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 THE RESPONDENT

Team 2

Counsel for Respondent

QUESTIONS PRESENTED

I. Under § 1915(g) of the Prison Litigation Reform Act, may indigent prisoners bring a claim in forma pauperis when they have three prior cases dismissed solely pursuant to *Heck v. Humphrey*?

II. Under *Kingsley v. Hendrickson*, does an objective standard apply to failure to protect claims when the plaintiff is a pretrial detainee filing under the Fourteenth Amendment's Due Process Clause?

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OPINIONS BELOW

The United States District Court for the District of Wythe's order denying Mr. Shelby's motion to proceed in forma pauperis can be found at page 1 of the record, while the opinion can be found at pages 2 through 11 of the record. The United States Court of Appeals for the Fourteenth Circuit's opinion is located on pages 12 through 20 of the record.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Prison Litigation Reform Act, 28 U.S.C. § 1915, which governs actions and appeals filed by prisoners. This case also involves the Fourteenth Amendment, which provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

STATEMENT OF THE CASE

1. Statement of Facts

Arthur Shelby ("Mr. Shelby" or "Respondent") lives in the town of Marshall, a town currently run by a street gang led by Luca Bonucci. R. at 3. The Bonucci clan is notorious for bribing police officers and jail officials and exerting considerable power over local politicians and other government officials. R. at 3. Despite their power, Luca Bonucci and other members of the Bonucci clan are currently being held in the Marshall jail. R. at 3. The Marshall jail attempted to eliminate the clan's authority by replacing officers who accepted their bribes. R. at 3. Still, the Bonucci clan wields significant influence over Marshall. R. at 3.

Prior to the rise of the Bonucci clan, Marshall was historically owned by a rival gang, the Geeky Binders. R. at 3. The Geeky Binders rose to influence after their leader violently beat courtroom guards to death with binders of case law. R. at 2. They maintained their power through running local businesses, owning real estate, and holding positions in public office. R. at

3. Additionally, the Geeky Binders are known for carrying a distinct, engraved ballpoint pen that conceals a sharp awl inside. R. at 2. As a prominent member of the gang, Mr. Shelby also wears a tweed three-piece suit and overcoat, a style unique to members of the group. R. at 2–4. Mr. Shelby has been previously convicted of numerous crimes and detained in jail as a result. R. at 3. During his detention, he filed three separate actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. R. at 3. All three cases questioned his underlying convictions or sentences and thus were dismissed solely pursuant to *Heck v. Humphrey*. R. at 3.

On December 31, 2020, Marshall police officers raided a boxing match that Mr. Shelby and his brothers were attending. R. at 3. Mr. Shelby was arrested and subsequently booked at the Marshall jail. R. at 3–4. The booking officer, Dan Mann, was a seasoned jail official and immediately recognized Mr. Shelby due to his distinct outfit and custom pen engraved with the words "Geeky Binders." R. at 4. Officer Mann logged these items into the jail's extensive online database. R. at 4. In addition, Mr. Shelby made several comments towards Officer Mann referencing his gang membership, including statements such as, "The cops can't arrest a Geeky Binder!" and "My brother Tom will get me out of here, just you wait." R. at 4. Officer Mann's notes were added to Mr. Shelby's existing page on the database, which clearly indicated his gang affiliation and other identifying information. R. at 5.

Due to Marshall's high gang activity, the jail's online database and administrative procedures were tailored to prevent gang violence. R. at 4–5. The database includes essential information about each detainee's charges, medications, inventoried items, and other pertinent data that jail officials would need. R. at 4. More importantly, the database includes any gang affiliations, gang rivalries, and known hits on the detainee. R. at 4. The jail also employs several gang intelligence officers who review each incoming detainee's entry in the online database. R.

at 4. The gang intelligence officers paid particular attention to Mr. Shelby's file because the Bonuccis and Geeky Binders recently clashed after Thomas Shelby murdered Luca Bonucci's wife. R. at 5. The intelligence officers were aware that the Bonucci clan sought revenge against the Geeky Binders, which made Mr. Shelby a prime target. R. at 5. The potential hit on Mr. Shelby was added to his file and printed on paper notices posted in all administrative areas of the jail. R. at 5. Mr. Shelby's status was also noted on all rosters and floor cards at the jail. R. at 5. Due to the high potential for violence between Mr. Shelby and the Bonuccis, the intelligence officers immediately called a meeting to notify all officers of Mr. Shelby's presence. R. at 5. They told the other officers that Mr. Shelby would be placed in block A, away from the Bonuccis in blocks B and C of the jail. R. at 5. The officers were also instructed to regularly check rosters and floor cards to prevent any contact between the rival gang members. R. at 5.

Officer Chester Campbell ("Petitioner") called in sick that morning and did not arrive at the jail until after the meeting. R. at 6. The jail required any officers who were absent from the meeting to use the online database to review the meeting minutes. R. at 6. However, a glitch in the jail's system deleted any record of those who viewed the meeting minutes. R. at 6. While Petitioner was an entry-level guard, he was both properly trained by the jail and performed well for the duration of his employment. R. at 5.

A week after, Petitioner transferred Mr. Shelby from his cell to the jail's recreational room. R. at 6. Petitioner did not know or recognize Mr. Shelby at the time, nor did he consult the jail's database or his hard copy list of inmates' statuses. R. at 6. His hard copy list included not only Mr. Shelby's gang affiliation, but also his risk of attack at the hands of the Bonucci clan. R. at 6. As Petitioner transported Mr. Shelby to a common area, an inmate in block A yelled, "I'm glad your brother Tom finally took care of that horrible woman." R. at 6. Mr. Shelby responded

that it was "what that scum deserved," and Petitioner ordered him to be quiet. R. at 6. While Mr. Shelby waited, Petitioner brought over three inmates from blocks B and C—all from the Bonucci clan. R. at 7. Mr. Shelby tried to move behind another inmate as they approached, but they immediately charged at him and beat him with their fists. R. at 7. One Bonucci member used a club made from tightly rolled and mashed paper to repeatedly hit Mr. Shelby over the head and ribs. R. at 7. The attack lasted for several minutes because Petitioner attempted to break it up but failed. R. at 7. Other officers finally arrived, but Mr. Shelby had already sustained severe, life-threatening injuries. R. at 7.

Mr. Shelby suffered penetrative head wounds from external blunt force trauma, resulting in a traumatic brain injury. R. at 7. Because of the Bonuccis' attack, he also suffered fractures of three different ribs, lung lacerations, acute abdominal edema, organ lacerations, and internal bleeding. R. at 7. Mr. Shelby had to stay in the hospital for several weeks to recover from his injuries. R. at 7.

After a bench trial, Mr. Shelby was found guilty of battery and possession of a firearm by a convicted felon but was acquitted of the assault charge. R. at 7. He is currently housed at Wythe Prison. R. at 7.

2. Procedural History

Mr. Shelby brought this civil rights action for monetary damages under 42 U.S.C. § 1983 in the United States District Court for the District of Wythe on February 24, 2022. R. at 2. He filed the action pro se against Petitioner in his individual capacity. R. at 2. On the same day, Mr. Shelby filed a motion to proceed in forma pauperis ("IFP"). R. at 1. The District Court denied the motion on April 20, 2022, finding that Mr. Shelby's three prior dismissals under *Heck v.*

Humphrey constituted "strikes" pursuant to the PLRA. R. at 1; 28 U.S.C. § 1915(g). The order also directed Mr. Shelby to pay the $402.00 filing fee, which he timely paid in full. R. at 1.

As to the complaint, Mr. Shelby asserted that Petitioner violated his constitutional rights by failing to protect him from the Bonuccis' violent attack. R. at 8. He argued that under the Fourteenth Amendment, *Kingsley v. Hendrickson*'s objective standard governed his claim because he was a pretrial detainee at the time of the attack. R. at 8. In response, Petitioner filed a Rule 12(b)(6) motion to dismiss for failure to state a claim. R. at 8. The District Court granted the motion to dismiss, finding that the subjective "deliberate indifference" standard is required for all failure to protect claims. R. at 11.

On July 25, 2022, Mr. Shelby timely appealed both the order denying him IFP status and the dismissal of his case to the United States Court of Appeals for the Fourteenth Circuit, which appointed him counsel shortly thereafter. R. at 13. The Fourteenth Circuit subsequently reversed the District Court's decisions on both grounds. R. at 19. First, it held that the District Court incorrectly denied Mr. Shelby's motion to proceed IFP because *Heck* dismissals do not constitute "strikes" within the meaning of the PLRA. R. at 15; 28 U.S.C. § 1915(g). Second, it held that the District Court incorrectly dismissed his case because the objective standard governs all Fourteenth Amendment claims, regardless of the specific constitutional violation. R. at 17–18. Under this standard, Petitioner acted in an objectively unreasonable manner when he failed to recognize the threat to Mr. Shelby's health and safety. R. at 18. Mr. Shelby therefore prevailed on both grounds. R. at 19.

