

No. 23-05
IN THE
SUPREME COURT OF THE UNITED STATES OCTOBER TERM 2023

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

BRIEF FOR THE RESPONDENT

Team 44

Counsel for the Respondent

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Questions Presented

- I. In the interest of equity, American civil procedure recognizes financial burdens hinder an individual from seeking relief in their legal system and offers the opportunity to proceed without paying costs. Being held over a week, Respondent was ruthlessly attacked prior to his bench trial, and due to the extent of his injuries could not leave the hospital for several weeks. Whether Respondent, who was detained for a week and bed-ridden for seven, as a result of an attack made possible by Petitioner's decisions to gather the rival gang inmates together, is entitled to in forma pauperis status despite three dismissals under *Heck v. Humphrey* that were not dismissed for being frivolous, malicious, or failure to state a claim.

- II. Life, liberty, and property are sacred principles which effectuate the Nation's deepest mores that all people are endowed by their Creator with certain inalienable rights. Out of this conviction, the presumption of innocence rises as a formidable pillar of American jurisprudence. Without checking the list of special-status inmates that was in his hand, Officer Campbell collected pretrial detainee Shelby with three inmates who were members of a rival gang that recently placed a hit notice on Shelby. Whether Shelby's Fourteenth Amendment was violated when Campbell knowingly brought together Shelby and inmates from cell blocks B and C which resulted in an attack on Shelby and serious life-threatening injuries.

Opinions Below

The Western District of Wythe in the United States District Court denied plaintiff's motion to proceed in forma pauperis on April 20, 2022. (R. at 1). On July 14, 2022, the Western District of Wythe in the United States District Court issued its opinion. (R. at 11). On December 1, 2022, the United States Court of Appeals for the Fourteenth circuit reversed and remanded the District Court's decision on both issues. (R. at 19). The Supreme Court of the United States granted petition for writ of certiorari in October 2023. (R. at 21).

Constitutional Provisions and Statutes Involved

Us. Const. Amdt. 14, § 1.3

Statement of the Case

On December 31, 2020, three Geeky Binders lead members, all of whom had arrest warrants, attended a boxing match that the Marshall police raided. (R. at 3). Geeky Binders acquired the reputation of being an infamous street gang in the town of Marshall after the Geeky Binders founder beat guards to death with case law in binders. (R. at 2). Thomas Shelby, Arthur Shelby, and John Shelby had warrants out for battery, assault, and firearm offenses. (R. at 3). The second-in-command, Arthur Shelby ("Shelby"), had been in prison at various times over the last several years. (R. at 3). Shelby had filed three separate civil actions under 42 U.S.C. § 1983 against prison and state officials, as well as the United States, but each were dismissed without prejudice according to *Heck v. Humphrey*. (R. at 3). *Heck* barred all three claims because they invariably questioned Arthur's conviction or sentence. (R. at 3).

Due to being under the influence of alcohol and drugs, Shelby was placed under arrest, while his two brothers escaped. (R. at 3). He was then subsequently charged with battery, assault, and possession of a firearm by a convicted felon, and detained at the Marshall jail. (R. at 4).

Shelby was recognizable immediately to the experienced jail official, Officer Mann, who completed his initial paperwork. (R. at 4). Shelby wore a unique outfit and possessed a custom-made ballpoint pen, “Geeky Binders” engraved on the outside, and an awl concealed on the inside. (R. at 4). When Mann inventoried all of Shelby’s possessions on him, he added in the jail’s online database that Shelby did bring the awl inside of the pen with him. (R. at 4).

The online database being utilized was crucial for all Marshall jail officers to put information into: inmate’s charges; inventoried item; medications; gang affiliation; and more. (R. at 4). Because of the town’s high gang activity, there were specific gang intelligence officers who reviewed information of both an inmate’s affiliation as well as any known hits placed on specific members and rivalries they may be a part of with other gangs. (R. at 4). Shelby had previous information relating to his gang involvement already in the system from his earlier arrests, but Mann properly added all of Shelby’s current information and his statements regarding the Geeky Binders. (R. at 5). Mann finished his booking procedures around 11:30 PM, and Shelby was then transported to a holding cell away from the main part of the jail. (R. at 5).

Gang intelligence officers then reviewed Shelby’s file on the online database and noted his high-ranking status. (R. at 5). They also knew that Shelby was a prime target for the Bonuccis, a competing gang in the town, who believed that Thomas Shelby had murdered Bonucci’s wife. (R. at 5). Due to the revenge that was sought, the intelligence officers took subsequent steps to spread the information: placing a special note in his file; printing out paper notices to be posted at every administrative area in the jail; indicating his status on all rosters and floor cards; and holding a meeting with every jail official the next morning. (R. at 5). The meeting informed every officer Shelby was in the jail and that he would be housed in cell block A, as the Bonuccis occupied cells in blocks B and C. (R. at 5). The rosters and floor cards were

to be checked regularly by each officer to ensure the rival gangs would not end up sharing any common spaces in the jail. (R. at 5).

