No. 23-587

IN THE

Supreme Court of the United States

MARK JAKOB, ET AL.,

Petitioners,

v.

CLARA CHEEKS,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

CHRISTOPHER B. BENT
LAW OFFICE OF
CHRISTOPHER BENT, LLC
111 West Port Plaza Drive
Suite 850
St. Louis, MO 63146
(314) 439-0287

WENDY LIU
Counsel of Record
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
wliu@citizen.org

Attorneys for Respondent

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QUESTION PRESENTED

Whether the court of appeals correctly held that police officers were not entitled to qualified immunity, where they purposely caused Mikel Neil to crash into a tree at high speed and then fled the scene, without stopping to render aid to Mr. Neil or call for medical assistance.

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INTRODUCTION

St. Louis County police officers Mark Jakob and Alex Maloy chased Mikel Neil at speeds exceeding 90 mph because he drove through a red light. When their maneuvers caused Mr. Neil to crash into a tree, the officers fled the scene without calling for help or otherwise providing any aid. Mr. Neil died as a result.

Respondent Clara Cheeks, Mr. Neil's mother, sued the two officers under 42 U.S.C. § 1983, alleging that their failure to aid her son violated his rights under the Due Process Clause. The district court denied the officers' motion for summary judgment based on qualified immunity, holding that the factual record, viewed in the light most favorable to Ms. Cheeks, showed that the officers violated clearly established law when they ignored Mr. Neil's serious medical need. The Eighth Circuit affirmed.

The petition should be denied. Petitioners agree that the law is clearly established that officers owe a duty to aid persons injured while being apprehended by them and that an officer's deliberate indifference to the person's serious medical need violates the person's constitutional right to be rendered aid. They ask this Court, however, to consider whether this clearly established duty is excused absent proof that the injured person was still alive. That issue was waived below and, moreover, is not presented on the factual record here. In addition, petitioners do not suggest a conflict on the issue, and it is not clearly included within the petition's questions presented.

Petitioners also dispute the Eighth Circuit's ruling that the officers were deliberately indifferent to Mr. Neil's serious condition, arguing that "medical evidence" of "detrimental effect" was required to

support the finding that Mr. Neil had an objectively serious medical need. As the court below held, because Mr. Neil crashed at high speed into a tree, his serious medical need was obvious; no medical evidence of detrimental effect was needed to show the objective seriousness of Mr. Neil's condition. The Eighth Circuit's decision does not conflict with any decision of any court of appeals. And petitioners' disagreement on the court's application of well-settled law to the factual record does not warrant review.

STATEMENT

Factual Background

On the night of August 10, 2018, St. Louis County police officers Mark Jakob and Alex Maloy, driving at speeds up to 94 miles per hour, chased Mikel Neil for allegedly running a red traffic light. Pet. App. 2a–3a; *see* C.A. App. 649. To end the chase, the officers performed a Precision Immobilization Technique (PIT) maneuver, using their "vehicle to make intentional contact with [Mr. Neil's] vehicle to force an end to the pursuit." Pet. App. 3a n.4. As a result, they struck Mr. Neil's car, causing it to spin out of control and crash into a tree. *Id.* at 3a. An eyewitness to the crash "testified that he witnessed Jakob and Maloy's police car bump the side of Neil's car, causing it to go into a spin." *Id.* at 28a. A second witness testified that he observed the police car within a car length of Mr. Neil's vehicle before Mr. Neil crashed into the tree. C.A. App. 1162–63. And another person testified that others at the crash scene "yell[ed]… why did they PIT that vehicle." *Id.* at 845.

The officers did not stop after causing Mr. Neil to crash into the tree. They "did not render aid or call for medical assistance." Pet. App. 3a. Instead, they

turned off the police lights on their vehicle and fled the scene, as shown by video footage from a nearby store. *Id.* at 28a. Although the officers dispute that they executed a PIT maneuver and deny witnessing the crash, an investigation conducted by the Missouri State Highway Patrol that "used … surveillance video, GPS data, and crash scene information to recreate the crash" concluded that they "did, or should have, witnessed the crash." C.A. App. 646, 651. Nonetheless, the officers did not render aid or call for assistance, but instead drove away. A bystander called 911. Pet. App. 3a.

