No. 23-05

IN THE

Supreme Court of the United States

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

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

BRIEF FOR RESPONDENT

Team #32

Counsel for Petitioner

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QUESTIONS PRESENTED

I. 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?

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

OPINIONS BELOW

A district judge for the United States District Court for the Western District of Wythe issued an order denying Respondent's motion to proceed in forma pauperis on April 20, 2022. *Shelby v. Campbell*, No. 23:14-cr-2324 1, 1 (W. D. Wythe Apr. 20, 2022). The district judge also issued a memorandum opinion and order granting the Petitioner's motion to dismiss on July 14, 2022. *Id.* at 2 (W. D. Wythe Jul. 14, 2022). On December 1, 2022 the Fourteenth Circuit heard Respondent's appeal, and it issued an opinion reversing and remanding the District Court on both issues. *Shelby v. Campbell*, No. 2023-5255 12, 19. (14th Cir. Dec. 1, 2022).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. § 1915(g) of the Prison Litigation Reform Act provides in pertinent part that "[i]n 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."
2. 42 U.S.C. § 1983 provides in pertinent part that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

3. The Eighth Amendment of the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
4. The Fourteenth Amendment of the United States Constitution provides in pertinent part that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

INTRODUCTION

The presumption of innocence for all persons accused of a crime is often regarded as the bedrock of our criminal justice system. This presumption requires that persons not yet convicted of a crime must not only be shielded from cruel and unusual punishment under the Eighth Amendment, but from *any* punishment at all. Arthur Shelby was very much the innocent man this Court has repeatedly protected when he was attacked in the Marshall jail by members of an opposing gang. When the attack occurred, Mr. Shelby was only *accused* of criminal activity. Despite his status as a mere pretrial detainee with all rights protected under the law, Mr. Shelby was left a victim without a tangible remedy—a presumptively innocent man, punished as a result of being left in the wrong place at the wrong time.

Mr. Shelby, the Respondent, brought a constitutional and statutory claim, arising out of the reckless conduct of Marshall jail officials which left him critically hospitalized, before he ever stepped foot in front of a jury of his peers. As an unconvicted pretrial detainee, Mr. Shelby asserts a 42 U.S.C. § 1983 claim, establishing that jail official Officer Campbell's disregard for Mr. Shelby's safety violated his rights under the Fourteenth Amendment's Due Process Clause. U.S. Const. amend. XIV. Shelby cannot afford the $402.00 filing fee to appeal the district court's dismissal of these claims and thus sought to proceed in forma pauperis. This Court should affirm

the ruling in the Fourteenth Circuit, and hold that Mr. Shelby's Section 1983 claim was adequately pled, and that Mr. Shelby's prior dismissals did not constitute "strikes" under 28 U.S.C. § 1915(g), thereby denying him the opportunity to file an appeal in forma pauperis. If this Court were to hold any differently, other innocent victims like Mr. Shelby will be denied a remedy.

STATEMENT OF THE CASE

Respondent Arthur Shelby, was brutally attacked in jail under the unwatchful eye of one Officer Chester Campbell. Initially, Shelby was made a victim without a remedy when the Western District of Wythe's District Court dismissed his 42 U.S.C. § 1983 claim against Campbell and denied his motion to proceed in forma pauperis. However, the Fourteenth Circuit reversed and remanded the District Court on both issues. To better understand the procedural nuance, Respondent first provides a legal background on the motion to proceed in forma pauperis and bringing a Section 1983 claim, and then provides the facts giving rise to this claim and the decisions below.

I. Legal Background

A. The "Three-Strike" Provision Under the PLRA

Since the 1890s, indigent litigants filed otherwise expensive federal actions contesting the treatment of their imprisonment by filing claims under an in forma pauperis statute that waived court filing fees and costs for those unable to afford such action. *See* Molly Guptill Manning, *Trouble Counting To Three: Circuit Splits And Confusion In Interpreting The Prison Litigation Reform Act's 'Three Strike Rule*,' 28 Cornell J. L. & Pub. Pol'y 207, 207-08 (2018) (recounting the history of the Prison Litigation Reform Act). However, in 1996, Congress enacted the Prison Litigation Reform Act ("PLRA") as a means to "dramatically reduce the number of meritless prisoner lawsuits." 141 CONG. REC. 14413 (Sept. 27, 1995) (statement of Sen. Bob Dole). The

PLRA introduced the "three-strikes" provision, under which prisoners would be barred from proceeding in forma pauperis if they accrued three or more "strikes" by bringing a civil action while incarcerated or detained that "was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted . . . ." 28 U.S.C. § 1915(g). As used in this statute, "the term 'prisoner' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent." 28 U.S.C. § 1915(h).

In other words, after an indigent prisoner has filed three civil actions deemed "frivolous, malicious, or fail[ing] to state a claim," 28 U.S.C. § 1915(g), federal courts will deny their motion to file in forma pauperis, requiring them to instead pay the full filing fees and costs—costs that are particularly burdensome for this class of litigants. Congress failed to define the terms "frivolous," "malicious," and "fail[ure] to state a claim" within the PLRA, and many courts have since attempted to ascertain the intentional limits of the statute. *See Neitzke v. Williams*, 490 U.S. 391, 325 (1989) (remarking that neither the PLRA statute—a different version in 1989 but relatively similar—nor Congress provided guidance to define exacting terms); *see, e.g.*, *Ball v. Famiglio*, 726 F.3d 448, 469 (3d Cir. 2013) (finding a claim "frivolous" if on its conclusion, the claim is based on an indisputably meritless legal theory, or that the complaint's factual allegations are clearly baseless); *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005) (finding a claim "malicious" when filed with the intention or desire to harm another).

B. Bringing Claims Under 42 U.S.C. § 1983

Under 42 U.S.C. § 1983, any person, while "under the color" of the law, who deprives citizens of any "rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured." While convicted prisoners bring Section 1983 claims under the Eighth Amendment's Cruel and Unusual Punishment Clause, U.S. Const. amend. VIII (protecting those

adjudicated guilty of a crime from "cruel and unusual punishments"), unconvicted pretrial detainees bring Section 1983 claims under the Fourteenth Amendment's Due Process Clause,. U.S. Const. amend. XIV (stating that no state shall "deprive any person of life, liberty, or property, without due process of law. . . ."). Depending on which amendment the claim is brought under, courts may apply different standards to evaluate the claims. *See Kingsley v. Hendrickson*, 576 U.S. 389, 401 (2015).

