No. 24-677

In the Supreme Court of the United States

VICTOR HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner, a county sheriff, had fair notice that injuring compliant and nondisruptive pretrial detainees through hours-long sessions in a restraint chair, for punitive purposes, deprived them of their constitutional rights, in violation of 18 U.S.C. 242.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-53a) is reported at 99 F.4th 1289. The order of the district court (Pet. App. 64a-72a) is available at 2022 WL 1421771. The report and recommendation of the magistrate judge (Pet. App. 73a-102a) is available at 2021 WL 8825265.

JURISDICTION

The court of appeals entered its judgment on April 29, 2024. A petition for rehearing was denied on August 22, 2024 (Pet. App. 103a-104a). On November 12, 2024, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including December 20, 2024, and the petition was filed on December 18, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Georgia, petitioner was convicted on six counts of willfully depriving persons of their constitutional rights under color of law, in violation of 18 U.S.C. 242. Pet. App. 54a-56a. The district court sentenced petitioner to 18 months of imprisonment, to be followed by three years of supervised release. *Id.* at 57a-58a. The court of appeals affirmed. *Id.* at 1a-53a.

1. Petitioner was the sheriff of Clayton County, Georgia. Pet. App. 3a. One of his responsibilities was overseeing the county jail, including the detention of people awaiting trial. *Ibid.* As sheriff, petitioner received annual trainings on excessive force. *Ibid.* Based on that training, he adopted a policy for the jail defining excessive force as "any force used in excess of the amount of force reasonably required to establish control over or to prevent or terminate an unlawful act of violence." *Ibid.*

In 2018, petitioner obtained restraint chairs for the jail and established a policy governing their use. Pet. App. 3a, 5a. The policy provided that restraint chairs were intended "for emergencies," such as "safe containment of an inmate exhibiting violent or uncontrollable behavior" and preventing "self-injury, injury to others or property damage." *Id.* at 5a. The policy further specified that detainees were to be "kept in the restraint chair no longer than four (4) hours unless exigent circumstances exist" and that restraint chairs could "never be authorized as a form of punishment." *Ibid.*

Petitioner nonetheless used the restraint chairs on six pretrial detainees who were not "violent, uncontrollable, or threatening" during arrest or booking. Pet.

App. 6a; see *id.* at 6a-11a. In some cases, the detainees were forced to stay in the chairs for longer than four hours, without any break, even to use the restroom. See *id.* at 6a-11a. And all of the detainees experienced significant pain—described as, *inter alia*, "the worst thing [the detainee had] ever felt" or "torture"—along with scarring, marking, or other injuries as a result. *Id.* at 6a, 9a.

First, in December 2019, after Raheem Peterkin allegedly "point[ed] a gun at two men outside his apartment," officers arrested him and brought him to jail. Pet. App. 6a. Petitioner and a team of security officers visited Peterkin's holding cell and questioned him about his alleged offenses. *Ibid.* Petitioner told Peterkin that if he had been present for the offenses, he "would have riddled [Peterkin's] ass with bullets." *Ibid.* Petitioner then directed the security officers to "put that bitch in the chair." *Ibid.* Peterkin was strapped in the chair for four hours and forced to urinate on himself. *Ibid.*

Second, in February 2020, officers arrested Desmond Bailey for drug and firearm possession. Pet. App. 6a. After being taken to jail, Bailey refused to answer petitioner's questions without a lawyer present. *Id.* at 7a. Petitioner replied: "You think you're a big badass. Oh, you think you're a gangster. Put his ass in the chair." *Ibid.* Bailey was strapped in the chair for six hours, where he "suffer[ed] 'open and bleeding' cuts on both wrists." *Ibid.*

Third, in February 2020, officers arrested Joseph Arnold for assault approximately three weeks after the alleged incident. Pet. App. 7a. When Arnold arrived at the jail, he asked petitioner whether he was entitled to a fair and speedy trial. *Ibid.* Petitioner responded that Arnold was "entitled to sit in this chair" and "to get the

hell out of [his] county." *Id.* at 8a. Arnold was then strapped in the chair for at least four hours. *Ibid.*

