CAUSE NO. 23-05

**IN THE**

# Supreme Court of the United States

OCTOBER TERM 2023

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**CHESTER CAMPBELL,**
***Petitioner*,**

**—VERSUS—**

**ARTHUR SHELBY,**
***Respondent*.**

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

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ORAL ARGUMENT REQUESTED

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**UNITED STATES SUPREME COURT CASES:**

**CIRCUIT COURT CASES:**

**DISTRICT COURT CASES:**

**CONSTITUTIONAL PROVISIONS:**



**STATUTES:**



**RULES:**



**SECONDARY AUTHORITIES:**

## QUESTIONS PRESENTED

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

II. Does this Court's decision in *Kingsley* eliminate the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment due process rights in a 42 U.S.C. § 1983 action?

## OPINIONS BELOW

The United States District Court of Wythe district judge's order denying Respondent's motion to proceed in forma pauperis is unreported. R. at 1. The district judge's opinion dismissing Respondent's 42 U.S.C. § 1983 civil rights case is unreported. R. at 2–11. The opinion of the United States Court of Appeals for the Fourteenth Circuit reversing the district court opinion is unreported. R. at 12–20.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. CONST. amend. VIII.

"No State shall make or enforce any law which shall 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 any person within its jurisdiction the equal protection of laws." U.S. CONST. amend. XIV.

Section 1915 of Title 28 of the United States Code governs in forma pauperis proceedings applicable to prisoners and pretrial detainees, stating: "[A]ny 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 thereof, by a person who submits an affidavit that includes statement of all assets such prisoner possess that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1).

Subsection (g) of Section 1915 limits a prisoner's ability to obtain in forma pauperis status, providing: "In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more 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 was 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).

Section 1983 of Title 42 of the United States Code states in pertinent part: "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." 42 U.S.C. § 1983.

## STATEMENT OF THE CASE

### Respondent's Prior Criminal History

Arthur Shelby (Respondent) possesses an extensive criminal record which includes several arrests and prior convictions. R. at 3. While serving his most recent prison sentence, Respondent filed three civil rights lawsuits under 42 U.S.C. § 1983 against various government officials. *Id.* Each action called into question the validity of Respondent's conviction. *Id.* Pursuant to *Heck v. Humphrey*, all three cases were dismissed.

### Respondent is Booked and Processed into Marshall Jail

Most recently, Respondent was arrested on December 31, 2020, for battery, assault, and possession of a firearm by a convicted felon. R. at 3. Respondent was subsequently booked and processed into Marshall jail to await trial, making him a pretrial detainee. R. at 4. The booking officer included information on the jail's database regarding Respondent's gang affiliation. *Id.* Gang intelligence officers edited the database to reflect an unconfirmed attack sanctioned on Respondent by a rival gang, the Bonucci clan. R. at 6.

### Officer Campbell Oversees Inmate Transfer

On January 8, 2021, Officer Campbell retrieved Respondent from cell block A during a cell transfer; however, he neglected to refer to the list of inmate statuses provided by the jail. R. at 6. Additionally, Officer Campbell did not recognize Respondent as a member of the Geeky Binders. *Id.* Officer Campbell then retrieved inmates from cell blocks B and C who, unbenknownst to Officer Campbell, were members of the Bonucci clan. R. at 7. Shortly after, the Bonucci clan members attacked Respondent. *Id.* Officer Campbell attempted to break up the fight, but it continued for several minutes until other guards arrived. *Id.* Respondent suffered various injuries. *Id.*

**Respondent's Civil Rights Action Under 42 U.S.C. § 1983 is Dismissed.**

On February 24, 2022, Respondent filed a civil rights action under 42 U.S.C. § 1983, alleging Officer Campbell failed to protect Respondent's safety. R. at 13. Respondent also filed a motion to proceed in forma pauperis which the District Court of Wythe denied on April 20, 2022, finding Respondent's prior dismissals pursuant to *Heck* constituted a strike under 28 U.S.C. § 1915(g). *Id.* On May 4, 2022, Officer Campbell filed a motion to dismiss the § 1983 suit for failure to state a claim, which was granted by the district court on July 14, 2022. R. at 7, 13. The district court found the subjective standard from *Farmer v. Brennan* applied to pretrial detainee failure-to-protect claims under § 1983. R. at 8. Further, the district court found Officer Campbell lacked actual knowledge of a substantial risk of harm to Respondent and was not deliberately indifferent to Respondent's constitutional rights. R. at 11.

**Respondent Appeals Both the Denial of His Motion to Proceed In Forma Pauperis and Dismissal of His § 1983 Action.**

In the Fourteenth Circuit Court of Appeals, Respondent appealed both the denial of his motion to proceed in forma pauperis and the dismissal of his § 1983 action. R. at 13. The Fourteenth Circuit reversed the district court on both issues. *Id.* The appellate court held a prior dismissal pursuant to *Heck* did not constitute a strike under 28 U.S.C. § 1915(g). R. at 14. As such, the appellate court held Respondent was permitted to proceed in forma pauperis. R. at 15. Furthermore, the appellate court concluded the standard provided in *Farmer* was limited to convicted prisoners. R. at 16–18. Because Respondent was a pretrial detainee at the time of the attack, the appellate court held the objective standard from *Kingsley v. Hendrickson* applied to pretrial detainee failure-to-protect claims. 576 U.S. 389 (2015); R. at 18. Judge Solomons dissented, stating the *Kingsley* standard applied solely to excessive force cases. R. at 18–19.

This appeal followed. R. at 21.

## SUMMARY OF THE ARGUMENT

### I.

Respondent cannot proceed in forma pauperis because he has accumulated three strikes under 28 U.S.C. § 1915(g). In *Heck v. Humphrey*, this Court held a prisoner must prove favorable termination of their underlying conviction by showing their conviction is invalid, expunged, or otherwise called into question by a court before they can maintain a civil rights action. Therefore, favorable termination is an element a prisoner must allege and prove to state a claim for relief under 42 U.S.C. § 1983. Accordingly, a dismissal pursuant to *Heck* constitutes a dismissal for a failure to state a claim. Respondent previously filed three § 1983 suits which were dismissed pursuant to *Heck*. Therefore, Respondent exhausted his strikes and cannot proceed in forma pauperis. Even if favorable termination is not an element of § 1983, Respondent's dismissals count as frivolous and malicious strikes because he unsuccessfully filed repetitive claims arising from the same incident. Finally, Respondent does not qualify for the imminent danger exception under § 1915(g) because he does not face an ongoing threat.

### II.

Respondent's § 1983 failure-to-protect claim is governed by the subjective intent standard promulgated in *Farmer v. Brennan*. A failure-to-protect claim often involves omissions rather than affirmative actions, making intent the focal point of the inquiry. On the other hand, excessive force claims involve affirmative actions, making reasonableness the key inquiry. As such, state of mind cannot be presumed in a failure-to-protect case and courts must assess an officer's actual knowledge. Additionally, a subjective standard is consistent with the Fourteenth Amendment because a pretrial detainee, like Respondent, cannot be punished under the Due Process Clause. In these instances, the Eighth Amendment, which requires subjective intent, informs the

application of due process. Here, Officer Campbell lacked any knowledge of an excessive risk of harm to Respondent. Therefore, he did not violate Respondent's constitutional rights. However, even if this Court applies the objective standard from *Kingsley v. Hendrickson*, Respondent's claim fails because Officer Campbell's actions amount to nothing more than mere negligence.

## ARGUMENT

### I. A DISMISSAL PURSUANT TO *HECK V. HUMPHREY* CONSTITUTES A STRIKE UNDER 28 U.S.C. § 1915(g).

In *Heck v. Humphrey*, the Supreme Court expounded on the minimum requirements a prisoner must demonstrate to file and maintain a civil action for damages under 42 U.S.C. § 1983 while incarcerated. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (emphasizing its holding is limited to plaintiffs seeking monetary relief, not injunctive relief or release from custody). Specifically, this Court explained a prisoner does not possess a valid § 1983 claim if a "judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id*. Thus, if a § 1983 plaintiff brings a claim for monetary damages bearing a relationship to their conviction, a district court "must dismiss" the action as invalid. *Id*.

