No. _____

IN THE

Supreme Court of the United States

JASON W. KING,

Petitioner,

v.

MONTY CHRISTY, MICHAEL MIDGLEY, SAUCUE MA'AT, ERIC BROOKS, SUE ENGLES, T.R. CRAIG, DR. DAVID AIAKMAN, DR. S. HUGHES, and HATTIE SMALLS,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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FEBRUARY 28, 2014

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QUESTIONS PRESENTED

To satisfy the subjective standard for deliberate indifference, a prisoner must show "something more than mere negligence." *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). But 20 years after this Court's decision in *Farmer*, the nature of that "something more" remains unclear and has divided the lower courts. *Id.*

In this case, the Court of Appeals affirmed the dismissal of Petitioner's claims because he had not shown "something more." When Petitioner went for a routine dental screening, the prison's dental staff failed to confirm his identity and confused him with another patient. Over Petitioner's repeated protests, dental staff forcibly drilled Petitioner's healthy tooth, exposing the root of that tooth. Then, dental staff refused to perform a necessary root canal to relieve his severe and constant pain.

The questions presented in this case are:

1. Whether erroneous treatment of a prisoner, despite the prisoner's protests alerting officials to the risk of mistreatment, satisfies the subjective standard for deliberate indifference.

2. Whether a plaintiff plausibly states a claim for deliberate indifference when officials proceed with easier, less efficacious treatment, even though that treatment is grossly inadequate to address a prisoner's serious medical needs.

PARTIES TO THE PROCEEDING

The petitioner, who was plaintiff-appellant below, is Jason W. King.

The respondents, who were defendants-appellees below, are the following persons, sued in their individual capacities: Monty Christy, Correctional Counselor; Michael Midgley, Correctional Counselor; Saucue Ma'at, Unit Manager; Eric Brooks, Case Manager; Sue Engles, Associate Warden of Programs; T.R. Craig, Warden; Dr. David Aiakman, Dentist; Dr. S. Hughes, DDS/CDO; and Hattie Smalls, Assistant Warden.

In the proceedings below, respondents were also sued in their official capacities. In addition, defendants-appellees who are not named as respondents herein are the United States of America; the Federal Bureau of Prisons; Michael B. Mukasey in his individual and official capacities; and Dr. McDaniels, Psychologist, in her individual and official capacities.

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OPINION BELOW

The decision of the United States Court of Appeals for the Fourth Circuit (Pet.App. 1a) is reported at 536 F. App'x 358.

JURISDICTION

The Fourth Circuit issued its opinion denying rehearing and rehearing en banc on October 1, 2013. Pet.App. 54a. On December 20, 2013, the Chief Justice granted Petitioner's application for an extension of time to file a petition for writ of certiorari until February 28, 2014. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the United States Constitution provides as follows:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

INTRODUCTION

When Jason W. King went to the prison's medical ward for a routine dental examination, he did not expect that prison officials would confuse him with another prisoner and drill his healthy tooth. Nor did he expect that his visit would result in months of severe pain, which would be alleviated only by an urgent root canal performed after transfer to a different prison.

The dental staff failed to take critical steps to confirm that they had the correct patient before performing an invasive dental operation on Mr. King. Although Mr. King presented his prison identification card, the staff failed to verify his identity. And while

the dental staff took x-rays of Mr. King's mouth, they did not bother to view the results to ensure that Mr. King was there for the drilling of a decayed tooth. Worse still, when Mr. King repeatedly and clearly protested that he was only there for a first-time dental screening, the dental staff refused to confirm his identity. Instead, they injected him with Novocain and used physical force to drill his healthy tooth.

The dental staff's egregious error caused Mr. King extreme and constant pain. Adding insult to injury, the dental staff refused to perform a root canal or take steps to effectively relieve Mr. King's pain.

Notwithstanding the dental staff's grossly inadequate treatment of Mr. King, the Court of Appeals affirmed in a divided opinion the dismissal of his claims for deliberate indifference to medical needs. The Court of Appeals' decision dramatically departs from this Court's precedent and deepens a circuit split. This Court's guidance is essential to establish consistent standards for deliberate indifference and to ensure that prisoners may vindicate their constitutional rights.

STATEMENT OF THE CASE

1. Mr. King was imprisoned at FCI-Beckley, a federal facility in West Virginia, when he was required to appear for an initial dental screening. Pet.App. 57a ¶ 1, 62a ¶ 12, 66a ¶ 29. Mr. King's screening was scheduled for May 30, 2007. *Id.* at 62a ¶ 12. Unbeknownst to him, another inmate with the last name of King was scheduled for drilling and filling of a diseased tooth on the very same day. *Id.*

When Mr. King arrived for his dental screening, he presented his prison identification card to a dental assistant, *id.*, who apparently failed to verify that he

was the correct patient. Dental staff also took an x-ray of Mr. King's teeth, *id.*, but apparently never looked at the x-ray picture. The dental staff did not ask Mr. King if he was experiencing any dental problems, did not ask about the purpose of his visit, did not ask if he was experiencing any tooth pain, and did not ask Mr. King to sign a consent form for any operating procedures. *Id.* at 62a ¶¶ 12-13.

Mr. King was then seen by Dr. David Aiakman. *Id.* at 62a ¶ 12. When Mr. King was seated in the dental chair, Dr. Aiakman approached Mr. King with a needle. *Id.* Concerned, Mr. King protested and asked Dr. Aiakman "what [the needle] was for." *Id.* Dr. Aiakman responded that the needle "was routine" and directed Mr. King to "open [his] mouth." *Id.* When Mr. King again "tried to inform them that he was only there for a []first time[] examination," the dental staff ignored his protest and "use[d] physical force against [him]" to numb, drill and attempt to fill his perfectly healthy tooth. *Id.* at 63a ¶ 16, 66a ¶ 29.

When the procedure was complete, a triage medical assistant called and asked if the other inmate named King had arrived at the dental department. *Id.* at 62a-63a ¶¶ 14-15. Dental staff finally checked Mr. King's registration number, which confirmed that they had drilled the wrong patient's tooth. *Id.* at 62a-63a ¶ 14.

