No. _____

In the Supreme Court of the United States

ESTATE OF WILBERT L. HENSON, ET AL.,
Petitioners,

v.

KAYE KRAJCA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The circuits are divided on a question this Court has twice left open regarding the Fourteenth Amendment rights of pretrial detainees versus the Eighth Amendment rights of convicted prisoners: "[W]hether something less than the Eighth Amendment's 'deliberate indifference' test may be applicable in claims by detainees asserting violations of their due process right to medical care while in custody." *City of Canton v. Harris*, 489 U.S. 378, 388 n.8 (1989). The question presented here is as follows:

What degree of culpability is required to establish that pretrial detention conditions violate the Due Process Clause of the Fourteenth Amendment?

PARTIES TO THE PROCEEDING

Petitioners are the Estate of Wilbert L. Henson and Henson's family members: Barbara Kay Henson Reed, Iwiller G. Henson Hendrix, Wilma Lynn Henson, and Shelisha Richardson. They were plaintiffs in the district court, and Respondent Kaye Krajca was a defendant. In the court of appeals below, Petitioners were the appellees, and Krajca was the appellant.

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PETITION FOR A WRIT OF CERTIORARI

Wilbert Henson's family and his estate respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The decision of the court of appeals is available at 2011 U.S. App. LEXIS 18730 and reproduced in the Appendix at 1a–25a. The decision of the U.S. District Court for the Northern District of Texas is available at 2009 U.S. Dist. LEXIS 67717 and reproduced in the Appendix at 26a–58a.

JURISDICTION

The court of appeals issued its judgment on September 7, 2011. Pet. App. 1a. The court denied Petitioners' timely petition for rehearing en banc on December 5, 2011. Pet. App. 59a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides in part that no State shall "deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

The Eighth Amendment provides as follows: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

STATEMENT OF THE CASE

Wilbert Henson was detained in county jail based on a bond-forfeiture warrant for driving with a suspended license. Because of lack of medical care on Nurse Krajca's watch at the jail, he died. The Fifth Circuit, in a 2-1 decision, reversed the district court and concluded that—though her conduct may have amounted to malpractice or gross negligence—a jury could not find her liable because the subjective "deliberate indifference" standard of the Eighth Amendment was not met. As other circuits recognize, this Court's precedent suggests a less-strict standard for pretrial detainees. This case enables this Court to make clear what the standard is.

Background

Henson was not the first inmate to die while on Krajca's watch. Krajca is a vocational nurse, which means that she must practice under the supervision of a registered nurse, doctor, or similar professional. Tex. Admin. Code § 217.11(2). Four months before Henson was detained at the jail, Krajca was informed that an inmate had thrown up blood, was incoherent, and had various pre-existing medical conditions. Pet. App. 48 n.8. She responded by giving the inmate antacids and suppositories and moving him into medical solitary. *Id*. The district court cited these acts and the inmate's ensuing death as some of the evidence that "she is plainly incompetent . . . ." *Id.*

A few months later, as the fall of 2004 was underway, Henson was unaware he would soon suffer a similar fate. The weekend before Thanksgiving he was not feeling well, and on Sunday, November 21,

Henson's breathing became so difficult that he went to the emergency room. He was diagnosed with hypertension, chronic obstructive pulmonary disease (COPD), and pneumonia. He was prescribed an antibiotic and an albuterol inhaler. He was instructed to immediately return to the emergency room if he had "any increase in shortness of breath" or "any change or worsening in his symptoms."

Henson was released from the emergency room, but two days later, on Tuesday the 23rd, ran into another problem before he had filled the prescriptions: He was picked up on a bond-forfeiture warrant for the misdemeanor of driving with a suspended license, and he was booked into the Wichita County Jail. At that time, Henson was again having trouble breathing, and he told another vocational nurse (Michelle George) that he had recently been to the emergency room; that he had COPD, emphysema, and pneumonia; and that he had not yet filled his prescriptions. George gave him an antibiotic and an inhaler, and she filled out a "pink card" requesting that Henson be put on the "doctor's call," which was scheduled there for the next morning. That night, however, Henson was transferred from the downtown jail to another jail facility known as "the annex," which had a separate doctor's call—so he did not see a doctor Wednesday morning. When Nurse George realized this, she called the annex to request that Henson be placed on the next doctor's call there. Henson did not see the doctor that Wednesday. Nor did he see the doctor the next day, Thursday, November 25—that was Thanksgiving Day.

