No. 23-05

In the Supreme Court of the United States

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

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

BRIEF FOR RESPONDENT

TEAM 18

QUESTIONS PRESENTED

1. Whether the circuit court properly concluded that dismissal of a prisoner's action under *Heck v. Humphrey* does not constitute a "strike" within the meaning of the Prison Litigation Reform Act.

2. Whether the circuit court correctly applied *Kingsley v. Hendrickson*'s objective inquiry to a pretrial detainee's § 1983 failure-to-protect claim under the Fourteenth Amendment's Due Process Clause.

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The order and opinion of the United States District Court for the Western District of Wythe is reported in *Shelby v. Campbell*, No. 23:14-cr-2324 (W.D. Wythe 2022) and can be found in the Record at 1-11.

The opinion of the United States Court of Appeals for the Fourteenth Circuit, reversing the lower court, is reported in *Shelby v. Campbell*, No. 2023-5255 (14th Cir. 2022) and can be found in the Record at 12-20.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Eighth Amendment provides:

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

U.S. CONST. amend. VIII.

The Fourteenth Amendment provides, in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

U.S. CONST. amend. XIV.

The Prison Litigation Reform Act provides, in pertinent part:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

And federal habeas corpus provides, in pertinent part:

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(a).

STATEMENT OF THE CASE

Arthur Shelby, a pretrial detainee, was on his way to the recreation room when he was attacked by three Bonucci gang members in the Marshall jail. R. at 7. Because the accompanying officer failed to hold back the three gang members, the attack lasted for several minutes. R. at 7. Mr. Shelby then spent several weeks in the hospital with life-threatening injuries, including a traumatic brain injury caused by a club to the head. R. at 7. These events concern the fundamental principle that pretrial detainees cannot be punished before an adjudication of guilt. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

Background. All Marshall jail officials are trained to take notice of pertinent information when booking inmates. R. at 4. Specifically, all jail officials must make, file, and upload two copies of intake forms. R. at 4. These forms catalog an inmate's gang affiliation, inventoried items, and other relevant information. R. at 4. And these procedures are necessary to counteract Marshall's high gang activity. R. at 4.

When raiding a local boxing match, the police arrested Mr. Shelby, a known leader of the Geeky Binders gang. R. at 3. Upon bringing Mr. Shelby to the Marshall jail, a seasoned jail official, Officer Mann, followed the jail's stringent booking procedures. R. at 4. He inventoried Mr. Shelby's signature Geeky Binder weapon, an awl concealed inside a ballpoint pen. R. at 4. He noted Mr. Shelby's statement about being a Geeky Binder. R. at 4-5. And he recorded Mr. Shelby's gang status in the jail's database under the gang affiliation tab. R. at 5. Officer Mann thus followed proper protocol by making the Marshall jail aware of Mr. Shelby's gang status. R. at 4-5.

Gang intelligence officers then reviewed Mr. Shelby's file. R. at 5. The officers knew about the recent murder of a rival gang leader's wife and the hit that the gang, the Bonuccis, ordered

against Mr. Shelby. R. at. 5. Thus, the intelligence officers specifically noted the threat in Mr. Shelby's file. R. at 5. They then printed out paper notices warning all jail officials of Mr. Shelby's high-risk status and placed them in every administrative area of the jail. R. at 5. Finally, they indicated Mr. Shelby's status on all jail rosters. R. at. 5.

The Mandatory Meeting. To ensure that all jail officials knew of the risk to Mr. Shelby, the gang intelligence officers held a mandatory meeting the next morning. R. at 5. There, they notified all jail officials of Mr. Shelby's presence, the hit ordered against Mr. Shelby, and his housing location. R. at 5. The officers intentionally separated Mr. Shelby, placing him in cell block A and leaving the Bonuccis in cell blocks B and C. R. at 5. Finally, the intelligence officers reminded all jail officials to keep the rival gang members separate while in the jail's common areas. R. at 5.

Officer Campbell. Officer Campbell served as a guard at the Marshall jail. R. at 5. Although he was an entry-level guard, he worked for several months and met all job expectations. R. at 5. On the morning of the mandatory meeting, the gang intelligence officers recorded Officer Campbell as present. R. at 5. Yet the jail's time sheets showed that Officer Campbell did not clock in until the afternoon. R. at 6. If Officer Campbell missed the meeting, his superiors required him to review the meeting's minutes online. R. at 6. Inconveniently, a system glitch wiped any record of those who reviewed the minutes. R. at 6. But it did not wipe the underlying information from the database. R. at 6.

The Prison Attack. Seven days after the mandatory meeting, Officer Campbell removed Mr. Shelby from his cell to transfer him to the recreation room. R. at 6. And although Officer Campbell did not recognize Mr. Shelby at that time, he failed to check the printed list of inmates

with him detailing the hit against Mr. Shelby. R. at 6. Nor did he reference the jail's database. R. at 6.

Before leaving cell block A, a different inmate yelled that he was glad Mr. Shelby's brother, Tom, "took care of that horrible woman." R. at 6. And after overhearing Mr. Shelby respond, Officer Campbell told him to be quiet. R. at 6.

Then, Officer Campbell collected other inmates to transfer to the recreation room alongside Mr. Shelby. R. at 6-7. He retrieved two inmates from cell block B and one from cell block C. R. at 7. But those three inmates were Bonucci gang members. R. at 7. Upon entrance, the three Bonuccis immediately attacked Mr. Shelby. R. at 7. The Bonuccis rained down punches, repeatedly beating Mr. Shelby. R. at 7. And one of them struck Mr. Shelby over the head with a homemade club. R. at 7. Because Officer Campbell could not break up the attack, the Bonuccis beat Mr. Shelby for several minutes before other jail officials arrived. R. at 7.

Mr. Shelby then spent several weeks in the hospital with life-threatening injuries. R. at 7. The attack left Mr. Shelby with a traumatic brain injury, three fractured ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding. R. at 7.

Proceedings Below. In response to the life-threatening injuries sustained while in the prison's care, Mr. Shelby filed a pro se action under 42 U.S.C. § 1983, alleging that Officer Campbell violated his Fourteenth Amendment rights by failing to protect him as a pretrial detainee. R. at 7. In his complaint, Mr. Shelby alleged that Officer Campbell should have known about the Bonucci gang hit against him. R. at 7. And that Officer Campbell should have been on notice of that risk from the online database's information. R. at 8.

Mr. Shelby also filed a motion to proceed in forma pauperis. R. at 1. But the district court denied his request, citing the "three strikes" provision of the Prison Litigation Reform Act. R. at

7. The court reasoned that Mr. Shelby's three § 1983 claims constituted strikes because they were dismissed under *Heck v. Humphrey*. R. at 3. Those actions were dismissed without prejudice pursuant to *Heck v. Humphrey* because they called into question either his conviction or his sentence. R. at 3.

After denying his motion to proceed in forma pauperis, the district court ordered Mr. Shelby to pay the $402 filing fee. R. at 13. Mr. Shelby timely complied. R. at 13. In response to Mr. Shelby's action, Officer Campbell filed a Rule 12(b)(6) motion for failure to state a claim. R. at 2. The court granted Officer Campbell's motion, holding that Mr. Shelby did not sufficiently allege that Officer Campbell had actual knowledge of the serious risks posed to Mr. Shelby. R. at 13.

Mr. Shelby then filed a timely appeal in the United States Court of Appeals for the Fourteenth Circuit. R. at 12. He appealed both the lower court's denial of his motion to proceed in forma pauperis and the lower court's grant of Officer Campbell's Motion to Dismiss. R at 12.

