No. 23-05

In the
Supreme Court of the United States
October Term 2023

CHESTER CAMPBELL,
Petitioner,
v.

ARTHUR SHELBY,
Respondent.

On Writ of Certiorari to
the United States Court of Appeals
for the Fourteenth Circuit

BRIEF ON THE MERITS FOR PETITIONER

Team 11
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether a prisoner is entitled to file in forma pauperis despite the "strike" provision of the Prison Litigation Reform Act if three prior civil actions were all dismissed under *Heck v. Humphrey*.

2. Whether this Court's decision in *Kingsley* 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 Rights in a 42 U.S.C. § 1983 action.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

Page

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISION

UNITED STATES SUPREME COURT CASES

UNITED STATES CIRCUIT COURT CASES

UNITED STATES DISTRICT COURT CASE

STATUTES

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit appears in the record at pages 12–19. The dissent from that opinion appears in the record at pages 19–20. The opinion of the United States District Court for the Western District of Wythe appears in the record at pages 2–11. The denial of the respondent's motion to proceed in forma pauperis appears in the record at page 1.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution 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 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.

STATUTORY PROVISIONS INVOLVED

Section 1915 of Title 42 of the U.S. Code provides in relevant part:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or

> fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

42 U.S.C. § 1915(g).

Section 1983 of Title 42 of the U.S. Code provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983.

STATEMENT OF THE CASE

This case concerns the legal distinction between a state actor's negligence and the consequences of intentional inaction depriving a prisoner of his constitutional rights. R. at 5, 7. The facts of the case pertain to state efforts to curtail gang violence in jails and the administration of those policies. R. at 4–6. The Respondent, Arthur Shelby ("Shelby"), alleges that he is entitled to file suit in forma pauperis despite having three "strikes" under the PLRA for prior cases dismissed under *Heck v. Humphrey*. R. at 1. Respondent further alleges that the Petitioner, Officer Chester Campbell ("Campbell"), is liable under 42 U.S.C. § 1983 for deliberate indifference for failure-to-protect under an objective standard. R. at 16.

I. Statement of Facts

Shelby is a career criminal. R. at 1. His role as the second-in-command of the notorious street gang, the Geeky Binders, has seen Shelby in and out of prison for the last several years. R. at 3-. During this time, he filed three separate actions under 42 U.S.C. § 1983, all of which were dismissed as *Heck*-barred. R. at 3.

Shelby's Arrest and Booking: Pursuant to arrest warrants for Shelby and two other high-ranking members of the Geeky Binders, police raided a boxing match on December 31, 2020. R. at 3. The police arrested Shelby and charged him with battery, assault, and possession of a firearm by a convicted felon. R. at 4. Police took Shelby to the Marshall jail for booking. R. at 4. Experienced jail officer Dan Mann ("Mann") booked Shelby. R. at 4. Mann noted the effects identifying Shelby as a member of the Geeky Binders, including their signature weapon, an awl concealed in a pen. R. at 4. Shelby further identified himself as a member of the gang in verbal remarks made to Mann. R. at 4.

Pursuant to jail policy, Mann recorded Shelby's information in the jail's online database, which housed information such as medications, gang affiliation, inmate charges, and other relevant statistics. R. at 4–5. While in the database, Mann opened and viewed a preexisting file on Shelby's prior arrests. R. at 5. Once Mann had submitted the file, Shelby was transferred to a holding cell, and gang intelligence officers reviewed his file per jail procedure. R. at 4–5.

The gang intelligence officers took note of Shelby's gang affiliation. R. at 5. Shelby's brother and head of the gang, Thomas Shelby, had murdered the wife of the rival Bonucci gang's patriarch. R. at 3, 5. Aware that the Bonuccis were seeking revenge, the gang intelligence officers made a special note in Shelby's file and distributed paper notices throughout the prison. R. at 5.

The officers held a meeting of all jail officials the next morning. R. at 5. They reminded those in attendance to check rosters and floor cards regularly to ensure the rival gang would not come in contact with Shelby. R. at 5. For his protection, Shelby would be housed in cell block A, away from the Bonuccis in blocks B and C. R. at 5.

Campbell had been employed as an entry-level guard at the jail for several months when Shelby was booked. R. at 6. Although roll call records for the day of the meeting, January 1, 2021, indicate Campbell attended the meeting, he called in sick that morning and did not arrive at work in time for the meeting. R. at 5–6. A failure in the online database erased the record of whether Officer Campbell viewed the minutes for that meeting per jail policy in case of absences. R. at 6.

The Assault: One week later, on January 8, 2021, members of the rival Bonucci gang assaulted Shelby while he was waiting to be taken to recreation with other prisoners. R. at 6–7. Campbell oversaw the inmate transfers to and from recreation that day. R. at 6. Campbell approached Shelby in his cell and asked if he would like to go to recreation. R. at 6. Shelby indicated he would and followed Campbell to the guard stand to wait with other inmates headed to recreation. R. at 6. On the way there, an inmate shouted to Shelby, referencing his brother's murder of Bonucci's wife. R. at 6. Campbell did not check the hard copy list of inmates with special statuses he carried with him. R. at 6. Amongst the lists of inmates with special medical needs, violent tendencies, weapons found in jail, and gang affiliations was Shelby's name, indicating his risk of attack by the Bonuccis. R. at 6.

After leaving Shelby and another inmate from block A at the guard stand, Campbell retrieved three more prisoners from blocks B and C. R. at 7. These three were all members of the Bonucci gang. R. at 7. They immediately charged Shelby, beating him with their fists and a paper

club. R. at 7. Campbell tried to break up the attack, but the assailants overpowered him. R. at 7. Several minutes passed before other officers arrived to assist Campbell in finally breaking up the assault. R. at 7. Shelby was hospitalized as a result of his injuries. R. at 7. Shelby was subsequently found guilty of battery and possession of a firearm by a convicted felon and is imprisoned at Wythe Prison. R. at 7.

Officer Campbell is not a gang intelligence officer. R. at 5. He was new to the job at the time of the assault but had completed training and consistently met job expectations. R. at 5. Officer Campbell did not recognize Shelby at any time prior to the assault. R. at 6.

