**No. 23-05**

IN THE

# Supreme Court of the United States

CHESTER CAMPBELL,

*Petitioner,*

*v.*

ARTHUR SHELBY,

*Respondent.*

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

## BRIEF FOR RESPONDENT

TEAM 36
*Counsel of Record*

## QUESTIONS PRESENTED

1. Whether a suit challenging the fact of a prisoner's conviction filed under 42 USC § 1983 dismissed pursuant to *Heck v. Humphrey* constitutes as a "strike" under the Prison Litigation Reform Act's 28 USC § 1915(g) provision, barring a prisoner from filing further claims as to the condition of his imprisonment *in forma pauperis*.

2. Whether a pretrial detainee bringing a Fourteenth Amendment failure to protect claim under 42 USC § 1983 must show that the defendant acted with an objective deliberate indifference to the pretrial detainee's safety.

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## OPINION BELOW

The relevant Fourteenth Circuit Appellate Court opinion below is reported as *Shelby v. Campbell*, No. 2023-5255 (14th Cir. 2023).

## CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

The relevant statutes and constitutional provisions are as follows:

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

28 U.S.C. § 1915(g) (West 1996)

> 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.

42 U.S.C. § 1983 (West 1996)

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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 to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend XIV § 1.

## STATEMENT OF THE CASE

### Arthur Shelby is attacked in Marshall Jail on January 8, 2021

Arthur Shelby was a pretrial detainee at Marshall Jail who had been in custody since December 31, 2020. (R. at 3). On January 8, 2021, Officer Chester Campbell transferred Mr. Shelby and members of the Bonucci gang to the recreation room. (R. at 6). During this transfer, Bonucci gang members attacked Mr. Shelby, beating him with their fists and handmade weapons. (R. at 6-7). The Bonucci gang members assaulted Mr. Shelby for several minutes, hitting him on the head, ribs, and abdomen. (R. at 7). Mr. Shelby sustained life-threatening injuries including a traumatic brain injury which will affect him for the rest of his life. (R. at 7). The attack also left him with several fractures, lung and organ lacerations, abdominal edema, and internal bleeding. (R. at 7). These injuries required a long-term hospital stay, lasting several weeks. (R. at 7).

### Geeky Binders and Bonucci Gang Rivalry

Mr. Shelby is a member and co-founder of the Geeky Binders, a prominent street gang in the town of Marshall. (R. at 2). As a member of the gang, Mr. Shelby has had previous run-ins with law enforcement, resulting in previous convictions and jail stays. (R. at 3). The Geeky Binders have a rivalry with another powerful Marshall gang known as the Bonucci gang. (R. at 3). The Bonucci gang is widely known among Marshall residents and its members exercise a great deal of power over the town. (R. at 3). Luca Bonucci, the leader of the clan, along with other Bonucci members, was housed in the Marshall Jail at the same time as Mr. Shelby. (R. at 3). At the time of Mr. Shelby's arrest, Mr. Bonucci and his gang were seeking revenge on the Geeky Binders for the murder of Bonucci's wife, allegedly perpetrated by Mr. Shelby's brother. (R. at 5). The Bonucci gang specifically targeted Mr. Shelby in the attack. (R. at 5).

**Marshall Jail Gang Intelligence Protocol**

When Marshall police arrested Mr. Shelby on December 31, 2020, he underwent the booking process at Marshall Jail. (R. at 4). A Marshall Jail officer, Dan Mann, conducted Mr. Shelby's booking paperwork. (R. at 4). At the booking stage, officers are required to make digital and paper copies of the paperwork and upload the digital copies into the jail's database. (R. at 4). This database contains a file for each inmate which lists any gang affiliations, charges, medications, and any other important information or data that jail officials would need to know about the person. (R. at 4). Officer Mann followed this important protocol and uploaded Mr. Shelby's information to the database. (R. at 4-5). The database already contained information about Mr. Shelby's gang affiliation based upon his previous arrests. (R. at 5). The gang affiliation section of an inmate's file includes information such as: which gang the inmate is affiliated with, any gang rivalries, and any known gang-related hits placed on the inmate. (R. at 4). Officer Mann updated the gang affiliation section to ensure the information was up to date. (R. at 5).

Because the town of Marshall has a high level of gang activity, Marshall Jail employs several gang intelligence officers to review every inmate's entry in the database. (R. at 4). These officers reviewed and edited Mr. Shelby's file to include information regarding the Bonucci rivalry. (R. at 5). The intelligence officers then left a special note in Mr. Shelby's file and printed out paper notices for every administrative office in the jail. (R. at 5). Intelligence officers also updated the rosters and floor cards at the jail to notify other jail officials of Mr. Shelby's status as a target for a gang-related attack. (R. at 5). The morning after Officer Mann booked Mr. Shelby, gang intelligence officers held a jail-wide meeting to notify officers of Mr. Shelby's presence and status. (R. at 5). The intelligence officers indicated Mr. Shelby would be housed in Cell Block A and the Bonucci members between Cell Blocks B and C. (R. at 5). Officers were

reminded to follow Marshall Jail protocol and review the rosters and floor cards regularly to ensure there was no rival gang contact in the jail's common areas. (R. at 5). These measures were in place to ensure inmate safety.

**Officer Campbell failed to follow Marshall Jail protocol, resulting in Mr. Shelby's severe injuries.**

Officer Campbell, a guard at Marshall Jail, oversaw the transfer of Mr. Shelby to and from the recreation room on January 8, 2021. (R. at 6). On January 1, 2021, jail timesheets indicated that Officer Campbell called in sick. (R. at 5). However, roll call records for the same day indicate that he attended the gang intelligence meeting regarding Mr. Shelby. (R. at 5). Regardless of the roll call sheet's validity, jail policy required any absent officer to review the meeting notes to inform themselves of Mr. Shelby's status. (R. at 5-6). Prior to overseeing Mr. Shelby's transfer, Officer Campbell failed to read any of the floor cards or rosters indicating Mr. Shelby's status. He also did not reference the online database which contained this information. (R. at 6). Officer Campbell also carried a list on his person which included inmates who risked an attack from rival gang members. (R. at 6). This list explicitly stated that the Bonucci clan leader possibly ordered a hit on Mr. Shelby and Mr. Shelby risked an attack from Bonucci clan members. (R. at 6). Despite all this information being available to Officer Campbell, he placed Mr. Shelby in harm's way when transferring him to recreation alongside members of the Bonucci gang. During the transfer, the Bonucci members carried out a planned attack, which could have been avoided had Officer Campbell followed jail protocol. (R. at 7).

**Procedural History**

On February 24, 2024, Mr. Shelby timely filed suit pursuant to 42 U.S.C. § 1983 against Officer Campbell. (R. at 7). In his complaint, Mr. Shelby alleged that Officer Campbell failed to protect him, resulting in a constitutional violation entitling Mr. Shelby to damages. (R. at 7-8).

