Brief on the Merits
No. 23-05

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2023

CHESTER CAMPBELL,
Petitioner,

v.

ARTHUR SHELBY,
Respondent.

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

BRIEF FOR PETITIONER

Team 27
Counsel for Petitioners

QUESTIONS PRESENTED

1. Whether clear Congressional intent and this Court's precedent in *Heck v. Humphrey* should prevail in finding a dismissal of Petitioner's federal civil suit to constitute a "strike" under the Prison Litigation Reform Act ("PLRA") and its three-strike provision.

2. Whether this Court's decision in *Kingsley*, which specifically and only addressed excessive force claims, abrogates the subjective intent standard for a pretrial detainee's deliberate indifference failure-to-protect claim under 42 U.S.C. § 1983 action despite the precedential support for the subjective element.

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The decision of District Judge Michael Gray of the United States District Court for the Western District of Wythe, *Arthur Shelby v. Chester Campbell*, Case No. 23:14-cr-2324 (April 20, 2022), is contained in the Record at pages 1-11. The decision of Circuit Judges Alfred Solomons, Elizabeth Stark, and Ada Thorne of the United States Court of Appeals for the Fourteenth Circuit, *Arthur Shelby v. Chester Campbell*, No. 2023-5255 (December 1, 2022), is contained in the Record at pages 12-20.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following authorities are relevant to Petitioner's argument in the case before this Court and appear in full in the appendix:

U.S. Const. amend VIII.

U.S. Const. amend XIV.

42 U.S.C. § 1983.

28 U.S.C. § 1915(g).

28 U.S.C. § 2254.

Fed. R. Civ. P. 12(b)(6).

STATEMENT OF THE CASE

Arthur Shelby ("Shelby") is second-in-command of the infamous and brutal street gang, the Geeky Binders. R. at 2. On New Year's Eve, December 31, 2020, Marshall police raided a boxing match in which Shelby and his brothers were in attendance, having warrants for all of their arrests. R. at 3. Police placed Shelby under arrest and charged him with battery, assault, and possession of a firearm by a convicted felon. R. at 3.

The Geeky Binders, led by the Shelby brothers, created an elaborate crime syndicate, with members running businesses, owning significant real estate, and holding positions of public office. R. at 3. Practically, the Geeky Binders had established *de facto* control of the town of Marshall ("Marshall"). R. at 3. Even with this amount of control and influence, however, Shelby found himself in and out of prison. R. at 3. During his most recent detention, Shelby made a habit of bringing 42 U.S.C. § 1983 civil actions against anyone he deemed fit, including prison officials, state officials, and the United States. R. at 3. Because the actions "would have called into question either his conviction or his sentence, each action was correctly dismissed without prejudice" pursuant to *Heck v. Humphrey*. R. at 3.

On January 8, 2021. R. at 6. On this day, an entry-level guard, Officer Chester Campbell ("Officer Campbell" or "Campbell") oversaw the transfer of inmates to and from the jail's recreation room. R. at 6. While walking to the guard station, a cell block A inmate told Shelby he was glad that his brother "'finally took care of that horrible woman'" to which Shelby responded that it was what she deserved. R. at 6. As inmates from different cell blocks gathered, members of the Bonucci clan led by Luca Bonucci, a rival gang with members imprisoned in the Marshall jail, saw their opportunity to pounce; they beat Shelby with their fists and a club made of tightly wound paper. R. at 3, 7. The entire interaction lasted only minutes and Officer Campbell tried to break up

the attack, but Shelby suffered serious injuries. R. at 7. Shelby now brings the proceeding 42 U.S.C. § 1983 action citing constitutional violations when, in reality, the situation was a product of uncontrollable gang violence bound to explode.

From the time Shelby was booked, all officials at the Marshall jail followed requisite protocol. A "seasoned" jail official, Dan Mann ("Mann"), booked Shelby and conducted his preliminary paperwork. R. at 3, 4. Mann recognized that Shelby was a member of the Geeky Binders from his distinct outfit, custom-made ballpoint pen featuring a concealed awl, and exclamations that "cops can't arrest a Geeky Binder!" R. at 4. Pursuant to protocol, Mann made both paper and digital copies of forms to file and upload to the jail's database. R. at 4. Mann ensured Shelby's gang affiliation with the Geeky Binders was "clearly displayed" and that Shelby's current information under the gang affiliation tab was updated. R. at 5.

The Marshall jail recognizes the prevalence of gang activity in the town of Marshall, and thus, calls upon specialized, gang intelligence officers to review each incoming inmate's entry in the database system. R. at 4. The gang intelligence officers reviewed Shelby's file and made a note of a recent dispute between the Geeky Binders and the Bonuccis. R. at 5. The cause of this dispute: Shelby's brother Thomas had murdered Bonucci's wife. R. at 5. Arthur Shelby was a prime target for the Bonuccis to seek revenge. R. at 5.

Officer Campbell was not a gang intelligence officer well-versed in the intricacies of the Geeky Binders and Bonucci family feud. R. at 5. Rather, Officer Campbell is a qualified and capable guard at the Marshall jail–but an entry-level one, nonetheless. R. at 5. On January 1, 2021, about a week before the incident alleged in this action, roll call records indicate that Officer Campbell attended the meeting hosted by the gang intelligence officers to discuss Shelby's presence in the jail, but it is a point of contention whether Officer Campbell was actually in

attendance at the meeting. R. at 5, 6. Even if he was absent, however, he was required to review the meeting minutes via the jail's database, but it is still unclear whether Officer Campbell had. R. at 6. On January 1, 2021, Officer Campbell did not know or recognize Shelby, and thus, lacked knowledge of any risk to Shelby's health or safety. R. at 6, 8.

SUMMARY OF THE ARGUMENT

Respondent, Arthur Shelby, has accrued three strikes pursuant to the Prison Litigation Reform Act ("PLRA") and its three-strike provision, 28 U.S.C. § 1915(g). Therefore, he is barred from bringing this current 42 U.S.C. § 1983, for the events which took place on January 8, 2021, *in forma pauperis* in this Court. Any other finding would incentivize state prisoners to bring nonmeritorious claims, limiting overall judicial economy and efficiency. Rather, in passing the three-strike provision, Congress intended to prevent the submerging and the preclusion of claims with actual merit.

On this first issue, Shelby's § 1983 claim for damages based on conduct whose unlawfulness would render his conviction or sentence invalid is "not cognizable" until he has proved that his sentence has been invalidated, meaning it has been reversed, expunged, declared invalid, or called into question by a writ of habeas corpus. Since Shelby has failed to show this kind of invalidation, otherwise known as favorable termination, a *Heck* dismissal is warranted. Additionally, the order of a *Heck* dismissal with or without prejudice has no bearing on deciding whether the dismissal constitutes a strike under the PLRA three-strike provision. Instead, the rule hinges solely on the basis for dismissal.

Thus, *Heck* dismissals are the equivalent of dismissing a case under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. A *Heck* dismissal is, therefore, a dismissal on statutorily enumerated grounds and constitutes a strike. Cases such as *Washington v. Los Angeles County* and *In re* Jones clearly support this argument, especially when a ruling in Shelby's favor would create an obvious bar to relief. It would require the Court (1) to overlook Shelby's inability in proving his conviction or sentence has been held invalid—an essential requirement outlined by the court in *Heck*; and (2) would serve as a complete abandonment of the intentions of Congress.