II. Factual Background

Arthur Shelby was attending a boxing match with his brothers on New Years Eve in 2020 when he was arrested by Marshall police. *Shelby v. Campbell*, No. 23:14-cr-2324 1, 2 (W. D. Wythe Apr. 20, 2022) (hereafter "*Shelby I*"). He was charged with assault, battery, and felony possession of a firearm—the first of which he would ultimately be acquitted of at a bench trial—and brought to the local jail for booking and pretrial detention. *Id.* at 3. Unbeknownst to Mr. Shelby, about a week later, he would be in a hospital bed fighting for his life.

Mr. Shelby is a well-known, high-ranking affiliate of the Geeky Binders street gang: a Marshall crime syndicate that, while relevant in the past, today exerts considerably less authority since the rival Bonucci gang's recent takeover of the town. *Id.* at 2-3. Through bribery, the Bonuccis wield considerable power over Marshall officials, including several officers in the Marshall police department. *Id.* at 3. Although several Bonucci members are confined in the Marshall jail—including gang boss Luca Bonucci—the Bonuccis still exercise considerable control over Marshall governance. *Id.*

When Mr. Shelby was brought to the station following his New Years Eve arrest, the booking officer immediately recognized him as a member of the Geeky Binders, and updated a pre-existing file on Mr. Shelby in the jail's online database. *Id.* at 4-5. The "gang affiliation" subset

on files like Mr. Shelby's—which lists a prisoner or detainee's gang affiliations, rivalries, and known hits placed on them—is particularly important for Marshall jail officials because of the town's high gang activity. *Id.* at 4. Because of this, several gang intelligence officers review each incoming prisoner or pretrial detainee's file after their initial booking and update it to reflect any pertinent information regarding gang hostilities. *Id.*

The gang intelligence officers knew that the Bonuccis were seeking revenge on the Geeky Binders over the alleged murder of Luca Bonucci's wife, and that Mr. Shelby in particular was a prime target of the Bonuccis. *Id.* at 5. The intelligence officers made a special note in Mr. Shelby's file of this relationship and printed out paper notices to be left at every administrative area in the jail. *Id.* Mr. Shelby's status was also indicated on all rosters and floor cards at the jail. Most significantly, the intelligence officers held a meeting with all jail officials the morning after Mr. Shelby had been booked, notifying each officer of Mr. Shelby's presence in the jail. *Id.* at 4-5. At the meeting, all officers were told that Mr. Shelby would be housed in cell block A of the jail and that the Bonuccis were dispersed between cell blocks B and C. *Id.* at 5. Officers were instructed to keep Mr. Shelby separated from the Bonuccis, and to check the rosters and floor cards regularly to ensure that the rival gangs did not come in contact with each other. *Id.*

Officer Chester Campbell is a guard at the Marshall jail. *Id.* He had been employed by the jail for several months, was fully trained, and had been meeting job expectations. *Id.* On January 1, 2021, roll call records indicated that Officer Campbell attended the meeting hosted by the gang intelligence officers, but the jail's time sheets indicated that Officer Campbell did not arrive at work until later that afternoon, after the meeting had ended. *Id.* at 6. Gang intelligence officers required anyone absent from the meeting to review the meeting minutes on the jail's online database. *Id.* While the database typically indicates if an officer or official has viewed a specific

page or file, a glitch in the system wiped all records of any person who viewed the meeting minutes for the January 1 meeting, leaving it unclear whether Officer Campbell had fulfilled this obligation. *Id.*

A week later, Officer Campbell oversaw the transfer of prisoners and pretrial detainees to and from the jail's recreation room. *Id.* at 6-7. Officer Campbell carried a list of the names of prisoners and pretrial detainees with special medical needs, previously shown violent tendencies or recorded instances of having weapons inside the jail, and gang affiliations along with their corresponding risk of attack from other gang members in the jail. *Id.* at 6. The list explicitly included Mr. Shelby's name, indicating that a possible hit had been ordered on Mr. Shelby by Bonucci and that Mr. Shelby was at risk of attack. *Id.*

Without reading the list, Officer Campbell retrieved Mr. Shelby from his cell and led him to the guard stand to wait for other prisoners and detainees to be gathered for recreation. *Id.* On their walk to the guard stand, another person in cell block A yelled out to Shelby: "I'm glad your brother Tom finally took care of that horrible woman." Shelby responded, "yeah, it's what that scum deserved." *Id.* Officer Campbell told Shelby to be quiet, then collected one other confined person from cell block A and three confined people from cell blocks B and C. *Id.* All three individuals from cell blocks B and C were members of the Bonucci clan. *Id.* at 7.

In direct violation of the gang intelligence officers' orders that rival gang members be kept separated, three Bonucci members were now standing directly behind Shelby in a common area. *Id.* Wasting no time, the Bonucci members charged Shelby, beating him with their fists and an improvised club made from tightly rolled and mashed paper, striking Shelby's head and ribs. *Id.* The attack, which lasted several minutes before enough guards arrived to intervene, left Shelby with several life-threatening injuries. *Id.* He would spend the next several weeks in the hospital

recovering from penetrative head wounds, traumatic brain injury, lung lacerations, acute abdominal edema and organ laceration, internal bleeding, and multiple rib fractures. *Id.*

III. Procedural Background

Mr. Shelby brought a Section 1983 claim, pro se, against Officer Campbell in his individual capacity for a failure to protect him from the attack. *Shelby I* at 7-8. The District Court dismissed Shelby's Section 1983 claim under Rule 12(b)(6). *Id.* at 2, 7-8. The District Court refused to apply the "objectively unreasonable" standard articulated in *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015), to Mr. Shelby's Fourteenth Amendment failure-to-protect claim. *Shelby I* at 8-9. The court instead applied the standard articulated in *Farmer v. Brennan*, 511 U.S. 825, 837 (1994), which required a showing of subjective knowledge of risk. *Shelby I* at 8. The Court found that because Mr. Shelby had not alleged that Officer Campbell "knew of and disregarded a substantial risk of serious harm," he had failed to state a claim and thereby was dismissed. *Id.* at 10.

Alongside his complaint, Mr. Shelby filed a motion to proceed in forma pauperis because he could not afford the $402.00 filing fee. *Id.* at 7. The District Court for the Western District of Wythe denied Mr. Shelby's motion to proceed in forma pauperis, finding that Mr. Shelby had accrued three "strikes" under the PLRA previously when his claims were dismissed as unripe under *Heck v. Humphrey*, 512 U.S. 477 (1994), and subsequently directed him to pay the full filing fee for the proceeding. *Id.* at 7.

