No. 23-05

In the Supreme Court of the United States

OCTOBER TERM 2023

CHESTER CAMPBELL, *Petitioner*

V.

ARTHUR SHELBY, *Respondent*

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

BRIEF FOR PETITIONER

Team 1

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II. Did this Court limit its holding in *Kingsley*, so as not to affect the analysis of subjective intent in a deliberate indifference failure-to-protect claim for violations of pretrial detainees' Fourteenth Amendment Due Process rights in 42 U.S.C. § 1983 actions?

OPINIONS BELOW

The opinion and order of the United States District Court for the Western District of Wythe is reported in the Record on pages 1–11. The opinion of the United States Court of Appeals for the Fourteenth Circuit is reported in the Record on pages 12–20.

CONSTITUTIONAL PROVISIONS AND STATUTES

This case involves the following constitutional and statutory provisions:

U.S. Const. amend. VIII

U.S. Const. amend. XIV

28 U.S.C. § 1915(g)

28 U.S.C. § 2254

42 U.S.C. § 1983

The following provisions are relevant to Questions Presented 1: 28 U.S.C. § 1915(g), 28 U.S.C. § 2254, and 42 U.S.C. § 1983. The following provisions are relevant to Questions Presented 2: U.S. Const. Amend. VIII, U.S. Const. amend. XIV, 42 U.S.C. § 1983.

STATEMENT OF CASE

Statement of Facts

Respondent is the second-in-command of the infamous street gang, the Geeky Binders. R. at 2. Respondent's involvement and leadership in the gang have led him to several run-ins with the law, including arrests and convictions for drug distribution, drug possession, assault, and brandishing a firearm. R. at 3. On December 31, 2020, Respondent was arrested for battery, assault, and possession of a firearm after Marshall police raided a boxing match. R. at 3. Several members of the Geeky Binders were in attendance. R. at 3. Upon entering the Marshall jail, a seasoned jail official, Officer Dan Mann, conducted the preliminary paperwork. R. at 4.

This included an inventory of Respondent's belongings, such as the signature Geeky Binder weapon, to the Marshall jail's online database. R. at 4. Officer Mann correctly recorded all of Respondent's information and finished his booking procedures. R. at 4–5. He then turned Respondent over to other jail officials, who placed him in a holding cell away from the central jail area. R. at 5.

The online database contains important information about an inmate, such as charges, inventoried items, medications, and gang affiliations. R. at 4. Due to the town's significant gang activity, the database also indicates any gang rivalries and potential hits placed on the inmate. R. at 4. Gang intelligence officers consistently review database entries for each incoming inmate, paying special attention to gang rivalries and potential hits. R. at 4.

Over the past few years, the Geeky Binders have suffered a downfall in dominance with the takeover of a rival gang led by Luca Bonucci. R. at 3, 5. The intelligence officers knew of the menacing rivalry including a recent dispute that led to the murder of Bonucci's wife. R. at 5. The Bonuccis thus sought revenge, primarily targeting Respondent. R. at 5. This knowledge prompted the intelligence officers to make a special note in Respondent's file, print out paper notices, and indicate Respondent's status on all rosters and floor cards in the jail. R. at 5.

On January 1, 2021, the intelligence officers met with all jail officials to notify them of Respondent's presence and that he would be housed in cell block A, away from the Bonuccis, who were in cell blocks B and C. R. at 5. Officers were reminded to routinely examine the rosters and floor cards to ensure the rival gangs were not in contact. R. at 5. The minutes of this meeting were recorded and placed on the jail's online database. R. at 6. The intelligence officers required those absent from the meeting to review the minutes. R. at 6. Officer Chester Campbell, although a properly trained entry-level guard, is not a gang intelligence officer. R. at

5. Officer Campbell had called in sick that morning and was absent from the meeting, contrary to roll call records. R. at 5.

On January 8, 2021, Officer Campbell supervised the transfer of inmates to the jail's recreation room, including Respondent. R. at 6. Before retrieving Respondent from his cell, Officer Campbell did not reference the hard copy list of inmates with special statuses or the jail database. R. at 6. The list included Respondent's name, indicating that the Bonucci gang had ordered a potential hit. R. at 6. Once Officer Campbell retrieved Respondent, they walked towards the guard stand. R. at 6. An inmate from cell block A shouted to Respondent: "I'm glad your brother Tom finally took care of that horrible woman." R. at 6. Respondent replied with, "[Y]eah, it's what that scum deserved." R. at 6. Officer Campbell ordered Respondent to stay silent and continued retrieving an inmate from cell block A, two from cell block B, and one from cell block C. R. at 6–7. The inmates from cell blocks B and C were members of the Bonucci gang. R. at 7. Upon seeing Respondent, the Bonucci gang members charged at him, beating him for several minutes until other officers arrived to assist Officer Campbell in breaking up the fight. R. at 7.

Shelby's eventual bench trial resulted in a conviction for battery and possession of a firearm by a convicted felon. R. at 7. He is currently imprisoned at Wythe prison. R. at 7.

