CAUSE NO. 2023-5255

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 RESPONDENT

ORAL ARGUMENT REQUESTED

TEAM NO. 34
ATTORNEYS FOR RESPONDENT

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QUESTIONS PRESENTED

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

II. Whether this Court's decision in *Kingsley* eliminates the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference Failure-to-Protect claim for a violation of the pretrial detainee's Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 action.

OPINIONS BELOW

The Fourteenth Circuit's opinion is reported at Rec. 12–20 (No. 2023-5255). The district court's opinion is reported at Rec. 2–11 (Case No. 23:14-cr-2324).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides:

No State shall make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Eight Amendment provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The Town of Marshall's Gang History

Marshall is home to the Geeky Binders street gang. Rec. at 2. The gang's presence has touched all facets of the town's life, including its members' involvement in the town's business, real estate, and public office. Rec. at 3. Members of the Geeky Binders can be identified by certain items. A tweed three-piece suit and a long overcoat are distinct garment choices for members. Rec. at 4. Members also carry custom-made ballpoint pens which conceal sharp awls. Rec. at 2. The Geeky Binders are currently led by Thomas Shelby. Rec. at 3. Leadership is also shared among Thomas's brothers, John Shelby and Arthur Shelby. *Id.*

Luca Bonucci's gang, the Bonucci clan, has made recent efforts to challenge the Geeky Binders' control of Marshall. *Id.* These efforts include bribing local politicians and powerful Marshall officials, including jail officers. *Id.* However, the Bonucci clan's reign came to a downfall after Marshall jail fired the officers who were involved and bribed by the Bonucci clan to hire "untainted" officers. *Id.* The Geeky Binders and the Bonucci clan power struggle power recently came to a head. Thomas Shelby murdered Bonucci's wife, sparking outrage from the Bonucci clan. Rec. at 5. The Bonucci clan sought revenge against the Geeky Binders, specifically targeting Thomas's brother, Arthur Shelby. *Id.*

Police Arrest Arthur Shelby

Arthur Shelby attended a New Year's Eve boxing match with his brothers. Rec. at 3. Marshall police had already issued an arrest warrant against each of the brothers for various charges. *Id.* The police raided the boxing match and apprehended Arthur Shelby. Rec. at 4. Following Arthur's arrest, he was transported to the Marshall jail. *Id.*

Officer Mann booked Mr. Shelby upon his arrival to the Marshall jail. *Id*. Officer Mann immediately recognized Mr. Shelby was a member of the Geeky Binders by his attire and his custom ballpoint pen. *Id*. During the booking, Mr. Shelby also stated that "the cops can't arrest a Geeky Binder" and that his brother "Tom would get [him] out of [jail]." *Id*. Officer Mann documented Mr. Shelby's clothing and weapon into the jail's online database, along with Mr. Shelby's comments. *Id*. Mr. Shelby was already in the jail's online database due to previous arrests, and his file indicated his affiliation with the Geeky Binders. Rec. at 5.

Marshall Jail is Put on High Alert

The Marshall jail's gang intelligence officers review new entries to an inmate's online file when they arrive to the jail. Rec. at 4. The intelligence officers, aware of the Bonucci clan seeking revenge on the Geeky Binders, made special notes in Mr. Shelby's file and printed paper notices to place throughout the jail. Rec. at 5. On January 1, 2021, one day after Mr. Shelby's arrival, the intelligence officers held a meeting to alert all officers of Mr. Shelby's risk. *Id*. Officers were reminded to check rosters and floor cards to ensure rival gangs did not encounter each other. *Id*. Mr. Shelby was to be housed in block A, to stay away from blocks B and C, which housed members of the Bonucci clan. *Id*.

If an officer did not attend the meeting, the gang intelligence officers required them to review the meeting minutes. Rec. at 6. Unlike other jail officers, Petitioner Officer Campbell did not attend the January 1 meeting concerning risks to Mr. Shelby. *Id*. Petitioner also did not review the jail's online database before walking to Mr. Shelby's cell. *Id*. Nor did Petitioner review the printed list of inmates, which indicated inmates with special statuses, he carried with him throughout his shift. *Id*. This list included Mr. Shelby's gang affiliation and risk of attack from the Bonucci clan. *Id*.

Arthur Shelby is Attacked by the Bonucci Clan

On January 8, 2021, a week following Mr. Shelby's booking, Petitioner supervised inmates, including Mr. Shelby, to the jail's recreation room. *Id*. Petitioner took Mr. Shelby from his cell to walk him over to the jail's recreation room. *Id*. Along the way, Petitioner took Mr. Shelby from block A, to block B and C, where Petitioner gathered three other inmates to take to the recreation room as well. Rec. at 7. These other three imamates were all members of the Bonucci clan. *Id*.

The Bonucci clan members immediately began beating Mr. Shelby with their fists and a club hardened from mashed paper. *Id*. Petitioner was helpless to stop the attack. *Id*. Mr. Shelby experienced the beating for several minutes until other jail officers could assist. *Id*. Mr. Shelby suffered life-threatening injuries, including a traumatic brain injury, fractured ribs, lung lacerations, swollen abdomen, organ laceration, and internal bleeding. *Id*. Mr. Shelby was hospitalized for several weeks. *Id*.

Arthur Shelby Appeals Dismissal

The district court held that Mr. Shelby had accrued three "strikes" from the dismissals of his prior cases. Rec. at 1. The court directed Mr. Shelby to pay the filing fee of $402.00 within thirty days of the order. Rec. at 1, 7. Nevertheless, Mr. Shelby's motion to proceed *in forma pauperis* was denied. Rec. at 7. Mr. Shelby appealed to the Fourteenth Circuit on two grounds: (1) that the lower court erred by counting his prior dismissals as "strikes," and (2) that the lower court applied the incorrect standard for his Failure-to-Protect claim. Rec. at 14, 16. The Court of Appeals reversed Mr. Shelby's § 1983 claim dismissal and remanded the District Court's decision on both issues. Rec. at 19. This appeal followed. Rec. at 21.

SUMMARY OF ARGUMENT

I.

The "three-strikes" rule of the Prison Litigation Reform Act (hereinafter "PLRA") requires that a plaintiff proceeding *in forma pauperis* may not file on more than three occasions a claim that is frivolous, malicious, or fails to state a claim. Because the purpose of the PLRA is to sort good claims from claims that could potentially clog the judicial system, a claim that is dismissed is not always a dismissal that constitutes a strike. Here, the dismissal of Mr. Shelby's § 1983 actions under *Heck* were required regardless of the claims' underlying merit. This dismissal was required because the actions were filed prematurely, not because they were frivolous, malicious, or failed to state a valid claim. Pro se plaintiffs must be given opportunity to amend their complaints before the complete dismissal of their claim. Therefore, dismissals under *Heck* do not categorically constitute as strikes within the meaning of the PLRA.

II.

