id.* at 2574. And there, as here, the detention ended not with trial, but with the detainee's tragic—and preventable—death by suicide. *Id.*

This petition thus involves deeply disturbing facts regrettably similar to cases the Court has seen before.

But this petition, unlike prior petitions, presents the *Kingsley* question in the cleanest possible form. The recurrence of both this factual scenario and this legal issue call for this Court's review, and this petition presents an ideal vehicle for the Court to resolve the question presented once and for all.*

D. The Decisions Below Are Wrong

No principled basis justifies cabining *Kingsley* to pretrial detainees' excessive force claims, rather than applying its objective reasonableness test to all detainee due process claims. Still less justified would be wrenching a subjective standard from the distinguishable Eighth Amendment context that applies to sentenced prisoners and applying it to detainees protected by due process.

1. While *Kingsley* specifically considered pretrial detainee excessive-force claims, "nothing in the logic the Supreme Court used in *Kingsley* . . . would support . . . dissection of the different types of claims that arise under the Fourteenth Amendment's Due Process Clause." *Miranda*, 900 F.3d at 352. To the contrary, *Kingsley* made clear that the applicable

* At least one other petition raising the *Kingsley* issue is currently pending before the Court. *See* Petition for Cert., *Jordan v. Howell*, No. 23-210 (U.S. filed Aug. 31, 2023). That petition underscores why this Court should take up the question, but this case offers a superior vehicle for answering it, including because this case does not implicate the complicating issue of what constitutes proper medical judgment. *See Howell v. NaphCare, Inc.*, 67 F.4th 302, 312-14 (6th Cir. 2023) (analyzing whether defendant, who believed detainee "was experiencing a psychiatric episode, "acted recklessly by failing to treat [detainee]'s sickle cell disease," *id.* at 313).

standard turns *not* on the nature of the *claim*, but the status of the *claimant*.

Kingsley analyzed cases involving a wide range of pretrial-detention issues—not just excessive force—en route to its conclusion that "a pretrial detainee can prevail" on a claim about her treatment in custody by relying on "objective evidence." 576 U.S. at 398 (citing, *e.g.*, *Bell v. Wolfish*, 441 U.S. 520 (1979)). This Court's precedents thus teach that the doctrinal distinction that matters is not what *type* of mistreatment the detainee alleges, but at what stage she alleges it—pretrial detention or postconviction confinement.

That distinction reflects basic constitutional principles. When convicted prisoners challenge their treatment in custody under the Eighth Amendment, courts apply a subjective standard because evaluating whether punishment is cruel and unusual requires knowing the official's state of mind: punishment is only cruel and unusual if inflicted maliciously, sadistically or with deliberate indifference. *Kingsley*, 576 U.S. at 400; *see Wilson*, 501 U.S. at 299. But the same is not true for pretrial detainees. "[P]retrial detainees . . . cannot be punished at all, much less 'maliciously and sadistically.'" *Kingsley*, 576 U.S. at 400; *see Bell*, 441 U.S. at 535 ("a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law"). It follows that "the Eighth and Fourteenth Amendments are fundamentally different to the degree that cases involving one claim cannot be legitimately compared to cases involving another." Kate Lambroza, *Pretrial Detainees and the Objective Standard After* Kingsley v. Hendrickson, 58 Am. Crim. L. Rev. 429, 453 (2021).

By importing the Eighth Amendment' subjective standard onto pretrial detainees' due process claims, the courts in the Fifth Circuit's camp improperly narrowed the protection to which the detainees in this case were entitled—protection from all punishment—to protection from only cruel and unusual punishment. Only this Court can correct that error.

2. What is more, lest there be any question about whether *Kinglsey*'s "objective standard is workable," this Court has already determined that the answer is yes: many facilities "train officers to interact with all detainees as if the officers' conduct is subject to an objective reasonableness standard." *Kingsley*, 576 U.S. at 399. And an objective standard adequately protects officers who act "in good faith": courts must "take account of the legitimate interests in managing a jail, acknowledging as part of the objective reasonableness analysis that deference to policies and practices needed to maintain order and institutional security is appropriate." *Id.* at 399-400.

As in *Kingsley* itself, a wide range of factors bears on objective reasonableness, and the different contexts in which the issue may arise may result in differing factors having more or less prominence. *Id.* at 397. Courts applying a due process standard are accustomed to paying close attention to the facts. And jail officials are never held strictly liable for tragic deaths by suicide of individuals in their custody. As *Kingsley* clarified, the official must have acted purposely, knowingly, or at least recklessly with respect to his action or inaction towards the detainee. *Id.* at 395-96. Only then do courts move on to the objective reasonableness of the official's conduct. And the

objective standard applies to "the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." *Id.* at 397. Those safeguards ensure that the objective reasonableness test of *Kingsley*, as applied to this context, is both sound and workable.

* * *

As Judge Readler counseled, "[f]or the sake of litigants and courts alike, the Supreme Court should soon grant certiorari in a case involving allegedly unconstitutional deliberate indifference toward a pretrial detainee." *Helphenstine*, 65 F.4th at 801 (Readler, J., respecting denial of rehearing en banc). The time is now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

T. Dean Malone
Jennifer Kingaard
LAW OFFICES OF DEAN MALONE, P.C.
900 Jackson Street
Suite 730
Dallas, TX 75202

Bruce K. Thomas
LAW OFFICE OF BRUCE K. THOMAS
12900 Preston Road
Suite 590
Dallas, TX 75230

Michael Dreeben
Counsel of Record
Andrew R. Hellman
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5300
mdreeben@omm.com

Melissa C. Cassel
O'MELVENY & MYERS LLP
Two Embarcadero Center
San Francisco, CA 94111

September 22, 2023