The Fourteenth Circuit reversed and remanded the District Court's decisions to dismiss Mr. Shelby's Section 1983 claim and deny his in forma pauperis motion. *Shelby v. Campbell*, No. 2023-5255 12, 12-23 (14th Cir. Dec. 1, 2022) (hereafter "*Shelby II*"). On the first, the Fourteenth Circuit held that *Kingsley*'s objective standard applied to deliberate indifference claims, and that under this standard, Mr. Shelby sufficiently pled his failure-to-protect claim. *Id.* at 16-19. On the

second, the Fourteenth Circuit held that dismissals under *Heck* do not necessarily constitute a failure "to state a claim" and therefore should not be considered a strike under 28 U.S.C. § 1915(g). *Id.* at 14-15. This Court should affirm the Fourteenth Circuit's decision for the following reasons.

SUMMARY OF THE ARGUMENT

I. *Kingsley v. Hendrickson* established an objective standard for all Fourteenth Amendment Section 1983 claims, including deliberate indifference claims like the failure-to-protect action Mr. Shelby has brought. The Constitution demands a lower burden of innocent pretrial detainees claiming a due process violation under the Fourteenth Amendment, because pretrial detainees are afforded greater constitutional protections than convicted prisoners. Subjective standards from Eighth Amendment cases like *Farmer v. Brennan* do not transpose onto Fourteenth Amendment cases, and *Kingsley*'s plain language shows that its objective standard already applies to deliberate indifference cases.

Even if *Kingsley* did not apply to deliberate indifference cases on the day of its decision, the arguments against extending its objective standard to deliberate indifference claims are flawed. Deliberate indifference cases cannot be distinguished from cases with affirmative acts because they do not center around supposed "inaction." Rather, the objective standard requires a showing that the defendant made an intentional decision that exposed the plaintiff to substantial risk. This requirement serves as protection against plaintiffs obtaining relief after only pleading mere negligence.

Additionally, that deliberate indifference cases center around individual episodes rather than policies does not counsel against applying an objective standard. *Kingsley* itself applied an objective standard to an individual act, effectively eliminating the punitive intent requirement on

which a policy-episodic distinction is premised. But, even if this Court restored a punitive intent requirement, an individual's punitive intent—even in deliberate indifference claims—can be inferred in the same way a policymaking body's intent has been inferred.

Thus, it is logical to extend *Kingsley*'s objective standard to failure-to-protect claims, and as the court below noted, Mr. Shelby has pled facts sufficient to prevail in his failure-to-protect challenge under the objective standard.

II. None of Shelby's prior claims dismissed under *Heck* count as strikes under 28 U.S.C. § 1915(g). As the District Court did not consider whether Shelby's prior actions were frivolous or malicious, we argue only that Mr. Shelby's *Heck* dismissals do not constitute "failure[s] to state a claim," and that finding otherwise would establish a new ground for strike not previously enumerated.

Heck dismissals are jurisdictional in nature. If the plaintiff has failed to exhaust claims that would determine if the underlying criminal conviction or sentence was invalid, federal courts lack the power to assess the merits of the plaintiff's Section 1983 claim for damages and must automatically dismiss the claim without reaching the merits. Congress elected to omit jurisdictional dismissals as a cognizable strike under Section 1915(g), evidenced by the adoption of the language in Rule 12(b)(6) but not that of other rules like 12(b)(1). Furthermore, it is possible that these claims could "state a claim," unbeknownst to the judge because of their early dismissal.

Mr. Shelby's prior dismissed claims should also not constitute a strike, since they are not meritless claims that burdened the federal court system. Congress enacted Section 1915(g) of the PLRA to reduce the influx of meritless claims brought by incarcerated people. However, just because a claim was dismissed under *Heck* does not mean it was without merit. To be sure, these

claims often contest the constitutionality of one's imprisonment or sentence. Finding that *Heck*-barred claims are necessarily strikes would defeat the purpose of the statute.

ARGUMENT

I. Kingsley Established an Objective Standard For All Fourteenth Amendment Section 1983 Claims.

A. The Constitution demands a lower burden for innocent pretrial detainees to plead a due process violation under the Fourteenth Amendment.

While convicted prisoners bring 42 U.S.C. § 1983 claims under the Eighth Amendment's Cruel and Unusual Punishment Clause, U.S. Const. amend. VIII, unconvicted pretrial detainees bring Section 1983 claims under the Fourteenth Amendment's Due Process Clause, U.S. Const. amend. XIV. That pretrial detainees bring these suits under a different constitutional provision is not mere window dressing: "[t]he language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished *at all*. . . ." *Kingsley v. Hendrickson,* 576 U.S. 389, 401 (2015) (emphasis added). As such, the subjective standard for convicted prisoners articulated in *Farmer v. Brennan*, 511 U.S. 825 (1994), does not offer relevant guidance for pretrial detainees, but *Kingsley*'s objective standard does, and it already applies to deliberate indifference cases like the one at bar.

i. Standards from Eighth Amendment cases like Farmer do not transpose onto Fourteenth Amendment cases because pretrial detainees are afforded greater constitutional protections than convicted prisoners.

In *Kingsley*, this Court gave the distinction between prisoners and pretrial detainees legal effect. *Kingsley* was a Fourteenth Amendment excessive force case brought by a pretrial detainee who was tased after refusing to remove a piece of paper from a light fixture. *See id.* at 392. There, pretrial detainees were not held to the same demanding standard as convicted prisoners bringing excessive force claims under the Eighth Amendment. *See id.* at 396. Rather than prove, as

convicted prisoners must, that an officer applied force "maliciously and sadistically for the very purpose of causing harm," *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986) (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)), pretrial detainees need only establish "that the force purposely or knowingly used against him was objectively unreasonable." *Kingsley,* 576 U.S. at 397.

Although *Kingsley* lowered the burden required of pretrial detainees in excessive force cases, circuits have split on whether *Kingsley*'s objective standard should be imported into Fourteenth Amendment "deliberate indifference" cases like Mr. Shelby's. While some circuits have applied *Kingsley* to these cases, others continue to apply the subjective standard from *Farmer*, a failure-to-protect case brought by a *convicted prisoner* under the Eighth Amendment's Cruel and Unusual Punishment Clause. *See generally Farmer*, 511 U.S. 825. Under *Farmer*, a prisoner bringing a deliberate indifference claim must show that the official "*knows* that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Id.* at 847 (emphasis added).

Both sides of this circuit split agree on one principle at a high level: that like cases should be treated alike. The disagreement is over *what* makes cases like one another. Those applying *Kingsley* to Fourteenth Amendment deliberate indifference cases believe that where the same *constitutional right* is implicated—due process—the same objective standard ought to apply. Those continuing to apply *Farmer* to Fourteenth Amendment deliberate indifference cases believe that where the same *specific claim* is at issue—deliberate indifference—the same subjective standard ought to apply. This latter camp treats the differing sources of constitutional rights for convicted prisoners and pretrial detainees as a "distinction without a difference." *Short v. Hartman*, 87 F.4th 593, 609 (4th Cir. 2023). But there is a difference in this distinction—a constitutionally

profound difference, to boot: pretrial detainees, not yet convicted of any crime, remain innocent in the eyes of our criminal justice system. They must not just be shielded from cruel and unusual punishment, but from *any* punishment at all. *See Kingsley*, 576 U.S. at 400 ("[P]retrial detainees (unlike convicted prisoners) cannot be punished at all, much less maliciously and sadistically." (internal quotations omitted)).