One year after *Heck*, Congress passed the Prison Litigation Reform Act of 1995 (PLRA) to prevent frivolous prisoner lawsuits.[1] B. Patrick Costello, Jr., *"Imminent Danger" Within 28 U.S.C. § 1915(g) of the Prison Litigation Reform Act: Are Congress and Courts Being Realistic?*, 29 J. LEGIS. 1, 1 (2002). The PLRA possesses two goals—(1) clarify the judicial role in governing prison conditions and (2) provide a case management system for complaints advanced by individual prisoners. Ostrom et. al., *Congress, Courts and Corrections: An Empirical Perspective on the Prison Litigation Reform Act*, 78 NOTRE DAME L. REV. 1525, 1525–26 (2003). Pursuant to the second goal, the PLRA placed stringent requirements on achieving in forma

[1] Prior to the passage of the PLRA, "state prisoners challenging the conditions of their confinement accounted for the single largest category of civil lawsuits filed in U.S. district courts." Brian J. Ostrom et. al., *Congress, Courts and Corrections: An Empirical Perspective on the Prison Litigation Reform Act*, 78 NOTRE DAME L. REV. 1525, 1525–26 (2003). The number of prisoner suits peaked in 1996, just before the PLRA went into effect, and represented "one in every six federal civil lawsuits filed that year." *Id.* Prisoner-plaintiffs were successful in only 1.4% of cases. *Id.*

pauperis[2] (IFP) status for indigent prisoners. *Id.* at 1528; *see also* 28 U.S.C. § 1915 (covering IFP proceedings). Importantly, the PLRA established the "three strikes" rule. 28 U.S.C. § 1915(g). This rule bars a prisoner from proceeding IFP in a civil action if three of the prisoner's prior cases were dismissed as (1) frivolous, (2) malicious, or (3) for failure to state a claim upon which relief may be granted. *See id.* (providing one exception to the three strikes rule when the prisoner faces imminent danger of harm); *see also Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (emphasizing Congress's "recognition that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits"). As such, a dismissal will only count as a strike if it falls into one of the three categories identified in the statute. *Id.*

After the PLRA was enacted, a majority of the circuit courts recognized a dismissal based on failure to comply with *Heck* counted as a strike, impacting the determination of a prisoner's IFP request. *See, e.g.*, *Garrett v. Murphy*, 17 F.4th 419 (3d Cir. 2021) (following the Fifth, Tenth, and D.C. Circuits in holding a *Heck* dismissal constitutes a strike).[3] Because the Respondent here filed three § 1983 suits that were dismissed pursuant to *Heck*, the district court below correctly found the Respondent struck out and is precluded from obtaining IFP status. R. at 3.

### A. A District Court's Interpretation of the PLRA Three Strikes Provision is Reviewed De Novo.

What constitutes a strike under the PLRA is a question of law. *Blakey v. Wards*, 701 F.3d 995, 998 (4th Cir. 2012). As such, a lower court's interpretation and application of the provision

[2] A prisoner who files to proceed IFP "seeks to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security thereof." 28 U.S.C. § 1915(2).
[3] Opinions from the Eighth Circuit indicate that it will likely join the view that a *Heck* dismissal counts as a strike for failure to state a claim. *See, e.g., Kurtenbach v. Reliance Tel. Servs.*, No. 21-cv-2376, 2021 WL 5784722 at *2–3 (D. Minn. 2021) (finding the rationale in *Garrett v. Murphy* convincing).

is reviewed de novo, including the court's issuance of a strike. *Richey v. Dahne*, 807 F.3d 1202, 1206 (9th Cir. 2015). Here, the Respondent moved to proceed IFP on February 24, 2022. R. at 13. The district court determined that because the Respondent's prior dismissals were all pursuant to *Heck*, they counted as strikes under the PLRA. R. at 1, 3. Therefore, the district court's determination of strikes and subsequent denial of the Respondent's IFP request should be reviewed de novo. *Howard*, 642 Fed. Appx. at 943.

Additionally, a court construes a pro se plaintiff's pleadings liberally. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding pro se litigants to a "less stringent" standard). However, "liberality of interpretation must never become advocacy of position." *Lorensen v. United States*, 236 F.R.D. 553, 557 (D. Wyo. 2006). Pro se plaintiffs must nevertheless comply with fundamental requirements of the Federal Rules of Civil Procedure (FRCP) just as represented parties would. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10th Cir. 2005) ("[W]e cannot fill the void by crafting arguments and performing the necessary legal research."). When the pleadings are insufficient even under the less stringent pro se standard, a dismissal is required. *Id.*

### B. A Dismissal Pursuant to *Heck* Constitutes a Failure to State a Claim Because Favorable Termination is An Element Under § 1983.

In *Heck*, this Court determined what differentiates a civil rights suit from a habeas corpus action. *Heck*, 512 U.S. at 480. There, Heck was serving a prison sentence for manslaughter. *Id.* at 478–79. During this time, he filed a pro se § 1983 suit against various government officials who handled his investigation and trial. *Id.* at 479. Specifically, Heck claimed government officials knowingly destroyed evidence and engaged in an unlawful investigation. *Id.* Importantly, Heck's suit sought monetary damages rather than injunctive relief or release from custody. *Id.* However, because Heck's case challenged the validity of his conviction, this Court was faced with

determining whether a § 1983 action was the appropriate avenue to effectuate Heck's challenge while his conviction remained valid. *Id.* at 480. Ultimately, this Court held:

> In order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.

*Id.* at 486–87. Because Heck's § 1983 suit challenged the legality of his conviction, this Court dismissed the action, holding it was not cognizable. *Id.* at 490.

Thus, a dismissal pursuant to *Heck* is a dismissal for failure to state a claim because favorable termination is an element of a successful § 1983 claim, not an affirmative defense or mechanism for judicial traffic control.

#### *a. A § 1983 Claim is Analogous to Malicious Prosecution Which Requires Favorable Termination.*

This Court further explained in *Heck* that a § 1983 claim "creates a species of tort." *Heck*, 512 U.S. at 483. Relying on the rules developed for common law torts, this Court likened § 1983 claims to the common law cause of action for malicious prosecution because § 1983 and malicious prosecution both permit "damages for confinement imposed pursuant to the legal process." *Id.* Specifically, this Court highlighted one critical element for this tort—"termination of the prior criminal proceeding in favor of the accused." *See id.* (requiring the element be alleged and proven). Based on the similarities between the two causes of action, this Court adopted what is now known as the favorable termination requirement for § 1983 claims. *Id.* at 487. While the Court did not specifically label the requirement an element, most circuit courts have read it as such. *See, e.g.*, *Colvin v. LeBlanc*, 2 F.4th 494, 499 (5th Cir. 2021) (holding *Heck* impacts a prisoner's ability to state a claim); *Garrett*, 17 F.4th at 428 (holding *Heck* dismissals constitute a

strike). These circuits dismiss a prisoner's § 1983 case if the underlying conviction remains valid, assessing a strike under the PLRA for failure to state a claim. *Id.*; *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011).

Viewing a prisoner's failure to prove favorable termination as a strike is consistent with this Court's interpretation of *Heck*. *Garrett*, 17 F.4th at 428. In fact, this Court in *McDonough v. Smith* applied the reasoning from *Heck* to clarify when a § 1983 claim accrues.[4] *McDonough v. Smith*, 139 S. Ct. 2149, 2158 (2019). This Court emphasized there is "not a complete and present cause of action" to challenge criminal proceedings "while those criminal proceedings are ongoing." *Id.* at 2158. In *McDonough*, the plaintiff alleged the defendant, an investigator in the case, fabricated evidence to secure an indictment against the plaintiff. *Id.* at 2153. Again, this Court compared the plaintiff's cause of action to malicious prosecution, highlighting the pragmatic concerns of not imposing a favorable termination requirement. *Id.* at 1256 (emphasizing the importance of finality and consistency of judgments to the judicial system). By adopting the principles laid out in *Heck*, this Court announced that the statute of limitations for claims challenging a criminal proceeding do not begin to run until the proceedings are resolved in favor of the plaintiff. *Id.* at 2158. Without such resolution, the plaintiff cannot state a § 1983 claim. *See id.* (directing plaintiffs to seek collateral review through appeal rather than a civil action).

