No. 21-1396

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CHARLES WILLIS SHORT, *individually and as Administrator of the Estate of Victoria Christine Short,*

Plaintiff-Appellant,

v.

J.D. HARTMAN, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of North Carolina
No. 1:18-cv-00741-NCT-JLW
Hon. N. Carlton Tilley, Jr.

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION, THE ACLU OF NORTH CAROLINA LEGAL FOUNDATION, THE ACLU OF SOUTH CAROLINA, RIGHTS BEHIND BARS, AND THE RODERICK & SOLANGE MACARTHUR JUSTICE CENTER IN SUPPORT OF THE PLAINTIFF-APPELLANT

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INTEREST OF *AMICI CURIAE*[1]

The **American Civil Liberties Union** ("ACLU") is a nationwide, nonprofit, nonpartisan organization with more than 1.7 million members, dedicated to the principles of liberty and equality embodied in the Constitution and this Nation's civil rights laws. Consistent with that mission, the ACLU established the National Prison Project ("NPP") in 1972 to protect and promote the civil and constitutional rights of incarcerated people. The NPP has decades of experience in complex prisoners' rights class action suits and since 1990 has represented incarcerated people in five cases before the U.S. Supreme Court. Courts across the country have repeatedly recognized the special expertise of the NPP in conditions of confinement cases.

The **ACLU of North Carolina Legal Foundation** ("ACLU-NCLF") is a state affiliate of the ACLU, with more than 30,000 members statewide. ACLU-NCLF is dedicated to defending and

[1] This brief has not been authored, in whole or in part, by counsel to any party in this appeal. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than the *amici*, their members, or their counsel, contributed money that was intended to fund preparation or submission of this brief.

advancing civil rights and civil liberties for all North Carolinians. Among other priorities, the ACLU-NCLF is committed to advocating for lawful treatment of people incarcerated in North Carolina prisons and jails.

The **ACLU of South Carolina** ("ACLU-SC") is a nonpartisan nonprofit organization that advocates for civil rights and civil liberties in South Carolina. Consistent with that mission, ACLU-SC routinely advocates for constitutional conditions of confinement for all involuntarily detained persons in South Carolina. As a result, ACLU-SC has a special interest in ensuring that pretrial detainees and other unsentenced individuals are entitled to robust substantive protections against punishment.

Rights Behind Bars ("RBB") legally advocates for people in prison to live in humane conditions and contributes to a legal ecosystem in which such advocacy is more effective. RBB seeks to create a world in which people in prison do not face large structural obstacles to effectively advocating for themselves in the courts. RBB helps incarcerated people advocate for their own interests more effectively

and through such advocacy push towards a world in which people in prison are treated humanely.

The **Roderick and Solange MacArthur Justice Center ("RSMJC")** is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC has offices at Northwestern Pritzker School of Law, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. RSMJC attorneys routinely litigate cases in areas including police misconduct, the rights of the indigent in the criminal justice system, compensation for the wrongfully convicted, and the treatment of incarcerated people. RSMJC frequently files amicus briefs related to the civil rights of incarcerated persons throughout the federal circuits.

INTRODUCTION

The Supreme Court in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), confirmed that under the Fourteenth Amendment's Due Process Clause the appropriate standard for a pretrial detainee's claim is "solely an objective one." *Id.* at 397. Since then, four federal courts of appeals have adopted *Kingsley*'s purely objective test, rejecting prior precedent that applied a subjective standard to medical care and other conditions of confinement claims brought by pretrial detainees.

In those circuits, to meet the objective standard, pretrial detainees must demonstrate that the defendant intentionally or recklessly failed to act to mitigate a risk of serious harm even though a reasonable official would have known of the risk. Unlike an Eighth Amendment claim, what an individual defendant actually knew or thought is irrelevant. *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017); *Brawner v. Scott Cty., Tenn.*, 14 F.4th 585, 597 (6th Cir. 2021); *Miranda v. Cty. of Lake*, 900 F.3d 335, 353–54 (7th Cir. 2018); *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018). This standard requires "more than negligence but less than subjective intent—something akin to

reckless disregard." *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc).

