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A Need for Improved Medical Treatment: Why Borrowed Eighth Amendment Standards are Not Sufficient to Protect Pretrial Detainees in Substantive Due Process Cases

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INTRODUCTION

When discussing inmates' rights issues, the focus is often on mass incarceration, sentencing discrepancies, and deprivation of felons' rights. This Article will focus on inadequate-medical treatment and insufficient medical protocols for pretrial detainees. When pretrial detainees receive subpar medical treatment, it can often be a struggle for them to receive meaningful compensation and sometimes, it may even result in permanent ailment or death. The case of Shannon Bowles, a pretrial detainee arrested for public intoxication, demonstrates the lack of justice many have suffered while under government custody.[1]

At the time of his arrest, Bowles suffered from drug withdrawal. Before police booked him, a doctor evaluated Bowles at a hospital before and instructed jail officials to return Bowles if his symptoms worsened.[2] While in custody, an advanced practice registered nurse only visited Bowles once, and he eventually developed a large, right temporal lobe mass.[3] Even though Bowles was "in drug withdrawal, was diagnosed with an infection, and had complained of nausea, diarrhea, and head pain," the licensed practical nurse on staff did not put him on the advanced practice registered nurse's patient list during his weekly visit, nor was he returned to the hospital as the doctor instructed.[4] Bowles complained of various, worsening symptoms related to drug withdrawal over the course of a week and a half and also of symptoms that presented as a sinus infection.[5] Eventually, he lost consciousness and the jail staff rushed him to a hospital where, after a CT scan, doctors discovered a large, right temporal lobe mass in his brain.[6] Bowles lost consciousness again and the doctors transferred him to another hospital, where he never regained consciousness and died after the mass herniated.[7]

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[1] Bowles v. Bourbon Cnty., No. 21-5012, 2021 WL 3028128, at *4–5 (6th Cir. July 19, 2021).

[2] *Id.* at *3.

[3] *Id.* at *3–5. Bowles only had access to licensed practical nurses otherwise. An advanced practice registered nurse can prescribe medication while a licensed practice nurse cannot. *Id.* He lacked access to a medical doctor because the jail did not have an agreement with one. The advanced practice registered nurse only visited the jail once a week. *Id.* Advanced Correctional Healthcare, a private company contracted with the jail, was responsible for providing medical care for the detainees. *Id.*

[4] *Bowles*, 2021 WL 3028128, at *2. Kelly Cox-Lynn, a licensed practical nurse, stated it was common for advanced practice registered nurse, Matthew Johnston, to not see patients on the list anyway. *Id.*

[5] *Id.* at *2–8.

[6] *Id.* at *1–5.

[7] *Id.* Bowles was determined to be brain dead and the coroner "determined that the cause of death was a 'Right Temp[o]roparietal Mass due to Chronic IV Drug Abuse.'" *Id.* at *4.

Advanced Correctional Healthcare, the company that provided the nurses for the jail, did not provide written policies on how "its employees should monitor drug withdrawal or should implement a hospital's discharge instructions."[8] The nurses who interacted with Bowles failed to use a flowsheet to monitor him or take his vital signs, among other shortcomings.[9] In the substantive due process action that followed, the Sixth Circuit held in favor of Bourbon County, reasoning that no individual entity acted with deliberate indifference to Bowles's serious medical needs.[10]

The standard for pretrial detainee,[11] inadequate medical care cases was not clear before 2015.[12] What was clear is pretrial detainees were at least guaranteed the protections that the Eighth Amendment affords to convicted prisoners: the Government cannot act with deliberate indifference to a detainee's serious medical needs.[13] In *Kingsley v. Hendrickson*, the Supreme Court held that the standard for pretrial detainee excessive-force claims is objective reasonableness.[14] Since this decision, Circuits have been split over whether to apply *Kingsley*, an excessive force case, to inadequate medical care cases, or to continue to use deliberate indifference.[15] Still, there are other Supreme Court cases that provide the proper framework for pretrial detainee, inadequate medical care cases. In *Youngberg v. Romeo*, the Supreme Court held that a professional judgment standard will be applied to cases involving involuntarily committed, mentally disabled people.[16]

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[8] *Bowles*, 2021 WL 3028128, at *9.

[9] *Id.* at *5, *8.

[10] *Id.* at *8.

[11] Pretrial detainees are defendants being held on criminal charges because the established bail could not be posted or because pretrial release was denied. *Detention*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[12] *See* Miranda-Rivera v. Toledo-Dávila, 813 F.3d 64, 70 (1st Cir. 2016). The First Circuit acknowledged that "Fourteenth Amendment substantive due process requires the government to provide medical care" but also noted that the boundaries of this duty were muddy. *Id.* at 74.

[13] City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244–45 (1983) (citing Youngberg v. Romeo, 457 U.S. 307, 312 n.11 (1982)) (declining to define the obligations the government owes to pretrial detainees who need medical care).

[14] Kingsley v. Hendrickson, 576 U.S. 389 (2015); Darnell v. Pineiro, 849 F.3d 17, 35 (2d Cir. 2017) (explaining that objective reasonableness in inadequate medical care cases requires the detainee to show that the prison or detention center official "acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant-official knew, or should have known, that the condition posed an excessive risk to health or safety").

[15] *See* Bruno v. City of Schenectady, 727 F. App'x 717, 720 (2d Cir. 2018); Miranda v. Cnty. of Lake, 900 F.3d 335, 350–53 (7th Cir. 2018); Gordon v. Cnty. of Orange, 888 F.3d 1118, 1120, 1122–25 (9th Cir. 2018) (extending *Kingsley* to inadequate medical care cases); *see also Miranda-Rivera*, 813 F.3d at 64; Alderson v. Concordia Par. Corr. Facility, 848 F.3d 415, 419 (5th Cir. 2017); Whitney v. City of St. Louis, 887 F.3d 857, 860 n.4 (8th Cir. 2018); Strain v. Regalado, 977 F.3d 984, 989 (10th Cir. 2020); Dang v. Sheriff, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) (declining to extend *Kingsley* to inadequate medical care cases).

[16] Youngberg v. Romeo, 457 U.S. 307, 320–23 (1982). The professional-judgment standard dictates that "liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Id.*; Doe 4 v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 339 (4th Cir. 2021) (quoting *Youngberg*, 457 U.S. at 323).

This Article will argue that the professional-judgment standard is the correct standard to apply to pretrial detainee, inadequate medical care cases, and that this standard is how the objective-reasonableness standard manifests in such cases. Part II discusses the background and history of medical-care standards under the Fourth, Eighth, and Fourteenth Amendments. It also discusses the *Kingsley* and *Youngberg* opinions. Part III analyzes the arguments for and against expanding the *Kingsley* reasoning to inadequate medical care cases, as well as examining the professional-judgment standard. Part IV argues that objective reasonableness, applied as a professional-judgment standard, accomplishes the goal of encouraging detention centers to be proactive in instituting policies and protocols that provide better treatment for detainees. Part V concludes that a professional-judgment standard offers a better solution for detainees than deliberate indifference and is how objective reasonableness should apply to medical care cases.

I. HISTORY & BACKGROUND

Civilians, except minors and those lacking the ability to care for themselves, seek and obtain their own medical treatment. This responsibility shifts when the government assumes custody over a person. The government can exercise custody over a person in three main ways: arrestee, pretrial detainee, and prisoner.[17] The standard of medical care owed by the government changes in each of these three scenarios. The Fourth Amendment protects arrestees whose cases are governed by objective reasonableness.[18] Deliberate indifference applies to prisoners protected by the Eighth Amendment.[19] Either the Fifth Amendment (federal) or the Fourteenth Amendment (state) protects pretrial detainees,[20] and depending on the circuit, objective reasonableness or deliberate indifference governs their standard of care.[21] Section A briefly discusses the constitutional rights of those in government custody. Section B discusses the Supreme Court's decision in *Kingsley v. Hendrickson* and its impact on the legal standard for conditions of confinement and inadequate medical care claims for pretrial detainees. Section C overviews the circuit split that arose after the *Kingsley* decision in inadequate medical care jurisprudence. Section D discusses the Supreme Court's decision in *Youngberg v. Romeo* to adopt a professional-judgment standard for medical treatment for involuntarily committed detainees.