Fourth, in April 2020, officers arrested Cryshon Hollins for vandalizing his family's home. Pet. App. 8a. Petitioner asked the deputy sheriff for Hollins's age, and when the deputy stated that Hollins was 17, petitioner responded: "Chair." *Ibid.* Hollins was strapped in the chair "immediately upon his arrival at the jail." *Ibid.* Hollins cried because "he felt like he was 'being tortured'" and was forced to urinate on himself. *Id.* at 8a-9a. Officers released Hollins after four to five hours, after which Hollins fell asleep in a holding cell. *Id.* at 9a. An hour later, petitioner scolded Hollins for disrespecting his mother and ordered Hollins to be returned to the chair. *Ibid.* Hollins was strapped in the chair for another five- to six-hour stint, during which petitioner recorded a video threatening to "sit [Hollins's] ass in that chair for sixteen hours straight" if he "mess[ed] up [his] mama's house again." *Ibid.* Petitioner texted the video to his girlfriend. *Ibid.*

Fifth, in April 2020, petitioner and a man named Glen Howell had a verbal altercation by phone, after which petitioner instructed a deputy to prepare a warrant to arrest Howell for misdemeanor harassing communications. Pet. App. 9a-10a. When Howell turned himself in, petitioner "ordered deputies to 'put [Howell] in the chair.'" *Ibid.* (brackets in original). Howell was strapped in the chair for a four-hour span, during which officers denied his request for a medic. *Ibid.* Petitioner told Howell that he was "going to teach [him] a lesson" and that "if [Howell] crossed him or one of his deputies again, it [would] be the sniper team." *Ibid.* (second and third set of brackets in original).

Sixth, in May 2020, an officer arrested Walter Thomas for speeding and driving with a suspended license. Pet. App. 11a. In a holding cell at the jail, an officer told Thomas not to put his head against the wall. *Ibid.* When Thomas turned to look at the officer, a group of officers pinned Thomas against the wall. *Ibid.* Petitioner then ordered Thomas to be strapped in the chair, where he remained for five or six hours. *Ibid.* While petitioner was present, officers punched Thomas in the face, causing a bruised lip. *Ibid.* Thomas cried and urinated on himself several times. *Ibid.*

2. In April 2021, a grand jury in the Northern District of Georgia charged petitioner with willfully depriving pretrial detainees of the constitutional right to be free from the use of unreasonable force by law enforcement officers, in violation of 18 U.S.C. 242. Pet. App. 12a. Superseding indictments added additional, similar counts. See D. Ct. Doc. 24 (July 29, 2021); D. Ct. Doc. 49 (Mar. 16, 2022).

The district court denied petitioner's motion to dismiss the indictment. Pet. App. 64a-72a. The court explained that petitioner had "fair warning or notice" that his conduct "was criminal according to clearly established law." *Id.* at 67a. The court observed that "the Eleventh Circuit's well-defined case law preclud[es] the use of force against a detainee who has stopped resisting, absent any legitimate nonpunitive governmental purpose to continue such restraint." *Id.* at 70a. And the court found that here, the indictment alleged that "no such legitimate governmental purpose exist[ed]" for petitioner's use of the restraint chair against the pretrial detainees. *Ibid.* The court emphasized that petitioner's conduct "appear[s] to be quite different" from officers'

use of restraints due to "security concerns outside of a jail and maintaining order within a jail." *Ibid.*

The jury found petitioner guilty on six of the seven charged counts. Pet. App. 16a; D. Ct. Doc. 94 (Oct. 26, 2022). The district court sentenced petitioner to 18 months of imprisonment —"a 'significant' downward variance" from petitioner's Guidelines range. Pet. App. 17a.

3. The court of appeals affirmed. Pet. App. 1a-53a.

Like the district court, the court of appeals found that petitioner "had fair warning that his conduct was unconstitutional—that is, that he could not use gratuitous force against a compliant, nonresistant detainee." Pet. App. 2a. The court recognized that "[c]riminal liability attaches under § 242 only if case law provides the defendant 'fair warning' that his actions violated constitutional rights." *Id.* at 18a (citation omitted). And the court observed that "[h]ere, a 'broad statement of principle'" within the "case law clearly established that the use of force on compliant, nonresistant detainees is excessive." *Id.* at 21a (citation omitted).

The court of appeals identified *Hope* v. *Pelzer*, 536 U.S. 730 (2002), as "the closest Supreme Court case on point" because "it stands for the proposition that restraint, especially prolonged and painful restraint, without any legitimate penological purpose is constitutionally impermissible punishment." Pet. App. 22a. The court also cited "[s]everal" of its own decisions illustrating that same point. *Id.* at 23a. And the court "note[d] that several of [its] sister circuits ha[d] also concluded that, while restraint-chair use may be proper if a detainee is violent or noncompliant, it is impermissible once the detainee is compliant or subdued." *Id.* at 25a n.12.

