No. 23-05

In the Supreme Court of the United States

CHESTER CAMPBELL, *PETITIONER*

V.

ARTHUR SHELBY, *RESPONDENT*

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

BRIEF FOR RESPONDENT

Team 24
February 2, 2024

QUESTIONS PRESENTED

1. Whether a "strike" within the meaning of the Prison Litigation Reform Act occurs when a prisoner's action under 42 U.S.C. § 1983 is dismissed pursuant to *Heck v. Humphrey* because the suit called into question their conviction or sentence.
2. Whether this Court's decision in *Kingsley v. Hendrickson* removes the subjective component of a deliberate indifference claim when the plaintiff is a pretrial detainee bringing an action for failure to protect under the Due Process Clause of the Fourteenth Amendment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES *Page(s)*

STATUTORY PROVISIONS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit can be located at *Shelby v. Campbell*, Case No. 2023-5255 (14th Cir. 2022), and is reprinted in full on pages 12-20 of the Record. The opinion of the United States District Court for the Western District of Wythe can be located at *Shelby v. Campbell*, Case No. 23:14-cr-2324, and is reprinted in full on pages 2-11 of the Record.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions at issue are the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Cruel and Unusual Punishments Clause of the Eighth Amendment. U.S. Const. amend. XIV; U.S. Const. amend. VIII. Additionally, this case involves the Prison Litigation and Reform Act, specifically its "three strikes" provision, codified under 28 U.S.C. § 1915(g). Finally, this case concerns 42 U.S.C. § 1983, and its provisions for civil actions alleging deprivations of rights secured by the United States Constitution.

STATEMENT OF THE CASE

On February 24, 2022, Respondent-Plaintiff Arthur Shelby ("Plaintiff" or "Shelby") filed his Complaint in the United States District Court for the Western District of Wythe against Petitioner-Defendant Chester Campbell ("Officer Campbell" or "Petitioner"). Plaintiff filed his Complaint *pro se,* in addition to a motion to proceed *in forma pauperis*. Contained within the Complaint were detailed descriptions of Officer Campbell's condemnable failures to perform his duties as a detention officer at the Marshall Jail. Specifically, Mr. Shelby alleged Officer Campbell violated his Due Process rights by failing to protect him from a brutal prison gang-related assault. As a result, Mr. Shelby suffered near-fatal injuries. This violence was completely avoidable.

As the District Court's Order Granting Defendant's Motion to Dismiss explained in its factual synopsis, Officer Campbell failed to protect Mr. Shelby from the assault by other prisoners at the Marshall Jail. (R. at 2-7.) Mr. Shelby's allegations evince a complete lack of responsibility on the part of Officer Campbell. That is, he was reckless in failing to prevent the substantial harm Mr. Shelby faced on January 8, 2021 by members of the Bonucci clan.

Mr. Shelby was a well-known and prominent member of the Geeky Binders, an "infamous street gang" in the town of Marshall. (R. at 2.) In fact, he was their "second in command." *Id.* The Geeky Binders were not a new phenomenon to Marshall and its citizens—they had "historically owned" it, "with members of the crime syndicate running various businesses, owning much of the real estate, and even holding public office." (R. at 3.) Nor was Mr. Shelby new to the Marshall Jail prior to January 2021. He had "several run-ins with the law" that included arrests and convictions for different crimes, and he was a frequent detainee/inmate at the Marshall Jail and elsewhere. *Id.* Thus, when Marshall police arrested him on charges of battery, assault, and possession of a firearm by a convicted felon on New Year's Eve 2020, his identity was readily apparent. *Id.* And, after jail officers booked him into the Marshall Jail that night, his presence was immediately noted. *Id.* at 3-4.

The officer who completed Mr. Shelby's preliminary paperwork, Dan Mann, "immediately" recognized him as a member of the Geeky Binders. (R. at 4.) As the District Court noted, "[f]irst, Shelby entered the jail in a distinct outfit: a tweed three-piece suit, a long overcoat, and most significantly, he possessed a custom-made ballpoint pen with an awl concealed inside and with 'Geeky Binders' engraved on the outside." *Id.* The awl was most significant to Mann because it is the Geeky Binders' trademark method of violence against their enemies. (R. at 2.) These items were all "inventoried . . . using the Marshall jail's online database," with Officer Mann

"making a special note to indicate that Shelby arrived at the jail with a weapon, the awl in the pen." (R. at 4.) And as if the physical signifiers of Shelby's gang-status were not enough, he also "made several comments to the booking officer, including: 'The cops can't arrest a Geeky Binder!' and 'My brother Tom will get me out of here, just you wait.'" *Id.* Tom Shelby, at the time, was the leader of the Geeky Binders. (R. at 3.) In short, Arthur Shelby made his gang-affiliation, and high-ranking status, clearly obvious from the moment he set foot in the Marshall Jail.

Jail officials were not aloof to the presence of their prominent inmate and "followed protocol" to ensure that Mr. Shelby's status was well-known amongst the staff. (R. at 4.) Officer Mann did this when Mr. Shelby was booked in. *Id.* Because "[a]ll officers at the Marshall jail are required to make both paper and digital copies of the forms to file and upload in the jail's online database," Mann entered this information on the night Mr. Shelby was arrested and booked in. (R. at 4-5.) This directive did not exist in a vacuum, either. The database Mann was working in contained a plethora of information on each inmate, including any gang affiliations. (R. at 4.) "***The gang affiliation subset of the page proves particularly important in the Marshall jail because of the town's high gang activity; the database allows officers to indicate not only an inmate's gang affiliation, but also list any known hits placed on the inmate and any gang rivalries***." *Id.* (emphasis added). So, when Mann inputted Shelby's information on December 31, he paid special care to note Shelby's statements under the gang affiliation tab. (R. at 5.) What's more, Mann could already see Shelby's gang affiliation from his prior arrest records contained within the database. *Id.* Having completed the booking procedures, Mann turned Shelby over to other detention officers late in the evening of the December 31st, and they subsequently placed Shelby in a holding cell *apart from the main area of the Jail*.

