No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2023

CHESTER CAMPBELL, *Petitioner*

V.

ARTHUR SHELBY, *Respondent*

ON APPEAL FROM THE

COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

OF THE UNITED STATES

BRIEF FOR PETITIONER

TEAM 39

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QUESTION PRESENTED

1. Under *Heck v. Humphrey*, does a dismissal of a prisoner's civil actions for failure to prove a favorable termination of an underlying conviction or sentence constitute a "strike" within the meaning of the Prison Litigation Reform Act?
2. Under a 42 U.S.C. § 1983 action pursuant to the Fourteenth Amendment, does a deliberate indifference failure-to-protect claim maintain the requirement that a pretrial detainee prove a defendant's subjective intent after *Kingsley*?

OPINIONS BELOW

The Western States District Court for the Western District of Wythe issued its opinion on April 20, 2022. R. at 2. The District Court directed the plaintiff to pay $402.00 filing fee after finding that plaintiff was not entitled to in forma pauperis status because he had three cases dismissed pursuant to *Heck v. Humphrey*. R. at 2. The Court also found that plaintiff failed to state a claim under the subjective test of *Farmer*, denying plaintiffs deliberate indifference failure-to-protect claim. R. at 9-11.

On December 1, 2022, the United States Court of Appeals for the Fourteenth Circuit reversed and remanded the District Court decision on both issues. R. at 14. The Supreme Court of the United States granted certiorari in October 2023.

CONSTITUTIONAL PROVISIONS AND STAUTES INVOLVED

1. 42 U.S.C. § 1983 allows a plaintiff to bring a civil action for deprivation of Constitutional Rights.
2. The Prison Litigation Reform Act ("PLRA"), codified by 28 U.S.C. § 1915, administers strikes for frivolous, malicious, or failure to state a claim to ensure efficient use of judicial resources.
3. The Eighth Amendment to the United States Constitution forbids infliction of cruel and unusual punishments.
4. The Fourteenth Amendment to the United States Constitution provides, that no State shall deprive any person of life, liberty, or property, without due process of law.

STANDARD OF REVIEW

The Court reviews the dismissal of a lawsuit under *Heck* and the interpretation of the Prison Litigation Reform Act de novo. *Beets v. Cnty. of L.A.*, 669 F.3d 1038, 1041 (9th Cir. 2012). The Court reviews any conclusions of law regarding constitutional challenges de novo. *United States v. Lynch*, 881 F.3d 812, 817 (10th Cir. 2018).

STATEMENT OF THE CASE

Petitioner, Officer Chester Campbell, is a properly trained entry-level guard at the Marshall Jail, who has been consistently meeting job expectations for several months since his employment. R. at 5. Respondent, Arthur Shelby, is a leading member of the infamous street gang, the Geeky Binders. R. at 2. Under the Respondent's leadership, the Geeky Binders have developed sophisticated techniques of torturing people they target using sharp awls disguised as ballpoint pens. *Id.* The Geeky Binders have infiltrated many aspects of the Town of Marshall. R. at 3. By imposing themselves with gang members and taking operating businesses, owning a large portion of property, and holding elected positions the street gang sought intentional ways to gain influence and power. R. at 3. Respondent has had numerous arrests and convictions for various crimes including drug distribution, assault, and brandishing a firearm. *Id*. Additionally, Respondent was no stranger to filing suits that warranted dismissals. *Id.* During previous detainment, Respondent filed three separate civil action suits under 42 U.S.C. § 1983. *Id.* On three occasions, the Respondents claims against prison officials, state officials, and the United States repeatedly called into question either his previous sentences or convictions. *Id*. Subsequently, each of the actions were dismissed without prejudice pursuant to *Heck v. Humphry*. *Id*.

On December 31, 2020, under Respondent's leadership, Geeky Blinders members were arrested after a failed flea from a police raid. R. at 3. Respondent was once again arrested and

charged with battery, assault, and possession of a firearm by a convicted felon. R. at 4. Respondent was then booked at the Marshall jail adherent to Marshall jail procedures. *Id.* Subsequently, standard booking procedures took place noting Respondent's possession of a weapon at time of arrival at the jail. *Id.* Within the jail's multiple database systems include digital and paper monitoring.

Respondent was not new to this process and because of his previous arrests and detentions, he had already had a file in the system. R. at 4. However, despite already having a file, the booking officer recorded Respondent's current information under the gang affiliation tab of a separate file. Thus, the information appeared in two separate files and while the database displayed Respondent's gang affiliation on one file other identifying information appeared on a separate file. R. at 4-5. Upon completion of the booking procedures, Respondent was transferred to a holding cell separate from the main area of the jail. *Id*.

The jail's intelligence officers implemented strict measures around Respondent because of the danger of rival gang wars and hit on Respondent. *Id*. Pursuant to the measures, Respondent was isolated in cell block A, separated from rivals in blocks B and C. *Id*. Officers were alerted to the situation. The Respondent's status was indicated on the roster and floor cards within the jail. *Id.* Instructions to monitor potential interactions between the rival gangs we are given to various jail officials. *Id*. A meeting was held and on the day of that meeting records were inconsistent regarding the presence of Officer Campbell, an entry-level guard. *Id.* Though the roll call records indicate Officer Campbell's attendance, jail time sheets state Officer Campbell was sick that morning and did not arrive at work until after the meeting. R. at 6. It is not supported by the Officer Campbell's knowledge of Respondent's presence and hit is further unsupported because the

database recording meeting minute review, required by gang intelligence officers, has no records of anyone, including Officer Campbell, viewing the specific meeting minutes. *Id*.

