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 United States Court of Appeals
for the Fourteenth Circuit

BRIEF FOR RESPONDENT

Team 4
Attorneys for Respondent

Oral Argument Requested

QUESTIONS PRESENTED

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

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

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The April 20, 2022, order of the United States District Court for the Western District of Wythe denying Respondent's motion to proceed in forma pauperis is unpublished and can be found on page 1 of the Record. The district court's July 14, 2022, order granting Petitioner's motion to dismiss is unpublished and found on pages 2–11 of the Record. The United States Court of Appeals for the Fourteenth Circuit's opinion reversing both of the district court's orders is unpublished and found on pages 12–20 of the Record. This Court's Order granting certiorari for the October 2023 Term is found on page 21 of the Record.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the Eighth Amendment and § 1 of the Fourteenth Amendment of the United States Constitution. *See* Appendix A. This case also involves the interpretation and application of the Prisoner Litigation Reform Act, codified in 28 U.S.C. § 1915(g), and 42 U.S.C. § 1983. *See* Appendix B.

STATEMENT OF THE CASE

Statement of Facts

Respondent Mr. Arthur Shelby is the second-in-command of the Geeky Binders, an infamous street gang in the town of Marshall. R. at 2. Over the past several years, the Geeky Binders' influence in Marshall has been challenged by a gang led by Luca Bonucci. R. at 3. The Bonucci gang's political power extended to law enforcement, allowing Bonucci and other clan members to exercise this power from jail. *Id.* Similarly, Mr. Shelby has been in and out of prison over the past few years for gang-related crimes, during which he brought three civil actions under 42 U.S.C. § 1983 against state actors. *Id.* Each action was dismissed without prejudice under *Heck v. Humphrey*. *Id.*

On December 31, 2020, Marshall police arrested Mr. Shelby and charged him with battery, assault, and possession of a firearm by a convicted felon. R. at 3–4. Officer Dan Mann conducted Mr. Shelby's preliminary paperwork and booking at the jail. R. at 4. Officer Mann readily recognized Mr. Shelby as being part of the Geeky Binders based on his outfit and a weapon that had a "Geeky Binders" engraving. *Id.* During this process, Mr. Shelby shouted: "The cops can't arrest a Geeky Binder!" and "My brother Tom will get me out of here, just you wait." *Id.* Officer Mann followed protocol when entering Mr. Shelby's paperwork into the computer, which requires officers to "list each inmate's charges, inventoried items, medications, gang affiliation, and other pertinent statistics and data that jail officials would need to know." *Id.* The gang affiliation section allowed Officer Mann to indicate Mr. Shelby's gang affiliation and other relevant information, such as Mr. Shelby's high-ranking status. R. at 4–5.

Due to Marshall's high activity of gang violence, the jail employed several "gang intelligence officers" to review incoming inmates' files in the online database. R. at 4. Upon reviewing Mr. Shelby's file, the intelligence officers made a special note that the Bonuccis were currently seeking revenge on the Geeky Binders with Mr. Shelby being the gang's prime target. R. at 5. The intelligence officers printed paper notices detailing Mr. Shelby's status and left them in all the jail's administrative areas, rosters, and floor cards. *Id.* On the morning of January 1, 2021, the officers met with all jail officials and notified them of Mr. Shelby's presence. *Id.* There, the officers explained that Mr. Shelby would be placed in cell block A of the jail to keep him separated from the Bonuccis, who were housed between cell blocks B and C. *Id.* The intelligence officers urged all staff "to check the rosters and floor cards regularly to ensure that the rival gangs were not coming in contact in common spaces in the jail." *Id.*

Roll call records of the January 1 meeting indicated that Petitioner Officer Chester Campbell, an entry-level guard, was in attendance. *Id.* However, time sheets revealed that Officer Campbell called in sick and did not begin his shift at the jail until after the meeting ended. R. at 5–6. The gang intelligence officers required anyone absent from the meeting to review the information on the online database. R. at 6. Due to a glitch in the jail's system, there is no record of anyone who viewed the January 1 meeting notes. *Id.*

On January 8, Officer Campbell transferred inmates to and from the jail's recreation room. *Id.* Officer Campbell approached Mr. Shelby's cell to escort him to recreation, and it is undisputed that, at this time, Mr. Shelby's legal status was a pretrial detainee. R. at 6 & n.1. Officer Campbell did not recognize Shelby at this time, and he did not reference the lists of inmates with "special statuses" that he had on hand or the jail's database before leading Mr. Shelby from his cell. R. at 6. The list that Officer Campbell was carrying included the list of inmates "with gang affiliations and their corresponding risk of attack from other gang members in the jail." *Id.* This list explicitly included Mr. Shelby and indicated that he was at risk of a possible hit from the Bonuccis. *Id.*

Officer Campbell then retrieved two inmates from cell block B and another from cell block C, all of whom were members of the Bonucci clan. R. at 6–7. The Bonucci gang immediately charged and savagely beat Mr. Shelby with their fists and a club made from tightly rolled and mashed paper. R. at 7. Officer Campbell was unable to stop the three men from attacking Mr. Shelby until other officers arrived several minutes later. *Id.* This anticipated attack caused Mr. Shelby to suffer life-threatening injuries, including "penetrative head wounds from external blunt force trauma resulting in traumatic brain injury." *Id.* He also suffered from fractured ribs, lung lacerations, acute abdominal edema, organ laceration, and internal bleeding, putting Mr. Shelby in the hospital for several weeks. *Id.*

Mr. Shelby was acquitted of the assault charge but found guilty of battery and possession of a firearm by a conviction felon following a bench trial. *Id.*

Procedural History

On February 24, 2022, Mr. Shelby brought this 42 U.S.C. § 1983 action pro se against Officer Campbell and filed a motion to proceed in forma pauperis. *Id.* On April 20, 2022, the district court denied Mr. Shelby's motion pursuant to 28 U.S.C. § 1915(g) because he had accrued three "strikes" under the Prisoner Litigation Reform Act (PLRA) from his three prior § 1983 actions that were dismissed under *Heck v. Humphrey*. *Id.* The district court directed Mr. Shelby to pay the $402.00 filing fee before proceeding, which he paid in full. *Id.*

In his Complaint, Mr. Shelby alleges that he is entitled to damages under § 1983 because Officer Campbell violated his constitutional rights when he failed to protect Mr. Shelby from the attack. R. at 7–8. Mr. Shelby argued that, because of his pretrial detainee status at the time of the assault, he need only prove that Officer Campbell's actions were objectively unreasonable pursuant to *Kingsley v. Hendrickson*. R. at 8. Specifically, Mr. Shelby argued that Officer Campbell should have been on notice of the risk from the Bonucci clan based on all the information from the jail's database. *Id.* On May 4, 2022, Officer Campbell filed a motion to dismiss Mr. Shelby's action, arguing that Mr. Shelby failed to state a claim. R. at 8. Officer Campbell asserted that the standard for an official to be liable under a failure-to-protect claim is a subjective one according to *Farmer v. Brennan* of which Mr. Shelby did not sufficiently allege. *Id.*

On July 14, 2022, the district court granted Officer Campbell's Motion to Dismiss, R. at 11, because Mr. Shelby did not allege that Officer Campbell "knew of and disregarded a substantial risk of serious harm," R. at 10. The court held that the subjective standard in *Farmer* applied to pretrial detainees' failure-to-protect claims and that *Kingsley*'s excessive force case did

nothing to alter *Farmer*'s framework. R. at 9. According to the court, if it were to adopt the objective standard for failure-to-protect cases, it would erroneously transform the question of Officer Campbell's state of mind to one of negligence, which is why a subjective standard for deliberate indifference cases is necessary. R. at 9–10.

