No. 2023-05

IN THE

Supreme Court of the United States

CHESTER CAMPBELL,
Petitioner,

— against —

ARTHUR SHELBY,
Respondent.

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

BRIEF FOR PETITIONER

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I. Whether dismissal of a prisoner's civil action under *Heck v. Humphrey* constitutes a "strike" within the plain meaning of and legislative intent animating the Prison Litigation Reform Act?

II. Whether, following *Kingsley v. Hendrickson*, a pretrial detainee is required to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for a Fourteenth Amendment Due Process violation in a 42 U.S.C. § 1983 action?

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Wythe appears in the record at pages 1–11. The opinion of the United States Court of Appeals for the Fourteenth Circuit appears in the record at pages 12–19.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

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

42 U.S.C. § 1983 provides in full:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. § 1915(g) provides in full:

> 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.

STATEMENT OF THE CASE

I. Factual Background

On January 8, 2021, Respondent Arthur Shelby ("Respondent") sustained an attack by two inmates while incarcerated at the Marshall jail. (R. at 6–7). Respondent is a leader and second-in-command of the Geeky Binders, a notorious street gang in the town of Marshall. (R. at 2). The Geeky Binders have a contentious rivalry with the Bonucci gang, since the Bonuccis took control over Marshall by exercising their influence over local politicians and prominent Marshall officials. (R. at 3). Thomas Shelby murdered the wife of Luca Bonucci, the leader of the Bonucci gang, further fueling the rivalry. (R. at 5). As the Bonuccis' control over Marshall declined, several members of the gang — including Luca Bonucci — were incarcerated at Marshall jail on assault and armed robbery charges. (R. at 3). These members of the Bonucci gang remain incarcerated today. (R. at 3). Respondent retains an extensive history of arrests and subsequent convictions for offenses such as narcotics distribution and possession, assault, and brandishing a firearm. (R. at 3). For these offenses, Respondent has been incarcerated on several occasions. (R. at 3). While previously in detention, Respondent brought three separate civil actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. (R. at 3). Because each of those actions would have called into question either his conviction or his sentence, a district court dismissed each suit without prejudice pursuant to *Heck v. Humphrey*. (R. at 3).

On December 31, 2020, Marshall police sought to arrest Respondent and his two brothers for multiple charges including battery, assault, and firearm offenses. (R. at 3). Respondent's brothers, however, escaped the police, and only Respondent was arrested, charged, and later detained at Marshall jail. (R. at 3–4). Respondent arrived at Marshall jail wearing a distinct three-piece suit, an overcoat, and with a custom-made ballpoint pen engraved with "Geeky

Binders." (R. at 4). The prison officials inventoried all of his belongings. (R. at 4). Officer Mann specifically oversaw booking Respondent in the jail's online system, updating Respondent's online database file at around 11:30 PM on December 31. (R. at 4–5). The gang affiliation subset in the file indicates any known hits on a prisoner placed by a currently incarcerated, rival gang member. (R. at 4).

The jail's gang intelligence officers are tasked with reviewing each incoming inmate's entry in the online database. (R. at 4). On the morning of January 1, 2021, the intelligence officers held a meeting with jail officials to inform them of Respondent's booking and that Respondent would be segregated from any Bonucci-affiliated prisoner to minimize rival gang interaction. (R. at 5). Although the intelligence officers required those absent from the meeting to review the minutes, a glitch in Marshall jail's online system eliminated all viewing records of the minutes from the January 1 meeting. (R. at 6). Petitioner Officer Chester Campbell ("Officer Campbell"), an entry-level guard who was not a gang intelligence officer, was absent from the meeting because he was sick. (R. at 5). Officer Campbell had been employed at the jail for only a few months, received proper training by Marshall jail, and fulfilled his job expectations. (R. at 5).

On January 8, 2021, Officer Campbell oversaw the transfer of inmates to and from the jail's recreation room. (R. at 6). When Officer Campbell approached Respondent at his cell, he did not know or recognize Respondent. (R. at 6). The jail generated a list of inmates with special statuses, which Officer Campbell had not reviewed before escorting Respondent from his cell to the recreation room. (R. at 6). After removing Respondent from his cell, Officer Campbell retrieved three inmates who were members of the Bonucci gang. (R. at 7). The Bonucci inmates then attacked Respondent. (R. at 7). Officer Campbell was unable to restrain the three Bonucci

inmates by himself, and the attack continued until Officer Campbell received assistance from other officers. (R. at 7).

As a result of the Bonucci inmates' attack, Respondent was injured and hospitalized. (R. at 7). After Respondent was released from the hospital, a bench trial was held where he was convicted for battery and possession of a firearm by a convicted felon but acquitted of the assault charge. (R. at 7). Respondent is currently incarcerated at Wythe Prison. (R. at 7).

II. Procedural Posture

Respondent filed a 42 U.S.C. § 1983 action *pro se* under the Prison Litigation Reform Act (PLRA)[1] against Officer Campbell in the United States District Court for the District of Wythe. (R. at 1). On April 20, 2022, the District Court dismissed Respondent's suit for failing to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6). (R. at 1). The District Court also ruled that Respondent had accrued three "strikes" under the PLRA, barring him from bringing suit *in forma pauperis* and denying his motion to proceed under the PLRA. (R. at 1). The District Court also ruled that Respondent's claim failed to allege that Officer Campbell knew of and disregarded a substantial risk of serious harm, rejecting Respondent's argument for an objective knowledge standard. (R. at 8).

