No. 23-05

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

CHESTER CAMPBELL,

Petitioner

-against-

ARTHUR SHELBY,

Respondent

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR THE PETITIONER

Team 25

Counsel for the Petitioner

QUESTIONS PRESENTED

I. Must courts dismiss claims that do not allege all essential elements, and thus not cognizable, for failure to state a claim?

II. Does this Court's decision in *Kingsley* eliminate the requirement for a pre-trial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for a violation of the pre-trial detainee's Fourteenth Amendment Due Process Rights in a 42 U.S.C. § 1983 action?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

Constitutional Provisions

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

28 U.S.C. § 1915. Proceedings in forma pauperis.

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

42 U.S.C. § 1983. Civil action for deprivation of rights.

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

U.S. Const. amend. VIII

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

U.S. Const. amend. XIV, §1

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

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-05

CHESTER CAMPBELL, Petitioner

v.

ARTHUR SHELBY, Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Fourteenth Circuit appears in the Record on Appeal. (R. at 12-20). The opinion of the District Court for the Western District of Wythe appears in the Record on Appeal. (R. at 2-11). The order denying Arthur Shelby's motion to proceed *in forma pauperis* appears in the Record on Appeal. (R. at 1).

STATEMENT OF THE CASE

I. Nature of the Proceedings

The case originated in the District Court for the Western District of Wythe. (R. at 1). The Respondent filed suit under 42 U.S.C. § 1983 against the Petitioner in his individual capacity and also filed a motion to proceed *in forma pauperis* under 28 U.S.C. § 1915(g). (R. at 1-2). The Petitioner then filed a Rule 12(b)(6) Motion to Dismiss for failure to state a claim. (R. at 2). The District Court denied Respondent's motion to proceed *in forma pauperis* and granted the Petitioner's Motion to Dismiss. (R. at 1-2). Respondent appealed both the denial of Respondent's motion to proceed *in forma pauperis* and subsequent dismissal of this 42 U.S.C. § 1983 case against Petitioner for failure to state a claim to the United States Court of Appeals for the

Fourteenth Circuit. (R. at 12). The Fourteenth Circuit reversed and remanded the case both on the forma pauperis issue and the dismissal on summary judgment of the suit for failure to state a claim (R. at 13). This Court, in case no. 23-05, issued an Order Granting Petition For Writ of Certiorari in order to consider the issues raised in the Appellate Court Opinion. (R. at 21).

II. Summary of the Facts

Arthur Shelby is the second-in-command of a violent street gang in Marshall known as the Geeky Binders. (R. at 2). Shelby has a prior record of illegal activity, including arrests and convictions for drug distribution and possession, assault, and brandishing a firearm, for which he has spent time in prison. (R. at 3). During this prior detention, Shelby filed three separate 42 U.S.C. § 1983 suits against prison officials, state officials, and the United States government. (*Id.*). However, all three actions were dismissed without prejudice pursuant to *Heck v. Humphrey* because they would have called into question either his conviction or his sentence. (*Id.*).

The Geeky Binders' power in Marshall has waned with the rise of a rival gang, the Bonucci clan. (R. at 3). Several members of the Bonucci clan are currently being held in the Marshall jail for crimes including assault and armed robbery charges. (*Id.*). Marshall police officers and jail officials in the past had accepted bribes from Bonucci clan members, so the jail responded by firing many officers involved in illegal relations with the Bonucci clan and hired new officers untainted by Bonucci's authority. (*Id.*). One of the 2020 hires to the Marshall jail was Chester Campbell, who had been trained properly to work as an entry-level guard and had met job expectations for the several months he had been employed. (R. at 5).

On December 31, 2020, Marshall police raided a boxing match that Shelby and his brothers were attending, arresting them for battery, assault, and a slew of firearms offenses. (R. at 3). While the brothers managed to escape, Arthur Shelby, under the influence of alcohol and

drugs, was arrested and charged with battery, assault, and possession of a firearm by a convicted felon. (R. at 3-4). A seasoned jail official, Dan Mann, booked Shelby into the Marshall jail. (R. at 4). Because of Shelby's distinct outfit, his special Geeky Binders pen, and the revealing comments he made about his gang affiliation, Mann recognized that Shelby was a part of the gang and noted this in the jail's online database. (*Id.*). This database allows officers to indicate an inmate's gang affiliation as well as any known hits placed on the inmate and any gang rivalries, and such entries are reviewed by the gang intelligence officers at the Marshall jail. (*Id.*). Shelby already had a page in the database identifying him as a member of the Geeky Binders; Mann added additional information to this file including notations of Shelby's statements made during the booking process. (R. at 5).

When the gang intelligence officers looked at Shelby's file, they paid special attention to it because of his high-ranking status and their awareness of a recent dispute between the gangs following Thomas Shelby's murder of Bonucci's wife. (R. at 5). The gang intelligence officers knew that Arthur Shelby was a prime target of the Bonucci clan, who were seeking revenge on the Geeky Binders. (*Id.*). These officers made a note of that risk in Shelby's file and also printed paper notices to be placed in administrative areas of the jail as well as on rosters and floor cards. (*Id.*). To inform the jail officials of this particular risk, the gang intelligence officers held a meeting on the morning of January 1, 2021. (*Id.*). At this meeting, the officers explained that Shelby would be housed in cell block A, separate from the Bonuccis in cell blocks B and C. (*Id.*). The intelligence officers then reminded the other officers to check rosters and floor cards regularly to ensure that the rival gangs were not coming in contact in common spaces in the jail. (*Id.*).

Although roll call records indicated that Officer Campbell attended the January 1 meeting, the jail's time sheets indicated that he called in sick that morning and did not even arrive at the jail until later that afternoon, after the meeting had ended. (R. at 5-6). The gang intelligence officers had required those absent from the meeting to review the minutes posted to the database, but these records cannot be checked because a glitch in the system wiped the minutes' views for that particular meeting. (R. at 6).

