No. 22-735

IN THE

Supreme Court of the United States

KORI ANDERSON, DAN BUNNELL, KYLE FULLER, TYLER CONLEY, RICHARD GOWEN, and UINTAH COUNTY,
Petitioners,

v.

TRISTEN CALDER, as personal representative of the estate of Coby Lee Paugh,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that jail officers who denied Coby Lee Paugh medical treatment for his worsening symptoms of alcohol withdrawal, despite a doctor's orders that Mr. Paugh be brought back to the hospital if his condition worsened, resulting in his death, were not entitled to qualified immunity.

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INTRODUCTION

Coby Lee Paugh sought help for his chronic alcoholism by turning himself in to the police. The police brought him to the hospital, where he was given a prescription for Librium and discharged with instructions that he be brought back to the hospital if his condition worsened. The police then took him to the Uintah County Jail. While in jail, Mr. Paugh's condition deteriorated significantly. He vomited, retched, or had dry heaves throughout the day, alternated between having the chills and being hot, and experienced uncontrolled, visible shaking. Yet the jail officers who were responsible for him did not provide him with medical assistance. They did not monitor or record his symptoms. They did not keep him under observation. They did not take him to see a medical professional, as the doctor had instructed. And they did not give him the prescribed Librium treatment. Indeed, the evidence is disputed as to whether they gave him any Librium at all. Mr. Paugh died alone in a cell at some point during his first full night in jail. His body was not found until the following morning, approximately twenty-eight hours after he arrived.

Mr. Paugh's estate sued the jail officers and the County, alleging that the officers had been deliberately indifferent to his serious medical needs and that their conduct resulted from the County's policies and customs. The district court denied summary judgment to five of the officers and the County, holding that the officers were not entitled to qualified immunity and that questions of fact precluded summary judgment for the County. On interlocutory appeal, the Tenth Circuit affirmed the

district court's denial of qualified immunity to the five officers and dismissed the County's appeal for lack of jurisdiction. With respect to the officers, the court of appeals explained that it was clearly established that ignoring the obvious and serious medical needs of a detainee violates the detainee's constitutional rights, and that a reasonable jury could find that the officers disregarded Mr. Paugh's obvious and serious medical needs. With respect to the County, the court explained that it lacked pendent appellate jurisdiction because the County's appeal was not inextricably intertwined with the qualified immunity issues.

The five officers and County seek this Court's review, primarily arguing that the right at issue was not clearly established because the Tenth Circuit relied on cases concerning conditions other than alcohol withdrawal. As this Court has repeatedly explained, however, a prior case does not need to involve the exact same facts as the case under consideration to constitute clearly established law. Here, the Tenth Circuit properly concluded that the jail officers were on notice that they could not ignore Mr. Paugh's obvious and serious medical needs.

Although they assert that the Tenth Circuit's decision conflicts with other circuits' precedent, Petitioners identify no conflict between the decision below and the decisions of other circuits. Indeed, decisions from other circuits support the Tenth Circuit's decision. And although they contend that only this Court can clearly establish the law, Petitioners waived that argument in the court of appeals, and, regardless, this case would not be a good vehicle for considering it. Moreover, circuit court cases are controlling law that can serve the clearly-

established-law requirement's purpose of providing notice to officials that their conduct is unlawful.

Finally, although the body of the petition asks this Court to review the Tenth Circuit's dismissal of the County's appeal for lack of jurisdiction, as well as the merits of that appeal, Petitioners' question presented does not fairly include any questions about the scope of pendent appellate jurisdiction or municipal liability. Furthermore, the Tenth Circuit correctly concluded that it lacked jurisdiction over the County's appeal, and the issue is not cert.-worthy.

The Tenth Circuit's decision is thorough, well-reasoned, and correct. The petition should be denied.

STATEMENT OF THE CASE

A. Factual Background

On July 24, 2015, Coby Lee Paugh, who had long struggled with alcoholism, voluntarily turned himself in for violating the terms of his supervised probation by being intoxicated. After discussion, police took him into custody, and he registered a blood alcohol concentration of 0.324, which approaches overdose levels. Pet. App. 3a–4a.

The arresting officers took Mr. Paugh to Ashley Regional Medical Center, where Dr. Aaron Bradbury examined Mr. Paugh, diagnosed him as suffering from alcohol withdrawal, and prescribed him Chlordiazepoxide, commonly known as Librium, to mitigate his withdrawal symptoms. *Id.* at 4a. Although Dr. Bradbury found Mr. Paugh "currently stable and safe for incarceration," he warned the officers that if Mr. Paugh's "alcohol withdrawal condition got any worse they'd have to bring him back to [the hospital]." *Id.* (citation omitted). Dr.

Bradbury's discharge instructions likewise instructed that Mr. Paugh was to be given Librium as needed and brought back to the hospital if his condition worsened. *Id.* These instructions were clear.

On July 24 around 2:10 a.m., Dr. Bradbury discharged Mr. Paugh and the arresting officers transported him to Uintah County Jail. *Id.* at 5a. The officers informed Deputies Kori Anderson and Dan Bunnell—who were in the middle of an overnight shift ending at 6:00 a.m.—that Mr. Paugh had registered a blood alcohol concentration of 0.324, that Mr. Paugh had been to the hospital, and that a doctor had prescribed him Librium. *Id.* at 5a, 6a. The arresting officers told Deputy Anderson the doctor's discharge instructions and gave Deputies Anderson and Bunnell the written discharge instructions, which they placed in Mr. Paugh's file. Deputy Anderson attested that she understood the instructions to mean that if Mr. Paugh exhibited "red flags" of alcohol withdrawal, meaning that if his "condition worsened … in any way," the staff needed to return him to the hospital. *Id.* at 6a (citation omitted).

