No. 14-6368

In the Supreme Court of the United States

MICHAEL B. KINGSLEY, PETITIONER

v.

STAN HENDRICKSON, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING AFFIRMANCE

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QUESTION PRESENTED

Whether the requirements of a 42 U.S.C. 1983 excessive-force claim brought by a plaintiff who was a pretrial detainee at the time of the incident are satisfied by a showing that the state actor deliberately used force against the pretrial detainee and the use of force was objectively unreasonable.

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INTEREST OF THE UNITED STATES

This case concerns the requirements for establishing that an officer's use of force against a pretrial detainee violated the Constitution. The United States detains individuals awaiting criminal prosecutions. At the same time, the United States prosecutes law-enforcement officers who violate the civil rights of pretrial detainees, see 18 U.S.C. 242, and brings civil actions to address the use of excessive force against such detainees, see 42 U.S.C. 1997a, 14141. The United States therefore has a substantial interest in the Court's disposition of this case.

STATEMENT

1. In April 2010, petitioner was placed into detention in the Monroe County Jail in Sparta, Wisconsin, pending his trial on a drug charge. Pet. App. 2a;

D. Ct. Doc. 157, at 43-44 (Nov. 5, 2012). On May 20, 2010, an officer was performing a cell check when he noticed a piece of paper covering a light fixture above petitioner's bed. Pet. App. 3a. The officer told petitioner to remove the paper, but petitioner refused. *Ibid.* Throughout the course of the evening and the following morning, petitioner continued to refuse multiple orders from different officers to remove the paper, including orders from Lieutenant Robert Conroy, the administrator of the jail. *Ibid.*

Lieutenant Conroy ultimately told petitioner that the officers would remove the paper, but that petitioner would have to be removed from the cell and would face disciplinary action. Pet. App. 3a. Lieutenant Conroy and four officers, including respondents, then approached the cell. *Id.* at 4a. When petitioner refused to voluntarily exit, the officers stood him up and handcuffed him. *Ibid.* Petitioner would not voluntarily walk out of the cell, claiming that his foot was in pain. *Ibid.* The officers therefore carried him to a "receiving cell," where they placed him facedown on a concrete cell bunk. *Ibid.*

The events that occurred in the receiving cell are captured in a video in the record, but the officers' bodies largely obstructed the view of the camera. Pet. App. 4a n.3. According to the officers, petitioner physically resisted their efforts to remove his handcuffs (a safety precaution when leaving an inmate alone in a cell). *Id.* at 4a-5a; J.A. 174. Respondent Hendrickson put his knee on petitioner's back, and petitioner responded by telling him, in saltier terms, to stop. Pet. App. 5a. In the courts below, but not in this Court, petitioner claimed that the officers then slammed his head into the concrete bunk. *Id.* at 5a,

58a, 61a, 63a-64a. According to the officers, respondent Degner told petitioner that if he continued to resist, Degner would stun him with a taser. *Id.* at 58a. When petitioner still refused to comply, Hendrickson ordered Degner to stun petitioner. *Id.* at 5a n.4. Degner stunned petitioner in the back for five seconds. *Id.* at 5a. At that point, Lieutenant Conroy ordered the officers to leave the cell. *Ibid.*

Fifteen minutes later, officers returned to the cell, and petitioner allowed them to remove his handcuffs. Pet. App. 5a. The officers placed petitioner on a medical watch. *Ibid.* A nurse came by shortly after, but petitioner refused to allow her to attend to him. *Id.* at 5a, 59a.

2. Petitioner filed a pro se complaint against respondents and other officers under 42 U.S.C. 1983 and state law in the United States District Court for the Western District of Wisconsin. Pet. App. 6a & n.6. As relevant here, he alleged that they had violated the Due Process Clause of the Fourteenth Amendment by using excessive force against him in the receiving cell. *Id.* at 6a.

a. The district court denied cross-motions for summary judgment on the excessive-force claim after identifying "a genuine dispute of material fact regarding whether [the officers] used excessive force against [petitioner] once he was in the receiving cell" by "slamm[ing] [his] head into the concrete bed and us[ing] a taser against him solely for the purpose of causing him harm." Pet. App. 63a; see *id.* at 53a. The court found that a "jury could conclude that because [petitioner] was not resisting and posed no safety threat at the time [the officers] slammed his head and used the taser against him, [their] use of force was

disproportionate to the situation" or that the officers "made no efforts to temper the severity of the force and * * * intended to harm [petitioner]." *Id.* at 64a. The district court also denied the officers' request for qualified immunity. *Id.* at 66a-67a. The court stated that "a reasonable jury could conclude that [the officers] acted with malice and intended to harm [petitioner] when they used force against him." *Ibid.*

b. The parties stipulated to the dismissal of all claims except the excessive-force claim against Hendrickson and Degner (respondents here). Pet. App. 7a. With petitioner represented by appointed counsel, the case proceeded to trial. *Ibid.* Over three days, the jury heard testimony from petitioner, respondents, other officers, and expert witnesses. See D. Ct. Docs. 154-158 (Nov. 5, 2012).

c. The parties proposed different jury instructions for the definition of unconstitutionally excessive force. Petitioner proposed an instruction that would have asked the jury only "whether each individual [respondent's] use of force was unreasonable from the perspective of a reasonable officer facing the same circumstances that [each respondent] faced," without regard to whether the officer's "intentions were good or bad." J.A. 78 (emphasis omitted); see J.A. 76-77. That proposal mirrored the Fourth Amendment standard that this Court has recognized for claims of excessive force in arrest situations. See, *e.g.*, *Plumhoff* v. *Rickard*, 134 S. Ct. 2012, 2020 (2014).