On January 8, Campbell oversaw the transfer of inmates from their cells to the recreation room. (R. at 6). He approached Shelby's cell to ask if he wanted to go to recreation, but he did not know or recognize Shelby at this time. (*Id.*). Campbell also did not reference the list of inmates with special statuses that he was carrying. (*Id.*). Additionally, Campbell did not take a look at the jail's database before he took Shelby from the cell to the recreation room. (*Id.*). Had he done this, he would have seen Shelby's name and the indication that a possible hit had been ordered on him by Bonucci and that he was at risk for attack by Bonucci clan members. (*Id.*).

Since Campbell did not see this information, he led Shelby through cell block B and C to retrieve other inmates on the way to the recreation room. (R. at 7). On the walk, he asked Shelby to be quiet when he responded "Yeah, it's what that scum deserved," to a fellow cell block A inmate who had yelled, "I'm glad your brother Tom finally took care of that horrible woman." (R. at 6). Then, after retrieving inmates from cell block B and C who happened to be Bonucci clan members, these inmates immediately charged Shelby, beating him with their fists and rolled paper. (R. at 7). Campbell attempted to break up the attack but struggled as just one person to hold the three men back. (*Id.*). Several minutes later, other officers arrived to assist Campbell in breaking up the attack. (*Id.*).

Shelby was in the hospital for several weeks after being injured in the attack. (R. at 7). He suffered a traumatic brain injury, rib fractures, lung lacerations, abdominal edema, organ laceration, and internal bleeding because of the Bonucci clan members' attack. (*Id.*). He was later found guilty as charged for battery and possession of a firearm by a convicted felon and sentenced to prison at Wythe Prison. (*Id.*).

III. Summary of the Argument

Shelby accrued three Prison Litigation Reform Act "strikes" when three of his previous 42 U.S.C. § 1983 actions were dismissed pursuant to *Heck v. Humphrey* for challenging the validity of his conviction or sentence. An essential element of a 42 U.S.C. § 1983 action for damages is to prove that the conviction or sentence was previously terminated. He did not properly allege favorable termination and thus failed to state a claim. When three of a prisoner's 42 U.S.C. § 1983 suits are dismissed for failure to state a claim, 28 U.S.C. § 1915(g) bars the plaintiff from proceeding *in forma pauperis*.

Kingsley did not eliminate the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 action. The proper standard from which to assess Campbell's potential liability is the subjective standard in *Farmer v. Brennan.* There, this Court established that a prison official's deliberate indifference to a substantial risk of serious harm to an inmate violates the cruel and unusual punishment prohibition found in the Eighth Amendment. Under this deliberate indifference standard, there is both an objective component (that there had to be a substantial risk of serious harm to an inmate) and a subjective component (that the officer in question had to actually know of and disregard

this risk). In requiring the subjective component, the Court reasoned that only pain that is intended to be punishment is punishment.

This same standard is used when evaluating officers who may have failed to protect pre-trial detainees. That is because in *Bell v. Wolfish*, this Court held that in evaluating the constitutionality of conditions of pretrial detention that implicate the deprivation of liberty under the Due Process Clause, the proper inquiry is whether those conditions amount to punishment of the detainee. Thus, the Court extended the subjective deliberate indifference standard from *Farmer* to situations involving pretrial detainees.

There is only a minor categorical exception from this long-standing precedent; the *Kingsley* objective standard applies to cases involving officers' use of excessive force against pretrial detainees. No subjective inquiry is necessary in these cases because the officers' affirmative use of violence against a detainee itself constitutes punishment. The narrow holding only applies to excessive force cases, and the opinion itself does not make any indication that it is overturning the *Farmer* precedent.

The case at hand does not involve an officer's use of force, but rather an officer's inadvertent mistake of allowing rival gang members to congregate in a communal part of the jail, putting a detainee at risk of harm. Shelby claims that his due process rights were violated as the constitutional basis for his § 1983 claim. For this claim to be made out, he has to have been punished by the officer. This requires a subjective inquiry into whether Officer Campbell had actual knowledge of the risk of harm to Shelby. If Officer Campbell was unaware that Shelby faced risks, this may be because of his negligence, but it cannot be construed as a punishment. If there is no punishment, there is no deprivation of liberty, which is required for the Due Process violation to be satisfied. Since there is no indication in the record that Campbell had actual

knowledge of the risk, the District Court was correct in initially granting Petitioner's Motion To Dismiss for Respondent's failure to state a claim upon which relief could be granted.

ARGUMENT

I. SHELBY HAS ACCRUED THREE § 1915(g) STRIKES

The Prison Litigation Reform Act ("PLRA") was enacted by Congress in 1996 to counter the "sharp rise in [§ 1983] prisoner litigation in the federal courts" by "filter[ing] out the bad claims filed by prisoners and facilitate[ing] consideration of the good". *Woodford v. Ngo*, 548 U.S. 81, 84 (2006); *Coleman v. Tollefson*, 575 U.S. 532, 535 (2015). Congress wanted to decrease the number of suits to reduce the "huge costs imposed on state governments to defend against . . . meritless suits." 141 Cong. Rec. 27,041 (1995) (statement of Sen. Hatch). Congress also sought to reinforce "a state's interest in protecting the final judgements of its criminal proceedings" and "goals of finality and consistency" as "continued litigation with the possibility of monetary recovery weakens the deterrent effect of the criminal law." Thomas Stephen Schneidau, *Favorable Termination After Freedom: Why Heck's Rule Should Reign, Within Reason*, 70 La. L. Rev. 647, 671 (2010). To promote these aims, the PLRA prohibits suits that are "frivolous", "malicious", or "fail to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii), (iii). If a prisoner files at least three suits that were dismissed under Section 1915(e)(2)(B), Section 1915(g) bars them from proceeding *in forma pauperis* ("IFP") in future actions unless they can show they were "under imminent danger of serious physical injury." Civil claims that challenge the validity of a prison sentence must be dismissed. *Heck v. Humphrey*, 512 U.S. 477 (1994).

