IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2023

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

ON WRIT OF CERTIORARI TO THE

SUPREME COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

TEAM 22

Counsel for Arthur Shelby

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QUESTIONS PRESENTED

I. First Question Presented

Deemed the three strikes provision, 28 U.S.C. § 1915(g) precludes a prisoner from proceeding *in forma pauperis* if the prisoner, "on three or more prior occasions, while . . . detained in any facility," had an action dismissed by a United States court on grounds the action was "frivolous, malicious, or fail[ed] to state a claim, unless the prisoner is under imminent danger of serious physical injury." During his previous detentions, Arthur Shelby commenced three § 1983 actions, and a court dismissed each action under *Heck v. Humphrey*, 512 U.S. 477 (1994), which concerns whether a favorable ruling would imply the invalidity of a prisoner's conviction. Does every *Heck* dismissal constitute a strike, or dismissal on "grounds [the action was] frivolous, malicious, or fail[ed] to state a claim," under 28 U.S.C. § 1915(g)?

II. Second Question Presented

Pretrial detainees, under the Fourteenth Amendment, and Prisoners, under the Eighth Amendment, allege a host of § 1983 claims—*e.g.,* claims of inadequate medical care, failure-to-protect, conditions of confinement, and excessive force. Under the Eighth Amendment, prisoners must prove an official had subjective knowledge of the risk of harm, regardless of the type of claim alleged. The standard under the Fourteenth Amendment remains less clear. But in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), while requiring proof of a knowing *action*, this Court held pretrial detainees alleging excessive force claims need only prove the *extent* of the force used by a prison official was objectively unreasonable. Does this Court's holding in *Kingsley* extend to failure-to-protect claims under the Fourteenth Amendment, permitting pretrial detainees, like in *Kingsley*, to prevail without proving an official was subjectively aware of the risk of harm?

OPINIONS BELOW

I. United States District Court for the Western District of Wythe

Issue 1 The United States District Court for the Western District of Wythe denied Mr. Shelby's motion to proceed in forma pauperis. *Shelby v. Campbell*, No. 23:14-CR-2324 (W.D. Wythe 2022). R. 1.

Issue 2 The United States District Court for the Western District of Wythe granted Petitioner's Motion to Dismiss for failure to state a claim. *Shelby v. Campbell*, No. 23:14-CR-2324 (W.D. Wythe 2022). R. 2-11.

II. United States Court of Appeals for the Fourteenth Circuit

Issue 1 The United States Court of Appeals for the Fourteenth Circuit reversed and remanded the district court's denial of Mr. Shelby's Motion to proceed in forma pauperis. *Shelby v. Campbell*, No. 2023-5255 (14th Cir. 2023). R. 12-19.

Issue 2 The United States Court of Appeals for the Fourteenth Circuit reversed and remanded the district court's grant of Petitioner's Motion to Dismiss. *Shelby v. Campbell*, No. 2023-5255 (14th Cir. 2023). R. 12-19.

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

I. U.S. Const. amend. VII

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

II. U.S. Const. amend. XIV, § 1

"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."

III. 28 U.S.C. § 1915(g)

"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

This appeal results from the United States Court of Appeals for the Fourteenth Circuit's reversal of the United States District Court for the Western District of Wythe's Order denying Mr. Shelby's motion to proceed in forma pauperis and grant of Petitioner's Motion to Dismiss for failure to state a claim. R. 19. Mr. Shelby, the Respondent, requests this Court to affirm the decision of the United States Court of Appeals for the Fourteenth Circuit.

I. Statement of Facts

Arthur Shelby is the second-in command of the Geeky Binders—a notorious gang that, at one point, dominated the town of Marshall. R. 3. Shelby's brother Thomas is the Geeky Binders' current leader. R. 3. In recent years, the Bonucci clan, led by Luca Bonucci ("Luca"), has rivaled the Geeky Binders, establishing significant control over local politicians and important officials in Marshal. R. 3. Indeed, Marshal authorities have charged Marshal police officers and Marshal jail officials with accepting bribes from the Bonucci clan. R. 3. Despite Luca becoming confined to

the Marshal jail, and the Marshall jail's replacement of several officers, the Bonucci clan still exercised considerable control over the town of Marshal and Marshal jail. R. 3.

On December 31, 2020, Mr. Shelby landed himself in Marshal jail—the jail controlled and occupied by members of his rival gang, the Bonucci clan. R. 3-4. Officer Dan Mann ("Mann") booked Shelby pursuant to Marshal jail policy, uploading forms to Marshal jail's online database. R. 4. The database contained each inmate's charge, inventoried items, medications, gang affiliations, and important statistics and data relevant to jail officials. R-4. Considering Marshal's high gang activity, the gang affiliation tab proved especially important for officers to determine known hits placed on inmates and gang rivalries. R. 4. Although Mr. Shelby's existing page required Mann to open a new file to obtain information regarding his previous arrests, the database clearly displayed Mr. Shelby's gang affiliation and identifying information. R. 4. Mann recorded Mr. Shelby's current information and statements, including "The cops can't arrest a Geeky Binder!" and "My brother Tom will get me out of here, just you wait." R. 4.

Gang intelligence officers staffed by Marshal jail to combat the significant gang activity reviewed and edited Mr. Shelby's file in the database, "paying special attention because of Shelby's high-ranking status." R. 5. Intelligence officers knew the Bonucci clan sought revenge against the Geeky Binders because Mr. Shelby's brother Thomas recently murdered Luca's wife. R. 5. They also knew Mr. Shelby was a prime target. R. 5. To protect Mr. Shelby, the Intelligence officers (1) made a special note in Mr. Shelby's file, (2) printed out paper notices for every administrative area of the jail, (3) indicated Mr. Shelby's status on all rosters and floor cards at the jail, and importantly, on January 1, 2021, (4) "held a meeting with all jail officials . . . notifying each officer of Shelby's presence." R. 5.

Intelligence officers informed all officers Mr. Shelby would be held in cell block A, and that members of the Bonucci clan were held in blocks B and C. R. 5. Intelligence officers reminded officers to check rosters and floor cards to ensure the rival gangs were separated in common places. R. 5. Roll call records indicated Officer Campbell attended the meeting. R. 5. While time sheets indicate Officer Campbell may have called in sick, intelligence officers required absent officers to review meeting minutes on the jail's database. R. 6. A glitch in the database prevents confirmation that Officer Campbell viewed those minutes, but Campell was a properly trained officer who "had been meeting job expectations for several months he had been employed." R. 5-6.

On January 8, 2021, Officer Campbell retrieved Mr. Shelby from his cell to go to recreation. R. 5-6. Officer Campbell carried on his person a hard copy list of inmates, which stated inmate's special needs, previous violent tendencies or possessions of weapons, gang affiliations, and risks of attack from other gang members. R. 6. The list explicitly included Mr. Shelby's name, mentioned the potential hit on him ordered by the Bonucci clan, and noted Mr. Shelby was at risk of an attack by the Bonucci clan. R. 6. Officer Campbell failed to reference the list of inmates before transferring Mr. Shelby. R. 6. He also failed to reference the online database, which clearly displayed Mr. Shelby's gang affiliation and contained the intelligence officer's special notes. R. 4.

While Officer Campbell led Shelby to the guard stand, an inmate in block A yelled "I'm glad your brother Tom finally took care of that horrible woman," to which Mr. Shelby responded, "yeah, it's what the scum deserved." R. 6. Officer Campbell told Mr. Shelby to be quiet, and collected another inmate from cell block A. R. 6. Then, despite the words just yelled, Officer Campbell retrieved two inmates from cell block B and one inmate from cell block C. R. 7. The three inmates were Bonucci clan members, and, as intelligence officers feared, the Bonucci clam

members immediately charged Mr. Shelby, beating him with their fists and hitting his head and ribs with a club. R. 7.

During the minutes-long attack where Officer Campbell could not hold the three men back, Mr. Shelby suffered life-threatening injuries, including a traumatic brain injury, three rib fractures, "lung lacerations, acute abdominal edema and organ laceration, and internal bleeding." R. 7. Following several weeks in the hospital, and a subsequent bench trial, Mr. Shelby was found guilty of two charges leading to his initial arrest, and is now imprisoned at Wythe Prison. R. 7.

II. Procedural History

On February 24, 2022, Mr. Shelby, acting pro se, filed his timely § 1983 action against Officer Campbell in his individual capacity, and a motion to proceed in forma pauperis. R. 7. During Mr. Shelby's prior detentions, he commenced three § 1983 actions against prison officials, state officials, and the United States, and a court dismissed each without prejudice on grounds the action would have called into question his conviction or sentence. R. 3. Mr. Shelby's Complaint alleged Officer Campbell failed to protect him—a pretrial detainee—violating Mr. Shelby's constitutional rights. R. 7. On May 4, 2022, Officer Campbell filed a motion to dismiss, only arguing Mr. Shelby failed to state a claim. R. 8.

