

**In the Supreme Court of the United States**

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CHESTER CAMPBELL,

*Petitioner,*

v.

ARTHUR SHELBY,

*Respondent.*

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

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**BRIEF FOR RESPONDENT**

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TEAM 17  
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**QUESTION PRESENTED**

- I. Did the Fourteenth Circuit Correctly Determine The PLRA Does Not Block All Paths to Civil Recourse for an Individual Whose Civil Rights Have Been Violated When He Has Suffered Three Prior Dismissals Solely Pursuant to *Heck v. Humphrey*?**
  
- II. Did the Fourteenth Circuit Correctly Decide to Adopt the Objective Standard in Deliberate Indifference Failure-to-Protect Claims to Promote the Pretrial Detainees Due Process Clause Protections Under the Fourteenth Amendment?**

**OPINIONS BELOW**

The Record Features the Fourteenth Circuit’s opinion (R. 12.) and dissent to that opinion (R. 19.), the District Court’s Opinion (R. 2.), and the District Court’s Order (R. 1.)

**CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

In answering the first certified question, 42 U.S.C. § 1983 and 28 U.S.C. § 1915 are discussed in detail.

In answering the second certified question the Fourteenth Amendment Due Process Clause to the United States Constitution and the Eighth Amendment Cruel and Unusual Punishment Clause to the United States Constitution are discussed in detail.

**STATEMENT OF THE CASE**

**I. Procedural History**

Mr. Shelby filed a 42 U.S.C. § 1983 action pro se on February 24, 2022 in the District Court of Wythe against Officer Campbell. (R. 2.) Officer Campbell then filed a 12(b)(6) Motion to Dismiss for failure to state a claim on May 4, 2022. (*Id.*) The District Court granted the Motion to Dismiss on July 14, 2022. (R. 11.) Mr. Shelby then filed an appeal with the Fourteenth Circuit Court of Appeals on December 1, 2022. (R. 12.) The Fourteenth Circuit reversed and remanded

the District Court's decision on both issues. Officer Campbell then petitioned this Court for certiorari which this Court granted. (R. 21.)

## II. Statement of the Facts

Arthur Shelby is the second-in-command of the Geeky Binders Street Gang. (R. 2.) Prior to being convicted of battery and possession of a firearm by a convicted felon, Mr. Shelby was detained at the Marshall jail. (R. 4, 7.) Prior to his most recent arrest and conviction, Mr. Shelby commenced three separate civil actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. (R. 3.) These actions were dismissed without prejudice pursuant to *Heck v. Humphrey* because they would've called into question his conviction or sentence. (*Id.*)

The town of Marshall has historically been heavily influenced and even at times owned by the Geeky Binders, the gang Mr. Shelby is affiliated with. (*Id.*) However, in recent years the town of Marshall has experienced an influx of rival gang members known as the Bonucci Clan and led by Luca Bonucci. (*Id.*) The Bonucci's have rivaled the Geeky Binders for influence in the town of Marshall by allegedly bribing the local politicians, police officers, and jail officials. (*Id.*) Bonucci and several of his clan members are being held in the Marshall jail on charges of assault and armed robbery. (*Id.*) In an effort to eradicate gang affiliated corruption, the Marshall jail recently mass terminated the employment of some officers involved in the Bonucci Clan's illicit activities and hired new officers unaffiliated with the Bonucci Clan. (*Id.*) Still, the Bonucci Clan still exercises a considerable amount of influence over the Marshall Jail. (*Id.*)

Upon his arrest, Mr. Shelby was booked by Officer Dan Mann, seasoned jail official who immediately recognized the Geeky Binders' second in command as affiliated with the gang. (R. 4.) This was due to Mr. Shelby wearing the distinctive three-piece tweed suit and long coat associated with the Geeky Binders upon his entry, as well as him being in possession of the custom-



made ball point pen engraved with “Geeky Binders,” and containing a concealed awl (*Id.*) Officer Mann took care to inventory Mr. Shelby’s belongings into the jail’s online database, making special note of his arrival with the weapon. (*Id.*) Marshall jail officers are required to make physical and digital copies of forms to file and upload to the jail database. (*Id.*) The online database encompasses compilations of each detainee’s charges, inventoried items, medications, gang affiliations, and other information pertinent to jail officials successfully executing their duties as government officials acting under color of state law. (*Id.*) Due to the jail’s prominent history of gang corruption, the database also contains a subset for gang affiliations of detainees that allows officers to log gang rivalries and potential hits placed on individual detainees. (*Id.*) The Marshall jail also has gang intelligence officer’s who take care to review each incoming detainee’s entry into the database. (*Id.*)

Mr. Shelby’s database prominently featured information clearly detailing his gang affiliation and high-ranking status with the Geeky Binders purposely edited in by the gang intelligence officers. (R. 5.) Once booked, Mr. Shelby was placed in an isolated holding cell separate from the main area of the jail. (*Id.*) This was impart due to Mr. Shelby being a high retaliatory target following his brother’s recent murder of Bonucci’s wife. (*Id.*) The intelligence officers printed and distributed paper notices detailing Mr. Shelby’s high risk status. (*Id.*) Mr. Shelby’s status was also indicated on all rosters and floors of the jail. (*Id.*) The intelligence officers then conducted a meeting with all jail officials the morning following Mr. Shelby’s booking to notify each officer of the notorious Geeky Binders’ presence in the jail. (*Id.*) The intelligence officers specified that Mr. Shelby would be held in cell block A, separated from Bonucci Clan detainees in cell blocks A and B. (*Id.*)

Officer Chester Campbell is an entry-level guard who is noted as being properly trained and had been meeting job expectations for several months at the time of the incident. (*Id.*) Officer Campbell called in sick and missed the January 1st meeting detailing Mr. Shelby's arrival and high risk status. (R. 6.) It is protocol for any absentee officers to review missed meeting minutes logged on the jails database. (*Id.*) A glitch in the system wiped any record of officials that viewed minutes for the January 1st meeting. (*Id.*)

On January 8th, a week after the gang intelligence meeting detailing Mr. Shelby's arrival, Officer Campbell was placed in charge of transferring detainees, including the isolated Mr. Shelby, to the recreation room. (*Id.*) First, Officer Campbell failed to recognize Mr. Shelby upon their meeting. (*Id.*) Next, Officer Campbell failed to consult the database detailing Mr. Shelby's identity and high risk status before escorting him out of his cell. (*Id.*) Lastly, Officer Campbell failed to reference the hard copy list in his possession, again specifying Mr. Shelby's identity and high risk status as well as medical needs, tendencies for violence, weapon possession, or gang affiliation associated with the other detainees on his list. (*Id.*) As officer Campbell led Mr. Shelby to the guard stand, another detainee yelled, "I'm glad your brother Tom finally took care of that horrible woman," to Mr. Shelby. (*Id.*) Mr. Shelby responded, "yeah, it's what that scum deserved," to which Officer Campbell promptly told Mr. Shelby to be quiet, before collecting another inmate from cell block A. (*Id.*) Officer Campbell then proceeded to retrieve two Bonucci clan members from cell block B and one from Cell block C. The Bonucci clan members immediately attacked Mr. Shelby, violently beating him with their fists. (*Id.*) One clan member repeatedly bludgeoned Mr. Shelby over the head and in his ribs with a club fashioned from tightly rolled and mashed paper. (*Id.*) Officer Campbell's feeble attempts to break up the attack were inadequate, failing to protect Mr.

