No. 23-05

In the Supreme Court of the United States

October Term 2023

CHESTER CAMPBELL
Petitioner

v.

ARTHUR SHELBY
Respondent

On Writ of Certiorari to the
United States Court of Appeals
For the Fourteenth Circuit

BRIEF FOR THE RESPONDENT

Team 30
Counsel for the Respondent

QUESTIONS PRESENTED

I. Does dismissal of a prisoner's civil action under *Heck v. Humphrey* constitute a "strike" within the meaning of the Prison Litigation Reform Act?

II. Does this Court's decision in *Kingsley* 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?

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The opinions for the United States District Court for the Western District of Wythe and the United States Court of Appeals for the Fourteenth Circuit have not been officially reported but are printed on pages one and twelve of the record, respectively.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. Amend. VIII.

U.S. Const. Amend. XIV § 1.

28 U.S.C. § 1915

42 U.S.C. § 1983

STATEMENT OF THE CASE

Arthur Shelby ("Shelby") is the second-in-command of the infamous street gang, the Geeky Binders. R. at 2. The Geeky Binders are well known for their sophisticated techniques of torturing their enemies using sharp awls hidden inside of custom-made, engraved ballpoint pens. R. at. 2. The Geeky Binders practically own the town of Marshall, with their members running various businesses, owning most of the real estate, and holding positions in office. R. at 3. Shelby has gotten in trouble with the law numerous times, and as a result has been in and out of prison for the last several years. R. at 3. During his last detention, Shelby initiated three separate civil actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. R. at 3. All three of the actions would have called into question either his conviction or his sentence, therefore they were dismissed without prejudice pursuant to *Heck v. Humphrey*. R. at 3.

Over the last couple of years, the Geeky Binders have fell in authority over the town of Marshall with the takeover of a rival gang led by Luna Bonucci ("Bonucci"). R. at. 3. Not only has the Bonucci clan been exercising power over local politicians and Marshall officials, but those same officials and politicians have been accused of accepting bribes from the members of the Bonucci clan. R. at 3. However, this bribing power has worn thin, as Bonucci is being held at the Marshall jail along with other members of his clan. R. at 3. The Marshall jail has fired many officers involved in Bonucci's illegal activity and hired new officers, but the clan still holds considerable power over Marshall, even while in jail. R. at 3.

On December 31, 2020, police raided a boxing match that Shelby and his brothers were attending. R. at 3. The police had warrants for the three lead members of the Geeky Binders,

including Shelby and his brother, Thomas, who is the leader of the Geeky Binders. R. at 3. Shelby was the only one who did not manage to escape as he was under the influence of drugs and alcohol. R. at 3. Shelby was arrested and charged with battery, assault, and possession of a firearm by a convicted criminal. R. at 4. A seasoned jail official, Dan Mann ("Mann"), booked Shelby and immediately recognized that he was a member of the Geeky Binders. R. at 4. Shelby was recognized specifically because he possessed a custom-made ballpoint pen with an awl hidden inside with "Geeky Binders" engraved on the outside. R. at 4. The booking officer inventoried Shelby's belongings using the jail's online database, and even made a special note to indicate that Shelby arrived with a weapon, his pen. R. at 4. While still under the influence, Shelby made several comments to the booking officer, one of which being: "The cops can't arrest a Geeky Binder!"

The jail has an online database that all officers are required to upload forms to. R. at 4. The database contains a file for each inmate and specifically lists their gang affiliation, amongst other information. R. at 4. Listing an inmate's gang affiliation, known rivals, as well as any known hits placed on the inmate is important, as Marshall is an epicenter for gang activity. R. at 4. For this reason, the jail has several gang intelligence officers reviewing each incoming inmate's entry in the database. R. at 4. Mann followed all protocol when entering Shelby's paperwork and noted that a file in the jail's database had already been created, describing Shelby's gang affiliation. R. at 5. The gang intelligence officers knew of a tense dispute between the Geeky Binders and the Bonucci clan because of the recent murder of Bonucci's wife. R. at 5. The intelligence officers knew that the Bonucci clan wanted revenge and that Shelby was the prime target. R. at 5. Because of this, the intelligence officers made a special note in Shelby's file and printed out paper notices to be left at every administrative area in the jail. R. at 5. Shelby's

status was also indicated on all rosters and floor cards at the jail; even more, a meeting was held with all jail officials notifying each of Shelby's presence in the jail. R. at 5.