Approximately an hour later, the two officers returned to the scene, having been ordered by their supervisor to do so. C.A. App. 646, 811, 822–23. They returned in a different vehicle, and they claimed that they had been on patrol in a different area at the time of the crash. *Id.* at 646, 829–30. After speaking with the two officers when they returned, the supervisor on the scene suspected them of wrongdoing. *Id.* at 828.

Both Mr. Neil and his passenger died at the scene of the crash. Pet. App. 3a; C.A. App. 646.

Several months later, after investigating the officers' conduct, the St. Louis County Police Department fired the two officers. The Department investigation found that they had "witnessed the crash and failed to take appropriate action by means of rendering aid[] and requesting emergency medical services to the scene" and that they had violated several Department policies in their pursuit and subsequent neglect of Mr. Neil. C.A. App. 646, 651.

Proceedings Below

A. Ms. Cheeks sued the two officers under 42 U.S.C. § 1983, alleging among other things that they

failed to provide emergency aid to her son in violation of the Due Process Clause of the Fourteenth Amendment.[1]

The two officers moved for summary judgment on the ground that they were entitled to qualified immunity. The district court denied the motion, explaining that their arguments "rely heavily on factual claims that the parties dispute—specifically, whether Maloy and Jakob were aware of the crash and whether they could have done anything to prevent Neil's death." Pet. App. 28a. The court held that "[v]iewing the facts in the light most favorable to Plaintiff, a reasonable jury could conclude that Maloy and Jakob were aware of the crash, and that their failure to call for emergency medical assistance violated Neil's constitutional right under the Fourteenth Amendment." *Id.* at 35a. In addition, the court held that Mr. Neil's right to be rendered aid was "clearly established" in light of precedent holding that "an officer does have an obligation to render aid" in circumstances like the ones leading to Mr. Neil's death and that "an officer runs afoul of the Eighth or Fourteenth Amendment where she does nothing in response to a manifestly serious medical need." *Id.* at 37a.

B. The officers appealed, and the Eighth Circuit affirmed. *Id.* at 2a. The court of appeals explained that it could not "second-guess" the district court's fact-bound determinations that a reasonable juror could find that the officers had performed a PIT maneuver

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[1] Ms. Cheeks also alleged claims against other defendants, which have been dismissed. In addition, Officer Maloy's father Frank Maloy has been substituted as a defendant for Officer Maloy, who has passed away. Pet. App. 2a n.1.

causing Mr. Neil to crash into a tree and that the officers "had actual knowledge of Neil's serious medical need and disregarded it." *Id.* at 7a; *id.* at 7a–8a (stating that the contention that the officers "performed a PIT maneuver is not so blatantly contradicted by the record that no reasonable jury could believe it" (cleaned up)).

The Eighth Circuit also rejected the officers' argument—made for the first time on appeal—that they did not violate Mr. Neil's rights because Mr. Neil was not in custody for purposes of the Fourteenth Amendment. *Id.* at 8a. The court stated that the officers' conduct—"intentionally conducting a maneuver that causes a vehicle to spin out and collide with a tree"—placed Mr. Neil in custody by "limiting [Mr. Neil's] 'freedom to act on his own behalf.'" *Id.* And it explained that "[w]hen the state limits an individual's 'freedom to act on his own behalf,' by *purposely causing a car accident*, a clearly established duty arises 'to provide medical care to persons … who have been injured while being apprehended by the police.'" *Id.* at 10a (internal citation omitted).