Shelby from the violent onslaught lasting several minutes until backup officers arrived at the scene.  
(R. 7.)

In the wake of the attack, Mr. Shelby suffered doctor-identified life-threatening injuries including penetrative head wounds, traumatic brain injury, fractured ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding. (*Id.*) Mr. Shelby was later acquitted of the assault charge but found guilty of battery and possession of a firearm by a convicted felon. (*Id.*) Mr. Shelby is now serving his sentence at the Wythe Prison. (*Id.*)

### III. Standard of Review

This Court reviews constitutional challenges *de novo*, even when answering mixed questions of law and fact. *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 431 (2001); *U.S. Bank Nat. Ass'n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 967 n.4 (2018). Because this Court today is asked to apply constitutional standards to the facts of this particular case to “unify precedent” and “stabilize the law,” *de novo* review is appropriate. *Cooper Industries*, 532 U.S. at 435; *Ornelas v. U.S.*, 517 U.S. 690, 697 (1996)

### **SUMMARY OF THE ARGUMENT**

This Court should reverse the Thirteenth Circuit’s decision for both issues on certiorari. First, this Court should find that *Heck* dismissals do not count as strikes within the meaning of the Prison Litigation Reform Act. Second, this Court should find that the objective reasonableness standard applied in *Kingsley* is better suited to protect pretrial detainee’s right to due process for failure-to-protect claims.

Congress carefully drafted the Prison Litigation Reform Act to balance the preservation of meritorious Civil Rights claims against the termination of nonmeritorious ones. The Supreme Court has always maintained a strict interpretation of the Prison Litigation Reform Act and the

three grounds for accruing a strike through a dismissed claim. Furthermore, many courts treat *Heck* as having created an affirmative defense, instead of a jurisdictional bar. Therefore, when a court dismisses a claim, without prejudice, solely pursuant to *Heck v. Humphrey*, that dismissal does not constitute a strike within the meaning of the Prison Litigation Reform Act.

The Fourteenth Amendment Due Process Clause grants a broader range of protections for pretrial detainees than the Eighth Amendment Cruel and Usual Punishment Clause affords post-conviction. As this Court has previously held, the objective reasonableness standard applied in *Kingsley v. Hendrickson* more effectively satisfies the language of the Fourteenth Amendment than the subjective intent standard applied in *Farmer v. Brennan*. The objective reasonableness standard allows courts to assess the facts and circumstances influencing an officer's intent when determining deliberate indifference in failure-to-protect claims, addressing aspects that the subjective intent standard might disregard. Given Mr. Shelby's right to Due Process attached while he awaited trial, the objective reasonableness standard reveals that the life-threatening injuries resulting from Officer Campbell's failure to protect him amounted to a violation of the Fourteenth Amendment. This is evidenced by the facts, circumstances, policies, and practices Officer Campbell deliberately disregarded in the week preceding the attack which may only be considered under the objective reasonableness standard.

### **ARGUMENT**

This Court should affirm the Fourteenth Circuit Court of Appeals decision on both issues certified by this Court. First, this Court should affirm the Fourteenth Circuit's decision allowing Mr. Shelby to proceed *in forma pauperis* because *Heck* dismissals do not constitute a strike within the meaning of the Prison Litigation Reform Act. Second, this Court should find that the objective

reasonableness standard applied in Kingsley is better suited in protecting pretrial detainee's right to due process than the subjective standard petitioner is moving to apply.

**I. MR. SHELBY'S *IN FORMA PAUPERIS* MOTION SHOULD BE GRANTED BECAUSE HE HAS NOT ACCRUED ANY STRIKES WITHIN THE MEANING OF § 1915 AND THE THREAT OF IMMINENT DANGER WAS NOT ASSESSED.**

The combination of 28 U.S.C. §1915 "*in forma pauperis*" (IFP) proceedings and 42 U.S.C § 1983 claims are instrumental in leveling the playing field for impoverished prisoners<sup>1</sup> whose constitutional rights have been violated. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948). IFP filings allow for prisoners to proceed in civil suits without paying the federal court filing fee upfront, instead paying the fee over time. § 1915(a). Still, § 1983 provides the actual avenue for a prisoner to pursue damages when his civil rights have been violated. The text of § 1983 broadly states:

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.

42 U.S.C. § 1983.

However, nonmeritorious prisoner claims flooded the judicial system more and more since the statutes were enacted, leading Congress to enact the Prison Litigation Reform Act of 1995 (PLRA). *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020) (citing *Jones v. Bock*, 549 U.S. 199, 202-04 (2007)). Through its early judicial screening of prisoner claims, the PLRA is one of a variety of reforms Congress enacted "designed to filter out the bad claims and facilitate

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<sup>1</sup> "Prisoner" includes pretrial detainees like Garrett. 28 U.S.C. § 1915(h)

consideration of the good.” *Jones*, 549 U.S. at 204. One of the ways in which the PLRA regulates early judicial screening is through the “three-strike” rule, which states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

**A. This Court Should Affirm the Fourteenth Circuit’s Decision, Allowing Mr. Shelby to Proceed IFP Because a *Heck* Dismissal, Standing Alone, Does Not Constitute a Strike Within the Meaning of § 1915.**

In *Heck v. Humphrey*, the Court held that any 42 U.S.C. § 1983 claim that would necessarily invalidate a prisoner’s conviction should be dismissed unless and until the prisoner bringing such a claim can prove her conviction or sentence has been invalidated by a successful habeas corpus petition. 512 U.S. 477, 489 (1994). As Justice Souter made apparent in his concurrence, the ruling in *Heck* was necessary to maintain balance in the judicial system, as it would not make sense for a prisoner to succeed on a § 1983 claim when he could not succeed on a habeas petition. *Id.* at 501-02 (J. Souter, concurring). Justice Souter’s concurrence also indicated that the Court’s holding must halt at abolishing collateral attacks of a current prisoner’s conviction through § 1983. *Id.* at 501-02 (J. Souter, concurring). He specifically stated:

Nor do I see any policy reflected in a congressional enactment that would justify denying to an individual today federal damages (a significantly less disruptive remedy than an order compelling release from custody) merely because he was unconstitutionally fined by a State, or to a person who discovers after his release from prison that, for example, state officials deliberately withheld exculpatory material. And absent such a statutory policy, surely the common law can give us no authority to narrow the “broad language” of § 1983.