Petitioner timely petitioned for a writ of certiorari on both issues, which this Court granted. R. at 21.

SUMMARY OF THE ARGUMENT

I.

Mr. Shelby may file his claim in forma pauperis ("IFP") because dismissals under *Heck v. Humphrey* do not constitute "strikes" pursuant to the Prison Litigation Reform Act ("PLRA"). Under the PLRA, prisoners are permanently barred from proceeding IFP when they have three actions dismissed as frivolous, malicious, or for failing to state a claim. This includes civil rights actions filed under 42 U.S.C. § 1983. Meanwhile, *Heck* bars a narrow category of § 1983 claims that implicitly challenge the underlying conviction or sentence before the proceedings have terminated in the prisoner's favor. These claims are considered premature because until a favorable termination has occurred, a cause of action under § 1983 has not yet accrued. As such, claims dismissed pursuant to *Heck* are not categorically frivolous or malicious because *Heck* merely recognizes the prematurity of the claim, not the invalidity of its merits. Moreover, dismissals under *Heck* are not automatically dismissals for failure to state a claim because favorable termination is plainly not required by the text of § 1983. Holding otherwise would create a heightened pleading standard for a subset of § 1983 claims without the required authorization from Congress or the Federal Rules. As is, indigent prisoners already face a multitude of barriers that impede their fundamental right to access the legal system. This Court should therefore avoid creating yet another barrier by holding that *Heck* dismissals do not constitute strikes under the PLRA. Thus, Mr. Shelby may bring his claim IFP.

II.

The *Kingsley v. Hendrickson* objective standard applies to pretrial detainees' failure to protect claims under the Fourteenth Amendment because pretrial detainees are granted heightened constitutional protection. Pretrial detainees have been lawfully detained, but have not

yet received an adjudication of guilt. Thus, pretrial detainees may allege violations under the Due Process Clause when a prison official fails to protect them from violence at the hands of other inmates. To establish a constitutional violation, a plaintiff is required to demonstrate that the defendant had a sufficiently culpable state of mind. This Court has previously applied two standards to analyze a defendant's state of mind. In *Kingsley*, this Court held that the Fourteenth Amendment only requires an objective standard because pretrial detainees are afforded higher constitutional protections than convicted inmates. The controlling standard in these claims is dependent not on the specific constitutional violation, but on the right being protected. Applying this objective standard, the Fourteenth Circuit correctly held that Petitioner acted in an objectively unreasonable manner when failing to protect him from the Bonucci clan's attack. Even if this Court does not apply *Kingsley*'s objective standard, Mr. Shelby still prevails under the subjective "deliberate indifference" standard from *Farmer* because Petitioner knew of a substantial risk of harm. Despite knowing of the risk, Petitioner failed to respond, resulting in Mr. Shelby's severe injuries. As such, Mr. Shelby's claim prevails under either standard.

ARGUMENT

I. DISMISSALS UNDER *HECK V. HUMPHREY* DO NOT CONSTITUTE "STRIKES" WITHIN THE MEANING OF THE PRISON LITIGATION REFORM ACT WHEN THE CLAIM WAS DISMISSED SOLELY PURSUANT TO *HECK*.

Dismissals under *Heck v. Humphrey*, 512 U.S. 477 (1994), do not constitute "strikes" pursuant to the Prison Litigation Reform Act ("PLRA") of 1995, 28 U.S.C. § 1915(g). Under § 1915(a), an indigent litigant may request to proceed in a case in forma pauperis ("IFP"), meaning without prepaying filing fees. 28 U.S.C. § 1915(a). This statute ensures that indigent litigants have meaningful access to the federal legal system when the costs of litigation would otherwise be prohibitively expensive. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989), *superseded*

by statute on other grounds, 28 U.S.C. § 1915. However, plaintiff-prisoners may not bring a case IFP when the prisoner has three or more "strikes." 28 U.S.C. § 1915(g). This is known as the "three-strikes" rule. *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020). Prisoners receive a "strike" when they file an action or appeal "that [is] 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). After three strikes, the prisoner loses the ability to proceed IFP permanently. *See id.* This includes civil rights actions filed under 42 U.S.C. § 1983.

To establish a claim under § 1983, a plaintiff must show a "deprivation of any rights, privileges, or immunities secured by the Constitution," and that the challenged conduct occurred "under color of [state law]." 42 U.S.C. § 1983. Congress enacted § 1983 as part of the Civil Rights Act of 1871 in response to state officials using their authority to deny former slaves their federally guaranteed rights. Martin A. Schwartz, *The Preiser Puzzle: Continued Frustrating Conflict Between the Civil Rights and Habeas Corpus Remedies for State Prisoners*, 37 DePaul L. Rev. 85, 89–90 (1988). The purpose of § 1983 is to deter state actors from using their authority to strip individuals of their constitutional rights. *Wyatt v. Cole*, 504 U.S. 158, 161 (1992); *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 948 (1982) (Powell, J., dissenting). When such deterrence fails, § 1983 provides individuals with monetary relief for injuries caused by the deprivation of their rights. *Carey v. Piphus*, 435 U.S. 247, 254–56 (1978).

Under *Heck*, a prisoner may not bring a § 1983 claim for monetary damages that challenges the underlying conviction or sentence unless "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a

writ of habeas corpus." *Heck*, 512 U.S. at 487. There, an Indiana state prisoner filed a § 1983 case challenging his conviction by asserting claims that, if true, would undermine his underlying conviction. *Id.* at 479. This Court explained that allowing the action to proceed would improperly permit a "collateral attack" on a state criminal judgment. *Id.* at 484–85. To prevent collateral attacks, the Court reasoned it could screen out premature claims until a cause of action has arisen. *Id.* at 484. As such, this Court held that a § 1983 claim "does not accrue" until the conviction or sentence is overturned in the plaintiff's favor. *Id.* at 490. *See id.* at 487 (a claim is "not cognizable under § 1983" until reversal); *id.* at 489 ("claim has not yet arisen" until reversal); *id.* ("We . . . deny the existence of a cause of action."). This rule—known as the favorable termination rule—only applies once the district court finds that "a judgment in favor of the plaintiff would necessarily imply" that the conviction or sentence is invalid. *Id.* at 487. If the district court determines that it would, the claim must be dismissed. *Id.* However, outside of that discrete category of § 1983 claims, *Heck* does not apply. *Id.*

Joining these rules together, a § 1983 claim dismissed under *Heck* would constitute a "strike" if the claim was dismissed for (1) being frivolous or malicious or (2) failing to state a claim. *See id.*; 28 U.S.C. § 1915(g). Because Mr. Shelby has three prior *Heck* dismissals, finding against him would permanently bar him from proceeding IFP. *See* R. at 1. Ultimately, the Fourteenth Circuit correctly held that Mr. Shelby's prior *Heck* dismissals do not constitute "strikes" under the PLRA. First, a dismissal under *Heck* is not automatically frivolous or malicious absent a specific finding from the district court. Second, a dismissal under *Heck* does not automatically constitute a dismissal for failure to state a claim because the text of § 1983 does not require favorable termination. Therefore, this Court should affirm the Fourteenth

Circuit's holding that Mr. Shelby's prior *Heck* dismissals do not constitute strikes and allow him to proceed IFP in his claim.

A. Claims Dismissed Under *Heck* Are Not Presumptively Frivolous or Malicious Because They Are Not Utterly Baseless or Brought with an Improper Purpose.

Claims dismissed under *Heck* are not automatically frivolous or malicious under the PLRA. Since the PLRA does not expressly define frivolous or malicious, this Court may look to reasonably plain meanings of the statute's language. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). This Court has defined frivolous as "'clearly baseless,' a category encompassing allegations that are 'fanciful,' 'fantastic,' and 'delusional.'" *Denton v. Hernandez*, 504 U.S. 25, 33–34 (1992) (internal citations omitted) (quoting *Neitzke*, 490 U.S. at 325–28). Further, "a complaint . . . is frivolous where it lacks an arguable basis either in law or in fact." *Neitzke*, 490 U.S. at 325. *See e.g., Smith v. Veterans Admin.*, 636 F.3d 1306, 1310 (10th Cir. 2011) (holding a claim was frivolous because it contained marriage proposals to a court clerk); *id.* at 1314 (holding another claim was frivolous because the United States Constitution cannot be sued). Similarly, a claim is malicious when it is brought "with improper purpose and without probable cause." *McDonough v. Smith*, 139 S. Ct. 2149, 2156 (2019); *Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016).