2. After this procedure, Mr. King "started having severe pain" as a result of "the drilling, packing, and filling" of his healthy tooth. *Id.* at 63a ¶ 17. His tooth was sensitive to "anything hot or cold." *Id.* Mr. King's severe pain continued for at least four months. *Id.* at 63a-64a ¶¶ 17, 21, 22, 24, 26. Despite Mr. King's ongoing pain from an obviously exposed nerve,

Dr. Aiakman refused to perform a root canal. *Id.* at 64a ¶ 26. Only when Mr. King was transferred to a different facility did he finally receive the root canal that he so urgently needed. *Id.*

a. Between June 19, 2007 and October 4, 2007, Mr. King saw dental staff on numerous occasions because of his constant pain. The dental staff "attemp[ted] to convince [Mr. King] that the pain was coming from" an adjacent tooth, rather than his drilled tooth. *Id.*; *see also id.* at 63a ¶ 18. They alleged that x-rays showed decay in the adjacent tooth, even though Mr. King had never experienced pain or difficulty with this tooth. *Id.* at 63a-64a ¶¶ 18, 22, 25, 26. The dental staff also told Mr. King that another nearby tooth was horizontally impacted. *Id.* at 63a ¶ 18. They claimed that x-rays revealed nothing wrong with the drilled tooth. *Id.* at 63a-64a ¶¶ 18, 22, 25. And they dismissed his persistent sensitivity to hot and cold by telling him that it "was common after a filling is placed." *Id.* at 63a ¶¶ 17, 19.

Dr. Aiakman and the dental staff failed to take adequate steps to alleviate Mr. King's pain. Dr. Aiakman adjusted the occlusion on the drilled tooth and prescribed antibiotics and Motrin. *Id.* at 63a ¶ 20, 66a ¶ 31. But Dr. Aiakman "refused" to perform a root canal to eliminate the pain, which was obviously attributable to an exposed nerve. *Id.* at 64a ¶ 26, 66a-67a ¶¶ 31, 33.

b. At Mr. King's last appointment at FCI-Beckley, the dental staff reversed course; they finally acknowledged that the drilled tooth was seriously damaged. Contrary to prior representations that "nothing was wrong" with the drilled tooth, *id.* at 64a ¶ 25, the dental staff suddenly "attempt[ed] to con-

vince [Mr. King] to let them pull (extract)" the drilled tooth, *id.* at ¶ 26. Despite his apparent willingness to take the extreme step of extracting Mr. King's tooth, Dr. Aiakman still refused to perform a root canal. *Id.* at 64a ¶ 26, 66a ¶ 31.

c. After Mr. King's last dental appointment at FCI-Beckley, he was transferred to another prison. *Id.* at 64a ¶ 26, 66a ¶ 31. Upon being transferred, Mr. King received a root canal to correct the dental problems caused by Dr. Aiakman and his staff. *Id.*

3. a. While still at FCI-Beckley, Mr. King filed a form BP-8 / Inmate Request to Staff form and then a BP-9 Request for Administrative Remedy form, detailing how he was the victim of an erroneous dental procedure and how the dental staff was not properly treating his post-procedure pain. *Id.* at 65a ¶ 28. After filing these forms, Mr. King was placed in the adjustment unit at FCI-Beckley. *Id.* Mr. King did not receive the warden's response to his BP-9 form until December 4, 2007, even though the warden's response was dated November 13, 2007. *Id.*

Upon receiving the warden's response to the BP-9 form, Mr. King immediately requested a BP-10 / Regional Administrative Remedy Appeal form to appeal the warden's denial. *Id.* at 65a ¶ 28, 79a. Mr. King was then transferred from FCI-Beckley and was in transit until April 6, 2008. *Id.* Before and during his transit, Mr. King's requests to receive a BP-10 form were repeatedly ignored. *Id.* at 79a.

Mr. King was not able to obtain a BP-10 form from a prison official until he reached his final destination, FCI-Allenwood—over four months after he began requesting the form. *Id.* Once at FCI-Allenwood, Mr. King was able to obtain a BP-10 form, which he

completed. Mr. King's BP-10 form was subsequently denied as untimely. *Id.* After he submitted a BP-10 form, Mr. King also filed the final form—a BP-11 form, which was denied because the BP-10 form had been denied as untimely.

b. Upon receiving the denial of his BP-10 form, Mr. King filed his complaint on January 26, 2009, in the United States District Court for the Southern District of West Virginia. *Id.* at 56a. Mr. King alleged that Dr. Aiakman and other prison officials were deliberately indifferent to his serious medical needs when they (1) performed the wrong procedure over Mr. King's protests and (2) failed to adequately treat his severe, ongoing pain. *Id.* at 66a-68a; *see also Bivens v. Six Unknown Federal Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).[1]

The magistrate judge reviewed Mr. King's complaint pursuant to 28 U.S.C. § 1915A and recommended dismissal, concluding that the complaint failed to state claims for deliberate indifference. Pet.App. 46a-51a. The magistrate judge also concluded that Mr. King had failed to exhaust his administrative remedies. *Id.* at 40a-46a.

In Mr. King's objections to the magistrate judge's recommendation and findings, he reasserted his de-

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[1] Mr. King's complaint sought damages and injunctive relief. Pet.App. 68a-70a. Because Mr. King is no longer incarcerated, his claims for injunctive relief are moot, and the case is limited to Mr. King's claims for damages. Accordingly, Mr. King has named as respondents only those defendants against whom damages may be asserted. In addition, Mr. King's claims against a mental health counselor are not at issue in this petition. *Id.* at 12a n.7.

liberate-indifference claims and provided additional facts regarding the unavailability of his administrative remedies. *Id.* at 73a-79a.

The district court accepted the magistrate judge's findings and recommendations, concluding that Mr. King failed to state a claim for deliberate indifference and failed to exhaust administrative remedies. *Id.* at 21a-30a.

c. A divided panel of the Court of Appeals affirmed, despite its sympathy for Mr. King's plight as "the victim of an unfortunate case of mistaken identity that resulted in ongoing pain." *Id.* at 12a. The decision was limited to the merits of the deliberate-indifference claims; it did not address administrative exhaustion. *Id.* at 4a n.3.