Pretrial detainees are protected from any form of punishment under the Fourteenth Amendment, extending beyond the Eighth Amendment's Cruel and Unusual Punishment Clause protecting convicted inmates in deliberate indifference claims. These protections require the application of an objective standard outlined in *Kingsley* rather than the subjective intent of the prison official responsible for the pretrial detainee's injuries in a Failure-to-Protect claim. Here, Petitioner caused Mr. Shelby's injuries despite the wide assortment of resources available to the petitioner for over a week that would have prevented the circumstances resulting in the Bonucci clan's attack. Therefore, the Fourteenth Circuit was correct in ruling the petitioner's objectively unreasonable conduct was a violation of Mr. Shelby's due process rights and require the extension of *Kingsley* to pretrial detainee claims.

ARGUMENT

I. THE DISMISSAL OF A PRISONER'S CIVIL ACTION UNDER *HECK V. HUMPHREY* DOES NOT CATEGORICALLY CONSTITUTE A "STRIKE" WITHIN THE MEANING OF THE PRISON LITIGATION REFORM ACT.

The United States Code provides "for appeal only from all final decisions of the district courts, except when direct review may be had in the Supreme Court." 28 U.S.C. § 1291. The law of the case doctrine instructs that prisoners who have brought a civil action or appeal on more than three occasions will not be allowed to continue *in forma pauperis* if the prisoner's actions were dismissed on the grounds that they were "frivolous, malicious, or [failed] 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).[1] This rule was enacted with the express purpose of facilitating the consideration of valid claims that are ripe to be heard while filtering out claims that are completely lacking in value or have been filed prematurely." *Coleman v. Tollefson*, 575 U.S. 532, 535 (2015). Additionally, this Court instructs that claims by pro se plaintiffs proceeding *in forma pauperis* cannot be held to as strict of standards to those drafted by practicing attorneys. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Where, as here, Mr. Shelby's § 1983 claim was dismissed purely on the basis that his action called into question the validity of his underlying conviction, with no evidence that he conclusively failed to state a meritorious claim. A dismissal with leave to amend Mr. Shelby's complaint would be the more appropriate measure than to dismiss his entire § 1983 claim. Therefore, this Court should affirm the decision of the Fourteenth Circuit and hold that dismissals pursuant to *Heck* do not automatically count as strikes within the meaning of § 1915(g).

[1] *See* Appendix A (defining appeals *in forma pauperis* as actions instigated by plaintiffs without the expectation that court fees will be paid).

A. This Court Conducts A *De Novo* Review Of Motions To Proceed *In Forma Pauperis* Under 28 U.S.C. § 1291.

"The denial by a District Judge of a motion to proceed *in forma pauperis* is appealable" as a final judgment under 28 U.S.C. § 1291. *Roberts v. U. S. Dist. Ct.*, 339 U.S. 844, 844 (1950). The court reviews the interpretation and application of the PLRA under a *de novo* standard of review.[2] A court's determination of whether a dismissal constitutes a strike is a question of law. *Camp v. McGill*, 789 F.App'x 449, 550 (5th Cir. 2020) (per curiam) (unpublished) (collecting circuit cases reviewing strikes as questions of law). A *de novo* standard of review allows for independent examination to clarify legal principles and unify case precedent. *Ornelas v. U.S.*, 517 U.S. 690, 697 (1996).

B. The Dismissal Of A Civil Action Under *Heck* Is Based On A § 1983 Claim's Ripeness, Not Because The Claim Was Frivolous, Malicious, Or Failed To State A Claim.

42 U.S.C. § 1983 protects individuals with the right to sue for "claims of unconstitutional treatment at the hands of state officials." *Heck v. Humphrey*, 512 U.S. 477, 480 (1994). This Court held in *Heck* that if a favorable ruling of a convicted defendant's civil § 1983 claim would result in a questioning of the validity of that defendant's underlying sentence, the claim must be dismissed. *Id.* at 487. In order to proceed with their § 1983 action, a convicted defendant must first prove that the underlying 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

[2] *See Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007); *see also Prescott v. UTMB Galveston Texa*s, 73 F.4th 315, 318 (5th Cir. 2023) (deciding whether a prior dismissal constitutes a strike is a legal question which is reviewed *de novo*); *Smith v. Veterans Admin.*, 636 F.3d 1306, 1309 (10th Cir. 2011) (reviewing *de novo* the district court's determination of whether the plaintiff had three strikes under § 1915(g)); *McFadden v. Noeth*, 827 Fed.App'x. 20, 24 (2d Cir. 2020) (a review of a district court's denial of *in forma pauperis* status pursuant to the PLRA concerns only a threshold procedural question and is thus reviewed *de novo*).

question by a federal court's issuance of a writ of habeas corpus" as a method of exhausting an inmate's available administrative remedies. *Id*. This decision was upheld by the rationale that the state would be obligated to release a convicted individual if he achieved a favorable ruling, even if he had not sought that type of relief. *Id*. at 479–80. Claims challenging the validity of a defendant's underlying conviction do not "accrue" until the defendant's conviction has been invalidated. *Id*. at 490. This dismissal poses no conflict regarding the § 1983 claim's statute of limitations "while the state challenges are being pursued, because the § 1983 claim has not yet arisen." *Id*. at 489.

The Seventh Circuit determined that "the *Heck* doctrine is not a jurisdictional bar [and] because it's not jurisdictional . . . [it] is subject to waiver." *Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011). The same court later held that *Heck* dismissals "deal with timing rather than the merits of litigation," emphasizing that until the underlying conviction can be set aside, "the claim is unripe, and the statute of limitations has not [began] to run." *Mejia v. Harrington*, 541 Fed.App'x. 709, 710 (7th Cir. 2013).[3] Because *Heck* dismissals address the timing of when a § 1983 action is filed, they "do not concern the adequacy of the underlying claim for relief." *Id*. The Ninth Circuit expanded upon this reasoning, ruling that *Heck* dismissals "do not reflect a final determination on the underlying merits" of a prisoner's § 1983 claim. *Washington v. Los Angeles Cnty. Sheriff's Dep't.*, 833 F.3d 1048, 1056 (9th Cir. 2016). Under *Heck*, a court must dismiss a § 1983 action challenging a prisoner's conviction until the prisoner invalidates his underlying sentence. *Id*. Therefore, this establishes that a claim filed prematurely is not a pro se plaintiff's failure to state a claim under the PLRA.

[3] *See McDonough v. Smith*, 139 S.Ct. 2149, 2158 (2019) (This recent decision supports this line of reasoning where Justice Sotomayor described civil actions barred by underlying criminal proceedings as "dormant" and "unripe.").

Here, Mr. Shelby's § 1983 claims against Marshall jail officials, state officials, and the United States were each dismissed explicitly because the actions called into question "either his conviction or his sentence." Rec. at 3. Without additional information in the record, dismissing Mr. Shelby's due process claim solely because the action challenged his underlying sentence cannot conclusively be determined as frivolous, malicious, or a failure to state a claim if the claim instigated by Mr. Shelby is simply not ripe yet for a proper assessment. Because this Court ruled in *Heck* that any § 1983 action by a convicted person that questions their underlying sentence must be dismissed irrespective of the claim's underlying merit, Mr. Shelby has not failed to state a valid claim. *Heck*, 512 U.S. at 480. The purpose of dismissals under *Heck* is to prevent the forced release of prisoners who have achieved a favorable ruling in their § 1983 civil actions while their criminal proceedings are still ongoing, not to obliterate valid due process claims. Without evidence in the record supporting Mr. Shelby's § 1983 actions failed to state a valid claim, the dismissal pursuant to *Heck* was correctly determined by the Fourteenth Circuit to have been an issue of timing rather than a failure to assert a legitimate claim.