Respondent then paid the $402.00 filing fee in full (R. at 7) and appealed the District Court's ruling to the United States Court of Appeals for the Fourteenth Circuit. (R. at 12). On appeal, the Fourteenth Circuit reversed the District Court's dismissal of Respondent's action, finding that his previously dismissed actions did not constitute "strikes" within the meaning of the PLRA. (R. at 21). The Fourteenth Circuit also ruled that Respondent properly alleged that

[1] The PLRA permits a prisoner plaintiff to bring a § 1983 suit *in forma pauperis*, meaning the $402.00 filing fee is waived so that indigent prisoners may still bring suit. Thus, in this action, Respondent is bringing a § 1983 action against Officer Campbell via the PLRA in an effort to avoid paying the $402.00 filing fee.

Officer Campbell failed to take reasonable measures to abate the risk of imminent danger and that the standard for evaluating Officer Campbell's conduct is an objective one. (R. at 21). Thus, the Fourteenth Circuit held that Respondent's suit was not barred by the PLRA and his complaint properly alleged facts supporting his claim that Officer Campbell should have known of the risk of harm to Respondent in prison. (R. at 15, 19).

Officer Campbell petitioned for a writ of certiorari to the United States Supreme Court. This Court granted certiorari. (R. at 21).

SUMMARY OF THE ARGUMENT

I. Standard for "Strikes" Under the PLRA

The Fourteenth Circuit erred in holding that Respondent's action is not barred under the PLRA.

The PLRA prohibits a prisoner from filing an action if the prisoner has accumulated three "strikes" for prior federal court actions while incarcerated or in detention, unless the prisoner is under imminent danger of serious physical injury. A plaintiff may incur a "strike" under the PLRA for bringing a suit that was dismissed for being frivolous or malicious, or failing to state a claim upon which relief may be granted. Here, Respondent already filed three § 1983 suits, all of which the District Court dismissed because they would have "called into question either his conviction or his sentence," which *Heck v. Humphrey* explicitly prohibits. Respondent's three prior actions failed to state a claim upon which relief may be granted because the District Court would have had to invalidate the underlying conviction in order to rule favorably on his suits. Because the District Court dismissed each of Respondent's three previous actions for failing to state a claim upon which relief may be granted, Respondent's previously dismissed actions are "strikes" under the PLRA.

Congress intended the statute's "three strikes" rule to free courts from wasteful, meritless litigation like Respondent's suit. To permit Respondent's suit to proceed against Officer Campbell would run afoul of both the text and intent animating the PLRA. Further, the PLRA's "imminent danger" exception does not protect Respondent's suit because his complaint fails to establish a nexus between the alleged violations of law and the purported imminent danger of serious physical injury.

II. Standard for Deliberate Indifference Failure-to-Protect Claims

The Fourteenth Circuit erred in holding that a pretrial detainee need not demonstrate a defendant's subjective intent in a § 1983 action for a deliberate indifference failure-to-protect claim. In a deliberate indifference failure-to-protect claim, the subjective "actual knowledge" standard in *Farmer v. Brennan* governs. This Court should not extend *Kingsley v. Hendrickson*'s objective standard to the deliberate indifference failure-to-protect context for two reasons.

First, *Kingsley*'s objective standard for excessive use of force claims is not applicable to the failure-to-protect context. The categorical differences between an excessive use of force claim and a deliberate indifference failure-to-protect claim warrant different state-of-mind inquiries. It is appropriate to apply the same subjective standard to both pretrial detainees and convicted inmates because they are similarly situated. Both groups' rights are necessarily abrogated while they are incarcerated, and thus, they must rely on prison officials for their safety. Also, prison officials owe pretrial detainees and convicted inmates the same duty of care. *Farmer v. Brennan*, rather than *Kingsley*, is the controlling precedent; thus, a pretrial detainee must demonstrate that the prison official was subjectively aware of a substantially serious risk to the detainee and consciously disregarded it.

Second, a subjective deliberate indifference standard is necessary and appropriate for convicted inmates and pretrial detainees alike to maintain uniform prison administration.

STANDARD OF REVIEW

This Court reviews *de novo* a lower court's decision to strike a § 1983 suit under the PLRA and must "exercise [its] independent judgment to analyze the grounds for dismissal." *Garrett v. Murphy*, 17 F.4th 419, 423 (2021); *see also, e.g., Fourstar v. Garden City Grp., Inc.*, 875 F.3d 1147, 1152 (D.C. Cir. 2017) ("District courts must independently evaluate prisoners' prior dismissals to determine whether there are three strikes."). Thus, in assessing whether Respondent is barred from proceeding with his action against Officer Campbell, Respondent's previously dismissed § 1983 suits should be independently evaluated — without deference to either lower court.

This Court also reviews *de novo* the Fourteenth Circuit's 12(b)(6) decision that a pretrial detainee may sufficiently allege a deliberate indifference failure-to-protect claim under an objective standard. *See McLin v. Twenty-First Jud. Dist.*, 79 F.4th 411, 415 (5th Cir. 2023).

ARGUMENT

I. RESPONDENT'S § 1983 ACTION IS BARRED BECAUSE IT VIOLATES THE PLRA'S "THREE STRIKES" RULE AND DOES NOT QUALIFY FOR THE STATUTE'S "IMMINENT DANGER" EXCEPTION.