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[17] *See* Kendall Huennekens, *Long Over-Due Process: Proposing a New Standard for Pretrial Detainees' Length of Confinement Claims*, 71 Duke L.J. 1647, 1668 (2022).

[18] Graham v. Connor, 490 U.S. 386, 388 (1989).

[19] *See, e.g.*, Helling v. McKinney, 509 U.S. 25, 33 (1993).

[20] *See* Huennekens, *supra* note 17, at 1668. *See, e.g.*, Kingsley v. Hendrickson, 576 U.S. 389, 397 (2015).

[21] *See Youngberg*, 457 U.S. at 320–23; *Doe 4*, 985 F.3d at 343.

A. *Constitutional Rights of Inmates*

Inmates fall into two categories, and each type of inmate has different rights under the Constitution. The Eighth Amendment provides that prisoners cannot face "cruel and unusual punishment."[22] On the other hand, the Due Process Clause protects pretrial detainees who may only be detained to "ensure [their] presence at trial."[23] Those charged but not convicted are pretrial detainees, except when a court releases them on bail.[24] Pretrial detainees are different from prisoners because pretrial detainees are presumed to be innocent and *cannot* be punished at all.[25] Thus, the Constitution guarantees pretrial detainees at least the same level of care as convicted prisoners.[26] Before a person becomes a detainee, however, they are an arrestee protected by the Fourth Amendment.[27]

1. *Fourth Amendment Rights of Arrestees*

The Fourth Amendment protects citizens "against unreasonable searches and seizures."[28] An objective-reasonableness standard applies to claims against law enforcement officials using excessive force during an arrest, investigatory stop, or any other seizure.[29] Officials seize a person when they restrain that person's freedom of movement so that they are not free to leave.[30] Seizures are generally "reasonable" only when there is probable cause that the individual has committed a crime.[31]

The Fourth Amendment not only protects an individual during an arrest, but also in different phases throughout pretrial detention.[32] The Supreme Court explained that a person objecting to the reasonableness of their detention could find relief under the Fourth Amendment.[33] Indeed, it remains a Fourth Amendment claim when a person's detention is later found to be unreasonable—perhaps because new facts extinguished the probable cause for their arrest—their claim does not convert to one under the Due Process Clause.[34] "Legal process [does] not expunge [a person's] Fourth Amendment claim because the process he receive[s] fail[s] to establish what

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[22] U.S. CONST. amend. VIII.

[23] Bell v. Wolfish, 441 U.S. 520, 536–37 (1979); *see also* Gerstein v. Pugh, 420 U.S. 103, 113–15 (1975).

[24] *Bell*, 441 U.S. at 523.

[25] U.S. CONST. amend. XIV, § 1; *Kingsley*, 576 U.S. at 400; *Bell*, 441 U.S. at 535 ("[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.").

[26] City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244 (1983).

[27] Graham v. Connor, 490 U.S. 386, 388–89.

[28] U.S. CONST. amend. IV.

[29] *Graham*, 490 U.S. at 388.

[30] Manuel v. City of Joliet, 580 U.S. 357, 364 (2017) (quoting Brendlin v. California, 551 U.S. 249, 254 (2007)).

[31] *Id.* (quoting Bailey v. United States, 568 U.S. 186, 192 (2013)).

[32] *Id.* at 363–64. There is also a circuit split about when an arrestee becomes a detainee. *See infra* note 152 and accompanying text.

[33] *Id.* at 366.

[34] *Id.* at 364.

that Amendment makes essential for pretrial detention—probable cause to believe he committed a crime."[35] The Fourth Amendment, and objective reasonableness, governs throughout pretrial detention for claims relating to the reasonableness of their detention.

2. *Eighth Amendment Rights of Convicted Prisoners*

The Eighth Amendment bars "cruel and unusual punishments."[36] The Supreme Court has not only interpreted the Eighth Amendment to prohibit barbarous punishments like torture but also to embody "'idealistic concepts of dignity, civilized standards, humanity, and decency.'"[37] The Supreme Court held that prisons must provide inmates with humane conditions of confinement, medical care, and protection from serious harm at the hands of others.[38] Eighth Amendment inadequate medical care and conditions of confinement cases use a deliberate-indifference standard.[39]

The government has an obligation to provide medical care for those it incarcerates because an inmate relies on prison authorities to treat their medical needs.[40] The Supreme Court recognized that a failure to meet this obligation could result in death, or, in less serious cases, pain and suffering serving no penological purpose.[41] The Court then concluded "that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' . . . proscribed by the Eighth Amendment."[42] This standard applies to all prison staff and not just prison doctors.[43] The Court noted, however, that mere negligence, or medical malpractice, does not rise to a constitutional violation just because the victim is a prisoner.[44] The indifference must "offend 'evolving standards of decency.'"[45]

The Court affirmed the deliberate-indifference standard in *Wilson v. Seiter* and rejected a "malicious[] and sadistic[]" standard for prison condition cases.[46] The Supreme Court ruled that if the harm done is not "formally meted out as punishment by the statute or sentencing judge, some mental element must be attributed to the inflicting officer" before the

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[35] *Id.* at 368–69.

[36] U.S. CONST. amend. VIII. *See* Robinson v. California, 370 U.S. 660, 666 (1962) (incorporating the Eighth Amendment to the States through the Fourteenth Amendment).

[37] Estelle v. Gamble, 429 U.S. 97, 102 (1976) (quoting Jackson v. Bishop, 404 F. 2d 571, 579 (8th Cir. 1968)).

[38] *See, e.g.*, Helling v. McKinney, 509 U.S. 25, 32–33 (1993); *Estelle*, 429 U.S. at 103–04; Farmer v. Brennan, 511 U.S. 825, 833–34 (1994); *see also* Wilson v. Seiter, 501 U.S. 294, 303 (1991) ("[T]he medical care a prisoner receives is just as much a 'condition' of his confinement as the food he is fed, the clothes he is issued, the temperature he is subjected to in his cell, and the protection he is afforded against other inmates.").

[39] *Estelle*, 429 U.S. at 104–05 (quoting Gregg v. Georgia, 428 U.S. 153, 182–83 (1976)).

[40] *Id.* at 103.

[41] *Id.*

[42] *Id.* at 104 (quoting *Gregg*, 428 U.S. at 182-83).

[43] *Id.*

[44] *Id.* at 106.

[45] *Estelle*, 429 U.S. at 106.

[46] Wilson v. Seiter, 501 U.S. 294, 302–03 (1991).

conduct is considered deliberately indifferent.[47] There must be an inquiry into the prison official's state of mind. Only the unnecessary and wanton infliction of pain, not inadvertence or error in good faith, violates the Eighth Amendment in prisoner conditions of confinement cases—unintentional acts or omissions cannot be cruel and unusual punishment.[48] The Court then concluded that *Estelle's* deliberate-indifference standard is the appropriate standard for medical-conditions cases because the responsibilities of prison officials for medical conditions are not materially different from their responsibilities with nonmedical conditions.[49] "Indeed, the medical care a prisoner receives is just as much a 'condition' of his confinement as the food he is fed, the clothes he is issued, the temperature he is subjected to in his cell, and the protection he is afforded against other inmates."[50]

3. *Due Process Protections for Detainees*

The Fourteenth Amendment states that "[n]o 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."[51] To deprive a civilian of their liberty without convicting them, there must be a judicial determination of probable cause for their arrest to satisfy the due process requirement of the Fourteenth Amendment and justify their detention.[52]

The government detains pretrial inmates as a "regulatory measure" to ensure their presence at trial. So long as the "conditions and restrictions do not amount to punishment," the government can justifiably restrict a detainee's constitutional right to liberty.[53] To determine whether a governmental action is punitive or regulatory, a court must consider several factors: (1) whether there is "an expressed intent to punish on the part of detention facility officials;"[54] (2) whether a "condition is not reasonably related to a legitimate [government] goal;"[55] and (3) whether the governmental purpose justifies the imposed condition.[56] The detention of a pretrial detainee is justified by probable cause, an objective standard,[57] but

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[47] *Id.* at 300.