Denying Mr. Shelby's motion, the district court found his three prior dismissals under *Heck* constituted strikes under 28 U.S.C. § 1915(g) ("[O]n grounds that it [was] frivolous, malicious, or fail[ed] to state a claim."), precluding Mr. Shelby from proceeding in forma pauperis. R. 1. The district court ordered Mr. Shelby to pay a $402.00 filing fee, which he paid. R. 7. Granting Officer Campbell's motion, the district court held Mr. Shelby's failure-to-protect claim, despite his pretrial detainee status, required him to allege Officer Campbell knew of and disregard a substantial risk of serious harm. R. 10-11. It found Mr. Shelby's Complaint failed to support such a finding. R. 11.

Shelby filed a timely appeal on July 25, 2022, and the appellate court issued an Order permitting Shelby to proceed in forma pauperis on appeal. R. 13. On August 1, 2022, the appellate court appointed Shelby counsel. R. 13. The appellate court held *Heck* dismissals, distinct from strikes contemplated under 28 U.S.C. § 1915(g), concern whether a judgement in a § 1983 action would imply the invalidity the plaintiff's underling conviction or sentence. R. 15. Further, the appellate court held that, under *Kingsley*, a pretrial detainee need not prove an official had subjective awareness of the risk of harm. R. 18. The appellate court, therefore, reversed and remanded both issues to the district court. R.19. Officer Campbell filed a petition for writ of certiorari to this Court, and this Court granted the petition, certifying both issues for argument. R. 21.

SUMMARY OF THE ARGUMENT

This case concerns two square pegs and two round holes—specifically, Appellant urges this Court to neglect its precedents and apply two unfitting provisions. Worse, the implications threaten indigent prisoners' access to the court systems and pretrial detainees' Fourteenth Amendment rights.

Issue 1 Mr. Shelby remains eligible to proceed *in forma pauperis*—to proceed without incurring costs. 28 U.S.C. § 1915(g) operates to preclude detained individuals from bringing suits *in forma pauperis* by establishing a "three strikes" rule. Detainees receive a strike when, while detained, a court dismisses their complaint on grounds it is "frivolous, malicious, or fails to state a claim for which relief can be granted." 28 U.S.C. § 1915(g). The legislature articulated three types of dismissals that constitute strikes. But none of Mr. Shelby's three prior dismissals have occurred on the grounds his complaint was frivolous, malicious, or failed to state a claim. R. 3. Shelby's dismissals resulted under *Heck v. Humphrey*, 512 U.S. 477 (2015), which concerns

whether a favorable ruling would imply the validity of a prisoner's conviction. Appellant asks this Court to assume the role of the legislature and read *Heck* into § 1915(g)—a square peg in a round hole.

Dismissals under *Heck*, however, fundamentally differ from the grounds provided under § 1915(g). This Court's decision in *Heck* created a procedural traffic light: courts neglect the merits of a case and determine only whether a § 1983 action would imply the invalidity of a prisoner's conviction or sentence. That's quite distinct from a frivolous or malicious claim under § 1915(g). And unlike dismissals for failing to state a claim, *Heck* is not a jurisdictional bar. *Okoro v. Bohman*, 164 F.3d 1059, 1061 (7th Cir. 1999). Section 1915(g) deals with dismissals of an entire action, *See Thompson v. Drug Enforcement Admin.*, 492 F.3d 428, 431 (D.C. Cir. 2007), not procedural hurdles, like in *Heck*, that merely delay bringing an action on its merits. *Heck* dismissals cannot—especially *per se*—constitute strikes under § 1915(g). Therefore, this Court should affirm the appellate court's holding that *Heck* dismissals do not constitute strikes under § 1915(g).

Issue 2 Mr. Shelby's Fourteenth Amendment rights as a pretrial detainee cannot be reduced to those of a prisoner under the Eighth Amendment. Pretrial detainees receive protection from all punishment; prisoners have only protection against punishment deemed cruel and unusual. This Court recognized the implications arising from the difference in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). Indeed, this Court distinguished pretrial detainees from prisoners, who must prove an official had subjective awareness of the risk of harm. *Id*. In doing so, this Court determined an objective reasonableness standard is the appropriate standard to apply when pretrial detainees allege due process claims—which includes failure to protect claims. The majority of circuits have interpreted *Kingsley* as such.

Undoubtedly, Officer Campbell acted objectively unreasonable regarding the harm his conduct posed: Officer Campbell carried with him a list of inmates that stated gang affiliations and risks of attack; he had access to the jails online database stating the same; the jail hosted a required meeting to warn of the risks to Mr. Shelby; and the jail's gang population was substantial. R. 4-7. Disregarding every warning sign, Officer Campbell removed Mr. Shelby from his cell and escorted him to a brutal attack by three rival gang members. R. 7. Even if this Court determines the Fourteenth Amendment standard requires something more than objective awareness, Officer Campbell's conduct exceeds criminal recklessness. Therefore, this Court should affirm the appellate court's holding that *Kingsley* extends to pretrial detainees' failure to protect claims.

ARGUMENT

I. DISMISSAL OF A PRISONER'S CIVIL ACTION UNDER *HECK V. HUMPHREY* DOES NOT CONSTITUTE A "STRIKE" UNDER 28 U.S.C. §1915(g).

This Court's decision in *Heck v. Humphrey*, 512 U.S. 477, 486–487 (1994) serves a different purpose than 28 U.S.C. § 1915(g). From a large picture view, *Heck* concerns judicial traffic control and when claims should be heard by courts. *See Heck*, 512 U.S. at 486–487. On the other hand, § 1915(g) is about barring claims in their entirety based on previous action of the plaintiff. This Court has interpreted § 1915(g) many times before and, each time, has implemented a literal textual reading of the statute, only imposing penalties for violations specifically outlined in the statute. *See Coleman v. Tollefson*, 575 U.S. 532, 535 (2015); *Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721 (2020). No where in the text of § 1915(g) does it say that a case dismissed under the situation outlined in *Heck* can count as a strike under the statute. *See* 28 U.S.C. § 1915(g). The only way an action can be a "strike" under § 1915(g) is if it is "frivolous, malicious, or fails to state a claim for which relief can be granted." *Id.* None of these can be attributable to a *Heck* dismissal. *See Heck*, 512 U.S. at 486–487. While some circuits have interpreted *Heck* dismissals

as strikes, those circuits are mistaken because they have gone against the specific textual interpretation laid down by this Court, which those circuits must follow. This Court should make a definitive ruling that will reverberate and set a standard across the nation that align with the differing purposes of *Heck v. Humphrey* and § 1915(g), as well as the consistent literal interpretation of the § 1915(g)— that a district court's dismissal of an action under *Heck* does not count as a strike against *in forma pauperis* status under § 1915(g).

A. *Heck v. Humphrey* is about the prematurity of a civil action, not whether such an action is invalid, therefore *Heck* and the PLRA do not share the same goals and *Heck* cannot be said to constitute a "strike."

In *Heck* a unanimous Supreme Court set the current regime for [traffic light] control over when convicted persons can challenge their convictions. 512 U.S. at 486–487. The case concerned the interaction between the federal habeas corpus statute, 28 U.S.C. §2254, and the federal civil rights statute for deprivation of constitutional rights by state actors, 42 U.S.C. § 1983. *Id.* at 480. These statutes did the same thing: provide access to a federal forum for claims of unconstitutional treatment at the hands of state officials. *Id.* The procedure for bringing such claims, however, was different. *Id.* Section 2254 required a prisoner to exhaust their state remedies before seeking redress from a federal court. *Id* at 480–481. Contrarily, a person could bring a § 1983 claim without exhausting state remedies. *Id.* at 480. Thus, a prisoner who could allege either claim would be incentivized to bring the claim under § 1983, as it would be able to be heard in a federal court faster. *Id.*

However, one small problem arose because, as the Court said, that was not what congress intended when it passed § 2254. *Id.* at 482. In *Priser v. Rodriguez* this Court ruled that the federal habeas corpus statute was the exclusive remedy for prisoners challenging the validity of their conviction. 411 U.S. 475, 489 (1973). Many times, the federal court's decision on a prisoner's §

1983 action, even though the claim was only for monetary damages and not filed challenging the validity of the prisoner's sentence, would affect the validity of the prisoner's sentence. *Heck*, 512 U.S. at 481–482. This makes complete logical sense: if a prisoner challenges the way their conviction was handled, say either the length of confinement, or the way in which the prosecution went about the case, and the district court ruled that the prisoner should succeed on that § 1983 claim, this would call the entire validity of that conviction into question. *Id.* In the interest of justice, the prisoner's conviction would need to be looked at, and through these civil § 1983 claims, prisoners could succeed on overturning their criminal convictions. *Id*.

That problem lead this Court to lay down *Heck*'s procedural traffic light principle. *Id.* at 486–487. In order for a convicted inmate to recover damages under a § 1983 action due to either allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, the § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. *Id.* The *Heck* procedural traffic light principle, however, is just that: procedure. Under *Heck*, courts are not called to determine the merits of a case, just whether ruling on the § 1983 action would necessarily imply the invalidity of his conviction or sentence. *Id.* at 487.

