No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2023

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

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

BRIEF FOR THE RESPONDENT

Team 28

Attorneys for the Respondent

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QUESTIONS PRESENTED

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

2. Whether this Court's decision in *Kingsley v. Hendrickson* eliminated the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for violation of the pretrial detainee's Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 action.

OPINIONS BELOW

The opinion of the Fourteenth Circuit, No. 2023-5255, is unreported. R. 12–20. The ruling of the District Court for the Western District of Wythe denying the plaintiff's motion to proceed in forma pauperis, Case No. 23:14-cr-2324, is unreported. R. 1. The ruling of the District Court for the Western District of Wythe granting the defendant's Rule 12(b)(6) Motion to Dismiss for failure to state a claim, Case No. 23:14-cr-2324, is unreported. R. 2–11.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Eighth Amendment of the United States Constitution is invoked in this case concerning the Cruel and Unusual Punishment Clause. This provision provides in full: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment of the United States Constitution is invoked in this case concerning the Due Process Clause, which provides in relevant part:

> 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.

This case involves parts of the Prison Litigation Reform Act, codified at 28 U.S.C. § 1915(g), which provides in relevant part:

> 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.

This case also involves § 1983 which allows a civil action for depravation of rights, codified at 42 USC § 1983, which provides in relevant part:

> 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.

STATEMENT OF THE CASE

Respondent Arthur Shelby is a leading member of the Geeky Binders, an infamous criminal association in the town of Marshall. R. 3. Mr. Shelby has been convicted of several crimes in Marshall during his adult life. *Id.* The Geeky Binders have a rival gang in Marshall, the Bonucci clan, and local law enforcements are aware of their antagonist relationship and there are accusations of Marshall jail officers being bribed by members of the Bonucci clan. *Id.*

On December 31, 2020, Mr. Shelby was arrested by Marshall police officers at a boxing match; Mr. Shelby was inebriated when he was placed under arrest. R. 3–4. Mr. Shelby was held at the Marshall jail for charges of assault, battery, and possession of a firearm by a convicted felon. R. 4. The officer who did the preliminary paperwork and booked Mr. Shelby, Dan Mann, recognized Mr. Shelby as a member of the Geeky Binders. *Id.* He inventoried Mr. Shelby's belongings, including a characteristic custom ballpoint pen that concealed an awl with "Geeky Binders" engraved on it. *Id.* During the booking, Mr. Shelby asserted that he was a Geeky Binders member and that his brother Tom (another lead member) would get him out." *Id.*

Officer Mann specifically noted the awl in the pen in the Marshall police online database. *Id.* He also noted Mr. Shelby's affiliation with the Geeky Binders in the online database and the

physical copy. R. 4–5. After booking Mr. Shelby, other jail officers took Mr. Shelby to a holding cell that was not in the main area of the jail. R. 5.

Marshall's gang intelligence officers promptly reviewed Mr. Shelby's file in the online database. *Id.* They knew that members of the Bonucci clan were in the jail and would likely try to harm Mr. Shelby. *Id.* The officers noted this in Mr. Shelby's file and posted notices in administrative areas so other officers would be aware of the potential risk of harm. *Id.* On the morning of January 1, 2021, the gang intelligence officers also called a meeting with all jail officials, reminding them that Mr. Shelby and the Bonuccis were not to be in the same common areas. *Id.* The gang intelligence officers also said that Mr. Shelby was in cell block A, and the Bonuccis were in cell blocks B and C. *Id.* Officer Chester Campbell was present at the meeting per the roll call records, but the time sheet indicates that he did not arrive to the jail until after the meeting had ended. R. 5–6. Campbell was a newer entry-level jail officer; he had been employed by the Marshall jail for several months by the time of the meeting. R. 5. Campbell had been properly trained and consistently met work expectations. *Id.*