There is no evidence in the record that Mr. Shelby's claim was supported by false information, was filed with the intent to cause harm, or was initiated with the aspiration to create judicial waste. Because Mr. Shelby's three dismissals under *Heck* presented only an issue of premature submission of his § 1983 claims, they cannot be determined as a failure to state a claim.

C. Courts Dismiss A § 1983 Action Under *Heck* Regardless Of Its Underlying Legal Merits, Demonstrating That Not All Dismissals Meet The Definition Of A Strike.

Shortly following this Court's ruling in *Heck*, Congress enacted the PLRA in an effort to help address the rising number of prisoner-plaintiff actions filed in federal court. *Jones v. Bock*,

549 U.S. 199, 199 (2007).[4] The goal of the PLRA was to "reduce the quantity and improve the quality" of lawsuits from inmates complaining about prison conditions by requiring prisoners to exhaust all administrative remedies available before initiating a lawsuit. *Id.* at 204. The PLRA codified the federal *in forma pauperis* statute originally enacted in 1892 ensuring "that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams,* 490 U.S. 319, 324 (1989). However, in order to prevent litigants from excessively accumulating filing fees and court costs that need to be paid with public funds, the PLRA established the "three-strikes" rule as a method of reducing the amount of prisoner complaints. *Lomax v. Ortiz-Marquez,* 140 S.Ct. 1721, 1723 (2020). This provision prevents a prisoner from bringing suit *in forma pauperis* if he has had three or more prior suits "dismissed on the grounds that [they were] frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). The three-strikes provision is designed to "filter out the bad claims asserted by prisoners and to facilitate the consideration of good claims." *Coleman v. Tollefson*, 575 U.S. 532, 535 (2015). However, while the goal is to reduce non-meritorious prisoner litigation, the results have led to many meritorious prisoner claims being disregarded because of the PLRA's three-strike rule.[5] Because these claims are submitted by pro se plaintiffs

[4] The act signed by Bill Clinton was to provide a solution to the increasing amount of lawsuits by prisoners directly stemming from the increase in incarcerations that had tripled in the United States between 1990 and 1996. The PLRA quickly had its intended effect, reducing lawsuits filed by prisoners by 39% between 1995 and 2000. This reduction in lawsuits, however, has come at the chiseling away of prisoner's rights. The protection given to prison employees by the PLRA creates obstacles for a prisoner's valid § 1983 claims to be heard. Additionally, the PLRA increases the difficulty prisoners face when searching for competent representation. *See* C. Dreams, *How the Prison Litigation Reform Act Blocks Justice For Prisoners*, THE APPEAL (May 8, 2023) https://theappeal.org/prison-litigation-reform-act-repeal-unjust/.

[5] *See* Kasey Clark, *You're Out!: Three Strikes Against the PLRA's Three Strikes Rule*, 57 GA. L. REV. 779, 802–04 (2023) ("[M]ore meritorious claims are being excluded from the courts—a consequence lawmakers swore against").

that are typically proceeding *in forma pauperis* because of an inability to pay their own court fees, claims excluded by the PLRA indicate a death blow to a prisoner's potential chance at justice. This distinction between good and bad claims is especially critical in the evaluation of *Heck* dismissals, since prisoners may renew their § 1983 claims if they succeed in overturning their underlying conviction. *Perez v. Sifel*, 57 F.3d 503, 505 (7th Cir. 1995). The Due Process Clause was enacted to protect vulnerable populations from state action.[6] No such population deserves more protection from governmental overstep in the United States than prisoners, especially pretrial detainees who have yet to be convicted of a crime.[7]

Here, this separation between what qualifies as a good claim versus a bad claim is what inappropriately characterizes Mr. Shelby's legitimate but prematurely submitted § 1983 action as frivolous, malicious, or a failure to state a claim. Mr. Shelby filing his action too early is not the same as failing to state a claim upon which relief may be granted. Circuits have held that not all § 1983 dismissals that are facially frivolous, malicious, or fail to state a claim constitute a strike within the meaning of the PLRA. *See Adams v. United States*, 818 Fed. App'x. 807, 812 (10th Cir. 2020) (a dismissal did not count as a strike when the entire action was not dismissed based on § 1915(g) grounds); *Paul v. Marberry*, 658 F.3d 702, 704 (7th Cir. 2011) (strikes that should have

[6] *Cf. Slaughter-House Cases*, 83 U.S. 36, 73 (1872) (Field, J., dissenting) ("[T]he Due Process Clause protected individuals from state legislation that infringed upon their 'privileges and immunities' under the federal Constitution," describing the Fourteenth Amendment's particular importance for newly freed slaves following the Civil War who were vulnerable to erroneous state legislation).

[7] *See also* Sharon Dolovich, *The Failed Regulation and Oversight of American Prisons*, 5 ANNU. REV. CRIMINOL. 153, 154 (2022) ("Unfortunately, 150 years of civil rights enforcement have made plain that, left to their own devices, the state's agents cannot always be counted on to honor constitutional rights, especially when the rights holders in question are members of disfavored groups (internal citations omitted). And perhaps no disfavored group is more vulnerable to official abuse of power than the incarcerated, whose interactions with state actors take place behind high walls, away from public view, in fraught and adversarial environments where uniformed officers hold all the power.").

counted against a prisoner are voided when a judge fails to specify § 1915(g) grounds); *Ladeairous v. Sessions*, 884 F.3d 1172, 1176 (D.C. Cir. 2018) (a court's dismissal including the phrase "fails to state a claim upon which relief may be granted" in effect only declined to hear state law claims and did not constitute a strike).

Additionally, following the dismissal of Mr. Shelby's third claim, he was no longer allowed to continue *in forma pauperis* and thus required to pay the $402.00 filing fee. Rec. at 1. Seeing that Mr. Shelby immediately paid this amount in full to appeal his § 1983 action indicates a greater likelihood that his claims had underlying merit. A pro se plaintiff would not senselessly spend a significant amount of money to appeal his denied motion to continue *in forma pauperis*, if he did not sincerely believe he was appealing a violation of his due process rights.[8] This Court should extend rules set by the Circuits and hold that dismissals under *Heck* do not categorically constitute as strikes within the meaning of the PLRA.

1. The dismissal of an inmate's claim under Heck is not "frivolous" or "malicious" within the meaning of the PLRA.

An action is determined to be frivolous if it does not contain an arguable basis either in law or in fact. *Neitzke*, 490 U.S. at 325. Under the purview of the PLRA, not even claims that have been determined as meritless are "frivolous" unless the legal theories advanced by the plaintiff are so lacking in merit and legitimacy that they fail the notion of having the slightest chance of success. *Wilson v. Yaklich*, 148 F.3d 596, 602 (6th Cir. 1998). This means that inmates may submit § 1983 claims that can be determined to have no legal merit and still not constitute as a strike pursuant to the PLRA. *Id.*

[8] *See also* Tiffany Buxton, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE W. RES. J. INT'L L. 103 (2002) (arguing that pro se plaintiffs proceeding *in forma pauperis* do not file civil claims challenging their underlying sentence purely for the "*Heck*" of it).