Roll call records on January 1, 2021, showed that Officer Campbell attended the morning meeting conducted by the intelligence officers in regards to Shelby, but the jail time sheets stated that Campbell had not arrived until after the meeting ended, due to being sick. (R. at 6). The gang intelligence officers required anyone absent from the meeting to review the minutes from the meeting, but a glitch in the jail's database wiped the records indicating whether officers had viewed specific pages or files. (R. at 6). Campbell held a position as an entry-level guard, not a gang intelligence officer, and was new at the job. (R. at 5). Although new, Campbell underwent proper training and had been satisfying job expectations during the months he had been employed. (R. at 5).

On January 8, 2021, Campbell assisted in transferring inmates to and from the jail's recreation room. (R. at 6). At the time Campbell asked Shelby if he would like to go to the recreation room and Shelby responded with a yes, Campbell did not know or recognize him. (R. at 6). Before he began transporting Shelby, Campbell did not check his paper list of inmates with special statuses he had on him, nor did he check the jail's online database for any relevant information. (R. at 6). The hard copy list Campbell had consisted of names of inmates with special medical needs; inmates with previous violent tendencies or had a weapon inside the jail; and inmates' gang affiliations and risk of attack from other gang members. (R. at 6). Shelby was on the list due to the Bonuccis possibly placing a hit on Shelby, resulting in a risk of Shelby being attacked by members of the clan. (R. at 6).

Campbell led Shelby to the guard stand to wait for other inmates he was gathering to take to recreation. (R. at 6). On the way, an inmate in cell block A shouted out to Shelby, "I'm glad

your brother Tom finally took care of that horrible woman,” and after Shelby responded with, “yeah, it’s what that scum deserved,” Campbell told Shelby to be quiet. (R. at 6). Campbell collected three inmates from cell block B and cell block C, who were all members of the Bonucci clan. (R. at 7). Shelby moved behind another inmate from cell block A, but the clan members immediately charged at him and began beating him with their fists. (R. at 7). Shelby was hit in the head and ribs with a club a Bonucci clan inmate constructed with tightly rolled and mashed paper. (R. at 7). Campbell could not break up the attack or hold the three men back, and Shelby was attacked for several minutes before other officers could help assist in breaking up the attack. (R. at 7).

Shelby stayed at the hospital for several weeks because of the attack. (R. at 7). Doctors stated that he had suffered life-threatening injuries, and had penetrative head wounds from external blunt force trauma. (R. at 7). Shelby had traumatic brain injury, three different rib fractures, lacerations on his lung, acute abdominal edema, and organs, and internal bleeding. (R. at 7).

Shelby was found guilty of battery and possession of a firearm by a convicted felon following a bench trial, but was acquitted of assault. (R. at 7). The district court denied Shelby’s motion to proceed in forma pauperis due to having three “strikes” under the Prison Litigation Reform Act. as well as granted Campbell’s motion to dismiss. (R. at 11). The Court of Appeals reversed and remanded the District Court’s decision on both issues. (R. at 19). Shelby now seeks the Court of Appeals decision to be affirmed because his previous civil actions did not constitute a strike under *Heck v. Humphrey*, and the Court’s decision in *Kingsley* eliminated his requirement to prove Campbell’s subjective intent in the failure-to-protect claim.

Summary of the Argument

Shelby is entitled to in forma pauperis status and judgment in favor of his § 1983 action. Shelby's three prior dismissals under *Heck* do not constitute strikes under the Prison Litigation Reform Act (PLRA) and he is therefore not barred from in forma pauperis.

First, dismissals under *Heck* are not dismissed for being per se frivolous, malicious, or for failures to state a claim which constitute strikes. They may be dismissed without prejudice due to their claims having not yet accrued, and so complaints may be refiled once a conviction has been overturned.

Second, the *Heck* doctrine serves as an affirmative defense and does not automatically bar suits. This defense can be bypassed by courts by looking at the merits of a case, and the merits of this case show the necessity for Shelby to be able to sue.

Third, even if this Court finds his prior dismissals do constitute strikes, Shelby should still be granted in forma pauperis because he satisfies the safety valve provision in 28 U.S.C. § 1915(g), facing an imminent risk of serious physical harm while detained at Marshall jail.

Shelby's § 1983 action should be granted relief because he is afforded greater protections than prisoners who bring claims under the Eighth Amendment, and so he is not required to show a subjective intent with respect to the nature of the defendant's actions.

First, *Kingsley*'s decision extends to failure-to-protect claims arising under the Fourteenth Amendment and an objective standard is the proper analysis for a failure-to-protect claim under the Fourteenth Amendment.

Second, Campbell's reckless disregard of Shelby's safety was unreasonable and created a substantial risk of harm by ignoring several proper procedures.

