No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

FEBRUARY 2024 TERM

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

ON WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team 45

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QUESTIONS PRESENTED

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

II. Whether this Court's decision in *Kingsley* eliminates 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.

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OPINIONS BELOW

United States Court of Appeals for the Fourteenth Circuit:

Record of the United States Court of Appeals for the Fourteenth Circuit, *Shelby v. Campbell*, No. 2023-5255, J. A. 12 (Dec. 1, 2022) (holding that Shelby may not proceed *in forma pauperis* after accruing three strikes under the Prison Litigation Reform Act and failure-to-protect claims must be analyzed using an objective standard)

United States District Court for the District of Wythe:

Record of the United States District Court for the District of Wythe, *Shelby v. Campbell*, No. 23:14-cr-2324, J. A. 2 (Apr. 20, 2022) (holding that Shelby's claims' previous dismissals in accordance with *Heck v. Humphrey* did not constitute strikes under the Prison Litigation Reform Act and that the deliberate indifference doctrine applies in failure-to-protect claims).

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CONSTITUTIONAL & STATUTORY PROVISIONS BELOW

Constitutional Provisions:

U.S. CONST. amend. XIV Sec. 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.

Federal Statutes:

28 U.S.C. § 1915(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.

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STATEMENT OF THE CASE

A. Statement of the Facts

Arthur Shelby is the second-in-command of the infamous street gang, the Geeky Blinders. (J.A. at 2). On New Year's Eve, December 31, 2020, Marshall Police raided a boxing match that Shelby and his brother Tom attended. (J.A. at 3). Warrant in hand for his arrest, police officers apprehended Arthur Shelby at the boxing match. *Id.* They charged Shelby with battery, assault, and possession of a firearm by a convicted felon and subsequently processed him at the Marshall Jail. (J.A. at 4.) A seasoned jail official, Dan Mann, booked Shelby and managed his preliminary paperwork upon entering the jail. *Id.*

Officer Mann recognized that Shelby was a member of the Geeky Blinders. *Id.* Not only by his distinct three-piece suit and overcoat but also by a custom ballpoint pen engraved with "Geeky Blinders" that concealed an awl. *Id.* He also overheard Shelby yell, "The cops can't arrest a Geeky Blinder!" and "My brother Tom will get me out of here, just you wait." *Id.* Following protocol, Officer Mann made a paper copy of his report and entered the same information into the jail's online database. *Id.* In his report, Officer Mann recorded Shelby's belongings and statements upon entering the jail. (J.A. at 5). Every officer at the Marshall Jail has access to the database, which contains detailed information on the inmate's charges, medical information, and, crucially, their gang affiliation. *Id.* The system marks inmates' files who possess a gang affiliation with a separate section. *Id.* That section outlines not only which gang the inmate belongs to but which gangs known to the prison may rival that inmate's gang, along with whether they have called for the assassination of that inmate. *Id.* Arthur Shelby already had a file at the Marshall Jail from his previous arrests and stays at the jail. *Id.* During his prior detention, Shelby commenced three

separate civil actions under 42 U.S.C. § 1983[1] against prison officials, state officials, and the United States. (J.A. at 3). He filed each one *in forma pauperis* and all of them were dismissed without prejudice, pursuant to *Heck v. Humphrey*.[2] *Id.*

Due to the town's substantial gang activity, the Marshall Jail had several gang intelligence officers review and confirm each incoming inmate's entry into the jail's database. *Id.* All the officers reviewed Shelby's file on the database and noted Shelby's high-ranking status. (J.A. at 5). They all knew of the bad blood the Bonucci held toward the Geeky Blinders. (J.A. at 5). After a different member of the Geeky Blinders murdered the wife of the Bonucci gang's leader, the Bonucci sought to exact their revenge on Arthur Shelby—the intelligence officers were also aware of this fact. *Id.*

Gang intelligence officers noted the hit-out on Arthur Shelby in his file, prison rosters, floor cards at the jail, and even printed out paper notices for every administrative area in the jail. *Id.* The officers also met with jail officials the next morning on January 1, 2021, notifying them of Shelby's presence and the risks he faced. *Id.* They expressly told every jail officer there that Shelby would be housed in cell block A to separate him from the Bonuccis in cell blocks B and C. *Id.* The officers reminded everyone to check the rosters and floor cards regularly. *Id.*

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[1] *See* 42 U.S.C. §1983 (establishing Respondent's cause of action).
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.
[2] 512 U.S. 477 (1994)

It is unclear whether Chester Campbell, an entry-level guard at the Marshall Jail, was at the meeting. *Id.* While roll call indicated that Officer Campbell attended the meeting with gang intelligence officers, the jail's time sheets indicated that Officer Campbell called in sick that morning and did not arrive until after the meeting ended. (J.A. at 5-6). Gang intelligence officers require any absentee from the safety meeting to review the meeting's minutes on the jail database. (J.A. at 6). However, due to a system glitch, there is no record of Campbell reviewing the meeting's information on Arthur Shelby. *Id.* On January 8, 2021, Officer Campbell oversaw Shelby's transfer to recreation. *Id.* Officer Campbell did not know or recognize Shelby at the time. *Id.* He neither referenced the hard copy list of inmates that gang officers listed Shelby's special status on nor looked at the jail's database before taking Shelby from his cell. *Id.* What he did have was a list of inmates with special statuses—Shelby's gang affiliation and his risk of attack by members of the Bonucci gang were included on that list. *Id.* On their walk to recreation, and in front of Officer Campbell, an inmate yelled out, "I'm glad your brother. . .finally took care of that horrible woman", to which Shelby responded, "Yeah, it's what that scum deserved." *Id.* Officer Campbell told Shelby to be quiet and retrieved three other inmates from cell Blocks B and C. (J.A. at 7). They were Bonucci gang members who suddenly attacked Shelby. *Id.*

