No. 091361

In The
Supreme Court of the United States

CITY OF RENO, RYAN ASHTON,
and DAVID ROBERTSON,

Petitioners,

v.

CHARLA and DUSTIN CONN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *City of Canton* v. *Harris*, this Court foreclosed § 1983 liability for inadequate police training unless "the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." 489 U.S. 378, 388 (1989). Justice O'Connor, concurring in relevant part, noted that a claim "that police officers were inadequately trained in diagnosing the symptoms of emotional illness [ ]falls far short of the kind of 'obvious' need for training that would support a finding of deliberate indifference. . . ." *Id.* at 396-97. In the instant case, six sets of medical professionals performed medical, mental-health, and suicide-prevention evaluations of a detainee in the days before her suicide. Nevertheless, the Ninth Circuit below held that the City of Reno may be found liable for not training its police officers to diagnose and report detainees' symptoms of suicidal tendencies. The questions presented are:

I. Must a city train its law-enforcement officers to diagnose and report detainees' symptoms of suicidal tendencies, in order to avoid municipal liability under the Fourteenth Amendment's Due Process Clause and 42 U.S.C. § 1983?

II. Must law-enforcement officers diagnose and report detainees' symptoms of suicidal tendencies, in order to avoid individual liability under the Fourteenth Amendment's Due Process Clause and 42 U.S.C. § 1983?

PARTIES TO THE PROCEEDING

Petitioners are the City of Reno and two members of the Reno Police Department, Officers Ryan Ashton and David Robertson. Petitioners were defendants-appellees below.

Respondents are Dustin Conn, adult son of decedent Brenda Jean Clustka; and Charla Conn, adult daughter and special administrator of the estate of decedent. Respondents were plaintiffs-appellants below.

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PETITION FOR A WRIT OF CERTIORARI

The City of Reno, Ryan Ashton, and David Robertson respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The original opinion of the Ninth Circuit panel is reported at 572 F.3d 1047 (9th Cir. 2009). The amended panel opinion, denial of rehearing and rehearing en banc, and dissent from denial of rehearing en banc are reported at 591 F.3d 1081 (9th Cir. 2010) and reprinted at App. 1. The district court's order granting Defendants' Motion for Summary Judgment, filed on March 8, 2007, is unpublished but reprinted at App. 54.

JURISDICTION

The court of appeals entered its judgment on July 24, 2009. It denied a petition for rehearing and rehearing en banc on January 8, 2010, and also amended its panel opinion on that day. On March 22, 2010, Justice Kennedy granted Application No. 09A882, extending the time within which to file a petition for writ of certiorari until and including May 7, 2010. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of Section 1 of the Fourteenth Amendment to the U.S. Constitution provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

STATEMENT OF THE CASE

This case presents two important and recurring questions of § 1983 liability on which the federal courts of appeals are intractably divided. There is an entrenched 5-2 split on whether municipalities may be held liable for failing to train law-enforcement officers to diagnose detainees' suicidal tendencies. Judge Reinhardt's opinion for the Ninth Circuit, holding that municipalities can be held liable, aggravates "a clear inter-circuit split and is irreconcilable with the standard for liability fashioned by the Supreme Court in *City of Canton* v. *Harris*, 489 U.S. 378

(1989)." *Conn*, 591 F.3d at 1086, App. 5 (Kozinski, C.J., dissenting from denial of rehearing en banc).

By joining the minority side of the split and denying rehearing en banc over the dissent of seven judges, the Ninth Circuit has deepened and entrenched that split. The panel's opinion also creates a circuit split on whether law-enforcement officers must diagnose and communicate detainees' symptoms of suicidal tendencies or be held individually liable.

Both issues recur frequently, affecting well over a million law-enforcement officers and more than fourteen million arrests across the country each year. The issues are also crucially important. Judge Reinhardt's opinion imposes novel, undefined, and potentially costly psychiatric-training duties on thousands of cities and towns throughout the nine states in the Ninth Circuit. It obligates officers to make nuanced psychiatric diagnoses, even where (as here) medical professionals repeatedly screen a detainee for suicide risk. Only this Court can resolve these conflicts and give needed, uniform guidance to cities and police departments across the country.

A. Factual Background

1. In 2005, police arrested 14.1 million persons for non-traffic offenses, including 3.4 million for alcohol-related offenses or driving under the influence. On a typical day in mid-2005, more than 747,000 inmates were detained in local jails. *Sourcebook of Criminal Justice Statistics Online*, tbls. 4.1.2005, 4.27.2005,

6.13.2005, *available at* http://www.albany.edu/sourcebook/pdf/t412005.pdf, http://www.albany.edu/sourcebook/pdf/t4272005.pdf, http://www.albany.edu/sourcebook/pdf/t6132005.pdf. Nationwide, 286 local jail inmates committed suicide in 2005. *Id.* tbl. 6.0012.2005, *available at* http://www.albany.edu/sourcebook/pdf/t600122005.pdf. That number is less than 0.04% of the daily jail population, less than 0.009% of alcohol-related arrestees, and 0.002% of all arrestees that year.

States and municipalities, including Reno, Nevada, have made substantial progress in addressing the problem of jail suicides, lowering the U.S. jail-suicide rate by almost two-thirds between 1983 and 2002. Thus, suicide is no longer the leading cause of death in jail. Christopher J. Mumola, Bureau of Justice Statistics, *Suicide and Homicide in State Prisons and Local Jails* 1, 2 tbl. (Aug. 2005), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf.

2. The State of Nevada has adopted two comprehensive procedures to protect intoxicated and mentally ill arrestees and inmates from harming themselves or others. First, peace officers must place publicly intoxicated persons who cannot care for their own health or safety in civil protective custody (CPC) for up to 48 hours. Nev. Rev. Stat. § 458.270 (West 2009). If intoxicated persons need emergency medical treatment, officers must first bring them to secure detoxification or emergency medical facilities before taking them to jail. *Id.*

Second, to protect the mentally ill, Nevada law authorizes a measure called a Legal 2000 hold. This protective measure authorizes officers to take into custody mentally ill persons who appear to present a clear and present danger of harm to themselves or others. Nev. Rev. Stat. §§ 433A.115, 160 (West 2009). Under a Legal 2000 hold, officers must first bring mentally ill persons to doctors, physicians' assistants, or registered nurses to be evaluated for immediate medical problems. Officers must then take these persons to mental health facilities or hospitals for detention, evaluation, and treatment for up to 72 hours. *Id.* §§ 433A.150, 165.