Third, even if this Court rejects the objective standard, public policy dictates that an official be held responsible for preventable harm to a pretrial detainee whose freedom of movement is restricted.

Standard of Review

We review the District Court's interpretation and application of 28 U.S.C. § 1915(g) de novo. *Washington*, 833 F.3d at 1048.

Argument

- I. **A prisoner's civil action dismissed under *Heck v. Humphrey* does not constitute a "strike" within the meaning of the Prison Litigation Reform Act because they are not equivalent to dismissals based on the grounds of frivolousness, maliciousness, or failure to state a claim.**

Shelby's three prior case dismissals pursuant to *Heck* do not constitute strikes under the PLRA because a *Heck* dismissal is not categorically a strike. A strike is a dismissal that is due to frivolousness, maliciousness, or failure to state a claim. 28 U.S.C. § 1915(g). In contrast, a dismissal of a § 1983 claim for purposes of preventing an unlawful invalidation of a conviction constitutes a *Heck* dismissal. *Heck v. Humphrey*, 512 U.S. 477, 490 (1994). Unless the plaintiff can prove the conviction was already reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, the § 1983 claim must be dismissed. *Id.* at 487 (citing 28 U.S.C. § 2254). The nature of a *Heck* dismissal is not in harmony with the nature of a strike as described in the PLRA. Shelby's prior *Heck* dismissals should not be counted as strikes against him.

Courts have not yet determined whether a dismissal under *Heck v. Humphrey* counts as a strike under the Prison Litigation Reform Act. Many circuit courts have determined a *Heck* dismissal generally does not constitute a strike. . Only when the *Heck* dismissal is frivolous,

malicious, or a 12(b)(6) with an obvious bar to relief does the *Heck* dismissal constitute a strike. *Washington v. L.A. Cty. Sheriff's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016).

A. Dismissals under *Heck* are not dismissed for being per se frivolous, malicious, or a failure to state a claim but are rather dismissed for the purpose of preventing an invalidation of a prior conviction.

The nature of a *Heck* dismissal is categorically different from dismissals falling under the strike provision of the PLRA. In a prisoner's civil action under 42 U.S.C. § 1983, where if granted would invalidate the prisoner's prior conviction, the case is to be dismissed. *Heck*, 512 U.S. at 490. Where a case is dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, the dismissal counts as a strike against the plaintiff under the PLRA. 28 U.S.C. § 1915(g). A complaint is frivolous when it has no basis in law or fact and is malicious when filed with the intention or desire to harm another. *Washington*, 833 F.3d at 1055 (9th Cir. 2016) (citing *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005)). A complaint dismissed under *Heck* is not per se frivolous or malicious because it may have meritorious claims that do not accrue until underlying criminal proceedings have been successfully challenged. *Id.* (citing *Heck*, 512 U.S. at 489-90)). Cases under *Heck* are dismissed for reasons other than those described under the strike provision of the PLRA because they consist of premature claims awaiting the invalidation of a prior conviction or sentence. *Heck*, 512 U.S. at 489.

A *Heck* dismissal intertwined with a valid habeas challenge to an underlying sentence does not constitute a strike because the entire action was not dismissed by *Heck*. *Washington*, 833 F.3d at 1057. The Ninth Circuit in *Washington* found plaintiff's request for injunctive relief to be proper under a writ of habeas corpus, and while his legal challenge to the criminal sentence was dismissed per *Heck* for failure to prove his sentence was already invalidated, his dismissal

did not constitute a strike under the PLRA because the dismissal was not regarding the entire action. *Id.* Neither was the dismissal for one of the qualifying reasons under the PLRA. *Id.*

A § 1983 action brought for damages from an unlawful, unreasonable, and arbitrary investigation which led to a plaintiff's arrest must be dismissed because the relief sought challenges the legality of plaintiff's conviction and if won, would oblige the State to release him. *Heck*, 512 U.S. at 479. This Court held a § 1983 action that seeks recovery for an allegedly unconstitutional conviction or sentence cannot move forward unless the plaintiff can prove the conviction or sentence has already been invalidated. *Id.* at 487. The plaintiff in *Heck* sought relief from an allegedly unconstitutional investigation and destruction of exculpatory evidence, but because his cause of action set his conviction for voluntary manslaughter, the case was dismissed. *Id.* at 478. This Court found a judgment in favor of *Heck* would necessarily imply the invalidity of his conviction. *Id.* at 487. Even if *Heck* began proceedings to get his conviction reversed, until a court made a final determination, his § 1983 action would be premature and therefore, required to be dismissed. *Id.*