The jail determined that Shelby would be housed in separate areas than Bonucci and his clan, and the officials were reminded to check the rosters and floor card regularly to ensure that the rival gangs were not encountering one another. R. at 5. Officer Chester Campbell ("Appellant") is an entry level guard at the jail but has been trained properly and meeting the job expectations for several months. R. at 5. On January 1, 2021, roll call records indicated that Appellant attended the meeting held by the intelligence officers, however, the jail timecards indicated that Appellant called in sick and did not arrive until after the meeting ended. R. at 6. The intelligence officers required anyone who is not present at meetings to review the meeting minutes on the jail's online database. R. at 6. On January 8, 2021, Appellant was transferring inmates to and from recreation, one of which being Shelby. R. at 6. Appellant did not know or recognize Shelby at the time, nor did Appellant reference the hard copy list of inmates with special statuses that he was carrying. R. at 6. Appellant also did not reference the jail's database before taking Shelby from his cell." R. at 6. The list that Appellant failed to check explicitly included Shelby's name, indicating that a possible hit had been ordered on Shelby by Bonucci and that Shelby was at risk of attack by the Bonucci clan. R. at 6.

Despite having access to all relevant information noting Shelby's unique status, Appellant retrieved Shelby from his cell and led him to the guard stand to wait for other inmates to be gathered for recreation. R. at 6. On the walk to the guard stand, another inmate yelled to Shelby regarding his "brother Tom" taking care of a "horrible woman". R. at 6. Shelby responded with "yeah, it's what that scum deserved" and Shelby told him to be quiet while collecting another inmate from cell block A. R. at 6. Appellant then retrieved three more inmates from cell block B

and C. R. at 7. All three of those inmates were members of the Bonucci clan. R. at 7. Those three inmates immediately started to beat Shelby with their fists, and one hit Shelby over the ribs and head with a homemade club. R. at 7. Appellant attempted to stop the attack but could not hold off three men, so the attack lasted several minutes until other officers arrived to help. R. at 7. Shelby suffered life threatening injuries and remained in the hospital for several weeks. R. at 7. Following a bench trial, Shelby was imprisoned at Wythe prison after being found guilty of battery and possession of a firearm by a convicted felon. R. at 7.

Shelby filed a 42 U.S.C. § 1983 action against Appellant in his individual capacity, along with a motion to proceed in forma pauperis. R. at 7. The motion was denied pursuant to 28 U.S.C. § 1915(g), because Shelby had accrued three strikes under the PLRA. R. at 7. Shelby alleged that Appellant violated his constitutional rights when Appellant failed to protect Shelby at the time of the attack and that he is entitled to damages. R. at 7-8. Appellant filed a motion to dismiss Shelby's claims, stating that he did not know Shelby faced an excessive risk of suffering serious physical harm. R. at 8. The United States District Court for the Western District of Wythe granted Appellant's motion to dismiss. R. at 11. Shelby appealed to the United States Court of Appeals for the Fourteenth Circuit. R. at 12. The Court of Appeals revered and remanded, finding that: (1) dismissals under *Heck v. Humphrey* do not constitute a "strike" pursuant to 28 U.S.C. § 1915(g), and (2) under *Kingsley v. Hendrickson*, failure-to-protect claims must be analyzed using an objective standard. R. at 14, 16. Appellant appealed to this Court, which granted certiorari. R. at 21.

SUMMARY OF THE ARGUMENT

This Court should uphold the decision of the United States Court of Appeals for the Fourteenth Circuit, which held that Shelby can proceed in forma pauperis, and that Shelby adequately alleged that Appellant failed to take reasonable measures to abate risk even though any reasonable officer would have done otherwise. The Court of Appeals made the right decision for two reasons.

First, the court correctly found that dismissals under *Heck v. Humphrey* do not constitute a "strike" pursuant to 28 U.S.C. § 1915(g). In doing so, the court subsequently held that Shelby's prior dismissals, of which there were three, under *Heck* did not count as a strike. Therefore, Shelby would be entitled to proceed in forma pauperis. Second, the court correctly applied the objective standard for failure-to-protect claims, under *Kingsley v. Hendrickson*. Under the objective standard articulated in *Kingsley*, Plaintiffs must, at a minimum, allege that a reasonable officer should have known of the risk to the detainee; Plaintiffs do not have to allege that the officer had actual knowledge of the risk to the detainee. In his Complaint, Shelby properly alleged that the Appellant failed to take reasonable measures to avoid the risk, departing from the acts of a reasonable officer.

However, even if this Court applies a subjective approach under the "deliberate indifference" standard, this Court should still find that Shelby adequately alleged his claims. There are a variety of mechanisms through which Appellant likely became aware of Shelby's unique circumstance. Due to his lack of action, Appellant was deliberately indifferent to Shelby's vulnerable status. This Court has authority to uphold the decision of the lower court and honor Shelby's constitutional rights.

ARGUMENT

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

Under the Prison Litigation Reform Act (the "PLRA"), a prisoner shall not bring a civil action or appeal a judgment in forma pauperis if the prisoner has, on three or more occasions, brought an action or appeal that is either 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). On April 20, 2022, the District Court denied Shelby's motion to proceed in forma pauperis, citing the PLRA's three-strikes provision, 28 U.S.C. § 1915(g). R. at 13. The United States Court of Appeals for the Fourteenth Circuit reversed, holding that claims that were dismissed because they were barred by the United States Supreme Court decision in *Heck v. Humphrey* do not count as strikes under the PLRA's three-strikes provision. R. at 15. This Court should uphold the decision of the Fourteenth Circuit.