Furthering this idea that *Heck* is about procedural traffic control the Court wrote that "if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Id.* This means, again, that courts considering *Heck* challenges are not concerned with the plaintiff's reasons for filing the § 1983

action. *Id.* All that a court is to consider under the *Heck* standard is whether it is the right time for this claim to be brought before the court. *Id.* This is vastly different from the three strike system under 28 U.S.C. § 1915(g), which specifically looks at the plaintiff's purpose for bringing the case and assigns strikes based off that, fully deciding the action. 28 U.S.C. § 1915(g); *See Washington v. Los Angeles County Sheriffs Dept*, 833 F.3d 1048, 1057 (9th Cir. 2016).

The United States has a long history of securing indigent access to the court systems. *Coleman*, 575 U.S. at 535. First enacting the *in forma pauperis* statute in 1892, Congress recognized that no citizen should be unable to have access to the court system, civil or criminal, solely because their poverty makes it impossible for them to pay or secure the costs. *Adkins v. E.I. DuPont de Nemours & Co.,* 335 U.S. 331, 342 (1948). The statute permits an individual to litigate federal action without having to pay fees if the individual makes certain showings, they are unable to pay the fees. 28 U.S.C. § 1915(a)(1). As one can imagine, many of those who take advantage of *in forma pauperis* status are prisoners who do not have access to income and without the statute would not be able to bring their righteous claims to court. LAWRENCE S. WRIGHTSMAN, THE PSYCHOLOGY OF THE SUPREME COURT 60 (2006). (In a typical Supreme Court term, about two-thirds of the petitions are *in forma*, mostly by prisoners challenging the conditions of their confinement).

The nature of litigation raised by prisoners is complicated. *Coleman*, 575 U.S. at 536. Many times, these prisoners are bringing these actions pro se and know next to nothing about the law besides they were wronged in some way and have a right to have that wrong redressed. *Id.*

Litigation brought by prisoners is one of the largest categories of cases in federal court.[1] In 1996 Congress zeroed in on this vulnerable subset of the population as a reason for the backlog of cases in the federal system. Congress passed the Prison Litigation Reform Act ("PLRA") which made changes to the *in forma pauperis* system, notably through the introduction of § 1915(g). The section reads …

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

28 U.S.C. § 1915(g). Section 915(g) created a restriction on *in forma pauperis* status for when a prisoner filed three prior actions that were dismissed by the district court on the grounds it was frivolous, malicious, or fails to state a claim. The actions dismissed under the statute are "strikes" against the prisoner, and if a prisoner accrues three "strikes" they are no longer able to file for *in forma pauperis* status when filing a civil action. Under § 1915(g), in order to impose a strike, a court must find that the *entire action* is "frivolous, malicious, or fails to state a claim upon which relief may be granted." *Thompson* 492 F.3d at 431.

i. ***Heck* and §1915(g) serve different functions and were not intended to combat the same problem.**

There are fundamental differences between the procedural stop sign of *Heck* and the dismiss-in-entirety requirement under § 1915(g). Because of these differences, this Court should rule that a *Heck* dismissal does not count as a "strike" under § 1915(g). *Heck* serves not as a tool

[1] Prisoner petitions increased 7 percent (up 2,490 petitions) as petitions involving civil rights grew 10 percent (up 1,744) to 18,488. *See Administrative Office of the United States Courts, Judicial Facts and Figures, Tables*.

to lower the number of cases on the federal docket, but instead, as a tool to direct cases to the correct court in which to be heard. *Heck*, 512 U.S. at 486. On the opposite, explicitly, both in the debate around the passing of the statute, and in the statute itself, § 1915(g) serves as a tool to lower the number of cases on the federal docket. *Woodford v. Ngo*, 548 U.S. 81, 83 (2006). These fundamental differences lead to the laws having two different functions, with *Heck* being a vehicle to ensure a case is heard at its proper time, and § 1915(g) being a penalty imposed on prisoners. *Heck*, 512 U.S. at 486–487; *Woodford*, 548 U.S. at 83.

There is good reason for this difference, as in the passing of § 1915(g) Congress said they wanted to surgically target actions filed by prisoners that were "frivolous" or "malicious." 141 Cong. Rec, S11408 (DAILY ED. Sept. 27, 1995) (Statement of Sen. Dole). However, under *Heck*, it cannot be said that dismissal of the claim means the claim is "frivolous" or "malicious" because plaintiffs may have meritorious claims that do not accrue until the underlying criminal proceedings have been successfully challenged. *Washington*, 833 F.3d at 1055. Thus, no dismissal under *Heck* can categorically be considered "frivolous" because of the possibility that the claim could accrue. *Id.* Furthermore the claim cannot be said to be "malicious" because again, the action cannot be said to be final as there is still time for a claim to accrue. *Id.* The only time a court might find a *Heck* dismissal "malicious" is if the court specifically found that the complaint was filed with the intent to harm another. *Id.*

To understand why dismissals under *Heck* are not "frivolous" or "malicious" this Court should look to *Washington v. Los Angeles County Sheriffs Dept*., 833 F.3d 1048 (9th Cir. 2016). The case arose out of a § 1983 action by a prisoner, much like this current case, where the prisoner

was denied *in forma pauperis* status because of having three strikes. *Id.* at 1052–1054.[2] The court agreed with Washington that a *Heck* dismissal, standing alone, could not be said to be "frivolous" or "malicious" under § 1915(g) because of the possibility that the plaintiff could have underlying claims in the § 1983 action that do not accrue until the criminal proceeding has been successfully challenged. *Id.* at 1055. The court believed that when a dismissal is made without prejudice, like *Heck* dismissals are, the claim is not "frivolous" because the claim could be successfully refiled. *Id.* Additionally, the court found that under a strict reading of the § 1915(g) statute, a *Heck* dismissal cannot be categorized as "malicious" unless the court specifically finds that the complaint was "filed with the intention or desire to harm another." *Id.*; *See also Andrews v. King*, 398 F.3d 1113, 1211 (9th Cir. 2005). Because underlying claims under *Heck* may be refiled once the criminal proceeding is successfully challenged, no dismissal under *Heck* is "frivolous" or "malicious"; the jurisdictional nature of those categories emphasizes these differences.

One can also find fundamental differences between *Heck* and § 1915(g) by looking at the jurisdictional basis for the action; based off this reading alone this Court could conclude a *Heck* dismissal should not constitute a § 1915(g) strike. *Heck*, 512 U.S. at 486–487. *Heck* does not dismiss the action in its entirety, while a dismissal under § 1915(g) does. *Id. Heck* is not a jurisdictional bar. *Okoro v. Bohman*, 164 F.3d 1059, 1061 (7th Cir. 1999); *See Also Jiron v. City of Lakewood*, 392 F.3d 410, 413 (10th Cir. 2004). On the other hand, § 1915(g) deals with the action in its entirety, so a finding that the conditions for dismissal are met necessitates that the action be dismissed in its entirety. *Thompson*, 492 F.3d at 431.

[2] Washington had accumulated five strikes, three of which involved *Heck v. Humphrey*; thus, if *Heck* dismissals did not constitute a strike, Washington would be able to get *in forma pauperis* status baring he meet the other requirements of § 1915.

Under *Heck*, the element that must be proved to survive a *Heck* challenge—favorable termination—is not an element a prisoner must allege in a § 1983 complaint. *Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011). Therefore, it would be impossible to claim *Heck* as a jurisdictional bar, as the plaintiff in the case would have absolutely no way of knowing this jurisdictional challenge was present in their § 1983 claim when they file. *Id.* The *Heck* favorable termination requirement is more of an affirmative defense to the claim that the court cannot review the § 1983 action and as such is subject to waiver. *Id.* Furthering this idea, courts may choose to bypass the *Heck* doctrine and address the merits of the case. *Id.* at 838. All of this goes to say, when deciding a *Heck* challenge, a district court will never conclude the case presents a jurisdictional bar. *Id.*

The same treatment cannot be said to "frivolous" "malicious" or failure to state a claim" requirements of § 1915(g). These statements both in their plain meaning, and in the case law interpretation, have found the statements are jurisdictional and decides whether or not the action should be in court. *Coleman*, 575 U.S. at 537. When a case is dismissed as "frivolous" and attributed as a strike under § 1915(g), the district court is determining that there is no basis for the entire action. *Thompson*, 492 F.3d at 431. The statute speaks of dismissals of "actions and appeals," not "claims." *Id.* at 432. In fact, while under *Heck* the district court can dismiss just the claims that fail to meet the statutory standard, under § 1915(g), the entire action must fail to meet the statutory standard for the district court to dismiss the claim. *Id.* Therefore, it is clear; § 1915(g) is a jurisdictional bar, if a district court finds the claim is "frivolous" "malicious" or a "failure to state a claim" within the means of the statute, the entire action will be dismissed. *Id.*

Where § 1915(g) is about lowering the number of cases on the federal docket, *Heck* is about avoiding parallel litigation and making it so the federal habeas corpus statute is the only way for

claims challenging the validity of a conviction to be heard. *Heck*, 512 U.S. at 484. The case is not meant to be a way for courts to dismiss cases. *Id.* What *Heck* is meant to do is direct cases along the proper channels to be heard, such that a court deciding a prisoner's § 1983 action, will not affect the outstanding criminal conviction. *Id.* at 486–487. An important factor of *Heck* is that this Court likened the new standard to closely resemble the tort of malicious prosecution. *Id.* at 489. Under that standard, causes of action do not accrue until criminal proceedings have been terminated in the plaintiff's favor. *Id.* No where does this Court mention that for malicious prosecution, a plaintiff could have the claim completely barred if the tort claim would affect the outcome of a criminal proceeding. *Id.* That would completely go against notions of justice and fairness. *Id.* Through this framework this Court concluded that *Heck* does not bar the claim if it affects the outcome of criminal proceedings. *Id.* However, there is a very real danger of this Court creating a ruling like that today, as a finding that *Heck* dismissals constitute strikes under § 1915(g) would effectively be baring these claims before the potential claims have accrued. *Id.* Therefore, it can never be said that a *Heck* dismissal could be considered "frivolous" or "malicious" in line with § 1915(g) and for this reason, this Court should rule that *Heck* dismissals do not constitute strikes under § 1915(g).

ii. *Heck* dismissals categorically cannot be treated as "failure to state a claim" under §1915(g) because the original §1983 action does not require an affirmative pleading that the conviction has been invalidated.