The Prison Litigation Reform Act (PLRA) prohibits a prisoner from filing an action under § 1983 if the prisoner has accumulated three "strikes" for prior federal court actions while incarcerated or in detention, unless the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). A plaintiff may incur a "strike" under the PLRA for bringing a suit that was dismissed for being frivolous or malicious, or failing to state a claim upon which relief may be granted. *Heck v. Humphrey*, 512 U.S. 477 (1994); *see also Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011); *Washington v. Los Angeles Cnty.*, 833 F.3d 1048, 1055 (9th Cir. 2016). When an incarcerated or detained individual seeks damages in a § 1983 suit, the district court must evaluate whether judgment for the plaintiff would necessarily imply that the individual's conviction or sentence is invalid. *Heck*, 512 U.S. at 487. If judgment for a plaintiff's § 1983 action would necessarily imply the invalidity of a conviction or sentence, the district court must dismiss the complaint without prejudice until the prisoner is able to show 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." *Id.* at 486–87. The cause of action only accrues when the prisoner can show that the underlying conviction or sentence has been invalidated. *Id.*

This Court should reverse the Fourteenth Circuit's ruling and hold that Respondent's § 1983 action constituted a "strike" within the meaning of the PLRA for two reasons. First, Respondent's three previous suits failed to state a claim upon which relief may be granted,

requiring the court to "strike" the actions per § 1915(g). Second, Respondent's action is not protected by § 1915(g)'s "imminent danger" exception and thus still must be barred.

A. Respondent's Action Is Barred Because He Already Received Three "Strikes" Against Previous § 1983 Suits.

Respondent's action is barred because he has already filed three § 1983 suits that failed to state a claim upon which relief may be granted, making them "strikes" under the PLRA. Congress intended the statute's "three strikes" rule to free courts from wasteful, meritless litigation like Respondent's suit. To permit Respondent's suit to proceed against Officer Campbell would run afoul of both the text and intent animating the PLRA.

1. Respondent's Three Previous § 1983 Suits Were Dismissed for Failing to State a Claim, Making Them "Strikes" Under the PLRA.

Section 1915(g) of the PLRA bars Respondent from proceeding with his action against Officer Campbell because a district court has dismissed three of Respondent's previous § 1983 suits under *Heck v. Humphrey* for failing to state a claim upon which relief may be granted. A *Heck* dismissal constitutes a Rule 12(b)(6) dismissal for failure to state a claim when the pleadings present an "obvious bar to securing relief." *Washington*, 833 F.3d at 1055–56. Under *Heck*, a district court hearing a prisoner's action must dismiss the suit if their underlying conviction or sentence would be invalidated or otherwise undermined by a favorable ruling on their § 1983 action. *Heck*, 512 U.S. at 486–87. Here, prior to this action, Respondent had already commenced three separate civil actions under § 1983 against prison officials, state officials, and the United States. (R. at 3). Because his previous actions would have "called into question either his conviction or his sentence," a district court dismissed each without prejudice per *Heck v. Humphrey*. 512 U.S. at 486–87 (holding that a cause of action under § 1983 challenging the constitutionality of a conviction or sentence does not develop until the underlying conviction or

sentence has been reversed, expunged, declared invalid, or called into question). Put another way, each of Respondent's previous suits necessarily failed to state a claim upon which relief may be granted; each of these suits presented an obvious bar to securing relief. Because Respondent's prior three suits were dismissed for failing to state a claim upon which relief may be granted, a court hearing Respondent's current action must treat each of his previous *Heck* dismissals as a "strike" under the PLRA. Thus, Respondent may not proceed with the instant action *in forma pauperis* because he already accrued three "strikes" against him for previous actions dismissed pursuant to *Heck.*

2. Congress Intended the PLRA's "Three Strikes" Rule to Free Courts from Wasteful, Meritless Litigation like Respondent's Suit.

Congress intended the PLRA to curtail "meritless, wasteful litigation brought by prisoners." (R. at 15); *see also Fourstar v. Garden City Grp., Inc.*, 875 F.3d at 1149 ("In 1996, Congress passed . . . the [PLRA]...to stem the tide of frivolous litigation filed in federal court by some federal and state prisoners."). The PLRA's "three strikes" rule is designed to "filter out the bad claims and facilitate consideration of the good," where "bad" claims are frivolous, malicious, repetitive, or fail to state a claim. *Wells v. Brow*n, 58 F.4th 1347, 1350 (11th Cir. 2023). Here, Respondent's failure to state a claim in three prior § 1983 actions constitutes exactly the kind of wasteful litigation that Congress intended the PLRA to curb. The district courts hearing those actions spent precious judicial time and resources repeatedly dismissing Respondent's previous suits because each would have called into question either his conviction or his sentence, which *Heck* explicitly prohibits. *Heck,* 512 U.S. at 486–87. Having been informed of this defect in his first claim, Respondent still failed to adapt his later suits. (R. at 3). Instead, he continued to file § 1983 suits that would have called his underlying conviction or sentence into question. (R. at 3).

Accordingly, this Court should bar Respondent's action against Officer Campbell to prevent further burdening the courts with wasteful litigation.