Mr. Shelby also moved to proceed in forma pauperis when he filed suit. (R. at 7). The District Court denied this motion pursuant to 28 U.S.C. § 1915(g) on April 20, 2022. (R. at 1). The court denied the motion on the grounds that Mr. Shelby's previous case dismissals for unrelated suits under the *Heck* doctrine constituted "strikes" under the Prison Litigation Reform Act ("PLRA"). (R. at 1). The court directed Mr. Shelby to pay the $402 dollar filing fee in full before his suit could proceed, which he paid. (R. at 1, 7). Officer Campbell moved to dismiss this matter on May 4, 2022. (R. at 8). The District Court granted Officer Campbell's motion, dismissing the case. (R. at 11). Mr. Shelby appealed both the denial of the motion to proceed in forma pauperis and the dismissal of his suit to the Fourteenth Circuit Court of Appeals. (R. at 12). The Fourteenth Circuit reversed and remanded both issues. (R. at 19). Officer Campbell submitted a petition for writ of certiorari, which this Court granted in the October 2023 term. (R. at 21).

## SUMMARY OF THE ARGUMENT

This Court should affirm the lower court's decision to allow Mr. Shelby to proceed in forma pauperis in order to uphold the legislative intent of the Prison Litigation Reform Act ("PLRA") and to secure prisoners' access to justice. Congress enacted the PLRA to address the inundation of meritless inmate lawsuits in federal courts. Central to its provisions is the classification of certain dismissals as "strikes" under the PLRA, aimed at deterring frivolous litigation while preserving access to justice. The crux of the argument lies in whether dismissals under the *Heck* doctrine, which imposes stringent standards for prisoners pursuing damages in civil rights actions based upon the fact of their conviction, should be construed as "strikes" under the PLRA. A meticulous analysis, guided by a positivist approach to statutory interpretation and Supreme Court precedent, demonstrates that *Heck* dismissals do not align with the grounds specified in the PLRA's "three strikes" provision. Moreover, *Heck* dismissals are legally distinct

from actions warranting strikes under the PLRA, as they address the prematurity rather than the inherent merits of a claim.

Public policy considerations further support the contention that *Heck* dismissals should not trigger strikes under the PLRA. Denying in forma pauperis status based on a misinterpretation of *Heck* dismissals as automatic strikes contradicts the legislative intent of the PLRA, perpetuating systemic barriers to justice for economically disadvantaged and incarcerated individuals. By upholding both the statutory framework and broader principles of justice and access to legal remedies, a balanced interpretation is essential to ensuring the effective implementation of the PLRA while safeguarding constitutional rights.

Thus, a comprehensive analysis incorporating statutory interpretation, case law, legislative intent, and public policy considerations underscore the argument that *Heck* dismissals should not be classified as "strikes" under the PLRA. This perspective not only aligns with the overarching goals of the PLRA but also upholds principles of fairness and equal protection under the law for all individuals, including those facing financial constraints and incarceration.

As pertaining to the second issue in this case this Court should adopt an objective deliberate indifference standard for § 1983 Fourteenth Amendment failure to protect claims brought by pretrial detainees. Failure to protect claims can be brought under the Eighth Amendment or the Fourteenth Amendment depending on the status of the individual bringing the claim. Mr. Shelby may bring a Fourteenth Amendment failure to protect claim because he is a pretrial detainee who has yet to be convicted of any crime. Pretrial detainees are guaranteed the same due process protections as citizens who have never been arrested. Congress created § 1983 as an avenue through which citizens could sue state actors for violating their civil rights. In order to bring a failure to protect claim, the plaintiff must show the defendant acted with deliberate

indifference. Under the Eighth Amendment, the analysis is subjective; however, under the Fourteenth Amendment, the analysis should be objective.

Although this Court did not extend an objective standard to deliberate indifference claims in *Kingsley v. Hendrickson*, it should do so here. The extension of a subjective standard set forth by this Court in *Farmer v. Brennan* is unconstitutional. The Eighth Amendment cannot be applied to this case because Mr. Shelby has not been convicted, therefore he cannot be punished at all. A foundational concept of the criminal legal system is that criminal defendants are innocent until proven guilty. Extending Farmer's subjective standard to Mr. Shelby's case would grant him the same limited rights as someone convicted of a crime.

Fourteenth Amendment claims of deliberate indifference can be brought by pretrial detainees for the actual conditions within the jail and an officer's failure to protect the detainee. The Second, Six, Seventh, and Ninth Circuits have held that an objective standard is correct for Fourteenth Amendment claims of deliberate indifference. This Court should adopt the Ninth Circuit's objective test here because it creates a bright-line rule for courts to follow. The Ninth Circuit test has an intentionality requirement which moves the objective standard even further from a negligence standard. Further, the Fourteenth Circuit held that an analysis of failure to protect claims involving inaction of an officer should center around intentionality.

The Ninth Circuit test is satisfied by the Petitioner's conduct. The Petitioner's actions put Mr. Shelby in a place of danger, causing injuries that would not have occurred without the Petitioner's conduct. He would not have been beaten so brutally that he suffered from fractures, organ lacerations, internal bleeding, and a traumatic brain injury. The Ninth Circuit test provides a bright-line rule that this Court should adopt to ensure that the Fourteenth Amendment rights of pretrial detainees are equally protected. As it stands, pretrial detainees are afforded differing

levels of Fourteenth Amendment protections depending on the geographic location. This inequity within the circuits is impermissible and therefore this Court should adopt an objective standard. As such, this Court should affirm the Fourteenth District's decision to apply an objective deliberate indifference standard to Fourteenth Amendment failure to protect claims.

## ARGUMENT

Writing for the majority in *Turner v. Safley*, Justice Sandra Day O'Connor related: "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution." 482 U.S. 78, 81 (1987). Whether it be in prison post-conviction, or in jail pretrial, a person in custody's constitutional rights do not end on the jailhouse's doorstep. This extends to the remedies available to an incarcerated individual should someone violate those constitutional rights. Historically, both the judiciary and Congress have imposed higher burdens upon incarcerated individuals seeking damages pursuant to § 1983. See, *Farmer v. Brennan,* 511 U.S. 825, 838 (1994) (holding that a person in prison post-conviction bringing a failure to protect claim under the Eighth Amendment must prove that a state actor acted with a subjective deliberate indifference to the plaintiff's safety); 42 USC § 1997e(a) (1996 West) (implementing a requirement where prisoners must exhaust all administrative remedies before filing a § 1983 claim); 28 USC § 1915(g) (1996 West) (implementing the "three strikes rule" where if a prisoner plaintiff's suit is dismissed for frivolity, maliciousness, and/or failure to state a claim three times in a row, the fourth time, the plaintiff must pay the filing fees up front).

These standards are set only for individuals in custody. For example, incarcerated individuals are the only class of plaintiffs that are required to exhaust all the administrative remedies available to bring a § 1983 claim. *See, Monroe v. Pape,* 365 U.S. 167, 174 (1961). As this Court iterated in the seminal Section 1983 case *Monroe v. Pape*, plaintiffs do not have an exhaustion requirement to bring their claim. *Id.* This is generally the rule for both state judicial

remedies and administrative remedies. See, *McNeese v. Bd. of Ed. for Community Unit Sch. Dist. 187, Cahokia, Ill*., 373 U.S. 668, 671 (1963). This Court in *Patsy v. Bd. Of Regents* made clear that § 1983 had no exhaustion requirements. *Patsy v. Bd. of Regents of State of Fla*., 457 U.S. 496, 501 (1982). That is unless the plaintiff is incarcerated or detained. *See*, 28 USC 1997e(a) (West 1996). Additionally, ordinary plaintiffs who meet *in forma pauperis* status are rarely ordered to pay filing fees up front. *Taylor v. Robertson*, 703 F. Supp. 392, 393 (E.D. Pa. 1989) ("Whenever the required affidavit of poverty is filed, the right to proceed *in forma pauperis* should be granted, except in extreme circumstances.").