First, the Fourteenth Circuit reversed the denial of Mr. Shelby's motion to proceed in forma pauperis. R. at 13. The court held that Mr. Shelby was entitled to proceed in forma pauperis because his prior dismissals under *Heck v. Humphrey* did not constitute strikes under the Prison Litigation Reform Act. R. at 15.

And second, the Fourteenth Circuit reversed the grant of Officer Campbell's motion to dismiss. The court held that the district court improperly applied an Eighth Amendment subjective test to Mr. Shelby's Fourteenth Amendment due process claim. R. at 15. Instead, the Fourteenth Circuit applied this Court's objective test from *Kingsley v. Hendrickson* to Mr. Shelby's failure-to-protect claim under the Fourteenth Amendment. R. at 16, 19. Under that standard, Mr. Shelby

sufficiently alleged that Officer Campbell should have known about the serious risks to Mr. Shelby, and that Officer Campbell failed to protect him. R. at 16, 19.

Officer Campbell's appeal follows.

SUMMARY OF THE ARGUMENT

1. A dismissal of a prisoner's civil action under *Heck v. Humphrey* does not constitute a "strike" under the Prison Litigation Reform Act ("PLRA"). *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Under the PLRA, prisoners are barred from filing suits in forma pauperis when the prisoner has accumulated three strikes. 28 U.S.C. § 1915(g). The prisoner accrues a strike each time a civil action is "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." *Id.* But Mr. Shelby's three prior actions were dismissed pursuant to *Heck* "[b]ecause the actions would have called into question either his conviction or his sentence." R. at 3. And a *Heck* dismissal does not satisfy the three enumerated conditions of the PLRA. Thus, Mr. Shelby has not accrued three strikes. The Fourteenth Circuit correctly held that Mr. Shelby may proceed in forma pauperis.

2. Mr. Shelby is a pretrial detainee under the Fourteenth Amendment, not a convicted prisoner under the Eighth. "The language of the two Clauses differs" and pretrial detainees "cannot be punished at all[.]" *Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015). Precedent and this Court's decision in *Kingsley* demonstrate that applying the Eighth Amendment's subjective test to Fourteenth Amendment due process claims is inappropriate. *See Kingsley*, 576 U.S. at 400-01. Instead, *Kingsley* mandates an objective inquiry. *Id.* Six circuits correctly applied *Kingsley*'s objective inquiry to other pretrial detainee Fourteenth Amendment claims rather than continue to import Eighth Amendment standards. And because Mr. Shelby's pro se complaint alleges that Officer Campbell failed to take reasonable measures to mitigate the risk posed to Mr. Shelby while

inside the prison, the Fourteenth Circuit's decision should be affirmed. Mr. Shelby is entitled to his day in court.

ARGUMENT

I. DISMISSALS OF A PRISONER'S CIVIL ACTION UNDER *HECK V. HUMPHREY* DO NOT CONSTITUTE A "STRIKE" UNDER THE PRISON LITIGATION REFORM ACT.

This issue turns on whether a prisoner's civil action dismissed under *Heck v. Humphrey*, 512 U.S. 477 (1994), simultaneously constitutes a strike under the PLRA. It does not.

To quote this Court's discussion of the PLRA's three-strikes provision in *Lomax v. Ortiz-Marquez*, "[t]his case begins, and pretty much ends, with the text of Section 1915(g)." *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 (2020). Under the three strikes provision of the PLRA, a prisoner accrues one strike each time the action they bring 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 text of the PLRA explains that a prisoner is barred from proceeding in forma pauperis if "the prisoner has, on 3 or more prior occasions … brought an action … that was dismissed on [one of the act's three enumerated grounds]." *Id*. This narrow list does not include the grounds on which prisoner's suits are dismissed under *Heck v. Humphrey*. 512 U.S. at 486-87. Under *Heck*, a prisoner's action is appropriately dismissed when it calls into question the validity of the prisoner's conviction or sentence. *Id*.

Before a prisoner can proceed with a § 1983 action, the court "must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id*. at 477. Unless the prisoner can show that their "conviction or sentence has already been invalidated," actions which call into question the validity of the prisoner's conviction or

sentence "must be dismissed." *Id*. The grounds for dismissal outlined in *Heck* do not satisfy any of the three enumerated conditions in section (g) of the PLRA. Therefore, because Mr. Shelby's actions were dismissed under *Heck* rather than under the PLRA's enumerated grounds, his dismissals do not count as strikes. The Fourteenth Circuit correctly held as such. This Court should affirm the Fourteenth Circuit and permit Mr. Shelby to proceed in forma pauperis.

A. Counting *Heck* Dismissals as Strikes Is Contrary to the Purpose of the Prison Litigation Reform Act.

Also persuasive is the legislative purpose of the PLRA. *See generally, Foster v. United States*, 303 U.S. 118, 120 (1938) ("Courts should construe laws in harmony with the legislative intent and seek to carry out legislative purpose."). Congress passed the PLRA "[i]n an effort to address the large number of prisoner complaints filed in federal court." *Jones v. Bock*, 549 U.S. 199, 202 (2007). The legislative history of the PLRA reveals that "its purpose is to provide an effective case-management plan for prisoner civil rights cases." Bernard D. Reams, Jr. & William H. Manz, *A Legislative History of the Prison Litigation Reform Act of 1996* iii (1997). And this Court explained that the PLRA's three strikes rule functions "[t]o help staunch a 'flood of nonmeritorious' prisoner litigation." *Lomax* 140 S. Ct. at 1723 (quoting *Jones*, 549 U.S. at 203). Per the PLRA, such nonmeritorious litigation constitutes a strike for the prisoner each time the action they bring 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).

Petitioner maintains that Mr. Shelby's three prior *Heck* dismissals constitute strikes under the PLRA, and that Mr. Shelby is therefore barred from proceeding in forma pauperis. R. at 7. However, as the Ninth Circuit explains, the "plain and unambiguous" language of the three strikes provision makes clear that "a dismissal on a ground other than frivolousness, maliciousness, or failure to state a claim will not qualify as a strike*." Harris v. Harris,* 935 F.3d

670, 674 (9th Cir. 2019). In asking this Court to simply read an additional ground into the PLRA's narrow list in order to encompass *Heck* grounds, Petitioner expects this Court to abandon its "duty to construe legislation as it is written." *Meese v. Keene*, 481 U.S. 465, 484-85 (1987).

The PLRA's three strike provision provides, in pertinent part:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is *frivolous*, *malicious*, or *fails to state a claim upon which relief may be granted*, unless the prisoner is under imminent danger of serious physical injury.

§ 1915(g) (emphasis added). In § 1915(g), Congress included this straightforward list of three grounds under which a prisoner's dismissed suit could be properly counted as a strike. In the same subsection, Congress also made clear that prisoners lose their ability to proceed in forma pauperis only when the prisoner has accrued three strikes. 28 U.S.C. § 1915(g). It is a standard principle of statutory construction that courts should begin their analysis with the text of the statute itself. *Lomax*, 140 S. Ct. 1724. And in the case of the PLRA, "the statutory language is clear—if a case was not dismissed on one of the specific enumerated grounds, it does not count as a strike under § 1915(g)." *Harris*, 935 F.3d at 673. To further support this interpretation, the Eleventh Circuit explains that "[u]nder the negative-implication canon, these three grounds are the *only* grounds that can render a dismissal a strike." *Daker v. Comm'r, Ga. Dep't of Corr.*, 820 F.3d 1278, 1283-84 (11th Cir. 2016) (emphasis in original).

