No. 23-05

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 State of Wythe

BRIEF FOR PETITIONER

Team 23

ATTORNEYS FOR PETITIONER

ISSUE PRESENTED

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

II. Whether the objective standard in *Kingsley* extends to Failure-To-Protect claims and eliminates the requirement to prove subject intent by a pretrial detainee under the Fourteenth Amendment.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Eighth and Fourteenth Amendments to the United States Constitution. The Eighth Amendment provides that "..." U.S. Const. amend. VII. The Fourteenth Amendment provides that "[n]o State shall . . .deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV.

This case also involves Section 1915(g) of Title 28 and Section 1983 of Title 42 of the United States Code.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

Petitioner, Officer Chester Campbell, is an entry-level guard at Marshall Jail, where Respondent, Arthur Shelby, is being held as a pretrial detainee. R. at 5-6. Respondent is second-in-command of the infamous street gang, the Geeky Binders. R. at 2. On New Year's Eve, after a police raid of a boxing match, Respondent was arrested. R. at 3. A more experienced officer, who recognized Respondent as a member of the Geeky Binders booked Respondent into the jail and filled out his paperwork. R. at 4.

The Marshall jail has a protocol requiring all paper and digital copies of booking forms be filed and uploaded to the jail's database. *Id.* The online database contains a file for every inmate and lists information about them including charges, inventoried items, gang affiliations, and other information the jail officials may need to know. *Id.* The gang intelligence officers reviewed and edited Respondent's file on the database and paid attention to his special status of his gang involvement. R. at 5. The gang intelligence officers knew of the rivalry between the Geeky Binders and another gang, the Bonuccis, and that Respondent was the prime target. *Id.* The gang intelligence officers held a meeting after Respondent was booked into the jail to alert other jail officials of Respondent's special status. *Id.*

Officer Campbell is not a gang intelligence officer and missed the meeting about Respondent. R at 5-6. A week after Respondent was booked into the jail, Officer Campbell oversaw the transfer of inmates to and from recreation. R. at 6. Respondent chose to go to recreation when offered by Officer Campbell. *Id.* Officer Campbell did not know or recognize Respondent and negligently failed to reference the information about inmates before transfer. *Id.*

After receiving Respondent from his cell, he led him to the guard stand and went to get other inmates from other cells. R. at 5. As soon as the inmates from the other cells saw Respondent, they immediately attack Respondent in which he suffered injuries as a result. R. at 7. Officer Campbell attempted to break up the attack but the attack last for several minutes until other officers showed up to help. *Id.*

II. NATURE OF THE PROCEEDINGS

On February 24, 2022, Respondent Shelby filed a pro se 42 U.S.C. § 1983 action against Officer Campbell. R. at 7. A motion to proceed in forma pauperis was filed along with the complaint. *Id*. On April 20, 2022, the district court denied Respondent's motion to proceed in forma pauperis after determining that he had accrued three strikes under 28 U.S.C. § 1915(g) of the PLRA. *Id*. Respondent paid the $402.00 filing fee before proceeding. *Id*.

Later, on May 4, 2022, Officer Campbell filed a motion to dismiss, arguing that Respondent failed to state a claim on which relief can be granted. R. at 8. The District Court agreed and dismissed the suit on July 14, 2022. *Id*. Respondent appealed both the decision to deny his motion to proceed in forma pauperis and to dismiss the suit to the Circuit Court of Appeals for the Fourteenth Circuit. R. at 12.

The three-judge panel of the Fourteenth Circuit reversed the District Court on both issues, holding that Respondent's dismissals pursuant to *Heck* were not strikes for purposes of the PLRA and that under *Kingsley*, failure-to-protect claims must be analyzed using an objective standard. R. at 19. Finally, Officer Campbell appealed that decision to this Court, which granted certiorari. R. at 21.

SUMMARY OF THE ARGUMENT

I.

With respect to the first issue, the district court below properly held that Respondent has three strikes for purposes of the Prison Litigation Reform Act. For one, dismissals pursuant to *Heck v. Humphrey* are for failure to state a claim on which relief can be granted. Such dismissals are not for want of jurisdiction or based on prematurity alone. Additionally, *Heck*'s reasoning is consistent with the goals of the PLRA.

Next, this Court's precedent has made clear that dismissals for failure to state a claim count as strikes under the PLRA. To be sure, many dismissals for failure to state a claim, including those pursuant to *Heck*, are without prejudice. Despite this, the language of 28 U.S.C. § 1915(g) makes clear dismissals without prejudice are strikes.

