No. 14-6368

IN THE
Supreme Court of the United States

MICHAEL B. KINGSLEY,
Petitioner,
v.
STAN HENDRICKSON, ET AL.,
Respondents.

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

BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether the requirements of a 42 U.S.C. § 1983 excessive force claim brought by a plaintiff who was a pretrial detainee at the time of the incident are satisfied by a showing that the state actor deliberately used force against the pretrial detainee and the use of force was objectively unreasonable.

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INTEREST OF *AMICI CURIAE*[1]

The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

[1] All counsel of record consented to the filing of this brief by filing blanket consents with the Clerk. *Amici* state that no portion of this brief was authored by counsel for a party and that no person or entity other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief.

The National League of Cities (NLC) is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with 49 State municipal leagues, NLC serves as a national advocate for the more than 19,000 cities, villages, and towns it represents.

The U.S. Conference of Mayors (USCM), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,200 cities at present. Each city is represented in the USCM by its chief elected official, the mayor.

The International City/County Management Association (ICMA) is a nonprofit professional and educational organization of over 9,000 appointed chief executives and assistants serving cities, counties, towns, and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the professional management of local governments throughout the world.

The International Municipal Lawyers Association (IMLA) has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 3,000 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters.

This case directly impacts the interests of *amici* and their members. Cities and counties across the country operate detention facilities for pre-trial detainees. Imposing a more stringent constitutional standard for the use of force against pre-trial detainees than against post-conviction detainees would threaten the safety of inmates and officers, in addition to saddling these cities and coun-

ties with heavy new compliance and litigation costs. *Amici* thus have a strong interest in this case.

SUMMARY OF ARGUMENT

Amici have first-hand experience with the unique challenges of jail administration. The facts on the ground support applying the same standard regarding the use of force for all inmates, regardless of whether they are pre-trial detainees or post-conviction detainees. Jails generally commingle these two categories of inmates, and the extremely high turnover rate of jails leaves officers little time to become familiar with each individual. Thus, officers operating in tense and rapidly escalating situations do not know whether a particular inmate is a pre-trial detainee or a post-conviction detainee. Further, the level of danger posed by a particular inmate—both to jail officers and other inmates—cannot be predicted based on whether the inmate is a pre-trial detainee or post-conviction detainee. In fact, the data indicate that pre-trial detainees are often more dangerous than the post-conviction detainees housed in jails. That makes sense given that post-conviction detainees in jails generally are serving time for relatively minor offenses whereas pre-trial detainees are awaiting trial for all manner of offenses, including serious and violent crimes.

For all of those reasons, this Court and Congress have treated pre-trial detainees and post-conviction detainees similarly in the inmate-litigation context. This Court should continue that policy and extend officers the same protections whether they are dealing with a pre-trial detainee or a post-conviction detainee. The Eighth Amendment standard has governed excessive-force claims brought by post-conviction detainees for years, and it strikes the right balance between protecting officers acting in good faith and safeguarding an inmate's right to challenge unlawful actions. It gives officers latitude to operate without the fear of undue second guess-

ing under an exclusively objective standard and ensures officers can act quickly and decisively to protect not only themselves, but also the inmates entrusted to their care. That same standard, or something close to it, should govern claims brought by pre-trial detainees under the Fourteenth Amendment as well.

ARGUMENT

I. THE PRACTICAL REALITIES OF JAILS SUPPORT ADOPTING THE SAME STANDARD FOR EXCESSIVE-FORCE CLAIMS BY PRE-TRIAL DETAINEES AND POST-CONVICTION DETAINEES

