No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2023

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

BRIEF OF PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

QUESTIONS PRESENTED

1. Does a dismissal of a prisoner's § 1983 civil action failure to state a claim for relief under *Heck v. Humphrey* constitute a "strike" within the meaning of the Prison Litigation Reform Act?
2. Does this Court's decision in *Kingsley v. Hendrickson* 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?

OPINIONS BELOW

The Court of Appeal reversed and remanded the case back to the District Court for the Western District of Wythe. The Supreme Court of the United States granted Petitioner's petition for writ of certiorari in the October Term 2023.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. XIII

U.S. Const. amend. XIV

28 U.S.C. § 1915

42 U.S.C. § 1983

Fed. R. Civ. Proc. 12

STATEMENT OF THE CASE

This appeal comes before this Court because of an incident that turned into a frivolous legal battle. Petitioner, Chester Campbell (Officer Campbell), is a well-respected, but entry-level guard at the Marshall jail where the Respondent, Arthur Shelby (Shelby), was injured by rival gang members. R. at 2-7. Shelby, a known Geeky Binders gang member, was arrested on December 31, 2020, by Marshall police, and he suffered physical injuries during his status as a pretrial detainee when Officer Campbell mistakenly, but following protocol, comingled Shelby with rival gang members on January 8, 2021. *Id.*. Leading up to the incident on January 8, 2021, Dan Mann booked Shelby and conducted his preliminary paperwork, in which he inventoried all

of Shelby's belongings using the Marshall jail's online database. R. at 5. As part of the protocol by Marshall police, all officers are the Marshall jail are required to make both paper and digital copies of the forms to file and upload on the jail's database, and Shelby's information was properly uploaded. R. at 4. The paperwork that is filed into the database includes each inmate's charges, inventoried items, medications, gang affiliation, and other pertinent statistics and data that jail officials would need to know. *Id.* The database allows officers to indicate an inmate's gang affiliation along with known hits placed on the inmate and any gang rivalries. *Id.* Officer Mann opened a new file on Shelby even though Shelby's information was previously listed in the database and properly recorded all of Shelby's information. *Id.* The gang intelligence officers of Marshall police reviewed and edited Shelby's profile in the database and decided to hold a special meeting with other officers in charge of Shelby. R. at 5. The gang intelligence officers knew Shelby was a target of rival gang, so they filed and printed out paper notices of this information. *Id.* At the special meeting, the gang intelligence officers notified the jail officers Shelby would be housed in cell block A and members of the rival gang in cell blocks B and C. *Id.* This information was not inputted on the printed notices, nor does it appear to have been in Shelby's file. *Id.* Officer Campbell is not a gang intelligence officer, and he was unable to attend the special meeting that was held due to illness. *Id.* The meeting minutes were required to be read but the database system does not have a record of who viewed the minutes because of a system glitch. *Id.* On January 8, 2021, Officer Campbell did not know or recognize Shelby when he went to bring Shelby to the jail's recreation room. R. at 6. The record does not indicate that Officer Campbell knew the inmates housed in cell blocks B and C were members of the rival gang who put a hit on Shelby. *Id.* Officer Campbell, then following protocol, removed Shelby from his cell block along with the two inmates from cell blocks B and C. *Id.* The inmates shouted

at each other, and the record reflects the yelling did not indicate gang status. *Id.* Shelby was attacked by the two inmates and suffered serious injuries as a result, however, Officer Campbell attempted to breach the fight up but was unable to fend off three men by himself. *Id.* As a result of this incident, Shelby brought this 42 U.S.C. § 1983 in the United States District Court for the Western District of Wythe the action against Officer Campbell in his individual capacity on February 24, 2022, and he filed a motion to proceed in forma pauperis alongside his complaint. R. at 1. The District Court dismissed the civil suit because Shelby failed to state a relief claim, and the Court denied Shelby's motion to proceed in forma pauperis on April 20, 2022. R. at 7.

Shelby appealed the District Court's decision arguing that the denial of his motion to proceed in forma pauperis does not serve as a "strike" pursuant to *Heck v. Humphrey*. R. at 12. Shelby also appealed arguing the District Court erred in applying the subjective indifference standard to his failure-to-protect claim instead of utilizing the objective standard in *Kinglsey v. Hendrickson*. R. at 16. The Court of Appeals for the Fourteenth Circuit reversed and remanded the case, finding that a dismissal pursuant to *Heck v. Humphrey* does not automatically amount to a "strike" under the Prison Litigation Reform Act. R. at 19. The Court of Appeals also joined sister circuits by holding the objective standard extends beyond excessive force claims and to failure-to-protect claims under the *Kingsley* decision. *Id.* The Court of Appeals, however, did not have a unanimous decision, and Judge Solomons dissented from Judges Stark and Thorne. R. at 20. In the dissent, Judge Solomons held the Fourteenth Circuit Court of Appeals was altering decades of precedent by joining the objective standard established in *Kingsley*. *Id.*

Officer Campbell petitioned for a writ of certiorari following the Fourteenth Circuit Court of Appeals decision, and the Supreme Court of the United States granted this petition. R. at 21.

SUMMARY OF THE ARGUMENT

The Court granted certiorari because there are two issues involving a division among the federal court of appeals, and both issues require this Court to revisit its application and holding of precedent binding cases. The first issue, whether a dismissal for failure to state a claim for relief under the Prison Litigation Reform Act ("PLRA"), codified at 28 U.S.C.S. § 1915, pursuant to the holding in *Heck v. Humphrey*, 512 U.S. 477 (1994), constitutes a "strike," has created a circuit split in which the courts have held a variety of application regarding the treatment of these types of dismissals. The confusion stems from this Court's use of malicious prosecution to analogize to § 1983 claims, as this federal civil rights statute provides an avenue for prisoners to bring tort claims at the federal level, but requires favorable-termination of the criminal conviction before proceeding. The Third, Fifth, Tenth, and D.C. Circuits have found that a dismissal for failure to state a claim is a strike pursuant to the holding in *Heck* because favorable-termination is an elemental to § 1983 claims. Whereas the Ninth and Seventh Circuits have held favorable-termination is the equivalent of an affirmative defense, and, thus, is subject to waiver. Furthermore, the First and Eleventh Circuits have held that favorable-termination is jurisdictional and elemental. The Second, Fourth, Sixth, and Eighth Circuits have not affirmatively held a designated answer to how those courts view favorable-termination, however, some have indicated how they would interpret *Heck*. We submit that the favorable-termination requirement is an element of § 1983 claims, and, thus, the Third, Fifth, Tenth, and D.C. Circuits have correctly interpreted the holding in *Heck*.

