No. 18-684

In The Supreme Court of the United States

PATTI STEVENS-RUCKER, ADMINISTRATOR OF THE ESTATE OF JASON WHITE,

Petitioner,

v.

CITY OF COLUMBUS, OHIO, ET AL.,

Respondents.

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

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE RUTHERFORD INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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MOTION OF THE RUTHERFORD INSTITUTE FOR LEAVE TOFILE BRIEF AS *AMICUS CURIAE*

Pursuant to Supreme Court Rule 37.2(b), The Rutherford Institute respectfully moves for leave to file the accompanying *amicus curiae* brief in support of Petitioner. Counsel for Petitioner has consented to the filing of this brief, and written consent has been filed with the Clerk of the Court; counsel for Respondents has withheld consent.

The Rutherford Institute requests the opportunity to present an *amicus curiae* brief in this case because the Institute is keenly interested in the protection of individuals' civil liberties from infringement by the government. The issue presented in this case, *i.e.*, whether there are circumstances in which police officers are constitutionally obligated to help a person injured during arrest, is a significant one given the number of arrests in the United States each year and the present divide on this issue among the federal courts of appeals.

As a civil liberties organization, The Rutherford Institute brings a particularized analysis to the issues presented in this case. The Institute specializes in protecting the constitutional rights of individuals, and its experience in these matters will assist the Court in reaching a just resolution to the question presented.

Wherefore, The Rutherford Institute respectfully requests that its motion for leave to file an *amicus curiae* brief be granted.

December 26, 2018

Respectfully submitted,

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Rutherford Institute is an international nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute specializes in providing *pro bono* legal representation to individuals whose civil liberties are threatened and in educating the public about constitutional and human rights issues. At every opportunity, The Rutherford Institute will resist the erosion of fundamental civil liberties that many would ignore in a desire to increase the power and authority of law enforcement. The Rutherford Institute believes that where such increased power is offered at the expense of civil liberties, it achieves only a false sense of security while creating the greater dangers to society inherent in totalitarian regimes.

The Rutherford Institute is interested in this case because it is concerned about and seeks to defend the rights of arrestees and other pretrial detainees who have been injured at the hands of police officers. The Sixth Circuit erred by holding

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

that officers, who shot an arrestee, satisfied their constitutional obligations simply by calling for medical assistance when they had basic medical training and could have rendered aid. Allowing officers, with the authority to injure individuals, to stand by amid the suffering of someone they have harmed does not further the goal of protecting the rights of individuals.

SUMMARY OF ARGUMENT

This Court has held that suspects who suffer an injury during arrest should receive "the needed medical treatment," *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 245 (1983), but it has not defined what constitutes that treatment and who is obligated to provide it. In cases involving convicted prisoners, however, it has concluded that "deliberate indifference to serious medical needs" violates the Eighth Amendment's prohibition on cruel and unusual punishments, and it has provided contours on what that means. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Farmer v. Brennan*, 511 U.S. 825, 829 (1994).

Police should be held to a comparable standard in their treatment of other persons in their care who require medical attention. To that end, it is not always enough for officers to summon a rescue squad that will arrive several minutes after an individual is injured, especially in cases where, as here, the individual is "clearly . . . dying." ECF No.

71 at 15. The requirement to provide urgent medical attention should extend to the personal aid of police officers who not only inflicted the injury but also recognize the risk of serious harm and are present and capable of assisting the injured individual. Officers are trained to evaluate and respond to rapidly evolving situations that include the need for medical aid; the fact that they are involved in such a scenario should not absolve them of the obligation to render aid when they are able to do so.

Here, the suspect was not provided with immediate medical attention, and the officers who fired the fatal shots did nothing to limit his suffering. Overall, he was provided with less aid than that which must be provided to convicted criminals. This is unacceptable. Accordingly, this Court should clarify the obligations that police officers owe to "persons in [their] care who require medical attention." *Revere*, 463 U.S. at 244.

ARGUMENT

I. CONVICTED CRIMINALS ARE AFFORDED BROAD PROTECTIONS FROM DELIBERATE INDIFFERENCE UNDER THE EIGHTH AMENDMENT.

"[W]e are, fundamentally, a decent people, and decent people do not allow other human beings in their custody to suffer needlessly from serious illness or injury." *Kosilek v. Maloney*, 221 F. Supp. 2d 156, 160 (D. Mass. 2002).

In *Estelle v. Gamble*, this Court grappled with the question of what constitutes cruel and unusual punishment in violation of the Eighth Amendment in the case of an inmate who alleged that prison staff denied him medical care. Writing for the majority, Justice Marshall noted the practical reality that "[a]n inmate must rely on prison authorities to treat his medical needs" and "[i]n the worst cases, such a failure may actually produce physical torture or a lingering death." *Estelle*, 429 U.S. at 103 (internal citation and quotation marks omitted). But he also voiced a loftier concern: that the Eighth Amendment "embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency[,] . . . against which we must evaluate penal measures." *Id.* at 102 (internal citation and quotation marks omitted). Thus, the Amendment proscribes not only "physically barbarous punishments," but also "deliberate indifference to serious medical needs of prisoners." *Id.* at 102, 104.