Respondent may argue that this Court cannot retroactively strike his previously dismissed § 1983 suits because the dismissals were not contemporaneously labeled as "strikes." But, this argument carries no weight. District courts are not statutorily obligated to contemporaneously label *Heck* dismissals as "strikes" — some district courts do so, others do not. *Fourstar*, 875 F.3d at 1152–53. In fact, the Second Circuit has instructed district courts not to contemporaneously label *Heck* dismissals as "strikes" in the first place to avoid confusion. *Id; see also Deleon v. Doe*, 361 F.3d 93, 95 (2d Cir. 2004). In doing so, the Second Circuit and other courts that refuse to contemporaneously label a *Heck* dismissal as a "strike" avoid influencing a later district court that must "independently evaluate" whether a prisoner's previous *Heck* dismissals are "strikes" under the PLRA. *Fourstar*, 875 F.3d at 1152–53. Thus, it does not matter whether the district courts that dismissed Respondent's three previous suits contemporaneously labeled the dismissals as "strikes" because they were not required to do so, and the district court in this action was required to independently evaluate whether each of the previous suits was a "strike."

B. The PLRA's "Imminent Danger" Exception Does Not Apply — Respondent's Suit Is Still Barred.

This Court should bar Respondent from proceeding *in forma pauperis* with this action because the PLRA's narrow "imminent danger" exception does not extend to Respondent's suit. Section 1915(g) of the PLRA permits a § 1983 plaintiff whose suit would otherwise be barred by three strikes to nonetheless proceed *in forma pauperis* if the prisoner is in imminent danger of serious physical injury. *See Ray v. Lara*, 31 F.4th 692, 695 (9th Cir. 2022). For a plaintiff's claim to be protected by the "imminent danger" exception, the allegations in the prisoner's complaint must show both (1) a fairly traceable nexus between the alleged imminent

danger of serious physical injury and the unlawful conduct asserted in the complaint, and (2) that a favorable judicial outcome would redress that injury. *Ray*, 31 F.4th at 695. The plain reading of the PLRA requires the "imminent danger" to exist contemporaneously when the prisoner files the action. *Hall v. United States*, No. 5:20-CV-922023, 2023 U.S. Dist. LEXIS 75362, *5 (N.D. W. Va. Apr. 19, 2023) (citing *Negonsott v. Samuels*, 507 U.S. 99, 103–04 (1993)). While district courts have broad discretion to consider the totality of circumstances in determining whether a prisoner plaintiff faces imminent danger at the time of filing, "past allegations of danger or threats of harm on their own are insufficient to satisfy the exception." *Hall*, 2023 U.S. Dist. LEXIS 75362, *4–5. Thus, there is no nexus between the alleged violations of law and the imminent danger if the harm has already occurred or is not likely to occur.

Two cases illustrate the bar for a plaintiff to fulfill the first prong of the "imminent danger" exception. First, in *Hall v. United States*, the prisoner plaintiff seeking the exception's protection cited "denied or delayed medical care causing worsening conditions." 2023 U.S. Dist. LEXIS 75362, *4. Considering the totality of circumstances, past and present, the district court found that the plaintiff's injury was not "imminent" — rather, the court found that his injury was the result of chronic illness predating his incarceration. *Id.* Second, in *Ray v. Lara*, a prisoner plaintiff with three previously struck suits sought the protection of the PLRA's "imminent danger" exception for his § 1983 mail tampering suit against a corrections officer. 31 F.4th 692 (9th Cir. 2022). However, he did not connect the risk of imminent danger to his allegations of mail tampering. Rather, he alleged that he faced a risk of imminent danger of serious physical injury due to the prison's inhumane living conditions. *Id.* at 695. Because the court found no nexus between the alleged imminent danger posed by the prison's living conditions and the plaintiff's mail tampering allegations, the PLRA's "imminent danger" exception did not apply.

Id. Thus, in both *Hall* and *Ray*, the district courts refused to protect the prisoners' suits from being barred because neither plaintiff sufficiently alleged a nexus between their injuries and the alleged unlawful conduct.

Respondent's suit is similarly ineligible for § 1915(g)'s protection because there is no nexus between the alleged violations of law and the purported imminent danger of serious physical injury. In fact, Respondent's suit fails to fulfill the first prong of the exception in two different ways. First, the harm at issue here is not imminent; it happened three years ago. (R. at 7). To reach for protection of this suit under the exception, Respondent may argue that he still faces the imminent danger of further violence from rival gang members. This argument falls flat. Nothing in the record indicates that Respondent faces imminent danger of bodily injury in the future. Instead, Respondent's only argument is that his suit deserves the protection of the exception for harm that occurred three years ago — hardly imminent. Second, Respondent may not weaponize the PLRA's narrow "imminent danger" exception to hold the state responsible for the risks of his violent rivalries with other gangsters. Even if Respondent credibly alleged an imminent danger to his safety at the hands of the Bonucci clan, there is no nexus between that danger and Officer Campbell's conduct. Any remaining risk of imminent danger to Respondent stems from his own affiliations. Respondent's brother murdered Luca Bonucci's wife; Officer Campbell played no role in creating the risk of danger to Respondent at the hands of Bonucci clan members in the prison. (R. at 5). Because Respondent failed to establish a nexus between Officer Campbell's conduct and the alleged harm, this suit does not qualify for the PLRA's "imminent danger" exception.

