No. 23-05

In the Supreme Court of the United States

CHESTER CAMPBELL

Petitioner,

v.

ARTHUR SHELBY,

Respondent

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

BRIEF OF THE RESPONDENT

Team 10
Counsel for Respondent

Brief Color: Red

QUESTIONS PRESENTED

I. Does dismissal of a prisoner's civil action under *Heck v. Humphrey* constitute a "strike" within the meaning of the Prison Litigation Reform Act?

II. Does this Court's decision in *Kingsley* eliminate the requirement for a pretrial detainee, an inmate that has yet to have a lawful determination of guilt or innocence, to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 action?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Treatises

Constitutional Provisions

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit Court is an unpublished slip opinion reported as No. 2023-5255 and is reproduced in the record. R. at 12—20. The opinion of the United States District Court for the Western District of Wythe is an unpublished slip opinion reported at No. 23:14-cr-2324 and is reproduced in the record. R. at 2—11. The order of the United States District Court for the Western District of Wythe was reported in conjunction with the opinion and is reproduced in the record. R. at 1.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. VIII states:

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

U.S. Const. amend. XIV, §1 states:

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

42 U.S.C. § 1983

Prison Reform Litigation Act, 28 U.S.C. § 1915(g)

STATEMENT OF THE CASE

A. Statement of Facts

On December 31, 2020, police placed Arthur Shelby under arrest. (R. at 3-4) Mr. Shelby was charged with battery, assault, and possession of a firearm by a convicted felon. (R. at 4) He was subsequently held at the Marshall jail as a pretrial detainee while awaiting his opportunity to be tried on those charges. *Id.*

Prior to this arrest, Mr. Shelby had previous run-ins with the law. (R. at 3) Mr. Shelby has commenced three civil actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. *Id.* Each of these actions were dismissed without prejudice pursuant to *Heck v. Humphrey* as they would have called into question Mr. Shelby's conviction or sentence. *Id.*

Upon Mr. Shelby's arrival to the Marshall jail on Dec. 31, 2020, it was immediately apparent to an experienced jail official, Dan Mann, that Mr. Shelby was a member of the infamous street gang, Geeky Binders. (R. at 2, 4) Officer Mann was able to determine this through Mr. Shelby's clothes, his possession of items linking him to the Geeky Binders, and through comments Mr. Shelby made while under the influence discussing his affiliation with the infamous gang. (R. at 4)

When booking an inmate, it is a requirement that all officers at the Marshall jail make both paper and digital copies of filing forms and upload it onto the jail's online database. *Id.* The online database contains a file for each inmate listing "pertinent" statistics that jail officials "need to know" including gang affiliation. *Id.* Making note of an inmate's gang affiliation and status is exceedingly significant in the Marshall jail because of the town's high gang activity. *Id.* The database lists inmate's gang affiliation, gang rivalries, and any known hits placed on an

inmate. *Id.* Additionally, Marshall jail has enlisted gang intelligence officers to review and monitor inmate's entries in the online database. *Id.*

When conducting Mr. Shelby's paperwork, Officer Mann followed the proper protocol, recording all of Mr. Shelby's information, "clearly displaying" his gang affiliation. (R. at 5) The gang intelligence officers reviewed and edited Mr. Shelby's file, notably paying "special attention" to it because of Mr. Shelby's "high-ranking status." *Id.* The intelligence officers made a special note in Mr. Shelby's file because they knew of a gang rivalry between the Geeky Binders and the Bonuccis, and that Mr. Shelby "in particular was a prime target for the gang." *Id.* The note in Mr. Shelby's file indicating that he was the prime target was not only in the database, but it was also printed out and left at every administrative area in the jail. *Id.* It was also specified on "all rosters and floor cards at the jail." *Id.* Moreover, a meeting was held by the intelligence officers with all jail officers in order to notify them of Mr. Shelby's status and presence in the Marshall jail. *Id.* In this meeting, the intelligence officers reminded all the jail officials to regularly check rosters and floor cards to confirm that rival gangs were not in the same common areas within the jail. *Id.* The intelligence officers required anyone who missed this meeting to review its minutes, which were provided on the jail's online database. (R. at 6)

Officer Chester Campbell had been trained properly and, for the several months he had been employed, had been meeting job expectations. (R. at 5) Though the roll call cards showed that Officer Campbell had been present at the meeting held by the intelligence officers discussing Mr. Shelby's status, the Marshall jail's time sheets show that Officer Campbell had called in sick that morning. (R. at 5-6) A glitch in the computer system wiped any record of any person viewing the meeting minutes, consequently it is unclear if Officer Campbell attended the meeting, or viewed the minutes as was required. (R. at 6). In the week between Mr. Shelby's booking and the day of

his brutal attack, Officer Campbell failed to meet the jail's protocol which is in place to protect inmates from substantial risk of harm. *Id.*

On Jan 8, 2021, Mr. Shelby suffered life threatening injuries from an attack by three other inmates, members of the rival gang, Bonucci, that had a known hit on the Geeky Binders, with Mr. Shelby being their known prime target. (R. at 5, 7) His life-threatening injuries include a penetrative head wound from external blunt force trauma resulting in traumatic brain injury, fractures of three different ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding. (R. at 7)

On the day of Mr. Shelby's attack, Officer Campbell retrieved Mr. Shelby from his cell to take him to a common space in the jail. (R. at 6) Despite Officer Campbell's proper training, and the jail's strong emphasis on inmate safety related to gang violence, Officer Campbell failed to take reasonable steps to ensure the safety of Mr. Shelby. (R. at 5) When collecting inmates from different cell blocks to join in the same common space, Officer Campbell did not reference the hard copy list of inmates with special statuses that he was carrying with him in his hand (R. at 6) Had he referenced it as his job requires, he would have seen that it explicitly listed Mr. Shelby's name, signifying that the Bonucci gang had possibly ordered a hit on Mr. Shelby and that he was at risk of an attack by members of the Bonucci clan. *Id.* Officer Campbell also failed to recognize the printed paper notices in every administrative area of the jail, the posting of Mr. Shelby's status on all rosters and floor cards and to review the meeting minutes as was required by the intelligence officers. (R. at 5) Finally, he failed to see the warning sign that Mr. Shelby could be at a substantial risk of harm when he overheard other inmates yell out to Mr. Shelby language indicating that he was a known gang member in the Geeky Binders and Bonucci feud, (R. at 6) During this exchange, Officer Campbell told Mr. Shelby to be quiet, signifying that he

heard the conversation and even then still continued to walk Mr. Shelby to a shared common space without taking any further precautions. *Id.*

All three of the inmates that attacked Mr. Shelby were part of the Bonucci gang. (R. at 7) Had Officer Campbell followed the Marshall jail protocol and appreciated his duty to protect inmates who have been stripped of the ability to protect themselves, Mr. Shelby, a pretrial detainee, would not have suffered life-threatening injuries. *Id.*

SUMMARY OF THE ARGUMENT

Heck dismissals do not count as strikes under 28 U.S.C. § 1915(g). A *Heck* dismissal is not a decision on the merits because a dismissal under *Heck* is jurisdictional in nature. *Heck's* favorable termination requirement is an affirmative defense, so a dismissal is not a strike for failure to state a claim. Claims that are dismissed on the grounds that they should have been brought under habeas corpus do not qualify as strikes under § 1915(g).

Mr. Shelby filed three prior actions under § 1983 that were dismissed pursuant to *Heck v. Humphrey*. All three claims were dismissed because they would have called into question his conviction or sentence, they were not dismissed as frivolous or malicious. Thus, the only concern is whether a dismissal under *Heck* is the same as a dismissal for failure to state a claim under § 1915(g). *Heck* dismissals do not equate to dismissals for failure to state a claim, therefore, Mr. Shelby does not have three strikes and may proceed in forma pauperis.