There are no circuit courts that hold that all *Heck* dismissals are categorically frivolous or malicious. *But see Washington*, 833 F.3d at 1055 (holding a *Heck* dismissal is not frivolous or malicious because "plaintiffs may have meritorious claims that do not accrue until the underlying criminal proceedings have been successfully challenged"). Rather, claims dismissed under *Heck* are only considered frivolous or malicious when the district court has made a specific finding that the claims were clearly baseless or were brought with an improper purpose. *See id.*; *Smith*, 636 F.3d at 1314 (upholding a *Heck* dismissal as frivolous only after the district court

specifically found the complaint was frivolous); *Davis v. Kansas Dep't of Corrections*, 507 F.3d 1246, 1249 (10th Cir. 2007) (specifically finding the *Heck* barred claim was frivolous).

Here, Mr. Shelby has three prior actions dismissed solely pursuant to *Heck*. R. at 1. There is no indication that a district court found his previous claims frivolous or malicious. Further, Mr. Shelby's prior actions are not presumptively frivolous or malicious because claims dismissed under *Heck* are categorically different from claims that are clearly baseless or have an improper purpose. The favorable termination rule was created to prevent collateral attacks by delaying premature claims until a cause of action has accrued. *See* 512 U.S. at 484–85. *Heck* merely delays a court from considering the merits of the claim because ultimately, a *Heck* dismissal does not reflect a final judgment or determination of the merits. A complaint may perfectly allege a § 1983 claim by establishing that the plaintiff was deprived of constitutional rights under color of state law. *See* 42 U.S.C. § 1983. In those cases, it cannot be said that the claims utterly lack a legal basis or were filed with an improper purpose. Yet despite the complaint's merit, the district court may still find that the complaint is barred for prematurity under *Heck*. Therefore, a *Heck* dismissal does not automatically constitute a strike unless the district court specifically finds that the complaint was frivolous or malicious. Absent a specific finding, Mr. Shelby's prior *Heck* dismissals were not frivolous or malicious and thus, do not constitute strikes on those grounds.

B. Claims Dismissed Under *Heck* Do Not Automatically Fail to State a Claim Because the Text of § 1983 Does Not Require Favorable Termination.

Complaints dismissed under *Heck* do not automatically amount to strikes for failing to state a claim under the PLRA. Under § 1915(g), a prisoner receives a "strike" for actions or appeals dismissed for failure to state a claim. 28 U.S.C. § 1915(g). The consensus among circuit courts is that 1915(g)'s "fails to state a claim" language includes dismissals pursuant to Rule 12(b)(6). *Id.*; Fed. R. of Civ. P. 12(b)(6); *Washington*, 833 F.3d at 1055; *Byrd v. Shannon*, 715

F.3d 117, 126 (3d Cir. 2013). A case may be dismissed under Rule 12(b)(6) only when the complaint does not "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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). However, a plaintiff may plausibly allege facts but still fail to state a claim if the bar to relief is evident from the face of the complaint. *Jones v. Bock*, 549 U.S. 199, 215 (2007).

Meanwhile, *Heck* only bars § 1983 claims when (1) they challenge the underlying conviction or sentence and (2) that conviction or sentence has not been overturned. 512 U.S. at 487. Allowing these actions to proceed before reversal would improperly permit a "collateral attack" on a valid state judgment. *Id.* at 484–85. Looking to common-law malicious prosecution claims for guidance, this Court noted that it could prevent collateral attacks by screening out premature claims. *Id.* at 484. As such, district courts "must consider whether a judgment in favor of the plaintiff would *necessarily* imply the invalidity of his conviction or sentence." *Id.* at 487 (emphasis added). If the district court determines it would, "the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* at 487. Thus, a plaintiff is not required to demonstrate that a favorable termination occurred until after the court has made "a threshold legal determination" that the § 1983 claim would necessarily challenge the underlying judgment. *Washington,* 833 F.3d at 1056.

Under the Seventh and Ninth Circuits' rules, a dismissal under *Heck* does not automatically count as a strike for failure to state a claim. *Polzin v. Gage*, 636 F.3d 834, 836–37 (7th Cir. 2011); *Washington*, 833 F.3d at 1055–56. The Ninth Circuit correctly held that *Heck* dismissals do not categorically amount to dismissals for failure to state a claim because the text of § 1983 does not require favorable termination. *Washington*, 833 F.3d at 1055–56. Similarly,

the Seventh Circuit aptly noted that because *Heck* is not a jurisdictional bar, district courts may bypass the issue of whether *Heck* applies and consider the merits of the claim. *Polzin*, 636 F.3d at 838. Meanwhile, the Third, Fifth, Tenth, and D.C. Circuits erroneously held that all *Heck* dismissals automatically amount to PLRA strikes for failure to state a claim. *See Garrett v. Murphy*, 17 F.4th 419, 427 (3d Cir. 2021); *Colvin v. LeBlanc*, 2 F.4th 494, 499 (5th Cir. 2021); *Smith*, 636 F.3d at 1311–12; *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011). These circuits misplace reliance on the *Heck* Court's discussion of common-law torts while overlooking the plain text of § 1983.

Therefore, the Fourteenth Circuit correctly held that *Heck* dismissals do not constitute strikes because Mr. Shelby's prior cases were dismissed solely pursuant to *Heck*. R. at 1. This Court should uphold the Fourteenth Circuit's decision because (1) favorable termination is not an element of § 1983, and (2) *Heck* bars cases based on the prematurity of the claim, not the invalidity of the merits. Thus, Mr. Shelby's prior *Heck* dismissals are not strikes for failure to state a claim.

1. Plaintiffs are not required to plead or prove favorable termination within the complaint of a § 1983 claim.

Plaintiffs are not required to demonstrate favorable termination at the pleadings stage and even then, not required to prove favorable termination until after the court has made a threshold determination. The language of a statute is the primary authority for determining the elements of a claim. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020) (explaining with respect to Title VII that "only the words on the page constitute the law adopted by Congress and approved by the President."). The elements of a claim must be alleged in the complaint according to the usual pleading rules and requirements under the Federal Rules of Civil Procedure. *See* Fed. R. of Civ. P. 8(a); Fed. R. of Civ. P. 9. Rule 8(a) requires only a "short and plain statement of the

claim" in a complaint, while Rule 9 enumerates specific claims that require heightened pleading standards. Fed. R. of Civ. P. 8(a). Because Rule 9 does not apply to § 1983, heightened pleading requirements for § 1983 claims "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Leatherman v. Tarrant Cnty. Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993). Courts must abide by the rules and rulemaking procedures unless Congress expressly authorizes a heightened standard through statute. *Jones*, 549 U.S. at 216–17. As Congress enacted, § 1983 merely requires a plaintiff to demonstrate (1) a deprivation of constitutional rights that (2) transpired under color of state law. 42 U.S.C. § 1983. Absent congressional authorization, creating a heightened pleading standard for a particular subset of § 1983 claims would contradict the Federal Rules. *Jones*, 549 U.S. at 216–17.

In *Jones*, this Court held that failing to plead exhaustion of administrative resources was not a failure to state a claim. 549 U.S. at 216–17. There, three Michigan prisoners filed § 1983 claims contesting the prison conditions but had not yet exhausted administrative resources as required by the PLRA. *Id.* at 207–11 (citing 42 U.S.C. § 1997e(a)). This Court unanimously held that even though exhaustion is required prior to bringing a conditions of confinement claim, a prisoner is not required to plead or demonstrate exhaustion within the complaint. *Id.* at 216–17. This Court explained that § 1983 defines the elements of a § 1983 claim, not the PLRA. *See id.* at 212–14. Because exhaustion was not required by the PLRA or § 1983 itself, it was not a necessary element of a claim. *See id.* at 211–12. Rather, exhaustion is an affirmative defense that could be addressed later in the court's proceedings. *Id.* This Court further explained that requiring plaintiffs to plead exhaustion would create an additional pleading requirement, and thus a heightened pleading standard, that was not authorized by Congress or the Federal Rules. *Id.* at 214. "[A]dopting different and more onerous pleading rules to deal with particular

categories of cases should be done through established rulemaking procedures, and not on a case-by-case basis by the courts." *Jones*, 549 U.S. at 224. Thus, in line with the Federal Rules, failing to exhaust is not a failure to state a claim unless the lack of exhaustion is evident from the face of the complaint. *See id.* at 215.

