

No. _____

**In The
Supreme Court of the United States**

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RICHARD W. TROYANOS, JR.,
as personal representative of the estate of
RICHARD J. TROYANOS,

Petitioner,

vs.

JIM COATS, in his official capacity as Sheriff of the
Pinellas County Sheriff's Office, RICHARD F. MILLER,
D.O. and RAPHAELITA E. SIMON-ROBINSON, R.N.,
individually and in their official capacities as a doctor and
nurse employed by the Pinellas County Sheriff's Office,

Respondents.

◆

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

◆

PETITION FOR WRIT OF CERTIORARI

◆

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QUESTIONS PRESENTED

Not since *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970 (1994), has this Court addressed the standard required in order for an inmate to successfully allege a deprivation under 42 U.S.C. § 1983. The Circuit Courts are in conflict as to the application of the *Farmer* standard. Specifically, a number of circuits are inserting a higher standard than is constitutionally permissible. As such, it is imperative that the following questions presented are addressed:

1. In *Farmer*, this Court held that the deliberate indifference standard requires that a prison official have knowledge that an inmate faces a substantial risk of serious harm. The Eleventh Circuit and others have held that the deliberate indifference standard requires not only that an official have knowledge that an inmate faces a substantial risk of serious harm, but must also foresee the exact form of harm for which the inmate was at risk. May an inmate, consistent with *Farmer*, properly maintain a section 1983 claim by alleging that an official had knowledge of a substantial risk of serious harm without alleging that the official had knowledge of the specific harm suffered?
2. The Ninth Circuit Court of Appeals, in *Gibson v. County of Washoe, Nev.*, 290 F.3d (9th Cir. 2002) has held that a municipality may be held liable for violations of 42 U.S.C. § 1983 even if liability cannot be ascribed to

QUESTIONS PRESENTED – Continued

a single, individual officer. In conflict with the Ninth Circuit, the Eleventh Circuit has held that the Sheriff's Office is not liable (as a matter of law) under Troyanos' failure to train theory because no single individual officer may be held liable for violation of section 1983. Should a uniform standard be established to allow an inmate to properly maintain a section 1983 claim for failure to train even if liability cannot be ascribed to a single, individual officer?

3. Does the subjective recklessness standard for claims brought by prisoners under the Eighth Amendment apply equally to claims brought by detainees under the Fourteenth Amendment?

PARTIES TO THE PROCEEDING

Petitioner is Richard W. Troyanos, Jr., in his capacity as the Personal Representative of the Estate of Richard J. Troyanos. He was the Plaintiff in the District Court, and the appellant in the Court of Appeals.

Respondents are Sheriff Jim Coats, Pinellas County Sheriff's Office; Richard F. Miller, D.O., Pinellas County Sheriff's Office; and Raphaelita Simon-Robinson, RN, Pinellas County Sheriff's Office. They were Defendants in the District Court and appellees in the Court of Appeals.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review a decision of the United States Court of Appeals for the Eleventh Circuit.



OPINIONS BELOW

The opinion of the Eleventh Circuit for which this petition is filed is reported at 372 Fed.Appx. 932 (11th Cir. 2010). The Eleventh Circuit denied rehearing on September 15, 2011.



JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was entered on April 13, 2010. The Eleventh Circuit denied rehearing on September 15, 2011. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1983 of Title 42 of the United States Code provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of

Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

The Equal Protection Clause of the Fourteenth Amendment provides in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



STATEMENT OF THE CASE AND FACTS

The Writ should be granted because the Eleventh Circuit Court of Appeals' decision conflicts with 42 U.S.C. § 1983, this Court's prior decisions, and decisions of other circuit courts of appeals.

A. Factual Background

Mr. Richard Troyanos was a resident of the Boley Center for Behavioral Healthcare, a rehabilitation center for mentally ill adults. *Troyanos v. Coats*, 372 Fed.Appx. 932, 933 (11th Cir. 2010). Troyanos had a history of mental illness, including depression, bipolar disorder, and psychosis. *Id.* He had attempted suicide on multiple occasions, and had been involuntarily committed for psychiatric treatment on at least six occasions. *Id.* at 933-34.

On November 6, 2006, Troyanos was arrested for an alleged incident of domestic violence and was transported to the Pinellas County jail. *Id.* at 934. During the intake process, detention Deputy Donna L. Pecorelli observed, documented and photographed scars on both of Troyanos' wrists. *Id.* Troyanos admitted that those wounds were self-inflicted. *Id.* Although Deputy Pecorelli informed the screening nurse of the scars and of Mr. Troyanos' admission that they were self-inflicted, the nurse continued with the intake process. *Id.* While being processed, Troyanos became agitated and uncooperative and had to be forcibly restrained by detention staff. *Id.* He was placed in a holding cell to "deescalate," but instead began to violently bang his head against the cell wall. *Id.*

Nurse Raphaelita Simon-Robinson evaluated Troyanos and observed that he had in fact injured himself by banging his head against the wall. *Id.* In her report, Simon-Robinson noted that Troyanos was now "babbling," "belligerent," and experienced

an “alteration in mental status,” and concluded that Troyanos was “mentally challenged.” *Id.* She authorized Troyanos to be restrained and placed him on “Close Observation Status,” which required that a detention officer observe Troyanos every 15 minutes. *Id.* Troyanos was restrained for approximately three and a half hours; however, he was still not classified as a “suicide risk.” *Id.*