The Washoe County Detention Facility (the Jail) is owned and operated by Washoe County, not Reno, though it does house arrestees from Reno and surrounding areas. In addition to the procedures adopted by Nevada, the Jail also has adopted internal policies to protect mentally ill and intoxicated detainees. Immediately upon arrival at the Jail, registered nurses examine every detainee and fill out a medical screening form and a mental-health questionnaire, both of which address the detainee's suicide risk. Lindsay M. Hayes, *Technical Assistance Report on Suicide Prevention Practices Within the Washoe County Jail* 11 (Sept. 13, 2005). The Jail also offers annual suicide-prevention training for all corrections officials. *Id.* at 6.

3. Despite these efforts to prevent suicide, jail inmates such as Brenda Clustka still occasionally take their own lives. Clustka had a troubled past as a

repeat misdemeanant. In the year before her death, she was jailed four times: (1) in May 2004 for domestic battery; (2) in December 2004 for driving under the influence of alcohol (DUI), careless driving, and driving with a suspended license; (3) in February 2005 for petit larceny, DUI, and battery; and (4) in March 2005 for domestic violence against her 74-year-old mother. Ninth Circuit Excerpts of Record (ER) 23-27.

Clustka was also committed to the Northern Nevada Mental Health Institute (NNMHI), a state mental hospital, three times under the Legal 2000 procedure, in September 2001, August 2003, and April 2004, for threatening or attempting suicide. ER 98-131. All three times, she was released with instructions to follow up with her primary-care doctor and with recommendations for counseling. ER 107, 119-20, 126-28. There is no evidence in the record that Clustka followed any of these instructions.

On April 25, 2005, Clustka was put on a fourth Legal 2000 hold. ER 140-41. Her mother reported that she had threatened to overdose on her medication, so Reno police officers transported her to the Washoe Medical Center, a private hospital. ER 133-34. When doctors examined her in the emergency room, she denied threatening or attempting to commit suicide. ER 133.

Because Clustka's story contradicted her mother's account, a doctor recommended transferring her to NNMHI on a Legal 2000 hold for further evaluation.

Id. When a psychiatric nurse and then a psychiatrist evaluated her at NNMHI, Clustka again repeatedly denied any suicidal ideations, denied that she would harm herself, and refused treatment. ER 78-82. A social worker, who interviewed Clustka together with the psychiatrist, found that she posed a "low risk of [self-]harm." ER 83, 88, 90. Thus, the psychiatrist ordered staff to return Clustka's prescription drug Xanax to her. ER 83-85. When he discharged her, he judged that she did not pose a risk of suicide. ER 91. Because she was dependent on alcohol and prescription drugs, the psychiatrist and psychiatric nurse recommended that she receive alcohol treatment and counseling following her discharge the next morning. ER 84-85. There is no evidence in the record that Clustka followed her psychiatrist's advice. On the contrary, she kept blaming others for her problems, remained "unwilling to admit to [her] substance abuse problem," and rejected the psychiatrist's "[s]tron[g] encourage[ment]" to seek inpatient treatment. ER 82.

Fewer than five hours after being released on April 26, Clustka was again grossly intoxicated. ER 158-59. Emergency medical personnel employed by a local nonprofit corporation found her lying on the ground, medically evaluated her, and called Reno police. ER 182-83. Officers Ryan Ashton and David Robertson responded to the call and met the medical personnel at the scene. ER 158-59. When they told Clustka they were taking her into CPC custody, she became belligerent, began cursing, refused to

accompany the officers, and insisted on going to her mother's house to get her belongings. *Id.* To calm her, Officer Robertson said they would take her home as she had asked. *Id.* The officers put her in the back of their police transport wagon, without handcuffs, and proceeded to the Jail. ER 148, 158-59, 182-85. As they prepared to leave, the results of a computer background check came in. ER 158. That background check informed the officers of Clustka's violent tendencies, drug and alcohol addictions, and mental health problems, but not of any suicidal thoughts or attempts. ER 44-48, 158.

As they were driving, Clustka unbuckled her seatbelt, approached the surveillance camera, and began tapping on it to get the officers' attention. ER 36. The officers did not respond. *Id.* When Clustka looked out the window and saw that they were approaching the Jail, she went back to her seat and wrapped her seatbelt around her neck in full view of the camera. ER 158-59. The officers immediately stopped the wagon, removed the seatbelt, handcuffed her, put her back in her seat, and buckled her seatbelt again. ER 36. As they were doing this, Clustka said: "You lied to me. Just kill me. I'll just kill myself then." ER 36, 158, 215.

Upon arriving at the Jail, Officer Ashton, a rookie, asked Officer Robertson whether to report the incident. ER 151-52. Under standard Jail procedure, a medical professional was to evaluate Clustka as soon as they arrived at the Jail. Because the officers saw Clustka's behavior as angry, attention-seeking,

and manipulative rather than suicidal, they did not report it. ER 158-59, 187, 192-93, 215-16.

When Officers Ashton and Robertson turned Clustka over to the Jail staff, a registered nurse gave her a standard CPC evaluation. ER 428-30. Nothing in the record indicates that the nurse or anyone else at the Jail asked Officer Ashton or Robertson about Clustka's conduct during their encounter with her. For the fourth time in just over 24 hours, Clustka was examined by a medical professional. The registered nurse asked Clustka a series of questions about any mental instability, anxiety, medical issues, and injuries. *Id.* Clustka denied everything except for a headache. *Id.* Four hours later, after she had sobered up, Clustka was released and served with a Temporary Protective Order (TPO) sought by her mother because of Clustka's domestic battery. ER 44.

Late that night, police again detained Clustka on a CPC and brought her to the emergency room. A physician found no basis for further detaining or treating her and discharged her on April 27. ER 432.

Hours later, on April 27, Clustka returned to her mother's house in violation of the TPO. ER 51-52. There, different officers arrested her for violating the TPO and for domestic violence against her elderly mother. *Id.* After booking, a nurse at the Jail screened her for suicidal tendencies once again. ER 53-58. This was the sixth time in 48 hours that a medical professional evaluated Clustka. Clustka again denied having suicidal ideations or past suicide attempts. *Id.*

The nurse recommended assigning Clustka to the general jail population. ER 36, 56-57. Because of Clustka's history of substance abuse and mental illness, however, she was placed in the mental health unit to alert staff that she was a high-risk inmate. ER 36. A psychiatric nurse was scheduled to examine her the next day. *Id.* On the morning of April 28, Clustka took her life in her jail cell. ER 36, 59-62. Shortly afterward, Officer Ashton arrived at the jail with another arrestee and learned that Clustka had committed suicide. ER 151-53. Officer Ashton eventually wrote a full and detailed report of his interactions with Clustka on April 26. ER 74, 157-59.