*Id.* at 502.

**1. Mr. Shelby’s Prior Actions are Not Strikes Because a *Heck* Dismissal is Not Automatically Frivolous or Malicious, nor Does it Fail to State a Claim Upon Which Relief May be Granted.**

The decision in *Heck* preceded the enactment of the PLRA, and therefore should not be read with an intention to influence the way § 1915(g) was interpreted. More recently, this Court did address how lower courts should interpret dismissals and their effect on the strike tallying scheme under § 1915(g) in *Lomax*. 140 S. Ct. 1721. In *Lomax*, this Court applied a similar rationale to statutory interpretation as Justice Souter did in *Heck*, determining that all dismissals for failure to state a claim, whether with prejudice or without prejudiced, were encompassed in the word “dismissals.” *Id.* at 1724-25. This Court reasoned that following this strict textualist interpretation was necessary to prevent “violat[ing] yet another rule of statutory construction: ‘In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning’ across a statute.” *Id.* at 1725 (quoting *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 139 S.Ct. 1507, 1512). The decision in *Lomax* also remained consistent with this Court’s prior literal interpretation of the § 1915(g) text. *See Coleman v. Tollefson*, 575 U.S. 532, 539 (2015) (“Our literal reading of the ‘three strikes’ provision also is supported by the way in which the law ordinarily treats trial court judgments.”).

Like the Fourteenth Circuit in the present case, the guidance from this Court has left many Circuits abiding by the strict textualist interpretation of § 1915(g). Some Circuits, such as the Ninth Circuit, have explicitly held that a heck dismissal, standing alone, “is not a per se ‘frivolous’ or ‘malicious’ complaint.” *Washington v. Los Angeles Cnty. Sheriff’s Dep’t*, 833 F.3d 1048, 1055 (9th Cir. 2016). Other Circuits may not have opinions explicitly holding the same, but silently follow suit, only tallying PLRA strikes when a plaintiffs *Heck* dismissal also falls into one of the three reasons for a strike under § 1915(g). *See Garrett v. Murphy*, 17 F.4th 419 (3d Cir. 2021) (holding that a *Heck* dismissal constitutes a strike when it was dismissed pursuant to § 1915(e)(2)(B)(i),

which states: “the court shall dismiss the case at any time if the court determines that the action or appeal is frivolous or malicious,” and Fed. R. Civ. P. 12(b)(6), which states: “failure to state a claim upon which relief can be granted.”); *Davis v. Kansas Dept. of Corr.*, 507 F.3d 1246 (10th Cir. 2007) (holding a *Heck* dismissal was frivolous because it was based on an indisputably meritless legal theory that could not conceivably refute the court’s disposition); *Kastner v. Texas*, 332 Fed. Appx. 980 (5th Cir. 2009) (affirming a district court’s ruling that a dismissal based on *Heck* was also frivolous where a prisoner filed a § 1983 claim alleging he did not need to pursue other avenues to invalidate his sentence because he pleaded *nolo contendere* and therefore was never convicted).

The Record before the Court today does not include any information that would provide this Court with a reason to conclude Mr. Shelby’s prior § 1983 dismissals would constitute a strike under § 1915(g). The only reason the Western District of Wythe provided for Mr. Shelby’s prior dismissals was that they were all pursuant to *Heck*. (R. 1.) Because of this, the Fourteenth Circuit reversed the Western District’s decision, stating that *Heck* alone is not grounds for a strike under § 1915(g). (R. 15.) The Fourteenth Circuit’s decision fit squarely into the precedent set out by this Court in *Lomax* and *Coleman*. It does not inject new grounds for accruing a strike, that Congress did not intend to include, into § 1915(g). Instead, the Fourteenth Circuit’s decision follows the example set out by other cases, such as *Washington*.

Admittedly, Mr. Shelby’s case is unlike most of his predecessors in the sense that his prior dismissals are only due to *Heck*, and do not touch the scope of one of the three grounds for accruing a strike under § 1915(g). Unlike most who brought a similar question to their Circuit, Mr. Shelby has not had a single prior claim dismissed for being frivolous, malicious, or failing to state a claim. This is undoubtedly different from cases like *Garrett*, and the Third Circuit even acknowledged that Mr. Shelby’s scenario could produce a different outcome than the plaintiff in *Garrett* by



refusing to “decide whether *Heck*-barred claims are frivolous.” 17 F.4th at 429 n. 5. Instead of making an express decision regarding *Heck*, courts typically rely on additional language outside the *Heck* grounds when assessing a strike on an individual. *See, e.g. Lomax*, 140 S.Ct. at 1724 (“The Courts of Appeals have long divided over whether a dismissal without prejudice *for failure to state a claim* qualifies as a strike under Section 1915(g).” (emphasis added)). It is entirely tenable that courts are hesitant to rely on *Heck* dismissals alone because this Court’s plain text approach has led them to believe that *Heck* dismissals, standing alone, are in-fact not adequate grounds for a strike within the meaning of the PLRA. Nonetheless, the District Court of Wythe provided no reason besides three dismissals pursuant to *Heck* when denying Mr. Shelby’s IFP motion. (R. 1.) The Fourteenth Circuit then took a plain text approach when reversing the lower court, correctly identifying the three grounds for accruing a strike and determining *Heck* dismissals do not automatically constitute any of them. (R. 15.)

