Case No. 22-5078

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DEWAYNE HERNDON KNIGHTEN,
Plaintiff – Appellee,

v.

AARON RAMSEY,
Deputy, Tulsa County Sheriff's Office,
Defendant – Appellant
and
TULSA COUNTY SHERIFF'S OFFICE, et al.,
Defendants.

On Appeal from the United States District Court for the Northern District of Oklahoma
(Case No. 4:21-cv-00186, Hon. Claire V. Eagan)

APPELLEE'S RESPONSE BRIEF

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF PRIOR OR RELATED APPEALS

There are no prior or related appeals in this case.

STATEMENT OF THE ISSUE

Whether the district court correctly found that Defendant Deputy Aaron Ramsey was not entitled to qualified immunity for dumping a restrained, immobile, and injured pretrial detainee out of his wheelchair, causing further damage to his crushed ankles?

INTRODUCTION

DeWayne Knighten was a pretrial detainee who, before his arrest, suffered an accident when a truck rolled over his legs, crushing his ankles. Mr. Knighten spent two weeks in jail without medical attention before Defendant Deputy Aaron Ramsey was assigned to transport him to the hospital to have his injured ankles evaluated. Because Mr. Knighten was unable to walk of his own volition, Ramsey had to escort Mr. Knighten to the jail parking garage in a wheelchair. As Ramsey was pushing Mr. Knighten's wheelchair, the two men began to argue because Ramsey believed Mr. Knighten was faking his injuries. Although Mr. Knighten was handcuffed, black-boxed, and unable to walk because of his crushed ankles, Ramsey tried to force Mr. Knighten to walk on his broken bones by dumping him out of his wheelchair. As a result, Mr. Knighten sustained pain and further injuries to his ankles.

Before the district court, Ramsey claimed that his use of force was *de minimis*, or in the alternative that he was entitled to qualified immunity. The district court rejected both arguments. Now on appeal, Ramsey pursues the same arguments that he raised before the district court. Ramsey's arguments again fail.

As a threshold matter, most of Ramsey's arguments rely on facts not in the Complaint. But a motion to dismiss tests only the sufficiency of the allegations in the Complaint. Thus, all of Ramsey's arguments that rely on facts outside of the Complaint fail.

On the merits of Ramsey's arguments, Ramsey is not entitled to qualified immunity because the Complaint alleges that Ramsey dumped Mr. Knighten as a form of punishment, and it was clearly established at the time of the incident that force used to punish a pretrial detainee is excessive and violates the Fourteenth Amendment. Even if the purpose of Ramsey's force was not to punish, the force was not reasonably related to a legitimate government interest, or was excessive in relation to its purpose. And it was clearly established at the time of the incident that force not reasonably related to a legitimate government interest or excessive in relation to its purpose violated Mr. Knighten's Fourteenth

Amendment rights. Accordingly, the district court's finding that Ramsey was not entitled to qualified immunity should be affirmed.

STATEMENT OF THE CASE[1]

A. Officers At The Jail Ignored Mr. Knighten's Injuries For Two Weeks.

Plaintiff DeWayne Knighten was detained at the David L. Moss Criminal Justice Center (hereinafter, the "jail") awaiting trial in Tulsa, Oklahoma. (Compl., App. Vol. 1 at 9.)[2] Mr. Knighten was arrested and

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[1] On a motion to dismiss, the Court may only consider the well-pleaded factual allegations of the complaint to determine whether it contains "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007). But Ramsey cites to facts outside of Mr. Knighten's Complaint at least twenty-six times in his opening brief. (*See* Op. Br. at 3-28 (relying repeatedly on a Declaration and the *Martinez* report for factual allegations not contained in the Complaint).) The district court did not rely on any of those facts (*see* Order, App. Vol. 1 at 101 (drawing the facts only "from Knighten's complaint")), nor could it have, *see*, *e.g.*, *Jackson v. Integra, Inc.*, 952 F.2d 1260, 1261 (10th Cir. 1991) (reversing dismissal that had been based on facts not contained in the complaint). To the extent Ramsey believes this Court could consider for the first time on appeal the facts he draws from sources beyond the Complaint, he is wrong. *See* part I, *infra*.

[2] Cites to "App. Vol. 1" refer to the Appellant's Appendix, Volume 1, appellate ECF No. 21. Cites to pages within the Appendix are to the Bates Stamp number; for example, "App. Vol. 1 at 10" refers to the page of Volume 1 of the Appendix bearing Bates Stamp "Appellant's Appendix 000010." Cites to "Op. Br." are to the Appellant's Opening Brief, appellate ECF No. 20.

booked into the jail on January 19, 2020, with severely broken bones in both ankles from an accident that occurred prior to his arrest. (*Id.* at 11-12.) Mr. Knighten had alerted his arresting officer as to his injuries, although they were also obvious given that he had "clear physical swelling and bruising of [his] legs, ankles, and feet." (*Id.* at 11.) The arresting officer then informed the deputies at the jail that Mr. Knighten had severe ankle injuries and requested to personally take Mr. Knighten to the hospital. (*Id.*) Medical staff at the jail denied the request, believing that Mr. Knighten was "faking [his] injuries." (*Id.*)

Thus, Mr. Knighten was booked into the jail with no medical attention. Even though he was "unable to walk on [his] own violition [sic]," he was not provided with a wheelchair. (*Id.*) Over the next two weeks, until the date of the incident giving rise to this appeal, Mr. Knighten received no medical attention. (*Id.* at 12.)

B. Mr. Knighten Was Further Injured When Ramsey Dumped Him Out Of His Wheelchair Onto His Crushed Legs.

On February 7, 2020, Ramsey was assigned to transport Mr. Knighten to the hospital to receive medical attention. (*Id.* at 11-12.) Mr. Knighten was shackled; his wrists were secured by "black-box"

handcuffs, a device that restricts inmate movement to an even greater degree than typical handcuffs because it prevents the handcuffed individual from moving his wrists apart.[3] (*Id.* at 11.)

Because he was unable to walk, Mr. Knighten was transported from the jail to the squad car in a wheelchair. (*Id.* at 11, 12.) As Ramsey was pushing Mr. Knighten's wheelchair to the squad car, before they had left for the hospital, the pair began to argue, and Ramsey accused Mr. Knighten of "faking [his] injuries." (*Id*. at 12.)

When Mr. Knighten did not comply with Ramsey's demands that he walk to the squad car, Ramsey then "tried to force [Mr. Knighten] to walk on [his] broken bones by dumping [him] out of [his] wheelchair in the parking garage." (*Id*. at 11, 12.) As a result of Ramsey dumping him from his wheelchair, Mr. Knighten sustained further pain and injury to his already broken ankles. (*Id.*)

At the hospital, Mr. Knighten received an x-ray, full-body CAT

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[3] "The 'black box' is a plastic rectangular device placed over the chain that connects the handcuffs, thereby restricting hand movement and reducing access to the handcuffs' keyholes." *Levi v. Thomas*, 429 F. App'x 611, 612 (7th Cir. 2011). For one example of black-box style handcuffs, see BOA Handcuff Co., CM High Security Transport Box, https://www.boahandcuff.com/shim-resistant-dead-bolt-handcuffs-211205.html (last accessed Nov. 29, 2022).

scan, and an MRI. (*Id.* at 12.) The test results revealed that Mr. Knighten had incurred "more agitation" to his pre-arrest injury. (*Id.*) When Mr. Knighten was brought back to the jail, he was housed in the medical unit until his body was given a chance to heal enough to return to general population. (*Id.*) The doctors at the hospital had recommended light physical therapy, but the jail refused. (*Id.*)

C. Mr. Knighten Filed Multiple Grievances That Were Ignored.

Mr. Knighten filed multiple grievances that were left "minimally answered" by the sergeant in charge. (*Id.* at 14.) He complained that he was refused medical attention and assaulted by an officer of the Tulsa County Sherriff's Department "without provocation or the ability to defend [him]self." (*Id.*) He used the electronic kiosk terminal provided to him on his assigned housing unit to file this grievance. (*Id.*) He stated that he was granted no relief in his favor, and he believed that there was no investigation done by Internal Affairs, the Sheriff's Detectives, or any law enforcement officials. (*Id.*) Mr. Knighten's grievances were alleged to have been "swept under the rug." (*Id.*)

In the minimal response that Mr. Knighten did receive, staff "openly admitted to the assault and lack of medical treatment [he]

should have received." (*Id.*) On this basis, he tried to appeal the finding of grievance #21594503 by attempting to bring charges of assault and battery against Ramsey. (*Id.*) However, as Mr. Knighten describes in his Complaint, all of his pleas were ignored. (*Id.*)

D. The District Court Denied Ramsey's Request For Qualified Immunity For Dumping Mr. Knighten Out Of The Wheelchair.

Mr. Knighten filed a *pro se* complaint under 42 U.S.C. § 1983 on April 26, 2021. (*Id.* at 8-18.) Mr. Knighten brought a claim, as is relevant to this appeal, that Ramsey had violated his Fourteenth Amendment rights as a pretrial detainee to be free from excessive force by dumping him out of his wheelchair and further injuring his crushed legs. (*Id.* at 10-12.) Ramsey moved to dismiss the excessive force claim, arguing that the force he used against Mr. Knighten was *de minimis*, and even if it was not, that he was entitled to qualified immunity. (Opinion and Order ("Order"), App. Vol. 1 at 100, 106.)