An *in forma pauperis* claim can be dismissed on prematurity grounds and still not constitute as frivolous under the PLRA. *Tafari v. Hues* 473 F.3d 440, 443 (2nd Cir. 2007). The Second Circuit ruled that the term "frivolous" refers to the ultimate merits of the case, and that prematurity has "nothing to do with the merits of the underlying claim." *Id.* at 442. An *in forma pauperis* § 1983 claim constitutes as malicious, and thus a strike within the meaning of the PLRA, if the claim was filed "with the intention or desire to harm another." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). Thus, a *Heck* dismissal cannot be hastily determined as a strike unless the court finds that it was intentionally filed with the desire to harm someone else. *Id.* A dismissal under *Heck* is not categorically frivolous or malicious "because plaintiffs may have meritorious claims that do not accrue until the underlying criminal proceedings have been successfully challenged." *Washington*, 833 F.3d at 1055. These first two provisions of the PLRA's "three-strikes" rule are more easily agreed upon across the Circuits, but provide context for analyzing the ultimate purpose of the PLRA when determining what it means for a litigant to fail to state a claim regarding the third provision.

Here, there is no evidence in the record that Mr. Shelby's § 1983 claims were obviously or plainly lacking in merit. The contents of his complaint sufficiently demonstrate the consideration of a situation that does not meet the definition of frivolous, nor contains any evidence that Mr. Shelby's claims were filed with the intention to inflict harm onto someone else. Because the district court was unable to show that Mr. Shelby's § 1983 action was a meritless claim, the Fourteenth Circuit was correct in its determination that Mr. Shelby did not submit a claim that was categorically frivolous or malicious.

2. A dismissal under Heck is not a failure to state a claim.

The final reason for dismissal that constitutes a "strike" within the meaning of the PLRA, dismissal for failure to state a claim upon which relief may be granted, mirrors exactly the language found in Federal Rule of Civil Procedure 12(b)(6).[9] In order for a motion to dismiss for failure to state a claim to succeed, there must be no factual allegations provided that raise a right to relief above a speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Meaning, if any allegations raised by the plaintiff create an indication that his due process rights were violated, the plaintiff has not failed to state a claim under 12(b)(6). This Court held that the dismissal of a suit for failure to state a claim counts as a strike. *Lomax,* 140 S.Ct. at 1727 (2020). However, this Court purposefully did not address whether a dismissal under *Heck* constituted as a failure to state a claim because "not all Courts of Appeals accept that view." *Lomax,* 140 S.Ct. at 1727 n.2. At the time, this Court was addressing specifically if a case dismissal with or without prejudice decides whether the dismissal for failure to state a claim counts as a strike in line with the protocol established at the District Court level. *Id*. Because the plaintiff had not raised the issue of whether a dismissal under *Heck* is a failure to state a claim, this Court did not address it. *Id*.

Conversely, the Ninth Circuit held in *Washington* that *Heck* dismissals do not categorically count as strikes within the meaning of the PLRA unless the opportunity for relief is "obvious from the face of the complaint." *Washington v. Los Angeles Cnty Sheriff's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016). The court determined that *Heck* dismissals are not frivolous, malicious, or fail to state a claim because "plaintiffs may have meritorious claims that do not accrue until the underlying criminal proceedings have been successfully challenged." *Id*. Where, as here, Mr.

[9] *See* Fed. R. Civ. P. 12(b)(6) ("Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert [by motion] . . . failure to state a claim upon which relief can be granted.").

Shelby's dismissals under *Heck* were purely for the reason that his civil actions called into question the validity of his underlying sentence. Rec. at 3. There is no indication in the record that any of Mr. Shelby's § 1983 actions obviously failed to state a claim, providing evidence that his claims have merit and may be challenged once his conviction is reversed, expunged, or otherwise invalidated.

Regarding every dismissal under *Heck* as a strike would incorrectly presume that all claims filed prematurely are inherently without merit. Because the premature submission of a legitimate § 1983 action does not meet the definition of a failure to state a valid claim under *Heck*, Mr. Shelby's dismissals do not automatically constitute as strikes under the meaning of the PLRA.

D. Pro Se Litigants Must Be Given an Opportunity To Amend Their § 1983 Action Before A Dismissal For Failing To State A Valid Claim.

When dealing with a § 1983 claim by a pro se plaintiff, any complaint submitted needs to be granted an allowance to amend in order to prevent the complete dismissal of a legitimate claim. This especially extends to plaintiffs proceeding *in forma pauperis* because an erroneous dismissal might force a litigant to forgo filing a well-grounded action because they are not able to afford a filing fee after accruing their three strikes under the PLRA. Dismissing a litigant's complaint with leave to amend, rather than an entire § 1983 action, does not constitute a strike because the PLRA requires the dismissal of an "action or appeal." 28 U.S.C. § 1915(g). The Equal Protection Clause of the Fourteenth Amendment promises that justice should be available to everyone, without consideration of wealth, race, or status. *Bearden v. Georgia*, 461 U.S. 660, 673 (1983). This Court explicitly stated that any document filed by a pro se plaintiff, regardless of a proceeding i*n forma pauperis* and no matter how ineloquently pleaded, "must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Dismissing a § 1983 action without granting the pro se litigant an opportunity to amend his claim would be

improper if there is even a slight indication that a justifiable claim might be stated. *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999). The dismissal for failure to state a claim must only be issued if the claim establishes "beyond doubt that the plaintiff can prove *no* set of facts in support of his claim which would entitle him to relief." *Id* (emphasis added).[10]

Where, as here, Mr. Shelby is entitled to a right to amend his complaint before a dismissal of his § 1983 action because he is a pro se plaintiff. Rec. at 7. The record shows no indication that his complaint met the standard of proving beyond doubt that no set of facts support his claim, leading to an erroneous dismissal of his potentially meritorious action. The record also provides no evidence that a dismissal of Mr. Shelby's complaint with leave to amend took place, indicating that the lower court never granted him an opportunity to do so. A dismissal of Mr. Shelby's complaint rather than his action would not have equated to Mr. Shelby failing to state a valid claim and thus would not have constituted a strike under the PLRA.

Heck dismissals are required if the § 1983 claim calls into question the validity of a prisoner's underlying conviction. *Heck*, 512 U.S. 477, 486. This is an issue which evinces itself within a prisoner's complaint, not the prisoner's action itself. A dismissal with instruction to amend Mr. Shelby's complaint until after his underlying sentence has been reversed, expunged, or otherwise invalidated properly allows for Mr. Shelby's claim to eventually be heard. An outright dismissal of Mr. Shelby's action without any evidence that the action is totally lacking in merit robs Mr. Shelby of his right to pursue justice. The proper course of action by this Court would be a dismissal of Mr. Shelby's complaint with leave to amend and not the dismissal of his § 1983

[10] *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976) ("A pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears " 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'") (quoting *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957)).

action, a dismissal that does not meet the "action or appeal" definition required in order to constitute a strike under the PLRA.

