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
No. 2023-5255

BRIEF FOR PETITIONER

Team 3
Attorneys for Petitioner
Chester Campbell

QUESTIONS PRESENTED

I. Whether an action dismissed on the ground that the plaintiff is barred from recovery by the rule from *Heck v. Humphrey* is dismissed because it either is "frivolous" or "fails to state a claim upon which relief can be granted" for the purposes of the Prison Litigation Reform Act?

II. Whether this Court's decision in *Kingsley v. Hendrickson* preserves the current, longstanding subjective intent element of the deliberate indifference test in failure-to-protect claims brought by pretrial detainees under 42 U.S.C. § 1983 for violations of the Fourteenth Amendment Due Process Clause?

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The United States District Court for the Western District of Wythe's order denying Mr. Shelby's motion to proceed *in forma pauperis*, issued April 20, 2022, appears on page 1 of the Record. The United States District Court for the Western District of Wythe's order and memorandum opinion granting Mr. Campbell's motion to dismiss, issued July 14, 2022, appears on pages 2-11 of the Record. The United States Court of Appeals for the Fourteenth Circuit's opinion reversing the District Court's orders appears on pages 12-20 of the Record.

CONSTITUTIONAL PROVISIONS AND STATUTES

This case involves the Eighth Amendment which states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The case also involves the Due Process Clause of the Fourteenth Amendment which reads, "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." *Id.* amend. XIV. Lastly, the case involves the Prison Litigation Reform Act, which reads 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.

28 U.S.C. § 1915(g).

STATEMENT OF THE CASE

Officer Chester Campbell is an entry-level jail guard in the town of Marshall. R. at 5. The jail houses many known members of the Bonucci gang, which wields considerable influence over the town despite recent reforms reducing their reach. R. at 3. Before the Bonuccis arrived, Marshall was controlled by another gang—the Geeky Binders (GB). R. at 2. Despite the fraught

environment of the rival gangs competing for influence inside and outside the jail, Officer Campbell discharged his duties well. R. at 5.

Late on New Year's Eve of 2020, a high-ranking GB member was arrested and booked at Marshall jail: Arthur Shelby. R. at 3, 5. Shelby had been incarcerated several times before, during which time he filed three actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. R. at 3. All were dismissed without prejudice pursuant to *Heck v. Humphrey*. *Id.* Due to the volume of gang activity in Marshall, the town employs special gang intelligence officers to screen inmates upon booking. R. at 4. Officer Campbell was not and is not such a gang intelligence officer. R. at 5. While screening Shelby, the gang intelligence officers noted that he was a GB leader. *Id.* The officers were aware of a recent flare-up between the GBs and the Bonucci gang and knew the Bonuccis might target Shelby for violence. *Id.* Consequently, the intelligence officers took precautionary steps to raise awareness of the situation, including holding an all-hands meeting the morning after Shelby was booked. *Id.*

While roll call records list Officer Campbell as attending the mandatory meeting, *id.*, the jail's time sheets indicate he called in sick and only arrived after the meeting ended, R. at 5-6. During the meeting, intelligence officers announced that Shelby would be placed in cell block A, away from blocks B and C which housed Bonucci members. R. at 5. The agenda of the meeting also included a reminder for personnel to regularly check the floor roster cards to keep inmates from rival gangs separated. *Id.* The notes of the meeting were stored online and all officers who were unable to attend the meeting were ordered to review them. R. at 6. The jail kept records of which officers viewed the meeting notes, but those records were lost due to a technical issue. *Id.*

The Friday following the all-hands meeting, Officer Campbell was tasked with supervising a group of inmates, including Shelby. *Id.* Officer Campbell went to Shelby's cell and

asked if he wanted to go to the recreation area. *Id.* Shelby responded that he did. *Id.* At that time, Officer Campbell did not know or recognize Shelby. *Id.* Shelby's name was on a list in the jail database under a special status because of the possibility that he would be targeted for violence by the Bonuccis. *Id.* Officer Campbell did not consult this list before he talked with Shelby, in either its electronic or physical form, nor did he do so afterward. *Id.*

After collecting Shelby, Officer Campbell proceeded to gather four more inmates on the way to the recreation area, one from cell block A and the others from blocks B and C. R. at 6-7. The inmates from blocks B and C all belonged to the Bonucci gang. R. at 7. Once assembled, the three Bonucci members in the group rushed Shelby. *Id.* Two beat him with their fists while the third used an improvised club. *Id.* Officer Campbell attempted to stop them, but he could not hold off all three men alone. *Id.* Within minutes, other officers came and ended the attack. *Id.* Shelby was taken to the local hospital, where doctors identified life-threatening injuries. *Id.* Nevertheless, Shelby was discharged from the hospital several weeks later. *Id.*

On February 24, 2022, Shelby timely filed suit in the United States Federal Court for the Western District of Wythe under 42 U.S.C. § 1983. R. at 7. At the same time, he filed a motion to proceed *in forma pauperis*, which the court denied on April 20, 2022, citing the "three strikes rule" in the Prison Litigation Reform Act ("PLRA"), codified as 28 U.S.C. § 1915(g). R. at 1. The court ordered Shelby to pay the $402.00 filing fee, *id.*, and he did so in a timely fashion, R. at 13. Officer Campbell filed a motion to dismiss, which the court granted on July 14, 2022. R. at 11. The court held that Shelby failed to allege sufficient facts suggesting that Officer Campbell had actual knowledge of Shelby's gang affiliation and resulting risk of bodily harm. *Id.*

On July 25, 2022, Shelby timely filed his appeal to the United States Court of Appeals for the Fourteenth Circuit. R. at 13. The Circuit Court appointed counsel for Shelby on August 1,

2022. *Id.* On December 1, 2022, the parties submitted arguments on two issues: whether a case dismissed pursuant to *Heck v. Humphrey* constitutes a "strike" for the purposes of the PLRA, and whether *Kingsley v. Hendrickson* abandoned the requirement for pretrial detainees to prove a defendant's subjective intent in failure-to-protect claims under § 1983. R. at 12-13. The court reversed and remanded on both issues. R. at 13. The court held on the first issue that *Heck* dismissals treat a claim as premature rather than invalid, putting them outside the enumerated categories of the PLRA. R. at 15. On the second issue, the court held that *Kingsley* abandoned the requirement for pretrial detainee plaintiffs to prove the defendant's subjective intent in failure-to-protect claims under § 1983. R. at 18. Judge Solomons dissented, writing that *Kingsley* did not disturb that subjective intent element. R. at 19-20. Campbell filed a petition for certiorari on both issues to this Court for the October 2023 term, which this Court granted. R. at 21.

SUMMARY OF THE ARGUMENT

The criminal justice system is built on careful balances between the rights of the incarcerated, the practical realities of the courts, and the ability of law enforcement to maintain order. Respondent's position threatens to destabilize the legislation and constitutional principles underlying these balances, undermining all three objectives. This Court should instead follow plain statutory text and decades of precedent and reverse the Fourteenth Circuit's decision.

Congress passed the Prison Litigation Reform Act ("PLRA") to prevent a deluge of meritless suits threatening to overwhelm the courts and wash those prisoners with meritorious complaints out of access to justice. Congress sought to balance the need of prisoners without resources to access the courts against the need for economic incentives to prevent the filing of repetitive, frivolous, and meritless lawsuits. Congress did so through a "three strikes rule," preventing prisoners from obtaining *in forma pauperis* status if they had filed three prior cases

dismissed for being malicious or frivolous, or failing to state a claim upon which relief could be granted. Congress used the same language in the statute when it empowered judges to dismiss suits brought by prisoners *sua sponte*, conserving judicial resources for meritorious suits. In *Heck v. Humphrey*, this Court determined that prisoners whose civil suits call their convictions into question have no claim to relief unless their convictions have already been set aside. Mr. Shelby filed three suits prior to this one, all dismissed based on the rule from *Heck*. Whatever the ultimate status of claims barred by *Heck*, when they are brought without proof that the conviction had been set aside, relief cannot be granted. *Heck*-barred claims thus fall under the plain language of the PLRA, and Mr. Shelby's record of dismissed suits means he has "struck out." To hold otherwise would not only defy statutory text but impair the statute's function by forcing courts to spend time and resources sorting through a category of suit known to be meritless.