The Ninth Circuit recognizes *Heck* dismissals may count as a strike but, if and only if, the pleadings for the underlying claim present an "obvious bar to securing relief." *Washington v. Los*

[4] This Court distinguished *Heck* from *Wallace v. Kato* where the Court held illegal arrest claims challenging the constitutionality of an arrest under the Fourth Amendment may accrue prior to termination of the underlying criminal proceedings. *McDonough*, 139 S. Ct. at 2158. This Court carefully noted that such cases may fall outside the ambits of the *Heck* favorable termination requirement because false-arrest claims are more analogous to false-imprisonment rather than malicious prosecution. *Id.* at 2159.

*Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016) (refusing to hold favorable termination is a necessary element of a § 1983 claim). However, that limitation ignores the scope of a § 1983 action. If a plaintiff cannot prove their conviction or sentence is invalid for a qualifying reason, then it is clear from the face of the pleadings the plaintiff does not have a cause of action. *Heck*, 512 U.S at 489 (stating the Supreme Court was denying "the existence of a cause of action"). As the Third Circuit aptly explained in *Garrett v. Murphy*, a cause of action in the *Heck* context is "synonymous with a 'claim' under the PLRA." *Garrett*, 17 F.4th at 427 (citing *Claim*, BLACK'S LAW DICTIONARY (7th ed. 1999)). This is true even when the plaintiff completes their prison sentence. *See Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000) ("[T]he Court unequivocally held that unless an authorized tribunal or executive body has overturned or otherwise invalidated the plaintiff's conviction, his claim 'is not cognizable.'"). Thus, favorable termination is most appropriately characterized as an element of a plaintiff's § 1983 case.

Here, Respondent filed three civil actions against various government parties during his previous incarcerations. R. at 3. All three of the Respondent's actions called into question either his conviction or sentence without showing his conviction was "revoked on direct appeal, expunged by executive order, or declared invalid by a state tribunal . . . or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 487; R. at 3. Because Respondent failed to show favorable termination in all three cases, he lacked a cognizable action. Therefore, all three cases were dismissed for failure to state a claim which constitutes three strikes under the PLRA.

***b. Favorable Termination Is Not an Affirmative Defense.***

Relatedly, the Ninth and Seventh Circuits characterize the favorable termination requirement as an affirmative defense that must be raised by the defendant, rather than an element

of a plaintiff's claim. *Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011); *see also Ray v. Lara*, 31 F.4th 692, 696 (9th Cir. 2022) (applying a burden-shifting scheme); *Washington*, 833 F.3d at 1056. These courts hold compliance with *Heck* "closely resembles mandatory administrative exhaustion of PLRA claims." *Washington*, 833 F.3d at 1056. Because the PLRA is "not a source of a prisoner's claim," this Court treats exhaustion as an affirmative defense that must be raised by the defendant. *Jones v. Bock*, 549 U.S. 199, 212 (2007). However, § 1983 often serves as the source of a prisoner's civil rights action and this Court has consistently held § 1983 "does not require exhaustion." *Id.* Thus, analogizing favorable termination to exhaustion is directly contrary to this Court's precedent.

The *Heck* Court meticulously specified the favorable termination element did not add an exhaustion requirement to § 1983 claims beyond what is congressionally required. *See Heck*, 512 U.S. at 483 (citing *Patsy v. Brd. Of Regents of State of Fla.*, 457 U.S. 496 (1982) (holding "exhaustion of state remedies should not be required as a prerequisite to bringing an action pursuant to § 1983")). Nothing in *Heck* indicates a defendant must first question the validity of a conviction or sentence like a defendant would under the PLRA. *See Day v. McDonough*, 547 U.S. 198, 199 (2006) (referring to exhaustion as a defense for habeas corpus petitioners). Rather, this Court was clear the plaintiff carries the burden of demonstrating the invalidity of a conviction or sentence to maintain a § 1983 suit. *Id.* at 486 (employing the phrase "plaintiff must prove").

To make the Court's point, it compared the facts of *Heck* to *Preiser v. Rodriguez* where the Court concluded habeas corpus proceedings were the exclusive remedy for prisoners attacking the duration or fact of their confinement even if the claim technically fit the terms of § 1983. *Heck*, 512 U.S. at 481 (citing *Preiser v. Rodriquez*, 411 U.S. 475 (1973)). This Court concluded the issue in *Heck* was the same as in *Preiser*: whether a prisoner possessed a claim at all. *Id.* at 483.

Although exhaustion of state remedies is necessary to some extent for habeas corpus claims, this Court noted *Preiser* "did not create an exception to the 'no exhaustion' rule of § 1983." *Id.* at 481. Rather, this Court explained *Preiser* held certain prisoner claims are not recognized under § 1983 and must be brought in habeas corpus proceedings where exhaustion is required. *Id.* In either case, it is the plaintiff's burden to prove they have met the requirements to state a claim. Thus, favorable termination is an element required to state a claim under § 1983.

Here, the Fourteenth Court of Appeals held "*Heck* only temporarily prevents courts from addressing the underlying merits of the inmate's § 1983 claim." R. at 15. Because of this temporary impediment, the court below determined favorable termination cannot be an element of a § 1983 claim. *Id.* Thus, the lower court held failure to prove favorable termination cannot amount to a failure to state a claim. *Id.* However, because the proper remedy for an individual challenging the validity of their conviction is a habeas corpus petition, favorable termination is necessary to prevent "collateral attack[s] on [a] conviction through the vehicle of a civil suit." *Heck*, 512 U.S. at 484. If favorable termination constituted a mere defense, failure to raise it would allow § 1983 claims to proceed and potentially lead to conflicting court judgments. *Id.* (recognizing strong judicial policy "against creation of two conflicting resolutions arising out of the same or identical transaction").

***c. A Dismissal Pursuant to Heck is Not Jurisdictional.***

The First and Eleventh Circuits view *Heck*'s favorable termination requirement as both an element and a component of a court's subject matter jurisdiction. *O'Brien v. Town of Bellingham*, 943 F.3d 514, 529 (1st Cir. 2019); *Harrigan v. Metro Dade Police Department Station #4*, 977 F.3d 1185, 1192 (11th Cir. 2020). While the First Circuit has not provided an explanation for its characterization of *Heck*, the Eleventh Circuit focuses on logical necessity. *Compare O'Brien*,

943 F.3d at 529 (pointing to a Black's Law definition of cognizable which utilizes the word "jurisdiction" as one way to describe cognizable), *with Harrigan*, 977 F.3d at 1192 (concentrating on "logical necessity"). Under this approach, "so long as 'there still exists a construction of the facts that would allow the underlying [punishment] to stand,' a § 1983 suit may proceed. *Dixon v. Hodges*, 887 F.3d 1235, 1238 (11th Cir. 2018). This approach misconstrues *Heck* and the traditional principles of subject matter jurisdiction.

Dismissals pursuant to subject matter jurisdiction and dismissals for failure to state a claim operate similarly but have distinct impacts on an individual's IFP request. Federal courts may examine the basis of subject matter jurisdiction at any point in a case, even on appeal. *Union Planters Bank Nat. Ass'n v. Salih*, 369 F.3d 457, 557 (5th Cir. 2004) (stating "federal courts are duty-bound"). Subject matter jurisdiction sets forth the types of cases a court has the power to adjudicate. *Id.* Any judicial correction based on a lack of subject matter jurisdiction requires dismissal pursuant to FRCP 12(b)(1). *Id.*; FED. R. CIV. P. 12(b)(1). Thus, these dismissals do not constitute a strike under the PLRA. *See* 28 U.S.C. § 1915(g) (providing the three strike grounds for frivolous or malicious cases and for cases that fail to state a claim).