That *Kingsley* "never referenced, alluded to, or cited *Farmer v. Brennan*, the flagship case on the subjective deliberate indifference standard," is of little relevance. *Shelby II* at 19 (Solomons, J., dissenting). *Kingsley* itself dismissed the persuasiveness of cases centering around "claims brought by convicted prisoners under the Eighth Amendment's Cruel and Unusual Punishment Clause, [rather than] claims brought by pretrial detainees under the Fourteenth Amendment's Due Process Clause." 576 U.S. at 400. The truly glaring omission is that *Farmer*—the case Petitioner believes controls when evaluating pretrial detainees' Fourteenth Amendment due process rights—does not mention the words "pretrial detainee," "Fourteenth Amendment," or "due process" a single time. *See* 511 U.S. at 825-62.

Because pretrial detainees are presumptively innocent until proven guilty, they are afforded greater constitutional protections than convicted prisoners. And as Section 1983 itself "contains no independent state-of-mind requirement," *Daniels v. Williams*, 474 U.S. 327, 330 (1986), pretrial detainee claims of deliberate indifference should be assessed under the objective rubric that *Kingsley* requires.

ii. Kingsley's broad language implies that its objective test already applies to all Fourteenth Amendment claims, even those outside the excessive force context.

On its face, *Kingsley*'s holding *already* applies to all Fourteenth Amendment deliberate indifference cases, including Mr. Shelby's failure-to-protect claim. *Kingsley* derived its objective

standard from the core holding in *Bell v. Wolfish*, 441 U.S. 520 (1979), a case which examined whether various jail practices like "double bunking" violated pretrial detainees' due process rights. *Accord Bell*, 441 U.S. at 541; *see Kingsley*, 576 U.S. at 398. The *Bell* plaintiffs conceded that the double-bunking practices were not employed "with an intent to punish," arguing instead that the measures were "greater than necessary to satisfy [the state]'s legitimate interest in maintaining security." 441 U.S. at 561. Though *Bell* ultimately found the measures did not violate due process, it applied the plaintiffs' objective standard to arrive at this conclusion. *Id.* at 561-62. *Bell* held that "[a]bsent a showing of an expressed intent to punish on the part of detention facility officials"—a subjective standard anchored in a culpable state of mind—an action may *nonetheless* constitute punishment if it is not "rationally related to a legitimate nonpunitive governmental purpose . . . ." *See id.* at 538, 561.

Kingsley dealt with an excessive force claim—a different type of claim than the conditions of confinement challenged in *Bell*—but it imported *Bell*'s reasoning to fashion a rule that applies to a broad set of claims. *Kingsley* held 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 . . . ." 576 U.S. at 398 (emphasis added); *see also Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018) ("Notably, the broad wording of *Kingsley*.... did not limit its holding to force but spoke to the challenged governmental action generally." (internal quotations omitted)). And, in clarifying that *Bell* did not require a pretrial detainee to prove punitive intent, *Kingsley* did so within the broad context of "prevail[ing] on a claim that *his due process rights* were violated," not just narrowly that an officer had used excessive force. *Kingsley*, 576 U.S. at 398 (emphasis added).

Kingsley's plain language makes clear that its objective standard is not confined only to the excessive force context, but rather may be applied to other Section 1983 Fourteenth Amendment claims like Mr. Shelby's.

B. Arguments that deliberate indifference claims center around supposed "inaction" or "episodes"—and thus should not be evaluated with the objective standard—are logically flawed.

Several circuits have refused to acknowledge *Kingsley's* broad reach. *See, e.g.*, *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017) ("Because the Fifth Circuit has continued to . . . apply a subjective standard post-*Kingsley*, this panel is bound by our rule of orderliness."); *Whitney v. City of St. Louis, Missouri*, 887 F.3d 857, 860 n.4 (8th Cir. 2018) ("*Kingsley* does not control because it was an excessive force case, not a deliberate indifference case."); *Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020) ("[W]e recognize that *Kingsley* involved an excessive force claim, not a deliberate indifference claim."); *Nam Dang by & through Vina Dang v. Sheriff, Seminole Cnty. Fla.*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) ("*Kingsley* involved an excessive-force claim, not a claim of inadequate medical treatment due to deliberate indifference."). These circuits refuse to extend *Kingsley* for two key reasons: deliberate indifference claims involve (i) supposed "inaction" rather than affirmative acts, and (ii) individual episodes rather than policies. Neither of these arguments hold water.

i. Deliberate indifference cases do not center around supposed "inaction" that can only amount to negligence.

In *Strain*, the Tenth Circuit refused to extend *Kingsley*'s objective standard to a medical deliberate indifference claim because "excessive force requires an affirmative act, while deliberate indifference often stems from inaction." 977 F.3d at 991; *see also Hooks v. Atoki*, 983 F.3d 1193, 1204 (10th Cir. 2020) (extending *Strain*'s reasoning to failure-to-protect claims). Inaction, it is contended, cannot be intentional, and "the unintentional or accidental infliction of harm amounts

at most to negligence." *Castro v. County. of Los Angeles*, 833 F.3d 1060, 1085 (9th Cir. 2016) (Ikuta, J., dissenting). We agree. It is well established that "[l]iability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). However, the action-inaction distinction fails to recognize that (a) deliberate indifference claims require intentional decisions, and as a result, (b) plaintiffs are capable of pleading that defendant officials acted more than merely negligently.

a. The objective standard requires that the defendant official make an intentional decision that exposes the plaintiff to substantial risk.

The *Kingsley* framework was transposed onto the deliberate indifference context by the Ninth Circuit in *Castro*, a failure-to-protect case. Under the *Castro* framework, a pretrial detainee like Mr. Shelby must prove the following elements:

> (1) The defendant made an *intentional* decision with respect to the conditions under which the plaintiff was confined;
>
> (2) Those conditions put the plaintiff at substantial risk of suffering serious harm; [and]
>
> (3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct *obvious* . . . .

833 F.3d at 1071 (emphasis added). A defendant may only be held liable if, at step (1), they make "an *intentional* decision with respect to the conditions under which the plaintiff was confined." *Id.* at 1072 (emphasis added). Thus, while failure to "take reasonable available measures to abate the risk" at step (3) may take the form of "inaction," the *Castro* framework still requires a subjectively deliberate decision up front on the part of the defendant.

b. The objective standard, even when applied to failure-to-protect cases, requires that a plaintiff plead more than mere negligence.