Similar to *Washington*, the District Court improperly assessed the existence of prior strikes accrued by Shelby. The record does not indicate whether Shelby's three prior *Heck* dismissals happened to be for frivolousness, maliciousness, or a failure to state a claim. Lacking evidence that Shelby's *Heck* dismissals were not merely premature meritorious claims, this Court should not categorically bar Shelby from minimum financial relief in the form of in forma pauperis. Only in a very limited circumstance may a *Heck* dismissal qualify as a strike under the PLRA—where the § 1983 action is dismissed under *Heck* because it presents an obvious bar to securing relief and is a 12(b)(6) failure to state a claim upon which relief may be granted or any other qualifying reason under the PLRA. *Washington v. L.A. Cty Sheriff's Dep't*, 833 F.3d 1048,

1055 (9th Cir. 2016). A case must be completely dismissed as a whole under *Heck* to be counted as a strike. *Id.* (citing *Andrews v. Cervantes*, 493 F.3d 1047, 1054 (9th Cir. 2007)). Without any evidence that the prior dismissals dismissed each case as a whole, to deny him in forma pauperis relief would be contrary to notions of fair play and substantial justice.

A *Heck* dismissal exists because a § 1983 would invalidate a conviction if granted whereas a strike under the PLRA exists because of a dismissal for frivolousness, maliciousness, or a failure to state a claim. A *Heck* dismissal may be completely meritorious and only dismissed because it is premature in the sense that plaintiff's conviction has not yet been legally reversed. In these ways, the character of a *Heck* dismissal is distinguished from a strike under the PLRA.

B. The *Heck v. Humphrey* doctrine serves as an affirmative defense rather than a jurisdictional bar and can be bypassed by looking at the merits of the case.

Heck dismissals are not a final determination of the merits of the case but are rather intended to serve as judicial traffic control to prevent civil actions from attacking existing criminal convictions or sentences. *Washington*, 833 F.3d at 1056. While an appeal on a criminal conviction is pending, *Heck* does not bar the plaintiff from bringing a § 1983 claim and the court may straightly address the merits of the case. *Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011).

Where a criminal conviction is pending on appeal and the plaintiff files a § 1983 claim to meet the statute of limitations, the court has discretion in deciding whether to stay the civil action solely based on the merits and is not required to issue a dismissal per *Heck*. *Id.* The plaintiff in *Polzin* appealed his conviction of sexual assault and simultaneously filed a separate civil action under § 1983 for failure of the police to further investigate his claims of being abused as a kid which could have been a mitigating factor for sentencing. *Id.* at 836. *Polzin* acknowledged that because he had a post-conviction motion pending, *Heck* would apply and bar his claims until the conviction was overturned. *Id.* He asked the court to stay the civil proceedings nonetheless

because the statute of limitations was about to run and he had no choice but to file. *Id.* The Seventh Circuit held *Heck* is subject to waiver and may be bypassed to decide a case on its merits. *Id.* at 838. Despite bypassing *Heck*, the court still dismissed the case on grounds of frivolousness because Polzin's § 1983 claim sought relief from a party that was not involved in the investigation and therefore, could not be lawfully ordered to supply him relief. *Id.*

A detained parolee that is unable to prove the conditions of his confinement were punitive in regards to the charges pending against him cannot win on a § 1983 claim. *Hamilton v. Lyons*, 74 F.3d 99, 103 (5th Cir. 1996). Hamilton filed a § 1983 against his investigating officer for using the conditions of his confinement to coerce him into giving a statement and altering evidence, violating his Fifth and Fourteenth Amendment Rights. *Id.* The court held Hamilton's claim was legally frivolous because it called into question the validity of his conviction and Hamilton failed to prove his conviction had been reversed, expunged, invalidated, or otherwise called into question. *Id.*

Looking at the merits of Shelby's claim, even if this Court finds his past three *Heck* dismissals constitute strikes, in forma pauperis should be granted because Shelby suffered from serious physical harm. Even if this Court finds Shelby's prior *Heck* dismissals constitute strikes, Shelby is still entitled to in forma pauperis because under *Polzin* this Court should determine the case based on its merits. Unlike *Hamilton*, Shelby's § 1983 claim does not call into question the validity of his conviction and is therefore, not frivolous.

C. The Prison Litigation Reformation Act was created to curb meritless, wasteless litigation brought by prisoners, and Shelby's claim is anything but.

Created in 1995, the Prison Litigation Reform Act ("PLRA") was enacted to limit the number of prisoners who could file certain federal lawsuits in forma pauperis. *Washington*, 833 F. 3d at 1048. There is minimum legislative history given surrounding the creation of the PLRA,

but the supporters of the Act indicated it was meant to decrease the number of non-meritorious or frivolous civil-rights lawsuits that were burdening the federal courts at the time. *Id.* at 1054. The PLRA was partially codified in 28 U.S.C § 1915, which outlines other stringent requirements prisoners must satisfy to be able to proceed in forma pauperis. Besides the three-strikes provision, some of those requirements are paying an initial filing fee, paying court costs in gradual installments rather than one lump sum, bringing an affidavit summarizing all of their assets, and more.