Similarly, the sufficiency of a plaintiff's pleading may be reviewed sua sponte[5] by a federal court. *Lozano v. Ocwen Fed. Bank, FSB*, 489 F.3d 636, 642–43 (5th Cir. 2007) (holding notice prior to dismissal is not always required, "as long as the plaintiff has alleged his 'best case'"). Review of the adequacy of a claim is governed by FRCP 12(b)(6) which requires a plaintiff allege facts that, taken as true, raise a right to relief. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 575 (2007) (requiring the pleadings be more than speculative); FED. R. CIV. P. 12(b)(6). This judicial

[5] A district court may dismiss a plaintiff's cases on its own failure to state a claim motion where "the plaintiff[] cannot win relief." *Sparling v. Hoffman Consr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988).

check allows a court to ascertain the manner and type of remedy sought by a plaintiff and to ensure "a permanent judgment will result." *Bell Atl. Corp.*, 550 U.S. at 575 (internal quotations omitted). The PLRA employs a review like FRCP 12(b)(6) when determining strikes based on a failure to state a claim, issuing a strike for insufficient pleadings. *Colvin*, 2 F.4th at 497. Therefore, "the absence of a valid . . . cause of action does not implicate [subject matter] jurisdiction." *Garret*, 17 F.4th at 428.

*Heck* defined the scope of a § 1983 claim, not a court's power to hear a § 1983 claim. *Compare Colvin*, 2 F.4th at 498 (holding *Heck* does not present a jurisdictional hurdle), *with Dixon v. Hodges*, 887 F.3d at 1237 (holding *Heck* "strips a district court of jurisdiction in a § 1983 suit"). That power is well-settled and well-defined. *See Hagans v. Lavine*, 415 U.S. 528, 538 (1974) (stating § 1983 "unquestionably authorize[s] federal courts to entertain suits to redress the deprivation, under color of state law, of constitutional rights"). Rather, *Heck* and its progeny discussed the requirements a plaintiff must prove to maintain their civil challenge. *Colvin*, 2 F.4th at 498; *Ortiz v. N.J. State Police*, 747 Fed. Appx. 73, 77 (3d Cir. 2018). Namely, *Heck* mandates a prisoner prove the underlying conviction is invalid before vindicating any constitutional violations through a civil suit. *Heck*, 512 U.S. at 487. Thus, *Heck* affects a prisoner's ability to state a claim, not the jurisdiction of a court.

Some circuits hold the *Heck* rule operates as "judicial traffic control." *Washington*, 833 F.3d at 1056; *Polzin*, 636 F.3d at 838. While these circuits agree *Heck* is not jurisdictional, they nevertheless hold courts may bypass the impediment created by the favorable termination requirement in *Heck* and determine the merits of a prisoner's case. *Polzin*, 636 F.3d at 838. Based on this ability to bypass, these circuits reason favorable termination cannot be an element of a prisoner's § 1983. The Fourteenth Court of Appeals took a similar position in this case, holding

favorable termination is not an element of a prisoner's § 1983 suit. R. at 15. However, federal courts exercise the power to look beyond insufficient pleadings in a narrow and exceedingly rare circumstance. This Court took care in *Heck* to identify that circumstance as abstention. *See Heck*, 512 U.S. at 487, n.8 (noting abstention is not appropriate in all § 1983 claims).[6] Even if this Court wanted to consider abstention, the record indicates the Respondent has three prior dismissals. R. at 3, 13. Abstention will not save the Respondent's IFP request here.

### C. A Dismissal Pursuant to *Heck* May Also Qualify as Strike for Other Qualifying Reasons.

This Court has explained that a claim may be dismissed for a combination of reasons under the PLRA. *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1726 (2020). According to this Court, the objective of the PLRA is to cull both meritless and abusive claims. *Id.* As such, a *Heck* dismissal may also be considered frivolous or malicious under certain circumstances.

#### *a. A Case May be Dismissed Under Heck as Frivolous.*

A claim is frivolous under the PLRA "if it is based on an indisputably meritless legal theory." *Northington v. Jackson*, 973 F.2d 1518, 1520 (10th Cir. 1992). Several circuit courts hold "a § 1983 claim which falls under the rule in *Heck* is legally frivolous unless the conviction or sentence at issue has been reversed, expunged, invalidated, or otherwise called into question." *Hamilton v. Lyons*, 74 F.3d 99, 102 (5th Cir. 1996); *see also Saunders v. Bright*, 281 Fed. Appx. 83, 85 (3d Cir. 2008) (concluding a prisoner's suit lacked arguable basis because there was no

[6] Abstention is only appropriate where (1) the state proceeding will render the federal case moot; (2) when the case involves difficult questions of state law impacting policy of "substantial public import;" (3) in criminal proceedings where the plaintiff seeks an injunction; and (4) where parallel proceedings will significantly impact judicial resources. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814–17 (1976). Because this Court stated it was denying a cause of action in the absence of favorable termination and that it would only proceed without the requirement in limited circumstances, favorable termination is appropriately characterized as an element of a § 1983 claim.

favorable termination of the underlying criminal conviction). *Contra Washington*, 833 F.3d at 1055 (holding *Heck* dismissals are not categorically frivolous). Complaints may also be dismissed as frivolous if they seek to "relitigate claims that allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the plaintiff." *Wilson v. Lynaugh*, 878 F.2d 846, 850 (5th Cir. 1989).

Here, during Respondent's most recent detention, he filed three § 1983 claims against several government officials, challenging his conviction or sentence. R. at 3. The first suit was dismissed under *Heck* because Respondent failed to prove favorable termination which is "legally frivolous." *Hamilton*, 74 F.3d at 102; R. at 3. After the first suit was dismissed under *Heck*, Respondent was on notice of the requirements necessary to maintain a civil action while convicted. R at 3; *see also Gowadia v. Sorenson*, No. 14-00288, 2014 WL 3579657 at *5 (D. Haw. 2014) (explaining the plaintiff received "unequivocal notice that he may not allege [his claims] in a civil action until his conviction has been overturned, reverse or expunged"). Each subsequent suit faced a similar result under *Heck*. R. at 3. While the record does not reveal the exact nature of each previous claim, this Court can infer they all centered around his most recent conviction. Thus, all of Respondent's claims likely arose from a common series of events and were all unsuccessfully litigated by Respondent. Therefore, Respondent's three *Heck* dismissals may also constitute strikes under the PLRA because they are frivolous.

***b. A Case May be Dismissed Under Heck as Malicious.***

A prisoner's lawsuit may be considered malicious for purposes of the PLRA "if it duplicates allegations made in another federal lawsuit by the same plaintiff." *Pittman v. Moore*, 980 F.2d 994, 994 (5th Cir. 1993); *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (explaining claims may be abusive if they merely repeat prior complaints). Thus, a court must look to the

plaintiff's prior complaints and litigious conduct. *Cochran v. Morris*, 73 F.3d 1310, 1316–17 (4th Cir. 1996). If the complaint repeats previously litigated claims, it will be considered abusive and dismissed as malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988).

Once again, Respondent advanced duplicative allegations in three federal civil lawsuits. R. at 3. Although Respondent sued various defendants, each suit was a § 1983 claim challenging his prior conviction or sentence. *See Bailey*, 846 F.2d at 1021 (recognizing a suit may be malicious even if the plaintiff sues different defendants on repeat claims). Each claim was subsequently dismissed because it failed to conform with this Court's requirements in *Heck*. R. at 3, 13. Consequently, Respondent's *Heck* dismissals also count as strikes because his prior suits were malicious and abusive of the judicial process.

