TEAM 42

Case No. 23-05

IN THE

Supreme Court of the United States

OCTOBER TERM, 2023

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

On Writ for Certiorari to the
United States Court of Appeals
for the Fourteenth Circuit

BRIEF FOR RESPONDENT

Team 42
Counsel for Respondent

QUESTIONS PRESENTED

1. Does dismissal of a prisoner's civil action under *Heck v. Humphrey* constitute a "strike" within the meaning of the Prison Litigation Reform Act?
2. Does this Court's decision in *Kingsley* 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 pretrial detainee's Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 action?

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Rule 24(1)(b) of the Rules of the Supreme Court of the United States, the caption of this case contains the names of all parties involved in the proceeding under review.

/s/ Counsel for Respondent

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The United States District Court for the Western District of Wythe granted Chester Campbell's 12(b)(6) motion to dismiss for failure to state a claim as to Arthur Shelby's deliberate indifference claim under 28 U.S.C. § 1983 and denied Arthur Shelby's motion to proceed in forma pauperis under 28 U.S.C. § 1915(g). The opinion of the United States Court of Appeals for the Fourteenth Circuit reversed and remanded as to both issues.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The following Constitutional provision is relevant to the decision of this case:

U.S. CONST. amend. XIII

U.S. CONST. amend. XIV

The following statutory provisions are relevant to the decision of this case:

28 U.S.C. § 1914

28 U.S.C. § 1915

28 U.S.C. § 1983

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CHESTER CAMPBELL,

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BRIEF FOR RESPONDENT

TO THE SUPREME COURT OF THE UNITED STATES:

Respondent ARTHUR SHELBY, appellant in Docket No. 2023-5255 before the United States Court of Appeals for the Fourteenth Circuit, and plaintiff in Case No. 23:14-cr-2324 before the United States District Court for the Western District of Wythe, respectfully submit this brief on the merits, and ask this Court to affirm the judgment of the court of appeals in reversing the decision of the district court and remand for further proceedings.

STATEMENT OF THE CASE

I. Statement of the Facts

A. The Geeky Binders and Arthur Shelby's Arrest

The Geeky Binders are a household name throughout the town of Marshall. (R. at 2.) Their rivalry with the Bonucci clan, another local gang led by Luca Bonucci, is well known throughout the community. (R. at 3.) Recently, numerous police officers and jail officials from Marshall "have been . . . charged with accepting bribes" from the Bonucci clan, allowing the group to build their status and exercise "considerable power" over local officials and politicians. (R. at 3). Despite these bribes, Luca Bonucci is currently in custody at the Marshall jail, along with several other Bonucci clan members, for assault and armed robbery charges. (R. at 3.) Nonetheless, the Bonucci clan still "exercise[s] considerable power over Marshall, even from jail." (R. at 3.)

Respondent Arthur Shelby, second-in-command of the Geeky Binders, is a prominent figure throughout Marshall. (R. at 2.) While previously in detention for past incidents with law enforcement, Shelby "commenced three separate civil actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States." (R. at 3.) Each of these previous actions was dismissed without prejudice under *Heck v. Humphrey*, as *Heck* bars § 1983 claims from continuing if the civil verdict "would have called into question either his [criminal] conviction or his sentence." (R. at 3.)

On December 31, 2020, Marshall police stormed a "boxing match that Shelby and his brothers were attending" with "warrants for the arrest of the three lead members of the Geeky Binders." (R. at 3.) The current leader of the Geeky Binders, Thomas Shelby—along his brothers John Shelby and Respondent Arthur Shelby—were charged with assault, battery, and various

firearm offenses. (R. at 3.) While Thomas and John both escaped the scene without being arrested, Arthur Shelby, who was allegedly intoxicated at the time of the raid, failed to escape, and was later arrested by Marshall police. (R. at 3-4.) Arthur Shelby was then formally charged with "battery, assault, and possession of a firearm by a convicted felon." (R. at 4.)

Arthur Shelby was booked into the Marshall jail by Officer Dan Mann, an experienced jail official. (R. at 4.) Officer Mann, while conducting Shelby's preliminary paperwork, recognized Shelby from his unique clothing. (R. at 4.) The Geeky Binders are famous for always wearing a signature outfit comprised of "a tweed three-piece suit [and] a long overcoat," and carrying a custom ballpoint pen featuring an awl concealed on the inside with "'Geeky Binders' engraved on the outside." (R. at 4.) Officer Mann inventoried Shelby's belongings on the Marshall jail's online database. (R. at 4.)

B. Marshall Jail's Online Database and Gang Intelligence Meeting

Standard protocol requires all officers working at the Marshall jail to create "both paper and digital copies of the [booking] forms to file and upload in the jail's online database." (R. at 4.) Each inmate has a file on the database listing their "charges, inventoried items, medications, gang affiliation, and other pertinent statistics and data" that are important for jail officials to know. (R. at 4.) Because of Marshall's prevalent gang activity, the information concerning gang affiliation is particularly important for jail officials to be aware of in their daily operations. (R. at 4.) The database not only lists gang affiliation, but also "list[s] any known hits placed on the inmate and any gang rivalries"—vital information for maintaining the safety of pretrial inmates. (R. at 4.) The Marshall jail's numerous gang intelligence officers also make it a high priority to review "each incoming inmate's entry in the online database." (R. at 4.)

While entering Shelby's paperwork into the database, Officer "Mann noticed that Shelby already had a page in the database from his previous . . . stays at the jail." (R. at 4.) Even though Officer Mann "had to open a new file to see the data relating to Shelby's previous arrests," a separate file on the database clearly showed "Shelby's gang affiliation and other identifying information." (R. at 4-5.) Officer Mann properly recorded all of Shelby's information within the gang affiliation tab, including relevant gang rivalries and potential risks for violence with the Bonucci clan. (R. at 5.) After finishing his booking procedures, Shelby was placed in a holding cell separate from the main area of the jail. (R. at 5.)

The gang intelligence officers paid particular attention to Shelby's online database file because of his high-ranking status within the Geeky Binders. (R. at 5.) The feud between the Geeky Binders and the Bonucci clan, which resulted from "Thomas Shelby's murder of Bonucci's wife," was well known among the intelligence officers. (R. at 5.) They recognized that the Bonucci clan would be eager for revenge on the Geeky Binders, with "Arthur Shelby in particular" as a "prime target" for gang violence. (R. at 5.)