The Fourteenth Circuit Court of Appeals reversed and remanded the case on both issues. R. at 13. First, the circuit court held that dismissals under *Heck v. Humphrey* do not qualify as a "strike" under the PLRA. R. at 14. The court determined that "*Heck* only temporarily prevents courts from addressing the underlying merits of the inmate's § 1983 claim," not its invalidity based on the merits, whereas the PLRA's three strikes rule was intended to "curb meritless, wasteful litigation brought by prisoners." R. at 15. Second, the court held that *Kingsley*'s holding eliminates the subjective intent requirement in failure-to-protect claims, thus requiring that they be analyzed under an objective standard. R. at 16. Determining that Mr. Shelby's allegations met this objective standard, the court reversed the district court's decision on both issues. R. at 19. Petitioner Officer Campbell appealed, and the Court granted certiorari on both issues. R. at 21.

SUMMARY OF THE ARGUMENT

Where a prison official violates a pretrial detainee's constitutionally protected civil rights, the pretrial detainee may bring a civil claim against that official under 42 U.S.C. § 1983. Correspondingly, Congress enacted 28 U.S.C. § 1915(g) to address the concern of meritless and frivolous claims being filed by prisoners within the courts. Indeed, Congress intended to balance the interests of curbing meritless claims with preserving the integrity of prisoner litigation, most of which is filed pro se, and ensuring that pretrial detainees are properly afforded their broad due process rights under the Fourteenth Amendment. Thus, this Court should recognize that neither

Heck v. Humphrey nor *Kingsley v. Hendrickson* bar Mr. Shelby from proceeding with his failure-to-protect § 1983 claim in forma pauperis.

First, *Heck* requires district courts to dismiss a § 1983 claim prematurely challenging the constitutionality of a conviction or sentence. If the conviction or sentence has not been invalidated, *Heck* requires a court to defer their consideration of the claim until the conviction or sentence is invalidated and the claim becomes ripe. Because a *Heck* dismissal does not relate to the merits and rather relates to the timeliness of the claim, it cannot be considered a dismissal for failure to state a claim under § 1915(g). Accordingly, if a court intends for a claim to count as a strike § 1915(g), it must explicitly dismiss the claim as either frivolous, malicious, or for failure to state a claim. Although a claim can simultaneously be dismissed pursuant to *Heck* and for being frivolous or malicious, these grounds for dismissal are distinct. A court must look past the impediment of the *Heck* doctrine to assess the merits of the claim to properly assess an additional dismissal separate from *Heck*. Therefore, because a *Heck* dismissal does not constitute an explicitly enumerated ground in § 1915(g), the Fourteenth Circuit correctly held that Mr. Shelby's claims dismissed solely pursuant to *Heck* do not automatically count as strikes under § 1915(g).

Second, this Court's holding in *Kingsley* requires an objective test for all pretrial detainee claims alleging Fourteenth Amendment due process violations under 42 U.S.C. § 1983. The Court has understood the Due Process Clause to broadly protect pretrial detainees from *any* punishment from state actors, as they have yet to be convicted of any crime. To subject pretrial detainees to the heightened standard under the Eighth Amendment, where the Cruel and Unusual Punishment clause only protects prisoners from a *narrow* subset of punishment, would be to impede pretrial detainees' due process rights. Additionally, although *Kingsley* involved an excessive force claim, the nature of constitutional and physical harm suffered by such claims is analogous to the injuries

suffered in deliberate indifference failure-to-protect claims. This is further supported by *Kingsley*'s broad language, suggesting that pretrial detainees need only provide objective evidence regarding *the challenged governmental action*. Finally, an objective standard is favored by this Court's precedent and interpretation of the Fourteenth Amendment and § 1983. Therefore, because *Kingsley*'s objective standard extends to failure-to-protect claims, the Fourteenth Circuit correctly held that Mr. Shelby's allegations sufficiently met that standard and stated a valid claim.

ARGUMENT

I. MR. SHELBY'S THREE PREVIOUS DISMISSALS OF HIS 42 U.S.C. § 1983 CLAIMS DO NOT CONSTITUTE STRIKES UNDER THE PRISON LITIGATION REFORM ACT BECAUSE THEY WERE NOT EXPLICITLY DISMISSED UNDER AN ENUMERATED GROUND STATED IN 28 U.S.C. § 1915(g), AND BECAUSE A *HECK V. HUMPHREY* DISMISSAL IS CONCERNED WITH THE RIPENESS OF A CLAIM RATHER THAN THE UNDERLYING CLAIM ITSELF.

For a plaintiff to state a claim under 42 U.S.C. § 1983, the plaintiff must (1) allege a violation of a right secured by the Constitution and (2) show that the alleged deprivation was committed by a person "acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). A plaintiff must also show that the conviction or sentence from which their claim stems "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," for the claim to be cognizable. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). If the plaintiff is unable to show that the conviction or sentence has been invalidated, the court must dismiss the § 1983 claim until it accrues at a later date. *Id.* at 489.

The Prison Litigation Reform Act (PLRA) prohibits incarcerated individuals from proceeding in forma pauperis if they have brought three or more actions or appeals that were dismissed on the grounds of being (1) frivolous, (2) malicious, or (3) failing to state a claim upon

which relief may be granted, "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C § 1915(g). A "strike" under § 1915(g) "hinges exclusively on the basis for the dismissal." *Lomax v. Ortiz-Marquez,* 140 S. Ct. 1721, 1725 (2020). A dismissal constitutes a strike if the entire action is "dismissed explicitly because it is frivolous, malicious, or fails to state a claim." *Byrd v. Shannon*, 715 F.3d 117, 126 (3d Cir. 2013) (internal quotations omitted). Whether or not a claim is dismissed with prejudice is irrelevant when determining if a claim will constitute a strike. *Lomax*, 140 S. Ct. at 1727.

This Court should affirm the circuit court's holding that dismissals pursuant to *Heck* do not constitute a "strike" within the meaning of 28 U.S.C § 1915(g). First, the circuit court correctly held that a *Heck* dismissal does not constitute a failure to state a claim because a *Heck* dismissal does not address the merits of a § 1983 claim. Further, if a district court intends for a claim to constitute a "strike," it should explicitly dismiss the claim on one of the three grounds enumerated in § 1915(g). Second, a *Heck* dismissal is concerned with a claim's ripeness for adjudication. Until the underlying conviction or sentencing is invalidated, the claim is effectively dormant. Considering over ninety percent of prisoner petitions are filed pro se,[1] classifying a dismissal not enumerated within § 1915(g) as a strike would be contrary to the purpose of the PRLA, unintentionally constraining a prisoner's ability to litigate in forma pauperis.

[1] "[F]rom 2000 to 2019, in 91 percent of prisoner petition filings, the plaintiffs were self-represented." *Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019*, U.S. Cts. (Feb. 11, 2021) [hereinafter Trends in Pro Se Civil Litigation], https://www.uscourts.gov/news/2021/02/11/just-facts-trends-pro-se-civil-litigation-2000-2019.

A. A Dismissal Pursuant to *Heck v. Humphrey* is Not an Enumerated Ground Stated in § 1915(g), and the Plain Meaning of the Statute Requires That Strikes Only be Assessed When a Claim is Dismissed for Being Frivolous, Malicious, or for Failure to State a Claim.