The court of appeals accordingly found that petitioner's conduct here ran counter to "clearly established" precedent. Pet. App. 25a. The court emphasized that "no need for force existed, the detainees were not 'actively resisting,' and [petitioner] could not have 'reasonably perceived' any 'threat' from the detainees' compliant behavior." *Ibid.* (citation omitted). "Yet," the court observed, "[petitioner] still ordered each detainee into a restraint chair for at least four hours with his hands cuffed behind his back, without medical observation, and without bathroom (or other) breaks." *Ibid.*

The court of appeals also reasoned that "[e]ven accepting [petitioner's] 'legitimate . . . purpose' of maintaining jail security," petitioner's "protracted restraint-chair use was 'excessive in relation to that purpose.'" Pet. App. 25a-26a (citation omitted). The court made "clear" that it was not "suggest[ing] that officers may never use 'passive restraint' if the restrained individual is not actively resisting." *Id.* at 26a. And it explicitly acknowledged that "[o]fficers sometimes have a 'legitimate nonpunitive . . . purpose'" for "restraining a compliant individual, such as ensuring officer safety when transporting a pretrial detainee to his arraignment." *Ibid.* (citation omitted).

"But here," the court of appeals observed, "[petitioner] had no legitimate purpose for ordering compliant, nonresistant detainees who were in the secure jail environment into restraint chairs for at least four hours." Pet. App. 26a. And it accordingly found both that petitioner's use of force was "excessive" and that its "precedent gave him fair warning of that fact." *Ibid.*

Judge Marcus issued a concurring opinion. Pet. App. 46a-53a. In that opinion, he made clear that on the fair-notice issue, he "ha[d] no doubt [petitioner] had fair

warning that he violated the constitutional rights of six detainees when he ordered them strapped into a painful restraint chair for four or more hours for no legitimate reason associated with maintaining safety and good order in a county jail." *Id.* at 46a.

ARGUMENT

Petitioner renews (Pet. 10-30) his contention that he lacked fair warning that he violated pretrial detainees' constitutional rights. The lower courts correctly rejected that contention because Supreme Court and Eleventh Circuit precedent provided notice that government officials may not use force against compliant pretrial detainees absent a legitimate, nonpunitive purpose. The decision below does not conflict with any decision of this Court or another court of appeals. No further review is warranted.

1. a. Under 18 U.S.C. 242, it is unlawful to "willfully" and "under color of any law" deprive a person "of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." To be convicted under Section 242, a defendant must have "fair warning" that the statute prohibits his conduct. *United States* v. *Lanier*, 520 U.S. 259, 266 (1997). That standard is satisfied "if, but only if, 'in the light of pre-existing law,'" the illegality of the defendant's conduct under the Constitution is "apparent." *Id.* at 271-272 (quoting *Anderson* v. *Creighton*, 483 U.S. 635, 640 (1987)). The standard is "the same as the standard for determining whether a constitutional right was 'clearly established' in civil litigation under § 1983." *Hope* v. *Pelzer*, 536 U.S. 730, 740 (2002).

Fair warning does not require "precedents that applied the right at issue to a factual situation that is 'fundamentally similar'" to the defendant's case. *Lanier*,

520 U.S. at 269. A defendant may have fair warning despite "notable factual distinctions" between his case and prior judicial decisions. *Ibid.* And in some cases, "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though 'the very action in question has [not] previously been held unlawful.'" *Id.* at 271 (quoting *Anderson*, 483 U.S. at 640) (brackets in original); see, *e.g.*, *Williams* v. *United States*, 341 U.S. 97, 101 (1951) (upholding Section 242 conviction and explaining that, whatever the precise "scope and meaning of the Due Process Clause," it was "as plain as a pikestaff" that the police there "deprived the victim of a right under the Constitution").

b. The relevant constitutional protection here is the right of pretrial detainees to be free from "excessive" force. Pet. App. 18a. Under this Court's precedents, "[i]t is clear * * * that the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment." *Graham* v. *Connor*, 490 U.S. 386, 395 n.10 (1989). Force used against a pretrial detainee is "excessive" if it is "objectively unreasonable," *Kingsley* v. *Hendrickson*, 576 U.S. 389, 396-397 (2015) —that is, if "objective evidence" shows "that the challenged governmental action is not rationally related to a legitimate governmental" purpose or is "excessive in relation to that purpose," *id.* at 398. "[I]mportantly," punishment is not a legitimate purpose because "pretrial detainees (unlike convicted prisoners) cannot be punished at all." *Id.* at 400.