At this time, Mr. Paugh "was walking, talking" and "[d]idn't seem unsteady on his feet." *Id.* at 5a (citation omitted). Deputy Bunnell—the shift's designated medical officer, who was responsible for administering medication to the inmates—placed Mr. Paugh in a detoxification cell. Despite a jail policy requiring officials to observe inmates once every hour and, whenever possible, every thirty minutes, Deputies Anderson and Bunnell did not check on Mr. Paugh for the rest of their overnight shifts. *Id.* at 6a.

At 6:00 a.m., Corporal Richard Gowen, Deputy Kyle Fuller, and Deputy Tyler Conley began their

twelve-hour shift. Corporal Gowen was the shift supervisor, and Deputy Fuller was the designated medical official. Corporal Gowen, Deputy Fuller, and Deputy Conley reviewed Mr. Paugh's medical file or otherwise learned that Mr. Paugh was experiencing alcohol withdrawal. *Id.* at 6a–7a. Deputy Conley served Mr. Paugh breakfast around 6:30 a.m. and noted that he "seemed normal and well." *Id.* at 7a.

Over the course of the morning, however, Corporal Gowen noticed Mr. Paugh retch or dry-heave "two or three times." *Id.* (citation omitted). And around 11:00 a.m., both Corporal Gowen and Deputy Fuller noticed that Mr. Paugh's hands were shaking. At that time, Deputy Fuller advised Mr. Paugh to stay hydrated. *Id.*

At about 11:30 a.m.—nine hours after Mr. Paugh arrived at the jail—Deputy Fuller left to fill Mr. Paugh's Librium prescription, which no one else had yet done. *Id.*

During Deputy Fuller's absence, Deputy Conley began Mr. Paugh's booking and medical screening process, with Corporal Gowen present. In the middle of the screening, Mr. Paugh vomited. In response to the medical screening questions, he also informed the officers that he was "currently going through withdrawals," that he was in "lots of pain," that he was feeling restless and anxious, and that he had previously had seizures. *Id.* at 8a (citation omitted). Jail policy required the officers to contact medical professionals based on affirmative answers to any medical screening question. Despite this—and despite Dr. Bradbury's instruction to return Mr. Paugh to the hospital if his condition worsened—Corporal Gowen and Deputy Conley did not seek medical assistance. *Id.*

Deputy Fuller testified that he administered Librium to Mr. Paugh around 1:40 p.m. *Id.* The medical examiner's autopsy report, however, contradicts that testimony. Although Librium has an "extremely long half-life" of "24–48 hours," the autopsy found no trace of Librium in Mr. Paugh's blood. *Id.* at 13a.

Around this time, Deputy Fuller contacted a physician assistant, Logan Clark (P.A. Clark), to clarify how often the officers should administer Librium—whether "as needed," which was the doctor's instruction, or every two hours as needed, as the packaging stated, or at 7:00 a.m., 12:00 p.m., and 5:00 p.m., which was the jail's standard protocol. *Id.* at 8a–9a. P.A. Clark asked if Mr. Paugh was experiencing any symptoms of withdrawal, including any shakiness. Deputy Fuller reported that he had not seen any withdrawal symptoms. He told P.A. Clark that Mr. Paugh had been "walking around good," "ha[d] been eating," hadn't been throwing up, and "seem[ed] to be doing good"—even though he had earlier observed Mr. Paugh's hands shaking and knew that Mr. Paugh had vomited. *Id.* at 9a (citation omitted). In response to this information, P.A. Clark told Deputy Fuller to lower Mr. Paugh's Librium dosage to one capsule three times a day to follow the jail's standard protocol and to notify him if Mr. Paugh's symptoms changed. *Id.* When his shift ended at 6:00 p.m., Deputy Fuller did not inform anyone that P.A. Clark had instructed the officers to update him if there was any change in Mr. Paugh's symptoms. *Id.* at 11a.

Between 4:00 p.m. and 6:00 a.m. the next morning, when Mr. Paugh was found dead, Corporal Gowen and

Deputies Conley, Anderson, and Bunnell each noticed that Mr. Paugh was experiencing symptoms of withdrawal or were told by Mr. Paugh that he was experiencing withdrawal that would continue to worsen.

At around 4:00 p.m., Mr. Paugh told Corporal Gowen that he was "feeling sick and nauseous," and that the "peak" of his alcohol-withdrawal symptoms had not yet arrived. *Id.* at 9a (citation omitted). Mr. Paugh's hands and forearms were "visibly shaking." *Id.* at 10a (citation omitted). Corporal Gowen noted that Mr. Paugh seemed "really sick from detoxing." *Id.* (citation omitted).

At around 5:00 p.m., Deputy Conley took over Deputy Fuller's medication-distribution duties when Deputy Fuller got called away to deal with another inmate, but neither Deputy Conley nor anyone else gave Mr. Paugh his Librium—even though 5:00 p.m. is one of the three times when the jail administers medication and thus when Mr. Paugh, per P.A. Clark's instructions, was to receive the medication. Deputy Fuller did not confirm with Deputy Conley that Mr. Paugh had received his Librium. *Id.*

At 5:30 p.m., when picking up Mr. Paugh's dinner tray, Deputy Conley noticed that Mr. Paugh was "shaking pretty bad," and Mr. Paugh repeated that he was in withdrawal and that it "had not peaked yet." *Id.* (citation omitted).