Shelby filed three distinct §1983 civil actions during a previous detention. (R. at 3). The district courts dismissed each suit without prejudice pursuant to *Heck*. (*Id*.). The procedural significance of these dismissals is in dispute.

Heck requires a plaintiff to show that the conviction or sentence has been overturned before pursuing § 1983 damages. 512 U.S. at 486–87 ("plaintiff must prove…"). The Circuits split about the procedural implications of this requirement. **1)** Most agree that favorable termination is an essential element of a § 1983 claim – without showing favorable termination, *Heck* requires district courts to dismiss for failure to state a claim – and thus the dismissal counts as a "strike" under the PLRA. *Garrett v. Murphy*, 17 F.4th 419, 427 (3d Cir. 2021) ("[F]ailure to meet *Heck*'s favorable-termination requirement counts as a PLRA strike for failure to state a claim"); *Colvin v. LeBlanc*, 2 F.4th 494, 498 (5th Cir. 2021) (*Heck* dismissals are "for failure to state a claim"); *Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (10th Cir. 2011) ("dismissal of a civil rights suit for damages based on prematurity under *Heck* is for failure to state a claim"); *In re Jones*, 652 F.3d 36, 39 (D.C. Cir. 2011) ("dismissal of a section 1983 lawsuit for damages based on prematurity under *Heck v. Humphrey* is for failure to state a claim, and constitutes a 'strike' under the PLRA"). **2)** The Ninth and Seventh Circuits take *Heck* dismissals to be "an affirmative defense and not a pleading requirement" because it "do[es] not reflect a final determination." *Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016) ("compliance with Heck most closely resembles . . . an affirmative defense and not a pleading requirement"); *Carr v. O'Leary*, 167 F.3d 1124, 1126 (7th Cir. 1999) ("failure to plead the Heck defense in a timely fashion [is] a waiver").

The Fourteenth Circuit has erroneously sided with the Ninth and Seventh Circuits. The opinion below holds that *Heck* dismissals are not strikes because "[f]avorable termination is not

an element that a prisoner must allege" and "*Heck* only temporarily prevents courts from addressing the underlying merits of the inmate's § 1983 claim." (R. at 15). Neither claim is consistent with the text of the PLRA nor can coexist with *Heck*.

A. Favorable Termination is a Pleading Requirement for a § 1983 Claim

The Supreme Court is clear – a "claim for damages bearing [a] relationship to a conviction or sentence that has *not* been [] invalidated is not cognizable under § 1983." *Heck* at 487. If a claim is not cognizable, it must be dismissed pursuant to FRCP 12(b)(6). *Heck's* holding strongly emphasizes this order of operations. A prisoner's "complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence ***has already*** been invalidated." *Id*. (emphasis added). Analogizing to the tort of malicious prosecution, the Court emphasizes that favorable termination is "[o]ne *element* that must be *alleged* and *proved*". *Id*. (emphasis added). *Heck* "precludes the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution." *Id*. at 484. The Court sought to advance the "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction." *Id*. The Court wanted to prevent a plaintiff from undermining a state conviction or sentence in a federal forum – thus a plaintiff must *plead* that the conviction or sentence are no longer lawful or valid.

Favorable termination as a pleading requirement advances Congress's underlying goals to quash bad claims and encourage good ones, promote finality, and preserve federalism. *See also Withrow v. Williams*, 507 U.S. 680, 717 (1993) (Scalia, J., Concurring) (emphasizing the equitable goals of "finality, comity, and federalism."). In the 28 years since the enactment of the PLRA and the *Heck* decision, prisoner civil-rights cases have fallen from 16.8% to 8.6% of the federal district courts' dockets. Office of the U.S. Courts, *Judicial Facts & Figures 2023*, Tables

4.4, 4.6, https://www.uscourts.gov/report-name/judicial-facts-and-figures (visited Feb. 1, 2023). Prisoners have won suits more frequently in the years since the PLRA and *Heck*. Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Approaches 20*, Corr. L. Reporter, Vol. XXVIII, No. 5, at 84 tbl.3, col. (i) (2017). Because prisoners must first prevail on separate challenges to their convictions, their subsequent § 1983 claims are fewer and more meritorious. The financial burden on state governments and the taxpayers is reduced because of a decrease in meritless suits.

If a *Heck* dismissal "only temporarily prevents courts from addressing the underlying merits", then *no* conviction or sentence would *ever* be finalized. (R. at 15). Even if a prisoner loses on the merits in their federal habeus petition and state appeal, without a pleading requirement for favorable termination, § 1983 provides unlimited bites at the apple. A plaintiff could constantly initiate civil suits to revisit their criminal conviction. The "common-law principle that one cannot use the device of a civil tort action to challenge the validity of an outstanding criminal conviction" is both *Heck's* north star and a key goal Congress sought to advance in the PLRA. *Heck.* at 484, n. 10; *see also Teague v. Lane*, 489 U.S. 288, 309 (1989) ("[w]ithout finality, the criminal law is deprived of much of its deterrent effect."). Crucially, the Supreme Court recognizes that even *Heck* dismissals without prejudice count as a "strike"; even "temporary" dismissals still trigger § 1915(g). *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724-25 (2020) (§ 1915(g) "applies to [dismissals] issued both with and without prejudice to a plaintiff's ability to reassert his claim" and "hinges exclusively on the basis for the dismissal, regardless of the decision's prejudicial effect").