Because there is a complete lack of evidence within the record demonstrating that Mr. Shelby's § 1983 claim was obviously lacking in legitimacy, there cannot be a presumption that he failed to state a claim under Rule 12(b)(6) to qualify as a strike under the PLRA. There is a stronger indication that the lower court's dismissal was required strictly because the § 1983 action questioned the validity of Mr. Shelby's underlying sentence. If the merits of Mr. Shelby's claim are required to be ignored until his underlying conviction is overturned or invalidated, the lower court's dismissal under *Heck* does not meet the definition of a failure to state a claim within the meaning of the PLRA. Mr. Shelby's premature filing of his due process action does not equate to a failure to state a due process claim. The oversimplification that any dismissal under *Heck* constitutes a strike disregards the intended purpose of the PLRA to reduce frivolous prisoner-litigation and causes an unfortunate disposal of valid § 1983 actions.

Additionally, pro se plaintiffs proceeding *in forma pauperis* must be granted the opportunity to amend their complaints when the evidentiary record signals the existence of a valid due process violation. The lower court should have dismissed Mr. Shelby's complaint with leave to amend rather than his entire claim, a dismissal that would not have qualified as a strike because the PLRA requires the dismissal of an "action or appeal." Therefore, the Fourteenth Circuit was correct in reversing the district court's decision holding that the dismissal of Mr. Shelby's § 1983 action under *Heck* was not a strike within the meaning of the PLRA.

II. *KINGSLEY* ELIMINATES THE REQUIREMENT FOR A PRETRIAL DETAINEE TO PROVE A DEFENDANT'S SUBJECTIVE INTENT IN A DELIBERATE INDIFFERENCE FAILURE-TO-PROTECT CLAIM.

This Court ruled in *Kingsley* that pretrial detainees are only required to meet an objective unreasonableness standard when asserting § 1983 excessive force actions against prison officials. *Kingsley v. Hendrickson*, 576 U.S. 389, 402 (2015). While excessive force claims are limited to protections from cruel and unusual punishment under the Eighth Amendment, the Fourteenth Amendment broadens the application of the objective standard to Failure-to-Protect due process violations involving pretrial detainees. *Id*. at 400–01. The *Kingsley* objective standard requires a higher burden of proof than negligence but prevents valid § 1983 Failure-to-Protect actions from going unnoticed because of the difficult burden to prove subjective intent under a deliberate indifference standard. *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016). An insistence to demonstrate an officer's subjective deliberate indifference to a pretrial detainee in Failure-to-Protect claims risks a hurried presumption that valid § 1983 actions are reduced to assertions of mere negligence, leaving said claims to be dismissed despite raising serious questions about prison officer conduct. *Id*.

Where, as here, Mr. Shelby's injuries were a direct result of the petitioner's objectively unreasonable failure to utilize the numerous resources available to him. Petitioner would have been protected from liability if the attack of Mr. Shelby was the consequence of the petitioner's inadvertent error. However, the Marshall jail's rigorous security measures provided several opportunities over the course of a week for the petitioner to inform himself on Mr. Shelby's at-risk status, elevating Petitioner's conduct from negligence to objectively unreasonable conduct. As a result, this Court should affirm the decision of the Fourteenth Circuit and hold that *Kingsley*

eliminates the requirement for pretrial detainees to prove subjective intent in a § 1983 Failure-to-Protect claim.

A. Pretrial Detainees Are Protected By The Fourteenth Amendment From § 1983 Violations, Which Is Distinctly Separate From The Eighth Amendment's Restrictive Deliberate Indifference Standard And Should Thus Extend Objective Unreasonableness To Failure-To-Protect Claims.

The Fourteenth Amendment's Due Process Clause guarantees that no government institution shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. This clause extends to protect pretrial detainees from all acts intended to inflict punishment because all individuals in the criminal justice system are entitled to the constitutional presumption of innocence before appearing in trial. *Bell v. Wolfish* 441 U.S. 520, 533 (1979). Under *Bell*, a pretrial detainee has a constitutional right under the Fourteenth Amendment to be free from punishment of any kind without due process of law. *Id*. at 534.

The Fourteenth Amendment requires this Court to apply an objective standard when evaluating claims alleging violation of due process, which includes injuries suffered irrespective of whether they were the result of actions subjectively intended to serve as punishment. *Kingsley*, 576 U.S. at 400–01. Further, a pretrial detainee providing objective evidence that proves the contested state action was not reasonably connected to a legitimate governmental objective or was excessive in relation to that objective, has proven successful in a due process claim. *Id*. at 538. Here, Mr. Shelby has sufficiently asserted that his injuries brought on by the Bonucci clan while incarcerated as a pretrial detainee were the result of several avoidable errors. Rec. at 6–7. This provides sufficient evidence that the Fourteenth Circuit was correct in applying the *Kingsley* objective unreasonableness standard to Mr. Shelby's Failure-to-Protect claim.

1. Failure-to-Protect claims extend beyond protection from cruel and unusual punishment, proving that an objective standard under the Fourteenth Amendment must be applied to prison guard treatment of pretrial detainees.

This Court acknowledged in *Kingsley* that the Eighth Amendment addresses a completely separate category of protections under the Constitution. *Kingsley*, 576 U.S. at 390. The Eighth Amendment guarantees that convicted criminals will not be subject to the infliction of "cruel and unusual punishments," which is distinctly separate from due process rights afforded to individuals who have not yet been convicted of a crime. *Id*. The Due Process Clause ensures that pretrial detainees are protected from all forms of punishment without consideration of whether it meets the definition of cruel or unusual under the Eighth Amendment. *Id.* at 400–01. The right to be free from punishment guaranteed under the Fourteenth Amendment encompasses a broader scope than the protection from cruel and unusual punishment. *Kingsley* guarantees that pretrial detainees are protected from acts that "amount to punishment" or otherwise known as acts deemed objectively unreasonable, and acts inflicted with the intent to punish which must be conducted with a specific state of mind.[11]

The Second Circuit ruled that a violation of a pretrial detainee's due process rights "can occur without meting any punishment", meaning that such violations under the Fourteenth Amendment can occur without a prison official having subjective intent to inflict punishment maliciously or sadistically on the pretrial detainee.[12] Where, as here, Mr. Shelby was being held

[11] *See Kingsley*, 576 U.S. at 398–99; *Bell*, 441 U.S. at 535–36 ("[T]he proper inquiry is whether those conditions amount to punishment of the detainee.").

[12] *See Darnell v. Pineiro*, 849 F.3d 17, 33–35 (2d Cir. 2017) ("Unlike a violation of the Cruel and Unusual Punishments Clause, an official can violate the Due Process Clause of the Fourteenth Amendment without meting out any punishment, which means that the Due Process Clause can be violated when an official does not have subjective awareness that the official's acts (or omissions) have subjected the pretrial detainee to a substantial risk of harm"); *see also* Kate Lambroza, *Pretrial Detainees and the Objective Standard After Kingsley v. Hendrickson*, 58 AM. CRIM. L. REV. 429, 452 (2021).

as a pretrial detainee and is therefore entitled to the protections guaranteed to him under the Fourteenth Amendment. Rec. at 6. When viewing Failure-to-Protect claims under a subjective standard, the Eighth Amendment creates an excessively restrictive obstacle for pretrial detainees to overcome. The insistence of Mr. Shelby to prove subjective deliberate indifference confines his right to due process to protection solely against cruel and unusual punishment. Because Mr. Shelby was not convicted of his most recently alleged crimes at the time he was attacked, his protection from cruel and unusual punishment has not been enabled. *Id*.