At 6:00 p.m., Deputies Anderson and Bunnell started a new shift as the shift supervisor and designated medical official, respectively. Corporal Gowen informed Deputy Anderson of Mr. Paugh's withdrawal symptoms, including that he had been vomiting and that he was "feeling sick and nauseous,"

and told Deputy Anderson to check on Mr. Paugh as often as possible to ensure that he was breathing. *Id.* at 11a, 30a (citation omitted).

Approximately an hour into their shift, Mr. Paugh informed Deputies Anderson and Bunnell that he had not received any Librium during dinner and asked about his next dose. *Id.* at 11a. Deputies Anderson and Bunnell noticed during this conversation that Mr. Paugh was "shaking, looked pale, and didn't appear to be well." *Id.*

Deputy Bunnell claims that he gave Mr. Paugh a dose of Librium at 8:00 p.m.—again, a claim contradicted by the autopsy. *Id.* at 11a, 13a. At that time, Mr. Paugh "was still shaking and pale, and Paugh told Bunnell that 'he was detoxing.'" *Id.* at 11a (citation omitted).

Around 10:00 p.m., Deputy Bunnell again spoke with Mr. Paugh, who was still shaking. Mr. Paugh told Deputy Bunnell that he was "getting the chills then hot again." *Id.* at 12a (citation omitted). Deputy Anderson joined the conversation, and Mr. Paugh told her that he felt nauseous. Deputy Anderson noticed that Mr. Paugh "seemed 'shaky,' had the chills, and looked sick." *Id.* (citation omitted). The officers moved Mr. Paugh to a solo cell, and Deputy Bunnell gave him a blanket. *Id.*

Between 10:00 p.m. and 6:10 a.m., no one performed a physical check on Mr. Paugh. Deputy Anderson thought she heard Mr. Paugh vomit, and throughout the night Deputies Bunnell and Anderson heard Mr. Paugh "coughing" and sounding like he was "trying to get phlegm out of his throat." *Id.* (citation omitted). At around 2:00 a.m., before going home, Deputy Bunnell peered into Mr. Paugh's cell and saw

that "he was in there," but did not otherwise check on him. *Id.* at 74a (citation omitted). Neither Deputy Bunnell nor Deputy Anderson told the officer who took over Deputy Bunnell's duties that Mr. Paugh was experiencing alcohol withdrawal. *Id.* at 12a. Deputy Anderson left her shift without checking in on Mr. Paugh. *Id.* at 75a.

At around 6:10 a.m. on July 25, Deputy Conley found Mr. Paugh dead. Mr. Paugh's blue lips indicated to Deputy Conley that Mr. Paugh had probably been dead for some time. *Id.* at 12a–13a. The medical examiner concluded from an autopsy that Mr. Paugh's death had "resulted from chronic alcoholism, most likely a complication of withdrawal." *Id.* at 13a (citation omitted). The examiner found no Librium in Mr. Paugh's blood, even though Librium has a half-life of "24–48 hours." *Id.* (citation omitted). Dr. Esmaeil Porsa, an expert witness, testified that had Mr. Paugh received Librium or been "returned to the hospital for life-saving measure[s] as his condition continued to worsen, he would have most likely not died." *Id.* at 13a (citation omitted), 81a.

In the approximately 28 hours that passed between Mr. Paugh's arrival at the jail and the discovery of his death, no officer reported Mr. Paugh's worsening condition to a medical professional or took him back to the hospital as Dr. Bradbury had instructed.

B. District Court Proceedings

Mr. Paugh's estate sued Uintah County, Deputy Anderson, Deputy Bunnell, Deputy Fuller, Deputy Conley, Corporal Gowen, and another officer under 42 U.S.C. § 1983. *Id.* at 13a–14a. The Estate alleged that the officers had violated Mr. Paugh's constitutional

rights by being deliberately indifferent to his serious medical needs, and that their conduct was the result of the County's constitutionally deficient policies, customs, and training. The County and officers moved for summary judgment, with the officers asserting qualified immunity. *Id.* at 14a.

In a 91-page opinion, the district court denied qualified immunity for Deputy Anderson, Deputy Bunnell, Deputy Fuller, Deputy Conley, and Corporal Gowen (collectively, the "Officers"), but granted it for the other officer.[1] *Id.* at 99a–100a. The court also concluded that genuine disputes of material fact precluded entry of summary judgment in favor of the County. *Id.* at 100a. The Officers and the County appealed. *Id.* at 2a.

C. Tenth Circuit Decision

The Tenth Circuit affirmed the district court's holding that the Officers were not entitled to qualified immunity. *Id.* at 3a. Starting with the first prong of the qualified immunity analysis, the Tenth Circuit analyzed whether the Estate had raised a genuine issue of material fact that the Officers were deliberately indifferent to Mr. Paugh's serious medical needs. The court explained that prison officials may be held liable for deliberate indifference where they "prevent an inmate from receiving treatment or deny him access to medical personnel capable of evaluating the need for treatment." *Id.* at 19a (quoting *Sealock v. Colorado*, 218 F.3d 1205, 1211 (10th Cir. 2000)); *see also id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976) (explaining that deliberate

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[1] The Estate did not challenge that grant of qualified immunity on appeal. Pet. App. 2a.

indifference may be manifested "by prison guards in intentionally denying or delaying access to medical care")).