Shelby's claim is not a wasteless civil action. The injuries he faced were life-threatening: a traumatic brain injury, three different rib fractures, lacerations on his lung, acute abdominal edema, and internal bleeding. These injuries were brought about because of Campbell's actions in bringing him in a confined space along with members of the rivalry claim.

Counting *Heck* dismissals automatically as strikes under the PLRA will bar many future prisoners in dangerous situations, such as Shelby's, from being able to sue. If the district courts are still able to proceed on the merits and evaluate if something is frivolous, malicious, or failure to state a claim, it is giving discretion to the judges while the PLRA can still assist in conjunction by limiting the number of lawsuits. This will allow prisoners who are seriously harmed to still seek justice.

II. Failure-to-protect claims arising under the Fourteenth Amendment do not require a showing of subjective intent with respect to the nature of a defendant's actions because pretrial detainees are afforded greater protection than prisoners who bring such claims under the Eighth Amendment.

The objective standard this Court developed in *Kingsley v. Hendrickson* is the appropriate threshold for failure-to-protect claims. 576 U.S. 389, 396-97 (2015). Whether the officer's conduct was intentional in regards to the actions towards the plaintiff and whether there was a substantial risk of serious harm to the plaintiff that could have been eliminated through

reasonable and available measures that the officer did not take determines the outcome of a failure-to-protect claim. *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016). Campbell intentionally gathered Shelby and three rival gang members together for transport to recreation which resulted in the attack on Shelby and his serious life-threatening injuries which could have been prevented by Campbell taking other reasonable, available measures. Shelby meets the requirements of the *Kingsley* standard and is entitled to relief from his failure-to-protect claim.

Pretrial detainees receive greater constitutional protections under the Fourteenth Amendment than convicted prisoners do under the Eighth Amendment. *Kingsley*, 576 U.S. at 400. Where a pretrial detainee is afforded greater constitutional protection under the Fourteenth Amendment than a prisoner under the Eighth Amendment, the threshold required of a pretrial detainee to prove harm must be lower than that of the prisoner. Claims brought by prisoners under the Eighth Amendment have to do with the right to be free from “cruel and unusual punishment,” whereas pretrial detainees’ due process claims arise from their guarantee not to be deprived of “life, liberty, or property, without due process of law” under the Fourteenth Amendment. U.S. Const. Amt. VIII, IVX. Sec. 1.

When a pretrial detainee is attacked while confined in a cell with a combative inmate and separate cells are available and cries for help are ignored, all elements of a Fourteenth Amendment failure-to-protect claim are met. *Id.* at 1071. In *Castro*, officers were found liable for the violation of the pretrial detainee’s due process right to be protected from violence from other inmates. *Id.* at 1067. The correctional facility had a custom or policy of detaining highly intoxicated people in sobering cells that lacked adequate visual surveillance and monitoring. This custom was found unconstitutional because it was deliberately indifferent to a substantial risk of

serious harm to prisoners in the sobering cells. *Id.* at 1073. Castro banged on the window in the door of his cell when he was attacked, but was ignored by officers and as a result, was permanently injured - hospitalized for a month, transferred to a long-term care facility for four years, and continues to suffer from severe memory loss and other cognitive difficulties. *Id.* at 1065.

In *Carnell v. Grimm*, the 9th Circuit held that even though pretrial detainees claims arise under the Fourteenth Amendment, the Eighth Amendment guarantees provide a *minimum standard of care* or a floor in determining the rights of a pretrial detainee. 74 F.3d 977, 979 (9th Cir. 1996) (quoting *Jones v. Johnson*, 781 F.2d 769, 771 (9th Cir. 1986)) (emphasis in *Carnell*). “A pretrial detainee may not be punished at all under the Fourteenth Amendment, whether through the use of excessive force, by deliberate indifference to conditions of confinement, or otherwise.” *Darnell v. Pineiro*, 849 F.3d 17, 35 (2nd Cir. 2017). The *Darnell* court further stated that “an official can violate the Due Process Clause of the Fourteenth Amendment without meting out any punishment;” consequently, the Due Process Clause can be violated absent a subjective awareness that the official’s acts have subjected the pretrial detainee to a substantial risk of harm. *Darnell*, 849 F.3d at 35. It does not matter if the individual understood the risks because the standard is objective. *Castro*, 833 F.3d at 1069. A pretrial detainee must show that the action was purposeful and objectively unreasonable. *Kingsley*, 576 U.S. at 396-397. The elements of a pretrial detainee’s Fourteenth Amendment failure-to-protect claim are: (1) The official “made an intentional decision with respect to the conditions under which plaintiff was confined;” (2) “Those conditions put the plaintiff at substantial risk of suffering serious harm;” and (3) “The defendant did not 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” *Castro*, 833 F.3d at 1071.

The heightened constitutional protections of the Fourteenth Amendment do not require the pretrial detainee to meet the same higher standard of proving subjective intent under an Eighth Amendment deliberate indifference claim. Shelby’s claim under 42 U.S.C. § 1983 against Officer Campbell for failure-to-protect does not require Shelby to prove Campbell was subjectively aware that this failure was unreasonable.