B. Proceedings Below

1. Respondents Charla and Dustin Conn, Clustka's adult children, filed this suit in the U.S. District Court for the District of Nevada under 42 U.S.C. § 1983. They sought compensatory and punitive damages, as well as declaratory and injunctive relief, against the City of Reno for its alleged failure to train its law enforcement officers and failure to implement policies to prevent suicides. They sued the city, not Washoe County, even though the Jail is a county agency. They also named Officers Ashton and Robertson as defendants for their alleged deliberate indifference to Clustka's serious medical need. The district court granted summary judgment to Reno and both officers on all claims. App. 73.

2. In an opinion by Judge Reinhardt, the Ninth Circuit reversed.

a. The panel held that a jury could find Reno liable for failing to train its police officers to prevent suicides. Under *Harris*, such liability under § 1983 is possible only if the "city's failure to train reflects deliberate indifference to the constitutional rights of its inhabitants." 489 U.S. at 392. Even though Officers Ashton and Robertson took Clustka to a jail where a medical professional immediately evaluated her, the panel believed that Reno exhibited "deliberate indifference" by failing to train the officers themselves to diagnose suicidal ideations. "[O]fficers predictably face situations where they must assess and react to suicide risks" and "are the first law enforcement officials to deal with detainees . . . in highly stressful situations." *Conn*, 591 F.3d at 1103, App. 47.

According to the panel, the "failure to train officers on how to identify and when to report suicide risks produces a 'highly predictable consequence': that police officers will fail to respond to serious risks of suicide and that constitutional violations will ensue." *Id.*, App. 48. Likewise, the panel held that a jury could find Reno liable for failing to adopt and implement policies to prevent suicides, for two reasons: first, because "there was no written policy on reporting suicide threats"; and second, because "neither Robertson nor Ashton was disciplined for failing to report Clustka's suicide threat, although

each received negative comments about the incident in their annual evaluation." *Id.* at 1104, App. 49-50.

b. The panel also held that a jury could find the officers themselves deliberately indifferent to Clustka's serious medical need, because a jury could find that they "were . . . subjectively aware of" Clustka's need for treatment based on the seatbelt incident and "failed to adequately respond." *Id.* at 1096, App. 30. In addition, the panel rejected the officers' claim of qualified immunity. In the panel's view, "[w]hen a detainee attempts or threatens suicide en route to jail, it is obvious that the transporting officers must report the incident to those who will next be responsible for her custody and safety." *Id.* at 1102, App. 45. Because the panel considered that proposition "obvious," it held that "the constitutional right at issue here has been clearly established." *Id.*

c. Because neither the individual nor municipal-liability claims could be resolved on summary judgment, the panel reversed and remanded to let both proceed to a jury trial.

3. The court of appeals denied a petition for rehearing en banc. 591 F.3d 1081, 1085 (9th Cir. 2010), App. 2. Chief Judge Kozinski, joined by Judges O'Scannlain, Kleinfeld, Tallman, Callahan, Bea, and Ikuta, dissented from the denial of rehearing en banc. *Id.*

a. In the dissenting opinion, Chief Judge Kozinski noted that the State's obligation is simply

"not to purposefully create a risk of harm" to prisoners. *Id.* at 1085, App. 4. He explained that Reno satisfied that duty here. County and city officials gave Clustka multiple medical assessments and treatment. *Id.* at 1086-87, App. 7. They would have given her more had she responded truthfully to the medical professionals' questions. Thus, Reno did not purposefully create opportunities for her to harm herself. *Id.*

More broadly, Chief Judge Kozinski raised grave federalism concerns about the panel's "unprecedented judicial intervention in our local institutions." *Id.* at 1085, App. 3. Democratically elected officials, not judges, are responsible for deciding whether to offer more care and social services. The opinion, he objected, empowers federal judges to "micromanage the police, who in turn will serve as mental health professionals." *Id.* In conjunction with Washoe County, Reno had gone above and beyond its obligations by having multiple sets of medical professionals evaluate Clustka in the 48 hours before she committed suicide. The panel nevertheless found Reno's efforts inadequate, requiring that police officers likewise be trained as "suicide prevention experts." *Id.* at 1086, App. 5. This "novel holding," he feared, will "have far-reaching consequences." *Id.*

Judge Reinhardt's opinion "creates a clear intercircuit split" involving decisions of the First, Third, Fifth, and Eleventh Circuits, Chief Judge Kozinski explained. *Id.* It also conflicts with this Court's decision in *City of Canton* v. *Harris*, 498 U.S. 378

(1989). *Conn*, 591 F.3d at 1086 (Kozinski, C.J., dissenting from denial of rehearing en banc), App. 7 ("'The claim in this case – that police officers were inadequately trained in diagnosing the symptoms of emotional illness – falls far short of the kind of 'obvious' need for training that would support a finding of deliberate indifference. . . .'" (quoting *Harris*, 498 U.S. at 396-97 (O'Connor, J., concurring in relevant part and dissenting in part))). Suicide-prevention policies were in place, and Reno should not be liable simply because the panel thought other policies would be more effective. *Conn*, 591 F.3d at 1087 (Kozinski, C.J., dissenting from denial of rehearing en banc), App. 7-8. Under *Harris*, "deliberate indifference means more than negligence," but the panel's opinion conflates the two. *Id.*, App. 9.

b. Chief Judge Kozinski reasoned that the officers were also entitled to qualified immunity. The officers neither withheld psychiatric care nor interfered with Clustka's treatment. "The panel's denial of qualified immunity in these circumstances means that officers can no longer leave the treatment of medical issues to trained medical professionals. Instead, they must actively assist those professionals by providing any information potentially relevant to a diagnosis." *Id.* at 1088, App. 10. Clearly established law, however, creates no such duty to share information, so the officers should enjoy qualified immunity. *Id.* at 1088-89, App. 11-12. Chief Judge Kozinski noted that the panel's decision on this point

conflicted with case law from the Third Circuit. *Id.* at 1089, App. 12.

c. In conclusion, Chief Judge Kozinski criticized Judge Reinhardt's opinion as "a sweeping and dangerous precedent" that "severely undermine[s] the autonomy of local governments. . . ." *Id.* at 1090, App. 16.

