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## Death by Detox: Substance Withdrawal, a Possible Death Row for Individuals in Custody

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***DEATH BY DETOX:  
SUBSTANCE WITHDRAWAL, A POSSIBLE DEATH ROW FOR INDIVIDUALS  
IN CUSTODY***

*Dorothea R. Carleton\**

\*J.D. May 2023, Cleveland State University College of Law. Thank you to all of my peers and professors who have reviewed and edited this Note. Especially to my Journal of Law and Health colleagues who have been diligent this entire year in making all of the publications possible. I would also like to thank Professor Witmer-Rich for his help on this note and teaching me how to refine a legal argument. A special thank you to my husband Jason for his unconditional support throughout law school as well as spending endless hours reading and listening to me discuss this Note.

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## I. INTRODUCTION

In the landmark case of *Estelle v. Gamble*,<sup>1</sup> the United States Supreme Court guaranteed that those in custody were entitled to necessary medical care as a Constitutional right. This care extends to treatment for withdrawal from substance abuse. However, this is not what occurs. The experience for many individuals in custody regarding basic healthcare, and especially for those withdrawing from substance abuse, is just about everything short of a bearable or pleasant experience. For some, it can even be deadly.<sup>2</sup>

It would seem common sense that because, as a society, we have strict standards for healthcare, it would not be any different for an individual in custody. Especially when death by withdrawal is the third leading cause of death for individuals in custody.<sup>3</sup> But, searching for these standards, one immediately comes face-to-face with many of the issues that make healthcare for individuals in custody subpar.<sup>4</sup> These issues include the fact that authority for those very standards is given to people who do not necessarily need a medical degree.<sup>5</sup> Moreover, individuals in custody face many challenges, even in bringing a suit against a correctional facility for inadequate care.<sup>6</sup> Further, these individuals are faced with inconsistency within the courts.<sup>7</sup>

One of the inconsistencies faced by individuals in custody is the differing standards applied to different claims related to abuse or mistreatment. Specifically, this note focuses on claims brought by an individual in custody suffering from inadequate treatment for withdrawal bringing a deliberate indifference claim. The Supreme Court in *Farmer* stated the rule for deliberate indifference cases under the Eighth Amendment has both an objective and subjective prong. Those two prongs are (1) that the officer knew that the inmate faced a substantial risk of serious harm and (2) disregarded that risk or failed to take reasonable measures.<sup>8</sup> The Supreme Court in *Kingsley* stated the rule for excessive force cases under the Fourteenth Amendment, which requires only the objective prong: that the force purposely or knowingly used against him was objectively unreasonable.<sup>9</sup> Some plaintiffs have argued that the *Kingsley* excessive force standard, the objective prong only standard, should be used for deliberate indifference cases for pretrial detainees. This note argues that the subjective prong should be presumed and that this standard should be used in deliberate indifference claims regarding substance withdrawal for all individuals in custody, which includes pretrial detainees and inmates.<sup>10</sup>

Problems obtaining adequate care for those in custody facing withdrawal are made exponentially worse by the recent denial of certiorari for the case of *Strain v. Regalado*.<sup>11</sup>

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<sup>1</sup> 429 U.S. 97, 104-05 (1976).

<sup>2</sup> *Can You Die From Drug or Alcohol Withdrawals?*, AM. ADDICTION CTRS., <https://americanaddictioncenters.org/withdrawal-timelines-treatments/risk-of-death> (last modified Oct. 21, 2022).

<sup>3</sup> E. Ann Carson, *Mortality in Local Jails, 2000-2018 – Statistical Tables*, U.S. DEP'T JUST. (Apr. 2021), <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>.

<sup>4</sup> Marin C. Olson et al., *Aligning Correctional Health Standards With Medicaid-Covered Benefits*, JAMA NETWORK (July 27, 2020), <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2768932>.

<sup>5</sup> OHIO REV. CODE ANN. ch. 5120 (2023).

<sup>6</sup> 14B M.J. PRISONS AND PRISONERS § 8 (2022).

<sup>7</sup> *McBride v. Deer*, 240 F.3d 1287, 1289 (10th Cir. 2001).

<sup>8</sup> *Farmer v. Brennan*, 511 U.S. 825, 835-37 (1994).

<sup>9</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015).

<sup>10</sup> *Strain v. Regalado*, 977 F.3d 984 (10th Cir. 2020).

<sup>11</sup> *Id.*

As the Tenth Circuit faced the objective and subjective prong argument as *Strain* argued that the proper standard to be applied in a deliberate indifference claim for the failure to provide adequate medical care during substance withdrawal by a pretrial detainee is the single objective prong, as used in *Kingsley*.<sup>12</sup> However, the Tenth Circuit ruled that both the objective and the subjective prong were needed.<sup>13</sup> The plaintiff's main basis of the argument for the objective prong only standard was based on the precedent of *Kingsley*. The court declined to accept this based on the fact that the *Kingsley* decision was specifically directed at an excessive force claim, since the court did not directly extend its holding to deliberate indifference claims.<sup>14</sup> The court then addressed how both claims were brought under the Fourteenth Amendment but found that the claims – deliberate indifference versus excessive force – serve different purposes.<sup>15</sup> A deliberate indifference claim does not relate to punishment, but rather safeguards a detainee's access to adequate medical care. In contrast, an excessive force claim protects a pretrial detainee from punishment.<sup>16</sup> That excessive force is often an affirmative act, whereas deliberate indifference is often inaction. These differences require different state of mind inquiries. The court additionally noted that removing the subjective prong would go against the precedent in *Farmer*.<sup>17</sup>

By denying certiorari for *Strain*, the Supreme Court declined to consider resolving a circuit split pertaining to whether there was deliberate indifference under the Fourteenth or Eight Amendments, as it pertained to the individual in custody's medical care for alcohol withdrawal. Under the Tenth Circuit's analysis in *Strain*, the proper standard for analyzing a challenge to adequate health care is a two-prong test with both an objective and subjective prong; however, other circuits believe the proper test for these cases is a single objective prong.<sup>18</sup> By failing to clarify the standard, the Supreme Court has made hurdles to adequate health care even more challenging.

This note argues that those in custody are entitled to a higher standard of healthcare and that being put in jail and forced to detox should not be a possible death sentence. Correctional facilities need to be equipped with the training and medical supplies to adequately treat those going through withdrawal. If and when these standards of healthcare fail, however, individuals in custody need to be able to seek justice. Those in custody would be better able to accomplish this better if the Supreme Court unified the current Circuit Court standards of analysis into the two-prong test, with a presumed subjective prong. This can be done by presuming the subjective prong for cases of deliberate indifference for inadequate medical care for an individual in custody suffering from substance withdrawal. Where the presumption is based on the volume of detoxing inmates, which makes the substantial risk of medical complications known to the correctional officers. In making this argument, this note first discusses the subjective and objective prongs and the leading cases for deliberate indifference claims. The note then discusses withdrawal, how it is treated, and the history of medical treatment for individuals in custody going through withdrawal.

The note will then focus on the case of *Strain v. Regalado* and will discuss how its decision differs from those made in other circuits. It will then explain how the Supreme Court should not have denied certiorari for *Strain* because of the damage that the non-

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<sup>12</sup> *Id.* at 989.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 991.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 992.

<sup>18</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 395 (2015).

unified standard has and will cause for individuals in custody who are challenging inadequate care for withdrawal treatment. It will suggest that either the Court reconsider its decision or grant certiorari for the next similar case in order to unify the Circuit standard to a two-prong test, with the subjective prong presumed in the case of deliberate indifference of substance withdrawal. Additionally, this note will argue that federal legislation is necessary to codify the standard for deliberate indifference claims for those suffering from withdrawal.

## II. BACKGROUND

### A. The Subjective and Objective Prong

The objective prong, one that some courts have chosen to use as the only prong necessary for a deliberate indifference claim, asks “whether the harm suffered rises to a level sufficiently serious to be cognizable under the Cruel and Unusual Punishment Clause of the Eighth Amendment.”<sup>19</sup> The subjective prong, “in turn, asks whether the defendants knew [the individual in custody] faced a substantial risk of harm and disregarded that risk, by failing to take reasonable measures to abate it.”<sup>20</sup> Another court explained that for the subjective prong, an individual in custody “must prove more than negligence but less than subjective intent—something akin to reckless disregard.”<sup>21</sup> That for the “subjective” requirement, [] to violate the Eighth Amendment a prison official must have a sufficiently culpable state of mind.”<sup>22</sup>

In *Farmer v. Brennan*,<sup>23</sup> the court held that when there is a deliberate indifference claim under the Eighth Amendment, it needs to be analyzed under both the objective and the subjective prongs.<sup>24</sup> The case came to address the issue of defining the analysis for deliberate indifference when a transgender inmate was put into the general population and was thereafter assaulted. The inmate alleged that the correctional facility workers were aware of this risk. However, the court of appeals affirmed the lower court stating the prison officials lacked sufficient knowledge of the risk to be held liable.<sup>25</sup> Since there needs to be both an objective and subjective prong for a deliberate indifference claim under the Eighth Amendment.<sup>26</sup> Stating that “[t]he Eighth Amendment does not outlaw cruel and unusual ‘conditions’; it outlaws cruel and unusual ‘punishments.’” An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation.”<sup>27</sup>

In rebutting arguments for the single objective prong, the court stated that it “doubt[s] that a subjective approach will present prison officials with any serious motivation to take refuge in the zone between ‘ignorance of obvious risks’ and ‘actual knowledge of risks.’”<sup>28</sup> *Farmer* stated that it is “indeed, fair to say that acting or failing to

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<sup>19</sup> *Quintana v. Santa Fe County Bd. of Comm’rs*, 973 F.3d 1022, 1029 (10th Cir. 2020) (internal quotations omitted).

