No. 25-1078

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

LYNNEL COX, as administrator of the estate of Shayne R. Stilphen,

Plaintiff-Appellant,

v.

ISMAEL ALMEIDA; PAUL MICHAEL BERTOCCHI; CATIA FREIRE; BRIAN PICARELLO,

Defendants-Appellees.

BOSTON POLICE DEPARTMENT; JOHN/JANE DOES 1-2; DAVID MARSHALL; CITY OF BOSTON,

Defendants.

On Appeal from the U.S. District Court
for the District of Massachusetts
No. 1:22-cv-11009-RGS
Hon. Richard G. Stearns

BRIEF OF *AMICI CURIAE* THE INSTITUTE FOR CONSTITUTIONAL ADVOCACY & PROTECTION, RIGHTS BEHIND BARS, AND THE RODERICK & SOLANGE MACARTHUR JUSTICE CENTER IN SUPPORT OF THE PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, undersigned counsel certifies that:

Amicus curiae the Institute for Constitutional Advocacy and Protection does not have a parent corporation, and no publicly held corporation owns any portion of its stock.

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/s/ Elizabeth R. Cruikshank
Elizabeth R. Cruikshank

INTEREST OF AMICI CURIAE[1]

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[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. All parties have indicated that they do not oppose the filing of this amicus brief.

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 attorneys have played a key role in civil rights battles in areas including pretrial detention and the treatment of people who are detained or incarcerated. In addition to direct representation on behalf of our clients, RSMJC frequently files amicus briefs related to the civil rights of detained or incarcerated persons throughout the federal circuits, and in state supreme courts.

INTRODUCTION

The Supreme Court in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), confirmed that the appropriate standard for a pretrial detainee's Fourteenth Amendment Due Process claim for excessive force is "solely an objective one." *Id.* at 397. Since then, five federal courts of appeals have adopted *Kingsley*'s purely objective test when evaluating medical care and other conditions of confinement claims brought by pretrial detainees,[2] rejecting pre-*Kingsley* precedent that applied the Eighth Amendment's subjective standard to such claims. *See Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017); *Short v. Hartman*, 87 F.4th 593, 611 (4th Cir. 2023); *Brawner v. Scott Cnty.*, 14 F.4th 585, 597 (6th Cir. 2021); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 353-54 (7th Cir. 2018); *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018).

In those circuits, pretrial detainees need not "show that the defendant had actual knowledge of the detainee's serious medical condition" or other danger "and consciously disregarded the risk that their action or failure to act would result in harm." *Short*, 87 F.4th at 611. Instead, "it is sufficient that the plaintiff show that the defendant's action or inaction was, in *Kingsley*'s words, 'objectively unreasonable': that is, the plaintiff must show that the defendant should have known of that condition and that risk, and acted accordingly." *Id.* (citation omitted). In other words, "it is

[2] "T]he 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 v. Seiter*, 501 U.S. 294, 303 (1991).

enough that the plaintiff show that the defendant acted or failed to act 'in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 836 (1994)); *see also, e.g.*, *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc). In contrast to an Eighth Amendment claim, what an individual defendant actually knew or thought is not dispositive.

This Court has yet to reach the question whether the *Kingsley* objective standard applies to all conditions claims brought by pretrial detainees. This Court should join the majority of its sister circuits and affirm that an objective standard applies to such claims. In addition to being compelled by binding Supreme Court precedent, application of the objective standard will provide numerous benefits, including promoting predictability and uniformity in official decisionmaking.

ARGUMENT

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

Longstanding Supreme Court precedent, including the decision in *Kingsley*, demonstrates that the appropriate test for conditions claims by pretrial detainees is an objective one.

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. There are meaningful distinctions between the two clauses, which require different standards for claims arising under each clause. *See id.* ("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[.]").

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." *Wilson*, 501 U.S. at 297. To violate the Eighth Amendment, a prison official thus must have a "sufficiently culpable state of mind." *Id.*

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*, 511 U.S. at 837; *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 that 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.*, which provides that the state may not "deprive any person of life, liberty, or property, without due process of law," U.S. Const. amend. XIV. 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. When evaluating constitutional protections for pretrial detainees, rather, "the proper inquiry is whether those conditions amount to punishment of the detainee" at all, *see Bell v. Wolfish*, 441 U.S. 520, 535 (1979), not whether that punishment is "cruel and unusual."

Farmer establishes by its own terms that the subjective deliberate indifference test it announced for Eighth Amendment claims does not extend to Fourteenth Amendment conditions claims by pretrial detainees. *Farmer* involved an Eighth Amendment cruel and unusual punishment claim by a convicted prisoner who alleged injuries resulting from prison officials' deliberate indifference to the serious safety risks the prisoner faced in a general population setting. 511 U.S. at 829-31. In determining the appropriate standard for assessing the prisoner's claim, *Farmer* explained that the level of culpability required for deliberate indifference depends on the source of the underlying duty of care. *Id.* at 835-37.

As a general matter, the Supreme Court observed, "acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the

equivalent of recklessly disregarding that risk." *Id.* at 836. "[T]he term recklessness," however, "is not self-defining," and has different meanings in different contexts. *Id.* In civil cases, recklessness means "act[ing] or … fail[ing] to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* In criminal cases, by contrast, a finding of recklessness requires that the defendant "disregard[] a risk of harm of which he is aware." *Id.* at 837. In other words, the criminal liability standard is subjective, focusing on "what a defendant's mental attitude actually was (or is)," while the civil liability standard is objective, focusing on "what it should have been (or should be)." *Id.* at 839.