In adopting the deliberate indifference standard, the Court did not limit its scope to prison medical staff. It found that such indifference could be shown "by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care . . . . ***Regardless of how evidenced***, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983." *Id.* at 104-05 (emphasis added).

Lower courts have taken the concerns of *Gamble* to heart, applying it to a broad range of cases involving the medical care of inmates. In doing so, they have held that prison officials must promptly address inmates' requests for medical care that require immediate attention.

For example, in *Gayton v. McCoy*, 593 F.3d 610 (7th Cir. 2010), the Seventh Circuit held that "a jury could easily find that [an on-site nurse's] actions . . . entered the realm of deliberate indifference" where the nurse knew about a prisoner's serious heart condition but refused to see her immediately because she "was approaching the end of her shift and she wanted to let the next nurse handle the situation." *Id.* at 624; *see also Grieveson v. Anderson*, 538 F.3d 763, 778-80 (7th Cir. 2008) (finding genuine issues of material fact about whether guards were deliberately indifferent to detainee's medical needs where the guards did not secure medical treatment for him immediately after learning about his injury); *Tlamka v. Serrell*, 244 F.3d 628, 633-35 (8th Cir. 2001) (denying summary judgment, where corrections officers failed to provide CPR or approach the inmate for ten minutes, as "any reasonable officer would have known that delaying [the inmate]'s emergency medical treatment for [ten] minutes, with no good or apparent explanation for the delay, would have risen to an Eighth Amendment violation").

The Third Circuit has found a delay in providing "necessary medical treatment . . . for non-medical reasons" as an independent basis for finding deliberate indifference. *Pearson v. Prison Health Serv.*, 850 F.3d 526, 538 (3d Cir. 2017). In *Pearson*, a nurse refused to examine a prisoner in his cell when first called and ordered him to the infirmary overnight despite recognizing signs of appendicitis. Reversing the grant of summary judgment, the court found that because the nurse was on notice that there was "a substantial risk of serious harm," the case raised a triable issue. *Id.* at 541 (internal quotation marks omitted); *see also Natale v. Camden County Corr. Facility*, 318 F.3d 575, 583 (3d Cir. 2003) (holding that a jury could find deliberate indifference where the treating hospital had "no practice in place to accommodate inmates with more immediate medication needs").

Allowing inmates to suffer unnecessarily may also amount to deliberate indifference. *See Taylor v. Franklin County*, 104 F. App'x 531, 540 (6th Cir. 2004) (finding genuine issue of material fact about whether a prison supervisor was deliberately indifferent to prisoner's medical needs where supervisor "did not respond to the risk of [prisoner's] worsening condition as his pain increased, resulting in [prisoner] continuing to suffer"); *Ramos v. Lamm*, 639 F.2d 559, 578 (10th Cir. 1980) (staff shortages "endanger [inmates'] health and well being, make unnecessary suffering inevitable, and evince on the

part of the State a deliberate indifference to the serious health needs of the prison population"); *see also Feeley v. Sampson*, 570 F.2d 364, 368 (1st Cir. 1978) ("[A] prisoner ought to be used with the utmost humanity, and neither be loaded with needless fetters, nor subjected to other hardships than such as are absolutely requisite for the purpose of confinement only" (citation and internal quotation marks omitted)).

Despite its broad application, the standard of deliberate indifference in the prison context is not an amorphous one. In *Farmer v. Brennan*, 511 U.S. 825, 829 (1994), this Court addressed the definition, and held that it "requir[es] a showing that the official was subjectively aware of the risk." A prison official can be found liable under the Eighth Amendment only when "the official knows of and disregards an excessive risk to inmate health or safety." *Id.* at 837.

II. ARRESTEES MERIT AT LEAST THE SAME LEVEL OF PROTECTION UNDER THE FOURTEENTH AMENDMENT.

The Eighth Amendment undoubtedly does not apply where there has been no criminal prosecution; a state does not acquire the power to punish to which the Amendment applies until "after it has secured a formal adjudication of guilt." *Ingraham v. Wright*, 430 U.S. 651, 671-72 n.40 (1977). With respect to the treatment of arrestees and other "pretrial detainees," then, the due process concern

falls under the Fourteenth Amendment rather than the Eighth. Despite this distinction, "the due process rights of a person [detained] are at least as great as the Eighth Amendment protections available to a convicted prisoner." *Revere*, 463 U.S. at 244.