The district court rejected Ramsey's contentions. First, it found that Ramsey's use of force against Mr. Knighten was not *de minimis*. (*Id.* at 108.) The district court looked to *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), which instructs that a pretrial detainee need only

allege that "the force purposely or knowingly used against him was objectively unreasonable" in order to state a claim for excessive force. (Order, App. Vol. 1 at 107.) Looking to the *Kingsley* factors, the district court rejected Ramsey's argument that his use of force was *de minimis*, finding that the extent of force "is only one factor in the *Kingsley* analysis." (*Id.*; *see also id.* at 108 (the "*de minimis* principle [Ramsey] rel[ies] on . . . does not carry the weight [he] place[s] upon it").)

Second, the district court rejected Ramsey's qualified immunity defense. It found that a reasonable officer would have known that "us[ing] force against a pretrial detainee in a wheelchair who was 'black-boxed and handcuffed' when the detainee posed no security threat or flight risk" and when "there exists no apparent, much less legitimate, purpose for the use of force" amounts to "the gratuitous use of force against a restrained pretrial detainee" in violation of the Fourteenth Amendment. (*Id.* at 110.) And the district court found that the right violated was "clearly established" as of the time of the incident, citing *Miller v. Glanz*, 948 F.2d 1562 (10th Cir. 1991) and *Thompson v. Commonwealth of Virginia*, 878 F.3d 89 (4th Cir. 2017). (*Id.* at 110.) Indeed, the district court found that Ramsey's actions were

more egregious than the actions of the officers in those cases because Mr. Knighten was a pretrial detainee, not a convicted prisoner, and thus "this clearly established law would make it even more apparent . . . that the gratuitous use of force against a restrained pretrial detainee could violate the Fourteenth Amendment." (*Id.*)[4]

Thus, the district court found that Ramsey was not entitled to qualified immunity and denied his motion to dismiss. (*Id.* at 111.)

SUMMARY OF THE ARGUMENT

This Court should affirm the district court's holding that Ramsey was not entitled to qualified immunity.

At the outset, Ramsey relies on facts outside of the Complaint as the basis for many of his arguments. On a motion to dismiss, however, a court looks only to the facts alleged in the complaint to judge the sufficiency of a claim. Thus, all of Ramsey's arguments that rely on facts from sources outside of the Complaint fail. *See* part I.

Ramsey's arguments fail on the merits as well. The district court properly found that Ramsey was not entitled to qualified immunity,

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[4] "Conduct 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).

because (1) the force Ramsey used was objectively unreasonable such that it constituted a violation of Mr. Knighten's right to be free from excessive force under the Fourteenth Amendment; and (2) it was clearly established at the time of the incident that dumping a handcuffed, chained, black-boxed pretrial detainee with preexisting injuries to both ankles out of a wheelchair was objectively unreasonable. *See* part II.

Ramsey's arguments to the contrary do not hold water. *See* part III. Ramsey argues that Mr. Knighten did not plead, and that Ramsey did not have, a subjective intent to harm Mr. Knighten. But that is irrelevant after *Kingsley*, which held that pretrial detainees need only allege that the force is *objectively* unreasonable. *See* part III.A.

Ramsey's *de minimis* argument also fails. *See* part III.B. Ramsey's use of force was not *de minimis* because he used enough force to dump Mr. Knighten from a wheelchair and further injure his ankles. *See* part III.B.1. Moreover, the prisoner cases that Ramsey relies on for this argument are inapposite because (1) prisoners' excessive force claims arise under the Eighth Amendment, which applies a different standard than pretrial detainees' excessive force claims under the Fourteenth Amendment; and (2) pretrial detainees (unlike convicted

prisoners) cannot be punished at all, and here Ramsey was alleged to have used force to punish. *See* part III.B.2.

Finally, Ramsey's argument that his use of force was justified by Mr. Knighten's failure to comply with his order to stand and walk on his broken legs is foreclosed by caselaw. A detainee's physical inability to comply with an order cannot justify any use of force. *See* part III.C.

Thus, this Court should affirm the district court's holding that Ramsey was not entitled to qualified immunity.

ARGUMENT

I. RAMSEY CANNOT RELY ON FACTS OUTSIDE OF THE COMPLAINT AT THE MOTION TO DISMISS STAGE.

As an initial matter, Ramsey's efforts to have this Court consider facts from sources outside of the Complaint—facts not considered by the district court—should be rejected.

At the motion to dismiss stage, a court must accept as true and may only consider the well-pleaded factual allegations of the complaint to determine whether it contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. *See also, e.g.*, *Jackson*, 952 F.2d at 1261 (reversing district court for considering matters outside of the complaint). This Court is bound by the same

rule. *See, e.g.*, *Archuleta v. Wagner*, 523 F.3d 1278, 1281 (10th Cir. 2008). The district court here correctly considered only the facts "from Knighten's complaint" in ruling on Ramsey's motion to dismiss. (Order, App. Vol. 1 at 101.) This Court should do the same.

However, in his opening brief, Ramsey asks this Court to rely on numerous facts outside of the Complaint, citing facts not considered by the district court and from sources other than the Complaint no less than twenty-six times. *See* Op. Br. at 3-28. For example, Ramsey asks this Court to rely on facts from a Declaration Mr. Knighten submitted in opposition to Ramsey's motion to dismiss. *See, e.g.*, Op. Br. at 3-4, 13, 20-22. But that Declaration was not relied on by the district court (*see* Order, App. Vol. 1 at 101 (noting that the facts relied on "are drawn from Knighten's complaint")) and was not incorporated into or referred to by the Complaint, and thus cannot be considered here. *See, e.g.*, *Teton Millwork Sales v. Schlossberg*, 311 F. App'x 145, 149 (10th Cir. 2009) (noting that an affidavit submitted with the motion to dismiss briefing could not be considered because it was "not central to [the] complaint and [was] not referred to therein"); *Harper v. United States Dep't of the Interior*, 571 F. Supp. 3d 1147, 1160 (D. Idaho 2021)

(disregarding factual allegations contained only in plaintiff's declaration submitted in opposition to motion to dismiss).[5]

Likewise, Ramsey asks that this Court consider facts from the *Martinez* report (a report that was not relied on by the district court) to have this Court make factual findings in support of dismissal. (*See, e.g.*, *id.* at 3-4, 13, 20, 28 (citing *Martinez* report contained in App. Vol. 2).) However, a court "may not look to the *Martinez* report, or any other pleading outside the complaint itself, to refute facts specifically pled by a plaintiff, or to resolve factual disputes" on a motion to dismiss. *Swoboda v. Dubach*, 992 F.2d 286, 290 (10th Cir. 1993).

