THIS CASE HAS BEEN SCHEDULED FOR ORAL ARGUMENT
FEBRUARY 23-24, 2024

NO. 23-05

IN THE SUPREME COURT OF THE UNITED STATES

CHESTER CAMPBELL
Petitioner,

v.

ARTHUR SHELBY
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT

BRIEF FOR RESPONDENT

Team 16
ATTORNEYS FOR RESPONDENT
February 2, 2024

QUESTIONS PRESENTED

1. Whether this Court should consider the District Court's dismissal of Arthur Shelby's 42 U.S.C. § 1983 claim under *Heck v. Humphrey* a "strike" according to the Prison Litigation Reform Act.
2. Whether this Court's decision in *Kingsley v. Hendrickson* extends an objective knowledge requirement to pretrial detainees alleging deliberate indifference under 42 U.S.C. §1983.

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STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the Courts Below

Respondent Arthur Shelby brought a 42 U.S.C. § 1983 pro se claim to the Western District of Wythe against Petitioner Officer Campbell in his individual capacity. R. 7. Shelby filed both his Complaint and Motion to Proceed in *Forma Pauperis* on February 24, 2022. *Id.* The District Court found Shelby had accrued three strikes under the Prison Litigation Reform Act ("PLRA") on April 20, 2022. R. 1. The Court denied Shelby's petition to proceed in *forma pauperis* and directed him to pay the $402.00 filing fee. *Id.* Shelby timely paid the filing fee within 30 days from the District Court's order. R. 13. Petitioner Officer Campbell filed a Motion to Dismiss for failure to state a claim on May 4, 2022. R. 8. The District Court later granted the Petitioner's Motion to Dismiss on July 14, 2022. R. 11.

Shelby timely filed for appeal to the Fourteenth Circuit on July 25, 2022. R. 13. The Circuit appointed Shelby counsel prior to argument submission on December 1, 2022. R. 12. The Circuit later reversed and remanded the District Court's decision on both the PLRA strike and Eighth Amendment issues. R. 19. This Court granted Petitioner Chester Campbell's Writ of Certiorari in the 2023 October Term. R. 21.

B. Statement of Facts

As a high ranking member in the maligned Geeky Binders organization, Mr. Arthur has been a frequent guest in Marshall's jail. R. 2-3. While this organization is primarily engaged in legitimate business, Mr. Shelby has had previous conflicts with the law. *Id*. Perhaps as a result of

the Binder's disfavorable reputation, Mr. Shelby has had frequent issues with the jail staff, filing three civil actions against various government actors during his last detention. R. 3.

On December 31st 2020, during a local sporting event hosted by the Geeky Binders, Mr. Shelby was again arrested on a number of charges. R. 3-4. Mr. Shelby was taken to the Marshall jail where Officer Mann performed his intake. R. 4. During intake Officer Mann discovered a ballpoint pen adonred with the Geeky Binder's logo. *Id*. In addition, Mr. Shelby made repeated references to his affiliation with the organization. *Id*. Finally, Officer Mann found a prior case entry listing Mr.Shelby's affiliation with the Geeky Binders. R. 5. In accordance with the jail's regulations, Officer Mann listed that affiliation, and Mr. Shelby's statement's regarding the Binders, in the new case file. *Id*.

Not long before Mr. Shelby's arrest, a rival organization, the Bonnuci Family, found themselves at the focus of a police bribery scandal. R. 3. Many members of the family, including their leader, had been arrested and detained at the Marshall jail at the Mr. Shelby was arrested. *Id*. Aware of a violent history between the organizations, and the Bonuccis specific desire to harm Mr. Shelby, intelligence officers at the jail took multiple precautions to ensure that jail officials would be aware of the risk to Mr. Shelby. R. 5. The intelligence officers made a note in Mr. Shelby's file, sent paper notices to administrative areas of the jail, and included Mr. Shelby' status on the rosters and door cards throughout the jail. *Id*. Finally, to ensure awareness of Mr. Shelby's status, the intelligence officers hosted a meeting informing officials both of Mr. Shelby's position in the Geeky Binders and the risk he faced from the Bonnucis. *Id*.

On January 8th, 2021, Officer Campbell, a trained but relatively inexperienced jail official, moved Mr. Shelby to the recreation room. R. 6. While Officer Campbell had missed the intelligence meeting, absent officials were required to review the database entries of prisoners

discussed. R. 5. We do not know whether Mr. Campbell reviewed that database, but upon seeing Mr. Shelby, Mr Campbell was apparently unfamiliar with his identity. R. 6. Before moving Mr. Shelby, Officer Campbell failed to recognize the name and status listed on his jail door. *Id*. Additionally Officer Campbell was carrying a list of detainess with special conditions, including Mr. Shelby's conditions, yet failed to check this list before moving Mr. Shelby. *Id*.

While transporting Mr. Shelby to the recreation area Officer Campbell heard Mr. Shelby and another detainee discuss Mr. Shelby's older brother, the leader of the Geeky Binders. *Id*. He then gathered four other detainees, three of whom belonged to the Bonucci family. R.7. Almost immediately the Bonucci's attacked and brutally beat Mr. Shelby. *Id*. As a result of the beating, lasting multiple minutes, Mr. Shelby was hospitalized for several weeks with traumatic brain injuries, internal bleeding, and multiple fractured bones. *Id*.

C. Standard of review

Circuits review de novo a district court's decision to dismiss a complaint for failure to state a claim. *Strauss v. Angie's List, Inc.*, 951 F.3d 1263, 1266 (10th Cir. 2020); *City of Pontiac Gen. Emp. Reti. Sys. v. MBIA, Inc.*, 637 F.3d 169, 173 (2nd Cir. 2011). Circuits also review a district court's interpretation and application of § 1915(g) de novo. *Andrew v. Cervantes*, 493 F.3d 1047 (9th Cir. 2007); *Calderon-Ramirex v. McCament*, 877 F.3d 272, 275 (7th Cir. 2017). Finally, circuits accept the "complaint's well-pleaded allegations and draw all resonable inferences in the plaintiffs' favor." *Calderon-Ramirex*, 877 F.3d at 275.