The Fourteenth Circuit’s decision follows the plain text approach this Court has applied to § 1915(g) multiple times before, and it reaches the logical conclusion that *Heck* dismissals do not automatically satisfy one of the three reasons for accruing a strike. If this Court affirms the Fourteenth Circuit, it will further solidify the plain text approach set by this Court’s precedent. However, if this Court reverses the Fourteenth Circuit, it will further confuse lower courts and lead to an even greater imbalance in how different regions of this country apply a federal statute. Moreover, if this Court reversed the Fourteenth Circuit, then this Court would be holding that *Heck* dismissals are automatically frivolous, malicious, or fail to state a claim upon which relief may be granted. Whichever one of those categories this Court would decide *Heck* dismissals fall under remains unclear, as *Heck* dismissals are commonly understood to be in and of itself its own category. Thus, this Court would essentially be adding a fourth category, which already existed at

the time of enactment, to § 1915(g), and would be dangerously close to, if not unambiguously, overstepping its bounds and into Congress's territory.

Accordingly, this Court should affirm the Fourteenth Circuit's decision holding that *Heck* dismissals are not automatically strikes within the meaning of § 1915(g) and allow Mr. Shelby to proceed *in forma pauperis*.

## **2. *Heck* Acts as an Affirmative Defense, Not a Jurisdictional Bar.**

There is no favorable termination requirement for a § 1983 claim because if there was, many individuals who are not eligible for habeas corpus would be deprived of their civil rights without recourse. In the face the Court's interest in preventing an exhaustion requirement from being incorporated into § 1983, Justice Scalia used an explanatory analogy to the tort of malicious prosecution. 512 U.S. at 484-86. While this analogy was helpful for the understanding the Court's rationale, it went a step too far in denying a "cause of action" under § 1983, *Id.* at 489, which Souter clarified was not the case in his concurrence. *Id.* at 502. Nonetheless, it caused some confusion amongst lower courts in how to proceed with a § 1983 claim that had not been exhausted. This led the Court to decide a new issue a few years later in *Spencer v. Kemna*. 523 U.S. 1 (1998). In *Spencer*, a prisoner's sentence expired while his habeas petition was still pending, and the appellate court affirmed the district court's dismissal of the petition as moot. *Id.* at 3-6. He raised the question to this Court of whether his petition was moot because there was no longer any "personal stake in the outcome of the lawsuit," or whether it was still relevant to satisfy a favorable termination element of any potential § 1983 claims. *Id.* at 7. The Court affirmed the dismissal, and both Justices Souter and Ginsburg wrote separate concurrences emphasizing the decision in *Heck* did not incorporate a favorable termination element into an otherwise valid § 1983 claim. *Id.* at 18-22.

Therefore, the decision in *Heck* actually gave rise to an affirmative defense when a current prisoner or detainee files a § 1983 claim without first seeking habeas relief. However, *Heck* did not provide a jurisdictional bar preventing courts from hearing the merits of any § 1983 claims lacking a prior favorable termination. *See, e.g., Washington*, 833 F.3d at 1056; *Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011). In at least one case, the Tenth Circuit did not even address the *Heck* defense because it is not jurisdictional, and the circuit was therefore able to affirm a dismissal based solely on other grounds. *Jiron v. City of Lakewood*, 392 F.3d 410, 413 n.1 (10th Cir. 2004). Still, there remains a Circuit split regarding whether a *Heck* dismissal, which is commonly considered to be an affirmative defense, should constitute a strike under § 1915(g) for failure to state a claim. This Court noted this Circuit Split in footnote two of *Lomax*, stating:

Two of the cases were dismissed under *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), which holds that a claim challenging the validity of a conviction or sentence under 42 U.S.C. § 1983 “does not accrue until the conviction or sentence has been invalidated.” 512 U.S. at 490, 114 S.Ct. 2364. In concluding that those two *Heck* dismissals were for failure to state a claim, the District Court followed Circuit precedent. *See Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (CA10 2011). Not all Courts of Appeals accept that view. *See, e.g., Mejia v. Harrington*, 541 Fed.Appx. 709, 710 (CA7 2013). But *Lomax* did not raise that issue, and we therefore do not address it.

140 S. Ct at 1724 n. 2.

Now, the Court should take this opportunity to demonstrate why a *Heck* dismissal, standing alone, does not automatically qualify as any of the three strikes listed under § 1915(g). A decision creating a bright-line rule that the *Heck* doctrine should be treated as an affirmative defense instead of a jurisdictional bar would create equity amongst people and courts across the nation, instead of some people being given more opportunities to proceed IFP simply because they were lucky enough to be jailed in the Fourteenth or Ninth Circuit. Such a bright-line rule would also curb ambiguities across the nation for prisoners who were dismissed because they were genuinely unaware of the proper procedure for seeking relief for their unconstitutional treatment, but

subsequently followed the correct procedure and reinstated their § 1983 claim after successfully petitioning a court for habeas relief. Lastly, such an affirmative defense rule would make the most sense for courts, as it would allow courts to dismiss a frivolous case on the merits in a dispositive manner, which some courts have already taken it upon themselves to do without prior instruction from this Court. *See, e.g., Jiron*, 392 F.3d at 413 n.1; *Polzin*, 636 F.3d at 838.

The facts, or lack thereof, at the foot of the Court provide a red carpet to roll out a new, sweeping, bright-line rule. The Record is silent to whether any of Mr. Shelby's *Heck* dismissals were done by the district court *sua sponte*, or if they were all dismissed because the defense was raised as an affirmative defense by the defendants. The Record is also silent as to the dates of his three prior filings. This means it is entirely possible that Mr. Shelby contemporaneously raised three premature, but otherwise valid, § 1983 claims. Then, the defendants could have raised an affirmative defense that Mr. Shelby was supposed to file a habeas petition instead. Then, the District Court dismissed, without prejudice, all of Mr. Shelby's claims solely pursuant to *Heck*. If the Fourteenth Circuit never stepped in to correct the District Court, then it is entirely possible, if not probable, Mr. Shelby would have spent as long as it takes paying off those three filing fees, and then never been able to file another claim IFP. Then, depending on his economic status, he may never have been able to pursue justice for a violation of his civil rights again. Thus, he would have been about \$1,200 poorer, without anything to show for it. At that point, one would wonder why § 1915 exists if its purpose cannot be effectuated through a leveled playing field. While that may or may not be the case here, § 1915 was enacted for the purpose of preventing people from being stuck in horrific positions like the one previously described, and Mr. Shelby's case provides this Court the opportunity to ensure true justice is done, from hereon out.

Accordingly, this Court should affirm the Fourteenth Circuit by adopting the position that *Heck* constitutes an affirmative defense, instead of a jurisdictional bar.