In *Swoboda*, for example, the defendants relied on parts of the *Martinez* report that contradicted the allegations made by the plaintiff in his complaint in moving to dismiss the plaintiff's excessive force claim. *Id.* at 288-90. The district court, too, relied on those same parts

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[5] To the extent the Declaration could be considered, it would further support Mr. Knighten's argument that Ramsey used force to punish in violation of clearly established law, *infra* part II. (*See, e.g.*, Declaration, App. Vol. 1 at 91 ("[D]eputy Ramsey said to me 'since your[sic] such a tough guy how about you can walk yourself to the car' . . . that's when he got rough with me saying 'I said get up and walk smart ass! You ain't so tough now, are you!' All the while he was yelling at me, he was also upending my wheelchair from the back, until [he] succeeded in dumping me out of it onto the garage floor.").)

of the *Martinez* report in granting the defendant's motion. *Id.* at 290. This Court reversed, finding that the function of the motion to dismiss is not to "weigh potential evidence that the parties might present at trial," but rather to "assess whether *the plaintiffs' complaint alone* is legally sufficient to state a claim for which relief may be granted." *Id.* (citation omitted) (emphasis in original). Accordingly, this Court held that the district court erred in "look[ing] to the *Martinez* report, or any other pleading outside the complaint itself, to refute facts specifically pled by a plaintiff, or to resolve factual disputes." *Id.* (citation omitted).

Here, Ramsey relies on documents outside of the Complaint for facts that contradict allegations in the Complaint, to argue that the Complaint should be dismissed. For example, in arguing that Ramsey's use of force was *de minimis*, Ramsey relies on Mr. Knighten's Declaration to argue that Ramsey never removed Mr. Knighten from his wheelchair and that Mr. Knighten was capable of standing and walking on his broken ankles, such that attempting to remove Mr. Knighten from his wheelchair would not "lead to any cognizable harm." *See* Op. Br. at 13-14 (citing Mr. Knighten's Declaration, App. Vol. 1 at 90, 93). But those facts are directly contradicted by the Complaint's

allegations that Ramsey "dumped" Mr. Knighten and that Mr. Knighten was unable to walk on his broken ankles. (*Compare, e.g.*, Compl., App. Vol. 1 at 12-14.) Thus, Ramsey's efforts to have this Court consider the Declaration to contradict the Complaint should be rejected, and his arguments relying on the Declaration therefore should fail.

So, too, with Ramsey's efforts to have this Court rely on the *Martinez* report. For example, Ramsey relies on the *Martinez* report to argue that Mr. Knighten "slammed his feet into the ground and prevented the wheelchair from moving any further," and thus that Ramsey did not use excessive force in violation of the Fourteenth Amendment. Op. Br. at 21 (citing *Martinez* report, App. Vol. 2 at 27). But that contradicts the Complaint's allegations that Mr. Knighten was injured when Ramsey "dumped" him out of his wheelchair. (*Compare, e.g.*, Compl., App. Vol. 1 at 11-12.) As in *Swoboda*, Ramsey uses the *Martinez* report to contradict the allegations in the Complaint, and thus his efforts must be rejected. Without those facts, many of Ramsey's arguments fail. *See*, e.g., Op. Br. at 13-18 (relying on facts in the *Martinez* report and the Declaration for arguments that the force used was *de minimis* and did not violate the Fourteenth Amendment).

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This Court may not consider facts drawn from the Declaration and *Martinez* report and relied on by Ramsey in his opening brief. Thus, all citations in Ramsey's opening brief to Mr. Knighten's Declaration (App. Vol. 1 at 87-94), or to the *Martinez* report (App. Vol. 2) are to documents outside of the Complaint and should be disregarded. *Swoboda*, 992 F.2d at 290; *Teton Millwork Sales*, 311 F. App'x at 149.

II. THE DISTRICT COURT CORRECTLY FOUND THAT RAMSEY IS NOT ENTITLED TO QUALIFIED IMMUNITY.

Qualified immunity considers "the need to hold public officials accountable when they exercise power irresponsibly." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). A defendant is not entitled to qualified immunity if (1) the defendant's conduct violated a constitutional right and (2) the right violated was "clearly established" such that "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Hernandez v. Mesa*, 137 S. Ct. 2003, 2007 (2017) (quotation and citation omitted). The district court correctly found that, taking all of the allegations in the Complaint as true, Ramsey was not entitled to qualified immunity because (1) the

force Ramsey used was objectively unreasonable and thus violated Mr. Knighten's rights under the Fourteenth Amendment and (2) it was clearly established at the time of the incident that dumping a handcuffed, black-boxed pretrial detainee with preexisting injuries to both ankles out of a wheelchair was objectively unreasonable.

1. Pretrial detainees—individuals who have been charged with but not yet convicted of crimes—are protected by the Fourteenth Amendment's Due Process Clause from the use of excessive force by a government actor. *See Kingsley v. Hendrickson*, 576 U.S. 389, 395-97 (2015) (articulating the two-prong test that a court must apply when determining when the force used against a pretrial detainee was excessive as a constitutional matter).[6]

When a government actor uses force against a pretrial detainee that is (1) purposeful, knowing, or possibly reckless, and (2) not rationally related to a legitimate governmental objective or excessive in

[6] Though Ramsey argues that the force used need be "conscience-shocking" to violate the Constitution, Op. Br. at 18, this Court has rejected that argument and made clear that *Kingsley* provides the only test for determining whether the use of force against a pretrial detainee is excessive. *See Colbruno v. Kessler*, 928 F.3d 1155, 1163 n.3 (10th Cir. 2019) (recognizing that *Kingsley* rejected the "shocks the conscience" test for "the treatment of pretrial detainees").

relation to its purpose, the force is objectively unreasonable and violates the Fourteenth Amendment. *Id.* at 395-98. Ramsey concedes that his use of force was purposeful, and thus concedes the first prong of the test. Op. Br. at 18 ("Ramsey . . . clearly had to use force.").[7]

Under the second prong, the court asks if "the challenged governmental action is not rationally related to a legitimate governmental objective or . . . is excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398. If so, the use of force is objectively unreasonable and violates the Fourteenth Amendment. *Id.* at 396-98.

2. The second prong of the qualified immunity analysis—the "clearly established" prong—asks whether officials would be on notice that their actions would violate that constitutional right. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Officials are on notice when there is "[a] Supreme Court or Tenth Circuit decision on point or the weight of authority from other courts . . . clearly establish[es] [the] right." *Halley v. Huckaby*, 902 F.3d 1136, 1144 (10th Cir. 2018). To determine whether officials would be on notice from prior caselaw, this Court

[7] Even if Ramsey did not concede this point, Mr. Knighten adequately alleged in his Complaint that Ramsey's use of force was purposeful and knowing. (*See* Compl., App. Vol. 1 at 11-12.)

employs a "sliding scale" under which "[t]he more obviously egregious conduct in light of prevailing constitutional principles," the "less specificity" from prior case law is required. *See Pierce v. Gilchrist*, 359 F.3d 1279, 1298 (10th Cir. 2004). Thus, violations of a "constitutional rule may apply with obvious clarity," such that an officer may be on notice even without a factually similar precedent. *U.S. v. Lanier*, 520 U.S. 259, 271 (1997).

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Ramsey's use of force was objectively unreasonable because it was not rationally related to any legitimate governmental objective, *see* part A.1, or in the alternative was excessive in relation to its purpose, *see* part B.1. And it was clearly established at the time of the incident that Ramsey's actions violated Mr. Knighten's right to be free from the use of such force. *See* parts A.2, B.2. Ramsey thus "exceeded the scope of the qualified immunity [he] enjoy[s]." *Blackmon*, 734 F.3d at 1239.

A. Ramsey's Purposeful Use Of Force Was Not Rationally Related To A Legitimate Governmental Objective Because It Was Punitive.

Mr. Knighten alleged in his Complaint that Ramsey's use of force was punitive. (*See, e.g.*, Compl., App. Vol. 1 at 11-12.) An officer's use

of force to punish a pretrial detainee is always objectively unreasonable under the Fourteenth Amendment. *See* part 1. Mr. Knighten's right to be free from force used to punish was clearly established at the time of the incident. *See* part 2. Thus, the district court was correct to find that Ramsey was not entitled to qualified immunity.