The grounds for dismissal under *Heck* are wholly separate from the three PLRA grounds for a strike. The Ninth Circuit explains that, in determining whether a prisoner's civil action for damages under § 1983 is permissible pursuant to *Heck*, the court must consider "whether a

judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Beets v. County of Los Angeles*, 669 F.3d 1038, 1042 (9th Cir. 2012). If so, "the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* The test for dismissals created by this Court in *Heck* is completely independent from the test for dismissals (which subsequently count as strikes) created by Congress in the PLRA. As *Heck*'s test predates the passage of the PLRA, *Heck* makes no mention of strikes. 512 U.S. at 477. And notably, the PLRA, passed after *Heck* was decided, makes no mention of dismissals made on the grounds set out in *Heck*. *See* 28 U.S.C. § 1915.

Within the meaning of the PLRA pursuant to 28 U.S.C. § 1915(g), a dismissal of a prisoner's civil action under *Heck v. Humphrey* does not constitute a strike. 512 U.S. at 486-87. As plainly stated in the record, Mr. Shelby's three prior § 1983 actions were dismissed without prejudice on the grounds set out in *Heck* because each action "would have called into question either his conviction or his sentence." R. at 3. Because Mr. Shelby's actions were dismissed on *Heck* grounds rather than on any of the three enumerated grounds in the PLRA, his dismissals do not constitute strikes. R. at 3. And because he has not accrued three strikes, the Fourteenth Circuit correctly held that Mr. Shelby is entitled to proceed in forma pauperis in his proceeding against Officer Campbell. This Court should affirm that decision.

1. A *Heck* Dismissal Is Not a Strike Under the PLRA Because It Is Not Frivolous.

A prisoner whose action is dismissed pursuant to *Heck* does not automatically accrue a strike under the PLRA because a *Heck* dismissal is not frivolous. The legislative history of the PLRA reveals that Congress's "principal intent" was to "reduce frivolous litigation by prisoners." *Blair-Bey v. Quick*, 151 F.3d 1036, 1040 (D.C. 1998). A frivolous action is one with "little prospect of success; often brought to embarrass or annoy the defendant." *Frivolous*, *Black's Law*

Dictionary (6th ed. 1990). As defined, frivolous actions are not frivolous because they call into question the nature or validity of a prisoner's sentence or conviction. *Id*. A frivolous action does not automatically warrant a dismissal under *Heck*, but it does warrant a dismissal, and subsequently a strike, under the PLRA. *Heck*, 512 U.S. at 489.

A frivolous action is deemed frivolous because it is baseless or intended to "annoy" the opposing party. Conversely, *Heck* dismissals are made when the cause of action hasn't yet accrued. *Heck*, 512 U.S. at 489-90 ("a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until *the* conviction or sentence has been invalidated"). Thus, suits are dismissed under *Heck* because the underlying cause of action has not yet accrued, not because the suit itself is frivolous. The Ninth Circuit explains that dismissal of a suit pursuant to *Heck* without prejudice allows the prisoner to "refile the complaint once his conviction has been overturned." *Washington v. L.A. County Sheriff's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016). This assertion indicates that such a *Heck* dismissal is not frivolous, it's simply not yet ripe. Therefore, frivolous actions, which properly constitute a strike, are wholly distinguishable from *Heck* dismissals, which do not constitute a strike.

As the Ninth Circuit asserted, "a *Heck* dismissal is not categorically frivolous." *Washington*, 833 F.3d at 1055. In *Washington*, the court explained that *Heck* dismissals cannot automatically be considered frivolous – and therefore cannot automatically constitute a strike – "because plaintiffs may have meritorious claims that do not accrue until the underlying criminal proceedings have been successfully challenged." *Id*. Ultimately, a prisoner's civil action can be properly categorized as a *Heck* dismissal and still not qualify as a strike at all, because the grounds set out in *Heck* are explicitly different from the grounds set out in the PLRA. *Id*. Though an action dismissed on the grounds that it calls into question the prisoner's conviction or sentence may

simultaneously be found to be frivolous, the two do not automatically correlate. In that example, the action could be dismissed pursuant to Heck and simultaneously also be deemed a strike under the PLRA, but only because it happens to fulfill the two separate requirements.

The Tenth Circuit held that an action can warrant dismissal under *Heck* and simultaneously constitute a frivolous action, and thus a strike, but the court made two explicit and separate findings. *Davis v. Kansas Dep't of Corr.*, 507 F.3d 1246, 1249 (10th Cir. 2011). In *Davis*, the Tenth Circuit determined that the prisoner's claim "would necessarily imply the invalidity of his … sentence" and thus warranted dismissal under *Heck*. *Davis*, 507 F.3d at 1248. Additionally, the Tenth Circuit separately found that the prisoner's case was frivolous under the PLRA. *Id.* at 1249. In that case, the action happened to fulfill both *Heck*'s requirements and the PLRA's requirements, and the Tenth Circuit made a clear distinction between both assessments.

Because accruing strikes comes with a high cost to the prisoner, courts should assign strikes, and ultimately, deny in forma pauperis status, only after "careful evaluation of the order dismissing an action, and other relevant information." *Andrews*, 398 F.3d at 1121. Though the court in *Davis* did perform this careful evaluation, there is no finding in the record that Mr. Shelby's suits were dismissed because they were frivolous. *Davis*, 507 F.3d at 1249. Rather, Mr. Shelby's three prior actions were dismissed without prejudice under *Heck*. R. at 3. Since those dismissals do not satisfy the PLRA's "frivolous" condition, Mr. Shelby's previous *Heck* dismissals do not count as automatic strikes.

2. A *Heck* dismissal is not a strike under the PLRA because it is not malicious.

And a *Heck* dismissal does not constitute a strike under the PLRA because it is not "malicious." A malicious action is one which is "begun in malice." *Malicious*, *Black's Law Dictionary* (6th ed. 1990). Thus, as defined, malicious actions do *not* encompass the type of actions

dismissed under *Heck*, which necessarily call into question a prisoner's sentence or conviction. 512 U.S. at 489. In *Andrews v. King*, the Ninth Circuit explained that the prisoner in question's "prior dismissals would qualify as strikes only if, after reviewing the orders dismissing those actions and other relevant information, the district court determined that they had been dismissed because they were frivolous, malicious or failed to state a claim." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). The Ninth Circuit held that a prisoner's dismissed actions cannot be counted as strikes unless the court "mak[es] an independent assessment of whether the prior cases were frivolous or malicious or failed to state a claim." *Id*.

Based on this reasoning, in order to count a *Heck* dismissal as a strike, the Court must find that the dismissed action was dismissed on the grounds that the action is malicious or otherwise violative of the PLRA. *Id.* This requirement promotes the purpose of the PLRA, to curb meritless lawsuits, while still protecting the constitutional rights of prisoners to access the court system. Reams & Manz, *supra*, at iii; *see generally*, *Bounds v. Smith*, 430 U.S. 817, 821 (1977) ("It is now established beyond doubt that prisoners have a constitutional right of access to the courts.").

Noting that a properly filed § 1983 action creates "a species of tort liability," this Court in *Heck* likened the elemental requirements for a § 1983 action to those in a torts action for malicious prosecution. 512 U.S. at 483-84. The one bringing the suit in a malicious prosecution claim must prove that their "conviction or sentence has been reversed." *Id*. at 486. Using malicious prosecution as a launchpad, this Court in *Heck* held that in order to survive dismissal under *Heck*, the prisoner bringing the § 1983 action also must prove that their "conviction or sentence has already been invalidated." *Id*. at 487. Notably, in formulating the *Heck* doctrine, this Court began by looking at common law as simply "a starting point for the inquiry" to determine the grounds for dismissal, not an end point. *Id*. at 483-84.