A. *Heck* dismissals reflect a matter of "judicial traffic control" and do not reflect a final determination on the merits of the claim.

For *Heck* dismissals to count as a strike pursuant to § 1915(g), a *Heck* dismissal must be considered either frivolous, malicious, or fail to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(g). Dismissals pursuant to the United States Supreme Court decision in *Heck v. Humphrey* are not per se frivolous or malicious nor do they necessarily fail to state a claim because *Heck* dismissals do not reflect a final determination on the underlying merits of the case. *See Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016) (likening *Heck* dismissals to dismissals for lack of administrative exhaustion because they do not reflect a final determination on the merits of a case).

In *Heck*, petitioner was serving a 15-year sentence in Indiana state prison for voluntary manslaughter when he brought a § 1983 claim seeking compensatory and punitive damages for unlawful investigation and evidentiary procedures. *Heck v. Humphrey*, 512 U.S. 477, 478–79 (1994). Meanwhile, the Indiana Supreme Court upheld petitioner's conviction and sentence on direct appeal. *Id.* at 479. The Court held that to recover damages for an allegedly unconstitutional conviction or imprisonment, including other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence was reversed, expunged, or otherwise resolved in the criminal defendant's favor. *Id.* at 486–487. A § 1983 plaintiff that has not proven that the conviction or sentence was reversed, expunged, or otherwise resolved in the criminal defendant's favor has not brought a cognizable claim under § 1983. *Id.* at 487. When confronted with a § 1983 claim, a district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of the prisoner's conviction or sentence. *Id.* A § 1983 claim that necessarily implies the invalidity of the prisoner's conviction or sentence should not be able to proceed. *Id.*

In *Heck*, the Court reasoned that, due to concerns for finality and consistency, opportunities for collateral attacks on criminal convictions are generally disfavored. *Id.* at 484–485. The Court analogized the types of § 1983 claims that necessarily imply the invalidity of the prisoner's conviction or sentence to the common-law cause of action for malicious prosecution. *Id.* at 484. To succeed on a malicious prosecution claim, the plaintiff must prove the termination of the prior criminal proceeding in favor of the accused. *Id.* This favorable termination requirement avoids parallel litigation over the issues of probable cause and guilt and avoids the possibility of conflicting judgments. *Id.* There is strong judicial policy against the creation of two conflicting resolutions arising out of the same transaction, such as a claimant succeeding in a

civil claim that contradicts his criminal conviction. *Id.* Permitting a convicted criminal defendant to proceed with a malicious prosecution claim, or a § 1983 claim that necessarily implies the invalidity of the prisoner's conviction or sentence, would permit a collateral attack on the conviction. *Id.*

1. *Heck* dismissals are not per se frivolous.

A *Heck* dismissal is not per se frivolous. The PLRA does not define the term "frivolous." The Ninth Circuit, by looking to the ordinary, contemporary, and common meaning of the term "frivolous" has determined that a claim is frivolous under the PLRA if it is "of little weight or importance: having no basis in law or fact." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). As explained by the Ninth Circuit in *Washington*, § 1983 plaintiffs may have meritorious claims that have simply not accrued until the successful challenge of the underlying criminal proceeding. *Washington*, 833 F.3d at 1055. *Heck* dismissals are made without prejudice to afford a prisoner the opportunity to refile the claim once the prisoner receives a favorable outcome on his criminal conviction. *Id. Heck* dismissals do not weigh-in on the basis of a claim—the court merely dismisses the claim to prevent potentially inconsistent judgments. As such, in order for a *Heck* dismissal to be a frivolous claim, there would need to be an additional finding that the claim has no basis in law or fact.

In the present case, Shelby's previous claims were dismissed as *Heck*-barred. R. at 13. There is nothing in the record to suggest that Shelby's claims were frivolous in addition to being *Heck*-barred. As such, Shelby's *Heck*-barred claims do not qualify as a strike under § 1915(g) for being frivolous.

2. *Heck* dismissals are not per se malicious.

A *Heck* dismissal is not per se malicious. The PLRA does not define the term "malicious." The Ninth Circuit, by looking to the ordinary, contemporary, and common meaning of the term "malicious" has determined that a claim is malicious under the PLRA if it was filed with the "intention or desire to harm another." *Andrews*, 398 F.3d at 1121. As explained by the Ninth Circuit in *Washington*, § 1983 claims may be filed without the specific finding of intent or desire to harm another. *Washington*, 833 F.3d at 1055. As such, in order for a *Heck* dismissal to be a malicious claim, there would need to be an additional finding that the claim was filed with the intention or desire to harm another.

In the present case, Shelby's previous claims were dismissed as *Heck*-barred. R. at 13. There is nothing in the record to suggest that Shelby's claims were malicious in addition to being *Heck*-barred. As such, Shelby's *Heck*-barred claims do not qualify as a strike under § 1915(g) for being malicious.

