No. 23-05

In the SUPREME COURT OF THE UNITED STATES

October Term 2023

Chester Campbell,
Petitioner,

v.

Arthur Shelby,
Respondent.

On Writ of Certiorari to the
Supreme Court of the United States

BRIEF FOR RESPONDENT

Team 38
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2. Should this Court expressly constrain the decision in *Kingsley* as to require pretrial detainees to meet an excessively high subjective deliberate-indifference burden when bringing a failure-to-protect claim under 42 U.S.C. § 1983?

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Wythe is unpublished and may be found at *Shelby v. Campbell*, No. 23:14-cr-2324 (W.D. Wythe July 14, 2022). The opinion of the United States Court of Appeals for the Fourteenth Circuit is unpublished and may be found at *Shelby v. Campbell*, No. 2023-5255 (14th Cir.).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Eighth Amendment, the Fourteenth Amendment, and multiple federal statutes are implicated in the case at bar. The Eighth and entire Fourteenth Amendments are reproduced in Appendix A, though the case at bar focuses on the Cruel and Unusual Punishment clause and the Due Process clause respectively. Relevant Federal Statutes, 42 U.S.C. § 1983 and 28 U.S.C. § 1915(g), are available in Appendix B.

STATEMENT OF THE CASE

I. The Arrest: First Domino to Fall in the Course of Events which Landed Mr. Arthur Shelby in the Hospital.

On New Year's Eve, 2020, the three Shelby brothers attended a boxing match together when local Marshall police raided the event with arrest warrants for each brother. *Shelby v. Campbell*, No. 23:14-cr-2324, at *3 (W.D. Wythe July 14, 2022). This incident was the first domino in the chain of police action that eventually landed Mr. Arthur Shelby in the hospital.

Arthur Shelby is the second-in-command of the notorious local gang, the Geeky Binders; Thomas Shelby is the current leader, and John Shelby is also a member. *Id.* at *2-3. All three had arrest warrants for battery, assault, and a variety of firearm offenses. *Id.* During the commotion of the raid, Thomas and John escaped but as Mr. Shelby was "under the influence of alcohol and several drugs," he was unable to flee. *Id.* at *3. Police arrested Mr. Shelby and charged him "with battery, assault, and possession of a firearm by a convicted felon" and then took Mr. Shelby to the Marshall jail where he was booked by long-time jail official, Dan Mann. *Id.* at *4.

II. Marshall Jail's Booking Procedures Keep an Eye Towards Gang Affiliation to Prevent Rival Clashes.

As Mann completed the preliminary paperwork, he instantly noticed Mr. Shelby was a Geeky Binder. *Id.* at *4. In the past, the Geeky Binders essentially owned the town as they ran various businesses in Marshall, owned a majority of the real estate, and held public office. *Id.* at *3. Thus, being an infamous gang, the Geeky Binders had a slew of traits that set them apart, all of which Mr. Shelby donned as he arrived at the jailhouse. *Id.* at *4. First is their eye-catching attire: "a tweed three-piece suit" topped with "a long overcoat." *Id.* Second, and incredibly important, is "a custom-made ballpoint pen with an awl concealed inside and 'Geeky Binders' engraved on the outside." *Id.* This distinctive pen ties to the use of sharp awls in the Geeky Binders' advanced torture techniques they leverage against their enemies. *Id.* at *2.

Mann inventoried all of Mr. Shelby's items in the Marshall jail's online database and specifically indicated that Mr. Shelby came to jail with a weapon, the pen-awl. *Id.* at *4. The Marshall jail requires its officers to create "both paper and digital copies of [completed] forms" to upload and store in the online database. *Id.* This database stores a file for each of the inmates and it lists the "charges, inventoried items, medications, gang affiliation, and other pertinent" information the Marshall "jail officials would need to know." *Id.* As Marshall deals with a substantial amount of gang activity, the gang affiliation section of the file proves especially important, as it also includes "any known hits placed on the inmate and any gang rivalries." *Id.*

Marshall's hefty gang activity is not solely attributable to the Geeky Binders. *Id.* at *4. In recent years, the Geeky Binders' power deteriorated significantly as newcomers, the Bonucci clan, took over the town. *Id.* This gang, led by Luca Bonucci, exerted noteworthy power in local politics and over "important Marshall officials." *Id.* Their bribing power even captured Marshall police and jail officials. *Id.* In response, the Marshall jail fired the personnel involved and hired new officials, unsoiled by the Bonucci clan. *Id.* Eventually, Bonucci's bribing sway ran dry and he is now being held, with several Clan members, "at the Marshall jail on assault and armed robbery charges." *Id.* Even from jail, the Bonucci clan still employs substantial influence over Marshall. *Id.* Consequently, due to this considerable gang presence, the jail employs several gang intelligence officers who are responsible for reviewing incoming inmates' database files. *Id.*

While completing Mr. Shelby's paperwork, Mann followed jail protocol; but observed in the database that Mr. Shelby "already had a page…from his previous arrests and stays at the jail." *Id.* at *4. In the past, Mr. Shelby had encounters with the law which resulted in "arrests and subsequent convictions for…drug distribution and possession, assault, and brandishing a firearm." *Id.* at *3. To observe the previous arrest information, Mann opened a new file and

clearly saw Mr. Shelby's "gang affiliation and other identifying information." *Id.* at *4-5. During this booking process, Mr. Shelby made statements to Mann while still under the influence of the alcohol and drugs, including "'The cops can't arrest a Geeky Binder!'…'My brother Tom will get me out of here, just you wait.'" *Id.* at *4. Nonetheless, Mann correctly recorded Mr. Shelby's current data and noted Mr. Shelby's comments in the gang affiliations section. *Id.* at *5.

III. Gang Intelligence Recognizes the Blaring Target on Mr. Shelby's Back and Implements Procedures to Protect Him.

After Mann finished Mr. Shelby's booking process, Mann released him to jail officials who took him to a holding cell, separate from the main jail area. *Id.* at *5. Gang intelligence officers then pulled Mr. Shelby's database file and "reviewed and edited" it, keeping a close eye due to Mr. Shelby's "high-ranking status" as second-in-command of the Geeky Binders. *Id.* at *2, *5. Further, a recent clash between the Bonucci clan and the Geeky Binders heightened their awareness as Bonucci's wife was murdered by Thomas Shelby. *Id.* at *5. This meant war; the Bonucci clan was thirsting for revenge, and Mr. Arthur Shelby had landed smack in the middle of the Bonucci clan's crosshairs. *Id.* Due to being a prime target, the gang intelligence officers created "a special note in [Mr.] Shelby's file and printed out [] notices…[for] every administrative area in the jail." *Id.* Mr. Shelby's status was also printed "on all roster and floor cards." *Id.* Most importantly, the morning after Mr. Shelby was booked, the gang intelligence officers called a "meeting with all jail officials" alerting them of Mr. Shelby's presence and that Mr. "Shelby would be housed in cell block A" as the Bonucci clan was "dispersed…[among] cell blocks B and C." *Id.* Everyone present was reminded "to check the roster and floor cards regularly" to prevent rival gang members from clashing in the jail's common spaces. *Id.*

On the roll call list of attendees of the January 1, 2021, meeting was Officer Chester Campbell, a new, properly trained, "entry-level guard at the [] jail." *Id.* at *5. Though he was not

a gang intelligence officer, Officer Campbell had met job expectations during his employment. *Id.* However, the jail's time sheets showed that Officer Campbell did not come in to work until the afternoon after the meeting had concluded as he had called in sick that morning. *Id.* at *5-6. Any personnel who missed the meeting needed to "review the meeting minutes on the jail's [] database" per the gang intelligence officers' instructions. *Id.* at *6. Whenever a jail employee views a page or file on the database, it is recorded; but, the data containing the employees who viewed the January 1 meeting minutes was completely erased due to a "glitch in the system." *Id.* Thus, there was no way to verify if Officer Campbell actually reviewed the meeting minutes.

