No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 2023

Chester CAMPBELL,

Petitioner,

v.

Arthur SHELBY,

Respondent.

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

BRIEF FOR PETITIONER

Team No. 15

ATTORNEYS FOR PETITIONER

QUESTIONS PRESENTED

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

II. Does this Court's decision in *Kingsley* eliminate 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

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

CONSTITUTIONAL PROVISIONS:

STATUTES:

TREATISES:

LEGAL PERIODICALS:

OTHER SOURCES:

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Wythe, issued by District Judge Michael Gray on July 14, 2022, is unreported but is reproduced in the record. R. at 2–11. The opinion of the United States Court of Appeals for the Fourteenth Circuit, issued by Circuit Judge Elizabeth Stark on December 1, 2022, is unreported but is reproduced in the record. R. at 12–20.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. VIII.

U.S. Const. amend. XIV.

28 U.S.C. § 1915.

42 U.S.C. § 1983.

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

This case arises from the arrest of Respondent Arthur Shelby ("Arthur") and the injuries he incurred in the Marshall jail from an attack by rival gang members. R. at 2–7. Petitioner, Chester Campbell ("Officer Campbell"), was the officer on duty when the attack occurred as he oversaw the transfer of inmates to and from the jail's recreation room. R. at 6–7. Arthur subsequently filed a claim for failure-to-protect under 42 U.S.C. § 1983 against Officer Campbell. R. at 7. Litigation ensued over the nature of this claim and is what brings both parties before this Court. R. at 21.

***Rival Gang Controversy*.** Arthur is the second-in-command of the Geeky Binders, a street gang in the town of Marshall. R. at 2. The Geeky Binders historically owned the town of Marshall, with members of the crime syndicate running various businesses, owning most of the real estate, and even holding public office. R. at 3. However, the Geeky Binders suffered a great fall in

authority over the course of several years with the takeover of a rival gang led by Luca Bonucci. *Id.* Like the Geeky Binders, The Bonucci clan exercised considerable power over local politicians and other important Marshall officials. *Id.* For instance, several Marshall police officers and jail officials were accused and charged with accepting bribes from the Bonucci clan. *Id.* This bribing power soon ran out, however, as Bonucci and several of his clan members were arrested and held at the Marshall jail. *Id.* The Marshall jail subsequently fired officers who were involved with the clan's illegal activity and hired new officers untainted by Bonucci's influence. *Id.*

The Arrest. On December 31, 2020, Marshall police raided a boxing match that Arthur was attending with his brothers Thomas and John Shelby. *Id.* Police had warrants for all three brothers, but Arthur failed to escape as he was under the influence of alcohol and several drugs. *Id.* Arthur was placed under arrest and charged with battery, assault, and possession of a firearm by a convicted felon. R. at 4. Officers subsequently brought Arthur to the Marshall jail. *Id.*

The Booking Process. Upon Arthur's arrival, a seasoned jail official booked Arthur and conducted his preliminary paperwork. *Id.* All officers of the Marshall jail are required to make both paper and digital copies of the forms to file and upload in the jail's online database. *Id.* The online database contains a file for each inmate and lists each inmate's charges, inventoried items, medications, gang affiliation, and other important data jail officials would need to know. *Id.* Under the gang affiliation tab of the file, the database allows officers to list any known hits placed on an inmate or another rival gang. *Id.*

The booking officer recognized that Arthur was a member of the Geeky Binders because of his distinct outfit: a tweed three-piece suit, a long overcoat, and he possessed a ballpoint pen with the engraving "Geeky Binders" with an awl concealed on the inside. *Id.* Additionally, Arthur made several comments to the booking officer, including: "The cops can't arrest a Geeky Binder!" and

"My brother Tom will get me out of here, just you wait." *Id.* The officer followed protocol and properly recorded all of Arthur's information, including his statements towards the officer, under the gang affiliation tab. R. at 4–5. While in the database, the officer noticed that Arthur already had a page from previous arrests and stays at the jail. R. at 5. Although the booking officer had to open a new file to see the data relating to Arthur's previous arrests, the database clearly displayed Arthur's gang affiliation and other identifying information on the separate file. R. at 4–5. Upon completion of the booking process, Arthur was placed in a holding cell apart from the main area of the jail. R. at 5.

The Gang Intelligence Process. The Marshall jail has several gang intelligence officers review each incoming inmate's entry in the online database. R. at 4. After Arthur was fully booked, they reviewed and edited his file. R. at 5. These officers were aware of a recent dispute between the rival gangs because Arthur's brother murdered Bonucci's wife. *Id.* Additionally, the officers were aware that the Bonuccis were seeking revenge on the Geeky Binders and had heard that Arthur was a prime target for revenge. *Id.* Accordingly, the intelligence officers made a special note in Shelby's file and printed out notices for every administrative area of the jail. *Id.* Arthur's status was also indicated on all rosters and floor cards. *Id.*

The morning after Arthur had been booked, gang intelligence officers held a meeting with all jail officials to notify each officer of Arthur's presence. *Id.* They informed the jail officials that Arthur would be housed in cell block A while the Bonuccis were dispersed between cell blocks B and C. *Id.* They also reminded everyone to check the rosters and floor cards regularly to ensure rival gangs were not mixing in common areas of the jail. *Id.*

The Meeting Minutes. Anyone who missed the meeting was required to review the meeting's minutes on the jail's online database. R. at 6. The Petitioner, Officer Campbell, is an

entry-level guard—not a gang intelligence officer—at the Marshall jail. R. at 5. Campbell was trained properly and had been meeting job expectations for the several months he had been employed. *Id.* Roll call records indicated that Officer Campbell attended the meeting hosted by the gang intelligence officers, but the jail's time sheets indicated that he called in sick and did not arrive at work until after the meeting had ended. R. at 6. Ordinarily, the database shows if an officer or official has viewed a specific page or file, but a glitch in the system wiped any record of any person who viewed the meeting minutes from that day. *Id.*