Finally, holding that *Heck* dismissals are strikes is consistent with the purpose of the PLRA. Congress passed the law with the hope of curbing the extremely high number of cases brought by prisoners every year that were frivolous, malicious, and wasteful.

These arguments, when considered together, make clear that Respondent has accrued three strikes under the PLRA and is unable to claim in forma pauperis status in this case or any other going forward, save for extraordinary circumstances.

II.

The District Court of Wythe correctly decided that the decision in *Kingsley v. Hendrickson*, does not alter the standard for deliberate indifference failure-to-protect claims. The

framework set out in *Farmer* controls for failure-to-protect claims because it allows for deference to jail officials.

The *Kingsley* objective standard does not apply to failure-to-protect claims for the following three reasons. Excessive force claims result from affirmative actions while failure-to-protect results from inaction, a state of mind inquiry is required for failure-to-protect claims, and s*tare decisis* weights against overruling precedent by extending one Supreme Court holding to a new category of claims.

The Respondent fails to present sufficient evidence that Officer Campbell had actual knowledge of the serious risk of harm present here. Furthermore, regardless of the standard, Officer Campbell's conduct was at most negligence.

Accordingly, this Court should reverse and remand the lower court's holding that the *Kingsley* decision eliminated the requirement for a pretrial detainee to prove a defendant's subjective intent in a failure-to-protect claim for a violation under the Fourteenth Amendment.

ARGUMENT AND AUTHORITIES

The Court reviews the lower court's decision on a motion to dismiss *de novo*. *Whitney v. City of St. Louis*, 887 F.3d 857, 859 (8th Cir. 2018). The district court granted Officer Campbell's Rule 12(b)(6) Motion to Dismiss for failure to state a claim. R. at 2. The appellate court reversed the district court's holding and ruled in favor of the Respondent. R. at 13.

A complaint must be dismissed if the plaintiff fails to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When deciding a motion to dismiss for failure to state a

claim under 12(b)(6), a court must accept all well-pleaded facts as true, viewing them in light most favorable to the plaintiff. To survive a 12(b)(6) motion, the plaintiff must plead enough facts to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (*quoting Bell Atlantic Corp v. Twombly,* 550 U.S. 544, 570 (2007).

I. THIS COURT MUST REVERSE THE CIRCUIT COURT BELOW BECAUSE DISMISSALS PURSUANT TO *HECK V. HUMPHREY* COUNT AS STRIKES FOR PURPOSES OF THE PRISON LITIGATION REFORM ACT'S THREE-STRIKES RULE, 28 U.S.C. §1915(g).

All federal courts are authorized by title 28 of the United States Code, section 1915 to allow commencement of any suit brought by a prisoner who, upon submission of an affidavit swearing to such fact, is unable to afford prepayment of the required fees. 28 U.S.C. § 1915(a). As a safeguard, courts are obliged to dismiss a suit if at any time it is determined that the "allegation of poverty is untrue", or the action or appeal "is frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(1)-(2). Finally, as another safeguard, the so-called "three-strikes" provision of the PLRA forbids an incarcerated individual from bringing another suit or appeal in forma pauperis if that person 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 was 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).

This three-strikes rule left open the question of whether dismissals pursuant to *Heck v. Humphrey* count as a strike for purposes of the law. For the following reasons, this Court should hold that they do.

A. Dismissals pursuant to *Heck v. Humphrey* should count as strikes under the Prison Litigation Reform Act for three reasons.

This Court should reverse the circuit court below because civil suits brought by prisoners that are dismissed pursuant to *Heck v. Humphrey* count as strikes under the PLRA. For one, *Heck* dismissals are for failure to state a claim, which is one of the causes for dismissal that counts as a strike under the three-strikes rule. Second, all dismissals for failure to state a claim count as strikes under this Court's precedent. Third, and finally, holding that *Heck* dismissals count as strikes is consistent with the purpose of the PLRA and will help curb meritless suits that waste the time of courts and taxpayer dollars.

1. Dismissals pursuant to *Heck v. Humphrey* are for failure to state a claim.

When Congress enacted the Prison Litigation Reform Act of 1995 (PLRA) in the year 1996, it did so with the goal of bringing what was a "sharp rise in prisoner litigation in the federal courts" to a manageable level. *Woodford v. Ngo*, 548 U.S. 81, 84 (2006). As mentioned, one of the provisions limited individuals who have had three previous appeals or suits dismissed from filing in forma pauperis.

With the advent of the three strikes rule came the question of how dismissals pursuant to *Heck v. Humphrey* should be treated. The language of that case, though, when considered alongside analysis from the various circuits, makes clear that *Heck* dismissals count as strikes under the PLRA.