Many times, what seems to get lost in the noise of the important issues surrounding the PLRA, is that the PLRA in it of itself, is not the act in which prisoners are bringing their claims to court. *Jones v. Bock*, 549 U.S. 199, 202 (2007). The PLRA simply regulates the procedure in which prisoners bring their claims before a court. *Id.* Many times, the act prisoners are brining the claim under, as is the case in this current matter, is 42 U.S.C. § 1983. *Id*. Thus, for a court looking to

determine whether there has been a failure to state a claim for the purposes of the PLRA and § 1915(g), the court must look at the pleading requirements of the statute in which the case is actually being brought under § 1983. *Id.* at 212.

Under a § 1983 action the plaintiff must show that a government actor was (1) working "under the color of state law" and (2) deprived the plaintiff of a constitutional right or federal statutory right. 42 U.S.C. § 1983; *See also West v. Atkins*, 487 U.S. 42, 48 (1988). Nowhere in those requirements is the plaintiff required to make a showing indicating that the lawsuit will not affect the validity of a criminal case. *Id.* A plaintiff is not required to make a *Heck* showing that a ruling on the § 1983 action in question will not affect the validity of an outstanding criminal judgment against the plaintiff unless the defendant raises the question as an affirmative defense to the § 1983 claim. *See Washington,* 833 F.3d at 1056. Thus, a showing under *Heck* that the conviction in question has been invalidated does not function as a claim the plaintiff must make but more so as an affirmative defense that must be raised by the defendant. *Id.* Only once the court makes prima facie finding that the action in question could affect the validity of an outstanding criminal judgment is the plaintiff required to show the conviction has been invalidated within the lines of *Heck. Id.*

This Court and lower courts have furthered this viewpoint by saying compliance with *Heck* more closely resembles the mandatory administrative exhaustion of PLRA claims, which constitutes an affirmative defense and not a pleading requirement. *Id*; *See also Jones*, 549 U.S. at 215–217. *Heck* dismissals do not bar the claim forever but allow for refiling if the underlying criminal action in question is invalidated. *Washington*, 833 F.3d at 1056. Additionally, this also means that the *Heck* dismissals do not reflect the court's final determination of the action on the merits. *Id.* So then, under this logic, it would be completely nonsensical to say that a *Heck* dismissal

could constitute a strike for failure to state a claim under § 1915(g), as the plaintiff would have never been on notice in the underlying action for which they filed that they needed to satisfy the *Heck* requirements. *Id*.

There are rare circumstances in which courts have found that a *Heck* dismissal could constitute a failure to state a claim, but these are in situations where, in line with the requirements of Rule 12(b)(6), the pleadings present an "obvious bar to securing relief" under *Heck. See Washington*, 833 F.3d at 1055–1056. However, this is not the case in many *Heck* cases, and it certainly cannot be said that there could be a categorical rule allowing for *Heck* dismissals to always constitute strikes for failure to state a claim under § 1915(g). *Id.* Therefore, because the § 1983 claim that the prisoner is making when a *Heck* question comes into being does not require the prisoner to make a claim certifying that the *Heck* standard has been met, it cannot be said that a *Heck* case can be dismissed for failure to state a claim in the same way as under § 1915(g). *Id.* Therefore this Court should rule that a *Heck* dismissal cannot constitute failure to state a claim for purposes of § 1915(g).

Under 28 U.S.C. § 1915(g), a prisoner can only be denied *in forma pauperis* status if it is explicitly found that their claim is "frivolous, malicious, or fails to state a claim for which relief may be granted." 28 U.S.C. § 1915(g). A *Heck* dismissal cannot be said to constitute any of these reasons as prisoners always have claims that could accrue out of their lawsuits, and the underlying statute which the prisoner files the claim under does not require them to certify that their § 1983 action meets the *Heck* standard. Thus, as none of the reasons for denying *in fomra pauperis* status can arise out of a *Heck* dismissal, this Court must use this opportunity to set a national standard that cases dismissed under *Heck* do not constitute strikes for the purposes of 28 U.S.C. § 1915(g).

B. The current standard of §1915(g) textual interpretation is clear: strikes can only accrue for violations outlined in the statute; as a *Heck* dismissal is not outlined in the statute, it cannot be considered a strike.

This Court has interpreted § 1915(g) many times before. *See Coleman*, 575 U.S. at 532; *Lomax*, 140 S.Ct. at 1721. Notably, this Court has never said that a *Heck* dismissal should count as a strike. *Id*. Generally, when this Court is faced with an issue of interpretation, it is the Court's role to say what the law is and not re-write what Congress has already passed. *Marbury v. Madison*. 5 U.S. 137, 177 (1803). In a sense, this Court's role is to look at the text of the statute and apply it to the situation at hand. *Id.* As Justice Kagan famously said, "we're all textualist now."[3] With § 1915(g), many times, this court has said conflicts begin an end with the text. *Lomax*, 140 S.Ct. at 1722. Special attention should be given to the lack of the words "demonstrate the invalidity of any outstanding criminal judgment against the plaintiff" 28 U.S.C § 1915(g).

This Court institutes a literal reading of the text, and in § 1915(g) cases, the Court takes the phrase "was dismissed" to indicate that the action was dismissed by the court in question. *Coleman*, 575 U.S. at 532. This Court looks at the entire action even though it might have past multiple levels of appeals as one action for the purposes of a strike. *Thompson v. Drug Enforcement Admin.*, 492 F.3d 428, 431 (D.C. Cir. 2007). Additionally, under the statute, the term "action" refers to the entire case as a whole, and so then, the *action* can be dismissed, only if the entire *action* fails to meet statutory standards. *Lira v. Herrera*, 427 F.3d 1164, 1173 (9th Cir. 2005). When some claims are valid and others are not, the usual procedural norm—that when a complaint has both good and bad claims, only the bad claims are 'dismissed,'—prevails." *Id.* When making a determination as to the meaning of § 1915(g) and applying the *Heck* doctrine to it, this

[3] Harvard Law School, The Antonin Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes, YOUTUBE (Nov. 25, 2015) https://www.youtube.com/watch?v=dpEtszFT0Tg.

Court should make a determination that, because of prior close literal reading of the statute, dismissal of a plaintiff's claim under *Heck* does not constitute a strike for the purposes of § 1915(g). *See Heck*, 512 U.S. 486–487.

The most recent ruling from this Court on 28 U.S.C. § 1915(g) was in *Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721 (2020). The case is inapplicable for Petitioner to further their argument of *Heck* counting as a strike because it affects a completely different subsect of the law than *Heck*. *Id.* at 1723. However, this case supports Mr. Shelby's argument that *Heck* dismissals cannot constitute a strike under the meaning of § 1915(g), because it lays out the clear standard that § 1915(g) is interpreted through a strict textualist lens. *Id.* The question presented in the case was whether a suit dismissed for failure to state a claim counted as a strike when the dismissal was without prejudice. *Id.* Lomax, a prisoner, was seeking *in forma pauperis* status for a new suit but the district court ruled that he had already accumulated three strikes. *Id.* at 1724. Lomax challenged stating that some of those cases had been dismissed without prejudice for failure to state a claim and thus could not be counted as strike. *Id.* This Court, in specifically zoning in on the text of § 1915(g), ruled that the dismissals counted as strikes because the words of the statute say "dismissed on the ground[s] that it ... fails to state a claim upon which relief may be granted." *Id.* Thus the Court found that dismissals under § 1915(g) hinge on the basis for the dismissal and whether that basis can be found in the text of the statute. *Id.* at 1724–1725. Importantly, nowhere in the text of § 1915(g) does it say a strike can be given because it would require the court to call into question a federal court's issuance of a writ of habeas corpus. 28 U.S.C. § 1915(g). Thus, under this textual analysis, put forward by this very Court, it cannot be said that a case dismissed under the *Heck* standard can constitute a strike under § 1915(g). *Lomax*, 140 S.Ct. at 1724–1725.