The test for deliberate indifference, the court explained, involves both an objective and a subjective component. *Id.* Under the objective prong, "the alleged deprivation must be 'sufficiently serious.'" *Id.* at 20a (quoting *Self v. Crum*, 439 F.3d 1227, 1230 (10th Cir. 2006)). In the context of a delay in medical care, this standard can be met by showing that the deprivation "resulted in substantial harm." *Id.* (quoting *Estate of Beauford v. Mesa Cnty.*, 35 F.4th 1248, 1262 (10th Cir. 2022)).

Under the subjective prong, a plaintiff must show that the defendant "knows of and disregards an excessive risk to inmate health or safety." *Id.* at 23a (quoting *Strain v. Regalado*, 977 F.3d 984, 990 (10th Cir. 2020)). "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 842 (1994)). A "factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious," if "such risks present themselves as 'obvious' to the so-called 'reasonable man.'" *Id.* (*quoting Quintana v. Santa Fe Cnty. Bd. of Comm'rs*, 973 F.3d 1022, 1029 (10th Cir. 2020)).

The court held that the Estate satisfied the objective component of the deliberate indifference test by "present[ing] expert evidence that the [Officers'] failure to obtain medical care led to Paugh's death." *Id.* at 21a. With respect to the subjective component, the court determined that, in light of Dr. Bradbury's

discharge instructions—which directed the Officers to return Mr. Paugh to the hospital if his condition worsened—"a reasonable jury could find that it would have been 'obvious' to any reasonable jail official that Paugh needed medical assistance if the [Officers] saw Paugh's condition worsening." *Id.* at 27a. The court then concluded that a reasonable jury could conclude that the Officers saw Mr. Paugh's condition worsen, signaling his obvious need for medical attention, and that the Officers disregarded Mr. Paugh's obvious medical needs. *Id.* In making that determination, the Tenth Circuit evaluated each Officer's conduct individually and explained that a reasonable jury could find that each Officer had disregarded Mr. Paugh's serious medical needs. *Id.* at 30a–43a.

Turning to the second prong of the qualified immunity analysis, the court of appeals explained that the law was clearly established that when a detainee has obvious and serious medical needs, ignoring those needs violates the detainee's constitutional rights. *Id.* at 49a. The Tenth Circuit relied on its own precedent in reaching that holding, *id.* at 49a–52a, but noted that other circuits agree, *id.* at 49a–50a (citing *Williams v. City of Yazoo*, 41 F.4th 416, 426 (5th Cir. 2022), *Orlowski v. Milwaukee Cnty.*, 872 F.3d 417, 422 (7th Cir. 2017), *Schaub v. VonWald*, 638 F.3d 905, 918 n.6 (8th Cir. 2011), and *Phillips v. Roane Cnty.,* 534 F.3d 531, 545 (6th Cir. 2008)).

In holding that the law was clearly established, the Tenth Circuit was "mindful that [it] must not define clearly established law at too high a level of generality." *Id.* at 50a (cleaned up). The court concluded, however, that its prior cases were "sufficiently analogous to the facts here to have placed

the [Officers] on notice that disregarding Paugh's obvious and serious medical needs amounted to a constitutional violation." *Id.* at 52a (discussing *Sealock*, 218 F.3d 1205, *Mata v. Saiz*, 427 F.3d 745 (10th Cir. 2005), *Al-Turki v. Robinso*n, 762 F.3d 1188 (10th Cir. 2014), and *Quintana*, 973 F.3d 1022).

The Tenth Circuit rejected the argument that, to find clearly established law, it had to point to cases specifically involving alcohol withdrawal in jails. "The relevant inquiry in determining whether a right is clearly established," the court explained, "is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted," and that inquiry does not require "a case directly on point." *Id.* at 53a (cleaned up). The court also rejected the arguments that the cases it discussed applied only to medical professionals and that they applied only to officials who took "no action whatsoever" to help the inmate in their charge. *Id.* at 55a (citation omitted). The court pointed out that *Sealock* reversed summary judgment for a jail officer who was not a medical professional, *id.* at 54a, and that *Sealock* held that a defendant could be liable for failing to call an ambulance for an inmate, even though the defendant had taken some action to help the inmate, *id.* at 56a.

After affirming the district court's denial of qualified immunity to the Officers, the Tenth Circuit addressed the County's appeal of the district court's denial of its summary judgment motion. The court explained that it lacked jurisdiction over the County's appeal under the collateral order doctrine and that it could only exercise pendent appellate jurisdiction if the County's appeal were "inextricably intertwined" with the qualified immunity issues. *Id.* at 58a

(citation omitted). Because the County's appeal was not inextricably intertwined with the qualified immunity issues, the Tenth Circuit held that it lacked jurisdiction over the County's appeal. *Id.* at 58a–59a.

The Officers and County filed a petition for rehearing en banc, which was denied without any judge requesting that the court be polled. *Id.* at 192a.