SUMMARY OF THE ARGUMENT

A *Heck* dismissal cannot accrue a PLRA strike because it is jurisdictional in nature. The dismissal prevents courts from exercising authority over a class of cases for prematurity. Moreover, *Heck* functions identically to jurisdictional issues such as subject matter jurisdiction.

A claimant can allege failure to meet *Heck*'s requirements at any point throughout the proceedings as an affirmative defense. *Heck* is also jurisdictional because it does not require a plaintiff to plead its satisifaction in their complaint. *Heck*, as jurisdictional, prevents courts from assessing the merits of a plaintiff's claims and cannot allow a court to determine whether a plaintiff has failed to adequately state a claim according to the PLRA. Thus, a PLRA strike cannot accrue without assessment of the merits of a plaintiff's claim.

Even if a *Heck* dismissal is not jurisdictional in nature, it cannot constitute a PLRA strike because it functions separately from an element of a claim. When a *Heck* dismissal is appropriately applied, a court is temporarily restricted from assessing the merits of a plaintiff's claims. Without an assessment of the merits of a plaintiff's claim, a court cannot adequately determine whether the plaintiff's complaint has met the PLRA's statutory requirements.

This Court should accord its interpretation of pro se pleadings in accordance with its prior precedent and typical construction of the Federal Rules of Civil Procedure. A pro se plaintiff, such as Shelby, deserves to have their complaint liberally construed when they allege constitutional rights violation following life threatening injuries. A *Heck* dismissal thus, should not count as a PLRA strike because such a view unfairly penalizes pro se plaintiffs who attempt to bring meritorious claims.

The objective knowledge standard established in *Kingsley v. Henderickson* should be extended to all deliberate indifference claims brought by pretrial detainees under the Fourteenth Amendment. This court has repeatedly distinguished the standards governing §1983 claims under the Eighth and Fourteenth amendments, both because the two clauses significantly differ in language and history and because the basic obligations owed to prisoner are different than those owed to the presumptive innocents awaiting trial.

Kingsley also relies on previous deliberate indifference cases holding that a pretrial detainee can only suffer a deprivation of rights which are reasonably necessary to effectuate safe pretrial detention. As a result, the principly punitive concerns of the Eighth Amendment have little untility under the Fourteenth Amendment. Because an objective knowledge standard protects detainees from reckless incompetence, willfull blindness, and egregious failures to train while imposing minimal intrusions on the flexibility and administrative discretion needed to effect safe detention, extension of *Kingsley* strikes the proper Due Process balance.

The circuits extending *Kingsley* have established a number of valuable elements to find deliberate indifference in the reckless omissions of an individual. Alongside the objective knowledge standard these elements provide a coherent test of *Kingsley*'s stated concerns while remaining sufficiently flexible to meet the unique factual patterns housed under the deliberate indifference label. Under these standards, Officer Campbell took a deliberate action which was reckless in light of information any reasonable official would have known. Thus, this Court should find that Mr. Shelby can state a claim for deliberate indifference against Officer Campbell.

ARGUMENT

I. A *Heck* dismissal is not a Prison Litigation Reform Act strike.

Congress promulgated the Prison Litigation Reform Act (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). The PLRA's three-strike provision states a prisoner accrues a strike when the complaint was "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). Once a prisoner accumulates three strikes, they are barred from bringing an in *forma pauperis* federal court action while

incarcerated or detained in any facility "unless the prisoner is under imminent danger of serious physical injury." *Id.*

In *Heck v. Humphrey,* this Court established expectations that lower courts should refrain from addressing a 42 U.S.C. § 1983 claim for damages when such a ruling would undermine a plaintiff's pending criminal conviction and render it unlawful. 512 U.S. 477, 486 (1994). To overcome this barrier,

> a § 1983 plaintiff 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, 28 U.S.C. § 2254.

Id. at 487. A *Heck* dismissal only temporarily prevents a court from addressing a plaintiff's underlying claims. *Id.* According to the favorable termination requirement, a court can later address the earlier factual allegations if the criminal proceeding is resolved in the Plaintiff's favor. *Id.* at 489-90.

The favorable termination requirement coincides with *Heck*'s goal to prevent prisoners from implementing collateral attacks on their criminal judgments via § 1983 civil litigation. *Id*. at 484-85. Notably, this Court ruled in *McDonough*, that *Heck* functions as a categorical rule requiring federal courts to defer consideration of a § 1983's merits until they have actually accrued. *McDonough v. Smith*, 139 S.Ct. 2149, 2159 (2019). As such, preclusion of an assessment of a plaintiff's underlying claim is not automatic, instead functioning as an affirmative defense. *Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011). *Heck* serves to restrict prisoners' collateral attacks on criminal judgments by temporarily restraining a court's view of the merits of a plaintiff's § 1983 claim. *Albino v. Baca*, 747 F.3d 1162, 1170 (9th Cir. 2014).

The PLRA's text and purpose also demonstrate a *Heck* dismissal does not accrue a PLRA strike. Arthur Shelby's prior 12(b)(6) dismissal does not count as a PLRA strike because it does

not meet the statute's textual requirements that claim must be frivulous, malicious, or for failure to state a claim. The District Court's dismissal was neither frivolous nor malicious. Just as *McDonough* says a *Heck* dismissal is not a strike because it does not allow courts to assess a plaintiff's § 1983 claims, Shelby's *Heck* dismissal is not a PLRA strike because the District Court never assessed the core of his § 1983 claims. *McDonough*, 139 S.Ct. at 2159. The District Court's dismissal of Shelby's case is neither frivolous, malicious, nor for failure to state a claim upon which relief can be granted and therefore does not count as a PLRA strike. R.11.