Enacted in 1996, the PLRA came as a response to the overwhelming amount of prisoner filings in the federal district courts. *Jones v. Bock*, 549 U.S. 199, 203 (2007). Concerned with the possibility of meritless claims drowning out actual claims with merit, Congress enacted "a variety of reforms designed to filter out the bad claims and facilitate consideration of the good." *Id.* at 204. Key among these reforms included § 1915(g), which restricts prisoners from proceeding in a civil action under the PRLA if three or more of their prior claims brought while they were incarcerated were dismissed on the grounds that they were frivolous, malicious, or for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g).

When statutory interpretation arises, and where Congress has expressed its will in explicit terms, a court is tasked with giving effect to Congress, and the plain language of the statute must be regarded as conclusive. *Negonsott v. Samuels*, 507 U.S. 99, 104 (1993) (internal quotations omitted) (quoting *Griffin v. Oceanic Contractors, Inc*., 458 U.S. 564, 570 (1982)). The inquiry should begin and end "with the language of the statute itself" when the language of the statute is reasonably plain, as is § 1915(g). *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Following the literal application of § 1915(g) does not "produce a result demonstrably at odds with the intentions of its drafters," and thus, Congress's intention must control. *Griffin*, 458 U.S. at 571.

1. Because Heck *Does Not Address the Merits of a § 1983 Claim, Such a Claim Dismissed Solely Pursuant to* Heck *Cannot Constitute a Failure to State a Claim Under the PLRA and Thus Does Not Constitute a Strike.*

District courts should look beyond a *Heck* bar and address the merits of the case to determine whether there is an additional reason for dismissal or if the dismissal is exclusively

based on *Heck*. *Polzin v. Gage*, 636 F.3d 834, 839 (7th Cir. 2011). In *Polzin*, the plaintiff brought an action under § 1983 against state actors, alleging constitutional violations during his sentencing proceedings. *Id.* The court found that *Heck* barred the plaintiff's complaint because, if the plaintiff were to prevail, his "claim would call into question the validity of [his] sentence." *Id.* at 837. The court subsequently denied the plaintiff's motion for reconsideration, explaining that, in addition to the *Heck* bar, the plaintiff failed to state a claim and that his decision to sue certain state officials was frivolous. *Id.* On appeal, the Seventh Circuit held that courts "*may* bypass the impediment of the *Heck* doctrine and address the merits of the case" when considering a dismissal, acknowledging a distinction between the *Heck* doctrine and the merits of the claim. *Id.* at 838 (emphasis added).

A dismissal under *Heck* reflects a matter of judicial oversight that prevents civil actions from negating existing criminal judgments rather than a failure to plead a necessary element to a § 1983 claim. *See Washington v. L.A. Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016). In *Washington*, the plaintiff appealed the district court's dismissal of his petition to proceed in forma pauperis and dismissal of his claim. *Id.* at 1055. The district court reasoned that the plaintiff had accrued three strikes under the PLRA, where one was dismissed under *Heck*. *Washington,* 833 F.3d at 1055. The Ninth Circuit reversed the district court's holding based on their improper assessment of a strike, holding that a *Heck* dismissal "standing alone, is not a per se frivolous or malicious complaint," nor can it be characterized as malicious "unless the court specifically finds that the complaint was filed with the intention or desire to harm another." *Id.* (internal quotes omitted). Further, the Ninth Circuit asserted that not all *Heck* dismissals categorically count as dismissals for failure to state a claim, as termination of the prior criminal proceeding, or favorable termination, is not "a necessary element of a civil damages claim under § 1983." *Id.* at 1056.

Instead, a *Heck* dismissal reflects a "matter of judicial traffic control" by essentially constraining a civil action from proceeding until the plaintiff's criminal conviction has been set aside. *Id.*

Some circuits read favorable termination as an implied necessary element to a § 1983 claim. *See, e.g.*, *Garrett v. Murphy*, 17 F.4th 419, 428 (3d Cir. 2021); *Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (10th Cir. 2011). In *Garrett*, the plaintiff brought several § 1983 claims, one of which was dismissed because the defendants had qualified immunity. 17 F.4th at 428. The court held that the plaintiff's claims could have also been dismissed on the ground that he failed to plead facts supporting that his sentence had been invalidated. *Id.* On appeal, The Third Circuit held that the dismissal of the plaintiff's § 1983 claim constituted a strike under the PRLA. *Id.* at 427. The court reasoned that, without the plaintiff proving favorable termination, he lacked a "valid cause of action under § 1983" and therefore required that the complaint be dismissed "as premature for failure to state a claim." *Id.* at 427–28. Similarly in *Smith,* the plaintiff brought several § 1983 claims, one of which was barred by *Heck* and other grounds. *Smith*, 636 F.3d at 1311–12. In holding that the dismissal counted as a strike under the PLRA, the Tenth Circuit reasoned that favorable termination is an "essential element" of a § 1983 claim, and, absent favorable termination, a claim must be dismissed "prematurity under *Heck.*" *Id.* at 1312.

Unlike in *Garrett*, where the plaintiff's claim was dismissed on grounds for qualified immunity and *could have also* been dismissed for failure to support that his sentence had been invalidated (*Heck* dismissal), 17 F.4th at 426, in the present case, all three of Mr. Shelby's claims were dismissed *solely* pursuant to *Heck*, R. at 3. In dismissing the claim, the district court in *Garrett* effectively bypassed the impediment of the *Heck* bar to address the actual merits of the claim, like how the Seventh Circuit in *Polzin* instructed district courts to consider the reason for dismissal. 636 F.3d at 838. Had the court in *Garrett* not found an issue with the merits of the claim, it would

have dismissed it exclusively pursuant to *Heck*. *Garrett*, 17 F.4th at 426. This is similar to *Smith*, where the plaintiff's claim was dismissed pursuant to *Heck and* other grounds. *Smith*, 636 F.3d at 1311–12. Therefore, if the district court that reviewed Mr. Shelby's claims identified an issue with the merits of his claims, the court would not have dismissed it only pursuant to *Heck*, R. at 3, and instead would have included other grounds focused on the merits.

Further, both courts in *Smith* and *Garrett* acknowledged that the plaintiffs' claims were premature. 17 F.4th at 428; 636 F.3d at 1312. When a claim is premature, it exists "before the proper, usual or intended time." *Premature*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/premature (last visited Jan. 27, 2024). In dismissing the claims for prematurity, both the *Garrett* and *Smith* courts asserted judicial traffic control, as termed by the Ninth Circuit in *Washington*, 833 F.3d at 1056, and prevented a head-on collision between the plaintiffs' existing § 1983 claims and their existing respective criminal convictions. Here, the district court asserted judicial safeguarding when it dismissed Mr. Shelby's three convictions pursuant to *Heck*. R. at 3. As the Fourteenth Circuit held: "*Heck* only temporarily prevents courts from addressing the underlying merits of the inmate's § 1983 claim." R. at 15. Therefore, relying solely on *Heck*, the district court signaled that there was not an issue with the merits of Mr. Shelby's claims. Rather, the dismissals focused on when the "proper, usual or intended time" Mr. Shelby could bring the claim.

2. Determining That a Dismissal Constitutes a Strike When it is Not Explicitly Dismissed for Being Frivolous, Malicious, or for Failing to State a Claim Goes Against the Plain Meaning of the Statute and Public Policy.