1. Ramsey's use of force violated Mr. Knighten's right to be free from punishment by a government actor.

Ramsey's use of force was objectively unreasonable, and thus violated the Fourteenth Amendment, because it was punitive. After *Kingsley*, "a pretrial detainee can establish that official actions constitute unconstitutional punishment either by showing that 'an expressed intent to punish on the part of detention facility officials exists,' or 'by showing that the restriction in question bears no reasonable relationship to any legitimate governmental objective.'" *Colbruno*, 928 F.3d at 1163. Here, Ramsey's use of force was explicitly punitive, *see* part a, or alternatively was implicitly punitive because it advanced no legitimate governmental objective, *see* part b.

a. Ramsey's use of force was objectively unreasonable because it was explicitly punitive.

Ramsey violated Mr. Knighten's Fourteenth Amendment right as

a pretrial detainee to be free from force used explicitly to punish.

"[T]he Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment." *Kingsley*, 576 U.S. at 397. Force used "with an 'expressed intent to punish'" a pretrial detainee is therefore never rationally related to a legitimate government interest. *Id.* at 398 (citations omitted). *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished."); *Colbruno*, 928 F.3d at 1162 ("[T]he Supreme Court has been categorical in one respect: '[A] detainee may not be punished.'" (emphasis omitted)); *Blackmon*, 734 F.3d at 1241 (liability attaches if "an 'expressed intent to punish . . . exists").

Here, Ramsey used force explicitly to punish Mr. Knighten. Ramsey "dumped" Mr. Knighten out of his wheelchair and "tried to force [him] to walk on [his] broken bones" because Ramsey "thought [Mr. Knighten] was faking [his] injuries" and had "refused to walk to [Ramsey's] squad car." (Compl., App. Vol. 1 at 10, 11.)[8] Those are facts,

[8] As noted above, if this Court were to consider Mr. Knighten's Declaration repeatedly cited in the Opening Brief, that would provide further support that Ramsey used force explicitly to punish Mr. Knighten. (*See, e.g.*, Declaration, App. Vol. 1 at 91 (Ramsey dumped Mr. Knighten while saying "you ain't so tough now, are you!").).

taken as true on a motion to dismiss, that demonstrate Ramsey's use of force was explicitly punitive, and thus under *Kingsley* and *Bell* violated Mr. Knighten's Fourteenth Amendment right as a pretrial detainee to be free from force used as punishment. *See Blackmon*, 734 F.3d at 1242 (force used with "express purpose of punishing" is a "clear violation").

b. Ramsey's use of force was objectively unreasonable because it was implicitly punitive.

Alternatively, Ramsey violated Mr. Knighten's Fourteenth Amendment right to be free from excessive force because Ramsey used force that was implicitly punitive—that is, force that advanced no legitimate governmental interest at all.

Though a pretrial detainee will always prevail if he can show that force used was expressly punitive, a pretrial detainee may also prevail if he alleges that the force was used "without any penological purpose" and thus was implicitly punitive because it "bears no reasonable relationship to any legitimate governmental objective." *Id.* at 1241-42. For example, in *Blackmon*, officials repeatedly restrained an eleven-year-old pretrial detainee in a chair with "wrist, waist, chest, and ankle restraints," *Id.* at 1239. Often, the detainee was restrained in the chair for long periods of time "when there was no hint he posed a threat of

harming himself or anyone else" and when the summary judgment record revealed no "legitimate penological reason" for keeping him in there. *Id.* at 1242. Without a "legitimate penological reason" for using the chair, this Court found that the use of force in restraining the detainee was implicitly punitive, thus violating the detainee's Fourteenth Amendment rights. *Id.*

Likewise, when that same detainee alleged that a corrections worker permitted "one of his subordinates—a fully grown man—to sit on the [eleven-year-old, 96-pound detainee's] chest . . . without any penological purpose," the detainee successfully pled a Fourteenth Amendment excessive force claim because that use of force was implicitly punitive. *Id.* at 1243 (finding that "it [was] possible" that the official sat on the detainee's chest "simply (only) to punish him" when detainee alleged that man sat on his chest "not 'to separate participants in a fight, for self defense, for defending other staff, to protect other juveniles, to prevent property damage, to prevent escape, or to move a juvenile who failed to comply with a lawful order'"). Thus, this Court affirmed the district court's denial of qualified immunity. *Id.* at 1247.

Other circuits are in accord. *See, e.g.*, *McClam v. Verhelst*, No. 21-

35426, 2022 WL 1046807, at *1 (9th Cir. Apr. 7, 2022) (when a correctional officer "stomped" on a pretrial detainee's hand after the detainee reached into a box on the floor to retrieve two paper towels, "a jury could reasonably conclude" that the correctional officer used force "to punish [the pretrial detainee] with physical pain rather than for any penological purpose" and thus violated the Fourteenth Amendment); *Jacobs v. Cumberland Cnty.*, 8 F.4th 187, 195-96 (3d Cir. 2021) (holding that force violated Fourteenth Amendment where a "jury could find that there was no penological need for *any* additional force" because the plaintiff "was defenseless and obeying orders" (emphasis in original)).

Here, as in *Blackmon*, Ramsey used force without penological purpose, and thus force that was implicitly punitive. (*See* Compl., App. Vol. 1 at 10, 11.) Accordingly, Ramsey's use of force violated Mr. Knighten's right under the Fourteenth Amendment to be free from excessive force. *See Blackmon*, 734 F.3d at 1241.

* * *

Ramsey's use of force was either explicitly punitive, or implicitly so. In either case, it was objectively unreasonable. Therefore, the district court correctly found that Ramsey's use of force violated Mr.

Knighten's Fourteenth Amendment right to be free from excessive force.

2. It was clearly established at the time of the incident that punishment is never a legitimate governmental objective with respect to pretrial detainees.

A reasonable officer in Ramsey's position would have known that using force to either explicitly or implicitly punish a pretrial detainee violated the Fourteenth Amendment.

Supreme Court and Tenth Circuit precedent going back forty years have established a bright-line rule that pretrial detainees "cannot be punished at all." *Kingsley*, 576 U.S. at 400. *See, e.g.*, *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) ("[T]he Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment."); *Youngberg v. Romeo*, 457 U.S. 307, 320 (1982) ("[T]he detainees, not yet convicted of the crime charged, could not be punished."); *Bell*, 441 U.S. at 534 (recognizing same); *Est. of Booker v. Gomez*, 745 F.3d 405, 420 (10th Cir. 2014) (same).

This bright line rule, by itself, clearly established Mr. Knighten's right to be free from force used as punishment and put Ramsey on notice that his actions would violate that right. *See, e.g.*, *Blackmon*, 734 F.3d at 1241 (recognizing that *Bell*, by itself, was sufficient to clearly

establish this right); *Colbruno*, 928 F.3d at 1166 (same, made even stronger with *Blackmon* also as precedent); *Hubbard v. Nestor*, 830 F. App'x 574, 583 (10th Cir. 2020) (same); *Bloom v. Pompa*, 654 F. App'x 930, 934 (10th Cir. 2016) (same). That is true whether the force was explicitly punitive, *see, e.g.*, *Blackmon*, 734 F.3d at 1242 (holding that *Bell* clearly established that explicitly punitive use of restraints violated the Fourteenth Amendment); *Hubbard*, 830 F. App'x at 583 ("It was clearly established" as of 2015 that "'an expressed intent to punish' . . . —standing alone—is sufficient to demonstrate" that the officials violated the Fourteenth Amendment); or implicitly so, *see, e.g.*, *Blackmon*, 734 F.3d at 1244 (holding that *Bell* clearly established that implicitly punitive sitting on chest violated the Fourteenth Amendment); *Colbruno*, 928 F.3d at 1166 (implicitly punitive clearly established by *Bell* and *Blackmon*); *Bloom*, 654 F. App'x at 934 (same).

It is also true whether or not there is a factually analogous case on point. *See, e.g.*, *Hubbard*, 830 F. App'x at 583 (rejecting argument that officers were not on notice in the absence of a factually similar case, in light of the bright-line rule of *Bell*). For example, *Blackmon* involved factual circumstances—as noted above, prolonged use of a restraint

chair, and a grown man sitting on the chest of an eleven-year-old boy—that bore no resemblance to prior case law. 734 F.3d at 1244. Nevertheless, this Court found that the officers were not entitled to qualified immunity because their actions violated the bright-line rule established in *Bell* that force could never be used as punishment. *Id*. *See also Colbruno*, 928 F.3d at 1165 (finding same).