"Because of the town's substantial gang activity, the Marshall jail had several gang intelligence officers who reviewed each incoming inmate's entry in the online database." (R. at 4.) These officers "reviewed and edited Shelby's file on the online database, paying special attention because of Shelby's high-ranking status." (R. at 5.) Crucially, they knew of a plot to kill Arthur by a rival gang known as the Bonucci clan. *Id.*; (R. at 3.) This threat caused the gang intelligence officers to take conspicuous and drastic measures to ensure the safety of Mr. Shelby. For instance, they "made a special note in Shelby's file and printed out paper notices to be left at every administrative area in the jail" that he was a prime target for gang violence. (R. at 5.) They ensured "Shelby's status was also indicated on all rosters and floor cards at the jail." *Id.* And, "[m]ost significantly, the intelligence officers held a meeting with all jail officials the morning after Shelby had been booked, notifying each officer of Shelby's presence in the jail." *Id.* They told the other officers that Shelby was housed in Cell Block A, away from the Bonuccis, who were dispersed between blocks B and C. *Id.* Additionally, the gang intelligence officers "***reminded everyone to check the rosters and floor cards regularly to ensure that the rival gangs were not coming in contact in common spaces in the jail***." *Id.*

It is not clear from the record whether Defendant Campbell attended this meeting, and the noted allegations are conflicting. For instance, roll call records indicated he *was in attendance*. *Id.* However, timesheet records indicated that he was not present because he had called in sick the morning of the meeting. (R. at 5-6.) Either way, "the gang intelligence officers required anyone absent from the meeting to review the meeting minutes on the jail's online database." (R. at 6.) But, again, it is not clear whether Campbell did this. Ordinarily, the database would show whether an officer reviewed the meeting minutes, but, coincidentally, "a glitch in the system wiped any record of any person who viewed the meeting minutes for the January 1 meeting." *Id.*

Despite all these warnings, and every other effort made by jail officials to ensure detention officers knew the substantial risk of serious harm befalling Arthur Shelby, Officer Campbell walked into Cell Block A on January 8, 2021 to retrieve him for recreation time with other inmates. There had been a full week for Officer Campbell to gain some notice—some iota of indication—from all the sources utilized by the Jail officials, that Shelby occupied a special holding cell and was the subject to a credible threat of death. As noted, *infra*, though the District Court stated that "Officer Campbell did not know or recognize Shelby at the time of their meeting," it is unclear where this apparent statement of fact arises from.[1] Nonetheless, immediately prior to this encounter, Campbell "did not reference the hard copy list of inmates with special statuses that he was carrying, nor did he reference the jail's database before taking Shelby from his cell." (R. at 6.) Had he done so, he would have known that Shelby was a high-ranking member of the Geeky Binders, that the Bonucci clan had ordered a "hit" on him from within the Jail, and that Arthur was at a substantial risk of harm. *Id.*

Campbell forged ahead anyway without any regard for Shelby's safety. After retrieving him from his cell in Block A, he led him to the guard stand to wait for other inmates to join the walkabout. *Id. "*On their walk to the guard stand, another inmate in cell block A yelled out to

[1] For one matter, Plaintiff would posit that Campbell *did* have actual knowledge of Shelby's identity and status on January 8, 2021 because of the measures taken by gang intelligence officers to ensure such knowledge prior to that day and the disputed facts regarding Campbell's attendance at the intelligence meeting and access of the database afterwards. Further, Plaintiff would doubtfully allege a fact in his Complaint portending to know Campbell's actual state of mind prior to the assault. If the District Court somehow gleaned this fact from Defendant's Motion to Dismiss, then it ran afoul of the rule to take as true all allegations made *in the Complaint*. *See, e.g., Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint."). And to the extent there was a question of fact as to whether Shelby properly alleged Campbell had actual knowledge of his identity prior to January 8 (even though the District Court ruled otherwise), taking this fact as true would be a further error of the District Court.

Shelby: 'I'm glad your brother Tom finally took care of that horrible woman.' Shelby responded, 'yeah, it's what that scum deserved.'" *Id.* ***Campbell was in full ear shot of this conversation***. *Id.* But still, Campbell retrieved two more inmates from Cell Block B and another from Block C. (R. at 7.) Unfortunately for Mr. Shelby, all three of these inmates were Bonucci gang members. *Id.* At the first instance of opportunity, the Bonucci members viciously attacked Mr. Shelby with their fists and a makeshift club. *Id. "*Officer Campbell attempted to break up the attack but could not hold the three men back. The attack lasted for several minutes until other officers arrived to assist Officer Campbell." *Id.*