The Court of Appeals first turned to Mr. King's claim concerning the drilling of his healthy tooth. The court noted at the outset that it was "troubled by the dental staff's failure to take common-sense steps before performing the procedure," such as confirming Mr. King's identity through a visual or x-ray inspection. *Id.* at 7a. And it assumed that Mr. King had alleged the existence of a serious medical need. *Id.* at 6a n.4. Nevertheless, the panel majority held that Mr. King had not adequately alleged that prison officials acted with deliberate indifference, but instead showed mere negligence. *Id.* at 8a.

The panel majority reasoned that prison officials "did not entirely abdicate their responsibility" to ensure that they treated the correct patient, because they "attempted to verify King's identity" when they reviewed his prison identification card. *Id.* at 7a. And the panel majority rejected as insufficient Mr. King's protests that he was only there for an ini-

tial dental screening. *Id.* at 7a-8a. The court considered Mr. King's knowledge when assessing the subjective mental state of the officials, deeming it relevant that "King himself was unsure of the mistake until after the procedure was complete." *Id.* at 7a. It ultimately concluded that the alleged facts "do not indicate that prison officials 'refused to verify underlying facts that they strongly suspected to be true.'" *Id.* at 8a (quoting *Farmer v. Brennan*, 511 U.S. 825, 843 n.8 (1994)). "[A]t most," the court concluded, "prison officials were negligent in failing to confirm King's identity." *Id.*

Next, the Court of Appeals considered Mr. King's claim that prison officials failed to adequately treat his continued pain after the erroneous drilling procedure. Despite acknowledging Mr. King's eventual need for a root canal, the panel majority held that the dental staff's refusal to perform a root canal could not plausibly amount to deliberate indifference. *Id.* at 9a-12a. It reasoned that "the fact that King eventually received a root canal does not raise a plausible inference" that the dental staff's "initial treatment for tooth pain" was improper. *Id.* at 10a-11a. The panel majority cited Mr. King's dental visits, x-rays, occlusion adjustment and medications, and it admitted that "these efforts were not ultimately successful." *Id.* at 11a. Based on this ineffective treatment, the panel majority ultimately determined that it could "[]not conclude that the allegations in the complaint show more than the dental staff's mere negligent attention to King's need for a root canal." *Id.*

Judge Gregory dissented from the judgment with respect to the claim that officials were deliberately indifferent when they drilled Mr. King's healthy

tooth. The dissenting opinion explained that "abdication of responsibility is not the only means of establishing deliberate indifference." *Id.* at 14a. Rather, "[t]here can be deliberate indifference when the defendant refuses to verify underlying facts upon a strong suspicion of error." *Id.* (citing *Farmer*, 511 U.S. at 843 n.8). As Judge Gregory concluded, "King plausibly alleges Defendants chose not to verify his identity and purpose for his visit even after his warning to the dentist that he had not been diagnosed with any decay that needed treatment." *Id.*

Judge Gregory disagreed with the panel majority's decision to ignore Mr. King's protests. The panel majority implied that "only protest[ing] the drilling twice . . . was not enough to put Defendants on notice of the impending error." *Id.* But as Judge Gregory explained, the "'content and manner'" of the communication, not the quantity, are the critical facts in determining the sufficiency of notice of the risk of harm. *Id.* (quoting *Vance v. Peters*, 97 F.3d 987, 993 (7th Cir. 1996)). And as Judge Gregory determined, Mr. King's protests provided ample notice. *Id.* at 13a-14a. Indeed, Mr. King's "statement that he was only present for a first-time examination was *unequivocal*" and was "tantamount to a statement that he was not there for a filling." *Id.* at 13a (emphasis added). Dr. Aiakman was thus "on notice of a fundamental underlying fact establishing that he was about to commit an extreme error in treatment." *Id.* The risk, Judge Gregory explained, was "obvious." *Id.* at 15a.

Further undercutting the majority's analysis, Judge Gregory reasoned that Mr. King's unawareness of the other inmate had no bearing on the analy-

sis. "Although King did not know of the other inmate, he was clearly aware of the purpose of his visit," and nothing "change[s] the fact that he adequately protested the drilling." *Id.* Nor was it relevant that the dental staff checked Mr. King's prison identification card, given that Mr. King protested the drilling *after* he handed them the card and while seated in the dental chair. *Id.* at 13a-14a. Ultimately, the fact remained that "[n]o confirmation took place at the critical point when it mattered most." *Id.* at 14a.

Mindful that the case was only at the pleading stage, Judge Gregory emphasized that "at this stage, all we are to determine is whether King has made a sufficient showing in the complaint to survive dismissal for failure to state a claim." *Id.* at 16a. And Mr. King "met his burden." *Id.* Therefore, Judge Gregory would have held that "[t]he dentist's choice not to verify the purpose of King's visit, and his persistence in completing the drilling despite King's protest is plausible deliberate indifference" under this Court's pleading standards. *Id.* at 13a (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007)).

Mr. King filed a timely motion for rehearing and rehearing en banc, which the Court of Appeals denied. *Id.* at 54a.

REASONS FOR GRANTING THE PETITION

1. It has been 20 years since this Court announced the subjective standard for deliberate indifference in *Farmer*, and lower courts are in need of this Court's additional guidance. Although lower courts are well aware that "something more than mere negligence" is required, the nature of that "something more" remains unclear. *Farmer*, 511 U.S.

at 835. The consequence of this uncertainty has been a varied application of the legal standard in claims for deliberate indifference to medical needs. This unequal application of the standard not only jeopardizes prisoners' ability to vindicate their constitutional right to adequate medical care, but it also undermines their human dignity. *See Brown v. Plata*, 131 S. Ct. 1910, 1928 (2011). Over time, increasing prison populations and overcrowding will only exacerbate the pervasive problem of medical care in prisons. It is time for this Court to clarify the standard for deliberate indifference and prevent future injustices for prisoners who are denied adequate medical care while in custody.

2. The decision below contradicts fundamental principles established by this Court. By allowing prison officials to turn a blind eye to obvious risks, the decision below flouts the standards set forth in *Farmer* and creates an impossibly high burden for deliberate indifference claims. Moreover, it disregards this Court's precedents establishing the sufficiency of deliberate indifference claims on similar facts. And despite *Farmer*'s statements that prison officials' knowledge is a fact-specific question to be determined based on the evidence, the Court of Appeals prevented Mr. King from moving beyond the pleadings on his plausible allegations that prison officials knowingly disregarded a serious risk of substantial harm.