The Court's decision in *Kingsley v. Hendrickson* eliminates the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment Due Process Clause in a 42 U.S.C. § 1983 action. The objective state of mind standard outlined in *Kingsley* should be extended to pretrial detainee's failure-to-protect § 1983 claims because the text and scope of the Fourteenth Amendment's Due Process Clause supports the objective standard's application, as the Fourteenth Amendment provides pretrial detainees with stronger constitutional protections than convicted prisoners. Further, the application by various circuit courts of the subjective standard outlined in *Farmer v. Brennan* to § 1983 claims by pretrial detainees is not legally sound in that the analysis in *Farmer* is based on a convicted prisoner's claim under the Eighth Amendment, not a pretrial detainee's claim under the Fourteenth Amendment Due Process

Clause. Implementing the objective deliberate indifference standard for § 1983 claims adequately preserves the rights of pretrial detainees, comports with the limitations of the Fourteenth Amendment, aids judicial efficiency and still protects officers acting in good faith.

Mr. Shelby is a pretrial detainee, awaiting a lawful determination of his guilt or innocence, not a convicted prisoner. He is entitled to the constitutional protections of the Fourteenth Amendment's Due Process Clause, meaning that he cannot be punished at all, whereas convicted prisoners can be punished under the Eighth Amendment in relation to their crime or incident to incarceration. Relying on *Farmer's* analysis in the context of a pretrial detainee's claim distorts Supreme Court precedent in that *Farmer* was determined under the Eighth Amendment, not the Fourteenth Amendment, therefore *Kingsley* applies.

Mr. Shelby was stripped of his liberty and therefore, his ability to care for, and protect himself. Thus, it was Officer Campbell's duty to take reasonable steps to protect Mr. Shelby from substantial risk of harm. Had Officer Campbell complied with Marshall jail's policies, it would have sufficiently ensured Mr. Shelby's safety and ultimately protected Mr. Shelby. A reasonable officer would not have acted as Officer Campbell did provided the ample opportunities and warning signs Officer Campbell had to learn of Mr. Shelby's status, therefore, Mr. Shelby would prevail under the objective standard set forth in *Kingsley*.

The objective deliberate indifference is a workable standard, in that if uniformly implemented it would eliminate geographic disparities and disparate constitutional protections, aid judicial efficiency, and discourage forum shopping. Additionally, the test outlined in *Kingsley* still maintains an intentional prong, therefore, it still protects officers acting in good faith.

ARGUMENT

I. *HECK* DISMISSALS DO NOT COUNT AS STRIKES UNDER 28 U.S.C. § 1915(G).

This Court reviews dismissals for failure to state a claim *de novo,* accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff. *Leal v. Wiles*, 734 F. App'x 905, 907 (5th Cir. 2018). Under the Prison Litigation Reform Act's (PLRA) three strikes provision, a prisoner is barred from bringing a civil action or appeal in forma pauperis (IFP) if that prisoner has:

> on [three] or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). A strike is only accrued when the entire action is dismissed on one of the grounds enumerated in § 1915(g). *Byrd v. Shannon,* 715 F.3d 117, 125 (3d Cir. 2013). This Court, in *Heck v. Humphrey*, held that a cause of action brought under 42 U.S.C. § 1983 challenging the constitutionality of the plaintiff's underlying conviction or sentence does not develop until the underlying conviction has been vacated. 512 U.S. 477, 487 (1994). This Court reasoned that the district court must consider whether a judgment for the plaintiff would invalidate their conviction, at which point the burden shifts to the plaintiff to provide proof that their conviction has already been invalidated; in other words, the plaintiff must meet a "favorable termination prerequisite. *Id.* Dismissals under the *Heck* doctrine are not per se frivolous because the underlying claims could have merit, which is why they must be dismissed without prejudice. *Washington v. L.A. Cnty. Sheriff's Dep't.*, 833 F.3d 1048, 1055 (9th Cir. 2016). Unless the court finds that a claim was filed with harmful intent, dismissals under *Heck* are not malicious. *Id.* A *Heck* dismissal counts as a dismissal for failure to state a claim, only when it is clear from the

face of the complaint that relief is barred. *Id.* Mr. Shelby filed three prior actions under § 1983 that were dismissed pursuant to *Heck*. (R. at 3) These claims were all dismissed because they would have called into question his conviction or sentence. (R. at 3). None of Mr. Shelby's claims were dismissed as frivolous or malicious; therefore, the only concern is whether a dismissal under *Heck* is the same as a dismissal for failure to state a claim under § 1915(g). Because, for the reasons stated below, *Heck* dismissals do not equate to dismissals for failure to state a claim, Shelby does not have three strikes and may proceed IFP.

A. A *Heck* Dismissal is not a Dismissal for Failure to State a Claim Under § 1915(g) Because a Heck Dismissal does not Reach the Merits of the Case.

This Court has not determined that a *Heck* dismissal equates to a dismissal for failure to state a claim. *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 n.2 (2020). The "failure to state a claim" language in § 1915(g) mirrors the language in Federal Rules of Civil Procedure 12(b)(6). *See Washington*, 833 F.3d at 1055. This Court presumes that Congress is aware of existing law when it passes legislation. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). Therefore, this Court may infer that Congress intended the phrase in § 1915(g) to refer only to dismissals of meritless prisoner suits based on the insufficiency of the facts alleged in complaint. *See* 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1349 (3d ed. 2020). The "favorable termination" requirement outlined in *Heck* focuses on when a collateral attack can occur and whether a court has the power to reach the merits of the plaintiff's case, not on the underlying merits of a plaintiff's claim. *See Heck*, 512 U.S. at 483-86.

a. A Heck dismissal is not a decision on the merits because a dismissal under Heck is jurisdictional in nature.

When a claim is dismissed for failure to meet the "favorable termination" requirement outlined in *Heck*, it limits the court's power to consider a plaintiff's § 1983 damages claim until the plaintiff's conviction is set aside in the same way that the court's power is limited when it does not have jurisdiction over a claim. *See id.* Until the "favorable termination" requirement is met, a plaintiff's § 1983 claim has not accrued. *Id.* An action that has not accrued is unripe for adjudication. *See McDonough v. Smith*, 139 S. Ct. 2149, 2158-59 (2019). Ripeness is analyzed separately from the merits of a claim. *See Mejia v. Harrington*, 541 F. App'x 709, 710 (7th Cir 2013) (noting that *Heck* deals with the timing and not the underlying merits of a claim for relief). When a court lacks the power to hear a claim, they must dismiss the claim before they discuss its merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-45 (1998) ("The requirement that jurisdiction be established as a threshold matter . . . is 'inflexible and without exception.'" (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884))). Thus because, pursuant to the *Heck* doctrine, a court cannot hear the merits of a claim before a plaintiff's conviction is invalidated just like a court cannot hear the merits of a claim it does not have jurisdiction over, the *Heck* bar is jurisdictional in nature. *See Heck*, 512 U.S. at 483-86; *Mejia*, 541 F. App'x at 710. Some courts have found that *Heck* is strictly jurisdictional. *See O'Brien v. Town of Bellingham*, 943 F.3d 514, 529 (1st Cir. 2019) ("Whether Heck bars § 1983 claims is a jurisdictional question that can be raised at any time during the pendency of litigation"); *Dixon v. Hodges*, 887 F.3d 1235, 1237 (11th Cir. 2018) (per curiam) ("The *Heck* rule . . . strips a district court of jurisdiction in a § 1983 suit"). Other courts have labelled a court's power to hear unripe actions "quasi-jurisdictional". *McCarney v. Ford Motor Co.*, 657 F.2d 230, 233 (8th Cir. 1981)

("The justiciability doctrine, for the purposes of claim preclusion, should be analyzed in the same way as subject matter jurisdiction").