II. Procedural History

The District Court: Shelby filed this action pro se under 42 U.S.C. § 1983 against Campbell in his individual capacity. R. at 7. Shelby alleges Campbell violated his constitutional rights by failing to protect him as a pretrial detainee. R. at 7. The district denied Shelby's motion to proceed in forma pauperis pursuant to the PLRA three strikes provision. R. at 1, 7. The court granted Campbell's motion to dismiss for failure to state a claim, as Shelby did not allege that Campbell had actual knowledge of the danger to Shelby. R. at 11.

The Fourteenth Circuit: The United States Court of Appeals for the Fourteenth Circuit reversed. R. at 19. The court first determined that a *Heck* dismissal does not constitute a dismissal for failure to state a claim. R. at 15. The court then held that *Kingsley*'s objective standard of reasonableness in excessive force claims applied to deliberate indifference failure-to-protect claims by pretrial detainees. R. at 18–19. As such, the court found that Campbell acted in an objectively unreasonable manner. R. at 18–19.

SUMMARY OF THE ARGUMENT

I.

The Fourteenth Circuit erred in holding that Shelby's prior *Heck* dismissals were not "strikes" under the Prisoner Litigation Reform Act ("PLRA"). The PLRA, and its three strikes provision, is intended to prevent an inundation of frivolous prisoner claims in American courts. *Heck v. Humphrey* thus imposes a favorable termination requirement on claims that would question the validity of an underlying conviction. In doing so, *Heck* too aims to limit meritless litigation and safeguard judicial efficiency.

Since Shelby's prior claims were *Heck*-barred, they were meritless and thus constitute "strikes" under the PLRA for failure to state a claim. Even if the claims were merely premature, the PLRA issues strikes for dismissal of premature actions. This comports with the intent of both the PLRA and *Heck* in conserving judicial resources by discouraging prisoners from filing every suit possible without paying court fees.

This Court should reverse the Fourteenth Circuit's decision and hold that Shelby's *Heck* dismissals bar him from filing an action in forma pauperis.

II.

The Fourteenth Circuit erred in holding that *Kingsley*'s objective standard extends beyond excessive force claims to apply to deliberate indifference claims. *Kingsley*'s objective standard does not eliminate the subjective intent requirement in a pretrial detainee's failure-to-protect deliberate indifference claim because its holding narrowly applies to excessive force cases. Under the Fourteenth Amendment, pretrial detainees cannot be punished at all. But a government official is deliberately indifferent only if he knows of and disregards an excessive risk to health or safety

that amounts to punishment. *Kingsley* only addressed deliberate action that was inherently purposeful and required no in-depth subjective analysis. However, the nature and purpose of deliberate indifference claims require a subjective inquiry into the official's mindset because inaction is not inherently purposeful.

The distinction between deliberate action and inaction is apparent in *Kingsley*, as this Court aligned itself with its deliberate action precedent, *Bell*, and deviated from its deliberate inaction precedent, *Farmer*. However, this Court has never suggested that we remove the subjective component for claims addressing inaction. Rather, when an official's inaction has inadvertently created a dangerous situation, this Court has required a subjective inquiry to determine whether the official purposefully refrained from acting or did so negligently. This Court has never permitted constitutional compensation for negligent acts.

Moreover, a subjective analysis is required, regardless of the claimant's status under the Eighth or Fourteenth Amendments, to ensure the rights of every prisoner are equally protected. Outside of punishment, this Court has recognized that pretrial detainees' rights are at least as great as the Eighth Amendment protection for convicted prisoners. The government assumes the Constitutional duty to provide safety and general well-being when it holds an individual against their will. *Kingsley*'s application of an objective standard was limited to excessive force claims, and this Court's decision was consistent with the Fourteenth and Eighth Amendments' parallel analysis outside of punishment. A conviction should not make one more amenable under the Constitution to unnecessary random violence, suffering, or greater denial of basic human needs.

Additionally, if this Court were to adopt a solely objective standard, the standard would prove unworkable because it would stretch judicial resources, permit inconsistent determinations

of liability, and fail to protect officials who act in good faith. First, its implementation will incentivize negligence suits that force courts to use judicial resources to decide if a claim rises to a constitutional violation. Second, because negligence and deliberate indifference will resemble one another, the objective test will cause inconsistent conclusions regarding whether detainees' claims allege negligence or deliberate indifference. Third, under an objective standard, officials whose inaction is in good faith nevertheless will be subject to liability because their reason for refraining cannot be readily ascertained by objective factors.

This Court should reverse the Fourteenth Circuit's decision and hold that the subjective standard is required for deliberate indifference failure-to-protect claims.

ARGUMENT

The Fourteenth Amendment Due Process Clause protects pretrial detainees against constitutional violations before conviction through a § 1983 civil action. *See* U.S. Const. amend. XIV, § 1; *see also, e.g.*, *Block v. Rutherford*, 468 U.S. 576 (1984) (one of many cases analyzing claims for pretrial detainees under the Fourteenth Amendment). While a § 1983 claim allows a pretrial detainee to vindicate deprivations of his rights, the PLRA, and its three strikes rule, aim to curb the "flood of nonmeritorious" prisoner litigation that results. *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020) (highlighting the judicial policy underpinnings of the three strikes rule); *see also* 42 U.S.C. § 1983.

This Court should reverse the decision of the Fourteenth Circuit for two reasons. First, a *Heck* dismissal constitutes a PLRA "strike" for failure to state a claim when a prisoner's claim challenges the underlying conviction and thus triggers but fails to satisfy *Heck*'s favorable termination requirement. All three of Shelby's prior § 1983 claims would have called into question

his underlying conviction or sentence and were accordingly dismissed pursuant to *Heck*. R. at 3. Because none of these claims were first decided on the merits according to *Heck*'s favorable termination requirement, each count as a "strike" under the PLRA for failure to state a claim. Second, the *Kingsley* objective standard is exclusive to claims of deliberate action. *Farmer*'s subjective standard applies to Fourteenth Amendment deliberate indifference claims involving government inaction. Because Shelby's deliberate indifference failure-to-protect claim stems from Campbell's inaction, *Farmer*'s subjective analysis is required.

I. A *Heck* dismissal constitutes a Prison Litigation Reform Act "strike" because a premature, collateral attack on the underlying merits of a case fails to state a claim.