Over one week after Respondent's booking, Officer Campbell oversaw the transfer of inmates to and from the jail's recreation room. *Id*. Officer Campbell approached Respondent's cell and asked if he wanted to go to recreation. *Id*. Officer Campbell fulfilled Respondent's desire to go to recreation without referring to any documents alerting him to Respondent's status and hit. *Id.*

Along the route to recreation, Respondent had an interaction with another inmate where an unknown inmate yelled "I'm glad your brother Tom finally took care of that horrible woman." *Id.* Respondent responded "yeah, it's what that scum deserved," and was met by Officer Campbell's order to be quiet. R. at 6. Further, Officer Campbell retrieved additional inmates from cell block A and three inmates from cell block B and C. R. at 6-7. The three inmates from cell block B and C were members of the Respondent's rival gang. R. at 7. Upon sight of Respondent, the rival gang members unfortunately Respondent and severely beat him. *Id.* After medical assessment of the life-threatening injuries, Respondent was found guilty of battery and possession of a firearm by a felon and transferred to Wythe Prison. *Id.*

SUMMARY OF ARGUMENT

Due to the high volume of prisoner suits under in forma pauperis Congress enacted Prison Litigation Reform Act. The act's purpose was to ensure that there was a reduction of the number of suits that did not warrant the use of judicial resources because they were frivolous, malicious, or failed to state a claim. Similarly, under *Heck,* the Supreme Court adopted a standard to help judicial traffic for claims that failed to state a claim in civil suits. As such, a cause of action is cognizable, and if the civil claim calls into question the underlying conviction or sentence of a

prisoner, it must have been favorably terminated in the prisoner's favor. Under the Prison Litigation Reform Act, a prisoner is administered strike if their claims fail to state a claim under FRCP (12)(b)(6), therefore mirroring the standard used to dismiss a civil action under *Heck* if favorable termination is not met.

We ask the Court to apply the subjective test for the current deliberate indifference claim brought by a pretrial detainee under § 1983 pursuant to the Fourteenth Amendment. Under the applicable subjective standard, the detainee is required to provide proof of Officer Campbell's knowledge and subjective conclusions regarding the risk posed to the detainee. The detainee did not provide evidence to prove the requisite knowledge or subjective intent of Officer Campbell, thereby yielding the Court to rule in favor of the petitioner and reverse the lower court's decision.

ARGUMENT

I. THE LOWER RULING COURT ERRED BECAUSE A HECK DISSISSAL CONSTITUTES A STRIKE UNDER THE PLRA FOR FAILING TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED OR ON THE GROUNDS OF A FRIVOLOUS CLAIM.

In 1892, Congress created the federal in forma pauperis[1] ("IFP") statute, "designed to ensure that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In 1995, Congress enacted the Prison Litigation Reform Act ("PLRA") in response to the "alarming explosion in the number of lawsuits filed by State and Federal prisoners." *See* 28 U.S.C. § 1915; 141 Cong. Rec. 14,570 (1995). PLRA sponsors were concerned that indigent prisoners who were exempted from paying the full amount of their court fees under

[1] IFP means that an indigent person can bring a lawsuit without having to pay traditional fees. *See* 28 U.S.C. § 1915.

IFP would waste judicial resources by filing frivolous claims. *Id.* The primary aim of the PLRA was to reduce the number of frivolous prisoner-initiated lawsuits. *Id.*

PLRA governs all IFP civil actions, including prisoners claiming IFP status. *See* 28 U.S.C. § 1915. Specifically, § 1915(g) of the PLRA contains the "three-strikes" rule, which provides that a prisoner may not bring an IFP civil action or appeal if the prisoner has, on three or more prior occasions, brought an action or appeal that was dismissed on the grounds it was frivolous, malicious, or failed to state a claim. *See* 28 U.S.C. § 1915(g) (Supp. III 1997). The section reads:

> "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." *Id.*

Prisoners are limited by the three-strike rule when bringing IFP claims that are frivolous, malicious, or fail to state a claim upon which relief may be granted. *Id.* "When a prisoner has accumulated three strikes [under § 1915(g)], he has 'struck out' from proceeding IFP in a new civil action or appeal." *Strope v. Cummings*, 653 F.3d 1271, 1273 (10th Cir. 2011).

In this case, the Respondent incurred three strikes IFP claims brought pursuant to for commenced three separate 42 U.S.C. § 1983 ("§ 1983") lawsuits pursuant to IFP. All three actions called into question either his conviction or sentence, and each action was dismissed without prejudice under *Heck v. Humphrey*, 512 U.S. 477 (1994). The Court should reverse the lower court's ruling and find that a *Heck* dismissal constitutes a strike under the PLRA because not meeting the favorable termination requirement under *Heck* is a failure to state a claim for the purposes of the PLRA.