Therefore, although this Court utilized the preexisting malicious prosecution torts claim in developing the elemental requirements for the *Heck* doctrine, this Court did not hold that a *Heck* dismissal is made on the grounds that the action itself is malicious. *Id*. at 486-87. This important distinction makes clear the line between a *Heck* dismissal and a strike under the PLRA. The two provide different tests and lead to different results: a suit dismissed under *Heck* does not count as a strike, but a suit dismissed under the PLRA's grounds does count as a strike. *See Andrews*, 398 F.3d at 1121 (holding that a dismissal constitutes a strike only if there's a specific finding that it violates one of the PLRA's three enumerated grounds).

The Ninth Circuit explained that, when assessing whether a prisoner's dismissed action constitutes a strike, "the central question is whether the dismissal 'rang the PLRA bells of … malicious…'" *El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016). A case is malicious if it was filed with the "intention or desire to harm another." *Andrews*, 398 F.3d at 1121. The Ninth Circuit asserted that "a *Heck* dismissal cannot be characterized as malicious, unless the court specifically finds that the complaint was "filed with the intention or desire to harm another." *Washington*, 833 F.3d at 1055. Applied here, Mr. Shelby's action was not found to be "filed with the intention or desire to harm another." *Id*.; R. at 3. Rather, Mr. Shelby's actions were dismissed solely under *Heck* grounds. R. at 3. Therefore, unless Mr. Shelby's action was actually found to be malicious or otherwise violative of the PLRA, none of his prior dismissals count as strikes. *Andrews*, 398 F.3d at 1055. Consequently, without a showing to the contrary, Mr. Shelby is well within his rights to proceed in forma pauperis.

3. A *Heck* Dismissal Is Not a Strike Under the PLRA Because It Does Not Fail to State a Ground On Which Relief May Be Granted.

And a *Heck* dismissal does not constitute a strike under the PLRA because *Heck*'s dismissal grounds do not encompass the "fail[ure] to state a claim on which relief may be granted" element

of the PLRA. *See* 28 U.S.C. § 1915(g); *Heck*, 512 U.S. at 487. This element mirrors the language of Federal Rule of Civil Procedure 12(b)(6). *See* Fed. R. Civ. P. 12(b)(6) (allowing a party to assert a defense, upon motion, for "failure to state a claim upon which relief can be granted"). Thus, when a prisoner's action is dismissed for "failure to state a claim upon which relief can be granted," the prisoner does accrue a strike under the PLRA. *See Washington*, 833 F.3d at 1055 (holding that "the language 'fails to state a claim upon which relief may be granted' in § 1915(g), tracks the language of Rule 12(b)(6), and that dismissals under Rule 12(b)(6) may constitute strikes within the meaning of the PLRA.")

Heck dismissals and PLRA strikes have separate and distinct requirements. When a court determines that a dismissed action constitutes a strike, it is because that action failed to state a claim on which relief may be granted or was otherwise violative of the PLRA. *Washington*, 833 F.3d at 1051. But it is not because that action called into question the prisoner's sentence or conviction pursuant to *Heck*. *Washington*, 833 F.3d at 1055 (holding that not all *Heck* dismissals "categorically count" as 12(b)(6) dismissals for failure to state a claim). An action dismissed on the grounds that it calls into question a prisoner's sentence or conviction is not a meritless action; it is simply a premature one. *See Heck*, 512 U.S. at 489. This Court clarified in *Heck* that the dismissals are made due to the prematurity of the claims, noting that "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Id*. at 489-80. Thus, suits dismissed under *Heck* are dismissed simply because the cause of action in question has not accrued yet, *not* because the suit itself is meritless.

Unlike 12(b)(6) dismissals, *Heck* dismissals are about the ripeness of the claim. A suit dismissed under *Heck* can be properly brought in the same form, it just must be brought after the

court overturns the prisoner in question's conviction. *Id*. at 489-90. When a court dismisses an action under *Heck,* the court is not deciding the merits of the case. *Id*. Instead, the court is simply analyzing the timeline of the case because that same suit could be properly brought in the future. Id. at 489-90 (explaining that "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated"). Yet when a prisoner's suit is dismissed on 12(b)(6) grounds, it means that the suit cannot be meritorious in its current form; the prisoner would have to substantively amend the suit to bring it again. *See generally Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Because of this finality, the prisoner in that case would properly receive a strike under the PLRA. *Washington,* 833 F.3d at 1055.

This conclusion is supported by the PLRA's purpose of curbing meritless lawsuits "in light of the fact that the overwhelming majority of prisoner cases arc filed pro se and in forma pauperis." Reams & Manz, *supra,* at iii. To achieve that purpose, courts penalize prisoners with strikes when their lawsuits are meritless, and courts can determine that a lawsuit is meritless by granting a defendant's rule 12(b)(6) motion. Conversely, courts do not dismiss suits under *Heck* in order to curb meritless lawsuits, because *Heck* dismissals aren't meritless. 512 U.S. at 499. Instead, courts dismiss suits under *Heck* because those suits are at the wrong place at the wrong time. *Id*.

Mr. Shelby's three prior cases were not dismissed for failure to state a claim on which relief could be granted, as indicated in the record. R. at 3. Rather, the record asserts that Mr. Shelby's claims were dismissed on the grounds that each of them called into question Mr. Shelby's sentence or conviction, which is prohibitable under *Heck*. 512 U.S. at 486-87. Without a showing that Mr. Shelby's three prior civil actions were dismissed on the grounds that they failed to state a claim on which relief may be granted, his dismissals, while proper under *Heck,* do not constitute PLRA

strikes. *Washington*, 833 F.3d at 1042. The Ninth Circuit explains that "to constitute a strike, the denial of [in forma pauperis] status must be based on one of the enumerated grounds in the statute." *Id*. And because *Heck* dismissals do not constitute one of the three enumerated grounds, Mr. Shelby's prior actions are not strikes. *Heck* dismissals are about prematurity, not invalidity. *Heck*, 512 U.S. at 486-87. Accordingly, Mr. Shelby has not accrued three strikes, and is thus entitled to proceed in forma pauperis.

B. 28 U.S.C § 2255 Habeas Corpus Actions Mislabeled as § 1983 Claims Do Not Constitute Strikes Under the Prison Litigation Reform Act.

A § 2255 habeas corpus action mislabeled as a § 1983 action warrants dismissal under *Heck* but does not constitute a strike under the PLRA because the PLRA's enumerated grounds do not encompass mislabeling. See *Heck*, 512 U.S. at 481 (holding that a § 1983 action which "challenges the fact or duration of [a prisoner's] confinement" must be dismissed, because habeas corpus is "the exclusive remedy" for such actions); see also 28 U.S.C. § 1915(g) (enumerating the PLRA's three grounds for dismissal). As the Fifth Circuit succinctly asserted, "[t]he PLRA thus does not apply to [habeas corpus] proceedings." *Davis v. Fechtel*, 150 F.3d 486, 490 (5th Cir. 1998). The Tenth Circuit asserts that dismissals count as strikes when "the dismissal is made because the action is frivolous, malicious, or fails to state a claim." *Day v. Maynard*, 200 F.3d 665, 667 (10th Cir. 1999). Based on the "[c]ourt's duty to refrain from reading into the statute a phrase that Congress has left out," the list enumerated in the three strikes provision of the PLRA is exhaustive. *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012) ("Negative-Implication Canon[:] The expression of one thing implies the exclusion of others . . . .").

The context surrounding the passage of the PLRA supports the conclusion that Congress intended that § 2255 actions exist outside of the jurisdiction of the PLRA, unlike § 1983 actions.