Although not automatic, *Heck* dismissals constitute a PLRA "strike" when a prisoner's claim attacks the underlying conviction or sentence and thus triggers but fails to satisfy *Heck*'s favorable termination requirement. *See Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994) (making favorable termination a requirement when a civil action challenges the underlying judgment). The PLRA bars prisoners from filing an action in forma pauperis if they have accrued three "strikes" from previously dismissed in forma pauperis filings. *See* 28 U.S.C. § 1915. Prisoners accumulate a "strike" every time "an action or appeal in a court of the United States [is] dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted . . . ." *Id.*

The U.S. Supreme Court's decision in *Heck* explicitly imposed a favorable termination requirement on claims whereby judgment in favor of the plaintiff would necessarily imply the invalidity of the underlying conviction or sentence. *See Heck*, 512 U.S. at 486-87; *see also Davis v. Kansas Dep't of Corr.*, 507 F.3d 1246, 1249 (10th Cir. 2007) (holding that, regardless of relief

sought, favorable termination is a requirement if the claim challenges the underlying conviction or sentence). As such, a district court must dismiss § 1983 claims if the underlying conviction or sentence has not been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 486–87. Conversely, if a plaintiff's action, even if successful, would not demonstrate the invalidity of his underlying judgment, the § 1983 action should be allowed to proceed. *Id.* at 487.

A review of *Heck*'s language coupled with case precedent shows that a *Heck* dismissal's status as a PLRA "strike" is dependent on the nature of the claim, whether the claim triggers the favorable termination requirement, and whether the prisoner satisfies such requirement. *Heck* sought to limit prisoner litigation and avoid collateral, premature attacks on the merits of a case. *See Heck*, 512 U.S. at 484. As such, the fact that the nature of the claim itself triggers the favorable termination requirement comports with this policy goal.

Accordingly, this Court should reverse the Fourteenth Circuit's decision for two reasons. First, Shelby's three prior actions all challenged his underlying conviction and thus triggered *Heck*'s favorable termination requirement. Second, because Shelby did not satisfy the favorable termination requirement on any of his three prior actions, they are all *Heck*-barred and constitute PLRA "strikes" for failure to state a claim.

A. *Heck*'s favorable termination rule becomes a requirement of a federal civil rights action when the claim challenges the underlying conviction or sentence.

Heck's favorable termination requirement applies to Shelby's three prior actions because each challenged the validity of his underlying sentence. R. at 3.

First, this Court, alongside various circuit courts, has long recognized that *Heck*'s favorable termination rule becomes a mandatory component of a § 1983 claim if, and only if, the plaintiff's allegations imply the invalidity of the underlying judgment. *See Muhammad v. Close*, 540 U.S. 749, 755 (2004); *see also Peralta v. Vasquez*, 467 F.3d 98, 100 (2d Cir. 2006) (holding that "[i]t is also clear that when a prisoner's challenge involves a sanction that affects only his conditions of confinement, this 'favorable termination' requirement does not apply and a prisoner may maintain an action under § 1983 without showing that the sanction . . . [has] been previously invalidated.").

In *Peralta*, an inmate at New York State's Department of Correctional services was sentenced to five years confinement, five years loss of packages, five years loss of good-time credits, telephone privileges, and commissary after he cut another inmate several times with a razor-like weapon. *See Peralta*, 467 F.3d at 100. Following a disciplinary hearing, the inmate filed a § 1983 suit claiming that the hearing violated his constitutional rights. *Id.* The court held that *Heck*'s favorable termination rule did not apply. *Id.* at 104. Therefore, the inmate could proceed with his claim because the underlying subject matter of his allegation did not relate to the fact of, duration, or term of his confinement or sentence. *Id.* The court reasoned that *Heck*'s favorable termination rule seeks to "prevent prisoners from using § 1983 to vitiate collaterally" a judicial decision that affects the length, term, duration, or mere fact of confinement. *Id.* Conditions of confinement, the court concluded, did not pose the judicial threat that *Heck* sought to quell. *Id.*; *see also Wilkinson v. Dotson*, 544 U.S. 74, 84 (2005) (asserting that prisoners are permitted to bring a § 1983 claim challenging the conditions of their confinement without being subject to *Heck*'s favorable termination rule). In fact, *Heck*'s favorable termination requirement was never

meant to apply to legal challenges that "[threaten] no consequence for [a prisoner's] conviction or the duration of his sentence." *Peralta*, 467 F.3d at 104.

Similarly, the court in *Jenkins v. Haubert* held that *Heck* does not bar claims challenging issues of confinement that have no effect on the fact, duration, or term of the underlying conviction. 179 F.3d 19, 21 (2d Cir. 1999) As such, *Heck*'s favorable termination requirement did not apply. *Jenkins*, 179 F.3d at 21. In *Jenkins*, the inmate was sentenced to administrative segregation via confinement in his cell, loss of contact with other inmates, and deprivation of participation in the normal prison routine. *Id.* The inmate subsequently filed a § 1983 claim alleging a violation of his constitutional rights because of the "imposition of intra-prison disciplinary sanctions." *Id.* The court reasoned that the suit was not *Heck*-barred because the violations alleged did not relate to the inmate's original conviction. *Id.* at 27. *Heck*'s language, when viewed in light of other circuit court decisions, demonstrates that "a § 1983 plaintiff must prove that the conviction or sentence" has been reversed, expunged, declared invalid, or called into question when judgment in favor of the plaintiff would "render a conviction or sentence invalid . . . ." *Id.* at 486. In choosing mandatory, unambiguous language, the *Heck* court intended the favorable termination requirement to become mandatory only to those § 1983 claims that challenge the underlying conviction or sentence.

Second, *Heck*'s purpose as "judicial traffic control" comports with *Heck*'s favorable termination requirement, given that favorable termination seeks to increase judicial efficiency and avoid conflicting resolutions. *See Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016). The court in *Washington* indicated that a *Heck* dismissal is indeed a "strike" under the PLRA when there exists an "obvious bar to securing relief on the face of the complaint."

Id. Washington also asserted that such deficiencies arise when prisoners seek to undermine their underlying conviction or sentence through a civil action. *Id.* (explaining that the "*Heck* deficiency was plain from the face of the complaint, as [the plaintiff] sought a 'recall' of his allegedly unlawful sentence . . . ."). Therefore, the holding in *Washington* aligns with the assertion that a *Heck* dismissal's status as a PLRA "strike" is dependent on the violations alleged in a prisoner's complaint. *Id.* (focusing on the fact that a bar to relief arises when a prisoner prematurely challenges his underlying conviction or sentence through a civil action).

