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 PETITIONER

Team 37
Counsel of Record

QUESTIONS PRESENTED

1. Whether proper dismissal of a prior civil action, pursuant to *Heck v. Humphrey*, constitutes a "strike" within the meaning of the Prison Litigation Reform Act where such a dismissal fails to state a proper claim.

2. Whether this Court's holding in *Kingsley v. Hendrickson* extends to a pretrial detainee's § 1983 action alleging deliberate indifference based on failure to protect in violation of the Fourteenth Amendment Due Process Clause where the *Kingsley* Court's holding was expressly limited to the excessive force context.

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CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

The Fourteenth Amendment of the United States Constitution provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV.

Section 1983, codified as 42 U.S.C. § 1983, 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 . . . 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 . . . ."

42 U.S.C. § 1983.

Section 1915(g), codified as 28 U.S.C. § 1915(g), provides:

> "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).

STATEMENT OF THE CASE

Respondent Arthur Shelby is the second in command of one of the most notorious street gangs in the town of Marshall—the Geeky Binders. R. at 1. For the last several years,

Respondent has been in and out of prison for crimes such as assault, drug distribution, possession, and brandishing a firearm. R. at 3. On New Year's Eve of 2020, despite Respondent's efforts to flee, Marshall police arrested him while he was at a boxing match with his brothers. This time, Respondent was charged with battery, assault, and possession of a firearm by a convicted felon. R. at 4. He was later held at the Marshall jail. R. at 4.

Respondent's Booking at Marshall Jail

Officer Dan Mann was responsible for Respondent's booking. R. at 4. At Marshall jail, officers are required to upload all inmate paperwork into the jail's online database. R. at 4. Each inmate's file contains information about the inmate's charges, medications, inventoried items, and—if appropriate—gang affiliation, potential gang rivalries, and any known hits placed on an inmate. R. at 4. Marshall jail also employs several gang intelligence officers who are responsible for reviewing each incoming inmate's entry in the online database. R. at 4.

Because of his significant previous criminal charges, Respondent had a pre-existing file in the database with information regarding his past arrests and gang affiliation. R. at 4. Pursuant to Marshall jail policy, Mann updated Respondent's file with his current information including that he arrived at Marshall with a weapon and the statement he made to police that "[t]he cops can't arrest a Geeky Binder." R. at 4-5

Gang intelligence officers later reviewed Respondent's file in the online database. R. at 5. The intelligence officers knew that a rival gang—the Bonuccis—were seeking revenge on the Geeky Binders because Respondent's brother, Thomas Shelby, murdered a top official's wife. R. at 5. As a result, Respondent was a prime target for the gang. R. at 5. Given that members of the Bonucci gang were also being held in Marshall jail, the intelligence officers made a note in

Respondent's file and left paper notices throughout the jail. R. at 5. Respondent's status was also indicated on the rosters and floor cards at the jail. R. at 5.

A Missed Meeting with Jail Gang Intelligence Officers

The morning after Respondent's booking, gang intelligence officers held a meeting with all jail officials notifying them of his return. R. at 5. Because Respondent was a target for the Bonucci gang, the intelligence officers explained that Respondent would be housed in block A of the jail while the Bonucci members were to be held in blocks B and C. R. at 5. The intelligence officers reminded officials to check their rosters and floor cards often to ensure that rival gangs did not meet in the jail's common spaces. R. at 5.

Absent from that meeting was Petitioner, Officer Chester Campbell, an entry level guard at Marshall jail. R. at 5. According to the jail's time sheets, Campbell called in sick that morning and did not arrive at work until later that afternoon, after the meeting ended. R. at 5-6. Those absent from the meeting were instructed to review the meeting minutes in the jail's online database. R. at 6. However, there is no indication that Campbell ever did as a glitch in the system wiped any record of who viewed the meeting minutes. R. at 6.

Officer Campbell's Effort to Protect Respondent

About a week after Respondent's booking, Campbell—who was not a gang intelligence officer—supervised the transfer of inmates to the jail's recreation room. R. at 6. Respondent—now a pretrial detainee—told Campbell that he wanted to go to recreation. R. at 6. Campbell forgot to reference the database or list of inmates with special statuses that he carried with him before retrieving Respondent from his cell. R. at 6. That list included Respondent's name and noted that he was at possible risk of attack from members of the Bonucci gang. R. at 7.

Because Campbell was a rookie guard at Marshall jail, he was unaware of Respondent's gang affiliation. R. at 6.

While Respondent waited with another inmate at the guard stand, Campbell went to retrieve two more inmates for recreation from blocks B and C, not knowing they were members of the Bonucci gang. R. at 6-7. The two Bonucci gang members instantly charged Respondent and beat him. R. at 7. Campbell immediately tried to intervene to protect Respondent from the attack, but Campbell could not hold the three men back. R. at 7. Respondent was injured despite Campbell's efforts to maintain Respondent's safety. R. at 7.