Procedural History

On February 24, 2022, Respondent filed a § 1983 action against Officer Campbell. R. at 7. Alongside the § 1983 claim, Respondent filed a motion to proceed in forma pauperis. R. at 7. The District Court denied Respondent's motion pursuant to the Prison Litigation Reform Act's ("PLRA") three "strike" rule. R. at 7. In response, Officer Campbell filed a motion to dismiss for failure to state a claim. R. at 7. Officer Campbell argued that Respondent's complaint failed

to rise to the standard of deliberate indifference. R. at 8. The District Court agreed and granted Officer Campbell's motion to dismiss on July 14, 2022. R. at 11. Respondent appealed the dismissal to the Fourteenth Circuit Court of Appeals. R. at 13.

On appeal, the Fourteenth Circuit reversed and remanded the District Court's ruling. R. at 19. The Fourteenth Circuit held that (1) a dismissal pursuant to *Heck v. Humphrey* does not constitute a strike under the PLRA, and (2) under *Kingsley v. Hendrickson*, failure-to-protect claims must be analyzed using an objective standard. R. at 14, 16.

Officer Campbell timely appealed to this Court. R. at 21. This Court granted certiorari, specifically to address two issues. R. at 21. First, whether the dismissal of a prisoner's civil action under *Heck v. Humphrey* constitutes a "strike" within the meaning of the PLRA. R. at 21. Second, whether this Court's holding in *Kingsley* effected the subjective intent required for a deliberate indifference failure-to-protect claim for violating a pretrial detainee's Fourteenth Amendment Due Process rights under § 1983. R. at 21.

SUMMARY OF ARGUMENT

This Court should REVERSE the Fourteenth Circuit Court of Appeal's decision that a dismissal under *Heck v. Humphrey* does not constitute a strike under the PLRA and that failure-to-protect claims must be analyzed under an objective standard.

First, a dismissal under *Heck v. Humphrey* constitutes a strike under the PLRA. A prisoner obtains a strike under the PLRA if their case is dismissed as frivolous, malicious, or for failure to state a claim. This Court in *Heck* held that a § 1983 action must be dismissed if the plaintiff fails to satisfy the element of favorable termination. If the element is not met, a § 1983 action is dismissed for failure to state a claim pursuant to *Heck*. Additionally, as *Heck* is a

dismissal for failure to state a claim it must constitute a strike under the PRLA in accordance with this courts reading of § 1915(g) and in line with congressional intent.

Second, this Court should hold that a Fourteenth Amendment failure-to-protect claim must be analyzed under a subjective standard. This Court held in *Kingsley v. Hendrickson* that an objective reasonableness standard applies to pretrial detainees' § 1983 claims for excessive force violating their Fourteenth Amendment right to due process. However, this decision did not affect the subjective deliberate indifference standard normally applied to failure-to-protect claims brought by pretrial detainees. This Court should read *Kingsley* as an exception to the traditional application of the deliberate indifference standard to claims such as failure-to-protect. However, should this Court decline to do so, it should not extend *Kingsley*'s objective standard to failure-to-protect claims. Further, the nature of an excessive force claim violating the Fourteenth Amendment uniquely requires analysis under the objective standard, while the nature of failing to protect contradicts workable application of that same standard. Implementing this unworkable standard would create detrimental implications for both pretrial detainees and officers tasked with protecting them.

ARGUMENT

I. THE FOURTEENTH CIRCUIT COURT OF APPEALS ERRED IN HOLDING A *HECK* DISMISSAL IS NOT A STRIKE UNDER THE PRISON LITIGATION REFORM ACT.

The Fourteenth Circuit Court of Appeals erred in holding a *Heck* dismissal is not a strike under the PLRA. The PLRA established what is known as the three-strike provision. 28 U.S.C. § 1915(g). This rule prevents prisoners from bringing a suit in forma pauperis if the prisoner has filed three or more civil actions that were "dismissed on the grounds [that] they were frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted." *Id.*

One of the highly contested elements of the PLRA is whether a claim dismissed in accordance with this Court's holding in *Heck v. Humphrey* constitutes a strike. The Circuit Court of Appeals are split on this issue. *Garrett v. Murphy,* 17 F.4th 419, 427 (3rd Cir. 2021). The First and Eleventh Circuit hold that a *Heck* dismissal is a jurisdictional matter as well as an element for claims for damages under § 1983. *See O'Brien v. Town of Bellingham*, 943 F.3d 514, 529 (1st Cir. 2019); *Harrigan v. Metro Dade Police Dep't Station #4*, 977 F.3d 1185, 1191 n.4 (11th Cir. 2020). The Seventh and Ninth Circuit hold that *Heck*'s favorable termination functions as an affirmative defense subject to waiver. *See Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011); *Washington v. L.A. Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016). Lastly, and properly, the Third, Fifth, Tenth, and D.C. Circuits have held that a dismissal for failure to meet *Heck*'s favorable termination requirement is a dismissal for failure to state a claim. *See Garrett*, 17 F.4th at 427; *Colvin v. LeBlanc*, 2 F.4th 494, 499 (5th Cir. 2021); *Smith v. Veterans Admin.*, 636 F.3d 1306, 1311–12 (10th Cir. 2011); *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011).