As the legislative history shows, the purpose of § 1983 claims, along with the workability of the standard, the favorable-termination is a requirement prevents an influx of suits being filed. The crux of § 1983 was to prevent judicial overflow from prisoners seeking judicial recourse for

civil rights violations by creating a strike system to deter prisoners from filing frivolous claims, malicious claims, or by failure to state a claim upon which relief can be granted. Thus, holding favorable-termination as an element achieves this purpose best because it provides clarity to individuals and prevents parallel litigation. In this case, Respondent asserts that the appellate court correctly determined that favorable-termination is not a requirement as it indicated in the majority opinion, "*Heck* deals with prematurity of claims." Respondent fails to assert that the legislative intent behind § 1983 claims was precisely to avoid claims that do not state a claim for relief. Premature or not, failing to state a claim upon which relief can be granted results in a court's inevitable dismissal of the claim, and, thus, more judicial hearings that were intended to be avoided by the strike system and the favorable-termination requirement. This case demonstrates why this Court should reaffirm its holding under *Heck* and a dismissal for failure to state a claim upon relief by failing to meet the favorable-termination requirement is appropriate.

The second issue, whether the holding in *Kinglsey v. Hendrickson*, departed from the subjective standard utilized in deliberate indifference failure-to-protect, inadequate medical care, and conditions of confinement claims, also created a circuit split that this Court is asked to address and answer. This Court decided *Kingsley* under a narrow question: whether excessive force claims brought under the Fourteenth Amendment by pretrial detainees requires an objective standard. The Court held that an objective standard based on the set of facts under *Kingsley*, but did not extend its holding to Fourteenth Amendment actions, such as the issue in this case of deliberate indifference failure-to-protect claims. The Court's holding in *Kingsley*, nevertheless, has created competing views among the circuit courts about applying an objective versus subjective standard in a failure-to-protect claim. The Fifth, Eighth, Tenth, and Eleventh Circuits

apply the subjective standard, whereas, the Second, Fourth, Sixth, Seventh, and Ninth apply the objective standard.

We submit that the subjective standard is appropriate and necessary in deliberate indifference failure-to-protect claims for several reasons. First, the holding in *Kingsley* was narrowly-tailored to excessive force claims. Second, the objective standard for deliberate indifference is inconsistent with this Court's precedent in *Farmer* and *Daniels* because the objective standard ignores this Court's understanding that deliberate indifference failure-to-protect claims may arise from negligence, which is below the Constitutional threshold of protection. Third, and finally, the subjective standard has proven to be not only a workable standard, but the standard most consistent with Constitutional rights protected under the Fourteenth Amendment and this Court's precedent. Therefore, this Court should reverse the Fourteenth Circuit's decision and hold that (1) Dismissals under *Heck* for failure to state a claim constitute a strike within the meaning of the PLRA, and (2) *Kinglsey* did not eliminate the subjective standard for deliberate indifference claims.

ARGUMENT

I. The District Court correctly held a dismissal of a prisoner's § 1983 civil action failure to state a claim for relief under Heck v. Humphrey does constitute a "strike" within the meaning of the Prison Litigation Reform Act, and the legislative history shows the Prison Litigation Reform Act intended to address these claims.

The question before this court is specific to whether a dismissal for a failure to state a claim for relief counts as a "strike" pursuant to *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994). When a plaintiff files § 1983 claims it is understood they cannot bring suits which are frivolous, malicious, or fail to state a claim for relief; otherwise, plaintiffs accrue "strikes." 28 U.S.C.S. § 1915. Plaintiffs who bring these types of suits may not proceed in forma pauperis after three strikes. *Id. Heck* interpreted provisions under the Prison Litigation

Reform Act. The circuit courts have been tasked with the consideration if dismissals for failure to state a claim count as a strike using the *Heck* doctrine; specifically, the courts are asked whether favorable-termination is necessary to state a claim for relief. *Garrett v. Murphey*, 17 F. 4th 419, 427 (2021). In *Heck*, the Court held that

> to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must 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.

Heck at 487. The Supreme Court analogized a plaintiff's § 1983 claim to the common-law action for malicious prosecution while determining the outcome of the issue because § 1983 created an avenue for these plaintiffs to seek federal redress for potential tort liability of wrongdoers. *Id.* at 484. The Fifth, Tenth, D.C., and, now Third Circuits all treat dismissals for failure to meet *Heck's* favorable-termination requirement as a dismissal for failure to state a claim, and, thus, these circuits treat such dismissals as strikes in accordance with the PLRA. *Garrett*, 17 F.4th at 427. The Seventh and Ninth Circuits, however, treat *Heck*'s favorable-termination as an affirmative defense, analogous to an exhaustion requirement and waivable. *Id.* Lastly, the First and Eleventh Circuit treat *Heck's* favorable-termination requirement as jurisdictional and elemental to a claim for damages arising under § 1983. *Id.* For the following reasons this Court should adopt the holding of the Third, Fifth, Tenth, and D.C. Circuits as the correct interpretation of the *Heck* Doctrine, and REVERSE the decision of the Fourteenth Circuit Court of Appeals.