IV. Officer Campbell's Nonadherence to Protocol: the Domino that Guaranteed Mr. Shelby's Vicious Attack.

Approximately a week after the meeting and Mr. Shelby's booking, on January 8, 2021, a "transfer of inmates to and from the jail's recreational room" was to occur under Officer Campbell's supervision. *Id.* at *6. While gathering inmates, Officer Campbell went to Mr. Shelby's cell and asked if he would like to go; Mr. Shelby responded agreeably. *Id.* At this time, since Mr. Shelby had already been "charged with several offenses," he was "formally considered a pretrial detainee." *Id.* at *6 n.1. When this interaction occurred, Officer Campbell supposedly did not know who Mr. Shelby was, but he neither bothered to check the list of special status inmates he was holding, nor the jail's database before retrieving Mr. Shelby from the cell. *Id.* at *6. The list Officer Campbell held contained important information about the inmates such as "special medical needs[,]…violent tendencies[, those]…found with a weapon inside the jail[,] and…gang affiliations and their corresponding risk of attack from other gang members in the jail." *Id.* This list obviously included Mr. Shelby's name, along with a note that the Bonucci clan commanded a possible hit on Mr. Shelby, and thus, he bore a "risk of attack by members of the Bonucci clan." *Id.*

Even though Officer Campbell failed to check his information, he collected Mr. Shelby and took "him to the guard stand to wait" while he rounded up more inmates. *Id.* at *6. While walking to the waiting point, an inmate along the way in cell block A shouted to Mr. Shelby, "'I'm glad your brother Tom finally took care of that horrible woman'" and Mr. Shelby answered affirmatively, saying it was "what that scum deserved." *Id.* Officer Campbell apparently failed to head the implication a statement like that could have in a jail that housed gang rivals and simply ordered Mr. Shelby to "be quiet." *Id.* Officer Campbell then proceeded to retrieve "one other inmate from cell block A[,] two [] from cell block B and one from cell block C." *Id.* at *6-7. Of course, all three of the inmates from blocks B and C were part of the Bonucci clan. *Id.* at *7.

As Mr. Shelby saw these Bonucci clan inmates walk towards him, he tried to hide "behind the other inmate from cell block A," but his efforts failed as they immediately charged him. *Id.* at *7. The three men mercilessly beat Mr. Shelby, with one even using "a club he made from tightly rolled and mashed paper" to strike Mr. Shelby in the head and the ribs. *Id.* Officer Campbell attempted to intervene and stop the fight but could not hold off the three men. *Id.* Consequently, the brutal assault lasted for several minutes until other officers arrived to help. *Id.*

This vicious incident landed Mr. Shelby in the hospital for an extended, several-week visit as he sustained serious, "life-threatening injuries, including penetrative head wounds from external blunt force trauma resulting in traumatic brain injury…fractures of three different ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding." *Id.* at *7.

As a result of a bench trial, the judge acquitted Mr. Shelby of the assault charge, but found him "guilty as charged of battery and possession of a firearm by a convicted felon." *Id.* at 7. Mr. Shelby is currently imprisoned at Wythe Prison. *Id.*

V. Mr. Shelby Commenced this Currently Waging Legal Battle in the Wake of His Extensive Injuries.

In response to these events, on February 24, 2022, Mr. Shelby filed the current "42 U.S.C. § 1983 action pro se against Officer Campbell in his individual capacity" within the statute of limitations. *Id.* at *7. Mr. Shelby asserts in the complaint that when Officer Campbell disastrously failed to protect him, a "pretrial detainee at the time," from the brutal assault, Officer Campbell violated his constitutional rights and thus, he is entitled to damages. *Id.* at *7-8. Mr. Shelby maintains that as a pretrial detainee, Officer Campbell's actions, or lack thereof, "were objectively unreasonable" when examined under the "objective standard established in *Kingsley v. Hendrickson*,…576 U.S. 389, 397 (2015)." *Id.* at *8. Mr. Shelby argues that, despite Officer Campbell missing the January 1 meeting, he still had access to extensive information, including the meeting minutes, which he was required to review, and the database which listed "his gang status, at-risk status, inventoried items, and his previous charges" all of which alerted him to Mr. Shelby's high-risk status. *Id.* at *8, *10. Therefore, Officer Campbell should have known of Mr. Shelby's life-threatening risk of "attack by [the] rival" Bonucci clan but dramatically failed to exercise accurate precautions. *Id.* at *8.

Additionally, Mr. Shelby contemporaneously filed "a motion to proceed in forma pauperis, which," on April 20, 2022, the District Court denied under 28 U.S.C. § 1915(g). *Id.* at *7. While detained last, Mr. Shelby initiated three independent 42 U.S.C. § 1983 civil actions "against prison officials, state officials, and the United States," but as these claims cloaked doubt around "either his conviction or his sentence," each one "was dismissed without prejudice pursuant to *Heck v. Humphrey*[, 512 U.S. 477 (1994)]." *Id.* at *3. The District Court found each dismissal to count as a "'strike[]' under the Prison Litigation Reform Act" which meant that Mr. Shelby was denied "in forma pauperis status." *Shelby v. Campbell*, No. 23:14-cr-2324, at *1

(W.D. Wythe Apr. 20, 2022). Thus, for the case to proceed, the District Court required Mr. Shelby "to pay the $402.00 filing fee within 30 days of…[the court] order." *Id*. Mr. Shelby paid the filing fee in full within the 30 days given. *Shelby*, No. 23:14-cr-2324, at *7.