Therefore, this Court should REVERSE the Fourteenth Circuit Court of Appeals decision and hold that a *Heck* dismissal constitutes a strike under the PLRA because (1) a case dismissed pursuant to *Heck* is dismissed for failure to state a claim and (2) a failure to state a claim constitutes a strike under the PLRA.

A. A Dismissal Pursuant to *Heck v. Humphrey* Is a Dismissal for a Failure to State a Claim.

In *Heck v. Humphrey*, this Court addressed the question of whether "a state prisoner may challenge the constitutionality of his conviction in a suit for damages" under § 1983. *Heck v. Humphrey*, 512 U.S. 477, 478 (1994). The answer to this question requires a comparison of § 1983 claims with claims of habeas corpus. *Id.* at 480. Both claims provide routes for prisoners to challenge unconstitutional treatment from state officials. 42 U.S.C. § 1983; 28 U.S.C. § 2254.

However, they differ in scope. *Id.* The important distinction is that a habeas corpus case is the exclusive remedy for prisoners challenging duration of confinement and requesting speedier relief. *Heck*, 512 U.S. at 481. This distinction raises an issue about whether monetary damages under § 1983 can be awarded for actions challenging a prisoner's conviction or confinement. *Id.* at 483. This Court held that such a claim accrues only when a prisoner can prove that their "conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by state tribunal authorized to make such determination, or called into question by federal court's issuance of writ of habeas corpus." *Id*. At 489.

In *Heck*, the plaintiff filed a § 1983 action against county prosecutors and state police investigators on the grounds that his conviction violated his constitutional rights. *Heck*, 512 U.S. at 479. While the § 1983 claim was pending, the Illinois Supreme Court upheld his conviction. *Id.* Therefore, the District Court dismissed the plaintiff's § 1983 action because the plaintiff failed to satisfy the favorable termination requirement. *Id.* at 479–80. Without favorable termination, the court would not be able to award damages without improperly considering the legality of his conviction. *Id*. at 481. Since the plaintiff's conviction had already been upheld, monetary damages could not be awarded in order to avoid contradictory holdings. *Id*. at 486–87.

This Court affirmed the Seventh Circuit's decision. *Heck*, 512 U.S. at 490. To reach this decision, this Court looked to the common law of torts as this Court has "repeatedly noted that 42 U.S.C. § 1983 creates a species of tort liability." *Id.* at 483 (citing *Memphis Community School Dist. V. Stachura*, 477 U.S. 299, 395 (1986)). The tort most analogous to a § 1983 claim is the tort of malicious prosecution. *Id.* at 484. This Court relied on this analogy to guide its decision. *Id.* at 484–88. One element that must be proven for a malicious prosecution action to accrue is the termination of the criminal proceeding. *Heck*, 512 U.S. at 484. The reasoning

behind the favorable termination requirement is to avoid parallel litigation and preclude the possibility of creating "two conflicting resolutions arising out of the same or identical transactions." *Id.* (citing 8 S. Speiser, C. Krause, & A. Gans, American Law of Torts § 28:5, p.24 (1991)). This is applicable to a § 1983 claim because this Court has repeatedly held that civil torts actions are not appropriate instruments for challenging the validity of outstanding criminal judgments. *Id.* at 486. Therefore, to ensure the criminal challenge is completed and parallel litigation does not occur, a favorable termination is required for a § 1983 action. *Id.* Thus, when a prisoner seeks damages under a § 1983 action for a complaint that would imply the invalidity of his conviction or sentence, the complaint must be dismissed unless the plaintiff can prove the sentence or conviction was already invalidated. *Id.* at 487.

The Third, Fifth, Tenth and D.C. Circuits have correctly interpreted a dismissal for failure to meet the favorable termination requirement as a dismissal for failure to state a claim. In *Garrett v. Murphy*, the Third Circuit analyzes why "without favorable termination, a plaintiff lacks a claim, and the complaint must be dismissed based on prematurity for failure to state a claim." 17 F.4th at 428. In line with this reasoning from *Heck*, the Third Circuit upheld a district court's denial of the plaintiff's motion to proceed in forma pauperis because plaintiff had at least three prior cases dismissed for failure to state a claim. *Id.* at 426. Two of these cases were dismissed for failure to satisfy *Heck*'s favorable termination requirement. *Id*. In the two cases dismissed under *Heck*, the plaintiff brought § 1983 actions challenging his conviction and sentencing. *Id*. at 426. The plaintiff's first § 1983 action challenged his prosecution, arrest, and conviction for which he had pled guilty. *Id.* The plaintiff brought the second claim against the United States on the same grounds. *Id.* At the time the plaintiff brought these actions, his conviction and sentence had been upheld on appeal and collateral review. *Id.* Therefore, even

though the action was for monetary damages, finding in favor of the plaintiff would imply the invalidity of his conviction that had already been upheld. *Garrett*, 17 F. 4th at 426. Thus, without the favorable termination requirement, "the complaint must be dismissed based on prematurity" in accordance with *Heck* because the requested relief cannot be granted. *Id*.