Third, that *Heck* may be waived or bypassed by the courts does not undermine its application on prior dismissals. While the court's decision in *Polzin v. Gage* bestows a bypass power on the courts, its impact is not retroactive. 636 F.3d 834, 837–38 (7th Cir. 2011). Nowhere in *Polzin* does the court allow circuits to ignore *Heck*'s doctrine for *prior* dismissals. Plus, the *discretionary* power to bypass does not mandate that courts do so. Shelby's former actions have all already been dismissed. The Court today decides whether those dismissals, all three of which have already occurred, constitute PLRA "strikes." A court's ability to bypass the *Heck* doctrine in the future has no bearing on the present case.

Here, each of Shelby's three prior § 1983 claims, if not dismissed, would have challenged his underlying conviction or sentence. R. at 3. The allegations thus addressed more than secondary issues, such as conditions of confinement, having no impact on the validity of the charges. Because the nature of Shelby's claims prematurely challenged the merits of his conviction, *Heck*'s favorable termination requirement applied to all three actions.

B. If *Heck*'s favorable termination requirement applies but is not met, a claim is *Heck*-barred and constitutes a "strike" under the Prison Litigation Reform Act for failure to state a claim.

Because Shelby's three prior claims did not satisfy *Heck*'s favorable termination requirement, each is *Heck*-barred and thus counts as a "strike" under the PLRA for failure to state a claim.

First, multiple circuits, including the Fifth, Tenth, Third, and D.C., have held that "dismissals for failure to meet *Heck*'s favorable termination requirement count as dismissals for failure to state a claim." *See Garrett v. Murphy*, 17 F.4th 419, 427 (3d Cir. 2021); *see also 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). In *Garrett*, the court held that failure to meet *Heck*'s favorable termination requirement counts as a PLRA strike for failure to state a claim. *See Garrett*, 17 F.4th at 427. The prisoner plaintiff brought three prior § 1983 claims challenging his prosecution, arrest, and conviction, seeking immediate release, and alleging wrongful conviction, respectively. *Id.* at 426. The court analyzed all three prior claims and reasoned that, because the allegations challenged his underlying conviction, each counted as a PLRA "strike" for failure to satisfy *Heck*'s favorable termination requirement. *Id.* at 433. The *Garrett* court's reasoning was explicit: "Any other rule is incompatible with *Heck*." *Id.* at 427. Dismissal under *Heck* indicates that a cause of action has not yet accrued, and "a cause of action in this context is synonymous with a 'claim' under the PLRA." *Id.* Ultimately, *Heck*'s favorable termination requirement exists to ensure that claims are "complete and present cause[s] of action." *Id.* at 428. Any claim that falls short of that standard must, therefore, fail to state a claim for purposes of the PLRA.

Similarly, the court in *Smith v. Veterans Admin.* reaffirmed *Garrett*'s conclusion, namely that § 1983 suits dismissed under *Heck* for failure to satisfy the favorable termination requirement count as PLRA "strikes" for failure to state a claim. 636 F.3d at 1312. The *Smith* court reasserted that *Heck*'s favorable termination requirement was an "essential element" of a § 1983 suit that necessarily implies the invalidity of the underlying conviction. *Id.* In *Smith*, the prisoner plaintiff filed three actions, all of which were dismissed. *Id.* at 1310. The first action was dismissed as frivolous because his motion "contained proposals of marriage to one of the district court clerks." *Id.* The second action was dismissed for failure to state a claim because the prisoner plaintiff's complaint challenged "various aspects of his criminal conviction," such as a *Miranda* violation, evidentiary issues, ineffective assistance of counsel, and due process claims. *Id.* at 1311. On the substance of his second action, the *Smith* court held that *Heck*-barred claims constitute PLRA "strikes" for failure to state a claim. *Id.* at 1312. The third action also challenged his underlying conviction via an allegation of ineffective assistance of counsel. *Id.* at 1314. As a result, the court also counted the third action as a PLRA "strike" for failure to state a claim. *Id.*

Second, it is of no consequence that *Heck* recognizes the prematurity of a prisoner's claim because even premature claims can be dismissed as PLRA "strikes" for failure to state a claim. *See In re Jones*, 652 F.3d at 38 (holding that premature claims under *Heck* are indeed PLRA "strikes" for failure to state a claim, regardless of the merits of the case); *see also Smith*, 636 F.3d at 1312 (10th Cir. 2011). The policy underlying *Heck* seeks to avoid collateral attacks on the merits of a case through a § 1983 civil claim. *See McDonough v. Smith*, 139 S. Ct. 2149, 2157 (2019); *see also Kossler v. Crisanti*, 564 F.3d 181, 193 (3d Cir. 2009) (emphasizing that the favorable termination requirement has a strong judicial policy that aims to avoid the "creation of two

conflicting resolutions arising out of the same or identical transaction"). It is, therefore, the prematurity itself of a prisoner's claim that warrants a dismissal under *Heck*. After all, if the PLRA aims to regulate judicial wastefulness, *Heck*'s favorable termination requirement accomplishes that goal.

Here, Shelby's underlying convictions had not been reversed, expunged, called into question, or declared invalid so as to satisfy *Heck*'s favorable termination requirement. R. at 3. As a result, each prior action failed to satisfy *Heck*'s favorable termination requirement. Therefore, all three claims were *Heck*-barred and count as a PLRA "strike" for failure to state a claim.

II. *Kingsley* did not eliminate the subjective intent requirement in deliberate indifference failure-to-protect claims for pretrial detainees because its holding applies exclusively to Fourteenth Amendment excessive force claims.

The Due Process Clause of the Fourteenth Amendment protects "a pretrial detainee from the use of excessive force that amounts to punishment," and "pretrial detainees . . . cannot be punished at all, much less 'maliciously and sadistically.'" *Kingsley*, 576 U.S. at 397, 401. An official is deliberately indifferent if he "knows of and disregards an excessive risk to inmate health or safety . . . ." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *c.f. Estelle v. Gamble*, 429 U.S. 97, 105 (1976) (discussing accidents not amounting to deliberate indifference). The official "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 838. *Farmer*'s test informs a court whether "a state official who has subjective knowledge of the risk . . . and whose response is deliberately indifferent inflicts either cruel and unusual punishment or no punishment at all." *Hare v. City of Corinth*, 74 F.3d 633, 650 (5th Cir. 1996). In *Kingsley*, this Court questioned whether, "[i]n deciding whether the force deliberately used is, constitutionally speaking,

'excessive,' [courts should] use an objective standard only . . . ." *Kingsley*, 576 U.S. at 396. This Court narrowly held "with respect to *this* question" that "courts must use an objective standard." *Id*.