Further, the court rejected the officers' argument that they did not violate Mr. Neil's constitutional right to be rendered aid because "there was no medical evidence that the delay in aid detrimentally altered Mr. Neil's outcome." *Id.* at 6a; *see id.* at 10a. The court explained that a claim alleging *delayed* medical treatment requires proof of detrimental effect because "'the objective seriousness of the deprivation" is measured in part "by reference to the effect of delay in treatment." *Id.* at 10a–11a. Because, however, Ms. Cheeks alleged that "the officers failed to render *any* aid, rather than simply delaying in providing it," the objective seriousness of Mr. Neil's medical need "does

not require Cheeks to demonstrate the detrimental effect of the lack of aid." *Id.* at 12a. Indeed, because Mr. Neil crashed into a tree at high speed, the seriousness of his medical condition would have been obvious to any layperson. Therefore, the court of appeals "agree[d] with the district court that, viewed in the light most favorable to Cheeks, she has shown a clearly established constitutional violation." *Id.*

Dissenting, Judge Stras wrote that it was not clearly established that the Constitution created a duty to aid for a person who was "seized by force but … not taken into custody." *Id.* at 13a. Judge Stras did not dissent on the holdings that an officer has a clearly established duty to aid a person who is injured while being apprehended and that it is clearly established that no evidence of detrimental effect is needed when no aid is provided at all.

The officers' petition for rehearing and rehearing en banc was denied, with no judge calling for a vote.

REASONS FOR DENYING THE WRIT

Petitioners ask this Court to review the Eighth Circuit's straightforward application of well-established law on the duty to render aid. They do not claim a conflict among the circuits, and they do not claim that the court of appeals overlooked relevant law of this Court. Petitioners agree that police officers owe a clearly established duty to aid individuals injured while being apprehended by the police, and they agree that the court utilized the proper test—the deliberate-indifference test—to examine the failure-to-aid claim. Petitioners argue, however, that the court got it wrong when it held that disputed facts precluded summary judgment for petitioners when looked at in the light most favorable to the non-moving

party. That disagreement does not warrant this Court's review.

I. The law is clearly established that an individual has a right to be rendered aid when injured while officers are seeking to apprehend him.

As the court of appeals explained, and as petitioners agree, "[w]hen the state limits an individual's 'freedom to act on his own behalf,' *by purposely causing a car accident*, a clearly established duty arises 'to provide medical care to persons ... who have been injured while being apprehended by the police.'" Pet. App. 10a (quoting first, *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989), and second, *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)); *see* Pet. 5 (quoting *City of Revere*, 463 U.S. at 244). Petitioners do not dispute that "intentionally conducting a maneuver that causes a vehicle to spin out and collide with a tree" placed Mr. Neil in custody, giving rise to a duty to provide aid. Pet. App. 8a.

Petitioners argue, however, that this clearly established duty to aid does not exist absent proof that the injured person was alive when the officers ignored his serious medical need. To begin with, petitioners do not claim a conflict among courts on the issue, and it is not clearly encompassed in the petition's two questions presented. Both questions concern the impact of medical aid had it been provided: The first question asks whether the affirmative provision of medical aid would have "altered the outcome," whereas the second question asks whether the denial of medical aid had "a detrimental effect." Pet. i. Neither clearly includes the issue whether a person's

status as alive or dead means that person has (or lacks) constitutional rights that may be vindicated through a section 1983 cause of action.

Moreover, the issue is unsuitable for review because it was not argued below: Petitioners did not argue in the district court that Mr. Neil lacked due process rights or was not a "person" within the scope of section 1983. They raised the issue for the first time in a footnote on appeal, *see* Pet. C.A. Br. 27 n.8, and not surprisingly, therefore, the court of appeals did not address it. *See Copeland v. ABB, Inc.*, 521 F.3d 1010, 1015 n.5 (8th Cir. 2008) (stating that an "argument is waived because [the appellant] did not raise it before the district court"); *see also Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (declining to consider an argument not addressed below because this Court is "a court of review, not of first view").

