NO. 20-990

In the Supreme Court of the United States

THOMAS J. DART, SHERIFF OF COOK COUNTY, ILLINOIS,

Petitioner,

v.

ANTHONY MAYS, INDIVIDUALLY AND ON BEHALF OF A CLASS OF SIMILARLY SITUATED PERSONS, ET AL.,

Respondents.

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

BRIEF OF *AMICI CURIAE* THE NATIONAL SHERIFFS' ASSOCIATION AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PETITIONER

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AMICI CURIAE BRIEF OF THE NATIONAL SHERIFFS' ASSOCIATION AND CALIFORNIA STATE ASSOCIATION OF COUNTIES

The National Sheriffs' Association and California State Association of Counties respectfully submit this *amici curiae* brief.[1]

IDENTITY AND INTEREST OF *AMICI CURIAE*

The National Sheriffs' Association (the "NSA") is a non-profit association formed under 26 U.S.C. 501(c)(4). Formed in 1940 the NSA seeks to promote the fair and efficient administration of criminal justice throughout the United States and in particular to advance and protect the Office of Sheriff throughout the United States. The NSA has over 13,000 members and is the advocate for 3,080 sheriffs throughout the United States.

The NSA also works to promote the public interest goals and policies of law enforcement throughout the nation. It participates in the judicial process where the vital interests of law enforcement and its members are affected.

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[1] *Amici* notified all counsel of record of its intent to file this brief more than 10 days before the due date, and consent to file was given by all. This brief was not authored in whole or in part by counsel for any party. No person or entity other than *amici* made a monetary contribution to this brief's preparation or submission.

Amicus represents the nation's sheriffs who operate more than 3,000 local correctional facilities throughout the country. The vast majority of these facilities house both pretrial detainees and convicted inmates.[2] Sheriffs, as the custodians of the inmates housed within these facilities, are charged with providing a safe and secure environment for both the inmates and for their staff.

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all California counties.

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[2] For the purposes of this brief unless noted otherwise, pretrial detainees include any inmate, including arrestees, who have not been convicted.

SUMMARY OF ARGUMENT

In this case under review, the Seventh Circuit inappropriately applied an "objective reasonableness" standard to the medical conditions of confinement case, citing *Kingsley v. Hendrickson* which was an excessive force case. *Amici* respectfully request that this Court uphold its long established deliberate indifference standard for medical conditions of confinement cases as established by this Court in *Estelle v. Gamble* and later expanded in *Farmer v. Brennan*, specifically, that medical conditions of confinement are constitutional unless the official knew of and disregarded an excessive risk to inmate health or safety.

The court below is ignoring this Court's holding in *Farmer* by eliminating the subjective component of a medical conditions of confinement case. In essence, the Seventh Circuit has constitutionalized tort negligence medical malpractice by requiring only objective reasonableness in deliberate indifference cases. Such an approach flies in the face of this Court's long recognized holding that substantial deference is owed to jail administrators.

Amici pray that this Court will uphold the well-established subjective component of the deliberate indifference test for medical conditions of confinement liability.

ARGUMENT

I. CIRCUITS ARE SPLIT AS TO THE STANDARD FOR MEDICAL CONDITIONS OF CONFINEMENT CLAIMS BY PRETRIAL DETAINEES.

In 2015, this Court decided *Kingsley v. Hendrickson*, 135 S.Ct. 2466 (2015) which held that the appropriate standard for a pretrial detainee's Fourteenth Amendment excessive force claim is objective reasonableness. Following *Kingsley*, circuits have become deeply divided on whether this Court meant for Kingsley's adoption of the "objectively reasonable" standard to apply to Fourteenth Amendment Due Process medical and conditions of confinement cases brought by pretrial detainees. Several circuits have abandoned (ignored) this Court's subjective deliberate indifference standard for medical conditions of confinement claims creating confusion and uncertainty for the criminal justice community. This divide occurred despite the facts of *Kingsley* applying only to excessive force claims, not medical or conditions of confinement claims. The following cases illustrate the divide among the circuits.

In *Miranda-Rivera v. Toledo-Dávila*, 813 F.3d 64 (1st Cir. February 12, 2016), the court applied the deliberate indifference standard's subjective component in finding that officers may be liable if they recognized a serious risk to an arrestee's health and choose to prioritize others' safety over seeking immediate medical attention for the arrestee.

In *Darnell v. Pineiro*, 849 F.3d 17 (2nd Cir. February 21, 2017) the court concluded that this Court's decision in *Kingsley* altered the standard for deliberate indifference claims under the Due Process clause. As a result, the court held that the Due Process clause can be violated even though the official does not have subjective awareness that his or her acts (or omissions) have exposed the pretrial detainee to a substantial risk of harm. *Id.* at 34-35.