Meanwhile, Henson's breathing deteriorated—he continually coughed, gasped for air, and could say only

a few words at a time. Things had gotten so bad that other inmates requested that he be taken to a doctor or to the hospital. Henson also told detention officers that he was having trouble breathing.

On Friday the 26th, Nurse Krajca was called to the annex. Henson told her that he had COPD and pneumonia, that he had recently been in the emergency room, and that he had an antibiotic prescription. Nurse Krajca filled out a pink card for Henson to see the doctor at the next doctor's call—another three days later, on Monday. She also gave him a breathing treatment through a machine that delivers albuterol, leaving instructions that he could have the treatment every four hours. Jail records show that Henson was out of his cell for just ten minutes during this visit, and Krajca did not even record his vital signs. She also did not contact a doctor or take any other actions.[1] That evening, too, passed by—Henson had yet to see a doctor or even a registered nurse.

Henson's gasping and difficulties breathing continued into that Saturday (November 27). That evening, he received another breathing treatment, but just 15 minutes later he pushed the emergency-call button and told an officer that he still was struggling to breathe and that his personal inhaler was

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[1] At her deposition four years later, Nurse Krajca claimed that—contrary to the jail records—she spent an hour and a half with Henson. She further claimed that she took Henson's vital signs but did not record those because they were within "normal limits," but she could not even identify at her deposition what the normal limits are. These factual disputes are resolved in favor of Henson at this summary-judgment stage.

completely ineffective. The officer relayed this information to Nurse George, who was on duty at the downtown jail. She instructed that Henson be placed in solitary and checked by guards every 15 minutes. Concerned about Henson's condition, the guard called Nurse Krajca for a second opinion.

Krajca asked the officer to have Henson's vital signs taken, and it was reported back to her that Henson's blood pressure was a dangerously high 208/107, his pulse rate was 92, and he was sweating profusely. When blood pressure reaches levels of 180 for the systolic (top) number or 110 for the diastolic (bottom) number, the person is in "hypertensive crisis" and requires immediate medical attention. Pet. App. 16a n.3 (Dennis J., dissenting) (noting that the American Heart Association states that "[t]here is no safe duration for blood pressure in this range" and that one should "[c]all 9-1-1 immediately").

Upon hearing these vital signs, Krajca instructed that the guards *reduce* the frequency of their observations, checking on Henson every 30 minutes instead of every 15. She did not leave any other instructions and took no other actions—she also did not contact any other medical staff or arrange for Henson to be taken to the emergency room.[2] Yet the condition was treatable. As an expert physician later explained, "with appropriate procedures it is unlikely that this condition would have been allowed to become a threat to Wilbert Henson's life." Pet. App. 17a–18a.

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[2] Officers testified that they reported the vital signs to Krajca; she claims they did not. As noted, the factual disputes at this stage are resolved in Henson's favor.

But now another day had passed, and in the early morning hours on Sunday the 29th—five days after Henson was first booked, the threat to his life was growing. He mustered some strength to push the emergency button in his cell, but he was so short of breath that the guards could not hear him speak through the intercom. When the guards reached him, he gasped, "I'm not going to make it." The guards called the on-call nurse and loaded Henson a wheelchair (he was now too weak to stand) for yet another breathing treatment. Henson's blood pressure was now 232/161 (up from 208/107), and his pulse was 53. He was so weak that he could not hold the end of the breathing machine in his mouth. The staff began "fanning him with a Tupperware lid." After a minute or two, Henson's eyes rolled back, he began gurgling, became incontinent, and passed out. EMS was finally called, and for the first time over the span of this five-day ordeal, Henson finally saw adequately trained medical professionals—they pronounced him dead at the hospital.

District Court

Petitioners, Henson's family and his estate (referred to collectively as "Henson's family"), brought this 42 U.S.C. § 1983 suit in the district court, contending that various officials violated Henson's constitutional rights regarding his suffering and death. Relevant here, Henson's family alleged that Nurse Krajca's conduct violated his due-process rights under the Fourteenth Amendment. Krajca moved for summary judgment on that claim.