**B. Alternatively, This Court Should Affirm the Fourteenth Circuit’s Decision, Allowing Mr. Shelby to Proceed IFP Because the District Court Erred in Ignoring the Threat of Imminent Danger in the Form of Serious Bodily Harm.**

There is one exception to § 1915(g), which states that no prisoner can proceed IFP, “unless the prisoner is under imminent danger of serious physical injury.” As long as the plaintiff alleges a sufficient threat of imminent danger in the form of serious bodily harm, he will be able to proceed IFP. *See Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998). In *Ashley v. Dilworth*, the plaintiff was a prisoner who the Eighth Circuit deemed as suffering imminent danger due to repeatedly being put near inmates on his “enemy alert list.” *Id.* at 717. “Some circuits have also required ‘an adequate nexus between the claims he seeks to pursue and the imminent danger he alleges,’ that is, he must allege ‘an imminent danger of serious physical injury that is fairly traceable to a violation of law that the complaint asserts.’” *Charron v. Allen*, 37 F.4th 483, 486 (8th Cir. 2022) (citing *Pettus v. Morgenthau*, 554 F.3d 293, 296 (2d Cir. 2009); *Pinson v. U.S. Dept. of Justice*, 964 F.3d 65, 71-72 (D.C. Cir. 2020)). Some circuits require the imminent danger to be at the time of the incident that occurred, *Gibbs v. Roman*, 116 F.3d 83, 86 (3d Cir.1997), but most require imminent danger at the time of filing for the IFP. *Malik v. McGinnis*, 293 F.3d 559, 561 (2d Cir. 2002) (“[T]he District Court denied the motion for reconsideration, rejecting *Gibbs* and, instead, following the Fifth, Eighth, and Eleventh Circuits, all of which held that § 1915(g)'s use of the present tense means that the danger must exist when the action is filed, rather than when the underlying events occurred.”).

Here, the District Court made no mention of the only possible exception it was required to analyze under § 1915(g). This is appalling considering Mr. Shelby’s factual allegations make it highly plausible that he faced imminent danger due to corrupt jail officials in the Marshall jail.

Mr. Shelby alleges that Officer Campbell is a jail guard who should have been aware of Mr. Shelby's high-ranking status and great risk of being attacked by members of the Bonucci clan. (R. 5-6.) Mr. Shelby further alleges Officer Campbell guided Mr. Shelby to multiple members of the clan, who ultimately attacked Mr. Shelby causing serious bodily harm. (R. 6-7). These allegations suggest both an imminent danger in the form of serious bodily harm, and an adequate nexus that the imminent danger of serious bodily harm is traceable to the failure-to-protect claim he alleges. While it is undeniable Mr. Shelby faced imminent danger at the time of the incident like some courts require, the factual record is insufficient to determine whether he still faced imminent danger at the time of the IFP filing. Mr. Shelby was attacked due to Officer Campbell's failure-to-protect on January 8th, 2021. (R. 6.) Mr. Shelby filed an IFP motion on February 24th, 2022. (R. 7.) As of July 14th, 2022, Mr. Shelby was incarcerated in Wythe Prison. (R. 7, 11.) It remains unclear whether Mr. Shelby was incarcerated in Wythe Prison or detained at Marshall jail, where the combination of corrupt jail officials and Bonucci clan members would most likely render him still in a state of imminent danger. If Mr. Shelby was detained at Marshall jail at the time of filing, and the District Court of Wythe denied his motion to proceed IFP, that would put him in even greater danger as corrupt officers would know they will likely not face any recourse if they let the Bonucci clan attack Mr. Shelby again. Therefore, the District Court of Wythe should have at least analyzed whether Mr. Shelby faced the threat of imminent danger of bodily harm at the time of filing.

Accordingly, this Court should affirm the Fourteenth Circuit's decision, allowing Mr. Shelby to proceed IFP because the District Court did not properly assess whether he faced imminent danger before denying his IFP Motion.

## **II. THE OBJECTIVE REASONABLENESS STANDARD APPROPRIATELY PROTECTS PRETRIAL DETAINEES' RIGHT TO DUE PROCESS IN FAILURE-TO-PROTECT CLAIMS.**

The Due Process Clause of the Fourteenth Amendment guarantees citizens the right to procedural fairness when detained by government agents, ensuring a proper legal process before any deprivation of life, liberty, or property interest can take place. U.S. CONST. amend. XIV.; *see also Ingraham v. Wright*, 430 U.S. 651, 671–672. Because detainees are afforded expanded protections under the Due Process Clause, a plaintiff does not need to prove an officer was subjectively aware that their use of force was unreasonable for the injury suffered to be considered unreasonable. *Kingsley v. Hendrickson*, 2576 U.S. 398, 2473–2474. *Kingsley's* objective reasonableness standard is being more broadly applied to cases beyond the realm of excessive force claims in various circuits. *See Darnell v. Pineiro*, 849 F.3d 17 (2nd Cir. 2017); *Helphenstine v. Lewis County, Kentucky*, 60 F.4th 305 (6th Cir. 2023). These cases have encompassed claims involving deliberate indifference to substantial risks of harm, medical needs, and failure to protect claims from pretrial detainees. *Id.* This Court should affirm the Appellate Court's holding that an objective standard must be applied when analyzing failure-to-protect claims because failing to protect pretrial detainees against wholly preventable life-threatening attacks constitute punishment and violates the Fourteenth Amendment right to Due Process.

### **A. Fourteenth Amendment Due Process Requires More Protection Than the Eighth Amendment.**

The Fourteenth Amendment provides pretrial detainees with a broader range of protections against constitutional deprivations than the Eighth Amendment provides for convicted prisoners. *Kingsley*, 576 U.S. at 2475; *see also Bell v. Wolfish*, 441 U.S. 520, 535–37 (1979). Still, this Court has previously applied the subjective intent standard utilized in *Farmer v. Brennan* in both pretrial and post-conviction claims of constitutional deprivations. 511 U.S. 825 (1994); *see also Estelle v.*