In *O'Brien v. Town of Bellingham*, the plaintiff filed a § 1983 claim alleging that police officers used excessive force when they arrested him after he was found unresponsive in the woods. *O'Brien,* 943 F.3d at 518. On the night in question, the police officers responded to a report of an unresponsive, possibly intoxicated individual in the woods. *Id.* When they arrived, officers found the plaintiff and placed him under arrest, at which point the plaintiff became aggressive. *Id.* The plaintiff eventually pled guilty to several charges, including assault, battery, and resisting arrest. *Id.* The district court dismissed the plaintiff's claims on the grounds that it lacked subject matter jurisdiction under *Heck*. *Id.* at 525. The First Circuit upheld the district court's decision, rejecting the plaintiff's argument that the defendants waived any defense under the *Heck* doctrine by not raising it. *Id.* at 530. The court reasoned that an analysis whether a claim is barred by the *Heck* doctrine is a jurisdictional analysis that can be raised sua sponte at any point during litigation. *Id.*

Much like *O'Brien,* the courts below did not have jurisdiction to hear Mr. Shelby's three prior § 1983 claims. *See id.* at 525. Because Mr. Shelby did not satisfy *Heck's "*favorable termination" prerequisite, his claim was not yet ripe for adjudication. *See Heck*, 512 U.S. 483-86. Following the First Circuit's reasoning in *O'Brien*, the court would have been required to dismiss Mr. Shelby's claims under *Heck* regardless of whether the defendant raised the challenge. *See O'Brien*, 943 F.3d at 530. In fact, the court would have been required to dismiss Mr. Shelby's claims the instant it became apparent that his claims were barred by *Heck* regardless of whether his underlying claims had merit. *See id.* Because the court's power to hear

the merits of Mr. Shelby's § 1983 claims was limited by the jurisdictional nature of the *Heck* doctrine, his dismissals do not count as a strike under 1915(g) for failure to state a claim.

b. Heck's favorable termination requirement is an affirmative defense, so a dismissal is not a strike for failure to state a claim.

Favorable termination is an affirmative defense, not an element of a claim under 42 U.S.C. § 1983. *Polzin v. Gage*, 636 F.3d 834, 837-38 (7th Cir. 2011) (finding that the *Heck* doctrine functions as an affirmative defense that can be waived). 42 U.S.C. § 1983 requires that a claimant need only allege conduct constituting a "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" committed "under color of [state law]" to bring a claim under the statute. 42 U.S.C. § 1983. A claimant need not prove their conviction has been favorably resolved to bring the initial claim. *See Washington*, 833 F.3d at 1056. The favorable termination requirement outlined in *Heck* does not impose a special pleading requirement for § 1983 claims. *Heck*, 512 U.S. at 489. The burden of proving favorable termination only shifts to the plaintiff when their claim has been challenged as being barred by the *Heck* doctrine. *See id.* at 487. Similarly, affirmative defenses are raised by the defendant in an action. *Affirmative Defense, Black's Law Dictionary* (11th ed. 2019). Therefore, an affirmative defense is not grounds for dismissing an action for "failure to state a claim" unless the affirmative defense appears on the face of the complaint. *Jones v. Bock*, 549 U.S. 199, 215 (2007) (holding that the PLRA does not change the pleading requirements for a complaint to require a prisoner to plead facts in anticipation of an affirmative defense). Affirmative defenses under the PLRA do not count as strikes. *El-Shaddai v. Zamora*, 833 F.3d 1036, 1044 (9th Cir. 2016) (finding that the plaintiff's failure to exhaust administrative remedies was not a strike under the PLRA).

In *Washington v. Los Angeles County Sheriff's Department*, the plaintiff has previously brought three claims under § 1983, all of which were dismissed under *Heck*. 833 F.3d at 1056. The Ninth Circuit looked to the text of § 1983 to determine whether a favorable termination of the plaintiff's conviction was a necessary element of a claim brought under the statute. *Id.* Upon determining that favorable termination was not a necessary element of the claim, the Ninth Circuit reasoned that compliance with *Heck* most closely resembles the mandatory administrative exhaustion requirement for PLRA claims – an affirmative defense. *Id.* The Ninth Circuit reasoned that, like an affirmative defense, *Heck* dismissals do not reach the merits of a case, serving instead as a means of judicial traffic control. *Id.* (internal citations omitted). The Ninth Circuit concluded that the only time that a court could properly dismiss an action for "failure to state a claim" is when the fact that the plaintiff would be barred from relief under *Heck* is plain from the face of the complaint itself. Therefore, only one of the plaintiff's dismissed § 1983 claims counted as a strike for "failure to state a claim" because in the complaint itself the plaintiff explicitly asked the court to "recall" his unlawful sentence. *Id.*

In *El-Shaddai v. Zamora*, the plaintiff was denied IFP status on the grounds that he had accrued more than three strikes. 833 F.3d at 1043. On appeal, the Ninth Circuit analyzed ten of the plaintiff's prior cases to determine whether they counted as strikes under the PLRA. *Id.* At 1044. One of the plaintiff's prior cases was dismissed because he had not exhausted all administrative remedies before bringing the claim. *Id. a*t 1043. The Ninth Circuit acknowledged that exhaustion of all administrative remedies is a requirement under the PLRA but reasoned that this requirement is an affirmative defense because the plaintiff does not have to "affirmatively allege that he has done so in order to state a cognizable claim." *Id.* (citing *Jones v. Bock*, 549 U.S. 199, 215 (2007)). Relying on the fact that the district court had to look outside the four

corners of the complaint to determine whether the plaintiff had met this requirement, the Ninth Circuit reasoned that it was not clear from the face of the complaint that the plaintiff had not exhausted all administrative remedies and could not be dismissed for "failure to state a claim". *Id. a*t 1044.

Like the plaintiff in *Washington*, Mr. Shelby brought three prior claims under § 1983, all of which were dismissed as being barred by the *Heck* doctrine. (R. at 3); 833 F.3d at 1056. Similar to the plaintiff *El- Shaddai,* Mr. Shelby was not required to prove that he met *Heck's* "favorable termination" requirement when he filed the complaint. *El-Shaddai*, 833 F.3d at 1043. Additionally, like in *Washington,* the court never reached the merits of Mr. Shelby's complaint prior to dismissing it. 833 F.3d at 1056. Therefore, the courts below should have treated these dismissals as resulting from an affirmative defense, not failure to state a claim. *See id.; El-Shaddai*, 833 F.3d at 1043. Furthermore, there is no indication in the record that it was clear from the face of the complaint that Mr. Shelby's claims were *Heck*-barred. Because a *Heck* dismissal is an affirmative defense, and affirmative defenses are not strikes under the PLRA, Mr. Shelby does not have three-strikes under § 1915(g) and may proceed IFP.

B. Claims that are Dismissed on the Grounds that they Should have been Brought Under Habeas Corpus do not Qualify as Strikes Under § 1915(g).

The PLRA's three strikes provision does not cover habeas claims. The three strikes provision bars a prisoner from proceeding IFP when bringing "a civil action" or appealing "a judgment in a civil action" if "an action or appeal" was dismissed on enumerated grounds on "3 or more prior occasions." 28 U.S.C. § 1915(g). Many courts have found that this provision does not include habeas petitions. *See, e.g.*, *Andrews v. King*, 398 F.3d 1113, 1122 (9th Cir. 2005); *Jennings v. Natrona Cnty. Det. Ctr. Med. Facility*, 175 F.3d 775, 779 (10th Cir. 1999), *overruled on other grounds by, Black v. Wafai*, No. 22-1037, 2022 WL 1789040 (10th Cir. June 2, 2022);

Santana v. United States, 98 F.3d 752, 754 (3d Cir. 1996); *In re Nagy*, 89 F.3d 115, 117 (2d Cir. 1996). In *El-Shaddai,* the plaintiff filed two claims, one of which he brought under § 1983, that that the district court dismissed on the grounds that the sole remedy sounded in habeas. 833 F.3d at 1046. The Ninth Circuit reasoned that both claims were essentially mislabeled habeas claims. *Id.* at 1046-47. According to the Ninth Circuit, district courts should construe § 1983 claims challenging the fact or duration of the plaintiff's sentence as a petition for habeas corpus when the complaint shows a clear intention to state a habeas claim. *Id.* at 1047. Therefore, a habeas petition that is mislabeled as a § 1983 claim should not count as a strike under § 1915(g) of the PLRA. *Id.* Like the plaintiff in *El-Shaddai,* Mr. Shelby's three prior § 1983 claims were merely mislabeled habeas petitions. Mr. Shelby's claims were all dismissed on the grounds that they would challenge his conviction or sentence. (R. at 3) Pursuant to *Heck* and the reasoning set forth in *El-Shaddai,* Mr. Shelby's sole remedy was through habeas. *See Heck,* 512 U.S. at 489; *El-Shaddai,* 833 F.3d at 1046-47. Therefore, Mr. Shelby's prior § 1983 claims do not count as a strike, and he may proceed IFP.