The Incident. A little over one week after Arthur's booking, Officer Campbell oversaw the transfer of inmates to and from the jail's recreation room. *Id.* Officer Campbell went to Arthur's cell in cellblock A and asked if he wanted to go to recreation; Officer Campbell did not know or recognize Arthur whatsoever. *Id.* He also did not reference the hard copy list of inmates with special statuses that he was carrying, nor did he reference the jail's database before taking Arthur from his cell. *Id.* The list had pertinent inmate information, including the names of inmates with gang affiliations and their corresponding risk of attack from other gangs within the jail. *Id.* Arthur's name was explicitly on the list, indicating that a potential hit had been ordered on Arthur by Bonucci and that he was at risk of attack by members of the Bonucci clan. *Id.*

Officer Campbell then retrieved Arthur from his cell and led him to the guard stand to wait for other inmates to be gathered for recreation. *Id.* As they both walked to the guard stand, an inmate yelled out to Arthur: "I'm glad your brother Tom finally took care of that horrible woman," to which Arthur responded, "yeah it's what that scum deserved." *Id.* Officer Campbell told Arthur to be quiet and collected another inmate from cell block A. *Id.* Officer Campbell then retrieved two more inmates, one from cell block B and one from cell block C. R. at 7. Unbeknownst to Officer Campbell, all three inmates with Arthur were members of the Bonucci clan. *Id.* The

members immediately charged Arthur and began beating him. *Id.* Officer Campbell attempted to break up the attack but was unable to hold the three men back *Id.* The attack lasted for several minutes until other officers arrived to assist Officer Campbell. *Id.* Weeks later, Arthur was acquitted of his assault charge, but was found guilty of battery and possession of a firearm by a convicted felon; he is now at Wythe Prison. *Id.*

II. NATURE OF PROCEEDINGS

The District Court. Arthur filed a 42 U.S.C. § 1983 action pro se against Officer Campbell in the United States District Court for the Western District of Wythe. *Id.* Alongside his Complaint, Arthur filed a motion to proceed in forma pauperis[1] but was denied pursuant to 28 U.S.C. § 1915(g) because Arthur had accrued three "strikes" under the Prison Litigation Reform Act (PLRA).[2] Arthur alleged that Officer Campbell violated his constitutional rights when he failed to protect him as a pretrial detainee and therefore is entitled to damages. R. at 7–8. Officer Campbell subsequently filed a Motion to Dismiss for failure to state a claim which the court granted. R. at 8. The court emphasized that the proper standard for failure-to-protect claims brought by pretrial detainees is *Farmer*'s subjective deliberate indifference standard, not *Kingsley*'s objective standard which would make Officer Campbell's state of mind irrelevant to the question of liability. R. at 8–11. Thus, the court found that Arthur was unable to meet the subjective deliberate indifference standard required for failure-to-protect claims because he did not allege sufficient

[1] In forma pauperis means "in the manner of a pauper" and allows an inmate to file a claim without prepayment of court and filing fees. *In forma pauperis*, *Black's Law Dictionary* (11th ed. 2019).

[2] Arthur was previously convicted of several crimes and has been in and out of prison for the last several years. R. at 3. During his prior detention, he commenced three separate civil actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. *Id.* Each action was dismissed without prejudice pursuant to *Heck v. Humphrey* because the actions would have called his conviction or sentence into question. *Id.*

facts showing that Officer Campbell subjectively knew of and disregarded a substantial risk of serious harm. *Id.*

The Appellate Court. On appeal to the United States Court of Appeals for the Fourteenth Circuit, Arthur challenged the district court's denial of his motion to proceed in forma pauperis and the subsequent dismissal of his 42 U.S.C. § 1983 claim against Officer Campbell. R. at 12. There were two issues on appeal: (1) whether the dismissal of a prisoner's civil action under *Heck v. Humphrey* constitutes a "strike" within the meaning of the PLRA; and (2) whether *Kingsley v. Hendrickson* eliminated the requirement for a pretrial detainee to prove a defendant's subjective intent in a 42 U.S.C. § 1983 failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment Due Process rights. R. at 12–13.

The court reversed and remanded on both issues. R. at 13. First, the court held that Arthur should have been able to proceed in forma pauperis because *Heck* dismissals are not considered "strikes" under 28 U.S.C. § 1915(g). R. at 14–15. Second, the court held that under *Kingsley*, failure-to-protect claims brought by pretrial detainees alleging due process violations under the Fourteenth Amendment must be analyzed using an objective standard, not *Farmer*'s subjective deliberate indifference standard. R. at 16–18. Thus, the court found that Officer Campbell acted in an objectively unreasonable manner, and Arthur did not need to prove that Officer Campbell subjectively knew of and disregarded a substantial risk of serious harm. R. at 18–19. Officer Campbell filed a *Writ of Certiorari*, and this Court granted *Cert.* on both issues. R. at 21.

SUMMARY OF THE ARGUMENT

First, the dismissal of a prisoner's civil action under this Court's holding in *Heck v. Humphrey* constitutes a "strike" within the meaning of the PLRA. Under *Heck*, a prisoner lacks a cause of action under 42 U.S.C. § 1983 if they are challenging an allegedly unconstitutional

conviction or imprisonment before proving that the conviction or sentence has been overturned. This became known as *Heck*'s favorable-termination requirement and applies to all prisoners seeking money damages under § 1983. Therefore, if judgment in favor of the prisoner would call their conviction or sentence into question, the complaint must be dismissed unless they can show the conviction or sentence has already been invalidated. The PLRA's three-strike rule prevents a prisoner from suing in forma pauperis if three or more civil actions or appeals filed by the prisoner have previously been dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief can be granted.

All three of Arthur's *Heck* dismissals count as strikes under the PLRA because *Heck* dismissals are for a failure to state a claim. This Court's language in *Heck* is clear; suits dismissed for failure to meet *Heck*'s favorable-termination requirement are dismissed because the plaintiff lacks a valid cause of action, and a "cause of action" is synonymous with a "claim" under the PLRA. *Heck*'s favorable-termination requirement is not an affirmative defense that can be waived by the defendant because it is an element of a claim. Further, A suit barred by *Heck*'s favorable-termination requirement is not dismissed for jurisdictional reasons because the favorable-termination requirement is an implied element of a claim, not a rule of subject-matter or personal jurisdiction. Thus, Arthur was not entitled to proceed in forma pauperis because all three of his *Heck* dismissals count as strikes under the PLRA.