As to the exception's second prong, Respondent's claim is not judicially redressable. Respondent's claim is both too early and too late to lawfully proceed. First, his

claim is too early because it alleges a future risk of physical violence against him at the prison, which fails to fulfill the exception's requirement of imminence. A court cannot preemptively redress harm that has not occurred. Second, Respondent's claim is untimely because the harm he alleges happened three years ago, meaning it too inherently fails to fulfill the "imminence" part of the exception. Respondent's case lays out the interdependence between the two prongs of the "imminent danger" exception. A claim that lacks a temporal nexus between the danger and the alleged unlawful conduct inherently cannot be judicially redressable. Because Respondent's claim is both too early and too late to bear a sufficient temporal nexus, it is also not judicially redressable. Thus, this Court should bar Respondent's action.

II. A PRETRIAL DETAINEE IN A § 1983 ACTION MUST DEMONSTRATE THE DEFENDANT'S SUBJECTIVE INTENT IN A DELIBERATE INDIFFERENCE CLAIM.

The Fourteenth Amendment's Due Process Clause affords pretrial detainees with the right to basic human needs, including the right to reasonable safety. U.S. CONST. amend. XIV. Although prison officials have a duty to protect prisoners from violence by others, not "every injury suffered by one prisoner at the hands of another . . . translates into constitutional liability for prison officials." *Farmer v. Brennan*, 511 U.S. 825, 833–34 (1994). A prisoner's constitutional right to safety, under either the Eighth Amendment's Cruel and Unusual Punishments Clause or the Fourteenth Amendment's Due Process Clause, is violated only if a prison official acts with deliberate indifference, *Estelle v. Gamble*, 429 U.S. 97 (1976), meaning they know of and consciously disregard an excessive risk to a prisoner's safety. *Farmer*, 511 U.S. at 837. When a prison official's conduct concerning a pretrial detainee is tantamount to "unnecessary and wanton infliction of pain" or punishment, *Estelle*, 429 U.S. at 103, a prison official acts with deliberate indifference. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

This Court should reverse the Fourteenth Circuit's decision. *Kingsley*'s objective standard for excessive force claims is inapplicable to deliberate indifference failure-to-protect claims. Rather, in a deliberate indifference failure-to-protect claim, *Farmer v. Brennan* is the controlling authority. Moreover, a subjective deliberate indifference standard for pretrial detainees and convicted inmates alike should govern in the interest of uniform prison administration.

A. *Farmer*'s "Actual Knowledge" Standard, Not *Kingsley*, Controls in a Deliberate Indifference Failure-to-Protect Claim under a § 1983 Action.

Prior to *Kingsley v. Hendrickson*, courts have relied on *Farmer*'s subjective deliberate indifference standard for Eighth Amendment claims as controlling precedent for failure-to-

protect claims brought by pretrial detainees. This Court in *Kingsley* held that, in a § 1983 action, a pretrial detainee can demonstrate a due process violation where only objective evidence was presented in support of an excessive force claim. 575 U.S 389 (2015). Following *Kingsley*, the circuit courts are split on the appropriate state-of-mind inquiry required for deliberate indifference claims. Here, because *Kingsley* did not answer whether an objective standard is applicable to all categories of § 1983 claims brought by pretrial detainees, *Farmer*'s subjective "actual knowledge" standard governs.

1. *Kingsley*'s Objective Standard Applies Only to Excessive Force Claims and Not to Failure-to-Protect Claims.

The objective standard under *Kingsley* is inapplicable in the deliberate indifference failure-to-protect context. The categorical distinctions between an excessive use of force claim and a deliberate indifference claim warrant different state-of-mind inquiries. Determining which state of mind is required turns on the type of underlying claim giving rise to the § 1983 action. *See Daniels v. Williams*, 474 U.S. 327, 330 (1986).

First, *Kingsley* only answered the narrow question of whether a pretrial detainee must demonstrate subjective intent to prevail in an excessive force claim in violation of his Fourteenth Amendment due process rights. 576 U.S at 395. The opinion did not address whether an objective standard would extend to all kinds of claims brought by pretrial detainees, such as conditions of confinement, failure to protect, failure to provide medical care, and failure to intervene, nor did this Court invite the lower courts to do so. *Id*. at 399, 402.

Second, *Kingsley* did not entirely eliminate a subjective intent requirement. *Kingsley* emphasized that a plaintiff was still required to prove the defendant's intent to purposefully commit the injury-causing act — the use of force. *Id*. at 396. A trier of fact may infer punitive intent from an unreasonable affirmative act, such as the use of force or the imposition of a

restrictive condition. *See Bell*, 441 U.S. at 539. However, Officer Campbell's failure to act does not support the same inference. Where there was no affirmative act or prison policy that caused Respondent's injury, the Fourteenth Circuit stretched *Kingsley*'s language to conform to the facts of this case.

In an attempt to adhere to *Kingsley*'s intentional act requirement, the Fourteenth Circuit determined that Officer Campbell made an intentional decision when he placed Respondent in the same area with the Bonucci inmates. (R. at 17). However, the court erred as it described a voluntary action, not an intentional decision. A "voluntary" action conveys that the individual made a conscious, physical act. *See Dixon v. United States*, 548 U.S. 1, 23 (2006). An "intentional" decision inherently conveys a subjective element — such as purpose, knowledge, or recklessness. *See Kingsley*, 576 U.S. at 396. In a deliberate indifference failure-to-protect claim, an official cannot *intentionally* decide to not act without first being aware of potential harm to the detainee. Placing Respondent near other Bonucci inmates may have constituted an "act" which precipitated Respondent's injury and thereby allowed his claim to be actionable. However, that act alone does not demonstrate deliberate indifference. The subjective element in the deliberate indifference standard shields prison officials, such as Officer Campbell, from liability for mere negligence. *See Strain v. Regalado*, 977 F.3d 984, 992 (10th Cir. 2020) (finding that the plain meaning of "deliberate" presupposes a subjective intent and therefore requires something more than negligence).