A. Officers cannot distinguish between pre-trial detainees and post-conviction detainees in jails

The nature of jail administration makes it impossible for officers to apply one standard of conduct to pre-trial detainees and another standard to post-conviction detainees. Jails generally house these two groups of inmates together. Indeed, the National Institute of Corrections recommends a number of criteria for determining where and with whom a correctional facility should house an inmate, taking into account factors such as gang affiliation and disciplinary history. See Austin & Hardyman, National Institute of Corrections, U.S. Dep't of Justice, *Objective Prison Classification: A Guide for Correctional Agencies* 45-46 (July 2004). But whether an inmate is a pre-trial detainee or post-conviction detainee isn't on that list. Those recommendations reflect the reality of jail administration. They also reflect the practical realities that finite building dimensions cannot house infinite categorical distinctions. Jails rely on proven classification systems to ensure the safe confinement of all inmates, and practice has shown that an inmate's conviction status is not a relevant consideration for that purpose. Thus, segregating the jail population based on conviction status would impose steep new costs on jails, especially on small facilities and those operating at or over

capacity, with little or no additional safety in return. The resulting commingling of pre-trial detainees and post-conviction detainees makes it difficult, if not impossible, for officers to distinguish between them.

Jail inmates also are almost evenly split between pre-trial detainees and post-conviction detainees. See Minton & Golinelli, Bureau of Justice Statistics, U.S. Dep't of Justice, *Jail Inmates at Midyear 2013—Statistical Tables* 7 tbl.3 (rev. Aug. 12, 2014) ("*2013 Statistical Tables*"). Thus, an officer often cannot even make an educated guess about the conviction status of any particular inmate. The combination of co-housing and this roughly equal split between pre-trial detainees and post-conviction detainees means that officers have no basis for quickly deducing the conviction status of jail inmates.

Further complicating matters, jails experience rapid turnover in their inmate populations—an average of 60% per week for jails nationwide. See *2013 Statistical Tables* 9 tbl.7. Out of the national jail population of approximately 700,000 inmates, a little over 200,000 of those are new admissions every week, with a roughly equal number of weekly releases. *Ibid.* That results in statistically complete turnover of the jail population every two weeks. "This extremely fast turnover makes jails inherently [] chaotic." Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1686 (2003). And importantly, it deprives officers of adequate time to become familiar with individual inmates so that they can commit the inmates' conviction statuses and personality traits to memory.

All of this means that when an officer confronts a dangerous situation in a jail—be it breaking up a riot or dealing with a defiant inmate—he will almost certainly not know the conviction status of the inmates involved before he must take decisive action. Inmate and officer safety is the highest priority in jails, and ensuring safety means defusing disturbances before they spiral out of control.

There is no time to stop and check the records to determine what standard should govern the use of force against the offending inmates. And thus an officer must apply the same standard to all inmates in these critical situations. The practical realities of jail operation leave no other option.[2]

B. Pre-trial detainees are commonly more dangerous than post-conviction detainees in jails

The data on inmate dangerousness do not support a more restrictive standard for the use of force against pre-trial detainees. This Court has recognized that even "[p]eople detained for minor offenses can turn out to be the most devious and dangerous criminals." *Florence* v. *Bd. of Chosen Freeholders*, 132 S. Ct. 1510, 1520 (2012). And jails hold not only pre-trial detainees charged with minor offenses, but also suspected murderers and other violent felons who could not make bail or were denied bail. Unsurprisingly, then, the evidence demonstrates the error of assuming that pre-trial detainees are less dangerous than post-conviction detainees. In fact, just the opposite is true, and that is why a more restrictive

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[2] Petitioner-aligned *amici* Former Corrections Administrators and Experts appear to agree that one standard should govern all jail operations, but they prefer the objective standard used by some corrections facilities' policy manuals. See Former Corrections Administrators and Experts' Br. 2-4. That is not a live option, however, because it is well established that the Eighth Amendment's *subjective* standard governs claims by post-conviction detainees. *Whitley* v. *Albers*, 475 U.S. 312, 320-321 (1986). No party has asked the Court to revisit its entrenched Eighth Amendment precedent. Therefore, the only way to apply the same constitutional standard to all inmates is to recognize a subjective standard for excessive-force claims by pre-trial detainees as well. Moreover, as this Court's existing Eighth Amendment precedent shows, the internal jail policies cited by *amici* are not a reliable guide for this Court's task of announcing constitutional standards to be applied by judges and juries.

standard for the use of force against pre-trial detainees flies in the face of the facts on the ground.