Second, this Court's holding in *Kingsley* did not eliminate 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 their Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 action. *Kingsley* issued a narrow decision only for excessive force claims brought by pretrial detainees, not failure-to-protect claims. Further, the status of Arthur as a pretrial detainee does not

affect the nature of his failure-to-protect claim because there is no constitutionally significant distinction between failure-to-protect claims brought by pretrial detainees and prisoners, and this Court has always imposed different liability standards between claims for excessive force and claims for failure-to-protect.

Kingsley's objective reasonableness standard transforms the failure-to-protect inquiry into one of negligence because it asks whether there was a substantial risk of serious harm to the plaintiff that could have been eliminated through reasonable and available measures that the officer did not take, thus causing the injury suffered. This directly contradicts this Court's long held principle that liability is precluded for mere negligence. The proper standard for failure-to-protect claims is *Farmer*'s subjective deliberate indifference standard, which requires the official to be subjectively aware of the facts constituting the risk and be aware of the risk itself to be liable. Thus, by correctly applying *Farmer*'s subjective deliberate indifference standard, Officer Campbell was not deliberately indifferent towards Arthur because he was not subjectively aware of Arthur's protected status; at most, Officer Campbell negligently brought the rival inmates together.

ARGUMENT AND AUTHORITIES

Standard of Review. Whether a dismissal under *Heck* constitutes a strike within the meaning of the PLRA is a question of law. Additionally, whether this Court's decision in *Kingsley* abrogated 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 their Fourteenth Amendment Due Process rights in a § 1983 action is a question of law. This Court reviews questions of law *de novo*. *Monasky v. Taglieri*, 140 S. Ct. 719, 730 (2020). This standard calls on this Court to act as if it is considering these questions for the first time and afford no deference to any decision below. *Id.*

I. THE DISMISSAL OF A PRISONER'S CIVIL ACTION UNDER *HECK V. HUMPHREY* CONSTITUTES A "STRIKE" WITHIN THE MEANING OF THE PRISON LITIGATION REFORM ACT (PLRA).

The dismissal of a prisoner's civil action under *Heck v. Humphrey* constitutes a "strike" within the meaning of the PLRA. By the mid-1990s, Congress was concerned about the "sharp rise in prisoner litigation in the federal courts." *Woodford v. Ngo*, 548 U.S. 81, 84 (2006). To address this concern, Congress enacted the PLRA to "filter out the bad claims filed by prisoners and facilitate consideration of the good." *Coleman v. Tollefson*, 575 U.S. 532, 535 (2015); *see also* Lynn S. Branham, *Of Mice and Prisoners: The Constitutionality of Extending Prisoners' Confinement for Filing Frivolous Lawsuits*, 75 S. Cal. L. Rev. 1021, 1028–29 (2002) (expanding on purpose and procedures of the PLRA).

The PLRA's three-strike rule prevents a prisoner from suing in forma pauperis if three or more civil actions or appeals filed by the prisoner have previously been "dismissed on the grounds that [they were] frivolous, malicious, or fail[ed] 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). It is important to note that a "strike-call under § 1915(g) hinges exclusively on the basis for dismissal, regardless of the decision's prejudicial effect."[3]

In *Heck v. Humphrey*, this Court held that a prisoner "lacks a cause of action" under § 1983 if the prisoner is challenging "an allegedly unconstitutional conviction or imprisonment" before having the conviction or sentence overturned. 512 U.S. 477, 486–87 (1994). Discussing the similarities between a § 1983 claim and the common-law cause of action for malicious prosecution, the Court noted "[o]ne element that must be alleged and prov[en] in a malicious

[3] *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724–25 (2020). Therefore, the prejudicial effect of Arthur's *Heck* dismissals has no bearing on whether they count as strikes under the PLRA.

prosecution action is termination of the prior criminal proceeding in favor of the accused." *Id.* at 484. The Court decided to add this "favorable termination" requirement to all § 1983 claims seeking damages in order to prevent collateral attacks on convictions or sentences through money damages actions. *Id.* at 484–87.

Therefore, when a prisoner is seeking damages under § 1983, "the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id.* at 487. If judgment in favor of the prisoner would call their conviction or sentence into question, the complaint must be dismissed unless they can show that the conviction or sentence has already been invalidated. *Id.* There are several ways to prove that a conviction or sentence has been invalidated.[4]

All three of Arthur's *Heck* dismissals count as strikes under the PLRA because *Heck* dismissals are for a failure to state a claim. *Heck*, 512 U.S. at 489; *Garrett v. Murphy*, 17 F.4th 419, 427 (3d Cir. 2021). *Heck*'s language clearly indicates that suits dismissed for failure to meet *Heck*'s favorable-termination requirement are dismissed because the plaintiff lacks a "cause of action" under § 1983, and a cause of action is synonymous with a "claim" under the PLRA. *Heck*, 512 U.S. at 489; *Garrett*, 17 F.4th at 427. *Heck*'s favorable-termination requirement is not an affirmative defense that may be waived by the defendant because it is an element of a claim. *Heck*, 512 U.S. at 489; *Garrett*, 17 F.4th at 429. Further, a suit barred by *Heck*'s favorable-termination requirement is not dismissed for jurisdictional reasons because the favorable-termination requirement is an implied element of a claim, not a rule of subject-matter or personal jurisdiction.

[4] A prisoner seeking damages "must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 486–87.

Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 89 (1998). Therefore, Petitioner respectfully asks this Court to reverse the Fourteenth Circuit and hold that Arthur was not entitled to proceed in forma pauperis because his three previous *Heck* dismissals constituted "strikes" under the PLRA.

A. Dismissal of an Action for Failure to Meet *Heck*'s Favorable-Termination Requirement Counts as a PLRA Strike for Failure to State a Claim.