In determining whether force was objectively unreasonable, a court must consider, among other things, "the relationship between the need for the use of force and the amount of force used; the extent of the

[detainee]'s injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the [detainee] was actively resisting." *Kingsley*, 576 U.S. at 397. The court must also "take account of the legitimate interests in managing a jail" and "maintain[ing] order and institutional security." *Id.* at 399-400.

c. The court of appeals correctly identified clearly established law under which petitioner's "use of restraint chairs on compliant, nonresistant detainees" was excessive and violated those detainees' constitutional rights. Pet. App. 22a. In *Hope*, this Court held that prison guards "obvious[ly]" violated the Eighth Amendment by handcuffing a prisoner to a "hitching post" for seven hours after the prisoner "had already been subdued." 536 U.S. at 738. "Despite the clear lack of an emergency situation," the guards "knowingly subjected" the prisoner to "unnecessary pain" and "deprivation of bathroom breaks," contributing to the "punitive treatment" that the Court's "precedent clearly prohibits." *Ibid.* And while *Hope* involved a convicted prisoner and thus arose under the Eighth Amendment instead of the Fourteenth Amendment, "[c]onduct that violates the clearly established rights of convicts necessarily violates the clearly established rights of pretrial detainees." *Blackmon* v. *Sutton*, 734 F.3d 1237, 1241 (10th Cir. 2013) (Gorsuch, J.).

Eleventh Circuit precedent likewise draws a "clear[] line." Pet. App. 23a. In *Danley* v. *Allen*, 540 F.3d 1298 (2008), the Eleventh Circuit explained that "[w]hen jailers continue to use substantial force against a prisoner who has clearly stopped resisting—whether because he has decided to become compliant, he has been subdued,

or he is otherwise incapacitated—that use of force is excessive." *Id.* at 1309. And applying that principle, the court concluded that jail guards used "excessive" force by confining a pretrial detainee "in [a] small, poorly ventilated, pepper spray-filled cell" for 20 minutes after he had already been "disabled" by pepper spray. *Ibid.*

Similarly, in *Piazza* v. *Jefferson County*, 923 F.3d 947 (2019), the Eleventh Circuit observed that "because force in the pretrial detainee context may be defensive or preventative—but never punitive—the continuing use of force is impermissible when a detainee is complying, has been forced to comply, or is clearly unable to comply." *Id.* at 953. Thus, the court held that a prison guard "crossed the constitutional line, and clearly so, when, having already tased [a pretrial detainee] once—dropping him to the floor, rendering him motionless, and causing him to urinate on himself—[the guard] shocked [the detainee] again a full eight seconds later." *Id.* at 950.

In light of the foregoing authorities, petitioner had fair warning that his "use of force was constitutionally excessive." Pet. App. 20a. The six pretrial detainees described above "were not 'actively resisting,'" and petitioner "could not have 'reasonably perceived' any 'threat' from the detainees' compliant behavior." *Id.* at 25a (quoting *Kingsley*, 576 U.S. at 397). Yet petitioner "still ordered each detainee into a restraint chair for at least four hours with his hands cuffed behind his back, without medical observation, and without bathroom (or other) breaks." *Ibid.* Accordingly, "a jury reasonably could have concluded"—as the jury in petitioner's case evidently did—"that [petitioner] authorized chair use *purely* as a form of punishment." *Id.* at 29a. And the use of force for such impermissible "punitive" purposes

was by definition "'excessive.'" *Piazza*, 923 F.3d at 953 (citation omitted); see, *e.g.*, Pet. App. 9a (explaining that petitioner ordered a 17-year-old detainee back into the chair for five to six hours even after he had fallen asleep in his cell).

2. Petitioner's contrary arguments lack merit. Petitioner asserts (Pet. 14) that he lacked fair warning because the facts of this case were purportedly "novel." But in applying Section 242, this Court has expressly rejected any requirement that the government identify "a case with facts 'fundamentally similar' to the case being prosecuted." *Lanier*, 520 U.S. at 268 (citation omitted). And it has rejected a lower court's requirement that precedent apply with an "extreme level of factual specificity * * * in every instance." *Ibid.* Instead, the Court has "upheld convictions" under Section 242 "despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights." *Id.* at 269; see *id.* at 269-270 (citing cases). For the reasons explained above, petitioner had such warning here.