3. *Heck* dismissals do not necessarily fail to state a claim.

The favorable termination requirement established under *Heck* is a threshold determination made by a court in order to avoid inconsistent judgments, but the determination does not reach the merits of the claim. *See id.* at 1056 (explaining that favorable termination is not an element of the claim but is a threshold legal determination made by the court). The PLRA does not define what it means to "fail to state a claim upon which relief may be granted"; however, the language of § 1915(g) tracks the language of Federal Rule of Civil Procedure 12(b)(6) and, as such, dismissals under Rule 12(b)(6) may be considered strikes pursuant to § 1915(g). *Id.* at 1055. Several circuits have addressed the issue of whether *Heck*-barred claims are

considered failures to state a claim and, as such, result in a strike under § 1915(g) of the PLRA. *E.g.*, *Garrett v. Murphy*, 17 F.4th 419, 428 (3d Cir. 2021) ("Dismissals for failure to meet *Heck*'s favorable-termination element therefore count as PLRA strikes for failure to state a claim."). The circuits have addressed the issue to mixed results. *Compare*, *e.g.*, *Washington*, 833 F.3d at 1056 ("Neither do all *Heck* dismissals categorically count as dismissals for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)), *with*, *e.g.*, *Garrett*, 17 F.4th at 428 ("Dismissals for failure to meet *Heck*'s favorable-termination element therefore count as PLRA strikes for failure to state a claim."). This Court should address the circuit split by upholding the decision of the Fourteenth Circuit "that a *Heck* dismissal does not constitute a failure to state a claim under the PLRA, therefore, *Heck* dismissals do not automatically count as 'strikes.'" R. at 14. As the Fourteenth Circuit explained, "Ultimately, *Heck* recognizes the prematurity, not the invalidity, of a prisoner's claim." R. at 15.

In *Washington*, the Ninth Circuit held that *Heck* dismissals had the potential to constitute Rule 12(b)(6) dismissals for failure to state a claim when the pleadings present an obvious bar to securing relief, but *Heck* dismissals are not categorically considered failures to state a claim under Rule 12(b)(6). *Washington*, 833 F.3d at 1055–56. The court explained that "Section 1983 merely requires that a litigant allege a 'deprivation of any rights, privileges, or immunities secured by the Constitution and laws,' and that the challenged conduct transpire 'under color of state law.'" *Id.* at 1056 (citing 42 U.S.C. § 1983). While *Heck* may require favorable termination of the underlying criminal proceedings, there is no such element to bring a § 1983 claim. *Id.* Instead, a court must make a "threshold legal determination . . . that the requested relief would undermine the underlying conviction." *Id.*

The *Washington* court likened *Heck* dismissals to other mandatory administrative exhaustion requirements under the PLRA. *Id.* "Like dismissals for lack of administrative exhaustion, *Heck* dismissals do not reflect a final determination on the underlying merits of the case." *Id. Heck* dismissals are instead a form of judicial traffic control—focused on the prematurity of claims and not their invalidity. *See id.* Instead of being a pleading requirement, compliance with *Heck* resembles an affirmative defense. *Id.*

As explained by the Seventh Circuit, the *Heck* doctrine is not a jurisdictional bar and, as a result, the *Heck* defense is subject to waiver. *Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011). In *Polzin*, the court held that, because the *Heck* doctrine is not a jurisdictional bar, district courts are afforded the opportunity to bypass *Heck* altogether and proceed to decide the case on the merits. *Id.* at 838. In other words, under the approaches of both the Seventh Circuit and the Ninth Circuit, compliance with *Heck* is a threshold legal determination that occurs prior to ever reaching the merits of the claim—recognizing prematurity of the claim, not the claims lack of merit. *Heck*-barred claims may in fact be meritorious, but, generally, courts will dismiss the claim without prejudice as *Heck*-barred until the appropriate time in order to avoid inconsistent judgments. If the objective of the PLRA's three-strikes rule is to help filter out excessive, meritless claims, such as suggested by the Third Circuit in *Garrett*, then punishing prisoners for bringing what are potentially meritorious claims, just brought at the inappropriate time, seems antithetical to the purpose of the PLRA. *See Garrett*, 17 F.4th 419, 425 (explaining that the three-strikes rule is one of Congress's reforms to filter out bad claims and facilitate consideration of good claims).

