No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

CHESTER CAMPBELL,

Petitioner,

vs.

ARTHUR SHELBY

Respondent.

ON WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE UNITED

STATES

BRIEF FOR RESPONDENT

Oral Argument Requested

TEAM NO. 6

Counsel for Respondent

QUESTIONS PRESENTED

1. Whether claims dismissed under *Heck v. Humphrey* constitute a "strike" under the Prison Litigation Reform Act and thus prevent a prisoner from proceeding *in forma pauperis* in future actions?

2. Whether this Court's decision in *Kingsley* eliminates the requirement for a pretrial detainee to prove the defendant's subjective intent in a deliberate indifference failure-to-protect claim and instead allows for the use of an objective standard?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

OPINIONS BELOW vii

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED viii

STATEMENT OF THE CASE 1

I. Statement of the facts 1

II. Procedural history 5

SUMMARY OF THE ARGUMENT 6

ARGUMENT 9

I. Dismissal of a prisoner's civil action under Heck v. Humphrey does not constitute a "strike" within the meaning of the Prison Litigation Reform Act (PLRA). 9

A. Actions dismissed under Heck are not inherently frivolous or malicious. 10

B. Heck dismissals do not reach the merits of the claim, such that dismissals pursuant to Heck are not dismissals for failure to state a claim. 11

i. Heck dismissals address ripeness issues, not merit issues. 11

ii. Favorable invalidation is not an essential element of §1983 claims. 12

C. The policy intentions behind the PLRA and its language do not support Heck dismissals counting as strikes under the Act. 14

II. This Court's decision in Kingsley removes the need for a pretrial detainee to establish a defendant's subjective intent in a deliberate indifference failure-to protect claim under 42 U.S.C. §1983. 16

A. Under the holding in Kingsley, the correct standard for all §1983 claims brought my pretrial detainees is objective unreasonableness. 16

i. Pretrial detainees not only possess a uniquely distinct claim under the Fourteenth Amendment when compared to a convicted criminal's Eighth Amendment claim, but they also bear a lighter burden. 19

ii. A circuit split exists on applying Kingsley's objective standard to non-excessive force claims brought by pretrial detainees, with the overwhelming majority extending it to all pretrial detainee claims. 20

B. In the alternative, even if the objective standard does not apply to all pretrial detainee claims, it is the appropriate standard for failure-to-protect claims. 24

i. The issue in a failure to protect claim is that of inaction rather than action. 25

ii. Campbell acted in an objectively unreasonable manner. 26

CONCLUSION 28

TABLE OF AUTHORITIES

Cases

Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331 (1948) 16

Alderson v. Concordia Parish Correctional Facility, 848 F.3d 414 (5th Cir. 2017) 19, 22

Bell v. Wolfish, 441 U.S. 520 (1979) 17, 18, 21

Brawner v. Scott County, 14 F.4th 585 (6th Cir. 2021) 20, 21, 25

Carrera v. E.M.D. Sales Inc., 75 F.4th 345 (4th Cir. 2023) 24

Castro v. County of Los Angeles, 833 F.3d 1060 (9th Cir. 2016) 22, 23, 26, 28

City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239 (1983) 18

Cortes–Quinones v. Jimenez–Nettleship, 842 F.2d 556 (1st Cir. 1988) 27

County of Sacramento v. Lewis, 523 U.S. 833 (1998) 26

Dang ex rel. Dang v. Sheriff Seminole Cnty., 871 F.3d 1272 (2017) 19, 22

Daniels v. Williams, 474 U.S. 327 (1986) 25

Darnell v. Pineiro, 849 F.3d 17 (2d Cir. 2017) 19, 21, 22, 26

Demery v. Arpaio, 378 F.3d 1029 (9th Cir. 2004) 20

Dixon v. Hodges, 887 F.3d 1235 (11th Cir. 2018) 12

Estelle v. Gamble, 429 U.S. 97 (1976) 26

Farmer v. Brennan, 511 U.S. 825 (1994) 16, 27

Gordon v. County of Orange, 888 F.3d 1118 (9th Cir. 2018) 21, 22, 25

Graham v. Connor, 490 U.S. 386 (1989) 20, 26

Heck v. Humphrey, 512 U.S. 477 (1994) 10, 11, 12, 13

Helling v. McKinney, 509 U.S. 25 (1993) 27

Johnson v. Edlow, 37 F. Supp. 2d 775 (E.D. Va. 1999) 11

Johnson v. West, 218 F.3d 725 (7th Cir. 2000) 9

Jones v. Bock, 549 U.S. 199 (2007) 13, 14, 15

Jones v. Smith, 720 F.3d 142 (2d Cir. 2013) 15

Kingsley v. Hendrickson, 576 U.S. 389 (2015) .... passim

Martin v. Gentile, 849 F.2d 863 (1988) 17

Mays v. Sprinkle, 992 F.3d 295 (4th Cir. 2021) 20

McCarney v. Ford Motor Co., 657 F.2d 230 (8th Cir. 1981) 12

Meija v. Harrington, 541 F. App'x 709 (7th Cir. 2013) 12

Miranda v. County of Lake, 900 F.3d 335 (7th Cir. 2018) 21, 22, 25

Miranda-Rivera v. Toledo-Davila, 813 F.3d 64 (1st Cir. 2016) 22

Neitzke v. Williams, 490 U.S. 319 (1989) 16

O'Brien v. Town of Bellingham, 943 F.3d 514 (1st Cir. 2019) 12

Peterson v. Heinen, 89 F.4th 628 (2023) 21

Porter v. Nussle, 534 U.S. 516 (2002) 15

Rinaldi v. United States, 904 F.3d 257 (3d Cir. 2018) 13, 14

Schmidt v. Skolas, 770 F.3d 241 (3d Cir. 2014) 14

Short v. Hartman, 87 F.4th. 593 (4th Cir. 2023) .... passim

Smith v. Copeland, 87 F.3d 265 (8th Cir. 1996) 21

Strain v. Regalado, 977 F.3d 984 (10th Cir. 2020) 25

United States v. Firishchak, 468 F.3d 1015 (7th Cir. 2006) 10

Washington v. Los Angeles County Sheriff's Department, 833 F.3d 1048 (9th Cir. 2016) 11, 13

Whitney v. City of St. Louis, 887 F.3d 857 (2018) 19, 22

Wilson v. Seiter, 501 U.S. 294 (1991) 20

Younger v. Crowder, 79 F.4th 373 (2023) 20

Rules

42 U.S.C. §1983 .... viii, 13

Prison Litigation Reform Act of 1995, 28 U.S.C. §1915(g) .... viii, 10, 11

U.S. Const. amend. XIII .... viii, 17, 20

U.S. Const. amend. XIV, §1 .... ix, 20

Other Authorities

Restatement (Second) of Torts §500 (1965) 28

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit reversing and remanding the district court's decision is unreported. R. 12-20. The opinion of the United States District Court for the Western District of Wythe denying respondent's motion to proceed *in forma pauperis* and granting petitioner's motion to dismiss is also unreported. R. 1-11.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

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.