Favorable-termination must be considered when a plaintiff brings a § 1983 claim. In *Garrett v. Murphey* the Third Circuit held suits dismissed for lacking a favorable-termination means the suit does not state a valid cause of action on its face. *Garrett*, 17 F.4th at 427-28. The court in *Garrett*, adopted this approach because it determined applying favorable-termination as a requirement to state a claim for relief is consistent with the holding in *Heck*. *Id.* The Amicus in *Garrett* argued that (1) "*Heck* dismissals implicate whether or not the court has the authority to entertain the action," and (2) "*Heck's* favorable-termination requirement is an affirmative defense that may be waived by the defendant, not an element of the claim." *Id.* at 428-29. The court rejected both arguments presented because neither were appropriate or consistent with how *Heck* defined the favorable-termination requirement, in which *Heck* defines favorable-termination as a "necessary element" to prevail and continue on a § 1983 cause of action. *Id.* at 429. Therefore, by *Heck's* plain language, favorable-termination of a criminal conviction must occur for a plaintiff to proceed on a § 1983 claim. *Id.*

The Fourteenth Circuit Court of Appeals failed to address the First and Eleventh Circuit's opinion regarding favorable-termination, however, it is appropriate to discuss why the First and Eleventh Circuits wrongly use favorable-termination as a jurisdictional element. A jurisdictional requirement under *Heck* would be inconsistent with the holding in *Heck* requiring favorable-termination to be met before a plaintiff can advance on a § 1983 claim when the criminal conviction would either imply a conviction or would cause the State to overturn conviction. *Garrett*, 17 F.4th at 427. Additionally, a jurisdictional requirement is explicitly contrary to the holding under *Heck* finding that § 1983 purpose is "to interpose the federal courts between the States and the people, as guardians of the people's federal rights." *Heck v. Humphrey*, 512 U.S. 477, 501 (1994) (J., Thomas, concurring) (citing *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).

Meaning, the federal courts have jurisdiction by statute to hear § 1983 claims. *Id.* Moreover, using favorable-termination as a jurisdictional requirement makes little sense because jurisdiction, generally, refers to the ability to hear the case based on personal and subject-matter jurisdiction. *Garrett v. Murphey*, (citing *Fort Bend Cnty v. Davis*, 139 S. Ct. 1843, 1848, 204 L. Ed. 2d 116 (2019)). To hold that favorable-termination is a jurisdictional requirement ignores the purpose of the statute along with the holding in *Heck* that favorable-termination deals with a plaintiff's conviction status.

As mentioned previously, other circuit courts find the favorable-termination under *Heck* to be either a waivable affirmative defense or a jurisdictional requirement. *Garrett* at 427. In the Ninth and Seventh Circuits, favorable-termination is viewed as a waivable affirmative defense. *Polzin v. Gage*, 636 F. 3d 848; *Washington v. L.A. Cnty Sheriff's Dept.*, 833 F. 3d 1048, ~~2016 U.S. App. LEXIS 14854 (2016~~). The courts in these circuits incorrectly determined favorable-termination is a waivable affirmative defense on the basis that "*Heck* dismissals reflect a matter of judicial traffic control. . . a court may properly dismiss . . . if there exists an obvious bar to securing relief on the face of the complaint." *Washington v. L.A. Cnty Sheriff's Dept.* at 1056. Meaning, these courts view dismissals for claims that are premature instead of viewing the dismissals for face-value: a failure to state a claim upon which relief can be granted. *Washington v. L.A. Cnty Sheriff's Dept.*, 833 F. 3d. 1048, 1056; R. at 15. These courts may employ this method to ensure § 1983 plaintiffs the ability to proceed in forma pauperis, or because a plaintiff's conviction may be overturned in the future, R. at 15, however, this is an inaccurate reflection of the legislative purpose of § 1915 to prevent an overwhelmed judicial system by claims that do not move past the filing stage because a plaintiff's conviction has not been overturned. *Heck*, 512 U.S. at 489. Furthermore, if this Court were to adopt the Ninth and

Seventh Circuit's application of favorable-termination, then judicial systems across the country will become homes for § 1983 plaintiffs to assert allegations that will ultimately result in a dismissal when the plaintiff's conviction has not been overturned. Thus, to hold anything other than the opinion and application that favorable-termination is a requirement is to lessen the strength of § 1915(g).

It is equally important addressing what some circuit courts share as concerns for prisoners who may have a § 1983 violation without an overturned criminal conviction. Neither *Heck* nor § 1915(g) bars a plaintiff from filing a suit if it will not imply or cause the state to overturn their conviction. *Heck*, 512 U.S. at 481-82. The Court in *Heck* distinguished and analogized the issue from prior cases, and explicitly stated that, "the claim at issue in *Wolff* did *not* call into question the lawfulness of the plaintiff's continuing confinement." *Id.* at 482-83 (emphasis in the original). Therefore, a plaintiff may proceed with a § 1983 claim when the claim does not call into question their conviction. Furthermore, § 1915(g) does not bar plaintiff's from seeking judicial remedy after accruing three strikes. 28 U.S.C.S. § 1915. Instead, § 1915(g) bars plaintiffs from proceeding in forma pauperis after accruing three strikes. Thus, § 1983 plaintiffs can bring claims under the statutory law, but plaintiffs are not afforded the status of in forma pauperis after accruing three strikes.

Shelby, in our present case, already has three strikes on his record in addition to the suit he is currently pursuing. R. at 1. Without discussion of what those three prior strikes were in Shelby's case, the Fourteenth Circuit in a conclusory statement held that suits dismissed for failure to state a claim pursuant to the *Heck* doctrine are not "automatically" a strike. R. at 14. Using this misinterpretation of *Heck* broadens the statute by allowing prisoners to file suits that do not state a claim for relief without consequences based on the mere notion that a plaintiff's

criminal conviction may one day be overturned. Essentially, these courts disregard the purpose behind § 1915(g) as a preventative measure to avoid frivolous, malicious, and suits that fail to state a claim for relief adding to the tremendous backlog and weight of the judicial system. § 1983 was designed to allow these plaintiffs an avenue for relief, and we encourage these plaintiffs to seek relief, but not without a proper claim as § 1915(g) explicitly states. This is what the Third, Fifth, Tenth, and D.C. Circuits find credible in holding a dismissal under *Heck* counts as a strike for PLRA purposes. As with those circuits, this Court should find those holdings as correct and reverse the decision of the Fourteenth Circuit Court of Appeals.