In concluding that deliberate indifference should be defined objectively for a claim of a due process violation, the Second Circuit joined the Ninth Circuit, which, in *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) likewise interpreted *Kingsley* as standing for the proposition that deliberate indifference for due process purposes should be measured by an objective standard. *Darnell*, 849 F.3d at 35.

In *Hope v. Warden York Cty. Prison*, 972 F.3d 310 (3rd Cir. August 25, 2020), the court held that immigrant detainees claims of insufficient COVID-19 precautions required analysis under the *Bell v Wolfish* prohibition of punishment and that in order to establish deliberate indifference, the Plaintiffs must show that the Government knew of and disregarded an excessive risk to their health and safety. *Id.* at 329.

In *Hill v. Nicodemus*, 979 F.2d 987 (4th Cir. November 16, 1992), the court in a jail suicide case explained that in *City of Canton v. Harris*, 489 U.S. 378, 103 L.Ed.2d 412, 109 S.Ct. 1197 (1989), this Court concluded that it did not need to formulate the precise standard of medical care owed to a pretrial detainee. *Hill*, 979 F.2d at 991. Accordingly, the *Hill* court applied the deliberate indifference standard using

the subjective component as applied in *Farmer*. *Hill*, 979 F.2d at 991-992.

In *Baldwin v. Dorsey*, 964 F.3d 320 (5th Cir. July 1, 2020), the court held that the Fourteenth Amendment protects pretrial detainees' rights to medical care and to protection from known suicidal tendencies. The court stated that a government official violates that Fourteenth Amendment right when the official acts with deliberate indifference to a detainee's serious medical needs. *Id*. at 326. In order to prove deliberate indifference, however, an arrestee must show that a police officer was aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, that the officer actually drew the inference, and that the officer disregarded that risk by failing to take reasonable measures to abate it. *Id*.

In *Baker-Schneider v. Napoleon*, 769 Fed. Appx. 189 (6th Cir. April 16, 2019), the court held in a medical conditions of confinement case involving a suicidal pretrial detainee, that the Fourteenth Amendment's Due Process Clause extends the same protections to pretrial detainees as the Eighth Amendment does to prisoners. *Id*. at 192. In so holding, the court held that in order to prevail on a deliberate indifference claim, a Plaintiff must show that the prison official recklessly disregarded a known risk. *Id*.

In *Ayoubi v. Dart*, 724 Fed. Appx. 470 (7th Cir. February 2, 2018), the court held that a pretrial detainee's claim for failure to properly quarantine him from influenza was governed by the deliberate indifference test with a subjective component as applied in *Farmer*. *Ayoubi*, 724 Fed. Appx.at 474.

In *Johnson v. Leonard*, 929 F.3d 569 (8th Cir. July 3, 2019), the court applied the deliberate indifference standard to a claim of inadequate dental care to a pretrial detainee holding that to prove his deliberate indifference claim, the detainee must show that the defendants knew of the need yet deliberately disregarded it. *Id.* at 575.

In *Stella v. Anderson*, 2021 U.S. App. LEXIS 2957 (10th Cir. February 3, 2021), the court applied the subjective deliberate indifference standard to a claim of inadequate medical care to a pretrial detainee holding that in order to satisfy the component, an official must have known that the inmate faced a substantial risk of serious harm, and disregarded that risk by failing to take reasonable measures to abate it. *Id.* at 5.

In *Paulk v. Ford*, 826 Fed. Appx. 797 (11th Cir. September 4, 2020), the court applied the deliberate indifference standard to a claim of inadequate medical care for Crohn's disease to a pretrial detainee holding that the Plaintiff must show a jail official's subjective knowledge of a risk of serious harm, and that the official disregarded that risk by conduct that is more than mere negligence. *Id.* at 803.

Based on the split among the circuits on the standard necessary in order to prevail on a claim of deliberate indifference in medical conditions of confinement cases, *amici* seek clarification of the standard and re-affirmance that deliberate indifference requires subjective knowledge of a risk of harm as enunciated in *Farmer*.

II. DELIBERATE INDIFFERENCE TO A SUBSTANTIAL RISK OF SERIOUS HARM IS THE PROPER STANDARD FOR MEDICAL CONDITIONS OF CONFINEMENT CLAIMS.

This Court in *Farmer v. Brennan*, 511 U.S. 825 (1994) held that a prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment, citing *Helling v. McKinney*, 509 U.S. 25, 125 L.Ed.2d 22, 113 S.Ct. 2475 (1993); *Wilson v. Seiter*, 501 U.S. 294, 115 L.Ed.2d 271, 111 S.Ct. 2321 (1991); *Estelle v. Gamble*, 429 U.S. 97, 50 L.Ed.2d 251, 97 S.Ct. 285 (1976). *Farmer*, 511 U.S. at 828. While *Estelle* establishes that deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. *Farmer*, 511 U.S. at 835.