The favorable termination pleading requirement also recognizes that a fair chance to litigate the conviction in a competent state forum trumps the federal perrogative. States have a

fundamental interest in protecting the authority of their criminal courts and the use of § 1983 to question state convictions runs afoul of the *Rooker-Feldman* doctrine. Federal courts cannot allow litigants to use a federal forum to relitigate matters that have already been finalized by a state court of competent jurisdiction. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923).

B. A Heck Dismissal is for Failure to State a Claim and is not an Affirmative Defense

The Fourteenth Circuit makes much of the Ninth Circuit's opinion in *Washington*, but that court's affirmative defense conception cannot coexist with the text of the PLRA or *Heck*. Section 1915(e)(2) requires that courts "*shall* dismiss the case at any time if the court determines" that the suit "fails to state a claim on which relief may be granted". If *Heck* is merely an affirmative defense subject to waiver, then a defendant that waives the defense would necessarily bar courts from obeying the statute's "*shall dismiss*" command.

Moreover, the Ninth Circuit's affirmative defense theory is incompatible with the plaintiff's burden to "allege and prove[]" favorable termination. *Heck* at 483. The burden to plead favorable termination falls on the plaintiff in the malicious prosecution context, and since *Heck* repeatedly focused on the commonalities between malicious prosecution and § 1983, it would be nonsensical to depart from the analogy and place the burden on the defendant. Simply put – *Heck* places the burden on plaintiffs to show favorable termination – and it would be incongruous to also place a burden on the defendant to raise favorable termination as a defense.

Shelby has accrued three strikes. Three of his previous civil actions were dismissed pursuant to *Heck*. (R. at 3). Because he did not allege favorable termination, he did not allege a cognizable legal claim. Thus, each dismissal was for failure to state a claim and counted as a strike. He is barred from proceeding IFP.

II. THE SUBJECTIVE STANDARD UNDER *FARMER* IS THE APPROPRIATE TEST FOR FAILURE-TO-PROTECT CASES INVOLVING PRE-TRIAL DETAINEES, AND CAMPBELL LACKED THE ACTUAL KNOWLEDGE REQUIRED BY THIS STANDARD

The Fourteenth Circuit erred in applying the objective standard from *Kingsley* to Officer Campbell's actions in the case at hand. Cruel and unusual punishment of prisoners and any punishment of pre-trial trainees is forbidden under the Constitution. *See* U.S. Const. amend VIII (applying to prisoners); U.S. Const. amend XIV (applying to pre-trial detainees). Prison staff facing constitutional violations are typically held to a subjective deliberate indifference standard requiring actual knowledge to be held liable. *Kingsley* offered one exception: prison officials in excessive force cases involving pre-trial detainees are held to an objective standard because the affirmative act of force from the official to the detainee constitutes punishment. *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015). This standard should not be applied to other factual situations, such as those involving prison workers who failed to protect inmates due to mere negligence. Negligence does not rise to the serious level of harm required for a constitutional violation, especially considering that an inadvertent mistake does not fit the definition of punishment. Thus, under the proper subjective inquiry laid out in the *Farmer* case, Officer Campbell cannot be held liable because nothing in the record suggests he had actual knowledge of the risk to Shelby's safety. *Farmer v. Brennan*, 511 U.S. 825, 838 (1994).

A. The objective standard from *Kingsley* may suffice for excessive force cases, but failure-to-protect cases require a subjective prong to weed out potentially negligent acts by officials that do not constitute punishment or violate the Constitution

The detainee might have an ordinary tort claim against Officer Campbell, but instead the detainee chose to pursue 42 U.S.C. § 1983 litigation against the officer, which means that he

must allege Officer Campbell's actions in failing to protect him were so severe that they violated the Constitution, a much harder standard to prove than a simple negligence claim.

The subjective inquiry is the proper standard because it assesses punishment, which is the basis of the constitutional violation that Shelby is alleging. The Court has explained in the past that the treatment of prisoners and the conditions of their confinement are subject to scrutiny under the Eighth Amendment, which forbids cruel and unusual punishment. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). For instance, using excessive physical force against a prisoner may violate the Eighth Amendment; and sometimes, failing to protect prisoners from third party violence can violate this requirement. *Id.* However, not "every injury suffered by one prisoner at the hands of another…translates into constitutional liability for prison officials responsible for the victim's safety." *Id.* at 834. This is due to the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment," which specifically refers to the word "punishment" and thus requires the prison official to have a "sufficiently culpable state of mind." *Id.* (citing *Wilson v. Seiter*, 501 U.S. 294, 297 (1991)). If the prison official was truly unaware of the risk of harm to the prisoner, then he cannot have been said to be "punishing" him by failing to protect him from something off his radar.

The meaning of the word punishment suggests a specific, subjective intent to harm. The dictionary definition of punishment is "the infliction of some kind of pain or loss upon a person for a misdeed." *Punishment*, Encyclopedia Britannica, 11 Jan. 2024, https://www.britannica.com/topic/punishment. It follows that unfortunate, unintentional mistakes that lead to a prisoner's injury do not equate to the intentional infliction of some sort of retribution on a prisoner; in other words, mere negligence on the behalf of a corrections officer does not rise to the level of violating the Eighth Amendment. That is why this Court in *Estelle v.*

Gamble and *Farmer* produced a stricter, subjective standard by which to judge the prison official in these sorts of cases: the deliberate indifference standard. *Farmer*, 511 U.S. at 935 (applying the deliberate indifference standard in a failure-to-protect case); *see also Estelle v. Gamble*, 429 U.S. 97, 102-06 (1976) (applying the deliberate indifference standard in a case about officials failing to address a prisoner's medical needs). Under deliberate indifference, an official is not liable unless he "knows of and disregards an excessive risk to inmate health or safety; 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 that inference." *Farmer*, 511 U.S. at 935.