To answer the complaint, Officer Campbell "filed a Rule 12(b)(6) Motion to Dismiss for failure to state a claim" on May 4, 2022, and the District Court granted this motion on July 14, 2022. *Id.* at *2, *8. In his motion, Officer Campbell contends that to be liable for a failure-to-protect claim, a type of deliberate indifference claim, "the officer must have subjective, actual knowledge of" and ignore an extreme risk to the inmate, the officer must know about facts which create the inference that an excessive risk exists, and the officer must actually "'draw that inference.' *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)." *Id.* at *8. Following *Farmer*, Officer Campbell claims that, no matter if "the claim arises under the Eighth [] or Fourteenth Amendment," the "same subjective standard" should apply to both pretrial detainees and prisoners. *Id.*

VI. The District Court Came to a Calloused Conclusion Against the Beaten Mr. Shelby.

The District Court sided with Officer Campbell, finding that in failure-to-protect claims brought by pretrial detainees, "the subjective standard applies." *Id.* at *8. The District Court held that convicted and sentenced prisoners are protected and can assert claims under the Eighth Amendment when prison officers "act with deliberate indifference to the risk of harm to a prisoner" as "prisoners cannot be cruelly or unusually punished." *Id.* at *9. However, Mr. Shelby's claim arose under the Fourteenth Amendment's protections as he was "a pretrial detainee at the time of the attack." *Id.* Thus, being a pretrial detainee, Mr. Shelby could not be punished by any officer at all before being adjudicated. *Id.*

The Court asserted *Farmer* was the controlling authority in failure-to-protect claims, "and *Kingsley* did not alter this" as the subjective inquiry achieves the same goal for pretrial detainees

and prisoners, even though their exact constitutional rights may be different. *Id.* at *9. This goal is to determine whether an officer was negligent in his actions or if they were intentional to punish the inmate. *Id.* As deliberate indifference refers to a mental state "'more blameworthy than negligence,'" the court rejected using an objective standard as it would change the inquiry of Campbell's mental state "into one of negligence." *Id.* at *9-10.

Further, the Fourteenth Circuit, along with other jurisdictions, had not applied "*Kingsley* to failure-to-protect claims" and the District Court refused to change this circuit precedent. *Id.* at *10. Thus, for pretrial detainees' failure-to-protect claims, the District Court held the correct inquiry "is 'whether those conditions amount to punishment.'" *Id.* Accordingly, Mr. Shelby should have alleged that Officer Campbell was deliberately indifferent, as he "knew of and disregarded an extensive risk of harm." *Id.* However, the District Court found that since the record lacked any evidence of Officer Campbell checking the special risk lists or his knowledge of Mr. Shelby's gang affiliation or potential hit, Mr. Shelby's claims failed to meet the proper standard. *Id.* at *11. Instead, Mr. Shelby asserted Officer Campbell was negligent by failing to check his resources, but this did not demonstrate that Officer Campbell "had a sufficiently culpable state of mind." *Id.* at *8, *11. So, the District Court granted Officer Campbell's motion to dismiss. *Id.* at *11.

VII. The Court of Appeals Finds in Mr. Shelby's Favor: A *Heck* Dismissal Does Not Equal a Strike Under the Prison Litigation Reform Act.

Consequently, Mr. Shelby filed a timely appeal on July 25, 2022, after the District Court denied his "motion to proceed in forma pauperis and" dismissed his 42 U.S.C. § 1983 claim against "Campbell for failure to state a claim." *Shelby v. Campbell*, No. 2023-5255, at *12-13 (14th Cir.). The Court of Appeals for the Fourteenth Circuit accepted the District Court's "rendering of the facts," as discussed above, and on August 1, 2022, appointed counsel for Mr.

Shelby. *Id.* at *13. Further, since Mr. Shelby appealed the denial of the motion to proceed in forma pauperis, the Court of Appeals "issued an order allowing [Mr.] Shelby to proceed in forma pauperis…subject to…[the court's] assessment of this issue." *Id.* at *13 n.2.

On appeal, Mr. Shelby argues the District Court incorrectly "deni[ed…] his motion to proceed in forma pauperis" as a dismissal of a claim according to *Heck v. Humphrey* does not equal a "strike" under the Prison Litigation Reform Act (PLRA). *Id.* at *13. Thus, the Court of Appeals must decide whether claim dismissals pursuant to *Heck* automatically count as "strikes" under "the PLRA's three strikes provision, codified at 28 U.S.C. § 1915(g)." *Id.* at *14. According to the PLRA, a plaintiff gains a "strike" each time his or her "'action or appeal…was dismissed…[due to it being] frivolous, malicious, or fail[ing] to state a claim upon which relief may be granted, unless the prisoner is under imminent danger.'" *Id.* Once a prisoner has accumulated "three strikes," the PLRA bars him or her from filing in forma pauperis. *Id.*

The Court of Appeals looked to *Heck* and found that a § 1983 claim, which challenged "the constitutionality of a conviction or sentence" does not come into existence until the in-question conviction or sentence is reversed, expunged, invalidated, or called into question due to a writ of habeas corpus. *Id.* at *14. Consequently, § 1983 claims commenced "before a conviction or sentence has been invalidated" must be dismissed without prejudice. *Id.* Moreover, the *Heck* court stated that when a prisoner's § 1983 claim seeks damages, the court must contemplate if a judgment in the prisoner's favor would consequently "imply the invalidity of his conviction or sentence." *Id.* If it would, the court should dismiss the claim "until [the] prisoner…[can] show that the conviction or sentence has been invalidated." *Id.* at *14-15. Once the prisoner can demonstrate this, "the cause of action [then] 'accrues.'" *Id.* at *15. So, since a §

1983 claim does not contain favorable termination as an element that the prisoner must assert, *Heck* simply temporarily prevents the court from tackling the merits of the § 1983 claim. *Id.*

Additionally, the *Heck* doctrine has been found to function akin to an affirmative defense which can be waived, meaning that courts may evade the temporary block in *Heck* and proceed to "address the merits of the case." *Id.* at *15. The Court of Appeals considered the *Washington* court's determination "that a *Heck* dismissal, 'standing alone, is not per se 'frivolous' or malicious.'" *Id.* (internal citations omitted). Meanwhile, the only time a *Heck* dismissal may form a Rule 12(b)(6) dismissal for failure to state a claim is when "the pleadings present an 'obvious bar to securing relief.'" *Id.* In addition, while the PLRA, with the three strikes rule, was an attempt to curtail prisoners' "meritless[and] wasteful" litigation, *Heck* simply addresses "the prematurity [of a prisoner's claim], not the invalidity" of it. *Id.*

Therefore, the Court of Appeals held that "*Heck* dismissals do not automatically count as 'strikes'" as these dismissals "do[] not constitute a failure to state a claim under the PLRA." *Id.* at *14. Thus, the Court of Appeals found that the District Court incorrectly counted Mr. "Shelby's prior *Heck* dismissals as 'strikes' under the PLRA." *Id.* at *15.

VIII. The Court Appeals Agrees with Mr. Shelby: The *Kinsley* Objective Standard Applies to Pretrial Detainees Failure to Protect Claims.