Shelby must prove an essential element commonly associated with malicious prosecution claims—which the court in *Heck* likened to federal civil actions—that being favorable termination. Again, because Shelby has failed to show the termination of his prior criminal proceeding in his favor, he should be barred from bringing this § 1983 claim *in forma pauperis*, in order to prevent a means for him to collaterally attack his conviction or sentence. The proper route for Shelby is to first exhaust his state remedies before bringing a federal civil action because it would provide federal courts an ability to rule more effectively. Therefore, this Court should find that the dismissal of Shelby's three prior § 1983 claims, pursuant to *Heck v. Humphrey*, count as strikes and bar him from bringing this claim *in forma pauperis*.

Onto the second issue, although prisoners bring their § 1983 claims under the 8th Amendment while pretrial detainees bring their same claims under the 14th Amendment, the same standard is applicable to both claims. Since there is a constitutional duty of prison officials to protect both groups from harm, courts have consistently held that claims brought by either type of claimant are to be treated the same for purposes of establishing liability. The Supreme Court held in *Kingsley v. Hendrickson* that § 1983 excessive force claims brought by pretrial detainees under the Due Process Clause of the 14th Amendment are to be analyzed under an objective reasonableness standard. The holding, however, was specific to excessive force claims. The Court made no mention of the appropriate deliberate indifference standard for conditions of confinement claims such as inadequate medical care or failure-to-protect. Because a failure to act does not presume intent, and deliberate indifference implies a subjective component, the *Kingsley* holding should be limited to excessive force claims. It was clearly established in *Farmer* that a subjective deliberate indifference standard applies in the failure-to-protect context. In the aftermath of *Kingsley*, several circuits and lower courts have continued to apply the subjective standard to

deliberate indifference claims. Extending *Kingsley* to failure to protect claims would disrupt decades of precedent. In the circuits that have chosen to extend *Kingsley*, they have applied different forms of the objective standard resulting in confusion and inconsistency.

The objective standard that some courts have applied after *Kingsley* is no different than a negligence standard. Negligence, however, is insufficient to establish a § 1983 claim. Tort law already imposes liability for negligent acts and as a result, the subjective standard will not allow those who failed to act, when they should have, to go without consequences. Based on the circumstances and facts of a case, the objective standard could allow officials to escape liability even when acting in a deliberately indifferent manner. Even if objective reasonableness was the standard to apply, Officer Campbell does satisfy all the necessary elements. As a much less experienced jail officer, he was much more susceptible to not taking all the precautions prior to taking Shelby to recreation. It is clear that Officer Campbell did not know Shelby's identity at the time of the incident and the risk of harm was not so obvious as to assume that he was purposeful in his conduct. Although looking at the special status list would have allowed Officer Campbell to realize Shelby's vulnerability, that does not imply that he would know that the inmates he was removing from Block B and C were members of the Bonucci clan.

The proper inquiry here is whether Officer Campbell knowingly and purposefully disregarded the risk to Shelby. The facts indicate that Office Campbell did not recognize Shelby. He also could not conclude from the brief exchange between Shelby and another inmate that he was a high-risk target of a gang hit. Additionally, had he been purposeful in his inaction, Officer Campbell would not have immediately attempted to assist Shelby once the attack ensued. Prison officers and officials must have discretion in the measures they take to preserve the safety and health of the inmates they oversee. The objective standard would eliminate this necessary

discretion and impose liability on officers who are only negligent rather than reckless. As a result, the subject standard should control for deliberate indifference claims and Shelby has not alleged facts to support his § 1983 claim. In conclusion, this Court should reverse the United States Court of Appeals for the Fourteenth Circuit and dismiss Respondent's action for failure to state a claim.

ARGUMENT

I. THE DISMISSAL OF A PRISONER'S CIVIL ACTION CONSTITUTES A STRIKE UNDER THE PLRA.

On February 24, 2020, Arthur Shelby filed his 42 U.S.C. § 1983 claim ("§ 1983 claim" or "§ 1983 action") in federal court and, on that same day, filed a motion to proceed *in forma pauperis*. R. at 13. On April 20, 2022, the District Court properly denied Shelby's motion to proceed *in forma pauperis*, accurately citing to the Prison Litigation Reform Act's ("PLRA") three-strike provision. R. at 13; *see also* 28 U.S.C. § 1915(g). For the proceeding reasons, the dismissal of a prisoner's civil action, pursuant to this Court's precedent in *Heck v. Humphrey*, constitutes a strike precisely in accordance with the language of the PLRA.

A. Congress Passed The PLRA And The Three-Strike Provision, 28 U.S.C. § 1915(g), To Curb Nonmeritorious Claims Like Shelby's § 1983 Action.

Congress passed the three-strike provision to avoid "meritless, wasteful litigation" brought by prisoners. R. at 15. The PLRA exemplifies Congressional intent in "ensuring that [a] flood of nonmeritorious claims [do] not submerge and effectively preclude consideration of the allegations with merit." *Jones v. Bock*, 549 U.S. 199, 203 (2007); *see also Blakely v. Wards*, 738 F.3d 607 (4th Cir. 2013), *as amended* (Oct. 22, 2013) (holding Congress sought to reduce the number of frivolous lawsuits "flooding the federal courts"). To promote its goal of judicial economy, Congress enacted 28 U.S.C. § 1915(g). *See Wards*, 738 F.3d at 607.

This provision states that a prisoner is barred from bringing an *in forma pauperis* civil action "if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal . . . that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim," unless the prisoner faces imminent danger. 28 U.S.C. §

1915(g); *see also* 168 A.L.R. Fed. 433; *Griffin v. Carnes*, 72 F.4th 16, 18 (2d Cir. 2023) (holding plaintiff was barred under the PLRA from proceeding *in forma pauperis*).

Allowing Shelby's previous § 1983 claims to go forward, as well as the one before the court for the event which took place on January 8, 2021, would override Congressional intent in passing the PLRA and the three-strike provision. Instead, it would allow a "flood of nonmeritorious" claims into court, "submerging" those with merit. *Bock*, 549 U.S. at 203. It would set a precedent that state prisoners need not adhere to the PLRA's three-strike provision and allow for constant filings of federal civil suits *in forma pauperis*. This would overburden courts, violate Congressional intent, and permit collateral attacks on other court rulings. *See Heck v. Humphrey*, 512 U.S. 477, 484 (1994) (holding an aim of *Heck* dismissals is to avoid an improper collateral attack on the conviction through "the vehicle of a civil suit").

B. Shelby's Three Prior § 1983 Claims Were Properly Dismissed Pursuant To *Heck* And Is Barred From Now Proceeding *In Forma Pauperis*.