3. In addition to departing from this Court's precedents, the decision below also conflicts with the decisions of several courts of appeals, resulting in a 2-2 split on the first question presented and a 4-2 split on the second question. While the facts vary slightly

from case to case, it is clear that the circuits' application of the subjective standard for deliberate indifference presents an irreconcilable conflict. Certiorari is warranted to provide much-needed guidance to courts adjudicating prisoners' claims for deliberate indifference to serious medical needs.

I. THE SUBJECTIVE STANDARD FOR DELIBERATE INDIFFERENCE IS AN IMPORTANT ISSUE OF FEDERAL LAW THAT REQUIRES THIS COURT'S GUIDANCE

It has been two decades since this Court announced the subjective standard for deliberate indifference to medical needs. This Court's guidance is needed to correct lower courts' inconsistent application of this standard and to bring clarity to this critical area of civil rights law.

A. Lower Courts Are In Need Of Guidance

The Eighth Amendment's prohibition against cruel and unusual punishment requires prison officials to "provide humane conditions of confinement," including "adequate . . . medical care." *Farmer*, 511 U.S. at 832. This Court has thus held that the Eighth Amendment prohibits "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). To assert a claim for constitutionally inadequate medical care, a prisoner must allege (1) a sufficiently serious medical need, and (2) prison officials' deliberate indifference to that need. *See id.*; *see also Farmer*, 511 U.S. at 834 (explaining the two-part test for deliberate indifference); *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (same).

Although this Court first coined the phrase "deliberate indifference" in 1976, *see Estelle*, 429 U.S. at

104, it has rarely elaborated on the meaning of that term. In *Estelle*, this Court said only that deliberate indifference was something more than "inadvertent failure to provide medical care" or mere "negligen[ce] in diagnosing or treating a medical condition." *Id.* at 105-06. Beyond these statements, the Court "never paused to explain the meaning" of deliberate indifference until its 1994 decision in *Farmer*. 511 U.S. at 835.

In *Farmer*, this Court adopted a subjective test for deliberate indifference, holding that prison officials must "know[] of and disregard[] an excessive risk to inmate health or safety." *Id.* at 837. That is, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.*

In the 20 years since *Farmer*, this Court has said very little about the subjective requirement for deliberate indifference. Indeed, this Court has never elaborated on the standards it announced in *Farmer*.[2]

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[2] In *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam), the subjective standard was not at issue, and the Court did not even cite *Farmer*. *Id.* at 93. Additionally, this Court's brief application of the subjective standard in *Hope v. Pelzer*, 536 U.S. 730 (2002), was ancillary to the decision, and the egregious facts of that case left no question that officials had violated the Eighth Amendment. In *Hope*, officials hooked an inmate to a hitching post for seven hours in the hot sun, taunted him, and deprived him of water and bathroom breaks. *Id.* at 738. On these facts, this Court easily concluded that "[t]his punitive treatment amounts to gratuitous infliction of 'wanton and unnecessary' pain that our precedent clearly prohibits." *Id.* (quotation omitted).

To be sure, lower courts are familiar with "the oft-repeated caveat 'that deliberate indifference entails something more than mere negligence.'" *Cooper v. County of Washtenaw*, 222 F. App'x, 459, 466 (6th Cir. 2007) (quoting *Farmer*, 511 U.S. at 835). But as the Sixth Circuit observed, "[p]recisely how much more is required remains difficult to determine." *Id.* The uncertainty surrounding "how much more is required," *id.*, produces vastly different outcomes on similar facts. *Compare, e.g.*, *Gibson v. Moskowitz*, 523 F.3d 657, 663-64 (6th Cir. 2008) (prison doctor was deliberately indifferent where mentally disabled prisoner died of dehydration and doctor ignored facts warning of a substantial risk of harm), *with Stewart v. Murphy*, 174 F.3d 530, 533 (5th Cir. 1999) (prison physicians were merely negligent where inmate died of bedsores in prison, despite their failure to effectively treat his medical needs). The time has come for the Court to break its 20-year silence and provide lower courts with guidance on the proper application of *Farmer*'s test.

B. The Standard For Deliberate Indifference Is Exceptionally Important

The constitutional adequacy of prisons' medical care is a federal issue of exceptional importance. Adequate medical treatment for prisoners is a fundamental mandate in any civilized society, and yet the threat to prisoners' health is greater now than ever.

As this Court recently held, depriving prisoners of medical care strikes at the heart of "human dignity" and "has no place in civilized society." *Plata*, 131 S. Ct. at 1928. Because incarceration "takes from prisoners the means to provide for their own needs," *id.*, inmates "must rely on prison authorities to treat

[their] medical needs," *Estelle*, 429 U.S. at 103; *see also id.* ("[E]lementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration."); *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 199 (1989) (stating that because a prisoner is unable "by reason of the deprivation of his liberty to care for himself," it is only "just" that the State be required to care for him). "In the worst cases," the failure to provide medical care for incarcerated individuals "may actually produce physical torture or a lingering death[.]" *Estelle*, 429 U.S. at 103. But even in "less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose." *Id.*

Prisoners' conditions of confinement, including poor medical treatment, present an urgent problem in many institutions today. For example, prison overcrowding in California has caused "extreme departures from the standard of care," leading to preventable deaths, prolonged illness and unnecessary pain. *See Plata*, 131 S. Ct. at 1925-26. Similarly troubling conditions of confinement extend throughout the nation. *See, e.g.*, *Kane v. Winn*, 319 F. Supp. 2d 162, 190 (D. Mass. 2004) (observing that inadequate medical care is "a common problem"). And given this country's ever-expanding prison population and widespread staff shortages, the problem of inadequate medical care will only worsen over time. *See* U.S. Dep't of Justice, *FY 2013 Agency Financial Report* III-3 (2013)[3] ("[F]ederal prisons are facing a

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[3] *Available at* http://www.justice.gov/ag/annualreports/afr2013/afr2013.pdf (last visited Feb. 27, 2014).

number of important safety and security issues, including, most significantly, that they have been overcrowded for years and the problem is only getting worse."); GAO, *Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure* 17, 22-24 (Sept. 2012)[4] (projecting that "crowding will increase from the [2012] rate of 39 percent to 44 percent by 2015" and noting prevalent staff shortages). These trends confirm that the Eighth Amendment's protections are now more vital than ever.