*Gamble*, 429 U.S. 97 (1976); see also *Rhodes v. Chapman*, 452 U.S. 337 (1981). However, prisons and jails must observe and protect different rights for the citizens they house due to where they fall in the prosecutorial process. Prisons house convicted individuals serving out varying sentences, while jails house pretrial detainees awaiting adjudication and either exoneration or conviction. This distinction is further expanded when considering the variance of protections applied under the limited scope of the Eighth Amendment Cruel and Unusual Punishment Clause in comparison to the Fourteenth Amendment Due Process Clause. *Bell*, 441 U.S. at 535–37. Under the Fourteenth Amendment Due Process Clause, pretrial detainees are to be protected from any application of punishment until post-conviction sentencing, at which point the Eighth Amendment provides protections for incarcerated citizens through the more limited Cruel and Unusual Punishment Clause. U.S. CONST. amend. XIV, U.S. CONST. amend. VIII. This distinction empowers Fourteenth Amendment Due Process Clause to begin working for pretrial detainees the moment they are arrested by restricting government agents from inflicting any forms of punishment against them prior to an adjudication of guilt. U.S. CONST. amend. XIV. While this Court has previously held that under the Eighth Amendment, prison officials may only be found to have been deliberately indifferent to a substantial risk of serious harm if the official was subjectively aware of the risk, this Court has also found that the same subjectivity standard fails to mirror the scope of protections intentionally provided by the Fourteenth Amendment. *Farmer*, 511 U.S. at 835, *Kingsley*, 576 U.S. at 2475. Pretrial detainees must be afforded the full breath of rights provided by the Due Process Clause as they are innocent until proven guilty. This means that government agents entrusted to exert authority over the innocent and guilty must also be held to a higher standard, a standard Officer Campbell failed to meet.



Had the Framers intended to extend the same rights to pretrial detainees as those granted to convicted prisoners under the Eighth Amendment Cruel and Unusual Punishment Clause, they would not have crafted the Fourteenth Amendment Due Process Clause. *Bell*, 441 U.S. at 535–37. As a pretrial detainee, Mr. Shelby was entitled to protection from any punishment under the Fourteenth Amendment, including completely avoidable life threatening injury resulting from Officer Campbell’s sustained inaction over the course of the week preceding the attack. *Kingsley*, 576 U.S. at 2476. Officer Campbell’s contention that this Court should disregard the Framers’ intentions to make these distinctions between the two amendments when considering failure-to-protect claims would in effect strip all citizens awaiting trial from their right to not be recipients of avoidable violence. (R. 8.); *Kingsley*, 576 U.S. at 2475. As a jail official exercising power and authority over pretrial detainees, Officer Campbell has a heightened obligation to ensure the protections afforded by the Fourteenth Amendment than he would if he were serving as a prison official. *Id.* at 2475; *Bell*, 441 U.S. at 535–37. Marshall jail officials understood this heightened obligation and took every precaution to make ignorance of Mr. Shelby’s high-risk status unreasonable. (R. 5–6.) Application of the objective reasonableness standard was correctly applied by lower court because it worked to illuminate the Marshall jail officials’ good faith efforts to protect Mr. Shelby while holding Officer Campbell to account for his sustained negligence leading up to the attack. The same negligence that the *Farmer* subjective intent standard would overlook. 511 U.S. at 835.

**B. Officer Campbell Need Not be Subjectively Aware That His Unreasonable Indifference Would Produce Life Threatening Injury for it to be Unreasonable.**

A plaintiff need not show that an officer was subjectively aware that their use of force was unreasonable to prove excessive use of force. *Kingsley*. In *Kingsley*, a pretrial detainee brought a 42 U.S.C. § 1983 claim after several jail officers exerted excessive force against him in violation

of the Fourteenth Amendment's Due Process Clause. *Id.* at 2466–2467. This Court held that the objective reasonableness standard discussed in *Kingsley* was appropriate to apply in cases concerning violations of pretrial detainees' protection against punishment under the Due Process Clause. *Id.* at 2474. The *Kingsley* Court held that the objective reasonableness standard more closely aligned with the protections afforded to pretrial detainees under the Fourteenth Amendment than the subjective intent standard. *Id.* This is because the *Kingsley* standard empowers courts to assess jail policies, practices, and incident context, including facility culture and history, to determine the severity of injuries suffered by the detained party. *Id.* In contrast, the subjective intent standard focuses solely on an official's mental state in determining reasonableness. *Id.* at 2473. In application, the objective reasonableness standard also serves to commend officers acting in good faith by considering the comprehensive context of any alleged incident arising in a failure-to-protect claim. *Id.* at 2474. By requiring courts to consider the facts, circumstances, policies, and practices the *Kingsley* standard is able to better infer whether the truth about an officer's conduct where the subjective standard may not. *Id.*

### **1. Consider the Facts and Circumstances.**

The objective reasonableness standard empowers courts to consider the facts and circumstances of a case when determining liability of officers involved. *Graham v. Connor*, 490 U.S. 386, 395 (1989). Through analysis of the facts and circumstances, the objective reasonableness standard works to reveal officers' acting in good faith as well as those acting with reckless indifference in relation to a pretrial detainee's right to due process when incidents occur. *Kingsley*, 576 U.S. at 2474. This Court has previously acknowledged that the management and sustainment of prisons and jails is an inordinately difficult undertaking, requiring the implementation of policies and practices designed to protect the health and safety of all individuals

present. *Id.* at 2473. This is in part due to the high rates of violence and risk of violence associated with those arrested for criminal offenses. *Farmer*, 511 U.S. at 825. Jail officials are “often forced to make split-second judgements—in circumstances that are tense, uncertain, and rapidly evolving,” to ensure protecting the health, safety, and constitutional rights of pretrial detainees. *Graham*, 490 U.S. at 397. The objective reasonableness standard of *Kingsley* invokes courts to consider a holistic view of any potential incidents that subjectivity standards turn a blind eye to. *Kingsley*, 576 U.S. at 2474. Objective reasonableness empowers jurisdictions to consider the good faith efforts government agents make in rapidly evolving circumstances, as well as environmental factors outside of their control when due process violations occur. *Id.* Requiring an officer to be subjectively aware of their conduct regardless of the gravity of injury parallels protections afforded under the rightfully more stringent Eighth Amendment, as these protections extend to the convicted, not those awaiting trial who may be eventually deemed innocent. *Kingsley*, 576 U.S. at 2475.