For the second issue on appeal, Mr. Shelby claims the District Court erred in dismissing his claim due to mistakenly adopting the "subjective deliberate indifference standard to his [pretrial detainee] failure-to-protect claim," whereas the court should have adopted *Kingsley's* objective standard instead. *Id.* at *13. So, the Court of Appeals must determine, in a § 1983 failure-to-protect claim, whether a subjective or objective standard is proper. *Id.* at *16. After the decision in *Kingsley*, circuit courts were divided on whether the objective reasonableness standard, which was established for pretrial detainees' excessive force claims, extended to other

pretrial detainee claims, "such as failure-to-protect claims." *Id.* On one hand, the deliberate indifference standard acts as a subjective test demanding "an officer…to have actual knowledge of the risk to the detainee." *Id.* On the other, the *Kingsley* objective reasonableness standard simply "requires that a reasonable officer should have known of the risk to the detainee." *Id.*

The Court of Appeals weighed the *Kingsley* court's finding that "no single 'deliberate indifference' standard applied to all § 1983 claims," regardless of the plaintiff's status, as a prisoner or pretrial detainee, when the constitutional harm occurred. *Id.* at *16. Further, the *Kingsley* court found that there are two different mental state questions involved in a pretrial detainee's § 1983 claim. *Id*. at *17. The first question is a subjective inquiry. *Id.* In excessive force claims, this subjective inquiry focuses solely on "the physical force applied by an officer" as "liability for *negligently* inflicted harm is [] beneath the threshold of constitutional due process." *Id.* However, in failure-to-protect claims, the officer's inaction, instead of action, usually constitutes the main issue. *Id.* Thus, the analysis consists of "whether the officer's conduct…[towards] the plaintiff was intentional." *Id.* The Court of Appeals deemed the event this case that needed evaluation was Officer Campbell's act of putting several inmates in "the same area to await transfer to recreation." *Id.* The Court found that Officer Campbell's actions were intentional when placing this group together, "as no outside force, illness, or accident rendered [him] unable to make th[ese] conscious" choices. *Id.*

The second question regarding mental state is an objective inquiry. *Id.* at *17. In failure-to-protect claims, this objective inquiry centers on whether there was a significant "risk of serious harm to the plaintiff that could have been eliminated through reasonable and available measures that the officer did not take," subsequently causing the plaintiff's injury. *Id.* at *18. Further, under *Kingsley*, a pretrial detainee bringing a failure-to-protect claim must assert

"something more than negligence [of the officer], but less than subjective intent…[it should be] akin to reckless disregard." *Id.* Thus, no proof is needed "of the officer's actual awareness of the level of risk." *Id.* Consequently, the Court of Appeals extended *Kingsley's* objective standard finding it applied "beyond [pretrial detainees'] excessive force claims and [encompassed] failure-to-protect claims" such as the current case. *Id.* at *16.

To succeed in a Fourteenth Amendment failure-to-protect claim, a pretrial detainee must meet three elements. *Id.* at *18. First, the pretrial detainee must show the officer "made an intentional decision…[concerning] the conditions under which [the] plaintiff was confined." *Id.* Second, the plaintiff must demonstrate the aforementioned "conditions put the plaintiff at substantial risk of suffering serious harm." *Id.* Third, the pretrial detainee must prove the officer "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." *Id.*

The Court of Appeals found overall that "Officer Campbell acted in an objectively unreasonable manner." *Id.* at *18. Here, Officer Campbell had access to all kinds of preventative information and warning signs, including the gang intelligence officers' meeting to inform officers of the "special circumstances" of Mr. Shelby's safety, the meeting minutes in the database, the roster and floor cards, the "notices [of Mr. Shelby's file]…at every administrative area in the jail," the list of special status inmates, Mr. Shelby's file on the jail's database, and the conversation between Mr. Shelby and the other inmate that Officer Campbell overheard. *Shelby*, No. 23:14-cr-2324, at *5-6; *Shelby*, No. 2023-5255, at *18. Yet, Officer Campbell disastrously failed to identify any of the warning signs concerning Mr. Shelby's safety that surrounded him. *Shelby*, No. 2023-5255, at *18.

Furthermore, the Court of Appeals held that, Mr. "Shelby adequately alleged all [of] this [listed] information in his [c]omplaint" and that the facts asserted indicated "Officer Campbell intentionally…[grouped Mr.] Shelby with other inmates while" transporting them to the recreation room. *Id.* at *18-19. These facts also showed that Officer Campbell put Mr. Shelby in conditions that posed "a risk of suffering serious harm." *Id.* at *19. Lastly, Mr. Shelby accurately asserted that Officer Campbell absolutely "failed to take reasonable measures" which would have quelled "the risk even though any reasonable officer would have acted otherwise." *Id.* Therefore, the Court of Appeals reversed and remanded "the District Court's decision on both issues." *Id.*

IX. The Supreme Court Holds the Power to Grant Mr. Shelby Justice in the Aftermath of Campbell's Disastrous Decisions.

Subsequently, Officer Campbell petitioned the Supreme Court for a writ of certiorari, which was granted. *Campbell v. Shelby*, No. 23-05, at *21. The Court will assess two questions: 1) Should the Court consider a routine *Heck* dismissal, with no evidence to evaluate the merits of the claim, a "strike" within the meaning of the Prison Litigation Reform Act to stifle prisoners from seeking judicial relief? and 2) Should this Court expressly constrain the decision in *Kingsley* as to require pretrial detainees to meet an excessively high subjective deliberate-indifference burden when bringing a failure-to-protect claim under 42 U.S.C. § 1983? *Id*.

Mr. Shelby asks this Supreme Court to uphold the Court of Appeals' wise decision that 1) a *Heck* dismissal does not equal a "strike" under the Prison Litigation Reform Act and 2) that in a 42 U.S.C. § 1983 action "for a violation of the pretrial detainee's Fourteenth Amendment Due Process rights," *Kingsley* abolished the obligation that the pretrial detainee prove the officer or official's subjective intent in a deliberate indifference failure-to-protect claim. *Id*.

SUMMARY OF THE ARGUMENT

Heck dismissals cannot be considered a "strike" under the Prison Litigation Reform Act if evaluated solely on its face. Dismissals under 28 U.S.C. § 1915(g) can only be granted in three circumstances: if the claim is dismissed because it is malicious, frivolous, or fails to state a claim. Without any evidence to evaluate the merits, ruling Mr. Shelby's previous claims as malicious or frivolous would be unconscionable. Further, *Heck* dismissals should not be considered failures to state a claim. By its nature, *Heck* dismissals concern the timing of claims. They are not comments on the adequacy of an argument; they are statements the claim is not ripe for court. A ruling stating otherwise would effectively bar indigent detainees from ever pursuing their claims because they took three swings with a broken bat and struck out. Should the Court choose to set aside the access to justice issues that plague our criminal justice system, Mr. Shelby qualifies for *in forma pauperis* status because he meets the threshold of the only statutory

exemption: the risk of imminent danger of physical injury. Officer Campbell's deliberate actions caused life-threatening injuries, and at the very least this Court should grant Mr. Shelby his IFP claim that he rightfully deserves.

Furthermore, in protecting Mr. Shelby's rights as a pretrial detainee, this Court must analyze his failure-to-protect claim under the framework of the Fourteenth Amendment. Under the Fourteenth Amendment, it is an axiomatic principle that the judicial system must afford a presumption of innocence to anyone who has not been convicted in trial. Under the Due Process clause, this signifies that pretrial detainees cannot be subject to any punishment. If this Court were to use a subjective standard to analyze Mr. Shelby's claims, it would be a direct conflation with the standard used in Eighth Amendment Cruel and Unusual Punishment cases. The utilization of such a standard would provide categorically decreased protection to Mr. Shelby as if he were a convicted criminal.