This Court has repeatedly determined that it has long been clearly established that a pretrial detainee has a right to be free from force used either explicitly or implicitly to punish. It should do so again here.

B. Ramsey's Purposeful Use Of Force Was Excessive In Relation To Any Legitimate Governmental Purpose.

If this Court finds that the Complaint's allegations, taken as true, do not indicate Ramsey's use of force was explicitly or implicitly punitive—although the allegations do so indicate, *see supra* part II.A.1—Ramsey's use of force was nonetheless objectively unreasonable because it was excessive in relation to its purpose.

To determine whether the use of force against a pretrial detainee was excessive in relation to its purpose, a court looks to "the 'facts and circumstances of each particular case,'" which includes factors such as:

[T]he relationship between the need for the use of force and

> the amount of force used; the extent of the plaintiff'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 plaintiff was actively resisting.

Kingsley, 576 U.S. at 397-98; *see also Lombardo v. City of St. Louis*, 141 S. Ct. 2239, 2241 (2021) (discussing the application of the *Kingsley* test). Force that is excessive in relation to its purpose violates the Fourteenth Amendment. *Kingsley*, 576 U.S. at 398.

Under *Kingsley*, Ramsey's use of force was excessive in relation to its purpose, *see* part 1, and Mr. Knighten's right to be free from such force was clearly established at the time, *see* part 2.

1. Ramsey violated Mr. Knighten's right to be free from the use of force by a government actor that was excessive in relation to its purpose.

Ramsey argues that his use of force against Mr. Knighten was objectively reasonable because he had a legitimate objective: to transport Mr. Knighten, an injured, restrained, wheelchair-bound pretrial detainee, to the hospital to have his injured ankles examined. Op. Br. at 7, 8. But even if Ramsey had a legitimate governmental objective, Ramsey's use of force in dumping Mr. Knighten from his wheelchair and exacerbating Mr. Knighten's ankle injuries was

excessive under the *Kingsley* factors.

First, as to "the relationship between the need for the use of force and the amount of force used," *Kingsley*, 576 U.S. at 397, there was no need to use any force. When an individual is restrained, not resisting, and otherwise immobile, any amount of force used is excessive. *See, e.g.*, *Est. of Booker*, 745 F.3d at 424 (use of force not necessary where pretrial detainee "was not resisting" and "was handcuffed and on his stomach"); *Piazza v. Jefferson Cty.*, 923 F.3d 947, 953 (11th Cir. 2019) (any use of force is excessive "when a detainee . . . is clearly unable to comply"); *Jacobs*, 8 F.4th at 196 (no need for any force under the Fourteenth Amendment where plaintiff "was defenseless and obeying orders"); *Shuford v. Conway*, 666 F. App'x 811, 816 (11th Cir. 2016) (finding use of force excessive where "plaintiffs appeared to be sitting or standing in their cells such that they could be restrained without the use of *any* force" (emphasis in original)). *See also, e.g.*, *Fairchild v. Coryell Cnty., Tx.*, 40 F.4th 359, 368 (5th Cir. 2022) (finding that it was clearly established that the continued use of force on a restrained, subdued, immobile pretrial detainee was objectively unreasonable).

Mr. Knighten was handcuffed, black-boxed, belly-chained, and

unable to place any pressure on either of his legs, thus he was not capable of physically resisting in any capacity, nor did he pose a physical threat. (Compl., App. Vol. 1 at 11, 12; *see also* Order, App. Vol. 1 at 108 (finding same).) What is more, Ramsey concedes as much. Op. Br. at 24 ("[I]t does not appear . . . that Knighten posed an immediate personal threat."). As the district court found, these facts meant that no use of force, "much less [force] that called for dumping Knighten from the wheelchair," was justified. (Order, App. Vol. 1 at 108.) Thus, the first factor weighs in favor of finding Ramsey's force was excessive. *See, e.g.*, *Est. of Booker*, 745 F.3d at 424 (finding first factor weighed in favor of finding force was excessive where pretrial detainee was handcuffed, not resisting, and immobilized); *Fairchild*, 40 F.4th at 366-67 (finding first factor weighed in favor of finding force was excessive where force was used before pretrial detainee offered any resistance, and when she posed "no threat").

Second, Mr. Knighten was injured by Ramsey's use of force.[9] By

[9] Indeed, Ramsey appears to concede in his opening brief that Mr. Knighten suffered an injury that was more than *de minimis*. Op. Br. at 14-15 (clarifying that his argument was not that the injury caused was *de minimis*, but rather that the force used was *de minimis*).

dumping Mr. Knighten out of his wheelchair, Ramsey caused "more agitation to a crush injury [Mr. Knighten had] received" prior to his arrest. (Compl., App. Vol. 1 at 12.) This was confirmed by the results of "an x-ray, full body cat-scan, and MRI." (*Id.*) When a use of force causes injury, including the aggravation of an existing injury, the second factor weighs in favor of finding that the use of force was excessive. *Edrei v. Maguire*, 892 F.3d 525, 538 (2d Cir. 2018) (finding second *Kingsley* factor weighed in favor of finding force was objectively unreasonable where plaintiffs sustained "auditory pain, migraines, tinnitus, and hearing loss"). *Cf. McCowan v. Morales*, 945 F.3d 1276, 1294 (10th Cir. 2019) (affirming the denial of qualified immunity where the defendant aggravated the arrestee's preexisting shoulder injuries); *Martin v. Bd. Cnty. Comm'rs*, 909 F.2d 402, 407 (10th Cir. 1990) (upholding excessive force claim where police officers aggravated an existing fracture in arrestee's neck).[10]

[10] Even if Mr. Knighten's injuries were less substantial than some of the injuries in the caselaw, even under the higher bar of the Eighth Amendment "[a]n inmate who is gratuitously beaten by guards does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury." *Aruanno v. Maurice*, 790 F. App'x 431, 434 (3d Cir. 2019) (quoting *Wilkins v. Gaddy*, 559 U.S. 34, 38 (2010)).

The third *Kingsley* factor also weighs in favor of finding that Ramsey's force was excessive, because Ramsey made no "effort . . . to temper or to limit the amount of force used." Ramsey appears to concede this factor in his opening brief. Op. Br. at 22 (admitting that he "likely couldn't 'temper' the amount of force used"). And "[n]othing in the complaint suggests that [he] did." *Edrei*, 892 F.3d at 538. Thus, the third factor weighs in favor of finding Ramsey's force was excessive.

As to the fourth factor, there was no security problem to which Ramsey was responding, and thus this factor also weighs in favor of finding that Ramsey's use of force was excessive. A pretrial detainee who is thoroughly restrained and immobile cannot pose a security problem that would justify the use of any force. *See, e.g.*, *Kingsley v. Hendrickson*, 801 F.3d 828, 832 (7th Cir. 2015) (finding defendants not justified in tasing handcuffed plaintiff, and collecting cases to show that "the fact that force [is] applied after the [plaintiff] was handcuffed [is] a significant factor in denying immunity").

Like the plaintiff in *Kingsley*, Mr. Knighten was handcuffed and otherwise thoroughly restrained before Ramsey used force on him; specifically, Mr. Knighten was black-boxed, belly-chained, and without

the functional use of his legs due to his preexisting ankle injuries. (Compl., App. Vol. 1 at 11-12.) Ramsey thus used force on a pretrial detainee who could not have posed a security threat. The fourth factor also weighs in favor of finding that Ramsey's force was excessive. *See, e.g.*, *Fairchild*, 40 F.4th at 366 (finding fourth factor weighed in favor of finding force was excessive when pretrial detainee "made no movement toward" the officers and "was restrained in the prone position and [thus] represented almost no risk").

As to the fifth *Kingsley* factor, as noted above, Ramsey concedes that "it does not appear . . . that Knighten posed an immediate personal threat." Op. Br. at 24. Thus, the fifth factor weighs in favor of finding that Ramsey's force was excessive.