A. THE LOWER COURT ERRED BECAUSE A FAVORABLE TERMINATION IS AN ESSENTIAL ELEMENT FOR A § 1983 CLAIM THAT CALLS INTO QUESTION AN UNDERLYING CONVICTION OR SENTENCE.

In *Heck*, the Supreme Court held that prisoners lack a "cause of action" under § 1983 civil action for challenging an "allegedly unconstitutional conviction or imprisonment" before having the conviction or sentence overturned. *Heck*, 512 U.S. at 486–87, 489. In such cases, "the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* at 487. The Court held that "in order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486–87. This is known as the favorable termination requirement under *Heck*. *Id.* at 484.

The Court explained that a "district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* at 487 In other words, the plaintiff seeking damages must have a *favorable termination* by "prov[ing] that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486–87.

It is undisputed that the Respondent commenced three § 1983 civil actions that were each dismissed under *Heck* for underlying convictions or sentences. As a result, the Respondent's civil claims lacked the necessary requirement of a favorable termination for a claim that calls into question an underlying conviction or sentence. Therefore, the court should find that the lower court erred in its ruling because a favorable termination is an essential element for a § 1983 civil claim.

B. THE LOWER COURT ERRED BECAUSE HECK DISMISSALS CONSTIUTUE FAILURE TO STATE A CLAIM UNDER THE PLRA.

A *Heck* dismissal constitutes a strike under the PLRA because a favorable termination is an essential element of a prisoner's § 1983 claim. *Heck* held that the favorable termination requirement applies whenever a claim attacks the validity of an underlying conviction. *Heck*, 512 U.S. at 492. The favorable termination requirement can only be met by the plaintiff demonstrating a successful challenge to the criminal conviction or sentence. *Id.*

The Third, Eighth, Tenth, and D.C. Circuit all have held that a *Heck* dismissal constitutes an automatic strike under the PLRA because, absent a favorable termination, the plaintiff fails to state a claim under § 1983. *See In re Jones*, 652 F.3d 36, 38-39 (D.C. Cir. 2011) (per curiam) (dismissal based on *Heck* is a failure to state a claim under § 1915(g) and constitutes a strike under the PLRA); *see also Schafer v. Moore*, 46 F.3d 43, 45 (8th Cir. 1995) (complaint dismissed under *Heck* properly dismissed for failure to state a claim). The Tenth Circuit held that a direct appeal or a favorable termination of a habeas case is an "essential element of a prisoner's civil claim for damages brought under 42 U.S.C. § 1983." *Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (10th Cir.2011) The Tenth Circuit reasoned that the plaintiff's "failure to allege this essential element of his § 1983 claim ... was a failure to state a claim" that constituted a strike under the PLRA's three-strikes provision. *Id.*

Furthermore, the Third Circuit held that dismissal of an action under *Heck* constitutes a strike under the PLRA for a failure to state a claim. *Garrett v. Murphy*, 17 F.4th 419 (3d Cir. 2021). In *Garrett*, a prisoner brought numerous claims against prison officials utilizing IFP. *Id.* at 424. The court found these actions were "fruitless" and effectively triggered the three strike provisions after the prisoners' continuous disregard for the necessary standards under *Heck*. *Id.* The court further noted that a cause of action in this context is synonymous with a "claim" under the PLRA. *Id.* at 427 Thus, favorable termination is a necessary element, where the plaintiff "must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 486-87.

Like in *Garrett*, the respondent's claim was dismissed under *Heck* because his civil actions did not have the necessary elements to meet a favorable termination. As a result, like the prisoner in Garrett, the Respondent does not have a cognizable claim. Therefore, the District Court properly dismissed the claim without prejudice because the plaintiff lacked a valid cause of action. Like *Garret,* the Respondent's claims here were barred by *Heck* for not having a legal basis to proceed with a § 1983 claim. Like in *Garrett*, this court should similarly find that the Respondent's § 1983 claims were "fruitless" in lacking favorable termination from the Respondent's underlying conviction or sentence and failed to state a claim in which relief could be granted.

The Respondent's *Heck* dismissals constitute strikes under the PLRA because all *Heck* dismissals fail to state a claim for not meeting the favorable termination requirement. The Third, Fifth, Eighth, Tenth, and D.C. circuits all mandate that the Respondent's § 1983 claims failed to state a claim for failing to prove that his underlying sentence or conviction was overturned, expunged, or declared invalid prior to filing the claims. The Respondent cannot prove a favorable

termination for any of his three § 1983 civil actions. Conversely, the facts do show that the Respondent's claims were dismissed under *Heck*. All *Heck* dismissals signify the absence of a favorable termination, which constitutes a failure to state a cause of action. Thus, the Respondent's *Heck* dismissals constitute strikes because, as emphasized by the Third Circuit, failing to state a cause of action under *Heck* is synonymous with failing to state a claim. The Respondent's failure to state a claim constitutes a strike under the PLRA.

Furthermore, a *Heck* dismissal is inherently a failure to state a claim because the lawsuit lacks a favorable termination which is a necessary element to proceed with a § 1983 claim that calls into question an underlying conviction or a sentence. Without demonstrating a successful challenge to the criminal charges or a favorable termination, the civil claim cannot prove actual harm or rights violations under § 1983. As stated before, *Heck* requires a favorable termination before considering a § 1983 claim related to criminal charges. Absent a favorable termination, the lawsuit, like in this case, lacks a legal basis to proceed, resulting in a failure to state a claim. Accordingly, the Respondent did not meet this requirement as all three of Respondent's *Heck* dismissals lack a valid cause of action and, therefore, must count as a strike under PLRA's failure to state a claim clause in the three-strike provision.