Congress did not intend for the PLRA to apply to habeas corpus actions, as evidenced by the distinctive procedural requirements for habeas actions Congress set out in the Antiterrorism and Effective Death Penalty Act of 1996, which was passed just two days before the PLRA. *Day*, 200 F.3d at 667. As this Court plainly stated in *Heck*, § 2255 actions and § 1983 actions "differ in their scope and operation." 512 U.S. at 480.

Though § 2255 actions are distinct from § 1983 actions, this Court recognized in *Heck* that the two often cross paths. *Id.* In fact, this Court essentially used the preexisting habeas corpus action to denote the boundaries in which § 1983 could coexist. *Preiser v. Rodriguez*, 411 U.S. 475, 490 (1973). This Court noted that Congress "determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement" and asserted that this explicit determination sets the parameters for actions brought under § 1983. *Id.* Thus, while crafting the *Heck* doctrine, this Court carefully avoided overreaching preexisting habeas corpus doctrine. After all, *Heck* was ultimately intended to avoid these "collisions at the intersection of habeas corpus relief and § 1983." Lyndon Bradshaw, *The Heck Conundrum: Why Federal Courts Should Not Overextend the Heck v. Humphrey Preclusion Doctrine*, 2014 BYU L. Rev. 185, 185 (2014).

As a result, *Heck* maintains that suits labeled as § 1983 actions but walk and talk like habeas corpus actions are dismissed precisely because they overreach. 512 U.S. at 486-87. However, this mislabeling speaks only to the title of the action rather than the merits. So, suits dismissed pursuant to *Heck* on the grounds that they ought to be properly labeled as § 2255 actions do not constitute strikes under the PLRA. *See Heck*, 512 U.S. at 486-87 (enumerating *Heck*'s grounds for dismissal); *see also* 28 U.S.C. § 1915(g) (enumerating the PLRA's three grounds for dismissal).

Strikes exist to disincentivize prisoners from bringing meritless litigation, not to prevent prisoners from exercising their constitutional rights to habeas corpus actions. *Blair-Bey*, 151 F.3d at 1040. But an action dismissed on *Heck* grounds is not a meritless action, it's merely a premature one. Suits brought which call into question the nature or validity of a prisoner's sentence or conviction are permitted as habeas actions, just not when they're labeled a § 1983 action. 512 U.S. at 486-87. *Heck* preclusion doctrine has a simple goal: "to avoid undermining state criminal convictions by using a federal civil cause of action." Bradshaw, *supra*, at 208. The solution is equally simple: federal civil causes of action which necessarily call into question the nature or validity of the prisoner's conviction or sentence must be properly labeled as habeas corpus actions. *Heck*, 512 U.S. at 486-87.

If this Court held that these mislabeled habeas petitions constituted strikes under the PLRA, prisoners would essentially be punished for challenging the constitutionality of their convictions. This is deeply problematic, as habeas corpus actions are fundamental to our constitutional jurisprudence, and are a foundational right of all Americans. *Boumediene v. Bush*, 553 U.S. 723, 729 (2008). This Court explained that these claims have been paramount since the conception of the Nation, noting that "[t]he Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." *Boumediene*, 553 U.S. at 739.

Prisoners do not give up their inalienable rights to the courts at the prison gates. In sum, prisoners would be impermissibly punished if *Heck* dismissals constituted strikes because it would affect the ability of prisoners to bring habeas corpus actions. If a prisoner slipped up just three times in mislabeling their habeas corpus action, they would be barred from proceeding in forma pauperis for any future litigation. *But see* 28 U.S.C. § 1915(g) (allowing a prisoner to file in forma

pauperis, regardless of strikes, if the prisoner "is under imminent danger of serious physical injury"). While the PLRA's goal to curb meritless lawsuits may be economically efficient, "[c]ompliance with any judicial process requires some incremental expenditure of resources." *Boumediene*, 553 U.S. at 769. Constitutional rights are not sold to the highest bidder, and prisoners cannot be charged exorbitantly to engage in the court system while incarcerated.

Mr. Shelby's prior § 1983 actions were dismissed without prejudice pursuant to *Heck* because each went "directly to the constitutionality of his physical confinement itself." *Preiser,* 411 U.S. at 494. Prisoners like Mr. Shelby may try and may fail to seek relief under § 1983; after all, "the broad § 1983 cause of action is curtailed *only* when an action falls within the scope of habeas relief." Bradshaw, *supra*, at 207. (emphasis added). The nature of Mr. Shelby's three prior *Heck* dismissals indicate that his actions did just this – they fell into the scope of habeas relief. R. at 3. Although it wasn't labeled as a § 2255 habeas corpus action, Mr. Shelby's action was "close to the core of habeas corpus" because it attacked "the fact or length of his confinement." *Preiser,* 411 U.S. at 494. The actions could instead have been brought as habeas corpus actions because they challenged the validity of his conviction. R. at 3.

Notably, if his prior actions were properly labeled as § 2255 habeas corpus action, Mr. Shelby would not be subject to the PLRA's three strikes provision. *Blair-Bey,* 151 F.3d at 1040. Because habeas corpus actions have unique procedural requirements and limiting measures, subjecting these actions to the three strikes provision of the PLRA would be a "draconian penalty." *Id* at 1041. Of course, even if Mr. Shelby had properly labeled his claims as § 2255 actions to question the validity of his conviction or sentence, his claims may still have been dismissed, just as they were dismissed when he brought them as § 1983 actions.

However, the vital difference is that because he labeled his claims as § 1983 actions instead of § 2255 actions, the lower court subjected Mr. Shelby to the full force of the three strikes provision of the PLRA. R. at 7. And, although his three actions were dismissed on grounds not enumerated in the PLRA, the lower court determined that Mr. Shelby had accrued three strikes. R. at 7. As a result, Mr. Shelby was stripped of his right to proceed in forma pauperis in his current suit against Officer Campbell. R. at 7. This simple mislabeling resulted in a huge cost to Mr. Shelby – not just the $402 filing fee, but his rights. R. at 7. And this "draconian" outcome is wholly unwarranted. *Blair-Bey*, 151 F.3d at 1041. Although Mr. Shelby paid the filing fee up front, many prisoners cannot. *See* Kasey Clark, *You're Out!: Three Strikes Against the PLRA's Three Strikes Rule*, 57 Ga. L. Rev. 779, 791 (2023) ("prisoners in federal facilities … earn 12¢ to 40¢ per hour for their work… it is exceptionally difficult for prisoners to earn enough money while in prison to pay a full filing fee.").

The fact that the lower court dismissed Mr. Shelby's three prior complaints without prejudice supports the conclusion that *Heck* dismissals are not meritless. R. at 3. As the Ninth Circuit explains, suits dismissed pursuant to *Heck* are judged on the ripeness of the claim, not the merits of the claim: "For this reason, a *Heck* dismissal is made without prejudice, such that a prisoner may refile the complaint once his conviction has been overturned." *Washington*, 833 F.3d at 1055. Therefore, Mr. Shelby's prior actions were not dismissed on any of the PLRA's grounds, because those grounds speak to the merits of the claim. 28 U.S.C. § 1915(g). Instead, Mr. Shelby's prior actions were dismissed on *Heck* grounds, and without prejudice, which is a clear sign from the lower court that his actions were not found to be frivolous, malicious, or failed to state a claim. Instead, the prior dismissals simply hadn't yet accrued the underlying cause of action due to the timeline and were thus more properly characterized as habeas actions instead.