In this Court, the "'precise scope' of this Fourteenth Amendment right remains 'unclear.'" *Mays v. Sprinkle*, 992 F.3d 295, 300 (4th Cir. 2021) (quoting *Martin v. Gentile*, 849 F.2d 863, 871 (1988)). To date, this Court has declined to resolve whether *Kingsley* altered the deliberate indifference standard when applied to pretrial detainees. *See, e.g.*, *Mays*, 992 F.3d at 300–01. The Court therefore has "traditionally looked to Eighth Amendment precedents in considering a Fourteenth Amendment claim of deliberate indifference to serious medical needs." *Id.* at 300. But in *Kingsley*, the Supreme Court provided the clarity this Court seeks. This Court should now join its sister circuits and affirm that an objective standard applies to conditions claims brought by pretrial detainees.

ARGUMENT

I. The Objective Standard Set Forth In *Kingsley v. Hendrickson* Applies To Fourteenth Amendment Conditions Claims By Pretrial Detainees.

The constitutional rights of pretrial detainees are protected by the Fourteenth Amendment, rather than the Eighth Amendment. *See*

Martin, 849 F.2d at 870. Longstanding precedent and the Supreme Court's decision in *Kingsley* demonstrate that applying the same subjective deliberate indifference standard under both provisions is untenable and illogical.

First, the Supreme Court, and this Court, have long distinguished between the two provisions, acknowledging that "while the convicted prisoner is entitled to protection only against punishment that is 'cruel and unusual,' the pretrial detainee, who has yet to be adjudicated guilty of any crime, may not be subjected to *any* form of 'punishment.'" *Martin*, 849 F.2d at 870 (citing *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 245 (1983)). *See also Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

Second, the Supreme Court confirmed in *Kingsley* that under the Due Process Clause the appropriate standard for a pretrial detainee's claim is "solely an objective one." 576 U.S. at 397. This standard applies to all claims brought by pretrial detainees, as four circuits have held, and is not limited to excessive force claims.

A. The Supreme Court And This Court Have Long Distinguished Between Eighth And Fourteenth Amendment Protections.

Claims brought by convicted prisoners arise under the Eighth Amendment's Cruel and Unusual Punishments Clause, whereas claims brought by pretrial detainees arise under the Fourteenth Amendment's Due Process Clause. *Kingsley*, 576 U.S. at 400. Treating these standards as a distinction without a difference is error. "The language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all[.]" *Id.*

The Eighth Amendment protects prisoners from "cruel and unusual punishments." U.S. CONST. amend. VIII. Only the "unnecessary *and wanton* infliction of pain implicates the Eighth Amendment," and therefore to violate the Eighth Amendment, a prison official must have a "sufficiently culpable state of mind." *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (internal quotation marks omitted).

Accordingly, to demonstrate an Eighth Amendment violation, convicted prisoners must establish that officials acted with subjective "deliberate indifference"—meaning the official "kn[ew] of and

disregard[ed] an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). *See also id.* at 834 (explaining that the subjective deliberate indifference standard "follows from the principle" that only the wanton infliction of pain violates the Eighth Amendment). The Supreme Court determined a subjective standard is appropriate under the Eighth Amendment because that amendment "does not outlaw cruel and unusual 'conditions'; it outlaws cruel and unusual 'punishments.'" *Id.* at 837.

But "the State does not acquire the power to punish" under the Eighth Amendment "until after it has secured a formal adjudication of guilt in accordance with due process of law." *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977). "Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment." *Id. See also Martin*, 849 F.2d at 870.

The Fourteenth Amendment provides that the state may not "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV. When evaluating constitutional protections for pretrial detainees, therefore, "the proper inquiry is

whether those conditions amount to punishment of the detainee." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). *See also Martin*, 849 F.2d at 870.

In light of this distinction, the Supreme Court has never applied the Eighth Amendment's subjective state-of-mind standard to Fourteenth Amendment claims brought by pretrial detainees. *Brawner*, 14 F.4th at 596. For example, in *Bell v. Wolfish*, the Supreme Court considered a challenge to a wide range of detention conditions and determined that pretrial detainees could prevail under the Fourteenth Amendment with purely objective evidence demonstrating that the conditions were not "rationally related to a legitimate nonpunitive governmental purpose" or "excessive in relation to that purpose." 441 U.S. at 561.