<sup>20</sup> *Id.*

<sup>21</sup> *Sykes v. Donnellon*, No. 2:20-cv-10689-TGB-KGAs, 2021 U.S. Dist. LEXIS 208889, \*2 (E.D. Mich. Oct. 29, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> 511 U.S. 825, 846 (1994).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 851.

<sup>26</sup> *Id.* at 834.

<sup>27</sup> *Id.* at 837–38.

<sup>28</sup> *Id.* at 842.

act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.”<sup>29</sup>

The court in *Farmer* additionally stated that to fulfill the subjective prong, “it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.”<sup>30</sup> Therefore, “[t]he question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, expose a prisoner to a sufficiently substantial risk of serious damage to his future health.”<sup>31</sup>

Here are some of the different standards used for arguably similar claims, all claiming deliberate indifference. A pretrial detainee bringing a Fourteenth Amendment claim for excessive force, under *Kingsley*, only needs to show the objective prong.<sup>32</sup> An individual in custody bringing an Eighth and Fourteenth Amendment claim for inadequate medical care, under *Strain*, needs to show the objective and subjective prongs.<sup>33</sup> A pretrial detainee bringing a Fourteenth Amendment claim for inadequate medical treatment, under *Brawner*, needs to show the objective prong only.<sup>34</sup> In *Miranda v. County of Lake*, the Seventh Circuit “acknowledged that *Kingsley* has called into question our case law treating the protections afforded by the Eighth and Fourteenth Amendments as functionally indistinguishable in the context of a claim about inadequate medical care.”<sup>35</sup> The court discussed how *Kingsley* and other opinions are blurring the lines between claims brought under the Eighth and Fourteenth Amendments.

In *Gordon v. County of Orange*, the Ninth Circuit court stated, “we hold that claims for violations of the right to adequate medical care ‘brought by pretrial detainees against individual defendants under the Fourteenth Amendment’ must be evaluated under an objective deliberate indifference standard.”<sup>36</sup> The court then went on to lay out the different elements that would be needed:

“the elements of a pretrial detainee’s medical care claim against an individual defendant under the due process clause of the Fourteenth Amendment are: (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff’s injuries.”<sup>37</sup>

In considering inadequate medical care and the subjective prong for determining a substantial risk, the Tenth Circuit states “[a] medical need is sufficiently serious ‘if it is one that has been diagnosed by a physician as mandating treatment or...is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.’”<sup>38</sup> The next consideration is when is a need obvious? The need for medical treatment is “obvious” when

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<sup>29</sup> *Id.* at 836.

<sup>30</sup> *Farmer v. Brennan*, 511 U.S. 825, 842 (1994).

<sup>31</sup> *Id.* at 843.

<sup>32</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 395 (2015).

<sup>33</sup> *Strain v. Regalado*, 977 F.3d 984, 987 (10th Cir. 2020).

<sup>34</sup> *Brawner v. Scott County, Tennessee*, 14 F.4th 585, 597 (6th Cir. 2021).

<sup>35</sup> *Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018).

<sup>36</sup> *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018).

<sup>37</sup> *Id.* at 1125.

<sup>38</sup> *Quintana v. Santa Fe County Bd. of Comm’rs*, 973 F.3d 1022, 1029 (10th Cir. 2020).

“a medical professional completely denies care although presented with recognizable symptoms which potentially create a medical emergency.”<sup>39</sup> However, “[n]o Tenth Circuit authorities have concluded that heroin withdrawal presents a ‘sufficiently serious’ medical need.”<sup>40</sup>

### B. Leading Cases for Deliberate Indifference Claims

*Estelle v. Gamble* is the case that outlined the basis for individuals in custody being able to take legal action against a jail or prison official for a lack of adequate medical care.<sup>41</sup> In *Estelle*, the court stated “we have held repugnant to the Eighth Amendment punishments which are incompatible with ‘the evolving standards of decency that mark the progress of a maturing society,’”<sup>42</sup> or which “involve the unnecessary and wanton infliction of pain.”<sup>43</sup> These elementary principles establish the government’s obligation to provide medical care for those whom it is punishing by incarceration.<sup>44</sup>

While *Estelle* established the right for individuals in custody to be able to bring a suit against jail officials, it did not establish the objective and subjective prongs. Rather, it held, “[i]n order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend evolving standards of decency in violation of the Eighth Amendment.”<sup>45</sup> It is *Farmer* that established the standard on which to assess the deliberate indifference.<sup>46</sup>

*Farmer* involved a claim for deliberate indifference brought by a transsexual<sup>47</sup> inmate that was placed into the general population of the prison, who claimed that as a result of being placed in the general population the individual was beaten and raped.<sup>48</sup> In addition, the plaintiff argued that the officer acted with deliberate indifference to her safety by placing her in the general population, an Eighth Amendment violation. The Supreme Court decided to hear this case in part due to the inconsistencies in the court of appeals adoption of differing tests for deliberate indifference claims.<sup>49</sup> One lower court decision held that deliberate indifference required a subjective standard of recklessness, whereas a different court of appeals case held that a prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate.<sup>50</sup> This inconsistency can also be seen as the difference in the application of the single objective prong standard or the dual objective and subjective prong standard. The court addressed

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<sup>39</sup> *Id.* at 1032.

<sup>40</sup> *Id.* at 1029.

<sup>41</sup> *Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 103.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Farmer v. Brennan*, 511 U.S. 825, 837–38 (1994).

<sup>47</sup> While the proper modern term is transgender, for places using the language from the *Farmer* opinion, the same language they used will be used in this Note.

<sup>48</sup> *Farmer v. Brennan*, 511 U.S. 825, 829 (1994).

<sup>49</sup> *Id.* at 832.

<sup>50</sup> *McGill v. Duckworth*, 944 F.2d 344 (7th Cir. 1991) (requiring a criminal form of recklessness that requires the plaintiff to show that the defendants had actual knowledge and failed to act appropriately with that knowledge.); *Young v. Quinlan*, 960 F.2d 351 (3d Cir. 1992) (holding that a prison official is deliberately indifferent for purposes of the Eighth Amendment when he “knows or should know” of the danger facing the inmate.)



the proper test to apply in cases of deliberate indifference, and ultimately held that deliberate indifference by an inmate requires both the objective and subjective prong.

The *Farmer* court reasoned that there are two requirements that must be met to find a violation of the Eighth Amendment.<sup>51</sup> First, the deprivation must be objectively and sufficiently serious. The deprivation is caused by the prison official's act or omission that results in the denial of the minimal civilized measure of life necessities.<sup>52</sup> The inmate must show that he or she is under conditions that pose a substantial risk of serious harm.<sup>53</sup>

The second requirement is for the officer to have a sufficiently culpable state of mind.<sup>54</sup> This is based on the principle that "only the unnecessary and wonton infliction of pain implicates the Eighth Amendment."<sup>55</sup> The court then went on to determine the mental state required, finding that deliberate indifference is akin to that of recklessness.<sup>56</sup> From the determination of recklessness the court found the subjective element in choosing criminal law recklessness over civil law recklessness. A criminal law recklessness standard ordinarily requires the individual to be aware of the harm he or she disregards. The Court noted that "an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment."<sup>57</sup> The court elaborated on the test, explaining that "an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm."<sup>58</sup> The Court then proposed that the "question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial 'risk of serious damage to his future health.'"<sup>59</sup> The court appears to have put the burden on the officials, as they stated "it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety."<sup>60</sup>

*Kingsley* involved a claim for excessive force brought by a pretrial detainee following a dispute about removal of paper covering a light fixture in Kingsley's cell.<sup>61</sup> After Kingsley's refusal, the officers attempted to move Kingsley to another cell, and the parties disputed whether or not Kingsley resisted being moved. During this process, Kingsley's head was slammed into the concrete bunk and he was tased in his back for approximately five seconds.<sup>62</sup> The Supreme Court granted certiorari to determine whether an excessive force claim required both an objective and subjective prong, as there was disagreement in the circuit courts.<sup>63</sup>

The *Kingsley* court reasoned that a single objective prong standard was the appropriate standard for a pretrial detainee's excessive force claim based on precedent in the *Bell* case.<sup>64</sup> The Court stated that a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a

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<sup>51</sup> *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 835.