While this case's constitutional underpinning comes from the Due Process Clause of the 14th Amendment (since Shelby is a pre-trial detainee, not a prisoner), the same logic about punishment applies. This Court has explained that when it comes to constitutionality of prison conditions for pre-trial detainees, "the proper inquiry is whether those conditions amount to punishment of the detainee." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Under the Due Process Clause, the Government is free to detain those suspected to have violated a crime to ensure they appear at trial, but the conditions under which they are held must not amount to any sort of "punishment." *Id.* at 535-36. Here, too, the Court was quick to explain that "not *every* disability imposed during pretrial detention amounts to 'punishment' in the constitutional sense." *Id.* at 537 (emphasis added). As this Court stated plainly: "a detainee simply does not possess the full range of freedoms of an un-incarcerated individual." *Bell*, 441 U.S. at 546. While pre-trial detainees have the privilege of being protected from any sort of punishment in the absence of a conviction, this does not mean that they are constitutionally protected from the sort of harm that results from mistakes or oversight from officers. (R. at 20). In other words, officers' negligent mistakes that

lead to a detainee's injury cannot amount to punishment because there is no intent on behalf of the officer to cause harm to the detainee.

Kingsley did not alter this test; it only substituted deliberate indifference for a purely objective standard in cases that involve excessive force. Excessive force cases differ from failure-to-protect cases in an important way. *See Kingsley v. Hendrickson*, 576 U.S. 389 (2015). The Tenth Circuit, in an opinion holding that the deliberate indifference standard should still apply to cases about medical treatment for pre-trial detainees, explained that *Kingsley* "turned on considerations unique to excessive force claims: whether the use of force amounts to punishment, not on the status of the detainee." *Strain v. Regalado*, 977 F.3d 983, 991 (10th Cir. 2020). In *Kingsley*, the parties debated whether to prove an excessive force claim, "a pretrial detainee must show that the officers were subjectively aware that their use of force was unreasonable, or only that the officers' use of that force was objectively unreasonable." *Kingsley*, 576 U.S. at 391.

Kingsley reasoned that an officer's use of force itself is evidence of punishment. *Id.* at 395-96. The Court explained that when a defendant punches a detainee, pushes them, or shoots a taser at them, he must "possess a purposeful, a knowing, or possibly a reckless state of mind." *Id*. Punching someone is pretty much never an accident. Since the use of force against the detainee is assumed to be deliberate, it amounts to punishment. *Id.* Given that pre-trial detainees cannot be punished at all under the Fourteenth Amendment, the objective standard suffices here to satisfy the constitutional violation. The Court reiterated that this narrow holding only applies to affirmative, intentional acts by officers that harm a detainee, not inadvertent mistakes: "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." *Id.* at 396.

Simply put, negligent mistakes by officers are treated differently because they do not involve the deliberate punishment of a detainee. *Id.* ("liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process") (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)).

Moreover, longstanding notions of stare decisis should prevent this Court from ruling in favor of an objective standard in cases involving failing to protect pre-trial detainees. The on-point precedent here is *Farmer*, which broadly asserted that the Eighth Amendment "outlaws cruel and unusual punishments, not conditions, and the failure to alleviate a significant risk that an official should have perceived but did not, while no cause for commendation, cannot be condemned as the infliction of punishment." *Farmer*, 511 U.S. at 827. *Kingsley* carved a narrow exception out of the deliberate indifference standard for pre-trial detainees: excessive force cases. That carve out has to do with the fact that affirmative force against a detainee (i.e., a slap across the face) is itself evidence of punishment. The case made no mention of *Farmer,* nor did it suggest that it was overturning *Farmer's* subjective intent requirement for other prison conditions cases, even for those involving pre-trial detainees. *Strain*, 977 F.3d at 991. Since failing to protect a detainee from third party violence fits within the "conditions" category in *Farmer*, such an act can only be said to be punishment if accompanied by the specific intent to harm. *Farmer*, 511 U.S. at 827. This Court is bound by the *Farmer* precedent.

Unlike the affirmative acts of officers in excessive force cases, the injuries from failure-to-protect cases arise under officers' inaction, meaning that the officers may often be merely negligent rather than intentional harmers. While it is difficult to make an argument that an officer punched a detainee by accident, it is oftentimes easy to show that officers inadvertently failed to protect detainees; "one cannot inflict punishment by way of accident." (R. at 20). The subjective

prong of the inquiry helps to divide these cases into situations where the officer knew of and disregarded the risk of harm to the detainee, where liability attaches, and situations where the officer was not aware of the harm, where liability does not attach.

Although some appellate courts have defied precedent by mistakenly applying the *Kingsley* objective standard (whose holding was limited to excessive force cases) to failure-to-protect cases involving medical needs or physical harm to detainees, most of the other circuits that have confronted the question have continued to apply the subjective deliberate indifference standard from *Farmer.* For example, the Eleventh Circuit held that a pre-trial detainee's failure to provide adequate medical care claim should be evaluated under the deliberate indifference standard used for Eighth Amendment violations, despite his particular cause of action arising from the Fourteenth. *Nam Dang ex rel. Vina Dang v. Sheriff, Seminole County Florida*, 871 F.3d 1272, 1279 (11th Cir. 2017). Accordingly, to prevail on his § 1983 claim, the detainee had to show that he had a serious medical need and that the prison's healthcare providers were deliberately indifferent to his need, leading to his injury. *Id.* The court noted that to meet this standard, the prison officials must have seriously disregarded the risk of harm by conduct that is "more than mere negligence," once again demonstrating the principle that negligent conduct is not severe enough to meet this standard. *Id.* at 1280.