II. The District Court correctly dismissed Shelby's § 1983 claim because the Supreme Court's decision in Kingsley was a narrowly tailored opinion and does not require the objective standard to be applied to a deliberate indifference standard for a failure-to-protect claim.

Pretrial detainees may bring a § 1983 claim under the Fourteenth Amendment Due Process Clause if they believe a state actor violates a constitutional right. 42 U.S.C. § 1983. Qualified immunity may shield an officer from liability when their conduct does not violate a clearly constitutional right in which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The nature of the claim under § 1983 often differs on which constitutional provision an inmate is invoking. *Kingsley v. Hendrickson*, 576 U.S. 389, 447 (2015). Courts have extended the Eighth Amendment protections to pretrial detainees under the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 585 (1979).

After the Supreme Court's decision in *Farmer*, most circuit courts applied the same deliberate indifference standard regardless of which constitutional amendment provided for the claim. *Strain v. Regalado*, 977 F. 3d 984 (10th Cir. 2020). The standard of deliberate indifference is high standard. *Whitley v. Albers*, 475 U.S. 312, 398 (1986). To prove deliberate indifference the plaintiff must allege acts sufficiently harmful. *Estelle v. Gamble*, 429 U.S. 97,

106 (1976). Courts have equated deliberate indifference with recklessness but disagree as to whether this is civil recklessness (known as the objective standard) or criminal recklessness (the subjective standard) should apply. *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). Civil recklessness requires a person to act with an unjustified risk that the person knew or should have known. *Id.* Criminal recklessness, however, requires a conscious disregard of a substantial risk. *Id.* at 837.

This Court has explicitly stated that deliberate indifference claims arising under the Eighth Amendment require the subjective standard. *Id.* at 848. Before *Kingsley*, there was a strong consensus among the courts that deliberate indifference claims under the Fourteenth Amendment also require the subjective standard. *Strain*, 87 F.4th at 607. After *Kingsley*, circuit courts began to move away from *Farmer* by broadly interpreting *Kingsley* to eliminate the subjective standard for deliberate indifference claims. *Castro v. Cnty of Los Angeles*, 833 F.3d 1060. However, these broad interpretations of *Kingsley* miss the clear indications that *Kingsley* confined their holding to the context of excessive force claims under the Fourteenth Amendment. *Kingsley*, 576 U.S. at 402. Previously, the Court stated in *Graham* that there could not be a universal standard for excessive force claims. Because the Court had already set the standard for excessive force claims under the Fourth and Eighth Amendments, the Court limited the holding in *Kingsley* to setting the correct standard for excessive force claims under the Fourteenth Amendment. *Id.*

The Supreme Court, in reviewing a motion to dismiss, will review and accept the allegations as true. *Cooper v. Pate*, 84 S. Ct. 1733, 1734 (1964); *Estelle*, 429 U.S. at 99. Because the holding in *Kingsley* confined the objective standard to excessive force claims under the Fourteenth Amendment, this Court should find here, that the District Court correctly applied the

subjective standard, and should thus reinstate the motion to dismiss as this application is the most consistent with this Court's precedent.

A. The decision in *Kingsley* did not eliminate the subjective intent requirement for a pretrial detainee in a deliberate indifference failure-to-protect claim because *Kingsley* was narrowly tailored to resolve the then circuit split and announce the correct standard for excessive force claims brought under the Fourteenth Amendment.

The Fourteenth Circuit Court of Appeals broadly misstates *Kingsley's* delineation that there are two separate state of mind questions at play "in a pretrial detainees' § 1983 claim." R. at 17. This Court in *Kingsley* said there are two separate state of minds "[i]n a case like this one," where there was an excessive force claim brought by a pretrial detainee. *Kingsley*, 576 U.S. at 395. The first mental state in question was in "respect to his physical acts," and the second, "to the proper *interpretation* of the force," whether it be constitutionally excessive or not. *Id.* at 396 (emphasis in original). The Court found that the best approach to handle excessive force claims brought under the Fourteenth Amendment was to apply the subjective standard to the first state of mind, and apply the objective standard to interpret if the actor knowingly applied force in a manner that was unreasonable and excessive under the circumstances. *Id.* at 396-97. The Court reiterates throughout *Kingsley* that the use of the objective standard is confined to the context of excessive force claims brought under the Fourteenth Amendment. *Id.* at 402-04. In concluding *Kingsley*, the Court again limited its opinion to excessive force claims, by acknowledging its decision may challenge the interpretation under the Eighth Amendment excessive force claims, but ultimately left that decision for another day. *Id.* at 403-04. If the Court meant to address the proper standard for deliberate indifference claims, then it would have been unnecessary to bring up the future of Eighth Amendment excessive force claims. This likely shows that this Court

only altered the standard for excessive force claims, and not all deliberate indifference claims brought under the Fourth Amendment. *Id.* at 402.

In *Kingsley*, this Court was asked to answer a narrow issue of whether a pretrial detainee trying to prove an excessive force claim necessarily had to show the actor knowingly acted in a way they were subjectively aware their force was unreasonable, or if pretrial detainee could just show the action was objectively unreasonable. *Id.* Circuit courts that extend the objective standard to deliberate indifference claims under the Fourteenth Amendment have failed to take into the judicial atmosphere *Kingsley* arose in. Before addressing excessive force claims under the Fourteenth Amendment in *Kingsley*, this Court had settled the proper standard for excessive force for arrestees under the Fourth Amendment in *Graham*, and this Court has long interpreted the proper standard for excessive force claims brought by convicted criminals under the Eighth Amendment. *Graham v. Connor*, 490 U.S. 386 (1989). When *Graham* was announced in 1989, it created confusion within the circuit courts as the Court stated there is no generic standard for all excessive force claims brought under 1983. *Graham*, 490 at 393-94. After *Graham*, when circuit courts were confronted with excessive force claims under the Fourteenth Amendment, they split with some applying the standard from the Eighth Amendment, some the Fourth Amendment, and others a mix. *Id.* Confusion, improper applications, and unjust decisions ran rampant through the circuit courts and created a dire need to set a standard for excessive force claims arising under the Fourteenth Amendment. *Kingsley* was the perfect opportunity to bridge the divide.