Finally, the issue is not presented here for the additional reason that there has been no factual finding that Mr. Neil was deceased at the time the officers fled the scene, ignoring his serious medical condition. Rather, the parties disputed whether Mr. Neil was dead or alive immediately after the crash, and the district court did not reach the question. *See also* C.A. App. 9 (alleging in the complaint that Mr. Neil was "alive and breathing immediately following the crash"); *id.* at 1059–65 (witness testimony that Mr. Neil had "a faint pulse" immediately after crashing into the tree, that the witness observed his "chest and his stomach area … going up and down a little bit," and that the witness heard the paramedic at the scene "stat[ing] that he's still with us").

II. The decision below correctly held that the two officers were deliberately indifferent to Mr. Neil's objectively serious medical need.

A. It is clearly established that to prove a failure-to-aid claim, the plaintiff must show that the officer "exhibited 'deliberate indifference' to [the person's] 'serious' medical needs." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 198 n.5 (1989) (quoting *Estelle v. Gamble*, 429 U.S. 97, 105–06 (1976)); *see City of Revere*, 463 U.S. at 244. Such a claim has "subjective and objective requirements." *Farmer v. Brennan*, 511 U.S. 825, 846 (1994). The subjective prong requires proof that the officer "knows of and disregards" a serious condition. *Id.* at 837. The objective prong requires proof of an "objectively[] 'sufficiently serious'" condition; for example, that the person is subject to "conditions posing a substantial risk of serious harm." *Id.* at 834.

There is no question that the decision below adhered to these precedents. The court of appeals stated that "[t]he plaintiff must show (1) 'an objectively serious medical need,' … (2) 'that the defendant knew of and yet deliberately disregarded.'" Pet. App. 6a (quoting *Reese v. Hale*, 58 F.4th 1027, 1030 (8th Cir. 2023)). Citing its well-settled law, the court explained that, in satisfying the objective requirement, a "serious medical need is 'one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention.'" *Id.* at 10a (quoting *Camberos v. Branstad*, 73 F.3d 174, 176 (8th Cir. 1995)). And the court of appeals correctly explained that its role was not to "second-guess" the district court's fact-bound determinations that a reasonable jury could find that

the officers intentionally caused Mr. Neil to crash into a tree and "had actual knowledge of Neil's serious medical need and disregarded it." *Id.* at 7a; *see id.* at 7a–8a.

The fact-specific decision below is correct, and it is not in tension with any decision of this Court or the courts of appeals.

B. Petitioners agree that the deliberate-indifference test is the correct test governing a failure-to-aid claim. And they do not dispute that the facts, when taken in the light most favorable to Ms. Cheeks, demonstrate that the "subjective" prong of the deliberate-indifference test was met—that is, that petitioners "knew of and yet deliberately disregarded" Mr. Neil's serious condition. Pet. App. 6a (quoting *Reese*, 58 F.4th at 1030). Arguing that Ms. Cheeks must provide "verifiable medical evidence" showing "detrimental effect" from the officers' decision to drive away, petitioners dispute only the court's finding that the objective requirement was met. Pet. 6.

As the court of appeals has "repeatedly emphasized," however, "[t]o constitute an objectively serious medical need or a deprivation of that need, the need or the deprivation alleged must be *either obvious to the layperson or* supported by medical evidence, like a physician's diagnosis.'" *Aswegan v. Henry*, 49 F.3d 461, 464 (8th Cir. 1995) (emphasis added). That is, "[a] medical need that would be obvious to a layperson makes verifying medical evidence unnecessary." *Schaub v. VonWald*, 638 F.3d 905, 914 (8th Cir. 2011); *see Roberson v. Bradshaw*, 198 F.3d 645, 648 (8th Cir. 1999) (holding that the plaintiff did not need "verifying medical evidence" where his "serious

physical conditions … would have been obvious to a layman").