The balance of the rights of incarcerated people and the function of institutions is also reflected in the longstanding principle that negligence cannot constitute a constitutional due process violation. The Court has long held that the Fourteenth Amendment protects pretrial detainees when they are harmed by a prison official's deliberate indifference to their basic needs. Deliberate indifference was developed as the standard of culpability to balance the government's interests in not transforming accidents into constitutional violations and a detainee's interest in being protected from harm while in government custody. To strike that balance, this Court determined that plaintiffs must prove both an objective component—that the official acted unreasonably—and a subjective component—that the official was aware of a substantial risk of harm and disregarded that risk. This applies to both affirmative acts and omissions on the part of prison officials, but the proof in each case looks quite different. In *Kingsley v. Hendrickson*, this Court evaluated what must be proven when a pretrial detainee brings a claim of excessive force.

The Court held that since the use of force necessarily entails a deliberate decision to inflict harm, the only remaining question is the objective component of the reasonability of that decision. The Court did not address the standard that should apply when liability is based on omissions by prison officials or the precedents relevant to those situations—and had no reason to. Despite this, the Fourteenth Circuit interpreted *Kingsley* as abolishing the subjective component of deliberate indifference analysis entirely, even in omissions-based liability claims such as the failure-to-protect claim brought by Mr. Shelby. In so doing, the court failed to apply this Court's precedents, and threatened to upset a balance at the heart of not only the criminal justice system but all constitutional torts. This Court should thus reverse the Fourteenth Circuit's decision.

ARGUMENT

Standard of Review

The first issue before the Court turns on the proper interpretation of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). R. at 21. Interpretation of statutory terms "is a question of law," *Chandris, Inc. v. Latsis*, 515 U.S. 347, 369 (1995), reviewed *de novo*, without deference, *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). The second issue before the Court involves the extent of Fourteenth Amendment Due Process Clause protections in a failure-to-protect claim brought under 42 U.S.C. § 1983 by a pretrial detainee. R. at 21. Constitutional interpretation questions are reviewed *de novo*. *See Jacobellis v. Ohio*, 378 U.S. 184, 190 n.6 (1964).

I. DISMISSALS UNDER *HECK V. HUMPHREY* ARE "STRIKES" WITHIN THE MEANING OF THE PRISON LITIGATION REFORM ACT SINCE *HECK* REMOVED ANY COLORABLE ARGUMENT THAT PLAINTIFFS WHOSE CLAIMS QUESTION CONVICTIONS WHICH HAVE NOT BEEN SET ASIDE HAVE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Congress enacted the Prison Litigation Reform Act ("PLRA") to "staunch a 'flood of nonmeritorious' prisoner litigation." *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020)

(quoting *Jones v. Bock*, 549 U.S. 199, 203 (2007)). Congress set out to ensure "the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit." *Jones*, 549 U.S. at 203. An integral part of that scheme is 28 U.S.C. § 1915(g), the "three strikes rule," which provides "an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Coleman v. Tollefson*, 575 U.S. 532, 535 (2015). It does so by preventing a prisoner from obtaining *in forma pauperis* status to avoid filing fees when the prisoner has filed three or more previous lawsuits "dismissed on the grounds that [they were] frivolous, malicious, or fail[ed] 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).

Further protecting the courts from waves of litigation is this Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), which limited collateral attacks on criminal convictions. In *Heck*, the Court held that a prisoner may not obtain relief under 42 U.S.C. § 1983 when a judgment in the prisoner's favor "would necessarily imply the invalidity of [the prisoner's] conviction or sentence" unless the conviction or sentence has already been set aside. 512 U.S. at 487. Here, Mr. Shelby previously brought three such collateral attacks under § 1983, R. at 3, each time doing so despite the clear holding that he has "no cause of action under § 1983 unless and until the conviction or sentence is reversed." *Heck*, 512 U.S. at 489. His cases were each dismissed on that basis. R. at 3. Mr. Shelby thus struck out under § 1915(g). In his prior filings, he could not obtain relief based on a clear ruling from this Court. He did not, and could not, present any rational argument that he could obtain relief, so his prior cases were dismissed for "fail[ing] to state a claim upon which relief may be granted" and being "frivolous." § 1915(g). This best reflects the clear holding from *Heck*, plain text of § 1915(g), and purpose of the PLRA.

A. Cases Dismissed Under *Heck* Either Failed to State a Claim or Were Frivolous Since *Heck* Held That Plaintiffs Who Do Not Prove Their Convictions Have Been Set Aside Have No Cause of Action.

When interpreting a statute, "the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished." *Est. of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). The language in § 1915(g) regarding failure to state a claim is clear: a prisoner gets a strike for each prior suit "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." In *Lomax*, this Court determined that this "broad language covers all such dismissals" and "hinges exclusively on the basis for the dismissal, regardless of the decision's prejudicial effect." 140 S. Ct. at 1724-25. The only remaining question is whether a case dismissed under *Heck* is dismissed because it "fails to state a claim upon which relief may be granted" or is "frivolous." § 1915(g).

1. When *Heck* Applies, Plaintiffs Fail to State a Claim Upon Which Relief Can Be Granted Based on the Language of the PLRA and This Court's Precedents Concerning *Heck*.

This Court clarified which dismissals fall under the PLRA's "failure to state a claim" language in *Jones*. 549 U.S. at 214-15. A suit may be dismissed under "the PLRA's enumerated ground authorizing early dismissal for 'fail[ure] to state a claim upon which relief may be granted[]' . . . if the allegations, taken as true, show the plaintiff is not entitled to relief." *Id.* (quoting 28 U.S.C. § 1915(e)(2)(B)). It is immaterial exactly why or at what stage the claim fails—dismissal is for failure to state a claim whenever the allegations do not show the plaintiff is entitled to relief. *See id.* (collecting cases where suits were dismissed for failure to state a claim based on affirmative defenses, statutes of limitations, and official immunity). While the Court in *Jones* was interpreting § 1915(e)(2)(B), the relevant language is identical in § 1915(g).

The "rule of statutory construction" that "'a single use of a statutory phrase must have a fixed meaning' across a statute" dictates it must be given the same scope. *Lomax*, 140 S. Ct. at 1725 (quoting *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 139 S. Ct. 1507, 1512 (2019)).

A dismissal under *Heck* thus qualifies as a strike under § 1915(g) since it is on the ground that the plaintiff's allegations, when taken as true, do not show that the plaintiff is entitled to relief. *See Jones*, 549 U.S. at 214-15. The Court's reasoning in *Heck* indicates that is precisely what dismissal under its rule means: "in order to recover damages for allegedly unconstitutional conviction or imprisonment, . . . a § 1983 plaintiff must prove that the conviction or sentence has been" set aside. 512 U.S. at 486-87. A prisoner "has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Id.* at 489. A plaintiff lacking a cause of action cannot show entitlement to relief. This Court adopted the understanding that *Heck* imposed a "favorable-termination requirement" that plaintiffs must "prove that [their] conviction[s] had been invalidated in some way" to state a claim under § 1983 when the allegations imply the invalidity of their conviction. *McDonough v. Smith*, 139 S. Ct. 2149, 2157 (2019); *Thompson v. Clark*, 596 U.S. 36, 44 (2022). This is consistent with the reasoning from *Heck*, which analogized the favorable-termination requirement for proving a § 1983 claim to the "element that must be alleged and proved in a malicious prosecution action" of termination of the prior proceeding. *Heck*, 512 U.S. at 484.