The immediate case leaves this Court with the decision to either expand this separate burden placed upon incarcerated individuals seeking to vindicate their constitutional rights or solidify a heightened burden without further unbalancing the scales of justice. Requiring *Heck* dismissals be classified as strikes under the PLRA would only increase this burden and set a great financial barrier for prisoners to bring successful suits. Creating such a rule impermissibly creates another mechanism for which to bar meritorious claims. A rule which was outside both the contemplation of Congress in the creation of the PLRA and this Court's opinion in *Heck v. Humphrey.*

Further, even if such a heightened burden exists for prisoners, pretrial detainees should be held to different standards than individuals who have been convicted of crimes. It is a fundamental concept in American justice that a person is innocent until proven guilty. *See, In re Winship*, 397 U.S. 358, 363 (1970) (the presumption of innocence is a "bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.'") (internal citations omitted). With such a presumption of innocence should come the preservation of rights. Requiring a pretrial detainee plaintiff to have the same burden as a

convicted individual in a § 1983 claim for conditions of detention unconstitutionally extends the holding of *Farmer* beyond its confines of the "cruel and unusual punishment" standard of the Eighth Amendment. *Farmer*, 511 U.S. at 838. Pretrial detainees retain more rights and liberties than those who have been convicted of a crime; requiring that a pretrial detainee ostensibly show that they faced punishment when bringing a Fourteenth Amendment failure-to-protect claim does not align with the basic tenets of justice or the precedent this Court has set forth.

## I. Mr. Shelby's suit dismissal pursuant to *Heck* does not constitute a "strike" under the Prison Litigation Reform Act ("PLRA") therefore this Court should permit him to proceed in forma pauperis.

The Prison Litigation Reform Act ("PLRA") is a pivotal legislative response to the surge in meritless inmate litigation within the federal court system. At the heart of its provisions lies a nuanced consideration: the classification of certain dismissals as "strikes" under the PLRA. 28 U.S.C. §1915(g) (1996 West). A comprehensive analysis of the interplay between the PLRA and the *Heck* doctrine demonstrates that dismissals pursuant to *Heck* are inapposite to PLRA "strikes." A lens of legal positivism guides this exploration, urging a nuanced interpretation of statutory language informed by venerable Supreme Court precedent. *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 230 (2011) (arguing that that text alone is the only true indicia of statutory intent). Enacted to address a barrage of frivolous inmate lawsuits, the PLRA includes provisions that define and penalize the filing of groundless claims. The District Court over complicated the simple issue of discerning whether dismissals under the *Heck* doctrine fall within the confines of these "strikes." The simplicity of this issue is amplified when examining the legislative history and intent of the *Heck* doctrine.

The *Heck* doctrine, born from the landmark case *Heck v. Humphrey*, imposes a rigorous standard for prisoners pursuing damages in civil rights actions. *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). According to the *Heck* Court, pursuing a § 1983 claim that would implicate the

invalidity of a prisoner's conviction or sentence requires a dismissal unless the conviction or sentence has already been invalidated. *Id.* This standard requires prisoners to weigh the validity of their claims against the specter of a dismissal.

In navigating the nuanced terrain of PLRA strikes and *Heck* dismissals, it is necessary to use a purposivist approach. Purposivism, characterized by a strict adherence to statutory language and legislative intent, offers a compass for interpretation. *Bruesewitz,* 562 U.S. at 230. This approach ensures alignment with the legislature's purpose of deterring frivolous litigation without unduly stifling legitimate claims. In *Wilson v. Seiter*, the Court underscored the importance of interpreting statutes with fidelity to clear language. 501 U.S. 294, 300 (1991). This juridical wisdom echoes the need for precision in statutory interpretation.

### A. A basic reading of § 1915(g) of the PLRA demonstrates Congressional intent to strictly limit strikes to claims that were frivolous, malicious, or failed to state a claim.

This Court should adopt a purposivist approach when examining whether dismissals under *Heck* automatically constitute a "strike" pursuant to the PLRA's three strikes provision. This approach's main purpose is to interpret the statutory language in line with its legislative purpose. This approach involves scrutinizing the PLRA's text, structure, and purposes to determine whether Congress intended to classify *Heck* dismissals as strikes under section 1915(g). The PLRA's "three strikes" provision, articulated in 28 U.S.C. § 1915(g), serves as a crucial gatekeeping mechanism, limiting an indigent prisoner's ability to commence a civil action without paying court filing fees in full. 28 U.S.C. § 1915(g). A critical analysis of the statutory language reveals that the term "strike" encompasses dismissals based on frivolity, maliciousness, or the failure to state a claim upon which relief may be granted.

In *Gross v. FBL Fin. Servs.*, Inc., the Supreme Court emphasized that interpreting statutory language in line with its ordinary meaning is imperative. 557 U.S. 167, 174 (2009). So

too here. A thorough examination of the statutory text is required because the ordinary meaning accurately expresses the legislative purpose. Dismissing an action under *Heck v. Humphrey,* 512 U.S. at 477 does not align with the "strike" grounds specified in § 1915(g). A purposivist approach demands adherence to the explicit language. The District Court's interpretation introduces a conflict with the PLRA's structure and underlying purposes.

Further, *Heck* dismissals are legally distinct from actions that warrant strikes under the PLRA. *Heck* dismissals, by their nature, are not indicative of the inherent defects specified by § 1915(g); rather *Heck* dismissals are solely concerned with the ripeness of the claim. *Heck,* 512 U.S. at 487. The District Court's interpretation, asserting that Mr. Shelby incurred three strikes due to *Heck* dismissals, overlooks the fundamental criterion established in the legislative intent of the PLRA. (R. at 3). The legislative intent clarifies that the basis for strikes under the PLRA are actions or appeals that are inherently defective, not ones that are brought prematurely. *See,* 28 U.S.C. 1915(g) (1996 West). The District Court's interpretation fails to distinguish between dismissals that are procedurally curable and those that indicate a claim's inherent factual or legal insufficiency. (R. at 3). This contrast underscores the need for a meticulous examination of each dismissal type within the framework of the PLRA. As to *Heck*, a dismissal is based upon the maturity of the suit. *Heck,* 512 U.S. at 487. Under the PLRA, dismissal occurs based upon the inherent merit of the suit. *See,* 28 U.S.C. 1915(g) (1996 West). As such, this Court should permit Mr. Shelby to proceed *in forma pauperis*, adhering to the legislative intent behind the PLRA and preserving access to the courts for those facing genuine barriers to paying court filing fees.

### 1. Categorizing *Heck* dismissals as 28 USC 1915(g) strikes flies directly in the face of Congress' intent to weed out frivolous or malicious claims.