II. THE COURT'S DECISION IN *KINGSLEY V. HENRICKSON* ELIMINATES THE REQUIREMENT FOR A PRETRIAL DETAINEE TO PROVE A DEFENDANT'S SUBJECTIVE INTENT IN A DELIBERATE INDIFFERENCE FAILURE-TO-PROTECT CLAIM FOR A VIOLATION OF THE PRETRIAL DETAINEE'S FOURTEENTH AMENDMENT DUE PROCESS CLAUSE IN A 42 U.S.C. § 1983 ACTION.

This Court reviews dismissals for failure to state a claim *de novo,* accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff. *Leal v. Wiles*, 734 F. App'x 905, 907 (5th Cir. 2018). Inmates can usually be split into two groups: (i) pretrial detainees and (ii) convicted prisoners. Pretrial detainees are individuals incarcerated for the period of time between being charged with a crime and being tried on the charge. *Bell v. Wolfish* 441 U.S. 520, 523 (1979). Meaning these individuals have not received a lawful

"determination of their guilt or innocence" since they have not had due process of law. *Id.* The purpose of pretrial detention is to ensure arrested individuals awaiting a potential conviction do not flee, or, to remove any potential danger to society if the individual is deemed to possibly pose such a threat. *See U.S. v. Salerno*, 481 U.S. 739, 748 (1987) (holding "the government may detain individuals whom the government believes to be dangerous"). Pretrial detainees and convicted prisoners have distinct and different constitutional rights that impact the way courts address claims brought forward by either of the two groups. *Bell*, 441 U.S. at 535. The effects of this distinction have been discussed in jurisprudence. *Id.*

The prominent Supreme Court case examining the rights of pretrial detainees is *Bell v. Wolfish*. *Bell* outlines the distinctions between pretrial detainees and convicted prisoners, emphasizing that convicted prisoners challenge prison conditions or excessive force claims on the basis that they violate their constitutional rights under the Eighth Amendment's bar on "cruel and unusual punishment," U.S. Const. Amend. VIII., whereas pretrial detainees are provided greater constitutional protections under the Fourteenth Amendment's Due Process Clause in that "pretrial detainees cannot be punished *at all*." *Bell*, 441 U.S. at 535-37; U.S. Const. Amend. XIV, §1. While pretrial detainees are protected against all forms of punishment, convicted criminals can be punished without violation of their Fourteenth Amendment rights because the punishment may be in relation to their charged crime or incident to incarceration. U.S. Const. Amend. XIV, §1; U.S. Const. Amend VIII.

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend VIII. The Supreme Court expanded on this, writing, "the basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to

punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards." *Trop v. Dulles,* 356 U.S. 86, 100-01 (1985); U.S. Const. Amend. VIII. Only after an inmate has been given due process, and is convicted through lawful prosecution, can action by the government toward an inmate be subject to scrutiny under the Eighth Amendment. *Ingraham v. Wright,* 430 U.S. 651, 671 (1977); U.S. Const. Amend. VIII. The Supreme Court in *Whitley v. Albers* emphasized that "the Cruel and Unusual Punishment Clause was designed to protect those convicted of crimes" 475 U.S. 312, 318-19 (1985).

The Fourteenth Amendment provides in relevant part: **"**No State shall deprive any person of life, liberty, or property without due process of law." U.S. Const. Amend. XIV, §1. The Supreme Court has explained that any form of punishment from the government implicates liberty rights, meaning that individuals have a right to be free from government-imposed punishment without receiving due process of law. *Bell,* 441 U.S. at 535; U.S. Const. Amend XIV, §1.

Section 1 of the Civil Rights Act of 1871, codified as 42 U.S.C. § 1983, provides a civil remedy for a "federal cause of action for constitutional violations inflicted by state actors." 42 U.S.C. § 1983; *Monroe v. Pape,* 365 U.S. 167, 172 (1961). § 1983 provides in pertinent part: "any citizen of the United States or other person within the jurisdiction thereof" may have a cause of action against a state actor who deprives the person of "any rights, privileges, or immunities secured by the Constitution and laws." 42 USC § 1983. Through the years, the Supreme Court has created various state-of-mind standards for § 1983 claims based on the type of claim, excessive force or conditions of confinement, and the status of the plaintiff, a convicted prisoner or pretrial detainee. *See Farmer v. Brennan,* 511 U.S. 825 (1994); *Kingsley v. Hendrickson,* 576 U.S. 389 (2015). §1983 contains no state-of-mind requirement. *Bd. of Cnty.*

Comm'rs of Bryan Cty v. Brown, 520 U.S. 397, 405 (1997). As the Supreme court noted in *Farmer v. Brennan,* "'deliberate indifference' is a judicial gloss, appearing neither in the Constitution nor in a statute." 511 U.S. at 840.

There are two types of claims that inmates generally bring in a §1983 action: (i) excessive force or (ii) inadequate conditions of confinement. *See Kingsley,* 576 U.S. at 405-06. When assessing §1983 claims, the court must first determine which constitutional provision is appropriate for the plaintiff's claim. *See Graham v. Connor*, 490 U.S. 386, 394 (1989) (noting that the "analysis begins by identifying the specific constitutional right allegedly infringed"). This distinction impacts the state-of-mind standard that courts will apply when faced with a §1983 lawsuit brought by an inmate. *Ingraham*, 430 U.S. at 670-72. As previously noted, the Eighth Amendment prohibits cruel and unusual punishment against convicted prisoners, U.S. Const. amend. VIII; whereas the Fourteenth Amendment ensures pretrial detainees the right to due process of law. U.S. Const. Amend. XIV, §1.; *Bell*, 441 U.S. at 535.

A. The Objective Standard Outlined in *Kingsley v. Hendrickson* Should be Extended to Pretrial Detainee Failure-to-Protect §1983 Claims Because it is Supported by the Text and Scope of the Fourteenth Amendment's Due Process Clause, and the Application of the Subjective Standard Outlined in *Farmer v. Brennan* to § 1983 Claims by Pretrial Detainees is not Legally Sound in that it Distorts Supreme Court Precedent and Evades Proper Analysis of the Limitations of the Fourteenth Amendment.

For pretrial detainees, the Fourteenth Amendment, not the Eighth Amendment, controls, thus, pretrial detainees have stronger protection than convicted prisoners to be free from punishment and the officer's actions constitute punishment. U.S. Const. Amend. XIV, §1.; U.S. Const. Amend. VIII.; *Bell*, 441 U.S. at 535-37.

Where there has been no "formal adjudication of guilt…the Eighth Amendment has no application." *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983), quoting *Ingraham,* 430 U.S. at 672. § 1983 claims brought by pretrial detainees are scrutinized under the Fourteenth

Amendment Due Process Clause and as such, pretrial detainees are afforded stronger constitutional protections than convicted prisoners under the Eighth Amendment. *Bell,* 441 U.S. at 535-37. U.S. Const. Amend. XIV, §1; U.S. Const. Amend. VIII.

The Supreme Court in *Kingsley* noted the legally innocent status of pretrial detainees, as they have not had a lawful "determination of guilt or innocence," finding that they are owed a constitutional due process right to be free from punishment prior to a lawful prosecution and conviction. 576 U.S. at 399; *Bell,* 441 U.S. at 535. The rationale behind the opinion in *Kingsley* provided authority for appellate courts to overturn cases using Eighth Amendment standards as a basis for rejecting claims brought by pretrial detainees. *Kingsley* involved a pretrial detainee's allegations that prison officers had used excessive force to debilitate him. *Id.* at 393. The Court held that the law surrounding the Eighth Amendment does not provide the analysis that should be applied to claims made by pretrial detainees under the Fourteenth Amendment. *Id.* at 400. The Court stressed the different functions of the Eighth Amendment's Cruel and Unusual Punishments Clause and the Fourteenth Amendment's Due Process Clause as applied to cases of pretrial detainees versus convicted prisoners. *Id.;* U.S. Const. Amend. VIII; U.S. Const. Amend. XIV, §1.