However, *Kingsley* still entitles him to protection under the Fourteenth Amendment from objective unreasonableness that amounts to punishment. *Kingsley*, 576 U.S. at 397. *Kingsley* recognized that the application of Eighth Amendment interpretation to pretrial detainee claims is improper, and extending the objective reasonableness standard to Failure-to-Protect claims keeps to the original purpose of the Due Process Clause. *Id.* at 400–401. Thus, the Fourteenth Circuit was correct in ruling the Fourteenth Amendment extends beyond cruel and unusual punishment. Therefore, this Court should eliminate the requirement for pretrial detainees to prove subjective intent and apply *Kingsley's* objective unreasonableness standard to Failure-to-Protect claims.

2. Petitioner's failure to utilize abundant available information regarding Mr. Shelby's at-risk status for several days qualifies as objectively unreasonable conduct.

Circuits extending *Kingsley* to pretrial detainees are aware of this distinction between the Eighth Amendment's protection of already convicted criminals and the expanded due process protections available to pretrial detainees. The Ninth Circuit held that *Kingsley* extended to Failure-to-Protect claims after a pretrial detainee suffered injuries resulting from a prison official placing the detainee in the same confinement as a violent inmate. *Castro*, 833 F.3d at 1071. The court here determined that the amount of preventative information abundantly available to the

guard prior to his placing of the two inmates together, resulting in the pretrial detainee's injuries, amounted to objectively unreasonable conduct. *Id*. The Ninth Circuit found that an objective unreasonableness standard was consistent with both *Bell* and the Fourteenth Amendment because each protects pretrial detainees from all forms of punishment, not just punishment under the more restrictive context of cruel and unusual punishment. *Bell*, 441 U.S. at 535. To support that the Fourteenth Amendment applies to a claim of excessive force, the Ninth Circuit created a four part test to determine if a prison guard's behavior was objectively unreasonable. *Id*.

First, the court investigated whether the prison official engaged in an intentional and deliberate act with respect to the situation or conditions that the pretrial detainee was subjected to. *Id*. This examines if a defendant was compelled or forced by an external variable that could have caused the pretrial detainee's eventual harm.[13] The second element investigates if the new conditions placed the pretrial detainee in a situation where there was a substantial risk of harm. *Id*. Third, whether the prison guard took "reasonable and *available* measures to abate the risk" and if a reasonable officer in the same position would have "appreciated the high degree of risk involved." *Id*. (emphasis added). Finally, whether the prison official caused the plaintiff's injuries by not taking these protective measures. *Id*.

Here, all four elements of the Ninth Circuit's test are found in the present situation. Petitioner deliberately and intentionally acted when he approached Mr. Shelby's cell, asked him if he wanted to go to the recreation area of Marshall jail, and escorted him accordingly. Rec. at 6. Second, it is without question that placing Mr. Shelby in confinement with members of the rival

[13] *Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015) ("[I]f 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. But if the use of force is deliberate—*i.e.*, purposeful or knowing—the pretrial detainee's claim may proceed.").

Bonucci clan, who had openly indicated that they intended to seriously hurt Mr. Shelby, put him at significant risk of suffering harm. *Id.*

The third element is the most crucial, because the amount of available resources at the petitioner's disposal prior to Mr. Shelby's attack is where Petitioner's objectively unreasonable conduct took place. The Fourteenth Circuit correctly acknowledged that the petitioner did not attend the gang intelligence officer meeting warning Marshall jail staff of the Bonucci clan's intention to hurt Mr. Shelby. Rec. at 18. The lower court also noted correctly that the petitioner had access to an enormous amount of information and failed to recognize every warning sign that would have prevented Mr. Shelby's unfortunate confrontation with the Bonucci clan. *Id.*

The Fourteenth Circuit did not include, however, that the information regarding Mr. Shelby and the Bonucci clan was available to the petitioner for more than a week. Rec. at 6. Because the Marshall jail's database experienced a glitch, it's impossible to determine whether Petitioner reviewed the minutes of the meeting informing jail officials on Mr. Shelby's at-risk status. *Id.* This single factor is what elevates the petitioner's conduct from mere negligence to objectively unreasonable conduct. If Petitioner had reviewed the minutes as he was required, then he would have had actual knowledge of Mr. Shelby's risk of attack by the Bonucci clan and this Failure-to-Protect claim would meet the requirement of deliberate indifference. If Petitioner did not review the minutes, failing to follow a direct order from a superior authority and avoiding the plethora of available information, then his behavior is objectively unreasonable.[14] The fourth element determining whether the petitioner caused Mr. Shelby's injuries can be answered by utilizing a

[14] The ability for Petitioner to avoid information regarding Mr. Shelby's status for several days despite the numerous written notices throughout the facility, the detailed instructions about Mr. Shelby Petitioner was carrying with him while conducting his work responsibilities, and the inevitable chatter between jail employees following the intelligence officers meeting approaches implausibility to a degree that borders on astounding. Rec. at 6–7.

simple causation analysis. If not for the petitioner's following of Marshall jail orders and the review of Mr. Shelby's at-risk status available to him for several days, Mr. Shelby would not have been severely beaten by members of the Bonucci clan. Rec. at 7.

Kingsley's objective unreasonableness standard extends not to the petitioner's actual knowledge of Mr. Shelby's criminal history or gang affiliation, but to the knowledge a reasonable officer in the petitioner's position would have had if he was in the same situation. It's evident that a reasonable prison guard in the petitioner's situation would have followed the protocols set forth by the Marshall jail and thus been aware of Mr. Shelby's at-risk status. These behaviors are objectively unreasonable regardless of whether the petitioner intended for Mr. Shelby to suffer severe injuries. An extension of *Kingsley* to Mr. Shelby's Failure-to-Protect claim appropriately aligns with the true purpose of protecting an individual's due process rights. Because the petitioner's actions fall under this unreasonable classification, this Court should follow the same compass as the Ninth Circuit in *Castro* and extend the *Kingsley* unreasonableness standard to Mr. Shelby's Failure-to-Protect claim, without consideration of whether the petitioner intended to inflict harm.

B. Objective Unreasonableness Grants Protection To Prison Officials While Aligning With The Intended Purpose Of The Fourteenth Amendment And This Court's Precedent Sets A Higher Standard Than Mere Negligence.