By extending the decision that this Court held in *Kingsley*, Mr. Shelby's failure-to-protect claim can be properly analyzed under an objective standard that sheds light on Officer Campbell's faulty work. Officer Campbell directly and with all intentions gathered Mr. Shelby with inmates who were well known to have violent intentions against the Geeky Binders. Officer Campbell had access to this information which was posted throughout the jail and known by the other jail officers. Officer Campbell's decision to not review the available sources around him represents an objectively unreasonable action that resulted in devastating injury for Mr. Shelby. If this Court were to constrain the holding in *Kingsley*, it would be sanctioning a jurisdictional lottery where pretrial detainees like Mr. Shelby would be subject to severely distorted Constitutional protections based on where they were detained. It is only through the use of the

Kingsley objective standard that pretrial detainees can be given their guaranteed constitutional protections and served justice.

ARGUMENT

I. *Heck* Dismissals Do Not Qualify as "Strikes" Under 28 U.S.C. § 1915(g).

As acknowledged by the proceeding 14th Circuit Court Opinion, *Heck* dismissals should be treated as a "jurisdictional bar…that is 'subject to waiver.'" *Shelby v. Campbell*, No. 2023-5255, at *15 (14th Cir.). Absent further evidence suggesting a waiver is warranted in this case, the mere fact they are *Heck* dismissals alone cannot substantiate any claim they are "strikes" under the PLRA. Without this evidence, suggesting these dismissals are "strikes" defies judicial discretion and treats prison litigation as a one-size-fits-all, which is unconscionable in that it shows a lack of consideration for the complex experiences incarcerated adults have when in a detention facility.

Through this brief, a history of *Heck v. Humphrey* and the Prison Litigation Reform Act (PLRA) will be analyzed in light of whether *Heck* dismissals should be considered "strikes" within the meaning of the statute. *Heck v. Humphrey,* 512 U.S. 477 (1994). It will be shown that,

without further evidence to the contrary, it is impractical to consider these previous dismissals as malicious or frivolous under § 1915(g). 28 U.S.C. § 1915(g). Further, the Court should not adopt the notion that *Heck* dismissals are failures to state a claim. Rather, these should be treated as a ripeness concern, therefore not barring prison litigants access to an *in forma pauperis* status. Finally, should the Court fail to be persuaded by these arguments, Mr. Shelby should qualify for the imminent danger exception to the three-strike rule.

a. To Find a *Heck* Dismissal to be Frivolous or Malicious, it Requires a Determination of the Merits of the Case; Something that is Absent in Mr. Shelby's Situation.

Adopted after the U.S. Supreme Court decision in *Heck v. Humphrey*, the PLRA was signed in an attempt to squash prisoner lawsuits. 512 U.S. As it stands currently, courts will frequently dismiss claims as *Heck*-barred, but there is a lack of consistency on what these dismissals mean in light of the three-strike rule. Courts have found flexibility to view these dismissals as malicious or frivolous, however, it requires a judicial determination of the merits of the case. Absent this evidence in the case at bar, the Court should reject any notion these previous dismissals were frivolous or malicious.

In *Heck v. Humphrey,* Mr. Heck simultaneously filed claims for damages under 42 U.S.C. § 1983 and a habeas corpus claim for his conviction. 512 U.S. While the damages claim was pending, Heck's habeas corpus appeal was upheld by the Indiana Supreme Court. The question before the U.S. Supreme Court then became, does a § 1983 claim for damages become invalidated if the underlying conviction was upheld. 42 U.S.C. § 1983. In short, the U.S. Supreme Court found that in order to succeed on a § 1983 claim, it must be shown that the underlying conviction had been "reversed, expunged, declared invalid, or called into question." *Id.* at 487. In practice, this amounts to courts dismissing a suit under *Heck* if there remains a question of the validity of the original claim. This

is commonly understood to mean an incarcerated person cannot claim damages if it calls into question the underlying merits of their conviction without a ruling in the incarcerated person's favor as to the original conviction claim. *See McDonough v. Smith*, 139 S. Ct. 2149, 2158 (2019) (*Heck*'s favorable termination requirement is necessary to bring a complete and present cause of action); *Nance v. Ward*, 597 U.S. 159 (2022) (a prisoner filing a § 1983 claim did not come within the core of habeas because the relief sought did not imply the invalidity of his conviction or sentence); *Wilkinson v. Dotson*, 544 U.S. 74, 74 (2005) (a "prisoner cannot use § 1983 to obtain relief where success would necessarily demonstrate the invalidity of confinement or duration").

Then, in 1996, Congress enacted the PLRA to help "staunch a 'flood of nonmeritorious' prisoner litigation" which created the three-strike rule to prevent habitual prisoner litigants from qualifying for *in forma pauperis* (IFP) status. *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1726 (2020). The language of § 1915(g) states a prisoner cannot proceed IFP if they have on 3 or more occasions brought an action that was dismissed because "it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). Additionally, the statutory language includes an exception if a prisoner "is under imminent danger of serious physical injury." *Id.* Considering the PLRA was adopted two years following the decision in *Heck*, there has been an outstanding question on whether cases dismissed under *Heck* should be considered "strikes" under the meaning of 28 U.S.C. § 1915(g). Courts have not reached a consensus on this issue. A lack of uniformity, despite almost three decades since the passage of this act, is every indication that this matter is too complicated for a blanket "strike" rule for face *Heck* claims.

Some jurisdictions have found *Heck* dismissals can rise to frivolous or malicious claims, however they require findings to do so. Summarized effectively and noted in the proceeding decision, the 9th District Court found a *Heck* dismissal "standing alone is not per se 'frivolous' or

'malicious.'" *Shelby*, No. 2023-5255, at *15 *citing Washington v. Los Angeles County*, 833 F.3d 1048, 1055 (9th Cir. 2016). Absent further evidence suggesting Mr. Shelby's former dismissals were anything more than standalone *Heck* claims, this Court should not find them to be "strikes" because *Heck* on its face alone cannot be considered frivolous or malicious.

First, *Heck* dismissals on their face cannot be considered generally frivolous claims. As with much of the PLRA, there is nuance in the cases themselves, and the devil, as they say, is in the details. Courts often cite *Neitzke* to define what frivolous means in the context of the PLRA. *Neitzke v. Williams*, 490 U.S. 319 (1989). In *Neitzke*, the U.S. Supreme Court stated that "an *in forma pauperis pro se* complaint may only be dismissed as frivolous…when the petitioner cannot make any claim with a rational or arguable basis in law or in fact." *Id.* at 322-323. To do so, this requires a review of the record to determine whether there was a rational or arguable basis. Here, no such review exists. The only information provided in the docket is there are three previous claims pursuant to *Heck*. *Shelby v. Campbell*, No. 23:14-cr-2324, at *3 (W.D. Wythe July 14, 2022). Without any further information, it would be unjust to decide that these previous dismissals are frivolous and therefore "strikes" under the PLRA.