Because of the high risk of retaliatory violence, the gang intelligence officers took a number of steps to prevent this feud from manifesting itself further inside the jail. (R. at 5.) For example, officers placed a special note in Shelby's file addressing the feud and "printed out paper notices to be left at every administrative area in the jail." (R. at 5.) In addition, because of the issue's significance, the gang intelligence officers even "held a meeting with all jail officials the morning after Shelby had been booked, notifying each officer of Shelby's presence in the jail." (R. at 5.) Officers were notified that because "the Bonuccis were dispersed between cell blocks B and C," Shelby would be housed separately in block A. (R. at 5.) The intelligence officers also made a point to remind all the officers 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." (R. at 5.)

C. January 8, 2021 Incident

The officer involved in the incident, Chester Campbell, is "an entry-level guard at the Marshall jail." (R. at 5.) Roll call records from January 1, 2021, indicate that Officer Campbell attended the gang intelligence meeting concerning Shelby and the Bonucci clan; however, the jail's time sheets demonstrated he had actually called in sick, arriving at work after the meeting was over. (R. at 5-6.) Any officers who did not attend the meeting were required to "review the meeting minutes on the jail's online database." (R. at 6.) Generally, the online system keeps record of which officers have reviewed the database, but a chance "glitch in the system wiped any record of any person who viewed" the file concerning the January 1, 2021, gang intelligence meeting. (R. a 6.)

On January 8, 2021, about a week after Shelby's initial booking, Officer Campbell was tasked with overseeing the "transfer of inmates to and from the jail's recreation room." (R. at 6.) In addition, because "Shelby was already charged with several offenses," he was "formally considered a pretrial detainee at this time." (R. at 6, n. 1.) When Officer Campbell approached Shelby's cell and "asked [him] if he wanted to go to recreation," Shelby responded affirmatively. (R. at 6.) Officer Campbell "did not know or recognize Shelby" at this time, even though he carried with him a "hard copy list of inmates with special statuses," listing inmates with specific medical needs, "violent tendencies" or those "found with a weapon inside the jail," as well as "inmates with gang affiliations and their corresponding risk of attack from other gang members in the jail." (R. at 6.) This list "explicitly included Shelby's name," clearly "indicating that a

possible hit had been ordered on Shelby by Bonucci and that Shelby was at risk of attack by members of the Bonucci clan." (R. at 6.)

Officer Campbell retrieved Shelby from Block A and "led him to the guard stand to wait for other inmates to be gathered for recreation." (R. at 6.) While walking to a guard stand, "another inmate from block A yelled out at Shelby: "I'm glad your brother Tom finally took care of that horrible woman." (R. at 6.) When Shelby responded to the inmate, Officer Campbell ordered Shelby to be quiet and continued to collect another inmate from Block A. (R. at 6.)

While overseeing the transfer, Officer Campbell did not reference the list on his person, "nor did he reference the jail's database before taking Shelby from his cell." (R. at 6.) Officer Campbell proceeded by collecting two inmates from block B and one from block C, who were all members of the Bonucci clan. (R. at 7.) When the three Bonucci clan inmates approached, "Shelby moved behind the other inmate from cell block A." (R. at 7.) The Bonucci clan members saw Shelby hiding and charged at him, "beating him with their fists." (R. at 7.) One of the clan members used "a club . . . made from tightly rolled and mashed paper," to hit Shelby over the head and in the ribs. (R. at 7.) Officer Campbell was unable to break up the skirmish or hold back the three Bonucci clan members on his own, allowing the attack to persist until additional officers arrived. (R. at 7.)

The attack on Shelby lasted several minutes and caused serious bodily injuries. (R. at 7.) During his three weeks at the hospital, doctors determined that "Shelby had suffered life-threatening injuries, including penetrative head wounds from external blunt force trauma resulting in traumatic brain injury." (R. at 7.) In addition, Shelby had fractures on "three different ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding." (R. at 7.)

After his stay in the hospital, Arthur Shelby "was acquitted of the assault charge, but was found guilty as charged of battery and possession of a firearm by a convicted felon" after a bench trial. (R. at 7.) Shelby is "currently imprisoned at Wythe Prison." (R. at 7.)

II. Nature of the Proceedings

Arthur Shelby timely "filed [his] 42 U.S.C. § 1983 action *pro se* against Officer Campbell in his individual capacity," along with a motion to proceed in forma pauperis, on February 24, 2022. (R. at 7.) On April 20, 2022, the District Court denied Shelby's request to proceed in forma pauperis "pursuant to 28 U.S.C. § 1915(g)," holding that "Shelby had accrued" the maximum number of strikes allowed under the PLRA when his three prior § 1983 actions were dismissed under *Heck v. Humphrey*. (R. at 7.) Shelby was then directed "to pay the $402.00 filing fee before proceeding, which Shelby paid in full" within the thirty-day deadline. (R. at 7, 13.)

On May 4, 2022, Officer Campbell filed a 12(b)(6) Motion to Dismiss, arguing that Shelby failed to state a claim upon which relief may be granted in his § 1983 complaint alleging Campbell had acted with deliberate indifference. (R. at 8, 13.) The District Court for the Western District of Wythe granted Chester Campbell's Motion and held that under a subjective standard for deliberate indifference for Fourteenth Amendment failure to protect claims, "Shelby failed to allege sufficient facts suggesting that Officer Campbell had actual knowledge of Shelby's gang affiliation and resulting risk of bodily harm." (R. at 13.)

On July 25, 2022, Shelby timely appealed the district court's denial of his motion to proceed in forma pauperis and the dismissal of his § 1983 claim under Rule 12(b)(6). (R. at 12-13.) The Court of Appeals for the Fourteenth Circuit "appointed Shelby counsel on August 1, 2022." (R. at 13.) Because Shelby was "appeal[ing] the District Court's denial of his motion to

proceed in forma pauperis," the Fourteenth Circuit "issued an order allowing [him] to proceed in forma pauperis on appeal." (R. at 13, n. 2.)