Circuits denying the expansion of *Kingsley* to Failure-to-Protect claims have expressed concern that applying an objective standard will result in incorrect awards to prisoner-plaintiffs in instances of mere officer negligence.[15] However, this Court in *Kingsley* provided an intuitive

[15] *See Leal v. Wiles*, 734 F.App'x 905, 910–11 (5th Cir. 2018) (arguing that protections under the Fourteenth Amendment are not triggered by an officer's negligent action, even in the event of an objective risk to inmate safety.); *Edwards v. Northampton Cnty.*, 663 F.App'x 132, 137 (3d Cir. 2016) ("[n]egligence and malpractice do not constitute Eighth Amendment violations" when evaluating a pretrial detainee's § 1983 action alleging unclean conditions that caused a methicillin-

framework to avoid conflating negligence, a standard that creates improper grounds for liability under a § 1983 action, with objective unreasonableness. The first prong of *Kingsley* investigates the defendant's intentional physical movements that brought about the consequences suffered by the plaintiff. *Kingsley*, 576 U.S. at 395. In order for liability to be imposed, the prison official must have engaged in a deliberate act. *Id*. *Kingsley's* objective standard protects prison officials from liability in negligence actions in instances of prisoner harm that were the result of an inadvertent error. *Id*. at 396. Demonstrating that if an officer truly was unable to avoid the resulting injury due to something outside the realm of his control, he would not be held liable for negligent conduct. *Id*. This shifts Failure-to-Protect claims from the act of omission, that would normally constitute as negligence, to the objectively unreasonable conduct by the prison official that results in a pretrial detainee's injury. The Second, Seventh, and Ninth Circuits have applied this reasoning to expand the objective unreasonableness standard to pretrial detainee claims and in each instance provided protection for prison officials from liability for mere negligence.[16]

Here, Mr. Shelby provided that the petitioner engaged in an intentional act when he deliberately retrieved Mr. Shelby from his holding cell to bring him to recreation. Rec. at 6. This act by itself would constitute as mere negligence, if not for the objectively unreasonable conduct

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resistant Staphylococcus aureus (Staph) inflection requiring extensive medical treatment); *Nam Dang ex rel. Vina Dang v. Sheriff, Seminole Cnty*., 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) ("in [this] case, as tragic as the facts are, all we have is, at most, negligence. So regardless of whether *Kingsley* could be construed to have affected the standard for pretrial detainees claims involving inadequate medical treatment due to deliberate indifference, whatever any resulting standard might be, it could not affect [this] case.").

[16] *See Darnell v. Piniero*, 849 F.3d 17, 30 (2d Cir. 2017) (arguing that a detainee must prove beyond mere negligence that a prison official acted either intentionally or recklessly); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 354 (7th Cir. 2018) (specifying that negligence was not the issue of a § 1983 action after the medical staff of a prison used a "wait-and-see" method to treat a pretrial detainee that was incredibly sick); *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2018) (determining that a pretrial detainee asserting a due process claim explicitly must prove more than mere negligence in order to succeed on a failure-to-protect claim).

by the petitioner that led to Mr. Shelby's injuries. There were no errors on the part of the petitioner that caused Mr. Shelby's injuries that were not outside the realm of the petitioner's control. Petitioner sequestering members of the rival Bonucci clan in close proximity with Mr. Shelby was the result of the petitioner's objectively unreasonable disregard of all aforementioned resources abundantly available before the incident took place. *Id*. A consideration that Petitioner lacked the actual knowledge required to meet a subjective deliberate indifference standard does not abscond his intentional actions leading to Mr. Shelby's injuries, elevating the present situation from negligence into objectively unreasonable behavior. This Court should hold that this kind of deliberate action resulting in pretrial detainees being subjected to preventable injuries merits the application of the *Kingsley* objective unreasonableness standard.

C. Circuits Applying A Subjective Intent Standard Improperly Rely On Precedent That Supports Applying Objective Unreasonableness And Avoids A Deeper Examination Of The Pretrial Detainee's Failure-To-Protect Claim.

To support an application of a subjective standard, the Fifth, Eighth, and Eleventh Circuits have heavily relied on rulings from two cases.[17] Along with holding that a prisoner's condition must be related to a legitimate government purpose, this Court determined in *Bell* that policy practice regarding the detention conditions of pretrial detainees is examined as whether "those conditions or restrictions amount to punishment of the detainee." *Bell*, 441 U.S. at 560. Additionally, this Court held in *Farmer* that Failure-to-Protect claims asserted by convicted

[17] *See Hare v. City of Corinth*, 74 F.3d 633, 641 (5th Cir. 1996) (arguing *Bell* and *Farmer* instruct that confinements rationally related to a government objective exclusively apply to jail policy); *Butler v. Fletcher*, 465 F.3d 340, 345 (8th Cir. 2006) (relying on *Bell* and *Farmer* to apply a subjective deliberate indifference standard under the Eighth Amendment to claims brought by prisoners without regard to whether they were convicted inmates or a pretrial detainee); *Campbell v. Sikes*, 169 F.3d 1353, 1374 (11th Cir. 1999) (utilizing *Bell* and *Farmer* to argue that prison officials should be granted a wide-ranging deference in the execution of practices necessary to keep order when evaluating an officials subjective intent).

criminals must prove a prison official exhibited deliberate indifference to the risk posed to the convicted criminal, thus requiring the use of a subjective standard when evaluating an excessive force claim. *Farmer v. Brennan*, 511 U.S. 834, 838 (1994). To be found guilty of deliberate indifference, there must be evidence that the prison official had actual knowledge of the substantial risk to a pretrial detainee. However, as previously discussed, this Court in *Kingsley* outlined that a subjective standard more appropriately applies to Eighth Amendment claims, rather than those asserted under the broader protections of the Fourteenth Amendment. *Kingsley*, 576 U.S. at 402.

1. The Bell ruling applies to policy driven confinement issues, not isolated incidents resulting from preventable errors by prison officials.

This Court in *Kingsley* explicitly stated that "*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. Rather, as *Bell* itself shows (and as [this Court's] later precedent affirms), a pretrial detainee can prevail by providing *only* objective evidence." *Kingsley* 576 U.S. at 398 (emphasis added). Despite this Court's language regarding the proper interpretation of *Bell*, Circuits have been split on how to apply *Bell's* ruling to Failure-to-Protect claims. The Fifth Circuit's interpretation of *Bell* and *Farmer* applying the subjective indifference standard to Failure-to-Protect claims under the Eighth Amendment was first discussed in *Hare*. *Hare v. City of Corinth, Miss*., 74 F.3d 633, 636 (5th Cir. 1996).

There, the estate of a detainee who had committed suicide while imprisoned in a city jail filed a § 1983 claim alleging that officials failed to protect the detainee and thus violated her due process rights. *Id*. The Fifth Circuit created a distinction between policy-based treatment versus isolated incidents of violating pretrial detainee's due process rights that restricted *Bell* to a subjective interpretation. *Id*. at 641. This interpretation predates *Kingsley* but yet is still being relied on by the Fifth Circuit for analyzing Failure-to-Protect claims, even if the reliance on *Hare*

is revealing its obsolescence to other members of the Fifth Circuit. *See Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 420 (5th Cir. 2017).[18] Under the *Farmer* rationale, the Fifth Circuit in *Leal* narrowed *Kingsley* to purely a subjective standard ruling that a prison official was not deliberately indifferent because the pretrial detainee could not prove the official had actual knowledge the detainee was the target of a gang attack before confining both individuals together. *Leal v. Wiles*, 734 Fed.App'x. 905, 910 (5th Cir. 2018). In both cases, the Fifth Circuit misapplied *Bell's* holding that the pretrial detainee's treatment must be "rationally related" to a legitimate government interest and limits it to scenarios intended to act as punishment. This fails to recognize that this Court's holding in *Bell* was referring to the *practice* of double-bunking pretrial detainees as a policy concern that did not amount to a violation of due process. *Bell*, 441 U.S. at 541.