After his release from the restraints, Troyanos was evaluated by Nurse Melinda Scott, who “observed that Troyanos was extremely agitated, unable to focus, spoke in a rambling manner, and exhibited an altered thought process. *Id.*

At 2:38 p.m. on November 7, 2006, Troyanos was evaluated by Dr. Miller. *Id.* Dr. Miller noted that Troyanos “was angry, agitated, nasty, hostile, uncooperative, and verbally abusive.” *Id.* Dr. Miller did not perform a mental health assessment or screening. *Id.*

Almost two and one-half hours later, Dr. Miller met with Troyanos due to reports of Troyanos’ increased agitation. *Id.* Dr. Miller noted that Troyanos was “very agitated, exhibited loud rapid pressured speech, and was shaking and hitting the cell door and wall with his head.” *Compl.*, ¶ 37. Dr. Miller further noted that Troyanos was delusional and diagnosed him with a psychotic disorder. *Id.* Dr. Miller ordered Mr. Troyanos to be sedated. *Troyanos*, 372 Fed.Appx. at 934.

Not long after the sedation medication wore off, Troyanos was again observed to be very agitated,

smashing his head against a control room window outside the nurses' station at the jail. *Compl.* ¶ 38. As a result, Troyanos was tackled and physically restrained by staff. *Troyanos*, 372 Fed.Appx. at 934. Although Dr. Miller was called to re-evaluate Troyanos after this incident, Dr. Miller opted not to perform another evaluation because Troyanos was asleep. *Id.*

On November 9, 2006, three days after his initial arrest, Troyanos continued to exhibit signs of a severe mental illness and self-injurious behavior, yet was still not classified as a suicide risk. Troyanos was observed by staff sitting on the floor of his cell with his head in his hands upset because he was unable to reach his son via phone. *Id.* Two fellow inmates recalled Troyanos crying aloud and shaking the bars of his cell. *Id.*

Although Mr. Troyanos was to be observed by staff every fifteen minutes (rather than the constant observation that would have been required had Troyanos been placed on suicide watch), deputies failed to check on Troyanos between 4:30 and 5:00 p.m. on November 9th. *Id.* At 5:14 p.m., a deputy found Troyanos sitting on the floor of his cell with his back against his cell door, unresponsive. *Id.*

Mr. Troyanos had committed suicide by hanging himself from the bars of his cell using the elastic waistband of his inmate uniform pants, which he cut with the jagged edge of a shredded plastic cup. *Id.*

B. Proceedings Below

Mr. Troyanos' son filed a complaint against Sheriff Jim Coats, Dr. Richard Miller, and Nurse Simon-Robinson, alleging violations under 42 U.S.C. § 1983, the Fourteenth Amendment, and Florida Statutes §§ 768.16-26.

The complaint alleges that Sheriff Coats failed to train or supervise his employees with regard to mentally ill detainees; that Coats was liable under the Florida Wrongful Death Act; and that Simon-Robinson and Miller failed to assess and treat Troyanos as at risk of committing suicide.¹

The defendants moved to dismiss the complaint for failure to state a claim under Federal Rules of

¹ It is worth noting that the Eleventh Circuit's opinion repeatedly mischaracterizes the allegations of the Complaint. For example, the Eleventh Circuit specifically relied upon the assertion that "Troyanos' complaint fails to allege that Simon-Robinson or Miller ignored a strong likelihood that Troyanos would commit suicide." *Troyanos*, 372 Fed.Appx. at 935. In fact, Troyanos' Complaint clearly alleges:

Defendant Nurse SIMON-ROBINSON's actions and/or omissions were deliberately indifferent to the due process rights of RICHARD J. TROYANOS to receive adequate and appropriate medical treatment for illness and injuries, including, but not limited to, the right to receive psychiatric and mental health care. Defendant, Nurse SIMON-ROBINSON, at all times material, *deliberately disregarded a strong likelihood that RICHARD J. TROYANOS would inflict harm on himself, including attempting to commit suicide.*

Complaint, ¶ 32.

Civil Procedure 12(b)(6). The district court granted defendant's motion ruling that the above described conduct "fell 'short of deliberate indifference' and the employees were entitled to qualified immunity." *Troyanos*, 372 Fed.Appx. at 935. The district court also dismissed the claim for inadequate training finding "that '[n]o basis exist[ed] for an inadequate training claim' against Coats based on Troyanos' allegation of a 'single incident' of suicide. The district court declined to exercise supplemental jurisdiction over the claims of wrongful death under Florida law." *Id.*

Troyanos' son appealed the dismissal to the United States Court of Appeals, Eleventh Circuit. The Eleventh Circuit affirmed the dismissal finding that the complaint failed to allege that prison doctors or officials "ignored a strong likelihood *that Troyanos would commit suicide*."² *Id.* According to the Eleventh Circuit, Troyanos' complaint "did not mention that Simon-Robinson or Miller knew of Troyanos' suicidal tendencies, ignored Troyanos when he acted out, or delayed or withheld from him mental or medical treatment." *Id.* In addition, in finding that the complaint also failed to allege deliberate indifference on the part of Sheriff Coats in adequately training, supervising, or disciplining his staff, the Eleventh Circuit found that it was "not required to inquire about Coats's customs or policies for treating mentally ill inmates because the complaint failed to state a claim

² All emphasis is supplied unless otherwise noted.

that jail officials violated Troyanos' constitutional rights." *Id.* at 936.