A. A *Heck* dismissal is not a strike because it is jurisdictional in nature.

This Court defines "jurisdiction" as "prescriptions delineating the classes of cases a court may entertain…" *Ford Bend County v. Davis*, 139 S.Ct. 1843, 1848 (2019). As applied to *Heck,* a split emerges among the Circuits on considerations of jurisdictionally and other procedural elements. The First and Eleventh Circuits have found *Heck* is jurisdictional while the Third, Fifth, and Seventh Circuits have found *Heck* is not jurisdictional. *See O'Brien*, 943 F.3d 514, 529 (1st Cir. 2019); *Figueroa v. Rivera,* 147 F.3d 77, 81 (1st Cir. 1998); *Harrigan v. Metro Dade Police Dep't Station #4*, 977 F.3d 1185, 1191 (11th Cir. 2020); *Dixon v. Hodges*, 887 F.3d 1235, 1237 (11th Cir. 2018); *McCarney v. Ford Motor*, 657 F.2d 230, 233 (8th Cir. 1981); *Garret v. Murphy*, 17 F.4th 419 (3rd Cir. 2021); *Colvin v. LeBlanc* 2 F.4th 494 (5th Cir. 2021); *Polzin v. Gag*e, 636 F.3d 834. Other Circuits such as the Second Circuit remain silent on the issue while others such as the Ninth Circuit find *Heck* is better considered an affirmative defense instead of assessed for jurisdictionally. *See Washington,* 833 F.3d at 1057

This Court should adopt the view of the First and Eleventh Circuits that *Heck* is jurisdictional in nature because it operates the same as similar defenses such as subject matter jurisdiction. Specifically, *Heck* is jurisdictional in nature because it prevents courts from exercising authority over a class of cases consisting of premature claims. *Heck*, 512 U.S. at 499.

A court can exercise its authority over prematurity – like other core jurisdictional issues such as subject matter jurisdiction – at any point during the proceedings. *O'Brien*, 943 F.3d 514 at 529. Thus, *Heck* is jurisdictional because it operates the same as other jurisdictional claims such as subject matter jurisdiction.

The First and Eleventh Circuits have both found that *Heck* is strictly jurisdictional and as such prevents courts from addressing the merits of a plaintiff's § 1983 claim. *See O'Brien*, 943 F.3d at 529; *Figueroa,* 147 F.3d at 81; *Harrigan*, 977 F.3d at 1191; *Dixon v. Hodges*, 887 F.3d at 1237. The First Circuit found in *O'Brien v. Town of Bellingham* that a *Heck* dismissal, like subject matter jurisdiction, functions as an affirmative defense because it can be raised at any point during the proceedings. *O'Brien*, 943 F.3d at 529; *See also White v. Gittens*, 121 F.3d 803, 807 (1st Cir. 1997). Thus, a *Heck* dismissal is identical to a subject matter jurisdiction claim and is jurisdictional in nature.

In contrast, the Third, Fifth, and Seventh Circuits have held *Heck* is not jurisdictional. *See McCarney*, 657 F.2d at 233; *Garret*, 17 F.4th at 428p; *Colvin v. LeBlanc* 2 F.4th at 498; *Polzin v. Gag*e - 636 F.3d 834 (7th Cir. 2011). In *Garrett* the Third Circuit found that *Heck's* favorable termination requirements – whereby criminal proceedings must be resolved in a plaintiff's favor before civil claims can continue – functions as an *implied* element of a claim and does not render the dismissal jurisdictional. *Garrett*, F.4th at 428. The Third Circuit also found a *Heck* dismissal is not jurisdictional since the claims are "dismissed because the plaintiff lacks a valid "cause of action" under § 1983, and a cause of action in this context is synonymous with a "claim" under the PLRA." *Id.* (quoting *Heck* 512 U.S. at 489).

This reading, however, does not accord with the text of the statute. Nowhere in 42 U.S.C. § 1983 does the statute call for its requirements to function as an *implied* element of a claim.

Washington v. L.A. Cty. Sheriff's Dep't, 833 F.3d 1048, 1056 (9th Cir. 2016). The more apt reading of *Heck* is that the dismissal functions as an exhaustion defense that must be anticipated by the defendant's answer. *Id.* The exhaustion defense functions separately from elements of a claim and thus demonstrates a *Heck* dismissal is jurisdictional in nature.

The Ninth Circuit has ruled separately from the jurisdictional issue and instead found that a *Heck* dismissal is analogous to an affirmative defense. *Washington,* 833 F.3d at 1057. In *Washington*, the Ninth Circuit held that *Heck* dismissals are jurisdictional because *Heck* dismissals are "judicial traffic control" and function to "prevent civil actions from collaterally attacking criminal judgments." *Id.* at 1056 (quoting *Albino v. Baca*, 747 F.3d 1162, 1170 (9th Cir. 2014)). Like other PLRA defenses, such as the mandatory administrative exhaustion requirement, *Heck* dismissals function as an affirmative defense and not a pleading requirement. *Id.* at 1057. Thus, without an assessment of the merits of the underlying claim, *Heck* dismissals effectively function as a waiver, not an element of a claim. *Id.* Even if *Heck* is not jurisdictional, and more akin to a waiver, its dismissal therefore does not accrue a PLRA strike without allowing a court to consider the merits of a plaintiff's claims.

1. A *Heck* dismissal does not accrue a PLRA strike for failure to state a claim because it dismisses a plaintiff's claim for prematurity, not meritlessness.

The PLRA mandates a strike accrues for a claim that is "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). The District Court's dismissal of Shelby's case is neither frivolous, malicious, nor for failure to state a claim upon which relief can be granted because it does not impact the merits of Shelby's claim. The District Court's *Heck* dismissal of Shelby's § 1983 claim, therefore, does not count as a PLRA strike. R.11.