Various circuit courts have grappled with this constitutional distinction. The Ninth Circuit in *Castro v. County of Los Angeles* found in a failure-to-protect claim by a pretrial detainee "[t]he underlying federal right arises under the Due Process Clause, rather than the Eighth Amendment's Cruel and Unusual Punishment Clause." 833 F.3d 1060, 1069-70 (9th Cir. 2016); U.S. Const. Amend. VIII; U.S. Const. Amend. XIV, §1. The Seventh Circuit held that inadequate medical care claims brought by pretrial detainees are scrutinized under the Fourteenth Amendment, not the Eighth Amendment. *Miranda v. Cnty. of Lake,* 900 F.3d 335, 352 (7th Cir.

2018). The court reasoned that pretrial detainees "stand in a different position" than prisoners since they are "still entitled to the constitutional presumption of innocence," further noting that the Supreme Court has cautioned that the "Eighth Amendment and Due Process Analyses are not coextensive." *Id.* at 350, 352 citing *Kingsley,* 576 U.S. at 400. The Sixth Circuit in *Brawner v. Scott County* found that "given *Kingsley*'s clear delineation between claims brought by convicted prisoners under the Eighth Amendment and claims brought by pretrial detainees under the Fourteenth Amendment, applying the same analysis to these constitutionally distinct groups is no longer tenable." 14 F.4th 585, 596 (6th Cir. 2021).

Here, much like the claimant in *Kingsley, Castro, Miranda,* and *Brawner,* Mr. Shelby is a pretrial detainee, not a convicted prisoner. (R. at 4) Mr. Shelby has not yet been afforded due process of law and thus, according to Supreme Court precedent and the limitations of the Fourteenth Amendment, his claim should be examined under the Due Process Clause under the Fourteenth Amendment as opposed to the Cruel and Unusual Punishment Clause under the Eighth Amendment, ultimately affording him stronger constitutional protections. U.S. Const. Amend. VIII; U.S. Const. Amend. XIV, §1.

Despite the Supreme Court establishing that that the Due Process Clause, not the Eighth Amendment, governs challenges and claims brought by pretrial detainees, many circuit courts continue to apply the Eighth Amendment's Cruel and Unusual Punishment standard when addressing claims by pretrial detainees. *Compare Bell,* 441 U.S. at 535-37 (holding pretrial detainee claims are scrutinized under the Fourteenth Amendment), *and Kingsley,* 576 U.S. at 400 (emphasizing pretrial detainees are owed a constitutional right of due process under the Fourteenth Amendment), *with Hamm v. Dekalb County,* 774 F.2d 1567, 1574 (11th Cir. 1985) (holding conditions of confinement claims can be analyzed under the same standard for pretrial

detainees and convicted prisoners), *and De Veloz v. Miami Day County*, 756 Fed.Appx. 869, 876 (11th Cir. 2018) (holding the standards in a § 1983 are the same under the Fourteenth Amendment and the Eighth Amendment).

To illustrate how a multitude of circuits are reasoning in contravention with Supreme Court jurisprudence, the Eleventh Circuit runs afoul of the Court's express holdings, relying instead on its own finding in *Hamm v. Dekalb County's* that the "standards governing a pretrial detainee's conditions of confinement claim under the Fourteenth Amendment can equally and fairly be measured by the same standard as the Eighth Amendment." 774 F.2d at 1574; *See also Edwards v. Gilbert*, 867 F.2d 1271, 1274 (11th Cir. 1989) (holding that because *Hamm* held the standards for pretrial detainees and convicted prisoners are the same, a pretrial detainees claim did not require a separate analysis).

As a result of these circuit courts erroneously applying the Eighth Amendment analysis to pretrial detainee claims, pretrial detainees and convicted prisoners must meet the same standard in § 1983 claims to be able to hold government officials liable for harm: proving a subjective state-of-mind. *See Leal,* 734 F.App'x at 910-12 (holding that in a failure-to-protect claim, a pretrial detainee must show the official actual knowledge).

Applying this result to Mr. Shelby's claim goes against both the Supreme Court and the Fourteenth Amendment. *See Ingraham,* 430 U.S. at 670-72 (asserting that the "Eighth Amendment had no place in analyzing the claims of those not convicted of crimes"). Supreme Court precedent necessitates a pretrial detainee's claims of unconstitutional conditions of confinement and excessive force to be governed by the Due Process Clause of the Fourteenth Amendment, *Benjamin v. Fraser*, 343 F.3d 35, 49 (2d Cir. 2003), because "[p]retrial detainees have not been convicted of a crime and thus 'may not be punished in any manner— neither

cruelly and unusually nor otherwise.'" *Darnell v. Pineiro*, 849 F.3d 17, 30 (2nd Cir. 2017); *Iqbal v. Hasty*, 490 F.3d 143, 168 (2d Cir. 2007) quoting *Benjamin*, 343 F.3d at 49–50; U.S. Const. Amend. XIV, §1. Thus, Mr. Shelby's claim as a pretrial detainee should be examined under the Fourteenth Amendment, not the Eighth Amendment, therefore affording him stronger constitutional protections.

The circuits that do not extend *Kingsley's* objective state-of-mind standard to pretrial detainees' claims are distorting Supreme Court precedent and evading proper analysis of the limitations of the Fourteenth Amendment.

Pretrial detainees cannot be punished at all. U.S. Const. amend. XIV, §1. Punishment can be defined in two ways: (i) where there is an "expressed intent to punish," requiring an inquiry into the actor's state-of-mind, or (ii) where restrictions or practices are not "rationally related to a legitimate nonpunitive governmental purpose" and whether they appear "excessive in relation to that purpose." *Bell*, 441 U.S. at 561. Therefore, pretrial detainees' Fourteenth Amendment right is to be free from punishment because it was not imposed "for the purpose of punishment," or it was "rationally related to a legitimate nonpunitive governmental purpose." *Id.* at 538, 541, 561. The "rationally related" test set forth in *Bell* provides pretrial detainees with an opportunity to succeed on claims using only objective state-of-mind evidence. *See Kingsley*, 576 U.S. at 398 (stating "As *Bell* itself shows (and as our later precedent affirms), a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate objective or is excessive in relation to that purpose").

Kingsley's interpretation of *Bell*, which has been adopted and implemented in the Second, Sixth, Seventh and Ninth Circuits, is correct. In *Kingsley*, the inmate's use of a piece of paper to cover his light fixture, which is what led to his excessive force beating by officers, was a

common practice by inmates seeking to dim the jail's light. *Id.* at 392. The Court concluded that the use of force against the inmate for refusing to remove the paper from the light was excessive in relation to the legitimate government objective of official's ability to exert force when inmates refuse to comply with orders, thus the inmate only needed objective evidence to prevail on his claim. *Kingsley,* 576 U.S. at 397-98. The Court reasoned the application of the objective standard comported with the training provided to officers who interact with detainees. *Id.* at 398

The Second Circuit held that an official can violate the Due Process Clause "without meting out any punishment," meaning that an official can violate a pretrial detainee's Fourteenth Amendment's Due Process without having subjective awareness that the official's acts, or failures to act, subjected the pretrial detainee to a "substantial risk of harm." *Darnell,* 849 F.3d at 35. There, a class of plaintiffs alleged that they were subjected to "punitive conditions" in pretrial detention, including overcrowding, poor sanitation, extreme temperatures, and officer's failing to protect inmates from other inmates. *Id.* at 23. The court noted "[o]ur Constitution and societal standards require more, even for incarcerated individuals, and especially for pretrial detainees who cannot be punished by the state." *Id.* at 37 quoting *Cano v. City of N.Y.,* 44 F.Supp.3d 324, 333 (E.D.N.Y. 2014). The court went on, "the focus of *Bell* and its progeny on punishment 'does not mean that proof of intent (or motive) to punish is required for a pretrial detainee to prevail on a claim that his due process rights were violated' or that the "application of *Bell*'s objective standard should involve subjective considerations.'" *Darnell,* 849 F.3d at 34 quoting *Kingsley,* 576 U.S. at 397-99. The court held that harmful conditions of confinement such as the ones present in *Darnell* may constitute objective constitutional deprivations. 849 F.3d at 39.