Second, *Heck* dismissals on their face cannot be malicious claims for much the same reason. Once again, malicious claims as they pertain to § 1915 can refer to a litany of definitions. *See* Molly Guptill Manning, *Trouble Counting to Three: Circuit Splits and Confusion in Interpreting the Prison Litigation Reform Act's 'Three Strikes Rule,' 28 U.S.C. Section 1915(G)*, 28, CORNELL J.L. & PUB. POL'Y, 207, 216-217 (2018) *citing Deutsch v. United States*, 67 F.3d 1080, 1086 (3rd Cir. 1995) (required a subjective look at the litigant's motivations at the time of the lawsuit to determine if there was an attempt to vex, injure, or harass the defendant); *In Re Tyler*, 839 F.2d 1290, 1293 (8th Cir. 1988) (using disrespectful and abusive language in

pleadings are considered malicious); *Horsey v. Asher*, 741 F.2d 209, 212 (8th Cir. 1984) (false accusations, vexatious and abusive pleadings are considered malicious); *Andrews v. King*, 398 F.3d 1113, 1116 (9th Cir. 2005) (an action is malicious if it is filed with the intention or desire to harm another). Once again, each of these claims requires a review of the subjective mind state of the petitioner, the language of the petition, or otherwise subjective fact-finding that the petitioner had nefarious intentions. Once again, the record cannot support any of these findings to apply to Mr. Shelby.

Finding any of Mr. Shelby's previous *Heck* dismissals as frivolous or malicious lawsuits, when there is no evidence suggesting either to be true, would be unconscionable and the Court should reject any suggestion they could be.

b. *Heck* Dismissals are a Ripeness Concern, not a Failure to State a Claim.

Opposing counsel's strongest argument for *Heck* dismissals to be considered "strikes" would be to equate them as failures to state a claim. This, however, fails to acknowledge once again the complexities of prison litigation in light of the PLRA and what lasting consequences a decision finding all *Heck* dismissals to be "strikes" would have on litigation rights. Notably**,** the U.S. Supreme Court in its 2020 decision in *Lomax* elected not to weigh in on this question, and it remains that courts continue to handle these dismissals individually. *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1726 (2020). Expanding on the 14th Circuit Court's opinion that "*Heck* recognizes the prematurity, not the invalidity, of a prisoner's claim," *Heck* dismissals should be treated procedurally the same as a ripeness dismissal, which is not a "strike" under the meaning of the PLRA. *Shelby v. Campbell*, No. 2023-5255, at *15 (14th Cir.). Thus, this Court should adopt the 7th Circuit's opinion and treat *Heck* dismissals not as "strikes" under the PLRA, and grant Mr. Shelby his rightful *in forma pauperis* status.

In *Mejia v. Harrington*, the 7th Circuit Court of Appeals reviewed a petition from Mr. Mejia regarding previous dismissals under *Heck* and *Edwards*. *Mejia v. Harrington*, 541 F. App'x 709 (7th Cir. 2013) *citing Edwards v. Balisok*, 520 U.S. 641 (1997); *Heck,* 512 U.S. The court explained how these dismissals resemble dismissals for ripeness concerns, not failures to state a claim as they "deal with timing rather than the merits of litigation" and "until the conviction or disciplinary decisions is set aside, the claim is unripe." *Mejia*, 541 F. App'x at 710. The decision in *Mejia* highlights the appropriate view that a *Heck* dismissal simply was brought too prematurely, not that a case lacked merits warranting a dismissal for failure to state a claim. Similarly, Mr. Shelby's *Heck* dismissals were so because they regarded questions of the underlying conviction or sentence, either of which had yet to be resolved at the time of the lawsuit. Again, this limited information states the reality of Mr. Shelby's situation: the claims were brought too early.

This Court should find *Heck* dismissals are not ripe, and nothing more. This Court has the responsibility of considering the message a favorable ruling for Officer Campbell would send to prison litigants. The question for the court is whether prisoners deserve to be treated inhumanely without an action for relief just because they are in a custodial facility. Allowing all *Heck* dismissals to be treated as failures to state a claim under § 1915(g), and therefore a strike, would accomplish this. Under the statute, there are limited exceptions to the three-strike rule, and it is irrelevant certain timing considerations such as the length of the sentence or duration between claims. This could mean someone with a life sentence could receive years of mistreatment and be financially barred from bringing each claim forward, forcing them to pick and choose which acts were just cruel enough to warrant that risk of litigation. Any statements that prisoners would still be able to access the judicial system for these claims are misleading. It is true that the PLRA

does not bar prison litigants from filing claims. However, the lack of consideration of the financial burden litigation places on plaintiffs is why this claim is misleading. Currently, eligible citizens can file as many *in forma pauperis* claims as they would like, no matter how ridiculous or wasteful the claim may be. In comparison, incarcerated adults are limited to only three claims before incurring court fees. In context, the wages for prisoners assigned work within a correctional facility are as low as $0.12. *See* Federal Bureau of Prisons, *Work Programs,* https://www.bop.gov/inmates/custody_and_care/work_programs.jsp (last visited January 28, 2024). This begs the question of how long a person must withstand abusive treatment before they can afford to seek the court's assistance.

Further, this brief wades through the complicated legal history that is both the PLRA and *Heck* dismissals. It has been stated, more than once, that courts have not reached a consensus on many of these outstanding questions. It would therefore be utterly unreasonable for this Court to find a predominately uneducated, minority, and impoverished community to be expected to wade through this same battle with no more than three mistakes before they are effectively barred from seeking relief.

In conclusion, Mr. Shelby's previous *Heck* dismissals as it stands currently should not be considered "strikes" within the meaning of the PLRA. Without further evidence contrary to the fact, *Heck* dismissals are not frivolous, malicious, or constitute a failure to state a claim, and as such, Mr. Shelby's current IFP status should be granted on appeal.

c. Mr. Shelby Should Receive an IFP Status Because He Was in Imminent Danger When He Petitioned the Court.

Further, if this Court is not persuaded that Mr. Shelby be allowed to proceed with his IFP claim by his own right, Mr. Shelby's current claim qualifies as an exception to the three-strikes provision as he was in imminent danger of serious physical injury at the time of his filing. The

text of § 1915(g) states the three-strike provision bars prisoner litigation "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Much like the entirety of § 1915, the statute fails to provide guidance on what qualifies as "imminent danger." *Id.* In the absence of a jurisdictional test on what constitutes imminent danger of serious physical injury, this brief will analyze the higher standard set forth by the 9th, 2nd, and D.C. Circuit Courts. *See Ray v. Lara,* 31 F.4th 692 (9th Cir. 2022); *Pettus v. Morgenthau*, 554 F.3d 293 (2nd Cir. 2009); *Pinson v. United States DOJ*, 964 F.3d 65 (D.C. Cir. 2020).

Under *Ray v. Lara*, the 9th Circuit Court adopted the 2nd Circuit test for the nexus requirement. This test examines two requirements: "that (1) 'the imminent danger of serious physical injury that [the prisoner] alleges is *fairly traceable* to unlawful conduct asserted in the complaint' and (2) 'a favorable judicial outcome would redress that injury.'" *Ray*, 31 F.4th *citing Pettus*, 554 F.3d at 289-299. In *Ray,* Mr. Ray alleged he qualified for the imminent danger exception to § 1915(g) because he was housed with the general population despite having a different classification, and he was moved to the general population because of a retaliation from a corrections officer. Mr. Ray failed to provide a nexus, as his argument was the exception does not require a link to the substantive claim. Mr. Shelby's claim does have a nexus, however.