In *Washington*, the Ninth Circuit found a *Heck* dismissal did not accrue a strike under the PLRA because the Circuit could not assess the merits of the plaintiff's claims unless the *Heck* deficiency was obvious on the face of the complaint. 833 F.3d at 1056. There, a pretrial detainee, like Shelby, alleged violations of his Eighth Amendment rights to adequate medical care and safe prison conditions. *Id.* The Plaintiff filed a § 1983 claim against the prison guards alleging they had violated his rights by improperly applying a sentencing enhancement. *Id.* The Circuit, recognizing the similarities between the language of a Rule 12(b)(6) motion and *Heck* dismissal, applied the typical interpretation of the District Court's order granting the pretrial detainee's motion to dismiss under the Federal Rules of Civil Procedure. *Id.* at 1055. The Court found a *Heck* dismissal is not one for failure to state a claim when the face of the complaint clearly demonstrates its claims are mature. *Id.*

The Ninth Circuit emphasized that *Heck* prevents courts from exercising authority based on the claim's prematurity, not meritlessness. *Id.* at 1058. The Circuit noted, "dismissal on jurisdictional grounds occurs not only before an examination of the merits, but curtails such an examination." *Id*. Without assessing the merits of a plaintiff's § 1983 claim, a court cannot assess whether a claim was adequately stated. *Id.* Thus, Shelby's *Heck* dismissal cannot be a PLRA strike for failure to state a claim when the District Court never assessed the merits of his claims. *Id.*

2. <u>The favorable termination requirement demonstrates a Heck dismissal does not accrue a PLRA strike because it restrains courts' ability to determine the merits of a plaintiff's § 1983 claim.</u>

The *Heck* favorable-termination requirement also demonstrates that a court dismisses § 1983 claims for prematurity, not meritlessness. The favorable termination requirement directs court to defer consideration of the merits of a plaintiff's § 1983 claims until the plaintiff's pending criminal conviction has ended in their favor. *Heck*, 512 U.S. at 489-90. Once a plaintiff

meets the favorable termination requirement, courts can assess the earlier factual allegations without additional pleadings. *Id.* Meaning, plaintiffs *can* sufficiently state a claim and still face a *Heck* dismissal further according that a *Heck* dismissal does not accrue a PLRA strike.

This Court also affirmed in *McDonough* that until the favorable termination prerequisite has been met, the § 1983 claim has not accrued at all. 139 S. Ct. at 2158-59. A court is required to dismiss the § 1983 proceeding for failure to meet the favorable termination requirement. The termination requirement prevents a court from assessing the merits of a plaintiff's §1983 claims and instead operates as "judicial traffic control." *Albino*, 747 F.3d at 1170. A *Heck* dismissal for failure to state a claim thus, does not count as a PLRA strike because a court does not have the ability to assess the merits of the case at all. *McDonough*, 139 S.Ct. at 2158; *See also Meija v. Harrington,* 541 F. App'x 709, 710 (7th Cir. 2013) (holding that a *Heck* dismissal prevents a court from assessing the adequacy of an underlying claim); *See also Washington,* 833 F.3d at 1055 (holding a *Heck* dismissal is without prejudice because a court does not assess the plaintiff's underlying claims).

B. Even if *Heck* is not jurisdictional, the dismissal does not count as a PLRA strike because it is separate from elements of a § 1983 claim.

The *Heck* favorable termination requirement does not function as an element of a § 1983 claim. *McDonough*, 139 S. Ct. at 2159. The Ninth Circuit established in *Washington* that a § 1983 plaintiff is not required to plead in his complaint that his prior conviction was invalidated as the favorable termination requirement mandates. 833 F.3d at 1056. Without such a pleading requirement, a *Heck* dismissal is not an element of a claim but instead functions as an affirmative defense because it operates the same as other such defenses under the PLRA. *Id.*

The *Heck* favorable termination requirement replicates the mandatory administrative exhaustion requirement of PLRA claims. *Jones v. Bock,* 549 U.S. 199, 200 (2007). The

administrative exhaustion requirement mandates prisoners must utilize their facility's prison grievance procedures prior to bringing a civil suit. 42 U.S.C. § 1997e(a). The requirement also serves as an affirmative defense because a prisoner is not required to plead its satisfaction in their complaint. *Jones*, 539 U.S. at 200. Like the administrative exhaustion requirement, a § 1983 plaintiff can raise the favorable termination requirement as a defense to a defendant's counterclaim at any point during the proceeding. *Id.* at 215. Moreover, a plaintiff is not required to assert the satisfaction of the administrative exhaustion requirement in their complaint as an element of their claim. *Id*. at 212. As such, a *Heck* dismissal operates as an affirmative defense because it is not an element of a § 1983 claim that must be pleaded in the complaint. *Id.*

A *Heck* dismissal cannot impact a plaintiff's complaint so effectively that the plaintiff has failed to adequately state a claim *unless it functions as an element of a claim*. *Washington,* at 1055. A Rule 12(b)(6) Motion demonstrates a *Heck* dismissal's distinctions. *Id.* There, a court does not assess the merits of the Plaintiff's claim but instead, looks to the face of the complaint to determine whether a claim has been sufficiently pleaded. *Id.* However, without assessing the merits of the underlying claim, a court's dismissal cannot meet the requirements of the failure to exhaust dismissal found in § 1915(g). Naturally, a *Heck* dismissal for failure to state a claim cannot count as a PLRA strike without assessing the merits of a plaintiff's claims.

C. **The PLRA's and *Heck's* legislative goals both affirm a *Heck* dismissal does not count as a strike.**

This Court has held that "the right to sue and defend in courts is ... the right conservative of all other rights, and lies at the foundation of orderly government." *Chambers v. Balt. & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907). The PLRA was enacted by Congress to reduce prisoner's *frivolous* lawsuits and appeals, not bar prisoner's legitimate claims for infringement of their constitutional rights. *Coleman*, 575 U.S. at 535. Pretrial detainees deserve to have this Court's

assurance that they will not be forced to endure needless violence without any recourse for the violation of their constitutional rights. Arthur Shelby's § 1983 claim against Officer Campbell is meritorious because it is alleges violations of his core constitutional rights. R. 8. Shelby's complaint, on its face, demonstrates the antithesis of frivolous suits and does not fall under the PLRA's legislative goals. R.8.