The assault was devastating. Mr. Shelby had an extended stay in the hospital for several weeks. *Id.* Doctors noted that he nearly died from his injuries. *Id.* Specifically, he had "penetrative head wounds from external blunt force trauma resulting in traumatic brain injury. He also suffered fractures of three different ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding." *Id.* While it is not clear what happened to Officer Campbell, regarding his employment at the jail or otherwise, Mr. Shelby was subsequently convicted "of battery and possession of a firearm by a convicted felon. He is currently imprisoned at Wythe Prison." *Id.*

a. Procedural History

On February 24, 2022, Mr. Shelby filed a complaint pursuant to 42.U.S.C. § 1983 against Officer Campbell. (R. at 7.) He did this within the statute of limitations. *Id.* Along with his Complaint, "Shelby filed a motion to proceed *in forma pauperis*, which [the District Court] denied according to 28 U.S.C. § 1915(g) on April 20, 2022[.]" *Id.* The District Court did so on the presumption that "Shelby had accrued three 'strikes' under the" Prison Litigation Reform Act. *Id.*

This presumption was made from complaints Shelby filed before his current period of incarceration. Sometime during this previous detention, Mr. Shelby filed three separate lawsuits

under 42 U.S.C. § 1983, alleging various constitutional claims against state and federal actors. *Id.* All three were subsequently dismissed *solely* on the grounds of *Heck v. Humphrey* because the allegations called into question Shelby's conviction or sentence. *Id.* The District Court, when analyzing Mr. Shelby's instant motion to proceed *in forma pauperis*, construed these dismissals as equivalent to failing to state a claim, which would implicate the PLRA's three strikes provision. (R. at 1, 14.) And aside from denying his motion for *in forma pauperis* status, the District Court also granted Campbell's Motion to Dismiss Mr. Shelby's constitutional claims because "Shelby must [have] allege[d] that Officer Campbell knew of and disregarded a substantial risk of serious harm, and "[n]othing in the record suggests Officer Campbell had actual knowledge of Shelby's gang affiliation." (R. at 11.) The District Court used subjective and objective components to analyze Shelby's Fourteenth Amendment claim, foregoing the proffered reach of *Kingsley v. Hendrickson* and analogizing the Due Process action as akin to an Eighth Amendment action. Mr. Shelby subsequently appealed to the United States Court of Appeals for the Fourteenth Circuit.

The Fourteenth Circuit reversed the District Court on both claims in a 2-1 panel decision. First, it found that *Heck* dismissals are akin to affirmative defenses subject to waiver rather than a jurisdictional bar. (R. at 15.) Therefore, when a prisoner's suit is dismissed because of *Heck*, "prematurity" is the primary concern as opposed to the claims being invalid. *Id.* Second, it held that *Kingsley v. Hendrickson* altered the framework for civil actions brought by pretrial detainees claiming Due Process violations. (R. at 16.) According to the Fourteenth Circuit, citing with approval decisions of the Ninth, Seventh, and Second Circuits, *Kingsley* applies to claims of deliberate indifference in addition to claims of excessive force. (R. at 16-18.) Therefore, the test for Mr. Shelby's allegations should have only been an objective one, which he satisfied. (R. at 18-19.) After the circuit decision, this Court granted Defendant Campbell's petition for writ of

certiorari on the two questions of whether *Heck* dismissals count for the PLRA's three-strike provision, and whether *Kingsley*'s holding extends beyond excessive force claims. (R. at 21.)

SUMMARY OF THE ARGUMENT

This Court should affirm the Fourteenth Circuit's ruling for Mr. Shelby on both issues. First, prior *Heck* dismissals do not count as "strikes" within the language of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(g). As such, Shelby is still entitled to file *in forma pauperis.* Second, the District Court erroneously applied a subjective deliberate indifference standard when it granted Defendant Campbell's Motion to Dismiss; instead, the court should have applied an objective test when analyzing whether Campbell's actions.

The PLRA restricts incarcerated individuals from filing *in forma pauperis* once they have accrued three 'strikes,' which refer to dismissals of complaints "on the grounds that [they are] frivolous, malicious, or fail[] to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). *Heck* dismissals do not automatically fall within any of the three categories listed in the PLRA. This is because section 1983 cases dismissed under *Heck* are not done so in response to their underlying claims, but rather because their claims question the validity of the plaintiff's conviction or sentence. *Heck* dismissals merely prevent those issues from being heard "unless and until" the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489 (1994).

There is no evidence to suggest that Shelby's prior claims were dismissed as a result of being frivolous or malicious, or for an obvious failure to state a claim upon which relief can be granted. To the contrary, all three of his claims were dismissed under *Heck* without prejudice. They should not constitute strikes under the PLRA, and Shelby should be permitted to file *in forma pauperis*.

Additionally, *Kingsley* should be extended to cover claims of deliberate indifference by pretrial detainees like Shelby. In other words, the reasonableness of Campbell's behavior should be evaluated according to an *objective* standard, rather than the *subjective* standard advocated by the District Court. Under the Eighth Amendment, convicted individuals who are incarcerated in prisons have a right to be protected "from violence at the hands of other prisoners," and a failure to carry out this duty constitutes deliberate indifference. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). But *Farmer* stipulated that for a plaintiff to succeed on such a claim, they must prove that the accused be of a "sufficiently culpable state of mind." *Id*. at 834.

Kingsley, however, applied an objective standard in a case alleging excessive force against a pretrial detainee by detention officers. *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). Although excessive force involves an act and deliberate indifference typically involves an omission, the real factor distinguishing *Kingsley* from *Farmer* is the fact that the plaintiff was a pretrial detainee, as opposed to a convicted prison inmate. And pretrial detainees "cannot be punished at all." *Id*. at 400. There is thus a higher standard of care governing the treatment of pretrial detainees under the Fourteenth Amendment, as any amount of maltreatment that may constitute punishment is prohibited. As such, a detention officer's liability for failure to prevent violence against a detainee should be evaluated according to an objective standard of reasonableness given the context.