B. *Kingsley* Confirmed That An Objective Standard Must Be Applied To Fourteenth Amendment Claims Brought By Pretrial Detainees.

In *Kingsley*, the Supreme Court reaffirmed the distinction between the Eighth and Fourteenth Amendment standards and made clear that under the Fourteenth Amendment, "the defendant's state of mind is not a matter that a plaintiff is required to prove." 576 U.S. at 395. As such, the Court held, "a pretrial detainee can prevail by

providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Id.* at 398. The appropriate standard for a pretrial detainee's claim, therefore, "is solely an objective one." *Id.* at 397.

Following *Kingsley*, the "precise scope" of the Fourteenth Amendment standard remains "unclear" in this Court. *Mays*, 992 F.3d at 300 (quoting *Martin*, 849 F.2d at 871).[2] While the Court has applied the *Kingsley* standard to excessive force claims, to date the Court has repeatedly declined to consider whether *Kingsley*'s objective standard

[2] Notably, however, this Court has applied different standards to pretrial detainees and sentenced prisoners in other contexts, such as procedural due process. In *Dilworth v. Adams*, this Court rejected the argument that the same procedural due process standard applicable to sentenced prisoners should apply to pretrial detainees. 841 F.3d 246, 252 (4th Cir. 2016). In doing so, the Court joined its sister circuits to hold that *Bell*'s procedural protections applied to pretrial detainees. *Id.* This Court has also explicitly rejected the application of the Eighth Amendment's subjective deliberate indifference standard to civil detainees who, like pretrial detainees, "may not be punished at all[.]" *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982). *See Doe 4 by & through Lopez v. Shenandoah Valley Juvenile Ctr. Comm'n*, 985 F.3d 327, 342 (4th Cir. 2021) (applying objective professional judgment standard to juvenile immigration detainees and noting that "one difference between the two standards is that *Youngberg* does not require proof of subjective intent.").

applies to other conditions claims. *See, e.g.*, *Mays*, 992 F.3d at 300–01 (declining to resolve whether *Kingsley* altered the deliberate indifference standard when applied to pretrial detainees); *Moss v. Harwood*, 19 F.4th 614, 624 n.4 (4th Cir. 2021) (same); *Michelson v. Coon*, No. 20-6480, 2021 WL 2981501, at *3 (4th Cir. July 15, 2021) (unpublished) (same).

The Court therefore has continued to "look to Eighth Amendment precedent for guidance, as a pretrial detainee has at least as much protections as a convicted prisoner." *Younger v. Crowder*, ---F.4th---, 2023 WL 5438173, at *6 n.11 (4th Cir. Aug. 24, 2023).

Like this Court, other Circuits previously looked to Eighth Amendment standards when considering conditions claims brought by pretrial detainees. But following *Kingsley*, the Second, Sixth, Seventh, and Ninth Circuits revisited those assumptions and clarified that *Kingsley*'s objective standard controls in conditions claims under the Fourteenth Amendment, including medical care and failure-to-protect claims. *Darnell*, 849 F.3d at 34–35; *Brawner*, 14 F.4th at 596; *Miranda*, 900 F.3d at 352; *Gordon*, 888 F.3d at 1124–25.

The Second Circuit explained in *Darnell v. Pineiro* that "*Kingsley* altered the standard for deliberate indifference claims under the Due Process Clause" and overruled prior precedent that applied the same subjective deliberate indifference standard to both Eighth and Fourteenth Amendment claims. 849 F.3d at 30, 35. That court subsequently applied the objective standard to medical care claims. *Bruno v. City of Schenectady*, 727 F. App'x 717, 720–21 (2d Cir. 2018).

Similarly, the Sixth Circuit ruled that, in light of *Kingsley*, applying the same analysis to Eighth and Fourteenth Amendment claims "is no longer tenable." *Brawner*, 14 F.4th at 596. The court went on to apply the objective *Kingsley* standard to a Fourteenth Amendment medical care claim. *Id.* at 597–98.

The Seventh and Ninth Circuits are in accord. In *Miranda v. County of Lake*, 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*." 900 F.3d at 352. The court subsequently extended the objective standard to all conditions of confinement claims. *Hardeman v. Curran*, 933 F.3d 816, 823 (7th Cir. 2019). And in *Gordon v. County of*

Orange, the Ninth Circuit held that "logic dictates" applying the objective deliberate indifference standard to medical care claims. 888 F.3d at 1124. *See also Castro*, 833 F.3d at 1070 (applying *Kingsley* to failure-to-protect claims by pretrial detainees).