Even though a minority of circuits consider prematurity an issue of timeliness, the Tenth Circuit correctly addressed why that is not implicated under *Heck.* Brian R. Means, *Postconviction Remedies* § 11.2 (2023-2024 ed.). The Tenth Circuit, in *Smith v. Veterans Admin*., clarified that the dismissal of a civil rights suit for damages based on prematurity under *Heck* is for failure to state a claim, not a dismissal for timeliness. 636 F.3d 1306, 1313 (10th Cir. 2011). The court reasond that whether or not the claim is timely bears no relation to the favorable termination requirement. *Id*. The plaintiff in *Smith* challenged the district court's decision that he was barred from proceeding in forma pauperis due to the PLRA's three strike provision. *Id*. at 1308–09. There, the plaintiff alleged that his dismissal under *Heck* was not a strike because it was dismissed for prematurity, not for failing to state a claim. *Id*. at 1312. However, the Tenth Circuit held, consistent with *Heck,* that it is irrelevant whether the plaintiff has a pending challenge against his conviction. *Id*. at 1313–12. A dismissal for prematurity occurs when the plaintiff fails to satisfy *Heck's* favorable termination requirement and thus still constitutes a failure to state a claim. *Id.*

Lastly, the Fifth Circuit held that this Court in *Heck* discussed the scope of § 1983 cases—not subject matter jurisdiction. *Colvin v. LeBlanc*, 2 F.4th 494, 498–99 (5th. Cir. 2021). This discussion included when and how a § 1983 claim may be brought. *Id.* In *Colvin*, the Fifth Circuit stated that "*Heck* implicates a plaintiff's ability to state a claim, not whether the court has jurisdiction over that claim." *Id*. at 499. In *Colvin*, the plaintiff filed a § 1983 action against

state corrections officials alleging a records clerk impermissibly changed his released date, extending his sentence. *Colvin*, 2 F.4th at 495. Although the claim was for monetary damages, the underlying issue being challenged was the duration of his sentence. *Id*. at 499. The Fifth Circuit affirmed this claim fell under *Heck* because (1) a claim for speedier release is a cause of action under a writ of habeas corpus rather than a § 1983 action, and (2) even if the claim was for damages provided under a § 1983 claim, the success of the plaintiff's claim would invalidate the duration of his incarceration because the plaintiff had no favorable termination. *Id*. Thus, the court properly dismissed for failure to state a claim.

Here, the Fourteenth Circuit erred in holding that a dismissal under *Heck* is for prematurity, not for failure to state a claim. R. at 14–15. First, the Fourteenth Circuit reasoned that *Heck*'s favorable termination requirement only temporarily prevents courts from addressing the claims in a prisoner's 1983 action. R. at 15. This is incorrect. As seen in *Garrett*, a § 1983 case must be dismissed for failure to state a claim if the favorable termination requirement has not been satisfied. 17 4th at 487. In *Garrett*, the plaintiff's § 1983 claim alleged violations attacking the validity of his confinement and conviction even though both had already been upheld on appeal. *Id.* at 426. Because the plaintiff's conviction had been upheld, ignoring the lack of favorable termination would improperly allow the plaintiff to relitigate his criminal conviction.

Second, the Fourteenth Circuit erred in holding that *Heck* recognizes the prematurity, not the invalidity, of a prisoner's claim. The Tenth Circuit in *Smith* held that it is irrelevant whether the plaintiff has a pending challenge against his conviction. 636 F.3d at 1312–13. The issue is whether the prisoner satisfied the element of favorable termination. *Id.* As seen in *Smith*, a dismissal under *Heck* for prematurity is for a failure to state a claim, not a dismissal for

timeliness. 636 F.3d at 1312–13. The inability to satisfy the element of favorable termination constitutes a failure to state a claim, even when premature. *Id.*

Lastly, the Fourteenth Circuit incorrectly held that favorable termination is not a necessary element of § 1983 claims. R. at 15. In fact, the Fifth Circuit in *Colvin*, held that a § 1983 claim may only accrue when the underlying issue of sentence duration was favorably terminated. *Colvin*, 2 F.4th at 499. Otherwise, a claim challenging duration is brought under a writ of habeas corpus. *Id.*

Therefore, the Third, Fifth, Tenth, and D.C. Circuits properly hold that a dismissal pursuant to *Heck* is a dismissal for failure to state a claim. A *Heck* dismissal occurs when the underlying issue of a § 1983 action challenges the invalidity of a prisoner's conviction or sentence, but the element of favorable termination has not been met. Failure to satisfy the element of favorable termination constitutes a failure to state a claim, thus the claim must be dismissed pursuant to *Heck.*

B. A Dismissal Pursuant to *Heck v. Humphrey* Constitutes a Strike Under the Prison Litigation Reform Act.

A dismissal under *Heck* constitutes a strike under the PLRA. A strike under the PLRA occurs when a civil action filed by a prisoner has been "dismissed on the grounds that [they were] frivolous, malicious, of fail[ed] to a state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). The three-strike rule established under § 1915(g) prevents prisoners from filing in forma pauperis if they have accrued three strikes. *Lomax v. Ortiz-Marquez,* 140 S.Ct. 1721, 1723 (2020). The three-strike provision was established in 1995, when Congress passed the PLRA in response to the sharp increase in pro se prisoner civil rights actions. *Garrett*, 17 4th at 426. The purpose of the PLRA is to "filter out the bad claims filed by prisoners and facilitate consideration of the

good." *Garrett*, 17 4th at 426. Therefore, any claim that is frivolous, malicious, or fails to state a claim must be dismissed and constitutes a strike. *Lomax*, 140 S.Ct. at 1723. Thus, a dismissal pursuant to *Heck* is a strike because it is a dismissal for failure to state a claim.