42 U.S.C. §1983.

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.

Prison Litigation Reform Act of 1995, 28 U.S.C. §1915(g) (emphasis added).

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

U.S. Const. amend. XIII (emphasis added).

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.*

U.S. Const. amend. XIV, §1 (emphasis added)

STATEMENT OF THE CASE

I. Statement of the facts

Historically, a street gang known as the Geeky Binders has owned the town of Marshall. R. at 3. Members run businesses, own substantial real estate in the town, and hold public office. R. at 3. The syndicate is known for their unique weapon of choice: awls concealed inside of custom-made, engraved ballpoint pens. R. at 2. Thomas Shelby leads the Geeky Binders, with Arthur Shelby ("Shelby" or "Mr. Shelby") serving as his trusted second-in-command. R. at 3.

Currently, the Geeky Binders find themselves grappling with a decline in influence due to the ascendancy of a rival gang headed by Luca Bonucci. R. at 3. The power shift is underscored by corruption amongst Marshall police officers and jail officials who stand accused of accepting bribes from the Bonucci gang. R. at 3. In addition, the Bonuccis wield substantial influence over politicians and various local officials. R. at 3. Despite recent efforts to cleanse the system by dismissing corrupt officers and appointing new, untainted personnel, the Bonucci gang's influence remains palpable. However, Luca Bonucci is currently being held at Marshall jail for assault and armed robbery. R. at 3. Several other Bonucci gang members are also in custody at Marshall jail. R. at 3.

Shelby's legal history encompasses arrests for and convictions of drug distribution and possession, assault, and brandishing a firearm. R. at 3. He has been in and out of prison for the past several years and has filed three separate 42 U.S.C. § 1983 civil actions against prison officials, state officials, and the United States. R. at 3. Regrettably, each endeavor faced dismissal without prejudice under the constraints of *Heck v. Humphrey*, given their potential to challenge his conviction or sentence. R. at 3. The narrative further unfolds with Shelby's arrest on December 31, 2020, during a police raid at a boxing match attended by him and his brothers. R. at 3-4. Mr. Shelby

was arrested and charged with battery, assault, and possession of a firearm by a convicted felon. R. at 3-4. While Thomas and John Shelby managed to elude arrest, Mr. Shelby found himself entangled in a legal predicament once again. R. at 3.

Officer Dan Mann, an experienced jail official, meticulously handled the booking and paperwork for Mr. Shelby upon his arrival at the Marshall jail. R. at 4. Officer Mann immediately identified Mr. Shelby as a Geeky Binder, given his distinctive attire the conspicuous presence of a custom-made ballpoint pen engraved with “Geeky Binders” and concealing an awl within. R. at 4. Mr. Shelby’s brazen remarks further underscored his status, commenting to Officer Mann that, “the cops can’t arrest a Geeky Binder!” and, “my brother Tom will get me out of here, just you wait.” R. at 4.

In adherence to protocol, Officer Mann inventoried all of Mr. Shelby’s possessions in the jail’s online database, specifically noting the presence of an awl pen weapon. R. at 4. This meticulous recording process, a standard for all officers at the jail, involves the creation of both digital and paper copies of various forms for filing and uploading to the online database. R. at 4. The comprehensive online database includes individual files for each inmate, detailing charges, inventoried items, gang affiliations, and other critical information that jail officials should know. R. at 4. Because of Marshall’s high gang activity, the gang affiliation section is of particular importance and garners heightened attention. R. at 4. It allows officers to indicate gang affiliation, hits placed on the inmate, and existing gang rivalries. R. at 4. Further, acknowledging the need for vigilance, the jail has designated gang intelligence officers tasked with reviewing the online database entries of every incoming inmate. R. at 4.

Officer Mann adhered to established protocols when entering Mr. Shelby’s paperwork and accurately recording his current information under the gang affiliation tab. R. at 4-5. Additionally,

Officer Mann recognized the significance of Mr. Shelby's prior interactions with the law, as he already had a page in the database from his previous arrests. R. at 4-5. Though necessitating the opening of a new filed to access this historical data, the database offered a clear snapshot of Mr. Shelby's prior history R. at 4-5. Officer Mann finished Mr. Shelby's booking procedures around 11:30p.m. and turned him over to the other jail officials who placed him in a holding cell separate from the main jail area. R. at 5.

The gang intelligence officers were well-versed in the ongoing conflict between Mr. Shelby and the Bonucci clan, originating from Thomas Shelby's involvement in the tragic death of Luca Bonucci's wife. R. at 5. The intelligence officers recognized the Bonucci gang's desire for revenge and identified Mr. Shelby as a prime target for that retaliation. R. at 5. In response to this heightened threat, the intelligence officers thoroughly reviewed and meticulously edited Mr. Shelby's online database file, emphasizing his distinguished rank within the Geeky Binders. R. at 5. This scrutiny prompted the officers to make a special notation in Shelby's file, disseminating printed notices throughout every administrative area within the jail. R. at 5. Mr. Shelby's status was prominently displayed on all rosters and floor cards throughout the facility. R. at 5. Importantly, the intelligence officers held an all-hands meeting with the entire jail staff on January 1, 2021. R. at 5. During the meeting, officers were apprised of Mr. Shelby's presence, with specific instructions for maintaining his segregation from the Bonucci gang. R. at 5. Furthermore, a pointed reminder was issued, advising all jail officials to regularly check rosters and floor cards to ensure the continued separation of rival gang members. R. at 5.

Officer Chester Campbell ("Officer Campbell" or "Campbell") is an entry-level guard at the jail, has been properly trained, and has been meeting expectations in the several months of his employment. R. at 5. The January 1, 2021, roll call indicates that he attended the meeting held by

the gang intelligence officers. R. at 5-6. However, the time sheets reveal that he called in sick on that morning, arriving at the jail only after the meeting's conclusion. R. at 5-6. The intelligence officers mandated that guards absent from the meeting were to review the minutes posted online. R. at 6. Complicating matters, a system glitch erased the typical database records indicating whether an officer had viewed specific pages or files, including those of the January 1 meeting minutes. R. at 6. On January 8, Officer Campbell was in charge of transferring inmates to and from the recreation room. R. at 6. Mr. Shelby expressed to Officer Campbell his desire to partake in recreation. R. at 6. Officer Campbell did not know or recognize Mr. Shelby at that time. R. at 6. Yet, Officer Campbell opted not to check the list of inmates with special statuses before removing Mr. Shelby from his cell. R. at 6. The roster that he had on his person. R. at 6. Officer Campbell also chose not to reference the jail's online database. R. at 6. This list detailed inmates with medical needs, those who had been violent or who had been found with weapons inside the jail, and inmates with gang affiliations and their risk of attack by other inmates. R. at 6. Although Mr. Shelby's name was explicitly included in this list, highlighting the potential danger posed by the Bonucci gang, Officer Campbell failed to reference it before removing Mr. Shelby from his cell, nor did he consult the jail's online database for relevant information. R. at 6.