Similarly, the Ninth Circuit in *Washington* held that *Heck* dismissals do not constitute dismissals for failure to state a claim unless "the pleadings present an 'obvious bar to securing relief.'" 833 F.3d at 1055 (quoting *ASARCO, LLC v. Union Pac. R.R. Co.*, 765 F.3d 999, 1004 (9th Cir. 2014)); *id.* at 1055–56 (holding the complaint presented an obvious bar to relief under *Heck* because the plaintiff sought a "recall" of his sentence). The Ninth Circuit reasoned that favorable termination is not a necessary element of a § 1983 claim based on the text of § 1983. *Id.* at 1056. The court explained that like the PLRA's exhaustion requirement, *Heck* dismissals do not reflect an assessment of the underlying merits of the claim. *Id.* "Rather, *Heck* dismissals reflect a matter of 'judicial traffic control' and prevent civil actions from collaterally attacking existing criminal judgments." *Id.* (quoting *Albino v. Baca*, 747 F.3d 1162, 1170 (9th Cir. 2014) (en banc)). Moreover, a plaintiff is not required to demonstrate favorable termination until the court has made a "threshold legal determination" that the claim would undermine the underlying conviction or sentence. *Id.* Therefore, the Ninth Circuit concluded that dismissals under *Heck* are not strikes for failure to state a claim. *See id.*

Meanwhile, the Third Circuit in *Garrett* mistakenly concluded that favorable termination is required element of § 1983 that must be established within the complaint. 17 F.4th at 427–28. *See Colvin*, 2 F.4th at 499; *Smith*, 636 F.3d at 1311–12; *In re Jones*, 652 F.3d at 38. The court incorrectly reasoned that favorable termination was a required element of § 1983 claims. 17 F.4th at 428. In doing so, the Third Circuit erred in two critical ways. First, the court did not

consider the text of § 1983. *See Garrett*, 17 F.4th at 428. Ignoring the guiding statute, which outlines the elements of the claim, undermines the validity of the Third Circuit's holding from the outset. Second, the court overrelied on common-law when concluding favorable termination is a necessary element of § 1983. Common-law may guide a court's analysis of § 1983, but it is not a dispositive authority for defining its elements. *Heck*, 512 U.S. at 492 (Souter, J., concurring) ("[W]e have consistently refused to allow common-law analogies to displace statutory analysis, declining to import even well-settled common-law rules into § 1983.") *Manuel v. City of Joliet*, 580 U.S. 357, 370 (2017) ("Common-law principles are meant to guide rather than to control the definition of § 1983 claims."); *Rehberg v. Paulk*, 566 U.S. 356, 366 (2012) ("§ 1983 is [not] simply a federalized amalgamation of pre-existing common-law claims."). Even then, the *Heck* Court merely looked to malicious prosecution claims for guidance on how to prevent collateral attacks in the context of § 1983. 512 U.S. at 484. At no point did this Court explicitly or impliedly adopt favorable termination as a required element. Thus, the Third Circuit erroneously held that all *Heck* dismissals are automatically dismissals for failure to state a claim. *Garrett*, 17 F.4th at 428.

Here, favorable termination is plainly not an element of § 1983. Like exhaustion in *Jones*, there is no favorable termination requirement within § 1983 or the PLRA. Congress enacted the PLRA two years after this Court decided *Heck*, but the PLRA lacks any discussion of claims barred by *Heck* or premature claims in general. Additionally, *Heck* only bars a discrete category of § 1983 claims. As such, adopting favorable termination as a necessary element would create an additional pleading requirement without authorization from Congress or the Federal Rules. This Court already emphasized in *Jones* that "adopting different and more onerous pleading rules to deal with particular categories of cases should be done through established rulemaking

procedures, and not on a case-by-case basis by the courts." *Jones*, 549 U.S. at 224. Because neither § 1983 nor the Federal Rules authorized a heightened pleading standard, a plaintiff is not required to demonstrate favorable termination within the complaint.

Even then, a plaintiff is not required to prove favorable termination until after the court has determined that the claim would necessarily undermine the underlying judgment. As the Ninth Circuit noted, "a particular plaintiff's need to demonstrate that his conviction has been set aside is contingent on a threshold legal determination, made by the court." *Washington*, 833 F.3d at 1056. The *Heck* Court essentially created a two-part inquiry. *See* 512 U.S. at 486–87. First, "the district court must consider whether a judgment in favor of the plaintiff would *necessarily* imply the invalidity of his conviction or sentence." *Id.* at 487 (emphasis added). If the court determines it would, it moves to the next inquiry. *Id.* Second, the court must determine whether the underlying conviction or sentence has already been overturned in the plaintiff's favor. *Id.* Only then must plaintiffs demonstrate that a favorable termination has occurred. *Id.* at 486–87. *See Washington*, 833 F.3d at 1056. Thus, a plaintiff is not required to plead favorable termination within the complaint and even then, not required to prove favorable termination until after the court has made a threshold determination.

2. Counting *Heck* dismissals as "strikes" runs counter to the PLRA's purpose because *Heck* bars suits based on the prematurity of the claim.

Because Congress enacted the three-strikes provision to curb meritless prisoner litigation, the result Petitioner seeks runs counter to the PLRA's purpose. The purpose of the PLRA is to "ensur[e] that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit." *Jones*, 549 U.S. at 203. The main senators supporting the statute repeatedly disclaimed any intent to impede valid federal claims. 141 Cong. Rec. 35,797 (1995) (statement of Sen. Hatch) ("Indeed, I do not want to prevent inmates from

raising legitimate claims. . . . [T]his legislation will not prevent those claims from being raised."). This aligns with the fact that circuit courts have routinely treated *Heck* as distinct from the merits of a § 1983 claim. *See Polzin*, 636 F.3d at 838. Because *Heck* is not a jurisdictional bar, courts may bypass the issue of whether *Heck* even applies and address the case on its merits. *Id.* While the Seventh Circuit explicitly acknowledges this distinction, other circuit courts consistently discuss *Heck* separately from the merits of the claim. *Id. See, e.g.*, *Colvin*, 2 F.4th at 500; *Smith*, 636 F.3d at 1312; *Harrigan v. Metro Dade Police Dep't Station #4*, 977 F.3d 1185, 1191 (11th Cir. 2020). In doing so, the circuit courts implicitly acknowledge that *Heck* did not alter the substantive elements of § 1983.

Here, the Fourteenth Circuit aptly noted that "*Heck* recognizes the prematurity, not the invalidity, of a prisoner's claim." R. at 15. At no point in *Heck* did this Court suggest that a claim barred by its holding was *invalid* on the merits. Rather, this Court consistently noted that until the underlying sentence has been overturned, "the § 1983 claim has not yet arisen." 512 U.S. at 489; *id.* at 490 (a claim "does not accrue" until reversal); *id.* at 489 ("We . . . deny the existence of a cause of action" until reversal); *id.* at 487 (a claim is "not cognizable under § 1983" until reversal). A complaint may perfectly allege an otherwise valid § 1983 claim but still be premature under *Heck.*

Instead, *Heck*'s favorable termination rule is a screening mechanism to delay premature § 1983 claims. *Heck* bars premature claims in order to prevent collateral attacks on valid state criminal proceedings. *Id.* at 484–85. The *Heck* Court emphasized that its decision was grounded in "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." *Id.* at 486. This is a longstanding principle that the Court has consistently safeguarded. *See Parke v. Raley*, 506 U.S. 20, 29–30 (1992); *Rooker v.*

Fidelity Trust Co., 263 U.S. 413 (1923); *Voorhees v. Jackson*, 35 U.S. 449, 472–73 (1836). Ultimately, as the Ninth Circuit noted, "*Heck* dismissals reflect a matter of 'judicial traffic control' and prevent civil actions from collaterally attacking existing criminal judgments." *Washington*, 833 F.3d at 1056 (quoting *Albino*, 747 F.3d at 1170). The rule established in *Heck* therefore does not bar claims based on their merits but rather operates as a judicial safeguard to prevent collateral attacks against valid state judgments. Thus, counting *Heck* dismissals as strikes would contradict the purpose of the PLRA.

C. Holding That *Heck* Dismissals Constitute Strikes Under the PLRA Would Place Yet Another Barrier Between Indigent Prisoners and Their Fundamental Right to Access the Courts.