The district court, exercising jurisdiction under 28 U.S.C. § 1331, denied summary judgment. Adhering

to Fifth Circuit precedent as established in *Hare v. City of Corinth*, 74 F.3d 633 (5th Cir. 1996) (en banc), the district court first stated that a pretrial detainee has a Fourteenth Amendment right not to have his serious medical needs met with "deliberate indifference" by jail officials. Pet. App. 40a–41a. (In *Hare*, the Fifth Circuit rejected the approach of some other circuits that a lesser standard than subjective "deliberate indifference" applies to pretrial detainees; Judge Dennis dissented in *Hare*, contending that the majority's approach conflicted with this Court's decisions.) The district court noted that the deliberate-indifference standard is grounded in this Court's Eighth Amendment decision of *Farmer v. Brennan*, 511 U.S. 825 (1994). Pet. App. 41a. The district court then concluded that there was sufficient evidence to establish that Krajca was "deliberately indifferent to Henson's serious medical needs." *Id.* at 45a. The court also determined that she was not entitled to qualified immunity because there was sufficient evidence that she acted in an objectively unreasonable manner. The district court further noted that there is evidence that "she is plainly incompetent in her professional capacity." *Id.* at 48a n.8.

Court of Appeals

Krajca appealed to the Fifth Circuit, which had jurisdiction under 28 U.S.C. § 1291 and the collateral-order doctrine to consider whether, as a matter of law, Krajca was entitled to qualified immunity. *See generally Ortiz v. Jordan*, 131 S. Ct. 884, 891 (2011). Following its earlier precedent in cases such as *Hare*, the Fifth Circuit issued an unpublished decision in which it assessed whether Krajca violated the Eighth Amendment's subjective "deliberate indifference"

standard. In a 2-1 decision, the Fifth Circuit reversed the district court.

The majority concluded that there was no constitutional violation: Nurse Krajca's conduct might have risen to the level of negligence or "malpractice," but it was not deliberate indifference. Pet. App. 12a–13a. The majority claimed that there was no evidence that she refused to treat Henson or showed a wanton disregard for his needs. *Id.* at 13a.

Judge Dennis dissented, concluding that a reasonable jury could find that Nurse Krajca's decision not to treat Henson's dangerously high blood pressure amounted to deliberate indifference. *Id.* at 20a. Moreover, because her conduct "was even more egregious" than in other Fifth Circuit cases where officials were deliberately indifferent to medical needs, Judge Dennis concluded that her conduct was objectively unreasonable and not protected by qualified immunity. *Id.* at 23a.

Henson's family now respectfully petitions for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

"There is a fierce circuit split over the extent of pretrial detainees' substantive due process rights." David C. Gorlin, Note, *Evaluating Punishment in Purgatory: The Need to Separate Pretrial Detainees' Conditions-of-Confinement Claims from Inadequate Eighth Amendment Analysis*, 108 Mich. L. Rev. 417, 421 (2009). The question is whether detainees are entitled to greater protection than the minimum guaranteed to convicted prisoners by the Eighth Amendment. This Court has not resolved the issue and has expressly reserved decision on the question whether pretrial detainees are entitled to greater medical care than the minimum guaranteed by the Eighth Amendment. *City of Canton v. Harris*, 489 U.S. 378, 388 n.8 (1989); *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983). Henson's case raises that precise question, as the majority in the court below concluded that Nurse Krajca's conduct—though perhaps malpractice—did not violate Eighth Amendment standards, and both Judge Dennis and the district court concluded that it did violate that standard. Under the proper standard, Henson's claim would survive summary judgment and reach a jury. The question is an important federal question that defines the rights of hundreds of thousands of detainees. Certiorari should be granted.