> That point underlies the ruling that "application of the deliberate indifference standard is inappropriate" in one class of prison cases: when "officials stand accused of using excessive physical force." *Hudson v. McMillian*, 503 U.S. at 6-7; *see also Whitley*, supra, at 320. In such situations, where the decisions of prison officials are typically made "'in haste, under pressure, and frequently without the luxury of a second chance,'" *Hudson v. McMillian*, supra, at 6 (quoting *Whitley*, supra, at 320), an Eighth Amendment claimant must show more than "indifference," deliberate or otherwise. The claimant must show that officials applied force "maliciously and sadistically for the very purpose of causing harm," 503 U.S. at 6 (internal quo-

> tation marks and citations omitted), or, as the Court also put it, that officials used force with "a knowing willingness that [harm] occur," *id.*, at 7 (internal quotation marks and citation omitted). This standard of purposeful or knowing conduct is not, however, necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement; "the very high state of mind prescribed by *Whitley* does not apply to prison conditions cases." *Wilson*, *supra*, 501 U.S. at 302-303.

Farmer, 511 U.S. at 835-836.

In the present case, the Seventh Circuit applied an "objective reasonableness" standard as opposed to a "subjective knowledge" requirement in determining deliberate indifference relating to a medical conditions of confinement claim. In so doing, it cited *Kingsley v. Hendrickson* which was an excessive use of force claim by a pretrial detainee. Applying *Kingsley*'s holding to this medical conditions of confinement case is in direct contravention of *Whitley v. Albers* which explained that use of force claims and conditions of confinement claims must be evaluated differently. In its landmark decision in *Whitley*, this Court set a new standard for use of force cases, separate and distinct from the deliberate indifference standard applied in medical care and conditions cases. The *Kingsley* standard was never intended by this Court to apply to medical care and conditions of confinement claims. *Farmer* provides the proper, universal and well established analysis to be used in medical care and conditions claims.

In *Farmer*, this Court provided as follows:

> The Constitution "does not mandate comfortable prisons," *Rhodes v. Chapman*, 452 U.S. 337, 349, 69 L.Ed.2d 59, 101 S.Ct. 2392 (1981), but neither does it permit inhumane ones, and it is now settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment," *Helling*, 509 U.S. at 31. In its prohibition of "cruel and unusual punishments," the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive physical force against prisoners. *See Hudson v. McMillian*, 503 U.S. 1, 117 L.Ed.2d 156, 112 S.Ct. 995 (1992). The Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must "take reasonable measures to guarantee the safety of the inmates," *Hudson v. Palmer*, 468 U.S. 517, 526-527, 82 L.Ed.2d 393, 104 S.Ct. 3194 (1984). *See Helling*, *supra*, at 31-32; *Washington v. Harper*, 494 U.S. 210, 225, 108 L.Ed.2d 178, 110 S.Ct. 1028 (1990); *Estelle*, 429 U.S. at 103. *Cf. DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 198-199, 103 L.Ed.2d 249, 109 S.Ct. 998 (1989).

Farmer, 511 U.S. at 832-833.

This Court in *Farmer* stated that a prison official violates the Eighth Amendment only when two require-

ments are met. First, which is not an issue here, that the deprivation alleged must be, objectively, "sufficiently serious," *Wilson*, *supra*, at 298; *see also Hudson v. McMillian*, *supra*, at 5; *Rhodes*, *supra*, at 347 (a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities"). *Farmer*, 511 U.S. at 834.

The second requirement, which is the basis for this *amici* brief, is the requirement that the alleged violator have subjective knowledge of a risk of serious harm, and disregard that risk. *Id.* at 837.

This Court has previously provided that it is fair to say that 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. Further the Court explained that criminal law generally permits a finding of recklessness only when a person disregards a risk of harm of which he is aware. *Farmer*, 511 U.S. at 836-837, citing R. Perkins & R. Boyce, CRIMINAL LAW 850-851 (3d ed. 1982); J. Hall, GENERAL PRINCIPLES OF CRIMINAL LAW 115-116, 120, 128 (2d ed. 1960); American Law Institute, Model Penal Code § 2.02(2)(c), and Comment 3 (1985). A subjective state of mind is required. To abandon the well-established deliberate indifference standard would in essence create a federal negligence claim for constitutional violations. This was never the intent of this Court's long standing history of the development of the deliberate indifference standard.

