No. 23-317

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

REPLY BRIEF FOR PETITIONER

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(Additional Caption Information on Inside Cover)

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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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

REPLY BRIEF FOR PETITIONER

The courts of appeals are divided on the question whether the objective reasonableness test of *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), applies to pretrial detainee due process claims beyond the excessive-force context. Respondents themselves acknowledge as much. This is a question that needs the Court's resolution, and this is the case in which to decide it.

Respondents urge the Court to instead assess, and take a pass on, a narrower question isolated to suicide cases. But the decision below and others like it do not embrace a special rule for suicide cases; they apply a special rule for pretrial detainee claims that do not involve excessive force. Because that rule has been rejected by the five courts of appeals that apply *Kingsley*'s objective standard to all pretrial detainee claims, the resulting conflict merits review. *See* Pet. 12-16.

Of course, what conduct qualifies as objectively reasonable (or subjective deliberate indifference) depends on the circumstances—housing, medical care, suicide precautions, and so on. But what matters is that the circuits have divided over the legal standard that applies to all pretrial detainee due process claims. Respondents are incorrect in any case that there is insufficiently developed authority involving detainees' failure-to-protect claims—their own briefs identify no fewer than four different courts of appeals on either side of that issue.

Equally unpersuasive are respondents' arguments that this is a poor vehicle in which to resolve the conflict. Respondents urge one-sided inferences of the

records in their favor, but they struggle to diminish facts—like one detainee's history of bipolarity, and another's paranoia—that could easily lead a court to permit continued litigation of these claims, if the objective reasonableness standard is applied. Nor does qualified immunity doctrine preclude review: the Fifth Circuit did not rest its decision on that basis, and the lower courts can consider on remand respondents' arguments that this Court's precedents did not clearly establish the applicable constitutional standard. There is an entrenched circuit split; qualified immunity does not stand in the way of the Court's confirming what the law *is*.

Last, the merits arguments offered by respondents and their *amicus* do not dispel the need for review. Petitioners will argue on the merits that these claims all stem from the same due process right, *Wilson v. Seiter*, 501 U.S. 294, 296 (1991); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), and are therefore subject to the due process standard this Court already recognized in *Kingsley*; respondents read *Kingsley* differently, and see reason to create a different standard for non-excessive-force claims. Nine courts of appeals have had the same disagreement, and respondents' arguments merely confirm that the debates underneath this conflict are sufficiently serious to warrant the Court's review. The petition should be granted.

A. The Courts of Appeals Are Intractably Divided On The Question Presented

Respondents acknowledge, as they must, that the courts of appeals have expressly disagreed on whether *Kingsley*'s objective standard applies to

pretrial detainees' claims challenging their treatment in custody. At the time the petition was filed, the Second, Sixth, Seventh, and Ninth Circuits unequivocally held that it does, while the Fifth, Eighth, Tenth, and Eleventh Circuits held it does not. *Compare Darnell v. Pineiro*, 849 F.3d 17 (2d Cir. 2017), *Brawner v. Scott County*, 14 F.4th 585 (6th Cir. 2021), *Miranda v. County of Lake*, 900 F.3d 335 (7th Cir. 2018), *and Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016), *with Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415 (5th Cir. 2017), *Whitney v. City of St. Louis*, 887 F.3d 857 (8th Cir. 2018), *Strain v. Regalado*, 977 F.3d 984 (10th Cir. 2020), *and Dang ex rel. Dang v. Sheriff, Seminole County*, 871 F.3d 1272 (11th Cir. 2017); *see also* Pet. 12-16 (describing split). Since then, the split has only deepened: the Fourth Circuit held last month that "*Kingsley*'s objective test extends to all pretrial detainee claims under the Fourteenth Amendment." *Short v. Hartman*, 87 F.4th 593, 610 (4th Cir. 2023). As Judge Readler explained in calling on the Court to resolve this very question even before the Fourth Circuit joined the debate, "the *Kingsley* circuit split is more than mature—it is having offspring." *Helphenstine v. Lewis County*, 65 F.4th 794, 801 (6th Cir. 2023) (Readler, J., dissenting from denial of en banc rehearing); *Helphenstine v. Lewis County*, 60 F.4th 305, 316 (6th Cir. 2023) ("our sister circuits are all over the map on this issue").