A § 1983 civil action for damages based on conduct whose unlawfulness would "render a conviction or sentence invalid," *Heck*, 512 U.S. at 486-87, is "not cognizable unless the conviction or sentence has been invalidated." *In re* Jones, 652 F.3d 36, 37 (D.C. Cir. 2011). In other words, a § 1983 action does not develop until the plaintiff has proven that "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 486-87; *see also* 28 U.S.C. § 2254. If a prisoner fails to show that their sentence has been invalidated in any of the preceding ways, a *Heck* dismissal is warranted. *See generally*, *Heck*, 512 U.S. 477; *see also Hamilton v. Lyons*, 74 F.3d 99, 103 (5th Cir. 1996) (holding that *Heck* barred the plaintiff's claim because they failed to make a showing

that their conviction or sentence had been reversed, expunged, invalidated, or otherwise called into question and is, therefore, "legally frivolous").

Shelby has had several run-ins with the law. R. at 3. He has been arrested and subsequently convicted for various crimes, including drug distribution and possession, assault, and brandishing a firearm. R. at 3. During his prior detention, Shelby commenced three separate civil actions under 42 U.S.C. § 1983. R. at 3. All three of his prior § 1983 claims would have "called into question either his conviction or his sentence." R. at 3. Furthermore, each § 1983 claim was "not cognizable" and properly dismissed without prejudice pursuant to *Heck v. Humphrey* because Shelby had failed to show the claims had been invalidated. *In re* Jones, 652 F.3d 36; *see also Heck*, 512 U.S. at 486-87 (reaffirming that the claim must be based on conduct which would "render the conviction or sentence invalid"). None had not been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 486-87. As such, Shelby's claim before this Court should be dismissed, just as his three prior § 1983 claims have been.

In addition, regardless of whether the dismissal was with or without prejudice, a *Heck* dismissal constitutes a strike under the PLRA three-strike provision because the rule "hinges exclusively on the basis for dismissal." 168 A.L.R. Fed. 433; *see also White v. State of Colo.*, 157 F.3d 1226, 1234 (10th Cir. 1998) (holding the PLRA's three-strike provision is "rationally related to the legitimate end of deterring frivolous and malicious prisoner lawsuits and does not violate the guarantees of equal protection and due process"). As such, "[a] dismissal is a dismissal . . . and counts as a strike." *Paul v. Marberry*, 658 F.3d 702, 704 (7th Cir. 2011); *see also Orr v. Clements*, 688 F.3d 463, 465 (8th Cir. 2012) ("[W]e see no reason why a dismissal without prejudice should

not count as a strike under § 1915(g).”). Furthermore, this Court has held that a prior dismissal “on a statutorily enumerated ground counts as a strike even if the dismissal is the subject of an appeal.” *Coleman v. Tollefson*, 575 U.S. 532, 537 (2015). The text of the PLRA’s three-strike provision makes this abundantly clear and “an easy call,” especially when recognizing that granting different judicial avenues for state prisoners depending on whether the dismissal of their claim is subject to an appeal would create vast inconsistencies in the reading of the statute. *See Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721, 1725, 1727 (2020) (holding that “[a] dismissal of a suit for failure to state a claim counts as a strike, whether or not with prejudice” because reading the PLRA’s three-strike provision to only apply to dismissals with prejudice “would introduce inconsistencies into the statute”).

The prejudicial effect of a dismissal has no bearing on whether the dismissal constitutes a strike under the PLRA. *See* 168 A.L.R. Fed. 433 (noting the rule “hinges exclusively on the basis for dismissal”). Rather, the three-strike provision, 28 § 1915(g), is “rationally related to the legitimate end of deterring frivolous and malicious prisoner lawsuits.” *White*, 157 F.3d at 1234. And preventing Shelby from bringing yet another nonmeritorious § 1983 claim achieves this end. *See White*, 157 F.3d at 1234. Simply, a *Heck* dismissal is a dismissal, and there is no reason why a dismissal without prejudice should not count as a strike under the clear language of the PLRA. *See Paul*, 658 F.3d at 704; *see also Orr*, 688 F.3d at 465. A dismissal without prejudice, versus a dismissal with prejudice, should not warrant any other finding than that it constitutes a strike under the PLRA. *See Orr*, 688 F.3d at 465. Even if the dismissal is subject to an appeal, as dismissals without prejudice are, the determination remains sound. *See Coleman*, 575 U.S. at 537. For these reasons, it is an “easy call.” *Lomax*, 140 S.Ct. at 1725, 1727.

Because the dismissal of each of Shelby's three prior federal civil actions under *Heck* constitute strikes, Shelby is prohibited from proceeding *in forma pauperis* in his current § 1983 claim before this Court.

II. *HECK* DISMISSALS CONSTITUTE STRIKES UNDER THE PLRA.

A § 1983 claim for damages which is dismissed for failure to state a claim, which includes *Heck* dismissals, constitutes a strike under the PLRA, § 28 U.S.C. § 1915(g). *See In re* Jones, 652 F.3d at 38 (asserting that "the dismissal of a § 1983 lawsuit for damages based on prematurity under *Heck* for failure to state a claim . . . constitutes a 'strike' under the PLRA"). Furthermore, because this Court in *Heck* likened federal civil actions to malicious prosecution claims, Shelby must prove the essential requirement of favorable termination, which he has failed to do. Therefore, having accrued three strikes for failing to state a claim in his prior § 1983 actions, Shelby should be prevented from bringing his current § 1983 action *in forma pauperis*.

A. *Heck* Likens § 1983 Claims To Malicious Prosecution Claims, And Shelby Fails To Meet Its Essential Favorable Termination Requirement.

Heck analogizes the common-law cause of action for malicious prosecution to that of a state prisoner seeking damages in a § 1983 suit. 512 U.S. at 484. The court in *Heck* held that one element that must be "alleged and proved" in a malicious prosecution case is the "termination of the prior criminal proceeding in favor of the accused," in order to avoid an improper collateral attack on the conviction through "the vehicle of a civil suit." *Id.* And thus, a claim for damages "bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983" and must be dismissed. *Id.* at 487 (emphasis added).

Circuit Courts have similarly ruled. The Tenth Circuit held that "favorable termination" is an "essential element" of a federal civil rights claim that "necessarily implies the invalidity of the prisoner's conviction." *Smith v. Veterans Admin.*, 636 F.3d at 1312. Thus, in *Smith v. Veterans*

Admin., because of the plaintiff's failure to allege this essential element, their claim was correctly dismissed for failure to state a claim. *See* 636 F.3d at 1312. Further, this dismissal constitutes a strike under the PLRA, 28 U.S.C. § 1915(g). In *Payton v. Ballinger*, the Tenth Circuit similarly reasoned that a dismissal of a § 1983 claim "because they were *Heck* barred is a strike" which is "immediately effective." 831 F.App'x 898, 902 (10th Cir. 2020); *see also Childs v. Miller*, 713 F.3d 1262, 1265-66 (10th Cir. 2013) (holding the dismissal of a complaint as "repetitive and an abuse of process constitutes a strike" under § 1915(g), regardless of whether or not the district court classified the claim as frivolous or malicious).