Officer Campbell took Mr. Shelby from his cell and walked him to the guard stand to wait for other inmates to be gathered for recreation time. R. at 6. During this walk, an inmate shouted to Mr. Shelby, stating, "I'm glad your brother Tom finally took care of that horrible woman," to which Mr. Shelby replied, "yeah, it's what that scum deserved." R. at 6. In response, Officer Campbell told Mr. Shelby to be quiet and retrieved another inmate from block A, two inmates from block B, and one inmate from block C. R. at 6-7. Notably, the three inmates from blocks B and C were all members of the Bonucci gang. R. at 7. Mr. Shelby moved behind the other inmate from

block A, but the Bonucci gang inmates immediately charged Mr. Shelby, and began beating him with their fists. R. at 7. One of those inmates had a club made from mashed paper, which he used to repeatedly strike Mr. Shelby in the head and ribs. R. at 7. Officer Campbell attempted to intervene, but his efforts proved unsuccessful. R. at 7. The attack persisted for several minutes until additional officers arrived to help. R. at 7.

As a result of the attack, Mr. Shelby suffered severe, life-threatening injuries including penetrative head wounds from blunt force trauma resulting in traumatic brain injury, three fractured ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding. R. at 7. Consequently, Mr. Shelby stayed in the hospital for several weeks due to the extent of his injuries. R. at 7. After a bench trial, Mr. Shelby was acquitted of the assault charge, but found guilty of battery and possession of a firearm by a convicted felon. R. at 7.

II. Procedural history

On February 24, 2022, Respondent-Appellee Arthur Shelby filed a 42 U.S.C. §1983 action *pro se* against Petitioner-Appellant Officer Chester Campbell, in his individual capacity, in the United States District Court for the Western District of Wythe. R. at 7. Alongside his complaint, Shelby filed a motion to proceed *in forma pauperis*. R. at 7. The District Court denied the accompanying motion on April 20, 2022, on the grounds that Shelby had accrued three "strikes" under the Prison Litigation Reform Act of 1995 ("PLRA"), 28 U.S.C. §1915(g). R. at 1. The denial of Shelby's motion also included an instruction for him to settle the $402.00 filing fee, a payment that Shelby promptly submitted within the thirty-day timeframe stipulated by the District Court. R. at 7.

In response to the claim, Officer Campbell filed a 12(b)(6) Motion to Dismiss on May 4, 2022, arguing Shelby failed to state a claim, under the Federal Rules of Civil Procedure. R. at

8. The motion was approved by the District Court on July 14, 2022, which concluded that Shelby had not provided facts sufficient to indicate that Officer Campbell possessed actual knowledge of Shelby's gang affiliation and the associated risk of bodily harm. R. at 11.

On July 25, 2022, Shelby timely appealed the District Court's order granting Campbell's Motion to Dismiss and denying Shelby's motion to proceed *in forma pauperis*. R. at 13. The Court of Appeals for the Fourteenth Circuit reversed and remanded the District Court's ruling on both issues. R. at 19. Officer Campbell filed a timely petition for a writ of certiorari to the United States Supreme Court. R. at 21. The Court granted certiorari. R. at 21.

SUMMARY OF THE ARGUMENT

Heck dismissals do not count as strikes under the three-strike rule of the Prison Litigation Reform Act, such that Mr. Shelby should be allowed to proceed *in forma pauperis* on his current claim. Further, to allow *Heck* dismissals to count as strikes under the PLRA would undermine the congressional intent of both the PLRA and the *in forma pauperis* statute. The enumerated strikes under § 1915(g) are 1) if the claim is frivolous, 2) if the claim is malicious, and 3) if the complaint fails to state a claim. Claims dismissed pursuant to *Heck* are not per se frivolous or malicious. For a claim to be frivolous under the statute, it must lack an arguable basis in law or fact. There is no indication that Mr. Shelby's previously dismissed claims lacked an arguable basis. For a claim to be malicious under the PLRA, it must abuse the judicial system. A claim that abuses the judicial system is one that is filed with ill intent or motive. There is no indication that Mr. Shelby's previously dismissed claims were an abuse of the judicial system. Moreover, *Heck* dismissals are not dismissals for failure to state a claim because 1) the dismissal does not reach the merits of the case, and 2) favorable invalidation is not a prerequisite of a §1983 claim but is instead an affirmative defense. Rather than being a merit issue, *Heck* dismissals deal with ripeness and

operate similarly to other jurisdictional bars. Even the most meritorious claim can be dismissed under *Heck* simply because it is not yet ripe. For a §1983 claim to become ripe, favorable invalidation must occur. While favorable invalidation is necessary for §1983 claims, it is not a prerequisite. Like administrative exhaustion, favorable invalidation must be raised as an affirmative defense in the defendant's answer. Because *Heck* dismissals are for ripeness and favorable invalidation is an affirmative defense, *Heck* dismissals are not for failure to state a claim and thus should not count as a strike under the PLRA.

Additionally, the purpose of the three-strike provision, as stated by Congress, is to encourage the filing and ruling on meritorious claims while preventing the influx of non-meritorious claims. Allowing *Heck* dismissals to count as strikes will undermine this exact purpose. Further, allowing litigants to proceed *in forma pauperis* is an effort to give more people, specifically prisoners, equitable access to the judicial system. *Heck* dismissals should not prevent prisoners from being able to get the access everyone else is afforded.

Shifting focus, in the landmark decision of *Kingsley*, the Supreme Court eliminated the requirement for pretrial detainees to establish a defendant's subjective intent in deliberate indifference failure-to-protect claims under §1983. This marked a pivotal shift in jurisprudence, establishing a consistent approach for pretrial detainee claims, grounded in both U.S. Supreme Court precedent, and underlying constitutional principles.

This departure was justified by the recognition that "deliberate indifference" was an undefined term, requiring varied applications based on the constitutional rights afforded to pretrial detainees. Relying on prior decisions, the Court emphasized the objective nature of evidence and the differentiation between the rights of pretrial detainees and convicted prisoners.

Similarly, the belated but necessary evolution of pretrial detainee adjudication gains legitimacy from the constitution. With the presumption of innocence on their side, individuals in pretrial detention assert their claims under the Due Process Clause of the Fourteenth Amendment, diverging from the Eighth Amendment utilized by convicted criminals. This choice is grounded in the recognition of distinct rights, legal status, and notably, a lighter burden for pretrial detainees.

Furthermore, an overwhelming majority of circuits have chosen to broaden the application of the objective standard. This expansion includes not only failure-to-protect claims by pretrial detainees but also extends to cover all §1983 claims brought by individuals in pretrial detention. This acknowledgment reflects a departure from prior precedent and a commitment to aligning the legal standard with an objective framework.

In the alternative, even if the objective standard does not apply to all pretrial detainee claims, it is the appropriate standard for failure-to-protect claims. §1983 lacks an independent state-of-mind requirement, necessitating courts to determine the appropriate state-of-mind for each claim. A categorical distinction persists between negligence and intentional acts, and a failure-to-protect claim comfortably fits in between these extremes. This is due to the inherent nature of a failure-to-protect claim, focusing on inaction rather than action.