Faced with this deep circuit conflict, respondent Borrego concedes it; respondents Hastings and Piper attempt to reframe it; and respondents Hall &

McGowan argue more percolation is needed. None of those arguments counsels against certiorari.

Because they cannot deny that the question presented implicates a circuit split, respondents argue the Court should focus on a *different* question concerning only the "failure to protect from suicide"—a subset of the due process claims included in the broader issue. Had the petition presented that narrower question, respondents contend, the division would not run so deep. HP BIO 25.

But the division that has emerged in the circuits is not over how to treat suicide claims alone—it is over how to treat the entire class of pretrial detainee claims that do not involve excessive force. They have adopted a legal standard with general application. How the legal standard plays out in a particular set of circumstances can vary; but the point of legal standards is that they provide consistent frameworks for claims, as here, with a common underpinning.

All pretrial detainees' challenges to their conditions stem from the same due process right, regardless of the specific condition challenged. As this Court has put it, "the medical care a prisoner receives is just as much a 'condition' of his confinement as the food he is fed, the clothes he is issued, the temperature he is subjected to in his cell, and the protection he is afforded against other inmates." *Wilson*, 501 U.S. at 303. Five courts of appeals take that to mean *Kingsley* applies broadly to pretrial detainee claims about their treatment in custody, including but not limited to a failure to protect against the risk of suicide. *See, e.g.*, *Darnell*, 849 F.3d at 35 (holding *Kingsley* applies to all pretrial

detainees' "conditions of confinement" claims under Fourteenth Amendment); *Short*, 87 F.4th at 610; *Brawner*, 14 F.4th at 596; *Kemp v. Fulton County*, 27 F.4th 491, 495 (7th Cir. 2022); *Castro*, 833 F.3d at 1070.

Respondents are therefore wrong to argue that "any disagreement that may exist" has not percolated enough "to warrant review." HP BIO 13; *see* HM BIO 16 ("[T]his issue has not been fully considered."). As Judge Readler observed even *before* the Fourth Circuit joined the debate, "confusion" over what standard applies to pretrial detainees' claims is "rampant coast-to-coast." *Helphenstine*, 65 F.4th at 801 (Readler, J., dissenting from denial of en banc rehearing) ("at some point, intervention is needed"). And even under the narrower question of whether *Kingsley*'s objective standard applies to pretrial detainees' failure-to-protect claims, the split is deeply entrenched. *Compare Castro*, 833 F.3d at 1070 (applying *Kingsley* to failure-to-protect claims), *Kemp*, 27 F.4th at 495 (same), *Short*, 87 F.4th at 607 (same), *Westmoreland v. Butler County*, 29 F.4th 721, 728 (6th Cir. 2022) (same), *with Alderson*, 848 F.3d at 419 n.4 (declining to apply *Kingsley* to failure-to-protect claims), *Whitney*, 887 F.3d at 860 (same), *Contreras v. Dona Ana Cnty. Bd. of Cnty. Comm'rs*, 965 F.3d 1114, 1117 n.3 (10th Cir. 2020) (Tymkovich, J., concurring). There is no denying that the question presented has divided the circuits. "For the sake of litigants and courts alike," the Court should grant review to resolve it. *Helphenstine*, 65 F.4th at 801 (Readler, J., dissenting from denial of rehearing).

B. This Case Provides A Good Vehicle For Resolving The Split

Both decisions below squarely implicate the conflict at issue, and this case offers an excellent vehicle for the Court to resolve it. The standard was outcome determinative in each case; the Fifth Circuit explicitly focused solely on respondents' subjective intent, without any objective assessment of their conduct. Pet. 19. It is at the very least plausible that the courts below would permit these claims to be litigated were the proper standard applied, and respondents' contrary arguments depend on readings of the records that a court could easily reject on remand.

1. Respondents in *Crandel* do not and cannot deny that the Fifth Circuit's summary judgment analysis turned on its application of the subjective standard. Pet. App. 20a (looking for "evidence that the Officers formed the opinion that Worl was at a risk for suicide"); Pet. App. 16a (finding no "genuine dispute of material fact regarding Hall's subjective knowledge of a substantial risk of suicide"), 18a (same, for McGowen). They argue only that a reasonable jury could find no constitutional violation even under an objective standard. HP BIO 26-27, 31-32; *see* HM BIO 23.