Respondents proposed an instruction that would have required the jury to find that the force they had used against petitioner was "not applied in a good faith effort to maintain or restore discipline, but was

instead applied maliciously or sadistically for the very purpose of causing harm." J.A. 65. That is the standard that this Court has recognized under the Eighth Amendment for claims of excessive force brought by prisoners serving criminal sentences. See *Farmer* v. *Brennan*, 511 U.S. 825, 835-836 (1994).

The district court gave an instruction that differed from both of the proposed instructions. See J.A. 277-278; D. Ct. Doc. 156, at 153-154. The instruction stated that "[e]xcessive force means force applied recklessly that is unreasonable in light of the facts and circumstances of the time." J.A. 277. "Thus," the court said, petitioner was required to "prove each of the following factors": (i) respondents used force on him; (ii) that "use of force was unreasonable in light of the facts and circumstances at the time"; (iii) respondents "knew that using force presented a risk of harm to [petitioner], but they recklessly disregarded [petitioner's] safety by failing to take reasonable measures to minimize the risk of harm to [petitioner]"; and (iv) the use of force caused some harm to petitioner. J.A. 277-278.

The court further instructed the jury that "[i]n deciding whether one or more [respondents] used 'unreasonable' force against [petitioner], you must consider whether it was unreasonable from the perspective of a reasonable officer facing the same circumstances that [respondents] faced." J.A. 278. The court added that "in deciding whether one or more [respondents] used unreasonable force and acted with reckless disregard of [petitioner's] rights," the jury could "consider such factors as: [t]he need to use force; [t]he relationship between the need to use force and the amount of force used; [t]he extent of [petition-

er's] injury; [w]hether [respondents] reasonably believed there was a threat to the safety of staff or prisoners; and [a]ny efforts made by [respondents] to limit the amount of force used." *Ibid.*

Petitioner preserved an objection to the portion of that instruction stating that the jury would have to find that respondents had "recklessly disregarded [petitioner's] safety by failing to take reasonable measures to minimize the risk of harm" to petitioner. J.A. 231; see J.A. 228-231. He argued that the phrase was "confusing in the context of an excessive force case where [respondents] were deliberately applying force." J.A. 231. Petitioner also objected to the instruction requiring proof of harm (although he has not pressed that objection in this Court). J.A. 233-234.

d. The jury entered a verdict in favor of respondents. J.A. 284.

3. The court of appeals affirmed. Pet. App. 1a-26a. As relevant here, the court rejected petitioner's argument that the district court had "conflated the standards for excessive force under the Eighth and Fourteenth Amendments and, as a result, wrongly instructed the jury to consider the subjective intent of [respondents]." *Id.* at 2a.

a. The court of appeals began by explaining that the Fourth and Eighth Amendments protect arrestees and convicted prisoners, respectively, from excessive force by law-enforcement officers, but that "[b]etween the status of arrestee and sentenced prisoner is the intermediate status of the detainee," who "is entitled to protection from physically abusive government conduct" under the Due Process Clause of the Fourteenth Amendment. Pet. App. 11a. The court accordingly analyzed the instructions under due-process stand-

ards, relying on this Court's decision in *Bell* v. *Wolfish*, 441 U.S. 520 (1979), as its "primary touchstone." Pet. App. 12a. Under *Bell*, the court of appeals explained, "'the proper inquiry' is whether the treatment of the detainee 'amount[s] to punishment,'" which may not be imposed on an individual before he has been convicted and sentenced. *Ibid.* (brackets in original) (quoting *Bell*, 441 U.S. at 535). The court contrasted that standard with the Eighth Amendment's narrower proscription only on "cruel and unusual" punishments, and thus concluded that "the protection afforded by the Due Process Clause" from the use of force "is broader than that afforded under the Eighth Amendment." *Ibid.*

The court of appeals then held, again relying on *Bell*, that to determine whether a given action constituted forbidden "punishment," a court must ask "whether [the] action was taken 'for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose.'" Pet. App. 13a (quoting *Bell*, 441 U.S. at 538). That standard of liability, the court said, could not be satisfied by negligent governmental conduct, *ibid.* (citing *Daniels* v. *Williams*, 474 U.S. 327, 334 (1986)), but it could be satisfied by recklessness, which, the court said, "incorporates some measure of subjective intent," *ibid.* The court of appeals cited circuit precedent approving instructions that required a plaintiff to prove that the defendants "acted deliberately or with callous indifference, evidenced by an actual intent to violate [the plaintiff's] rights or reckless disregard for his rights." Pet. App. 16a-17a (citation omitted); cf. *id.* at 17a (pertinent inquiry is whether officers acted "maliciously and sadistically for the very purpose of causing

harm"). The court noted that its cases "recognize, quite clearly, the need for a subjective inquiry into the defendant's state of mind in performing the activity under scrutiny." *Id.* at 18a. Such a standard "stands in contrast," the court continued, "to the rule under the Fourth Amendment that focuses only on whether the government conduct was '*objectively* reasonable' in light of all of the facts and circumstances." *Id.* at 13a-14a (quoting *Graham* v. *Connor*, 490 U.S. 386, 397 (1989)).

Applying its understanding of the *Bell* due-process standard, the court of appeals held that the jury instructions were "sufficiently precise in [their] description of the due process right of a pretrial detainee to ensure that [petitioner's] case was fairly presented to the jury." Pet. App. 15a; see *id.* at 19a-22a. Petitioner had argued on appeal that "the instructions were erroneous and confusing because he was required to establish that the officers had acted with 'reckless disregard' for his safety, when the instruction should have allowed the jury to find the existence of punishment on the basis of wholly objective factors." *Id.* at 21a. But the court rejected that argument on the ground that "the existence of intent—at least recklessness—*is* a requirement in Fourteenth Amendment excessive force cases," and that the instructions had told the jury to measure recklessness "largely by the objective factors" that the district court had enumerated. *Id.* at 21a-22a. The court of appeals further explained that in light of the overall context of the instructions, the district court's three references to recklessness indicated only that to be held liable, respondents must have (i) acted more than negligently ("i.e., the taser did not go 'off by acci-

dent'"), (ii) "'failed to take reasonable measures to minimize harm to [petitioner],'" and (iii) otherwise behaved unreasonably in light of "objective considerations." *Id.* at 22a n.20 (quoting jury instructions).

b. Judge Hamilton dissented. Pet. App. 27a-42a. He argued that "[i]f a pretrial detainee can prove that a correctional officer used objectively unreasonable force against him, it should be self-evident that the detainee was 'punished' without due process of law." *Id.* at 27a. In his view, the district court had erred by "add[ing] an unnecessary and confusing element of 'reckless' conduct or purpose to the required elements of [petitioner's] claim." *Ibid.*; see *id.* at 34a-37a.