I. The Circuits Are Divided On What Standard Governs Pretrial Confinement Conditions Under the Fourteenth Amendment.

Pretrial detainees and convicted prisoners are both constitutionally protected from deplorable or dangerous conditions of confinement, but the

protections for each group are found in distinct constitutional sources. Gorlin, 108 Mich. L. Rev. at 419. Convicted prisoners are protected by the Eighth Amendment, which prohibits the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. The Eighth Amendment's protection applies only after the State has secured a formal adjudication of guilt in accordance with due process of law. *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977). Pretrial detainees, by contrast, are protected by the substantive component of the Due Process Clause, which prohibits the deprivation of liberty without due process of law. U.S. Const. amend. XIV.

A brief chronology of this Court's decisions regarding these two provisions reveals how the division in the circuits took root.

In its 1976 decision in *Estelle v. Gamble*, this Court held that convicted prisoners had to prove that prison officials were "deliberately indifferent" to their serious medical needs to state an Eighth Amendment claim. 429 U.S. 97, 104–05 (1976).

Three years later in *Bell v. Wolfish*, this Court held that substantive due process protects pretrial detainees from conditions of confinement that "amount to punishment." 441 U.S. 520, 535 (1979) (applying Fifth Amendment's due-process clause in relation to a federal facility). Under this standard, the question is whether the conditions are "imposed for the purpose of punishment" or whether they are incidents of "some other legitimate governmental purpose." *Id.* at 538. If the conditions (such as lack of care) are reasonably related to a legitimate governmental objective, they do not, without more, amount to prohibited "punishment."

Id. at 539. Conditions that are excessively harmful to pretrial detainees "amount to punishment." *Id.* at 538.

The Court soon confirmed, in *Youngberg v. Romeo*, that the Eighth Amendment's deliberate-indifference standard did not apply to civilly committed individuals. 457 U.S. 307, 312 (1982). Rejecting that standard, the Court held that, under the Due Process Clause, "liability may be imposed only when the decision by the [mental health] professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person actually did not base the decision on such a judgment." *Id.* at 323.

The next term, in *City of Revere v. Massachusetts General Hospital*, the Court recognized that the due-process rights of a pretrial detainee are "at least as great" as the Eighth Amendment protections of a convicted prisoner. 463 U.S. 239, 244 (1983). But the Court did not define the contours: "We need not define, in this case, [the City's] due process obligation to pretrial detainees or to other persons in its care who require medical attention." *Id.*

The question remained unanswered in *City of Canton v. Harris*, 489 U.S. 378 (1989). The Court recognized that it had "reserved decision on the question whether something less than the Eighth Amendment's 'deliberate indifference' test may be applicable in claims by detainees asserting violations of their due process right to medical care while in custody," but again the Court concluded that it "need not resolve here the question left open in *Revere* . . . ." *Id.* at 388 n.8.

While the question was left open, the Court further defined the Eighth Amendment's "deliberate indifference" standard in 1994 in *Farmer v. Brennan*, requiring a subjective test akin to criminal recklessness: "[A] prison official cannot be found liable under the Eighth Amendment 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." 511 U.S. 825, 837 (1994). The Court rejected an objective test of deliberate indifference akin to tort recklessness in which one is held liable for acting or failing to act "in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* at 836.

Thus, the courts of appeals knew that pretrial detainees' rights to medical care under the Due Process Clause were "at least as great" as rights afforded convicted prisoners under the Eighth Amendment, but the courts did not know the extent. *See, e.g., Hare*, 74 F.3d at 640 ("The level of official conduct that must be shown to support a comparable claim by a pretrial detainee . . . is a question that the Court has repeatedly left open."); *id.* at 639 ("Much of the current confusion over the measures of due process rights of pretrial detainees stems from the divergent ways in which lower courts have applied *Bell* [*v. Wolfish*].").

Some circuits concluded that the subjective deliberate-indifference standard applies for all such claims because the inmate has the same interest in being free from deplorable conditions regardless

whether the inmate has been convicted of a crime. *See, e.g.*, *Hart v. Sheahan*, 396 F.3d 887, 892–93 (7th Cir. 2005).

Other circuits concluded that pretrial detainees are entitled to greater protections than the minimum afforded by the Eighth Amendment's subjective deliberate-indifference standard, instead relying on *Wolfish* and employing an objective standard. *See, e.g.*, *Benjamin v. Fraser*, 343 F.3d 35, 49–51 (2d Cir. 2003) (noting that deliberate indifference may generally be presumed from an absence of reasonable care).