On January 8, 2021, Campbell took Mr. Shelby for recreation with another inmate from cell block A. R. 6. Campbell claims not to have known who Mr. Shelby was at the time he took him, and he did not look at the physical list of inmates with special statutes, e.g., inmates with known gang affiliations, and he did not look at Mr. Shelby's file in the online database. *Id.* Campbell carried with him a list of inmates who were at risk of being attacked by a rival gang that included a hit on Mr. Shelby ordered by the Bonucci clan; he did not look at the list. *Id.* When walking with Mr. Shelby to recreation, another inmate yelled to them, "I'm glad your brother Tom finally took care of that horrible woman." *Id.* Mr. Shelby affirmed the statement. *Id.*

Campbell picked up three inmates from cell blocks B and C; all were members of the Bonucci clan. R. 7. Mr. Shelby tried to hide behind the other cell block A inmate, but the Bonucci inmates immediately began savagely beating Mr. Shelby. *Id.* One used a club made of tightly rolled paper that he fashioned while in jail. *Id.* The assault lasted for several minutes. *Id.* Campbell could not stop the Bonuccis by himself, and it ended once other officers arrived to help. *Id.* Mr. Shelby suffered life-threatening injuries and was hospitalized for weeks after the attack. *Id.*

Mr. Shelby was convicted of battery and possession of a firearm by a convicted felon. *Id.* On February 24, 2022, Mr. Shelby filed a 42 U.S.C. § 1983 claim in the Western District of Wythe against Campbell in his individual capacity. *Id.* He also filed to proceed in forma pauperis. *Id.* The district court denied his in forma pauperis motion because Mr. Shelby had three prior conviction dismissed pursuant to Heck v. Humphrey, which it counted as strikes within the meaning of the 28 U.S.C. § 1915(g) (the Prison Litigation Reform Act). *Id.* Mr. Shelby paid the filing fee in full. *Id.*

Mr. Shelby claimed that Campbell violated his Constitutional rights by failing to protect him during the attack. *Id.* Campbell filed a 12(b)(6) to dismiss for failure to state a claim on May 4, 2022. R. 8. On July 14, 2022, the District Court granted Campbell's motion, holding that Mr. Shelby did not allege that Campbell had actual knowledge of the risk of harm due to Mr. Shelby's gang affiliation under the subjective standard of pretrial detainees' failure-to-protect claims. *Id.*; R. 13. The Court of Appeals for the Fourteenth Circuit reversed, holding that a *Heck* dismissal does not automatically count as a strike because they may state a claim, and that the objective standard should apply when evaluating failure-to-protect claims so Mr. Shelby did properly state a claim. R. 14–15; R. 18–19.

SUMMARY OF THE ARGUMENT

The Court should find that Mr. Shelby's prior *Heck* dismissals do not constitute strikes within the meaning of the PLRA. A *Heck* dismissal in and of itself reflects the prematurity of the case, and not whether the case was dismissed for maliciousness, frivolity, or failing to state a claim. A *Heck* dismissal can mean that the complaint failed to state a claim, but only if the claim in its *entirety* challenged the validity of the underlying conviction. In this situation, the reason for accruing the strike would be the failure to state a claim because that is a reason explicitly enumerated in § 1915(g). Other parts of the complaint may be intermingled, and in such a situation a *Heck* dismissal should not count as a strike.

Congress intended § 1915(g) to disincentivize litigation that brought pointless or wasteful claims by requiring plaintiffs to pay the filing fee after earning three strikes. Congress did not intend to discourage plaintiffs from bringing legitimate claims of civil rights violations, and complaints dismissed under *Heck* may still allege such legitimate Constitutional or civil rights violations. A *Heck* dismissal does not automatically show that the complaint was frivolous, malicious, or failed to state a claim, so the Court should find that it does not count as a strike within the meaning of the PLRA.

The Court should uphold its decision in *Kingsley* which eliminated the subjective intent requirement in a deliberate indifference failure-to-protect claim for a violation of Mr. Shelby's Fourteenth Amendment due process right pursuant to 42 U.S.C. § 1983. Since the Eighth Amendment deals with cruel and unusual punishment, it is not applicable to pretrial detainees, who shall not be subject to any form of punishment while awaiting their sentence. Consequently, the Due Process Clause of the Fourteenth Amendment controls and it does not require a state of mind component within the language of the Constitution. Therefore, the standard of objective

reasonableness should apply to all deliberate indifference claims under § 1983 brought forth by pretrial detainees pursuant to the Fourteenth Amendment.