In *Heck*, an inmate brought a 42 U.S.C. § 1983 claim against the prosecutors assigned to his criminal case as well as an investigator who was also working on that case. 512 U.S. at 478-79. The complaint alleged that the two prosecutors and investigator, acting under color of state

law, "engaged in an unlawful, unreasonable, and arbitrary investigation leading to petitioner's arrest", destroyed exculpatory evidence, and used improper identification procedures at the trial. *Id.* at 479. (internal citations omitted). When that § 1983 claim was brought, however, the petitioner was also appealing the conviction that earned him 15-years in prison. *Id.* at 478-79. As such, the district court dismissed the § 1983 action without prejudice because "the issues it raised directly implicate the legality of petitioner's confinement". *Id.* (internal punctuation omitted). While appealing that decision to the Seventh Circuit, the Indiana Supreme Court affirmed the original conviction and sentence. *Id.* at 479. The Seventh Circuit went on to affirm dismissal of the § 1983 suit. *Id.*

The Supreme Court granted certiorari and affirmed the Seventh Circuit, holding that to be successful on a § 1983 claim challenging an allegedly unconstitutional action that would render the conviction or sentence invalid, "a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order… or called into question by a federal court's issuance of a writ of habeas corpus". *Id*. at 486-87. "Thus, district courts must dismiss without prejudice § 1983 claims brought before a conviction or sentence has been invalidated." R. at 14.

To reach its ultimate conclusion, the Court analogized 42 U.S.C. § 1983 claims to the common-law cause of action for malicious prosecution. *Id.* at 484. That cause of action, the Court explained, is the best analogy to § 1983 claims because "it permits damages for confinement imposes pursuant to legal process." *Id.* Additionally, a necessary element of such a claim is proving that the criminal proceeding was terminated in favor of the accused because "it precludes the possibility… of succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation

of two conflicting resolutions arising out of the same or identical transaction." *Id.* (internal citations omitted). This is the first indication that dismissals under *Heck* count as strikes for purposes of the PLRA.

It has been asserted that Heck dismissal recognizes the prematurity of a suit rather than its invalidity. R. at 15; see also *Polzin v. Gage*, 636 F.3d 834, 837-38 (7th Cir. 2011). This assertion is wrong. For one, as mentioned, the Court in Heck treated favorable termination of an underlying criminal conviction as a necessary part of bringing a § 1983 claim: "Even a prisoner who has fully exhausted available state remedies has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Heck*, 512 U.S. at 489. The Court did not state that favorable termination is a necessary element of a § 1983 claim, but it did state that without such favorable termination, there is no cause of action at all. *Id.* "This is consistent with the Supreme Court's interpretation of *Heck*'*s* favorable-termination requirement as necessary to being 'a complete and present cause of action' under § 1983." *Garret v. Murphy*, 17 F.4th 419, 427, quoting *McDonough v. Smith*, 588 U.S. __, 139 S.Ct. 2149, 2158 (2019).

2. Dismissals for failure to state a claim count as a strike under the Prison Litigation Reform Act.

Given that dismissals under *Heck* are for failure to state a claim upon which relief may be granted, it is reasonable to question if a dismissal without prejudice for that reason counts as a strike. Various courts around the country held that such a dismissal did not count as a strike before the Supreme Court had the opportunity to take up that question. See e.g., *Millhouse v. Heath*, 866 F.3d 152, 162-63 (3d Cir. 2017); *McLean v. U.S.*, 566 F.3d 391, 396-97 (4th Cir. 2009). In fact, that very issue was taken up by this Court in the 2020 case of *Lomax v. Ortiz-Marquez*.

In that case, a prisoner brought a § 1983 claim alleging that he was wrongfully expelled from a sex-offender treatment program in the prison. *Lomax v. Ortiz-Marquez*, 590 U.S. __, 140 S.Ct. 1721, 1723 (2020). The petitioner in that case already had three previous suits dismissed for failure to state a claim so the district court denied his petition to proceed in forma pauperis, and the circuit court affirmed. *Id*. Over the prisoner's claim that dismissals for failure to state a claim without prejudice do not count as strikes, both courts reasoned that dismissal for failure to state a claim counts as a strike because it is one of the grounds specified in Section 1915(g). *Id.* When the case reached the Supreme Court, it unanimously affirmed the lower court's decision. *Id.* at 1727. The Court there reasoned that "[a] strike call under Section 1915(g) thus hinges exclusively on the basis for dismissal, regardless of the decision's prejudicial effect." *Id*. at 1724-25 (emphasis added). "To reach the opposite result… we would have to read the simple word 'dismissed' in Section 1915(g) as 'dismissed with prejudice'". *Id*. at 1725.