<sup>57</sup> *Id.* at 838.

<sup>58</sup> *Id.* at 842.

<sup>59</sup> *Id.* at 843.

<sup>60</sup> *Farmer v. Brennan*, 511 U.S. 825, 844 (1994).

<sup>61</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 392 (2015).

<sup>62</sup> *Id.* at 393.

<sup>63</sup> *Id.* at 395.

<sup>64</sup> *Id.* at 398; *Bell v. Wolfish*, 441 U.S. 520 (1979).

legitimate governmental objective or that it is excess in relation to that purpose.<sup>65</sup> Additionally, the Court believed that the objective standard is workable and is consistent with jury instructions in other circuits.<sup>66</sup> The court further noted that many facilities are training their officers to be judged on an objective standard.<sup>67</sup> Lastly, the Court noted that the objective standard adequately protects officers acting in good faith.<sup>68</sup>

In *Strain*, a pretrial detainee with worsening substance withdrawal symptoms was denied access to a physician and now suffers from permanent disability due to the lack of medical response from the correctional facility. *Strain* raises the issue of how the test is applied when faced with different circumstances, such as excessive force versus a claim of inadequate medical care. The Tenth Circuit held in *Strain* that the correct standard for determining whether or not there was deliberate indifference to a pretrial detainee's serious medical needs also included both the subjective and objective component. Under the Tenth Circuit test, a plaintiff would have to show that the official either acted or failed to act in an objectively unreasonable manner while also having a subjective awareness of the risk.<sup>69</sup> The court argued that the word deliberate requires a subjective element in the analysis.<sup>70</sup> The court also noted in its explanation for its rejection of the single objective test is based on the precedent relied on by the plaintiff from the case of *Kingsley v. Hendrickson*.<sup>71</sup> *Strain* explained that *Kingsley*, involved an excessive force claim which the court notes relates more to punishment, in comparison to not providing medical care.<sup>72</sup> The court noted "[t]he deliberate indifference cause of action does not relate to punishment, but rather safeguards a pretrial detainee's access to adequate medical care."<sup>73</sup> The court additionally noted that "[e]xcessive force requires an affirmative act, while deliberate indifference often stems from inaction."<sup>74</sup> *Strain* also stated that a "deliberate indifference requires an official to subjectively disregard a known or obvious, serious medical need."<sup>75</sup> While *Farmer* stated "that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain, ...proscribed by the Eighth Amendment."<sup>76</sup> Despite withdrawal being a serious medical condition for those that have died from their withdrawal, and serious medical needs being considered unnecessary infliction of pain, it was decided in *Strain* to require both an objective and subjective prong.<sup>77</sup>

With this background information as the basis for the remainder of the note, we can begin the discussion as to why the subjective prong should be presumed for claims brought by individuals in custody who are alleging a deliberate indifference claim as it pertains to medical treatment for withdrawal of substances.

### C. Who is an Individual in Custody, and How Do Their Rights Differ?

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<sup>65</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015).

<sup>66</sup> *Id.* at 399.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Strain v. Regalado*, 977 F.3d 984, 987 (10th Cir. 2020).

<sup>70</sup> *Id.*

<sup>71</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015).

<sup>72</sup> It is arguable that suffering from deadly withdrawal symptoms is not a cruel punishment, when that is not the treatment one typically faces outside of a correctional facility.

<sup>73</sup> *Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 992.

<sup>76</sup> *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

<sup>77</sup> *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Strain v. Regalado*, 977 F.3d 984 (10th Cir. 2020).

According to Black's Law dictionary, an inmate is a person confined in a prison, hospital, or similar institution.<sup>78</sup> A detainee is defined as a person held in custody, confined, or delayed by an authority, such as law enforcement or the government.<sup>79</sup> The key difference in considering a detainee versus an inmate, comes from the way in which they are treated differently under the law. A detainee has not been found guilty and thus cannot be punished under the law.<sup>80</sup> A prisoner or an inmate is an individual who has been found guilty in a court of law and received a sentence of some form of incarceration.<sup>81</sup>

Protections of the Eighth Amendment are different with respect to their application regarding detainees versus prisoners or inmates. The Eighth Amendment is not applicable to a detainee, but prisoners and inmates do have Eighth Amendment protections, not only in relation to types of punishment, but in how they are treated when confined.<sup>82</sup> The Fourteenth Amendment, however, applies to both pre-trial detainees and inmates, to ensure proper due process of law.

These protections apply whether the confined individual is in jail, prison, or a holding cell.<sup>83</sup> This paper will focus on the confinement of detainees and inmates of jails. Jails are used for pre-trial detainees and for inmates who are convicted but have sentences of less than one year. In comparison, prison is used for someone who is convicted for more than one year.<sup>84</sup> This means that someone arrested and awaiting trial or being held to see if they will be charged, or anyone who is not yet found guilty, and or found guilty but sentenced for less than one year will be in a jail, rather than a prison. This leads to many more individuals detoxing in jails rather than in prisons, due to a lack of individuals that are immediately placed in a prison.<sup>85</sup> While noting this difference, the issue still needs to be addressed for both inmates and pre-trial detainees, so this note will address both inmates and pretrial detainees as "individuals in custody." Additionally, it will use a correctional setting to refer to a jail, prison, detention center, or other area of confinement. This is due to the fact that both an inmate and a pretrial detainee, regardless of where they are detained, can and do face injustice as they go through withdrawal.<sup>86</sup>

#### D. How Your Medical Detox Differs from Jail Detox

According to American Addiction Centers, "[t]he various types of drug withdrawal syndromes may involve different combinations of physical, mental, and emotional

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<sup>78</sup> *Inmate*, Black's Law Dictionary (11th ed. 2019).

<sup>79</sup> *Detainee*, Black's Law Dictionary (11th ed. 2019).

<sup>80</sup> Kate Lambroza, *Pretrial Detainees and The Objective Standard After Kingsley v. Hendrickson*, 58 AM. CRIM. L. REV. 429, 452 (2021) <https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2021/04/58-2-Lambroza-Pretrial-Detainees-and-the-Objective-Standard.pdf>.

<sup>81</sup> *Id.*

<sup>82</sup> Bradley J. Taylor, *Inadequate Medical Care Under the Eighth and Fourteenth Amendments: A Distinction Without a Difference?*, 30 IDC QUARTERLY 2, 2 (2020), [https://cdn.ymaws.com/www.idc.law/resource/resmgr/quarterly\\_v30-31/30.2.18.pdf](https://cdn.ymaws.com/www.idc.law/resource/resmgr/quarterly_v30-31/30.2.18.pdf).

<sup>83</sup> *Prisoners' Rights*, LEGAL INFORMATION INSTITUTE (last visited Mar. 29, 2023), [https://www.law.cornell.edu/wex/prisoners%27\\_rights](https://www.law.cornell.edu/wex/prisoners%27_rights).

<sup>84</sup> *What is the Difference Between Jail and Prison*, HG, <https://www.hg.org/legal-articles/what-is-the-difference-between-jail-and-prison-31513> (last visited Mar. 29, 2023).

<sup>85</sup> *Id.*

<sup>86</sup> *Incarceration and Health: A Family Medicine Prospective*, AAFP (July, 2021), <https://www.aafp.org/about/policies/all/incarceration.html>.

symptoms—some of which can prove dangerous if left unmanaged.”<sup>87</sup> When someone regularly uses a number of substances, “withdrawal is often an inevitable response to the sudden absence or declining blood concentration of a given substance.”<sup>88</sup> One way to think about addiction is to consider how a body reacts when it loses a substance such as insulin, which can also be fatal. When “your body is addicted to a substance, it has been conditioned to believe it requires it to survive.”<sup>89</sup>

Many institutions such as the World Health Organization, American Addiction Centers, and hospitals will have statements reminding patients: withdrawal can be life threatening,<sup>90</sup> withdrawal should be done in the presence of medical care professionals,<sup>91</sup> and to seek medical attention when experiencing withdrawal.<sup>92</sup> Yet despite all these statements for people going through withdrawal, those who are even just detained— and have therefore not even been found guilty of a crime— are not getting care in accord with these warnings.