To succeed in an indifference claim, the pretrial detainee must show that the officer's actions must have been intentional and reckless while confronted by an unjustifiably high risk of harm that is either known or so obvious that it should be known. Campbell showed intent by transporting Mr. Shelby, a pretrial detainee, with several inmates. There was a substantial risk of serious harm to Mr. Shelby since he was listed as an individual who was at risk of attack in the facility and this risk could have been eliminated by checking the gang affiliation list that named at risk individuals, that Campbell did not perform, causing Mr. Shelby to suffer significant injuries.

ARGUMENT

Questions of law are reviewed de novo. *Monasky v. Taglieri*, 140 S. Ct. 719, 730 (2020). Similarly, questions of constitutional interpretation are also reviewed de novo. *Bose Corp. v. Consumers Union*, 466 U.S. 485, 500–01 (1984). Here, the Court has been requested to consider two questions of law: whether Mr. Shelby's prior Heck dismissals constituted strikes, and whether a pretrial detainee must prove a defendant's subjective indent in deliberate indifference failure-to-protect claims when bringing a for violation of the pretrial detainee's Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 action.

Applying the de novo standard of review, the Court should find that the Fourteenth Circuit correctly held that Mr. Shelby's prior civil actions dismissed pursuant to *Heck v. Humphrey* do not automatically count as strikes because it is a procedural dismissal that does not always show that the plaintiff failed to state a claim, and the objective reasonableness standard

should be applied to § 1983 actions by pretrial detainees under the Fourteenth Amendment Due Process Clause.

I. THE FOURTEENTH CIRCUIT CORRECTLY HELD THAT MR. SHELBY'S PRIOR CIVIL ACTIONS DISMISSED PURSUANT TO *HECK V. HUMPHREY* DO NOT CONSTITUTE "STRIKES" WITHIN THE MEANING OF THE PRISON LITIGATION REFORM ACT.

The Fourteenth Circuit correctly held that Mr. Shelby's prior *Heck* dismissals were not strikes within the meaning of the Prison Litigation Reform Act (PLRA). The PLRA was passed by Congress in 1996 and specifies that a prisoner-plaintiff earns a "strike" each time the prisoner brings a "civil action or appeal" and it is 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). The PLRA prescribes that plaintiffs who have gained three or more "strikes" cannot file in forma pauperis; they would have to pay the entire filing fee before filing. *Id.* A plaintiff's entire complaint must be "dismissed on enumerated grounds to count as a strike." *Tolbert v. Stevenson*, 635 F.3d 646, 651 (4th Cir. 2011).

In *Heck v. Humphrey*, the Court held that § 1983 claims must be dismissed without prejudice if the court hearing the case would have to determine if "judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." 512 U.S. 447, 487 (1994). If a plaintiff can prove "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus . . ." then the claim can proceed. *Id.*

The U.S. Courts of Appeals treat *Heck* dismissals differently with respect to whether they constitute strikes; however, construing *Heck* dismissals not to be strikes is consistent with the

PLRA and the Court's decision in *Heck*. *See e.g.*, *Washington v. Los Angeles Cnty*. *Sherrif's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016). *Cf. Garrett v. Murphy*, 17 F.4th 419, 424 (3d Cir. 2022). The Ninth Circuit held that a *Heck* dismissal does not constitute a strike because "standing alone, it is not per se 'frivolous' or 'malicious.'" *Washington*, 833 F.3d at 1055 (9th Cir. 2016). A *Heck* dismissal is a matter of "judicial traffic control," and does not reflect whether a case is meritorious or not. *Id.* at 1056. A favorable termination showing is not an element of a § 1983 claim; a court's ruling that the underlying conviction would be invalidated is a "threshold legal determination." *Id.* Likewise, The Seventh Circuit echoes the Ninth's reasoning and asserts that *Heck* operates like an affirmative defense that is "subject to waiver," therefore courts "may bypass . . . *Heck* . . . and address the merits of the case." *Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011).