Shelby's § 1983 claim also does not impair *Heck's* policy goal to avoid collateral attacks on criminal judgments through civil litigation. *See Heck*, 512 U.S. at 484-85. Here, Shelby's claim does not undermine his prior arrest because the two instances are wholly distinct. R.6. Shelby sustained injuries from the Bonucci rival gang members a full week after his arrest on December 31, 2020. *Id.* Shelby's failure to protect claims cannot render his December 31st arrest unlawful when the time, place, and individuals involved in the two instances are entirely separate. Officer Campbell's actions inside of the Marshall jail have no relation to or impact on the arresting officer's actions on December 31, 2020. R. 4. Shelby's § 1983 claim should not count as a PLRA strike when the allegations impair neither the PLRA's nor *Heck*'s policy goals.

Pro se litigants such as Shelby should be given special considerations by this Court when considering whether a *Heck* dismissal counts as a PLRA strike. In *Erickson v. Pardus*, a prisoner filed a pro se complaint alleging violations of his Eighth Amendment rights when the correctional facility terminated his hepatitis C treatment. 551 U.S. 89, 90 (2007). This Court found the prisoner was afforded a liberal pleading standard because he proceeded pro se and thus any document he filed was to be "liberally construed." *Id.* at 94; Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice"). Thus, applying the liberal pleading standard, this Court reversed the 10th Circuit's decision to dismiss the prisoner's complaint for failure to state a claim. *Id.*

Here, like the prisoner in *Erikson*, Shelby proceeded pro se throughout the entirety of the District Court's proceedings. R. 7. To allow the District Court to dismiss Shelby's § 1983 allegations for failure to state a claim violates the policies of the Federal Rules of Civil Procedure, the PLRA, and *Heck* itself. A *Heck* dismissal should not count as a strike under the PLRA because that unfairly penalizes pro se litigants who bring meritorious claims alleging violations of their core constitutional rights. Thus, Shelby's meritorious § 1983 claim against Officer Shelby should not accrue a PLRA strike.

II. **This Court should extend the objective knowledge standard established in *Kingsley* to claims for deliberate indifference under §1983 and reverse the finding of summary judgement against Mr. Shelby.**

§1983 of the Civil Rights Act allows prisoners who experience deprivation or injury during their incarceration to recover if that injury stems from a violation of their constitutional rights. 42 U.S.C. §1983. One manner of showing that a prison or individual officer violated a prisoner's civil rights is to show that they manifested "deliberate indifference" to the needs of a prisoner in their care, and that the prisoner's injury was caused by that indifference. *Estelle v. Gamble*, 429 U.S. 97 (1976). In *Bell v. Wolfish* this Court distinguished prisoners, whose claims were governed by the Eighth Amendment, from pretrial detainees, establishing that the Fourteenth Amendment's Due Process clause governs the rights of those incarcerated pending trial. 411 U.S. 520; *Farmer v. Brennan*, 511 U.S. 825 (1994). In so doing this Court distinguished the circumstances faced by a pre-trial detainee, focusing on the crucial distinction that pre-trial detainees, who are presumptively innocent, may not be punished at all, let alone "maliciously and sadistically." *Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015).

While distinguishing the law and limitations governing pre-trial detainees, this Court left circuit courts to establish the appropriate standards on their own under the guiding consideration

that any conduct which does not serve a legitimate government interest intrinsic to detention violates Due Process. 411 U.S. at 539-40. Continuing to conflate prisoners with detainees, the circuits decided that the same subjective requirements of actual knowledge which applied to claims under the Eighth Amendment should also be used to define which conduct violates the Fourteenth Amendment. *Short v. Hartman*, 87 F.4th 593 (2023). However, in *Kingsley v. Hendrickson*, heavily citing *Bell*'s precedent, this Court held that a pre-trial detainee could sustain an excessive force claim against a government officer by showing only that the officer's conduct was objectively unreasonable. 576 U.S. at 400. Because of this Court's emphasis on the linguistic and practical differences at play in these cases, and their use of broad language in deciding *Kingsley*'s objective standard, it should now hold that the same standard governs "deliberate indifference" claims by pretrial detainees.

A. ***Kingsley's* abrogation of the subjective knowledge requirement rightly applies to deliberate indifference as well as excessive force claims.**

In *Kingsley*'s wake, the circuits have split in deciding whether the knowledge standard for excessive force claims against pre-trial detainees should also cover claims of "deliberate indifference," including failure-to-protect claims. At present, the majority view has extended *Kingsley*'s objective standard to claims of "deliberate indifference." *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016) (holding that *Kingsley* requires an objective standard in failure to protect cases); *Miranda v. County of Lake*, 900 F.3d 335 (7th Cir. 2017) (extending *Kingsley*'s objective standard to medical indifference toward psychotic, self-starving detainee); *Darnell v. Pineiro*, 849 F.3d 17 (2nd Cir. 2017) (applying *Kingsley*'s objective standard to a conditions of confinement claims); *Westmoreland v. Butler County, Kentucky*, 29 F.4th 721 (6th Cir. 2022) (holding that *Kingsley* requires objective standard in claim asserting failure to protect an informant); *Short*, 87 F.4th 593 (employing objective standard to judge claim that prison

officials housed a known suicidal detainee alone). The remainder of circuits have declined extension or avoided deciding the question until this Court has weighed in. *Helphenstine v. Lewis County, Kentucky*, 60 F.4th 305, 316 (6th Cir. 2023); see also *Whitney v. City of St. Louis, Missouri*, 887 F.3d 857 (8th Cir. 2018); *Strain v. Regaldo*, 977 F.3d 984 (10th Cir. 2020); *Cope v. Cogdill*, 3 F.4th 198 (5th Cir. 2021).

The precedent of this Court and the lower courts clearly indicate that the difference in the language and history of the governing clauses impose distinct requirements for claims under the Eighth and Fourteenth amendments. 87 F.4th at 608. Additionally, this Court's broad language and reliance on a "deliberate indifference" case in setting the objective standard, alongside a broader context of cases carving out rights for pre-trial detainees, indicates an intent to establish a distinct sphere of protection for those awaiting trial. *Id* at 609; 900 F.3d 352. For these reasons, this Court should hold that the objective requirement established in *Kingsley* also governs the "deliberate indifference" claims of pretrial detainees.