Trying to prevent the attack, Officer Campbell attempted to restrain the inmates. *Id.* The gang members, however, brought weapons with them and continued to attack Shelby until officers arrived to assist Officer Campbell. *Id.* Shelby sustained life-threatening injuries and remained in the hospital for several weeks because of his injuries. *Id.* Following a bench trial, a judge acquitted Shelby of his assault charge but found him guilty of battery and possession of a firearm. *Id.* He is currently imprisoned at Wythe prison. *Id.*

B. Procedural History

Shelby filed this 42 U.S.C. § 1983 action pro se against Officer Campbell in his individual capacity. *Id.* Shelby filed within the statute of limitations but alongside his complaint he filed a motion to proceed *in forma pauperis*. The District Court for the Western District of Wythe denied the motion pursuant to 28 U.S.C. § 1915(g)[3], finding Shelby's previous *Heck* dismissals qualified as three "strikes." *Shelby v. Campbell,* No. 23:14-cr-2324, J. A. 2 (Apr. 20, 2022). The court directed Shelby to pay the $402.00 filing fee before proceeding, which he did. *Id.*

In his complaint, Shelby alleged that Campbell violated his constitutional rights when he failed to protect Shelby, a pretrial detainee, and that he is entitled to damages under 42 U.S.C. § 1983. *Id.* Officer Campbell filed a motion to dismiss, which the district court granted. *Id.* at 10. The district court reasoned that the appropriate standard for knowledge in a failure-to-protect claim under the Fourteenth Amendment was actual knowledge. *Id.* Finding Shelby failed to allege Officer Campbell possessed actual knowledge of the risk his gang affiliation posed, the court dismissed Shelby's motion for failure to state a claim. *Id.* at 11.

On appeal, the court reversed the district court's judgment on both issues. *Shelby v. Campbell*, No. 2023-5255, J. A. 19 (2022). The court held that Shelby's *Heck* dismissals did qualify as "strikes" under 28 U.S.C. § 1915(g), allowing Shelby to proceed *in forma pauperis*. *Id.* at 15. The court also held that the district court applied the incorrect standard when evaluating

[3] *See* 28 U.S.C. § 1915(g) (barring proceeding *in forma pauperis* if petitioner accrues three strikes).

> 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.

knowledge for failure to protect claims. *Id.* at 16. Emphasizing the inaction at play in failure-to-protect claims, the court held the correct knowledge is an objective one. *Id.* at 18. Concluding that Shelby sufficiently alleged that Officer Campbell acted in an objectively unreasonable manner, the court reversed the district court's decision. *Id.* at 19. Petitioners then filed a writ of certiorari to the Supreme Court of the United States to challenge the court's decision. (J.A. at 21). This Court granted certiorari. *Id.*

STANDARD OF REVIEW

Questions of law before this Court are subject to a de novo standard of review. *United States v.* Tsarnaev, 595 U.S. 302 (2022). The first issue in this case is whether *Heck v. Humphrey* dismissals of actions under 42 U.S.C. § 1983 qualify as "strikes" under 28 U.S.C. § 1915(g). That issue is a question of law and thus subject to a de novo review. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc*., 572 U.S. 559, 563 (2014). "When de novo review is compelled, no form of appellate deference is acceptable." *Salve Regina College v. Russell*, 499 U.S. 225, 238 (1991). Accordingly, this Court does not give deference to the Fourteenth Circuit's opinion regarding the first issue in this case. The second issue in this case is whether this Court's decision in *Kingsley v. Hendrickson*[4] eliminates the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim, brought under 42 U.S.C. § 1983. That issue is also a question of law, requiring a de novo review. *Highmark Inc.*, 572 U.S. at 563. Accordingly, this Court also does not give deference to the Fourteenth Circuit's opinion regarding the second issue in this case. *Salve Regina College*, 499 U.S. at 238. This Court accepts the well-pleaded factual allegations as true when reviewing a Rule 12(b)(6) motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Appellate courts review de novo Rule 12(b)(6) motions to

[4] 576 U.S. 389 (2015).

dismiss, meaning this Court does not give deference to the Fourteenth Circuit's ultimate decision to deny petitioner's motion to dismiss. *Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 87 (2d Cir. 2002); *Harrington v. Richter*, 562 U.S. 86, 86 (2011).

SUMMARY OF ARGUMENT

Heck v. Humphrey dismissals under 28 U.S.C. § 1915(g). The Fourteenth Circuit erred in holding that dismissals pursuant to *Heck v. Humphrey* do not constitute "strikes" under 28 U.S.C. § 1915(g). The Prison Litigation Reform Act qualifies "strikes" as claims that are malicious, frivolous, or fail to state a claim. 28 U.S.C. § 1915(g). The list of what qualifies as a "strike" is exhaustive, meaning only those claims that are malicious, frivolous, or fail to state a claim can be considered "strikes". *Harris v. Harris*, 935 F.3d 670, 672 (9th Cir. 2019); *Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1283–84 (11th Cir. 2016); *Tafari v. Hues*, 473 F.3d 440, 443 (2d Cir. 2007); *Thompson v. Drug Enforcement Admin.*, 492 F.3d 428, 440 (D.C. Cir. 2007). Nevertheless, dismissals pursuant to *Heck* fail to state a claim and can be held to be frivolous. Under *Heck*, if an individual brings a claim when the underlying case has not been overturned or otherwise invalidated, then the individual earns a strike for failing to state a claim because they fail to allege a crucial element of the § 1983 claim, that their conviction is wrongful. Similarly, when claims dismissed under *Heck* possess facts that do not support the underlying cause of action, they are frivolous, qualifying as "strikes" under the Prison Litigation Reform Act. *Heck*, 512 U.S. at 483; *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). Courts dismissed each of Arthur Shelby's previous claims pursuant to *Heck.* (J.A. at 3). Accordingly, at a bare minimum, they failed to state a claim for relief and qualify as "strikes." The Fourteenth Circuit erred in its decision and Arthur Shelby should not be allowed to proceed *in forma pauperis*.

***Kingsley* still requires subjective intent to be proven in a failure-to-protect claim under the appropriate deliberate indifference claim.** The Fourteenth Circuit erred in applying the *Kinglsey* framework to Shelby's failure-to-protect claim. By erroneously utilizing the standard outlined in *Kinglsey,* the Court imposed a negligence standard on deliberate indifference claims made by pretrial detainees arising under the Fourteenth Amendment. This decision contravenes long-established Supreme Court precedent, which certifies that negligently inflicted harm in no way implicates constitutional due process. *See Daniels v. Williams*, 474 U.S. 327 (1986); *Davidson v. Cannon*, 474 U.S. 344 (1986). The Fourteenth Amendment is not a vehicle through which pretrial detainees may bring tort actions against officials for negligently inflicted harm—including failure-to-protect claims. See *Kingsley v. Hendrickson*, 576 U.S. 389, 408 (2015) (Scalia, J., dissenting) (noting that the Fourteenth Amendment's "Due Process Clause is not a font of tort law to be superimposed upon that state system.") Separately, the Supreme Court has clearly stated that a pretrial detainee's only constitutional right in regard to conditions of confinement is whether those conditions amount to punishment. *Bell v. Wolfish*, 441 U.S. 520 (1979). When the deprivation of due process rights results from government inaction, the deliberate indifference standard properly distinguishes between inaction, which can be inferred to be punitive, and inaction, which results from negligence. *See Farmer v. Brennan*, 511 U.S. 825 (1994); *City of Canton v. Harris*, 489 U.S. 378 (1989). Using the proper deliberate indifference framework, Shelby fails to state a claim for relief. Since Officer Campbell had no subjective knowledge of any risk posed to Shelby, nor is it alleged that Campbell had any such knowledge, either actual or constructive, Shelby's claim fails to meet the element of deliberate indifference requiring such knowledge.

ARGUMENT

I. THE DISMISSAL OF A PRISONER'S CIVIL ACTION UNDER HECK V. HUMPHREY CONSTITUTES A "STRIKE" WITHIN SECTION 1915(G) OF THE PRISON LITIGATION REFORM ACT.

The petitioners do not contest that § 1915(g)'s list of "strikes" is exhaustive. Courts across this country have come to the same conclusion. In *Harris v. Harris*, the Ninth Circuit heard a case that addressed whether a prisoner's previous § 1983 claims qualified as "strikes". *Harris*, 935 F.3d 670, 672 (9th Cir. 2019). One of the prisoner's scrutinized claims was dismissed for failing to state a federal claim, while another was dismissed because Harris failed to properly serve a defendant and other co-defendants enjoyed partial judicial immunity. *Id.* at 672. The circuit held the claims at issue did not qualify as "strikes" because their respective grounds for dismissal were not outlined in the § 1915(g). *Id.* at 674-75. Other courts across the country maintain the same position. The Second Circuit refused to treat a petitioner's appeal which was dismissed as premature as a strike under § 1915(g) because premature appeals are not listed in § 1915(g). *Tafari v. Hues*, 473 F.3d 440, 443 (2d Cir. 2007). The Eighth Circuit held the grant of summary judgment is not a strike because it is not enumerated under § 1915(g). *Stallings v. Kempker*, 109 F. App'x 832, 833 (8th Cir. 2004).

The Eleventh Circuit held that a petitioner's several prior dismissals for lack of jurisdiction did not qualify as "strikes" because they were not enumerated under § 1915(g). *Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1283–84 (11th Cir. 2016). The D.C. Circuit took the same position but went further to hold that the only instance dismissals for lack of jurisdiction could count as strikes would be when the court *expressly* stated the underlying action was frivolous or malicious. *Thompson v. Drug Enforcement Admin.*, 492 F.3d 428, 440 (D.C. Cir. 2007). "[I]n a statutory construction case, analysis must begin with the language of the statute itself; when the statute is clear, judicial inquiry into its meaning, in all but the most extraordinary circumstance, is

finished." *Harris*, 935 F.3d. at 673. Qualified judges across the country agree that § 1915(g) is an exhaustive list of "strikes"—only claims that are malicious, frivolous, or fail to state a claim for relief qualify. The Petitioner does not challenge that national consensus and urges this Court to adopt it.

Given only those claims which are malicious, frivolous, or fail to state a claim, are ones that may qualify as "strikes", dismissals under *Heck* must fit one of those definitions. The petitioners maintain they meet two of them—failures to state a claim for relief and frivolousness.

A. Claims Dismissed Pursuant to *Heck v. Humphrey* Fail to State a Plausible Claim for Relief.

Respondent's claims that were dismissed under *Heck* constitute strikes pursuant to 28 U.S.C. § 1915(g) because they fail to state a claim, a conclusion that is consistent with *Heck* itself. *See Heck*, 512 U.S. at 487. An action fails to state a claim if the facts pled, and reasonable inferences therefrom, are legally insufficient to support the relief requested. *Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir. 1987). Dismissal under *Heck* constitutes failure to state a claim because the prisoner lacks a cause of action at the time that the claim is filed. *See Heck*, 512 U.S. at 490.

In *Heck*, the Supreme Court held that a state prisoner bringing a civil rights lawsuit under 42 U.S.C. § 1983 for damages must prove that their conviction or sentence has been reversed, expunged, declared invalid by a state tribunal, or called into question by a federal court through a writ of habeas corpus. *Id.* at 486-87. The Court held that if the success of the § 1983 damages suit would necessarily imply the invalidity of the plaintiff's conviction or sentence, that the complaint must be dismissed. *Id.* at 487. Essentially, dismissal is necessary when the prisoner lacks a cause of action. *See id.* 487. In this situation, Shelby challenged an "allegedly unconstitutional conviction or imprisonment" before proving that his conviction or sentence was overturned. *Id.*

The Third, Fifth, Tenth, and D.C. Circuits have held that dismissals pursuant to *Heck* count as dismissals for failure to state a claim, and thus, count as strikes under the PLRA. *Colvin v. LeBlan*c, 2 F.4th 494, 499 (5th Cir. 2021); *Smith v. Veterans Admin.*, 636 F.3d 1306, 1311–12 (10th Cir. 2011); *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011). In *Smith v. Veterans Administration*, the Tenth Circuit held that because the favorable termination of a habeas case or direct appeal is "an essential element of a prisoner's civil claim for damages under § 1983, the plaintiff's failure to allege this element was a failure to state a claim. *Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (10th Cir. 2011). In *Garrett v. Murphy*, the Third Circuit discussed how in *Heck*, the Supreme Court analogizes a § 1983 claim to a "common-law cause of action for malicious prosecution. 17 F.4th 419, 425-26 (3d Cir. 2021). In a malicious prosecution action, "[o]ne element that must be alleged and proved . . . is termination of the prior criminal proceeding in favor of the accused." *Id.* Without proving this crucial element of the claim, the complaint must be dismissed. *Id.* at 424. Dismissals under *Heck* therefore count as PLRA strikes for failure to state a claim. *Id.*

The Fourteenth Circuit relies on the Ninth Circuit's characterization of the PLRA as merely "judicial traffic control" as it correctly notes the Congressional rationale behind the PLRA is to curb meritless litigation brought by prisoners. *See Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 (9th Cir. 2016). However, *Heck* is clear that the favorable termination requirement, showing that the prisoner's prior conviction or sentence is invalid, is a crucial element, not merely premature but necessary for a cause of action. *See Heck*, 512 U.S. at 486-87. A cause of action is "synonymous" with a claim. *Garrett*, 17 F.4th at 427-28. Further, malicious prosecution, which was relied on by *Heck* in developing the doctrine, requires favorable

termination as a necessary element. *See id.* at 425-26. Pursuant to *Heck*, these incomplete claims by Respondent should be dismissed because they fail to state a claim and are considered "strikes".

Here, Respondent has had three prior cases dismissed pursuant to *Heck*. Accordingly, Respondent has accrued three strikes under the PLRA for failure to state a claim and is no longer entitled to proceed *in forma pauperis* under 28 U.S.C. § 1915(g).

B. Claims Dismissed Pursuant to *Heck v. Humphrey* Can Be Frivolous Claims.

In addition to qualifying as actions for failing to state a claim of relief, actions under § 1983 can also qualify as frivolous under § 1915(d). This Court drew a careful distinction between frivolous claims and those that fail to state a claim for relief when evaluating a petitioner's request to file *in forma pauperis*. *Neitzke v. Williams*, 490 U.S. 319 (1989). Consulting the language in § 1915(d), which parallels the grounds for a "strike" under § 1915(g), this Court differentiated that actions which fail to state a claim are not automatically frivolous. *Id* at 327-28. While actions decided against the plaintiff on 12(b)(6) grounds may fail to state a claim upon which relief can be granted, that does not mean the action is "without arguable merit" or frivolous. *Id.* at 329. Instead, this Court held that frivolous in the context of § 1915(d) is reserved for a class of claims that contain *both* "factual allegations and legal conclusions" that lack "an arguable basis", while claims that fail to survive a 12(b)(6) analysis only lack a plausible claim for legal relief. *Neitzke*, 490 U.S. at 325; *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). Put differently, frivolous actions uniquely possess "delusional" or baseless allegations. *Neitzke*, 490 U.S. at 328.

Heck dismissals can capture "delusional" factual allegations inherent to frivolous claims. *Neitzke*, 490 U.S. at 328. In *Heck* this court stated that when a § 1983 claim attacks the validity of the defendant's sentence, its merit depends on whether "the plaintiff can demonstrate that the conviction or sentence has already been invalidated." 512 U.S. at 487. Reasoning that fact is crucial

to whether the claim can proceed, the Court required an evaluation of the veracity to the claim's factual assertion. *Id.* It follows that courts, evaluating claims under *Heck*, must assess whether the facts exist to support the § 1983 claim. Congress recognized this risk when it passed the PLRA and expressly delineated a frivolous claim as a "strike." 28 U.S.C. § 1915(g).

When a *Heck* dismissal does contain factual allegations that are misleading or delusional, it fits this Court's definition of frivolousness. A petitioner who brings a § 1983 action for damages that is subsequently dismissed under *Heck*, brings a claim that is not "cognizable" under § 1983, and lacks any "arguable merit." 512 U.S. at 483; *Neitzke*, 490 U.S. at 392. Therefore, even though *Heck* dismissals may not always involve "delusional" factual allegations, those that contain them would nevertheless warrant a designation as frivolous. 512 U.S. at 483; *Neitzke*, 490 U.S. at 392. As applied to Shelby's case, the factual allegations of his previous claims are unclear. Nevertheless, 28 U.S.C. § 1915(d) "is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions." *Neitzke*, 490 U.S. at 327. "To this end, the statute accords judges . . . the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Id.* This Court's opinion in *Heck* states that incognizable claims under § 1983 can harbor facts that do not support the action. 512 U.S. at 487. Those actions would be frivolous claims under § 1915(g).

II. ***KINGSLEY*** **DOES NOT ELIMINATE THE SUBJECTIVE INTENT REQUIREMENT IN A FAILURE-TO-PROTECT, DELIBERATE INDIFFERENCE CLAIM.**

The Fourteenth Circuit erred in applying the *Kinglsey* framework to Shelby's failure-to-protect claim. By erroneously utilizing the standard outlined in *Kinglsey,* the Court imposed a

negligence standard on deliberate indifference claims made by pretrial detainees arising under the Fourteenth Amendment. This decision contravenes long-established Supreme Court precedent, which certifies that negligently inflicted harm in no way implicates constitutional due process. *See Daniels v. Williams*, 474 U.S. 327 (1986); *Davidson v. Cannon*, 474 U.S. 344 (1986). The Fourteenth Amendment is not a vehicle through which pretrial detainees may bring tort actions against officials for negligently inflicted harm. See *Kingsley v. Hendrickson*, 576 U.S. 389, 408 (2015) (Scalia, J., dissenting) (noting that the Fourteenth Amendment's "Due Process Clause is not a font of tort law to be superimposed upon that state system"). The Fourteenth Amendment was crafted to protect against the deprivation of constitutionally protected rights by state actors. See *Daniels*, 474 U.S. at 331 ("Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property"). The Supreme Court has clearly stated that a pretrial detainee's only constitutional right in regard to conditions of confinement is whether those conditions amount to punishment. *Bell v. Wolfish*, 441 U.S. 520 (1979). When the deprivation of due process rights results from government inaction, the deliberate indifference standard properly distinguishes between inaction, which can be inferred to be punitive, and inaction, which results from negligence. *See Farmer v. Brennan*, 511 U.S. 825 (1994); *City of Canton v. Harris*, 489 U.S. 378 (1989). Deliberate indifference requires a showing that the government official consciously disregarded a known and substantial risk. *See Farmer*, 511 U.S. at 834. In other words, deliberate indifference claims involve a subjective inquiry into what the official actually knew, not what they should have known. *Id.*

Analyzed under this established deliberate indifference framework, Shelby has failed to state a claim for relief. Since Officer Campbell had no subjective knowledge of any risk posed to Shelby, nor is it alleged that Campbell had any such knowledge, either actual or constructive,

Shelby's claim fails to meet the element of deliberate indifference requiring such knowledge. Further, even if it is determined that a purely objective inquiry applies to failure to protect, deliberate indifference cases, Shelby's claim still must be dismissed as Shelby has at most pleaded negligence, which sits outside the bounds of Fourteenth Amendment protections.

A. The proper inquiry in claims brought by a pretrial detainee which implicate a due process right is whether the detainee was subject to punishment.

First, it must be noted that as a pretrial detainee, Shelby's § 1983 claim arises under the Fourteenth Amendment. *See Bell*, 441 U.S. at 535-37; *Leal v. Wiles*, 734 F. App'x 905, 909 (5th Cir. 2018). In *Bell*, the Supreme Court made clear that the proper standard for evaluating whether conditions of confinement violate a pretrial detainee's Fourteenth Amendment due process rights is whether such conditions amount to punishment. *Bell*, 441 U.S. at 534. This is because, under the Fourteenth Amendment, detainees may not be punished at all prior to an adjudication of guilt. U.S. Const. amend. XIV. Because Shelby is a pretrial detainee, his § 1983 claim is evaluated under the Fourteenth rather than the Eighth Amendment. As Shelby's claim arises under the Fourteenth Amendment, it must be determined whether he was punished in violation of the Fourteenth Amendment.

The Supreme Court has outlined the ways in which pretrial detainees may establish they have been punished in violation of the Fourteenth Amendment. *Bell*, 441 U.S. at 536-39; *Kingsley*, 576 U.S. at 391-92. First, a detainee may prove that officials had an expressed intent to punish. *Bell*, 441 U.S. at 538. Second, a detainee may make a showing that an affirmative action taken by government officials was objectively unreasonable and therefore unrelated to any legitimate government objective. *Id.* at 538-39. Finally, a pretrial detainee may prove punishment through the deliberate indifference standard if no objectively reasonable measures were taken to abate a substantial and known risk. *See Farmer*, 511 U.S. at 834. Because Shelby's Fourteenth

Amendment right to be free from punishment arises from Officer Campbell's inaction, the deliberate indifference standard should apply.

1. Express Intent To Punish Is Inapplicable To Shelby's Claim.

Naturally, a pretrial detainee may show they have been unlawfully punished by proving that government officials had an expressed intent to punish. *Bell*, 441 U.S. at 538. Nevertheless, Shelby does not claim that Officer Campbell had any such express intent to punish.

2. Objectively Unreasonable Affirmative Actions Is Likewise The Wrong Standard Given Shelby's Claim Does Not Arise Out Of An Intentional Or Affirmative Action From Officer Campbell.

A pretrial detainee may also prove they were punished in violation of the Fourteenth Amendment if it is determined that an affirmative, intentional action taken by officials is objectively unreasonable. *Bell*, 441 U.S. at 538-39. Because an objectively unreasonable action would not be tied to any legitimate government interest, punishment can be inferred through such an objectively unreasonable action. *Id.* In *Bell*, for example, the Court measured the intentional practice of double-bunking through objective measures such as the size of cells and the mobility of detainees. *Id.* at 543. The Court found that since there was a rational relationship between double-bunking inmates and a legitimate government interest, the practice could not be said to be punitive. *Id.* Similarly, when an objectively unreasonable, intentional action is deemed excessive in relation to a government objective, that action can be inferred to be punitive. *Kingsley*, 576 U.S. at 398. Thus, in *Kingsley,* the court evaluated whether prison officials' intentional use of force was excessive on a purely objective basis. *Id.* at 392.

In cases where the claimed deprivation of due process rights was generated by an affirmative government action or policy, asking whether the affirmative action or policy was objectively reasonable properly determines whether such action or policy was punitive. But in

cases that do not involve such an affirmative act, and in cases where the violation of due process arises from government inaction, the *Kingsley* framework is a poor fit. *See Crocker v. Glanz*, 752 F. App'x 564, 569 (10th Cir. 2018) (explaining that *Kingsley* may not apply "where there is no such intentional action"). Because Shelby's claim does not arise out of any intentional or affirmative action on behalf of Officer Campbell, it makes little sense to apply the *Kingsley* framework, which asks whether a deliberate action is objectively unreasonable.

3. The Deliberate Indifference Standard Is The Correct Method Of Inquiry Given Shelby's Claim Involves Inaction From Officer Campbell.

In failure-to-act scenarios, where the catalyst for the due process infringement is government inaction, such inaction is measured by the deliberate indifference standard. *See Farmer*, 511 U.S. at 828-29; *City of Canton*, 489 U.S. at 388. The deliberate indifference standard requires that the official be subjectively aware of a known and substantial risk before asking whether the official took objectively reasonable measures to abate the known risk. *See Farmer*, 511 U.S. at 829. In *Farmer,* for example, the Court held that prison officials could not be held liable for failing to protect an inmate when the officials had no subjective knowledge that the threat existed. *Id.* Because of the subjective knowledge requirement, the Supreme Court has equated the deliberate indifference standard with criminal recklessness, which requires a conscious disregard of a known risk. *Id.* at 839-40.

The failure to protect scenario is not the only failure to act case to which the Supreme Court has applied the deliberate indifference standard. *See City of Canton*, 489 U.S. at 388. In *City of Canton v. Harris*, for example, a pretrial detainee brought a § 1983 failure to train claim against a municipality when police officers failed to call for medical attention after the individual was "slumped to the floor." *Id.* at 381. The Supreme Court held that failure to train could only serve as the basis for § 1983 liability when the "failure to train amounts to deliberate indifference to the

rights of persons with whom the police come into contact." *Id.* As established, deliberate indifference claims require a subjective belief that a risk exists. *See Farmer*, 511 U.S. at 829. As Shelby claims Officer Campbell is liable due to his failure to protect him from other inmates, Shelby's claim should be evaluated under the deliberate indifference standard.

B. Shelby's failure to protect claim should be evaluated under the deliberate indifference standard.

As outlined above, in failure-to-act cases, deliberate indifference is the proper standard. *See Farmer*, 511 U.S. at 828-29; *City of Canton*, 489 U.S. at 388. This is the case regardless of whether the underlying claim arises out of the Eighth or Fourteenth Amendments.

1. Deliberate indifference is the proper standard in failure to act claims regardless of whether the claim arose under the Eighth or Fourteenth Amendment.

Regardless of whether arising out of the Eighth or Fourteenth Amendments, deliberate indifference claims are subjected to the same analysis. *See De Veloz v. Miami-Dade Cty.,* 756 F. App'x 869, 876 (11th Cir. 2018); *Whitney v. City of St. Louis*, 887 F.3d 857 (8th Cir. 2018). The deliberate indifference doctrine originated out of the Eighth Amendment and was used to determine whether government action or inaction constituted cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97 (1976). The deliberate indifference standard was subsequently expanded to cover pretrial detainees whose claims arise under the Fourteenth Amendment. *See, e.g. De Veloz*, 756 F. App'x at 876 (explaining "the standards under the Fourteenth Amendment are identical to those under the Eighth"); *Whitney*, 887 F.3d at 860 (holding the Fourteenth Amendment extends deliberate indifference protections to pretrial detainees); *Strain v. Regaldo*, 977 F.3d 984, 984 (10th Cir. 2020) (applying the same deliberate indifference test in both Eighth and Fourteenth Amendment cases). Applying deliberate indifference to Fourteenth Amendment claims follows because the due process rights of pretrial

detainees are "at least as great as the Eighth Amendment protections available to convicted prisoners." *See City of Revere v. Mass. General Hospital*, 463 U.S. 239, 244 (1983); *see also Hamm v. Dekalb County*, 774 F.2d 1567, 1574 (11th Cir. 1985) (propounding "the minimum standard allowed by the due process clause is the same as that allowed by the eighth amendment for convicted persons"). Behavior or government inaction, which is deemed cruel and unusual punishment for a convicted prisoner, would surely be considered punishment for a pretrial detainee. It follows that the deliberate indifference standard is sufficient in protecting the rights of both prisoner and pretrial detainees.

In addition, the deliberate indifference standard is suitable in determining whether a pretrial detainee has been subjected to punishment in violation of *Bell* or whether the harm to the detainee was the result of negligence. *See Farmer*, 511 U.S. at 839. As established, the Due Process Clause forbids holding pretrial detainees in conditions that "amount to punishment." *Bell*, 441 U.S. at 536-39. As stated by the Supreme Court in *Farmer, "*a subjective approach isolates those who inflict punishment." *Id.* at 839. Deliberate indifference is a level of culpability "more blameworthy than negligence," and the subjective element of deliberate indifference properly distinguishes harm resulting from a punitive measure and harm resulting from accident or negligence. *Id.* at 835.

As Shelby is a pretrial detainee, his claim arises under the Fourteenth Amendment. *See Bell*, 441 U.S. at 535-37. Yet, as demonstrated above, the deliberate indifference standard is identical under both the Eighth and Fourteenth Amendments. *Whitney*, 887 F.3d at 860. To survive summary judgment, Shelby must thus demonstrate that there is at least a factual dispute as to whether Officer Campbell had the requisite knowledge required to be deliberately indifferent in violation of the Fourteenth Amendment. *See Ashcroft*, 556 U.S. at 667 (requiring plausible claims to state sufficient factual allegations). Shelby does not allege, however, that Officer Campbell had

any such knowledge, constructive or otherwise. All that Shelby alleges is that Officer Campbell "should have" perceived the risk of injury and "should have" taken steps to abate the risk. Since Shelby has not demonstrated any dispute as to the material fact of Officer Campbell's knowledge regarding the risk of harm, Shelby's claim must be dismissed.

C. *Kingsley* does not apply to failure to act claims.

A minority of Circuit Courts have applied the *Kingsley* framework to other conditions of confinement cases, including failure-to-act scenarios. *See e.g. Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (applying *Kingsley* objective standard to failure-to-protect claim); *Darnell v. Piniero*, 849 F.3d 17, 34- 35 (2nd Cir. 2017) (extending *Kingsley* objective standard to failure to provide adequate medical treatment cases); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018). This is a misguided application of *Kingsley*. First, the Supreme Court was clear that the holding of *Kingsley* was limited to excessive force claims. *Kingsley*, 576 U.S. at 389, 402. Second, applying *Kinglsey* to claims revolving around government inaction creates a de facto negligence standard long held to be outside Fourteenth Amendment protections. *Strain*, 977 F.3d at 992; *Daniels*, 474 U.S. at 328; *Davidson*, 474 U.S. at 347-48. Finally, applying Kingsley to failure to act claims would provide inadequate protections to pretrial detainees against government inaction, which is punitive. *See Castro*, 833 F.3d at 1086 (J. Ikuta dissenting).

1. Kingsley is limited to excessive force claims.

The Supreme Court made clear that the holding of *Kingsley* was limited to excessive force claims. *Kingsley*, 576 U.S. at 389, 402. In *Kinglsey,* the Supreme Court addressed the narrow issue, "whether to prove an excessive force claim, 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 that force was *objectively* unreasonable." *Id.* at 391-92. In fact, the Supreme Court expressly stated

that the deliberate indifference standard has no application in such excessive force claims, writing "application of the deliberate indifference standard is inappropriate in one class of prison cases: when 'officials stand accused of using excessive physical force.' *Id.* at 835. Going even further, the Court in *Kingsley* issued a warning to circuit courts that they were in no way indicating that a purely objective test should be applied outside the limited excessive force scenario brought in that case. *Id.* at 402. The Court even suggested that the subjective standard may be proper in excessive force claims brought by prisoners under the Eighth Amendment, signaling a further limitation on the *Kingsley* objective test. *Id.*

Heeding the warnings of the Supreme Court, most circuit courts have not opted to extend *Kingsley* beyond excessive force claims. *See, e.g. Strain*, 977 F.3d at 991 (refusing to extend *Kingsley* to deliberate indifference claims since *Kingsley* "turned on considerations unique to excessive force claims"); *Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64, 70, 74 (1st Cir. 2016) (applying an objective unreasonableness standard to the plaintiff's excessive force claim but not his deliberate indifference claim); *Duff v. Potter*, 665 F. App'x 242, 244-45 (4th Cir. 2016) (declining to apply *Kingsley* to pretrial detainee's deliberate indifference to medical needs claim); *see also Whitney*, 887 F.3d at 860 n.4 (denying application of *Kingsley* to a deliberate indifference claim since *Kingsley* "was not a deliberate indifference case); *Nam Dang v. Sheriff Seminole County Florida*, 871 F.3d 1272 (11th Cir. 2017) (refusing to apply *Kingsley* in the context of a deliberate indifference claim because *Kingsley* involved an excessive force claim). A minority of circuit courts, however, have extended *Kingsley's* objective test to deliberate indifference claims. See *Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016); *Darnell v. Piniero*, 849 F.3d 17, 34- 35 (2nd Cir. 2017); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018). In doing so, these courts have applied a traditional negligence standard on deliberate indifference claims, which

has long been held to be insufficient to bring forth a Fourteenth Amendment claim. *See Daniels*, 474 U.S. at 328; *Davidson*, 474 U.S. at 347-48.

2. Applying Kingsley to failure to act claims would create a negligence standard.

Applying a purely objective test as outlined in *Kinglsey* to failure-to-protect claims would create a standard akin to negligence, which is decidedly insufficient to bring a Fourteenth Amendment claim. *See Daniels*, 474 U.S. at 327; *Davidson*, 474 U.S. at 344. The inherent intentionality present in every excessive force case allows for a purely objective inquiry into whether the deliberate force used was excessive without transforming the inquiry into one of pure negligence. *See Kinglsey,* 576 U.S. at 396-96 (explaining that "the defendant must possess a purposeful, a knowing, or possibly a reckless state of mind" with respect to the physical force used against the detainee). Thus, in an excessive force claim paralleling *Kingsley,* punishment may be inferred from deliberate acts that are objectively unrelated to any legitimate government objective or excessive in relationship to a government interest. *See Farmer*, 511 U.S. at 837-38. However, one cannot draw the same inference regarding what is at issue in an official's failure to act. *See Castro*, 833 F.3d at 1086 (J. Ikuta, dissenting). As the Tenth Circuit explained in *Crocker*, the analysis utilized in *Kingsley* may not apply "where there is no such intentional action." *Crocker*, 752 F. App'x at 569. An official who fails to recognize a risk, even if such a failure to perceive was objectively unreasonable, is at most negligent. *Id.* And as the Supreme Court noted in *Kingsley*, "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." 576 U.S. at 396. It follows that the Supreme Court in *Farmer* required those claiming deliberate indifference to prove the official was subjectively aware of the substantial risk. 511 U.S. at 829. As the Court in *Farmer* stated, "an official's failure

to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." *Id.* at 838.

In the circuits that have extended *Kingsley* to deliberate indifference claims, courts have struggled to articulate any meaningful distinction between the *Kingsley* objective standard and what is traditionally understood as negligence. *See Castro*, 833 F.3d at 1071; *Darnell*, 849 F.3d at 36; *Miranda*, 900 F.3d at 354. The court in *Castro*, for example, stated that the objective test under *Kingsley* "must require a pretrial detainee who asserts a due process claim for failure to protect to prove more than negligence but less than subjective intent—something akin to reckless disregard." *Castro*, 833 F.3d at 1071. Despite the Ninth Circuit's assertion that a detainee must prove more than negligence, the test they employed in *Castro* was steeped in language that has been traditionally applied to negligence. *Id.* Recognizing their failure to distinguish between negligence and recklessness, the Ninth Circuit attempts to claim that "reckless disregard" may be shown by an objective standard if the risk is so obvious that the official should have known it. *Id.* However, this does not abate the requirement of subjective knowledge and simply provides that constructive knowledge would be sufficient to prove actual knowledge, as consistent with the well-known doctrine of willful blindness. *See Farmer*, 511 U.S. at 842 (explaining "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious").

Following the Ninth Circuit's lead, the Second Circuit held that deliberate indifference may be shown if the official "recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant official knew, or should have

known, that the condition posed an excessive risk to health or safety." *Darnell*, 849 F.3d at 36. Even more so than the Ninth Circuit, the Second Circuit could not avoid using negligence language in their attempt to define the purely objective deliberate indifference standard. *Compare id.* (claiming an official recklessly fails to act when, "[T]he defendant-official knew, or should have known, that the condition posed an excessive risk…), *with* MODEL PENAL CODE § 2.02(2)(d) (AM. L. INST. 2023) (explaining "[a] person acts negligently…when he should be aware of a substantial and unjustifiable risk"). The Seventh Circuit, the only other circuit court to apply *Kingsley* to deliberate indifference claims, likewise read deliberate indifference as requiring some subjective degree of culpability. *Miranda*, 900 F.3d at 354. It held "deliberate indifference exists if a defendant made an intentional action or decision not to act "with purposeful, knowing, or reckless disregard of the consequences." *Id*. While acknowledging that mere negligence is not sufficient, the Seventh Circuit offered no guidance as to how to distinguish an objective deliberate indifference standard from negligence. *Id*.

As the Tenth Circuit explains in *Strain*, a deliberate indifference claim "presupposes a subjective component." *See Strain*, 977 F.3d at 992 (citing Black's Law Dictionary definition of "deliberate" as "intentional," "premeditated," or "fully considered"). In *Farmer*, this Court paralleled the 10th Circuit's logic, rejecting a purely objective deliberate indifference standard. 511 U.S. at 839. Removing the subjective requirement for deliberate indifference claims would "erode the intent requirement inherent" in such claims, thereby transforming the established deliberate indifference framework into a negligence standard. *Strain*, 977 F.3d at 992. Shelby's claim that Officer Campbell failed to protect him from a substantial risk of harm is a typical deliberate indifference claim and so should be evaluated using the established deliberate indifference standard.

D. Even if the *Kingsley* standard were applicable to failure-to-protect cases, Shelby's claim should be dismissed since he has only claimed negligence.

Even under the objective standard outlined in *Kinglsey,* claiming negligence is still insufficient to bring about a § 1983 claim. *See Castro*, 833 F.3d at 1071; *Darnell*, 849 F.3d at 36; *Miranda*, 900 F.3d at 354. For example, in *Castro*, *Darnell*, and *Miranda*, the courts applied the objective standard in *Kingsley*. *Castro*, 833 F.3d at 1071; *Darnell*, 849 F.3d at 36; *Miranda*, 900 F.3d at 354. To circumvent the well-established principle that negligently inflicted harm does not implicate a due process right, the court attempted (rather unconvincingly) to differentiate the objective *Kingsley* standard from negligence by stating that deliberate indifference was essentially a recklessness standard. *See Castro*, 833 F.3d at 1071; *Darnell*, 849 F.3d at 36; *Miranda*, 900 F.3d at 354. In doing so, these courts relied on a definition of recklessness this Court expressly disregarded in *Farmer*. 511 U.S. at 836-37 (declining to define deliberate indifference using civil law recklessness and instead using a criminal understanding of recklessness, requiring subjective knowledge). But even if we apply the rejected definition of recklessness, which states a person is reckless when they fail to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known, Shelby's claim fails. The invitation to call a person reckless when the risk was so obvious it should be known is not a rejection of the subjective knowledge requirement but simply provides an avenue for plaintiffs to prove actual knowledge through constructive knowledge. *See Farmer*, 511 U.S. at 842. Shelby does not allege anywhere in his complaint that Officer Campbell had knowledge, either actual or constructive, of a substantial risk. All that is alleged is that Officer Campbell "should have" been aware of the risk. This is simply a negligence standard. *See* Model Penal Code § 2.02(2)(d) (explaining "[a] person acts negligently . . . when he should be aware of a substantial and unjustifiable risk"). Shelby has pleaded no facts to indicate Officer Campbell acted with anything other than negligence, and as negligently inflicted

harm is "categorically beneath the threshold of constitutional due process," summary judgment for Officer Campbell must be granted. *See County of Sacramento* v. *Lewis*, 523 U.S. 833, 849 (1998).

CONCLUSION

In purpose and practice, the PLRA disincentives individuals from filing claims that cannot be successful, ensuring courts to take on cases with legal merit. As such, Shelby's procedural argument fails. Shelby is not entitled to proceed *in forma pauperis* as his claims dismissed pursuant to *Heck* constitute strikes under the Act on two grounds: failure to state a claim and frivolousness. The substantive claim brought by Shelby against Campbell also fails because *Kingsley* did not abrogate the requirement that-subjective intent be proven in a failure-to-protect claim under the appropriate deliberate indifference doctrine. Shelby does not allege that Officer Campbell has subjective knowledge of any risk posed to Shelby. Therefore, Shelby's claim fails to meet the element of deliberate indifference requiring such knowledge. And even if this Court determines that a purely objective standard is applicable to failure-to-protect deliberate indifference claims, Shelby's claim still fails, for he has at most pleaded negligence. For these reasons, Petitioner respectfully requests that this Court REVERSE the judgment of the Fourteenth Circuit.