Finally, the Eleventh Circuit affirmed the district court's decision declining to exercise supplemental jurisdiction over Troyanos' remaining state law claims against Sheriff Coats.



REASONS FOR GRANTING THE PETITION

I. A CONFLICT EXISTS AMONG THE CIRCUIT COURTS BECAUSE SEVERAL OF THESE COURTS HAVE HEIGHTENED THIS COURT'S *FARMER* STANDARD TO REQUIRE THAT THE OFFICIAL FORESEE THE SPECIFIC HARM ULTIMATELY SUFFERED BY THE INMATE IN ORDER TO MEET THE DELIBERATE INDIFFERENCE STANDARD. CERTIORARI SHOULD BE GRANTED TO RESOLVE THIS CONFLICT.

The circuits are in conflict as to what must be shown in order to prove that prison officials demonstrated a "deliberate indifference" to a prisoner's health and safety. This Court in *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970 (1994), established that an inmate must show only that a prison official had knowledge of facts from which the official could infer that the inmate faced a substantial risk of harm and was deliberately indifferent to that risk (regardless of whether the official could foresee the exact form of harm for which the inmate was at risk) in order to recover under 42 U.S.C. § 1983.

Those courts which apply traditional tort law principles to this standard permit recovery by finding the extent of the damages does not have to be foreseen under section 1983, so long as a risk of serious harm was foreseen, whereas other courts (including the Eleventh Circuit, from which this petition is taken) deny recovery if the *specific* harm suffered was not *actually foreseen* by the official. The confusion regarding whether an official must foresee the specific harm suffered emanates from the circuit courts' differing approaches to the "deliberate indifference" standard.

This Court should grant the Petition for Writ of Certiorari to harmonize the law among the various circuits and to clarify whether the "deliberate indifference" standard requires an inmate to allege that the harm suffered was the same, specific harm of which the official was consciously aware.

A. Introduction to the Conflict: The Proper Standard is Established by this Court in *Farmer*.

Justice Marshall, writing for this Court in *Estelle v. Gamble*, first provided the standard applicable to prisoners seeking to assert 42 U.S.C. § 1983 claims against employees of state correctional facilities or its agents. See *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285 (1976) (stating that "[i]n order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs."). In so holding, the

Court instructed that “deliberate indifference” can be found:

... whether the indifference is manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury states a cause of action under § 1983.

Id. at 104-05.³

However, the law remained unclear as to what state of mind on the part of prison officials must be alleged in order to prove “deliberate indifference.”

Almost twenty years later, this Court clarified the level of awareness of the risk of harm that prison officials must have, in order for an inmate to successfully allege a section 1983 violation. *See Farmer, supra*. In so doing, this Court laid out a structure to follow in determining whether an official has committed a constitutional tort under section 1983: (1) whether the deprivation alleged is objectively, sufficiently

³ Although the circuit courts have applied this standard to detainees alleging claims under the Fourteenth Amendment, (and we assume for the sake of argument in Part I and Part II of this Petition that the same standard applies) the petitioner will be respectfully requesting in Part III of this Petition that this Court decide if the same standard applies to claims brought under the Eighth and Fourteenth Amendments.

serious and (2) the official responsible for the deprivation is aware of facts from which an inference could be drawn that *a substantial risk of serious harm* exists and draws the inference.

The inmate in *Farmer*, a transsexual, was beaten and raped by another inmate after being placed in the general population of a prison even though the inmate had previously been segregated because of safety concerns (the inmate was also segregated many times for disciplinary reasons).

The *Farmer* Court explained:

The question under the Eighth Amendment is whether the prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial risk of serious damage to his future health, and it does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk.

Id. at 843 (internal citations and quotations omitted).

Farmer found that the objective prong in a section 1983 case alleging a violation of Eighth Amendment rights is only satisfied when the alleged deprivation is, objectively, “sufficiently serious.” This “sufficiently serious” standard is met if a prison official’s act or

omission results in the denial of “the minimum civilized measure of life’s necessities.” *Id.* at 834.

Further, this Court in *Farmer* made clear that a prison official may not escape liability for deliberate indifference by showing that, while he was aware of an obvious substantial risk to inmate safety, he did not know that the complainant was especially likely to be injured in a particular manner. *Id.* at 843. It is clear, then, that the objective prong looks not at the specific harm that was actually suffered; it looks at the facts and circumstances creating the risk of harm. In a medical deprivation case, then, the ultimate outcome (e.g., death), is not important at the threshold stage; the concern is whether the serious medical condition was consciously disregarded by prison officials, or whether steps were taken to address the seriousness of the medical condition in question. *Id.* at 844.

Similarly, an official cannot escape liability for deliberate indifference by showing that, while he was aware of an obvious substantial risk to an inmate’s health, he did not know the complainant was especially likely to be injured by the *specific ailment* that ultimately injured the plaintiff. See *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1193 (9th Cir. 2002) (“Although the deliberate indifference doctrine contains a heightened foreseeability requirement, this requirement differs from the traditional negligence foreseeability requirement only insofar as deliberate indifference requires the defendant to be subjectively aware that *serious harm* is likely to result from a failure to provide medical care. *But the deliberate*

indifference doctrine does not require that a particular consequence be more predictable than is required under traditional tort law.).