Heck dismissals can, however, be a basis for finding that the plaintiff failed to state a claim. *See Washington*, 833 F.3d at 1055–56 (holding Heck dismissals may fail to state a claim "when the pleadings present an 'obvious bar to securing relief' under *Heck*."); *Ray v. Lara*, 31 F.4th 692, 697 (9th Cir. 2022) (citing *Washington*, 833 F.3d at 1055) (holding that facially obvious *Heck* dismissals may constitute a strike when the *entire* complaint is "dismissed for a qualifying reason under the PLRA.") (emphasis added). However, this determination depends on the specific pleadings and should not automatically apply to all *Heck* dismissals because it does not inherently show that a complaint in its entirety was frivolous, malicious, or failed to state a claim.

A. Congress Intended to Help Judicial Traffic Control by Disincentivizing Wasteful Claims and Did Not Intend to Create Barriers for Legitimate Civil Rights Complaints.

Congress passed the PLRA in 1996 in response to an excessive amount of civil litigation by prisoner-plaintiffs. In a Senate hearing, Associate Attorney General Jon Schmidt emphasized that the purpose of the § 1915 was to disincentivize frivolous suits and was primarily concerned with reducing the filing of senseless claims. *Prison Reform: Enhancing the Effectiveness of Incarceration: Hearing Before the Comm. on Judiciary*, 104th Cong. 25–27 (1995) (statement of Jon Schmidt). Senator Dole emphasized the problems with "frivolous and abusive" litigation with examples of such "meritless" cases: "insufficient storage locker space, a defective haircut by a prison barber, . . . and yes, being served chunky peanut butter instead of the creamy variety." 141 Cong. Rec. 26,548 (1995). These kinds of claims abused the judicial system and mechanisms designed for getting relief for legitimate rights violations; they are unlike *Heck* dismissals. A *Heck* dismissal prevents a premature case from being heard because there has not been favorable termination, or the plaintiff did not show favorable termination. *Heck*, 512 U.S. at 487. It is unlike the wasteful cases that were plaguing the judicial system when the PLRA brought pointless allegations under the guise of a deprivation of constitutional rights.

The PLRA was not designed to prevent claims alleging civil rights abuses from being filed; Senator Hatch voiced concerns about the PLRA dissuading claims that allege legitimate rights violations from being filed. 141 Cong Rec. S18137–38 (daily ed. Dec. 7, 1995). Rather, it was designed to prevent abuse of the judicial system by making plaintiffs think twice before they filed otherwise they would have to pay the filing fee. *Id.* It did not intend to deprive plaintiffs of basic civil rights or to undermine such legitimate claims, as Senator Simon acknowledged that

many lawsuits allege inhumane treatment and they should not be discouraged by the PLRA. 141 Cong. Rec. S2297 (daily ed. March 19, 1996).

When the PLRA was passed in 1996, 83.3% of prisoner civil rights or conditions claims were brought by pro se plaintiffs. *Table B: Pro Se Litigation in U.S. District Courts, by Case Type*, Information and L., Apr. 2022, https://incarcerationlaw.com/resources/data-update/#TableB (lawsuit filings data from the Federal Judicial Center Integrated Database). Since then, similar claims filed were brought by an approximate average of 94% pro se plaintiffs. *Id.* Most pro se plaintiffs are not sophisticated users of the judicial system, so they are more prone to making procedural errors when filing, such as filing before exhausting all administrative remedies or filing before favorable termination. In passing the PLRA, the legislative history shows that Congress wanted to penalize abusive litigation by requiring prisoner-plaintiffs to pay filing fees, not to penalize plaintiffs who made procedural errors in bringing potentially legitimate claims that do not entirely challenge the underlying conviction. Therefore, a *Heck* dismissal should not automatically count as a strike.

B. A *Heck* Dismissal Does Not Categorically Mean That the Dismissed Case Failed to State a Claim.

Though some circuits have held that a *Heck* dismissal is a strike because it fails to state a claim, this interpretation reads a heightened pleading requirement into § 1915(g) is inconsistent with the statutory language and the longstanding judicial interpretation of the requirements to state a claim upon which relief can be granted. *E.g., Garrett v. Murphy*, 17 F.4th 419, 424 (3d Cir. 2022); *see infra* Section (B)(2). Additionally, courts have held that similar administrative requirements of a § 1983 claim that are absent in a pleading do not mean that the plaintiff has failed to state a claim.