In scrutinizing the proposition that dismissals under the *Heck* doctrine should be deemed as claims under 28 U.S.C. § 1915(g), a careful examination of the legislative history of the

PLRA is imperative. Congress enacted the PLRA with a specific aim: to curb the influx of baseless and vexatious inmate litigation, not to penalize prisoners for pursuing legitimate claims under the *Heck* doctrine. A retrospective analysis of the legislative history reveals that Congress was primarily concerned with deterring the filing of meritless claims that burdened the judicial system. Congressional Record S., 104th Congress, S7525 (May 26, 1995). The PLRA's three strikes provision, codified in 28 U.S.C. § 1915(g), was crafted to be a deterrent mechanism, discouraging prisoners from repeatedly filing frivolous or malicious lawsuits without due consideration for their validity.

This intent aligns with the Supreme Court's emphasis on interpreting statutes in a manner that respects their underlying purpose. In *Crawford Fitting Co. v. J.T. Gibbons, Inc*., this Court stressed that statutory interpretation should not lead to absurd results and should be consistent with the statute's overall purpose. 483 U.S. 437, 454 (1987). Extending the definition of "strikes" under § 1915(g) to include *Heck* dismissals goes against this fundamental interpretative principle. Existing case law further supports the contention that *Heck* dismissals should not be equated with claims subject to the PLRA's three strikes provision. In *Walker v. Doe*, the Eastern District of California allowed the petitioner to proceed *in forma pauperis* even though he previously accrued two *Heck* dismissals and was at risk of accruing another one. *Walker v. Doe,* No. 119-CV-01546LJOSKO, 2019 WL 6790765, at *6 (E.D. Cal. Dec. 12, 2019). Reinforcing the idea that Congress did not intend to penalize prisoners for pursuing claims that are legitimately barred by the *Heck* doctrine. Adopting the position that *Heck* dismissals should be classified as strikes under § 1915(g) not only contradicts binding precedent but also jeopardizes the original legislative intent behind the PLRA. Congress sought to strike a delicate balance –

discouraging meritless litigation while preserving legitimate access to the courts for indigent prisoners.

The extension of *Heck* dismissals as claims under 28 U.S.C. § 1915(g) is incompatible with the legislative purpose of the PLRA. The jurisprudential wisdom from *Walker* supports the argument that Congress did not intend to encompass *Heck* dismissals within the confines of the three strikes provision. By maintaining this distinction, this court would uphold the delicate equilibrium struck by Congress and would ensure that the PLRA fulfills its role as an effective deterrent against frivolous inmate litigation, not premature claims.

Additionally, denying *in forma pauperis* status based on a misinterpretation of *Heck* dismissals as automatic strikes, contradicts the legislative intent of the PLRA. Legislative debates and discussions leading to the enactment of the PLRA in 1996 reveal a clear intention to target frivolous and malicious litigation while safeguarding the rights of indigent prisoners. *See, e.g.,* Congressional Record S., 104th Congress, S14316 (Sept. 26, 1995). By erroneously categorizing *Heck* dismissals as automatic strikes, the District Court's interpretation deviates from this intent. Permitting Mr. Shelby to proceed in *forma pauperis* not only upholds the principles of justice and equality embedded in the PLRA but also ensures that individuals like him, people genuinely facing financial constraints, can avail themselves of the legal system without undue hindrance.

**2. Other provisions of the PLRA also demonstrate Congress' intent to weed out only frivolous or malicious claims.**

Other provisions of the PLRA further define Congress' intent in passing this legislation. One of the most prominent provisions of the PLRA includes the exhaustion requirement. Under 42 U.S.C. 1997e(a), a prisoner may not bring a claim under § 1983 in court until all administrative remedies are exhausted. 42 U.S.C. 1997e(a) (West 1996). This means that a

prisoner must first exhaust his prison or jail's grievance process before he may file a claim in court. The exhaustion requirement is essentially meant to serve as a filter upon meritorious claims. *See*, Congressional Record S., 104th Congress, S7525 (May 26, 1995). Congress deliberately omitted the failure to exhaust requirement from § 1915(g), refusing to deem it as a strike. 28 U.S.C. § 1915(g) (West 1996). The judiciary has supported this stance, refusing to read the exhaustion requirement into § 1915(g). *Snider v. Melindez*, 199 F.3d 108, 115 (2d Cir. 1999) ("[W]e do not believe that failure to exhaust qualifies as failure to state a claim in the context of the PLRA. Nor would an action be rendered 'frivolous' by a failure to exhaust that was remediable. Accordingly, a dismissal by reason of a remediable failure to exhaust should not count as a strike."); *see, Booth v. Carril*, No. 05-72905, 2007 WL 295236, at *3 (E.D. Mich. Jan. 29, 2007) ("Accordingly, we must honor Congress's deliberate omission from § 1915(g) of dismissals for failure to exhaust and conclude that a routine dismissal for failure to exhaust administrative remedies does not count as a strike under § 1915(g)."). The courts and Congress have made clear that § 1915(g) PLRA strikes are meant solely for frivolous, malicious, or meritless purposes and cannot include even other requirements of the PLRA. The courts have refused to extend a PLRA strike beyond what is in the letter of the law; this Court should follow suit.

### B. <u>This Court intended for *Heck* to prevent premature § 1983 claims not to penalize prisoners for bringing claims.</u>

*Heck* dismissals indicate the prematurity of a prisoner's claim. *Heck*, 512 U.S. at 487. Whereas PLRA "strikes" explicitly pertain to the merits of a plaintiff's case, presenting a clear distinction. 28 U.S.C. 1915(g) (1996 West). In elucidating the intricate relationship between the *Heck* doctrine and its intended scope, a focused examination of this Court's original intent is paramount. The inception of the *Heck* doctrine, as articulated in the landmark case *Heck v.*

*Humphrey* was rooted in the notion that prisoners should be barred from pursuing § 1983 claims challenging the validity of their convictions or sentences until such convictions or sentences have been invalidated. *Heck,* 512 U.S. at 486-487. The core principle of *Heck* is to prevent prisoners from utilizing § 1983 claims to indirectly challenge their convictions or sentences. *Id.* This is grounded in the idea that allowing such claims before the underlying criminal judgments are invalidated would disrupt the established order of criminal and habeas proceedings. *Id.* at 485. The doctrine, as articulated in *Heck,* serves as a safeguard against premature challenges to the fact of conviction. *Id.* at 487. Unlike the rigid requirement imposed by some legal doctrines like the PLRA, *Heck* dismissals are perceived as a form of judicial guidance rather than a strict mandate, akin to navigating the complexities of legal proceedings.

This interpretation is reinforced in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2013). In *Albino* the Ninth Circuit affirmed that the *Heck* doctrine was specifically designed to address challenges to the fact of conviction, emphasizing its role in preventing prisoners from initiating § 1983 claims that would question the validity of their convictions or sentences. *Id.* at 1184. The court held that *Heck* did not extend to bar claims related to conditions of confinement that are unrelated to the fact of conviction. Similarly, *Washington v. Los Angeles County* provided additional clarification by reaffirming that *Heck* does not hinder prisoners from pursuing § 1983 claims concerning conditions of confinement, as long as those claims do not challenge the validity of the conviction or sentence. 833 F.3d 1048, 1055 (9th Cir. 2016).