In his damages claim under § 1983, Shelby has failed to show favorable termination of a prior criminal proceeding. Rather, Shelby was found guilty as charged of battery and possession of a firearm by a convicted felon. R. at 7. As such, there is a grave concern that Shelby could now find ways to collaterally attack his conviction and sentence, using this § 1983 civil claim as a "vehicle" to do so. *Heck*, 512 U.S. at 484. In addition, proving favorable termination "precludes the possibility of the claimant," here Shelby, "succeeding in a tort action after having been convicted in the underlying criminal prosecution." *Id.* This requirement contravenes a "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction." *Id. at 484*-85; *see also* 8 S. Speiser, C. Krause, & A. Gans, American Law of Torts § 28:5, p. 24 (1991). Thus, Shelby has failed to meet the essential requirement of showing favorable termination. *See Smith*, 636 F.3d at 1312. His § 1983 claim before this Court is, therefore, "*Heck* barred" and a strike, taking immediate effect. *Payton*, 831 F.App'x 898, 902; *see also Childs*, 713 F.3d at 1265-66; *Hamilton*, 74 F.3d 99, 103 (holding because the plaintiff's claim had not been reversed, expunged, invalidated, or otherwise called into question, it was "legally frivolous).

B. *Heck* Dismissals Are Treated As The Equivalent Of Dismissals For Failure To State A Claim.

A *Heck* dismissal *is* a dismissal on statutorily enumerated grounds, and accordingly, warrants a strike. *See Coleman*, 575 U.S. at 537 (holding a prior dismissal "on a statutorily enumerated ground counts as a strike"). Any other interpretation would create vast inconsistencies in the law and the PLRA, specifically. *See Lomax*, 140 S.Ct. at 1725, 1727 (reading the PLRA's three-strike provision in another way "would introduce inconsistencies into the statute"). As the court in *Washington v. Los Angeles County* made clear, *Heck* dismissals may constitute Rule 12(b)(6) dismissals for failure to state a claim when the "pleadings present an obvious bar to securing relief." 833 F.3d 1048, 1055-56 (9th Cir. 2016).

The District of Columbia Circuit in *In re* Jones held that the plaintiff, Jones, while incarcerated, filed at least three civil actions which were dismissed as frivolous, malicious, or failed to state a claim, and the plaintiff had "neither offered any valid reason why he should not be required to pay in full the appellate filing fee . . . nor claimed he is in imminent danger"—the only exception to § 1915(g). 652 F.3d at 38; *see also* 28 U.S.C. § 1915(g). Accordingly, the court properly denied Jones' motion for leave to appeal *in forma pauperis* and ordered Jones to pay the full amount. *See id.*

The facts of *In re Jones* are analogous to the case at bar. Shelby filed three separate § 1983 civil actions against prison officials, state officials, and the United States. R. at 3. All of his claims were dismissed without prejudice pursuant to *Heck*, which is a statutorily enumerated ground. R. at 3; *see also* 512 U.S. 477. Accordingly, all three dismissals should be deemed "strikes" under the PLRA, 28 U.S.C. § 1915(g). Therefore, Shelby should be barred from bringing this § 1983 claim *in forma pauperis*, consistent with 28 U.S.C. 1915(g), because he has previously accrued three strikes. Likewise, Shelby has offered no valid reasons why he should not be required to pay

the full amount and proceed *in forma pauperis*. *See In re* Jones, 652 F.3d at 38 (holding the plaintiff failed to "offer[] any valid reason why he should not be required to pay in full the appellate filing fee"). In fact, Shelby is willing and able to pay the $402.00 filing fee within the thirty-day deadline. R. at 13. Shelby may claim that he is in "imminent danger" and deserves protection under this exception; however, a one-off oversight of an entry level guard, Chester Campbell, warrants no such determination. R. at 5.

Additionally, the three prior *Heck* dismissals constitute Rule 12(b)(6) dismissals for failure to state a claim because Shelby's pleadings present an obvious bar to securing relief. *See Washington*, 833 F.3d at 1055-56. First, Shelby has failed to show or present any testimony that his conviction or sentence has been "reversed, expunged, invalidated, or otherwise called into question." *Heck*, 512 U.S. at 480; *see also Smith*, 636 F.3d 1306, 1312 (10th Cir. 2011). And second, allowing Shelby to proceed on this § 1983 claim would require a complete and total abandonment of the PLRA three-strike provision and violate the clear intentions of Congress in preventing a "flood of nonmeritorious claims." *Bock*, 549 U.S. at 203. Thus, Shelby should not be permitted to bring this action *in forma pauperis* or any other action while under the status of a state prisoner.

C. Shelby Has Failed To Exhaust His State Remedies.

Shelby has failed to exhaust his state remedies, and so, his federal action under 42 U.S.C. § 1983 should be dismissed:

> If, regardless of the relief sought, the plaintiff [in a federal civil rights action] is challenging the legality of his conviction, so that if he won his case the state would be obliged to release him even if he hadn't sought that relief, the suit is classified as an application for habeas corpus and the plaintiff must exhaust his state remedies, on pain of dismissal if he fails to do so.

Heck, 512 U.S. at 479-80. Thus, another ground for dismissal lies in Shelby's inadequacy in exhausting his remedies with the state of Wythe before bringing a federal civil action. Even if this

Court finds that the exhaustion requirement does not apply to § 1983 claims, Shelby's claim, as a state prisoner is nonetheless "not cognizable" and "must [instead] be brought in habeas corpus proceedings, which *do* contain an exhaustion requirement." *Id.* at 480 (emphasis added).

The exhaustion requirement is "designed to protect the . . . courts' role in the enforcement of federal law." *Rose v. Lundy*, 455 U.S. 509, 518 (1982). This will "encourage state prisoners to seek full relief first from the state courts" and give those courts the "first opportunity to review claims alleging constitutional violations. *Id.* at 518-19. Federal claims which have been fully exhausted in state courts will present a more "complete factual record," aiding federal courts in their ability to make an effective determination. *Id.* at 519. Because Shelby has failed to exhaust his state remedies before bringing the present § 1983 claim, he has failed to equip the federal court of information and reliable testimony to make a proper determination. *See id.*

However, even if a state prisoner has fully exhausted state remedies, they still have no cause of action under § 1983 "unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned" by a writ of habeas corpus. *Heck*, 512 U.S. at 489. Shelby has failed to exhaust any state remedies and, again, has no cause of action under § 1983 "unless and until the conviction or sentence" has been invalidated. *Id.* at 486-87, 489; *see also Carnes v. Atkins Bros. Co.*, 123 La. 26, 31 (1909) (holding that a cause of action for malicious prosecution, likened to § 1983 claims in cases such as *Heck*, "does not accrue until the criminal proceedings have terminated in the plaintiff's favor"). When a state prisoner has failed to show favorable termination, as discussed above, a *Heck* dismissal results. *See generally Heck*, 512 U.S. 477. And this dismissal, practically, is supported by reasoning that Respondent has failed to state a claim, regardless of their attempts in seeking state remedies, and thus, qualifies as a strike under the PLRA § 1915(g) and this Court's ruling in *Heck*. *See* 28 U.S.C. § 1915(g); *see also Heck*, 512 U.S. 477.