REASONS FOR GRANTING THE WRIT

This case presents two entrenched circuit splits on recurring questions that greatly affect cities and law enforcement officers across the country. In each area – municipal liability and officers' duty to provide medical treatment – the Ninth Circuit's decision conflicts with decisions from this Court.

First, the courts of appeals have split 5-2 on whether municipalities can be held liable for failing to train law-enforcement officers to diagnose detainees' suicidal tendencies. The Ninth Circuit takes the minority side of the split, holding here that the failure to provide such training can satisfy the high standard of deliberate indifference required by *Harris*. Its decision also disregards *Harris*'s admonition that plaintiffs must show that the municipality's training failed to "enable[ ] officers to respond properly to the usual and recurring situations with which they must deal." 489 U.S. at 391. Because the "diagnosis of mental illness is not one of [these] 'usual and recurring situations,'" a mere claim that "police

officers were inadequately trained in diagnosing the symptoms of emotional illness [ ] falls far short of the kind of 'obvious' need for training that would support a finding of [municipal] deliberate indifference. . . ." *Id.* at 396-97 (O'Connor, J., concurring in relevant part and dissenting in part).

Second, the Ninth Circuit's holding regarding the officers' individual liability creates an additional circuit split. While the Ninth Circuit in this case held that the Due Process Clause requires law-enforcement officers to diagnose and report symptoms of mental illness, the First and Third Circuits have reached the opposite conclusion. This Court has held that a showing of deliberate indifference is necessary to make out a claim of constitutionally inadequate care. And it held in *Davidson* v. *Cannon* that a mere failure to communicate in a single case – in *Davidson*, even a negligent failure to communicate – falls well short of satisfying that standard. 474 U.S. 344, 348 (1986). The Ninth Circuit's decision conflicts with that holding.

These issues recur every day across America, as each year well over a million police officers arrest more than fourteen million people. The issues are also crucially important. Detecting suicidal ideations requires a medical diagnosis, one that is even more complicated for intoxicated detainees. This is a needle-in-a-haystack problem: in the Ninth Circuit, officers must now detect and report myriad potential symptoms of suicidal ideations in all 38,000 arrestees each day to prevent less than one actual suicide

among them. Marked improvements might require formal psychological exercises or even clinical training, forcing cities to spend indefinite and potentially devastating amounts of time and money. Only in hindsight can cities know how much training was enough to prevent suicides, and the Constitution does not require perfect foresight. This Court's review is imperative to provide uniform guidance to thousands of cities and millions of officers across the country.

ARGUMENT

I. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH *CITY OF CANTON* v. *HARRIS*, EXACERBATING A SUBSTANTIAL CIRCUIT SPLIT OVER § 1983 MUNICIPAL LIABILITY FOR NOT TRAINING LAW-ENFORCEMENT OFFICERS TO DIAGNOSE SUICIDE RISK

Under this Court's decision in *Harris*, the Ninth Circuit erred in holding a city liable under § 1983 for not training law-enforcement officers to diagnose arrestees' suicidal tendencies. This Court in *Harris* warned that a plaintiff cannot hold a city liable for failure to train merely by "prov[ing] that an injury or accident could have been avoided if an officer had had better or more training," since "[s]uch a claim could be made about almost any encounter resulting in injury. . . ." 489 U.S. at 391. The Ninth Circuit not only disregarded that warning here, but also widened

and deepened a "clear inter-circuit split." *Conn*, 591 F.3d at 1086 (Kozinski, C.J., dissenting from denial of rehearing en banc), App. 5. While the Ninth Circuit's holding accords with a Third Circuit ruling, five federal courts of appeals – the First, Fifth, Sixth, Seventh, and Eleventh Circuits – have rejected such claims. Because the question presented is recurring and important to cities and towns struggling to interpret *Harris*, it merits this Court's review.

A. Since *Harris*, the Circuits Have Divided 5-2 Over a Municipality's Duty to Give Officers Suicide-Diagnosis Training

1. Five Federal Courts of Appeals Have Rejected Municipal Liability for Failure to Train Officers to Diagnose Detainees' Suicidal Tendencies

Five federal courts of appeals have rejected municipal liability under § 1983 for failing to train law-enforcement officers to diagnose suicidal tendencies. In direct conflict with the Ninth Circuit's decision below, these decisions have held that such diagnosis is not a "usual and recurring" part of an officer's job. *See Harris*, 489 U.S. at 391. The circuit split is especially clear in cases factually similar to this one, involving drunk or otherwise intoxicated arrestees who are often belligerent or distraught at being arrested.

In the Fifth Circuit, diagnosing detainees' suicidal ideations is not a typical task expected of police

officers. Thus, the Fifth Circuit has held that a "[f]ailure to train police officers in screening procedures geared toward detection of detainees with suicidal tendencies" does not "rise to the level of a constitutional deprivation. . . ." *Burns* v. *City of Galveston*, 905 F.2d 100, 104 (5th Cir. 1990). In *Burns*, a drunk detainee shouted that if officers did not give him a cigarette "he would kill himself." *Id.* at 101. The officers discounted his behavior as drunken but not suicidal, though he committed suicide less than an hour later. *Id.* at 101-02. His mother filed a § 1983 claim against the city for inadequately training police officers in "medical screening and suicide detection procedures." *Id.* at 103. The district court rejected the claim and granted summary judgment for the city. The Fifth Circuit affirmed. Diagnosing a detainee's suicidal ideations "requires the skills of an experienced medical professional with psychiatric training, an ability beyond that required of the average police officer by the due process clause." *Id.* at 104.

Similarly, the Eleventh Circuit has held that a city's mere failure to train officers to diagnose suicidal tendencies "is insufficient to establish deliberate indifference," as an officer "is not the guarantor of a prisoner's safety" when it comes to suicide detection. *Popham* v. *City of Talladega*, 908 F.2d 1561, 1564 (11th Cir. 1990). Thus, *Popham* affirmed summary judgment for the city on a § 1983 failure-to-train claim based on an intoxicated detainee's suicide. *Id.* The Eleventh Circuit was also unwilling to hold officers individually liable for the suicide without the

clearest proof of actual knowledge. Simply knowing that an inmate has threatened suicide while under the influence of alcohol or drugs does not give officers sufficient "reason to believe" the inmate is actually suicidal. *Id.* at 1564.