Lastly, *Kingsley* relied on *Bell v. Wolfish* to establish an objective standard for excessive use of force claims. However, *Bell* did not stand for the proposition that pretrial detainees would be subject to lower evidentiary burdens in all deliberate indifference claims. 441 U.S. at 538.

Rather, *Bell* stated that absent an express intent to "punish" a prisoner,[2] courts may alternatively ask whether a prison policy, system, or condition, with respect to a pretrial detainee, is unreasonable in relation to a government purpose. *Id*. This Court borrowed the rational basis test used in substantive due process analysis to *justify* certain restrictive conditions that implicate the due process liberties of pretrial detainees. *Id.* at 540; *see also Block v. Rutherford*, 468 U.S. 576 (1984) (holding that a prison's practice of irregularly scheduled shakedown searches of pretrial detainees did not constitute punishment as it was reasonably related to a necessary security measure). Thus, the *Bell* test is particularly relevant when a pretrial detainee alleges unreasonable conditions, practices, rules, or restrictions of their confinement. *See, e.g.*, *Hare v. City of Corinth*, 74 F.3d 633 (5th Cir. 1996) (granting defendants' summary judgment motion because a plaintiff-detainee did not challenge a restrictive condition or practice, but rather attacked defendants' omissions).

Here, Respondent's claim is based on Officer Campbell's singular omission — his alleged failure to familiarize himself with Respondent's at-risk status. (R. at 5–6). *Bell*'s alternative reasonableness test is inapplicable to the facts of this case because Officer Campbell's lack of knowledge is not a result of nor incidental to a prison policy or objective. (R. at 6). Respondent also did not allege in his complaint any claims related to an unreasonable prison practice or condition which may have caused his injury. Absent a prison condition, practice, or policy imposed on Respondent, *Kingsley*'s objective standard is inapplicable. Thus, the proper inquiry must be whether the official had a culpable state of mind in failing to act.

[2] "Punishment" is used as a relevant barometer to assess whether an official's inaction with respect to pretrial detainees is unreasonable and prohibited. Under this Court's Eighth Amendment jurisprudence, prohibited punishment is described as "wanton and unnecessary." As this Court in *Bell v. Wolfish* noted, the proper inquiry for whether a condition or restriction violated the due process rights of pretrial detainees is whether such a condition amounted to the punishment of the detainee. 441 U.S. at 535.

2. A Prisoner's Right to Reasonable Safety Remains Constant Regardless of their Status as a Pretrial Detainee or a Convicted Inmate.

Regardless of whether a prisoner stands as a pretrial detainee or a convicted inmate, all prisoners retain the right to reasonable safety provided by prison officials. Incarceration fundamentally abrogates the constitutional rights of pretrial detainees and convicted inmates alike. *See Hare*, 74 F.3d at 649; *Bell*, 441 U.S. at 546 (stating that a pretrial detainee simply does not possess the full range of liberties afforded to a free citizen). Because pretrial detainees and convicted inmates are similarly restricted in their ability to fend for themselves, the state has an obligation to provide to *both* groups a set of constitutional rights related to basic human needs, including the right to safety. *See DeShaney v. Winnebago Cnty.*, 489 U.S. 189, 200 (1989). When Respondent entered the confines of the jail, he was not a free citizen, and his rights were necessarily abrogated.

Pretrial detainees and convicted inmates differ in one respect — pretrial detainees have not yet received the full process of the law and thus cannot be punished. *Bell*, 441 U.S. at 535; *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (emphasizing that the "touchstone of due process is protection of the individual against arbitrary action of [the] government"). Respondent may argue that because pretrial detainees bring their § 1983 action under the Fourteenth Amendment's Due Process Clause, whereas convicted inmates bring their claims under the Eighth Amendment's Cruel and Unusual Punishments Clause, different deliberate indifference standards should apply. *But see Daniels*, 474 U.S. at 335–36 (finding that a showing of mere negligence does not suffice to prove a Fourteenth Amendment due process violation in a § 1983 action). However, a prison official's duty to ensure a prisoner's safety remains constant regardless of one's status as a pretrial detainee or a convicted inmate. Just because the state may punish convicted inmates, under the Eighth Amendment, does not permit prison officials to

provide them substandard care or subject them to arbitrarily restrictive conditions. Convicted inmates and pretrial detainees, such as Respondent, are similarly situated and equally dependent upon the state for their well-being. An objective standard would effectively require a greater duty of care for pretrial detainees than for convicted inmates.

An objective deliberate indifference standard for pretrial detainees while retaining a subjective standard for convicted inmates would strain prison officials like Officer Campbell to adjust their conduct relative to the individual prisoner. Before any interaction with a prisoner, Officer Campbell would be forced to determine their incarceration status. He would also have to discern that there is no foreseeable risk to their safety and that the condition of confinement would not objectively appear punitive. To ask that prison officials exceed their numerous responsibilities in maintaining security and order due to fear of constitutional liability would upend this Court's "wide-ranging deference" to prison officials acting in good faith. *See Bell*, 441 U.S. at 547; *see infra* II.B.