This Court has since clarified that this analogizing approach is the appropriate method of determining the necessary elements of § 1983 claims. *Thompson*, 596 U.S. at 43 ("To determine the elements of a constitutional claim under § 1983, this Court's practice is to first look to the elements of the most analogous tort as of 1871 . . . ."). Failure to plead a necessary element is the quintessential example of failure to state a claim, and the necessary implication of dismissal

pursuant to *Heck*. This conclusion flows from the most natural readings of *Heck*, *McDonough*, and *Thompson*, and has been followed accordingly by the Third, Fifth, Tenth, and District of Columbia Circuits. *See, e.g.*, *Garrett v. Murphy*, 17 F.4th 419, 427 (3d Cir. 2021) ("[T]he dismissal of an action for failure to meet *Heck*'s favorable-termination requirement counts as a PLRA strike for failure to state a claim."); *Colvin v. LeBlanc*, 2 F.4th 494, 499 (5th Cir. 2021) ("By its own language, therefore, *Heck* implicates a plaintiff's ability to state a claim."); *Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (10th Cir. 2011) ("[D]ismissal of a civil rights suit for damages based on prematurity under *Heck* is for failure to state a claim."); *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011) (holding that absent proof of the conviction's having been set aside, "the plaintiff has failed to state a claim for purposes of section 1915(g)").

The question before the Court is simply whether claims barred by *Heck*, as Mr. Shelby's three prior suits were, fail to "state a claim upon which relief may be granted." § 1915(g). The Court held in *Heck*, in no uncertain terms, that for relief to be granted, "a § 1983 plaintiff must prove that the conviction or sentence has been . . . called into question." 512 U.S. at 486-87. When a plaintiff has not done so, the inability to obtain relief means that plaintiff has not "state[d] a claim upon which relief may be granted," and any dismissal recognizing that counts as a strike under § 1915(g), including those under *Heck*.

2. Cases Dismissed Under *Heck* Were Frivolous Since *Heck* Precludes Any Colorable Legal Argument for Relief When a Plaintiff's Conviction Has Not Been Set Aside.

Section 1915(g)'s "three strikes" rule also counts as strikes those actions which are dismissed on the ground that they are "frivolous." A suit is frivolous when "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). When a suit is barred by *Heck*, it is barred because the plaintiff's failure to demonstrate their conviction or

sentence has been set aside means the plaintiff has "no cause of action." *Heck*, 512 U.S. at 489. When *Heck* applies, it is inarguable that the plaintiff lacks a legal basis for recovery, and the suit is thus frivolous. The Fifth Circuit has appropriately followed this conclusion and held that suits barred by *Heck* are categorically frivolous. *Collins v. Dall. Leadership Found.*, 77 F.4th 327, 329-30 (5th Cir. 2023) (explaining that a "§ 1983 claim which falls under the rule in *Heck* is legally frivolous unless the conviction or sentence at issue has been reversed, expunged, invalidated, or otherwise called into question") (quoting *Hamilton v. Lyons*, 74 F.3d 99, 102 (5th Cir. 1996)).

Heck, by its own terms, imposes a requirement equivalent to an element of a plaintiff's § 1983 claim. To avoid the *Heck* bar, the plaintiff must demonstrate a fact: that the plaintiff's conviction or sentence has been set aside. *Heck*, 512 U.S. at 486-87. In the absence of that fact, there is no legal theory which would remove a bar in place for almost thirty years, affirmed by this Court multiple times and in recent decisions. *See, e.g.*, *McDonough*, 139 S. Ct. at 2156; *Thompson*, 596 U.S. at 44. No cause of action exists. *Heck*, 512 U.S. at 489. A *factual* argument might be made to dispute the applicability of *Heck*, but once *Heck* applies, there is no *legal* argument available that the suit should continue. The filings might be remediable to remove the *Heck* bar, making the common choice of dismissing a suit on the ground of frivolousness, but without prejudice, entirely appropriate. *See Lomax*, 140 S. Ct. at 1726 ("[C]ourts can and sometimes do conclude that frivolous actions are not 'irremediably defective,' and thus dismiss them without prejudice.").

Plaintiffs have no cause of action when *Heck* applies. *Heck*, 512 U.S. at 489. No legal argument can get a plaintiff around that. When legal argument is fruitless, courts should recognize the suit for what it is: frivolous, and thus a strike by the language of § 1915(g).

B. Alternative Approaches to *Heck* Are Inconsistent with the PLRA's Text and Purpose, and This Court's Precedents Concerning *Heck*.

Section 1915(g) counts as strikes all cases which were dismissed for failing to state a claim upon which relief could be granted or because they were frivolous. Since the "broad language" of the statute applies to "all such dismissals," *Lomax*, 140 S. Ct. at 1724, a dismissal under *Heck* would only fail to be a strike if there were some theory of *Heck*'s rule which placed its application outside the enumerated categories of § 1915(g). The best theory tracks squarely with the holding of *Heck* itself—that "a § 1983 plaintiff must prove that the conviction or sentence has been" set aside, 512 U.S. at 486-87, or else the plaintiff has failed to state a claim. Some lower courts have proposed alternative theories of *Heck*, none of which are consistent with this Court's precedents and the PLRA's text and purpose.

1. *Heck* Is Not an Affirmative Defense, and Even If It Is, It Is Still a Reason the Plaintiff Has Failed to State a Claim Upon Which Relief Can Be Granted.

While *Heck* is best understood as requiring plaintiffs to show the invalidation of their convictions as an element of their claim, the Seventh and Ninth Circuits have held that the "*Heck* bar" is an affirmative defense. *See, e.g.*, *Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011) ("[T]he *Heck* defense is subject to waiver."); *Washington v. L.A. Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016) (explaining that "compliance with *Heck* . . . constitutes an affirmative defense and not a pleading requirement"). The rule from these circuits is inconsistent with this Court's articulation of *Heck* in *McDonough* which clearly places the burden on the plaintiff: to recover, "a plaintiff in a § 1983 action first ha[s] to prove that his conviction ha[s] been invalidated in some way." *McDonough*, 139 S. Ct. at 2157. In *McDonough*, the Court followed *Heck*'s reasoning in analogizing § 1983 claims which question the legitimacy of a conviction to common law malicious prosecution actions, which had favorable termination of the prosecution

as an element. *See id.* In *Thompson*, the Court clarified that this sort of analogy determined the necessary elements of § 1983 claims. 596 U.S. at 43 ("To determine the elements of a constitutional claim under § 1983, this Court's practice is to first look to the elements of the most analogous tort as of 1871 . . . .").

Even were *Heck* an affirmative defense, dismissals under the rule would still be for failure to state a claim. As the Court established in *Jones*, dismissals pursuant to affirmative defenses are still dismissals for failure to state a claim since the plaintiff's allegations are shown to be insufficient to obtain relief. *See Jones*, 549 U.S. at 215. In *Jones*, the Court explained that whether a ground for dismissal is for failure to state a claim is not dependent "on the nature of the ground in the abstract," and dismissals pursuant to affirmative defenses such as statutes of limitations and official immunity are still for failure to state a claim. *Id.* As applied to § 1915(g), this understanding is consistent with Congress's purpose to deter unmeritorious suits and shift judicial resources to those with merit, a purpose which suggests the exact screening mechanism is immaterial. *See Lomax*, 140 S. Ct. at 1726. In *Lomax*, the Court determined that Congress added suits which fail to state a claim to the PLRA's list, in addition to those that are frivolous or malicious, to target "a flood of nonmeritorious claims." *Id.* If the rule from *Heck* applies, the plaintiff does not have a path to relief. *When* and *how* the court notes the application of *Heck* is irrelevant to that ultimate conclusion, and thus to whether the dismissal is for failure to state a claim.

2. *Heck* Is Not a Jurisdictional Issue, and Even If It Is, It Means the Case Is Frivolous.