Campbell's behavior before the incident that caused Shelby's injuries was unreasonable under the circumstances. Even if he did not have actual knowledge of Shelby's gang affiliation or the risks of placing him in an area with rival gang members, he *should have* known. All the relevant information was available to him—in the jail's computer databases, posted in administrative areas, and in the list of at-risk inmates he kept with him. At best, he failed to do the necessary due

diligence for someone in his position. As a result, he recklessly exposed Shelby to members of a rival gang, and he should be held accordingly liable.

ARGUMENT

I. HECK DISMISSALS DO NOT CONSTITUTE STRIKES UNDER THE PLRA UNLESS PLAINTIFFS BLATANTLY FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

The Prison Litigation Reform Act (hereinafter "the PLRA") limits the ability of incarcerated persons to file appeals or bring civil actions in a number of ways. Relevant here, the PLRA prohibits an incarcerated individual from filing *in forma pauperis* if that individual has incurred 'three strikes'—that is, if he has thrice "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." 28 U.S.C. § 1915(g). The relevant question in this case, however, relates to what constitutes a 'strike.' Specifically, the issue at bar is whether all dismissals under *Heck v. Humphrey* are considered strikes within the language of the PLRA. The Court should hold that, because Heck dismissals do not fall into any of the three categories stipulated in 28 U.S.C. § 1915(g), they do not count as strikes within the PLRA.

In *Heck*, the Supreme Court held that an incarcerated person's section 1983 claim challenging the constitutionality of their conviction or sentence is not actionable "unless and until" the claimant can demonstrate that it has already been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489 (1994). In essence, this holding states that a plaintiff with such a claim entirely lacks a cause of action "until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Id.* But a *Heck* dismissal is not necessarily final or permanent; rather, it sends the plaintiff's civil claim into a state of limbo, available to be revived if and when their conviction or sentence is properly invalidated.

The provisional nature of *Heck* dismissals is further illustrated by *Polzin v. Gage*, in which the Seventh Circuit held that a district court may address a case's underlying merits, regardless of whether a plaintiff's conviction or sentence has been invalidated. This is because "*Heck* is not a jurisdictional bar." *Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011). *Heck* dismissals are thus a sort of tabling, as opposed to an all-out, total denial of the underlying claims.

In *Washington v. Los Angeles County Sheriff's Department*, the Ninth Circuit explicitly grappled with the issue of whether *Heck* dismissals are considered strikes under the PLRA. There, the court found that a *Heck* dismissal may qualify as a strike, but only "when *Heck*'s bar to relief is obvious from the face of the complaint, and the entirety of the complaint is dismissed for a qualifying reason under the PLRA." *Washington v. Los Angeles Cnty. Sheriff's Dep't.*, 833 F.3d 1048, 1055 (9th Cir. 2016). Though the court found that *Heck* dismissals have the potential to count as a strike, they are by no means automatically considered "frivolous or malicious." *Id.* (internal quotation marks omitted). The reason for this is the inherently provisional status of *Heck* dismissals, as "plaintiffs may have meritorious claims that do not accrue until the underlying criminal proceedings have been successfully challenged." *Id.*

Excepting complaints dismissed for a blatant lack of a claim upon which relief can be granted, *Heck* dismissals are largely without prejudice and do not count as strikes under the PLRA. Indeed, the purpose of such dismissals is to increase efficiency as a form of "judicial traffic control," not to bar incarcerated people from seeking compensation or some form of redress for constitutional injustices they have suffered. *Id.* at 1056.

Mr. Shelby has now thrice filed section 1983 claims, and all three have been dismissed. But these claims were not dismissed with prejudice due to being frivolous or malicious, or for their failure to state a claim. They were instead merely put on hold because they questioned the validity

of either his conviction or his sentence. Their underlying claims may well have been meritorious, but under *Heck*, those claims could not be evaluated unless or until Shelby's convictions or sentences were invalidated. This Court should therefore uphold the Fourteenth Circuit's ruling that Shelby's *Heck* dismissals do not count as strikes under the PLRA.

II. *KINGSLEY* ESTABLISHED THAT PRETRIAL DETAINEES NEED NOT PROVE A SUBJECTIVE COMPONENT WHEN CLAIMING A CONSTITUTIONAL VIOLATION, AND THE FOURTEENTH CIRCUIT CORRECTLY USED *KINGSLEY*'S HOLDING IN THE FAILURE-TO-PROTECT CONTEXT

When an individual officer-defendant violates the constitutional rights of a pretrial detainee, the plaintiff need only show evidence evincing an objective standard of liability. Mr. Shelby brought his claims under the Fourteenth Amendment to the United States Constitution, as pretrial detainees are entitled, and he properly alleged a violation of his Due Process rights by claiming Officer Campbell's acts and omissions—in failing to prevent an inmate-on-inmate assault—were *objectively unreasonable*. Decisions of this Court, the Fourteenth Circuit, and others prove the validity of Plaintiff's allegations on that basis. Deliberate indifference in this context can be proven by purely objective evidence.