The Fifth Circuit similarly stuck with the subjective deliberate indifference standard in a case with facts analogous to those at hand, where a prison official was accused of not adequately protecting a detainee from an impromptu attack from rival gang members. *Leal v. Wiles*, 734 Fed.Appx. 905, 909-10 (5th Cir. 2018). The court explained that "deliberate indifference is an extremely high standard to meet," requiring more than even "gross negligence," and therefore it is not met when the facts involve "actions and decisions by officials that are merely inept." *Id.*

Similarly, the Tenth Circuit held that prison staff's "mere negligence" in administering medical treatment to a pre-trial detainee exhibiting alcohol withdrawal symptoms did not amount to a constitutional violation absent their subjective awareness of the risk to the detainee. *Strain*, 977 F.3d at 987. The court rejected the argument on appeal to drop the subjective component from the analysis, firmly stating that the Fourteenth Amendment prohibits *deliberate indifference* to a pre-trial detainee's medical needs and that the word *deliberate* means that a subjective prong is inherent to the claim. *Id.* (emphasis added).

Some circuit courts were too quick to apply *Kingsley* to non-excessive force cases involving pre-trial detainees, and in doing so focused too much on policy arguments and not enough on precedent and the importance of punishment as the underpinning of this cause of action. For instance, the Ninth Circuit used an objective standard in a pre-trial detainee's failure-to-protect claim in the wake of *Kingsley. Castro v. County of Los Angeles*, 833 F.3d 1060, 1069-70 (9th Cir. 2016); *see also Darnell v. Piniero*, 849 F.3d 17, 35-36 (2d Cir. 2017) (adopting *Castro's* reasoning in holding that an objective standard applies in condition of confinement claims for pre-trial detainees). In backing up this decision, the Ninth Circuit cited *Farmer* to show that there is an all-out duty for prison officials to protect prisoners from violence at the hands of other prisoners. *Id.* at 1067 (citing *Farmer v. Brennan*, 511 U.S. 825, 833 (1994)). This misconstrued the case, however, since it also explained that an inadvertent failure to protect prisoners from such violence would *not* violate this duty under the Constitution. *Farmer*, 511 U.S. at 844. This Court stated in *Farmer* that "because…prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware *even of an obvious risk* to inmate health or safety." *Id.* (emphasis added).

The policy and other reasons that the Ninth Circuit and other pro-objective standard legal scholars have advanced are insufficient in the face of precedent and the properly construed meaning of the constitutional provisions. For instance, the Ninth Circuit argued that *Kingsley* casts doubt on the survivability of the subjective standard because "excessive force applied directly by an individual jailer and force applied by a fellow inmate can cause the same injuries, both physical and constitutional." This view mistakenly focuses on the injury to the plaintiff, rather than the act that caused it in the first place. If all the courts focus on is the fact that the plaintiff was injured, then would an officer who slips and falls, accidentally harming a pre-trial detainee, also be said to have punished the detainee? This Court has explicitly held that "mere lack of due care" by a state official does not "deprive an individual of life, liberty, or property under the Fourteenth Amendment." *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986).

Those in favor of the objective standard also argue that the subjective intent requirement should only apply to the Eighth Amendment standard, since that prohibits *cruel and unusual* punishment, rather than the Due Process Clause, which protects detainees from any punishment. Kate Lambroza, *Pretrial Detainees and the Objective Standard after Kingsley v. Hendrickson,* 58 Am. Crim. L. Rev. 429, 452 (2021). However, a deeper look at the Court's reasoning back at the time the subjective standard was formulated shows the Court's focus on "punishment" itself, not necessarily the vague descriptors of "cruel and "unusual." This Court cited Judge Posner who observed that "the infliction of punishment" (note: not cruel and unusual punishment) "is a deliberate act intended to chastise or deter" and "this is what the word means today" as well as at the time of ratification of the Constitution. *Wilson v. Seiter*, 501 U.S. 294, 300 (1991) (citing *Duckworth v. Franzen*, 780 F.2d 645, 652 (7th Cir. 1985), *cert. denied,* 479 U.S. 816 (1986)). This Court affirmed Posner by explaining that "if the pain inflicted is not formally meted out as

punishment by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify." *Wilson,* 501 U.S. at 300. The subjective standard was not created because of the weight of the words "cruel and unusual," but rather because of what punishment itself implies: an intentional act to harm another. So even though the Fourteenth Amendment more broadly proscribes any punishment against a pre-trial detainee, the requirement that it at least be a punishment to violate the constitution still applies. The mens rea element must remain part of the equation.

Furthermore, although some in favor of an objective standard make a policy argument that the subjective prong serves as a "significant roadblock to successful inmate claims" and getting rid of it will lead to meaningful improvement in the treatment of prisoners, Section 1983 is not the right avenue for these suits if the Constitution has not been violated. Ann Woolhandler & Michael Collins, *Inmate Constitutional Claims and the Scienter Requirement*, 98 Wash. U.L. Rev. 645, 648 (2020) (citing Margo Schlanger, *The Constitutional Law of Incarceration, Reconfigured*, 103 Cornell L. Rev. 357, 360-61 (2018)). Some of these scholars argue that harsh effects on prisoners should be enough to satisfy the standard and qualify as punishment, regardless of any intent on behalf of the officer. *Id.* However, this would allow for constitutional violations in instances of mere negligence. This Court has cautioned that the Due Process Clause is not a "font of tort law to be superimposed upon." *Kingsley v. Hendrickson*, 576 U.S. 389, 408 (2015) (Scalia, J. dissenting) (citing *Daniels v. Williams*, 474 U.S. 327, 332 (1986)). Section 1983 is a unique and limited statute that affords plaintiffs advantages only in serious cases, those where the Constitution has been violated, depriving plaintiffs of their civil rights. 42 U.S.C. § 1983. Judges should be careful not to extend it too far into things like ordinary torts that do not meet the gravity of constitutional violations. *See Monroe v. Pape*, 365 U.S. 167 (1961). After all,

the Constitution "is not the only source of American law." *Kingsley v. Hendrickson*, 576 U.S. 389, 408 (2015) (Scalia, J. dissenting). Aggrieved plaintiffs in failure-to-protect cases may also bring state statutory or common law claims on theories of negligence. *Id.*

Those attacking the subjective standard because it keeps inmates from getting justice may be looking at the wrong issue. For instance, a better way to improve prisons on a systemic level is not through failure-to-protect cases that involve one-off situations like the attack on Shelby, but rather through conditions cases that seek injunctive relief that will improve the quality of life at the prison as a whole. Ann Woolhandler & Michael Collins, *Inmate Constitutional Claims and the Scienter Requirement*, 98 Wash. U.L. Rev. 645, 665 (2020). For these suits in particular, even critics of the knowledge requirement admit that the subjective element is "hardly insurmountable." *Id.* (citing Margo Schlanger, *Civil Rights Injunctions over Time: A Case Study of Jail and Prison Court Orders*, 81 N.Y.U. L. Rev. 550, 617 (2006)). Furthermore, the deliberate indifference standard is not the biggest hurdle to prisoner litigation success: the Prison Litigation Reform Act is an entire statutory scheme that aims to limit the relief that inmates are able to obtain. *Id.* The PLRA does everything from placing time limits on injunctions to limiting attorneys' fees in the effort to prevent inmates from suing; perhaps critics should focus on legislation like this in their reform efforts. *Id.* Finally, federal courts still see plenty of inmate cases each year and many succeed; studies have estimated a success rate somewhere between 15 and 18%. *Id. a*t 668. The current standard seems to strike an appropriate balance between allowing prisoners and detainees to have their complaints heard while also abiding by the limits imposed upon the breadth of Section 1983 by Constitution, thus also protecting prison officials who did not intend harm. After all, "limiting constitutional damages liability to cases involving truly blameworthy conduct may best preserve the moral face of such liability." *Id.* (citing

Barbara E. Armacost, *Qualified Immunity: Ignorance Excused*, 51 Vand. L. Rev. 583, 680 (1998)) ("The notion that section 1983 liability entails some level of moral stigma also suggests an argument against the conventional view that more constitutional damages liability is necessarily better...").

B. The subjective standard requires that the officer had actual knowledge of a risk to the inmate that he disregarded; since nothing in the record suggests Officer Campbell had actual knowledge of the risk of harm to Shelby, there can be no cause of action against him.

Applying the subjective *Farmer* standard, the question becomes whether Officer Campbell knew of and disregarded "an excessive risk to inmate health or safety." *Farmer,* 511 U.S. at 935. It is not enough for Shelby to argue that Officer Campbell knew "facts from which the inference could be drawn that a substantial risk of serious harm" existed; to be held liable, Officer Campbell must have had to actually draw that inference that Shelby himself was at risk. *Id.*

If the pleadings fail to allege facts showing that the officer had actual knowledge of the risk of harm to the detainee, courts tend to dismiss the case at summary judgment for failure to state a claim upon which relief can be granted. For example, in a case involving a detainee who committed suicide, the Eighth Circuit held that an officer did not meet the subjective prong of the deliberate indifference claim when a medical practitioner knew about the detainee's suicidal thoughts, yet the record did not indicate that this information was ever relayed to the officer. *Whitney v. City of St. Louis,* 887 F.3d 857, 860 (2018). The complaint made a legal conclusion that the officer was deliberately indifferent, but given the lack of facts in the complaint showing that the officer had actual knowledge about the detainee's suicidal thoughts, the court found that a Rule 12(b)(6) dismissal was appropriate. *Id.* Similarly, in another case the court emphasized that "imputed or collective knowledge" would not be able to serve as the basis for the deliberate

indifference claim; rather, "each individual defendant" must be assessed for his actual knowledge of the situation. *Nam Dang*, 871 F.3d at 1280.

In *Leal v. Wiles*, the case that also involved an officer's failure to protect an at-risk detainee from rival gang violence, the court made a clear distinction between evidence that simply went to the officer's negligence and evidence that showed actual knowledge, which was lacking. *Leal*, 734 Fed.Appx. at 910. The injured detainee tried to make the argument that the officer should have known about the risk of harm he faced given that his protected status was noted in the computer database and recreation roster. *Id.* The officer even admitted that he was "too busy and under pressure" to check for "flags" that would indicate which detainees to keep separate given the "gangster" tendencies of the inmates. *Id.* Here the officer was actually a member of the gang intelligence unit and still held himself out to be unaware of the inmate's risk. *Id.* Despite all of this evidence, the court concluded that the injured party failed to show that the officer acted with deliberate indifference because he only presented evidence going to the officer's negligence, not the officer's actual knowledge of the specific risk to the detainee. Id.

The record in the case at hand lacks any evidence showing that Officer Campbell had actual knowledge of the risk of gang violence that Shelby faced at the time of the attack. While the "seasoned jail official," Officer Mann, immediately recognized Shelby as a Geeky Binders gang member upon his arrival to the Marshall jail, Officer Campbell was "an entry-level guard" who did not have the specialized knowledge of a "gang intelligence officer." (R. at 4-5). This is notable because in the *Leal* case, the Fifth Circuit found that even a specialized gang intelligence officer could plausibly be unaware of the detainee's risk for a gang attack given that he did not check the jail database. Here, Campbell was just an ordinary corrections officer with even less know-how than Officer Sanchez in the *Leal case*.

Shelby might point out that despite this lack of specialized knowledge, Campbell had an opportunity to learn about Shelby's risk at the meeting held the morning after his booking at which jail officials were informed about Shelby's status and his separation from the Bonucci clan members. (R. at 5). Even though the roll call records indicate that Officer Campbell attended the morning meeting, the jail's time sheets indicated that Officer Campbell did not arrive at work until that afternoon because he had called in sick. (R. at 6). Since Campbell did not arrive at work until after the meeting concluded, it cannot be said that he had actual knowledge of the information disseminated at the meeting.

Even though Campbell was supposed to check the database for the meeting minutes given that he missed the meeting, a glitch in the system wiped the records of who viewed the January 1 meeting minutes. (*Id.*). Furthermore, the record indicates that Campbell did not reference the database before taking Shelby from his cell. (*Id.)* While the fact that Campbell disobeyed orders from his bosses by not checking the database may convey negligence, like how the officer in *Leal* failed to check for flags, it does not support the necessary element that he have actual knowledge of Shelby's status. The record indicates that Campbell had a true lack of awareness of Shelby's at-risk status. When he went to pick him up from his cell to walk to the recreation room, he did not even know or recognize Shelby, much less have insight regarding his gang status. (*Id.*). Campbell did not check the hard copy of inmate special statuses he had on hand, which once again may be evidence of his negligence, but supports the fact that he was unaware of the risk to Shelby. (*Id.*) .

It is possible that while on the walk, Campbell heard the other inmate in cell block A say to Shelby, "I'm glad your brother Tom finally took care of that horrible woman," but that comment by no means confers knowledge on Campbell about the specific risk to Shelby,

especially given that Campbell is not an expert on gangs. (*Id.*) The comment did not mention the name of either gang, nor did it imply that Shelby was in any sort of danger.

Moreover, the fact that Campbell attempted to break up the attack is evidence that his actions that day were far from "punishment" to Shelby. (R. at 7). The opposite was true; Officer Campbell attempted to help Shelby as he was being attacked by the Bonucci clan members. (*Id.*).

While the risk of inter-gang violence at the Marshall jail may have been obvious to seasoned officials, those with gang expertise, and those who attended the meeting or read its minutes, Officer Campbell was part of none of these categories. He was a relatively new corrections officer without specialized gang knowledge who had missed the meeting and failed to follow up to learn what he missed. Officer Campbell lacked any knowledge about the risk of violence Shelby faced. He did not even recognize who Shelby was as he was transporting him through the jail. The subjective intent component of the deliberate indifference inquiry cannot be satisfied.

CONCLUSION

Shelby cannot proceed *in forma pauperis*. Three of his previous § 1983 actions were dismissed for failure to state a claim, and thus § 1915(g) bars him from enjoying the benefits of cost-free litigation. *Heck v. Humphrey* emphasizes that an essential element of a § 1983 claim is favorable termination. A complaint that fails to allege all essential elements proffers no claim at all, and it is properly dismissed pursuant to FRCP 12(b)(6). Any other understanding of the nature of § 1983 litigation runs afoul of the text of the PLRA and reasoning of *Heck v. Humphrey*.

The favorable termination pleading requirement is good for federal courts. It keeps frivolous litigation at bay and encourages meritorious claims. It protects the finality of

convictions and bolsters the deterrent effect of the criminal law. The rule preserves federalism and prevents prisoners from using a federal forum to undermine state criminal law. The majority of the Circuits agree that the favorable termination pleading requirement is the law.

Under the deliberate indifference standard laid out in *Farmer*, those suing prison officials for constitutional violations must satisfy both an objective prong, that there existed a risk of harm to the inmate, and a subjective prong, that the official was actually aware of that risk and nonetheless disregarded it. Although originally applied to inmates suing under the Eighth Amendment, this standard was extended to pre-trial detainees suing under the Fourteenth Amendment's Due Process Clause per this Court's reasoning in the *Wolfish* case. The rationale behind the standard is that the very definition of punishment requires its inflictor to be intentional in his actions.

A narrow carve-out from this categorical rule was created for excessive force cases involving pre-trial detainees by this Court in *Kingsley*, but the reason for that departure does not implicate failure-to-protect cases. The subjective component is not needed in excessive force cases, where the officer uses violence against an inmate, because the very act of that force itself is evidence of a punishment. Punching someone is not a negligent act, but rather an intentional one. On the other hand, cases in the failure-to-protect realm often involve omissions by prison officials. These omissions, like Shelby's failure to ascertain information regarding gang members at the Marshall jail, can often be attributed to negligence, which does not meet the state of mind necessary for a punishment. Thus, a subjective inquiry is required to see if the official actually knew of the risk and disregarded it, thereby intentionally harming (punishing) the inmate, or if he was simply unaware of the risk, acting negligent at worst.

Under the proper deliberate indifference standard, Officer Campbell did not violate the Due Process Clause of the Fourteenth Amendment when he failed to separate Shelby from the Bonucci clan members. Nothing in the record indicates that Campbell actually knew who Shelby was or that he faced risks as a result of his gang affiliation. Campbell lacked special training in gang intelligence, and he failed to attend the meeting at which these officers informed staff about the particular risk to Shelby. Campbell also failed to check information sources around the prison, like information cards and the online database, leaving him unaware of the danger that would befall Shelby when he brought him into contact with rival gang members. While this conduct may be negligent, it was a result of ignorance, not intention. Therefore, the subjective prong of the deliberate indifference standard cannot possibly be met, and there can be no cause of action under 42 U.S.C. § 1983 against Campbell for failing to protect Shelby.