[48] *Id.* at 297–99 (citing *Estelle*, 429 U.S. at 104); *see also* Whitley v. Albers, 475 U.S. 312, 319 (1986).

[49] *Wilson*, 501 U.S. at 303.

[50] *Id.*

[51] U.S. CONST. amend. XIV, § 1.

[52] *Bell*, 441 U.S. at 535–37 (noting other proceedings such as a bail hearing).

[53] *Id.* at 536–37 (distinguishing between punitive measures after conviction and regulatory measurers before conviction); "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Id.* at 535 (first citing Ingraham v. Wright, 430 U.S. 651, 671–72 n.40 (1977); then citing Kennedy v. Mendoza-Martinez, 372 U.S.144, 165–67 (1963); and then citing Wong Wing v. United States, 163 U.S. 228, 237 (1896)).

[54] *Bell*, 441 U.S. at 584.

[55] *Id.* at 539.

[56] *Id.* at 561.

[57] *Id.* at 535–37.

the standard for the conditions of the detention (be it medical care or otherwise) is not as clear.[58]

B. Kingsley v. Hendrickson

Since *Bell v. Wolfish*, a case decided in 1979, until *Kingsley v. Hendrickson*, decided in 2015, the Supreme Court had not significantly changed pretrial detainee jurisprudence. In *Bell*, the Court held that "[a]bsent a showing of an expressed intent to punish, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'"[59] Realizing that this standard does not neatly apply to excessive-force cases, the Court took up the question in *Kingsley v. Hendrickson*. Before 2015, pretrial detainees bringing excessive-force claims were judged differently depending on which circuit the case was tried in.[60] Some circuits, borrowing reasoning from Eighth Amendment jurisprudence, required a subjective analysis, while others used an objective standard.[61]

The Supreme Court held that the standard for detainee-excessive-force claims is objective reasonableness in *Kingsley v. Hendrickson*.[62] The Supreme Court reasoned that because excessive-force cases are unique due to the nature of using force—an affirmative act necessarily done with intent—subjective intent was unnecessary to prove.[63] Kingsley was arrested on a drug charge and detained in a Wisconsin County jail.[64] Kingsley alleged that, during his detention, officers used excessive force against him when he refused to remove a paper covering a light fixture in his cell.[65] Kingsley brought an excessive-force claim and argued that the proper standard should be objective reasonableness.[66]

The Supreme Court agreed, reasoning that an objective-reasonableness standard (1) complied with precedent;[67] (2) was a workable standard;[68] and (3) "adequately protects an officer who acts in good faith."[69] Underpinning

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[58] *See generally Bowles*, 2021 WL 3028128, at *7 (quoting Richmond v. Huq, 885 F.3d 928, 938 n.3 (6th Cir. 2018)).

[59] *Bell*, 441 U.S. at 538–39.

[60] *See* Kingsley v. Hendrickson, 576 U.S. 389, 395 (2015). Many circuits relied on Eighth Amendment jurisprudence to guide their reasoning under the Fourteenth Amendment for excessive force claims. *Id.* at 400–02 (citing Johnson v. Glick, 481 F.2d 1028, 1030 (2d Cir. 1973)).

[61] *Id.* at 395.

[62] *Id.* at 402.

[63] *Id.* at 396, 400–03. Still, the Court required that the defendant in excessive force cases possess a purposeful or knowing state of mind; however, it concluded that this would be inherently satisfied if the act itself was a deliberate one. *Id.* at 396.

[64] *Id.* at 392.

[65] *Kingsley*, 576 U.S. at 392.

[66] *Id.* at 396–97.

[67] *Id.* at 397 ("We have said that 'the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment.'") (quoting Graham v. Connor, 490 U.S. 386, 395 n.10 (1989)).

[68] *Id.* at 399.

[69] *Id.*

this decision, the Court routinely referenced *Graham v. Connor*, a Fourth Amendment case, to explain the objective-reasonableness standard.[70] The Court highlighted that pretrial detainees could prevail on substantive due process claims only by providing objective evidence that a governmental action was not "rationally related" to a legitimate government objective.[71] The Court noted that several circuits use jury instructions consistent with objective reasonableness and that many facilities train officers as if their conduct is subject to objective reasonableness.[72] The Court also acknowledged that had Kingsley been released on bail, his claim would arise under the Fourth Amendment where the standard is objective.[73] Finally, the Court stated that "judging the reasonableness of the force used from the perspective and with the knowledge of the defendant officer is an appropriate part of the analysis."[74] Although the Court has not opined on the competing standards in inadequate medical care cases,[75] the decision in *Kingsley* is relevant because it sets forth the idea that objective reasonableness is the appropriate standard for pretrial detainee, substantive due process claims. Thus, circuits have since used *Kingsley* to guide their inadequate medical care cases.

C. *The Circuit Split*

Since *Kingsley*, a circuit split arose over whether the proper standard for inadequate-medical-treatment claims should be deliberate indifference or objective reasonableness. The Second, Seventh, and Ninth Circuits have applied an objective-reasonableness standard to inadequate-medical-treatment claims, extending the *Kingsley* reasoning to more than just excessive-force claims.[76] On the other hand, the First, Fifth, Eighth, Tenth, and Eleventh Circuits have continued to use the deliberate-indifference standard, reasoning that *Kingsley* applied to excessive force claims and did not extend to deliberate-indifference, inadequate medical treatment claims.[77] The Third, Fourth, and Sixth Circuits have not resolved the issue, concluding

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[70] *Id.* at 397–401 (citing *Graham*, 490 U.S. at 395 n.10, 396–97).

[71] *Kingsley*, 576 U.S. at 389 (citing *Bell*, 441 U.S. at 541–43).

[72] *Id.* at 390.

[73] *Id.* at 399.

[74] *Id.* at 390.

[75] At the time of writing this Article, the Supreme Court most recently denied certiorari on this issue in *Scott County. v. Brawner* on October 3, 2022. Brawner v. Scott Cnty., 14 F.4th 585 (6th Cir. 2021), *cert. denied sub nom.* Scott Cnty. v. Brawner, 143 S. Ct. 84 (2022). The Court reaffirmed its position to not take up the question in February 2024. Crandel v. Hall, 75 F.4th 537 (5th Cir. 2023), *cert. denied*, 2024 WL 674720.

[76] *See* Bruno v. City of Schenectady, 727 F. App'x 717, 720 (2d Cir. 2018); Miranda v. Cnty. of Lake, 900 F.3d 335, 352 (7th Cir. 2018); Gordon v. Cnty. of Orange, 888 F.3d 1118, 1120, 1124–25 (9th Cir. 2018).