Consistent with this mandate, this Court has held that an injured detainee has a constitutional right to "the needed medical treatment." *Id.* at 245. But it has not clearly defined the scope of that standard. *See id.* at 244 ("[w]e need not define, in this case, [the] due process obligation to pretrial detainees or to other persons in [police] care who require medical condition"). It is the complementary concerns that Judge Marshall expressed in *Gamble* that should guide the Court now. First, these individuals are reliant on the detaining officers to render immediate aid, as they are not free to obtain it for themselves. *See Gamble*, 429 U.S. at 103 ("[a]n inmate must rely on prison authorities to treat his medical needs"). This is even more so when the arrestee is injured to the point of incapacitation, unconsciousness, and near death. Second, common decency demands that the police not merely stand by while a person endures the pain of serious injury. Such disregard for human suffering is "incompatible with the evolving standards of decency that mark the progress of a maturing society." *Id.* at 102 (citation and internal quotation marks omitted).

In this respect, the lower court below appropriately relied on an earlier Sixth Circuit case, *Estate of Owensby v. City of Cincinnati*, 424 F.3d 596 (6th Cir. 2005), in finding deliberate indifference. *See Stevens-Rucker v. City of Columbus*, 242 F. Supp. 3d 608, 630 (S.D. Ohio 2017). In *Owensby*, police officers struck a suspect with a baton, pinned him down, placed him in a head wrap, and used a "compliance technique" to subdue him. After Owensby was handcuffed and prone, an officer sprayed mace into his face. *Owensby*, 424 F.3d at 600. As they placed Owensby in a cruiser, another officer continued to beat him. *Id.* The officers then locked the cruiser doors and made no attempt to render aid. *Id.* at 600-01. Six minutes later, a new officer arrived and checked on Owensby, removed him from the car, and called an ambulance, which arrived four minutes later. *Id.* at 601. The Sixth Circuit denied the officers qualified immunity, finding that there was evidence of their indifference in the six minutes where they did anything but help Owensby even though they had viewed him in significant distress. *Id.* at 603. The court found that the right to care was clearly established and that Owensby's prior flight and confrontation with the police was irrelevant to the analysis. *Id.* at 604.

That outcome is the just one. The general availability of a rescue squad after an injury does not necessarily encapsulate "the *needed* medical treatment" that is the crux of an injured detainee's

constitutional right. *See* Pet. at 27 ("Like the Eighth and Tenth Circuits, other district courts across the country have held that "summon[ing] rescue" "is insufficient by itself to defeat [a] deliberate indifference" claim and that there are times when the Fourteenth Amendment obligates an officer to intervene personally."); *see also* Pet. at 17, 29 ("Between June 2015 and March 2016, the Bureau of Justice Statistics identified 1,348 potential arrest-related deaths, which averages 135 arrest-related deaths each month."). Some situations demand immediate medical aid that can only be provided personally by police officers because they are already present at the site where the detainee lies injured.

By contrast, the Sixth Circuit's embrace of a bright-line rule that "does not require the officer to intervene personally," *Stevens-Rucker v. City of Columbus*, 739 Fed. App'x 834, 846 (2018), contravenes the concerns that underlie the deliberate indifference standard. The court found that an alternative ruling would "ignore[] the reality that such medical emergency situations often call for quick decisions to be made under rapidly evolving conditions." *Id.* But that is why a hard-and-fast rule is inappropriate here. Officers are trained to exercise judgment in fraught situations that can involve serious injuries, whether inflicted by themselves or others. When they recognize the need for medical assistance and are able to provide it, they should be expected to do so.

Nor does a bright-line rule comport with this Court's adoption of a subjective standard for deliberate indifference in the prison context, *Farmer*, 511 U.S. at 837, or its application of an objective standard in other situations involving police-civilian contact. *See, e.g.*, *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472-73 (2015) (adopting objective standard for judging a pretrial detainee's excessive force claim). Courts are eminently capable of applying standards that require the exercise of judgment, and there is simply no reason why the summoning of a rescue squad should absolve an officer in all circumstances of the duty to render aid.

In the prison context, ignoring the immediate medical needs of prisoners may constitute deliberate indifference. *Gayton*, 593 F.3d 610; *Pearson*, 850 F.3d 526. In the same vein, limiting an arrestee's right to medical treatment to a standard call to a rescue squad is inconsistent with due process protections. Subjecting a prisoner to unnecessary suffering similarly may constitute deliberate indifference. *Ramos*, 639 F.2d 559. Likewise, suspects in custody should not have to endure undue suffering, especially where, as here, the police inflicted the injury. Thus, if officers recognize the risk of serious harm and are able to provide immediate medical aid to an injured suspect or other pretrial detainee, they should be required to do so.

There is no justification for providing arrestees with substandard medical care. This Court

should grant review in order to provide further guidance as to the due process rights of these individuals and the obligations of police officers who inflict serious injury but are able to provide immediate medical attention.

CONCLUSION

For the foregoing reasons, and those stated by Petitioner, the petition should be granted.

December 26, 2018

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