If an official is deliberately indifferent toward rendering medical care to an inmate suffering from a probable heart attack, and the inmate ultimately suffers partial paralysis from a stroke, would the specific cause or type of injury determine whether a section 1983 claim could be brought? As will be shown below, the Eleventh Circuit's decision would indicate that unless the officials were deliberately indifferent toward the specific harm suffered, *i.e.*, paralysis from a stroke, then liability would not attach.⁴ On the other hand, this Court's holding in *Farmer* makes clear that liability would attach so long as the petitioner could establish that the official was deliberately indifferent to his serious medical condition, *i.e.*, a probable heart attack.

B. The Eleventh Circuit Conflicts with *Farmer*.

Applying the law as set out by *Farmer* to Troyanos' complaint, it is clear that the Eleventh Circuit wrongfully affirmed the dismissal of the complaint as a matter of law. At the outset, the Eleventh Circuit's opinion impermissibly places a burden of proof on

⁴ The Tenth Circuit shares a similar position to the Eleventh Circuit. See *Martinez v. Beggs*, 563 F.3d 1082 (10th Cir. 2009) *discussed infra*.

petitioner detainees beyond that established by *Farmer*. According to the Eleventh Circuit, Petitioner’s complaint was properly dismissed because, even though it alleged facts from which these officials could infer that Troyanos posed a serious health risk to himself, the “complaint fails to allege that Simon-Robinson or Miller ignored a strong likelihood that Troyanos would commit suicide.” *Troyanos*, 372 at 935. The Eleventh Circuit affirmed the dismissal of Petitioner’s complaint for failure to state a claim and held that the plaintiff must show that jail officials displayed deliberate indifference to the specific risk that Troyanos would take his own life. *Troyanos*, 372 Fed.Appx. at 935. According to the Eleventh Circuit, the officials “cannot be faulted for failing to foresee that Troyanos would commit suicide using the elastic in his pants.” *Id.* at 935-36.

Contrary to the Eleventh Circuit’s opinion, *Farmer* merely requires that: (1) the deprivation alleged is objectively, sufficiently serious (in this case a deprivation of the serious medical needs of an inmate with a psychotic disorder) and (2) the official responsible for the deprivation is aware of facts from which an inference could be drawn that a substantial risk of serious harm exists and that the official draws the inference.⁵

⁵ Although labeled as a “liberal” standard in *Estelle*, courts have recognized that such a standard is of vital importance and presents a balancing test in a society with evolving standards of decency that mark the progress of a maturing society. This

(Continued on following page)

The facts reveal that when Troyanos was processed he was observed to have scars on his inner wrists from multiple self-inflicted wounds, with slight edema and ecchymosis on his wrists. While in custody, Troyanos banged his head violently against the wall. Nurse Simon-Robinson recorded that Troyanos had in fact injured himself as a result of banging his head against the wall of his cell, and noted that Troyanos was “babbling,” “belligerent,” and experiencing an “alteration in mental status.” Ultimately, she concluded that Troyanos was “mentally challenged.” As a result, Simon-Robinson ordered Troyanos to be restrained and placed him on close observation status. Although Troyanos was restrained for three and a half hours, upon his release he was observed to be “extremely agitated,” “rambling” and his mental state continued to be altered.

The following day Troyanos continued to be in an altered and aggravated state. Dr. Miller, although at first reportedly unable to examine Troyanos due to his agitated state, later examined Troyanos and diagnosed him with a “psychotic disorder.” Dr. Miller again recorded self-injurious behavior on the part of Troyanos, specifically his beating his head against the walls and door of his cell once again. Although Dr.

balancing test must be used to weigh these standards of decency with protections afforded governmental agencies charged with protecting the safety of society as a whole. This case presents this Court with a significant opportunity to provide guidance to the nation’s courts, which frequently deal with these issues.

Miller authorized Troyanos to be sedated, as soon as the sedation medication wore off, Troyanos was again agitated, and continued with his pattern of self-injurious behavior.

The knowledge that Troyanos was “experiencing an alteration in mental status” and suffering from “psychotic disorder” along with the knowledge that Troyanos repeatedly injured himself while in custody demonstrate that Miller and Simon-Robinson were aware of facts from which an inference could be drawn that a substantial risk of serious harm existed for Troyanos. This risk came to fruition when Troyanos strangled himself in his cell. Given that Simon-Robinson and Miller were aware that Mr. Troyanos had repeatedly, violently smashed his head into the walls of his cell whenever given the opportunity to do so, Simon-Robinson and Miller could not plausibly deny that they appreciated (*i.e.*, drew the inference to) the serious risk of injury that Troyanos faced.⁶ These officials did, after all, sedate Troyanos to calm this self injurious behavior, demonstrating that they were aware that he posed a risk to himself.