All three of Arthur's *Heck* dismissals count as strikes under the PLRA because *Heck* dismissals are for a failure to state a claim. *Heck*'s language is clear; suits dismissed for failure to meet *Heck*'s favorable-termination requirement are dismissed because the plaintiff lacks a valid "cause of action" under § 1983, and a cause of action is synonymous with a "claim" under the PLRA. *Heck*, 512 U.S. at 489; *Garrett*, 17 F.4th at 427. This approach is symbiotic with this Court's consistent interpretation of *Heck*'s favorable-termination requirement as necessary to bring "a complete and present cause of action" under § 1983. *See McDonough v. Smith*, 139 S. Ct. 2149, 2158 (2019). Looking to *Heck*'s explicit language, the Third, Fifth, Eighth, Tenth, and D.C. Circuits have all correctly held that a 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; *Colvin v. LeBlanc*, 2 F.4th 494, 499 (5th Cir. 2021); *Orr v. Clements*, 688 F.3d 463, 465 (8th Cir. 2012); *Smith v. Veterans Admin.*, 636 F.3d 1306, 1310 (10th Cir. 2011); *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011).

This approach is also consistent with the tort of malicious prosecution that *Heck* relied on. *Heck*, 512 U.S. at 484; *Garrett*, 17 F.4th at 428. When 42 U.S.C. § 1983 was enacted in 1871, favorable termination was a necessary element of a malicious prosecution action.[5] Despite this

[5] Thomas M. Cooley, *A Treatise on the Law of Torts* 186 (Chi., Callaghan & Co. ed., 1880).

Court's recent change in what is needed to prove the favorable-termination element of a malicious prosecution claim, it is and has always been a necessary element. *See Thompson v. Clark*, 596 U.S. 36, 39 (2022). In a malicious prosecution case, A plaintiff's complaint must be dismissed as premature for failure to state a claim if they are unable to prove favorable termination. *Garrett*, 17 F.4th at 428. Therefore, it follows that dismissals for failure to meet *Heck*'s favorable-termination requirement are also dismissed for failure to state a claim and thus count as strikes under the PLRA. *Id.*

B. *Heck*'s Favorable-Termination Requirement Is Not an Affirmative Defense.

Heck's favorable-termination requirement is not an affirmative defense that may be waived by the defendant because it is an element of a claim. In *Washington v. Los Angeles County Sheriff's Department*, The Ninth Circuit held that *Heck*'s favorable-termination requirement is not a necessary element of a civil damages case under § 1983. 833 F.3d 1048, 1056 (9th Cir. 2016). Instead of an essential element, the court held that compliance with *Heck* most closely resembles "the mandatory administrative exhaustion of PLRA claims, which constitutes an affirmative defense and not a pleading requirement." *Id.* (citing *Jones v. Bock*, 549 U.S. 199, 215–17 (2007)). The court reasoned that like dismissals for administrative exhaustion, *Heck* dismissals do not reflect a final termination on the underlying merits of the case. *Washington*, 833 F.3d at 1056. Instead, the court found that *Heck* dismissals reflect a matter of "judicial traffic control" and serve to prevent civil actions from collaterally attacking existing criminal judgment. *Id.* Only two circuit courts uphold this affirmative defense rationale: the Seventh and Fourteenth Circuit. *See Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011) ("We now hold explicitly that district courts may bypass the impediment of the *Heck* doctrine and address the merits of the case."); R. at 14–15.

This rationale is flawed. This Court in *Heck* made it abundantly clear that it was not adding an exhaustion requirement to § 1983: "We do not engraft an exhaustion requirement upon § 1983, but rather deny the existence of a cause of action." *Heck*, 512 U.S. at 489. No language in *Heck* "requires that the defendant first plead the validity of the conviction or sentence in the answer." *Garrett*, 17 F.4th at 429. Rather, *Heck* makes it clear "that the favorable-termination requirement is a necessary element of the claim for relief under § 1983, not an exhaustion defense that must be anticipated by the defendant's answer." *Id.* The better analogy—as opposed to the Ninth Circuit's approach—is the one that *Heck* used: a malicious prosecution claim, which requires alleging and showing favorable termination to state a claim for relief. *Heck*, 512 U.S. at 477, 483–84; *see also Nataros v. Superior Ct. of Maricopa Cnty.*, 557 P.2d 1055, 1057 (Ariz. 1976) ("It is universally held that an essential element of a malicious prosecution claim is that the proceedings must have terminated in favor of the person against whom they were brought.").

The Ninth Circuit defended this rationale by noting that the text of § 1983 does not say anything about a favorable-termination requirement. *Washington*, 833 F.3d at 1056. However, "that is a substantive disagreement with *Heck*'s gloss of § 1983, not what *Heck* itself said." *Garrett*, 17 F.4th at 429. By solely relying on the direct text of § 1983 and not this Court's language in *Heck*, the Ninth Circuit forgot a vital principle of our justice system: precedent. Thus, *Heck*'s favorable-termination requirement is an essential element of a claim, not an affirmative defense.

C. A Suit Barred by *Heck*'s Favorable-Termination Requirement Is Not Dismissed for Jurisdictional Reasons.

A suit barred by *Heck*'s favorable-termination requirement is not dismissed for jurisdictional reasons because the favorable-termination requirement is an implied element of a claim, not a rule of subject-matter or personal jurisdiction. This Court held in *Steel Co. v. Citizens for a Better Environment* that "[i]t is firmly established . . . that the absence of a valid (as opposed to arguable)

cause of action does not implicate subject-matter jurisdiction, i.e., the courts' statutory or constitutional power to adjudicate the case." 523 U.S. at 89. As stated above, a suit barred by *Heck*'s favorable-termination requirement fails to state a valid cause of action under § 1983 and thus falls under this "firmly established rule." *Id.* at 90; *see also Colvin*, 2 F.4th at 498–99 ("By its own language, therefore, *Heck* implicates a plaintiff's ability to state a claim, not whether the court has jurisdiction over that claim.").