Finally, though Mr. Knighten and Ramsey "were arguing" because Ramsey "thought [Mr. Knighten] was faking [his] injuries" and thus insisted that Mr. Knighten get out of the wheelchair and walk without any sort of supportive device (Compl., App. Vol. 1 at 11, 12), Mr. Knighten was not resisting in any meaningful way that would require the use of force to subdue him, since he was both restrained and unable to place any pressure on either of his legs. *See Aruanno*, 790 F. App'x at

433-34 (holding that "a verbal provocation" did not justify the use of "*any* force" and thus an officer's punches in response were not an "objectively reasonable" use of force); *Fairchild*, 40 F.4th at 366 n.6 ("passive resistance" by a pretrial detainee, such as shaking her head "no" or turning away from the officers, "did not justify" force). Ramsey acted in an objectively unreasonable manner when he dumped Mr. Knighten out of his wheelchair based only on a verbal provocation. (Compl., App. Vol. 1 at 11-12). Therefore, the final factor also weighs in favor of finding that Ramsey's force was excessive.

* * *

Because all six *Kingsley* factors weigh in favor of finding that Ramsey's force was excessive, Ramsey's use of force violated the Fourteenth Amendment. *See, e.g.*, *Fairchild*, 40 F.4th at 366-67 (finding defendants used excessive force even where some *Kingsley* factors weighed in their favor).

2. It was clearly established at the time of the incident that Ramsey's use of force was excessive in relation to its purpose.

The right of pretrial detainees to be free from force that was excessive in relation to its purpose was clearly established at the time of

the incident. Here, Ramsey's use of force was excessive because it was in response to a verbal provocation. And it was clearly established that verbal provocation alone does not create a threat to security justifying the use of force. *See* part a.

Even if transporting Mr. Knighten was Ramsey's objective, a reasonable officer in his position would have known that exercising force against a restrained, non-resisting pretrial detainee violated clearly established constitutional principles that ensure detainees are free from any force greater than necessary. *See* part b.

a. It was clearly established that using force in response to a verbal argument was excessive.

Ramsey's use of force was not employed to meet a legitimate penological goal because his actions did not advance any security or safety objectives. Rather, Ramsey's dumping Mr. Knighten from his wheelchair was an improper response to the argument between the two men. And, as discussed in part II.B.1, *supra*, verbal provocation cannot constitute a legitimate justification for the use of force. *See Aruanno,* 790 F. App'x at 433-34.

This premise was clearly established at the time of the incident. It has long been the case in the Tenth Circuit, for example, that an

officer's unprovoked use of force, or use of force in response to only verbal provocations, violates the Fourteenth Amendment. *See Frohmader v. Wayne*, 958 F.2d 1024, 1027 (10th Cir. 1992) (pre-*Kingsley*, applying more exacting "shocks the conscious" test under Fourteenth Amendment, and finding that officer's use of force violated that test when plaintiff posed no threat and was merely belligerent); *Blackmon*, 734 F.3d at 1241-42 (force violated Fourteenth Amendment when pretrial detainee alleged that man sat on his chest "not 'to separate participants in a fight, for self defense, for defending other staff, to protect other juveniles, to prevent property damage, to prevent escape, or to move a juvenile who failed to comply with a lawful order'" but because the detainee "refused to do as he was told").

In *Frohmader*, a "belligerent" and "uncooperative" plaintiff alleged that, though he "was not a threat to himself or anyone else" and was fully restrained in handcuffs, belly chain, and ankle restraints, the officer used unnecessary force in subduing him, causing nerve damage to his wrists. 958 F.2d at 1027-28. This Court found that the officer was not entitled to qualified immunity because using force in response to verbal provocations was excessive. *Id.*

Other circuits are in agreement. When a pretrial detainee is restrained, his "mere words" cannot "justify the use of physical force." *United States v. Cobb*, 905 F.2d 784, 789 (4th Cir. 1990). *See, e.g., Gaudreault v. Salem*, 923 F.2d 203, 207 (1st Cir. 1990) (force excessive if used "after receiving nothing more than verbal provocation"). *Cf. also Vinyard v. Wilson*, 311 F.3d 1340, 1342-43 & 1348 (11th Cir. 2002) (use of pepper spray in response to "screaming" by arrestee was excessive under the Fourth Amendment because arrestee was "not a threat to [the officer], herself, or others"); *Miller v. Leathers*, 913 F.2d 1085, 1088-89 (4th Cir. 1990) (hitting an inmate with a baton in response to inmate's "mocking insult" and "derogatory remark" was excessive under the Eighth Amendment); *Carter v. Wilkinson*, 1:06-CV-02150, 2010 WL 5125499, at *2 (W.D. La. Dec. 9, 2010) (pushing inmate against the wall in response to heckling was excessive under the Eighth Amendment).[11]

[11] Indeed, if anything, the use of force in response to verbal insults gives rise to an inference that the force was intended to impermissibly "punish" a detainee or "to retaliate for insubordination." *See Brooks v. Johnson*, 924 F.3d 104, 113-14 (4th Cir. 2019) (finding that multiple uses of a taser on a handcuffed detainee being disrespectful and uncooperative was not a good faith effort to restore order). This inference further supports Mr. Knighten's allegations that Ramsey used force to punish Mr. Knighten. *See supra* part II.A.1.

Here, Mr. Knighten was thoroughly restrained at the time of his argument with Ramsey; he was "black-boxed and handcuffed," confined to a wheelchair, and unable to place pressure on either of his legs. (Compl., App. Vol. 1at 11.) Furthermore, he alleged in the Complaint that Ramsey used force "*because* [they] were arguing" (*id.* at 12 (emphasis added))—that is, Ramsey used force against a thoroughly restrained Mr. Knighten solely in response to his verbal provocation. But as demonstrated above, it has long been clearly established that force cannot be used against a thoroughly restrained pretrial detainee solely in response to verbal provocation. *See, e.g.*, *Frohmader*, 958 F.2d at 1027-28; *Blackmon*, 734 F.3d at 1241-42; *Cobb*, 905 F.2d at 789; *Gaudreault*, 923 F.2d at 207. Thus, it was clearly established at the time of the incident that Ramsey's actions violated the Fourteenth Amendment.

b. It was clearly established that using force against a restrained and immobile pretrial detainee was excessive.

Even if Ramsey's use of force was not in response to the verbal altercation, but was instead just in the performance of his legitimate governmental objective of transporting Mr. Knighten to the hospital, it

was still clearly established that his use of force was excessive.

1. It was clearly established at the time of the incident that force used against a restrained pretrial detainee like Mr. Knighten is excessive and violates the Fourteenth Amendment.[12] *See, e.g.*, *Est. of Booker*, 745 F.3d at 427 (jury could find force used against restrained

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[12] Had Mr. Knighten been an arrestee rather than a pretrial detainee, it was clearly established at the time of the incident that Ramsey's use of force against a restrained arrestee would have been excessive under the Fourth Amendment. *See, e.g.*, *Vette v. K-9 Unit Deputy Sanders*, 989 F.3d 1154, 1172 (10th Cir. 2021) (surveying clearly established caselaw in the Tenth Circuit and finding that it "would make it clear to every reasonable officer that punching an arrestee . . . after he is subdued, violates the Fourth Amendment."); *McCoy v. Meyers*, 887 F.3d 1034, 1052 (10th Cir. 2018) (holding that as of 2011 it was clearly established that using force against a restrained arrestee violated the Fourth Amendment); *McCowan*, 945 F.3d at 1286-89 (denying qualified immunity where officer used force on arrestee who was restrained and thus was "no longer a threat" and not "capable of defending himself"). Other circuits are in accord. *See, e.g.*, *Sallenger v. Oakes*, 473 F.3d 731, 742 (7th Cir. 2007) (holding that "a reasonable officer" would have known that administering blows "after the arrestee was handcuffed" constituted impermissible excessive force); *Mayard v. Hopwood,* 105 F.3d 1226, 1228 (8th Cir. 1997) ("slapping in the face and punching in the chest a handcuffed and hobbled" arrestee "result[s] in a cognizable constitutional injury")

For a case involving force to remove an arrestee from his wheelchair, see *Rhoads v. Miller*, No. 07-CV-306-D, 2008 WL 11411511, at *8 (D. Wyo. Nov. 10, 2008) (denying qualified immunity because the arrestee "presented little threat," and thus the use of force "to subdue and forcibly remove [the plaintiff] from his wheelchair was excessive"), *aff'd*, 352 F. App'x 289, 292 (10th Cir. 2009) (affirming because arrestee did not provoke the use of force or resist the officer).

pretrial detainee violates Fourteenth Amendment). Other circuits are in accord. *See, e.g.*, *Coley v. Lucas Cnty., Ohio*, 799 F.3d 530, 539-40 (6th Cir. 2015) (finding clearly established as of 2004 pretrial detainee's right to be free from force while "fully restrained and subdued"); *Watts v. Smart*, 328 F. App'x 291 (5th Cir. 2009) (qualified immunity improper where defendant-officers struck a restrained detainee during an interrogation); *Toliver v. New York City Dep't of Corr.*, 202 F. Supp. 3d 328, 338 (S.D.N.Y. 2016) (finding the officer's "decision to pepper-spray [pretrial detainee] while he was restrained" not objectively reasonable).