SUMMARY OF ARGUMENT

The judgment of the court of appeals should be affirmed. Petitioner is correct (Br. 11) that a pretrial detainee is not required to prove that an officer acted with a "bad mental state" to prevail on an excessive-force claim. However, the district court's instructions, although not a model of clarity, are most fairly read not to include such a mental-state element.

A. Under the Due Process Clause, a person who has been detained pending trial after a judicial finding of probable cause may not be subjected to "punishment." *United States* v. *Salerno*, 481 U.S. 739, 746 (1987); see *id.* at 746-752. This Court has held that a general restriction imposed on pretrial detainees constitutes "punishment" in the relevant sense if (i) prison officials impose it with the intent to achieve a punitive objective, such as deterrence or retribution, or (ii) the restriction is not reasonably related to a legitimate nonpunitive objective, such as prison security and discipline, or is unreasonably disproportionate to such an objective. *Bell* v. *Wolfish*, 441 U.S. 520, 535-

539 & n.20, 540 & n.23, 561 (1979). The same standard should apply to an officer's use of force against a pretrial detainee, with appropriate sensitivity to the difficult judgment calls that officers often must make when inmates resist their orders or threaten violence.

B. The due-process excessive-force standard for pretrial detainees differs in certain respects from the Fourth Amendment standard for arrestees and the Eighth Amendment standard for convicted prisoners. But those differences are attributable to the different text and purposes of the constitutional provisions and the different stages in the criminal-justice process at which they apply. In litigation, those differences can be substantial, as the Eighth Amendment's intent requirement poses a significant barrier to liability. However, for individual officers working with a prison population comprising both pretrial detainees and convicted prisoners, the practical problems should not be substantial. In all cases, an officer who makes a reasonable decision to use a proportionate level of force in the service of a legitimate governmental objective—such as effecting a lawful arrest, protecting the public, ensuring the safety of prisoners and guards, or enforcing legitimate discipline—complies with the Constitution. And qualified immunity protects from liability an officer who reasonably believes that her actions are lawful.

C. The jury instructions in this case required the jury to hold respondents liable if it found that respondents had used force against petitioner unreasonably in light of objective factors. Fairly read, those instructions did not, as petitioner contends, include an erroneous "bad mental state" element. Although the excessive-force instruction used a variant of "reck-

less" in three places, the instruction is best read to equate recklessness with "failing to take reasonable measures to minimize the risk of harm to [petitioner]" and otherwise acting unreasonably in light of objective considerations, J.A. 278, not with a "bad mental state," such as a malicious or punitive purpose.

ARGUMENT

TO SUCCEED ON AN EXCESSIVE-FORCE CLAIM, A PRETRIAL DETAINEE IS NOT REQUIRED TO PROVE THAT THE DEFENDANT ACTED WITH A PARTICULAR SUBJECTIVE MENTAL STATE

An individual is subject to the use of force by law-enforcement officers at various stages of the criminal-justice process. When an officer has probable cause to believe that a person has committed a crime, she may arrest him. *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 354 (2001). The Fourth Amendment permits the officer to use a reasonable level of force to effect that arrest and to ensure the safety of herself, fellow officers, and other citizens. *Plumhoff* v. *Rickard*, 134 S. Ct. 2012, 2020-2022 (2014). The Fourth Amendment and the Due Process Clause of the Fourteenth (or Fifth) Amendment then permit the government to detain the arrestee pending a guilty plea or trial if a magistrate finds probable cause and denies bail. See *United States* v. *Salerno*, 481 U.S. 739, 746-752 (1987); *Gerstein* v. *Pugh*, 420 U.S. 103, 126 (1975). Within the pretrial-detention facility, officers will often be required to use force or the threat of force to maintain order and to ensure the safety of officers and detainees. Finally, after a defendant has been convicted and sentenced to a term of imprisonment, the government may incarcerate him in a facility where officers may use force not only to maintain order and safety, but

also to advance legitimate penological goals, subject to the limits imposed by the Eighth Amendment's proscription on "cruel and unusual punishments." See *O'Lone* v. *Estate of Shabazz*, 482 U.S. 342, 348 (1987).

This case concerns the constitutional limits on officers' use of force during the pretrial-detention phase. This Court has made clear that "the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment." *Graham* v. *Connor*, 490 U.S. 386, 395 n.10 (1989). Petitioner is correct (Br. 12, 15-27) that a pretrial detainee can establish a due-process violation by showing either that the officer bore the subjective intent to inflict punishment *or* that the level of force employed had no reasonable relation to a legitimate nonpunitive objective, like prison safety and discipline. But petitioner errs in contending (Br. 11, 13) that the jury instructions in this case, fairly read, misled the jury that petitioner was required to prove a "bad mental state" element.[1]

A. The Due Process Clause Prohibits Prison Officials From Using Force That Amounts To Punishment Against A Pretrial Detainee

1. a. Under the Due Process Clause, a person "may not be punished prior to an adjudication of guilt in accordance with due process of law." *Bell* v. *Wolfish*, 441 U.S. 520, 535 (1979). The government, how-

[1] Respondents have preserved an argument that they are entitled to qualified immunity even if the instructions were erroneous, an issue that the court of appeals did not reach. See Br. in Opp. 17 n.1; Resps. C.A. Br. 28-29. Were this Court to conclude that the instructions were erroneous, it would be appropriate to remand to the court of appeals for resolution of that case-specific question in the first instance.

ever, may detain a criminal defendant pending trial in certain circumstances, such as where he cannot make bail or poses a risk of future dangerousness, because such detention is "regulatory, not penal" in character. *Salerno*, 481 U.S. at 746; see *Bell*, 441 U.S. at 536. During the course of that detention, the government "may subject [the detainee] to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment or otherwise violate the Constitution." *Bell*, 441 U.S. at 536-537.