Procedural History

On February 24, 2022, Respondent timely filed a § 1983 action against Officer Campbell in his individual capacity alleging that Campbell violated his Fourteenth Amendment Due Process rights in failing to protect him from the attack. R. at 7. Additionally, the same day Respondent filed a motion to proceed with litigation *in forma pauperis*. R. at 7. The District Court for the Western District of Wythe denied Respondent's motion to proceed *in forma pauperis* on April 20, 2022, pursuant to the "three-strikes" provision, codified at 28 U.S.C. § 1915(g), because the court found Respondent had three prior actions dismissed under *Heck v. Humphrey*. R. at 1. Respondent was ordered to pay the $402.00 filing fee, which Respondent timely paid. R. at 7. Officer Campbell filed a motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), which the district court granted on July 14, 2022, because Respondent failed to properly allege a deliberate indifference failure-to-protect claim under *Farmer v. Brennan*'s subjective standard. R. at 13.

Respondent timely filed an appeal on July 25, 2022, arguing that (1) his prior dismissed actions should not count as "strikes" under § 1915(g) and (2) that the district court erred in

applying the subjective deliberate indifference standard to his failure to protect claim. R. at 13. The Court of Appeals for the Fourteenth Circuit reversed the district court, holding Respondent's prior actions, dismissed pursuant to *Heck v. Humphrey*, were improperly counted as "strikes" and that Respondent's deliberate indifference failure-to-protect claim is governed by *Kingsley*'s objective standard. R. at 15. Officer Campbell subsequently petitioned for certiorari which this Court granted for the October 2023 term. R. at 21.

SUMMARY OF THE ARGUMENT

The Court of Appeals for the Fourteenth Circuit improperly held that (1) dismissals under *Heck v. Humphrey* do not constitute "strikes" under the Prison Litigation Reform Act ("PLRA"), and (2) that *Kingsley v. Hendrickson* established a purely objective standard for all Fourteenth Amendment claims brought by pretrial detainees. For reasons discussed below, the lower court's judgment must be reversed.

On the first issue, proper interpretation of the "three-strikes" provision finds dismissals pursuant to *Heck v. Humphrey* should generally constitute "strikes" because they fail to state a proper claim. The "three-strikes" provision was enacted to allow federal courts to hear more meritorious claims by preventing inmates from bringing, *inter alia*, actions which fail to state a proper claim without paying proper court filing fees. Additionally, this Court created the favorable termination requirement in *Heck v. Humphrey* by holding a detainee's civil action under § 1983 is procedurally barred if the action brings into question the detainee's criminal conviction associated with the civil action because it fails to create a cognizable claim.

A split exists amongst circuit courts of appeals regarding whether dismissals pursuant to *Heck*'s favorable termination requirement constitute "strikes" under the PLRA's "three-strikes" provision. However, most circuits constructively find *Heck* dismissals fail to state a proper claim because the claimant lacks an essential element necessary to sufficiently allege liability. The text

of the "three-strikes" provision explicitly states dismissals for failure to state a proper claim constitute "strikes"; thus, *Heck* dismissals must generally constitute "strikes."

Proper analysis begins—and ends—with a textual interpretation of the "three-strikes" provision. Well-established canons of statutory interpretation assert a proper analysis must begin with the text of the statute, including the plain meaning of the language in question and the context with which it appears within the statute. Applying these factors to the "three-strikes" provision finds textual support for dismissals pursuant to *Heck* constituting failures to state a proper claim because of an ordinary understanding of the language in other rules governing dismissals. Additionally, similar language within other sections of the PLRA bolster the assertion that a dismissal within the framework of *Heck* should properly be considered a "strike" because it does not establish a proper claim.

Moreover, even if this Court does not find textual support for *Heck* dismissals constituting "strikes," the overall purpose of the PLRA supports such analysis because it aligns with the PLRA's central purpose. The PLRA was enacted to allow greater access to meritorious claims by preventing frivolous claims from clogging federal courts. Further, the "three-strikes" provision was specifically enacted to prevent detainees from circumventing the more stringent pleading requirements of a habeas action in bringing suit against the government. Respondent is a frequent litigant because of his recurring intimacy with the criminal justice system, having brought at least four actions against government officials. Thus, Respondent's *Heck* dismissals should properly be considered "strikes" because of the PLRA's central purpose of stream-lining access to federal courts.

Turning to the second issue, the Fourteenth Circuit's decision must be reversed because it improperly interpreted and applied this Court's holding in *Kinglsey v. Hendrickson*. Both pretrial

detainees and convicted prisoners may bring a constitutional cause of action under § 1983 when a prison official acts with deliberate indifference to inmate health or safety. For convicted prisoners, deliberate indifference claims are governed by the Eighth Amendment's Cruel and Unusual Punishment Clause. And for pretrial detainees, deliberate indifference claims are governed by the Due Process Clause of the Fourteenth Amendment.