Plaintiff Arthur Shelby claims Officer Campbell was *deliberately indifferent* to his safety by failing to protect him from harm by other inmates. He filed his Complaint under 42 U.S.C. § 1983, alleging this breach as a constitutional violation with a detailed summary of Defendant Campbell's many failures to perform even a modicum of professional responsibility. This complete dereliction of duty directly led to Mr. Shelby's serious and near-fatal injuries. There is no doubt these allegations are sound as a constitutional tort.

This Court first recognized such a claim for deliberate indifference in *Estelle v. Gamble*, but that was, importantly, a case arising under the Eighth Amendment's prohibition of cruel and unusual punishments. *Estelle v. Gamble*, 429 U.S. 97, 101-05 (1976). Beyond the specific duty to

provide adequate medical care to incarcerated persons, as *Estelle* held, "prison officials [also] have a duty to protect prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (cleaned up). A violation of this duty is considered a failure to protect based on "deliberate indifference" to the safety of an inmate. *Id.* at 828. But whether it violates the Eighth or the Fourteenth Amendment depends upon the status of the claimant. *See Ingraham v. Wright*, 430 U.S. 651, 671 n. 40 (1977) ("[T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment."). This difference is critical. It decides this case. Petitioner-Defendant would argue, however, that the demarcation of Eighth and Fourteenth Amendment rights in the context of deliberate indifference is improper, but that would be incorrect. For this reason, the decision below should be affirmed.

c. Due Process jurisprudence shows *Kingsley*'s holding applies to claims for deliberate indifference brought by a pretrial detainee

"'Deliberate indifference' is a polysemous phrase." *Walton v. Dawson*, 752 F.3d 1109, 1117 (8th Cir. 2014). As contemplated by this Court in *Farmer*, recognized in *Kingsley*, and now incorporated by multiple federal circuit courts, there is no unitary "deliberate indifference" standard for all suits brought under 42 U.S.C. § 1983. The key is *who* brings the claim. When it is a pretrial detainee, only objective culpability is necessary to survive a motion to dismiss.

"A claim for 'deliberate indifference' to a prisoner's serious medical needs" was first established "in *Estelle v. Gamble*—an Eighth Amendment case." *Short v. Hartman*, 87 F.4th 593, 606 (4th Cir. 2023). But "[t]he Estelle Court . . . did not establish a standard for evaluating those claims." *Id.* This changed with *Farmer v. Brennan*. *Farmer*, aside from setting the standard for

deliberate indifference, recognized that "in its prohibition of 'cruel and unusual punishments,' the Eighth Amendment places restraints on prison officials," including the aforementioned duty to "take reasonable measures to guarantee the safety of the inmates." *Farmer*, 511 U.S. at 833 (internal citations omitted). Thus, prisoners were allowed to sue for failure to protect. But additionally, to prove a violation of the *Eighth Amendment*, and therefore to show deliberate indifference, "two requirements [must be] met." *Id.* at 834. First, a plaintiff must show "that he is incarcerated under conditions posing a substantial risk of serious harm." *Id.* Second, "to violate *the Cruel and Unusual Punishments Clause*, a prison official must have a 'sufficiently culpable state of mind.'" *Id.* (internal citations omitted) (emphasis added). In other words, for an Eighth Amendment deliberate indifference claim, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837. The *Farmer* Court reasoned that this dual approach to liability "comports best with the text of the [Eighth] Amendment . . . [because the amendment] does not outlaw cruel and unusual 'conditions'; it outlaws cruel and unusual 'punishments.'" *Id.*

Embedded in its reasoning, the *Farmer* Court recognized that "deliberate indifference" can take various forms because the term "is the equivalent of recklessly disregarding th[e] risk [of serious harm] to a prisoner" and "the term recklessness is not self-defining." *Id.* at 836. For instance, "[t]he civil law generally calls a person reckless who acts or (if the person has a duty to act) fails to act in the face of an unjustifiably high risk of harm that is either known or *so obvious that it should be known*." *Id.* (emphasis added). Indeed, in *Farmer*, the "petitioner ask[ed] [the Court] to define deliberate indifference as what [the Court had previously] called civil-law recklessness, and respondents urge[d] [the Court] to adopt an approach consistent with recklessness in the criminal law." *Id.* at 837; *cf. Darnell v. Pineiro*, 849 F.3d 17, 32 (2d Cir. 2017)

("'[D]eliberate indifference,' which is roughly synonymous with 'recklessness,' can be defined either 'subjectively' in a criminal sense, or 'objectively' in a civil sense. As such, the 'subjective prong' might better be described as the 'mens rea prong' or 'mental element prong.'"). For the reasons stated, *supra*, the Court ultimately chose the latter option to adopt objective *and* subjective components for Eighth Amendment claims. Nonetheless, while not implemented in *Farmer*, the Court at least recognized that "[a]n act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability *on a purely objective basis*." 511 U.S. at 837-38 (emphasis added). This acknowledgment precipitated modern-day Fourteenth Amendment doctrine for claims by pretrial detainees.

The framework for analyzing deliberate indifference diverges from *Farmer* and Eighth Amendment precedent when the plaintiff is a pretrial detainee. "[P]retrial detainees, who have not been convicted of any crimes, retain ***at least*** those constitutional rights that we have held are enjoyed by convicted prisoners." *Bell v. Wolfish*, 441 U.S. 520, 544 (1979) (emphasis added)[2]. This is because the underlying right claimed by pretrial detainees is different from convicted prisoners. "[The] State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. ***Where the State seeks to impose punishment without such an adjudication, the pertinent***

[2] While *Bell*'s Due Process analysis was technically based on the Fifth Amendment because the inmates concerned were in a *federal* holding facility, the analysis is the same if the Due Process claim arises under the Fourteenth Amendment instead. *See, e.g., Ingraham*, 430 U.S. at 672-73; *see also id.* at 667 (finding that the Eighth Amendment "limits the kinds of punishment that can be imposed on those convicted of crimes[.]").

constitutional guarantee is the Due Process Clause of the Fourteenth Amendment." *Id.* at 536, n. 16 (quoting *Ingraham*, 430 U.S. at 671 n. 40) (emphasis added).