Unlike the Ninth and Seventh Circuits, the Third Circuit is one circuit which has held that "dismissals for failure to meet *Heck*'s favorable termination element therefore count as PLRA

strikes for failure to state a claim." *Id.* at 428. The Third Circuit rejected the affirmative-defense understanding of *Heck* promoted by other circuits because "the favorable-termination requirement is a necessary element of the claim for relief under § 1983, not an exhaustion defense that must be anticipated by the defendant's answer. *Id.* at 429. Yet, as stated in *Washington*, § 1983 itself lists no requirement that the criminal conviction be favorably terminated prior to brining the § 1983 claim. *Washington*, 833 F.3d at 1056. The court in *Garrett* addressed this issue by claiming that this was a substantive disagreement with *Heck*'s reasoning, and, therefore, was an improper second-guessing of the Supreme Court's interpretation of § 1983. *Garrett*, 17 F.4th 419 at 429. Similarly, the court in *Garrett* rejected *Washington*'s comparison to an exhaustion requirement and, instead, restated *Heck*'s analogy to a malicious-prosecution claim. *Id.* Furthermore, regarding the prematurity versus invalidity of a claim, the court in *Garrett* asserts that "suits may be dismissed without prejudice *and* for failure to state a claim when the prematurity of a suit 'appears on the fact of the pleadings' because one of the elements has not yet been met." *Id.*

Ultimately, *Garrett*'s reasoning makes a fatal mistake—making a rule out of an example. The *Heck* Court explained that § 1983 claims are a species of tort liability. *Heck*, 512 U.S. at 483. "The common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered here . . . ." *Id.* The malicious prosecution analogy is simply that, an analogy, but this does not appropriately represent every type of claim. In *Garrett*, the court explained that a malicious-prosecution claim requires alleging and showing favorable termination to state a claim for relief. *Garrett,* 17 F.4th 419 at 429. *Garrett* is implying that, since malicious-prosecution claims have an element of favorable termination and *Heck* analogizes *Heck*-barred claims to malicious-prosecution claims, then each *Heck*-barred claim has

an implied element of favorable termination. This is relevant to *Garrett*'s analysis because *Garrett* claims that favorable termination is a "necessary element" to bring a § 1983 claim. *Id.* As such, if favorable termination is a necessary element of the claim, as opposed to a preliminary determination by the court, then it seems to fit more neatly in the failure to state a claim bucket of § 1915(g).

Garrett seems to extend what is true for the example, malicious prosecution, to a much broader group of cases, all *Heck*-barred claims. A different example paints a different picture. In *Havens*, an arrestee plead guilty to attempted assault of a detective and then, subsequently, brought a § 1983 claim for excessive force in violation of the Fourteenth Amendment. *Havens v. Johnson*, 783 F.3d 776, 777 (10th Cir. 2015). The court explained that a § 1983 plaintiff, to establish excessive force, must demonstrate that the force used was objectively unreasonable under the totality of the circumstances. *Id.* at 781. Despite there being no element of favorable termination necessary, the court determined the claim was barred by *Heck* because the plaintiff's only theory of relief was based on his total innocence. *Id.* at 784. The court explained that an excessive-force claim is not necessarily inconsistent with a conviction for assault, but the court must compare the plaintiff's allegations to the offense he committed. *Id.* at 783. At times, the entirety of the excessive force claim must be barred under *Heck* because the theory of the claim is inconsistent with the prior conviction. *Id.*

In instances such as *Havens*, the court dismissed the claim as *Heck*-barred without any discussion on the merits of any element of the excessive force claim. *See id.* ("Sometimes the excessive-force claim must be barred in its entirety because the theory of the claim is inconsistent with the prior conviction."). *Heck* is acting as a bar on a potentially meritorious claim that may even meet every individual element of the § 1983 excessive force claim. This

Heck-barred claim is not kept out of court due to its failure to state a claim, but instead as a method of the court to control judicial traffic until a time that there will not be a result of inconsistent judgments. *Heck*-barred claims should not be categorically considered failures to state a claim under § 1915(g).

Heck-barred claims are not categorically frivolous, malicious, or fail to state a claim. In the present case, Shelby was wrongfully denied in forma pauperis status because the district court considered Shelby's prior *Heck*-barred claims as strikes under § 1915(g) without any further consideration. R. at 13. Ultimately, this Court should uphold the decision of the Fourteenth Circuit that *Heck* dismissals do not count as strikes under § 1915(g) of the PLRA and award Shelby in forma pauperis status. R. at 15.

I. PRETRIAL DETAINEES' CLAIMS FOR FAILURE-TO-PROTECT SHOULD BE ANALYZED OBJECTIVELY.

Under *Kingsley v. Hendrickson*, pretrial detainees pursuing a § 1983 claim under a failure-to-protect theory must have to prove the inflicting official failed to act in an objectively reasonable manner. *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). On July 14, 2022, the District Court rejected Shelby's argument for applying the objective reasonableness standard in considering Shelby's allegations for failure-to-protect. R. at 10. The United States Court of Appeals for the Fourteenth Circuit reversed, holding that the objective standard articulated in *Kingsley* is the correct standard for analyzing failure-to-protect claims for pretrial detainees. R. at 18. This Court should uphold the decision of the Fourteenth Circuit.