REASONS FOR DENYING THE WRIT

I. The Tenth Circuit correctly held that the Officers violated clearly established law.

A. As the court of appeals explained, it was clearly established at the time of Mr. Paugh's death that when "a detainee has obvious and serious medical needs, ignoring those needs necessarily violates the detainee's constitutional rights." *Id.* at 52a (quoting *Quintana*, 973 F.3d at 1033); *see id.* at 48a–52a (discussing cases); *Estelle*, 429 U.S. at 104 (holding that "deliberate indifference to serious medical needs of prisoners" violates the Constitution); *Mata*, 427 F.3d at 749 ("[T]here is little doubt that deliberate indifference to an inmate's serious medical need is a clearly established constitutional right[.]"); *see, e.g.*, *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1315–17 (10th Cir. 2002) (reversing grant of summary judgment to police officer where reasonable jury could find that officer knew of and disregarded an excessive risk to the plaintiff's health); *Sealock*, 218 F.3d at 1210 (reversing grant of summary judgment for official where the facts demonstrated, for summary judgment purposes, that the official knew of the excessive risk to an inmate's health that could result from a delay in taking him to the hospital but nonetheless refused to take him). Because that law was clearly established, and because a reasonable jury

could find that the Officers knew that Mr. Paugh "was at a serious risk of harm when they saw his condition worsen" and "disregarded that risk," Pet. App. 47a, the Tenth Circuit correctly held that the Officers are not entitled to qualified immunity.

Petitioners do not disagree that prison officials may not ignore an inmate's obvious and serious medical needs. Instead, their primary contention is that the law was not clearly established because the Tenth Circuit relied on cases concerning medical conditions other than serious alcohol withdrawal. As this Court has explained, however, a prior case does not need to involve identical facts to constitute clearly established law. *See*, *e.g.*, *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) ("[T]his Court's caselaw does not require a case directly on point for a right to be clearly established[.]" (citation omitted)); *Ziglar v. Abbasi*, 582 U.S. 120, 151 (2017) ("[I]t is not necessary, of course, that the very action in question has previously been held unlawful." (cleaned up)). The Tenth Circuit therefore did not need to identify a case involving the exact same disease and symptoms that Mr. Paugh suffered to conclude that the Officers violated clearly established law. *See*, *e.g.*, *Pfaller v. Amonette*, 55 F.4th 436, 453 (4th Cir. 2022) (rejecting argument that clearly established law requires cases addressing "the precise required treatment for a specific underlying illness"); *Murray v. Dep't of Corrs.*, 29 F.4th 779, 790 (6th Cir. 2022) (noting that "[c]ourts have frequently rejected officials' contentions that a legal duty need be litigated and then established disease by disease or injury by injury" (cleaned up)). The requirement that jail officials respond to an inmate's obvious and serious medical needs does not depend on whether

those needs are due to diabetes, a heart attack, a methadone overdose, or alcohol withdrawal.

The relevant inquiry, in determining whether a right is clearly established, is whether it would be "clear to a reasonable officer that the alleged conduct was unlawful in the situation he confronted." *Ziglar*, 582 U.S. at 152 (cleaned up). Here, "a reasonable jury could find that it would have been 'obvious' to any reasonable jail official that Paugh needed medical assistance if the [Officers] saw Paugh's condition worsening." Pet. App. 27a. Given the obviousness of Mr. Paugh's serious medical needs, the law establishing that a jail officer cannot ignore an inmate's obvious and serious medical needs provided the Officers with notice that they could not ignore Mr. Paugh's worsening condition.

Contrary to Petitioners' arguments, the Tenth Circuit's decision does not "gut[] the defense of qualified immunity" in the context of alcohol withdrawal or "subject an officer to liability anytime there is a tragic event in a jail setting." Pet. 11, 13. Where, for example, the evidence does not support the allegation that an official knew that an inmate experiencing alcohol withdrawal (or another serious medical condition) needed medical attention, the official will be entitled to qualified immunity. Here, however, "a reasonable jury could find that the [Officers] knew, based on Dr. Bradbury's discharge instructions, that Paugh was at a serious risk of harm when they saw his condition worsen," and a "reasonable jury could also find that the [Officers] disregarded that risk by failing to return Paugh to the hospital, as those instructions mandated, or at the

very least contact a medical professional." Pet. App. 47a.

Petitioners suggest that the Officers did not in fact all know of Mr. Paugh's serious medical needs. *See, e.g.*, Pet. 12. Whether an official had the requisite knowledge, however, "is a question of fact." *Farmer*, 511 U.S. at 842. Accordingly, the Tenth Circuit was correct to look at whether a reasonable jury could find that the Officers knew—based on the doctor's instructions and Mr. Paugh's visible symptoms and statements—that Mr. Paugh was at a serious risk of harm and disregarded that risk. And it was correct to affirm the denial of qualified immunity upon concluding that a reasonable jury could so find.

B. The other factual differences that Petitioners identify between this case and the Tenth Circuit's prior case law also do not undercut the holding that the Officers violated clearly established law. For example, Petitioners attempt to distinguish *Sealock*, *Mata*, and *Al-Turki* on the ground that they involved medical professionals. But one of the defendants who was denied qualified immunity in *Sealock* was *not* a medical professional, *see* 218 F.3d at 1208, as the court of appeals explained, *see* Pet. App. 54a ("[I]t is not true that *Sealock* involved only medical professionals."). And although the defendant denied qualified immunity in *Mata* was a nurse, she was serving as a gatekeeper to other medical professionals, rather than as a medical provider herself, and the law that the court applied to her conduct was not unique to medical professionals. *See* 427 F.3d at 756–57; *see also* Pet. App. 19a (explaining that the Officers here were serving in a gatekeeper role). *Al-Turki* similarly recognized that prison

officials in general cannot be deliberately indifferent to prisoners' serious needs. *See* 762 F.3d at 1192.[2]