In *Bell*, this Court set out the framework for distinguishing "between punitive measures that may not constitutionally be imposed [on a detainee] prior to a determination of guilt and regulatory restraints that may." 441 U.S. at 537. "A court," *Bell* explained, "must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." *Id.* at 538. Thus, to prove a due-process violation, a plaintiff must establish a particularized form of intent: that jail officials acted with the *purpose* of achieving a punitive objective, such as "[r]etribution [or] deterrence," rather than a "legitimate nonpunitive governmental objective[]," *id.* at 539 n.20, such as "[e]nsuring security and order at the institution," *id.* at 561.

Bell further held that a plaintiff can establish that unlawful purpose in one of two ways. First, the purpose requirement is met if a plaintiff proves "an expressed intent to punish on the part of detention facility officials." 441 U.S. at 538; see *id.* at 539 n.20, 561. Second, absent proof of such an expressed intent, the "determination generally will turn on 'whether an alternative purpose to which [the challenged practice]

may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].'" *Id.* at 538 (second set of brackets in original) (quoting *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963)).

The inquiry under the second alternative is an objective one. If the challenged practice "is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment,'" and therefore does not violate due process. *Bell*, 441 U.S. at 539. "Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment." *Ibid.* In conducting that inquiry, a court must also ask whether there exist "many alternative and less harsh methods" of achieving the same nonpunitive objective. *Id.* at 539 n.20. For example, although "loading a detainee with chains and shackles and throwing him in a dungeon may ensure his presence at trial and preserve the security of the institution," such extreme conditions would nevertheless "support a conclusion that the purpose for which they were imposed was to punish." *Ibid.*

Bell applied its framework to a number of challenged security practices in a federal detention facility, including body-cavity searches and unannounced cell searches. See 441 U.S. at 544-562. Because the officials had no "intent to punish the pretrial detainees housed there," the Court evaluated whether the practices were "rationally related to a legitimate nonpunitive governmental purpose and whether they appear[ed] excessive in relation to that purpose." *Id.* at 561. Under that standard, the Court concluded that

the plaintiffs "simply ha[d] not met their heavy burden of showing that these officials have exaggerated their response to the genuine security considerations" that prompted the practices. *Id.* at 561-562; see *Block* v. *Rutherford*, 468 U.S. 576, 583-591 (1984) (applying *Bell* standard to security practices for pretrial detainees); *Schall* v. *Martin*, 467 U.S. 253, 269-271 (1984) (applying *Bell* standard to conditions of pretrial detention for juveniles).

b. Neither *Bell* nor this Court's subsequent decisions applying its standard have been perfectly clear as to whether the second, objective prong reflects an independent *legal* basis for classifying governmental action as punitive or instead describes only the sort of evidence from which a factfinder may infer that a given action was *in fact* motivated by a punitive intent. The former view, however, is the better reading of the decisions. *Bell* stated that the "court" (rather than the "jury" or "factfinder") would draw the inference of punitive intent from the lack of any reasonable and proportionate connection between the restriction and a nonpunitive objective. 441 U.S. at 538-539. It also held that "arbitrary or purposeless" restrictions would be unconstitutional, *id.* at 539, suggesting that if prison officials had no discernible purpose whatsoever in implementing a restriction, the restriction could violate due process. And in *Block*, the Court stated that *Bell*'s objective analysis applies "[a]bsent *proof* of intent to punish," 468 U.S. at 584 (emphasis added), indicating that the objective analysis does not constitute mere proof of an officer's actual mental state.

The *Bell* objective test thus resembles other situations when the law holds that a particular purpose

must be imputed to a challenged action based on objective circumstances. See, *e.g.*, *Michigan* v. *Bryant*, 131 S. Ct. 1143, 1156 (2011) ("To determine whether the primary purpose of an interrogation is to enable police assistance to meet an ongoing emergency, * * * we objectively evaluate the circumstances in which the encounter occurs and the statements and actions of the parties.") (citation and internal quotation marks omitted); cf. *Global-Tech Appliances, Inc.* v. *SEB S.A.*, 131 S. Ct. 2060, 2068-2069 (2011) (explaining that the criminal law often equates willful blindness with knowledge or purpose). And it accords with this Court's broader due-process jurisprudence, in which the Court has typically evaluated governmental action objectively. See Pet. Br. 24.

2. *Bell* set out the standard for impermissible "punishment" in the context of claims challenging conditions of confinement and general prison security practices, not the use of force against a detainee. But this Court later stated, citing *Bell*, that it "is clear * * * that the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment." *Graham*, 490 U.S. at 395 n.10 (citing 441 U.S. at 535-539). And this Court has indicated that the *Bell* standard represents a general definition of what sort of governmental action constitutes "punishment" that is "*per se* illegitimate" when "imposed without a prior adjudication of guilt." *Schall*, 467 U.S. at 272; see *Salerno*, 481 U.S. at 747-748 (applying standard to Bail Reform Act of 1984, 18 U.S.C. 3141 *et seq.*); *Kennedy*, 372 U.S. at 168-169 (applying standard to forfeiture-of-citizenship statute) (relied on by *Bell*, 441 U.S. at 537-539 & n.20). For that reason, the *Bell* standard is not limited to the

particular governmental practices at issue in *Bell* itself.