This Court was very clear in holding that any dismissal for failure to state a claim, even without prejudice, is a strike under the PLRA, and there is no reason to stray from that ruling here, and the purpose of the PLRA supports that notion.

3. Holding that *Heck* dismissals are strikes is consistent with the Act's purpose and will provide clarity for the circuits.

The issue before this Court is a complex one and one that has garnered obvious conflict from the various circuit courts. Holding that *Heck* dismissals are strikes for purposes of the PLRA would clear up a muddy situation especially for the federal courts around the country, but also may better prevent prisoners from bringing meritless suits – one of the key goals of the PLRA.

Across the circuits there have been varying interpretations of the *Heck* dismissal doctrine. To date, the Seventh and Ninth Circuits have held that dismissals under *Heck* generally do not count as strikes, likening the rule from *Heck* to an affirmative defense. See *Polzin*, 636 F.3d at 838; *Washington v. L.A. Cnty. Sheriff's Dep't.*, 833 F.3d 1048, 1056 (9th Cir. 2016). Similarly, the First and Eleventh Circuits have understood the *Heck* doctrine to be a jurisdictional element that can be raised at any point during the litigation. *O'Brien v. Town of Bellingham*, 943 F.3d 514, 529 (1st Cir. 2019). See also *Harrigan v. Metro Dade Police Dep't Station #4*, 977 F.3d 1185 (11th Cir. 2020). Finally, the Third, Fifth, Tenth, and D.C. Circuits have all held that dismissal of a claim pursuant to *Heck* counts as a strike for PLRA purposes because such a dismissal is for failure to state a claim. See *Garret v. Murphy*, 17 F.4th 419 (3d Cir. 2021); *Colvin v. LeBlanc*, 2 F.4thh 494 (5th Cir. 2021); *Smith v. Veterans Admin.*, 636 F.3d 1306 (10th Cir. 2011); *In re Jones*, 652 F.3d 36 (D.C. Cir. 2011).

Holding that dismissals pursuant to *Heck* are strikes under the PLRA would clarify the issue for the courts below that receive a shockingly high volume of claims brought by incarcerated individuals each year. In the 12-month period spanning from March 31, 2022, to March 31, 2023, there were 284,220 civil actions commenced in the district courts around the United States. *Federal Judicial Caseload Statistics*, Table C-2 "Civil Cases Filed, by Jurisdiction and Nature of Suit", https://www.uscourts.gov/statistics/table/c-2/federal-judicial-caseload-statistics/2023/03/31. Of that number, 48,790 were brought by incarcerated individuals. *Id*. Quick division reveals that in that period, 17.2% of all civil suits were brought by prisoners – clearly a large portion of the district courts' caseload.

While our legal system "remains committed to guaranteeing that prisoner claims… are fairly handled by law", it is important to recognize that "[t]he challenge lies in ensuring the flood

of nonmeritorious claims does not… effectively preclude consideration of the allegations with merit." *Jones v. Bock*, 549 U.S. 199, 203 (2007). Holding that *Heck* dismissals are strikes is consistent with the PLRA's goal to "reduce the quantity and improve the quality of prisoner suits." *Id*. at 203-04. For one, claimants may be less likely to bring a suit that could undercut the validity of their underlying criminal case before favorable termination if it were certain that doing so would result in a strike. Having less cases that will be immediately dismissed is surely one way to reduce the huge amount of prisoner cases. Such a rule would actually benefit incarcerated people as well: Well-pleaded claims are obviously far less likely to be dismissed for any reason.

It is for these reasons that this Court should hold that dismissals pursuant to *Heck v. Humphrey* are strikes for purposes of the PLRA.

B. Respondent has three strikes for PLRA purposes and is not entitled to file in forma pauperis.

When evaluating the facts surrounding this case, and more specifically the Petitioner's application to file his claim in forma pauperis, it is clear that he has accumulated three strikes for purposes of the PLRA. Consequently, as required by Section 1915(g), he is not entitled to file any more cases or appeals without paying the required fees.

Much like the prisoner in *Lomax* who brought three unsuccessful legal actions before attempting another, Respondent "is no rookie litigant". In this case, as explained, Respondent has brought three cases that were previously dismissed pursuant to *Heck*. R. at 7. It is unclear, though, if Respondent has brought other suits that were dismissed. In any event, however, this type of time and money wasting litigation is exactly what Congress was aiming to minimize. *See Jones*, 549 U.S. at 202.