Implication of the Due Process Clause of the Fourteenth Amendment alters *Farmer*'s two-part deliberate indifference standard, removing the subjective component—*Kingsley v. Hendrickson* proves this. There, the plaintiff, Michael Kingsley, was a pretrial detainee in a Wisconsin county jail when he claimed detention officers used excessive force against him. *Kingsley v. Hendrickson*, 576 U.S. 389, 392-93 (2015). In reversing the Seventh Circuit, this Court held that a pretrial detainee bringing a section 1983 suit for excessive force "***must show only*** that the force purposely or knowingly used against him was ***objectively unreasonable***." *Id.* at 396-97 (emphasis added). This departure from holdings of the Eighth Amendment's Cruel and Unusual Punishments clause, in requiring *only* an objective standard for claims under the Due Process Clause of the Fourteenth Amendment, was justified because "[t]he language of the two Clauses differs, and the nature of the claims often differ[]. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically.'" *Id.* at 400 (internal citations omitted).

This divergence is compatible with the Constitution. At a foundational level, "[s]ection 1983 itself 'contains no state-of-mind requirement independent of that necessary to state a violation' of the underlying federal right." *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 405 (1997) (quoting *Daniels v. Williams*, 474 U.S. 327, 330 (1986)). *Farmer* established the state of mind requirement in deliberate indifference cases *for convicted prisoners* not because of its inherency to section 1983 liability, but because "an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under [Eighth Amendment] cases be condemned as *the infliction of punishment*." *Farmer*, 511 U.S. at 838

(emphasis added). In other words, "inquiry into a prison official's state of mind [is mandated] when it is claimed that the official has inflicted cruel and unusual punishment." *Wilson v. Seiter*, 501 U.S. 294, 299 (1991). But as articulated, *supra*, this is ***irrelevant for Fourteenth Amendment cases***. *Kingsley*, 576 U.S. at 401. Thus, "the punishment model is inappropriate" for pretrial detainees. *Miranda v. County of Lake*, 900 F.3d 335, 351 (7th Cir. 2018).

This divergence in caselaw between Eighth Amendment and Fourteenth Amendment rights is the centerpiece of *Kingsley*'s holding. That is, *Kingsley* is not a commentary on excessive force claims so much as it is based on *Bell*'s analysis of a pretrial detainee's Due Process rights. *Short*, 87 F.4th at 610 ("*Kingsley* did not decree on a whim that we must use an objective test for excessive force claims."). For one thing, "[t]he appropriate standard for a pretrial detainee's excessive force claim is solely an objective one . . . [in part because] the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment." *Id.* at 397 (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)). "[S]uch 'punishment' can consist of [either] actions taken with an 'expressed intent to punish,'" or more broadly, "in the absence of an expressed intent to punish, a pretrial detainee can . . . prevail by showing that ***the actions are not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that purpose***.'" *Id.* at 398 (quoting *Bell*, 441 U.S. at 538, 561) (emphasis added).

Bell's language, and *Kingsley*'s use thereafter, indicate that "actions" can constitute varied governmental wrongs, not merely excessive uses of force. The *Kingsley* court recognized as much by noting that "[t]he Bell Court applied this latter objective standard to evaluate a variety of prison conditions . . . . In doing so, it did not consider the prison officials' subjective beliefs about the policy." *Id.* (quoting *Bell*, 441 U.S. at 541-43). *Bell* and its progeny, according to *Kingsley*, "does not mean that proof of intent (or motive) to punish is required for a pretrial detainee to prevail on

a claim that his due process rights were violated. Rather . . . a pretrial detainee can 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." *Id.* (internal citations omitted). There is no limitation in *Kingsley*'s reasoning to claims of excessive force. On the contrary, the lodestar is whether the plaintiff is a pretrial detainee or convicted prisoner. When a pretrial detainee brings a claim that her constitutional rights were violated because of "prison conditions," she need not prove "subjective considerations" because she has the added option of proving a claim "by showing that [the prison conditions] are not 'rationally related to a legitimate nonpunitive governmental purpose.'" *Kingsley*, 576 U.S. at 398-99 (quoting *Bell*, 441 U.S. at 561).

Using *Kingsley*'s reasoning, a pretrial detainee's claim for *inaction* that results in an unconstitutional condition of confinement is as valid under the purely objective test as those claiming excessive force. For one matter, "deliberate indifference," as interpreted by this Court, and as described, *supra*, is open to different interpretations of what may suffice as a valid claim when using it as a theory of liability. *Farmer*, 511 U.S. at 835 ("Use of 'deliberate,' . . . arguably requires nothing more than an act ***(or omission)*** of indifference to a serious risk that is voluntary, not accidental.") (emphasis added); *see also Brawner v. Scott Cnty., Tenn.*, 14 F.4th 585, 595 (6th Cir. 2021) ("We thus reject the Tenth Circuit's argument that the term 'deliberate indifference' itself demands a subjective standard.") (citing *Strain v. Regalado*, 977 F.3d 984, 992 (10th Cir. 2020)). *Kingsley*'s reasoning, while not specifically grounded in "deliberate indifference," does not foreclose analyzing an officer's inactions using purely objective evidence in a deliberate indifference case because whether the claim is for excessive force or something else, what matters is that it is brought under the Due Process Clause. *Kingsley*, 576 U.S. at 397.