In 2015, *Kingsley* came knocking on this Court's door as the best vehicle for the Court to set the correct standard for excessive force claims under the Fourteenth Amendment. *Kingsley* would at last resolve this circuit split by laying out the appropriate standard for excessive force claims. While *Kingsley* resolved one circuit split, however, the opinion's misinterpretation and

blending of language between four separate and distinct Constitutional amendments set in motion the start of another deep rift among the circuit courts.

Most courts had continued to follow *Farmer* and applied the subjective standard to deliberate indifference claims, while other courts, grasping for anything clung onto part of one sentence in the *Kingsley* opinion reading, "a pretrial detainee can prevail by providing only objective evidence that *the challenged governmental action* is not rationally related." *Castro v. Cnty of Los Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016) (quoting *Kingsley*, 576 U.S. at 398); *Short v. Hartman*, 87 F.4th 593, 608-09 (4th Cir. 2023). This broad language created a loophole for courts to interpret *Kingsley* as changing all deliberate indifference claims brought by pretrial detainees under the Fourteenth Amendment. *Castro*, 833 F.3d at 1069. Courts that have followed the Ninth Circuit's interpretation, however, have taken this sentence out of its context. When taken into full context, the Court was comparing the issue in *Bell* to the issue in *Kingsley*, stating how the objective standard would also expose if the action, in *Kingsley* excessive force, "was excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398.

Yet more confusing for the circuit courts, the majority in *Kingsley* heavily relied on *Graham*, a Fourth Amendment case, without explaining the extent to which the Fourth Amendment's objective approach informed excessive force claims brought under the Fourteenth Amendment. In *Graham*, an appellate court required plaintiff to show that the excessive force applied during a traffic stop was done maliciously and sadistically to cause harm. *Graham v. Connor*, 490 U.S. 386, 389(1989). The Court reversed the appellate court's decision, holding that the Fourth Amendment reasonableness standard must be used for "all claims that law enforcement officers have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other "seizure" of a free citizen. . .." *Id.* at 395. The Fourth Amendment's

language explicitly requires free citizens to be free from "unreasonable searches and seizures" which begs for an objective standard. *Id.* The majority in *Graham*, however, denied adopting a generic standard for all excessive force claims under 1983. *Id.* at 394. Rather, the Supreme Court took particular care of excessive force claims stating that the validity of the claim must "be judged by reference to the specific constitutional standard which governs that right, rather than to some generalized 'excessive force' standard." *Id.* Because a generalized excessive force claim could not be applied, as seen in *Graham*, this Court sought to set the standard for excessive force claims brought under the Fourteenth Amendment in *Kingsley*. Therefore, because this Court confined the holding in *Kingsley* to the context of excessive force claims, extending the objective standard to all pretrial detainees for deliberate indifference claims would be, at best, a grievous mistake.

Furthermore, this Court, in delineating the proper standard for excessive force claims under the Fourteenth Amendment, also looked to *Bell*. *Kingsley*, 576 U.S. at 398-99. *Bell* was the first case in which the Supreme Court really had an opportunity to address pretrial detainees' rights. There, the Court first recognized the principle that pretrial detainees were to be free from any form of punishment. *Bell*, 441 U.S. at 534. In addressing a condition to confinement claim brought by a pretrial detainee, the Court held that in some instances the conditions of confinement can amount to punishment and would create a violation of a pretrial detainee's Fourteenth Amendment Due Process right. *Id.* at 538. The Court responded to several constitutional challenges including violations of due process under the Fifth and Fourteenth Amendments, as well as other constitutional violates stemming from the First and Fourth Amendments. *Id.* at 544. The Court reiterated the general principle that convicted prisoners, although subject to some limitations, still have constitutional protections while confined in

prison. *Id.* at 544-45. An example the Court refers to is a Due Process Clause right "to prevent additional deprivation of life, liberty, or property without due process of law." *Id.* at 545. If there were any limitations, the legitimate institutional policies would have to mutually agree with "the provisions of the Constitution that are of general application." *Id.* at 546. The Court then explicitly states the general principle of retaining constitutional protections while being housed in prison applies equally to pretrial detainees and convicted prisoners, and a detainee may not possess the full range of freedoms of an unincarcerated individual." *Id.* Thus, when considering these types of claims in *Bell* under 1983, courts should consider the interests of the prison administration and determine if they are balanced with the substantive due process rights that inmates retain. *Id.* at 547.

In searching for the proper standard for excessive force claims, the Court distinguished *Bell* from *Kingsley* stating that the focus on punishment in *Bell* did not mean to require proof of intent "to punish for a pretrial detainee to prevail on a claim that his due process rights were violated. Rather, as *Bell* explains a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398. To prove an excessive force claim, the pretrial detainee may explicit intent to punish may be used, if it not there, then they may use the objective standard to "evaluate whether the policy was reasonably related to legitimate governmental objectives and whether it appears excessive in relation to that objective." *Id.* The Court then combined the subjective approach and the objective approach, as discussed above on page 17, to find the right scope Fourteenth Amendment Due Process protections from excessive force.

In his dissent to *Kingsley*, Justice Scalia warns the majority that by blending the language of the Fourth, Eighth, Fifth and Fourteenth Amendments clauses, the majority effectively achieved their desire to "tortify the Fourteenth Amendment." *Id.* at 408. In achieving this purpose, the majority diluted *Bell* to stand for the proposition that pretrial detainees are to be free from *any harmful action* that is "not reasonably related to a legitimate goal." *Id.* at 405. (emphasis added).