There are numerous stories of individuals who were either detained or imprisoned who never left their cells alive, due to a lack of medical attention as they went through withdrawal.<sup>93</sup> For instance, the Cumberland County jail was under investigation for its failure to adequately provide medical assistance to inmates that were undergoing withdrawal symptoms.<sup>94</sup> In *Bradley v. Sheriff of Rock Island County*, a United States District Court for the Central District of Illinois, a detainee was being held in a holding cell after being arrested on a warrant for trespassing, he died within 24 hours of being detained from alcohol withdrawal despite being noted as an alcoholic in his paperwork.<sup>95</sup> The *Bradley* court noted that a “jail, [providing] constitutionally inadequate medical care means that prison officials were deliberately indifferent to an inmate's objectively serious medical need.”<sup>96</sup> Additionally, a Nevada woman died in a cell while she detoxed from heroin, and she was dead in her cell for six hours before any correctional staff noticed, prior to her death an officer had given her a mop to clean up her own vomit.<sup>97</sup>

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<sup>87</sup> Amelia Sharp, *Drug Withdrawal Symptoms, Timelines, and Treatment*, AM. ADDICTION CTRS. (Feb. 27, 2023), <https://americanaddictioncenters.org/withdrawal-timelines-treatments>.

<sup>88</sup> *Id.*

<sup>89</sup> *Everything You Need to Know About Substance Abuse Detox*, MCLEAN HOSPITAL (Dec. 10, 2021), <https://www.mcleanhospital.org/essential/everything-you-need-know-about-substance-use-detox>.

<sup>90</sup> *Can You Die From Drug or Alcohol Withdrawals?*, AM. ADDICTION CTRS. (Oct. 21, 2022), <https://americanaddictioncenters.org/withdrawal-timelines-treatments/risk-of-death>; *Which Drug Withdrawal can be Fatal?*, INNOVO DETOX (Feb. 23, 2021), <https://www.innovodetox.com/2021/02/23/which-drug-withdrawals-are-fatal/>.

<sup>91</sup> *Clinical Guidelines for Withdrawal Management and Treatment of Drug Dependence in Close Settings*, WORLD HEALTH ORG. (2009), <https://www.ncbi.nlm.nih.gov/books/NBK310652/>.

<sup>92</sup> Sharp, *supra* note 13.

<sup>93</sup> *How the Failure to Provide Treatment for Substance Use in Prisons and Jails Fuels the Overdose Epidemic*, ACLU (June 25, 2021), [https://www.aclu.org/sites/default/files/field\\_document/20210625-mat-prison\\_1.pdf](https://www.aclu.org/sites/default/files/field_document/20210625-mat-prison_1.pdf); Christopher Zoukis, *Drug Addicts Suffer Preventable Deaths in U.S. Jails*, PRISON LEGAL NEWS (Jan. 8, 2018), <https://www.prisonlegalnews.org/news/2018/jan/8/drug-addicts-suffer-preventable-deaths-us-jails/>.

<sup>94</sup> *Investigation of the Cumberland County Jail (Bridgeton, New Jersey)*, U.S. DEP'T JUST. CIV. RTS. DIV. (Jan. 14, 2021), <https://www.justice.gov/opa/press-release/file/1354646/download>.

<sup>95</sup> *Bradley v. Sheriff of Rock Island County*, 2016 WL 9775233 (C.D. Ill., 2016).

<sup>96</sup> *Id.* at 6.

<sup>97</sup> Crystal Bonvillian, *Report: Woman detoxing from heroin died in jail after being denied medical care*, SPRINGFIELD NEWS-SUN (Sept. 6, 2018), <https://www.springfieldnewssun.com/news/crime-->

As noted below, one of the common symptoms of withdrawing is dehydration, something that seems simple to fix. However, when someone is suffering from severe vomiting and diarrhea due to withdrawal, drinking water or Gatorade is insufficient. Your body needs IV fluids to be able to adequately replenish the lack of fluids.<sup>98</sup> This is one of the many things that is done for those who are going through withdrawal either at a hospital, if they went to the ER due to their symptoms, or for those who are withdrawing in a rehab facility.<sup>99</sup>

According to the McLean Hospital, which is a Medical School Affiliate that has treatment programs for those facing addiction and withdrawal, there are several steps that should be taken when an individual is going through withdrawal. These steps are likely to be found at any hospital or rehab center. The first step is simple: identification of the substances that the individual is addicted to and the amount and timing of the substance or substances.<sup>100</sup> The next step is cessation, or the process of slowly reducing or stopping the use of the substance, without the individual stopping use cold turkey. The article points out that it is important to do this under a physician's care.<sup>101</sup> The remaining steps include monitoring the individuals' vital signs and symptoms, as well as using IV hydration and medications to manage their symptoms.<sup>102</sup> "It's difficult and dangerous to quit a substance 'cold turkey' [i]ndividuals should rely on medical professionals who can assist throughout withdrawal completely and safely"<sup>103</sup>

Notably, the biggest difference between withdrawal outside and inside of jail is the fact that in a detox center, hospital, or rehabilitation facility, individuals will be supervised and given adequate medication to help the process and alleviate symptoms to ensure a safe withdrawal.<sup>104</sup> Even being in a detox center is not a walk in the park for withdrawal, but at least it is not a death sentence.<sup>105</sup> Additionally, the National Institute on Drug Abuse noted "[s]tudies have also found that overdose deaths following incarceration were lower when inmates received medications for their addiction."<sup>106</sup>

The symptoms of addiction withdrawal are exacerbated after an individual is arrested or confined after committing a crime. Upon confinement, that individual is immediately removed from the ability to use the substances that were being used before

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law/report-woman-detoxing-from-heroin-died-jail-after-being-denied-medical-care/gFkOW7At6UT0yaba0hg6qJ/.

<sup>98</sup> Max Bayard et al., *Alcohol Withdrawal Syndrome*, 69 AM. FAM. PHYSICIAN 1443, 1445 (2004).

<sup>99</sup> *IV Vitamin Infusions*, FHE HEALTH, <https://therehab.com/services/iv-vitamin-infusions/> (last visited Mar. 30, 2023); While not all ER's will treat those going through withdrawal solely due to the number of individuals in the nation that are addicted to a substance and that may be going through withdrawal, they will help you find a facility that is equipped to help individuals safely go through withdrawal. Christine Vestal, *Most Hospital ERs Won't Treat Your Addiction. These Will.*, PEW (Sept. 21, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/09/21/most-hospital-ers-wont-treat-your-addiction-these-will>.

<sup>100</sup> MCLEAN HOSPITAL, *supra* note 15.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *4 Physical Detoxification Services for Withdrawal from Specific Substances*, SUBSTANCE ABUSE AND MENTAL SERVICES ADMINISTRATION (2006), <https://www.ncbi.nlm.nih.gov/books/NBK64116/>.

<sup>106</sup> *Criminal Justice DrugFacts*, Nat'l Inst. Drug Abuse (June 2020), <https://nida.nih.gov/publications/drugfacts/criminal-justice>.

being detained.<sup>107</sup> This is often the case for the detainees, especially those that are withdrawing from particular substances, including alcohol, GHB, benzodiazepines or ketamine.<sup>108</sup> For reference, as alcohol can be a common substance that one withdraws from, it can take up to 10 days to fully withdraw from alcohol use, and withdrawal involves symptoms like fevers, vomiting, hallucinations, dehydration, and seizures.<sup>109</sup> In some cases, alcohol withdrawal can involve what is called Delirium Tremens, or DTs, which can be deadly and often require hospitalization as symptoms that can last weeks.<sup>110</sup> A problem is that even for someone going through DTs, many of the symptoms can look (on the outside) like regular withdrawal, with some of the deadly effects going on internally.<sup>111</sup> The difficulty in determining the extent of the withdrawal risk further illustrates the need to increase supervision, training standards, and requirements for medical personnel to be accessible.

Detoxing in a detox center, rehab, or hospital is not enjoyable and detoxing in a cell is worse, with the lack of privacy, the lack of comfort during a process that is already extremely uncomfortable, and the lack of medication to assist with the symptoms.<sup>112</sup> Notably, there are “only five detention centers in the United States that currently induce people into medication-assisted treatment for opioid addiction.”<sup>113</sup> For someone undergoing withdrawal in a jail or prison, they will be placed in a “detox tank” rather than getting any medication in order to assist with their withdrawal.<sup>114</sup>

Detox tanks differ from what is sometimes referred to as the drunk tank, or a holding cell in which someone may be held for a few hours to a day or two while they sober up. Instead, a detox tank is a room in which multiple individuals suffering from withdrawal symptoms are placed in a room together.<sup>115</sup> However, “[o]ne of the dangerous aspects of this practice is that the person thought to be intoxicated is often put into one of these cells before they receive the standard medical screening by jail health staff.”<sup>116</sup> For example, considering “a person intoxicated with methamphetamine but who is also veering into alcohol withdrawal, which can be fatal. Looking through a vision panel in a cell door, it is basically impossible to tell the difference between these types of health concerns or whether a person is dealing with one or multiple issues.”<sup>117</sup> Unfortunately, even though it is generally known that many who are arrested will suffer some type of withdrawal, legislation and standards concerning these types of situations are subpar.

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<sup>107</sup> Christine Willmsen & Beth Healy, *When Inmates Die of Poor Medical Care, Jails Often Keep It Secret*, WBUR (Mar. 23, 2020), <https://www.wbur.org/news/2020/03/23/county-jail-deaths-sheriffs-watch>; Sharp, *supra* note 13.