In light of crowding and staff shortages across the prison system, it is crucial that this Court clarify the standard required to show subjective deliberate indifference. The articulation of a uniform standard will allow lower courts to more consistently protect the interests of those who rely on the prison system for their care. *See* Sup. Ct. R. 10(c) (certiorari appropriate when court of appeals "has decided an important question of federal law that has not been, but should be, settled by this Court").

II. THE DECISION BELOW DRAMATICALLY DEPARTS FROM THIS COURT'S PRECEDENTS

In at least three ways, the Court of Appeals' decision is a marked departure from this Court's precedents. The decision below misapplies the subjective standard for deliberate indifference, ignores this Court's precedents confirming the adequacy of Mr. King's allegations, and disregards the fact-intensive nature of assessing the subjective

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[4] *Available at* http://www.gao.gov/assets/650/648123.pdf (last visited Feb. 27, 2014).

knowledge of prison officials. Certiorari is warranted to address this conflict between the judgment below and this Court's decisions. *See* Sup. Ct. R. 10(c) (certiorari appropriate when court of appeals "has decided an important federal question in a way that conflicts with relevant decisions of this Court").

1. The Court of Appeals misapplied this Court's precedents concerning the subjective standard for deliberate indifference claims. While further guidance on this standard is warranted, *see supra* Part I.A, this Court's precedents make clear that deliberate indifference is not an impossibly high standard. Nor does the standard permit prison officials to ignore facts warning of obvious risks. Rather, a plaintiff may establish deliberate indifference through circumstantial evidence that an official was aware of a substantial risk of serious harm. *See Farmer*, 511 U.S. at 842. In this case, Mr. King's protests alerted dental staff of the risk that they were about to treat the wrong patient. On these facts, the subjective standard is easily satisfied.

In *Wilson*, this Court explained that Eighth Amendment claims for inadequate medical care do not require a prisoner to demonstrate that a prison official acted "maliciously and sadistically for the very purpose of causing harm." 501 U.S. at 302. Rather, a plaintiff need only show that he was subjected to an "unnecessary and wanton infliction of pain." *Id.* at 298, 303; *see also Estelle*, 429 U.S. at 104. Expounding on this subjective requirement in *Farmer*, this Court explained that a prisoner need not show "purpose" or "knowledge" on the part of a prison official to plausibly allege deliberate indifference. 511 U.S. at 836. Instead, the requisite state of mind is

akin to "subjective recklessness" in criminal law. *Id.* at 839-40. It is sufficient that a prison official was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]" and that he "also dr[e]w the inference." *Id.* at 837. Knowledge may be demonstrated through circumstantial evidence, including "the very fact that the risk was obvious." *Id.* at 842. Under this subjective standard, a prison official cannot "escape liability if the evidence show[s] that he merely refused to verify underlying facts that he strongly suspected to be true." *Id.* at 843 n.8 (internal citations omitted).

Contrary to these standards, the Court of Appeals' decision would allow prison officials to turn a blind eye to obvious risks. The panel majority determined that the prison officials were merely "negligent in failing to confirm King's identity," simply because they saw his identification card. Pet.App. 8a. In the panel majority's view, by taking this routine (and apparently ineffective) step to check a prisoner's identity, prison officials can immunize themselves from liability. *Id.* at 7a (stating that "the prison dental staff did not entirely abdicate their responsibility to ensure that they provided treatment to the wrong patient"). That is not the law. As this Court has instructed, when an official is put on notice of "underlying facts that he strongly suspect[s] to be true," he has an obligation to verify the underlying facts. *Farmer*, 511 U.S. at 843 n.8.

Mr. King's protests alerted the dental staff to critical "underlying facts," *id.*—namely, that he was there for a first-time examination, not dental surgery. Pet.App. 62a ¶ 12. These protests, combined with the dental staff's failure to use his prison identification

card or x-ray results to confirm his identity, created an obvious risk that Mr. King was not the correct patient. *Farmer*, 511 U.S. at 842; *see also* Pet.App. 13a-14a (Gregory, J., dissenting).[5] Yet the dental staff "refused to verify" Mr. King's identity, *Farmer*, 511 U.S. at 843 n.8, and instead told Mr. King to "open [his] mouth" and "used physical force against [him]" to numb, drill and fill his perfectly healthy tooth, Pet.App. 62a ¶ 12, 63a ¶ 16, 66a ¶ 29; *see also id.* at 7a("We are troubled by the dental staff's failure to take common-sense steps before performing the procedure . . . ."). When a prisoner repeatedly alerts prison medical staff that they are operating on the wrong person, yet staff do nothing to verify the accuracy of these claims, the staff is guilty of more than "mere negligence." *Id.* at 8a (quotation omitted).

Indeed, outside of the prison context, it is well established that medical officials are more than merely negligent when they fail to properly identify a patient and proceed with incorrect treatment. *See, e.g.*, *Walker v. Humana Med. Corp.*, 415 So. 2d 1107, 1108-10 (Ala. Civ. App. 1982) (upholding jury's verdict on "wantonness" claim where phlebotomist failed to check patient's armband and transfused him with the wrong blood, causing a severe allergic reaction),

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[5] Mr. King's protests conclusively demonstrate that he has stated a claim for deliberate indifference. Even absent these protests, however, the dental staff's failure to confirm Mr. King's identity—for example, by checking his prison identification card or reviewing his x-ray results—itself amounts to deliberate indifference. *See, e.g.*, *Leavitt v. Corr. Med. Servs.*, 645 F.3d 484, 499 (1st Cir. 2011) (reversing grant of summary judgment to physician assistant on claim alleging that he was deliberately indifferent for failing to review HIV patient's viral load report).