**c. *The Imminent Danger Exception to the PLRA Does Not Apply Here.***

The PLRA offers one exception to the three strikes provision—when the prisoner faces "imminent danger of serious physical injury." 28 U.S.C. § 1915(g). The present tense use of "imminent danger" in the statute demonstrates the prisoner must show they are presently in danger when filing for relief. *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998). Thus, allegations of past threats are insufficient to trigger the imminent danger exception. *Id.*

Furthermore, the Eleventh Circuit explained in *Medberry v. Butler* that the alleged events forming the basis of a prisoner's complaint are insufficient to prove imminent danger without more. *Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir. 1999). In that case, the plaintiff was in prison for sexual battery. *Id.* at 1191. The plaintiff expressed concerns to jail staff regarding his placement in general population. *Id.* Particularly, the plaintiff feared for his safety because other inmates viewed those convicted of sexual crimes with disdain. *Id.* Eventually, the plaintiff was physically assaulted. *Id.* Afterward, the plaintiff filed a civil rights action and sought IFP status

under the PLRA. *Id.* The court held the plaintiff exhausted his three strikes under the PLRA and that his complaint was insufficient for the imminent danger exception to apply. *Id.* at 1191–92. Specifically, the court explained to trigger the imminent danger exception, a plaintiff must allege an "ongoing danger." *Id.* at 1193. Because prison staff placed the plaintiff in a different cell from his attackers, the court concluded plaintiff was no longer in danger. *Id.*

Here, Respondent's complaint similarly lacks sufficient information to trigger the imminent danger exception to the PLRA. The facts forming Respondent's § 1983 claim are the only facts indicating danger or a threat to Respondent's life. R. at 6–7. The threat ceased when the fight ceased. R. at 6. In fact, the record indicates Respondent—like the plaintiff in *Medberry*—is housed in a different cell block from members of the Bonucci clan, showing he is not at risk of an ongoing danger from another attack. R. at 5; *Medberry*, 185 F.3d at 1191. Therefore, Respondent does not qualify for IFP status through the imminent danger exception.

## II. FAILURE-TO-PROTECT CLAIMS UNDER SECTION 1983 MUST BE ANALYZED UNDER A SUBJECTIVE STANDARD.

Section 1983 of Title 42 of the United States Code provides a judicial avenue for individuals to enforce their constitutional rights against both federal and state government entities and actors. 42 U.S.C. § 1983; *see also* MARTIN SCHWARTZ & KRIS MARKARIAN, SECTION 1983 LITIGATION 1–2 (3rd ed.) (summarizing the statute's legislative history). The statute provides in relevant part:

> 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 . . . .

42 U.S.C. § 1983. This Court has recognized three purposes of the statue—(1) "override certain kinds of state laws;" (2) "provide a remedy where state law [is] inadequate;" and (3) "provide a federal remedy where the state remedy, though adequate in theory, [is] not available in practice." *Monroe v. Pape*, 365 U.S. 167, 173–74 (1961).

Notably, this Court differentiates between arrestees, pretrial detainees, and convicted prisoners when reviewing the applicability and remedies available under § 1983. *See, e.g., Turner v. Oklahoma Cnty. Bd. of Cnty. Comm'r*, 804 Fed. Appx. 921, 925 (10th Cir. 2020) (noting which constitutional amendment governs pretrial detainee claims). Thus, the source of a litigant's right depends on their status at the time of the alleged unconstitutional action. *See Cottone v. Jenne*, 326 F.3d 1352, 1357 (11th Cir. 2003) (applying the Fourteenth Amendment to the plaintiff's case because violations occurred while he was a pretrial detainee). The Fourth Amendment applies to arrestees and seized individuals. *See Graham v. Connor*, 490 U.S. 1865, 1871 (1989) (holding the Fourth Amendment applies in the "context of an arrest or investigatory stop of a free citizen"). The Fourteenth Amendment Due Process Clause generally applies to pretrial detainees.[7] *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (holding due process governs challenges to pretrial detention). Finally, the Eighth Amendment applies to convicted prisoners. *Ingraham v. Wright*, 430 U.S. 651, 669 (1977) (explaining the Eighth Amendment applies when an individual is deprived of freedom, which typically occurs post-conviction).

Because Respondent was a pretrial detainee at the time of the alleged unconstitutional violation, his claim will be reviewed consistent with this class of individuals under § 1983. A

[7] The Fourteenth Amendment incorporated the Fourth and Eighth Amendments to the states, allowing § 1983 claims to proceed against state and local government officials. *See* U.S. CONST. amend. XIV § 1 ("No State shall . . . deprive any person of life, liberty . . . without due process of law."); *see also Monroe*, 365 U.S. at 176 (recognizing § 1983's remedy was aimed at both a state and those who represent the state).

pretrial detainee possesses a right to reasonable safety from "violence at the hands of other prisoners." *Nelson v. Tompkins*, No. 22-14205, 2024 U.S. App. LEXIS 337 at *19 (11th Cir. 2024) (internal quotations omitted); *see also Cottone*, 326 F.3d at 1357 n.4 ("[T]he standard for providing basic human needs to those incarcerated or in detention is the same under both the Eighth and Fourteenth Amendments."). Thus, prison officers have a "duty under the Constitution to take reasonable action to protect prisoners." *Nelson*, 2024 U.S. App. LEXIS 337 at *19. If a prison official fails to uphold their duty to protect, an individual may bring suit under § 1983 for failure to protect. *Id.* When a pretrial detainee alleges a failure-to-protect claim, the detainee must show the defendant acted with deliberate indifference to their constitutional right. *Goodman v. Kimbrough*, 718 F.3d 1325, 1332 (11th Cir. 2013).

In *Farmer v. Brennan*, this Court held deliberate indifference has both a subjective and objective component in the context of a failure-to-protect claim. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (explaining the standard as it relates to the Eighth Amendment). This Court explained it finds culpability where (1) the plaintiff's deprivation is objectively serious and (2) the defendant possesses a "sufficiently culpable state of mind." *Id.* (requiring the prison official to have actual knowledge of a substantial risk of harm). However, this Court does not apply the subjective intent component to all deliberate indifference claims brought by a pretrial detainee. *Kingsley v. Hendrickson*, 567 U.S. 389, 396 (2015).

In *Kingsley v. Hendrickson* this Court held a plaintiff in excessive force cases need only prove an official's conduct was objectively unreasonable. *Id.* After *Kingsley*, some circuit courts adopted the objective standard for all pretrial detainee claims, not just excessive force cases. *See Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1068 (9th Cir. 2016) (adopting the objective test announced in *Kingsley*). Many circuit courts, however, continue to apply a subjective standard in

failure-to-protect cases, finding *Kingsley*'s objective standard provided a narrow limitation, applicable solely to excessive force claims. *See, e.g., Leal v. Wiles*, 734 Fed. Appx. 905, 909 (5th Cir. 2018) (requiring subjective intent). Because Respondent here brought a failure-to-protect claim, the district court below correctly held the subjective intent standard laid out in *Farmer* applies to this case. R. at 9.

### A. *Kingsley* Involved Wholly Different Conduct that Warranted a Different Standard.

In *Farmer*, this Court defined deliberate indifference as it relates to a § 1983 claim for failure-to-protect. *Farmer*, 511 U.S. at 835. This Court explained deliberate indifference "describes a state of mind more blameworthy than negligence." *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). Thus, liability under § 1983 requires the defendant's actions rise above the "lack of due care" needed to prevail on a mere negligence claim. *Id.* Likening deliberate indifference to criminal recklessness, this Court held a plaintiff must show the defendant knew of and "disregard[ed] an excessive risk to inmate health or safety." *Id.* at 837. Thus, the official (1) must be aware of sufficient facts to draw an inference of a substantial risk of harm and (2) draw the inference. *Id.* (explaining civil-law recklessness does not amount to punishment).

