No. 20-465

IN THE

Supreme Court of the United States

YOUNG COUNTY, TEXAS; YOUNG COUNTY SHERIFF'S DEPARTMENT, PETITIONERS,

v.

NICOLE SANCHEZ; CASEY SIMPSON; EDWARD LAROY SIMPSON, II, INDIVIDUALLY AND AS THE REPRESENTATIVE OF THE ESTATE OF DIANA LYNN SIMPSON, RESPONDENTS

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

BRIEF FOR *AMICI CURIAE* NATIONAL INSTITUTE FOR JAIL OPERATIONS, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, AND WESTERN STATES SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

This case involves when a governmental entity can be held civilly liable for after-effect actions taken by a pretrial detainee prior to being taken into custody and outside the knowledge or control of the governmental entity. Because Amici Curiae represent the interests of governmental entities, they have a significant interest in the outcome of this case, as it may be used as precedent in the future.[1]

The National Institute for Jail Operations was formed in 2011 and serves as the primary resource dedicated to serve those entities that operate jails, detention facilities, and correctional facilities. NIJO provides a compilation of legal-based resources, information, and training for agencies to make facilities safer and more secure and to protect against adverse publicity and liability. NIJO's work focuses on issues relating to the Eighth Amendment rights and responsibilities of county and municipal jail operators and their employees. Thus, NIJO has a special interest in the Fifth Circuit panel's decision in this matter because it substantially implicates the burdens placed on jail operators to screen, assess, and monitor pretrial detainees in county jails.

The National Association of Police Organizations is a nationwide alliance of organizations committed to advancing the interests of law enforcement officers.

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[1] Amici provided notice and obtained consent from the parties to file this *amici curiae* brief more than 10 days before its filing. No party or its counsel authored this brief in whole or in part. No party to this case or their counsel contributed to the cost of preparing and submitting this brief.

Since NAPO's founding in 1978, it has become the strongest unified voice supporting law enforcement in the United States. The organization represents over 1,000 police units and associations and over 241,000 sworn officers mutually dedicated to fair and effective law enforcement.

The Western States Sheriffs' Association ("WSSA") was formed in 1993 "to allow Sheriffs to assist each other in fulfilling their duties and obligations related to law enforcement in their respective counties." About the WSSA, available at https://www.westernsheriffs.org/about/ (last accessed Jan. 24, 2020). The WSSA is comprised of sheriffs and their affiliates from 17 Western states, including Washington, Wyoming, Oregon, Utah, Idaho, California, Arizona, Nevada, Nebraska, New Mexico, North Dakota, South Dakota, Colorado, Kansas, Montana, Texas, and Oklahoma. This extensive network allows Western Sheriffs to develop and maintain relationships with federal and state agencies to provide effective law-enforcement services in the "wide open spaces and abundant public land" characterizing Western America.

SUMMARY OF THE ARGUMENT

This Court should grant the Petition for Writ of Certiorari for the many reasons discussed in the Petition itself. This Court should also grant certiorari review to address the Fifth Circuit's incomplete analysis, which failed to address whether there was a legitimate governmental objective for the complained of conditions and has virtually outlawed a law

enforcement mechanism that has been used all over the country for decades: the drunk tank.

Claims brought by pretrial detainees attacking conditions of confinement are analyzed under a well-settled standard. The primary inquiry is whether the challenged conditions amount to punishment. Instead of adhering to this standard, the Fifth Circuit has become an island on which jail conditions cases are divided into two distinct claims: true conditions cases and episodic-acts-and-omissions cases. This distinction has been rejected by this Court and should be shelved in the Fifth Circuit. Instead of inquiring about punishment, the Fifth Circuit instituted its own opinion of how jails should handle intoxicated persons. If the Fifth Circuit had conducted the proper analysis, the conditions attacked do not rise to the level of a constitutional violation. The Court should grant certiorari to correct the errant court of appeals, confirm the proper analysis for conditions-of-confinement claims, and reinforce decades of well-settled precedent on this issue.

ARGUMENT

Pre-trial detainees are entitled to certain protections under the Fourteenth Amendment. Most fundamentally, the Government may not deprive a person of life, liberty, or property without due process of law. However, as is well understood, the Government may hold people accused of a crime in jail under certain conditions. But, in doing so, the Government cannot impose punishment.

The Fifth Circuit in this case lost sight of the proper question: Did the challenged conditions amount to punishment? Indeed, this is the only inquiry to be made in analyzing conditions-of-confinement claims. By failing to make this inquiry, the Fifth Circuit misapplied this Court's precedent. And, in so doing, the Fifth Circuit has elevated local jail standards and mere negligence to the level of a constitutional violation—a step long rejected. Moreover, the Fifth Circuit's opinion effectively removes an important tool for dealing with intoxicated persons from the belts of detention facilities and will make it more difficult and expensive for jails to operate efficiently and effectively.