The First Circuit has held that the application of *Heck* is a "jurisdictional question." *O'Brien v. Town of Bellingham*, 943 F.3d 514, 529 (1st Cir. 2019). *But see Figueroa v. Rivera*, 147 F.3d 77, 81 (1st Cir. 1998) (explaining that *Heck* held that annulment of the conviction was

an "element" of a § 1983 claim). This, too, is inconsistent with *Heck* doctrine. In *Heck*, this Court explained that when *Heck* applies, it "den[ies] the existence of a cause of action." 512 U.S. at 489. That is a fundamentally different question from jurisdiction: "[i]t is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, i.e., the courts' statutory or constitutional power to adjudicate the case." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). The validity of a cause of action implicates jurisdiction only when the claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Id. Heck* does not establish that all § 1983 claims failing to show the invalidation of a prior conviction are made solely to obtain jurisdiction, so the second label from *Steel Co.*, "wholly insubstantial and frivolous," would have to apply for *Heck* to be a jurisdictional issue. *Id.* If that label applied, dismissals under *Heck* would still be strikes under § 1915(g), since it counts as strikes those cases dismissed as "frivolous." However, the Court has been careful to confine jurisdictional inquiries to those "delineating the classes of cases a court may entertain (subject-matter jurisdiction) and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction)." *Fort Bend County v. Davis*, 139 S. Ct. 1843, 1848 (2019). Given the absence of a clear Congressional command or long line of cases from this Court, there is no reason to expand the concept of jurisdiction here.

3. *Heck* Is Not Merely a Question of Timing, and Even If It Is, It Is Still a Reason the Plaintiff Has Failed to State a Claim Upon Which Relief Can Be Granted.

The Seventh and Ninth Circuits, in holding that dismissals under *Heck* do not categorically count as strikes under § 1915(g), have described the rule from *Heck* as one of timing rather than "the adequacy of the underlying claim for relief." *Mejia v. Harrington*, 541 F.

App'x 709, 710 (7th Cir. 2013); *see Washington*, 833 F.3d at 1056 (describing the rule from *Heck* as a matter of "judicial traffic control"). First, this is inconsistent with *Heck* and *McDonough*, which describe favorable termination as an element a plaintiff must prove to obtain relief. *See Heck*, 512 U.S. at 486-87; *McDonough*, 139 S. Ct. at 2157. Second, the distinction is without a difference, as the question is only whether the plaintiff is entitled to relief under the facts pled. *See Jones*, 549 U.S. at 214-15. If the plaintiff is not, it is irrelevant why—the plaintiff has still failed to state a claim *upon which relief can be granted*. *See id.* at 215. Section 1915(g) makes no distinction between failure to state a claim upon which relief can *currently* be granted and failure to state a claim upon which relief can *ever* be granted. The rule from the Seventh and Ninth Circuits would effectively rewrite the statute as the latter, despite the statute using "broad language" applying to "all such dismissals." *Lomax*, 140 S. Ct. at 1724. Whatever reasons the circuits may have, they cannot override the fundamental principle that the "judge's job is to construe the statute—not to make it better." *Jones*, 549 U.S. at 216.

4. Non-Categorical Rules Undermine the PLRA's Purpose of Preserving Judicial Resources for Meritorious Suits.

A categorical rule concerning the effect of *Heck* dismissals furthers the purpose of the PLRA better than a case-by-case approach. The three strikes rule in § 1915(g) exists to "filter out the bad claims and facilitate consideration of the good." *Coleman*, 575 U.S. at 539. Each District Court must independently determine whether a plaintiff has "struck out" under § 1915(g), regardless of the label prior courts placed on any dismissals. *See, e.g.*, *Pitts v. South Carolina*, 65 F.4th 141, 145-46 (4th Cir. 2023) (describing the "unanimous" consensus of the circuits that strike determinations are a "backward-looking inquiry" for the court considering a petition to proceed *in forma pauperis*). The more easily a court can determine whether a dismissal qualifies as a strike, the fewer judicial resources spent, and the more effective the filter.

Non-categorical approaches, such as the Ninth Circuit's, evaluate prior dismissals under *Heck* on a case-by-case basis, forcing courts to examine whether the pleadings presented an "obvious bar to securing relief" before assessing a strike. *Washington*, 833 F.3d at 1055. This approach would produce a "leaky filter." *Coleman*, 575 U.S. at 539. Courts assessing whether a plaintiff had struck out would need to examine not only the orders and opinions of the plaintiff's prior cases but all the filings to determine the "obviousness" of the *Heck* bar, inevitably producing more litigation over what is "obvious" enough. *Compare Hebrard v. Nofziger*, 90 F.4th 1000, 1010-11 (9th Cir. 2024) (examining the filings in a district court case and concluding that the application of *Heck* was "obvious") *with id.* at 1014 (Sung, J., dissenting) (concluding that the application of *Heck* was not obvious). Given the long history and inflexibility of the *Heck* bar, the most effective filter would be a categorical rule allowing courts to efficiently determine that a *Heck*-barred case counts as a strike.

5. Any Construction Placing *Heck* Outside the PLRA's Three Strikes Language Inhibits the Operation of the Entire Statute.

As a final consideration, any interpretation of the statute which excludes *Heck* dismissals from the categories of failure to state a claim or frivolousness would exacerbate the "flood of nonmeritorious claims" Congress set out to control. *Jones*, 549 U.S. at 203. If *Heck* dismissals are not for failure to state a claim or frivolousness under § 1915(g), then they could not be under § 1915(e)(2)(B) either given that "'a single use of a statutory phrase must have a fixed meaning' across a statute." *Lomax*, 140 S. Ct. at 1725 (quoting *Cochise Consultancy, Inc.*, 139 S. Ct. at 1512). Judges would consequently not be authorized under that section to dismiss cases barred by *Heck* on their own initiative, and instead would be forced to wait until that defect had been identified in a filing by the defendant. *See* § 1915(e)(2)(B) (providing that courts "shall dismiss the case at any time if the court determines" that the action is "frivolous" or "fails to state a claim

on which relief may be granted"). This would force additional litigation costs on defendants, and the additional expenditure of judicial time and resources would come at the expense of considering "suits more likely to succeed." *Lomax*, 140 S. Ct. at 1726. Excluding *Heck* dismissals from § 1915(g) thus both undermines the statute as a whole and access to justice for prisoners with meritorious lawsuits.

No plausible construction of § 1915(g) excludes suits dismissed under the rule from *Heck* from the enumerated categories of "strikes." Mr. Shelby had three prior suits dismissed under the rule from *Heck*. R. at 3. Thus, the Fourteenth Circuit's holding that these dismissals do not count as "strikes" under § 1915(g) should be reversed.

II. *KINGSLEY V. HENDRICKSON* APPLIED ONLY TO EXCESSIVE FORCE CLAIMS AND DID NOT DISTURB THE LONGSTANDING PRECEDENT REQUIRING PRETRIAL DETAINEES TO PROVE A DEFENDANT'S SUBJECTIVE INTENT IN A FAILURE-TO-PROTECT CLAIM.

Pretrial detainees' § 1983 claims arise under the protections of the Fourteenth Amendment's Due Process Clause, which prohibits a state officer from inflicting any form of punishment upon a detainee who has yet to receive sentencing. *See Bell v. Wolfish*, 441 U.S. 529, 535-37 (1979). Given the longstanding principle that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process," all successful § 1983 claims brought by pretrial detainees must show the defendant acted with a mental state more culpable than negligence, whether liability is premised on action or inaction. *Kingsley v. Hendrickson*, 576 U.S. 389, 396 (2015) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)). When the claim is for the use of excessive force, this requirement is necessarily satisfied since the use of *any* force was a deliberate act by the officer, and the only remaining question is the objective reasonableness of that use of force. *See Kingsley*, 576 U.S. at 397. In contrast, a failure-to-protect claim is premised on inaction by the defendant, with no guarantee that the defendant

had a sufficiently culpable mental state; so, the plaintiff must prove that the defendant's omission occurred with "deliberate indifference" to the plaintiff's constitutional rights. *Estelle v. Gamble*, 429 U.S. 97, 105 (1976). To prove an official was deliberately indifferent, the plaintiff must show the official was both "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," and that the official actually "dr[e]w the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

The Fourteenth Circuit misinterpreted *Kingsley*, and improperly extended the holding that excessive force cases require only an objective reasonableness inquiry to abolish the subjective inquiry in failure-to-protect cases. Under the proper legal standard, Mr. Shelby failed to state a claim because he did not establish that Officer Campbell, however negligent he may have been, actually knew of the threat to Shelby's safety. The Fourteenth Circuit's decision not only applies the wrong standard to this case but upends the foundational principle that constitutional violations cannot be founded on mere negligence and should thus be reversed.