Some circuits erroneously believe that, under *Castro*, a plaintiff can only plead negligence at best. While this framework does stop short of requiring a subjective intent to punish, it requires more than mere negligence because a plaintiff must prove the decision at step (1) was made intentionally rather than accidentally.

Kingsley distinguishes intentional decisions creating liability—like if an officer purposefully tases or shoves a detainee—from accidents shielded from liability—like "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee." 576 U.S. at 396. In the failure-to-protect context, an officer might be liable for intentionally transferring a detainee to a substantially danger-filled communal area—as in Mr. Shelby's case—but not liable for accidentally doing so as a result of, say, a miscommunication, a door malfunction, or an official's involuntarily dozing off as inmates moved freely between rooms.

Clearly distilled, the burden the *Castro* framework places on plaintiff detainees is as follows:

> The objective standard requires less than a showing of the official's subjective state of mind but more than a showing of a mere accidental act. Under the objective standard, the action must be objectively unreasonable in light of what the official should have, rather than what he actually, knew, making it a lower threshold to meet than the subjective standard. But it also requires that an official deliberately, rather than accidentally, took the physical action that imposed the risk, making the objective standard a higher threshold to meet than mere negligence.

Kate Lambroza, *Pretrial Detainees and the Objective Standard After Kingsley v. Hendrickson*, 58 Am. Crim. L. Rev. 429, 457 (2021). Accordingly, the proper standard a plaintiff must allege is "something akin to reckless disregard." *Shelby II* at 18 (citation omitted). So, while perhaps

oxymoronic, a defendant is only liable in a failure-to-protect claim if they first make an *intentional* decision to subject a detainee to or leave a detainee in a situation that is substantially risky. If "imposition-of-an-objectively-obvious-risk" had as nice a ring to it as "failure-to-protect" does, several Circuits may have been spared some confusion as to which standard of culpability applies.

ii. That deliberate indifference claims center around individuals rather than policies does not counsel against applying an objective standard.

In *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 636-38 (5th Cir. 1996), the Fifth Circuit refused to extend *Bell*'s objective standard to a failure-to-protect-from-suicide case in which a pretrial detainee hanged herself after inadequate monitoring. *Hare* ruled that the objective standard from *Bell* applied only to *policies* like "general conditions, practices, rules, or restrictions," but not to *episodic acts or omissions* like the failure-to-protect case before it. *Id*. at 644-45. The Fifth Circuit continues to apply *Hare*'s policy-episodic distinction even since the ruling in *Kingsley*. *See, e.g.*, *Est. of Henson v. Wichita Cnty., Tex.*, 795 F.3d 456, 462 (5th Cir. 2015); *Zimmerman v. Cutler*, 657 F. App'x 340, 347-48 (5th Cir. 2016). *But see Alderson*, 848 F.3d at 419 (5th Cir. 2017) (Graves, J., dissenting in part) (noting that *Kingsley* may call *Hare* into question and support the conclusion that an objective standard applies in failure-to-protect cases). The Fifth Circuit's policy-episodic distinction is misguided because (a) *Kingsley*, which itself involved an episodic act, rejected *Hare*'s underlying premise of a punitive intent requirement, and (b) a punitive intent requirement does not even preclude episodic acts from being judged under an objective standard.

a. *Kingsley* applied an objective standard to an individual act by rejecting the punitive intent requirement on which the policy-episodic distinction is premised.

After *Kingsley*, the Fifth Circuit's policy-episodic distinction cannot stand. *Kingsley* examined a claim of excessive force—undoubtedly an episodic act, not a policy—and found that "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one."

576 U.S. at 397. *Kingsley*'s application of *Bell* to an individual act presents binding Supreme Court precedent that directly undermines *Hare*'s reading of *Bell*.

But *Kingsley* did more than merely defeat the policy-episodic distinction by applying *Bell*'s standard to an individual episode. It rejected the key premise from which *Hare*'s reasoning flowed: that for a pretrial detainee to prove they have been punished (a *per se* violation of their due process rights), they must demonstrate that their punishment was *actually intended to be punishment*. *See Hare*, 74 F.3d at 644-45.

As *Kingsley* noted, "*Bell*'s focus on 'punishment' does not mean that proof of intent (or motive) to punish is required for a pretrial detainee to prevail on a claim that his due process rights were violated." 576 U.S. at 398. Rather, the *Kingsley* majority "agree[d] with the dissenting appeals court judge," *id.* at 396, that "the intent in question is the intent to *commit the act*, not the intent that a certain result"—punishment—"be achieved." *Kingsley v. Hendrickson*, 744 F.3d 443, 462 (7th Cir. 2014) (Hamilton, J., dissenting). In other words, the initial inquiry into an official's "state of mind with respect to the bringing about of certain physical consequences in the world"—whether an official *meant* to tase a detainee—may be subjective. However, the inquiry into the "proper *interpretation* of the force"—whether tasing the detainee was excessive, thus "amount[ing] to punishment"—need only be objective. *Kingsley*, 576 U.S. at 396-97.

Simply put, "[a]fter *Kingsley* . . . an official can violate the Due Process Clause of the Fourteenth Amendment without meting out any punishment." *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017).

b. If, *arguendo*, there was a punitive intent requirement, an individual's punitive intent can be inferred in the same way a policymaking body's intent has been inferred, even in deliberate indifference cases.

Petitioners may urge this Court to cast aside *Kingsley*'s rejection of the punitive intent requirement and align itself with the Fifth Circuit, Justice Scalia's *Kingsley* dissent, and other judicial musings about the meaning of punishment. *See Kingsley*, 576 U.S. at 406 (Scalia, J., dissenting) ("*Bell* makes intent to punish the focus of its due-process analysis."); *Wilson v. Seiter*, 501 U.S. 294, 300 (1991) ("If the pain inflicted is not formally meted out *as punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify."); *Duckworth v. Franzen*, 780 F.2d 645, 652 (7th Cir. 1985) (Posner, J.) ("The infliction of punishment is a deliberate act intended to chastise or deter."). That would require this Court to take the significant step of substantially modifying its own precedent.