1. **The language and history of the Eighth and Fourteenth Amendments impose different standards for determining an acceptable harm.**

In *Kingsley*, this Court paid careful attention to the different language of the Constitutional clauses governing §1983 claims by prisoners and those by pre-trial detainees, noting that "the language of the Clauses differs, and the nature of the claim often differs." 576 U.S. at 400. Rejecting the state's request to employ an Eighth amendment standard, this Court held that "there is no need here, as there might be in an Eighth Amendment case, to determine when punishment is unconstitutional" and, thus, the more burdensome Eighth Amendment standard was inapplicable. *Id*. *Bell* further makes clear that "punishment" is not a talisman, rather the legitimacy of government intrusions against pre-trial detainees can be measured through a balancing test more familiar to the Due Process clause. 411 U.S. at 537-8; *Mathews v. Eldridge*,

424 U.S. 319 (1976). Because the extension of Eighth amendment standards to Fourteenth Amendment claims runs counter to this Court's precedent and method of judicial interpretation, it should find that *Farmer*'s subjective knowledge requirement is inapplicable in Fourteenth Amendment "deliberate indifference" claims.

Focused primarily on public policy and the appropriate scope of a Constitutional right, the circuits have done little to justify the conflation of standards this Court has repeatedly distinguished. 87 F.4th at 607. In criticizing their own precedent, as well as that of their sister circuits, the 4th Circuit argued that courts adopting *Farmer*'s subjective standard under the Fourteenth amendment "did not provide extensive reasoning" for doing so. *Id*. Instead the circuits relied on a misreading of this Court's statement that the protections for pretrial detainees are "at least as great as the Eighth amendment protections available to a convicted prisoner," interpreting it to mean that the protections of pretrial detainees are the same as those afforded convicted prisoners. *Id*. Since *Kingsley* has been decided, the courts maintaining a subjective standard under the Fourteenth Amendment have provided similarly paltry reasoning to justify the application lower standards in excessive force claims under the Due Process clause when "deliberate indifference" is governed by equal, if not less burdensome, standards of knowledge under the Eighth Amendment. *Hudson v. McMillan*, 503 U.S. 1, 9 (1992).

While lacking positive reasoning, the circuits maintaining a subjective standard have argued against the implementation of an objective one on linguistic grounds. A common claim asserts that punishment cannot be inflicted accidentally, and thus can only be inflicted with intent or actual knowledge. R.20. Yet, while *Kingsley* establishes the detainee's immunity from punishment as a controlling distinction, it does not hold that it is the only one. 576 U.S. at 398; *see also Darnell,* 849 F.3d at 34-6. Several circuits, finding inspiration in *Bell*'s implementation

of Due Process balancing, have interpreted this Court's precedent to hold that those awaiting trial forfeit only those rights necessary to effectuate detention. 441 U.S. at 537-38; *Darnell*, 849 F.3d 17 at 34-6. Under this framework, the right not to be punished is only one amongst a panoply of protections afforded to presumptive innocents held before trial.

This narrow wordplay is in the tradition of argument explicitly rejected by this Court in *Farmer*. 511 U.S. at 840. Prior to that decision the circuit courts relied on the "deliberate" language in "deliberate indifference" to claim that the violation of rights under *Bell* required an intentional act, despite *Bell*'s application of Fourteenth Amendment "deliberate indifference" never inquiring into the government's subjective knowledge. *Id*; *Short*, 87 F.4th at 609. This Court rejected that argument claiming that the phrase was inherently ambiguous and instead relied on the clause's context to determine the appropriate standard. *Farmer*, 511 U.S. at 840. Now a few stubborn circuits employ the same narrow distinction, precedential intransigence, and selective linguistic literalism to ignore this Court's repeated demand that the rights of pre-trial detainees be governed by a distinct due process framework. *Short*, 29 F.4th at 727 (noting that the circuits rejecting an objective standard have done so on procedural grounds, in footnotes). The next sub-section will demonstrate this Court's application of their Due Process standard in its cases most directly governing the rights of pre-trial detainees.

2. ***Kingsley's*** **broad language and reliance on a deliberate indifference case indicate an intent to apply a distinct Due Process standard in all §1983 actions brought by pretrial detainees.**

Although *Kingsley* only directly addresses the proper standard of knowledge in excessive force cases, the Court frequently applied their logic to pre-trial detainees generically. 576 U.S. at 397-8. Using *Bell*, a "deliberate indifference" case to justify it's holding, this Court spoke broadly, stating "a pretrial detainee can prevail by providing only objective evidence that the

challenged government action is not rationally related to a legitimate government objective or is excessive in that objective." *Id*. When this Court began describing *Kingsley*'s fit with its precedent, rather than citing any cases in which the court employed a subjective standard the Court turns to the use of an objective standard in prior conditions of confinement, bail, and juvenile detention cases. *Id*. *Kingsley*'s deliberate choice of scope and the context surrounding it signal a clear intent by this Court to carve out a body of law in which Due Process principles consistently govern §1983 claims by pretrial detainees.

The Court does not directly apply the factors suggested by *Bell*, which described the application of Due Process in a type of "deliberate indifference" against the jail as an institution. 441 U.S. at 523. Instead, they rely on its fundamental logic urging that the only legitimate government purposes are those intrinsic to a non-punitive detention. *Id* at 539-40. As in the Eighth Amendment framework, it is presumed that the intentional and unnecessary infliction of harm against a detainee can never be non-punitive. *Hudson*, 503 U.S. at 9. However, unlike the Eighth Amendment standard, this is not the only logic by which is protection afforded under the Due Process clause[1]. *Bell*, 441 U.S. at 540. Just as the intentional and unnecessary infliction of harm by jail officials is always cruel and unusual, there is no legitimate detention interest in the reckless disregard of a detainee's known or reasonably knowable needs. *Id*.