Accordingly, "[t]he same objective analysis should apply to an officer's appreciation of the risks associated with a claim . . . for deliberate indifference under the Fourteenth Amendment" because "there is no need [in the Fourteenth Amendment context], as there might be in an Eighth Amendment case, to determine when punishment is unconstitutional." *Kingsley*, 576 U.S. at 401. "[B]ecause punishment has no place in defining the *mens rea* element of a pretrial detainee's claim under the Due Process Clause," it is unnecessary to prove that "a prison official [] appreciate[d] the risk to which a prisoner was subjected." *Darnell*, 849 F.3d at 35. Thus, "the Due Process Clause can be violated when an official does not have subjective awareness that the official's acts ***(or omissions)*** have subjected the pretrial detainee to a substantial risk of harm." *Id.* (emphasis added). And this substantial risk of harm can arise from a condition of confinement that amounts to punishment. *Wilson*, 501 U.S. at 309 (White, J., concurring in judgment).

To be sure, claims for unconstitutional prison conditions can take the form of "specific acts ***or omissions*** directed at individual prisoners." *Wilson*, 501 U.S. at 299 n.1. For example, "if an individual prisoner is deprived of needed medical treatment, that is a condition of his confinement." *Id.* Denial of medical treatment can constitute deliberate indifference because "no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need for such treatment is apparent." *Short*, 87 F.4th at 606 (cleaned up).

Further, circuit courts such as the Second Circuit have used this framework to find that a "pretrial detainee" can "establish a claim for deliberate indifference" by proving that "the defendant-official . . . recklessly failed to act with reasonable care to mitigate the risk that the condition [of confinement] posed to the pretrial detainee even though the defendant-official knew, ***or should have known***, that the condition posed an excessive risk to health or safety." *Darnell*, 849 F.3d at 35 (emphasis added). This is the logical culmination of an appropriate use of "civil

law recklessness" to define "deliberate indifference" in the Fourteenth Amendment context: by purely objective evidence. *Cf. Farmer*, 511 U.S. at 836 (noting that the meaning of "deliberate indifference l[ies] somewhere between the poles of negligence at one end and purpose or knowledge at the other[.]"); *see also Kingsley*, 576 U.S. at 400 (leaving "open the possibility of including a 'reckless' act" under the objective reasonableness framework); *Darnell*, 849 F.3d at 35 ("In other words, the 'subjective prong' (or 'mens rea prong') of a deliberate indifference claim is defined objectively [for a Due Process violation].").

Still, *Kingsley*'s pronouncement of what constitutes a valid Fourteenth Amendment Due Process violation does not cover negligent or inadvertent actions. "In a case like this one, there are, in a sense, two separate state-of-mind questions. The first concerns the defendant's state of mind with respect to his physical acts—i.e., his state of mind with respect to the bringing about of certain physical consequences in the world." *Id.* at 395. This first question is what protects individual defendants from liability for inadvertent or negligent failures. For example, "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim. But if the [action] is deliberate—i.e., purposeful or knowing—the pretrial detainee's claim may proceed." *Id.* at 396. The requirement "that the officer's conduct with respect to the plaintiff was intentional" applies whether the pretrial detainee is making a claim for an unconstitutional act or omission. *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc).

The intentionality requirement (the first state of mind question in *Kingsley*) protects officers against claims not rising to the seriousness of a constitutional violation. "For example, if the claim relates to housing two individuals together, the inquiry at this step would be whether ***the placement decision*** was intentional. Or, if the claim relates to inadequate monitoring of the cell,

the inquiry would be whether ***the officer chose the monitoring practices*** rather than, for example, having just suffered an accident or sudden illness that rendered him unconscious and thus unable to monitor the cell." *Id.* Thus, whether the Due Process claim is for unconstitutional actions or inactions, an officer cannot be held liable for inadvertent or negligent failures because "liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process." *Kingsley*, 576 U.S. at 396 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)) (emphasis in original).

Even with these caveats, a pretrial detainee states a valid claim when she alleges a jail officer acted with objective unreasonableness. And because punishment has no place at all in the detention of persons pretrial, "[f]or a Fourteenth Amendment claim, it is enough that the challenged action is not rationally related to a legitimate nonpunitive purpose or is excessive in relation to that purpose." *Short*, 87 F.4th at 609. Moreover, just as in the medical care context or other conditions of confinement claims, a constitutional violation for a failure to protect necessarily implicates these same bases.

In this regard, the claimed rights and injuries are the same as if the detainee had suffered an excessive use of force. *Castro*, 833 F.3d at 1069 ("The underlying federal right, as well as the nature of the harm suffered, is the same for pretrial detainees' excessive force and failure-to-protect claims."). Of course, *Kingsley*'s first state-of-mind factor "would not be satisfied in the failure-to-protect context if the officer's inaction resulted from something totally unintentional." *Id.* at 1070. But assuming that the officer made a "voluntary" decision concerning his actions (or inactions), this would be satisfied. *Farmer*, 511 U.S. at 835. Next, the detainee would need to show, by purely objective evidence, that "the defendant-official . . . recklessly failed to act with reasonable care to mitigate the risk . . . even though the defendant-official . . . should have known[] that the condition

posed an excessive risk to health or safety." *Darnell*, 849 F.3d at 35. Courts would need only to ask: "Was there a substantial risk of serious harm to the plaintiff that could have been eliminated through reasonable and available measures that the officer did not take, thus causing the injury that the plaintiff suffered?" *Castro*, 833 F.3d at 1070; *see also Short*, 87 F.4th at 611 ("Now, it is sufficient that the plaintiff show that the defendant's action or inaction was . . . 'objectively unreasonable,' . . . that is, the plaintiff must show that the defendant ***should have known*** of that condition and that risk, and acted accordingly.") (internal citations omitted) (emphasis added).