Accordingly, the *Bell* standard supplies the appropriate test for evaluating the constitutionality of the use of force against pretrial detainees. A challenged use of force should therefore be held to violate the Due Process Clause when either (i) there was "an expressed intent to punish on the part of [the] detention facility officials" who used the force, *i.e.*, to achieve punitive objectives like deterrence, retribution, or chastisement; or (ii) the use of force was "not reasonably related to a legitimate goal," such as the safety of officers and inmates or appropriate prison discipline, or was unreasonably disproportionate in respect to such an objective. *Bell*, 441 U.S. at 538-539.

That standard provides a workable test to guide an officer's decisionmaking in situations where she must choose whether to use force to ensure the security of a detention facility or to enforce her commands. Both law-enforcement organizations and courts have ample experience in assessing the lawfulness of the use of force in light of the objective circumstances known to the officer at the time, because a similar inquiry is required by the Fourth Amendment in the arrest context. See pp. 22-23, *infra*.

There are, to be sure, critical differences between general restrictions and security practices established as prison policy and the quick judgment calls that officers make when deciding whether to use force against a pretrial detainee. Officers can be called upon to use force "in haste, under pressure, and frequently without the luxury of a second chance." *Hudson* v. *McMillian*, 503 U.S. 1, 6 (1992) (quoting *Whitley* v. *Albers*, 475 U.S. 312, 320 (1986)). That concern,

however, does not warrant a different constitutional standard for excessive-force claims. Cf. p. 26, *infra*. Instead, courts should apply the *Bell* standard with appropriate sensitivity to the volatile conditions under which officers must make decisions about whether to use force, as they do with Fourth Amendment claims. See, *e.g.*, *Plumhoff*, 134 S. Ct. at 2020-2022. In addition, as petitioner recognizes (Br. 26), a court must always evaluate the use of force in light of the "facts known [to the officer] at the time, not hindsight." See *Graham*, 490 U.S. at 397. And as with any claim challenging the actions of officials who serve in detention facilities, courts must keep in mind that "[r]unning a prison is an inordinately difficult undertaking," *Turner* v. *Safley*, 482 U.S. 78, 84-85 (1987), and that "safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face," *Florence* v. *Board of Chosen Freeholders*, 132 S. Ct. 1510, 1515 (2012). See *Block*, 468 U.S. at 584-585, 588; *Hudson* v. *Palmer*, 468 U.S. 517, 526-527 (1984); *Bell*, 441 U.S. at 540 n.23, 547-548 & n.29; accord Pet. Br. 22.

3. In the decision below, the court of appeals correctly recognized that under *Bell*, "[w]e must ask whether a particular action was taken 'for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose,'" Pet. App. 13a (quoting *Bell*, 441 U.S. at 538), and the court concluded that "the existence of intent—at least recklessness—*is* a requirement in Fourteenth Amendment excessive force cases," *id.* at 21a. But in discussing recklessness, the court cited precedents both for the proposition that reckless (but not negligent) govern-

mental action can violate the Due Process Clause, see *id.* at 13a-14a, and for the proposition that the requisite intent can be shown either by "an actual intent to violate [the plaintiff's] rights or reckless disregard for his rights," *id.* at 16a-17a (citation omitted; brackets in original).

That analysis was unnecessarily confusing. The court of appeals conflated two different types of intent relevant to a due-process claim: the intent to commit the act that caused harm, and the intent to achieve a particular purpose. See Pet. App. 37a-41a (Hamilton, J., dissenting). This case does not involve any dispute over the first type of intent—as it would if, for example, respondents claimed to have accidentally stunned petitioner with the taser. See *id.* at 22a n.20 (majority opinion); cf. *County of Sacramento* v. *Lewis*, 523 U.S. 833, 836 (1998) (holding that "deliberate or reckless indifference to life in a high-speed automobile chase" does not violate due process). Rather, the question here is whether respondents' admittedly intentional use of force against petitioner was undertaken with the *purpose* of inflicting punishment rather than achieving a nonpunitive objective, like ensuring compliance with their lawful orders.

As discussed, that aspect of the *Bell* standard is an objective inquiry, and the use of the term "reckless" in that context is more likely to confuse courts and litigants, because it appears to invoke the threshold distinction between intentional and unintentional governmental conduct. Accordingly, this Court should not import the concept of "recklessness" into the standard for constitutional excessive-force claims; it should instruct lower courts to apply the *Bell* standard instead.

B. The Standards For Excessive-Force Claims Under The Fourth And Eighth Amendments Do Not Apply To Pretrial Detainees

The *Bell* standard differs in some respects from the standards that this Court has established for Fourth Amendment excessive-force claims brought by arrestees and Eighth Amendment excessive-force claims brought by convicted prisoners. But those differences are attributable to the different text and purposes of those provisions and the different stages in the criminal-justice process at which they apply. And in any event, the differences in the legal standards are unlikely to matter in a significant number of real-world encounters where officers must decide whether to use force.

1. The use of force during pretrial detention does not effect a Fourth Amendment seizure

Petitioner contends (Br. 27-34) that the Fourth Amendment supplies an alternative standard for an excessive-force claim by a pretrial detainee. Although that argument is misguided, petitioner is correct (Br. 34-36) that the Fourth Amendment's reasonableness standard does not substantially differ from the objective component of the *Bell* standard.

a. The Fourth Amendment prohibits unreasonable seizures of persons. "Whenever an officer restrains the freedom of a person to walk away," either through a show of force or an exercise of force, "he has seized that person." *Tennessee* v. *Garner*, 471 U.S. 1, 7 (1985); see *Brendlin* v. *California*, 551 U.S. 249, 254 (2007). Because the Fourth Amendment's reasonableness requirement governs "*how* [a] seizure is made," *Garner*, 471 U.S. at 7, the use of force "in the context of an arrest or investigatory stop of a free citi-

zen" must be objectively reasonable, *Graham*, 490 U.S. at 394.