Another case interpreting § 1915(g) is *Coleman v. Tollefson*, 575 U.S. 532 (2015). Here this Court emphasized that strikes under § 1915(g) are only to be given for actions laid out on statutorily enumerated grounds. *Id.* at 537. The plaintiff had made previous lawsuits which the courts had explicitly dismissed as "frivolous" under § 1915(g). *Id.* at 536. However, the plaintiff challenged that he still had *in forma pauperis* status for a fourth action he filed, because one of the dismissals was still on appeal and the issue was not settled. *Id.* This Court struck back at that argument and specifically dictated that interpretation of § 1915(g) is to be based on the text of the statute. *Id.* at 537. In looking at the linguistics of the statute and the term "was dismissed" this Court said it could not read in extra meaning or specificity. *Id.* at 538. This Court said it applies a consistent literal reading of the text. *Id.* Also of note is the Court's statement that "[t]he "three strikes" provision was "designed to filter out the bad claims and facilitate consideration of the good." *Id.* at 539 (citing *Jones*, 549 U.S. at 204).

There are lower court cases that have interpreted a *Heck* dismissal to constitute a strike under § 1915(g), however, those cases were mistaken in reaching that conclusion because they do not follow the strict textualist interpretation of § 1915(g), as laid out by this Court. A good example of this phenomenon is a recent case out of the Third Circuit, *Garrett v. Murphy*, 17 F.4th 419 (2021). The Third Circuit found that a dismissal under *Heck* should count as a strike because they akin the dismissal for failure to show favorable termination as lacking a cause of action under § 1983. *Id.* at 427. Furthermore, more the court takes the outlandish step of stating that "any other rule is incompatible with *Heck.*" *Id.* However, the court made the mistake in constituting lack of showing of a favorable termination as a lack of cause of action under § 1983 due to the strict textualist interpretation this Court has employed when discussing § 1915(g). In addition, the *Garrett* court severely mischaracterizes the purpose of *Heck* by stating that find a strike is the only

compatible rule under *Heck*. When discussing the action as a whole, there most certainly could be valid § 1983 claims that do not accrue until the underlying criminal proceedings have been successfully challenged. *Washington*, 833 F.3d at 1055.

There is no doubt as to the way this Court interprets § 1915(g). *Lomax*, 140 S.Ct. at 1724–1725; *Coleman*, 575 U.S. at 537. This Court applies a strict textual interpretation of the statute and looks solely at whether the basis for the dismissal can be found in the text of the statute. *Id.* Furthermore, this Court does not add to the meaning of the text and applies a consistent literal reading of the text. *Id.* at 538. Under this standard, it cannot be said that a dismissal under *Heck* can be considered a strike under § 1915(g). *Heck*, 512 U.S. at 486–487; *Lomax*, 140 S.Ct. at 1724–1725. The statute does not allow district courts to grant strikes based on the prisoner's § 1983 action calling into question the validity of an outstanding criminal judgement. 28 U.S.C. § 1915(g). Any interpretation from a lower court that is not based of the strict textual interpretation and plain meaning of the statute goes against this reasoning. *Id.* As the situation for a *Heck* dismissal is not outlined in the statute, it cannot be said that a *Heck* dismissal can constitute a strike under § 1915(g). *Id.*

For the aforementioned reasons, in line with the past decisions this Court should adopt a national standard that 42 U.S.C. § 1983 dismissals under *Heck* do not constitute a "strike" against *in forma pauperis* status under 28 U.S.C. § 1915(g).

II. THE HOLDING IN *KINGSLEY V. HENDRICKSON* ELIMINATES THE NEED FOR PRETRIAL DETAINEES TO PROVE SUBJECTIVE INTENT TO SATISFY A DELIBERATE INDIFFERENCE FAILURE-TO-PROTECT CLAIM.

The undue suffering sustained by Mr. Shelby and the egregious oversight exhibited by Officer Campbell constitute sufficient facts to objectively demonstrate that Officer Campbell was

deliberately indifferent and failed to protect Mr. Shelby. Therefore, there are sufficient facts to render Mr. Shelby's claim facially plausible and survive a Rule 12(b)(6) motion to dismiss. *Zakora v. Chrisman*, 44 F.4th 452, 464 (6th Cir. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). Not only should Mr. Shelby's claim be allowed to proceed, but the rightful application of the objective analysis promulgated in *Kingsley* demonstrates that Mr. Shelby and identically situated pretrial detainees are entitled to relief. *See Kingsley v. Hendrickson*, 576 U.S. 389, 396-397 (2015). Mr. Shelby's designation as a pretrial detainee channels his claim through the Fourteenth Amendment rendering the subjective test outlined in *Farmer v. Brennan* inapplicable and the objective test promulgated in *Kingsley* the sole guiding test. *See id.*; *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Mr. Shelby's notoriety combined with the training and notification provided to the Marshall jail officers objectively demonstrates that a reasonable officer should have known to protect Mr. Shelby from potential conflict between Mr. Shelby and the Bonuccis. *See* R. 2-3, 4-5.

Different inmates allege different constitutional violations, requiring different standards of proof. *See Kingsley*, 756 U.S at 389, 396-97; *Farmer*, 511 U.S. at 834. Prisoners alleging constitutional violations do so under the Eighth Amendment's Cruel and Unusual Punishment Clause, whereas pretrial detainees allege constitutional violations under the Fourteenth Amendment's Due Process Clause. *See Castro v. Cnty. of L.A.,* 833 F.3d 1060, 1068 (9th Cir. 2016). This Court outlined a two-prong test for establishing whether a prison official acted "deliberately indifferent," for a prisoner's failure-to-protect claim under the Eighth Amendment. *See Farmer*, 511 U.S. at 834. Prisoners must show (1) the conditions posed a substantial risk of serious harm, and that (2) the prison official had a "sufficiently culpable state of mind." *Id. Farmer* established the *mens rea* requirement under the Eighth Amendment. *Id.* But in a later decision, this

Court established a different requirement for pretrial detainees under the Fourteenth Amendment. *See Kingsley*, 576 U.S. at 389.

Pretrial detainees who bring actions under the Fourteenth Amendment need only show the harm purposefully or knowingly inflicted upon them was objectively unreasonable. *See Kingsley*, 756 U.S at 396-97. In *Kingsley*, this Court held pretrial detainees need not prove the official's culpable state of mind. *See id.* Specifically, pretrial detainees must show the official acted deliberately—purposefully or knowingly. *Id.* at 396. But for the official's state of mind regarding the harm posed by the officials conduct, "courts must use an objective standard." *Id.* at 396-97 ("[T]hat the force purposely or knowingly used against him was objectively unreasonable.").

Regarding failure-to-protect claims, the Ninth Circuit crafted a four-part test incorporating the principles promulgated by *Kingsley*. *See Castro,* 833 F.3d at 1071. First, the prison official must make an intentional decision regarding a pretrial detainee's confinement conditions. *Id.* Second, the conditions must substantially risk harming the plaintiff. Third, the prison official failed to take "reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious." *Id.* Fourth, the plaintiff's injuries were caused by the defendant failing to take said measures. *Id.*

A. *Kingsley*'s holding extends to failure-to-protect claims and creates a uniform standard that preserves the rights of pretrial detainees.

Mr. Shelby can establish that Officer Campbell was deliberately indifferent because the objective analysis under the Fourteenth Amendment promulgated in *Kingsley* extends to failure-to-protect claims. *See Castro,* 833 F.3d at 1070. *Kingsley*'s holding extends to failure-to-protect claims because its broad wording does not limit its holding to excessive force claims. *Id.* at 1069-70. Additionally, convicted prisoner Eighth Amendment claims and pretrial detainee Fourteenth

Amendment claims are blatantly distinct. *Id.* Therefore, there is no restriction on the type of claim that can be proven using objective evidence to establish deliberate indifference itself, opening the door to failure-to-protect claims. *Id.*

While the claim in *Kingsley* concerned an excessive force claim, *Kingsley* 576 U.S. at 391, the guidance the case's holding provides regarding the deliberate indifference doctrine transcends the specific claim considered within the case. *See Darnell v. Piniero*, 843 F.3d 17, 35-36 (2d. Cir. 2017); *Short v. Hartman*, 87 F.4th 593, 605-606, 612 (4th Cir. 2023); *Brawner v. Scott Cnty. Tenn.*, 14 F.4th 585, 596-97 (6th Cir. 2021); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 354 (7th Cir. 2018); *Castro*, 833 F.3d at 1070-71. Specifically, the Second, Fourth, Sixth, Seventh, and Ninth Circuits have allowed *Kingsley*'s guidance to carry into other pretrial detainee Fourteenth Amendment claims. *See id.* Additionally, while the D.C. Circuit itself has not dealt with this issue, it has extended *Kingsley* beyond the excessive force context at the district court level. *Banks v. Booth*, 468 F.Supp.3d 101, 110-11 (D.D.C. June 18, 2020); *Banks v. Booth*, 459 F.Supp.3d 143, 151-53 (D.D.C. April 19, 2020). However, the Circuits that have declined to extend *Kingsley* continue to implement a subjective prong within their deliberate indifference analysis.[4] Moreover, the First and Third Circuits have neglected to address how *Kingsley* interacts with the deliberate indifference doctrine entirely. *See Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64, 74 (1st Cir. 2016)*; Moore v. Luffey*, 767 F.App'x 335, 340 n.2 (3d Cir. 2019).