By recognizing this distinction, the Court aligns with the original intent behind the *Heck* doctrine. This interpretation ensures that prisoners are not unduly hindered from bringing legitimate § 1983 claims regarding the conditions of their confinement. It upholds the delicate

balance intended by this Court, preventing premature challenges to the fact of conviction while preserving prisoners' ability to address issues distinct from the validity of their convictions.

The Court's intention in formulating the *Heck* doctrine was to curtail premature § 1983 claims challenging the fact of conviction, not to erect unnecessary barriers for prisoners seeking to address conditions of confinement. Therefore, this Court should solidify the understanding that *Heck* should not impede prisoners from pursuing legitimate claims beyond the fact of conviction by allowing Mr. Shelby to proceed *in forma pauperis*.

### C. The inclusion of *Heck* dismissals as strikes under the PLRA further limits a prisoner's access to the court system and fortifies the economic barriers standing in the way of justice.

Beyond statutory interpretation, public policy considerations further support the argument that *Heck* dismissals should not trigger strikes under the PLRA. The overarching goal of the PLRA is to curb frivolous litigation. Imposing strikes for dismissals that do not signify inherently meritless claims would undermine this objective. Allowing prisoners three opportunities to correct procedural errors without facing severe consequences aligns with the PLRA's aim to strike a balance between preventing abuse of the legal system and ensuring access to justice. Moreover, treating *Heck* dismissals as strikes could discourage prisoners from pursuing legitimate constitutional challenges, contrary to the PLRA's intention not to inhibit prisoners from addressing valid grievances. Unlike rigid legal doctrines such as the PLRA, *Heck* dismissals are viewed as a form of judicial guidance, navigating the complexities of legal proceedings. This nuanced approach, which distinguishes between procedural deficiencies and substantive merits, serves the broader public interest in maintaining a fair and effective legal system.

Access to the courts is a fundamental tenet of the legal system, ensuring that individuals, regardless of financial standing, can seek redress for their grievances. Statistical data supports

the notion that financial constraints often pose significant barriers to accessing the legal system. According to a 2017 report from the American Bar Association Journal, a substantial portion of the U.S. population faces economic challenges that impede their access to legal representation. Debra Cassens Weiss, *86 percent of low-income Americans' civil legal issues get inadequate or no legal help, study says,* ABAJournal Daily News. https://www.abajournal.com/news/article/86_percent_of_civil_legal_issues_of_low_income_americans_get_inadequate_or (2017). The report highlights that nearly 86% of civil legal problems reported by low-income Americans receive inadequate or no legal help. *Id.* This underscores the real and pervasive issue of financial barriers preventing individuals from pursuing their legal rights. By allowing Mr. Shelby to proceed in forma pauperis, the Court aligns with the overarching goal of the PLRA – to balance the prevention of abuse of the legal system with the preservation of access to justice for those genuinely unable to afford court filing fees.

Denying Mr. Shelby the opportunity to proceed in forma pauperis extends beyond an individual case; it has systemic implications for incarcerated individuals seeking justice within the legal system. According to a comprehensive study conducted by the National Longitudinal Study of Adolescent to Adult Health in 2014, a staggering 65% of incarcerated individuals come from economically disadvantaged backgrounds, making it difficult for them to navigate the complexities of the legal process without financial assistance. Eli Jones, *The Race Gap in US Prisons is Glaring, and Poverty is Making it Worse*, Mother Jones. https://www.motherjones.com/criminal-justice/2018/02/the-race-gap-in-u-s-prisons-is-glaring-and-poverty-is-making-it-worse (2018). Denying *in forma pauperis* status erects a formidable barrier, limiting access to legal representation and hindering the ability of those behind bars to assert their constitutional rights effectively.

Moreover, the denial of *in forma pauperis* status perpetuates a cycle of inequality within the legal system. The Center for American Progress reported in 2022 that financial barriers disproportionately impact marginalized communities, leading to a lack of representation and a higher likelihood of wrongful convictions. Center For American Progress, *America's Broken Criminal Legal System Contributes to Wealth Inequality,* Center For American Progress. https://www.americanprogress.org/article/americas-broken-criminal-legal-system-contributes-to-wealth-inequality/ (2022). When incarcerated individuals face obstacles in pursuing legal remedies, it not only hampers their ability to challenge unjust sentences but also undermines the principles of fairness and equal protection under the law. *Id.* In the broader context, denying *in forma pauperis* status exacerbates disparities within the legal system and perpetuates a system where economic status rather than the merit of a case dictates the course of justice.

A comprehensive analysis which incorporates statutory language, structural considerations, legislative intent, public policy considerations, and case law, reinforces the argument that *Heck* dismissals should not be classified as "strikes" under the PLRA. The Fourteenth Circuit Court Appeals decision in favor of Mr. Shelby's case highlights the need for a balanced interpretation that upholds both the statutory framework and broader principles of justice and access to legal remedies.

## II. A pretrial detainee's § 1983 failure to protect claim brought pursuant to the Fourteenth Amendment should be analyzed under an objective standard to determine whether Petitioner acted with deliberate indifference to Mr. Shelby's safety.[1]

Congress created § 1983 to provide citizens with a statutory basis to bring civil rights claims against state actors for damages. 42 U.S.C. § 1983 (West 1996). When Congress wrote §

[1] Qualified immunity is not at issue in this case. Qualified immunity is an affirmative defense that must be brought by the defendant in the initial stages of a lawsuit. *Gomez v. Toledo*, 446

1983 it did not include a mental state requirement that the petitioner had to prove in order to be successful; rather the mental state requirement is dependent on the constitutional amendment that is the basis of the claim. *Id.* In this case, Mr. Shelby brought a failure to protect claim under the Fourteenth Amendment. To that point, the courts have interpreted § 1983 within the framework of tort common law. The text of the Fourteenth Amendment does not define the mental state required for deliberate indifference claims. U.S. Const. amend XIV. However, because the legal understanding of § 1983 is rooted in tort law, the requirement should be an objective standard. *See*, *Pierce v. Gilchrist*, 359 F.3d 1279, 1286 (10th Cir. 2004) ("the courts have used the common law of torts as a 'starting point' for determining the contours of claims of constitutional violations under § 1983."). The general mental state requirement for tort law is that of an objective reasonable person. Because there is no defined mental state requirement for Fourteenth Amendment claims, the objectivity standard found in tort law should perform a gap-filling function. This would apply the reasonable person standard to deliberate indifference failure to protect claims.

Deliberate indifference claims brought under the Fourteenth Amendment should be analyzed under an objective standard. Failure to protect claims can be brought under the Eighth Amendment or the Fourteenth Amendment depending on the status of the individual bringing the claim. This Court held in *Farmer v. Brennan* that failure to protect claims brought by incarcerated individuals, people who have been convicted of crimes, are properly brought under the Eighth Amendment. 511 U.S. at 829. However, pretrial detainees should bring a deliberate indifference claim under the Fourteenth Amendment because they have been detained, but not

U.S. 635, 636 (1980). Petitioner in this case has not brought this defense; therefore, qualified immunity is not at issue before the Court.

convicted. *Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015). Pretrial detainees, like all Americans, are protected from deprivation of "life, liberty, or property, without due process of law." U.S. Const. Amend XIV, § 1. Due process protections have historically been applied to "*deliberate* decisions of government officials." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Mr. Shelby's due process rights are protected by the Fourteenth Amendment because he is a pretrial detainee.