While pretrial detainees and convicted prisoners derive their rights from differing constitutional sources, federal courts have long analyzed deliberate indifference claims using the clear and workable Eighth Amendment standard laid out by this Court in *Farmer v. Brennan*. This familiar test asks whether an official knew of and disregarded a substantial risk of harm to inmate health or safety. The subjective intent requirement stems from the understanding that an official's failure to mitigate a risk he did not know about cannot constitute punishment within the meaning of the Constitution.

Kingsley v. Hendrickson did not alter this settled framework. In *Kinglsey*, this Court considered the narrow question of whether a pretrial detainee bringing an excessive force claim under the Fourteenth Amendment must show that the officer was subjectively aware that his use of force was unlawful. Regarding this question and this question only, *Kingsley* held that a detainee can prevail by showing that the force purposely or knowingly used against him was objectively unreasonable.

Despite the limited scope of *Kingsley*'s holding, the Court of Appeals for the Fourteenth Circuit erroneously expanded *Kingsley* beyond the excessive force context. In doing so, the court ignored the fundamental distinctions between excessive force claims, which involve the intentional application of force by state actors, and deliberate indifference failure-to-protect claims which rest on unknowing inaction. Additionally, by replacing *Farmer*'s clear subjective

standard with an ill-defined reckless disregard standard, the Fourteenth Circuit eviscerates any meaningful distinction between state tort law and constitutional due process violations.

Accordingly, this Court must reverse the decision below.

ARGUMENT

I. This Court should reverse the Fourteenth Circuit's holding because *Heck* dismissals properly constitute "strikes" pursuant to 28 U.S.C. § 1915(g).

Heck dismissals should generally constitute "strikes" pursuant to the "three-strikes" provision of the Prison Litigation Reform Act ("PLRA") because any alternative interpretation misconstrues the PLRA's legislative purpose and statutory language. Congress enacted the PLRA to prevent frivolous claims from clogging federal courts and blocking more meritorious civil rights violations from being reviewed. *See e.g.*, *Jones v. Bock*, 549 U.S. 199, 203 (2007); *Washington v. L.A. County Sheriff's Dep't*, 833 F.3d 1048, 1054 (9th Cir. 2016). Accordingly, the PLRA created several procedural bars including a "three-strikes" provision, codified at 28 U.S.C. § 1915(g), which prevents any prisoner from filing civil actions *in forma pauperis* if they accumulate three "strikes"—prior actions which were dismissed. *See Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) ("To address concerns that prisoners proceeding IFP were burdening the federal courts with frivolous lawsuits, the PLRA altered the IFP provisions for prisoners in an effort to discourage such suits."). This provision deters nonmeritorious claims by preventing prisoners from filing civil actions without paying appropriate filing fees.

Under the "three-strikes" provision, a prisoner accumulates a "strike" for bringing "an action or appeal . . . that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). Because of the provision's broad language, federal courts have debated whether dismissals pursuant to *Heck v. Humphrey* constitute a "strike." *See Garrett v. Murphy*, 17 F.4th 419, 427 (3d Cir. 2021) (outlining

conflicting holdings from various circuit courts of appeals). However, most circuits have properly interpreted *Heck* dismissals as "strikes" under § 1915(g) because they fail to state a proper claim. *See e.g.*, *id.* (joining the Fifth, Tenth, and D.C. Circuits in holding that a dismissal which fails to meet *Heck*'s favorable termination requirement counts as a PLRA strike).

Heck dismissals, or the favorable termination rule, are distilled from *Heck v. Humphrey* where the Supreme Court addressed whether a claim seeking monetary damages "is cognizable under § 1983 at all" if it challenges a prisoner's conviction. 512 U.S. 477*,* 483 (1994). A *Heck* dismissal bars § 1983 action where favorable judgment would "render a conviction or sentence invalid" unless the plaintiff can prove the conviction "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.

The *Heck* Court relied on the well-established holdings for a tortious analysis of § 1983 claims and determined the common law tort of malicious prosecution the most analogous because "it permits damages for confinement imposed pursuant to the legal process." *Id.* at 484; *see also Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 304 (1986) ("We have repeatedly noted that 42 U.S.C. § 1983 creates 'a species of tort liability'"). Because favorable termination of a prior criminal proceeding is an essential element of malicious prosecution claims, the *Heck* Court held a prisoner lacking evidence of favorable termination could not properly state the claim and would have no cognizable action under § 1983. *Heck*, 512 U.S. at 485. Accordingly, this Court should reverse the Fourteenth Circuit's holding that *Heck* dismissals do not constitute "strikes" under § 1915(g) because proper statutory interpretation of the provision supports *Heck* dismissals as failing to state a proper claim.

A. ***Heck*** **dismissals should constitute "strikes" because they fail to state a claim when interpretated under § 1915(g)'s broad language.**

A statute's language should always act as the starting point for a court's analysis. *Permanent Mission of India to the UN v. City of N.Y.*, 551 U.S. 193, 197 (2007) ("We begin, as always, with the text of the statute."). Additionally, because § 1915(g)'s legislative history is meager, the statute's language provides the clearest illustration of the legislative intent and various established statutory interpretation canons provide proper insight into a persuasive interpretation of its text. *Washington*, 833 F.3d at 1054.