The majority in *Kingsley* sets aside *Bell* because it focused too much on punishment, but Court disregarded *Bell*'s discussion how pretrial detainees' rights were more similar to the ones of a convicted prisoner and not an arrestee. As a general principle, a convicted prisoner does not forfeit all of his substantive rights protected under the Due Process Clause. *Bell v. Wolfish*, 441 U.S. 520 (1979). This general principle also applied to pretrial detainees, and, while they retain their substantive due process rights, they "may not always be the same rights an unincarcerated person enjoys." *Id.* The Court in *Bell*, thus, had to focus on punishment to discern what had government action would rise to the level of constitutional punishment. In doing so, in cases regarding policies, this Court found that the "application[s] of force that [are] objectively unreasonable," may be evidence of an intent to punish, which is required. *Kingsley v. Hendrickson*, (Scalia dissent at 406). *Bell* illustrates the balancing of this interest by acknowledging that under certain circumstances, the prison administration may limit these general constitutional rights of convicted prisoners and pretrial detainees through their policies, but the courts must hold these policies to a higher standard, one easier to prove, the objective standard to ensure there is a reasonable purpose for limiting constitutional protections. As *Bell* states, not every disability imposed during pretrial detention amounts to "punishment" in the constitutional sense. *Bell* at 537.

Applying the objective standard in effect ultimately decimates the distinction between constitutional civil rights and state tort law. The *Bell* Court was careful to balance the state prisons interest and the individual liberties protected by the Constitution. The use of the objective standard in *Bell* was the most appropriate test for considering whether the policies were intended to punish an individual or otherwise violate the Constitution. But to get to this answer, *Bell* had to define punishment under constitutional law.

Nevertheless, circuit courts have justified departing from *Farmer* and the application of the subjective standard because it protects all Eighth amendment guarantees, it may not cover all of the Fourteenth Amendment rights for pretrial detainees. *Short v. Hartman*, 87 F. 4th at 608. This reasoning, generally, stems from the presumption that a person is innocent until proven guilty and the government does not have the right to punish until there is a formal conviction. *Bell v. Wolfish*, 441 U.S. 520, n. 16 (1979). The presumption of innocence is crucial for the criminal system; however, the Court in *Bell* dismissed this claim because the presumption of innocence allocates the burden in a criminal trial and is intended to ensure a fair trial. *Id.* at 532. Because the presumption is a component of a fair trial, it has no place in defining the rights of pretrial detainees under the Constitution. *Id.* at 533.

Courts also use the broad language in *Kingsley* to draw the distinctive line, not between excessive force claims and deliberate indifference claims, but the differing rights under the Eighth Amendment and Fourteenth Amendment. Some courts, including the Fourteenth Circuit Court of Appeals interpret "pretrial detainees are afforded stronger constitutional protections than convicted prisoners." R. at 16. At least one circuit court supports this conclusion because "the language of the two Clauses differ, and the nature of the claims often differs," then there is

no need to determine if punishment was unconstitutional as the Eighth Amendment claims require. *Short v. Hartman*, 87 F. 4th at 609 (quoting *Kingsley* 400-01).

While it is true detainees are to be free from any punishment, those courts broadly interpreting *Kingsley* ignore this Court confining *Kingsley* to appropriating the correct standard for excessive force claims brought under the Fourteenth Amendment, and it also ignores the fact that excessive force claims have always been held to a different standard than failure-to-protect, inadequate medical care, and conditions of confinement claims. *Estelle v. Gamble*, 429 U.S. 97 (1976). To the former, the *Kingsley* Court may have used broad language throughout, but expressly confined the holding to the context of excessive force claims under the Fourteenth Amendment. *Kingsley*, 576 U.S. at 398. Furthermore, when read in context, the Kingsley Court was responding to the respondents use of two cases that brought excessive force claims under the Eighth Amendment. However, as the *Graham* Court stated, there was no generic excessive force standard. *Graham*, 490 U.S. at 393-94. The *Kingsley* Court had to set out the correct standard for excessive force claims arising under the Fourteenth Amendment, the same way it did for the Fourth and Eighth Amendments. To the latter, the Eighth Amendment generally protects a prisoner from excessive amounts of force that amount to punishment. *Graham*, 490 U.S. at 395. Excessive force claims under the Eighth Amendment, however, have traditionally been held to a much higher standard in which a prisoner must prove the officer intended to cause harm by using force "maliciously and sadistically." *Whitley v. Albers*, 475 U.S. 312, 329 (1986). This standard is difficult for a prisoner to prove because it requires the express intent to punish through unnecessary pain. *Id.* at 318. As discussed above, *Kingsley* expanded this for excessive force claims explaining how courts may use the objective standard to find an implicit intent to punish when there is not an explicit intent to punish. *Kingsley*, 576 U.S. at 398.

Deliberate indifference claims, at least what the Court in *Estelle* understood, would require a less stringent standard so plaintiffs could bring successful claims. In *Estelle*, the Court was challenged with a failure to provide adequate medical care claim brought by a prisoner. *Estelle*, 429 U.S. at 106. Because this claim was brought by a prisoner the Court reviewed the history and tradition of the Eighth Amendment Cruel and Unusual Punishment Clause and the rights were protected under it. *Id.* at 101-02. As case law shows, the understanding at the time of ratification was that the framers intended the Eighth Amendment to, in the very least, prohibit torture. *Id.* at 102. Throughout the years, the Court expanded the scope of the Eighth Amendment to include penal punishments "incompatible with the evolving standards of decency" or those which "involve the unnecessary and wanton infliction of pain." *Id.* at 103 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169-173 (1976) (joint opinion)). Using precedent and history, the *Estelle* court held that because failure to provide medical care can amount to something akin to torture, or some other, unnecessary purpose than punishment, officers had to take care of the prisoner. *Id.* at 103-04. Because the prisoner no longer has the freedom of physical restraint to seek his own medical care, officers had to protect him. *Id.* The Court, however, was certain to distinguish that it had to be the failure of a duty to act and could not be mere negligence. *Id.* at 106. Although the failure to take care of a prisoner may amount to unnecessary punishment, these actions do not always arise to the level constitutional punishment. *Id. Bell* would later affirm this proposition three years later. *Bell*, 441 U.S. at 540. Therefore, as the *Estelle* Court concluded, a 1983 plaintiff need not show the intent to harm as in excessive force claims but must show the officer acted with "an unnecessary and wanton infliction of pain," to evidence deliberate indifference. *Estelle*, 429 U.S. at 104-05; *Whitley*, 475 U.S. at 321.