On appeal, the Fourteenth Circuit reversed as to both issues and remanded for further proceedings. (R. at 13.) First, the court held that because "*Heck* [*v. Humphrey*] recognizes the prematurity, not the invalidity, of a prisoner's claim," a *Heck* dismissal does not automatically constitute a strike under the PLRA's three-strikes rule. (R. at 15.) Thus, because Shelby's three prior dismissals under the *Heck* doctrine did not count as valid strikes under the PLRA, the appellate court granted Shelby in forma pauperis status. (R. at 15.)

Second, the Fourteenth Circuit rejected the district court's use of a subjective standard in analyzing a deliberate indifference claim under the Fourteenth Amendment and held that the district court should have utilized a purely objective standard in analyzing Shelby's failure to protect claim. (R. at 17-18.) Because Shelby adequately alleged Officer Campbell was objectively unreasonable in his actions, the appellate court held that the district court's 12(b)(6) motion should be reversed and remanded for further proceedings. (R. at 19.)

Chester Campbell petitioned this Court for Writ of Certiorari, which was granted. (R. at 21.) Respondent Arthur Shelby respectfully asks this Court to affirm the decision of the Fourteenth Circuit and remand for further proceedings.

SUMMARY OF THE ARGUMENT

This case concerns the protection of a pretrial detainee's rights in two distinct but equally important scenarios. First, the protection of an inmate's ability to proceed in forma pauperis if he has not received more than three valid strikes under the Prison Reform Litigation Act's 'three strikes' rule; and second, the importance of protecting a pretrial inmate's right to be free from any punishment by utilizing the correct objective standard in analyzing deliberate indifference claims brought by pretrial inmates under the Fourteenth Amendment's Due Process Clause.

The Prison Reform Litigation Act (PLRA) was enacted in 1995 to restrain "the ability of prisoners to avail themselves of [in forma pauperis] status when filing certain federal lawsuits." *Washington v. Los Angeles County Sheriff's Department*, 833 F.3d 1048, 1054 (9th Cir. 2016). 28 U.S.C. § 1915(g) provides that when a prisoner accrues three strikes under the PLRA, they are barred from in forma pauperis status unless they demonstrate an "imminent danger of serious injury." 28 U.S.C. § 1915(g). Prisoners receive a strike when their federal action or appeal is "dismissed on the grounds that it was frivolous, malicious, or fails to state a claim upon which relief may be granted." *Id.*

In *Heck v. Humphrey*, the Supreme Court held that when a favorable verdict in a § 1983 claim would suggest invalidity of the plaintiff's prior criminal conviction, the claim "is barred unless he proves that his 'conviction or sentence has been reversed.'" *Connors v. Graves*, 538 F.3d 373, 376 (5th Cir. 2008) (quoting *Heck v. Humphrey*, 512 U.S. 447, 487 (1994)). Thus, if a plaintiff's § 1983 claim is dismissed pursuant to *Heck*, their cause of action "accrues" only when he has demonstrated his criminal conviction has been invalidated. *Heck*, 512 U.S. at 489-90.

Because a plaintiff's § 1983 cause of action does not accrue until their original criminal conviction is reversed, the appellate court was correct in their holding that *Heck* dismissals do

not count as strikes under the PLRA. *Id.*;(R. at 15.) Therefore, Shelby's three prior dismissals under *Heck* were not valid 'strikes' under the PLRA, and this Court should affirm the decision of the Fourteenth Circuit and allow Shelby to proceed in forma pauperis under 28 U.S.C. § 1915(g). (R. at 15.)

Additionally, this Court should affirm the decision of the Fourteenth Circuit and adopt an objective standard for analyzing an officer's actions in a pretrial inmate's 28 U.S.C. § 1983 deliberate indifference claim under the Fourteenth Amendment's Due Process Clause. (R. at 17-19.) In *Kingsley v. Hendrickson*, the Supreme Court held that "to prove an excessive force claim [under the Fourteenth Amendment], a pretrial detainee" only has to show that the "officers' use of force was objectively unreasonable." *Castro* v. Cnty. of Los Angeles, 833 F.3d 1060, 1060; *see Kingsley v. Hendrickson*, 576 U.S. 389, 392 (2015).

Therefore, because this Court's holding in *Kingsley* abrogated the subjective intent requirement that is required under the Eighth Amendment, the appellate court was correct in holding that Fourteenth Amendment deliberate indifference claims must be analyzed utilizing a purely objective standard. (R. at 18.) Additionally, the appellate court's reversal of Chester Campbell's 12(b)(6) motion to dismiss should be affirmed because the Fourteenth Circuit was correct in its determination that under this objective standard, Shelby's complaint plausibly alleged that the defendant acted objectively unreasonable in his behavior, failing to protect Shelby from mental and physical harm. (R. at 18.)

STANDARD OF REVIEW

The court of appeals reviews district courts' 12(b)(6) motion rulings de novo. *VDARE Found. v. City of Colorado Springs*, 11 F.4th 1151, 1159 (10th Cir. 2021). Under Federal Rule of Civil Procedure 12(b)(6), courts may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). For a claim to survive a motion to dismiss, it must "contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (quoting *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007)). This plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft,* 556 U.S. at 677. A plaintiff's 12(b)(6) motion must be "construe[d] . . . in the light most favorable to the plaintiff." *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 619 (6th Cir. 2002). Because Shelby has plausibly alleged that Chester Campbell acted unlawfully in failing to protect his health and wellbeing as a pretrial inmate, the appellate circuit's reversal of the district court's grant of Chester Campbell's 12(b)(6) motion should be upheld.

Additionally, the court of appeals reviews a district court's "'interpretation and application of § 1915(g)' de novo." *Washington v. Los Angeles Cnty. Sheriff's Dep't.*, 833 F.3d 1048, 1054 (9th Cir. 2016) (quoting *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007).