A. This Court’s decision in *Kingsley* extends to failure-to-protect claims arising under the Fourteenth Amendment because failure-to-protect claims resemble claims of excessive force.

Shelby does not have to prove Campbell acted with subjective intent when Campbell failed to protect him because *Kingsley* eliminated the subjective-intent requirement of excessive-force claims brought under the Fourteenth Amendment. Under *Kingsley*, a pretrial detainee must show (1) the defendant acted purposely or knowingly with respect to his physical acts and (2) the defendant’s actions and their results were objectively unreasonable. *Id.* Whether a defendant’s actions are objectively unreasonable is determined by the “facts and circumstances of each particular case. *Id.* at 397 (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). The causes of action that give rise to excessive force claims are always actions that harmed an inmate while the causes of action for failure-to-protect claims consist of inaction that harmed an inmate.

Subjection to public nudity while escorted through a hospital and subsequently handcuffed to a bed receives the objective standard of *Kingsley* under the Fourteenth Amendment. *Colbruno v. Kessler*, 928 F.3d 1115, 1165 (10th Cir. 2019). A pretrial detainee in need of urgent medical care was taken to the hospital, and after his examination, the accompanying officer forced him to walk nude through the public halls of the hospital to another

room where his clothes were. *Id.* at 1159. The officer then handcuffed him nude to a hospital bed. *Id.* Colbruno brought a § 1983 claim against the accompanying officer for a violation of his Fourteenth Amendment due process rights. *Id.* The Tenth Circuit held that it did not need to distinguish between excessive force, forced nudity, handcuffing, or any other condition that might violate the Fourteenth Amendment when it determined which standard to apply. *Id.* at 1163. § 1983 claims arising under the Fourteenth Amendment are treated with the same standard because the Fourteenth Amendment provides the same level of protection to all pretrial detainees. *Id.*

The *Kingsley* objective standard extends beyond excessive force, encompassing claims of conditions-of-confinement and inadequate-medical-care. *Hardeman v. Curran*, 933 F.3d 816, 821 (7th Cir. 2019); *see also Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018). Due process failure-to-protect claims arising under the Fourteenth Amendment are of the same nature as those of excessive force and conditions-of-confinement, and therefore, must be analyzed under the same standard. Campbell argues that an official must know of and disregard “an excessive risk to inmate health or safety, the official must be aware of the facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw that inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). *Farmer* examined an Eighth Amendment challenge for which this Court ruled conditions of confinement are not punishment, and therefore a subjective standard is appropriate. Under a Fourteenth Amendment challenge, though, broader forms of injury can be considered “punishment,” and greater protections are afforded because very few harms are tolerable under the Fourteenth Amendment. Consequently, an objective analysis is appropriate.

Claims of harm by pretrial detainees and prisoners do not receive the same standard because pretrial detainees receive greater constitutional protections. Petitioner argues that a Fourteenth Amendment Due Process claim rests only on one standard - subjective. A court can apply different standards for a claim of harm when brought under different constitutional provisions. *Kingsley*, 576 U.S. at 400. An objective standard prescribes a lower level of culpability, and because the threshold for satisfying a Fourteenth Amendment claim is lower than that of an Eighth Amendment (because pretrial detainees maintain a presumption of innocence), an objective standard is appropriate. Whether the defendant in a failure-to-protect claim acted with intent to harm, is irrelevant under the objective standard. Just as use of excessive force might or might not have been intentional in causing the harm that occurred (even though the act itself was intentional), failure to protect might or might not have been intentional in subjecting the individual to harm. However, that is not what the *Kingsley* holding was based on. The *Kingsley* decision was based on the protection of the rights of pretrial detainees and a broad policy decision to hold officials responsible for any objectively unreasonable harm. *Id.* Consequently, the analysis of the harm resulting from the use of excessive force is essentially the same as the harm that occurs from a failure-to-protect claim and does not require subjective intent.

Excessive force claims and conditions of confinement claims involve harm to a detainee just as Shelby was harmed by Campbell's failure to protect. The officer in *Colbruno* acted purposely and knowingly when he forced the detainee to walk nude through the hospital and handcuffed him to a bed. *Colbruno*, 928 F.3d at 1165. Campbell purposely and knowingly took Shelby from his cell and three other inmates from different cell blocks and brought them together. Just as the result of *Colbruno*, a naked detainee handcuffed to a bed for the public in a

hospital to see, was objectively unreasonable, the result of Campbell's action was objectively unreasonable amounting to serious life-threatening injuries including traumatic brain injury. The facts and circumstances in Shelby's case further indicate Campbell's objectively unreasonable actions: that he disregarded countless flyers and notices of Shelby's at-risk status, intentionally collected inmates from cell blocks A, B, and C when jail policy is to separate gang inmates from rivals, and chose not to look at the list of special statuses of inmates in his hand.