Individuals who have been arrested and detained pretrial still enjoy most of the rights and privileges afforded to them outside of the jailhouse. These rights and privileges are only diminished once a court convicts and sentences an individual. In 2018, the Pew Research Center found that more than eight in ten Americans believe that the criminal legal system should treat those awaiting trial "more like citizens than criminals." Pew Research Center, *Americans Favor Expanded Pretrial Release, Limited Use of Jail*, Pew Research Center, p. 3 (2018). A decision in favor of the Petitioner would cause a degradation of the rights of pretrial detainees which would effectively limit the rights of all American citizens. Additionally, an objective standard would allow for the most protection of the rights of pretrial detainees, who have not yet been convicted of a crime. The very basis of the American criminal legal system is founded upon the assumption that every person accused of a crime is innocent until proven guilty. *Coffin v. United States*, 156 U.S. 432, 453 (1895) (holding that "a presumption of innocence in favor of the accused is the undoubted law"). A rule holding a pretrial detainee to the same standards as incarcerated people when seeking justice is diametrically opposed to this foundational legal concept. The utmost legal protections in such a system should be afforded to those awaiting their day in court.

This Court first impressed upon pretrial detainee claims as to prison conditions in *Bell v. Wolfish*. In *Bell*, the Court decided that an objective standard must be applied to determine

deliberate indifference in Fourteenth Amendment pretrial detainee claims. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). This Court further extended this objective standard in *Kingsley*. This Court held when bringing a Fourteenth Amendment excessive force claim under § 1983, a pretrial detainee must show that the officer's actions were objectively unreasonable. *Kingsley*, 576 U.S. at 392. Although this Court did not address deliberate indifference claims in *Kingsley*, it should nonetheless extend *Kingsley*'s objective standard to § 1983 claims of deliberate indifference. This extension should be made because the District Court's erroneous adherence to the *Farmer* subjective standard was a violation of Mr. Shelby's constitutional rights. Further, the split amongst this nation's appellate courts effectively limits Fourteenth Amendment protections for detainees in circuits that use a subjective standard. The extension of *Kingsley* is not only appropriate but necessary to address the split between the circuits and to maintain this country's tradition of protecting its citizens from governmental abuse.

### A. Mr. Shelby's claim should be analyzed under an objective standard because an extension of Farmer's subjective standard would be unconstitutional.

*Farmer v. Brennan* does not control here. In *Farmer*, petitioner, who was incarcerated following her conviction, brought a failure to protect claim against prison officials. *Farmer*, 511 U.S. at 829. The Court's analysis of her claim rested on whether the officer's deliberate indifference to her safety violated her Eighth Amendment right to be free from cruel and unusual punishment. *Id.* The Court held that an incarcerated plaintiff must prove, using a subjective standard, that the officer was deliberately indifferent in failing to protect the plaintiff from cruel and unusual punishment. *Id.* at 847. *Farmer* cannot be extended here because Mr. Shelby is a pretrial detainee. The crux of the *Farmer* Court's decision rested upon the language of the Eighth Amendment. *Id.* The Court stated that a subjective test was necessary for Eighth Amendment claims because the Eighth Amendment refers to cruel and unusual *punishments*, not conditions.

*Id.* at 838 ("[A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment."). Mr. Shelby brought his § 1983 claim under the Fourteenth Amendment because he was a pretrial detainee and had yet to be convicted of the crime of which he was accused at the time of the incident. Here, § 1983 failure to protect claims brought by pretrial detainees necessitates an objective deliberate indifference standard; applying a subjective standard when a detainee need not prove he faced cruel and unusual punishment is out of line with this Court's precedent.

Here the Court must analyze Mr. Shelby's claim under the Fourteenth Amendment because he is a pretrial detainee. The holding in *Farmer* simply does not extend to this context. In *Farmer,* this Court had to determine whether the officer's deliberate indifference rose to the level of punishment under the Eighth Amendment. *Id.* Punishment is not at issue here and therefore the Eighth Amendment and its applicable standards cannot be implicated. The District Court below incorrectly held that the *Farmer* subjective standard must be extended because an objective framework would reduce the deliberate indifference standard to that of mere negligence.

This Court held in *County of Sacramento v. Lewis* that "liability for negligently inflicted harm is categorically beneath the constitutional due process threshold." 523 U.S. 833, 848 (1998). An objective standard for deliberate indifference provides plaintiffs with more options to prove their claims and still falls within the due process threshold. A showing of mere negligence would not meet the objective standard for deliberate indifference. Mr. Shelby does not advocate for merely a reasonableness standard–Mr. Shelby urges this Court to objectively analyze the deliberate indifference mental state. To prove their claim, this Court requires that plaintiffs at

least show that the defendant acted with reckless disregard, which is categorically a higher burden than negligence. *Id.* at 833. Additionally, to assert that an objective standard is akin to negligence would call into question the validity of this Court's holding in *Kingsley*.

Having the same standard for deliberate indifference, failure to protect claims for individuals who have been convicted of crimes and those who have not yet been convicted is illogical and against the very basis of our criminal legal system. Mr. Shelby, like all pretrial detainees, has yet to be convicted of any crime and is therefore protected by the same rights and freedoms as someone who has not been accused of wrongdoing. Not only are the statuses of pretrial detainees and incarcerated individuals different, but even the constitutional provisions under which they may bring their § 1983 claims are extremely distinct. ("The language of the two Clauses differs . . . pretrial detainees (unlike convicted prisoners) cannot be punished at all . . ."). *Kingsley,* 576 U.S. at 400 Although pretrial detainees experience somewhat limited constitutional rights while in jail, they are still afforded more legal protections and liberties than incarcerated people. Petitioner hopes this Court will hold that pretrial detainees and convicted, incarcerated people may only be afforded the same, limited rights. But, this is squarely against this Court's precedent and the foundations of the American criminal legal system.

In *Farmer*, the Court assigned a defendant friendly subjective threshold in § 1983 for failure to protect claims brought by incarcerated prisoners. Petitioner's belief that *Farmer* should extend to this case would cause a deterioration of citizen's rights. However, pretrial detainees like Mr. Shelby, must be protected while they are awaiting their day in court. Extending *Farmer* to encompass the Fourteenth Amendment would pose a considerable challenge for plaintiffs in establishing a violation of their due process rights. The due process standard presents a less

demanding threshold compared to punishment. See, *Farmer*, 512 U.S. at 838. An objective standard would align with the differences among pretrial detainees and convicted prisoners.

### B. Mr. Shelby's claim should be analyzed under an objective standard because it allows for a bright-line rule whereas a subjective standard does not.