The data demonstrate that jails are more dangerous than prisons and that pre-trial detainees in jails present greater security risks than do post-conviction detainees in jails. As one scholar has explained:

> [J]ails are more dangerous than prisons, in large part because of the primary operational difference between the two types of facilities: prisons take and hold inmates while jails take and release them. This extremely fast turnover makes jails inherently more chaotic. More generally comparing jails to prisons, classification of jail inmates is more haphazard, jail routines are less regular, jail time is more idle, and jail inmates are more likely to be in some kind of crisis. Jail inmates are also more likely to be vulnerable to harm in many ways—mentally ill, inexperienced with incarceration, drunk or high, or suicidal.

Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. at 1686 (footnotes omitted).

The heightened danger of jails compared to prisons is partially due to the unique risks posed by pre-trial detainees. Pre-trial detainees who do not post bail are among the most dangerous residents in jails because their crimes are the most serious and they pose the greatest flight risk, resulting in high bail or denial of bail: "Those who are held, though, appear systematically to have observable characteristics that are associated with higher violent-crime rearrest rates. * * * [W]e have strong evidence that those who are held are more dangerous." See Baradaran & McIntyre, *Predicting Violence*, 90 Tex. L. Rev. 497, 538-39 (2012) (presenting data on state court felony defendants in a sample of urban

counties from 1990 to 2006 and concluding that pre-trial detainees were more likely to present a danger to the community than persons released pending trial). The post-conviction detainees in jails, by contrast, are serving short sentences for minor offenses, and are therefore among the least dangerous of all inmates. See, *e.g.*, Wis. Stat. Ann. § 973.02 (providing that generally "a sentence of less than one year shall be to the county jail[and] a sentence of more than one year shall be to the Wisconsin state prisons").[3] As this Court explained in *Bell* v. *Wolfish*:

> In the federal system, a detainee is committed to the detention facility only because no other less drastic means can reasonably assure his presence at trial. As a result, those who are detained prior to trial may in many cases be individuals who are charged with serious crimes or who have prior records. They also may pose a greater risk of escape than convicted inmates.

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[3] See also Fla. Stat. Ann. § 922.051 ("When a statute expressly directs that imprisonment be in a state prison, the court may impose a sentence of imprisonment in the county jail if the total of the prisoner's cumulative sentences is not more than 1 year."); Idaho Code Ann. § 18-111 ("A felony is a crime which is punishable with death or by imprisonment in the state prison. * * * Every other crime is a misdemeanor."); compare Cal. Penal Code § 17(a) (generally classifying a "felony [a]s a crime that is punishable with death or by imprisonment in the state prison") with Cal. Penal Code § 19.2 (generally limiting misdemeanor sentences to one year in county jail); compare Tex. Penal Code § 12.04(a) (classifying felonies into five categories ranging from "capital felonies" to "state jail felonies") with Tex. Penal Code §§ 12.31-12.35 (allowing state "jail" sentences only for "state jail felonies" and otherwise requiring "imprisonment in the Texas Department of Criminal Justice" for felonies) and Tex. Penal Code §§ 12.21-12.23 (including within the available sentences for misdemeanors only "confinement in jail" and excluding confinement in "prison").

> This may be particularly true at facilities * * * where the resident convicted inmates have been sentenced to only short terms of incarceration and many of the detainees face the possibility of lengthy imprisonment if convicted.

441 U.S. 520, 546 n.28 (1979) (citations omitted). Again, statistical evidence supports that pre-trial detainees are particularly dangerous. For example, compared with post-conviction detainees in jails, pre-trial detainees are significantly more likely to be being held for violent offenses, including murder and assault. See James, Bureau of Justice Statistics, U.S. Dep't of Justice, *Profile of Jail Inmates, 2002* 3 tbl.3 (rev. Oct. 12, 2004).