The plain meaning of § 1915(g) requires that, for a strike to be assessed, a claim must be dismissed explicitly because it is "frivolous," "malicious," or it "fails to state a claim." *Byrd*, 715

F.3d at 126; *see also Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1283–84 (11th Cir. 2016) ("Three specific grounds render a dismissal a strike: frivolous, malicious, and fails to state a claim upon which relief may be granted. Under the negative-implication canon, these three grounds are the *only* grounds that can render a dismissal a strike." (internal quotations omitted)). In *Byrd*, the Third Circuit dismissed the plaintiff's appeal of his § 1983 claim because the appeal "was without merit." 715 F.3d at 125 (internal quotations omitted). In assessing whether the plaintiff had accrued a strike under § 1915(g) from that dismissal, the court relied on the "driving purpose of the PLRA—preserving resources of both the courts and the defendants in prisoner litigation." *Id.* In serving this purpose, the court held that it was necessary to (1) identify and reduce frivolous claims by prisoners and (2) reduce litigation centered on whether a dismissal constituted a strike. *Id.* Therefore, the court adopted the following rule to ensure the reduction of litigation centered on a strike analysis: "[A] strike under § 1915(g) will accrue only if the entire action or appeal is (1) dismissed explicitly because it is "frivolous," "malicious," or "fails to state a claim" or (2) dismissed pursuant to a statutory provision or rule that is limited solely to dismissals for such reasons." *Id.* at 126. Applying this rule, the Third Circuit held that the dismissal of the plaintiff's claim "because it was without merit" did not constitute a strike. *Id.*

In *Daker*, the plaintiff, who had previously "submitted over a thousand pro se filings in over a hundred actions and appeals in at least nine different federal courts," appealed the district court's dismissal of his petition to proceed in forma pauperis after finding that he had accrued six strikes under § 1915(g). 820 F.3d at 1281. Two of the claims were dismissed for lack of jurisdiction and the other four were dismissed for want of prosecution. *Id.* at 1282. The Eleventh Circuit reversed its holding, relying on the plain meaning of § 1915(g), which does not include either lack of jurisdiction or want of prosecution as enumerated grounds that could serve as a strike. *Id.* at

1284. Further, the court held that a reviewing court could not conclude that an action was dismissed on specific grounds, such as frivolous, malicious, or failure to state a claim, "unless the dismissing court made some express statement to that effect." *Id.*

To preserve the integrity of prisoner litigation and the purpose of the PLRA, a dismissal should explicitly state an enumerated ground in § 1915(g) to constitute a strike. *See Paul v. Marberry*, 658 F.3d 702, 704 (7th Cir. 2011). In *Paul*, the plaintiff appealed the district court's decision to deny his motion to proceed in forma pauperis, asserting that the court erred in assessing three strikes to the plaintiff for three previously dismissed claims for failure to prosecute. *Id.* at 703. The Seventh Circuit reversed the district court's assessment of the three strikes, reasoning that because § 1915(g) was explicit, the plaintiff "was entitled to take the previous dismissals at face value, and since none of them were based on any of the grounds specified in section § 1915(g), to infer that he was not incurring strikes by the repeated dismissals." *Id.* at 706. The court relied on the fact that most prisoners litigate pro se, and therefore they should not be expected or required to "speculate on the grounds the judge could or even should have based the dismissal on." *Id.*

Here, it is imperative that this court interpret § 1915(g) by its plain language as intended by Congress and only render a dismissal to constitute a strike if it is dismissed for being frivolous, malicious, or for failure to state a claim. First, by observing the proper intent of Congress, this Court will rid lower courts of ambiguity when tasked with determining whether a claim should constitute a strike. Without such clarity from the onset, courts are left with the laborious duty to decide whether, when dismissing a claim, the dismissing judge intended to do so under the meaning of § 1915(g). Although permitting a discretionary approach may serve the first purpose of the PRLA, as mentioned in *Byrd*, to "identify and reduce frivolous claims by prisoners," it hardly meets the second purpose of reducing "litigation centered on whether a dismissal constituted a strike."

715 F.3d at 119. Further, relying on mere speculation runs the risk of claims that are dismissed for nonfrivolous reasons, such as claims with clerical or jurisdictional errors, or errors concerning ripeness such as dismissals pursuant to *Heck*, to assume a strike and therefore unintentionally restricting a prisoner beyond the purview of the PRLA.

Second, by explicitly following the grounds enumerated in § 1915(g) when determining whether a dismissal constitutes a strike, this Court will also rid prisoners opting to litigate pro se from ambiguity in their litigation process. *Paul* acknowledged the fact that most prisoners litigate pro se, 658 F.3d at 706, with more than ninety percent of petitions filed by pro se prisoners, *see Trends in Pro Se Civil Litigation*, *supra* note 1. Pro se litigants, like Mr. Shelby, should not be restricted in their ability to bring future allegations with merit simply because previous claims were erroneous on other, fixable grounds, such as ripeness or jurisdiction. Instead, they should be distinguished from litigants who filed a claim that was *actually* frivolous, malicious, or failed to state a claim. Where a district court finds a claim falls within such enumerated grounds, that court should use its discretion to explicitly state that dismissal rather than requiring a pro se plaintiff to decipher if the judge meant otherwise.

Although the PRLA was enacted in response to the outsized number of filings from prisoners in the courts, Congress acknowledged that there would be a need to strike a balance between reducing frivolous filings from clogging the legal system and preserving filings with merit. This acknowledgment is reflected in their clear enumeration of dismissals that should count as strikes under the PLRA.

B. A *Heck* Dismissal is Concerned With the Ripeness of the Claim Rather than the Underlying Claim Itself, Falling Outside the Enumerated Grounds of § 1915(g).

A § 1983 claim that calls into question an unconstitutional conviction or sentence "does not accrue until the conviction or sentence has been invalidated." *Heck*, 512 U.S. at 489–90. Under Article III of the United States Constitution, any "claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotations omitted) (quoting *Thomas v. Union Carbide Agric. Prods. Co*., 473 U.S. 568, 580–81 (1985)). Therefore, a § 1983 claim is not ripe until the conviction or sentence decision on which the claim is based is invalidated. *McDonough v. Smith*, 139 S. Ct. 2149, 2158 (2019). Further, a *Heck* dismissal's concern with preventing "collateral attacks on criminal judgments through civil litigation," *McDonough*, 139 S. Ct. at 2157 (citing *Heck*, 512 U.S. at 484), is aligned with the basic rationale behind ripeness: "to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements," *Thomas*, 473 U.S. at 580 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977)).

When a civil claim for damages clashes with an existing conviction or sentence, the claim is not cognizable under § 1983. *Heck*, 512 U.S. at 487. In *Heck*, this Court affirmed the lower court's dismissal of the plaintiff's § 1983 claim, reasoning that a plaintiff who wishes to recover damages for an unconstitutional conviction or sentencing, "whose unlawfulness would render a conviction or sentence invalid," must first prove that the conviction or sentence has been invalidated. *Id.* at 486–87. If a district court considers that a judgment in favor of the plaintiff in their § 1983 claim "would necessarily imply the invalidity of his conviction or sentence," then the court should dismiss it until the claim becomes cognizable. *Id.*

When a § 1983 claim is barred by *Heck*, the claim is unripe because it has yet to accrue. *McDonough*, 139 S. Ct. at 2158. In *McDonough*, this Court reversed the circuit court's dismissal of the plaintiff's § 1983 claim, asserting that the circuit court incorrectly held that the statute of limitations began the moment that the plaintiff suffered a loss of liberty as a result of the fabricated evidence, regardless of whether favorable termination had been met. *Id.* at 1255. Instead, this Court characterized civil claims questioning the validity of criminal state proceedings without favorable termination as "dormant, unripe cases." *Id.* at 2158. This court asserted this characterization in accordance with *Heck*'s requirement for a court to defer consideration of a § 1983 claim until that claim accrues, thus furthering the goal of avoiding "collateral attacks on criminal judgments through civil litigation." *Id.* at 2151.

Dismissing a claim pursuant to *Heck* focuses on the timing of the claim rather than the merits. *Mejia v. Harrington*, 541 F. App'x 709, 710 (7th Cir. 2013). In *Mejia*, the plaintiff filed a claim that was dismissed by the district court for being barred by *Heck. Mejia*, 541 F. App'x at 709. In its dismissal, the district court assessed a strike under § 1915(g). *Id.* at 710. The Third Circuit affirmed the dismissal but rejected the assessment that the dismissed claim constituted a strike under § 1915(g) because the district court failed to explain why the claim was either frivolous, malicious, or how it failed to state a claim. *Id.* The court reasoned that a *Heck* dismissal did not fall within these enumerated grounds and instead resembled a dismissal based on ripeness because *Heck* dealt "with timing rather than the merits of litigation." *Id.*

This Court in *Heck* directed district courts to dismiss a claim until it became cognizable if, after a review of the merits of the claim, it determined that a judgment in favor of the plaintiff would imply the invalidity of their conviction or sentence. 512 U.S. at 478. When a claim is not cognizable, it is not capable of being judicially tried. *See Cognizable*, Oxford English Dictionary,

https://www.oed.com/dictionary/cognizable_adj?tl=true (last visited Jan. 27, 2024). Therefore, whether a claim is cognizable is not determined on the merits of a prisoner's claim but rather on if, at that moment in time, it is able to be adjudicated.

This Court further supported this understanding in *McDonough*, where it was tasked with determining when a claim was ripe for adjudication. 139 S. Ct. at 1255. In this case, this Court clarified the intent of a dismissal pursuant to *Heck* by characterizing claims that question the conviction or the sentence of the prisoner filing the claim as dormant and unripe. *Id.* The intent, therefore, was to dismiss claims to defer consideration until they are cognizable or ripe, *id.* at 2158, and not based on their merits, *see Mejia*, 541 F. App'x at 710. Accordingly, in following this Court's dicta, Mr. Shelby's claims, which were solely dismissed pursuant to *Heck*, R. at 5, should be considered deferred for consideration until they are cognizable and ripe. In doing so, this Court will adopt the standard necessary in effectively balancing the prevention of conflicting civil and criminal judgments and in the rights of prisoners to bring their meritorious claim once they've obtained ripeness.

II. *KINGSLEY* DOES NOT REQUIRE PRETRIAL DETAINEES TO PROVE SUBJECTIVE INTENT FOR FAILURE-TO-ACT CLAIMS BECAUSE PRETRIAL DETAINEES HAVE GREATER CONSTITUTIONAL PROTECTIONS THAN PRISONERS, DELIBERATE INDIFFERENCE CLAIMS RESULT IN THE SAME PHYSICAL AND LEGAL HARMS AS EXCESSIVE FORCE CLAIMS, AND PRECEDENT SUPPORTS AN OBJECTIVE STANDARD.

Section 1 of the Civil Rights Act of 1871, codified as 42 U.S.C. § 1983, allows for both convicted prisoners and pretrial detainees awaiting adjudication to bring a federal action against state actors for constitutional violations. 42 U.S.C. § 1983. As relevant to the present case, prisoners may sue under the Eighth Amendment, which provides them with the right to be protected from cruel and unusual punishment. U.S. Cont. amend. VIII. As for pretrial detainees,

the Due Process Clause of the Fourteenth Amendment provides for the right to be free from *any* punishment while incarcerated. U.S. Cont. amend. XIV, § 1; *see also Bell v. Wolfish*, 441 U.S. 520, 575 n.16 (1979). In *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015), this Court held that pretrial detainees bringing excessive force claims alleging a violation of their due process rights under § 1983 need only prove the state actor's objective intent, not subjective intent as is the standard for convicted prisoners. Following *Kingsley*, the circuit courts split as to whether the purely objective standard also applies to a pretrial detainee's claim of deliberate indifference and whether the inquiry is based on the type of claim brought or by who brings the claim.

Kingsley eliminates the subjective intent requirement for pretrial detainees' deliberate indifference failure-to-protect claims alleging due process violations under § 1983. First, this Court's delineation between Eighth and Fourteenth Amendment rights in *Kingsley* mandates that *all* pretrial detainee deliberate indifference claims be analyzed under a separate, lower standard than that of prisoners. Second, excessive force and failure-to-act claims cause pretrial detainees the same physical injury and harm to civil liberties, requiring courts to analyze them under similar tests. Finally, this Court's Fourteenth Amendment and § 1983 precedent and interpretation of the statute support an objective standard for deliberate indifference claims. Because *Kingsley*'s objective-reasonableness standard applies to a pretrial detainee's failure-to-protect claim under § 1983, this Court should affirm the Fourteenth Circuit.

A. ***Kingsley* Mandates That Pretrial Detainees Be Subject to a Different Standard than Convicted Prisoners for Deliberate Indifference Claims Under § 1983 Because the Text of the Due Process Clause Provides Broader Protection to Pretrial Detainees than the Eighth Amendment Does for Prisoners.**

A person's legal status as a prisoner or pretrial detainee affects how a court analyzes their § 1983 claim. *Compare Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (analyzing a prisoner's

claim under a subjective standard), *with Kingsley*, 576 U.S. 397–98 (analyzing a pretrial detainee's claim under an objective standard). For a prisoner alleging that a state actor violated their Eighth Amendment rights due to deliberate indifference, the prisoner must prove that (1) the risk posed to him by the prison official was objectively, sufficiently serious, and (2) the official subjectively "kn[ew] of and disregard[ed] an excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837. Although *Farmer* did not discuss how its two-pronged test applies to pretrial detainee claims, courts nevertheless applied the test in such cases. *See, e.g.*, *Westmoreland v. Butler Cnty.*, 29 F.4th 721, 727 (6th Cir. 2022) (discussing how circuit courts traditionally analyzed Fourteenth Amendment pretrial detainee claims under the same standard as Eighth Amendment prisoner claims). However, because *Kingsley* distinguished § 1983 claims based on the respective constitutional rights that protected prisoners and pretrial detainees and not whether the claim was one of excessive force or deliberate indifference, *see* 576 U.S. at 400–01, it is erroneous for courts to apply the Eighth Amendment's heightened standard to pretrial detainees.

Kingsley's analysis of the different levels of protection afforded to pretrial detainees and prisoners under the Fourteenth and Eighth Amendments in § 1983 cases, respectively, requires separate standards based on the plaintiff's legal status. *See* 576 U.S. at 400. In *Kingsley*, the plaintiff, a pretrial detainee, brought a § 1983 claim against prison officials for use of excessive force in violation of his due process rights. *Id.* at 393. The defendants argued that the plaintiff had to prove that such force was applied "maliciously and sadistically," citing cases involving prisoners' excessive force claims as support. *Id.* at 400–01. This Court compared the text of the Eighth Amendment's Cruel and Unusual Punishment Clause and the Fourteenth Amendment's Due Process Clause, explaining that "[t]he language of the two Clauses differs, and [thus] the nature of the claims often differs." *Id.* at 400; *see also Bell*, 441 U.S. at 535 n.16 ("Due process

requires that a pretrial detainee not be punished. A sentenced inmate . . . may be punished, although that punishment may not be 'cruel and unusual' under the Eighth Amendment."). The Eighth Amendment cases were thus irrelevant to the plaintiff's case, as "detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically.'" *Kingsley*, 576 U.S. at 400. The Court ultimately held that the plaintiff "must show only that the force purposely or knowingly used against him was objectively unreasonable." *Id.* at 396–97.

Indeed, the origin of the subjective intent requirement for deliberate indifference claims brought by *prisoners* is rooted in the Eighth Amendment's text and purpose. *See Farmer*, 511 U.S. at 834. In *Farmer*, a prisoner alleged that a prison official violated his Eighth Amendment rights through deliberate indifference to the inhumane confinement conditions. *Id.* at 830. In outlining the two-prong test for prisoner deliberate indifference claims, the Court emphasized the need for a subjective component based on the text of the Cruel and Unusual Punishment Clause, as "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Id.* at 834. The Court also noted that its precedent "mandate[s] inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." *Id.* at 838 (citations omitted); *see also Wilson v. Seiter*, 501 U.S. 294, 300 (1991) ("The source of the intent requirement is [from] . . . the Eighth Amendment itself, which bans only cruel and unusual *punishment*."). Thus, *Farmer* required the plaintiff to prove the subjective intent of an official's punitive acts or omissions because prisoners must prove that their "punishments," not "conditions," were, in fact, cruel and unusual for Eighth Amendment protections to apply. 511 U.S. at 836–37.

Despite the difference between the Eighth and Fourteenth Amendment's protections against punishment, some circuit courts continue to require pretrial detainees to prove subjective intent in deliberate indifference cases. *See Griffith v. Franklin Cnty.*, 975 F.3d 554, 569 (6th Cir.

2020). In *Griffith*, the Sixth Circuit determined that the test for evaluating a pretrial detainee's deliberate indifference to conditions of confinement claim was "whether those conditions amount to punishment." *Id.* at 569 (citing *Bell*, 441 U.S. at 535). The court ultimately held that the *Bell* test "requires an intent to punish . . . [which] is the same 'punishment' governed by the Eighth Amendment," thus making it appropriate to apply the standard to pretrial detainees because "[the] test would yield the same deliberate-indifference standard." *Id.* Notably, the Sixth Circuit declined to address whether *Kingsley* governed the plaintiff's case, reasoning that the plaintiff could not even prevail under a proposed test that only required proof that the defendants "recklessly failed to act with reasonable care. . . ." *Id.* at 570.

The Due Process Clause's broad protection against punishment requires a lower, broader standard than the Cruel and Unusual Punishment's subjective standard. The Eighth Amendment's narrow scope of protecting against "only the unnecessary and wanton infliction of pain," *Farmer*, 511 U.S. at 834, necessitates a heightened standard for prisoners to meet. Conversely, the Fourteenth Amendment's Due Process Clause does not include any punishment-related language. *See* U.S. Cont. amend. XIV, § 1. There is thus no textual support within the Due Process Clause that would require pretrial detainees to meet the same heightened standard in § 1983 cases that the Eighth Amendment's text demands. To require pretrial detainees to prove a defendant's subjective intent would be to effectively narrow their due process rights to resemble that of prisoners, thereby contradicting this Court's Fourteenth Amendment jurisprudence. *See, e.g.*, *Kingsley*, 576 U.S. at 400 (determining that Eighth Amendment cases requiring prisoners to prove subjective intent did not control whether a pretrial detainee had to meet the same standard). Thus, the Fourteenth Circuit correctly applied an objective standard when analyzing Mr. Shelby's claim. R. at 16.

Furthermore, courts that continue to apply the subjective standard to pretrial detainee deliberate indifference claims, as did the district court in the present case, R. at 10, are directly impeding pretrial detainees' due process rights. The Sixth Circuit in *Griffith* reasoned that requiring the pretrial detainee to prove that the state actor had "an intent to punish" was effectively the same as applying the Eighth Amendment standard. 975 F.3d at 569. However, merely showing an intent to punish generally is markedly different from proving an intent to punish cruelly and unusually. In fact, requiring a pretrial detainee to *only* provide evidence of *any* intent to punish is consistent with this Court's understanding and interpretation of the Fourteenth Amendment: The Due Process Clause protects pretrial detainees from *any* punishment, and the Eighth Amendment only protects prisoners from that which is cruel and unusual. *See Bell*, 441 U.S. at 535 n.16. Additionally, proof of such intent need not rise to the level of subjective intent as required by the Eighth Amendment but instead may need only prove recklessness, as noted by the *Griffith* court. *See* 975 F.3d at 570.

Therefore, given that *Kingsley* delineated the broad protections from the punishment of the Fourteenth Amendment from the narrow scope of the Eighth Amendment, both *Kingsley* and the text of the Fourteenth Amendment reject applying a subjective standard to pretrial detainee deliberate indifference claims under § 1983.

B. ***Kingsley*'s Objective Test Appropriately Extends to Deliberate Indifference Failure-to-Protect Claims Because Such Claims Result in the Same Physical and Constitutional Injuries as Excessive Force Claims, and *Kingsley* Did Not Limit its Holding to Excessive Force.**

For claims under § 1983 alleging excessive force, there are two questions regarding the officer's state of mind regarding (1) his physical acts (subjective) and (2) whether his use of force was excessive (objective). *Kingsley*, 576 U.S. at 395. Because due process claims only apply to a

state actor's deliberate behavior, *id.* at 396, pretrial detainees alleging excessive force under § 1983 need not prove the defendant's subjective state of mind, *id.* at 395. Comparatively, in the context of deliberate indifference cases brought by prisoners, the Court has held that "deliberate indifference describes a state of mind more blameworthy than negligence." *Farmer*, 511 U.S. at 835. Indeed, like excessive force claims, failure-to-protect claims result from a state actor *deliberately* making a decision with respect to the pretrial detainee, placing the pretrial detainee at risk and making him subject to serious harm. *See Castro v. Ctny. of L.A.*, 833 F.3d 1060, 1070–71 (9th Cir. 2016) (en banc).

The nature of excessive force and failure-to-protect claims involve the same harm and violations of the same fundamental right and should thus be subject to the same standard. *See Castro*, 833 F.3d at 1069. In *Castro*, the Ninth Circuit compared excessive force to failure-to-protect claims, detailing how excessive force from a prison official causes the same harm as violence from another prisoner on both a physical and constitutional level. *Id.* at 1070. Acknowledging that one requires action and the other inaction, the court determined that the equivalent to *Kingsley*'s subjective intent question is whether "the officer's conduct with respect to the [pretrial detainee] was intentional." *Id.* Like in *Kingsley*, the *Castro* court determined that this factor is not satisfied "if the officer's inaction resulted from something totally unintentional." *Id.*; *see Kingsley*, 576 U.S. at 395–96 ("[L]iability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process."). As to *Kingsley*'s objective prong, *Castro* explained that the question becomes whether the officer's inaction created "a substantial risk of serious harm to the [detainee] that could have been eliminated through reasonable and available measures that the officer did not take, thus causing injury that the plaintiff suffered[.]" 833 F.3d at 1070. *Kingsley* thus requires that a pretrial detainee "prove more than negligence but less than

subjective intent—something akin to reckless disregard." *Castro*, 833 F.3d at 1071. In applying this test, the Ninth Circuit held that the objective standard adequately applied to the plaintiff's failure-to-protect claim, *id.* at 1072–73, which is consistent with this Court's determination that prison officials have a duty to provide "humane conditions of confinement," such as protecting inmates from violence by other prisoners, *Farmer*, 511 U.S. at 832–33.

Additionally, *Kingsley*'s broad language in adopting the objective standard does not limit its holding exclusively to excessive force claims, nor does it bar recklessness from being an acceptable standard to satisfy the test for deliberate indifference cases. *See* 576 U.S. at 396. In *Kingsley*, the plaintiff alleged that officers used excessive force when they handcuffed him in his cell, slammed his head into the concrete bunk, and tased him, despite him not resisting. *Id.* at 393–94. In determining that a purely objective standard is sufficient for that case, this Court also noted that absent an expressed intent to punish, "a pretrial detainee can prevail by providing only objective evidence that *the challenged governmental action* is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Id.* at 398 (emphasis added). While this language was broad and not exclusive to excessive force cases, the Court noted that accidental conduct is insufficient to constitute a due process claim, as "liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process." *Id.* at 395–94 (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)). Notably, however, this Court suggested that "recklessness in some cases might suffice as a standard for imposing liability." *Id.* at 396 (citing *Lewis*, 523 U.S. at 849).[2]

[2] The Court in *Kingsley* did not address whether the recklessness standard would apply to the mistreatment of pretrial detainees because the officers, in that case, did not dispute that their force against the plaintiff was purposeful. 576 U.S. at 396.

Because of *Kingsley*'s broad language and reasoning, other circuits have interpreted its holding to extend to deliberate indifference cases correspondingly to the Ninth Circuit in *Castro*. In *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017), the Second Circuit held that prison officials could violate a pretrial detainee's due process rights "without meting out any punishment," finding that *Kingsley* is not excluded to excessive force claims. Similarly, the Fourth Circuit in *Short v. Hartman*, 87 F.4th 593, 609 (4th Cir. 2023), applied the objective standard to deliberate indifference cases because "*Kingsley* itself likewise speaks broadly of challenged governmental action, as opposed to only the government's use of excessive force." Both the Sixth and Seventh Circuits have also extended *Kingsley* to deliberate indifference to medical care claims. *See, e.g.*, *Brawner v. Scott Cnty.*, 14 F.4th 585, 596–97 (6th Cir. 2021); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018).

However, the nature of an excessive force claim indicates a purposeful or knowing action, whereas an official's deliberate indifference could result from mere negligence, not intentional action. *See Strain v. Regaldo*, 977 F.3d 984, 991 (10th Cir. 2020). In *Strain*, the Tenth Circuit declined to extend *Kingsley* to deliberate indifference claims because "excessive force requires an affirmative act" and "deliberate indifference often stems from inaction." *Id.* Given these differences, the court determined that an objective standard could not extend to *all* pretrial detainee claims because deliberate indifference "does not relate to punishment." *Id.* Several other circuits have followed this reasoning in deciding to apply the Eighth Amendment standard to deliberate indifferent claims instead of *Kingsley*'s objective standard. *See, e.g.*, *Cope v. Cogdill*, 3 F.4th 198, 207 n.7 (5th Cir. 2021) (declining to extend *Kingsley*); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018) (rejecting the objective test because *Kingsley* was an excessive force case and does not control deliberate indifference cases); *Dang ex rel. Dang v. Sheriff*, 871 F.3d 1272,

1279 n.2 (11th Cir. 2017) (declining to extend *Kingsley*'s to a medical mistreatment claim because *Kingsley* did not address deliberate indifference).

Given that instances of excessive force and failure-to-protect pretrial detainees result in the same constitutional and physical violations, *Kingsley*'s objective standard easily lends itself to failure-to-protect claims under § 1983. Like in *Kingsley*, where the plaintiff's excessive force claim arose from injuries suffered from prison officers slamming his head into the concrete and tasing him, 576 U.S. at 393–94, in the present case, the Bonucci gang's attack left Mr. Shelby with life-threatening injuries, including significant head trauma, R. at 7. Just as the *Kingsley* officers intentionally inflicted force on that plaintiff and caused him physical injuries, 576 U.S. at 393–94, Officer Campbell's reckless disregard to reviewing the crucial information that would have protected Mr. Shelby resulted in serious physical harm, R. at 7. Indeed, Officer Campbell's actions exemplify how a prison official can violate a pretrial detainee's due process rights without directly inflicting punishment. *See Darnell*, 849 F.3d at 35. While some circuits assert that deliberate indifference does not rise to the level of "punishment" seen in excessive force cases, *see, e.g.*, *Strain*, 977 F.3d at 991, this Court has determined that failing to protect inmates from other violent prisoners creates inhumane confinement conditions, which qualifies as a type of "punishment," *see Farmer*, 511 U.S. at 832–33. Because pretrial detainees have the right to be free from *any* punishment, the harm suffered from an official's failure to act is sufficiently analogous to injuries from excessive force where both types of claims may be subject to the same standard.

Extending the objective standard is further supported by *Kingsley*'s broad language in reasoning for this standard, which indicates that the rule may be broadly applied, contrary to the decision of the district court in the present case. R. at 10. The *Kingsley* Court did not limit its rule to "excessive force" but instead held that pretrial detainees may prevail by providing objective

evidence of "the challenged governmental action," 576 U.S. at 398, thereby leaving the door open to a broader application, *see Short*, 87 F.4th at 609. Notably, *Kingsley* did not discuss deliberate indifference claims and applied its analysis to the excessive force allegation at hand, which is the primary basis for some circuits declining to extend the objective standard. *See, e.g.*, *Strain*, 977 F.3d at 991; *Cope*, 3 F.4th at 207 n.7; *Whitney*, 887 F.3d at 860 n.4; *Dang*, 871 F.3d at 1279 n.2. However, this Court's reasoning in *Kingsley* is consistent with its analysis of the Fourteenth Amendment, *see* 576 U.S. at 400, evidencing that broad protections against punishment apply to *any* infliction of punishment, not solely that which is considered "excessive force."

Therefore, *Kingsley*'s objective test comfortably extends to failure-to-protect claims. First, the *Kingsley* Court acknowledged that a reckless standard may be appropriate for imposing liability under the objective test, *id.* at 396, and *Castro*'s test expanding from *Kingsley* proves this standard workable in failure-to-protect contexts, 833 F.3d at 1071. As stated in *Castro*, the objective standard requires showing more than negligence but "something akin to reckless disregard." *Id.* Thus, unlike the district court's fear that the inquiry would turn into one of negligence, R. at 9–10, the standard for failure-to-protect claims relates to *intentionality*. As the Fourteenth Circuit correctly held, R. at 18, in extending *Kingsley*, the present case's inquiry would thus become (1) whether Officer Campbell *intentionally* decided not to review the preventative information that he was required to related to Mr. Shelby's safety, R. at 6; (2) whether Officer Campbell's decisions put Mr. Shelby at "substantial risk of suffering serious harm," *Castro*, 833 F.3d at 1070, such as putting him into the same space as inmates of other gangs who were known for violence towards the Geeky Blinders, R. at 5, 7; and (3) whether Officer Campbell could have eliminated this risk of harm to Mr. Shelby through *reasonable* and *available* measures, such as accessing reviewing information from the meeting that he missed or checking his list of inmates with "special statuses,"

R. at 6. Given the similarities in excessive force and failure-to-act claims, *Kingsley*'s broad language in adopting the objective standard, and the workability of an objective standard in failure-to-act claims, the Fourteenth Circuit properly determined that *Kingsley* eliminates the subjective intent requirement for such claims brought by pretrial detainees.

C. This Court's Interpretation of the Fourteenth Amendment and § 1983, Along with Other Precedents, Further Support an Objective Standard Applying to Deliberate Indifference Claims Brought by Pretrial Detainees.

The *Kingsley* decision is not the only authority that supports a purely objective standard for deliberate indifference failure-to-protect claims. Indeed, Section 1983, like the Fourteenth Amendment, "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels v. Williams*, 474 U.S. 327, 330 (1986). This Court has further emphasized that "the coverage of § 1983 must be broadly construed." *Dennis v. Higgins*, 498 U.S. 439, 443 (1991) (internal quotations and citations omitted). This Court's prior understanding of the interplay between the Fourteenth Amendment and § 1983 weighs in favor of an objective test for all such pretrial detainee claims, including those alleging deliberate indifference.

1. Neither the Fourteenth Amendment Nor § 1983 Mandate a Subjective Intent Requirement or One Single Standard for All Deliberate Indifference Cases.

The Fourteenth Amendment and § 1983's objective language weighs in favor of applying an objective test to pretrial detainee claims. First, the *Kingsley* Court reasoned that its objective test followed its Fourteenth Amendment jurisprudence. 576 U.S. at 397. Important in this precedent was *Daniels*, where the Court determined that a person bringing a claim under § 1983 must nevertheless "prove a violation of the underlying constitutional right." 474 U.S. at 329–30. In analyzing the text of the Fourteenth Amendment, the Court held that the word "deprive" within

the Due Process Clause "connote[s] more than a negligent act." *Id.* at 330. *Daniels* thus established that a person bringing a Fourteenth Amendment claim under § 1983 must allege more than negligent conduct for the objective standard to apply. *Id.* at 328. However, the *Daniels* Court affirmed part of its prior holding in *Parratt v. Taylor*, 451 U.S. 457, 534 (1981), where it determined that "[n]othing in the language of § 1983 or its legislative history limits the statute solely to intentional deprivations of constitutional rights."

Additionally, the Court's § 1983 precedent acknowledges that different types of deliberate indifference claims require different standards, thus weighing against the need for requiring a subjective intent component for all such cases. *See Farmer*, 511 U.S. at 840. In *Farmer*, this Court categorized the term "deliberate indifference" as "a judicial gloss, appearing neither in the Constitution nor in a statute." *Id.* Absent a universal definition, the Court's use of "[d]eliberate indifference that shocks in one environment may not be so patently egregious in another." *Lewis*, 523 U.S. at 850 (1996). For example, the *Farmer* Court rejected the deliberate indifference standard described in *City of Canton v. Harris*, 489 U.S. 378, 388–89 (1989), primarily because that test was applied within a different context than the dispute in *Farmer*, 511 U.S. at 841.

This Court's precedent and interpretation of the Fourteenth Amendment and § 1983 weigh in favor of analyzing pretrial detainee claims under an objective standard. First, while the Court has outlined that negligence claims are not protected under § 1983, *Daniels*, 474 U.S. at 328, negligence is merely the floor, not the ceiling. Thus, employing *Castro*'s test of "something akin to reckless disregard," 833 F.3d at 1071, remains consistent with this Court's precedent.

Second, the Court in *Farmer* laid the groundwork for determining that deliberate indifference is not a blanket term that mandates the same standard. Important to the *Farmer* decision was that the plaintiff was a prisoner protected under the Eighth Amendment, thereby

requiring a different deliberate indifference standard than that in *Harris*, which involved a municipality's failure to train its employees. 489 U.S. at 388. Remaining consistent with the Court's prior reasoning, the term "deliberate indifference" itself cannot require a subjective standard for *all* such cases. Instead, it requires a case-by-case determination as to the *type* of claim being alleged (i.e., failure-to-protect versus inhumane confinement conditions) and the *legal status* of the person bringing the claim (i.e., prisoner or pretrial detainee). Therefore, the district court's blanket adoption of subjective intent test, R. at 10, where *Farmer* involved a different type of deliberate indifference claim brought by a person of a different legal status, was erroneous and inconsistent with this Court's understanding of the Fourteenth Amendment and § 1983 claims.

2. The Other Sources that the Kingsley Court Relied on in Its Reasoning Extend to Deliberate Indifference Claims.

Furthermore, the reasons that *Kingsley* cited for adopting an objective standard in excessive force cases also apply to cases involving deliberate indifference. First, *Kingsley* cited *Bell* and other precedents to support its holding for a purely objective standard. 576 U.S. at 398. In *Bell*, a pretrial detainee brought a deliberate indifference claim alleging inhumane confinement conditions. 441 U.S. at 526–27. There, the Court explained that a pretrial detainee may prevail on their claim by showing that the official's actions were not "rationally related to a legitimate nonpunitive governmental purpose" in the absence of an expressed intent to punish. *Id.* at 561. Thus, in *Kingsley*, the Court noted that *Bell* and its progeny "did not suggest . . . that [the Court's] application of *Bell*'s objective standard should involve subjective considerations." *Kingsley*, 576 U.S. at 399. Indeed, *Kingsley*'s reasoning for an objective standard is based in part on a case involving deliberate indifference. Because the *Kingsley* Court interpreted *Bell* to not require subjective considerations in a pretrial detainee's claim of inhuman confinement conditions, it

follows that such a consideration would also be absent from failure-to-protect claims, as this Court has previously determined that protecting inmates from violence by other prisoners is part of maintaining humane conditions of confinement. *See Farmer*, 511 U.S. at 832–33.

Second, the Court reasoned that the objective standard "adequately protects an officer who acts in good faith." *Kingsley*, 576 U.S. at 399. Due to a prison official's training and the stressful nature of managing correctional facilities, the Court determined that an objective standard would give proper deference to these officials, as it would be challenging for a plaintiff to "overcome these hurdles where an officer acted in good faith." *Id.* at 400. Thus, applying the objective standard to the present case would not make it inherently "easier" for Mr. Shelby to prevail on his failure-to-act claim. Indeed, the analysis would include an inquiry as to whether Officer Campbell's failure to comply with his training, such as the requirement for officials to review the jail's online database for inmates with special statuses, R. at 6, placed Mr. Shelby in a "substantial risk of serious harm," *Castro*, 833 F.3d at 1070.

Therefore, the *Kingsley* Court rule eliminating the subjective intent requirement was based on the fact that pretrial detainees are protected from any form of punishment while awaiting adjudication. While *Kingsley* involved an excessive force claim, the *type* of claim was merely part of the analysis and not its foundation. Indeed, the narrow scope of the Eighth Amendment's Cruel and Unusual Punishment Clause was the basis for requiring prisoners to meet the heightened standard of proving subjective intent. Consistent with this Court's due process jurisprudence, the broad scope of the Fourteenth Amendment's Due Process Clause mandates that pretrial detainees be held to a lesser standard than their convicted counterparts. Therefore, this Court should affirm the Fourteenth Circuit's holding and extend *Kingsley*'s objective standard to deliberate indifference failure-to-protect claims brought by pretrial detainees under § 1983.

CONCLUSION

For the foregoing reasons, Respondent Arthur Shelby respectfully asks that this Court AFFIRM the decision of the Fourteenth Circuit Court of Appeals.

Respectfully submitted,

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Team 4
Attorneys for Respondent

APPENDIX "A"

Constitutional Provisions

U.S. Cont. amend. VII

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

U.S. Cont. amend. XIV, § 1

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"

Relevant Statutes

28 U.S.C. § 1915(g) – Prisoner Litigation Reform Act

(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.

42 U.S.C. § 1983

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.