Petitioner next faults (Pet. 17) the court of appeals for relying in part on "the *Kingsley* factors" to "gaug[e] fair warning." But while those factors are not "exclusive," they do "illustrate the types of objective circumstances potentially relevant to a determination of excessive force." *Kingsley*, 576 U.S. at 397. And where, as here, multiple factors point in the same direction—*e.g.*, the victim's lack of "active[] resist[ance]" and a wide disparity "between the need for the use of force and the amount of force used"—those factors can indicate that the defendant had fair warning that his force was excessive. *Ibid.*

Petitioner also contends (Pet. 19) that the Eleventh Circuit's *Piazza* decision is distinguishable because it involved "an actively resisting detainee who had already been subdued." If anything, however, that distinction shows that petitioner's conduct was *more* egregious than that of the prison guard in *Piazza*. Here, none of the pretrial detainees was "actively resisting" to begin with—petitioner instead sought just to inflict pain for punitive purposes. See Pet. App. 3a-12a. For instance, petitioner ordered 17-year-old Cryshon Hollins to be strapped into the chair "immediately upon his arrival at the jail," even though he "was never violent, uncontrollable, or threatening." *Id.* at 8a. And petitioner directed that Desmond Bailey be strapped into the restraint chair after he simply declined "to answer questions without a lawyer present" in "his holding cell." *Id.* at 7a.

Petitioner's reliance (Pet. 24-25) on *Williams* v. *Burton*, 943 F.2d 1572 (11th Cir. 1991) (per curiam), cert. denied, 505 U.S. 1208 (1992), is misplaced. There, the Eleventh Circuit found no liability where prison guards restrained the plaintiff because he "was trying to incite other inmates to join him in a prison disturbance," and kept him there only until they "'were reasonably assured that the situation had abated.'" *Id.* at 1575-1576. Here, in contrast, there was no "situation" to "abate[]": petitioner's victims were compliant and incited no disturbances. Rather than using the restraint chair to avert "a significant security concern," *id.* at 1575, petitioner openly used the restraint chair "to teach [the victims] a lesson," Pet. App. 10a.

Petitioner also errs in positing (Pet. 29) that the decision below itself acknowledges a lack of fair notice by recognizing that officers may sometimes use passive

restraints even "if the restrained individual is not actively resisting." Pet. App. 26a. As the decision makes clear, that is because "[o]fficers sometimes have a 'legitimate nonpunitive purpose' for restraining a compliant individual, such as ensuring officer safety when transporting a pretrial detainee to his arraignment." *Ibid.* (citation and ellipsis omitted). "But here," petitioner "had no legitimate purpose for ordering compliant, nonresistant detainees who were in the secure jail environment into restraint chairs for at least four hours." *Ibid.*

Finally, petitioner takes issue (Pet. 20) with the Eleventh Circuit's "recitation of facts." But disputes that "turn[] entirely on an interpretation of the record in one particular case" are the "quintessential example of the kind that [this Court] almost never review[s]." *Taylor* v. *Riojas*, 592 U.S. 7, 11 (2020) (per curiam) (Alito, J., concurring in the judgment); see Sup. Ct. R. 10. In any event, petitioner's factual arguments focus mainly on the detainees' conduct *before* they entered the jail. Nothing suggests as a legal matter that such conduct could justify petitioner's application of punitive measures *in* the jail, where all the victims were cooperative. Petitioner was not entitled to take it upon himself to punish the detainees for their behavior in the outside world —that is the role of the judicial system, which guarantees due process before any punishment is imposed.

3. The court of appeals expressly agreed with its "sister circuits" that have "concluded that, while restraint-chair use may be proper if a detainee is violent or noncompliant, it is impermissible once the detainee is compliant or subdued." Pet. App. 25a n.12; see *Young* v. *Martin*, 801 F.3d 172, 181 (3d Cir. 2015) (finding use of a restraint chair excessive where the victim "was

already subdued" and "not violent, combative, or self-destructive"); *Blackmon*, 734 F.3d at 1242 (finding use of a restraint chair excessive where defendants "shackled [the victim] with the express purpose of punishing him" and "without *any* legitimate penological purpose").