1. Other administrative or procedural requirements of a § 1983 claim do not inherently constitute strikes within the meaning of the PLRA.

The Court of Appeals for the Fourteenth Circuit correctly held that *Heck* does not require plaintiffs to allege favorable termination in their complaint; rather it means that the court is delayed from deciding the case on the merits until there has been favorable termination. R. 15. Therefore, a *Heck* dismissal is not categorically a failure to state a claim upon which relief can be granted, and therefore should not constitute a strike pursuant to the PLRA.

For example, the PLRA also requires that prisoner-plaintiffs exhaust all administrative relief before bringing a § 1983 claim. 42 U.S.C. § 1997e. However, bringing a § 1983 claim before exhausting administrative remedies is not a failure to state a claim. *See Jones v. Bock*, 549 U.S. 199, 215–16 ("there is no basis for concluding that Congress implicitly meant to transform exhaustion from an affirmative defense to a pleading requirement by the curiously indirect route of specifying that courts should screen PLRA complaints and dismiss those that fail to state a claim."); *Green v. Young*, 454 F.3d 405, 409 (4th Cir. 2006) ("Because a dismissal for failure to exhaust is not listed in § 1915(g), it would be improper for us to read it into the statute."); *Snider v. Melindez*, 199 F.3d 108, 111–12 (2d Cir. 1999) (asserting that the three strikes provision was not meant to apply to "suits dismissed without prejudice for failure to comply with a procedural prerequisite."). Therefore, a dismissed § 1983 claim that fails to exhaust all administrative remedies is only a strike if it is otherwise frivolous or fails to state a claim.

A *Heck* dismissal, similar to a failure to exhaust dismissal, can be a "routine dismissal" that should not count as a strike under the PLRA. *Green*, 545 F.3d at 409. The Ninth Circuit affirmed that "compliance with *Heck* most closely resembles the mandatory exhaustion of PLRA claims, which constitutes an affirmative defense and not a pleading requirement." *Washington*,

833 F.3d at 1056 (citing *Jones*, 549 U.S. at 215–17 (2007)). A claim that does not show favorable termination does not necessarily call the validity of the underlying claims into question.

The exhaustion requirement was created by Congress, and Congress declined to include it as a reason for accruing a strike. Here, the *Heck* Court delineated the favorable termination requirement prior to enactment of the PLRA; similarly Congress declined to enumerate it as a reason for earning a strike. Like how courts have held that filing before exhausting administrative remedies does not constitute a strike, a *Heck* dismissal should not automatically count as a strike.

2. Automatically counting *Heck* dismissals as strikes would improperly read an unenumerated way to earn a strike into § 1915(g) that Congress did not include.

The language used by Congress in § 1915(g) is the same used in Rule 12(b)(6) of the Federal Rules of Civil Procedure, which allows a case to be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). An action may be dismissed "for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief." *Jones*, 549 U.S. at 215; *see also Conley v. Gibson*, 355 U.S. 41, 47 (1957); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It may also be dismissed for failure to state a claim if there is a facially obvious affirmative defense. *Jones*, 549 U.S. at 215 (quoting *Leveto v. Lapina*, 258 F.3d 156, 161 (CA3 2001)).

There is no heightened pleading requirement in the PLRA that would require a plaintiff to show favorable termination of their claim to avoid receiving a strike in the statute. § 1915(g). Instead, it expressly mentioned three ways for a dismissed claim to accrue a strike for in forma pauperis proceedings. *Id.* Therefore, a claim that does not require favorable termination in its

entirety and is subsequently dismissed under *Heck* should not constitute a strike because it does not necessarily fail to state a claim.