Although Eighth Amendment deliberate indifference claims by convicted prisoners arise under civil law, *Farmer* concluded that the criminal liability test nonetheless applies to such claims by virtue of the Eighth Amendment's text. *See id.* at 837. The infliction of "cruel and unusual punishment," the Court held, requires more than the "failure to alleviate a significant risk that [a prison official] should have perceived but did not." *Id.* at 838. Rather, a reckless act (or failure to act) amounts to punishment only if the official "consciously disregard[s] a substantial risk of serious harm." *Id.* at 839 (internal quotation marks and alteration omitted).

This reasoning has no application to conditions claims asserted by pretrial detainees, which arise under the Fourteenth Amendment's right to "due process of law" before a deprivation of life or liberty. *Farmer*'s delineation of the objective and subjective recklessness standards instead establishes that the subjective criminal

liability standard is improper in civil cases where, as in the pretrial detention context, the plaintiff is not punishable at all because he has not been found guilty of any crime.

Kingsley confirms this reading of *Farmer*. In *Kingsley*, the Court held that the subjective intent requirement for Eighth Amendment excessive force claims by convicted prisoners does not extend to Fourteenth Amendment excessive force claims by pretrial detainees because "[t]he language of the two Clauses differs." 576 U.S. at 400. While the Eighth Amendment prohibits only punishment that is "cruel and unusual," the Court explained, "pretrial detainees (unlike convicted prisoners) cannot be punished at all." *Id.* (internal quotation marks omitted). As such, "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one." *Id.* at 397. And as five circuits have recognized, "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; *see also Short*, 87 F.4th at 611; *Brawner*, 14 F.4th at 596-97; *Darnell*, 849 F.3d at 34-35; *Castro*, 833 F.3d at 1070.

Indeed, *Kingsley* attributes the objective standard it adopted to a Fourteenth Amendment conditions case, *Bell v. Wolfish*, 441 U.S. 520 (1979). *See Kingsley*, 576 U.S. at 398-99. The plaintiffs in *Bell* were pretrial detainees who challenged numerous conditions of their confinement in a short-term custodial facility. *Bell*, 441 U.S. at 523. The Court explained that pretrial detention conditions violate due process if they are not "reasonably related to a legitimate governmental objective." *Id.* at 539. Under such

circumstances, "a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees," even "[a]bsent a showing of an expressed intent to punish on the part of detention facility officials." *Id.* at 538-39. In interpreting *Bell*, the *Kingsley* Court clarified that "proof of intent (or motive) to punish" was not "required for a pretrial detainee to prevail on a claim that his due process rights were violated." *Kingsley*, 576 U.S. at 398. "Rather, as *Bell* itself shows (and as our later precedent affirms), 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.*

This different standard of proof for pretrial detainees, as compared to convicted prisoners, is compelled not only by *Bell*, *Farmer*, and *Kingsley*, but also by centuries-old common law. *See, e.g.*, *Washington v. Glucksberg*, 521 U.S. 702, 711-12 (1997) (noting that the analysis in "all due process cases" begins with review of the "Anglo–American common-law tradition"). A 1771 treatise written by William Eden, the first Baron of Auckland, observed that it would be "contrary [] to public justice … to throw the accused and convicted … into the same Dungeon," because "previous to the conviction of guilt[,] the utmost tenderness and lenity are due to the person of the prisoner." Principles of Penal Law 45 (2d ed. 1771) (emphasis omitted). Blackstone agreed: A person confined during the "dubious interval between [] commitment and trial," must be treated with "the utmost humanity," 4 William Blackstone,

Commentaries on the Laws of England 297 (1769). Because pretrial detention is "only for safe custody, and not for punishment," Blackstone explained, pretrial detainees cannot be "subjected to other hardships than such as are absolutely requisite for the purpose of confinement only." *Id.*

As these authorities illustrate and binding precedent requires, the proper standard for evaluating Fourteenth Amendment claims by pretrial detainees is an objective one.

II. Adoption of the Objective Standard Will Offer Many Benefits.

The objective standard has numerous benefits. Because the objective standard looks to what a reasonable official in the defendant's position would understand rather than the vagaries of an individual defendant's subjective mental state, it will allow courts to clarify what is objectively reasonable across a range of scenarios. This will promote uniformity and consistency among cases and ensure that officials will be better able to predictably conform their behavior to the law. And given the availability of qualified immunity, the objective standard will not expose unwary jail officials to any liability they could not have foreseen at the time. *See, e.g.*, *Mays v. Sprinkle*, 992 F.3d 295, 302 (4th Cir. 2021).

At the same time, the objective standard may make a meaningful difference to pretrial detainees seeking to prove conditions of confinement claims. Detainees will be able to make use of a broader universe of relevant evidence tending to show what an objectively reasonable official would have known about the risk to the detainee,

rather than directing their resources solely toward proving up the subjective mental state of individual officials and rebutting necessarily self-serving testimony. This is especially important in a case like this one, where a key witness to the jail officials' knowledge of Mr. Stilphen's condition—Mr. Stilphen himself—died as a result of the officials' inaction and therefore was unable to testify, further limiting the plaintiff's ability to rebut the defendants' testimony.

For many of the same reasons, adoption of the objective standard will benefit juries and the courts. Jurors will not be left to attempt to divine the subjective knowledge of individual officers but will instead face the more straightforward task of determining whether the officers' behavior conformed with objective standards of care. And trials, especially those involving numerous defendants, may be streamlined when plaintiffs are able to focus on proving the unitary standard of objective reasonableness rather than needing to demonstrate subjective intent for each individual officer.

CONCLUSION

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

Respectfully submitted,

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June 23, 2025

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the First Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Elizabeth R. Cruikshank
Elizabeth R. Cruikshank

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 35(b)(2) because this brief contains **2,566 words**, excluding the parts of the brief exempted by Rule 32(f).

I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in **14-point Garamond font**, a proportionally spaced typeface, using **Microsoft Word**.

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Dated: June 23, 2025