D. *Polzin* and *Washington* Are Inapplicable To Shelby's Case.

Respondents will cite to *Polzin v. Gage* and *Washington v. Los Angeles* to support its argument; however, both cases are inapplicable to the facts at issue here—not to mention that this Court need not adopt Seventh and Ninth Circuit precedent. *See generally Polzin*, 636 F.3d 834; *Washington*, 833 F.3d 1048. The Seventh Circuit in *Polzin* acknowledged that "courts may bypass" the *Heck* doctrine and address the merits of the case. 636 F.3d at 838. However, courts are under no requirement or obligation to do so. This is supported by the word "*may*" in the court's reasoning. *Id.* Rather, in doing so, courts would, in actuality, be "bypass[ing]" the intentions of Congress and established case law. *Polzin*, 636 F.3d at 838. As previously noted, *Washington* acknowledges that *Heck* dismissals constitute Rule 12(b)(6) dismissals for failure to state a claim, and thus, are deemed strikes under the PLRA three-strike provision but only if the pleadings present "an obvious bar to securing relief." 833 F.3d at 1055-56. Again, this obvious bar exists because it would require an abandonment of Congressional intent and allow for an influx of nonmeritorious actions brought be state prisoners who see no reason to abide by the language of the PLRA. *See Bock*, 549 U.S. at 203.

In conclusion and for the reasons stated above, *Heck* dismissals constitute "strikes" under the clear language and Congressional intent of the PLRA's three-strike provision, and Shelby should not be allowed to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(g). This Court should reverse the decision of the Court of Appeals for the Fourteenth Circuit on this issue.

III. *KINGSLEY'S* HOLDING IS LIMITED TO PRETRIAL DETAINEES' EXCESSIVE FORCE CLAIMS AND THE SUBJECTIVE STANDARD SHOULD CONTINUE TO APPLY TO FAILURE-TO-PROTECT CLAIMS.

The Eighth Amendment protects prisoners from cruel and unusual punishment. U.S. Const. amend. VIII. In accordance with this Court's rulings in *Estelle v. Gamble* and *Farmer v. Brennan*,

a prisoner, meaning someone who has already been convicted of the crime charged and has been sentenced, may bring a § 1983 claim when prison officials "act with deliberate indifference to the risk of harm" to such person. R. at 9; *see also Estelle v. Gamble*, 429 U.S. 97, 102-06 (1976); *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). Because a person lawfully committed to pretrial detention has yet to be found guilty of a crime, a pretrial detainee may not be punished under the Due Process Clause. U.S. Const. amend XIV; *Graham v. Connor*, 490 U.S. 386, 396, n. 10 (1989). This Court has held that a pretrial detainee's due process rights "are at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere v. Massachusetts Gen. Hospital*, 463 U.S. 239, 244 (1983). A pretrial detainee's § 1983 claim alleging deliberate indifference is, therefore, brought under the Fourteenth Amendment. *See County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998); *see also Bell v. Wolfish*, 441 U.S. 520, 535-37 n. 16 (1979).

To clarify the disagreements among Circuit Courts regarding the proper standard for evaluating § 1983 claims, this Court held that a pretrial detainee bringing an excessive force claim need only satisfy an objective standard. *See Kingsley v. Hendrickson*, 576 U.S. 389, 395 (2015). In doing so, this Court only analyzed state of mind questions pertaining to excessive force and left the deliberate indifference standard, outlined in *Farmer*, untouched for failure-to-protect claims. *Id.* As a result, Officer Campbell's conduct, or lack thereof, should continue to be analyzed under a subjective standard. R. at 10. Therefore, this Court should reverse the Fourteenth Circuit's decision and grant Officer Campbell's Motion to Dismiss for Respondent's failure to allege sufficient facts establishing that he possessed the required, culpable state of mind.

A. The Subjective Deliberate Indifference Standard Is Applicable To § 1983 Claims Brought By Both Pretrial Detainees And Prisoners.

Although the underlying amendment providing a basis for the § 1983 claim differs for a pretrial detainee and a prisoner, the same standard for deliberate indifference outlined in *Farmer*

should be applied regardless of the type of claimant. Pretrial detainees' due process rights may exceed those of prisoners under the Eighth Amendment, but their rights to be protected from danger or harm are similar. *See Hare v. City of Corinth*, 74 F.3d 633, 641 (5th Cir. 1996). Indeed, the same conditions of violence which constitute cruel and unusual punishment can also be sufficient to constitute punishment of pretrial detainees per se. *See Alberti v. Klevenhagen*, 790 F.2d 1220, 1224 (5th Cir. 1986) (determining that the differences in rights for pretrial detainees and prisoners does not affect the constitutional duty of prison officials to protect both groups from harm).

In the opinion below, the majority contends that this Court made clear in *Kingsley v. Hendrickson* that there was not one deliberate indifference standard to apply to all claimants. R. at 16. Despite this contention, in the aftermath of *Kingsley*, several circuits have continued to follow *Farmer* and treat prisoners and pretrial detainees the same when analyzing the subjective element of their deliberate indifference claims. R. at 10. *See Hare*, 74 F.3d at 648 (determining that the "subjective definition of deliberate indifference provides the appropriate standard for measuring the duty owed to pretrial detainees under the Due Process Clause."); *Thomas v. Cumberland County*, 749 F.3d 217, 223 n.4 (3d Cir. 2014) (explaining in a footnote that it continues to apply the same standard for a failure-to-protect claim brought under the Fourteenth Amendment as under the Eighth Amendment). The mental state that "a § 1983 plaintiff is required to prove depends on the right at issue." *Dancy v. McGinley*, 843 F.3d 93, 117 (2d Cir. 2016). The rationale in *Kingsley* applied specifically to excessive force claims and focused on "whether the use of force amounted to punishment, not on the status of the detainee." *Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020). Because the *Kingsley* ruling provides no precedential support for

a change in the standard for § 1983 claims other than excessive force claims, the deliberate indifference standard remains the same regardless of the claimant's status.

B. The *Kingsley* Court's Reliance On *Bell* In Applying The Objective Standard To Excessive Force Claims Provides No Basis For Extending The Standard To Failure-To-Protect Claims.

This Court in *Kingsley* relied heavily on *Bell v. Wolfish* in determining that an objective standard is appropriate in the context of excessive force claims. *See Kingsley*, 576 U.S. at 398-400. In *Bell*, this Court determined that the relevant question, in evaluating conditions of confinement claims brought by pretrial detainees, "is whether those conditions amount to punishment of the detainee." *Id.* at 405. Although punishment can never be imposed on detainees, not all restrictions and conditions amount to punishment. *Id.* In determining what constitutes punishment in the constitutional sense, this Court held that a condition or restriction reasonably related to a legitimate governmental objective, or that is not excessive in relation to that purpose, does not amount to punishment. *Id.* at 539. This provides prison officials with the discretion needed to take appropriate action in ensuring the safety of inmates and prison personnel. *Id.* at 547. The *Kingsley* Court reasoned that the *Bell* Court applied the objective standard to evaluate a prison's double-bunking practice and found it to be the appropriate, workable standard for Kingsley's case. *Kingsley*, 576 U.S. at 398-400.