Holding that *Heck* dismissals constitute strikes under the PLRA would place another burden on indigent plaintiffs, especially those proceeding pro se. *See Washington*, 833 F.3d at 1055. Prisoners have a fundamental right to meaningfully access the courts under this Court's precedent. *Lewis v. Casey*, 518 U.S. 343 (1996). Still, many prisons do not provide adequate access to legal resources, libraries, or other materials. Justin C. Van Orsdol, *Crying Wolves, Paper Tigers, and Busy Beavers-Oh My!: A New Approach to Pro Se Prisoner Litigation*, 75 Ark. L. Rev. 607, 627 (2022). Indigent prisoners are especially vulnerable because they presumptively cannot afford counsel. *Id.* at 626–27. This barrier to resources is further exacerbated by prisoners' low rates of literacy and education completion but high rates of mental illness. *Id.* at 622. Many prisoners have below average literacy and writing skills, and nearly half of all inmates have not completed a high school education. *Id.* Moreover, inmates are anywhere from three to ten times more likely to suffer from a mental illness or developmental disability, and over half of inmates suffer from mental illness. *Id.*

Despite these numerous barriers, the PLRA's three-strikes rule works in conjunction with other provisions to uniquely disadvantage indigent prisoners from vindicating their rights in court. *See* Walker Newell, *An Irrational Oversight: Applying the PLRA's Fee Restrictions to Collateral Prisoner Litigation*, 15 CUNY L. Rev. 53, 54 (2011). As is, the three-strikes provision permanently bars indigent prisoners from proceeding IFP unless they can demonstrate an imminent danger of serious physical injury at the time the complaint is filed. 28 U.S.C. § 1915(g). Further, the general consensus among circuit courts is that "strikes" accrue retroactively to any actions or appeals dismissed on the specified grounds even before the PLRA was enacted. *See Rivera v. Allin*, 144 F.3d 719, 728–29 (11th Cir. 1998); *Wilson v. Yaklich*, 148 F.3d 596, 603 (6th Cir. 1998); *Keener v. Pa. Bd. of Prob. & Parole*, 128 F.3d 143, 144 (3d Cir. 1997); *Green v. Nottingham*, 90 F.3d 415, 419 (10th Cir. 1996). In addition, the PLRA mandates dismissal sua sponte once the district court finds that a complaint is frivolous, malicious, or fails to state a claim, among other grounds. 28 U.S.C. § 1915(e)(2). These barriers place a heavy burden on indigent prisoners to navigate an already complex legal system without the courtesies afforded to paying litigants.

Holding that all *Heck* dismissals are strikes under the PLRA would have burdensome effects on indigent inmates across the country. As a starting point, Mr. Shelby would be permanently barred from proceeding IFP in civil rights claims. This would contradict the IFP statutes' purpose of placing indigent litigants on equal footing with paying litigants and undermine his ability to protect his federally guaranteed rights from unruly state actors. Finding against Mr. Shelby by holding that all *Heck* dismissals are strikes would also implicate numerous other provisions of the PLRA. Because strikes are retroactive, any prisoner with a *Heck* dismissal in the last thirty years would accrue a strike. Prisoners everywhere could suddenly accrue strikes

and be permanently barred from proceeding IFP without warning. Additionally, holding that all *Heck* dismissals are dismissed as frivolous, malicious, or for failing to state a claim would mandate courts to dismiss the claims sua sponte. Courts are not afforded discretion on this issue—dismissal sua sponte is obligatory. This would further burden indigent prisoners, while paying litigants are permitted to repeatedly amend their complaints until they state a claim. Therefore, the three-strikes provision violates the spirit of *Lewis* by creating yet another barrier between prisoners and their fundamental right to meaningfully access the courts.

II. UNDER THIS COURT'S DECISION IN *KINGSLEY V. HENDRICKSON*, THE FOURTEENTH AMENDMENT ONLY REQUIRES A PRETRIAL DETAINEE TO SATISFY AN OBJECTIVE STANDARD WHEN PROVING THE DEFENDANT'S STATE OF MIND IN A FAILURE TO PROTECT CLAIM.

Under the Fourteenth Amendment, Mr. Shelby must only satisfy the *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), objective standard in his failure to protect claim under 42 U.S.C. § 1983. The Fourteenth Amendment's Due Process Clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. The Due Process Clause, and not the Eighth Amendment, protects pretrial detainees because they have been detained but not yet convicted. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). This Court has already established that "prison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 836 (1994) (quoting *Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556, 558 (1st Cir. 1988)). However, pretrial detainees receive a higher level of constitutional protection than convicted prisoners because pretrial detainees have not received an adjudication of guilt. *Bell*, 441 U.S. at 535. As such, pretrial detainees' due process rights "are at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983). Thus, prison officials violate the Due Process Clause when

they fail to protect a pretrial detainee from harm. *See Castro v. City of Los Angeles*, 833 F.3d 1060, 1067 (9th Cir. 2016) (en banc); *Leal v. Wiles*, 734 F. App'x 905, 909 (5th Cir. 2018).

In contrast, the Eighth Amendment protects convicted prisoners from "cruel and unusual punishments." U.S. Const. amend. VIII. This Court has interpreted the Cruel and Unusual Punishments Clause to limit the government's punitive power over those who have already received an adjudication of guilt. *Austin v. United States*, 509 U.S. 602, 609 (1993). As such, the Eighth Amendment is implicated when both an adjudication of guilt and an exercise of punishment over the guilty party has occurred. *See Estelle v. Gamble*, 429 U.S. 97, 102 (1976). In claims alleging unconstitutional punishment, analyzing an Eighth Amendment violation requires examining the *extent* of the punishment inflicted upon a convicted prisoner, rather than whether there was a punishment inflicted at all. *See Bell*, 441 U.S. at 535–37; *Kingsley*, 576 U.S. at 397–98. Therefore, the language of the amendment and the underlying right have an important role in determining the level of protection a detainee receives. *See Kingsley*, 576 U.S. at 397–98.

To establish a constitutional violation under either amendment, detainees may assert a civil rights claim pursuant to § 1983. Filing a claim under § 1983 allows individuals to recover monetary damages for injuries caused by a deprivation of their federally guaranteed rights under the color of state law. 42 U.S.C. § 1983. The statute is merely the vehicle for filing a claim, not an independent source of constitutional rights. *Farmer v. Brennan*, 511 U.S. 825, 841 (1994). The specific source of the constitutional right must be established, and once it is, the right determines how much constitutional protection a plaintiff receives. *See Bell*, 441 U.S. at 535–37. Establishing a constitutional violation also requires that the defendant had the requisite state of mind to support finding culpability. *Farmer*, 511 U.S. at 841.

There are two main state of mind requirements that lower courts apply to failure to protect claims. *See Farmer*, 511 U.S. at 837 (subjective "deliberate indifference" standard); *Kingsley*, 576 U.S. at 400 (objective standard). Until recently, courts have applied a subjective standard from *Farmer* to claims arising under either amendment. *See* 511 U.S. at 837. This is known as the "deliberate indifference" standard. *See id.* Deliberate indifference requires that (1) the prisoner objectively faced a substantial risk of serious harm, and (2) the prison official actually knew of and disregarded the substantial risk. *Id.* The first prong is an objective inquiry, and the second prong is a subjective inquiry. *Id.* However, in *Kingsley*, this Court held that an objective standard must be applied to pretrial detainees' claims under the Fourteenth Amendment. 576 U.S. at 400. While the *Kingsley* Court dealt with an excessive force claim, its analysis did not turn on the type of claim. *See id.* at 398–99. Rather, the Court's analysis turned on the language of the Fourteenth Amendment and the underlying right it protects—due process. *Id.* Since *Kingsley*, circuit courts have created different rules when analyzing failure to protect claims. *See Castro*, 833 F.3d at 1071 (applying *Kingsley*'s objective standard). *But see Leal,* 734 F. App'x at 909 (applying *Farmer*'s subjective standard).

Ultimately, the Fourteenth Circuit correctly applied the objective standard from *Kingsley* because Mr. Shelby was a pretrial detainee. Under this standard, Mr. Shelby established a violation of his Fourteenth Amendment rights because Petitioner acted in an objectively unreasonable manner when he failed to prevent the Bonucci clan's violent attack. Even if a subjective standard were to apply, Mr. Shelby plausibly alleged that Petitioner knew of but disregarded the substantial risk to his health and safety. Therefore, under either the correct *Kingsley* standard or a subjective standard, Mr. Shelby's claim survives a motion to dismiss.