Petitioner errs in asserting (Pet. 7) a circuit conflict about whether use of restraint chairs "constitutes excessive force." As a threshold matter, he cites (Pet. 7-9) only unpublished decisions from the Third, Fifth, and Sixth Circuits—even though unpublished decisions in those circuits do not bind future panels. See *Wallace* v. *Mahanoy*, 2 F.4th 133, 144 n.16 (3d Cir. 2021); *Butler* v. *S. Porter*, 999 F.3d 287, 296 n.4 (5th Cir. 2021), cert. denied, 142 S. Ct. 766 (2022); *In re Blasingame*, 986 F.3d 633, 637 n.2 (6th Cir. 2021). And in any event, those decisions either involve facts meaningfully distinct from those here,[*] or do not present an excessive-force issue

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[*] See *Reynolds* v. *Wood Cnty.*, No. 22-40381, 2023 WL 3175467, at *1, *4 (5th Cir. May 1, 2023) (per curiam) ("combative" inmate "refused to answer intake questions" and "attempted to kick and spit at officers" before being restrained "in a climate-controlled facility," where he "was checked on every 15 minutes, and was offered necessities such as water, limb exercises, and medical care"); *Rogers* v. *New Jersey Dep't of Corr.*, No. 21-2891, 2022 WL 4533848, at *2 (3d Cir. Sept. 28, 2022) (per curiam) (inmate was "hand and ankle-cuffed alone in a holding cell for three hours, shortly after his involvement in a violent altercation with another inmate"); *Diaz* v. *Director Fed. Bureau of Prisons*, 716 Fed. Appx. 98, 100 (3d Cir. 2017) (per curiam) (prisoner was restrained after "he rammed his shoulder into one guard, and then spat in his face, and then spat in the face of another, all in spite of the guards' attempts to calm him"); *Blakeney* v. *Rusk Cnty. Sheriff*, 89 Fed. Appx. 897, 899 (5th Cir. 2004) (per curiam) ("unruly and dangerous pretrial detainee who was creating havoc in the jail" was restrained after he "disobeyed orders and

at all, see *Britt* v. *Hamilton Cnty.*, No. 21-3424, 2022 WL 405847 (6th Cir. Feb. 10, 2022) (deliberate-indifference claim). And the only published Third Circuit decision cited by petitioner found use of a restraint chair to be excessive. See *Young*, 801 F.3d at 181.

Nor has petitioner established that the Seventh Circuit would resolve this case differently than the Eleventh Circuit did here. In *Jones* v. *Anderson*, 116 F.4th 669 (2024), a Seventh Circuit panel found no excessive force where prison guards briefly used a restraint chair to "transport" a prisoner "to the restrictive-housing unit" after the prisoner "repeatedly refused to return to his cell and even demanded that the officers carry him." *Id.* at 673, 678. And in *Rice ex rel. Rice* v. *Correctional Medical Services*, 675 F.3d 650 (7th Cir. 2012), the court found that use of a restraint chair was not excessive where a prisoner "had been fighting with his cellmate," "failed to comply with the directive that he step out of his cell," and then "refused to leave the chair when invited to do so." *Id.* at 668. Neither case involved the extended use of a restraint chair against compliant pretrial detainees, upon or shortly after their arrival at the jail.

Finally, petitioner asserts (Pet. 7) that the Eleventh Circuit "has arrived at opposite conclusions" in different unpublished decisions. But in the Eleventh Circuit as well, "[u]npublished opinions are not binding precedent." *United States* v. *Izurieta*, 710 F.3d 1176, 1179 (2013). Regardless, the two decisions cited by petitioner are consistent with one another. Compare *Jacoby* v. *Mack*, 755 Fed. Appx. 888, 899 (11th Cir. 2018) (per curiam) (reversing grant of summary judgment to

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engaged in destructive practices, such as starting fires, knocking holes in the wall and pulling pipes out of the wall" in his cell).

defendants where they "use[d] force in the form of continued confinement that cause[d] a compliant detainee to suffer continued effects of pepper spray"), with *Jacoby* v. *Keers*, 779 Fed. Appx. 676, 680 (11th Cir. 2019) (per curiam) (in different incident involving same plaintiff, video evidence "directly contradicted" plaintiff's claim that he was placed in a restraint chair with mace in his eyes). Moreover, even assuming the decisions did reflect internal inconsistency, that still would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APRIL 2025