First, Mr. Shelby's claim is against Officer Campbell for failing to protect himself, a pretrial detainee at the time of his attack in the Marshall jail. *Shelby*, No. 23:14-cr-2324, at *7. Mr. Shelby suffered "life-threatening injuries, including penetrative head wounds from external blunt force trauma resulting in traumatic brain injury…fractures of three different ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding." *Id*. The injuries were caused by a rival gang in the prison, albeit in a separate block from Mr. Shelby. Typically, a different cell block and proper separation procedures can reduce the instances of infighting

among residents of a facility. This, however, was not the case for Mr. Shelby. Instead, Mr. Shelby's injuries were sustained due to Officer Campbell's intentional actions.[1] Officer Campbell's actions are not only fairly traceable to Mr. Shelby's injuries, but they are also the direct cause of them. As such, the first element of the nexus is satisfied. Receiving damages for an injury does not replace the physical or emotional hurt received, however, it can be justice served when justice is due. Granting Mr. Shelby an IFP claim to allow him to seek damages against the individual that is to blame for his extensive injuries does indeed redress the harm, and the Court should grant Mr. Shelby this claim.

To restate, there is no universally accepted interpretation of the imminent danger language in § 1915(g), and some courts have chosen to interpret this language broadly. *See Kinnell v. Graves* 265, F.3d 1125 (10th Cir. 2001) (to meet the imminent danger of serious physical injury requirement in § 1915(g) the appellant must make specific, credible allegations of imminent danger of serious physical harm). Whether the Court elects to interpret the language broadly, or more narrowly in the form of the nexus test, Mr. Shelby should be granted IFP status based on his current claim before the Court.

II. Mr. Shelby's pretrial detainee failure-to-protect claim passes muster under the Kingsley objective standard.

As decided by the preceding 14th Circuit Court Opinion, failure-to-protect claims brought by pretrial detainees should be analyzed under an objective standard held in *Kingsley v. Hendrickson*. *Shelby v. Campbell*, No. 2023-5255, at *16 (14th Cir.). Using an objective standard accounts for the specific demands of the Fourteenth Amendment, is consistent with *Kingsley's* treatment of *Bell v. Wolfish*, and is applicable in a manner that shields government actors from

[1] Officer Campbell's actions will be explored further in depth in the following sections of the brief.

liability for negligence. The use of a subjective standard misconstrues distinctions between the constitutional source of the claims, misinterprets *Bell v. Wolfish*, and mistakenly asserts that the objective standard mirrors that of negligence.

For Mr. Shelby's failure-to-protect claim to succeed, he must prove an official made "an intentional decision with respect to the conditions under which the [pretrial detainee] [is] confined" and second that the official "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." *Castro v. County of Los Angeles* 833 F.3d 1060, 1071 (9th Cir. 2016). Officer Campbell's actions meet the first prong as he made an intentional and purposeful decision to not only let Mr. Shelby into the waiting area for the recreational area but to further allow the rival Bonucci clan inmates into the area, creating the dangerous condition. *Shelby*, No. 23:14-cr-2324, at *6-7. Furthermore, Officer Campbell failed to heed multiple notices in both physical and virtual mediums that Mr. Shelby was not to encounter other inmates from rival gangs. *Id.* Because Mr. Shelby is able to prove both prongs, this Court should uphold the decision of the appellate court finding that the proper basis for the failure to protect claim was the Fourteenth Amendment.

a. Pretrial detainees, like Mr. Shelby, are afforded distinctly greater constitutional protection under the Fourteenth Amendment than convicted criminals.

Under the Due Process Clause of the Fourteenth Amendment, pretrial detainees are protected from all acts intended to punish because they are entitled to a constitutional presumption of innocence. U.S. Const. amend. XIV; *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). This contrasts with claims arising under the Eighth Amendment which protects convicted criminals from cruel and unusual punishment. U.S. Const. amend. VIII. Under Eighth Amendment analysis convicted criminals can still be punished as the state has found them guilty,

but rather, the Constitution prevents only punishment of the cruel and unusual type. *See Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015) (noting that convicted criminals can be punished); *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (explaining convicted criminals are protected from cruel and unusual punishment by the states). When convicted criminals bring a failure-to-protect claim, the Eighth Amendment requires a subject standard to be analyzed that asks whether a government official acted with deliberate indifference. *Farmer v. Brennan*, 511 U.S. 825, 836-37 (1994).

While Officer Campbell and the District Court argue that this difference is irrelevant, they ignore fundamental distinctions between the underlying nature of the two amendments. Because pretrial detainees are protected from all types of punishment rather than just the cruel unusual kind, the right to be free from punishment under the Fourteenth Amendment is explicitly broader than the right to be free from punishment under the Eighth Amendment. In *Bell,* this Court expressly held that claims by pretrial detainees arise from the Fourteenth Amendment. *Bell*, 441 U.S. at 535-537. As identified in the Second Circuit's decision in *Darnell v. Pineiro*, "Unlike a violation of the Cruel and Unusual Punishment Clause, an official can violate the Due Process Clause of the Fourteenth Amendment without meting out any punishment…" 849 F.3d 17, 35 (2d Cir. 2017). It follows then that if a pretrial detainee were required to utilize a subjective standard, their protection would only be narrowed to that of cruel and unusual punishment rather than a broader protection that the Fourteenth Amendment guarantees.

Because of the stark differences between the Eighth and Fourteenth Amendments, the court in *Kingsley*, expressly rejected the notion that cases utilizing the Eighth Amendment could be analogized to cases with pretrial detainees. *See Kingsley*, 576 U.S. at 400-01. When Officer Campbell argues that this Court's analysis should be centered around a deliberate indifference

standard, he directly ignores this Court's rhetoric in rejecting the use of a subjective standard deriving from the Eighth Amendment for pretrial detainees. The Fourteenth Amendment requires the use of a different standard from the Eighth Amendment when assessing § 1983 claims.

b. The objective standard utilized in *Kingsley* is applicable to failure-to-protect claims brought by pretrial detainees.

Pretrial detainees are protected by the Due Process Clause from "excessive force that amounts to punishment." *Kingsley*, 576 U.S. at 397. In *Kingsley*, Michael Kingsley, a pretrial detainee, was removed from his cell so that officers could remove a piece of paper that he had placed over a light. *Id.* at 392. While he was being removed from his cell, one officer had rammed his knee into Kingsley's back while slamming his head into the concrete bunk. *Id.* Simultaneously, another officer tasered Kingsley for five seconds and left him in a cell for fifteen minutes, still in handcuffs. *Id.* In bringing a § 1983 claim, this Court was faced with the question of "whether an excessive force claim by a pretrial detainee must satisfy the subjective standard or only the objective standard." *Id.* at 395. This Court held that rather than apply a lofty standard that requires actual awareness, that the claim should be measured by an objective standard. *Id.* at 396-397.