The *Kingsley* Court heavily cited *Bell*'s use of objective factors for determining when a detainee's needs are being recklessly disregarded, including their review of "the size of the rooms and available amenities" to determine whether the conditions were reasonable. 576 U.S. at 398. The reliance on *Bell*'s method is especially telling when precedent already provides a case

[1] The *Bell* court states that any deprivation of rights or liberties without a justifying government interest is presumptively punitive. 441 U.S. 520. While punishment is still nominally the relevant factor, it acts in this structure as the intermediary between the traditional Due Process concerns of individual deprivation and government interests, not as a meaningful concern in its own right. *Id.*

from this Court suggesting an objective standard in excessive force cases under the Due Process clause. *Graham v. Connor*, 490 U.S. 386, 396. What makes *Kingsley* unique among these cases is not its application to excessive force *per se*, but rather the application of previously institutional liability to the individual officer. In that distillation, the proper role of scienter and knowledge in an objective analysis is not ancillary, but the crucial element.

B. **The majority view extending *Kingsley* to deliberate indifference provides a better reflection of Due Process concerns than the maintenance of *Farmer's* subjective standard.**

While Due Process balancing establishes the basic logic of §1983 claims against pretrial detainees, this Court in *Kingsley* employed an elemental test to determine when an officer has engaged in excessive force. 576 U.S. at 393. This decision is paralleled in the Eighth Amendment jurisprudence where it is explained that actions committed with malicious intent to cause serious harm to a prisoner are, by definition, cruel and unusual. *Hudson*, 503 U.S. at 9. Similarly, the logic implicit in *Kingsley* is that the reckless disregard of a detainee's serious needs can never serve the government's legitimate purpose in housing and safeguarding those awaiting trial. While *Bell*'s balance between the government's interest and safe detention can't be immediately applied in the individual context, those concerns are reflected in elucidating the tests for finding reckless disregard. 441 U.S. at 540. Because the circuit's adaptations of *Kingsley* better reflect the concerns of Due Process analysis, this court should follow the majority view in extending *Kingsley*'s test to "deliberate indifference" claims.

1. **The concerns of Due Process balancing are better served by an objective test of knowledge.**

Because §1983 jurisprudence under the Eighth Amendment had already established a standard for individual misconduct, it was natural that the *Kingsley* court would adapt that standard to claims under the Fourteenth Amendment. 576 U.S. 389, 393. However, in doing so,

this Court was careful to modify those portions of the standard which were unique to their respective clauses, most notably the test of knowledge. *Id* at 396-398. Because, under the Eighth Amendment, a significant deprivation of liberty is implicit in the concept of punishment, the courts have determined that an individual only violates the remainder of a prisoner's rights when they act with the subjective intent to impose deprivations beyond those which are typical of punishment. *Hudson*, 503 U.S. 1, 9.

Under the Due Process clause, the assumption is flipped. Because a detainee may only be deprived of rights intrinsic to their safe and effective pretrial housing, an officer violates the remainder of the detainee's rights whenever they impose a condition beyond that requisite minimum. *Bell*, 441 U.S. 520 at 540. An intentional infliction of unnecessary harm clearly exceeds that minimum, but a reckless failure to make reasonable accommodations for the known or apparent needs of a detainee not only exceeds that minimum, but actively impedes the effectuation of safe detention. Thus, a standard that captures egregious failures in an official's knowledge or decision-making better reflects underlying Due Process concerns.

The underlying Due Process concerns articulated in *Bell* are also reflected in *Kingsley*'s requirement that official's acts or omissions comprise more than mere negligence and the circuits' near universal requirement that an individual's deliberate act be proximately tied to the asserted harm. 576 U.S. 389, 397; *Castro*, 833 F.3d 1060. Were this Court treating "punishment" as a talisman, there would be little practical justification for distinguishing a reckless or intentional infliction of harm from a negligent or involuntary one. Because the "punishment" experienced by the detainee is the same, so should the standard be. However, under the balancing approach, while negligent and involuntary acts may be deleterious to safe detention, they are also intrinsic to any human endeavor. As this Court recognized in *Bell*, the costs of requiring rigid

and consistent vigilance in the chaotic setting of jailhouse administration would reduce the ability of state officials to effectively safeguard their wards. 441 U.S. 520, 547. Instead, the courts have turned their focus to those behaviors which are so unproductive and deleterious to the government's interest in safe detention as to justify any reduction in the state's capacity for flexible adaptation which results from the court's intervention, including the reckless and seriously harmful conduct of jail officials.

2. The circuits have elaborated a generally consistent test which respects the Due Process concerns articulated in *Bell* and *Kingsley*.

Despite some minor differences, the circuits extending *Kingsley* have settled on a reasonably uniform test. The common elements of these tests are: (1) objectively serious risk of harm, (2) of which an official knows or should have known[2], (3) and an act or omission which is reckless in light of that knowledge. *Castro*, 833 F.3d 1060; *Miranda*, 900 F.3d 335. The risk of harm is typically proximately tied to a deliberate act by prison officials to ensure that liability is not established for inadvertent acts. *See Westmoreland*, 29 F.4th at 729-730 (finding that officials acted deliberately in moving informant to general population and that this move caused detainee's injuries). Some jurisdictions separate the knowledge requirement into two sub-elements, requiring that the official know or should know (1) of the condition from which risk arises and (2) of the connection between that condition and the risk imposed by the official's deliberate act. *See Helphenstine v. Lewis County, Kentucky*, 65 F.4th 794 (debating the benefits of a dual knowledge requirement). Finally, many jurisdictions employ a failure to mitigate standard to assess reckless omissions by jail officials. *Darnell v. Pineiro*, 849 F.3d at 35. While many jurisdictions' tests accommodate the concerns articulated in *Kingsley*, the remainder of this

[2] Some jurisdictions require that harm to the detainee be "obvious." The appropriate distinction between these standards is nebulous at best.

analysis shall proceed with the best reasoned and most syncretic standard, articulated by the Fourth circuit in *Short*. 87 F.4th 593.