A subjective deliberate indifference standard accurately represents the realities of incarceration and prison administration. Just as the rights of convicted inmates are restricted when they are sentenced, pretrial detainees' rights are necessarily restricted when they are held in the state's custody. The state retains legitimate interests in holding pretrial detainees in detention. Such interests include ensuring detainees' presence at trial, *Sandin v. Conner*, 515 U.S. 472, 484 (1995), and enforcing disciplinary actions to maintain order and security in a facility. *Pell v. Procunier*, 417 U.S. 817, 827 (1974). Prison officials, like Officer Campbell, are obligated to use reasonable means to maintain order and protect the lives of prisoners and prison officials. In fulfilling these duties, prison officials may impose restrictive conditions, which may incidentally constrain prisoners' rights.

3. Whether An Omission or Inaction Is Tantamount to "Punishment" Depends On A Subjective Inquiry.

Determining whether an omission or inaction is tantamount to "punishment" depends on a subjective inquiry. Under this Court's precedent, "punishment" necessarily entails a subjective element because not every restriction or injury during pretrial detention results from punitive intent. *Bell*, 441 U.S. at 535–39 (finding that numerous conditions including double-bunking in detention cells were not "arbitrary or purposeless" and thus did not constitute punishment). Deliberate indifference exists where an officer's action or inaction amounts to punishment. *See id.* at 535. Negligently inflicted harm is categorically beneath the threshold of deliberate indifference. *See Farmer*, 511 U.S. at 837 (analogizing the required subjective intent to the mens rea attached to criminal recklessness — where a "person must 'consciously disregard' a substantial risk of serious harm"); *see also Swain v. Junior*, 961 F.3d 1276, 1288 (11th Cir. 2020) (explaining that the deliberate indifference standard is not a constitutionalized version of common law negligence and requires a far more onerous standard). As such, a deprivation of a detainee's rights, which is merely incidental to a legitimate government purpose, would not constitute deliberate indifference. *Block*, 468 U.S. at 584. Under the deliberate indifference standard, first, the factual circumstances of a detainee's deprivation must be "sufficiently serious" to raise a constitutional concern. *Farmer*, 511 U.S. at 834. Second, the prison official must have been aware of those facts and inferred that a risk exists. *Id.* at 837. Further, the failure to follow procedures does not, by itself, give rise to the level of deliberate indifference. *See Bowen v. Warden Baldwin State Prison*, 826 F.3d 1312, 1323 n.27 (11th Cir. 2016).

Here, although the potential for harm to Respondent was serious, Officer Campbell did not have actual knowledge of the harm prior to the attack. Officer Campbell was sick on January 1 and thus was absent from the meeting about Respondent's at-risk status. (R. at 5–6).

Ambiguity regarding Officer Campbell's adherence to prison procedures does not allow for the assumption that he had actual knowledge of any risk to Respondent. *See Bowen*, 826 F.3d at 1323. As such, there is no reason to assume that Officer Campbell had cause to consult the inmate list or take any specific precautions before bringing Respondent to the recreation room.

Moreover, Respondent did not state facts that would indicate that the risk here was sufficiently obvious to Officer Campbell. If a prisoner puts forth facts of a substantial risk that is "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past," and also demonstrates that the official had exposure to information about the risk, then such facts could suggest the official's actual knowledge. *Farmer*, 511 U.S. at 844; *cf. Crocker v. Glanz*, 752 F. App'x 564, 568–89 (10th Cir. 2018) (concluding that, despite an officer's awareness of a systemic deficiency in medical care to prisoners, there was insufficient evidence to show that the officer was aware of the "specific risk" to the plaintiff-detainee).

Based on the alleged facts here, Officer Campbell would not have been able to draw the inference of a risk to Respondent. First, an entry-level officer who was new to the job, not a gang intelligence officer, and had no prior knowledge of Respondent's pervasive rivalry with the Bonuccis could not have determined that Respondent was at risk of an attack. Certainly, a seasoned official like Officer Mann, who immediately recognized Respondent and his affiliation with the Geeky Binders, would have realized a potential risk. (R. at 4). However, Officer Campbell did not have enough experience on the job to even know Respondent's affiliation with the Geeky Binders let alone infer a rivalry with the Bonuccis. Officer Mann could have readily recognized Respondent because he arrived at the jail in his distinct three-piece suit, an overcoat, and a custom-made ballpoint pen engraved with "Geeky Binders," an accessory unique to the gang. (R. at 1). In contrast, when Officer Campbell retrieved Respondent from his cell on the

day of the incident, Respondent had removed his personal belongings which eliminated any indication of his gang affiliation. (R. at 4). Respondent failed to allege facts which support the obviousness of the risk. Thus, Officer Campbell's failure to alleviate a risk that he did not perceive did not constitute punishment.

B. A Subjective Standard for Deliberate Indifference Claims is Necessary to Ensure Uniform Prison Administration.

The unique setting of incarceration requires a subjective deliberate indifference standard for pretrial detainees and convicted inmates alike. Several circuit courts have unjustifiably extended *Kingsley*'s objective standard for excessive force claims to deliberate indifference claims, which are normally assessed under a subjective inquiry. The Sixth, Seventh, and Ninth Circuits would require pretrial detainees to demonstrate that (1) the defendant intentionally imposed an objectively unreasonable condition, and (2) the defendant recklessly failed to act with reasonable care to mitigate the excessive risk, even though they knew or should have known that it existed. *See, e.g., Castro v. City of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 351–52 (7th Cir. 2018); *Westmoreland v. Butler Cnty. Ky.*, 29 F.4th 721 (6th Cir. 2022). The Second and Fourth Circuits would require only the second prong of that standard. *See Darnell v. Pineiro*, 849 F.3d 17 (2d Cir. 2017); *Short v. Hartman*, 87 F.4th 593 (4th Cir. 2023).