The Supreme Court has affirmed that pretrial detainees can succeed under the Fourteenth Amendment by presenting solely objective evidence. Establishing conscious knowledge poses an evidentiary challenge in cases involving omissions rather than acts, warranting the adoption of a practical standard akin to reckless disregard.

Finally, there is no doubt that Officer Campbell acted in an objectively unreasonable manner. Officer Campbell's intentional act of placing Shelby with rival gang members demonstrated clear neglect and recklessness. Despite available resources, Campbell failed to

identify and mitigate risks, acting in an objectively reckless manner that unjustifiably placed Shelby at a high risk of harm, thereby substantiating a cognizable claim.

In summary, *Kingsley's* objective unreasonableness standard not only redefined the legal landscape for pretrial detainee claims but also provided a consistent and tailored approach rooted in constitutional principles. The majority of circuits recognized and embraced this shift, ensuring a nuanced evaluation of pretrial detainee claims under the Fourteenth Amendment.

ARGUMENT

Since the issues before this Court were previously adjudicated in lower courts, this Court should review the case *de novo*. *Johnson v. West*, 218 F.3d 725, 729 (7th Cir. 2000). A *de novo* standard of review is used when there are questions as to how the law was applied or interpreted. *Johnson*, 218 F.3d at 729. In this standard, there is no deference to the findings of the lower courts and the higher court will rule on all aspects of the case as if it is being heard for the first time. *Johnson* at 729. The Court reviewing the matter *de novo* can refer to the record to establish facts of the case, and those facts are not in dispute, but will not defer to the lower court's findings of law. *United States v. Firishchak*, 468 F.3d 1015, 1023 (7th Cir. 2006).

I. Dismissal of a prisoner's civil action under Heck v. Humphrey does not constitute a "strike" within the meaning of the Prison Litigation Reform Act (PLRA).

Prior to the current action, Mr. Shelby had filed three other §1983 claims that were dismissed pursuant to *Heck*. As a result, the district court ruled that Mr. Shelby generated three strikes under the PLRA, so he could not proceed *in forma pauperis* in his current action. The appellate court reversed the district court's finding, holding that a *Heck* dismissal is not a strike under the PLRA and Mr. Shelby could proceed *in forma pauperis*.

Under the PLRA, a strike accrues only if a person who is incarcerated or detained in a facility, brings in a court of the United States, an action or appeal that is dismissed on particular grounds enumerated in the statute. 28 U.S.C. § 1915(g). The enumerated grounds for dismissal are 1) that the action or appeal is frivolous, 2) the action or appeal is malicious, or 3) the action or appeal fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). A *Heck* dismissal occurs when a §1983 claim has been brought, which challenges the constitutionality of a conviction or confinement, when that conviction or confinement has not yet been invalidated by the court. *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994).

In the present case, the previous actions filed by Mr. Shelby were dismissed pursuant to *Heck*. R. at 3. The previous actions were not frivolous or malicious, nor did they fail to state a claim, such that they do not constitute strikes under the PLRA. Finally, expanding the meaning of §1915(g) to include a *Heck* dismissal as grounds for a strike goes against the policy intentions of the PLRA and the *in forma pauperis* statute.

A. Actions dismissed under Heck are not inherently frivolous or malicious.

Claims dismissed pursuant to *Heck* are not dismissed because they are categorically frivolous or malicious. *Washington v. Los Angeles County Sheriff's Department*, 833 F.3d 1048, 1055 (9th Cir. 2016). Plaintiffs may have meritorious claims that do not accrue until the underlying criminal proceedings have been successfully challenged. *Washington*, 833 F.3d at 1055. Moreover, a prisoner's claim is frivolous, within the meaning of the PLRA three-strikes provision, only if it lacks an arguable basis either in law or in fact. 28 U.S.C. § 1915(g); *Washington* at 1055. There is no indication anywhere in the record that Mr. Shelby's three previously dismissed claims lacked an arguable basis.

A malicious claim within the meaning of the PLRA is one that is abusive of the judicial process. *Johnson v. Edlow*, 37 F. Supp. 2d 775, 776 (E.D. Va. 1999). When determining if a claim abuses the judicial process, the court must consider whether it is the plaintiff's motive to "harass and vex" the defendants, or to "seek redress for a legitimate claim." *Johnson*, 37 F. Supp. 2d at 776. Again, the record gives no indication that Mr. Shelby had ill intent or motive when bringing his previous three claims, such that they cannot be considered malicious. Furthermore, a §1983 claim cannot be characterized as malicious unless the court specifically finds that the complaint was filed with the intention or desire to harm another. *Washington* at 1055. There were no such specific findings when those previous claims were dismissed. Therefore, dismissals pursuant to *Heck* are not inherently frivolous or malicious, and, more specifically, Mr. Shelby's dismissed actions were not frivolous or malicious.

B. Heck dismissals do not reach the merits of the claim, such that dismissals pursuant to Heck are not dismissals for failure to state a claim.

A prisoner needs to obtain a favorable invalidation of their conviction or confinement before the court can review the merits of the §1983 claim. *Heck,* 512 U.S. at 2372. As a result, dismissals pursuant to *Heck* do not address the merits or the adequacy of the underlying claim. *Meija v. Harrington*, 541 F. App'x 709, 710 (7th Cir. 2013). Once there is a ruling of favorable invalidation, the §1983 claim accrues, and the merits of that claim can be heard by the court. *Heck* at 2372.

i. Heck dismissals address ripeness issues, not merit issues.

Heck dismissals deal with timing of the litigation rather than the merits of the litigation. *Mejia*, 541. F. App'x at 710. Until the conviction or confinement is held as invalid, the claim is unripe. *Mejia* at 710. Inherent in a *Heck* dismissal is the court's acknowledgment that the plaintiff brought the claim prematurely, which is not an acknowledgement of a claim's lack of merit. *Id.*

Ripeness issues, unlike deficient factual pleadings, are analyzed separately from the merits of the case. *Id.* Under a *Heck* dismissal, even the most meritorious claim is not heard until it is ripe.

Heck dismissals are operatively similar to other jurisdictional doctrines that prevent the court from hearing a claim until specific conditions are met. In fact, some courts have held that *Heck* is strictly jurisdictional. See *O'Brien v. Town of Bellingham*, 943 F.3d 514, 529 (1st Cir. 2019) (discussing whether *Heck* barring a §1983 claim is "a jurisdictional question"); *Dixon v. Hodges*, 887 F.3d 1235, 1237 (11th Cir. 2018) (delineating *Heck* as "strip[ping] a district court of jurisdiction"). Alternatively, *Heck* dismissals can be considered quasi-jurisdictional to align with descriptions of other limits on the ability of federal courts to hear claims. See, e.g., *McCarney v. Ford Motor Co.*, 657 F.2d 230, 233 (8th Cir. 1981) (describing dismissals based on issues related to standing, advisory opinions, mootness, and ripeness as quasi-jurisdictional).