Albeit a high standard, the creation of the deliberate indifference standard was intended to help plaintiffs bring a successful claim for officers failing to take care of the prisoner while ensuring that officers were not being held liable for negligence or accidents. *Estelle*, 429 U.S. at 104. This standard was set in place because deliberate indifference can be an act, but in most instances, is a failure to act. As *Bell* alluded to, courts need to look into the subjective mental state and judge if there was intent to punish. The objective standard applied in deliberate indifference claims, however, does not always consider the intent of the officer as it can judge on the basis of what the officer "should have known." There is an overwhelming consensus in this Court's precedent that negligent acts are below the Constitutional threshold of protection. *Kingsley*, 576 U.S. at 396. A judge tasked with deliberating an officer's intent is much harder to do when the officer has not affirmatively acted. Especially if the court, as in this case, has evidence to show that the officer inserted himself into harm's way to protect the plaintiff once he completely understood the situation. For cases like these, it is better for the plaintiff to bring a state tort action, rather than allowing the Court to distort the Constitution into a tort claim.

B. The Objective Standard for Deliberate Indifference is Inconsistent with this Court's Precedent.

When *Kingsley* was decided in 2015, the majority did not cite or mention *Farmer* even though *Farmer* was only decided nineteen years earlier in 1994. Supreme Court Justices Kennedy and Ginsberg joined the unanimous decision of *Farmer* and joined the majority of *Kingsley*, but did not file separate opinions to explain how the *Kingsley* opinion might question *Farmer*. In *Farmer*, the Court held that in order to prove an officer acted with deliberate indifference, the prisoner must show the officer acted subjectively reckless. The Court, respecting their precedent, distinguished *Bell*, from the failure-to-protect claim, and the Court explicitly denied extending the objective standard to deliberate indifference claims. *Farmer v.*

Brennan, 511 U.S. 825, 842 (1989). The purpose of the deliberate indifference standard is to ensure officers are held liable for constitutional violations, such in the case of the Eighth Amendment, acts that amount to cruel or unusual punishment. *Id.* at 841 (quoting *Wilson*).

Furthermore, the Court has warned judges to not use the Fourteenth Amendment Due Process Clause to further a tort claim. *Daniels v. Williams*, 474 U.S. 327 (1986). A plaintiff may always bring a tort claim through state tort law and may recover remedies in the event of negligence. The Fourteenth Amendment, however, was ratified to protect certain individual liberties from government infringement, not to provide remedies for negligent acts. *Daniels* 333. Under the Fourteenth Amendment it states "[N]or shall any state *deprive* any person of life, liberty, or property without the due process of law. U.S. Cont. amend XIV § 2. (emphasis added). To deprive an individual of something there must be an affirmative abuse of power. *Id.* at 330. If the "should have known" language of the objective standard does in fact create a negligence standard, as Justice Thomas suggests, then applying the objective standard grossly distort the Constitution to a tort claim, but with the full force of the Constitution.

Therefore, because the objective standard is the most inconsistent with the Constitution and greatly undermines this very Court's precedent, this Court deny extended the objective standard to all deliberate indifference claims under the Fourteenth Amendment.

C. The subjective standard has proven to be a workable standard and is the most consistent standard for deliberate indifference claims.

The very language and use of "deliberate indifference" strongly implies that the disregard of the consequences of one's act or omissions must be done intentionally. *Strain v. Regalado*, 977 F.3d 984, 992 (2020). Although the plaintiff does not prove the harm was malicious and sadistic, they must nevertheless show that officer had the intent to punish. Accidental or

negligent acts, as the Court has long held, cannot be reconciled with the standard's language. *Cnty of Sacramento v. Lewis*, 523 U.S. at 849. By using the language "should have known," the objective standard, in which Justice Thomas in his concurrence to *Farmer* states, renders the "nothing but a negligence standard, as the Court's discussion implicitly assumes." *Farmer*, 511 U.S. at 860.

Most circuit courts used the subjective standard for deliberate indifference claims under the Fourteenth Amendment until a year after Kingsley was announced. *Castro v. Cnty of Los Angeles*, 833 F.3d 1060 (2016). Many circuit courts did so without hesitation as they read the Eighth and Fourteenth Amendments as granting the same protections and therefore, and therefore held the claims to the same standard. *Short*, 87 F.4th at 607-08. The courts never argued that deliberate indifference standard was unworkable. Rather, after the Court handed down *Kingsley*, courts were trying to reconcile this new opinion that when broadly interpreted seems to offer an alternative standard for pretrial detainees, and the direct holding of *Farmer* requiring the subjective standard to be used for deliberate indifference claims under the Eighth Amendment. *Id*. at 609. Some courts shifted to the objective standard because pretrial detainees were to be free from punishment. *Id.* But the Court warns that not every act constitutes punishment, otherwise the Constitution would become a tort.

In *Kingsley*, the Court argued that the objective standard would protect officers acting in good faith. *Kingsley*, 576 U.S. at 399-400. Recognizing that officers usually make decisions "in haste, under pressure, and frequently without the luxury of a second chance," the Court urges other courts to judge based on the perspective of that officer. *Id.* Justice Scalia in his dissent finds that an using the objective standard to infer punitive intent on an officer, in an excessive force case, open to the door to who holding officers liable even though they may have accidently

misjudged the situation. *Id.* at. 406. If excessive force claims require an affirmative action, then it would be appropriate to judge the interpretation of excessiveness of the force under what was necessary under the circumstances. Using the objective standard, however, for claims merely requires plaintiff to show that the officer acted with an unjustified risk that the person knew or should have known. Using the objective standard for claims that are usually based on an inaction, however, unfairly implies the prisoner intended to punish when they might have seen a situation developing but might not have understood it the same way that the judge deciding his liability might have. When reviewing an action in retrospect, the judge has the advantage to view the totality of the circumstances, however, officers do not have this opportunity until after something occurs. The subjective standard protects the officer from being held liable for accidents, a principle this Court has reinforced in all deliberate indifference claims. *Cnty of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998).