Respondents fail to construe the evidence in the light favoring petitioners, however, as a court must at this posture. Their own briefs illustrate the point: respondents admit, for example, that Worl's husband confirmed she had a history of bipolarity, HP BIO 32; that she "refus[ed] to answer the [suicide] screening questions at book[-]in," HP BIO 26; and that when she

was "asked if she had ever [attempt]ed suicide," she responded by baring her arms, and saying, "I don't know. Have I?," *id.*—which they subjectively (but potentially unreasonably) interpreted to mean "no." Respondents argue that this evidence is compatible with an objectively reasonable conclusion that no suicide precautions were necessary. *See id*; HM BIO 23. But a reasonable jury could find otherwise. Pet. 19.

2. Respondents similarly say the Court should deny review in *Edmiston* because, they argue, they would prevail on a motion to dismiss under the *Kingsley* standard. Borrego BIO 11-16. But the district court found the complaint plausibly alleged a constitutional violation *even under the subjective standard*. Pet. App. 31a-32a. That alone makes it hard to seriously entertain respondents' back-of-the-hand treatment of the complaint.

Respondents' argument again rests on a refusal to construe the operative pleading in petitioners' favor. Respondents contend that "it was not objectively unreasonable for [them] to provide Schubert with comfortable housing for the remaining hours of the late night." Borrego BIO 12-13. That is a charitable description of how respondents left Schubert alone in a cell with the sheet he used to cause his own death. Pet. App. 29a-30a. The allegations before the district court were that Schubert had "been wandering around" town shirtless, claiming that "someone was trying to kill him," calling the police himself, and prompting others to call the police about him. Pet. App. 28a. Even reading these allegations neutrally, it is hard to miss Schubert's paranoia and distress;

construing them in petitioners' favor, the warning signs are clear—yet respondents did not so much as complete a suicide screening for Schubert. Construing the complaint's allegations in their favor, petitioners state a plausible claim under *Kingsley*.

3. Finally, respondents contend that even if *Kingsley* governs, the officers would still have been entitled to qualified immunity because the law was not "clearly established." *See* HM BIO 25-26; Borrego BIO 7-11. But the court of appeals in each case expressly declined to reach that question and rested its holding solely on its assessment of respondents' "subjective knowledge." Pet. App. 12a-13a; Pet. App. 38a. If this Court corrected the Fifth Circuit's error, the "clearly established" prong of qualified immunity would not foreclose the possibility of a different outcome on remand.

As several "circuits have concluded, … because the clearly established law prong focuses objectively on whether it would be clear that the defendant's conduct violated the Constitution, lack of notice regarding the mental state required to establish liability has no bearing on the analysis." *Sandoval v. County of San Diego*, 985 F.3d 657, 675 (9th Cir. 2021) (collecting cases). That makes all the difference here, because the Fifth Circuit relied *exclusively* on its assessment of respondents' mental states. Just as the objective analysis of whether respondents' conduct violated the Constitution is best left to the court of appeals on remand, so too is the objective analysis of respondents' conduct under clearly established law.

Respondents' objections should not dissuade this Court from granting review even if the "clearly

established" prong encompassed the subjective standard. Courts have "discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). "For years" the Fifth Circuit "has found value in addressing the constitutional merits" in qualified immunity cases, "to provide clarity and guidance for officers and courts." *Joseph v. Bartlett*, 981 F.3d 319, 331 & n.40 (5th Cir. 2020); *see also*, *e.g.*, *Roque v. Harvel*, 993 F.3d 325, 332 (5th Cir. 2021). The Fifth Circuit has not allowed qualified immunity to calcify errors in the law, and this Court should not deny review merely because it is *possible* the courts would interpose a bar on remand.