While there may be debate over whether the Sixth Circuit explicitly supports extending *Kingsley*, the Fourth Circuit has interpreted *Brawner* to support the adopting of a purely objective

[4] *Estate of Henson v. Wichita Cnty., Texas v.*, 795 F.3d 456, 464 (5th Cir. 2015); *Alderson v. Concordia Parish Correctional Facility*, 838 F.3d 415, 420 n. 4 (5th Cir. 2017); *Whitney v. City of St. Louis, Missouri*, 887 F.3d 857, 860 n. 4 (8th Cir. 2018); *Strain v. Regalado*, 977 F.3d 984, 993 (10th Cir. 2020); *Nam Dang by and through Vina Dang v. Sheriff, Seminole County Florida*, 871 F.3d 1272, 1279 n. 2 (11th Cir. 2017).

test. *See Short*, 87 F.4th at 605 n. 8; *Helphenstine v. Lewis Cnty., Kentucky*, 60 F.4th 305, 316 (6th Cir. 2023) (stating that *Brawner* is controlling precedent). Furthermore, the Fourth Circuit made that determination more recently than the Sixth Circuit has interpreted their own precedent illustrating its viability. *See id.* Overall, the majority of Circuits have decided to extend *Kingsley*'s holding to claims beyond the excessive force context.

First, *Kingsley* interprets *Bell v. Wolfish*, 441 U.S. 520, 538, 561 (1979) to permit a pretrial detainee to "prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." 576 U.S. at 398-99; *Darnell*, 843 F.3d at 34. This interpretation of *Bell* shows that there is no single deliberate indifference standard that is applicable to all § 1983 claims, "whether brought by pretrial detainees or convicted prisoners." *Castro*, 833 F.3d at 1069; *see Darnell*, 849 F. 3d at 36 (explaining that a pretrial detainee must be free from punishment and deliberate indifference should be analyzed objectively regardless of the type of claim asserted).

The *Kingsley* court broadly uses the term *challenged governmental action* when instructing that a pretrial detainee can prevail by objectively showing that the action is unrelated or excessive in relation to that purpose, demonstrating the holding's applicability to a myriad of claims. *See Castro*, 833 F.3d at 1070. As emphasized by the Ninth Circuit, a challenged governmental action could include many claims that fall within the Fourteenth Amendment's reach allowing for the incorporation of failure-to-protect claims. *See id.* Not only does this broadness allow for the inclusion of failure-to-protect claims, but the Court in *Kingsley* also described the nature of Fourteenth Amendment claims and Eighth Amendment claims as entirely different. *Miranda*, 900 F.3d at 352 (quoting *Kingsley*, 576 U.S. at 400). This broad wording defeats the contention of many circuits where they refuse to extend *Kingsley* strictly because *Kingsley* failed to explicitly

command that extension. *See Castro*, 1070; *Miranda*, 900 F.3d at 352; *Cf Nam Dang by and through Vina Dang*, 871 F.3d at 1279 n. 2 (declining to apply *Kingsley* to a non-excessive force claim).

Most importantly, pretrial detainees are to remain free from punishment at all costs placing a pretrial detainee's right to be protected from violence within the Fourteenth Amendment's Due Process Clause. *See Kingsley*, 576 U.S. at 400-01. The Seventh Circuit interprets this emphasis as an indication that no qualifying limitations were implemented, and the objective analysis is designed to be applicable to a variety of claims to ensure that pretrial detainees continue to be unpunished. *Miranda*, 900 F.3d at 352. Additionally, a pretrial detainee can prevail if they can demonstrate that the conditions they endured are "not reasonably related to a legitimate, nonpunitive governmental purpose." *Darnell*, 849 F.3d at 34 (citing *Kingsley*, 576 U.S. at 398-99 citing *Bell*, 441 U.S. at 541-43)). Furthermore, a pretrial detainee is not required to prove an intent to punish to prevail. *Darnell*, 849 F.3d at 34 (citing *Kingsley*, 576 U.S. at 398). Therefore, because pretrial detainees are to remain free from punishment and the proper vehicle to facilitate a pretrial detainee's deliberate indifference claim is under the Fourteenth Amendment's Due Process Clause, the Eight Amendment's Cruel and Unusual Punishment Clause not only is inapplicable but reinforces that *Kingsley*'s holding does extend beyond excessive force claims. *See Kingsley*, 576 U.S. at 397-98.

The Sixth Circuit recognizes the Eighth Amendment's inapplicability to pretrial detainees by observing that they must remain free from punishment as they have not received any adjudication of guilt. U.S. Const. amend. XIV; *See Brawner*, 14 F.4th at 595-96. More importantly, the Sixth, Second, Seventh, and Ninth Circuits agree that *Kingsley* requires modification of the subjective prong, resulting in reducing the mental state requirement from actual knowledge to

reckless disregard. *See Brawner*, 14 F.4th at 596-97. *Helphenstine*, 60 F.4th at 316. This revision reflects the impact that *Kingsley* has on the deliberate indifference standard and the rightful extension of its holding regarding the doctrine's essence. *See id.*

Second, the nature of Fourteenth Amendment claims and Eighth Amendment claims are entirely distinct. *Kingsley*, 576 U.S. at 400 (emphasizing the different the nature and language of the Fourteenth Amendment Due Process Clause and Eighth Amendment Cruel and Unusual Punishment Clause); *Miranda*, 900 F.3d at 352 (holding that "the Eighth Amendment and Due Process analyses" do not correspond with one another and that there is nothing within the *Kingsley*'s logic that would render it inapplicable to certain Fourteenth Amendment claims and applicable to others). Additionally, *Kingsley* establishes that not only does the Fourteenth Amendment command a different standard for pretrial detainees compared to convicted prisoners, but the standard is higher. *Kingsley*, 576 U.S. at 400 (distinguishing pretrial detainees from convicted prisoners on the basis that they cannot be punished). Therefore, the Tenth Circuit declining to extend *Kingsley*'s elimination of a subjective analysis because the test for deliberate indifference is the same regardless of which Amendment is used for the claim's legal basis is about as seamless as fitting a square peg into a round hole. *Strain,* 977 F.3d at 989.

The Tenth Circuit also partially bases their rejection to extend *Kingsley*'s holding on the concept that excessive force requires affirmative action thereby excluding claims consisting of inaction. *Id.* at 991. Interestingly, the Tenth Circuit cites a circuit extending *Kingsley* to failure-to-protect claims, a claim consisting of inaction where a detainment official failed to satisfy their duty to act (i.e., protecting the pretrial detainee). *Id.* (citing *Castro*, 833 F.3d at 1069, 1070 (holding that prison officials have the same duty to protect pretrial detainees from violence inflicted by other inmates just as they have a duty to protect pretrial detainees from violence inflicted by

themselves)). Therefore, relegating *Kingsley*'s holding to claims that require action is unfounded, particularly when Circuits that have declined the extend Kingsley share the same opinion regarding the duties of state representatives. *Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415, 420 (5th Cir. 2017) (holding that the Fourteenth Amendment requires the state to protect an individual when depriving that individual of freedom).

Overall, the nature of a pretrial detainee's claim falling under the Fourteenth Amendment, *Kingsley*'s broad holding, and the logical support by several circuits demonstrates that objectively analyzing the reasonableness of a defendant's conduct extends to failure-to-protect claims.

B. The Fourteenth Amendment objective analysis promulgated by *Kingsley* is superior because it respects the rights retained by pretrial detainees over convicted prisoners.

The objective standard promulgated in *Kingsley* is the proper and superior interpretation of a pretrial detainee's Fourteenth Amendment failure-to-protect claim for three reasons: (1) using an objective analysis would not open a floodgate of litigation exposing prison officials to frivolous liability, (2) using an objective analysis for the deliberate indifference doctrine accounts for a case's unique circumstances and (3) using an objective standard will lead to more just rulings and uniform application of the doctrine by relieving the court from having to determine an individual's mindset. Ensuring that pretrial detainees' rights are respected and that deliberate indifference claims are uniformly analyzed will cultivate a reality where pretrial detainees' interests and the government's interests are properly balanced.

First, allowing pretrial detainees to establish deliberate indifference claims by objectively showing that a detainment official's conduct was unreasonable would not render prison officials liable for actions amounting to mere negligence because 42 U.S.C. § 1983 claims—including deliberate indifference claims under the Fourteenth Amendment—require a *mens rea* that

surpasses mere negligence and reaches at least reckless disregard. *Miranda*, 900 F.3d at 353 (quoting *Castro*, 833 F.3d at 1071); *Darnell*, 849 F.3d at 36 (citing *Kingsley*, 576 U.S. at 396). *Kingsley* merely altered the mental state prong of the Eighth Amendment deliberate indifference test so that the plaintiff is no longer required to prove the defendant's state of mind *relating to whether the defendant understood their force to be excessive*. *Kingsley*, 576 U.S. at 396-97 (clarifying that it is undisputed that the alleged violator must have a "purposeful, knowing, or possibly . . . reckless state of mind but that the excessiveness of conduct can be proven to be objectively unreasonable). Therefore, a *mens rea* requirement is still part of the Fourteenth Amendment analysis following *Kingsley* and operates as an additional barrier to prevent a sudden influx of frivolous claims. *See Miranda*, 900 F.3d at 353; *see also Castro*, 833 F.3d at 1071 (clarifying that just because a pretrial detainee does not need to prove the defendant's subjective awareness of risk does not mean that the mental state requirement is eliminated from the claim itself and still requires a mental state of reckless disregard to be proven).