To reiterate, Respondent's previous dismissals were pursuant to *Heck*. R. at 1. *Heck* dismissals are for failure to state a claim on which relief can be granted, not for jurisdictional or other reasons. *Heck,* 512 U.S. at 489. This Court has made clear that dismissals for failure to state a claim are strikes under the PLRA. *Lomax*, 140 S.Ct. at 1727. As such, Respondent is no longer entitled to bring this or any other action in forma pauperis. *See* 28 U.S.C. § 1915(g). This type of wasteful suit is exactly what the PLRA was aiming to reduce, and the result is consistent with the aforementioned purposes and goals of the same. Accordingly, this Court should find that Respondent has three strikes and is no longer entitled to file this suit or any other in forma pauperis.

II. *KINGSLEY* DOES NOT ELIMINATE THE REQUIREMENT TO PROVE A DEFENDANT'S SUBJECTIVE INTENT IN A DELIBERATE INDIFFERENCE FAILURE-TO-PROTECT CLAIM UNDER THE FOURTEENTH AMENDMENT.

Courts have historically used Eighth Amendment standards in evaluating conditions of confinement claims brought by pretrial detainees under the Fourteenth Amendment. *Bell v. Wolfish,* 441 U.S. 520, 535 (1979). Since pretrial detainees should at least get the same protections as convicted detainees, the Eighth Amendment guidelines should be applied. *Id.* Under the Eighth Amendment, conditions of confinement are unconstitutional if they amount to punishment. *Id.* A pretrial detainee may be subjected to the restrictions and conditions of confinement just as a convicted detainee as long as the conditions and restrictions do not amount to punishment. *Id.* at 537. A detained individual also has the right to reasonable safety and medical care. *Estelle v. Gamble,* 429 U.S. 97, 103 (1976).

Traditionally, to prove a claim of deliberate indifference such as failure-to-protect claims, the plaintiff must first show they were exposed to an objectively serious risk of harm, and

second, the corrections officer has a "sufficiently culpable state of mind" that showed a "deliberate indifference to inmate health or safety." *Farmer v. Brennan,* 511 U.S. 825, 834 (1994). The court in *Kingsley v. Hendrickson* held for excessive force claims, the inquiry was a purely objective one. 576 U.S. 389, 398 (2015). After *Kingsley*, courts have questioned the appropriate standard to use to determine a constitutional violation. The question presented before this Court is whether *Kingsley* eliminated the subjective intent requirement in a deliberate indifference failure-to-protect claim when determining if there is a constitutional violation under the Fourteenth Amendment.

The Court should grant the Rule 12(b)(6) Motion to Dismiss of the Petitioner, Chester Campbell, as an entry-level guard at the Marshall jail, for the following reasons. First, the *Kingsley* standard does not eliminate the requirement to prove subjective intent for failure-to-protect claims because it did not extend its holding beyond excessive force claims. Second, a deliberate indifference standard applies to failure-to-protect claims. Third, Officer Campbell's conduct was at most negligent. While Officer Campbell had access to the information, his failure to refer to the database does not rise to the level of a constitutional violation. Therefore, this Court should reverse the lower court's holding and grant Officer Campbell's Motion to Dismiss for failure to state a claim.

A. ***Kingsley* does not eliminate the requirement to prove subjective intent in a deliberate indifference failure-to-protect claims because it did not by its own language extend its holding beyond excessive force claims and therefore must be applied narrowly.**

A prison official cannot be found liable for failing to protect an inmate unless that official knows of and disregards an excessive risk to inmate health or safety. *Farmer,* 511 U.S. at 837. Courts are split on which standard is appropriately applied for failure-to-protect claims brought by pretrial detainees.

Kingsley did not eliminate the subjective intent requirement for failure-to-protect claims. First, the *Kingsley* standard does not apply to failure-to-protect claims because the objective standard does not extend beyond excessive force claims. Extending *Kingsley* and eliminating the subjective component to the standard for failure-to-protect claims would overrule the longstanding precedent established in *Farmer.* Second, a deliberate indifference standard applies to failure-to-protect claims. A higher standard is appropriate because deference must be given to the officers who are faced with a difficult job within the jail. Lastly, regardless of the standard applied, Officer Campbell's conduct was at most negligence and the Motion to Dismiss must be granted.

The Supreme Court held in *Kingsley* that the standard applicable for excessive force claims brought by a pretrial detainee was an objective one. 576 U.S. at 398. A pretrial detainee claiming excessive force against an officer must show that the force purposefully or knowingly used against him was objectively unreasonable. *Id.* at 389. The Court reasoned that an objective standard was appropriate since the court in *Bell* used objective evidence to evaluate whether conditions were not excessive in relation to the legitimate purpose of holding a detainee. *Id. (citing Bell* 441 U.S. at 541-543). The Court also suggests that the objective standard is workable, and it adequately protects an officer who acts in good faith. *Id.* at 399.