cited with approval in Mobile Infirmary Med. Ctr. v. Hodgen, 884 So. 2d 801, 810 (Ala. 2003) (using *Walker* as an example of the proper application of Alabama law on "wantonness"); *cf.* Final Rule: "Medicaid Program; Payment Adjustment for Provider-Preventable Conditions Including Health Care-Acquired Conditions," 76 Fed. Reg. 32816, 32817, 32821 (June 6, 2011) (classifying wrong-patient and wrong-site surgery as "never events" that "should never happen" and that "are entirely preventable," and refusing to provide reimbursement for such events and consequent corrective treatment). This is particularly so when medical officials fail to verify a patient's identity despite obvious warnings that they are about to treat the wrong patient. *See, e.g.*, *Marsh v. Arnot Ogden Med. Ctr.*, 91 A.D.3d 1070, 1071-72 (N.Y. App. Div. 2012) (jury could conclude that nurse's conduct "transcended mere carelessness" and demonstrated "reckless indifference" where nurse failed to ascertain patient's identity and mistakenly injected him with insulin medication, despite his daughter's warning that he was not a diabetic) (quotation omitted); *Scribner v. Hillcrest Med. Ctr.*, 866 P.2d 437, 439, 441 (Okla. Ct. App. 1992) (concluding that failure to adhere to patient identification procedures "clearly and convincingly supported a finding of conduct equivalent to reckless disregard" where orderly mistakenly took patient for lab testing without confirming her identity, despite patient's protests that she just had a hysterectomy and was instructed not to move without direction); *cf. Zazzara v. Roche*, 54 Pa. D. & C.4th 225, 236 (Com. Pl. 2001) (plaintiff "sufficiently averred that [physician's] deviation from the standard of care manifested a reckless indifference to the safety of his patient" where physician per-

formed surgery on the wrong carotid artery despite test results indicating that the other carotid artery required surgery). Whether or not the patient is a prisoner, there is simply no question that it is "wanton," *Wilson*, 501 U.S. at 303, and "reckless," *Farmer*, 511 U.S. at 839-40, for medical officials to treat the wrong patient without confirming his identity—particularly when medical officials are "put on notice" that they are about to commit an egregious error, *id.* at 843 n.8.

The panel majority's decision blatantly disregards this Court's standards for deliberate indifference. If operating on the wrong patient despite his protests cannot plausibly constitute deliberate indifference, it is difficult to imagine a set of facts that would. This Court should grant certiorari to address this inconsistency with its precedents.

2. A brief review of this Court's deliberate indifference cases reveals that the facts of Mr. King's case are more than adequate to state a claim for deliberate indifference. In *Helling v. McKinney*, 509 U.S. 25 (1993), this Court held that allegations that prison officials subjected a prisoner to unreasonable levels of second-hand smoke, thus endangering his future health, were sufficient to state a claim of deliberate indifference. *Id.* at 33. And in *Farmer*, this Court held that placing a transsexual inmate in the general population where he was beaten and raped may constitute deliberate indifference, even if the prisoner never expressed any concern for his safety. *Farmer*, 511 U.S. at 848. Most recently, in *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam), this Court reversed the dismissal of a prisoner's claim that prison officials acted with deliberate indifference by re-

moving him from treatment for Hepatitis C. *Id.* at 94.

Mr. King's allegations are no less sufficient. Here, Mr. King alleges that prison officials not only operated on the wrong patient despite his protests, but also failed to remedy their error with effective treatment. This is precisely the sort of claim recognized by this Court as adequately stating a claim for deliberate indifference. Indeed, in *Estelle*, this Court observed that deliberate indifference may exist on similar facts. When providing examples of deliberate indifference to medical needs, *Estelle* approvingly cited the Seventh Circuit's decision in *Thomas v. Pate*, 493 F.2d 151, 158 (7th Cir. 1974), *vacated on other grounds by* 419 U.S. 813. *See Estelle*, 429 U.S. at 104 & n.10. In *Thomas*, prison officials injected a patient with penicillin, despite their knowledge that he was allergic, and then refused to treat his allergic reaction. *See* 493 F.2d at 158. This Court intimated that such conduct amounted to deliberate indifference. *Estelle*, 429 U.S. at 104 n.10 (citing *Thomas* with approval and describing the facts in a parenthetical). Similarly, in this case, the dental staff provided Mr. King with incorrect treatment, causing severe pain, and then refused to remedy their error. Under this Court's precedents, there is no question that this conduct plausibly constitutes deliberate indifference.

3. The panel majority's decision also conflicts with *Farmer*'s statements that a prison official's knowledge is generally a question of fact to be proven through discovery, *see* 511 U.S. at 841, particularly given this Court's liberal construction of *pro se* complaints, *see Erickson*, 551 U.S. at 94. The Court of Appeals erred in dismissing Mr. King's claims on the

pleadings, rather than allowing the parties to prove or disprove the dental staff's subjective deliberate indifference through evidence obtained in discovery.

As this Court explained in *Farmer*, "[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Farmer*, 511 U.S. at 842. *Farmer* contemplated that when an official's knowledge of a risk is at issue, the parties will present competing evidence on the subject. It instructed that a plaintiff may prove knowledge through "any relevant evidence" showing that an official "must have known about" a risk. *Id.* at 842, 848; *see also id.* at 842 ("[A] factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious."). Likewise, an official may prove "that the obvious escaped him," *id.* at 843 n.8; he may show, for example, "that [he] did not know of the underlying facts indicating a sufficiently substantial danger," *id.* at 844. Ultimately, the question of knowledge is for the trier of fact. *See id.* ("That a trier of fact may infer knowledge from the obvious . . . , does not mean that it must do so.").

Farmer's discussion makes it quite clear that a prison official's knowledge of a substantial risk frequently involves nuanced factual inquiries and evidentiary disputes. In cases such as this one, where a plaintiff alleges specific facts that would have alerted any prison official to a substantial and obvious risk of harm, dismissal is inappropriate. Rather, the case should proceed to discovery so that the parties may present evidence on the issue. Here, the parties should be allowed to present evidence regarding the

details of Mr. King's protests, as well as the reaction of the dental staff to his statements. The allegations of Mr. King's complaint are more than adequate to survive a motion to dismiss on this fact-intensive question, particularly in light of this Court's instruction that *pro se* complaints are "'to be liberally construed'" and "'must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Erickson*, 551 U.S. at 94 (quoting *Estelle*, 429 U.S. at 106) (reversing dismissal of claims for deliberate indifference to medical needs). Certiorari is warranted to correct the Court of Appeals' departure from this Court's precedents.