Petitioners' citation to *Garcia v. Salt Lake County*, 768 F.2d 303 (10th Cir. 1985) does not aid their argument. There, police officers found a man who was passed out and had a strong odor of alcohol on his breath. After a doctor examined him, the man was transported to a jail, where he was still unconscious when checked by a medic approximately five hours later and where he died later that night. *See id.* at 305–06. The Tenth Circuit affirmed a judgment against the County on the ground that the man's death was caused by county policies or practices that were deliberately indifferent to serious medical needs. *See id.* at 307. Petitioners claim that *Garcia* supports them because Mr. Paugh was not unconscious. *See* Pet. 15. But *Garcia* cannot reasonably be read to state a rule that an intoxicated inmate must be unconscious to require medical attention, and Mr. Paugh had other symptoms that made it obvious that he needed such attention. *See* Pet. App. 44a–45a. Furthermore, *Garcia* shows that the Tenth Circuit has long held

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[2] Petitioners' other attempts to distinguish *Mata* and *Sealock* also fail. Although Petitioners argue that a nurse in *Mata* was granted qualified immunity even though she violated policy in not reporting all of the inmate's symptoms to a doctor, the relevant policy required reporting to either a doctor or a nurse practitioner, and the nurse "fulfilled her gatekeeper duty by reporting [the inmate's] symptoms to a nurse practitioner in accordance with the … protocol." 427 F.3d at 759. And although a nurse in *Sealock* was granted qualified immunity even though she "may have failed to communicate [the inmate's symptoms] properly" to a physician's assistant, 218 F.3d at 1212 n.7, that failure did not undercut the legal rule that prison officials cannot disregard an inmate's known, serious health risks, *see id.* at 1209.

that deliberate indifference may be based on denial of access to medical care for people with serious medical needs due to their substance use. 768 F.2d at 307–08.

Similarly, Petitioners err in suggesting that *Quintana* "mandates application of qualified immunity," Pet. 14, because *Quintana* stated that "frequent vomiting alone does not present an obvious risk of severe and dangerous withdrawal," 973 F.3d at 1029. As the Tenth Circuit explained below, "here, there was more" than frequent vomiting alone. Pet. App. 25a n.18. Mr. Paugh "either reported or was observed experiencing tremors, paleness, spitting up mucus, cold chills and other fever symptoms, loss of appetite, restlessness and anxiety, and significant shaking in his hands to the point that it extended through his forearms and the shaking could be seen from a distance." *Id.* (cleaned up). And the Officers witnessed these symptoms against the background of the doctor's discharge instructions. *See id.* at 24a.

Petitioners' reliance on *Martinez v. Beggs*, 563 F.3d 1082 (10th Cir. 2009), is also misplaced. In *Martinez*, the court held that prison officials were not deliberately indifferent to an intoxicated detainee's risk of heart disease and death where there was "no evidence in the record of any symptoms or signs indicating that [the detainee] would suffer from a heart attack." *Id.* at 1090 (citation omitted). That decision does not help the Officers here, where "a reasonable jury could find that it would have been 'obvious' to any reasonable jail official that Paugh needed medical assistance if the [Officers] saw Paugh's condition worsening." Pet. App. 27a.

C. Petitioners accuse the Tenth Circuit of failing to account for the "positive actions" they took, such as

giving Mr. Paugh Librium (a disputed assertion) and placing him in a cell alone (where he died unobserved). Pet. 16. For each officer, however, the Tenth Circuit analyzed the facts and explained why a reasonable jury could find that that officer disregarded Mr. Paugh's serious medical needs. *See* Pet. App. 30a–43a. Moreover, it was clearly established at the time of the events in question that an official serving as a gatekeeper for medical personnel could be held liable for failing to summon medical help in response to an inmate's serious medical needs even if the official took some other actions to help the inmate. *See Blackmon v. Sutton*, 734 F.3d 1237, 1245 (10th Cir. 2013) (affirming denial of qualified immunity for juvenile detention center employees who delayed or failed to provide detainee with access to mental health care by qualified professionals, even though the employees took the step of consulting a psychologist); *Sealock*, 218 F.3d at 1208, 1212 (holding that a physician's assistant could be liable for failing to call an ambulance for an inmate's chest pain, even though the physician's assistant had ordered the inmate be given a shot of Phenergan). As the Tenth Circuit explained, "the law sufficiently notified the [Officers] that even with the little 'help' they provided Paugh, their actions (and inactions) would still violate his constitutional rights." Pet. App. 56a.

II. Petitioners identify no conflict among the circuits.

A. Petitioners contend that the Tenth Circuit's decision "conflicts with the precedent of other circuits." Pet. 17. With respect to most of the circuit court cases that they cite, however, Petitioners do not

claim a disagreement with the decision below. Instead, Petitioners contend that those cases "either stat[e] the law too broadly or are distinguishable from this case." *Id.* Such contentions do not establish any conflict among the circuits.

Far from showing a conflict, the decisions from other circuits cited in the petition support the Tenth Circuit's decision. In particular, although Petitioners criticize the level of generality with which the Tenth Circuit identified the clearly established right, the cases demonstrate widespread agreement on the contours of that right. *See Williams*, 41 F.4th at 426 ("Officers and jailers have long had notice that they cannot ignore a detainee's serious medical needs."); *Orlowski*, 872 F.3d at 422 (explaining that officers who "chose to do nothing" when inmate "presented obvious symptoms of a serious medical condition" violated "clearly established" law); *Phillips*, 534 F.3d at 545 ("[A] pretrial detainee's right to medical treatment for a serious medical need has been established since at least 1987." (citation omitted)). Cases cited in the petition also demonstrate that officials can be liable when they ignore serious medical needs caused by alcohol withdrawal, as well as other medical conditions. *See Harper v. Lawrence Cnty.*, 592 F.3d 1227, 1233–35 (11th Cir. 2010) (affirming denial of qualified immunity to officials who did not secure immediate medical attention for serious needs of pretrial detainee suffering from alcohol withdrawal); *Stefan v. Olson*, 497 F. App'x 568, 579 (6th Cir. 2012) (affirming denial of qualified immunity to jail nurse based on her disregard of serious known risks to detoxifying pretrial detainee).