Amici will begin by addressing the Fifth Circuit's erroneous distinction between two theories of liability in jail conditions cases. Amici will then discuss the standard for conditions-of-confinement cases and how the Fifth Circuit misapplied the standard. Amici will conclude by highlighting the important policy consequences of the Fifth Circuit's decision.

I. The Fifth Circuit's distinction between episodic acts and omissions and conditions of confinement claims has been rejected by this Court.

In *Bell v. Wolfish*, this Court enunciated the standard for claims by pretrial detainees attacking conditions of confinement, stating that "the proper inquiry is whether those conditions amount to punishment of the detainee." 441 U.S. 520, 535 (1979). This Court has consistently applied this standard in cases attacking conditions faced by pretrial detainees

and has refused to separate claims according to the characterization of the condition.

In contrast, the Fifth Circuit announced in *Hare v. City of Corinth* that it applies two different tests to claims by pretrial detainees depending on the nature of the claim: whether it was based on general conditions of pretrial confinement or on a jail official's episodic acts or omissions. 74 F.3d at 643. If the claim challenges general conditions of confinement, the *Bell* test applies. But if the claim alleges harm based on episodic acts or omissions of a jail official, then the Fifth Circuit applies the deliberate indifference standard articulated in *Estelle v. Gamble*, 429 U.S. 97 (1976).

This distinction is not rooted in the Fourteenth Amendment nor in this Court's precedent. In fact, it has been rejected by this Court. In *Wilson v. Seiter*, it was argued that such a distinction should be drawn between short-term or one-time conditions, in which a state of mind requirement would apply, and continuing or systemic conditions, in which official state of mind would be irrelevant. 501 U.S. 294, 300 (1991). But this Court found that "neither a logical nor a practical basis for that distinction" existed. *Id.*

This Court even pondered how such distinctions would be made. *Id.* at 301. Would there be a day or hour requirement to separate the two? Would that day or hour be the same for all conditions or would it differ based on the condition? How many occurrences is enough to make an act a "condition"? Five? Fifteen?

Fifty? Attempting to separate the two simply "defies rational implementation." *Id.*

Instead, as will be explained, this Court reasoned that an intent element is inherent is the Eighth Amendment's ban on cruel and unusual *punishment* (and, by extension, the Fourteenth Amendment's prohibition on *punishment* period), no matter if it is an episodic act or a long-term condition. *Id.* at 300.[2] Thus, this Court reasoned that "[t]he long duration of a cruel prison condition may make it easier to establish *knowledge* and hence some form of intent . . . ; but there is no logical reason why it should cause the *requirement* of intent to evaporate." *Id.* at 300-01.

As explained in *Wilson*, there is no basis in the Constitution for the Fifth Circuit's arbitrary distinction between episodic acts and conditions, and, therefore, the Fifth Circuit's distinction should be overruled and discarded.

II. The Fifth Circuit further misapplied the *Bell* standard by failing to determine whether the alleged conditions were reasonably related to a legitimate governmental interest.

As noted, the Fourteenth Amendment protects pretrial detainees from punishment, and, therefore, the proper inquiry is whether the condition challenged

[2] Quoting Judge Posner, this Court recognized that "[t]he infliction of punishment is a deliberate act intended to chastise or deter. This is what the word means today; it is what it meant in the eighteenth century . . . ." *Id.* (quoting *Duckworth v. Franzen*, 780 F.2d 645, 652 (7th Cir. 1985)).

amounts to punishment. Accordingly, in *Bell*, this Court explained that, "if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Id.* at 539. In making this determination, a court's scope is "limited," *Block v. Rutherford*, 468 U.S. 576, 589 (1984), and detainees shoulder a "heavy burden" to prove such intent, *Bell*, 441 U.S. at 562.

> "Absent a showing of an *expressed intent* to punish on the part of detention facility officials, that determination generally will turn on 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].'"

Hare, 74 F.3d at 651 (Dennis, J., specially concurring) (emphasis added) (quoting *Bell*, 441 U.S. at 538). If the condition is not reasonably related to a legitimate governmental interest, then it can be inferred that it is designed to punish. "Courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility." *Bell*, 441 U.S. at 539.