Kingsley's reliance on *Bell*, however, does not control whether the objective standard should be extended to failure-to-protect claims brought by pretrial detainees. Importantly, *Kingsley* and *Bell* did not address a government official's failure to act. In *Hare*, the Fifth Circuit created a distinction between claims challenging a practice, rule, or condition, and claims regarding episodic acts or omissions of prisons officials. *Hare*, 74 F.3d at 643. The court reasoned that the *Bell* test was inapplicable to the latter types of claims and that the correct inquiry is "whether the official

has a culpable state of mind in acting or failing to act." *Id.* While the mere imposition of a restriction or condition demonstrates an intention to subject a pretrial detainee to that condition or restriction, episodic acts or omissions do not presume such an intent. *Id.* at 644. Thus, applying *Bell's* "reasonably related" test to official's episodic acts or omissions creates problems in application. To determine whether an episodic act or omission is reasonably related to a legitimate governmental objective, one would need to inquire into whether the official had the required state of mind to be liable "as a perpetrator of the particular act or omission, not as a dispenser of intended conditions or restrictions." *Id.* at 645. Unless the detainee can show an established rule tied to an official's act or omission, or that the acts or omissions were extensive, an official can only be constitutionally liable if he knowingly disregards the substantial risk of harm to a detainee. *Id.* at 645-46.

This Court in *Kingsley* failed to apply the distinction outlined by the Fifth Circuit to the episodic act of handcuffing and tasering Kingsley, but the difference in the type of claim indicates why this Court did not attempt to apply the standard used for an episodic act. *Kingsley*, 576 U.S. at 399. Establishing that the excessive force used is unrelated to a legitimate government objective or is excessive in relation to that objective does not require looking into the mental state of an official. *See Strain*, 977 F.3d at 992. A pretrial detainee may not be punished in *any* way, and so, courts can easily use objective evidence to show the official's punitive actions were intentional even without an expressed intent to punish. *Id.* However, the punitive element found in excessive force cases is absent in a failure-to-protect claim and the deliberate indifference cause of action presupposes a subjective element. *Id.* at 987. As this Court determined in *Farmer*, an official's failure to protect individuals from serious danger that he should have been aware of, but was not, cannot be viewed as imposing any punishment whatsoever. *Farmer*, 511 U.S. at 838.

Appropriately, this Court in *Kingsley* did not criticize or overrule *Farmer*. In fact, it made no reference to *Farmer* anywhere in the opinion. R. at 19. Moreover, the dissent in *Brawner* noted that a failure-to-protect claim rests on a failure to act, and so, punitive intent cannot be inferred. *Brawner v. Scott Cty.*, 14 F.4th 585, 608 (6th Cir. 2021) (Readler, J., dissenting). Thus, the subjective intent of an official is necessary to understand the events that unfolded. *Id.*

The claim at issue here involves a single episodic omission that led to the assault on Shelby. R. at 7. While punitive intent can be inferred from the physical acts of the officers in *Kingsley*, Officer Campbell's failure to reference the list of inmates with special status or the jail's database does not provide that same inference. R. at 6. If anything, his conduct constitutes negligence or gross negligence at most. R. at 20. Since there is no prison policy or practice being challenged, the application of *Bell's* "reasonably related" test turns on whether Officer Campbell purposely and knowingly failed to inquire into Shelby's status. When evaluating Campbell's state of mind, there is no evidence to suggest that he purposely failed to look at the special risks list or the jail's database before retrieving Shelby. R. at 6. Likewise, nothing to indicate that he knowingly failed to learn about the possible hit on Shelby. R. at 11. Due to the difficulty in applying *Bell's* rationale to this type of claim, this Court should follow the Fifth Circuit in holding that the proper standard to apply depends on the claim at issue.

C. Courts Have Continued Applying The Subjective Standard To Deliberate Indifference Claims Post-*Kingsley*.

To establish a deliberate indifference claim, a detainee must show both an objective and subjective component. *Strain*, 977 F.3d at 989. To satisfy the objective element, a detainee "must show that he is incarcerated under conditions posing a substantial risk of serious harm." *Farmer*, 511 U.S. at 834. Under the subjective component, a prison official acts with deliberate indifference when they know of and disregard an excessive risk to inmate safety. *Id.* at 839. Although this

Court's reasoning for adopting the subjective recklessness standard for deliberate indifference was rooted in its consistency with the Eighth Amendment and the Cruel and Unusual Punishments Clause, it is nonetheless consistent with the Fourteenth Amendment's Due Process Clause as well. *See Hare*, 74 F.3d at 648 (acknowledging that *Farmer* dealt with conditions of confinement for a convicted prisoner under the Eighth Amendment and extending its subjective deliberate indifference standard to pretrial detainees' Due Process Clause claims).

There is no reason for this Court to disregard precedent and alter the deliberate indifference standard due to *Kingsley's* change in the appropriate standard, specifically and only, regarding excessive force claims. In *Nam Dang*, the Eleventh Circuit distinguished *Kingsley* as an excessive force case, rather than a case stemming from a deliberate indifference claim and determined that prior precedent for the deliberate indifference standard had not been abrogated because of the Supreme Court ruling. *Nam Dang ex rel. Vina Dang v. Sheriff, Seminole Cty. Fla*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017). The Eleventh Circuit further reasoned that, even if *Kingsley* did alter the standard for pretrial detainees' claims of inadequate medical care due to deliberate indifference, the outcome for petitioner would not have changed because the conduct in the case amounted to merely negligence. *Id.* at n.2.

Similarly, here, Officer Campbell's inaction could not be considered more than negligence. R. at 11. Just like how the medical staff's failure to recognize Dang's symptoms or check his vitals was not considered to be grossly incompetent, Officer Campbell was merely careless in bringing Shelby and the Bonucci inmates together during recreation. R. at 20; *Nam Dang*, 871 F.3d at 1281. The fact that *Nam Dang* involves a medical care claim, rather than a failure-to-protect claim, does not alter the analysis because the underlying purpose of preventing a detainee from suffering pain or harm is the same under both claims. *See Hare*, 74 F.3d at 643-44 (determining that medical care

and failure-to-protect claims "should be treated the same for purposes of measuring constitutional liability").

The Fifth Circuit has continuously applied the subjective standard to deliberate indifference claims, and other circuits have done the same. *See Cope v. Cogdill*, 3 F.4th 198, 207 (5th Cir. 2021) (applying the subjective standard to a claim of inadequate medical care because *Kingsley* dealt with an excessive force claim and deliberate-indifference precedent remains unchanged); *see also Johnson v. Bessemer*, 741 Fed. Appx. 694, 699 n.5 (11th Cir. 2018) (rejecting the argument that the proper standard for a pretrial detainee's deliberate indifference claim is an objective one because *Kingsley* involved excessive force and did not undermine earlier deliberate indifference precedent); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 (8th Cir. 2018) (rejecting the argument that the relevant standard is objective rather than subjective after *Kingsley* because that case dealt with excessive force and not deliberate indifference); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419 (5th Cir. 2017) (finding that subjective deliberate indifference must be shown to prevail on a pretrial detainee's § 1983 action based on episodic acts or omissions). Considering that *Kingsley* only addressed excessive force claims and numerous courts have applied the subjective standard even after that ruling, this Court should abide by precedent and affirm the practices of the lower courts. *See R.A.V. v. St. Paul*, 505 U.S. 377, 386 n.5 (1992) (explaining that it is "contrary to all traditions of [the Court's] jurisprudence to consider the law on [a] point conclusively resolved by broad language in cases where the issue was not presented").