This Court acknowledged in *Farmer* how the deliberate indifference standard is inappropriate in excessive force cases. *Farmer*, 511 U.S. at 835 (describing cases where "officials stand accused of using excessive physical force" as a separate class). This Court suggested excessive force claims required "a knowing willingness that harm occur." *Id.* at 836. While *Kingsley* later abrogated *Farmer* to the extent it suggested a "very high state of mind," the Court's opinion in *Farmer* nevertheless recognizes excessive force cases fall into a category separate from a failure-to-protect claim. *Id.* As the dissent from the Fourteenth Circuit below recognized, a court can infer punishment is intended if deliberate actions are in excess of a legitimate government

objective. R. at 20 (citing *Kingsley*, 576 U.S. at 398). In fact, this Court noted "there is no dispute" in excessive force cases as to an officer's state of mind "with respect to bringing about . . . certain physical consequences in the world." *Kingsley*, 576 U.S. at 395. Thus, the issue in excessive force cases focus on reasonableness, calling for an objective standard. *Id.* at 399 (recognizing "safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face").

Failure-to-protect claims, however, often involve omissions or failures to a rather than affirmative acts. *See, e.g.*, *Walton v. Dawson*, 752 F.3d 1109, 1114 (8th Cir. 2014) (alleging prison guards failed to lock an inmate's door which allowed his assaulters to enter the cell). As such, failure-to-protect claims demand a different standard—one that requires actual knowledge and subjective intent.

***a. Respondent's Claim Fails under a Subjective Standard.***

Officer Campbell's actions here do not rise to the level of deliberate indifference sufficient to find liability under § 1983. Regarding the first prong for deliberate indifference, an official's level of knowledge regarding a substantial risk of harm is a question of fact "subject to demonstration in usual ways, including inference from circumstantial evidence." *Farmer*, 511 U.S. at 842. While obviousness of a risk may establish knowledge, it is not conclusive. *Id.* An official may nevertheless lack knowledge if they can show "that obviousness escaped [them]." *Id.* at 843 n.8. "It is not enough merely to find that a reasonable person would have known." *Id.* If a prison official is unaware of a substantial risk, this Court has held they "cannot be said to have inflicted punishment." *Id.* at 844.

An examination of caselaw is useful in ascertaining the requisite level of knowledge for deliberate indifference. In *Caldwell v. Warden, FCI Talladega*, the Eleventh Circuit held the

defendant jailers undoubtedly possessed sufficient knowledge of a substantial risk of harm. *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1100 (11th Cir. 2014). There, the plaintiff was housed with another inmate, Pinson, who expressed his strong desire not to have a cellmate. *Id.* at 1093. In response to Pinson's objection, one officer stated, "kill him" and "I don't care." *Id.* at 1094. After jail staff informed Pinson they were placing the plaintiff in his cell, Pinson started a fire in their cell. *Id.* Prison staff nevertheless returned plaintiff to the cell after assessing his injuries and Pinson subsequently attacked him again. *Id.* at 1095. After the second attack, prison staff disclosed in a report that Pinson's violent tendencies and assaultive behavior were well-known throughout the jail prior to the first attack. *Id.* at 1096. Based on these facts, the court held it was permissible to infer prison staff knew Pinson would be violent and that he specifically targeted the plaintiff. *Id* at 1101.

Conversely, in *Verdecia v. Adams*, the Tenth Circuit held officers lacked sufficient knowledge of a substantial risk of harm to the prisoner-plaintiff. *Verdecia v. Adams*, 327 F.3d 1171, 1175 (10th Cir. 2003). There, the plaintiff was of Cuban descent and was placed in a special housing unit with two other inmates who were members of a well-known Latin gang. *Id.* at 1173. The plaintiff requested transfer to another housing unit because he feared for his safety. *Id.* Before the plaintiff could be transferred, he was attacked by his cellmates. *Id.* The plaintiff alleged jail staff should have known placing an individual of Cuban descent with members of a Latin gang would result in an altercation. *Id.* at 1174. To support his contention, the plaintiff pointed to a previous attack in the jail that involved a Cuban individual and a member of the Latin gang. *Id.* The Tenth Circuit, however, determined the previous attack and knowledge about the Latin gang were insufficient to establish actual knowledge of a substantial risk of harm to the plaintiff's safety. *Id.* at 1175. While the officers were aware of a risk of harm, the court explained the plaintiff

needed to present evidence supporting an inference that the defendants "knew about a substantial risk of serious harm to [*the plaintiff's*] safety." *Id.* (emphasis added). In essence, the risk must be individualized.

Here, Respondent's case is most analogous to the facts in *Verdecia*. The record provides sufficient facts to indicate Officer Campbell lacked knowledge of an excessive risk of harm to the Respondent's safety. Officer Campbell was a new jailer, indicating he possessed less exposure to Respondent and other members of Respondent's gang. R. at 5–6. Jail timesheets indicate Officer Campbell was absent when the gang intelligence officers hosted a meeting about Respondent's gang affiliation. R. at 5. (revealing Officer Campbell's name conversely appeared on the attendance records for the meeting). Additionally, the record shows Officer Campbell did not obtain information about Respondent's risk status by other means. *Id.* Specifically, system records do not reveal Officer Campbell viewed the meeting notes from the gang intelligence meeting or the jail's database which warehoused Respondent's information. *Id.* Although Officer Campbell possessed a list of at-risk inmates, he failed to reference the list when conducting the transfer of Respondent. R. at 6. While Officer Campbell may generally be aware of the Geeky Binders and Bonucci clan, there are insufficient facts to suggest the risk to Respondent was so obvious as to put Officer Campbell on notice of its threat. This minimal exposure to the information about Respondent is not enough to impose constructive knowledge on Officer Campbell—the obviousness escaped him just as it escaped the officers in *Verdecia*. 327 F.3d at 1175. As such, Officer Campbell lacked knowledge of a substantial risk of harm to the Respondent based on Respondent's gang affiliation.

The second prong of deliberate indifference requires the government official to knowingly disregard a risk. *See Farmer*, 511 U.S. at 835 (requiring that the defendant draw the inference).

Deliberate indifference does not require the government official to purposefully intend for harm to precipitate to the prisoner. *Id.* Rather, "recklessly disregarding the risk" is sufficient for a court to find liability. *Id.* at 836. In the context of a prison fight, "[a] prison official acts with deliberate indifference . . . when the official is present at the time of an assault and fails to intervene or otherwise act to end the assault." *Williams v. Mueller*, 13 F.3d 1214, 1216 (8th Cir. 1994).

Here, even if Officer Campbell was aware of Respondent's gang affiliation, the second element for deliberate indifference is not satisfied. Most importantly, Officer Campbell did not recognize Respondent when he conducted the cell transfers. R. at 6. Additionally, Officer Campbell could not draw an inference of gang violence because the individuals who shouted at Respondent in cell block A did not express gang affiliation or suggest Respondent's safety was at risk. R. at 6. This was the first attack on Respondent by the Bonucci clan. R. at 5. In fact, the gang intelligence officers assumed the clan would attack Respondent based on an unconfirmed tip. *Id.* Further, Officer Campbell is an entry-level guard at Marshall jail and is not a member of the gang intelligence unit, indicating he lacks the wisdom of a more experienced officer. R. at 5 (noting Officer Campbell was nevertheless properly trained and met job expectations). Indeed, Officer Campbell was hired because he is untainted by the Bonucci clan's influence. R. at 3 (revealing Marshall jail recently fired all personnel affiliated with the Bonucci clan). As soon as the fight broke out, Officer Campbell attempted to break up the men, potentially saving Respondent's life. *Id.* at 7. An officer with a longer tenure at Marshall jail certainly would be more likely to perceive such a risk and respond in a different manner. However, Officer Campbell's lack of actual knowledge and minimal experience do not point to a culpable state of mind commensurate with deliberate indifference.