Yet, even if it did so, *Kingsley*'s objective standard for individual acts still satisfies an intent requirement, again rendering a policy-episodic incoherent. Proponents of an intent requirement argue that applying the objective *Bell* standard to a policy makes sense because if the policy is not rationally related to a nonpunitive aim, then the intent of the policymaking body can be "presumed" to have been punitive. *See Hare*, 74 F.3d at 644. Contrarily, the argument goes, the objective *Bell* standard cannot be applied to an individual because even if their conduct served no nonpunitive aim, one cannot *automatically* assume that their underlying intent was to punish. *See id.* at 645. For an excessive individual act may be "the result of a misjudgment" or made "without the luxury of a second chance" rather than "after the considered thought that precedes detention-policy determinations." *Kingsley*, 576 U.S. at 406 (Scalia, J., dissenting) (internal quotations omitted).

But even well-intentioned legislatures with time to deliberate can produce policies that fail a rational basis test. *See Hare*, 74 F.3d at 646 ("The 'reasonably related to a valid penological standard' . . . is in essence a rational basis test of the validity of jail rules."). A legislature "*may*

not want to subject a detainee to inhumane conditions of confinement," but "its intent to do so is *nevertheless* presumed when it incarcerates the detainee in the face of such known conditions . . . ." *Id.* at 644 (emphasis added). In other words, even if evidence indicated a legislature's avowed intent *not* to punish, if their policy objectively "amount[s] to punishment" then a court must infer punitive intent in a constructive sense. *Id.* at 639.

Thus, when a court "logic[ally] . . . infer[s]" a legislature's punitive intent, *Kingsley*, 576 U.S. at 406 (Scalia, J., dissenting), it is essentially engaging in an exercise of legal fiction. And if the type of "inference" *Bell* requires is of *legally fictitious* intent, then there is no reason *Bell* cannot be applied to individual acts too. Just because policymakers may fail to meet due process requirements less frequently—or for different reasons—than jail officials, it does not mean they are not guilty of the same due process violation. If we can impute constructive punitive intent to policymaking bodies to remedy these violations, it is only logical we can do the same to jail officials.

This logic applies to Fourteenth Amendment deliberate indifference cases just as much as it does to excessive force cases like *Kingsley*, because proof of an intentional decision is required. *Contra Castro*, 833 F.3d at 1086 (Ikuta, J., dissenting) ("While punitive intent may be inferred from affirmative acts that are excessive in relationship to a legitimate government objective, the mere failure to act does not raise the same inference."). When an official *intentionally* exposes a detainee to substantial danger—like "deliberately cho[osing] a 'wait and see' monitoring plan" for a starved and dehydrated detainee—it is logical to infer constructive punitive intent. *Miranda v. County of Lake*, 900 F.3d 335, 354 (7th Cir. 2018). In the case at bar, it may seem *impossible* for Officer Campbell—ignorant of who Mr. Shelby even was—to have intended punishment against him. But Officer Campbell's intentional transferring decisions were unreasonable in light of

objectively obvious dangers they posed to Mr. Shelby. This warrants the inference that Officer Campbell, like a policymaking body, had legally fictitious punitive intent.

The policy-episodic distinction ultimately collapses in on itself, leaving *Kingsley*'s objective standard unscathed were this Court to reimpose a punitive intent requirement in the Fourteenth Amendment context.

C. Mr. Shelby has pled sufficient facts under the objective standard to obtain relief in his Section 1983 action.

We agree with the Fourteenth Circuit's application of our facts to the law, and underscore its conclusion that Officer Campbell acted objectively unreasonably under the *Castro* framework.

First, Officer Campbell intentionally—not negligently—placed Mr. Shelby in a room with several inmates awaiting recreation. *See Shelby I* at 6-7. Second, Mr. Shelby's placement in this situation posed substantial risk of serious harm, given that three inmates in the room were Bonucci rivals who were prepared to, and ultimately did, mount a violent attack on Mr. Shelby. *See id.* at 7. Third, a reasonable guard—with Officer Campbell's training and knowledge of the required protocols for staying up-to-date on gang-related information—would have, on their own accord, reviewed the minutes for the meeting he missed and read the printed list detailing Mr. Shelby's risk. But even if the reasonable guard had not initially taken these measures, overhearing an inmate shout at Mr. Shelby about "finally [taking] care of that horrible woman" certainly would have prompted the reasonable guard to *then* take these measures. *See id.* at 6.

The reasonable guard, appreciating the obviously harmful consequences of bringing Mr. Shelby in contact with the Bonuccis, would have transferred them separately and ensured they remained apart. *See id*. at 5-7 As a result of Officer Campbell's deliberate actions, he caused Mr. Shelby's injuries, entitling Mr. Shelby to relief under Section 1983.

II. Dismissal of Shelby's Civil Action Under Heck v. Humphrey Does Not Constitute a "Strike" Under 28 U.S.C. § 1915(g).

Because of his economic status, Mr. Shelby's motion to proceed in forma pauperis should be granted, allowing him to proceed without paying the $402.00 filing fee. Under the Prison Litigation Reform Act ("PLRA"), indigent defendants like Mr. Shelby may file a motion in forma pauperis to contest the conditions of their imprisonment, but such motion may be denied if the prisoner has filed three or more claims considered "frivolous," "malicious," or "fail[ing] to state a claim." 28 U.S.C. § 1915(g). Only a dismissal under the three enumerated grounds may qualify as a strike under Section 1915(g). *See Fourstar v. Garden City Grp., Inc.*, 875 F.3d 1147, 1151 (D.C. Cir. 2017) (Kavanaugh, J.). Because Mr. Shelby's three prior civil actions were previously dismissed pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994), Mr. Shelby's motion to proceed in forma pauperis was denied by the District Court, which held that a *Heck* dismissal necessarily constituted a "fail[ure] to state a claim" and thus was a strike under the provision. *Shelby I* at 2, 7-8.[1]

Heck established that when a prisoner files a claim under 42 U.S.C. § 1983 seeking civil damages for an "unconstitutional conviction or imprisonment," the plaintiff must provide that this allegedly unconstitutional conviction has been reversed on direct appeal, 512 U.S. at 486-87, or at least establish a "favorable termination of the underlying proceeding," *Id.* at 492 (Souter, J., concurring). If the prisoner fails to establish that the criminal conviction or sentence has been

[1] The term "prisoner" is defined in the relevant statute as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law." *See* 28 U.S.C. § 1915(h). For convenience of the Court, Section II of this brief will utilize the term "prisoner" to keep consistent with the terminology used in Section 1915(g) of the PLRA, and because Mr. Shelby's *Heck*-barred Section 1983 claims were filed after he was officially convicted. However, as is stressed in Section I of this brief, at the time the incident in question took place Mr. Shelby's status was as a pretrial detainee, not a convicted "prisoner" in the Eighth Amendment's sense of the word.

reversed, allowing premature civil claims may potentially lead to parallel litigation, thus it must be dismissed as a failure to raise a cause of action. *Id.* at 487-89. In other words, a civil "cause of action" relating to an unconstitutional conviction or sentence is unripe for adjudication if a prisoner fails to exhaust all state remedies to establish that their criminal conviction or sentence is, in fact, unconstitutional. *Id.* at 489 (finding that prisoner may exhaust remedies via "revers[al], expunge[ment], invalidat[ion], or impugn[ment]" through writ of habeas corpus). If a prisoner is unable to exhaust procedural review for the criminal conviction, the district court must dismiss their civil claim, as the cause of action has yet to "accrue." *Id.* at 490 ("Just as a cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor … a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated.") (cleaned up).