Respondent will argue that this Court should follow other circuits, namely the Second, Seventh, and Ninth, and extend *Kingsley's* objective standard to other § 1983 claims. *See Darnell v. Pineiro*, 849 F.3d 17 (2d Cir. 2017); *Miranda v. County of Lake*, 900 F.3d 335 (7th Cir. 2018); *Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). In doing so, however, it would create

confusion nationwide as to the appropriate standard and problems in application. In *Terry v. Cty. of Milwaukee*, for example, the court struggled to apply the Seventh Circuit's test from *Miranda v. County of Lake*. 357 F. Supp. 3d 732, 744 (E.D. Wis. 2019); *see generally Miranda*, 900 F.3d 335. *Miranda* involved a medical care claim in which the court asked two questions. *Terry*, 357 F. Supp. 3d 732, 744. First, "whether the medical defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences" of their conduct. *Miranda*, 900 F.3d at 353. Second, whether the failure to act was objectively unreasonable. *Id.* at 354. The court in *Terry* found that the first question conflicted with the second because whether the defendants were reckless should not matter based on the second inquiry regarding objective reasonableness. *Terry*, 357 F. Supp. 3d at 745. Importantly, the court in *Terry* determined that asking whether the jail doctor's conduct is objectively reasonable is the same as asking whether they were negligent. *Id.*

Additionally, the Second and Ninth Circuits provide inconsistent frameworks for establishing deliberate indifference claims through an objective standard. Despite its reliance on *Castro*, the Second Circuit held that a pretrial detainee must prove that a defendant "recklessly failed to act with reasonable care to mitigate the risk" even though they knew or should have known of the excessive risk to safety. *Darnell*, 849 F.3d at 35. However, the comparable element presented in *Castro* is that a defendant "did not take reasonabl[y] available measures to abate [a substantial] risk, even though a reasonable officer in the circumstances would have appreciated" the risk involved. *Castro*, 833 F.3d at 1071. While the Second Circuit element establishes a recklessness standard, the Ninth Circuit's element is akin to negligence. The creation of different standards does nothing but muddle *Kingsley's* objective reasonableness standard and increase the likelihood for litigation. To avoid further issues with the standards set forth in these circuits, this

Court should minimize any confusion by maintaining the standard that has been in place since *Farmer*.

IV. THE NINTH CIRCUIT ERRED IN APPLYING THE OBJECTIVE STANDARD TO FAILURE-TO-PROTECT CLAIMS BROUGHT UNDER THE FOURTEENTH AMENDMENT.

The Ninth Circuit was the first circuit to apply *Kingsley* to failure-to-protect claims of pretrial detainees. *Castro*, 833 F.3d at 1070. In *Castro*, authorities placed an aggressive inmate in a sobering cell with the pretrial detainee, Castro. *Id.* at 1064. Despite his attempts to attract attention, officials ignored him, and as a result, Castro was severely beaten. *Id.* The Ninth Circuit analyzed plaintiff's § 1983 claim through *Kingsley's* objective reasonableness standard. *Id.* at 1070. According to the court, the elements of a failure-to-protect claim brought by pretrial detainees under the Fourteenth Amendment are that "[t]he defendant made an intentional decision with respect to the conditions to which the plaintiff was confined," and the plaintiff was "at substantial risk of suffering serious harm" due to those conditions. *Id.* at 1071. Next, it must be shown that the defendant failed to "take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved." *Id.* Finally, the defendant's failure to take such measures must have caused the detainee's injuries. *Id.*

The majority surprisingly concedes that *Kingsley* did not directly address the applicability of the objective standard to all pretrial detainee claims. *Id.* at 1069. The court goes on to acknowledge that excessive force and failure-to-protect claims differ in some ways and that *Kingsley's* holding was limited. *Id.* Although the court later argues that *Kingsley's* holding was not limited to "force," it is difficult to find support for this claim considering that this Court only included excessive force examples and focused specifically on punishment in its analysis. *Id.*; *see*

Kingsley, 576 U.S. at 395-98 (explaining how, unlike punching someone in the face or pushing them to the ground, the accidental discharge of a taser or unintentional tripping of a detainee does not invoke deliberateness). Thus, Petitioner contends that the Ninth Circuit erred in extending *Kingsley* beyond excessive force claims and that the dissenting view in *Castro* should be the argument this Court adopts.

A. Failure-To-Protect Claims Do Not Require An Intentional, Affirmative Act And Thus Warrant A Different Standard Than Excessive Force Claims.

It is true that the underlying federal right is the same for failure-to-protect and excessive force claims brought by pretrial detainees. Importantly, however, the nature of the conduct required for and the purpose of a pretrial's detainee's excessive force cause of action is different than that for deliberate indifference. *Strain*, 977 F.3d at 991. Unlike excessive force claims, a failure-to-protect claim does not require an affirmative act. *Id.* Instead, it usually stems from some type of inaction. *Castro*, 833 F.3d at 1069. One can infer punitive intent from "affirmative acts that are excessive in relationship to a legitimate government objective," but the same inference does not arise from the mere failure to act. *Id.* at 1086 (Ikuta, J., dissenting).

As the dissent in *Castro* explains, *Kingsley's* objective standard is not applicable to cases involving a failure to act since one who fails to act in an objectively unreasonable manner is nothing more than negligent. *Id.* Indeed, this Court made clear that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *See Kingsley*, 576 U.S. 389, 396 (2015) (quoting *County of Sacramento*, 523 U.S. at 849); *see also Davidson v. Cannon*, 474 U.S. 344, 347 (1986) (finding that a "government official's mere negligence [did] not give rise to a deliberate indifference claim under the 14th Amendment"). Respondent may argue that the subjective standard allows officials to avoid liability for acts or omissions "unaccompanied by knowledge of a significant risk of harm," but those concerns are addressed

through the common law's imposition of "tort liability on a purely objective basis." *Farmer*, 511 U.S. at 837-38 (alternate citations omitted). After all, the Fourteenth Amendment is not "a font of tort law." *Paul v. Davis*, 424 U.S. 693, 701 (1976). Additionally, the subjective approach will not encourage officials to avoid learning about substantial risks because circumstantial evidence can be used to infer whether the official had the requisite knowledge of a significant risk, and a factfinder is permitted to determine that a prison official was aware of a "substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at 842.

In his dissent, Judge Ikuta lays out four ways for a pretrial detainee to establish that they were subject to unconstitutional punishment. *Castro*, 833 F.3d at 1084. First, a detainee can show that a prison official's conduct was done with an "expressed intent to punish." *Id*; *Kingsley*, 576 U.S. at 398 (quoting *Bell*, 441 U.S. at 538). Second, a detainee can show that an official's "deliberate action was objectively unreasonable." *Id.* at 1085. This is the category that excessive force claims would fall under. *Id.* Third, the detainee can show that a restriction is not reasonably related to a legitimate government purpose. *Id.* Finally, a pretrial detainee can establish that the official acted with deliberate indifference to a substantial risk of harm. *Id.* This final category encompasses the claims of Castro and Shelby.