Courts should begin examining the language at issue to determine if it has a "a plain and unambiguous meaning with regard to the particular dispute." *Robinson v. Shell Oil Co*., 519 U.S. 337, 340 (1997). To determine whether plain meaning exists in statutory language courts typically reference "[t]he plainness or ambiguity of statutory language [itself]" and "how the language exists within the statute." *Id.* at 341; *see also McCarthy v. Bronson*, 500 U.S. 136, 139 (1991) (explaining that "statutory language must always be read in its proper context").

Moreover, this Court has already endorsed a similar statutory interpretation of § 1915(g) under the analogous setting of determining whether an action dismissed for failure to state a claim constituted a "strike" when dismissed without prejudice. *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020). The *Lomax* Court held a proper interpretation of the "three-strikes" provision "begins, and pretty much ends, with the text of Section 1915(g)." *Id*. at 1724. Further, because of the intentionally broad language of § 1915, the *Lomax* Court stressed against an interpretation which would incentivize judicial lawmaking. *Id*. at 1725 ("This Court may not narrow a provision's reach by inserting words Congress chose to omit."). Thus, well-established canons of statutory interpretation support *Heck* dismissals as "strikes" pursuant to § 1915(g) because *Heck* dismissals fail to state a proper claim when examined under a plain meaning of

§ 1915(g)'s language and the context of the "three-strikes" provision within the PLRA.

1. A plain reading of the "three-strikes" provision's language supports *Heck* dismissals constituting "strikes" for failure to state a claim.

Statutory language should be followed from its plain or ordinary meaning unless "absurd results [would] follow from giving such broad meaning to the words." *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892). The "three-strikes" provision explicitly states any action "dismissed on the grounds that [it] failed to state a claim upon which relief can be granted" should be counted as a "strike." 28 U.S.C. 1915(g). Additionally, the plain meaning of this language has been held central to *Heck*'s favorable termination requirement. *See Colvin v. LeBlanc*, 2 F.4th 494, 497 (5th Cir. 2021) ("*Heck* implicates a plaintiff's ability to state a claim, not whether the court has jurisdiction over that claim"). Thus, an action dismissed pursuant to *Heck* is constructively a dismissal for failure to state a proper claim.

Heck v. Humphrey was clear. Section 1983 claims for damages which imply the invalidity of an inmate's conviction are not cognizable claims under § 1983 "until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Heck*, 512 U.S. at 489; *see also Smith v. Virginia*, 636 F.3d 1306, 1312 (10th Cir. 2011) (stating that the *Heck* Court's favorable termination requirement is as "an *essential element* of a prisoner's claim") (emphasis in original). The *Heck* Court's requirement of favorable termination constructively frames dismissals pursuant to *Heck* are those which fail to plausibly state a claim. Thus, a case lacking evidence of favorable termination does not raise a cognizable claim and the claimant cannot be entitled to relief. 512 U.S. at 489. Such nonmeritorious claims then present plausible pleading deficiencies properly dismissed by courts. *Jones*, 549 U.S. at 215 ("A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief.").

Further, the "three-strikes" provision contains almost identical language to countless statutes and treatises governing dismissal, but the most significant and analogous comparison comes from the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P 12(b)(6) ("failure to state a claim on which relief can be granted"). Additionally, cases dismissed under Rule 12(b)(6) have been held to properly count as "strikes" under the PLRA. *See Washington*, 833 F.3d at 1055 (holding that *Heck* dismissals may constitute Rule 12(b)(6) dismissals when the pleadings present an "obvious bar to securing relief" under *Heck*). Here, Respondent offers no evidence of favorable termination for any of his previous actions, all dismissed pursuant to *Heck*. R. at 1. Thus, a plain understanding of § 1915(g)'s language within well-established legal terminology supports Respondent's *Heck* dismissals counting as "strikes."

2. Identical language in § 1915(e) supports *Heck* dismissals constituting "strikes."

Next, Respondent's *Heck* dismissals should properly be counted as "strikes" under § 1915(g) because of comparable language elsewhere in the statute. Courts often compare similar language within the entire statute to determine plain meaning of potentially ambiguous statutory language. *See Est. of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 479 (1992) (reaffirming "the basic canon of statutory construction that identical terms within an Act bear the same meaning."). Questions on statutory interpretation should be resolved by looking at the context of the language in question. *See King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) ("[A] statute is to be read as a whole . . . since the meaning of statutory language, plain or not, depends on context.").