A. ***Kingsley* Applies Only to Excessive Force Claims, and Failure-to-Protect Claims are Substantially Distinct.**

A state official violates a pretrial detainee's Fourteenth Amendment rights when failing to protect the detainee from harm only when that official effectively inflicts punishment on the detainee by acting with "deliberate indifference." *Id.* at 828-29; *Estelle*, 429 U.S. at 105. Deliberate indifference is "an extremely high standard to meet." *Leal v. Wiles*, 734 F. App'x 905, 910 (5th Cir. 2018). The standard is satisfied when an officer knows of and disregards "an excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837. There are two components to establishing deliberate indifference: first, an objective component demonstrating that the constitutional deprivation was "sufficiently serious," and second, a subjective component demonstrating that the official acted "with a sufficiently culpable state of mind." *Wilson v. Seiter*,

501 U.S. 294, 298 (1991). For nearly fifty years, this Court has consistently mandated the subjective component be determined via "inquiry into a prison official's state of mind." *Id.* at 299. An officer must "not only know facts sufficient to draw an inference of excessive risk but must also draw the inference." *Farmer*, 511 U.S. at 837.

1. Longstanding Precedent Requires Proof of Subjective Intent to Establish Any Deliberate Indifference Claim.

The definition of deliberate indifference from *Farmer* separates "those who inflict punishment" from those who merely act negligently. *Id.* at 839. This Court has defined punishment as "a deliberate act intended to chastise or deter." *Wilson*, 501 U.S. at 300 (quoting *Duckworth v. Franzen,* 780 F.2d 645, 652 (7th Cir. 1985), *abrogated on other grounds by Haley v. Gross*, 86 F.3d 630, 645 n.34 (7th Cir. 1996)). Punishment, as a deliberate act, inherently requires some culpable mental state beyond negligence. *See id.* Deliberate indifference therefore requires something more than the lack of due care. *See Hare v. City of Corinth*, 74 F.3d 633, 649 n.5 (5th Cir. 1996) (explaining that deliberate indifference "cannot be inferred from a prison guard's failure to act reasonably").

The deliberate indifference standard defined in *Farmer* was first employed in 1976 but traces its roots back to at least 1947. *Estelle*, 429 U.S. at 103. In *Estelle*, a prisoner alleged that his Eighth Amendment rights against cruel and unusual punishment were violated when he was not treated properly by prison medical staff for back pain. *Id.* at 100. The Court held that mere accidents could not reach the level of cruel and unusual punishment, which involves the "unnecessary and wanton infliction of pain." *Id.* at 103 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)); *see also Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947). The Court traced its jurisprudence on the Eighth and Fourteenth Amendments back to the late 1940s where a plurality of the Court held that cruel and unusual punishment requires wantonness.

Francis, 329 U.S. at 463. In *Estelle*, the Court held that failure to act could evince such wantonness when it is done with deliberate indifference to a prisoner's medical needs. 429 U.S. at 104. The Court reasoned that the government is obligated to care for the basic needs of prisoners because knowing failure to provide for basic needs "involve[s] the unnecessary and wanton infliction of pain." *Id.* Awareness of the needs of a prisoner, combined with the choice to not provide for those needs, thus constitutes the deliberate indifference necessary to classify a failure to act as punishment. *Id.* at 104-05 (applying the principle only to failure to respond to known medical needs or intentional denials or interference with treatment). Accidental or negligent failures could not rise to the level of deliberate indifference. *Id.* at 105.

Deliberate indifference is the standard of culpability for other claims beyond failure to meet medical needs. *Whitley v. Albers*, 475 U.S. 312, 320 (1986). In *Whitley*, a prisoner alleged that his Eighth Amendment rights against cruel and unusual punishment were violated when he was shot while officers were attempting to quell a prison riot. *Id.* at 316-17. The Court held everything from "establishing conditions of confinement . . . [to] restoring official control over a tumultuous cellblock" should be evaluated under the deliberate indifference standard. *Id.* at 319. The Court emphasized the fact that it is willful "obduracy and wantonness" that is prohibited under the Eighth Amendment. *Id.* In using the words "obduracy" and "wantonness," the Court reaffirmed that there must be some element of subjective knowledge in the mind of the offending officer: "inadvertence or error" could not be construed as obdurate or wanton. *Id.* However, the majority made clear that an officer did not need to explicitly state that he had known of and disregarded an excessive risk to inmate. *Id.* Serving as a harbinger to *Farmer*, the majority wrote that "express intent" was not needed to find blameworthy punishment. *Compare Whitley*, 475 U.S. at 319, *with Farmer*, 511 U.S. at 842 ("Whether a prison official had the requisite

knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence").

The Court has had occasion to explore questions of where to draw the line between negligence and deliberate indifference. *See Wilson v. Seiter*, 501 U.S. 294, 296 (1991). In *Wilson*, a prisoner alleged deficient heating and cooling, inadequate ventilation, overcrowding, and six other specific failures. *Id.* at 296. The Court held that the proper mental state necessary to show these failures constituted constitutional violations was deliberate indifference. *Id.* at 297. Revisiting its prior rulings in *Estelle* and *Whitley*, the Court concluded that "these cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." *Id.* at 299. It is significant that after fifteen years, the Court held that proof of subjective state of mind was a necessary element to prove a plaintiff's claims.

The Court also referenced its statement from two years prior where it stated that "the term[] 'punishment[]' clearly suggest some inquiry into subjective state of mind." *Graham v. Connor*, 490 U.S. 386, 398 (1989). The Court reasoned that the word "punishment" is the textual foundation for the subjective element of the deliberate indifference test. *Wilson*, 501 U.S. at 300. "The source of the intent requirement is not the predilections of this Court, but the Eighth Amendment itself, which bans only cruel and unusual *punishment*." *Id.* Since the subjective element is rooted in the text of the Constitution, it is not subject to the dictates of "policy considerations." *Id.* at 301-02. The Court reaffirmed its prior holding in *Whitley,* that there is "no significant distinction between claims alleging inadequate medical care and those alleging inadequate conditions of confinement." *Id.* at 303 (quotations omitted). The Court reasoned that failure to provide adequate medical care and failure to provide necessities such as warmth, protection, and food are similar because of the duress placed on the prison official. *Id.* The

Court's precedents, applying the text of the Constitution, thus establish a consistent standard for constitutional claims premised on a failure of officials to act: all such claims must demonstrate awareness of the risk of substantial harm on the part of the official failing to act.

Constitutional text and decades of precedent support inquiry into state officials' state of mind in failure-to-act cases; policy considerations support such inquiry as well. The deliberate indifference standard walks the line between penalizing negligence at one extreme and permitting willful blindness at the other. *Farmer*, 511 U.S. at 836. Deliberate indifference is similar enough to criminal recklessness in its standard of culpability that this Court and others consider the two "equivalent." *Id.*; *see also City of Springfield v. Kibbe*, 480 U.S. 257, 269 (1987) (O'Connor, J., dissenting) (using "deliberate indifference" and "reckless disregard" interchangeably); *LaMarca v. Turner*, 995 F.2d 1526, 1535 (11th Cir. 1993) (describing deliberate indifference as "knowing or reckless[] disregard"); *Manarite ex rel. Manarite v. City of Springfield*, 957 F.2d 953, 957 (1st Cir. 1992) (equating "reckless" or "callous" behavior with deliberate indifference). The deliberate indifference standard strikes a balance between over-inclusivity and under-inclusivity of behavior. It safeguards the rights of the vulnerable while addressing the realities of working in a complex and, at times, perilous institution.