<sup>108</sup> *Withdrawal*, ALCOHOL & DRUG FOUND., <https://adf.org.au/reducing-risk/withdrawal/> (last visited Mar. 29, 2023).

<sup>109</sup> *Alcohol and Other Drugs Compendium*, NSW GOV'T, <https://www.health.nsw.gov.au/aod/resources/Documents/aod-compendium-interim.pdf>.

<sup>110</sup> *Id.*

<sup>111</sup> *Dying from Alcohol Withdrawal: What is Delirium Tremens?*, NORTHPOINT SEATTLE (May 1, 2019), <https://www.northpointseattle.com/blog/potential-delirium-tremens-dt-someone-goes-alcohol-withdrawal/>.

<sup>112</sup> Elizabeth Brico, *What It's Like to Detox in Jail*, VICE (Nov. 20, 2018), <https://www.vice.com/en/article/5988q3/what-its-like-to-detox-in-jail>.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Homer Venters, *It's Time to Eliminate the Drunk Tank*, THE HILL (Jan. 28, 2020), <https://thehill.com/opinion/criminal-justice/480028-its-time-to-eliminate-the-drunk-tank>.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

### E. The Law Surrounding an Individual's Rights and Standards in Correctional Facilities

The highest authority that affects the healthcare required for individuals in custody comes from the United States Constitution, specifically the Eighth and Fourteenth Amendments. The Eighth Amendment, which prohibits cruel and unusual punishment, requires the government to provide healthcare to prisoners.<sup>118</sup> Attached to this are the principles that are further articulated in the *Estelle*<sup>119</sup> case, that a prisoner can only hold officials liable for the failure to provide adequate health care if they are aware of and disregard a substantial risk of serious harm, through failure to take reasonable measures to avoid serious harm.<sup>120</sup> A separate constitutional provision, the Fourteenth Amendment, provides a prohibition against any state deprivation of life, liberty, or property without due process of law.<sup>121</sup> A pre-trial detainee gets their constitutional right to adequate medical care under the Fourteenth Amendment.<sup>122</sup> This is in comparison to inmates, which was a right established by *Estelle* and the Eighth Amendment.<sup>123</sup>

For Ohio, the minimum standards for jails are governed by the Ohio Administrative Code (O.A.C.) 5120:1-8-09. It states that a jail has a designated health authority, who is responsible for health and/or mental health care services. This authority can either be a physician, a health care administrator, or an agency.<sup>124</sup> The first instance in which an individual in custody encounters healthcare is an in-custody pre-screen, which is followed by a receiving screen. The pre-screen does not designate any considerations for substance withdrawal specifically, rather only for serious medical or mental health issues.<sup>125</sup> It is not until the receiving screen that an inmate is specifically asked questions about any substances that have been used, their amounts, duration of use, frequency, and history of withdrawal symptoms.<sup>126</sup> This receiving screen is done upon arrival at the jail prior to being placed in the general population.<sup>127</sup> Following that, there is a health appraisal, to be completed within 14 days,<sup>128</sup> which goes over more general health assessments. This assessment can be completed by a nurse or paramedic, and the report will then be reviewed by a registered nurse or higher medical professional.<sup>129</sup>

According to O.A.C. 5120:1-8-09 (W)– “[t]he health authority shall develop specific policies and protocols in accordance with local, state and federal laws for the treatment and observation of inmates manifesting symptoms of intoxication or detoxification from alcohol, opiates, hypnotics, or other drugs. Specific criteria are established for immediately transferring inmates experiencing severe, life-threatening intoxication (overdose) or detoxification symptoms to a hospital or detoxification center.”<sup>130</sup> The Ohio Administrative Code states that “[t]he health authority may be a

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<sup>118</sup> Gabriel B. Eber, *Using the Constitution to Improve Prisoner Health*, 99 AM. J. PUB. HEALTH 1541 (2009).

<sup>119</sup> *Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

<sup>120</sup> Eber, *supra* note 38.

<sup>121</sup> Taylor, *supra* note 12.

<sup>122</sup> Taylor, *supra* note 12.

<sup>123</sup> *Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

<sup>124</sup> OHIO ADMIN. CODE § 5120:1-8 (2022).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> OHIO ADMIN. CODE § 5120:1-8-09 (2020).

<sup>128</sup> Considering this timeline, and that detox can start within hours depending on substance dependency, this might not be done until an individual is already in severe withdrawal.

<sup>129</sup> OHIO ADMIN. CODE § 5120:1-8-09 (2020).

<sup>130</sup> *Id.*

physician, health administrator or agency.”<sup>131</sup> In the case in which the health authority is not a physician, the Code provides, “[w]hen the health authority is other than a local physician, final clinical judgment rests with a single, designated, responsible, local physician licensed in Ohio.”<sup>132</sup> Reporting for an individual in custody is governed by O.A.C. 5120:1-8-09 (H) -

“The jail shall ensure that there is a daily procedure whereby inmates have an opportunity to report medical and mental health complaints through health trained personnel, or for urgent matters, to any jail employee. The jail employee shall contact the appropriate medical or mental health department immediately. An inmate grievance system for medical and mental health treatment shall be established by the health authority. Both daily complaints and grievances shall be: (1) Addressed in a timely manner. (2) Recorded and maintained on file. (3) Reviewed daily by qualified health care personnel and treatment or follow-up shall be provided as necessary.”<sup>133</sup>

Notably, the health authorities establish the policies for health care as well as the grievance system for a lack of health care, all while not being required to be medical personnel.

### III. ANALYSIS

#### A. Substance Withdrawal is a Major Concern for Jails and Prisons and Presents a Need for a Higher Standard of Care

Data surrounding individuals in custody going through substance withdrawal is rarely documented, and until the recent increase in withdrawal deaths and the opioid crisis, few jails were documenting it at all.<sup>134</sup> In regard to Ohio specifically, it is “unknown exactly how many Ohio jail individuals in custody detox from opioids -- or alcohol and other drugs -- behind bars each year. Jails don't have to report the numbers.”<sup>135</sup> Despite the lack of reporting, jails and prisons across the country are becoming the main place where individuals are going through detox. “Whether they should be or not, the state's jails appear to be its busiest detoxification centers.”<sup>136</sup> However, while they have become the main place for detox, “the state has no guidelines as to how many inmates can be detoxed at once or the safest methods for doing so.”<sup>137</sup>

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Laura Brookes, *Safe Withdrawal in Jail Settings*, CTR. FOR HEALTH & JUST. (Jan. 2018), [https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail\\_010918.pdf](https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail_010918.pdf).

<sup>135</sup> Rachel Dissell, *Ohio Jails Accept Role as State's Busiest Opioid Detox Centers*, CLEVELAND (Jan. 11, 2019), [https://www.cleveland.com/metro/2017/10/ohio\\_jails\\_accept\\_role\\_as\\_states\\_busiest\\_opioid\\_detox\\_centers.html](https://www.cleveland.com/metro/2017/10/ohio_jails_accept_role_as_states_busiest_opioid_detox_centers.html).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*



From data that has been collected “[a]cross the nation the number reported [i]n 2016, 2.5 million people went through detox while incarcerated.”<sup>138</sup> For Ohio, “Cuyahoga County, about half of the inmates booked into the jail or given medical screenings each day report some level of withdrawal.”<sup>139</sup> On a national level, “58% of state prisoners and 63% of sentenced jail inmates met the criteria for drug dependence or abuse.”<sup>140</sup> Compare the percentage of individuals in custody with withdrawal and substance dependence with approximately 5% of the total general population meeting the same criteria.<sup>141</sup>

The Bureau of Labor and Statistics reported that “[f]our in [10] inmate deaths occurred within the first 7 days of admission to jail.”<sup>142</sup> The three leading causes of death for individuals in custody, include illness, suicide and substance withdrawal.<sup>143</sup> According to a chart by the Bureau and Labor Statistics, “drug and alcohol withdrawal is the third leading cause of death for individuals in custody.”<sup>144</sup> As the increase in the use of various substances increased in the past several years, so did the number of deaths that resulted from withdrawal in correctional facilities. “The number of deaths in local jails due to drug or alcohol intoxication has more than quadrupled between 2000 (37 [deaths]) and 2018 (178 [deaths]).”<sup>145</sup>

According to the Center for Health and Justice, “between 2014 and 2016 there were at least twenty lawsuits alleging that individuals in jail died from opiate withdrawal complications.”<sup>146</sup> It is difficult to find a reliable source for the data surrounding the number of claims regarding improper deaths due to withdrawal, this is due to a number of factors, one and the most concerning being that correctional facilities do not have accurate reporting data for the number of deaths and their causes.<sup>147</sup> “Jails are perhaps the least accountable part of [the] government in the United States.”<sup>148</sup> Furthermore, “[w]hen you combine that lack of transparency — that lack of oversight — with a marginalized, unpopular captive population, it's a recipe for neglect and mistreatment.”<sup>149</sup>

Another issue for accurate data regarding lawsuits is a lack of knowledge regarding all settlements entered into.<sup>150</sup> Considering the settlements between the families of

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<sup>138</sup> *New Film Provides Solutions to Opioid Withdrawal Death in U.S. Jails and Prisons*, ADVOCATES FOR HUMAN POTENTIAL, INC. (July 2, 2019), <https://www.ahpnet.com/Newsroom/News-Announcements/2019/New-Film-Provides-Solutions-to-Opioid-Withdrawal-D>.