[77] *See* Miranda-Rivera v. Toledo-Dávila, 813 F.3d 64, 64 (1st Cir. 2016); Alderson v. Concordia Par. Corr. Facility, 848 F.3d 415, 419 (5th Cir. 2017); Whitney v. City of St. Louis, 887 F.3d 857, 860 n.4 (8th Cir. 2018); Strain v. Regalado, 977 F.3d 984, 989 (10th Cir. 2020); Dang v. Sheriff, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017).

that the outcome in their cases would be the same under either standard.[78] The Sixth Circuit "'recognize[d] that this shift in Fourteenth Amendment deliberate indifference jurisprudence' as a result of *Kingsley* 'calls into serious doubt whether [the pretrial detainee] need even show that the individual defendant-officials were subjectively aware of her serious medical conditions and nonetheless wantonly disregarded them.'"[79] Still, the Sixth Circuit declined to address this issue, stating it "found it unnecessary to answer the question each time we have confronted the issue" because the "same result would obtain under either the subjective test dictated by *Farmer* or by a purely objective test derived from *Kingsley*."[80] The Third and Fourth Circuits held similarly that the outcome would be the same under either standard.[81]

D. Youngberg v. Romeo

The professional-judgment standard from *Youngberg v. Romeo* can help clarify this ever-changing area of law and govern future Fourteenth Amendment, inadequate medical care claims. This case is from 1982, yet it provides the proper framework for pretrial detainee, inadequate medical care claims today. The Supreme Court has already viewed this case as a medical-care case.[82] Even if that were not true, central to *Youngberg* is a mentally ill detainee and various congressional acts, such as the Americans with Disabilities Act, include physical and mental impairments under the same definition.[83] This shift reflects contemporaneous views and understanding of mental health—our legal standards should as well.

The issue in *Youngberg v. Romeo* was whether an involuntarily committed, mentally retarded[84] detainee has substantive rights under the Due Process Clause of the Fourteenth Amendment to safe conditions of confinement, freedom from restraints, and habilitation.[85] The Pennhurst State School and Hospital admitted Romeo because his mother was unable to take care of him after his father's death.[86] While committed, Romeo

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[78] *See* Bowles v. Bourbon Cnty., No. 21-5012, 2021 WL 3028128, at *7–8 (6th Cir. July 19, 2021) (quoting Griffith v. Franklin Cnty., 975 F.3d 554, 570 (6th Cir. 2020)); Moore v. Luffey, 767 F. App'x 335, 340 n.2 (3d Cir. 2019); Mays v. Sprinkle, 992 F.3d 295, 301 (4th Cir. 2021).

[79] *Bowles*, 2021 WL 3028128, at *7 (quoting Richmond v. Huq, 885 F.3d 928, 938 n.3 (6th Cir. 2018)).

[80] *Id.* at *7 (quoting *Griffith*, 975 F.3d at 570).

[81] *Moore*, 767 F. App'x at 340 n.2; *Mays*, 992 F.3d at 301.

[82] *See, e.g.*, City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244–45 (1983) ("We need not define, in this case, Revere's due process obligation to pretrial detainees or to other persons in its care who require *medical* attention.") (emphasis added) (citing *Youngberg*, 457 U.S. at 312 n.11).

[83] Today the Americans with Disabilities Act describes disability as an individual (1) with "a physical or mental impairment that substantially limits one or more major life activities of such individual;" (2) with "a record of such impairment;" or (3) "being regarded as having such an impairment." 42 U.S.C. § 12102.

[84] It's worth noting that, at the time, mental retardation was not considered a mental illness. *Youngberg*, 457 U.S. at 309 n.1; *but see* 42 U.S.C. § 12102. For the purposes of this Article, mentally ill will be used henceforth for all mental impairments.

[85] *Youngberg*, 457 U.S. at 309.

[86] *Id.* at 309–10.

purportedly suffered injuries from at least sixty-three incidents and his mother filed a complaint that alleged "Pennhurst's director and two supervisors . . . knew, or should have known, that Romeo was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments."[87] At trial, the court instructed the jury that only if they found the defendants "deliberately indifferent" to Romeo's serious medical needs could they find his Eighth and Fourteenth Amendment rights violated.[88] The jury returned a verdict for the defendants and the Third Circuit, sitting en banc, reversed.[89]

The Supreme Court reasoned that professional judgment "reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed."[90] The Court reasoned that it is not appropriate for the judiciary to discern which specific professionally acceptable choice a jail official should make and that "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish."[91] Although the *Youngberg* Court focused on involuntary commitment, rehabilitation, and restraints, it also viewed these issues as both treatment and conditions of confinement.[92] Contrasting *Estelle v. Gamble*, an Eighth Amendment case that holds deliberate indifference is the standard for prisoners, the *Youngberg* Court held that professional judgment is the standard for involuntarily committed, mentally ill detainees.[93]

The Fourth Circuit expanded on *Youngberg* and held that a professional-judgment standard is the appropriate standard for juvenile mental healthcare cases.[94] In *Doe 4 v. Shenandoah Valley Juvenile Center*, the appellants were all unaccompanied alien children placed in the custody of the Shenandoah Valley Juvenile Center.[95] The unaccompanied alien children filed a class action complaint alleging that the Center "engaged in unlawful patterns of conduct through: (1) excessive use of force, physical restraints, and solitary confinement; (2) failing to provide a constitutionally

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[87] *Id.* at 310.

[88] *Id.* at 312.

[89] *Id.* The Third Circuit suggested a confusing standard that changed based on how close the condition was to a punishment. The Third Circuit reasoned that various standards should control: (1) restraints, which raise a presumption of punishment, require a "compelling necessity"; (2) failure to provide for a resident's safety requires a "substantial necessity"; and (3) that defendants are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.* at 313 (internal quotations omitted) (quoting Romeo v. Youngberg, 644 F.2d 147, 154 (3d Cir. 1980)). Chief Judge Seitz, in his concurrence, provided a much clearer and workable standard. Chief Judge Seitz reasoned that the "Constitution 'only requires that the courts make certain that professional judgment in fact was exercised.'" Youngberg v. Romeo, 457 U.S. 307, 314 (1982) (quoting *Romeo*, 644 F.2d at 178 (Seitz, C.J., concurring)).

[90] *Id.* at 321.

[91] *Id.* at 321–22.

[92] *Id.*

[93] *Id.* (citing Estelle v. Gamble, 429 U.S. 97, 104 (1976)) (comparing Eighth Amendment medical care standards directly to persons who are involuntarily committed and protected by the Due Process Clause of the Fourteenth Amendment).

[94] Doe 4 v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 329 (4th Cir. 2021).

[95] *Id.*

adequate level of care for plaintiffs' serious mental health needs; and (3) discrimination on the basis of race and national origin."[96] The children argued for *Youngberg*'s professional-judgment standard because they believed it would lead to safe and sanitary conditions and that special concern should be taken for children who are more vulnerable than other types of detainees.[97] The Fourth Circuit, drawing similarities between involuntarily committed, mentally ill detainees and unaccompanied alien children, agreed. It held that a professional-judgment standard would apply to unaccompanied alien children's cases.[98]

II. ANALYSIS

Inadequate medical care cases have not been a source of clarity in the ever-changing area of substantive due process law. There is confusion about whether courts should use typical Eighth Amendment approaches or use Fourth Amendment cases for guidance. The scarcity of Supreme Court precedent on pretrial detainee medical care under the due process clause forces courts to rely on cases about excessive force. The lack of clarity on whether mental health care invokes the same legal standards as physical health care adds even more confusion. Moreover, there are three separate standards courts use to deal with inadequate medical care claims brought by detainees: (1) objective reasonableness; (2) deliberate indifference; and (3) professional judgment. Clarification is needed to produce a simple, workable standard for pretrial detainees bringing inadequate medical care claims.

The objective-reasonableness standard derived from *Kingsley* is the minority approach to inadequate medical care claims under the due process clause. In the excessive force context, it requires that "a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable."[99] For conditions of confinement or inadequate medical care claims, a pretrial detainee must satisfy one of two prongs: (1) that the official "acted intentionally to impose the alleged condition, or [(2)] recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant-official knew, or should have known, that the condition posed an excessive risk to health or safety."[100]

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[96] *Id.* at 334.

[97] *Id.* at 339–40; *see also* Youngberg v. Romeo, 457 U.S. 307, 307 (1982).