By holding that liability cannot attach because Simon-Robinson and Miller could not have foreseen that Troyanos would commit suicide using the elastic in his pants, the Eleventh Circuit raised the bar for

⁶ Because Troyanos’ complaint was dismissed for failure to state a claim, we have no way of determining the actual state of mind on the part of Simon-Robinson or Miller.

section 1983 deprivation of medical care claims. As such, the Eleventh Circuit's holding allows the medical staff to escape liability for acting with deliberate indifference to Troyanos' serious medical needs (altered mental status and psychotic disorder), because the staff "cannot be faulted for failing to foresee that Troyanos would commit suicide using the elastic in his pants." *Troyanos*, 372 Fed.Appx. at 935-36. This standard is significantly higher than, and an impermissible departure from, that set by *Farmer*.⁷

C. The Eleventh Circuit Approach Conflicts with the Ninth Circuit.

In contrast to the Eleventh Circuit, the Ninth Circuit (following the standards established by *Farmer*) has held:

Although the deliberate indifference doctrine contains a heightened foreseeability requirement, this requirement differs from the traditional negligence foreseeability requirement only insofar as deliberate indifference requires the defendant to be *subjectively aware that serious harm* is likely to result from a failure to provide medical care. But the deliberate indifference doctrine *does not require that a*

⁷ These repeated and well-documented episodes of self injury are sufficient to put these officials on notice that Troyanos posed a risk of harm to himself, which is all that *Farmer* requires.

particular consequence be more predictable than is required under traditional tort law.

Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1193 (9th Cir. 2002).

The facts of *Gibson* illustrate the diverging treatment of the “deliberate indifference” standard. In *Gibson*, the decedent suffered from manic depressive disorder, had been hospitalized several times for the disorder, was at the time of his death under regular psychiatric care and had been prescribed medicine to control his illness. *Id.* at 1180. Gibson was entering a manic phase when he left his house with a loaded gun. *Id.* His wife, being fearful for her safety, contacted the police several times in an effort to locate Mr. Gibson and have him taken to a hospital. *Id.* at 1181. Three days later, Gibson was placed under arrest for driving under the influence. A search incident to the arrest found several prescription bottles thought to be “psych meds.” *Id.* at 1182. The arresting officers inferred that Gibson might not be taking his medication. *Id.* Gibson became combative as he was being transported to the jail, and upon his arrival four deputies pulled Gibson out of the car and restrained him with a waist chain, wrist chains, and leg irons. *Id.* The arresting officers delivered the prescription medication found in Gibson’s truck to the nurse on duty, and the nurse confirmed to one of the arresting officers that the medication was to stabilize someone who was suffering from mental illness. *Id.* It appeared from the record that no one else at the jail knew that Gibson suffered from a mental illness. *Id.* Gibson was

not screened for mental illness or evaluated by a mental health provider. Instead, he was restrained alone in a holding cell. *Id.* Twice during the night Gibson slipped out of his restraints and on the second occasion assumed a fighting stance as deputies prepared to enter his cell. *Id.*

The sergeant in charge ordered Gibson to a special watch cell containing a bench with attached soft restraints and a helmet. *Id.* As they prepared to transfer Gibson to the special cell, one deputy pepper sprayed Gibson while three other deputies entered the cell to restrain him. *Id.* at 1182-83. After several deputies dragged Gibson into the special watch cell and Gibson was lying face down on the bench, two deputies climbed on his back and legs while the other deputies helped restrain his arms and legs. *Id.* at 1183. As the deputies fought to restrain Gibson, he suffered a fatal heart attack. *Id.*

According to the autopsy report, the immediate cause of Gibson's death was severe arteriosclerosis. *Id.* The defense expert testified that the "entire milieu" of Gibson's uncontrolled manic state and the officers' efforts to restrain him "resulted in a physiologically stressful state for Mr. Gibson, which essentially resulted in a heart attack." *Id.* Mr. Gibson's wife brought suit under section 1983 alleging that the County was liable under a failure to train theory and that the individual deputies who had contact with Gibson after he was admitted to the jail were also liable under section 1983 based on their deliberate indifference to

Mr. Gibson's serious medical condition – mental illness. *Id.* at 1184.

The trial court granted the Defendants' motion for summary judgment by characterizing Gibson's serious health condition not as his mental illness but as his severe heart disease. On appeal, the County argued: (1) "the serious medical need at issue in the case was Mr. Gibson's coronary disease, not his mental health condition" and (2) "[e]ven if the County was deliberately indifferent to Gibson's mental health condition, this deliberate indifference did not cause Gibson's death because the County neither knew nor had reason to know that a fatal heart attack would result from ignoring Gibson's severe mental health condition." *Id.* at 1191-92 (internal citations and quotations omitted).

In rejecting the County's argument, the Ninth Circuit noted:

Although the precise way in which Gibson died may not have been foreseeable, the extreme stress on Gibson's system and the possibility that this stress would trigger a fatal reaction of some sort was foreseeable.

Id. at 1192.

Accordingly, the Ninth Circuit expressly applied the "eggshell skull" doctrine to section 1983 claims. *See id. quoting Wakefield v. Nat'l Labor Relations Bd.*, 779 F.2d 1437, 1438 (9th Cir. 1986) ("The 'time honored legal principle that a wrongdoer takes his victim as he finds him' means that if the County is liable for

Gibson's other injuries it also must bear liability for Gibson's death.")

The Ninth Circuit is clear that when one applies the "eggshell skull" doctrine, the allegations indicating that the County and its officials were aware of the significant risk of some form of harm (as opposed to the specific harm actually suffered by Gibson) were sufficient to find a section 1983 deprivation.

In direct conflict with *Gibson*, the Eleventh Circuit held that the "deliberate indifference" standard required the official to *foresee the specific harm that ultimately befell the detainee*. *Troyanos*, 372 Fed.Appx. at 935-36. Clearly, under this standard the *Gibson* court would have been constrained to affirm summary judgment in favor of the defense, because neither Gibson's ultimate harm nor its exact cause was foreseeable to defendants.