Furthermore, the deliberate indifference standard does not allow officers to blatantly disregard the needs of inmates. *Farmer*, 511 U.S. at 842. Furthermore, as the Court in *Farmer* states, the slightly higher standard would have little to no effect on how officers care for inmates. *Id*. Let the Court not forget that the Fourteenth Amendment protects "any person" from a deprivation of liberty without due process. It does not matter if a person is a convicted prisoner, pretrial detainee, or arrestee, all persons retain their substantive due process rights. *Bell*, 441 U.S. at 545. *Bell* acknowledged this general principle. Congress acknowledged this principle when it passed § 1983 allows them to bring claims that their Constitutional rights have been violated. All inmates have constitutional protections and inmates were to have more rights than others, officers do not always have the time to decipher between an inmate is a pretrial detainee and convicted prisoners, and whether the objective or subjective standard applies to him for a

deliberate indifference claims and excessive force claims under all the amendments. Even if the officer did have the time, or if the prison spent extreme amounts of money to create separate cells for these the different statutes of inmates, no officer should even be concerned of these things. As the *Estelle* Court emphasized, officers have a duty to protect inmates who do not have the liberty to do so because of their confinement. His duty extends to all inmates.

On the other hand, the Court in *Kingsley* mentions that officers at several facilities are told to expect the objective standard to apply. *Kingsley*, 576 U.S. at 399. In practice, officers are called to act in quick, immediate circumstances, that they do not have time to consider whether objective standard should apply. Even if the officer had to the time to identify whether the inmate was a pretrial detainee or convicted prisoner, it would not make much difference because he has to act to protect all constitutional rights of all inmates. As shown, the objective standard is inconsistent with the way this Court understands deliberate indifference and is inconsistent with the Constitution protections should not be the standard for indifference claims arising under the Fourteenth Amendment. Therefore, to protect the Constitution and respect the precedent of this Court, this Court should find the subjective approach as the best approach for deliberate indifference claims.

D. Officer Campbell did not violate Shelby's Fourteenth Amendment Due Process Right

The District Court of Wythe held that Shelby failed to allege facts suggesting that Officer Campbell had a sufficiently culpable state of mind. R. at 9. Additionally, the court relied on *Bell*, in which it found that pretrial detainees may bring a cause of action pertaining to cruel or unusual punishment under the Fourteenth Amendment. *Id.* The court dismissed Shelby's action because "in the failure-to-protect context, *Farmer* controls, and *Kingsley* did not alter this framework." *Id.* Thus, the court employed a subjective standard against the facts that Shelby

alleged had occurred and found no cause of action. The Fourteenth Circuit Court of Appeals reversed the District Court's determination on the ground that *Kingsley* did control, and the two-step framework was applicable to Shelby's cause of action. R. at 16-17. In doing so, the circuit court found that Officer Campbell did subjectively, or intentionally, move Shelby from his prison cell, and by this action, there was a "substantial risk of serious harm to the plaintiff that could have been eliminated through reasonable and available measures that the officer did not take, thus causing the injury that the plaintiff suffered." R. at 18. In its application, the circuit court found that Campbell's actions did cause a substantial risk that resulted in Shelby's harm, so Shelby did state a cause of action.

In a case very similar to the one here, the Fifth Circuit affirmed the district court's decision to grant summary judgment in favor of the defendant officers based on qualified immunity. *Leal v. Wiles*, 734 F. App'x 905, 912 (5th Cir. 2018). There, plaintiff was being booked, when two detectives told the booking officer to make note in the computer database that the barrio Azteca gang members has issued a hit, and that plaintiff was to be separated from this gang. *Id. at* 906. The information was placed on the rosters, floor cards, and in the computer database. *Id.* On a separate occasion, defendant officer escorted plaintiff and another inmate to recreation. Officer told the two to wait while he retrieved two other inmates, who happened to be Barrio Azteca gang members. *Id.* The two attacked defendant and defendant suffered serious injuries to his head, face, and neck. *Id.* The court held that plaintiff failed to meet the high standard of deliberate indifference. *Id.* at 910. Plaintiff argued officer defendant should have been aware of a substantial risk of serious harm because his special status was noted in the computer database, and officer did not check it before gathering the inmates. *Id.* The record, however, did not indicate whether the officer knew

of plaintiff's special status. *Id.* The deliberate indifference standard requires, however, that plaintiff show that the officer did know, not just should have known. *Id.*

Here, as the District Court correctly concludes, Officer Campbell should not be held liable for this action because he did not have the act with deliberate indifference. Under the subjective standard, Shelby must show that Officer Campbell acted with a conscious disregard of a substantial risk. When Officer Campbell went to retrieve the inmates, he carried a form that included names of inmates, but the record does not indicate if Officer Campbell looked at the list. It does, however, the reflect that Campbell did not recognize Shelby when gathered him, nor does it reflect that Officer Campbell knew the other two inmates were members of a rival gang. Furthermore, the record shows Officer Campbell was following the appropriate protocol when the fight broke out, and it shows that Campbell tried to break up the fight before more officers came to help. As argued by respondent, Officer Campbell should have looked at the database before gathering inmates together. The unknown fact of whether Officer Campbell should have looked at the database before retrieving Shelby does not reflect a subjective intent to harm or put Shelby in a position of a substantial risk. These facts reflect Officer Campbell acted, at most, negligently, but not to a level of a substantial risk. Therefore, the District Court correctly determined that the use of the subjective standard was appropriate and that Campbell could not be held liable.

CONCLUSION

For the reasons stated herein, petitioner respectfully requests this Court to reverse and Fourteenth Circuit Court's decision on both issues, and affirm the District Court's denial of motion to proceed in forma pauperis and the motion to dismiss for failure to state a claim.