With either label, the function of a *Heck* dismissal remains the same. Courts do not have the power to evaluate the merits of a plaintiff's §1983 claim until their conviction or confinement is set aside. Because the court lacks the authority to evaluate the underlying claim, a *Heck* dismissal cannot be for failure to state a claim. Therefore, a *Heck* dismissal does not fall under any of the enumerated grounds in Section 1915(g) counting as a strike under the PLRA, such that a *Heck* dismissal cannot constitute a strike within the meaning of the PLRA.

ii. Favorable invalidation is not an essential element of §1983 claims.

The elements of a §1983 claim are: 1) conduct by a "person" who 2) acted "under color of state law," 3) proximately causing a 4) deprivation of a federally protected right. 42 U.S.C. §1983. Favorable invalidation is not a prerequisite of a §1983 claim and thus does not need to be pled in the plaintiff's complaint. *Washington* at 1056. The Court in *Heck* clarified that it was not creating a pleading requirement for §1983 claims when discussing an exhaustion requirement. *Heck* at

2373. The same is true here – there is no favorable invalidation pleading requirement. In fact, only Congress, not federal courts, has the authority to change the pleading standards set out in the Federal Rules of Civil Procedure. *Jones v. Bock*, 549 U.S. 199, 213 (2007). Further, this Court has held that instead of using judicial interpretation to address these perceived policy concerns, the Federal Rules must be amended. *Bock*, 549 U.S. at 201 (internal citations omitted).

Instead, favorable invalidation must be raised as an affirmative defense. See *Washington* at 1056 (citing *Bock* at 215-17). Typically, affirmative defenses cannot be pled in 12(b)(6) motions to dismiss, since those motions look only at inadequacies on the face of the complaint. *Rinaldi v. United States*, 904 F.3d 257, 261 (3d Cir. 2018). Defendants must raise the affirmative defense, in this case a *Heck* bar, in their answer to the complaint. *Washington* at 1056. Only after the defendant's answer is the plaintiff required to show favorable invalidation. *Id.* Further, the plaintiff is not required to anticipate any defenses in their complaint, such that they do not need to address a potential *Heck* dismissal on the face of their complaint. *Schmidt v. Skolas*, 770 F.3d 241, 248-49 (3d Cir. 2014).

This structure is like a failure to exhaust dismissal. Congress does not require plaintiffs to plead exhaustion in their complaint because it must be raised as an affirmative defense. *Bock* at 215-16. In *Bock*, this Court held that while there is "no question that exhaustion is mandatory under the PLRA," the statute's silence regarding whether exhaustion must be pled or is an affirmative defense constitutes "strong evidence" that it should be regarded as an affirmative defense. *Bock* at 216. The Court goes on to note that, in general, courts should not depart from the usual practices of the Federal Rules "based on perceived policy concerns." *Id.* The same is true for favorable invalidation. Respondent agrees that favorable invalidation is necessary to bring a §1983 claim, but because the statute does not explicitly state that it must be pled in the complaint, the

Court should remain consistent in holding that a *Heck* bar must be raised as an affirmative defense. Had Congress intended that a *Heck* dismissal be a strike, they would have added it to one of the enumerated grounds, like frivolous or malicious claims, or failure to state a claim. See *Bock* at 215-16 (stating dismissal for failure to exhaust is not a strike because it would have been added to the terms in the enumeration had Congress intended it to be a strike).

Since failure to exhaust administrative remedies is an affirmative defense, a dismissal on those grounds only amounts to failure to state a claim when those failures appear on the face of the plaintiff's complaint. *Rinaldi*, 904 F.3d at 261. Moreover, dismissal for failure to state a claim must be based only on the evidence and allegations included in the complaint, such that courts cannot look beyond the complaint itself in deciding whether a §1983 claim is *Heck* barred. *Rinaldi* at 261. Therefore, if a *Heck* bar is not obvious from the plaintiff's complaint, it must be raised as an affirmative defense by the defendant in their answer.

Because favorable invalidation is not an essential element of a §1983 claim, and is instead an affirmative defense, a *Heck* dismissal is not one for failure to state a claim and does not count as a strike under the PLRA.

C. The policy intentions behind the PLRA and its language do not support Heck dismissals counting as strikes under the Act.

The stated purpose of the PLRA is to "reduce the quantity and improve the quality of prisoner suits." *Porter v. Nussle*, 534 U.S. 516, 984 (2002). To achieve this purpose, Congress passed reforms to reduce the bad claims filed by prisoners and highlight consideration of their good claims. *Bock* at 203. Expanding *Heck* dismissals to count as strikes under the PLRA overcorrects too far one way and will leave prisoners with meritorious claims without the ability to resolve those claims. Barring prisoners from bringing their meritorious claims is certainly not what Congress had in mind when drafting the PLRA. In fact, in discussing the bill on the floor,

sponsors noted that the legislation was focused on preventing §1983 suits claiming, "insufficient storage locker space, a defective haircut by the prison barber, or being served creamy peanut butter instead of chunky." *Jones v. Smith*, 720 F.3d 142, 147 (2d Cir. 2013) (internal citations omitted). These are the kinds of obviously frivolous claims that the PLRA was targeted to prevent. Further, Congress, in amending the in *forma pauperis* statute through the PLRA, wanted to ensure "that the flood of non-meritorious claims does not submerge and effectively preclude consideration of the allegations with merit." *Bock* at 203. Again, the case at hand here illustrates how, by extending the interpretation of the PLRA to include *Heck* dismissals as strike-worthy goes against Congress' intent to create a system in which meritorious prisoner claims can be heard efficiently.

Not only would this strike expansion go against the intentions of the PLRA, but it goes against the policy intentions in allowing litigants to proceed *in forma pauperis*. When first drafted, the *in forma pauperis* statute was "designed to ensure that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). The statute further "intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, solely because his poverty makes it impossible for him to pay or secure the costs." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948). Allowing litigants to proceed *in forma pauperis* is a principle based in making the justice system more equitable and more accessible to all people. Allowing a *Heck* dismissal, which is not a dismissal for frivolity or failure to state a claim, to count as a strike and prevent people from filing *in forma pauperis* simply contradicts the essence of the statute.

II. This Court's decision in Kingsley removes the need for a pretrial detainee to establish a defendant's subjective intent in a deliberate indifference failure-to protect claim under 42 U.S.C. §1983.

The groundbreaking decision in *Kingsley v. Hendrickson* marked a pivotal shift in jurisprudence, acknowledging the distinctive claim of a pretrial detainee asserting a violation of their constitutional rights. *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). However, in rendering the aforementioned decision, the Supreme Court of the United States established a precedent that poses untenable opposition to prior holdings like that of *Farmer v. Brennan*, 511 U.S. 825 (1994). Thus, this Court should use the present case as an opportunity to clarify the applicability of *Farmer's* subjective standard to convicted criminals only, and in claims brought by pretrial detainees, the appropriate standard is *Kingsley's* objective unreasonableness.