By contrast only the Tenth Circuit has declined, in a reasoned opinion, to apply the objective standard outside of the excessive force context presented in *Kingsley*.[3] *See Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020). The Tenth Circuit reasoned that *Kingsley* "turned on considerations unique to excessive force claims" and "the nature of a deliberate indifference claim infers a subjective component." *Id.*

The Tenth Circuit's reasoning is faulty. The facts of *Kingsley* dealt with excessive force, but its mandate extends to all claims brought by pretrial detainees. *Kingsley* built on the Supreme Court's earlier

[3] The other three circuits to have considered the question—the Fifth, Eighth, and Eleventh Circuits—cabined *Kingsley* to its facts. *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018); *Swain v. Junior*, 961 F.3d 1276, 1285 n.4 (11th Cir. 2020); *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017). But they did so largely in footnotes and "with minimal analysis." *Brawner*, 14 F.4th at 593. *See also Griffith v. Franklin Cty., Kentucky*, 975 F.3d 554, 589 n.1 (6th Cir. 2020) (Clay, J., concurring in part and dissenting in part) (noting that the Fifth, Eighth, and Eleventh Circuits are "unpersuasive" on *Kingsley* because they reached their conclusions "without analysis" or by "mechanically appl[ying] a circuit rule").

decision in *Bell v. Wolfish*, which "applied . . . [an] objective standard to evaluate a variety of prison conditions." *Kingsley*, 576 U.S. at 398 (citing *Bell*, 441 U.S. at 541–43). And the Court spoke in terms of the "challenged governmental action" generally, *not* excessive force claims specifically, in concluding that pretrial detainees need only provide objective evidence to prevail on a claim alleging due process violations. *Id.*

Further, it is "clear" that the Supreme Court "adopted the subjective component of the test for deliberate indifference under the Eighth Amendment based on the language and purposes of that amendment, focusing particularly on 'punishments,' and not on any intrinsic meaning of the term." *Brawner*, 14 F.4th at 595 (rejecting the rationale of the Tenth Circuit). As such, there is "no doctrinal reason to distinguish among different types of conditions-of-confinement claims for purposes of applying *Kingsley*'s objective standard. Neither the Supreme Court's logic nor its language suggests that such a distinction is proper." *Hardeman*, 933 F.3d at 823.[4]

[4] Notably, the Supreme Court twice has declined the opportunity to reject this understanding of *Kingsley*'s scope. *See Scott Cnty., Tenn. v.*

Finally, limiting *Kingsley* to excessive force claims would create an illogical result: If detainees can win excessive force claims with objective evidence alone, but must provide subjective state-of-mind evidence for all other conditions claims, jail staff will enjoy the least deference in excessive force litigation. That cannot be right. The Supreme Court has stated that corrections staff must be afforded the most deference in the excessive force context, where officers must act "quickly and decisively," *Hudson v. McMillian*, 503 U.S. 1, 6 (1992), making split-second decisions "in haste, under pressure, and frequently without the luxury of a second chance," *Whitley v. Albers*, 475 U.S. 312, 320 (1986).

This Court should therefore align itself with the Second, Sixth, Seventh, and Ninth Circuits and clarify that an objective standard applies to all Fourteenth Amendment claims brought by pretrial detainees.

Brawner, 143 S. Ct. 84 (2022) (denying petition for writ of certiorari); *Los Angeles Cnty., Cal. v. Castro*, 137 S. Ct. 831, 832 (2017) (same).

CONCLUSION

For the foregoing reasons, the Court should apply the purely objective *Kingsley* standard to the matter at hand.

Dated: September 11, 2023

Respectfully submitted,

/s/ Jennifer Wedekind

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(b)(4) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 2,809 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface with 14-point Century Schoolbook font.

Dated: September 11, 2023

/s/ Jennifer Wedekind
Jennifer Wedekind

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2023, I electronically filed this brief with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit, causing notice of such filing to be served upon all parties registered on the CM/ECF system.

/s/ Jennifer Wedekind
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