The deliberate indifference standard shields liability from mere negligence, but prison officials cannot escape liability for an obvious risk by simply pleading ignorance. *Farmer*, 511 U.S. at 842. "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Id.* In *Farmer*, the Court relied upon criminal law authorities to hold that a jury may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious. *See id.* Inferring subjective knowledge from circumstantial evidence is

common. *See, e.g.*, *Est. of Cole by Pardue v. Fromm*, 94 F.3d 254, 260 (7th Cir. 1996) (holding that a jury may infer subjective knowledge from circumstantial evidence but "are not required"); *Williams v. Hampton*, 797 F.3d 276, 292 (5th Cir. 2015) (holding that subjective intent could not be inferred based upon expert testimony without circumstantial evidence); *Nelson v. Tompkins*, 89 F.4th 1289, 1293 (11th Cir. 2024).

In *Nelson*, a black man stabbed a store clerk simply because the clerk was white. *Id.* at 1292. When he was arrested, the man confessed his motives for the stabbing to the arresting officer. *Id.* at 1293. He told the officer he had watched news reports of white cops shooting black men and decided to take matters into his own hands. *Id.* The officer, thinking this motive significant, conveyed that information to the booking officer. *Id.* Nevertheless, the booking officer did not inform the officers responsible for classifying and placing the detainee that his assault was based on color. *Id.* at 1294. The classifying officers placed the man with a white inmate whom he subsequently strangled and killed. *Id.* The booking officer was tried in his individual capacity by the victim's survivors for deliberate indifference to substantial risk of serious harm in violation of the Fourteenth Amendment. *Id*. at 1293. The booking officer argued at trial that he did not know of the substantial risk potentially posed to white inmates. *Id.* at 1297. He justified this assertion by stating that the detainee appeared compliant and polite during his encounter with him. *Id*. at 1298. Despite this, the court held there was sufficient circumstantial evidence to prove subjective knowledge. *Id.* He was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]," *Farmer*, 511 U.S. at 837, namely the color-based animus. He argued that he did not actually "draw the inference" of harm. *Id.* But evidence, including testimony from the two classifying officers, the arresting officer, and

a police expert, contradicted his claim. *Nelson*, 89 F.4th at 1298. This strong circumstantial evidence, when pitted against the booking officer's bare assertions, ultimately prevailed. *Id.*

The law goes further than simply allowing circumstantial evidence to prove subjective intent was formed. A prison official may not escape liability "for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault." *Farmer*, 511 U.S. at 843. The fact that an officer knows that an objectively excessive risk is likely is sufficient to demonstrate deliberate indifference; they need not know of the exact source of the risk. The current standard thus imposes real accountability on culpable officers without the risk that they can be absolved through mere assertions of ignorance.

The Fourteenth Circuit was bound by this long line of precedent requiring a subjective state-of-mind inquiry in failure-to-protect cases. In applying only an objective standard to Mr. Shelby's failure-to-protect claim, it relied on *Kingsley*. *Kingsley* did not have the effect the Fourteenth Circuit attributed to it.

2. *Kingsley* Applied an Objective Standard Only to Excessive Force Claims and Did Not Remove the Subjective Element of Deliberate Indifference for All Claims.

The subjective component of the deliberate indifference test has been relied upon by the courts ever since it was defined three decades ago in *Farmer*. *See* 511 U.S. at 837. The deliberate indifference standard developed under the Eighth Amendment framework prohibiting cruel and unusual punishment. *See Estelle*, 429 U.S. at 104 (holding that deliberate indifference to a prisoner's medical needs constitutes the "unnecessary and wanton infliction of pain" proscribed by the Eighth Amendment); *see also Farmer*, 511 U.S. at 828 (defining "deliberate indifference"

as requiring a showing that the official was subjectively aware of the risk). However, this Court and lower courts have held that the Eighth Amendment deliberate indifference standard translates directly to the Fourteenth Amendment framework prohibiting punishment of pretrial detainees, creating a uniform rule for all similar claims by incarcerated people. *See e.g.*, *Bell*, 441 U.S. at 545 (noting that a pretrial detainee "retain[s] at least those constitutional rights that we have held are enjoyed by convicted prisoners"); *Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013) (stating that pretrial detainee's claims under the Fourteenth Amendment are analyzed "under the same rubric as Eighth Amendment claims brought by prisoners"). Under either the Eighth or Fourteenth Amendment, a subjective component applies when assessing punishment that is beyond what is allowed under the Constitution—limiting the infliction of punishment is the underlying objective of both amendments.

In 2015, this Court decided *Kingsley*, clarifying the test applied in excessive force cases brought by pretrial detainees. *See* 576 U.S. at 396-97. In *Kingsley*, a pretrial detainee brought a claim under § 1983 against several jail officers alleging that the officials used excessive force against him in violation of the Fourteenth Amendment Due Process Clause when the officials forcibly removed him from his jail cell, slammed his face down on a bunk in a receiving cell with his hands handcuffed behind his back, and tased him. *Id.* at 392-93. This Court held that in a case alleging excessive force like *Kingsley*, there are two separate state-of-mind questions. *Id.* at 385. The first looks to the defendant-officer's state of mind as to his physical acts, which in *Kingsley* were concededly deliberate on the part of the officers. *Id.* The second looks to whether the officer's use of force was "excessive." *Id.* Only the second inquiry regarding the excessiveness of the officer's force was disputed in *Kingsley*, and this Court held that courts must use an objective standard with respect to *that* question. *Id.* at 396.

The holding in *Kingsley* was confined to excessive force claims, where the harmful activity to a detainee was an affirmative act which was concededly or necessarily deliberate making a state-of-mind inquiry unnecessary. The Eighth and Eleventh Circuits have appropriately interpreted *Kingsley* in that manner. In *Whitney v. City of St. Louis*, 887 F.3d 857, 859 (8th Cir. 2018), the plaintiff sued a correctional officer under § 1983 alleging that the officer caused his son's death while his son was imprisoned. The plaintiff alleged that the officer was deliberately indifferent by failing to adequately monitor his son in his cell, by failing to timely provide adequate medical care to his suicidal condition, and by failing to timely intervene to rescue while his son committed suicide in his jail cell. *Id.* The court held that in order to prevail on his deliberate indifference claim, the plaintiff must show both that the officer had actual knowledge that the plaintiff's son had a substantial risk of suicide and that the officer failed to take reasonable measures to abate that risk. *Id.* at 860. The plaintiff argued that *Kingsley* required the court to apply only a subjective standard, but the court properly recognized that *Kingsley* was relevant only to excessive force cases, not failure-to-act cases requiring a showing of deliberate indifference. *Id.* at 860 n.4.

The Eleventh Circuit similarly recognized the limited scope of *Kingsley* when it evaluated a pretrial detainee's inadequate medical care claims. *See Dang ex rel. Dang v. Sheriff, Seminole Cnty. Fla.*, 871 F.3d 1272, 1279 (11th Cir. 2017). The court assessed deliberate indifference under a three-prong test that included the following factors: (1) subjective knowledge of a risk of serious harm, (2) disregard of that risk, and (3) by conduct that is more than mere negligence. *Id.* at 1280. The court declined to apply *Kingsley*'s objective standard because the plaintiff's claim in this case did not involve excessive force, like the plaintiff in *Kingsley*, but rather a claim for inadequate medical treatment. *Id.* at 1279 n.2. The court's decision not to extend *Kingsley* to a

claim for inadequate medical treatment stemmed from *Kingsley*'s clear admonition that "liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process." *Id.* (quoting *Kingsley*, 576 U.S. at 396).