[98] *Doe 4*, 985 F.3d at 329. The professional-judgment standard imposes liability only when the decision by the professional is "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Id.* at 342 (quoting *Youngberg*, 457 U.S. at 323) (internal quotation marks omitted).

[99] Kingsley v. Hendrickson, 576 U.S. 389, 396–97 (2015).

[100] Darnell v. Pineiro, 849 F.3d 17, 35 (2d Cir. 2017). The Ninth and Seventh Circuits have applied similar, predominantly objective standards to inadequate medical care claims. The Ninth Circuit "interpreted *Kingsley* to require an intentional decision by the officer with respect to the challenged condition, but only objective recklessness for the officer's failure to mitigate the risk." Abby Dockum, Kingsley*, Unconditioned: Protecting Pretrial Detainees with an Objective Deliberate Indifference Standard in § 1983 Conditions of confinement Claims*, 53 ARIZ. ST. L.J. 707, 731 (2021) (citing Castro v. Cnty. of Los Angeles, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc)). The Seventh Circuit "required

The deliberate-indifference test is the majority approach. It has two components—objective and subjective. The "objective component requires the plaintiff to show that the medical need at issue is 'sufficiently serious.'"[101] The medical need must be so serious that even a layperson could identify it.[102] The subjective component requires that a prison "official knows of and disregards an excessive risk to inmate health or safety."[103]

The professional-judgment standard imposes liability "only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment."[104] Courts have sparingly used this standard.[105]

A. *Objective Reasonableness v. Deliberate Indifference*

The tension between the dueling standards of objective reasonableness and deliberate indifference arose from *Kingsley*. The objective-reasonableness standard better reflects pretrial detainees' Fourteenth Amendment rights because they cannot be punished at all and are thus different from prisoners.[106] The objective-reasonableness standard follows Supreme Court precedent[107] and it is workable because it can apply to excessive-force, conditions of confinement, failure-to-protect, and medical-needs claims.[108]

Pretrial detainees and prisoners are distinct from each other. The government can punish prisoners because they have gone through the entire conviction process, and the Eighth Amendment bars only punishments that are cruel and unusual.[109] On the other hand, the Fourteenth Amendment protects pretrial detainees from *any* punishment because they maintain a

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plaintiffs to show that a defendant was at least reckless in considering the consequences of an objectively unreasonable action." *Id.* at 731 (citing Miranda v. Cnty. of Lake, 900 F.3d 335, 353–54 (7th Cir. 2018)); *see also* Wilson v. Seiter, 501 U.S. 294, 303 (1991) ("[T]he medical care a prisoner receives is just as much a 'condition' of his confinement as the food he is fed, the clothes he is issued, the temperature he is subjected to in his cell, and the protection he is afforded against other inmates.").

[101] Richmond v. Huq, 885 F.3d 928, 938 (6th Cir. 2018) (quoting Farmer v. Brennan, 511 U.S. 825, 834 (1994)).

[102] *Id.* at 938 (quoting *Farmer*, 511 U.S. at 834).

[103] *Farmer*, 511 U.S. at 837.

[104] *Youngberg*, 457 U.S. at 323.

[105] *See, e.g.*, Doe 4 v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 342–44 (4th Cir. 2021).

[106] Dockum, *supra* note 100, at 739–40 (citing Kingsley v. Hendrickson, 576 U.S. 389, 398–401 (2015)).

[107] Dockum, *supra* note 100, at 742 (citing Darnell v. Pineiro, 849 F.3d 17, 35 (2d Cir. 2017)). The Court has stated that recklessly failing to act with reasonable care to mitigate unreasonable conditions can also satisfy the state-of-mind element. Dockum, *supra* note 100, at 742 (citing *Darnell*, 849 F.3d at 35). Thus, the objective reasonableness standard allows courts to infer intent when an officer's actions or omissions do not comport with what a reasonable officer would have done under the same conditions. Dockum, *supra* note 100, at 742–43.

[108] Dockum, *supra* note 100, at 743–44.

[109] U.S. CONST. amend. VIII; Dockum, *supra* note 100, at 712 (citing Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979)).

presumption of innocence.[110] This is important distinction is what makes pretrial detainees more akin to arrestees than prisoners. The Supreme Court has held that when there has not been formal adjudication of guilt, the Eighth Amendment has no application to a detainee's required medical care.[111] The Court explicitly stated that detainees' "due process rights . . . are at least as great as the Eighth Amendment protections available to . . . convicted prisoner[s]" but found it unnecessary to define what additional due process obligations they are owed.[112] While the Eighth Amendment may not have any application to a detainee's required medical care, the Supreme Court's failure to define a standard has led to lower courts applying Eighth Amendment standards to cases arising under the due process clause.[113]

Conversely, while courts have acknowledged that *Kingsley* creates a cloud over all pretrial detainee cases, the Supreme Court did not explicitly intend for it to govern inadequate medical care cases.[114] "[T]he Supreme Court previously rejected a request to adopt a 'purely objective test for deliberate indifference.'"[115] Criticism of objective reasonableness often compares the standard to medical malpractice, reasoning that objective reasonableness makes inadequate medical care cases under the Fourteenth Amendment basically tort law no better than a simple negligence standard.[116] This reasoning is underpinned by *Estelle*, an Eighth Amendment case, where the Court stated, "[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner."[117] Under the Fourteenth Amendment, Justice Scalia's dissent in *Kingsley* reasoned that the "Due Process Clause is not a font of tort law to be superimposed upon" and states that the "majority overlooks this in its tender-hearted desire to tortify the Fourteenth Amendment."[118]

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[110] *Bell*, 441 U.S. at 538–39, 539 n.20 (explaining, in a non-exhaustive list, that punishment can be shown in three ways: (1) punitiveness can be shown by an officer's expressed intent to punish; (2) if a condition is not "reasonably related" to a government's legitimate goal, courts can infer an intent to punish; and (3) absent intent to punish, the government's goal must still be able to justify the punishment). A legitimate government goal is not expressly defined but it can be shown in at least two ways: managing the detention center (giving deference to administrators) and ensuring the detainee's presence at trial. *Id.* at 540 n.23. Still, pretrial detainees are deprived of some rights, like liberty, for regulatory purposes. *Id.* at 523, 537.

[111] City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244 (1983).

[112] *Id.*

[113] *See* Bruno v. City of Schenectady, 727 F. App'x 717, 720 (2d Cir. 2018); Miranda v. Cnty. of Lake, 900 F.3d 335, 352 (7th Cir. 2018); Gordon v. Cnty. of Orange, 888 F.3d 1118, 1120, 1124–25 (9th Cir. 2018).

[114] Bowles v. Bourbon Cnty., No. 21-5012, 2021 WL 3028128, at *7–8 (6th Cir. July 19, 2021) (quoting Richmond v. Huq, 885 F.3d 928, 938 n.3 (6th Cir. 2018)); Miranda-Rivera v. Toledo-Dávila, 813 F.3d 64, 70 (1st Cir. 2016).

[115] Strain v. Regalado, 977 F.3d 984, 992 (10th Cir. 2020) (quoting Farmer v. Brennan, 511 U.S. 825, 839 (1994)).

[116] *Id.* at 993 (quoting Kingsley v. Hendrickson, 576 U.S. 389, 408 (Scalia, J. dissenting)).

[117] Estelle v. Gamble, 429 U.S. 97, 106 (1976).

[118] *Kingsley*, 576 U.S. at 408 (Scalia, J. dissenting) (quoting Paul v. Davis, 424 U.S. 693, 701 (1976)).