The use of force during pretrial detention, however, does not effect a "seizure" in the constitutional sense and so is not subject to the Fourth Amendment. Once a defendant has been placed into pretrial detention, it is not any subsequent use of force within the detention facility that "restrains [his] freedom * * * to walk away." *Garner*, 471 U.S. at 7. Rather, it is the placement into the detention facility itself that "results in restricting the movement of [the] detainee." *Bell*, 441 U.S. at 537. A subsequent use of force against him may constitute impermissible punishment, but it does not produce any additional restraint on his freedom of movement, because that freedom has already been fully extinguished upon his introduction into the facility. Even if that initial seizure is understood to continue throughout the period of detention, cf. *Albright* v. *Oliver*, 510 U.S. 266, 277-279 (1994) (Ginsburg, J., concurring), the use of force is not what effects the seizure; the detainee will remain seized regardless of whether force is employed. Cf. *Palmer*, 468 U.S. at 528 n.8 (holding that the Fourth Amendment "is inapplicable" to seizure of property from convicted prisoner's cell).

Petitioner suggests (Br. 30-32) that each incremental restriction on a detainee's freedom of movement *within* a detention facility counts as a separate Fourth Amendment seizure. Petitioner cites no case of this Court suggesting that view, and it is impracticable. Jail administrators, after all, constantly exercise physical control over detainees, both through the use of force and through the explicit or implicit threat of force. It would work a vast expansion of the Fourth

Amendment to hold that each of the many daily encounters that "necessitate some additional limitations on [a detainee's] freedom of movement" within a detention facility—such as "taking a prisoner aside for questioning," ordering him out of his cell, or breaking up a fight—constitutes an additional seizure requiring a fresh Fourth Amendment analysis. *Howes* v. *Fields*, 132 S. Ct. 1181, 1192 (2012).

Classifying every restriction on a detainee's movement as an additional Fourth Amendment seizure could foster confusion in lower courts as to whether the Fourth Amendment reasonableness standard requires a greater justification for particular restrictions than the *Bell* standard. And most significantly, petitioner does not identify any plausible reason why, on his view, each restriction on movement imposed on *convicted prisoners* would not also constitute a Fourth Amendment seizure. If so, prison administrators could be faced with a higher standard for certain conditions-of-confinement claims than the currently governing Eighth Amendment standard ("deliberate indifference"). See p. 26, *infra*. For those reasons, it is more sensible to consider the use of force under the due-process standard that this Court has already held to apply to pretrial detention.

b. In any event, as petitioner agrees (Br. 13, 34-36), applying the Fourth Amendment reasonableness standard to excessive-force claims would not produce a standard that materially differs from the *Bell* standard. The question in a traditional Fourth Amendment excessive-force case is whether the level of force used was a reasonable, proportionate means of achieving the legitimate governmental objectives appropriate to that stage of the criminal-justice process: ensuring

the safety of officers and the public and apprehending an offender. See, *e.g.*, *Plumhoff*, 134 S. Ct. at 2020-2022; *Scott* v. *Harris*, 550 U.S. 372, 383-384 (2007). In the pretrial-detention context, the governmental objectives are similar: primarily, protecting the safety of other inmates and officers and ensuring good order and discipline within the facility. See *Bell*, 441 U.S. at 559. As in arrest situations, a proportionate use of force reasonably calibrated to achieve those goals in light of the facts and circumstances facing the officer would be objectively reasonable. Accordingly, even if this Court were to hold that the Fourth Amendment applies (or reserve that question), adoption of the second, objective component of the *Bell* formulation, as a product of Fourth Amendment balancing, would ultimately be appropriate.

2. The Eighth Amendment's "malicious and sadistic" standard does not apply to excessive-force claims brought by pretrial detainees

The Eighth Amendment prohibits prison officials from applying force against inmates "maliciously and sadistically for the very purpose of causing harm." *Farmer* v. *Brennan*, 511 U.S. 825, 835-836 (1994). Although the Eighth Amendment applies only after a "formal adjudication of guilt," *City of Revere* v. *Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983), and therefore does not directly apply to pretrial detainees, respondents argued below that the Eighth Amendment standard "is appropriate whenever jail officials use force to preserve internal order and discipline and to maintain institutional security" in a pretrial-detention facility. Resps. C.A. Br. 23. That view is incorrect.

a. This Court has held that a "sentenced inmate," unlike a pretrial detainee, "may be punished, although that punishment may not be 'cruel and unusual' under the Eighth Amendment." *Bell*, 441 U.S. at 535 n.16 (citing *Ingraham* v. *Wright*, 430 U.S. 651, 671 n.40 (1977)); see *Sandin* v. *Conner*, 515 U.S. 472, 485 (1995). In contrast to pretrial detention, incarceration after sentencing can entail "restrictive and even harsh" conditions, *Rhodes* v. *Chapman*, 452 U.S. 337, 346-347 (1981), that are designed to achieve "valid penological objectives—including deterrence of crime, rehabilitation of prisoners," and just retribution, *O'Lone*, 482 U.S. at 348; see *Rhodes*, 452 U.S. at 352.

In light of that longstanding view, this Court has interpreted the Eighth Amendment's proscription on "cruel and unusual punishments" to bar "'only the unnecessary and *wanton* infliction of pain'" on prisoners. *Wilson* v. *Seiter*, 501 U.S. 294, 298 (1991) (emphasis added) (quoting *Whitley*, 475 U.S. at 319). That requires "more than ordinary lack of due care for the prisoner's interests or safety." *Id.* at 299 (quoting *Whitley*, 475 U.S. at 319). A plaintiff must prove both an objective element—that the prison official's conduct violated "contemporary standards of decency"—and a subjective element—that the official acted with "a sufficiently culpable state of mind." *McMillian*, 503 U.S. at 8 (citation omitted); see *Helling* v. *McKinney*, 509 U.S. 25, 35-37 (1993). A subjective element is necessary, this Court has held, for an official's action to qualify as "punishment" under the Eighth Amendment. *Wilson*, 501 U.S. at 300; see *Farmer*, 511 U.S. at 837-838.