The Seventh Circuit in *Miranda* similarly interpreted and relied on *Bell*'s emphasis that pretrial detainees are not only protected from acts expressly intended to punish but can still succeed on claims where there is a clear showing that the conditions of confinement were not "rationally related to a legitimate nonpunitive governmental purpose." *Miranda,* 900 F.3d at 351 quoting *Bell,* 441 U.S. at 561. There, a woman failed to appear for jury duty, wound up in county jail as a pretrial detainee, and died while in custody. *Miranda* at 341. During her incarceration, she refused to eat or drink. *Miranda,* 900 F.3d at 341. The medical providers who worked at the jail did little other than monitor her as she "wasted away in her cell." *Id.* Her estate sued several of the jail's healthcare providers for inadequate medical care. *Id.* at 341-42. The court found that this was "not a case in which the Jail knew that hunger strikes were at risk yet did nothing. It had a system in place, and that system included a series of reasonable measures." *Id.* at 344. The court further found, "[i]n this situation, there is no amount of process that would justify a decision to sit by and leave serious medical needs unattended." *Id.* at 353. The court noted that pretrial detainees "cannot be punished at all," and that "they are also protected from certain abusive conditions." *Id.* at 350. *See also Brawner,* 14 F.4th at 608 quoting *Bell,* 441 U.S. at 561 (stating "even absent an expressed intent to punish, objectively unreasonable force amounts to punishment").

Here, Mr. Shelby's life-threatening injuries, including "penetrative head wounds from external blunt force trauma resulting in traumatic brain injury… fractures of three different ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding," (R. at 7) did not result from conditions "rationally related to a legitimate nonpunitive governmental purpose." *Bell,* 441 U.S. at 561. Officer Campbell failed to comply with Marshall jail's policy, and acting contrary to jail policy is clearly not a rationally related governmental purpose. (R. at

5) As delineated in Supreme Court precedent, while there may not have been "express intent to punish" from Officer Campbell in Mr. Shelby's claim, he can still prevail. *Kingsley,* 576 U.S. at 397-98.

As the court noted in *Darnell,* Mr. Shelby is a pretrial detainee and as such, requires stronger constitutional and societal standards against punishment by the state. *Darnell,* 849 F.3d at 37; (R. at 4) Officer Campbell's failure to acknowledge the copious warning signs put out by the jail to protect inmates from substantial risks of harm, and as a result, causing Mr. Shelby a substantial amount of harm, constitutes objective constitutional deprivation. (R. at 5-7); *Darnell,* 849 F.3d at 39.

Similarly, like *Miranda,* Mr. Shelby's case involved a system in place, one that included a series of reasonable measures to prevent substantial harm such as this, that were ignored. (R. at 4-7) The actions by Officer Campbell went directly against the policies of the jail meaning that the life-threatening injuries suffered by Mr. Shelby were not related to a legitimate nonpunitive governmental purpose, and ultimately qualify as a form of punishment as described in *Bell* and interpreted in *Kingsley.* (R. at 5-7); *Bell,* 441 U.S. at 535-37; *Kingsley,* 576 U.S. at 398. The Marshall jail is aware of the high gang violence (R. at 4) and has put policies in place to help protect inmates seeing as they are extremely limited in their abilities to protect themselves while incarcerated. (R. at 4-5) The prison created an online database with files for each inmate listing "gang affiliation and other pertinent statistics and data that jail officials would need to know." *Id.* All of Mr. Shelby's information was properly recorded, reviewed, and edited by gang intelligence officers who paid special attention because of Mr. Shelby's high-ranking gang member status. (R. at 4-5) Along with making a special note of Mr. Shelby's file, printing out notices and leaving them in every administration area, indicating Mr. Shelby's status on rosters

and floor cards, the jail also held a meeting to notify officers of Mr. Shelby's presence taking special care to keep Mr. Shelby separate from rival gang members in common spaces. *Id.* Despite the jail's strong emphasis on protecting gang-affiliated inmates from potential members of rival gangs and on ensuring that there are procedures almost every step of the way to inform officers of various inmates to make special note of as an effort to protect and keep safe, Mr. Shelby's life-threatening injuries followed from Officer Campbell failing to take the steps required and mandated by the jail. (R. at 5) Like *Miranda,* there is no justification to sitting by and ignoring duties and measures that have been put into place to protect inmates. 900 F.3d at 344. Thus, Mr. Shelby's brutal beating qualifies as a form of punishment and therefore violates his constitutional rights under Fourteenth Amendment.

The Fifth Circuit's interpretation of *Bell* is incorrect because it relies on its own precedent in *Hare v. City of Corinth*. 74 F.3d 633 (5th Cir. 1996). *Hare* created a policy distinction that is unsupported by Supreme Court precedent and unsupported by the text of the Fourteenth Amendment, holding that the "reasonably related" punishment test set forth in *Bell* can only be applied to customs or policies. *Id.* at 645; U.S. Const. Amend. XIV. The result being policies employed by prisons use the objective standard, however, the acts of officials and officers are reviewed under the subjective standard. *Id*. *See* Judge Graves dissenting in *Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415, 424 (5th Cir. 2017) (dissenting as to the majority's decision not to apply *Kingsley* because it is bound to its precedent under *Hare*). However, the Supreme Court in cases following *Bell* did not suggest by "words or analysis that its application of *Bell's* objective standard should involve subjective considerations." *Kingsley,* 576 U.S. at 399. *See Schall v. Martin*, 467 U.S. 253 (1984); *Block v. Rutherford*, 468 U.S. 576 (1984).

The Due Process Clause's protection extends to an official's failure to protect pretrial detainees. U.S. Const. amend. XIV, § 1; *See Kingsley*, 576 U.S. at 400; *Bell*, 441 U.S. at 535-37. Here, Officer Campbell's failure-to-protect Mr. Shelby resulted in a pretrial detainee, wrongfully faced with substantial risk of harm, receiving life-threatening injuries. (R. at 7) Officer Campbell actions constitute a constitutional deprivation. *See Darnell,* 849 F.3d at 39. Government officials have a constitutional duty to protect detainees from a substantial risk of harm, and harmful conditions of confinement. *Bell,* 441 U.S. at 536-37. This should include the protection of inmates from other inmates, especially when the jail has already put reasonable procedures in place due to the high volume of at-risk inmates. (R. at 4-7) Mr. Shelby has not received a lawful conviction and yet, still, suffered from life-threatening injuries due to both Officer Campbell's actions, and inactions. (R. at 7) This is inconsistent with the Supreme Court's statement in *Estelle*, "it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself." *Estelle v. Gamble,* 429 U.S. 97, 103-105 (1976).

B. Because the Fourteenth Amendment Applies, *Kingsley* Controls, and Because Circuit Courts are Erroneously Interpreting Supreme Court Precedent, Failure-to-Protect Claims Must be Analyzed Using an Objective Standard Instead of the Subjective Standard; and Here, Under the Proper Objective Standard, Mr. Shelby Wins.

Though *Kingsley*'s direct holding spoke only of excessive force claims, various circuit courts, the Second, Sixth, Seventh and Ninth, have held that the rationale in *Kingsley's* logic is not so constrained and as such have applied and extended *Kingsley's* objective standard test to various conditions of confinement claims in addition to excessive force claims, including inadequate medical care, failure-to-protect, and so forth. *See Darnell,* 849 F.3d at 35; *Brawner,* 14 F.4th at 592; *Miranda,* 900 F.3d at 350-52; *Castro,* 833 F.3d at 1070. While the circuit courts'

enumerated tests vary in their language, the basic premises and results are the same and we prevail under them all.

"Liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *County of Sacramento v. Lewis*, 523 U.S. 833, 834 (1998). Under the objective standard for § 1983 claims, plaintiffs still must prove the defendant's "state of mind with respect to the bringing about of certain physical consequences in the world" to avoid the risk of imposing liability for negligence. *See Kingsley*, 576 U.S. at 396 (noting "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim. But if the use of force is deliberate —*i.e.*, purposeful or knowing—the pretrial detainee's claim may proceed."). To meet the objective standard for § 1983 claims, which better comports with the Fourteenth Amendment than the subjective standard, a pretrial detainee must show only that (i) the force purposely or knowingly used against him was (ii) objectively unreasonable. *Id.* at 396-97; U.S. Const. Amend. XIV, § 1. Objective reasonableness requires a factual analysis on a case-by-case basis as it cannot be mechanically. *Kingsley*, 576 U.S. at 397.