B. *The Professional-Judgment Standard*

A professional-judgment standard should govern inadequate medical care claims because it: (1) provides a backdrop of professional standards for courts to use and better assesses whether care was reasonable, and it is not for courts to decide which specific professionally acceptable choice a jail official should make; (2) is a workable standard that is already used in medical-care cases;[119] and (3) is closer to medical-malpractice standards used across the United States while not being a simple negligence standard.[120] Courts would defer to professional standards to determine whether care was adequate. Although mere departures from a professional's judgment are not enough to show a constitutional violation, under this approach courts must still evaluate the treatment provided under a relevant standard of professional judgment.[121]

Youngberg v. Romeo should be viewed as a medical care case, and thus govern inadequate medical-care cases for pretrial detainees. The professional-judgment standard is already used under Fourteenth Amendment, substantive due process claims for involuntarily committed individuals.[122] Although *Youngberg* deals with mental ailments, there is a growing trend where courts have stopped distinguishing between mental and

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[119] *See* Youngberg v. Romeo, 457 U.S. 307, 307 (1982).

[120] *Compare* Doe 4 v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 339 (4th Cir. 2021) (quoting *Youngberg*, 457 U.S. at 320–23) (explaining professional-judgment standard imposes liability "only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." Further, although courts must express deference to a professional's judgment and mere departures are not enough to show a constitutional violation, courts must still evaluate the treatment provided under a relevant standard of professional judgment.) *with* 61 AM. JUR. 2D *Physicians, Surgeons, Etc.* § 285 (2023) (explaining that "[t]hree elements are essential to establish a medical malpractice claim: (1) the physician's duty to his or her patient; (2) the physician's breach of that duty through the failure to exercise the requisite degree of skill and care; and (3) an injury proximately caused by the physician's failure.").

[121] *Doe 4*, 985 F.3d at 342–44. For example, in *Doe 4*, the court examines two Fourth Circuit cases about treatment of a transgender prisoner. *Id.* (first citing De'lonta v. Angelone, 330 F.3d 630 (4th Cir. 2003); and then citing De'lonta v. Johnson, 708 F.3d 520 (4th Cir. 2013)). In the first case, the prisoner was denied the use of hormone treatment because it was against the facility's policies, but the court determined that this denial was not related to the judgment of a professional with respect to the individual's specific needs. *Id.* at 343–44. The *De'lonta* court ultimately did not decide the case on the merits but did refuse to "dismiss the prisoner's claims as a matter of law simply because the prison provided some form of treatment." *Id.* at 344 (citing *De'lonta*, 330 F.3d at 635). In the second example, this same prisoner challenged the adequacy of her care but this time for a right to consultation for sex reassignment surgery. The Fourth Circuit relied on a "triadic treatment sequence" from the "Benjamin Standards of Care . . . published by the World Professional Association for Transgender Health." *De'lonta*, 708 F.3d at 522–23. The sequence is (1) hormone therapy; (2) real-life experience living as a member of the opposite sex; and (3) sex reassignment surgery. *Id.* at 523. The Fourth Circuit held that although De'lonta received some treatment, "it does not follow that they have necessarily provided her with *constitutionally adequate* treatment." *Id.* at 526. The Fourth Circuit conceded that a detainee does not have a constitutional right to choose the treatment they receive but that a detention center must still provide adequate treatment addressing the detainee's serious medical need. *Id.* "To apply *Youngberg* to a claim of inadequate medical care . . . a court must do more than determine that some treatment has been provided—it must determine whether the treatment provided is adequate to address a person's needs under a relevant standard of professional judgment." *Doe 4*, 985 F.3d at 344.

[122] *Youngberg*, 457 U.S. at 307–09.

physical ailments.[123] Finally, the Supreme Court and various circuit courts have already viewed *Youngberg* as a medical-care case and the professional-judgment standard neatly applies to all detainee medical-care cases.[124] Thus, the professional-judgment standard is the most workable standard for medical-care cases because it derives from a tangential medical-care case.[125] The professional-judgment standard should logically be extended to physical and mental ailments for all detainees.

A professional-judgment standard is like medical malpractice standards across the United States. It imposes liability when there is a substantial deviation from "accepted professional judgment, practice, or standards."[126] In general, a medical provider is liable for malpractice when the plaintiff shows "(1) the standard of care in the medical community by which the physician's treatment was measured, (2) that the physician deviated from the standard of care, and (3) that the resulting injury was proximately caused by the deviation from the standard of care."[127] Both professional judgment and medical malpractice require an accepted standard of care in the medical community, and then that the medical-care professional deviates from that standard of care. The key distinction that prevents professional judgment from becoming "merely" tort law is that the professional-judgment standard requires a *substantial* deviation from professional standards to merit a constitutional violation, while medical malpractice does not require as much.

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[123] Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977); *see also* Torraco v. Maloney, 923 F.2d 231, 234–36 (1st Cir. 1991); Inmates of Allegheny Cnty. Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979); Partridge v. Two Unknown Police Officers of Hous., 791 F.2d 1182, 1187 (5th Cir. 1986); Clark-Murphy v. Foreback, 439 F.3d 280, 292 (6th Cir. 2006); Ramos v. Lamm, 639 F.2d 559, 574–75 (10th Cir. 1980); Laaman v. Helgemoe, 437 F. Supp. 269, 313 (D.N.H. 1977). The Fourth Circuit has also adopted the professional-judgment standard from *Youngberg* for mental health treatment for unaccompanied alien children. *See Doe 4*, 985 F.3d at 342 ("[A] facility caring for an unaccompanied child fails to provide a constitutionally adequate level of mental health care if it substantially departs from accepted professional standards."). The Fourth Circuit further extended this standard for UACs because (1) they are not admitted because they committed a crime; (2) they are placed in juvenile detention centers for safety and care; (3) they are subject to mental health evaluations; (4) individuals are guaranteed adequate care regardless of the nature of the facility they are subjected to; (5) they are released subject to consideration for their risk of harm; and (6) UACs are children. *Id.* at 339–42. Although the court highlighted the fact that UACs are children, the standard derives from a case dealing with adults, and the reasoning employed can be similarly applied to pretrial detainees.

[124] *See, e.g.*, City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244–45 (1983) ("We need not define, in this case, Revere's due process obligation to pretrial detainees or to other persons in its care who require *medical* attention.") (emphasis added) (citing *Youngberg*, 457 U.S. at 312 n.11); *Doe 4*, 985 F.3d at 339.

[125] *See Youngberg*, 457 U.S. at 320–23; *see also Doe 4*, 985 F.3d at 329.

[126] *Doe 4*, 985 F.3d at 323, 339 (quoting *Youngberg*, 457 U.S. at 320–23).

[127] 61 AM. JUR. 2D *Physicians, Surgeons, Etc.* § 285 (2023). *See* Day v. Johnson, 255 P.3d 1064 (Colo. 2011); Bruscato v. O'Brien, 705 S.E.2d 275 (Ga. Ct. App. 2010), *aff'd*, 715 S.E.2d 120 (Ga. 2011); Martinez v. Park, 959 N.E.2d 259 (Ind. Ct. App. 2011); Smith v. Hines, 261 P.3d 1129 (Okla. 2011); Breland v. Rich, 69 So. 3d 803, 820 (Ala. 2011); Dallaire v. Hsu, 23 A.3d 792 (Conn. App. 2011); Johnson v. Ingalls Mem'l Hosp., 931 N.E.2d 835 (Ill. App. Ct. 2010); Johnson v. Morehouse Gen. Hosp., 63 So. 3d 87, 96 (La. 2011); Dickhoff *ex rel.* Dickhoff v. Green, 811 N.W.2d 109 (Minn. Ct. App. 2012), *aff'd*, 836 N.W.2d 321 (Minn. 2013); Estate of Willson v. Addison, 258 P.3d 410 (Mont. 2011); Scott v. Khan, 790 N.W.2d 9 (Neb. Ct. App. 2010), *review denied*, (Dec. 22, 2010); Healy v. Finz & Finz, P.C., 82 A.D.3d 704 (N.Y. App. Div. 2011); Cousart v. Charlotte-Mecklenburg Hosp. Auth., 704 S.E.2d 540 (N.C. Ct. App. 2011); Eskelson *ex rel.* Eskelson v. Davis Hosp. & Med. Ctr., 242 P.3d 762 (Utah 2010).