The use of this objective standard, as expanded to other claims brought by pretrial detainees, provides a well-reasoned approach to § 1983 claims. In support of its application of an objective standard, the Court looked to its decision in *Bell v. Wolfish*, which defined which sort of actions constituted "punishment" as related to § 1983 claims brought by pretrial detainees. 42 U.S.C. § 1983. In *Bell*, pretrial detainees brought a conditions of confinement action against a prison and its officials for their "double-bunking" policy which forced inmates to share rooms over capacity limits. *See Bell*, 441 U.S. at 525-526. This Court, while finding that the double-bunking policy was not a constitutional violation, stated that an official's act can constitute

punishment if it is "not rationally related to a legitimate nonpunitive governmental purpose." *Id.* at 561. This Court in *Kingsley* then, affirmed that this was an objective inquiry that called for analysis separate from the mindset of the government official. *See Kingsley*, 576 U.S. at 398. This interpretation of *Bell* provides the primary rationale for circuits that extend *Kingsley* to other types of claims beyond excessive force. *See, e.g., Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2018).

Officer Campbell argues that that utilizing an objective standard would penalize officers for negligently inflicted harm which does not provide a basis for liability under § 1983 claims. *See Daniels v. Williams*, 474 U.S. 327, 331 (1986) (holding officials not liable for misplacing pillow causing injury, because the conduct was only negligent). In furthering this argument, Officer Campbell ignores that the Court in *Kingsley* specifically created a prong in the objective standard to prevent solely negligent conduct from being the basis of a valid claim. The Court, in clarifying that the officials must act purposefully or knowingly with respect to the act resulting in the force that caused injury, prevent the inquiry from transferring to one of negligence. *Kingsley*, 576 U.S. at 401.

Officer Campbell further argues that the specific nature of failure-to-protect claims requires that they be analyzed via a subjective standard because of a perceived thin line between a negligent failure to act and an improper failure to act. *See Crocker v. Glanz*, 752 F. App'x 564, 569 (10th Cir. 2018) (explaining that objective standard may not apply to failure-to-protect claims because it borders closer to negligence than in excessive force claims). Despite this, the Ninth Circuit in *Castro* extended the *Kingsley* objective standard directly to pretrial detainee failure-to-protect claims. 833 F.3d at 1069-71. In *Castro*, a pretrial detainee brought a failure-to-protect claim when he was placed in a cell with another violent inmate, and then later severely

injured when officials allegedly failed to see the risk the inmate posed to Castro. *Id.* at 1073. The court in acknowledging that failure to protect actions often deal with inaction rather than action, still found that the first prong of the objective standard was sufficient to prevent negligent acts from forming a valid basis. The court specified that the first prong in determining whether the officer acted intentionally with respect to his/her physical acts "in the failure to protect context…is that the officer's conduct *with respect to the plaintiff* was intentional." *Id.* at 1070 (emphasis added). By emphasizing that this first prong requires intentionality in that action that exposed the plaintiff to risk, the court was able to abate fears of negligent actions incurring liability.

This Court should affirm the ruling of the lower court that a pretrial detainee's failure-to-protect claim should be scrutinized on the presence of an objectively unreasonable risk of harm. In upholding *Kingsley's* applications to claims beyond excessive force, the Court would rely on valid principles of constitutional analysis and interpretation of Supreme Court precedent presented in *Kingsley.* The current circuit split creates a geographical advantage on the burden of evidence for certain prisoners and should be resolved to prevent a battle of justice staked on the luck of an inmate's jurisdiction.

c. Officer Campbell's actions were objectively unreasonable and support a valid failure-to-protect claim.

The facts in this case show that Officer Campbell acted in an objectively unreasonable manner in failing to keep Mr. Shelby and the Bonucci clan members out of contact. Pursuant to *Kingsley* as applied in *Castro*, the objective standard requires a showing that the official acted intentionally "with respect to the conditions under which the plaintiff was confined" and an objective determination asking whether a reasonable officer in the circumstances would have

"appreciated the high degree of risk involved-making the consequences of the defendant's conduct obvious…" *Castro*, 833 F.3d at 1071.

Here Officer Campbell unilaterally and with full intention, created the condition which caused Mr. Shelby's injury. Here, Officer Campbell physically took and led Mr. Shelby into the waiting area. *Shelby*, No. 23:14-cr-2324, at *6. Here, the evidence points out that Officer Campbell specifically contemplated and acted on taking Mr. Shelby to the area because his intention was to also let the other inmates from cell blocks B and C to the recreation area. *Id.* at *7. No facts are alleged that show that there was any miscommunication or other unintentional act that allowed Mr. Shelby and the assaulting inmates to physically be present in the same area giving rise to the dangerous condition. *See Castro*, 833 F.3d at 1072. Mr. Shelby has sufficiently alleged facts that satisfy the first prong of the *Kingsley* standard.

In determining whether Officer Campbell acted objectively reasonable, the Court in *Kingsley* specifically limited the analysis to the knowledge of what the officer knew at the time, rather than with "20/20 vision of hindsight." *Kingsley*, 576 U.S. at 399-400. There are clearly sufficient facts alleged to support a finding that Officer Campbell acted objectively unreasonable. Here, Officer Campbell should have known that Mr. Shelby's gang affiliation presented a severe enough risk to the point where he was not to be interacting with the Bonucci clan inmates. Here, jail officer Mann followed all protocols when entering Mr. Shelby's information both virtually and via physical paperwork. *Shelby*, No. 23:14-cr-2324, at *4. Furthermore, Mr. Shelby's special status was broadcast to all jail officials via a special meeting highlighting his gang affiliation as well as paper notices indicating such in every administrative area and on all rosters and floor cards. *Id.* at *5. In addition, the jail officers who attended the meeting held by the gang intelligence officers were specifically reminded to check the rosters

and jail cards as to ensure the prisoners were safe. *Id.* Even if Officer Campbell was absent from the meeting, his actual knowledge is irrelevant, all signs point to the fact that a reasonable officer would have checked the many notices installed around the jail as a reminder to isolate Mr. Shelby from the Bonucci clan inmates. In addition, during the time Officer Campbell was responsible for transferring inmates to the recreational area, he had on hand physical files that expressly included Mr. Shelby's name and the fact that he was at risk of attack by a rival gang member. *Id.* at *6. Officer Campbell's refusal to look at the very papers he picked up reflects objectively unreasonable behavior that a reasonable officer in his position would have done that could have directly prevented the incident from occurring. Together, these acts show that Officer Campbell failed to act objectively reasonable under the *Kingsley* standard. Because Mr. Shelby has satisfied both prongs of the objective standard, this Court should uphold the ruling of the proceeding court that Mr. Shelby has brought a valid § 1983 pretrial detainee failure-to-protect claim.

CONCLUSION

In conclusion, this Court should find that Respondent Shelby's previous *Heck* dismissals were not "strikes" under the Prison Litigation Reform Act, or at the very least, he qualifies for the imminent danger exception, meaning he is entitled to his *in forma pauperis* status. Further, this Court should hold that *Kingsley's* standard is applicable and that Officer Campbell acted objectively unreasonable in failing to protect Mr. Shelby.

Accordingly, Respondent Shelby requests that this Court affirm the appellate court's decision and find in favor of the Respondent.

Respectfully submitted,

Attorneys for Respondent

APPENDIX A

Amendment VIII of the United States Constitution

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

Amendment XIV Section 1 of the United States Constitution

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.

APPENDIX B

42 U.S.C. § 1983 Civil Action for Deprivation of Rights

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.

28 U.S.C. § 1915(g) Proceedings *in forma pauperis*

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