"The 'reasonably related to a valid penological standard' never purported to allow recovery for mere negligence. To the contrary, this test is deferential to jail rulemaking; it is in essence a rational bases test of the validity of jail rules." *Id.* at 646. "Violation of the

Bell test requires acts or omissions not too distant from a standard of arbitrary and capricious conduct." *Id.*

Petitioners persuasively argue that the deliberate indifference standard should apply to conditions of confinement claims alleging inadequate medical care, highlighting a circuit split between the Fifth Circuit and the First, Third, Sixth, Tenth, and Eleventh Circuits. Indeed, the Fifth Circuit itself previously held that "a proper application of *Bell*'s reasonable-relationship test is functionally equivalent to a deliberate indifference inquiry," *Hare*, 74 F.3d at 643, but the Fifth Circuit has not applied that standard in practice.

This Court has explained that "the effective management of the detention facility . . . is a valid objective that may justify imposition of conditions and restrictions of pretrial detention." And, in determining "whether restrictions or conditions are reasonably related to the Government's interest in . . . operating the institution in a manageable fashion," courts must remember that "[s]uch considerations are peculiarly within the province and professional expertise of corrections officials." *Bell*, 441 U.S. at 540 & n.23. To be sure, courts are not to become "enmeshed in the minutiae of prison operations." *Id.* at 544.

> "[J]udicial deference is accorded [to prison administrators] not merely because the administrator ordinarily will, as a matter of fact in a particular case, have a better grasp of his domain than the reviewing judge, but also because the operation of our correctional

> facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial." *Id.* at 548.

Instead of determining whether the intent is to punish, the Fifth Circuit has determined that, if a condition exists, then courts may presume an intent by the State or jail officials to subject detainees to the condition. *Hare*, 74 F.3d at 644.[3] This analysis has all but done away with the requirement that there be either an express or implied intent to punish. And, in doing so, elevated what, at most, could be considered mere negligence to the level of a constitutional violation.[4]

Consider the Panel's application in this case. The Fifth Circuit reversed the grant of summary judgment, finding a fact issue as to the existence of de

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[3] The Fifth Circuit's *Hare* opinion acknowledged *Wilson*, but stated *Hare*'s holding "was consistent with *Wilson*'s holding that state of mind is significant in both situations, albeit differently demonstrated in each." *Id.* at 645 n.2. But this is not the case, since the Fifth Circuit only presumes an intent to impose the condition, but does not examine the intent behind the imposition of the condition.

[4] Further, the Fifth Circuit's reliance on the records from inspections by the Texas Commission for Jail Standards ("TCJS") is problematic. The Fifth Circuit's use of the TCJS standards overlooks the fact that those standards are not the constitutional standard. Put simply, proof that a county is engaged in a robust monitoring effort where deficiencies are measured against a set of standards is not proof that the county is violating the Constitution. *See Bell*, 441 U.S. at 543 n.27 (observing that while "recommendations of [professional] groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question").

facto policies. However, by doing so, the Fifth Circuit overlooked the constitutional issue, a purely legal question: even if such policies existed, were they intended to punish, i.e. were they arbitrary or purposeless as opposed to reasonably related to a legitimate government interest? The answer has to be no.

What's more, the Fifth Circuit ignored this Court's warnings, going beyond the "limited scope of judicial inquiry," and instituted its own opinion as to how a jail should handle intoxicated individuals. *See Block v. Rutherford*, 468 U.S. 576, 589 (1984). According to the Panel in this case, jails should have medical staff, should take into account every bit of outside information given, even to the point of ignoring information given by the detainee, and should conduct regular follow-up assessments. *See, e.g.*, App. at 26a.

As noted, in making this assessment, the Fifth Circuit did not conduct a rationality analysis. If it had done so, there is no question that the Jail has a legitimate interest in placing intoxicated individuals into a holding cell to sober up. Indeed, this has been done for many, many years in jails all over the country (and even world). There is no evidence the Jail believed Simpson was dangerously intoxicated, that she was attempting to kill herself, or that the Jail stuck her in a cell to suffer. There is, in fact, no evidence the Jail did anything other than place her in a cell by herself to sober up and periodically monitored her—a practice that has been deemed reasonable by courts all over the country. *See Estate of Allison v. Wansley*, 524 F.

App'x 963, 972 (5th Cir. 2013); *Schack v. City of Taylor*, 177 F. App'x 469, 472-73 (6th Cir. 2006) (collecting cases); *Bradich ex rel. Estate of Bradich v. City of Chicago*, 413 F.3d 688, 690 (7th Cir. 2005); *Grayson v. Peed*, 195 F.3d 692, 696 (4th Cir. 1999).