A. The Fourteenth Circuit Correctly Applied the *Kingsley* Objective Standard to Mr. Shelby's Fourteenth Amendment Claim Because Pretrial Detainees Are Entitled to Heightened Constitutional Protections Under the Due Process Clause.

Kingsley's objective standard applies to Mr. Shelby's failure to protect claim because he was a pretrial detainee at the time of the Bonucci clan's attack. Because pretrial detainees have not received an adjudication of guilt, they are entitled to a higher level of constitutional protection. *Kingsley*, 576 U.S. at 400. In *Kingsley*, this Court held that pretrial detainees are only required to demonstrate a defendant's state of mind under an objective standard. *Id.* In doing so, this Court distinguished between Fourteenth Amendment claims that require an objective analysis and Eighth Amendment claims that require a subjective analysis. *Id.* at 400. The Court reasoned that the previous subjective standard under the Eighth Amendment did not adequately protect pretrial detainees who receive heightened protections in line with their due process rights. *Id.* at 397–98; *Currie v. Chhabra*, 728 F.3d 626, 630 (7th Cir. 2013) ("[D]ifferent constitutional provisions, and thus different standards, govern depending on the relationship between the state and the person in the state's custody."); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) ("[T]he Eighth Amendment and Due Process analyses are not coextensive."). However, the Court did not outline the exact contours of *Kingsley*'s objective standard.

Circuit courts have subsequently adopted different rules for when *Kingsley*'s objective standard applies. The Second, Sixth, Seventh, and Ninth Circuits correctly extended *Kingsley* to different types of claims alleging Fourteenth Amendment due process violations. *See Darnell v. Piniero*, 849 F.3d 17 (2d Cir. 2017); *Brawner v. Scott County*, 14 F.4th 585 (6th Cir. 2021); *Westmoreland v. Butler County*, 29 F.4th 721 (6th Cir. 2022); *Miranda*, 900 F.3d at 352; *Castro*, 833 F.3d at 1069. Meanwhile, the Fifth, Eighth, Tenth, and Eleventh Circuits erroneously declined to extend *Kingsley* past the excessive force context. *See Leal*, 734 F. App'x at 909;

Whitney v. City of St. Louis, 887 F.3d 857 (8th Cir. 2018); *Strain v. Regalado*, 977 F.3d 982 (10th Cir. 2020); *Nam Dang v. Sheriff*, 871 F.3d 1272 (11th Cir. 2017). Yet, *Kingsley* was clear that it is the right protected that determines the standard applied.

Therefore, the Fourteenth Circuit correctly applied *Kingsley*'s objective standard to Mr. Shelby's failure to protect claim. *Kingsley* established a distinct objective standard for all claims filed by pretrial detainees because the Fourteenth Amendment provides a higher level of constitutional protection. The Second, Sixth, Seventh, and Ninth Circuits correctly applied *Kingsley*'s objective standard to pretrial detainees' Fourteenth Amendment claims. As applied here, Mr. Shelby has sufficiently proven that Petitioner failed to protect him from the Bonucci clan's attack in violation of due process.

1. *Kingsley* applies to failure to protect claims because pretrial detainees receive heightened constitutional protection.

Kingsley applies to all claims brought by pretrial detainees because the Due Process Clause provides heightened constitutional protection. In *Kingsley*, this Court addressed the issue of whether an objective standard applied to a pretrial detainee's excessive force claim under the Fourteenth Amendment. 576 U.S. at 391–92. Kingsley, a pretrial detainee, alleged his due process rights were violated when four correctional officers exercised excessive force by removing him from his cell without consent. *Id.* at 392. This Court reasoned that two state of mind questions were at play: (1) whether the defendants' actions were intentional, and (2) "the defendant's state of mind with respect to whether his use of force was 'excessive.'" *Id.* at 395. This Court explained that the intent prong prevents officials from being held liable for mere negligence, while the second prong more directly addresses defendants' state of mind. *Id.* at 396–97. Applying the first prong, this Court concluded that the defendants' intent to use force on Kingsley was not in dispute because they intentionally removed him from his cell. *Id.* Second,

this Court determined that the defendants' state of mind should be analyzed under an objective standard, reasoning that the Eighth and Fourteenth Amendments differ in both language and the rights they protect. *Kingsley*, 576 U.S. at 400–02. Applying an objective standard aligned with this Court's precedent in *Bell* because the Due Process Clause provides pretrial detainees with a higher standard of protection than the Eighth Amendment. *Id.* at 397. Nowhere in the decision did the Court expressly or impliedly limit the standard to excessive force claims. Thus, "*Kingsley* rejected the notion that there exists a single 'deliberate indifference' standard applicable to all § 1983 claims." *Castro*, 833 F.3d at 1069.

This Court based much of its decision in *Kingsley* on its precedent in *Bell*, where it applied an objective standard to a conditions of confinement case. *Bell*, 441 U.S. at 538. The pretrial detainees in *Bell* alleged that their due process rights were violated because the correctional officers failed to maintain adequate conditions in the detention center. *Id.* at 527. The *Bell* Court held that a defendant's express intent to punish satisfies the state of mind requirement. *Id.* at 538. Without an express intent, a plaintiff may still prevail by showing there was no "legitimate [governmental] goal" behind the defendants' actions or the defendants' actions were excessive in relation to that goal. *Id.* This second manner of analyzing a defendant's state of mind is objective. *Id.* Like in *Kingsley*, the *Bell* Court reasoned that an objective standard applied due to the heightened constitutional protection afforded to pretrial detainees. *Id.* at 538. Based on this reasoning, the Court applied an objective standard to pretrial detainees' conditions of confinement claims under the Fourteenth Amendment. *Id.* at 541. Yet, the *Kingsley* Court never discussed or distinguished between the types of claims involved. 576 U.S. at 398–99.

Despite this Court's decision in *Kingsley*, the District Court incorrectly applied the subjective deliberate indifference standard from *Farmer*. *See* R. at 9. In *Farmer*, the Court

applied deliberate indifference to a convicted prisoner's failure to protect claim under the Eighth Amendment. *Farmer*, 511 U.S. at 829. Deliberate indifference requires that (1) the prisoner objectively faced a substantial risk of serious harm, and (2) the prison official actually knew of and disregarded the substantial risk. *Id.* at 837. The first inquiry is objective, while the second inquiry is subjective. *See id.* The *Farmer* Court reasoned that a subjective standard comports with the Eighth Amendment. *Id.* at 838–39. However, this standard would not adequately protect pretrial detainees like Mr. Shelby whose claims arise under the Fourteenth Amendment. "The *Farmer* Court itself stated that '[b]ecause "deliberate indifference" is a judicial gloss, appearing neither in the Constitution nor in a statute,' it may be defined by courts differently depending on the context." *Brawner*, 14 F.4th at 598 (quoting *Farmer*, 511 U.S. at 840). *Kingsley* therefore modified *Farmer*'s second inquiry and replaced it with an objective standard for pretrial detainees. *See Castro*, 833 F.3d at 1071. Under this objective standard, pretrial detainees must only prove that a reasonable officer would have known of the risk to the detainee. *See id.*

Here, the Fourteenth Circuit correctly applied an objective standard to Mr. Shelby's failure to protect claim because *Kingsley* created a distinct objective standard for Fourteenth Amendment claims. Like the claimants in both *Kingsley* and *Bell*, Mr. Shelby was a pretrial detainee at the time that he was attacked by the Bonucci clan. R. at 7. Mr. Shelby's claim therefore implicated the Due Process Clause. As such, Mr. Shelby was entitled to a heightened standard of constitutional protection prior to an adjudication of guilt. *See Bell*, 441 U.S. at 536; *Kingsley*, 576 U.S. at 400.

Whether *Kingsley* dealt with a different type of claim does not change this analysis. A Fourteenth Amendment challenge made by a pretrial detainee is examined through a lens completely separate from that of an Eighth Amendment challenge made by a convicted prisoner.

See Kingsley, 576 U.S. at 400. The *Kingsley* Court was clear that a subjective standard does not adequately protect pretrial detainees who are afforded higher protections than convicted inmates. Further, the cases that originally established the subjective deliberate indifference standard arose under the Eighth Amendment. *See Farmer*, 511 U.S. at 829; *Estelle*, 429 U.S. at 106. Neither *Farmer* nor *Estelle* dealt with pretrial detainees filing claims under the Fourteenth Amendment. As a result, their standards cannot be automatically imputed onto Fourteenth Amendment claims because the amendments are categorically different in both the types of parties and the rights they protect. The right being protected, not the specific type of violation, determines the standard that should be applied. For example, the *Kingsley* Court addressed an excessive force claim but still heavily relied on *Bell*, which addressed a conditions of confinement claim. The Fourteenth Circuit merely followed suit. Thus, the objective standard established in *Kingsley* should be applied to Mr. Shelby's failure to protect claim.