This Court should affirm the decision of the Fourteenth Circuit and find that pretrial detainees' failure-to-protect claims should be analyzed under an objective standard. Circuit

courts have split as to whether the objective reasonableness standard this Court established for excessive force claims by pre-trial detainees in *Kingsley* extends to failure-to-protect claims. In contrast to the objective reasonableness standard articulated in *Kingsley*, the subjective test requires an officer to have actual knowledge of the risk to the detainee prior to the detainee's injury. Conversely, the objective analysis, under *Kingsley*, assesses liability where a reasonable officer *should* have known of the risk to the detainee. Using the objective standard, this Court should find that the Appellant in this case, Mr. Chester Campbell, failed to act in an objectively reasonable manner. Instead, Appellant ignored elaborate and conspicuously placed warning mechanisms, of which the Appellant *should* have been aware, causing Shelby to suffer such a violent and preventable injury.

A. Pretrial detainees suffer a violation of their Fourteenth Amendment constitutional rights in the failure-to-protect context.

Under the Fourteenth Amendment, pre-trial detainees are afforded stronger constitutional protections than those who have been convicted of a crime under the Eighth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The distinction in applying the Eighth Amendment's Cruel and Unusual Punishment Clause when considering the constitutional protections of a convicted prisoner versus the applying the Fourteenth Amendment's Due Process Clause when considering the constitutional protections of pre-trial detainees, is significant. This Court informed us in *Kingsley* that "pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically.'" *Kingsley,* 576 U.S. at 400. As such, this Court need not determine whether the actions taken by the Appellant were unconstitutional under the Eight Amendment's Cruel and Unusual Punishment Clause; rather, when contemplating the validity of a failure-to-protect claim for a pre-trial detainee, this Court need only consider whether a

punishment was in fact inflicted, as well as whether the inflicting official failed to act within the requisite reasonableness standard. *Id.* at 401.

B. Appellant acted intentionally with respect to the physical consequences of his actions.

This Court, in *Kingsley*, noted two separate inquiries relevant to the consideration of the inflicting officer's state of mind in connection to the harm he inflicted upon the injured detainee. The first inquiry seeks to capture the defendant's state of mind "with respect to bringing about certain physical consequences in the world." *Id.* at 395. While this subjective standard concerning the physical force applied by an officer is certainly relevant in the excessive force context, its applicability in failure-to-protect claims is not as apparent. In *Kingsley*, this Court succinctly responded to this initial inquiry by stating "there was no dispute as to the first question because everyone agreed that the officers' use of force was intentional." *Castro v. County of Los Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016) (citing *Kingsley v. Hendrickson*, 576 U.S. 389). The *Kingsley* Court elucidated this conclusion regarding the intentionality of the officer's force by providing counter-examples of instances where this question regarding the defendant's state of mind with respect to physical consequences could be used to prevent the official from facing liability: "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim." *Kingsley,* 576 U.S. at 396.

The connection of this initial inquiry to the validity of a detainee's failure-to-protect claim is more attenuated because failure-to-protect claims are generally prompted by an official's inaction, rather than an affirmative use of force. As such, when engaging with this question in the context of failure-to-protect claims for pre-trial detainees, this Court's focus should be

centered on the intentionality with which the inflicting officer acted. *See Castro*, 833 F.3d at 1070 (stating that "in the failure-to-protect context … the equivalent is that the officer's conduct with respect to the plaintiff was intentional.")

Castro provides an example of dealing with this physical consequence question in a failure-to-protect context by stating, "if the claim relates to inadequate monitoring of the cell, the inquiry would be whether the officer chose the monitoring practices rather than, for example, having just suffered an accident or sudden illness that rendered him unconscious and thus unable to monitor the cell." *Castro*, 833 F.3d at 1070. In the instant case, the action taken by Appellant that is analogous to the inadequate monitoring provided in the example was Appellant's transfer of Shelby to recreation, thus intermingling Shelby with inmates from cell block B and cell block C. R. at 6-7. This action was clearly intentional, as the record states that Appellant "retrieved Shelby from his cell and led him to the guard stand to wait for other inmates to be gathered for recreation." R. at 6.

The opposing side may claim that because Appellant had called in sick on the morning of January 1, 2021, and thus did not attend the meeting hosted by gang intelligence officers notifying other jail officials about the presence of Shelby, Appellant did not act with the requisite intentionality. R. at 5. However, this argument is not relevant to the present inquiry. When dealing with pre-trial detainees and their claims for failure-to-protect, this Court should be focusing its consideration on the intentionality with which the physical act itself was done. In the instant case, it is undisputed that Appellant led Shelby to recreation and surrounded Shelby with hostile inmates from neighboring cell blocks. Appellant's transfer of Shelby to recreation, and Appellant gathering inmates from other cell blocks to surround Shelby was an act Appellant carried out intentionally; there was no sickness nor unconsciousness that moved Shelby out his

cellblock and into a common area with members of cell block B and cell block C. As such, this Court should find that Appellant acted with the requisite intentionality in putting Shelby into close contact with inmates from neighboring cell blocks.