The broad language of the PLRA has led to different interpretations, including whether a dismissal for failure to state a claim without prejudice is actually a strike. This Court put this conflict to rest in 2020 with *Lomax v. Ortiz-Marquez*. 140 S.Ct. at 1722. In *Lomax*, the petitioner argued that he should not be barred from proceeding in forma pauperis under the PLRA because two of his three alleged strikes were dismissals for failure to state a claim issued without prejudice. *Id*. at 1724. Petitioner alleged that § 1915(g)'s phrase "dismissed [for] fail[ure] to state a claim" is a "legal term of art" and refers only to dismissals with prejudice. *Id*. at 1722. This Court disagreed, holding that a strike under § 1915(g) hinges "exclusively on the basis for the dismissal, regardless of the decision's prejudicial effect." *Id.* at 1725. To hold otherwise would mean reading "dismissed with prejudice" into the text of the statute, when Congress chose to omit such wording. *Id.* Therefore, this Court made clear—whether with or without prejudice—a dismissal for failure to state a claim constitutes a strike because it hinges on the basis of that failure. *Id.* at 1727.

Further, limiting the reading of "dismissal for failure to state a claim" would contradict the intent of congress. *Lomax*, 140 S.Ct at 1725. Congress created the PLRA in 1995, "to help staunch a flood of nonmeritorious prisoner litigation." *Id.* at 1723 (internal quotations omitted). Prior to the PLRA, the statutes governing in forma pauperis proceedings focused on claims that were frivolous and malicious. *Id.* at 1726. However, the courts continued to be bogged down by the sheer number of pro se prisoner litigation cases being filed. *Garrett*, 17 4th at 426. Therefore, as this Court held in *Lomax*, Congress established the PLRA's three strike provision,

adding "failure to state a claim" to "effectively preclude consideration of suits more likely to succeed." *Lomax*, 140 S.Ct. at 1726.

The case at hand portrays the importance of interpreting "failure to state a claim" broadly. Here, Petitioner, a frequent flyer in prison for crimes such as drug distribution, assault, and brandishing a firearm, was denied from filing in forma pauperis because he had accrued three strikes. During Petitioner's prior stints in jail, he filed three separates § 1983 actions that were each dismissed without prejudice pursuant to *Heck*. R. at 3. As a *Heck* dismissal is often without prejudice, a narrow reading of "failure to state a claim" would preclude those dismissals from counting as strikes. *See Garrett*, 17 4th at 426; *Smith*, 636 F.3d at 1310. This would be inconsistent with Congressional intent. *Lomax*, at 1725. Even though Petitioner's claim alone would not affect judicial efficiency, this standard would allow an influx of similar nonmeritorious claims to bog down the courts.

Ultimately, this Court states that the language of the PLRA is explicit: "a dismissal of a suit for failure to state a claim counts as a strike." *Lomax*, 140 S.Ct. at 1727. Thus, because a *Heck* dismissal is for failure to state a claim, it constitutes a strike under the PLRA.

II. THIS COURT'S DECISION IN *KINGSLEY* DID NOT ELIMINATE THE SUBJECTIVE INTENT REQUIREMENT FOR PRETRIAL DETAINEES' FAILURE-TO-PROTECT CLAIMS.

The Fourteenth Amendment provides that no person be deprived of life, liberty, or property, without due process of law. U.S. Const. amend. XIV. Pretrial detainees may bring a civil action against an officer for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws," including the right to due process. 42 U.S.C. § 1983. Convicted inmates may bring similar claims against officers for violating their Eighth Amendment right to be free from cruel and unusual punishment. U.S. Const. amend. VIII.

One available cause of action under § 1983 is failure to protect, for which this Court established a deliberate indifference standard to analyze Eighth Amendment claims. Under this standard, 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, 937 (1994). Courts had consistently applied this deliberate indifference standard to claims brought by inmates both under the Eighth Amendment and by pretrial detainees under the Fourteenth Amendment. *See e.g. Estate of Moreland v. Dieter*, 395 F.3d 747, 758 (7th Cir. 2005) (noting that even though the plaintiff is a pretrial detainee, the court assumes the claim is evaluated by the Eighth Amendment standard). After this Court's decision in *Kingsley v. Hendrickson*, that consistency disappeared. *See* 576 U.S. 389, 400 (2015).

In *Kingsley*, this Court decided to alter the subjective prong of the deliberate indifference analysis as applied to Fourteenth Amendment excessive force claims brought by pretrial detainees under § 1983. 576 U.S. at 400. Originally, courts required the defending officer to subjectively intend to violate the inmate's constitutional rights. *Id.* In the case of excessive force, this included the intent that the force be excessive. *Id.* After *Kingsley*, the subjectivity in an excessive force claim only applies to the officer's act of using force against a pretrial detainee. *Id.* This Court established the new standard without addressing its application to other Fourteenth Amendment claims. *Id.* Respondent contends that this Court's holding in *Kingsley* extends to *all* § 1983 claims made by pretrial detainees. The Fourteenth Circuit incorrectly extended this holding to failure-to-protect claims brought under the Fourteenth Amendment. *See* R. at 17.