Failure to show favorable termination in the complaint can only fail to state a claim if the complaint *in its entirety* calls the underlying conviction into question. *See Ray*, 31 F.4th at 697–98. Such a claim that is dismissed pursuant to *Heck* can properly be counted as a strike because it fails to state a claim as the statute provides. *Id.* However, other actions can be dismissed under *Heck* but the complaint in its entirety may not require favorable termination, so a strike would be impermissible. *See Washington*, 833 F.3d at 1056–57 (a portion of the complaint failed to comply with *Heck* but it was connected to the habeas challenge and therefore was not a strike). If such a *Heck* dismissal was counted as a strike, it would read a requirement into § 1915(g) that would essentially require plaintiffs to plead to a heightened standard to avoid earning a strike, even though their complaint does state a claim. A *Heck* dismissal should not automatically count as a strike because it does not always show that the plaintiff failed to state a claim.

II. THE COURT'S DECISION IN *KINGSLEY* ELIMINATED THE SUBJECTIVE INTENT REQUIREMENT IN A DELIBERATE INDIFFERENCE FAILURE-TO-PROTECT CLAIM FOR A VIOLATION OF MR. SHELBY'S FOURTEENTH AMENDEMENT DUE PROCESS RIGHT PURSUANT TO 42 U.S.C. § 1983.

The Fourteenth Circuit correctly held that failure-to-protect claims brought forth by pretrial detainees are protected under the Fourteenth Amendment because Campbell's actions were objectively unreasonable under the *Kingsley* standard. A pretrial detainee can file an action under 42 U.S.C. § 1983 against prison officials for injuries sustained while awaiting their sentence, pursuant to the Due Process Clause of the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (holding a detainee may not be punished prior to conviction under the Due Process Clause.); *see* U.S. Const. amend. XIV. Unlike convicted prisoners protected under the

Eighth Amendment Cruel and Unusual Punishment Clause, pretrial detainees are entitled to the presumption of innocence; as a result, they are shielded by the Constitution from *any* punishment for the actions that led to their confinement. *Kemp v. Fulton Cnty.*, 27 F.4th 491, 495 (7th Cir. 2022); *see* U.S. Const. amend. VIII. Under both provisions, the plaintiff must show that the actions of the prison officials amounted to deliberate indifference. *Id.*

A. The Standard of Objective Reasonableness Applies to All Deliberate Indifference Claims Brought by Pretrial Detainees.

In *Kingsley v. Hendrickson*, the Court held that a pretrial detainee who brings an excessive force claim under the Fourteenth Amendment does not need to satisfy the Eighth Amendment's subjective intent standard. 576 U.S. 389, 400–01 (2015). The Court asserted that a pretrial detainee could prevail in a due process violation claim by presenting solely objective evidence indicating that the challenged governmental action—in this instance, inaction—lacks a rational relationship to a legitimate governmental objective or exceeds what is necessary to achieve that purpose. *Id.* at 398. As *Castro* pointed out, the Court in *Kingsley* did not limit itself to excessive force actions but applied it more broadly to challenged governmental actions. *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016).

Castro also indicated that the use of excessive force has the same physical and constitutional injuries when applied by a fellow inmate; therefore, officials have a duty to protect pretrial detainees from harm from other inmates just as they have the duty to refrain from using excessive force themselves. *Id.* Additionally, the text of § 1983 does not contain a culpability requirement and only mentions the underlying rights provided by the text of the Constitution. *Id.* at 1069; *see* 42 U.S.C. § 1983. Claims of excessive force and failure-to-protect, brought by pretrial detainees, both arise under the Fourteenth Amendment. Violations under this provision

can occur irrespective of an official's state of mind. *Grote v. Kenton Cnty.*, 85 F.4th 397, 405 (6th Cir. 2023). Consequently, the objective standard should apply to all deliberate indifference claims brought by pretrial detainees under § 1983 actions.