Compounding the risk to jail security associated with pre-trial detainees is the fact that corrections officials have less time to assess the risks presented by any given pre-trial detainee: "Jails can be even more dangerous than prisons because officials there know so little about the people they admit at the outset." *Florence*, 132 S. Ct. at 1521. And even if officers thought they could discern important information about the pre-trial detainee from a split-second assessment, that information would often turn out to be very misleading. *Ibid.* (documenting several instances of pre-trial detainees arrested for minor infractions who turned out to have committed very serious crimes). The result is that officers know dangerously little about any particular pre-trial detainee and often must operate with this incomplete information when they face volatile situations requiring immediate and decisive action.

All of this supports an excessive-force standard for pre-trial detainees that is the same as or similar to that used for post-conviction detainees so that correctional officers can protect their safety and that of inmates in their charge. The facts and the experience of *amici*

demonstrate that pre-trial detainees are often more dangerous than post-conviction detainees in jails, and officers' lack of critical knowledge about the pre-trial detainees compounds the risks faced by all involved. These facts weigh against imposing a more restrictive test for the use of force against pre-trial detainees and underscore the need to give officers the same protections whether they are confronting pre-trial detainees or post-conviction detainees.

II. THIS COURT AND CONGRESS TREAT PRE-TRIAL DETAINEES AND POST-CONVICTION DETAINEES SIMILARLY IN THE INMATE-LITIGATION CONTEXT

A. Subjecting pre-trial detainees and post-conviction detainees to the same legal standards is nothing new. This Court treated pre-trial detainees and post-conviction detainees similarly in *Bell*. And while Petitioner suggests that *Bell* supports a purely objective standard for determining excessive-force claims, see Pet. Br. 12, *Bell* actually counsels against such a determination.

In *Bell*, this Court "s[aw] no reason to" "distinguish[] between pretrial detainees and convicted inmates in reviewing the challenged [jail] security practices." 441 U.S. at 546 n.28. The Court recognized "[t]he fact of confinement as well as the legitimate goals and policies of the penal institution limits these retained constitutional rights." *Id.* at 546. This principle "applies equally to pretrial detainees and convicted prisoners" because the state possesses a legitimate interest in confining both types of inmates and ensuring their safety, as well as the safety of the jail as a whole. *Ibid.* A pre-trial detainee occupies the same position as a post-conviction detainee in this confinement system and is therefore subject to the same limitations on rights: "A detainee simply does not possess the full range of freedoms of an unincarcerated individual. * * * [M]aintaining institutional security and pre-

serving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pre-trial detainees." *Ibid.* (footnote omitted). Thus, the fact of confinement is the key, not the "happenstance" of whether the detainee in question happens to be pre-trial or post-conviction. *Id.* at 547 n.29.

This Court's similar treatment of pre-trial detainees and post-conviction detainees in *Bell* reflects the convergence of interests protected by the Eighth and Fourteenth Amendments in the confinement context. Both seek to ensure that any force directed at an inmate is for the purpose of maintaining order and safety instead of inflicting arbitrary harm. For post-conviction detainees, this Court asks "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." *Whitley*, 475 U.S. at 320-321 (internal quotation marks omitted). For pre-trial detainees, the focus is on whether there was "an expressed intent to punish." *Bell*, 441 U.S. at 538. If not, the question becomes whether the "condition is [] reasonably related to a legitimate goal," because if it is not and is instead "arbitrary or purposeless[,] a court permissibly may infer that the purpose of the governmental action is punishment." *Id.* at 539.