This led to the development of the circuit split, and gradually a number of circuits began simply applying the subjective deliberate-indifference test even for pretrial detainees. Today, it appears that the First, Second, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits apply the Eighth Amendment's subjective deliberate-indifference test to conditions-of-confinement claims brought by pretrial detainees.[3] By

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[3] *See Surprenant v. Rivas*, 424 F.3d 5, 18–19 (1st Cir. 2005); *Caiozzo v. Koreman*, 581 F.3d 63, 70 (2d Cir. 2009); *Brown v. Harris*, 240 F.3d 383, 388 (4th Cir. 2001); *Hare v. City of Corinth*, 74 F.3d 633, 644–45 (5th Cir. 1996) (for "episodic acts"); *Spencer v. Bouchard*, 449 F.3d 721, 727–30 (6th Cir. 2006); *Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010); *Davis v. Oregon Cnty.*, 607 F.3d 543, 548 (8th Cir. 2010); *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1022 (10th Cir. 1996); *Marsh v. Butler Cnty.*, 268 F.3d 1014, 1024 n.5 (11th Cir. 2001); *see also Powers-Bunce v. D.C.*, 659 F. Supp. 2d 173, 179 (D.D.C. 2009) (holding that Eighth Amendment deliberate-indifference standard is appropriate for pretrial detainees even though a detainee's rights are "at least as great" as those of a convicted prisoner).

contrast, the Third and Ninth Circuits hew to *Wolfish* and a more-lenient objective standard.[4]

II. The Eighth Amendment's Subjective Deliberate-Indifference Standard Is Improper for Fourteenth Amendment Claims.

This Court should hold that the Eighth Amendment's subjective deliberate-indifference standard does not apply to pretrial detainees asserting their rights under the Due Process Clause. The circuits adopting the Eighth Amendment standard in this context have veered from this Court's principles in at least three ways.

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[4] *See Hubbard v. Taylor*, 399 F.3d 150, 166 (3d Cir. 2005) ("The district court then erred in concluding that 'pretrial detainees are afforded essentially the same protection as convicted prisoners and that an Eighth Amendment analysis is appropriate for determining if the conditions of confinement rise to the level of a constitutional violation.'"); *see also Mestre v. Wagner*, No. 11-2191, 2012 U.S. Dist. LEXIS 12092, at *9 (E.D. Pa. Jan. 31, 2012) ("[P]retrial detainees are afforded greater constitutional protection under the Fourteenth Amendment than that provided to convicted prisoners under the Eighth Amendment."); *Conn v. City of Reno*, 591 F.3d 1081, 1094 n.3 (9th Cir. 2010) *vacated and remanded*, 131 S. Ct. 1812 (2011) ("Because here, the Conns prevail under the Eighth Amendment deliberate indifference standard, we need not further explicate in this case the more lenient but more amorphous test under the Fourteenth Amendment that has been suggested by our case law."); *see also Brogsdale v. Barry*, 926 F.2d 1184, 1191 (D.C. Cir. 1991) ("[I]t could reasonably be surmised that prison overcrowding, if sufficiently egregious, could violate prisoners' Eighth Amendment rights and, *even more readily*, pretrial detainees' Fifth Amendment [due process] rights.") (emphasis added).

First, "[t]he notion that pretrial detainees are entitled to more vigorous protections than convicted prisoners is older than the Constitution itself." Gorlin, 108 Mich. L. Rev. at 433. As Blackstone has explained, pretrial custody "is only for safe custody, and not for punishment . . . therefore, in this dubious interval between the commitment and trial, a prisoner ought to be used with the utmost humanity . . . ." *Id.* (quoting 4 William Blackstone, *Commentaries on the Laws of England*, 297, 297 (1769)). As this Court has explained, "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1986).

Second, as this Court's decision in *Youngberg* shows, the deliberate-indifference standard does not apply to individuals in custody, such as those civilly committed, who have not been convicted of a crime. 457 U.S. at 312; *see also Hare*, 74 F.3d at 646 (acknowledging that *Youngberg* "arguably counsels against a deliberate indifference standard" for pretrial detainees).