Adopting a professional judgment standard accomplishes two goals. First, detention centers would be held to similar professional standards as hospitals, clinics, and other healthcare facilities.[128] Second, since detention centers are held to similar standards, it serves the purpose of encouraging them, and the medical-care companies that contract with them, to implement proper medical protocols in the first place to avoid liability to inadequate medical care claims.

III. SOLUTION

In *Griffith v. Franklin County*, a pretrial detainee, arrested for robbery and assault, claimed that he received inadequate-medical treatment during his detention.[129] During his intake, he was nauseous and admitted to smoking marijuana and taking Xanax earlier in the day.[130] He was placed in a detox cell to be monitored for forty-eight hours as a moderate suicide risk.[131] The detainee complained about vomiting and diarrhea for a few days and was given Imodium and Mylanta as treatment.[132] Despite complaining of worsening symptoms, medical staff did not elevate his treatment because they did not believe it to be serious, even though the staff never sought to identify the source of the symptoms.[133] Once the detainee's forty-eight-hour suicide-monitoring period was up, he was transferred to general population.[134] Despite warnings from the detainee's cell mates, prison staff did not take his medical care seriously until he had a seizure that caused him to smack his head against his metal bunk.[135] He was evaluated but eventually sent back to his cell before the medical staff assessed why he had a seizure.[136] The detainee had another seizure and this time medical staff took him to an emergency room where he suffered another seizure and was then airlifted to a different hospital where he received treatment.[137] Doctors diagnosed him with acute renal failure, seizure disorder, posterior reversible encephalopathy syndrome, hypomagnesemia, and anion gap metabolic acidosis.[138] The detainee recovered from that incident but still experienced

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[128] It is worth reminding that private medical care companies voluntarily take on the duty to provide medical care for pretrial detainees when they contract with detention centers.

[129] Griffith v. Franklin Cnty., 975 F.3d 554, 560 (6th Cir. 2020).

[130] *Id.*

[131] *Id.* at 560–61.

[132] *Id.* at 562.

[133] *Id.* at 562–63.

[134] *Id.* at 563.

[135] *Griffith*, 975 F.3d at 564.

[136] *Id.*

[137] *Id.* at 564–65.

[138] *Id.*; *see also* MAYO CLINIC, *Acute Kidney Failure*, https://www.mayoclinic.org/diseases-conditions/kidney-failure/symptoms-causes/syc-20369048 (last visited Feb. 9, 2024) (explaining acute renal failure "occurs when your kidneys suddenly become unable to filer waste products from your blood" and it requires intensive treatment or it can be fatal); CLEVELAND CLINIC, *Metabolic Acidosis*, https://my.clevelandclinic.org/health/diseases/24492-metabolic-acidosis (last visited Feb. 9, 2024) (explaining that anion gap metabolic acidosis "is a condition in which acids build up in your body" and "occurs when your body produces too much acid, or your kidneys don't remove enough acids from your blood" and "[s]evere cases . . . can cause death").

headaches, sleep deprivation, and an increased vulnerability to kidney failure.[139] The Sixth Circuit found that despite shortcomings in medical treatment, no individual was deliberately indifferent to the detainee's serious medical needs.[140]

This case further demonstrates the difficulty in meeting the deliberate-indifference standard and receiving just compensation for subpar medical treatment. Trying to prove that one individual was deliberately indifferent—that the medical provider knows that the detainee has a serious medical condition and essentially says, "I don't care"—is often futile. Many cases have similarly fallen through the cracks.[141] Deliberate indifference to a prisoner's serious medical needs constitutes unnecessary and wanton infliction of pain, or cruel and unusual punishment under the Eighth Amendment.[142] Deliberate indifference is the proper standard for prisoners because prisoners can be punished; they just cannot be cruelly and unusually punished. Pretrial detainees should be entitled to an easier-to-meet judicial standard than deliberate indifference because, unlike prisoners, they cannot be punished at all. Therefore, the standard of care afforded to pretrial detainees should be akin to the standard of care of arrestees or a civilian who seeks their own treatment. Further, even though objective reasonableness is an easier-to-meet standard than deliberate indifference, it does not explicitly account for any professional standards. An objective-reasonableness standard, applied through the lens of a professional's judgment, should apply to inadequate medical care cases. This is because (1) objective reasonableness is the standard that governs whether a detention is reasonable under the Fourth Amendment;[143] (2) other substantive due process claims, like excessive force, are now governed by objective reasonableness instead of deliberate indifference—a standard borrowed from Eighth Amendment

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[139] *Griffith*, 975 F.3d at 565.

[140] *Id.* at 570.

[141] *See, e.g.*, Bowles v. Bourbon Cnty., No. 21-5012, 2021 WL 3028128, at *5 (6th Cir. 2018); Estelle v. Gamble, 429 U.S. 97, 104 (1976); Richmond v. Huq, 885 F.3d 928, 938 (6th Cir. 2018); Farmer v. Brennan, 511 U.S. 825, 834 (1994); Kingsley v. Hendrickson, 576 U.S. 389, 389 (2015); Wilson v. Seiter, 501 U.S. 294, 303 (1991); Darnell v. Pineiro, 849 F.3d 17, 35 (2d Cir. 2017); Castro v. Cnty. of Los Angeles, 833 F.3d 1060, 1071 (9th Cir. 2016); Miranda v. Cnty. of Lake, 900 F.3d 335, 353–54 (7th Cir. 2018); Bruno v. City of Schenectady, 727 F. App'x 717, 720 (2d Cir. 2018); Gordon v. Cnty. of Orange, 888 F.3d 1118, 1120, 1122–25 (9th Cir. 2018); Miranda-Rivera v. Toledo-Dávila, 813 F.3d 64, 70 (1st Cir. 2016); Alderson v. Concordia Par. Corr. Facility, 848 F.3d 415, 419 (5th Cir. 2017); Whitney v. City of St. Louis, 887 F.3d 857, 860 n.4 (8th Cir. 2018); Strain v. Regalado, 977 F.3d 984, 989 (10th Cir. 2020); Dang v. Sheriff, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017); Berry v. Muskogee, 900 F.2d 1489, 1498 (10th Cir. 1990); Goka v. Bobbitt, 862 F.2d 646, 651 (7th Cir. 1988); Young v. Quinlan, 960 F.2d 351, 360–61 (3d Cir. 1992); Redman v. Cnty. of San Diego, 942 F.2d 1435, 1443 (9th Cir. 1991); Moore v. Luffey, 767 F. App'x 335, 340 n.2 (3d Cir. 2019); Mays v. Sprinkle, 992 F.3d 295, 301 (4th Cir. 2021); Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977); *see also* Torraco v. Maloney, 923 F.2d 231, 234–36 (1st Cir. 1991); Inmates of Allegheny Cnty. Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979); Partridge v. Two Unknown Police Officers of City of Hous, 791 F.2d 1182, 1187 (5th Cir. 1986); Clark-Murphy v. Foreback, 439 F.3d 280, 292 (6th Cir. 2006); Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980); Laaman v. Helgemoe, 437 F. Supp. 269, 311 (D.N.H. 1977); De'lonta v. Angelone, 330 F.3d 630 (4th Cir. 2003); De'lonta v. Johnson, 708 F.3d 520 (4th Cir. 2013).

[142] *Estelle*, 429 U.S. at 104–05.