The Ninth Circuit extended *Kingsley's* objective inquiry into pretrial detainees' failure-to-protect claims. *Castro* at 1070-71. The test applied by the court in *Castro* is a re-framing of *Kingsley's* prongs to better align with claims against conditions of confinement as opposed to *Kingsley's* claim against excessive force. *Castro* at 1071. In *Castro*, a pretrial detainee was placed in a sobering cell following his arrest for public intoxication. *Castro*, 833 F.3d at 1064. Officials shortly after placed a "combative" inmate in the cell with the pretrial detainee. *Id*. He was quickly attacked, resulting in injuries requiring hospitalization for over a month. *Id.* at 1065, 1073. The court held that the logic in *Kingsley* necessitated an objective evaluation of all

conditions of confinement cases brought by pretrial detainees. *Id.* at 1060. The court set forth elements for pretrial detainee § 1983 failure to protect claims:

> (i) the official made an intentional decision with respect to the plaintiff's conditions of confinement; (ii) the decision put the detainee at substantial risk of suffering serious harm; (iii) the official was objectively unreasonable in not fixing the risk; and (iv) the failure to undertake a fix caused the detainee's injuries.

Id. at 1086. The Ninth Circuit found that in the failure-to-protect context, "in which the issue is usually inaction rather than action, the equivalent is that the officer's conduct with respect to the plaintiff was intentional." *Id.* at 1070-71. The court illustrates examples of intentional inaction, writing, "if the claim relates to housing two individuals together, the inquiry at this step would be whether the placement decision was intentional." *Id.* at 1070. The court reasoned that the Supreme Court made clear that "prison officials have a duty to protect prisoners from violence at the hands of other prisoners because corrections officers have stripped the inmates of virtually every means of self-protection and foreclosed their access to outside aid" *Id.* at 1067 quoting *Farmer*, 511 U.S. at 833. *See also Gordon v. County of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018) (holding the proper standard for measuring pretrial detainee's claim of inadequate medical care to treat his opiate withdrawal is an objective one).

The Seventh Circuit extended *Kingsley* to pretrial detainee inadequate medical care claims in *Miranda*, where a pretrial detainee was arrested for failure to appear for jury duty and soon after died in pretrial custody. Her estate sued for inadequate medical care. *Miranda*, 900 F.3d at 342, 350, 352. Holding that pretrial detainees must show that (i) "the defendants acted purposely, knowingly, or recklessly when they considered the consequences of their actions," and (ii) "[t]he officer's action was objectively unreasonable. *Id.* at 353-54. The court found that the doctor's actions were unreasonable when taking a "wait and see" approach for a detainee who refused to eat or drink. *Id.* at 354. The Seventh Circuit reasoned that because "pretrial detainees

(unlike convicted prisoners) cannot be punished at all," a purely objective standard must guide their claims. *Id.* at 351. While *Miranda* extended *Kingsley* specifically to inadequate medical care claims, the Seventh Circuit has since held that the objective state-of-mind standard should be applied to all conditions of confinement claims. *See Hardeman v. Curran,* 933 F.3d 816, 819, 822 (7th Cir. 2019) (holding that there is no "principled reason not to" extend *Kingsley* to "the general conditions-of-confinement problem.").

The Second Circuit echoed this and applied the objective standard to pretrial detainees Fourteenth Amendment claims about inadequate conditions of confinement. *Darnell*, 849 F.3d at 35-35. In *Darnell*, pretrial detainees were subjected to severe overcrowding toilets covered with maggots, vomit, and feces, along with several other alleged constitutional violations. *Id.* at 24-25. The court held, "[u]nsanitary conditions, especially when coupled with other mutually enforcing conditions…can rise to the level of an objective deprivation." *Id.* at 30. The court found "[a] pretrial detainee may not be punished at all under the Fourteenth Amendment, whether through use of excessive force, by deliberate indifference to conditions of confinement or otherwise." *Id.* at 35. The court set out the considerations for the objective standard for a pretrial detainee's claim, finding that to satisfy the mental-state element in a conditions-of-confinement claim, a pretrial detainee only needs to prove that the defendant acted with objective deliberate indifference. *Id.* The court reasoned that *Kingsley's* excessive force claim analysis logically extended to conditions of confinement. *Id.* The Second Circuit has since used this same reasoning to apply an objective standard to claims of inadequate medical care. *See Bruno v. Schenectady,* 727 F.App'x 717 (2nd Cir. 2018); *Charles v. Orange Cty.*, 925 F.3d 73 (2nd Cir. 2019).

The Sixth Circuit joined in stepping away from the subjective deliberate indifference standard for claims by pretrial detainees in conditions of confinement claims. In *Brawner*, the Sixth Circuit was faced with an inadequate medical care for pretrial detainee with serious medical condition. *Brawner*, 14 F.4th at 586. The court agreed with other circuits in finding that the logic and rationale in *Kingsley* required modifying the subjective deliberate indifference state-of-mind standard for pretrial detainees, and instead applying an objective standard. *Id.* at 596. Following its own precedent in *Brawner*, the Sixth Circuit in *Westmoreland v. Butler County, Kentucky*, held that the analysis for deliberate indifference claims is a wholly objective consideration. 29 F.4th 721, 730 (6th Cir. 2022). There, a pretrial detainee was attacked by another violent detainee and as a result suffered severe physical injuries. *Id.* at 723. He had expressed concerns before the attack, yet the supervising jail official ignored him until it was too late. *Id.* at 725. The court found that "a defendant officer must act intentionally in a manner that puts the plaintiff at substantial risk of harm without taking reasonable steps to abate that risk, and by failing to do so actually cause the plaintiff's injuries." *Id.* at 729.

Here, Officer Campbell's actions were objectively unreasonable. Like *Castro* noted, in failure-to-protect claims, the issue is often inaction rather than action. The Ninth Circuit's illustration of intentional inaction was in an officer's decision to place two individuals together, the placement decision is the intentional inquiry. Mr. Shelby prevails under the test set forth in *Castro.* 833 F.3d at 1086. First, here, Officer Campbell made an intentional decision to place Mr. Shelby in a shared space with other inmates. (R. at 6) Officer Campbell made an intentional decision to retrieve Mr. Shelby from his cell, walk with him as he collected other inmates from a different block, and gather various inmates together. (R. at 6-7) Second, his actions were objectively unreasonable because despite receiving proper training he disregarded his duties and

as a result put an inmate at substantial risk of harm, consequently causing this inmate to suffer life-threatening injuries. (R. at 7) Third, Officer Campbell had ample opportunities provided to him by the jail to take special care to protect inmates that may be high risk, through the notices posted in every administrative officer in the jail, through Mr. Shelby's files which were properly updated and stored, through the required meeting held by gang intelligence officers, and through the statements made to Mr. Shelby in Officer Campbell's presence indicating that he was a member of a gang with a well-known rivalry. (R. at 4-7). Fourth, like the pretrial detainee in *Castro*, Mr. Shelby had been stripped of "virtually every means of self-protection" and Officer Campbell had a duty to protect Mr. Shelby, and his failure to do so resulted in Mr. Shelby's life-threatening injuries. (R. at 7)

Mr. Shelby likewise prevails under the test set forth in the Seventh Circuit. *Miranda,* 900 F.3d at 353-54. First, Officer Campbell acted recklessly when the consequences of his actions are considered, the consequences being Mr. Shelby's extensive injuries. (R. at 7) Second, Officer Campbell's actions were objectively unreasonable because, in *Miranda,* the court found that the "wait and see" approach taken by the doctor was objectively unreasonable, and Officer Campbells inaction regarding the safety of Mr. Shelby meets that standard. (R. at 4-7)