Here, the PLRA contains comparable language which follows the failure to state a proper claim analysis discussed above. Examining the "three-strikes" provision of § 1915(g) within the context of the statute reveals identical language in § 1915(e), granting courts the authority of

"*sua sponte* dismissals of *in forma pauperis* cases" that fail to state a claim for relief. *Jones*, 549 U.S. at 214 (citing 28 U.S.C. § 1915(e)(2)(B)). Further, claims under § 1915 are held to the same plausibility standard for pleading requirements as general civil actions. *See Jones*, U.S. at 215 (comparing § 1915(e) to Rule 12(b)(6)). These statutory provisions have the same ordinary meaning, and are subject to the same plain understanding, as the purported ambiguous language in the "three-strikes" provision. Therefore, the identical language in § 1915(e) supports interpreting Respondent's *Heck* dismissals as "strikes" pursuant to § 1915(g) because statutory language must be interpreted similarly if parallel language exists elsewhere in the statute.

B. The PLRA's overall purpose supports *Heck* dismissals constituting "strikes" because they deter meritless litigation.

Even if this Court determines a plain reading of the "three-strikes" provision leaves ambiguity, *Heck* dismissals should constitute "strikes" under § 1915(g) because doing so aligns with the overarching purpose of the PLRA. Statutory purpose provides insight into proper interpretation. *See Dole Food Co. v. Patrickson*, 538 U.S. 468, 484 (2003) (Breyer, J., concurring in part and dissenting in part) ("Statutory interpretation is not a game of blind man's bluff. Judges are free to consider statutory language in light of a statute's basic purposes."); *see also Holy Trinity*, 143 U.S. 457, 463 (1892) ("[A]nother guide to the meaning of a statute is found in the evil which it is designed to remedy").

The PLRA was enacted to deter frivolous litigation. *See Washington*, 833 F.3d at 1054 (explaining that "the Act's supporters indicated that it was meant to curb the volume of non-meritorious, and often frivolous, civil-rights lawsuits brought challenging prison conditions.") To accomplish this goal, the PLRA contains several screening provisions. *See e.g.*, 28 U.S.C. § 1915A (requiring courts to *screen cases for cognizable claims* and dismiss actions which are "frivolous, malicious, or fails to state a claim upon which relief may be granted") (emphasis

added); 42 U.S.C. § 1997e(a) (requiring inmates to exhaust administrative remedies before filing federal actions). The "three-strikes" provision acts in conjunction with these provisions to ensure a "flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit." *Jones*, 549 U.S. at 203; *see also Porter v. Nussle*, 534 U.S. 516, 524 (2002) ("Congress enacted § 1997e(a) to reduce the *quantity* and improve the *quality* of prisoner suits") (emphasis added).

Moreover, *Heck*'s favorable termination requirement has been held necessary to the central purpose of the PLRA by preventing inmates from bypassing the more stringent pleading requirements of the federal habeas statute, thus discouraging meritless litigation. *Nelson v. Campbell*, 541 U.S. 637, 647 (2004) ("This 'favorable termination' requirement is necessary to prevent inmates from doing indirectly through [civil] damages actions what they could not do directly . . . [through] the federal habeas statute.").

Here, Respondent is no stranger to the legal system having "had several run-ins with the law." R. at 3. Further, Respondent has previously brought multiple civil actions which have all been dismissed under *Heck*'s favorable termination rule. R. at 1. Because Respondent has significant experience with the legal system, it is not unreasonable to infer he will continue to bring civil actions against the government. Moreover, Respondent had no issue paying the appropriate filing fees. R. at 7 ("Court directed Shelby to pay the $402.00 filing fee before proceeding, which Shelby paid in full."). Therefore, if Respondent wishes to continue to file civil actions in conjunction with lawful detention, he need not be able to file *in forma pauperis*.

In sum, prior cases dismissed under *Heck v. Humphrey* should constitute proper "strikes" under § 1915(g), as would bar a prisoner from filing *in forma pauperis*, because such dismissals fail to state a proper claim under well-established canons of statutory interpretation and the

overall purpose of the PLRA. Further, Respondent has offered no evidence in lower proceedings to argue any mitigating factors, only that his prior cases should not count as "strikes" on principle. Therefore, the district court properly counted to three and dismissed Respondent's motion to file this § 1983 claim *in forma pauperis*. Accordingly, this Court must reverse the Fourteenth Circuit's decision.

II. *Kingsley* did not eliminate the subjective intent requirement in a pretrial detainee's deliberate indifference failure-to-protect claim because *Kingsley* was expressly limited to excessive force context, and thus the lower court's decision must be reversed.

Nearly thirty years ago, this Court in *Farmer v. Brennan* established the general standard for claims by inmates alleging unconstitutional conditions of confinement, otherwise known as deliberate indifference claims. *See* 511 U.S. 825, 834 (1994) (explaining that the deliberate indifference standard governs all "prison-conditions cases" including failure-to-protect claims). This familiar test requires plaintiffs to prove an objective component (a "sufficiently serious" deprivation) and subjective component (a "sufficiently culpable state of mind"). *Id*. Specifically, a plaintiff must show that the official knew of an "excessive risk to inmate health or safety" and failed to mitigate that risk. *Id.* at 837.