C. Shelby faced a substantial risk of serious harm when exposed to inmates from other cellblocks, and that risk could have been eliminated had the Appellant acted reasonably.

The second question into the defendant's state of mind is purely objective when a detainee is pursuing a § 1983 claim alleging a violation of his Fourteenth Amendment rights: "was there 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?" *Castro*, 833 F.3d at 1070. In considering this question, it is necessary to highlight distinctions between the constitutional rights entitled to pre-trial detainees under the Fourteenth Amendment, and those afforded to convicted inmates under the Eighth Amendment. When a convicted inmate brings a § 1983 claim based on a violation of his Eight Amendment rights, "the deprivation alleged must objectively be sufficiently serious; and the prison official must subjectively have a sufficiently culpable state of mind." *Id.* (quoting *Estate of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1049 (9th Cir. 2002)). To satisfy this subjective culpability standard, the official must have known, and disregarded, an excessive risk to the inmate's health or safety; "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 836 (1994)).

When a detainee brings a § 1983 claim under an alleged violation of his Fourteenth Amendment rights, "a pretrial detainee need not prove those subjective elements about the

officer's actual awareness of the level of risk." *Id.* at 1070. However, the pre-trial detainee bringing a failure-to-protect claim must prove more than negligence as the "mere lack of due care by a state official" does not "deprive an individual of life, liberty or property under the Fourteenth Amendment." *Id.* (quoting *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)). As such, pre-trial detainees who assert a due process claim under a failure-to-protect theory must prove something more than negligence, but not yet reaching subjective intent. *Castro*, 833 F.3d at 1070. The standard the detainee must meet when bringing a failure-to-protect claim is more like reckless disregard. *Id.* at 1071.

Applying this standard, the elements that a plaintiff must prove when bringing a failure-to-protect claims alleging a violation of his Fourteenth Amendment rights are as follows: that the official "made an intentional decision with respect to the conditions under which the plaintiff was confined;" that "those conditions put the plaintiff at substantial risk of suffering serious harm;" that the official "did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious;" and that the official caused the plaintiff's injuries by failing to take such reasonable abatement measures. *Id*.; *see also Darnell v. Pineiro*, 849 F.3d 17 at 35–36 (framing the objective standard for a conditions of confinement claim as when an officially recklessly failed to act); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352–54 (7th Cir. 2018) (adopting the reasoning of the Second and Ninth Circuits).

Taking each of these elements in turn, Appellant acted intentionally when transferring Shelby to recreation, thus bringing Shelby into close physical contact with hostile inmates. R. at 6-7. This is undisputed.

Next, Appellant's action of transferring Shelby to recreation and exposing him to inmates from neighboring cell blocks put Shelby at a substantial risk of suffering serious harm. Shelby is a high-ranking member of the Geeky Binders and when Shelby was brought into the jail, the jail was heavily populated with members of a rival gang, the Bonucci clan. R. at 3. There was an elevated degree of hostility between the Geeky Binders and the Bonucci clan when Shelby was incarcerated due to Thomas Shelby's recent murder of Bonucci's wife. R. at 5. Also, jail officials communicated to other jail personnel that Mr. Shelby faced an elevated risk of attack through a list of inmates with special statuses. R. at 6. As such, bringing Shelby into close physical contact with incarcerated members of the Bonucci clan put Shelby at a substantial risk of suffering serious harm.

Appellant did not take reasonable available measures to abate the risk that Shelby was likely to suffer serious harm even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the Appellant's conduct obvious. Marshall jail maintained elaborate mechanisms to prevent the sort of injury that Shelby suffered. This includes the jail's use of an online database containing each inmate's gang affiliation, as well as information related to any known hits placed on inmates and any gang rivalries. R. at 4. All of the necessary protocol was followed when Shelby went through the jail's intake process, and officers within the jail took several affirmative steps to ensure Shelby's vulnerability to a potential attack was addressed. R. at 5. In considering Shelby's elevated vulnerability, officers within the jail even held a staff meeting to ensure Shelby would be kept separate from those inmates in the Bonucci clan. R. at 5. Despite not being at the meeting, Appellant was expected to review the minutes from the staff meeting and make himself privy to the concerns emanating from Shelby's incarceration among rival gang members.

Also, when Appellant attempted to bring Shelby into recreation, he carried with him a list of inmates with gang affiliations; the list included their corresponding risk of attack from other gang members in the jail. R. at 6. The list explicitly included Shelby, it indicated that a possible hit had been ordered on Shelby by Bonucci, and it indicated that Shelby was at risk of attack by members of the Bonucci clan. R. at 6. A reasonable officer in Appellant's position would have certainly referenced the list when undertaking a transfer of a detainee into recreation, especially where there would be inmates from different cellblocks converging on the same physical location.