C. The Fifth Circuit's Decisions Are Wrong

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. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994); *see Wilson*, 501 U.S. at 299. But the same is not true for pretrial detainees. Pretrial detainees cannot be punished at all, much less maliciously and sadistically. *See Bell*, 441 U.S. at 535-37 ("a detainee may not be punished prior to an adjudication of guilt"). So when pretrial detainees challenge their conditions, the only "appropriate standard" is "an objective one"—a standard that asks whether conditions unfairly deprive the detainee of freedom. *Kingsley*, 576 U.S. at 396-97; *id.* at 401 ("there is no need here, as there

might be in an Eighth Amendment case, to determine when punishment is unconstitutional"). In the decisions below, the Fifth Circuit wrongly transposed the Eighth Amendment's subjective standard onto the pretrial detainees' failure-to-protect claims. *See* Pet. App. 23-26.

Respondents seek to defend the Fifth Circuit's decisions in three main ways. None persuades—and most critically, none is a reason to deny the petition.

1. Respondents' main defense is that the Fifth Circuit correctly applied a subjective standard because *Kingsley* arose in the excessive-force context, and applying its objective standard to other due process claims would "violate[] this Court's consistent directive against" the "expansion of substantive due process." Borrego BIO 17; HM BIO 10 (arguing "excessive force claims" are "uniquely suited" for objective standard); *see also* HP BIO 28 ("The Fifth Circuit got it right."). But as explained in the petition, "nothing in the logic the Supreme Court used in *Kingsley*" would support "dissection of the different types of claims that arise" under the Due Process Clause. Pet. 23 (quoting *Miranda*, 900 F.3d at 352). To the contrary, *Kingsley* makes clear the applicable standard turns *not* on the nature of the claim, but the status of the claimant—pretrial detainee or postconviction prisoner. *See Kingsley*, 576 U.S. at 398; *see* Pet. 23-24.

Applying an objective standard to pretrial detainees' challenges outside the excessive-force context would also not "expand" due process. Due process protects detainees from "conditions or restrictions" that "amount to punishment"—full stop.

Bell, 441 U.S. at 535. Whether an officer's conduct is evaluated through an objective or subjective lens does not change those rights in any way. Indeed, if the Court grants review and holds that *Kingsley* applies to all pretrial detainees' due process claims, detainees in the Fifth Circuit will have *no* more (or less) access to due process; the only difference will be under what *mens rea* standard courts evaluate officers' behavior.

2. Respondents are also wrong that applying *Kingsley*'s objective reasonableness standard would amount to holding officers liable for "negligence or strict liability." Borrego BIO 28; *see also* HM BIO 12. *Kingsley* expressly rejected that proposition. As the Court explained, "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." 576 U.S. at 396 (quotation omitted); *see also Farmer*, 511 U.S. at 837 (noting recklessness floor for liability). So before courts even evaluate whether an officer's conduct was objectively reasonable, there is a threshold question—whether the officer acted purposefully, knowingly, or at least recklessly with respect to his action or inaction toward the detainee. *Kingsley*, 576 U.S. at 395-96. If the answer to that question is no, the question of objective reasonableness never arises. *Id.* Officers are thus never held strictly liable for tragic suicides by individuals in their custody—even under *Kingsley*. *See* Pet. 25-26.

3. Finally, respondents contend that "a subjective standard is necessary and appropriate in a failure to protect from suicide" case because the "sad truth" about suicide is that it is "complex" and "almost impossible" to predict. HP BIO 28-30. "Almost

everyone can recount someone they know or have heard about who committed suicide," and "[a]lmost always," respondents say, "it comes out that no one around them … had any idea there was anything wrong." HP BIO 30. So if even a "trained psychiatrist or psychologist" would struggle to see the signs of suicide, respondents posit, how would we expect "ordinary law enforcement officers" to do the same? HP BIO 29.

Respondents not only fail to ground these sweeping "truths" in *any* evidence, but also misapprehend what *Kingsley* means. *Kingsley* does not appraise officer conduct based on what a mental health professional would have seen; it asks whether the officer disregarded risks that a *reasonable officer* would not have. *See Kingsley*, 576 U.S. at 392; *Brawner*, 14 F.4th at 597 (detainee must show "reasonable official in the defendant's position would have known, or should have known" risk to safety). The *Kingsley* standard holds officers accountable for doing what they have been trained to do—no more, no less.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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