This Court held in *Fort Bend County v. Davis* that the word "jurisdictional" is "generally reserved for prescriptions delineating the classes of cases a court may entertain (subject-matter jurisdiction) and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction)." 139 S. Ct. 1843, 1846 (2019). Because *Heck*'s favorable-termination requirement is an implied element of a claim and *Heck* only discussed the scope of § 1983 (not subject-matter jurisdiction), it would go against this Court's precedent to treat *Heck*'s favorable-termination requirement as "jurisdictional." *Garrett*, 17 F.4th at 428–29; *Colvin*, 2 F.4th at 498. As this Court has warned, the term "jurisdiction" is a "word of many, too many, meanings." *Steel Co.*, 523 U.S. at 90. Allowing *Heck* dismissals to be considered jurisdictional would severely undermine this Court's clear intention in *Heck* of treating the favorable-termination requirement as an implied element of § 1983 claims seeking damages. Therefore, a suit barred by *Heck*'s favorable-termination requirement is not dismissed for jurisdictional reasons because the favorable-termination requirement is an implied element of a claim, not a rule of jurisdiction.

II. THIS COURT'S DECISION IN *KINGSLEY* DID NOT ELIMINATE 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.

The Fourteenth Circuit erred when it held that failure-to-protect claims for pretrial detainees must be analyzed using an objective standard because *Kingsley* did not abrogate the subjective component of deliberate indifference failure-to-protect claims under the Fourteenth Amendment. The proper liability standard for failure-to-protect claims—under *Farmer v. Brennan*—requires the claimant to show that an official was deliberately indifferent to the risk posed against him. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (holding that an official must know of and disregard "an excessive risk to inmate health or safety; 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."). Therefore, the official must be subjectively aware of the facts constituting the risk and be aware of the risk itself to be liable under a failure-to-protect claim. *Id.*

Kingsley issued a very narrow decision for excessive force claims brought by pretrial detainees, not claims for failure-to-protect. *Kingsley v. Hendrickson*, 576 U.S. 389, 391–92 (2015). Accordingly, the *Farmer* standard applies to both pretrial detainees and prisoners alike, regardless of whether the claim arises under the Eighth or Fourteenth Amendment. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989); *Farmer*, 511 U.S. at 837. If this Court were to adopt an objective standard to measure Officer Campbell's state of mind, it would transform the inquiry into one of negligence, a liability standard that this Court has repeatedly struck down as "categorically beneath the threshold of constitutional due process." *Kingsley*, 576 U.S. at 396 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)). Thus, Arthur failed to allege facts showing that Officer Campbell knew of and disregarded a substantial risk of serious harm in

his complaint; at most, Officer Campbell was negligent in his work by failing to check the lists provided for him. *See Leal v. Wiles*, 734 F. App'x 905, 911 (5th Cir. 2018). Therefore, Petitioner respectfully asks this Court to reverse the Fourteenth Circuit and apply *Farmer*'s subjective deliberate indifference standard to Arthur's failure-to-protect claim.

A. This Court Issued a Narrow Decision in *Kingsley*.

This Court in *Kingsley* issued a narrow decision only to claims for "excessive force," not claims for "failure-to-protect." *Kingsley* addressed the narrow question of whether "to prove an *excessive force claim*, a pretrial detainee must show that the officers were subjectively aware that their *use of force* was unreasonable, or only that the officers' use of that force was objectively unreasonable." 576 U.S. at 391–92 (emphasis added).

This narrow question is what Kingsley wanted this Court to address on appeal: "Kingsley filed a petition for certiorari asking us to determine whether the requirements of a § 1983 *excessive force claim* brought by a pretrial detainee must satisfy the subjective standard or only the objective standard." *Id.* at 395 (emphasis added). Accordingly, this Court sought to decide the appropriate standard for this very question: "In deciding whether the force deliberately used is, constitutionally speaking, "excessive," should courts use an objective standard only, or instead a subjective standard that takes into account a defendant's state of mind?" *Id.* at 396. This Court held that "[i]t is with respect to *this* question that we hold that courts must use an objective standard." *Id.* (emphasis in original). This Court would not have used such narrow language if the intention was to also extend this objective standard to other claims such as a claim for failure-to-protect.

Additionally, several circuit courts correctly recognize that *Kingsley* issued a narrow decision and thus continue to apply *Farmer*'s subjective deliberate indifference standard to failure-to-protect claims brought by pretrial detainees. *See Cope v. Cogdill*, 3 F.4th 198, 207 n.7 (5th Cir.

2021) ("Since *Kingsley* discussed a different type of constitutional claim, it did not abrogate our deliberate-indifference precedent."); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018) ("*Kingsley* does not control because it was an excessive force case, not a deliberate indifference case."); *Strain v. Regalado*, 977 F.3d 984, 993 (10th Cir. 2020) ("Extending *Kingsley* to eliminate the subjective component of the deliberate indifference standard . . .would contradict the Supreme Court's rejection of a purely objective test in *Farmer* and our longstanding precedent."); *Swain v. Junior*, 961 F.3d 1276, 1285 n.4 (11th Cir. 2020) ("This case doesn't arise in the excessive-force context, and we have otherwise continued to require detainees to prove subjective deliberate indifference.").

The Fourteenth Circuit's decision to extend *Kingsley*'s general language on excessive force claims to failure-to-protect claims alters decades of established precedent because "[i]t is of course contrary to all traditions of [this Court's] jurisprudence to consider the law on this point conclusively resolved by broad language in cases where the issue was not presented or even envisioned." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 n.5 (1992). Additionally, the Fourteenth Circuit's extension of *Kingsley* is contrary to this Court's consistent initiative against the expansion of substantive due process concepts. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) ("[T]he Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended."). When asked to "break new ground in this field," This Court is required "to exercise the upmost care" under the doctrine of judicial self-restraint. *Id.* Accordingly, this Court exercised such care

by intentionally issuing a narrow decision in *Kingsley* that only applies to excessive force claims by pretrial detainees, not claims for failure-to-protect.[6]

B. The Status of the Person in Custody Does Not Affect the Nature of Failure-to-Protect Claims.

The status of Arthur as a pretrial detainee—as opposed to a prisoner—does not affect the nature of his failure-to-protect claim. In *Kingsley*, this Court explained that the language of the Eighth Amendment's Cruel and Unusual Punishment Clause and the Fourteenth Amendment's Due Process Clause "differs, and the nature of the claim often differs." 576 U.S. at 400. Several circuit courts—including the Fourteenth Circuit below—rely upon this statement to justify their expansion of *Kingsley*'s objective reasonableness standard for excessive force claims to failure-to-protect claims. *See, e.g.*, *Darnell v. Pineiro*, 849 F.3d 17, 34 (2d Cir. 2017); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016); R. at 16–19. However, these courts err in doing so because: (1) there is no constitutionally significant distinction between failure-to-protect claims brought by pretrial detainees and convicted prisoners; and (2) this Court has always imposed different liability standards between claims for excessive force and claims for failure-to-protect, even when they are brought under the same constitutional provision.