A. Under the holding in Kingsley, the correct standard for all §1983 claims brought my pretrial detainees is objective unreasonableness.

Kingsley's decision not only overruled *Farmer's* subjective intent requirement in pretrial detainee, failure-to-protect claims, but provided a new objective unreasonableness standard for all claims brought by pretrial detainees. The court in *Kingsley* found that it was only necessary for a pretrial detainee, alleging that jail officers used excessive force in violation of the Fourteenth Amendment's Due Process Clause, show that the force used against him was objectively unreasonable. *Kingsley*, 576 U.S. at 406. This was grounded in both U.S. Supreme Court precedent and underlying constitutional principles.

In *Kingsley*, the Supreme Court rejected the application of the subjective malicious and sadistic standard to pretrial detainee excessive force claims and held instead that these claims are measured by an objective standard. *Kingsley*, 576 U.S. at 396-97. At the outset, the Court reasoned that "deliberate indifference" was an undefined term, that could not be invariably applied to all claims brought under §1983. *Id.* In other words, the claimants' status, and thus the constitutional

protections afforded, dictate the correct test to be applied by a court. Since the constitutional rights for pretrial detainees vary, and the amendments under which their protections arise similarly differ, the same standard must not be applied under both provisions. *Martin v. Gentile*, 849 F.2d 863, 870 (1988).

Relying heavily on their prior decision in *Bell v. Wolfish*, this Court, in *Kingsley*, reasoned that a pretrial detainee can prevail by providing solely objective evidence. *Kingsley* at 398; see also *Bell v. Wolfish*, 441 U.S. 520 (1979). *Bell* endorsed the extension of this standard to not only excessive force claims, but also challenges to conditions of confinement. *Kingsley* at 405. Ultimately, *Bell* rested on the fundamental constitutional tenets at play when a pretrial detainee brings a claim under §1983. *Bell*, 441 U.S. at 535. Convicted prisoners are afforded protection against cruel and unusual punishment, a right grounded in the text of the Constitution's Eighth Amendment. On the other hand, pretrial detainees, who retain a presumption of innocence, must not be subjected to any form of punishment. *Martin v. Gentile*, 849 F.2d 863, 870 (1988) (citing *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 245 (1983)); (see also U.S. CONST. Amend. VIII).

The court devised a two-pronged test for assessing the viability of an excessive force claim brought by a pretrial detainee. The first prong provides that the official must have acted with a "purposeful, a knowing, or possibly a reckless state of mind" concerning their physical acts that led to the detainee's injury. *Kingsley* at 395-96. The second prong focuses on determining whether the force used was objectively excessive. In other words, the court did away with any consideration of the officer's state of mind, and instead focused on whether the force was objectively unreasonable given the facts and circumstances. Importantly, the first prong maintains the understanding that negligence is insufficient to satisfy the test. In addition, the court proceeded to

list relevant factors to be considered in the determination of the second prong's reasonableness inquiry. *Id.* at 397. These factors are of course specific to excessive force claims, but the ultimate determination is made absent the benefit of hindsight. *Id.* at 395. In *Bell*, the court defined an objective form of punishment as an official's act that was not "rationally related to a legitimate nonpunitive governmental purpose." *Bell*, 441 U.S. at 561. Arguably more influential, was the court's finding that Eighth Amendment claims brought by convicted criminals have no bearing on pretrial detainees' claims under the Fourteenth Amendment. *Kingsley* at 401. Pretrial detainees still possess the presumption of innocence and thus the *Kingsley* court adopted an objective standard, as a way of differentiating these claims from those of convicted criminals. Logically, the reasoning and ultimate holding in *Kingsley* is not focused on excessive force versus other categories of claims but instead acknowledges the different rights afforded to a pretrial detainee and convicted prisoner.

Narrowing the standard for assessing a violation of that right exclusively to cases involving excessive force not only contradicts the principles outlined in *Kingsley*, *Farmer*, and *Bell* but also implies that officials would be granted minimal consideration when faced with rapid "misjudgments" regarding the necessary level of force for maintaining order or safeguarding other inmates, as highlighted in *Kingsley*, 576 U.S. at 406 (Scalia, J., dissenting). Conversely, it suggests that officials would be afforded greater deference when making deliberate decisions concerning the conditions and care provided to individuals not yet convicted and under their custody. The petitioners fail to provide any justification for introducing such inconsistency into Fourteenth Amendment jurisprudence.

Moreover, while a circuit split persists among appellate courts post-*Kingsley*, it is imperative to underscore that proponents of a subjective intent standard often anchor their

arguments in antiquated precedent. See *Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 414 (5th Cir. 2017); *Whitney v. City of St. Louis*, 887 F.3d 857 (2018); *Dang ex rel. Dang v. Sheriff Seminole Cnty.*, 871 F.3d 1272 (2017). In contrast, those circuits acknowledging that *Kingsley* set a precedent at odds with *Farmer*, provided thorough rationalization and relied on the nature of the claims and the relevant constitutional amendments.

i. Pretrial detainees not only possess a uniquely distinct claim under the Fourteenth Amendment when compared to a convicted criminal's Eighth Amendment claim, but they also bear a lighter burden.

The distinction between Eighth Amendment protection for convicted prisoners and Fourteenth Amendment protection for pretrial detainees is "critical." *Demery v. Arpaio*, 378 F.3d 1029, 1028-29 (9th Cir. 2004). The Supreme Court's unequivocal and consistent precedent advocates for the non-application of the subjective state-of-mind standard of the Eighth Amendment to claims brought by pretrial detainees under the Fourteenth Amendment. *Brawner v. Scott County*, 14 F.4th 585, 596 (6th Cir. 2021). This enduring principle is grounded in the recognition that pretrial detainees and convicted criminals, possessing distinct legal statuses, assert claims under different constitutional amendments. The unique protections afforded by each amendment logically necessitate distinct tests for evaluating the validity of a claim. The court has sought guidance from Eighth Amendment precedent, affirming that a pretrial detainee is entitled to, at a minimum, the same level of protection afforded to a convicted prisoner. *Younger v. Crowder*, 79 F.4th 373, 387 n.11 (2023) (citing *Mays v. Sprinkle*, 992 F.3d 295, 300 (4th Cir. 2021)).

Convicted criminals are constitutionally shielded from "cruel and unusual punishments" under the Eighth Amendment. U.S. CONST. amend. VIII. Conversely, pretrial detainees, alleging violations of their constitutional rights, assert claims under the Fourteenth Amendment's Due

Process Clause. U.S. CONST. amend. XIV. Further still, the differentiation extends beyond pretrial detainees and convicted criminals to include a third category: arrestees. Each group brings forth §1983 claims under disparate constitutional provisions: arrestees under the Fourth Amendment; pretrial detainees under the Fourteenth Amendment; and convicted criminals under the Eighth Amendment. See *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Wilson v. Seiter*, 501 U.S. 294, 306 (1991) (White, B., concurring); and *Kingsley v. Hendrickson*, 576 U.S. 389, 396-99 (2015). Thus, in a §1983 claim, advocating for pretrial detainee treatment is paramount, given that the Fourteenth Amendment imposes "a lighter burden to show constitutional violation." *Peterson v. Heinen*, 89 F.4th 628, 634 (2023) (quoting *Smith v. Copeland*, 87 F.3d 265, 268 n.4 (8th Cir. 1996)); see also *Bell*, 441 U.S. at 535 n.16 (noting that under the Due Process Clause, a detainee is free from any punishment prior to an adjudication of guilt).

ii. A circuit split exists on applying Kingsley's objective standard to non-excessive force claims brought by pretrial detainees, with the overwhelming majority extending it to all pretrial detainee claims.