Shelby's failure-to-protect claim belongs to the objective standard developed in *Kingsley* for excessive force claims. The nature of the claims, as well as others falling under the Fourteenth Amendment such as conditions of confinement, is similar in the result and degree of protections guaranteed. While the cause of action for a failure-to-protect is not the same cause of action for an excessive force claim, they are still of the same genus. Campbell's actions which led to Shelby's objectively unreasonable injury were purposeful and deliberate. The objective standard applies to failure-to-protect claims and Shelby is entitled to relief under § 1983.

B. Shelby's liberty interest to be free from harm was violated when Officer Campbell recklessly collected Shelby and inmates from two other cell blocks, which resulted in an attack.

Campbell's acts rose to the level of reckless disregard by acting intentionally to put Shelby and the other pretrial detainees in the same waiting area while unreasonably ignoring every safety protocol he was required to follow. A person acts recklessly when he consciously disregards a substantial and unjustifiable risk thereby grossly deviating from the standard of conduct that a law-abiding person would observe in the actor's situation. Model Penal Code § 2.02(2)(c) (Am. Law Inst. 1985). The elements of a pretrial detainee's Fourteenth Amendment failure-to-protect claim are: (1) the official "made an intentional decision with respect to the conditions under which plaintiff was confined;" (2) "those conditions put the plaintiff at

substantial risk of suffering serious harm;” and (3) “the defendant did not 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” *Castro*, 833 F.3d at 1071. Shelby’s liberty interest to be free from harm was violated because Campbell failed to protect him given Campbell’s intentional acts, the conditions that resulted, and the substantial risk that manifested.

Where an officer places a pretrial detainee in a sobering cell which lacks adequate audio and visual monitoring with a combative inmate, the officer violates the pretrial detainee’s Fourteenth Amendment due process right to be free from violence from other inmates. *Castro*, 833 F.3d at 1073. Officers in *Castro* knew of the attacker’s enraged and combative nature when they placed him in a cell with the pretrial detainee even though there were other options to keep them separated. *Id.* The court held the officers knew or should have known that the jail’s policies required separation in those circumstances and that other options for placing them in separate cells existed. *Id.* The defendant failed to protect Castro when he intentionally housed him with a combative inmate and disregarded the substantial risk of harm that Castro would be injured which could have been prevented through reasonable, available measures. *Id.* at 1070. The officer’s conduct amounted to reckless disregard and led to the serious harm of the pretrial detainee. *Id.* at 1072.

Just as the officer in *Castro* intentionally placed the combative inmate and the plaintiff in a cell together, Campbell intentionally gathered Shelby and three Bonucci inmates from cell blocks B and C. The correct test for intentionality in the objective standard is whether the act leading to harm was intentional, not whether the harm itself was intentional. *Kingsley*, 576 U.S. at 394. Campbell intentionally retrieved Shelby from cell block A and inmates from both blocks that were distinguished from cell block A because of imminent gang violence. According to jail

policy, cell blocks B and C were where members of the Bonucci clan were to be housed while members of the Geeky Binders were to be housed in cell block A. As a result, the first prong of the *Castro* test for a due process violation has been satisfied.

Placing Shelby among other pretrial detainees who were members of Shelby's rival gang created a considerable risk given the well-known hostility between the gangs. The Due Process Clause of the Fourteenth Amendment may be violated "when an official does not have subjective awareness that the official's acts (or omissions) have subjected the pretrial detainee to a substantial risk of harm." *Darnell v. Pineiro*, 849 F.3d 17, 35 (2nd Cir. 2017). The jail was aware Shelby was a prime target for the Bonuccis because his brother had recently killed Bonucci's wife. Thus, there already was a risk of harm to Shelby, and by Campbell gathering him with inmates from other cell blocks, the risk of harm became substantial. Campbell had been at that jail for several months and is reported to have performed up to standards. Given this fact, it is reasonably inferred Campbell knew the town of Marshall was rampant with gang activity and that the jail recognized the importance of the gang affiliation tabs on inmate's files. Paper notices of the target on Shelby's back were placed at every administrative area in the jail. Shelby's status was indicated on all rosters and floor cards. It does not matter whether Campbell understood the risks because the standard is objective. *Castro*, 833 F.3d at 1069. Therefore, under *Castro*, the second prong has been satisfied.

Campbell acted in an objectively unreasonable manner which led to serious harm. A meeting was held to outline the specific circumstances surrounding Shelby's safety, but Campbell missed this meeting, and the record lacks any evidence that he reviewed the meeting minutes afterward, despite gang intelligence officers requiring exactly that. In addition to missing the meeting, Shelby was at the jail for over a week - plenty of time for any reasonable

person to notice the flyers and rosters displaying Shelby's at-risk status. Campbell failed to recognize all warning signs, review Shelby's detailed files, look at the list of at-risk inmates he held in his hands, and take note of the comments between Shelby and another inmate which suggested Shelby was affiliated with the Geeky Binders. Campbell could have followed any one of those procedures and mitigated the risk to Shelby's safety; there were multiple lines of defense to ensure Shelby's safety and Campbell recklessly avoided every one of them. For these reasons, the third prong of the test is satisfied because Campbell's intentional actions were objectively unreasonable. *Kingsley*, 576 U.S. at 396-397. Under the totality of the circumstances, Campbell's actions to avoid proper procedure at every step were a conscious disregard of Shelby's safety.