[143] Manuel v. City of Joliet, 580 U.S. 357, 379 (2017).

jurisprudence;[144] and (3) *Youngberg* should be viewed as an inadequate medical care case.[145]

Arrestees and pretrial detainees have a lot in common and the legal standards that govern their cases should reflect their similarities. The Fourth Amendment provides relief when a detention is found to be unreasonable.[146] This happens when probable cause is extinguished perhaps because the arrest stemmed from falsified evidence.[147] The Fourth Amendment also governs someone who is charged and then released on bail, while those who are not released remain protected by the Due Process Clause as it relates to the conditions of their detention.[148] There is also a circuit split on when an arrestee becomes a detainee, further blurring the lines between the Fourth Amendment and the Due Process clause in this area.[149] This distinction between an unconstitutional seizure and unconstitutional conditions of that seizure may not be so significant as this area of law develops over the coming decades. Recent Supreme Court decisions suggest that objective reasonableness, as laid out under Fourth Amendment jurisprudence, is the trend that will govern more future detention cases that have typically been governed by substantive due process under the Fourteenth Amendment.[150]

As *Kingsley* shows, the Supreme Court is moving away from the deliberate indifference standard in favor of objective reasonableness for some substantive due process claims. The Court reasoned that objective reasonableness complies with precedent, is workable, and still protects the officer who acts in good faith.[151] Circuits have recognized this shift in

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[144] *Kingsley*, 576 U.S. 389; *see also Estelle*, 429 U.S. at 104–05 (internal quotation marks omitted).

[145] *See Youngberg*, 457 U.S. 307.

[146] *Manuel*, 580 U.S., at 363–68.

[147] *Id.* at 364–70.

[148] *Kingsley*, 576 U.S. at 399. Under the Due Process clause, the standard remains in flux: either objective reasonableness or deliberate indifference applies depending on the circuit the litigant finds themselves in. *See Bruno*, 727 F. App'x at 720 (extending *Kingsley* to inadequate medical care cases); Miranda v. Cnty. of Lake, 900 F.3d 335, 350–53 (7th Cir. 2018); *Gordon*, 888 F.3d at 1120, 1122–25; *see also Miranda-Rivera*, 813 F.3d 64 (declining to extend *Kingsley* to inadequate medical care cases); *Alderson*, 848 F.3d at 419; *Whitney*, 887 F.3d at 860 n.4; *Strain*, 977 F.3d at 989; *Dang*, 871 F.3d at 1279 n.2.

[149] *See generally* Irene M. Baker, Comment, Wilson v. Spain*: Will Pretrial Detainees Escape the Constitutional "Twilight Zone"?*, 75 ST. JOHN'S L. REV. 449 (2001); Diana E. Cole, Comment, *The Antithetical Definition of Personal Seizure: Filling the Supreme Court Gap in Analyzing Section 1983 Excessive-Force Claims Arising After Arrest and Before Pretrial Detention*, 59 CATH. UNIV. L. REV. 493 (2010); Megan Shuba Glowacki, Comment, *The Fourth or Fourteenth? Untangling Constitutional Rights in Pretrial Detention Excessive Force Claims*, 78 UNIV. CIN. L. REV. 1159 (2009); Erica Haber, Note, *Demystifying a Legal Twilight Zone: Resolving the Circuit Court Split on When Seizure Ends and Pretrial Detention Begins in § 1983 Excessive Force Cases*, 19 N.Y.L. SCH. J. HUM. RTS. 939 (2003); Mitchell W. Karsch, Note, *Excessive Force and the Fourth Amendment: When Does Seizure End?*, 58 FORDHAM L. REV. 823, 835-40 (1990); Eamonn O'Hagan, Note, *Judicial Illumination of the Constitutional "Twilight Zone": Protecting Post-Arrest, Pretrial Suspects from Excessive Force at the Hands of Law Enforcement*, 44 B.C. L. REV. 1357 (2003); Tiffany Ritchie, Comment, *A Legal Twilight Zone: From the Fourth to the Fourteenth Amendment, What Constitutional Protection Is Afforded a Pretrial Detainee?*, 27 S. ILL. UNIV. L.J. 613 (2003); Jeffrey Sturgeon, Comment, *A Constitutional Right to Reasonable Treatment: Excessive Force and the Plight of Warrantless Arrestees*, 77 TEMP. L. REV. 125, 134–40 (2004).

[150] *Compare* Graham v. Connor, 490 U.S. 386, 388 (1989) *with Manuel*, 580 U.S. at 379.

[151] *Kingsley*, 576 U.S. at 399.

deliberate indifference jurisprudence under the Fourteenth Amendment, and have extended the *Kingsley* reasoning from excessive force cases to inadequate medical care cases.[152] This shift away from deliberate indifference, and towards objective reasonableness, should be viewed as a shift away from Eighth Amendment standards and towards Fourth Amendment standards for substantive due process cases under the Fourteenth Amendment.

Youngberg v. Romeo should be viewed as an inadequate medical care case because mental health is contemporaneously understood as a serious medical need. Although many courts have not explicitly held that there is no distinction between mental and physical health, they have observed this diminishing distinction.[153] "The responsibility to provide medical care includes care for a person's mental health: 'We see no underlying distinction between the right to medical care for physical ills and its psychological or psychiatric counterpart.'"[154] There is also no significant distinction between involuntarily committed mentally ill inmates and pretrial detainees—both groups are presumed to be innocent and involuntarily detained. Although some suggest that because pretrial detainees are held under the suspicion of committing a crime, that they are distinct from involuntarily committed mentally ill inmates or unaccompanied alien children,[155] this distinction lacks significance because no matter what a pretrial detainee is suspected of, they are *presumed* to be innocent of that suspicion until proven guilty beyond a reasonable doubt.[156]

CONCLUSION

Access to adequate medical treatment is the minimum that the government must provide to pretrial detainees. Medical care is always at its best when it is proactive and preventive. To achieve that goal, objective reasonableness, though the vehicle of professional judgment, should be the standard for all substantive due process, pretrial detainee medical cases. This standard best ensures that pretrial detainees receive adequate medical treatment because unlike deliberate indifference, the professional-judgment standard requires courts to evaluate treatment against evolving medical standards. It, therefore, incentivizes jails and detention centers to employ

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[152] *See* sources cited *supra* note 149. While other circuits have declined to extend the *Kingsley* reasoning to inadequate medical care cases, some have stated in dicta that *Kingsley* created the question as to what the proper standard is. *See, e.g.*, Bowles v. Bourbon Cnty., No. 21-5012, 2021 WL 3028128, at *7 (quoting Richmond v. Huq, 885 F.3d 928, 938 n.3 (6th Cir. 2018)).

[153] Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977); *see also* Torraco v. Maloney, 923 F.2d 231, 234–36 (1st Cir. 1991); Inmates of Allegheny Cnty. Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979); Partridge v. Two Unknown Police Officers of City of Hous., 791 F.2d 1182, 1187 (5th Cir. 1986); Clark-Murphy v. Foreback, 439 F.3d 280, 292 (6th Cir. 2006); Ramos v. Lamm, 639 F.2d 559, 574–75 (10th Cir. 1980); Laaman v. Helgemoe, 437 F. Supp. 269, 313 (D.N.H. 1977).

[154] Doe 4 v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 339 (4th Cir. 2021) (quoting *Bowring*, 551 F.2d at 47).

[155] *Doe 4*, 985 F.3d at 339.

[156] Bell v. Wolfish, 441 U.S. 520, 538–39, 539 n.20 (1979).

proper medical protocols and procedures to avoid liability. A deliberate-indifference standard that requires courts to inquire into an individual's mind to determine whether they were "indifferent" to a detainee's serious medical needs, is insufficient. This is because pretrial detainees are distinct from prisoners who, under the Eighth Amendment, can be punished. Pretrial detainees maintain a presumption of innocence, cannot be punished, and may only be detained for regulatory purposes. When a jail official responsible for a pretrial detainee's medical care substantially deviates from the judgment of a medical professional, they are treating that detainee objectively unreasonable in violation of the Constitution.