When considering the conduct of Officer Campbell in relation to the facts and circumstances of this case, it becomes impossible to argue that Officer Campbell acted in any way other than recklessly. Marshall jail is a high-risk environment in which Officer Campbell was employed as a government agent and Mr. Shelby was awaiting trial. (R. 6) Both the town and jail of Marshall hold an extensive history of gang affiliated corruption and violence by both the Geeky Binders and the Bonucci Clan. (R. 3.) Gang corruption was so pervasive in Marshall jail that jail officials recently mass terminated officers corrupted by the Bonucci Clan, likely resulting in the recent hiring of Officer Campbell. *Id.* This recent mass exodus combined with the presence of a detailed detainee database, frequent team status meetings, and physical notices detailing Mr. Shelby’s status and risk level, all assert the high-risk levels of the Marshall jail, especially for

notorious members of both the Geeky Binders and Bonucci Clan. *Id.* Moreover, the adoption of these protocols demonstrates the jail officials' overall awareness of the heightened risk for occurrences of gang violence, similar to the incident experienced by Mr. Shelby, and their good faith effort to minimize such incidents. *Id.* Given the facts of Marshall jail's history, known for its gang affiliation and official corruption, any reasonable officer assessing the circumstances would likely conclude an excessive risk to Mr. Shelby's safety or health, as such a risk exist for all detainees at Marshall jail. *Id.*; *Kingsley*, 576 U.S. at 2474; *see also Farmer*, 511 U.S. at 837 (holding that an official must be aware of the facts from which the inference could be drawn that a substantial risk of harm exists). This is further exemplified through the mandatory facility wide staff meeting detailing Mr. Shelby's booking and detention that Officer Campbell missed, the printing and distribution of physical notices detailing Mr. Shelby's intake, and the gang intelligence officers' strategic isolation of Mr. Shelby from the general population in an isolated cell, the very cell Officer Campbell ushered Mr. Shelby from for recreational time. (R. 6.) Under these facts and circumstances, Officer Campbell's failure to infer Mr. Shelby's high-risk status, despite a wealth of accessible information being at his literal fingertips, was unreasonable and directly led to Mr. Shelby's attack.

## **2. Consider the Policies and Practices.**

In determining objective reasonableness, courts may give “deference to [prisons and jails’] policies and practices needed to maintain order and institutional security,” because such policies and practices serve a “legitimate interest in managing a jail....” *Kingsley*, 576 U.S. at 2473, *Bell*, 441 U.S. at 540, 547. Maintaining institutional security necessitates the proper management of detention facilities through the implementation of relevant policies and practices. As each facility's facts and circumstances are unique, the objective reasonableness standard provides courts with the

ability to consider what the facility in question's officials deem necessary to ensure the health and safety of its detainees. *Kingsley*, 576 U.S. at 2473; *see also Bell*, 441 U.S. at 540, 547. Failing to adopt *Kingsley*'s objective reasonableness standard would strip courts of this holistic view when determining if an officer acted reasonably during incidents that invoke failure-to-protect claims, instead relegating courts to the confines of the offending officer's mind under the subjectivity standard. *Kingsley*, 576 U.S. at 2474.

The objective reasonableness standard is necessary when considering the facts of this case because they illuminate Officer Campbell's failure to act in good faith through his overt recklessness. Marshall jail officials put in place a multitude of policies and practices designed to protect the health and safety of their pretrial detainees in accordance with their Fourteenth Amendment Rights. (R. 5–6) The policies and practices implored leading up to Mr. Shelby's attack included a facility wide meeting led by the jail's gang intelligence officers, a requirement that any absentee officials review meeting minutes submitted to the database, strategic isolation of high risk targets, separation of rival gangs into different cell blocks, a comprehensive database detailing all relevant information in regards to health and safety of each detainee, the distribution of physical notices of high risk targets in administrative areas, frequently updated rosters detailing new detainees on each floor, and even hard copy lists of inmates with special statuses distributed to patrolling officers. (R. 5–6) All of these practices demonstrate Marshall jail's facility culture and good faith effort to safely manage the facility and protect its detainees' Fourteenth Amendment rights.

Application of *Kingsley*'s objective reasonableness standard is appropriate in this case due to the gravity and frequency such attacks like that suffered by Mr. Shelby may take place when and if jail officials fail to follow established policies and practices. *Farmer*, 511 U.S. at 1973.

When poorly managed and regulated, jails may subject all pretrial detainees to the mercy of individuals who statistically engage in antisocial and often hyper violent behavior.<sup>2</sup> Gang affiliated prisoners and detainees face much higher rates of physical and sexual assault, coercion and theft, and even life threatening injuries resulting in death than their non-affiliated counterparts.<sup>3</sup> Subjecting pretrial detainees to the violent environment detention facilities naturally cultivate is wholly considered punishment due to the obvious nature of substantial risks irrevocably tethered to jails and prisons. *Farmer*, 511 U.S. at 1973. Marshall jail officials put in practice a multifaceted system of policies and practices, all designed to ensure the safety of its pretrial detainees and prevent dissolution of the jail into a “state of nature.” *Id.* at 1977, (R. 5–6.) However, the fatal flaw of the system’s efficacy proved to be its reliance on Marshall jail officials' commitment to following procedure. In this case, all of these protocols were disregarded by Officer Campbell over the course of a week, culminating in Mr. Shelby almost losing his life when Officer Campbell failed to protect him from an avoidable attack. (R. 6.)

The Marshall jail institutionalized facility-wide policies and practices designed to mitigate the very type of attack Mr. Shelby suffered while under the authority of Officer Campbell. (*Id.* at 5–6.) The very implementation of these protocols and Officer Campbell’s failure to follow them show that Officer Campbell acted unreasonably in failing to meet his job expectations. (R. 5.) Officer Campbell’s failure to follow protocol becomes all the more inexcusable when considering he is noted as being “properly trained” and having been on the job for several months by the period

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<sup>2</sup> Nancy Wolff, Cynthia L. Blitz, Jing Shi, Ronet Bachman, and Jane A. Siegel. Sexual Violence Inside Prisons: Rates of Victimization, *Journal of Urban Health*, (Vol. 83) (last visited Jan. 30 2024), <https://link.springer.com/article/10.1007/s11524-006-9065-2>

<sup>3</sup> Randall G. Sheldon, *A Comparison of Gang Members and Non-Gang Members in a Prison Setting*, *The Prison Journal*, (Vol. 71.2) (last visited Jan. 30 2024), <https://journals.sagepub.com/doi/pdf/10.1177/003288559107100206>

preceding the incident. (R. 5.) The result of Officer Campbell's unreasonably reckless indifference was the completely preventable, life threatening attack committed against Mr. Shelby by detainees Officer Shelby was also expected to protect. (R. 7.) Under the objective reasonableness standard, it becomes clear that Officer Campbell missed a mandatory meeting led by the gang intelligence officers put in place to prevent such an attack. (R. 6.) Officer Campbell then failed to familiarize himself enough with the subject matter of that meeting, demonstrated through his inability to recognize Mr. Shelby upon removing him from his cell. (*Id.*) Officer Campbell then further failed to acknowledge any physical notices left in administrative spaces, read his updated roster list, or observe any context clues when leading the clearly isolated Mr. Shelby into the dangers of the general population recreational space. (*Id.*) When considering the objective reasonableness of why these ignored policies and practices were put in place by Marshall jail officials, it becomes impossible to paint Officer Campbell as the good faith actor this Court discussed in *Kingsley*. 576 U.S. at 2473. Rather, Officer Campbell's failure to protect Mr. Shelby is instead indicative of his reckless disregard for Mr. Shelby's safety, resulting in completely avoidable life threatening injuries that only occurred because Officer Campbell was more than negligent in his sustained indifference. *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). Because the attack resulting from Officer Campbell's reckless disregard resulted in injury so severe it constituted punishment under the Fourteenth Amendment, Mr. Shelby need not prove his subjective intent to raise a 42 U.S.C. § 1983 claim. *Id.*; *see also Kingsley*, 576 U.S. at 2473.