Further, Campbell is not entitled to qualified immunity because he intentionally collected Shelby and inmates from other cell blocks which created conditions that put Shelby at a substantial risk of suffering serious harm and Campbell did nothing to abate the risk despite reasonable available measures. Qualified immunity is inappropriate when state actors exercise their power irresponsibly but is appropriate when state actors perform their duties reasonably and need to be shielded from harassment, distraction, and liability. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The facts listed above support the reasonable inference that Campbell was aware of the substantial risk of harm to Shelby and any gang-affiliated inmates. Consciously disregarding this substantial risk of harm, Campbell acted recklessly. As a result of Campbell's recklessness, Shelby sustained traumatic brain injury, acute abdominal edema, organ laceration, internal bleeding, lung lacerations, and three separate rib fractures for which he is entitled to relief under 42 U.S.C. § 1983.

C. Public policy dictates that the objective standard be extended to failure-to-protect claims because the officials whose responsibility it is to protect pretrial detainees' safety should bear the consequences of foreseeable harm.

If the Court rules that the proper test is subjective for failure-to-protect claims or finds that Campbell did not meet the threshold for the objective test, public policy demands that an officer responsible for a pretrial detainee's safety be held responsible for injuries that were preventable. Where deprivation of liberty is both foreseeable and curable, circumstantial evidence indicates an officer had numerous options that would have allowed him to achieve his objective without depriving a detainee of liberty protected by the Fourteenth Amendment. *Hardeman*, 933 F.3d at 825. The attack on Shelby due to Campbell collecting inmates from different cell blocks together was foreseeable and could have easily been prevented and therefore, Campbell must be held responsible for the life-threatening injuries sustained by Shelby. Campbell had a responsibility to act reasonably to protect every pretrial detainee; the ultimate injury, as a result of his failure, should not be borne by the individual whose freedom of movement is restricted. Requiring a subjective standard would unfairly injure the pretrial detainee and enlarge his existing injury from Campbell's failure to protect.

An officer's failure to ensure a jail has adequate water reserves in the face of a planned water shut down by a city violates pretrial detainees' Fourteenth Amendment right to be free from harm. *Id.* The 7th Circuit in *Hardeman* found that defendant's inaction during a three-day water shutdown led to objectively unreasonable conditions where hundreds of toilets remained clogged, large quantities of human waste attracted insects, and inmates had no water to drink, shower, brush their teeth, take medication, or clean their living areas with. *Id.* From these "appallingly unsanitary" conditions, inmates contracted an assortment of physical illnesses, and the deliberate indifference that subjected the inmates to these conditions was deemed a problem

of constitutional magnitude. *Id.* at 824, 825. The fact that the jail knew about the city's planned water shutdown proved the issue was foreseeable. The facts that a lack of indoor plumbing is a common problem, and a quick internet search would have given the defendant a general idea of how much water the jail would need to maintain sanitary plumbing was within the officer's capabilities proved this problem to also be curable. *Id.* at 825.

When a consequence or risk of harm is readily avoidable, the actor in charge of ensuring prisoners' or pretrial detainees' safety should be made responsible. This contention does not constitute a slippery slope requiring merely that a pretrial detainee show negligence. Requiring proof of reckless disregard demands a higher culpability level than negligence - thus, preventing a flood of frivolous cases that would backlog the courts. However, requiring actual knowledge would prevent many claims with merit simply because an official failed to act rationally in multiple instances. A decision not holding Campbell responsible for his costly failure would send a message encouraging and rewarding plausible deniability: as long as the official just avoids doing their job, they may avoid wrongdoing. It sends a horrible message if an official like Campbell can miss meetings briefing safety issues, not read the minutes afterwards, ignore comments relating to gang violence, ignore signs posted throughout the prison, and fail to look at the safety protocol document in his own hands and to not be held responsible for Shelby's injuries. Campbell's main job working at the jail is to protect the safety of the pretrial detainees, and he has failed to perform his main duty in dramatic fashion. A decision for Campbell would give those similarly situated, and the public at large, no confidence in the justice system and would create greater fear for inmates because they would have little to no reprieve or redress for their injuries. A decision for Campbell puts many more lives in jeopardy, dissuades legal action against prison officials, and affords prison officials too much protection.

Conclusion

For the foregoing reasons, this Court should affirm the Court of Appeals for the Fourteenth Circuit's decision.