B. Petitioners suggest that two cases from other circuits disagree with the decision below: *Zentmyer v. Kendall County*, 220 F.3d 805 (7th Cir. 2000), and *Meier v. County of Presque Isle*, 376 F. App'x 524 (6th Cir. 2010). Neither case conflicts with the Tenth Circuit's decision.

In *Zentmyer*, the Seventh Circuit held that deputies were not deliberately indifferent to a pretrial detainee's serious medical needs when they missed some doses of his ear-infection medication. Petitioners suggest that *Zentmyer* conflicts with the Tenth Circuit's citation to a case stating that "[a]llegations that a prison official has ignored the instructions of a prisoner's treating physician are sufficient to state a claim for deliberate indifference." Pet. App. 38a (quoting *Wakefield v. Thompson*, 177 F.3d 1160, 1165 (9th Cir. 1999)). But the officers in *Zentmyer* did not "ignore" the treating physicians' instructions: They "administered most of his medication according to schedule." 220 F.3d at 811.

Moreover, the decision in *Zentmyer* rested on the absence of "evidence that any deputy thought missing doses of medication for an ear infection would cause a serious injury or loss of hearing." *Id*. Doctors had not "communicate[d] to the deputies that the medication must be constantly applied or else be rendered useless," and the detainee admitted "that none of the defendants noticed any pus, discharge or other physical signs of injury from his ear infection." *Id*. Here, in contrast, there was evidence that would allow "a reasonable jury [to] find that the [Officers] knew … that Paugh was at a serious risk of harm" and that the Officers "disregarded that risk." Pet. App. 47a. Dr. Bradbury had given specific instructions that Mr.

Paugh be brought back to the hospital if his condition worsened, but the Officers did not bring him back. And with regard to the provision of medicine in particular, Deputy Conley "knew about Paugh's need for" Librium, but failed to give it to him. *Id*. at 38a.

As for *Meier*, there, the Sixth Circuit held, in a non-precedential decision, that jail officers were not deliberately indifferent to the medical needs of a pretrial detainee suffering from alcohol withdrawal. Petitioners wrongly assert that *Meier* "suggests [that] alcohol withdrawal does not amount to a serious medical need." Pet. 21. *Meier* did not hold, however, that a detainee experiencing alcohol withdrawal does not face an objectively serious risk of harm. Instead, the Sixth Circuit determined that none of the defendants in that case recklessly disregarded the detainee's needs. Neither the inmate's "intoxication by itself" nor his "malaise" were sufficient "to put [the officers] on notice that [the inmate] needed medical attention," and the on-call doctor who was called for a consultation stated that medical treatment was not necessary. 376 F. App'x at 529–30. Here, in contrast, the Officers *were* on notice that Mr. Paugh needed medical attention. Dr. Bradbury had given instructions to bring Mr. Paugh back to the hospital if his condition worsened, and the Officers saw his condition obviously worsen.

Rather than showing a lack of "consensus among the circuits on the issue of how to treat an inmate suffering from alcohol withdrawal," Pet. 21, as Petitioners contend, these cases demonstrate the truism that application of the law to different facts can lead to different results. Where a plaintiff has not presented evidence that the defendants were "aware

of facts from which the inference could be drawn that a substantial risk of serious harm exists" and that the defendants "dr[ew] the inference," the plaintiff has not shown that the defendants acted with deliberate indifference. *Farmer*, 511 U.S. at 837; *see* Pet. App. 23a; *Zentmyer*, 220 F.3d at 811; *Meier*, 376 F. App'x at 528. But where, as here, a reasonable jury could find that the defendants knew that the inmate was at substantial risk of serious harm, but disregarded that risk, "a triable issue of material fact" exists "that the [defendants] violated [the inmate's] constitutional rights." Pet. App. 47a.

C. Petitioners suggest that the decision below is in tension with *Davis v. Scherer*, 468 U.S. 183 (1984), in which this Court stated that "[o]fficials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision." *Id.* at 194; *see* Pet. 19. *Davis*, however, is inapposite. The Tenth Circuit did not hold that the Officers were not entitled to qualified immunity because their conduct violated a statutory or administrative provision. Instead, noting that "fail[ure] to comply with jail policy does not amount to a constitutional violation on its own," Pet. App. 36a (cleaned up), the Tenth Circuit explained that Deputy Conley's and Corporal Gowen's failure to follow jail protocol and contact a medical professional when Mr. Paugh answered medical screening questions in the affirmative provided additional evidence that those officers were aware of and disregarded a substantial risk of serious harm. *Id.* at 36a–37a, 40a; *see Farmer*, 511 U.S. at 842 (explaining that "[w]hether a prison official had the requisite knowledge of a substantial risk is a question

of fact subject to demonstration in the usual ways, including inference from circumstantial evidence”).

III. This case would not be an appropriate vehicle for reconsidering the court of appeals’ role in stating clearly established law.