Kinglsey did not abrogate this settled framework. The majority in *Kingsley* decided only the narrow issue of what the standard is for determining "whether the force deliberately used is, constitutionally speaking, 'excessive.'" *Kingsley v. Hendrickson*, 576 U.S. 389, 396 (2015) . "It is with respect to *this* question," the Court explained, "that we hold that courts must use an objective standard." *Id.* (emphasis in original). By the Court's own words, *Kingsley* is limited to the excessive force context. *See id.* at 402 (declining to address questions not confront[ing] the specific issue of excessive force claims in the pretrial detainee context).

Despite the limited scope of *Kingsley*'s holding, the Fourteenth Circuit Court of Appeals joined the Second, Fourth, Fifth, Seventh, and Ninth circuits in reading *Kingsley* as a veiled invitation to upend its Fourteenth Amendment deliberate indifference jurisprudence and expand *Kingsley*'s objective standard beyond the excessive force context. *See e.g.*, *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017); *Short v. Hartman*, 87 F.4th 593, 605 (4th Cir. 2023); *Westmoreland v. Butler Cnty., Kentucky*, 29 F.4th 721, 728 (6th Cir. 2022); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016).

However, neither the ruling nor rationale of *Kingsley* suggests arbitrarily extending the objective standard to govern all deliberate indifference claims brought by pretrial detainees—a fact recognized by many circuits. *See e.g.*, *Cope v. Cogdill*, 3 F.4th 198, 208 n.7 (5th Cir. 2021) (noting that *Kingsley* addressed "a different type of claim" and thus "did not abrogate our deliberate indifference precedent"); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 (8th Cir. 2018) (stating that *Kingsley* "was an excessive force case, not a deliberate indifference case" and thus did not apply to the failure-to-protect claim); *Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020) (explaining that the *Kingsley* Court "said nothing to suggest it intended to extend that standard to pretrial detainee claims generally or deliberate indifference claims specifically"); *Dang v. Sheriff, Seminole Cnty. Fla.*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) (declining to extend *Kingsley* to deliberate indifference claim of inadequate medical care). Accordingly, for the reasons addressed below, this Court must reverse the judgment of the Court of Appeals for the Fourteenth Circuit.

A. Grafting *Kingsley*'s excessive force framework onto deliberate indifference failure-to-protect claims ignores the fundamental differences between the two types of claims.

The Due Process Clause prohibits any punishment of pretrial detainees prior to an adjudication of guilt. *See Bell v. Wolfish*, 441 U.S. 520, 535-36 (1979) (explaining that the relevant inquiry for a pretrial detainee's Fourteenth Amendment claim is whether the situation at issue "amounts to punishment"). And *Kingsley* is an excessive force case that involved punishment of a pretrial detainee in the most literal sense. There, after a detainee refused an officer's orders, the detainee was handcuffed, brought to a receiving cell, and placed face down on a bunk where one officer allegedly slammed his head into the concrete. *Kingsley*, 576 U.S. at 392. Another officer then applied a taser to the detainee's back for approximately five seconds. *Id.* at 393. Whether the officers intended to apply force was undisputed. *Id.* at 396. Thus, the Court considered the necessary "state of mind with respect to the proper *interpretation* of the force. . . that the defendant deliberately (not accidentally or negligently) used. *Id.* (emphasis in original).

The *Kinglsey* Court determined that an officer's reason for using force or whether the officer believed his use of force was "excessive" is not required for pretrial detainees to pursue excessive force claims. *Id.* at 395. Rather, a detainee may prevail by showing "that the force purposely or knowingly used against him was objectively unreasonable." *Id.* at 397. *Kingsley*'s holding, derived from *Bell*, observed that absent "'an expressed intent to punish,'" objectively unreasonable force constitutes punishment because such force could not be "'rationally related to a legitimate nonpunitive governmental purpose,'" and thus appears "'excessive in relation to that purpose.'" *Id.* at 398 (quoting *Bell*, 441 U.S. 520 at 561).

However, *Kingsley* turned on considerations unique to the excessive force context. *See* 576 U.S. at 397-401 (relying extensively on *Graham v. Connor*, 490 U.S. 386, 389 (1989), which

set the "objective reasonableness" standard used for analyzing excessive force claims in the Fourth Amendment context). And this Court has made clear that excessive force claims are categorically distinct from deliberate indifference claims. *See Farmer*, 511 U.S. at 835 (explaining that "'application of the deliberate indifference standard is inappropriate' in one class of prison cases: when officials stand accused of using excessive physical force") (internal citations omitted). Thus, interpreting *Kingsley* to rewrite the standard for all deliberate indifference jurisprudence simply clashes with logic and overlooks critical distinctions between the two categories of claims.

To begin, excessive force cases involve the deliberate application of physical force by officers—i.e. "the swing of a fist that hits a face . . . or the shot of a Taser that leads to the stunning of its recipient." *Kingsley*, 576 U.S. at 395. These actions are not inadvertent or accidental. *Kingsley* made clear that if an officer's use of force is unintentional, "the pretrial detainee cannot prevail" because the claim would become one of negligence. *See* 576 U.S. at 396 (2015) (reaffirming that "'*negligently* inflicted harm is categorically beneath the threshold of constitutional due process'") (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 834 (1998)). In all excessive force cases then, some element of intentionality necessarily exists. As a result, when an officer deliberately engages in objectively unreasonable force, courts may permissibly infer punitive intent without defaulting to subjective considerations. *Kingsley*, 576 U.S. at 398-99.