Second, the definition of reasonableness that is objectively analyzed is malleable. *See Kingsley,* 576 U.S. at 397. Specifically, the definition of reasonableness is dependent on a specific case's facts and circumstances. *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Moreover, the standard for reasonableness is determined from a reasonable officer's perspective that was on the scene knowing what they knew at the time of the event. *Id.* Not only is the standard defined from an identically situated reasonable officer, but courts are also to judge reasonableness from the jail official's perspective and account for a jail's legitimate interests (including management and giving deference to a jail's policies designed to maintain safety and security). *Id.* at 399-400 mechanically (quoting *Bell*, 441 U.S. at 540, 547)). The benefit of hindsight is not considered in this determination. *Id.* at 397.

Therefore, consideration for the stress that prison officials are placed under when making split second decisions in high intensity situations as emphasized in *Farmer* is still present. *See Farmer*, 511 U.S. at 835. Specifically, objectively judging a prison official's behavior from such an acutely tailored perspective properly considers the unique circumstances that a prison officer may be faced with thereby avoiding any unjust judgments of liability. *See id*; *Kingsley*, 576 U.S. at 396 (explaining that a pretrial detainee cannot prevail on a detainment official's accidents). Defining reasonableness from this perspective rewards and protects officers that act in good faith because they will not be subject to liability for a pretrial detainee's demise if they are acting reasonably based on the specific circumstances they were placed under. *See Farmer*, 511 U.S. at 835.

Farmer itself instructs that a prison official's mindset is considered when the prison official is alleged with inflicting cruel and unusual punishment. *Id.* at 838. Not only is that standard not the claim made in this matter, R. 21, that standard is inapplicable to pretrial detainees—including Mr. Shelby—and falls under an inapplicable Amendment. *Kingsley*, 576 U.S. at 400; *Bell*, 441 U.S. at 535. The Sixth Circuit supports this distinction by reducing the subjective component of the 2-part test to criminal recklessness from actual knowledge. *See Brawner*, 14 F.4th at 596-97; *Helphenstine*, 60 F.4th at 316. A further demonstration of holding a prison official's conduct to an objectively unreasonable standard while accounting for the prison official's mental state is the first element of the Ninth Circuit's four-part test requiring a prison official to make an intentional decision regarding a pretrial detainee's confinement. *Castro*, 833 F.3d at 1071.

Third, this intent requirement ensures that jail officials are not unduly persecuted for their behavior resulting in an unfortunate consequence but rather mandates that a jail official be sufficiently culpable to properly assert liability upon them, resulting in more just rulings. *See*

Farmer, 511 U.S. at 834 (determining that a defendant must have a "sufficiently culpable state of mind" to be liable for deliberate indifference). Therefore, consideration of a prison official's mental state as outlined in *Farmer* is still present even when utilizing an objective analysis because of the required mental state that must be present to assert liability for a prison official's action or inaction. *See id.* The only modification that *Kingsley*'s holding makes to the deliberate indifference standard is that the pretrial detainee does not have to prove the defendant detainment official's state of mind. *Darnell*, 849 F.3d at 34 (quoting *Kingsley*, 576 U.S. at 395). Furthermore, *Kingsley*'s holding accomplishes the same task as the two-part subjective analysis test by requiring a detainment official's indifference to be deliberate. *Kingsley*, 576 U.S. at 395-96; *Farmer*, 511 U.S. at 835; *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

In addition to alleviating any concern of unduly asserting prison officials with liability, having an objective standard based on an identically situated reasonable officer and accounting for the legitimate managerial interests of a jail, *Kingsley*, 576 U.S. at 397 (quoting *Bell*, 441 U.S. at 540, 547), would lead to more uniform analyses of deliberate indifference claims and relieve the court from having to determine a particular individual's mental state. *See Kingsley*, 576 U.S. at 397 (dictating that the reasonableness standard cannot be applied mechanically). Specifically, analyzing reasonableness under this precise and specific standard minimizes the potential for variability to arise in judicial interpretation, increasing uniformity of decision making. *See id*. Also, alleviating the need for a pretrial detainee to prove the detainment official's state of mind can avoid the potential for corruption rendering unjust verdicts, such as the case here with Marshall jail's history of Bonucci control. *See id.*; R. 3.

Overall, the Kingsley's objective Fourteenth Amendment analysis strikes a proper balance between the interests of the pretrial detainee and the detainment facility, allowing for less frivolous claims, more uniformity, and higher quality decisions.

C. The knowledge presented to Officer Campbell would lead a reasonable officer to expect that Mr. Shelby was at risk of serious injury, allowing Mr. Shelby to prevail under the Fourteenth Amendment and the Eighth Amendment.

Mr. Shelby was formally considered a pretrial detainee upon meeting Officer Campbell bringing Mr. Shelby's deliberate indifference claim within the bounds of the Fourteenth Amendment. R. 6; *Castro*, 833 F.3d at 1070 (explaining that failure-to-protect and excessive force claims are brought under the Fourteenth Amendment's Due Process Clause). The beating that Mr. Shelby suffered is entirely the result of Officer Campbell failing to adequately protect Mr. Shelby from undue harm whilst incarcerated at the Marshall jail. R. 7. Officer Campbell's conduct is objectively unreasonable when compared to an identically situated reasonable detainment official's behavior. *See* R. 5; *Castro,* 833 F.3d at 1073. Specifically, Officer Campbell's conduct constitutes deliberate indifference and violates the Fourteenth Amendment's Due Process Clause because of his failure to reference any warning signs that would familiarize himself with the Mr. Shelby's special inmate status and signal to him the possibility of Mr. Shelby's safety being threatened. *Castro,* 833 F.3d at 1070-71; R. 18. Officer Campbell's failures reflect a reckless disregard for Mr. Shelby's wellbeing, violate *Kingsley*'s holding, and satisfy a failure-to-warn deliberate indifference claim's elements. *See id.*

Even if this Court declines to extend *Kingsley*'s holding, Mr. Shelby's deliberate indifference claim still prevails under the Eighth Amendment's Cruel and Unusual Punishment Clause. *Farmer*, 511 U.S. at 834 (quoting *Wilson v. Seiter*, 501 U.S. 294, 297, 298 (1991)). Specifically, by Officer Campbell choosing to integrate Mr. Shelby with other inmates and

neglecting to pay attention to several instances posing a serious risk of harm to Mr. Shelby (the at-risk inmates list, the comments made by Mr. Shelby and other inmates, and the detailed records of Mr. Shelby that were entered into the database), R. 18, he was subjectively deliberately indifferent towards Mr. Shelby's wellbeing. *See Farmer*, 511 U.S. at 842

i. **Officer Campbell's intentional decision to ignorantly integrate Mr. Shelby with other inmates during transport is clearly objectively unreasonable and qualifies as deliberate indifference.**

Regarding the first element of a failure-to-warn claim (a defendant making an intentional decision regarding a plaintiff's conditions of confinement), *Castro,* 833 F.3d at 1071, Officer Campbell was properly trained on operating as a jail officer, paper notices were left indicating Mr. Shelby's heightened status, a meeting warning of a potential conflict involving Mr. Shelby was held where Officer Campbell's attendance was documented, several comments were made by other inmates indicating Mr. Shelby's affiliation, and both gangs are incredibly well-known. R. 2-6. By Officer Campbell failing to familiarize himself with the types of inmates he would be transporting by either reviewing the meeting minutes or simply paying attention to his surroundings, this reflects a lack of care exhibited by Officer Campbell concerning the well-being of the inmates he is charged with overseeing. *Id.*; *see Castro,* 833 F.3d at 1073 (illustrating an officer that was aware of the risk of integrating a pretrial detainee with a hostile cellmate). This behavior clearly illustrates reckless disregard for Mr. Shelby's wellbeing and satisfies the mental state requirement to initiate a deliberate indifference claim. *See id.*

While the time sheets indicated that Officer Campbell was absent from the meeting due to being ill and may have been initially not privy to Mr. Shelby's pretrial detainee status or perceptions by other hostile inmates, Officer Campbell's refusal to compensate for missing crucial information required to adequately perform the duties of his job is still inexcusable. R. 5-6; *See*

Castro, 833 F.3d at 1070 (citing Restatement (Second) of Torts § 500 cmt. a (Am. Law Inst. 2016) (holding that when a detainment official fails to recognize a perceived risk that a reasonable person similarly situated would identify, that detainment official can be seen to have "reckless disregard.")). By Officer Campbell choosing to be ignorant to the types of inmates he oversaw the transportation of, he was exhibiting reckless disregard for Mr. Shelby's wellbeing. *See id.* This elective ignorance is particularly apparent when Officer Campbell was carrying a reference list of special status inmates and still managed to avoid enlightening himself to the risks of integrating Mr. Shelby with other inmates. R. 6; *See id.* Furthermore, because Officer Campbell was properly trained, R. 5, a reasonable officer that also received proper training likely would have taken it upon themselves to ensure that they were properly equipped to safely transfer any inmates they were overseeing, further indicating the conscious disregard that Officer Campbell had for protecting the inmates in Marshall jail. *See id.*

For the second element of a failure-to-warn claim (the plaintiff's conditions of confinement exposed them to a substantial risk of harm), *Castro,* 833 F.3d at 1071, Officer Campbell integrating three members of the Bonucci clan with Mr. Shelby during transport entirely qualifies as an instance where Mr. Shelby was threatened with a risk of serious harm because of the hostile history that exists between the two gangs. R. 3, 7; *See Castro,* 833 F.3d at 1072 (ruling that placing two inmates—one of which was combative—in the same cell posed a serious risk of harm to the injured detainee). By placing Mr. Shelby in Cell Block A, his living quarters are close to a rival gang member, further exposing Mr. Shelby to a substantial risk of serious harm. R. 6-7.