***b. Even if this Court Applies an Objective Standard, Respondent's Claim Fails.***

This Court noted in both *Kingsley* and *Farmer* that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *Kingsley*, 576 U.S. at 396; *see also Farmer*, 511 U.S. at 835 (stating "deliberate indifference entails something more than mere negligence"). Allowing pretrial detainees and other prisoners to proceed with a § 1983 claim predicated on mere negligence would "make the Fourteenth Amendment a font of tort law to be superimposed upon" actions a state may already have jurisdiction over. *Paul v. Davis*, 424 U.S. 693, 701 (1976).

In *Freedman v. City of Allentown*, the Third Circuit succinctly explained what conduct constitutes mere negligence in the failure-to-protect context. *Freedman v. Cty. of Allentown*, 853 F.2d 1111, 1114–15 (3d Cir. 1988). There, the decedent's estate brought a civil rights action after the prisoner-decedent committed suicide while in the custody of the state. *Id.* at 1113. The decedent's estate alleged officers "knew or should have known" the decedent posed a risk of suicide. *Id.* The complaint stated officers should have recognized scars from suicide attempts when they processed the decedent upon her arrival at the jail. *Id.* at 1115. Noting mere negligence is insufficient to sustain a § 1983 suit, the Third Circuit compared the estate's case to another suicide case, *Colburn v. Upper Darby Township*, where the court found liability. *Id.* (citing *Colburn v. Upper Darby Twp.*, 838 F.2d 663 (3d Cir. 1988)). In *Colburn*, officers recognized suicide scars and interacted significantly with the deceased prisoner, especially in scenarios where the prisoner attempted to take her life. *Id.* at 1116. In comparison, the court in *Freedman* found the officers' actions amount to nothing more than negligence. *Id.* Even if officers recognized the

decedent's scars as suicide hesitation marks, the court explained the decedent's estate needed to proffer more evidence to prove deliberate indifference. *Id.*

Respondent's allegations at this stage of the litigation, if taken as true, are substantially similar to those in *Freedman*.[8] Although the attack on Respondent was tragic, the facts alleged in Respondent's complaint rise to negligence at most. Thus, even if this Court applied the objective standard from *Kingsley*, Respondent's claim fails. Officer Campbell's failure to check the list of at-risk inmates is similar to the officers in *Freedman* failing to recognize suicide attempt scars. *Freedman*, 853 F.2d at 115; R. at 6. Even if Officer Campbell was aware of the tumultuous relationship between the Bonucci clan and the Geeky Binders, Officer Campbell did not recognize Respondent or the members of the Bonucci clan that attacked Respondent. R. at 5. The record is devoid of any evidence to suggest the Bonucci clan attempted to attack Respondent to provide a foundation of knowledge like there was in *Colburn*. *See Freedman*, 853 F.2d at 115 (discussing the facts of *Colburn v. Upper Darby Twp.*). Accordingly, more evidence is required to elevate Officer Campbell's actions beyond a level of mere negligence.

Because negligence is a cause of action at common law, a state court is equipped to provide an adequate remedy for the Respondent. *See* 42 U.S.C. § 1983 (providing a federal remedy where an adequate remedy is not available in state court). Furthermore, the presence of a state remedy reveals the Respondent was not deprived of due process of law. *See Parratt v. Taylor*, 451 U.S. 527, 536–37 (1981) (holding because the state provided a tort for a prisoner's lost property, a § 1983 case was improper). As such, the district court below correctly dismissed Respondent's § 1983 claim. R. at 11.

[8] A court reviews the grant or denial of a motion to dismiss de novo. *Cox v. Nobles*, 15 F.4th 1350, 1354 (11th Cir. 2021). Additionally, a court accepts allegations in the complaint as true and construes them in the light most favorable to the plaintiff. *Id.*

### B. Deliberate Indifference Requires the Court to Analyze a Defendant's State of Mind.

The subjective standard announced in *Farmer* is the appropriate standard to apply to pretrial detainee failure-to-protect claims such as this one because it is consistent with the Due Process Clause and this Court's interpretation of cases challenging actions or omissions by state actors.

#### *a. A Subjective Intent Standard is Consistent with the Due Process Clause.*

The court of appeals below incorrectly held the objective standard provided by *Kingsley* is the appropriate standard for analyzing a pretrial detainee's failure-to-protect claim because it aligns with the rights protected by the Due Process Clause. R. at 16. To reach this conclusion, the lower court explained "pretrial detainees are afforded stronger constitutional protections than convicted prisoners under the Eighth Amendment." R at 16. This reasoning overlooks the purpose of both the Fourteenth and Eighth Amendments. Each amendment protects critical rights of an individual as they move through the criminal system, attaching at different stages of an individual's case. *Bell*, 441 U.S. at 335–36. The Fourteenth Amendment recognizes the government may place limited restraints on an individual's liberty after a judicial determination of probable cause.[9] *Id.* at 356. On the other hand, the Eighth Amendment acknowledges the government's ability to reasonably punish an individual after they have been "adjudged guilty of [a] crime." *Id.*

Whether or not an individual is convicted or awaiting trial, similar constitutional rights may be at issue while they are held in prison. For example, both amendments may address

[9] The right to due process has "been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Deliberate deprivation "comports with the notion that the Due Process Clause, like its predecessor, the Magna Carta, was designed to prevent abuses of government power, not simply a lack of due care." Brief for National Troopers Coalition, et.al. as Amici Curiae Supporting Petitioner, Lewis Cnty. v. Helphenstine, No. 23-259, 2023 WL 6940221 (2023).

punishment that goes beyond the strictures of the Constitution. *See Bell*, 441 U.S. at 545 (recognizing pretrial detainees "retain at least those constitutional rights that we have held are enjoyed by convicted prisoners"). In these cases, this Court imposes a subjective standard where the Eighth Amendment undoubtedly applies. *Farmer*, 511 U.S. at 835. However, deliberate indifference claims brought under the Fourteenth Amendment are subjected to an identical standard utilized for Eighth Amendment cases. *See, e.g., Turner*, 804 Fed. Appx. at 925 (quoting *Farmer*, 511 U.S. at 828 (providing the applicable standard for convicted prisoner § 1983 claims under the Eighth Amendment)). In fact, this Court has recognized the "due process rights of a [pretrial detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner." *Cty. of Revere v. Massachusetts Gen. Hospital*, 463 U.S. 239, 244 (1983). Additionally, adopting a subjective standard for pretrial detainee due process claims is consistent with this Court's principle that the clause was "meant to prevent 'abusive government conduct.'" *Hare v. City of Corinth*, 74 F.3d 633, 645 (5th Cir. 1996). Thus, requiring a defendant to possess actual knowledge of a risk of harm to the detainee is consistent with the Due Process Clause.

In *Hamm v. Dekalb*, the Eleventh Circuit aptly explained why pretrial detainee claims must be held to the same standard as convicted prisoner claims. *Hamm v. Dekalb Cnty.*, 774 F.2d 1567, 1573–74 (11th Cir. 1985). While the court there recognized the Eighth and Fourteenth Amendments apply in different contexts, the court explained "with respect to basic necessities to individuals in the state's custody, the two provisions necessarily yield the same result." *Id.* at 1574 (acknowledging a jail cannot impose conditions on a pretrial detainee that are volitive of the Eighth Amendment); *see also Bell*, 441 U.S. at 545 (forbidding conditions that "amount to punishment"). Applying different standards to each amendment would "require courts to evaluate details of slight differences in conditions." *Hamm*, 774 F.2d at 1574 (noting

correctional facilities nationwide contain both pretrial detainees and convicted prisoners). "Life and health are just as precious to convicted persons as to pretrial detainees." *Id.* Thus, the court held the government's duty to provide minimal necessities for pretrial detainees—including the duty to protect—can be defined by the standard applicable to convicted prisoners under the Eighth Amendment. *Id.*

Looking to the Eighth Amendment, this Court has rejected an interpretation "that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane conditions." *Farmer*, 511 U.S. at 838. In fact, this Court refused to find liability for prison officials where the official was unaware of a substantial risk to an inmate even though the risk was "obvious and a reasonable prison official would have noticed it." *Id.* at 842. As a result, this Court mandates an examination of a government official's state of mind before imposing liability for cruel and unusual punishment. *Wilson v. Seiter*, 501 U.S. 294, 299 (1991); *see also Kennedy v. Medoza-Martinez*, 372 U.S. 144, 168–69 (1963) (explaining punishment requires scienter). Because the Eight Amendment standard informs the application of the Fourteenth Amendment in pretrial detainee cases, subjective intent is consistent with the Due Process Clause. Accordingly, the subjective standard laid out in *Farmer* is the appropriate standard for pretrial detainee failure-to-protect claims.