2. The Sixth and Ninth Circuits' holdings demonstrate that Petitioner acted in an objectively unreasonable manner.

Under the Sixth and Ninth Circuits' decisions, Petitioner acted in an objectively unreasonable manner when he failed to protect Mr. Shelby from the Bonucci clan's attack. The Second, Sixth, Seventh, and Ninth Circuits correctly apply *Kingsley*'s objective standard to Fourteenth Amendment failure to protect claims and other types of violations. *See Westmoreland*, 29 F.4th at 728–29 (failure to protect); *Kemp v. Fulton Cnty.*, 27 F.4th 491 (7th Cir. 2022) (failure to protect); *Castro*, 833 F.3d at 1069 (failure to protect). *See also Darnell*, 849 F.3d at 35 (conditions of confinement); *Brawner*, 14 F.4th at 596 (medical care); *Miranda*, 900 F.3d at 352 (medical care). The Sixth and Ninth Circuits are particularly instructive because they demonstrate how *Kingsley*'s objective standard applies to failure to protect claims. *Castro*, 833 F.3d at 1069; *Westmoreland*, 29 F.4th at 728–29. Meanwhile, the Fifth, Eighth, Tenth, and

Eleventh Circuits ignore the controlling amendment and underlying right, instead drawing lines based on the type of claim. *See Leal*, 734 F. App'x at 909; *Nam Dang*, 871 F.3d at 1279; *Whitney*, 887 F.3d at 860 n.4; *Strain*, 977 F.3d at 989–91. This approach erroneously conflates convicted prisoners' protection against cruel and unusual punishment with pretrial detainees' right to due process. *See Kingsley*, 576 U.S. at 400 ("[T]he language of the two clauses differs, and the nature of the claims often differs."). Therefore, the Fourteenth Circuit correctly applied the Sixth and Ninth Circuits' iteration of *Kingsley*'s objective standard.

The Ninth Circuit extended *Kingsley* to a failure to protect claim on the basis that § 1983 itself does not contain a state of mind requirement. *Castro*, 833 F.3d at 1069. There, a pretrial detainee alleged that the prison officials ignored his pleas for help which resulted in him being severely beaten by a combative inmate. *Id.* at 1065. The court posited that *Kingsley* did not explicitly or implicitly limit the objective standard to excessive force claims. *Id.* at 1070. As such, the Ninth Circuit extended *Kingsley* to failure to protect claims and created a four-part test to analyze a defendant's state of mind. *Id.* A plaintiff satisfies *Kingsley*'s objective standard by showing (1) "[t]he defendant made an intentional decision with respect to" the plaintiff; (2) the plaintiff faced a "substantial risk of suffering serious harm;" (3) "[t]he defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have;" and (4) "[t]he defendant caused the plaintiff's injuries." *Id.* at 1071. These prongs follow the deliberate indifference standard from *Farmer* but add *Kingsley's* objective language to the third prong. *See id.* Applying only the third prong, the Ninth Circuit reasoned that the defendants failed to recognize and respond to a plethora of warning signs that the pretrial detainee was in danger. *Id.* at 1073.

The Sixth Circuit in *Westmoreland* held that *Kingsley* applies to all Fourteenth Amendment claims by pretrial detainees and adopted the Ninth Circuit's four-part test. 29 F.4th at 728–29. There, a pretrial detainee filed a failure to protect claim after he was attacked by another detainee for being a "snitch." *Id.* at 723. The Sixth Circuit maintained its previous ruling that "*Farmer* cannot be fairly read to require subjective knowledge where the Eighth Amendment does not apply." *Brawner*, 14 F.4th at 595–96. The court subsequently adopted and applied the Ninth Circuit's four-part test. *Westmoreland*, 29 F.4th at 728–29. The first and second prong were easily satisfied because the defendants intentionally placed the pretrial detainee in the cell where he was beaten despite knowing he was a potential target. *Id.* at 729–30. The fourth prong was also satisfied because defendants' failure to remove the pretrial detainee from his cell led to his severe injury. *Id.* at 730. Though it did not apply the third prong, the Sixth Circuit explained that it must be examined through the lens of a reasonable officer in the circumstances. *Id.* In comparison to a reasonable officer, the defendants must have disregarded the high degree of risk and the obvious consequences of their own conduct. *Id.* In addition, the defendant must have failed to abate these risks. *Id.* Thus, the Sixth Circuit held that the third prong is satisfied when a defendant is more than merely negligent, in accordance with *Kingsley*'s objective analysis for Fourteenth Amendment claims. *Id.*

In stark contrast, the Fifth, Eighth, Tenth, and Eleventh Circuits erroneously apply *Farmer*'s subjective standard to Fourteenth Amendment claims. *See Leal*, 734 F. App'x at 909; *Nam Dang*, 871 F.3d at 1279; *Whitney*, 887 F.3d at 860 n.4; *Strain*, 977 F.3d at 989–91. The Fifth Circuit in *Leal* applied the *Farmer* subjective standard to a pretrial detainee's failure to protect claim under the Fourteenth Amendment, reasoning that deliberate indifference was a high enough standard to protect due process. *Id.* at 910. However, the Fifth Circuit failed to address

this Court's explicit rejection of the subjective standard due to the Eighth Amendment's inherent incompatibility to Fourteenth Amendment claims. This Court in *Kingsley* emphasized that the objective standard better protected the rights guaranteed by the Fourteenth Amendment. 576 U.S. at 397. In addition, the Fifth Circuit ignores that this Court already applied an objective standard to a conditions of confinement claim in *Bell*. 441 U.S. at 538–39. The *Kingsley* Court discussed *Bell* in-depth, but at no point did this Court discuss, much less distinguish from, the type of claim in *Bell*. *See Kingsley*, 576 U.S. at 397–99. This wholesale adoption of *Bell*'s reasoning demonstrates that an objective standard applies to all Fourteenth Amendment claims, not just excessive force claims. *Id.* Thus, the Fifth Circuit overrelied on the type of claim while ignoring the underlying constitutional right to due process.

Applying the Ninth Circuit's four-part test, Petitioner failed to protect Mr. Shelby from the Bonuccis' attack in violation of his Fourteenth Amendment rights. Like in *Castro*, the first, second, and fourth prongs are easily met. Regarding the first prong, Petitioner intentionally transported Mr. Shelby from his cell to a common area. R. at 6–7. There was no outside force or other factor controlling the exact manner by which he transported the detainees. Even the jail's procedures and policies did not affect his actions because they required him to check the rosters and keep the detainees separate, which he chose not to do. As to the second prong, Mr. Shelby faced a substantial risk of suffering serious harm because of the known hit from the Bonucci clan. R. at 7. The fourth prong is satisfied because Petitioner's intentional decision to place Mr. Shelby and the Bonuccis in the same common area directly caused Mr. Shelby's life-threatening injuries. R. at 7.

As to the third prong, a reasonable officer would have recognized the clear threat of serious harm to Mr. Shelby—the Bonuccis' desire to seek revenge against him. R. at 6. As is, the

jail took substantial measures to notify all officers of Mr. Shelby's status and risk of attack at the hands of the Bonuccis. R. at 5–7. Petitioner was also notably absent from the gang intelligence officers' special meeting to notify all officers about Mr. Shelby's status, and there is no indication Petitioner reviewed the meeting minutes as required by the jail. R. at 5. A reasonable officer would have complied with the jail's safety precautions, yet Petitioner did not.

Further, on the day of the attack, Petitioner ignored a multitude of warning signs alluding to the risk of substantial harm to Mr. Shelby. R. at 5–7. Mr. Shelby's status was recorded on the jail's online database, posted in all administrative areas of the jail, and noted on all rosters and floor cards. R. at 5. In addition, Petitioner carried a hard copy list of inmates with special statuses, which noted Mr. Shelby and the risk of harm he faced. R. at 6. Finally, Petitioner was transporting Mr. Shelby to the common area when an inmate from cell block A yelled, "I'm glad your brother Tom finally took care of that horrible woman." R. at 6. Mr. Shelby responded that it "was what that scum deserved." R. at 6. At the least, these statements would have alerted a reasonable officer to a potential threat to Mr. Shelby's safety. Even though Petitioner heard the statements, he still did not check the posted notices, rosters, floor cards, or the list he carried. Instead, he brought three members of the Bonucci clan in the same area as Mr. Shelby without other guards to assist him. R. at 7. Mr. Shelby suffered penetrative head wounds, a traumatic brain injury, fractures of three different ribs, and other life-threatening injuries as a result. R. at 7. Petitioner therefore acted in an objectively unreasonable manner by failing to recognize and respond to a wealth of warning signs, satisfying the third prong. Thus, all four prongs of the Ninth Circuit's test are satisfied, and Mr. Shelby's claim survives a motion to dismiss under *Kingsley*'s objective standard.