Judge Ikuta contends that the majority's test is just a new version of the old deliberate indifference, but with the "reasonable" language of *Kingsley*. *Castro*, 833 F.3d at 1087. Importantly, he notes how the majority's test is not appropriate for a failure-to-act claim because officials can be relieved of their liability even when acting in a deliberately indifferent manner. *Id.* at 1086. If an official fails to provide medical care, for example, they can avoid liability by arguing that the first prong of the majority's test is not satisfied: that they "made no 'intentional decision with respect to the conditions under which the plaintiff was confined.'" *Id.* at 1087. Thus, the test

may only be applicable with certain and specific sets of facts and fails to establish a consistent, workable standard. *Id.*

B. Even If Objective Reasonableness Were The Proper Standard To Apply, Officer Campbell Would Still Not Be Liable For The Injuries To Respondent.

Castro provides a framework for analyzing Respondent's failure-to-protect claim under an objective standard. *Castro*, 833 F.3d at 1071. There is no dispute that the first element is satisfied because Officer Campbell intentionally took Shelby out of his cell to go to recreation. R. at 6. It is also true that Shelby was placed at a substantial risk of suffering significant harm. R. at 6, 7. However, the third element of not taking reasonable measures to reduce the risk of harm that "a reasonable officer in the circumstances would have appreciated" is at issue. *Castro*, 833 F.3d at 1071. In determining that the pretrial detainee need only show that the officer's inaction was objectively unreasonable, the standard is one that turns on the facts and circumstances of each case. *Kingsley*, 576 U.S. at 397 (internal quotation omitted).

In Castro's case, the jury found that officers knew of the substantial risk of harm to the detainee because the risk was so obvious, and the defendant's lack of response was so blameworthy. *Castro*, 833 F.3d at 1072. In looking at Shelby's claim, however, it is important to note that Officer Campbell is an entry level guard and not a gang intelligence officer. R. at 5. He called in sick on the morning of the meeting, and there is no indication of whether he viewed the meeting minutes on the online database. R. at 6. It is also clear from the record that Officer Campbell neither knew nor recognized Shelby when he oversaw the transfer of inmates to recreation. *Id.* Although he failed to reference the hard copy list or jail database before taking Shelby from his cell, this is the only aspect of Officer Campbell's conduct that indicates a failure to take reasonable measures. *Id.* This does not establish, however, that he acted in an objectively unreasonable manner overall.

In looking at the circumstances, a newer officer is much more vulnerable and susceptible to making mistakes and would have less knowledge than more experienced intelligence officers. R. at 5. During the transfer to recreation, the brief encounter between Shelby and another inmate did not provide Officer Campbell with an opportunity to understand the substantial risk of harm that Shelby was subject to. R. at 6. Finally, unlike the officers in *Castro*, Officer Campbell acted quickly in response to the attack on Shelby by trying to pull the attackers off Shelby. R. at 7; *Castro*, 833 F.3d at 1072. Thus, under the facts of this case, it is not evident that Officer Campbell was objectively unreasonable and as a result, the Complaint should be dismissed for failure to state a proper claim.

C. Officer Campbell's Inaction Does Not Constitute Deliberate Indifference.

The standard for deliberate indifference is extremely high, and Officer Campbell's conduct does not meet the threshold for imposing liability. R. at 10; *Leal v. Wiles*, 734 F. App'x 905, 910 (5th Cir. 2018). The Fifth Circuit case of *Leal v. Wiles* is on point with the issue at bar. In *Leal*, a pretrial detainee, Alejandor Leal, was supposed to be kept separate from gang members that had sanctioned a hit on him. *Leal*, F. App'x at 906. His separate status was recorded in the rosters and computer database. *Id.* In one instance, a prison officer asked Leal "if he wanted to go to recreation to which [he] answered affirmatively." *Id.* Leal was escorted to the guard station where he was advised to wait while other inmates were retrieved for recreation. *Id.* The officer returned with inmates that were gang members, and when placing the inmates on the elevator, he stated Leal's name out loud. *Id.* As a result, Leal was assaulted, suffered injuries, and brought a § 1983 failure-to-protect claim. *Id.* The court applied the subjective deliberate indifference standard to Leal's claim. *Id.* at 909. It reasoned that there was no express evidence that the officer knew of Leal's protected status. *Id.* at 910. Although it noted that he should have checked the recreation roster,

this conduct was not enough to rise to the level of deliberate indifference. *Id.* Nor did the record indicate that the officer resisted an opportunity to confirm "strong indications of a substantial risk to Leal's safety." *Id.* at 911.

Here, there are no allegations suggesting that Campbell was actually aware of Shelby's gang affiliation or the possible hit on him from the Bonuccis. R. at 11. The record indicates that Officer Campbell is an entry level guard, not a gang intelligence officer. R. at 5. As a result, his personal knowledge on the gang status of inmates is less informed than that of the officers specifically assigned to that department. The Record shows that Officer Campbell called in sick on the morning of the meeting hosted by gang intelligence officers on January 1st. R. at 5-6. Although those absent from the meeting were required to review it, a system glitch prohibited officials from knowing who viewed the meeting. R. at 6. Thus, it is unknown whether Officer Campbell viewed the recording.

Just as the officer in *Leal* asked if the detainee wanted to go to recreation, here, the same was asked of Shelby to which he affirmed. *Id.* Furthermore, Campbell did not reference the database before removing Shelby from his shell. *Id.* Even if Officer Campbell should have looked at the special risks list prior to taking Respondent to recreation, his failure to do so is not evidence of malicious intent or a conscious disregard for Respondent's safety. *See Leal*, 734 Fed. Appx. at 913. The brief exchange between the inmates in cell block A and Shelby also did not establish that Officer Campbell knew of Shelby's status, and similarly, did nothing to abate the risk of harm to him. R. at 6. Unlike the officer in *Leal*, whose words directly led to the assault on the detainee, Officer Campbell did not make any statements that would have put Shelby at greater risk. *Leal*, 734 Fed. Appx. at 906. Considering the officials in *Leal* were held not to be liable considering their larger, more direct involvement in the events leading up to the plaintiff's assault, Officer

Campbell surely cannot be held liable for less culpable conduct. *Id.* at 910. Although Officer Campbell may still be liable under tort law, the subjective standard ensures that he is not liable for conduct that does not reach the threshold of a constitutional deprivation of one's due process rights.

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Fourteenth Circuit should be REVERSED on both issues.

DATED this 2nd day of February 2024.

Respectfully submitted,
/s/ Team 27

Counsel for Petitioner
Chester Campbell

APPENDIX A

U.S. Const. amend VIII.

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

APPENDIX B

U.S. Const. amend XIV.

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 Congress, 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.

APPENDIX C

42 U.S.C. § 1983.

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.

APPENDIX D

28 U.S.C. § 1915(g).

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.

APPENDIX E

28 U.S.C. § 2254.

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--
(A) the applicant has exhausted the remedies available in the courts of the State; or
(B)(i) there is an absence of available State corrective process; or
(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.
(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.
(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

[abridged]

APPENDIX F

Fed. R. Civ. P. 12(b)(6).

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(6) failure to state a claim upon which relief can be granted.