II. *KINGSLEY V. HENDRICKSON*'S OBJECTIVE STANDARD GOVERNS OTHER FOURTEENTH AMENDMENT CLAIMS BY PRETRIAL DETAINEES.

The constitutional rights of pretrial detainees are governed by the Fourteenth Amendment, not the Eighth Amendment. *See City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983). Precedent and this Court's decision in *Kingsley* demonstrate that applying the Eighth Amendment's subjective test to Fourteenth Amendment due process claims is inappropriate. *See Kingsley v. Hendrickson*, 576 U.S. 389, 400-01 (2015).

First, this Court has distinguished between the two provisions. "Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions." *Ingraham v. Wright*, 430 U.S. 651, 671-72 n.40 (1977). It is inapplicable until after the State "has secured a formal adjudication of guilt in accordance with due process of law." *Id.* Conversely, the Fourteenth Amendment protects all pretrial detainees who fall outside the scope of the Eighth Amendment. Pretrial detainees like Mr. Shelby have not been convicted and therefore cannot be punished at all. *See Bell v. Wolfish*, 441 U.S. 520, 535-37 (1979) ("[A] detainee may not be punished prior to an adjudication of guilt"). The Fourteenth Amendment thus protects pretrial detainees from all punishments, not just the cruel and unusual kind.

Second, this Court in *Kingsley* held that the appropriate standard for a pretrial detainee's excessive force claim is "solely an objective one." 576 U.S. at 397. Six circuits have correctly applied *Kingsley*'s objective inquiry to other pretrial detainee Fourteenth Amendment claims. This Court should follow suit and resolve any remaining ambiguity.

Third, under *Kingsley*'s framework, the lower court correctly held that Mr. Shelby's pro se complaint alleging failure-to-protect should have its day in court. This Court should affirm the circuit court decision below and allow Mr. Shelby to proceed to the discovery phase.

Lastly, even if this Court holds that *Kingsley* does not govern failure-to-protect claims under the Fourteenth Amendment, dismissal of Mr. Shelby's pro se action is still premature under a subjective standard because Mr. Shelby's well-pleaded complaint sufficiently alleges that Officer Campbell subjectively knew about the serious risks at the prison.

A. This Court's Distinctions Between the Eighth and Fourteenth Amendments Mandate the Fourteenth Amendment's Objective Analysis.

Mr. Shelby is a pretrial detainee, not a convicted prisoner. And because Mr. Shelby is a pretrial detainee, the circuit court below correctly applied *Kingsley*'s objective inquiry to Mr. Shelby's failure-to-protect claim under the Fourteenth Amendment. R. at 18.

Claims arising under the Eighth and Fourteenth Amendments require different analysis under this Court's precedent. And this Court in *Kingsley* recognized that difference. 576 U.S. at 400 ("The language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all[.]").

The Eighth Amendment prohibits "cruel and unusual punishments." U.S. CONST. amend. VIII. But the provision applies only to convicted prisoners, not pretrial detainees. *See Ingraham*, 430 U.S. at 671-72 n.40. Prison officials violate the Eighth Amendment under two conditions: (1) the "deprivation alleged must be, objectively, sufficiently serious," and (2) the punishment is an "unnecessary and wanton infliction of pain." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (cleaned up).

Thus, a prison official must have a "sufficiently culpable state of mind" under the Eighth Amendment. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991). In *Farmer*, the Court held that a culpable state of mind required more than negligence. 511 U.S. at 836. There, the Court applied a subjective "deliberate indifference" standard for Eighth Amendment claims relating to prison conditions and failure to protect. *Id.* ("A prison official may be held liable under the Eighth Amendment for acting

with 'deliberate indifference' to inmate health or safety only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it."). The *Farmer* Court also rejected a purely objective test, reasoning a subjective standard was appropriate because the text of the Eighth Amendment did not outlaw "conditions," but "punishments." *Id.* at 837. "In sum, *Farmer* adopted a subjective test for Eighth Amendment claims on Eighth Amendment grounds." *Short v. Hartman*, 87 F.4th 593, 607 (4th Cir. 2023).

But when pretrial detainees challenge their treatment in custody, the Eighth Amendment's text and legal requirements do not apply. Because pretrial detainees have not been convicted, they fall outside the scope of the Eighth Amendment. *See Ingraham*, 430 U.S. at 671-72 n.40. And a pretrial detainee "may not be punished" at all. *Bell*, 441 U.S. at 535.

Instead, the Fourteenth Amendment's Due Process Clause governs pretrial claims like Mr. Shelby's. That Clause prohibits "any State [from] depriv[ing] any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV. Under the Fourteenth Amendment, pretrial detainees cannot be punished "at all." *Kingsley*, 576 U.S. at 400. The proper inquiry for pretrial conditions in prison, therefore, "is whether those conditions amount to punishment of the detainee." *Bell*, 441 U.S. at 535. But as this Court recently cautioned, "*Bell*'s focus on 'punishment' does not mean that proof of intent (or motive) to punish is required" to prevail on a Fourteenth Amendment claim. *Kingsley*, 576 U.S. at 398. Rather, absent an express intent to punish, *Bell* employed an objective test and held that a pretrial detainee may provide objective evidence to demonstrate a prison condition is not rationally related to a legitimate government purpose. *Id.*

Applied here, the Fourteenth Amendment governs Mr. Shelby's failure-to-protect claim. As a pretrial detainee, he may not be punished. Although this Court has previously held that

protections for pretrial detainees "are at least as great as the Eighth Amendment protections available to a convicted prisoner," *City of Revere*, 463 U.S. at 244, this does not mean that the Eighth Amendment's subjective test controls the outcome of all Fourteenth Amendment claims. Especially when the Fourteenth Amendment lacks the "cruel and unusual punishment" language of the Eighth. Rather, Eighth Amendment protections act as a floor, not the ceiling. And this Court recognized that gap in *Kingsley*. There, this Court emphasized the distinction between the two amendments, rejected a subjective test, and adopted an objective test for excessive force claims under the Fourteenth Amendment. *Kingsley*, 576 U.S. at 396-98.

As cautioned by the Fourth Circuit two months ago, circuit courts historically have improperly grafted the Eighth Amendment's analysis, grounded in the text of the amendment, and applied it to Fourteenth Amendment claims. *See generally Short*, 87 F.4th 593 at 607. And while "[i]t is true that . . . a Fourteenth Amendment claimant is entitled to at least as much protection as an Eighth Amendment claimant, . . . it does not follow that treatment violates the Fourteenth only if it violates the Eighth." *Short*, 87 F.4th at 608. Here, the circuit court below rejected an Eighth Amendment analysis and properly applied Fourteenth Amendment protections to Mr. Shelby's claim.

B. *Kingsley*'s Objective Standard Applies to All Fourteenth Amendment Claims.

The *Kingsley* Court held that "the appropriate standard for a pretrial detainee's excessive-force claim [under the Fourteenth Amendment] is solely an objective one." 576 U.S. at 397. Importantly, a "defendant's state of mind is not a matter that a plaintiff is required to prove." *Id.* at 395. Accordingly, the circuit court below properly analyzed Mr. Shelby's claim using an objective standard.

In *Kingsley*, jail officials forcibly removed a pretrial detainee from his cell after he refused commands to exit. *Id.* at 392. The officers handcuffed the detainee, slammed his head into a

concrete bunk, and tazed him while handcuffed. *Id.* The officers then left the handcuffed detainee in the cell alone. *Id.* The detainee brought a § 1983 action alleging excessive force under the Fourteenth Amendment's Due Process Clause. *Id.* at 393. But the jury found in favor of the officers based on a jury instruction requiring subjective intent. *Id.* at 394. And the circuit court rejected the detainee's appeal and held that the law required a subjective standard. *Id.* This Court granted certiorari and addressed the state of mind a pretrial detainee must plead for a claim of excessive force. *Id.* at 395.