The *Kingsley* Court did not address whether an objective standard extends to other claims brought by pretrial detainees under the Fourteenth Amendment. *Brawner v. Scott County, Tennessee,* 14 F.4th 585, 592 (6th Cir. 2021). In *Whitney,* the court did not extend the *Kingsley* standard to a failure-to-protect against suicide claim brought by a pretrial detainee. 887 F.3d at 860. The court in *Strain v. Regalado,* also declined to extend the solely objective standard established in *Kingsley*. 977 F.3d 984, 991 (10th Cir. 2020).

The objective standard was not extended by the court in *Strain* for the following reasons. First, the objectively reasonable standard applied uniquely to excessive force claims, not to all claims brought by pretrial detainees. The differing causes of action serve different purposes and therefore require different standards. Excessive force protects a pretrial detainee from punishment while deliberate indifference does not relate to punishment and rather safeguards against unsafe conditions. *Id.* Additionally, excessive force results from affirmative actions while failure-to-protect results from inaction. *Strain,* 977 F.3d at 991 *(citing Castro v. City of Los Angeles (*833 F.3d 1060, 1069(9th Cir. 2016)(en banc)). The *Kingsley* court focused on punishment and never suggested removing the subjective component for cases of inaction. The mere failure to act does not rise to the same inference of punitive intent. *Id.*

Furthermore, a state of mind inquiry is required for failure-to-protect claims. The *Kingsley* standard eliminates this state of mind requirement. The court in *Kingsley* held that an inquiry into the defendant's state of mind was not a requirement to be proved for excessive force claims. *Kingsley,* 576 U.S. at 395. The difference in the category of claims brought in *Kingsley* and by the Respondent here protects different rights and therefore requires different state of mind inquiries. Therefore, failure-to-protect claims require a subjective component.

Lastly, s*tare decisis* weights against overruling precedent by extending one Supreme Court holding to a new category of claims. *Kingsley* did not suggest that it intended to extend the objectively reasonableness standard generally or specifically to deliberate indifference failure-to-protect cases. Furthermore, the Supreme Court has previously rejected a purely objective test for deliberate indifference. *Farmer,* 511 U.S. at 839. Extending *Kingsley* to eliminate the subjective component of the deliberate indifference standard would contradict the longstanding precedent in *Farmer. Strain,* 977 F.3d at 993.

Looking to other circuits since the Court's ruling in *Kingsley*, the Second, Sixth, Seventh, and Ninth Circuits have extended the holding to other claims brought by pretrial detainees under the Fourteenth Amendment. *See Darnell v. Pineiro*, 849 F.3d 17 (2d Cir. 2017); *Brawner*, 14 F.4th at 585; *Kemp v. Fulton Cnty.*, 27 F.4th 491 (7th Cir. 2022); *Gordon v. Cnty. of Orange*, 888 F.3d 1118 (9th Cir. 2018). The First, Fifth, Eighth, Tenth, and Eleventh circuits have declined to extend the holding. See *Miranda-Rivera v. Toledo-Davila*, 813 F.3d 857 (1st Cir. 2016); *Cope v. Cogdill*, 3 F.4th 198 (5th Cir. 2021); *Whitney v. City of St. Louis*, 887 F.3d 857 (8th Cir. 2018); *Strain v. Regalado*, 977 F.3d 984 (10th Cir. 2020); *Dang v. Sheriff, Seminole Cnty.* 871 F.3d 1272 (11th Cir. 2017)

Extends *Kingsley*	**Declines to extend *Kingsley***
Second	First
Sixth	Fifth
Seventh	Eighth
Ninth	Tenth
	Eleventh

The circuits that have extended the *Kingsley* standard have held that the standard requires modification of the subjective component suggested for pretrial detainees bringing deliberate indifference claims under the Fourteenth Amendment. *Brawner*, 14 F.4th at 593.The circuits that have declined to extend the *Kingsley* standard have maintained a subjective component for deliberate indifference claims. *Id*. The circuit split gives this Court the discretion to decide whether *Kingsley* eliminates the subjective intent requirement but weighs in favor of declining to extend the *Kingsley* standard for deliberate indifference claims as seen in the split.

The court in *Darnell* incorrectly extended *Kingsley* by applying an objective standard to a conditions of confinement claim. 849 F.3d at 30. The court in *Darnell* ignores the long-standing precedent in *Farmer* that ruled against a purely objective component for conditions of

confinement claims. *Id.* at 35. The court incorrectly interpreted *Farmer* to hold that deliberate indifference can be viewed either objectively or subjectively for conditions of confinement claims. *Id.* Conditions of confinement claims, just as failure-to-protect claims are unconstitutional if they amount to punishment, and to evaluate if there is punishment, then there must be subjective awareness of the harm or risk resulting from the conditions. Therefore, a subjective component is required.