III. THE DECISION BELOW DEEPENS CIRCUIT SPLITS ON BOTH QUESTIONS PRESENTED

A. The Courts Are Split As To Whether Incorrect Medical Treatment Despite A Prisoner's Protests Amounts To Deliberate Indifference

The panel majority's decision deepens a circuit split on the question whether the subjective component of a deliberate-indifference claim is satisfied when prison officials proceed with incorrect treatment of a prisoner despite the prisoner's protests alerting them to the risk of mistreatment. The Seventh and Ninth Circuits have held that claims based on such facts adequately allege deliberate indifference. *See Thomas*, 493 F.2d at 158; *Actkinson v. Vargo*, 284 F. App'x 469, 472 (9th Cir. 2008). By contrast, the Eighth Circuit has held that no claim for deliberate indifference exists when the incorrect treatment is a "mistake," even though the prisoner's protests alerted officials to the risk of mistreatment. *Spann v. Roper*, 453 F.3d 1007, 1008 (8th Cir. 2006)

(per curiam). The Fourth Circuit's decision below deepens this split, siding with the Eighth Circuit.

1. The decision below is at odds with the decisions of the Seventh and Ninth Circuits. Both courts have held that the subjective standard may be satisfied when prison officials provide incorrect treatment to an inmate despite the inmate's protests alerting them to the risk of mistreatment.

a. In the Seventh Circuit's decision in *Thomas*, the plaintiff alleged that a prison nurse was deliberately indifferent when she gave him a shot of penicillin despite his allergy to the drug. 493 F.2d at 158. As a result of the injection, the plaintiff suffered an allergic reaction. *Id.* To demonstrate the nurse's knowledge that there was a substantial risk of an allergic reaction, the prisoner alleged that "his medical record reveals that he is allergic to penicillin," and that "he brought this information to the attention of the medical staff." *Id.* Although the district court dismissed the complaint, the Seventh Circuit reversed, concluding that the plaintiff's "allegations concerning the administration of penicillin despite his known allergy to that drug" adequately stated a claim for deliberate indifference to serious medical needs. *Id.* Two years later, this Court in *Estelle* approvingly cited *Thomas* as a classic example of a case in which prison doctors' response to a prisoner's medical needs violates the Eighth Amendment. *Estelle*, 429 U.S. at 104 & n.10.

b. In *Acktinson*, the Ninth Circuit held that a prisoner had adequately stated a deliberate indifference claim based on a prison physician's decision to treat the plaintiff with Prednisolone, despite the plaintiff's protests that he was allergic to the drug.

284 F. App'x at 472. The Ninth Circuit reversed the district court's order granting summary judgment to the physician because the evidence "raise[d] a triable issue of fact as to whether [the physician] was deliberately indifferent to [the plaintiff's] serious medical condition." *Id.* This decision, like that of the Seventh Circuit, properly applied the standards this Court articulated in *Farmer*.

2. In contrast with the Seventh and Ninth Circuits, the Eighth Circuit has held that mistakenly providing the wrong treatment to a prisoner does not amount to deliberate indifference, even when the prisoner's protests alert medical personnel to the risk of error. *See Spann*, 453 F.3d at 1008. In *Spann*, a nurse assistant forced the plaintiff to take seven to ten pills of psychotropic medication that had been prescribed for another inmate, "even though [the plaintiff] protested that the pills were not his." *Id.* When the nurse assistant realized her mistake, it was too late—the plaintiff had already swallowed the pills, which caused him to suffer from a severe reaction. *Id.* Despite the plaintiff's protests alerting the nurse assistant to the substantial risk of medicating the wrong prisoner, the Eighth Circuit affirmed the district court's grant of summary judgment to the nurse assistant. *Id.* It held that the nurse assistant did not act with deliberate indifference, simply because "it is undisputed that this was a mistake." *Id.*

Like the Eighth Circuit—and in sharp contrast with the Seventh and Ninth Circuits—the Fourth Circuit below held that a "mistake" in treatment is insufficient to show deliberate indifference, even when the prisoner's protests alert prison officials to the risk of error. That decision is inconsistent with

this Court's precedents, *see supra* at 17-20, and it deepens a circuit split. This Court should grant certiorari to resolve the conflict among the circuits on this important issue. *See* Sup. Ct. R. 10(a).

B. The Courts Are Also Split As To Whether Providing Grossly Inadequate Medical Care Amounts To Deliberate Indifference

When determining whether a prisoner's failure-to-treat allegations rise to the level of deliberate indifference, the federal courts of appeals have reached vastly different outcomes on similar facts. In particular, the circuits are divided over whether prison officials' easier and less efficacious treatment amounts to deliberate indifference, even when that treatment is grossly inadequate. At least four circuits have held that such conduct does amount to deliberate indifference, while two (including the Fourth Circuit in the decision below) have held that it does not.

1. Many circuits have correctly held that a prison official's decision to choose an easier and less efficacious treatment constitutes deliberate indifference, at least when that treatment is grossly inadequate to address a prisoner's serious medical needs. Decisions from the Second, Sixth, Seventh, and Eleventh Circuits provide the clearest examples. Indeed, decisions from the Sixth and Seventh Circuits allowed deliberate indifference claims on facts that are strikingly similar to those at issue here.

a. On facts that strongly resemble those in Mr. King's case, the Sixth Circuit held that treating a prisoner's dental pain through ineffective pain medications, rather than more effective dental procedures, may amount to deliberate indifference. *See McCarthy v. Place*, 313 F. App'x 810 (6th Cir. 2008). In

McCarthy, the plaintiff presented evidence that the dentist was aware of his significant pain, yet "failed to relieve this pain for over seven months." *Id.* at 816. The dentist could have prescribed a temporary filling, but "instead chose a less efficacious treatment route by giving [the plaintiff] packets of ibuprofen." *Id.* The Sixth Circuit reversed the grant of summary judgment to the dentist because there was evidence that the dentist "disregarded a risk of serious harm" by failing to prescribe a temporary filling despite his knowledge of the inmate's pain and the availability of "more effective treatment options." *Id.* *McCarthy* is directly contrary to the decision of the Court of Appeals here.