In addition to addressing excessive force and failure-to-protect claims, the Second, Sixth, and Seventh Circuits have extended the application of the objective reasonableness standard to various other § 1983 actions. *See Darnell v. Pineiro*, 849 F.3d 17, 34-35 (2nd Cir. 2017) (deliberate indifference to conditions of confinement); *Greene v. Crawford Cnty.*, 22 F.4th 593, 605 (6th Cir. 2022) (deliberate indifference to an inmate's serious medical needs); *Kemp*, 27 F.4th at 495 (deliberate indifference to conditions of confinement). They align with the Ninth Circuit's perspective, which holds that *Kingsley* has eliminated the subjective element for pretrial detainees asserting deliberate indifference claims under the Fourteenth Amendment. *Castro*, 833 F.3d at 1069. Notably, the Sixth Circuit has taken a decisive stance by asserting that *Kingsley* clearly distinguishes between claims made by convicted prisoners under the Eighth Amendment and those brought by pretrial detainees under the Fourteenth Amendment. *Westmoreland v. Butler Cnty.*, 29 F.4th 721, 727-728 (6th Cir. 2022) (citing *Brawner v. Scott Cnty., Tenn.*, 14 F.4th 585, 596 (6th Cir. 2021)). Accordingly, the Sixth Circuit argues that employing the same analysis for both scenarios is untenable for courts. *Id.* Therefore, the Court should adopt the approach of the Second, Sixth, Seventh, Ninth, and Fourteenth circuits, maintaining a clear distinction between the two Clauses of the Constitution and applying the objective reasonableness standard to all claims brought under § 1983 by pretrial detainees.

According to *Castro*, the elements of a pretrial detainee's Fourteenth Amendment failure-to-protect claim against an individual officer 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 reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious*; and

(4) By not taking such measures, the defendant caused the plaintiff's injuries.

Castro, 833 F.3d at 1071 (emphasis added). The third element is the most crucial in this matter. The objective reasonableness standard establishes deliberate indifference by presenting evidence that shows "more than negligence but less than subjective intent—something akin to reckless disregard." *Westmoreland*, 29 F.4th at 728 (citing *Brawner*, 14 F.4th at 596–97). Petitioner's actions must have been intentional and reckless while confronted by an "unjustifiably high risk of harm that is either known or so *obvious* that it should be known." *Id.* (emphasis added). Therefore, it turns on the facts surrounding each particular case. *Kemp*, 27 F.4th at 495. Campbell ignored his obvious duties as an official, causing Mr. Shelby a substantial amount of harm, therefore the Fourteenth Circuit correctly reversed the district court's motion to dismiss.

B. Campbell's Physical Actions Were Intentional and There Was a Substantial Risk of Serious Harm to Mr. Shelby That Could Have Been Eliminated Through Reasonable and Available Measures That Campbell Did Not Take.

Campbell intentionally escorted Mr. Shelby to the recreation room, inviting him to go and facilitating his transport, before retrieving several detainees. R. 6–7. Mr. Shelby faced a significant threat as he was listed in the inmates with gang affiliations risk of attack, a list Campbell possessed. R. 6. Campbell failed to protect Mr. Shelby by not adhering to the

necessary precautions expected of all officers in the same circumstances. The following cases highlight the exact factual basis for concern.

In one case, the pretrial detainee filed a failure-to-protect claim under the Fourteenth Amendment pursuant to § 1983. *McGowan v. Herbert*, No. 22-2033, 2023 App. Ct. LEXIS 8995 at *1 (6th Cir. 2023). The detainee contended that the officer failed to protect him by removing him from protective custody into the dorm where he was originally assaulted by inmates who knew he testified against someone and thus, was labeled a "snitch." *Id.* at *2–3. The pretrial detainee informed the officer of being labeled a "snitch" and that if he was placed back in the dorm he would be assaulted because he had a "price on his head" due to his reputation. *Id.* The court held that, given the circumstances, a reasonable officer should have recognized the significant risk and foreseeable consequences associated with removing the pretrial detainee from protective custody. *Id.* at *7. The Court reasoned that because of the pretrial detainee's role in an inmate's criminal case was "common knowledge," it was easy to determine that the pretrial detainee was in danger by new inmates and that there was incentive to attack. *Id.* at *8.