For an Eighth Amendment excessive-force claim (as opposed to a conditions-of-confinement claim), the

subjective element requires a plaintiff to "show that [the] officials applied force 'maliciously and sadistically for the very purpose of causing harm,'" *i.e.*, with "'a knowing willingness that [harm] occur.'" *Farmer*, 511 U.S. at 835-836 (brackets in original) (quoting *McMillian*, 503 U.S. at 6, 7). Accordingly, so long as the force was used in a "good-faith effort to maintain or restore discipline," the Eighth Amendment is not violated. *McMillian*, 503 U.S. at 7. Once that subjective element is established, however, the objective element is also met; "[w]hen prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated." *Id.* at 9 (citing *Whitley*, 475 U.S. at 327).

As with due-process claims, this Court has suggested that the subjective element of an Eighth Amendment excessive-force claim can be inferred from objective circumstances. The Court has instructed that in deciding whether a correctional officer's use of force was "malicious and sadistic," a court should consider "such factors as the need for the application of force, the relationship between the need and the amount of force that was used, [and] the extent of injury inflicted." *Whitley*, 475 U.S. at 320-321 (citation omitted; brackets in original). "From such considerations," the Court has held, "inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is *tantamount* to a knowing willingness that it occur." *Id.* at 321 (emphasis added).

b. The differences between the due-process standard and the Eighth Amendment standard arise from the different text of the pertinent constitutional provi-

sions and the fact that, unlike convicted prisoners, pretrial detainees have not yet been adjudicated guilty of a criminal offense. In particular, the Eighth Amendment requirement that the officer acted "maliciously and sadistically for the very purpose of causing harm" stems from the Eighth Amendment's distinct requirement that the punishment be "cruel and unusual," *i.e.*, *wanton*. *Whitley*, 475 U.S. at 320-321 (citation omitted). Because wantonness is not a requirement of a due-process claim, the officer's purpose in using force against a pretrial detainee need not rise to the level of maliciousness or sadism to violate the Constitution.

Likewise, in the Eighth Amendment context, this Court adopted a higher subjective standard for excessive-force claims ("malicious and sadistic") than for conditions-of-confinement claims ("deliberate indifference"), whereas under the due-process analysis set out above, the *Bell* standard applies to both types of claims. But that is because the Eighth Amendment's wantonness element requires a mental state for conditions-of-confinement claims—"deliberate indifference," *i.e.*, "subjective recklessness," *Farmer*, 511 U.S. at 839-840—that would be inappropriate for evaluating decisions to use force (and would be a poor fit in the context of intentional applications of force in any event). See *McMillian*, 503 U.S. at 6-7. The same problem does not exist here, because the *Bell* standard, like Fourth Amendment objective reasonableness, can readily be applied to excessive-force claims. See pp. 22-23, *supra*.

c. Detention facilities sometimes house both pretrial detainees and convicted prisoners. See *Bell*, 441 U.S. at 546 n.28. Under the framework described

above, a stricter standard for the use of force will apply to the pretrial detainees than to the other inmates, in theory giving rise to practical difficulties when the two classes of detainees are housed together.

There are substantial reasons, however, to believe that the difference in standards will not present serious practical problems for jail administration. Like the Eighth Amendment standard, the *Bell* standard gives officers substantial discretion to use force for safety and disciplinary purposes. Accordingly, in real-world encounters, an officer's decision to use force against a detainee probably would not be affected by whether the due-process or Eighth Amendment standard governs. It would be the unusual case where an officer's use of force is not malicious or sadistic (and so satisfies the Eighth Amendment) but has no reasonable relation to any legitimate nonpunitive objective (and so violates due process). In addition, many officers are subject to a use-of-force policy adopted by their detention facility that is stricter than the Eighth Amendment standard.

Moreover, it has been clear since at least 1981 that the *Bell* standard governs conditions-of-confinement claims for pretrial detainees, while the "deliberate indifference" standard governs such claims by convicted prisoners. See *Rhodes*, 452 U.S. at 347. Yet we are aware of no evidence that administrators of detention facilities housing both pretrial detainees and convicted prisoners have struggled to conform the conditions of the facilities to constitutional standards.

Finally, with respect to both due-process and Eighth Amendment claims, officers are protected from liability by qualified immunity. That defense "applies regardless of whether the government offi-

cial's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson* v. *Callahan*, 555 U.S. 223, 231 (2009) (citations and internal quotation marks omitted). Accordingly, to hold an officer liable for the use of excessive force under the *Bell* standard, absent an expressed intent to punish, it must be established that no reasonable officer in the same position could have concluded that the use of force was reasonably related to a legitimate nonpunitive objective and was proportionate to that objective. Cf. *Anderson* v. *Creighton*, 483 U.S. 635, 643-644 (1987) (holding that officers are entitled to qualified immunity if they reasonably conclude that a search is reasonable under the Fourth Amendment). Given that high threshold for liability, it is unlikely that officers will find themselves having to differentiate between pretrial detainees and convicted prisoners in deciding whether to use force.

C. The District Court Adequately Instructed The Jury On The Elements Of An Excessive-Force Claim

Under the *Bell* due-process standard for excessive-force claims discussed above, a plaintiff can succeed by proving that the use of force was not reasonably related to a legitimate nonpunitive objective (or was unreasonably disproportionate to such an objective), without proving that the defendant *in fact* had a particular culpable mental state.