This does *not* mean that liability would be triggered in this context by the "mere lack of due care by a state official," but recklessness in the civil sense would suffice. *Daniels*, 474 U.S. at 330-31. The Ninth Circuit has proposed a four-factor test for a failure-to-protect claim by a pretrial detainee that acknowledges this limitation, which ultimately hinges on the requirement of proof that "[t]he defendant did not take reasonable available measures to abate [the substantial risk of suffering serious harm], 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." *Castro*, 833 F.3d at 1071. This standard, while setting the bar above negligence, can be proven by a plaintiff using *Kingsley*'s pure objectivity which "will necessarily 'turn[] on the facts and circumstances of each particular case.'" *Id.* (quoting *Kingsley*, 576 U.S. at 397). It will also comport with *Kingsley* on two other points. First, on a purely legal basis, because *Kingsley* "did not limit its holding to 'force' but spoke to 'the challenged governmental action' generally." *Id* at 1070. And second, on a normative basis, because "[j]ailers have a duty to protect pretrial detainees from violence at the hands of other inmates, just as they have a duty to use only appropriate force themselves." *Id.* This is the logical and morally-just extension of Fourteenth Amendment jurisprudence.

d. Under the proper deliberate indifference standard extended from *Kingsley*, Respondent-Plaintiff's Complaint should not have been dismissed, and the Fourteenth Circuit should be affirmed

With *Kingsley*'s standard properly extended to failure-to-protect claims, it is evident that Mr. Shelby's claim of deliberate indifference should not have been dismissed by the District Court, and the Fourteenth Circuit should be affirmed. Officer Campbell's acts and omissions were objectively unreasonable, and they led to the serious and debilitating injuries Arthur Shelby suffered at the hands of the Bonucci clan. That is, Officer Campbell "***should have known*** of that condition and that risk, and acted accordingly." *Short*, 87 F.4th at 611.

First, and perhaps most crucially, Campbell either simply did not review the profile of Shelby presented by the gang intelligence officers on January 1, 2021, or he did and still did not take appropriate measures before extracting Mr. Shelby from his cell on January 8. (R. at 5-6.) If it was the former, the jail "required anyone absent from the meeting to review the meeting minutes on the jail's online database." (R. at 6.) And if it was the latter, then it is dubious at best that "Officer Campbell did not know or recognize Shelby at the time of their meeting." *Id.*

Second, Campbell recklessly failed to take the slightest bit of responsibility *for over a week* while Shelby was housed at the Jail before his assault. Officer Campbell failed to appreciate who was in the pod on January 8th, why Shelby (even if he did not immediately know his identity) was housed separately from the general population in the first place, and who was included on the hard copy list of inmates with special statuses that he was carrying. (R. at 6-7.) He did not reference the jail's database before taking Shelby from his cell, he did not reference any of the special notes about Shelby printed and left at every administrative area in the jail by the gang intelligence officers, and he did not read the list section that explicitly mentioned that Shelby was at risk of death from the Bonucci clan. *Id.* He did (and failed to do) all of this in a jail known for its high

gang population, with special gang intelligence officers stationed for that very purpose. (R. at 4.) This is well above the level of "negligently inflicted harm." *Kingsley*, 576 U.S. at 396. This is patent reckless disregard of the substantial risks of inmate safety that exist at a jail of this sort.

Mr. Shelby's (albeit brief) placement with members of the Bonucci clan was a condition of his confinement. *Id.* at 398 (citing *Bell*, 441 U.S. at 541-43). Placing Shelby with members of a rival gang known—by perhaps every detention officer in Marshall Jail save for Officer Campbell (according to him)—to harbor intentions of killing Mr. Shelby in prison is "not rationally related to a legitimate governmental objective." *Id.* Because Campbell utterly failed in almost every aspect of his job on January 8, 2021, Mr. Shelby almost died in a brutal and preventable assault. "[A] substantial risk of serious harm to the plaintiff [] could have been eliminated through reasonable and available measures that [Officer Campbell] did not take, thus causing the injur[ies] that the plaintiff suffered[.]" *Castro*, 833 F.3d at 1070.

Mr. Shelby offered abundant evidence that Officer Campbell was "objectively unreasonable." *Kingsley*, 596 U.S. at 396-97. This case presents a significant litany of "act[s] [and] omission[s] unaccompanied by knowledge of a significant risk of harm . . . [that] society wishes to discourage, and . . . assure compensation." *Farmer*, 511 U.S. at 837-38. Plaintiff should not be afforded the opportunity to seek recourse based on his Fourteenth Amendment rights. The Fourteenth Circuit should thus be affirmed, and Mr. Shelby's lawsuit should move forward.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the United States Court of Appeals for the Fourteenth Circuit.

Respectfully submitted,

/s/ *Team 24*
Attorneys for Respondent