The Ninth and Seventh Circuits inappropriately substituted the objective standard *Kingsley* set for excessive force claims for the required test in failure-to-act claims, which involves both a subjective and objective inquiry to establish deliberate indifference. *See, e.g.*, *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018). In *Castro*, a pretrial detainee sued the county and various correction officers under § 1983 alleging the officers failed to protect him from harm by other inmates when the pretrial detainee was attacked and severely beaten by another inmate while being held in a sobering cell. 833 F.3d at 1065. The court held that an objective standard applied to the plaintiff's failure-to-protect claim because § 1983 has no state-of-mind requirement independent of stating a violation of the underlying federal right, which is the same federal right for pretrial detainees whether the claim is excessive force or failure-to-protect. *Id.* at 1069. The court reasoned that "a pretrial detainee can prevail by providing only objective evidence that *the challenged governmental action* is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Id.* at 1070 (quoting *Kingsley*, 576 U.S. at 398). The court interpreted this line from the opinion to mean that *Kingsley*'s holding is not limited to excessive force claims but extends to governmental action generally. *Id.*

Extending *Kingsley* to a pretrial detainee's deliberate indifference claim is a misinterpretation of the punishment determination framework under the Fourteenth Amendment Due Process Clause. *Id.* at 1084 (Ikuta, J., dissenting). Judge Ikuta's dissenting opinion in *Castro* described four ways for a pretrial detainee to establish the existence of punishment that violates

Fourteenth Amendment rights: (1) showing that a government official took action with an "expressed intent to punish," (2) showing that a government official's deliberate action is objectively unreasonable, such as the use of excessive force, (3) showing that a restriction of condition of confinement is not reasonably related to a legitimate government purpose, and (4) showing that the official was deliberately indifferent to a substantial risk of harm. *Id.* at 1084-85. Judge Ikuta properly recognized that the *Kingsley* standard is not applicable to cases where a government official has only failed to act. *Id.* at 1086. *Farmer*'s subjective deliberate indifference framework is the appropriate one to apply in such cases, as the Court made clear when it wrote that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *Id.* (quoting *Kingsley*, 576 U.S. at 398).

The Seventh Circuit also inappropriately extended this Court's precedents in holding that there is no subjective inquiry in constitutional claims alleging failure to act. *See, e.g.*, *Miranda*, 900 F.3d at 352. *Miranda* involved a pretrial detainee who died in a hospital after suffering severe dehydration in a county jail. *Id.* at 341. Citing this Court's decisions in *Kingsley* and *Bell*, the Seventh Circuit held that a claim of inadequate conditions does not require inquiry into correctional staff's mental state. *Id.* at 353. Specifically, the court wrote that a pretrial detainee can prevail simply by showing that an official's "actions are not 'rationally related to a legitimate nonpunitive governmental purpose.'" *Id.* at 351 (quoting *Bell*, 441 U.S. at 561). The court misapplied *Kingsley* by failing to apply a subjective inquiry, but also misapplied *Bell*'s holdings on "restrictions and practices," which do not cover inaction unless inaction is policy. *Bell*, 441 U.S. at 561. In *Bell*, the Court addressed the issue of rights afforded to pretrial detainees under the Fourteenth Amendment. *Id.* at 523. It held that policies imposing restrictions on detainees spurred by an intent to punish were strictly unconstitutional. *Id.* at 535. *Bell* explicitly called for a

state-of-mind inquiry: "[a] court must decide whether the disability is imposed *for the purpose of* punishment or whether it is but an incident of some other legitimate governmental purpose." *Id.* at 538 (emphasis added). The Court was not attempting to protect against forgetful jailers but against prison officials intentionally enacting "restrictions and practices" with no "legitimate . . . governmental purpose." *Bell*, 441 U.S. at 561. Therefore, the Seventh Circuit was incorrect to abandon the mental state inquiry of the deliberate indifference test.

In this case, Mr. Shelby brought a deliberate indifference failure-to-protect claim which is squarely governed by the subjective standard from *Farmer*. That standard assesses liability only when a prison official "[subjectively] knows of and disregards an [objectively] excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837. Mr. Shelby did not allege that Officer Campbell actually knew of any risk to his safety. R. at 11. Mr. Shelby's injuries were not inflicted by Mr. Campbell, but by a fellow detainee after Mr. Campbell placed them in the same vicinity while awaiting recreation transfer. R. at 6. Mr. Shelby does not claim that Campbell used excessive force, nor did he allege facts consistent with such a claim. *Kingsley*'s framework, which applies only when some measure of harm is deliberately inflicted on an inmate, is thus inapplicable. The sole question in *Kingsley* was to determine if an objective reasonableness standard applied to an excessive force claim. 576 U.S. at 391-92. Importantly, the plaintiff in *Kingsley* did not allege that the officers were deliberately indifferent to his health and safety. The claims brought are too distinct from each other to compare the standards necessary to prove liability. The Court in *Kingsley* did not address *Farmer* or *Estelle* in its discussion of excessive force claims; if the Court intended to upend that line of precedent, then it surely would have explained that it was overruling the standard that has been heavily relied upon by the lower courts for almost five decades. Since Mr. Shelby only claimed that Officer Campbell failed to protect

him, the Fourteenth Circuit erred in applying the objective test from *Kingsley* rather than the deliberate indifference framework from *Farmer*, and its decision should be reversed.

B. Applying *Kingsley* to Failure-to-Protect Claims Would Effectively Violate the Constitution by Equating Negligence with Punishment.

Negligence does not violate a pretrial detainee's Fourteenth Amendment due process rights because punishment requires "a state of mind more blameworthy than negligence." *Farmer*, 511 U.S. at 835. The Court in *Kingsley* echoed this sentiment, explaining that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *Kingsley*, 576 U.S. at 396 (quoting *Lewis*, 523 U.S. at 849). Since simple negligence does not violate the Fourteenth Amendment's due process protections, a failure-to-protect claim should not be "transmuted into a negligence inquiry." *Hare*, 74 F.3d at 649. A detainee who disagrees with the wisdom of a correction officer's actions or that officer's assessment of risk has not stated a constitutional claim. *See Estelle*, 429 U.S. at 107 (holding that prisoner has not proven a constitutional violation simply by questioning the prudence of a prison administrator's policies). Courts cannot "freely substitute [their] judgment" for an officer's or otherwise second-guess an officer's course of action with the benefit of hindsight. *Whitley*, 475 U.S. at 322; *see also Graham*, 490 U.S. at 396 (explaining that courts do not judge the constitutionality of particular actions "with the 20/20 vision of hindsight").

1. Without the Subjective Element, Deliberate Indifference Reduces to Negligence Contrary to Longstanding Constitutional Precedent.

A correction officer's failure to minimize a significant risk that he should have perceived "cannot . . . be condemned as the infliction of punishment." *Farmer*, 511 U.S. at 838. This is because punishment requires "a state of mind more blameworthy than negligence." *Id.* In *Farmer*, a feminine-presenting prisoner housed in a facility for men argued the officers had

constructive knowledge of an excessive risk of sexual assault. *Id.* at 831. The Court patently rejected the prisoner's proposed purely objective standard for the failure-to-protect claim. *Id.* at 837. The *Farmer* Court highlighted a number of cases which precluded negligent activity from reaching the level of punishment. *See, e.g.*, *Wilson*, 501 U.S. at 299-302 (rejecting a reading of the Eighth Amendment that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions); *Helling v. McKinney*, 509 U.S. 25, 35 (1993) (holding that Eighth Amendment analysis requires inquiry into subjective intent); *see also Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (explaining that courts must consider if "officials acted with a sufficiently culpable state of mind").

Although in hindsight inaction is easily seen to be imprudent, courts refrain from second-guessing the deeds of not only corrections officers but also medical workers. *Strain v. Regalado*, 977 F.3d 984, 996 (10th Cir. 2020). In *Strain*, a pretrial detainee was exhibiting symptoms of alcohol withdrawal. *Id.* at 987. A doctor and a nurse diagnosed the symptoms and undertook treatment. *Id.* Ultimately, the healthcare providers significantly underestimated the amount of care needed. *Id.* These failures, nevertheless, did not reach the "high level of deliberate indifference." *Id.*; *see also Leal*, 734 F. App'x at 910 (holding that deliberate indifference is "an extremely high standard to meet"). Punitive intent cannot be inferred from "the mere failure to act." *Strain*, 977 F.3d at 991 (quoting *Castro*, 833 F.3d at 1086 (Ikuta, J., dissenting)). Even if the inaction's imprudence reaches the level of medical malpractice, it is insufficient "to satisfy the subjective component of a deliberate indifference claim." *Strain*, 977 F.3d at 996. The Tenth Circuit is hardly alone in this conclusion. *See, e.g.*, *Hare*, 74 F.3d at 645 (holding that formulating a standard higher than gross negligence but lower than deliberate indifference is "unwise because it would demand distinctions so fine as to be meaningless"); *Collins v. Al-*

Shami, 851 F.3d 727, 731-32 (7th Cir. 2017) (holding that a jail doctor was not deliberately indifferent for failing to monitor a detainee's vitals in accordance to policy, because better methods of risk minimization are available).