Appellant failed to acknowledge all the warning signs taken by his co-workers to ensure the sort of injury Shelby endured would not happen. In doing so, Appellant failed to take any reasonable measure to abate the risk that Shelby was likely to suffer serious harm. A reasonable officer in Appellant's position would have taken note of some or all of the warning mechanisms the jail had put in place to maintain inmate safety. As a result, a reasonable officer in the Appellant's position would have prevented Shelby from being in close and unmonitored physical contact with members of the Bonucci clan. Appellant did the very opposite, and instead facilitated the physical contact. Due to Appellants failures, Shelby suffered life-threatening injuries. R. at 7.

D. Appellant still faces liability if the Court applies the Eighth Amendment's subjective standard rather than the Fourteenth Amendment's objective standard.

Appellant is likely to respond to Shelby's argument by contending that *Kingsley* should not apply to the instant case, and that Shelby failed to prove that Appellant's actions constituted a "deliberate indifference" to the risk of injury pertinent to Shelby's presence in the jail. While

this argument is likely unpersuasive for the aforementioned reasons, this Court should still affirm the decision of the Fourteenth Circuit if it were to apply Eight Amendment's subjective standard.

Appellant knew of, and disregarded, the substantial risk of serious harm to Shelby when placed into close physical proximity with members of the Bonucci clan. One mechanism by which Appellant likely became aware of the apparent risk to Shelby posed by members of the Bonucci clan is through his review of the minutes from the jail's meeting led by intelligence officers. During said meeting, gang intelligence officers informed relevant jail personnel of the presence of Shelby in the jail, as well as the perceived risks associated with Shelby's detention.

Appellant will likely respond to this argument by stating that Appellant was not present at the meeting, and records fail to indicate whether Appellant reviewed the meeting minutes. However, despite a failure in the jail's database making it impossible to determine whether Appellant did in fact view the notes from the meeting, this Court should infer that Appellant did view the relevant notes. At the time of Shelby's injury, Appellant had been hired relatively recently, he had been trained properly, and he had been meeting job expectations for the several months he had been employed. R. at 5. Further, Appellant was *required* to review the minutes from the meeting on the jail's online database. R. at 6. Because Appellant had demonstrated his prior ability to satisfy his employment-related expectations, and because Appellant had gone through the appropriate training procedure, this Court should infer that Appellant had, in fact, reviewed the notes from the intelligence officers' meeting.

An additional mechanism by which the jail attempted to put relevant officers on notice of the potential risks associated with Shelby's detention was through the intelligence officers' posting of paper notices, which warned of Shelby's unique susceptibility to attack by members

of the Bonucci clan. R. at 5. As such, even if this Court is unable to draw the inference that Appellant had viewed the minutes from the intelligence officers' meeting, he was likely aware of Shelby's substantial risk of serious injury through his observation of the posted notices.

Lastly, this Court should find that Appellant knew of the substantial risk of injury Shelby faced when being put into close physical proximity with members of the Bonucci clan through the events that took place during the transfer. When Appellant was transferring Shelby to recreation, an inmate in cell block A yelled out to Mr. Shelby and referenced Thomas Shelby's murder of Bonucci's wife. R. at 6. When Shelby responded by stating, "yeah, it's what that scum deserved," Appellant told Shelby to be quiet. R. at 6. Appellant's interaction with Shelby upon hearing the dialogue between Shelby and other inmates in cell block A indicates that Appellant, at least, heard a reference to a squabble between the Geeky Binders and the Bonucci clan. If the Court is unpersuaded by the aforementioned facts indicating Appellant's deliberate indifference to the substantial risk of injury if Shelby was exposed to members of the Bonucci clan, Appellant hearing an inmate referencing Thomas Shelby's alleged murder of Bonucci's wife likely made Appellant aware of a heightened risk associated with Mr. Shelby's presence in the jail.

For the aforementioned reasons, this Court should affirm the decision of the lower court, and hold that Shelby sufficiently alleged a violation of his Fourteenth Amendment rights in the failure-to-protect context. However, if this Court decides that the appropriate standard for assessing the sufficiency of Shelby's claims is the "deliberate indifference" standard under the Eighth Amendment, the Court should find that Appellant's awareness of Shelby's apparent risk of serious injury and subsequent actions, did constitute a deliberate indifference.

CONCLUSION

This court should uphold the United States Court of Appeals for the Fourteenth Circuit's ruling and declare that *Heck* dismissals do not count as strikes under § 1915(g) of the PLRA. Additionally, this Court should uphold the United States Court of Appeals for the Fourteenth Circuit's ruling and declare that under an objective standard, as set forth in Kingsley, Shelby adequately alleged a violation of his Fourteenth Amendment right in his Complaint. However, even if this Court decides to use the subjective standard and the question becomes whether there was deliberate indifference on behalf of the Appellant, this Court should find that Appellant had actual knowledge of serious risk to Shelby and was indifferent to it. Therefore, Shelby respectfully requests this court to uphold the decision of the Fourteenth Circuit.

Respectfully submitted,

Team 30
Counsel for the Respondent