However, in the deliberate indifference failure-to-protect context, a state of mind inquiry is needed. Unlike the overt use of excessive force, which can more easily be categorized as punishment, failure-to-protect cases "often rest[] on an unwitting failure to act, making one's subjective intent critical in understanding the chain of events." *See Brawner v. Scott Cnty., Tenn.*,

14 F.4th 585, 608 (6th Cir. 2021) (Readler, J., dissenting). Unknowing inaction does not raise an inference of punitive intent. *See Strain*, 977 F.3d at 991 ("Although 'punitive intent may be inferred from affirmative acts that are excessive in relationship to a legitimate government objective, the mere failure to act does not raise the same inference.'") (internal citations omitted); *see also Farmer*, 511 U.S. at 837-38 (likening "[a]n act or omission unaccompanied by knowledge of a significant risk of harm" to common law negligence rather than "the infliction of punishment").

Additionally, even in a case where an officer affirmatively acts, for example, by placing a detainee in a cell with a violent inmate, a purely objective inquiry does not lend inference to whether the officer acted with punitive intent. In other words, the punitive intent that may be obviously and objectively inferred when an officer intentionally beats a detainee is not present in the deliberate indifference context. By its very definition, a deliberate indifference claim demands some appreciation of the consequences of one's actions and thus subjective intent. *See Strain*, 977 F.3d at 987 (emphasizing that "the word deliberate makes a subjective component inherent in the claim"). Accordingly, a plaintiff must prove that an official was aware of a serious risk of harm in order to show that the official intended the plaintiff's injury or at least appreciated the risk which eventually caused the injury. *See Farmer*, 511 U.S. at 837 (explaining that "an official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference").

B. This Court's precedent demands a subjective intent requirement for deliberate indifference failure-to-protect claims.

Nearly five decades ago, this Court recognized a constitutional cause of action under § 1983 for deliberate indifference to an inmate's serious medical needs in violation of the Eighth Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (holding that "deliberate

indifference to prisoner's serious illness or injury" constitutes cruel and unusual punishment). Recognizing that the term "deliberate indifference" is not inherently self-defining, *Farmer* later clarified that the deliberate indifference standard parallels the "subjective recklessness" standard of criminal law. 511 U.S. at 839-40. Thus, to prove that an officer acted with "deliberate indifference," a prisoner must show that the officer knew of an excessive risk to inmate health or safety and "disregard[ed] that risk by failing to take reasonable measures to abate it." *Id.* at 847.

In rejecting a purely objective standard for deliberate indifference cases, *Farmer* made clear that actual knowledge of the risk is critical because "an 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." *Id.* at 838. This principle applies with equal force whether the claim sounds in the Eighth Amendment or Fourteenth Amendment. To "punish" in the constitutional sense requires some heightened mental state. *See Bell*, 441 U.S. at 539 (recognizing an implied intent to punish where "a condition or restriction of pre-trial detention" is not "reasonably related to a legitimate governmental objective"). Thus, even when applied to detainees through the Due Process Clause, a deliberate indifference claim still requires inquiry into a defendant's state of mind to determine if the conduct goes beyond mere negligence. *See Daniels v. Williams*, 474 U.S. 327, 333 (1986) (explaining "injuries inflicted by governmental negligence" fall outside the ambit of Due Process protection). And *Farmer*'s subjective standard provides a clear and logical framework for deliberate indifference claims whether the inmate is a pretrial detainee or a convicted prisoner. *See e.g.*, *Burrell v. Hampshire Cnty.*, 307 F.3d 1, 7 (1st Cir. 2002) (applying subjective standard to pretrial detainee's failure-to-protect claim); *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 643 (5th Cir. 1996) **(**same); *Jackson v. Buckman*, 756 F.3d 1060, 1065 (8th Cir. 2014) (applying subjective

standard to pretrial detainee's inadequate medical care claim); *Martinez v. Beggs*, 563 F.3d 1082, 1088 (10th Cir. 2009) (same); *Dang*, 871 F.3d at 1279 (same).

In the case at bar, the Court of Appeals for the Fourteenth Circuit replaced *Farmer*'s familiar test with an arbitrary extension of *Kingsley*'s objective standard. To justify its decision, the lower court reasoned that "[u]nder the Fourteenth Amendment, pretrial detainees are afforded stronger constitutional protections than convicted prisoners under the Eighth Amendment." R. at 16. However, both the Eighth and Fourteenth Amendments impose a duty on prison officials to "take reasonable measures to guarantee the safety of the inmates" in their care. *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984); *see also DeShaney v. Winnebago Cnty. Dept. of Soc. Services*, 489 U.S. 189, 199-200 (1989) (explaining that "when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety"). This includes ensuring that "inmates receive adequate food, clothing, shelter, and medical care" and "protect[ing] prisoners from violence at the hands of other prisoners," *Farmer*, 511 U.S. at 833.