Although the precise language the Court has used in the two contexts differs, both inquiries focus on why the officer used force—the "intent" and "purpose" of the force. That is because both the Eighth and Fourteenth Amendments prohibit inflicting arbitrary or malicious harm on inmates as a means to punish them, regardless of their conviction status. Force is allowed only if directed at maintaining the safe confinement of the inmates—force which is "applied in a good faith effort to maintain or restore discipline," *Whitley*, 475 U.S. at 320-321 (internal quotation marks omitted), or is "related to a

legitimate goal," *Bell*, 441 U.S. at 539. Pre-trial detainees and post-conviction detainees share the common fact of confinement—albeit for different purposes—and the need to maintain this confinement in an orderly and safe manner drives the constitutional analysis for both amendments. As this Court explained in *Bell*, "maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." 441 U.S. at 546 (footnote omitted). That is why the Eighth and Fourteenth Amendments impose similar subjective tests in this shared context.

Petitioner misreads *Bell* in claiming that a due process violation can be maintained with purely objective evidence. Petitioner suggests that *Bell* held that "a pretrial detainee can also demonstrate a due process violation by proving that the state's use of force against him was 'excessive in relation to,' or not 'reasonably related to,' a legitimate government interest," and that such a showing amounts to "an objectively unjustified deprivation." See Pet. Br. 12 (quoting *Bell*, 441 U.S. at 539). But at no point does *Bell* suggest that a detainee need not prove an improper motivation to punish; rather, the Court simply held that where the inmate presents no direct evidence of intent, "a court permissibly may infer that the purpose of the governmental action is punishment" if the totality of the evidence warrants such an inference. *Bell*, 441 U.S. at 538-539. Thus, assuming *Bell* applies to excessive-force claims, an inmate might use circumstantial evidence to demonstrate an officer's intent, but that hardly means an inmate can bypass the subjective-intent requirement altogether.

In this way, *Bell* establishes a regime similar to the one that governs Title VII disparate-treatment claims. The "ultimate question in every employment discrimina-

tion case involving a claim of disparate treatment is whether the plaintiff was the victim of *intentional* discrimination." *Reeves* v. *Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 153 (2000) (emphasis added). But a plaintiff is free to employ "circumstantial evidence" to meet that burden. *Id.* at 147. The inadequacy of a proffered explanation is powerful circumstantial evidence: "Proof that the defendant's [non-discriminatory] explanation is unworthy of credence * * * may be quite persuasive." *Ibid.* Or in other words, like in the Fourteenth Amendment context, if the action is not "reasonably related to a legitimate goal," "a court permissibly may infer that the purpose" was unlawful. *Bell*, 441 U.S. at 539.

B. Congress has also treated pre-trial detainees and post-conviction detainees the same in inmate litigation. The Prison Litigation Reform Act overhauled the procedures governing inmate litigation. See 18 U.S.C. § 3626 (detailing the "[a]ppropriate remedies with respect to prison conditions"); 28 U.S.C. §§ 1915, 1915A (restricting *in forma pauperis* proceedings for prisoners and providing for faster dismissal of unmeritorious prisoner suits); 42 U.S.C. § 1997e (imposing an exhaustion of administrative remedies requirement on § 1983 claims challenging prison conditions and limiting monetary recovery and attorney's fees for such actions). Its key provisions apply to pre-trial detainees and post-conviction detainees alike—to "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law." 42 U.S.C. § 1997e(h); 28 U.S.C. §§ 1915(h), 1915A(c); see also 18 U.S.C. § 3626(g)(3) ("any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law"). In enacting these provisions, Congress recognized what this Court had already concluded—that the state's legitimate inter-

est in confining both pre-trial detainees and post-conviction detainees demands similar regulatory regimes for policing the confinement of both types of inmates.

III. Only The Eighth Amendment Standard Provides Adequate Protection For Both Jail Officers And Inmates

A. This Court has repeatedly accorded deference to jail and prison officials due to the profound challenges in running a correctional institution and maintaining a safe environment

This Court has repeatedly recognized that correctional facilities face enormous administrative and security challenges in maintaining order on a day-to-day basis. Consequently, "[t]he difficulties of operating a detention center must not be underestimated by the courts. * * * The largest facilities process hundreds of people every day; smaller jails may be crowded on weekend nights, after a large police operation, or because of detainees arriving from other jurisdictions." *Florence*, 132 S. Ct. at 1515. In such an environment, hindsight analyses as to whether attempts to maintain order involved "excessive" force—in the absence of examining the subjective intent of the officers involved in the incident—invite a level of second-guessing and Monday-morning quarterbacking that would undermine officers' ability to decisively handle volatile situations.