Similarly, in the Second Circuit, Mr. Shelby would need only to prove that Officer Campbell acted with objective deliberate indifference. *Darnell,* 849 F.3d at 35. In *Darnell,* the court held that the officials recklessly failed to act regarding the harmful conditions of confinement that the pretrial detainees were subjected to. *Id.* at 35-36. Here, Officer Campbell recklessly failed to act considering the strong emphasis the Marshall jail placed on inmates with gang affiliations safety concerns, and the fact that Officer Campbell had been properly trained and provided with copious warning signs that Mr. Shelby was at risk. (R. at 4-7)

Just as Mr. Shelby would prevail under the analysis of the Second, Seventh and Ninth Circuit, he would prevail under the objective standard analysis set forth by the Sixth Circuit. In *Westmoreland*, the court held that "a defendant officer must act intentionally in a manner that puts the plaintiff at substantial risk of harm without taking reasonable steps to abate that risk, and by failing to do so actually cause the plaintiff's injuries." 29 F.4th at 729. Like *Westmoreland,* the claim concerns an inmate attacking another inmate and a supervising jail official failing in their obligation to protect the injured inmate. *Id.* at 725; (R. at 4-7) Officer Campbell had been properly trained and therefore knew of the substantial risk of harm he would be causing inmates by failing to comply with Marshall jail policy and procedure. (R. at 5) Officer Campbell failed to take reasonable steps to abate the substantial risk of harm that Mr. Shelby faced and as a result, caused the extensive injuries suffered by Mr. Shelby. (R. at 5-7)

The Fifth, Eighth, and Eleventh Circuits have incorrectly kept the subjective state-of-mind deliberate indifferent standard for pretrial detainee claims under the Fourteenth Amendment, rejecting to modify the state-of-mind requirement as *Kingsley* so required. *Westmoreland*, 29 F.4th at 727; *See Leal*, 734 F.App'x at 910-12; *Whitney v. City of St. Louis,* 887 F.3d 857, 860 (8th 2018); *De Veloz*, 756 Fed.Appx. at 876. These circuits improperly rely on *Farmer's* decision as guidance for assessing deliberate indifference claims, overlooking the fact the fact that *Farmer's* reasoning was established in the Supreme Court's interpretation of the Eighth Amendment. *Farmer*, 511 U.S. at 837-40. The Sixth Circuit noted in *Brawner*, "we reject any argument that *Farmer* controls here until the Supreme Court tells us otherwise, because *Farmer* cannot fairly be read to require subjective knowledge where the Eighth Amendment does not apply," further explaining, "the Supreme Court has not held that *Farmer*'s subjective standard applies to Fourteenth Amendment pretrial-detainee medical-care claims." *Brawner*, 14

F.4th at 595-96 citing *Farmer,* 511 U.S. 825. The Sixth Circuit additionally notes in *Westmoreland,* "the court reviewed the history of the deliberate-indifference test, noting that in *Farmer*, the Supreme Court adopted the subjective component of the test for deliberate indifference under the Eighth Amendment *based on the language and purposes of that amendment*, focusing particularly on 'punishments.'" *Westmoreland,* 29 F.4th at 727-28 citing *Farmer,* 511 U.S. 825.

Officer Campbell failed to protect Mr. Shelby. (R. at 7) He made an intentional decision to place an inmate in a shared area without following proper protocol or take reasonable steps to protect Mr. Shelby, despite the jail putting a strong emphasis on the importance of these steps. (R. at 7) Notwithstanding receiving adequate training and knowing that the focus on gang affiliation in the jail is especially significant because of high gang activity in the town of Marshall, Officer Campbell unreasonably ignored signs and warnings, while failing at his proscribed duties. (R. at 4-7) He placed an inmate at risk of substantial harm. (r. at 6-7) The result of this was a pretrial detainee, whose guilt or innocence has yet to be determined, facing life-threatening injuries. (R. at 7) A reasonable officer would not have acted as Officer Campbell did.

C. Implementing the Objective Standard for § 1983 Claims Adequately Preserves the Rights of Pretrial Detainees, Comports with the Parameters of the Fourteenth Amendment, Aids Judicial Efficiency and Still Protects Officers Acting in Good Faith

As the circuit split stands now, pretrial detainees face different standards and requirements necessary to prevail on § 1983 claims depending on where the claim is brought. *Compare Castro,* 833 F.3d at 1070 (holding that the objective standard applies in failure-to-protect claims), *with Leal,* 734 F.App'x at 910-12 (holding that the subjective standard applies in failure to protect claims). The varying interpretations of the constitutional analysis, Eighth or

Fourteenth, and of the state-of-mind requirement, subjective or objective, have created geographical disparities in handling claims brought under § 1983. *See Id.*

There is a disparate protection of constitutional rights across circuits. *Compare Brawner*, F.4th at 596 (finding courts cannot apply the same analysis to "claims brought by convicted prisoners under the Eighth Amendment and claims brought by pretrial detainees under the Fourteenth Amendment" as they are "constitutionally distinct groups"), *with Gilbert*, 867 F.2d at 1274 (holding the standards for pretrial detainees and convicted prisoners are the same, and do not require a separate analysis).

Circuits ignoring *Kingsley* conflict with the constitutional guarantees of the Due Process Clause. U.S. Const. amend. XIV, § 1. Some circuits have followed the precedent set in the Supreme Court in having a separate analysis for pretrial detainees under the Fourteenth Amendment, where convicted prisoners' claims are evaluated against the protections of the Eighth Amendment, but others have failed to follow, resulting in constitutional deprivations based on geographic location. *Compare Nam Dang ex rel. Vina Dang v. Sheriff, Seminole County Florida*, 871 F.3d 1272, 1279 (11th Cir. 2017) (holding that *Kingsley's* objective standard rationale was confined to excessive force claims and did not apply to a pretrial detainee's claim against inadequate medical care), *with Brawner*, 14 F.4th at 595-96 citing *Farmer*, 511 U.S. 825 (noting "the Supreme Court has not held that *Farmer*'s subjective standard applies to Fourteenth Amendment pretrial-detainee medical-care claims.").

Incarcerated individuals are placed in potentially dangerous conditions, yet they are deprived of the ability to protect and care for themselves. *Estelle*, 429 U.S. at 103-105. Government officials have a duty to protect prisoners from a substantial risk of harm. *Id*. *Kingsley*'s interpretation of substantive due process puts important limits on the risk of abuse of

power in incarceration *Kingsley*, 576 U.S. 389. Moreover, there is a geographic disparity in the necessary state-of-mind for claims by pretrial detainees: where a pretrial detainee bringing a claim in a jurisdiction that confines *Kingsley* to only excessive force claims face a much higher and more difficult standard than a detainee that brings a claim in a jurisdiction that has extended *Kingsley* to conditions of confinement claims by examining the rationale and logic behind the Supreme Court's decision in *Kingsley*. *Compare Castro*, 833 F.3d at 1070, *with Leal*, 734 F.App'x at 910-12. This geographic disparity not only harms the individuals who are required to meet the same standard as convicted prisoners to prevail on their claims despite having stronger constitutional protections under the Fourteenth Amendment, it also creates a lack of trust from the public in the correctional system. The consequences that follow from faltering trust from the public can result in skepticism in the system, strengthening a desire for prison abolition.

In creating one uniform standard to apply to pretrial detainee's claims under § 1983, it will aid judicial efficiency. *See Kingsley*, 576 U.S. at 389-90 (stating "[e]xperience also suggests that an objective standard is workable. It is consistent with the pattern jury instructions used in several Circuits, and many facilities train officers to interact with detainees as if the officers' conduct is subject to objective reasonableness.") An objective standard crafted under the Fourteenth Amendment is workable for all conditions of confinement claims. *Id.* In having one workable standard, it will benefit courts and will discourage forum shopping. Additionally, implementing a uniform objective standard will still protect an officer's good faith action. *Id.* at 390. The first prong in *Kingsley* acknowledges and adapts to the understanding that negligence is not sufficient to create liability, thereby protecting officers who are acting in good faith and negating any risk that mere negligence will suffice in these claims. *Id.* at 399-400.

CONCLUSION

For the foregoing reasons Respondent Mr. Arthur Shelby, respectfully requests this Court affirm the United States Court of Appeals for the Fourteenth Circuit.

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