1. There is no constitutionally significant distinction between failure-to-protect claims brought by pretrial detainees and prisoners.

The nature of failure-to-protect claims brought by pretrial detainees and convicted prisoners does not differ under the Eighth Amendment or the Fourteenth Amendment because these claims

[6] Well after the *Kingsley* decision, two Justices of this Court opined that *Farmer*'s subjective deliberate indifference standard is "well-established law" for measuring claims regarding the health and safety risks for both convicted prisoners and pretrial detainees. *See Barnes v. Ahlman*, 140 S. Ct. 2620, 2622 (2020) (Sotomayor, J., joined by Ginsburg, J., dissenting from grant of stay).

arise from the fact of custody, not the reason for it. Thus, *Farmer*'s subjective deliberate indifference standard applies to both pretrial detainees and convicted prisoners if they wish to go forward with a failure-to-protect claim.

In *DeShaney v. Winnebago County Department of Social Services*, this Court noted that its holdings in *Estelle, Youngberg*, and *Revere* "stand only for the proposition that when 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." 489 U.S. at 199–200 (citing *Estelle v. Gamble*, 429 U.S. 97 (1976); *Youngberg v. Romeo*, 457 U.S. 307 (1982); *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239 (1983)).

Although these cases dealt with an Eighth Amendment claim by a convicted prisoner, a Fourteenth Amendment claim by an involuntarily committed mental patient, and a Fourteenth Amendment claim by a pretrial detainee, these distinctions did not affect this Court's analysis at all; this Court stated:

> The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.

DeShaney, 489 U.S. at 200.

The Fifth Circuit's adoption of this rationale provides a great example of why this is still good law because they rely on *DeShaney*. In *Hare v. City of Corinth*, the Fifth Circuit held that the objective standard articulated in *Bell v. Wolfish*—that a condition or restriction be reasonably related to a legitimate government interest—only applies to customs and policies. *Hare v. City of Corinth*, 74 F.3d 633, 644–45 (5th Cir. 1996) (discussing *Bell v. Wolfish*, 441 U.S. 520, 530 (1979), where a pretrial detainee challenged the constitutionality of a prison's double-bunking policy). In

Hare, the estate of a pretrial detainee who committed suicide brought a § 1983 action against a city for failure-to-protect. *Id.* at 635. The court created a "policy-episodic" distinction, meaning that policies or rules implemented by a prison would be reviewed under the objective standard, but independent acts of individual officials would be reviewed under the subjective standard for failure-to-protect claims. *Id.* at 645.

The court reasoned that the objective standard should only apply to policies and rules because the state-of-mind is presumptively met. *Id.* at 644 ("A state's imposition of a rule or restriction during pretrial confinement manifests an avowed intent to subject a pretrial detainee to that rule or restriction."). By contrast, "[w]ith episodic acts or omissions, intentionality is no longer a given, and *Bell* offers an ill-fitting test." *Id.* at 645. Thus, the court held that the subjective deliberate indifference standard must apply to independent acts of individuals when a pretrial detainee has brought forth a failure-to-protect claim. *Id.*

In applying this subjective standard, *Hare* relied on *DeShaney* in finding that the government's responsibility to protect pretrial detainees from harm "springs from the fact of incarceration and the resulting obligation to provide for the detainee's basic human needs." *Id.* at 645 (citing *DeShaney*, 489 U.S. at 200). The court in *Hare* found "no constitutionally significant distinction between the rights of pretrial detainees and convicted inmates to basic human needs, including medical care and *protection from violence* or suicide," and thus concluded that a state jail official's constitutional liability for episodic acts or omissions should be measured by the subjective deliberate indifference enunciated by this Court in *Farmer*. *Id.* at 643 (emphasis added).

The Fifth Circuit's reasoning in *Hare* is still valid after the *Kingsley* decision because this Court did not seek to modify its holdings in *DeShaney* or *Farmer* as *Kingsley* was concerned with distinctions between excessive force claims—not failure-to-protect claims—under different

constitutional provisions. *Kingsley*, 576 U.S. at 400–01. This Court did not mention *DeShaney* or *Farmer* in *Kingsley* at all for this very reason. In fact, three weeks before the *Kingsley* decision, this Court noted, without criticism, that the Third Circuit applied the *Farmer* subjective deliberate indifference standard to a pretrial detainee's failure-to-protect claim. *See Taylor v. Barkes*, 575 U.S. 822, 826–27 (2015) (citing *Serafin v. City of Johnstown*, 53 F. App'x 211, 213–14 (3d Cir. 2002)). Post-*Kingsley*, the Fifth Circuit's correct application of *Farmer*'s subjective deliberate indifference standard for failure-to-protect claims still stands as they continue to rely on *Hare*, which in turn relied on this Court's precedent in *DeShaney*. *See Edmiston v. Borrego*, 75 F.4th 551, 558 (5th Cir. 2023); *Cope*, 3 F.4th at 206; *Leal*, 734 F. App'x at 909 n.18. Therefore, the nature of Arthur's failure-to-protect claim does not differ under the Eighth Amendment or the Fourteenth Amendment because these claims arise from the fact of custody, not the reason for it.

2. This Court has always imposed different liability standards between claims for excessive force and claims for failure-to-protect.