A bright-line rule implementing an objective standard for § 1983 Fourteenth Amendment deliberate indifference claims is necessary because this country's appellate circuits have yet to agree on the appropriate standard. Pretrial detainees may bring Fourteenth Amendment claims of deliberate indifference under § 1983 in two instances–the actual conditions within the jail and an officer's failure to protect the detainee. *See e.g., Westmoreland v. Butler Cnty.*, 29 F.4th 721, 730 (6th Cir. 2022); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 351 (7th Cir. 2018). The Second Circuit, Sixth Circuit, Seventh Circuit, and Ninth Circuit have extended *Kingsley*'s objective standard to Fourteenth Amendment claims of deliberate indifference. *Westmoreland*, 29 F.4th at 730 (holding that a Fourteenth Amendment failure to protect standard is "solely an objective consideration"); *Miranda*, 900 F.3d 335, 351 (7th Cir. 2018) (holding that Fourteenth Amendment claims require an objective standard of analysis); *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) (holding that deliberate indifference claims are properly analyzed under an objective standard); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (holding that *Kingsley*'s objective standard extends to Fourteenth Amendment failure to protect claims). The District of Columbia Court of Appeals has yet to hear this issue, but its District Court held that Fourteenth Amendment claims must be analyzed under an objective standard showing that the "Defendants *knew or should have known.*" *Banks v. Booth*, 459 F. Supp. 3d 143, 151 (D.D.C. 2020) (emphasis added). The Seventh and Ninth Circuit each have their own legal tests that apply specifically in claims about the conditions within jails themselves. Both tests reflect the *Kinglsey* objective standard, but the controlling test should be the Ninth Circuit's.

### 1. This Court should adopt the Ninth Circuit's objective test because it creates a bright-line rule.

In *Castro v. County of Los Angeles*, petitioner was placed in a "sobering cell" along with another detainee. 833 F.3d at 1065. While in the cell, the petitioner attempted to attract the officer's attention because of the other detainee's erratic behavior, but no officers responded. *Id*. Twenty minutes later, a volunteer walked past the cell and discovered the other detainee inappropriately groping the petitioner's upper thigh while the petitioner laid motionless on the ground. *Id*. The volunteer reported this conduct to the officer who checked on the cell six minutes later. *Id*. When the officer arrived, the other detainee was stomping on the petitioner's head while he lay unconscious on the ground in a pool of his own blood. *Id*. Following the incident, the petitioner suffered from severe memory loss and cognitive difficulties placing him in a long-term care facility for four years. *Id*. There, the Ninth Circuit held that the officer's deliberate indifference caused the petitioner's injuries. The court created a test in which a petitioner must prove the following elements:

> (1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;
> (2) Those conditions put the plaintiff at substantial risk of suffering serious harm;
> (3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and
> (4) By not taking such measures, the defendant caused the plaintiff's injuries

*Id*. at 1071. The Court specifically created this test for failure to protect claims making it appropriately applicable to this case. Additionally, the Sixth Circuit has adopted this test for its own use. *Westmoreland,* 29 F.4th at 729. This test protects the rights of detainees because it adopts an objective standard that a plaintiff must prove for relief. Further, the Ninth Circuit test factors in the intentionality of the defendant's conduct. This intentionality requirement moves the objective standard further from negligence. Additionally, the Fourteenth Circuit Court of

Appeals stated that analysis should center around intentionality in failure to protect claims involving inaction by an officer. (R. at 17).

The facts are strikingly similar to the case before this Court and the Ninth Circuit test should control. Here, the Petitioner's actions, or lack thereof, satisfy all elements of the Ninth Circuit test. As to the first element, Petitioner made the decision to take Mr. Shelby to the recreation room along with detainees from the Bonucci gang. (R. at 7). This was an intentional decision by the Petitioner, he did not stumble upon Mr. Shelby in close proximity to Bonucci gang members. Rather the Petitioner intentionally took Mr. Shelby from his cell in cellblock A and put him in direct contact with members of a rival gang. (R. at 7). This intentional decision put Mr. Shelby at substantial risk of serious harm because of his proximity to Bonucci gang members, satisfying the second element.

The third element of the test is satisfied here because the Petitioner did not take any reasonable available measures to abate the risk posed to Mr. Shelby. The gang intelligence officers held a meeting with all jail officials to notify them of Mr. Shelby's presence in the jail. (R. at 5). Jail leadership specified that Mr. Shelby is a member of the Geeky Binders gang, which had a serious and dangerous rivalry with the Bonucci gang. (R. at 5) The officials emphasized that Mr. Shelby was not to be placed in close proximity to any documented member of the Bonucci gang. (R. at 5). Per jail policy, any jail officials who were not present at the meeting had to review the meeting minutes on the online database. (R. at 6). Additionally, Marshall Jail policy required officers to check the rosters and floor cards regularly to ensure that rival gang members were not placed in the same area. (R. at 6). On the day the Bonucci gang attacked Mr. Shelby, the Petitioner had the roster with Mr. Shelby's information in his hand when he placed him and the Bonuccis in close proximity. (R. at 6). While taking Mr. Shelby out of cell block A

on the day of the attack another detainee yelled at Mr. Shelby. (R. at 6). The other detainee yelled about Mr. Shelby's brother, the leader of the Geeky Binders. (R. at 6).

Petitioner's actions satisfy the third element of the Ninth Circuit test. He failed to follow jail protocol, resulting in Mr. Shelby's severe injuries. (R. at 7). There were measures available which Marshall Jail implemented to prevent the attack from happening. (R. at 5). Petitioner chose not to follow such measures. (R. at 6-7). The jail informed all personnel that Shelby was not to be in close proximity with any detainees from cell blocks B or C. (R. at 5). Although there is no evidence in the record that Petitioner affirmatively knew all the information about Mr. Shelby, he should have known of this risk pursuant to *Castro*. *Castro*, 833 F.3d at 1073 (holding that the officers knew or should have known that the jail's policies forbade the placement of the two detainees in the same cell). Here, Petitioner, as a jail officer, should have known of Marshall Jail's policy of reading meeting notes and information sheets. (R. at 5). Per the policy of the jail, Petitioner was required to read the meeting notes and Mr. Shelby's information sheet; therefore, he should have known of the risk Mr. Shelby faced as he moved to recreation. (R. at 5). Further, if Petitioner had read all of this information he should have known of the risk to Mr. Shelby when he heard another detainee reference Mr. Shelby's brother. (R. at 5-7). These policies are meant to keep detainees safe and prevent Mr. Shelby's injuries from occurring. Petitioner's gross failure to adhere to jail policies ought to render him liable for Mr. Shelby's injuries. Further, the last element of the test is satisfied. Petitioner directly caused Mr. Shelby's injuries through his failure to follow proper jail protocol. (R. at 6-7). Mr. Shelby suffered life-threatening injuries including a traumatic brain injury. (R. at 7). Additionally, he endured several fractures, lung and organ lacerations, abdominal edema, and internal bleeding. (R. at 7). Due to these injuries, he was hospitalized for several weeks. (R. At 7).

### 2. This Court should adopt the objective test because it is the appropriate and constitutional remedy for the circuit split.

There are two other circuits that have not decided the appropriate standard for § 1983 Fourteenth Amendment failure to protect claims. The First Circuit and Fourth Circuit have not decided whether an extension of Kingsley is appropriate in failure to protect claims. *Glennie v. Garland*, No. CV 21-231JJM, 2023 WL 2265247, at *6, n. 14 (D.R.I. Feb. 28, 2023) (declining to determine the applicable standard for deliberate indifference claims brought by pretrial detainees because neither party challenged the issue); *Michelson v. Coon*, No. 20-6480, 2021 WL 2981501, at *1 (4th Cir. July 15, 2021) (the Fourth Circuit did not decide on the proper standard because the petitioner did not challenge the use of both an objective and subjective standard). Because these two circuits have yet to decide, it would be inaccurate for Petitioner to assert that most of this nation's appellate circuits use a subjective standard.