Therefore, this Court should REVERSE the Fourteenth Circuit Court of Appeals decision and retain a subjective intent requirement for failure-to-protect claims brought by pretrial detainees because (1) *Kingsley* did not affect the application of deliberate indifference to other § 1983 claims, and (2) analyzing failure-to-protect claims under *Kingsley*'s objective standard would create negative implications.

A. This Court's Decision in *Kingsley v. Hendrickson* Does Not Apply to Failure-to-Protect Claims Brought by Pretrial Detainees.

This Court's holding in *Kingsley* is limited to excessive force claims and does not apply to failure-to-protect claims brought by pretrial detainees. Based on the language used and decisions made by this Court, the *Kingsley* holding expressly limited itself to excessive force claims alleging Fourteenth Amendment violations. *See Kingsley*, 576 U.S. at 400 ("[A]n officer enjoys qualified immunity and is not liable for *excessive force* unless he has violated a clearly established right, such that it would [have been] clear to a reasonable officer that his conduct was unlawful in the situation he confronted") (emphasis added and internal quotes omitted). Further, excessive force claims have a unique nature that warrants a more tailored standard as compared to other types of claims. *See id.* at 400.

Following *Kinglsey*, Circuits have inconsistently applied differing standards to § 1983 failure-to-protect claims, consisting of either subjective intent and objective reasonableness or solely an objective standard.[1] The former is appropriate because (1) this court's express

[1] Four circuits view *Kingsley* as requiring modification of the subjective prong of the deliberate-indifference test for pretrial detainees. *See Darnell v. Pineiro*, 849 F.3d 17, 30 (2d Cir. 2017); *Brawner v. Scott Cnty., Tenn.*, 14 F.4th 585, 596 (6th Cir. 2021) (reh'g en banc denied); *Kemp v. Fulton Cnty.*, 27 F.4th 491, 497 (7th Cir. 2022); *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018). Four circuits hold that *Kingsley* does not eradicate the subjective intent required for deliberate indifference claims. *See Alderson v. Concordia Parish Correctional Facility,* 848 F.3d 415, 419 (5th Cir. 2017); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 (8th Cir. 2018); *Strain v. Regalado*, 977 F.3d 984, 992 (10th Cir. 2020); *Myrick v. Fulton Cnty., Georgia*, 69 F.4th 1277, 1304–05 (11th Cir. 2023).

limitation of the objective standard's application functions as an exception to the pre-existing deliberate indifference standard, and (2) that exception is correctly limited based on the nature of excessive force claims in the context of pretrial detention.

1. This Court's decision to apply an objective standard to excessive force claims functions as an exception to the traditional application of deliberate indifference.

This Court in *Kingsley* created its holding with the intent not to disturb the deliberate indifference standard's application to § 1983 claims other than excessive force under the Fourteenth Amendment. Thus, the deliberate indifference standard should otherwise remain consistently applied to other Eighth and Fourteenth Amendment claims.

This Court in *Kingsley* explicitly declined to address whether its holding would affect the use of the subjective standard in the context of excessive force claims brought by convicted prisoners under the Eighth Amendment. 576 U.S. at 402. Additionally, this Court made clear that no single "deliberate indifference" standard applies to all § 1983 claims, regardless of the claimant's status at the time of the Constitutional harm. R. at 16 (citing *Kingsley*, 576 U.S. at 400–01). In fact, this Court made no reference to *Farmer*, "the flagship case on the subjective deliberate indifference standard." R. at 19. To consider "the law on this point conclusively resolved by broad language in cases where the issue was not presented or even envisioned seems to put the cart before the horse." R. at 19 (*citing RAV v. City of St. Paul*, 505 U.S. 377, 386 n.5 (1992). This evidence does not indicate that the objective standard should extend to other Fourteenth Amendment claims; instead, this Court's express limitation of its decision suggests that the subjective component should survive where applicable.

Therefore, this Court should treat its holding in *Kingsley* as an exception to the traditional application of deliberate indifference to § 1983 claims brought by pretrial detainees. However,

even if this Court declined to do so, it should still hold that *Kingsley*'s objective unreasonableness standard does not apply to failure-to-protect claims.

2. A purely objective analysis would contradict the nature of failure-to-protect claims.

The objective analysis of excessive force claims brought by pretrial detainees properly addresses the specific nature of such claims. However, that analysis is not workable when determining if an officer failed to protect a pretrial detainee.