In *Short v. Hartman* the fourth circuit considered a deliberate indifference case following the suicide of a detainee. This detainee repeatedly informed officials that she was suicidal during intake, information which was recorded in her file. *Id* at 599-601. Despite this fact, and contrary to jail regulations, the detainee was placed alone in an intake cell with insufficient supervision and implements which could be used to commit suicide, including the bed sheet with which she killed herself. *Id* at 600-602. After a few hours of occasional observation, the detainee hung herself from the door of the jail cell. *Id*. Applying *Kingsley* for the first time and integrating the elements used in their sister circuits, they analyzed the claim under the following test:

> (1) the detainee had a medical condition or injury that posed a substantial risk of serious harm;
> (2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed;
> (3) the defendant knew or should have known
> (a) that the detainee had that condition and
> (b) that the defendant's action or inaction posed an unjustifiably high risk of harm;
> (4) and as a result, the detainee was harmed."

Id at 611.

Applying the test, the court first looked to the detainee's objective condition, in this case suicidality. They then established that the official in question had actual knowledge of that condition, having conducted the intake. *Id* at 612. However, there was no direct evidence to suggest that the officials in question had actual knowledge of the risks this condition imposed. *Id* at 613. Instead, the court used the jail's policies to establish that they should have had such knowledge. Justifying this decision, the court stated that "The Jail established the Prison Policy to create a baseline of when a risk of suicide is sufficiently severe such that additional steps must

be taken. These judgments can serve as a proxy for when an inmate's medical need is so 'obvious that even a lay person would easily recognize' it." *Id*. This statement, alongside the decision not to analyze under the reckless standard in the second element implies that a regulation regarding a detainee's condition can independently establish knowledge of the risk that condition imposes. However, the combination of reckless failure to mitigate and the "should have known" requirement would also allow a court to find that failure to follow jail polices related to detainee's safety is inherently reckless while also providing evidence that the official should have known a specific risk.

Applying this standard to Mr. Shelby's case, the two are remarkably similar. Mr. Shelby's condition was noted by the intake officer and included in the database. R. 4-5. Additionally, the risk that placing Mr. Shelby with rival gang members posed was covered in a weekly meeting and the paper listing provided to Officer Campbell. R.5. Use of these information resources was required by the jail's regulations, which Officer Campbell repeatedly failed to follow. *Id*. Officer Campbell then deliberately moved Mr. Shelby and placed him in an exercise yard with individuals who presented a serious risk to Mr. Shelby's safety. R. 6-7. As a result, Mr. Shelby was brutally beaten and sustained serious injuries. *Id*.

In *Short*, the official was actually aware of the detainee's condition, yet failed to heed it. In this case, Officer Campbell violated regulations by failing to check multiple databases which would have informed him both of the condition and the risk it posed. 87 F.4th at 612; R. 4-6. Had Officer Campbell followed regulations he would have had actual knowledge of both factors and would have been required to mitigate the risk facing Mr. Shelby. R 4-6. A failure to check databases and forms dedicated to detainee safety is reckless in and of itself, but the fact that the regulations require an official to learn certain information can also establish that Officer

Campbell should have known the risks Mr. Shelby faced. *Id*; 87 F.4th at 613. In circuits which employ a more explicit "deliberate act" requirement, Officer Campbell's decision to move Mr. Shelby would constitute such a deliberate act, which was reckless in light of information he should have known. *Westmoreland*, 29 F.4th at 729-730. However, under the *Short* standard, Officer Campbell's failure to view the required files could also constitute the reckless act, allowing for a more streamlined analysis while still avoiding punishment for involuntary acts.

Mr. Shelby's case indicates the principal benefits of adopting the objective standard in "deliberate indifference" claims. The dual knowledge and reckless requirements would not have allowed liability if, for instance, Officer Campbell had merely failed to notice a gang-affiliated tattoo on Mr. Shelby's or his assailants' arm. However, where he so badly fails to comply with the jail's safety regulations, Officer Campbell is either inadequately trained such that he is unaware of their importance, completely apathetic to the safety of his wards, or willfully blind to the harm he was causing. Each of these shortcomings would fail to establish liability under the subjective standard, yet all indicate such a lack of concern for the citizens in his care as to amount to a violation of their constitutional rights. As such, this Court should extend the objective knowledge requirement in *Kingsley* to "deliberate indifference" claims and reverse the motion to dismiss Mr. Shelby's claim.

CONCLUSION

A *Heck* dismissal cannot accrue a PLRA strike because it is jurisdictional in nature. *Heck* functions similar to other jurisdictional issues such as subject matter jurisdiction. *Heck* does not require plaintiffs to plead satisfaction of its requirements in their complaint and can be raised as an affirmative defense at any point throughout the proceedings. Even if a *Heck* dismissal is not jurisdictional in nature, it cannot count as a PLRA strike because it functions separately from an

element of a claim. When a *Heck* dismissal is appropriately applied, a court is temporarily restricted from assessing the merits of a plaintiff's claims. Without an assessment of the merits of a plaintiff's claim, a court cannot adequately determine whether the plaintiff's complaint has met the PLRA's statutory requirements. Finally, this Court should find a *Heck* dismissal does not accrue a PLRA strike because neither is aimed to prevent a plaintiff from raising meritorious claims concerning his core constitutional rights dismissed. A pro se plaintiff, such as Shelby, should not be restricted from petitioning courts for remedies from serious injuries and constitutional violations. A *Heck* dismissal, therefore, should not accrue a PLRA strike.

The duties owed to a pretrial detainee, as well as the language and context of the clause under which they assert a constitutional right, are fundamentally different from those applicable to prisoners. An approach which justifies both institutional and individual liability through a Due Process balancing of the government's interest in safe detention and the degree of intrusion on a detainee's rights best reflects these differences. Because an objective standard allows for recovery by pretrial detainees when a government official is recklessly incompentent, insufficiently trained, or wilfully blind while reducing the intrusion of the flexile and efficient administration of a jail, this Court should extend *Kingsley*'s knowledge requirement to deliberate indifference claims.

For all of the foregoing reasons, Respondent Arthur Shelby requests this Court to affirm the Fourteenth Circuit's Opinion and Order.

Dated: February 2, 2024

Respectfully submitted,

Team 16
ATTORNEYS FOR RESPONDENT