Rather than coming to a conclusion based on the existence of actual knowledge and disregard of risk, an objective standard would collapse a deliberate indifference inquiry into pure prudence analysis. The question would become whether a *reasonable* officer would have taken a particular course of action instead of whether an officer *actually* knew of an excessive risk. *See Castro*, 833 F.3d at 1071 (majority opinion) (interpreting *Kingsley* to require a "reasonable officer" standard for failure-to-protect claims). The Court in *Kingsley* in no uncertain terms forbade this type of amalgamation. 576 U.S. at 396 ("[L]iability for negligently inflicted harm is categorically beneath the threshold of constitutional due process."). To read into *Kingsley* the desire to create a standard for deliberate indifference higher than even gross negligence but lower than subjective intent is to create a "gossamer standard" that is equal parts impractical and unnecessary. *Hare*, 74 F.3d at 645.

Circuits attempting to apply a purely objective standard without violating the clear rule that due process violations cannot flow from negligence illustrate those problems. *See Stein v. Gunkel*, 43 F.4th 633, 640 (6th Cir. 2022). In *Stein*, the plaintiff was a pretrial detainee booked into a detention center following arrest for nonviolent drug charges. *Id.* at 635. Due to his suicidal comments during booking, the detainee was placed in a "turtle vest" to prevent him from committing suicide and housed by himself. *Id.* at 636. Another detainee was also housed by himself for similar reasons after being booked for felony and misdemeanor assault. *Id.* at 635. After both men were cleared from suicide watch, they were placed in a cell together whereupon the second detainee attacked and beat the plaintiff. *Id.* Although the Sixth Circuit has adopted a

purely objective test for deliberate indifference post-*Kingsley*, *id*. at 639, the court declined to hold that the officers had failed to protect the plaintiff. *Id.* at 641. The Sixth Circuit requires four elements to establish deliberate indifference for a failure-to-protect claim: "a defendant officer must [1] act intentionally in a manner that [2] puts the plaintiff at a substantial risk of harm, [3] without taking reasonable steps to abate that risk, [4] and by failing to do so actually cause the plaintiff's injuries." *Id.* at 639 (quoting *Westmoreland v. Butler County*, 29 F.4th 721, 729 (6th Cir. 2022)). This third element is properly read to require something "more than negligence." *Stein*, 43 F.4th at 639.

While the Sixth Circuit and other circuits purport to apply an objective rather than a subjective recklessness standard, *id.*; *Castro*, 833 F.3d at 1071; *Short v. Hartman*, 87 F.4th 593, 610-11 (4th Cir. 2023), these courts must smuggle in the original subjective standard to avoid imputing guilt for mere negligence, *see Castro*, 833 F.3d at 1087 (Ikuta, J., dissenting). Regardless of which standard the Sixth Circuit purported to use, it held that an officer's failure to take additional steps that appear obviously prudent in hindsight "at most . . . amounts only to negligence." *Stein*, 43 F.4th at 640. This illustrates the difficulty with applying a purely objective standard: if proof of the obviousness of a substantial risk cannot be sufficient to establish liability, lest liability be imposed for negligence, what *would* be sufficient other than evidence of actual awareness of the risk? The Fourth Circuit drew a line with "civil recklessness," requiring proof that the defendant actually knew of a risk, or that the risk was "so obvious that it should be known." *Short*, 87 F.4th at 611 (quoting *Farmer*, 511 U.S. at 836). This line risks blurring into negligence: in establishing liability for obliviousness, nothing clearly separates the merely unreasonable from the reckless. What higher proof of "obviousness" would be different from circumstantial evidence that the defendant *did* actually know of a risk? The subjective standard

does not allow officers to ignore obvious, substantial risks of which the circumstances suggest they were aware. *Farmer*, 511 U.S. at 842. To satisfy a subjective intent standard, "it is enough that the official . . . failed to act despite his knowledge of a substantial risk of serious harm." *Id.* A subjective standard maintains a clear line for the courts and gives plaintiffs a clear standard by which to structure their arguments. *Cf. Nelson*, 89 F.4th at 1292-93 (holding that circumstantial evidence sufficiently showed a defendant officer was subjectively aware of a risk despite his claim to be unaware). An objective standard risks either moving the goalposts for plaintiffs to avoid imposing liability for negligence, or actually imposing that liability and creating constitutional issues out of mere mistake and accident.

2. Applying Kingsley's Solely Objective Standard to Failure-to-Protect Claims Would Be Inequitable Because Correctional Officers Must Be Afforded Wide Discretion When Balancing Institutional Concerns with Prisoner Safety.

Another policy consideration supporting the subjective component of the deliberate indifference test is the deference historically afforded to correctional officials. Correctional work is rigorous and requires moment-by-moment balancing of prisoner safety against "competing institutional concerns" including the "safety of other inmates." *Whitley*, 475 U.S. at 320; *Battista v. Clarke*, 645 F.3d 449, 454 (1st Cir. 2011) (explaining that prison administrators "have to balance conflicting demands" including "security considerations"). The subjective element of the deliberate indifferent test allows equity to prevail by permitting courts to weigh on-the-ground realities of a specific prison environment. By inquiring into whether an officer was aware of a risk, courts may take into account other risks within the environment as well. *See Whitley*, 475 U.S. at 320. The balancing correctional officers must do is somewhat analogous to the balancing performed by medical staff. *See Norwood v. Vance*, 591 F.3d 1062, 1066 (9th Cir. 2010) ("It is well established that judges and juries must defer to prison officials' expert judgments."); *see*

also Bell, 441 U.S. at 547 (stating prison administrators afforded deference because day-to-day operation "not susceptible to easy solutions"). Because of the difficulties inherent in correctional work, prison officials are not provided deference in name only, but "wide-ranging deference" when balancing security needs against the rights of detainees. *Bell*, 441 U.S. at 547; *Kosilek v. Spencer*, 774 F.3d 63, 83 (1st Cir. 2014) ("When evaluating medical care and deliberate indifference, security considerations inherent in the functioning of a penological institution must be given significant weight."). However, this deference is not limitless. "[S]ubstantial evidence" may lead a court to question the alleged exigencies of a particular situation. *Block v. Rutherford*, 468 U.S. 576, 584-85 (1984). Nevertheless, unless such substantial evidence is available, the Court has held that deference must be given. *See Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 330 (2012). Therefore, for purposes both prudential and precedential, the subjective element of the deliberate indifference test ought to be retained.

In this case, the District Court recognized that Officer Campbell did not recognize Mr. Shelby. R. at 6. This fact is undisputed. *Id.* To determine who Mr. Shelby was during the cell-side interaction, Campbell would have had to comb through the list of inmates with special statuses or else sift through an online database. *Id.* Since Officer Campbell did not recognize the inmate, he had no obvious reason to do either of these tasks just for Shelby. Under the subjective element, these facts are insufficient to find Campbell deliberately indifferent. He is given "wide deference" in his choice not to rifle through papers while escorting gang members. Respondent cannot point to "substantial evidence" indicating that deference would be improperly afforded to Officer Campbell. Rather, the very worst that can be alleged about his conduct is that he failed to take due care. Yet, this would be nothing more than negligence and thus categorically beneath the threshold of the Due Process Clause. Therefore, for policy reasons and following a lengthy

line of precedent, an exclusively objective test ought to be rejected, and the Fourteenth Circuit's decision to the contrary reversed.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court REVERSE the decision of the Fourteenth Circuit Court of Appeals.

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Respectfully submitted,
By: _____
Team 3
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