Therefore, a *Heck* dismissal must constitute a strike under PLRA for failure to state a claim under the three-strike provision. This court should find that the dismissal under *Heck* constitutes *a s*trike under PLRA because no relief could be granted to the respondent since the grounds for relief were not established by not having a favorable termination for his sentence or conviction prior to the § 1983 claims. Accordingly, the three dismissals that the Respondent incurred under *Heck* failed to state a claim since his underlying convention or sentence was called into question without proving that his sentence or conviction was overturned, expunged, or declared invalid prior to filing

the claims. Therefore, the Respondent has failed to state a claim and was properly subjected to strikes under the PLRA three-strike provision.

C. THE LOWER COURT ERRED BECAUSE HECK DISMISSALS CONSTIUTUE FRIVOLOUS CLAIMS UNDER THE PLRA.

The PLRA three-strikes provision also administers strikes to prisoners who file frivolous IFP claims. *See* 28 U.S.C. § 1915(g). The Supreme Court has stated that a complaint is "frivolous" for purposes of the PLRA if it lacks an arguable basis in law or fact. *Neitzke*, 490 U.S. at 325. As such, courts have held that *Heck* dismissals constitute a strike for filing a frivolous claim under the PLRA. *See, e.g*., *Davis v. Kansas Dep't of Corr.*, 507 F.3d 1246, 1249 (10th Cir. 2007) (reasoning that a 1983 claim that "falls squarely within the Heck holding" is frivolous); *Kastner v. Texas*, 332 F. App'x. 980, 981 (5th Cir. 2009) (per curiam) (holding that a *Heck* dismissal is a frivolous claim.). The Fifth Circuit in *Hamilton v. Lyons* held that § 1983 claims falling under *Heck* are categorically frivolous under the PLRA for lacking an arguable basis in law or fact. *Hamilton v. Lyons*, 74 F.3d 99, 102 (5th Cir. 1996). The Fifth Circuit noted that for the purposes of the PLRA a complaint is "frivolous" under the PLRA, if it lacks an arguable basis in law or fact. *Id.* The Fifth Circuit further explained that a *Heck* dismissal "is [a] legally frivolous [claim] unless the conviction or sentence at issue has been reversed, expunged, invalidated, or otherwise called into question." *Id.*

Here, Respondent's 1983 is also frivolous because *Heck* dismissals lack an arguable basis in law or fact. Respondent under *Heck* failed to prove that his sentence or conviction was 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. As a result, Respondent, on three separate occasions, commenced a section 1983 lawsuit under IFP that clearly lacked an arguable basis in law or fact, resulting in a frivolous claim.

Therefore, a *Heck* dismissal can be considered a frivolous claim because it inherently lacks an arguable basis in law or fact.

D. THE LOWER COURT ERRED BECAUSE A HECK DISMISSAL CONSTITUTES A FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED AND NOT AN AFFIRMITIVE DEFENSE.

The Court of Appeals erroneously relied upon the 9th Circuit ruling in *Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016). The court held that Heck's favorable-termination requirement is an affirmative defense that may be waived by the defendant, not an element of a claim. *Id.* at 1056. The Ninth Circuit reasoned that "compliance with *Heck* most closely resembles the mandatory administrative exhaustion of PLRA claims, which constitutes an affirmative defense and not a pleading requirement." *Id.* at 1056. However, this argument lacks merit because the majority in *Heck* explicitly stated that "[w]e do not engraft an exhaustion requirement upon § 1983, but rather deny the existence of a cause of action." *Heck*, 512 U.S. at 489. Therefore, *Heck* clearly states that the favorable termination requirement is a necessary element of the claim for relief under § 1983, not an exhaustion defense that the defendant's answer must anticipate. *Id.* at 483–87.

The Ninth Circuit in *Washington* also held that a *Heck* dismissal could constitute a strike for failure to state a claim if an obvious bar to recurring relief exists on the face of the complaint. *Washington*, 833 F.3d at 1055. This argument also lacks merit because a *Heck* dismissal inherently presents an obvious bar to relief since a favorable termination is essential for a § 1983 claim. All Heck dismissals are premature claims since a favorable termination is required to proceed with a § 1983 claim, which is an obvious bar to recurring relief.

Moreover, "[i]t is well settled that suits may be dismissed without prejudice and for failure to state a claim when the prematurity of suit "appears on the face of the pleadings" because one of

the elements has not yet been met. *Garrett*, 17 F.4th at 429. (citing Restatement (Second) of Judgments § 20(2) cmt. k (1982)). *Heck* dismissals, on their face, constitute a failure to state a claim since without satisfying the necessary element of a favorable termination, relief cannot be granted. As a result, a *Heck* dismissal constitutes a strike under the PLRA. Therefore, the lower court erred in finding that a *Heck* dismissal does not constitute a strike under the PLRA.