ARGUMENT

I. Because dismissals pursuant to Heck v. Humphrey are not valid strikes under the Prison Reform Litigation Act, Arthur Shelby should be allowed to proceed in forma pauperis

Under 28 U.S.C. § 1914(a), plaintiffs are normally required to pay a $350.00 filing fee and a $50.00 administrative fee when "fil[ing] a civil complaint in federal district court." *Andrews*, 493 F.3d at 1051; *Abreu v. Farley*, 415 F. Supp. 3d 342, 345 (W.D.N.Y. 2019); 28 U.S.C. § 1914(a). However, district courts have the authority to waive the fee requirement and grant a plaintiff in forma pauperis status if they "submit[] an affidavit" demonstrating the inability to afford such fees. U.S.C. § 1915(a)(1); *Andrews*, 493 F.3d at 1051; see *Washington, 833* F.3d at 1051-52. All requests to proceed in forma pauperis must be in good faith and "do not require that the underlying claim be meritorious." *Martinez v. Bureau of Prisons*, 444 F.3d 620, 624 (D.C. Cir. 2006).

The Prison Litigation Reform Act (PLRA) of 1995, "codified in part at 28 U.S.C. § 1915," was enacted to limit "the ability of prisoners to avail themselves of IFP [in forma pauperis] status when filing certain federal lawsuits." *Washington*, 833 F.3d at 1054; *see Abdul-Akbar v. McKelvie*, 239 F.3d 307, 312 (3d Cir. 2001); *see* 28 U.S.C. § 1915. Section 1915(g) of the PLRA contains the "three-strikes" rule at the center of this issue. *Washington*, 833 F.3d at 1054; 28 U.S.C. § 1915(g).

When a prisoner accrues 'three-strikes,' they are barred under the PLRA from proceeding in forma pauperis unless the prisoner can demonstrate "he is 'under imminent danger of serious physical injury.'" *Abreu*, 415 F. Supp. at 345 (quoting 28 U.S.C. § 1915(g)); *Washington*, 833 F.3d at 1054. The PLRA's legislative history indicates that this 'three strikes rule' was implemented by Congress to "curb the volume of non-meritorious . . . civil-rights lawsuits

brought challenging prison conditions." *Washington*, 833 F.3d at 1054; *see Abdul-Akbar*, 239 F.3d at 312.

Prisoners receive a strike under the PLRA when their "action or appeal in a court of the United States" is "dismissed on the grounds that it was frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger." 28 U.S.C. § 1915(g). In addition, the PLRA requires courts to dismiss prisoner complaints *sua sponte* if they are "'frivolous, malicious, or fail[] to state a claim.'" *Washington*, 833 F.3d at 1054 (quoting 28 U.S.C. § 1915A).

For the following reasons, this Court should affirm the decision of the Fourteenth Circuit and hold that Arthur Shelby's three prior dismissals under *Heck v. Humphrey* do not count as 'strikes' under the PLRA, allowing Arthur Shelby to proceed with his current § 1983 action in forma pauperis. (R. at 15).

A. Under the Prison Reform Litigation Act, *Heck* dismissals do not count as automatic strikes under 28 U.S.C. § 1915(g)

In *Heck v. Humphrey*, the Supreme Court addressed when a constitutional cause of action 'accrues' if a case must be temporarily dismissed until an original criminal conviction or sentence is overturned. *Heck*, 512 U.S. at 489-90. There, the Plaintiff Roy Heck "was convicted in Indiana state court of voluntary manslaughter." *Id.* at 478. While appealing his conviction, Heck filed his § 1983 suit *pro se* against an investigator and various prosecutors involved with his criminal conviction, seeking compensatory and punitive monetary damages rather than injunctive relief. *Id.* at 478-79. The district court dismissed Heck's § 1983 action without prejudice because if his § 1983 claim were to succeed, it would "directly implicate the legality of [Heck's] confinement" and his original criminal sentence. *Id.* at 479.

Therefore, under *Heck*, when an individual brings a § 1983 claim against an officer, "the district court must first 'consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence.'" *Hainze v. Richards*, 207 F.3d 795, 798 (5th Cir. 2000) (quoting *Heck*, 512 U.S. at 487); see *Connors*, 538 F.3d at 376.

If the court finds that the plaintiff's action "will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Heck*, 512 U.S. at 487. Conversely, if the district court determines that a favorable § 1983 verdict would suggest the original criminal sentence is invalid, then such a claim "is barred unless he proves that his '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.'" *Connors*, 538 F.3d at 376 (quoting *Heck*, 512 U.S. at 487).

Therefore, if a plaintiff's suit is dismissed under *Heck*, their constitutional cause of action "accrues" or develops *only* when he has demonstrated his criminal conviction or sentence has been invalidated. *Heck*, 512 U.S. at 489-90. The Court compares this accrual of a cause of action to the process of bringing a suit for malicious prosecution: "Just as a cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor . . . so also a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Id.*

A prisoner is not required to allege favorable termination in their § 1983 complaint, as *Heck* only temporarily bars courts from addressing the underlying merits of an inmate's claim. (R. at 15.) The Seventh Circuit acknowledged in *Polzin v. Gage* that the "*Heck* doctrine is not a

jurisdictional bar," as dismissals under *Heck* are "subject to waiver." *Polzin v. Gage*, 636 F.3d 834, 837-38 (7th Cir. 2011). Courts have the authority to "bypass the impediment of the *Heck* doctrine and address the merits of the case." *Id.* at 838; *see Washington*, 833 F.3d at 1055.

Furthermore, the Ninth Circuit has held that *Heck* dismissals can constitute Rule 12(b)(6) dismissals for failure to state a claim in some circumstances. *Washington*, 833 F.3d at 1055-56. However, this is only true if the pleadings show an "obvious bar to securing relief." *Id.* Inmates are not required to prove favorable termination as a "necessary element of a civil damages claim under § 1983." *Id. Heck* dismissals serve primarily as a means of "judicial traffic control," and not as a means to dismiss valid § 1983 lawsuits whose cause of action has simply not yet accrued. *Id.*

B. Arthur Shelby's three prior *Heck* dismissals were not valid strikes under the Prison Reform Litigation Act

Prior to Arthur Shelby's current § 1983 against Chester Campbell, Shelby, while previously in detention for unrelated convictions, had "commenced three separate civil actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States." (R. at 3.) Each individual action was dismissed without prejudice pursuant to the *Heck* doctrine, because if Shelby's § 1983 claims in each of those actions were successful, it would "demonstrate the invalidity of any outstanding criminal judgment" against Shelby. *Heck*, 512 U.S. at 487;(R. at 1.)

In the Fourteenth Circuit's opinion, the court correctly noted that "[u]ltimately, *Heck* recognizes the prematurity, not the invalidity, of a prisoner's claim." (R. at 15.) Because Shelby could not demonstrate that any of his original criminal convictions or sentences were overturned when he first brought these three § 1983 suits, they were dismissed, and his constitutional cause of action had not yet accrued for each prior § 1983 suit. *Heck*, 512 U.S. at 489-90.

The PLRA was passed to filter out unnecessary suits brought by prisoners, and not claims that are temporarily barred because their cause of action has not yet accrued. Therefore, the District Court erred in its decision that Shelby's three prior *Heck* dismissals were valid "strikes" under the PLRA, and Arthur Shelby should be permitted by this Court to proceed in forma pauperis.

C. The Respondent should be allowed to proceed in forma pauperis under 28 U.S.C. § 1915(g)'s imminent danger exception

If this Court should decide that Arthur Shelby's prior *Heck* dismissals are valid strikes under the PLRA, the Plaintiff should be granted in forma pauperis status under the imminent danger exception to the PLRA's three strikes provision. 28 U.S.C. § 1915(g) allows prisoners who have accumulated three strikes to "bring a civil action or appeal a judgment in a civil action or proceeding [in forma pauperis if] the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g); see *Ray v. Lara*, 31 F.4th 692, 699 (9th Cir. 2022).

28 U.S.C. "§ 1915(g) concerns only a threshold procedural question" – whether the imminent danger alleged by the plaintiff exists or not – so an "overly detailed inquiry" is not required. *Chavis v. Chappius*, 618 F.3d 162, 169 (2d Cir. 2010); *see McFadden v. Noeth*, 827 F. App'x. 20, 24 (2d Cir. 2020). Additionally, the Sixth and Second Circuits have noted that "[t]he imminent danger exception is essentially a pleading requirement subject to the ordinary principles of notice pleading," *Vandiver v. Prison Health Servs., Inc.* 727 F.3d 580, 585 (6th Cir. 2013), cautioning against challenges to in forma pauperis status "metastasiz[ing] into a full-scale merits review." *Shepherd v. Annucci*, 921 F.3d 89, 93 (2d Cir. 2019).

Plaintiffs must demonstrate three factors to show that there is a sufficient level of imminent danger to allow a plaintiff to proceed in forma pauperis despite an accrual of three prior strikes: (1) "that there is a danger to his physical well-being;" *McFadden*, 827 F. App'x. at

24; (2) "that the danger 'exist[ed] at the time the complaint [wa]s filed,'" *Id.* (quoting *Malik v. McGinnis*, 293 F.3d 559, 563 (2d Cir. 2002); and (3) "that the danger is 'fairly traceable to unlawful conduct asserted in the complaint.'" *Id.* (quoting *Pettus v. Morgenthau*, 554 F.3d 293, 299 (2d Cir. 2009) (emphasis omitted)).

Under the first factor, danger to Shelby's physical well-being currently exists because of the Bonucci clan's well-known dealings with police officials in the Marshall area. (R. at 3.) The Bonuccis "exercise considerable power over Marshall," and police have even "been . . . charged with accepting bribes" from the Bonucci clan. (R. at 3.) Arthur Shelby is currently held at the Wythe Prison; However, because the Bonucci clan members were also pretrial detainees at the time of the January 8, 2021, incident, there is the potential that they could be sentenced (or have already been sentenced) and held at the same prison as Shelby, allowing for the very real possibility of a second revenge-motivated attack. (R. at 3, 7.)

Second, this danger to Shelby's health and well-being existed at the time he filed his § 1983 complaint because of the possibility of another failure-to-protect incident at both the Marshall jail and the Wythe Prison. Shelby filed this 28 U.S.C. § 1983 motion, along with his request to proceed in forma pauperis, on February 24, 2022. (R. at 7.) The record does not provide whether Shelby's bench trial and formal sentencing had already occurred the time of filing, but the imminent danger to Shelby's life remained regardless of whether he was still at the Marshall Jail or at Wythe Prison, where he is currently detained. (R. at 7.) Another life-threatening incident could have easily happened at either facility because of the wide-reaching influence of the Bonucci clan. (R. at 3.)

Finally, this imminent danger is "fairly traceable to [the] unlawful conduct asserted in" Shelby's § 1983 complaint because of the high probability Shelby may be attacked by the

Bonucci clan again under a similar failure-to-protect scenario. *McFadden*, 827 F. App'x. at 24 (quoting *Pettus*, 554 F.3d at 299) (internal quotation marks omitted). Even with the numerous precautionary measures employed by gang intelligence officers at the Marshall jail to protect Arthur Shelby, he was still violently attacked because Officer Campbell ignored every single red flag and warning sign that appeared on the day of the incident. (R. at 7.) If Shelby can be so brutally attacked in a facility that took extensive measures to protect him, a real possibility remains that the Bonucci clan will continue to seek revenge and may pose as an imminent threat to Shelby's health and wellbeing.

Therefore, if this Court should hold that Arthur Shelby's three dismissals pursuant to *Heck v. Humphrey* were valid strikes under the PLRA, then this Court should grant Shelby in forma pauperis status under 28 U.S.C. § 1915(g)'s imminent danger exception.

II. Pursuant to the Supreme Court's decision in *Kingsley*, a deliberate indifference failure-to-protect claim brought by a pretrial detainee for a violation of his Fourteenth Amendment Due Process rights must be analyzed using a purely objective standard, and does not require proof of a defendant's subjective intent

When an individual is "lawfully committed to pretrial detention," they have "not been adjudged of any crime:" Rather, they only have a "'judicial determination of probable cause as a prerequisite to [the] extended restraint of [their] liberty following arrest.'" *Bell v. Wolfish*, 441 U.S. 520, 536 (1979) (quoting *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975)). The Government may detain a pretrial inmate to "ensure . . . presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution." *Bell*, 441 U.S. at 536-37. Therefore, pretrial detainees cannot be punished in *any* manner "prior to an adjudication of guilt in accordance with due process of law." *Id.* at 535.

The Eighth Amendment's Cruel and Unusual Punishment Clause allows inmates who have been convicted or sentenced to "sue prison officials for injuries suffered while in custody." *Castro*, 833 F.3d at 1067; U.S. Const. amend. VIII. The Fourteenth Amendment's Due Process Clause extends this ability to pretrial inmates who have not yet been convicted. *Castro*, 833 F.3d at 1068; U.S. Const. amend. XIV. In order to establish a claim under 28 U.S.C. § 1983, both clauses require the plaintiff to "show that prison officials acted with 'deliberate indifference.'" *Castro*, 833 F.3d at 1068; see *Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017).

A. *Kingsley* eliminated the subjective intent requirement for a plaintiff alleging a deliberate indifference claim under the Fourteenth Amendment

The standard for establishing deliberate indifference by prison officials is well-defined under the Eighth Amendment. *Castro*, 833 F.3d at 1068. By utilizing a subjective standard, prison officials are protected from liability under the Cruel and Unusual Punishment Clause

unless the inmate demonstrates the official had a "subjective awareness of the risk of harm." *Conn. v. City of Reno,* 591 F.3d 1081, 1096 (9th Cir. 2010). However, as addressed by the 9th Circuit in *Castro v. County of Los Angeles*, "[t]he standard to find an individual deliberately indifferent under the Fourteenth Amendment . . . is less clear" than under the Eighth Amendment. *Castro,* 833 F.3d at 1068.

The Supreme Court provided guidance courts in analyzing excessive force claims brought by pretrial inmates in *Kingsley v. Hendrickson*. *See Kingsley,* 576 U.S. at 397-398. There, "the Court considered whether, to prove an excessive force claim [under the Fourteenth Amendment], a pretrial detainee must show that the officers were subjectively aware that their use of force was unreasonable, or only that the officers' use of force was objectively unreasonable." *Castro,* 833 F.3d at 1060; *see Kingsley,* 576 U.S. at 391-92.

The plaintiff in *Kingsley*, a pretrial inmate, was removed from his cell by two officers for misbehavior and placed face down in a receiving cell, where two officers allegedly "slammed his head into [a] concrete bunk" and tased his back for five seconds. *Kingsley,* 576 U.S. at 392-93. Following these events, Kingsley filed a 28 U.S.C. § 1983 complaint, alleging the two officers "used excessive force against him, in violation of the Fourteenth Amendment's Due Process Clause." *Id.* at 393.

The Court in *Kingsley* considered the "two separate state-of-mind questions" at play "[i]n deciding whether the force deliberately used [by the office on the pretrial detainee] is constitutionally speaking, 'excessive.'" *Castro,* 833 F.3d at 1069 (quoting *Kingsley*, 576 U.S. at 395). The first question concerns "the defendant's state of mind with respect to his physical acts . . . [in] the bringing about of certain physical consequences in the world." *Kingsley,* 576

U.S. at 395. In contrast, "[t]he second question concerns the defendant's state of mind with respect to whether his use of force was 'excessive.'" *Id.*

As to the first question, the physical act triggering an excessive force claim must be affirmative and deliberate, as "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *Id.* (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)). For example, if an "officer's [t]aser goes off" accidentally, or they mistakenly trip over a detainee and harm him, an excessive force claim cannot prevail, as the physical act performed by the officer must be "purposeful or knowing." *Id.* at 396.

Under the second question, the Court in *Kingsley* held that when considering "the defendant's state of mind with respect to the proper interpretation of the force," a pretrial detainee is *only* required to demonstrate that "the force purposely or knowingly used against him was objectively unreasonable." *Id.* at 397. This standard of "objective unreasonableness turns on the 'facts and circumstances of each particular case." *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

Because the Supreme Court in *Kingsley* held that the relevant standard for the second question - determining the defendant's interpretation of the excessive force - was purely an objective standard, a plaintiff alleging an excessive force claim under the Fourteenth Amendment is not required to prove the defendant's state of mind. *Kingsley*, 576 U.S. at 395. The Court reasoned that utilizing an objective standard for the defendant's interpretation of force, rather than a subjective standard, "was consistent with its prior precedents." *Darnell*, 849 F.3d at 34; *Kingsley*, 576 U.S. at 397. In *Bell v. Wolfish*, the Court determined that "a pretrial detainee can prevail" on a Fourteenth Amendment claim that "challeng[es] 'a variety of prison conditions, including a prison's practice of double bunking' solely by proffering objective

evidence to show that the conditions were not reasonably related to a legitimate, nonpunitive governmental purpose." *Darnell*, 849 F.3d at 34 (quoting *Kingsley*, 576 U.S. at 398); see *Bell*, 441 U.S. at 541-43.

B. Following the decision of the Fourteenth Circuit and its sister circuits, Arthur Shelby's deliberate indifference failure-to-protect claim should be analyzed using an objective standard

At its core, the Court in "*Kingsley* rejected the notion that a single 'deliberate indifference' standard" applies to all 28 U.S.C. § 1983 claims, "whether brought by pretrial detainees or by convicted prisoners," by holding that the correct standard for excessive force claims brought under the Fourteenth Amendment is one of objective reasonableness. *Castro*, 833 F.3d at 1069. After the Court's decision in *Kingsley*, "a circuit split emerged" as to whether the objective reasonableness standard applied to excessive force claims in *Kingsley* also applied to other claims brought by pretrial detainees under the Fourteenth Amendment, such as failure-to-protect claims. *Westmoreland v. Butler Cnty., Kentucky*, 29 F.4th 721, 727 (6th Cir. 2022).

On one hand, "[t]he Second, Seventh, and Ninth Circuits held *Kingsley* required modification of the subjective component for pretrial detainees bringing Fourteenth Amendment deliberate-indifference claims," advocating for the objective reasonableness standard. *Id.*; *see Darnell*, 849 F.3d at 34-35; *see Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *see Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018). Alternatively, "the Fifth, Eighth, Tenth, and Eleventh Circuits retained the subjective component for deliberate indifference Fourteenth Amendment Claims." *Westmoreland*, 29 F.4th at 727.

For the following reasons, this Court affirm the decision of the Fourteenth Circuit and hold that *Kingsley* eliminated the requirement that a pretrial detainee must prove a defendant's

subjective intent and apply an objective reasonableness standard to failure-to-protect claims brought by pretrial detainees under the Fourteenth Amendment.

1. Deliberate indifference claims brought under the Fourteenth Amendment fundamentally differ from claims brought under the Eighth Amendment

The 9th Circuit correctly interpreted *Kingsley* and applied its objective reasonableness standard to a pretrial inmate's failure-to-protect claim not unlike the issue before the Court now in *Castro v. County of Los Angeles*. *Castro*, 833 F.3d at 1065, 1069-70. There, the plaintiff was detained for public drunkenness and placed in a sobering cell at the police station. *Id.* at 1064-65. Later that night, prison officials placed Gonzales, a violent and "combative inmate who had been arrested on a felony charge" inside the sobering cell with Castro. *Id.*

Even though Castro made attempts to attract officers' attention by banging on the cell's windows, his pleas for help were ignored by personnel. *Id.* at 1064. A supervising officer at the station "assigned an unpaid community volunteer to monitor the cell," who did not enter . . . to investigate when he noticed Gonzales "'inappropriately' touching Castro's thigh" while sleeping. *Id.* at 1065. The volunteer reported the conduct to the supervising officer, who arrived six minutes later to "discover[] Gonzales stomping on Castro's head . . . [with] Castro lying unconscious in a pool of blood." *Id.* Castro's injuries were severe: after a month in the hospital, he remained in a long-term care facility for four years, and "suffers from severe memory loss and other cognitive difficulties." *Id.*

The Ninth Circuit in *Castro* addressed the fact that *Kingsley* "did not squarely address whether the objective standard applies to all kinds of claims by pretrial detainees," by outlining a number of "significant reasons to hold that the objective standard applies to failure-to-protect claims as well." *Id.* at 1069. First, the text of 28 U.S.C. § 1983 lacks any "'state of mind

requirement independent of that necessary to state a violation' of the underlying federal right." *Bd. of Cnty. Comm'rs of Bryan County, Okl v. Brown*, 520 U.S. 397, 405 (1997) (quoting *Daniels v. Williams*, 474 U.S. 327, 330 (1986)); *see Castro*, 833 F.3d at 1069.

Second, both excessive force and failure-to-protect claims "arise under the Fourteenth Amendment's Due Process Clause, rather than under the Eighth Amendment's Cruel and Unusual Punishment Clause." *Castro*, 833 F.3d at 1069-70. Not only is the language of these two clauses distinct, but most significantly, "pretrial detainees (unlike convicted prisoners)" cannot be subject to any form of punishment at all, "much less 'maliciously and sadistically.'" *Id.* at 1070 (quoting *Kinsley*, 576 U.S. at 400); *see Darnell*, 849 F.3d at 29.

Additionally, *Castro* places a significant emphasis on Kingsley's deliberate use of broad language. *Castro*, 833 F.3d at 1070. The Court in *Kingsley* held "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." *Kingsley*, 576 U.S. at 398. The Court spoke broadly with its use of the phrase "the challenged governmental action," rather than purely limiting its language to apply only to excessive force claims. *Kingsley*, 576 U.S. at 389; *Castro*, 833 F.3d at 1070.

Because excessive force claims and failure-to-protect claims differ in their involvement of affirmative action or lack of action, *Castro* notes that "applying *Kingsley's* holding to failure-to-protect claims requires further analysis." *Castro*, 833 F.3d at 1070. Under the first question of *Kingsley's* 'two state of mind' inquiry discussed above, a plaintiff alleging an excessive force claim must demonstrate the officer's actions were affirmative, rather than purely accidental. *See id.* However, failure-to-protect claims differ from excessive force claims in that they generally

deal with "inaction rather than action." *Id.* Therefore, "the equivalent [question] is [whether or not] the officer's conduct with respect to the plaintiff was intentional." *Id.*

To illustrate, as discussed previously, if an Officer accidentally discharges his taser on a pretrial inmate, no affirmative act exists to sustain an excessive force claim. *Id.* Translating this scenario to a failure-to-protect cause of action, if a "claim relate[d] to inadequate monitoring of the cell," the claim would fail if the officer had "suffered an accident or sudden illness that rendered him unconscious and thus unable to monitor the cell." *Id.*

Continuing with this 'two state of mind' inquiry, "[u]nder *Kingsley*, the second question in the failure to protect context would . . . be purely objective: Was there a substantial risk of serious harm to the plaintiff that could have been eliminated through reasonable and available measures that the officer did not take, thus causing the injury that the plaintiff suffered?" *Id.*

The court in *Castro,* assembling the above "principles together, [held that] the elements of a pretrial detainee's Fourteenth Amendment failure-to-protect claim against an individual officer are:

(1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;

(2) Those conditions put the plaintiff at substantial risk of suffering serious harm;

(3) The defendant did not take reasonable measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved-making the consequences of the defendant's conduct obvious; and

(4) By not taking such measures, the defendant caused the plaintiff's injuries."

Id. at 1071. The objective reasonableness standard from *Kingsley* applies to the third element, and will "turn[] on the 'facts and circumstances of each particular case.'" *Id.*; *Kingsley*, 576 U.S. at 397 (quoting *Graham*, 490 U.S. at 396).

2. Under *Kingsley's* objective standard and the factors outlined in *Castro*, Chester Campbell's actions in failing to protect Arthur Shelby as a pretrial inmate were objectively unreasonable

Under both *Kingsley's* objective standard for analyzing deliberate indifference claims brought under the Fourteenth Amendment and the factors outlined by the Ninth Circuit in *Castro*, the Fourteenth Circuit was correct in holding that Arthur Shelby sufficiently alleged in his complaint that Defendant Chester Campbell "acted in an objectively unreasonable manner" on January 8, 2021. (R. at 18.)

Under the first factor from *Castro*, the defendant Campbell "made an intentional decision with respect to the conditions under which the plaintiff [Shelby] was confined" by choosing to remove Shelby from his cell and placing him near the guard stand without making any attempt to identify Shelby with the list on his person or with the online database. *Castro*, 833 F.3d at 1071; (R. at 7.) Unlike a scenario in which an officer discharges his taser on accident, Campbell acted affirmatively when he removed Shelby from his cell and intentionally placed him in an open area near the guard stand, leaving him vulnerable to attacks by other inmates like the Bonucci clan and unable to defend himself. (R. at 7.)

The open nature of the guard stand where Arthur Shelby was placed by Officer Campbell put Shelby "at substantial risk of suffering serious harm." *Castro*, 833 F.3d at 1071; (R. at 7.) By placing him out in the open where other inmates from Cell Blocks C and B could easily reach him, the Bonucci clan was practically handed the opportunity to enact their long-awaited revenge and seriously injure Shelby. (R. at 7.)

As to the third factor, Chester Campbell "did not take reasonable measures to abate that risk, even though a reasonable officer" in the place of Chester Campbell "would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious." *Castro*, 833 F.3d at 1071. Because of the extreme level of risk associated with having a prominent member of the Geeky Binders alongside the Bonucci clan in the same facility, prison officials specifically made it a top priority to notify all personnel of the potential for violence and took a number of affirmative steps to prevent such violence from occurring. (R. at 5.)

First, the Marshall jail's gang intelligence officers held a special meeting on January 1, 2021, for all staff to ensure every officer was notified of the precarious situation between the two gangs, particularly stressing the potential for retaliatory violence against Arthur Shelby. (R. at 5-6.) Additionally, if a staff member was unable to attend the meeting, they were required to review the meeting minutes on the jail's online database. (R. at 6.) While it is unclear if Officer Campbell viewed the meeting minutes because of the happenstance glitch that rendered it impossible to see which officers viewed that specific file, he did not attend the gang intelligence officer's important meeting, as he arrived to work after the meeting was over. (R. at 5-6.)

Nevertheless, even if Officer Campbell did not view the meeting minutes, Campbell had ample access to a wealth of readily available information concerning Arthur Shelby's gang affiliation and the potential for violence. Marshall jail protocol requires a variety of information be stored on an easily accessible online database, which contained a variety of information about Shelby from his previous "stays at the jail" and from Officer Mann's entry of Shelby's statements concerning his affiliation with the Geeky Binders. (R. at 4-5.) The Gang Intelligence

Officers also "made a special note in Shelby's file" because Shelby was "in particular . . . a prime target" for the Bonucci clan. (R. at 5.)

This vital information was not confined only to the online database. First, "the intelligence officers . . . printed out paper notices to be left at every administrative area in the jail," establishing the severity of the issue. (R. at 5.) In addition, "Shelby's status was also indicated on all rosters and floor cards of the jail," demonstrating how many clearly visible warning signs were placed throughout the facility to ensure officers' awareness. (R. at 5.) The gang intelligence officers also reminded all personnel 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," which Officer Campbell failed to do in the course of his daily tasks. (R. at 5.) Even if Chester Campbell was an entry-level guard and fairly new to his position, it was unreasonable for him to miss the generous number of warning signs posted throughout the Marshall jail. (R. at 5.)

On January 8, 2021, when Chester Campbell oversaw Shelby's failed transfer from his cell in Block A to the jail's recreation room, he failed to recognize Shelby from his initial appearance. While this failure to recognize is not in itself unreasonable, Campbell's conduct was transformed into being objectively unreasonable when he failed to consult any of the readily accessible information officers were required to consult to ensure inmate safety. (R. at 6.) Not only did Campbell fail to check the jail's online database for any pertinent information about Arthur Shelby, but he also neglected to "reference the hard copy list of inmates with special statuses that he was carrying" on his person. (R. at 6.) This is objectively unreasonable behavior, especially considering the amount of emphasis the facility had placed on ensuring that officers be diligent in their placement of inmates around the facility.

There were also warning signs that Shelby was a prominent gang member from the interaction Shelby had with another inmate while Officer Campbell was transferring him to recreation. (R. at 6.) As Campbell was leading Shelby to the guard stand, "another inmate in cell block A yelled out to Shelby: "I'm glad your brother Tom finally took care of that horrible woman." (R. at 6.) Shelby yelled back, "yeah, it's what that scum deserved," as an affirmative acknowledgement that what the other inmate had said did happen. (R. at 6.) Campbell "told Shelby to be quiet," also acknowledging he heard the exchange between Shelby and the other inmate. (R. at 6.) An objectively reasonable officer under the circumstances would have at least been prompted to look at the inmate's information on the sheet he carried on his person after hearing such a charged exchange.

Despite numerous warning signs and measures put in place by prison officials to keep this feud from becoming violent in the facility, Chester Campbell still failed to protect Arthur Shelby as a pretrial inmate. Campbell directly caused Shelby to suffer from life-threatening and painful injuries simply because he did not act in an objectively reasonable manner and follow the large number of precautions put into place by the gang intelligence officers.

Therefore, because Arthur Shelby has sufficiently alleged that Officer Campbell acted in an objectively unreasonable manner in failing to protect him from the violence of the Bonucci clan, this Court should affirm the decision of the Fourteenth Circuit and dismiss Campbell's 12(b)(6) motion, remanding for further proceedings.

CONCLUSION

This Court should affirm the opinion of the Fourteenth Circuit and remand for further proceedings. First, in *Heck v. Humphrey*, the Supreme Court held that a 28 U.S.C. § 1983 claim must be dismissed if a favorable verdict would suggest the invalidity of the plaintiff's original criminal conviction. The plaintiff's cause of action accrues *only* when the plaintiff can show that the original conviction or sentence has been invalidated. Because their cause of action has not actually accrued until their sentence has been reversed, the appellate court was correct holding that *Heck* dismissals are not valid strikes under the Prison Reform Litigation Act. Therefore, because Arthur Shelby's three prior § 1983 claims were dismissed pursuant to *Heck*, Shelby has not accrued any valid strikes under 28 U.S.C. § 1915(g) and should be granted in forma pauperis status.

Additionally, this Court should affirm the decision of the Fourteenth Circuit in adopting an objective standard for analyzing deliberate indifference failure-to-protect claims brought by pretrial inmates for a violation of their Fourteenth Amendment Due Process rights. The Court in *Kingsley v. Hendrickson* abrogated the subjective intent requirement for Fourteenth Amendment deliberate indifference claims and demonstrated the fundamental differences between the Fourteenth and Eighth Amendments. Under *Kingsley*, Arthur Shelby was only required to allege sufficient facts to demonstrate that Chester Campbell acted in an objectively unreasonable manner on the day of the incident. Therefore, this Court should affirm the decision of the Fourteenth Circuit and reverse the district court's decision to grant Campbell's 12(b)(6) motion, and remand for further proceedings.