The two differing approaches to the "deliberate indifference" standard represent a marked contrast in how the courts define the threshold inquiry of whether the deprivation alleged is "sufficiently serious."

The Eleventh Circuit begins with the ultimate harm that actually occurred, and determines objectively whether that harm is sufficiently serious. Then, the Eleventh Circuit asks whether the official could foresee that specific harm, *i.e.*, whether the official was deliberately indifferent to that *specific* harm.

The Ninth Circuit, on the other hand, looks not at the specific harm suffered, but rather at the risks

imposed by the circumstances that were known to the officials. The Ninth Circuit then asks whether the circumstances known to the officials demonstrate a sufficiently serious risk of harm. For example, the Ninth Circuit in *Gibson* looked not at the heart attack as the sufficiently serious risk of harm, but instead focused on the mental illness. Had the Ninth Circuit defined the sufficiently serious risk as a heart attack, it would be easy for it to conclude that the risk of harm (death from heart attack) was not foreseeable because the officials were not aware that Gibson suffered from a heart condition.

However, the Court rightly recognized that deliberate indifference to the inmates mental condition could create a risk of serious harm to the inmate. Once the risk is established, the exact form of the injury (and its foreseeability) is of no consequence; liability attaches.

D. This Conflict in Authority Extends to Other Jurisdictions.

The First Circuit in *Figueroa-Torres v. Toledo-Davila*, 232 F.3d 270 (1st Cir. 2000) takes an approach similar to the Ninth Circuit. In *Figueroa-Torres*, the First Circuit affirmed the application of the “eggshell skull” doctrine where an arrestee died of a lacerated spleen shortly after his arrest and where evidence was presented to the jury that although the spleen was enlarged and diseased, evidence that the officers’ conduct during the arrest contributed to the risk of

harm facing the arrestee. In so finding, the First Circuit cited the District Court's opinion denying the motion for a new trial, which stated:

Defendant argues that, if rupture of the spleen did cause Decedents death, he was not responsible because Decedents preexisting sickness made him prone to that injury. However, we find that Decedents preexisting injury or weakness in the spleen, does not absolve Defendant of his liability. It is well settled that in action for damages, the tortfeasor takes his victim as he finds him.

Id. at 275.

The First Circuit went on to quote from W. Page Keeton et al., *Prosser and Keeton on The Law of Torts* § 43 at 291 (5th ed.1984).

There are some areas in which even the courts which have been most vocal in favor of the "foreseeable risk" limitation upon liability have been forced to discard it. *There is almost universal agreement upon liability beyond the risk, for quite unforeseeable consequences, when they follow an impact upon the person of the plaintiff.*

It is as if a magic circle were drawn about the person, and one who breaks it, even by so much as a cut on the finger, becomes liable for all resulting harm to the person, although it may be death. . . .

Id. (emphasis in original).

Likewise, the D.C. Circuit has taken an approach similar to the First and Ninth Circuits. In *Smith v. District of Columbia*, 413 F.3d 86 (D.C. Cir. 2005), another § 1983 case, the D.C. Circuit reviewed an appeal of a jury verdict rendered in favor of the estate and next of kin of a murdered child, Tron Lindsey. *Id.* at 89. At the time of his death, Lindsey was an adjudicated delinquent in the custody of the District of Columbia, residing in an independent living program operated by a private company. The private company had no experience in operating an independent living program and did not have the required licensure to run such a program. *Id.* at 90. The site of the program (selected by the private company) was a housing complex with a history of criminal activity. Notwithstanding the lack of experience, lack of licensure, and arguably dangerous location of the program, the District awarded the private company a contract to provide independent living services to youths that were adjudicated delinquent by the District. *Id.* at 90-91. Lindsey was murdered by an unknown assailant who, after being invited into his apartment, shot him in the head with a silencer-equipped gun. Lindsey's next of kin and estate filed suit alleging that the District's policies or customs were deliberately indifferent in selecting and monitoring the independent living provider, and thereby Lindsey's rights under the Fourteenth Amendment were violated. *Id.* at 89. The case went to the jury, and the District was found liable for Lindsey's death. In upholding the jury's verdict, the D.C. Circuit rejected the District's arguments that the murder was too remote a consequence of the District's

inaction and that the District was unaware that Lindsey (or his roommate) had been targeted for murder, reasoning: “As for foreseeability, the defendant may be held liable for harm that is foreseeably attributed to his conduct as well as for unforeseeable harm attributable to his conduct, unless it appears that the chain of events is highly extraordinary in retrospect.” *Id.* at 103 (internal citations omitted). This analysis is clearly an application of the “eggshell skull” doctrine.⁸

In contrast with the First, Ninth, and D.C. Circuits’ application of the “eggshell skull” doctrine, the Tenth Circuit, (in harmony with the Eleventh Circuit), looks to the specific harm first, and then determines if the officials were deliberately indifferent to that specific harm. In *Martinez v. Beggs*, the Tenth Circuit held:

The test for deliberate indifference is both objective and subjective. The objective component of the test is met if the harm suffered rises to a level sufficiently serious to be cognizable under the Cruel and Unusual Punishment Clause of the Eighth Amendment. . . . [T]hat [] is the *harm claimed by the prisoner* [] must be sufficiently serious to satisfy the objective component, and not solely the symptoms presented at the

⁸ In this case, it cannot be rationally maintained that the risk of suicide of a psychotic detainee who had consistently injured himself in previous days is “highly extraordinary.”

time the prison employee has contact with prisoner.