Accordingly, this Court should find that *Kingsley* applies only to excessive force claims and does not eliminate the subjective analysis in deliberate indifference failure-to-protect claims because (1) *Kingsley* addressed state actors' affirmative action, not inaction, (2) *Farmer*'s deliberate indifference standard applies to both Eighth and Fourteenth Amendment claims, and (3) the use of an objective standard would contradict congressional policy on prisoner litigation.

A. *Kingsley*'s objective standard cannot apply to cases involving deliberate inaction because a government official's inaction is not inherently purposeful.

Because Shelby's allegations focus on government inaction, the *Kingsley* objective standard is not applicable. *Kingsley*'s holding is narrow: in excessive force cases, deliberate physical action by a government official is inherently purposeful and requires no in-depth subjective analysis. *Kingsley*, 576 U.S. at 396; *see also Hare*, 74 F.3d at 644–45 (citing *Bell v. Wolfish*, 441 U.S. 520 (1979)) (5th Cir. 1996) (explaining that cases involving pretrial detainees under *Bell* start with the assumption that the State intended to cause the alleged constitutional deprivation). However, this holding is exclusive to claims of deliberate action, and it would be "contrary to all traditions of our jurisprudence" to so broadly apply the language of a holding to issues not considered in its case. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 n.5 (1992). Moreover, this Court has delineated between deliberate action and inaction by government officials, and *Kingsley* exclusively addressed government officials' deliberate use of excessive force. *See Farmer*, 511 U.S. at 825 (addressing deliberate inaction); *see also Bell*, 441 U.S. at 520 (addressing deliberate action).

As such, *Kingsley* did not address or abrogate *Farmer*'s deliberate indifference standard involving a government official's inaction. *See Dang ex. rel. Dang v. Sheriff, Seminole Cnty. Fla.*, 871 F.3d 1272, 1280 n.2 (11th Cir. 2017) (explaining that *Kingsley* is not "squarely on point" for deliberate indifference claims and does not abrogate prior precedent because it narrowly addressed excessive force claims). And although "[a]n act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage," this policy concern does not warrant extending *Kingsley*'s objective standard to the deliberate indifference context. *Farmer*, 511 U.S. at 837–38. The nature and purpose of excessive force and deliberate indifference claims require a different analysis because, unlike deliberate action in excessive force claims, punitive intent cannot be inferred from inaction in a deliberate indifference claim. *Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020).

First, in excessive force cases where a government official deliberately uses force, an objective analysis is appropriate because the official's use of force is inherently purposeful. Furthermore, the distinction between deliberate action and inaction is readily apparent in *Kingsley* because this Court explained that the nature of an excessive force claim always requires deliberate action. *Kingsley*, 576 U.S. at 389. In *Kingsley*, the plaintiff ignored instructions to remove a piece of paper covering a light in his cell and, after his refusal, officers attempted to extract him from his cell. *Id.* at 392. In response to his resistance, the officers handcuffed him, put a knee in his back, which allegedly slammed his head into a concrete bunk, tased him for five seconds, and left him in his cell for fifteen minutes. *Id.* at 392–93. In evaluating whether the officer intended punishment, this Court deviated from *Farmer*, where inaction was measured by both an objective and subjective prong. *See Kingsley*, 576 U.S. at 395 (2015); *see also Farmer*, 511 U.S at 825; *Bell*,

441 U.S. at 520 (1979). Instead, this Court aligned its analysis with *Bell*, where the effects of deliberate action were measured solely by objective evidence. *See Kingsley*, 576 U.S. at 395 (2015); *see also Bell*, 441 U.S. at 520 (1979).

Specifically, this Court only considered "the defendant's state of mind with respect to the proper *interpretation of the force* . . . that the defendant deliberately (not accidentally or negligently) used" because the officers clearly intended to use force. *Kingsley*, 576 U.S. at 396. Similarly, in *Bell*, this Court analyzed the deliberate implementation of a "double bunking" policy and held that, "[a]bsent a showing of an expressed intent to punish on the part of detention facility officials," a determination will generally turn on "if a restriction or condition is not reasonably related to a legitimate goal." *Bell*, 441 U.S. at 538. And because the implementation of the policy was purposeful, "a court permissibly may infer that the purpose of the government action is punishment . . . ." *Id.* at 539. As *Kingsley* depicted, excessive force claims are similar to *Bell*'s policy analysis because the purposefulness is presumed and unlikely to be accompanied by expressed intent to punish. *See Hare*, 74 F.3d at 644 (explaining that intent is "presumed" when the state incarcerates a detainee "in the face of such known conditions and practices."). Thus, because an official's deliberate action is inherently purposeful, objective factors are appropriate to measure if that action was reasonable or amounted to punishment.

Second, when an official's inaction gives rise to a deliberate indifference claim, his purpose cannot be inferred objectively through the effects of such inaction. *See Strain*, 977 F.3d at 991 (quoting *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016)); *see also Hare*, 74 F.3d at 645 (explaining "[w]ith episodic acts or omission, intentionality is no longer a given and *Bell* offers an ill-fitting test."). And by way of the word "deliberate," the claim requires an

independent analysis of the state actor's subjective intent. *See Strain,* 977 F.3d at 992 (explaining that deliberate means intentional, premeditated, or fully considered). In fact, this Court has "never suggested that we should remove the subjective component for claims addressing inaction." *Id.* Rather, in cases dealing directly with a government official's inaction, this Court has established that "where a government official is merely negligent in causing injury, no procedure for compensation is constitutionally required," and a subjective analysis is necessary. *Davidson v. Cannon*, 474 U.S. 344, 347 (1986). Further, this Court has expressed that "an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." *Farmer,* 511 U.S. at 838. This Court has established that "punitive intent may be inferred from affirmative acts that are [objectively] excessive," but the "mere failure to act does not raise the same inference." S*train,* 977 F.3d at 991.

In *Daniels,* a state prisoner alleged that he slipped on a pillow negligently left on a staircase by an officer. *Daniels v. Williams*, 474 U.S. 327, 328 (1986). This Court explained that "due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property." *Id.* at 331. Further, "[n]ot only does the word 'deprive' in the Due Process Clause" indicate more than negligence, "but we should not 'open the federal courts to lawsuits where there has been no affirmative abuse of power.'" *Id.* The *Daniels* court thus supported a subjective analysis to determine whether a state actor's conduct is simply negligent or rises to the level of intentional deprivation.