This Court has taken the Eighth Amendment's preclusion of cruel and unusual punishment to indicate that the Fourteenth Amendment's protection of due process precludes any punishment of persons who are not yet convicted. *Bell v. Wolfish*, 441 U.S. 520, 546 (1979) (holding that the Due Process Clause forbids holding pretrial detainees in conditions that "amount to punishment"). This is because pretrial detainees are afforded stronger constitutional protection under the Fourteenth Amendment than convicted prisoners under the Eighth Amendment. R. at 16 (citing *Kingsley*, 576 U.S. at 400; *Bell*, 441 U.S. at 520, 535–37 & n.16). This Court also recognized that there must be a "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application," which applies equally to pretrial detainees and convicted inmates. *Bell,* 441 U.S. at 546 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974)). This Court thus acknowledged that pretrial detainees can prevail on due process claims by showing that officers' actions are not "rationally related to a legitimate nonpunitive governmental purpose or that the actions appear excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398 (quoting *Bell*, 441 U.S. at 538) (internal quotes omitted). Holding the use of force to an objective reasonableness standard advances that proposition.

The rationale from *Bell* required this Court to create the objective standard in *Kingsley*. Otherwise, this Court would have maintained a standard conflicting the nature of an excessive force claim. Under a subjective standard, officers would be required to subjectively intend—either "maliciously or sadistically"—for their actions to be unreasonable. *Kingsley*, 576 U.S. at 400 (quoting *Ingraham v. Wright*, 430 U.S. 651, 671–672, n. 40 (1977)). However, the question under the Fourteenth Amendment is not if punishment is unconstitutional, but whether punishment was inflicted at all. *Id.* at 401. The focus of excessive force claims, whether brought under the Eighth or Fourteenth Amendment, is on the reasonableness of an officer's actions rather than on any thoughts, knowledge, or motivation driving those actions. *Castro v. Cnty. of Los Angeles*, 797 F.3d 654, 665 (9th Cir. 2015) (rehearing en banc granted); *see also Graham v. Connor*, 490 U.S. 386, 397 (1989) (stating that "an officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional"). Thus, this Court's application of the objective standard to excessive force in violation of due process is appropriate.

On the other hand, failure-to-protect claims involve no affirmative act by the officer. *Castro*, 797 F.3d at 665. Instead, an officer must act with deliberate indifference to be held liable for failing to protect pretrial detainees or convicted inmates alike. *See Crandel v. Hall*, 75 F.4th 537, 544 (5th Cir. 2023) (discussing how *Kingsley* did not abrogate the deliberate indifference standard); *Nam Dang ex rel. Vina Dang v. Sheriff, Seminole Cnty. Fla.*, 871 F.3d 1272, 1280, n.2 (11th Cir. 2017) (holding that the objective standard does not apply to claims of inadequate medical treatment).

Although some circuits have extended *Kingsley* to other Fourteenth Amendment claims, the Tenth Circuit addressed why that standard cannot apply to deliberate indifference claims that do not require affirmative acts. First, the Tenth Circuit declined to apply *Kingsley*'s objective standard to medical needs deliberate indifference claim. *Strain*, 977 F.3d at 992. In *Strain*, the court held that "the force of *Kingsley* does not apply to the deliberate indifference context, where the claim generally involves inaction divorced from punishment." *Id.* When confronted with the same issue in the context of a failure-to-protect claim, the Tenth Circuit further declined to extend the objective standard. *Hooks v. Atoki*, 983 F.3d 1193, 1201 (10th Cir. 2020). In *Hooks*, a prison guard had placed the plaintiff—a member of a particular gang—in a section of cells reserved for members of the rival gang. *Id.* The plaintiff claimed that the defending officer who witnessed the attack failed to protect him from gang violence in the jail. *Id.* The court held that failure-to-protect claims involved the same nature and rationale as medical needs addressed in *Strain* because deliberate indifference stems from inaction. *Id.* at 1203. Deliberate indifference "requires consciousness of a risk[.]" *Id.* Thus, the nature of excessive force claims considered in *Kingsley* did not warrant extending its holding to deliberate indifference medical needs or failure-to-protect claims.

The proper inquiry, when evaluating deliberate indifference claims under the Fourteenth Amendment, remains whether pretrial conditions amount to punishment. *Bell*, 441 U.S. at 542. The objective reasonableness required by *Kingsley* presents a higher threshold than negligence because officers still need a knowing state of mind for physical acts. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). Although not applicable to excessive force claims because subjective intent to commit the act is built into the reasonableness inquiry of an officer's actions, subjectivity regarding a culpable state of mind is applicable here. *See Strain*, 977 F.3d at 984.

The subjective inquiry helps delineate whether an official's actions were merely a result of their negligence, or resulted from an intentional act, serving as punishment. *See* 977 F.3d at 984. This follows the principle that "a person who knowingly fails to act—even when such failure is objectively unreasonabl[e]—is negligent at most[.]" *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1086 (9th Cir. 2016) (en banc) (Ikuta, J., dissenting). Due process does not protect against purely negligent behavior because such behavior does not constitute punishment against pretrial detainees. *See Bell*, 441 U.S. at 534–37.

Therefore, the subjective standard appropriately holds officers to a standard preventing punishment of pretrial detainees, while an objective standard would preclude even simple negligence outside of the excessive force context. Even if *Kingsley* does not function as an exception to the application of deliberate indifference, this Court should decide not to extend its holding to failure-to-protect claims brought for due process violations.