In *Farmer*, this Court rejected an invitation to adopt an objective test for deliberate indifference. *Farmer*, 511 U.S. at 837. It held instead that a prison official cannot be found liable for a constitutional violation for denying an inmate humane conditions of

confinement unless the official knows of and disregards an excessive risk to inmate health or safety. The official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. *Farmer*, 511 U.S. at 837. This Court held that only common law imposes tort liability on a purely objective basis. *Farmer*, 511 U.S. at 838, citing Prosser and Keeton, PROSSER AND KEETON ON TORTS §§ 2, 34, pp. 6, 213-214; *see also* Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680; *United States v. Muniz*, 374 U.S. 150, 10 L.Ed.2d 805, 83 S.Ct. 1850 (1963).

In the present case, the Seventh Circuit seeks to change the subjective knowledge component of *Farmer* to a standard of whether an objectively reasonable person would have known. Such an approach abandons this Court's holding in *Farmer* and turns a medical conditions of confinement into a tort negligence claim. In the case below, the Seventh Circuit is constitutionalizing state medical malpractice liability in direct contravention of *Farmer*.

III. SHERIFFS ARE DUE SUBSTANTIAL DEFERENCE IN JAIL ADMINISTRATION.

Sheriffs operating jails across the Country desperately need this Court to resolve this uncertain and unacceptable state of constitutional jurisprudence. "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources." *Turner v. Safley*, 482 U.S. 78, 84-85 (1987). Sheriffs need a definitive answer from this Court to properly allocate limited resources and to develop appropriate and consistent policies, practices, and procedures that conform to a final

determination from this Court of what constitutes deliberate indifference in medical and conditions of confinement cases.

In addition, Sheriffs need the flexibility to use limited resources to the best of their abilities as experts in jail administration. This Court has recognized the importance of this concept.

The "wide range of 'judgment calls' that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government." *Bell*, 411 U.S. at 562; *S. Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613 (2020) at 1613-14. This Court has long recognized and respected that jail administrators should be "accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.* at 548 n.30. That applies to matters affecting jail security, but also to the myriad other complex issues affecting jail operations. Resolving those matters may justify imposing certain conditions without an inference of punishment arising. *Id.*

"Judicial deference is accorded not merely because the [jail] administrator ordinarily will . . . 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. For those reasons, "courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform." *Id.* At 548 n.30. "In the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to

these considerations, courts should ordinarily defer to their expert judgment in such matters." *Id.* at 547-48, quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974) (emphasis added).

In 2012, this Court expanded the deference that must be given to correctional officials by adding the word "substantial": "Maintaining safety and order at detention centers requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to problems." *Florence v. Board of Chosen Freeholders of the County of Burlington*, 566 U.S. 318 (2012). So important is the significance of substantial deference being owed, that failure by lower courts to recognize the deference can be reversible and prejudicial error. "We have held that the failure to instruct the jury on deference afforded prison officials for a prisoner's Eighth Amendment conditions of confinement claim can constitute reversible, prejudicial error." *Norwood v. Vance*, 591 F.3d 1062, 1067 (9th Cir. 2010).

In 2015, this Court again recognized the substantial deference owed to jail administrators. In *Kingsley*, this Court explained, "We recognize that running a prison is an inordinately difficult undertaking, and that safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face." *Id.* at 2474. This "substantial discretion" is incompatible with courts second-guessing decisions made by jail administrators on medical conditions of confinement unless courts want to take on the task of running jails.

The implications of allowing pretrial detainees to challenge every medical or condition of confinement

under an "objective reasonableness" standard would open the flood gates of litigation. Jail administrators make hundreds of different "conditions of confinement" decisions from how much toilet paper is distributed to inmates to what time meals are served and the manner of serving meals, amount of time in the yard for recreation, how administrative segregation is handled, who gets a top bunk, and hundreds of other decisions. Setting a low bar for any challenge to any medical or conditions of confinement claim will certainly drastically increase the load of courts handling conditions of confinement claims.

In sum, correctional administrators must be afforded judicial deference to their expertise within constitutional constraints. The constraints already established by this Court in *Farmer* provides deference to correctional administrators in the day to day operations so long as the administrators are not deliberately indifferent to a substantial risk of serious harm to inmates. The split among circuits on the proper standard to be used in determining whether an official was deliberately indifferent must be resolved. More specifically, the subjective knowledge requirement set forth by this Court must be the standard applied in all medical and conditions of confinement cases.

CONCLUSION

For these reasons, *amici* urge this Court to end any ambiguity, grant the petition for certiorari, and clearly state that there is but one Constitutional standard to be applied to medical conditions of confinement claims. That standard is the deliberate indifference standard articulated in *Farmer* which requires an official to have subjective knowledge of a risk of serious harm, and disregard that risk, in order for a Plaintiff to prevail on a claim of deliberate indifference regardless of whether the claim is brought under the Eighth or Fourteenth Amendment.

Respectfully submitted,

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