Identically, in *Davidson,* an inmate wrote a note to an officer warning of an attack by a fellow inmate. The officer never read the note and the inmate was attacked. *See Davidson,* 474

U.S. at 345–46. Like *Daniels,* this Court in *Davidson* held that "the protections of the Due Process Clause . . . whether procedural or substantive, are not triggered by lack of due care by prison officials." *Id.* at 348. The inmate's claim surrounding an officer's inaction was quite different from a deliberate, "unjustified attack by prison guards themselves" because the officer "simply forgot about the note." *Id.* As *Kingsley* noted, *Daniels* and *Davidson* asserted that "liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process." *Kingsley,* 576 U.S. at 396 (quoting *Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)). Thus, in cases like *Daniels* or *Davidson* where an officer is not aware that he has inadvertently created a dangerous situation or condition, a subjective inquiry is required to determine whether he purposefully refrained from acting or rather engaged in mere negligent inaction.

Moreover, in *Leal,* after officers booked the pretrial detainee, they made a note in his jail records to keep him separated from rival gang members planning a hit. *Leal v. Wiles*, 734 F. App'x 905, 906 (5th Cir. 2018). The officers placed the detainee in segregation, and rosters, floor cards, and computer databases reflected his status to ensure his safety. *Id*. After the detainee agreed to be taken to recreation by an officer, the officer retrieved two inmates from the rival gang who assaulted the detainee. *Id*. The Fifth Circuit concluded that the officer did not act with deliberate indifference because no direct evidence indicated that the officer knew of the detainee's protected status. *Id.* at 910. Although the officer "should have checked the recreation roster," liability only existed if the officer "knew—not merely should have known—about risk." *Id*. The court reasoned that "[d]eliberate indifference is an extremely high standard to meet" and therefore requires a showing of more than negligence. *Id*. at 909.

Here, Shelby was injured by Campbell's negligent inaction because of Campbell's failure to separate Shelby from the Bonucci members. R. at 5. Like the officer in *Davidson*, who "simply forgot" about the note that warned of a potential attack, Campbell "simply forgot" to reference the special inmate list that warned of a potential attack. R. at 6. And, unlike the deliberate use of a taser in *Kingsley*, Campbell's failure to separate Shelby from the other members does not raise the same inference of punishment without sufficient evidence of Campbell's actual knowledge of the risk. Thus, like *Davidson*, Campbell's inaction is distinguishable from the deliberate, "unjustified attack" in *Kingsley* and aligned with a lack of due care. *Davidson*, 474 U.S. at 348.

Nothing in the record indicates that Campbell's mindset was purposeful. In fact, Shelby does not allege that Campbell possessed actual knowledge of the risk. R. at 8. Shelby only asserts that Campbell "should have known" of the safety risk. R. at 8. Thus, Shelby does not have the required evidence to prove Campbell's punitive mindset. Campbell did not attend the meeting flagging Shelby's at-risk status, and no record indicates Campbell viewed the meeting minutes on his own time. R. at 5–6. And though like *Leal*, the jail record, floor cards, and the computer database indicated Shelby's special status, no direct evidence indicates Campbell knew of the risk. R. at 5, 8. However, under an objective analysis, Campbell's intentional decision to take Shelby and the Bonucci members to the recreation area would be sufficient for purposeful punitive action. *See Castro*, 833 F.3d at 1070 (explaining that an officer's intentional decision to place two inmates in a cell is sufficient). But such an affirmative decision does not comport with the type of deliberate action that this Court in *Daniels* envisioned as "depriv[ing] a person of life, liberty, or property." *Daniels*, 474 U.S. at 331. And like the officer in *Leal*, who should have checked the recreational roster, Cambell's failure to do so only creates liability if he "knew—not merely should have

known—about risk." *Leal*, 734 F. App'x at 906. Overall, Campbell's failure to check the inmates list amounted to negligence that this Court has noted as "categorically beneath the threshold of constitutional due process." *Kingsley*, 576 U.S. at 396.

B. A subjective standard applies to Eighth and Fourteenth Amendment deliberate indifference cases, regardless of a claimant's status, to ensure the rights of every prisoner are protected equally.

Even though Shelby asserts a Fourteenth Amendment Due Process violation, the *Farmer* deliberate indifference standard applies, regardless of the claimant's status. While this Court has been adamant that pretrial detainees cannot be punished at all, it has recognized that the Due Process rights of pretrial detainees, outside of punishment, are "at least as great as the Eighth Amendment protection available to a convicted prisoner." *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983); *see also Lewis*, 523 U.S. at 849 (explaining that prison officials' deliberate indifference to medical needs is the same under the Eighth and Fourteenth Amendments). Moreover, "[w]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *Lewis*, 523 U.S. at 851 (quoting *DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.*, 489 U.S. 189, 199–200 (1989)). And the only qualification is that "pretrial detainees cannot be punished at all." *Kingsley*, 576 U.S. at 400.

However, "[n]ot every disability imposed during pretrial detention amounts to punishment in the constitutional sense . . .." *Bell*, 441 U.S. at 537. And "[l]ife and health are just as precious to convicted prisoners as to pretrial detainees." *Hamm v. DeKalb Cnty.*, 774 F.2d 1567, 1574 (11th Cir. 1985). Thus, the same standard of safety and general welfare protections are extended to convicted prisoners and pretrial detainees, and the Fourteenth Amendment provides additional

"protection [to pretrial detainees] from deprivations that are *intended* to punish." *See Hott v. Hennepin Cnty.*, 260 F.3d 901, 905 (8th Cir. 2001) (emphasis added).

First, the Third, Fifth, Eighth, Tenth, and Eleventh Circuits have adhered to their pre-*Kingsley* precedent applying *Farmer*'s subjective standard to pretrial detainees and convicted prisoners alike. *See Strain*, 977 F.3d at 989; *see also Whitney v. City of St. Louis*, 887 F.3d 857, 860 (8th Cir. 2018); *Dang*, 871 F.3d at 1279; *Cope v. Cogdill*, 3 F.4th 198, 208 n.7 (5th Cir. 2021); *Thomas v. City of Harrisburg*, 88 F.4th 275, 281 n.23 (3d Cir. 2023). These circuits have established that basic rights to health and safety are not altered based on constitutional status. *See, e.g. Hamm*, 774 F.2d at 1574.