b. In another decision involving similar facts, the Seventh Circuit in *Berry v. Peterman*, 604 F.3d 435 (7th Cir. 2010), reversed the grant of summary judgment to a doctor who treated a prisoner's painful toothache with ineffective pain medications, instead of referring him to a dentist. *Id.* at 441-42. Like Mr. King, the prisoner received an emergency root canal only after being transferred to another facility. *Id.* at 439. The court explained that "a jury could reasonably conclude that [the doctor] knowingly adhered to an easier method to treat [the] pain that she knew was not effective." *Id.* at 441. In other cases, too, the Seventh Circuit has firmly held that merely providing "*some* treatment" is not enough if the treatment provided is ineffective. *See, e.g.*, *Greeno v. Daley*, 414 F.3d 645, 654 (7th Cir. 2005) (reversing grant of summary judgment where defendants "refuse[d] to alter [the plaintiff's] course of treatment despite his repeated reports that the medication was not working and his condition was getting worse").

c. The Second Circuit has repeatedly applied the principle that "a physician may be deliberately indifferent if he or she consciously chooses 'an easier and less efficacious' treatment plan," including in a case involving inadequate dental treatment. *Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir. 1998) (quoting *Williams v. Vincent*, 508 F.2d 541, 544 (2d Cir. 1974)). In *Chance*, the Second Circuit held that a plaintiff adequately alleged deliberate indifference on his claims that prison officials could have saved his teeth through less invasive, but more costly, methods than extraction. 143 F.3d at 700-01, 704. Similarly, in *Williams*, the Second Circuit reversed dismissal of a complaint where prison doctors chose to simply close a wound caused by the severing of the plaintiff's ear, rather than reattach the ear. *Williams*, 508 F.2d at 544; *see also Estelle*, 429 U.S. at 104 n.10 (citing *Williams* with approval). The *Williams* court determined that "the possibility that deliberate indifference caused an easier and less efficacious treatment to be consciously chosen by the doctors cannot be completely foreclosed." *Williams*, 508 F.2d at 544.

d. Finally, the Eleventh Circuit in *McElligott v. Foley*, 182 F.3d 1248 (11th Cir. 1999), reversed the grant of summary judgment to medical officials who merely prescribed rudimentary medication for a patient's severe and ongoing abdominal pain, despite his rapidly deteriorating condition. *Id.* at 1257-59. When the patient was finally transferred to the VA Hospital, he was diagnosed with terminal cancer. *Id.* at 1254. The Eleventh Circuit held that "a jury could conclude that, rather than try to diagnose and treat [the patient's] condition, the defendants knowingly took an easier but less efficacious course of treatment, reflecting their deliberate indifference to the

pain and suffering he was experiencing." *Id.* at 1258 (quotation omitted).

These courts' proper applications of the subjective standard for deliberate indifference are diametrically opposed to the Court of Appeals' decision in this case, which endorsed the dental staff's easier and less efficacious treatment. This Court should grant certiorari to correct the Court of Appeals' conflict with these circuits.

2. In contrast with the courts in the above decisions, the Fifth Circuit—like the Fourth Circuit in the decision below—has held that medical officials' grossly inadequate treatment does not amount to deliberate indifference if they take at least some steps to treat a patient's medical needs. In *Stewart*, the patient died from sepsis due to extreme bed sores. 174 F.3d at 536. On summary judgment, the Fifth Circuit exonerated the treating physicians because they provided at least some treatment. *Id.* at 534-36. The court concluded that the physicians were merely negligent when they failed to read the nurses' notes and failed take effective steps to treat the bed sores, such as prescribing antibiotics for an infection or following a local surgeon's recommendation to transfer the patient to another facility for physical therapy. *Id.* In a dissenting opinion, Judge Politz argued that the majority opinion created a "virtually impenetrable" barrier to deliberate indifference claims and "effectively render[ed] [the Eighth Amendment's] vaunted protections an empty promise." *Id.* at 538.

3. Like the Fifth Circuit's decision in *Stewart*, the decision below held that *some* treatment by the dental staff satisfied their Eighth Amendment obligation to provide Mr. King with adequate medical care.

While the Fourth Circuit paid lip service to the proper standards, *see* Pet.App. 9a, its application of those standards is in direct conflict with the decisions of numerous courts of appeals.

Although the dental staff's error caused Mr. King's urgent need for a root canal, they persisted in refusing to perform this medically necessary procedure. Their alternative course of treatment was undoubtedly "easier and less efficacious"—and grossly inadequate. *Chance*, 143 F.3d at 703 (quotation omitted). As the Court of Appeals acknowledged, the dental staff's alternative efforts "were not ultimately successful," Pet.App. 11a, and yet they failed to change their treatment in the face of Mr. King's repeated complaints. And they refused to give him a root canal, which was plainly the medical standard of care and the only reasonable treatment for Mr. King's exposed nerve. *See* 5 Med. Malprac. Chklsts. & Disc. § 35:6 ("[E]xtraction of teeth without consideration of attempting to save the teeth with endodontic treatment, periodontic treatment, or a crown may be substandard therapy . . . ."); American Association of Endodontists, *AAE Fact Sheet* ("Saving a natural tooth through endodontic treatment should always be the first choice for the best health and cosmetic results.")[6]; *cf. Berry*, 604 F.3d at 439 (dentist's notes

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[6] *Available at* https://www.aae.org/uploadedfiles/publications_and_research/guidelines_and_position_statements/toothsavingtips.pdf (last visited February 27, 2014); *see also* American Association of Endodontists, *Myths About Root Canals and Root Canal Pain*, *available at* http://www.aae.org/patients/treatments-and-procedures/root-canals/myths-about-root-canals-and-root-canal-pain.aspx (last visited February 27, 2014) (dispelling the

indicated that extraction would be required only if emergency root canal was unsuccessful). Yet the Court of Appeals concluded that Mr. King's complaint alleged nothing more than "mere negligent attention to King's need for a root canal." Pet.App. 11a. That is blatantly wrong, and it contradicts the clear principles embraced by the Second, Sixth, Seventh, and Eleventh Circuits. This Court should grant certiorari to resolve the circuit conflict on this important issue. *See* Sup. Ct. R. 10(a). This Court's guidance will ensure that lower courts apply consistent standards when adjudicating the claims of those who rely on the prison system for their medical care.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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myth that tooth extraction is an acceptable alternative to a root canal).