The district court held, and the court of appeals agreed, that a reasonable jury could find that the officers saw Mr. Neil crash into a tree at high speed. *See* Pet. App. 7a–8a; *id.* at 34a. In that circumstance, Mr. Neil's medical need was "so obvious that even a layperson would easily recognize the necessity for a doctor's attention." *Id.* at 34a (quoting *McRaven v. Sanders*, 577 F.3d 974, 982 (8th Cir. 2009). Indeed, "[i]t is difficult to imagine in what circumstances one's medical needs would be" obvious to a layperson "if a high-speed car crash does not qualify." *Id.*

Moreover, as the court of appeals explained, petitioners' insistence on evidence of detrimental effect, even in the face of an obvious medical need, relies on cases concerning delayed medical treatment, rather than cases concerning denial of medical treatment. Pet. App. 11a; *see, e.g.*, Pet. 8 (citing *Bailey v. Feltmann*, 810 F.3d 589 (8th Cir. 2016), which concerned alleged harm "from the delay caused by [the defendant's] failure to arrange a hospital visit the day before," *id.* at 594). The court explained that where delay is the alleged deprivation, "the objective seriousness of the deprivation" is measured by the "effect of delay in treatment." Pet. App. 10a–11a. This is because "delay-of-treatment claims involving 'sophisticated medical question[s],' which are not 'within the common understanding of the jury or the court' or are not 'so obvious that a layperson would easily recognize' the need for medical treatment, require additional evidence of causation or a 'detrimental effect' resulting from the official's misconduct." *Id.* at 34a (district court opinion, quoting *Redmond v. Kosinski*, 999 F.3d 1116, 1121 (8th Cir.

2021)). Here, though, petitioners did not delay providing aid to Mr. Neil; they did *nothing* at all to aid him. And, as both the appellate and trial courts explained, in denial-of-care cases, proof of detrimental effect is not required to show an objectively serious medical need. *Id.* at 12a (citing *Jones v. Minn. Dep't of Corr.*, 512 F.3d 478 (8th Cir. 2008)); *id.* at 34a. Where the objective seriousness is obvious, no "additional evidence of causation or a 'detrimental effect' resulting from the official's misconduct" is needed. *Id.* at 34a. Petitioners cite no denial-of-treatment case to the contrary.[2]

Petitioners suggest that the law is not "clearly established" that medical evidence is not required in these circumstances as to the "fact pattern present" here. Pet. 8. But the rule "that an official loses qualified immunity only for violating clearly established law" refers to "'whether the violative *nature of particular conduct* is clearly established,'" *Ziglar v. Abbasi*, 582 U.S. 120, 151 (2017) (emphasis added)—not to the type of evidence needed to prove the conduct. And here, no "verifiable medical evidence" was required, Pet. 6, where Mr. Neil's serious medical need after the high-speed crash was "so obvious that even a layperson would easily recognize the necessity for a doctor's attention," Pet. App. 34a (quoting *McRaven*, 577 F.3d at 982); *see also id.* at 3a (noting that a bystander did, in fact, call 911).

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[2] Contrary to petitioners' suggestion, *see* Pet. 7, *Jones* involves a straightforward application of the objective requirement in a denial-of-care claim. *See* 512 F.3d at 482–83 (considering whether the "medical need [was] objectively serious" and ruling that it was "not a sufficiently obvious medical issue").

In short, when petitioners caused Mr. Neil to crash at high speed into a tree, Mr. Neil's serious medical need was obvious. *See id.* at 34a (explaining that "[w]hether emergency medical assistance was needed under such circumstances is far from a 'sophisticated medical question"). The law clearly establishing that officers owe a duty to render aid to those injured while being apprehended provided the officers with notice that they could not ignore Mr. Neil's objectively serious medical need. The petition presents no issue warranting review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

CHRISTOPHER B. BENT
LAW OFFICE OF
CHRISTOPHER BENT, LLC
111 West Port Plaza Drive
Suite 850
St. Louis, MO 63146
(314) 439-0287

WENDY LIU
Counsel of Record
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
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