Recognizing these challenges, this Court has consistently deferred to the sound judgment of correctional institutions and their officers. "Maintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face." *Ibid.* And because "problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions[,] [p]rison administrators * * * should be accorded wide-ranging deference in the adoption and ex-

ecution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell*, 441 U.S. at 547.

Such deference is especially warranted in the context of the excessive-force claims at issue here, because correctional institutions necessarily involve a heightened level of tension between those who are detained and those who are charged with maintaining order. Even before conviction, pre-trial detainees forfeit many of their constitutional freedoms—they cannot leave freely and must submit to the rules and regulations of the jail facility. Indeed, although these individuals have not been convicted and therefore cannot be punished for any crime, they still must abide by the same rules as any other inmate, and every aspect of their day-to-day activities is carefully monitored.

This dynamic creates a constant and inescapable friction between jail officers and inmates, as well as fertile soil for disputes. Indeed, when force becomes necessary to control a situation, both pre-trial detainees and post-conviction detainees have plenty of spare time to contemplate and pursue excessive-force claims. Unsurprisingly, excessive-force claims are more common in correctional institutions than in normal police activity. Cf. Eith & Durose, Bureau of Justice Statistics, U.S. Dep't of Justice, *Contacts between Police and the Public, 2008* 19 (rev. Oct. 5, 2011) (about 1.5% of general public reported contact with police involving force or the threat of force, whereas about 22% of inmates reported force or the threat of force during their arrest). And although local governments vary greatly in their potential exposure to and handling of such claims, they generally must allocate significant funds for insurance against and/or litigation costs related to such claims. The drain on local coffers may be even more pronounced in the context of jail-generated litigation, where the transient and often vio-

lent nature of the population may contribute to increased friction. See, *e.g.*, Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. at 1689 ("[I]t seems very likely that jail damage actions generally pose a larger risk of liability—and of high damages—than prison cases do, and experienced participants in the litigation system think that this is in fact the situation.").

B. The Eighth Amendment standard protects both officers and inmates, whereas the Fourth Amendment standard does not

Both officers and inmates are entitled to protection from the dangers inherent in jails. Everyone's security depends on the ability of officers to maintain order and decisively quell situations before they spiral into violence. If the Court sets an improper standard for excessive-force claims, the threat of burdensome and costly litigation brought by highly motivated inmates may cause governments and officers to withhold actions that must be taken to maintain order and promote safety. As Respondents explain, the Fourth Amendment standard not only provides lesser protection for officers on its face, but it also waters down the protection afforded by qualified immunity because courts struggle with the apparent paradox of an officer being "reasonably unreasonable." See Resp. Br. 39-40. Only the Eighth Amendment standard provides the requisite protection for officer discretion, while also ensuring that inmates are not punished without due process.

In the experience of *amici*, the greatest threat to inmate safety is not rogue guards meting out unjustified force, but rather fellow inmates who target particular individuals or groups, or even incite riots that put the entire jail population at risk. See, *e.g.*, Speigel, *Prison "Race Riots": An Easy Case for Segregation?*, 95 Cal. L. Rev. 2261 (2007) (discussing the roles of race and gangs in jail and prison violence). In New York City jails, for

example, inmates cause 40% of the injuries to other inmates, whereas the use of force by guards accounts for only 12% of inmate injuries. Ludwig et al., *Injury Surveillance in New York City Jails*, 102 American Journal of Public Health 1108, 1110 tbl.2 (2012). And where "rogue" guards are found, their behavior not only will typically violate internal regulations and state law but also will be punished equally under both the purely objective Fourth Amendment standard and the Eighth Amendment standard, which would take into account their nefarious motives. In either case, the inmates would be protected.

CONCLUSION

For these reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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