Petitioners assert that this Court should grant review to hold that an official is entitled to qualified immunity unless “a specific case on point issued by *this Court*” clearly establishes that the official’s actions were unlawful. Pet. 21 (emphasis added). Petitioners failed to argue in the court of appeals, however, that only this Court can clearly establish the law. To the contrary, they conceded that “ordinarily, in order for the law to be clearly established, there must be a Supreme Court *or Tenth Circuit decision* on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains.” Appellants’ Br. at 25, *Paugh v. Uintah Cnty.*, No. 21-4067 (10th Cir. filed Oct. 7, 2021) (emphasis added; citation omitted). This Court “normally decline[s] to entertain” arguments that the parties “failed to raise … in the courts below” and should not grant review to consider an issue that Petitioners waived. *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 173 (2016).

This case would also not be a good vehicle for considering whether circuit court precedent can clearly establish the law because, in addition to the Tenth Circuit case law cited below, this Court’s case law should have put the Officers on notice that they could not ignore Mr. Paugh’s serious medical needs. In *Estelle*, 429 U.S. at 104, this Court held “that deliberate indifference to serious medical needs of

prisoners" violates the Eighth Amendment, including when the indifference is manifested "by prison guards in intentionally denying or delaying access to medical care." In *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244 (1983), the Court explained that the due process rights of pretrial detainees are "at least as great as the Eighth Amendment protections available to a convicted prisoner." And in *Farmer*, 511 U.S. at 842, this Court held that an official is deliberately indifferent if he "failed to act despite his knowledge of a substantial risk of serious harm." Thus, this Court's precedent clearly established that any officer who "knew … that Paugh was at a serious risk of harm when [the officer] saw his condition worsen," yet disregarded his worsening symptoms—as a reasonable jury could conclude the Officers here did, Pet. App. 47a—violated his constitutional rights.

In any event, the requirement that law be clearly established serves the purpose of ensuring that officials receive "fair warning" that their actions are unlawful. *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (citation omitted). Circuit court decisions, as well as decisions by this Court, are "controlling authority" that can give such warning to officials within the circuit. *Plumhoff v. Rickard*, 572 U.S. 765, 780 (2014) (citation omitted). And given this Court's limited docket, particularly in comparison to the number of cases decided in the courts of appeals, the rule that Petitioners seek would effectively undo decades of law, allowing officials to violate with impunity rights long established in the courts of appeals, but not yet addressed at the requisite level of particularity by this Court.

Contrary to Petitioners' arguments, this case is not similar to *Taylor v. Barkes*, 575 U.S. 822 (2015). There, this Court held that an "incarcerated person's right to the proper implementation of adequate suicide prevention protocols" was not clearly established. *Id.* at 825. The Court noted that "[n]o decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocol"; that "to the extent that a robust consensus of cases of persuasive authority in the Courts of Appeals could itself clearly establish the federal right[,] … the weight of that authority at the time of [the events at issue] suggested that such a right did *not* exist"; and that "neither of the Third Circuit decisions relied upon [by the Third Circuit] clearly established the right at issue." *Id.* at 826 (cleaned up). Here, in contrast, this Court's decisions establish that prison officials cannot deny an inmate medical care when they know he faces a substantial risk of harm. The Tenth Circuit's cases likewise establish that a prison official cannot ignore an inmate's "obvious and serious medical needs." Pet. App. 52a (citation omitted). And other courts of appeals agree. *See id.* at 49a–50. The court of appeals correctly concluded that the Officers violated clearly established law when they disregarded a substantial risk of harm of which they knew, and further review is unwarranted.

IV. The Tenth Circuit's denial of pendent jurisdiction over the County's appeal does not warrant review.

At the end of the petition, Petitioners ask this Court to review the Tenth Circuit's holding that it lacked pendent appellate jurisdiction over the County's appeal of the denial of its motion for

summary judgment and, "assuming there is jurisdiction," to "review the claims against" the County. Pet. 24. The question presented in the petition, however, concerns only qualified immunity—a defense unavailable to the County. *See id.* at i. No questions about the scope of pendent appellate jurisdiction or about municipal liability are "fairly included" in the question presented. S. Ct. Rule 14.1(a); *see Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 31 n.5 (1993) (stating that where an issue is not fairly included within the question presented, "the fact that [the Petitioner] discussed th[e] issue in the text of its petition for certiorari does not bring it before" the Court).

Moreover, the Tenth Circuit properly declined to exercise pendent appellate jurisdiction over the County's appeal. Courts may exercise pendent appellate jurisdiction over an otherwise-not-appealable interlocutory appeal where the underlying ruling is "inextricably intertwined with," or "necessary to ensure meaningful review of," a ruling that is appealable. *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 51 (1995) (holding that, although the court of appeals had jurisdiction over individual officers' appeals of the denial of their motions for summary judgment based on qualified immunity, it lacked pendent jurisdiction over the county commission's appeal of the denial of its motion for summary judgment). Here, the denial of the County's motion for summary judgment was neither inextricably intertwined with nor necessary to resolve the Officers' appeal of the denial of qualified immunity. The County can be held liable regardless of whether the Officers violated clearly established law, and the Officers can be held liable regardless of

whether county policies or procedures led to a violation of Mr. Paugh's rights. The exercise of jurisdiction in this case would therefore have disregarded the Court's concern that loose application of "pendent appellate jurisdiction would encourage parties to parlay [appealable] collateral orders into multi-issue interlocutory appeal tickets." *Id.* at 49–50. In any event, the question whether the denial of the County's motion for summary judgment was inextricably intertwined with the Officers' appeal is surely not cert.-worthy. The petition's single paragraph suggesting that the Court take up the County's appeal offers no argument to the contrary.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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