The majority of circuits, upon grappling with the implications of the *Kingsley* holding and its impact on precedent such as *Farmer*, have acknowledged that pretrial detainees can state a claim under the Fourteenth Amendment, based on a purely objective standard, for prison officials' deliberate indifference to excessive risks of harm. See *Short v. Hartman*, 87 F.4th. 593, 604 (4th Cir. 2023); *Gordon v. County of Orange*, 888 F.3d 1118,1120, 1122-25 (9th Cir. 2018); *Darnell v. Pineiro*, 849 F.3d 17, 34-35 (2d Cir. 2017); *Miranda v. County of Lake*, 900 F.3d 335, 351-52 (7th Cir. 2018); *Brawner v. Scott County*, 14 F.4th 585, 596 (6th Cir. 2021). *Kingsley* is irreconcilable with prior precedent utilizing a subjective standard. *Short*, 87 F.4th at 605.

When confronted with the task of reconciling the conflict between *Kingsley* and *Farmer,* it is not surprising that the majority of circuits have adopted an objective standard for all types of

§1983 claims brought by pretrial detainees. "*Kingsley* altered the standard for deliberate indifference claims under the Due Process Clause," and overruled prior precedent that applied the same subjective deliberate indifference standard to both Eighth and Fourteenth Amendment claims. *Darnell*, 849 F.3d at 30, 35.

Of the six circuits[1] tasked with addressing the impact of *Kingsley* on *Farmer* and pretrial detainee claims, the Second, Fourth, Sixth, Seventh and Ninth circuits have each held that *Kingsley's* objective standard extends to all pretrial detainee claims brought under the Fourteenth Amendment. See *Darnell v. Pineiro*, 849 F.3d 17, 36 (2d Cir. 2017) ("A detainee must prove that an official acted intentionally or recklessly, and not merely negligently"); *Brawner*, 14 F.4th 585, 592 (6th Cir. 2021); *Short*, 87 F.4th at 605 (4th Cir. 2023) ("The fact that *Kingsley* refers broadly to 'challenged governmental action' and speaks of claims under the Fourteenth Amendment generally, coupled with its heavy reliance on *Bell v. Wolfish*, demonstrate that *Kingsley's* objective standard extends not just to excessive force claims; it applies equally to deliberate indifference claims."); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) ("Thus, the test to be applied 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.").

In the Ninth Circuit, the court in *Gordon v. County of Orange* provided a succinct conclusion on what the new standard to be applied is for pretrial detainees bringing conditions of confinement claims. *Gordon v. County of Orange*, 888 F.3d 1118, 1120 (9th Cir. 2018). The court

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[1] [1] The First, Fifth, Eighth, and Eleventh Circuits have acknowledged *Kingsley's* existence however none have decisively accepted or rejected its wider applicability. The First Circuit hasn't addressed the question, while the Fifth, Eighth, and Eleventh Circuits have opted to reserve any decisive ruling for an en banc hearing. *Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64 (1st Cir. 2016); *Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415 (5th Cir. 2017); *Whitney v. City of St. Louis*, 887 F.3d 857 (8th Cir. 2018); *Dang ex rel. Dang v. Sheriff, Seminole Cnty.*, 871 F.3d 1272 (11th Cir. 2017).

reasoned that based on the develops in §1983 jurisprudence, namely *Kingsley* and *Castro*, the proper standard of review for such claims is one of objective indifference not subjective indifference. *Id.* In fact, the en banc majority for the Ninth Circuit, in *Castro*, devised a new test. Putting these principles together, the elements of a pretrial detainee's Fourteenth Amendment failure-to-protect claim against an individual officer are:

> 1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;
>
> 2) Those conditions put the plaintiff at substantial risk of suffering serious harm;
>
> 3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and
>
> 4) By not taking such measures, the defendant caused the plaintiff's injuries. 833 F.3d at 1071.

Arguably, the most exhaustive and eloquent scrutiny of the matter occurred in the recent case of *Short v. Hartman*, where the Fourth Circuit decisively declared *Kingsley* to be 'irreconcilable' with prior precedent and to have unequivocally established a novel, objective standard applicable to all claims brought by pretrial detainees. 87 F.4th 593, 605 (4th Cir. 2023) (emphasis added). To briefly recount the harrowing facts, Victoria Short attempted suicide while in custody at the Davie County Detention Center on August 24, 2016, and died two weeks later. *Id.* at 599. Her husband, Charles Short, filed a lawsuit under § 1983 against the Davie County Sheriff's Department and individual employees, alleging violations of the Fourteenth Amendment—specifically, a failure to adhere to detention center policies designed to address

suicide risks. *Id.* at 601. As the case ascended to the United States Court of Appeals for the Fourth Circuit, three pivotal issues were identified for briefing, with the primary query, 'Whether the Fourteenth Amendment claims should be evaluated under the objective test announced in *Kingsley* (internal citation omitted)." *Id.* at 602-03. Prior to delving into *Kingsley*, the court conceded that, akin to other circuits, it had extended *Farmer* to Fourteenth Amendment claims, but they "did not provide extensive reasoning," did so "[a]s a practical matter," and conducted such analysis "[d]espite the Supreme Court's suggestion that pretrial detainees may be afforded greater protection than convicted prisoners." *Short* at 607-08. When called upon to reconcile their previous holdings with *Kingsley*, the court categorically asserted that *Kingsley* disrupted the presumption that Fourteenth Amendment Due Process Clause claims should mirror Eighth Amendment claims. *Id.* Further, "*Kingsley* itself [speaks] broadly of 'challenged governmental action,' as opposed to only the government's use of excessive force." *Id.* at 609. (quoting *Kingsley* at 398). To be sure, the court left no room for doubt, providing several noteworthy quotes illustrating the finality of their ruling:

1) "Our subjective deliberate indifference test for pretrial detainees' Fourteenth Amendment claims is irreconcilable with the *Kingsley-Bell* objective test," *Id;*
2) "*Kingsley* repudiated the reasoning we followed in adopting the subjective test for deliberate indifference claims in the first place." *Id.*;
3) "Now that *Kingsley* requires us to properly distinguish Eighth Amendment claims from Fourteenth Amendment claims, our prior precedent applying a subjective deliberate indifference standard is "no longer tenable." *Id.* at 609-10, (citing *Carrera v. E.M.D. Sales Inc.*, 75 F.4th 345, 352 (4th Cir. 2023)).