B. Analyzing an Officer's Failure to Protect a Pretrial Detainee Without Subjective Intent Would Create Uncertainty.

Kingsley applies to excessive force claims because of their unique nature involving officials acting deliberately in a manner that proves to be "excessive in relation" to any "legitimate governmental objective[.]" *Bell*, 441 U.S. at 538. On the other hand, failure-to-protect claims depend primarily on inadvertent failures to act rather than affirmative actions. R. at 20. Thus, failure-to-protect claims warrant a subjective analysis of the officer's state of mind in subjecting the detainee to a risk of harm, similar to claims of failure to provide medical care. *See Hooks*, 983 F.3d at 1201; *see also Strain*, 977 F.3d at 984. Eradicating this prong of the deliberate indifference standard would subvert the Fourteenth Amendment's protection of due process. According to this Court in *Kingsley*, "liability for negligently inflicted harm is

categorically beneath the threshold of constitutional due process." 567 U.S. at 395–96 (quoting *Lewis*, 523 U.S. at 849).

Erasing the subjectivity from deliberate indifference in the context of failing to protect a pretrial detainee from harm would essentially create a negligence standard for officers' failure to act. When applying deliberate indifference, the District Court below correctly found that, "[w]ithout actual knowledge of Shelby's at-risk status, Officer Campbell did not punish Shelby prior to an adjudication of guilt by inadvertently placing Shelby with members of the Bonucci clan." R. at 9.

However, if this Court does not wish to apply traditional deliberate indifference to Fourteenth Amendment failure-to-protect claims, it could further limit the subjectivity required. By requiring a subjective knowledge of facts from which an officer *reasonably should have* drawn the inference that a risk of harm exists, both the government and pretrial detainee are protected. This standard falls between deliberate indifference and that considered by the Ninth Circuit in *Castro*. *See* 833 F.3d at 1086. This standard further addresses the above concerns about maintaining a constitutional threshold and preventing punishment of pretrial detainees. Under this standard, Officer Campbell would only be liable if he actually knew of the facts from which he should have drawn the inference that Respondent faced a safety risk. However, Officer Campbell did not know of the facts produced at the meeting that would reasonably lead to that inference. *See* R. at 6. If Officer Campbell had been aware of the fact that the database designated a safety risk to Respondent, the deliberate indifference standard could still hold him liable for his failure to draw that inference.

Not only would an objective analysis raise the threshold of constitutional due process for protected individuals, it would also create an influx of litigation against officers who have

committed no wrongdoing. It is one thing to hold officers accountable, but another to restrict them from fulfilling their duties. The use of force against a pretrial detainee presents this requirement of reasonableness in promoting accountability for affirmative actions that inherently present a risk of harm. *See Kingsley*, 576 U.S. at 402. However, pure objectivity would not promote the protection of that detainee from harm presented by a separate source of which the officer has no knowledge. Instead, this would place officers under the strain of an abstract threshold that essentially assumes knowledge of *all* the risks posing harm to pretrial detainees by all "reasonable" officers. Even though Officer Campbell had no intent to present a risk of harm to Respondent, his honest mistake in doing so will consequentially fall within liability.

The objective standard naturally safeguards against honest mistakes in the excessive force context by withholding liability for unintentional actions. *Kingsley*, 576 U.S. at 402. The same is not true for failure-to-protect because subjectivity required to show deliberate indifference applies to both the knowledge of facts from which the inference that a risk exists could be drawn, and to the inference that the risk actually exists. *See Farmer*, 511 U.S. at 937. Judge Solomons' dissent from the Opinion Below correctly recognized that "one cannot inflict punishment by way of accident." R. at 20. Thus, if this Court does not wish to apply traditional deliberate indifference to Fourteenth Amendment failure-to-protect claims, it should alter only the subjectivity of the officer's inference that the risk of harm existed.

Ultimately, the purely objective standard applied by this Court in *Kingsley* to Fourteenth Amendment excessive force would create negative implications if extended to failure-to-protect claims.

CONCLUSION

A dismissal under *Heck* constitutes a strike under the PLRA because a dismissal under *Heck* is for failure to state a claim. This court in *Heck* held that a claim challenging a prisoner's conviction or sentencing may only be brought under § 1983 if the prisoner can prove favorable termination. If favorable termination is not satisfied, the claim is dismissed as failure to state a claim. In line with congressional intent, all prisoner litigation claims dismissed as frivolous, malicious, or for failing to state a claim constitute a strike under the PLRA. Thus, as a dismissal under *Heck* is for failure to state a claim it constitutes a strike under the PLRA.

Further, *Kingsley* did not affect the deliberate indifference standard as applied to failure-to-protect claims alleging Fourteenth Amendment violations of pretrial detainees' due process. This Court made a deliberate decision to apply an objective analysis to pretrial detainees' claims of excessive force, without intent for its holding to extend further. Analyzing failure-to-protect claims under the same standard would raise the constitutional threshold of due process for pretrial detainees and hold officers liable for negligence. Thus, this Court should hold that *Kingsley* did not abrogate the subjective intent required for deliberate indifference failure-to-protect claims brought under the Fourteenth Amendment.

Therefore, Petitioner respectfully requests that this Court REVERSE the decision of the Fourteenth Circuit Court of Appeals.

Respectfully Submitted,
/s/ Team P1
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