The *Kingsley* Court held that excessive force claims under the Fourteenth Amendment are measured by an officer's objective reasonableness, not subjective intent. *Id.* The Court reasoned that two "state-of-mind questions" existed: (1) an official's mental state "with respect to his physical acts," and (2) an objective inquiry of reasonableness for determining if force was excessive. *Id.* at 395-97. The first question addresses a defendant's "state of mind with respect to the bringing about of certain physical consequences in the world." *Id.* at 395. It also rejects liability for mere negligence. *Id.* at 396; *see also County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) ("Liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process."). And the second question emphasizes that a defendant's subjective "state of mind is not a matter that a plaintiff is required to prove." *Id.* The Court reasoned that the Fourteenth Amendment is distinct from the Eighth Amendment's subjective intent requirement. *Id.* at 400. Further, the Court said a "pretrial detainee may state a claim under the Fourteenth Amendment by satisfying *Bell*'s objective standard." *Short*, 87 F.4th at 608; *see also Kingsley*, 576 U.S. at 398 (citing *Bell*, 441 U.S. at 561).

Pretrial detainees can therefore "prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or

that it is excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398. Importantly, the Court emphasized that "there is no need here, as there might be in an Eighth Amendment case, to determine when punishment is unconstitutional." *Id.* at 401.

Since that holding, six circuits have applied *Kingsley*'s objective standard for excessive force to various pretrial detainee claims under the Fourteenth Amendment. *See Short v. Hartman*, 87 F.4th 593, 609-10 (4th Cir. 2023); *Brawner v. Scott County*, 14 F.4th 585, 596 (6th Cir. 2021); *Miranda v. County of Lake*, 900 F.3d 335, 351-52 (7th Cir. 2018); *Darnell v. Pineiro*, 849 F.3d 17, 34-35 (2d Cir. 2017); *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016) (*en banc*); *Shelby v. Campbell*, No. 2023-5255 (14th Cir. 2023).[1] Four circuits cabined *Kingsley*'s holding and instead continue to apply the subjective test derived from the Eighth Amendment. *See Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018); *Dang ex rel. Dang v. Sheriff, Seminole County*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017); *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017). Most of these courts addressed the issue in cursory footnotes. *See, e.g.*, *Alderson*, 848 F.3d at 419 n.4 (holding that the panel is "bound by [the circuit's] rule of orderliness" to apply a subjective standard because "the Fifth Circuit ha[d] continued to . . . apply a subjective standard post-*Kingsley*").

The six circuits that extended *Kingsley* to other Fourteenth Amendment claims are correct.

First, these courts properly delineated between Eighth Amendment and Fourteenth Amendment protections, as mandated by *Kingsley*. *See, e.g.*, *Castro*, 833 F.3d at 1070. This Court

[1] Notably, all the listed circuits except the Ninth adopted *Kingsley*'s objective test without considering the question en banc. As the Fourth Circuit noted, "*Kingsley* mandates a departure from prior circuit precedent and eliminates the need for en banc consideration of the issue." *Short*, 87 F.4th at n.8.

was explicit when it said that "the two Clauses differ." *Kingsley*, 576 U.S. at 400. The appropriate standard thus turns on Mr. Shelby's status as the claimant. Failing to recognize the distinction leads to lower courts incorrectly applying Eighth Amendment principles to Fourteenth Amendment claims, regardless of the textual distinctions. Yet plaintiffs like Mr. Shelby are not convicted prisoners, but pretrial detainees. The Eighth Amendment analysis for prisoners is outcome determinative and precludes recourse for pretrial detainees like Mr. Shelby, where jail officials acted objectively unreasonable. And this outcome disregards this Court's holding that pretrial detainees "cannot be punished at all." *Kingsley*, 576 U.S. at 400 (citing *Ingraham*, 430 U.S. at 671-72 n.40). Thus, courts that continue to apply the Eighth Amendment's subjective standard onto Fourteenth Amendment due process claims are improperly narrowing the constitutional protections afforded to pretrial detainees.

And second, *Kingsley*'s holding is broad. *Kingsley* clarified the scope of the Fourteenth Amendment by building upon the Court's earlier decision in *Bell v. Wolfish*, which analyzed "a variety of prison conditions." *Kingsley*, 576 U.S. at 398 (citing *Bell*, 441 U.S. at 541-43). For instance, *Bell* dealt with the prison practices of housing multiple inmates in individual rooms ("double-bunking") and prohibiting all books and magazines other than those sent directly from a publisher or book club ("publisher-only rule"). *Bell*, 441 U.S. at 541, 549. In *Bell*, the Court employed an objective test and held that a pretrial detainee may provide objective evidence to demonstrate a prison condition is not rationally related to a legitimate government purpose. *Id.*; *see also Kingsley*, 576 U.S. at 398 (noting that *Bell* applied an objective standard to evaluate prison conditions and "did not consider the prison officials' subjective beliefs"). *Kingsley*, relying on *Bell*, thus mandates an objective standard for all Fourteenth Amendment claims.

Although petitioner and the Tenth Circuit insist that *Kingsley* is limited to only excessive force due process claims, *see Strain*, 977 F.3d at 991, this result is incorrect. First, *Kingsley*'s holding built on *Bell*'s application of an objective standard to numerous prison conditions, not just excessive force situations. *Kingsley*, 576 U.S. at 397. And the *Kingsley* Court explicitly stated that *Bell* "d[id] not mean that proof of intent (or motive) to punish is required for a pretrial detainee to prevail on a claim that his due process rights were violated." *Id.* To cabin *Kingsley* would be to ignore *Bell*. Second, petitioner's argument is illogical. This Court has repeatedly recognized legitimate government interests in the safety and order of prisons. *See, e.g.*, *Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington*, 566 U.S. 318 (2012) ("Maintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face."). Petitioner's argument allows an objective standard for excessive force claims, the most severe cases, but mandates a subjective standard for all other conditions claims. Such a holding would grant the least amount of deference in the most extreme cases. This cannot be the logical policy outcome of this Court.

Thus, the six circuits correctly extended the *Kingsley-Bell* objective framework to all deliberate indifference Fourteenth Amendment claims. *Kingsley* mandates this outcome. *See Short*, 87 F.4th at 605 ("*Kingsley* is irreconcilable with precedent requiring pretrial detainees to meet a subjective standard to succeed on claims under the Fourteenth Amendment.").

C. Under *Kingsley*, Mr. Shelby Properly Pleaded that Officer Campbell Violated His Constitutional Rights.

Applied here, Mr. Shelby satisfied *Kingsley*'s two-step inquiry. Mr. Shelby properly pleaded that Officer Campbell should have known that Mr. Shelby was targeted by rival gang members. R. at 8. And, at a minimum, Officer Campbell should have been on notice of the hit

based on the jail's database, which listed Mr. Shelby's storied gang status, inventoried Geeky Binder weapon, prior arrests, and the gang intelligence officer's mandatory meeting minutes.

Notably, Mr. Shelby is not required to prove that Officer Campbell acted objectively unreasonable at this early stage of the litigation. This case arrives on a motion to dismiss, not a motion for summary judgment. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). And a pro se plaintiff's complaint must be broadly construed under this standard. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (cleaned up); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (liberally construing a pro se prisoner's § 1983 complaint).

Thus, Mr. Shelby need only meet the lower threshold of a pro se litigant's sufficient complaint. And because he adequately pled his failure-to-protect claim, the Fourteenth Circuit appropriately held that Mr. Shelby is entitled to his day in court.