B. A deliberate indifference standard applies to failure-to-protect claims within the detention facility because it allows deference to the jail officers.

While a § 1983 claim may arise under different constitutional protections between pretrial detainees and convicted prisoners, the subjective inquiry into an officer's conduct serves the same purpose. To find that Officer Campbell acted with deliberate indifference, the Respondent must show:

1. They were exposed to an objectively serious risk of harm, and
2. The corrections officer had a "sufficiently culpable state of mind" that showed a deliberate indifference to inmate health or safety. *Farmer,* 511 U.S. at 834.

The conduct to be evaluated in this case is Officer Campbell placing several detainees from different pods in the same waiting area during transport to recreation. (R. 17) While Officer Campbell's actions created an objectively serious risk of harm due to the gang rivalry, the Respondent must show that Officer Campbell had actual knowledge of his at-risk status and failed to take proper precautions.

The standard of deliberate indifference requires something more than mere negligence and less than purposeful or knowing conduct. *Farmer,* 511 U.S. at 836. Therefore, the Court of Appeals has traditionally equated deliberate indifference with recklessness. *Id.* The standard

roughly means recklessness which requires a subjective state of mind. *Id. Farmer* held that deliberate indifference is the required state of mind in conditions of confinement claims under the Eighth Amendment. *Id.* at 834. *Wilson v. Seiter* held that there must be an actual intent to violate the appellants' rights or reckless disregard for his rights. 501 U.S. 294, 300 (1991). A subjective standard should also be required because an objective standard would create uncertainty for jail officials, who are often required to make quick decisions based on inefficient information. Additionally, a higher standard would protect against a flood of frivolous claims that would be brought if the lower standard was followed. The standard for deliberate indifference has both an objective and a subjective component and *Kingsley* did not eliminate this subjective component for Failure-to-Protect claims brought under the Fourteenth Amendment.

Another reason the deliberate indifference standard applies for failure-to-protect cases is that the claims are more closely related to conditions of confinement claims and inadequate medical care than excessive force claims. The court in *Castro* acknowledges the differences between excessive force claims and failure-to-protect claims. 833 F.3d at 1070. An excessive force claim requires an affirmative act, while a failure-to-protect claim results from the inaction of following precautions or procedures by officials. *Id.* at 1069. Excessive force is punishment and evaluates the actions taken by officials in how they respond to a situation. Failure-to-protect is not a prospective application. The court held that *Kingsley* is not applicable in cases where there is inaction because even if an officer unknowingly fails to act and that failure to act is objectively unreasonable, it is still at most negligent. *Id.* at 1086.

We have a case of inaction here and therefore the *Kingsley* objective standard does not apply, and a subjective inquiry of Officer Campbell's conduct is required. Even if Officer

Campbell failure to take proper precautions was unreasonable, it is at most negligent. While jail officials have a duty to protect inmates from violence, not every injury suffered by an inmate is to the blame of the jail officials. *Farmer,* 511 U.S. at 833-834. An official's failure to alleviate a significant risk that he should have perceived but did not, cannot be condemned as infliction of punishment to an inmate. *Id.* at 838.

Deference must be given to Officer Campbell in this case and find a deliberate indifference standard applies for failure-to-protect claims brought by pretrial detainees under the Fourteenth Amendment. While other circuits have interpreted *Kingsley's* broad language to apply a purely objective standard, this court should narrowly interpret the language and follow the traditional deliberate indifference standard for failure-to-protect claims brought under the Fourteenth Amendment.

C. Regardless of the standard applied to failure-to-protect claims, Officer Campbell's conduct was at most negligence.

A jail official cannot be found to be liable unless that official knows of and disregards an excessive risk to inmate health or safety. *Farmer,* 511 U.S. at 837. Under deliberate indifference standard, the Respondent must prove that Officer Campbell knew of and disregarded a substantial risk of serious harm. *Id.*

The Respondent introduces evidence to support their claim, that Officer Campbell had acted with reckless disregard and did not take reasonable steps to abate the risk of the inmate attack because of gang rivalry. The Respondent that Officer Campbell should have had the knowledge of his at-risk status because he had access to all the notices regardless of if he attended the meeting or not. R. at 10 Due to having this knowledge, Officer Campbell therefore failed to take proper precautions to protect the Respondent from the attack. R. at 10

The evidence presented by the Respondent here is insufficient to show that Officer Campbell acted with reckless disregard to the safety of Respondent. Deliberate indifference is an extremely high standard to meet, and the Respondent has failed to do so. The Respondent fails to provide evidence to prove that Officer Campbell had actual knowledge of his special status. Without actual knowledge, Officer Campbell would not have had the "sufficiently culpable state of mind" that shows a deliberate indifference to inmate health or safety.