Agreeing that municipalities should not be liable for failure to train in these circumstances, the Sixth and Seventh Circuits have suggested that suicide detection is beyond the competence of the typical police officer. In *Barber* v. *City of Salem*, a drunk arrestee had expressed worries that the arrest would harm "his job, his engagement, and his ability to obtain custody of his young son. . . ." 953 F.2d 232, 240 (6th Cir. 1992). He later committed suicide in jail. The court affirmed summary judgment for the officers and the city in a § 1983 suit. It held that officers could not be expected to discern suicidal tendencies and ideations in this drunken speech, as "such a reaction to an arrest for driving under the influence of alcohol could not be considered abnormal. . . ." *Id.* Because the officers never violated the Constitution, the city could not be liable for failing to train them and adopt suicide-prevention policies. *Id.*

Likewise, in a Seventh Circuit case, a detainee explicitly told officers that he had attempted suicide a few days ago, but he was drunk, made the statement in a joking manner, and said he was fine now. *Boncher ex rel. Boncher* v. *Brown Cty.*, 272 F.3d 484, 485-86 (7th Cir. 2001) (Posner, J.). Officers discounted the statement as that of a "happy drunk," but the detainee later committed suicide. *Id.* at 486. Judge

Posner refused to find § 1983 liability for failure to adopt better intake questionnaires or to train officers to diagnose suicidal tendencies: "It is not clear what good the [requested] better training would have done, at least in this case; the basic judgment the intake officers had to make was whether [the inmate] was joking, and that is not a judgment likely to be much assisted by special training." *Id.* at 488 (finding no deliberate indifference or constitutional violation).

The First Circuit has also agreed that suicide detection in intoxicated detainees is not a task that officers must perform. It has held that a city is not deliberately indifferent to the medical needs of "intoxicated and potentially suicidal detainees" simply because it does not train its police officers to detect suicidal tendencies. *Manarite ex rel. Manarite* v. *City of Springfield*, 957 F.2d 953, 959-60 (1st Cir. 1992) (affirming summary judgment for a city in a § 1983 suit predicated on the city's failure to train and educate police officers to detect suicidal tendencies and prevent suicides).

In sum, five federal courts of appeals have rejected municipal liability for failing to train law-enforcement officers to distinguish suicidal tendencies from intoxication. If the Ninth Circuit had applied these circuits' approaches to this case, it would have affirmed the district court's grant of summary judgment for Reno.

2. Two Courts of Appeals Have Allowed Municipal Liability for Failure to Train Officers to Diagnose Suicidal Tendencies in Detainees

In contrast with the above decisions, the Third Circuit has allowed cities to be held liable under *Harris* for failure to train their officers. In *Simmons* v. *City of Philadelphia*, the Third Circuit upheld municipal liability for a city's failure to train its officers to recognize suicidal tendencies in intoxicated detainees. 947 F.2d 1042, 1049 (3d Cir. 1991). Over a vigorous dissent, the court upheld a jury's award of damages against the city. *Simmons* reasoned that "training in the profile of a typical suicidal detainee, the known hours during which suicides were likely to occur, and the need for monitoring by officers or other inmates would have enabled turnkeys to prevent suicides among intoxicated detainees." *Id.* at 1075. The lead opinion also stressed that the city had introduced no evidence that training "would have proved unworkable, ineffective, or too costly," thus requiring cities to justify their policy tradeoffs in court. *Id.* (opinion of Becker, J.).

In the decision below, the Ninth Circuit joined the Third Circuit on this side of the split. *Conn*, 591 F.3d at 1089, App. 12.

3. The Split Is Mature, Entrenched, and Ripe for Resolution by This Court

In the two decades since this Court's opinion in *Harris*, the division over this issue has matured. Opinions on both sides of the circuit split have explicitly discussed, followed, and criticized precedents from sister circuits. *See, e.g.*, *Barber*, 953 F.2d at 239 (Sixth Circuit opinion discussing and adopting the Eleventh Circuit's reasoning in *Popham*); *Simmons*, 947 F.2d at 1096 (Weis, J., dissenting) (quoting the Fifth Circuit in *Burns* while criticizing the Third Circuit for requiring cities to train officers "to medically screen prisoners to detect suicidal tendencies," which would "'requir[e] the skills of an experienced medical professional with psychiatric training'"); *Conn*, 591 F.3d at 1086, App. 6 (Kozinski, C.J., dissenting from denial of rehearing en banc) (pointing out the circuit split over the issue and criticizing the Ninth Circuit for not following the First, Fifth, and Eleventh Circuit's decisions in *Manarite*, *Burns*, and *Popham*).

No consensus is likely to emerge unless this Court intervenes. The Ninth Circuit has not only joined the Third Circuit to deepen the split, but has rejected a petition for rehearing en banc over a strong dissent. The conflict is thus firmly entrenched. Only this Court can resolve it.

B. The Ninth Circuit's Decision Is Erroneous

Contrary to the decision below, *Harris* does not open municipalities to liability for failure to train officers to diagnose detainees' suicidal tendencies. The court's ruling disregarded *Harris*'s instruction not to judge training programs by hindsight or based on tasks beyond police officers' competence. Instead, the Court did precisely what *Harris* warned against. It mistakenly reasoned that because suicide-diagnosis training could possibly have averted the injury in this case, the Constitution required such training. The Ninth Circuit's weakening of *Harris*'s limitation on liability "open[s] municipalities to unprecedented liability under § 1983" and "implicate[s] serious questions of federalism." *Harris*, 489 U.S. at 391-92.

1. The Decision Below Conflicts with *Harris*

The Ninth Circuit erred in treating the diagnosis of detainees' suicidal tendencies as within the scope of police officers' duties. Municipalities may be liable under § 1983 for inadequate police training "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Id.* at 388. Courts must compare the training program with the particular officers' duties. *Id.* at 390. In this case, the city provided Clustka with the assistance of multiple medical professionals with training in mental health. The police officers' duties did not extend that far.

a. This Court in *Harris* took particular care to warn against the danger of reasoning backwards. A municipality ought not be responsible for a particular injury merely because, in hindsight, training directed at that injury might have prevented it. As this Court explained:

> Neither will it suffice to prove that an injury or accident could have been avoided if an officer had had better or more training, sufficient to equip him to avoid the particular injury-causing conduct. Such a claim could be made about almost any encounter resulting in injury, yet not condemn the adequacy of the program to enable officers to respond properly to the *usual and recurring* situations with which *they must* deal.

489 U.S. at 391 (emphases added). Municipalities are charged with training officers (and others) to handle the "usual and recurring situations with which they must deal," not to cure every risk with which they may come into contact. The Court, for instance, noted that when cities provide firearms to police officers, they must train them in the constitutional limits on using deadly force. *Id.* at 390 n.10.

Police officers are expected to carry and to know how to use guns; they are not expected to know how to interpret psychiatric diagnostic manuals. Diagnosing suicidal ideation is not part of the "usual and recurring situations with which" police officers – as opposed to trained medical professionals – "must deal." Thus, a city may not be held liable merely

because it has not trained its police officers to diagnose these psychiatric symptoms. Indeed, Justice O'Connor, joined by Justices Kennedy and Scalia, explained how *Harris*'s holding leads precisely to that conclusion. "The claim in this case – that police officers were inadequately trained in diagnosing the symptoms of emotional illness – falls far short of the kind of 'obvious' need for training that would support a finding of deliberate indifference to constitutional rights on the part of the city." 489 U.S. at 396-97 (O'Connor, J., concurring in relevant part and dissenting in part). That is because "the diagnosis of mental illness," unlike firearm use, "is not one of the 'usual and recurring situations with which [the police] must deal.'" *Id.* at 397; *see id.* at 390 n.10.

b. The Ninth Circuit engaged in just the sort of backward reasoning that *Harris* held would not "suffice" to establish municipal liability. In a key holding, the decision below reasoned that "plaintiffs have provided evidence that officers predictably face situations where they must assess and react to suicide risks in order to prevent grave harm to people under their protection." 591 F.3d at 1103, App. 47. Thus, the Ninth Circuit held, a city's failure to train police officers to diagnose suicidal ideation and tendencies "will fail to respond to serious risks of suicide and . . . constitutional violations will ensue." *Id.*, App. 48.

Police officers, however, face many risks. As this Court emphasized in *Harris*, an after-the-fact assessment of an injury can always uncover additional

training that would have prevented it. The question under *Harris* is not whether training directed to the particular injury in this case could, in hindsight, have potentially prevented it. Rather, the question is whether the city acted with deliberate indifference when it determined that medical professionals, not police officers, should be charged with diagnosing suicidal ideation and tendencies – in other words, whether diagnosing suicidal ideation is one of the "usual and recurring" situations with which *police officers* must deal. As Justice O'Connor's concurrence in *Harris* underscores – and the decisions of the First, Fifth, Sixth, Seventh, and Eleventh Circuits confirm – it is not.

2. The Decision Below Contravenes the Principles of Federalism Reflected in *Harris*

Moreover, the Ninth Circuit's decision conflicts with the principles of federalism central to this Court's decision in *Harris*. *Harris* insisted on demanding standards for liability that would not "engage the federal courts in an endless exercise of second-guessing municipal employee-training programs. This is an exercise we believe the federal courts are ill suited to undertake, as well as one that would implicate serious questions of federalism." 489 U.S. at 392.

Here, the Ninth Circuit second-guessed Reno's training program, seeking to micromanage local law

enforcement in exactly the way that *Harris* sought to foreclose. As noted above, Clustka received repeated medical and psychological evaluations and care before, during, and after her arrests. Nevertheless, the panel held that the Constitution required the city to train its police officers to better diagnose suicide risks and prevent suicides. 591 F.3d at 1103-04, App. 48-49. That holding prevents cities from making the reasonable choice to leave diagnoses of intoxicated inmates' suicidal ideations in the hands of medical professionals. And it holds them liable after the fact if, in hindsight, they incorrectly guessed what precise measures federal courts would later require and what would prevent particular suicides. The Constitution does not require perfect foresight to avoid liability.

II. THE NINTH CIRCUIT ERRONEOUSLY IMPOSED ON OFFICERS A NEW CONSTITUTIONAL DUTY TO DIAGNOSE AND REPORT SUICIDAL TENDENCIES, CREATING A CIRCUIT SPLIT

Only "the 'unnecessary and wanton infliction of pain'" on a prison inmate violates the Eighth Amendment. *Estelle* v. *Gamble*, 429 U.S. 97, 104 (1976) (quoting *Gregg* v. *Georgia*, 428 U.S. 153, 173 (1976)). When inmates allege failure to provide medical care, they must prove that officials were "deliberate[ly] indifferen[t] to [their] serious medical needs." *Estelle*, 439 U.S. at 106. Pretrial detainees enjoy at least as much protection under the Due Process Clause of the

Fourteenth Amendment as prison inmates receive under the Eighth Amendment. *Bell* v. *Wolfish*, 441 U.S. 520, 545 (1979). Thus this Court, the decision below, and other courts use the deliberate-indifference standard to gauge the medical care owed to pretrial detainees. *See, e.g.*, *Conn*, 591 F.3d at 1094 & n.3, App. 26 & n.3 (collecting cases); *City of Revere* v. *Mass. Gen. Hosp.*, 463 U.S. 239, 243-44 (1983).

Deliberate indifference requires "something more than mere negligence" or carelessness. *Farmer* v. *Brennan*, 511 U.S. 825, 835 (1994). Yet the Ninth Circuit held that officers' simple failure to diagnose and share medical information could amount to deliberate indifference. That holding not only conflicts with this Court's and federal circuit precedents, but erroneously lowers the bar for officer liability and disregards settled principles of qualified immunity.

A. The Decision Below Conflicts with Circuit Decisions That Reject Liability for Law-Enforcement Officers' Mere Failure to Diagnose and Communicate Suicide Information

1. Other Circuit Decisions Have Held That Officers' Failure to Diagnose and Report Suicidal Tendencies Does Not Amount to Deliberate Indifference

Other federal circuit decisions have held that, as a matter of law, officers' failure to diagnose and share medical information potentially relevant to a detainee's

suicide is not deliberate indifference, but at most negligence. Those holdings conflict with the decision below.

The Third Circuit has repeatedly rejected § 1983 liability for failure to pass on information about a detainee's past suicide attempts and tendencies. In *Freedman* v. *City of Allentown*, Freedman's probation officer knew that Freedman had attempted suicide and had "suicidal tendencies." 853 F.2d 1111, 1113 (3d Cir. 1998). He spoke with a police detective who was questioning Freedman at the police station, but failed to mention the risk of suicide. *Id.* at 1111, 1113, 1117. An hour after his arrest, Freedman committed suicide. *Id.* at 1113.

Nevertheless, the court affirmed the dismissal of the § 1983 complaint. Though the complaint alleged that the probation officer's failure to relay the information was intentional, the court found no evidence of intent to conceal Freedman's past suicidal tendencies. *Id.* at 1113, 1117. While the probation officer may well have been negligent, the court ruled that his failure to pass along the information about Freedman's suicide attempt and tendencies did not amount to deliberate indifference. *Id.* at 1117.

Likewise, in *Williams* v. *Borough of West Chester*, the court found no liability when a dispatching officer failed to communicate information about a pretrial detainee's suicidal tendencies. 891 F.2d 458, 466-67 (3d Cir. 1989). Williams was jailed at the police station. The dispatching officer there knew that

Williams had threatened and attempted suicide several times; but the officer never communicated that information to anyone else. *Id.* at 462-63. Less than an hour after being put in a cell, Williams committed suicide. *Id.* at 462. Citing *Freedman*, the Third Circuit granted summary judgment for the dispatcher on a § 1983 claim. "[E]ven though [the dispatching officer] knew of [Williams's] past suicide attempts," no reasonable jury could find that he was deliberately indifferent. *Id.* at 466-67.

Though its facts are not identical, an analogous First Circuit case likewise declined to hold an officer liable for failing to diagnose and report potential symptoms of suicidal tendencies, even though the detainee later committed suicide. In *Elliott* v. *Cheshire County*, an eighteen-year-old boy had attacked his mother and threatened his father with a corn sickle and a chainsaw. 940 F.2d 7, 9 (1st Cir. 1991). When the officer arrived on the scene, the mother told him about the boy's schizophrenia and troubled past. *Id.* The officer delivered the boy to the county house of corrections but told no one there of the mother's warnings. *Id.* The boy committed suicide, and his family sued under § 1983 "for failure to inform the booking officer of [the boy's] medical history." *Id.* at 9, 12. Nevertheless, the First Circuit affirmed summary judgment in favor of the officer. Even though the court had to draw all factual inferences favorable to the boy, it found no "reason to suspect" that the officer knew of a suicide risk. *Id.* at 12. The officer knew of the boy's schizophrenia and bizarre behavior, but he

was not liable for failing to infer and warn jailers of facts suggesting that he needed close medical supervision.

2. The Decision Below Created a Circuit Conflict, Holding Officers Liable for Failing to Diagnose and Share Suicide Information with Jailers

If the Ninth Circuit had applied the First and Third Circuits' cautious approach to this case, it would have affirmed the district court's grant of summary judgment. Instead, the Ninth Circuit's decision below found that officers have a constitutional duty to diagnose and report suicidal tendencies to jailers. Without explanation, Judge Reinhardt's opinion asserted that "it is obvious that the transporting officer must report the [suicidal] incident to those who will next be responsible for her custody and safety." *Conn*, 591 F.3d at 1102, App. 45. That approach contradicts the First and Third Circuits' decisions discussed above.

B. The Ninth Circuit Erred by Relaxing the Deliberate-Indifference Standard to Include Mere Negligence and by Diluting the Protections of Qualified Immunity

In holding that the officers could be liable for failing to diagnose and report suicidal tendencies, the court below made two errors. First, it watered down

the deliberate-indifference standard, holding officers liable for what was at most negligence. As this Court has held, an officer's failure to share information critical to an inmate's health and safety does not amount to deliberate indifference. Second, it held the officers potentially liable even though qualified immunity should have shielded them. The standard articulated in the decision below is novel, creating a new duty to share information. Novel legal standards are not clearly established law, and officers cannot be held liable in hindsight for failing to anticipate them.

1. Deliberate Indifference Requires More Than Careless Failure to Communicate Potentially Relevant Medical Information

This Court has repeatedly distinguished deliberate indifference from mere negligence or carelessness. *See, e.g.*, *Farmer*, 511 U.S. at 835; *Estelle*, 429 U.S. at 105-06. "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize" violations of an inmate's right to receive treatment for serious medical needs. *Whitley* v. *Albers*, 475 U.S. 312, 319 (1986). Deliberate indifference is a much more demanding standard than negligence.

More specifically, this Court has held that law-enforcement officers' mere failure to communicate falls well short of deliberate indifference. In *Davidson* v. *Cannon*, one inmate (McMillan) threatened to violently attack another (Davidson). 474 U.S. 344, 345

(1986). Davidson relayed a note about the threat to the assistant prison superintendent on a Friday. *Id.* The assistant superintendent "mistakenly believed that the situation was not particularly serious" and simply passed it on to a corrections sergeant. *Id.* at 345, 348. The corrections sergeant was told of the note's contents, left it on his desk unread, and forgot about the note. He left for the weekend without passing along the information or warning the officers on duty. *Id.* at 345. Not having been warned, the prison staff took no precautions, and McMillan attacked and seriously injured Davidson. *Id.*

Davidson sued the assistant superintendent and the sergeant under § 1983, claiming that the breakdown in communications violated the Eighth Amendment and the Fourteenth Amendment's Due Process Clause. *Id.* at 346. This Court held that the officers' negligence fell far short of Eighth Amendment deliberate indifference or even the looser due process standard. "Respondents' lack of due care in this case led to serious injury, but that lack of care simply does not approach the sort of abusive government conduct that the Due Process Clause was designed to prevent." *Id.* at 347-48.

Like the assistant superintendent and corrections sergeant in *Davidson*, petitioners Ashton and Robertson arguably erred in not identifying Clustka's threats as serious and reporting them. They understandably saw Clustka as drunk, angry, and manipulative rather than suicidal. While their single instance of not passing along Clustka's threats to

prison guards may perhaps have been negligent, under *Davidson* it falls far short of deliberate indifference. *See Freedman*, 853 F.2d at 1117 (relying on *Davidson* in holding that the failure to report information about suicidal tendencies could not rise to the level of deliberate indifference).

Indeed, this Court has emphasized that it is not enough that the official be on notice of a serious safety risk to a person and fail to prevent it. To be liable, an "official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, *and he must also draw the inference*." *Farmer*, 511 U.S. at 837 (emphasis added). "[A]n official's failure to alleviate a significant risk that he should have perceived but did not" does not violate the Constitution. *Id.* at 838.

The Ninth Circuit's affirmance of potential liability is even more egregious for three reasons. First, there is no basis here to find either deliberate indifference to a known risk or causation. Second, the officers transferred Clustka to the Jail where, pursuant to standard procedure, a medical professional screened her for suicide risk. Third, she did not commit suicide until after a later rearrest and another medical screening. The Ninth Circuit has thus distorted the law under the Fourteenth Amendment and § 1983. This Court should redress the Ninth Circuit's aberrant decision.