E. A HECK DISMISSAL SHOULD CONSTITUTE A STRIKE BECAUSE CONGRESS EXPLICITLEY INTENDED TO LIMIT PRISONER'S USE OF JUDICIAL RESOURCES FOR CLAIMS THAT ARE FRIVOLOUS OR FAIL TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

As stated above, the primary aim of the PLRA was to reduce the number of frivolous prisoner-initiated lawsuits. *See* 141 Cong. Rec. 14,570 (1995). By Enacting the PLRA, Congress intended to provide financial disincentives for prisoners filing lawsuits IFP. *See Lyon v. Krol*, 127 F.3d 763, 764 (8th Cir.1997) ("Congress enacted PLRA with the principal purpose of deterring frivolous prisoner litigation by instituting economic costs for prisoners wishing to file civil claims. *See*, *e.g.*, H.R. Rep. No. 104-378, at 166-67 (1995)(SC) (Conf. Rep.); (statement of Sen. Dole)"). Moreover, the three-strikes provision was "designed to filter out the bad claims and facilitate consideration of the good." *Coleman v. Tollefson*, 575 U.S. 532, 539 (2015). The Supreme Court also noted that "[e]very paper filed with the Clerk… no matter how repetitious or frivolous, requires some portion of the institution's limited resources." *In re McDonald*, 489 U.S. 180, 184 (1989) (per curiam).

The court should rule that a *Heck* dismissal is a strike under the PRLA since reducing frivolous claims was the aim of PLRA. The Respondent's three *Heck* dismissals, all filed IFP, wasted judicial resources that could have been used for legitimate claims. The repetitive nature of the Respondent's claims, which were all dismissed under *Heck* for failing to meet a favorable

termination, demonstrates precisely the situation the PLRA's restrictions aimed to prevent. Therefore, *Heck* dismissals constituting a strike would ensure that individuals pursue criminal appeals before launching civil suits, promoting efficient legal processes and protecting against frivolous claims. Therefore, the court should rule that a claim dismissed under *Heck* constitutes a strike because the PLRA's three-strike provisions were intended to prevent meritless IFP claims that absorb judicial resources.

Therefore, the lower court erred, and this Court should find that a *Heck* dismissal should constitute a strike pursuant to the three-strikes rule because absent a favorable termination, *Heck* dismissals (1) fail to state a claim upon which relief can be granted and (2) *Heck* dismissals are also frivolous claims for lacking an arguable basis in law or fact.

II. KINGSLEY DOES NOT ELIMINATE THE NEED FOR A SUBJECTIVE STANDARD BECAUSE KINGSLEY IS REASONABLENESS DETERMINATION RATHER THAN A DETERMINATION OF DELIBERATE INDIFFERENCE.

An excessive force objective test should not be applied to a deliberate indifference failure to protect claim because an excessive force claim is limited in applying liability to situations where the claim arises from an action made intentionally and knowingly. This is contradictory to a failure to protect claim which hinges on the lack of action taken by the police officer. *Kingsley* reiterates that the standard set forth was in context to the facts of a pretrial detainee's excessive force claim under the Fourteenth Amendment. *Kingsley v. Hendrickson*, 576 U.S. 389, 402 (2015). While the current case involves a § 1983 claim brought by a pretrial detainee pursuant to the Fourteenth Amendment, the material difference in the type of claim demonstrates that the objective test does not apply.

Under a failure-to-protect claim, the Court is charged with analyzing whether the official acted with deliberate indifference (recklessness) rather than excessiveness (unreasonableness) under an excessive force claim. *Farmer v. Brennan*, 511 U.S. 825, 839-40 (1994); *Kingsley*, 576 U.S. at 397. Deliberate indifference has been described by the courts to be an "extremely high standard" *Cope v. Cogdill*, 3 F.4th. 198, 207, (5th Cir. 2021) (*citing Domino v. Tex. Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001). Though deliberate indifference has been argued to include objective and/or subjective tests this Court has held that when determining deliberate indifference, the culpability standard to consider is one of recklessness. *Whitney v. City of St. Louis Missouri*, 887 F.3d 857, 860 (8th Cir. 2018) *citing Jackson v. Buckman*, 756 F.3d 1060, 1065 (8th Cir. 2014) (citing *Scott v. Benson*, 742 F.3d 335, 339–40 (8th Cir. 2014)); (*see also, Farmer*, 511 U.S. at 836 finding "It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.")

Negligence and purpose and knowledge have served as the guideposts for the deliberate indifference standard of culpability. *Farmer*, 511 U.S. at 836. There is consensus amongst the courts that deliberate indifference is "more than 'mere negligence.'" *Nam Dang by & through Vina Dang v. Sheriff, Seminole Cnty. Fla.*, 871 F.3d 1272, 1280 (11th Cir. 2017); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Under 42 U.S.C. § 1983 a plaintiff must prove a violation of a constitutional right "and depending on the right, merely negligent conduct may not be enough to state a claim." *Daniels v. Williams*, 474 U.S. 327, 330 (1986); *see e.g.*, *Estelle*, 429 U.S. at 105. Deliberate indifference to prisoner's health, sufficient to constitute an Eighth Amendment violation, requires a showing above negligent conduct. *Id. citing Estelle*, 429 U.S. at 105. Due Process protections, provided by the Fourteenth Amendment, are not triggered by lack of due care

by prison officials. *Davidson v. Cannon*, 474 U.S. 344, 671 (1986) *referring to Daniels*, 474 U.S. 334. Further, the Due Process Clause is "simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property." *Daniels*, 474 U.S. at 328. Consequently, "[a]ctions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference. *Leal v. Wiles*, 734 F. App'x 905, 910 (5th Cir. 2018).