Like the pretrial detainee in *McGowan*, Mr. Shelby's role in gang activity was "common knowledge" because the town was known for its high gang activity. R. 4. The District Court acknowledged that Mr. Shelby is the second-in-command of the *infamous* gang, Geeky Binders. R. 2. (emphasis added). Despite the disputed facts of Campbell's presence at the meeting, the intelligence officers *reminded* everyone at the meeting to regularly check the roster and floor cards to make sure rival gangs would not interact with each other. R. 5–6. (emphasis added). The fact that it was a reminder indicates that it was standard routine as a jail official. Although Campbell was new to the job, he had "been trained properly by the Marshall jail and had been meeting job expectations for the several months he had been employed." R. 5. Campbell carried

the hard copy list of inmates with gang affiliations and their corresponding risk of attack from other gang members in the jail which explicitly listed Mr. Shelby. R. 6. Officers knew that members of the Bonucci clan were in the jail and would likely try to harm Mr. Shelby. *Id.* The officers noted this in Mr. Shelby's file and posted notices in administrative areas so others would be aware of the potential risk of harm. *Id.* Campbell also had notice that Mr. Shelby had some type of affiliation when an inmate yelled, "I'm glad your brother Tom finally took care of that horrible woman," while Campbell was transporting Mr. Shelby to recreation. R. 6. Nonetheless, Campbell failed to adhere to established protocols, opting to transport Mr. Shelby along with multiple detainees recklessly without checking the gang affiliation list, despite evident warnings. As a result, Campbell failed to fulfill his duties, ensuing significant injuries to Mr. Shelby.

In *Brawner*, the pretrial detainee filed an inadequate medical care claim under § 1983 for the violation of her Fourteenth Amendment due process rights. *Brawner,* 14 F.4th at 590. While the nurse argues she did not receive the pretrial detainee's intake form with her listed medications in her mailbox, even though it was customary to leave intake forms there, there is evidence suggesting that the nurse received the intake form after the pretrial detainee was discharged from the hospital but failed to take measures to ensure she received her medications. *Id.* at 597–98. The court held that the nurse failed to take the necessary steps to ensure that the pretrial detainee obtained her prescribed medications or appropriate alternatives. *Id.* at 597. The court reasoned that given the nurse's training and experience, she should have known that the pretrial detainee needed her medication or consulted with the jail doctor. *Id.* at 598. Moreover, it ruled that a jury could reasonably conclude that the pretrial detainee need for medical care was so *obvious*, to the extent that even a layperson would *easily recognize* the necessity to consult with a doctor. *Id.*

Like the nurse in *Brawner*, Campbell was trained properly and was meeting job expectations for several months. R. 5. He also had access to the list of inmates with gang affiliations who were at risk of attack which included Mr. Shelby. R. 6. It was routine for Officer's to have this list and to check it regularly, and Campbell failed to take the necessary steps to ensure that Mr. Shelby was not on the list of inmates with gang affiliations. R. 5-6. Campbell also came into contact with an inmate who addressed Mr. Shelby and said that he was glad his brother Tom "took care of" someone. R. 6. This interaction should have alerted Campbell that Mr. Shelby potentially had gang affiliations once he affirmed the inmate's comment. Nonetheless, he told Mr. Shelby to "be quiet." R. 6. An ordinary officer with Campbell's training would easily recognize the need to look at the gang affiliation list that was on-hand, because it was so obvious that Mr. Shelby had such affiliations after the inmate's comments. Hence, Campbell did not take reasonable steps to ensure Mr. Shelby's safety while he was a pretrial detainee at the facility.

The Petitioner argues that *Farmer* is applicable to the present case. However, the Court decided *Farmer* by considering the Eighth Amendment, incorporating the subjective component of the deliberate indifference test under that Clause. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). This was done by considering the language and purposes of the amendment, placing emphasis on the concept of "punishments" rather than any intrinsic interpretation of the term. *Brawner,* 14 F.4th at 595. It underscores the contextual application of the deliberate indifference standard within the framework of the Eighth Amendment and does not address its applicability within the context of the Fourteenth Amendment. The Court should refrain from determining the applicability of the *Farmer* standard in the context of the Fourteenth Amendment since pretrial detainees are not subject to *any* punishment while awaiting sentencing, so the Eighth

Amendment does not apply to them. In conclusion, the Court should adopt the *Kingsley* objective reasonableness test to all deliberate indifference claims brought by pretrial detainees.

CONCLUSION

For these reasons, the Court should affirm the decision of the Fourteenth Circuit.