<sup>139</sup> Dissell, *supra* note 68.

<sup>140</sup> Jennifer Bronson, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. DEP'T JUST. (Aug. 10, 2020), <https://bjs.ojp.gov/content/pub/pdf/dudaspi0709.pdf>.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> E. Ann Carson, *Mortality in Local Jails, 2000-2018 – Statistical Tables*, U.S. DEP'T JUST. (Apr. 2021), <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>.

<sup>144</sup> *Id.*

<sup>145</sup> E. Ann Carson, *Mortality in Local Jails, 2000-2018 – Statistical Tables*, U.S. DEP'T JUST. (Apr. 2021), <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>.

<sup>146</sup> Laura Brookes, *Safe Withdrawal in Jail Settings*, CTR. FOR HEALTH & JUST. (Jan. 2018), [https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail\\_010918.pdf](https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail_010918.pdf).

<sup>147</sup> Christine Willmsen & Beth Healy, *When Inmates Die of Poor Medical Care, Jails Often Keep It Secret*, WBUR (Mar. 23, 2020), <https://www.wbur.org/news/2020/03/23/county-jail-deaths-sheriffs-watch>.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Brookes, *supra* note 78.

someone who died in jail from inadequate medical treatment for withdrawal and the jails and/or their staffs, between 2010 and 2015 in at least six states, families were awarded nearly \$11 million in compensation.<sup>151</sup> An additional issue for getting accurate information concerning the deaths regarding withdrawals is that “[i]n the case of opioids, for instance, many detox deaths are officially attributed to underlying illnesses that were exacerbated by the presence of withdrawal symptoms.”<sup>152</sup> Even without knowing an accurate number of deaths from inadequate medical treatment, the stories of those individuals who lost their lives in a correctional center because a staff member ignored their symptoms of withdrawal are heartbreaking, and are even more heartbreaking when the families are unable to determine the standards by which they can bring suit for their loss.

Using both the information about substance abuse being a major concern for correctional facilities and the background information discussed above surrounding the single versus two prong tests, this note now turns to discussing the *Strain* case and the proper test for deliberate indifference claims for individuals in custody going through withdrawal.

### **B. *Strain* was Incorrect in its Determinations about the Subjective Prong**

The leading case on the two-prong test for a deliberate indifference claim was *Farmer*. In *Farmer*, the court analyzed the differences in “recklessness” under a civil standard versus criminal standard, and they deemed the appropriate standard for this claim to be the criminal standard.<sup>153</sup> The court held “that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; 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.”<sup>154</sup> The *Farmer* court reasoned that “an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.”<sup>155</sup> The *Farmer* court also stated that “an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.”<sup>156</sup>

Even if the court kept both the objective and the subjective prong as laid out in *Farmer*, there is support for a presumed subjective prong based on the above language in *Farmer*. The subjective prong requires the correctional officer to have subjective awareness of the risk. *Farmer*, as discussed above, stated that it is enough that the official failed to act despite knowledge of a substantial risk of serious harm. This note shows that the data behind withdrawal in correctional facilities presents sufficient information for a correctional officer to have knowledge that a substantial risk of harm could befall individuals in custody going through withdrawal. Due to this showing, it would be reasonable to have the subjective prong presumed for a deliberate indifference claim for inadequate medical care due to substance withdrawal. Statistics cited above show that the number of individuals suffering withdrawal while in custody who arrive at a correctional

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<sup>151</sup> Brookes, *supra* note 78.

<sup>152</sup> Christopher Moraff, *Death by Detox*, ALJAZEERA AM. (Oct. 26, 2015), <http://america.aljazeera.com/opinions/2015/10/death-by-detox.html>.

<sup>153</sup> *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 838.

<sup>156</sup> *Id.* at 842.

facility is two and half million nationwide, and further, they show that the number of individuals in custody that die due to withdrawal is almost 16% of the deaths in custody.<sup>157</sup> The number of individuals in custody withdrawing from substances illustrates that it is unreasonable for an official to not be aware of the substantial risk of harm posed to individuals without medical treatment.

As discussed above, the *Strain* case held that for a case involving a deliberate indifference against a correctional facility for failure to provide sufficient medical care to an individual in custody suffering withdrawal, both the objective and subjective prongs are needed.<sup>158</sup> A large basis of this determination was that despite the decision in *Kingsley*, the court could not use the single prong test due to the difference in circumstances surrounding the case and the specific charge in *Kingsley*.<sup>159</sup> *Kingsley* dealt solely with an excessive force claim,<sup>160</sup> in which a single prong test could be used because the claim did not involve the deliberate element, which the court held required the subjective prong due to the mental state required for the claim.<sup>161</sup> *Strain* made legal leaps in coming to a conclusion that one can use excessive force without being deliberate, and thus does not require the subjective prong. In contrast, a correctional staff member who ignores an individual's medical needs, such as extreme vomiting, seizures, and pleading for medical care, requires a deliberate prong.

In *Browner*,<sup>162</sup> the Sixth Circuit correctly held that the use of the deliberate requirement does not necessitate the need for the second prong.<sup>163</sup> The *Browner* court took it back to *Estelle*,<sup>164</sup> where the court stated that a deliberate indifference amounts to recklessness, rather than a specific mental state that induces one to act or not to act.<sup>165</sup> The *Browner* court then reasoned that due to the differences in standing and the constitutional protections of a detainee, who has not yet been convicted, and an inmate, who has been convicted, claims brought by a detainee do not rest on the need for a subjective prong as they are not permitted to be punished under the law.<sup>166</sup> The court then distinguished a deliberate indifference standard from mere negligence. Stating that for the deliberate indifference standard "[a] defendant must have not only acted deliberately (not accidentally), but also recklessly "in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known."<sup>167</sup> Here, the issue is the fact that those working in the jails are being reckless in their regard for the individuals in custody that are

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<sup>157</sup> E. Ann Caron, *Mortality in Local Jails, 2000-2018 – Statistical Tables*, U.S. DEP'T JUST. (Apr. 2021), <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>.

<sup>158</sup> *Strain v. Regalado*, 977 F.3d 984, 989 (10th Cir. 2020).

<sup>159</sup> *Id.* at 989.

<sup>160</sup> 60 A.L.R. Fed. 204 (Originally published in 1982.) In determining whether a police officer's use of force is reasonable under the Fourth Amendment, a court must pay careful attention to the facts and circumstances of each particular case. The court focuses on the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

<sup>161</sup> *Regalado*, 977 F.3d at 990-91.

<sup>162</sup> *Browner v. Scott Cty.*, 14 F.4th 585, 594 (6th Cir. 2021).

<sup>163</sup> *Id.* at 596.

<sup>164</sup> *Id.* at 594.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 596; While *Browner*'s decision was for a pretrial detainee, this logic should be extended for the same indifference for the healthcare of an inmate.

<sup>167</sup> *Id.*

going through withdrawal, rather than choosing to act in a way that would ensure their safety.<sup>168</sup>

The *Strain* decision, by deciding that a subjective prong is required for a deliberate indifference claim, requires plaintiffs to prove that the correctional staff had subjective awareness of the issues. That decision is therefore putting a highly deferential standard on the correctional staff. Correctional staff have noted that due to the number of individuals in custody they have going through withdrawal, they see withdrawals more than many medical employees.<sup>169</sup> Despite the fact that correctional staff regularly see withdrawals, the *Strain* decision incorrectly requires an individual in custody or a detainee to prove that the specific employee was subjectively aware of the risk, for every deliberate indifference claim brought. Even though correctional officers are extremely knowledgeable about the effects of detoxing, the *Strain* court decision allows courts to be more deferential to correctional staff, deciding whether they exhibited indifference in any one individual's care. Instead, as *Brawner* pointed out, this is really a question of the employees being reckless, and as such, a subjective awareness prong is not required.<sup>170</sup> We should be holding the employees, many of whom are extremely well versed in detox, to a higher standard in ensuring the proper treatment of those suffering from detox.

Due to the number of individuals in custody that suffer from withdrawal, if a proper intake is done of the individual, a correctional facility staff member should have sufficient information and knowledge about the potential dangers of substance withdrawal. If nothing else, those who are known to be going through withdrawal should receive adequate check-ins in the event that their withdrawal symptoms worsen.