**C. Officer Campbell Demonstrated Deliberate Indifference in Protecting Mr. Shelby's Right to Due Process by Neglecting His Professional Obligations.**

The Fourteenth Circuit Court of Appeals joins other lower circuits that have persuasively broadened the application of *Kingsley's* objective reasonableness standard to cases of constitutional deprivations outside the scope of excessive use of force claims. *See Darnell v.*

*Pineiro*, 849 F.3d 17 (2nd Cir. 2017); *see also* *Castro v. Los Angeles County*, 833 F.3d 1060 (holding that in a failure-to-protect claim an objective standard applies). In *Darnell*, the Second Circuit persuasively held that detainees were not required to establish subjective intent to punish to prove deliberate indifference that subjects detainees to substantial risk of harm. *Darnell*, 849 F.3d 17 at 25. The court noted that because pre-arraignment detainees were subjected to nine constitutional deprivations including crime and intimidation, the jail officials' inaction to alleviate or abate the preventable assault and intimidation at the hands of other detainees constituted deliberate indifference. *Id.* This is because "[being] violently assaulted in [detention facilities] is simply not 'part of the penalty that criminal offenders pay for their offenses against society,'" as allowing these assaults fails to serve any "legitimate penological objectiv[e]," under "evolving standards of decency." *Farmer*, 511 U.S. at 1997; *see also* *Rhodes v. Chapman*, 452 U.S. at 347; *see also* *Hudson v. Palmer*, 468 U.S. at 548; *see also* *Estelle*, 429 U.S. at 102 (1958).

Officer Campbell exhibited deliberate indifference by exposing Mr. Shelby to constitutional deprivation of protection from crime and intimidation at the hands of other detainees. *Darnell* Similarly to the *Darnell* detainees that suffered the constitutional deprivation of protection against crime and intimidation from other detainees while awaiting arraignment due to a culture of deliberate indifference, Officer Campbell's pattern of negligence the week of January 1st through the 8th left Mr. Shelby exceedingly vulnerable to avoidable retaliatory gang violence, inescapable intimidation, and life-threatening injuries. *Id.*, (R. 6.) While under Officer Campbell's authority, Mr. Shelby was brutalized by rival gang members for several minutes, leaving him with penetrative head wounds, a traumatic brain injury, fractured ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding. (*Id.*) The gravity of these life-threatening injuries is only underscored by their preventability had Officer Campbell simply



referenced the medley of resources at his disposal, as was reasonably required of all jail officials, over the course of the week preceding the attack. (*Id.*) This violent assault served no legitimate purpose, not only because it violates evolving standards of decency in regard to appropriate punishments, but also because it violated Mr. Shelby's Due Process protection against any punishment as a pretrial detainee. *Estelle, Kingsley*, Officer Campbell's claim of lack of awareness despite evidence showing deliberate indifference likely qualified as a constitutional deprivation. *Darnell*, 849 F.3d 17 at 25, (R. 7, 9.)

Officer Campbell's week-long neglect of established policies, despite Marshall jail's history of gang affiliation and corruption, and his failure to stay informed about critical updates was likely "deliberate," given the effort required to remain ignorant to the inevitability of an attack against Mr. Shelby. (R. 5–7.), *Farmer*, 511 U.S. at 1974. Under the objective reasonableness standard, this Court may consider the fact that Officer Campbell is noted in the Record as having been trained properly by the Marshall jail and had been meeting job expectations for several months. (R. at 5.) This indicates that his week-long failure to follow protocol and familiarize himself with Mr. Shelby's arrival and subsequent substantial risk was nothing less than deliberate, as it went against his proper training and the job expectations he had previously met. (*Id.* at 6.) Furthermore, it is impossible to deduce from the Record whether Officer Campbell reviewed the meeting minutes following his absence, but his inability to recognize Mr. Shelby upon their meeting serves as evidence that he in fact did not review the meeting minutes that greatly detailed Mr. Shelby's intake and high-risk status. (*Id.* 5–6.) Officer Campbell's failure to recognize Mr. Shelby further illuminates a pattern of negligence, beginning with neglecting to review the updated gang intelligence database, ignoring physical notices in administrative spaces, and disregarding his own inmate status list before removing Mr. Shelby from his isolated cell. (*Id.*) This pattern of

negligence culminated in his obliviousness to the substance of the detainee's remarks to Mr. Shelby that tethered him to an act of violence that a reasonable Marshall officer may deduce would make Mr. Shelby is uniquely vulnerable to retaliatory violence. (R. 6.) In keeping with his pattern of negligence, Officer Campbell fumbled this last signal that the man he was transferring was vulnerable to a preventable attack, opting instead to silence Mr. Shelby as he led him into the clutches of the Bonucci Clan members.

Officer Campbell's inability to protect Mr. Shelby was not due his inability to succeed in the moment of the incident on January 8th, but rather the culmination of a pattern of his unreasonable negligence that begun with his missing of the mandatory meeting on January 1st. (*Id.*) When considering the elevated protections afforded by the Fourteenth Amendment Due Process Clause for pretrial detainees, the relevant facts, circumstances, policies, and practices of Marshall jail, and the deliberate indifference Officer Campbell demonstrated through a sustained pattern of negligence, this Court should uphold the lower court's decision, as the objective reasonableness standard far exceeds the limitations of the subjective intent standard by capturing the gravity of the Fourteenth Amendment violation and safeguarding the rights of all pretrial detainees facing similar circumstances.

### **CONCLUSION**

For the foregoing reasons, Mr. Shelby respectfully requests this Court affirm the Fourteenth Circuit's decision on both matters.

Respectfully Submitted,  
Team 17  
*Counsel for Respondent*

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