In *Cope*, the Fifth Circuit explained that *Kinglsey* discussed a different type of constitutional claim and "did not abrogate" *Hare*, its deliberate indifference precedent. *See Cope*, 3 F.4th at 208 n.7; *see also Crandell v. Hall*, 75 F.4th 537, 544 (5th Cir. 2023). Thus, despite *Kingsley*, the Fifth Circuit has continued to follow *Hare*. *Hare*, 74 F.3d at 648–49. In *Hare*, the court rejected treating convicted prisoners and pretrial detainees differently in failure-to-protect claims because "state jail and prison officials owe the same duty" to provide the same "basic human needs and humane conditions of confinement." *Hare*, 74 F.3d at 648–49. The court emphasized that "the fact of conviction ought not make one more amenable under the Constitution to unnecessary random violence, suffering, or to greater denial of *basic* human needs." *Id*.

Moreover, in *Dang*, the Eleventh Circuit explained that, under its precedent, pretrial detainees' inadequate medical care claims are analyzed under the same *Farmer* standard as the Eighth Amendment. *See Dang*, 871 F.3d at 1279 n.2. Similar to *Hare*, the Eleventh Circuit clarified that the analysis under the Fourteenth Amendment is identical to the Eighth, and "with respect to

the provision of basic necessities to individuals in the state's custody, the two provisions necessarily yield the same result." *See Hamm*, 774 F.2d at 1574; *see also Goebert v. Lee Cnty.*, 510 F.3d 1312, 1326 (11th Cir. 2007). Similarly, the Third, Eighth, and Tenth Circuits have adhered to prior precedent with the same conclusion: the subjective standard applies to deliberate indifference claims, regardless of the claimant's constitutional status. *See Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003); *see also Hott*, 260 F.3d at 905; *Garcia v. Salt Lake Cnty.*, 768 F.2d 303, 307 (10th Cir. 1985).

However, since this Court's decision in *Kinglsey*, a few circuits have misconstrued the holding to have abrogated *Farmer's* subjective indifference analysis because of the pretrial detainee's status under the Fourteenth Amendment. *See Castro*, 833 F.3d at 1070 (9th Cir. 2016); *see also Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 350 (7th Cir. 2018); *Brawner v. Scott Cnty.*, 14 F.4th 585, 596 (6th Cir. 2021).[1] Fatally, these circuits fail to recognize that *Kingsley* was an excessive force case, and this Court has been explicit that the "application of the deliberate indifference standard is *inappropriate* . . . when officials stand accused of using *excessive physical force*." *Farmer*, 511 U.S. at 835 (emphasis added). Thus, *Kingsley* did not abrogate *Farmer*'s subjective requirement simply because it concerned a pretrial detainee but rather abided by *Farmer*'s prohibition on the use of the deliberate indifference

[1] Prior to *Kingsley*, most of the circuits–who now require only an objective analysis–followed the 5th Circuit's analysis in *Hare* and applied *Farmer*'s standard regardless of the claimant's status under the Constitution. *See Caiozzo v. Koreman*, 581 F.3d 63, 71–72 (2d Cir. 2009); *see also Clouthier v. Contra Costa*, 591 F.3d 1232 (9th Cir. 2010); *Board v. Farnham*, 394 F.3d 469, 477-478 (7th Cir. 2005); *Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013). Thus, absent their misconstrual of *Kingsley*, these circuits would hold that pretrial detainees and convicted prisoners should be held to the same standard of human decency, outside of punishment.

standard in excessive force cases. *See Strain*, 977 F.3d 992; *see also Whitney*, 887 F.3d at 860 n.4; *Dang*, 871 F.3d at 1280 n.2; *Leal*, 734 F. App'x 905.

Second, *Kingsley* did not adopt *Bell*'s objective standard because of the status of the claimant or amendment at issue but because "the *Bell* test works comfortably in such cases [when the] official's state of mind is not a disputed issue." *Hare*, 74 F.3d at 644. The confusion rests on a broad interpretation of *Kinglsey*'s explanation that "a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related . . . to that purpose." *Kingsley*, 576 U.S. at 398. For example, in *Castro*, the Ninth Circuit explained that "[t]he Court did not limit its holding to 'force' but spoke to 'the challenged governmental action' generally." *Castro*, 833 F.3d at 1070. However, this Court did indeed limit its holding and explained that this standard is "consistent with [the court's] use of an objective 'excessive force' standard" involving pretrial detainees. *Kingsley*, 576 U.S. at 399. *Kingsley*'s focus on force and punishment was consistent with the position that the Fourteenth Amendment provides at least as great protection as the Eighth Amendment, unless there is infliction of punishment. *See Bell*, 441 U.S. at 535 (explaining that the "proper inquiry is whether those conditions amount to punishment of the detainee.").

Ultimately, when cases involve inaction, *Farmer*'s subjective analysis is appropriate for measuring whether the duty of health and safety owed to both groups has been breached. *Farmer*'s subjective standard allows courts to analyze whether an officer who acts with deliberate indifference inflicts cruel and unusual punishment or none at all because negligence is "categorically beneath the threshold of constitutional due process." *Kingsley*, 576 U.S. at 396; *see also Hare*, 74 F.3d at 648, 650. However, where intentionality is presumed from deliberate action,

the Fourteenth Amendment's prohibition on punishment applies, and an objective analysis is appropriate. *See Kingsley*, 576 U.S. at 399. Under any other view, constitutional "negligence tossed out the front door re-enters through the back." *Hare*, 74 F.3d 633, 650. Without this delineation, our society would experience a greater denial of basic human needs only because one individual's guilt has been decided and the other's lies in wait.

C. *Kingsley*'s objective standard is unworkable in deliberate indifference cases because it stretches judicial resources, permits inconsistent determinations of liability, and fails to protect officials who act in good faith.

If this Court were to adopt a solely objective standard for deliberate indifference cases, it would "open the federal courts to lawsuits where there has been no affirmative abuse of power." *Daniels*, 474 U.S. at 331. The application of an objective standard would prove unworkable.

First, an objective standard will increase the number of negligence suits filed by prisoners. As a result, this influx of cases will force courts to use judicial resources to decipher whether a claim constitutes negligence or rises to a constitutional violation. For one, Congress has recognized the need to curtail frivolous prison litigation with the enactment of the PLRA, and this Court has reflected this in *Heck v. Humphrey. See Chandler v. D.C. Dep't of Corr.*, 145 F.3d 1355, 1356 (D.C. Cir. 1998) (explaining that Congress enacted the PLRA in response to the concern that prisoners were "flooding the courts with meritless claims."); *see also Heck*, 512 U.S. at 485 (declining to expand the opportunity for collateral attacks on the merits of a case). Thus, the concern that prisoners will flood the courts with frivolous claims is not novel and must be approached with caution.