### C. The Effect of the Supreme Court Denying Certiorari

As illustrated by the discussion of the cases above, there is a strong need for a clear standard for individuals bringing claims due to suffering from withdrawal while in custody. Currently, an individual bringing a deliberate indifference claim against a correctional facility may not know the appropriate standard they will face. When the Supreme Court denied certiorari for the *Strain* case, they denied those seeking claims the ability to know the appropriate standard in which those cases would be analyzed both in the circuits with precedent, and more importantly, in those circuits that have not yet had to address the issue. Not only would it make the claim's standard known, establishing the presumption of the subjective prong could press correctional centers to provide better care and pay closer attention to individuals in their custody.

While many of the opinions from the Tenth Circuit have shared the view of what is necessary for deliberate indifference, in at least one opinion, the court stated, “[d]eliberate indifference does not require a finding of express intent to harm.”<sup>171</sup> The opinion stated, “[a] prison medical professional who serves ‘solely...as a gatekeeper for other medical personnel capable of treating the condition’ may be held liable under the deliberate indifference standard if she ‘delays or refuses to fulfill that gatekeeper role.’”<sup>172</sup> This opinion illustrates how there are multiple standards even within a single circuit, and shows the need for the Supreme Court to establish a single standard.

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<sup>168</sup> This is how, in cases like *Strain*, the correctional staff is failing to regularly check on those in the detox tanks.

<sup>169</sup> *Detoxification of Chemically Dependent Inmates*, FED. BUREAU OF PRISONS CLINICAL GUIDANCE (Feb. 2014), <https://www.bop.gov/resources/pdfs/detoxification.pdf>.

<sup>170</sup> *Brawner v. Scott Cty.*, 14 F.4th 585, 594 (6th Cir. 2021).

<sup>171</sup> *Mata v. Saiz*, 427 F.3d 745, 752 (10th Cir. 2005).

<sup>172</sup> *Id.* at 751.

There are different standards for deliberate indifference claims based on the underlying conduct, such as the standard applied in excessive force claims, using only the objective prong versus inadequate care claims, using both the objective and subjective prong.<sup>173</sup> This shows not only the strong need for a standard to be put in place, but it also demonstrates the lack of importance placed on withdrawal care for individuals in custody by requiring plaintiffs to meet a higher standard. Addiction across the United States is continuously rising and so will the number of cases of withdrawal deaths for individuals in custody. As those numbers rise, the suits that follow against correctional centers are only going to continue to increase, and without a clear standard, circuits that have not faced the question are going to have to decide for themselves which standard is correct. This will lead to some suits resulting in a death that is considered unlawful, while in the circuit next door, a similar correctional facility is permitted to engage in the exact same behavior.

The Supreme Court denying certiorari is additionally conflicting, since the Supreme Court held in *Kingsley*, discussed above, that only the objective prong is needed for an excessive force deliberate indifference claim.<sup>174</sup> While the court reiterated, however, that the holding in that case was in regard to a pre-trial detainee with a claim under the Fourteenth Amendment.<sup>175</sup> That still does not resolve the conflict for a deliberate indifference claim based on excessive force versus inadequate medical care.

#### **D. Presumption of the Subjective Prong is Needed for Withdrawal Cases**

##### *1. Being in Jail is What is Triggering the Problem*

To add further insult to injury for individuals in custody, being placed in custody is what triggered the withdrawal symptoms. This then causes the suffering and serious medical needs or death by forcing them to detox in a jail or holding cell, yet they were not afforded relatively simple medical interventions, such as IV Fluids. This is neither to discount nor take away responsibility for the individual's behavior that led to an arrest and detention, but rather to illustrate their lack of ability to seek medical care for themselves, which is part of the reasoning by which *Estelle* held that individuals in custody are entitled to adequate medical care.

Upon being detained, individuals are denied access to any outside substances. "In people who develop significant levels of dependence, withdrawal is often an inevitable response to the sudden absence or declining blood concentration of a given substance."<sup>176</sup> Jails put significant effort into preventing those within the jail from having access to drugs. This includes both illegal and legal substances, through body checks and searching property, both upon intake and throughout a sentence. Additionally, prescription medications are required to be administered within specific standards.<sup>177</sup> In Ohio for example, the Ohio Department of Rehabilitation & Correction states, "[i]nmates generally do not have the option to purchase or receive prescription medication or medically related

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<sup>173</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 391-92 (2015).

<sup>174</sup> *Miranda v. Cty. of Lake*, 900 F.3d 335, 351 (7th Cir. 2018) (holding that a pretrial detainee bringing an excessive-force claim did not need to prove that the defendant was *subjectively* aware that the amount of force being used was unreasonable).

<sup>175</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015).

<sup>176</sup> Amelia Sharp, *Drug Withdrawal Symptoms, Timelines, and Treatment*, AM. ADDICTION CTRS. (March 16, 2022), <https://americanaddictioncenters.org/withdrawal-timelines-treatments>.

<sup>177</sup> *Spotlight on the Standards*, NAT'L COMM'N ON CORR. HEALTH CARE, <https://www.ncchc.org/spotlight-on-the-standards/> (last visited Mar. 30, 2023).

items from outside sources.”<sup>178</sup> This leads individuals in custody to be at the mercy of the correctional facility, the main concern addressed in *Estelle*.

Forced substance withdrawal can be coupled with forced withdrawal of Medication Assisted Treatment (MAT), which is a treatment given to individuals going through withdrawal to assist in managing the symptoms of withdrawal. Correctional facilities often do not continue to provide the medical treatment for MAT once an individual is detained. “Only 10% to 12% of the nation’s 4,000 jails are trying some form of addiction medication as part of treatment.”<sup>179</sup> Additionally, “only 22 percent of individuals serving sentences in jails who met diagnostic criteria for substance abuse or dependence received any type of drug treatment while incarcerated, and only 2 percent of them were provided withdrawal management services”<sup>180</sup>

## 2. *Nature of the Officer’s Job & Not Being an Ordinary Person*

Due to the frequency with which an officer will encounter individuals going through withdrawal and witnessing the symptoms that follow, it is reasonable to presume an officer is able to see and understand withdrawal symptoms. An officer in a jail or one monitoring a holding cell has likely seen a large number of withdrawals and is likely to see many more. An officer is trained for a multitude of situations in a jail and has to know how to properly respond. It is reasonable to train an officer on withdrawal symptoms with the growing number of individuals nationwide that have substance abuse issues. An officer working in a correctional facility will then be able to reasonably understand the symptoms of withdrawal and be able to adequately assess the need for medical intervention.

The National Commission on Correctional Healthcare notes on its website in regards to the training that correctional officers receive, “[o]fficers must also be able to recognize and alert health staff to individuals with symptoms of intoxication and withdrawal for early intervention and treatment.”<sup>181</sup> Additionally, the officers “also represent many eyes and ears throughout the facility to alert health staff to individuals with possible health issues.”<sup>182</sup> “[T]hey must be aware of the potential for emergencies that may arise, know the proper response to life-threatening situations, and understand their part in the early detection of illness and injury.”<sup>183</sup>

Correctional officers are sworn officers which requires them to act to a higher standard. “Upon graduation from your state’s correctional officer training, you will be required to take a sworn oath of office. The oaths differ from state to state, but basically it is a sworn statement both verbally and in writing to uphold the duties of a correctional officer which typically include, Enforce Rules and Keep Order; Supervise the activities of inmates; Search for Contraband Items; Inspect facilities to ensure that they meet standards;

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<sup>178</sup> *FAQs: Medical Services*, OHIO DEP’T OF REHAB. & CORR., <https://drc.ohio.gov/faq/medical> (last visited Mar. 29, 2023).

<sup>179</sup> *County Jails Struggle With A New Role As America’s Prime Centers For Opioid Detox*, NPR (April 24, 2019), <https://www.npr.org/2019/04/24/716398909/county-jails-struggle-with-a-new-role-as-americas-prime-centers-for-opioid-detox>.

<sup>180</sup> *Safe Withdrawal in Jail Settings*, CTR. FOR HEALTH & JUST. (Jan. 2018), [https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail\\_010918.pdf](https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail_010918.pdf).

<sup>181</sup> *Health Training for Correctional Officers*, NATIONAL COMM’N ON CORRECTIONAL HEALTH CARE, <https://www.ncchc.org/spotlight-on-the-standards/health-training-for-correctional-officers/> (last visited Mar. 29, 2023).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

Report on inmate conduct; [and] Aid in rehabilitation and counseling of offenders.”<sup>184</sup> The requirement to take an oath, and to be an individual in custody’s first point of contact for issues within a correctional facility highlight the need for correctional staff to be held to a higher standard.

### 3. *Certain Symptoms Create a Sufficient Subjective Awareness*

As illustrated above, an officer will see a multitude of withdrawal cases with various symptoms, so an officer should learn the symptoms that are cause for concern, such as long-term vomiting and diarrhea, which can lead to severe dehydration. Symptoms of substance withdrawal can include: shaking, seizures, hallucinations, vomiting, sweating, trouble sleeping, body aches, agitation, paranoia, and depression.<sup>185</sup> Many of these symptoms should be considered a major health issue, regardless of being a symptom of substance withdrawal. The presence of these symptoms should therefore induce medical intervention; however, the actions and results indicate a measurable lack of caring for those going through withdrawal.