Thus, when it comes to deliberate indifference cases—i.e. those alleging a deprivation of basic human needs—no constitutionally significant distinction exists between the rights of pretrial detainees and convicted prisoners. To suggest that prisoners may be denied protection—even as a punitive measure—defies logic and ignores the principle that "[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society.'" *Id.* at 834 (internal citations omitted). Respondent—as a detainee—does not have more of a right than a convicted prisoner not to be beaten or raped by a fellow inmate. Accordingly, the lower court's rationale lacks merit.

C. The standard employed below eliminates any examination of a state actor's subjective intent and substitutes an ill-defined "reckless disregard" standard incompatible with a due process harm.

While the Due Process Clause protects a pretrial detainee's right to be free from punishment, this Court has made clear that "the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm." *Cnty. of Sacramento*, 523 U.S. at 848. Negligence never constitutes due process harm because "[o]ur Constitution deals with the large concerns of the governors and the governed . . . it does not purport to supplant traditional tort law." *Daniels*, 474 U.S. at 332. Despite this, the Court of Appeals for the Fourteenth Circuit effectively constitutionalized common law negligence by erroneously extending *Kingsley*'s limited holding to the deliberate indifference failure-to-protect context.

Under the lower court's transplanted "objective reasonableness standard," a detainee must prove that an officer made (1) "an intentional decision" regarding the detainees' conditions of confinement that (2) put the detainee at a "substantial risk of suffering serious harm," and (3) the officer "did not take reasonable measures to abate that risk." R. at 16-18. An "officer's actual awareness of the level of risk" need not be shown. R. at 18. Rather liability may be imposed if "a reasonable officer in the circumstances would have appreciated the high degree of risk involved." R. at 18.

The lower court's standard purportedly demands "more than negligence" by requiring detainees to allege "something akin to reckless disregard." R. at 18 (internal citations omitted). But as a practical matter, this objective standard is functionally indistinguishable from an ordinary negligence standard. *See Farmer*, 511 U.S. at 837-38 (rejecting an objective recklessness standard because the "[t]he common law . . . imposes tort liability on a purely objective basis."). And a closer look at the lower court's language proves instructive. In holding

that Respondent properly alleged a failure-to-protect claim, the Court explained that "Officer Campbell acted in an objectively unreasonable manner," and failed to take "*reasonable* measures to abate the risk even though *any reasonable officer* would have acted otherwise." R. 18-19 (emphasis added). Sound familiar? *See* Restatement (Third) of Torts: Phys. & Emot. Harm § 3 (Am. L. Inst. 2010) (defining "negligence" as when a "person *does not exercise reasonable care* under all the circumstances" and noting that "*reasonable care*" is "conduct that avoids creating an 'unreasonable risk of harm'") (emphasis added).

Additionally, this Court has repeatedly warned, that "[t]he Fourteenth Amendment is not a 'font of tort law to be superimposed upon whatever systems may already be administered by the States,'" *Cnty. of Sacramento*, 523 U.S. at 848 (quoting *Daniels*, 474 U.S. at 332). But without inquiry into a defendant's subjective intent and awareness of risk, the distinction between a due process violation under § 1983 and state tort law disappears. And Officer Campbell's case is the perfect example.

Campbell was an entry level guard—not a gang intelligence officer. R. at 5. And nothing in the record indicates that Campbell knew of Respondent's gang affiliation or the risk he faced from the Bonucci gang. In fact, the record states the opposite—that Campbell did not reference the database or the list of inmates with special statuses before retrieving Respondent from his cell. R. at 6. As a result, Campbell unknowingly grouped Respondent with inmates who wanted to harm him. This was an unintentional, unfortunate mistake on Campbell's part. But the Due Process Clause "is not implicated by the lack of due care of an official causing *unintended* injury to life, liberty or property." *Davidson v. Cannon*, 474 U.S. 344, 347 (1986) (emphasis added); *see also Daniels*, 474 U.S. at 331 (explaining that "[h]istorically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of . . .

liberty.") (emphasis in original). Even *Kingsley* made clear that the unintentional or accidental infliction of harm is not a due process violation. *See* 576 U.S. at 396 (explaining that "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail.").

Respondent alleged in his complaint that Officer Campbell "failed to take proper precautions." R. at 10. And while that may be true, such conduct is negligent at most. *See* Restatement (Third) of Torts: Phys. & Emot. Harm § 3 cmt. c (explaining that "negligence frequently involves a failure to take a reasonable precaution."). To hold that Officer Campbell's failure to act as a "reasonable officer" constitutes "a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law." R. at 19; *Daniels*, 474 U.S. at 332. Accordingly, dismissal of Respondent's claim is proper, and this Court must reverse the judgment below.

CONCLUSION

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

Respectfully submitted,

Team 37
Counsel of Record