If jails can be held liable here—where the individual has taken all the steps necessary to commit suicide before coming into contact with law enforcement, the individual was evaluated by medical professionals and cleared, the individual denied any suicidal ideations to jail officials, and the individual was continuously monitored on a camera in the cell and was periodically checked on—then what more must a jail do to escape liability?

Accordingly, there are several reasons why this Court should grant the Petition for Certiorari: to resolve the circuit conflict, address the proper application of the *Bell* test, decide whether there is any distinction between episodic acts and omissions, and determine what part deliberate indifference plays in the analysis.

III. The Fifth Circuit's opinion effectively makes the "drunk tank" and similar holding cells unconstitutional.

As previously explained, the Fifth Circuit held that there was a fact issue as to whether Young County's alleged failure to assess caused the constitutional violation. The failure to assess claim was divided into two distinct allegations: (1) Young County had a policy or practice of misclassifying/misplacing individuals in cells that do not provide maximum visual

observations and (2) Young County had a policy or practice of improperly filling out intake assessment forms. App. at 21a.

As more fully explained in the Petition for Writ of Certiorari, the Fifth Circuit failed to take into account that the actions taken by Simpson to end her own life were taken *before* she arrived at the jail. The Fifth Circuit also failed to take into account that Simpson was evaluated by medical professionals and deemed healthy, and Simpson herself repeatedly denied any suicidal inclinations to police and jail staff. Further, Simpson was able to speak without slurring words and walked unassisted. There was no real reason for the jail staff to believe she was anything other than intoxicated.

According to one newspaper, in 2013 in Houston alone, over 19,000 people were arrested for public intoxication.[5] That amounts to over 52 persons per day being arrested for public intoxication in just one city.[6] This is what the Nation's jails are dealing with. Detention facilities see and handle all levels of intoxication. And now, according to the Fifth Circuit, detention facilities will be required to ensure all

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[5] Minh Dam, *Beats a Night in the Drunk Tank*, HOUSTON CHRONICLE (Mar. 7, 2013, 8:45 p.m.) https://www.houstonchronicle.com/news/houston-texas/houston/article/Beats-a-night-in-the-drunk-tank-4337907.php.

[6] *See also Sobriety Center Implementation Report*, CITY OF AUSTIN, TEXAS (April 27, 2015) http://www.austintexas.gov/edims/document.cfm?id=230158 (collecting data on number of public intoxication arrests in Travis County, Texas).

booking forms are completed in their entirety, no matter the level of intoxication and incoherence of the answers, will be required to get an independent medical screening for each intoxicated person, and will be required to place intoxicated persons in a cell in full view of a jailer so that they may be watched continuously and not just on a monitor. If not, the jail has committed a constitutional violation.

Under the Fifth Circuit's ruling, there is no workable solution as to how to handle a person who is too intoxicated to complete the booking process. They cannot be let go, as they could go on to hurt themselves or others.[7] Do jailers sit them on a bench in full view of an officer until the person can complete the booking process and be placed in a cell? But, that would create other security problems, so that cannot be the solution. Or, must jails remodel to make sure there is an open cell in full view of an officer so they can be watched at all times? What if the city or county does not have funding to remodel? And what happens if there is more than one intoxicated person in the jail at one time? Would there have to be multiple cells adhering to this standard? Or, are police officers just supposed to take each intoxicated individual to the hospital instead of jail? But again, the Fourth Circuit has said to mandate this would be a "startling step to take." *Grayson*, 195 F.3d at 696. These are only a few of the questions raised by the Fifth Circuit's opinion, none of which are workable given the limited resources of most jails.

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[7] *See, e.g.*, *Powell v. Texas*, 392 U.S. 514, 528 (1968) ("It would be tragic to return large numbers of helpless, sometimes dangerous and frequently unsanitary inebriates to the streets of our cities without even the opportunity to sober up adequately which a brief jail term provides.").

In sum, this is a burden too great for our cities and jails to bear. The police and jailers deal with intoxicated persons every day. And, while it is the job of the courts to ensure the constitutional rights of detainees are not violated, the Fifth Circuit went too far. Instead of ensuring that constitutional rights are upheld, the Fifth Circuit crossed the line into managing detention facilities. As this Court explained long ago, that is not the job of the Judicial Branch.

CONCLUSION

This Court should grant the Petition for Writ of Certiorari to confirm the proper analysis for conditions of confinement claims and bring the Fifth Circuit into compliance with decades of precedent and other Circuits. By addressing the panel majority's flawed and incomplete analysis, this Court can clarify the standard for conditions of confinement claims, which in turn will protect governmental entities from unwarranted litigation.

Respectfully submitted,

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