Martinez v. Beggs, 563 F.3d 1082, 1088 (10th Cir. 2009) (internal citations and quotations omitted).

The facts of *Martinez* are instructive. A severely intoxicated man was arrested and detained. After being placed in a holding cell, he was instructed to kneel down so his handcuffs could be removed. When jail officials checked on the intoxicated man three hours later, he was found dead in the same kneeling position in which he was left. The cause of death, according to the medical examiner was “sudden heart attack due to coronary artery disease.” *Id.* at 1087 (internal citations omitted). The medical examiner also determined that “acute ethanol intoxication would be a participating factor to his death.” *Id.* (internal citations omitted).

In analyzing the claim under section 1983, the Tenth Circuit determined that the objective prong was satisfied because without doubt, the detainee’s heart attack and death were sufficiently serious. The Court then determined that a claim under section 1983 was not cognizable because “the defendants must subjectively disregard the risk of the claimed harm-death, and heart attack, and not merely the risks of intoxication.” By its holding, the Tenth Circuit permits an official to escape liability under section 1983 if the official did not foresee the *specific type* of harm that ultimately befell the detainee. Under *Martinez*, the analysis is to start with the

specific harm suffered and look backwards to see if the official was subjectively reckless to the specific harm – heart attack causing death.

If the Tenth Circuit had applied the deliberate indifference standard in the same manner as the Ninth Circuit applied it *Gibson*, the result would have been different. To be sure, the *Gibson* Court would look not at the deliberate indifference to the heart attack; the focus would be on whether severe inebriation would pose a sufficiently serious medical need. Assuming that severe inebriation would pose a sufficiently serious risk of harm, the Ninth Circuit would then turn to whether the officials were deliberately indifferent to the risks posed by the severe intoxication. If the officials were deliberately indifferent, then the inquiry would turn on whether the death (by heart attack) was simply an unforeseen consequence of the official's deliberate indifference.⁹

⁹ Although not expressly discussed in the *Gibson* opinion, a fair reading of the opinion indicates that the officials could still make a “proximate cause” argument to avoid liability by showing that the heart attack was not the proximate cause of the official's deliberate indifference.

E. The “Eggshell Skull” Doctrine is Applicable to Section 1983 claims in the First, Ninth and D.C. Circuits, but not in the Tenth and Eleventh Circuits.

As demonstrated above, the First, Ninth and D.C. Circuits apply the “eggshell skull” principle in their analysis of section 1983 claims. *See Figueroa-Torres*, 232 F.3d at 275 (1st Cir. 2000) (“[W]e find that Decedents’ preexisting injury or weakness in the spleen, does not absolve Defendant of his liability. It is well settled that in action for damages, the tortfeasor takes his victim as he finds him.”); *Gibson*, 290 F.3d at 1193 (9th Cir. 2002) (“[D]eliberate indifference requires the defendant to be subjectively aware that serious harm is likely to result from a failure to provide medical care. But the deliberate indifference doctrine does not require that a particular consequence be more predictable than is required under traditional tort law.”); *Smith*, 413 F.3d at 103 (D.C. Cir. 2005) (“As for foreseeability, the defendant may be held liable for harm that is foreseeably attributed to his conduct as well as for unforeseeable harm attributable to his conduct.”). As such, it is clear that an official in these jurisdictions may be held liable under the Eighth Amendment for denying medical care for a serious medical condition if he knows that the inmate faces a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it. Thus, under this tort law analysis, disregarding known risks renders the tortfeasor liable for

the foreseeable and unforeseeable consequences of the tortfeasor's actions.¹⁰

In contrast, the Tenth and Eleventh Circuits require officials to have knowledge of the risk of the specific harm suffered by the inmate prior to applying a traditional tort analysis. Therefore, traditional tort doctrines such as the “eggshell skull” principle never come into play. As demonstrated above, under the Tenth and Eleventh Circuits holdings, an official could never be liable for any specific harm that the official did not foresee.

By focusing on the specific harm suffered, the Tenth and Eleventh Circuits have raised the bar for deliberate indifference and permits tortfeasors to escape liability if the injury suffered is more severe than contemplated. In *Farmer*, this Court explained that a prison official may not escape liability for

¹⁰ This traditional tort analysis was employed in *Farmer*, wherein this Court stated:

[P]rison officials who actually knew of a substantial risk to inmate health or safety may be found free of liability if they responded reasonably to the risk, even if the harm ultimately was not averted.

...

[W]e . . . hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.

Id. at 844, 847.

deliberate indifference by showing that, while he was aware of an obvious substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault. *Id.* at 843. Under this analysis, a prison official cannot escape liability by showing that, while he was aware of an obvious substantial risk to inmate safety, *e.g.*, rape, he did not know that the complainant was especially likely to die as a result of the sexual assault. Under the Tenth and Eleventh Circuit holdings, however, the prison officials could escape liability if they did not foresee the likelihood of the specific harm suffered (the death).

As such, this Petition presents a question of national importance and accepting jurisdiction will permit this Court to resolve the conflict among the Circuits with respect to whether the “deliberate indifference” standard allows an official to escape liability if the specific harm suffered was not foreseen, even though a risk of serious harm *was* foreseen.