## E. Proposed Legislation that Provides a Clear Standard

While the standards imposed by courts for claims arising under deliberate indifference require federal authority to govern, there is additionally a clear need for legislation on a national level. Federal legislation would be able to guide the care for individuals in custody to safely complete withdrawal in a correctional facility. Knowing the number of individuals that are suffering from withdrawal when they are put in a correctional facility; and the number of those individuals that then die from this, a national standard for medical treatment is well overdue.<sup>186</sup> As noted in *Farmer*, “having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.”<sup>187</sup>

First, in considering the legal standard for deliberate indifference claims, there are a number of factors that need to be considered. As discussed above, some circuits apply the single objective prong to claims of deliberate indifference for excessive force, while for a deliberate indifference claim for inadequate care for substance withdrawal, it needs both the objective and subjective prong.<sup>188</sup> However, the claim is the same: that the jail was deliberately indifferent to the individual’s treatment while in custody. There should not be a variation because one has a condition that society looks down upon. The treatment of individuals is governed by the same constitutional protections for everyone, regardless of the harm inflicted and by showing indifference to someone, they should be judged under the same standard.<sup>189</sup> Others have argued that the Supreme Court should rule that only the

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<sup>184</sup> *How to Become a Correctional Officer*, CORRECTIONAL OFFICER.ORG, <https://www.correctionalofficer.org/how-to-become#:~:text=The%20oaths%20differ%20from%20state,Search%20for%20Contraband%20Items> (last visited Mar. 29, 2023).

<sup>185</sup> Sharp, *supra* note 87.

<sup>186</sup> 2.5 million; approximately two hundred.

<sup>187</sup> *Farmer v. Brennan*, 511 U.S. 825, 833 (1994).

<sup>188</sup> *Kingsley v. Hendrickson*, 576 U.S. 389, 402 (2015); *Miranda v. County of Lake*, 900 F.3d 335, 351 (7th Cir. 2018); *Brawner v. Scott Cty.*, 14 F.4th 585, 591 (6th Cir. 2021); *Strain v. Regalado*, 977 F.3d 984, 989 (10th Cir. 2020).

<sup>189</sup> Noting that there are several other injustices regarding equal protections and rights for different individuals in correctional centers.

objective prong should be used for pretrial detainees bringing a deliberate indifference claim for medical withdrawal, and should not extend to those who have been convicted.<sup>190</sup> Based on the fact that the Eighth Amendment claims are to determine “[w]hether punishment is cruel and unusual thus necessitates a subjective inquiry.”<sup>191</sup> This argument, however, falls short of the fact that the Fourteenth Amendment can still also apply to convicted individuals in custody, not only pretrial detainees. Under the Constitution, a person who is convicted is afforded no fewer rights under the Fourteenth Amendment.<sup>192</sup>

In regard to changes in national standards for medical treatment of individuals in custody going through withdrawal, there are also several factors to consider. There is no forgetting that people placed in a correctional facility likely did something to get there.<sup>193</sup> The individuals’ rights under the Constitution, however, cannot be disregarded and leaving these decisions to the health authority of correctional centers is proving to be anything but successful. To make matters worse, many of the solutions that could be implemented for jails are quite affordable, so the financial reasoning for not implementing them is that much more disheartening. For example, a common drug for treating opioid withdrawals is methadone and its wholesale price is about one dollar per dose.<sup>194</sup> The two common drugs for alcohol and benzodiazepine addiction are lorazepam and clonazepam and when generic versions are purchased in bulk they cost pennies per pill.<sup>195</sup>

Another notable concern for the healthcare of correctional centers, is that many other healthcare facilities have numerous certification and board requirements. However, there is not a single mandatory certification for the medical abilities of a correctional facility.<sup>196</sup> While there is strict enforcement of “Joint Commission standards among clinics and hospitals in the community, few correctional facilities have formal accreditation, and even accredited facilities do not always meet constitutional requirements.”<sup>197</sup> While “some states mandate basic health services provisions, such as an initial physical examination on entry to a correctional facility, many state statutes lack explicit details and often delegate the task of defining adequate health care to departments of corrections.”<sup>198</sup>

While the Supreme Court needs to lay out a standard, where the subjective prong is presumed, but more importantly make the standard clear. There should also be national standards for correctional facilities in dealing with withdrawal.<sup>199</sup> The standards that should be imposed at a national level need not rise to the level of care that one may receive at various detox and rehab centers but must be sufficient to ensure that individuals are safely detoxing. “An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met.”<sup>200</sup> Currently, less than 20% of jails provide any form of drug treatment – MAT for example – and only 1% of those in custody

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<sup>190</sup> Lambroza, *supra* note 80, at 452.

<sup>191</sup> *Id.*

<sup>192</sup> U.S. CONST. amend. XIV.

<sup>193</sup> While noting there are issues regarding numerous wrongful arrests and incarcerations, that is not the focus of this Note.

<sup>194</sup> Moraff, *supra* note 84.

<sup>195</sup> *Id.*

<sup>196</sup> Olson, *supra* note 3.

<sup>197</sup> Olson, *supra* note 3.

<sup>198</sup> Olson, *supra* note 3.

<sup>199</sup> While this Note argues that these standards should apply to all individuals in custody, the standards appear to be particularly important for those that are pretrial detainees because these detainees may only be temporarily held due to minor crimes, held specifically for sobering up, or may not even end up charged with a crime or found to be innocent.

<sup>200</sup> *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).



receive detoxification treatment in jail.<sup>201</sup> Implementing these standards could have a significant positive financial impact on correctional facilities, as in “2010 to 2015, families in at least six states were awarded nearly \$11 million in compensation for loved ones who died while being denied routine withdrawal management care in jails.”<sup>202</sup> This illustrates the likelihood that the costs for proper management of withdrawal symptoms may be more cost effective than the resulting settlements for inadequate treatment.

This note proposes the following national standards for correctional centers for claims brought under deliberate indifference, due to substance withdrawal. Standards should include, but are not limited to, frequent vital sign checks, IV requirements for vomiting and diarrhea for an extended period of time, medication for those who are experiencing significant withdrawal symptoms, and ensuring access to medical care in an appropriate time frame. By providing a standard of care for both pre-trial detainees and inmates who are going through withdrawal, unnecessary deaths would be avoided.

This would seem to be standard medical care to provide anyways, as “[s]everal advisory organizations provide guidelines or standards on the provision of care for individuals who are going through withdrawal syndrome while in correctional custody, including the Federal Bureau of Prisons, the World Health Organization, and the National Commission on Correctional Healthcare.”<sup>203</sup> These organizations are requesting that jails implement systems in order to better manage the crisis that is substance abuse in the nation, and substance withdrawal in jail. Specifically, they suggest for “jails that do not already have sufficient withdrawal management protocols to develop them, and to hire and train staff to respond to withdrawal and the associated symptoms.”<sup>204</sup> They further have a “consensus that medically supervised withdrawal from alcohol or illicit substances is ideal whenever possible.”<sup>205</sup>

#### IV. CONCLUSION

Suffering through substance withdrawal is a major problem for the majority of individuals in custody, yet there are no guidelines or standards to ensure their safety. Instead, individuals in custody are having their Constitutional rights violated and many die at the hands of the justice system. When their families seek accountability for the lack of adequate care provided by correctional facilities and employees, families are faced with a lack of consistency from one circuit to the next for knowing as to the correct standard to have a successful claim. *Strain v. Regalado*<sup>206</sup> was a chance for the Supreme Court to address this issue, but by denying cert in that case, the Court has signed off on the injustice these individuals face.

This note proposed having the subjective prong for the deliberate indifference claim for inadequate medical care for withdrawal for individuals in custody presumed. Allowing the subjective prong to be presumed better aligns with the reality of this issue because correctional officers see many inmates suffering withdrawal and the symptoms which indicate the need for medical intervention are similar to those that would indicate a medical need in any other situation. Additionally, correctional officers are purportedly held

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<sup>201</sup> *Managing Substance Withdrawal in Jails: A Legal Brief*, BUREAU OF JUST. ASSISTANCE (Feb. 2022), <https://bja.ojp.gov/doc/managing-substance-withdrawal-in-jails.pdf>.

<sup>202</sup> *Safe Withdrawal in Jail Settings*, CTR. FOR HEALTH & JUST. (Jan. 2018), [https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail\\_010918.pdf](https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/Safe%20Withdrawal%20in%20Jail_010918.pdf).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> 142 S. Ct. 312 (2021).

to a higher standard. This note then proposed a federal standard for claims and medical care. These are both basic rights in the United States, unless and until a person is in custody.