2. Officers Ashton and Robertson Are Entitled to Qualified Immunity, As the Ninth Circuit's Novel Constitutional Duty Was Not Clearly Established Law at the Time

Government officials are immune from civil damages if they do not violate clearly established legal rights. *Harlow* v. *Fitzgerald*, 457 U.S. 800, 812 (1982). The right must have been clear enough at the time that a reasonable official would have understood that he was violating that right. *Anderson* v. *Creighton*, 483 U.S. 635, 640 (1987). "If judges . . . disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy." *Wilson* v. *Layne*, 526 U.S. 603, 618 (1999). Thus, circuit splits are relevant to assessing clarity and can prevent a rule from being clearly established. *Id.*; *United States* v. *Lanier*, 520 U.S. 259, 269 (1997).

In April 2005, officers had no clearly established constitutional duty to diagnose and report suicidal tendencies to jailers. The First and Third Circuits, in *Freedman*, *Williams*, and *Elliott*, had held to the contrary, finding the absence of reporting in those cases to be at most negligence. Even this Court in *Davidson* had held that failure to share information about a threat was a mere lack of due care, not actionable deliberate indifference. The case law gave petitioners no fair warning that their failure to report an isolated incident could subject them to monetary liability.

The Ninth Circuit erred in asserting, without citing any authority, that law-enforcement officers bore an "obvious" duty to report the seatbelt incident. It is not at all obvious. At least where officers are taking a detainee to a place where the detainee routinely will receive a medical evaluation, they reasonably can leave the inquiry into symptoms and diagnosis to the medical professional.

III. THE BOUNDS OF MUNICIPALITIES' AND OFFICERS' CONSTITUTIONAL DUTIES TO DETAINEES ARE IMPORTANT AND RECURRING QUESTIONS

A. These Issues Affect Thousands of Local Law-Enforcement Agencies

This case presents questions of great importance to law enforcement agencies throughout the nation. Cities, townships, and police officers are receiving mixed signals on whether their suicide-prevention efforts are constitutionally adequate. In some circuits, cities must create policies and programs to train officers to diagnose detainees' suicidal tendencies. In other circuits, cities are free to leave these complicated judgment calls to medical professionals. And while some circuits hold individual officers liable for failing to diagnose and report symptoms of suicidal tendencies, others do not. Twenty years after *Harris*, there are still "no clear constitutional guideposts for municipalities" or officers regarding their potential liability for failing to "diagnos[e] the symptoms of emotional illness" in detainees. *Harris*, 489 U.S. at

396-97 (O'Connor, J., concurring in relevant part and dissenting in part).

These circuit splits reflect a fundamental divide over cities' and towns' freedom to define law-enforcement officers' roles. As a result, thousands of law-enforcement agencies must choose between dramatically altering their suicide-prevention measures and risking § 1983 liability. Municipalities suffer further because they lack clear guidance from those circuits that obligate them to train and adopt policies. The case law is unclear on what kind of training is necessary, whether it must involve extensive psychological and medical instruction, and how far individual officers must go to diagnose detainees.

Officers are neither used to nor prepared for serious mental-health duties. They typically rely on psychiatrists, physicians, nurses, and social workers in jails and hospitals to handle these professional medical questions. Cities and police officers, struggling to determine their constitutional duties, would greatly benefit from this Court's resolution of these issues.

B. Guidance Is Especially Important Given the Frequency of Alcohol-Related Arrests

This Court's resolution is particularly important because police officers detain thousands of intoxicated people like Cluskta every day. In 2005, police officers arrested more than 7000 people each day for alcohol-related violations. *Sourcebook of Criminal Justice*

Statistics Online, tbl. 4.28.2005, *available at* http://www.albany.edu/sourcebook/pdf/t4282005.pdf. The total number of intoxicated arrestees was probably much higher, as many intoxicated persons are arrested for non-alcohol-related crimes.

Thus, officers constantly interact with intoxicated detainees like Clustka. Drunk arrestees are often belligerent or distraught at being arrested, but they rarely commit suicide. In 2005, less than one detainee per day, arrested for any crime, committed suicide while in jail. *Id.* tbl. 6.0012.2005, *available at* http://www.albany.edu/sourcebook/pdf/t600122005.pdf. The Ninth Circuit's ruling requires officers to determine each day which of more than 7000 intoxicated arrestees (and 38,000 total arrestees) have potentially suicidal symptoms that might result in a single suicide within that haystack. This Court should give police officers and municipalities clearer guidance on their medical and clinical duties to these arrestees, since these interactions occur every day.

IV. THIS CASE IS AN EXCELLENT VEHICLE

This case is an excellent vehicle for resolving the entrenched circuit splits over municipal and officer liability. The factual record is clean and essentially undisputed. Petitioners denied the alleged constitutional duties at every stage of the proceedings, arguing that Reno and its officers are entitled to leave these diagnoses to medical professionals. The opinions below explicitly debated these issues and

squarely decided them. In particular, the Ninth Circuit's decision clearly held that the Constitution imposes specific suicide-detection and diagnosis obligations on cities and law-enforcement officers. These extensions of municipal and officer liability provoked an extensive dissent from denial of rehearing en banc by seven circuit judges. Moreover, this Court's resolution of the matter in favor of Reno and Officers Ashton and Robertson would determine the outcome in this case.

Doctrines of qualified immunity and municipal liability are designed not only to preclude money damages, but also to spare cities and officers the burden of litigation and trial. Thus, this Court has repeatedly reviewed denials of summary judgment in cases interpreting the scope of § 1983 and qualified immunity. *See, e.g., Scott* v. *Harris*, 550 U.S. 372, 376 n.2 (2007); *County of Sacramento* v. *Lewis*, 523 U.S. 833, 837-38 (1998); *Hunter* v. *Bryant*, 502 U.S. 224, 227-28 (1991) (noting that "because '[t]he entitlement is an *immunity from suit* rather than a mere defense to liability,' we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage of the litigation" (alteration in original) (internal citation omitted) (quoting *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (1985))); *Mitchell*, 472 U.S. at 530 (holding that a "denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment").

On review of summary judgment, this Court can take the facts as given in the light most favorable to the non-movant. This posture eliminates factual disputes and focuses on issues of law. This case thus presents an ideal vehicle for determining cities' and officers' obligations to detect and diagnose suicidal tendencies in intoxicated detainees.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari. In the alternative, it should summarily reverse the decision below and reinstate the district court's entry of summary judgment in favor of petitioners on all counts.

Respectfully submitted,

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