In terms of the third element (the defendant detainment official failing to take measures to avoid facing a substantial risk despite a similarly situated detainment official appreciating the potential risk's significance), which can be proven using objective evidence, *Castro,* 833 F.3d at

1071, the evidence of Officer Campbell's faulty protection of Mr. Shelby is uncontestably objectively unreasonable. Here, Officer Campbell did not take any corrective measures to inform himself of the potential dangers that Mr. Shelby may face when transporting him to recreation. *See* R. 6. Specifically, a glitch shows no record of anyone reviewing the meeting minutes and that Officer Campbell did not consult the list he had on his person regarding Mr. Shelby's gang affiliation and known targeted attack risk. R. 6. While the glitch may not impose direct liability on Officer Campbell, the fact that he did not recognize Mr. Shelby upon retrieving him demonstrates that he did not review the meeting minutes because he would have known Mr. Shelby's identity had he familiarized himself with the meeting's content. *See* R. 5, 6. Therefore, Officer Campbell did not take any measures to learn of the hostile opinions that the other inmates had towards Mr. Shelby allowing him to adequately protect Mr. Shelby from harm. *See* R. 5, 6.

Furthermore, Officer Campbell did not recognize Mr. Shelby upon seeing him and could have taken the steps to familiarize himself with Mr. Shelby to understand who he is transporting. *See* R. 6. Contrastingly, a reasonable Marshall jail official would have known of the increased risk that threatened Mr. Shelby as described by the Fourteenth Circuit. *See* R. 19 (Officer Campbell failed to take action to abate a risk of serious injury unlike a reasonable officer); *see also Castro,* 833 F.3d at 1073 (holding that officers putting a plaintiff in the same cell with a combative inmate when other cell locations were available constituted "failing to take reasonable measures to address the risk"). Overall, Officer Campbell's conduct objectively satisfies this third element. *Castro,* 833 F.3d at 1071.

Lastly, the fourth element (that the defendant's failure to take steps to avoid a substantial risk of harm caused the plaintiff's injuries), is holistically satisfied. *Castro,* 833 F.3d at 1071. Mr. Shelby suffered because of Officer Campbell's failure to protect Mr. Shelby. R. 7. Following the

beating he sustained from the three Bonucci clan members, Mr. Shelby was hospitalized for several weeks. *Id.* Mr. Shelby suffered a traumatic brain injury from penetrative head wounds caused by repeated blows to his head, three fractured ribs, "acute abdominal edema and organ laceration, and internal bleeding." *Id.* Mr. Shelby's injuries were determined to be life threatening. *Id.* Clearly, if Officer Campbell had known that he was bringing members of rival gangs within close proximity of each other, these injuries would not have happened because they would not have had the opportunity to attack Mr. Shelby. *See* R. 7. Therefore, by failing to take any preventative measures to abate Mr. Shelby's suffering, *see id.*, the fourth element of Mr. Shelby's failure to protect claim is satisfied. *Castro,* 833 F.3d at 1071.

Overall, by Officer Campbell's conduct satisfying all four elements, Mr. Shelby's failure-to-protect claim is satisfied under the Fourteenth Amendment and Officer Campbell is liable to Mr. Shelby for his deliberate indifference. *Castro,* 833 F.3d at 1071.

D. Even if this Court declines to extend *Kingsley* to failure-to-protect claims, Mr. Shelby still prevails because Officer Campbell knew that he did not learn the information necessary to properly protect Mr. Shelby.

Officer Campbell's actions, regardless of the Amendment applied, still constitute deliberate indifference. *Farmer*, 511 U.S. at 834 (quoting *Wilson*, 501 U.S. at 297, 298). Specifically, Officer Campbell's failure to protect Mr. Shelby from harm was (1) "sufficiently serious" and (2) reflected an "unnecessary and wanton infliction of pain." *Id.* Therefore, Officer Campbell possessed a "sufficiently culpable state of mind" to constitute a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause. *Id.* (quoting *Wilson*, 501 U.S. at 297).

First, Mr. Shelby's injuries were incredibly heinous nearly resulting in death and requiring hospitalization for several weeks. R. 7. These injuries unquestionably qualify as injuries that are "sufficiently serious." *Farmer*, 511 U.S. at 834 (quoting *Wilson*, 501 U.S. at 297, 298); *see Strain*,

977 F.3d at 989-90 (describing a medical need as sufficiently serious if diagnosed by a physician requiring treatment or a lay person would easily determine that a doctor's attention is needed). Second, Officer Campbell's actions demonstrate that he was aware of and disregarded the excessive risks that threatened Mr. Shelby's safety. *See Farmer*, 511 U.S. at 837. Here, Officer Campbell had the list of inmates given special statuses in-hand and still neglected to familiarize himself with the prisoners that he was responsible for transporting. R. 6-7. Additionally, Officer Campbell continued to integrate Mr. Shelby with other inmates despite not recognizing Mr. Shelby or checking the database beforehand. *Id.* Officer Campbell even disregarded comments made by nearby inmates indicating his popularity amongst other inmates. *Id.* at 6. These instances show that Officer Campbell was subjectively aware of the risk he was taking by choosing to remain uninformed regarding the history of his transferees. R. 6; *See Farmer*, 511 U.S. at 842 (holding that an official failing to act while knowing a substantial risk of harm is apparent constitutes an Eighth Amendment violation).

Additionally, even though Officer Campbell had no recognition of Mr. Shelby he cannot escape liability for failing to realize that his actions would be likely to lead to conflict. *See id.* While it could be said that Officer Campbell did not make the inference that a substantial risk was posed by Mr. Shelby based on his unrecognition, the fact that he was properly trained by jail officials who were privy to Mr. Shelby's gang affiliation and rivalry with the Bonucci clan shows that he likely possessed the requisite knowledge to infer that gang conflicts were possible at Marshall jail. R. 5; *See Quintana v. Santa Fe County Board of Commissioners*, 973 F.3d 1022, 1029 (quoting *Farmer*, 511 U.S. at 837 (holding that officials must also draw the inference from the facts they are aware of posing a substantial risk of harm)). Furthermore, this egregious neglect of several signs by Officer Campbell and then continuing to engage in the dangerous transfer of

Mr. Shelby and the other three Bonucci clan inmates clearly illustrates Officer Campbell's reckless disregard for Mr. Shelby's wellbeing. R. 6-7; *see Farmer*, 511 U.S. at 839-40 (determining that reckless disregard is the mental standard constituting an Eighth Amendment violation).

Lastly, even if this Court determines Officer Campbell did not possess the requisite intent to punish Mr. Shelby to constitute an Eighth Amendment violation, *see Farmer*, 511 U.S. at 839, Mr. Shelby still prevails because Officer Campbell's oversight in endangering Mr. Shelby qualifies as punishment because it does not reasonably relate to the nonpunitive legitimate governmental purpose of granting Mr. Shelby recreation time during his period of incarceration and Mr. Shelby does not have to prove an intent to punish. R. 6; *Darnell*, 849 F.3d at 34 (citing *Kingsley*, 576 U.S. at 398-99 (citing *Bell*, 441 U.S. at 541-43)).

Mr. Shelby's inexcusable treatment objectively constitutes a Fourteenth Amendment violation because of *Kingsley*'s extension to failure-to-warn deliberate indifference claims. If this Court declines to extend *Kingsley* to failure-to-warn claims, the deprivation suffered by Mr. Shelby at the hands of Officer Campbell is "sufficiently serious" and subjectively demonstrates his recklessness towards Mr. Shelby's wellbeing constituting a violation of the Eighth Amendment. *Farmer*, 511 U.S. at 834. Therefore, this Court should extend *Kingsley*'s holding to Mr. Shelby's claim, hold Officer Campbell liable for his recklessness, and overrule the Appellant's Rule 12(b)(6) motion to dismiss.

CONCLUSION

For the aforementioned reasons, Mr. Shelby requests this Court to affirm the appellate court's holding that *Heck* dismissals do not constitute strikes under § 1915(g), and that *Kingsley* extends to pretrial detainees' failure to protect claims.