II. CERTIORARI SHOULD BE GRANTED BECAUSE THE ELEVENTH CIRCUIT’S *TROYANOS* OPINION CONFLICTS WITH THE NINTH CIRCUIT’S OPINION IN *GIBSON*, INsofar AS IT HOLDS THAT NO LIABILITY MAY BE HAD AGAINST A MUNICIPALITY (OR SHERIFF) IF NO INDIVIDUAL SUBORDINATE IS FOUND TO HAVE COMMITTED A CONSTITUTIONAL VIOLATION.

In the opinion below, the Eleventh Circuit held:

Troyanos’ complaint also fails to allege that [Sheriff] Coats was deliberately indifferent because he did not properly train, supervise, or discipline his staff. We are not required to inquire about Coats’ customs or policies for treating mentally ill inmates because the complaint failed to state a claim that jail officials violated Troyanos’ constitutional rights.

Troyanos, 372 Fed.Appx. at 936.

In contrast, the Ninth Circuit has held: “[A] municipality may be liable even if liability cannot be ascribed to a single individual officer.” *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1186 (9th Cir. 2002). In the case at bar, even if liability cannot be ascribed to a single individual official, a claim is still viable against the Sheriff or municipality under a failure to train theory. To be sure, the Sheriff’s policy regarding handling mentally ill inmates was the moving force in causing Troyanos’ injuries even if

Simon-Robinson and Miller did not (on an individual basis) demonstrate subjectively reckless disregard in their treatment of Troyanos.

As this Court stated in *Owen v. City of Independence*, a “‘systemic’ injury” may “result not so much from the conduct of any single individual, but from the interactive behavior of several government officials, each of whom may be acting in good faith.” 455 U.S. 622, 652 (1980).

What’s more, in *Farmer*, this Court distinguished the “objective” deliberate indifference standard as used in *Canton v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989) (failure to train) from the deliberate indifference standard to be applied in a case against an individual official. As such, to find that a municipality (or Sheriff) cannot, as a matter of law, be liable under a failure to train theory if no individual subordinate was deliberately indifferent would raise the bar considerably for failure to train cases.

An individual’s lack of knowledge regarding the substantial risk may be directly attributable to the municipality’s policy (or lack thereof). In this case, the failure to train claim against Sheriff Coats should not have been dismissed just because Simon-Robinson and Miller were not found to have been liable. Instead, the allegations in the Complaint (taken in the light most favorable to the Plaintiff) reveal that Sheriff Coats’ policies were the moving force behind the risk of serious injury faced by Troyanos. Had Sheriff Coats adequately trained his subordinates in

dealing with mentally ill inmates who, like Troyanos, had a substantial history of mental illness, Troyanos would have been given a suicide assessment and treated accordingly. Thus, under *Owen* and *Gibson*, Troyanos adequately stated a cause of action against Sheriff Coats even if Simon-Robinson and Miller were not individually liable. The Eleventh Circuit’s opinion is in conflict with these authorities.

III. CERTIORARI SHOULD BE GRANTED TO ANSWER THE FOLLOWING QUESTION OF GREAT NATIONAL IMPORTANCE: DOES THE SUBJECTIVE RECKLESSNESS STANDARD FOR CLAIMS BROUGHT BY PRISONERS UNDER THE EIGHTH AMENDMENT APPLY EQUALLY TO CLAIMS BROUGHT BY PRE-TRIAL DETAINEES UNDER THE FOURTEENTH AMENDMENT?

The Circuits are generally in agreement that a detainee has “at least” the same rights under the Fourteenth Amendment as prisoners do under the Eighth Amendment. *See Gibson*, 290 F.3d at 1187, FN9; *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1241-43 (9th Cir. 2010); *Caiozzo v. Koreman*, 581 F.3d 63 (2d Cir. 2009); *cf Hare v. City of Corinth*, 74 F.3d 633, 639-45 (5th Cir. 1996) (holding that “pretrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate governmental objective” and holding that “claims arising from suicides to be

framed as a violation of the State's duty to provide reasonable medical care").

Notwithstanding the lack of conflict on this issue, this Court has never expressly ruled that the protections afforded to convicted prisoners by the Eighth Amendment are coextensive with those afforded to pretrial detainees by the Fourteenth Amendment.

To that end, and to the extent that a pre-trial (and presumed innocent) detainee would have greater protections under the Fourteenth Amendment than a convicted prisoner would have under the Eighth Amendment, this issue presents a question of national importance. Being that a detainee under the Fourteenth Amendment has the right to be free of all "punishment" prior to being convicted, a detainee's rights are arguably greater than a prisoner's Eighth Amendment right to be free of "cruel and unusual" punishment post-conviction. In other words, does an official owe a detainee a greater duty of protection from harm under the Fourteenth Amendment than is owed to a prisoner under the Eighth Amendment?

Petitioner respectfully requests this Court should accept jurisdiction to clarify a pretrial detainee's rights under the Fourteenth Amendment.



CONCLUSION

WHEREFORE, Petitioner Troyanos respectfully requests this Court grant his Petition for Writ of Certiorari in order to address the conflict between this Court's *Farmer* opinion and the Eleventh Circuit's *Troyanos* opinion, as well as the conflict between the circuits identified above.

Respectfully submitted,

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