Other circuit courts have abided by *Farmer*'s subjective standard which analyzes whether a prison official was subjectively aware of a substantially serious risk to a prisoner but disregarded it. *See, e.g., Leal v. Wiles*, 734 F. App'x 905, 909 (5th Cir. 2018) (applying *Farmer*'s subjective deliberate indifference standard to a failure-to-protect claim and following the Fifth Circuit's precedent prior to *Kingsley*); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018) (determining that *Kingsley* does not control because it was an excessive force

case, not a deliberate indifference case); *Swain v. Junior*, 961 F.3d 1276 (11th Cir. 2020) (finding that rising infection rates of COVID-19 and inability to social distance in a facility did not demonstrate defendants acted with deliberate indifference to the detainees' health); *Hooks v. Atoki*, 983 F.3d 1193 (10th Cir. 2020) (finding that a prison official did not act with deliberate indifference in failing to timely respond to an inmate attack because the official did not have actual knowledge that the attack was occurring).

A subjective deliberate indifference standard applied to both pretrial detainees and convicted inmates would resolve the current division among circuit courts. Given that all incarcerated individuals retain the right to protection from violence at the hands of other prisoners and that prison officials have a constitutional duty to protect that right, *see supra* II.A.2, a subjective deliberate indifference standard recognizes the realities of incarceration and would not federalize tort law. *See Daniels*, 474 U.S. at 328, 332.

A subjective standard further ensures that prison officials, when administering their duties, are afforded the presumption of good faith. This Court has consistently premised the deliberate indifference standard on whether an officer engaged in a good-faith attempt "to preserve internal order and discipline and to maintain institutional security." *Bell*, 441 U.S. at 540. As this Court has long recognized, "[r]unning a prison is an inordinately difficult undertaking," *Turner v. Safley*, 482 U.S. 78, 84–85 (1987), and prison officials must have substantial discretion to devise reasonable solutions to the problems they face. *See Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington*, 566 U.S. 318, 326 (2012). In a jail such as Marshall jail, which is known to detain members of violent gangs, it is incumbent on officials such as Officer Campbell to enforce necessary security measures without the constant fear of liability. (R. at 4). A purely objective standard, however, provides no deference to officials and

no notice of when they may be liable for constitutional violations. *See Taylor v. Barkes*, 575 U.S. 822, 827 (2015); *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

Here, Officer Campbell should be provided the presumption of good faith in his effort to carry out his responsibilities. Officer Campbell had insufficient experience on the job but had satisfactorily met his job expectations for several months. (R. at 5). As a new prison official at Marshall jail, Officer Campbell acted — at worst — carelessly during the moments leading up to Respondent's attack. However, mere carelessness is insufficient to establish deliberate indifference. *See Leal*, 734 F. App'x at 910. For example, the Fifth Circuit found no deliberate indifference where the officer facilitating inmate transfers failed to check a roster of inmates with special security statuses. *Id.* at 910. Although the court acknowledged that the officer's actions were inept, the court presumed that because the officer was in a hurry, there was no intention to escape liability. *Id.* at 911. Similarly, Officer Campbell was preoccupied with transferring multiple prisoners and did not check the inmate list. (R. at 6). However, Officer Campbell did not actively reject an opportunity to confirm facts indicating a risk to Respondent. (R. at 6). Allowing Respondent's pleading to survive without requiring a showing of actual knowledge would attach constitutional liability to every unintended error resulting from an official's good-faith action. If this Court were to so find, Officer Campbell and other officials would be preoccupied with the fear of liability at the cost of efficient prison administration.

An objective deliberate indifference standard would have repercussions in prison administration on a national scale. Currently, there is a severe shortage in prison personnel while the number of incarcerated persons in state facilities are rising. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Employment and Wage Statistics: 33-3012 Correctional Officers and Jailers (May 2022). The persistent concern of constitutional liability could deter

individuals from entering occupations in prison administration altogether. Under an objective standard, if an individual officer was unable to check on a detainee due to a staffing shortage or because the facility faced budgetary constraints, that individual officer, despite acting in good faith, could be held personally liable for institutional defects. Further, requiring different deliberate indifference standards for different groups of prisoners would conflict with common prison policies. In practice, facilities may confine pretrial detainees and convicted inmates together, and prison officials carry out their responsibilities without respect to one's incarceration status. *See* Brief for the National Sheriffs' Association et al. as Amici Curiae at 5–7, *Kingsley v. Hendrickson*, 576 U.S. 389 (2015) (No. 14-6368), 2015 WL 1384106, at *6. If different standards were to apply relative to a prisoner's incarceration status, prison officials could become unduly preoccupied with attending to pretrial detainees at the cost of maintaining a consistent standard of care for all prisoners. *See* U.S. Dept. of Justice, National Institute of Corrections, *Objective Prison Classification: A Guide for Correctional Agencies*, (2d ed. 2021). Thus, a subjective deliberate indifference standard for failure-to-protect claims is not only necessary to resolve the circuit split on this issue, but also to afford prison officials the presumption of good faith in administering security and order.

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks this Court to reverse the judgment of the United States Court of Appeals for the Fourteenth Circuit as to both issues.