Clearly established caselaw involving prisoners, and thus arising under the Eighth Amendment, also would have put Ramsey on notice[13] that his use of force against a restrained detainee was excessive. *See, e.g.*, *Coley*, 799 F.3d at 539-40 (recognizing that force used against a restrained prisoner would also violate the Eighth Amendment); *Kitchen v. Dallas Cnty.*, 759 F.3d 468, 479 (5th Cir. 2014) (same), *abrogated in part by Kingsley*, 576 U.S. at 397-400.

2. It was also clearly established at the time of the incident that

[13] As previously noted, "[c]onduct that violates the clearly established rights of convicts necessarily violates the clearly established rights of pretrial detainees." *Blackmon*, 734 F.3d at 1241.

force used against non-resisting pretrial detainees like Mr. Knighten is excessive and violates the Fourteenth Amendment.[14] *See, e.g.*, *Est. of Booker*, 745 F.3d at 428-29 (finding force used against non-resisting pretrial detainee violated the Fourteenth Amendment).

Other circuits are in accord. *See, e.g.*, *Beavers v. Edgerton*, 773 F. App'x 897, 897-98 (9th Cir. 2019) (use of "pain compliance tactics" were excessive when pretrial detainee had complied with officer's orders); *Piazza*, 923 F.3d at 954-55 (second use of taser on motionless, incontinent pretrial detainee who did not comply with order to roll over to be handcuffed—because he could not—had "no legitimate basis" and was objectively unreasonable); *Quinette v. Reed*, 805 F. App'x 696, 705 (11th Cir. 2020) (it was clearly established that use of force was excessive where detainee "was subdued, compliant, and non-resistant").

Clearly established caselaw involving prisoners arising under the

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[14] Had Mr. Knighten been an arrestee rather than a pretrial detainee, it was clearly established at the time of the incident that Ramsey's use of force against a non-resisting arrestee would have been excessive under the Fourth Amendment. *See, e.g.*, *Perea v. Baca*, 817 F.3d 1198, 1204 (10th Cir. 2016) (finding it "clearly established [under the Fourth Amendment] that officers may not continue to use force against a suspect who is effectively subdued"); *Morrison v. Bd. Trustees Green Twp.*, 583 F.3d 394, 408 (6th Cir. 2009) (recognizing same); *Smith v. Mattox*, 127 F.3d 1416 (11th Cir. 1997) (same).

Eighth Amendment, also would have put Ramsey on notice that his use of force against a restrained detainee was excessive. *See, e.g.*, *Wilson v. Rheams*, 494 F. App'x 469, 470 (5th Cir. 2012) ("flinging [inmate] out of his wheelchair to the floor" without provocation "sufficient to state a claim of excessive use of force" under the Eighth Amendment); *Lewis v. Downey*, 581 F.3d 467, 479 (7th Cir. 2009) (firing a taser gun at an inmate who was "prone on his bed, weakened, and docile" was excessive force under the Eighth Amendment); *Gruenwald v. Maddox*, 274 F. App'x 667, 672 (10th Cir. 2008) (finding complaint stated excessive force claim under the Eighth Amendment where Gruenwald was not resisting).

* * *

The force Ramsey used was objectively unreasonable because it was not rationally related to a legitimate government objective. In the alternative, the force Ramsey used was excessive in relation to any legitimate governmental objective. In either case, because Mr. Knighten was restrained, not physically resisting, and unable to stand on his broken ankles when Ramsey purposefully used force to "dump" Mr. Knighten from his chair, it was clearly established at the time of

the incident that Ramsey's use of force was excessive in violation of the Fourteenth Amendment. Thus, Ramsey was not entitled to qualified immunity, and the district court should be affirmed.

III. RAMSEY'S ARGUMENTS DO NOT HOLD WATER.

Ramsey's arguments to the contrary do not dictate a different result. Ramsey's arguments that pertain to his own subjective intent to harm are irrelevant to the objective reasonableness analysis. *See* part A. Ramsey's *de minimis* argument fails both as a factual and legal matter. *See* part B. And Ramsey's argument that his force was justified by Mr. Knighten's noncompliance with his order to stand on his broken legs fails as a matter of law. *See* part C.

A. Ramsey's Subjective Intent To Harm Is Irrelevant To The Objective Reasonableness Analysis.

Ramsey argues both that Mr. Knighten did not successfully plead subjective intent to harm, and that Ramsey did not have subjective intent to harm. *See* Op. Br. at 14, 23. Both arguments are irrelevant.

Under *Kingsley*, Mr. Knighten need not plead (nor prove) Ramsey's subjective intent to harm to succeed on his excessive force claim. *Kingsley*, 576 U.S. at 396-97 ("[A] pretrial detainee must show only that the force purposely or knowingly used against him was

objectively unreasonable."). *See also Colbruno*, 928 F.3d at 1163 ("[T]here is no subjective element of an excessive-force claim brought by a pretrial detainee."). Accordingly, Ramsey's characterization of his own subjective intent is also irrelevant. *Id.* *See also Graham*, 490 U.S. at 397 ("[A]n officer's good intentions [will not] make an objectively unreasonable use of force constitutional.").

Furthermore, on review of a motion to dismiss, a court "examine[s] only the plaintiff's complaint," "must determine if the complaint alone is sufficient to state a claim," and does not accept disputed assertions of fact from the defendant's pleadings. *Jackson*, 952 F.2d at 1261. Ramsey's characterization of his own subjective intent, *see* Op. Br. at 24 (contending that in using force sufficient to dump Mr. Knighten from his wheelchair and injure his ankles, Ramsey was only "attempting to remove Knighten from the wheelchair"), is thus not properly considered at this stage in the proceedings. *Jackson*, 952 F.2d at 1261.

B. Ramsey's *De Minimis* Argument Fails.

Ramsey's *de minimis* argument also fails for two reasons. First, Ramsey's use of force was not *de minimis* because, as alleged by Mr. Knighten, Ramsey used enough force to dump Mr. Knighten from a

wheelchair, cause him pain, and further injure his ankles. (Compl., App. Vol. 1 at 11, 12.) *See* part 1. Second, the prisoner cases Ramsey relies on for this argument are inapposite. *See* part 2.

1. As pleaded by Mr. Knighten, Ramsey's use of force was not de minimis.

When determining whether force used against a pretrial detainee was *de minimis*, a court looks to the first *Kingsley* factor, specifically, "the relationship between the need for the use of force and the amount of force used." *Kingsley*, 576 U.S. at 397. If the force used is disproportionate to the need—or "excessive in relation to [its] purpose" —it is excessive as a constitutional matter. *Id.* at 398. That is true even if it caused only a minor injury. *See United States v. Rodella*, 804 F.3d 1317, 1328 (10th Cir. 2015) ("[I]t is logically possible to prove an excessive use of *force* that caused only a minor *injury*, and a rule that forecloses a constitutional claim [when the subsequent injury is minor] focuses on the wrong question.") (quotations and citation omitted). For example, in *Ali v. Duboise*, this Court held that when a defendant "deliberately and unnecessarily manipulated [the plaintiff's] arms or shoulders, while he was handcuffed, in a way that caused excruciating pain" the force used was "more than *de minimis* . . . and represent[ed]

sufficient harm to state a constitutional claim" because there was no need for the force at all. 763 F. App'x 645, 651 (10th Cir. 2019).[15]

Likewise, here there was no need for the use of any force because Mr. Knighten was black-boxed, handcuffed, wheelchair-bound, and severely injured so he could not walk. (*See, e.g.*, Compl., App. Vol. 1 at 10-12.) The amount of force Ramsey used was enough to dump him from a wheelchair, causing him pain and exacerbating his existing ankle injuries. (*Id.* at 11 ("Ramsey [] dumped me out of my wheelchair because I refused to walk to his squad car on my broken ankles while black-boxed and handcuffed with no leg support, causing more damage and in turn causing me more pain, beyond my original injuries.").) Because this Court must take all facts properly pleaded as true, Mr. Knighten adequately alleged that Ramsey used more than *de minimis* force which caused him more than *de minimis* injury.