Under the Eighth Amendment, this Court has always imposed different liability standards between claims for excessive force and claims for failure-to-protect. In *Farmer*, this Court held that the subjective deliberate indifference standard applies to Eighth Amendment claims for failure-to-protect. 511 U.S. at 837. However, for excessive force claims under the Eighth Amendment, the claimant must show that officials applied force "maliciously and sadistically for the very purpose of causing harm." *Id.* (citing *Hudson v. McMillian*, 503 U.S. 1, 6 (1992)). Reiterating its holding in *Hudson v. McMillian*, this Court found that it would be inappropriate for the deliberate indifference standard to apply to Eighth Amendment claims for excessive force but not for Eighth Amendment claims for failure-to-protect. *Id.* at 835 (citing *Hudson*, 503 U.S. at 6). Thus, lower courts that recognize and apply different liability standards under the Fourteenth Amendment for excessive force claims and failure-to-protect claims do so based on this Court's

recognition of different liability standards under the Eighth Amendment depending on the type of claim being used. *See Cope*, 3 F.4th at 207 n.7; *Whitney*, 887 F.3d at 860 n.4; *Strain*, 977 F.3d at 993; *Swain*, 961 F.3d at 1285 n.4.

Kingsley did not reject the subjective component set out in *Farmer*. In *Kingsley*, the respondents did not ask this Court to apply *Farmer*'s subjective standard—which asks whether the official had actual knowledge of a substantial risk of serious harm—to failure to protect claims. *Kingsley*, 576 U.S. at 403. Rather, the respondents in *Kingsley* asked this Court to apply *Hudson*'s subjective standard for Eighth Amendment excessive force claims, which asks whether the official applied force maliciously and sadistically for the very purpose of causing harm. *Kingsley*, 576 U.S. at 400; *Farmer*, 511 U.S. at 835 (citing *Hudson*, 503 U.S. at 6). *Kingsley*'s rejection of this request did not constitute a blanket rejection of *Farmer*'s subjective measure for other pretrial detainee claims, including failure-to-protect claims.

Under the subjective prong of *Farmer*'s deliberate indifference standard, liability cannot be established for a government official's negligent conduct and sets forth a standard for identifying punishment for failure-to-protect claims; it does not identify when punishment is cruel and unusual. *Farmer*, 511 U.S. at 837. This Court held in *Farmer* that the subjective deliberate indifference standard is the proper threshold for failure-to-protect claims under the Eighth Amendment because a prisoner is unable to prove cruel and unusual punishment if he cannot show punishment at all. *Id.* at 835.

Accordingly, *Farmer*'s subjective deliberate indifference standard also provides an appropriate standard for a pretrial detainee's failure-to-protect claim under the Fourteenth Amendment because the Due Process Clause prevents any punishment of pretrial detainees, and *Farmer*'s subjective deliberate indifference standard "purports to ask *only* whether an official

'punished' an inmate, not whether the punishment was cruel and unusual." *Hare*, 74 F.3d at 650 (emphasis added); *see also id.* ("In essence, what *Farmer* says is that a state official who has subjective knowledge of the risk of serious injury to a convicted prisoner or a pretrial detainee and whose response is deliberately indifferent inflicts either cruel and unusual punishment or no punishment at all.").

Thus, it comports with this Court's precedent to apply *Farmer*'s subjective deliberate indifference standard for a prisoner's failure-to-protect claim under the Eighth Amendment to a pretrial detainee's failure-to-protect claim under the Fourteenth Amendment because this Court has always imposed different liability standards between claims for excessive force and claims for failure-to-protect.

C. The Objective Standard Transforms the Inquiry into One of Negligence.

Applying the objective standard from *Kingsley* to Officer Campbell's state of mind transforms the inquiry into one of negligence, a liability standard that *Kingsley* held to be "categorically beneath the threshold of constitutional due process." 576 U.S. at 396 (quoting *Lewis*, 523 U.S. at 849).

This principle far outdates *Kingsley*'s reiteration. The core concept of due process is the protection against arbitrary action by government officials, and "only the most egregious official conduct can be said to be arbitrary in the constitutional sense." *Lewis*, 523 U.S. at 846. Accordingly, this Court has always held that lack of due care by a government official does not infringe on an individual's Fourteenth Amendment due process rights. *See Daniels v. Williams*, 474 U.S. 327, 332 (1986) (stating that it would "trivialize the centuries-old principle of due process of law" to hold that an injury caused by lack of due care is a deprivation within the meaning of the

Fourteenth Amendment). Thus, lack of due care is "far from an abuse of power" and "suggests no more than a failure to measure up to the conduct of a reasonable person." *Id.*

The Fourteenth Circuit erred when it applied *Kingsley*'s standard to Arthur's failure-to-protect claim because it transformed the inquiry into one of negligence. R. at 16–19. The court adopted the Ninth Circuit's framework for what a pretrial detainee must prove for failure-to-protect claims under the Fourteenth Amendment: (1) the official "made an intentional decision with respect to the conditions under which plaintiff was confined;" (2) "Those conditions put the plaintiff at substantial risk of suffering serious harm;" and (3) "the defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved . . . ." *Castro*, 833 F.3d at 1071; R. at 18.

The third element incorporates *Kingsley*'s objective reasonableness standard for excessive force claims and therefore calls for a negligent standard because it asks whether Officer Campbell failed to act as a reasonable officer under the same circumstances in failing to recognize the risk to Arthur. 576 U.S. at 397–98. The Fourteenth Circuit adopted the rationale that pretrial detainees must allege something more than negligence, but less than subjective intent: "something akin to reckless disregard." *Castro*, 833 F.3d at 1071; R. at 18. However, directly asking whether an officer failed to act reasonably is explicitly asking for a negligent standard because the focus shifts to the failure of the act itself, not an affirmative action like in excessive force claims. *See Kingsley*, 576 U.S. at 395–96 (listing purposeful acts such as "the swing of a fist that hits a face, a push that leads to a fall, or the shot of a taser that leads to the stunning of its recipient."). Therefore, *Kingsley*'s objective reasonable standard is improper for failure-to-protect claims brought by

pretrial detainees under the Fourteenth Amendment because it transforms the inquiry into one of negligence.