Where, as here, Mr. Shelby's injuries were not the result of a fault stemming from the Marshall jail's operating procedures. The policies regarding the treatment of pretrial detainees at the Marshall jail reveal a strict application of numerous measures in place to ensure the protection of any prisoner's due process rights.[19] The cause of Mr. Shelby's confrontation with the Bonucci clan was purely from the petitioner's disregarding of the Marshall jail policy that otherwise would have prevented Mr. Shelby's injuries. Rec. at 6–7. If the petitioner had followed protocols as he had been instructed, he would have known the imminent danger posed to Mr. Shelby if he were placed in close proximity with members of the Bonucci clan. Because Mr. Shelby's injuries were

[18] *See Alderson*, 848 F.3d at 419 (Footnote 4 of Justice Graves' opinion notes the concurring opinion's concern with the Fifth Circuit's continued reliance on *Hare* post-*Kingsley*, despite the conflicting language of the two rulings, suggests that *Kingsley* would likely require the adoption of an objective standard for Failure-to-Protect claims).

[19] The rigorous upkeep of the jail's online database, the gang intelligence department observing the presence of gang activity within the Marshall Jail, and the special notices throughout the facility signaling the Bonucci clan's target on Mr. Shelby, reinforce that the cause of Mr. Shelby's injuries were not related to a lapse in the jail's policies. Rec. at 4–5.

purely brought on by the petitioner's objectively unreasonable behavior, an application of a subjective standard to a pretrial detainee's Failure-to-Protect claim would be inappropriate. The Fifth Circuit's interpretation of both rules cannot be logically applied to the present situation, and therefore allow for this Court to extend *Kingsley's* objective unreasonableness test to Mr. Shelby's § 1983 claim.

2. An insistence on applying a subjective standard regarding failure to protect claims allows courts to circumvent deeper analysis of legitimate due process violations.

The language and nature of the Cruel and Unusual Punishment Clause and the Due Process Clause are meant to be viewed under different standards of interpretation. *Kingsley*, 576 U.S. at 400. It is no question that the Eighth Amendment protection from cruel and unusual punishment requires both an expressed intent to punish and that it must be "maliciously and sadistically [inflicted] to cause harm." *Id*. When a prisoner's action alleges a violation of their Eighth Amendment rights, a proper conclusion is reached by assessing the offender's subjective intent. *Id*. at 401. The Third, Fifth, and Eleventh Circuits strengthen their insistence to use a subjective standard by reasoning that any attempts to extend *Kingsley* to pretrial detainees quickly fail because the detainee has only supported their facts with offenses that amount to mere negligence. *See Moore v. Luffey*, 767 F.App'x 335, 340 (3d Cir. 2019) (arguing that a pretrial detainee's argument to apply *Kingsley* failed because the plaintiff's complaint only amounted to negligence); *see also Leal v. Wiles*, 734 F.App'x 905, 910–11 (5th Cir. 2018); *Nam Dang ex rel. Vina Dang v. Sheriff, Seminole Cnty*., 871 F.3d 1272, 1279 n.2 (11th Cir. 2017).

When Circuits jump the gun to quickly determine a pretrial detainee's complaint only asserts a claim of negligence, they avoid a deeper analysis of the prisoner's action that may uncover a pretrial detainee actually meets the objective unreasonableness standard. In these situations, there is first an analysis of the subjective intent of the defendant before an evaluation of objective

reasonableness. *Moore*, 767 F.App'x at 340. By analyzing the objective reasonableness of a prison official's treatment of a pretrial detainee after first judging the officer's subjective intent, the pretrial detainee's § 1983 action is reduced to a claim of negligence before a court can determine if an officer's conduct was unreasonable. Other courts, such as the Sixth Circuit, understand that the objective standard requires courts to "pay careful attention to the different status of pretrial detainees" know that the Due Process Clause grants additional protections that allow for unreasonable conduct to elevate above a negligent action. *Westmoreland v. Butler Cnty*., 29 F.4th 721, 729 (6th Cir. 2022).

The Eleventh Circuit exposed this circumvention of deeper analysis in *Nam Dang ex. rel. Vina Dang v. Sheriff, Seminole County*. 871 F.3d at 1280. There, a pretrial detainee's inadequate medical care claim failed because the court determined the plaintiff had not met a subjective deliberate indifference standard. *Id*. However, the Eleventh Circuit explicitly pointed out that there was no deliberation whether to apply an objective standard after finding that the defendant lacked subjective intent needed to satisfy deliberate indifference. *Id*. The court reached the conclusion that applying an objective standard could not change the outcome of the case because the plaintiff's assertion of negligence failed to progress through the subjective deliberate indifference test, and disregarded that objective reasonableness is a standard that exists between negligence and subjective intent. *Id*.

Here, a similarly quick assumption that Mr. Shelby only argues a claim of negligence would constitute a legitimate violation of his due process rights. The Fourteenth Circuit properly deduced through careful consideration of the facts that Mr. Shelby's § 1983 action meets the requirements of the objective unreasonableness standard outlined in *Kingsley*. This Court must affirm the Fourteenth Circuit's decision to extend *Kingsley's* objective unreasonableness standard

to pretrial detainees because the Due Process Clause instructs the meticulous evaluation of a § 1983 action if there is even the slightest indication that a wrong has taken place.

CONCLUSION

The ultimate purpose of the PLRA was to allow for the processing of ripe prisoner-plaintiff actions and to filter out claims that could clog the judicial system. The "three-strikes" rule is integral in the implementation of this filtration process, but not all dismissals of prisoner-plaintiff actions constitute as a strike within the meaning of the PLRA. Mr. Shelby's three dismissals under *Heck* were required without consideration of the legitimacy of his § 1983 action because the claims called into question the validity of his underlying conviction. Because the record contains no evidence that Mr. Shelby's claims were frivolous, malicious, or failed to state a claim upon which relief may be granted, his dismissals under *Heck* cannot categorically count as strikes within the meaning of the PLRA.

Furthermore, the objective unreasonableness standard outlined in *Kingsley* extends beyond excessive force claims to protect pretrial detainees under the Due Process Clause of the Fourteenth Amendment. Petitioner's intentional act of retrieving Mr. Shelby and placing him in close confinement to immediately be attacked by the Bonucci clan, despite the plentiful preventative resources available to the petitioner establishes objectively unreasonable conduct. This Court recognized in *Kingsley* that the Fourteenth Amendment encompasses a criminal's safeguard from cruel and unusual punishment and expands to protect pretrial detainees from objectively unreasonable officer conduct in Failure-to-Protect § 1983 claims.

For the reasons set forth, Respondent prays this Court affirm the holding of the Fourteenth Circuit Court of Appeals.

Respectfully submitted this 2nd day of February 2024.

/s/ Team 34

TEAM 34
ATTORNEYS FOR RESPONDENT

APPENDIX A:

The Prisoner Litigation Reform Act

42 U.S.C. § 1915 (West 2024)

§ 1915. Proceedings in forma pauperis

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that —

(A) the allegation of poverty is untrue; or

(B) the action or appeal —

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.