While more than negligence, deliberate indifference is less than purposely causing harm or acting with knowledge that the harm will result. *Farmer*, 511 U.S. at 835. As a result of deliberate indifference lying between negligence and purpose and knowledge, the Court has equated the culpability standard of deliberate indifference to recklessness. *Id.* Though deliberate indifference has been equated and defined like the culpability standard to recklessness, the standard alone does not designate the appropriate test for analysis, subjective or objective. *Id.* at 836-37.

Despite dispute, it would be a misapplication of deliberate indifference to use the objective test because it would result in mere negligence claims, which does not rise to the requisite level in a failure-to-protect claim. *Cope*, 3 F.4th at 217; *see also Farmer*, 511 U.S. at 835. Again, deliberate indifference must be greater than negligence, because "[w]here a government official's act causing injury to life, liberty, or property is merely negligent, "no procedure for compensation is constitutionally required." *Daniels*, 474 U.S. at 333 *citing Parratt v. Taylor*, 451 U.S 527, 548 (1981). Therefore, the culpability standard of deliberate indifference requires the subjective test rather than an objective test. *Farmer*, 511 U.S. at 836-37. Therefore, deliberate indifference standard can be analyzed through the subjective test to adhere to the understood guideposts of negligence and purpose and knowledge.

A subjective test is appropriate in deliberate indifferent cases because an officer's failure to protect unaccompanied by knowledge of a significant risk of harm does not rise to the level of punishment needed to create a constitutional violation. *Farmer*, 511 U.S. at 838. After a transsexual, convicted inmate was transferred to general population of a prison he was beaten and raped by another inmate. *Id* at 829-30. The inmate then brought an action for deliberate indifference failure-to-protect under § 1983 pursuant to the Eight Amendment. *Id.* at 830-31. Petitioner alleged officials placed the inmate in general population despite knowing the violent environment and history of inmate assault of the prison and knowing of the inmate's vulnerability as a "transexual who 'projects feminine characteristics.'" *Id.* As a result of inconsistent tests adopted by the Court of Appeals, the Supreme Court granted cert, defining deliberate indifference culpability standard as recklessness which is to be tested subjectively. *Id.* at 832.

Further, the Court further outlined that a prison official can only be held liable for denying humane conditions of confinement under the Eighth Amendment when he "know[s] that the inmates face a substantial risk of serious harm and disregard[s] that risk by failing to take reasonable measures to abate [a serious risk of harm]." *Id.* at 847. To meet the culpability standard of deliberate indifference and be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement, 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." *Id.* at 837. Accordingly, the court implemented a subjective recklessness test for deliberate indifference claims under the Eight Amendment. *Id.* at 839-40. The Court reasoned that the Eighth Amendment outlaws cruel and unusual punishment, not cruel and unusual conditions. *Id.* at 837. Therefore, an official's failure to alleviate a substantial risk that he should have

perceived, but did not have knowledge of, does not rise to the level of an infliction of punishment nor constitutional violation. *Id.* at 837-38.

A. THE SIMILARITY IN CLAIMS OF FARMER IS VITAL TO THE APPLICABLE SUBJECTIVE TEST AND OUTWEIGHS THE AMENDMENT AND STATUS OF PETITIONER.

A pretrial detainee's constitutional right to be secure in basic human needs is violated by officials when the official has subjective knowledge of a substantial risk of serious harm and responded to that risk with deliberate indifference. *Cope*, 3 F.4th at 206 *citing Estate of Henson v. Wichita Cnty.*, 795 F.3d 456, 464 (5th Cir. 2015).

The subjective test set forth by *Farmer* was further upheld in *Cope v. Cogdill* – post *Kingsley*. *Cope*, 3 F.4th at 224-25. Like *Cope*, Respondent brings the present claim against Officer Campbell alleging a deliberate indifference claim pursuant to the Fourteenth Amendment. *Id.* at 203.

The Fifth Circuit held that a pretrial detainee must present sufficient evidence to prove the prison official had subjective knowledge of the risk of serious harm. (cite) When the pretrial detainee was arrested and booked to Coleman County Jail, the screening form completed upon intake indicated the detainees wishes to kill himself that day and previously attempted suicide two weeks prior. *Id.* at 202. The form further indicated detainee's psychiatric services and diagnosis, and the detainee was placed on a temporary suicide watch. *Id.* at 202-03. Roughly 17 minutes after returning to his cell from a medical center the detainee attempted to hang himself. *Id.* at 203. Though unsuccessful, the detainee attempted suicide again within hours and was successful. *Id.* This was after officers did not the intake form or seek mental health treatments. *Id.* After being left in his cell after attempting suicide, the detainee made a second suicide attempt by wrapping a cord around his neck, which resulted in his death. *Id.* The prison officers "watch[ed] an inmate attempt

suicide and fail[ed] to call for emergency medical assistance." *Id.* at 209. Though notifications of the detainee's suicide risk were present, the officers were not notified of the information nor aware the phone cord would be used in detainee Monroe's suicide attempt.