Petitioner contends (Br. 11, 13) that the jury instructions in this case impermissibly required him to prove that respondents had a "bad mental state" when they used force against him. That argument does not merit reversal of the jury's verdict. As the court of appeals recognized, Pet. App. 10a-11a, a jury verdict in a civil case should be reversed for instructional er-

ror "only if it appears that the jury was misled and its understanding of the issues was seriously affected to the prejudice of the complaining party." *Westchester Fire Ins. Co.* v. *General Star Indem. Co.*, 183 F.3d 578, 585 (7th Cir. 1999) (citation and internal quotation marks omitted); see, *e.g.*, *Townsend* v. *Lumbermens Mut. Cas. Co.*, 294 F.3d 1232, 1237 (10th Cir. 2002) ("The instructions as a whole need not be flawless, but we must be satisfied that, upon hearing the instructions, the jury understood the issues to be resolved and its duty to resolve them."). And a reviewing court must "defer to the district court's phrasing of an instruction" so long as it "accurately states the law." Pet. App. 10a (quoting *Huff* v. *Sheahan*, 493 F.3d 893, 899 (7th Cir. 2007)).

Fairly read in light of those standards, the instructions here did not contain reversible error. In focusing on the objective reasonableness of respondents' actions, the jury instructions nearly mirrored the Fourth Amendment approach that petitioner favors.

1. The district court instructed the jury that to hold respondents liable, the jury was required to find that the force respondents used "was unreasonable in light of the facts and circumstances at the time," and that respondents "knew that using force presented a risk of harm to [petitioner], but they recklessly disregarded [petitioner's] safety by failing to take reasonable measures to minimize the risk of harm to [petitioner]." J.A. 277-278. Underscoring that the court was effectively instructing the jury on an objective-reasonableness standard, the court told the jury to consider whether the force was "unreasonable from the perspective of a reasonable officer facing the same circumstances that [respondents] faced." J.A. 278.

The court then proceeded to enumerate the various objective factors that the jury was required to consider "in deciding whether one or more [respondents] used unreasonable force and acted with reckless disregard of [petitioner's] rights": "[t]he need to use force; [t]he relationship between the need to use force and the amount of force used; [t]he extent of [petitioner's] injury; [w]hether [respondents] reasonably believed there was a threat to the safety of staff or prisoners; and [a]ny efforts made by [respondents] to limit the amount of force used." *Ibid.*

Although the instruction used a variant of "reckless" in three places, it equated reckless conduct with "'failing to take reasonable measures to minimize the risk of harm to [petitioner],'"—the objective proportionality inquiry under *Bell*—and described "'reckless disregard'" purely in terms of "uncontroversial objective considerations," as the court of appeals concluded. Pet. App. 8a-9a, 22a n.20 (quoting instructions). While attorneys and courts know that the term "reckless" can connote a subjective mental state, such as consciously disregarding a substantial risk, see *Farmer*, 511 U.S. at 839, the use of that term in the instruction here would not have led a lay jury to conclude that respondents could be held liable only if they actually had a particular subjective "bad mental state." See *Morgan* v. *Family Dollar Stores, Inc.*, 551 F.3d 1233, 1283 (11th Cir. 2008) ("When the instructions, taken together, properly express the law applicable to the case, there is no error even though an isolated clause may be inaccurate, ambiguous, incomplete

or otherwise subject to criticism."), cert. denied, 558 U.S. 816 (2009).[2]

Even considered in light of the term's common legal connotation, moreover, the inclusion of recklessness was at most irrelevant in a case in which respondents did not dispute that they had used force intentionally. Indeed, that was petitioner's principal basis for objecting to the instruction in the district court. See J.A. 229 ("[I]n an excessive force case, the conduct will always be intentional. Indifference or disregard makes no sense."); see also J.A. 231. But the instruction was not likely to have the led the jury to believe that liability required the officers to have had a "bad mental state," such as a punitive or malicious intent.

For the reasons given above (see pp. 18-19, *supra*), in the future courts should not invoke the concept of recklessness in excessive-force cases. But the idiosyncratic way in which that term was used in the instruction here would not have misled the jury into entering a verdict for respondents on the ground that they lacked a particular subjective intent.

2. The excessive-force instruction was imprecise in two respects that petitioner does not challenge. Those flaws therefore provide no grounds for reversal. But the instruction given here should not be taken as a model for future cases.

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[2] The court's punitive-damages instruction used the term "reckless disregard" in a different sense ("complete indifference" to petitioner's safety or rights), J.A. 281-282, but petitioner has not argued that the punitive-damages instruction could have misled the jury on the liability instruction. To the contrary, the punitive-damages instruction makes clear that the standard for punitive damages is higher than the threshold standard for liability.

First, the district court did not instruct the jury under the first prong of the *Bell* standard that it could hold respondents liable if they had in fact acted with an explicit punitive purpose. But petitioner never requested such an instruction; to the contrary, he argued against any "separate subjective element" at all. J.A. 229.

Second, the instructions did not inform the jury that to be lawful, respondents' use of force had to be a reasonable and proportionate means of achieving a *nonpunitive* objective. But again, petitioner did not object on that ground. And in any event, the omission was harmless because respondents never argued that their actions could be justified as reasonably related to an interest other than prison safety and discipline. Instead, they argued that petitioner's refusal to comply with orders and physical resistance "led to the officers involved understandably being concerned that somebody was going to get hurt," D. Ct. Doc. 156, at 119, 135, and that Degner had stunned petitioner with the taser "solely for the purpose of getting [petitioner] to comply so they could take the cuffs off and leave the cell," *id.* at 136; see *id.* at 144-145.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. U.S. Const. Amend. IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. U.S. Const. Amend V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. U.S. Const. Amend VIII provides:

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

4. U.S. Const. Amend. XIV provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No Person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Con-

gress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

5. 42 U.S.C. 1983 provides:

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.