B. Even if the Subjective Standard Is Applied, Mr. Shelby Plausibly Alleged That Petitioner Failed to Protect Him in Violation of the Fourteenth Amendment.

Even if this Court does not apply *Kingsley*'s objective standard, Mr. Shelby plausibly alleged that Petitioner acted with deliberate indifference under the subjective standard. Under *Farmer*, the deliberate indifference standard requires that (1) the prisoner objectively faced a substantial risk of serious harm, and (2) the prison official actually knew of and disregarded the substantial risk. 511 U.S. at 837. The first inquiry is objective and was not altered by this Court's decision in *Kingsley*. 576 U.S. at 396–97; *Castro*, 833 F.3d at 1069. As such, the parties do not dispute that Mr. Shelby faced a substantial risk of serious harm as discussed above. *See supra* II.B.2. Meanwhile, the second inquiry is the subjective standard for determining whether the defendant had a sufficiently culpable state of mind. *Farmer*, 511 U.S. at 837 This second inquiry essentially has two requirements within it: the defendant knew of and disregarded the risk to the plaintiff's safety. *Id.* When considering each, the facts must be liberally construed in the light most favorable to Mr. Shelby because he initiated the claim while proceeding pro se. *Estelle*, 429 U.S. at 106; *Ashcroft*, 556 U.S. at 678.

Even under *Farmer*'s subjective standard, Petitioner failed to protect Mr. Shelby from the Bonuccis' attack in violation of his due process rights. First, Petitioner did not need to know of Mr. Shelby's specific history to recognize a substantial risk of serious harm. Second, Petitioner disregarded that risk. Therefore, if this court were to apply the *Farmer* subjective standard, Mr. Shelby's claim would still survive a motion to dismiss.

1. Petitioner did not need to know of Mr. Shelby's specific history to recognize a substantial risk of serious harm.

Mr. Shelby sufficiently alleged that Petitioner knew of a substantial risk of serious harm because Petitioner knew of the jail's general risk of gang violence. Knowledge of a general

substantial risk of serious harm satisfies the second *Farmer* prong. 511 U.S. at 848. In *Farmer*, this Court held that a convicted prisoner may establish defendants' awareness of a risk of harm "by reliance on any relevant evidence." *Id.* Thus, courts have found that defendants actually knew of a risk so long as they had general knowledge of a history of violence or knowledge of the general risks in a certain context. *See id.* at 848–49; *Hernandez v. City of San Jose*, 897 F.3d 1125 (9th Cir. 2018).

The *Farmer* Court took on an expansive definition of "relevant evidence" when analyzing actual knowledge under the subjective standard. 511 U.S. at 848. It held that it does not matter "whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk." *Id.* at 844. As such, defendants' general knowledge of the correctional facility's "violent reputation" was relevant to the Court's subjective knowledge analysis. *Id.* at 848. Therefore, the *Farmer* Court broadened the scope of relevant evidence beyond information specific to the claimant. *Id.* at 844. Defendants thus do not have to know of the risks to a specific claimant to have actual knowledge of a risk. *See id.*

The Ninth Circuit in *Hernandez* similarly held that the defendants' general knowledge of a risk of violence during political rallies constituted actual knowledge. 897 F.3d at 1136. In *Hernandez*, the claimants were forced by defendants to exit a political rally into a crowd of counter-protestors, leading to their severe injuries. *Id.* at 1129. The court reasoned that defendants knew this rally would garner violent protests in part because the police department had implemented extensive safety measures to prevent the violence. *Id.* at 1137. However, they still released the claimants directly into the protests. *Id.* The Ninth Circuit held that under the subjective standard, the defendants' knowledge of a general risk of violence satisfied the "stringent" standard of deliberate indifference. *Id.* at 1135 (quoting *Patel v. Kent Sch. Dist.*, 648

F.3d 965, 974 (9th Cir. 2011)). Thus, general knowledge of a risk of harm, rather than knowledge of risks specific to a claimant, was enough to prove deliberate indifference. *See id.*

Here, Petitioner was a properly trained employee who had been performing well for months before the Bonucci clan attacked Mr. Shelby. R. at 5. As a result, it is plausible that he had general knowledge about not only Marshall's gang history, but also the risk of gang violence within the jail itself. Like the correctional facility in *Farmer*, the town of Marshall has a history of violence. R. at 4. The town's history includes extensive lore about how the Geeky Binders got their name after their leader violently beat courtroom guards to death with binders of case law. R. at 2. The town of Marshall is home to prevalent gang activity in general, most notably carried out by the Geeky Binders and the Bonucci clan—two violently-opposed gangs. R. at 4. This gang activity is so extensive that it infiltrated the businesses, politics, and economy of Marshall. R. at 3. Once the Bonuccis rose to power, they garnered the loyalty of Marshall's politicians, police officers, jail officers, and other important officials. R. at 3. Even recently, the Bonucci clan and the Geeky Binders clashed after Thomas Shelby murdered Luca Bonucci's wife. R. at 5. As a properly trained officer who worked at the jail for months, Petitioner likely knew at least some, if not all, of the town's violent history and prevalent gang activity.

Further, Mr. Shelby plausibly alleged that Petitioner knew about the general risks of gang violence because of Marshall jail's extensive policies. The jail, as a result of its widely-known history, has extensive training and protocol to prevent gang violence. R. at 4–6. The jail's database lists detailed information regarding inmates' gang affiliations, gang rivalries, and potential hits placed on them. R. at 4. Petitioner also carried a list of inmates with special statuses with him on the day Mr. Shelby was attacked. R. at 6. Additionally, officers were required to attend the meeting about crucial safety procedures to prevent gang violence between the Geeky

Binders and the Bonuccis. R. at 5–6. Officers who missed the meeting were required to review meeting notes. R. at 5. Because of these extensive safety protocols, Petitioner's actions were shaped by an intimate knowledge of the risk of gang violence within the jail. As such, Petitioner's general knowledge about the town's history and knowledge of the jail's high risk of gang violence constituted actual knowledge under the subjective standard.

2. Petitioner disregarded the substantial risk to Mr. Shelby.

Petitioner failed to respond to the substantial risk to Mr. Shelby's health and safety when he placed Mr. Shelby in a common space with members of the Bonucci clan. R. at 6. This Court in *Farmer* held that "acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk." 511 U.S. at 836. As a result, if a defendant fails to respond to a substantial risk to a detainees' health and safety, they have disregarded that risk. *See id.*

Here, the analysis is similar to the third prong of the *Castro* test but does not include the reasonable officer standard. *See supra* II.A.2. The jail's high risk of gang violence was clear based on the town's history and extensive preventative procedures. Yet Petitioner did not check the jail's database, posted notices, rosters, floor cards, or the list he carried while transporting inmates. Instead, he moved Mr. Shelby into a common space, vulnerable to violence from other inmates. R. at 6. He then gathered three members of the Bonucci clan from two separate cell blocks and brought them near Mr. Shelby. R. at 7. No other factors affected Petitioner's decision to place Mr. Shelby and the Bonuccis in that common space. Rather, the jail's procedures instructed him to do the opposite. Even though he generally knew about the substantial risk of gang violence, Petitioner disregarded the risk to Mr. Shelby's detriment. Therefore, Mr. Shelby plausibly alleged that Petitioner failed to protect him in violation of his Fourteenth Amendment

rights. Ultimately, Mr. Shelby's complaint survives a motion to dismiss under either the correct *Kingsley* standard or *Farmer*'s subjective standard.

CONCLUSION

For the foregoing reasons, this Court should AFFIRM the judgment of the United States Court of Appeal for the Fourteenth Circuit and allow Mr. Shelby to bring his claim IFP. This Court should further AFFIRM the Fourteenth Circuit's decision and hold that Mr. Shelby sufficiently stated a claim under *Kingsley*'s objective standard.

Dated: February 2, 2024

Respectfully Submitted,

s/Team 2

Counsel for Respondent