***b. A Subjective Intent Standard is Consistent with Circuit Court Interpretation of Act or Omission Cases.***

Furthermore, a subjective intent standard is consistent with the treatment of deliberate indifference cases predicated on an act or omission, rather than conditions of confinement. This Court forbids intentionally inflicting harm upon a pretrial detainee, finding such actions violate the Due Process Clause. *Bell*, 441 U.S. at 535. Measuring the scope of a pretrial detainee's right under the Fourteenth Amendment depends on whether the detainee challenges the condition of

confinement or an "episodic act or omission of an individual state official." *In re Estate of Henson*, 795 F.3d 456, 462 (5th Cir. 2011). When a detainee's harm is caused by a particular act or omission, the relevant inquiry is "whether the official breached his constitutional duty" to protect the detainee. *Scott v. Moore*, 114 F.3d 51, 53 (5th Cir. 1997). Because an act or omission claim focuses on individual conduct, "the detainee is required to prove intent." *Sheppard v. Dallas Cnty.*, 591 F.3d 445, 452 (5th Cir. 2009). Under these circumstances, intentionality by the defendant is not presumed because there is no sanctioned conduct by the state. *Hare*, 74 F.3d at 645. A government official acts intentionally when their conduct is deliberate and aimed at chastising or deterring a prisoner. *Kingsley*, 576 U.S. at 405 (Scalia, J., dissenting) (quoting *Wilson v. Seiter*, 501 U.S. at 300 (requiring a culpable state of mind)).

In contrast, when a pretrial detainee challenges the conditions of confinement imposed by the jail or another governmental entity, an objective standard applies. *Castro*, 833 F.3d at 1076. The reason behind using a different standard for individual actors versus entity actors is premised on the mere fact that government entities "do not themselves have states of mind." *Id.* As such, if a plaintiff challenges their conditions of confinement properly, "he is relieved from the burden of demonstrating a municipal entity's or individual jail official's actual intent to punish." *Sheppard*, 591 F.3d at 452. A plaintiff may show unconstitutional conditions through a pattern of acts or omissions; however, "proving pattern is a heavy burden." *Id.* Typically, challenges to conditions of confinement are often proven by showing the conditions are "not reasonably related to a legitimate goal." *Id.* (citing *Bell*, 441 U.S. at 539).

In *Scott v. Moore,* the Fifth Circuit explained the difference between the types of challenges an individual may bring and the consequences of improperly characterizing a claim. *Scott*, 114 F.3d at 54. There, the plaintiff was a pretrial detainee who was sexually assaulted by a jailer.

*Id.* at 52. The plaintiff brought a § 1983 claim, alleging the attack resulted from improper staffing. *Id.* Specifically, the plaintiff argued the jail should have had more female officers on duty to supervise a female pretrial detainee and the jails failure to do so provided an opportunity for the plaintiff's attacker to take advantage of her. *Id.* The plaintiff originally filed suit against both the city and her attacker, but her attacker was dismissed after declaring bankruptcy. *Id.* Because the city remained as the only defendant, the court explained the plaintiff's case was characterized as a challenge to her conditions of confinement. *Id.* at 54. Based on the characterization, the court applied an objective standard and found the jail's policies and procedures were reasonable. *Id.* at 54–55. If the plaintiff's attacker remained a party to the cause of action, her case would have been a challenge to the episodic actions of an individual. *Id.* Under these circumstances, a subjective intent standard would apply, allowing the court to consider her attacker's state of mind and potentially find liability. *Id.*

Here, Respondent's case challenges the episodic omission of Officer Campbell. R. at 8. Respondent does not argue that the conditions or policies of Marshall jail caused his injuries. *Id.* Rather, Respondent argues Officer Campbell's negligent acts allowed other prisoners to attack Respondent. *Id.* This is a challenge to discrete actions of an individual which is properly categorized as an episodic act or omission challenge rather than a challenge to the conditions of his confinement. *Scott*, 114 F.3d at 54 (explaining when facts allege an omission). Because the *Farmer* subjective intent standard is consistent with episodic act or omission cases, subjective intent is the appropriate standard here.

### C. Applying an Objective Standard Would Unduly Hamper Officials in Carrying Out Their Jobs.

Adopting an objective standard would comingle concepts of negligence with constitutional challenges—something this Court has expressly refused to delve into. *See* discussion *supra*

Section I.A.ii (examining this Court's refusal to maintain § 1983 actions based on negligence); *Hare*, 74 U.S. at 650. The objective standard "is redolent with negligence." *Id.* Determining a defendant's state of mind "cannot be inferred from [their] failure to act reasonably." *Id.* If reasonability of action was the sole inquiry for failure-to-protect claims, § 1983 would morph into another federal tort claim act. *Id.* "An act or omission unaccompanied by knowledge of a significant harm might well be something society wishes to discourage." *Farmer*, 511 U.S. 837–38. But the common law reflects these concerns and assures compensation for them. *Id.*

Furthermore, an objective standard exposes officers to more liability, holding them accountable without a culpable state of mind. This will stifle officials in their obligations, causing them to "be timid or distracted in performing their duties as a result of excessive civil rights liability." Jack M. Beerman, *Common Law Elements of the Section 1983 Action*, 71 CHICAGO-KENT L. REV. 695, 698 (1997). Many jails across the United States house both convicted prisoners and pretrial detainees.[10] Within these jails, nurses, social workers, and correctional officers interact with individuals, often unaware of their prisoner status. Brief for Macomb County, et. al. as Amici Curiae Supporting Petitioner, Scott Cnty. v. Brawner, 143 S. Ct. 84 (2022). Utilizing the *Kingsley* objective standard for pretrial detainees and the *Farmer* subjective intent standard for convicted prisoners, puts state officials at risk of inconsistent court rulings. *Id.*

For example, jail staff such as Officer Campbell may have an identical interaction with a pretrial detainee and a convicted prisoner. Regardless of their classification, both individuals will have an identical injury. However, because of the difference in the individual's classifications, the

[10] According to the Prison Policy Initiative, "1,566 state prisons, 98 federal prisons, 3,116 local jails, 1,323 juvenile correctional facilities" house almost two million people. Wendy Sawyer & Peter Wagner, *Mass incarceration: The Whole Pie 2023*, PRISON POLICY INITIATIVE (Mar. 14, 2023), https://www.prisonpolicy.org/reports/pie2023.html [https://perma.cc/C5EV-76JF].

jailer will be subject to differing court judgments. Prison staff cannot be expected to know their responsibilities and duties toward those in their care if at one moment an objective standard applies, and the next moment a subjective standard applies. Because "[r]unning a [jail] is an inordinately difficult undertaking," applying two different standards is arbitrary and infeasible. *Turner v. Safley*, 482 U.S. 78, 84–85 (1987). The *Farmer* subjective standard must apply to both convicted prisoners and pretrial detainees like Respondent.

## CONCLUSION AND PRAYER

For the reasons set forth, this Court should hold a dismissal pursuant to *Heck v. Humphrey* constitutes a strike under the PLRA for purposes of determining a prisoner's IFP status. Additionally, this Court should maintain the subjective intent standard from *Farmer v. Brenan* in pretrial detainee failure-to-protect cases. Accordingly, Petitioner prays this Court reverse the decision of the Court of Appeals for the Fourteenth Circuit and affirm the District Court for the Western District Court of Wythe.

Respectfully submitted this 2nd day of February 2024.

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ATTORNEYS FOR PETITIONER