The Fourth Circuit diligently explores every facet of the legal landscape, even engaging with the singular opinion declining to apply *Kingsley* to deliberate indifference claims. *Short*, at 610. In meticulous fashion, the court in *Short* conducts a comprehensive examination of the Tenth Circuit's perspective, ultimately deeming its rationale 'unpersuasive.' *Id.* at 611. Finally, demonstrating an unwavering commitment to exhaustive analysis, the Fourth Circuit underscores that mere allegations of negligence or inadvertent lapses in duty are insufficient. *Id.* at 612, (citing *Kingsley*, 576 U.S. at 396; *Brawner*, 14 F.4th at 596; *Gordon*, 888 F.3d at 1125; *Miranda*, 900 F.3d at 353–54). For an in-depth exploration of the issue at hand, this Court is encouraged to turn its attention to the Fourth Circuit's comprehensive analysis in *Short v. Hartman*.

Conversely, the Tenth Circuit stands as the singular jurisdiction that has directly addressed the question of extending the *Kingsley* objective standard beyond excessive force claims and opted not to do so. See *Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020) ("We decline to extend *Kingsley* to Fourteenth Amendment deliberate indifference claims for several reasons. First, *Kingsley* turned on considerations unique to excessive force claims…[n]ext, the nature of a deliberate indifference claim infers a subjective component. Finally, principles of *stare decisis* weigh against overruling precedent to extend a Supreme Court holding to a new context or new category of claims"). In acknowledging that part of the reason they refused to extend *Kingsley* was "because it would contradict *Farmer,"* the Tenth Circuit appears to seek guidance form a higher court on the interaction between two Supreme Court Decisions. *Id.* at 992-93.

B. In the alternative, even if the objective standard does not apply to all pretrial detainee claims, it is the appropriate standard for failure-to-protect claims.

The varying forms of §1983 claims that may be brought by a pretrial detainee and convicted criminal alike, make it reasonable to avoid a one-size-fits-all approach, and instead attribute burdens based on the underlying nature of the claim. To be sure, §1983 contains no independent

state-of-mind requirement. *Daniels v. Williams*, 474 U.S. 327, 328 (1986); and courts are constantly tasked with ascribing the appropriate state-of-mind for a specific type of claim. If deliberate indifference were still necessary for pre-trial detainee conditions-of-confinement claims, that would still align with the objective tests adopted by post-*Kingsley* courts such as the Second Circuit. See *Darnell v. Pineiro*, 849 F.3d at 36. ("detainee must prove that an official acted intentionally or recklessly, and not merely negligently"). This adherence to the threshold first articulated in *Farmer* rests on the contention that "liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process." *Kingsley*, at 396 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)). Hence why *Kingsley* was wise to clarify that objective unreasonableness turns on the "facts and circumstances of each particular case." *Kingsley*, at 397; (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). This was consistent with prior precedent, and crucial in establishing a new precedent that would withstand muster.

i. The issue in a failure to protect claim is that of inaction rather than action.

Since the inception of the deliberate indifference standard in *Estelle v. Gamble*, courts have required a showing of more than negligence but less than "acts or omissions for the very purpose of causing harm with knowledge that the harm will result." *Estelle v. Gamble*, 429 U.S. 97, 104-06 (1976). This standard requires "more than negligence but less than subjective intent—something akin to reckless disregard." *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc). Maintaining a regulatory framework that permits prison authorities to intentionally allow violence to occur, only to subsequently plead ignorance, would render numerous cases susceptible to failure. The establishment of conscious knowledge poses too high an evidentiary threshold, underscoring the efficacy of a more practicable standard resembling reckless disregard. The Supreme Court has reviewed a breadth of cases challenging detention

conditions and determined that pretrial detainees could succeed under the Fourteenth Amendment by presenting solely objective evidence indicating that the conditions lacked purpose "rationally related to a legitimate nonpunitive governmental purpose" or "excessive in relation to that purpose." *Kingsley* at 398.

ii. Campbell acted in an objectively unreasonable manner.

There is no doubt that, under the two-part standard developed in *Kingsley*, Officer Campbell acted in an objectively unreasonable manner. *Kingsley* argues there are two questions: 1) were the actions intentional? And, 2) was there a risk of harm that reasonable measures could have eliminated? *Kingsley*, at 395. (See also R. at 17). ([T]wo separate state of mind questions is at play in pretrial detainees' § 1983 claims. The first inquiry is subjective, while the second inquiry is objective. It is uncontested that "prison officials have a duty ... to protect prisoners from violence at the hands of other prisoners"). *Cortes–Quinones v. Jimenez–Nettleship,* 842 F.2d 556, 558 (1st Cir. 1988). Thus, in order to bring a claim for failure to prevent harm, the claimant must demonstrate conditions presenting a substantial risk of serious harm. *Helling v. McKinney*, 509 U.S. 25, 34 (1993). Whether a prison official had the requisite knowledge of a substantial risk "can be demonstrated by 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." *Farmer*, 511 U.S. at 842.

In failure-to-protect claims, it is often the officer's inaction rather than a specific act at the center of the claim. Thus, when addressing the *Kingsley* analysis, the first question merely requires that the act, whatever it may have been, was done intentionally. The second question would inquire as to whether there was a "substantial risk of serious harm to the plaintiff that could have been

eliminated through reasonable and available measures that the officer did not take, thus causing the injury that the plaintiff suffered." *Castro*, 833 F.3d at 1070, See also *Kingsley*, at 396-97.

Officer Campbell's specific actions involved removing Shelby from his cell, accompanied by three inmates from a rival gang. R. at 6-7. This act was clearly intentional. Despite having multiple opportunities, Campbell neglected to inform himself of the associated risks when allowing rival gang members near Shelby. He should have attended the mandatory gang intelligence meeting. R. at 5. If he was not in attendance, he should have reviewed the minutes, as was required for anyone who was absent from the meeting. R. at 6. Additionally, Campbell should have checked his list of inmates, which detailed special statuses like at-risk gang violence targets, before moving anyone from their cells. R. at 6. Undoubtedly, he should have noticed that Shelby's gang status on the roster indicated a possible hit ordered by the Bonucci gang. R. at 6. Moreover, Campbell should have recognized that the other inmates he placed with Shelby were Bonucci gang members R. at 6. When multiple inmates shouted at Shelby, insinuating his brother's involvement in a murder, that should have heightened Campbell's curiosity about Shelby's background. R. at 6.

Officer Campbell failed to act as a reasonable person under the same circumstances, neglecting to identify and mitigate the risks to Shelby. Campbell's actions surpassed mere negligence; they were objectively reckless in the face of an unjustifiably high risk of harm, which he should have been aware of. See *Restatement (Second) of Torts* §500 (1965). Despite having access to numerous resources designed to prevent incidents like those experienced by Shelby, Campbell intentionally placed him with other inmates for transfer to recreation, failing to take any measures to avoid or limit the risk.

CONCLUSION

For the aforementioned reasons, the decision of the appellate court should be affirmed, favoring Respondent-Appellant Arthur Shelby on both issues.