Third, nothing in *Wolfish* requires detainees to establish subjective deliberate indifference by jail officials. The Court expressly held that a subjective intent to punish is not necessary to a due-process claim: "[I]n the absence of a showing of intent to punish, a court must look to see if a particular restriction or condition, which may on its face appear to be punishment, is instead but an incident of a legitimate nonpunitive governmental objective." *Wolfish*, 441 U.S. at 539 n.20.

Thus, consistent with *Wolfish* and *Youngberg*, this Court should adopt an *objective* deliberate-indifference test. "Such a test allows factfinders to focus on the nature of the conditions of confinement rather than an official's state of mind to determine the official's responsibility." Gorlin, 108 Mich. L. Rev. at 443. Under this approach, detainees are not required "to show anything more than actual or imminent substantial harm," and deliberate indifference may "be presumed from the absence of reasonable care." *Benjamin v. Fraser*, 343 F.3d 35, 50–51 (2d Cir. 2003). Thus, while convicted prisoners would have to show subjective deliberate indifference akin to criminal recklessness (i.e., that the official disregarded a risk of which the official *was aware*); pretrial detainees would have to show objective deliberate indifference akin to civil recklessness (i.e., that the official disregarded a risk of which the official *should have been aware*). Gorlin, 108 Mich. L. Rev. at 442 (noting that *Farmer v. Brennan* endorsed the subjective test for convicted criminals under the Eighth Amendment); *see also Hare*, 74 F.3d at 653 (Dennis, J., dissenting); Leslie B. Elkins, Comment, *Analyzing a Pretrial Detainee's § 1983 Claims Under the Deliberate Indifference Standard Amounts to Punishment of the Detainee*, 4 Seventh Circuit Rev. 91, 115 (2008) ("Treating those convicted prisoners' claims the same as pretrial detainees' claims amounts to punishment of the detainee in violation of the due process clause.").

III. The Decision Below Is Wrong and Should Be Reversed.

Under *Wolfish*, the proper question in Henson's case would be whether the lack of medical treatment he received was reasonably related to a legitimate

governmental purpose. And under an objective standard of deliberate indifference, the court would simply ask whether Nurse Krajca disregarded a risk of which she *should have been aware*—a standard easily met here. Krajca took no action upon learning that Henson's vital signs were so dangerous—indeed, she reduced his level of care when she learned of his condition. She could not even explain what a "normal range" of vital signs would be, and the district court recognized this was evidence that she was "plainly incompetent." Pet. App. 48a n.8.

Additionally, she would not be entitled to qualified immunity. Regardless of what standard applies to pretrial detainees, her conduct was so egregious as to violate even the subjective deliberate-indifference standard of the Eighth Amendment. She actually knew Henson faced a medical crisis, and her response was to *reduce* the frequency of his observations. As both the district court and Judge Dennis explained, Nurse Krajca violated that minimal standard and she is not entitled to immunity. *See, e.g.*, Pet. App. 23a (Dennis, J., dissenting) (noting that Krajca's conduct was "even more egregious" than that of defendants in various Fifth Circuit cases where subjective deliberate indifference was found).

IV. This Is An Important Federal Question.

The extent of due-process rights of pretrial detainees is an important federal question that affects hundreds of thousands of people. Elkins, 4 Seventh Circuit Rev. at 115 (noting that in June 2007 approximately 500,000 people were in jails without having been convicted).

And the conditions at issue can be life threatening, as they were here. Pretrial detainees commonly face harsher conditions of confinement than convicted individuals. Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1684–88 (2003). Most convicted prisoners serve their sentences at state or federally operated prisons, but detainees are typically housed in locally operated jails where resources are scarcer, the staff is less professionalized, classification of inmates is haphazard, and rapid turnover makes for generally chaotic conditions. *Id.* at 1684.

This Court should clarify that pretrial detainees are entitled to the due-process protections of the Fourteenth Amendment as stated in *Wolfish*. Wilbert Henson—in custody on a bond-forfeiture warrant for driving with a suspended license—needlessly suffered and died at the hands of state officials; other pretrial detainees should not endure the same fate in violation of their rights under the Due Process Clause.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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