The Fifth Circuit relied on *Farmer* holding a pretrial detainee's constitutional right to be secure in basic human needs is violated by officials when the official (1) "has subjective knowledge of a substantial risk of serious harm" and (2) "responded to that risk with deliberate indifference." The Court in *Cope* reasoned that the objective test set forth in *Kingsley* is not applicable because *Kingsley* "did not abrogate [this court's] deliberate-indifference precedent." As a result, the Court held that the officer did not violate a clearly established constitutional right, despite available information to notify the officer of the risk, because the officer did not have the request subjective knowledge.

In the present case, the information of the risk was not as apparent to that of *Cope*. Here, the record does not indicate that Officer Campbell, an entry level officer, was aware of the Respondent's status. *Cope,* however, was aware of the risk suicide attempt displayed by the previous suicide attempt on the same day. Further, the record gives no indication that officer Campbell intentionally or knowingly ignored the status of respondent. Officer Campbell's lack of knowledge does not amount to that of the officers in *Cope*, highlighted by the Fifth Circuit reasoning that officer's ignorance of the specific circumstances denied the needed subjective knowledge of the risk. As a result, there is minimal indication that the knowledge of officer Campbell was anywhere near the level of knowledge of the officers in cope. Therefore, with the subjective standard retained in cope with a finding of no subjective knowledge, the court should apply the same test and find that officer Campbell did not have the requisite knowledge to be liable under the 14th amendment for failure to protect a pretrial detainee.

Kingsley's objective test for unreasonableness does not apply because the test is exclusive to excessive force context. *Kingsley*, 576 U.S. at 402. The objective test is not appropriate to the deliberate indifference culpability standard of a failure-to-protect claim. *Edmiston v. Borrego*, 75 F.4th 551, 559-60 (5th Cir. 2023). "'[A]pplication of the deliberate indifference standard is inappropriate' in one class of prison cases: when 'officials stand accused of using excessive physical force.'" *Farmer*, 511 U.S. at 835, *citing Hudson v. McMillian*, 503 U.S. 1, 6–7 (1992); *see also Whitley*, 475 U.S. at 320.

Therefore, in context of analyzing deliberate indifference of a government official, an objective test is inappropriate, and the Court should find in favor of the subjective test in this matter.

B. THE OBJECTIVE TEST FOR THE EXCESSIVE FORCE SHOULD BE NARROWLY READ TO APPLY SOLELY TO *EXCESSIVE FORCE* CLAIMS BROUGHT BY PRETRIAL DETAINEES PURSUANT TO THE FOURTEENTH AMENDMENT.

In the context of excessive force claims brought by pretrial detainees pursuant to the Fourth Amendment, an objective test is used. *Kingsley*, 576 U.S. at 402. After repeatedly not complying with officers' instructions, a pretrial detainee was forcibly removed from his cell after being restrained by handcuffs. *Id.* at 393. It was disputed whether officers used impolite language and if inmate's physical resistance was met with officer's physical force. *Id.* However, the record was clear that the detainee was tased and left alone in a cell for fifteen minutes while remaining handcuffed. *Id.* at 392-393. In response, the pretrial detainee brought an excessive force claim under § 1983 pursuant to the Fourteenth Amendment. *Id.* at 393. The court explained that the first inquiry in an excessive force action is undisputed, that the officer deliberately acted. *Id.* at 395. The official must possess a purposeful, or possibly reckless state of mind in the action because

negligent infliction of harm is "categorically beneath the threshold of constitutional due process. *Id.* at 396 (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) ("Historically, this guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property"). The second inquiry in an excessive force action, the Court explained, is whether the official's use of force was excessive. *Id.* at 395. To determine excessiveness, the Court elected to use an objective reasonableness standard, denying the requirement for plaintiff to prove the defendant's state of mind. *Id.*

The Court held that the objective reasonableness turns on the facts and circumstances of each particular case. *Id.* at 397. Within the objective standard and among other factors, "a court *must* make [an objective reasonableness] determination from the perspective of a reasonable officer on the scene, *including what the officer knew at the time*, not with the 20/20 vison of hindsight." *Id.*

The inquiry into the knowledge of the officer, encompassed in the objective test, further highlights the importance of subjectivity though it may not have the same weight in varying claims, such as excessive force. The use of subjectivity further denies *Kingsley* to eliminate subjective intent requirements within deliberate indifference claims brought by a pretrial detainee while the *Kingsley* opinion repeated the objective test to be valid in the context of *Kingsley*.

C. THE DELIBERATE INDIFFERENCE CLAIM BEING BROUGHT UNDER THE FOURTEENTH AMENDMENT DOES NOT ELIMINATE *FARMER*'S SUBJECTIVE TEST BECAUSE PRETRIAL DETAINEES ARE PROVIDED MORE CONSTITUTIONAL PROTECTIONS THAN CONVICTED INMATES UNDER THE EIGHTH AMENDMENT.

The difference in incarceration status and applicable constitutional provisions does not outweigh the importance of the claim and maintains the need to apply the subjective test of *Farmer*

to this case. Despite *Farmer*'s claim being pursuant to the Eighth Amendment rather than Fourteenth Amendment, the subjective standard is equally applicable as the punishment of a pretrial detainee is more restrictive than a convicted inmate. *Estelle*, 429 U.S. at 104; *see also Youngberg v. Romeo*, 457 U.S. 307, 315 (1982).

The status of an inmate, whether detained prior to or after conviction, dictates the applicable constitutional provision. *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1067–68 (9th Cir. 2016). ("Inmates who sue prison officials for injuries suffered while in custody may do so under the Eighth Amendment's Cruel and Unusual Punishment Clause or, if not yet convicted, under the Fourteenth Amendment's Due Process Clause."); *see also* See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (*holding* under the Due Process Clause, a detainee may not be punished prior to conviction). "[U]nder the Supreme Court's current framework, the Fourth Amendment covers arrestees, the Eighth Amendment covers prisoners, and the Fourteenth Amendment covers 'those who exist in the in-between—pretrial detainees.'" *Crocker v. Beatty*, 995 F.3d 1232, 1246 (11th Cir. 2021) *citing Piazza v. Jefferson*, 923 F.3d 947, 952 (11th Cir. 2019). With a pretrial detainee, the inmate cannot experience any form of punishment contrary to a convicted inmate who cannot experience cruel and unusual punishment.

Pretrial detainees are afforded more protections than convicted inmates because a detainee hold the "right to be free from punishment" contrary to a convicted inmate whose right is to be free from "cruel and unusual punishment." *Bell*, 441 U.S. at 534. As a result, "[i]f it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions." *Youngberg*, 457 U.S. at 315–16.

Despite the different constitutional provisions applicable based on conviction status, the constitutional violation of failure to protect claims focuses on the level of unsafe conditions or punishment experienced by the inmate where convicted prisoners' rights are held to a lower standard than pretrial detainees, affording Eighth Amendment protections to pretrial detainees. *Bell*, 441 U.S. at 531. Courts have agreed that the rights afforded to convicted inmates at minimum apply to pretrial detainees. *See Bell*, 441 U.S. at 545 ("[P]retrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights that we have held are enjoyed by convicted prisoners.") *see also Youngberg*, 457 U.S. at 321–22 (*citing Estelle* Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish).

As previously mentioned, the status of the petitioner, pretrial detainee or convicted prisoner, dictates the applicable constitutional provisions, the Fourteenth or Eighth Amendment. In the instant case, the pretrial detainee status of the inmate requires the action be brought under the Fourteenth Amendment. The deliberate indifference standard under *Farmer*, brought under the Eighth Amendment, however, expands to deliberate indifference failure-to-protect claims under the Fourteenth Amendment. While the constitutional Amendment may be different, the protections afforded to convicted inmates under the Eighth Amendment are afforded to pretrial detainees and the test for deliberate indifference, therefore, should remain the same.

Here, the petitioner is a pretrial detainee, increasing the restraint on punishment in comparison to that of the Eighth Amendment requirement of cruel and unusual punishment. As a result, the deliberate indifference failure-to-protect claim is appropriately applicable to the present deliberate indifference case under the Fourteenth Amendment because the Eight Amendment

protections are encompassed by the Fourteenth Amendment. With the application of the subjective test, the detainee is required to prove that Officer Campbell had knowledge of the risk. The record nor Respondent made the showing of Officer Campbell's knowledge. As such, we ask this Court to find in favor of the petition and reverse the lower court's decision.

D. IT IS MISLEADING TO APPLY THE EXCESSIVE FORCE HOLDING TO A DELIBERATE INDIFFERENCE FAILURE-TO-PROTECT CLAIM DUE TO THE DIFFERENCE IN THE NATURE AND ORDINARY MEANING OF THE CLAIMS.

To read deliberate indifference and excessive force claims to have similar standards would be inconsistent with the ordinary meanings of the claims. Ordinary meaning is the presumption that terms should be interpreted in accordance with their general meaning. *See* Brian G. Slocum, *OrdinaryMeaning; A Theory of the Most Fundamental Principle of the Legal Interpretation 2* (2015).

Consistent with ordinary meaning of the claims, the *Kingsley* objective test does not eliminate the requirement for a pretrial detainee in a deliberate indifference failure-to-protect claim to prove the official's subjective intent. The claims of excessive force and deliberate indifference are materially different because the concept of excessive force can be excessive without regard to deliberateness. However, by definition, deliberate indifference requires deliberation. *Strain v. Regalado*, 977 F.3d 984, 987 (10th Cir. 2020) Excessiveness, on the other hand, can be measured without deliberate intent to be excessive based solely on the outcome of the deliberate action and balance of force in relation to the circumstances. The same is not applicable for the ordinary meaning of deliberate indifference.

With deliberate being a part of the culpability standard for a failure-to-protect claim, it is appropriate to require a deliberate action be present. By definition, deliberate indifference cannot be read without deliberation, and by common criminal law, deliberation includes subject intent. A deliberate indifference claim speaks of subjective intent among other things while an excessive force claim does not.

Therefore, when the nature of the conduct and ordinary meaning of the claim are material different, as they are here, it is unsuitable to adhere to an excessive force test within the context of a deliberate indifference claim.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests for the Court to overturn the lower court's decision.