This Court should address this circuit split in favor of Mr. Shelby. This circuit split has created a divide throughout the country's appellate courts. Consistency in legal standards ensures that the law is applied fairly. *See Reed v. Reed*, 404 U.S. 71 (1971) (holding that consistency in legal standards without discrimination, is essential for ensuring fairness and equal treatment under the law). The consequences of this divide are especially felt by plaintiffs making a Fourteenth Amendment deliberate indifference claim in the circuits that follow a subjective standard. This is because, the rights of these plaintiffs are effectively less protected in these circuits than the rights of citizens in the circuits that use an objective standard. As it stands, the level of Fourteenth Amendment protection a pretrial detainee can expect is dependent on what circuit they are in which they are detained. Abby Dockum, *Kingsley, Unconditioned: Protecting Pretrial Detainees with An Objective Deliberate Indifference Standard In § 1983 Conditions-Of-Confinement Claims*, 53 Ariz. St. L.J. 707, 738 (2021). This lack of uniformity creates an

imbalance in preservation of constitutional rights. This Court should remedy this unequal protection of constitutional rights in favor of pretrial detainees by adopting an objective standard.

### 3. This Court should adopt a bright-line rule because of the confusion in application of the subjective test.

While there is debate between the circuits about whether an objective or subjective standard is appropriate when analyzing Fourteenth Amendment deliberate indifference claims, confusion has also arisen regarding how to apply a subjective standard. This confusion caused the Second Circuit to correctly adopt an objective standard. *Darnell,,* 849 F.3d at 35. In *Darnell,* the court stated that this Court's precedent has held that subjective deliberate indifference effectively can be viewed as recklessness. *Id.* at 29. The court further asserted that recklessness could be analyzed in two ways: (1) subjectively in which the court analyzes what the officer actually knew and disregarded or (2) objectively in which the court analyzes what a reasonable officer knew or should have known. *Id.* Ultimately, the court's confusion as to the application of a subjective standard influenced its adoption of the objective standard. *Id.* This confusion in how the court should apply the subjective standard influenced its decision to adopt an objective standard for Fourteenth Amendment claims.

Mr. Shelby's failure to protect claim should be analyzed under the Ninth Circuit's objective test. This test's intentionality requirement moves the objective standard away from negligence and allows for greater protection for detainees. The need for a bright line rule is demonstrated by the unequal Fourteenth Amendment protections currently experienced by pretrial detainees throughout the country. This bright line rule would also clear up the kind of confusion that the subjective test brought the Second Circuit. An objective standard, specifically

the Ninth Circuit objective test, should be adopted as the bright line rule for § 1983 Fourteenth Amendment failure to protect claims.

### C. Mr. Shelby's claim should be analyzed under an objective standard because it would encourage jail officials to improve conditions and ensure the safety of all pretrial detainees.

Outside of this Court's precedent and constitutional protections the public policy considerations also favor an objective standard. Statistics demonstrate the abysmal conditions pretrial detainees are forced to live, and die, in. An objective standard would protect these detainees because it gives them an equitable and just avenue to seek relief. Additionally, an objective standard would act as a deterrent for bad conduct by jail officials.

#### 1. An objective standard would ensure that pretrial detainees can seek the relief that they deserve.

Jail and prison conditions have become of increased interest to the American public in recent years. Following the COVID-19 crisis the public began to see the impact that conditions had on detainees and incarcerated people. A U.S. Department of Justice study found that in 2019 a total of 1,200 people died while being detained in jail, a 33% increase from 2000. U.S. Dept. of Justice, Federal Bureau of Investigation, Bureau of Justice Statistics, *Mortality in Local Jails, 2009-2019,* NCJ 301368 (2021). Additionally, Reuters found that between 2008-2019 7,571 people died while in prison meaning that the average death rate in US jails is 1.5 per 1,000. Jason Szep, Ned Parker, Linda So, Peter Eisler & Grant Smith, *U.S. Jails are Outsourcing Medical Care- and the Death Toll is Rising,* Reuters Investigates. https://www.reuters.com/investigates/special-report/usa-jails-privatization/ (2020). Although suicide was the leading cause of death for detainees in 2019, about 3 per 100,000 died due to homicide. *Mortality in Local Jails,* NCJ 301368. The culture of violence and horrific conditions within Rikers Island Jail, one of the country's most infamous jails, forced the New York mayor

and city council to plan its closure. Michele Deitch, *But Who Oversees The Overseers?: The Status Of Prison And Jail Oversight In The United States*, 47 Am. J. Crim. L. 207, 210-11 (2020).

Mr. Shelby has lived experience of these unnerving numbers because of the decisions made by Petitioner. As a jail official, Petitioner's duties require him to protect detainees while they await trial. He failed this duty. His decision to allow detainees from cell blocks B and C to interact with Mr. Shelby directly led to Mr. Shelby's severe injuries. (record cite) Because of Petitioner's deliberate indifference to Mr. Shelby's safety and failure to follow proper jail protocol, Mr. Shelby will suffer from a traumatic brain injury for the rest of his life. Citizens who are placed in these violent environments must be given the proper avenues to seek relief if they are impacted by violence or horrific jailhouse conditions. An objective standard holds jail officials accountable in line with the Fourteenth Amendment. Further, it would encourage jail officials to improve the conditions within their jails.

**2. An objective standard would act as deterrence for jail officials, resulting in increased oversight.**

Along with holding jail officials accountable, an objective standard would act as a deterrent for bad jail officer conduct. *Kingsley, Unconditioned*, 53 Ariz. St. L.J. at 742. Jail officials would be encouraged to monitor the inner workings of their jails to avoid lawsuits. Government agencies "almost always" provide officers with counsel when they are individually sued. Joanna C. Schwartz, *Police Indemnification,* N.Y. Univ. L Rev. 887, 915 (2014). These agencies would be further encouraged to reform the conditions in their jails because of the financial impact. This increased oversight would improve jailhouse conditions and would likely decrease the violence that currently occurs in jails and would decrease the number of suits

brought. For nationwide improvement in jails the objective standard should be adopted by all circuits.

To remedy the circuit split, respect this Court's precedent, and protect detainees, this Court should adopt an objective standard for Fourteenth Amendment deliberate indifference claims. The Constitution must be equally applied to circuits throughout the country. A detainee's geographical location within this nation's borders should not determine the extent to which their Fourteenth Amendment rights will be protected. Additionally, this Court held that Fourteenth Amendment claims brought by pretrial detainees are categorically different from Eighth Amendment claims brought by incarcerated individuals. This difference makes *Farmer* wholly inapplicable to Mr. Shelby's case. Lastly, pretrial detainees are citizens who have yet to be proven guilty in a court of law and as such they should be afforded the same rights as all citizens. An objective standard is the only just way to protect detainees in line with the Constitution and this Court's precedent.

## CONCLUSION

For these reasons, this Court should affirm the judgement of the United States Court of Appeals for the Fourteenth Circuit.

Respectfully submitted,

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