The court in *Holden v. Hirner,* found that the inmate failed to present sufficient evidence to prove that the officials had any knowledge of the risk of danger presented by other inmates. 663 F.3d 336, 342. (8th Cir., 2011). The inmate in that case, had not told the officials that he felt threatened by the other inmates before the attack occurred. *Id.* at 341. A history of violence alone is insufficient to confer that that officials would know the inmate was in danger. *Id.*

While Officer Campbell could have referred to the information about the special status of Respondent, Respondent also did not alert Officer Campbell to the risk of the other gang or express any concerns that he felt threatened while being transported. Furthermore, even if Officer Campbell knew of the gang rivalry, he may not have had any knowledge as to the reason behind the attack. Just as the court held in *Holden,* the Court here should find that the evidence presented is insufficient to show that Officer Campbell knew of and disregarded a known risk.

If this Court were to decide that *Kingsley* eliminated the subject intent requirement for failure-to-protect claims brought by pretrial detainees and therefore adopt an objective standard to decide Officer Campbell's state of mind, the question would transform into an inquiry of negligence. Whether Officer Campbell failed to act as a reasonable person under the same circumstances in failing to recognize the risk to Shelby. A court must consider the legitimate interests stemming from the need to manage the facility. *Bell,* 441 U.S. at 540. Furthermore, the

objective standard is workable, and it adequately protects an officer who acts in good faith. *Kingsley* at 399. In the present case, Officer Campbell acted in good faith when he was doing his job of transporting inmates to recreation. He is an entry-level guard, with no knowledge of the gang rivalry as he is not a gang intelligence officer. An officer in the same position with the same lack of knowledge would have also failed to recognize the risk. As a result, the Motion to Dismiss should be granted because Respondent's failure to state a claim.

As a matter of public policy, the legitimate interests of managing a jail must be considered. In addition to a jail officer being a difficult job, to manage and keep track of a high number of inmates, jail officials are often overworked and tasked with multiple duties. Officer Campbell is just an entry-level guard who was doing his job and in a matter of seconds was faced with dealing with an inmate attack. He had no warning that the inmates would begin fighting and was on his own for several minutes to attempt to stop the attack until other officers showed up to help. R. at 7 Even though the attack resulted in injuries to the Respondent, Officer Campbell was at most negligent in his conduct prior to the attack.

D. The Court should reverse the lower court's holding on the *Kingsley* issue and find that there is a subjective intent requirement for deliberate indifference failure-to-protect claims and Officer Campbell is not liable.

Precedent does not require prison officials to take every step possible to address the serious risks of harm. *Wilson v. Williams,* 961 F.3d 829, 844 (6th Cir. 2020). The constraints of working as a jail official must also be acknowledged. *Wilson,* 501 U.S. at 301. Officer Campbell must be awarded discretion as an entry level guard jail official with no gang intelligence training. The court in *Kingsley* did not eliminate the subjective intent requirement for a pretrial detainee bringing a deliberate indifference failure-to-protect claim and therefore the Respondent must

prove that Officer Campbell had the actual knowledge of the risk of harm and failed to take the proper precaution. The Respondent failed to do that.

If the Court finds that *Kingsley* did eliminate the subjective intent requirement, Officer Campbell is still at most negligent. A constitutional violation requires proof of mens rea greater than mere negligence. *Darnell,* 849 F.3d at 36. If the court should find that Officer Campbell deviated from the protocols in place, any finding would be mere negligence, and the mere lack of due care by a state official does not deprive an individual of life, liberty, or property under the 14th Amendment. In sum, the court should reverse the lower court's holding and find that Officer Campbell Lew's conduct did not rise to the level of a constitutional violation and therefore the Motion to Dismiss must be granted.

CONCLUSION

Respondent has three prior dismissals pursuant to *Heck*. Dismissals pursuant to *Heck* constitute a "strike" under the Prison Litigation Reform Act. Furthermore, this Court's decision in *Kingsley* does not eliminate the requirement to prove subjective intent in a deliberate indifference failure-to-protect claim for a violation under the Fourteenth Amendment.

Accordingly, this Court should reverse the lower court's holding and grant Officer Campbell's Motion to Dismiss.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER