No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2023

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

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

BRIEF FOR RESPONDENT

TEAM 26

QUESTIONS PRESENTED

1. Whether the dismissal for a premature claim pursuant to *Heck v. Humphrey* constitutes one of the enumerated grounds for a "strike" under the Prison Litigation Reform Act and should bar Arthur Shelby from receiving in forma pauperis status.
2. Whether the subjective intent requirement is eliminated in a deliberate indifference failure-to-protect claim for a violation of a pretrial detainee's Fourteenth Amendment Due process rights based on this Court's decision in *Kingsley v. Hendrickson*.

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The United States District Court for the Western District of Wythe issued two opinions for this matter on April 20, 2022 and on July 14, 2022. R. 1-11. On December 1, 2022 the Fourteenth Circuit of the United States Court of Appeals received petitioner's request for a rehearing and subsequently overruled and remanded both decisions of the District Court. R. 12-20. In October 2023, the United States Supreme Court granted a petition for writ of certiorari. R. 21.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The texts of the following authorities relevant to the determination of the present case are set forth in the appendix:

28 U.S.C. § 1915(g)

42 U.S.C. § 1983

STATEMENT OF FACTS

All people, regardless of incarceration history, should be guaranteed due process under the laws of this country. Criminal status has been a scapegoat for our government to bar convicted or incarcerated individuals from proceeding with civil actions.

Our Petitioner, Arthur Shelby, is a well-known figure in the Marshall community who has recently found himself incarcerated for battery, assault, and possession of a firearm as a convicted felon R. at 4. Shelby is second-in-commander to an organization nicknamed the "Geeky Binders" by those in Marshal. R. at 2. Historically, members of the Geeky Binders have held prominent political positions in Marshall, ran various businesses, and owned significant real estate. R. at 3. In recent years, their political and societal influence in Marshall has dwindled as Luca Bonucci and his friends and family have quickly influenced influential community members. R. at 3. Even the Marshall police department has fallen victim to the influence of Bonucci, and several members of the force have been accused and charged with accepting bribes from the group. R. at 3. While the city has taken measures to rid its police force of these individuals of dwindling Bonucci's influence, he and his group still exercise significant authority over the police and other political entities in Marshall. R. at 3. Bonucci was held at Marshall jail during the disputed incident like Shelby. R. at 3.

On December 31, 2020, Shelby was attending a local sporting match with his brothers when the police raided the event and arrested him for battery, assault, and possession of a firearm as a convicted felon. R. at 4. Shelby's presence in the jail was well-known to the Marshall corrections officers primarily because of his distinct choice of dress: a tweed three-piece suit, a long overcoat, and most significantly, a ballpoint pen with the engraving "Geeky Binders" on it.

R. at 4. While conducting preliminary paperwork for his booking, Dan Mann, a seasoned officer, immediately noted he was a member of the Geeky Binders organization. R. at 4.

The Geeky Binders and Bonucci relationship is well known to police in the community. It is an employment requirement for Marshall officers to learn of any group affiliations and to list them accordingly in the online database for the jail because of high levels of activity from these organizations in the community and increased levels of hostile relationships amongst different groups, such as between the Geeky Binders and the Bonucci clan. R. at 4. Besides group affiliations, officers must file and upload information about the inmates' charges, inventoried items, medications, and other pertinent data. R. at 4. Officer Mann followed Marshall's protocol when booking Shelby entering his paper. R. at 4.

Under this protocol, Shelby was listed as "high ranked" and acquired special attention from the gang intelligence officers at the jail. R. at 5. Because of their extensive knowledge of the happenings in Marshall, these officers were aware that there was a current dispute between the Geeky Binders and the Bonucci's because of Thomas Shelby, Arthur Shelby's superior, murder of Bonucci's wife. R. at 5. They also knew that the Bonucci's were seeking revenge on the Geeky Binders and heard that Shelby was a prime target. R. at 5.

Knowing this information, the officers met with all jail officials to discuss Shelby's presence and the hostile conditions between Bonucci and him. R. at 5. They noted that Shelby needed to be housed in block A away from the Bonucci, who were in blocks B and C. R. at 5. They also printed out notices of Shelby's special status and left them in every administrative area in the building. R. at 5. It was critical for the officers to ensure protection for Shelby knowing this information, which they failed to do.

The Respondent in this case, Officer Chester Campbell, is a guard at the Marshall jail. The scope of his employment requires him to have extensive knowledge of the jail climate and to attend required events. R. at 5. Campbell has met job expectations and completed the required training since joining. R. at 5. On January 1, 2021, Marshall's records indicated that Officer Campbell attended the meeting hosted by the gang intelligence officers to discuss Shelby's stay. R. at 5. Time sheets indicated he had called in sick that morning and arrived at work later. R. at 5-6. Under Marshall policy, anyone absent from these meetings must review the minutes on the jail's online database. R. at 6. Conveniently for Marshall and Campbell, the database glitched on January 1, and there is no way to confirm that Officer Campbell did view the meeting minutes. R. at 6.

Officer Campbell's failure to act according to the procedures laid out by the gang intelligence officers for Shelby's safety caused the incident. On January 8, 2021, Officer Campbell oversaw the transfer of Shelby from his cell to recreation. R. at 6. Campbell failed to recognize Shelby, did not reference the physical copy of special-status inmates he was carrying, nor did he reference the database before escorting Shelby to recreation. R. at 6. The list by Officer Campbell contained details of inmates' group affiliations and risks posed to them. R. at 6. The list explicitly included Shelby's name and the possible hit put on him by Bonucci. R. at 6. Officer Campbell, without consulting any resources or anyone else, allowed Shelby to wait for the other inmates by the guard stand before going to recreation. R. at 6.

Officer Campbell retrieved two individuals from cell blocks B and C, both Bonacci clan members. R. at 7. To Shelby's surprise, the two men attacked him, beating him with their fists and a club made from tightly rolled and mashed paper. R. at 7. Officer Campbell failed to effectively intervene for several minutes while Shelby was hit over the head and in the ribs. R. at

7. Shelby sustained severe injuries, including penetrative head wounds, causing traumatic brain injury, rib fractures, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding. R. at 7.

The charges from the incident on December 31, 2020, ended up in front of a judge for a bench trial. R. at 7. Shelby was acquitted of the assault charges but convicted on battery and possession of a firearm by a convicted felon. R. at 7. He is currently incarcerated at Wythe Prison. R. at 7. In response to the January 8, 2021 incident, Shelby filed a timely 42 U.S.C. §1983 action against Officer Campbell. R. at 7. The complaint was filed with a motion to proceed forma pauperis. R. at 7. His request was denied by the court under the "three strikes" rule under the Prison Litigation Reform Act ("PLRA"). R. at 7.

Officer Campbell filed a 12(b)(6) Motion to Dismiss for failure to state a claim on May 4, 2022, which the District Court of the Western District of Wythe granted. R. at 2 & 8. Shelby appealed the District Court's holding to the Fourteenth Circuit Court of Appeals, who reversed and remained the District Court's holding and found in favor of Shelby's claims. R. at 19. Officer Campbell has petitioned the Supreme Court to hear this issue.

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the United States Court of Appeals for the Fourteenth Circuit and find that the dismissals of a prisoner's civil action under *Heck v. Humphrey* do not constitute a "strike" pursuant to 28 U.S.C. 28 §1915(g) and the subjective intent requirement of a pretrial detainee's deliberate indifference failure-to-protect claim was eliminated by this Court's decision in *Kingsley v. Hendrickson*. Mr. Shelby's prior §1983 claims were not dismissed because they were frivolous, malicious, or for failure to state a claim. Rather, they were dismissed because they "would have called into question either his conviction or his sentence." Additionally, the subjective intent requirement should not apply to failure-to-protect claims because it rewards lazy and incompetent prison officials by escaping liability for their own objectively unreasonable intentional decisions.

The *Heck* doctrine was established to prevent prisoners from filing frivolous or malicious complaints, or those that fail to state a claim upon which relief may be granted. Congress was intentional in distinguishing what types of dismissals constitute a "strike" and purposely chose to limit the discretion judges have on the issue. Furthermore, this Court in *Lomax v. Ortiz-Marquex* held that when interpreting 28 U.S.C. §1915(g) courts may not include language intentionally omitted from the statute when applying the doctrine. *Heck* dismissals are generally executed by judges because the claims have been brought before the prisoner's conviction or sentence has been invalidated. They do not indicate that there has been a final determination based on the merits of the case. The key analysis for a *Heck* dismissal is whether favorable termination is required for a valid §1983 under the Court's holding in *Heck*.

Mr. Shelby's dismissals did not have favorable termination and his suits were deemed premature. The absence of favorable termination for a dismissal does not signify a failure to state

a claim. Rather, the favorable termination requirement is a means of "judicial traffic control" to eliminate claims that are premature and not a necessary aspect of civil damages claims. This Court should hold that favorable termination is not required for valid §1983 claims to avoid *Heck* dismissals being wrongfully categorized as a "strike" under the PLRA.

This Court ruled in *Kingsley v. Hendrickson* that pretrial detainees' excessive force claims no longer require a subjective intent analysis, only objective. This standard should be extended to failure-to-protect claims brought by pretrial detainees as well. The two claims arise from the same injuries, physically and constitutional, and should be afforded the same judicial standard. The Fourteenth Amendment Due Process Clause protects pretrial detainees from deliberately indifferent exposure to violence by prison officials and by other inmates.

Officer Campbell recklessly disregarded his duties as prison official and intentionally placed Mr. Shelby in an objectively unreasonable position, whereby his safety was compromised from a near-fatal assault by other inmates. He disregarded his duties as a prison official by failing to inform himself of Mr. Shelby's special detainee status. The subjective intent prong would remove any liability from Officer Campbell and there would be no one accountable for the actions that took place. It would be a grievous error that would give prison officials a post hoc excuse for any erroneous decision they make by simply claiming that they were not properly informed. This Court must affirm the lower court's ruling as to the elimination of the subjective intent requirement for failure-to-protect claims brought by pretrial detainees.

Therefore, we ask this Court to affirm the decision of the Fourteenth Circuit Court of Appeals on both issues.

ARGUMENT

I. DISMISSALS UNDER *HECK V. HUMPHREY* DO NOT CONSTITUTE A "STRIKE" PURSUANT TO 28 U.S.C. §1915(g).

Prisoners in the United States have a Constitutional right to file habeas petitions to challenge the legality of their conviction or the conditions of their confinement. Most of the habeas petitions filed are civil actions against a state actor or agent who has violated a prisoner's protected civil rights under 42 U.S.C. §1983. "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." 42 U.S.C. §1983.

When filing a claim with a court, prisoners may file a motion to proceed in forma pauperis ("IFP"), which allows them to proceed in a lawsuit without first paying a filing fee to the court. 28 U.S.C. §1915. Under the Prison Litigation Reform Act ("PLRA"), "in no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. §1915(g). When a prisoner has acquired three "strikes" under the PLRA statute, they cannot proceed IFP and must first pay a filing fee before proceeding with their §1983 claim.

The petitioner in this case, Arthur Shelby, had previously brought three separate §1983 actions against prison officials, state officials, and the United States during his prior detention. R. at 3. Each of these claims was dismissed without prejudice under the doctrine established in

Heck v. Humphrey ("*Heck*"), which stalls incarcerated individuals §1983 claims from proceeding. The Supreme Court in *Heck* held that a prisoner's §1983 claim does not develop and cannot proceed until the conviction has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Thus, a judge can choose to dismiss a claim brought by a prisoner merely because their conviction has yet to have been invalidated.

The District Court for the Western District of Wythe incorrectly held that Shelby's three prior *Heck* dismissals constituted a "strike" under the PLRA, denying Shelby's request for IFP status. The Fourteenth Circuit corrected this error. When applying the three-strike provision of the PLRA, this Court must interpret the meaning of a "strike" within the statute's intent. The statute is unambiguous, and the application of the doctrine should be limited to the enumerated grounds listed by Congress.

A. Shelby's Prior Suits Were Not Dismissed on the Grounds That They Were Frivolous, Malicious, or Because They Failed to State a Claim.

In creating the PLRA, Congress's intent was not to restrict the Constitutional ability of prisoners to bring litigation while incarcerated. Instead, their intent was to curb meritless litigation by prisoners that creates unnecessary backlog and strains judicial resources. They hoped that limiting prisoners' ability to repeatedly bring §1983 claims against government officials would ensure that when claims are brought, they are legitimate and deserving of the court's time.

"[I]n a statutory construction case, analysis must begin with the language of the statute itself; when the statute is clear, 'judicial inquiry into its meaning, in all but the most extraordinary circumstances, is finished.'" *Talamantes v. Leyva*, 575 F.3d 1021, 1023 (9th Cir.

2009) (quoting *Estate of Cowart v. Nicholas Drilling Co.*, 505 U.S. 469, 475 (1992)). To emphasize, a petitioner accrues a "strike" when a complaint is dismissed because it "is *frivolous*, *malicious*, or *fails to state a claim* upon which relief may be granted." 48 U.S.C. §1915(g) (emphasis added). Congress intentionally specified what types of dismissals constituted a "strike," and purposefully left little room for judicial discretion to ensure no inequities in application and that no prisoners are deprived of their Constitutional rights to bring forth a §1983 claim.

This Court has recognized the importance of Congressional intent when interpreting the meaning of §1915(g). "This Court may not narrow [or broaden] a provision's reach by inserting words Congress chose to omit." *Lomax v. Ortiz-Marquex*, 140 S. Ct. 1721, 1725 (2020). *See also Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1906 (2019). Therefore, it is critical that this statute is left as Congress wrote it and that "strikes" are only accrued by the means specifically written out.

Shelby's prior §1983 claims were not dismissed on any of the enumerated grounds. The record clearly states that his three prior actions were dismissed under *Heck* because they "would have called into question either his conviction or his sentence." R. at 3. Nowhere does the record indicate that his complaints were dismissed because they were frivolous, malicious, or failed to state a claim. A dismissal under *Heck* doctrine does not automatically indicate that a claim is being dismissed on any of the three enumerated grounds in the PLRA statute and, therefore, does not qualify as a "strike" under §1915(g). *See Harris v. Harris*, 935 F.3d 670, 672 (9th Cir. 2019).

1. *Heck* Dismissals Reflect the Mere Prematurity of a Claim, Not the Invalidity.

Heck dismissals do not automatically reflect a failure to state a claim and therefore do not qualify as a "strike" under the PLRA. *Id.* Rather, *Heck* dismissals reflect the prematurity of a claim. When complaints are dismissed pursuant to the *Heck* it is often because a claim is brought before a conviction or sentence has been invalided. *Heck*, 512 U.S. 477 at 489-90. *Heck* dismissals do not reflect a final determination on the underlying merits of the case. *Washington v. Los Angeles County*, 833 F. 3d 1048, 1056 (9th Cir. 216) (*see also Lopez v. Smith* 203 F.3d 1122, 1129 (9th Cir. 2000).

We recognize that in isolated circumstances, *Heck* dismissals may constitute a 12(b)(6) dismissal for failure to state a claim. *See Washington*, 833 F.3d at 1055. Only when the pleadings of a claim present an "obvious bar to securing relief," would a Heck dismissal qualify as a failure to state a claim under the PLRA. *Id*. at 1055 - 56. Pursuant to page 3 of the record, it is only stated that the "actions would have called into question either his conviction or his sentence," but does not indicate any additional information. R. at 3. The suits were each dismissed without prejudice, further showing that there is no "obvious bar to securing relief," but rather no immediate remedy at the time the claim was filed. R. at 3.

The suits were dismissed not because there was no method of securing a remedy for Shelby's §1983, but rather because the claims were premature. While the 10th Circuit has held that the "prejudice" status of dismissal is "immaterial to the strike analysis," *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 (2020) (quoting *Childs v. Miller*, 713 F.3d 1262, 1266 (10th Cir. 2013), the "label" or the "style" of the dismissal is far less important than the actual "substance of the dismissed lawsuit." *Harris*, 935 F.3d at 673 (quoting *Ed-Shaddai v. Zamora*, 833 F.3d 1036, 1047 (9th Cir. 2016)).

There is nothing in the record that explains the substance of the dismissed suits, thus we must leave interpretation open to the discretion of the courts. Is it not stated anywhere in the record that Shelby needed to alter any of his claims in some way, but rather the language suggests that the claims themselves were premature in light of his conviction. Additionally, if the court were to deem a suit frivolous or malicious, it would not dismiss the suit without prejudice, but rather notify the prisoner of the reason for their dismissal and bar the claim from being refiled. *See Okoro v. Bohman*, 164 F.3d 1059, 1059 (7th Cir. 1999).

The 14th Circuit rightfully interpreted the language of the prior dismissals and found that there was nothing to suggest invalidities in Shelby's claims, rather just the prematurity of his lawsuits. This Court should find that the 14th Circuit acted well within their discretion and correctly interpreted the language of the prior dismissals. Prematurity is not synonymous with invalidity, and this Court should not view these dismissals as evidence that Shelby failed to state a claim.

2. Favorable Termination is not a Requirement for a Valid §1983 Claim.

The key to determining whether a *Heck* dismissal qualifies as a "strike" under one of the enumerated grounds listed in §1915(g) is whether favorable termination is required for a valid §1983 under the Court's holding in *Heck*. "When a state prisoner seeks damages in a §1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the *conviction or sentence has already been invalidated*." *Heck*, 512 U.S. at 487 (emphasis added).

The nature of Shelby's prior dismissals is simple: he did not have favorable termination, and thus, his suits were rendered premature. Circuit courts are split in interpreting the favorable termination requirement, as discussed in *Heck*. Therefore, this Court must determine that

favorable termination is not required for a valid §1983 claim under the *Heck* doctrine to set a precedent for lower courts and avoid *Heck* dismissals being wrongfully categorized as a "strike" under the PLRA.

The absence of favorable termination does not signify a failure to state a claim under *Heck*. Instead, the favorable termination "requirement" for prisoner's §1983 claims under *Heck* is a means of committing "judicial traffic control" to weed out claims that may be premature and is not a "necessary element of a civil damages claim." *Washington*, 833 F.3d at 1056. If it were a requirement of a valid §1983 claim under *Heck*, all *Heck* dismissals would be due to failure to state a claim and thus be considered a "strike" under the PLRA. This is a dangerous standard for §1983 claims brought by prisoners.

Justice Souter's concurrence in *Heck* recognizes the potential danger for the favorable termination requirement. "If these individuals were required to show prior invalidation of their convictions or sentences to obtain §1983 damages for unconstitutional conviction or imprisonment, the result would be to deny any federal forum for claiming a deprivation of federal rights to those who cannot first obtain favorable state ruling." *Heck*, 512 U.S. at 500. Souter calls into question the very purpose of §1983 and the remedies in place to protect incarcerated individuals. "'[T]he very purpose of §1983: 'to interpose the federal courts between the States and the people, as *guardians* of the people's federal rights.'" *Id*. at 501 (quoting *Mitchum v. Foster*, 407 U.S. 225, 242 (1972)) (emphasis added). Souter identified potential Fourteenth Amendment issues with requiring the favorable termination requirement and limiting the ability of prisoners to bring legitimate claims forward.

Circuit courts have been persuaded by Souter's argument when determining themselves if the absence of the favorable termination requirement rendered a §1983 suit incomplete and

deserving of a 12(b)(6) dismissal. *See Harden v. Pakati*, 320 F.3d 1289, 1289 (11th Cir. 2003); *see also Wilson v. Johnson*, 535 F.3d 262, 262 (4th Cir. 2008); *see also Burd v. Sessler*, 702 F.3d 429, 429 (7th Cir. 2012); *see also Cohen v. Longshore*, 621 F.3d 1311, 1311 (10th Cir. 2010). "Five circuits have held that in the *Spencer* [*v. Kemna*] plurality's view allows a plaintiff to obtain relief under §1983 when it is no longer possible to meet the favorable termination requirement via a habeas action. *Wilson*, 535 F.3d at 267. Only four circuits have continued interpreting *Heck*'s favorable termination requirement as undisputed law. *Id.* "[T]he sweeping breadth, "high purposes," and "unique[ness] of §1983 would be compromised in an unprincipled manner if it could not be applied here. *Wilson*, 535 F.3d at 268 (quoting *Wilson v. Garcia*, 471 U.S. 261, 261 (1985)).

Rendering a prisoner's §1983 claim invalid or incomplete because they cannot acquire favorable termination goes against the values Congress had in mind when providing this legal mechanism for prisoners to seek relief. It is critical that this Court conclusively hold that favorable termination is not a requirement of a valid §1983 claim. Thus, a §1983 dismissal under *Heck* cannot be interpreted as a failure to assert a claim and, therefore, does not fall under one of the enumerated grounds for a "strike" under the PLRA.

* * *

Congressional intent is critical to interpreting statutes and how judicial entities should apply them. "Congress said what it meant, and we [should] construe its language strictly and narrowly." *Harris*, 935 F.3d at 676. By way of the statute's language, *Heck* dismissals are not a "strike" under the PLRA because they are not dismissed due to being frivolous or malicious or because the petitioner failed to state a claim. Therefore, Shelby's request in forma pauperis status

should have been granted, and this Court must confirm the holding of the Fourteenth Circuit Court of Appeals. Additionally, Shelby should be reissued his filing fee of $402.00.

II. THIS COURT ELIMINATED THE SUBJECTIVE INTENT REQUIREMENT OF THE DELIBERATE INDIFFERENCE STANDARD FAILURE-TO-PROTECT CLAIMS FOR PRETRIAL DETAINEES BY ITS DECISION IN *KINGSLEY.*

"No state shall . . . deprive any person born in the United States of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S.C. Const. Amend. 14 § 1. Pretrial detainees are granted stronger constitutional protections under the Fourteenth Amendment than convicted prisoners are afforded by the Eighth Amendment. *See Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015) (distinguishing the different levels of protection imparted by the Eighth and Fourteenth Amendments). This Court held in *Kingsley v. Hendrickson* that the Fourteenth Amendment prohibits any punishment against pretrial detainees prior to a guilty verdict. *See* Id. at 398; *see also Grabowski v. Jackson County Pub. Defenders Office*, 47 F.3d 1386, 1397 (5th Cir. 1995) (citing *Alberti v. Klevenhagen*, 790 F.2d 1220, 1224 (5th Cir. 1986) (noting the "constitutionally rooted duty of jailers to provide their prisoners reasonable protection from injury at the hands of fellow inmates.")). The Due Process Clause of the Fourteenth Amendment "protects pretrial detainees from deliberate exposure to violence and from failure to protect when prison officials learn of a strong likelihood that a prisoner will be assaulted." *Anderson v. Gutschenritter*, 836 F.2d 346, 349 (7th Cir. 1988) (quoting *Matzker v. Herr*, 748 F.2d 1142, 1150 (7th Cir. 1984) (holding that reckless disregard of an inmate's right to be free from harm can be shown by a clear existence of a risk to the inmate and a failure to reasonably respond to the risk)). This Court should affirm the decision of the Fourteenth Circuit Court of Appeals because Officer Campbell

acted with reckless disregard for the safety and well-being of Mr. Shelby by intentionally placing him in conditions carrying a risk of serious and nearly fatal harm.

A. Kingsley's Interpretation of Bell v. Wolfish Created an Objective Analysis for Pretrial Detainees' §1983 Claims.

The majority opinion in *Kingsley v. Hendrickson* sets forth that under *Bell v. Wolfish* pretrial detainees are protected under the Due Process Clause of the Fourteenth Amendment from punishment, whether it be an "expressed intent to punish" or via actions that are not "rationally related to a legitimate nonpunitive governmental purpose" or if the actions are "excessive in relation to that purpose." *See Kingsley*, 576 U.S. at 427 (citing *Bell v. Wolfish*, 441 U.S. 520, 538 (1979) (explaining that certain prison conditions and procedures that are not necessarily punitive in nature can qualify as punishment)).

Officer Campbell, by intentionally disregarding his duties as a jail guard, subjected Arthur Shelby to certain conditions that amount to punishment. R. at 5-7. By failing to inform himself of the circumstances that he chose to place Arthur Shelby in, he subjected Mr. Shelby to a near fatal assault leaving the victim battered and bruised. *Id.* This was not merely a failure to recognize the risk of serious harm to Mr. Shelby; it was an intentional and reckless disregard for his duties as a prison officer because of either laziness or incompetence or both. Laziness and intentional disregard for one's duties has never been a viable defense when stripping away another's citizens right to liberty.

1. No Single Deliberate Indifference Standard Governs all 42 U.S.C. §1983 Claims made by Pretrial Detainees.

There is no one deliberate indifference standard that governs all 42 U.S.C. §1983 claims brought by convicted prisoners and pretrial detainees. *See Kingsley*, 576 U.S. at 400-01 (holding that there are differing claims arising from Eighth Amendment and Fourteenth Amendment claims); *see Castro v. Cty. Of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (holding that the

Kingsley standard applies to pretrial detainees failure-to-protect claims); *see Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976) (holding that the willful suspension of providing serious medical attention for an inmate constitutes deliberate indifference and violates the Eighth Amendment); *see Shelby County Jail Inmates v. Westlake*, 789 F.2d 1085, 1094 (7th Cir. 1986) (to prove deliberate indifference for a §1983 claim, one must only show reckless disregard for the pretrial detainee's Fourteenth Amendment rights); *see Darnell v. Pineiro*, 849 F.3d 17, 27 (2d Cir. 2017) (holding that "the Supreme Court's decision in *Kingsley* altered the standard for deliberate indifference claims under the Due Process Clause"). There is no consensus on how all §1983 claims made by convicted prisoners or pretrial detainees should be evaluated. R. at 16.

"There are few areas of law in black and white. The greys are dominant and even among them the shades are innumerable" *Estin v. Estin*, 334 U.S. 541, 545 (1948) (explaining that the analysis of most legal problems varies depending on the degrees of law and policy at issue in addition to the facts presented). If we treat every area of law as black and white, there would be no need for a jury or legal representation. The simple question would be, "did Officer Campbell know Mr. Shelby would be hurt by placing him in the same area as those he knew would assault Mr. Shelby?" This notion is ludicrous and would change the way judges and attorneys interpret the law in the United States. For example, it would nullify the distinctions between burglary and trespass based on the circumstances of the situation. "Due Process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place, and circumstances." *Mathews v. Eldrige*, 424 U.S. 319, 334 (1976) (quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961) (explaining that due process begins with a precise nature of the government function at issue and the interest of the private citizen affected)). "Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews*, 424 U.S. at

334 (quoting *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972) (explaining that different situations call for different procedural safeguards and legal analysis)).

Petitioners will likely assert that failure-to-protect and excessive force claims are not equal under the law. They will assert that the latter is a claim of inaction, while the former centers on an affirmative act imparting violence on a detainee. However, this is a flawed analysis that attempts to subvert liability for inattentive and careless prison officers. The force applied by a fellow inmate is the same exact excessive force applied by a jailer causing the same injuries. *See Castro*, 833 F.3d at 1070 (holding that prison officers' duty to protect inmates from other inmates is the same as the duty to not use excessive force themselves).Officer Campbell was required to review the minutes from the meeting hosted by the gang intelligence officers. R. at 5. Officer Campbell carried "a hard copy list of inmates with special statutes" when he retrieved Arthur Shelby from his cell; but failed to check the status of Mr. Shelby. R. at 6. Officer Campbell was present as other inmates yelled references to Mr. Shelby's brother Thomas, yet another warning sign that Officer Campbell may have retrieved a detainee of special status. R. at 6. The opposing counsel wishes to place the liberty interests of one citizen over another; not because Mr. Shelby was violent or problematic while in his confinement, rather because Officer Campbell refuses to take accountability for his actions which directly caused extreme physical and mental harm for Mr. Shelby. R. at 7.

2. Failure-to-Protect Claims Should Only Use an Objective Analysis.

This Court has held there is no "independent state-of-mind requirement" in §1983 to prove the deprivation of a constitutional right. *Daniels v. Williams*, 474 U.S. 327, 328 (1986). "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." *Castro*, 833 F.3d at 1069. Furthermore, both pretrial detainees' excessive force and failure-to-protect claims "arise under the Fourteenth

Amendment's Due Process Clause," not the Eighth Amendment. *See Id.* "The language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically.'" *Kingsley*, 576 U.S. at 400. "Excessive force applied directly by an individual jailer and force applied by a fellow inmate can cause the same injuries, both physical and constitutional." *Castro*, 833 F.3d at 1070. Thus, prison officers have a duty to protect pretrial detainees from assault by other inmates in the same way they have a duty not to use excessive force themselves. *See Id.*

The proper analysis for pretrial detainee's Fourteenth Amendment failure-to-protect claims against a prison officer was established by the Ninth Circuit in *Castro v. Cty. Of Los Angeles*. *See Castro*, 833 F3d at 1071. The four prongs are: (1) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (2) those conditions put the plaintiff at substantial risk of suffering serious harm; (3) the defendant did not take available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved – making the consequences of the defendant's conduct obvious; and (4) by not taking such measures, the defendant caused the plaintiff's injuries. *See Id.* "With respect to the third element, the defendant's conduct must be objectively unreasonable." *Id.* (explaining that the test is reliant on the facts and circumstances of each particular case).

Not only does this test provide pretrial detainees an opportunity for their claims to be heard, but it also protects those officers who act in good-faith and rely upon the proper procedures in their positions. *See Kingsley*, 576 U.S. at 428 ("the use of an objective standard adequately protects an officer in good-faith"). Furthermore, this test eliminates any confusion

about what the actual standard for deliberate indifference is. "The reason that the term 'subjective prong' might be a misleading description is that, as discussed below, the Supreme court has instructed that 'deliberate indifference' roughly means "recklessness," but "recklessness" can be defined subjectively (what a person actually knew and disregarded) or objectively (what a reasonable person knew or should have known)." *Darnell*, 849 F.3d at 26 (citing *Farmer v. Brennan*, 511 U.S. 825, 836-37 (1994)). It alleviates all liability from those officers who do their jobs diligently and in good-faith, unlike Officer Campbell and creates a much more succinct analysis for pretrial detainees' 42 U.S.C. §1983 claims.

B. Ruling for Petitioner would nullify the Fourteenth Amendment Protections of Pretrial Detainees.

As the prison official of the Marshall jail, Officer Campbell had a duty to the inmates and pretrial detainees to shield them from violence at the hands of other inmates, and not to place them in dangerous situations themselves. R. at 4-6. Officers of the prison were required to attend a gang intelligence meeting on the morning of the attack on Mr. Shelby's life. R. at 5. Those not in attendance were "required . . . to review the meeting minutes on the jail's database." R. at 6. "A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer*, 511 U.S. at 828 (citing *Helling v. McKinney*, 509 U.S. 25, 125 (1993)). The Eighth Amendment also imposes the duty on prison officials to "take reasonable measures to guarantee the safety of the inmates." *See Farmer*, 511 U.S. at 832 (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). Furthermore, per this Court, we know that the Fourteenth Amendment protections for pretrial detainees are at least as great, if not greater than, the Eighth Amendment protections given to convicted inmates. *See Kingsley*, 576 U.S. at 389. The issue presented then is, should Officer Campbell be held liable for failing to inform himself of the requisite information necessary to uphold his duty to Arthur Shelby? Or is

he free from liability because no one said to him directly not to let Bonucci gang members in an isolated area with Mr. Shelby? Choosing the latter standard would create a post hoc exception to nearly every crime enumerated in 18 U.S.C.

1. Pretrial Detainees Do Not Forfeit Their Constitutionally Protected Rights.

Pretrial detainees are not stripped of their constitutional granted rights simply because they are awaiting a resolution to their criminal proceedings. *See Bell*, 441 U.S. at 545 (stating that convicted prisoners do not forfeit their constitutional protections because of their confinement). "There is no iron curtain drawn between the Constitution and the prisons of this country." *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974). Pretrial detainees who have been temporarily stripped of some of their liberties while awaiting trial are still granted the same constitutional protections as a private citizen who has an unfettered liberty interest. *See* La. Atty. Gen. Op. No. 1990-134 at 13-14. "The liberty interest of the pretrial detainee is rooted in the presumption of innocence. There is no doubt that pretrial detainees do have the protection of this presumption. . . . The presumption of innocence is a shield that prevents 'the infliction of punishment prior to conviction.'" *Campbell v. McGruder*, 520 F.2d 521, 529 (D.C. Cir. 1978) (quoting *Stack v. Boyle*, 342 U.S. 1, 4 (1951)). Furthermore, this Court has held that the common-law right to be free from unprovoked battery is one of the liberties guaranteed under the Due Process Clause of the Fourteenth Amendment. *See Wash. v. Glucksberg*, 521 U.S. 702, 744 (1997). Undoubtedly, this Court intended that freedom from all violence is one of those liberties. *See Id.* Thus, it is up to the government officers presiding over these institutions to provide sufficient protection measures for those pretrial detainees at risk of serious or fatal injuries. *See Farmer*, 511 U.S. at 857 ("having stripped them of virtually every means of self-protection and

foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course").

The right to be free from violence is clearly established when the "contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *See Castro*, 833 F.3d at 1067 (quoting *Serrano v. Francis*, 345 F.3d 1071, 1077 (9th Cir. 2003)). The contours of Mr. Shelby's right were his right to be free from known assaults by other inmates. *See Id.* A reasonable official would understand that when working at a prison that is known to have a significant number of gang members, both as convicted inmates and pretrial detainees. R.at 4. Under the objective-subjective deliberate indifference standard, Officer Campbell would not be held liable for a failure-to-protect claim if he placed Arthur Shelby in a room of 20 Bonucci clan members, despite ignoring the duties required for his job.

2. Officer Campbell Intentionally and Objectively Acted with Reckless Disregard and Deliberate Indifference to Mr. Shelby's Safety.

"The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead the a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially grated than that which is necessary to make his conduct negligent." Restat 2d of Torts, § 500. Officer Campbell intentionally did not consult the meeting notes held by the gang intelligence officers. R. at 5-6. Officer Campbell intentionally did not consult the special status inmate list he was carrying when retrieving Mr. Shelby and the Bonucci gang members from their cells. R. at 6. Officer Campbell did not consult the paper notices at each administrative area of the jail or the rosters and floor cards indicating the unique and precarious situation of Mr. Shelby. R. at 5. This

Court cannot alleviate the liability from Officer Campbell because he made several intentional and objectively unreasonable choices when he oversaw the transfer of inmates from their cells to the recreation room. *See Davidson v. Cannon,* 474 U.S. 344, 357 (1986) (explaining that "excusing the state's failure to provide reasonable protection to inmates against prison violence demeans both the Fourteenth Amendment and individual dignity).

Furthermore, under the *Castro* test, it is clear that Officer Campbell's conduct was objectively unreasonable and subjected Mr. Shelby to a nearly fatal assault on his life. *See generally Castro*, 833 F.3d 1060. A closer look at the four prongs of the *Castro* test make clear that Officer Campbell's decisions directly led to the vicious beating suffered by the victim. *See Id.* at 1071. He intentionally chose to group the Bonucci gang members and Mr. Shelby together; the conditions he put Mr. Shelby in put him "at substantial risk of suffering serious harm;" he choose not to take any reasonable measures to alleviate such a risk, like properly informing himself of the status of the inmates he was transferring; and by not properly informing himself of the dangerous situation he created, the consequences of Officer Campbell's conduct were life-threatening injuries for Mr. Shelby. *See Id.* This test both rewards prison officials who act in good-faith and punishes those who recklessly disregard their duties leading to unnecessary violence and punishment on pretrial detainees. *See Kingsley*, 576 U.S. at 428.

The subjective intent requirement of a pretrial detainee's 42 U.S.C.S. § 1983 claims should not be broadly applied to every situation regardless of the facts and circumstances. It puts too much faith in our prison officials to know every minute detail for each situation they encounter. The subjective intent prong both restricts the Fourteenth Amendment rights of pretrial detainees and rewards lazy and incompetent prison officers. The *Castro* test "requires a pretrial detainee who asserts a due process claim for failure to protect to prove more than negligence but

less than subjective intent – something akin to reckless disregard." *See Castro*, 833 F.3d at 1071. This test still carries a high burden of proof for victims, while also providing a method of relief for those who suffer serious injury due to prison officers' reckless disregard for their safety.

CONCLUSION

Therefore, we respectfully ask this Court to uphold the decision of the Fourteenth Circuit and find that a dismissal pursuant to *Heck v. Humphrey* does not serve as a "strike" under the PLRA and the subjective requirement for deliberate indifference failure-to-protect claims brought by pretrial detainees be eliminated pursuant to the *Kingsley* decision.