2. The prisoner cases Ramsey relies on are inapposite.

Ramsey relies almost exclusively on prisoner cases (and almost

[15] The force used in *Ali* was more than *de minimis* under the high bar posed by the Eighth Amendment's subjective reasonableness test for excessive force, thus it would necessarily also be more than *de minimis* under the Fourteenth Amendment's lower objective reasonableness test.

exclusively on cases that were decided before *Kingsley*) for his *de minimis* argument. But the prisoner cases Ramsey relies on for this argument are inapposite.

In *Kingsley*, the defendants attempted, as Ramsey does here, to win qualified immunity by relying on a case that "concern[ed] excessive force claims brought by convicted prisoners under the Eighth Amendment's Cruel and Unusual Punishment Clause, not claims brought by pretrial detainees under the Fourteenth Amendment's Due Process Clause." *Kingsley*, 576 U.S. at 400. The Supreme Court found that prisoner cases are inapposite to show that a use of force was *not* excessive under the Fourteenth Amendment, because "[t]he language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically.'" *Id.*[16]

"It is especially critical to identify the precise constitutional basis for an excessive-force claim because it can be maintained under the

[16] Importantly, as noted above, Eighth Amendment cases *can* be used to show that use of force *was* excessive under the Fourteenth Amendment. *See Blackmon*, 734 F.3d at 1241.

Fourth, Fifth, Eighth, or Fourteenth Amendment . . . and each carries with it a very different legal test." *Geddes v. Weber Cnty.*, No. 20-4083, 2022 WL 3371010, at *3 (10th Cir. Aug. 16, 2022) (quoting *Est. of Booker*, 745 F.3d at 418-19). For example, as between prisoners' excessive force claims under the Eighth Amendment and pretrial detainees' claims under the Fourteenth Amendment: (1) "prisoners already convicted of a crime [] claim that their *punishments* involve excessive force," while as it pertains to pretrial detainees, "the Fourteenth Amendment protects against the state imposing punishment prior to an adjudication of guilt"; and (2) while pretrial detainees bring their claims under the Fourteenth Amendment's Due Process Clause, "prisoners . . . must proceed under the more restrictive terms of the Eighth Amendment's Cruel and Unusual Punishments Clause." *Id.* at *3 (internal quotations and citations omitted).[17] While

[17] Excessive force claims under the Eighth Amendment include a subjective component, while excessive force claims under the Fourteenth Amendment are analyzed using only an objective standard. *Kingsley*, 576 U.S. at 395; *compare, e.g.*, *Hudson v. McMillian*, 503 U.S. 1, 21 (1992) (discussing the fact that a successful Eighth Amendment claim necessarily involves both an "objective" and "subjective" component). Adding a subjective component "increase[s], significantly, [a plaintiff's] burden of proof." *Kingsley*, 801 F.3d at 831.

force may be reasonable when used against a prisoner if "applied in a good-faith effort to maintain or restore discipline," *id.* (internal quotations omitted), that same force when used against a pretrial detainee may nonetheless be objectively unreasonable. *Kingsley*, 576 U.S. at 397 (internal quotations omitted). Thus, cases in which a court finds a level of force not excessive when used against a prisoner may not be relied upon to prove that the same level of force would be acceptable when used against a pretrial detainee.

Nevertheless, Ramsey cites almost exclusively to prisoner cases in which courts found the use of force to not be excessive under the Eighth Amendment in support of his argument that the force he used against Mr. Knighten, a pretrial detainee, was *de minimis* or objectively reasonable and therefore not excessive under the Fourteenth Amendment. *See* Op. Br. at 15-17 (citing *Norton v. City of Marietta*, 432 F.3d 1145, 1148-49 (10th Cir. 2005) ("excessive force claims . . . ar[ose] under the Eighth Amendment"); *Reed v. Smith*, 182 F.3d 933 (10th Cir. 1999) (no allegation that "defendant officials engaged the 'wanton and unnecessary' infliction of pain that constitutes a violation of the Eighth Amendment"); *Rhoten v. Werholtz*, 243 F. App'x 364, 367 (10th Cir.

2007) ("use of force d[id] not state an Eighth Amendment violation"); *Marshall v. Milyard*, 415 F. App'x 850, 852 (10th Cir. 2011) ("An action by a prison guard may be malevolent yet not amount to cruel and unusual punishment."); *DeWalt v. Carter*, 224 F.3d 607, 620 (7th Cir. 2000) ("shoving [the plaintiff] . . . does not constitute cruel and unusual punishment"); *Boddie v. Schnieder*, 105 F.3d 857, 862 (2d Cir. 1997) ("[plaintiff]'s allegations of excessive force . . . do not approach an Eighth Amendment claim"); *Black Spotted Horse v. Else*, 767 F.2d 516, 517 (8th Cir. 1985) ("allegation . . . fails to state a claim under the Eighth Amendment"); *Olson v. Coleman*, 804 F. Supp. 148, 150 (D. Kan. 1992) ("plaintiff's allegation . . . fails to constitute the excessive use of force prohibited by the eighth amendment")). But under Supreme Court precedent and precedent from this Court, these Eighth Amendment cases cannot show that Ramsey's use of force was not excessive under the Fourteenth Amendment.

C. Mr. Knighten's Noncompliance With Ramsey's Order—When He Physically Could Not Comply—Cannot Justify Ramsey's Use Of Force.

Finally, Ramsey argues that his use of force against Mr. Knighten was justified because Mr. Knighten failed to comply with his order to

stand up from the wheelchair in the parking lot. Op. Br. at 22. That argument is foreclosed by caselaw. For one, though officers may consider noncompliance in assessing the need for physical force, that force must still be measured and "appropriate for the situation." *Gruenwald*, 274 F. App'x at 673. But when the plaintiff's noncompliance poses no danger to the officer or the security of the institution, any use of force is unnecessary and thus excessive. *See, e.g.*, *Martinez v. Salazar*, Civ. No. 14-534, 2017 WL 3601232, at *8 (D.N.M. Jan. 9, 2017) (paraplegic man's inability to comply with orders to exit his vehicle was not resistance that could justify force); *Miller v. Williams*, 15-CV-0028, 2016 WL 4537750 (N.D. Okla. Aug. 30, 2016).

In *Miller*, for example, a pretrial detainee threw an empty inhaler into the hallway and refused an officer's order to pick it up. 2016 WL 4537750 at *5. The officer then tased the detainee. *Id.* The district court denied the officer's claim of qualified immunity, finding that "the relationship between the force needed and the amount used was tenuous," given that the "danger associated" with the detainee's conduct was "minimal." *Id.* The court then found that the law at the time put the officer on notice that the use of force to "coerce compliance with a

command" against an unaggressive detainee was a violation of the detainee's constitutional rights. *Id.* at *8.

Here, unlike *Miller*, Mr. Knighten was unable to comply with Ramsey's demands to walk on his broken ankles. (Compl., App. Vol. 1 at 12.) On that basis, Ramsey had even less justification to use force than the officer in *Miller*—and the officer in *Miller* was found to have violated the detainee's rights. *Miller*, 2016 WL 4537750, at *8. Thus, Ramsey's noncompliance could not have justified Ramsey's use of force.

CONCLUSION

For the foregoing reasons, Mr. Knighten respectfully requests that this Court affirm the district court's denial of Ramsey's motion to dismiss.

STATEMENT OF COUNSEL AS TO ORAL ARGUMENT

Because of the importance of the issues presented in this appeal, counsel believes that the Court's decision-making process will be significantly aided by oral argument.

Respectfully submitted,

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