1. Mr. Shelby Satisfied *Kingsley*'s First Step (Subjective).

As to *Kingsley*'s first inquiry, Officer Campbell must "possess a purposeful, a knowing, or possibly a reckless state of mind" with respect to his physical acts harming Mr. Shelby. 576 U.S. at 396. The *Kingsley* Court provided some examples of what would fail this test: "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm." *Id.*

In Mr. Shelby's failure-to-protect claim, the question turns on whether Officer Campbell's conduct of placing several detainees in the same area was intentional. And the circuit court

correctly held that it was. R. at 17. Officer Campbell intentionally placed the three Bonucci gang members in with Mr. Shelby. Even if Officer Campbell did not know the identities of the various prisoners, the *Kingsley* Court rejected this knowledge requirement. And unlike the *Kingsley* accidental taser or trip and fall examples, nothing in the record suggests that Officer Campbell's actions were unintentional or accidental. He did not accidentally unlock cell doors. Nor did he accidentally drop his keys. And he certainly did not trip and fall on the cell doors to unlock them. Because Officer Campbell made the conscious decision to intermingle the prisoners, Mr. Shelby satisfied *Kingsley*'s first step.

2. Mr. Shelby Satisfied *Kingsley*'s Second Step (Objective).

As to *Kingsley*'s second inquiry, Mr. Shelby properly alleged that Officer Campbell acted in an objectively unreasonable manner. Two inferences arise from Mr. Shelby's complaint: (a) Officer Campbell intentionally ignored the serious risks to Mr. Shelby; or (b) Officer Campbell recklessly failed to act reasonably to mitigate the serious risks. *See Brawner,* 14 F.4th at 597. The inquiry turns on whether a reasonable officer would have avoided the substantial risk of harm to Mr. Shelby's safety. *Id.* And that inquiry does not require proof of Officer Campbell's actual awareness of the risk.

First, Officer Campbell acted objectively unreasonable when he failed to act pursuant to the mandatory prison meeting. At that mandatory meeting, Marshall's gang intelligence officers notified all jail officials of Mr. Shelby's presence. And that the Bonuccis placed a hit against Mr. Shelby. To ensure Mr. Shelby's safety, the gang intelligence officers explicitly told all jail officials that Mr. Shelby was housed in cell block A and separated from the Bonuccis in cell blocks B and C. Yet Officer Campbell ignored these warnings. Roll call records place Officer Campbell at the mandatory meeting. Although the jail's time sheets created a dispute about whether he attended

the meeting, Mr. Shelby is entitled to proceed to discovery to uncover that dispositive information. An officer at the mandatory jail meeting satisfies both the subjective and objective test.

And under *Kingsley*'s objective standard, Officer Campbell failed to take reasonable measures to abate the risks explicitly warned about at the mandatory meeting. A reasonable officer with that knowledge would not ignore his superior's commands. Nor would a reasonable officer intermingle Mr. Shelby with the Bonuccis with knowledge of a hit. Put simply, Officer Campbell opened the door for the killers. That is objectively unreasonable. And such an act defies this Court's instruction that pretrial detainees "cannot be punished at all[.]" *Kingsley*, 576 U.S. at 400.

Second, if Officer Campbell failed to attend the mandatory prison meeting, he acted objectively unreasonable when he failed to act pursuant to the jail's online database. The prison required all absent jail officials to review the meeting minutes online. But because of a computer glitch, it is not clear whether Officer Campbell did so. Seven days after the meeting, Officer Campbell intermingled Mr. Shelby and the Bonuccis. Two inferences arise: Officer Campbell either (a) viewed the minutes and ignored his superior's warnings or (b) failed to review the minutes for seven days. These factual allegations, not legal conclusions, must be drawn in favor of the plaintiff, Mr. Shelby. *See Iqbal*, 556 U.S. at 678. In either scenario, a reasonable officer would follow prison protocol, review the meeting minutes, and heed the gang intelligence officer's warnings. And that reasonable officer would have known of the serious risks posed to Mr. Shelby. Officer Campbell failed to do so here.

Third, Officer Campbell acted objectively unreasonable by failing to review the warnings posted around the prison. Those warnings noted Mr. Shelby's at-risk status in every administrative area of the jail. For seven days, Officer Campbell walked through those areas and failed to read the warnings. And when Officer Campbell transferred Mr. Shelby to the recreation area, he failed

to read the warnings on the list he carried with him. That list noted Mr. Shelby's gang affiliations and the hit placed against him. It also listed all inmates with gang affiliations, including the Bonuccis. Even so, Officer Campbell never read the gang affiliations of the three Bonuccis from cell blocks B and C when he brought them to Mr. Shelby. A reasonable officer would have looked at the list each time before transferring the inmates, especially an officer in a prison rife with gang activity like the Marshall jail. At a minimum, a reasonable officer would review the list at least once in a seven-day period. Officer Campbell failed to do so.

Lastly, Officer Campbell acted objectively unreasonable when he ignored an inmate's warning before transferring Mr. Shelby. In cell block A, an inmate yelled about Mr. Shelby's brother, Tom, "t[aking] care of that horrible woman." R. at 6. Officer Campbell heard the statement and told Mr. Shelby to be quiet when he responded to the inmate. In a town encapsulated by gang violence, and in a prison fighting against gang corruption, a reasonable officer would have known about the murder of the wife of the Bonucci leader. At the very least, a reasonable officer would have paused and reviewed the inmate list in his pocket before proceeding. But Officer Campbell failed to do so.

Ultimately, the factual allegations, drawn in favor of the pro se plaintiff, satisfy *Kingsley*'s objective second step. Officer Campbell either intentionally ignored the risk to Mr. Shelby or recklessly failed to act reasonably to mitigate the serious risks. Mr. Shelby's allegations are therefore sufficient to defeat a motion to dismiss. *See generally Brawner*, 14 F.4th at 597. And *Kingsley* mandates such a result.

Because Mr. Shelby's pro se complaint alleges that Officer Campbell failed to take reasonable measures to mitigate the risk posed to Mr. Shelby while inside the prison, the Fourteenth Circuit's decision should be affirmed.

D. Even So, Dismissing Mr. Shelby's Pro Se Action Is Premature Under a Subjective Standard.

Even if this Court were to conclude that *Kingsley* does not govern failure-to-protect claims under the Fourteenth Amendment, dismissal of Mr. Shelby's pro se action is still premature under a subjective standard. Mr. Shelby's complaint raises legitimate questions about whether Officer Campbell subjectively knew about the serious risks at the prison. For instance, roll call records place Officer Campbell at the mandatory meeting. If Officer Campbell was at the mandatory meeting, he had actual awareness of the hit against Mr. Shelby. If he was not present, Officer Campbell had actual awareness of the risk when he followed his superior's commands and reviewed the meeting's minutes. But a convenient system glitch wiped any record of Officer Campbell reviewing those minutes. And if Officer Campbell did not view the minutes, then he had actual awareness when he walked through the jail's administrative areas for seven days and saw the posted notices. Or when he looked at his inmate list. Or when an inmate yelled out about gang activity.

A reasonable inference from this factual content plausibly suggests that Officer Campbell had actual knowledge of Mr. Shelby's gang affiliation and the corresponding risks. *See Iqbal,* 556 U.S. at 678 (explaining a claim is facially plausible when the factual allegations permit "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"). Mr. Shelby is thus entitled to further discovery and his day in court.

CONCLUSION

This Court should affirm the judgment of the Fourteenth Circuit because (1) a *Heck* dismissal does not constitute a "strike" under the PLRA and (2) *Kingsley* governs Mr. Shelby's Fourteenth Amendment due process claim. Mr. Shelby is a pretrial detainee under the Fourteenth Amendment, not a convicted prisoner under the Eighth. He should be treated as such.

Respectfully submitted.