Reversing the District Court's decision, the Fourteenth Circuit held that a dismissal under *Heck* does not automatically constitute a strike under Section 1915(g). *See Shelby II* at 12, 14-15. This Court should affirm the Fourteenth Circuit's holding because (A) dismissals under *Heck* do not fall within the three enumerated strikes, and (B) the purpose of the PLRA would not be furthered by automatically denying motions for in forma pauperis under *Heck*.

A. Pursuant to Section 1915(g), a Heck dismissal does not constitute a strike because it does not fall within the three enumerated grounds.

To deny an indigent prisoner's petition to proceed in forma pauperis under the PLRA, Courts must determine whether the claim falls within Section 1915(g)'s three enumerated grounds for a strike: "frivolous," "malicious," or "fails to state a claim." 28 U.S.C. § 1915(g). This Court has previously refused to read additional textual constraints into this statute where "Congress chose to omit" them as doing so would impede the intended breadth. *See Lomax v. Ortiz-Marquez*, 140

S. Ct. 1721, 1725 (2020). As such, this Court should not find additional grounds to strike under the provision, especially where Congress chose to only enumerate a select few. *See Fourstar v. Garden City Grp., Inc.*, 875 F.3d 1147, 1151 (D.C. Cir. 2017) (Kavanaugh, J.). If this Court were to overturn the Fourteenth Circuit's determination, and find that a dismissal under *Heck* is a strike under Section 1915(g), this Court would effectively announce an additional ground for strikes under the PLRA, as dismissals under *Heck* fail to fall within one of the already enumerated grounds. This is because (i) jurisdictional dismissals are not an enumerated "strike" under the PLRA, and (ii) a *Heck* dismissal's jurisdictional nature necessarily prohibits federal judges from assessing whether a petition failed to state a claim.

i. A Heck dismissal is jurisdictional in nature, and therefore falls outside of the three enumerated grounds.

A dismissal based on lack of jurisdiction does not constitute a failure to state a claim, and therefore is not one of the enumerated grounds of Section 1915(g). A civil cause of action challenging unconstitutional convictions or sentences must be dismissed if the plaintiff cannot prove that their conviction or sentence has "been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 487.

Although this requirement is not labeled as an exhaustion requirement, *see id.* at 489, it effectively acts as one, because federal courts are required to defer consideration of the plaintiff's Section 1983 claims on its merits until the plaintiff has completed the process of contesting their conviction. *See McDonough v. Smith*, 139 S. Ct. 2149, 2158-59 (2019) (adopting the "accruel rule" because "there is no reason to put the onus to safeguard comity on district courts exercising case-by-case discretion—particularly at the foreseeable expense of … cluttering dockets with dormant, unripe cases."); *see also Jones v. Bock*, 549 U.S. 199, 204-05 (2007) (describing exhaustion, in the

context of the PLRA, as a requirement allowing prison officials and lower courts "opportunity to resolve disputes" before being brought to court, as a means of ensuring judicial economy). This Court has described the requirements to dismiss premature and unexhausted claims as the "rule of judicial administration" controlling access to the courts, just like issues of mootness and ripeness, because it governs "the timing of federal-court decisionmaking." *See Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1983); *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (superseded by statute).[2]

Under Rule 12 of the Federal Rules of Civil Procedure, parties may assert a motion to dismiss on seven grounds, including "lack of subject-matter jurisdiction," Fed. R. Civ. P. 12(b)(1), and "failure to state a claim upon which relief can be granted," Fed. R. Civ. P. 12(b)(6). Because the Federal Rules of Civil Procedure were adopted in 1937, it would strain credulity to suggest that the PLRA-passing Congress was unaware of the language in the Rules—an enduring hallmark of our adversarial judicial system. Therefore, this Court should track the language of the Fed. R. Civ. P. 12(b)(6)'s "fails to state a claim" with Section 1915(g)'s enumerated strike for "failure to state a claim." *See, e.g.*, *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013); *Wisniewski v. Fisher*, 857 F.3d 152, 155-56 (3d Cir. 2017). Congress' intentional adoption of the language from Rule 12(b)(6) further establishes that dismissals on other grounds, like lack of subject-matter jurisdiction, were intentionally omitted when Congress decided what deficient pleadings should constitute a strike. Therefore, this Court should conclude that dismissals on grounds other than a failure to state a claim were never intended to be grounds for a strike under Section 1915(g).

[2] Circuit Courts are split as to whether a *Heck* dismissal is a dismissal based on the federal court's lack of jurisdiction. *Compare Dixon v. Hodges*, 887 F.3d 1234, 1237 (11th Cir. 2018) (describing *Heck*-barred dismissals as "strip[ping] a district court of jurisdiction"), *with Garrett v. Murphy*, 12 F.4th 419, 427 (3d Cir. 2021) (finding "*Heck*'s favorable-termination requirement does not implicate a federal court's jurisdiction").

Under *Heck*, federal courts must automatically dismiss certain claims because they lack ripeness, not merit. *See Heck*, 512 U.S. at 487. *Heck* dismissals are much more akin to a dismissal for "lack of subject-matter jurisdiction" than a dismissal for "failure to state a claim" because they occur before federal courts can even consider the prima facie case and are effectuated because the claims are premature for review. Since Congress elected to adopt the language of Rule 12(b)(6) but not that of Rule 12(b)(1), we should assume that Congress never intended for such dismissals based on jurisdictional matters to be considered "strikes," otherwise they would have enumerated further grounds for dismissal under Section 1915(g). As this Court strongly condemns judicial legislating, *see Lomax*, 140 S. Ct. at 1724-25 (2020), this Court should not establish an additional ground for striking an in forma pauperis motion.

ii. A dismissal under Heck *is not inherently a failure to state a claim.*

Furthermore, the jurisdictional nature prevents Courts from assessing whether the plaintiff "fail[ed] to state a claim" within their complaint, and therefore such petitions cannot fall within the third enumerated strike provision under the PLRA. We should look to the Fed. R. Civ. P. 12(b)(6) for defining "failure to state a claim" where Congress remains silent. *See* discussion *supra* Section II.A.i. Under this Court's precedent regarding Rule 12(b)(6), a plaintiff will have failed to state a claim if they failed to provide the grounds of his entitlement to relief, pointing to the elements of his cause of action, and must be enough to raise a right to relief above the speculative level. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). In short, dismissal by "failure to state a claim" occurs where the plaintiff failed to sufficiently allege the elements for their prima facie case.