D. Applying the Correct Standard, Officer Campbell Was Negligent at Most.

Applying the subjective deliberate indifference standard from *Farmer*, Officer Campbell was not deliberately indifferent toward Arthur because he did not have actual knowledge of Arthur's gang status; at most, Officer Campbell negligently brought the rival inmates together. In *Leal v. Wiles*, the Fifth Circuit held that an official was not deliberately indifferent because Leal—a pretrial detainee—could not show that an officer had actual knowledge that he was the target of a gang attack. *Leal*, 734 F. App'x at 912. When Leal arrived at jail, two detectives informed the booking officer that Leal was to be kept separate from a certain gang because a hit had issued a hit on him. *Id.* at 906. Leal was placed in a different cell block, and the rosters, floor cards and computer database reflected his risk of being attacked. *Id.* One day, Leal was asked if he wanted to go to recreation by an officer ("Officer Mendizabal") overseeing the transfer of inmates from their cells to recreation. *Id.* Officer Mendizabal took both Leal and another inmate from the same cellblock to a guard station where a gang intelligence officer was present. *Id.* Officer Mendizabal left and returned with two inmates from another cell block that turned out to be members of the gang who had placed the hit on Leal. *Id.* Officer Mendizabal then placed all the inmates in an elevator where the two gang members subsequently assaulted Leal. *Id.*

The court held that Leal was unable to prove the subjective intent of Officer Mendizabal and thus could not proceed with his failure-to-protect claim. *Id.* at 910–12. The court found that Officer Mendizabal did not act with deliberate indifference towards Leal because no direct evidence indicated that he knew of Leal's protected status before the assault; even though Officer Mendizabal had access to the roster indicating Leal's status, the "record [fell] silent" on whether

he read it. *Id.* at 910. In further support of this finding, the Fifth Circuit mentioned the lower court's acknowledgments of the facts.[7]

Leal also argued that Officer Mendizabal had the chance to "draw the inference" and thus suggested that Officer Mendizabal "refused to verify underlying facts that he strongly suspected to be true or declined to confirm inferences of risk that he strongly suspected to exist." *Id.* at 911 (citing *Farmer*, 511 U.S. at 837, 843 n.8). In disagreement with Leal, the court cited *Farmer*'s provided examples of what it meant by "refus[ing] to verify" or "declin[ing] to confirm" underlying facts and inferences:

> when a prison official is aware of a high probability of facts indicating that one prisoner has planned an attack on another but resists opportunities to obtain final confirmation; or when a prison official knows that some diseases are communicable and that a single needle is being used to administer flu shots to prisoners but refuses to listen to a subordinate who he strongly suspects will attempt to explain the associated risk of transmitting disease.

Id. (citing *Farmer*, 511 U.S. at 843 n.8). The court found that the record did not indicate that Officer Mendizabal disregarded strong indications of a substantial risk to Leal's safety by resisting an opportunity to confirm facts or refusing to listen to a subordinate; rather, the record only showed that Officer Mendizabal did not check the recreation roster because he was in a "hurry." *Id.* Thus, the court held "[t]his, without more," did not establish that Officer Mendizabal knew of and disregarded a substantial risk of serious harm to Leal. *Id.*

Here, it is clear from the record that Officer Campbell was not deliberately indifferent towards Arthur because he was not subjectively aware of Arthur's protected status; at most, Officer

[7] The district court acknowledged that although Officer Mendizabal was aware of the general risk of transporting inmates, he exercised precautions such as ensuring the inmates were handcuffed and that he stood between them in the elevator. *Leal*, 734 F. App'x at 910. The district court also stressed Officer Mendizabal's attempt to try and stop the attack by placing himself in between the inmates. *Id.*

Campbell negligently brought both rival gang inmates together. *Id.* at 910–11; R. at 2–6. Although the "record [fell] silent" in *Leal*, the record in this case does not. 734 F. App'x at 910; R. at 6. Officer Campbell did not know or recognize Arthur at the time he retrieved him from his cell. R. at 6. Officer Campbell also did not reference the hard copy list of inmates with special status that he was carrying, nor did he reference the jail's database as required by the gang intelligence officers for those who missed the meeting regarding Arthur's status. *Id.* Like *Leal*, Officer Campbell even attempted to break up the attack when it occurred for several minutes until other officers arrived to help. 734 F. App'x at 910; R. at 7. Further, a negative inference cannot be drawn regarding Officer Campbell's potential attendance of the meeting because the record is conflicting; the roll call records indicated that he attended the meeting hosted by the gang intelligence officers, but the jail's time sheets indicated that he called in sick and did not arrive at work until the meeting had ended. R. at 5–6. Additionally, the database usually indicates if an officer has viewed a specific page or file, but a glitch in the system wiped any record of any person who viewed the meeting's minutes from that day. *Id.* These facts, without more, support the notion that Officer Campbell was not subjectively aware of Arthur's protected status.

Further, Officer Campbell did not disregard strong indications of a substantial risk to Leal's safety by resisting an opportunity to confirm facts or refusing to listen to a subordinate. *Farmer*, 511 U.S. at 843 n.8; R. at 5–7. On the walk to the guard stand, another inmate did yell out to Arthur "I'm glad your brother Tom finally took care of that horrible woman," to which Arthur replied "Yeah, it's what that scum deserved." R. at 6. However, it cannot be said that Officer Campbell had the chance to "draw an inference" from this but failed to do so because these statements are extremely broad; for example, another inmate could have a brother named "Tom," and the inmate did not implicate that he was directly talking about Bonucci's wife.

Officer Campbell was an entry-level guard, not a gang intelligence officer. R. at 5. He was trained properly and had been meeting his job expectations for the several months he had been employed. *Id.* The record reflects a classic case of negligence where a person breached their duty to another by lack of due care and therefore cannot be held liable. R. at 2–7. This Court said it best: To hold that injury caused by [lack of due care] is a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law." *Williams*, 474 U.S. at 332; *see also* Kate Lambroza, Note, *Pretrial Detainees and the Objective Standard After Kingsley v. Hendrickson*, 58 Am. Crim. L. Rev. 429, 439 (2021) (emphasizing how "careful" the Court was in *Kingsley* when explaining that negligent conduct is not a basis for liability under § 1983). Therefore, Officer Campbell was not deliberately indifferent towards Arthur because he did not have actual knowledge of Arthur's gang status; at most, Officer Campbell was negligent in bringing Arthur and the Bonucci inmates together.

CONCLUSION

For the foregoing reasons, Petitioner Chester Campbell respectfully asks this Court to reverse the judgment of the Court of Appeals for the Fourteenth Circuit.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER