No: 23-05

---

**IN THE**
***Supreme Court of the United States***

**OCTOBER TERM 2023**

---

**CHESTER CAMPBELL,**

*Petitioner,*

v.

**ARTHUR SHELBY,**

*Respondent,*

---

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

---

# BRIEF IN SUPPORT OF PETITIONER FOR WRIT OF CERTIORARI

---

**Team 5 Petitioner**

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**United States Supreme Court Cases:**



**Federal Circuit Cases:**

**Statutes and Regulations**

**Rules**

## QUESTIONS PRESENTED

The Court certifies for argument the following two questions:

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

2. 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?

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit was filed on December 1, 2022 under case number 2023-5255 and found on page 12 of the record. The opinion of the United States District Court for the District of Wythe was filed on July 14, 2022 under case number 23:14-cr-2324 and found on page 2 of the record. The order denying Respondent's motion to proceed in forma pauperis for the United States District Court for the District of Wythe was filed on April 20, 2022 under case number 23:14-cr-2324 and found on page 1 of the record.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution, Amendment XIV, Section 1 provides:

> 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.

42 U.S.C. § 1983

states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. § 1915(g) states:

> 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.

Federal Rule of Civil Procedure, Rule 12(b) states:

> (b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
> (1) lack of subject-matter jurisdiction;
> (2) lack of personal jurisdiction;
> (3) improper venue;
> (4) insufficient process;
> (5) insufficient service of process;
> (6) failure to state a claim upon which relief can be granted; and
> (7) failure to join a party under Rule 19.

## STATEMENT OF THE CASE

Respondent, Arthur Shelby, filed a pro se action pursuant to 42 U.S.C. § 1983 alleging, among other things, his Fourteenth Amendment rights were denied when he suffered serious injuries while a pretrial detainee housed at the Marshall jail. Following a December 31, 2020 raid by Marshall police, Respondent was arrested and charged with illegal possession of a firearm by a convicted felon, battery, and assault. Ultimately, Respondent was found guilty on the possession and battery charges, and he is currently incarcerated at Wythe Prison. Respondent's claims are confined to allegations solely against Petitioner, Chester Campbell, an entry-level guard hired at the Marshall jail shortly prior to the incident at issue. No claims against Marshall County or other jail officials were asserted.

By way of background, Respondent is said to be the second-in-command of the street gang, the Geeky Binders. Over the last several years, Respondent has been arrested and incarcerated on numerous occasions from charges and convictions stemming from drug distribution and possession, brandishing a firearm, and assault. Although the Geeky Binders' notoriety in Marshall purportedly dates back years with the founder's alleged escape during the pendency of his murder trial, the Geeky Binders have lost prominence in Marshall as of late. Instead, the rival Bonucci gang (led by Luca Bonucci) has taken over. In fact, due to the Bonucci gang's infiltration in the political climate in Marshall including, but not limited to, the alleged bribing of Marshall police officers, Marshall jail officials, and other key political officials, the city of Marshall terminated several officers. Several jail officers were replaced in effort to eliminate the Bonucci gang's influence and to curtail officer involvement in illegal gang activity. Notwithstanding efforts to sever the Bonucci's control, the gang continued to exert considerable influence, including within the jail.

Following Respondent's December 31, 2020 arrest, Officer Dan Mann, a seasoned jail officer, completed the booking and preliminary paperwork. Officer Mann visually identified Respondent as a member of the Geeky Binders given Respondent's attire (a tweed three-piece suit

and long overcoat), Respondent's statements, and Respondent's other personal effects. As the booking officer, Officer Mann completed an inventory of Respondent's personal belongings in the online database, including a notation of Respondent's possession of an altered ballpoint pen engraved with "Geeky Binders" and containing a secreted awl for use as a weapon. Officer Mann further noted Respondent's statements in the online database. Still intoxicated following his arrest at a boxing match raid, Respondent made several statements to Officer Mann challenging the police's authority to arrest a Geeky Binder and further threatening that his brother (Thomas Shelby, leader of the Geeky Binders) would get him out of jail.

In accordance with jail protocol, Officer Mann completed all the new paper and digital copies of pertinent forms, and when making entries in the database, Officer Mann detected the existence of prior form entries denoting Respondent's prior history of arrests and incarcerations. According to Marshall jail protocol, all booking officers are required to make duplicative paper and digital copies of forms. The online database file for each inmate provides an accounting of the inmate's inventoried personal items, medications, arrest charges, gang associations, and other pertinent information. The forms likewise contain a specific gang affiliation section which not only references any known gang association, but it also identifies gang rivalries and whether known threats for a hit on the inmate exist. Because of gang activity in Marshall, the jail created a designated gang intelligence officers' unit, and gang intelligence officers assumed responsibility for the review of each incoming inmate's online forms.

Having noted Respondent's history of gang affiliation and having also completed the gang affiliation portion in the new forms wherein he referenced Respondent's current status and statements, Officer Mann completed Respondent's booking at approximately 11:30 p.m. Thereafter, Respondent was turned over to jail officials and placed in a holding cell separate and apart from the main jail. When reviewing Respondent's file in the online database, gang intelligence officers edited the file highlighting Respondent's high-ranking status in the Geeky Binders. Gang intelligence officers were also privy to information about the Geeky Binders rivalry with the Bonucci gang and the Bonucci gang's desire to exact revenge for the recent death of Luca

Bonucci's wife. Luca Bonucci's wife was allegedly murdered by the leader of the Geeky Binders, Respondent's brother, Thomas Shelby. As the Respondent was a key target for retaliation, gang intelligence officers made a special note in Respondent's file and printed hard copies of the notice for posting at each administrative area. Similarly, the Respondent's status was recorded on the jail roster and floor cards. The morning after Respondent's arrest, gang intelligence officers held a meeting with all jail officials to discuss the matter. In particular, the gang intelligence officers advised officers that Respondent would be housed in cell block A apart from cell blocks B and C where Bonucci gang members were housed. Officers at the meeting were advised to regularly check the rosters and floor cards to ensure separation between Respondent and members of the Bonucci gang occurred.

Undisputedly, Petitioner Campbell was not involved in Respondent's booking. More importantly, when the January 1, 2021 meeting with gang intelligence officers took place, Petitioner Campbell was not present as he called in sick the morning of the meeting. Although initial roll call records indicate Petitioner Campbell was present at the meeting, time sheets confirm his morning absence and arrival to work after the meeting concluded. Albeit new to the job as an entry-level guard at the jail, Petitioner Campbell received the proper training as a guard. However, he was not a gang intelligence officer. Gang intelligence officers require anyone who misses a meeting to review pertinent materials online, but following the January 1, 2021 meeting concerning Respondent, a database glitch occurred such that the system did not record whether any person subsequently viewed the minutes from the mandated gang intelligence meeting.

Approximately one week later, on January 8, 2021, Petitioner Campbell oversaw the transfer of inmates to the recreation room. The transfer included transporting Respondent who expressed a desire to go to the recreation room. Prior to the transfer, Petitioner Campbell did not reference the hard copies of forms or database entries noting Respondent's gang affiliation status. Petitioner Campbell likewise did not recognize Respondent, nor did he consult the hard copy of the list in his possession wherein Respondent's name and the risk of attack from other jailed inmates was noted. In short, Petitioner Campbell did not know Respondent's identity. While in

route to the recreation room and still in cell block A, Respondent engaged in banter with another inmate who stated, "I'm glad your brother Tom finally took care of that horrible woman." After Respondent stated, "yeah, it's what that scum deserved," another inmate from cell block A was gathered for the recreation room and Petitioner Campbell instructed Respondent to be quiet.

Petitioner Campbell then unknowingly collected three Bonucci gang members for the recreation room; two inmates from cell block B and one from cell block C. Once together, Respondent was attacked by all three Bonucci gang members simultaneously. Petitioner Campbell's efforts to break up the attack were unsuccessful, and several minutes passed before officers arrived to assist and break up the fight. Respondent spent several weeks in the hospital for life-threatening injuries, including rib fractures, lung lacerations, internal bleeding, and traumatic brain injury. At present, Respondent remains incarcerated at Wythe Prison following his conviction on charges of battery and possession of a firearm by a convicted felon.

At the time the attack occurred, Respondent was a pretrial detainee as he had yet to be convicted of the charges prompting his arrest. In filing a 42 U.S.C. § 1983 action pro se against Petitioner Campbell, Respondent alleged Petitioner Campbell violated his Fourteenth Amendment rights when he failed to protect him from the assault by other inmates. Coupled with his complaint, Respondent filed a motion to proceed in *forma pauperis.* The Western District Court of Wythe denied Respondent's motion to proceed in *forma pauperis* finding Respondent was no longer entitled to in *forma pauperis* status given that Respondent's three prior actions under 42 U.S.C. § 1983 had been dismissed pursuant to *Heck v. Humphrey,* 512 U.S. 477 (1994). The three prior *Heck* dismissals, according to the District Court, accrued to three 'strikes' under the three-strike provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), such that Respondent's request for in *forma pauperis* status was barred.

In response to the complaint, Petitioner Campbell filed a Motion to Dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6) arguing Respondent failed to state a claim upon which relief can be granted. Specifically, Petitioner Campbell alleged there were no factual allegations that he acted with subjective intent to warrant a deliberate indifference failure to protect claim under the

Fourteenth Amendment. The District Court agreed with Petitioner Campbell and granted the Motion to Dismiss. The District Court held there must be "subjective, actual knowledge of the risk to inmate safety to be held liable in deliberate indifference claims like failure-to-protect claims." R. at 8. Notably, the District Court held, "Deliberate indifference 'describes a state of mind more blameworthy than negligence,' as negligence alone will not suffice." [R. at 9 (quoting *Farmer v. Brennan*, 511 U.S. 825, 835, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994))] Respondent appealed the District Court's denial of his motion to proceed in *forma pauperis* and the dismissal of his 42 U.S.C. § 1983 case against Petitioner Campbell for failure to state a claim.

On appeal, the Fourteenth Circuit Court found a *Heck* dismissal does not constitute a failure to state a claim under the Prison Litigation Reform Act, and therefore, *Heck* dismissals do not automatically count as "strikes." Furthermore, the Fourteenth Circuit Court reversed and remanded the lower court's ruling on the motion to dismiss finding the objective standard articulated in *Kingsley v. Henrickson*, 576 U.S. 389, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015) controls in deliberate indifference failure to protect actions brought by pretrial detainees. Based on the divergent views adopted by the circuit courts across the nations and further given the conflicting decisions of the lower and appellate courts in this action, a writ of certiorari to the United States Supreme Court was submitted to determine whether a dismissal of a prisoner's civil action under *Heck v. Humphrey* constitutes a "strike" within the meaning of the Prison Litigation Reform Act and whether an objective or subjective standard applies in a deliberate indifference failure to protect action brought under 42 U.S.C. § 1983.

## SUMMARY OF THE ARGUMENT

This Court should find in favor of Petitioner Campbell reversing the Fourteenth Circuit Court ruling and reinstating the district court's order granting Petitioner Campbell's Motion to Dismiss.

In considering the first issue, this Court should find that a dismissal based on *Heck v. Humphrey* should be considered a "strike" under the Prison Litigation Reform Act's (PLRA) three-

strike provision, codified at 28 U.S.C. § 1915(g). The purpose of the three-strikes provision is to deter prisoners from filing frivolous lawsuits by setting restrictions on eligibility for *in forma pauperis* status which determines one's ability to proceed with litigation without paying the associated filing fees. The United States District Court for the Western District of Wythe rightly concluded that Respondent's three prior 42 U.S.C. § 1983 actions that were dismissed pursuant to *Heck v. Humphrey* accumulated to three "strikes" under 28 U.S.C. § 1915(g) of the PLRA, rendering Respondent ineligible for *in forma pauperis* status.

*Heck* dismissals occur when a plaintiff's claim challenges the constitutionality of a conviction or sentence yet fails to meet the specific prerequisites (a showing that the challenged conviction or sentence has been invalidated). While federal courts are divided, several circuit courts have held that *Heck* dismissals constitute failures to state a claim and thus are considered a strike under 28 U.S.C. § 1915(g) of the PLRA. A counterargument may contend that favorable termination is not an element that must be alleged under 42 U.S.C. § 1983, and therefore that *Heck* dismissals are more about timing or "lack of ripeness" than the failure to state a claim. However, this is a flawed interpretation. *Heck* dismissals ensure that challenges to the constitutionality of convictions and sentences are only heard after the underlying conviction or sentence has been invalidated. *Heck* clearly establishes that bringing an action that challenges the constitutionality of a conviction or sentence before the conviction or sentence has been invalidated, is a failure to state a claim.

Furthermore, the explicit language of 28 U.S.C. § 1915(g) provides that a "strike" accrues every time "an action or appeal in a court of the United States [is] dismissed on the grounds that it was frivolous, malicious or fail[ed] to state a claim upon which relief may be granted, unless the prisoner is under imminent danger." 28 U.S.C. § 1915(g). Relief may not be granted on a claim

that challenges the constitutionality of a conviction or sentence, if that conviction or sentence has yet to be found unconstitutional and invalidated. Moreover, the entire purpose of the three-strikes provision of the PLRA is to curb meritless litigation. Therefore, it would be counterintuitive to hold that claims dismissed pursuant to *Heck v. Humphrey,* 512 U.S. 477 (1994), do not accrue a "strike" pursuant to 28 U.S.C. § 1915(g). To assert that *Heck* dismissals do not constitute "strikes" overlooks the purpose of the PLRA and waives financial costs and fees, enabling countless more additional challenges under 42 U.S.C. § 1983 to be brought before the underlying sentence or conviction has been invalidated.

In summary, Petitioner advocates that this Court find that *Heck* dismissals are effective "strikes" under the plain language of 28 U.S.C. § 1915(g) and that to find otherwise would go against the intent of the PLRA and the statute's purpose in deterring frivolous and meritless litigation.

Regarding the second issue, the Court previously held the applicable standard in the context of a deliberate indifference failure to protect cause of action brought pursuant to 42 U.S.C. § 1983 is a subjective standard. *See Farmer, supra* at 837. The objective reasonableness standard utilized in tort litigation holds no applicability in a deliberate indifference claim, and the Court has repeatedly held negligence alone will not suffice to set forth a due process claim. *Daniels, supra* at 332-333. In other words, binding authority mandates a finding that the "official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer, supra* at 837. Without knowing and culpable conduct on the part of the official, a due process claim fails.

Furthermore, absent justification for deviating from binding precedent, courts are mandated to follow controlling authority. The rationale underscoring *stare decisis* is, among other things, the doctrine promotes predictability and consistency in the judicial system. In refusing to subscribe to *stare decisis*, the Fourteenth Circuit Court adopted an objective standard in Fourteenth Amendment deliberate indifference failure to protect litigation simply because the objective standard was deemed appropriate in the context of a claim for excessive force. Applying the objective standard utilized in *Kingsley* to the facts at hand blatantly ignores the Court's ruling in *Farmer*—a ruling in which the Court unequivocally held a subjective standard applies. The *Kingsley* rationale simply does not apply when the facts are completely devoid of any intentional or knowing conduct on the part of the official. Nothing in the *Kingsley* ruling obviates the controlling precedent on deliberate indifference failure to protect claims. As such, the *Farmer* subjective deliberate indifference standard remains paramount in failure to protect actions brought under 42 U.S.C. § 1983, and Petitioner Campbell respectfully submits the Fourteenth Circuit Court's ruling must be reversed with the District Court's ruling reinstated. Respondent's pleadings fail to allege Petitioner Campbell acted with the requisite knowing mental state to withstand the motion to dismiss.

## ARGUMENT

### I. Dismissals Under *Heck v. Humphrey* Constitute a "Strike" Pursuant to 28 U.S.C. § 1915(g).

The United States District Court for the Western District of Wythe rightly concluded that Respondent has had three prior 42 U.S.C. § 1983 actions dismissed pursuant to *Heck v. Humphrey,* 512 U.S. 477 (1994), accumulating three "strikes" under the Prison Litigation Reform Act, thereby terminating his eligibility for in *forma pauperis* status.

The Prison Litigation Reform Act (hereinafter "PLRA") was enacted to curtail meritless litigation by prisoners. The PLRA contains a three-strikes provision, codified at 28 U.S.C. § 1915(g). The three-strikes provision prevents prisoners who have 'accrued' three strikes from exercising the privilege of filing *in forma pauperis*. A strike accrues when an individual, while incarcerated or detained in a facility, brings an action or appeal before a court of the United States, that is subsequently dismissed on grounds enumerated in the statute. 28 U.S.C. § 1915(g). The enumerated grounds include: (a) the action or appeal is frivolous, (b) the action or appeal is malicious, or (c) the action or appeal fails to state a claim upon which relief may be granted. *Id.*

The Civil Rights Act of 1871 (42 U.S.C.S § 1983) allows an individual to bring claims of unconstitutional treatment by state officials to a federal court. The statute intends to make it easier for individuals to pursue actions against state officials when they have faced unconstitutional treatment. However, prisoners may abuse this provision, especially when they perceive they have been subjected to unfair treatment, abuse, or denied basic rights. In *forma pauperis* status further aids prisoners' accessibility to litigation because it waives the financial costs associated with filing fees. The PLRA's three-strike provision contains the checks and balances necessary to deter prisoners from filing frivolous lawsuits with unsubstantiated claims or as a means of retaliation or harassment, especially in *forma pauperis*, where prisoners have no financial investment in filing the action.

### A. A *Heck* Dismissal Is Effectively For Failure to State a Claim Upon Which Relief May Be Granted.

Respondent filed a 42 U.S.C. § 1983 action pro se against Petitioner. Additionally, Respondent filed a motion to proceed *in forma pauperis.* The Western District Court of Wythe correctly determined that Respondent could no longer proceed *in forma pauperis* status because

three prior actions Respondent commenced under 42 U.S.C. § 1983 had been dismissed pursuant to *Heck v. Humphrey,* 512 U.S. 477 (1994), and therefore accrued to three 'strikes' under the three-strike provision of 28 U.S.C. § 1915(g) in the PLRA. R. at 1. The Fourteenth Circuit Court reversed. R. at 13. The issue before this court then turns on whether a dismissal of a prisoner's civil action under *Heck v. Humphrey* constitutes a "strike" under the PLRA. Petitioner submits that it does.

In *Heck v. Humphrey,* 512 U.S. 477 (1994), the Court addressed whether a state prisoner may challenge the constitutionality of [their] conviction in a suit for damages under 42 U.S.C § 1983. 512 U.S. at 478. In *Heck,* a prisoner convicted of voluntary manslaughter brought an action under 42 U.S.C. § 1983 alleging that prosecutors and a state investigator had conducted an unlawful investigation leading to his arrest, had knowingly destroyed evidence, and caused an illegal voice identification procedure to be used at trial. 512 U.S. at 477. Ultimately, the Court held that when a state prisoner seeks damages for an alleged unconstitutional conviction or incarceration in a 42 U.S.C. § 1983 action, the district court "must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* at 487. Therefore for the claim to proceed, a plaintiff must demonstrate that the conviction or sentence has been reversed "on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus" under 28 U.S.C.S. § 2254. 512 U.S. at 477. *Heck* clearly establishes that bringing an action that challenges the constitutionality of a conviction or sentence before the conviction or sentence has been invalidated, is effectively a failure to state a claim upon which relief may be granted.

### B. A Dismissal for Failure to State a Claim Upon Which Relief May Be Granted is Grounds for a "Strike" under 28 U.S.C. § 1915(g).

A *Heck* dismissal is within the enumerated grounds under the three-strike provision codified at 28 U.S.C. § 1915(g), and thus constitutes a strike under the Prison Litigation Reform Act. A *Heck* dismissal occurs when a plaintiff has failed to present a claim for which relief can be granted, as pursuing such a claim would have been found to challenge the plaintiff's conviction or sentence without meeting the prerequisite in *Heck* that requires the challenged conviction or sentence to have already been overturned. In addition to establishing that the plaintiff has failed to state a valid claim, a *Heck* dismissal accrues a strike under the PLRA.

Section 1915(g) provides:

> 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.

28 U.S.C. § 1915(g).

The plain language of Section 1915(g) expressly states that dismissals for failure to state a claim upon which relief may be granted are grounds for accruing a "strike" under the Prison Litigation Reform Act. Thus, when an action or case is dismissed pursuant to *Heck v. Humphrey,* it is implied that the dismissal arises from the claim's failure to meet the conditions necessary to state a valid claim. Therefore, a *Heck* dismissal holds direct relevance within the framework of the three-strike provision in the PLRA. The explicit language of 28 U.S.C. § 1915(g) clearly designates a strike to a *Heck* dismissal, reinforcing the PLRA's intent to count such dismissals as strikes.

*In re Jones*, 652 F.3d 36, 38-39 (D.C. Cir. 2011), the court considered whether a dismissal of a complaint for failure to state a claim based on *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), counts as a "strike" under the PLRA's three-strike provision at 28 U.S.C. § 1915(g). *In re Jones,* 652 F.3d at 36. Like the Respondent in this case, Jones while an inmate, sought *in forma pauperis* status in filing a civil rights suit pursuant to 42 U.S.C. § 1983. *Id.* Additionally, Jones acknowledged that three prior cases were dismissed for failure to state a claim based on the holding in *Heck v. Humph*rey. *Id.* at 36.

In *In re Jones*, the court highlighted that several federal courts have assigned "strikes" under the PLRA to dismissals pursuant to *Heck v Humphrey.* For instance, the Tenth Circuit, in *Smith v. Veterans Admin*., 636 F.3d 1306, 1312 (10th Cir. 2011), relying on *Davis v. Kan. Dep't of Corr*., 507 F.3d 1246, 1248, 1249 (10th Cir. 2007), held that a failure to allege that a favorable termination of a habeas case or direct appeal has occurred, is a failure to allege an essential element of a 42 U.S.C. § 1983 case, and thus, failure to state a claim. *See In re Jones,* 652 F.3d 36, 37-39, 397 U.S. App. D.C. 304 (D.C. Cir. 2011) (citing *Smith v. Veterans Admin*., 636 F.3d 1306, 1312 (10th Cir. 2011). Likewise, the Fifth Circuit agrees that "a plaintiff who seeks to recover damages under 42 U.S.C. § 1983 for actions whose unlawfulness would render a conviction or sentence invalid must first prove that the conviction or sentence has been reversed, expunged, invalidated, or otherwise called into question." *See In re Jones,* 652 F.3d 36, 37-39, 397 U.S. App. D.C. 304 (D.C. Cir. 2011) (citing *Hamilton v. Lyons*, 74 F.3d 99, 103 (5th Cir. 1996).

Ultimately, *In re Jones*, the court followed the Tenth and Fifth Circuits in holding that consistent with *Heck v. Humphrey,* absent evidence "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a

writ of habeas corpus," *Humphrey*, 512 U.S. at 487, a plaintiff has "failed to state a claim for purposes of section 1915(g). *In re Jones* at 36. The Court found that three previous 42 U.S.C. § 1983 actions filed by Jones, were premature and dismissed pursuant to *Heck v. Humphrey,* because his conviction had not been overturned yet. *In re Jones* at 36. In our case, while previously incarcerated, Respondent initiated three 42 U.S.C. § 1983 actions, targeting prison officials, state authorities, and the United States. Because each of these prior actions called into question his conviction or his sentence, each action was dismissed pursuant to *Heck v. Humphrey.* R. at. 5. Because Respondent brought the prior actions before establishing that the challenged conviction or sentence had been invalided, the *Heck* dismissals imply a failure to state a claim, which is proper grounds for a "strike" under 28 U.S.C. § 1915(g).

### C. "Favorable-termination" Requirement is Within The Framework of 28 U.S.C. § 1915(g)'s Consideration of a Strike.

Moreover, the Third Circuit in *Garrett v. Murphy*, 17 F.4th 419 (3d Cir. 2021), in a precedential opinion addressed whether dismissals under *Heck* should be considered "strikes" under the PLRA for failure to state a claim. In *Murphy,* Garrett had three prior cases dismissed per *Heck v. Humphrey. Murphy*, 17 F.4th at 426. The Court following the Fifth, Tenth, and D.C. Circuits held that a *Heck* dismissal counts as a PLRA strike for failure to state a claim. *Murphy*, 17 F.4th at 427. The Court reasons that finding any differently contradicts the principle established in *Heck. Id.* The Fourteenth Circuit found that favorable termination is not an element that a prisoner must allege in his or her complaint under 42 U.S.C. § 1983. R. at. 15. However, the proper interpretation mirrors the Third Circuit's reasoning that the "favorable-termination" requirement is within the framework of the PLRA consideration of a strike. *Murphy*, 17 F.4th at 419. The Court provides:

> *Heck* is clear. Suits dismissed for failure to meet *Heck*'s favorable-termination requirement are dismissed because the plaintiff lacks a valid "cause of action" under § 1983, and a cause of action in this context is synonymous with a "claim" under the PLRA. 512 U.S. at 489; *Black's Law Dictionary* 240 (7th ed. [*428] 1999). This is consistent with the Supreme Court's consistent interpretation of *Heck*'s favorable-termination requirement as necessary to bring "a complete and present cause of action" under § 1983. *McDonough v. Smith*, 139 S. Ct. 2149, 2158, 204 L. Ed. 2d 506 (2019) (citation omitted).

*Murphy*, 17 F.4th at 426.

Importantly, the Third Circuit contends that the argument that *Heck's* favorable-termination requirement is an affirmative defense that may be waived is unpersuasive. *Murphy*, 17 F.4th at 428. The Third Circuit finds that *Heck* is clear in treating this requirement as an essential element of a claim. *Murphy*, 17 F.4th at 419. Thus, the Third Circuit concludes that the Ninth Circuit's reasoning is inconsistent with *Heck's* interpretation and holds that dismissals for failure to meet *Heck's* favorable-termination element constitute a strike for failure to state a claim under 28 U.S.C. § 1915(g) of the Prison Litigation Reform Act. *Id.* at 419.

Moreover, any argument that favorable termination is not an element that must be alleged under 42 U.S.C. § 1983, and therefore that *Heck* dismissals are more about timing or "lack of ripeness' than the failure to state a claim is flawed. *Heck* dismissals ensure that challenges to the constitutionality of convictions and sentences are only heard after the underlying conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 486–87. Thus, *Heck* clearly establishes that bringing an action that challenges the constitutionality of a conviction or sentence before the conviction or sentence has been invalidated, is a failure to state a claim. The Fourteenth Circuit erred in following the Seventh Circuit's contention that the "*Heck* doctrine is not just a jurisdictional bar," but rather an affirmative defense that is "subject to waiver." *Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011). This Court can adopt a more logical reasoning and find that Fourteenth Circuit wrongly concluded that *Heck* dismissals should not be considered as dismissals

for "failing to state a claim upon which relief may be granted" under § 1915(g). Such a holding misinterprets the nature of *Heck* dismissals and their relation and consequences for failure to state a claim under the PLRA.

In *Heck,* the Court explicitly states that if a 42 U.S.C. § 1983 action would necessarily imply the invalidity of a conviction or sentence, the district court must dismiss the complaint until the plaintiff can show that the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 486–87. Any argument that a *Heck* dismissal is merely a dismissal on timing grounds or lack of ripeness is fallacious. A *Heck* dismissal functions as a procedural safeguard by ensuring that claims that challenge the constitutionality of a conviction or sentence are only entertained once the underlying conviction or sentence has been invalidated. Consequently, this Court should reject any argument that *Heck* dismissals are closer to lack of ripeness than failure to state a claim under the PLRA.

The explicit language of 28 U.S.C. § 1915(g) provides that a "strike" accrues every time "an action or appeal in a court of the United States [is] dismissed on the grounds that it was frivolous, malicious or fail[ed] to state a claim upon which relief may be granted, unless the prisoner is under imminent danger." 28 U.S.C. § 1915(g). A *Heck* dismissals occur when a plaintiff's claim challenges the constitutionality of a conviction or sentence yet fails to make a showing that the underlying conviction or sentence has been invalidated. It is evident that relief may not be granted on a claim that challenges the constitutionality of a conviction or sentence if that conviction or sentence has yet to be found unconstitutional and invalidated. Thus *Heck's* "favorable-termination" requirement is within the framework of the PLRA. The purpose of the three-strikes provision is to curb meritless litigation. It would be counterintuitive to hold that claims dismissed pursuant to *Heck v. Humphrey,* 512 U.S. 477 (1994), do not accrue a "strike"

pursuant to 28 U.S.C. § 1915(g). To establish that *Heck* dismissals do not constitute a "strike" under 28 U.S.C. § 1915(g) undermines the purpose of the PLRA and would waive the financial costs and fees for countless additional challenges brought under 42 U.S.C § 1983 on sentence and conviction that have yet to be invalidated.

For all the reasons stated above, Petitioner urges the Court to find that *Heck* dismissals constitute a "strike" under 28 U.S.C. § 1915(g) of the Prison Litigation Act, a decision otherwise refutes the intent of the PLRA and the statute's purpose in deterring frivolous and meritless litigation.

## II. A Pretrial Detainee Must Prove The Officer Acted With Subjective Intent To Set Forth A Viable Fourteenth Amendment Deliberate Indifference Failure To Protect Claim Under 42 U.S.C. § 1983.

Petitioner Campbell filed his motion to dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6) which provides for the dismissal of a party's claim when the claims asserted fail "to state a claim upon which relief can be granted." Fed. R. Civ. Pro. Rule 12(b)(6). In his complaint, Respondent filed suit against Petitioner Campbell alone alleging the officer failed to protect him from an assault by other inmates, thereby denying his Fourteenth Amendment right to due process. In addressing a Rule 12(b)(6) motion, courts are mandated to accept as true all of the allegations set forth in the complaint; however, courts are not compelled to subscribe to legal conclusions articulated in a complaint. *Estelle v. Gamble*, 429 U.S. 97, 99, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)(citing *Cooper v. Pate*, 378 U. S. 546, 84 S. Ct. 1733, 12 L. Ed. 2d 1030 (1964)); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). To withstand a Rule 12(b)(6) motion, Respondent's complaint must contain sufficient facts to allow the court to reasonably infer the claim for relief "is plausible on its face." *Ashcroft*, *supra* at 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). In other words,

Respondent's complaint must set forth sufficient factual allegations, which if assumed to be true, plausibly give rise to the claim for relief, but mere conclusory statements or factual allegations which purport to be "'merely consistent with' a defendant's liability… 'stops short of the line between possibility and plausibility'" of entitlement to the requested relief. *Id*. (quoting *Twombly, supra* at 557). According to controlling authority, the "plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id*.

Here, Respondent alleges Petitioner Campbell bears responsibility under a failure to protect theory because Petitioner Campbell should have been on notice of the potential for harm from rival gang members based on the information contained in the Marshall jail database. In particular, Respondent alleges Petitioner Campbell had access to information relative to his past criminal charges, his noted Geeky Binders affiliation, his hierarchy within Geeky Binders, and reference to items inventoried at booking, including the pen containing the awl weapon. Based on the database entries, Petitioner Campbell's actions on January 8, 2021, according to Respondent, were objectively unreasonable. The viability of Respondent's § 1983 civil rights theory of liability hinges on the application of an objective standard to his deliberate indifference argument as it is undisputed Petitioner Campbell had no notice of Respondent's gang affiliation, the purported threats made by the rival Bonucci gang, or the information contained in the database. When conducting the transfer to the recreation room, Petitioner Campbell did not recognize Respondent or know his identity. With a purely subjective standard analysis in which knowing and purposeful conduct on the part of Petitioner Campbell is required to set forth a meritorious claim, the motion to dismiss was properly granted by the District Court.

**A. Binding Precedent Defines Deliberate Indifference With a Subjective Standard.**

Under the Due Process Clause of the Fourteenth Amendment, a person shall not be deprived of life, liberty, or property without due process of law. (U. S. Const. amend. XIV). In the context of incarcerated individuals who have yet to be convicted, the Court has held the Due Process Clause prohibits holding a pretrial detainee in conditions that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). *See also City of Revere v. Massachusetts General Hosp*., 463 U.S. 239, 244, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983). Conditions of confinement may be "restrictive and even harsh," but "[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society.'" *Farmer v. Brennan*, 511 U.S. 825, 833-834, 114 S. Ct. 1970, 128 L. Ed. 2d 811(1994) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). As such, prison officials have a duty to protect inmates from violence from other inmates, but "[i]t is not, however, every injury suffered by one prisoner at the hands of another that translated into constitutional liability for prison officials responsible for the victim's safety." *Id*. at 832-834.

Negligence alone will not suffice, and liability attaches only where "deliberate indifference" to an inmate's health or safety has been found. *Id*. at 835. *See also County of Sacramento v. Lewis*, 523 U.S. 833, 848, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998)(wherein the Court reiterated "the Fourteenth Amendment is not a 'font of tort law to be superimposed upon whatever systems may already be administered by the States'"); *Daniels v. Williams*, 474 U.S. 327, 332 (1986)(wherein the Court rejected an inmate's claim for injuries sustained after tripping on a pillow left on the stairs holding, "lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person. To hold that injury caused by such conduct is a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law."); *Kingsley v. Hendrickson*, 576 U.S. 389, 396, 135 S. Ct. 2466,

192 L. Ed. 2d 416 (2015)(wherein the Court reaffirmed that "'liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process.'")

Deliberate indifference claims have long been recognized as viable causes of action in §1983 actions. *See Estelle, supra* at 105*; Farmer, supra* at 840-847. In *Estelle*, the Court held deliberate indifference entails a state of mind which is more culpable than mere negligence. *Estelle, supra* at 104-105. For example, merely misdiagnosing or improperly treating an inmate's medical condition falls under the malpractice/negligence umbrella and is not actionable under a constitutional theory of liability. *Farmer, supra* at 837. On the other hand, when a prison official intentionally interferes with or intentionally denies an inmate's medical needs, a completely different factual scenario exists with subjective culpability on the part of the official present. As such, the subjective intentional component gives rise to a potentially viable claim for deliberate indifference under § 1983. *Id*.

Recognizing there are two approaches to defining deliberate indifference, the *Farmer* Court expressly rejected the "civil law" objective standard approach in favor of the subjective "criminal law" perspective. *Id*. at 836-837. Albeit defining deliberate indifference in the context of an Eighth Amendment analysis, *Farmer* Court's rationale is equally applicable here. In pertinent part, the *Farmer* Court held:

> [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. …An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. But 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 837-838 (internal citations omitted).

In rejecting and likening the civil law objective standard to the standard utilized in tort liability, the *Farmer* Court held deliberate indifference requires "consciousness of a risk" and knowing action or inaction. *Id*. at 840. Undisputedly, Petitioner Campbell lacked the requisite knowledge to hold him culpable under a constitutional § 1983 due process theory of liability. As a relatively new hire of only a few months duration, Petitioner Campbell was not present when Respondent was booked, he was not a gang intelligence officer, he did not review the data concerning Respondent's gang affiliation in either the hard copy format or as noted in the online data system, and he called in sick on the morning of the gang intelligence officer meeting such that he wasn't privy to that which was discussed. None of the allegations set forth in Respondent's complaint, even assuming them to be true for purposes of argument, give rise to a meritorious deliberate indifference failure to protect claim under the Fourteenth Amendment. Moreover, the ruling does not deprive Respondent of all remedies for injuries allegedly sustained as he has recourse in a viable common law theory of tort liability. Indeed, any cause of action premised on tort liability would largely mirror the very claims espoused in this action in which Respondent avers an objective reasonableness standard controls.

### B. The Doctrine of *Stare Decisis* Mandates Adhering to the Subjective Standard Articulated in *Farmer*.

In contravention of longstanding precedent and the *stare decisis* doctrine, Respondent advocates ignoring the governing subjective standard for deliberate indifference claims as set forth in *Farmer*. *Stare decisis*, "the idea that today's Court should stand by yesterday's decisions," is a foundational legal principle all courts are urged to subscribe to without fail. *Kimble v. Marvel*

*Entertainment, LLC*, 576 U.S. 446, 455, 135 S. Ct. 2401, 1192 L. Ed. 2d 463 (2015). In fact, "'any departure' from the doctrine 'demands special justification.'" *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 798, 134 S. Ct. 2024, 188 L. Ed. 2d 1071 (2014)(quoting *Arizona v. Rumsey*, 467 U.S. 203, 212, 104 S. Ct. 2305, 81 L. Ed. 2d 164 (1984)). Adherence to the doctrine is the "preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *Kimble, supra* at 455 (quoting *Payne v. Tennessee*, 501 U.S. 808, 827-828, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)). To ensure courts devise legal rules "in a principled and intelligible fashion," *stare decisis* serves as a "foundation stone of the rule of law." *Bay Mills*, *supra* at 798 (quoting *Vasquez v. Hillary*, 474 U.S. 254, 265, 106 S. Ct. 617 88 L. Ed. 2d 598 (1986)).

In stark contrast to *stare decisis*, Respondent essentially advocates overruling the *Farmer* deliberate indifference definition in favor of the objective standard articulated in *Kingsley*. However, the *Kingsley* Court specifically addressed the viability of a pretrial detainee's Fourteenth Amendment rights relative to an excessive force claim only. Indeed, the *Kingsley* decision is glaringly silent on the application of the deliberate indifference standard and the ruling in *Farmer* specifically. Not once is the *Farmer* precedent discussed or distinguished in *Kingsley*, and "special justification" for departure from the controlling subjective deliberate indifference standard articulated in *Farmer* is flagrantly absent. *Id*. The *Kingsley* Court's focus remained singularly focused on the application of the objective reasonableness standard only in the context of excessive force claims. Simply stated, Respondent's reliance upon *Kingsley* is misplaced, and the Fourteenth Circuit Court erred in expanding the objective reasonableness excessive force standard to the facts at hand.

**C. Reliance on the *Kingsley* Objective Standard in the Context of a Deliberate Indifference Claim is Flawed Logic.**

In *Kingsley*, the Court held, "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *Kingsley*, *supra* at 396 (quoting *Lewis*, *supra* at 849). Of key importance in *Kingsley* is the fact officers conceded they intended to exert force and knowingly and purposefully acted in a fashion to exert force. *Id*. In fact, the *Kingsley* Court expressly refused to adopt a recklessness theory of liability in the context of a due process claim holding,

> In the context of a police pursuit of a suspect the Court noted, though without so holding, that **recklessness** in some cases might suffice as a standard for imposing liability. **Whether that standard might suffice for liability in the case of an alleged mistreatment of a pretrial detainee need not be decided here; for the officers do not dispute that they acted purposefully or knowingly with respect to the force they used against Kingsley**.

*Id*. (internal citations omitted and emphasis added).

The *Kingsley* Court further noted the objective standard protects an officer who acts in good faith, and the Court stated, "we have limited liability for excessive force to situations in which the use of force was the result of an intentional and knowing act (though we leave open the possibility of including a 'reckless' act as well)." *Id*. at 400. Nowhere in the Court's ruling was there an expressed intention to abrogate the governing *Farmer* subjective deliberate indifference standard in failure to protect litigation. In fact, the Court repeatedly states its restraint in extrapolating the objective standard to scenarios beyond excessive force claims involving a pretrial detainee.[1]

[1] The *Kingsley* Court expressly noted the limited scope of its ruling holding it was not addressing whether the objective standard even applied in the context of a prisoner excessive force claim. *Kingsley, supra* at 402. In pertinent part, the Court held, "our view that an objective standard is appropriate in the context of excessive force claims brought by pretrial detainees pursuant to the Fourteenth Amendment may raise questions about the use of a subjective standard in the context

The facts in *Kingsley* are incomparable to the facts at issue, and the logic of the Court's ruling simply does not apply in the context of a failure to protect deliberate indifference claim. Namely, officers in *Kingsley* knowingly and admittedly acted in a fashion to exert force over the pretrial detainee whereas here, Respondent alleges Petitioner Campbell acted with deliberate indifference as he failed to take certain actions. Although the facts at hand are unfortunate, no ill intent or improper motivation on the part of Petitioner Campbell contributed to Respondent's injuries. Conversely, in *Kingsley*, officers entered the cell of a pretrial detainee who refused to comply with a directive to remove a piece of paper over a light fixture. *Id*. at 392. Once in the cell, officers forcibly handcuffed the detainee, transported him to a receiving cell, placed him face down on a bunk, and tased him for several seconds. *Id*. at 392-393. The question before the Court was never whether the officers acted in an intentional and knowing fashion as they conceded the same. *Id*. at 395-396. Rather, the *Kingsley* Court only sought to define the standard applicable when determining "whether the force deliberately used is, constitutionally speaking, 'excessive,'." *Id*. at 396. The issue was narrowly confined to "the defendant's state of mind with respect to the proper *interpretation* of the force (a series of events in the world) that the defendant deliberately (not accidentally or negligently) used." *Id*. In that context alone, deciphering the standard for assessing the officer's state of mind relative to the excessiveness of force used, an objective standard was deemed appropriate. *Id*. at 397.

Generalizing the narrowly restricted use of an objective standard in *Kingsley* to all failure to protect deliberate indifference claims defies logic. Deliberate indifference, by its very definition, requires some purposeful action or a conscious decision to elect not to act. The Constitution affords

---

of excessive force claims brought by convicted prisoners. We are not confronted with such a claim, however, so we need not address that issue today." *Id*.

pretrial detainees protection from conditions which amount to punishment, and Petitioner Campbell's unwitting failure to protect was, at most, negligent. The mere failure to act does not rise to the level of punishment recognized as violative of the constitution. *Bell, supra* at 535. *See also Farmer, supra* at 835-837; *Lewis, supra* 849-850. On the contrary, punishment results when an officer holds awareness of a substantial risk of serious harm and nonetheless chooses to refrain from action in deliberate indifference to the risk. *Farmer, supra* at 838.

Prior to *Kingsley*, deliberate indifference failure to protect claims generally aligned with the *Farmer* subjective intent ruling, but since *Kingsley*, the rulings across the country have been diverse.[2] Petitioner Campbell respectfully submits the rationale of the circuit courts adhering to

[2]*Darnell v. Pineiro*, 849 F.3d 17 (2nd Cir. 2017)(held an objective standard applies in deliberate indifference claim involving pretrial detainees who sued alleging conditions of confinement including unusable toilets, inadequate nutrition, infestation, and overcrowding violated the Fourteenth Amendment*); Hare v. City of Corinth, Miss*, 744 F.3d 633 (5th Cir. 1996)(held a subjective standard applies for deliberate indifference failure to protect claim in which officers were sued after a pretrial detainee committed suicide); *Campos v. Webb County, Tex*, 597 Fed. Appx. 787 (5th Cir. 2015)(held an objective standard applies in deliberate indifference claim in which pretrial detainee sued for failure to protect from sexual assault); *Stein v. Gunkel*, 43 F.4th 633 (6th Cir. 2022)(held an objective standard applies in deliberate indifference failure to protect case involving a pretrial detainee assaulted by another inmate; however, the court noted negligence alone was insufficient and the officer must have acted with "reckless disregard" in the face of "an unjustifiably high risk of harm"); *Scott v. Moore*, 114 F.3d 51 (5th Cir. 1997)(pretrial detainee sued for failure to protect from assault from correctional officer, and the court held a subjective deliberate indifference standard applies); *Turner v. Oklahoma County Bd. Of County Comm'rs*, 804 Fed. Appx. 921 (10th Cir. 2020)(pretrial detainee sued after being stabbed by another inmate, and the court held a subjective deliberate indifference standard applies); *Whitley v. City of St. Louis, Missouri*, 887 F.3d 857 (8th Cir. 2018)(father of pretrial detainee who committed suicide sued alleging the officers failed to protect, and the court held a subjective deliberate indifference standard controls); *Strain v. Regaldo*, 977 F.3d 984 (10th Cir. 2020)(pretrial detainee sued alleging failure to protect and deliberate indifference regarding medical needs, and court held a subjective standard applies as *Kingsley* was limited to excessive force claims); *Dang v. Sheriff, Seminole County of Florida*, 871 F.3d 1272 (11th Cir. 2017)(held a subjective standard applies in a pretrial detainee's failure to protect deliberate indifference claim regarding medical needs); *Thomas v. Dart*, 30 F.4th 835 (7th Cir. 2022)(pretrial detainee sued after being assaulted by another detainee, and court held an objective standard controls in the failure to protect deliberate indifference claim); and *Brawner v. Scott County, Tennessee*, 14 F.4th 585 (6th Cir. 2021).

the *Farmer* subjective standard provides sounder reasoning. For example, in *Strain v. Regaldo*, 977 F.3d 984 (10th Cir. 2020), a pretrial detainee brought a similar failure to protect cause of action alleging officials were deliberately indifferent to medical needs. In rejecting plaintiff's argument to apply the *Kingsley* objective standard, the court held *Kingsley* "turned on considerations unique to excessive force claims," "the nature of a deliberate indifference claim infers a subjective component," and "principles of *stare decisis* weigh against overruling precedent to extend a Supreme Court holding to a new context or new category of claims." *Strain, supra* at 991. In distinguishing excessive force claims from deliberate indifference claims, the court held:

> Even though both causes of action arise under the Fourteenth Amendment, a pretrial detainee's cause of action for excessive force serves a different purpose than that for deliberate indifference. The excessive force cause of action 'protects a pretrial detainee from the use of excessive force that amounts to punishment.' . . . Because the two categories of claims protect different rights for different purposes, the claims require different state-of-mind inquiries.

*Id*. (internal citations omitted).

The focus in both *Strain* and *Kingsley* was on the issue of punishment and whether the official's intentional actions amounted to punishment prohibited by the Fourteenth Amendment. Quoting *Kingsley*, the *Strain* Court noted the following rationale:

> [P]retrial detainees should receive greater protection against excessive force than convicted criminals because the government lacks the same legitimate penological interest in punishing those not yet convicted of a crime. So a pretrial detainee may prevail on an excessive force claim 'in the absence of an expressed intent to punish' if an official's actions 'appear excessive in relation to [a legitimate government] purpose. . . .But the [*Kingsley*] Court never suggested that we should remove the subjective component for claims addressing inaction. Thus, the force of *Kingsley* does not apply to the deliberate indifference context, where the claim generally involves inaction divorced from punishment.

*Id*. at 991-992 (internal citations omitted)(quoting *Kingsley, supra* at 398-399).

The *Strain* Court further noted *Farmer's* precedential value wherein the Court defined deliberate indifference with a "subjective component." *Id*. at 992. To state a valid claim for deliberate indifference, "a plaintiff must allege that an actor possessed the requisite intent, together with objectively indifferent conduct." *Id*. Absent some conscious deliberation on the part of the actor, the claim fails. "[D]eliberate means 'intentional,' 'premeditated,' or 'fully considered,' and consequently, "the Supreme Court distinguished deliberate indifference cases—where an official's subjective intent behind objectively indifferent conduct matters—from the distinct class of cases involving excessive force, which does not require that an official subjectively intended for force to be excessive." *Id*. at 992-993 (citing *Farmer, supra* at 835). Here, Respondent's pleadings are lacking as they fail to satisfy the subjective component prong of a deliberate indifference claim, and no allegations were made that Petitioner Campbell knew of, much less consciously elected to disregard, Respondent's identity, gang affiliation, and/or the associated risk of reprisal from rival gangs.

Although pre-*Kingsley*, the rationale of the court in *Hare v. City of Corinth, Miss*, 74 F.3d 633 (5th Cir. 1996) is equally instructive. In *Hare*, a pretrial detainee with a history of heavy drug use and reported depression committed suicide while incarcerated. In reiterating as a "fundamental rule that negligent inaction by a jail officer does not violate the due process rights of a person lawfully held in custody of the State," the court rejected imposing liability under an objective standard. *Hare*, 74 F.3d at 645 (citing *Davidson v. Cannon*, 474 U.S. 344, 348 (1986)). In pertinent part, the court held:

> Formulating a gossamer standard higher than gross negligence but lower than deliberate indifference is unwise because it would demand distinctions so fine as to be meaningless. It would also risk endorsing an objective standard that is contrary to the Supreme Court's holding that the Due Process Clause was meant to prevent 'abusive government conduct.'

*Id*. at 645-646 (quoting *Davidson, supra* at 348). A jail official's failure to act does not constitute "infliction of punishment" unless the official "was aware of a substantial risk of serious harm" and "was deliberately indifferent to that risk." *Id*. at 649 (citing *Farmer, supra* at 837-838). An officer's inaction without actual knowledge of a risk of serious injury does not rise to the level of deliberate indifference. Moreover, assessing an official's conduct or inaction under a negligence framework where the reasonableness of the official's course of conduct is questioned is in contrast with controlling authority. *Id*. The *Hare* Court held the *Farmer* subjective deliberate indifference standard governs, and therefore, "'Deliberate indifference, i.e., the subjective intent to cause harm, cannot be inferred from a prison guard's failure to act reasonably. If it could, the standard applied would be more akin to negligence than deliberate indifference.'" *Id*. (quoting *Farmer, supra* at 835-836).

In support of its rationale for expanding the *Kingsley* objective standard to failure to protect claims, the Fourteenth Circuit essentially adopted the Ninth Circuit Court's rationale in *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). In *Castro*, a pretrial detainee was arrested for public drunkenness and placed in a sobering cell. *Castro*, 833 F.3d at 1065. While Castro was in the holding cell, officers arrested another inmate for shattering a glass door in a nightclub with his fist. *Id*. Officers then placed the "combative" inmate in the sobering cell with Castro despite his behavior being noted as "bizarre." *Id*. Castro purportedly knocked on the window of the cell seeking to alert the officer's shortly after the other inmate's arrival, but no one responded. *Id*. A volunteer given oversight for observing the sobering cell later observed Castro being inappropriately touched by the other inmate, and it was then that officers entered the cell and discovered Castro was unconscious and suffering from serious injuries at the hands of the other inmate. *Id*.

The *Castro* Court determined the objective *Kingsley* standard applied, and a pretrial detainee must "prove more than negligence but less than subjective intent—something akin to reckless disregard." *Id*. at 1071. In other words, the *Castro* Court held the pretrial detainee must show an officer failed to "take reasonable available measures to abate [a] risk" when a "reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the [officer's] conduct obvious." *Id*. Noteworthy, however, is the officers in *Castro* did not challenge the use of the objective standard verbiage in the jury instructions, did not claim there was any miscommunication regarding placing the aggressive inmate in the cell with Castro, did not challenge that Castro faced a substantial risk given the other inmate's placement, and did not challenge that they failed to "take reasonable measures to mitigate that risk." *Id.* at 1072. In fact, the jury found the risk was "obvious" and that the officers were "blameworthy" for their lack of response. *Id*.

The facts at hand are vastly different than those in *Castro* as Petitioner Campbell spearheaded the transfer to the recreation room without insight to the potential risk. In contrast, the officers in *Castro* knowingly placed a combative and bizarre acting individual in the same cell with a known inebriated individual. As the dissent keenly notes in *Castro*, the "majority has simply dressed up the *Farmer* test in *Kingsley* language for no apparent reason; it conflates the two standards only to end up where we started." *Id*. at 1087 (J. Ikuta, dissenting). The dissent further discerned that the "majority unnecessarily muddles our longstanding test for claims alleging that an officer's failure to act amounted to punishment based on mistaken assumption that it must achieve consistency with the test enunciated in *Kingsley*. But *Kingsley* applies to a different category of claims: those involving intentional, objectively unreasonable actions." *Id*.

The *Kingsley* Court not only reiterated that "liability for *negligently* inflicted harm" falls beneath the "threshold" for imposing liability under a due process analysis, but the Court also recognized that even the accidental infliction of harm in the context of an excessive force claim lacks merit. *Kingsley, supra* at 396 (quoting *Lewis, supra* at 849). For example, the Court held, "if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim." *Id*. In straining the *Kingsley* objective standard to failure to protect deliberate indifference claims, the Fourteenth Circuit Court has crafted an untenable standard which amounts to nothing more than the definition of negligence—a level of accountability the *Kingsley* Court held was deficient in the context of a due process analysis. No evidence suggests Petitioner Campbell acted in a calculated fashion in the face of a known risk, and as Justice Scalia noted in his dissenting *Kingsley* opinion:

> [O]ur Constitution is not the only source of American law. There is an immense body of state statutory and common law under which individuals abused by state officials can seek relief. . . . The Due Process Clause is not 'a font of tort law to be superimposed upon' that state system.

*Id*. at 408 (J. Scalia, dissenting)(quoting *Daniels, supra* at 332).

## CONCLUSION

Accordingly, this Court should reverse the Fourteenth Circuit Court ruling and reinstate the district court's order granting Petitioner Campbell's Motion to Dismiss.

Respectfully Submitted.

## CERTIFICATE OF SERVICE

We, Team 5 Petitioner, counsel for CHESTER CAMPBELL, hereby certify that on this 2nd day of February 2024, we caused one copy of the Brief of the United States in Support of Petitioner to be served via email to the following counsel:

William & Mary Law School
613 South Henry Street
Williamsburg, Virginia 23185
spong@wm.edu

*Counsel for Respondent*

We hereby further certify that all parties required to be served have been served.

Respectfully submitted,
/s/ Team 5 Petitioner
Counsel of Record for the Petitioner