Additionally, the PLRA cannot serve as an adequate deterrent to frivolous claims because the objective standard requires courts to delve into the facts and discern what the official should

have known. This Court cited the PLRA as a deterrent to frivolous claims in *Kingsley*. 576 U.S. at 402. But such deterrence is only effective in excessive force claims because an accidental act cannot prevail and can be filtered out at the pleading phase. *Id*. at 396 (explaining that an officer who unintentionally trips, causing harm to a pretrial detainee, cannot prevail). Conversely, whether an official was negligent or reckless in a deliberate indifference case would require a court to conduct an extensive examination of the circumstances surrounding the incident. *See Castro*, 833 F.3d at 1070 (explaining whether conduct is objectively unreasonable turns on the facts and circumstances of each particular case). Thus, a claimant, under the objective standard, can file a frivolous suit and proceed because a question of fact exists as to whether the conduct was negligent or reckless. As a result, the objective standard will require courts to expend precious judicial resources to filter out frivolous claims.

On the other hand, plaintiffs who bring claims with merit will provide evidence of policies, training, or communications within a facility to show that an official should have known of a risk. See *Darnell*, 849 F.3d at 35 (explaining an official can be held liable if he knew or should have known). However, this practice is identical to the *Farmer* standard, which permits plaintiffs to provide circumstantial evidence for a factfinder to "conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at 842; *see also Hare*, 74 F.3d at 646 (explaining that "[p]roperly understood, the *Bell* test is functionally equivalent to a deliberate indifference [standard]."). Ultimately, because the question of what an official should have known or actually knew can be proven by circumstantial evidence, any minimal gain by the objective test comes at the expense of valuable judicial resources that will produce similar results.

Second, because negligence and deliberate indifference will resemble one another, the objective test will cause circuits to arrive at inconsistent conclusions regarding whether detainees' claims allege negligence or deliberate indifference. Specifically, with negligence "categorically beneath the threshold of constitutional due process" and "deliberate indifference lying somewhere between the poles of negligence at one end and purpose or knowledge at the other," circuits will decide for themselves where deliberate indifference lies. *Kingsley*, 576 U.S. at 399; *Farmer*, 511 U.S. at 836. This will lead to inconsistent results. While some circuits may see negligent conduct, others may find that the same conduct constitutes deliberate indifference.

These discrepancies are inevitable because "a court . . . cannot apply this standard mechanically," and "objective reasonableness turns on the 'facts and circumstances of each particular case.'" *Kingsley*, 576 U.S. at 397. Although *Kingsley* denied a similar argument because there was no "evidence of a rash of unfounded filings in circuits that use an objective standard," evidence exists that the circuits will not apply the same objective deliberate indifference standard. *Id*. at 397; *see also*, *e.g.*, *Dang*, 871 F.3d at 1280 n.2 In fact, circuits have maintained that, even if the objective standard had applied, the conduct in question constituted mere negligence and warranted the dismissal of a plaintiff's claim. *See Dang*, 871 F.3d at 1280 n.2; *see also Leal*, 734 F. App'x at 911 n.28; *Moore v. Luffey*, 767 F. App'x at 340 n.2 (3rd Cir. 2019). By requiring plaintiffs to provide evidence, circumstantial or otherwise, that an official was actually aware of a substantial risk, this Court will ensure that pretrial detainees across the country will be treated equally.

Third, despite this Court's recognition that "[r]unning a prison is an inordinately difficult undertaking," officials whose inaction is done in good faith nevertheless will be subject to liability

under an objective test. *Kingsley*, 576 U.S. at 399 (alteration in original) (quoting *Turner v. Safley*, 482 U.S. 78, 84–85 (1987)). In either context—excessive force or deliberate indifference—"an official's intent matters not only as to what the official did . . . but also why he did it." S*train*, 977 F.3d at 992. In *Kingsley*, this Court emphasized that the objective standard functions effectively because it takes into account the circumstances in which the officer acted and "adequately protects an officer who acts in good faith." *Kingsley*, 576 U.S. at 399. For example, in *Sanchez v. Griffis*, an officer's good faith use of force could be determined because a pretrial detainee entered a medical station without the required shackles, refused to follow the official's repeated orders, and therefore presented a threat to institutional security. 569 F. Supp. 3d 496, 510–11, 513 (W.D. Tex. 2021) (explaining officials are justified to use some degree of force in good faith to maintain order). On the other hand, in cases like *Kingsley*, where multiple officers used physical force and tased one detainee in order to remove him from his cell, the unreasonableness and bad faith were apparent.

Yet the same protection from liability is not afforded to an officer whose failure to act is in good faith because his reason for refraining cannot be readily ascertained by objective factors. For example, although objective factors raise an inference that Campbell should have known Shelby faced a risk of attack, these factors alone do not raise the same inference that he acted in bad faith. R. at 6. Rather, the evidence suggests that Campbell—negligently but in good faith—failed to review his special status list, attempted to transfer Shelby to recreation for exercise, and failed to independently fight off three gang members attacking Shelby. R. at 6–7. Under a subjective standard, Campbell's good faith inaction would be protected because he was unaware of the risk to Shelby. Thus, without determining Campbell's actual knowledge at the time of the attack,

Campbell's inaction would be presumed bad faith simply because he objectively should have known better.

CONCLUSION

Shelby cannot show that his prior civil actions state a valid claim pursuant to *Heck* to warrant in forma pauperis status. Similarly, Shelby fails to satisfy the subjective component of *Farmer*'s deliberate indifference standard because possesses no evidence that Officer Campbell purposefully refrained from protecting him.

The United States has a deep-seated interest in both judicial efficiency and established constitutional standards. Allowing prisoners to collaterally litigate the merits of their case would not comport with these policies. Similarly, the adoption of an objective standard in deliberate indifference cases would ultimately render the Constitution a "font of tort law." *Kingsley*, 576 U.S. at 408 (Scalia, J., dissenting).

Accordingly, this Court should reverse the judgment of the United States Court of Appeals for the Fourteenth Circuit.

Respectfully submitted,

Team 11

February 2, 2024.