Where federal courts lack jurisdiction, the court must dismiss the claims alleged by the plaintiff "before any assessment of the merits is met." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998). Similarly, under *Heck*, federal courts are required to defer consideration of

the underlying merits of a *Heck*-barred action until the challenged conviction is invalidated. *Heck*, 512 U.S. at 487; *McDonough*, 139 S. Ct. at 2156-57. In other words, where a plaintiff prematurely argues that their conviction or sentencing was unconstitutional in order to recover damages, a federal court is required to dismiss the claim without considering the prima facie case or the merits of the claim because the case is not ripe for review.

Because *Heck* necessarily prohibits federal courts from assessing the merits of the claim, the judicial officers have yet to determine whether the plaintiff failed to state a claim in their Section 1983 complaint against the prison. It is possible that a claim filed by an indigent prisoner is meritorious and sufficiently establishes the prima facie case, even if initially dismissed under *Heck* but later filed once the claim became ripe.

A strike for *Heck* dismissals would especially implicate pro se litigants—common among indigent defendants—who likely are unaware of the nuanced exhaustion requirements of filing certain Section 1983 claims. Many prisoners filing in forma pauperis are likely pro se, as they cannot afford counsel to represent them in their civil proceedings. *See* Andrew Hammond, *Pleading Poverty in Federal Courts*, 128 Yale L. J. 1478, 1492-95 (2019) (describing in forma pauperis in practice). Because the lower court has yet to entertain the claims of these petitions, it would be a miscarriage of justice to assume that *Heck* dismissals failed to state a claim as it would cause many indigent litigants to pay expensive fees for meritorious claims yet to be considered. Instead, courts should wait until the merits are actually assessed before determining whether a previously dismissed petition under *Heck* is another strike under the PLRA.

B. A Heck dismissal should not constitute a strike under Section 1915(g) because it does not further the purpose of the PLRA.

The purpose of the PLRA was to "dramatically reduce the number of meritless prisoner lawsuits" brought by indigent prisoners. 141 CONG. REC. 14413-14 (1995). Congress has long

provided indigent prisoners with the opportunity to contest their treatment while incarcerated without paying for filing fees, allowing them to file in forma pauperis. *See* Molly Guptill Manning, *Trouble Counting To Three: Circuit Splits And Confusion In Interpreting The Prison Litigation Reform Act's 'Three Strike Rule*,' 28 Cornell J. L. & Pub. Pol'y 207, 207-08 (2018). In the 1990s, however, Congress contemplated whether providing limitless applications to file in forma pauperis stymied the judicial process by flooding the courts with meritless claims regarding prison conditions. *See* 141 CONG. REC. 14413 (1995) (Senator Dole) (describing a notable influx of frivolous cases entertained by the court). Senator Dole lamented to Congress that federal courts were burdened by entertaining suits involving "such grievances as insufficient storage locker space, a defective haircut by a prison barber, the failure of prison officials to invite a prisoner to a pizza party for a departing prison employee, and yes, being served chunky peanut butter instead of the creamy variety." 141 CONG. REC. 14413 (1995) (Senator Dole). Notably, the types of grievances Senator Dole pointed to—later termed "meritless" complaints—are claims better resolved by prison administrators than the judicial system, as they lack harm to a person's legal rights.

Congress surmised that when indigent prisoners were not required to pay the fees that commonly accompany filing lawsuits, the prisoners would file frivolous and, at times, malicious claims in federal court. 141 CONG. REC. 14413-14. This is, in part, because the prisoners were never discouraged from filing such claims by a court filing fee, and therefore looked to the courts rather than prison boards to resolve their complaints. *See* 141 CONG. REC. 14413. As a result, Congress unanimously passed the PLRA to "discourage prisoners from filing claims that are unlikely to succeed," implementing screening provisions like Section 1915(g) that prevented prisoners from filing three or more claims as described by Senator Dole, in forma pauperis. *See*

Crawford-El v. Britton, 523 U.S. 574, 596 (1998). Essentially, the PLRA establishes an economic disincentive to filing meritless claims.

Unlike the PLRA, this Court established dismissals under *Heck* not to disincentivize or even reduce meritless claims brought before federal courts, but to prevent "parallel litigation and conflicting judgments," *McDonough*, 139 S. Ct. at 2157; *see Heck*, 512 U.S. at 484-85 (preventing collateral attacks on parallel litigation). In order to avoid an automatic dismissal under *Heck*, a plaintiff contesting their unconstitutional confinement or sentencing must essentially exhaust remedies or prove that termination is favorable, otherwise, entertaining such claims could create "parallel criminal and civil litigation over the same subject matter and the related possibility of conflicting civil and criminal judgments." *McDonough*, 139 S. Ct. at 2157. The *Heck* Court did not suggest that lower courts must consider the merits in order to determine whether the unripe case should be dismissed without prejudice. *See* discussion *supra* Section II.A. Rather, *Heck* simply offered a pragmatic solution to procedural concerns arising out of a very specific type of Section 1983 claim.

A *Heck* dismissal does not screen out the sorts of claims that Congress intended to limit under the PLRA, for it would prevent courts from assessing potentially meritorious claims. Therefore, *Heck* dismissals do not further the PLRA's purpose of limiting litigation—in fact, a *Heck* dismissal actually requires the prisoners to continue with the judicial process and at times, file more litigation as a means to resolve the dispute of their unconstitutional confinement or sentencing. *See Heck*, 512 U.S. at 487 (requiring plaintiffs to prove that their conviction has been reversed, expunged, or declared invalid before proceeding to their Section 1983 claim).

Furthermore, these are nuanced constitutional claims that are far more complicated than grievances over the creaminess of peanut butter served in prison. The types of claims that may be

dismissed under Heck include those "seeking damages for allegedly constitutional convictions or imprisonments." *Id.* at 486. These claims often implicate the constitution and statutory provisions and the rights vested by them, *see id.* at 486, and are therefore best suited for judicial officials to interpret, *see Marbury v. Madison*, 5 U.S. 137, 167 (1803). This is distinctly different from the sorts of claims Congress intended to limit under the PLRA—claims that are better resolved by simple complaints to the prison board itself.

As it fails to screen out the sorts of meritless claims that Congress intended to disincentivize under Section 1915(g), this Court should not find that a *Heck* dismissal is automatically a strike under the provision, and should permit Mr. Shelby to file his claims without paying the $402.00 filing fee.

CONCLUSION

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